SPC Guiding Case No. 110: The Nanhai Rescue Bureau of the Ministry of Transport v. Aklngros Investment Company and the Shanghai Representative Office of Hong Kong Andaosen Co., Ltd. (Salvage Contract Dispute)

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Keywords

Civil / salvage contract / employed salvage / salvage remuneration

Holding

1. The International Convention on Salvage, 1989 and China's Maritime Law prescribe "no cure, no pay" for salvage contracts, but both permit the parties to separately agree on the determination of salvage remuneration. Where the parties expressly agree that the salved party shall pay remuneration regardless of whether the salvage is successful, and use factors such as the horsepower-hour of the salvage vessel and labor input as the standard for calculating remuneration, the contract is an employed salvage contract, not a salvage contract prescribed by the above international convention and China's Maritime Law.

2. Where the International Convention on Salvage, 1989 and China's Maritime Law have no specific provisions on employed salvage contracts, the relevant provisions of China's Contract Law may be applied to determine the rights and obligations of the parties.

Basic Facts

The Nanhai Rescue Bureau of the Ministry of Transport ("Nanhai Rescue Bureau") alleged: After the "Jiabuli" vessel ran aground in the Qiongzhou Strait, the Nanhai Rescue Bureau was entrusted by Aklngros Investment Company ("Investment Company") to provide salvage, transportation, and stand-by services, but the Investment Company never paid the salvage fees. It requested the court to order the Investment Company and the Shanghai Representative Office of Hong Kong Andaosen Co., Ltd. ("Shanghai Representative Office") to jointly pay salvage fees of RMB 7,240,998.24 and interest.

The court found upon trial: The "Jiabuli" vessel owned by the Investment Company was a Greek-registered tanker carrying 54,580 tons of Cabinda crude oil. At around 0500 hours on August 12, 2011, it ran aground near the north channel of the Qiongzhou Strait. The vessel and its cargo were in a dangerous state, seriously threatening the safety of the marine environment. After the accident, the Investment Company immediately authorized the Shanghai Representative Office to send an urgent email to the Nanhai Rescue Bureau regarding the grounding of the "Jiabuli," requesting the Nanhai Rescue Bureau to arrange two tugboats for salvage based on its experience, and expressing agreement to the Nanhai Rescue Bureau's quotation.

At 2040 hours on August 12, the Shanghai Representative Office submitted a letter of authorization to the Nanhai Rescue Bureau by email, entrusting the Nanhai Rescue Bureau to dispatch the "Nan Hai Jiu 116" and "Nan Hai Jiu 101" to the scene to assist the "Jiabuli" in refloating, and undertaking that, regardless of whether the refloating could be successfully assisted, it agreed to pay at the rate of RMB 3.2 per horsepower-hour, with the billing period running from the time the tugboats started their engines at their respective standby points until the Shanghai Representative Office notified the end of the task and the tugboats returned to their original standby points. The "Nan Hai Jiu 116" and "Nan Hai Jiu 101" were only responsible for the towing operation, and the Nanhai Rescue Bureau was not responsible for any accident

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during the refloating of the “Jiabuli.” In addition, the Nanhai Rescue Bureau was asked to dispatch a team of divers to the “Jiabuli” for inspection, at a cost of: land mobilization fee RMB 10,000; water transportation fee RMB 55,000; and operation fee RMB 40,000 per 8 hours, with the billing period running from the time the divers boarded the transport vessel until they finished the operation and left the transport vessel to go ashore. On August 13, the Investment Company also proposed chartering the “Nan Hai Jiu 201” to transport its two representatives from Haikou to the “Jiabuli.” The Nanhai Rescue Bureau sent an email to the Shanghai Representative Office stating that the rate of the “Nan Hai Jiu 201” was RMB 1.5 per horsepower-hour, with the total fee calculated according to the charter time.

Meanwhile, to prevent the dangerous situation from worsening and causing marine pollution, the Zhanjiang Maritime Safety Administration decided to take compulsory lightering, cargo-reduction, and refloating measures for the “Jiabuli.” Organized and arranged by the Zhanjiang Maritime Safety Administration, on August 18 the “Jiabuli” successfully refloated by using the high tide, and then safely arrived at its destination port of Qinzhou Port, Guangxi.

The salvage situation in which the Nanhai Rescue Bureau actually participated was as follows:

The “Nan Hai Jiu 116” owned by the Nanhai Rescue Bureau had a gross tonnage of 3,681 and a total power of 9,000 kW (12,240 horsepower). After arriving at the accident scene, the “Nan Hai Jiu 116,” according to the Investment Company’s instructions, kept stand-by watch over the “Jiabuli” at the accident scene, working for a total of 155.58 hours.

The “Nan Hai Jiu 101” owned by the Nanhai Rescue Bureau had a gross tonnage of 4,091 and a total power of 13,860 kW (18,850 horsepower). The vessel returned before arriving at the accident scene. The Nanhai Rescue Bureau claimed that the vessel’s working time was 13.58 hours in total.

The “Nan Hai Jiu 201” owned by the Nanhai Rescue Bureau had a gross tonnage of 552 and a total power of 4,480 kW (6,093 horsepower). On August 13, the vessel transported two shipowner representatives to board the grounded vessel, with a working time of 7.83 hours. On August 16, the vessel transported relevant personnel and equipment to the grounded vessel, with a working time of 7.75 hours. On August 18, the vessel transported relevant personnel and luggage to the lightering vessel, with a working time of 8.83 hours.

The divers did not actually enter the water for operations, and their working time was 8 hours.

It was also found that the salved value of the vessel in issue was USD 30,531,856, the salved value of the cargo was USD 48,053,870, and the ratio of the salved value of the vessel to the total salved value was 38.85%.

Judgment

On March 28, 2014, the Guangzhou Maritime Court rendered Civil Judgment (2012) Guang Hai Fa Chu Zi No. 898: (1) the Investment Company shall pay the Nanhai Rescue Bureau salvage remuneration of RMB 6,592,913.58 and interest; and (2) dismissing the other claims of the Nanhai Rescue Bureau. The Investment Company was dissatisfied with the first-instance judgment and appealed. On June 16, 2015, the Guangdong High People’s Court rendered Civil Judgment (2014) Yue Gao Fa Min Si Zhong Zi No. 117: (1) revoking Civil Judgment (2012) Guang Hai Fa Chu Zi No. 898 of the Guangzhou Maritime Court; (2) ordering the Investment Company to pay the Nanhai Rescue Bureau salvage remuneration of RMB 2,561,346.93 and interest; and (3) dismissing the other claims of the Nanhai Rescue Bureau. The Nanhai Rescue Bureau was dissatisfied with the second-instance judgment and applied for retrial. On July 7, 2016, the Supreme People’s Court rendered Civil Judgment (2016) Zui Gao Fa Min Zai No. 61: (1) revoking Civil Judgment (2014) Yue Gao Fa Min Si Zhong Zi No. 117 of the Guangdong High People’s Court; and (2) affirming Civil Judgment (2012) Guang Hai Fa Chu Zi No. 898 of the Guangzhou Maritime Court.

Reasoning

The Supreme People's Court held that this case was a dispute over a salvage contract. China had acceded to the International Convention on Salvage, 1989 ("the Salvage Convention"), and the purposes established by the Salvage Convention should be followed in this case. Because the Investment Company was a Greek company and the "Jiabuli" was a Greek-registered tanker, this case had foreign-related elements. The parties unanimously chose to apply the law of the People's Republic of China in the litigation, and pursuant to Article 3 of the Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations, the law of the People's Republic of China was applied to try this case. China's Maritime Law, as the special law regulating maritime transport relations and vessel relations, should be applied with priority. Where the Maritime Law has no provisions, the relevant provisions of China's Contract Law and other laws shall apply.

Maritime salvage is a traditional international maritime legal system, for which the Salvage Convention and China's Maritime Law have made special provisions. Article 12 of the Salvage Convention and Article 179 of the Maritime Law prescribe the "no cure, no pay" principle for the payment of salvage remuneration, and Article 13 of the Salvage Convention and Articles 180 and 183 of the Maritime Law further prescribe the criteria for assessing remuneration and the specific bearing of remuneration on the basis of that principle. The above provisions are specific provisions on salvage contracts in which the parties determine salvage remuneration on the basis of the "no cure, no pay" principle. At the same time, both the Salvage Convention and China's Maritime Law permit the parties to separately agree on the determination of salvage remuneration. Therefore, in addition to the "no cure, no pay" salvage contract prescribed by the Salvage Convention and China's Maritime Law, an employed salvage contract may also be formed according to the parties' agreement.

According to the facts found in this case, the Investment Company and the Nanhai Rescue Bureau, after full consultation, expressly agreed that the Investment Company should pay remuneration regardless of whether the salvage was successful, and that the Nanhai Rescue Bureau was not responsible for any accident during the refloating of the "Jiabuli." Under that agreement, whether the Nanhai Rescue Bureau obtained salvage remuneration was not directly related to whether the salvage had actual effect, and the calculation of the salvage remuneration was based on the pre-agreed fixed rates and fees such as the horsepower-hour of the salvage vessel and labor input, and had no connection with the value of the salved property. Therefore, the salvage contract in issue did not belong to the "no cure, no pay" salvage contract prescribed by the Salvage Convention and China's Maritime Law, but was an employed salvage contract.

As to the conditions and standards for payment of remuneration under an employed salvage contract, the Salvage Convention and China's Maritime Law have no specific provisions. The first-instance and second-instance courts' adjustment of the fixed rates agreed by the parties in the employed salvage contract based on the relevant factors prescribed by Article 180 of the Maritime Law was an erroneous application of law. This case should determine and regulate the rights and obligations of the parties in accordance with the relevant provisions of China's Contract Law. The Nanhai Rescue Bureau's request, based on the contract it entered into with the Investment Company, that the Investment Company pay the agreed salvage remuneration in full was not improper.

In sum, the second-instance court, using the amount of salvage remuneration determined in the first-instance judgment as the base and, in accordance with the Maritime Law, ordering the Investment Company to pay salvage remuneration according to the ratio of the salved value of the vessel to the total salved property value, applied the law erroneously and reached an erroneous result, which should be corrected. The first-instance judgment applied the law erroneously, but in view of the fact that the first-instance judgment's adjustment of the relevant rates was based on the parties' contractual agreement, and the Nanhai Rescue Bureau did not raise an objection by exercising the relevant procedural rights, the result of the first-instance judgment could be affirmed.

Relevant Legal Provisions

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Articles 8 and 107 of the Contract Law of the People’s Republic of China

Article 179 of the Maritime Law of the People’s Republic of China

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