

Soundings

Supporting Documents and Time Bars: “The Amalie Essberger”

In this case the court rejected the charterer’s attempt to time bar the owner’s claim for demurrage. The strict approach taken by the court is yet another example of the English courts holding parties to the deal agreed in the contract, in order to achieve contractual certainty. It is a reminder to both owners and charterers to consider carefully the terms of their charterparty to ensure strict compliance with the same.

Background

The case of “The Amalie Essberger” Tankreederei GmbH & Co KG -v- Marubeni Corporation [2019] EWHC 3402 (Comm) was heard by Mr Peter MacDonald Eggers QC, sitting as a judge of the High Court, on the charterer’s application for summary judgment.

The charterparty was on the ASBATANKVOY form with amendments and additional clauses. The relevant time-

bar provision was rider clause 5, which was a bespoke clause. The clause had two parts. The first part was in fairly standard terms, requiring “all supporting calculations and documents” to be provided within 90 days after the completion of discharge. The second part required that “the claim must be supported by” certain specified categories of documents, which included notices of readiness, pumping logs, and letters of protest.

The key issues

The key issues regarding the proper construction of rider clause 5 can be summarised as follows.

Firstly, the court considered as the meaning of “supporting documents”, as used in the first part of rider clause 5. See our Soundings on the case of “The Tiger Shanghai” for a further discussion of the meaning of “supporting documents”, [available here](#). The judge said that he would be inclined to read “supporting documents” as meaning either (i) documents on which the owner relies in support of its demurrage claim or (ii) documents which, taken at face value, establish the validity of the demurrage claim. However, the judge held that it was unnecessary for him to determine this issue. This was because the term “supporting documents”, as used in the first part of rider clause 5, did not fall to be construed in isolation but instead had to be read in accordance with the definition which had been supplied by the parties themselves in the second part of rider clause 5.

The judge went on to hold that the second part of rider clause 5 required the owner to provide all documents within the listed categories, even if they would not otherwise be considered to be “supporting documents”. This was because the parties had deemed that the documents were to be treated as “supporting documents”. All of the documents which were “missing” from the owner’s demurrage claim were documents that fell within the categories listed in the second part of rider clause 5. On that basis, the judge held that the missing documents were “supporting documents” for the purposes of rider clause 5.

Secondly, the court considered whether the owner was required to submit all of its supporting documents at the same time as the claim. The judge held that it was not obliged to do so. His decision was principally based on the approach taken to similar wording by Tomlinson LJ in “The Abqaiq” and on the generally-accepted commercial purpose of time-bar provisions such as rider clause 5.

Thirdly, the question arose as to whether the requirement to submit supporting documents within 90 days of the completion of discharge meant that documents submitted before the completion of discharge did not count (and had to be re-submitted). On this issue, the judge pragmatically held that “within 90 days” identified only the end-point of the relevant time period and not the starting-point. On that basis, the owner was not automatically precluded from relying on documents submitted prior to the completion of discharge.

The fourth issue was whether, if the owner provided a supporting document at a different time to the claim, there was any requirement for it to draw the document to the charterer’s attention. The judge went through a detailed

analysis of the leading cases of “The Sabrewing” [2008] 1 Lloyd’s Rep. 286 and “The Abqaiq” [2011] EWCA Civ 1127. However, ultimately his decision turned on the particular wording of rider clause 5. He held that any document which fell within the categories in the second part of rider clause 5 would automatically count as a supporting document. This was on the basis that it would have been obvious to the charterer that the documents were to be treated as supporting documents, such that there was no need for the owner to draw this to the charterer’s attention.

Finally, the court considered whether, if a missing document required by rider clause 5 related only to part of the demurrage claim, the entire claim is time-barred or only that part of the claim to which the document relates. This issue did not form part of the court’s formal decision given the judge’s decision that the claim was not time barred. However, the judge did go on to consider it in some detail in his judgment. The judge started by addressing the position based on the specific wording of rider clause 5. He emphasised that a failure to provide any supporting document within one of the categories listed in the second part of rider clause 5 would debar the entire demurrage claim as these documents support the entire claim. However, the judge did comment that in different circumstances, where the contract is not so prescriptive, a failure to provide some documents for part of a claim may not debar another part of the claim. Nonetheless, it should be noted that each case will turn on the wording of the relevant charterparty clauses.

Conclusion

The upshot of the judge’s decisions on these issues was that the owner’s demurrage claim was not time-barred. The “missing” documents had been provided to the charterer during the course of the performance of the charterparty and this was sufficient, since the documents were within the categories specified in the second part of rider clause 5 and therefore deemed to be supporting documents.

Overall, the court’s judgment is principally an application of established principles. However, it does provide some helpful guidance as to the application of those established principles, in particular as to the meaning of “supporting documents” and the effect of a time-bar provision naming specific categories of documents. It also serves as a reminder to both owners and charterers that the court’s starting point when considering a demurrage time bar will always be the wording of the clause itself. As such, both parties should carefully consider the requirements of any time bar clause to ensure strict compliance, in advance of submitting a claim.

Please contact the Managers for further advice on any of the issues discussed above.

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