

Clear words and certainty of operation: the holy grail of contractual drafting

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PRACTICES International, Shipping, Ship Construction and Conversion, Litigation, Europe, Middle East and Africa, Shipping Dispute Resolution

A good example of the interpretation of contracts, in practice, arose in *Havila Kystruten AS v Abarca Companhia De Seguros, SA* [2022] EWHC 3196 (Comm), a case that concerned the disputed termination of two shipbuilding contracts.

Lawyers are routinely required to advise their clients on the likely meaning and effect of contractual provisions, in so doing seeking to predict the outcome of a determination by a court or arbitration tribunal. So the opportunity to consider a detailed judgment on the meaning of complex provisions in a shipbuilding contract merits further consideration. This is all the more so given that these types of disputes are generally subject to confidential arbitration proceedings, i.e. the reasoning employed in determining the outcome is normally not publicly available.

The judgment in *Havila*, by Mr Justice Henshaw, is set out in some detail over 159 pages and in fact addresses various legal issues. We will focus however in this article on the approach taken by Henshaw J. on the meaning and effect of certain of the termination provisions under the shipbuilding contracts.

Background

The dispute arose out of two shipbuilding contracts concluded in April 2018 between Havila Kystruten AS (“**Havila**”), the buyer, and Hijos de J. Barreras SA (“**Hijos**”), the shipyard. Under those contracts, Hijos had agreed to design and construct two coastal passenger vessels for a contract price of EUR 108 million per vessel.

At the time of the dispute, Havila had paid Hijos three pre-delivery instalments in the sum of EUR 18.4 million per Vessel, i.e. EUR 36.8 million in total. Further pre-delivery instalments would become payable by Havila in due course under the contracts. As is customary in shipbuilding projects, Havila had the benefit of refund guarantees from Abarca Companhia de Seguros SA (“**Abarca**”) in relation to the (already paid) pre-delivery instalments. Those guarantees provided security to Havila in the event of termination of the shipbuilding contracts and a claim by Havila to recover those instalments.

The dispute arose in the context of ongoing discussions related to Havila’s financing of the project. In short, Havila’s originally intended lender was unable to provide finance in line with the structure of the project and Havila had to secure an alternative lender. Havila’s financing arrangements were also linked to the provision by Hijos of additional refund guarantees securing the repayment of the further (still to be paid) pre-delivery instalments. Indeed, it appears from the judgment that the provision by Hijos of that security was contingent upon Havila securing financing for the project.

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