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Implied Contract - Delay by agreement

In a recent case of Glencore *Energy UK Ltd v OMV Supply & Trading Ltd* - QBD (Comm Ct) (Sir Ross Cranston) [2018] EWHC 895 (Comm) - 23 April 2018, the claimant (Glencore Energy) agreed to sell to the defendant (OMV) 80,000 mt of light crude oil to be loaded at Novorossiysk, Russia **CFR** one safe berth/port basis Augusta, Italy on board a vessel to be nominated. Glencore nominated the vessel Seagrace to deliver the oil under a charter on the BPVOY4 form dated 2 November 2015. On 3 November 2015 OMV confirmed that the discharge port was Trieste. On 10 November, the vessel completed loading the cargo at Novorossiysk.

The terms of the sales contract also incorporated the 2007 edition of BP Oil International Ltd's General Terms and Conditions for Sales and Purchases of Crude Oil (the BP Terms) were:

> *Clause 9 of sales contract Laytime*
>
> *Laytime allowed at disport shall be 36 hours, commencing 6 hours after tendering of notice of readiness or upon commencement of discharge, whichever first occurs. Laytime computation shall be as per the general terms and conditions.*
>
> *Clause 10. Of the sales contract Demurrage*
>
> *Except as herein provided, for all time exceeding the allowed laytime, Buyer shall pay demurrage to Seller in accordance with the actual charterparty rate. Any claim for demurrage to be received latest 90 days from completion of discharge otherwise it will be deemed to have been waived, and any such claim not to exceed the amount properly due by seller to the shipowner. Seller will supply Buyer copy of owner's claim prior to payment.*

Clause 13.1 covered time allowed for discharge, 36 hours. Running hours were dealt with in clause 13.1, which provided:

> *13.2.1 Running hours shall commence Berth or no Berth 6 hours after NOR is tendered or on commencement of discharge, whichever is the earlier. For the purposes of calculating running hours, discharge shall be deemed to be completed upon disconnection of discharging hoses.*

On 9 November, the defendant sent an email highlighting that there are no berthing prospects at the discharge port and they must therefore wait outside until further orders, and then pass their NOR.

On 16 November, the defendants requested to find a waiting arrangement at an anchorage at another port Corfu, and requested to give Natural ETA to Trieste Terminal.

The Sellers agreed immediately only after the master agreed to the above request and vessel remained at Corfu until 11 December 2015. The Owners claimed detention for this waiting time and additional bunkers consumed through an invoice on 19 September 2016. The Defendants argued that either the demurrage claim is time barred or the contract was varied by their e-email of 9 and 16 November.

It was held by the judge there was implied contract for '*delay by agreement*' and therefore the issue was not classed as demurrage. The agreement between sellers and buyers resulted in such implied agreement.

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

(a) Emails should be drafted carefully. In such matters it is better to get the emails drafted by your P and I Club or expert in this field.
(b) FDD department regularly advice the clients to gain competitive advantage in the matters. This is the service available to the clients of ALCO.

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