RTI Ltd v MUR Shipping BV: Supreme Court decides sanctions force majeure case on *"fundamental point of principle"*

James Shirley

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In its judgment in ***RTI Ltd v MUR Shipping BV*** [2024] UKSC 18, handed down on Wednesday 15 May 2024, the Supreme Court allowed MUR's appeal, restoring the judgment of Jacobs J. A unanimous court decided that a force majeure clause in the parties' COA permitted MUR to suspend its nomination of performing vessels on account of likely delays in RTI paying freight in US dollars (as required by the COA) following the imposition of sanctions on RTI's parent company.

The central issue before the Supreme Court was whether the Court of Appeal had been correct to uphold the decision of the tribunal in the underlying arbitration that MUR was prevented from relying on force majeure because it could not satisfy clause 36.3(d), which provided that an event or state of affairs did not qualify as force majeure unless it could not be *"overcome by reasonable endeavors (sic)"*. RTI had offered to pay freight in euros (including the cost of conversion into US dollars) and the tribunal found that this solution would have caused MUR no detriment. The Court of Appeal, upholding the tribunal, reasoned that *"a problem or state of affairs is overcome if its adverse consequences are completely avoided"*.

However, the Supreme Court took a different approach, one which treated the appeal as raising a *"fundamental point of principle"* that would in theory apply to all force majeure clauses, namely whether the availability of a non-contractual solution to a contractual impasse may prevent a party from declaring force majeure. The court was concerned that if non-contractual solutions could have this effect, it would undermine the value of the parties' contractual rights and fail to reflect the importance of certainty in commercial contracts.

The decisions of Jacobs J and the Court of Appeal both gave rise to spirited debate. The Supreme Court's decision is sure to re-ignite the arguments on both sides.

James Shirley acted for RTI, led by Vasanti Selvaratnam KC, instructed by David Owens and Ahmed Hassan of Campbell Johnston Clark and Irvine Marr of Armour Consultants.

James Shirley

"A preferred senior junior with an excellent grasp of commercial imperatives." (Legal 500, 2024)

James practises in all areas of commercial law, in particular fraud cases, wet and dry shipping and international arbitration, jurisdictional disputes, and insurance. James is an experienced trial advocate, equally comfortable appearing in person or remotely, whether in English courts and tribunals or those abroad. He has particular experience trying cases in Hong Kong and Singapore.

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