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INTRODUCTION

The High Court has clarified what constitutes "reasonable judgment" in relation to sanctions clauses in charterparties and Owners' ability to refuse Charterers' orders. On 31 July 2025 the High Court handed down its judgment in Tonzip Maritime Ltd v 2Rivers Pte Ltd (formerly named Coral Energy Pte Ltd) [2025] EWHC 2036 (Comm) in which it confirmed the position that speculation is not sufficient to permit reliance on the sanctions provisions of a charterparty to refuse performance.

BACKGROUND

Tonzip Maritime Ltd (the "**Owners**") chartered the M/T "CATALAN SEA" (the "**Vessel**"), to 2Rivers PTE Ltd (the "**Charterers**") under a voyage charterparty for the carriage of oil from a Baltic Sea port to the Mediterranean in November 2021 (the "**Charterparty**").

Prior to entering into the Charterparty, Charterers had entered into a sale contract with Neftyanaya Kompaniya Neftisa, a Russian oil company ("**Neftisa**"), the intended shipper of a cargo of oil on board the Vessel. In June and August 2021, the EU and the UK had imposed sanctions on Neftisa's ultimate beneficial owner and chairman of the board of directors, Mr. Gutseriev. In July 2021, Mr. Gutseriev transferred most of his shares in Neftisa to his brother, also designating him chairman of the board of directors.

In November 2021 the Vessel arrived at Primorsk to load oil. Before loading the cargo, Owners ran sanctions checks on Neftisa, which identified Mr. Gutseriev as a designated individual, indicating that he had control of the company and was the chairman of the board of directors. The sanctions check was expressed to be accurate as at July 2021, with no further information available thereafter.

The Charterparty contained a sanctions clause, providing as follows:[1]

+ the Charterers warranted that "*[no] person or entity at any time having <u>an interest</u> in any of cargo carried under this charterparty, are designated or subject to any national, international or supranational law or regulation imposing trade and economic sanctions, prohibitions or restrictions ("sanctions") and that ... performance of [the] charterparty .... will not expose the owners, the vessel or its managers, crew, the vessel's insurers or re-insurers to sanctions*" (emphasis supplied); and
+ the Owners were not obliged to "*comply with any orders for the employment of the vessel which <u>in the reasonable judgement of the owners</u>, 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*"(emphasis supplied).

Owners, relying on the above clause, refused to load the cargo and requested alternative voyage orders. Charterers provided Owners with various evidence (including an article and legal opinions) confirming the transfer of the majority of his shares and his position in the board of directors to Mr. Gutseriev's brother. However, Owners maintained their position and refused to load. Charterers did not provide alternative orders and a few days later notified Owners that they were cancelling the Charterparty on the basis of Owners' refusal to load the cargo. Owners accepted Charterers' notice as a repudiatory breach and terminated the Charterparty. Charterers then chartered a replacement vessel which accepted to carry the cargo.

Owners brought a claim against Charterers seeking damages for the non-performance of the Charterparty. Charterers brought a counterclaim for the difference between the freight under the Charterparty, and the freight paid for the replacement vessel.

ISSUES

The main issue for determination was whether Owners had entitled to refuse to load the cargo, in reliance on the sanctions clause. Specifically:

a) What was the meaning and effect of the relevant sanctions clause.

b) What were the provisions of the relevant sanctions legislation.

c) Whether in the circumstances it was reasonable for Owners to conclude that Mr. Gutseriev owned or controlled Neftisa.

ANALYSIS

Construction of the sanctions clause

The judge held that the sanctions clause permitted Owners to depart from their primary obligations under the Charterparty, i.e. to perform the Charterers' voyage instructions. Applying the approach of Teare J at [37] of the first decision of <u>The Triton Lark</u>[2], the judge found that the right of a charterer to direct the chartered ship was a "key right" and any limitation on that right had to be "clearly expressed", the clause should therefore be construed "*contra proferentem*": narrowly and with any ambiguity being resolved against the party seeking to rely on it.

The judge held that the clause imposed on Owners the burden of proving that it had made an objectively reasonable decision that, if it performed the Charterers' orders, it would be "subject to risk" or "open to the danger" of sanctions, even if not necessarily that it would be in breach of sanctions. Regard had to be given to an "objectively reasonable" judgment of a "reasonable commercial person" taking place in a "relatively short timeframe".

In relation to evidence, the judge held that a judgment that was based on speculation would not be "objectively reasonable". The judge further found that he was entitled to have regard to material that was available to the Claimant at the time the decision was made, even though it may

[1] The full wording of the Sanctions Clause is set out at Paragraph 28 of the judgement.
[2] Pacific Basin IHX Ltd v Bulkhandling Handymax AS [2011] EWHC 2862 (Comm)

not have been considered by Owners when making the decision.

Requirements of the sanctions laws

The content of the sanctions laws to which the clause referred was relevant in determining what action could expose Owners to the risk of sanctions. The judge identified that for the purposes of EU law, indirectly making funds available to a designated entity would expose Owners to such risk. Under UK law, it was sufficient for Owners to have a reasonable cause to suspect that their actions would make economic funds available to a designated person. The judge stressed that any such suspicion required evidential foundation.

Owners' decision

The judge determined that Owners were not certain that Neftisa was owned or controlled by Mr. Gutseriev in November 2021. To the contrary, in view of all evidence that was or should have been available to them at the time, the judge considered that Owners' decision not to load the Cargo was not objectively reasonable. Therefore, that Owners did not have the right to refuse to load the Cargo and were liable to Charterers in damages.

COMMENT

The judgment confirms the importance of evidence and of appropriate enquiries in the process of deciding whether a counterpart is subject to sanctions. The English Court reiterated that speculation, without supporting evidence, is not sufficient to establish a risk of sanctions and a right to refuse performance of a contract.

This case is subject to appeal, which is due to be heard before September 2026.

A copy of the judgment is available here.

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