



Vessel Arrests and Off Hire

Navision Shipping A/S V Precious Pearls Ltd; Conti Lines Shipping NV V Navision Shipping A/S (The Mv “Mookda Naree”)

Background

The MV Mookda Naree arrived in Conakry, Guinea, in December 2018, to discharge a cargo of wheat. The ship had been chartered by the owners (Precious Pearls) to a time charterer (Navision), who had then sub-chartered it to Conti, who had in turn sub-chartered to a French wheat trading company (Cerealis).

The vessel was arrested in Conakry by a third party receiver (SMG) in respect of an alleged short delivery by Cerealis of an earlier cargo of wheat, which had been carried on an unrelated vessel, the MV Supertramp.

The head charter and the sub-charter were on the Asbatime Form with additional clauses but were not back to back. Clause 47, in both charterparties, put the ship off-hire upon being detained or arrested by any legal process, until the time of release, unless such detention or arrest was occasioned by any act, omission or default of the charterers and/or sub-charterers and/or their servants or agents.

Additional clause 86 of the head charter, which was not included in the sub-charter, provided that when trading to West African ports, the charterers shall accept responsibility for cargo claims from third parties in these countries (except those arising from unseaworthiness of the vessel) including putting up security, to prevent arrest/detention of the vessel or to release the vessel from arrest or detention and vessel shall remain on hire.

Arbitration Proceedings

The tribunal decided that because the arrest had been brought about by the default of the charterers, then clause 47 resulted in the arrest not putting the vessel off-hire. In addition, under the sub charterparty, clause 86 applied to SMG’s claim for short delivery of the *Supertramp* cargo.

The sub-charterers, Conti and charterers Navision appealed against that conclusion, against their respective despondent owners Navision and Precious Pearls.

The Appeal in the Commercial Court

The judge held that in relation to clause 47, the arbitrators correctly concluded, that an act or omission or default of sub-charterers was not confined to conduct in breach of a contractual obligation, under the sub-charter in question.

The judge held that the main purpose of clause 47, was to protect the time charterers' interests by a rule that the vessel would be off-hire if she was arrested or detained by legal process. However, Conti's failure to act, as it reasonably ought to have acted to deal with the SMG's claim was an omission by a sub-charterer within the meaning of the clause and had occasioned the arrest and therefore, the arrest came within the proviso of the clause.

Conti's appeal against the sub-charter award was dismissed and Navision's appeal in relation to clause 47 was also dismissed.

In relation to clause 86 however, the court did not dismiss Navision's appeal. The judge stated, that the arbitrators had erred in their construction of that clause although, SMG's claim related to cargo carried to a West African port, it was carried on a different ship altogether and under a different charter. Therefore, the claim was not the present charterer's responsibility, under clause 86.

The arbitrators had correctly appreciated that clause 86 was linked to clause 43. It logically followed that clause 86 only concerned claims about cargo carried, pursuant to the current charter.

Instead of holding that the vessel never went off-hire, the tribunal should have held that when it was arrested, it went off-hire under clause 47 until the proviso took effect. Further, they had wrongly held that Navision had liability for damages to be assessed for breach of clause 86.

The head charter award was remitted back to the arbitrators.

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