

“ ‘Good Weather’ or ‘All Weather’: Is it incorporated? ”

In a dispute over a Gas Carrier’s warranted performance under an amended Shelltime 3 time charter party, the English High Court ruled,¹ in favour of the charterers’ contention, that the “all weather” warranty contained in the standard form was not overreached by the agreed additional clauses. Whilst those involved in shipping know that a ship’s speed (and consumption) will not be the same under *any* weather conditions including weather conditions of force, say, 9 Beaufort with turbulent seas it is open for the parties to agree this as it simply allocates risk.

The ruling brings to the forefront all the rules of construction of a contract under English law which people in the chartering departments and shipbroking offices should keep in mind when they conclude a charterparty.

The material charterparty contained provisions in relation to the vessel’s speed and consumption in three different places.

The first reference was in the relevant clause of the standard charterparty form – clause 24. In that clause, blank spaces were left where the speed and consumption should be inserted but there were two cross references: the first to the vessel’s description as being that set out in “Gas Form C” and the other to one of the rider clauses - additional cls 42. The clause provided also that the “aforesaid speeds” (of which there were none as the space was blank) shall be calculated “...*on all sea passages and over the whole time...*” and that in the event of a conflict between the particulars of “[Gas Form C] *and any other provision (including this clause)....., such other provision shall prevail*”.

The second reference was in the rider clause cls 42 cross referred to in the above clause. This clause provided for the vessel’s “*speed about 15 knots average*” (consumptions were provided too). There was no reference whatsoever in the rider clause to weather conditions but it did cross refer at the end to Gas Form C stating: “*Otherwise as per Gas Form C*”.

The third provision was that contained in Gas Form C itself. Among other details, Gas Form C provided for the vessel’s “*guaranteed average speed on a year’s period and max wind force 4 in Beaufort scale: Loaded about 14.5 knots, Ballast about 15.5 knots*”.

The owners contended that the effect of the words “*Otherwise as per Gas Form C*” was that the detailed provisions of Gas Form C including the word “*and max wind force 4 in Beaufort scale*” should be read into the rider clause unless there was something contrary in the rider clause to displace that. As the speed referred to in cls 42 did not qualify the weather conditions in any way, those weather conditions in Gas Form C were incorporated. Effectively the parties had agreed to average the laden and ballast speeds.

The charterers’ contention was that the word “*otherwise*” applies only to those matters in Gas Form C which had not been expressly dealt with in the rider clause. As speed was dealt with in Cls 42 it was to be treated as a complete description in its own right and there was no need to introduce further wording.

The Court considered that the charterers’ construction did not cause any internal conflict between the speed and consumption provisions of cls 42 and those in standard clause 24 and which provided for an “*all weather*” warranty. Also, it considered that, as a matter of language, the word “*otherwise*” more naturally conveys something which supplements rather

¹ *Hyundai Merchant Marine Co Ltd v Trafigura Beheer BV* (The “*Gaz Energy*”) – [2011] EWHC 3180 (Comm).

than replaces or contradicts a clause. The court concluded that, “*upon its proper construction, the charter did contain the all weather warranty*”.

The lesson to be learnt from the above ruling is that Owners need to be careful how and where they describe the vessels performance particularly where the speed and consumption forms part of the vessels description only. The court in this case, effectively, decided that the parties had agreed that the owners had assumed the financial risk of bad weather notwithstanding their description of the vessel.

Extending the analogy, given that many charters at such stage often incorporate details from previous charters through the mechanism “*Otherwise as per c/p...*”, this may not have the full effect intended if other provisions deal with similar issues but not at the same level of detail; such detail may not be incorporated.

Brokers beware!

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Konstantinos Bachxevanis