

Client Alert - Shipping

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Damages for Early Redelivery



The High Court decision in the "North Prince" [2010] EWHC 1692 (Comm), published last week, has added clarity to the debate surrounding the proper calculation of damages for early redelivery by charterers where their disponent owners have also redelivered the vessel early up the charterparty chain.

The "North Prince" had been chartered by disponent owners for a minimum period to 27 June 2009. However, the charterers redelivered the vessel early in repudiatory breach on 5 January 2009. The normal measure of damages where there is an available market is the charterparty rate less the market rate. However, in this case the disponent owners had themselves redelivered the vessel to headowners on 5 June 2009. Given that the disponent owners did not have the use of the vessel to 27 June 2009, the charterers said the correct measure of damages was limited to the loss of profit actually suffered by owners, namely the difference between the head charter rate and the sub charter rate.

The charterers were granted leave to appeal. The issue was formulated as: "Where damages for repudiation of a sub-charter by charterers are assessed by reference to the actual earnings of the vessel during the balance of the sub-charter period, should the fact that the vessel is re-delivered under the head charter before the end of the balance of the sub-charter period be taken into account in the assessment of damages, and if so how?".

The charterers argued that since the Tribunal had looked to the vessel's actual earnings, it followed that they must take account of the disponent owners' early redelivery. Steel J rejected this argument. He said that the Tribunal had assessed the available market on the basis of the actual earnings. Therefore he confirmed that the correct measure of damages in such circumstances is as set out by Goff J. in *The Elena D'Amico* ([1980] 1 Lloyd's Rep 75), i.e. where there is an available market for the vessel at the time of wrongful redelivery, damages should be assessed by reference to the difference between the market rate and the charter rate for the remaining charter period. If the "innocent" party decides not to avail himself of the available market, e.g. by redelivering the vessel, then that decision is "independent of the wrong" and should not be taken into account in assessing damages. The market rate can be reflected in the vessel's actual earnings during the relevant period, but where the market rate and the vessel's actual earnings differ, it is still the market rate which serves as the measure of damages for early redelivery.

We anticipate that this decision may have a wide impact given the number of early redeliveries in charterparty chains in late 2008/early 2009. Unless and until a higher court considers this point, or it can be distinguished, it will be binding on London arbitrators.

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