‘CLASS ACTION ARBITRATIONS’ NOT ALLOWED WHERE ARBITRATION CLAUSE IS SILENT

LeRoy Lambert: President, Charles Taylor P&I Management (Americas), Inc.
Telephone: +1 212 809 8085
E-mail: leroy.lambert@ctcplc.com

On 27 April 2010, the United States Supreme Court issued its decision in *Stolt-Nielsen S.A. v. Animalfeeds International Corp., 559 US (2010)* and held that an arbitration clause is not broad enough to include ‘class action’ arbitrations if it is silent as to whether they are allowed or not allowed. The arbitration clause at issue was the clause in the Vegoilvoy form of charter. A ‘class action’ is a remedy available in a court proceeding by which one plaintiff represents a ‘class’ of similarly situated persons and brings a claim on behalf of all of them against one or more defendants. It is a proven remedy in cases where a wrong has arguably been committed but the damage to any one plaintiff is, compared to the costs of proceeding, not sufficient to justify the risk of bringing the claim. By allowing the ‘class representative’ to bring an action on behalf of all similarly situated persons, a ‘class action’ allows such alleged wrongs to be addressed and decided that might otherwise not be. Many consumer contracts in the US now contain arbitration clauses, and the US courts have been struggling with the issue whether ‘class actions’ should be allowed in arbitrations under such consumer contracts.

The instant case, however, was a dispute under a maritime charter party. Stolt Nielsen was guilty of anti-trust law violations. Animalfeeds, one of Stolt’s charterers, sought in the arbitration to recover damages from Stolt as a result of Stolt’s anti-trust law violations. Animalfeeds then asked that the arbitration be expanded to become a ‘class action’ in which it would bring claims on behalf of all similarly situated persons who had contracted with Stolt. The parties eventually submitted the issue – whether the clause allows ‘class action arbitrations’ – to the panel of arbitrators. The arbitrators interpreted existing case law, including a 2003 decision by the Supreme Court, and ruled that a ‘silent’ arbitration clause should be interpreted to allow ‘class action arbitrations’ in the absence of any intent to preclude them. The district court vacated the award, the court of appeals reinstated it, and the Supreme Court has now vacated it.

The decision will most certainly be welcomed favourably by the maritime industry. It is one less thing to worry about when fixing and performing charterparties.

However, the Supreme Court’s reasoning will doubtless leave lawyers scratching their heads. The US Arbitration Act lists four grounds for vacating an award. In addition, the court many years ago referred to ‘manifest disregard of the law’ as a ground for vacating an award. The lower courts and parties have struggled ever since with the meaning and application of the ‘manifest disregard of law’ standard, in particular, whether it is a separate, non-statutory basis for attacking an arbitration award or whether it is ‘simply’ a ‘gloss’ on the statutory grounds. The legal community believed that this case would finally give the Court the opportunity to clarify this legal point. However, the Court, declined to take the opportunity presented by this case to clarify the meaning and application of ‘manifest disregard of the law’ and yet nevertheless gratuitously added that the manifest disregard standard – that the panel knew the applicable legal principle, appreciated the principle was controlling and ‘wilfully’ refused to apply it – had been met in this case if the Court had decided to apply it.

Instead, the Court based its decision on one of the four statutory grounds in the Arbitration Act, which allows a court to vacate an award “[w]here the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made”. The Court does not quote the full text of the ground and simply refers to it as the “exceeding their powers” ground. Until now, this ground was interpreted narrowly to apply to awards in which the arbitrators decided issues beyond and outside those included in the agreement to arbitrate or which were rendered against parties who were not parties to the agreement.

“Because we conclude that there can be only one possible outcome on the facts before us, we see no need to direct a rehearing by the arbitrators.”

Here, the parties themselves submitted that precise issue – whether the clause permitted class action arbitrations – to the arbitrators to decide. The arbitrators decided that issue. It is difficult to see how the arbitrators “exceeded their powers” simply by deciding the issue submitted to them by the consent and stipulation of the parties. In effect, the Court reviewed the substantive ruling of the panel and reversed it on legal grounds as an incorrect and impermissible interpretation of the arbitration agreement in the Vegoilvoy form, i.e. that the arbitrators exceeded their powers by deciding the issue in a certain way. Moreover, the Court held that there was no need to send the case back to the panel to decide in light of the direction provided by the Court’s opinion, stating: “Because we conclude that there can be only one possible outcome on the facts before us, we see no need to direct a rehearing by the arbitrators.”

Whatever the Court intended, and however correct its decision may be on the merits, its decision will no doubt embolden losing parties to seek judicial review of the reasoning and the conclusions of arbitrators instead of accepting them as ‘final’ and binding.