

UAE Court Dismisses Physical Bunker Supplier Claim Against Ship Owner

Tariq Idais - Senior Associate
- Dubai International Financial Centre

The case deals with issues faced when a contractual bunker supplier becomes insolvent, and whether the physical supplier of bunkers (or bunkering company) can recover the unpaid cost of bunkers against ship owners or whether the claim is limited to recovery against the insolvent contractual supplier. The rights of the bank in intervention proceedings are also addressed as is the concept of assignment to the bank under UAE law. Al Tamimi and Co represented the Ship Owners in this matter.

Background

A contractual bunker supplier (the “Contractual Supplier”) sent a purchase order for bunkers to a bunkering company (“Physical Supplier”) requesting the latter to supply a ship (which was owned by a shipping company (the “Ship Owners”)) with marine fuel oil and marine gas oil (the “Bunkers”). The Physical Supplier then supplied the ship with the ordered Bunkers and the ship’s Master/Chief Engineer signed and stamped the bunker delivery note confirming receipt of the Bunkers.

As is normal practice, a commercial invoice detailing the Bunkers value was sent by the Physical Supplier to the Contractual Supplier; however the invoice was not paid by the Contractual Supplier.

Unfortunately, in the intervening period, the Contractual Supplier became insolvent, but it had assigned all its rights to a bank (the “Assignee”) in relation to its bunker supply contracts including the purchase order by virtue of a Security Agreement. Consequently this transaction became the subject matter of a dispute in Fujairah, UAE.

The Nature of the Claim

On 19 May 2015, the Physical Supplier bunkering company obtained an arrest order from Fujairah Court against the supplied ship’s sister ship (the “Arrested Ship”) which was at Fujairah Port at the time. The Physical Supplier based the arrest order request on the purchase order, the bunker delivery notes and the commercial invoices. On 26 May 2015 the Physical Supplier filed a substantive claim before Fujairah Court of First Instance against the Arrested Ship, the Ship Owners, the managers of the Arrested Ship and the insolvent Contractual Supplier (the “Defendants”). The claim was for USD 175,196 for to the unpaid cost of the supplied Bunkers and also to validate the arrest order against the Arrested Ship.

On 27 May 2015, the Ship Owners deposited counter-security in the sum of USD 175,196 with Fujairah Court’s Treasury in order to release the Arrested Ship and substituted the arrest order with a bond/counter security to allow the Arrested Ship to be released. The Court subsequently decided to release the Arrested Ship.

On 24 June 2015, the Assignee bank filed an intervention application and joined the proceedings by bringing an action against the Defendants, seeking the cost of the unpaid Bunkers (USD 175,196) based on the Security Agreement.

Fujairah Court of First Instance

On 25 October 2015, Fujairah Court of First Instance rendered its judgment by holding the Ship Owners, the managers of the Arrested Ship and the Contractual Supplier jointly liable to pay the Physical Supplier the sum of USD 175,196 plus interest 26 May 2015 until the full payment is made. The Court also

confirmed the attachment over the counter security which was deposited by the Ship Owners to release the Arrested Ship. Furthermore, the Court decided to dismiss the Assignee bank's intervention application.

Fujairah Court of Appeal

In November 2015, the Ship Owners and the Contractual Supplier (the "Appellants") as well as the Assignee bank challenged the Court of First Instance's judgment by filing appeals before the Fujairah Court of Appeal. The Appellants argued that the Ship Owners did not have the capacity to be sued in this claim as it was evidenced by the case file that there was no contractual relationship between the Ship Owners and the Physical Supplier with respect to the Bunkers. Furthermore, it is argued that the contractual relationship in relation to the Bunkers was between the Contractual Supplier and the Physical Supplier. Therefore, the Physical Supplier's claim should be dismissed against the Ship Owners based on Article 252 of the Civil Transactions Law which states that:

"A contract may not impose an obligation upon a third party but it may create a right in him."

In relation to the Assignee bank's appeal, the Ship Owners argued the Court of First Instance was in compliance with UAE law in relation to refusing the Assignee's intervention application. Alternatively, the Ship Owners argued that the Security Agreement did not meet the requirements for an assignment set out under Articles 1109, 1110 and 1116 of the Civil Transactions Law, as the Contractual Supplier did not inform the Ship Owners of the Security Agreement and the Ship Owners did not accept such Agreement.

Fujairah Court of Appeal Decision

On 9 November 2016, Fujairah Court of Appeal handed down its judgment and decided to revoke the Court of First Instance's judgment and to dismiss the Physical Supplier's claim against the Ship Owners, as there was no contractual relationship between the Ship Owners and the Physical Supplier with respect to the Bunkers. The Court of Appeal based its judgment on the abovementioned Article 252 of the Civil Transactions Law. Moreover, the Court held that the insolvent Contractual Supplier should be liable for the cost of the unpaid Bunkers, as the contractual relationship in relation to the Bunkers was established between the Ship Owners and the insolvent Contractual Supplier. The Court of Appeal also dismissed the Contractual Supplier's appeal.

Furthermore, the Court of Appeal dismissed the Assignee bank's appeal and ruled that the supplying bunkers did not fall within the scope of the Security Agreement as well as holding that the assignment of rights relied on by the Assignee bank did not meet the requirements of UAE law.

Comment

This is another judgment in which the UAE Courts have dismissed the Physical Supplier's claim against the Ship Owners based on Article 252 of the Civil Transactions Law. However, the judgment does not examine the liability of the ship in relation to the Bunkers.

The importance of this judgment is the fact that the Court of Appeal examined the Security Agreement and the Assignee bank's application and decided that the Security Agreement did not include the bunkers supply contracts of the Contractual Supplier, as well as holding that the same does not meet the requirements of the assignment of rights under UAE Law. Therefore, any further claim filed by the Assignee in the UAE based on the Security Agreement against the ship owners regarding bunker supply claims may be dismissed by the UAE Courts in the future, if the Court of Appeal judgment is upheld by the Federal Supreme Court.

Lastly, it should be noted that the Court of Appeal judgment is not a final order, and it has been challenged and we await final determination from the Federal Supreme Court.