



Pola Devora: Does an exclusive jurisdiction clause in a charterparty apply to tortious claims associated with a wrongful arrest?

An important and reaffirming decision in relation to exclusive jurisdiction clauses in charterparties has been reached in the English High Court in London on 28 June 2021.

Background of the case

A hire dispute had arisen under a time charterparty of the vessel *Divinegate* (currently named as *Simple Honesty*), between Eastern Pacific Chartering Inc and Pola Maritime Ltd. The charterparty contained a clause that provided for any disputes *“arising out of or in connection with”* the charterparty to be determined by English law and the exclusive jurisdiction of the English courts.

Following the redelivery of the vessel, the owners filed a claim for unpaid hire. The charterers wanted to offset any unpaid hire against some unpaid costs and expenses, which had been incurred during the charter period.

The owners decided to secure their claim against the charterers and they arrested a vessel, *Pola Devora*, of the coast of Gibraltar – claiming the charterers were the beneficial owners of it. The charterers denied they were the beneficial owners and argued they were only the time charterers of the vessel. The *Pola Devora* was subsequently released, but the owners did not concede the beneficial ownership point.

In the meantime, the owners also commenced proceedings in the English Court in accordance with the terms of the charterparty in relation to the unpaid hire. The charterers, in their counterclaim submissions, claimed damages in respect of the wrongful arrest of *Pola Devora*. They used alternative claims under English law, including an allegation that the Owners were in breach of the Torts (Interference with Goods) Act 1977. They argued the Owners had tortiously interfered with the use of the arrested vessel and conversion of the arrested vessel.

The owners challenged the English Court's jurisdiction in relation to the tort claims, as they claimed the Supreme Court of Gibraltar should handle any proceedings in relation to the arrest.

The English Court's decision

This case has been one of the very few cases where the 1968 Brussels Convention ("the Brussels Convention") applied rather than any of its successors, following Brexit. The English Court agreed that any claim for damages for wrongful arrest should be dealt with under the 1952 Arrest Convention – at the place where Pola Devora was arrested. However, the English Court held that the Supreme Court of Gibraltar might not have exclusive jurisdiction on the owners' liability in tort, resulting from the arrest.

The English Court asserted that Article 17 of the Brussels Convention applied – the tort claims fell within the exclusive jurisdiction of the charterparty (governed by English law) and the only reason for the arrest of Pola Devora was to secure the unpaid hire arising by that charterparty – therefore, without the charterparty, the arrest would not have taken place.

The distinction between the wordings of "in connection with" and "arising out of" has been reiterated – with the wording of "in connection with" having wider applicability than the wording of "arising out of".

The tort claim clearly derived from its connection with the charterparty – the arrest was a direct result of the claim for unpaid hire and the tort claims were a direct consequence of the arrest – therefore, the English Court held that it did have jurisdiction over the tort claims.

It was further held that the English Court did not have to stay the English proceedings in favour of the Gibraltar proceedings (the Supreme Court of Gibraltar being the first court seized) under Article 21 of the Brussels Convention as the proceedings did not include the same cause of action (England – unpaid hire/Gibraltar – arrest) or the same parties.

However, the English Court decided not to stay proceedings in favour of the Supreme Court of Gibraltar) under Article 22 of the Brussels Convention as the English Court felt that there were more compelling factors for the English Court not to do so. This was because the proceedings in Gibraltar had scarcely progressed and the overlap between these two proceedings was minimal. In addition, the Gibraltar maritime law mirrored the English one and the English Court felt competent to effectively deal with issues arising out of the Gibraltar law.

The Owners' application was therefore dismissed.

[Eastern Pacific Chartering Inc v. Pola Maritime Ltd \[2021\] EWHC 1707 \(Comm\)](#)