

Application to CA for leave to appeal before Staughton LJ; Judge LJ. 29th July 1997.

LORD JUSTICE STAUGHTON:

1. We do not often see Charter Parties in this court, but today we have a Charter Party between the Georgian Maritime Corporation (the owners of a ship called North Sea) and Sealand Industries Bermuda Ltd, the Charterers. Clause 3 provided: *"The Charterers on delivery, and the Owners on redelivery, shall take over and pay for all fuel and diesel oil remaining on board the vessel as hereunder."*
2. Then there is a reference to clause 56. That provides:
"BUNKER
Vessel to be delivered with about 700mts HFO and about 100mts IF120CST and about 100mts MDO, and to be redelivered with approx. same quantities as on delivery."
3. Clause 14 provided:
"If required by Charterers, time shall not commence before 5th August 1995 ... and should vessel not have been delivered on or before 10th August 1995 12:00 hours Charterers or their agents shall have the option of cancelling this Charter."
4. If the vessel cannot arrive in time the Charterers are required to declare whether they will cancel or take delivery of the vessel.
5. The Charter Party was a time chartering for a trip for 15 to 25 days without guarantee. The intended itinerary was Hong Kong, Kobe, Nagoya, Yokohama, Oakland and then to Long Beach. As to delivery, it says in line 34: *"Vessel shall be placed at the disposal of the Charterers at Charterers' berth Hong Kong or dlosp [dropping last outward sea pilot] Hong Kong in charterers option any time day/night."*
6. The present application is made by the Charterers, Sealand Industries, for leave to appeal from an order of Mance J on 18th April 1997. By that order the judge set aside an arbitration award made by Mr John Maskell on 10th January 1997.
7. Mr Maskell had dismissed a claim brought by the owners, Georgian Maritime Corporation, following a cancellation of the Charter Party. Creswell J granted the owners leave to appeal from the award. Mance J set it aside, holding that the cancellation by the Charterers was unlawful. He remitted the matter to Mr Maskell for an assessment of damages. There was an application by the Charterers to the judge for leave to appeal against his judgment, but he refused it. He did however grant a certificate under section 1(7) of the Arbitration Act 1979 that two questions of law were questions of general public importance. Subsequently Phillips LJ refused leave to appeal on paper. We today have a renewed application by Mr Tomlinson for leave to appeal.
8. The two questions certified by Mance J arose in this way. At noon on 10th August 1995, which was the cancelling date, the vessel was at the anchorage in Hong Kong. She was in the process of bunkering. But she did not, at that moment, have the full amount of bunkers required on board, only a significantly less quantity. At that stage the Charterers had not yet declared their option whether they required the vessel at their berth in Hong Kong, presumably to load a cargo there, or dropping the last outward pilot leaving Hong Kong presumably for the purposes of going to Japan to load a cargo there.
9. The two questions which arose, which are formally stated in the judge's judgment are, first, whether the Charterers were entitled to cancel if, at the date and time provided in the cancelling clause, there was not a sufficient quantity of bunkers on board the vessel. The arbitrator held that they were, the judge held that they were not. The cancelling clause is, of course, a contractual option and nothing to do with breach of contract. Secondly, the question was whether the Charterers were entitled to cancel although they had not yet declared their option as to whether the vessel should be tendered at their berth in Hong Kong or dropping the last outward pilot, when the fact was that she was not yet ready to be delivered in either place if the contractual quantity of bunkers was an essential preliminary.
10. In my judgment those two points, as the judge certified, are of general public importance, and they raise a case of sufficient strength to justify the giving of leave to appeal under the Arbitration Act. I would grant the leave asked for in this case.

LORD JUSTICE JUDGE: I agree.

ORDER: Application allowed. Costs in the appeal. Notice to be served in 7 days.

MR S TOMLINSON QC (Instructed by Clifford Chance, London EC1A 4JJ) appeared on behalf of the Applicant
THE RESPONDENTS DID NOT ATTEND AND WERE NOT REPRESENTED