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Force Majeure

How far can parties stretch
force majeure and reasonable endeavours
arguments following
MUR Shipping Ltd BV v RTI Ltd (SC)

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MUR Shipping BV v RTI – BRIEF RECAP OF FACTS

- Contract of affreightment for carriage of bauxite from Guinea to Ukraine.
- Tribunal proceeded on basis that specified freight payments to be made in USD
- COA contained Force Majeure Clause
- April 2018, RTI's parent company (United Company Rusal plc) sanctioned by OFSI
- April 2018, MUR sent FM Notice saying payment in USD prevented by sanctions
- RTI rejected FM Notice and offered to pay in Euros instead of USD and to bear any additional costs or exchange rate losses
- Common round that although US sanction did not prohibit USD payments there would have been delays in receiving payment

FM Clause

“36.1. Subject to the terms of this Clause 36, neither Owners nor Charterers shall be liable to the other for loss, damage, delay or failure in performance caused by a Force Majeure Event as hereinafter defined. While such Force Majeure Event is in operation the obligation of each Party to perform this Charter Party (other than an accrued obligation to pay monies in respect of a previous voyage) shall be suspended.

...

36.3. A Force Majeure Event is an event or state of affairs which meets all of the following criteria:

...

(d) It cannot be overcome by reasonable endeavors from the Party affected.”

DECISIONS BELOW

- **Arbitration Tribunal** – MUR could not rely on FM Clause because event could have been overcome by exercise of reasonable endeavours – Although RTI’s contractual obligation was to pay USD, MUR should have accepted payment in Euros.
- **Jacobs J** – Reversed Tribunal decision. MUR could rely on FM Clause. Reasonable endeavours provision did not require acceptance of non contractual performance.
- **CA (majority – Males LJ and Newey LJ)** – Reinstated tribunal decision. Focused on specific wording of FM Clause. Males LJ considered “real question” not what reasonable endeavours required but whether acceptance of payment in Euros plus payment of extra costs or exchange losses would “overcome” state of affairs caused by imposition of sanctions. Arnold LJ dissented for same reason at Jacobs J – non contractual performance could not be required



SUPREME COURT

- CA overturned. Decision of Jacobs J reinstated
- Reasonable endeavours provision in FM Clause did not require party affected by FM event to accept offer of non-contractual performance absent clear words to that effect

SUPREME COURT

- Reasons for decision
 - Object of reasonable endeavours provision was to maintain contractual performance and not to substitute a different performance
 - Principle of freedom of contract included freedom not to accept non-contractual performance
 - Party should not be required to forego a valuable contractual right in the absence of clear wording
 - Requirement to accept non contractual performance provided no detriment and achieved the same result as contractual performance led to uncertainty

“REASONABLE ENDEAVOURS” POST MUR SHIPPING

- Was MUR Shipping v RTI correctly decided? Was payment in Euros contractually permitted under the COA?
 - Gold, Banking cents and Mur, David Foxtton and William Day, L.Q.R 2025. 141 (Jan), 13-18
 - See Jacobs J judgment at [70]-[83]
 - See SC judgment at [59]

“REASONABLE ENDEAVOURS” POST MUR SHIPPING

- Case Reinforces that FM clause will generally be interpreted (or term implied) as applicable only if party invoking it could show that event was beyond its control of could not be avoided by taking reasonable steps provided those steps were contractual (ie in accordance wth the contract)
- Per SC decision - What “clear words” would need to be added to require non-contractual performance?
 - Currency “toggles” permitting currency changes from USD to certain pre-approved currencies?
 - Any wider applications?



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