A question of authority...signing on the dotted line

Recent English court decisions involving routine shipping contracts, corporate capacity, and authority highlight the dangers of taking too much for granted.

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Introduction

In shipping, contracts can be concluded via chains of brokers and representatives.

The frequent urgency to fix vessels on charter often results in little or no formal documentation or proper investigation. This can lead to ship owners committing their vessels to long term charters and charterers and traders placing cargoes into the care of unverified operators, which can sometimes lead to serious consequences.

Case study A – the charter guarantee

A question of capacity

In *Spar Shipping v Grand China Logistics [2015] EWHC 718 (Comm)* , Grand China Logistics (GCL) had issued charterparty guarantees governed by English law underpinning the performance of its subsidiary shipping entity, which defaulted under a number of charters with Spar Shipping (Spar). One issue was whether the individual who signed the guarantees was capable of binding GCL.

This question of capacity was not regulated by the law of the guarantee (English), but the law under which GCL was incorporated (Chinese). The law where a company is located regulates its ability to enter binding commitments. GCL's statutes required binding agreements to be approved by the Board of Directors and to be signed by the Chairman of GCL. However, the guarantees were not signed by the Chairman, and not stamped with CGL's corporate seal.

The court concluded:

1. There was board approval for the guarantees.
2. The Chairman had given his subordinate actual authority to sign and bind GCL.

Relevant factors included that the charterparty negotiations and guarantees were "subject GCL BOD approval" - the lifting of this subject via the broking chain was significant; as was the fact there was a delay in issuing the guarantees - explained to Spar as formalities necessary to meet company procedures. Furthermore, the fact the guarantees were not disclaimed by GCL when it became apparent Spar intended to rely upon them, was evidence of ratification by GCL. Finally, Spar submitted evidence of six other GCL guarantees issued to other owners and signed by the same subordinate individual.

Case study B – the charter fixtures

A question of authority

When shipowners and charterers negotiate to fix vessels through broking chains and deal with commercial managers, they need to ensure that any agent involved has express authority to conclude contracts on behalf of the contracting party. The absence of such authority in the case of *Navig8 Inc. v South Vigour Shipping Inc. et al. [2015] EWHC 32 (Comm), Queen's Bench Division* resulted in the owners not being bound by the charterparty.

The registered owners of four vessels, the Nan Fung Group (Nan Fung), had let them under long term bareboat charters, with each charterer managed by Star Maritime Management Co (SMMC). SMMC in turn signed sub-charters to Navig8 Inc (Navig8) as *"Disponent Owners Signatory in Contract"* . The vessels were withdrawn from service before the end of their respective charters and Navig8 claimed damages from Nan Fung and SMMC.

Navig8 claimed that by using the term 'disponent owners', SMMC should be regarded as the agent of Nan Fung. Nan Fung denied that it was a party to the sub-charters; maintained the bareboat charters remained in place; and argued SMMC had no authority to act on registered owners' behalf.

The court held:

1. The term SMMC as "disponent owner"had been used by the brokers in the rare sense to describe the manager of a vessel, rather than as a reference to the demise charterer. SMCC was never to be considered personally liable as disponent owner itself.
2. However, based on the evidence, there was a powerful case SMMC had no authority to fix a charter nor act as commercial managers on behalf of registered owners, Nan Fung.
3. Nan Fung had no contractual relationship with Navig8. Accordingly Navig8 had no recourse if Nan Fung terminated the demise charters, and withdrew the vessels.

Case study C – the acts of charterers or receivers

A question of allocation or delegation

In shipping there is a frequent blurring of lines and responsibilities. The Court of Appeal in *NYK Bulkship (Atlantic) N.V. v. Cargill International S.A. (GLOBAL SANTOSH)* [2014] EWCA Civ 403 looked closely at allocation of responsibilities in the shipping and trading chain when considering whether the vessel could be placed off hire due to an arrest.

The vessel was delayed at the discharge port for 2 months. Under the lengthy trading chain, sellers and buyers had agreed the end buyer would pay the price of the goods and demurrage for delay. One of the sellers in the string, a sub charterer Transclear, sought to secure its claim by arresting the cargo remaining on board. Transclear also arrested the ship in error. The head time charter contained a provision permitting each charterer to place the vessel off hire if it was arrested. Critically the off hire clause did not allow the vessel to be placed off hire if the arrest was "occasioned" by the "personal act or omission or default of the Charterers or their agents..."

The issue was whether the actions of Transclear fell within the sphere of charterers' agents. Charterers Cargill argued that by delegating the discharging process to others, they could not be responsible for their actions if they acted outside the scope of such delegated authority. Cargill had not authorised Transclear to arrest the vessel. Whereas owners argued the act of arranging discharge had been handed over by Cargill to its agents or delegates, so it could not escape the consequences if it did not arrange discharge, still less obtain a benefit in terms of placing the vessel off hire during detention.

The Court of Appeal concluded:

1. Cargill remained responsible for the actions of Transclear and the ultimate cargo buyer and these entities were Cargill's agents or delegates "for the purpose of any activity which falls within the Charterers' sphere of responsibility under the charter".
2. The vessel therefore could not be placed off hire during the arrest.

Recommendations

• While challenging to achieve, most problems could be avoided by ensuring the principals meet in the same room to finalise a deal with a handshake, preferably with a third party present to record in writing the terms of the deal.
• Establish best practice procedures for vetting contract formalities.
• Public documents identifying how a company can execute contracts should be checked.
• Alternatively, verify authority through proper documents before fixing.
• Where an agent or manager concludes a contract on behalf of another, both parties should ensure that the agent has express authority to act.
• Take care with terms like 'charterers' agents'in charter clauses. Under current English law, they are likely to be given a broad meaning, encompassing the entire party chain down to the bottom sub-charterers and receivers.

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