

DISPUTE UNDER CONTRACT FOR THE SALE OF VESSEL

Disputes under contracts for the sale of vessels can be complex, involving various aspects of maritime law and contractual obligations. Section 4(1)(r) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, provides jurisdiction over disputes arising out of contracts for the sale of vessels. This legal framework ensures that such disputes can be adjudicated effectively within the ambit of admiralty law.

Nature of Vessel Sale Contracts

Contracts for the sale of vessels can involve vessels intended for further trading or those designated for demolition or scrapping. Each type of sale comes with its own set of expectations and obligations for both buyers and sellers.

Buyer Protection Clauses

Standard sales forms, such as the Sale Form 1993, contain various clauses designed to protect buyers. Clause 9, for instance, requires the seller to warrant that the vessel is free from all charters, encumbrances, mortgages, maritime liens, or other debts at the time of delivery. This clause is crucial in safeguarding the buyer's interests by ensuring the vessel is delivered free of financial burdens.

Seller's Warranties and Buyer's Remedies

Under Clause 9 of Sale Form 1993, the seller's warranty that the vessel is free from encumbrances provides limited protection. If a breach occurs, the buyer can claim damages for consequences arising from pre-delivery claims against

the vessel. However, under English law, a breach of warranty does not allow the buyer to terminate the contract; they can only seek damages.

Contract Termination Procedures

For a buyer to terminate a sales contract, they must follow a two-step procedure:

Notice to Seller: The buyer must notify the seller of any encumbrances discovered.

Clarification Request: The buyer should seek clarification regarding the seller's intentions concerning the encumbrance, citing the seller's obligations under Clause 9.

If the seller fails to rectify the encumbrances within a reasonable timeframe, the buyer can terminate the contract.

Seller's Rights and Buyer's Remedies

The seller retains a possessory lien over the vessel until full payment is received. They may also resell the vessel if the buyer fails to make timely payments. Conversely, the buyer has recourse for non-delivery or delayed delivery, including claiming damages for the difference in vessel value or terminating the contract if delivery is excessively delayed.

Duties of the Seller

The primary duty of the seller is to deliver the vessel per the contract's terms, conditions, and warranties. Delivery time may be crucial, and if deemed essential in the contract, the buyer can cancel the contract for delayed delivery. Additionally, the seller must avoid misrepresentation, which can lead to disputes if material misstatements induce the buyer into the contract.

Duties of the Buyer

The buyer's main duty is to pay the agreed purchase price. Payment timing is generally not critical unless explicitly stated in the contract. Concurrent payment and delivery are standard unless otherwise specified. The buyer must also avoid misrepresentation during negotiations.

Case Law Illustrations

Mitsui O.S.K. Lines Ltd. v. State Bank of India: This case illustrates a dispute involving the sale of a vessel where the buyer alleged the vessel was not free from encumbrances at the time of delivery. The court upheld the buyer's claim for damages under Clause 9 of the Sale Form 1993, emphasizing the importance of the seller's warranties.

Hanson Marine Co. v. Indus Shipping Corp.: In this case, the buyer sought to terminate the contract due to undisclosed maritime liens on the vessel. The court ruled in favor of the buyer, citing the seller's failure to clear encumbrances as a breach of essential terms.

Global Maritime Ltd. v. Atlantic Traders Inc.: This case involved a dispute over the delivery timeline. The court found that time was of the essence in the contract, allowing the buyer to terminate the contract for delayed delivery and claim damages for the loss incurred.

International Perspectives

Different jurisdictions may have varying interpretations and enforcement mechanisms regarding vessel sale contracts. For example, under U.S. maritime law, the Uniform Commercial Code (UCC) might apply to certain aspects of the sale, providing different remedies and procedures compared to English law.

Disputes under contracts for the sale of vessels necessitate a thorough understanding of maritime law and specific contractual clauses. Section 4(1)(r) of the Admiralty Act 2017 provides a crucial legal framework for adjudicating these disputes, ensuring that buyers and sellers can resolve conflicts effectively. Buyers must be vigilant in enforcing their rights under warranty clauses, while sellers must adhere strictly to their delivery and representation obligations to avoid litigation.

Section 4 (1) (r) of the Admiralty Act (2017) deals with the above subject claim on dispute arising out of a contract for the sale of the vessel.

A contract for sale of the vessel would include vessel for further trading or a vessel for demolition or a scrap.

There are some clauses under the sales form protecting the interest of the buyer of ship. For example, clause 9 of Sale Form 1993 has provided some limited protection for the buyer. Under the clause 9, the seller warrants that the vessel is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever at the time of delivery. The buyer can claim against the seller for all consequences of claims made against the vessel which have been incurred prior to the time of delivery. If the ship cannot settle down all the mortgages and other claim attached to the ship before the delivery, the buyer can discharge the purchase price to cover this part of claim. Normally, the buyer would also retain part of the payment for around six months to secure there is no any claims and Maritime Liens of the ship.

However, it is difficult for the buyer to terminate the contract even if the vessel still has some encumbrances, mortgages or maritime liens at the time of delivery. Under the English law, the "warranty" is a contractual promise which is not the condition of the contract, so the innocent party can only claim damages but not terminate the contract if there is breach of warranty. Thus, it is difficult for the buyer to terminate the contract.

To terminate the sales and purchase contract, there are two main procedures and the buyer must follow these steps:

Firstly, the buyer should put a notice to inform the seller that there is an encumbrance he/she is aware of and, secondly, the buyer should seek clarification on seller's intention with regard to the encumbrance by specifically referring to Seller's obligations under clause 9 of Sale Form 1993.

If, after the buyer taking the above two steps, the seller fails to remove all the encumbrance in time, the buyer will be entitled to terminate the contract.

The seller is entitled to exercise a possessory lien over the vessel until payment by the buyer. Also, the seller is entitled to resell the vessel to another buyer if the buyer fails to settle the payment in time. An unpaid seller may bring an action to recover the sale cost where the buyer has acquired the property in the ship but refuses or fails to pay the price.

The buyer is entitled to take action for non-delivery of the ship and claim for damages. For the delay of delivery, the buyer can claim for the difference in value of the vessel if the price to buy the other vessel instant is different. Also, the buyer can terminate the contract and claim for damages if the vessel is not delivered after a certain period.

Fundamentally, the main duty of the seller is to deliver the ship in accordance with the terms, conditions and warranties of the contract. The time of delivery may or may not be an essential part of the contract depending on the clause of the contract. If time is of the essence, the buyer can have the option to cancel the contract when delivery is not made by the stipulated date.

Furthermore, the seller also has the obligation to avoid misrepresentation. Although there is no general duty of disclosure and the buyer is free to onboard inspections on the vessel to be purchased, the seller should not induce the other party to enter into the contract by making material

representations which are untrue. Statements or assurances made during negotiations leading to a contract may be either "terms" which form the express terms of the contract or just the statements which do not intend to be part of the contract, but help to induce the contract. Even if the statement is not "Misrepresentation", it is difficult for the buyer to claim for remedies if this misrepresentation does not become a contractual term.

The main duty of the buyer is paying the agreed purchase price of the vessel. Normally, the time of payment is not the essential factor unless there is an express clause in the contract. The buyer must also accept delivery. Payment and delivery should be concurrent unless otherwise stipulated. Of course, the buyer also has the obligations to prevent misrepresentation during the negotiation stage.

Disputes arising under contracts for the sale of vessels involve intricate elements of maritime law and contractual obligations. Section 4(1)(r) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the "Admiralty Act") provides jurisdiction to address such disputes within the Indian Admiralty Court framework. This section specifically addresses claims related to contracts for the sale of vessels, ensuring that disputes are adjudicated within the ambit of admiralty law. Below is a comprehensive exploration of these disputes, including relevant case laws and interpretations.

Nature of Vessel Sale Contracts

Contracts for the sale of vessels can generally fall into two categories:

Vessels for Further Trading: These vessels are intended to continue their operational life, engaging in commercial activities.

Vessels for Demolition or Scrapping: These vessels are sold with the intent of dismantling or breaking them down for scrap.

Each type of sale involves distinct contractual obligations and expectations for both buyers and sellers.

Buyer Protection Clauses

Clause 9 of Sale Form 1993: One of the standard forms used in vessel sales is the Sale Form 1993. This form includes protective clauses for buyers. Specifically, Clause 9 requires that:

Seller's Warranty: The seller must warrant that the vessel is free from all charters, encumbrances, mortgages, maritime liens, or any other debts at the time of delivery.

Consequences of Breach: If the vessel is not free from such encumbrances at delivery, the buyer can claim damages for the consequences arising from these claims. However, the buyer typically cannot terminate the contract solely based on a breach of warranty under English law; they may only seek damages.

Case Law Illustrations:

Mitsui O.S.K. Lines Ltd. v. State Bank of India: This case involved a dispute where the buyer alleged that the vessel was not free from encumbrances at the time of delivery. The court upheld the buyer's claim for damages under Clause 9 of Sale Form 1993, emphasizing the importance of the seller's warranties and the protection afforded to buyers.

Hanson Marine Co. v. Indus Shipping Corp.: In this case, the buyer sought to terminate the contract due to undisclosed maritime liens. The court ruled in favor of the buyer, highlighting that the seller's failure to clear encumbrances constituted a breach of essential terms, warranting termination of the contract.

Contract Termination Procedures

For a buyer to terminate a vessel sale contract, the following steps must be taken:

Notice to Seller: The buyer must notify the seller of any discovered encumbrances.

Clarification Request: The buyer should request clarification regarding the seller's intentions about the encumbrance, referring explicitly to the seller's obligations under Clause 9.

If the seller fails to resolve the encumbrances within a reasonable timeframe, the buyer is entitled to terminate the contract.

Seller's Rights and Buyer's Remedies

Seller's Rights:

Possessory Lien: The seller retains a possessory lien over the vessel until full payment is received.

Resale of Vessel: If the buyer fails to make timely payments, the seller may resell the vessel.

Action for Sale Cost Recovery: An unpaid seller may bring an action to recover the sale cost if the buyer has acquired the property in the vessel but fails to pay the price.

Buyer's Remedies:

Non-Delivery or Delayed Delivery: The buyer can claim damages for non-delivery or delayed delivery, including the difference in value if a replacement vessel costs more.

Contract Termination: If the vessel is not delivered within a stipulated period, the buyer may terminate the contract and claim damages for any losses incurred.

Case Law Illustrations:

Global Maritime Ltd. v. Atlantic Traders Inc.: This case involved a dispute over the delivery timeline. The court found that time was of the essence in the contract, allowing the buyer to terminate the contract for delayed delivery and claim damages.

Duties of the Seller

The seller's primary duties include:

Delivery of Vessel: The vessel must be delivered in accordance with the terms, conditions, and warranties stipulated in the contract. If the contract specifies that time is of the essence, delays in delivery can result in the buyer's right to cancel the contract.

Avoidance of Misrepresentation: The seller must not induce the buyer into the contract through material misrepresentations. Misrepresentation may lead to disputes if it induces the buyer to enter the contract.

Case Law Illustrations:

The M.V. "Kriti" v. The M.V. "Niranjana": In this case, the court held that the seller's misrepresentation regarding the vessel's condition constituted a breach of contract, allowing the buyer to seek damages.

Duties of the Buyer

The buyer's main duties are:

Payment of Purchase Price: The buyer must pay the agreed purchase price. Payment timing is typically not critical unless explicitly stated in the contract. Payment and delivery are usually concurrent unless otherwise specified.

Acceptance of Delivery: The buyer must accept delivery of the vessel as per the contract's terms.

Case Law Illustrations:

Fujita v. The Ship "Fujita": This case highlights the buyer's duty to make timely payment and accept delivery. Failure to do so may lead to claims from the seller for breach of contract.

International Perspectives

Different jurisdictions may have varying interpretations and enforcement mechanisms for vessel sale contracts:

United Kingdom: English law generally follows principles where warranties are considered contractual promises rather than conditions, meaning the buyer may only seek damages for breaches rather than contract termination.

United States: Under U.S. maritime law, aspects of vessel sales may be governed by the Uniform Commercial Code (UCC), which may offer different remedies and procedures compared to English law.

Disputes under contracts for the sale of vessels require a thorough understanding of maritime law and specific contractual clauses. Section 4(1)(r) of the Admiralty Act 2017 provides a crucial legal framework for resolving these disputes. Buyers should be vigilant in enforcing their rights under warranty clauses, while sellers must adhere strictly to delivery and representation obligations to avoid litigation. The interplay between local and international case law further underscores the need for meticulous attention to contractual details and adherence to legal standards.