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Charterparty Bulletin: Clarifying the Meaning of Fortuity

Delos Shipholding SA and Others v Allianz Global Corporate and Specialty SE and Others [2024] EWHC 719

In this case, the High Court found that the detention of a vessel in Indonesian territorial waters, due to the vessel anchored there without the permission of the Indonesian authorities, was a fortuitous event. Consequently, the Owners had a valid claim against the insurers under the war policy.

Background facts

In late 2018 the Capesize bulk carrier WIN WIN discharged a cargo of iron ore at Bayuquan, China. The vessel then took on bunkers in Singapore and was ordered to find a safe anchorage and to wait for further instructions. The straight of Singapore is one of the busiest shipping lanes in the world. The vessel had some difficulties trying to find a suitable place to anchor. The vessel departed Singapore and the master altered the passage plan to a waiting location partly inside and partly outside Indonesian territorial waters. This location had been used in the past as an anchorage by numerous vessels without any problem.

However, Indonesian authorities changed their policy in February 2019, and what used to be a safe anchorage was no longer safe. Permission was required by the Indonesian authorities. The Indonesian authorities arrested 19 vessels for anchoring in territorial waters without permission, including the WIN WIN. The vessel was detained for nearly a year, and her master was imprisoned and fined. During this period, the vessel became a constructive total loss.

The vessel was insured against war and political risks.

The insured perils included “seizure, arrest, restrain or detainment, or any attempt thereat”.

However, the policy excluded: “arrest, restrain or detainment under customs or quarantine regulations and similar arrests, restraints or detainments not arising from actual or impending hostilities...”

A claim was brought against the insurers for war risks, including the risk of detention.

The insurers' argument

The insurers accepted that there had been a constructive total loss but rejected the claim on four grounds:

1. The arrest was not fortuitous. The master knew that the vessel was anchored in Indonesian territorial water, and the detention was the consequence of the master's voluntary conduct.
2. The exclusion clause in the policy.
3. There was a breach of the sue and labour clause.
4. There was a breach of the duty of fair presentation.

The High Court's decision

The court held that the claim was allowed.

On the facts of the case, the court found that neither the master nor any of the other claimants knew that the vessel had anchored in Indonesian territorial waters until after she was arrested. The area had been used for anchorage previously and there had been no arrests before this incident. The master did not appreciate that the vessel might have been arrested as a result of anchoring in Indonesian territorial waters without permission. The court found that the event was fortuitous.

Conclusion

The Claimants were entitled to recover USD 37.5 million for the value of the vessel, which became a constructive total loss. A further USD 235,899.92 for sue and labour expenses, mainly legal fees, was also recoverable, as these expenses reasonably occurred with the purpose of averting or minimising the loss.

Key takeaway

In this decision, the court clarifies the meaning of "fortuity." The fortuity requirement meant that a policy did not protect the assured against losses that were certain to result or were deliberately caused by the assured. In the present case, the master was not aware that the vessel was anchored in Indonesian territorial waters. There was no wilful misconduct, and therefore, the court found in favour of the Owners.

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