



Neutral Citation Number: [2021] EWHC 2319 (Comm)

Case No: CL 2021 000096

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

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

Date: 17/08/2021

Before :

THE HONOURABLE MR JUSTICE HENSHAW

Between :

AI GIORGIS OIL TRADING LIMITED
(a company incorporated in Liberia)

Claimant

- and -

AG SHIPPING & ENERGY PTE. LIMITED
(a company incorporated in Singapore)

Defendant

M.T. "MARQUESSA"
Charterparty dated 1 June 2020

Sean O'Sullivan QC and Iain Munro (instructed by **Ince Gordon Dadds LLP**) for the
Claimant

The Defendant did not appear and was not represented

Hearing date: 2 July 2021
Draft judgment circulated: 29 July 2021

JUDGMENT

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 17th August 2021 at 10am

Mr Justice Henshaw:

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(A) INTRODUCTION AND PROCEDURAL BACKGROUND

1. The Claimant owners (“*Giorgis*”) of MT “*Marquessa*” (the “*Vessel*”) applied for summary judgment on claims against the Defendant charterers (“*Charterers*”) under a time charterparty on an amended Shelltime 4 form dated 1 June 2020 (the “*Charterparty*”), expressed to be governed by English law. At the end of the hearing before me, I granted Giorgis’s application, with written reasons to follow. This judgment sets out my reasons for having granted summary judgment.
2. Giorgis applied for judgment in respect of:
 - i) unpaid hire accrued due prior to the termination of the Charterparty (the “*Pre-Termination Claim*”), and,
 - ii) damages consequent upon Giorgis’s termination of the Charterparty on the basis of Charterers’ repudiation or renunciation (the “*Post-Termination Claim*”), but excluding damages in respect of the period after the discharge of Charterers’ cargo from the Vessel.
3. The application was supported by the witness statement of Giorgis’s solicitor, Jeremy Biggs of Ince Gordon Dadds LLP.
4. The proceedings were served on Charterers on 23 February 2021 at their registered office in Singapore, pursuant to CPR 6.33(2B), on the basis that the Charterparty confers on the English High Court exclusive jurisdiction over the claims and Singapore is a party to the 2005 Hague Convention on Choice of Court Agreements.

5. On 16 March 2021 Charterers' English solicitors, MFB Solicitors, filed an Acknowledgment of Service indicating an intention to defend the claim and making no objection to the jurisdiction. However, MFB subsequently came off the record, and Charterers filed a Notice of Change of Legal Representative in form N434, dated 13 April 2021, indicating that documents about this claim should thenceforth be sent to the email address "*chartering@agships.com*".
6. No Defence has been filed or served, and Giorgis elected to seek summary judgment on the merits rather than a default judgment.
7. Giorgis served the present application, followed by notification of the listing appointment and then notification of the hearing date, on Charterers at the email provided, on 4, 7 and 12 May 2021 respectively. Copies were also sent to the physical address of Charterers' registered office in Singapore, though photographic evidence indicates that that address appears to be vacant. On 24 May and 15 June 2021 communications were sent to Charterers reminding them of the present hearing date, and recommending that they instruct legal representation to attend. On 18 June 2021 Giorgis served on Charterers (by email and at their registered office) notice of its application to amend (see section (C)(1) below). No response has been received from any of these communications.
8. As Charterers were neither present or represented at the hearing, I considered whether or not to proceed, having regard by analogy to the factors identified by the Court of Appeal in *R v Hayward, Jones and Purvis* [2001] EWCA Crim 168, [2001] 2 Cr. App. R. 11 at § 22.5. I concluded that I should proceed with the hearing, because:
 - i) all reasonable steps had been taken to give Charterers sufficient notice of the hearing, as well as of the proceedings, and Charterers had been given ample opportunity to attend;
 - ii) there was no reason to believe that an adjournment would be likely to result in Charterers attending the hearing at a later date;
 - iii) there was no reason to believe that Charterers wished to be represented at the hearing: on the contrary, the procedural history indicates that, having filed an Acknowledgement of Service, Charterers thereafter chose to cease to engage with the proceedings; and
 - iv) although Giorgis was seeking judgment for a significant sum of money, there was a public interest in the matter proceeding without further delay.

In all the circumstances, Charterers had in my judgment foregone their right to appear or be represented at the hearing, and were voluntarily absent. I am satisfied that, in their absence, counsel for Giorgis drew my attention to all points that Charterers might reasonably have made had they been present or represented at the hearing.

9. During the course of the hearing, I also granted applications by Giorgis (i) to correct a misspelling of their name as pleaded, and (ii) to confirm that Giorgis

may continue to serve documents on the email address stated in Charterers' Notice of Change. I deal with these applications in section (C) below.

(B) FACTS

10. The relevant facts can be shortly summarised as follows.
11. The Charterparty was dated 1 June 2020. On 12 June 2020 Charterers paid, late, the deposit of the Euro equivalent of US\$414,750. The Vessel was delivered into Charterers' service on 15 June 2020.
12. The first hire instalment, comprising US\$830,500 hire and US\$208,903 bunkers on delivery, a total of US\$1,039,403, was due within 5 banking days of delivery of the Vessel. However, Charterers failed to pay by the deadline.
13. On 15 July 2020 the second hire instalment, of US\$858,150, fell due but was not paid.
14. The first hire instalment, excluding the sum due for bunkers on delivery, was paid on 28 July 2020 – over a month late – leaving a balance of US\$1,067,053 overdue.
15. On 15 August 2020 the third hire instalment, of US\$858,150, fell due but was not paid.
16. Charterers on 24 August 2020 paid the Euro equivalent of US\$236,940, leaving US\$1,688,263 outstanding.
17. On 15 September 2020 the fourth hire instalment, of US\$830,500, fell due but was not paid.
18. On 15 October 2020 the fifth hire instalment, of US\$858,150, fell due but was not paid.
19. A cargo was loaded on 16 October 2020. On the same day, Charterers paid the Euro equivalent of US\$528,345, leaving US\$2,848,568 outstanding.
20. Giorgis suspended performance of the Charterparty and negotiations took place. These led to the parties agreeing an Addendum dated 27 October 2020 ("*the Addendum*") giving Charterers further time to pay.
21. However, Charterers continued to fail to meet their obligations. On 4 November 2020 they failed to make payment in accordance with the Addendum, which led to Giorgis suspending performance again and, on 9 November 2020, exercising a lien over the cargo.
22. On 15 November 2020 the sixth hire instalment, of US\$830,500, fell due but was not paid, leaving a total of US\$3,679,068 outstanding and overdue.
23. The Vessel was at this stage carrying a cargo, loaded on the orders of Charterers, for sub-sub-charterers, HK Dada Trading Group Limited ("*Voyage Charterers*"). Having exercised a lien, and as an act of mitigation, Giorgis on

23 November 2020 agreed with Voyage Charterers to complete the voyage in exchange for payments to escrow.

24. On 25 November 2020, Giorgis accepted Charterers' breaches as a repudiation or renunciation, electing to treat the Charterparty as having come to an end.
25. Voyage Charterers' cargo was discharged on 3 December 2020.
26. A month later, in response to Giorgis's letter of claim dated 2 December 2020, Charterers on 23 December 2020 alleged wrongful termination by Giorgis and purported to accept it as a repudiatory breach by Giorgis.

(C) PROCEDURAL APPLICATIONS

(1) Correction of Claimant's name

27. Giorgis made an application to amend the Claimant's stated name, supported by a witness statement from Keith Rowbory of Ince Gordon Dadds. Giorgis' name was misspelt in the Claim Form and Particulars of Claim as "*Al Giorgis Oil Trading Limited*" rather than the correct "*Ai Giorgis Oil Trading Limited*". However, Charterers responded to correspondence containing the error, and also acknowledged service of the claim form without expressing any confusion about the identity of the Claimant. No limitation issue arises. Further, this is an instance of a correction to the name of a claimant, rather than substitution of a claimant. There is no evidence that any confusion has been caused. Accordingly, it was appropriate to grant permission to amend the Claimant's name, and I granted such permission at the hearing.

(2) Service of documents

28. As noted above, the applications to amend and for summary judgment were served on Charterers at their registered office and email address identified by them. The evidence indicates that the law of Singapore does not prohibit service of documents at an agreed email address or at a party's registered office (notwithstanding that the physical premises are now said to be 'for rent').
29. Out of an abundance of caution, Giorgis sought, and I granted, permission pursuant to CPR 6.15, 6.27 and 6.40 to serve any documents in these proceedings out of the jurisdiction on the email address provided in Charterers' Notice of Change of Legal Representative, including (with retrospective effect) the documents served in relation to the present applications.

(D) PRINCIPLES APPLICABLE TO SUMMARY JUDGMENT APPLICATIONS

30. Under CPR r. 24.2, the court may give summary judgment against a defendant on a particular issue if: (a) the defendant has no real prospect of defending the claim; and (b) there is no other compelling reason why the issue should be disposed of at a trial.

31. The Court of Appeal in *The LCD Appeals* [2018] EWCA Civ 220 §§ 38-39 set out the principles to be applied to applications for summary judgment under CPR 24.2 and strike-out under CPR 3.4(2)(a):

“The court may strike out a statement of case if, amongst other things, it appears that it discloses no reasonable grounds for bringing the claim: CPR 3.4(2)(a). It may grant reverse summary judgment where it considers that there is no real prospect of the claimant succeeding on the claim or issue and there is no other compelling reason why the case should be disposed of at trial: CPR 24.2(a)(i) and (b). In order to defeat an application for summary judgment it is only necessary to show that there is a real as opposed to a fanciful prospect of success. Although it is necessary to have a case which is better than merely arguable, a party is not required to show that they will probably succeed at trial. A case may have a real prospect of success even if it is improbable. Furthermore, an application for summary judgment is not appropriate to resolve a complex question of law and fact.”

32. The Court of Appeal quoted with approval the following considerations applicable to summary judgment applications, taken from passages in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) and *Swain v Hillman* [2001] 1 All ER 91 at 94:

- i) the court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;
- ii) a "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 § 8;
- iii) in reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*;
- iv) this does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* § 10;
- v) however, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
- vi) although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into

the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 3;

- vii) on the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725"; and
- viii) a judge in appropriate cases should make use of the powers contained in Part 24. In doing so he or she gives effect to the overriding objective as contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose; and it is in the interests of justice. If the claimant has a case which is bound to fail, then it is in the claimant's interest to know as soon as possible that that is the position: *Swain v Hillman* [2001] 1 All ER 91 § 94.

(E) PRE-TERMINATION CLAIM

- 33. Giorgis claimed, as liquidated sums, the balance of outstanding hire payments after giving credit for address commission, Charterers' payments to date (summarised above), and the relevant sums received from Voyage Charterers by way of mitigation. The hire payments were due under clauses 8 and 9 of the amended Shelltime 4 terms on which the parties contracted, read with the "*Main Terms*" incorporated into them.
- 34. In correspondence, Charterers asserted a failure by Giorgis to allow for off-hire periods, which presumably refers to the periods during which Giorgis suspended performance. The Charterparty permitted Giorgis to suspend performance:
 - “... failing the punctual and regular payment of hire ... [Giorgis] shall be at liberty to at any time withhold the performance of any and all of their obligations hereunder ... and hire shall continue to accrue ...” (§ 6.1)

35. I do not accept the objections Charterers' have put forward to Giorgis' reliance on this provision:
- i) Owners' right to suspend performance is not a penalty. Advance payment of hire is the commercial *quid pro quo* for the charterers' right to use the Vessel and crew. Allowing the owner to suspend performance for non-payment of hire, without suspending the accrual of hire (which would undermine the return for which the owner had contracted) simply gives effect to the fundamental bargain. The right to suspend performance is a common provision which has been upheld in previous cases (see, e.g., *The Greatship Dhriti* [2012] EWHC 3468 (Comm)).
 - ii) It is not arguable that Giorgis's exercise of the right to suspend performance was an unlawful exercise of a contractual discretion. The nature of the right is such that owners can reasonably have regard purely to their own commercial interests. In any event, the suspension of performance in the present case was not arguably irrational, arbitrary, or capricious. Giorgis was entitled to payment for the continued availability of the Vessel. Charterers' defaults were persistent and serious. Further, whilst I agree that it was not bound to do so, Giorgis provided reasonable accommodations to Charterers as summarised earlier, but Charterers continued to fail to comply with their obligations.
 - iii) Giorgis was not obliged to mitigate. Its claim was for liquidated sums due under the contract, not damages for breach. Further, any obligation to mitigate did not require Giorgis to refrain, while the Charterparty remained on foot, from exercising its right to suspend performance. In any event, Giorgis did subsequently take reasonable steps to mitigate by means of its arrangement with the Voyage Charterers.
36. I accept Giorgis's calculation of the net balance due, after credit for the items referred to earlier, as being US\$ 873,464.97. Charterers' have no realistic prospect of success in defending Giorgis's claim to this sum, and there is no other compelling reason why the issue should be disposed of at a trial.

(F) POST-TERMINATION CLAIMS

(1) Liability

37. The tests for repudiation and renunciation were conveniently summarised by Popplewell J at first instance ([2015] EWHC 718 (Comm)), quoted by the Court of Appeal in *Grand China Logistics Holding (Group) Co. Ltd v Spar Shipping AS (Rev 1)* [2016] EWCA Civ 982, thus

“(1) Conduct is repudiatory if it deprives the innocent party of substantially the whole of the benefit he is intended to receive as consideration for performance of his future obligations under the contract. Although different formulations or metaphors have been used, notably whether the breach goes to the root of the contract, these are merely different ways of expressing

the 'substantially the whole benefit' test: *Hongkong Fir* ...at 66, 72; *The Nanfri* ...[1979] AC 757 , at 778-779.

(2) Conduct is renunciatory if it evinces an intention to commit a repudiatory breach, that is to say if it would lead a reasonable person to the conclusion that the party does not intend to perform his future obligations where the failure to perform such obligations when they fell due would be repudiatory....

(3) Evincing an intention to perform but in a manner which is substantially inconsistent with the contractual terms is evincing an intention not to perform: *Ross T Smyth & Co Ltd v TD Bailey, Son & Co* [1940] 3 All ER 60 at 72. Whether such conduct is renunciatory depends upon whether the threatened difference in performance is repudiatory.....

(4) An intention to perform connotes a willingness to perform, but willingness in this context does not mean a desire to perform despite an inability to do so. As Devlin J put it in *Universal Cargo Carriers Corp v Citati* [1957] 2 QB 401 at 437, to say: 'I would like to but I cannot' negatives intent just as much as 'I will not.'" (§ 67)

38. In the Court of Appeal, Gross LJ (with whose judgment the other members of the court agreed) at §§ 72-78 in substance approved Popplewell J's summary, amplifying a number of points including as follows:
- i) the varying formulations in the case law of the test for repudiation, as a breach or breaches depriving the innocent party of "*substantially the whole benefit of the contract*" or "*a substantial part of the benefit*", do not represent a difference of principle but, rather, applications to different contracts of the common principle that in order to amount to repudiation a breach must go to the root of the contract (§ 74, quoting *Federal Commerce v Molena Alpha (The Nanfri, Benfri and Lorfri)* [1979] AC 757, 779 per Lord Wilberforce);
 - ii) the expression "*going to the root*" of the contract indicates that the failure must be compared with the whole of the consideration for the contract and not just a part of it (§ 75, quoting *Valilas v Januzai* [2014] EWCA Civ 436 § 59 per Arden LJ);
 - iii) renunciation is not confined to an evinced unwillingness to perform the contract at all: an evinced unwillingness to perform the contract according to its terms (whether through inability or otherwise) may likewise amount to a renunciation if the performance proffered is substantially inconsistent with that party's obligations thereunder (§ 77, citing *Ross T Smyth v Bailey* (supra));

- iv) renunciation may be inferred where it is apparent that the defaulting party is doing no more than procrastinating in the hope that something may turn up (§ 77, citing *Forslind v Bechely-Crundall* 1922 SC (HL) 173, 191, per Lord Shaw of Dunfermline); and
 - v) as renunciation looks to the future, it may be inferred from both the nature and causes of past breaches (even if by themselves insufficient or irrelevant for repudiation) and the evinced unwillingness to perform in the future (§ 78).
39. On the specific topic of hire payments under time charterparties, Gross LJ said:
- “... it is of the essence of the bargain under a time charterparty that the shipowner is entitled to the regular, periodical payment of hire as stipulated, in advance of performance, so long as the charterparty continues; hire is payable in advance to provide a fund from which shipowners can meet the expenses of rendering the services they have undertaken to provide under the charterparty; shipowners are not obliged to perform the services on credit; they do so only against advance payment.” (§ 83)
40. In the present case, I agree with Giorgis’s submission that by the time it treated the Charterparty as having come to an end by reason of Charterers’ breaches (25 November 2020), a reasonable owner would have concluded from Charterers’ conduct that they would not pay hire punctually in advance as required by the Charterparty:
- i) Charterers had failed to pay hire from the outset, and this continued over the ensuing months. Following late payment of the deposit, the first hire instalment was paid late, by which time the second hire instalment was already due and unpaid, leaving an outstanding balance of US\$1,067,043. Charterers then failed or refused to pay the third, fourth and fifth instalments of hire in accordance with the Charterparty. The Addendum gave Charterers an opportunity to pay the arrears, but they almost immediately failed to comply with their payment obligations under it, and then failed to pay the sixth hire instalment. By 25 November 2020, US\$ 3,679,500 was outstanding, a considerably larger amount than the total of the sums Charterers had paid.
 - ii) At most, Charterers expressed a willingness to perform, but repeatedly proved unable or unwilling to do so. By emails of 21 October 2020 Charterers offered part payment of hire from the freight on the current voyage, and proposed ‘mitigation’ payments via freight from future cargoes. This would in substance have converted a contract for payment of hire in advance into one for payment in arrears, based on the hope of future freight receipts. As recorded in Giorgis’s solicitors’ email of 7 January 2021, Charterers’ solicitors had explained that Charterers had no money, were unable to make any further payment from their own

funds, and were instead seeking to pressure third parties into making payments.

- iii) Giorgis thus was not receiving, and had good reason to believe that they would not receive in the future, the regular, periodic payment of hire in advance for which the parties had bargained.
 - iv) As in *Grand China* itself, Charterers' conduct in the present case deprived Giorgis of "*substantially the whole benefit*" of the Charterparty, and they were seeking to hold Giorgis to an arrangement "*radically different*" from that which had been agreed. Charterers had made clear that they could or would not perform the Charterparty in accordance with its terms. I consider that Charterers both were in repudiatory breach of the Charterparty and had renounced it.
41. I do not consider it arguable, as alleged in Charterers' response to Giorgis's letter of claim, that Giorgis was itself in repudiatory breach, for suspending performance and then reaching an agreement with Voyage Charterers:
- i) Giorgis was entitled to suspend performance for the reasons addressed earlier.
 - ii) The arrangement with the Voyage Charterers was a lawful step in mitigation, realising value from the exercise of Giorgis's lien, and in any event post-dated the contract having come to an end upon Giorgis's acceptance of Charterers' breaches.
42. Charterers have no real prospect of defending Giorgis's claim that it was entitled to treat the Charterparty as being at an end by reason of Charterers' breaches. Further, no material additional evidence can reasonably be expected to be available at trial. The claim is essentially a straightforward one, in relation to which the position is clear from the documents.

(2) Quantum

43. When the Charterparty came to an end in November 2020, the Vessel was laden with cargo. Until discharge, no replacement charterparty at the current market rate was possible, and therefore there was no scope for entering into a mitigation charterparty. In correspondence, Charterers have not challenged the principle of using the Charterparty rate up to discharge.
44. Giorgis does not seek summary judgment on its claims for post-discharge sums, because those claims are complicated by the need for expert evidence on market rates and the fact that there was a fire on the Vessel. Giorgis continues to seek those sums at trial.
45. As noted earlier, in quantifying its claim Giorgis has given credit for address commission, Charterers' payments and relevant sums received from the Voyage Charterers. Giorgis has also given credit for the value of bunkers remaining on board at the date of discharge. Since there is no evidence from Charterers as to

the actual sums paid for the bunkers, Giorgis has given credit at the contractual rate.

46. Charterers have suggested in correspondence that the credit for bunkers remaining on board should be calculated as at the date of termination, rather than upon discharge of the cargo and hence completion of the voyage for which they gave orders. However, as Giorgis points out:
- i) Clause 15 of the Shelltime 4 form (as amended) provides that “... Owners shall on redelivery (whether it occurs at the end of the charter or on the earlier termination of this charter) accept and pay for all bunkers on board ...”.
 - ii) The relevant date must, logically, be the date of actual redelivery, even if it is in fact later than the (natural) end of the charter or the date on which it is contractually brought to an end. Otherwise owners would in effect be paying for bunkers consumed on the charterers’ business, or (at least) bunkers consumed in the course of procuring the return of the unladen vessel to which they are entitled.
 - iii) In any event, even if clause 15 were not construed in that way, owners would be still entitled to recover the bunkers used to complete Charterers’ voyage on a different basis, viz as damages or in bailment – see e.g. *The Kos* [2012] UKSC 17.
47. As a result, Giorgis is entitled to summary judgment for a sum equivalent to hire up to the date of discharge of the cargo, i.e. the period from Giorgis’ acceptance of Charterers’ repudiation on 25 November 2020 to discharge on 3 December 2020, less credit for commission and bunkers remaining on board at the latter date. I have considered and accept Giorgis’s calculation of this amount, which results in a sum of US\$ 41,291.42.
48. In my judgment, Charterers have no real prospect of successfully defending this claim, and there is no other compelling reason why the issue should be disposed of at a trial.

(G) INTEREST AND CURRENCY

49. The interest rate to be applied, at least up to the date of judgment, is the contractual rate of 1% over US Prime (clause 9 of the Charterparty).
50. The Main Terms provided that all payments under the Charterparty were due in Euros, albeit they were to be converted to US dollars and invoiced in that currency:

“ALL PAYMENTS, INCLUDING HIRE, UNDER THE C/P SHALL BE MADE IN EUR AND EFFECTED AT THE CURRENCY EXCHANGE RATE OF THE ECB AS QUOTED IN [HTTP://WWW.ECB.EUROPA.EU/STATS/POLICY_AND_EXCHANGE_RATES/EURO_REFERENCE_E](http://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_e)

XCHANGE_RATES/HTML/EUROFXREF-GRAPH-USD.EN.HTML ON 20TH OF EVERY MONTH OR PREVIOUS BANKING DAY IF 20TH OF THE MONTH IS A HOLIDAY, BEFORE THE PAYMENT DATE.

FOR THE AVOIDANCE OF DOUBT, ALL INVOICES WILL BE ISSUED FROM THE OWNERS IN US\$ CURRENCY AND THERE WILL BE A FOOTNOTE WITH THE WORDING FOR THE CONVERSION FORMULA.”

In these circumstances Giorgis is in my view entitled to, and does, seek judgment in Euros as reflecting its true loss.

(H) CONCLUSION

51. Giorgis is entitled to summary judgment on those claims on which it presently seeks such judgment, namely the claims for unpaid pre-termination hire totalling the Euro equivalent of US\$873,464.97 and damages equivalent to post-termination hire totalling the Euro equivalent of US\$41,291.42. Giorgis is also entitled to its costs of the summary judgment application, which I summarily assessed in the sum of £45,000. Giorgis’s other claims will need to proceed to trial unless otherwise resolved.