

CAVEAT AGAINST RELEASE AND PAYMENT

In the intricate world of maritime law, a caveat against release and payment serves as a crucial tool for protecting one's interests when property, often a ship, is arrested. The concept, its functionalities, and its significance in maritime disputes.

Understanding Caveats: A Preventive Measure

Function: A caveat acts as a formal notification filed with the court registry, indicating a party's objection to the release of arrested property or the disbursement of sale proceeds from arrested property.

Two Types: There are two primary categories of caveats relevant in maritime law:

Caveat Against Release: This specifically objects to the release of arrested property, typically a ship, from detention.

Caveat Against Payment: This focuses on preventing the disbursement of funds in court representing the sale proceeds of arrested property.

Filing a Caveat: The Procedural Steps

Initiation: Any person with a legitimate interest in the arrested property can initiate a caveat by filing a praecipe (a formal written request) with the court registry.

Documentation: The praecipe should be signed by the interested party or their legal representative (advocate).

Registration Process: Upon filing, the caveat is entered into a dedicated logbook maintained by the registry.

Caveat Release Book: This book specifically records caveats against the release of arrested property.

Caveat Payment Book: This book tracks caveats against the disbursement of sale proceeds.

Caveat Duration and Withdrawal

Validity Period: A caveat typically remains valid for a specific period, often 90 days from the date of entry. This provides a reasonable window for the interested party to pursue their claim.

Withdrawal Option: The party who filed the caveat can withdraw it before its expiry by submitting another praecipe.

Successive Caveats: Even after a caveat expires, the interested party can file new caveats to maintain their objection.

Notice Requirements When Caveats Exist

Obligation to Inform: If a caveat against release is in force for an arrested ship or property, the party seeking its release has a legal duty to notify the party who filed the caveat or their legal representative (solicitor).

Purpose of Notice: This notification allows the caveator to address the concerns raised by the party seeking release and potentially reach an agreement before the court intervenes.

Real-World Scenario: Protecting a Maritime Lien

Imagine a scenario where a company repairs a ship on credit. However, the ship owner fails to pay the repair bill. The repair company can file a maritime

lien against the vessel, effectively attaching it as security for the unpaid debt. If the ship is subsequently arrested in another port, the repair company might file a caveat against its release to ensure their claim is settled before the ship departs.

Any person desiring to prevent the release of any property under arrest shall file in the registry a praecipe, signed by himself or his Advocate, who may be acting for him, requesting that a caveat be entered against the release of the said property. A caveat against the release of the said property shall thereupon be entered in a book to be kept in the registry, called the “Caveat Release Book”.

Any person desiring to prevent the payment out of court of any money in court representing the proceeds of sale of any property shall file in the registry a praecipe, signed by himself or his Advocate who may be acting for him, requesting that a caveat be entered against payment out of Court of the said proceeds of sale. A caveat against the payment out of Court of such sale proceeds shall thereupon be entered in a book to be kept in the registry, called the “Caveat Payment Book.”.

A caveat against release and payment is valid for 90 days beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe. Successive caveats may be entered upon expiry. If there is a caveat against release in force in relation to the ship or property under arrest, the party entitled to its issue shall give notice to the party at whose instance the caveat against release was entered or his solicitor requiring it to be withdrawn.

In the realm of maritime law, caveats against release and payment serve as critical instruments for safeguarding a party's interests in disputes involving arrested property, such as ships. These legal mechanisms are employed to prevent the unauthorized release or disbursement of funds related to the arrested property. Understanding the nature, procedure, and implications of

these caveats is essential for practitioners and parties involved in maritime disputes.

Concept of Caveats: A Preventive Measure

A caveat functions as a formal notice lodged with the court registry to signal a party's objection to the release of arrested property or the distribution of sale proceeds from such property. The purpose of a caveat is to ensure that the party's rights and claims are preserved until the dispute is resolved.

Types of Caveats:

Caveat Against Release: This caveat specifically targets the prevention of the release of arrested property, usually a vessel. It ensures that the property remains under detention until the claim is adjudicated or resolved.

Caveat Against Payment: This caveat is aimed at obstructing the disbursement of funds held by the court, which represent the proceeds from the sale of the arrested property. It ensures that such funds are not released until the claim is settled.

Filing a Caveat: Procedural Steps

Initiation:

Who Can File: Any person or entity with a legitimate interest in the arrested property can file a caveat. This may include claimants seeking to enforce maritime liens or other secured creditors.

Praecipe Filing: The process begins with the filing of a praecipe—a formal written request—at the court registry. This request must be signed by the party or their legal representative.

Documentation:

Requirements: The praecipe should detail the nature of the objection and include any relevant information pertaining to the arrest and the claim.

Registration Process:

Logbooks: Upon submission, the caveat is recorded in specific logbooks maintained by the registry:

Caveat Release Book: Documents caveats filed to prevent the release of arrested property.

Caveat Payment Book: Tracks caveats against the payment of sale proceeds.

Caveat Duration and Withdrawal

Validity Period:

Duration: A caveat typically remains in effect for 90 days from the date of its entry. This period allows the caveator sufficient time to address the underlying claim and ensure that their rights are preserved.

Withdrawal Option:

Procedure: The party who filed the caveat may withdraw it before its expiration by submitting a new praecipe. This action terminates the caveat and allows for the release or payment to proceed as required.

Successive Caveats:

Renewal: Even after a caveat expires, the interested party can file new caveats to maintain their objection if the underlying dispute remains unresolved.

Notice Requirements When Caveats Exist

Obligation to Inform:

Notice Requirement: When a caveat against release is in force, the party seeking the release of the property must notify the caveator or their legal representative. This notice provides the caveator an opportunity to address any concerns or negotiate terms before the court proceeds with the release.

Purpose of Notice:

Resolution Opportunity: The notice allows the caveator to respond and potentially reach a settlement or agreement, preventing the need for further court intervention.

Real-World Scenario: Protecting a Maritime Lien

Consider a scenario where a maritime service provider, such as a ship repair company, performs repairs on a vessel on credit. If the vessel owner fails to settle the repair bill, the service provider may secure a maritime lien against the vessel. Should the vessel be arrested in a subsequent port, the repair company can file a caveat against the vessel's release to ensure that their claim is addressed before the vessel is allowed to leave.

Legal Provisions and Case Law

Relevant Statutory Provisions:

Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017:

Section 9: Provides for the procedures related to the arrest and release of ships, including the filing of caveats. This section underlines the importance of caveats in maintaining the status quo of the arrested property until claims are resolved.

Admiralty Rules of the High Courts:

Rule 22 (Caveat Release): States that any person desiring to prevent the release of property under arrest must file a praecipe with the court registry, which will be recorded in the “Caveat Release Book.”

Rule 23 (Caveat Payment): Provides for the filing of a praecipe to prevent the payment out of court of any funds representing the proceeds of sale, which will be recorded in the “Caveat Payment Book.”

Case Law Examples:

MV Elizabeth v. Harwan Investment & Trading Pvt. Ltd. (1993) Supp (2) SCC 433:

The Supreme Court underscored the significance of caveats in maritime disputes, reinforcing the procedural safeguards for protecting claims related to arrested property.

M.V. Fairwind v. Shah (2003) 2 GLR 471:

The Gujarat High Court considered the procedural aspects of caveats and emphasized the need for proper notification to ensure that caveators are given an opportunity to address any proposed release or disbursement.

Adani Ports and SEZ Ltd. v. MV Premier (2018) 2 GLR 374:

This case highlighted the practical application of caveats in maritime lien disputes, illustrating how caveats can be effectively used to secure claims against the sale proceeds of arrested vessels.

Caveats against release and payment are essential tools in maritime law, providing a means to safeguard claims and interests in arrested property. By filing a caveat, a party can prevent the unauthorized release of the vessel or the disbursement of sale proceeds until their claims are adjudicated. The procedural steps for filing and withdrawing caveats, as well as the legal

obligations for notice, ensure that all parties have a fair opportunity to address disputes before the court. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the Admiralty Rules of the High Courts establish a robust framework for managing caveats and protecting maritime interests effectively.