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Charterparty “Subjects” - Latest Case Law

When negotiating a charterparty, it is important to appreciate that a charter “on subjects”, even if what has been achieved is fully agreed in principle, will usually only become binding if or when all “subjects” applicable have been lifted within a stated deadline; failing which the “subjects” have not been satisfied and the contract does not become legally binding.

Furthermore, unless the “subjects” are clearly agreed on a basis which obliges one party to take reasonable steps to seek to satisfy the “subjects” within a stated deadline, there is often no basis on which to pursue that party for damages if it does not lift the “subjects” within the deadline.

There are legal authorities by the English courts which consider whether a binding contract comes into effect when the contract is negotiated “on subjects” that are to be “lifted” (i.e. removed) by a party. In *Nautica Marine Ltd v Trafigura Trading LLC (The Leonidas)* [2020] EWHC 1986 (Comm), the English courts have now considered what effect is created by a “subject” when its satisfaction in relation to the approval of the proposed vessel under a voyage charter is dependent on the actions of a prospective counterparty (charterers) and also a third-party (cargo suppliers).

In this dispute, an in-principle voyage charter was negotiated between prospective owners and charterers which was made “subject” to “suppliers’ approval” of the proposed vessel within a four-day deadline. In the event, charterers did not remove “suppliers’ approval” within the stated deadline.

As a result, charterers walked away from the in-principle fixture and owners sought to claim damages. This was on the premise that there was a legally binding contract under which charterers were under an obligation to take reasonable steps to obtain “suppliers’ approval” of the vessel within the stated deadline in order to seek to satisfy the “subject”, which owners argued charterers had failed to do.

The judge held that a binding charter had not been concluded.

This was on the basis that the “subject” was a pre-condition of the contract because the “lifting” (i.e. removal) of the “subject” (being the point at which the contract becomes binding) was dependent on the exercise of commercial judgement (and options) by charterers as to what cargo would be loaded, where loading would take place and who would supply the cargo, for which a wide range of commercial considerations would be in play. As such, that “subject” qualitatively affected the commercial desirability of charterers’ decision to charter the vessel.

Accordingly, charterers were not under an implied obligation to take reasonable steps to lift the “subject” before the deadline expired, and so were not liable to pay owners damages for a putative loss of profit.

Read the full judgment [here](#).

Source of Information: The North P&I Club

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