Demurrage and sales contracts

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In the recent case of Gunvor S.A. v CruGas Yemen Limited, the English Court was asked to decide whether a company, which had not been named as a contracting party in a sale contract, could be held responsible for demurrage and other claims worth USD18 million.

Gunvor entered into a contract for the sale of gasoline with a buyer named CruGas Limited. The gasoline was to be delivered over a 12 month period. Gunvor were responsible for chartering in vessels to carry the gasoline and it used one of its group companies, Clearlake Shipping, to charter in the required vessels on the Asbatankvoy Form.

Large sums of demurrage and other amounts accrued during the period of the sale contract. Despite the contract of sale specifically identifying the buyer as CruGas Limited, by the time the dispute reached the English

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Court, Gunvor were perusing that company as well as another company, CruGas Yemen Limited, for their losses. Both of these companies were named as Defendants in the legal action which was started to recover the demurrage.

CruGas Limited and CruGas Yemen Limited both claimed that CruGas Limited was the correct defendant under the sales contracts in their defence. In addition some technical defences were raised as to whether the demurrage claim was time barred and whether the demurrage claimed was at the market rate. The vessels had been chartered in by Clearlake rather than by the seller Gunvor, so there was also a legal issue as to whether Gunvor had actually suffered any loss and were seeking an indemnity. The owners of the Vessels involved would have contracted with Clearlake rather than Gunvor. The time bar issues arose under the contract of affreightment between Clearlake and Gunvor, in relation to the chartering in of vessels.

Various pieces of evidence appear to have been produced in support of the seller's views. A market analyst was used to show that the demurrage rates being claimed were at the market rate. The demurrage claims received from Clearlake were at the market rate.

The Court concluded that CruGas Yemen Limited were in fact the contracting party under the sale contract, despite that CruGas Limited were the named party. As far as Gunvors' right to claim demurrage was concerned, the Court also decided that they had a free standing claim against CruGas Yemen Ltd for the demurrage and that the claim was not premised on issues of indemnity. It also decided that the demurrage claim was not time barred on the basis of Gunvors' free standing entitlement.

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