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Whose Force Majeure is it? European gas market in confusion

Friederike Schäfer

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WHOSE FORCE MAJEURE IS IT? EUROPEAN GAS MARKET IN CONFUSION

Written by Friederike Schäfer

1. INTRODUCTION

Following the Russian aggression towards Ukraine on 24 February 2022 and the subsequent EU sanctions on various Russian entities, individuals and specific kinds of transactions, the European Energy market has been highly affected even where not directly sanctioned by the EU.

On the other side, the Russian government has issued a number of decrees directly affecting transactions with EU and other counterparties: In late March 2022, in what was described as a response to the EU sanctions, the so-called Ruble decree "On special procedure for fulfilment of obligations by foreign buyer to Russian natural gas suppliers" was issued. It stipulated that, with effect from 1 April 2022, payment for any delivery of natural gas from Respondent after 1 April 2022 under existing delivery contracts must be made in Rubles to an account at Gazprombank in accordance with a specific mechanism set out in the decree.

Further, also as a response to unfriendly actions of certain states and international institutions, a decree was issued in May 2022 enforcing special economic measures which, among others, prohibit entities and individuals under Russian jurisdiction from concluding transactions with sanctioned entities or from fulfilling obligations towards them.

Just recently, there was news coverage that Naftogaz may be sanctioned by the Russian government as a consequence of an apparently ongoing ICC arbitration regarding payment for the transit through Ukraine via Naftogaz's pipeline. According to the respective news article, Gazprom would be prevented from paying for transportation services if indeed Russian sanctions were imposed on Naftogaz.

In any event, gas supplies from Russia through the pipelines Nord Stream 1 and 2 have already been stopped or never started respectively. After several explosions at these pipelines, it is unclear if gas transport is now physically possible at all. Whether, and if so, to what extent, gas supplies through Ukraine will continue (or start) on 1 October 2022, is also unclear.

This situation will lead (or has already led) to conflicts between Russian supplier(s), more specifically Gazprom, and their European contractual counterparts, as well as between contract parties further down in the supply chain. One major aspect in these contractual disputes will be whether performance is still possible (and what efforts would be necessary) or whether a party is exempt from the obligation to fulfil the contractual obligation due to the impossibility to perform. Depending on the exact contractual framework, the relevant test may not always be whether performance is still possible in absolute terms, but instead, whether the respective party is prevented from performance by an impediment beyond its control or by force majeure.

2. FRAMEWORK

Which test is relevant is determined by the respective contract itself or the law applicable to the contract. In this regard, it is to be noted that gas supply contracts fall within the scope of the Convention for the International Sale of Goods (CISG). Thus, if the parties to the supply contract are based in two member states or the applicable international private law refers to the law of a member state, the CISG would be generally applicable to the supply contract.

Under the CISG, Article 79 CISG addresses the situation that a party has difficulties in performing its obligation due to external circumstances. According to this provision, a party is not liable for a failure to perform any of its obligations if it proves that the failure was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences. The threshold for a party to be excused, namely the impediment beyond control which could not have been expected and the consequences of which cannot be overcome, is rather strict. Arguably, the excuse under Article 79 could also be invoked in exceptional cases of hardship, i.e., in situations in which performance may be theoretically possible but would be excessively onerous (read more here, para. 3.2); a mere worsening of a party's economic situation or the fact that the transaction would not be profitable anymore, would not suffice.

If the CISG is not applicable, the respective equivalent instruments of national law will determine the conditions under which a party is excused from its obligation to perform. In Germany and Austria, for instance, two legal institutions would be relevant in situations where a seller claims that it cannot perform its obligation to deliver a certain good for factual or economic reasons: impossibility to perform ("Unmöglichkeit") and fundamental change of circumstances ("Wegfall der Geschäftsgrundlage"). The exact application and case law may vary between Austria and Germany, but the basic understanding of these concepts is very similar in both jurisdictions.

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In most long-term gas supply agreements, however, neither Article 79 CISG nor the corresponding provisions of national law will be directly relevant, since the parties regularly derogate from such provisions by including a force majeure clause and, as the case may be, a hardship clause in their contracts. In most cases, such clauses define the term force majeure and give some examples; they further stipulate obligations when and how to notify the other party of a force majeure event and the consequence of the occurrence of force majeure for the contractual obligations. Regularly, a force majeure clause will foresee that the affected party is relieved from its obligation to perform while the force majeure event continues. Whether any further consequences of a continuing force majeure event are foreseen and if so, what the consequences are, greatly varies and depends on the specific contract. In this regard, a recourse to the subsidiarily applicable law may be necessary.

A widely known example of a force majeure clause is the ICC model clause which exists in a long form and a short form (see here). The list of events which presumably constitute force majeure includes, among others, the following occurrences: war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation; civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; currency and trade restriction, embargo, sanction; act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation; plague, epidemic, natural disaster or extreme natural event; explosion, fire, destruction of equipment, prolonged break-down of transport, general labour.

The ICC model clause expressly addresses the situation in which a party does not perform its obligation due to a third party, typically a supplier or other subcontractor, failing to perform its obligation. In this situation, force majeure may only be invoked to the extent that the occurrence of a force majeure event is established for both the affected party and the third party.

Whether the omission to address this situation eases the proof of a force majeure event for the affected party, whether it is making the proof more difficult or whether it represents a gap which may have to be filled by applying the respective provisions of the applicable law, is a question of interpretation of each specific force majeure clause and each specific contract.

3. SPECIFIC ISSUES IN FACE OF INSECURITIES IN THE CURRENT GAS MARKET

As mentioned, the European gas market is under deep tensions given that Russia is curtailing the gas supply in what may be its reaction to European and other "western" sanctions imposed on it or a general strategic manoeuvre following its invasion of Ukraine. In addition to the general distortion of the gas market, the curtailing of supply raises different issues in the respective different contractual contexts. One of the most relevant of these issues will be the question whether and to which extent Gazprom, the supplier, may invoke force majeure due to a number of Russian governmental acts and subsequently whether and to which extent sellers of gas relying on Russian supply in order to fulfil their delivery obligations towards their buyers may invoke force majeure due to Gazprom's failure to deliver. In addition, the tensions in the market may even put sellers in a difficult position who normally do not depend on Russian gas supplies but now face economic difficulties in securing gas supplies in the market.

While the answer to the question if a party may rely on force majeure depends on the specific circumstances of each case, some general, problematic aspects may be identified.

The first question will always be whether deliveries of gas are indeed impossible. In some cases, Gazprom may seek to rely on Russian sanctions imposed on the contractual counterpart, in some cases there may be technical problems. Still in other cases, companies involved in the transport may be subject to Russian sanctions. In case of Russian sanctions, one issue will be whether and by which way such sanctions would be taken into account. On the level of private international law, Article 9(3) Rome I Regulation would normally be the gateway to give effect to foreign sanctions. According to this provision, effect may be given to overriding mandatory provisions ("Eingriffsnormen") of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. Thus, the conditions would be that the place of performance is in Russia, that performance is rendered unlawful by a provision of Russian law (in contrast to an administrative regulation) and that this provision of law is based on values which are shared by the law of the forum. Notwithstanding the issues of whether decrees of a government constitute provisions of law and whether place of performance is in Russia (which probably is rarely the case), it is almost certain that a court in an EU member state would not acknowledge the latest Russian sanctions as being based on the same values as its respective home jurisdiction. In case of arbitral proceedings, this may be different. Already the applicability and application of Article 9 Rome I Regulation by an arbitral tribunal seems doubtful, even if seated in an EU member state. Yet, with a view of potential setting aside or enforcement proceedings, also arbitral tribunals may take into account general principles for acknowledging foreign sanctions applied by state courts at the place of arbitration or the place of likely enforcement.

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However, even if sanctions issued by a state may not be acknowledged as overriding mandatory provisions which have to be given effect, they may nevertheless affect the performance by a party being subject to the jurisdiction of the issuing state. It would then be a factual question whether performance is still possible or which efforts can reasonably be expected by the respective party in order to perform. The exact test would depend on the law applicable and / or the wording of the force majeure clause. An additional layer of complexity is created by the fact that Gazprom is a state entity (its majority shareholder is the Russian state, see here). While there may be some discussion on whether a state entity can rely on acts of the state holding the majority in it, it seems arguable that the status as state entity rather would be relevant for the liability than for the question of performance itself. Again, there cannot be a blueprint for answering this question, the exact circumstances of each individual case have to be examined.

Besides the Russian sanctions which may affect gas deliveries by Gazprom, there are also a number of other circumstances which may be relevant for determining whether there is a force majeure situation. One of the most important will be the factual, and as the case may be regulatory, situation surrounding the transport of gas through the existing pipelines. Also here, the question of who may be responsible for a specific situation creating a hindrance to transport gas may have to be distinguished from the question of whether the situation as such is indeed affecting or preventing performance, i.e., the delivery of gas.

The mentioned issues may vary but generally, they will also become relevant further down in the supply chain. A seller of natural gas who sold exclusively back to back, or at least in majority, gas supplied by Gazprom will most likely be in a difficult situation. It will be up to the seller to prove that it is prevented from delivering gas by force majeure or that supplying gas is economically so burdensome that the threshold of hardship or clausula rebus sic stantibus is met (depending on the applicable framework). The determination of the exact content of the contract and, more specifically, of each party's own sphere of risk, will likely even be more difficult than on the first level of the supply chain. Moreover, uncertainties as to the factual situation and constant developments of the situation will complicate the proof of force majeure as well as of the possibility to have avoided or overcome the force majeure situation.

In any event, parties will be well-advised to communicate early with their contractual counterparty and, even where in doubt, comply with the elements required for a valid force majeure notice. They also should document from the beginning all the efforts taken and information gathered in order to comply with their notice and delivery obligations.

4. PROCEDURAL CHALLENGES

Procedural challenges are manifold in this constellation. In most cases, long-term gas supply contracts will provide for arbitration as the dispute resolution mechanism.

One of the biggest challenges for the arbitral tribunal will be the direct consequence of the complex situation, namely, the fact finding. In this situation, where a number of facts will simply not be possible to be determined, the burden of proof (and as the case may be, standard of proof) will be an important instrument for arbitral tribunals to allocate the risk that certain facts cannot be established. Besides, as is practice in complex cases, the submission of expert evidence regarding the concrete regulatory and market situation in a certain country will be the rule. Thus, parties anticipating potential disputes with their counterparties should collect and file relevant information as early as possible. In some cases, the consultation of experts may be useful even where the dispute has not yet arisen.

But even before the arbitral tribunal is constituted and can start with the fact finding, particular problems may arise, especially in cases in which Gazprom itself is involved. From publicly accessible information (see here), it seems that the participation of Gazprom through the entire proceedings may not be relied upon. Depending on the place of arbitration, Gazprom may argue that this is not (anymore) a neutral forum. But also in case Gazprom participates, it may face difficulties in nominating an arbitrator. In general, it may prove difficult to find arbitrators who will not be objected to by one of the parties due to conflicts or involvement in similar cases. In the specific circumstances, not even those arbitrators who otherwise would not be conflicted may consider themselves unbiased due to the current geopolitical situation.

Eventually, EU sanctions may come into play and may make the administration of arbitral proceedings more burdensome for all participants, if, for instance, payment of the advance on costs or payment to the arbitrators may be subject to certain compliance rules on different levels.

At least, the general doubts as to whether a case involving a sanctioned entity could be administered and conducted at all, have been cleared: According to the amended Article 5aa Council Regulation (EU) No 833/2014 of 31 July 2014, *"transactions which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State and if such transactions are consistent with the objectives of this Regulation and Regulation (EU) No 269/2014"* shall be exempt from the prohibition to engage in transactions with Russian entities which are state controlled (see here). Thus, all transactions

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between the parties to an arbitration and the arbitral institution, arbitrators and obviously counsel, are still possible even if one of the parties is sanctioned by Regulation (EU) No 833/2014 of 31 July 2014.

For additional information and queries, please contact friederike.schaefer@zeilerfloydzad.com

Additional content on this topic:

REMOVAL

Written by Eva-Maria Mayer & Jack Kennamer

Removal is a procedure that allows a defendant to transfer an ongoing case from state to federal court. A defendant might choose to remove a case to federal court for any number of reasons. Procedural differences between state and federal courts mean that it is often advantageous for a defendant to do so.

There are two principal bases for removal: (1) where the district court has original jurisdiction over a claim and (2) cases in which the district court does not have original jurisdiction, but Congress has otherwise provided for removal—namely cases involving a federal officer (28 U.S.C. § 1442) and certain civil rights cases (28 U.S.C. § 1443). There are several statutory limitations on removal. For example, under 28 U.S.C. § 1445(b), suits against a common carrier, its receivers, or trustees to recover damages for delay, loss, or injury of shipments, arising under 49 U.S.C. § 11706 or § 14706, may not be removed to any US district court unless the matter in controversy exceeds $10,000.

WHY SEEK REMOVAL?

The decision to remove a case to federal court is a matter of litigation strategy. Differences between state and federal judicial systems related to judges, juries, rules of civil procedure, rules of evidence, venue, and pleading standards, may all be factors in such a decision. In certain cases, resetting the clock on the timeline of a case may also be an incentive to remove.

Because of the high constitutional requirements for appointment to the federal judiciary, some argue that the quality of the federal bench is higher than that of state courts. This argument is particularly pertinent in states where judges are elected. Defendants should also consider that federal juries must generally be unanimous, whereas most states do not have such stringent verdict requirements. A federal jury pool will also draw from a wider geographic area. This is particularly important in a case where the plaintiff has tactically selected a plaintiff friendly area in which to bring the suit.

The pleading standard in federal court is quite high relative to those of most states. When a case is removed to federal court, any decision regarding pretrial relief is considered with regards to that higher standard required of plaintiffs. Many practitioners also believe that federal judges are more inclined to grant pretrial relief than state judges are.

The Federal Rules of Civil Procedure and the Federal Rules of Evidence could also be an inducement to remove. Federal rules regarding expert witnesses are more liberal than those of many states. Other areas, such as attorney-client privilege may differ from state to federal rules. Evidentiary rules may differ in a manner that has a significant impact on whether or not an important piece of evidence is able to come into the record.

One other consideration is venue. Once a case has been removed, a party may seek a change of venue pursuant to 28 U.S.C. § 1404. A transfer under § 1404 is appropriate where a change in venue would be more convenient for the parties or witnesses, and in the interest of justice. This could theoretically allow a change to any other state in the country, provided the conditions for transfer are satisfied.

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TYPES OF REMOVAL

28 U.S.C. § 1441 allows a defendant to remove a civil action from state to federal court where the US district courts have original jurisdiction. 28 U.S.C. § 1442 and § 1443 allow a defendant to otherwise remove a case involving federal officer jurisdiction or certain civil rights claims. The case may only be removed to the federal district court for the district and division embracing the state court in which the case is pending.

The two ways one may satisfy federal district court original jurisdiction are diversity jurisdiction and federal question jurisdiction. Diversity jurisdiction (28 U.S.C. § 1332) is satisfied where plaintiff(s) and defendant(s) are citizens of different states, and the amount in controversy exceeds $75,000. Federal question jurisdiction (28 U.S.C. § 1331) is satisfied where a claim "arises under" federal law.

Federal officer removal is permitted where: (1) the defendant is a person; (2) the defendant acted under the direction of a federal officer; (3) a "causal nexus" exists between the plaintiff's claims and the actions taken by the defendant under color of its federal office; and (4) the defendant has a colorable federal defense. *Jacks v. Meridian Resource Co. LLC*, 701 F.3d 1224, 1230 (8th Cir. 2012).

REMOVAL PROCEDURE

To remove, a defendant must file a notice of removal within 30 days of defendant's receipt of the initial complaint, or other document from which it might first be ascertained that the case is or has become removable. Such documents include amended complaints and motions.

Newly joined defendants may seek removal within 30 days of their joinder; if the other defendants consent, then the case may be removed. One notable exception to this rule is the case in which more than one year has passed since the commencement of the action and the removal is premised upon diversity jurisdiction.

The notice of removal is filed with the federal district court, and must have attached state-court process, pleadings, and orders as well as documentation of co-defendant consent where relevant. If the defendant is a nongovernmental corporate party, it will also be necessary to file a disclosure statement identifying any parent corporation and any publicly held corporation owning 10% or more of its stock. After filing with the court, the defendant must serve the removal papers on the adverse parties and file notice of removal with the state court *promptly*.

Because federal district courts are courts of limited jurisdiction, they have interpreted the statutory requirements for removal narrowly. Thus, it is important that a removing defendant take care to follow procedural requirements closely in order to avoid a potential remand to state court. Once a case is remanded to state court, there is no opportunity for a second removal.

It is worthwhile for any defendant in state court to consider the possibility of removal. It can be a highly effective litigation strategy that allows a defendant to take advantage of the procedural differences in state and federal courts.

For additional information and queries, please contact eva.mayer@zeilerfloydzad.com

RESTORING RECIPROCITY IN THE PRC

Written by Alexandra Tompson

"If I have to sue, will my judgment be enforced in China?" – a vexing question for one entering into a contract with a Chinese company.

Good news, then, that Shanghai Maritime Court's (**SMC**) recent decision to recognise and enforce an English judgment in *Spar Shipping v Grand China Logistics* (2018) is widely recognised as a breakthrough. The March 2022 ruling marked the first time that an English monetary judgment has been enforced in China based on reciprocity.

The ruling is an encouraging development for businesspeople and lawyers considering the best approach for seeking to enforce foreign judgments in mainland China.

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This decision not only opens the door for English High Court judgments to be enforced against People's Republic of China (**PRC**) entities, but also bolsters faith in China's foreign judgment-friendly judicial policy, which was published by China's Supreme People's Court (**SPC**) earlier this year.

It appears to pave the way towards a more pro-enforcement approach in the Chinese courts.

BACKGROUND

The Claimant was the shipowner, Spar Shipping AS, and the Respondent was the charterers' parent company as guarantor: Grand China Logistics Holding (Group) Co., Ltd (**GCL**).

A dispute arose between the Claimant and the Respondent with respect to the performance guarantees for unpaid hire due under three time charterparties and damages for loss of bargain in relation to the unexpired term of the charterparties.

Under the PRC Civil Procedure Law, Chinese courts will recognize and enforce a foreign judgment as long as: (1) China has concluded a relevant international treaty or bilateral agreement with the country where the judgment was rendered; or (2) a reciprocal relationship exists between China and the country where the judgment was rendered in the absence of the aforesaid treaty or bilateral agreement, provided that the basic principles of Chinese law and state sovereignty, national security and public interest are not contravened.

China is not a signatory to the Hague Judgments Convention, nor has it concluded any pertinent international treaty or bilateral agreement with the UK. The core issue of the case therefore centered around whether the Chinese court could recognise the judgment of the English court based on the principle of reciprocity.

CHRONOLOGY

The Claimant filed a lawsuit to the Queen's Bench Division Commercial Court. On 18 March 2015, England Queen's Bench Division Commercial Court rendered its judgment in favour of the Claimant's claim for compensation. (See *Spar Shipping AS v Grand China Logistics Holding (Group) Co, Ltd* [2015] EWHC 718.)

After the judgment was appealed, the English Court of Appeal rendered its second instance judgment on 7 October 2016, and upheld the first instance judgment. (See *Grand China Logistics Holding (Group) Co Ltd v Spar Shipping AS* [2016] EWCA Civ 982.)

In March 2018, the Claimant sought to enforce the Court of Appeal judgment against the Respondent in mainland China, where it held assets, and applied to China's SMC for recognition and enforcement of the English Judgment.

On 17 March 2022, the SMC, following the approval of China's SPC, made a civil ruling on the case, recognising the English judgment (See *Spar Shipping AS v Grand China Logistics Holding (Group) Co., Ltd.* [2018] Hu 72 Xie Wai Ren No.1).

As noted above, this is the first ever such ruling by a PRC Court -- acknowledging judicial reciprocity between PRC and English Courts.

KEY ISSUE: PRINCIPLE OF RECIPROCITY

Chinese judicial practice often found a reciprocal relationship to exist where a precedent of a foreign court has been previously recognised and enforced via a Chinese court judgment—a practice known as de facto reciprocity.

The Claimant argued that the judgment of *Spliethoff's Bevrachtingskantoor BV v Bank of China Ltd,* [2015] EWHC 999 (Comm), of the English High Court of Justice Queen's Bench Division Commercial Court, could be regarded as positive precedent of Chinese judgments recognised and deemed enforceable by English Courts. The SMC concluded that this case could not be regarded as precedent of enforcement by English Courts for Chinese judgments, but that it was also not precedent of the English Court's refusal to recognise Chinese court judgments.

In the absence of reciprocal precedent with English courts, the SMC held that: *"The Civil Procedure Law PRC does not limit the principle of reciprocity to the prior recognition and enforcement of civil and commercial judgments of our courts by relevant foreign courts, so this court holds that if according to the law of the country where the foreign court renders the judgment, the civil and commercial judgments made by Chinese courts can be recognised and enforced by the courts of that country, it can be concluded that there is a reciprocal relationship between China and the country in recognising and enforcing civil and commercial judgments."*

In essence, the SMC clarified and adopted a new reciprocity test: de jure reciprocity. Even in the absence of a reciprocal precedent, a Chinese court can still recognise the judgment of an English court based on the principle of reciprocity.

On 31 December 2021, shortly before the PRC ruling was issued, the SPC of the PRC issued a memorandum on commercial and maritime matters entitled "Memorandum of the National Courts' Symposium on Trials for Commercial and Maritime Cases." This memorandum provided that sin-

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ce the PRC and UK have not concluded or jointly acceded to international treaties, the memorandum can be applied in respect to the review of recognition of English judgments by the PRC courts. Notably, it provided for the de jure reciprocity test. In its guidance the SPC appears to have encouraged courts in China to take a more liberal approach to the recognition and enforcement of foreign court judgments, particularly when it comes to consideration of reciprocity.

COMMENTS

The success of *Spar Shipping* before the SMC is seemingly historic and may open up a new avenue for those who contract and do business with Chinese entities when disputes arise.

Even though the ruling may hold little precedential value in a civil law legal system such as the PRC, the memorandum issued by the highest court in the land will likely have a significant impact on judicial practice across the PRC.

The potential ability to seek enforcement locally in the PRC will encourage those who contract with Chinese companies to reconsider any decision to include arbitration dispute resolution provisions, that are typically used, over English law and jurisdiction clauses.

Before the PRC Ruling, an arbitration clause was thought to be more beneficial than an English court jurisdiction clause regarding potential enforcement in China, as China is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. The ruling provides parties with another option when considering the law and jurisdiction clause in their maritime contracts involving Chinese entities.

These developments have sparked hope for a lasting pro-enforcement approach in the Chinese courts, as well as ostensible reassurance to those concerned about how their contracts might be enforced in the PRC.

For additional information and queries, please contact alexandra.tompson@zeilerfloydzad.com

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A "PRESTIGE(OUS)" JUDGMENT? THE BRUSSELS I REGULATION'S DIFFICULT RELATIONSHIP WITH COMMERCIAL ARBITRATION

Written by Thomas Herbst

1. INTRODUCTION

After many years of litigating Spain's claims arising from the clean-up of arguably the largest oil spill in its history, on 20 June 2022, the European Court of Justice ("ECJ") issued the latest decision on this matter. This ruling marks the next upset in a series of extraordinary decisions. Following a reference by the High Court of England and Wales only a few days before the "Brexit divorce" (which according to the Court of Appeal never should have been made) the ECJ might have handed Spain the key to recovering a significant portion of its losses. However, with its reasoning on the relationship between commercial arbitration and the Brussels I Regulation (the "**Regulation**"), the court has surprised commentators in what can be described as a highly unusual decision in a highly unusual case. Whilst this might have been a happy day for Spain, the ECJ's consequential ruling raises significantly more questions than it answers.

2. BACKGROUND

In November 2002, the "M/T Prestige" – a Bahamas-regis-

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tered, single-hull oil tanker – sunk before the coastline of northern Spain (Galicia). After a storm the vessel broke in two, lost 64,000 tonnes of heavy fuel oil, and thus caused significant environmental damage to the coastlines and Spain and France. The costs the Spanish Kingdom incurred as a consequence were in the billions. The issue of the civil liability of the insurer of the vessel for claims arising from this accident gave rise to a long and complex series of proceedings in England and Spain.

Following the initiation of criminal proceedings against the captain and certain members of the crew, in June 2010, civil claims against the indicted, the owners, and the indemnity insurers of the vessel –The London Steam-Ship Owners' Mutual Insurance Association Limited (the "**London P&I Club**" or "**Club**") – were introduced into the Spanish proceedings. The claimants relied on a provision in the Spanish Penal Code, allowing for a direct right of action of the injured party against an indemnity insurer where an insurance claim was caused by a crime. The Club was notified of the claims in June 2011 (the "**Spanish Proceedings**").

In response, in January 2012, the Club commenced arbitration in London to shield itself against the proceedings before the Spanish court. Relying on the arbitration clause contained in the policy, the Club requested the tribunal to find jurisdiction over Spain's claims and declare that in accordance with the policy's 'pay to be paid' clause, the Club was only liable under the condition that the insured had made payments first (the "**Arbitration**"). As the insured, a worthless, Liberia-incorporated entity, had not made any payments so far, following the Club's position would have led to an effective dismissal of the Club's liability.

Despite being invited to do so, neither did the Club participate in the Spanish Proceedings nor did Spain participate in the Arbitration.

Inevitably, the arbitration proceeded quicker than the Spanish Proceedings. In February 2013, the sole arbitrator rendered an award, finding that Spain's civil claims were governed by English law, contractual in nature, and that Spain should have brought its claims under the arbitration agreement. Moreover, the arbitrator concluded that the claims were subject to the 'pay to be paid' clause and that the Club, hence, could not be liable in the absence of the payment of the damages, by the owners of the vessel, to Spain (the "**Award**").

Shortly thereafter, the Club applied to the High Court, requesting leave to enforce the Award and render a judgment in terms of the award pursuant to s.66 (1) and (2) Arbitration Act 1996 (the "**Act**"). (For all non-English lawyers: A judgment in terms of an award is a common method of recognition in the UK whereby the award is adopted as a judgment by the court. This has advantages over the mere enforcement of the award. (FN: In particular, as regards the possibility of additional post-award interest where no interest was awarded and a more beneficial limitation period)).

Spain opposed this application and applied to have the award set aside, inter alia, for a lack of jurisdiction, but was unsuccessful. In October 2013, the High Court dismissed its arguments, declared the award enforceable, and issued a separate judgment in terms of the Award (the "**UK Judgment**") (FN: London Steam Ship Owners Mutual Insurance Association Ltd v Kingdom of Spain [2013] EWHC 2188 (Comm); In 2015, Spain's appeal was dismissed by the Court of Appeal).

With some delay, however, Spain was successful with its efforts to recover its losses in the domestic proceedings: Following various appeals, in December 2018, the Spanish Supreme Court upheld a lower court's ruling that following the captain's conviction for environmental crimes, the Club was liable to the 200 plus claimants (including Spain). As the Club's liability was held to be subject to the global limit of USD 1 billion stipulated in the policy, in March 2019, a Spanish provincial court issued a decision ordering the Club to pay to Spain EUR 855 million (the "**Spanish Judgment**").

Consequently, Spain applied to the High Court and requested the recognition of the Spanish Judgment in the UK pursuant to Art. 33 of the Regulation, which the High Court granted in May 2019. The Club, in turn, appealed the registration order arguing that that the Spanish Judgment was incompatible with the UK Judgment pursuant to Art. 34(3) of the Regulation and that its recognition would be manifestly contrary to the UK's public policy pursuant to Art. 34(1).

3. THE REFERRED QUESTIONS

In essence, hence, the question before the High Court was whether the UK Judgment rendered on the basis of the Award was a barrier to the recognition of the Spanish Judgment. As the High Court deemed the concerned provisions of the Regulation insufficiently clear, on 22 December 2020 – only a few days before the end of the transition period pursuant to the UK-EU Withdrawal Agreement – it made a reference for a preliminary ruling on three questions.

It is clear from the reference that the High Court had little doubts that the two decisions were incompatible. However, apparently for two reasons the court was uncertain as to whether the UK Judgment could be considered a judgment in the sense of Art. 34(3) of the Regulation:

- Firstly, the proceedings pursuant to s.66(2) of the Act did not include a full review of the claims heard in the arbitration, but the High Court adopted the decision of the ar-

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bitral tribunal only after hearing arguments on the tribunal's jurisdiction and considerations of public policy; and Secondly, the UK Judgment was rendered in terms of an arbitral award and "arbitration" fell outsidethe material scope of the Regulation (Art. 1(2)(d); the "**Arbitration Exception**").

Alternatively, in case the ECJ would rule that the UK Judgment was not a "judgment" pursuant to Art. 34(3) of the Regulation, the High Court asked a third question. It asked whether in such as case, it could still refuse recognition of the Spanish Judgment on manifest public policy grounds pursuant to Art. 34(1) considering, in particular, the *res judicata*-effects of the Award and the UK Judgment.

4. THE DECISION C-700/20

a. As to the questions if the UK Judgment qualifies as judgment pursuant to Art. 34(3)

As suggested by the Advocate General's Opinion dated 5 May 2022 (the "**Opinion**"), the ECJ commenced its analysis by addressing the first two questions on the qualification of the UK Judgment as "judgment" pursuant to Art. 34(3) of the Regulation jointly.

In line with the Opinion's reasoning, the ECJ found in a first step that the Arbitration Exception had to be read broadly and that court proceedings on the recognition of arbitral awards were excluded from the material scope of the Regulation. Concluding thus that the Arbitration Exclusion extended to actions and decisions relating to the recognition and enforcement of arbitral awards, the Court clarified that a judgment in terms of an award (s. 66(2) of the Act) could not be recognised and enforced in other member states pursuant to the Regulation.

In a second step, however, the ECJ held that – regardless the Regulation's material scope – such a judgment in terms of an award could be considered a judgment pursuant to Art. 34(3).

Addressing first the concerns of the High Court as to the nature of the UK Judgment, the Court pointed to the broad definition of the term "judgment" in Art. 32 and its case law whereby a decision could qualify as such a judgment regardless of its content if it could have been the subject of an inquiry in adversarial proceedings. Further, the ECJ noted that the purpose of the clause, namely preventing the integrity of the legal order within a member state, militated in favour of a broad interpretation of the term.

Addressing the relevance of the Arbitration Exception for the qualification of the UK Judgment as a judgment pursuant to Art. 34(3), the ECJ referred to its *Hoffmann* ruling (FN: Judgment of 4 February 1988, 145/86, EU:C:1988:61) and noted that where the legal effects of the decisions were manifestly incompatible, a conflicting judgment could be considered to refuse recognition even if it fell outside the substantive scope of the Regulation.

Up to this point the ECJ had essentially followed the reasoning proposed by the Advocate General. The conclusion would have been that the UK Judgment could indeed be qualified as a judgment capable of preventing the recognition of the Spanish Judgment, which would have frustrated Spain's claims against the Club.

But this is where the decision took an unexpected turn.

The ECJ stated that a domestic judgment rendered in terms of an award could not be considered such judgment pursuant to Art. 34(3) which prevents the recognition of another EU judgment where the Award on which it is based had been rendered under circumstances, which – had the tribunal been a court of a member state – would have violated core principles of the Regulation.

The ECJ commenced the subsequent part of the decision with a broad reference to the importance of considering the principles of the Regulation when interpreting it. Further, the ECJ noted that the principle of mutual trust in the administration of justice, which was underlying the system of recognition of judgments, did not extend to arbitral awards. The Court thus concluded that arbitral awards could only produce effects by means of a judgment entered in its terms if this would not contradict the right to an effective remedy (Art. 47 CFR) and enabled the objectives of the free movement of judgments in civil matters and of mutual trust in the administration of justice to be achieved under conditions at least as favourable as those resulting from the application of Regulation.

These policy statements were followed by an analysis of the proceedings before the arbitral tribunal through the lens of the Regulation. Assuming that the arbitral tribunal had been a court of a member state, the ECJ singled out two incidents where the recognition of the UK Judgment as a judgment within the meaning of Art. 34(3) would compromise fundamental objectives of the Regulation.

First, the ECJ noted that the tribunal (had it been a court) could not have assumed jurisdiction and rendered its Award (judgment) without violating the principle of relativity of jurisdiction agreements in insurance policies (that is, had the arbitration agreement been a jurisdiction agreement). With reference to its case law, the ECJ noted that a jurisdiction clause agreed upon between an insurer and an insured party could not be invoked, where, if permitted by national law, the victim of the insured damage decided to bring an

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action directly against the insurer before the courts for the place where the harmful event occurred. The ECJ held that – as illustrated by the present case – the recognition of such a judgment (in terms on an award) which was rendered contrary to these rules could frustrate the success the injured had achieved in the direct action for damages and thus the Regulation's objective of protecting the injured party against the insurer.

Second, as regards the issue of *lis pendens*, the ECJ noted that when the reference to the sole arbitrator was made, proceedings on the same cause of action pursuant to Art. 27 of the Regulation were pending before the Spanish courts (the issue of the Club's civil liability). Had the sole arbitrator been a court, it would have been required on its own motion to stay the proceedings until the jurisdiction was established by the Spanish courts and then declined jurisdiction in favour of that court. The ECJ noted that the minimisation of the risk of concurrent proceedings was one of the objectives and principles underlying judicial cooperation in civil matters in the EU.

According to the ECJ, therefore, a court seized with entering a judgment in terms of an award was under an obligation to verify that the provisions and fundamental objectives of the Regulation had been complied with to prevent a circumvention of those provisions and objectives by way of arbitration proceedings. As it was apparent from the record that the English courts had not conducted such a verification, the ECJ held that the UK Judgment could not be considered a judgment pursuant to Art. 34(3), which could prevent the recognition of the Spanish Judgment.

b. As to the relevance of the *res judicata* effect of the judgment in terms of an award

As indicated above, the High Court had asked whether it could refuse recognition of the Spanish Judgment based on *public policy* grounds in light of the *res judicata*-effects acquired by the Award and the judgment in terms of the award, even if Art. 34(3) would be held not to apply.

In answering this question, the ECJ first referred to its ruling on the first two questions. The court noted that where the UK Judgment – in breach of the principles of the Regulation – had failed to take into account the proceedings before the Spanish courts, a breach of public policy of the UK by the Spanish Judgment could not be considered.

Further, the ECJ stressed that the public policy exception of Art. 34(1) had to be interpreted strictly and could only be relied upon in exceptional cases. The court pointed to the Advocate General's Opinion and noted that the issues of the force of *res judicata* acquired by a prior judgment and, in particular, the irreconcilability of the judgment to be recognised with an earlier judgment were exhaustively regulated in Art. 34(3) and (4) of the Regulation. As recourse to the public-policy exception was excluded in that context, the ECJ held that the recognition of the Spanish Judgment could not be refused by reference to the *res judicata* effect of the UK Judgment.

5. DISCUSSION

It is notable that since its publication, this newest addition to the ECJ's case law on the relationship between commercial arbitration and the Brussels Regulations has already attracted widespread criticism by legal commentators. While scholars predominantly point out the court's lack of methodological rigour, with reference to the parties involved and the stakes at hand, some (English) commentators even go so far as to suspect a political motivation behind the decision. Although such suggestions should not be uttered lightly, it is hard to ignore the fact that the court, without any apparent basis in the Regulation, thought up the requirement of a "parallel universe" test, which was key to eventually granting recognition of the Spanish judgment. It is also accurate that the more obvious and intuitive solutions to the case, i.e., either rejecting the application of the Regulation on the grounds of a broad reading of the Arbitration Exception (leaving the question of incompatibility to English domestic law) or following the Advocate General's Opinion (qualifying the judgment in terms of the award as a contrary judgment pursuant to Art. 34(3)) would have likely led to a refusal of recognition of the Spanish Judgment.

Looking at the details of the court's reasoning, it is particularly surprising how the ECJ skipped over what is arguably the core issue of the case, namely, the scope of the Arbitration Exception when heading for an interpretation of one of the Regulation's specific provisions (Art. 34). Indeed, the overarching theme of the case is the relationship between court proceedings and arbitration under the Brussels regime, which found its clear expression in the Arbitration Exception. Even if one were to agree with the Court that judgments on subject matters excluded by the Regulation could be relevant under Art. 34(3), the Court could have spent a thought or two whether the exclusion of arbitration (as a parallel **method** of dispute resolution, concerning subject matters governed by the Regulation) truly should have been treated identically to other excluded subject matters (such as the personal status question, which gave rise to the *Hoffmann* case).

Interestingly, the case where a defendant initiates UK arbitration proceedings and applies for the recognition of the award by UK courts to shield itself against concurrent court proceedings in a Member State has been identified in English scholarship as a poster case demonstrating the unclear and unresolved relationship between the Brussels Regula-

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tion and arbitration (FN: see *Merkin/Flannery*, Arbitration Act 1996 (2014) page 286 et seq).

The court's methodological freedoms aside, the ECJ's solution is inherently problematic: Essentially, the court decided to stipulate an obligation for courts recognizing domestic awards to assess if the arbitral tribunal had observed the provisions of the Regulation when conducting the arbitration. Although the Regulation is obviously and undisputedly **inapplicable** to arbitral tribunals, the ECJ – in effect – requires the latter to adhere to its provisions if their award is to be considered by the courts at the seat of arbitration if and when in conflict with other EU judgments. However, as the Regulation has not been drawn up considering arbitral tribunals as courts, this subjects arbitral proceedings to a host of procedural issues. For example, considering that the ECJ characterized the avoidance of parallel proceedings as one of the core principles of the Regulation to be observed, the ECJ effectively negates the principle of *Kompetenz Kompetenz* and primacy of arbitral proceedings, at least as far as domestic arbitral awards are concerned.

Finally, looking beyond the ECJ's ruling, it appears that one issue remains to be resolved by the High Court in the Prestige case, namely, the legal **relevance and effects of the Award** (not of the UK Judgment). Although the ECJ expressed a clear opinion on the relevance of the judgment entered in terms of the award, it did not (and was not asked to) address the relevance of the Award in the context of recognition of the Spanish Judgment. Similarly, the ECJ did not address the related question, if the legal effects acquired by the award could be considered in the context of the public policy exception of Art. 34(1). Notably, the High Court had specifically asked the latter question.

Arguably, whilst in contrast with the outcome of the ECJ's ruling, the reasoning that the UK Judgment could not be considered a judgment pursuant to Art. 34(3) due to the High Court's failure to assess the arbitration's compliance with the principles of the Regulation, does not *per se* rule out either qualifying **the Award** as such a judgment by analogy (indeed, this is the majority view of German-speaking scholars (FN: *Oberhammer* in *Stein/Jonas*, ZPO[22] Art 34 EuGVVO Rz 84 mwN; *Geimer/Schütze* EUZVR Art. 28 Rz. 37 and Art. 27 Rz. 130 mwN; also *Kropholler/von Hein*, EuGVO Art. 35 Rn.60 [re foreign awards])) or even to consider the award's legal effects under the public policy exception of Art. 34(1). Whether these arguments are still available to the Club could also depend on whether the High Court finds that the award ceased to have independent *res judicata* effects following its merger into the judgment.

In any event, it goes without saying that a result that would require the High Court to ignore the legal effects of a final and binding domestic award (for ignoring EU law, which, undisputedly, was never inapplicable to the arbitration) as well as its own final judgments rendered in the setting aside proceedings on such award would hardly be a justifiable outcome in light of the purpose of Art. 34, which – as the ECJ pointed out – is the preservation of the integrity of a member state's legal order.

6. OUTLOOK

Looking beyond the particulars of the case, the question if and to which extent the ECJ's decision will practically impact the relationship between commercial arbitration and court proceedings in the EU is difficult to answer.

As a general matter it can be said that the decision is relevant for the law currently in force between the (remaining) member states as the interpreted provisions have not changed in substance after the Brussels I recast Regulation (FN: Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 (OJ 2012, L 351, p. 1)) replaced the Brussels I Regulation interpreted here (FN: Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)).

The first unknown going forward is to which extent member states' courts must consider the legal effects of final domestic arbitral awards as barriers to the recognition of an EU judgment on the same subject matter, in cases where no court decision exists that "recognized" the award or declared the award enforceable. The second unknown is whether the ECJ will apply the principles developed in this case to all court decisions that declare arbitral awards enforceable even if those concern the recognition of foreign arbitral awards. In this context, it appears crucial whether the ECJ will equate such recognition decisions (which, NB, are clearly outside the scope of the Regulation) to the High Court's recognition by way of a judgment in terms of the award.

It should be noted that the ECJ's decision ought to be irrelevant for a conflict between recognized foreign arbitral awards and EU judgments on the same subject matter. The Brussels I recast Regulation expressly notes that the 1958 New York Convention remains unaffected by the Regulation (Art. 73) and the ECJ made it clear that proceedings for the recognition and enforcement of an arbitral award are not covered by the Regulation but by the national and international law applicable in the Member States.

However, with a view to the "policy"-oriented approach which the ECJ applied in the case at hand, it does not seem inconceivable that the ECJ could impose a similar obligation on member states to ignore the existence of recognized foreign awards, where the award was rendered contrary to the Regulation's provisions and the recognition of a later

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EU judgment on the same subject matter is sought. If that was the case, this decision must be seen as a sea change. It would mean that the ECJ (indirectly) subjected arbitral tribunals to the provisions of the Regulation, and through the backdoor of the recognition introduced the Regulation to the realm of arbitration. As a side effect, the court may have handed parties the option to torpedo the arbitral process by ignoring arbitration agreements in the hope that the domestic courts find in their favour.

For additional information and queries, please contact thomas.herbst@zeilerfloydzad.com

Additional content on this topic:

THE DIVINEGATE

HIGH COURT DISMISSES COUNTER-CLAIM FOR WRONGFUL ARREST BUT UPHOLDS UNDER-PERFORMANCE COUNTER-CLAIM

Written by Harrison Smith

In this recent decision (see *Eastern Pacific Chartering Inc v Pola Maritime Ltd (The Divinegate)* [2022] EWHC 2095 (Comm)), a Deputy Judge of the High Court considered two counter-claims raised by Pola Maritime Ltd (**Pola Maritime**) in defence of a claim by Eastern Pacific Chartering Inc (**Eastern Pacific**), accepting an under-performance claim in part and dismissing a claim for wrongful arrest.

Eastern Pacific sought to claim payment of outstanding hire, bunkers and expenses, totalling US$99,982.79, in respect of a time trip charter of a bulk carrier, the *Divinegate*. Pola Maritime counter-claimed for under-performance under the charterparty and in tort for the wrongful arrest of another bulk carrier, the *Pola Devora*, which it had time chartered. If made out, the balance of the claims would have given rise to a judgment in charterers' favour of $59,129.25.

Given the quantum involved, it is surprising that the matter proceeded to a three-day trial, with an earlier interlocutory hearing on the Court's jurisdiction to hear the wrongful arrest claim under the charterparty's jurisdiction clause (see *Eastern Pacific Chartering Inc v Pola Maritime Ltd* [2021] EWHC 1707 (Comm)). Nevertheless, the decision provides a useful illustration of difficulties which can arise when attempting to establish liability for under-performance, hull fouling or wrongful arrest.

BACKGROUND

Eastern Pacific, the disponent owner of the *Divinegate*, chartered the vessel to Pola Maritime for the carriage of a cargo of pig iron from Europe to the United States, under a time trip charterparty on a NYPE 1946 form.

The *Divinegate* was delivered at Rotterdam on 21 September 2019. It then proceeded in ballast to Riga to load cargo, before sailing to New Orleans where it discharged that cargo between 27 October and 1 November 2019. The dispute between the parties arose from their differing calculations as to time lost during the voyage, which initially differed by some 21.58 hours. Based on its higher calculation, Pola Maritime refused to pay hire and bunkers for the additional hours and expenses.

Upon inspection in New Orleans, the *Divinegate* was also discovered to have "considerable" marine growth on her hull. On this basis, Pola Maritime claimed that her performance had been "significantly affected" during the voyage, with 32.2 hours lost due to hull fouling in breach of clause 15. It also claimed that the vessel had failed to proceed with the utmost despatch as required by clause 8 (or, alternatively, as a "default of Master, officer or crew" under clause 15), such that a further 51.4 hours were lost. Those claims were the foundation for Pola Maritime's first counter-claim.

The second counter-claim was based on Eastern Pacific having wrongfully arrested the Pola Devora, resulting in Pola Maritime being deprived of the use of that vessel and suffering associated losses. In pursuit of its claim, Eastern Pacific had effected the arrest of that vessel on 2 July 2020. In so doing, its legal representative gave a declaration in the Supreme Court of Gibraltar that Pola Maritime was beneficial owner of the vessel, exhibiting a Lloyd's List Intelligence Vessel Report (the **Lloyd's List Report**) which he stated confir-

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med that fact (as it identified Pola Maritime as its "beneficial owner").

Following arrest, the *Pola Devora*'s P&I Club offered a letter of undertaking as security for its release, which was refused unless Pola Maritime was named. It was only when Eastern Pacific received proof that Pola Maritime was merely the time charterer of the vessel (and only the "beneficial owner" in the sense of being its indirect owner by reason of the structure of a corporate group rather than holding "equitable ownership" of the vessel) that the Pola Devora was released from arrest on 6 July.

DECISION

Before the High Court, the principal claim by Eastern Pacific was largely uncontroversial, with the focus of the decision being Pola Maritime's counter-claims for under-performance (including hull fouling) and wrongful arrest. The analysis of those claims by the Court is considered in turn below.

Under-performance and hull fouling

Dismissing Eastern Pacific's argument that the under-performance claim was time-barred, the Court accepted that Pola Maritime had established 16 hours of lost time based on the conventional "good weather method": *The Gas Enterprise* [1993] 1 Lloyd's Rep. 352. The application of that method followed from authority and the parties' adoption of a good weather performance warranty, and involved assessing performance by reference to a sample period or periods of good weather, extrapolated across the voyage. Though not undisputed, the Court concluded that there had been a representative period of "good weather" for 32 hours across 23 and 24 October 2019.

Pola Maritime's proposed alternative "RPM" method, which involved comparing the propeller speed required to achieve the warranted performance to the actual propeller speeds, was not accepted as a reliable measure for lost time. In particular, it failed to account for variations in weather during the voyage and assumed constant resistance on the hull irrespective of RPM. Nevertheless, the Court accepted that the good weather method was not the exclusive method for establishing under-performance (although alternative justifiable methods have not yet been identified).

The Court held that Pola Maritime failed to establish that any time was lost solely due to the hull fouling. The evidence in this regard was unreliable and, on the basis that Pola Maritime had shown under-performance on the good weather method, any such under-performance would have already been taken into account.

Wrongful arrest

In relation to this claim, while the Court accepted that Pola Maritime was not the beneficial owner of the *Pola Devora*, it was not shown that Eastern Pacific had acted with the requisite malice or gross negligence in arresting the vessel: *The Evangelismos* (1858) 12 Moo PC 352; 14 ER 945. In particular, Pola Maritime had been named as beneficial owner in the Lloyd's List Report and its own website referred to it owning the vessel. Moreover, there was a lack of clarity in the public documents as to its registered ownership at the time of arrest, such that it would not have been obvious that beneficial ownership was held by some other entity.

The subsequent conduct of Eastern Pacific in refusing to release the vessel from arrest prior to 6 July 2022 also did not establish the requisite state of mind required for malice or gross negligence. Until 6 July, the position as to ownership remained unclear and, unsurprisingly, Eastern Pacific sought to secure the best possible security to answer its claim before agreeing to release the vessel sooner. It was also significant that the vessel was immediately released upon production of evidence demonstrating the true position as to ownership.

COMMENT

The Court's analysis of the counter-claims in this matter demonstrates the adoption of a pragmatic approach to the resolution of the factual issues. In particular, though it may be argued that the good weather method is as imprecise as the PRM method, it offers a pragmatic measure of performance and, as observed by the Court, is defensible on the basis of parties' continued adoption of performance warranties based on good weather performance over many years.

The difficulties faced by Pola Maritime in seeking to establish lost time are also notable. When making multiple performance claims, the Court considered how those claims interacted and overlapped in determining the amount of time lost for the purposes of the charterparty. Moreover, it was noted that each party was only given leave to adduce evidence from a single expert on speed and performance. This caused an issue for Pola Maritime as its sole expert had referenced other expert opinions not in evidence which limited the weight that could be given to its report.

Finally, the decision illustrates the high bar to demonstrating the state of mind required to establish wrongful arrest, either at the time of arrest or while arrest is maintained. Though there was considerable doubt as to the true position, it was not shown that Eastern Pacific was grossly negligent in the sense that it had paid no serious regard to whether it could arrest the vessel. In the Court's view, that was enough for it to arrest and to maintain the arrest until the

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true position could be shown (or adequate alternative security was offered up).

For additional information and queries, please contact harrison.smith@zeilerfloydzad.com

Additional content on this topic:

Case by Case Podcast **34 Min.**

#34 Arrest gone wrong, or wrongful arrest?

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Case by Case Podcast **40 Min.**

#08 Unlocking the DIVINEGATE

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NEWS

TEAM

| Our New York office welcomed Associate Mozar Ross, specializing in international dispute resolution.

| In Vienna, we welcomed Junior Associate Alexandra Kutschera, joining the litigation and arbitration teams.

LOCATIONS

| Our London office, Vienna office and New York office all moved into shiny new spaces over the past couple months, and our Chicago office is quickly catching up, with a new address as of tomorrow, 1 December. Photos and videos will be available on our social media channels!

EVENTS

| Disputes for Tea | Sanctions
With Edward Floyd & Friederike Schäfer
Wednesday, 18 January 2023

Stay tuned for further details and for our full 2023 event schedule.

CONTRIBUTORS TO THIS BULLETIN

Alfred Siwy
Partner
Attorney at Law (Vienna) |
Solicitor (England and Wales)

T +43 664 889 287 84
M +44 203 740 2576
E alfred.siwy@zeilerfloydzad.com

Edward Floyd
Partner
Attorney at Law (New York, New Jersey) |
Solicitor (England and Wales)

M +1 917 999 6914
E ed.floyd@zeilerfloydzad.com

Friederike Schäfer
Partner
Attorney at Law (Germany, Austria)

M +43 664 780 209 42
E friederike.schaefer@zeilerfloydzad.com

Timothy S. McGovern
Partner
Attorney at Law (Illinois)

T +1 708 320 0010
M +1 312 545 4994
E tim.mcgovern@zeilerfloydzad.com

Joseph Johnson
Partner
Attorney at Law (New York)

M +1 917 375 9511
E joe.johnson@zeilerfloydzad.com

Thomas Herbst
Senior Associate
Attorney at Law (Vienna)

T +43 1 890 10 87-94
M +43 664 187 80 06
E thomas.herbst@zeilerfloydzad.com

Eva-Maria Mayer
Associate
Attorney at Law (New York)

M +1 617 943 7957
E eva.mayer@zeilerfloydzad.com

Alexandra Tompson
Associate
Attorney at Law (New York)

T +44 20 80172-510
M +44 7881 857553
E alexandra.tompson@zeilerfloydzad.com

Harrison Smith
Associate
Legal Practitioner (Supreme Court of Queensland, Australia)

T +44 20 80172-510
M +44 7443 405413
E harrison.smith@zeilerfloydzad.com

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