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Case No: CO/1160/2023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 July 2023

Before:

Sir Ross Cranston sitting as a High Court judge

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Between :

DALSTON PROJECTS LIMITED (1) **SERGEI GEORGIEVICH NAUMENKO (2)** **PRISM MARITIME LIMITED (3)**	**Claimants**
- and –	
THE SECRETARY OF STATE FOR TRANSPORT	**Defendant**

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NIGEL GIFFIN KC and JOHN BETHELL (instructed by **JAFFA & CO**) for the **Claimants**
JASON POBJOY and EMMELINE PLEWS (instructed by **GOVERNMENT LEGAL DEPARTMENT**) for the **Defendant**

Hearing dates: 13-14 July 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 21 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

SIR ROSS CRANSTON:

INTRODUCTION

1. The background to these proceedings is the Russian invasion of Ukraine in February 2022. The claim concerns the lawfulness of the Secretary of State's decision pursuant to the Russia (Sanctions) (EU Exit) Regulations 2019 to detain a 58.5m luxury motor yacht, the MY Phi, which is beneficially owned by a wealthy Russian businessman. In their challenge to the decision, the claimants contend that the Secretary of State acted for an improper purpose under the regulations, as well as in breach of the European Convention on Human Rights, specifically because the detention is a disproportionate interference with their property rights. In a supporting role to these grounds are various challenges on conventional public law grounds.

2. The matter comes to this court because the Russia (Sanctions) (EU Exit) Regulations 2019 ("the Sanctions Regulations") are made under the Sanctions and Anti-Money Laundering Act 2018, and section 38 of that Act enables those like the claimants affected by a decision under the regulations to apply to the High Court for it to be set aside. In considering an application section 38(4) states that the court is to apply the principles of judicial review. If a decision to set aside is made, the section goes on to provide that the court may grant the remedies available in judicial review.

BACKGROUND

The parties and the vessel

3. The second and main claimant is Mr Naumenko, a Russian businessman and beneficial owner of the *MY Phi*. On his account his wealth has arisen from business activity, undertaken over the period since the end of communism in the Soviet Union. He was a senior operational manager and minority shareholder in an investment bank established in 1991 which he sold in 2012; a regional manager and minority shareholder in an asset management company also founded in 1991; and one of the original owners of a construction and development company, privatised in the mid-1990s, and subsequently involved in many major projects in the Ural region.

4. There is no evidence that Mr Naumenko holds any political or administrative position in Russia or has ever engaged in any sort of political activity. Nor is there any evidence that he has ever had any connection with President Putin or his circle. He has not been "designated" under Part 2 of the Sanctions Regulations. The evidence is that the Foreign, Commonwealth and Development Office ("FCDO") has specifically considered and rejected a designation in his case.

5. Although there is no witness statement from Mr Naumenko, there are two witness statements from Sir Ian Seymour Collett Bt, a superyacht consultant at Ward & McKenzie (Yacht Consultants) Ltd, which are yacht surveyors, project managers, and legal consultants. Sir Ian had provided Mr Naumenko with general consultancy services since 2015 in relation to the *Phi* and Mr Naumenko's other superyachts, the *MY Aurelia*, now sold, and the *Phi's* sister vessel, the *MY Phi Phantom*. In one of his witness statements Sir Ian recounts answers which Mr Naumenko gave to questions he put to him about his businesses and wealth.

6. The first claimant, Dalston Projects Limited ("Dalston"), is a special purpose vehicle incorporated in St Kitts and Nevis and current owner of the *Phi*. The third claimant is the Maltese company to whose ownership the vessel would have transferred so as to be owned by an EU-domiciled entity.

7. The defendant is the Secretary of State for Transport ("the Secretary of State") who exercised the power under Part 6 of the Sanctions Regulations to detain the *Phi*. There were two witness statements on behalf of the Secretary of State from Mr James Driver. Mr Driver is a Deputy Director in the department's transport security directorate and Head of the Maritime Security Division. He has responsibility for policy relating to the security of UK ports and British-flagged shipping.

8. As to the *MY Phi* ("the vessel") itself, it was moored at South Dock in the West India & Millwall Docks in London in December 2021 and remains there. London was her first port of arrival following her delivery as a newly built vessel by the Royal Huisman Shipyard in the Netherlands. She came to London partly for tax reasons (she was to be onward exported into the EU), and partly at the invitation of a British magazine to participate in the World Superyacht Awards. Following that winter stopover, she was due to leave London for Malta on 28 March 2022, followed by post-delivery warranty works in Mallorca, and a chartering season in the Mediterranean.

Detention direction, 28 March 2022

9. The Russian invasion of Ukraine escalated on 24 February 2022. In the second week of March 2022 the Department for Transport ("DfT" or "the Department") began making enquiries about the ownership of the vessel, apparently because the National Crime Agency ("NCA") had been asked to investigate opportunities to consider large yachts. The vessel was identified as connected with Russia along with Mr Naumenko's beneficial ownership. Ministerial submissions of 13 March and 24 March had highlighted [the vessel] as a "ship of interest."

10. On the evening of 28 March 2022 officials of the DfT put up a submission for personal consideration by the Secretary of State, then the Rt Hon Grant Shapps MP. The submission asked Mr Shapps to consider certain specified evidence, as well as material about legal risk, and to decide whether he wished to exercise his powers to detain the vessel. If so, he was requested to sign the relevant documents.

11. The submission summarised the evidence for saying that the power to detain existed in that the vessel was owned by Mr Naumenko, who lived in Ekaterinburg, Russia. The public sector equality duty was mentioned at paragraph 14 and the public interest in "strong action in the present crisis". There was reference to an agreed press briefing strategy in paragraph 15. The submission did not make any recommendation one way or another as to whether the power of detention should be exercised:

> "Under regulation 57D (1) of the Regulations, you have the power to issue a Detention Direction, **if you so wish**." (bold type in original)

The evidence presented in Annex C to the submission set out how the preconditions for the exercise of the power were satisfied. The invoice from the Dutch shipyard showed the value of the ship for customs purposes as over €44 million. There was also a letter

from the NCA which expressed the belief that Mr Naumenko also owned the *Phi Phantom*, the *Phi's* sister vessel.

12. Mr Shapps reviewed the submission and agreed to detain the vessel. The "read-out" from his private office recorded his comment "that it is most certainly both in the public interest to detain this ship and to publicise the fact of its detention". Mr Shapps signed The Phi (Russia (Sanctions) (EU Exit) Regulations 2019) Direction 2022 ("the detention direction"). It contains a detention direction (paragraph 3) and a movement direction (paragraph 4). At paragraph 5 the detention direction stated:

> "The Phi is being detained on the grounds that it is owned, controlled or operated by [Mr Naumenko], a person connected with Russia."

A footnote to paragraph 5 referred to the definitions of "person connected with Russia", "owned" and "controlled", contained in the Sanctions Regulations.

13. The detention direction was delivered by the NCA to the Master of the vessel, Captain Booth, at South Dock the following morning, 29 March 2022. Mr Shapps visited the dock afterwards. Mr Shapps' department prepared a communications plan for him. The key messages were:

> "The UK is taking decisive action to maintain the pressure on Russia and further demonstrate the Government's action to support this effort against Russia's illegal war.
>
> The NCA, Border Force, and the DfT have worked closely together with international law enforcement networks to investigate ownership of vessels and apply sanctions against those benefitting from Russian connections."

14. At South Dock Mr Shapps conducted a number of interviews with the media, and filmed a TikTok video of himself which was then posted to social media. While standing on the quayside next to the vessel and referring to its detention Mr Shapps said: "It's a yacht which belongs to a Russian oligarch, friends of Putin." Mr Shapps' remarks were widely reported by media organisations. Mr Shapps told ITN News that the owner was an "oligarch" who had "made their money through their association with President Putin whilst he is going into Ukraine". The BBC reported that: "Transport Secretary Grant Shapps said the individual was not currently sanctioned but had close connections to Russian President Vladimir Putin" and quoted him as saying that "People who have benefited from [Mr Putin's] regime cannot benefit from sailing around London and the UK in ships like this".

15. Later that day Sir Ian Collett of Ward & McKenzie asked the department by e-mail for "a formal response as to why the Secretary of State has felt it necessary to issue the Direction and to detain the vessel."

16. There was a response from the department the same day, 29 March 2022. So far as relevant it noted Ward & McKenzie's confirmation that Mr Naumenko was the ultimate beneficial owner of the vessel and a Russian national.

Continuation of detention direction, 11 April 2022

17. There was a further ministerial submission, dated 8 April 2022. Its covering note was dated two days previously. At paragraph 2, the covering note recommended ("Following previous steers from the SoS [Secretary of State])" that the detention of the vessel should be maintained "whilst seeking further evidence". Paragraph 3 of the covering note said this:

> "By continuing the detention of the vessel the Secretary of State would be relying on a generic argument that in order to own the yacht Mr Naumenko must be a wealthy individual, and it is reasonable to assume (in the absence of evidence to the contrary) that persons of wealth who are resident/located in Russia are (i) connected to the regime by patronage and/or (ii) in a position to influence Putin/the administration. We have found no evidence to either prove or disprove this."

18. Paragraph 4 of the covering note stated that the Secretary of State should consider whether the "potentially indefinite" detention of the vessel was a proportionate means of achieving a legitimate aim and should "be able to fully articulate what that aim is."

19. The submission itself expressed the view at paragraph 1 that the immediate issue was to respond to correspondence from the owner's representatives (i.e., Ward & McKenzie), and to "confirm your view for ongoing detention of the vessel." At paragraph 2, it recommended that a response to the correspondence should be sent, in the form of what became the department's e-mail of 11 April 2022. The submission recommended that Mr Shapps should note the rationale for detention at Annex D to the submission, and the risk of legal challenge. He should "provide a steer" as between options. Option A was "maintain detention direction whilst seeking further evidence", and Option B was to revoke the detention direction "if you take the view that the continued designation of the vessel no longer meets the purposes of the Regulations."

20. Paragraph 7 of the submission said that officials had repeatedly requested the FCDO to designate Mr Naumenko, in other words under Part 2 of the Sanctions Regulations, "however we understand that FCDO do not intend to designate [him] at this time as no further evidence has yet been found linking [him] to the Russian regime." Paragraph 10 said that due consideration had to be given to whether detention "continues to meet the purposes of the Regulations", and that any decision had to be "rational and proportionate based on the available evidence and the purposes of the Regulations."

21. Attached to the submission was a copy of Ward & McKenzie's e-mail pointing out that there was no evidence of Mr Naumenko meeting the designation criterion for being an "involved person".

22. Annex D to the submission was headed *Rationale for the Detention of the Phi*. In referring to the regulation 4 purpose and the original decision to detain the vessel, it stated that it was:

> "felt that exercising the powers available . . . to detain the yacht would send a clear message of intent to Russian oligarchs and others directly or indirectly linked to Putin's regime – with the

> aim of damaging support for Putin and limiting resources available to the Russian state."

Annex D then noted that it was:

> "likely that Phi's owner had benefitted and/or continues to benefit from the current Russian regime to accumulate the level of wealth to be able to afford a superyacht valued at £38 million."

Annex D suggested that the value of the vessel, when combined with his Russian residency, suggested that its owner "has accumulated a level of wealth that . . . suggests significant economic activity in Russia that would be beneficial to the regime." In referring to the hope that the cumulative impact of sanctions "particularly on the elites/those with power" would "contribute to a wider cultural and social change putting further pressure on Putin and the Russian regime", Annex D added:

> "Through the material impact of having his vessel detained it was thought that the owner may respond by criticising or withdrawing support for the Putin government, for example if he was to publicly distance himself from the regime and/or actions of the state.
>
> The detention of the Phi sits as part of a wider package of sanctions being implemented across HMG and by other nations. Whilst the detention of the Phi is one action, officials considered that it could contribute to a wider cultural and social change putting further pressure on Putin and the Russian regime. There is also the hope that the cumulative impact of sanctions upon the Russian economy, and particularly on the elites/those with power, will erode support for actions against Ukraine."

23. The read-out e-mail on 11 April 2022 from the Secretary of State's private office recorded that Mr Shapps and the Parliamentary Under-Secretary, Mr Robert Courts MP, were content to agree the recommendation. A note from Mr Courts said: "maintain [detention] for now whilst we obtain further evidence - but we do need to consider this fully in the round once that is obtained and come to a properly evidenced decision."

24. An e-mail was sent to Ward & McKenzie the same day, 11 April 2022, stating that "the Secretary of State remains content that the continued detention of the vessel is appropriate".

Events May-December 2022

25. On 26 May 2022 Ward & McKenzie sent a further letter to the Department of Transport, setting out reasons for the Secretary of State to reconsider his decision and to allow the vessel to depart from the United Kingdom.

26. The department's response of 14 June 2022, so far as relevant, said:

> "We understand that your client [Mr Naumenko] does not dispute that he is the owner of the vessel and that he is a person

> `connected with Russia' as defined . . . From your letter and accompanying documents we understand that your client is both ordinarily resident in and located in Russia. Accordingly, the vessel has been lawfully detained under the Regulations."

27. The next submission to the Secretary of State was by way of an update provided on 5 August 2022 in the light of a planned newspaper article about the vessel, which summarised the previous decisions and correspondence. At the Secretary of State's request there was then a collation in tabular form dated 11 August 2022 of the evidence previously gathered and the Secretary of State's and other public comments about detention of the vessel.

28. In the following months Ward & McKenzie sent a number of emails relating to matters such as the vessel's insurance and repair.

Continuation of detention direction, 3 January 2023

29. In early December Ward & McKenzie made a further request for reconsideration of the decision to continue the vessel's detention.

30. There was a further ministerial submission dated 13 December 2022. (In October 2022 the Rt Hon Mark Harper MP had replaced Mr Shapps as Secretary of State for Transport.) Paragraph 2 asked the Minister to decide whether, in the light of this review, detention of the vessel should continue. The submission referred to the correspondence from Ward & McKenzie. Paragraph 7 stated that officials had conducted a review of the matter and assessed that the detention:

> "continues to meet the purpose of the Regulations and to be in HMG's strategic interest given its release could act as a signal that HMG is softening its approach to sanctions. DfT has also detained three aircraft whose detention may be questioned if the Phi is released."

31. Annex C to the submission, headed *Rationale for Continued Detention of the Phi*, summarised the review which had been carried out in response to the request of Ward & McKenzie regarding the vessel's continued detention. It explained why the conditions for the exercise of the detention power continued to be met. Paragraph 4 referred to the previous basis for detention. Paragraph 5 noted the assertion by Ward & McKenzie that Mr Naumenko was not a Putin crony. It also stated that at the time of the March decision, officials considered that his wealth "suggested significant economic activity in Russia which would be beneficial to the regime. This continues to be considered the case." Paragraph 6 stated:

> "In the nine months since the development of the latest sanctions, given the trajectory of the war, officials cannot attribute the strategy of asset detention to direct impact on the regime. Nevertheless, detention policy is one part of the UK's overarching package of sanctions against Russia. Detaining aircraft and vessels of those closest to the Kremlin or understood to directly or indirectly benefit from the regime is intended to put

> pressure on oligarchs by disrupting their luxurious lifestyle . . . which would in turn place pressure on the regime."

32. Paragraphs 9 and 10 concluded that the detention of the vessel was compatible with ECHR, A1P1.

> "Detaining an aircraft or ship under the Regulations is clearly an interference with the owner's property rights under A1P1; however, as a qualified right, this can be justified if it is provided for by law and is a proportionate means of achieving a legitimate aim. The legitimate aim of detaining the Phi is to put pressure on a Russian elite, signalling to Putin's regime that, whilst Russia continues to destabilise and attack Ukraine, those benefitting from the Russian state will continue to pay a price. Detention is also a tool in HMG's sanctions strategy to apply economic pressure on the regime…For the reasons above, we assess that the Phi's detention continues to meet the purposes of the Regulations and the effect on the individual's restriction on the use of his property is proportionate given the overarching HMG objective to put pressure on Russia."

33. Paragraph 12 of Annex C referred to concerns that ending the detention might be seen as a signal about a relaxation of sanctions or the United Kingdom's approach to them. Paragraph 18 emphasised that the original rationale for *Phi's* detention continued to hold good.

34. On 3 January 2023 the Secretary of State agreed with the recommendations and an email was sent to Ward & McKenzie that the Secretary of State "has decided to continue the detention".

LEGISLATIVE FRAMEWORK

Sanctions and Anti-Money Laundering Act 2018

35. The Sanctions Regulations are made under the Sanctions and Anti-Money Laundering Act 2018. Section 1(1) of the Act confers on the Secretary of State the power to "make sanctions regulations" for the purposes prescribed in section 1(2). Those purposes include "the interests of international peace and security" and "further[ing] a foreign policy objective of the government of the United Kingdom": s.1(2)(c), (d). Regulations under the section must state their purpose: s.1(3). "Sanctions regulations" as used in the section includes "shipping sanctions"): s.1(5)(e). Section 2, now repealed, provided that with sanctions regulations not made for the purpose of compliance with a UN or other international obligation, the appropriate Minister had to lay a report before Parliament explaining their purpose.

36. For the purposes of section 1(5)(e), regulations "impose shipping sanctions" if they provide, inter alia, for the detention of disqualified or specified ships: s.7(1)(a). Under section 7(8) "disqualified ships" means ships:

> "(a) owned, controlled, chartered, operated or crewed by—

(i) designated persons,

(ii) persons connected with a prescribed country…"

37. The "connected with" condition in section 7(8)(a)(ii) appears elsewhere in the legislation in materially similar terms, for example, in relation to powers to impose financial sanctions (s.3); aircraft sanctions (s.6); shipping sanctions (s.7); and various trade sanctions (Part 1 of Schedule 1).

38. At the time the legislation was passing through Parliament, the House of Lords Constitution Committee asked in relation to financial sanctions whether it was appropriate for ministers to enjoy such a broad power, "which is not confined to persons who have committed acts of misconduct or who have a personal responsibility for the policy of a repressive state or who have a particular status in that state" (*Sanctions and Anti-Money Laundering Bill [HL]*, HL Paper 39, 17 November 2017). The Minister replied to the committee chair, Baroness Taylor, on 21 December 2017:

> "It is a necessary but unfortunate consequence of sanctions that they have impact on people who are not personally involved in the activities that are being targeted. For example, citizens of North Korea who are not involved in nuclear proliferation will be affected by the restrictions on transfers of funds to North Korea, which apply to all transfers of funds to and from that country. However, this is necessary to ensure that sanctions have sufficient impact to achieve change in the behaviours they target."

39. As well, in responding to a question in the House of Lords in the second reading of the bill about the "persons connected with" condition, the Minister of State for the Commonwealth and UN replied that it was aware that with broad financial sanctions the potential existed for persons to be caught by them in circumstances that were less than ideal (letter to Lord Pannick, 9 November 2017, placed in the Library of the House of Lords). He referred to "the need for this type of sanction to have a broad and deep impact (in order to bring about a change in the behaviour that the sanctions are targeted against) and the need to ensure that people are not caught by sanctions which are not directed at them."

The Sanctions Regulations

40. The Sanctions Regulations were made in 2019 and came into force in December 2020. They replaced the sanctions regime previously operating under EU law. Since their introduction they have been amended some 20 times. Their purpose is set out at regulation 4, which reads in part:

> "4. The regulations contained in this instrument . . . are for the purposes of encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine."

41. Pursuant to section 2(4) of the Sanctions and Anti-Money Laundering Act 2018, the Government reported to Parliament and referred to the purposes of the Sanctions Regulations at length ("The s.2(4) Report"). In one passage it explained:

> "There are good reasons for pursuing these purposes, namely that changing borders illegally and by force is geopolitically destabilising… Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation. The UK believes sanctions can be an effective and reasonable foreign policy tool if they are one part of a broader foreign policy strategy for a country…"

42. Parts 1 and 7 to 11 of the Regulations are concerned with general matters. Parts 3 to 6A contain the substantive sanctions provisions, dealing with asset-freezing and other financial and investment restrictions (Part 3); immigration (Part 4); trade (Part 5 – including provisions on the export and import of, and services relating to, restricted goods and technology, energy-related goods, technical assistance relating to aircraft and ships, the export to Russia of luxury goods, and various other specified goods and services); ships (Part 6); and aircraft (Part 6A). One aspect of Part 3 is the power to impose an asset freeze in relation to a designated person.

Designation, Part 2

43. Part 2 of the Regulations is concerned with the designation of persons. It permits the designation of named persons for various purposes specified in regulation 5, including the freezing of assets. Designation is only permissible if the criteria set out in regulation 6(1) are satisfied. The Secretary of State must have reasonable grounds for suspecting that the person is an "involved person", broadly speaking involved in activities adverse to Ukraine or "obtaining a benefit from or supporting the Government of Russia": regulations 6(2)-(4).

44. The gateways to designation of a person are based on the individual's conduct (see regulation 6(2)(a)), and upon a defined connection with a person who has engaged in such conduct (see regulations 6(2)(b)-(d)). There are provisions dealing with issues of notification, publicity, and confidentiality: see regulations 8 to 9B, in particular 8(4) ("statement of reasons"). Under section 23 of the Sanctions and Anti-Money Laundering Act 2018 a person can request a variation or revocation of a designation, and there are provisions for reasons for a designation to be provided as soon as reasonably practicable: s. 33(2)(b).

Part 6, Ships

45. Part 6 of the Sanctions Regulations, headed "Ships", was substantially amended in March 2022 by the Russia (Sanctions) (EU Exit) (Amendment) (No 4) Regulations 2022. Previously Part 6 had been limited essentially to a power to direct British cruise ships not to enter ports in Crimea. It now includes a wide range of other measures. In relation to vessels to which it applies, they may not normally be provided with access to United Kingdom ports: regulation 57A. There are also powers under regulations 57C and 57D respectively to give a movement direction and to direct the detention of certain ships at UK ports or anchorages. It seems that other states have not adopted such wide-ranging measures.

46. The detention power in regulation 57D (1) is to give a detention direction to the master of a ship referred to in regulation 57D (3). Regulation 57D provides in part:

> "(3) The Secretary of State may direct a harbour authority to give a detention direction to the master of –
>
> (a) a ship owned, controlled, chartered or operated by a designated person,
>
> (b) a ship owned, controlled, chartered or operated by persons connected with Russia…"

Regulation 57D (5) adds that a detention direction:

> "(c) must state the grounds on which the ship is detained".

47. The interpretation provision to Part 6, regulation 57I, provides:

> "(5) For the purposes of this Part, a person is to be regarded as "connected with Russia" if the person is -
>
> (a) an individual who is, or an association or combination of individuals who are, ordinarily resident in Russia,
>
> (b) an individual who is, or an association or combination of individuals who are, located in Russia…"

48. As we saw, the use of a "connected with" condition is empowered by section 7(8)(a)(ii) of the Sanctions and Anti-Money Laundering Act 2018. It appears throughout the legislation. "Connected with" Russia provisions also appear in other parts of the Sanctions Regulations, for example regulations 16(4D)(a), 18B(2)-(3), 25-27, 42(1A), 44, 54C(1) and 57J.

Explanatory memorandum and statutory reports

49. In support of the Russia (Sanctions) (EU Exit) (Amendment) (No 4) Regulations 2022, three documents were laid before Parliament, the Explanatory Memorandum and two statutory reports.

50. The Explanatory Memorandum under the heading "What is being done and why?" referred to the Russian invasion of Ukraine and the government's unwavering support for the country's territorial integrity and sovereignty. These sanctions, it said, were part of a broader policy of measures which included diplomatic pressure, trade sanctions, economic and financial sanctions and designations. Change would therefore be sought, it explained, through diplomatic pressure and other measures, supported by implementing sanctions in respect of actions undermining the territorial integrity, sovereignty, and independence of Ukraine. The Regulations provided, the Explanatory Memorandum said, "that persons (including vessels and/or ships) may be designated for the purposes of regulations 57A and 57C to 57E (ships: prohibition on port entry etc.)."

51. The government also laid a report before Parliament under section 18 of the Sanctions and Anti-Money Laundering Act 2018 ("the Section 18 report"). That section, now repealed, required the appropriate minister to do this if regulations created criminal sanctions. In this case the Section 18 report gave as the rationale for maritime sanctions that the vast majority of global trade in goods is carried on board ships and that maritime sanctions are therefore crucial in achieving the objectives of the Russian sanctions regime, and "are designed to cause significant short-term disruption to Russian shipping, thereby restricting their economic interests and further holding the Russian government to account."

52. Thirdly, there was a further statutory report, this one laid before Parliament under section 46 of the Sanctions and Anti-Money Laundering Act 2018 ("the Section 46 report"). That section, also now repealed, required the appropriate minister when the regulations were amended to state the purpose when it was other than to comply with a UN obligation or other international obligation.

53. The Section 46 report explained that the new maritime measures in Part 6 were "designed to cause significant short-term disruption to Russian shipping, thereby restricting their economic interests and further holding the Russian government to account". As to the detention power, it stated that "[a]ny ship which is owned, controlled, chartered or operated by persons connected with Russia or designated persons…may be the subject of a direction requiring the detention of the ship at a port or anchorage": [8]. The report also stated that it would:

> "18…send a clear political signal to Russia that we are aligned with international partners and would signal to the wider international community that territorial expansionism is unacceptable and should be met with a serious response. Any diminution of sanctions against Russia would be seen as an acceptance of Russia's invasion of Ukraine. More comprehensive measures, as detailed above, are both reasonable and proportionate to achieve the purposes of the sanctions regime."

54. Finally, the new Part 6 provisions were debated by the First Delegated Legislation Committee of the House of Commons on 21 March 2022. The then Minister for Europe and North America, James Cleverly MP, described the powers which they contained as a "powerful new tool against oligarchs and wealthy individuals closely associated with Vladimir Putin's regime."

GROUNDS OF CHALLENGE

55. At the hearing the claimants' case was almost entirely devoted to grounds 1 and 2, proper purpose and disproportionality. With ground 1 the argument was that although falling within the regulatory language, the decision to detain Mr Naumenko's vessel was unlawful since it was taken for purposes not contemplated by the legislation. Ground 2 focused on what was said to be disproportionality in the decision to detain Mr Naumenko's property, in breach of Article 1 of the First Protocol of the European Convention on Human Rights.

56. If it had been necessary to address the claimant's challenge on a further ground, that there was a failure of the detention direction to state the grounds relied upon, I would have dismissed it. Regulation 57D(5)(c) requires the direction to state the grounds on which the ship is detained, whereas regulation 8(4) requires a statement of reasons for designation under Part 2. The contrast in the language of the two provisions means that the detention direction does not require grounds to be equivalent to a statement of reasons.

Ground 1: proper purpose

The claimants' case

57. For the claimants, Mr Giffin KC contended that in making the detention direction the Secretary of State exercised his power under regulation 57D of the Sanctions Regulations for an improper purpose in breach of *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 99. (There is no need to consider separately the direction as regards restricting the vessel's movement made under regulation 57C since similar considerations apply.)

58. Mr Giffin advanced the argument first, by reference to the legislative context of the regulation 57D detention power. He referred to the broad asset freezing power in regulation 11 of the Sanctions Regulations and highlighted that it could only be used against designated persons. There the Secretary of State had to have reasonable grounds to suspect the individual of being an "involved person". By contrast, Mr Naumenko was being deprived by the detention direction of his vessel for chartering and enjoyment as a superyacht. Mr Giffin characterised this as "designation lite". Effectively detention was being used to penalise Mr Naumenko although he did not meet the criteria for designation, and without the procedural safeguards which attended designation. The point was underlined because the FCDO had decided that Mr Naumenko did not meet the criteria for designation.

59. In Mr Giffin's submission it was contrary to the proper purpose of regulation 57D to detain a ship unless the (beneficial) owner had become involved in, broadly speaking, activities adverse to Ukraine or had obtained a benefit from Russia or was supporting Russia. That was the balance struck in the designation provisions as regards the freezing of assets, and the same should apply to detaining ships. Targeting someone who, at its highest, might be said to give tacit acceptance to the regime, fell short of the proper purpose of the Sanctions Regulations stated in regulation 4.

60. Further, Mr Giffin submitted, the proper purpose behind the detention power for ships was to target the ships themselves, not their owners, specifically to disrupt Russia's maritime trade and the transport of goods and personnel by restricting the movement of the vessels by which that was undertaken. That purpose was supported by what was said, for example, in the Section 18 report regarding Part 6 of the Sanctions Regulations. In the passage quoted earlier in the judgment the government had stressed the importance of maritime sanctions to disrupt Russian trade. Instead, what the detention direction did in this case was to target Mr Naumenko, simply because he was a wealthy Russian, and to deprive him of the ordinary use of his superyacht.

61. Finally, Mr Giffin submitted, this understanding of the statutory purpose was consistent with the secondary role played by detention in the scheme of Part 6. Under regulation

57A, the first and logically foremost provision of Part 6 is that ships with the necessary Russian connection may not be given access to UK ports. If that regulation is complied with, relevant ships will not normally be here so that any issue of detention will not arise. Hence the primary purpose is to stop Russian vessels operating through UK ports, not to detain them in order to penalise their owners or pressure the Russian government. The Secretary of State is given what are effectively ancillary powers under regulations 57C and 57D to deal with relevant ships which have still found their way to the UK – for example, their Russian connection may have been unknown when they entered port, or they may have entered in an emergency under regulation 61A. The present case illustrated the point since it was fortuitous that Mr Naumenko's vessel was in London when Part 6 came into force.

Discussion

62. In my view Mr Giffin has not established that the Secretary of State acted for an improper purpose in making the detention direction. He is undoubtedly correct that as well as the words, the interpretation of a legislative provision turns on its context and its underlying purpose. In my view, however, his submissions involve a misreading of the context, structure, and rationale as regards the Sanctions Regulations.

63. First, the read across from the designation provisions fails to acknowledge that the Sanctions Regulations contain distinct regimes. That is evident in regulation 57D itself, which confers powers on the Secretary of State to direct the detention of ships owned, controlled, chartered or operated by a designated person in 57D (3)(a), as well as those owned, controlled, chartered or operated by persons connected with Russia in 57D (3)(b). That reflects the clear distinction drawn in the parent Act, the Sanctions and Anti-Money Laundering Act 2018, where in section 7(8)(a) "disqualified ships" means ships owned, controlled, chartered, operated or crewed by (i) designated persons and (ii) persons connected with a prescribed country. In other words, the detention power in regulation 57D is not limited to circumstances where an individual has been designated but is an additional power for those "connected with" Russia. For this reason I also accept Mr Pobjoy's submission that the fact that the FCDO decided not to designate Mr Naumenko has no bearing on the propriety of the Secretary of State acting under these distinct legislative provisions.

64. The other issue of legislative context was Mr Giffin's submission that regulation 57A was the first and logically foremost provision, with regulation 57D falling in under it and not being designed for the purpose of detaining a super yacht, which just happens to be in a UK port. From a reading of Part 6 as a whole, there is no support for this. Each of the powers in Part 6 of the regulations stand on an equal footing. There is nothing in the language, legislative context, or underlying purpose of Part 6 to support the suggestion that detention plays a subsidiary role in a scheme to prevent Russian ships entering UK ports.

65. That leaves the purpose of the detention power in regulation 57D and whether it is, as Mr Giffin submitted, focused on disrupting Russia's maritime trade and the transport of goods and personnel. In my view the purposes behind that power are not as narrow as this. The starting point is whether the language of the provision is suggestive of the underlying purpose. The language is "connected with" Russia. Sanctioning those "connected with" Russia is evident throughout the Sanctions Regulations and could be consistent with the purposes provided for in regulation 4 of the Sanctions Regulations,

namely encouraging Russia to cease its actions regarding Ukraine. There is no dispute that Mr Naumenko is a resident in Russia and the ultimate beneficial owner of the vessel and therefore satisfied the definition of a person "connected with" Russia so as to fall within the Secretary of State's detention powers under regulation 57D.

66. Secondly, the legislative history of the "connected with" power of detention in regulation 57D suggests it is not confined in the way Mr Giffin suggests. It will be recalled that when Parliament enacted the power under section 7(8) of the Sanctions and Anti-Money Laundering Act 2018 to make regulations sanctioning individuals "connected with" a particular country, the purpose was made explicit in the House of Lords, to give sanctions "a broad and deep impact", albeit that this might have consequences for those not personally involved in the activities being targeted.

67. That purpose was energised when the Sanctions Regulations were introduced: the Section 2(4) Report asserted that sanctions could be used to change behaviour, constrain damaging action, and send a signal of condemnation, while recognising that they were but one aspect of a foreign policy strategy. And then when Part 6 was introduced, which contained the regulation 57D power, there was the Section 46 Report, where the government was required to state the purpose of the measure. It will be recalled that it explained that the detention power applied to "any ship" of a person satisfying the "connected with" criterion, and that the Part 6 sanctions were designed to send a "clear political signal to Russia", and that any diminution of sanctions against Russia would be seen as an acceptance of what had occurred.

68. In the result, there is no support in the language, legislative history, or underlying rationale of the detention power for reading down its purpose, as Mr Giffin suggested, to disrupting Russian trade and the transport of personnel and goods. The Parliamentary material demonstrates that the legislative purpose has been to confer powers in the broadest possible terms to allow Ministers to impose sanctions that would exert maximum pressure on Russia in a wide variety of ways.

69. Nor is there any support for the suggestion that in this case the power was used for an improper purpose. The March decision was taken because the vessel was a high value ship, worth at least €44 million and its owner, Mr Naumenko, was "connected with" Russia. Immediately after the detention order, the Secretary of State had given as the reason that Mr Naumenko was an oligarch and friend of Putin. In the context of Russia, "oligarch" is commonly used these days in a wide sense as meaning a very wealthy person. The description "friend of Putin" was wrong. However, it was excusable political hyperbole, contrary to the basis of the Secretary of State's own decision and to his media briefing (and, I note, not mentioned again). After the March decision there was fuller reasoning for maintaining the detention set out in the 8 April submission at Annex D and the 13 December submission at Annex C, reiterating the vessel's value and Mr Naumenko's wealth, but with the additional reasoning, set out earlier in the judgment, and consistent with the Parliamentary material, that (in brief) it was likely that he had benefited from the regime and that targeting him would send a signal to others in his position about the implications of Russia's actions in Ukraine.

Ground 2: proportionality, rationality, and Tameside

70. An interference with the peaceful enjoyment of property engages the property right in Article 1 of the First Protocol of the European Convention on Human Rights ("A1P1").

To be lawful, a measure must pursue a legitimate aim in the public interest, and there must be proportionality between the means employed and that aim. That includes a consideration of whether the aim is sufficiently important to justify the limitation of the right, whether the measure is rationally connected to the aim, whether a less intrusive measure is possible, and whether the measure strikes a fair balance between the general interest of the community and the rights of the individual: see *Bank Mellat v Her Majesty's Treasury* [2013] UKSC 39, [20], per Lord Sumption, [74], per Lord Reed. Overlapping to an extent, certainly in the circumstances of this case, are the claimants' conventional public law challenges regarding rationality and the *Tameside* duty to seek relevant information for decision-making (*Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014).

The claimants' case

71. Mr Giffin's challenge was to the exercise of the detention power in the circumstances of Mr Naumenko's case. His was not a challenge to the validity of the Sanctions Regulations but the contention that the exercise of that power in this case was disproportionate. At base, Mr Giffin submitted, was the serious interference with Mr Naumenko's property rights, the seemingly indefinite detention of a valuable and depreciating asset in circumstances which deprived him as owner of its use for chartering and for personal enjoyment, while at the same time he had to maintain it. Although Mr Naumenko accepted that he was not suffering financially given his great wealth, there was still a serious interference with his A1P1 rights which, in Mr Giffin's submission, called for a commensurately strong justification.

72. Mr Giffin's case was that the detention of Mr Naumenko's vessel in overall terms was disproportionate, which he advanced by critiquing the Secretary of State's decisions which first imposed, and then maintained, detention of the *Phi*. Beginning with the March 2022 decision, he submitted that its basis seemed to be simply that Mr Naumenko was a person "connected with Russia". That was the ground in the detention direction itself, and there was little embellishment in the ministerial papers. The ministerial submission referred to strong action under the equality duty, but that added little. The read-out of Mr Shapps's decision was that he considered the detention to be in the public interest, but that remained unexplained. The statements made to the media about oligarchs and "connections with Putin" were untrue and unlawful in *Wednesbury* terms. Detaining an individual's property simply because he was a Russian resident, Mr Giffin submitted, would represent a wholly disproportionate interference with the property rights protected by A1P1, and was not rationally connected with any legitimate aim.

73. The difficulty with the April 2022 decision, Mr Giffin continued, was that the reason given for maintaining detention of the vessel in the read-out email of the ministerial decision was that it was a holding measure, pending further inquiries. That rationale was also contained in the cover note to the ministerial submission. This, Mr Giffin submitted, supported the case that the decision was unevidenced. Alternatively, maintaining detention while seeking further evidence, but then not carrying out inquiries, meant that the detention was no longer pursuing a legitimate aim i.e., to preserve the position pending such steps. Nothing seemed to be done until preparing for the January 2023 decision. Beyond the couple of weeks in which inquiries could have been completed after the April 2022 decision, Mr Giffin submitted, detention of the vessel became disproportionate.

74. As to the other reasons given for the April 2022 decision, Mr Giffin contended that these were also flawed in proportionality terms. They did not exhibit a rational connection to the aims in regulation 4 of the Sanctions Regulations or strike a fair balance between community and individual rights. The covering note to the ministerial submission referred to a "generic" argument, that wealthy persons like Mr Naumenko were connected to the regime by patronage or were in a position to influence it. There was no evidence for that, Mr Giffin submitted, as the covering note itself conceded. As to the seizure of Russian superyachts and aircraft, there were relatively few, if any, in the UK to be detained. The burden of justification was on the Secretary of State, but all that was offered was speculation and not the "exacting analysis of the factual case advanced": *Bank Mellat*, at [50], per Lord Sumption.

75. The same error, Mr Giffin submitted, infected the January 2023 decision. The reasoning of Annex C was about putting pressure on the Russian elite and "signalling" to them and to the regime. However, there is no suggestion that Mr Naumenko is part of an inner circle, and it boils down to the proposition that ownership of the vessel was indicative of "extreme wealth". But as Sir Ian Seymour Collett explained, Mr Naumenko's wealth was from ordinary business activity carried out successfully, in large measure, before President Putin was in power. The Secretary of State's position, Mr Giffin submitted, was therefore that wealthy Russians, with yachts and aircraft, were legitimate targets for sanctions, even if the source of their wealth was unimpeachable and they had no position of influence or connections with the regime, and had done nothing personally to support it or its actions against Ukraine.

76. That crude approach, Mr Giffin contended, was fundamentally disproportionate and without any coherent justification. It could not be said to strike any sort of fair balance, when in effect it sought to compel individuals, who had done nothing wrong except to succeed in business, to leave their own country or remain there and engage in open criticism of the regime, without any consideration of what the impact upon them might be – in reality, a stark downside as Mr Giffin put it. It was making a gesture at the expense of an individual. Moreover, Mr Giffin added, there had been no serious analysis of what if any impact upon the Russian government such an approach might have, especially when the likelihood of detaining further Russian ships (or aircraft) was low. The notion of "signalling" took the matter no further. Citing Lord Sumption in *Bank Mellat* at [27], Mr Giffin submitted that the consequences for a blameless individual of the detention of his ship, for who he was, was wholly disproportionate to any plausible gain.

77. Mr Giffin's submissions on rationality and the *Tameside* duty relied upon essentially the same matters. Thus the April 2022 decision was a breach of the *Tameside* duty since the existing information could not properly justify continuing indefinite detention. The January 2023 decision was irrational in considering that detention would serve the regulation 4 purpose. It also took irrelevant factors into account in its reference to signalling and its consideration that releasing the vessel would be perceived as a relaxation.

Discussion

78. The starting point for considering the claimants' A1P1 case is the nature of the challenge. First, as Mr Giffin made clear, this is not a challenge to the legislative framework but to its operation in this particular case: see *Re Abortion Services (Safe*

Access Zones: Northern Ireland) Bill [2022] UKSC 32, [12]-[13], per Lord Reed. Consequently, the focus must be on the aim of detaining Mr Naumenko's vessel and whether it is of sufficient importance to justify interference with his ownership rights of the *Phi*; whether the detention of that vessel is rationally connected to the aim; and the balance struck between public policy and Mr Naumenko's individual rights. (Mr Giffin did not pursue a "less intrusive" argument, possibly because the only plausible less intrusive measure would have been to allow the *Phi* to leave the UK.)

79. Secondly, a proportionality challenge is ultimately a matter for the court to determine with reference to all the evidence before it. That involves considering the substance of the Secretary of State's decision, not the process of its making. Moreover, in coming to a judgment on proportionality, the court is not limited to assessing the decision-maker's process, thinking or assessment at the time the decisions were made but can consider the matter in more general terms: *Belfast City Council v Miss Behavin' Limited* [2007] UKHL 19, [13]-[15], per Lord Hoffmann, [31], per Lady Hale; *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7, [69], per Lord Reed.

80. Thirdly, although the court itself determines proportionality objectively on the basis of its own assessment, a margin of discretion will be afforded to the decision-maker, to the extent that it has itself considered the relevant issues at the time of the challenged decision. In matters relating to foreign policy or the conduct of foreign relations, the court accords to the executive an especially broad margin of discretion: *R (Al Rawi) v Secretary of State for Foreign and Commonwealth Affairs* [2006] EWCA Civ 1279, [148], per Laws LJ; *R (Lord Carlile of Berriew) v Secretary of State for the Home Department* [2014] UKSC 60, [19]-[22], [32], per Lord Sumption.

81. First, then, legitimate aim. In this regard there was no general challenge to the legitimacy of the Secretary of State's aim. Those aims were formulated in Annex D of the April 2022 ministerial submission, and Annex C of the December 2022 submission. They are now fully elaborated in Mr Driver's witness statements. They are in brief that the detention of Russian assets is part of the UK Government's foreign policy response including a wider sanctions package taken in light of Russia's actions in Ukraine.

82. Mr Giffin did raise an issue about the legitimacy of the April 2022 decision. The argument was that it could not be legitimate to detain the vessel as a holding measure while further evidence was collected, and then not to undertake further inquiries. In my view, this places too much weight on the comment of Mr Robert Courts MP, the Parliamentary Under-Secretary of State, and on the summary in the cover sheet to the ministerial submission. The Secretary of State did not expressly share Mr Courts' view, and the rationale of the decision in Annex D to the submission does not give any support to maintaining detention as a holding exercise. That Ward & McKenzie were invited to make further submissions does not detract from this point.

83. Turning to the rational connection of the detention decision to this legitimate aim, the starting point is that the vessel was detained because Mr Naumenko was "connected with" Russia and very wealthy. In the March decision his wealth was evident in the ministerial submissions, the invoice containing the value of the *Phi* and the NCA letter mentioning his possible ownership as well of the *Phi Phantom* (The ownership of the *Phi Phantom* was subsequently confirmed, as was that of the *Aurelia*.) Mr Naumenko's wealth featured in the continuation decisions of April 2022 and January 2023. The ministerial submission for the January 2023 decision quite reasonably inferred from Mr

Naumenko's wealth "significant economic activity in Russia which would be beneficial to the regime." They then made the connection with the legitimate aim, that detaining the property of "oligarchs" was intended to place pressure on them and indirectly the regime. Detention of Mr Naumenko's superyacht would send a signal to others about how Russia's activity in Ukraine could affect their lifestyle. These points were spelt out in greater detail in Annex C of the submission, summarised earlier in the judgment.

84. Against that background I do not accept the argument that since Mr Naumenko had no proximate responsibility for events around Ukraine, and could not be said to have assisted the Russian regime, the detention decision had no rational relationship to the legitimate aim. In particular Mr Giffin highlighted the April 2022 decision and the "generic" argument supporting the maintenance of detention. There is no need to go as far as Mr Driver's evidence about the patronage system in Russia and the need for loyalty to President Putin on the part of wealthy Russians if they are to retain their wealth. It is sufficient in this context to accept Mr Pobjoy's submission that given the likely direct and indirect links between Mr Naumenko's wealth, economic activities, and the Russian state, it is rational to consider that Mr Naumenko is the sort of individual economic actor on whom sanctions could effect the "broad and deep impact" which Parliament intended via the "connected with Russia" powers in, at the least, weakening their tacit support for the regime.

85. Absent from the rational connection analysis is evidence regarding the efficacy of a detention decision on the legitimate aim of deterring Russia from its actions in Ukraine. Here Mr Naumenko's property has been detained but it is unclear what contribution this will make in influencing a situation for which he is not directly responsible and over which he has no control. Officials fairly conceded this, for example in the ministerial briefing for the January 2023 decision. In the *Bank Mellat case* [2013] UKSC 39, the order restricting the access of an Iranian bank to UK financial markets so as to inhibit facilitating the production of nuclear weapons in Iran was held to be disproportionate, inter alia because it was "disproportionate to any contribution which it could rationally be expected to make to its objective": [27], per Lord Sumption. The difference with the *Bank Mellat case* is that there disproportionality followed because Iranian banks other than Bank Mellat were not affected by the measure.

86. In this regard I accept Mr Pobjoy's submission that the Secretary of State need not demonstrate the efficacy of each individual detention (or designation) decision in order to maintain a sanctions measure. Certainly, it would be difficult to demonstrate that any one decision would have the desired foreign policy outcome. It is not an issue for the court. In the end all that is needed is a rational connection between the sanctions measure and the aim. Additionally, the Secretary of State is granted a broad margin of discretion in a case such as this to decide that the exercise of the sanctions power is needed, when coupled with other measures, as part of pursuing the UK's foreign policy objectives.

87. Finally, there is the fair balance between the community interest and the individual rights of Mr Naumenko. In my view this is straightforward. There can be no doubt that the interference with Mr Naumenko's property rights in the *Phi* is significant. It may not go as far as the submission Mr Giffin made at one point, that it was close in substance to the deprivation of the vessel, but the Secretary of State's case that its detention is temporary and reversible, and that the claimants still have control of it, must be of small comfort when they are deprived of its use. There are, however, three

points of note. First, there is the weighty public interest factors on the community interest side of the balance - the UK's foreign policy response, which seeks to have as broad and deep an impact as possible on Russia through the sanctions regime given what is being inflicted on Ukraine and the wider geopolitical instability this has caused.

88. Secondly, on the other side of the balance concerning individual burden is Mr Pobjoy's submission that the interference complained of concerns the use of a luxury superyacht, and that given his great wealth Mr Naumenko does not claim to be suffering financial hardship because of its detention. Thirdly, there is the deference which the court must exhibit vis-à-vis the executive, especially within the arena of foreign policy. To repeat the point, the Secretary of State is entitled to a broad margin of discretion in deciding that the detention power is to be exercised in pursuit of the government's foreign policy aims. That the decision was taken by the Secretary of State for Transport, not the Foreign Secretary, is not to the point since, as Mr Driver explains, his department has an important remit with foreign policy implications. *Bank Mellat* [2013] UKSC 39 was, of course, a case where the decision challenged was made by HM Treasury.

89. As to the claimants' rationality challenge, that cannot surmount the high threshold the law sets, especially in the foreign policy context. Mr Naumenko fell within the language of the Sanctions Regulations, as being connected with Russia, and it was open to the Secretary of State rationally to conclude that the detention of the vessel met the regulation 4 purpose and balanced the relevant foreign policy objectives with Mr Naumenko's individual circumstances. As mentioned earlier, the April 2022 decision was not taken as a holding decision; the *Tameside* duty goes nowhere.

90. As to irrelevant considerations, "oligarch" used at the time of the March decision had its common meaning of a very wealthy Russian in business. The Secretary of State's "connected with Putin" remark in his media appearances had no mention in the ministerial submissions or communications briefing. It was political messaging. It did not feature as a consideration in the Secretary of State's own decision-making. In any event it made no difference to the outcome. As to "signalling" in the January 2023 decision, that cannot be an immaterial consideration. Judges, especially in the criminal courts, are not immune to the notion of "sending a message" through their decisions. Especially in the foreign policy field signalling is a factor which a decision-maker could rationally take into account.

CONVERSION

91. In my view there has been no conversion of the *Phi* as a result of the detention decision. In *Club Cruise Entertainment & Travelling Services Europe BV v Department for Transport (The Van Gogh)* [2008] EWHC 2794 (Comm) a vessel was subject to a notice of detention for reasons of public health and so could not undertake a third May cruise. After reviewing the authorities, Flaux J (as he was) decided that this did not constitute the assumption of ownership or dominion over the ship to amount to conversion: [53]. In that case the vessel was detained for a relatively short period of time, but that was not part of Flaux J's reasoning as to the existence or otherwise of conversion.

CONCLUSION

92. For the reasons given I dismiss the claim for review.