Judgement of the meaning of the word 'approval'

Transpetrol Maritime Services Limited v SJB (Marine Energy) BV (MT Rowan), 2011 unreported).*

There are few reported English decisions relating to oil major approvals. Oil majors operate a system of vetting and approvals to ensure that the vessels they use or trade, or buy cargoes from are of satisfactory quality.

Owners and operators of tankers seek and collect as many written approvals as possible from top name oil majors, which are often required by charterers. Given the importance of such approvals in tanker charterparties for the purposes of trading a tanker profitably, the observations of the Judge in this case on the meaning of 'approved' as provided for in the charterparty are worth noting.

Dispute background

This dispute arose out of a voyage charter for the carriage of vacuum gas oil (VGO). The charterer was a trader in petroleum products and had chartered the vessel to carry VGO from the Black Sea to the US Gulf, with an option to top up, discharge, or reload at Antwerp.

At Antwerp, the vessel was inspected by Shell and Conoco. Shell had, according to the charterer, agreed to buy the cargo subject to vetting. However, the inspections established that a low suction sea chest valve needed repair prior to sailing. There was no drydock available at Antwerp so the class surveyor issued an interim certificate allowing the deficiency to be repaired at the next port. As a result, however, the charterer claimed that Shell had rejected the vessel and refused to buy the cargo. Chevron also allegedly refused to deal with the vessel.

A claim was made by the owner for demurrage and port costs that arose during the voyage. The charterer counterclaimed that, due to the bad reputation the vessel gained in the market following the events at Antwerp, it had been unable to sell the cargo on satisfactory terms.

The charterer sought to claim damages for the difference in price it had allegedly agreed with Shell and what the cargo actually realised. The success of the counterclaim depended in part on whether the owner had warranted that the vessel had the requisite oil major approvals referred to in the charterparty and, if so, whether that warranty had been breached.

The Commercial Court

The recap stated under vessel information that *"TBOOK WOG VSL IS APPROVED BY: BP/LITASCO/STATOIL – EXXON VIA SIRE"*. The recap also incorporated Clause 18 of the Vitol standard chartering terms, which stated as follows: "Owner warrants that the vessel is approved by the following companies and will remain so throughout the duration of this Charterparty…". In the recap, next to the reference that incorporated Clause 18, it was stated *"TBOOK VSL IS APPROVED BY: BP/EXXON/LUKOIL/STATOIL/MOH"*.

The owner argued that the wording in the recap overwrote and replaced the wording in the standard Vitol Clause 18 so that '*WOG*' ('without guarantee') applied, meaning that there was simply an indication, without a contractual commitment, that the listed approvals were in place at the outset of the charter.

The Judge, however, agreed with the charterer's interpretation that the parties were adding to, not replacing, the standard term. The fact that a continuing warranty qualified by '*Tbook*' ('to best of owner's knowledge') might prove unworkable in a commercial situation, as contended by the owner, was of no significant weight, in the Judge's view. It was not unusual for commercial parties to 'make what are in retrospect bad bargains'.

He added that there was also no express reference to deletion of Clause 18 in the recap as there was for a number of other standard Vitol clauses and he concluded that this meant

the parties had not intended to delete that clause. Consequently, he held that the owner had warranted that the vessel was approved by the named oil majors and would remain so throughout the duration of the voyage charter.

Was it so approved? This depended on what 'approved' meant and how long any such approval had continued.

Meaning of 'approvals' or 'approved'

The Court considered what constitutes an 'approval' letter from an oil major. The charterer contended that the meaning of 'approvals' or 'approved' was a matter of plain and ordinary English and that the correct interpretation in this context is that the owner warrants that the vessel has indeed been approved and will continue to be so throughout the charterparty. This, when applied to the letters relied on in this case, with their reservations and conditions, would mean that the owner had obtained no approvals at all.

The charterer's case, if accepted, would have meant that this type of letter did not in fact constitute an approval in the context of the common charter requirement.

However, the court considered the charterer's argument to be "doomed by the overwhelming evidence". It was agreed by the experts for both sides that the word 'approved' was used in the market at the relevant time (2007) to mean 'acceptable to' oil majors who might or might not, when the prospect of a real transaction arose, decide to approve that vessel.

It was not the practice of oil majors to grant approvals as such in advance. Express approvals were given only for specific voyages, not for a period of time. So the letters in the form relied on by the owner, it was agreed between the experts, are regarded in the industry as approval letters, despite the fact that they may often state that approval has not been granted and should not be assumed.

Applying this in the context of the present charter, the Judge concluded that the approval letters had to be in place throughout the charter as per the warranty in Clause 18. In other words, at any time when offered to cargo buyers, the vessel must not be in a state which to the knowledge of the owner, would remove the comfort of the warranted approvals to the potential purchaser of cargo. There would be a breach of warranty, for example, if some event occurs which, to the knowledge of the owner, would, if known to the issuer of the approval letter, cause it to withdraw or cancel that approval.

Regarding the 'tbook' ('to the best of owner's knowledge') qualification, the Judge observed that the term 'tbook' cannot take an obligation beyond the extent of an owner's actual knowledge and does not require the owner to make enquiries in addition to those which would ordinarily be made in the course of its business.

However, on the facts of this case, he held that the owner had breached its warranty that, to the best of its knowledge and belief, the vessel was approved by the specified oil majors and would remain so throughout the charterparty.

In his view, it was inconceivable that the owner would have believed that the approval letters still applied in light of the problems at Antwerp. TO

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