

## Fiona Cain and Milad Amani in Solicitors Journal: Deposits, Conditions Precedent and the Doctrine of Deemed Fulfilment

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**PRACTICES** Shipping Dispute Resolution, Ship Sale and Purchase, International, Shipping

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Haynes Boone Counsel [Fiona Cain](#) and Trainee Solicitor [Milad Amani](#) assess a recent judgement by the Court of Appeal, *King Crude Carriers SA and Others v. Ridgebury November LLC and Others* in an article authored for *Solicitors Journal*.

Read an excerpt below:

The Court of Appeal's judgment has confirmed that the principle in *Mackay v Dick* (despite being a Scottish case) and the doctrine of deemed fulfilment apply under English law, and that this is consistent with the legal maxim that contracting parties do not intend for a party to be able to benefit from its own breach.

It is interesting to note that throughout the case references were made to the need for clarity from a higher court. Firstly, in a quote from the arbitration award, the arbitrators had commented that it was a matter of speculation as to whether the Abacha principle may, in the future, be reviewed by the Supreme Court. It would also be helpful if the Supreme Court were to provide its views on the formulation of the principle in *Mackay v Dick* set out by Lord Justice Popplewell. Secondly, the buyers reserved the right to argue that the decision in *Griffon Shipping LLC v Firodi Shipping Ltd* [2013] EWCA Civ 1567, which concerned a ship sale and purchase on a previous edition of the Norwegian Saleform, had been wrongly decided but accepted that they were bound by it. In that case, the Court of Appeal had found that a buyer's failure to lodge a deposit in time gave a seller the right to terminate the sale agreement and to claim the full amount of the deposit whether or not it exceeded the seller's actual losses.

At the time of writing there is no indication that permission to appeal to the Supreme Court has been sought in respect of this case, but it is possible that the parties will seek a further appeal and the Supreme Court may welcome the opportunity to provide clarity on these issues.

Read the full *Solicitors Journal* article [here](#).