Neutral Citation Number **[2024] EWHC 1329 (Admlty)**

IN THE HIGH COURT OFJUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
ADMIRALTY COURT

Claim No. AD-2024-000008

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Thursday, 21st March 2024

Before:

THE HONOURABLE MR JUSTICE ANDREW BAKER

B E T W E E N:

BOLUDA TOWAGE ROTTERDAM BV & others

and

ELISE TANSCHIFFAHRT KG & another

Thomas Steward (instructed by **Penningtons Manches Cooper LLP**) for the **Claimants**
William Mitchell (instructed by **Andrew Jackson Solicitors LLP**) for the **Defendants**

JUDGMENT
(Approved Transcript)

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Andrew Baker J:

1. In this claim, the first claimant is said to be the operator of the tug "*VB Rebel*". I shall refer to the first claimant as 'Boluda'. The precise contractual arrangements under which it operates the tug have not been put in evidence for the purposes of the hearing today, but it is not suggested in any evidence that Boluda is a demise charterer or in some other way has any proprietary interest in the tug.

2. The second claimant, to which I will refer as 'Rebel', is the owner of the tug. The third claimant is described compendiously as "*The owners and/or demise charterers, master, officers and crew of the tug VB Rebel*". The reference to the owners is superfluous since Rebel is named already in its own right as second claimant and Mr Steward confirmed not only that there is no suggestion that Boluda were demise charterers but nor is there any suggestion that there were any demise charterers at any material time. In substance, therefore, although the formulaic description used for the third claimant could potentially have gone wider, the third claimant is compendiously the master, officer and crew of the tug, and I shall refer to it or them, as a named claimant, simply as 'the crew'.

3. The first defendant is or was at material times the owner of a small inland waterways tanker, on the evidence it would seem about 85 metres long and 10 metres broad, that was or may have been in November 2023 named m.t. "*Stela*". I shall refer to the first defendant as 'the owner'.

4. The second defendant, on the evidence before the court, was a charterer of the *Stela*, and I shall refer to it as 'the charterer'. As with Boluda on the tug side of the litigation, there is no suggestion that the charterer had any proprietary interest in the tanker. Indeed, there is affirmative evidence served on the defendants' part to the contrary.

5. The Claim Form was issued on 14 February 2024. It states that the proceedings are for the pursuit of claims by Rebel and/or the crew for salvage reward and claims by all three claimants for an anti-suit injunction.

6. There is before the court today the claimants' application notice dated 20 February for an interim anti-suit injunction. That application was listed for hearing today, 21 March, on notice to ensure that the question of interim injunctive relief was resolved prior to 10 April, the date of a first procedural hearing in the Dutch proceedings brought by the owner and charterer as plaintiffs against Rebel and Boluda as defendants that give rise to the claimants' desire for an anti-suit injunction.

7. An acknowledgement of service was filed, dated 7 March, on behalf of both defendants, stating both an intention to defend and an intention to challenge jurisdiction, and that was followed by an Application Notice dated 15 March, also then listed to be dealt with today, by which the defendants apply to set aside these proceedings, so far as brought by Boluda and so far as brought against the charterer, and for an order that the court will not exercise its jurisdiction and, as a result, an order for a stay, in respect of Rebel's and the crew's claims against the owner.

8. That, as Mr Mitchell helpfully then confirmed in his skeleton argument and oral submissions, subject to one wrinkle I shall mention, appeared to constitute acceptance of this court's jurisdiction, and thus submission to this court's jurisdiction, in respect of those

claims, that is to say the claims of Rebel and the claims of the crew against the owner, but with an application that the court stay the proceedings as regards those claims in favour of the Dutch proceedings. That would have to be on the basis of an argument of *forum non conveniens*.

9. The wrinkle which had rendered that position possibly a touch less clear was that in Mr Mitchell's skeleton for the defendants, whilst confirming in terms that jurisdiction was conceded and only a stay sought as regards Rebel's claim against the owner and that, by contrast, jurisdiction was challenged as regards Boluda's claims and as regards any claim against the charterer, the crew's claim against the owner was not mentioned. Mr Mitchell, however, helpfully confirmed in his dialogue with the court at the outset of the hearing that the understanding created by the procedural background I have described was correct, so far as the crew's claims against the owner are concerned. The defendants indeed do not say that this court has no jurisdiction over those claims. It is said only that the court should not exercise that jurisdiction, in the form of ordering a stay of the proceedings here pending the resolution of the Dutch proceedings.

10. The basic facts I can state very shortly for the purposes of today's applications. Early on the morning of 14 November 2023, the *Stela* was warned by the marine traffic authorities at Rozenburg, Holland that she appeared to be heading towards the mole at Scheurhaven.

11. In the event, she grounded forward upon the rocks that form that mole. The master of the tug had heard the radio traffic and proceeded to *Stela*'s location. In the event, and in detailed circumstances that may be in dispute between the parties, the *Stela* refloated, or was refloated, relatively rapidly and was in fact taken under tow by the tug to a location at which the tug and the tanker parted company.

12. Before they finally parted company, however, the master of the tug went aboard the *Stela* to invite the master of the tanker to sign a Certificate of Safe Delivery. The basic details of the ships and the timing had been inserted and the document had been printed for the master of the tug to take with him to the master of the tanker. The master of the tanker and the master of the tug both signed the document and, as it now appears, there may be issues between the parties as to precisely what, if anything, was said between the two masters concerning the nature of the document.

13. The document, headed "Boluda Towage" and entitling itself a "Certificate of Safe Delivery", identifies the place as Rotterdam-Scheurhaven, the date as 1 November 2023 and the local time as 06.45. It then contains the following brief words:

> "I, the undersigned, master of the m.t. Stela, hereby certify that my vessel, together with her cargo (if any) was safely delivered to me by the Master or representative of the tugboat "VB Rebel", at Rotterdam - Caland I (place), this day of 14-11-2023 (date) at 07.21 hours local time, where she is at present lying safely moored (moored, at anchor, etc.) on termination of salvage services. Any dispute arising out of the services performed by the tug, will be settled in London, in accordance with English law.
>
> In agreement with the above:",

under which were lines for signature by the master of the tug on the left and the master of the tanker on the right, and, as I have indicated, both masters signed the document.

14. It is not disputed, at all events for the purposes of today's application, that objectively and other things being equal, the signatures of the two masters on that document in those circumstances purported to create a binding commitment on the part of each of their principals that any dispute arising between those principals out of whatever services were performed by the tug were to be settled in London, having the meaning in context of litigated, if not resolved by agreement, in the English courts, and in accordance with English law, meaning in context the referred dispute to be determined according to applicable rules of English domestic law.

15. It is said that there may be a defence of either *non est factum* or unilateral mistake in respect of that apparent commitment by the master of the tanker to English law and jurisdiction.

16. The claimants' evidence at this stage, in the form of a witness statement from Mr Strange of Penningtons Manches Cooper LLP, the claimants' solicitors, based on the information he has received from those instructing him - although as I observed in the course of argument, not descending to the level of particularity it should as to who has given what information - is to the effect that the two masters on board the tanker were able to communicate so as to understand each other. It is not said in what language that occurred, but, as a result, the master of the tanker managed to convey to the master of the tug that he spoke little English but did speak German. However, the claimants' evidence continues, the master of the tug does not speak German, and he proceeded to present the certificate for signature, it was signed by the master of the tanker, and then he (the tug master) also signed. On the basis of that evidence, no particular conversation of any kind occurred between the two masters concerning what it was that the master of the tanker was being invited to sign. He had conveyed that he spoke little English but not that he did not speak English at all, nor that he could not understand written English, and the signatures followed.

17. The evidence before the court for this application on the defendants' side is, in the first place, in the form of a witness statement from Mr Coish of Andrew Jackson Solicitors LLP, the defendants' solicitors. It equally, but it might be said even more so, has the difficulty of not adequately explaining the source or sources of the information provided or therefore the chain of evidence. That is a greater problem in the case of the defendants' evidence because of the nature of that evidence, as I am about to describe.

18. The burden of that evidence, at its high point for the defendants, is a suggestion that the master of the tanker's English was so limited or non-existent that he would not have understood and did not understand at all what he was signing and that he was in some way misled as to what it was he was being asked to sign by a description of it by somebody on behalf of the tug, which it might be inferred would have to have been the tug's master, as being just a formality.

19. An immediate difficulty with that evidence is that, as supposedly clarified by the master in documents provided recently so as to supplement the exhibit to Mr Coish's statement, it is claimed that that aspect of the conversation between the two masters occurred in German, although the evidence before the court, at least at this stage, is that the master of the tug does not speak German.

20. The more fundamental and grave difficulty with the evidence is that, as presented by Mr Coish in his statement, there is at pages 13-14 of his exhibit, an account of the relevant circumstances provided by the master of the tanker and written in English. The additional documentation provided more recently to supplement and clarify that explanation is also written in English, is signed by the master of the tanker, and comes under cover of or accompanied by a document reiterating some of the basic supposed circumstances asserted by the defendants, as I have just summarised them, and confirming that in good faith what is attached to that document by the master is his signature.

21. In those circumstances, and for the purposes of the applications before the court today, I am quite unable to identify that there is other than a speculative and highly unlikely possibility of a defence of *non est factum* or unilateral mistake in the case.

22. Of course any ruling at this stage as to how the case appears does not finally decide anything and if upon different evidence at a final trial, a seriously arguable defence of either variety emerges, that will need to be dealt with. I am satisfied, however, that although brought on at some speed, there has been ample time, as a result of the claimants' careful acceptance and insistence that there was sufficient time after it issued its Application Notice to have a meaningful on-notice hearing, for seriously credible evidence of a possible defence of that sort to have been put in front of the court if it was available.

23. I turn then briefly to introduce the Dutch proceedings that give rise to the application for an anti-suit injunction. They were commenced a little earlier than the English proceedings and were brought to the attention of those acting for the claimants on 25 January, with notification that it involved summoning the parties to a first court appearance on the date I have already identified, 10 April, for a hearing at 10 o'clock.

24. The proceedings, as I mentioned already, are pursued by the owner and the charterer as plaintiffs against Boluda and Rebel. They assert, as will be the defendants' case in whatever jurisdiction any claims or cross-claims are to be litigated, if not resolved, that the tanker was not in any situation of danger and did not ever need assistance, readily rectified her difficulties, essentially under her own efforts, and though (it is accepted) took a towing line from the tug and was then towed, that did not amount to a salvage operation. Relief is sought, broadly speaking, that the court determine that there was no salvage operation and, therefore, there can be no entitlement to any salvage reward or, in the alternative, to fix the amount of any salvage reward, and if the defendants here, the plaintiffs in the Netherlands, are correct that the operation was not in the nature of salvage, to have the court determine what, if any, amount by way of a reasonable fee for towing services might be payable.

25. Against that description of the circumstance and in the light of my observations on the weakness, as it presently appears, of the suggested defence to the claim of a binding agreement to English law and jurisdiction, I shall turn to deal concisely in turn with the claims here against the charterer, the claims here by Boluda, and then the claims here by Rebel and the crew against the owner.

26. Firstly, then, as regards the claims against the charterer, in my judgment, there is no basis for jurisdiction in respect of any claim against the charterer, and, therefore, no basis for relief by way of anti-suit injunction against the charterer, since the charterer, in my judgment, is not

arguably bound by the governing law and jurisdiction clause. Mr Steward presents, attractively, a cleverly formulated argument by reference to those cases such as there are, in which a party other than the immediate contracting party has succeeded in obtaining relief by way of anti-suit injunction, founded upon the scope, terms and intended effect of a jurisdiction clause entered into by others. However, this is a straightforward case in which two masters, acting in the absence of any evidence to the contrary on behalf of their respective principals, have signed a document concerning claims relating to the services rendered by the one master in charge of the tug to the other master in charge of the tanker.

27. In those circumstances, the plain purport of the clause and its only relevant effect is to create an agreement as to what is to happen in respect of claims between those principals, that is to say between Rebel and the owner.

28. In those circumstances, as it seems to me, the fact that - quite possibly unnecessarily but that is not a matter on which I need to take any final view - on the tanker side of this litigation, the charterer was included as a plaintiff in the Netherlands in case remuneration claims, including possibly a claim for salvage reward, might be pursued against it, is not a basis upon which this court should seek to interfere with, or intervene indirectly in, the Dutch proceedings by the grant of anti-suit injunctive relief.

29. The pursuit in the Netherlands by the charterer of a claim to establish that it has no relevant liability is not a claim that it is any part of this court's function to consider as potentially vexatious, oppressive or otherwise. It may be, as discussed in the dialogue with counsel, that the involvement of the charterer has indeed been premature and unnecessary, and a little more constructive communication between the parties could have made clear that any possible claim would only ever have been against the owner anyway. If that results in an ability for the parties to resolve the Dutch proceedings, as brought by the charterers, quickly and cheaply without ongoing litigation, no doubt they will both be glad of that. If, somehow, that proves to be wrong and there is some ongoing reason for the charterer to wish to establish its own position before the Dutch court, as I say, in my judgment there is no reason for this court to restrain it from doing so.

30. Secondly, as regards claims by Boluda, in my judgment, there is no basis for jurisdiction in respect of any claim brought by it or therefore an anti-suit injunction to restrain the Dutch claim against it because by parity of reasoning, it is not arguably entitled to or bound by the governing law and jurisdiction clause agreed by Rebel with the owner. It has made clear through both the Claim Form and then the submissions of Mr Steward today that it makes no claim itself for salvage reward or other remuneration against any of the opposing parties.

31. That, again, may have the capacity to inform a rapid resolution of matters in the Netherlands if the parties are able to be constructive about it, other than of course the claims between the principal protagonists, the two vessel owners, which give rise to greater difficulties.

32. Thirdly, then, I turn to those claims, that is to say the claim here by Rebel against the owner and the corresponding negative claim, in effect, by the owner against Rebel in the Dutch proceedings, the owner suing there as plaintiff though it is naturally the defendant to a money claim, suing as plaintiff for the purpose of seeking to establish that it does not have any monetary liability of a particular kind and it may be to have a quantification, at least on its primary case, of a much cheaper species of liability that it may have.

33. As regards that third aspect of the matter, in my judgment, the stay application here was and is ill-founded. The Dutch court, with respect, is plainly not the more appropriate forum for the resolution of a dispute governed by English law over whether the governing law and jurisdiction clause is binding on the owner as a contract. If it is binding on the owner as a contract, Rebel should be free in the exercise then of its contractual right thus established to pursue its substantive salvage claim and any alternative basis for remuneration that it may wish to advance if this was not a salvage operation in this jurisdiction and governed by English law. This court can readily accommodate an alternative claim either for salvage reward or other species of remuneration governed by Dutch law if Rebel wishes to pursue any such claim in the alternative and should it ultimately fail to establish finally the existence of the binding agreement it asserts for English law to govern.

34. I have no reason to suppose that the Dutch court is not similarly well able to consider a salvage claim governed by English law or a claim for some alternative basis of remuneration but governed by English law rather than Dutch law. However in the circumstances of this case, in my judgment, that is not a good reason to countenance the owner's breach of contract, as it would be in that circumstance, of having that claim dealt with there rather than in this jurisdiction.

35. Contrary to the submission, also attractively presented, and cleverly constructed, by Mr Mitchell, that there is similarity in this case to the circumstances, for example, of *Donohue v Armco Inc & Others* [2001] UKHL 64 where anti-suit injunctive relief was ultimately declined in a circumstance of multiple parties in different jurisdictions, in this case the involvement of other parties in the Dutch claim is no reason, let alone good reason, why claims by Rebel against the owner should not proceed here if governed by the English law and jurisdiction clause relied on by Rebel or be stayed here pending determination elsewhere of the question governed by English law whether that is the position to the extent that is not yet finally resolved. There are, so far as this court can see, no arguable claims, that is to say substantive claims, arising out of the circumstances disclosed to the court, either by Boluda or against the charterer.

36. There is, in those circumstances, no reason at all why the defendants' pursuit of some confirmation of that fact in a court in Holland, if that is required, because the parties cannot find an agreed way of extricating the peripheral claims from the litigation, should mean that the real dispute between the principal and insofar as this court can see only proper parties, Rebel and the crew and the owners, should not occur here.

37. Having in that formulation, just mentioned again the crew, it is perhaps worth adding that there is no greater reason why the seemingly unnecessary involvement of Boluda and the charterer in the Dutch proceedings should have a greater weight in any balance that has to be considered over the involvement so that they can pursue any claims, if they have any, that arise, of the crew here but not in Holland, as I made clear at the outset in describing the way in which these proceedings now stand procedurally. The jurisdiction of this court, whatever may be the governing law of the claims being brought by the crew, has been accepted and the burden was on the defendants, therefore, in practice, given my conclusions concerning the charterer, the burden was on the owner to persuade the court why that jurisdiction should not be exercised.

38. In the circumstances, although it is not necessary to add this, as it seems to me it would become vexatious and oppressive to insist upon a duality of jurisdiction for the litigation of the issues arising between Rebel and the owners, and particularly it would be vexatious and oppressive for the Dutch proceedings in which the owner, in substance, is seeking negative declaratory relief, to be continued in the face of the high probability that the matters between those parties are, by contract, governed by English law with an associated obligation to litigate here.

39. My conclusion, in all those circumstances, is that, firstly, the proceedings here must be set aside to the extent brought by Boluda or against the charterer. If, amongst others, that conclusion will be given effect by removals and deletions in the formal court documentation, I might invite consideration to be given at the same time to striking through the words "The owners and/or demise charterers" in the description of the third claimant so that it is clear that the third claimant, in fact, is only the crew as I have been describing them.

40. Secondly, the application for a stay, which *ex hypothesi* becomes an application only for a stay of the proceedings to the extent they are brought by Rebel and the crew against the owner, is dismissed and, thirdly, an interim anti-suit injunction will be granted upon the application of Rebel to restrain the further prosecution by the owner of the Dutch proceedings to the extent that those proceedings involve claims brought by the owner against Rebel, pending trial or further order here.

41. Not by way of relief, because it is not for this court to attempt to do so by way of relief, but I say again, by way of encouragement, that in my judgment the parties should make real efforts to see if, in the light of the submissions that have had to be developed for these applications, and the judgment that this court has now given on those matters, the Dutch proceedings, so far as they are not the owner against Rebel, might be capable of some rapid resolution.

42. For completeness, I should say that I do not consider it appropriate to adjourn the interim anti-suit injunction application given the conclusion I have felt able to reach on the material as it stands as to the apparent strength of that case pending what would then be a final trial of the issue whether there was a governing law and jurisdiction clause binding on the owner, tried out as an issue within the application. In my judgment, any question whether governing law and the existence or not for the purposes of any final anti-suit injunctive relief of the jurisdiction clause can and should be dealt with separately, should be dealt with as a matter of case management, that is to say whether there should be a preliminary issue or a case management direction that the anti-suit injunction claim be taken first prior to the substantive monetary claims. However, I have to say, at least by way of provisional indication and acknowledging that I have not heard specific argument about this, which will not be a matter for me in the future, that I envisage the cost and time involved in this litigation as a whole and in any contemplation of managing it by way of potentially two separate trials splitting out the different issues, is surely going to be a very considerable factor for the parties to contemplate on what is, in any view, a relatively modest claim.

43. However, in the meantime, and pending a case management decision as to when different issues should be tried if there is not simply to be a single final trial, if necessary, Rebel will be protected by the interim injunction granted today from being, as I would have it, vexed by

duplicity of litigation in the Netherlands that is, or could very well be, a breach of contract against it.

44. Given the modest value and nature of this litigation, without meaning by that any disrespect to the potential importance of it to the lay clients, and subject to any observations of counsel that I will now briefly invite, given the hour, I have in mind to allocate the matter to the Admiralty Registrar for case management and trial but I invite consideration to whether, even now, I should not order on a relatively rapid timescale an exchange at least of pleadings, following which the parties could give anxious consideration to how much and what type of further interlocutory process was necessary, and arrange for a short case management hearing before the Registrar if they are not able to agree directions to submit to him for approval on the papers.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof

This transcript has been approved by the judge.