Laycan and out of office hours – m.v.“Alpha Harmony”

The recent English High Court decision in Bilgent Shipping Pte Ltd v ADM International Sarl *(the “Alpha Harmony”)* serves as a useful reminder that owners/charterers involved in a contractual chain of charterparties need to ensure where possible, that they contract on a back-to-back basis.

The case concerned two arbitral appeals regarding the cancellation of voyage charters for a failure to tender a valid Notice of Readiness (NOR). The arbitrators found both cancellations were invalid. On appeal, the High Court found that the NOR given under the Head Charter was valid and therefore the cancellation invalid but decided the NOR under the Sub Charter was invalid thus, allowing the Sub Charterers to cancel their charterparty. This left the Disponent Owners in an unwelcome position.

Laycan meaning

The definition of laycan period is a window of opportunity by which shipowners must ensure the vessel is ready to load/discharge. The “cancelling date” marks the end of the laycan period and the charterer is entitled to refuse performance of the charter if the vessel is not ready to load by that date.

The background facts:

Oldendorff (the Head Owners) chartered the vessel to ADM (Disponent Owners) on an amended Norgrain 1973 form (Head Charter). Disponent Owners sub-chartered the vessel to Bilgent (Sub Charterers) on an amended Baltimore Form C Berth Grain Form (Sub Charter). The cases before the arbitrators/courts were about the charterers’ cancellations and specifically whether the cancellations be valid, when the NOR had not been tendered during permitted hours but had been tendered prior to the expiry of the laycan period?

- Under both charters the NOR could be tendered during weekday office hours, between 0800 and 1100 on a Saturday and no later than 10 May 2015. Laytime was to commence at 0800 on the next working day after receipt of the valid NOR.
- NOR was tendered at 0704 on 10 May 2015.
- Sub Charterers cancelled the Sub Charter at 2047 hours on Sunday 10 May

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- Disponent Owners cancelled the Head Charter at 0555 on Monday 11 May.

The finding

Sub Charter - It was found that the specific clause relating to the charterers option to cancel the charter had to meet the requirements of the relevant NOR clause, namely the NOR had to be tendered within certain hours on a weekday or a Saturday. The cancellation clause referred directly to the permitted hours clause. The NOR was not tendered within the permitted hours and therefore the Sub Charterers were entitled to cancel.

Head Charter - The contract was not back-to-back with the Sub Charter. The cancellation provision did not refer directly to the NOR provision specifying how it should be tendered within permitted hours, instead it referred to a separate clause relating to laytime, which included a notable variation from the standard form - the removal of the office hours requirement. The Court found the contract provided an option to cancel where no NOR had been tendered before 2359 on 10 May, without the NOR being issued within the permitted hours clause. Accordingly, the judge was persuaded that the amendments were intended to create a different NOR regime (for laycan) from that which applied to laytime. The Disponent Owners had no option to cancel.

Take away

Interests should compare laycan/laytime provisions in a charterparty chain, including specifically:

1. The time and process by which a valid NOR can be tendered; and

2. The circumstances in which the charterers can cancel a charter, to ensure back-to-back terms.

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