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August 28, 2015.

Mr. Nigel Smith
International Registrar of Shipping & Seamen
St. Kitts & Nevis International Ship Registry
West Wing, York House
48-50 Western Road
Romford, RM1 3LP
UNITED KINGDOM

Dear Mr. Smith,

Re: Mortgage on Ship Registered with the St. Kitts and Nevis International Ship Registry

1. We refer to instructions received via email wherein we have been asked to provide an updated legal opinion on the applicable law concerning the efficacy and due registration of a mortgage on a ship registered under the St. Kitts and Nevis International Ship Registry.
2. We have treated our instructions as full and complete and for the limited purpose as indicated above. This opinion addresses only the position as a matter of St. Kitts and Nevis law, is so limited, and should be strictly so construed.

The Law

3. The operation of the St. Kitts and Nevis International Ship Registry is regulated by the Merchant Shipping Act, Cap 7.05 of the 2009 Revised Laws of St. Christopher and Nevis (hereinafter referred to as the "Act") and Regulations made pursuant thereto.

Who Can Own a St. Kitts and Nevis Ship?

4. The Act sets out the persons qualified to be owners of St. Christopher and Nevis ships as follows:

- (a) St. Christopher and Nevis nationals or citizens;
 - (b) Citizens of CARICOM States residing in a member state of the Caribbean Community, where the ship is customarily engaged in international voyages;
 - (c) Individuals or corporations owning ships hired out on bareboat charters to nationals or citizens of St. Christopher and Nevis;
 - (d) Individuals or corporations in bona fide joint venture shipping enterprise relations with nationals or citizens of St. Christopher and Nevis as may be prescribed;
 - (e) A corporation established and operating under and in accordance with the laws of St. Christopher and Nevis and having its registered office in St. Christopher and Nevis;
 - (f) Such other persons as the Minister may, by Order, determine.¹
5. Further, the Act provides that a person who is not listed under section 4(1) may own a St. Christopher and Nevis ship if a majority interest in the ship is owned by persons who are qualified to be owners of St. Christopher and Nevis ships and the ship is registered in accordance with section 5 of the Act. Section 5 of the Act provides that where a ship in which a majority interest is owned by a person qualified to be the owner of a St. Christopher and Nevis ship is
- (a) 24 metres or more in length, and
 - (b) The person by whom the majority interest is owned is not resident in St. Christopher and Nevis
- the ship shall only be entitled to be registered if a representative person resident in St. Christopher and Nevis is appointed in relation to the ship.²
6. Under the Act, a representative person may be an individual resident in St. Kitts and Nevis or a body corporate incorporated in St. Kitts and Nevis and having a place of

¹ Section 4(1)

² Sections 4(2), Section 5

business within the Federation. The Minister may, by regulations, prescribe other requirements.³

7. All applications for ship registration are processed by the St. Kitts and Nevis International Ship Registry which is located London and operates within the authority of the Department of Maritime Affairs, which is located in Basseterre, St. Kitts. Applications made by citizens or residents of St. Kitts and Nevis may be made in Basseterre.
8. The Director of Maritime Affairs, who pursuant to the Act is the head of the International Ship Registry, operates out of the headquarters in Basseterre. The Act provides for the Director to also act as Registrar or in any other capacity as the Minister may direct⁴.
9. The Act gives the Minister the authority, acting on the advice of Cabinet, to enter into a contractual relationship with a company or firm for the purpose of such company or firm carrying out the functions of the Registrar.⁵
10. Further, Maritime Registrars have been appointed in several jurisdictions across the globe and the offices of the Maritime Registrars are authorized to receive applications from non-citizens and non-residents of St. Kitts and Nevis. A full list of the Maritime Registrars worldwide is available on the Registry's website. Kindly note, however, that any documentation submitted to one of the Maritime Registrars must be forwarded by the Maritime Registrar to the Registrar in London for processing.
11. The International Ship Registry and the Registrar, by virtue of section 446(5) of the Act, have the power to effect all the transactions provided for under the Act and any Regulations made pursuant thereto, including the registration of mortgages on ships.

³ Section 6(2)

⁴ Section 444(3)

⁵ Section 446(5)

Registration of Mortgages on St. Kitts and Nevis Ships

12. The Act provides for the registration of mortgages on a ship registered under the Act. The Act provides that a registered ship, or a share in that ship, may be made a security for the repayment of a loan or the discharge of any other obligation.⁶ The mortgage must be in the prescribed form and will be registered by the Registrar when produced to him.⁷ The prescribed forms are available from the Registry or from the Registry's website at www.StKittsNevisRegistry.net. The operational procedure for the registration of a mortgage is also available on the Registry's website. Please note that completed forms accompanied by the necessary documentation may be submitted from a Maritime Registrar to the Registry via facsimile or electronic mail.
13. The Registrar registers mortgages in the order in which they are produced to him. On registering a mortgage the Registrar enters and signs a statement to the effect that the mortgage has been registered by him, stating the date and time of registration.⁸
14. Where it is stated in the mortgage instrument that it is prohibited to create further mortgages without the prior written consent of the mortgagee, the Registrar will make a note on the register to that effect, and will not register any further mortgages unless the written consent of the holder of the prior mortgage is produced to him; any mortgage registered in violation of this provision is void.⁹
15. Further, the Act provides for the mortgage instrument to contain a prohibition against the transfer of ownership of the ship or the termination of the registration of the ship by the ship's owner without the prior consent of the mortgagee. The Registrar must make a note of such a prohibition and is not to record a transfer in contravention of the prohibition in the mortgage instrument, otherwise recording would be void.¹⁰

⁶ Section 77(1)

⁷ Sections 77(2) and (3)

⁸ Section 77(4)

⁹ Section 77(5)

¹⁰ Section 77(6)

Priority of Mortgages

16. Where there are two or more mortgages on the same ship or share, the priority of the mortgages is determined by the order in which the mortgages are registered.¹¹ There is provision in the Act for the registration regulations to provide for intending mortgagees to give “*priority notices*” to the Registrar which would determine the priority of the interest to which the notice relates.¹² However, to date, no such regulations have been made in St. Kitts and Nevis.

Discharge of Mortgage

17. When the registered mortgage is discharged, on production of the mortgage deed with a receipt for the mortgage money endorsed thereon duly signed and attested the Registrar will make an entry in the register to the effect that the mortgage has been discharged. When that entry is made, the estate, if any, which passed to the mortgagee will vest in the person in whom, having regard to intervening acts and circumstances, if any, it would have vested in if the mortgage had not been made.¹³ However, there is provision for the discharge to be registered if the registered mortgage cannot be produced and the Registrar is satisfied that the mortgage has been properly discharged.¹⁴
18. The termination of the registration of the ship by virtue of any provision of the Act will not affect any entry in the register of any undischarged registered mortgage of the ship or any share in the ship.¹⁵ However, where the Registrar is satisfied that the person interested as the mortgagee under the mortgage in question consents to the entry ceasing to have effect, then the Registrar can give effect to such consent.¹⁶

¹¹ Section 78(1)

¹² Section 78(2)

¹³ Section 79(1)

¹⁴ Section 79(2)

¹⁵ Section 80(1)

¹⁶ Section 80(2)

Enforcement of Mortgage

19. The mortgagee is not deemed to be owner of the mortgaged ship or any share in the ship and the mortgagor is not deemed to cease to be owner of the mortgaged ship, save as far as it may be necessary for making a mortgaged ship or share available for security for the mortgage debt.¹⁷
20. However, a registered mortgagee has the power, if the mortgage money or any part of it is due, to sell the ship or share in respect of which he is registered, and give effectual receipts for the purchase money.¹⁸
21. Where two or more mortgages are registered in respect of the same ship or share, a subsequent mortgagee shall not, except under an order of a court of competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee.¹⁹
22. A registered mortgage will not be affected by the bankruptcy of the mortgagor, the mortgage being preferred to any right, claim or interest in the mortgaged ship of other creditors of the bankrupt or any trustee or assignee on their behalf.²⁰

Application of Proceeds of Sale

23. We note that the Act is silent on the manner in which the proceeds of sale on a mortgagee's exercise of his power of sale ought to be applied.
24. However, section 8 of the **Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act** Cap 3.11 of the 2009 Revised Laws of St. Christopher and Nevis provides as follows:

“(1) The High Court is hereby declared to be a Court of Admiralty.

¹⁷ Section 81(1)

¹⁸ Section 81(2)

¹⁹ Section 81(3)

²⁰ Section 82

(2) The High Court shall, in relation to Admiralty matters, have and exercise within the State such jurisdiction in like manner, and to as full an extent as is exercised by the High Court of England and shall have the same regard as that Court to international law and the comity of nations.”

25. Section 8 of the Eastern Caribbean Supreme Court Act makes express provision for the High Court in St. Kitts and Nevis to have, and exercise in like manner, the same jurisdiction of the High Court in England. Consequently, to ascertain the jurisdiction of the High Court in St. Kitts and Nevis it would be appropriate to have regard to the relevant provisions of the legislation which sets out the Admiralty jurisdiction of the High Court in England.

26. Section 20 et seq of the UK Supreme Court Act 1981 deals with the Admiralty jurisdiction of the High Court. We note the following section:

“21(6) Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title of the proceeds of sale.”

27. We also wish to draw attention to the decision in **The Ruta** [2000] 1 Lloyd’s Rep 359 wherein the Court recognized its broad discretionary power to determine questions concerning the ranking of claims. Steele J cited with approval Thomas, Maritime Liens B.S.L. Vol 13 at para 418 as follows:

“The Admiralty and Appellate Courts have adopted a broad discretionary approach with rival claims ranked by reference to considerations of equity, public policy and commercial expediency, with the ultimate aim of doing that which is just in the circumstances of each case.”

28. We note in the treatise **Modern Maritime Law and Risk Management** by Dr. Alekka Mandaraka-Sheppard, it is stated as follows at pages 42-143:

“Payment will be made only to judgment holders as follows:

- (a) The Admiralty Marshal’s costs.*
- (b) Claimant’s costs.*
- (c) Maritime lienees.*
- (d) Mortgages in the order of registration, equitable mortgages having last priority.*
- (e) Claimants who became secured creditors by the issue of the in rem claim form (statutory liens in rem). As between themselves, they run pari passu.*
- (f) Claimants who have obtained judgments in personam against the shipowner of the res will be last...*
- (g) The balance, if any, will be paid to the owner of the ship.”*

29. In light of section 8 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, we submit that should issues of the priority in the distribution of the proceeds of sale on a mortgagee’s exercise of sale be raised, the local Courts would have regard to the Admiralty jurisdiction of the High Court in England in the exercise of its jurisdiction.
30. Kindly note that we are not qualified to practice law in England and therefore any statements herein are limited to our reading of the relevant statute and the case law cited. However, we would advise that you obtain advice on the Admiralty jurisdiction of the English High Court from Counsel qualified to practice law in England.

Transfer of Mortgage

31. The registered mortgage of the ship may be transferred to any person. On production of the instrument effecting the transfer, the Registrar will record the transfer by entering the name of the transferee as mortgagee in the register. The Registrar will enter and sign on

the instrument of transfer a statement to the effect that it has been registered to him, stating the date and time of the registration.²¹

32. However, if the mortgage interest in a ship or share is transmitted to any person by lawful means other than the transfer described above, that person must produce to the Registrar a statement of the manner in which and the person to whom the property has been transmitted, accompanied by evidence of the transmission.²² On receipt of the documents, the Registrar will enter the name of the person entitled under the transmission in the register as mortgagee of the ship or share.²³

Bringing a claim in respect of a mortgage on a ship

33. A claim made in respect of a mortgage of or charge on a ship or any share in a ship falls under the rubric of Admiralty Proceedings under the Civil Procedure Rules 2000 as amended (hereinafter “the Rules”) by virtue of rule 70.2(1). The applicable procedure to bring any claim in respect of a mortgage on a ship or any share therein is outlined in Part 70 of the Rules.
34. Where there is any claim in respect of a mortgage on a ship a claim in rem may be brought against the ship.²⁴ An admiralty claim in rem is begun by claim form in the prescribed form (Form 25 of the Rules)²⁵. Also, the claimant or defendant who counterclaims may, after the issue of the claim form, issue a warrant for the arrest of the property against which the claim or counterclaim is brought.²⁶

²¹ Section 83(1)

²² Section 83(2)

²³ Section 83(3)

²⁴ Rule 70.3(1) and (2)

²⁵ Rule 70.4(1)

²⁶ Rule 70.9(1)

Registration and enforcement of foreign judgments

35. The Reciprocal Enforcement of Judgments Act, Cap 5.14 of the 2009 Revised Laws of St. Christopher and Nevis provides for the registration and enforcement in St. Kitts and Nevis of a judgment of the High Court in England or Northern Ireland or in the Court of Session in Scotland. There is provision for the Reciprocal Enforcement of Judgments Act to be extended to any part of the Commonwealth outside the United Kingdom where the Governor-General is satisfied that reciprocal provisions have been made in that particular jurisdictions²⁷ and several such orders have been made.
36. Part 72 of the Rules outlines the procedure to be followed in order to register a judgment of a foreign court or tribunal in the High Court of St. Kitts and Nevis for enforcement of the judgment within St. Kitts and Nevis.
37. The application to register the judgment may be made without notice but must be supported by evidence on Affidavit which sets out the evidence as required by rule 72.2 of the Rules. It is worth noting that the court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration. A register of the judgments ordered to be registered is kept in the court office.
38. Notice of the registration of a judgment must be served on the judgment debtor personally or in such manner as the Court may direct and there is no need for leave to serve such notice outside the jurisdiction. The registration of a foreign judgment may be set aside on an application supported by Affidavit evidence. A judgment of a foreign court registered in St. Kitts and Nevis may not be executed until the expiration of the period allowed on the order for the registration to be set aside.

²⁷ Section 6

Conclusion

39. In light of the foregoing, please be advised as follows:

- i. A mortgage on a St. Kitts and Nevis ship owned by a non-citizen or non-resident may be duly registered by the International Registrar of Shipping and Seamen in the United Kingdom provided that a representative person is appointed.
- ii. Designated Maritime Registrar Offices located across the globe are authorized to receive the documentation required to effect the registration of a mortgage on a St. Kitts and Nevis vessel and forward same to the Registrar in London so that the mortgage may be registered;
- iii. St. Kitts and Nevis law provides for the enforcement by the mortgagee of his security, should a mortgagor be in default of payment.

We are pleased to so advise. Please feel free to contact the undersigned should you require further assistance.

Yours respectfully,



Dahlia A. Joseph-Rowe

Partner

DANIEL BRANTLEY