



25 June 2026

# COURT OF APPEAL CLARIFIES SANCTIONS RISK ASSESSMENT IN CHARTERPARTY CONTEXT

**The Court of Appeal has overturned the High Court's decision in [Tonzip Maritime \(Singapore\) Pte Ltd v 2 Rivers Pte Ltd \("The Catalan Sea"\) \[2026\] EWCA Civ 641](#), holding that Owners who relied on a charterparty sanctions clause to justify a refusal to comply with an order did not have to prove on the balance of probabilities that compliance with the order would have exposed them to sanctions, but instead were only required to form a reasonable judgement that there was a 'real risk' that such liability would arise.**

## 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**").

The Charterparty contained a sanctions clause, which is set out as an appendix to this article (the "**EPS Sanctions Clause**"). Prior to entering into the Charterparty, the Charterers had entered into a sale contract with the Russian oil company Neftyanaya Kompaniya Neftisa ("**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, it was reported that Mr Gutseriev had transferred most of his shares in Neftisa to his brother, who replaced Mr Gutseriev as 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 Owners, relying on the EPS Sanctions Clause, refused to load the cargo and requested alternative voyage orders.

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

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

## THE HIGH COURT DECISION

Mr Andrew Hochhauser KC, sitting as a Deputy Judge of the High Court (the “**Judge**”) held that, on the construction of the EPS Sanctions Clause, Owners had to demonstrate that they had formed a reasonable commercial judgement that complying with Charterers' orders would have created a risk or a danger that they would be in breach of sanctions. Considering all evidence that was or should have been available to them at the time, the Court found that Owners' decision not to load the Cargo was not objectively reasonable. In particular, the material that Owners had considered did not show that Mr Gutseriev was in control of Neftisa in November 2021 (as it was only valid to July 2021), and the Owners had not been able to confirm the position. Owners accepted that they did not know whether or not Mr Gutseriev had control, and the Judge held that this was insufficient to “*amount to an objectively reasonable decision that Mr Gurseriev had de facto control*”. Therefore, the Owners did not have the right to refuse to load the Cargo and were liable to Charterers in damages.

## THE COURT OF APPEAL

The appeal centred on two questions:

1. What is the natural and ordinary meaning of sub-clause (C) of the EPS Sanctions Clause, and in particular the phrase “*expose... to sanctions*”?
2. Did the Judge err in concluding that the Owners' judgment that complying with Charterers' orders would expose them to sanctions was not a reasonable judgment?

## THE NATURAL AND ORDINARY MEANING OF SUB-CLAUSE (C)

The key issue was whether the words “*expose ... to sanctions*”:

- (i) imposed a threshold which the Owners could only meet by reaching a reasonable judgement that it was “*more likely than not*” that they would be in breach of sanctions if they complied with the Charterers' orders; or
- (ii) whether it was sufficient for the Owners to reasonably conclude that there was a “*real risk*” that sanctions would be breached.

The wording of the Charterparty was central. Sub-clauses (A) and (B) envisage a situation where entry into or performance of the Charterparty was either prohibited by sanctions or would “*expose*” Owners to sanctions. Sub-clause (C) addresses the Owners' obligation to comply with an order at the time it is given, or to continue performing an order already in progress when the sanctions issue arose. The Owners are relieved of the obligation to comply with an order when given if they reasonably judge that compliance: (i) is prohibited by sanctions; or (ii) will expose the Owners to sanctions.

It was common ground that the judgement required was the same, whether in the context of Owners' obligation to follow an order when given or in the context of continuing to perform if an order subsequently becomes affected by sanctions.



The Court of Appeal held that the words “such risk” in sub-clause (C) provided “strong support” for the Owners’ argument that the word “expose” in sub-clauses (A) and (B) was used in the sense of “put at risk”. The Court of Appeal concluded that the language was sufficiently clear to qualify the Owners’ obligation to follow the Charterers’ orders.

The commercial context provided further support for that position. The Court of Appeal noted that the Owners were much less likely than the Charterers to have detailed knowledge of the facts relevant to whether or not sanctions would bite. Such facts were frequently not in the public domain, sanctions laws were generally both broadly phrased and complex, and the Owners needed to make a quick decision under pressure. In this context, it made more sense that the relevant threshold was whether there was a “real risk of liability” as opposed to a determination on the balance of probabilities.

### **Did the Judge err in concluding that the Owners’ judgement that complying with Charterers’ orders would expose them to sanctions was not a reasonable judgement?**

The Court of Appeal agreed with the Owners’ submission that the Judge had erred his application of Litasco SA v Der Mond Oil and Gas Africa [2023] EWHC 2866 (Comm) and Vneshprombank LLC v Bedzhamov [2024] EWHC 1048 (Ch), cases argued to be relevant to the question of what Owners were required to prove in order to show that they had formed a reasonable judgement with regard to the sanctions risk. The Court of Appeal also held that the Judge had erred in addressing the question of whether the Owners had made a reasonable determination that Mr Gutseriev’s control of Neftisa continued, rather than the question of whether Owners had made a reasonable decision that there was a real risk of breaching sanctions. These errors meant that it was open to the Court of Appeal to address the reasonableness of the Owners’ decision.

Taking into account the material available to Owners, including a Russian newspaper article and a sanctions check report, which both undermined the Charterers’ position that Mr Gutseriev has transferred control of Neftisa, the Court of Appeal was satisfied that it was reasonable for Owners to decide that following the Charterers’ orders would have given rise to a real risk of liability to sanctions. The Charterers’ appeal was, accordingly, allowed.

### **COMMENT**

It can be difficult to determine with certainty whether dealing with a particular counterparty will result in exposure to sanctions, as the relevant information is often challenging to obtain. Adding the time pressure that is present in commercial vessel operations makes that challenge greater. The stakes are high; the wrong decision can put a party in breach of sanctions legislation, or in breach of its obligations to its counterparty. This decision offers important guidance for vessel owners and others who may wish to rely on a sanctions clause to excuse them from performance of their contractual obligations. Further, it highlights the challenges that globally interrelated sanctions legislation can pose for parties to international contracts.

As this decision demonstrates, the analysis will almost always begin with considering the precise wording of the charterparty. It was the construction of the EPS Sanctions Clause as a whole, together with consideration of the commercial context, which gave rise to the Court of Appeal’s finding that the Owners were only obliged to reach a reasonable judgement that there was a real risk that sanctions would be breached, and had done so in this instance, in spite of Charterers’ entreaties, rather than a decision that the risk was more likely than not to materialise. This decision demonstrates the willingness of the English courts to take commercial realities into account.



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## THE EPS SANCTIONS CLAUSE

*“(A) the charterers hereby warrant and represent to the owners that neither the charterers nor any person or entity on whose behalf or under whose direction the charterers act or assist, or who directly or indirectly owns or controls the charterers, nor, to their knowledge, any person or entity at any time having an interest 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 entry into and performance of this charterparty is not and will not be prohibited or restricted by, and will not expose the owners, the vessel or its managers, crew, the vessel’s insurers or re insurers to sanctions.*

*(b) the owners hereby warrant and represent to the charterers that neither the owners nor any person or entity on whose behalf or under whose direction the owners act or assist, or who directly or indirectly owns or controls the owners, are subject to sanctions and that entry into and performance of this charterparty is not and will not be prohibited or restricted by, and will not expose the charterers to sanctions.*

*(c) the owners shall not be obliged to comply with any orders for the employment of the vessel in any carriage, trade, voyage, ship-to-ship transfer operation or other service 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”.*