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A CAUTIONARY TALE FOR CHALLENGING ARBITRATION AWARDS: FOUR LESSONS FROM A&N SEAWAYS AND PROJECTS LIMITED V ALLIANZ BULK CARRIERS DMCC [2025] EWHC 2126 (COMM)

Arbitration challenges and appeals are rarely successful and can be difficult to navigate. The recent English High Court (the "Court") decision in *A&N Seaways v Allianz Bulk Carriers* is an important reminder of the common pitfalls that appellants can suffer from, which can undermine even potentially meritorious challenges. In this case, the Court swiftly dismissed a last-minute challenge, highlighting that missed deadlines, incomplete applications and vague allegations of fraud can quickly sink a challenge.

BACKGROUND

The underlying dispute arose out of a time-trip charterparty for a vessel under a fixture note and an amended NYPE 1946 form, both dated 5 July 2023 (the "**Charterparty**"). Mr Puria, acting as director of A&N Seaways and Projects Limited (the "**Charterers**"), entered into the Charterparty with Allianz Bulk Carriers DMCC (the "**Owners**"). When the Charterers failed to pay hire, the Owners served a demand notice and subsequently withdrew the vessel for non-payment, leaving the Charterers with a resulting liability of US$304,912.75.

THE ARBITRATION

The Owners commenced London-seated arbitration proceedings in November 2023, appointing a sole arbitrator (the "**Tribunal**"). In lieu of formal defence submissions, the Charterers submitted an interim statement alleging that Mr Puria fraudulently entered the Charterparty without proper authority (the "**Interim Response**"). The Charterers also sought and received an extension of time to file further submissions but did not then file anything and did not participate further in the arbitration. The Tribunal treated the Interim Response as the Charterers' defence. The Owners served Reply submissions, arguing that Mr Puria had actual or apparent authority and that the Charterers had performed the Charterparty: the email address "accounts@anseaways.com" actioned Mr Puria's instructions to affix the company stamp to certify the Charterparty. Additionally email correspondence was received from other employees of the Charterers, and the Charterers made late payments. The Tribunal accepted the Owners' arguments and awarded them US$295,508.13 (the "**Award**").

THE CHARTERERS' CHALLENGE

The Charterers challenged the Award to the Court:

i. **6 August 2024** – The Charterers filed a claim form challenging the award under section 72(2)(a) of the Arbitration Act 1996 ("**AA 1996**") by an application on the lack of substantive jurisdiction. It is a condition of such a challenge that the party "*takes no part in the proceedings*". Their claim (with no supporting evidence) was filed on the 28th and final day after the Award, using the incorrect form (N208 instead of N8), thereby commencing the claim in the Commercial Court rather than the London Circuit Commercial Court, despite the relatively low quantum in dispute. They argued that Mr Puria entered the Charterparty without proper authority, as there was no written board resolution authorising the agreement. They claimed the Charterparty was not binding until they received a demand notice, and therefore, no valid arbitration agreement existed between the Charterers and the Owners.

ii. **20 September 2024** – The Owners filed a respondent's notice and skeleton argument seeking to strike out the challenge, citing lack of evidence, insufficient particulars, and arguing that the Charterers had participated in the arbitration.

iii. **26 September 2024** – The Charterers filed a witness statement from Mr Samuel (their other director), introducing fraud allegations (for the first time) and providing further factual background.

iv. **27 September 2024** – The Charterers filed a short responsive skeleton argument opposing the strike-out application and requesting directions to file particulars of claim.

v. **1 October 2024** – The Owners filed a reply skeleton argument, noting that any fraud allegations must be properly pleaded, and that Charterers must apply to amend if they wish to pursue such allegations.

vi. **25 November 2024** – The Charterers sent a draft application to the Owners seeking permission to amend the claim form to include allegations of fraud.

vii. **16 January 2025** – The Charterers filed an application for permission to amend the claim form, supported by a supplemental witness statement from Mr Samuel.

Baumgartner J refused permission to amend and the Charterers' challenge failed in its entirety.

LESSONS LEARNED FROM THE CHARTERERS' CHALLENGE

1. **Lesson 1 – Even minimal participation in arbitration may forfeit section 72 rights**

Any engagement with the arbitral process, even if limited to procedural correspondence or interim responses, may be deemed participation.

Baumgartner J held that the Charterers had participated in the arbitration by submitting the Interim Response and seeking an extension of time, thereby losing the right to challenge the award under section 72 of the AA 1996. Baumgartner J cited Merkin and Flannery:[1]

"*A party cannot have its cake and eat it: it must really elect at the outset to snub the process entirely, or to engage, and if the latter, any engagement at all will cost that party the right to apply under section 72.*"

The threshold for what constitutes "participation" is very low; even minimal or indirect engagement with the arbitration process can forfeit section 72 rights. Any act where a party acknowledges the arbitration rules, such as agreeing to an arbitrator appointment,[2] constitutes participation. To preserve non-participant status, a party should limit its involvement to a clear statement to the tribunal that it does not accept jurisdiction and does not intend to participate.[3] However, *Sovarex S.A. v Romero Alvarez S.A.* shows that correspondence with the tribunal is risky - if a party invites the tribunal to rule on its own jurisdiction, this may be deemed participation and result in forfeiture of section 72 protections.[4]

If a party does not wish to participate in arbitration - such as when they believe the resulting award will not be enforceable - they must carefully consider the implications. The tribunal will still issue an award on the merits, but the non-participating party cannot challenge the award on a point of law under section 69 of the AA 1996. As demonstrated by the Charterers in this case, a non-participating party can only challenge an award through section 72(2) of the AA 1996, which allows for two grounds: (i) lack of substantive jurisdiction (section 67 of the AA 1996); or (ii) serious irregularity (section 68 of the AA 1996). Additionally, the party also remains liable for any costs and tribunal fees.

A party not wishing to participate in any aspect of the arbitration proceedings may wish to consider taking its chances by waiting to challenge any subsequent enforcement of an award in another jurisdiction, but that has its own risks and such a stance needs to be considered very carefully before undertaken.

2. Lesson 2 – The Court expects a fully particularised application from the outset and will view an any challenge to an award as final

The Court requires all necessary evidence with the initial arbitration claim.[5] Citing *Leibinger v Stryker Trauma GmBH*,[6] Baumgartner J emphasised that parties are entitled to know the specific grounds being advanced in any challenge to an arbitration award. The Court has little patience for speculative or unsubstantiated claims and will not allow a protective in-time claim form to serve as a placeholder for new arguments or evidence at a later stage. Late amendments are unlikely to be permitted without exceptional justification.

3. Lesson 3 – Strict compliance with procedural rules and deadlines is essential

Parties should carefully follow the arbitration body's and Court's procedural guidance. Where the arbitration body does not provide specific time limits on challenges or appeals, section 70(3) of the AA 1996 takes precedence, which imposes a strict 28-day time limit for challenging an award. Baumgartner J observed that the Charterers' procedural errors, together with the fact that the claim was made on the very last day of the 28-day period, suggested that the claim was "*brought hurriedly and at the very last minute*". [7]

[1] Merkin and Flannery on the Arbitration Act 1996 (Informa Law, 6th ed., 2019)
[2] See *Frontier Agriculture Limited v Bratt Brothers (a firm)* [2015] EWCA Civ 611
[3] See *Caparo Group Ltd v Fagor Arrasate Sociedad Cooperativa* 1998 [2000] ADRLJ 254, *The Law Debenture Trust Corporation v Elektrim Finance BV* [2005] EWHC 1412 (Ch) and *Excalibur Ventures LLC v Texas Keystone Inc and others* [2011] EWHC 1624 (Comm).
[4] *Sovarex S.A. v Romero Alvarez S.A.* [2011] EWHC 1661 (Comm)
[5] CPR r.8.5(1), (7),
[6] *Leibinger v Stryker Trauma GmbH* [2006] EWHC 690 (Comm), at [31] to [33] per Cooke J
[7] See paragraph 14 of the judgment

4. **Lesson 4 – Fraud allegations must be pleaded with full particulars and credible supporting material.**

Fraud must be pleaded fairly and squarely, with full particulars and credible supporting material. The Court refused permission to amend because the delay was unjustified, the fraud allegations were insufficiently particularised, and the proposed amendments lacked any real prospect of success. Unfounded or speculative claims, especially those involving allegations of fraud, may result in an order for indemnity costs against the claimant.

The full judgment can be found here.

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