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## Commodities in Focus Weekly – issue 110

### Damages for late redelivery under a time charterparty – *Hapag-Lloyd v (1) Skyros Maritime Corporation (2) Agios Minas Shipping Company* [2024] EWHC 3139 (Comm)

In a recent Commercial Court case *Hapag Lloyd AG v Skyros Maritime Corporation and another* the Court was asked to consider whether owners of two vessels were entitled to substantial damages for late redelivery of the two ships under time charterparties, where there was no evidence that after timely redelivery, the owners could, or would, charter them out, and held that in such a scenario the owners were only entitled to nominal damages.

#### Facts

Skyros Maritime Corporation and Agios Minas Shipping Company ("**Owners**") had chartered vessels MV SKYROS and MV AGIOS MINAS (the "**Vessels**") to Hapag-Lloyd AG ("**Charterers**") on two materially identical time charterparties on the NYPE form (the "**Charterparties**"). By the terms of the Charterparties, the latest times when the Vessels could lawfully be redelivered were 24:00 on 30 May 2021 (SKYROS) and 24:00 on 31 May 2021 (AGIOS MINAS). Before these dates, Owners entered into Memoranda of Agreement dated 22 April 2021 and 23 March 2021 (the "**MOAs**"), agreeing to sell the Vessels to MSC Shipping SA and Maersk A/S (the "**Buyers**"). Under the terms of the MOAs Owners agreed not to enter into further charterparties before delivering the Vessels to the Buyers.

In breach of the Charterparties, both Vessels were redelivered late by Charterers: SKYROS by about two days and AGIOS MINAS by about seven days. Owners' position was that the last voyage orders were illegitimate, meaning ones which could not have been completed within the agreed charter period. Charterers contested this, but nothing turned on this point, as Owners had chosen to accept these orders. During the overrun periods, Charterers paid

hire to Owners at the charterparty rates. However, the market rates for the overrun period were significantly higher than the charterparty rates.

It was common ground between the parties that even if the Vessels had been redelivered timeously, Owners would not have chartered them out again after redelivery and the Vessels would have been delivered to the Buyers as soon as they were redelivered.

Owners commenced arbitration proceedings, claiming that Charterers had breached the Charterparties by failing to timely redeliver the Vessels and seeking damages for the difference between the charterparty rates and the market rates for the overrun period.

#### Preliminary issues in the arbitration

As a preliminary issue, the arbitrators were asked to decide whether Owners were entitled to recover from Charterers substantial damages, compensation, remuneration or other monetary relief, which is what Owners were seeking, or only nominal damages, which was Charterers' position.

The arbitrators decided that Owners were entitled to substantial damages. Charterers appealed the arbitrator's finding to the Court.

#### Commercial Court Decision

Charterers argued that Owners were not entitled such damages because Charterers' breach had not caused Owners any loss, because Owners would not have been able to relet the Vessels and take advantage of the higher charter rates because of the terms of the MOAs. Charterers relied on the well-known compensatory principle underpinning the rationale for assessment of contractual damages, which provides that the basic measure of contractual damages is to put the innocent party so far as

money can do in the same situation as if the contract had been performed. In the present case, if there had been no breach, Owners would not have been any better off in monetary terms.

Whilst Owners did not contend that they would have been better off in monetary terms if there had been no breach, they argued that as a matter of legal principle they were entitled to claim the difference between the charter rate and the market rate, arguing that the MOAs should be disregarded.

Court noted that it is generally accepted that the normal measure of damages for late redelivery is the difference between what owners earn in hire under the charter during the period of the overrun and the market price, if the market rate is higher. If the market rate rates are lower than the charter rate during the overrun period, charterers would still have to pay the charter rate for the overrun period.

The Court dismissed all of Owners' arguments:

- i) On quantum meruit, a principle of restitution/unjust enrichment which comes into play where services are rendered without any agreement as to their remuneration, the Court said that this could not apply, because Owners' claim was for breach of the redelivery obligation under the Charterparty and hire at the charterparty rate was being paid.
- ii) On user damages, a principle concerning assessment of damages that a person who has wrongfully used another's property without causing the latter any pecuniary loss may still be liable to that other party for more than nominal damages in a reasonable sum for the wrongful use made from others' property. This was not applicable as Charterers' use of the Vessel was not wrongful.
- iii) On negotiating damages, which are damages assessed by reference to the sum that the claimant could hypothetically have negotiated from the defendant in return for releasing him from the obligation that he has failed to perform, the Court said that this was not applicable as the breach of redelivery obligation did not result in a loss of a valuable asset.

The Court allowed Charterers' appeal and concluded that Owners were only entitled to nominal damages because they did not suffer any actual loss due to Charterers' breach and whilst the normal measure of damages is the difference between the charter and market rate for the overrun period, each case will turn upon the terms of particular terms of the charter in question and the underlying facts.

## Comment

This Judgment is a good example of the Court upholding the compensatory principle in the assessment of damages and that damages for the late redelivery can be sought where there is an actual loss and not a hypothetical loss.

In addition to considering different types of damages the Judgment also included a thorough analysis of principle of remoteness and, whilst the underlying dispute did not concern non-delivery or late delivery of goods, given some of the arguments made by the parties were advanced in reliance of case law dealing with non-delivery or late delivery of goods, the Judgment makes an interesting read to anyone interested in that.

Please click [here](#) for a copy of the full judgment.

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