

Circular Ref: 2016/0013**Date: 17 October 2016****Owners in a big trouble - Hire was not paid & the vessel was arrested by Receivers for various doubtful claims**

Recently, the FDD department of Andrew Liu assisted a client (the ship owners based in China), who were in a big trouble in a foreign port. The charter hire was not paid to them, and the receivers of cargo on board the vessel had arrested the vessel in Bangladesh, and if that was not enough, the receivers even managed to get a local court order that put the obligation on the ship owners to discharge the cargo!

Facts of the Cases

In this case, the Charterers from Singapore and the Receivers from Bangladesh had a cargo of cement on board the vessel. They had already partially discharged the cargo. The Owners, who are client of Andrew Liu had to shut the hatches for non-payment of hire pursuant to NYPE charterparty, and were waiting at the anchorage to resolve the problem. The Receivers, a big Bangladesh organization, passed a claim for nearly a million dollars against the vessel as a result of delay arising due to waiting at anchorage.

The Receivers arrested the vessel in an ex-parte hearing in Bangladesh court, and also took a court order to persuade the Owners to discharge the cargo to them, no matter whether the Owners had received the hire or not. In addition, the receivers were claiming against the Owners for delay and their claim was for nearly million dollars. These types of scenarios are not new in many parts around the world. In this case, there was also an additional issue of LOI to discharge the cargo without the production of bill of lading. The vessel was losing money every day for non-payment of hire along with threats from the Receivers to the master that he was in contempt of court by not allowing the discharge of cargo, and therefore he would be put into prison in Bangladesh. The client had gone to the law firm, but the problem was becoming bigger by the day and only solution they were recommended was arbitration and wait for the result.

The ship owners then came to FDD department for assistance. At this stage, the FDD department assisted the client in the following ways:

- tried to make owners' act of closing of hatches to come within the law by using academic legal arguments; and
- recovered the due charter hire; and
- persuaded the Bangladeshi receivers to withdraw their claim in full, and took in writing from all parties that no one will arrest the vessel on completion of discharge. Due hire would be paid and before the commencement of discharge, and the vessel could sail out without any problem.
- got into writing through a settlement agreement from the Receivers and the Charterers to apply to the local court to vacate the arrest order before the commencement of discharge of cargo; and
- commenced arbitration and drafted applications for interim orders as fast as possible. All these work

was done in-house in the FDD Department of Andrew Liu.

- further assisted in relation to bunker claim after the vessel was delivered, and other monetary claims of the Owners.

The FDD department succeeded in all the above for the Owners, who are the client of Andrew Liu. In such cases, the dispute is usually going to be resolved using the law such as commencing arbitration and through numerous interim applications, but most importantly the tasks required diplomacy, threats, putting pressure and other tactics. Though, the FDD department was successful, it was not that easy to get it resolved, and it involved a few days working for at least 15-16 hours a day. Most law firms would have just started arbitration, which FDD department also did, but our actions were much more than taken usually by the law firms. By just pursuing the arbitration and by waiting for a solution in coming 5- 8 months is an easy part, and would not have resolved the problem in situations such as in the current case, where the vessel was arrested in Bangladesh, cargo still remaining on board, and threats were received by Master and the Owners.

The FDD team even applied for various interim measures in the arbitration to put legal pressure along with other pressures on various stakeholders that was constantly put to an effective use to crush the big Bangladesh organization in their own country. Andrew Liu's organization has been in business for years in the Far East and has many local offices. Since the arbitration was in one of the Far East center, the local offices of Andrew Liu assisted in contacting relevant people on FDD team's instructions. This wide network of offices and huge network is of immense assistance to clients. Similarly, networks have been used even in UK and continental Europe to assist the clients in other cases for arbitration in London and elsewhere.

FDD Service From Shanghai Office

In the last few years, similarly, many cases were resolved commercially by the FDD department, but by using legal tactics that are required. More often a very high-level cultural understanding of nuances and the international exposure are deployed. Most of these problems were resolved upon the basis of No cure, No Pay basis in context of service fees of the FDD personnel (but third party costs such as arbitrator's cost, arbitration fees, etc. were still payable the client). These types of assistance from the FDD Department have been proved crucial in the following cases:

- a) There has been no FDD cover, for some reason or there is a dispute with the club; and
- b) Collating evidence when the incident has happened, and the FDD personnel can travel on an hour's notice anywhere in the world; and
- c) To travel to the port to get the problem resolved, and recently, as an example, the FDD personnel flew to Africa where the vessel was arrested and got it released in a cost-effective way in 3 days by working day and night; and
- d) Salvage negotiations with the salvors around the world , and as an example recently resolved to reduce the salvage remuneration in Brazil, or negotiating with the Port Authority when there are disputes as to the rates charged; and
- e) Recovery of demurrage claims, hire or exercising liens and resolving disputes; and

- f) Conducted negotiation and mediation meetings in state of art Shanghai office alongside the river at the Bund;

Please note, all of the above services are available to Andrew Liu's clients ONLY. Furthermore, please note, even though for FDD services, including managing arbitration are provided to clients of Andrew Liu, but the aim is not like a law firm to earn money. FDD team as a matter of principle ensures that matters are not stretched and cost-effective resolution is reached between the parties as soon as possible. In addition, since the FDD team does not work on the concept of billable hours, there is no motivation for the FDD team to stretch the case.

The above FDD service started with the huge investment in start-up costs and the FDD service is part of extra service available to clients of Andrew Liu. It is available 24 X 7 where lawyers/legal consultants from this team can visit even the client's office to discuss a case, or visit at the spot to resolve the problem. Other than solving cases, the FDD team has been writing regular legal bulletins, and had provided free answers to general enquiries.

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