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Contracts for Services - Are they important?

In a new case of *Pan-United Shipping Pte Ltd v Cummins Sales and Service Singapore Ltd - High Court (Chan Seng Onn J) [2017] SGHC 198 - 14 August 2017*, selected for its importance as both Charterers and Owners in course of business sign or agree to many contracts such as with stevedores or repairing company.

In this case the Owners (the Claimants) had agreed orally to the repairing company's (the Defendant) quotation to repair the engine based on their quotation and their standard terms and conditions. The engine while under repairs was damaged further as the repairing company failed to prime the engine before testing it after repairs leading to further damage. The total claim was S\$458,646.85.

The issues in this case were:

- (a) What terms and conditions were applicable as the Owners were asserting their own Standard form? It was proved that if the Owners wish to allege their own standard form that then they should have given their counter offer in clear terms. On the evidence, the defendant would not have moved ahead to repair the engine other than on their own terms.
- (b) Can the exclusion clause in the Defendant's form will construed strictly against them? In law it is a matter of law that any party relying on the exclusion clause will have to be ready for such eventuality.
- (c) Were losses alleged by the Claimants will fall within the exclusion clause that provides:

Under no circumstance shall the [Defendant] be liable for special or consequential damages for personal injury, loss or damage (including loss of profits or other economic loss) in connection with or arising out of the sale, supply, delivery, installation or use of any Merchandise. In any event, liability shall in no case exceed the price of such Merchandise

The Court agreed that all losses alleged by the Claimants were not *special and flowed directly, naturally and in the ordinary course of events* of the Defendants' breach without any intervening cause and independently of special circumstances.

FDD department of Andrew Liu advice to his clients is as follows:

- (a) Every contract (even for minor services) signed or agreed is important and not just charter parties or bills of lading.
- (b) FDD department is available to assist in all kinds of contracts.

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