SUPREME COURT OF SOUTH AUSTRALIA

(Civil)

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JEBSENS INTERNATIONAL (AUSTRALIA) PTY LTD & ANOR v INTERFERT AUSTRALIA PTY LTD & ORS

[2012] SASC 50

Ruling of The Honourable Justice Anderson

25 August 2011

ARBITRATION - THE AWARD - ENFORCING AWARDS - FOREIGN AWARDS

SHIPPING AND NAVIGATION - DEMISE AND CHARTERPARTY - OTHER MATTERS

MARITIME LAW - CHARTERS - BREACH OF CHARTER AGREEMENT - INTERNATIONAL ARBITRATION

Whether a charter party constitutes an arbitration agreement within the meaning of s 3(1) of International Arbitration Act 1974 (Cth) – whether the charter party comes within the ambit of s 11 of the Carriage of Goods by Sea Act 1991 (Cth) – whether the charter party was a "sea carriage document" within the definition contained in schedule 1A of the Carriage of Goods by Sea Act 1991 (Cth) – whether the awards made by the arbitrator are valid and enforceable in Australia pursuant to s 8 of the International Arbitration Act 1974 (Cth).

Held: The charter party constituted an arbitration agreement within the meaning of s 3(1) of the International Arbitration Act 1974 (Cth) - the voyage charter party entered into between the second plaintiff and the first defendant does not come within the ambit of s 11 of the

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First Plaintiff: JEBSENS INTERNATIONAL (AUSTRALIA) PTY LTD Counsel: MR S HORGAN SC WITH HIM MR N ROCHOW SC AND MR P BRITTEN-JONES - Solicitor: MELLOR OLSSON AS TOWN AGENTS FOR HOLMAN FENWICK WILLAN
Second Plaintiff: JEBSENS ORIENT SHIPPING SERVICES A/S Counsel: MR S HORGAN SC WITH HIM MR N ROCHOW SC AND MR P BRITTEN-JONES - Solicitor: MELLOR OLSSON AS TOWN AGENTS FOR HOLMAN FENWICK WILLAN
First Defendant: INTERFERT AUSTRALIA PTY LTD Counsel: MR B DOYLE - Solicitor: COWELL CLARKE
Second Defendant: PETER EVANS Counsel: MR B ROBERTS - Solicitor: PHILIP FARLAM LEGAL CONSULTING
Third Defendant: JOHN SIMPER Counsel: MR B ROBERTS - Solicitor: PHILIP FARLAM LEGAL CONSULTING
Fourth Defendant: INDEPENDENT GRAIN HANDLING PTY LTD ACN 132 180 306 Counsel: MR B ROBERTS - Solicitor: PHILIP FARLAM LEGAL CONSULTING

Hearing Date/s: 26/07/2011

File No/s: SCCIV-10-1589

A

Carriage of Goods by Sea Act 1991 (Cth) - the charter party was not a "sea carriage document" within the definition contained in Schedule 1A of the Carriage of Goods by Sea Act 1991 (Cth) - both the awards made by the arbitrator in London are enforceable in this Court pursuant to s 8 of the International Arbitration Act 1974 (Cth).

International Arbitration Act 1974 (Cth) s 3(1) and s 8; *Carriage of Goods by Sea Act 1991* (Cth) s 2C, s 11(2), s 11 and Schedule 1A, referred to.

JEBSENS INTERNATIONAL (AUSTRALIA) PTY LTD & ANOR v INTERFERT AUSTRALIA PTY LTD & ORS
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Civil

1 **ANDERSON J.** The parties have requested rulings on questions raised in their agreed statement of position. In my view, the questions raised in that agreed statement numbered 7(a) to 7(d) inclusive should be answered "Yes".

2 It is my view that the charter party constituted an arbitration agreement within the meaning of s 3(1) of the *International Arbitration Act 1974* (Cth). It was an agreement in writing of the kind referred to in sub-article II of article 2 of the New York Convention.

3 The *International Arbitration Act* does not affect the continued operation of the *Carriage of Goods by Sea Act 1991* (Cth) ("COGSA") by virtue of s 2C.

4 Mr Roberts argued that the arbitration clause in the charter party was in contravention of s 11(2) of the COGSA. I reject that argument.

5 I have formed the view that the voyage charter party entered into between the second plaintiff and the first defendant does not come within the ambit of s 11 of the COGSA. In my view it is not a "sea carriage document" within the definition contained in schedule 1A of the COGSA.

6 The definition is set out in the Schedule of Modifications to the Amended Hague Rules, specifically article 1, 1(g) of the schedule. In particular, I find that the charter party is not within 1(g)(iv) of the schedule as argued by the respondents.

7 The COGSA, in its current form, deals with the rights of persons holding bills of lading or similar instruments. A charter party is a document of a different genus.

8 A charter party is not a sea carriage document simply because it is a document containing a contract for the carriage of goods by sea.

9 The charter party is the relevant document, not the bill of lading. The arbitration was concerned with the charter party. The pleadings and correspondence between the parties makes that clear.

10 It is my opinion that both the awards made by the arbitrator in London are enforceable in this Court pursuant to the provisions of s 8 of the *International Arbitration Act*.

11 For these brief reasons, I answer each of the questions 7(a) to 7(d) "Yes".

12 I reserve the right to add to, vary or modify these reasons.

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