

Circular Ref: 2022/0001

Date: 28 January 2022

Deduction From Hire

In a new arbitration (2022) 1098 LMLN 4, Charterers had deducted from the final hire payment and that resulted in arbitration. The Charterers lost the arbitration.

Facts

- The owners advanced a claim for USD57,045.89 being the balance shown on their final hire statement.
- The charterers then withheld USD53,550.40 gross, or USD52,211.64 net of commission, plus a related sum of US\$305.51 in respect of C/V/E, in respect of time lost due to under-performance to the extent of 6.69 days.
- The Charterers asserted that they made that deduction on the basis that the ship was off hire for the time in question. They did not assert any other basis for withholding the hire.
- The dispute was referred to arbitration. The Owners claimed the balance of hire, and the charterers made a counterclaim for USD52,305.75 in respect of their complaints concerning speed and consumption and for the return of sums overpaid when allegedly never due.
- The owners applied to the tribunal for a Partial Final Award for USD52,211.64 plus USD305.51 C/V/E, a total of US\$52,517.15, on the basis that the charterers' deduction was wrongfully made.

Award

Deductions of hire had to be made in good faith and on reasonable grounds, and a charterer could be called upon at short notice to show that its deductions were so made. If it failed in that respect it was liable to have an award made against it. The Tribunal finding was made on the case law of *The Kostas Melas* [1981] 1 Lloyd's Rep 18.

The Charterers have to present a prima facie case as to why their deduction was made bona fide and on reasonable grounds. The Tribunal commented that the Charterers had not addressed the question of good faith, nor had they made any attempt to show that they had a claim for off-hire in clear terms.

FDD department of ALCO's advice to Andrew Liu's clients is:

- a) Explanation as to the deductions from hire should be provided to the Owners promptly along with the relevant documents.

- b) Clarity in the claims submissions must be there. In many cases, it has been observed by FDD department, many firms take a case but rely on external party to draft those submissions and even take advice on law from that external party. As a result, sometimes message is lost in communication and this must be investigated before case is given to any lawyer/law firm. FDD department regularly draft submissions for ALCO's clients.
- c) FDD Department can be contacted 24 x 7.

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