

Shipping law bulletin

KRITI AKTI

COURT OF APPEAL JUDGMENT

The case of the Kriti Akti concerns the seemingly simple question of “what is the charter period?”. This question has, however, caused considerable debate between the parties involved and, following the judgment of Moore-Bick J. on 9 July 2003, the Court of Appeal has now added its voice.

As well as providing important clarification for Charterers and Owners alike as to what constitutes the charter period, the Court of Appeal has also provided significant guidance regarding the time when final voyage instructions may be made. The Court of Appeal’s decision in the Kriti Akti is, therefore, landmark authority as to the rights of parties to a charter when re-delivery approaches.

The facts

The vessel was chartered by Petrobras on an amended Shelltime 3 form. Specifically, the Charter incorporated 3 key clauses relevant to the time for re-delivery: (a) the period clause, stated to be 11 months plus or minus 15 days at Charterers’ option (clause 3); (b) a typed extension clause allowing the Charterers to extend the charter by a period equal to the total of any off-hire time (clause 50); and (c) a printed final voyage clause entitling the vessel to complete any voyage that the vessel had already commenced at “the expiry of the period of this charter” (clause 18).

After the basic 11 month period had expired but within, Charterers say, the extended period, the vessel was ordered to carry out a final voyage. At the time this was done the Owners, Kriti Akti Shipping SA, took the view that the charter had already expired and declined to accept those voyage orders which, ultimately, led to the vessel being withdrawn. This was on the basis, Owners allege, that the period of the charter referred to in the final voyage clause was in fact a reference to just the basic 11 month period. On the two questions originally put to the Tribunal, Moore-Bick J in the High Court decided that (i) the “period of this charter” as per clause 18 includes any additional period for which Charterers may elect to keep the vessel, i.e. the off-hire extension (clause 50) and (ii) that the charter so extended also included the tolerance of 15 days in the period clause. This judgment has now been affirmed by the Court of Appeal.

Owners’ arguments

With respect to Owners’ argument that the charter period should not include any time allowed by way of the off-hire extension, the Court of Appeal wasted little time in rejecting this. As such, the substantive issue decided by the

Court of Appeal is the question of whether the 15 day margin referred to in clause 3 of the charterparty should also constitute part of the charter period.

On this point, Owners made two main submissions. First, it was claimed that the 15 day period was merely a tolerance designed to prevent the Charterer from being in breach of the charterparty for up to 15 days after the end of the basic period in the event that the vessel's final voyage overruns this date due to the 'exigencies of maritime life'. In the alternative, Owners argued that Charterers are entitled to use the vessel during the 15 day margin period but only in the event that any voyage undertaken in that period was instructed prior to the end of the basic 11 month period and was completed before the fifteenth day. Secondly, Owners contended that the Court of Appeal decision in *Gulf Shipping Lines Limited v Compania Naviera Alanje SA* (the "*Aspa Maria*") [1976] 2 Lloyd's Rep 643 was binding authority that the 15 day margin was nothing more than an express agreement as to the exact tolerance for re-delivery of the vessel that would otherwise be implied by the law. Accordingly, it should not to be considered to be an extension to the charter.

Court of Appeal judgment

The Court of Appeal's judgment is premised by an analysis of the earlier decisions in *Alma Shipping Corp of Monrovia v Mantovani* (the "*Dione*") [1975] 1 Lloyd's Rep 115, *Hyundai Merchant Marine Co Ltd v Gesuri Chartering Co Ltd* (the "*Peonia*") [1991] 1 Lloyd's Rep 100 and *Chiswell Shipping Ltd & Liberian Jaguar Transports Inc v National Iranian Tanker Co* (the "*World Symphony*" and "*World Renown*") [1991] 2 Lloyd's Rep 251. The finding of Lord Justice Mance, delivering the Court of Appeal's judgment, was that all of these cases proceeded on the basis that "*it is legitimate for a time charterer to give directions for the vessel's use on a voyage so long as it can reasonably be expected to be completed by the final terminal date, defined by taking into account any implied or express margin to which the Charterer is entitled*".

Mance LJ went on to find that in respect of the wording of clauses 3 and 18 of the Shelltime 3 form then the natural meaning is "*to entitle Charterers to the full commercial use of the vessel for a period of between 11 months plus or minus 15 days. Apart from clause 18 and apart from*

authority, I would see no reason for restricting Charterers' freedom to give voyage directions by reference to any date, except the final terminal date". Furthermore, Mance LJ held that the wording of the Shelltime 3 form "*provides no basis for implying into the charter some restriction, related to the terminal date of the basic charter period, on the date when final voyaging directions can be given or when a final voyage can commence*".

Turning to the binding nature or otherwise of the decision in the *Aspa Maria*, Mance LJ found that Denning LJ, in that case, "*was concerned with the rationale of the margin period, and the essence of the point that he was making was that it was a tolerance in respect of redelivery - in respect of the "date he [the charterer] can get the ship redelivered"*". It was further added that clause 18 in the Shelltime 3 form cannot be treated in the same way as the extension clause in the *Aspa Maria* in that it relates to a specific voyage commenced within the charter period rather than, in itself, being an extension to that charter period. On this basis, the Court of Appeal has confirmed that the *Aspa Maria* is not binding authority affecting the natural meaning, as determined by Mance LJ, of the Shelltime 3 form.

The effect of the Court of Appeal's judgment is that (i) generally, charterers have the vessel at their disposal for all practical purposes for any period between the basic stated period (e.g. 11 months) and any margin period (e.g. plus or minus 15 days); and (ii) for vessels chartered on the Shelltime 3 form with clause 18 unamended, any final voyage may be commenced at any time during the period that the vessel is at the charterers' disposal (albeit that the Court of Appeal has noted the submission that voyages of an extreme length may nevertheless be precluded from this interpretation).

The Court of Appeal's judgment provides certainty as to the meaning and effect of a form of wording defining the charter period which is used in all forms of time charter. As such, it is to be welcomed by owners and charterers alike.

Ince & Co acted for Charterers, Petrobras.

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