Limits of Force Majeure Clauses in Shipping Contracts

Due to recent global events, “force majeure” clauses are frequently revisited in all commercial contracts, with the shipping industry no exception. Professionals within the industry have been paying close attention to one case in particular, and on 15th May 2024, the Supreme Court gave its ruling on it. This is the case of MUR Shipping BV (“MUR”) v RTI Ltd (“RTI”) [2024]. See our previous article on the matter, authored by Philippa Langton, head of our LA Marine team in Southampton: MUR v RTI – Force Majeure and Reasonable Endeavours.

Background

This case revolves around a freight contract under which RTI agreed to ship, and MUR agreed to carry, a cargo of bauxite from Guinea to Ukraine. The contract stipulated that the hire payments would be made in US dollars. The contract contained a force majeure clause. This is where parties are relieved of their contractual obligations due to obstacles arising that are out of the control of the parties i.e. the pandemic, war and sanctions. In this case, the clause stipulated that the parties would be relieved of their contractual obligations if such an obstacle or state of affairs could not be overcome by reasonable endeavours by the party affected. Due to the events in Eastern Europe, US sanctions were imposed on RTI’s parent company once the charterparty was underway. MUR attempted to claim that paying hire in USD would breach sanctions, thus voiding the contract and they therefore claimed force majeure relieved them from their payment obligations. It is important to note that RTI attempted to demonstrate reasonable endeavour by offering to pay in Euros. This offer was rejected by MUR, who insisted on payment in USD.

Judgments

Before the Supreme Court’s ruling, the earlier courts had mixed judgments. The first instance tribunal and the Court of Appeal deemed the proposed payment in Euros to be within the remit of “reasonable endeavours.” The Commercial Court had a contradictory ruling stating that paying in Euros would go beyond what was stipulated in the contract.

The Supreme Court has shared the view of the Commercial Court – overturning the decision of the Court of Appeal. The Supreme Court clarified that while parties must use reasonable endeavours to overcome force majeure, this does not extend to accepting non-contractual performance. Parties are not obliged to forgo contractual rights, such as payment in a specified currency unless explicitly stated.

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The ruling means that parties invoking force majeure are not required to accept alternative performance if it deviates from the contract terms. Contracting parties could overcome this principle by explicitly including provisions for accepting non-contractual performance under certain conditions but must consider how these provisions might apply and limit them appropriately.

This judgment emphasises the fine balance between adhering to contractual terms and using reasonable efforts to mitigate force majeure events, reinforcing the principles of contractual freedom and predictability in commercial dealings. The overall takeaway of this saga is the increased importance of careful and accurate drafting for such agreements.

Please contact our Shipping & Logistics team at online.enquiries@LA-law.com should you like to discuss the judgment further or require advice on a similar agreement you wish to enter into.

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