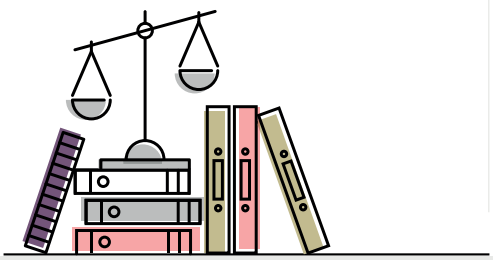
Point 45

Commercial, maritime and arbitration law bullet points from 4-5 Gray's Inn Square

S.44(3) ARBITRATION ACT 1996: INJUNCTING PROCEEDINGS IS NOT NECESSARY TO PRESERVE ASSETS

- **S.44(3) enables the Court to make orders "as it thinks necessary" to preserve assets on the urgent application of a party / proposed party to arbitration**
- **Headowners were not thereunder entitled to restrain bareboat charterers from pursuing sub-bareboat charterers for sums the latter intended to pay charterers, of which headowners claimed to be assignees under the head charter (and wished to pursue under its arbitration clause)**
- **Prior to the making of any payment by sub-charterers, there was in fact no asset to be preserved**
- **Sub-charterers ought to have interpleaded in the appropriate forum (in this case, Hong Kong)**



DAELIM CORPORATION V BONITA COMPANY LTD and ors [2020] EWHC 697 (Comm)
Andrew Baker J, 25 March 2020

D bareboat chartered the "DL CARNATION" to B under a charter subject to an English arbitration clause, and B in turn sub-let the vessel under a bareboat charter to E. The three parties entered into a *"Termination and Settlement Agreement"* (**"the TSA"**) subject to a Hong Kong arbitration clause terminating both charters on payment by E to D of c. US$6 million; and to B of c. US$0.5 million.

D claimed to be owed c.US$1 million by B in unpaid hire under their charter to be assignee thereunder of the c. US$0.5 m that E owed to B under the TSA. However, E indicated that absent injunction, it intended to pay B.

In June 2019 D obtained an ex parte order under s.44(3) Arbitration Act 1996 which restrained E from paying B the disputed amount and required E to pay that money into Court; it also injuncted B from demanding or seeking to recover the sum from E. In July 2019 the parties agreed a continuation of the June Order which continued the prohibition on B from pursuing the contested sum from E.

Andrew Baker J granted B's application to discharge the prohibition on it from pursuing the relevant sums from E, on the grounds that it was not "*necessary*" for the purposes of s. 44(3), applying *Cetelem SA v Roust Holdings Ltd* [2005] 1 WLR 3555.

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