

Seadrill Ghana Operations Limited v Tullow Ghana Limited

[2018] EWHC 1640 (Comm)

Whether or not a force majeure event must be the sole cause of a failure to perform is a question of construction of the clause. Here the clause required the event to be the sole effective cause. On the facts, the event relied upon was not the sole effective cause of the defendant's inability to perform. Further, the contract required the defendant to use 'reasonable endeavours' to circumvent the force majeure event, and the defendant had failed to do so.

West Leo was a semi-submersible drilling rig owned by Seadrill. By a contract concluded in 2012, Tullow hired West Leo from Seadrill. Under the hire contract, Seadrill agreed to provide drilling services to Tullow in exchange for a daily hire rate. The contract (as extended) was to run until June 2018 as part of Tullow's drilling operations in offshore oilfields between Ghana and Cote d'Ivoire. Drilling licences were issued by the government of Ghana. However, some of the oilfields were claimed by Cote d'Ivoire. In September 2014, an arbitral tribunal was convened (pursuant to the United Nations Convention on the Law of the Sea) to resolve that dispute between the governments of Ghana and Cote d'Ivoire. On 25 April 2015, the tribunal imposed a Provisional Measures Order ("PMO") ordering the Ghanaian government to "*take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area*". On 4 May 2015, the Ghanaian government wrote to Tullow enclosing a copy of the PMO and inviting Tullow to take steps to comply with it.

Immediately before the PMO, Tullow had planned to use West Leo in the disputed area until October 2016 and then to move the rig to another (non-disputed) oilfield for use until the conclusion of the hire contract in June 2018. Initially, it appeared that the effect of the PMO (which only prohibited the commencement of *new* drilling operations) was that Tullow could proceed with its plans in respect of all but one well in the disputed area before moving the rig to the other oilfield (which was unaffected by the PMO). However, in February 2016, a fault was found in the equipment at the other oilfield and (as a result of that fault) the government of Ghana refused the necessary permissions for West Leo to drill there.

In the event, Tullow did not issue a drilling program for West Leo from October onwards and, in December 2016, Tullow terminated the hire contract. Tullow relied on a force majeure clause at Section A Clause 27 of the hire contract. This was on the basis that the combination of the PMO and the letter from the Ghanaian government amounted to a drilling moratorium which was a named force majeure event under Section A Clause 27. Seadrill denied that Tullow was entitled to rely on Section A Clause 27. This was on the basis that the PMO was not a "drilling moratorium" and, in any event, it was not the sole effective cause of Tullow's inability to issue a drilling program for West Leo. Seadrill's case was that Tullow had terminated for its own convenience due to falling hire rates for rigs such as West Leo. Seadrill issued proceedings seeking payment of a contractual termination fee in excess of US\$270 million.

Teare J concluded that, ultimately, the question of whether a force majeure event must be the sole cause of the failure to perform is one of construction of the clause itself. Teare J construed Section A Clause 27 as requiring the force majeure event to be the sole effective cause of Tullow's inability to perform. Teare J found that Tullow's inability to issue a drilling program for West Leo was caused by the PMO and by Tullow's failure to secure permission from the government of Ghana to drill the other oilfield. The latter was not a force majeure event. Therefore, it could not be said that a force majeure event was the sole effective cause of Tullow's inability to perform and the force majeure clause was not engaged. Even if the force majeure clause was engaged, Tullow would have been prevented from relying on it. Section A Clause 27 required Tullow to use "reasonable endeavours" to circumvent the force majeure event. Teare J found that it would have been open to Tullow to drill in four other available (non-disputed) oilfields. In failing to do so, Tullow failed to discharge its obligation to use "reasonable endeavours" to circumvent the force majeure event and issue a drilling program for West Leo. This was so even though the available oilfields were less profitable. Tullow was not entitled to disregard Seadrill's interests when considering what steps to take.