

Circular Ref: 2016/0006

Date: 26 April 2016

Time Bar - when were the causes of action accrued?

In a recent *London Arbitration (2016) 949 LMLN 2*, disputes arose under a time charter, which was on the standard NYPE form. The Charterers withheld hire on the basis of off-hire and/or equitable set off after their last payment on 7 Jan 2007. Altogether six installments of hire fell due but were withheld by the Charterers, the last being on 8 March 2006. The vessel was redelivered on 22 March 2006. The Owners commenced arbitration on 21 March 2012, that is, one day before the completion of 6 years after redelivery of the vessel. The Owners were of view that their claims for non-payments of installments of hire were not time barred.

The Charterers contended that the claim was time-barred for the reason that there was a breach of contract on each occasion when hire was not paid, i.e. when the fortnightly installment was due and not paid. In addition, the cause of action in respect of that installment accrued at that date of non-payment of installment, so that the claims for hire and other expenses due were time-barred as limitation period of 6 years had passed by the time arbitration was commenced.

On the other hand, the Owners argued in their defence that the Charterers could provide the balance of account information (final hire statement) at a later stage and therefore time should count from that date onwards. The Owners further argued that the limitation period of six years had not expired by the time the arbitration was commenced and finally that time for the under-performance claims did not run until the Charterers had provided their final hire statement, which in fact was provided only in the last week of March 2006.

In a declaratory award on preliminary issue (the first award), the tribunal found the central issue in dispute is the date on which the Owners' cause of action accrued for the purposes of limitation period. The Tribunal's view was that the Owners could have started their claim any time after the non-payment of hire installments, when they were due and not paid. In addition, in this case no parties agreed to any settlement sum so as to the change the time for purposes of limitation period. The tribunal added that the position at law remains unchanged regardless of how claim was framed, or whether the Charterers had any defence, or whether the deductions by Charterers from hire were reasonably assessed.

Accordingly the tribunal's view was that Owners claim was time barred. As such, the Owners' claim for non-payment hire was not allowed.

Owners subsequently applied to the High Court for permission to appeal the first arbitration award on question of law.

For Andrew Liu's clients, the FDD team based out of Shanghai recommends the following:

1. Time bar is fatal to a claim. In case claim arose, the client are advised to note the date and inform your Club or ALCO case handler asap.
2. Client should draft appropriate notice at the right time to avoid the situation that occurred in this case.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk

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