

# The Maltese Falcon: When Contracts Allocate Risk, Courts Will Not Rewrite the Bargain

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**PRACTICES** Shipping Dispute Resolution, Europe, Middle East and Africa, International, Shipping

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In *Pleon Limited v Leonis Yachting Limited* (“*The Maltese Falcon*”) [2025]<sup>1</sup> the English Commercial Court upheld an appeal from an arbitration award concerning the allocation of risk between the parties for the unseaworthiness of a yacht. It serves as a reminder that, where the parties have expressly allocated risk, the English court will not seek to imply terms to address potential unfairness in the parties’ agreement.

## Background

In February 2022, Pleon Limited (seller) entered into a Memorandum of Agreement, on an amended Mediterranean Yacht Brokers Association form, with Leonis Yachting Limited (buyer) for the sale of a yacht, the Maltese Falcon (the Agreement for Sale). Delivery under the Agreement for Sale was on 7 April 2022. The buyer had permission from the seller to inspect all documentation in relation to the yacht’s construction, maintenance, repair and registration. The buyer was also entitled to a four-hour sea trial and authorised to conduct a condition survey of the yacht. If any defects were identified during the survey, the seller would be responsible for remedying them. Subject to this, the yacht was sold “as is”.

The Agreement for Sale was amended to include an Agreement for Access, under which the seller would have use and access of the yacht at no hire charge for 61 days from the 20 April 2022. Clause 3.3 of the Agreement for Access provided that: “*The [Yacht] and her tenders and gear shall be in commission and in full working order and [the Yacht] shall be seaworthy...*” during the period of the seller’s use.

The yacht was sold. During the subsequent access period, the yacht suffered a breakdown of its starboard generator, was immobilised and the access period curtailed from 9 May 2022.

## Award

The majority of the Tribunal found that it was not possible during the time after the yacht had been delivered to the buyer and before the seller had use of the yacht under the Agreement for Access to perform any “transformative maintenance”. It therefore considered that it was appropriate to qualify the buyer’s obligations to provide the yacht in full working order and seaworthy by implying a term into Clause 3.3 that said that the buyer’s obligations were “*conditional on the [Yacht’s] hull and machinery on delivery under [the Agreement for Sale] having been properly maintained*”. The Tribunal considered this was necessary because the parties could not have intended the buyer to perform the Agreement for Access to a higher standard than the seller had to perform the Agreement for Sale when time did not permit this.

A dissenting opinion by Sir Bernard Eder considered that it was not appropriate to imply a term into Clause 3.3, as this would plainly contradict the express term. In his view, that clause was “clear and

unambiguous”, even though it placed the buyer under an absolute obligation to provide the yacht to sellers “in full working order” and “seaworthy”. The buyer appealed.

## Judgment

The question before the Commercial Court was whether it was necessary to qualify Clause 3.3 of the Agreement for Access in order for it to have business efficacy. The court found that it was not, although it reached its conclusion for different reasons than the majority and the minority of the Tribunal. It considered that Clause 3.3 effectively allocated risk, and in doing so, it placed the financial consequences of the yacht being unseaworthy on the buyer. This was the case, even though the buyer had only recently purchased the yacht from the seller, who may have caused the breakdown due its failure to properly maintain the yacht’s machinery prior to its sale. However, under the Agreement for Sale, the buyer had been entitled to sea trials and condition survey, but it did not serve a written notice requiring defects to be made good, so the yacht was sold on an “as is” basis with risk of the yacht being unseaworthy at delivery falling to the buyer.

## Comment

The decision serves as a timely reminder of the English courts' reluctance to imply terms into commercial contracts, particularly where the parties have expressly allocated risk. They are reserved for circumstances where they are truly necessary to give effect to the parties' agreement. Whilst the outcome may appear commercially harsh, as the buyer was left to bear the consequences of a breakdown caused by maintenance failures that occurred whilst the seller owned the vessel, the court’s decision is a clear application of the business efficacy test.

For commercial parties, the case underscores the critical importance of careful and comprehensive drafting. Here, the parties’ agreements contained an inconsistency in their approach to risk. The English courts will interpret and enforce contractual provisions in accordance with their terms, and courts will not rewrite agreements to achieve outcomes that parties may have expected but failed to record expressly or to remedy what one party considers to be an unfair bargain.

We would like to thank [Aimee Benjamin](#) for her assistance with this alert.

<sup>1</sup>[2025] EWHC 3144 (Comm), 28 November 2025