Seaworthiness under NYPE Charterparty - Whose Responsibility?

A benchmark decision was recently confirmed by the English Court of Appeal in the case of the “Imvros”.

The case concerned the question as to whether, as between Owners and Charterers, the Owners and Master of a vessel necessarily remain responsible for its seaworthiness in all circumstances. The Court decided that they were not.

The “Imvros” was on charter on the NYPE form pursuant to which she loaded, inter alia, timber on deck in Brazil for South Africa and the Far East. Loading was carried out by the Charterers under the direction of their Supercargo and at their responsibility (clause 8 of the charterparty being materially unamended).

The height of the deck cargo was such that the relevant IMO Code required that lashings should be spaced at intervals of no more than 1.5 metres, whereas, in fact, they were spaced at intervals of 3 metres. The lashing of the deck cargo was carried out by the crew, albeit as Charterers’ servants.

During the voyage, the vessel encountered heavy weather. This resulted in a proportion of the deck cargo breaking free from the lashings and being lost overboard. As a result, the vessel suffered some structural damage and the Master was forced to put into Port Elizabeth, as a port of refuge, where re-lashing was carried out.

The Owners were obliged to settle claims of cargo interests for the lost cargo (Charterers having issued under-deck Bills of lading). They subsequently brought indemnity claims against the Charterers via arbitration in London. Their claim also included the cost of re-lashing the cargo, damage to the vessel and lost time.

The Charterers defended the claim on the basis that the height of the deck cargo coupled with the distance between the deck lashings was such that it rendered the vessel unseaworthy at the commencement of the voyage and that the Master was or should have been aware of this as it was specified in the IMO Code. They also argued that the Master was under an overriding duty to intervene to rectify the unseaworthiness and in failing to do so rendered the Owners responsible for the stowage and lashing.

The Owners argued that responsibility for the stowage and lashing remained with the Charterers as this was entirely within their domain of responsibility.

The Tribunal had held that although the vessel was unseaworthy and the losses occurred as a result of inadequate lashing, the Charterers could not relieve themselves of their obligation to properly stow and lash the cargo. Their reasoning was that to find in the alternative would mean that Charterers would have an incentive to carry out loading and stowage in such a manner that a vessel would be rendered as unseaworthy in order to relieve themselves of the responsibility for the consequences. The Tribunal considered that this result could not be in the interests of commercial efficacy. This was later confirmed on appeal.

The decision makes it clear that time Charterers who are obliged under the charterparty to stow and lash in a proper manner cannot avoid responsibility for such matters by arguing that their failure to stow and lash properly rendered the vessel unseaworthy and the owners liable.