Neutral Citation Number: [2020] EWHC 147 (Comm)

Case No: CL-2018-000832

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

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

Date: 30/01/2020

Before:

HIS HONOUR JUDGE PELLING QC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

AMERICAS BULK TRANSPORT LIMITED (LIBERIA)	**Claimant**
- and -	
COSCO BULK CARRIER LIMITED (CHINA)	**Defendant**

m.v. Grand Fortune

- -
- -

Mr Mark Stiggelbout (instructed by **MFB Solicitors**) for the **Claimant**
Mr Paul Toms (instructed by **Penningtons Manches Cooper LLP**) for the **Defendant**

Hearing dates: 19 December 2020

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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.

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HIS HONOUR JUDGE PELLING QC SITTING AS A JUDGE OF THE HIGH COURT

HH Judge Pelling QC:

Introduction

1. This is the hearing of the claimant's application under s.67 of the Arbitration Act 1996 ("AA") challenging the award of Messrs Marshall, Aston and Raymond (dissenting) ("Tribunal") dated 29 November 2018 ("Award") holding that the Tribunal had substantive jurisdiction in respect of the defendant's claim for sums due alternatively damages against the claimant under a recap time charter of the Motor Vessel Grand Fortune ("Vessel") dated 16 May 2008 ("Charterparty") contained in or evidenced by an email of that date.

2. At all material times the defendant was the disponent owner of the Vessel. By a time charter dated 15 November 2007, the defendant chartered the Vessel to Britannia Bulkers A/S ("Bulkers") ("Head Charter"). Bulkers' obligations under the Head Charter were guaranteed by Britannia Bulk Plc ("Bulk"). Bulkers was at all material times a wholly owned subsidiary of Bulk. Bulk was the larger of the two companies. Of the total group fleet, Bulk was the charterer and disponent owner of about 75% of the total fleet with Bulkers being the charterer and disponent owner of the remainder.

3. There is no dispute that the claimant chartered the Vessel by the Charterparty. The Charterparty was negotiated on behalf of the claimant by Mr Philip Lambert, then the claimant's exclusive broker, who is deceased, and Mr Andrew Lees, a freight trader employed by Bulk. The Charterparty was expressly fixed by reference to the Head Charter but did not state who the disponent owner was.

4. The claimant's case is that its counterparty under the Charterparty was Bulk not Bulkers. This is important to the jurisdiction of the Tribunal because the defendant's claims against the claimant in the arbitration are brought as assignee of the rights of Bulkers. If Bulk was the disponent owner under the Charterparty then the Tribunal has no jurisdiction because the defendant cannot rely on the arbitration agreement contained in the Charterparty.

5. The claimant sought a ruling from the Tribunal pursuant to AA, s.30(1)(a), declaring that the Tribunal had no jurisdiction because the true disponent owner was Bulk not Bulkers and thus there was no valid arbitration agreement between the claimant and defendant. By the Award, the Tribunal by a majority rejected the claimant's case. Following publication of the Award, the claimant commenced these proceedings under AA, s.67(1)(a) challenging the Award on the basis that the Tribunal has no substantive jurisdiction and for an order varying the Award so as to uphold the claimant's challenge to jurisdiction. The phrase "*substantive jurisdiction*" within AA, s.67(1)(a) refers to the matters set out in AA, s30(1)(a) to (c) – see AA, s.82. Such a challenge proceeds by way of a re-hearing – see Dallah Real Estate and Tourism Holding Company v. Ministry of Religious Affairs of the Government of Pakistan [2011] AC 763 at paras 25-26. The evidence will usually be and in this case is that which was given before the Tribunal as recorded in the transcripts of the proceedings before the Tribunal leading to the Award.

Background

Authoritative Version of Head Charter

6. There are two versions of the Head Charter in existence. The claimant maintains that the version it adduces is the relevant version. The defendant contends that the version it has produced is the relevant version. However Mr Lees (the individual who negotiated the Charterparty on behalf of the disponent owner) accepted in the course of his oral evidence before the Tribunal that the authentic version was likely to have been the version produced by the claimant – see T1/94/5. I accept that evidence and so find because (a) there was nothing to contradict this evidence, (b) as Mr Lees accepted earlier in his cross examination the document in the possession of the claimant could only have been received by the claimant from Mr Lambert (the claimant's broker) – see T1/93/6-9 - and Mr Lambert could only have obtained it from Mr Lees – see T1/93/10-12 – and (c) the version produced by defendant has some indications within it that suggest it was likely not to have been the authoritative version. Amongst the most obvious is that the version relied on by the claimant refers to the guarantee of Bulkers' obligations by Bulk whereas the version produced by the defendant does not. The guarantee is dated the same day as the Head Charter. Since it is common ground that Bulk did guarantee Bulkers' obligations this tends to support Mr Lees' acceptance that the version produced by the claimant is the version that the parties were working to and (as I explain below) is the version to which the Charterparty refers.

7. Although it is suggested by the defendant that the stamp "*Working Copy*" on the version produced by the claimant suggests it is a draft, I do not accept that to be so in the absence of any evidence that such was what was meant by the stamp. It is equally and perhaps more realistically arguably capable of meaning that the copy of the Head Charter supplied to the claimant was a copy of the Head Charter used by the defendant for trading the Vessel. I regard the stamp as essentially a neutral factor given the absence of any evidence as to its purposes and reach my conclusion by reference to the other factors mentioned earlier.

Charterparty

8. The Charterparty on which the defendant relies is evidenced by an email dated 16 May 2008 from Mr Lambert which sets out "*... a recap of fixture ...*" ("Recap"). The Recap describes the Vessel as being:

> "mv GRAND FORTUNE
>
> (as described in CP dated Nov. 15 2007)"

It contains a number of technical provisions typical of such a document and concludes "*...Otherwise as per CP dated Nov. 15, 2008 with logical alterations"*. It is common ground that the reference to "*2008"* is a typographical error and that it should be "*2007"* and is a reference to the Head Charter. The Recap names the claimant (described as "*ABT*") as charterer but as I have said does not identify the disponent owner. The Charterparty was extended by an agreement contained in or evidenced by an email from Mr Lambert to Mr Lees dated 20 August 2008. In so far as is material the extension was on the same terms as the original Charterparty. It does not identify the disponent owner either. The final sentence of the 20 August email is "*Were you able to draw CP*".

In its context this is a question being asked by Mr Lambert (the claimant's broker) of Mr Lees.

9. By an email of 12 September 2008, the defendant sent the claimant a first draft charterparty ("Draft CP"). Although Mr Stiggelbout referred to it repeatedly as an engrossment, it was not. It is a draft that was never agreed between the parties. The Draft CP purported to be between Bulk as owner and the claimant as charterer. It is dated 16 May 2008 (the date of the recap email) and provides for signature at the end by or on behalf of Bulk as owner and the claimant as charterer. It was drafted after the date when the Recap had been sent and received and after the extension. The claimant relies very heavily on this draft in support of its case that Bulk not Bulkers was the true disponent owner.

The Underlying Dispute and Reference to Arbitration

10. On 31 October 2008, Bulk was placed in administration and on 20 November 2008, Bulkers was placed in insolvent liquidation. A dispute arose between Bulkers and the defendant concerning hire alleged to be due from Bulkers to the defendant. The detail is not relevant. However, as part of a settlement agreement between Bulkers' liquidators and the defendant, the defendant took an assignment of Bulkers' rights, which it then utilised by claiming allegedly unpaid hire from the claimant as Bulkers' assignee.

11. This led, on 12 August 2011, to the issue of Notice of Arbitration by solicitors acting on behalf of the defendant. It described Bulkers as the disponent owners of the Vessel and the claimant as charterer. It claimed that the defendants had been " *... assigned all legal rights in relation to a Sub-Charterparty dated 16 May 2008 between [Bulkers] and [the claimant] ...*".

12. The claimant's solicitors responded by an email dated 26 August 2011, in which they asserted that there "*... was no contract between [the claimant] and [Bulkers] as evidenced by the charter drawn up by [Bulk] ... there is therefore no arbitration agreement between [Bulkers] or [the defendant] and [the claimant] and indeed no charter ...*". The response continued by indicating that Mr Rayment had been appointed as its arbitrator but the claimant's rights were reserved "*... to maintain that there was no contract between [the claimant] and [Bulkers] ... and that the Tribunal has no jurisdiction in this matter ...*". The letter concluded by inviting the defendant to withdraw the proceedings and threatening to seek indemnity costs if it did not. This was followed by a response from the defendant's solicitors re-asserting the claim in October 2011.

13. Nothing further passed between the parties before Mr Lambert died in 2014 or thereafter until 7 April 2017, when the defendant served its claim submissions. The claimant challenged jurisdiction and following an exchange of pleadings limited to the jurisdiction issue, there was a 2 day hearing before the Tribunal on 15-16 October 2018 followed by the publication of the Award on 29 November 2018.

The Award

14. The decision of the majority was that the claimant's counterparty was Bulkers and thus that the Tribunal had jurisdiction over the dispute between the claimant and defendant. The majority considered that the jurisdictional issue depended upon the construction of

the " *... recap dated 16 May 2008 and the head charter dated 15 November 2007 which was between the [defendant] and [Bulkers] ...*" [Award, para. 138]. The substance of the majority's decision is set out at para. 144 in these terms:

> "What is however clear from the decisions in both the Double Happiness and the Rhodian River and the Rhodian Sailor is the presumed concern and hence intention, in the absence of evidence to the contrary, of charterers engaged in negotiations to contract with the disponent owners of the vessel who of course enjoy the authority to instruct and employ (sub-charter) the vessel. Here that coincided with the disponent owner named in the pro-forma [Bulkers]. As a matter of construction, therefore, the view of the majority of the tribunal is that [Bulkers] were the disponent owners who chartered the vessel to [the claimant].
>
> …
>
> Having reached that conclusion, the evidence that post-dated the conclusion of the fixture was irrelevant … "

In relation to the Draft CP, without prejudice to their finding that evidence that post-dated the conclusion of the fixture was irrelevant, the majority noted the inclusion within it of a provision that entitled Bulk to withhold performance if hire was outstanding – see the addition in italics to clause 5 on page 2 – that appeared "*... nowhere else*" by which they meant nowhere in the Recap or Head Charter. They then said of the Draft CP:

> "…Mr Lees … insisted that the references to [Bulk] were mistakes but could not explain how the new term had been added. It is difficult to accept that mistakes were made. Given the deliberate addition of the new term, together with other discrepancies mean that this version of the charter prepared some months after the fixture was not the version agreed initially between the parties. In these circumstances, we consider that the document is open to too many uncertainties and is unreliable as evidence of the original agreement between the parties."

15. Mr Rayment disagreed with this approach. Having concluded that it was unusual in the London Charter market for the disponent owner or owner's agent to draw up a working charterparty, he concluded that in those circumstances the Draft CP was one that would be drawn up with some care and that he was "*... certain that whomever had drawn up the charter would have been given the correct owner's style to insert by someone in authority in [Bulk's] office*". He added that he did not accept that the use of Bulk rather than Bulkers' name was an error and that given that it was unusual for the owner to draw up a working charterparty, Mr Lees "*... would take as much extra care as was necessary to ensure that all the insertions were correct ...*". This took no account of the inclusion within the document of the new term referred to by the majority, which did not appear in the Recap or Mr Lee's evidence as to how the Draft CP came to be drawn up. I return to this evidence later in this judgment.

Issues and Parties' Contentions in Summary

16. The claimant submits that in order for the defendant to prove that Bulkers was a party to the Charterparty, it must prove that:

    i) it was agreed by and between Mr Lambert and Mr Lees that Bulkers was the disponent owner; and

    ii) Mr Lees (being an employee of Bulk) had authority from Bulkers to enter into the Charterparty.

    The claimant submits that I should find that Messrs Lambert and Lees agreed that the disponent owner would be Bulk in essence because (i) the best evidence of what was agreed is contained in the Draft CP, which named Bulk as the disponent owner, (ii) Mr Lees did not have authority to conclude the Charterparty on behalf of Bulkers but only on behalf of Bulk and (iii) that in those circumstances its claim should succeed.

17. The defendant contends that Bulkers was the disponent owner and that in consequence this claim should be dismissed because (a) that is so as a matter of construction of the Recap either (i) viewed in isolation or (ii) when read alongside all admissible extrinsic evidence known to the parties down to 16 May 2008 and/or (b) because Mr Lees was authorised to act on behalf of two principals (Bulk and Bulkers) and he intended to act on behalf of Bulkers in fixing the Charter to the claimant and/or because he had actual authority to act on behalf of Bulkers in fixing the Charterparty and no authority to do so on behalf of Bulk.

Applicable Legal Principles

18. There is a dispute between the parties as to how the issues that arise should be determined. The claimant submits that ascertaining the identity of the parties to a contract is a question of fact to be determined by reference to all the relevant evidence even if it post-dates the contract in issue and even if it is not something known to both parties but only to one of them. The defendant submits that identification of a party to a contract is a matter of contractual construction, which may be supported by extrinsic evidence known to both parties at the time the contract was made. It submits that material coming into existence after that time is immaterial to the issue.

19. In my judgment the applicable principles in summary are as follows:

    i) Where the contract is contained in a document then the first question that arises is whether the document sufficiently unequivocally identifies the parties to the contract. If it does then the question is one to be determined by construction of the relevant document and is not a question of factual investigation and evaluation – see Hector v. Lyons (1988) 58 P & CR 156 and Shogun Finance Limited v. Hudson [2003] UKHL 62; [2004] 1 AC 919 *per* Lord Hobhouse at para. 49 because " *... the rule that other evidence may not be adduced to contradict the provisions of a contract contained in a written document is fundamental to the mercantile law of this country; the bargain is the document; the certainty of the contract depends on it ...*" and *per* Lord Phillips at para. 161;

ii) Where the contract is contained in or evidenced in writing but the document or documents containing or evidencing the agreement do not enable the parties to be ascertained, then recourse to extrinsic evidence is permitted of what the parties said to each other and what they did down to the point at which a contract was concluded for the purpose of determining who the parties to the agreement were intended to be – see Estor Limited v. Multifit (UK) Limited [2009] EWHC 2565 (TCC) *per* Akenhead J at para. 26 approved in Hamid v. Francis Bradshaw Partnership [2013] EWCA Civ 470 *Per* Jackson LJ at para. 56 with whom the other members of the court agreed – see paras 74 and 75;

iii) Where para (ii) applies in principle, the approach that should be adopted is objective not subjective so that the question the court must ask and answer is what a reasonable person furnished with the relevant information, would conclude – see Hamid v. Francis Bradshaw Partnership (ibid.) at para 57(ii) and Navig8 Inc v. South Vigour Shipping Inc and others [2015] EWHC 32; [2016] 2 All E.R. (Comm) 159 *per* Teare J at para. 94.

20. It was submitted on behalf of the claimant that The Starsin [2003] UKHL 12; [2004] 1 AC 715 is authority for wider propositions than those I have set out above. I do not accept that submission. Lord Millett clearly draws the distinction referred to above between cases where a contract is in writing and sufficiently unequivocally identifies the party to the contract – see para 176 – and those where the document containing or evidencing the agreement does not enable the parties to be ascertained – as to which see para 175. There is nothing within what Lord Millett says that supports the proposition that post contractual conduct or knowledge possessed by only one of the parties is relevant to the exercise even if extrinsic evidence is admissible and so is not in conflict with what the Court of Appeal stated in Hamid v. Francis Bradshaw Partnership (ibid.)

21. Although, it was submitted by the claimant that post contractual conduct was admissible to determine the parties to an agreement, this is not consistent with Akenhead J's formulation in Estor Limited v. Multifit (UK) Limited (ibid.) which I am bound to follow since it is the formulation that was approved by the Court of Appeal in Hamid v. Francis Bradshaw Partnership (ibid.). No authority to contrary effect has been cited by the claimant. The only authority that the claimant submitted supported this proposition was ED&F Man Commodity Advisers Limited v. Fluxo-Cane Overseas Limited and another [2008] EWHC 1997. However the issue in that case was not concerned with ascertaining who the parties were to a contract that it was common ground had been made at a particular date but whether an agreement had been reached at all. That issue involves a different form of enquiry from that which arises in this case but in any event I am bound to follow Hamid v. Francis Bradshaw Partnership (ibid.) because it is a decision of the Court of Appeal concerned with the question that arises in this case.

22. I accept the claimant's submission that the reference to the Head Charter in the Recap did not have the effect of stating the charterer under the Head Charter was to be treated as being the disponent owner under Charterparty. The reference is effective only to incorporate the terms of the Head Charter into the Charterparty to the extent they are not contradicted by the terms of the Charterparty – see The Double Happiness [2007] 2 Lloyds Rep 131 *per* Langley J at para. 42. However, the Tribunal's conclusion was not

that the incorporation by reference of the Head Charter terms into the Charterparty had the effect of making Bulkers the disponent owner as a matter of construction but rather was the majority's answer to the question the Tribunal was required to answer namely who a reasonable person furnished with the relevant information would conclude was a party to the Charterparty. The material was relevant to that question because the Head Charter had been supplied by Mr Lees to the claimant acting by Mr Lambert in the course of the negotiations leading to the Charterparty and because, all things being equal, neither Mr Lees nor anyone else had suggested to Mr Lambert that anyone other than Bulkers was entitled to sub-charter the Vessel and a charterer would prefer to contract with a party who had the power as well as the duty to perform – see The Rhodian River and Rhodian Sailor [1984] 1 Lloyds Rep 373 *per* Bingham J as he then was at para. 3. This was the point being made by Langley J – see The Double Happiness (ibid.) at para. 41 and 43.

23. Finally, it was submitted by the defendant and I accept that if (i) the identity of the disponent owner is not apparent on the face of a document containing or evidencing the Charterparty and (ii) cannot be ascertained by reference to the extrinsic evidence available down to the point at which the relevant contract was concluded; but (iii) the relevant contract was entered into by an agent acting on behalf of two or more potential unidentified principals, the identity of the true principal can be ascertained by reference to the intention of the agent when entering the contract – see Atlantic Insurance Company Limited v. Nationwide General Insurance [2003] EWHC 499 (Comm) *per* Cooke J at paragraph 28, where he held that " *... where it is necessary to ascertain the [identity] of a principal, with whom the other party knows it is dealing but who remains unidentified on the face of the contract, resort ... must be had to the intention of the agent when making the contract, to ascertain on whose behalf he was then acting ...*". The material that is admissible in order to resolve this issue includes " *... any ... admissible material showing what was subjectively intended by ...*" the agent – see National Oil Well (UK) Limited v. Davy Offshore Limited [1993] 2 Lloyds Rep. 582 *per* Colman J at 597 LHC (para.(3)). I accept that when this is the issue it is permissible to refer to post contractual as well as pre contractual evidence as long as the evidence is material to the subjective intent of the agent at the time when he contractually bound his principal.

Findings and Determination

24. The Recap is not an agreement in writing but is an email recapitulation by Mr Lambert as agent on behalf of the claimant as charterer to Mr Lees as agent on behalf of the disponent owner of an underlying agreement reached by negotiation between them. There is no reason to suppose however that it is anything other than an accurate summary of what had been agreed not least because no objection was taken to its terms by Mr Lees when it was received or at all and the Charterparty was extended without variation of the terms set out in the Recap. The Recap is therefore evidence of an underlying agreement but it does not contain it. It does not identify expressly who the disponent owner is as I have said nor does it do so impliedly or by reference.

25. The Recap describes the Vessel as being:

> "mv GRAND FORTUNE

(as described in CP dated Nov. 15 2007)"

The reference to the "*... CP dated Nov. 15 2007*…" is to the Head Charter and, as I have held already, the version of the Head Charter that passed between the parties is that disclosed by the claimant. This does not have the effect of incorporating by reference into the Charterparty the identification of Bulkers as disponent owner. The Description referred to is of the Vessel in terms of its essential characteristics as set out in lines 4-11 of the Head Charter and in more detail in clause 44, which is entitled "*Description clause*". The name of Bulkers set out at line 12 of the Head Charter is not part of the description of the Vessel but is the identification of the Charterer under the Head Charter. The inclusion of the phrase "*Otherwise as per CP dated Nov. 15, 2008 with logical alterations*" does not assist either, because the reference is effective only to incorporate the terms of the Head Charter into the Charterparty - see The Double Happiness (ibid.) - and then only to the extent that it is not necessary to make " … *logical alterations …*". In my judgment the inclusion of this phrase makes it close to obvious that the intention was to incorporate the terms of the Head Charter save to the extent they were contradicted by or were inconsistent with the express terms of the Charterparty as set out in the Recap. It follows that the principle referred to in paragraph 19(i) above is of no assistance in identifying the disponent owner.

26. It is next necessary to consider the extrinsic evidence of what the parties said to each other and what they did down to the point at which a contract was concluded for the purpose of attempting to determine who a reasonable person, furnished with the relevant information, would conclude was the disponent owner.

27. As I have explained, Mr Lambert has died since the events with which this claim is concerned took place. However, there is included within the trial bundle an unsigned statement by Mr Lambert. Mr Lambert's evidence has not been tested in cross examination whereas Mr Lees' evidence has been. In the statement Mr Lambert asserts that he acted as sole broker on behalf of both the claimant and Bulk in relation to the fixing of the Charterparty – see paragraph 3. That assertion is not accepted by the defendant and in cross examination it was accepted by Mr Coll (the President of Phoenix Bulk Carriers Inc., the claimant's agent at the relevant time) that Mr Lambert acted exclusively for the claimant. That reflected Mr Lees' understanding – see paragraph 9 of his witness statement. In those circumstances, I accept the defendant's submission that Mr Lambert was not acting for the defendant or Bulk in relation to the Charterparty. This inaccuracy means that some care must be taken in accepting what is said in Mr Lambert's statement, particularly in preference to what Mr Lees said in evidence save where there is a contemporaneous document that indicates that what is said in Mr Lambert's statement should be preferred. Mr Lambert asserts that his understanding was that the Charterparty was with Bulk. The basis of that assertion is set out in paragraph 17 of his statement – that his negotiations were carried out with Mr Lees, he only ever spoke to Bulk in the UK and the Draft CP identified Bulk as the disponent owner. He also gives some evidence as to his understanding as to the relationship between Bulk and Bulkers. This understanding is challenged but in any event is immaterial since it is not alleged that Mr Lambert's understanding was known to Mr Lees.

28. Mr Lambert's evidence does not assist on the issues that I have to decide. He does not anywhere assert that the issue of who was to be disponent owner under the Charterparty

was the subject of any discussion between him and Mr Lees. In those circumstances, the question as to who the disponent party to the Charterparty was depends on the extrinsic evidence and the conclusion that a reasonable person with that knowledge would have drawn rather than the subjective and unarticulated views of one of the participants to the negotiation.

29. Mr Lees' evidence was that he was employed by Bulk as its freight trader, that this was the first time he had fixed a charter with Mr Lambert while he was employed at Bulk and that he conducted his part of the negotiation from Bulk's offices in London using a London phone number and a Bulk email address. He confirmed that Bulk carried out all the chartering for the group, that there were about 80 ships being traded by the two companies, of which about 25% were controlled by Bulkers. Of this, the information known to both parties (that is by Mr Lambert and Mr Lees) was that Mr Lees conducted his part of the negotiation from Bulk's offices in London using a London phone number and a Bulk email address.

30. Mr Lambert also knew or ought to have known that Bulkers traded vessels or at any rate was apparently entitled to trade the Vessel. I reach that conclusion from the following reasons. Both Mr Lambert (and therefore the claimant) and Mr Lees were aware of the Head Charter because it was disclosed as I have described in the course of the negotiations leading to the Charterparty. Whilst there is no evidence as to when precisely it was disclosed, I conclude that it is probable it was disclosed prior to the date of the Recap because it is referred to in the Recap sent by Mr Lambert on behalf of the claimant to Mr Lees and it is clear from the terms of the Recap that the negotiations had proceeded on the basis that the terms of the Head Charter would be incorporated into the Charterparty by reference save where contradicted by the express terms of the Charterparty. Mr Lambert and Mr Lees could not have negotiated on that basis unless the Head Charter had been disclosed by Mr Lees to Mr Lambert in the course of the negotiations. Thus the claimant and its counterparty by their respective agents knew of the existence of the Head Charter and who was identified as the charterer therein.

31. In my view such an assumption would have been fortified by the fact that the Head Charter identified Bulk as the guarantor of Bulkers' obligations under the Head Charter. Thus a reasonable person in the position of Mr Lambert would have known from the Head Charter that not merely was Bulkers, not Bulk, the charterer under the Head Charter but that Bulk had elected to guarantee Bulkers' obligations rather than itself become charterer under the Head Charter thus eliminating any risk of there having been a misidentification of the charterer in the Head Charter. The reference to Bulk's guarantee within the Head Charter also drew attention to the probability that Bulk and Bulkers were related or associated companies. This largely negatives whatever inferences might otherwise have been properly drawn from the fact that Mr Lees operated from Bulk's offices in London and used a Bulk phone number and email address.

32. There is no evidence of any discussion between Mr Lees and Mr Lambert about the identity of the owner prior to the sending and receipt of the Recap. It is not suggested in Mr Lambert's statement that there was any such discussion. Mr Lees' evidence was that there was no such discussion. So when he was asked whether he had provided an assurance prior to fixing the Charterparty that Bulk would be the owner, he replied:

> "I can't remember. I have only general recollection, but I cannot remember any conversation like that and I can't – I wouldn't be able to have given that assurance to them."

It was suggested that it was apparent on the face of the Head Charter that the defendant considered it necessary that Bulkers' obligations be secured by a guarantee from Bulk and that it was implausible in those circumstances that the claimant would have agreed to contract with Bulkers without a further discussion or a guarantee, to which Mr Lees responded:

> "Okay, well, we didn't have a discussion of that kind as far as my memory serves … as far as I can recall we did not have any discussion like that."

He confirmed a little later that he could not recall the name of Bulkers ever coming up in the course of discussions and a little later still that he and Mr Lambert did not discuss the identity of the disponent owner.

33. I accept that this is likely to be the case, not least because the contrary is not suggested in Mr Lambert's statement. The identity of the disponent owner was simply not discussed at any time down to the date when the charter was fixed and the Recap sent. This is unsurprising in the wider commercial context in which the Charterparty was negotiated. The shipping market at that time was extremely strong as is apparent from the increase in rates between Head Charter hire rate and the Recap rate of hire. The claimant had a pressing need for a ship of the Vessel's type as is apparent from paragraph 5 of Mr Lambert's statement. In such circumstances, it is unsurprising that the focus of discussion was on the commercial terms of the charter to the claimant rather than who the disponent owner was. Had there been any discussion of who the disponent owner was, the disponent owner would have been identified expressly in the Recap. As I have said earlier, it was not (and is not) suggested that the Recap is an inaccurate summary of what had been agreed between Mr Lambert and Mr Lees.

34. There is no evidence of there being any disclosure, or even suggestion in the course of the negotiations of the existence, of a sub-charter between Bulkers and Bulk. Not merely is there no evidence that an internal charter from Bulkers to Bulk was mentioned in the course of the negotiations but there is no evidence of such a charter having been entered into. As I have explained, Bulk guaranteed the liabilities of Bulkers under the Head Charter. It would have been far more straightforward for Bulk to have become charterer in place of Bulkers when the Head Charter was being negotiated rather than guarantee Bulkers' obligations if the intention was then to internally charter the Vessel from Bulkers to Bulk.

35. Mr Lees' evidence was that he would not have known if there had been an internal charter from Bulkers to Bulk unless he was told of such an arrangement – see T1/128/3-13 – and that he did not know of such an arrangement in relation to any other ships – see T1/129/1-2 – which led him to respond to the suggestion made on behalf of the claimant that "*… there was probably a historical standing internal charter agreement between the two companies …*" with the answer that "*I have no idea"*. However it went a little further than that as is apparent from this exchange between Mr Aston and Mr Lees:

> "Mr Aston: Were you aware of any other cases, any other vessels that had been fixed on that basis that [it had been] chartered in by one company and you were asked to charter it out with another company?
>
> A Not to my knowledge at all. As I keep saying, it was a long time ago, but no, I don't remember that at all."

Not merely was (i) Mr Lees not told of the existence of an internal charter, but (ii) no evidence was adduced of such an arrangement either generally within the Britannia Group or specifically in relation to the Vessel but (iii) no sensible explanation has been proffered as to why such an arrangement would be made without disclosing the arrangement to the person responsible for arranging a charter of the Vessel. The commercial reality is that if there was an internal charter from Bulkers to Bulk, the only purpose of it would be to enable Bulk rather than Bulkers to trade the Vessel. That being so, Bulk would have informed Mr Lees and Mr Lees would have informed Mr Lambert of the position when supplying him with a copy of the Head Charter. In those circumstances, the suggestion that there was such an arrangement but Mr Lees was not told about it is commercially absurd as is the notion that Mr Lees would not have explained the position when providing the copy of the Head Charter to Mr Lambert.

36. As I explain below, the practice within the Britannia Group was that the entity that chartered the vessel in was the entity that chartered it out. In those circumstances, if Mr Lees was not told of an internal charter from Bulkers to Bulk, it would mean that Mr Lees (to the knowledge of his relevant managers and directors) would be fixing the charter of the Vessel to a sub-charterer on behalf of an entity other than one with the power to offer the Vessel for sub-charter.

37. In those circumstances, I conclude that it is improbable that any such internal charter existed but in any event the existence of any such charter was not known to Mr Lees or Mr Lambert. It follows that even if such a charter existed, it's supposed existence was not part of the extrinsic evidence of what the parties said to each other, did or knew before the Recap was sent and received.

38. In summary therefore, down to the date when the Recap was sent and received, it was known to both Mr Lambert and Mr Lees that (a) Bulkers was charterer of the Vessel under the Head Charter; (b) therefore, Bulkers had the power to sub-charter the Vessel; (c) the terms of the Head Charter as disclosed reinforced this view by providing that Bulkers' performance of its obligations under the Head Charter were guaranteed by Bulk; (d) Mr Lees had not suggested that any entity within the Britannia Group other than the entity that had chartered the Vessel under the Head Charter was to be disponent owner under the Charterparty, because he had not been instructed to that effect; and (e) if there had been an internal charter of the Vessel from Bulkers to Bulk (something which I consider to be implausible for the reasons set out above) that was not something known to Mr Lambert and, therefore to the claimant. That Mr Lees was employed by Bulk and was based at Bulk's London office and used a Bulk email address and phone number was in the circumstances plainly outweighed by the other extrinsic evidence to which I have referred including in particular that a reasonable person with knowledge of the Head Charter would have inferred that Bulk and Bulkers were associated companies from the guarantee referred to in the Head Charter.

39. In those circumstances, the extrinsic evidence of what the parties knew, said to each other and did down to the date when the Recap was sent and received would have led a reasonable person, furnished with the relevant information, to conclude that Bulkers was the disponent owner. In those circumstances, everything that was said and done thereafter was irrelevant and immaterial. What I say hereafter are findings I make on the basis that this conclusion (or my understanding as to the law in this area) is wrong.

40. If and to the extent that (contrary to my conclusions set out earlier) it is permissible to refer to conduct occurring after the date when the relevant contract has been entered into for the purpose of ascertaining the parties to that contract, then I consider the following conduct provides significant support for the conclusion that I have reached by reference to the extrinsic evidence I have so far considered.

41. First, it is not disputed that all the hire due under the Charterparty was paid to Bulkers. Indeed, the claimant's preliminary final statement of account was entitled "*Britannia* (sic) *Bulkers cp dated May 16 2008*". I accept that this is a strong indicator that the Charterparty was with Bulkers not Bulk and I reject the submission made on behalf of the claimant that this point is neutral on that question. Mr Lees' oral evidence was that Bulkers did not deal with the receipt of hire on behalf of Bulk – see T1/78/13-24. The instructions for the payment of hire could only have come from either Bulk or Bulkers. It is improbable that Bulk would direct one of its charterers to pay hire to its subsidiary but by the same token it is probable that such an instruction would have been given on behalf of Bulkers if it was the disponent owner of the Vessel. The claimant did not challenge the instruction to pay Bulkers. The Charterparty was a profitable one – the hire due on the Head Charter was US$28,000 less than that payable under the Charterparty. Thus there was no reason for it to be receiving more than the sum needed to pay the hire due under the Head Charter if it was not the disponent owner. It is more probable than not that the instruction to pay Bulkers was given because Bulkers was the disponent owner. That instruction was consistent with the terms of the Head Charter.

42. Similar considerations apply to the two Letters of Indemnity in evidence. Each was issued by the claimant and each was addressed to Bulkers. Each was a contract by which the claimant agreed to indemnify Bulkers if it delivered cargos shipped aboard the Vessel without production of the original Bills of Lading. In each Bulkers was described as being "*The disponent owners of MV Grand Fortune*". If Bulk was the disponent owner then the Letters of Indemnity would and should have been addressed to it, Bulkers would have returned it as being wrongly addressed to it rather than Bulk and Bulk would have refused discharge of the cargo without corrective Letters of Indemnity – see Mr Coll's evidence at T1/66-70.

43. There was a dispute as to who was the originator of the text of the Letters of Indemnity. Mr Coll suggested it came from the Britannia side. Assuming that is so, the point being made remains a good one since as Mr Coll accepted at T1/68/18-69/5, if Britannia was sent a Letter of indemnity hypothetically naming a non-existent company that would be a real problem for Britannia. The reality is this: no competent ship manager would issue wording for a letter of indemnity that named the wrong company as disponent owner for the purpose of enabling a cargo to be released otherwise than against the production of original Bills of Lading. I accept that if there had been an internal charter between Bulk and Bulkers, an explanation for the terms of the letters of indemnity could be that within Britannia, Bulk was content that the Letter of Indemnity should be

addressed to Bulkers because it was the head charterer from the defendant. However I have decided that there is no evidential basis for concluding that there was such an internal charter. In any event it is inherently more probable than not that Bulkers would request the letter of indemnity because it was the disponent owner to the claimant rather that if it was not.

44. It is now necessary that I refer in some detail to the Draft CP. That document is relevant only if (contrary to what I have concluded) either (i) extrinsic evidence that post-dates the relevant contract is admissible in order to ascertain the party to the contract not ascertainable from the terms of a document containing or evidencing the relevant agreement or (ii) if I am wrong to conclude that the question can be answered by reference to the extrinsic evidence down to the date when the Recap was sent and received and it is necessary to ascertain the parties to the Charterparty by reference to the intention of the agent of the unidentified party when making the contract.

45. Before turning to the Draft CP it is necessary to set out the context. As I have said already, Mr Lees was not told of the existence of any internal charter arrangement between Bulkers and Bulk at any stage. He did however possess a copy of the Head Charter and that document identified the charterer from the defendant as being Bulkers and Bulkers' obligations under the Head Charter as being guaranteed by Bulk. In the absence of any instructions to him to the contrary, his only knowledge as to who could be the disponent owner was that which could be derived from the Head Charter namely that it was Bulkers.

46. This is important because Mr Lees said in evidence that he would be authorised to fix the charter of any particular vessel by whichever of Bulk or Bulkers was capable of being its disponent owner – see T1/79/5-25. In relation to Bulk, the authorisation came from Mr Znak the managing director of Bulk and in relation to Bulkers from Mr Schultz, its managing director – see T1/79/12-18 and 80/1-4. This is entirely unsurprising. If this evidence is correct, Mr Lees could only have intended to fix the Charterparty on behalf of Bulkers not Bulk and only have had authority to fix it on Bulkers' behalf unless he was instructed to fix it on behalf of Bulk – a proposition that I have rejected.

47. Mr Lees' evidence is that specific instructions were not given as to which entity was to be disponent owner. Rather he was told to fix a specific ship and "*… if the ship was on period [charter] with one entity then you had to fix out using the same entity …*" – see T1/80/7-10. Again this is entirely unsurprising. Although he was asked repeatedly to confirm that he would fix on behalf of whichever entity he was instructed to fix the charter on behalf of, Mr Lees repeatedly maintained that this was not the basis on which he worked. He said that he was told which entity to fix a vessel out by the documentation on the charterparty in - see T1/80/11-13. Similarly at T1/80/23-25 this exchange took place:

> "Q: I suggest… you would have been told to fix out this vessel using one of the two companies.
>
> A: The company that it had been fixed in by."

As he added at T1/81/9-14:

> "I would be chartering out under Plc or the Svendberg entity depending on who that ship was on charter to, so if Plc had a ship on period charter then Plc would be the owner, as I chartered out. If it was Bulkers then the same"

It was suggested to Mr Lees on a number of occasions that he would simply act on whatever instructions he was given as to which entity was to be the disponent owner and on each occasion when this was suggested Mr Lees refused to agree. So at T1/82/8-13, there was this exchange:

> "Q: So sometimes you would just be told "fix for Britannia Bunkers A/S"
>
> A: Well, I would be told "could you please fix this ship" and then I would see that the ship was either Plc or Bulkers AS and then that would be the entity that we would fix it out under.
>
> …
>
> (84/9-14):
>
> A: … if the ship was chartered in by Plc then it would be chartered out of Plc as the disponent owner and likewise if it was AS Bulkers in then it should be chartered AS Bulkers out."

In these circumstances and in light of my conclusion that it is improbable that there was an internal charter from Bulkers to Bulk, it is close to certain that Mr Lees' intention was that the Charterparty would be between the claimant and Bulkers, being the entity that to his knowledge had chartered the vessel in. Although Mr Lees gave evidence many years after the events with which this litigation is concerned, given his evidence as set out above, it is more likely than not that he would have recalled being instructed to fix the charter of the Vessel in the name of an entity other than the one that had chartered the Vessel in, had he been given any such instructions, because such an instruction would have been contrary to what was the invariable practice adopted within the Group. Had he received such instructions, it is inherently improbable that Mr Lees would not have made the position clear to Mr Lambert and it is equally clear to me that if such a conversation had taken place, the Recap would have recorded it as being agreed that Bulk was disponent owner.

48. The document on which the claimant places most reliance is the Draft CP. The claimant submits that this is the best evidence of what in fact had been agreed. I reject that submission because the Draft CP is not part of the extrinsic evidence of what the parties said to each other or did in the period down to the date when the Recap was sent and received. It was a document that came into existence after that event in the detailed circumstances to which I refer later in this judgment. If my conclusion that the Draft CP is not part of the relevant extrinsic evidence is wrong, I accept that it would then be a material consideration to be weighed with the other pre and post contract conduct referred to earlier. In any event, the claimant also relies on the document as

demonstrating that Mr Lees did not have authority to conclude the Charterparty on behalf of Bulkers but only on behalf of Bulk.

49. The key points made by the claimant are that this document was issued by Bulk and it names Bulk as the disponent owner in two separate places, being line 2, where Bulk is defined as being the owner of the Vessel and the signature box at the end, where Bulk is again identified as the owner. The claimant relies on the fact that it was agreed between Mr Lambert and Mr Lees that the latter would draw up the formal Charterparty.

50. The first reference to the drawing of a formal charterparty came in the 20 August 2008 email referred to earlier, in which Mr Lambert asked Mr Lees "*... were you able to draw CP?*". The Draft CP was sent by Bulk to the claimant on 12 September 2008 and was next mentioned in correspondence between Mr Lambert and Bulk in an email dated 14 October 2008, where Mr Lambert states:

> "II) Ref: Charter party as drawn by owner and received by chrs on Sep 12 2008
>
> We understand from brokers SITC that he did not draw this cp. In fact broker advises that at time of concluding this fixture, owners agreed to draw this charterparty.
>
> The CP agreement was concluded on May 16th and the CP was never drawn by owner until the dispute over dry docking (clause 93) arose. Approximately 10 days after the dispute arose owners apparently moved rapidly to produce a 'self-serving' document containing a dry docking clause that should properly have been deleted/omitted as it is a logical alteration
>
> Furthermore, had the CP been drawn in a timely fashion, charterers would have noticed owners inclusion of the subject clause and chrs would have objected immediately, thereby avoiding all of the damages that have subsequently arisen. "

There then followed a series of proposed amendments to the draft which serve to highlight that the document was a draft. These proposed amendments were never agreed and the document was never signed.

51. The claimant submits that this document is evidence of the entity that had authorised Mr Lees to contract with the claimant. In support of this contention the claimant relies on Mr Lees' evidence that on fixing the Charterparty, he would have entered the details on the Group's "*Ship Net*" computer system including the names of the owner and charterer, the voyage and the ship – see T1/87/9-88/1. This leads the claimant to submit that whichever employee at Bulk draw up the Draft CP must have obtained the information as to who was the disponent owner from the Ship Net entry and this can only have been the information that was available and applied at the time when the Recap was sent and received. Thus it is submitted it was Mr Lees' intention to enter into the Charterparty on behalf of Bulk not Bulkers.

52. The claimant submits there are a number of reasons why this document is critical to arriving at a conclusion concerning the intention of Mr Lees. First, as I have said, it is

submitted that the information in the Draft CP could only have come from Ship Net and that in turn could only have been inserted by Mr Lees. There is no evidence that is so however and Mr Lees evidence is that it was more probably drafted by a junior employee using the Recap as the main source of information but also the Head Charter. If that is so there is no explanation as to why Bulk rather than Bulkers was identified as disponent owner. The only explanation offered is error. Although the claimant submits that that error is improbable, I disagree. If the claimant is right about how the Draft CP came to be prepared then it necessarily follows that the Letters of Indemnity were erroneous as was the instruction to pay hire to Bulkers not Bulk. There is no evidence that Mr Lees consulted anything prior to fixture other than the Head Charter.

53. Secondly, it is submitted that particular care would have been taken in drafting the Draft CP because it is unusual for a disponent owner to draft the formal charterparty. This was all the more the case because three quarters of the Group vessels were controlled by Bulk and the remainder by Bulkers meaning that care had to be taken in identifying the correct company within the group that was the disponent owner. It is important to note the nuanced nature of Mr Lees' evidence on this issue however. When it was suggested to him that one of the first responsibilities of anyone tasked with drawing up a charter would have been to check on the correct Britannia entity that was letting the vessel concerned, Mr Lees replied: "*... That is what should have been done absolutely*". When he was pressed with the implausibility of the wrong entity being identified in the draft, his response was "*...Its clear it's not ... you know, its not as it should be.*". Although it is submitted that errors are improbable I do not agree. As I have said, if the claimant is correct in its submission as to the effect of the Draft CP, it follows that in all probability a mistake was made in the manner in which the Letter of Indemnity had been drawn up and in instructing the claimant to pay the hire to Bulker rather than Bulk. Given that the Letters of Indemnity and payment instructions are consistent with the Head Charter, in my view it is more probable that Mr Lees' intention was that Bulkers be disponent owner and the Draft CP erroneously identified Bulk rather than Bulkers as disponent owner.

54. Thirdly, it was submitted by the claimant to be obvious that whoever drew up the Draft CP did so with care and attention because multiple amendments including the addition of a "withholding of service" clause that was designed to assist with the underlying dry docking dispute were made which had no basis in the Recap and thus it is implausible that an error would have been made in identifying the correct letting entity.

55. In my judgment that too does not necessarily lead to the conclusion that Mr Lees' intention at the time when the contract was made for Bulk to be the letting entity and not Bulkers. These additions are equally consistent with someone within the Britannia organisation being asked to draw up a formal Charterparty having been supplied with the Recap and the Head Charter. I say that because all the drafting corrections suggested on behalf of the claimant in the 14 October email (apart from the deletion of the Withholding of Service clause, which had not been agreed) were corrections to clauses reflecting the Head Charter terms that were argued to be inappropriate by reason of the logical alteration qualification to the incorporation of the terms of the Head Charter. The claimant maintains that it is noteworthy that the list of corrections does not include a correction of the description of the disponent owner even though the claimant's agent was at pains to ensure that the claimant was correctly described. In my judgment that point does not assist since it is at least as consistent with the identity of the disponent

owner not having been discussed and the claimant not being in a position to comment on the issue.

56. Potentially more important is that if the author of the Draft CP had access to the Head Charter then he or she would or ought to have seen that the charterer from the defendant was Bulkers not Bulk. However, whilst courts do not lightly assume drafting errors of this sort are made, such errors do occur and as I have said, it would appear that even on the claimant's case mistakes have been made in documents prepared on the basis of information supplied by Bulk.

57. Fourthly it was submitted that Mr Lees would have checked the charter document carefully himself. However the evidence that is relied on as supporting that proposition is not to that effect. At T1/88/21-23, the exchange between counsel and Mr Lees was as follows:

> "Q: And when a draft engrossed charter, drawn up charter came back from a broker, you would typically check it?
>
> A: That was part of my job, yes. … I think every chartering manager or freight trader on the planet would tell you that checking charterparties of deals done is quite a long way down their priority.
>
> Q: But you would do it?
>
> A: you would do it eventually.
>
> Q: You would check it for correctness?
>
> A: Yes."

Two points emerge from this evidence. First, Mr Lees was not being asked what he did in relation to the Draft CP or even what he would have done in relation to a draft CP issued by Bulk on behalf of a Britannia entity that was the disponent owner but what he would have done if conventional practice had been followed and the charterer (rather than the disponent owner) had drawn a draft Charterparty for signature on behalf of a Britannia entity where that entity was the disponent owner. Secondly, whilst it was no doubt that such documents ought to be checked with care, Mr Lees was impliedly suggesting that did not always happen.

58. It was submitted on behalf of the claimant that the Draft CP was "… *contemporaneous/near contemporaneous evidence …*" of whether Bulk or Bulkers was party to the Charterparty. Whilst I accept that it was much closer in time to the date when the Recap was sent and received than the witness statement of and oral evidence from Mr Lees, it remains the case that it was prepared some 4 months after that date and in circumstances where there was an emerging and serious dispute relating to the dry docking of the Vessel. Although provision for that was contained in the Head Charter, no provision was made for it in the Recap. Nonetheless the claimant submits that it is overwhelmingly improbable that the Draft CP did not accurately reflect the position as to who Mr Lees intended the disponent owner to have been. It submits that if that conclusion is to be rejected it involves concluding that whoever draw up the Draft

CP did so without reference to the Ship Net system and that the individual responsible drafted the document so as to obtain an illegitimate advantage whilst at the same time making a mistake as to the entity that was the disponent owner. I return to these points in a moment.

59. I reject as immaterial the fact that the claimant or Mr Lambert did not correct the identity of the disponent owner. As I have explained, that issue was never discussed between Mr Lambert and Mr Lees in the negotiations leading to the sending and receipt of the Recap. Similarly, I reject as immaterial the assertion that Mr Lees failed to correct the error. As I have said the evidence was that he would check incoming draft charterparties not that he checked this or any outgoing ones. His evidence was that he did not draw the Draft CP and he does not recall checking it – see para. 10 of his witness statement and his oral evidence at T1/124 – although he accepted it would have been his job to check it (by implication if anyone had checked it) – see T1/108/5-6. His evidence is that it would not have been sent to anyone for checking – see T1/107/17. His evidence both in his witness statement and orally was that the document was drawn up by a secretary or other junior colleague because it was in essence an administrative task – see T1/107/6-8.

60. Ultimately, the defendant's case is that the inclusion within the Draft CP of Bulk as disponent owner rather than Bulkers was an error. Whilst I accept that the insertion of the Withholding of Service clause, suggests that someone with knowledge of the underlying dry docking dispute had directed that such a provision be included, that does not lead necessarily to the conclusion that similar thought and care had been devoted to the remainder of the document. Indeed, the comments on the draft from Mr Lambert suggest that all the person preparing the document had done was to attempt to mirror within the Draft CP the provisions of the Head Charter without taking account of the "*... logical alterations ...*" proviso. The only exception to this appears to be the addition of the words "*and without guarantee*" to the vessel's description in clause 44. Inserting a clause that had not been agreed does not lead to the conclusion that the document had been prepared erroneously in other respects. The document is clearly a pro forma to which alterations have been made. Mr Lees evidence was that in order to be able to draft a charterparty such as the Draft CP, the person concerned needed to have the relevant template on his or her computer. I accept that this is probably correct given the appearance of the document. It is a standard document to which insertions and deletions have been made electronically. It is conceivable that the description of the disponent owner as being Bulk was left in the draft in error and not spotted. Such drafting errors are not unknown in many fields of activity. There is some evidence that such mistakes occurred in relation to other documents material to this case - see for example the draft head Charter relied on by the defendants where the charterer is described as being Bulkers but the continuation sheets refer to the charterer as being Bulk. They occur because the main focus of attention is elsewhere. At the time when the Draft CP was being drawn up, the identity of the disponent owner was not a contentious issue.

61. The Draft CP is relevant only to the question concerning Mr Lees' intention when making the contract in order to ascertain on whose behalf he was then acting. The Draft CP was not drafted by him, was not in fact approved or checked by him and was not prepared by reference to information provided by him. The information that he had available to him at the time the Charterparty was agreed in the terms of the Recap was that contained in the Head Charter. There is no evidence of any internal charter between

Bulkers and Bulk nor any commercial reason why there should have been such an arrangement.

Conclusions

62. For the reasons set out above, the only admissible evidence relevant to the question who was the disponent owner was evidence of what Mr Lambert and Mr Lees said to each other and what they did. Applying this test, in my judgment it is plain that the intended disponent owner under the Charterparty was Bulkers because it was the only entity entitled to trade the Vessel under the Head Charter. If and to the extent that evidence of conduct occurring after the event is relevant, I consider that the terms of the Letters of Indemnity and the instructions to pay Bulkers is much more significant than the terms of the Draft CP, which I conclude erroneously identified the wrong Britannia entity as the disponent owner. In those circumstances, this claim fails and is dismissed.