Case No: A3/2015/1274

Neutral Citation Number: [2016] EWCA Civ 778

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
Flaux J
[2015] EWHC 666 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 July 2016

Before :

LADY JUSTICE BLACK
LORD JUSTICE KITCHIN
and
LORD JUSTICE CHRISTOPHER CLARKE

- -

Between :

OMV PETROM SA	**Claimant/ Respondent**
- and -	
GLENCORE INTERNATIONAL AG	**Defendant/ Appellant**

- -
- -

Mr Richard Southern QC and **Mr Fionn Pilbrow** (instructed by **Clyde & Co LLP**) for the **Appellant**
Mr Duncan Matthews QC and **Mr Andrew Fulton** (instructed by **Withers LLP**) for the **Respondent**

Hearing dates : 11 and 12 May 2016

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Judgment

Lord Justice Christopher Clarke :

1. This case concerns the measure of damages for deceit.

The parties

2. OMV Petrom SA is a Romanian Oil Company. It is the successor in title to two other Romanian oil companies SC Rafirom SA ("Rafirom") and SC Compania Romana de Petrol SA ("CRP") both of which were State-owned. Rafirom merged with CRP in 1996. These companies had overall responsibility in Romania for the import of crude oil, the refining of it and the production and export of refined products. Hereafter I use "Rafirom" to cover both Rafirom and, where relevant, CRP. In 1998 CRP became SNP Petrom, the Romanian State oil company, which in 2004 was privatised and became Petrom S.A., later renamed OMV Petrom S.A. ("Petrom"), the claimant and now respondent.

The facts

3. Much of what I say in this respect is to be found in the judgment of Flaux J.

4. The actual importation of crude oil was organised by another State-owned company Petrolexportimport SA ("Petex"). Petex acted as commission agent for Rafirom pursuant to a set of Foreign Trade Agreements. Petex entered into contracts with third parties for the supply of crude oil but as between itself and Rafirom was acting as agent. Payment for the crude oil under contracts with third parties was made by Rafirom/CRP pursuant to letters of credit opened by Petex on behalf of Rafirom/CRP with Banca Romana de Comert Exterior SA ("Bancorex") or another Romanian Bank. Contracts with third parties were usually made on CIF Constantza terms, and when title and risk passed to Petex under those contracts it passed simultaneously, under the Foreign Trade Agreements, to Rafirom. Between 1993 and 1996 crude oil was imported in accordance with the requirements of refineries in Romania pursuant to Annual Energy Programmes laid down by the Government (through the Ministry of Industry) and revised monthly. It was Rafirom's responsibility to implement the national energy programme. The imported crude oil with which this case is concerned was used by four of the ten Romanian refineries, the oil being sent to these inland refineries through pipe lines running from the oil terminal at Constantza. The refineries themselves were owned by subsidiaries of Rafirom.

5. During the period 1993 to 1996 the crude oil imported by Petex for use in the four refineries was principally of three grades: (i) Iranian (mainly Iranian Heavy but sometimes Iranian Light); (ii) Gulf of Suez Mix ("GOSM"), a recognized blend of various Egyptian crudes; and (iii) Urals (Russian crude oil from the Urals also known as Soviet Export Blend). These were medium heavy/sweet crudes which suited the technological profile of the refineries. Although GOSM was a blend, it was a well-recognised one. Hereafter I refer to these three crudes as "brands".

6. Petex had a long standing trading relationship with Marc Rich & Co AG, which in 1994 became Glencore International AG ("Glencore"). Between 1993 and 1996 Glencore made about 80 shipments to Petex of crude oil principally pursuant to contracts calling for the supply of Iranian Heavy, GOSM or Urals. In the case of 32 of these shipments, made between August 1993 and November 1996, the supply

contracts provided for the supply of Iranian Heavy (cargoes 1 to 14) or GOSM (cargoes 15 to 31, including one numbered 25A), but what Glencore in fact supplied was a blend of various crude oils blended for Glencore by the Eilat Ashkelon Pipeline Company ("EAPC") at its storage facility in Ashkelon, Israel. The crudes used in the blends were predominantly, but not always, Egyptian, and in the case of the purported GOSM cargoes contained substantial quantities of Marib, a Yemeni crude oil or Oso, a Nigerian crude oil. The blends were all bespoke and never identical either in terms of the constituent crude oils or their quantities or proportions. The object of the exercise was to create crude oils which resembled Iranian Heavy or GOSM, and replicated their yield characteristics, but the cost of which was less to Glencore than the costs of those crudes would have been. The actual composition of the cargoes was as set out in the so-called Table B which the judge annexed to his judgment, and which is annexed to this one.

7. All the cargoes were loaded at Ashkelon on board vessels chartered or operated by Glencore. Mindful perhaps of 2 Samuel 1.20[1], Glencore created or caused to be created a suite of false documents which were designed to deceive, and did deceive, those in Romania who received and acted on them into thinking that the cargo in each case was either Iranian Heavy or GOSM. These included **bills of lading** which falsely described the crude as Iranian Heavy (or in one case Iranian Heavy Blend). In the case of the GOSM cargoes, the shipping documents including the bill of lading described the cargo as "Gulf of Suez Crude Oils Blend" but the **certificates of conformity and commercial invoices** described the cargo as GOSM as did the letters of indemnity provided to the banks when original shipping documents were not yet available. Accordingly, as the judge found, Glencore clearly intended that Petex, Rafirom, and the banks should regard the descriptions "Gulf of Suez Crude Oils Blend" and "Gulf of Suez Mix" as interchangeable. But as between Glencore and EAPC "Gulf of Suez Crude Oils Blend" was a term of art intended to distinguish GOSM from the blend created at Ashkelon.

8. Other documents with false descriptions of the cargo included certificates of insurance, certificates of quantity and quality, commercial invoices, certificates of conformity, the vessel's ullage reports and time sheets and the master's receipts for samples.

9. In the case of nearly all the claim cargoes the original bills of lading and other shipping documents had not arrived at the bank when the bank was notified that the seller intended to draw on the letter of credit. Glencore would provide the bank in telex form with (i) its commercial invoice which represented that the cargo was Iranian Heavy or GOSM; and (ii) a letter of indemnity. This provided that in consideration of the Banks and Petex releasing payment Glencore warranted that it had title to the cargo which it again represented to be Iranian Heavy or GOSM and that it would do its utmost to produce the original documents as soon as possible. When the original shipping documents were presented to the bank they were checked against the letter of credit by the bank to see that they were compliant before any letter of indemnity was released. The documents were also checked by the finance/accounting department at Rafirom. If the documents had revealed the true

[1] "Tell it not in Gath, publish it not in the streets of Ashkelon, lest the daughters of the Philistines rejoice, lest the daughters of the uncircumcised triumph".

position, the bank would not have released the letter of indemnity and would have alerted Rafirom. If Rafirom had become aware of the true position it would not have repaid the bank pursuant to any cross indemnities or, even if it was obliged to repay, it would have pursued Glencore for an indemnity.

10. The judge was quite satisfied that Petex was unaware of the fraud that was being perpetrated on it until it was informed of the fraud in about May 2002 by a former trader from Glencore who approached Petex out of the blue to blow the whistle. Samples of the oils were taken from the vessels' tanks at the time of discharge; but it was common ground between the petrochemical and refining experts at trial that the testing and analysis which was undertaken could not have discovered that the 32 cargoes were bespoke blends. Rafirom was not aware of the fraud until April 2006 when Petex informed Rafirom about it.

11. If Petex or Rafirom had known the true position they would probably have rejected the claim cargoes and purchased the relevant brand elsewhere. They would not have paid the price of Iranian Heavy or GOSM for a bespoke blend or purchased such a blend without being provided with yield information and negotiating a discount.

12. As to the applicable law, it was accepted that in respect of the first 29 cargoes the common law double actionability rule applied and that in relation to the last 3 cargoes, in the light of the coming into force of the *Private International Law (Miscellaneous Provisions) Act 1996*, Romanian law applied.

13. The judge held that under English law Rafirom had a claim in deceit. The relevant representations were made directly by Glencore to Rafirom's agents, being Petex and the banks which issued and confirmed the letters of credit. Glencore knew that Petex was a commission agent and that whatever representations were made to it would be passed on to, and relied on by, its principal and by the banks, which were, for these purposes acting as Rafirom's agents.

14. Rafirom thus came within all three types of representee identified in the summary of the law at [6-03] of *Chitty* namely as:

> *"first, persons to whom the representation is directly made and their principals; secondly, persons to whom the representor intended or expected the representation to be passed on; and, thirdly, members of a class at which the representation was directed"*.

15. As to Romanian law, the judge was quite satisfied with the opinion of Professor Sorin David of Bucharest University that Rafirom was entitled to pursue a claim against Glencore in delict.

16. The judge was also satisfied that the contention that Petex knew of the falsity of the shipping documents and/or agreed with Glencore that such documents should be presented with a view to deceiving Rafirom was wholly unsustainable. The evidence that there was never any intention to deceive Petex or Rafirom was "*mendacious and unbelievable*" [156]. Rafirom relied upon the fraudulent representations [157], first, when Petex for Rafirom checked the shipping documents which had come with a particular vessel; second, when the banks, on Rafirom's behalf, checked (a) the

commercial invoice and letters of indemnity and (b) the original shipping documents which in due course found their way to the banks and were checked against the letter of credit and, lastly, when the original shipping documents found their way through the banking chain and Rafirom's employees in the financial/accounting department checked them.

Damages

17. Petrom's case as to the damages recoverable was as follows. It claimed first the full price paid by it in respect of the claim cargoes namely US $434,433,302, a figure which was not in dispute. Against that it gave credit for what it submitted was the market value of each of the bespoke blends as at the bill of lading date, which, it was agreed, was the most appropriate date to take rather than the date of the contract.

18. To arrive at that value Petrom's expert, Miss Catherine Jago, used the FOB price for each of the constituents of the relevant blend at the normal place of origin of the constituent in question in order to calculate a composite FOB price for the particular blend on the bill of lading date. To that she added a figure per barrel for the cost of insurance and freight[2] dependent on the size of vessel in which the particular claim cargo was shipped from Ashkelon to Constantza. By this means she arrived at a total CIF price of $ 420,568,562. To that CIF price she applied a discount which she assessed at $ 1.25 per barrel to reflect the fact that what were supplied were bespoke blends and not recognised brands or even 32 cargoes of the same blend. By this means she determined the actual value of the claim cargoes for which Petrom had to give credit as being $ 387,809,566.

19. The judge thought that the figure of $ 1.25 for the discount was too high and should be reduced to $ 1. Applying that discount to the total quantity of the claim cargoes he reached a figure for the discount of $ 26,201,172.

20. In the result, therefore, the damages were calculated as follows:

1.	Full price	$ 434,433,302
2.	CIF figure for the components of the blend	$ 420,568,562
3.	Difference between 1 and 2	**$ 13,864,740**
4.	Discount at an average of $1 per barrel	**$ 6,207,172**

On this approach ("the valuation approach") the damages were $ 13,864,740 + $ 26,207,172 = $ 40,071,913

21. The judge reached the discount figure of $ 1 per barrel in this way. He accepted [200]-[206] the evidence of Miss Catherine Jago and Mr Peter Jones for Petrom that any buyer invited to purchase a blend which contained obscure or unfamiliar components and with no history of their performance would have been looking for a

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[2] The freight was taken as the freight from the place where each component was typically shipped by its producer.

further discount from the CIF price of the components because of the range of uncertainties that came into play when buying an unknown blend as opposed to a recognized grade - refiners being inherently conservative in this respect. Mr Jones and Miss Jago had identified three broad types of uncertainty (i) uncertainty as to the composition of the blend; (ii) uncertainty as to how to set up the refinery or refineries to which the blend was to be supplied; and (iii) uncertainty as to the performance of the blend. The composition of the blends was agreed to be as set out in Table B.

22. As to that composition the judge said this:

> *"204.... some of the claim cargoes contained components the precise nature of which remains obscure. Thus, cargo 19 contains some 15,000 metric tons of oil stated to be "N" which the experts understood to be a reference to "Nile Blend". However, that cannot have been Nile Blend because that crude did not exist outside Sudan at the relevant time in 1995. Cargo 21 contained some 20,000 metric tons of crude oil stated to be "DH". None of the experts could explain what that was. In closing submissions, Mr Southern QC submitted that in the arbitration ten years ago the suggestion was that this was a blend of three Kazakh crudes. Whether that is right or not, the precise provenance of DH remains obscure. Cargo 30 contained just short of 1,700 metric tons of something described as "Fuel Oil Mix ????" As Mr Matthews QC rightly submitted, the question marks indicate that there was uncertainty as to what it was, save that it was not crude oil.*
>
> *205 As a general observation, whilst some of the crude oils used in the blends were well known crudes at the time such as Belayim, Ras Budran and Ras Gharib, others were not well known at the time, such as Geisum (used in cargo 26), Zafarana (used in cargoes 22, 26, 27 and 31) and OSO Condensate (a Nigerian crude used in cargoes 26, 27 and 28). This was the evidence of Mr Roffey in the arbitration and he accepted it in cross-examination before me."*

23. As the judge recorded [207], Mr Duncan Matthews QC accepted on behalf of Petrom that the seller would be able to provide the buyer with the information as to the characteristics of the blend set out in Table B. The judge described this as a "*pragmatic concession*" given that it was unclear to what extent Glencore could in fact have obtained that information in advance from EAPC when offering any blend to the buyer. He, also, accepted the submission that the actual value of the blend was to be assessed on the basis that the hypothetical buyer was provided, in respect of the particular blend that he was buying, the information in Table B and no more. He rejected the submission that it should be assessed on the basis that the seller would have provided full up to date assays of each of the constituents of the blends, a distillation analysis, which tells you how much product you will get at what temperature, and independent verification of those constituents ("the bells and whistles information" as the judge described it).

24. Mr Michael Roffey, Glencore's oil trading expert, was not prepared to put a figure on the sort of discount which might have been achieved by a hypothetical buyer in the present case. He did, however suggest that, based on his own experience in the past something between $ 0.15 and 0.60 a barrel was appropriate. The judge treated this evidence with considerable caution because Mr Roffey's assumption was that the buyer would be receiving the bells and whistles information. In addition his experience was as a buyer working for BP Australia between 1978 and 1981 when he bought about 4 or 5 blends in the course of buying about 180 cargoes a year. At that time the market was very tight in terms of supply, whereas in the period 1993 to 1996 the market was slack and crude oil was in plentiful supply. In those market conditions any purchaser would require more of an incentive to purchase a bespoke blend rather than a familiar brand of crude. In addition the blends which BP Australia bought were comprised of components with which they were familiar; and before the purchase they calculated the yield they were likely to achieve. In the light of his evidence the judge concluded that it was unlikely that, *if given only the information in Table B*, a buyer would have purchased the blends at all, and that if he had done so, the discount would have been considerably in excess of $ 0.60 per barrel which appeared to be his upper limit.

25. When I invited Mr Southern QC to indicate the sort of figure that he might put forward, if the question was relevant, he said that the evidence suggested between 35 and no more than 50 cents.

26. On the issue of discount the judge much preferred the evidence of Miss Jago. She said that an analogy could be drawn with the sort of discount - $ 0.50 to $ 1 per barrel - which would be required for the purchase of a new brand of crude oil. She made it clear that this opinion was based on her experience in the market and the judge plainly accepted that that was so [211] and [215]. But, in her view, the financial incentive required to purchase a blend in the circumstances of the present case would be likely to be greater than that required for a new crude [212]. A new crude oil would be offered with the bells and whistles information and in small volumes whereas the claim cargoes were up to 135,000 m.t. In addition for the buyer of a new crude there would be some financial incentive in purchasing a new crude which might perform sufficiently well to form an ongoing source of supply in the long term. This factor would be completely absent in the case of the bespoke blends each of which differed in composition from all the others. In her evidence she stressed that the risks are associated with the fact that the blend, despite the inclusion in it of recognized brands, is, itself, unrecognized.

27. The judge also accepted that there would, with a new blend, be a risk of a maximum period of 12 hours in setting up the refinery to run a bespoke blend during which production would be sub-optimal. That 12 hours would be about 5-10% of the 10-12 days it would take to process an average cargo quantity of 820,000 bbl which would lead to a margin impairment of about $ 0.06 - 0.07 per barrel.

28. In the result the judge held that the evidence about the level of discount given by Miss Jago was much to be preferred to that of Mr Roffey but, as she recognized, her $ 1.25 figure was something of a subjective figure. The judge reduced it to $ 1 to reflect the fact that the risk of margin impairment in the set-up of the refinery would not in reality have had much impact.

Glencore's submissions

29. Glencore contends that this method of assessment is erroneous. Mr Richard Southern QC on its behalf submits (i) that, even on the valuation approach taken by Petrom damages of $ 40,071,913 cannot be justified; and (ii) that the approach is, in any event, an inappropriate one.

30. As to the first submission, the defects in Petrom's method of assessment are said to be two-old. First, whilst the difference between the full price and the CIF figure might be justifiable, any discount is not. Second, even if some discount is justifiable $ 1 per barrel was too high.

31. The discount is said to be wrong in principle. Its basis was that anyone buying one of the blends would want a substantial discount because of the risks of using an untried blend in a refinery. Use of such a blend could reduce the output of refined product below what would be expected of the relevant brand or affect the machinery of the refinery itself. At worst use of the blend might lead to a fire or, more likely, rust. But, in the events which happened, nothing untoward occurred. In those circumstances any discount is inappropriate. The measure of damages is the price paid less the benefit received being the real value of the goods. To make a deduction for risks which did not eventuate would be to attribute to the blends an unreal value and to compensate Rafirom/Petrom for a loss which it might have suffered but did not. Moreover, if the crude supplied had had some effect on the machinery of the refinery Rafirom could have claimed against Glencore for that so that, effectively, Glencore was the guarantor of such risks.

32. I consider the level of discount further at paragraphs 85 ff below.

The comparative yield approach

33. As to the second submission, Mr Southern contends that the correct method of assessing Rafirom's damages falls to be determined as follows. The crude oil was purchased in order to be processed into refined products. The refineries did so, unaware that the cargoes were blends. In doing so they obtained a less valuable yield than the brands would have done. If there had been no deceit Petex would have bought Iranian Heavy or GOSM (or similar) from other suppliers (or Glencore) and refined it in the usual way. Its complaint is thus about the relative yields of the blends delivered compared with the yield that would have been derived from Iranian Heavy or GOSM and its damages should be assessed by reference to that difference. To do so would provide compensation for Petrom's loss in carrying out the transactions contemplated and put it in the same position as it would have been in if it had bought the brands from another supplier. I call this "the comparative yield" approach. Miss Jago, the claimant's expert, defined Gross Product Worth ("GPW") as "*a means of comparing the value to a refiner of one crude against another*".

34. The fact that Rafirom was not obliged to supply the cargoes the subject of the claim to the refineries was not, Mr Southern submits, relevant, or, at any rate, not determinative. In fact it did supply the crudes in question to the refineries, and that was the purpose for which they had been bought. Nor is it relevant that the buyers paid more for the blends than they would have done if they had known the truth. The relevant inquiry is the loss made by the buyer from acting on the deceit and not what

it would have done or agreed if it had not been deceived. Nor is it relevant to consider what it might have done (e.g. sell the blends on) but did not. What it did was to send the blends for refining as usual and its loss should be measured by the reduction in yield.

35. Glencore's experts, Mr John Minton and Dr Ian Holdaway of Minton, Treharne & Davies ("MTD"), the petrochemical /refinery experts, and Mr Michael Roffey, the oil trading expert, compared the GPW of each blend, i.e. the yield derived from refining the products, with the GPW of the relevant contractual brand. This calculation was based on distillation analyses and computer modelling rather than the measured result of any actual refining process.

36. Rafirom's expert, Mr Jones, also calculated the respective GPWs of the blends. The experts came to agree that their respective GPW calculations were reasonably calculated estimates of the loss suffered by Rafirom if that was to be calculated on a comparative yield approach, and that the tolerances associated with their respective methodologies were such that the results obtained ($ 5,119,000 in the case of MTD and $ 6 million in the case of Mr Jones) were so similar as to be virtually identical. The appropriateness of the comparative yield approach is, Mr Southern submits, confirmed by the similarity of the results of the rival calculations. If he had chosen to accept this method of valuation the judge would have taken the midpoint of the two valuations [35].

Smith New Court

37. The measure of damages in deceit was extensively considered in *Smith New Court Securities v Citibank NA* [1997] AC 254. In that case Lord Browne-Wilkinson summarised the principles applicable to assessing damages for fraud as follows:

> *"In sum, in my judgment the following principles apply in assessing the damages payable where the plaintiff has been induced by a fraudulent misrepresentation to buy property:*
>
> *1. The defendant is bound to make reparation for all the damage directly flowing from the transaction;*
>
> *2. Although such damage need not have been foreseeable, it must have been directly caused by the transaction;*
>
> *3. In assessing such damage, the plaintiff is entitled to recover by way of damages* ***the full price paid by him, but he must give credit for any benefits which he has received as a result of the transaction****;*
>
> *4. As a general rule, the benefits received by him include the market value of the property acquired* ***as at the date of acquisition****; but such general rule is not to be inflexibly applied where to do so would prevent him obtaining full compensation for the wrong suffered;*

> 5. *Although the circumstances in which the general rule should not apply cannot be comprehensively stated, it will normally not apply where either (a) the misrepresentation has continued to operate after the date of the acquisition of the asset so as to induce the plaintiff to retain the asset or (b) the circumstances of the case are such that the plaintiff is, by reason of the fraud, locked into the property;*
>
> 6. *In addition, the plaintiff is entitled to recover consequential losses caused by the transaction;*
>
> 7. *The plaintiff must take all reasonable steps to mitigate his loss once he has discovered the fraud."*

38. As is apparent from that summary the basic measure of damages is the price paid less the benefits received as a result of the transaction which will, in a case where property is acquired, be or include its value at the date of acquisition – which, for present purposes was, by agreement, taken as the bill of lading date.

39. In my view there is, in this case, no sufficient reason to take a different date and good reason not to do so. The purpose of the flexibility of approach about the valuation date to which Lord Browne-Wilkinson referred was to ensure that the person duped should not suffer an injustice by failing to recover full compensation in the type of circumstances to which he referred. There is no need to adopt such an approach in order to relieve the fraudster from the general rule as to damages, especially if to do so means that the person defrauded ends up paying more than the cargo was worth at the time that he bought it. This is particularly so in the light of the observations of Lord Blackburn in *Livingston v Rawyards Coal Co* [1880] 5 App.Cas 25 at 39 that when damage is done maliciously or with full knowledge that the person doing it was doing wrong "*you would say everything would be taken into view that would go most against the wilful wrongdoer*".

40. The crude oil the subject of these proceedings was a commodity bought in the oil trading market. That does not mean that there was a regular market for the sale of the 32 different bespoke blends with a ready supply of buyers and sellers. On the contrary these cargoes were unique and had to be valued by a calculation of the total CIF value of the component crudes discounted on account of the risks and uncertainties involved in buying these odd cargoes which were a mixture of crude oils, condensates and fuel oil. The amount by which the price paid exceeded a price calculated on that basis constitutes the measure of the buyer's loss, representing, as it does, the amount that he has overpaid on account of the seller's deceit. That loss arose when on account of the deceit he acquired the property, for which he had to overpay. The fact, if such it be, that, afterwards, none of the risks to which the discount related materialised cannot alter the fact that the buyer was induced to pay too much when he did so.

Glencore's criticism of the assessment on the valuation approach

41. In my view Glencore's criticism of the method of assessment on the valuation approach is erroneous for a number of reasons.

42. First, it involves taking into account risks which did not materialise after the bill of lading date in order to eliminate the discount which purchasers at that date would have required in the light of those risks. It is not, in other words, an assessment of the value of the blends at the date of acquisition.

43. Second, acceptance of this line of argument would mean that Glencore recovered a price – the CIF value of the components - which it would never have recovered if it had been honest.

44. Third, before the judge Mr Southern relied by analogy on contractual cases where the buyer has purchased goods for a specific purpose and in fulfilling that purpose has been able to minimise his loss to less than the difference between contract and market price which is the prima facie measure of loss under section 53 (1) of the *Sale of Goods Act 1979*.

45. If the present case were brought in contract I would be inclined to agree with the judge that any sub-contract would be *res inter alios acta* for the reasons identified by Scrutton LJ in *Slater v Hoyle & Smith* [1920] 2 KB 11, as cited in [196] of Flaux J's judgment, especially because Rafirom was not the refiner nor was there evidence as to (a) the basis and terms upon which Rafirom supplied crude oil to the refineries; (b) that it was ever obliged to supply crude oil under any particular contract with Glencore to any particular refinery as opposed to selling it for profit; or (c) that it had any liability to the refineries if the crude oil supplied was not what it appeared to be or shared in any profit from the refining of it. The decision of this court in *Bence Graphics v Fasson* [1998] QB 87 may render that debatable; but the consistency between the latter and the former case is, itself, in doubt, especially given the reliance by Auld LJ in *Bence* on the Privy Council decision in *Wertheim v Chicoutimi Pulp Co* [1911] AC 301 which Scrutton LJ thought was erroneous.

46. This is a controversy which I do not propose to resolve. For the purposes of a claim in deceit, I would not regard it as right to discard an assessment of the difference between the price and the lesser value at the date of acquisition of the property in favour of an assessment dependent in part on whether anything untoward transpired in the course of refining. I would also decline to ignore the distinction between Rafirom and its refinery subsidiaries on the ground that they are all organisations of the Romanian State, particularly when Glencore did not pursue its request for disclosure of documents relating to the relationship between Rafirom and the refineries or information thereon: see [178].

47. Fourth, it is not apparent that there were no deleterious consequences as a result of the use of the blends. If Glencore sought to contend that action taken post breach reduced Petrom's recoverable loss it was for it to plead and prove it: *The World Beauty* [1970] P 144, 154 F-G, 158 D. The pleadings made no averment as to what happened at the refinery. There was before the court no record of the actual outturn at the four refineries over 20 years ago and we cannot know whether anything untoward e.g. rusting of machinery or interruption in production occurred there. The information deficit is for Glencore's account.

48. Fifth, Glencore's approach involves the fragmentation of what is a composite exercise. A value of the cargoes is reached by calculating a CIF price of the components and applying a discount on account of risk and uncertainty. The risk is

said not to have materialised. Therefore, it is said, you can revert to the CIF valuation. Put another way, the lie was to say that the blends were brands. That implied that there was no risk of any problem from mixing. That implied statement turned out to be true. So one must revert to the CIF valuation which compensates for the fact that what was supplied was a blend not a brand, without an additional discount for risk.

49. I do not regard it as appropriate to divide up matters in this way. The valuation is to be carried out as at the bill of lading date, being the date upon which Petrom's loss crystallized, and at which time any valuation would have to take account of the then risks. What happened after the bill of lading date does not affect the value of the blend *on that date*. A valuation without any discount would produce a figure which did not represent the market value at that date, at which time no one would have bought the blends without one.

Taking account of events after the date of acquisition

50. In *Smith New Court* the House of Lords recognised that the value of the asset might be taken at a later date than that of its acquisition if that was necessary to give full compensation to the person deceived. Mr Southern submitted that a similar approach should be taken when the buyer's position can be seen to have been better than might have been feared at the time of the acquisition in order to avoid overcompensation.

51. In this respect he prayed in aid some recent cases in which the court has, in assessing damages, taken into account events subsequent to the date of acquisition.

Ageas

52. In *Ageas (UK) Ltd v Kwik –Fit (GB) Ltd* [2014] EWHC 2178 (QB) there was a claim under an insurance policy which protected the claimant against loss in respect of breaches of warranties on the sale to it of several companies in excess of the £ 5 million limit of the vendor's liability for such breach. The warranty broken was as to the accuracy of the company's accounts, which were alleged to be inaccurate in respect of an item known as time on cover bad debt ("TOCBD"). In effect the accounts underestimated the bad debt and overvalued the companies. As at the date of the breach the value of the companies was such that liability under the policy was about £ 12.6 million. The defendant insurers sought to rely on the fact that the TOCBD subsequently turned out to be less because after the sale the bad debts diminished with the result that liability under the policy was assessed at £ 3,792,000.

53. In giving judgment Popplewell J, having considered *The Golden Victory* [2007] 2 AC 253 and the reliance therein on the approach of the House of Lords in *Bwllfa and Merthyr Dare Steam Collieries [1891] Ltd v Pontypridd Waterworks Co* [1903] AC 426, said this:

> *35 The Bwllfa approach, as applied in The Golden Victory, supports the proposition that when assessing damages for breach of contract by reference to the value of a company or other property at the date of breach, whose value depends upon a future contingency, account can be taken of what is subsequently known about the outcome of the contingency as a result of events subsequent to the*

valuation date where that is necessary in order to give effect to the compensatory principle. ***In an appropriate case****, the valuation can be made with the benefit of hindsight, taking account of what is known of the outcome of the contingency at the time that the assessment falls to be made by the court. This is so not merely as a cross check against the reasonableness of prospective forecasting, as Staughton J regarded as permissible in* Buckingham. *It is so whatever view might prospectively be taken at the breach date of the outcome of the contingency.*

36. *This seems to me consistent with principle and justice. In the course of argument I posited an example of the sale of a racehorse, which the seller warranted to be free from disease; its value at the date of sale was to be measured by reference to an assessment of the races it might win and its consequent stud value; at the date of sale it had a latent disease which increased the risk of it suffering a career ending lameness at some stage; if the parties had known the true position at the date of sale the horse would have been valued at half the price because of this increased risk of lameness; by the time damages came to be assessed, however, the horse's racing days were over and it was known that there had been no incidence of career ending lameness despite the increased risk. Would the buyer still be able to claim half the price of the horse on the basis that its value without the benefit of hindsight was half what he paid? I am inclined to think not. By the time damages come to be assessed, it is known that the buyer received a horse which was every bit as valuable at the date of sale as the horse as warranted; with the benefit of hindsight it is known that the horse was as capable of winning the same number of races over its racing career as a horse without the latent disease. To award the buyer half the price of the horse would offend the compensatory principle and provide the buyer with a windfall.*

37. *I would, however, sound a note of caution. There are, in my view, two qualifications to the adoption of such an approach. The first is that it can only be justified* ***where it is necessary to give effect to the overriding compensatory principle****. The prima facie rule, from which departure must be justified, is that damages are to be assessed at the date of breach and that only events which have occurred at that date can be taken into account.*

> *38. Secondly, it is important to keep firmly in mind any contractual allocation of risk made by the parties. Party autonomy dictates that an award of damages should not confound the allocation of risk inherent in the parties' bargain. It is not therefore sufficient merely that there is a future contingency which plays a part in the assessment. It is necessary to examine whether the eventuation of that contingency represents a risk which has been allocated by the parties as one which should fall on one or other of them. If the benefit or detriment of the contingency eventuating is a risk which has been allocated to the buyer, it is not appropriate to deprive him of any benefit which in fact ensues: it is inherent in the bargain that the buyer should receive such benefit. In* The Golden Victory *the contractual allocation of risk, in relation to the period of the charter, formed no impediment to the majority's approach to assessment of damages. The contingency was the outbreak of war, which the parties had provided for by the right to cancel conferred by clause 33. The risk of that happening had been foreseen and had been agreed to be one which if it eventuated would entitle the other party to terminate the charter. The owners had contractually undertaken the risk of such an event allowing the charterers to terminate the charterparty. Adopting an approach to the assessment of damages which took into account the eventuation of the contingency to reduce the owners' damages did not cut across the contractual allocation of risk."* [Bold added]

54. Popplewell J decided that the insurer had failed to demonstrate that the assessment of damages as at the breach date resulted in a windfall to the claimant thereby offending the compensatory principle; and that under the terms of the sale and purchase agreement any benefit or loss arising as a result of how the business was run or as a result of external factors or the success of the business were risks allocated to the claimant and it was not appropriate to deprive it of the benefit of the lower incidence of time on cover bad debt and accordingly the claimant was entitled to recover the larger sum.

Horses

55. Flaux J considered the example of the horse with a latent defect dishonestly concealed which turns out to win all its races. He did not regard it as of assistance to Glencore and nor do I. The upshot of the argument based upon it is that the seller, although fraudulent, is not, on the valuation approach, liable in damages at all. The judge rejected the argument on the basis that it ignored the fact that as a consequence of the fraud the buyer will still have paid more for the crude oil (or the horse) than he would have done if he had known the truth and that it was the difference between the price paid and the actual value which represented the loss.

56. *The Ageas* was a claim in respect of a non-deliberate breach of a warranty which related to a future contingency (whether debts would be paid) and not a case of a

deceit which induced the purchase of an asset for a particular price at a particular date. In those circumstances I do not think it necessary to decide whether Popplewell J's *obiter* inclination was correct. A potential rival view is that there was a difference in value because of the breach of warranty and that the seller should not be relieved of the obligation to pay the buyer the difference between the price and the value of a horse with a latent disease because of the fortunate failure of the latent disease to materialise. The buyer paid the price for a horse without any latent disease when the only price he should have had to pay was the price for a horse with such a disease.

57. In any event Popplewell J's judgment makes clear that the approach to which he inclined could only be justified where it was necessary to give effect to the overriding compensatory principle. I do not regard Flaux J's approach as inconsistent with that principle. Whatever may be the position in relation to contractual claims not based on fraud, the duped buyer is entitled to compensation for the excessive price that he has paid which is to be determined as at the date when he acquired the property. To require the deceiver to make such compensation is consistent with a policy of discouraging intentional wrongdoing.

58. Mr Southern submits that it was wrong in principle to ask what the buyer would have done *if he had been told the truth,* relying on what Lord Steyn said in *Smith New Court* at 283 F-G:

> *"It is not necessary in an action for deceit for the judge, after he had ascertained the loss directly flowing from the victim having entered into the transaction, to embark on a hypothetical reconstruction of what the parties would have agreed had the deceit not occurred.*

59. I do not regard this criticism as well founded. Lord Steyn's observations were designed to confirm that the deceived buyer was entitled to recover all his loss as a result of entering into the transaction and not merely such of his loss as was attributable to the falsity of the representation. In the present case the buyer's loss is the difference between the price it paid and the market value. I accept Mr Matthews' submission that this is a "generic" exercise which does not require consideration of what alternative transaction the claimant would have entered into if not deceived or a hypothetical negotiation between the actual parties.

60. The market value of a cargo will depend on the terms on which it is sold and the information which the buyer has about it. The critical questions are (a) what is the date by reference to which the value/ price is to be determined; and (b) what information is the putative buyer to be taken to have had? The latter is relevant because the price that a purchaser will pay on any given day depends, *inter alia*, on the information that is then available to him, as well as the terms upon which he is to purchase.

61. As to (a), in a case of fraud the answer is, generally, the date of purchase – here the date of the bill of lading. Whatever may be the position in relation to contractual claims there is no good reason for departing from that measure in a case of fraud or at any rate in this one. On the contrary I would, in this case, regard the fact that refining led to no problems as something which should enure to the benefit of Rafirom.

62. As to (b) for the reasons which I have already considered the information which the buyer must be taken to have does not include information about what happened *after* the bill of lading date. Any market value at the bill of lading date would not be based on information which did not then exist. I consider in paragraphs 81ff below the extent of the information which the putative buyer should be taken to have had.

Bacciottini

63. In *Bacciottini v Gotelee and Goldsmith* [2016] EWCA Civ 170 a firm of solicitors negligently failed to advise the purchasers of residential property that there was a planning restriction attached to it restricting its residential use. After the purchase was concluded the appellants successfully procured the removal of the restriction. The judge awarded them £ 250 representing the cost of the application to remove the planning restriction. The appellants said that the judge should have awarded them £ 100,000, representing, as the judge found, the difference between the value of the property upon purchase in May 2007 without the planning restriction and the lesser value at that date with the restriction. This difference assumed that there was a very high likelihood that an application to lift the condition would be successful. The judge had held that the buyer was under a duty to mitigate his loss and that he had done so, reducing it to nil at cost of £ 250.

64. After an extensive consideration of authority Davis LJ, with whom Lloyd Jones and Underhill LJJ agreed, concluded that there was rather less in the case than possibly first met the eye. The nub of it was that by reason of the subsequent removal of the restriction the appellants had suffered no loss in respect of which they required to be compensated. The normal measure was only to be applied if it produced a fair result; and subsequent events were not always irrelevant. The appellants were under a duty to take steps to mitigate by seeking to remove the restriction and had done so. He observed that ultimately cases of this kind have to be determined by their facts, in order to determine the proper measure of damages and having regard to the need to secure a fair outcome. He also regarded the measure of loss as the cost of removing the eminently removable defect.

65. I do not regard this case as assisting Glencore either. It was not a fraud case; its facts were completely different and it did not involve any sale. In the present case the defect in the cargoes was unknown until 20 years later; there was nothing that Petrom could have done about it at the time; nor could it be said that the cost of taking any step was the measure of Petrom’s loss. The normal measure of loss was singularly appropriate for a case where the buyer had paid too high a price on account of the seller’s fraud.

66. Nor am I persuaded that any different result should follow on the footing that in effect Rafirom had Glencore as its guarantor if anything went wrong in the refining process or the yield was less than expected from a brand. That itself assumes that Rafirom would have discovered the deceit which is, itself, uncertain. In any event what falls to be determined is the difference between the price of the crude oil supplied and its market value. The fact that Petrom might have a claim against Glencore for any consequential losses does not affect that difference.

67. Mr Southern submitted that it would be illogical to award damages for deceit which combined (a) the contract price less a market price which involved a discount for

uncertainty and risk; and (b) any consequential loss arising because the risk materialised. In the case of (a) the damages would be calculated on the footing that the buyer knew that the crude to be sold was a blend and that the price should be discounted on account of the risks of using a previously unknown blend. If the buyer paid a price discounted on account of the risk he could not then claim the loss suffered because the risk materialised. By contrast in the case of (b) the buyer would be recovering damages on the basis that, unbeknownst to him, what he got was a blend and not a brand and which, therefore, involved risks of which he was unaware which later materialised.

68. I am far from convinced that there is any illogicality involved in awarding the deceived buyer the difference between the contract and market price of the cargo and any consequential damages. Items 4 and 6 of Lord Browne-Wilkinson's principles appear to contemplate just that. In the example given the deceit will have caused the buyer both to have paid more than he ought to have done and to suffer consequential loss. The fact that he could not have recovered consequential losses if he had bought the cargo knowing of the risk is irrelevant when he bought it in ignorance.

69. Even if it would not have been open to Petrom to claim both the difference in value insofar as it represented a discount for risk and the consequential loss when the risk arose, I am quite satisfied that Petrom is entitled to damages consisting of and limited to the contract price less a market price which reflects the uncertainties of the blends in fact supplied.

Van Dycks

70. Another example raised in the course of argument was the sale of a painting by an art expert who dishonestly states that the painting is a Van Dyck when he has (as he knows) no sound basis for doing so. The buyer pays the price appropriate for a real Van Dyck – say £ 10 million. If he had not been told that it was a Van Dyck he would have paid the much lesser price which a painting of the type in question (seventeenth century painting of unknown authorship in the style of Van Dyck) would command - say £ 1 million. In the event it turns out that it was a Van Dyck after all. Can the purchaser who was deceived by the seller into thinking that the seller had honest grounds for believing it to be a Van Dyck keep the painting and also recover the difference between the £ 10 million he paid and the £ 1 million value of a painting with the less valuable characteristics which were the only ones that the seller, if acting honestly, could ascribe to it?

71. Mr Matthews QC submitted that the answer was "yes". On the information available to the seller the picture could only truthfully be described as being of the less valuable type and the deceived buyer is entitled to recover the price paid less the value at the time of purchase of a painting of the type which it could honestly be said to be. This will mean that he will have paid the lower price at which he ought to have been able to acquire the painting if the seller had been honest. The fact that it later turned out to be a real Van Dyck would give the buyer a windfall if he recovered £ 9 million and kept the picture. But as between the fraudster and himself it is appropriate that the windfall should be his. So here: the fact that none of the risks materialised and that the crude turned out to be relevantly risk free cannot alter the proper measure of damages.

72. Mr Southern submits that the situation argued for by Mr Matthews cannot be right and that the absurdity of such a result (as he would characterise it) which gives the buyer an undeserved windfall shows the need to take into account subsequent discoveries about the nature of the property purchased. Justice requires that account be taken of the true position.

73. I do not regard this example as enlightening. The factual premise – a valuer who acts dishonestly in saying that the painting is a Van Dyck when in fact it is one – must be rare. Even if the factual situation is established I am not wholly convinced that a person who says a painting is a Van Dyck, when in fact it is one, must pay damages because his method of reaching the right conclusion was dishonest.

74. In any event, the example given is not this case. In the example the vendor says that it is a Van Dyck and it is. In the present case Glencore said that the crude shipments were brands and they were not.

The comparative yield approach

75. The judge was right to reject the comparative yield approach as the appropriate measure of damages. I say that for the following reasons.

76. First, Petrom's justifiable complaint was that Rafirom had had to pay more than the cargoes were worth on account of the seller's deceit. It was not that the relative yield of the blends was less than that of the grades. It is unclear whether Petrom or its predecessors, despite their role in the Romanian State-owned industry, had any title to sue in respect of the reduction in yield. They were not the refiners, who would be the beneficiaries of the yield; nor was it established that they were under any obligation to deliver all crude cargoes or any specific claim cargo to the refineries or that they would have had any liability to the refiners for any difference in yield. In any event the fact that the oil was despatched to the refineries and would have produced a reduced yield cannot alter the fact that, as a result of the deceit, Petrom paid more than the blends were worth at the time. Since Petrom was not compelled to deliver the oil to the refineries it had a real legal and economic interest in the value of the cargoes that it paid for.

77. Second, the approach involves a forecast of the comparative yield likely to be obtained from the blends and the brands. Whilst the anticipated yield of a blend may play a part in a determination of its market value, a calculation of GPW is not a determination of that value, not least because a determination of yield assumes that nothing untoward occurs or could be expected to occur in the course of refining, whereas the market value of the crude would take account of the risk of that happening as well as other factors. As the judge recorded, Glencore's own experts accepted that GPW is not an assessment of market value and that yield is only part of the picture in that exercise [179]. A comparative loss of yield approach does not compensate for the loss caused by being deceived into overpaying in the first place. Whatever the yield achievable from the blends Petrom will still have overpaid. In addition the comparison is based on a hypothetical and approximate assessment, based on limited information, and informed by events happening after the bill of lading date, whereas it is the latter date which is, absent special circumstances, the correct one.

78. Third, acceptance of this line of argument would mean that Glencore secured a price of $ 428,433,302 ($ 434,433,302 less - at most - $ 6 million) which exceeds even the undiscounted CIF value of the components i.e. $ 420,568,562. If the GPW figures were the same because the blends could mimic the performance of the brands, Glencore would suffer no reduction in the price at all and would recover the price charged for the grade when (a) what it supplied was the blend; and (b) it could not hope to have secured that price without the deception. In contrast the valuation approach would ensure that Glencore retained no part of its fraudulently acquired profit.

79. Fourth, the reason identified in paragraph 47 above is equally applicable.

80. The conclusion that I have reached makes it unnecessary to determine whether the arguments on which Glencore sought to rely were open to it on the pleadings. A defendant who wishes to assert that post-breach events have reduced a recoverable loss must plead as well as prove it. Glencore did not plead that Petrom mitigated its loss by refining the oil nor did it put in issue the actual circumstances of the refining. Had it done so there would probably have been greater coverage in the evidence as to what did or did not happen in the refining process and Petrom would have been able to adduce whatever evidence was available , including any evidence that actual yields were lower than those predicted by Glencore's GPW calculations.

The discount and its amount

81. As I have indicated, the judge held [208] that, in the light of what Lord Blackburn said in *Livingstone v Rawyards* to the effect that everything should be taken into account which goes most against the fraudster, the court should not proceed on the basis that the hypothetical buyer would have any further evidence about the blend or its likely performance than that contained in Table B. Thus no assumption should be made that the seller would have been able to provide and would have provided the bells and whistles information.

82. Mr Southern submits that this approach was wrong in principle. The exercise with which the court should have been concerned was to determine the real or true value of the blends following a hypothetical negotiation between willing buyer and willing seller. regardless of the circumstances of Rafirom or Glencore or their state of knowledge. The real value should be determined in the light of what is now known about the successful outcome of the refining process and on the assumption that the seller provided all relevant information or at least all the information that the buyer sought.

83. I disagree. The relevant search is for the market value at the bill of lading date, at which date the outcome of any refining process using the blends was uncertain. I, also, agree with the judge that, in the light of *Livingstone v Rawyards,* the market value falls to be determined on the basis of the information contained in Table B. In circumstances where Glencore deceived Rafirom with false information, the court should not assume the provision by Glencore of any more information than would be necessary to ensure that Rafirom was not being deceived, provided that the information postulated is not so scant that no one would willingly buy the product at all. The information in Table B would fulfil that function. That approach may, itself, be favourable to Glencore since, as the judge found, it was unclear to what extent

Glencore could in fact have obtained the information in Table B in advance from EAPC [207]. In addition it might have been possible to calculate market value on the basis of the price they would have fetched if they were described as no more than high sulphur heavy crude oil.

84. Resort to the concept of "real" value is apt to mislead insofar as it appears to call for a valuation with perfect knowledge, including that gained from hindsight, of the characteristics of the crude cargoes and their performance in the refinery. (I have not forgotten that Lord Steyn used that term in *Smith New Court* but that was in the context of a valuation at a particular date in a case where no issue arose about after acquired knowledge: see the passage quoted at [168] of the judgment). But the relevant value is the market value and, in particular, the price which, at the bill of lading date, someone in the position of Rafirom would pay for the blends, if he knew them to be blends. Only such a calculation can determine how much, on account of the fraud, he overpaid.

The amount of the discount

85. Mr Southern submitted that Miss Jago's reasons for a $ 1.25 discount did not justify taking that figure or $ 1 per barrel. Insofar as she relied on the uncertainty of composition of the blend, that was met by the assumption that the cargoes had the composition set out in Table B. As to any analogy from the sale of a new crude, it was not apparent from her evidence exactly what new crudes she was speaking of and her recollection of the detail of her experience was limited. She referred in her evidence to Glencore having had an open option to dump problem oils, which was an irrelevant consideration in determining the true market value of what was supplied. Mr Jones' estimate of the margin impairment in refinery operation from the blends arising from losses incurred in setting up a refinery to run a bespoke blend was minuscule – at best $ 0.07 per barrel. The discount of $ 0.34 for a blend agreed in respect of the SEAWIND II cargo (see judgment [74] ff) applied to a price which was probably in excess of the CIF value of the components which suggested that a $ 1 discount on such value in this case was far too high. The ultimate figure of $ 26 million by way of discount was out of line with the difference between the CIF value of the components which was, itself, a substantial discount on the price.

86. In my judgment, in the light both of the evidence of the experts and common sense, the judge was entitled to find [201] that purchasers of these untried blends ("lucky dip" cargoes as Mr Matthews, perhaps with some degree of exaggeration, characterised them) would require a discount to reflect risks and uncertainties.

87. I have summarised in [26] – [28] above the basis upon which the judge reached his discount figure of $ 1 in preference to Miss Jago's assessment of a discount of $ 1.25. Whilst he accepted that the cargoes had the components set out in Table B he took account [204] of the fact that some of the claim cargoes contained components the precise nature of which was obscure; and that some of the crude oils in the blends were not well known at the time [205]. In addition the information in Table B did not give the buyer information about the presence or absence of cracked materials or high metals or other material which might cause damage to the refinery in the refining process. These factors contributed to the requirement for a discount. He plainly accepted Miss Jago's evidence about her experience in relation to new crudes and took account of the limited significance of margin impairment. He took the view that

the level of discount in the present case should be significantly greater than in the case of the SEAWIND II because that was a barter deal which solved some outstanding problems for both sides.

Conclusion

88. The assessment of a market value for the claim cargoes absent the deceit was quintessentially one of fact and value judgment. The exercise was a difficult one (the difficulty arising because of Glencore's fraud) since it involved 32 bespoke blends of varying composition for which there was neither an established market, observable prices or established methods of valuation. There was scope for a range of possible figures as to the appropriate discount. Mr Southern suggested a figure of no more than 50 cents. Miss Jago suggested $ 1.25 (on the basis that the composition of the blend was unknown) which the judge reduced to $ 1. It was for Glencore to prove the benefit for which Petrom had to give credit: *Midco v Piper* [2004] EWCA Civ 476, but its experts did not even attempt to identify the market value of the cargoes at the bill of lading date. The judge approached Mr Roffey's evidence about discounts with caution for the reasons summarised at [24] above. He found Miss Jago to be a reliable witness and was influenced, *inter alia,* by her evidence about the level of a discount for a new crude (with accompanying information) and the need for any discount for the claim cargoes to be greater.

89. In those circumstances this court should be reluctant to interfere with the judge's finding and I see no good or sufficient reason to do so. He did not, in my judgment, make any error of law and reached a decision which was open to him. Indeed Mr Southern, as I understood him, accepted that if the judge did not err in principle his assessment of the discount was unassailable.

90. I would, therefore, dismiss the appeal. Mr Matthews indicated that in that event Petrom would not seek to pursue its claim for an account of profits.

Lord Justice Kitchin :

91. I agree.

Lady Justice Black :

92. I also agree.

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TABLE B - SUMMARY OF BLENDED CARGOES

Cargo No	1 B/L Date	2 Grade	3 Vessel Name	4 Barrels	5 Gelsum api 29.10	6 Zafarana api 23.20	7 R. Budran api 25.50	8 R Gharib api 21.50	9 Fuet Oil Mix ????	10 Belayim api 27.60	11 OH api 27.86	12 GOSM api 30.10	13 IH api 30.50	14 IL api 32.80	15 Zeit Bay api 36.40	16 N api 34.00	17 Syrian Light api 36.40	15 Marib api 48.40	19 OSO api 47.40	20 Total (MT)
1	08-Aug-93	Iranian Heavy	Khan Asparukh	503,115			31,312						1,000		37,131					69,443
2	09-Sep-93	Iranian Heavy	African Addax	583,376			39,205							2,000	39,679					80,884
3	09-Oct-93	Iranian Heavy	Kingfisher	578,179			39,443							1,400	39,174					80,017
4	20-Oct-93	Iranian Heavy	Hexagram	720,009			51,518							1,457	46,800					99,775
5	17-Jan-94	Iranian Heavy	Equator	685,151			21,036			36,578			500		36,950					95,064
6	28-Jan-94	Iranian Heavy	Equator	763,722			39,758			21,317			500		44,384					105,959
7	27-Mar-94	Iranian Heavy	Oak	923 263			7,948			**76,348**										
														1,000	42,622					127,918
				924,846						37,322										
8	20-Apr-94	Iranian Heavy	Sea Dancer				41,183							1,000	48,751					128,256
9	03-May-94	Iranian Heavy	Saturn	956,805			70,085							1,000	61,559					132,644
10	21-Jun-94	Iranian Heavy	Aspilios	723,348			51,705							1.000	47,538					100,243
11	30-Jun-94	Iranian Heavy	Super Lady	972,073			**36,795**													
										66,164				1,544	13,287			17,088		134,878
12	12-Jul-94	Iranian Heavy	Equator	793,569						88,467		1,728	3,000					16,680		109,875
13	12-Aug-94	Iranian Heavy	Super Lady	645,098						37,229			42,382					9,676		89,287
14	26-Sep-94	Iranian Heavy	Star Hero	941,897			41,830			62,633			1,000					25,003		130,466
15	14-Nov-94	GOSM	Aspilios	821,828			70,411			21,167								22,666		114,244
16	22-Dec-94	GOSM	Star Hero	951,064			73,337					26,600			23,254			9,305		132,496
17	05-Jan-95	GOSM	Hexagram	791,405						79,030		224	4,000		26,937					110,191
18	26-Jan-95	GOSM	Hexagram	776,976			79,809								9,885			18,265		107,959
19	23-Feb-95	GOSM	Aspilios	813,783			60,260					30,460				15,186		7,478		113,384
20	28-Mar-95	GOSM	Aspilios	819,328			29,685			65,641			1,000					17,570		113,896
21	08-May-95	GOSM	Sea Dancer	899,867			83,392				20,058							22,668		126,118
22	28-May-95	GOSM	Hexagram	**899,490**		54,945														
										25,413		16,375						28,135		124,868
				899,812																
23	14-Jui-95	GOSM	Hexagram				79,381			23,500								21,746		124,627
24	05-Sep-95	GOSM	Star Hero	838,751						112,776								17,365		130,141
25	06-Oct-95	GOSM	Daimon	1,029,380						115,232								20,300		135 532
25A	26-Nov-95	GOSM	Cloud	538,647				18,094		50,179								6,593		74,866
26	01-Jan-96	GOSM	Saraband	909,187	27,092	49,702				18,830								272	30,669	126,765
27	23-Jan-96	GOSM	Hexagram	905,445		6,997				100,072									18,075	125,144
28	16-Feb-96	GOSM	Spiros	718,188				65,010									21,861		12,829	99,700
	24-May-96	GOSM	Hexagram	903,126				48,259		50,369								26,630		125,258
30	01-Oct-96	GOSM	**Paola**	967,336				44,909	1,692			**43.994**								
										3,910					40,074					134,579
31	22-Dec-96	GOSM	Santa Maria	909,097		22,228				44,944					58,963					126,135