

Approval Clause

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In *Transpetrol Maritime Services Ltd v SJB (Marine Energy) BV (The Rowan)* [2012] EWCA Civ 198, the owners appealed against decision of Mackie HHJ in the High Court (*Transpetrol Maritime Services Ltd v SJB (Marine Energy) BV* [2011] EWHC 3374) who held that the owners were in breach of cl.18 of recap which is intended to be read together with Vitol Clause 18.

Lord Justice Longmore found it difficult to construe the recap clause and clause 18 of Vitol terms in a way it was done by the judge in the High Court. He rejected charterers' submission that to express the whole obligation of clause 18 in the recap and the printed Vitol terms, it would be sufficient to add TBOOK after the word "Charterparty" so that the full clause read:

"Owner warrants that the vessel is approved by the following companies and will remain so throughout the duration of this Charterparty to the best of owner's knowledge: BP/EXXON/LUKOIL/STATOIL MOH."

His Lordship declared at para 13 that:

...the concept of a "continuing warranty to the best of the owner's knowledge" is to say the least a curious one and I cannot believe that it is what the parties intended to agree.

He came to view that clause 18 of the recap, which has no express continuing warranty of approval for the duration of the charterparty, was not intended to be read together with Vitol Clause 18 (Approval Clause) but in substitution for it. On its true construction the clause 18 of the recap was confined to a promise at the time when it was made. It was stated at paras 17-18 that:

17. ... essential to the Owner's case ... is that clause 18 of the recap is different from clause 18 of the Vitol terms; that (Vitol) clause is an express continuing warranty of approval for the duration of the charterparty; clause 18 of the recap has no such express continuing warranty: on its true construction the clause is confined to a promise at the time when it was made. For the reasons given, I consider this submission to be correct.

18. That leaves open the question of the meaning of "TBOOK". It can be said with some force that it is not much of a promise for an owner to say at the time of the agreement that his vessel is approved by specified oil companies "to the best of his knowledge". He must, after all, know perfectly well at that time whether his vessel has been approved or not. For this reason it seems to me that the promise must have a limited degree of futurity, albeit related to the knowledge of the owner at the time the promise is made. The force of "TBOOK" (in a voyage charter at any rate) must be first, that the owner has, to the best of his knowledge, at the date of the charter, procured approvals from the named oil companies and secondly that, at the date of the charter, he knows of no facts which would cause the vessel to lose the approval of those oil companies in the course of the duration of the charter.

Accordingly, it was held that there was no breach of the charterparty by the owners because...

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