



Campbell Johnston Clark

Damages arising from redelivery of a vessel in the absence of tender of contractual redelivery notices by a charterer: *Maestro Bulk Ltd v. Cosco Bulk Carrier Co Ltd* (“*The Great Creation*”) [2014] EWHC 3978 (Comm)

In the recent High Court judgment the Court considered the correct approach to damages when redelivery of a vessel takes place with insufficient notices where the charterparty stipulates that charterers give timely redelivery notices at agreed intervals.

The judgment is noteworthy as it illustrates the correct measure of damages. Further, the judgment is a reminder of the importance of the tender of redelivery notices by charterers in accordance with the charterparty terms.

BACKGROUND

The case came before the High Court following an appeal of an arbitration award. The dispute arose under a charterparty on amended NYPE terms dated 16 November 2009 for a period of minimum 4 and maximum 5 months, plus 15 days in charterers’ option at a daily rate of US\$18,500 per day gross. The redelivery clause of the charterparty provided as follows:

“On redelivery charterers to tender 20/15/10/7 days approximate and 5/3/2/1 days definite notice.”

The vessel was delivered to charterers on 29 November 2009. The earliest redelivery date was accordingly 29 March 2010 and the latest redelivery date 14 May 2010. In February 2010, charterers fixed the vessel for a voyage from Casablanca to Pasadena, however, due to delays the voyage was concluded on or about 16 April.

On 13 April, due to the delays, charterers concluded that a final fixture was unlikely to materialise under the circumstances and tendered a redelivery notice, which was purported to be a 20 day notice. On 14 April, charterers tendered 15/10/7 approximate redelivery notices and on 16 April 3/2/1 redelivery notices were served. The vessel was redelivered on 19 April, some 6 days following tender of charterers’ 20 day redelivery notice.

On 21 April, owners fixed the vessel for a time charter trip from New Amsterdam, Guyana with redelivery Mediterranean/Black Sea at a daily rate of US\$22,000 per day (gross). The laycan of the substitute fixture was 28 April to 1 May 2010 and the vessel was delivered on 30 April.

The owners claimed against charterers by way of damages, hire that would have been earned on a notional lost voyage that Owners could have conducted if contractual notices had been

given from 31 March onwards in respect of the redelivery which actually occurred on 19 April. The loss of hire that would have been earned on a notional voyage arose from the charterers’ failure to tender the contractual redelivery notices. It was the owners’ case that the breach was the redelivery of the vessel on 19 April without tender of the contractual notices, with the loss occurring when the new substitute fixture was entered into. Owners argued that loss had been suffered due to loss of opportunity to enter into a substitute charter at a higher hire rate than the substitute fixture that had actually been agreed. In particular, owners claimed losses arising from loss of opportunity to enter into a notional fixture that could have been concluded between 31 March and 16 or 19 April had charterers tendered contractual redelivery notices prior to redelivery on 19 April.

In defence to the owners’ claim, charterers argued that the proper measure of damages should be the difference between the charter hire rate and the hire rate that owners could have earned if contractual redelivery notices had been tendered. In this regard, charterers argued that owners’ loss was limited to hire that would have been earned at the existing charter rate 20 days following tender of the approximate 20 day redelivery notice, meaning that owners’ losses would be limited to hire payable from 13 April to 3 May 2010.

DECISION

The judge found that the arbitrators had erred in their application of the law and found in favour of the charterers. The arbitrators had found that because redelivery was within the redelivery dates and ranges between 29 March and 14 May 2010, the breach for which damages were payable did not relate to the date of redelivery as such but to the absence of correct contractual notices, honestly and reasonably given. The arbitrators concluded that losses would be calculated on the basis of a lost notional fixture that owners could have entered into had they gone into the market 20 days before the actual redelivery date of 19 April.

The Court analysed the breach and concluded that the charterers’ breach of the charterparty arose because of the charterers’ failure to redeliver the vessel in accordance with the contractual 20 day redelivery notice tendered on 13 April and not because charterers redelivered the vessel on 19 April in the absence of tender of the contractual redelivery notices.

Further, the Court held that the owners’ loss did not arise on the date that the substitute fixture was entered into as claimed by owners, because the substitute fixture constituted a credit which would be off set against any loss claimed by owners.



In considering the owners' claim in respect of losses arising from a notional voyage, the Court analysed in detail the judgments in the *Achilleas* [2008] UKHL 48 and the *Sylvia* [2010] EWHC 542 (Comm) and held that the measure of damages was best reflected by reference to that period of time between the first redelivery notice and the date on which the vessel should have been redelivered in accordance with the redelivery notice i.e. approximately 20 days. Such losses would have reasonably been within the contemplation of the parties at the time of fixing the charter. Losses arising from loss of opportunity to enter in a notional substitute voyage at a higher market rate 20 days prior to the date of actual redelivery on 19 April were held to be too remote.



Allen Marks
Partner, Newcastle
allen@cjclaw.com



Louise Lazarou
Associate, London
louise@cjclaw.com

Accordingly, the owners' loss was limited to hire that would have been earned during the balance of the redelivery notice period of about 20 days. As hire had been earned at the charter rate from the date on which the 20 day redelivery notice was tendered (13 April) up to the date of redelivery (19 April) the owners' loss would be limited to hire that could have been earned up to about 1 May less any mitigation of such loss and subject to application of a margin of tolerance of 2 days (being the allowance that "approximate notice" was held to mean).

COMMENT

The judgment is helpful as it clarifies how damages are to be assessed when charterers redeliver vessels without tendering contractual redelivery notices. The court set out a clear method by which damages are to be assessed which can be summarised as follows: hire that would have been earned during the balance of the first contractual redelivery notice less any hire actually earned less any mitigation gains less an allowance of 2 days if the notices are to be "approximate".

The judgment is also a reminder of the losses that may arise for which charterers will be liable when charterers tender redelivery notices that are not honest nor based on reasonable grounds, and if relied on by owners, could give rise to damages as non-contractual redelivery notices.

59 Mansell Street, London, E1 8AN, Tel: +44 (0) 207 855 9669

Campbell Johnston Clark Limited is registered in England and Wales with Company registration number 8431508 and is authorised and regulated by the Solicitors

Regulation Authority. Its registered office is at 59 Mansell Street, London, E1 8AN. SRA Number 596892.

London • Newcastle • Dublin • Singapore

www.cjclaw.com