

Implicit Misrepresentations and Reservation of Rights

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PRACTICES Shipping Dispute Resolution, Europe, Middle East and Africa, Offshore Oil and Gas Dispute Resolution, Litigation

The recent case of ***SK Shipping Europe plc v (3) Capital VLCC 3 Corp (5) Capital Maritime Trading Corp*** [2020] EWHC 3448 (Comm) concerned the time charter of a very large crude carrier (the “**C Challenger**”). The charterer claimed that it had been induced to enter the charter by pre-contractual misrepresentations made by the owner. By way of a brief reminder, English law generally provides a party to a contract with a right to extricate itself from the contract if the other party had induced it to enter the contract by means of an untrue statement of fact or law. The judgment considered a number of issues in respect of misrepresentation, however this briefing will focus on one issue concerning misrepresentation that is of particular interest as well looking at another issue that arose, namely:

1. does a party who offers to enter into a contract on certain terms make any implicit representations relating to those terms (such as could give rise to a misrepresentation claim); and
2. what is the effect of an “express reservation of rights” communicated by one party to the other following a misrepresentation or upon a repudiatory breach of contract by the other.

The background

In the course of negotiations leading to the fixing of the charter, the owner had, through the broker, provided the charterer with a document which detailed the vessel’s speed and fuel consumption. This was expressed as being derived from the vessel’s last three voyages, but it subsequently transpired that the figures provided reflected different voyages. The information provided by the owner was used as the basis for the warranty provision within the charterparty. Once on charter, the vessel’s performance proved not to meet the stated performance detailed in the information provided in the negotiations nor the warranty provisions. The charterer after some time declared the charterparty to be rescinded due to misrepresentation, which it contended had been fraudulent in nature, and sought to claim damages. The charterer also claimed that the owner was in repudiatory breach of the charterparty and relied on this to bring it to an end.

[Read the full alert here.](#)