

Sanctions Risk in Shipping: Court of Appeal Provides Guidance on the Interpretation of Risk Avoidance Clauses

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In *Tonzip Maritime (Singapore) PTE Ltd v 2 Rivers PTE Ltd* (the “Catalan Sea”)[1], the Court of Appeal allowed an appeal by Tonzip Maritime (Singapore) Pte Ltd (formerly Tonzip Maritime Ltd) (“**Owners**”), determining that they were entitled to refuse orders from 2 Rivers Pte Ltd (formerly Coral Energy Pte Ltd) (“**Charterers**”) in circumstances where, in Owners’ reasonable judgment, compliance with Charterers’ orders would expose them to a real risk of sanctions liability.

Background

Facts

By Charterparty dated 5 November 2021 (the “**Charterparty**”) on an amended ExxonMobil VOY2005 form, Owners chartered the MV “Catalan Sea” (the “**Vessel**”) to Charterers to carry a cargo of oil from the Baltic Sea to the Mediterranean (intention Aliaga, Turkey).

The Charterparty included what is referred to in the case as an “EPS Sanctions Clause” (the “**Sanctions Clause**”), Sub-clause C of which provided that Owners “*shall not be obliged to comply with any orders for the employment of the Vessel ... which in the reasonable judgement of the owners, is prohibited by sanctions or will expose the Owners, the vessel or its managers, crew, the vessel’s insurers or reinsurers to sanctions. In the event that such risk arises in relation to a voyage the Vessel is performing, the owners shall be entitled to refuse further performance and the charterers shall be obliged to provide alternative voyage orders*”. “Sanctions”, for the purpose of the Sanctions Clause, referred to what the High Court Judge described as the “Relevant Sanctions Laws”[2].

On 17 November 2021, the Vessel arrived at the nominated port and gave notice of readiness. The draft bills of lading provided to Owners identified the entity Neftisa as shipper of the cargo (the “**Neftisa Cargo**”). Whilst Neftisa was not on any sanctions list, searches on Refinitiv World-Check (a platform used by certain banks and shipowners when managing sanctions issues) identified Neftisa as being associated with Mikhail Gutseriev, who had been sanctioned by the EU and UK earlier in 2021 as a result of his connections with the Lukashenko regime in Belarus. The report from the sanctions checks also contained links to sources, which included a Russian financial newspaper article reporting that Mr. Gutseriev had transferred ultimate beneficial ownership of Neftisa to his half-brother and long-term business partner shortly after being sanctioned, raising concerns as to whether the transaction was at arm’s length.

Due to Neftisa’s apparent connection to Mr. Gutseriev and, unpersuaded by Charterers’ attempts to convince them otherwise, Owners refused to load the Neftisa Cargo and called upon Charterers to provide alternative voyage orders. When Charterers refused and purported to terminate the Charterparty, Owners terminated the Charterparty for repudiatory breach.

Two key issues were in dispute, both at first instance and on appeal, namely:

1. The true construction of the Sanctions Clause
2. Applying the Sanctions Clause, whether Owners were entitled to refuse to load the Neftisa Cargo.

High Court Decision

On the question of construction, Charterers' case was that Owners were entitled to refuse Charterers' orders only if, in their reasonable judgement, compliance with Charterers' orders would (on the balance of probabilities) breach the Sanctions Laws. Owners, on the other hand, contended that they could refuse compliance with Charterers' orders if they formed a reasonable commercial judgment that following Charterers' orders would give rise to a risk or a danger of sanctions infringement. The High Court held that Owners' position was correct; a risk of sanctions infringement was sufficient to refuse Charterers' orders.

Concerning application of the Sanctions Clause, the High Court held that the test they articulated was not met on the facts. As such, Owners were not entitled to refuse to load the Neftisa Cargo. The Court held that Owners did not satisfy this test because, among other reasons, material obtained by Owners did not evidence Mr. Gutseriev's control of Neftisa in November 2021. It was a matter of speculation whether there was such control, and Owners had not been able to confirm the position and accepted that they did not know whether control continued. The Judge held that this was insufficient to "*amount to an objectively reasonable decision that Mr. Gurseriev [sic] had de facto control*".

Court of Appeal Decision

Construction of the Sanctions Clause

The Court of Appeal upheld the High Court's decision, taking the view that the judge at first instance was right to conclude that the words "such risk" used in Sub-clause C of the Sanctions Clause provide "strong support" for Owners' construction of the Sanctions Clause; namely, that "exposure" to sanctions was used in the sense of "put at risk" and that Owners were therefore entitled to refuse Charterers' orders where compliance with such orders would give rise to such risk of sanctions infringement.

The Court also listed the following commercial context factors in support of its conclusion derived from the language used in Sub-clause (C) of the Sanctions Clause:

1. Sub-clause (C) requires Owners to make a prospective determination of the effect of future compliance (or continued compliance) with an order, and to do so in circumstances in which Owners are likely to be much less well-informed than Charterers as to the factual circumstances bearing on the potential application of sanctions: the beneficial ownership or control of the shipper, and the origins and destination of the cargo.
2. When the issues at point 1 arise in a sanctions context, they will frequently be hidden from public view and will be eminently contestable.
3. Sanctions laws are generally broadly phrased and complex, with a view to capturing potential evasion of their application, and the sanctions laws of multiple jurisdictions may be engaged by a single transaction.
4. Owners are required to make a speedy determination, given the commercial significance of delay in the carriage of goods by sea against a background of moving commodity and freight

prices. ... The speed at which Owners are required to make a decision, and the limits of the information likely to be available to them, are to be contrasted with the time, and the information-gathering resources, available to sanctions authorities when determining if the carrying out of the voyage had breached applicable sanctions.

5. This is a context in which it is inherently more likely that Owners are required to reach a reasonable judgment that compliance with Charterers' orders will give rise to a real risk of liability for sanctions, rather than require a determination that such liability will arise on the balance of probabilities.

Charterers advanced further arguments regarding interpretation of the Sub-clause by reference to other clauses in the Charterparty and the use of the word "expose" in other cases, from which the Court derived little or no assistance.

Application of the Sanctions Clause "Risk Avoidance" Test

After confirming the correct interpretation of the test in the Sanctions Clause, the Court considered whether the High Court correctly applied the test to the facts of the case.

On review of the decision at first instance, the Court of Appeal found that the Judge applied the test incorrectly for the following key reasons:

1. The Judge misdirected himself in relying on the case of *Litasco SA v Der Mond Oil and Gas Africa* and the Court expressed doubt as to whether much assistance was to be gained from the decision in *Vneshprombank LLC v Bedzhamov*, though the Judge's reliance upon this decision could only be said to involve a material error of law in one respect.
2. Having recorded the issue he had to decide in accurate terms (namely, whether a reasonable judgment had been made regarding exposure to sanctions risk) the judge had, it appeared from the judgment, at least on the specific issue of Mr. Gutseriev's continuing involvement with Neftisa, addressed "*a different (and contractually irrelevant) question of whether the Owners had made a reasonable determination that such control continued in fact*".
3. Taking account of the information available to Owners at the time of their decision not to comply with Charterers' orders, the Court of Appeal agreed with Owners that a reasonable judgment had been made that compliance with Charterers' orders would have given rise to a real risk of liability to sanctions.

In its own application of the test, the Court of Appeal held unanimously that Owners' decision that following Charterers' orders would have given rise to a real risk of liability for sanctions was an objectively reasonable decision and dismissed Charterers' cross-appeal.

Comment

There are a number of noteworthy points of practical importance arising from the Court of Appeal judgment:

1. This decision provides important guidance on the interpretation of sanctions risk avoidance clauses, particularly as to when a refusal to comply with charterers' orders may be justified on sanctions grounds. The decision is likely to be of wider significance in future cases involving sanctions clauses and risk-based decisions.

2. The courts will not assume linguistic consistency between constituent parts of a charterparty constructed out of different standard forms.
3. The precise wording of a sanctions clause is vital in determining its construction. Careful drafting is therefore essential.
4. The Court of Appeal left open the question of whether a contractual decision-maker exercising a “reasonable judgment” discretion in a commercial context can be challenged on the basis of the process by which the decision was reached (as opposed to the reasonableness of the outcome). However, the Court noted that in commercial cases, judges have tended to be resistant to the suggestion that the exercise of a contractual discretion can be attacked on process grounds alone.
5. The courts will give significant weight to the commercial context in which sanctions determinations must be made, including the information asymmetry between owners and charterers, the speed at which decisions must be taken and the opaque and inherently contestable nature of beneficial ownership and control questions.

A permission to appeal application has been lodged by Charterers. We will report on further developments in due course.

[\[1\]](#) [2026] EWCA Civ 641

[\[2\]](#) Including, *inter alia*, those provisions contained in the UK’s Sanctions and Anti-Money Laundering Act 2018 (SAML A); the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019/600; Council Regulation (EC) No 765.2006 of 18 May 2006 concerning restrictive measures in respect of Belarus; and Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus.