LA marine

The “Ocean Virgo” – speed and performance warranties reconsidered

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The English Commercial Court in Polaris Shipping Co Ltd V Sinoriches Enterprises Co Ltd [2015] EWCH 3405 (Comm) recently considered and allowed the charterer’s appeal in from an arbitration award relating to the failure of a vessel to meet its speed and performance warranties.

The vessel “Ocean Virgo” was chartered in December 2013 pursuant to an NYPE time charter trip to Singapore / Japan via the North Pacific range carrying coal in bulk. The vessel performed a ballast voyage from Chang Jiang Kou to Robert Bank BC and then a laden voyage from Robert Banks BC to Donghae.

The charterers were given speed and performance warranties on the basis of good weather and smooth sea, up to Beaufort Force 4 and Douglas Sea State 3, with no adverse currents or negative swell.

The charterers sought damages from the owners alleging that the vessel was unable to meet the speed and performance warranties given by the owners. During the arbitration proceedings, the tribunal considered the laden voyage and two legs of the ballast voyage. In reaching a decision, the tribunal excluded periods of good weather days relied upon in the second leg of the ballast voyage and in the laden voyage because they were not periods of 24 consecutive hours running from noon until noon. The tribunal therefore found that there were no periods of good weather substantial enough and therefore found for the owners and dismissed the charterer’s claim.

The charterers appealed on the basis that the arbitrator had erred in law in finding that admissible periods of good weather had to be a period of 24 consecutive hours running from noon to noon. However, according to the owners, the arbitrator dismissed the claim because the charterers could not substantiate a breach of the performance warranty.

The charterers argued that it was an error in law for the tribunal to fail to give effect to the findings in *The Didymi* and *The Gas Enterprise*, which established that once a breach of performance warranty was established in good weather conditions, the consequential damages can be applied to the whole of the charter period, regardless of the weather.

The Commercial Court allowed the appeal and found that the tribunal had made an error of law in finding that a period of 24 consecutive hours running from noon to noon was required to consider the vessel’s performance.

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The charterparty referred to 'good weather' and there was also no reference to good weather being taken to mean 24 consecutive hours from noon to noon. The tribunal had excluded good weather periods of 14 hours and 16 hours and the court considered that these periods of good weather were not too small a sample to consider the vessel's performance.

Consequently, the court's view was that the award should be remitted to the tribunal for it to consider whether the two periods of good weather referred to above were sufficient to substantiate a breach of performance warranty. In addition, two periods could not be omitted from consideration on the grounds that each lasted less than 24 hours. The court referenced the traditional approach that any shortfall of performance observed over good weather periods should be applied to the entire charter in all weather conditions in accordance with *The Didymi* and *The Gas Enterprise*.

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