LA marine

MUR v RTI – Force Majeure and Reasonable Endeavours

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The term “force majeure” has been in regular usage within the shipping industry in recent times, with parties seeking to be relieved of their contractual obligations due to obstacles created by the pandemic, war, sanctions and the global financial crisis.

The case of MUR Shipping BV (“MUR”) v RTI Ltd (“RTI) [2022] EWCA Civ 1406 is one such example which has raised an interesting question as to the extent to which parties are expected to try to overcome a force majeure event.

Whilst force majeure itself is not an English law concept and only applies if, and to the extent that, it is expressly agreed by the parties, there is nevertheless a body of English case law which determines the principles by which force majeure provisions should be interpreted and applied.

The contract of affreightment entered into by MUR as owners and RTI as charterers contained a force majeure clause which relieved the parties from performance in the case of a force majeure event, including sanctions, which “cannot be overcome by reasonable endeavours from the Party affected”. After entering into the COA, US sanctions were imposed on RTI’s parent company. MUR accordingly sought to invoke the force majeure clause, arguing that it would be a breach of sanctions for them to continue with performance of the COA. In particular, the sanctions would prevent payment of freight in US dollars, as required under the charterparty. RTI offered to pay freight in Euros, in order to circumvent sanctions. MUR nevertheless declined to nominate any further vessels under the COA, forcing the RTI to find alternative tonnage, the costs of which they then claimed from MUR.

There is a general principle that an event would not come within a force majeure or similar clause if it could have been overcome or avoided by the taking of reasonable steps. This was reinforced by the express wording of the clause. The question for the courts, therefore, was whether those reasonable endeavours included accepting non-contractual performance, i.e. in this case, payment of freight in a currency which was not permitted under the contract.

In the first instance arbitration, the tribunal had considered RTI’s proposal to make payment in Euros to be a reasonable and realistic alternative to the payment obligation in the COA, in order to resolve the issue. RTI had proposed to bear any additional costs or exchange rate losses in converting Euros to US dollars, so MUR would

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suffer no detriment.

On appeal, the Commercial Court reversed the tribunal's decision, taking the view that it would not be reasonable to expect the parties to go outside the contractual agreement in order to avoid the force majeure event. However, the Court of Appeal has agreed with the Tribunal that MUR were not entitled to rely on the force majeure clause in circumstances where the state of affairs resulting from the force majeure event could be reasonably overcome with no detriment to MUR. Payment in Euros with compensation for the costs of converting the Euro payment in dollars would have achieved the underlying objective in the contract, namely for MUR to receive payment of freight in dollars.

As is invariably the case with force majeure disputes, the wording used in this particular contract was key to the court's determination – a timely reminder of the importance of careful drafting. The decision is perhaps to be welcomed as a common-sense approach, though it should be borne in mind that the principle set out by the court does not give carte blanche to parties to insist on non-contractual performance. Circumstances will be considered on a case-by-case basis taking into account any detriment suffered by the affected party and the commercial reasonableness of the proposed action to determine the extent to which it falls within the realms of "reasonable endeavours".

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