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Anti-suit Injunction in English Court Against Chinese Court Proceedings

In a new case, *Grace Ocean Private Ltd v MV "Bulk Poland"* – QBD (Comm Ct) (Bryan J) [2020] EWHC 3343 (Comm), just came this month, on 4 December 2020, the English court granted Claimant's application to continue with the anti-suit injunction with customary cross-undertaking in damages and be fortified with a Club LOU in the sum of £50,000.

Facts of the case:

The main facts of the case are as follows:

- i. The dispute arises out of the carriage of some 69,699.714 mt of 2019 crop Brazilian soybeans in bulk (hereinafter "the Cargo") on board MV Bulk Poland (hereinafter "the Vessel"), from the port of Barcarena, Brazil, to the port in People's Republic of China.
- ii. The contracts of carriage were contained in or evidenced by four bills of lading dated 1 July 2019 (hereinafter "the Bills"). There were four shippers of the soyabean cargo, and these bills were consigned "To Order". The Defendant's name and address were stated in the 'Notify address' section of each Bill. The original Bills were presented at Longkou in China by the Defendant, which took delivery of the Cargo.
- iii. The Claimants, a company incorporated in Singapore, are the owners of the Vessel and the contractual carrier of the Cargo. The Defendant is the receiver of the Cargo and is a company incorporated in the People's Republic of China. The Cargo was insured by China Pacific Insurance Co., Ltd ("CPIC") for the receivers.
- iv. The Conditions of Carriage are mentioned on the reverse of each of these Bills. Clause 1 of the Conditions of Carriage states that:

1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated.

The front page of each of the Bills referred to a charter party dated 17 May 2019 as follows:
Freight payable as per charter party dated 17 May 2019.

- v. The Vessel was subject to three charterparties:

- The Claimant, by way of a time charter dated 7 November 2011, chartered the Vessel to DryLog Bulk Carriers Ltd (hereinafter the "Head Time Charter").
 - (DryLog Bulk Carriers Ltd as disponent owners sub-chartered the Vessel to Star Logistics LLC ("Star") by way of a sub-time charter (hereinafter the "Time Charter").
 - By a fixture recap dated 17 May 2019 incorporating an amended CONVOY Charterparty (Adapted 2004) with rider clauses, Star sub-chartered the Vessel to Gavilon Grain LLC (hereinafter "the Voyage Charter")
- vi. The vessel arrived at Longkou anchorage on 14 August 2019 and tendered notice of readiness. It berthed on 18 August 2019 and commenced discharge of the cargo. The vessel completed discharge on 24 August 2019 and sailed from the discharge port on the same day.

Claim from the receivers

The following important details are available for the claim:

- i. A "Notice of Claim" dated 19 August 2019 was then served by the Defendant asserting that they were the final holders of the bills. In the Notice they alleged that the Cargo during the carriage onboard the Vessel was damaged by heat. The defendants threatened to arrest the Vessel.
- ii. The Defendant demanded security for their claim in the amount of US\$4.5 million. In order to prevent arrest of the Vessel, the lawyers based in China on behalf of Owners negotiated security provided by P and I club that was China Reinsurance then issued a Letter of Undertaking ("LOU") directly to the Defendant. In China, no P and I Club letter is acceptable to the parties and local courts and any such letter needs to be countersecured by local insurance company in China.
- iii. The receivers intended to proceed with their claims in the Chinese courts as claim was served by them on Owners' lawyers in China on 19th August. Owners appealed the jurisdiction of the local court in China but that claim was rejected. The Owners then appealed their jurisdiction claim to higher provincial court in China and that result is awaited.
- iv. Accordingly, On 8 September Owners' English solicitors informed the Defendant that the Chinese Proceedings were in breach of the London arbitration agreements and they should withdraw the Chinese Proceedings by 15 September or they will be forced to bring anti-suit injunction. There was no response and the Owners managed to take anti-suit injunction from the English court in relation to arbitration on 12 Oct 2020 and the Order was served on to the Defendant with a promise that Owners will not take any issue of time bar, if they join London arbitration.

What is the English Law in such cases?

Most bills of lading are pursuant to the English Law and the express wording in Clause 1 of the Conditions of Carriage of the Bills of Lading that the reference is to the Voyage Charter. In addition, Clause 14 of the amended *CONVOY Charterparty* (Adapted 2004) incorporated in the Voyage Charter provides:

Bill of Lading

14. It is also mutually agreed that this contract shall be completed and superseded by the signing of Bills of Lading. Any Bill of Lading issued under this Charter Party are [sic] considered to incorporate all terms/conditions including arbitration to this Charter Party.

Furthermore, Clause 56 of the amended *CONVOY Charterparty* (Adapted 2004) further provides for “Arbitration London [emphasis added] – English Law to apply”. In English law it means cargo interests must bring their action in London arbitration only and subject to English law and must be brought by way of London arbitration only. Also, the appearance of Owners in China to argue jurisdiction is not considered as voluntary submission to the jurisdiction of the Chinese court and the English court will not be bound by Chinese court’s decision as the express term about arbitration in London was clearly and conspicuously included in the contract. Accordingly, the anti-suit injunction was granted to the Owners against the application in Chinese courts.

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

- a) Do not submit to any jurisdiction contravening the arbitration clause in the bill of lading. If under duress, you are forced to sign some papers, then take the advice of P and I Club and FDD department.
- b) FDD department have assisted many clients in similar cases and can be contacted 24 x7, 365 days in a year quickly to avoid surprise later from the opponents.

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