

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE HIGH COURT OF JUSTICE

No. AD-2017-000036

QUEEN'S BENCH DIVISION

ADMIRALTY COURT

[2017] EWHC 3271 (Admlty)

Rolls Building

Monday, 27th November 2017

Before:

MR JUSTICE ANDREW BAKER

B E T W E E N :

THE OWNERS OF THE SHIP
"AL KHATTIYA"

Claimants

- and -

THE OWNERS AND/OR DEMISE CHARTERERS
OF THE SHIP "JAG LAADKI"

Defendants

MR T. MACEY-DARE (instructed by Reed Smith LLP) appeared on behalf of the Claimants.

MR R. THOMAS QC (instructed by Ince & Co LLP) appeared on behalf of the Defendants.

J U D G M E N T

MR JUSTICE ANDREW BAKER:

- 1 In February of this year, the defendants' VLCC "Jag Laadki" crashed into the claimants' LNG carrier "Al Khattiya", at a Fujairah anchorage. That is a rather colloquial description, especially for this court, but it is a fair and sufficient explanation of the collision for present purposes. The defendants have accepted as regards liability that they are to be held 100% responsible.
- 2 The claimants founded jurisdiction in this court in respect of their resulting claim for damages by a Claim Form *in rem* against a sister ship of the Jag Laadki calling at Milford Haven.
- 3 The defendants seek a stay of these proceedings, contending that the UAE courts are the appropriate forum for the resolution of the substantive dispute. They have commenced proceedings there, seeking to establish that their liability to the claimants is limited under the 1976 Limitation Convention to about US \$14.7 million and seeking to constitute a limitation fund in that amount subject to any question of enforcing a UAE limitation judgment in their favour if obtained. But the defendants have no tonnage limitation defence in this jurisdiction because the UK, unlike the UAE, is party to the 1996 Protocol to that Convention, under which the limit will comfortably exceed the claimants' asserted claim of US \$30 million.
- 4 That difference in tonnage limitation figures is, I rather suspect, a major motivation behind the parties' respective forum preferences, but it was common ground before me that it will not be a relevant factor in the court's consideration of the defendants' stay application following the *Western Regent* [2005] EWCA Civ 985; [2005] 2 Lloyd's Rep 359.
- 5 The defendants' stay application is due to be heard in February 2018. The defendants apply now for certain information and/or documentation readily available to the claimants, without which the defendants say they cannot begin a proper or informed scrutiny of the claimants' asserted losses. They say provision to them of the material sought is reasonably required for the fair disposal of their stay application. If and then to the extent that they are correct about that, I have no doubt that the material sought should be provided and that I would so order.

- 6 I do not accept the claimants' claim that it would be wrong to make such an order as a matter of discretion on grounds of proportionality or confidentiality. The information and documentation is within a limited scope and readily available to the claimants, so no complaint of disproportionality arises. Such considerations of confidentiality as might arise here are outweighed by the injustice of requiring the defendants to pursue their objection to having the merits determined in this jurisdiction with one hand tied behind their back, if Mr Thomas QC is right to say that is the effect of not making the order sought.
- 7 Of the authorities cited to me, the closest to the present facts is *Vava v Anglo American South Africa Ltd* [2012] EWHC 1969 (QB), in which early specific disclosure of certain documents by the defendants was ordered to ensure a fair resolution of the question as to forum that arose in that case. I agree with the approach adopted by Mr Justice Silber. That approach amply justifies an order in this case if the premise of the application is made out.
- 8 Similarly, I recognise that ordering the claimants to provide early information about their claim or documentation to support it, prior even to any statements of case, would be unusual. But if the premise of the application is made out, namely that the material sought is reasonably required for a fair consideration of venue, then the case is an unusual one, and that demand for fairness would outweigh any *a priori* reluctance to interfere at such an early stage.
- 9 The parties did not limit themselves to an argument as to that premise. For their part the defendants, taking the application to be sound, suggested I should infer from the claimants' refusal to accede to it, that the claimants wished to starve the defendants of information so as in some way to frustrate the proceedings in the UAE. Meanwhile the claimants, taking the application to be unsound, said I should infer from the defendants' pursuit of it that the defendants wished to use the material sought otherwise than in or for the purposes of the proceedings in this jurisdiction, that is to say improperly.
- 10 In my judgment it is regrettable that either suggestion was made. I do not think either was reasonably justified. Nor were such cross-allegations as to motives apt to assist the court in any event – and they did not in fact assist me upon the only question that matters. That question, whether provision to the defendants of the material they seek is reasonably required for a fair disposal of their stay application, arises because of the extreme paucity of the claimants' explanation of their claim to date.

11 Mr Thomas QC rightly observes that it is surprising, and at a general level unhelpful, for the claimants to be so reluctant to particularise or document their asserted losses. The first interest of shipowners in the position of these parties and of the hull underwriters and/or P&I Clubs insuring them, one might have thought, would be to try to avoid costly and time-consuming litigation over the collision in any jurisdiction. That interest is certainly not served by the blanket refusal with which the claimants have met requests for the provision of a detailed breakdown of their claim and some basic supporting evidence. Rather, the claimants have chosen to rest upon an initial assertion that their claim is for:

“damage repairs US \$15 million; loss of use US \$14 million; loss of LNG heel, bunkers and superintendents’ costs, US \$1 million”.

12 The only further explanation or information provided has been a clarification that, by loss of use, the claimants in fact meant loss of hire under the long term time charter upon which Al Khattiya was employed at the time of the collision, but a copy of which the claimants declined to provide to the defendants.

13 That plainly leaves the defendants in no suitable position to scrutinise the claim that has been asserted in any detail. To require them to defend the merits of that claim without much more detail or without supporting documents would be to require them to litigate with one hand tied behind their back. But does it follow – or is it true in any event – that they cannot fairly contest venue under their stay application without such detail or evidence? In my judgment the answer is “No”.

14 The factors connecting the parties’ dispute to the UAE are plain and obvious. The information and evidence sought from the claimants is not required to identify them. Likewise, the factors said to connect the dispute to this jurisdiction, or at all events said to connect it other than to the UAE: for example its connections to Qatar, where Al Khattiya was repaired and where the claimants are based. They are identified in detail in the witness statements already exchanged in the stay application.

15 The defendants say that the claimants’ claim will be governed by the law of the UAE, whether tried here or there. There is no suggestion, nor could it reasonably have been

suggested, that the information or evidence sought by this application is needed to enable the court to consider that question of applicable law for the purposes of the stay application.

16 But the defendants say that matters do not rest there. They have identified respects in which they will contend that UAE law damages principles differ from those of English law. An issue has been joined as to that in the stay application evidence, but the defendants' obvious point on it for that application will be that it would be more appropriate, other things being equal, for the consideration and application of UAE law to be undertaken by the UAE courts. The claimants will say in response that other things are not equal; that it is no great difficulty or inconvenience if this court is called upon to consider and apply UAE law with the assistance of expert evidence; and that, considering everything in the round, the defendants have not shown the UAE to be more appropriate as a venue for litigation on the merits in this case.

17 At this stage, what matters, to my mind, is that it is not shown to be reasonably necessary for the defendants to have the information or evidence sought by this application in order for that aspect of the stay application to be considered. Mr Thomas QC says it was certain very limited information the defendants' advisers have had about the damage suffered by Al Khattiya or the work done in Qatar that led them to consider one particular aspect of the law. That is whether damage resulting from or aggravated by a pre-existing defect or weakness is treated under UAE law as it would be treated under English law. That may be so, as a matter of fact, but it does not mean that having that information was reasonably required for that purpose. I see no reason why advice from a suitably qualified UAE lawyer, with relevant expertise in the law of maritime collisions as to the principles of UAE law on damages, cannot fairly be obtained or will not be adequate for the purpose of the stay application. Indeed, it seems tolerably clear that adequate evidence of that kind is precisely what has already been filed in that application, as summarised by Mr Dodds' third statement filed in the present application at his para.31.

18 If anything, and as Mr Macey-Dare realistically accepted, the paucity of detailed information or evidence volunteered by the claimants serves to assist the defendants in the stay application. The claimants cannot criticise the defendants if their evidence as to UAE law for the stay application is by nature somewhat abstract. In particular, they cannot contend that any differences between UAE law and English law identified by that evidence

will not matter on the facts of this case whilst declining to give the defendants or the court any detailed information about those facts.

19 For those reasons, the defendants' application in general fails.

20 There is, however, one specific aspect of the application that survives. The defendants say that in the claimants' witness evidence the claimants have referred to the charter under which Al Khattiya was operating at the time of the collision. They seek an order for inspection under **CPR 31.14(1)(b)**. In practice that will mean a direction for provision of a copy, the defendants paying the claimants' solicitors' reasonable copying charges.

21 The defendants have made clear they accept **CPR 31.22(1)** will apply to any copy of the charter so provided, and if I order inspection I shall make an order under **CPR 31.22(2)** to make clear that continues to be the case, notwithstanding that this application has been heard in public. It is not necessary therefore to grapple with the question whether reference to the existence of a document at a public hearing of an application for disclosure of that document removes the protection of **CPR 31.22(1)** in the absence of such a further order if the application succeeds and disclosure is ordered.

22 It was common ground that the Al Khattiya charter had been referred to in a witness statement, because Mr Dodds' third statement responding to the present application unarguably referred to it. As a matter of discretion, however, I would not accede to the application if it were not otherwise well founded merely because in replying to it that Rubicon had been crossed. As it is, however, it seems to me to have been a well-founded application without having to rely on Mr Dodds' response.

23 In Mr Dodds' first statement, filed originally for a different purpose but referred to and relied on in the claimants' evidence in the stay application, he states that:

“At the time of the collision, the Al Khattiya was engaged on a 25 year time charter to Qatar Gas at a rate of US \$89,738 per day”.

24 In his second statement filed in the stay application, he refers to the vessel being:

“...on long term time charter from the claimants to Qatar Liquefied Gas Co Limited...”.

- 25 Those references fairly read in context are plainly to a written charter party. It is vanishingly unlikely to the point of practical impossibility that the 25 year time charter would not be a document and anyone with a knowledge of shipping, in my view, would understand Mr Dodds’ references to be references to that document. Whilst a distinction has been drawn in the authorities between referring to a transaction and referring to a particular document or documents, in my judgment it is not realistic to contend that Mr Dodds’ evidence exemplifies only the former rather than the latter.
- 26 Further, I do not agree with a submission by Mr Macey-Dare that unless provision of a copy of the charter is required for the just determination of the stay application an order under **CPR 31.14(1)(b)** should be refused in my discretion. The claimants have chosen to refer to it so that **CPR 31.14(1)(b)** is engaged. They cannot be serious in the pursuit of their claim, whatever the decision as to venue, and yet be unwilling to provide a copy of the charter to the defendants at some stage. That is very obviously so in respect of the claims for loss of use, now said to be for loss of hire under the charter, and for loss of LNG heel and bunkers. A moment’s reflection shows it to be true also for the claim for repair costs.
- 27 The claimants suggest that all they will need to give the defendants is a copy redacted save as to the identity of the parties to the charter. To my mind that is plainly insufficient and unsatisfactory. In circumstances where provision of a copy of the charter to the defendants is inevitable, where in the general interest of the dispute the sooner the better, and where **CPR 31.14(1)(b)** has been engaged, it seems to me there is no substantial reason against and real reason favouring an order for inspection at this stage.
- 28 For all those reasons, the order on the defendants’ application will be for provision by the claimants of a copy of the Al Khattiya charter pursuant to **CPR 31.14(1)(b)** with an appropriate protective order out of an abundance of caution pursuant to **CPR 31.22(2)**. Save to that limited extent the application fails and is dismissed.

*Transcribed by Opus 2 International Ltd.
(Incorporating Beverley F. Nunnery & Co.)
Official Court Reporters and Audio Transcribers
5 New Street Square, London EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

****This transcript has been approved by the Judge****