Impossibility of Notifying Place of Delivery

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An interesting issue, and potentially relevant to all forms of time charterparties, was addressed as preliminary issue in Mansel Oil Ltd and Another v Troco Storage Tankers SA (The “Alisa Craig”) [2008] EWHC 1269 (Comm) - whether a charterer is entitled to cancel a time charterparty following a failure by owners to have the vessel at their disposal by the cancellation date by reason of the former not having nominated a delivery port pursuant to the fixture. In other words, can a charterer exercise a right to cancel before he has fulfilled his obligation to nominate a place of delivery?

The “Alisa Craig”, chartered on the Shelltime 4 form, laycan was 25 September to 31 October, 2007. In the event that the vessel was not at the charterers’ disposal by the end of this period the charterers were entitled to cancel. The charter provided that the vessel was to be delivered by the owners at any port on the Ghana/Nigeria range in West Africa, at charterers’ option.

The delivery period was extended by agreement to latest 15 November, 2007. Owners were unable deliver the vessel into charterers’ service by this date because the vessel was in dry-dock at Piraeus. Charterers cancelled the charter albeit that they had not nominated a delivery port within the charter range.

The owners argued that the right to cancel could not be exercised until the charterers had nominated a port within the charter range. That is, that in the absence of a nominated place of delivery, they could not place the vessel at charterers’ disposal, and thus the obligation to deliver by the 15 November was only triggered once the place of delivery had been nominated.

On the other hand, charterers submitted a) that there was no duty to nominate a delivery port, b) that even if there was such a duty, the moment for its performance never arose and c) that the nomination would in any event have been futile and was therefore unnecessary.

The High Court decided that charterers did have an obligation under the charter to nominate the delivery port within a reasonable time so as to prevent any delays to the vessel due to an absence of nomination. However, that time had not expired and therefore the moment at which they were obliged to nominate the delivery port had not arrived. The absence of a nomination had not prevented the delivery of the vessel. Further, even if the obligation to nominate arose before the 15 November, when the vessel was in dry dock in Piraeus, it was obviously futile to a nominate a place of delivery of the vessel, it was clear on the facts that the vessel would never have arrived at that place before the 15 November.