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A CASE STUDY OF RELATION BETWEEN ASSIGNMENT OF CLAIM AND BANK GUARANTEE TO RELEASE THE VESSEL BY PETER KOS

General

A CASE STUDY OF RELATION BETWEEN ASSIGNMENT OF CLAIM AND BANK GUARANTEE TO RELEASE THE VESSEL

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I. GENERAL

A bank guarantee and a letter of credit are similar in many ways but they're two different things. Letters of credit ensure that a transaction proceeds as planned, while bank guarantees reduce the loss if the transaction doesn't go as planned.

A bank guarantee, like a line of credit, guarantees a sum of money to a beneficiary. Unlike a line of credit, the sum is only paid if the opposing party does not fulfil the stipulated obligations under the contract. This can be used to essentially insure a buyer or seller from loss or damage due to non-performance by the other party in a contract.

These financial instruments are often used in trade financing when suppliers, or vendors, are purchasing and selling goods to and from overseas customers with whom they don't have established business relationships. The instruments are designed to reduce the risk taken by each party.

In proceedings relating with arrest of vessel bank guarantee is an important instrument. Once the vessel is arrested, the vessel may be released if the correct bank guarantee is submitted by the debtor. Slovene law defines that debtor must submit first class Slovene bank or first class EU bank in order to release the vessel.

II. WORDING OF BANK GUARANTEE

After arrest warrant is granted, Slovenian law allows that debtor submit bank guarantee in order to release the vessel. Debtor must be very careful in order to submit the correct wording of bank guarantee. If creditor agree on wording of the bank guarantee court do not analyse the wording of bank guarantee and automatically release the vessel.

If creditor do not agree on wording of bank guarantee, court has to decide whether the bank guarantee gives creditor enough protection to get payment from this bank guarantee after the claim on merit is finally decided upon in court procedure.

Bank guarantee shall be recognised by court as sufficient guarantee if the bank guarantee includes:

- the sum of payment including principal claim that is granted with arrest warrant
- the interest that are granted with arrest warrant
- all cost, court fees and other expenses that are granted with arrest warrant.

III. BENEFICIARY OF BANK GUARANTEE – ASSIGNMENT OF CLAIM

There is also an interesting question about the beneficiary person to whom the bank guarantee shall be granted. Some drafts in www and other sources include the name of the court as a person who is legitimate on the basis of bank guarantee to receive the money after the case is finished. Court has nothing to do with the claim of creditor and do not receive any payment of behalf of creditor. Therefore one has to be very careful to nominate the correct beneficiary person – creditor to be the entitled from bank guarantee.

It is also very important question who shall be the beneficiary of bank guarantee if the creditor assign his claim during the proceeding of arrest of vessel to other person. In case of assignment of the claim the bank guarantee must be reissued to beneficiary of new creditor, because he will get payment from bank guarantee.

IV. DRAFT OF BANK GUARANTEE

Beneficiary:

NAME OF CREDITOR

BANK:

BANK GUARANTEE

In consideration and upon condition that the creditor irrevocable refrains from arresting or otherwise detaining m/vand/or any other vessel in the same or associated ownership or management, possession or control for the purposes of obtaining security in respect of creditor claim arising out of alleged damage to cargo,

BANK — grant the irrevocable bank guarantee that will pay for and on behalf of the debtor :..... on the first demand of the creditorthe claim with interests and costs as will be adjudged by enforceable judgment or agreed with settlement at the court in the contentious proceeding ref. num. District Court, pertaining the payment of principal in the amount ofEUR with default interests from, costs of the proceeding for security ref. num. Rzl _____ in the amount with default interests from and costs of the contentious proceeding ref. num. in the amount with default interests from, provided always that this guarantee shall not exceed the amount of EUR.

This guarantee cannot be deemed an admission of liability on the part of the debtor nor as a waiver of any of his rights to limitation of liability and is issued entirely without prejudice to any right, defence and exception which the debtor may have, including the right to limit his liability according to the applicable law.

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