[Deciding Court]
Tokyo District Court

[Date of Decision]
28 January 2015

[Case No.]
2012 (wa) No.35587

[Source]
Hanrei Jiho No.2258 p.100

[Summary of Facts]

Plaintiff X is a ship company and a corporation of the Republic of Panama, and a wholly owned subsidiary of A, a Japanese corporation. Defendant Y, which is a Japanese corporation, is a joint stock corporation engaged in the operation of ships (operator).

In July 2008, X executed a time charter agreement (this time charter agreement) with Y in relation to a ship owned by X (this ship) with Y being the charterer. In June 2011, X delivered this ship to Y. Article 17 of this time charter agreement provided in English that if a dispute occurs between the ship owner and the charterer, the matter would be submitted to two (2) arbitrators each designated by each party and one (1) examiner designated by such arbitrators in London (this arbitration agreement). Article 83 of the supplementary provisions of this time charter agreement also provided that the said agreement should be interpreted in accordance with the laws of England.

On July 2, 2012, Y filed a petition to commence reorganization proceedings to the Tokyo District Court, and the said court rendered a decision to commence reorganization proceedings on July 23, and B was appointed as the receiver. Based on receiver B's petition dated July 27, on July 30, the High Court of England issued an order (this High Court order) containing such matters as that (1) the reorganization proceedings of Y in Japan are approved as primary foreign proceedings, (2) unless there is the approval of the receiver or the permission of the court, no legal actions including arbitration may be commenced or continued against Y or the properties of Y.

Receiver B manifested his intent to terminate this time charter agreement to X in accordance with Article 61 Paragraph 1 of the Corporate Reorganization Act (hereinafter, the "Act") by a written form dated August 13, 2012 (this termination notice). On

September 7, 2012, X manifested its intent to set off, in an equal amount, a part of the charter fee receivables based on this time charter agreement, which are reorganization receivables, as the self-work receivables, against a claim for payment of fuel oil fees in an amount of USD 170,779.07 remaining in this ship held by receiver B against X (these fuel oil fee receivables) as the receiving receivables (this prior set-off). Furthermore, X claimed that the charter fee receivables in an amount of USD 462,000 from the date of the petition for commencement of reorganization proceedings till the day immediately preceding the date of the decision of the commencement of such proceedings (these charter fee receivables 1), and the charter fee receivables in an amount of USD 506,000 from the date of the decision of the commencement of the said proceedings (July 23) till August 14, 2012 claimed as being the date of termination of the said agreement (these charter fee receivables 2; hereinafter, collectively with these charter fee receivables 1, the "Charter Fee Receivables") each fell under common benefit claims, the former in accordance with Article 62 Paragraph 2 of the Act and the latter in accordance with Article 127 Item 2 of the Act, and requested the payment thereof and also filed an action to request confirmation that the said receivables were common benefit claims (this action). In response, Y requested dismissal of this action claiming that an arbitration agreement existed in relation to a dispute related to this action.

[Summary of Decision]
claim upheld

Ⅰ. "Y's defense before the merits requesting dismissal of this action, stating that the dispute related to this action is subject to the arbitration agreement, is unfounded."
Ⅱ. "The governing laws of the arbitration agreement is initially determined in accordance with the intent of the parties in accordance with Article 7 of the Act on General Rules for Application of Laws. Considering that it is provided that the time charter agreement should be interpreted by the laws of England and the seat of arbitration is London of the said country, it is appropriate to recognize that there was an implied agreement that the laws of England are the governing laws of this arbitration agreement."
Ⅲ. "The formation or non-formation of this arbitration agreement should be determined in accordance with the laws of England which are the governing laws of this arbitration agreement, …… and from the Arbitration Act of England of 1996 ……, an arbitration agreement is interpreted to be formed by the meeting of the intent to submit to

arbitration."

Ⅳ. 1 "The Arbitration Act of England of 1996 provides that unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement (Article 7). Therefore, it cannot be interpreted that this arbitration agreement was immediately terminated by receiver B's termination of this time charter agreement in accordance with Article 61 Paragraph 1 of the Act."

2 "Also, since it is recognized that the reason why receiver B filed a petition for this High Court order was because to prevent any interference to the reorganization proceedings by the free exercise of rights by a creditor outside of Japan (entire purport of the argument), even if it is interpreted that the receiver is able to terminate the arbitration agreement in accordance with Article 61 Paragraph 1 of the Act, it cannot be interpreted that receiver B manifested his intent to terminate this arbitration agreement due to the fact that the petition above was made."

Ⅴ. "This arbitration agreement uses comprehensive terminology regarding the dispute which is subject to arbitration, 'that should any dispute arise', and it does not place any limits.

However, in light of the facts that …… the central issue of the merits of this action is an issue unique to the interpretation of the Corporate Reorganization Act of Japan ……. whether the Charter Fee Receivables fall under common benefit claim ……and it is considered difficult for an arbitrator in London to make an appropriate decision [evidence abbreviated], and that under the laws of England, except in special cases such as where there is the permission, etc. of the court, it is not permitted to perform arbitration procedures against a company which filed for bankruptcy [evidence abbreviated], it cannot be interpreted that the parties agreed to submit a dispute related to the merits of this action to arbitration in London."