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UNION MARINE CLASSIFICATION SERVICES LLC v. CAMOROS (2015, EWHC 508)

AUTHORED BY – TRIPTI & TANISHA RANJAN

1. **TITLE:** Maritime Arbitration
2. **COURT:** England and Wales High Court
3. **CITATION:** 2015, EWHC 508
4. **THEME:** Maritime Shipping
5. **SUBJECT:** Commercial Arbitration
6. **JUDGEMENT PLACE:** London
7. **FACTS OF THE CASE**

- a. The case concerns the application made by the claimant in this arbitration claim, Union Marine Classification Services LLC (applicants), for:
 - An order under Section 68 of the Arbitration Act of 1996 to invalidate Mr. Bruce Harris's Second Partial Award ("the second award") due to significant irregularities.
 - An order that, in accordance with Section 24 of the Act, Mr. Harris is no longer a sole arbitrator.
- b. In 2007, the claimant and the defendant (Comoros) signed a 25-year contract for the provision of specific services. The claimant was entitled to 50% of the money generated, provided that the defendant received a minimum monthly payment. However, the defendant terminated the contract in 2012.
- c. After arbitration began, the arbitrator determined that the defendant's notice of termination constituted a repudiatory breach of the agreement. The arbitrator also declined to grant the claimant damages, citing the termination of the defendant's monthly payments as a breach of the agreement. The Court did not consider that the non-payment had entitled the defendant to terminate the contract, but held that the defendant was entitled to damages in respect of it.
- d. The award was contested by both parties, who asked for a second award. The claimant argued that the contract remained in effect because the defendant lacked the right to terminate it, while the defendant asked for a declaration that the termination had taken

effect and that the claimant had acknowledged its repudiatory breach. In addition, the claimant sought damages for the remaining time under the contract.

- e. The claimant's failure to pay the instalments due under the contract amounted to both acceptance of that repudiatory breach and the claimant's non-payment constituting acceptance of the repudiatory breach. The arbitrator then held in the second award that the contract had been terminated following the defendant's repudiatory breach; the claimant's damages claim was also an acceptance of the repudiation because it was incompatible with any idea that the contract remained alive.

8. LEGAL ISSUES

The claimant sought to impugn the second award on three grounds. These grounds were that the arbitrator had:

- a. No jurisdiction to decide whether the contract had been terminated.
- b. No evidential basis for finding it guilty of non-payment.
- c. No basis for finding that its damages claim constituted acceptance of the defendant's repudiatory breach.

9. ARGUMENTS

- a. The claimant's application was denied by the court. First, regarding the tribunal's jurisdiction to decide on contract termination, the court determined that the arbitrator had full authority to make that decision and that he was correct in doing so.
- b. Rather than being a legally binding conclusion, the first inquiry had not been whether the claimant had accepted the repudiatory breach. Therefore, he was able to address the acceptance problem at a second hearing without being hindered by issue estoppel.
- c. The arbitrator thought that the parties had granted him further authority to decide at a second hearing whether the contract was still in effect after both parties stated their desire for the tribunal to make a second award. Consequently, there was no reason to think otherwise in such a situation.
- d. Furthermore, the court held that the arbitrator had to have used appropriate evidence to reach a decision on the claimant's nonpayment. It is argued that there was uncontested proof of non-payment at the initial hearing, and the claimant did not question the defendant's statement of non-payment in the second arbitration's submissions. Moreover, the claimant's allegation that the arbitrator's decision was influenced by new

evidence, which was not permissible, was dismissed, because, for the second hearing, both the parties had equal opportunities to support their claims along with their written submissions.

10. JUDGEMENT

- a. The court dismissed Union Marine's application, citing the strict time limits under the 1996 Act. The court determined that any outstanding issues would be settled throughout the account-taking procedure in accordance with the modified award, although admitting certain inconsistencies in the original award's wording. The court concluded that Union Marine's objection did not fall under the substantive jurisdiction of the arbitrator and did not declare the modified award to be void.

11. CONCLUSION

- a. In the present case, the parties granted the tribunal jurisdiction twice to consider their disagreement; yet, they eventually turned to the courts for resolution.
- b. Although the court maintained the tribunal's ruling, it calls into question the legitimacy of arbitral verdicts in general and contractual provisions that bind the parties in particular.
- c. Even the court admits that such tribunals' decisions were made after taking reasonable factors into account.

REFERENCES

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