Recent updates to the UAE Maritime Law: Exercising lien over cargo

The shipping news

In this briefing note, we set out the position regarding owners of a vessel being permitted to withhold discharge of goods for non-payment of freight and demurrage.

Background

In a recent Dubai Court of Cassation judgement dated 24 April 2024 (No. 1729/2023), a disponent owner succeeded in its claim to withhold discharge of cargo until payment of freight had been received and was awarded demurrage for the vessel's waiting time.

The disponent owner entered into a voyage charterparty with the charterer and agreed a freight rate to be paid within 3 days after loading and in any event before breaking bulk, with demurrage to compensate for any delays during the loading and discharging process of the cargo. Demurrage was to be paid after completion of discharge.

The charterer failed to pay the freight in a timely manner and the discharge operations were suspended until receipt of the freight. After some days the freight was eventually received by the disponent owner and the discharge operations resumed. However, the charterer refused to pay the demurrage for the period of delay resulting from the non-payment.

The disponent owner sought recourse at the Dubai Courts.

Court of First Instance

The Dubai Court of First Instance appointed an expert committee to examine the case. The committee confirmed that the charterer was late in settling the payment and verified the demurrage amount. However, the Court of First Instance dismissed the case based on Article 222 of the old Maritime Law (currently Article 133.2 of the current UAE Maritime Law), which stipulates that an owner may not detain the goods on-board the vessel at the discharge port due to non-payment of the freight. The Court of First Instance concluded that the disponent owner was not entitled to collect the demurrage since the delay was due to its statutory breach by detaining the cargo in the first place.

Court of Appeal

The disponent owner appealed the Court of First Instance judgment, arguing that Article 217 of the old Maritime Law (currently Article 130 of the new UAE Maritime Law) allows parties to agree provisions contrary to non-mandatory articles of the UAE Maritime Law, 'provided that the agreement does not contradict the nature of charterparty'. The charterparty provides that payment is to be received "Before Breaking Bulk". The Court of Appeal agreed with the disponent owner, reversed the Court of First Instance judgment and ordered the payment of the demurrage to the disponent owner.

Court of Cassation

The Court of Cassation upheld the Court of Appeal judgment and obliged the charterer to pay the demurrage amount to the disponent owner. The Court of Cassation judgment provided that the Court of Appeal considered the defences raised by the disponent owner and the expert committee's report, which confirmed that the charterer was late in settling the payment, giving the disponent owner the right under the charterparty, to suspend the discharge operations. Further, the Court of Cassation clarified that the terms of the charterparty, including the shipowner's right to exercise a lien over the cargo, are strictly applicable and the charterer's argument that exercising the right of lien was against the provisions of the UAE Maritime Law was wrong; and therefore, the Court of Appeal judgment was issued in compliance with the law.

Conclusion

This judgment highlights the importance of specifically agreed clauses between the parties, which can supersede certain provision of the UAE Maritime Law by virtue of article 217 of the old Maritime Law, which is still contained in the new Maritime Law by virtue of article 130. Accordingly, even though this judgment was rendered under the old law the position would remain the same under the new law. Parties are at liberty to agree terms in their charterparties which are contrary to the non-mandatory provisions of the UAE Maritime Law which relate to charterparties. There was always a question in the UAE as to whether shipowners are entitled to exercise a lien over cargo for unpaid freight given the prohibition in the UAE Maritime Law. The Court of Cassation has made it clear that this is possible.

Next steps

If you have any enquiries regarding this update or the recent updates to the UAE Maritime Law, please contact Mohamed, Mehtab or Reem, or your usual contact in the Middle East maritime, trade and offshore team at Stephenson Harwood.

Mohamed El Hawawy
Partner and Head of Middle East Shipping and Insurance

E: mohamed.elhawawy@shlegal.com

Mehtab Kassam
Managing Associate

E: mehtab.kassam@shlegal.com

Reem Sharif
Paralegal

E: reem.sharif@shlegal.com