Charterparty stevedoring charges

PENINSULAR & ORIENTAL STEAM NAVIGATION COMPANY v *NORWEST BEEF INDUSTRIES LIMITED*
New South Wales Court of Appeal 30 April 1987.

The New South Wales Court of Appeal has just affirmed the judgment of Yeldham J at first instance in which his Honour held that P & O was entitled to recover the costs of stevedoring charges from the defendant charterer in accordance with the terms of the charterparty.

The significance of the case is that the charterer sought to argue that by reason of the terms of telexes and conversations which had taken place between P & O's broker and the charterer before the charterparty was entered into, an agreement had been made that P & O would not charge the actual stevedoring charges but would only charge in accordance with a schedule of charges published by stevedores. Alternatively, the charterer argued that P & O was estopped from charging the actual charges and could only charge in accordance with the schedule.

In seeking to assert that it was a part of the charterparty agreement that P & O would only charge the scheduled charges, the charterer sought to rely on the rule enunciated by the High Court in *Codelfa Constructions Pty Limited* v *State Rail Authority*[1] in order to modify the charter by reference to the telexes and conversations. In that case Mason J said that —

> evidence of surrounding circumstances is admissible to assist in the interpretation of the contract if the language is ambiguous or susceptible of more than one meaning. But it is not admissible to contradict the language of the contract when it has a plain meaning.[2]

Both Yeldham J and the Court of Appeal held that there was no ambiguity in the terms of the clause in the charterparty which required the charterer to pay "all other expenses" until the cargo reached the ship's hook. The charterer also failed in an attempt to imply a term into the charter to the effect that P & O would only charge the scheduled charges. Similarly, to the extent that the charterer sought to rely on a collateral contract to support such an argument, their Honours held that the inconsistency of the terms relied upon by the charterer and the actual terms in the charterparty prevented such an argument from succeeding.

As stated earlier, the charterer also relied on promissory estoppel to prevent P & O from recovering the full amount of the charges as opposed to

1 (1981-1982) 149 CLR 337.
2 Supra n1, 352.

the scheduled charges. Differing views have been expressed by various courts as to whether a party can rely on pre-contractual negotiations in order to support promissory estoppel. In the most recent case in which that issue has been discussed, McHugh JA in *State Rail Authority of New South Wales* v *Heath Outdoor Pty Limited*[3] concluded that a party was entitled to rely upon pre-contractual statements to support such an estoppel. Hope JA, with whom Samuels JA agreed, declined to express a view on this point as he determined that the telexes and conversations relied upon to establish the representation made by the broker on behalf of P & O were not sufficiently certain to found an estoppel.

Without saying so expressly, the Court of Appeal has gone some way to re-affirming the objective test which the court must apply in seeking to interpret written agreements and not concern itself with the interpretation, which may be conflicting, which the parties have themselves placed upon the words they have chosen to use in reaching their agreement. In particular they found that it was not the role of an agent who negotiated the written agreement to seek to explain the construction and meaning of a particular clause in the charterparty when the principals had insisted on the particular wording being incorporated in the written agreement.

3 (1986) 7 NSWL 170.