



Mercante's Sea Trials



That Sinking Feeling - the Bank Took My Boat!

Economy goes down . . . suspicious boat claims go up! A weak economy seems to spawn mysterious losses, stolen equipment claims, and strange fires. Even repossessions.

The *Repo Man* movie was a tale about a reposessor of cars whose owners defaulted on a bank loan. This is happening more and more now to boat owners. Call them *ReBo Men*. (They repo boats). *Harsh remedy*

Repossession is a harsh legal remedy. You think your boat was stolen, but come to realize it was repossessed by the bank and being sold at auction. If you are delinquent in your boat loan payments, you can not only lose your boat, but still remain responsible for the difference between what the boat sells for and the balance of the loan. A boat owner experienced this sinking feeling recently.

The owner defaulted on a Barclays Bank loan. Barclays repossessed the vessel and brought an action in federal court to recover the deficiency on the mortgage that had been granted to secure the loan on the yacht. The original loan was \$1.4 million for the custom made yacht. It was secured by a "First Preferred Ship Mortgage." Several years into the payment schedule, the vessel owner defaulted on the mortgage. The bank repossessed the

vessel and transferred it to National Liquidators to be sold. After taking the boat, the bank gave written notice of repossession to the owner and that the boat would be sold. The letter did not identify the time or place of the sale, just that it would be sold by way of private sale sometime after the date of the letter. About two months later, the yacht was sold at auction but leaving a deficiency of over \$600,000. The bank sued to recover this amount.

Read the fine print!

The fine print of the "ship mortgage" provided the bank with several options arising from a default including repossession and sale of the vessel upon giving written notice of the time and place of sale. More fine print gave the bank the *catch-all* option of pursuing *such other rights, privileges and remedies granted by applicable law*. Even more fine print referred to the loan being governed by *federal law, including the Ship Mortgage Act*. Here, the bank's written notice did not state the time and place of the proposed sale, so the vessel owner argued that he should be relieved from his obligations under the mortgage for the deficiency amount remaining after the sale took

place. This argument may have held water if not for the wide net cast by the catch-all provision and other fine print in the contract.

Federal law

Federal law governing mortgages on vessels is set forth in the Ship Mortgage Act of 1920 (46 U.S.C. Sect 31301 *et seq*) which contains the procedures for "judicial" foreclosure and sale of vessels. This Act does not discuss "non-judicial" foreclosures, i.e., self-help remedies without a judge's (or court) involvement. Where the federal law pertaining to a vessel mortgage is not fully developed, courts may look to state law to fill the gaps.

Even the U.S. Coast Guard weighs in on this subject in 46 C.F.R. Sect 67.07-11, which provides procedures for passage of title by *extra-judicial* repossession and sale. And, if state law needs to be looked at, the place to start is the particular state's Uniform Commercial Code. In this case Florida state law did not require that there be notice of the time and place of the sale as long as the owner was given 10 days or more written notice before the proposed sale is to take place.

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The court in this reported case upheld the sale and determined that the yacht owner remained responsible for the amount that still remained due after the sale. The yacht owner did not establish that he was in any way prejudiced by the bare bones written notice he received from the bank. For example, the owner had more than 45-days notice of the pending sale but apparently made no attempt in that time frame to make a payment to bring the default current, nor did he arrange for private financing or even to take steps to learn of the place and time of the sale. Lastly, there was no suggestion that the auction was somehow deficient or that there was any disparity between the fair market value and the sale price of the vessel.

Conclusion

When the going gets rough, it may not be a good plan just to

walk away from your vessel and let the bank handle the headache. You may remain responsible for any deficiency in the amount of the sale and the remaining amount due on the loan after the sale. Word to the wise....look closely at the fine print of your loan agreement and consult admiralty counsel. Also, it is unwise to continue in arrears after receiving a written notice of repossession...but better to communicate with the bank and perhaps plead for an acceptable option short of facing *a sale and a suit!*

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