

PIRAEUS BANK A.E. V ANTARES UNDERWRITING LIMITED & ORS

[2022] EWHC 1169 (COMM) [Calver J]

I. THE ISSUE

This case concerned whether the prolonged detention of a vessel in Venezuela gave rise to a constructive total loss of that vessel under the owners' war risks policy and if so, whether the mortgagees under a mortgagees' interest policy of insurance could recover an indemnity in respect of their loss as assignees and loss payees under the owners' war risks policy.

II. BACKGROUND

The Claimant ("**the Bank**") is a company incorporated in Greece, engaged in the business of providing banking and related services, and the mortgagee of the vessel '*ZouZou*' ("**the Vessel**").

The First to Twelfth Defendants are members of syndicates which underwrote insurance at Lloyd's for the 2014 year of account, and the Thirteenth Defendant is a U.S. insurance and reinsurance company (collectively, "**the Insurers**").

The Vessel was insured against war risks on the terms and conditions set out in the rules of the Hellenic Mutual War Risks Association ("**the Club Rules**" or "**the War Risks Policy**"), and the Bank was the assignee under this War Risks Policy.

Separately, the Bank was the assured under a Mortgagees' Interest Insurance Policy ("**the MII Policy**"), under which the Insurers agreed to insure the Vessel.

On 16 August 2015, the Vessel called at Puerto La Cruz, Venezuela, in order to load a cargo of high sulphur diesel oil. On 22 August 2015, it was noticed that high sulphur diesel oil was present in a certain tank of the Vessel as a matter of irregularity. Pursuant to an order on 27 August 2015, the Vessel was made subject to "preventive seizure" under Articles 4.4 and 55 of the 2012 Venezuelan Law Against Organized Crime Act ("**LAOC**"). A release order authorising the release of the Vessel was ultimately issued on 17 October 2016.

In the present case, the Claimant sought a claim for an indemnity under the MII Policy.

III. THE FINDINGS OF THE COURT

Calver J held that there was no cover under the War Risks Policy for the detention of the Vessel as any loss caused by the detention of the Vessel would have been excluded by Rule 3.5 of the Club Rules. [128]-[144] The scope of cover under the War Risks Policy was as a matter of general principle determined by reading the insured perils and the exclusions together: *Impact Funding Solutions v Barrington Support Services* [2017] AC 73 at [7] per Lord Hodge JSC. [227]-[267]

The Court set out its construction of the relevant provisions of Venezuelan law in relation to preventive seizure or confiscation of assets and the considerations and procedure surrounding application for their return, particularly Articles 55, 58 and 59 of the LAOC, and Articles 293 and 294 of the 2012 Organic Code of Criminal Procedure of Venezuela ("**the OCCP**"), which included an analysis of *The B Atlantic (No 2)* [2015] 1 Lloyd's Rep 117. [145]-[195]

After considering the *B Atlantic (No 1)* [2012] Lloyd's Rep IR 363, Calver J concluded that the ongoing detention of the Vessel did not become unlawful at any point in time. The parties were agreed that the detention order was originally lawful, and the ongoing detention did not become unlawful as a result of the prosecutors failing to apply to the court for the release of the Vessel given they had no power to release the Vessel, and they were under no duty to do so. Even if there were such a duty, the Bank had failed to establish on the evidence any breach of that duty. Yet further, a bona fide error in applying the law would not have broken the chain of causation absent perversity: *The Anita* [1971] 1 Lloyd's Rep 487 and *The Silva* [2011] 2 Lloyd's Rep IR 470; *The B Atlantic (No 2)* [2015] 1 Lloyd's Rep 117 at p. 162. [196]-[208]

There was no constructive total loss under the detainment clause of the War Risks Policy since there was not a continuous period of 12 months during which the deprivation was not caused by an excluded peril. [209]-[215]

There was no constructive total loss under section 60(2)(i) of the Marine Insurance Act 1906 either, as the Bank failed to establish that, as at the date of the first notice of abandonment, it was unlikely that the Vessel would be recovered within a reasonable time. The Court applied *Rickards v Forestal Land, Timber and Railways Co Ltd* [1942] AC 50. [216]-[225]

The Court set out an analysis of the key provisions of the MII Policy and ultimately found that there was no cover under the MII Policy. The MII Policy was not intended to, and did not, cover losses which would not have given rise to a loss covered by the War Risks Policy, because, as here, there was no CTL under the War Risks Policy or the loss was excluded thereunder.

IV. DECISION

For the reasons summarised above, Calver J concluded that the Bank's claim failed and the Court therefore did not need to make any findings on quantum.