

Making Waves

THE NEWSLETTER FOR THE CLIENTS AND CONTACTS OF
SWINNERTON MOORE

“Achilleas” healed in House of Lords



Fanos, Lewis and Hannah outside the House of Lords with their Lordships' Opinions.

On 9 July the House of Lords unanimously allowed the Charterers' Appeal in the “ACHILLEAS”. The House decided that the damages which Charterers were to pay for the nine day late re-delivery of the Vessel should be limited to the difference between the market rate and the charterparty rate for the overrun period as opposed to Owners' claim which was for loss of profits on their subsequent fixture. Charterers, therefore, were obliged to pay US\$158,301.17 as opposed to Owners' figure of US\$1,364,584.37. The Decision returns certainty to the assessment of damages where a vessel is redelivered late and has reinstated the previously widely held market view that damages would be limited to the

difference between the market and the contract rates for the overrun.

Swinerton Moore were instructed by Clive Aston of Consult Marine on the Appeals and briefed Dominic Kendrick QC of 7 King's Bench Walk who appeared in the Commercial Court, the Court of Appeal and the House of Lords where he led Benjamin Parker also of 7 King's Bench Walk.

If any of our readers require more information or details relating to the case they are welcome to contact us.

New Associated Office

The firm is delighted to announce that it is now also in association with International Law Offices of Odessa and Kiev in the Ukraine. The address details of our associates are shown in the adjacent panel.

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Shipping Matters

Bitter End

In *Kryisia Maritime Inc. -v- Intership Ltd* the Court apportioned liability when a loose rope attached to the aft end of a fender secured to a barge became entangled in the propeller of a support vessel manoeuvring alongside leading to a collision. Liability was apportioned 30% against the support vessel because the inattention or slow reaction of the Master had allowed it to get too close to the aft end of the fender.

and the Nominations are...

P -v- (1) A (2) I

This case concerned a nomination of a laycan spread in a COA. The Charterer gave notice of the laycan for the fifth voyage and then wished to change the laycan because the shippers did not have cargo available. The Owners offered to cancel the fifth voyage and perform the sixth voyage on the dates proposed by the Charterers. The Charterers claimed that they could move the laycan. The majority arbitrators found that once the laycan notice was given it was written into the contract and could not be changed without agreement and that the Charterers had demonstrated a clear intention not to be bound by the original nomination. The Court upheld the majority arbitrators' decision.

Antiparos Ene -v- (1) Sk Shipping Co Ltd (2) Sk Holdings Co Ltd (3) Sk Energy Co Ltd

The Owners claimed a sum representing increased bunkering costs incurred through a change of loading port by the Charterers. The Charterparty provided "any extra expense incurred in connection with any change in loading or discharging ports (so named) shall be paid for by S and any time thereby lost to the vessel shall count as used lay-time." The cost of bunkering the vessel through the change of loading ports was increased. The court held that the Charterers had to pay the increased cost of bunkering at the revised load port.

(1) Mansel Oil Ltd (2) Vitol SA -v- Troon Storage Tankers SA (2008)

The time for Charterers to make a nomination had not arisen, therefore they were able to exercise a right of cancellation as it was not necessary for the charterers to make a nomination in circumstances where it was futile to do so.

Are You Interested?

Gater Assets Ltd -v- Nak Naftogaz Ukrainiy (2008)

The court made an order pursuant to the Arbitration Act 1996 s.101(3) entering judgment in terms of a New York Convention arbitration award, therefore interest was payable in respect of the judgment under the Judgments Act 1838 s.17 at the rate of eight per cent.

We Have Our Limitations

(1) Serena Navigation Ltd (2) London Steamship Owners Mutual Insurance Association Ltd -v- (1) Dera Commercial Establishment (2) Standard Chartered Plc

The limit of a carrier's liability under the Hague-Visby Rules art.IV r.5(a) was to be calculated by reference to the gross weight of the goods physically damaged at the time of delivery/discharge and not by reference to the total quantity of cargo which had suffered "economical damage".

Thick Skinned

(1) Golden Fleece Maritime Inc (2) Pontian Shipping Sa -v- St Shipping & Transport Inc (2008)

Owners were in breach of time charter after the coming into force of new regulations for double-hulled vessels, with which the Owners' vessels did not comply, under the Convention for the Prevention of Pollution from Ships 1973 (MARPOL).

Caveat AKTOR

(1) Pt Berlian Laju Tanker Tbk (2) Brotojoyo Maritime Pte Ltd -v- Nuse Shipping Ltd (2008)

Although Buyers were ready to pay 100% of the purchase price, they lost their deposit.

The MOA said the place of closing was to be Singapore. Sellers nominated NBG in Greece for payment of 100%. Buyers were prepared to pay the 90% in Greece and release the deposit.

Pending an appeal, Buyers should ensure the place of payment is named in the MOA and they can perform the contractual payment obligations.

Safe Ports

Aic Ltd -v- Marine Pilot Ltd (2008)

The Court of Appeal held that where a charterparty provided that the vessel had to load at a single named safe port, the Charterers warranted the safety of that port and that the vessel could load

a full cargo and depart safely from the port notwithstanding that, by the application of good seamanship in loading less than a full cargo, the master could avoid any threat of danger to the vessel. The Owners succeeded with their claim for deadfreight.

Property Matters

Estate Agents Entitlement to Commission

by Maxine Falomo – Assistant Solicitor

In *Foxtons Limited -v- Pelkey Bicknell & Anr* the Court of Appeal held that a firm of Estate Agents were not entitled to commission although they had first shown the eventual purchaser around a property. The agreement was later terminated. A second firm of estate agents showed the same buyer around the property who exchanged contracts at a lower price. The Court of Appeal held that an exchange of contracts with "a purchaser introduced by us" meant a person who had become a purchaser as a result of the Estate Agents' introduction.

Return of Deposit

by Christopher Christou – Associate

Section 49(2) of the Law of Property Act 1925 gives the Court a discretion to order the return of a deposit paid under a contract for the sale and purchase of land "if it thinks fit". The recent case of *Aribisala -v- St. James Homes (Grosvenor Dock) Ltd (No.2)* in the High Court dealt with this issue and decided that Section 49(2) of the 1925 Act could not be excluded in a contract as this would oust the Court's jurisdiction.

The Court also decided that in exercising the Court's discretion the Court would consider:

- how close a Buyer came to performing the contract;
- what alternatives the Buyer proposed to the Seller and how advantageous they were.

If a Buyer could not perform the contract or offer an acceptable alternative the deposit would be forfeited by the Seller.