Neutral Citation Number: [2019] EWHC 3541 (Comm)

Case No: CL-2019-000359

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 20 December 2019

Before :

MR JUSTICE ANDREW BAKER

- -

Between :

Seniority Shipping Corporation S.A.	**Claimant**
- and -	
City Seed Crushing Industries Ltd	**Defendant**

m.v. "Joker"

- -

Neil Henderson (instructed by **Holman Fenwick Willan International LLP**) for the **Claimant**
The Defendant did not appear and was not represented

Hearing dates: 6 December 2019

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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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MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker:

Introduction

1. The claimant owns the m.v. *Joker*, a dry bulk cargo ship that carried a cargo of 53,222.24 m.t. of soya bean meal in bulk from Santos, Brazil to Chittagong, Bangladesh under bills of lading on the Congenbill 1994 form dated 29 March 2019 ('the Bills of Lading'). On 8 May 2019, the *Joker*'s propeller tangled with the anchor chain of a tanker, m.t. *P Russel*, on the passage to berth, within Bangladesh waters. In the resulting collision, hold no.4 was penetrated causing seawater ingress and cargo damage.

2. On 14 May 2019, the defendant as holder of the bills of lading and intended receiver of the cargo, filed Admiralty Suit No.20 in the High Court Division of the Supreme Court of Bangladesh ('the Cargo Claim'). An arrest order was made that day and served on the *Joker* the next day, 15 May. On 3 June 2019, the claimant issued its Claim Form in this action, for an anti-suit injunction in respect of the Cargo Claim.

3. The claimant seeks upon the trial of this action a final injunction prohibiting any further prosecution of the Cargo Claim, requiring the termination of the Cargo Claim and restraining the defendant from commencing or pursuing any proceedings in respect of any claim arising under or relating to the Bills of Lading other than in London arbitration.

4. As I shall describe in more detail below, the claimant has participated in the Cargo Claim. The defendant has not participated at all in this action.

5. By an Order dated 3 June 2019, Phillips J made provision for service of the Claim Form and an application for interim relief, pursuant to which these proceedings and that application were duly served on the defendant. By Order dated 14 June 2019, Butcher J granted an interim injunction restraining the defendant from continuing or further prosecuting the Cargo Claim. On 12 July 2019, by my Order of that date, that interim injunction was continued until trial or further order, and directions were given for trial.

6. Both interim injunction orders were duly served on the defendant. The trial came to be listed, in the event before me, on 6 December 2019. The defendant was duly notified throughout of all elements of the progress of proceedings here; it was served with all the evidence filed by the claimant and also with the claimant's skeleton argument for trial.

Arbitration Clause

7. For the voyage in question, the *Joker* was operating under a time charter between the Claimant and DHL Project & Chartering Ltd ('DHL') on the New York Produce form dated 8 March 2019 and a voyage charter, the date of which is not in evidence before me, between DHL and COFCO on the EUROMED Charter Party 1983 (Revised 1997) form. Clause 6 of the voyage charter was entitled "*Law & Arbitration Clause*" and was in these terms:

> "*a) This contract is governed by and construed in accordance with English law.*
>
> *b) [Provision for mediation of disputes under the auspices of CEDR, London].*
>
> *c) In the event that mediation does not lead to a mutually signed settlement agreement within 35 days after the appointment of a mediator any dispute shall be resolved by London arbitration as provided below*
>
> *1) All disputes arising out of or relating to this contract irrespective of amount in dispute … shall be referred to arbitration in London and that reference shall be in accordance with the small claims procedure of the LMAA.*
>
> *2) All other disputes, unless the parties agree forthwith on a single arbitrator, be referred to the final arbitrament of two arbitrators carrying on business in London who shall be members of the Baltic Exchange and engaged in shipping and/or grain trades 1 to be appointed by each of the parties with power to such arbitrators to appoint an Umpire. …*"

8. The voyage charter also included an additional Clause 46 providing: "*Arbitration in London, English law to apply. For any dispute not exceeding US$100,000 then both principals agree to settle such dispute in accordance with LMAA small claims procedure*."

9. There is an inconsistency between Clause 6(c)(1) and Clause 46. The former requires all disputes, irrespective of the amount in dispute, to be arbitrated under the LMAA Small Claims Procedure. The latter requires only disputes where the amount at stake does not exceed US$100,000 to be subject to that Procedure. A normal canon of contractual construction is of course to give effect to an additional clause in case of inconsistency with a standard form. But the position here is complicated by two matters. First, I would understand that applying the Small Claims Procedure "*irrespective of amount in dispute*" is an amendment to the EUROMED standard form wording at Clause 6(c)(1). Second, I am concerned not with the voyage charter itself but with the Bills of Lading and their incorporation of the terms of the voyage charter, "*including the Law and Arbitration Clause*".

10. I do not need to resolve that difficulty, however. It would mean only that there might be room for debate between the parties whether the Defendant's claim under the Bills of Lading in respect of the seawater damage to the cargo was subject to the LMAA Small Claims Procedure even though the value of the damage far exceeded US$100,000. That possible issue does not cast doubt on the obligation to refer that claim for determination by arbitration in London if the Bill of Lading incorporation clause is effective.

11. As I mentioned at the outset, the Bills of Lading were on the Congenbill 1994 form. Each was consigned to order and named the defendant as a notify party. As any commercial party engaged in international trade should know, the Congenbill 1994 form is designed, as it states on its face, "*TO BE USED WITH CHARTER-PARTIES*", provides

on its face "*Freight payable as per CHARTER-PARTY dated,* " (the date in this case left blank, as often occurs, especially when as here the bill is "FREIGHT PREPAID") and "*FOR CONDITIONS OF CARRIAGE SEE OVERLEAF* ", and by Condition of Carriage (1) on the reverse provides that: "*All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated.*"

12. Before the English court, applying English conflict of laws rules, the question whether the Bills of Lading incorporate the express choice of English law from the voyage charter is governed by English law by virtue of Article 10(1) of the Rome I Regulation (Regulation (EC) No 593/2008), subject to Article 10(2) (on which, see below). If that choice of English law is incorporated, so that the Bills of Lading are by express choice governed by English law, then so too under English conflict of laws rules the question whether the voyage charter arbitration clause is incorporated is governed by English law, by virtue of the 'putative proper law' rule of the common law (for which, see *Dicey, Morris & Collins*, "*The Conflict of Laws*", 15th Ed., paras. 32-110 to 32-112), since Rome I does not apply to arbitration agreements. If in each case the question is governed by English law, then straightforwardly:

    i) the choice of English law as governing law is indeed incorporated into the Bills of Lading by Congenbill 1994 Condition (1); and

    ii) likewise, the voyage charter arbitration clause is indeed incorporated into the Bills of Lading by that Condition.

13. Article 10(2) of Rome I provides that to establish lack of consent, a party may rely upon the law of the country in which it has habitual residence "*if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1*." Since Article 10(1) concerns "*the existence and validity of a contract, or of any term of a contract*" (my emphasis), so too Article 10(2). Thus, the defendant would be entitled to have its consent to the choice of English law determined by reference to the law of Bangladesh if it was unreasonable in the circumstances of this case to apply English law to that question.

14. Accordingly, it is properly to be held that the defendant was and is bound to refer its claim in respect of the cargo damage to London arbitration, and therefore the Cargo Claim was brought, and if pursued further would be pursued, in breach of contract, if

    i) this court is the appropriate forum for the determination of that issue; and

    ii) Article 10(2) of Rome I does not apply.

15. The appropriateness of this court as forum for the determination of any dispute as to whether by the Cargo Claim the defendant has been or will be acting in breach of contract was assessed provisionally in the claimant's favour by the decision to authorise service out of the jurisdiction. It will not normally be proper to revisit that assessment at trial. The proper procedure for raising any suggestion that it is not appropriate for this court to take a claim forward to trial, for final determination there, is by application under CPR Part 11. At least as a normal rule, a defendant duly served out of the jurisdiction who chooses to make no such application should properly be taken to have made an informed decision that there is no serious argument

against the appropriateness of this forum for the resolution of the issues raised by the claim brought against it here. In my judgment, there is no reason to depart from that normal rule in this case.

16. As regards Article 10(2) of Rome I, in my judgment it is eminently reasonable and in accordance with the ordinary expectations of international trade to judge the effectiveness of the incorporation into the Bills of Lading of the choice of governing law specified by the voyage charter by reference to the law so specified. That, I emphasise, is not because the law so specified is English law – the same conclusion would *prima facie* be justified whatever system of law had been chosen for the voyage charter and therefore, by the use of the Congenbill 1994 form, putatively chosen for the Bills of Lading.

17. Whilst I cannot set out full particulars because the defendant has not participated or provided evidence, this case appears to be a classic example of the harmonious pattern of individual, bilateral contracts by which international trade in goods to be carried by sea is so habitually conducted. The defendant, as a buyer who wished to leave to its seller responsibility for arranging carriage, had full freedom of contract to specify the form and terms by and upon which it entitled and required the seller to cause it to become privy to a contract with the claimant as carrier. The Bills of Lading, which were in a very well-known, widely used form, commonly accepted for trade worldwide, may be taken to have conformed to the defendant's contractual requirements (or, if not, to have been the subject of a free choice by the defendant to accept them nonetheless). If the defendant wished not to be obliged to arbitrate in a neutral, international forum (in the event, London), or wished to be so obliged only if the arbitration clause in question was set out expressly in any bills of lading rather than being incorporated by reference, then it was free to choose only to contract on that basis, for example by purchasing on f.o.b. terms and concluding the carriage contract itself, or by purchasing on c.&.f. terms (or similar) but insisting on sale contract provisions as to the carriage contract to be tendered that fitted that requirement (*cf* UCP 600 Article 20(v)/(vi) and *Benjamin's Sale of Goods*, 10th Ed., at para.19-041). Of course, the defendant might or might not have the bargaining power so to insist in the market in which it operates, but that does not detract from the proposition that choosing to contract without so insisting will have been a free choice.

18. The approach I have articulated above is, in my view, right in principle. It also accords with approach taken by Mance J (as he was then) in *Egon Oldendorff v Libera Corporation* [1995] 2 Lloyd's Rep 64, at 70 rhc to 71 lhc. That was not a final decision, since the Article 10(2) issue was raised (under Article 8(2) of the Rome Convention, as it was then) not at trial but on a challenge to jurisdiction under RSC Order 12 rule 8 (CPR Part 11, as it would be now). When the question of governing law later came to trial, as a preliminary issue before Clarke J (as he was then), the Article 8(2) point was not pursued after all (see *Egon Oldendorff v Libera Corporation* [1996] 1 Lloyd's Rep 380).

19. This is not the occasion to consider at length, or more generally, the possible problem of a 'conflict of conflicts', as discussed by *Raphael*, "*The Anti-Suit Injunction*", 2nd Ed., at para. 8.31*ff*, and in that author's article at [2016] LMCLQ 256, "*Do as you would be done by? System-transcendent justification and anti-suit injunctions*". But it will be appreciated that I do not agree with the comment in the book at para. 8.40 that there is "*little meaningful sense in which the holder [of a bill of lading] has 'freely*

chosen' to agree to be bound by the exclusive forum clause [incorporated into it from a charterparty by reference]". The holder's freedom of choice, at all events in a typical international trade transaction such as the present, exists and is exercised when he concludes the trade contract pursuant to which he will be entitled to become and in due course becomes the holder, or when he chooses to take up the documents and become the holder although (if this be the case) he contracted not to accept bills that incorporated charterparty terms by reference.

20. For the reasons given above, I conclude that the defendant was indeed bound to refer to arbitration in London any claim against the claimant in respect of the seawater damage to the cargo carried under the Bills of Lading. It is plain on the evidence in this case that the defendant had no need to commence suit in Bangladesh or arrest the *Joker* in order to obtain reasonable security for its possible claim. The threat of such action would have resulted, I am clear, in the same, proper and reasonable, offer of security in fact made in response to the Cargo Claim, namely the provision of a P&I Club letter of undertaking from the Standard Club that would respond to a London arbitration award up to US$4.84 million, inclusive of interest and costs. The defendant commenced and has pursued the Cargo Claim, to the extent it has to date, only because it refuses to honour its contractual obligation to arbitrate and (at least initially) it sought fancifully to suggest that it might have a claim for a total loss of the entire cargo, even though only cargo in hold no.4 suffered damage, and sought to use the Cargo Claim oppressively to extract security for a sum equivalent to c.US$15.4 million. The Cargo Claim was brought in breach of contract and, unless the claimant has somehow lost the right to have claims arising out of the Bills of Lading referred to arbitration, any further pursuit of the Cargo Claim by the defendant would be in continuing and further breach of contract.

The Angelic Grace

21. 25 years, almost to the day, before the defendant commenced the Cargo Claim and arrested the *Joker*, the Court of Appeal heard and decided *The Angelic Grace* [1995] 1 Lloyd's Rep 87. That case concerned a claim brought in Italy for compensation for damage to the unpowered floating elevator vessel *Clodia* caused during an operation to discharge cargo from the *Angelic Grace* into the *Clodia*. The parties to the litigation both here and in Italy were the owners of the *Angelic Grace* ('Owners') and Pagnan SpA ('Pagnan'), who were both the voyage charterers of the *Angelic Grace* and the owners of *Clodia* into which, and pursuant to the voyage charter, they had directed the discharge of the cargo.

22. Owners had commenced the English proceedings promptly upon the Italian claim being brought and claimed declaratory relief to confirm that Pagnan was obliged to refer the claim it had brought in Italy to arbitration in London and an injunction to restrain the further pursuit of the Italian proceedings. Those proceedings had made essentially no progress before the trial of the English proceedings before Rix J, as he was then. At that trial, it was common ground that the voyage charter, including the arbitration agreement within it, was governed by English law, that the question whether the claim as brought in Italy put Pagnan in breach of contract was thus a question of the proper construction of that English law arbitration agreement that it was appropriate for this court to determine, that the scope of the arbitration agreement ought to be treated by the Italian court also as a matter governed by English law, and that Pagnan would seek to pursue their claim in Italy in defiance of the decision of

this court if that decision was that the claim as brought in Italy fell within the scope of the arbitration agreement. Rix J found that in those circumstances the further pursuit of the Italian claim, in breach of contract, that was threatened and intended by Pagnan, would be vexatious and oppressive conduct it was proper to restrain by injunction: [1994] 1 Lloyd's Rep 168. The Court of Appeal agreed, unanimously and without calling on Owners in argument.

23. Millett LJ (as he was then) added, *obiter*, brief observations, with which Neill LJ also agreed, that in the quarter of a century since have become established, orthodox doctrine under English law. Thus, *per* Millett LJ:

    i) at 96 rhc, "*... where an injunction is sought to restrain a party from proceeding in a foreign Court in breach of an arbitration agreement governed by English law, the English Court need feel no diffidence in granting the injunction, provided that it is sought promptly and before the foreign proceedings are too far advanced. ... The justification for the grant of the injunction ... is that without it the plaintiff will be deprived of its contractual rights in a situation in which damages are manifestly an inadequate remedy. The jurisdiction is, of course, discretionary and is not exercised as a matter of course, but good reason needs to be shown why it should not be exercised in any given case.*";

    ii) at 96 lhc, "*there is no good reason for diffidence in granting an injunction to restrain foreign proceedings on the clear and simple ground that the defendant has promised not to bring them*";

    iii) at 96 rhc, "*if there should be any reluctance to grant an injunction out of sensitivity to the feelings of a foreign Court, far less offence is likely to be caused if an injunction is granted before that Court has assumed jurisdiction than afterwards*".

24. There being in this case, as in *The Angelic Grace*, no issue of appropriate forum and the question whether there is an obligation to arbitrate being governed by English law, I hold that the orthodox modern approach, as thus stated by Millett LJ, applies here. In consequence, it will be right to restrain the Cargo Claim unless (a) the claimant has allowed it to proceed so far and/or has participated in it to such an extent as to make it now inappropriate to be seen to interfere, or (b) there is some other good reason why the defendant should not be restrained.

25. As to (b), the burden of establishing good reason lies upon the defendant. By choosing to ignore these proceedings, the defendant has chosen not to seek to discharge that burden. That is to say, it offers the court no explanation or attempted justification for breaking its promise not to pursue the claimant in respect of claims arising out of the Bills of Lading otherwise than by referring claims, if disputed, to arbitration in London. It is not necessary, therefore, or in any event on the facts, to explore whether the defendant's burden is to demonstrate "*strong reasons for suing in [the non-contractual] forum*" (*per* Lord Bingham or Cornhill in *Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 All ER 749, at [24]) or (if this is any different) "*strong reasons why an injunction should not be granted*" (*per* Hamblen J, as he was then, in *Ecom Agroindustrial v Mosharaf Composite Textile Mill* [2013] 2 Lloyd's Rep 196 at [19]). In short, if the stage the Cargo Claim has reached and the claimant's participation in it

will not deter the court from granting the final injunction now sought, there is otherwise no basis for any suggestion that there is good reason for allowing the defendant to pursue it further.

26. Specifically as to that, I raised with Mr Henderson for the claimant whether it is to be inferred from the defendant's refusal to engage with these proceedings that it will ignore any final injunction that might now be granted and whether, if so, any question arose that equity would be acting in vain. I was persuaded by his argument in response, which was, in summary, that:

    i) It should not be inferred that a final injunction will not be obeyed. The defendant has chosen not actively to participate here. But equally it has not said that it does not recognise this court's jurisdiction in this matter or that it would disobey a final decision by this court upon this trial. It is at least open to argument, albeit the claimant would say it had the better of the argument, whether the defendant has done anything so as to infringe the interim injunction granted by Butcher J and continued by me pending trial. That is because, as is described below, since the injunction was first granted, the defendant has not been required to do anything in the Cargo Claim other than respond to the claimant's various efforts to secure the release of the ship and extensions of time so that it (the claimant) would not have to engage substantively in Bangladesh prior to the trial here. Further, since that interim injunction was intended to preserve the *status quo* pending trial, it did not require the defendant to terminate the Cargo Claim in Bangladesh. In all the circumstances, no clear inference arises that if now required to do so, by way of final injunction, the defendant will not comply.

    ii) The court should not lightly hold that it would be acting in vain if it granted a final injunction, if otherwise merited, and the defendant did not comply. The prospect of proceedings for contempt, legitimately pursued, against the defendant, its directors and/or insurers responsible for pursuing the Cargo Claim, if it is pursued in the face of a final injunction issued by this court, should not be assumed to be without value. In particular, therefore, the fact that in order to secure the release of the *Joker* from an arrest in Bangladesh, to which by contract the claimant should never have been subjected, the claimant has been compelled to provide security by way of bank guarantee that will pay against a judgment of the Bangladesh court, should not be taken to mean that it is pointless to grant the final injunction now sought.

Progress / Participation?

27. What, then, has happened to date in the Cargo Claim? To what extent, and why, has the claimant participated?

28. Alongside the commencement of proceedings and application for arrest, on 14 May 2019 the defendant sought an order from the Bangladesh court requiring the discharge of the holds unaffected by the accident, hold nos.1, 2, 3 and 5. That was reasonably resisted by the claimant on the basis that, as then advised, the claimant understood it to be unsafe by reference to stability considerations not to discharge from hold no.4 at the same time. The claimant's position on that prevailed and the Bangladesh court on 20 May 2019 ordered that discharge of sound cargo was to commence within 12 hours

of the court's order and that the claimant was at liberty to discharge damaged cargo from hold no.4 at the same time.

29. On 24 May 2019, by email, the defendant was made aware that the claimant expected the cargo claim to be referred to arbitration under the arbitration clause incorporated in the Bills of Lading and that the Standard Club's letter of undertaking for US$4.84 million had been issued and was available to secure any claim thus referred. A copy of the Club letter was sent with the email. On 29 May 2019, the Club wrote to the defendant warning that, proper and reasonable security having thus been offered, failure by the defendant to withdraw the Cargo Claim in favour of London arbitration would result in an application to this court for an anti-suit injunction.

30. By the time Butcher J granted the interim injunction on 14 June 2019, the discharge of sound cargo had been completed (but only on 12 June), and all of the cargo in hold no.4 remained on board. There had been difficulties in the meantime, unrelated to the claimant's safety concerns, in arranging discharge of the hold no.4 cargo to a salvage buyer. The claimant had therefore revisited those safety concerns with the assistance of a naval architect attending on board as part of a professional salvage team from T&T Salvage Ltd. An alternative discharge sequence was developed allowing for a safe discharge of hold nos.1, 2, 3 and 5 only, retaining all damaged cargo on board.

31. By that time also, the Bangladesh court had closed on 23 May 2019 for the Eid holiday to mark the end of Ramadan and was set to re-open on 16 June 2019. During that court vacation, on 8 June 2019, the claimant's English solicitors wrote to the defendant making clear that if the defendant accepted the proffered Club letter as security and confirmed that it would arbitrate, the anti-suit application would be withdrawn. The defendant's Bangladesh lawyer replied on 10 June 2019 stating that the defendant would be appearing in the English action to contest jurisdiction, indeed that the defendant was in the process of instructing English leading counsel for that purpose, and asserting that the claimant had already submitted to the jurisdiction in Bangladesh. The claimant's solicitors responded, maintaining that it was not too late for the claimant to challenge jurisdiction in Bangladesh, but in any event insisting that the substantive claim ought to be referred to arbitration and claiming, accurately in my judgment, that the steps the claimant had taken before the Bangladesh court were solely designed to secure the release of the vessel from arrest.

32. On 13 June 2019, as the claimant was before Butcher J in this court, the claimant was also filing in the Bangladesh court an application to secure the lifting of the arrest if security of US$4.84 million was provided rather than the oppressive and unreasonable security of c.US$15.4 million set by the defendant's arrest demand. That application succeeded on 25 June 2019 and the arrest was lifted in return for a bank guarantee procured on behalf of the claimant by the Standard Club that will answer to a future judgment in the Cargo Claim and not to an award of arbitration. As a result, when continuing the interim injunction in July, I required and was given undertakings from the claimant and also from the Club that a Club letter in the terms of the letter of undertaking originally proffered would be provided to the defendant if it surrendered and procured the release and return of the bank guarantee from the Bangladesh court. Mr Henderson confirmed that those undertakings could and would be repeated if a final injunction would now be merited.

33. The claimant was obliged to file a further application to the Bangladesh court, which it did on 29 June 2019, to permit it to sail from Bangladesh with the damaged cargo (some 8,020 m.t.) still on board for disposal at sea. That application recognised the Bangladesh court's obvious and exclusive right to sanction that departure and disposal so as to ensure no infringement of local law where the ship was still situated. It conveyed nothing as to the proper forum for the future determination on its merits of the defendant's substantive cargo claim. Further, in the particular circumstances of this case, it did no more than complete the process of freeing the ship from arrest and subsequent detention in Bangladesh waters.

34. That further application was granted by the Bangladesh court on 1 July 2019. When the matter then came before me on 12 July, I was told, which was the claimant's solicitors' understanding, that the ship had been set to depart Bangladesh the previous day. In the event, there were administrative delays in dealings with local municipal authorities in relation to the disposal of the damaged cargo, and the ship finally left Bangladesh only on 26 July 2019.

35. The damaged cargo was disposed of outside Bangladesh waters on 31 July and 1 August 2019, enabling the ship finally to resume normal trading.

36. The claimant was required by the procedural rules in the Bangladesh court to file a Written Statement of Defence by 31 July 2019. On that date, it sought instead an extension of time, which was granted to 28 August 2019. A further extension was granted on that date, to 27 November 2019, and on that date a yet further extension was granted, to 8 January 2020.

37. In those factual circumstances:

    i) The claimant has neither done nor allowed anything to be done that advances the *status quo ante* in Bangladesh as it stood when, perfectly promptly, it commenced proceedings here seeking the appropriate relief to restrain the defendant from breaking its contract, save for such steps as were reasonably required to free the ship from an arrest it had been a breach of contract for the defendant to procure in the first place.

    ii) Those steps cannot properly be regarded as a voluntary submission to the jurisdiction of the Bangladesh court: see *Voinet v Barrett* (1885) 55 LJQB 39; *Pan Ocean Co Ltd v China-Base Group Co Ltd* [2019] EWHC 982 (Comm), *obiter*, at [39]-[54]; s.33(1)(c) of the Civil Jurisdiction and Judgments Act 1982.

    iii) Those steps were in any event taken alongside clear and repeated protest that the defendant was obliged to refer the matter to arbitration and should be doing so, not pursuing the Cargo Claim, and then the expeditious pursuit of the claim for relief by way of anti-suit injunction in this court.

    iv) The three appearances before the Bangladesh court to obtain extensions of time should not have been necessary. They were not part or parcel of freeing the ship from arrest. They were capable in principle, and if judged in isolation, of amounting to a voluntary submission in the eyes of this court to the jurisdiction of the Bangladesh court. Not so, however, when judged fairly in

their context and alongside the active and urgent pursuit by the claimant of the anti-suit claim in this court.

38. Whilst it cannot therefore be said that there has been quite the complete level of inactivity in the Cargo Claim in this case there was in the Italian claim by the time *The Angelic Grace* came before Rix J for trial (that total inactivity explaining why no interim injunction was ever sought in that case), as a matter of substance, in my judgment, the cases are indistinguishable. I noted above the only response of any kind to the anti-suit claim in this court, *viz.* the defendant's Bangladesh lawyer's assertion that jurisdiction would be challenged and that leading counsel was being briefed to appear for that purpose. Nothing came of that assertion but, with respect, it was in my judgment the response that could have been coherent, at least in principle (see paragraph 15 above). No such challenge to the appropriateness of this court's involvement having however been raised in the event, the defendant cannot be less deserving of restraint by way of final injunctive relief through trying to ignore these proceedings than were Pagnan who participated in *The Angelic Grace* to argue that they were not acting in breach of contract. If, as I have held, the defendant has indeed been acting throughout in breach of contract, the claimant having sought relief from this court promptly and pursued its claim diligently, and ample security acceptable in form and nature being available to the defendant if it will now finally comply with its obligation to arbitrate, there is no good reason why that obligation should not be enforced by this court by final injunction nor, if this is different, good reason why the defendant should continue to pursue the Cargo Claim.

Conclusion & Costs

39. Upon the reiteration of the claimant's and the Standard Club's undertakings as mentioned above, and upon such other terms as I shall settle with the assistance of counsel, the claimant's claim herein succeeds and I shall grant a final injunction.

40. There can be no argument in the circumstances but that the claimant has succeeded on its claim in full and costs should follow that event. By reference to the duly certified Costs Schedule filed in advance of the trial hearing on 6 December 2019 and provided to the defendant, I assess summarily the claimant's recoverable costs at £82,370.28.