Impossibility of Notifying Place of Redelivery - Revisited

The decision of the High Court in Mansel Oil Ltd and Another v Troon Storage Tankers SA (The "Ailsa Craig") [2008] EWHC 1269 (Comm) was discussed in an earlier website article: Impossibility of Notifying Place of Delivery. The owners have since appealed.

When The "Ailsa Craig", chartered on the Shelltime 4 form, missed her due delivery date in November 2007, the charterers sought to cancel the fixture by exercising their contractual right to do so. On the premise that the charterers had not at the time nominated a port of delivery from the available range provided in the charter, the owners argued that there was no entitlement to cancel because the charterers had not, at the time of cancellation, nominated a delivery port.

The owners argued that because the charterparty provided a mechanism for providing notice of estimated and definite arrival at the place of delivery into charterers' service, the charterers were under an obligation to nominate the port of delivery at least 51 days (i.e. 1 day before the first estimated notice) before the earliest agreed delivery date. In this connection, owners' argued that the right to cancel was dependent on charterers having nominated a delivery port in order to allow owners the opportunity to give the required notices.

Longmore LJ rejected owners' arguments on the basis that:

(i) nothing in the charter could be deemed as expressing or implying an obligation to nominate a delivery port prior to cancelling,

(ii) even if such an obligation existed, the time for its fulfilment never arose as the vessel could not have proceeded to the closest point of the available ports range without a nomination, and

(iii) the futility of nominating on the assumption that the vessel would not have been ready on time should nullify any obligation to select a delivery port.

The Court of Appeal, without much hesitation, affirmed the High Court's decision and the appeal was dismissed.

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