

THE HIGH COURT

[2022] IEHC 501

[Record No. 2022/4234 P]

BETWEEN

POLA LOGISTICS LIMITED

PLAINTIFF

- AND -

GTLK EUROPE DESIGNATED ACTIVITY COMPANY

AND

GTLK MALTA FOUR LIMITED

AND

CENTRAL BANK OF IRELAND

DEFENDANTS

**JUDGMENT of Mr. Justice Mark Sanfey delivered on the 25th day of August
2022.**

Introduction

1. This judgment concerns an unusual application made in unusual circumstances. Essentially, the plaintiff seeks specific performance, as against the second named defendant, of purchase options contained in a number of charters in relation to five seagoing vessels. The second named defendant is a special purpose vehicle and wholly owned subsidiary of the first named defendant, which is an Irish registered company. The vessels are tug-boats and barges leased to the plaintiff by the second named defendant.

2. The application is made by notice of motion in circumstances which I shall outline below. The urgency of the application, which was made on 16th August, 2022, *i.e.* during the court's long vacation, is primarily due to the fact that the first named defendant was on 2nd August, 2022 added to the list administered by the US Department of the Treasury's Office of Foreign Assets Control of "Specially Designated Nationals" for the purpose of Executive Order No. 14024 ('EO 14024'). The effect of this listing as regards the plaintiff is that it must wind down its relationship with the first and second named defendants prior to 1st September, 2022, or risk breaching sanctions imposed by EO 14024 in circumstances to which I refer below.

3. There are three other proceedings in which similar applications are made for specific performance in relation to the purchase of leased vessels by companies, at least some of which the court is told are members of the same group of companies. It is suggested that the result of the present application may well determine the success or otherwise of the other three applications.

4. It should be said at the outset that a letter of 15th August, 2022 on behalf of a number of defendant companies in the various proceedings, including the first and second named defendants in the present application, exhibited to an affidavit of Paul

Convery, a partner in the solicitors' firm representing the plaintiff, indicated that the various defendants in all four proceedings, who are effectively the lessors under the various charter agreements, "...have no objection to the jurisdiction or orders sought on a summary basis. The group companies are in the court's hands, in this regard".

5. Reliefs 10 to 16 of the notice of motion are sought against the third named defendant, the Central Bank of Ireland ('CBI'), seeking various reliefs pursuant to Article 5(1) of Council Regulation EU No. 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ('the sanctions regulation'). Article 5 of that regulation permits a competent authority of a Member State to authorise the release of certain frozen funds or economic resources if certain listed conditions are met.

6. It is accepted by all parties that the CBI is the competent authority in this jurisdiction for the purposes of Article 5. However, the plaintiff now accepts the position of the CBI that the process envisaged by Article 5 requires an application to, and invocation of, the competent authority's jurisdiction under that article, rather than court orders seeking to compel the exercise of that jurisdiction. Accordingly, the plaintiff accepted at the hearing that the reliefs at paras. 10 to 16 of the notice of motion were inappropriate, so that it was not necessary for CBI to contest them.

The parties

7. The plaintiff is an entity incorporated under the laws of Cyprus, and carries on business as a provider of transshipment services. An affidavit sworn on 12th August, 2022 by Dimo Marinov, a director of the plaintiff, explains that the ultimate beneficial owners of the plaintiff are Russian citizens but that neither they nor any of the entities they own which are the subject of the related proceedings are the subject of any sanctions in any jurisdiction.

8. The first named defendant, GTLK Europe DAC, is a designated activity company registered in Ireland and engaged in the leasing and trading of air and sea vehicles. Its ultimate beneficial owner is JSC GTLK, an entity incorporated in Russia, the sole shareholder of which is the Ministry of Transport of the Russian Federation. It appears that JSC GTLK and the first named defendant are designated entities and/or related entities for the purposes of both EU and US sanctions regimes.

9. The second named defendant is a special purpose vehicle incorporated in Malta, and is a wholly owned subsidiary of the first named defendant, which employs special purpose vehicles including the second defendant for the purposes of purchasing and leasing assets.

The vessels

10. The proceedings relate to seven vessels that were leased to the plaintiff by the second named defendant ('the SPV') between June 2018 and April 2020. Two of the vessels are floating cranes. Mr Marinov avers at para. 15 of his affidavit that the plaintiff is "considering how best to proceed in circumstances where it is not currently in a position to exercise its right to acquire the Floating Cranes"; however, no relief is presently sought in respect of the cranes.

11. The remaining five vessels comprise three tug-boats and two barges. The vessels are used primarily for the transshipment of bauxite, in respect of which activity the plaintiff has a ten-year contract with Compagnie des Bauxites de Dian Dian ('COBAD'), which is engaged in the development of the Dian Dian bauxite deposit in Guinea, West Africa. The bauxite is primarily delivered to Limerick to Aughinish Alumina Limited; both that company and COBAD are subsidiaries of Rusal, an aluminium company incorporated in Jersey. The bauxite is used for the production of alumina for, *inter alia*, the EU market.

12. The plaintiff is under an obligation, *inter alia*, to provide for the transport of bauxite from the Dian Dian bauxite deposit to oceangoing vessels at the port of Taressa, Guinea for a period of ten years. The transshipment is done by river, hence the use of barges and tug-boats. At Taressa, the floating cranes are engaged in the further transshipment of the bauxite from the port of Taressa to large-capacity oceangoing vessels. Mr Marinov avers that the barges were built in 2021 in China specifically for the purposes of fulfilling the contract and, while the tug-boats were not specifically built for this purpose, it was necessary to source tug-boats that met the particular requirements of the contract.

13. The vessels are used exclusively for the purposes of the contract, and the plaintiff company is engaged solely in carrying out its obligations under the contract. Mr Marinov avers that an inability to use the vessels will render it unable to comply with its obligations under the contract, which is the plaintiff's only source of income. The plaintiff is therefore dependent on the continued use of the vessels for its economic viability.

Designation of GTLK Europe DAC

14. The sanctions regulation provides for the freezing of assets of persons and entities designated under Annex 1 of the regulation, as well as associated entities. On 8th April, 2022, JSC GTLK was designated for the purposes of Annex 1 of the sanctions regulation, and the first named defendant was designated as an associated entity to JSC GTLK.

15. The effect of the designation is that all funds and economic resources belonging to, owned, held or controlled by GTLK Europe DAC have been frozen since 8th April, 2022, and that company is prevented from using any economic resources to obtain funds, goods or services in any way. The position seems to be

somewhat uncertain as to whether assets controlled by a subsidiary are frozen, and Mr Marinov suggests that this is determined on a case-by-case basis. The plaintiff's position is that the vessels are not controlled by a designated entity and therefore are not frozen for the purposes of Article 2(2) of the sanctions regulation.

16. As regards the US sanctions regime, on 2nd August, 2022, the US Department of State designated JSC GTLK and GTLK Europe DAC as “blocked” pursuant to s.1(a)(vii) of EO 14024. Mr Marinov avers that the effect of the blocking is that property and interests in property of that entity in the US, or in the possession or control of any US person, may not be transferred, paid, exported, withdrawn, or otherwise dealt in. While the vessels are not in the US, or in the possession or control of any US person, s.2 of EO 14024 includes a prohibition on the making of any contribution or provision of funds, goods or services by, to, or for the benefit of any person whose property and interests in the property are blocked pursuant to that order, and the receipt of any contribution or provision of funds, goods, or services from any such person.

17. Pursuant to a licence issued by the US Department of the Treasury Office of Foreign Assets Control, any transaction ordinarily incident and necessary to the winddown of any transaction involving the sanctioned entities is authorised until 12.01am Eastern Daylight Time, September 1st 2022. Any payment made to a blocked person or entity under that licence must be made into a blocked or frozen account.

18. Mr Marinov avers that the practical impact of the foregoing is that “...in order to avoid any risk of breaching those US sanctions, and where no entity or person will be willing to provide services to the vessels where GTLK Europe DAC is subject to US sanctions...”, the purchase of the vessels must be completed by 1st September, 2022.

The purpose of the proceedings

19. In initiating these proceedings and the present application in particular, the plaintiff seeks to enforce what it contends are its contractual entitlements with respect to the vessels, and in particular its contractual entitlement to purchase the tug-boats and barges from the defendants so as to allow it to retain the use of the vessels for the purposes of its business. The effect of the designation of JSC GTLK on the first named defendant for the purposes of Annex 1 of the sanctions regulation on 8th April, 2022 is that any such purchase must be concluded by 9th December, 2022. When these proceedings were initiated on 10th August, 2022, it was envisaged that the proceedings would have to be determined by that date. The effect of the US sanctions is that the plaintiff considers that it must effect the purchases before 1st September, 2022, lest it fall foul of the US sanctions. In those circumstances, the plaintiff considers that the present application – seeking specific performance on foot of a motion to the court – is necessary, given the urgency of the situation.

20. Mr Marinov avers at para. 38 of his affidavit that it is the intention of the plaintiff “to obtain an authorisation under Article 5 of the Sanctions Regulation from the Central Bank to purchase the Tug Boats and the Barges. In that respect, the transfer of the Tug Boats and the Barges to Pola Logistics to give effect to the Orders sought by Pola Logistics will not be possible unless the Central Bank grants that authorisation”. As I have mentioned above, the plaintiff now accepts that this will require a separate application to CBI under Article 5, rather than an application to this Court for orders in that regard.

The charters themselves

21. The charters are exhibited to Mr Marinov's affidavit. Each of them provides for leasing of the vessels to the plaintiff for a period of 120 months from the date of delivery of the vessel. The charters are each what is known as a "bareboat charter". The plaintiff is entirely responsible for maintenance of the vessels and all operational requirements. It is also responsible for the insurance of the vessels and for effecting any insured repairs. While the SPV has a right to inspect or survey the vessels on reasonable notice, it has no involvement with the vessels during the charter hire period.

22. Payment in respect of the leases is made to the second named defendant by the plaintiff by instalments on a quarterly basis. Mr. Marinov avers that, since the plaintiff entered into the charters, it has paid in excess of US\$13m in charter hire payments for the vessels (including the floating cranes). The charters are essentially hire purchase agreements, and the terms relating to the hire purchase element of the charters are set out at clause 46 and part IV of the charters. These terms provide for the transfer of title to the vessels to the plaintiff in circumstances summarised by Mr. Marinov at para. 52 of his affidavit as follows: -

“(i) On the payment of the last Charter Hire Payment, Part IV and clause 46 of the Charters provide for the transfer of title to each vessel free of all encumbrances to Pola Logistics. The price payable by Pola Logistics in those circumstances (**‘the Purchase Obligation Price’**) is determined in accordance with clause 46 of the Charters, having regard to the definition of that term in clause 32.

(ii) At any time, Pola Logistics has the right to purchase the Vessels by giving irrevocable notice to the Owners in accordance with Part IV and clause 46 of the Charters (**‘the Purchase Option’**). The price payable by Pola Logistics on

the exercise of that Purchase Option (**‘the Purchase Option Price’**) is also determined in accordance with Clause 46 of the charters, having regard to the definition of that term in clause 32.

(iii) On termination of the charters by reason of a default by Pola Logistics under Clause 28(a), Pola Logistics is required to purchase the Vessels and to pay the Purchase Option Price as determined in accordance with Clause 46 of the Charters, having regard to the definition of that term in clause 32.”

[Emphasis in original]

23. In short, these terms – which I am satisfied are accurately summarised by Mr Marinov – suggest that the intent of the charters is that the plaintiff will obtain ownership of the vessels, either at the end of the charter hire period or on exercising its purchase options under the charters.

24. By letters of 10th August, 2022, the plaintiff gave irrevocable notice of its intention to purchase the tug-boats and barges, subject to authorisation of the sales by the CBI. These notices are exhibited to Mr Marinov’s affidavit, and provide for a delivery date of 9th September, 2022, which is the earliest date on which delivery could be demanded in accordance with the terms of the charters. The purchase option price is defined in clause 32, and the plaintiff’s calculation of the prices for the five vessels for a proposed date of sale of 30th August, 2022 amounts in total to a sum of approximately US\$15.8m.

25. The operative paragraphs in relation to the letter of notice in each case to the second named defendant are as follows: -

“Pola Logistics Limited hereby gives irrevocable notice to GTLK Malta Four Limited that Pola Logistics Limited is exercising its right to purchase the Vessel as provided for in Part IV of the Charter.

Pola Logistics Limited requires you to deliver the Vessel on 9 September 2022 or on such earlier date as may be agreed between us.

The purchase of the Vessel is subject to compliance with all applicable laws and in particular with the provisions of Council Regulation (EU) No. 269/2014...”

The defendants’ response

26. In an affidavit sworn on 11th August, 2022 on behalf of the plaintiff, Laura Murdock, a partner in the plaintiff’s solicitors firm, outlined the difficulties that the plaintiff has encountered in serving the documentation. In particular, it appears that the registered office of the second defendant is at the office of a law firm in Valletta, Malta. This firm has filed documents in the Companies Office in Malta advising that it has ceased to provide corporate services to the second named defendant. This would appear to be as a result of the designation of the first defendant pursuant to the sanctions regulation. The plaintiff therefore apprehends that the Maltese firm “...will regard themselves as being precluded from providing any services to the second Defendant in connection with the service of the documents as to do so would be tantamount to making economic resources indirectly available to a designated entity...” [para. 9].

27. Accordingly, the plaintiffs, while intending to make arrangements to serve the motion in accordance with the EU service regulations, has served the proceedings and this application by email which in fact is in accordance with the notices clause in each of the charters. To the extent that it is necessary, the plaintiff seeks an order for substituted service permitting service of the proceedings on the notice of motion in this manner.

28. In any event, Mr Convery's affidavit exhibits a letter of 15th August, 2022 from Mr Roman Lyadov, who states that he is a director with power to "act as a duly authorised office [sic] of each of the Group Companies and therefore have authority to execute this letter upon their behalf". The group companies are defined in the heading to the letter as GTLK Europe Capital DAC, GTLK Malta Three Limited, GTLK Malta Four Limited – the second named defendant herein – and GTLK Malta Five Limited. The three companies – GTLK Malta Three Limited, GTLK Malta Four Limited and GTLK Malta Five Limited – are all special purpose vehicles and one-hundred percent owned subsidiaries of GTLK Europe DAC, the first named defendant in the present proceedings. The three special purpose vehicles are the counterparties to the various charters held by Pola Logistics Limited, but also Avonburg Finance Limited and Gravelor Shipping Limited. These two companies have initiated three separate sets of proceedings in respect of vessels held by the various special purpose vehicles, and Mr Lyadov's letter addresses all four sets of proceedings and in particular the position of GTLK Europe Capital DAC and the special purpose vehicles in relation to those proceedings.

29. Mr Lyadov, having listed the four sets of proceedings and their various record numbers, states as follows: -

"Amongst certain ancillary documents, we note that a Plenary Summons and Notice of Motion has issued in each of the proceedings. Strictly upon agreement that the Group of Plaintiffs will not pursue damages or costs (as confirmed by email today) in the Proceedings (removal of certain orders originally sought set out individually below) against any of the Group Companies and the agreement of Purchase Price Options and Charter Hire Payments figures (as set out below), the Group Companies have no objection

to the jurisdiction or orders sought on a summary basis. The Group Companies are in the court's hands, in this regard. [Emphasis in original]

The Group Companies do not see the benefit of entering Appearances, given the above position and the likely delay this would cause to the Proceedings.

The Group Companies are unaware of the position being adopted by the Central Bank of Ireland and same is a matter between the Group Plaintiffs and the Central Bank of Ireland. The Group Companies will comply insofar as possible with any orders made.”

30. The letter goes on to deal with the price to be paid for the vessels in each of the four proceedings. In respect of the present proceedings, Mr Lyadov accepts as correct the purchase prices for each of the five vessels set out at para. 89 of Mr Marinov's affidavit.

31. It follows that, in the present proceedings: -

- The first and second named defendants have been served by email with the proceedings on the present application, and are aware of their content and import;
- the various group companies, including the first and second named defendants in the present proceedings, do not object to the jurisdiction of this Court to deal with the matter or the orders which are sought by the plaintiff;
- the various companies including the first and second named defendants “will comply insofar as possible with any orders made”.

Jurisdiction and choice of law

32. Clause 30 of the charters states that the contract “shall be governed by and construed in accordance with English law and any dispute arising out of or in

connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause...”. The clause sets out further terms in relation to the conduct of any such arbitration, and also provides for the possibility of a reference to mediation.

33. Given that English law governs the terms of the contract, the various plaintiffs in the proceedings including Pola Logistics Limited have produced opinions on English law – exhibited in the present case to an affidavit sworn by Mr Convery on 15th August, 2022 – by Thomas Raphael QC of Twenty Essex Chambers, 20 Essex Street, London WC2R 3AL. Mr Raphael is a commercial barrister experienced in English contract law and avers as to his expertise in that regard. He acknowledges the duty of an expert to assist this Court, and that that overrides any obligation to any party paying the fee of the expert. He avers as to his compliance with his duty to give his true and honest opinion on the questions identified.

34. Mr Raphael identifies the questions which he is required to answer as: -

“(1) What are the relevant principles of contractual interpretation that would apply to the charterparty, and in particular the purchase options, under English law?

(2) What are the relevant principles of English law of specific performance?”

35. In relation to the first question, Mr Raphael refers to the principles of contractual interpretation summarised by Popplewell J in *Lukoil Asia Pacific Pte Limited v. Ocean Tankers (Pte) Limited (the ‘Ocean Neptune’)* [2018] EWHC 163 (Comm), and in particular to “the two most recent lead judgments of the Supreme Court” of *Wood v. Capita Insurance Services Limited* [2017] UKSC 24 and *Financial Conduct Authority v. Arch Insurance (UK) Limited* [2021] UKSC 1.

36. These questions are answered in the opinion given by Mr Raphael in relation to proceedings by Avonburg Finance Limited seeking similar relief. In his opinion in the present proceedings, Mr Raphael specifically adopts the views he expressed in the Avonburg Finance case. While I do not propose to reproduce Mr Raphael’s analysis here, it is clear from his exposition of the relevant principles of the English law of specific performance that it is broadly similar to the position in this jurisdiction. The claimant must prove that specific performance is appropriate; the court will generally not award specific performance in circumstances where damages will be an adequate remedy. In particular, specific performance may be ordered to avoid a real risk that the defendant may be or become insolvent and “not good for the money”: see *Evans Marshall & Co Limited v. Bertola SA* [1973] 1 WLR349. Under s.52 of the Sale of Goods Act 1979, the court has discretion to order specific performance where an action is brought for breach of contract to deliver “specific or ascertained goods”. Mr Raphael states that this would apply to a purchase option for sale of a ship. In any event, Mr Raphael states that it is well recognised that specific performance can be granted to enforce contracts for the sale of ships, whether unique or not, and this “would include purchase options such as that in this case”. Mr Raphael expresses the view that any risks of GTLK’s insolvency “would apply as a relevant factor in this context”.

37. As regards the arbitration clause, it is clear from Mr Lyadov’s letter of 15th August, 2022 that the first and second named defendants “have no objection” to the court exercising jurisdiction in the matter. As the High Court has full original jurisdiction, it would be a matter for the first and second named defendants to invoke the arbitration clause and insist on its application. This would necessitate an application to this Court to stay the proceedings to allow the arbitration to take place.

It is clear that the first and second named defendants have no intention of making any such application and are content to abide by this Court's jurisdiction and any orders which it sees fit to make. In such circumstances, it would be in my view inappropriate for this Court to decline jurisdiction or insist on the primacy of the arbitration clause against the clear wishes of the parties. Mr. Raphael makes it clear that a court applying English law would be likely to come to the same conclusion.

Summary judgment in plenary proceedings

38. At para. 3 of the notice of motion, the plaintiff seeks "summary judgment as against the first and second Defendants in respect of the reliefs set out at paragraphs 4 to 20 below". In fact, as I have mentioned above, the plaintiff is not pressing the reliefs sought at paras. 10 to 16, which involve the jurisdiction of the CBI under Article 5 of the sanctions regulation. Paragraph 17 seeks an order restraining the defendants from disposing of the vessels; it does not appear from Mr Lyadov's letter that this order is necessary. Paragraphs 18 to 20 deal with matters such as service of the motion and costs.

39. The substantive reliefs are sought at paras 4 to 9 of the notice of motion. Declaratory relief is sought at para. 4 in relation to the entitlement of the plaintiff to exercise the option at clause 46 and part IV of the charter, and further declaratory relief is sought at paras. 5 and 7 in relation to the exercise of the purchase options and the transfer of title to the plaintiff. At para. 6, the plaintiff seeks "an Order for the specific performance of each of the Purchase Options as aforesaid in accordance with Part IV and clause 46 of the Charters". Paragraphs 8 and 9 effectively seek injunctive relief requiring the transfer to the plaintiff of the vessels and the release of securities in accordance with the charters.

40. It is clear that, if this Court grants the reliefs sought at paras. 4 to 9 of the notice of motion, orders in that regard will determine the issues in the proceedings and effectively grant summary judgment to the plaintiff. The question arises, before considering whether or not the orders are appropriate given the facts of the case, as to whether in principle it is possible to make such orders in the context of plenary proceedings.

41. Counsel for the plaintiff relied on the note of the judgment delivered by Kelly J (as he then was) in *Abbey International Finance Limited v. Point Ireland Helicopters Limited* [2012] IEHC 374, in which the court held that the plaintiff was entitled to seek summary judgment in respect of unliquidated claims by reference to the inherent jurisdiction of the court, and the rules which apply to cases transferred to the commercial list. Counsel also referred to the decision of Allen J in *Shawl Property Investments Limited v. A & B* [2019] IEHC 649, in which the court applied the test set out by Kelly J in the *Abbey International Finance* case and found that the defendants did not have an arguable defence. Allen J based his decision on the inherent jurisdiction which Kelly J was satisfied existed in respect of the granting of summary judgment in plenary proceedings: see para. 37 of the judgment.

42. The case was appealed, and the Court of Appeal, at para. 75 of its judgment, simply noted that the proposition that the High Court enjoyed an inherent jurisdiction to grant orders for summary judgment in plenary proceedings “was not the subject of any meaningful dispute or argument by (B) in the course of this appeal”. In those circumstances, Whelan J stated that she was prepared to accept, “for the purposes of this appeal”, that such a jurisdiction was vested in the High Court, while stressing that it would “be for the courts on another day, should the issue be fully argued and its

implications cogently stress-tested, to fully evaluate the nature, extent and scope of any such jurisdiction.”

43. The topic was also discussed in a judgment of this Court in *McAteer v. Fried* [2021] IEHC 249 at paras 67 to 86 of that judgment. In that case, which did not come under the aegis of O.63A concerning procedure in the Commercial Court, it fell to be decided whether, if there is an inherent jurisdiction to grant summary relief on a claim commenced by plenary summons, that jurisdiction should be exercised in the present case. The decision in *Abbey International Finance* was considered, along with a later judgment of Peart J in *Judkins v. McCoy* [2013] IEHC 82, in which the court came to the conclusion that the court could not award summary judgment in that plenary action. In the course of the judgment, I stated as follows: -

“83. It seems to me that such an inherent jurisdiction must exist for the reasons set out in the judgment in *Abbey International Finance*. There will be situations where it would be unjust to deny a plaintiff who has commenced his or her action by plenary summons a right to summary judgment, and subject them to the long delays to which plenary proceedings can be prone, rather than to grant judgment where it is clearly appropriate to do so. The facts in *Abbey International Finance* present a compelling example of such a situation”.

44. Notwithstanding this view, I concluded that the circumstances in that case did not warrant the grant of summary judgment. However, I remain satisfied that the court has an inherent jurisdiction to grant summary judgment in plenary proceedings, and that the invocation of such relief may be particularly appropriate in circumstances where there is either clearly no defence, or where the defendant effectively acquiesces in the relief sought. The danger in granting summary relief on foot of a motion to the court is that the issues of contention between the parties are not properly explored or

ventilated; in circumstances where the defendants do not oppose either the jurisdiction of the court or the reliefs sought, it seems to me that the court has an inherent jurisdiction to make a summary order in an appropriate case, notwithstanding the plenary nature of the proceedings.

45. While, in principle, I am satisfied that the court can make summary orders in plenary proceedings, the issue presently is whether it is appropriate to do so in this application. The power to grant relief by way of specific performance or by way of injunction remains a matter of the court's discretion, and the court must be satisfied that it is appropriate to make such orders, notwithstanding that the application of the plaintiff in this regard is not opposed.

Factors relevant to the court's discretion

46. At para. 64 to 84 of his affidavit, Mr Marinov avers as to the impact of the designation of the first named defendant on the plaintiff, both in relation to the sanctions regulation and E.O. 14024. In relation to the former, he avers that the plaintiff has suffered interference with its commercial operations due to the uncertainties arising with respect to the status of the vessels "...and where a sanctioned entity has a continuing interest in the Vessels". There have been difficulties with respect to the insurance of the vessels. Also, it is averred that the plaintiff has encountered significant difficulties with respect to the repair and maintenance of the vessels. For the purpose of repair and maintenance, the vessels are required to leave Guinea and have the work carried out in other ports. The plaintiff has had to avoid docking the vessels in ports in the EU, and such works are now carried out at the port of Dakar in Senegal; however, Mr Marinov avers that "...the quality of service is not equivalent to that provided in the EU ports that were previously utilised by Pola Logistics". There have been very significant difficulties

with the floating cranes, which require regular maintenance by service engineers at Liebherr, which manufactured the cranes; Liebherr, according to Mr Marinov, has not responded to requests for maintenance and repair of the floating cranes, presumably due to the sanctions.

47. As regards the US sanctions, Mr Marinov avers bluntly at para. 75 of his affidavit that "...Pola Logistics cannot continue to use the Vessels in accordance with the charters following that designation [*i.e.* under E.O. 14024]...". He says that the company cannot take the risk of being in breach of E.O. 14024, in circumstances where charterers, service providers, insurers and port authorities "will refuse to contract with and/or provide services to Pola Logistics with respect to Vessels where an entity subject to US sanctions is in the ownership structure..." [para. 77].

48. Mr Marinov avers that the plaintiff is "...left with no choice but to either purchase the Vessels or terminate the Charters and relinquish possession of the Vessels". Financing for the tugboats and the barges has now been sourced, and the plaintiff proposes to exercise its purchase options in respect of those vessels. The position in relation to obtaining appropriate financing to purchase the Floating Cranes is uncertain. As Mr Marinov avers at para. 83, "...if Pola Logistics cannot continue to lease the Floating Cranes and cannot purchase the floating cranes then Pola Logistics will – in effect – lose the benefit of the payments that it has made towards the acquisition of the Floating Cranes". He avers that the sanctions have "...placed Pola Logistics in an impossible situation and has put its commercial viability at serious risk".

49. The plaintiff asserts that damages are not an adequate remedy, having regard to a number of circumstances. Firstly, an inability to use the vessels will jeopardise the ability of the plaintiff to fulfil its obligations under the transshipment contract,

which ability is already placed at serious risk by reason of the possibility that the floating crane charters will have to be terminated. Secondly, the monies which the plaintiff has already discharged by way of lease payments have been made with the intent and expectation of ultimately obtaining ownership of the vessels. If the charters have to be terminated or cannot be operated, the benefit of these very considerable payments to date will be lost.

50. Thirdly, Mr Marinov avers at paragraph 100 of his affidavit that, as a result of the designation of the first named defendant under the sanctions regulation and EO 14024, "...issues arise in relation to whether it and/or the [second named defendant] would be in a position to meet any award of damages, even if damages were otherwise an adequate remedy for Pola Logistics (which is denied)".

Position of Central Bank of Ireland

51. Article 2 of the sanctions regulation is as follows: -

“(1) All funds and economic resources belonging to, owned, held or controlled by any natural persons or natural or legal persons, entities or bodies associated with them as listed in Annex 1 shall be frozen.

(2) No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex 1.

52. Article 5 of the sanctions regulation provides that the Central Bank may make an authorisation for a derogation from Article 2: -

Article 5

(1) By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) The funds or economic resources are subject to an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 2 was included in Annex 1, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;
- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the decision is not for the benefit of a natural or legal person, entity or body listed in Annex 1; and
- (d) recognition of the decision is not contrary to public policy in the Member State concerned...”

53. Article 6b(3) of the sanctions regulation provides that the Central Bank may make an authorisation for a derogation from Article 2 so as to permit the release of funds or economic resources necessary for the sale and transfer of proprietary rights in a legal entity established in the Union that are directly or indirectly owned by a sanctioned entity or a related entity by 31st December, 2022, or within six months of the date of designation, if later. Article 7(2)(b) provides an exception to Article 2(2), with respect to which an authorisation from the Central Bank is not required, permitting payments to frozen accounts due under contracts, agreements or obligations that concluded or arose before the date on which the designated entity was included under Annex 1.

54. If the court is satisfied to make orders which allow the plaintiff to exercise the purchase options in respect of the vessels so as to permit the plaintiff to retain the use of them for the purposes of its business, the plaintiff intends to proceed to apply to the CBI for an authorisation pursuant to Article 5 of the sanctions regulation. The plaintiff accepts that the transfer of the vessels to the plaintiff “will not be possible unless the Central Bank grants that authorisation...” [affidavit of Mr Marinov, para. 38]. The plaintiff also now accepts that the CBI’s jurisdiction pursuant to Article 5 arises when invoked by the parties seeking authorisation, so that seeking orders in the first instance from this Court to compel exercise of that jurisdiction is not appropriate. The plaintiff accepts that the money will be paid into a frozen bank account, and cannot be used without the authorisation of the CBI.

Conclusions

55. I am satisfied that the court has jurisdiction to entertain the plaintiff’s application, notwithstanding the arbitration clause in the charter. The essence of the arbitration agreement is contractual; if the parties to the agreement are satisfied that the agreement to arbitrate need not be enforced, and the second named defendant declines to apply to court to seek its enforcement, there is no impediment to the matter proceeding in this Court. The court otherwise has jurisdiction, as the first named defendant is an Irish company and the second named defendant its wholly owned subsidiary. It is clear however that English law applies to the contract.

56. I am also satisfied that the court has power to grant judgment of a summary nature in plenary proceedings. While summary rather than plenary proceedings should be the normal route to a summary judgment, I accept that a court has an inherent jurisdiction to grant summary judgment in plenary proceedings where it is satisfied that it is in all the circumstances the appropriate course of action which meets the

justice of the case. A situation in which the plaintiff's claim is undefended, or where it is very clear that there is no arguable defence, may justify the grant of summary judgment. The present proceedings, in which the first and second named defendants do not oppose the orders sought, and intend to comply with them if made, warrant consideration by the court whether or not to exercise its discretion on a summary basis.

57. Notice by letter has been given by the plaintiff in respect of each of the five tug-boats and barges of its exercise of its right to purchase the vessels pursuant to part IV of the hire/purchase agreement, which entitles the plaintiff to purchase the vessels thirty days after submission of such notice. While the letters are undated, Mr Marinov's evidence is that they were sent on August 10th 2022; they require delivery of the vessel on 9th September, 2022 "or on such earlier date as may be agreed between us". While thirty days since those notices have not passed, the stated intention of the first and second named defendants to comply with any orders made by the court indicates that those defendants do not regard the thirty-day period as being of the essence; the prices mentioned by Mr Lyadov in his letter are agreed as of 30th August, 2022. In those circumstances, it seems to me that the first and second named defendants may be taken as having agreed to an abridgement of the thirty-day period.

58. In part IV of the hire/purchase agreement, the seller – in this case the second named defendant – guarantees "...that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery". The seller undertakes to indemnify the buyer, *i.e.* the plaintiff, against any claims incurred prior to delivery.

59. In the circumstances, I am satisfied that the plaintiff has exercised its right under the charter to purchase each of the five vessels, and that the second named defendant guarantees that the vessels are each free from incumbrances, liens or other debts. However, it remains a matter of the court's discretion as to whether it should order specific performance as against the second named defendant of the purchase options.

60. In this regard, I am satisfied, on the basis of the evidence of Mr. Raphael and my own perusal of the relevant caselaw, that it is open to the court as a matter of English law to order specific performance of the purchase options in circumstances where it is just and convenient to do so, and particularly in circumstances in which damages would not be an adequate remedy. Mr Raphael expresses the view that the relief is available in English law to enforce contracts for the sale of ships, and that "...this approach would include purchase options such as that in this case".

61. Mr Raphael acknowledges that it is for this Court to assess the weight and relevance of the facts surrounding the claim in deciding whether specific performance is appropriate. While I am satisfied that English law permits an order of specific performance to be made in relation to the type of relief claimed by the plaintiff, and that, as a matter of Irish procedural law, the court can make an order for summary judgment on foot of plenary proceedings, it remains a matter for the court to decide whether orders enforcing the purchase options are appropriate in all the circumstances.

62. I am satisfied that the court should order specific performance of the options, particularly in the following circumstances: -

- There does not appear to be any reality to an award of damages against entities which are the subject of international sanctions, the effects of

which are to freeze the assets of those entities and to prohibit funds or economic resources being made available to them;

- an inability to exercise the options, on the evidence available to the court, is a serious threat to the plaintiff's ability to perform its contract, and thus the economic viability of the plaintiff;
- the plaintiff would in the normal course have a contractual entitlement to exercise the options on payment of the agreed purchase price;
- there is no evidence before the court other than that the plaintiff is legitimately exercising its contractual options;
- the first and second named defendants are not objecting to orders enforcing the options, and have indicated that they will comply with them if made;
- there is no evidence or circumstances before the court which would suggest that the relief is sought for collusive purposes, or in contravention of Article 9 of the sanctions regulation, which provides that "it shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2".

63. I emphasise that the court's decision is based on the private law contractual arrangements between the parties to the charter, and wish to make it clear that the exercise by the CBI of its jurisdiction as a competent authority pursuant to Article 5 of the sanctions regulation is entirely a matter for that entity. This Court expresses no view as to how that jurisdiction should be exercised. I should also make clear that, although the CBI is a defendant to the present proceedings, the plaintiff did not proceed with the reliefs sought in the notice of motion against that entity, and

although the CBI was represented by counsel at the hearing, the CBI did not contest the plaintiff's application, but reserved its position as regards the issues before the court pending the exercise of its jurisdiction in respect of the application to be made to it by the plaintiff pursuant to Article 5.

Orders

64. Having communicated these findings in principle to the parties, and after hearing further submissions, I have made orders in these proceedings and in the three related proceedings which give effect to the respective plaintiffs' purchase options in each case.