

## FEDERAL COURT OF AUSTRALIA

### Pluto Shipowning Inc v Able Glory Maritime Co Ltd [2019] FCA 1836

File number: NSD 2023 of 2018

Judge: **RARES J**

Date of judgment: 10 October 2019

Legislation: *International Arbitration Act 1974* (Cth) s 8  
*United Nations Conference on International Commercial Arbitration Convention, on the Recognition and Enforcement of Foreign Arbitral Awards* done at New York on 10 June 1958 ([1975] ATS 25)

Cases cited: *The Ship "Sam Hawk" v Reiter Petroleum Inc* (2016) 246 FCR 337

Date of hearing: 10 October 2019

Registry: New South Wales

Division: General Division

National Practice Area: Admiralty and Maritime

Category: No Catchwords

Number of paragraphs: 9

Counsel for the Plaintiff: M Scott QC with E Levine

Counsel for the Defendant: The Defendant did not appear

## ORDERS

NSD 2023 of 2018

**BETWEEN:** **PLUTO SHIPOWNING INC**  
Plaintiff

**AND:** **ABLE GLORY MARITIME CO LTD**  
Defendant

**JUDGE:** **RARES J**

**DATE OF ORDER:** **10 OCTOBER 2019**

### THE COURT ORDERS THAT:

1. The first partial final arbitration award dated 3 January 2018 in the matter of the arbitration between Pluto Shipowning Inc and **Able Glory** Maritime Co Limited be enforceable pursuant to s 8(3) of the *International Arbitration Act 1974* (Cth).

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

## REASONS FOR JUDGMENT (REVISED FROM THE TRANSCRIPT)

### **RARES J:**

- 1 This is an application to enforce a **partial final award** made on 3 January 2018 in London by the three arbitrators appointed pursuant to an arbitration agreement between the plaintiff, **Pluto** Shipowning Incorporated, as owners of *Sea Pluto*, and **Able Glory** Maritime Company Limited, as charterers of the ship under a charterparty made in Shanghai on 8 October 2014.
- 2 The United Kingdom is a party to the *United Nations Conference on International Commercial Arbitration Convention, on the Recognition and Enforcement of Foreign Arbitral Awards* adopted in 1958, known as the New York Convention. Pursuant to s8(3) of the *International Arbitration Act 1974* (Cth), a foreign award being an arbitral award made in a country other than Australia in relation to which the Convention applies may be enforced by this Court, as if it were a judgment of this Court.
- 3 I am satisfied that in October 2018 the arbitrators certified a true copy of the arbitration agreement embodied in the charterparty. Clauses 17 and 83 of the charterparty provided for London arbitration by three arbitrators in the event of a dispute.
- 4 Following delivery of *Sea Pluto* to Able Glory under the charter party, Able Glory arranged with **OW Bunkers**, or one of its subsidiaries, for bunkers to be provided to the vessel. OW Bunkers invoiced both Able Glory and Pluto on 15 October 2014 for the supply of bunkers, in the sum of USD598,675.58. Payment was due 30 days from the date of supply, but as found in the partial final award, payment has never been made and the debt remains outstanding
- 5 On about 18 March 2016, **ING Bank NV**, as assignee of **OW Bunkers** following its collapse, caused *Sea Pluto* to be arrested in Geelong, Victoria, in proceedings commenced in this Court, seeking to recover the debt. As a result of an undertaking providing security in the sum of USD1,234,000 by **Skuld P&I Club** on behalf of Pluto, the ship was released from arrest on 22 March 2016. Skuld required Pluto to counter-secure its letter of undertaking giving that security by placing USD1,357,400 with Skuld.

- 6 On about 26 May 2016, Pluto began the arbitration proceedings in London against Able Glory. Able Glory appointed its own arbitrator, in accordance with the arbitration agreement, and both arbitrators then appointed a third. The arbitrators made the partial final award after a two-day hearing, at which each of Pluto and Able Glory appeared and was represented. The arbitrators concluded that Able Glory was liable to Pluto in respect of the claims by ING or OW Bunkers, by way of indemnity or damages for any liability that might be imposed on Pluto in Australia or in other countries, assuming that any such proceedings were reasonably defended and determined.
- 7 They found that, notwithstanding the decision of the Full Court in *The Ship "Sam Hawk" v Reiter Petroleum Inc* (2016) 246 FCR 337, because ING and its assignor, OW Bunkers, had claimed against Pluto and arrested *Sea Pluto* in Australia, there was a real risk that in other countries, that recognise maritime liens that charterers can create on ships for the supply of necessaries, *Sea Pluto* could be arrested even though such liens are not likely to be recognised in Australia. Accordingly, notwithstanding that ING's and OW Bunkers' claim in Australia against the ship was objectively unsound under Australian law, *Sea Pluto* was still at risk of being arrested in other jurisdictions.
- 8 The partial final award ordered Able Glory to put up counter-security in a form reasonably acceptable to Pluto and Skuld, to replace the security in the sum of USD1,357,400 provided in respect of the proceeding of this Court in March 2016 on behalf of Pluto. The arbitrators also awarded Pluto costs, which have not yet been assessed.

### **Conclusion**

- 9 I am satisfied that the subject matter of the partial final award was capable of settlement by arbitration under the laws in force in the United Kingdom, and that there is no apparent basis under s 8(5) or (7) of the *International Arbitration Act* at the present time not to enforce the award. Accordingly, I will order that the partial final award be enforceable as an order of the Court.

I certify that the preceding nine (9) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Rares.

Associate:

Dated: 10 October 2019