

Update

Vessel sale upheld despite missing certificate

In the case of *Polestar Maritime Limited v YHM Shipping Co Limited and another* [2012] concerning the sale of the bulk carrier “REWA”, the Court of Appeal had to consider firstly, how far the obligations of a Seller extended, following agreement under the contract and the survey of the vessel, and secondly, the provisions in place for a Seller to correct any deficiencies in those obligations before the Buyer could cancel the agreement.

The Buyers had two survey reports stating that the vessel did not comply with Annex IV of MARPOL, specifically in that she did not have an ISPP certificate. The reports made clear that the vessel would require the ISPP certificate by 27 September 2008. On 23 July 2008, the parties signed a memorandum of agreement (“MOA”) for the purchase of the vessel. The MOA also attached a Lloyd’s Register extract which noted that a vessel of this type had to comply with Annex IV of MARPOL as from 27 September 2008.

Clause 11 of the MOA provided that “the vessel shall be delivered with...her national/international trading certificates, as well as all other certificates the vessel had at the time of her inspection...”. The MOA also provided that “the Sellers shall be granted a maximum of three banking days after notice of readiness has been given to make arrangements for the documentation as per Clause 8”.

Because of the lack of an ISPP certificate at the time of delivery, the vessel was detained by the Port Authorities in Hong Kong on 30

September 2008, putting Sellers in breach of a covenant in the Bill of Sale (despite the detention being lifted within a day).

The Buyers cancelled the agreement on 1 October 2008, alleging that (i) the Sellers were in breach of their obligations under the MOA in failing to have an ISPP certificate by 27 September 2008 and (ii) the vessel had been under detention and therefore the sellers were in breach of the covenant.

On (i) the Court of Appeal found that “in the absence of any wording that imposes any duty to provide further certificates that the vessel did not have at the time of her inspection by the Buyers, no obligation to provide such further certificates can be eked out of the actual wording of Clause 11”. The Court of Appeal approved the certainty provided by this construction of the contract, pointing out that a Seller could not possibly know where the vessel may trade in the future, and what national or international certificates may therefore be necessary.

On (ii) Lord Justice Aikens stated that, in his view, the wording of the MOA contemplated the Sellers being permitted to “*make arrangements*” in order to enable them to provide documentation, which included lifting any detention. The Buyers were therefore not entitled to cancel.

On both questions, therefore, and perhaps influenced by a suspicion that the Buyers were looking for ways to reject the vessel given the falling market, the Court adopted a common sense approach that effectively upheld the commercial expectations of the parties.

Further information

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