

September 2015

FREIGHT CONNECT (S) PTE LTD V PARAGON SHIPPING PTE LTD [2015] SGCA 37

We had previously issued an update on the case of [Paragon Shipping Pte Ltd v Freight Connect \(S\) Pte Ltd \[2014\] 4 SLR 574](#). The facts of the case were that the Defendant sub-charterers had chartered a vessel from the Plaintiffs for the shipment of heavy machinery from China to Singapore. The Defendants subsequently failed to load the cargo on board the vessel.

The Plaintiff successfully sued the Defendant in the High Court for loss of freight and detention charges. The Defendant subsequently appealed to the Court of Appeal against the decision of the High Court. One of the issues in the appeal was the detention charges awarded to the Plaintiffs.

The vessel had tendered a notice of readiness on 20 August 2012 when it arrived at the port of loading. The Plaintiff claimed detention charges from then up to the time the Defendant repudiated the fixture by loading the cargo onboard another vessel pursuant to a “time lost clause” in the fixture which provided:-

Time lost due to swell and/or weather and/or waiting for loading and/or discharging berth on ships arrival at or off port or so near thereto vessel may be permitted to approach, will be charged as time for which detention is due...

The Court of Appeal considered the nature and effect of time lost clauses in charterparties, a point that had not been squarely dealt with by the Singapore Courts previously.

The Defendant argued that, on the facts of the case, the vessel tendered her notice of readiness before berth was actually secured. Therefore, the notice of readiness was invalid and accordingly, detention charges could not accrue. The Plaintiff’s position was that the time lost clause operated independently of whether or not the vessel had tendered a valid notice of readiness or not.

The Court of Appeal agreed with the Plaintiff’s argument and drew a distinction between a claim for demurrage or detention after the expiration of laytime and a claim for an agreed sum which is payable upon the occurrence of a specified event. In the latter case, once it is shown that the specified event has in fact taken place, the clause is triggered and the issues of commencement of laytime and/or the tendering of a valid notice of readiness do not even arise.

The Court of Appeal further distinguished an existing line of English cases in relation to the usual form of time lost clauses on the basis that those cases dealt with time lost clauses that stipulate that any waiting time is to count as loading time while the time lost clause in this case clearly and expressly stated that any time lost waiting for a loading berth was to count as detention.

Owners and charterers should therefore be aware of the potential impact of time lost clauses which can operate outside the usual notice of readiness/demurrage/laytime regime.

The Plaintiff was represented at the High Court and the Court of Appeal by K. Murali Pany and Edward Koh of JTJB.

This update is for general information only and is not intended to constitute legal advice. JTJB has made all reasonable efforts to ensure the information provided is accurate at the time of publication.



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