

High Court refuses to bypass the 12 month guarantee period under a shipbuilding contract

In the recent case of Neon Shipping Inc. v (1) Foreign Economic 7 Technical Corp. Co. of China (2) China Chang Jlang National Shipping Group Corp. Jinling Shipyard [2016], the High Court considered an appeal against an arbitration award on whether the guarantee provided under a shipbuilding contract limited all claims to a period of 12 months following delivery of the vessel.

Facts

On 12 November 2009, the defendant shipyard delivered a 57,000 DWT bulk carrier to the claimant buyer. Article XI of the contract provided for a guarantee period of 12 months from delivery, which expired on 12 November 2010. Three years after delivery, bearings in the cranes on board the vessel were subject to excessive wear, and required repair and replacement. The buyers sought to claim the costs of the repair and replacement from the shipyard alleging there was an implied term in the shipbuilding contract that the vessel must be fit for purpose, and that the shipyard had delivered the vessel in breach of this implied term.

The High Court

The appeal before the High Court addressed two questions:

1. Did the contract contain an implied term as to fitness for purpose?
2. Did the 12 month time bar provision contained in the guarantee clause apply to all claims made after delivery of the vessel, or only to claims for defective design, construction, calculation, material and workmanship (collectively "guarantee defects") but not to claims that the vessel was not seaworthy or contractual in all respects?

The buyers argued that the time bar in the guarantee clause applied only to claims which were brought within Article XI, in relation to guarantee defects, and maintained that where a claim was brought for breach of other terms of the contract, the time bar did not apply. The buyers essentially attempted to split the requirement in Article XI.I that the vessel would be "seaworthy and contractual in all respects" from the requirement that it should be "free from all defects which are due to defective design, construction, calculation, material or workmanship". The buyers sought to assert that different claim regimes applied to those two categories, and that the 12 month period, therefore, only applied to guarantee defects and not to a breach of the obligation to ensure the vessel was seaworthy and contractual.

The decision

The High Court considered that the splitting of claims under Article XI.I was "wholly artificial" and held that the clause very clearly set a 12 month time bar for any and all claims whatsoever following delivery of the vessel, and not only for the category of guarantee defects relied on by the buyers.

The Judge did, however, further consider whether Section 14(3) of the Sale of Goods Act 1979 would imply a term into the contract that the vessel must be fit for the normal purpose to which it would be put, and whether such an implied term would be read in, where it may be inconsistent with the express terms of the contract. The Judge concluded that in the ordinary course of events, the term as to fitness for purpose would be implied into the contract but that, should express terms be inconsistent with such an implied term, the express terms would take precedence.

The appeal was therefore dismissed, primarily on the basis that the 12 month time bar applied to all claims under the shipbuilding contract following delivery.

Comment

The decision very much reflects the orthodox position with regard to guarantee clauses in shipbuilding contracts. The clause is designed to limit in time the exposure of the shipyard for defects, or breaches of contract, to the guarantee period following delivery, and no further. Essentially, the guarantee clause excludes liability for all claims arising after delivery of the vessel, with the exception of those provided for within the guarantee, and only for the 12 month guarantee period. Following the decision in the "SETA MARU" [2000] that the Shipbuilders' Association of Japan standard warranty clause represents a complete code excluding liability for breaches of both express and implied terms of the shipbuilding contract, this was not an unexpected decision.



Author:
Tom Kelly