



Repudiatory Breach of Charterparty – Damages and Guarantees

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In *Spar Shipping v. Grand China Logistics Holding (Group) Co Ltd* the court was asked to consider the implications of a repudiatory breach of a charterparty and the assessment of the resultant damages. The court was also asked to rule on the issue of the validity of letters of guarantee.

Spar Shipping AS [Spar] chartered three vessels – the Spar Draco, the Spar Capella and the Spar Vega – to Grand China Shipping (Hong Kong) Co Ltd [GCS] on a long term amended NYPE time charter. The parent company of GCS issued Letters of Guarantees on GCS's behalf.

Breach of Charterparty

GCS soon ran up substantial arrears in payment of hire. Spar recouped some of those arrears through the exercise of a lien on sub-freights, however there remained substantial arrears on all three vessels and GCS continued to miss hire payments. Spar withdrew one of the vessels and shortly after withdrew the remaining two vessels, thereby terminating all three charterparties. They then sought to call on the Letters of Guarantee issued by GCS.

Eventually, Spar commenced arbitration but GCS went into liquidation in Singapore.

Spar then sought to bring numerous claims under the Letters of Guarantee, including the costs of arbitration. A dispute arose regarding the validity of the Letter of Guarantee. GCS contended that Mr Jia, who signed the letters and held himself out to be the Board Chairman, actually occupied the lesser position of “Executive Board Chairman” and therefore did not have authority to sign. Unsurprisingly, Spar counter-argued that he did.

GCS also argued that approval and registration of guarantees was required by the State Administration of Foreign Exchange (SAFE) in China, this was not complied and therefore the Guarantees were not valid. Spar contested the applicability of Chinese law as the Guarantees' were governed by English law.

A second important argument arose; GCL submitted that they were not liable under the unexpired periods of the three charters. Spar argued that payment of hire was an express condition of the charterparties and it was entitled to damages for loss of bargain for such time. Even if payment of hire was an innominate term, Spar argued that GCS's conduct was repudiatory and was evidential of no intention to pay hire.

Various questions arose for the court to consider:

1. Did the Guarantees bind GCL and did the non-compliance of SAFE affect their validity?
2. Was payment of hire a condition of the charterparties?
3. What was the correct assessment of damages and what was the correct principle?

The court found as follows:

1. SAFE legal rules on registration of foreign guarantees to overseas entities were not mandatorily applicable under Article 3 of the Rome Convention. Their non-compliance with SAFE did not hinder their applicability.
2. Payment of hire was not held to be a condition and even additional clauses allowing for withdrawal of the vessel did not make it so, casting doubt on the findings in the "Astra". However, the presence of an anti-technicality clause in the charterparties did not make time of the essence and therefore the payment clause did become a condition.
3. The non-payment of hire was tantamount to a renunciation of the charterparties at date of termination notices – the owners' were entitled to damages for loss of bargain.
4. The owners' loss was to be calculated by reference to actual earnings not to substitute markets such as shorter charters.