



Neutral Citation Number: [2020] EWHC 631 (Comm)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/03/2020

Before :

MR. JUSTICE TEARE

CL-2017-000793

Between :

**(1) KOREA SHIPBUILDING &
OFFSHORE ENGINEERING CO., LTD**
(2) HYUNDAI HEAVY INDUSTRIES CO., LTD
- and -
(1) F WHALE CORPORATION
(2) TMT CO., LTD

Claimant

Defendant

CL-2017-000794

Between :

**HYUNDAI SAMHO HEAVY INDUSTRIES
CO., LTD**
- and -
(1) TMT CO., LTD
(2) B LADYBUG CORPORATION
(3) E ELEPHANT INC

Claimant

Defendant

CL-2018-000350

Between :

**(1) KOREA SHIPBUILDING &
OFFSHORE ENGINEERING CO., LTD**
(2) HYUNDAI HEAVY INDUSTRIES CO., LTD
- and -
(1) TMT CO., LTD
(2) E ELEPHANT INC
(3) B LADYBUG CORPORATION

Claimant

Defendant

Between :

(1) KOREA SHIPBUILDING &
OFFSHORE ENGINEERING CO., LTD
(2) HYUNDAI HEAVY INDUSTRIES CO., LTD

Claimant

- and -

(1) TMT CO., LTD
(2) IRON MONGER 2 CO., LTD
(3) F DUCKLING CORPORATION
(4) ESTABLE SHIPPING S.A.
(5) ADMIRAR VISTA SHIPPING S.A.

Defendant

Between :

HYUNDAI SAMHO HEAVY INDUSTRIES
CO., LTD

Claimant

- and -

(1) TMT CO., LTD
(2) B LADYBUG CORPORATION

Defendant

Between :

HYUNDAI SAMHO HEAVY INDUSTRIES
CO., LTD

Claimant

- and -

(1) TMT CO., LTD
(2) E ELEPHANT INC
(3) F WHALE COPORATION
(4) A MAX CORPORATION
(5) IRON MONGER 8 CO., LTD

Defendant

Karen Maxwell (instructed by **Squire Patton Boggs**) for the **Claimants**
The Defendants were not represented

Hearing dates: 3 and 4 March 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE TEARE

Mr. Justice Teare:

1. Very substantial claims have been made by South Korean shipbuilders, Hyundai Heavy Industries (“HHI”) and Hyundai Samho Heavy Industries (“HSHI”), against a Taiwanese shipping company, TMT, and “individual buyer companies” within the TMT group. There are in fact six sets of proceedings or actions which were issued in this court between December 2017 and June 2018 and which have been ordered to be tried together. The claims have a long history. The shipbuilding contracts date from 2006-2007 and from 2010. In the usual way they provided for the price to be paid by instalments due at various stages of the construction of the ships. However, the buyers had difficulty in paying the price and so the original shipbuilding contracts were amended, several times, between 2008 and 2017 to permit later payment of the price and for the buyers’ liability to be guaranteed. In the result the claims now advanced are for “deferred payments” falling due after delivery of the vessels and for sums due under guarantees in respect of those deferred payments.
2. The trial took place on 3 and 4 March 2020. The Defendants were not represented. Counsel for the Claimants drew my attention to the contents of a written application made by Mr. Nobu Su for an adjournment of the trial. He is currently in HMP Pentonville serving a sentence of imprisonment for contempt of court and purported to act on behalf of TMT. The court decided, for reasons given on 4 March 2020, to proceed with the trial in the absence of the Defendants pursuant to CPR 39.3. The Defendants may apply pursuant to CPR 39.3(5) to set aside this judgment.
3. The claims in each of the six actions have been described by counsel as being “structurally similar”. The debts claimed are of two principal types. First, there are claims for deferred instalments of the price. Second, there are claims for deferred payments in respect of adjustments to the price agreed in respect of modifications to the contractual specifications (described as CINO claims). Both types of claim were guaranteed by TMT or by affiliated ship-owning companies and so claims under those guarantees have also been made.
4. The defences pleaded raised, in broad terms, the following issues of construction or law. First, it is alleged that the Defendants have been released from their liability to pay or that their liability to pay has expired. Second, it is alleged that the demands for payment under the guarantees were invalid. Third, it is alleged that certain claims were time barred. Fourth, it is alleged that the claims were compromised by reason of Chapter XI proceedings in the United States.
5. There was also pleaded a counterclaim but that was struck out in January 2019 (shortly after the Defendants had terminated the retainer of the solicitors who had previously been acting them).
6. It is necessary to address the claims and the defences by reference to each action. This is a somewhat laborious exercise (but one greatly assisted by the comprehensive skeleton argument provided by counsel for the Claimants which has identified the relevant agreements, the sums owed, the sums paid, the outstanding sums and the pleaded defences). It is a necessary exercise because, although there is no dispute of fact, the details of the claims and defences, though they have common features, are not identical.

7. The parties entered into several agreements amending the terms of the original shipbuilding contracts. The Defendants made no admissions as the authority of the individuals who executed these agreements. However, the stated capacity of those who signed the agreements on behalf of the relevant parties is evidence that they had such authority. That evidence has not been rebutted. Further, by suing upon the agreements the Claimants have plainly ratified them.
8. I am satisfied that in the three actions in which Korea Shipbuilding & Offshore Engineering Co. Ltd (“KSOE”) is a claimant title to sue has passed from KSOE to HHI, following a corporate restructuring, for the reasons given by Mr. Chung, a South Korean lawyer, in his witness statement dated 6 November 2019. Somewhat confusingly KSOE was originally known as Hyundai Heavy Industries Co. Ltd. Thus when I refer to the shipbuilding contracts having been made with HHI I am referring to “old” HHI (now known as KSOE). The sums assessed by this judgment to be due in actions CL-2017-000793, CL-2018-000350 or CL-2018-000427 are claimed by and are payable to the “new” HHI.
9. For ease of understanding the following summary of the many transactions it may be noted that hulls built by HHI are referred to by a number (e.g. 2068) whereas hulls built by HSHI are referred to by a number with the prefix S (e.g. S385).

Hull 2068, action CL 2017 000793

10. The relevant shipbuilding contract dated 30 March 2007 was entered into between HHI and T Elephant Corporation. The contract price of USD 152,746,000 was payable in six instalments. Delivery was due on or before 24 March 2011.
11. By a Memorandum of Agreement dated 10 November 2008 between HHI, TMT and certain of the purchasers including T Elephant Corporation the payment of pre-delivery instalments was postponed until delivery on condition that the Buyer would pay interest. The terms of payment were further amended by subsequent agreements, including an Amendment Agreement dated 23 February 2010, which provided for USD 15,000,000 to be paid over a five year period (with the balance of the instalments due on delivery) and for guarantees and other security (including a mortgage on the vessel) to be provided. (By this time the name of the Buyer had been changed to F Whale Corporation.) By a Liability Assumption Agreement dated 14 June 2010 TMT assumed liability for the sum of USD 15,000,000 and deferred CINO payments. By a Memorandum of Agreement dated 22 November 2010 certain instalments paid in respect of another vessel were appropriated to hull 2068 and so the amount of the outstanding contract price was agreed to be USD 74,720,356 (though the agreed sum was subject to amendment and certain further sums were also due in respect of CINO payments). By an Amendment Agreement dated 8 December 2010 USD 75,000,000 was to be paid “by TMT or buyer”, TMT was to provide a guarantee in respect of all of the Buyer’s liabilities and a mortgage was to be granted over hull 2068. The rights and obligations under the Liability Assumption Agreement were to be extinguished.
12. The vessel was delivered on 3 January 2011. On the same date the quantum of CINO payments was agreed in the sum of USD 5,037,340, to be paid by the Buyer by 3 January 2012 and the mortgage on the vessel secured the sum of USD 75,000,000.

13. Having been taken through the relevant agreements and amendments thereto I am satisfied that on delivery the position was as follows:
 - i) A deferred sum of USD 75 million was to be paid by TMT or the Buyer, F Whale Corporation, by 3 January 2012 together with interest at 6.5% pursuant to clause 1.1 of the 8 December 2010 Amendment Agreement;
 - ii) A deferred CINO sum of USD 5,037,340 was to be paid by the Buyer together with interest at 6.5% in respect of amendments to the specification pursuant to the Supplemental Agreement dated 3 January 2011;
 - iii) TMT had guaranteed the performance by the Buyer of its obligations.
14. The above sums were not paid.
15. On 5 October 2017 a Settlement Agreement was concluded in which TMT and the Buyer acknowledged its liability for USD 75,000,000 but provided for the vessel to be chartered and for the debts to be paid out of profits from the chartering of the vessel. However, no charter was concluded. The vessel proceeded to Ulsan, South Korea, where she was arrested and sold. The vessel had been mortgaged as security not only for sums due in respect of hull 2068 but also as security for sums due in respect of two other vessels. The sums due in respect of hull 2068 were 52% of the total sums secured by mortgage and so 52% of the proceeds have been applied to the debts in respect of hull 2068. (See Appendix 4 to Counsel's skeleton argument for the calculation.)
16. Thus the sums claimed in respect of hull 2068 against both TMT and the Buyer are USD 51,962,549.33 (being USD 75,000,000 less the proceeds of sale applied in reduction of the debt) plus USD 5,037,340 (in respect of the CINO payments), together with interest.
17. In respect of these claims the Defendants raised three defences.
18. First, it was said that the Buyer's liability was transferred to TMT under the Liability Assumption Agreement so that the Buyer was released from liability. This is not a tenable defence because the effect of the Liability Assumption Agreement in relation to hull 2068 was extinguished by the agreement of 8 December 2010 (see above). Further, it is clear from the subsequent agreements, in particular the Settlement Agreement, that the Buyer's liability was acknowledged (see above also).
19. Second, it was said that that there was a breach of the Settlement Agreement by the Claimants arising from the appointment of the vessel manager. It was suggested that finding suitable employment for the vessel was not a simple matter "due to the identity and lack of appropriate experience of the ship managers appointed by the Builder". However, no evidence has been adduced to support this allegation. Such evidence as there is suggests a different explanation. Thus on 12 December 2017 the manager reported that "F Whale is not easy to fix cargo and failed several times at last minute by charterers due to ship's name/flag". On 27 December 2017 Mr. Nobu Su reported that "it became clear that F Whale name is the issue due to old arrest in India and also bad tumors by few Greek owners and brokers."

20. Third, it was said that the demands for payment under the guarantee were invalid and that the claims are now time-barred. In order to address this allegation it is necessary to note the terms of the guarantee given by TMT. The guarantee dated 8 December 2010 provided:

“In the event that the Buyer fails to pay the full Contract Price in accordance with the terms of the Contract (and as amended), the undersigned will pay to you the amounts due immediately upon receipt by us of written demand from you including a statement that the Buyer is in default of payment of the Contract Price and/or interest thereon.....”

21. Thus it is clear that a written demand is required before TMT is liable to pay.
22. It is next necessary to consider whether and when a demand was made. On 3 January 2012 TMT was advised by email that

“the Post-delivery Installment and Deferred CINO for the subject vessel [hull no. 2068] amounting to USD 85,312,023has not been paid.

We therefore hereby serve this Notice for non-payment of the subject instalments in accordance with the Amendment Agreement dated December 8, 2010 and the Supplemental Agreement dated January 3, 2011.

23. I was told and accept that the figure of USD 85,312,023 is the aggregate total of the sums due including interest (as at 3 January 2012). Although the email does not contain an express demand it was sent to TMT and was clearly intended to be a formal document (“We therefore hereby serve this Notice for non-payment”). The test of whether a document amounts to a demand is whether there is “a clear intimation that payment is required” and the word “demand” need not be used. On the other hand “mere notice of the principal debtor’s default will not constitute a sufficient demand by implication”; see the discussion of this subject and the relevant authorities in *The Law of Guarantees* by Andrews and Millett 7th.ed. at paragraph 7-007. I consider it arguable that the email dated 3 January 2012 was a clear intimation that payment was required but it is also arguable that the email was merely a formal notice of non-payment by the Buyer. In circumstances where counsel’s skeleton argument accepted that the email did not contain a demand I will accept that it did not do so.
24. However, on 20 January 2012 a clear demand was made. The email was addressed to TMT and certain of the buying companies, including F Whale Corporation, and entitled “Outstanding Payment Status”. The aggregate sum overdue in respect of several vessels, including hull 2068, was set out (and particularised with regard to each vessel in an attachment, where the sum due in respect of hull 2068 was said to be USD 85,557,693) and the email continued:

“In this regard, you are requested to pay immediately all of the outstanding amount for each vessel together with the accrued interest as shown above.”

25. It has been pleaded that this demand was invalid because the shipbuilding contract required notices to be served by letter or facsimile. However, the guarantee simply required there to be a “written demand” and the demand was in writing. There is no reason why the notice provisions in the shipbuilding contract should be incorporated into the guarantee.
26. The claim form was issued on 21 December 2017, that is, within six years from when the cause of action against TMT accrued on 20 January 2012. Thus the claim is not time barred.
27. For these reasons I am satisfied that the Claimant, new HHI, is entitled to judgment against TMT and the Buyer for USD 51,962,549.33 in respect of the outstanding deferred contract price, plus interest, and USD 5,037,340 in respect of the CINO payment, plus interest.

Hull S385, action CL 2017 000794

28. The relevant shipbuilding contract dated 6 December 2006 was entered into between HSHI and F Elephant Corporation. This claim concerns a deferred CINO sum which is claimed against TMT only because the Buyer was a debtor in Chapter XI proceedings in the US and is not a party to these proceedings. Delivery was due on or before 31 December 2010.
29. On 6 January 2011 the vessel was delivered and HSHI, the Buyer and TMT concluded an Agreement for S385 CINO Deferred Payment. The amount due was agreed in the sum of USD 7,541,242 plus interest which was to be paid within one year of delivery. On the same day TMT issued a guarantee in respect of the deferred CINO amount.
30. The deferred CINO amount was not paid.
31. On 16 December 2019 HSHI received the sum of USD 467,678.18 as a result of the distribution of the proceeds of sale of hull S385 in Texas. Thus the amount claimed is USD 7,073,563.82.
32. Again, three defences have been raised.
33. First, it is said that the demand made on 9 January 2012 was not addressed to TMT and was therefore not valid. The demand was addressed to “Fortune Elephant (TMT)”. I accept that it is not clear that this demand was addressed to TMT. However, the demand of 20 January 2012 was clearly addressed to TMT and so this point cannot assist the Defendants.
34. Second, it is said that the claim has been “pursued and fully compromised” in the US Chapter XI proceedings. But TMT was not party to the Chapter XI proceedings and so no claim against it can have been compromised by those proceedings. I have considered whether the fact that the claim against the Buyer has been “compromised” by the Chapter XI proceedings affects the claim against TMT as guarantor. But section 524(e) of the US Bankruptcy Code expressly provides that “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.” Thus a Chapter XI plan does not affect the liability of a guarantor. Even if under US law it could affect the liability of a guarantor, that would not affect the

liability of the guarantor governed by English law; see *Global Distressed Alpha Fund I v PT Bakrie Investindo* [2011] EWHC 256 (Comm) at paragraphs 11-27 per Teare J.

35. Third, it is said that the claim against the Buyer is now time barred. But that claim is not time barred. The claim accrued on 6 January 2012 and the proceedings were commenced within 6 years, namely, on 21 December 2017.
36. For these reasons I am satisfied that TMT is liable for the CINO amount in the sum of USD 7,073,563.82 plus interest.

Hull S399, action CL 2017 000794

37. A claim in relation to another vessel was also raised in action 000794. The relevant shipbuilding contract dated 30 March 2007 was entered into between HSHI and Ducky N Corporation, the name of which was changed on 30 August 2010 to B Ladybug Corporation. The contract price was USD 89,300,000 and delivery was to be on or before 30 November 2010.
38. By an Amendment Agreement dated 13 January 2011 the deferred CINO amount was agreed to be payable 12 months after delivery, subject to the amount being agreed prior to or upon delivery of the vessel. By an Agreement dated 2 March 2011 the amount was agreed to be USD 7,573,840 plus interest and to be payable by the Buyer. By an Amendment Agreement of the same date the deferred contract price in the amount of USD 63,000,000 was payable by the Buyer or TMT within 10 months of the delivery of the vessel. By a guarantee of the same date TMT guaranteed both the deferred CINO amount and the deferred contract price and E Elephant Inc (the buyer of hull S384) also guaranteed the Buyer's liabilities.
39. On 3 March 2011 hull S399 was delivered. A mortgage was executed on hull S384 which secured, inter alia, USD 24,000,000 of the deferred contract price and a mortgage was executed on hull S399 which secured USD 39,000,000 of the deferred contract price.
40. Neither the deferred CINO amount nor the deferred contract price were paid.
41. On 4 April 2014 S399 was sold in Malta and the sale proceeds attributable to the deferred contract price amounted to USD 32,199,062.31. On 31 May 2016 S384 was sold in China and USD 12,884,880 was attributable to the deferred contract price. On 9 February 2018 the bunkers on board S384 were sold and USD 25,645.44 was attributable to the deferred contract price. Credit for all of these sums has been given. (See Appendix 4 to Counsel's skeleton argument.)
42. Two defences have been advanced.
43. First, it was said that the TMT did not assume liability under the 2 March 2011 Amendment for the deferred contract price. This is untenable. It provided for payment by the Buyer or TMT.
44. Second, it was denied that the demands for payment were addressed to TMT. However, the demand dated 20 January was expressly addressed to TMT.

45. I am therefore satisfied that judgment may be given against TMT, the Buyer and E Elephant Inc for the sum of USD 17,890,412.29 in respect of the outstanding and deferred contract price and against TMT and the Buyer for the sum of USD 7,573,840 in respect of the deferred CINO payment, plus interest.

Hulls 2174 and 2175, action CL 2018 000350

46. The relevant shipbuilding contracts in respect of hulls 2174 and 2175 with HHI were both dated 17 August 2007. In each case the purchase price was USD 153,100,00 and the vessels were to be delivered on or before 4 January 2011 (hull 2174) and 28 February 2011 (hull 2175).
47. Amendments were made by two addenda and by an agreement dated 21 March 2008.
48. By the 10 November 2008 Memorandum of Agreement the instalments were made payable on delivery; 4 July 2011 for hull 2174 and 8 February 2011 for hull 2175.
49. By the Amendment Agreement dated 23 February 2010 USD 15,000,000 of the deferred contract price was to be paid over a five year period (with the balance of the instalments due on delivery). The deferred CINO amount was to be paid 12 months after delivery. The Amendment Agreement also provided for guarantees from TMT and the buyer of hull 2046 and other security (including a mortgage on hull 2046). By a Liability Assumption Agreement dated 14 June 2010 TMT assumed liability for the sum of USD 15,000,000 and deferred CINO payments. By an Amendment Agreement dated 16 December 2010 the mortgage over hull 2046 was to be substituted by mortgages over four other vessels. Further, payment of the deferred CINO amounts “shall be made until 12 months after the delivery of the each Vessel by TMT”.....and shall remain senior obligations of TMT”. By the Amendment Agreement dated 29 April 2011 the amount of USD 15,000,000 in respect of hull 2174 was increased to USD20,000,000 and was payable by the Buyer or TMT and the amount of USD 15,000,000 in respect of hull 2175 was to be paid by the Buyer or TMT within 12 months after delivery. The USD 20,000,000 in respect of hull 2174 was to be secured by a mortgage on hull S384, with guarantees provided by the buyer of hull S384 and TMT. The USD 15,000,000 in respect of hull 2175 was to be secured by a mortgage over S399, with guarantees provided by the buyer of S399 and TMT.
50. Hull 2174 was delivered in 3 June 2011 and by a Supplemental Agreement dated 3 June 2011 the deferred CINO amount in respect of hull 2174 was agreed in the sum of USD 5,117,840 and was payable by the Buyer by 3 June 2012.
51. Hull 2175 was delivered on 21 June 2011 and by a Supplemental Agreement dated 21 June 2011 the deferred CINO amount in respect of hull 2175 was agreed in the sum of USD 6,476,840 and payable by the Buyer by June 21 2012.
52. As already noted hulls S384 and S399 were sold in China and Malta and the appropriate sums have been allocated to the deferred contract price payable in respect of hulls 2174 and 2175. (see Appendix 4 to counsel’s skeleton argument.)
53. Four defences were advanced in respect of these claims.

54. First, it was said that claims against the 2174 and 2175 Buyers were compromised in the US Chapter XI proceedings. This suggested defence fails for the reasons I have already given. Neither TMT nor the buyers of hulls S384 and S399 against whom these claims are brought as guarantors were party to the US Chapter XI proceedings.
55. Second, it was said that that the term in the 16 December 2010 amendment agreement which required TMT to pay deferred CINO “until 12 months after the delivery” means that TMT was under no obligation after the expiry of 12 months. This suggestion was submitted to be “unarguably bad”. I agree. The purpose of clause 1.2 of the 16 December 2010 amendment, consistent with the earlier amendment agreement of 23 February 2010, was to confirm that the CINO payments were deferred until 12 months after delivery. There would be no commercial purpose in imposing a time limit, namely 12 months after delivery, after which no sums were payable. Such a construction would be inconsistent with the final phrase of the clause in question, namely, that the liability “shall remain senior obligations of TMT”.
56. Third, it was said the demand of 29 June 2012 was not a valid demand because it was not addressed to the corporate guarantors. The two corporate guarantors were E Elephant Inc and B Ladybug Corporation. It appears to be correct that the demand of 29 June 2012 was not addressed to those companies. However, the suggested defence is unfounded. The corporate guarantees (unlike others) do not require a demand to be made. The guarantor is liable as “primary obligor” to guarantee “the due and faithful performance by TMT of all of its liabilities.” Thus when the buyer fails to pay the guarantor is in breach of its liability as guarantor.
57. It was submitted on behalf of the Claimants that if a demand were required it was sufficient that the demand were addressed to TMT because, under the corporate guarantees, the corporate guarantor had appointed TMT Co. UK Limited as its agent to receive service of proceedings in the court on its behalf. It is unnecessary for me to rule on this submission. But there appear to be difficulties with it because service of a demand is different from service of proceedings. It was also submitted on behalf of the Claimants that a demand dated 18 June 2018 served by Squire Patton Boggs on behalf of HHI on TMT Co. Ltd in Taiwan (without prejudice to the contention that a demand was not required) was a sufficient demand. It is also unnecessary for me to rule on this submission. But there appear to be difficulties with it because the demand, although it expressly related to the liabilities of the corporate guarantors, was not addressed to them.
58. Fourth, it was said that the cause of action under the guarantees accrued on 31 May 2012 and that the claim is time barred. This is difficult to follow. Action CL 2018 000350 was issued on 29 May 2018, that is, just before the expiry of 6 years from 31 May 2012. Thus, assuming that the cause of action accrued on 31 May 2012, the claim was not time barred. But the cause of action accrued on 3 June 2012, that is, 12 months after delivery on 3 June 2011.
59. For these reasons I am satisfied that USD 9,241,437.58 (being the outstanding deferred contract price in respect of hull 2174 after giving credit for the sums realised on the sale of the mortgaged vessel) is due from TMT and E Elephant and that USD 5,117,840 (being the deferred CINO payment) is due from TMT (in both cases together with interest). I am also satisfied that USD 2,618,184.32 (being the outstanding deferred contract price in respect of hull 2175 after giving credit for the sums realised on the sale

of the mortgaged vessel) is due from TMT and B Ladybug and that USD 6,476,840 (being the deferred CINO payment) is due from TMT (in both cases together with interest).

Hulls 2046 and 2065-7, action CL 2018 000427

60. There are four vessels to be addressed in the context of this action.
61. The shipbuilding contract for hull 2046 was between HHI and the buying company and was dated 6 December 2006. The price was USD 147,200,00 and the vessel was to be delivered on or before 20 December 2010.
62. By an Amendment Agreement dated 23 February 2010 a first deferred amount of USD 15,000,000 (plus interest) was to be paid in 10 equal instalments over 5 years. A second deferred amount of USD 31,285,358 (plus interest) was to be paid at prescribed intervals up to and following delivery, with the final payment of USD 16,285,358 being made within 12 months of delivery. The deferred CINO payment was also to be paid within 12 months of delivery. TMT was to provide a guarantee and there were to be additional securities also. By an Amendment Agreement No.2 dated 23 February 2012 further amendments were made and by a Supplemental agreement also dated 23 February 2010 the deferred CINO was agreed in the sum of USD 11,300,200 “to be paid by the Buyer within February 23 2011”.
63. Hull 2046 was delivered in 23 February 2010. The above sums were not paid.
64. By the Liability Assumption Agreement dated 14 June 2010, as amended by the Amendment Agreement no.2 dated 16 December 2010, TMT assumed the liabilities of the buyer of hull 2046.
65. By the Amendment Agreement dated 16 December 2010 the owners of vessels 2056, 2065, 2066 and 2067 were to provide guarantees and mortgages in respect of the sums on hull 2046. (In the event, three of these mortgaged vessels were sold for scrap without the knowledge of the HHI on 4 December 2012, 7 January 2013 and 22 June 2016.)
66. USD 1,500,000 (plus interest) was paid in respect of the 2046 first deferred amount and USD 10,000,000 (plus interest) was paid in respect of the 2046 second deferred amount.
67. The shipbuilding contract for hull 2065 was between HHI and the buying company and was dated 30 March 2007. The price was USD 152,746,000 and delivery was to be on or before 30 August 2010.
68. On 23 February 2010, by Amendment no.2, USD 15,000,000 of the contract price was to be deferred and paid in in 10 semi-annual instalments over a period of 5 years from delivery and the CINO amount was payable 12 months after delivery. TMT agreed to guarantee performance of the 2065’s buyer’s liabilities “immediately upon receipt ...of written demand”.
69. On 21 May 2010, by an Addendum and a Supplemental Agreement, the deferred amount was increased to USD 25,000,000 which would be payable in 10 semi-annual instalments over 5 years from delivery.

70. On 14 June 2010, by a Supplemental Agreement, an Amendment Agreement and a Liability Assumption Agreement, the quantum of the CINO payment was agreed as USD 4,961,560, provisions were made for guarantees and mortgages in respect of the buyer's liabilities and TMT assumed liability of the buyer's liabilities described as the "transfer amount".
71. Hull 2065 was delivered on 24 June 2010.
72. By the Third Amendment Agreement dated 16 December 2010 it was confirmed and agreed that the deferred amount of USD 25,000,000 plus interest was to be paid in 10 instalments over 5 years from delivery and that the deferred CINO amount plus interest was to be paid within 12 months from delivery.
73. No part of those amounts has been paid.
74. The shipbuilding contract with regard to hull 2066 was dated 30 March 2007. The price was USD 152,746,000 and delivery was to be on or before 5 November 2010.
75. By Amendment No.2 dated 23 February 2010 USD 15,000,000 of the contract price was to be deferred and paid in 10 semi-annual instalments over a period of 5 years from delivery and the CINO amount was payable 12 months after delivery. TMT agreed to guarantee performance of the 2066 buyer's liabilities "immediately upon receipt ...of written demand". By an amendment dated 21 May 2010 the deferred amount was reduced to USD 5,000,000.
76. On 14 June 2010, by a Liability Assumption Agreement, provision was made for TMT to assume the liability of the 2066 buyer's liabilities and for TMT's obligations to be secured by a mortgage over hull 2046 and a guarantee by the 2046 buyer.
77. On 27 September 2010 by an Addendum no.2 and Supplemental Agreement the deferred amount was increased to USD 15,000,000 which was to be payable over 5 years from delivery.
78. On 30 September 2010 by a Supplemental Agreement the deferred CINO amount was agreed to be USD 5,049,330 and was to be paid by 30 September 2011.
79. Hull 2066 was delivered on 30 September 2010.
80. By an Amendment Agreement dated 16 December 2010 2010 it was confirmed and agreed that the deferred amount of USD 15,000,000 plus interest was to be paid in 10 instalments over 5 years from delivery and that the deferred CINO amount plus interest was to be paid within 12 months from delivery. Security was to be provided in the form of mortgages over four vessels and guarantees from the owners of those vessels.
81. The shipbuilding contract in respect of hull 2067 was dated 30 March 2007. The price was USD 152,746,000 and delivery was to be on or before 3 February 2011.
82. By Amendment No.2 dated 23 February 2010 USD 15,000,000 of the contract price was to be deferred and paid in 10 semi-annual instalments over a period of 5 years from delivery and the CINO amount was payable 12 months after delivery. TMT agreed to guarantee performance of the 2067 buyer's liabilities "immediately upon receipt ...of written demand".

83. On 14 June 2010, by a Liability Assumption Agreement, provision was made for TMT to assume the liability of the 2067 buyer's liabilities and for TMT's obligations to be secured by a mortgage over hull 2046 and a guarantee by the 2046 buyer.
84. By a Supplemental Agreement dated 29 October 2010 the CINO deferred amount was agreed to be USD 5,019,230, to be paid by the hull 2067 buyer by 28 October 2011. By an Amendment Agreement also dated 29 October 2010 part payments made under a cancelled contract for hull 2214 were to be applied against part payment of the hull 2067 delivery instalment.
85. Hull 2067 was delivered on 29 October 2010.
86. By an Amendment Agreement dated 16 December 2010 it was confirmed and agreed that the deferred amount of USD 15,000,000 plus interest was to be paid in 10 instalments over 5 years from delivery and that the deferred CINO amount plus interest was to be paid within 12 months from delivery. Security was to be provided in the form of mortgages over four vessels and guarantees from the owners of those vessels.
87. The vessel Admirar Vista was sold by court auction in Wuhan. The sale proceeds have been applied in reduction of the deferred amounts in respect of the four hulls, 2046 and 2065-7. (See Appendix 4 to counsel's skeleton argument.)
88. Five defences have been advanced.
89. First, it was said that the claims have been compromised as a result of the US Chapter XI proceedings. However, the four buyers of these vessels who were debtors in the Chapter XI proceedings are not defendants in these proceedings. For that reason and for the reasons expressed above the claims against guarantors were not compromised.
90. Second, it was said that the liability to pay the deferred CINO amount expired once 12 months had elapsed from the delivery. This is unsustainable for the reasons given above.
91. Third, it is said that the claim in respect of hull 2046 is time barred. The demand for payment by TMT was made on 20 January 2012. The claim form was not issued until 22 June 2018. It must follow that this defence succeeds because the claim form was only issued after the expiry of the six year limitation period. The guarantees by vessel owners did not require a demand and so the cause of action arose as and when an instalment was not paid. Instalments falling due before 22 June 2012 are therefore time barred. (These instalments are identified in Appendix 5 to counsel's skeleton argument.) Instalments falling due thereafter would not be time-barred.
92. Fourth, it is said that the claim for the 2066 and 2067 deferred CINO amounts are time barred. These sums were payable on 30 September 2011 and 29 October 2011. It must follow that they too are time barred.
93. Counsel's skeleton argument, Appendix 5, also recognises that the 2065 deferred CINO amount is time barred and that the instalments identified in the appendix of deferred amounts in respect of hulls 2065, 2066 and 2067 are also time barred. I agree with that assessment. Instalment falling due after 22 June 2012 would not be time-barred.

94. Accordingly, it must follow that certain of the claims in action 2018 000427 must be dismissed. I request counsel, when this judgment is handed down, to identify the sums which remain due and payable in accordance with this judgment.

Hulls S400 and S443, action CL 2018 000467

95. The shipbuilding contracts for hulls S400 and S443 between HSHI and the owning companies were dated 30 March 2007 and 17 August 2007 respectively. Each provided for a price of USD 89,300,000 and delivery was to be on or before 3 and 12 January 2011 respectively.
96. By an Amendment Agreement dated 13 January 2011 the CINO amounts in respect of both vessels were to be paid 12 months after delivery.
97. By an Amendment Agreement dated 6 July 2011 the deferred amounts in respect of the contract price were to be USD 5,000,000 in relation to each hull which would be payable “by the Buyer or TMT” 12 months after delivery. Guarantees were to be provided by TMT and the buyer of hull S399.
98. By an Agreement dated 11 July 2011 the CINO deferred payment in respect of S400 was agreed to be USD 7,647,340 plus interest. By an Agreement dated 5 January 2012 the CINO deferred payment in respect of S443 was agreed to be USD 7,645,550 plus interest. TMT guaranteed both sums on demand.
99. Hulls S400 and S443 were delivered on 11 July 2011 and 13 January 2012 respectively.
100. Hull S399 was sold in Malta on 4 April 2014. The hull had been mortgaged in respect of the sums due in respect of a number of hulls. The amount attributable to hulls S400 and S443 has been applied in diminution of the sums due in respect of those vessels. (See Appendix 4 to counsel’s skeleton argument.)
101. Two defences to the sums claimed have been advanced.
102. First, it is said that the claims have been compromised by the Chapter XI proceedings. However, the buyers of these two vessels who were debtors in the Chapter XI proceedings are not defendants in these proceedings. For that reason and for the reasons expressed above the claims against guarantors were not compromised.
103. Second, it was said that demands made by email or post were invalid because they were not by facsimile as required by the shipbuilding contracts. This defences failed for the reasons given earlier in this judgment.
104. I am therefore satisfied the TMT and B Ladybug Corporation are liable in the sums of USD 872,728.11 (plus interest) in respect of the deferred contract price for hull S400 and USD 872,728.11 (plus interest) in respect of the deferred contract price for hull S443 and that TMT is liable in respect of the sums of USD 7,647,340 and USD 7,645,550 plus interest in respect of the CINO payments arising in connection with the two vessels.

Hulls S384, S398, S541 and S542, claim CL 2018 000476

105. The action concerns 4 hulls.

106. Hull S384: The shipbuilding contract between HSHI and the buyer was dated 6 December 2016. The contract price was USD 128,380,000 and the vessel was to be delivered on or before 3 November 2010.
107. By an Amendment Agreement dated 2 March 2011 USD 86,000,000 was to be deferred until after delivery. USD 30,000,000 was to be paid in 10 instalments during the five years from delivery and USD 56,000,000 was to be paid 10 months after delivery. Provision was also made for guarantees by TMT and mortgages over vessels 2068 and S384. The deferred CINO payment was to be paid 12 months after delivery. On the same date the CINO payment was agreed to be USD 7,583,642.
108. The vessel was delivered on 3 March 2011.
109. Hull S398: The shipbuilding contract between HSHI and the buyer was dated 30 March 2007. The contract price was USD 89,300,000 and the vessel was to be delivered on or before 28 September 2010.
110. By an Amendment Agreement dated 13 January 2011 USD 40,000,000 was to be deferred until after delivery. USD 30,000,000 was to be paid in 10 instalments during the five years from delivery. Provision was also made for guarantees by TMT and mortgages over vessels 2068 and S398. The deferred CINO payment was to be paid 12 months after delivery. By an agreement dated 17 January 2011 the CINO payment was agreed to be USD 7,807,420.
111. The vessel was delivered on 17 January 2011.
112. Hull S541: The shipbuilding contract between HSHI and the buyer was dated 9 April 2010. The contract price was USD 37,500,000 and the vessel was to be delivered on or before 23 June 2011.
113. By an Amendment Agreement dated 6 July 2011 it was agreed that USD 25,000,000 was to be deferred until 12 months after delivery. Provision was also made for guarantees by TMT and a mortgage over hull S541.
114. The vessel was delivered on 15 July 2011.
115. Hull S542: The shipbuilding contract between HSHI and the buyer was dated 9 April 2010. The contract price was USD 25,000,000 and the vessel was to be delivered on or before 9 September 2011.
116. By an Amendment Agreement dated 22 December 2011 it was agreed that USD 9,023,661 was to be deferred until 12 months after delivery. Provision was also made for guarantees by TMT and a mortgage over another vessel.
117. The vessel was delivered on 28 December 2011.
118. Hulls S384, 2068 and S541 were sold in China, Korea and China respectively. The proceeds were attributed to the sums owing in respect of S384, S398 and S541 as indicated in Appendix 4 to counsel's skeleton argument. Credit has also been given for the sums recovered as a result of the distribution of assets of the buyer of S398 in the Chapter XI proceedings.

119. The sums owed in respect of hull S384 were acknowledged by a Settlement Agreement dated 2 November 2015 (with regard to the tranche of USD 56,000,000). The sums owed in respect of hull S398 and hull S384 (with regard to the tranche of USD 30,000,000) were acknowledged by a Settlement Agreement dated 5 October 2017.
120. Several defences were pleaded against these claims.
121. First, it was said that that claims against the buyers of S398 and S542 had been compromised by the Chapter XI proceedings. But no claims have been advanced against these buyers and the claims under the relevant guarantees are not affected for the reasons given earlier in this judgment.
122. Second, it was said that claims in relation to hull S398 are time barred. The claims against TMT were made by demands between July and August 2011. It is conceded that the instalments due in 2011 and 2012 and the CINO amount were potentially time-barred. (Proceedings were commenced on 13 July 2018, that is, after the expiry of six years from the demand or the accrual of the cause of action). However, by the Settlement Agreement dated 5 October 2017 TMT and the corporate guarantor acknowledged their indebtedness in respect of hull S398 and so the claims are not time-barred in respect of the deferred contract price (pursuant to section 29(5) of the Limitation Act 1980). Since that acknowledgment did not extend to the CINO amount the claim in respect of that sum is, it appears, time barred.
123. Third, it was said that the claims under the guarantees were made more than six years before the commencement of proceedings. In so far this relates to hull S398 I have addressed this defence in the previous paragraph. In so far as it relates to hull S384 it must fail in relation to the deferred contract price because the indebtedness in respect of the deferred contract price was acknowledged by the Settlements Agreements dated 12 November 2015 and 5 October 2017. But in respect of the deferred CINO amount the claim is time barred.
124. Fourth, it is said that the demands were required to be sent by facsimile and not by air mail or courier. I reject this suggestion for the reasons given above.
125. I am therefore satisfied that the following sums are due:
 - i) Hull S384: USD 20,823,019.54 and USD 25,935,280 plus interest from TMT, E Elephant (S384 buyer) and F Whale (2068 buyer).
 - ii) Hull S398: USD 26,542,243 plus interest from TMT and F Whale (2068 buyer).
 - iii) Hull S541: USD 9,205,768 plus interest from TMT and the buyer of S541.
 - iv) Hull S542: USD 9,023,661 plus interest from TMT and Iron Monger 8.
126. I request counsel to prepare a draft order giving effect to this judgment, showing the sums held to be due and payable, and from whom, and the amount of interest payable at the agreed rate until the date in which judgment is given. I also request counsel, in the event of any obvious error in my summary of the amendments to the shipbuilding contracts or in my assessment of the sums due and owing, to point out such error.