

Neutral Citation Number: [2019] EWHC 3555 (Comm)

Case No: CL-2017-000664

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2019

Before :

MR JUSTICE ROBIN KNOWLES CBE

Between :

ADEN REFINERY COMPANY

- and -

GUNVOR SA

Claimant

Defendant

Part 20 Defendant

Richard Colbey for the Claimant
Oliver Caplin (instructed by **Hill Dickinson LLP**) for the Defendant

Hearing dates: 9-12 December 2019

Approved Judgment

I direct that pursuant to CPR PD39A 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

MR JUSTICE ROBIN KNOWLES CBE

Robin Knowles J:

Introduction

1. By a contract in writing dated 8 May 2014 the Defendant (“Gunvor”) agreed to sell and the Claimant (“ARC”) agreed to buy around 60,000 metric tonnes of gasoil.
2. Delivery was agreed for July 2014. The parties were later to agree to postpone delivery to August 2014 and then to September 2014.
3. On or about 15 September 2014, ARC paid \$58,563,752 to Gunvor. Gunvor was prepared to deliver only 56,164.211 tonnes for that sum, ARC maintains that it has overpaid by \$4,475,482 and seeks the return of that sum. Gunvor admits an overpayment of \$786,505.08 but advances counterclaims by way of set off.

The contract

4. The parties expressly provided that their contract was to be governed by English law and agreed that the English court should have jurisdiction to decide any dispute.
5. The contract provides:

(a) By clause 6:

“6 – DELIVERY PERIODS DURING JULY: 30-31 / JULY 2014”.

(b) By Clause 9 that ARC was to make full payment for the cargo before the cargo was to be discharged from the performing vessel. Essentially, this obliged ARC to prepay for the cargo before it would be discharged.

(c) By clause 10:

“10-PRICE

DES Little Aden in USD per metric ton, related to “Prem UNL 10ppm” for “Med FOB Italy” as published by Platts Europeanmarketsscan, Platts prices defined as the average of the mean of July, 2014 plus premium of 24.75 USD/mt (two four point seven five USD per metric ton “air”)

The invoice that shall be raised by the seller for prepayment shall be based on the available prices until the B/L or provisional invoice date. If cargo has B/L at the end of the previous month of delivery, then prices for the previous month shall be considered for prepayment invoice”

6. The difference between the parties arises out of the change of list pricing between July and August 2014, falling from US\$1028.72 in July to just over US\$963 in August.

The chronology of events

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8. On 17 July 2014 Energen FZE (“Energen”) confirmed Gunvor’s agreement to postpone delivery to 29-31 August on the basis of “no [carrying] costs for ARC” and to “keep the pricing as average of July as per our contract”.
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“Energen will secure the payment of the balance outstanding in favour of ARC on the margin of the future deliveries of LSFO in November and next cargoes of fuel from Gunvor.”
23. On 19 September 2014 Gunvor negotiated \$150,000 additional freight to sail to Fujairah for resale of the remaining cargo on board. Confirmation of discharge of 56,190.36mt leaving 5,716.69mt in air on board was given.
24. There was an intense day of negotiations on 19 September 2014 between Energen and ARC to allow the vessel to sail with the remaining cargo on board. In an exchange of emails ARC accepted Energen’s proposal that was in these terms:

“I may have a solution to this unfortunate situation.

As you know Gunvor will not discharge the balance of cargo without payment for the product.

We will be of course very happy to deliver the gasoline 11-13 November.

As ENERGEN we value our cooperation as paramount and i am personally willing to resolve this matter in a way that allows ARC to stay in line with the guidelines of the Ministry.

I would like to propose you the following:

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- b. ENERGEN will issue the final invoice for the product based on avg of august pricing and outturn quantity
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"Payment of balance to ARC to be effected through offset on future sales/purchase contract, as per our agreement."
- 28. On 9 January 2016 ARC wrote to Energen seeking payment of \$4,475,482.79 "since the proposed payment was for October and November 2014".

The parties' case in summary

- 29. ARC contends that on the true construction of the contract if the delivery period moved the price moved. If that is not right, it says the contract was varied to that effect because on 19 September 2014 Energen acted on behalf of Gunvor rather than on its own behalf.
- 30. Gunvor rejects these arguments. It does accept that there is a credit due to ARC of US\$786,505.08, because Gunvor delivered, on its own case, a cargo that was a little less than the size due even for the price tendered. However it says that it is entitled to damages for ARC's failure to make the full payment required of it for the full amount of the cargo it had agreed to buy, and also to demurrage on another contract. The sums due under these heads exceed US\$786,505.08, it says, if interest is taken into account.

The witness evidence

31. Dr Najeeb Al-Oj, a Minister of the Planning and International Cooperation Ministry at Aden and Mr Mohammed Al-Anani, a Minister of the Electricity and Energy Ministry at Aden and Mr Sultan Haider, an engineer with ARC, all gave evidence for ARC. For Gunvor evidence was given by Mr Henri Schuurman, a trader with Gunvor, Mr Ruggero Maman, the Chairman of Energen and Mr Emmanuel Chaval, at the time a gasoline operations executive with Gunvor.
32. In the event this was a case in which the contemporaneous documents rather than the additional evidence of witnesses, played the most substantial evidential part.
33. To the limited extent that the witness evidence made a contribution I add these brief observations.
34. Mr Haider was not cross-examined. Mr Maman gave helpful and straightforward evidence. Mr Shuurman too was straightforward and trying to assist. I am grateful for the contribution made by each of these two witnesses, and that of Mr Haider.
35. Dr Al-Oj's involvement was at very high level; other people in the organisation dealt with the material detail. Mr Al-Anani himself made reference to the fact that there were things he could not remember from 5 years ago. Mr Chaval was not materially involved in the relevant trading (his responsibilities were with operations and logistics).

The meaning of the contract

36. For ARC, Mr Richard Colbey drew my attention to the tender preceding the contract and other contextual documents. He argued that the second paragraph of Clause 10 of the contract was there for a reason, and that in the present case it prevailed over the first. The words "end of the previous month" in the second part of Clause 10 of the contract had to mean, he argued, something other than the end of July. The result was that Clause 10 moved the price when, as here, delivery was moved.
37. I respectfully disagree with this understanding on the part of ARC of the compass and working of Clause 10. I do not consider the tender advances things, and do consider that the meaning of Clause 10 is clear enough from its language, read in context and as part of the contract as a whole.
38. In my view the correct analysis is as follows. This is the analysis advanced by Mr Oliver Caplin for Gunvor:
 - a. The contract was a prepayment one. It envisaged the possible need for a "Provisional" Invoice and then a "Final" Invoice to account for that.
 - b. The first paragraph of clause 10 provides for pricing to be generated on the basis of an average of July 2014 Platts prices + the premium. As a matter of construction, that fixed pricing period of July was not dependent on the delivery period in clause 6 being 30-31 July.

- c. The second paragraph of clause 10 provides that for the provisional invoice, the average of the available dates up to the bill of lading date were to be used.
 - d. The second paragraph of clause 10 also contemplates that a bill of lading might be issued in the month prior to delivery. It therefore allows prices for the provisional invoice, in that eventuality, to be calculated on the available Platts prices in that month.
39. In the result, the contract does not move price with delivery. It is possible to see the commercial sense in this, and the parties would of course be free to agree to move price when agreeing to move delivery.
40. I should add that there was some discussion with the witnesses of whether and how Gunvor hedged its delivery obligations, and whether these threw light on either party's arguments. The discussion was not conclusive and certainly does not improve on the available (and in my view plain) meaning of Clause 10 revealed by its language.

The authority of Energen

41. There is no question that Energen acted with authority from Gunvor in agreeing the contract. Mr Colbey gave me a number of examples where in the course of the transaction Energen was acting for Gunvor and with its authority. ARC goes further however. Mr Colbey argued that Energen had authority to bind Gunvor to a variation of the contract reflected in the emails of 19 September 2014 and the invoice of 21 October 2014.
42. In my judgment the correct position is that Energen had authority to bind Gunvor but not to the arrangement reached by email on 19 September 2014 or as reflected by the invoice in Energen's name of 21 October 2014. Furthermore, the documents in question do not give the appearance of the alleged authority. Mr Colbey makes the point that there is nothing from Gunvor that asks Energen to make sure that it does not bind Gunvor. However in my judgment that was not necessary in this instance.
43. It is clear that in this particular episode Energen was intervening in its own right (and not on behalf of Gunvor) to try to achieve a solution. It offered its own proposal, and issued its own invoice in connection with that proposal. Mr Maman's evidence, which I accept, showed that what he was doing was trying to help the parties and to that end he (and thus Energen) was prepared to do things over and above his work as agent, and to take some personal risk in doing so.
44. Mr Maman was prepared to generate the invoice in the hope that it would meet the requirements of ARC and enable ARC to release further funds. He was quite clear that he had not consulted Gunvor about the invoice and that they would not have agreed to issue it. He suggested that, in line with the solution he sought to achieve, in the event Energen had managed to provide ARC over time with other

transactions at highly competitive prices, although on this it was clear ARC's witnesses would contend that a tender process would achieve those results in any event.

45. Mr Colbey submitted that the email of 19 September 2014 would require settlement in a sum that Mr Maman did not have and so must be referring to Gunvor. I weigh this, but do not think it disturbs the clarity of the language of the email to the effect that Energen was here speaking for Energen. The issue of the invoice in Energen's name rather than Gunvor's reinforces this. The reference to "future sales/purchase contract" was to business through Energen and which might or might not involve Gunvor.
46. Mr Colbey put fairly and squarely to Mr Shuurman that Gunvor had left final pricing to Energen. Mr Shuurman rejected the proposition. I accept his evidence, and am further quite satisfied that ARC fully understood that in this chapter they were dealing with Mr Maman and Energen acting on their own account and not for Gunvor.

The counterclaims

47. In a prepayment invoice dated 19 September 2014, on Gunvor letterhead, Gunvor allocated a figure of US\$786,505.08 to "market differential, extra freight for Little Aden to Fujairah, extra port costs, interest." The figure was convenient for Gunvor and Mr Colbey understandably challenged its legitimacy. It was not fully explained to me and I do not give it any weight.
48. However, ARC's failure to make the full payment required of it for the cargo it had bought amounted to a breach of clauses 9 and 10 of the contract, which obliged it to accept and pay Gunvor for the cargo at an average of the relevant July Platts prices.
49. Gunvor claims market losses comprising, first, the presumed measure of loss provided for by section 50(3) of the Sale of Goods Act 1979 (the hypothetical contract-market differential losses that Gunvor would have suffered, assuming it re-sold the remaining cargo into the nearest available market on or soon after ARC's breach) and, second, the additional losses in relation to accessing the relevant available market (which on the facts was in Fujairah).
50. Mr Colbey made the point in opening that the vessel still had some oil on board that should have been delivered, but I do not consider that affects the point that the far larger part of the quantity on board was there and had to be moved and sold elsewhere because ARC did not pay for it.
51. Gunvor submits that the best evidence in this case of what the market price of the remaining cargo was, is the price that Gunvor was able to sell it to Glencore for. I agree. That was US\$943.17/mt, as against a contract price of US\$1028.72. It advances its market loss claim in relation to the remaining cargo which ARC can properly be described as having wrongfully not paid for. That is 4,886.44mt. I am satisfied its market loss arising from the salvage sale amounts to US\$418,034.94.

52. The costs of shipping the remaining cargo from Yemen to Fujairah so that it might be sold into the market there can be easily assessed because Gunvor did in fact ship the remaining cargo to Fujairah. The cost (US\$150,000) is an appropriate figure to take into account for the section 50 calculation.
53. In addition Gunvor has a straightforward counterclaim for unpaid demurrage in the amount of US\$158,781.95. This is in relation to a separate contract but in opening Mr Colbey helpfully made clear that there was no argument that it could not be brought into consideration.
54. No substantive defence to this further counterclaim has been put forward. Sufficient supporting documents concerning the claim are in the trial bundle. The documents support Gunvor's case that the agreed demurrage rate was US\$19,000, itself a concession from a higher rate. They do not support ARC's contention that a rate of US\$18,000 was agreed.

Interest

55. Gunvor would add interest to its counterclaims, with the result that the total owed to it exceeds the credit of US\$786,505.08 to which (it accepts) ARC is entitled. For ARC Mr Colbey says that interest should run on both sides of the account, not just one, or should run only on the net balance of the principal sums in question.
56. Mr Caplin responds, in a measured way, with the point that although the credit of US\$786,505.08 is accepted it is technically not claimed within ARC's statements of case.
57. Admittedly the statements of case for ARC are not impressive (they were not the work of Mr Colbey). But the position is clear enough for this type of commercial case and witnesses for Gunvor emphasised to me that Gunvor would always wish to meet its commercial responsibilities, and to do so unprompted and without taking inappropriate advantage. It is to be kept in mind that the credit reflects an under-delivery of cargo (although of course to nothing like the level claimed by ARC) and in my judgment it has throughout been clear enough that that is what ARC was alleging.
58. Both sides refer to the Court's jurisdiction to award interest under section 35A of the Senior Court Act 1981. On the facts of the present case the just course is to decline to apply interest in favour of Gunvor unless (which is not the case) the net balance of the principal sums was in its favour.
59. As for the net balance itself, I understood from Gunvor that it would clarify at the handing down of this judgment how it would, voluntarily, meet its accepted responsibility. I will hear further argument in this area of the case.

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38. In my view the correct analysis is as follows. This is the analysis advanced by Mr Oliver Caplin for Gunvor:
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41. There is no question that Energen acted with authority from Gunvor in agreeing the contract. Mr Colbey gave me a number of examples where in the course of the transaction Energen was acting for Gunvor and with its authority. ARC goes further however. Mr Colbey argued that Energen had authority to bind Gunvor to a variation of the contract reflected in the emails of 19 September 2014 and the invoice of 21 October 2014.
42. In my judgment the correct position is that Energen had authority to bind Gunvor but not to the arrangement reached by email on 19 September 2014 or as reflected by the invoice in Energen's name of 21 October 2014. Furthermore, the documents in question do not give the appearance of the alleged authority. Mr Colbey makes the point that there is nothing from Gunvor that asks Energen to make sure that it does not bind Gunvor. However in my judgment that was not necessary in this instance.
43. It is clear that in this particular episode Energen was intervening in its own right (and not on behalf of Gunvor) to try to achieve a solution. It offered its own proposal, and issued its own invoice in connection with that proposal. Mr Maman's evidence, which I accept, showed that what he was doing was trying to help the parties and to that end he (and thus Energen) was prepared to do things over and above his work as agent, and to take some personal risk in doing so.
44. Mr Maman was prepared to generate the invoice in the hope that it would meet the requirements of ARC and enable ARC to release further funds. He was quite clear that he had not consulted Gunvor about the invoice and that they would not have agreed to issue it. He suggested that, in line with the solution he sought to achieve, in the event Energen had managed to provide ARC over time with other

transactions at highly competitive prices, although on this it was clear ARC's witnesses would contend that a tender process would achieve those results in any event.

45. Mr Colbey submitted that the email of 19 September 2014 would require settlement in a sum that Mr Maman did not have and so must be referring to Gunvor. I weigh this, but do not think it disturbs the clarity of the language of the email to the effect that Energen was here speaking for Energen. The issue of the invoice in Energen's name rather than Gunvor's reinforces this. The reference to "future sales/purchase contract" was to business through Energen and which might or might not involve Gunvor.
46. Mr Colbey put fairly and squarely to Mr Shuurman that Gunvor had left final pricing to Energen. Mr Shuurman rejected the proposition. I accept his evidence, and am further quite satisfied that ARC fully understood that in this chapter they were dealing with Mr Maman and Energen acting on their own account and not for Gunvor.

The counterclaims

47. In a prepayment invoice dated 19 September 2014, on Gunvor letterhead, Gunvor allocated a figure of US\$786,505.08 to "market differential, extra freight for Little Aden to Fujairah, extra port costs, interest." The figure was convenient for Gunvor and Mr Colbey understandably challenged its legitimacy. It was not fully explained to me and I do not give it any weight.
48. However, ARC's failure to make the full payment required of it for the cargo it had bought amounted to a breach of clauses 9 and 10 of the contract, which obliged it to accept and pay Gunvor for the cargo at an average of the relevant July Platts prices.
49. Gunvor claims market losses comprising, first, the presumed measure of loss provided for by section 50(3) of the Sale of Goods Act 1979 (the hypothetical contract-market differential losses that Gunvor would have suffered, assuming it re-sold the remaining cargo into the nearest available market on or soon after ARC's breach) and, second, the additional losses in relation to accessing the relevant available market (which on the facts was in Fujairah).
50. Mr Colbey made the point in opening that the vessel still had some oil on board that should have been delivered, but I do not consider that affects the point that the far larger part of the quantity on board was there and had to be moved and sold elsewhere because ARC did not pay for it.
51. Gunvor submits that the best evidence in this case of what the market price of the remaining cargo was, is the price that Gunvor was able to sell it to Glencore for. I agree. That was US\$943.17/mt, as against a contract price of US\$1028.72. It advances its market loss claim in relation to the remaining cargo which ARC can properly be described as having wrongfully not paid for. That is 4,886.44mt. I am satisfied its market loss arising from the salvage sale amounts to US\$418,034.94.

52. The costs of shipping the remaining cargo from Yemen to Fujairah so that it might be sold into the market there can be easily assessed because Gunvor did in fact ship the remaining cargo to Fujairah. The cost (US\$150,000) is an appropriate figure to take into account for the section 50 calculation.
53. In addition Gunvor has a straightforward counterclaim for unpaid demurrage in the amount of US\$158,781.95. This is in relation to a separate contract but in opening Mr Colbey helpfully made clear that there was no argument that it could not be brought into consideration.
54. No substantive defence to this further counterclaim has been put forward. Sufficient supporting documents concerning the claim are in the trial bundle. The documents support Gunvor's case that the agreed demurrage rate was US\$19,000, itself a concession from a higher rate. They do not support ARC's contention that a rate of US\$18,000 was agreed.

Interest

55. Gunvor would add interest to its counterclaims, with the result that the total owed to it exceeds the credit of US\$786,505.08 to which (it accepts) ARC is entitled. For ARC Mr Colbey says that interest should run on both sides of the account, not just one, or should run only on the net balance of the principal sums in question.
56. Mr Caplin responds, in a measured way, with the point that although the credit of US\$786,505.08 is accepted it is technically not claimed within ARC's statements of case.
57. Admittedly the statements of case for ARC are not impressive (they were not the work of Mr Colbey). But the position is clear enough for this type of commercial case and witnesses for Gunvor emphasised to me that Gunvor would always wish to meet its commercial responsibilities, and to do so unprompted and without taking inappropriate advantage. It is to be kept in mind that the credit reflects an under-delivery of cargo (although of course to nothing like the level claimed by ARC) and in my judgment it has throughout been clear enough that that is what ARC was alleging.
58. Both sides refer to the Court's jurisdiction to award interest under section 35A of the Senior Court Act 1981. On the facts of the present case the just course is to decline to apply interest in favour of Gunvor unless (which is not the case) the net balance of the principal sums was in its favour.
59. As for the net balance itself, I understood from Gunvor that it would clarify at the handing down of this judgment how it would, voluntarily, meet its accepted responsibility. I will hear further argument in this area of the case.

Neutral Citation Number: [2019] EWHC 3555 (Comm)

Case No: CL-2017-000664

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2019

Before :

MR JUSTICE ROBIN KNOWLES CBE

Between :

ADEN REFINERY COMPANY

- and -

GUNVOR SA

Claimant

Defendant

Part 20 Defendant

Richard Colbey for the Claimant
Oliver Caplin (instructed by **Hill Dickinson LLP**) for the Defendant

Hearing dates: 9-12 December 2019

Approved Judgment

I direct that pursuant to CPR PD39A 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

MR JUSTICE ROBIN KNOWLES CBE

Robin Knowles J:

Introduction

1. By a contract in writing dated 8 May 2014 the Defendant (“Gunvor”) agreed to sell and the Claimant (“ARC”) agreed to buy around 60,000 metric tonnes of gasoil.
2. Delivery was agreed for July 2014. The parties were later to agree to postpone delivery to August 2014 and then to September 2014.
3. On or about 15 September 2014, ARC paid \$58,563,752 to Gunvor. Gunvor was prepared to deliver only 56,164.211 tonnes for that sum, ARC maintains that it has overpaid by \$4,475,482 and seeks the return of that sum. Gunvor admits an overpayment of \$786,505.08 but advances counterclaims by way of set off.

The contract

4. The parties expressly provided that their contract was to be governed by English law and agreed that the English court should have jurisdiction to decide any dispute.
5. The contract provides:
 - (a) By clause 6:

“6 – DELIVERY PERIODS DURING JULY: 30-31 / JULY 2014”.
 - (b) By Clause 9 that ARC was to make full payment for the cargo before the cargo was to be discharged from the performing vessel. Essentially, this obliged ARC to prepay for the cargo before it would be discharged.
 - (c) By clause 10:

“10-PRICE

DES Little Aden in USD per metric ton, related to “Prem UNL 10ppm” for “Med FOB Italy” as published by Platts Europeanmarketsscan, Platts prices defined as the average of the mean of July, 2014 plus premium of 24.75 USD/mt (two four point seven five USD per metric ton “air”)

The invoice that shall be raised by the seller for prepayment shall be based on the available prices until the B/L or provisional invoice date. If cargo has B/L at the end of the previous month of delivery, then prices for the previous month shall be considered for prepayment invoice”

6. The difference between the parties arises out of the change of list pricing between July and August 2014, falling from US\$1028.72 in July to just over US\$963 in August.

The chronology of events

7. The chronology of events is agreed.
8. On 17 July 2014 Energen FZE (“Energen”) confirmed Gunvor’s agreement to postpone delivery to 29-31 August on the basis of “no [carrying] costs for ARC” and to “keep the pricing as average of July as per our contract”.
9. On 18 July 2014 ARC requested further written confirmation of the postponement which Energen provided. On 27 July 2014 Energen again confirmed the postponement of the delivery.
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18. On 11 September 2014 ARC raised concerns with Energen over July pricing and they exchanged emails on whether to spread the price difference across future cargoes.
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21. On 16 September 2014 Gunvor wrote to ARC with a settlement proposal to price the remaining cargo on board at an average of August pricing. On 17 September 2014 Gunvor chased ARC for a reply to its proposal, advising that discharge of 56,928mt was expected the next day.
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“Energen will secure the payment of the balance outstanding in favour of ARC on the margin of the future deliveries of LSFO in November and next cargoes of fuel from Gunvor.”
23. On 19 September 2014 Gunvor negotiated \$150,000 additional freight to sail to Fujairah for resale of the remaining cargo on board. Confirmation of discharge of 56,190.36mt leaving 5,716.69mt in air on board was given.
24. There was an intense day of negotiations on 19 September 2014 between Energen and ARC to allow the vessel to sail with the remaining cargo on board. In an exchange of emails ARC accepted Energen’s proposal that was in these terms:

“I may have a solution to this unfortunate situation.

As you know Gunvor will not discharge the balance of cargo without payment for the product.

We will be of course very happy to deliver the gasoline 11-13 November.

As ENERGEN we value our cooperation as paramount and i am personally willing to resolve this matter in a way that allows ARC to stay in line with the guidelines of the Ministry.

I would like to propose you the following:

 - a. Release ASAP the vessel with the 5000 mt on board

- b. ENERGEN will issue the final invoice for the product based on avg of august pricing and outturn quantity
- c. ENERGEN will settle the balance between the provisional price and the final invoice during november and december

I think this will prevent a bad situation and also improve our good relation?

I hope this proposal will be acceptable to ARC?"

The vessel received authorisation to leave.

- 25. On 26 September 2014 the remaining cargo on board was sold by Gunvor to Glencore. On 5 October 2014 5,530.465mt in air of cargo was delivered into shore tanks at Fujairah.
- 26. On 19 October 2014 ARC requested the "final invoice" from Energen. On 22 October 2014 Energen emailed a "final invoice" to ARC. ARC wrote to Energen asking for a final invoice based on outturn figures not Bill of Lading figures "as per the agreed contract".
- 27. Energen sent a corrected final invoice, dated 21 October 2014. The invoice is on its letterhead, not that of Gunvor. It provides for a balance payment due to ARC of US\$4,475,482.79 after crediting an amount received of US\$58,563,752.22. There follows a line in these terms:

"Payment of balance to ARC to be effected through offset on future sales/purchase contract, as per our agreement."
- 28. On 9 January 2016 ARC wrote to Energen seeking payment of \$4,475,482.79 "since the proposed payment was for October and November 2014".

The parties' case in summary

- 29. ARC contends that on the true construction of the contract if the delivery period moved the price moved. If that is not right, it says the contract was varied to that effect because on 19 September 2014 Energen acted on behalf of Gunvor rather than on its own behalf.
- 30. Gunvor rejects these arguments. It does accept that there is a credit due to ARC of US\$786,505.08, because Gunvor delivered, on its own case, a cargo that was a little less than the size due even for the price tendered. However it says that it is entitled to damages for ARC's failure to make the full payment required of it for the full amount of the cargo it had agreed to buy, and also to demurrage on another contract. The sums due under these heads exceed US\$786,505.08, it says, if interest is taken into account.

The witness evidence

31. Dr Najeeb Al-Oj, a Minister of the Planning and International Cooperation Ministry at Aden and Mr Mohammed Al-Anani, a Minister of the Electricity and Energy Ministry at Aden and Mr Sultan Haider, an engineer with ARC, all gave evidence for ARC. For Gunvor evidence was given by Mr Henri Schuurman, a trader with Gunvor, Mr Ruggero Maman, the Chairman of Energen and Mr Emmanuel Chaval, at the time a gasoline operations executive with Gunvor.
32. In the event this was a case in which the contemporaneous documents rather than the additional evidence of witnesses, played the most substantial evidential part.
33. To the limited extent that the witness evidence made a contribution I add these brief observations.
34. Mr Haider was not cross-examined. Mr Maman gave helpful and straightforward evidence. Mr Shuurman too was straightforward and trying to assist. I am grateful for the contribution made by each of these two witnesses, and that of Mr Haider.
35. Dr Al-Oj's involvement was at very high level; other people in the organisation dealt with the material detail. Mr Al-Anani himself made reference to the fact that there were things he could not remember from 5 years ago. Mr Chaval was not materially involved in the relevant trading (his responsibilities were with operations and logistics).

The meaning of the contract

36. For ARC, Mr Richard Colbey drew my attention to the tender preceding the contract and other contextual documents. He argued that the second paragraph of Clause 10 of the contract was there for a reason, and that in the present case it prevailed over the first. The words "end of the previous month" in the second part of Clause 10 of the contract had to mean, he argued, something other than the end of July. The result was that Clause 10 moved the price when, as here, delivery was moved.
37. I respectfully disagree with this understanding on the part of ARC of the compass and working of Clause 10. I do not consider the tender advances things, and do consider that the meaning of Clause 10 is clear enough from its language, read in context and as part of the contract as a whole.
38. In my view the correct analysis is as follows. This is the analysis advanced by Mr Oliver Caplin for Gunvor:
 - a. The contract was a prepayment one. It envisaged the possible need for a "Provisional" Invoice and then a "Final" Invoice to account for that.
 - b. The first paragraph of clause 10 provides for pricing to be generated on the basis of an average of July 2014 Platts prices + the premium. As a matter of construction, that fixed pricing period of July was not dependent on the delivery period in clause 6 being 30-31 July.

- c. The second paragraph of clause 10 provides that for the provisional invoice, the average of the available dates up to the bill of lading date were to be used.
 - d. The second paragraph of clause 10 also contemplates that a bill of lading might be issued in the month prior to delivery. It therefore allows prices for the provisional invoice, in that eventuality, to be calculated on the available Platts prices in that month.
39. In the result, the contract does not move price with delivery. It is possible to see the commercial sense in this, and the parties would of course be free to agree to move price when agreeing to move delivery.
40. I should add that there was some discussion with the witnesses of whether and how Gunvor hedged its delivery obligations, and whether these threw light on either party's arguments. The discussion was not conclusive and certainly does not improve on the available (and in my view plain) meaning of Clause 10 revealed by its language.

The authority of Energen

41. There is no question that Energen acted with authority from Gunvor in agreeing the contract. Mr Colbey gave me a number of examples where in the course of the transaction Energen was acting for Gunvor and with its authority. ARC goes further however. Mr Colbey argued that Energen had authority to bind Gunvor to a variation of the contract reflected in the emails of 19 September 2014 and the invoice of 21 October 2014.
42. In my judgment the correct position is that Energen had authority to bind Gunvor but not to the arrangement reached by email on 19 September 2014 or as reflected by the invoice in Energen's name of 21 October 2014. Furthermore, the documents in question do not give the appearance of the alleged authority. Mr Colbey makes the point that there is nothing from Gunvor that asks Energen to make sure that it does not bind Gunvor. However in my judgment that was not necessary in this instance.
43. It is clear that in this particular episode Energen was intervening in its own right (and not on behalf of Gunvor) to try to achieve a solution. It offered its own proposal, and issued its own invoice in connection with that proposal. Mr Maman's evidence, which I accept, showed that what he was doing was trying to help the parties and to that end he (and thus Energen) was prepared to do things over and above his work as agent, and to take some personal risk in doing so.
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transactions at highly competitive prices, although on this it was clear ARC's witnesses would contend that a tender process would achieve those results in any event.

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46. Mr Colbey put fairly and squarely to Mr Shuurman that Gunvor had left final pricing to Energen. Mr Shuurman rejected the proposition. I accept his evidence, and am further quite satisfied that ARC fully understood that in this chapter they were dealing with Mr Maman and Energen acting on their own account and not for Gunvor.

The counterclaims

47. In a prepayment invoice dated 19 September 2014, on Gunvor letterhead, Gunvor allocated a figure of US\$786,505.08 to "market differential, extra freight for Little Aden to Fujairah, extra port costs, interest." The figure was convenient for Gunvor and Mr Colbey understandably challenged its legitimacy. It was not fully explained to me and I do not give it any weight.
48. However, ARC's failure to make the full payment required of it for the cargo it had bought amounted to a breach of clauses 9 and 10 of the contract, which obliged it to accept and pay Gunvor for the cargo at an average of the relevant July Platts prices.
49. Gunvor claims market losses comprising, first, the presumed measure of loss provided for by section 50(3) of the Sale of Goods Act 1979 (the hypothetical contract-market differential losses that Gunvor would have suffered, assuming it re-sold the remaining cargo into the nearest available market on or soon after ARC's breach) and, second, the additional losses in relation to accessing the relevant available market (which on the facts was in Fujairah).
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51. Gunvor submits that the best evidence in this case of what the market price of the remaining cargo was, is the price that Gunvor was able to sell it to Glencore for. I agree. That was US\$943.17/mt, as against a contract price of US\$1028.72. It advances its market loss claim in relation to the remaining cargo which ARC can properly be described as having wrongfully not paid for. That is 4,886.44mt. I am satisfied its market loss arising from the salvage sale amounts to US\$418,034.94.

52. The costs of shipping the remaining cargo from Yemen to Fujairah so that it might be sold into the market there can be easily assessed because Gunvor did in fact ship the remaining cargo to Fujairah. The cost (US\$150,000) is an appropriate figure to take into account for the section 50 calculation.
53. In addition Gunvor has a straightforward counterclaim for unpaid demurrage in the amount of US\$158,781.95. This is in relation to a separate contract but in opening Mr Colbey helpfully made clear that there was no argument that it could not be brought into consideration.
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58. Both sides refer to the Court's jurisdiction to award interest under section 35A of the Senior Court Act 1981. On the facts of the present case the just course is to decline to apply interest in favour of Gunvor unless (which is not the case) the net balance of the principal sums was in its favour.
59. As for the net balance itself, I understood from Gunvor that it would clarify at the handing down of this judgment how it would, voluntarily, meet its accepted responsibility. I will hear further argument in this area of the case.

Neutral Citation Number: [2019] EWHC 3555 (Comm)

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Hearing dates: 9-12 December 2019

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1. By a contract in writing dated 8 May 2014 the Defendant (“Gunvor”) agreed to sell and the Claimant (“ARC”) agreed to buy around 60,000 metric tonnes of gasoil.
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The witness evidence

31. Dr Najeeb Al-Oj, a Minister of the Planning and International Cooperation Ministry at Aden and Mr Mohammed Al-Anani, a Minister of the Electricity and Energy Ministry at Aden and Mr Sultan Haider, an engineer with ARC, all gave evidence for ARC. For Gunvor evidence was given by Mr Henri Schuurman, a trader with Gunvor, Mr Ruggero Maman, the Chairman of Energen and Mr Emmanuel Chaval, at the time a gasoline operations executive with Gunvor.
32. In the event this was a case in which the contemporaneous documents rather than the additional evidence of witnesses, played the most substantial evidential part.
33. To the limited extent that the witness evidence made a contribution I add these brief observations.
34. Mr Haider was not cross-examined. Mr Maman gave helpful and straightforward evidence. Mr Shuurman too was straightforward and trying to assist. I am grateful for the contribution made by each of these two witnesses, and that of Mr Haider.
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36. For ARC, Mr Richard Colbey drew my attention to the tender preceding the contract and other contextual documents. He argued that the second paragraph of Clause 10 of the contract was there for a reason, and that in the present case it prevailed over the first. The words "end of the previous month" in the second part of Clause 10 of the contract had to mean, he argued, something other than the end of July. The result was that Clause 10 moved the price when, as here, delivery was moved.
37. I respectfully disagree with this understanding on the part of ARC of the compass and working of Clause 10. I do not consider the tender advances things, and do consider that the meaning of Clause 10 is clear enough from its language, read in context and as part of the contract as a whole.
38. In my view the correct analysis is as follows. This is the analysis advanced by Mr Oliver Caplin for Gunvor:
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 - d. The second paragraph of clause 10 also contemplates that a bill of lading might be issued in the month prior to delivery. It therefore allows prices for the provisional invoice, in that eventuality, to be calculated on the available Platts prices in that month.
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40. I should add that there was some discussion with the witnesses of whether and how Gunvor hedged its delivery obligations, and whether these threw light on either party's arguments. The discussion was not conclusive and certainly does not improve on the available (and in my view plain) meaning of Clause 10 revealed by its language.

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transactions at highly competitive prices, although on this it was clear ARC's witnesses would contend that a tender process would achieve those results in any event.

45. Mr Colbey submitted that the email of 19 September 2014 would require settlement in a sum that Mr Maman did not have and so must be referring to Gunvor. I weigh this, but do not think it disturbs the clarity of the language of the email to the effect that Energen was here speaking for Energen. The issue of the invoice in Energen's name rather than Gunvor's reinforces this. The reference to "future sales/purchase contract" was to business through Energen and which might or might not involve Gunvor.
46. Mr Colbey put fairly and squarely to Mr Shuurman that Gunvor had left final pricing to Energen. Mr Shuurman rejected the proposition. I accept his evidence, and am further quite satisfied that ARC fully understood that in this chapter they were dealing with Mr Maman and Energen acting on their own account and not for Gunvor.

The counterclaims

47. In a prepayment invoice dated 19 September 2014, on Gunvor letterhead, Gunvor allocated a figure of US\$786,505.08 to "market differential, extra freight for Little Aden to Fujairah, extra port costs, interest." The figure was convenient for Gunvor and Mr Colbey understandably challenged its legitimacy. It was not fully explained to me and I do not give it any weight.
48. However, ARC's failure to make the full payment required of it for the cargo it had bought amounted to a breach of clauses 9 and 10 of the contract, which obliged it to accept and pay Gunvor for the cargo at an average of the relevant July Platts prices.
49. Gunvor claims market losses comprising, first, the presumed measure of loss provided for by section 50(3) of the Sale of Goods Act 1979 (the hypothetical contract-market differential losses that Gunvor would have suffered, assuming it re-sold the remaining cargo into the nearest available market on or soon after ARC's breach) and, second, the additional losses in relation to accessing the relevant available market (which on the facts was in Fujairah).
50. Mr Colbey made the point in opening that the vessel still had some oil on board that should have been delivered, but I do not consider that affects the point that the far larger part of the quantity on board was there and had to be moved and sold elsewhere because ARC did not pay for it.
51. Gunvor submits that the best evidence in this case of what the market price of the remaining cargo was, is the price that Gunvor was able to sell it to Glencore for. I agree. That was US\$943.17/mt, as against a contract price of US\$1028.72. It advances its market loss claim in relation to the remaining cargo which ARC can properly be described as having wrongfully not paid for. That is 4,886.44mt. I am satisfied its market loss arising from the salvage sale amounts to US\$418,034.94.

52. The costs of shipping the remaining cargo from Yemen to Fujairah so that it might be sold into the market there can be easily assessed because Gunvor did in fact ship the remaining cargo to Fujairah. The cost (US\$150,000) is an appropriate figure to take into account for the section 50 calculation.
53. In addition Gunvor has a straightforward counterclaim for unpaid demurrage in the amount of US\$158,781.95. This is in relation to a separate contract but in opening Mr Colbey helpfully made clear that there was no argument that it could not be brought into consideration.
54. No substantive defence to this further counterclaim has been put forward. Sufficient supporting documents concerning the claim are in the trial bundle. The documents support Gunvor's case that the agreed demurrage rate was US\$19,000, itself a concession from a higher rate. They do not support ARC's contention that a rate of US\$18,000 was agreed.

Interest

55. Gunvor would add interest to its counterclaims, with the result that the total owed to it exceeds the credit of US\$786,505.08 to which (it accepts) ARC is entitled. For ARC Mr Colbey says that interest should run on both sides of the account, not just one, or should run only on the net balance of the principal sums in question.
56. Mr Caplin responds, in a measured way, with the point that although the credit of US\$786,505.08 is accepted it is technically not claimed within ARC's statements of case.
57. Admittedly the statements of case for ARC are not impressive (they were not the work of Mr Colbey). But the position is clear enough for this type of commercial case and witnesses for Gunvor emphasised to me that Gunvor would always wish to meet its commercial responsibilities, and to do so unprompted and without taking inappropriate advantage. It is to be kept in mind that the credit reflects an under-delivery of cargo (although of course to nothing like the level claimed by ARC) and in my judgment it has throughout been clear enough that that is what ARC was alleging.
58. Both sides refer to the Court's jurisdiction to award interest under section 35A of the Senior Court Act 1981. On the facts of the present case the just course is to decline to apply interest in favour of Gunvor unless (which is not the case) the net balance of the principal sums was in its favour.
59. As for the net balance itself, I understood from Gunvor that it would clarify at the handing down of this judgment how it would, voluntarily, meet its accepted responsibility. I will hear further argument in this area of the case.

Neutral Citation Number: [2019] EWHC 3555 (Comm)

Case No: CL-2017-000664

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2019

Before :

MR JUSTICE ROBIN KNOWLES CBE

Between :

ADEN REFINERY COMPANY

- and -

GUNVOR SA

Claimant

Defendant

Part 20 Defendant

Richard Colbey for the Claimant
Oliver Caplin (instructed by **Hill Dickinson LLP**) for the Defendant

Hearing dates: 9-12 December 2019

Approved Judgment

I direct that pursuant to CPR PD39A 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

MR JUSTICE ROBIN KNOWLES CBE

Robin Knowles J:

Introduction

1. By a contract in writing dated 8 May 2014 the Defendant (“Gunvor”) agreed to sell and the Claimant (“ARC”) agreed to buy around 60,000 metric tonnes of gasoil.
2. Delivery was agreed for July 2014. The parties were later to agree to postpone delivery to August 2014 and then to September 2014.
3. On or about 15 September 2014, ARC paid \$58,563,752 to Gunvor. Gunvor was prepared to deliver only 56,164.211 tonnes for that sum, ARC maintains that it has overpaid by \$4,475,482 and seeks the return of that sum. Gunvor admits an overpayment of \$786,505.08 but advances counterclaims by way of set off.

The contract

4. The parties expressly provided that their contract was to be governed by English law and agreed that the English court should have jurisdiction to decide any dispute.
5. The contract provides:
 - (a) By clause 6:

“6 – DELIVERY PERIODS DURING JULY: 30-31 / JULY 2014”.
 - (b) By Clause 9 that ARC was to make full payment for the cargo before the cargo was to be discharged from the performing vessel. Essentially, this obliged ARC to prepay for the cargo before it would be discharged.
 - (c) By clause 10:

“10-PRICE

DES Little Aden in USD per metric ton, related to “Prem UNL 10ppm” for “Med FOB Italy” as published by Platts Europeanmarketsscan, Platts prices defined as the average of the mean of July, 2014 plus premium of 24.75 USD/mt (two four point seven five USD per metric ton “air”)

The invoice that shall be raised by the seller for prepayment shall be based on the available prices until the B/L or provisional invoice date. If cargo has B/L at the end of the previous month of delivery, then prices for the previous month shall be considered for prepayment invoice”

6. The difference between the parties arises out of the change of list pricing between July and August 2014, falling from US\$1028.72 in July to just over US\$963 in August.

The chronology of events

7. The chronology of events is agreed.
8. On 17 July 2014 Energen FZE (“Energen”) confirmed Gunvor’s agreement to postpone delivery to 29-31 August on the basis of “no [carrying] costs for ARC” and to “keep the pricing as average of July as per our contract”.
9. On 18 July 2014 ARC requested further written confirmation of the postponement which Energen provided. On 27 July 2014 Energen again confirmed the postponement of the delivery.
10. On 6 August 2014 ARC emailed Energen asking for a further postponement of delivery until 14-16 September 2014. Also on 6 August 2014 Energen suggested a revised laycan of 3-4 September 2014.
11. On 7 August 2014 ARC emailed Energen requesting a revised laycan of 8-10 September.
12. On 13 August 2014 Energen confirmed a second postponement of delivery until 14-16 September 2014.
13. On 13 August 2014 Mr Emmanuel Chaval of Gunvor emailed ARC to nominate the vessel “Jo Pinari”.
14. On 17 August 2014 ARC agreed a new laycan of 14-16 September but stated that the pricing period is “average of the new agreed delivery month (Sep. 2014)”. The next day Energen replied to confirm that the contract was still on basis of July pricing; “[k]indly confirm your agreement”.
15. On 27 August 2014 the Bill of Lading was issued.
16. On 29 August 2014 a prepayment invoice was produced quoting 23 July 2014 Platts prices to arrive at a July monthly average price for a quantity of 61,907.143MT of 90 RON gasoline (in air quantity). Energen notified Gunvor that ARC had requested the prepayment invoice to be reissued so that it accorded with the contract in quoting the quantity of the cargo in vac and not in air. On 1 September 2014 Gunvor credit noted the prepayment invoice and reissued it.
17. On 3 September 2014 Gunvor chased ARC for payment of the prepayment invoice. ARC replied that payment would be made upon vessel arrival and testing at Aden.

18. On 11 September 2014 ARC raised concerns with Energen over July pricing and they exchanged emails on whether to spread the price difference across future cargoes.
19. On 12 September 2014 ARC wrote to Energen asking for a revision of invoice to September 2014 average pricing. On 13 September 2014 Energen wrote to ARC to express surprise and to decline the request to move the contract pricing.
20. On 15 September 2014 ARC paid USD 58,563,752.22. Gunvor calculated that 56,928mt should be discharged on the basis of the payment made, and wrote to ARC seeking payment of the balance.
21. On 16 September 2014 Gunvor wrote to ARC with a settlement proposal to price the remaining cargo on board at an average of August pricing. On 17 September 2014 Gunvor chased ARC for a reply to its proposal, advising that discharge of 56,928mt was expected the next day.
22. On 18 September 2014 ARC wrote to Energen saying the different pricing of two parcels on the same vessel was “impossible” and calling for discharge of the balance. Gunvor instructed the Master to stop discharging at 56,345 mts, disconnect hoses and then sail. Energen wrote to ARC to propose a solution:

“Energen will secure the payment of the balance outstanding in favour of ARC on the margin of the future deliveries of LSFO in November and next cargoes of fuel from Gunvor.”
23. On 19 September 2014 Gunvor negotiated \$150,000 additional freight to sail to Fujairah for resale of the remaining cargo on board. Confirmation of discharge of 56,190.36mt leaving 5,716.69mt in air on board was given.
24. There was an intense day of negotiations on 19 September 2014 between Energen and ARC to allow the vessel to sail with the remaining cargo on board. In an exchange of emails ARC accepted Energen’s proposal that was in these terms:

“I may have a solution to this unfortunate situation.

As you know Gunvor will not discharge the balance of cargo without payment for the product.

We will be of course very happy to deliver the gasoline 11-13 November.

As ENERGEN we value our cooperation as paramount and i am personally willing to resolve this matter in a way that allows ARC to stay in line with the guidelines of the Ministry.

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Hearing dates: 9-12 December 2019

Approved Judgment

I direct that pursuant to CPR PD39A 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

MR JUSTICE ROBIN KNOWLES CBE

Robin Knowles J:

Introduction

1. By a contract in writing dated 8 May 2014 the Defendant (“Gunvor”) agreed to sell and the Claimant (“ARC”) agreed to buy around 60,000 metric tonnes of gasoil.
2. Delivery was agreed for July 2014. The parties were later to agree to postpone delivery to August 2014 and then to September 2014.
3. On or about 15 September 2014, ARC paid \$58,563,752 to Gunvor. Gunvor was prepared to deliver only 56,164.211 tonnes for that sum, ARC maintains that it has overpaid by \$4,475,482 and seeks the return of that sum. Gunvor admits an overpayment of \$786,505.08 but advances counterclaims by way of set off.

The contract

4. The parties expressly provided that their contract was to be governed by English law and agreed that the English court should have jurisdiction to decide any dispute.
5. The contract provides:
 - (a) By clause 6:

“6 – DELIVERY PERIODS DURING JULY: 30-31 / JULY 2014”.
 - (b) By Clause 9 that ARC was to make full payment for the cargo before the cargo was to be discharged from the performing vessel. Essentially, this obliged ARC to prepay for the cargo before it would be discharged.
 - (c) By clause 10:

“10-PRICE

DES Little Aden in USD per metric ton, related to “Prem UNL 10ppm” for “Med FOB Italy” as published by Platts Europeanmarketsscan, Platts prices defined as the average of the mean of July, 2014 plus premium of 24.75 USD/mt (two four point seven five USD per metric ton “air”)

The invoice that shall be raised by the seller for prepayment shall be based on the available prices until the B/L or provisional invoice date. If cargo has B/L at the end of the previous month of delivery, then prices for the previous month shall be considered for prepayment invoice”

6. The difference between the parties arises out of the change of list pricing between July and August 2014, falling from US\$1028.72 in July to just over US\$963 in August.

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As you know Gunvor will not discharge the balance of cargo without payment for the product.

We will be of course very happy to deliver the gasoline 11-13 November.

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"Payment of balance to ARC to be effected through offset on future sales/purchase contract, as per our agreement."
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- 30. Gunvor rejects these arguments. It does accept that there is a credit due to ARC of US\$786,505.08, because Gunvor delivered, on its own case, a cargo that was a little less than the size due even for the price tendered. However it says that it is entitled to damages for ARC's failure to make the full payment required of it for the full amount of the cargo it had agreed to buy, and also to demurrage on another contract. The sums due under these heads exceed US\$786,505.08, it says, if interest is taken into account.

The witness evidence

31. Dr Najeeb Al-Oj, a Minister of the Planning and International Cooperation Ministry at Aden and Mr Mohammed Al-Anani, a Minister of the Electricity and Energy Ministry at Aden and Mr Sultan Haider, an engineer with ARC, all gave evidence for ARC. For Gunvor evidence was given by Mr Henri Schuurman, a trader with Gunvor, Mr Ruggero Maman, the Chairman of Energen and Mr Emmanuel Chaval, at the time a gasoline operations executive with Gunvor.
32. In the event this was a case in which the contemporaneous documents rather than the additional evidence of witnesses, played the most substantial evidential part.
33. To the limited extent that the witness evidence made a contribution I add these brief observations.
34. Mr Haider was not cross-examined. Mr Maman gave helpful and straightforward evidence. Mr Shuurman too was straightforward and trying to assist. I am grateful for the contribution made by each of these two witnesses, and that of Mr Haider.
35. Dr Al-Oj's involvement was at very high level; other people in the organisation dealt with the material detail. Mr Al-Anani himself made reference to the fact that there were things he could not remember from 5 years ago. Mr Chaval was not materially involved in the relevant trading (his responsibilities were with operations and logistics).

The meaning of the contract

36. For ARC, Mr Richard Colbey drew my attention to the tender preceding the contract and other contextual documents. He argued that the second paragraph of Clause 10 of the contract was there for a reason, and that in the present case it prevailed over the first. The words "end of the previous month" in the second part of Clause 10 of the contract had to mean, he argued, something other than the end of July. The result was that Clause 10 moved the price when, as here, delivery was moved.
37. I respectfully disagree with this understanding on the part of ARC of the compass and working of Clause 10. I do not consider the tender advances things, and do consider that the meaning of Clause 10 is clear enough from its language, read in context and as part of the contract as a whole.
38. In my view the correct analysis is as follows. This is the analysis advanced by Mr Oliver Caplin for Gunvor:
 - a. The contract was a prepayment one. It envisaged the possible need for a "Provisional" Invoice and then a "Final" Invoice to account for that.
 - b. The first paragraph of clause 10 provides for pricing to be generated on the basis of an average of July 2014 Platts prices + the premium. As a matter of construction, that fixed pricing period of July was not dependent on the delivery period in clause 6 being 30-31 July.

- c. The second paragraph of clause 10 provides that for the provisional invoice, the average of the available dates up to the bill of lading date were to be used.
 - d. The second paragraph of clause 10 also contemplates that a bill of lading might be issued in the month prior to delivery. It therefore allows prices for the provisional invoice, in that eventuality, to be calculated on the available Platts prices in that month.
39. In the result, the contract does not move price with delivery. It is possible to see the commercial sense in this, and the parties would of course be free to agree to move price when agreeing to move delivery.
40. I should add that there was some discussion with the witnesses of whether and how Gunvor hedged its delivery obligations, and whether these threw light on either party's arguments. The discussion was not conclusive and certainly does not improve on the available (and in my view plain) meaning of Clause 10 revealed by its language.

The authority of Energen

41. There is no question that Energen acted with authority from Gunvor in agreeing the contract. Mr Colbey gave me a number of examples where in the course of the transaction Energen was acting for Gunvor and with its authority. ARC goes further however. Mr Colbey argued that Energen had authority to bind Gunvor to a variation of the contract reflected in the emails of 19 September 2014 and the invoice of 21 October 2014.
42. In my judgment the correct position is that Energen had authority to bind Gunvor but not to the arrangement reached by email on 19 September 2014 or as reflected by the invoice in Energen's name of 21 October 2014. Furthermore, the documents in question do not give the appearance of the alleged authority. Mr Colbey makes the point that there is nothing from Gunvor that asks Energen to make sure that it does not bind Gunvor. However in my judgment that was not necessary in this instance.
43. It is clear that in this particular episode Energen was intervening in its own right (and not on behalf of Gunvor) to try to achieve a solution. It offered its own proposal, and issued its own invoice in connection with that proposal. Mr Maman's evidence, which I accept, showed that what he was doing was trying to help the parties and to that end he (and thus Energen) was prepared to do things over and above his work as agent, and to take some personal risk in doing so.
44. Mr Maman was prepared to generate the invoice in the hope that it would meet the requirements of ARC and enable ARC to release further funds. He was quite clear that he had not consulted Gunvor about the invoice and that they would not have agreed to issue it. He suggested that, in line with the solution he sought to achieve, in the event Energen had managed to provide ARC over time with other

transactions at highly competitive prices, although on this it was clear ARC's witnesses would contend that a tender process would achieve those results in any event.

45. Mr Colbey submitted that the email of 19 September 2014 would require settlement in a sum that Mr Maman did not have and so must be referring to Gunvor. I weigh this, but do not think it disturbs the clarity of the language of the email to the effect that Energen was here speaking for Energen. The issue of the invoice in Energen's name rather than Gunvor's reinforces this. The reference to "future sales/purchase contract" was to business through Energen and which might or might not involve Gunvor.
46. Mr Colbey put fairly and squarely to Mr Shuurman that Gunvor had left final pricing to Energen. Mr Shuurman rejected the proposition. I accept his evidence, and am further quite satisfied that ARC fully understood that in this chapter they were dealing with Mr Maman and Energen acting on their own account and not for Gunvor.

The counterclaims

47. In a prepayment invoice dated 19 September 2014, on Gunvor letterhead, Gunvor allocated a figure of US\$786,505.08 to "market differential, extra freight for Little Aden to Fujairah, extra port costs, interest." The figure was convenient for Gunvor and Mr Colbey understandably challenged its legitimacy. It was not fully explained to me and I do not give it any weight.
48. However, ARC's failure to make the full payment required of it for the cargo it had bought amounted to a breach of clauses 9 and 10 of the contract, which obliged it to accept and pay Gunvor for the cargo at an average of the relevant July Platts prices.
49. Gunvor claims market losses comprising, first, the presumed measure of loss provided for by section 50(3) of the Sale of Goods Act 1979 (the hypothetical contract-market differential losses that Gunvor would have suffered, assuming it re-sold the remaining cargo into the nearest available market on or soon after ARC's breach) and, second, the additional losses in relation to accessing the relevant available market (which on the facts was in Fujairah).
50. Mr Colbey made the point in opening that the vessel still had some oil on board that should have been delivered, but I do not consider that affects the point that the far larger part of the quantity on board was there and had to be moved and sold elsewhere because ARC did not pay for it.
51. Gunvor submits that the best evidence in this case of what the market price of the remaining cargo was, is the price that Gunvor was able to sell it to Glencore for. I agree. That was US\$943.17/mt, as against a contract price of US\$1028.72. It advances its market loss claim in relation to the remaining cargo which ARC can properly be described as having wrongfully not paid for. That is 4,886.44mt. I am satisfied its market loss arising from the salvage sale amounts to US\$418,034.94.

52. The costs of shipping the remaining cargo from Yemen to Fujairah so that it might be sold into the market there can be easily assessed because Gunvor did in fact ship the remaining cargo to Fujairah. The cost (US\$150,000) is an appropriate figure to take into account for the section 50 calculation.
53. In addition Gunvor has a straightforward counterclaim for unpaid demurrage in the amount of US\$158,781.95. This is in relation to a separate contract but in opening Mr Colbey helpfully made clear that there was no argument that it could not be brought into consideration.
54. No substantive defence to this further counterclaim has been put forward. Sufficient supporting documents concerning the claim are in the trial bundle. The documents support Gunvor's case that the agreed demurrage rate was US\$19,000, itself a concession from a higher rate. They do not support ARC's contention that a rate of US\$18,000 was agreed.

Interest

55. Gunvor would add interest to its counterclaims, with the result that the total owed to it exceeds the credit of US\$786,505.08 to which (it accepts) ARC is entitled. For ARC Mr Colbey says that interest should run on both sides of the account, not just one, or should run only on the net balance of the principal sums in question.
56. Mr Caplin responds, in a measured way, with the point that although the credit of US\$786,505.08 is accepted it is technically not claimed within ARC's statements of case.
57. Admittedly the statements of case for ARC are not impressive (they were not the work of Mr Colbey). But the position is clear enough for this type of commercial case and witnesses for Gunvor emphasised to me that Gunvor would always wish to meet its commercial responsibilities, and to do so unprompted and without taking inappropriate advantage. It is to be kept in mind that the credit reflects an under-delivery of cargo (although of course to nothing like the level claimed by ARC) and in my judgment it has throughout been clear enough that that is what ARC was alleging.
58. Both sides refer to the Court's jurisdiction to award interest under section 35A of the Senior Court Act 1981. On the facts of the present case the just course is to decline to apply interest in favour of Gunvor unless (which is not the case) the net balance of the principal sums was in its favour.
59. As for the net balance itself, I understood from Gunvor that it would clarify at the handing down of this judgment how it would, voluntarily, meet its accepted responsibility. I will hear further argument in this area of the case.

Neutral Citation Number: [2019] EWHC 3555 (Comm)

Case No: CL-2017-000664

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2019

Before :

MR JUSTICE ROBIN KNOWLES CBE

Between :

ADEN REFINERY COMPANY

- and -

GUNVOR SA

Claimant

Defendant

Part 20 Defendant

Richard Colbey for the Claimant
Oliver Caplin (instructed by **Hill Dickinson LLP**) for the Defendant

Hearing dates: 9-12 December 2019

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“6 – DELIVERY PERIODS DURING JULY: 30-31 / JULY 2014”.
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44. Mr Maman was prepared to generate the invoice in the hope that it would meet the requirements of ARC and enable ARC to release further funds. He was quite clear that he had not consulted Gunvor about the invoice and that they would not have agreed to issue it. He suggested that, in line with the solution he sought to achieve, in the event Energen had managed to provide ARC over time with other

transactions at highly competitive prices, although on this it was clear ARC's witnesses would contend that a tender process would achieve those results in any event.

45. Mr Colbey submitted that the email of 19 September 2014 would require settlement in a sum that Mr Maman did not have and so must be referring to Gunvor. I weigh this, but do not think it disturbs the clarity of the language of the email to the effect that Energen was here speaking for Energen. The issue of the invoice in Energen's name rather than Gunvor's reinforces this. The reference to "future sales/purchase contract" was to business through Energen and which might or might not involve Gunvor.
46. Mr Colbey put fairly and squarely to Mr Shuurman that Gunvor had left final pricing to Energen. Mr Shuurman rejected the proposition. I accept his evidence, and am further quite satisfied that ARC fully understood that in this chapter they were dealing with Mr Maman and Energen acting on their own account and not for Gunvor.

The counterclaims

47. In a prepayment invoice dated 19 September 2014, on Gunvor letterhead, Gunvor allocated a figure of US\$786,505.08 to "market differential, extra freight for Little Aden to Fujairah, extra port costs, interest." The figure was convenient for Gunvor and Mr Colbey understandably challenged its legitimacy. It was not fully explained to me and I do not give it any weight.
48. However, ARC's failure to make the full payment required of it for the cargo it had bought amounted to a breach of clauses 9 and 10 of the contract, which obliged it to accept and pay Gunvor for the cargo at an average of the relevant July Platts prices.
49. Gunvor claims market losses comprising, first, the presumed measure of loss provided for by section 50(3) of the Sale of Goods Act 1979 (the hypothetical contract-market differential losses that Gunvor would have suffered, assuming it re-sold the remaining cargo into the nearest available market on or soon after ARC's breach) and, second, the additional losses in relation to accessing the relevant available market (which on the facts was in Fujairah).
50. Mr Colbey made the point in opening that the vessel still had some oil on board that should have been delivered, but I do not consider that affects the point that the far larger part of the quantity on board was there and had to be moved and sold elsewhere because ARC did not pay for it.
51. Gunvor submits that the best evidence in this case of what the market price of the remaining cargo was, is the price that Gunvor was able to sell it to Glencore for. I agree. That was US\$943.17/mt, as against a contract price of US\$1028.72. It advances its market loss claim in relation to the remaining cargo which ARC can properly be described as having wrongfully not paid for. That is 4,886.44mt. I am satisfied its market loss arising from the salvage sale amounts to US\$418,034.94.

52. The costs of shipping the remaining cargo from Yemen to Fujairah so that it might be sold into the market there can be easily assessed because Gunvor did in fact ship the remaining cargo to Fujairah. The cost (US\$150,000) is an appropriate figure to take into account for the section 50 calculation.
53. In addition Gunvor has a straightforward counterclaim for unpaid demurrage in the amount of US\$158,781.95. This is in relation to a separate contract but in opening Mr Colbey helpfully made clear that there was no argument that it could not be brought into consideration.
54. No substantive defence to this further counterclaim has been put forward. Sufficient supporting documents concerning the claim are in the trial bundle. The documents support Gunvor's case that the agreed demurrage rate was US\$19,000, itself a concession from a higher rate. They do not support ARC's contention that a rate of US\$18,000 was agreed.

Interest

55. Gunvor would add interest to its counterclaims, with the result that the total owed to it exceeds the credit of US\$786,505.08 to which (it accepts) ARC is entitled. For ARC Mr Colbey says that interest should run on both sides of the account, not just one, or should run only on the net balance of the principal sums in question.
56. Mr Caplin responds, in a measured way, with the point that although the credit of US\$786,505.08 is accepted it is technically not claimed within ARC's statements of case.
57. Admittedly the statements of case for ARC are not impressive (they were not the work of Mr Colbey). But the position is clear enough for this type of commercial case and witnesses for Gunvor emphasised to me that Gunvor would always wish to meet its commercial responsibilities, and to do so unprompted and without taking inappropriate advantage. It is to be kept in mind that the credit reflects an under-delivery of cargo (although of course to nothing like the level claimed by ARC) and in my judgment it has throughout been clear enough that that is what ARC was alleging.
58. Both sides refer to the Court's jurisdiction to award interest under section 35A of the Senior Court Act 1981. On the facts of the present case the just course is to decline to apply interest in favour of Gunvor unless (which is not the case) the net balance of the principal sums was in its favour.
59. As for the net balance itself, I understood from Gunvor that it would clarify at the handing down of this judgment how it would, voluntarily, meet its accepted responsibility. I will hear further argument in this area of the case.

Neutral Citation Number: [2019] EWHC 3555 (Comm)

Case No: CL-2017-000664

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2019

Before :

MR JUSTICE ROBIN KNOWLES CBE

Between :

ADEN REFINERY COMPANY

- and -

GUNVOR SA

Claimant

Defendant

Part 20 Defendant

Richard Colbey for the Claimant
Oliver Caplin (instructed by **Hill Dickinson LLP**) for the Defendant

Hearing dates: 9-12 December 2019

Approved Judgment

I direct that pursuant to CPR PD39A 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

MR JUSTICE ROBIN KNOWLES CBE

Robin Knowles J:

Introduction

1. By a contract in writing dated 8 May 2014 the Defendant (“Gunvor”) agreed to sell and the Claimant (“ARC”) agreed to buy around 60,000 metric tonnes of gasoil.
2. Delivery was agreed for July 2014. The parties were later to agree to postpone delivery to August 2014 and then to September 2014.
3. On or about 15 September 2014, ARC paid \$58,563,752 to Gunvor. Gunvor was prepared to deliver only 56,164.211 tonnes for that sum, ARC maintains that it has overpaid by \$4,475,482 and seeks the return of that sum. Gunvor admits an overpayment of \$786,505.08 but advances counterclaims by way of set off.

The contract

4. The parties expressly provided that their contract was to be governed by English law and agreed that the English court should have jurisdiction to decide any dispute.
5. The contract provides:
 - (a) By clause 6:

“6 – DELIVERY PERIODS DURING JULY: 30-31 / JULY 2014”.
 - (b) By Clause 9 that ARC was to make full payment for the cargo before the cargo was to be discharged from the performing vessel. Essentially, this obliged ARC to prepay for the cargo before it would be discharged.
 - (c) By clause 10:

“10-PRICE

DES Little Aden in USD per metric ton, related to “Prem UNL 10ppm” for “Med FOB Italy” as published by Platts Europeanmarketsscan, Platts prices defined as the average of the mean of July, 2014 plus premium of 24.75 USD/mt (two four point seven five USD per metric ton “air”)

The invoice that shall be raised by the seller for prepayment shall be based on the available prices until the B/L or provisional invoice date. If cargo has B/L at the end of the previous month of delivery, then prices for the previous month shall be considered for prepayment invoice”

6. The difference between the parties arises out of the change of list pricing between July and August 2014, falling from US\$1028.72 in July to just over US\$963 in August.

The chronology of events

7. The chronology of events is agreed.
8. On 17 July 2014 Energen FZE (“Energen”) confirmed Gunvor’s agreement to postpone delivery to 29-31 August on the basis of “no [carrying] costs for ARC” and to “keep the pricing as average of July as per our contract”.
9. On 18 July 2014 ARC requested further written confirmation of the postponement which Energen provided. On 27 July 2014 Energen again confirmed the postponement of the delivery.
10. On 6 August 2014 ARC emailed Energen asking for a further postponement of delivery until 14-16 September 2014. Also on 6 August 2014 Energen suggested a revised laycan of 3-4 September 2014.
11. On 7 August 2014 ARC emailed Energen requesting a revised laycan of 8-10 September.
12. On 13 August 2014 Energen confirmed a second postponement of delivery until 14-16 September 2014.
13. On 13 August 2014 Mr Emmanuel Chaval of Gunvor emailed ARC to nominate the vessel “Jo Pinari”.
14. On 17 August 2014 ARC agreed a new laycan of 14-16 September but stated that the pricing period is “average of the new agreed delivery month (Sep. 2014)”. The next day Energen replied to confirm that the contract was still on basis of July pricing; “[k]indly confirm your agreement”.
15. On 27 August 2014 the Bill of Lading was issued.
16. On 29 August 2014 a prepayment invoice was produced quoting 23 July 2014 Platts prices to arrive at a July monthly average price for a quantity of 61,907.143MT of 90 RON gasoline (in air quantity). Energen notified Gunvor that ARC had requested the prepayment invoice to be reissued so that it accorded with the contract in quoting the quantity of the cargo in vac and not in air. On 1 September 2014 Gunvor credit noted the prepayment invoice and reissued it.
17. On 3 September 2014 Gunvor chased ARC for payment of the prepayment invoice. ARC replied that payment would be made upon vessel arrival and testing at Aden.

18. On 11 September 2014 ARC raised concerns with Energen over July pricing and they exchanged emails on whether to spread the price difference across future cargoes.
19. On 12 September 2014 ARC wrote to Energen asking for a revision of invoice to September 2014 average pricing. On 13 September 2014 Energen wrote to ARC to express surprise and to decline the request to move the contract pricing.
20. On 15 September 2014 ARC paid USD 58,563,752.22. Gunvor calculated that 56,928mt should be discharged on the basis of the payment made, and wrote to ARC seeking payment of the balance.
21. On 16 September 2014 Gunvor wrote to ARC with a settlement proposal to price the remaining cargo on board at an average of August pricing. On 17 September 2014 Gunvor chased ARC for a reply to its proposal, advising that discharge of 56,928mt was expected the next day.
22. On 18 September 2014 ARC wrote to Energen saying the different pricing of two parcels on the same vessel was “impossible” and calling for discharge of the balance. Gunvor instructed the Master to stop discharging at 56,345 mts, disconnect hoses and then sail. Energen wrote to ARC to propose a solution:

“Energen will secure the payment of the balance outstanding in favour of ARC on the margin of the future deliveries of LSFO in November and next cargoes of fuel from Gunvor.”
23. On 19 September 2014 Gunvor negotiated \$150,000 additional freight to sail to Fujairah for resale of the remaining cargo on board. Confirmation of discharge of 56,190.36mt leaving 5,716.69mt in air on board was given.
24. There was an intense day of negotiations on 19 September 2014 between Energen and ARC to allow the vessel to sail with the remaining cargo on board. In an exchange of emails ARC accepted Energen’s proposal that was in these terms:

“I may have a solution to this unfortunate situation.

As you know Gunvor will not discharge the balance of cargo without payment for the product.

We will be of course very happy to deliver the gasoline 11-13 November.

As ENERGEN we value our cooperation as paramount and i am personally willing to resolve this matter in a way that allows ARC to stay in line with the guidelines of the Ministry.

I would like to propose you the following:

 - a. Release ASAP the vessel with the 5000 mt on board

- b. ENERGEN will issue the final invoice for the product based on avg of august pricing and outturn quantity
- c. ENERGEN will settle the balance between the provisional price and the final invoice during november and december

I think this will prevent a bad situation and also improve our good relation?

I hope this proposal will be acceptable to ARC?"

The vessel received authorisation to leave.

- 25. On 26 September 2014 the remaining cargo on board was sold by Gunvor to Glencore. On 5 October 2014 5,530.465mt in air of cargo was delivered into shore tanks at Fujairah.
- 26. On 19 October 2014 ARC requested the "final invoice" from Energen. On 22 October 2014 Energen emailed a "final invoice" to ARC. ARC wrote to Energen asking for a final invoice based on outturn figures not Bill of Lading figures "as per the agreed contract".
- 27. Energen sent a corrected final invoice, dated 21 October 2014. The invoice is on its letterhead, not that of Gunvor. It provides for a balance payment due to ARC of US\$4,475,482.79 after crediting an amount received of US\$58,563,752.22. There follows a line in these terms:

"Payment of balance to ARC to be effected through offset on future sales/purchase contract, as per our agreement."
- 28. On 9 January 2016 ARC wrote to Energen seeking payment of \$4,475,482.79 "since the proposed payment was for October and November 2014".

The parties' case in summary

- 29. ARC contends that on the true construction of the contract if the delivery period moved the price moved. If that is not right, it says the contract was varied to that effect because on 19 September 2014 Energen acted on behalf of Gunvor rather than on its own behalf.
- 30. Gunvor rejects these arguments. It does accept that there is a credit due to ARC of US\$786,505.08, because Gunvor delivered, on its own case, a cargo that was a little less than the size due even for the price tendered. However it says that it is entitled to damages for ARC's failure to make the full payment required of it for the full amount of the cargo it had agreed to buy, and also to demurrage on another contract. The sums due under these heads exceed US\$786,505.08, it says, if interest is taken into account.

The witness evidence

31. Dr Najeeb Al-Oj, a Minister of the Planning and International Cooperation Ministry at Aden and Mr Mohammed Al-Anani, a Minister of the Electricity and Energy Ministry at Aden and Mr Sultan Haider, an engineer with ARC, all gave evidence for ARC. For Gunvor evidence was given by Mr Henri Schuurman, a trader with Gunvor, Mr Ruggero Maman, the Chairman of Energen and Mr Emmanuel Chaval, at the time a gasoline operations executive with Gunvor.
32. In the event this was a case in which the contemporaneous documents rather than the additional evidence of witnesses, played the most substantial evidential part.
33. To the limited extent that the witness evidence made a contribution I add these brief observations.
34. Mr Haider was not cross-examined. Mr Maman gave helpful and straightforward evidence. Mr Shuurman too was straightforward and trying to assist. I am grateful for the contribution made by each of these two witnesses, and that of Mr Haider.
35. Dr Al-Oj's involvement was at very high level; other people in the organisation dealt with the material detail. Mr Al-Anani himself made reference to the fact that there were things he could not remember from 5 years ago. Mr Chaval was not materially involved in the relevant trading (his responsibilities were with operations and logistics).

The meaning of the contract

36. For ARC, Mr Richard Colbey drew my attention to the tender preceding the contract and other contextual documents. He argued that the second paragraph of Clause 10 of the contract was there for a reason, and that in the present case it prevailed over the first. The words "end of the previous month" in the second part of Clause 10 of the contract had to mean, he argued, something other than the end of July. The result was that Clause 10 moved the price when, as here, delivery was moved.
37. I respectfully disagree with this understanding on the part of ARC of the compass and working of Clause 10. I do not consider the tender advances things, and do consider that the meaning of Clause 10 is clear enough from its language, read in context and as part of the contract as a whole.
38. In my view the correct analysis is as follows. This is the analysis advanced by Mr Oliver Caplin for Gunvor:
 - a. The contract was a prepayment one. It envisaged the possible need for a "Provisional" Invoice and then a "Final" Invoice to account for that.
 - b. The first paragraph of clause 10 provides for pricing to be generated on the basis of an average of July 2014 Platts prices + the premium. As a matter of construction, that fixed pricing period of July was not dependent on the delivery period in clause 6 being 30-31 July.

- c. The second paragraph of clause 10 provides that for the provisional invoice, the average of the available dates up to the bill of lading date were to be used.
 - d. The second paragraph of clause 10 also contemplates that a bill of lading might be issued in the month prior to delivery. It therefore allows prices for the provisional invoice, in that eventuality, to be calculated on the available Platts prices in that month.
39. In the result, the contract does not move price with delivery. It is possible to see the commercial sense in this, and the parties would of course be free to agree to move price when agreeing to move delivery.
40. I should add that there was some discussion with the witnesses of whether and how Gunvor hedged its delivery obligations, and whether these threw light on either party's arguments. The discussion was not conclusive and certainly does not improve on the available (and in my view plain) meaning of Clause 10 revealed by its language.

The authority of Energen

41. There is no question that Energen acted with authority from Gunvor in agreeing the contract. Mr Colbey gave me a number of examples where in the course of the transaction Energen was acting for Gunvor and with its authority. ARC goes further however. Mr Colbey argued that Energen had authority to bind Gunvor to a variation of the contract reflected in the emails of 19 September 2014 and the invoice of 21 October 2014.
42. In my judgment the correct position is that Energen had authority to bind Gunvor but not to the arrangement reached by email on 19 September 2014 or as reflected by the invoice in Energen's name of 21 October 2014. Furthermore, the documents in question do not give the appearance of the alleged authority. Mr Colbey makes the point that there is nothing from Gunvor that asks Energen to make sure that it does not bind Gunvor. However in my judgment that was not necessary in this instance.
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