



Neutral Citation Number: [2023] EWHC 67 (Comm)

Case No: CL-2020-000796

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice,
Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 18/01/23

Before :

CHRISTOPHER HANCOCK KC
SITTING AS A JUDGE OF THE HIGH COURT:

Between :

NAVIG8 CHEMICALS POOL INC	<u>Claimant</u>
- and -	
AETURNUM ENERGY INTERNATIONAL PTE LTD	<u>Defendant</u>

Henry Ellis (instructed by HFW) for the Claimant
The Defendant did not appear and was not represented

Hearing date: 9 December 2022

Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Wednesday 18th January 2023.

Christopher Hancock KC:

Introduction and factual background.

1. This is the hearing of an adjourned trial. The full facts of the matter are set out in my earlier judgment, which was handed down on 23 November 2021, and I will not therefore repeat those facts here. In brief, however:
 - (1) The claim is brought by the disponent Owners of the vessel Navig8 Ametrine (“the vessel”) against the time charterers of that vessel (“AEI”) for damages and an indemnity pursuant to a letter of indemnity (LOI) given by the time charterers.
 - (2) The Claimant had chartered the vessel from the demise charterers of the vessel.
 - (3) Proceedings have been brought in Singapore by ING Bank NV, the Bank who had financed the purchase of the cargo carried on the vessel (“the Cargo”), which it was alleged had been misdelivered, against the demise charterers of the vessel. At the time I heard this matter in November 2021, these proceedings were not very far advanced, but there was a summary judgment application pending, which was in the event determined on 8 April 2022.
2. I determined a number of matters in November 2021, as follows:
 - (1) Delivery of the Cargo was effected in accordance with the Defendant’s instructions and the terms of the LOI.
 - (2) The Defendant was obliged under the LOI to indemnify the Claimant in respect of any liability, loss, damage or expense of whatsoever nature which the Claimant might incur by reason of delivering the Cargo without production of the original Bills of Lading in accordance with the Defendant’s request.
 - (3) The Defendant was obliged under the LOI to provide the Claimant (or its servants or agents) upon demand with sufficient funds to defend any proceedings commenced against the Claimant (or its servants or agents) in connection with the delivery of the Cargo.
 - (4) The Defendant was obliged under the LOI to provide security or substitute security for the release of the vessel and to indemnify the Claimant in respect of any liability, loss, damage or expense caused by the Arrest.
 - (5) The Defendant had breached the LOI.
3. I awarded in November 2021 a sum in respect of the detention of the vessel while she was under arrest in Singapore. However, I adjourned for further consideration, in the light of decisions to be made in the High Court proceedings in Singapore mentioned above, the questions of what further relief should be granted and, in particular, whether I should make the declarations sought by the Claimant relating to the indemnity against sums awarded against the demise charterers in Singapore, a claim for which sums might then be passed on to the Claimant.
4. On the day of the hearing in 2021, I was also informed that a notice had been posted in the Singapore Government Gazette that a meeting had been called of the Defendant’s

creditors for the purposes of nominating a liquidator or confirming the Defendant's choice of liquidator. That meeting was due to take place on November 16 2021. I asked for further submissions at that time as to the impact of that announcement, and was provided with such before I gave judgment. I was satisfied, on the basis of what I was then told, that the Singapore proceedings relating to the solvency of the Defendant did not affect the decision I was then called on to make, and I accordingly gave judgment which, as I have said, was handed down on 23 November 2021.

5. The Singapore Court proceedings between the financing bank and the demise charterers have now continued, and a number of relevant matters are now clear.
 - (1) First, by its judgment in April 2022, the Singapore High Court determined that the demise charterers of the vessel were liable to ING for the misdelivery of the cargo.
 - (2) Secondly, the time for an appeal against that finding of liability has now expired.
 - (3) Thirdly, the judgment was for damages to be assessed, on the footing that the claim was properly not for the invoice value of the goods, but for the market value of the goods when they should have been delivered.
 - (4) Fourthly, the hearing in relation to the assessment of damages is fixed to take place on 28 July and between 1-4 August 2023.
6. In addition, in Singapore, there have been further relevant proceedings which are ongoing in relation to the Defendant.
 - (1) As I have indicated, on 3 November 2021, a notice of creditors meeting was given relating to a Creditors' Voluntary Insolvency of the Defendant.
 - (2) The Creditors Meeting took place on 16 November 2021.
 - (3) The Claimant's claim was disallowed at that meeting, and the representative of the Claimant was not allowed to participate. I was told that the decision to refuse the Claimant's representative was taken by the Chairman of the meeting, who was a representative of the Defendant company, and that the ground for that decision was that the Defendant had not participated in these proceedings in the UK. This last suggestion, made by the Chairman at that meeting, is not correct. The Defendant had participated in the UK proceedings, as indicated in my earlier judgment.
 - (4) The Claimant challenged the decision to refuse to allow its representative to participate and sought to reopen the Creditors' Meeting, to revoke the appointment of the Liquidator appointed at that meeting and to appoint a different liquidator instead.
 - (5) At a hearing on 8 March 2022, the Singapore Court granted a compulsory winding up order, and ordered that the original liquidator's appointment be revoked, and that a new liquidator be appointed. The new liquidator is Mr Don Ho Mun-Tuke of Don Ho & Associates, who are insolvency practitioners.
 - (6) That new liquidator has been investigating the Defendant company's affairs.

- (7) As I understand matters, there has not been any order for a stay of the English legal proceedings. I specifically inquired as to this at the hearing on 9 December 2022, and the Claimant has since the hearing date provided a clear account of the procedure, the orders made and the current state of the proceedings. That account has been served, at my request, on the liquidator, and the Claimant has also sought to serve it on those who had been the representatives of the Defendant prior to the winding up order being granted.
- (8) That account, which I accept, was as follows:
 - (a) The Defendant is currently under compulsory insolvent liquidation in accordance with section 124 of the Insolvency, Restructuring and Dissolution Act 2018 (“**IRDA**”).
 - (b) Pursuant to s.133 of that Act, all proceedings issued in the Singapore Court were stayed automatically on the date of the winding up order, namely 8 March 2022. That stay does not however apply to the English proceedings.
 - (c) The Claimant’s Singapore lawyers were not aware of any order or application in Singapore which might stay the English proceedings, nor any application in the English proceedings to recognise the Singapore insolvency proceedings.
- (9) The liquidator has accepted a proof of debt in relation to my earlier orders for damages for detention and costs, as well as the earlier judgment dated 18 December 2020 of the English Court for costs arising out of the hearing before Deputy Judge Sonia Tolaney QC (as she then was).

The relief now sought.

7. The Claimant now seeks the same two forms of declaratory relief which it sought in November 2021 from me, namely:
 - (1) A declaration that the Defendant is obliged to indemnify the Claimant, its servants and agents in respect of any liability, loss, damage or expense of whatsoever nature sustained by reason of the delivery of the Cargo without production of the original Bills of Lading in accordance with the Defendant’s request.
 - (2) A declaration that, upon a demand to do so from Owners or the Claimant, the Defendant is obliged to supply directly to Owners or the Claimant sufficient funds to defend the Arrest Proceedings and/or any proceedings brought by Owners and/or ING against the Claimant arising out of or in connection with the delivery of the Cargo.
8. As at the date of this hearing, it was accepted that the Claimant has no ascertained monetary claim. The quantum of the claim against the demise charterers has not yet been determined, and it will only be at that stage that a claim will, or may, be made, by the demise charterers against the Claimant. I have no reason to doubt the possibility that a claim will be made. Nevertheless, it was submitted, I should exercise my undoubted discretion to grant declaratory relief because it would serve a useful purpose, for the following reasons:

- (1) In the light of my previous judgment, it is clear that there was a demand by the Defendant to deliver otherwise than against the production of original bills of lading, triggering the liability on the part of the Defendant under the LOI to pay an indemnity.
 - (2) It was therefore clear that there was an obligation on the part of the Defendant to pay an indemnity in respect of any amounts awarded by the Singapore Court against the demise charterers, since those amounts would almost certainly form the basis of a claim down the line by demise charterers against the Claimant.
 - (3) All that is currently missing therefore is a finalised judgment of the Singapore Court for an ascertained amount. Such a judgment will be rendered next year as against the demise charterers.
 - (4) The amount of that judgment is overwhelmingly likely to be passed on by the demise charterers to the Claimant.
 - (5) The evidence of Mr Ritter, for the Claimant, was that he had been advised by Asia Legal, the Claimant's lawyers in Singapore, that once quantum has been determined in Singapore, the Claimant ought to be able to submit an acceptable proof of debt in Singapore if the Claimant had both a declaratory judgment from this Court stating that the Defendant was liable to indemnify the Claimant in respect of such sum as the Singapore Court ordered the demise charterers to pay to ING, and a judgment quantifying the liability of the demise charterers to ING in Singapore.
 - (6) I have seen evidence from Asia Legal confirming this.
 - (7) If this advice proves to be correct, it would be unlikely that the Claimant would need to trouble this Court further.
 - (8) Since this matter had already led to substantial expense and use of Court time, it would be better for the Court to determine the matter now rather than to put it off further.
9. The only caveat that the Claimant added was that they would wish to retain the right to apply to this Court again for a variation of any order made today in the event that their expectation, as set out above, did not, for whatever reason, turn out to be correct.

My decision.

10. The first point that I should make is that, given that this was a hearing at which the Defendant was not represented, I have sought to ensure that I have considered all of the arguments which might have been made by the Defendant had it been present. I also asked Counsel for the Claimant for assistance in this regard, and I am satisfied that Counsel has indeed complied with his duties to ensure that the arguments that might have been put forward have been put forward.
11. Secondly, I turn to the starting point for my consideration of the remaining issues, which is that I have already determined that there was a demand for delivery without production

of the original bills, and that this triggered the obligation on the part of the Defendant to indemnify the Claimant against any consequences of compliance with this demand.

12. Thirdly, therefore, the only real remaining issue is whether the grant of the declarations sought has any real utility; and, further, that it would be appropriate to grant this relief at this stage, rather than to adjourn matters again. I am satisfied, in the light of the evidence and submissions as to Singapore law with which I have been presented, that there is such utility, and that it would be appropriate to grant the relief now.
 - (1) First, it is my understanding that the grant of such relief would, when coupled with a finally ascertained amount of the liability of demise charterers (and thus the amount of any obligation on the part of the Claimant to indemnify the demise charterers), enable the Claimant to file a further proof of debt in the liquidation proceedings in Singapore.
 - (2) Secondly, this ascertainment will not occur until at least the middle of next year.
 - (3) Thirdly, the current application has been adjourned on a number of occasions, and time and costs have therefore been wasted.
 - (4) Fourthly, it is therefore desirable to bring an end to these proceedings now, if at all possible.
13. I do also, however, accept that it would be desirable to ensure that the Claimant can return to this Court in the event that all does not go as anticipated in Singapore.
14. I therefore propose to grant the declaratory relief sought, but also to give liberty to apply in case all does not go as anticipated in Singapore.
15. Finally, I should thank Mr Ellis and his instructing solicitors for their assistance. I will, as I indicated orally, deal with any questions as to the form of the order and as to costs on the basis of written submissions.