

Circular Ref: 2018/0002

Date: 12 February 2018

商业合同 - 哪方有先付款义务?

仲裁案 (2018) 994 LMLN 3 有关买卖双方销售合同下的争议。合同于2014年9月8日订立，销售3000公吨乌克兰饲料大麦，(销售合同)适用《2000年国际贸易术语解释通则》CFR条款。根据销售合同，卖方作为承租人，于2014年9月8日与船东订立航次租约，从乌克兰的基里拉运输货物到利比亚的班加西。

对于运费预付提单，船东拒绝放单，除非在提单签发3个银行工作日内支付运费。Fixture Note及租约相关条款如下：

Fixture Note:

“FREIGHT PAYABLE IN FULL LESS COMMISSION ACCT W/I 3 BDAYS AFTER
SIGNING ‘FREIGHT PAYABLE AS PER C/P’ BS/L ... AND IN ANY CASE BBB ...

IF BS/L MARKED FREIGHT PREPAID THEN ORIGINALS TO BE KEPT BY THE
OWNERS REPRESENTATIVES [sic] AT LOADPORT UNTIL FREIGHT IS
RECEIVED BY THE OWNERS.”

Charterparty:

“Clause 14. Freight Payment

100 per cent OF FREIGHT TO BE PAID WITHIN 3 BANKING DAYS FROM
MASTER’S SIGNING/RELEASING BILLS OF LADING [emphasis added] IN ANY
CASE BBB.”

结果船东选择不予卸货，直到收到全部运费。这导致卸货港滞期费，船东相应地向卖方索赔。卖方转而依据销售合同向买方索赔同样的滞期费。卖方基于销售合同第9条向买方索赔，条款如下：

The buyers shall pay freight according to the [charterparty]... and the Owners’ invoice net cash by SWIFT transfer at the buyers’ charge and expenses as soon as possible [emphasis added] after signing Bill of Lading. Balance shall be paid to the sellers net cash by SWIFT transfer at the buyers’ charge and expenses within 48 hours of banking days against presentation of original shipping documents mentioned in Clause 8 hereof by the sellers’ representative at the buyers’ bank...

买方抗辩，依据销售合同中的运费支付条款，尽管他们同意协助卖方，但事实上，卖方是与船东订立租约的一方。

仲裁员认为，尽管依据销售合同，买方违反了尽快付款的义务，但基于分析，关键点在于，卖方本应意识到买方付款延迟，且未做相应地减损。与此相反，卖方选择在相当长的一段时间内，不向船东支付运费，这是航次租约下卖方的明确义务。因此，卖方对买方的起诉以失败告终。

ALCO抗辩险部门(FDD division) 给我司客户如下建议：

- (a) 在多方参与及多个合同的情况下，首先要搞清楚，哪一方有先付款的义务。
- (b) 对于因合同违约而遭受损失的无辜方而言，减损是最重要义务之一。
- (c) ALCO抗辩险部门(FDD division)，对于涉及多方当事人案件的处理，通过指导正确技巧，节省了大笔资金。在最近的一起案件中，就在上周，FDD部门（FDD division）3天内解决了一起多方争议，由于费用高昂的多方律师的参与，这起案件之前已经持续了7天，这本可能会造成数百万的复杂争议。FDD部门(FDD division)的主要目标是解决案件而不是扩大案件。

以上由 ANDREW LIU & CO.,LTD 编译，应以英文为准！

信息来源：Andrew Liu & Co., Ltd www.andrewliu.com.hk