Charterers Continued Failure to Pay Hire Results in Rupudiatory Breach – The "Marquessa"

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The vessel, *MT Marquessa*, was chartered by the Owners on a time charter to the Charterers on an amended Shelltime 4 form dated 1 June 2020.

The deposit due under the CP of US$414,750 was paid late, however the Vessel was delivered into the Charterers' service. There were five hire instalments due by the charterers during the charter period. One was paid in full, two paid in part, and the others remained unpaid. After agreeing an addendum allowing the Charterer's further time to pay, the sixth hire instalment also became due and was also unpaid. With a figure of USD3,700,000 outstanding, Owners accepted this continued conduct as Charterers' repudiation and they terminated the charter.

The Vessel was carrying cargo at the time of the termination and the Owners exercised a lien over this in order to mitigate against the outstanding sum. The Owners then made an application for summary judgement against the Charterers for both unpaid hire due, prior to the termination of the CP (the "Pre-Termination Claim"), and damages consequent upon Owners' termination of the Charterparty (the "Post-Termination Claim") .

Henshaw J rejected the Charterers' argument relating to off-hire periods (namely the periods during which the owners suspended performance) and confirmed that the Owners actions were permitted by the following clause:

"… failing the punctual and regular payment of hire … [Owners] shall be at liberty to at any time withhold the performance of any and all of their obligations hereunder … and hire shall continue to accrue …"

It was agreed that the Owners rightfully suspended performance. As this was a claim for liquidated damages under the contract, there was no duty to mitigate placed on the Owners. The Owners were granted summary judgement on the Pre-Termination Claim and a total of US$873,464.97 .

In relation to the Post-Termination Claim, it was considered reasonable for the Owners to conclude that due to the Charterers continued payment failures, they could fairly conclude that Charterers would not pay punctually as required under the CP, which constituted a repudiation and/or renunciation of the CP.

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The tests set out by Popplewell J were used, in particular:

"(1) Conduct is repudiatory if it deprives the innocent party of substantially the whole of the benefit he is intended to receive…"

"(2) Conduct is renunciatory if it evinces an intention to commit a repudiatory breach, that is to say if it would lead a reasonable person to the conclusion that the party does not intend to perform his future obligations…."

Applying the test, the Court held the consistent failure to pay hire on time had deprived Owners of "substantially the whole benefit" of the CP and it was reasonable to assume this would continue to affect their future obligations.

The Owners were then also granted summary judgment on the Post-Termination Claim for a sum of US$41,291.42 (equivalent to hire from when they accepted Charterer's repudiation to the date of discharge on the cargo at that date (less credit for commission and bunkers remaining on board at the latter date)) and costs of US$45,000.

The result is that an Owners' right under a CP to suspend their performance while hire accrues is not a discretionary right that has to be exercised reasonably or selflessly, it was recognised that the Owners could have a regard to their own commercial interest. Further, a consistent failure to pay or pay on time will amount to a repudiatory breach.

If you have any questions or concerns regarding charterparty repudiatory breaches, please contact our specialist Marine Lawyers on 02380 827416 or by emailing online.enquiries@la-law.com

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