

Soundings

Supporting Documents and Time Bars: “The MTM Hong Kong”

In Tricon Energy Ltd v. MTM Trading LLC (“MTM Hong Kong”) [2020] EWHC 700 (Comm), the High Court (Robin Knowles J) held that the owners were required to submit bills of lading in support of a demurrage claim for a part cargo to prevent the claim from being time-barred.

Facts

The charterers chartered the ship to carry a part cargo from Antwerp to Houston. The charter was on an amended Asbatankvoy form and clause 10 of the charter stated:

“Laytime/Demurrage

(e) If load or discharge is done simultaneously with other parcels then laytime to be applied prorata between the parcels.

(g) In the event of Vessel being delayed in berthing and the Vessel has to load and / or discharge at the port(s) for the account of others, then such delay and / or waiting time and / or demurrage, if incurred, to be prorated according to the Bill of Lading quantities.”

The charter also included a time-bar clause which provided that the charterer would be discharged and released from all liability *“unless a claim / invoice in writing and all supporting documents have been received by Charterer within 90 days after completion of discharge of the cargo covered by this Charter Party or after other termination of the voyage, whichever occurs first.”*

The ship discharged at Houston in March, 2017. NOR was tendered at 01.12 on 20th March, the ship shifted to berth between 14.48 and 20.40 on 21st March, and discharge was completed at 04.30 on 23rd March. The ship discharged two parcels at the berth, which engaged the provisions of clause 10 of the charter.

The owner presented its claim for demurrage within the 90 day period. The claim was supported by a demurrage invoice, laytime and demurrage calculations, NOR, timesheets/statements of facts (for both parcels), hourly rate/pressure logs and various letters of protest. The statements of facts for the third party's cargo were redacted but the bill of lading quantity was apparent.

The two bills of lading for the two parcels of cargo discharged at Houston (the charterer's parcel and the second parcel) were not included with the demurrage claim. Further, the statements of facts stated an incorrect quantity for the charterer's parcel.

The charterer argued that the owner had failed to provide “*all supporting documents*” because of the absence of the bills of lading, with the result that the demurrage claim was time-barred. The dispute was referred to London arbitration, where it was decided on written submissions.

The arbitrators' award

The tribunal decided that the claim was not time-barred, because the provision of a statement of facts recording the bill of lading figure “*is in reality all that Charterers need to check that the apportionment of waiting and discharging time has been correctly calculated*”.

The tribunal rejected the charterer's argument that sight of the bills of lading was necessary to ensure that the quantity figures in the statements of facts were stated on the same basis as the bill of lading figure (i.e. measured in air or in a vacuum). As the statements of facts were produced in the knowledge that they would be required to pro-rate discharging time, the ship's officers would have used the cargo quantity figure recorded by the same method in each bill of lading. The tribunal stated that, to the best of its recollection in disputes involving discharge of different parcels of cargo, bills of lading were never produced. Further, it expressed very real doubts about whether an owner could properly forward a bill of lading to a third party without the permission of the holder of that bill of lading.

The appeal

The charterer was given permission to appeal on the question of law: “*Where a charterparty requires demurrage to be calculated by reference to bill of lading quantities, and contains a demurrage time bar which requires provision of all supporting documents, will a claim for demurrage be time-barred if the vessel owner fails to provide copies of the bills of lading?*”

There were two main issues before the court. Firstly, the court considered whether “all supporting documents” included the bills of lading in circumstances where the statements of facts showed the bill of lading quantities. Secondly, the court assessed whether the failure to submit the third-party bill of lading only affected the part of the claim attributable to delays in berthing.

The court held that the bills of lading did fall within the words “*all supporting documentation*”. The reasoning was brief. In the earlier case of the “The Amalie Essberger” [2019] EWHC 3402 (Comm) (see our Soundings on this decision, [available here](#)), a different judge said that the words “all supporting documents” might be interpreted to refer to (a) documents on which the owner relies in support of its demurrage claim,

(b) documents, or the essential or primary documents, which, taken at face value, establish, or possibly promote or advance, the validity of the demurrage claim, or (c) documents which are objectively relevant, or documents which are primarily or essentially relevant, to the owner's demurrage claim, including adverse documents. In the present case, the court appears to have regarded the bills of lading as “primary documents” which had to be provided (perhaps because the statements of facts, although also primary documents, might mis-state the relevant quantities in the bills of lading). However, it is unclear from the judgment whether the error in the statements of facts had a bearing on the court's decision.

The owner's argument that a third party bill of lading was confidential, for which the arbitrators had sympathy, was rejected by the court. The judge said that any confidentiality issues could be circumvented by redaction (provided that the quantities were not redacted).

The owner's argument that only the claim for delays in berthing under clause 10(g) should be time-barred for lack of the bills of lading was also rejected. It is unclear from the judgment whether discharge of both parcels was simultaneous so that pro-rating was required under clause 10(e) by reference to bill of lading quantities. In any event, the judge rejected the owner's argument on the grounds that any demurrage claim was indivisible for the purposes of the time-bar clause.

Comment

Given the way that the question of law was framed, the decision in “The MTM Hong Kong” is an authoritative statement that where a charter requires demurrage to be calculated by reference to bill of lading quantities, and contains a demurrage time bar which requires provision of “all supporting documents”, a demurrage claim will be time-barred if the owner fails to provide copies of the relevant bills of lading. However, the decision does not shed any further light on what constitutes a “primary” or “essential” document, particularly where the same information may be stated in a number of documents.

Insofar as the case considered whether a failure to provide supporting documents may only affect part of a claim, even if the claim is presented as a single composite, there remains much force in the argument that missing documents should only result in the part of the claim to which they relate being time-barred: see “The Adventure” [2015] 1 Lloyd's Rep. 473 at [44]-[45]. The present decision is far from the last word on that point, although each case is likely to turn on the specific wording of the relevant charterparty clauses.

This decision, in addition to the decision in *MUR Shipping B.V. v Louis Dreyfus Company Suisse S.A* (“The Tiger Shanghai”) [2019] EWHC 3240 (Comm) (discussed in our Soundings, [available here](#)), seems to demonstrate a trend towards a strict interpretation of time bar clauses. Members are reminded to consider the requirements of such clauses carefully, particularly in respect of supporting documents, to avoid claims becoming time barred.

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

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