

Circular Ref: 2017/0017**Date: 22 December 2017****Notice of Arbitration - Difficult to hide !**

In the recent case of *Sino Channel Asia Ltd v Dana Shipping & Trading Pte Singapore and Another - Court of Appeal (Gross and Flaux LJJ) [2017] EWCA Civ 1703 - 2 November 2017*, a clarification was provided by Court of Appeal in relation to a dispute as to the service of Notice of Arbitration.

On 9 April 2013, a contract of affreightment (COA) was concluded between the first defendant (Dana), as owner, and the claimant (Sino) as charterer. Sino had played no part in the negotiation and performance of the COA, and it was anticipated that a different company, Beijing XCty Trading Ltd (BX) would handle the day-to-day operation of the COA. Disputes arose under the COA, and on 4 February 2014 Dana appointed an arbitrator and emailed notice of arbitration to a Mr Daniel Cai, an employee of BX, calling upon Sino to appoint its arbitrator.

It was Sino's case that Mr. Cai had no authority to accept service on Sino's behalf; that, therefore, such purported service was ineffective; and that, as a result, Sino did not respond because it was unaware of the arbitration and did not participate in it. According to Sino, any award by the sole arbitrator was not valid. The charterer successfully obtained declaration to that effect from the judge at the High Court that the award is invalid as it lacked jurisdiction due to the fact that service of Notice of Arbitration was ineffective.

However, the Owners appealed the matter to the Court of Appeal. It was held by the Court of Appeal that the actual authority might be express or implied. The focus in the case of implied actual authority was on the actual circumstances of the relationship between principal and agent, hence on what might be inferred from the conduct of the parties. Implied actual authority to accept service of originating process was not to be viewed simply as a matter of the general law of agency and it is a serious matter.

In the present case, the correct inference to be drawn from the actual circumstances of the relationship between Sino and BX was that BX did have implied actual authority to accept service of the notice. Sino was "fronting" for BX. The position of Sino's broker reinforced that view. Sino's broker had passed the notice of arbitration to BX, not to Sino. Accordingly, the Owners prevailed over the Charterers' taking the procedural argument that failed eventually.

FDD department based in Singapore advice to ALCO's client is that:

- (a) Charterparty should clearly mention the address and e-mail address and PIC that can receive the Notices of Arbitration to avoid such costly disputes.
- (b) FDD department routinely provide various assistance to ALCO's clients in relation to advice and arbitration in various forums apart from assisting in negotiating settlements.

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