

Insight

Maritime Arbitration as a Chosen Choice of Forum Method in International Charterparty Dispute

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Introduction

Forum selection in maritime disputes are important to ensure certainty and predictability throughout the whole process of international shipping. Parties engaged in international shipping transactions have increasingly begun to choose maritime arbitration forums as an effective mechanism for settling disputes arising from contractual relationships. Arbitration clauses and provisions are oftentimes inserted in international contracts as a choice of foreign forums. The seat of the forum will determine the dispute settlement process and enforceability of arbitration awards; thus, contractual documents related to shipping mechanisms such as charterparty and bills of lading could choose arbitration as the dispute settlement method.

Case Analysis (Golden Ocean Group Ltd v. PT Humpuss Intermoda Transportasi)

The companies Golden Ocean Group Ltd and PT Humpuss Intermoda Transportasi are legally bound through a charter party agreement. The case revolved around the Claimant, a Norwegian company based in Bermuda referred to as “Golden Ocean”, and two defendants. The first defendant is a publicly registered Indonesian traded company, Humpuss Intermoda Transportasi (“HIT”), which is also the parent company of the second defendant, a Panamanian company, Genuine Maritime Ltd (“Genuine”). HIT was the ultimate parent company of the Humpuss group of companies, as the ship-owning and chartering business was conducted through Humpuss Sea Transport PTE Limited (“HST”), a wholly owned subsidiary of HIT incorporated and managed in Singapore. HST's principal activity was time chartering vessels. HST, in turn, had several wholly owned operating subsidiaries, including Genuine, a company incorporated in Panama whose business involved dry bulk transportation services. Accordingly, while HIT and Genuine were both defendants in the proceedings, they occupied different positions within the Humpuss corporate structure, with HIT as the ultimate parent company and Genuine as an operating subsidiary of HST.

In 2008, Golden Ocean entered into a time charterparty concerning the vessel M/V Barito for a period of approximately 11 to 13 months. The fixture was negotiated on behalf of Golden Ocean and the Humpuss group, addressed by the owners’ broker to Golden Ocean and HIT. The recap provided that the remaining terms would follow those of the parties’ previous charter for the *Mahakam*, with logical changes. The *Mahakam* charter identified Heritage, another Humpuss group company, as the disponent owner and contained a London arbitration clause governed by English law. The subsequent documentation and performance of the Barito charterparty, however, involved Genuine. Genuine was identified as the disponent owner in the relevant charterparty documentation, and during the charter period Golden Ocean paid hire into an account in Genuine’s name. Golden Ocean also issued letters of indemnity in favour of Genuine in connection with the discharge of cargo. The vessel was delivered on 2 August 2008 and was subsequently redelivered in March 2009 following a dispute concerning its off-hire status.

Following the early redelivery, Golden Ocean advanced claims against HIT, maintaining that HIT was the disponent owner under the charterparty, while Genuine asserted that it was the disponent owner and brought a counterclaim against Golden Ocean. The dispute therefore extended beyond the parties’ substantive claims concerning the performance of the charterparty to the identification of the entity that was legally bound by the charterparty and its arbitration agreement. Golden Ocean commenced arbitration in London pursuant to the arbitration agreement contained in the original charterparty.

A central issue before the arbitral tribunal was the identity of Golden Ocean's contractual counterparty. While Golden Ocean maintained that HIT was the disponent owner and party to the charterparty, Genuine disputed this position and maintained that it was the relevant contracting party. The issue was therefore closely connected to the tribunal's jurisdiction, as determining the party bound by the charterparty was also relevant to determining who was bound by the arbitration agreement.

However, while the arbitration dispute process was still ongoing in London, Golden Ocean and Genuine entered into an Addendum dated 8 March 2010. The Addendum provided for disputes arising under the charterparty to be referred to arbitration in Singapore, while maintaining English law as the governing law. It also addressed the existing proceedings between the parties and contemplated discontinuing the proceedings then being pursued in London and Indonesia. The Addendum therefore introduced a new arbitral forum, replacing the London arbitration arrangement contained in the original charterparty with Singapore as the agreed seat of arbitration.

The Addendum subsequently became central to the dispute concerning the appropriate arbitral forum. Golden Ocean later challenged the effect of the Addendum, particularly as Genuine was not the contractual counterparty under the original charterparty. This raised a further question as to whether an agreement between Golden Ocean and Genuine could validly alter the arbitration arrangement applicable to the charterparty and bind the parties to arbitration in Singapore. The dispute thus evolved into a dispute concerning the validity and effect of the parties' choice of arbitral forum.

Following the Addendum, Genuine commenced arbitration proceedings in Singapore and nominated its own arbitrator. This occurred after the London arbitral tribunal had determined in its judgement that Golden Ocean had contracted with HIT and that it had jurisdiction over the dispute. Genuine's commencement of the Singapore arbitration therefore gave practical effect to the arbitration agreement in the Addendum, while also creating a conflict with the position previously taken in the London arbitration. Golden Ocean maintained that the London arbitration and its resulting determination should govern the dispute, whereas Genuine relied on the Addendum as the basis for Singapore arbitration. In response to the commencement of the Singapore arbitration, Golden Ocean commenced proceedings before the English High Court and sought an injunction restraining Genuine from pursuing the Singapore arbitration. Golden Ocean argued, among other things, that Genuine was not a party to the original charterparty and that the Addendum could not give rise to a valid arbitration agreement binding Golden Ocean in respect of the dispute. The High Court was therefore required to consider the relationship between the original charterparty, the Addendum, and the competing arbitral proceedings.

The English High Court ultimately restrained Genuine from pursuing the Singapore arbitration, thereby preventing the dispute from being re-litigated before the Singapore arbitral tribunal. The Court's intervention did not constitute a determination of the underlying charterparty dispute itself, but rather concerned the proper forum in which the dispute could be pursued.

Arbitration as A Choice of Forum

The case demonstrates the importance of arbitration as a choice of forum in international charterparty disputes. Charterparties frequently involve parties from different jurisdictions and may concern vessels, owners, charterers, and other entities operating across multiple countries. In such circumstances, submitting a dispute to the national courts of one party may raise concerns regarding neutrality and procedural uncertainty.

Arbitration allows the parties to address these concerns by agreeing in advance on a neutral arbitral seat and procedural framework. The choice of arbitration therefore provides parties with greater control over the manner and forum in which potential disputes will be resolved.

A choice of forum only operates effectively where there is a sufficiently clear agreement as to the forum and the parties who are bound by it. This becomes particularly relevant in international charterparties involving corporate groups, where the entity negotiating the charter, the registered owner, the disponent owner, and the entity performing certain contractual obligations may not always be the same. The existence of multiple affiliated entities can therefore create uncertainty regarding which entity has actually consented to arbitration. The Case dispute illustrates this broader concern, as the question of the appropriate arbitral forum was connected to the identification of the entity bound by the relevant arbitration agreement. A subsequent change of arbitral forum may create uncertainty where the original and amended agreements provide for different forums. This suggests that any amendment affecting an arbitration agreement should clearly identify the provision being replaced, the disputes covered by the new agreement, and the parties intended to be bound.

Conclusion

Maritime arbitration has become the preferred choice of forum for resolving disputes in international shipping as arbitration clauses have become a standard feature of international shipping contracts, reflecting the parties' preference for a forum for a dispute resolution mechanism. Arbitration remains a suitable choice of forum for international charterparty disputes because it allows parties to determine in advance how and where disputes arising from their contractual relationship will be resolved. However, the effectiveness of such a choice ultimately depends on the existence of a clear and binding arbitration agreement, including certainty as to the parties bound by it and the arbitral forum selected. Arbitration can provide an effective and commercially appropriate forum for international charterparty disputes, but careful drafting and consistency in the arbitration agreement remain essential to ensure that the parties' choice of forum achieves its intended purpose.

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