London Arbitration 17/21

By a charterparty on an amended BIMCO Heavycon 2007 form, the head owners (owners) chartered a heavy lift vessel to charterers for a single voyage. On the same day, the charterers sub-chartered the vessel, on similar terms, to sub-charterers.

The vessel arrived off the loading port on 14 March and NOR was given to be effective at 00.01 on 15 March. The vessel berthed at midnight on 17 March but the loading commenced on 7 April. The cargo loading was completed on 19 May and the vessel left the following morning on 20 May and commenced her voyage to the discharge port.

Nine days later, the performance of the voyage was suspended by the owners for non-payment of demurrage and other sums from the charterers. The vessel was anchored and thereafter largely drifted (for 272 days). As the daily rate of the vessel was US$45,000, the gross detention charges and stoppage costs amounted to US$12.24 million.

The owners commenced an arbitration against the charterers who in turn commenced arbitration against the sub-charterers. The charterers' claim against the sub-charterers was then dismissed.

The arbitration between owners and charterers dealt with several issues, discussed below in turn:

1. Whether the head charter had become frustrated

The charterers claimed that the charter became frustrated on 15 March when restrictions on travel were issued by the country of the loading port due to the Coronavirus pandemic. As the charterers used a specific loading method, they claimed it was essential for the charterers' employees to carry out the loading operations. As some of the charterers' employees commuted to the port from a neighbouring country and therefore were not able to get to the port, the loading delay was not expected and was so substantial that it frustrated the charter.

The tribunal rejected this argument, as there was no particular method of loading that needed to be essentially used – the charterers could subcontract or delegate the loading operations to someone else as the charterers saw fit. Further, the tribunal rejected the charterers' argument of the impossibility of performance as the cargo was successfully loaded, albeit with delay, and the vessel sailed.

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2. Commencement of laytime including the validity of NOR

The charterers claimed that the NOR was invalid and laytime did not begin until the commencement of the loading because (1) the deck preparations have not been met and (2) the vessel had insufficient mooring wires.

The tribunal rejected both claims as (1) the vessel was only supposed to be provided with a clean deck, which it was and (2) the loading and discharging was the responsibility of charterers.

Accordingly, the NOR was valid and the laytime commenced at 00.01 on 15 March.

3. Load port demurrage

As the tribunal found that the NOR was valid, the owners were entitled to the demurrage at the loading port as claimed.

4. Freight

It was held that when the voyage was halted, payment of the remaining tranche of freight has become due.

5. Load port bunkers

The charterparty's terms did not cover bunkers within the demurrage rate. However, the demurrage clause allowed the owners to charge their actual bunkers consumption in addition to any demurrage and therefore the owners were entitled to the bunker costs while the vessel was on demurrage in the loading port.

6. Bunker escalation and port costs

As the charterers' assertion of frustration failed, the owners were awarded bunker escalation and port costs. However, the owners were not awarded "pilotage/tug hire/mooring" charges, as these were expenses normally covered by owners and were also provided for by the charterparty.

7. War risks

Under the charterparty, the owners were responsible for basic war risk insurance and any additional premiums were for the charterers' account.

However, two questions arose: (1) whether the owners were entitled to the reimbursement of the additional premiums from the date of the approach voyage and (2) whether the charterers should pay the additional

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premiums whilst the vessel was stopped/ a lien was being exercised.

As the Heavycon charterparty has its own provisions for mobilisation and demobilisation charges incurred before arrival at the load port and after departure from the discharge port (unlike other types of charterparties), the tribunal held that the owners were entitled to the additional premiums only from the date and time of the vessel's tender of NOR.

Secondly, the tribunal held that while the vessel was stooped/ a lien was exercised, the vessel was still performing the chartered voyage and therefore the charterers remained liable for the additional premiums.

8. Lien and stoppage at sea

There were additional clauses inserted into the charterparty that allowed the owners to halt their operation if freight, demurrage and other billed expenses are not paid in time. Additionally, the owners would have a lien over the cargo and charterers' equipment for freight, demurrage and other expenses concerning the voyage, including over the costs to recover the same.

The owners gave notice of their intentions to exercise their rights as per the relevant clauses of the charterparty to the charterers, including specifying timescales and the sums due. The charterers did nothing.

The charterers later claimed that the demand for payment was not validly made and that the owners were acting unreasonably when exercising their rights and that the owners exercised their rights at the wrong place – in international waters rather than ashore.

The tribunal rejected the charterers' claims as there was no obligation on owners to act reasonably, the demand was not excessive and the owners did have a right to exercise their rights in the international waters – which were only a little less than two days steaming from the discharge port.

In the end, the owners were awarded US$17,081,717.26 plus interest. The charterers were to bear their own costs and those of the owners, as well as the cost of the award.

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

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