IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
ADMIRALTY COURT (QBD)

Royal Courts of Justice
Rolls Building, Fetter Lane, London EC4A 1NL

[2020] EWHC 3443 (Admlty)

17 December 2020

Before:

MR ADMIRALTY REGISTRAR DAVISON

- -

AD-2020-000108

Between:

TRANS-TEC INTERNATIONAL, SRL (1) **WORLD FUEL SERVICES (SINGAPORE) PTE LTD (2)**	**Claimant**
- and -	
THE OWNERS AND/OR DEMISE CHARTERERS OF **THE VESSEL 'COLUMBUS'**	**Defendant**

And between-

AD-2020-000097

WORLD FUEL SERVICES (SINGAPORE) PTE LTD	**Claimant**
- and -	
THE OWNERS AND/OR DEMISE CHARTERERS OF **THE VESSEL 'VASCO DA GAMA'**	**Defendant**

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Mr Paul Henton (instructed by **Reed Smith LLP**) for the **Claimants**
Mr John Kimbell QC and Ms Celine Honey (instructed by **Watson Farley & Williams LLP**) for **Carnival Plc and P&O Princess Cruises International Ltd**
Mr Bruce Hailey (of **Salvus Law Ltd**) for **KPI Bridge Oil Inc and various other Claimants**

Hearing date: 2 December 2020 (by Microsoft Teams)

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.30am on Thursday 17th December 2020

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Introduction

1. This is my judgment on the application of the claimants for default judgment in these *in rem* proceedings against the vessels 'Columbus' and 'Vasco Da Gama'. The vessels were sold on 22 October and 16 October 2020 respectively and the actions have continued against the proceeds of sale. Those proceeds will be insufficient to satisfy the many claims against the funds. Hence, each individual claimant has an interest in ensuring that only claims that are genuinely *in rem* claims are admitted and that those claims are properly scrutinised and quantified.

2. These claimants are bunker suppliers. They are subsidiaries of World Fuel Services Corporation, a company based in Florida, USA. I will refer to them in this judgment compendiously as 'WFS'. The claims are for six stems of bunkers supplied in the first quarter of 2020. Two were supplied to 'Columbus' in Panama and Tahiti. Four were supplied to 'Vasco Da Gama' in Fremantle, Australia (two such), Singapore and Cape Town. The claims against 'Columbus' total US$1,420,320.43 (split across the two claimant companies). The claims against 'Vasco Da Gama' total US$2,282,061.02. These sums comprise the principal amounts for the supplies of bunker oil. Additionally, the claimants claim (i) contractual interest on overdue amounts at 2% per month (or 1½% per month for invoices under US$500,000), (ii) an administrative fee of 5% of the principal amount on all amounts more than 15 days overdue, and (iii) a contractual indemnity in respect of the claimants' costs. These claims derive from WFS's standard terms and conditions which were in each case incorporated into the contract of sale by WFS's order confirmation and invoice. The relevant paragraphs were as follows:

   7. PAYMENT

   (c) Past due amounts shall accrue interest at a rate equal to the lesser of 2% per month, or the maximum rate permitted by the applicable law. All amounts more than fifteen (15) days past due shall incur an additional 5% administrative fee. All payments received from Buyer after an invoice is overdue shall first be applied to interest, legal collection costs and administrative fees incurred before they will be applied to the principal amounts on a subsequent delivery. Buyer may not designate application of funds to a newer invoice so long as they are unpaid.

   (f) Buyer agrees to pay, in addition to other charges contained herein, internal and external attorneys fees on a full indemnity basis for Seller's collection of any non-payment or underpayment, as well as any other charges incurred by or on behalf of Seller in such collection, including, but not limited to, the cost of bonds, fees, internal and external attorneys fees associated with enforcing a maritime lien, attachment or other available right, whether in law, equity or otherwise.

   11. INDEMNITY:

   Buyer shall defend, indemnify and hold Seller and any of Seller's agents or representatives harmless with respect to any and all liability, loss, claims, expenses, or damage suffered or incurred by reason of, or in any way connected with, the acts, omissions, fault or default of Buyer or its agents or representatives in the purchase, receipt, use, storage, handling or transportation of the Products in connection with each Transaction."

3. By paragraph 18 of the terms and conditions, the contracts were subject to the law of the United States of America, specifically US General Maritime Law, applicable federal laws and, if the former were silent on any issue, then Florida State law.

4. It is not in dispute that the principal amounts are *in rem* claims. But two of the other *in rem* claimants, Carnival Plc and P&O Princess Cruises International Ltd ('POPCIL') have disputed that items (i) – (iii) can be so characterised. Their position is that these claims can only rank

as *in personam* claims and should be re-directed against the operators of the vessels. If they were admitted as *in rem* claims, the effect, they say, would be improperly to deplete the funds available for distribution amongst the body of claimants whose claims are proved.

Legal provisions and submissions

5. The point turns on whether the claims fall within the wording of section 20 of the Senior Courts Act 1981 headed 'Admiralty Jurisdiction of the High Court', specifically section 20(2)(m). In relevant part, section 20 is in these terms:

> *(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say—*
> *(a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2) …*
> *(2) The questions and claims referred to in subsection (1)(a) are—*
> *…*
> *(m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;*

6. The bunkers themselves were obviously supplied to the vessels for their operation. But Mr Kimbell QC, for POPCIL and Carnival, submitted that the interest, the administrative fee and the costs indemnity were to be regarded separately and were not 'in respect of' the supply of the oil. Mr Henton, for the claimants, submitted that these items were part and parcel of the bargain and that it was not permissible to 'unpick' or 'slice and dice' the package of contractual terms upon which the bunkers were supplied. That was particularly so where they had been supplied on 90 days terms which others had not been prepared to extend and where the provisions for interest et cetera were elements of arm's length transactions reflecting hard commercial realities.

7. The leading modern case on section 20(2)(m) is *The Edinburgh Castle* [1999] 2 Lloyd's Rep 362, a decision of Peter Gross QC sitting as a Deputy High Court Judge. The claim was in respect of four categories of goods or materials supplied to a ship. These were (1) food, drink and other consumables supplied for the use of the officers and crew; (2) food, drink, stationery and other consumables supplied for the use or consumption by passengers on the vessel; (3) the provision of services, in particular the provision of officers and crew of suitable calibre for the operation and manning of the vessel; and (4) a wide range of equipment supplied to the vessel. The judge was taken to the authorities from which he derived the following four propositions:

> 1. The words "in respect of" are wide words which should not be unduly restricted: *The Kommunar*, [1997] 1 Lloyd's Rep. 1, at p. 5.
> 2. Section 20(2)(m), which is derived from the equivalent provision in the Administration of Justice Act, 1956, contains a jurisdiction which is no narrower than the predecessor jurisdiction in respect of claims for "necessaries": *The Fairport* (No. 5), [1967] 2 Lloyd's Rep. 162; *The Kommunar*, sup.
> 3. No distinction is to be drawn: . . .between necessaries for the ship and necessaries for the voyage, and all things reasonably requisite for the particular adventure on which the ship is bound are comprised in this category. [Roscoe, The Admiralty Jurisdiction and Practice, 5th ed., at p. 203; *The Riga* (1872) L.R. 3 Ad. & Ecc. 516].
> 4. The jurisdiction extends to the provision of services: *The Equator*, (1921) 9 Ll.L.Rep. 1; *The Fairport* (No. 5), sup.

8. Mr Henton also referred to *The Kommunar* [1997] 1 Lloyd's Rep 1, a decision of Clarke J. In that case, pursuant to a written agreement, the claimant undertook 'to organise and carry out all settlements with foreign firms regarding: the operation, servicing and repair of vessels in the countries of Latin America and/or other countries on the Principal's instructions'. Clause 3.3. of the agreement provided for the claimant to advance to the Principal a 'credit line in the amount of 500,000.00 (Five hundred thousand) US dollars per year' and for the payment of interest. That part of the clause was in these terms:

> The Principal shall pay [the claimants] interest of 1.4% per month. The interest shall be charged from the date of termination of the period of grace for payment of the bill that was agreed with the firm, which must be shown on the bill.

9. It was argued that this arrangement rendered the claimants 'simply bankers or financiers providing finance to the shipowners'. Clarke J agreed that the claimants were providing finance via their credit terms. But it did not follow that they were unable to bring their claim within section 20(2)(m) of the 1981 Act. The arrangement was not restricted to the provision of finance but was for them to appoint sub-agents in South America for the purpose of supplying goods and services to the defendants' ships and to pay invoices tendered to them by the sub-agents. At the conclusion of his judgment, Clarke J said this:

> By the terms of the contract it was their responsibility to pay for necessaries supplied by the supplier of the necessaries. I can see no reason why it should not be held that the claim to recover those moneys is 'in respect of the goods and materials supplied to the ship for her operation or maintenance'. In these circumstances, I have reached the conclusion that the first basis upon which the jurisdiction of the Court is challenged fails.

10. It is apparent that 'those moneys' included the interest. Mr Henton submitted that, so far as the interest was concerned, the case was close to the present ones. Interest in *The Kommunar* formed one part of a general account which Clarke J had held to be 'in respect of' the supplies of goods to the vessels by the sub-agents who actually provided them. In the present cases, the interest (and, he submitted, the administrative fee and costs) formed an integral part of the contracts for the supply of the bunkers and therefore all were 'in respect of' that supply.

11. Mr Kimbell accepted that the words 'in respect of' were to be construed widely. But that still required the court to form a judgment in any given case. A claim 'for' goods or materials supplied or 'arising out of' goods and materials supplied etc would be within the words of the statute. A claim that was merely 'in connection with or related to' such a supply would not. He submitted that these claims were in the latter category. He submitted that, far from being prevented from unpicking a package of contractual terms, it was, in an appropriate case, incumbent on the court to do just that. He referred to a case, *The Oriental Dragon* HCAJ 162/2012, where the High Court of Hong Kong (Ng J), applying an identically worded statute, had 'examined the nature of each of the claims challenged' (see paragraph 23) and had ruled some within the section and disallowed others. The judgment records that the claimants were retained as the consultant and/or advisor and/or manager and/or goods and services provider of the defendants in respect of the ship technical management, marine planning, recruitment and procurement for the Vessel. The services provided were evidently very diverse. However, Mr Kimbell maintained that I should adopt the same approach – even though the contracts before me were exclusively for the supply of bunkers. The claims for interest etc were merely 'ancillary to' (Mr Henton's words) that supply; they were not sufficiently closely connected to be 'in respect of' it and the consequence was that the claimants could only pursue them *in personam*. Mr Kimbell drew an analogy with what I might label a purely financial claim which Ng J in *The Oriental Dragon* rejected. This was a claim for payment in lieu of notice, which arose when the claimant's contract was terminated. Ng J found that this was 'not remuneration for services rendered to the Vessel. On the contrary, it was compensation to the Plaintiffs for not being given the opportunity to continue their services under the Contract, including inter alia managing the Vessel. As such, it could not be regarded as having any relations to any supplies (whether of goods, materials or services) to the Vessel, whether for her operation, maintenance or otherwise'. Mr Kimbell submitted that the claims for interest etc were in a similar way ancillary to (and therefore not 'in respect of') the supply of bunkers.

Discussion

12. I do not think it would be appropriate or wise for me to gloss the statutory words 'in respect of' or to attempt to define them further. They are ordinary words in the English language. To date, and notwithstanding the involvement of numerous very distinguished Admiralty

practitioners and judges, no court has found it necessary to do that. It is enough if I note that they are 'wide words which should not be unduly restricted'.

13. If I were to adopt Mr Kimbell's suggested approach I would be departing from those parameters. I would be giving the words a narrow and restricted interpretation. The provisions for interest, administration fee (obviously meant to cover the administrative costs of chasing the debt) and costs are integral parts of a package of contractual terms. They are incidents of the contract which follow from non-payment of the price. In the case of the interest and the administration fee, they are calculated as a percentage of the price and therefore closely and directly related to it. There is nothing unusual about them. (If they were not recoverable contractually, interest would be recoverable under section 35A of the Senior Courts Act 1981 and costs under CPR r 44.5.) I agree with the submission of Mr Henton that, so far as interest is concerned, there is no difference of principle between these cases and *The Kommunar*, where Clarke J impliedly held that interest fell within section 20(2)(m). As both Mr Henton and Mr Hailey pointed out, if I were to hold that the price was within the section but that the contractual consequences of non-payment of the price were not, that would mean that a *bona fide* supplier of necessaries to a ship would have to bring two separate claims – one *in rem* against the ship and the other *in personam* against the operator. That makes no sense at all, either in terms of fairness or procedure. It would, in many cases, allow the counterparty simply to ignore or bypass the consequences of their contractual bargain and it would lead to a wasteful multiplicity of actions.

14. I acknowledge that the costs are further removed from the price of the bunkers than the interest and the administration fee. But they are no less a part of the contractual bargain and I see no reason in principle to treat them differently. They too fall within section 20(2)(m).

15. The case of *The Oriental Dragon* offers no real support for Mr Kimbell's submissions. That case concerned a contract for the supply of a wide variety of goods and services and in such a case it would be correct to examine each one or at least each broad category. The present cases concern the supply of a single commodity – oil bunkers. That commodity was, and was accepted to be, for the operation of the ship. *The Oriental Dragon* is no authority for the proposition that in such a case – where the supply was unarguably within section 20(2)(m) – the court can unpick the contractual consequences of non-payment or treat those consequences as separate and distinct claims for the purpose of the section.

16. Finally, I note that (a) POPCIL and Carnival are the only claimants (out of some three dozen) who have objected to the characterisation of these present claims as *in rem* claims and that (b) my distinguished predecessor, Mr Jervis Kay QC sitting as a Deputy, granted contractual interest in the claims against these defendants brought by two other suppliers of bunkers, KPI Bridge Oil Inc (AD-2020-000045) and A/S Dan Bunkering Ltd (AD-2020-000050). There was no argument on the point. But Mr Kay evidently saw none of the difficulties raised by POPCIL and Carnival and made the awards of contractual interest.

Quantification

17. It was not in dispute that the law applicable to the contract was US law. Nor did Mr Kimbell and Mr Hailey seriously dispute that US law therefore governed the provisions for interest and for the administration fee and the costs; see Dicey, The Conflict of Laws, 15th Ed, Rules 20 and 227. (I initially had some doubts about the costs. The costs of an action are classically a matter of procedure and therefore governed by domestic law. But in this case, what are claimed are the 'collection costs'. These (a) go beyond the costs of these actions and (b) are a contractual claim. Further, the same costs are recoverable under the indemnity provisions of the terms and conditions; see paragraph 11. It therefore appears to me that the collection costs are, like the interest and the administrative fee, governed by US law.)

18. That has the following consequences.

19. US law caps contractual interest at 1.5% for debts under US$500,000. This is relevant only to the third and fourth stems for 'Vasco Da Gama'. The first claimant's claim for interest

against 'Columbus' is US$101,836 up to 2nd December 2020; the second claimant's claim is US$103.432 up to 2nd December 2020. The claimant's claim for interest against 'Vasco Da Gama' is US$281,593 up to 2nd December 2020.

20. In respect of the administration fee: against 'Columbus' the first claimant claims US$41,066 and the second claimant claims US$37,450. Against 'Vasco Da Gama' the claimant claims US$114,103.05.

21. The calculation of the foregoing sums was not in dispute.

22. In respect of the collection costs, the claimants claim £154,054 which is split across the two actions. These costs are fully explained in Mr Weller's witness statements and are supported, where appropriate, by vouchers. Under US law, in practical terms these are not susceptible to challenge. It is sufficient if I quote the following paragraphs from the supplemental witness statement of Mr Scott Wagner, a Florida attorney and former Vice-Chair of the Admiralty Law Committee of the Florida Bar:

> The phrase "collection costs" is broad enough to encompass any amount, assuming that the fee represents the costs incurred by the creditor in collecting the debt. As such, under applicable law, so long as the party incurred the cost in the collection and it is reasonably related to collection it is recoverable and the amount is not at issue for collateral attack.

23. No evidence was deployed in opposition. It seems to me that the claimants are entitled to these costs albeit that in relation to the complexity of the claims (though not their amount) they are high.

24. If, contrary to the above, I had been obliged to apply English law, then the costs would have been governed by CPR r 44.5. The claimants accepted that their recoverable costs under this provision would extend only to the costs of the actions. They would not include the costs of taking more general advice on recovery from US lawyers and they would not include the claimants' costs of their intervention in the claim made against the vessels by the Port of Tilbury. The figure sought was therefore the lower one of £105,457. Paraphrasing rule 44.5, it provides that costs payable under the terms of a contract are presumed to have been reasonably incurred and to be reasonable in amount. The presumption is rebuttable. In written submissions running to 23 paragraphs, Mr Hailey set out the basis upon which he sought to rebut. Mr Kimbell adopted these submissions. Without going into detail (given that the point is rendered academic by my finding that US law applies and that the collection costs are recoverable in full), had it been necessary to do so I would have found the matters relied upon sufficient to rebut the presumption. I would then have assessed the costs across both actions in the sum of £70,000 – a deduction of one third. This would have been broadly in line with the costs which Mr Hailey's clients recovered in the two claims decided by Mr Deputy Admiralty Registrar Kay QC and which are referred to in paragraph 16 above.

Conclusion

25. In each case I find that the 4 elements of the claim fall within section 20(2)(m) and are proved in the sums set out above. I invite counsel to submit orders to that effect.