

The 'Global Santosh': Time charterers and their responsibility for the acts of third parties

The 'Global Santosh' [2016] 1 Lloyd's Rep 629

- Time c/p cl. 49 provided vessel off-hire for period of arrest, unless occasioned by act/default of Charterers or their agents
- Chain = Os-TCs-SubCs-SubSubCs-Receiver
- Receiver in breach of S&P contract with, SubSubCs (failure to commence and complete discharging within laytime, failure to secure demurrage)
- SubSubCs initiated arrest proceedings vs cargo
- By mistake, Court Order also named vessel, which also arrested
- Caused long delay before discharging could commence

SubSubCs and Receiver treated as TCs' 'agent' in sense that the process of discharging was delegated to them. They were not agents in the strict sense, because

CA and Lord Clark in Sup Ct decided on basis this was enough:

- Receiver was TCs' agent
- Receiver was at fault under its contract w SubSubCs

Majority in Sup Ct held cl. 49 proviso not engaged:

- Cl. 49 proviso only concerned w act/default *qua* agent
- Act/default of Receiver in course of discharging would have been *qua* agent, because would have been performing an obligation under the T/C which delegated to Receiver;
- Act/default not in course of the process of discharging (failure to discharge/receive cargo) was not *qua* agent, so not within the proviso
- Lord Sumption treats the question as one of vicarious responsibility, esp [28]:

"[The Receiver's] inactivity could be relevant to the question of responsibility posed by clause 49 only if it amounted to the vicarious breach of some obligation of Cargill under the time charter, which it did not."

Conclusion:

- Under clauses like cl. 49 responsibility for loss of time, when occasioned by third parties, will fall on Charterers only if the third party's act/default occurs in the course of their acting vicariously for Charterers
- The test is similar to that for general vicarious liability
- Lord Sumption at [19] puts it on basis whether the act/default is "*in the course of performance*" of TCs' obligations under T/C; and whether the relevant persons are "*availing themselves of the facility contractually derived either directly or indirectly from the charterers*".

Some observations:

- Third parties such as SubSubCs, Shipper, Receiver are not agents in the strict sense. This was recognised at all levels in The 'Global Santosh'.
- They are performing the non-delegable contractual obligations of TCs. Non-delegable in the sense that TCs can delegate performance of that obligation may be delegated but not responsibility.
- Physical work of loading/discharging is not carried out by TCs but by Shipper/Receiver/their sub-contractors (stevedores). This is expected and allowed under TC
- But TCs remain responsible, under TC. TC will be responsible/liable, if damage to vessel or cargo, because of act/default of Shipper/Receiver/stevedore during loading/discharging
- Cf. vicarious liability

Some practical examples:

The 'Mediolanum' [1984] 1 Lloyd's Rep 136

- TCs had obligation to provide bunkers. They ordered vessel to bunker at a safe port and (by their port agents) to a safe place within the port
- Physical supply sub-contracted to refinery. Because of congestion at the port, the refinery directed vessel to a different, unsafe place within the port, where the vessel grounded
- CA accepted refinery = TCs' agent for purpose of performing the obligation to provide bunkers
- CA doubted whether the refinery could be treated as an agent for the purpose of selecting the specific bunkering location; esp. where (legal) agent had ordered vessel to a different location
- In any event refinery had not been at fault in selecting the bunkering place

The 'Goodpal' [2000] 1 Lloyd's Rep 638

- Claim under Inter Club Agreement. Question = whether cargo claim = Os' fault/responsibility or TCs' fault/responsibility.
- Receiver at 1st disport directed vessel to discharge more cargo to it than it was entitled to receive
- Led to short outturn at 2nd disport
- In giving directions re cargo over which they had no rights, Receiver at 1st disport was not acting as TCs' delegate
- TC delegated discharge of cargo to which Receiver at 1st disport was entitled – no delegation beyond this
- As between Os and TCs, cargo claim resulted from Os acceding to illegitimate request of Receiver at 1st disport

The Andra [2012] 2 Lloyd's Rep 587

- Voyage charter. Frustration
- Delay in discharge of the cargo was due to Receiver's decision to interrupt discharge with a view to obtaining an immediate cash settlement of cargo claim.
- Popplewell J held this was within the scope of the charterer's non-delegable obligation to discharge, and therefore the charterers were responsible for the delay and could not plead frustration

The Crudesky [2014] 1 Lloyd's Rep 1

- Voyage charter. Force Majeure clause. Could be relied on only if FM event outside "reasonable control of either party."
- Terminal operator commenced loading in violation of local regulations.
- Loading was Cs' responsibility under VC
- CA held that Cs could not say that the events were outside their reasonable control, where relevant acts carried out by the party to whom loading was delegated (or, on the facts, sub-sub-sub-delegated)
- Cf. The Kriti Rex (applied); The Marine Star (not followed)

Some difficult cases:

The Mozart [1985] 1 Lloyd's Rep 239

- TC clause suspended laytime for '[a]ny cause whatsoever beyond the control of the Charterer affecting ... loading of the Petcoke'.
- Loading delayed by breakdown in terminal's conveyor belt, caused by terminal's negligence
- Mustill J held terminal's negligence was beyond TC's control, because terminal was an independent contractor engaged by TC's charterer's agent.
- Fact that the charterers were contractually responsible for loading did not mean that "*[a]nything which goes wrong before or during the act of loading is to be treated as the charterers' "fault" for the purpose of cl. 3*"
- Questionable if still good law

The Adelfa [1988] 2 Lloyd's Rep 467

- Voyage charter. Frustration
- Receiver refused to take delivery of damaged cargo and arrested vessel; this caused local authority to refuse to allow it to be discharged
- Evans J held that, even if discharging delegated by VCs to Receiver, VCs not responsible: "*it does not follow that the charterer becomes responsible, vicariously or otherwise, for the receivers and all that they do, or fail to do. The charterer can only be liable when there has been a failure to achieve what the charterers undertook to the shipowner would be done. There was, of course, a failure to discharge within the laytime, for which the charterers are*

liable in damages or in demurrage. The vessel was detained by her arrest and the subsequent judgment. There is no undertaking in the charter-party, express or implied, that cargo receivers will not arrest the vessel, or seek to do so, at the discharging port".

- Questionable if still good law

Back to *The 'Mediolanum'* [1984] 1 Lloyd's Rep 136

Cited by Lord Sumption in *The 'Global Santosh'*, with apparent approval, but CA's doubts whether TC vicariously liable for refinery's directions re management of the bunkering operation seems difficult. See at p. 140 rhc:

*"Although, in relation to the charterers, the refinery was in the position of an independent contractor, we naturally accept that for the purposes of the charterers' obligation, under cl 2 of the charter-party, to provide the fuel, the refinery was the agent of the charterers as between the charterers and the owners. The reason is that, in that respect, the refinery was used by the charterers in order to perform one of the charterers' obligations under the contract. We are much more doubtful, however, whether the refinery can also properly be described as the charterers' agent for the purpose of indicating or selecting the ultimate place within the port of Las Minas to which the vessel was to proceed for bunkering, which turned out to be unsafe, particularly when the charterers' agents, Continental, had previously ordered her to proceed to a different and safe place at that port. In this context, as it seems to us, the refinery might well be regarded as performing similar functions to those of a harbourmaster or port authority whose acts would not be treated as the acts of the charterers: cf. the decision of Mr. Justice Robert Goff in *Cosmar Compania Naviera S.A. v. Total Transport Corporation (The Isabelle)* [1982] 2 Lloyd's Rep 81. This doubt is reinforced by the fact that, with all due respect to the arbitrators, we cannot begin to follow par. 21 (a) of the special case, on which the inference of agency appears mainly to have been based. How can Continental's authority on behalf of the charterers to select the exact place for bunkering have conferred any authority on the refinery, in particular when Continental exercised that authority by ordering the vessel to a safe and different place from that which was ultimately indicated by the refinery?"*

What about a harbourmaster or port authority? Is *The Isabelle* still good law?

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