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Dispute after agreed settlement

*High Court ruling[1] highlights that ensuring that the wording of a settlement agreement truly reflects the parties' agreement is key, writes **Deven Choudhary** from CJC's Newcastle office.*

Clare Ambrose J presided as a Deputy Judge of the High Court for this interesting dispute which again reminds us of the necessity that the wording of settlement agreements is accurate and fully reflect the parties' agreement. Failing to ensure this can result in severe repercussions as settlement agreements will override the parties' previous negotiations, especially if they contain an entire agreement clause.

Background

Briefly, in April 2019, the parties' vessels were involved in a collision in India. As a result, the ship of Levant Shipping Ltd (the **"Defendant"**) was arrested, and the Defendant admitted 100% liability for the accident. However, the quantum remained in dispute, and solicitors entered correspondence in April 2020.

The solicitors of Falcon Trident Shipping Limited (the **"Claimant"**) entered pre-action correspondence in response to quantum and provided the Defendant with a Scott Schedule setting out a breakdown of the claim.

The Claimant simultaneously made a Part 36 offer inclusive of interest. The Defendant accepted this offer stating – *"we confirm that our clients accept your clients' attached Part 36 offer of USD775,000 inclusive of interest but plus your clients' reasonable and recoverable pre-action legal costs to be agreed or failing agreement to be assessed. Please let us have... details of your proposed recoverable costs so that we can see if these can be agreed and paid at the same time as the USD775,000?"*.

Thereafter, the parties' solicitors signed a settlement agreement, stating:

a. *"The sum of USD775,000 and inclusive of interest"*;
b. *"The recoverable pre-action legal costs of the Falcon Trident* [the Claimant]*"*; and
c. *"The costs of Falcon Trident owners* [the Claimant] *shall be assessed by the High Court of Justice in London if not agreed between parties"*.

Afterwards, the Defendant paid USD775,000 to the Claimant.

However, another issue arose when the Claimant sought additional sums for four items amounting to USD85,538.06 in respect of *"recoverable pre actioned legal costs"*, on top of the initially paid USD775,000.

The Claimant's solicitor gave evidence explaining how each of the four disputed items related to the cost, seeking to persuade the Defendant to agree and admit liability.

Arguments

The Claimant argued as follows:

1. The Part 36 offer was made and accepted in accordance with Part 36 and the consequences of accepting a Part 36 offer must follow.

2. The settlement agreement merely memorialised the Part 36 offer and gave effect to what had already been agreed – as shown by the fact that it followed the wording of the Part 36 offer; it referred expressly to costs being recoverable.

3. Both parties would have known that a Part 36 offer cannot be made inclusive of costs. The way the cost items were separated from principal items on Scott's schedule meant that the parties knew that these items weren't a part of USD775,000.

4. The agreement to pay USD775,000 was intended to cover everything other than those items which the parties had been treating as costs up to that point.

Court Decision

The Court concluded that the settlement agreement superseded the original Part 36 offer, and the parties chose to conclude a written settlement agreement with fresh wording and an entire engagement clause. The Judge went on to explain that in making and accepting the Part 36 offer, the parties probably intended that it would be an effective Part 36 offer and not be inclusive of all costs.

Claire Ambrose J further stated that "[o]*n its ordinary meaning, paragraph 1 had to be read together with the recital identifying the Claim to be settled by reference to the Scott Schedule and would be understood to mean that all items within the sum of USD876,682.79 given in the summary of claims would be settled by payment of USD775,000."*

Accordingly, the Claimant's claim for four disputed items was dismissed because they were covered by the settlement agreement.

Obiter, the Court held that the fees of lawyers who had been instructed to obtain security, admit liability, or agree English jurisdiction would be recoverable as legal costs. On the other hand agency fees, P&I correspondent fees and the costs of arranging contemporaneous surveys would not qualify as costs but were better claimed as damages or expenses.

CJC Perspective

1. The judgement serves as a useful reminder of how important a clearly worded settlement offer, but even more so the terms of any subsequent settlement agreement, are.

2. At times, the parties may easily assume that certain terms are obviously clear and understood by the opponent, especially where the parties are under pressure to conclude a deal as quickly as possible. The parties should take no risks at this crucial stage and should if possible seek legal advice to prevent future problems with the deal as the opponent might otherwise seek exploit any void or unclarity to their benefit.

3. The crux remains that careful proofreading is required of all the settlement agreements drafted by parties to ensure that all the definitions and figures are in order as mistakes can prove to be very costly.

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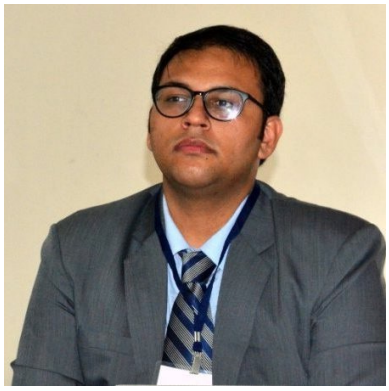
[1] *Falcon Trident Shipping Ltd v Levant Shipping Ltd* [2021] EWHC 2204 (Comm)

For further information, please contact:



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