15TH ANNUAL INTERNATIONAL MARITIME LAW ARBITRATION MOOT, 2014

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY

TEAM NO. 18

MEMORANDUM FOR SUPER CHARTERS INC.

ON BEHALF OF	AGAINST
SUPER CHARTERS INC.	RELIABLE HOLDINGS INC.
RESPONDENTS	CLAIMANTS

IN THE FIRST REFERENCE…………………………………………………………………………...

AND

ON BEHALF OF	AGAINST
SUPER CHARTERS INC.	RELIABLE HOLDINGS INC.
CLAIMANTS	RESPONDENT

IN THE SECOND REFERENCE……………………………………………………………………..

TEAM

ABHISHEK CHOUDHARY • DIVIJ JOSHI • PRAKSHAL JAIN • SHUBHAM JAIN

TABLE OF CONTENTS

Table of Contents .... **i**

Abbreviations .... **iii**

Index of Authorities .... **v**

Questions Presented .... **xi**

Statement of Facts **1**

Arguments Advanced **3**

I. The arbitration in the first reference was not validly commenced 3

[A] Rti did not exist at the time the notice was delivered 3

[B] The owners failed to comply with the arbitration agreement 3

[C] The error in the notice does not amount to a misnomer 4

II. The owners are time barred from presenting counterclaims in the second reference 6

III. The owners were in breach of their obligations under the charter party 7

[A] The owners failed to commence the approach voyage in time to arrive by the estimated time of arrival 7

[B] The owners were in breach of the obligation to proceed with reasonable dispatch 9

IV. The charterers were entitled to treat the contract as terminated and claim for damages . 11

[A] The aforementioned breaches amounted to a repudiation of the contract 11

[B] The owners' refusal to fulfil their obligations amounted to renunciation 13

[C] As a result of the repudiation or renunciation, the charterers elected to terminate the contract, while reserving their right to claim damages 13

[D] *Further and alternatively,* the charter was cancelled as per the provisions of the cancellation clauses 14

V. The owners may not invoke any of the limitations of liability present in the charter party 17

[A] The owners may not invoke the exceptions under the asbatankvoy standard form charter party 17

[B] The owners may not invoke the exemption from any consequential damages under cl. 5 of their standard terms 17

VI. The owners are not entitled to the advance freight claimed 19

[A] Cl 4 of the owners' standard terms does not provide for advance freight 19

[B] *Arguendo,* the advance freight may be recovered as an element in the damages claimed 21

[C] the cancellation of the charter discharges the charterers from liability 21

VII. Computation of damages 22

[A] The charterers are entitled to claim the additional costs of obtaining a substitute charter as a result of the failure to furnish the Vessel in time 22

[B] The charterers are entitled to recover the increased costs at the loadport and disport 23

Prayer 25

ABBREVIATIONS

AB QB	Alberta Court of Queen's Bench (Canada)
All ER	All England Law Reports
Art	Article
ASBATANKVOY	Association of Ship Brokers & Agents Tanker Voyage Charter Party
Bing NC	Bingham New Cases
Bundle	IMLAM Moot Scenario 2014
Ch	Law Reports Chancery
Charter	Charter Party
Charterers	Super Charters
Cl.	Clause
CLJ	Cambridge Law Journal
Com Cas	Company Cases (England)
EWCA (Civ)	Court of Appeal (Civil Division)
EWHC	England and Wales High Court
i.e.	That is
KB	Law Reports King's Bench
LR Ex	Exchequer
LRPC	Privy Council Appeals
Lloyd's Rep	Lloyd's Law Reports
Owners	Reliable Holdings Inc./ Reliable Tankers Inc.
Para	Paragraph
P & I	Protection and Indemnity Insurance
QBD	Law Reports Queen's Bench Division

RHI	Reliable Holdings Incorporated
RTI	Reliable Tankers Incorporated
S	Section
SC	Super Charters Inc.
SDNY	United States District Court for the Southern District of New York
TLR	Times Law Reports
UKHL	United Kingdom House of Lords

INDEX OF AUTHORITIES

Cases **Reffered to in.**

A Roberts & Co Ltd v Leicestershire CC [1961] 2 WLR 1000 16

Adams v National Bank of Greece SA [1961] AC 255.. 3

Agip SpA v Navigazione Alta Italia SpA [1984] 1 Lloyd's Rep 353 16

AMB Generali Holding v SEB Trygg Liv Holding [2005] EWCA Civ 1237 4

Austin v Manchester, Sheffield and Lincolnshire Railway Co (1852) 10 CB 454......................... 17

Bank of Boston Connecticut v European Grain and Shipping Ltd [1989] 2 WLR 440................. 21

Barker v McAndrews (1868) 18 CBNS 759.. 8

Beal v South Devon Railway [1861-73] All ER Rep 972 18

Blackgold Trading of Monrovia v Almare SpA Navigazione of Genoa [1981] 2 Lloyd's Rep 43321

Bremer Handelsgesellschaft mbH v Vanden Avenne-Izegem PVBA [1978] 2 Lloyd's Rep 109... 11

British Westinghouse Electric Co Ltd v Underground Electric Rlys [1912] AC 673.............. 22, 23

Camarata Property Inc v Credit Suisse Securities (Europe) Ltd [2011] EWHC 479 18

Canada Steamship Lines v The King [1952] AC 192 15

Charles Rickards Ltd v Oppenhaim [1950] 1 KB 616.. 10

Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38 16

Christie & Vessey v Helvetia [1960] 1 Lloyd’s Rep 540, 547 9

Commission for the New Towns v Cooper (Great Britain) Ltd [1995] Ch 259............................. 16

County Ltd v Girozentrale Securities [1996] 3 All ER 834.. 24

Curling v Long 126 ER 1104 20

Dalkia Utilities Services Plc v Celtech International Ltd [2006] EWHC 63 (Comm).................. 14

Davidson v Gwynne 12 East 380.. 11

Dufourcet v Bishop (1886) 18 QBD 373... 21

Dunn and others v Bucknall Brothers [1902] 2 KB 614.. 24

East Ham Corp v Bernard Sunley & Sons Ltd [1966] AC 406 22

Eurosteel Ltd v Stinnes AG [2000] 1 All ER 964... 3

Evans Construction Co Ltd v Charrington & Co Ltd [1983] 1 QB 81 5

Evera SA Commercial v North Shipping Co Ltd [1956] 2 Lloyd's Rep 367............................... 8, 9

Fetherston v Wilkinson (1872-73) LR 8 Ex 122 23

Force India Formula One Team Ltd v 1 Malaysia Racing Team Sdn Bhd [2013] EWCA Civ 780 13

Fowler v Fowler 1859 4 De Gex & Jones 250.. 16

Fyffes Group Ltd v Reefer Express Lines Pty Ltd [1996] 2 Lloyd's Rep 171 22

Geogas SA v Trammo Gas Ltd (The Baleares) [1993] 1 Lloyd's Rep 215 .... 9, 23, 24

George Wimpey UK Ltd v VI Construction Ltd [2005] EWCA Civ 77 16

Glaholm v Hays (1841) 2 Man & G 257 12

Glynn v Margetson & Co [1893] AC 351 15

Great Indian Peninsular Railway Co v Turnbull (1885) 53 LT 325 21

Grill v General Iron Screw Collier Co (1866) LR 1 CP 600... 18

Hadley v Baxendale (1854) 9 Exch 341 .... 22, 23, 24

Harper Versicherungs AG v Indemnity Marine Assurance Company Limited [2006] EWHC 1500 (QB) 4

Harrison v Garthorne 26 LT (NS) 508... 8

Heskell v Continental Express Ltd [1950] 1 All ER 1033 24

Heyman v Darwins Ltd [1942] AC 356 13

Hick v Raymond & Reid [1893] AC 22.. 10

Hilton v Dibber (1842) 2 QB 646 17

Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1962] 2 QB 26 .... 11, 12

Hudson v Hill [1874] 43 LJ CP 273... 8, 9

Hyundai Shipbuilding & Heavy Industries Co v Pournaras [1978] 2 Lloyd's Rep 502................ 13

Internaut Shipping GmbH v Fercometal Sarl (The Elikon) [2003] 2 Lloyd's Rep 430 .... 3, 4, 5

Investors Compensation Scheme v West Bromwich Building Society [1998] 1 WLR 896...... 14, 15

Jackson v The Union Marine Insurance Co Ltd (1874-75) LR 10 CP 125 11

Jaks (UK) Ltd v Cera Investment Bank SA [1988] 2 Llyod's Rep 89... 13

Joscelyne v Nissen [1970] 2 QB 86.. 17

Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd [2007] HCA 61 12

Koufos v Czarnikow Ltd (The Heron II) [1967] 2 Lloyd's Rep 457....................................... 22, 23

Kuoni Travel Ltd v John Boyle [2013] EWHC 877 (QB)... 7

Lay v Ackerman [2004] EWCA Civ 184.. 6

Lazard Bros v Midland Bank Ltd [1933] AC 289 (HL)... 3

Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd [1918] AC 350 24

Louis Dreyfus v Lauro (1930) 60 Ll L Rep 94 8

LUK Leamington Ltd v Whitnash Plc [2002] 1 Llyod's Rep 6.. 17

Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] 2 WLR 945.................... 14

Marbienes Compania Naviera SA v Ferrostaal AG (The Democritos) [1976] 2 Lloyd's Rep 149 9

Maredelanto Compania Naviera SA v Bergbau-Handel GMBH (The Mihalis Angelos) [1971] 1 QB 164 14

Mc'Andrew v Adams (1834) 1 Bing (NC) 29.. 10

Metalfer Corp v Pan Ocean Shipping Co Ltd [1997] CLC 1574 6

Metalimex Foreign Trade Corp v Eugenie Maritime Co Ltd [1962] 1 Lloyds Rep 378 6

MH Progress Lines SA v Orient Shipping Rotterdam BV (The Genius Star 1) [2012] 1 Lloyd's Rep 222 6

Milburn v Rodoconachi (1886) 3 TLR 115.. 21

Mitsui v Garnac Grain (The Mytro) [1984] 2 Lloyd's Rep 449.. 7, 8

Monarch Steamship Co Ltd v Karlshamns Oljefabriker (A/B) [1949] AC 196....................... 23, 25

Monroe Bros v Ryan [1935] 2 KB 28 .... 8, 9

Moschi v Lep Air Services Ltd [1972] 2 All ER 393 13

National Bank of Greece and Athens SA v Metliss [1958] AC 509 3

Nissho v Livanos (1941) 69 Ll L Rep 125 22

Pacific Interlink Sdn Bhd v Owner of the Asia Star [2009] 2 Lloyd's Rep 387 .... 22, 23

Pegler Ltd v Wang (UK) Ltd [2000] BLR 218 14

Photo Production Ltd v Securicor Transport Ltd [1980] 1 Lloyd's Rep 545 .... 12, 13, 15

Proforce Recruit Ltd v The Rugby Group Ltd [2006] EWCA Civ 69 14

Rainy Sky SA v Kookmin Bank [2011] UKSC 50 20

Riverlate Properties Ltd v Paul [1974] 3 WLR 564 16

Robert H Dahl v Nelson and Donkin (1880) 6 App Cas 38 .... 9, 10

SEB Trygg Holding AB v Manches [2005] 2 Lloyd's Rep 129 .... 3, 4, 5

Sirius International Insurance Co v FAI General Insurance Ltd [2004] 1 WLR 3251 14

SK Shipping (S) Pte Ltd v Petroexport Ltd [2009] EWHC 2974 (Comm) 13

Smeaton Hanscomb v Sasoon I Setty Son & Co [1953] 1 WLR 1468 6

Smith v South Wales Switchgear Co Ltd [1978] 1 WLR 165 14

Springwell Navigation Corp v JP Morgan Chase Bank [2010] EWCA Civ 1221 17

Stanton v Richardson LR 7 CP 421 12

Stocznia Gdanska SA v Latvian Shipping Co [2001] 1 Lloyd's Rep 537 13

Ströms Bruks Aktie Bolag v John & Peter Hutchison [1905] AC 515 24

Suisse Atlantique Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale [1967] 1 AC 361 15

Sylvia Shipping Co Ltd v Progress Bulk Carriers Ltd [2010] EWHC 542 (Comm) 23, 24

Tam Wing Chuen v Bank of Credit & Commerce Hong Kong Ltd [1996] BCC 388 15

The Ship "Socofl Stream" v CMC (Australia) Pty Ltd [2001] FCA 961 10

Thomas Bates and Son Ltd v Wyndham's (Lingerie) Ltd [1981] 1 WLR 505 .... 16, 17

Thomas Nelson & Sons v Dundee East Coast Shipping Co Ltd 1907 SC 197 (Scotland) 22

Transworld Oil Ltd v North Bay Shipping Corp (The Rio Claro) [1987] 2 Lloyd's Rep 137 9

Unisys International Services Ltd v Eastern Counties Newspapers Ltd [1991] 1 Lloyd's Rep 538 4

Universal Cargo Carriers Corp v Citati [1957] 2 QB 401 12

Victoria Laundry (Windsor) Ltd v Newman Industries Ltd [1949] 2 KB 528 CA 22, 24

Vitol SA v Norelf Ltd (The Santa Clara) [1996] 2 Lloyd's Rep 225 13

Wilson v Brett 11 M & W 113 .... 18, 19

Yorkshire Dale Steamship Co v Minister of War Transport [1942] AC 691 .... 24, 25

Statutes

International Convention on Arrest of Ships 1999 18

Limitation Act 1980 6

The UK Arbitration Act 1996 5

Books

Alan Redfern and Martin Hunter, *Law and Practice of International Commercial Arbitration* (14th edn, London Sweet & Maxwell 2006) 3

AV Dicey, *Dicey, Morris and Collins on the Conflict of Laws* (Adrian Briggs and others, 15th edn, Sweet & Maxwell 2012) 3

David St. John Sutton, Judith Gill and Matthew Gearing, *Russell on Arbitration* (23rd edn, Sweet & Maxwell 2007) 3

GH Treitel, The Law of Contract (Edwin Peel, 12th edn, Sweet & Maxwell 2007) 13, 15, 23

Halsbury's Laws (5th edn, 2008) vol 7 8

Julian Cooke and others, *Voyage Charters* (1st edn, Lloyd's of London Press Ltd 1993) 17, 20

Shrikant Hathi, *Ship Arrest and Admiralty Laws of India* (8th edn, 2014) < http://admiraltypractice.com/chapters/77.htm> 18

Sir Jack Beatson, Andrew Burrows and John Cartwright, *Anson's Law of Contract* (29th edn, Oxford University Press 2010) 11, 12

Sir Joseph Arnould, *Arnould's Law of Marine Insurance and Average,* vol 1(16th edn, Stevens & Sons 1981)........ 20

TE Scrutton, *Scrutton on Charterparties and Bills of Lading* (Stewart C Boyd and others, 21st edn, Sweet and Maxwell 2008)........ 8, 9, 21, 22

Articles

Arthur Rosett, 'Partial, Qualified, and Equivocal Repudiation of Contract' (1981) 81 Columbia Law Review 93, 107 13

Janet O'Sullivan, 'Absurdity and ambiguity - making sense of contractual construction' (2012) 71(1) CLJ 34. 20

Raymond A Connell, 'Charter Party termination and the approach voyage' (2000) 25 Tulane Maritime Law Journal, 469 8

Simon Crookenden, 'Correction of the Name of the Party to an Arbitration' (2009) 25 Arbitration International 217. .... 4, 5

W Tetley, 'Arrest, Attachment and Related Maritime Law Procedures' (1999) 73 Tulane Law Review 1895 19

Yvonne Baatz, 'Construction of terms in maritime contracts and remedies for their breach' (2013) 19(3) .Journal of International Maritime Law 200........ 20

Miscellaneous

John Arthur, 'Damages and Equitable Compensation in a Commercial Setting' (2010) < http://www.gordonandjackson.com.au/uploads/documents/seminar-papers/Damages_and_Equitable_Compensation_-_John_Arthur.pdf> accessed 1 May 2014.. 24

QUESTIONS PRESENTED

I. Whether the Arbitration resulting from the first reference was validly commenced?

II. Whether the Owners are time barred from presenting counterclaims in the second reference?

III. Whether the Owners' conduct in not ensuring the arrival of the ship at loadport by the laycan date resulted in consequential breaches?

IV. Whether the Charterers were entitled to treat the contract as terminated as a result of the alleged breach?

V. Whether the Owners can invoke any clause excluding or limiting liability in the Charter?

VI. Whether the Owners are entitled to claim advance freight?

VII. Whether the Charterers can claim damages as a result of the alleged breaches?

STATEMENT OF FACTS

THE PARTIES AND THE CONTRACT OF AFFREIGHTMENT

On the 19th of November, 2011, Super Charters ("The Charterers"), agreed to charter the vessel "Reliable Butterfly" ("The Vessel") from RHI/ then RTI ("The Owners"), by way of an amended ASBATANKVOY Standard form including the Charterers' Rider Clauses and the standard terms of business of both parties. The charterparty provided that the vessel was to arrive at BlueLand ("The Loadport") on the 3rd of December after completing its voyage to RedLand ("The Bunker port"), and from the Loadport carry a cargo of 260,000 Metric Tons of crude oil to IndigoLand ("The Disport"). The laycan for the vessel was fixed between the 5th and 6th of December, 2011; which was later narrowed down to the 5th of December, 2011.

THE ARREST AT THE BUNKER PORT

On the way to the Loadport, the Vessel was detained by the way of an *in-rem* action against the ship by bunker suppliers due to the non-payment by the Owners of the dues owed to the suppliers. The Owners, acting *negligently*, neither provided security for the claim, nor made provisions for a Letter of Indemnity to ensure the prompt release of the Vessel from arrest.

THE NOTICE OF CANCELLATION

Due to the arrest and the resultant delay, the Owners indicated to the Charterers that the Vessel would continue to be detained for an unknown period, and consequently, would be unable to comply with the conditions of the charterparty. They further provided a laycan for undetermined dates, which the Charterers elected to decline. The Charterers accepted the actions of the Owners as a repudiation and/or renunciation of the contract, and also gave a notice by validly terminating the contract under the cancellation clause (Cl. 2) of the Owners' Standard terms. In the interim, the Charterers attempted to mitigate the damages by promptly negotiating a substitute charter for the same voyage, from a third party. Subsequently, in December 2011, Reliable Tankers Inc. was merged with Reliable Holdings Inc. by way of universal succession.

THE NOTICE OF CLAIMS AND THE ARBITRATION PROCEEDINGS

On the 28th of January, RHI allegedly commenced arbitration proceedings, under the name of RTI, a non-existent entity, against the Charterers (the “first reference”). Without prejudice to their claim of invalidity, on the 12th of February 2012, the Charterers appointed an arbitrator under the first reference and separately initiated valid proceedings against the Owners (“the second reference”).

THE CLAIMS

The Owners contend that the Charterers are in breach of the charter due to their failure and refusal to pay the advance freight. The Charterers contend that the Owners are in breach of the charter due to non-fulfilment of their obligations under the ETA clause; failure to prosecute the voyage with reasonable dispatch; and are, in consequence, liable to pay damages.

These proceedings have been conjoined and are being brought together for the tribunal’s reference.

ARGUMENTS ADVANCED

I. THE ARBITRATION IN THE FIRST REFERENCE WAS NOT VALIDLY COMMENCED

1. The Owners sent a notice of appointment to initiate proceedings on the 28th of January, 2012, in the name of RTI.[1] The Charterers submit that the arbitration in the first reference has not been validly commenced and is therefore a nullity. This is because RTI did not exist at the time the notice was sent [A]; the requirement of the arbitration agreement was not complied with [B]; and the error in the notice of appointment cannot be termed as a misnomer [C].

[A] RTI DID NOT EXIST AT THE TIME THE NOTICE WAS DELIVERED

2. It is submitted that at the time when the notice of arbitration was received, RTI was no longer in existence, as it had merged into RHI by way of universal succession.[2] It is a settled position in law that proceedings initiated in the name of a non-existent party are a nullity.[3] In a case where one foreign corporation amalgamates with another by way of universal succession, English law provides that the law of the place of incorporation of the companies, herein, Fruitland law, will govern all disputes related to the status of parties.[4] Furthermore, Mr. Tim Bowman's expert report on Fruitland law provides that after the said merger, RTI was indeed a *discontinuing entity*.[5] Thus, it is submitted that any proceedings brought in the name of RTI, a non-existent party, must necessarily be regarded as a nullity.

[B] THE OWNERS FAILED TO COMPLY WITH THE ARBITRATION AGREEMENT

3. The Charterers submit that when the arbitration agreement has a *specific provision* with regard to the commencement of arbitration, it is imperative that such a provision is strictly

[1] Notice of Appointment, Page 101 of Bundle
[2] Newspaper Report, Page 100 of Bundle; Notice of Appointment, Page 101of Bundle.
[3] *Lazard Bros v Midland Bank Ltd* [1933] AC 289 (HL); *SEB Trygg Holding AB v Manches* [2005] 2 Lloyd's Rep 129. See also *Internaut Shipping GmbH v Fercometal Sarl (The Elikon)* [2003] 2 Lloyd's Rep 430; David St. John Sutton, Judith Gill and Matthew Gearing, *Russell on Arbitration* (23rd edn, Sweet & Maxwell 2007) 191, 98.
[4] *National Bank of Greece and Athens SA v Metliss* [1958] AC 509; *Adams v National Bank of Greece SA* [1961] AC 255; *Eurosteel Ltd v Stinnes AG* [2000] 1 All ER 964; *SEB Trygg Holding AB v Manches* [2005] 2 Lloyd's Rep 129; Alan Redfern and Martin Hunter, *Law and Practice of International Commercial Arbitration* (14th edn, London Sweet & Maxwell 2006) 152; AV Dicey, *Dicey, Morris and Collins on the Conflict of Laws* (Adrian Briggs and others, 15th edn, Sweet & Maxwell 2012) 1534.
[5] Expert Report of Tim Bowman, Page 113 of Bundle.

complied with; otherwise, the arbitration will not be deemed to have been validly commenced.[6] In the instant case, the agreement mandates that only a *party to the contract* can initiate the arbitration proceedings.[7] Post its merger, RHI became subject to all the rights and liabilities of RTI, which includes the taking over of its rights as the contractual counterparty of the Charterers. Despite this, the Owners initiated proceedings in the name of RTI, *and not* RHI, though the former had no cause of action. It is submitted that as a consequence of the non-compliance of this requirement of the arbitration agreement, the proceedings in the first reference stand invalidated.

[C] THE ERROR IN THE NOTICE DOES NOT AMOUNT TO A MISNOMER

4. Admittedly, in case an error in the notice of appointment can be attributed to a misnomer, the position can be corrected by simply amending the name of the party to the proceedings.[8] However, in the present case, the Charterers submit that the error is not due to a misnomer as (i) *the reason for the solicitor's error is not satisfactorily known;* (ii) *even if the tribunal were to believe that the reason is known, it is not merely a mistake as to the name of the party and;* (iii) *the notice of appointment left the Charterers in doubt as to the identity of the claimant.*

i. <u>The reason for the solicitors' error is not satisfactorily known</u>

5. In the *Elikon,*[9] Rix LJ, while deciding on the issue of misnomer, considered the reasons in making such a mistake to be relevant.[10] The Owners may seek to rely on decisions such as the *Unisys*,[11] the *Sardinia Sulcis*,[12] and the *SEB Trygg Holding,*[13] to contend that in the present case, the error in naming due to *solicitors' ignorance* should be attributed to a misnomer. However,

[6] David St. John Sutton, Judith Gill and Matthew Gearing, *Russell on Arbitration* (23rd edn, Sweet & Maxwell 2007) 188.
[7] Cl 24 of Part II, ASBATANKVOY.
[8] For instance, see *Unisys International Services Ltd v Eastern Counties Newspapers Ltd* [1991] 1 Lloyd's Rep 538; *Owners of the Sardinia Sulcis v Owners of the Al Tawab* [1991] 1 Lloyd's Rep 201; *SEB Trygg Holding AB v Manches* [2005] 2 Lloyd's Rep 129; *Harper Versicherungs AG v Indemnity Marine Assurance Co Ltd* [2006] EWHC 1500 (QB); David St. John Sutton, Judith Gill and Matthew Gearing, *Russell on Arbitration* (23rd edn, Sweet & Maxwell 2007) 192.
[9] *Internaut Shipping GmbH v Fercometal Sarl (The Elikon)* [2003] 2 Lloyd's Rep 430.
[10] Simon Crookenden, 'Correction of the Name of the Party to an Arbitration' (2009) 25 Arbitration International 217.
[11] *Unisys International Services Ltd v Eastern Counties Newspapers Ltd* [1991] 1 Lloyd's Rep 538.
[12] *Owners of the Sardinia Sulcis v Owners of the Al Tawab,* [1991] 1 Lloyds Rep 201.
[13] *AMB Generali Holding v SEB Trygg Liv Holding* [2005] EWCA Civ 1237.

these decisions are distinguishable from the instant case because in the aforementioned cases, the reason behind the ignorance of the solicitors was incontrovertibly known; while, in the instant case, there is a lack of such certifiable knowledge insofar as the reason behind the solicitors' mistake remains unexplained.[14]

6. It is the Charterers' submission that the decision on the issue of misnomer and the subsequent amendment of the title cannot merely be an exercise in contractual construction, but also requires the exercise of discretion by the arbitrators.[15] Moreover, the UK Arbitration Act also enshrines on the arbitrator the power to allow an amendment in terms of this discretion.[16] Consequently, it is submitted that the reasons for the solicitors' mistake is a necessary pre-requisite for an arbitrator to exercise his discretion. Furthermore, this is important because an arbitrator would want to be satisfied that there was a *bona fide* mistake, and ensure for themselves that the misnaming was not for an ulterior purpose.[17] Thus, in the absence of such reasons in the present case, the Charterers submit that the tribunal should not consider the error to be a mere misnomer.

ii. In any case, it cannot be held to merely be a mistake as to the name of the party

7. In order to establish that the error in naming is due to a misnomer, it is crucial that the mistake should not be one of *identity* of the entity that was intended to be the claimant in the proceedings.[18] In the present case, even if the tribunal were to accept RHI's reason for the solicitors' mistake to be satisfactory,[19] it is the Charterers' submission that such a mistake is

---

[14] Reply to SC Notice of Appointemnt, Page 104 of Bundle.
[15] *Internaut Shipping GmbH v Fercometal Sarl (The Elikon)* [2003] 2 Lloyd's Rep 430; Simon Crookenden, 'Correction of the Name of the Party to an Arbitration' (2009) 25 Arbitration International 217.
[16] The UK Arbitration Act 1996 s 34(1) (c); Simon Crookenden, 'Correction of the Name of the Party to an Arbitration' (2009) 25 Arbitration International 217.
[17] Simon Crookenden, 'Correction of the Name of the Party to an Arbitration' (2009) 25 Arbitration International 217.
[18] *Evans Construction Co Ltd v Charrington & Co Ltd* [1983] 1 QB 81; *Owners of the Sardinia Sulcis v Owners of the Al Tawab* [1991] 1 Lloyds Rep 201; *SEB Trygg Holding AB v Manches* [2005] 2 Lloyd's Rep 129.
[19] Reply to SC Notice of Appointment, Page 104 of Bundle.

connected with *what legal entity was the party with the relevant rights,* and is not a mere misnomer or mistake in transcribing the name of the intended entity.

iii. The notice of appointment left the Charterers in doubt as to the identity of the claimant

8. Even when the error in naming was due to a misnomer, it is essential that the notice of proceedings be such that it leaves the respondent *in no doubt* as to the identity of the entity intending to be the claimant.[20] This is also a precondition to the validity of the notice.[21] In the instant case, since the title of the notice was in the name of 'Reliable Tankers Inc',[22] the Charterers' were left in doubt as to the identity of the intended claimant. Thus, in light of this discrepancy, it is submitted that the mistake was not a misnomer.

II. THE OWNERS ARE TIME BARRED FROM PRESENTING COUNTERCLAIMS IN THE SECOND REFERENCE

9. In the present case, Cl.4 of the Charterers' Standard terms requires that any proceedings against the Charterers be commenced within 20 days after the discharge was to be completed.[23] It is submitted that the accepted interpretation of a clause requiring proceedings to be commenced within a certain number of days is that, if it is not commenced, the claim is barred.[24] Thus, any proceedings against Charterers' beyond 20 days are time barred. As a result of this, RHI cannot bring counter-claims in the second reference, as a counter-claim is a new claim,[25] and must be deemed to be a separate proceeding.[26] *Even if,* (which is denied) a contrary time bar provision exists in the charter, the Charterers submit that, in the light of decisions in *The Genius Star I*,[27]

[20] *Owners of the Sardinia Sulcis v Owners of the Al Tawab* [1991] 1 Lloyds Rep 201.
[21] *Lay v Ackerman* [2004] EWCA Civ 184; *AMB Generali Holding v SEB Trygg Liv Holding* [2005] EWCA Civ 1237.
[22] Notice of Appointment, Page 101 of Bundle.
[23] SC StandardTerms, Page 45, 88 of Bundle.
[24] *Smeaton Hanscomb v Sasoon I Setty Son & Co* [1953] 1 WLR 1468; *Metalimex Foreign Trade Corp v Eugenie Maritime Co Ltd* [1962] 1 Lloyds Rep 378; *Metalfer Corp v Pan Ocean Shipping Co Ltd* [1997] CLC 1574.
[25] Limitation Act 1980 s 35(2).
[26] Limitation Act 1980 s 35 (1).
[27] *MH Progress Lines SA v Orient Shipping Rotterdam BV (The Genius Star 1)* [2012] 1 Lloyd's Rep 222.

and *Kuoni Travel,*[28] the express provision in Cl.1 of the Charterers' Standard terms should resolve the conflict in favour of the time bar in Cl.4 of the Standard terms. This is because Cl. 1 clearly provides that the Charterers' Standard terms will take precedence over all other terms of the charterparty. [29]

III. THE OWNERS WERE IN BREACH OF THEIR OBLIGATIONS UNDER THE CHARTER PARTY

10. The Vessel was arrested at the Bunker port on the 22nd of November, and such arrest unduly delayed in the performance of the chartered voyage. It is submitted that this was caused due to the breach of the Owners' obligations under the charterparty; specifically the obligations to commence the approach voyage on time in order to arrive by the Estimated Time of Arrival [A]; and to use reasonable dispatch in the prosecution of the approach voyage [B].

[A] THE OWNERS FAILED TO COMMENCE THE APPROACH VOYAGE IN TIME TO ARRIVE BY THE ESTIMATED TIME OF ARRIVAL

i. There was an express obligation to commence the approach voyage in time for it to meet the estimated date of arrival

11. As per the amendments made by the Owners in ASBATANKVOY Part I, as evidenced by the fixture recap, the Owners nominated the 3rd of December, 2011 as the Estimated Time of Arrival at the loadport.[30] An ETA provision in the charterparty is similar to an 'estimated ready to load' provision,[31] and mandates an *absolute obligation* that the vessel *commence the approach voyage to the loading port* within such a time as would enable it to arrive by the indicated ETA

[28] *Kuoni Travel Ltd v John Boyle* [2013] EWHC 877 (QB).
[29] SC Standard Terms, Page 45, 88 of Bundle.
[30] Page 47 of Bundle.
[31] *Mitsui v Garnac Grain (The Mytro)* [1984] 2 Lloyd's Rep 449, 451.

date.[32] The Owners in this instance have admitted that they would be unable to reach the Loadport by the time stipulated.[33]

ii. The approach voyage to the port of loading was never commenced

12. The approach voyage to the Loadport only commences when the vessel proceeds *directly for the port of loading* from its *immediately preceding port of call prior to loading.*[34] Hence, the point at which the approach voyage commences does not arrive until the vessel is free of intermediate voyages[35] and breaks ground to proceed to the loading port.[36] In the present case, the Vessel was arrested at the Bunker port prior to the port of loading and hence was unable to commence upon the *direct voyage to the Loadport.*

iii. The intermediate voyage was not a voyage contemplated under the charter party

13. In order for an intermediate voyage to form a part of the contemplated voyage in the charter, there must be an *express stipulation* to that effect,[37] i.e., an *express term* that the obligation to proceed to the loading port is subject to such an engagement.[38] In order to make the beginning of the chartered voyage contingent upon the completion of the intermediate voyage, it is not sufficient to provide an estimation of the completion of the intermediate voyage in the charter,[39] as was done in the instant case.[40]

14. The terms of the charter, specifically Cl. 2 of the Charterers' standard terms and Cl. 37 of the rider clauses, provide that the vessel must arrive at the port of loading fully bunkered,[41] and

---

[32] TE Scrutton, *Scrutton on Charterparties and Bills of Lading* (Stewart C Boyd and others, 21st edn, Sweet and Maxwell 2008) art 50, 88; *Halsbury's Laws* (5th edn, 2008) vol 7, para 246; *Louis Dreyfus v Lauro* (1930) 60 Ll L Rep 94; *Monroe Bros v Ryan* [1935] 2 KB 28; Raymond A Connell, 'Charter Party termination and the approach voyage' (2000) 25 Tulane Maritime Law Journal, 469.
[33] Notice delivered on the 25th of November, Page 95 of Bundle.
[34] *Louis Dreyfus v Lauro* (1938) 60 Lloyds Rep 94; *Mitsui v Garnac Grain (The Mytro*) [1984] 2 Lloyd's Rep 449.
[35] *Hudson v Hill* [1874] 43 LJ CP 273; *Harrison v Garthorne* 26 LT (NS) 508.
[36] *Barker v McAndrews* (1868) 18 CBNS 759.
[37] *Evera SA Commercial v North Shipping Co Ltd* [1956] 2 Lloyd's Rep 367.
[38] *Hudson v Hill* [1874] 43 LJ CP 273.
[39] *Evera SA Commercial v North Shipping Co Ltd* [1956] 2 Lloyd's Rep 367.
[40] *Monroe Bros v Ryan* (1935) 51 Ll L Rep 179; *Evera SA Commercial v North Shipping Co Ltd* [1956] 2 Lloyd's Rep 367
[41] Cl 2, SC Standard terms, Page 88 of Bundle.

the Vessel's itinerary indicates that the voyage to the bunkering port was contemplated and commenced upon prior to the date of the fixture of the charter.[42] Since the voyage was solely for the Owners' benefit and the Charterers had not *expressly consented* to the risks of the intermediate engagement being placed upon them, the Owners remain absolutely liable for the delay.[43]

iv. The Owners do not have the benefit of the exceptions clauses under the charterparty

15. The exceptions in the charter apply to the approach voyage to the loading port,[44] but not to earlier engagements.[45] Since the *chartered voyage* commences only when the vessel commences her approach voyage,[46] the Owners are not entitled to the benefit of any of the exceptions or limitations to liability set forth in the charter until the time of such commencement, and are therefore absolutely liable for the delay caused.

[B] THE OWNERS WERE IN BREACH OF THE OBLIGATION TO PROCEED WITH REASONABLE DISPATCH

16. It is further submitted that, even if the approach voyage was commenced on time, the delay was caused due to a breach of the obligation to prosecute the chartered voyage with *reasonable dispatch*.

i. There was an express undertaking to perform the voyage with reasonable dispatch

[42] Page 47 of Bundle.
[43] *Monroe Bros v Ryan* (1935) 51 Ll L Rep 179; *Marbienes Compania Naviera SA v Ferrostaal AG (The Democritos)* [1976] 2 Lloyd's Rep 149; *Geogas SA v Trammo Gas Ltd (The Baleares)* [1993] 1 Lloyd's Rep 215.
[44] *Hudson v Hill* 1874 43 LJ CP 279; *Monroe Bros v Ryan* (1935) 51 Ll L Rep 179.
[45] TE Scrutton, *Scrutton on Charterparties and Bills of Lading* (Stewart C Boyd and others, 21st edn, Sweet and Maxwell 2008) art 67; *Monroe Bros v Ryan* [1935] 2 KB 28; *Louis Dreyfus v Lauro* (1938) 60 Ll L Rep 94; *Evera SA Commercial v North Shipping Co Ltd* [1956] 2 Lloyd's Rep 367; *Christie & Vessey v Helvetia* [1960] 1 Lloyd's Rep 540, 547; *Transworld Oil Ltd v North Bay Shipping Corp (The Rio Claro)* [1987] 2 Lloyd's Rep 137.
[46] TE Scrutton, *Scrutton on Charterparties and Bills of Lading* (Stewart C Boyd and others, 21st edn, Sweet and Maxwell 2008) art 67; *Robert H Dahl v Nelson and Donkin* (1880) 6 App Cas 38.

17. Cl. 1 of Part II of the ASBATANKVOY states that '*the vessel shall, with all convenient dispatch*' proceed to the loadport.[47] Hence, the Owners had an *express contractual obligation* to proceed with reasonable dispatch in undertaking the approach voyage to the loading port.

ii. *The Owners did not prosecute the voyage without unreasonable delay*

18. The obligation to proceed with reasonable dispatch requires that the voyage be commenced upon without unreasonable delay.[48] The test for determining what is a reasonable time for performance, as laid down in *Hick v Raymond,*[49] is that *"the party upon whom it is incumbent duly fulfils his obligation, notwithstanding protracted delay, so long as such delay is attributable to causes beyond his control, and he has neither acted negligently nor unreasonably."* In determining what is reasonable, the courts must consider the intention and knowledge of the parties, as well as the object of the voyage and the damage that the delay would cause to the innocent contractual counterparty.[50] In the present instance, it may be inferred that the voyage to the loading port ought to have terminated by the date at which the Charterers were entitled to cancel, i.e., the 5th of December.[51] Further, the Owners had knowledge that the delay would cause undue damage to the Charterers and defeat the purpose of the voyage.[52]

19. Sending a vessel upon an intermediate voyage with the knowledge that the chartered voyage would be delayed,[53] or allowing a ship to be arrested in the course of its voyage has been held to have been unreasonable and make the Owners of the ship liable for the resultant delay.[54] It is submitted that the delay in the prosecution of the approach voyage was attributable to the Owners' own fault in failing to provide security for the payment of the bunker suppliers,[55] and

[47] Cl 1 of part II, ASBATANKVOY.
[48] *Hick v Raymond & Reid* [1893] AC 22; *Charles Rickards Ltd v Oppenhaim* [1950] 1 KB 616.
[49] *Hick v Raymond & Reid* [1893] AC 22, 33 (Watson J).
[50] *Mc'Andrew v Adams* (1834) 1 Bing (NC) 29; *Robert H Dahl v Nelson and Donkin* (1880) 6 App Cas 38.
[51] Page 47 of Bundle.
[52] Page 89 of Bundle.
[53] *Mc'Andrew v Adams* (1834) 1 Bing (NC) 29.
[54] *The Ship "Socofl Stream" v CMC (Australia) Pty Ltd* [2001] FCA 961.
[55] Page 93 of Bundle.

subsequently, in failing to furnish a security for the prompt release of the Vessel.[56] In the present case, therefore, the arrest of the vessel and its detention beyond a reasonable period was an impediment which the Owners *themselves created*, clearly considering their own commercial interests over the adverse impacts on the charter. Therefore, they cannot be said to have acted reasonably and they must be held liable for the resulting delay.

IV. THE CHARTERERS WERE ENTITLED TO TREAT THE CONTRACT AS TERMINATED AND CLAIM FOR DAMAGES

20. In light of the aforementioned breaches, the Charterers elected to terminate the contract, and claim damages for breach of the same, *vide* their notice of cancellation on the 27th of November.[57] It is submitted that the Owners' conduct amounted to repudiation [A], and/or renunciation [B] of the charter, which was duly accepted by the Charterers [C]. *Further and alternatively,* the Owners validly terminated the Charter by effecting the cancellation clause, which retains their right to claim damages from the Owners [D].

[A] THE AFOREMENTIONED BREACHES AMOUNTED TO A REPUDIATION OF THE CONTRACT

21. It is submitted that the Owners' inability to comply with the obligations under the charter entitled the Charterers to treat it as at an end, since the breach went to the root of the contract,[58] and it frustrated the commercial purpose of the contract.[59] An implication that *time is of the essence* to the contract may be inferred in cases such as the instant case, where performance has to be done in a sequence, and at specified times.[60] As laid down in *Hongkong Fir Shipping,* non-compliance with a contractual term will lead to a fundamental breach of the contract if it denies the innocent party of the *substantial benefit* of the contract, which depends on the events which

[56] Page 93 of Bundle.
[57] Notice of Cancellation, Page 96 of Bundle.
[58] *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26; *Davidson v Gwynne* 12 East 380.
[59] *Jackson v The Union Marine Insurance Co Ltd* (1874-75) LR 10 CP 125.
[60] Sir Jack Beatson, Andrew Burrows and John Cartwright, *Anson's Law of Contract* (29th edn, Oxford University Press 2010) 148; *Bremer Handelsgesellschaft mbH v Vanden Avenne-Izegem* PVBA [1978] 2 Lloyd's Rep 109.

occurred as a result of the breach.[61] It is submitted that the commercial intent of the Charterers was to have the cargo carried to the disport *before the planned maintenance shutdown*, which was also patently communicated to the Owners.[62] The fact that time was of the essence to this charter was further indicated by the Charterers' internal report, which indicates that the scheduling dates were precarious, and that the *only reason* they chartered the Owners' vessel was due to paucity of available tonnage on that particular schedule.[63] The prompt termination, rejection of a later date, and the timely substitution of the voyage in an increasingly expensive market by the Charterers are additional evidence to show that only the timely delivery of the Vessel would have led to a substantial benefit for the Charterers.[64]

22. Further, it is submitted that the Owners failed to discharge the obligation of remedying the situation[65] by neglecting to provide security for their dues and failing to approach the P&I Club for furnishing a bond for release of the Vessel. This, therefore, jeopardized any chances of the contractual obligations being completed in a timely manner. This conduct is sufficient to establish that the intention of the Owners was to treat the contract as coming to an end.[66] It is then contended that a fundamental breach of the contract had occurred, thereby entitling the Charterers to terminate the contract. This is endorsed by the fact that any *reasonable party* in the position of the promisee would conclude that that the promisor (the Owners) had abandoned the contract.[67] The failure to discharge the obligation of commencing the voyage on time; the commensurate responsibility of reasonable dispatch; and the proven *gross negligence,* individually or collectively amounted to a repudiation of the charter.

---

[61] *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26, 66.
[62] Page 3, 46, 89 of Bundle.
[63] Page 90 of Bundle.
[64] Page 96, 97, 98 of Bundle.
[65] *Stanton v Richardson* LR 7 CP 421, 425, 433, 437; *Universal Cargo Carriers Corp v Citati* [1957] 2 QB 401; *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26 (Diplock LJ).
[66] *Glaholm v Hays* (1841) 2 Man & G 257; *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd* [2007] HCA 61.
[67] *Photo Production Ltd v Securicor Transport Ltd* [1980] 1 Lloyd's Rep 545; *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd* [2007] HCA 61; Sir Jack Beatson, Andrew Burrows and John Cartwright, *Anson's Law of Contract* (29th edn, Oxford University Press 2010).

[B] THE OWNERS' REFUSAL TO FULFIL THEIR OBLIGATIONS AMOUNTED TO RENUNCIATION

23. A renunciation of contract occurs when a party to the contract absolutely or unequivocally expresses their total inability or refusal to perform.[68] Such an expression need not be expressly made.[69] Admittedly, the Owners' letter was not an express renunciation but it was an indication that they would not be able to discharge their obligations under the charter. Further, their indication that the resultant delay was unknown was an expression of doubt as to their will or ability to perform. This may reasonably be inferred to be an indication of their absolute inability to perform the chartered voyage.[70]

[C] AS A RESULT OF THE REPUDIATION OR RENUNCIATION, THE CHARTERERS ELECTED TO TERMINATE THE CONTRACT, WHILE RESERVING THEIR RIGHT TO CLAIM DAMAGES

24. In the absence of a requirement of a particular format or manner of accepting a repudiation or renunciation,[71] the Charterers' letter on the 29th of November, 2011 amounted to a valid acceptance of the Owners' repudiation or renunciation, while *clearly and unequivocally* bringing the contract to an end.[72]

25. Such a termination, brought about by the innocent party, discharged both the parties from performance of further obligations under the contract, but not from accrued liabilities.[73] Hence, it is contended that the Charterers legally reserved their right to claim damages for the breach.

---

[68] Arthur Rosett, 'Partial, Qualified, and Equivocal Repudiation of Contract' (1981) 81 Columbia Law Review 93, 107; *Jaks (UK) Ltd v Cera Investment Bank SA* [1988] 2 Llyod's Rep 89, 93.

[69] GH Treitel, The Law of Contract (Edwin Peel, 12th edn, Sweet & Maxwell 2007) para17-074.

[70] Arthur Rosett, 'Partial, Qualified, and Equivocal Repudiation of Contract' (1981) 81 Columbia Law Review 93, 95; *SK Shipping (S) Pte Ltd v Petroexport Ltd* [2009] EWHC 2974 (Comm).

[71] *Stocznia Gdanska SA v Latvian Shipping Co* [2001] 1 Lloyd's Rep 537; *Vitol SA v Norelf Ltd (The Santa Clara)* [1996] 2 Lloyd's Rep 225.

[72] *Vitol SA v Norelf Ltd (The Santa Clara)* [1996] 2 Lloyd's Rep 225; *Force India Formula One Team Ltd v 1 Malaysia Racing Team Sdn Bhd* [2013] EWCA Civ 780; *Photo Production Ltd v Securicor Transport Ltd* [1980] 1 Lloyd's Rep 545.

[73] *Heyman v Darwins Ltd* [1942] AC 356; *Photo Production Ltd v Securicor Transport Ltd* [1980] 1 Lloyd's Rep 545; *Hyundai Shipbuilding & Heavy Industries Co v Pournaras* [1978] 2 Lloyd's Rep 502; *Moschi v Lep Air Services* Ltd [1972] 2 All ER 393.

[D] *FURTHER AND ALTERNATIVELY,* THE CHARTER WAS CANCELLED AS PER THE PROVISIONS OF THE CANCELLATION CLAUSES

26. Without prejudice to the foregoing, or in the event that the tribunal were to believe there was no valid repudiation or renunciation of the contract, it is submitted that the charter was cancelled in pursuance of the cancellation clause under Cl. 14 of the Charterers' Rider Clauses,[74] as they were entitled to do so in case of anticipated inability to fulfil the obligation to start on time for the port of loading,[75] *or* alternatively as under Cl. 2 of the Owners' Standard terms.[76] As contractual termination rights operate in addition to common law remedies, an innocent party is not required to elect between the two rights.[77] Therefore, in addition to the common law remedies for repudiation and renunciation, the Charterers were entitled to the contractual termination of the charterparty.

i. The cancellation clause reserved the Charterers' right to claim damages

27. A contractual term must be constructed to achieve a commercial and purposive connotation,[78] based on what a reasonable person in similar circumstances would have intended.[79] Additionally, pre-contractual negotiations will be admissible in case an undefined and unusual combination of words is used.[80] It is submitted that the intention of the parties, on the basis of the communications leading up to the contract can only have been that the cancellation provision would mean a release from future performance only. Terms for the exception or limitation of liability must be strictly construed and clearly defined, [81] and, in the absence of express words, may not indicate an absolute exclusion.[82]

[74] Cl 14, SC Rider Clauses, Page 62 of Bundle.
[75] *Maredelanto Compania Naviera SA v Bergbau-Handel GMBH (The Mihalis Angelos)* [1971] 1 QB 164.
[76] Cl 14, SC Rider Clauses, Page 62 of Bundle; Cl 2, Reliable Tankers Inc Standard terms, Page 87 of Bundle.
[77] *Dalkia Utilities Services Plc v Celtech International Ltd* [2006] EWHC 63 (Comm).
[78] *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896.
[79] *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] 2 WLR 945; *Sirius International Insurance Co v FAI General Insurance Ltd* [2004] 1 WLR 3251.
[80] *Proforce Recruit Ltd v The Rugby Group Ltd* [2006] EWCA Civ 69 para 55.
[81] *Pegler Ltd v Wang (UK) Ltd* [2000] BLR 218; *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896.
[82] *Smith v South Wales Switchgear Co Ltd* [1978] 1 WLR 165.

28. It is further submitted that the purpose of the cancellation clause was to release both parties from the further performance of obligations, and may not be construed as a wide exceptions clause,[83] since the charter already provided for exclusions from liability in other clauses.[84] The word *whatsoever* cannot be given an all-embracing character.[85] In any case, the doctrine of *contra proferentem* would require such an ambiguous term to be treated as against the party granting the term, i.e., the Owners, and therefore, the words must be construed in favour of the Charterers.[86]

29. It is submitted that construing the clause as an absolute exclusion of liability would lead to the contracted terms being a mere declaration of intent.[87] Such a construction would be invalid, as the parties in a contract are not deemed to have contemplated that an ambiguous clause should have so wide an ambit, as in effect, to deprive one party's stipulations of all contractual force.[88] Without secondary obligations, the contract would be illusory as there would be no sanction for its breach, which would be inconsistent with the objects of any charter.[89] Thus, it is argued that the Owners' construction may not be approved.

ii. *Alternatively, the charter falls to be rectified by way of common or unilateral mistake*

30. To the extent that the tribunal finds otherwise, the charter falls to be rectified by way of a common, or alternatively, an unilateral mistake.[90] It is a settled law that prior negotiations are admissible as evidence in a claim for rectification of an instrument.[91]

a. RECTIFICATION BY REASON OF COMMON MISTAKE

[83] *Canada Steamship Lines v The King* [1952] AC 192.
[84] Cl 23, ASBATANKVOY; Cl 2, SC Rider Clauses, Page 57; Cl 5, Reliable Tankers Inc Standard terms, Page 87 of Bundle.
[85] *Photo Production Ltd v Securicor Transport Ltd* [1980] 1 Lloyd's Rep 545.
[86] *Tam Wing Chuen v Bank of Credit & Commerce Hong Kong Ltd* [1996] BCC 388.
[87] *Suisse Atlantique Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1967] 1 AC 361.
[88] *Suisse Atlantique Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1967] 1 AC 361.
[89] *Glynn v Margetson & Co* [1893] AC 351.
[90] GH Treitel, *The Law of Contract* (Edwin Peel, 12th edn, Sweet & Maxwell 2007) 351.
[91] *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896; GH Treitel, *The Law of Contract* (Edwin Peel, 12th edn, Sweet & Maxwell 2007) 351.

31. It is submitted that the charter is rectifiable due to a common mistake in the final fixture, which fails to reflect the common intention of the parties.[92] In the negotiations between the parties, the Charterers and the Owners had agreed to restrict the scope of the exclusion in the cancellation clause, and had evinced a common intention that the exclusion from liability would not operate against both parties.[93] This common intention continued unchanged until the execution of the written agreement,[94] which is evidenced by the modification of the cancellation clause in the unsigned fixture recap.[95] It is therefore submitted that a rectified documents would reflect the agreed meaning of the cancellation clause.[96]

b. RECTIFICATION BY WAY OF UNILATERAL MISTAKE

32. In any event, the charter may be rectified as there was a unilateral mistake. A unilateral mistake may evoke a rectification of the contract if the non-mistaken party (here, the Owners) had *actual knowledge of the intentions* of the mistaken party and of the mistake in question.[97] The Charterers contend that this requirement has been satisfied.[98] The Owners unconscionably shut their eyes to the obvious by recklessly failing to enquire as an honest person would have done under the given circumstances.[99] This was sufficient to hold them guilty of *sharp practice* and it turn justifies rectification.[100]

33. Additionally, the present situation satisfies the additional requirement that one party suffers a detriment while the other benefits from the mistake,[101] as they would have no right to claim damages under the cancellation provision unless the document is rectified. Having thus

---

[92] *Agip SpA v Navigazione Alta Italia SpA* [1984] 1 Lloyd's Rep 353.
[93] Cl 16, SC's Claim submission, Page 111 of Bundle; *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38.
[94] *Fowler v Fowler* 1859 4 De Gex & Jones 250; *Agip SpA v Navigazione Alta Italia SpA* [1984] 1 Lloyd's Rep 353.
[95] Page 8 of Bundle.
[96] *Agip SpA v Navigazione Alta Italia* SpA [1984] 1 Lloyd's Rep 353.
[97] *A Roberts & Co Ltd v Leicestershire CC* [1961] 2 WLR 1000; *Riverlate Properties Ltd v Paul* [1974] 3 WLR 564; *Agip SpA v Navigazione Alta Italia SpA* [1984] 1 Lloyd's Rep 353, 365.
[98] Page 3 of Bundle.
[99] *Commission for the New Towns v Cooper (Great Britain)* Ltd [1995] Ch 259; *George Wimpey UK Ltd v VI Construction Ltd* [2005] EWCA Civ 77.
[100] *Riverlate Properties Ltd v Paul* [1974] 3 WLR 564.
[101] *Thomas Bates and Son Ltd v Wyndham's (Lingerie) Ltd* [1981] 1 WLR 505.

convincingly discharged their liability of proving the grounds for rectification,[102] the Owners are entitled to have the document rectified to give it the intended meaning.

V. THE OWNERS MAY NOT INVOKE ANY OF THE LIMITATIONS OF LIABILITY PRESENT IN THE CHARTER PARTY

34. It is submitted that the Owners may not invoke the exceptions under Cl.19 of the ASBATANKVOY Standard Form Charter Party [A], and neither may they invoke the general exception from consequential damages under Cl.5 of the Owners' Standard terms [B].

[A] THE OWNERS MAY NOT INVOKE THE EXCEPTIONS UNDER THE ASBATANKVOY STANDARD FORM CHARTER PARTY

35. Cl. 19 of the ASBATANKVOY charterparty exempts the liability of the Owners in cases of '*seizure under legal process* ***provided bond is promptly furnished to release the cargo or vessel***'. The proviso to this exception clearly provides an additional duty on the Owners to ensure the prompt provision of a bond to secure the release of the vessel.[103] In the instant case, the Owners negligently failed and refused to furnish a bond for releasing the vessel from arrest.[104] Therefore, they may not invoke the exceptions under Cl.19.

[B] THE OWNERS MAY NOT INVOKE THE EXEMPTION FROM ANY CONSEQUENTIAL DAMAGES UNDER CL. 5 OF THEIR STANDARD TERMS

36. Cl. 5 of the Owners' Standard terms state that the Owners can only be held liable for consequential damages if *gross negligence* is proven.[105] The distinction between negligence and gross negligence has been held in law to be contrived and unintelligible.[106] The term gross

[102] *Joscelyne v Nissen* [1970] 2 QB 86, 98; *Thomas Bates and Son Ltd v Wyndham's (Lingerie) Ltd* [1981] 1 WLR 505;.*LUK Leamington Ltd v Whitnash Plc* [2002] 1 Llyod's Rep 6.

[103] Julian Cooke and others, *Voyage Charters* (1st edn, Lloyd's of London Press Ltd 1993) 654.

[104] Page 93 of Bundle.

[105] Page 87 of Bundle.

[106] *Hilton v Dibber* (1842) 2 QB 646 (Lord Denman); *Austin v Manchester, Sheffield and Lincolnshire Railway Co* (1852) 10 CB 454, 474-475; *Springwell Navigation Corp v JP Morgan Chase Bank* [2010] EWCA Civ 1221.

negligence must be treated, semantically, as a word of description and not definition.[107] The principles, therefore, is that the same requirements need to be proven for gross negligence and negligence alike, namely—the failure to exercise reasonable care, skill and diligence.[108] It is further submitted that, *even if* a higher standard is required in the event of proving gross negligence, the Owners' actions meet such a standard.

37. The negligence of the Owners can be established by the fact that they refused to pay the bunker suppliers on time; did not pay the security to the bunker suppliers promptly; and further refused to raise an insurance claim for the payment of the security.[109] It is submitted that these actions collectively were sufficient to cross the threshold from an *actual appreciation of the risk* to a *serious disregard or indifference to an obvious risk*, which would be tenable grounds to constitute gross negligence.[110]

38. *Firstly*, the arrest by the bunker suppliers ought to have been reasonably contemplated by the Owners, as it is a widely regarded right of third-party bunker suppliers to arrest ships for non-payment.[111] Yet, they chose to stand in wanton disregard of the arrest of the vessel due to non-payment of the bunker suppliers, and thence the threat of not meeting the laycan. *Secondly*, the Owners failed to pay the requisite security for the release of the Vessel despite being aware of the impending laycan dates. As communicated to them on 23rd of November, 2011, the ship would have needed to sail latest by the 25th of November if it hoped to meet its laycan dates.[112] Yet, in ignorance of this exigency, the Owners refused to pay the price quoted by the third-party suppliers, choosing instead to "not be in a rush to meet their demands".[113] *Thirdly,* the Owners refused to supply a bond for the prompt release of the Vessel, *despite* being covered by the

[107] *Wilson v Brett* 11 M & W 113.
[108] *Beal v South Devon Railway* [1861-73] All ER Rep 972, 975; *Grill v General Iron Screw Collier Co* (1866) LR 1 CP 600.
[109] Page 93 of Bundle.
[110] *Camarata Property Inc v Credit Suisse Securities (Europe) Ltd* [2011] EWHC 479.
[111] International Convention on Arrest of Ships 1999 art 2(3); Shrikant Hathi*, Ship Arrest and Admiralty Laws of India* (8th edn, 2014) < http://admiraltypractice.com/chapters/77.htm> accessed on 1 May 2014.
[112] Page 94, Bundle.
[113] Page 93 of Bundle.

SKULD P&I Group,[114] which is the customary practice in case a vessel is arrested during a chartered voyage.[115]

39. It is submitted that such conduct not only indicates a *serious disregard or indifference,* but also fulfils the standard of *negligence with vituperative epithet* required of gross negligence,[116] Therefore, it is argued that the Owners may not claim the benefit of Cl.5.

VI. THE OWNERS ARE NOT ENTITLED TO THE ADVANCE FREIGHT CLAIMED

40. It is submitted that the Owners are not entitled to the advance freight. On proper construction, Cl. 4 of the Owners Standard terms, does not provide for advance freight to be earned on the fixing of the charterparty [A]; alternatively, freight may be recoverable as an element of the damages claimed [B]; and in the further alternative, if the contract was cancelled without further recourse, the Charterer was absolved of all liability to pay the advance freight [C].

[A] CL 4 OF THE OWNERS' STANDARD TERMS DOES NOT PROVIDE FOR ADVANCE FREIGHT

41. Cl. 4, which the Owners rely upon, states that *"freight deemed earned in full discountless non-returnable **and** 95% of minimum freight payable upon lifting of subjects."*[117] It is submitted that, on proper construction, this clause only provides for the *payment* of *minimum* freight to be made upon the lifting of the subjects, i.e., on the fixture of the charterparty, and does not provide for when the freight is to be earned. On a proper construction of the clause, *full* freight can only be deemed earned once it is ascertained, and, since the charter provides for freight to be calculated on the basis of quantity of cargo loaded,[118] the clause would be meaningless and

[114] Cl 9.5, Q88, Page 86 of Bundle.
[115] W Tetley, 'Arrest, Attachment and Related Maritime Law Procedures' (1999) 73 Tulane Law Review 1895.
[116] *Wilson v Brett* 11 M. & W 113.
[117] Cl 4, RT Standard terms, Page 87 of Bundle.
[118] Page 48 of Bundle.

inapplicable, since at this point of time the amount of freight could not be ascertained, and hence, cannot be claimed to be *fully earned.*[119]

42. Further, it is submitted that, since the clause is sufficiently ambiguous, the clause must be construed *(i) to avoid commercial absurdity*; and, *(ii) according to the doctrine of 'contra proferentum'.* It is contended that such a construction would be in favour of the Charterers.

(i) The clause must be construed to avoid commercial absurdity.

43. It is submitted that the Owners' construction of the freight clause would lead to a commercially absurd situation which could not possibly be intended by either party. In construing terms under commercial contracts, including contracts of affreightment,[120] when there exists a situation of sufficient ambiguity, the construction must be such as to avoid commercial absurdity.[121] Since the payment was for freight and not hire, the right to freight could not have occurred prior to the loading of the cargo.[122] If freight was to be deemed earned prior to *any actual performance* of the contract, any frustration or repudiation or termination of the contract, *including the contractual cancellation of the contract*, would allow the Owners the right to retain such freight notwithstanding that they completely failed or refused to discharge their contractual obligations. It is submitted that such a "surprising and uncommercial" construction cannot have been intended by any reasonable commercial person,[123] and therefore, that the alternate construction must be given effect.

(ii) The clause must be construed in favour of the Charterers.

[119] *Curling v Long* 126 ER 1104; Julian Cooke and others, *Voyage Charters* (1st edn, Lloyd's of London Press Ltd 1993) 238; Sir Joseph Arnould, *Arnould's Law of Marine Insurance and Average,* vol 1(16th edn, Stevens & Sons 1981) para 348, 229.
[120] Yvonne Baatz, 'Construction of terms in maritime contracts and remedies for their breach' (2013) 19(3) .Journal of International Maritime Law 200.
[121] *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50; Janet O'Sullivan, 'Absurdity and ambiguity - making sense of contractual construction' (2012) 71(1) CLJ 34.
[122] *Curling v Long* 126 ER 1104; Sir Joseph Arnould, *Arnould's Law of Marine Insurance and Average,* vol 1(16th edn, Stevens & Sons 1981) para 348, 229.
[123] *Rainy Sky SA and others v Kookmin Bank* [2011] UKSC 50

44. As a general principle of construction of contracts, in the case of ambiguity, the construction of a term must be *against the grantor* of the term. It is submitted that Cl. 4, providing for the payment of freight, is sufficiently ambiguous for this principle to apply, and, as it was drafted by the Owners, the construction must be in favour of the Charterers. Therefore, the term may not be held to allow the earning of freight upon the fixing of the charter.

[B] *ARGUENDO,* THE ADVANCE FREIGHT MAY BE RECOVERED AS AN ELEMENT IN THE DAMAGES CLAIMED

45. In the event that the tribunal finds that the advance freight was in fact earned by the Owners on the 19th of November, it is submitted that it does not preclude a claim for recovery in damages. It is admitted that although a claim for advance freight may not be made on the basis of restitution, i.e., for return of advance payment based upon total failure of consideration,[124] it is submitted that such a bar does not extend to a valid claim or action for damages, as long as it is not barred by time and is not brought as a set-off against the freight.[125] Claims for damages for lost goods during shipment, whose value included the amount of advance freight, have been allowed by the courts in several instances.[126] Analogously, a claim for damages for obtaining a substitute fixture, which is calculated based on the cost of the replacement fixture less the amount of freight saved,[127] may include advance freight, since such freight may not be subtracted from the cost of the replacement fixture.

[C] THE CANCELLATION OF THE CHARTER DISCHARGES THE CHARTERERS FROM LIABILITY

46. In the event that the tribunal finds that the Charterers are not entitled to bring a claim for damages, it is submitted that the operation of the cancellation clause, the Owners have submitted

---

[124] *Bank of Boston Connecticut v European Grain and Shipping Ltd* [1989] 2 WLR 440.
[125] *Bank of Boston Connecticut v European Grain and Shipping Ltd* [1989] 2 WLR 440, 556; *Milburn v Rodoconachi* (1886) 3 TLR 115; *Great Indian Peninsular Railway Co v Turnbull* (1885) 53 LT 325; *Dufourcet v Bishop* (1886) 18 QBD 373.
[126] TE Scrutton, *Scrutton on Charterparties and Bills of Lading* (Stewart C Boyd and others, 21st edn, Sweet and Maxwell 2008) art 194.
[127] *Blackgold Trading of Monrovia v Almare SpA Navigazione of Genoa* [1981] 2 Lloyd's Rep 433.

that both parties are to be discharged of *all liabilities,* and are therefore precluded by estoppel from claiming damages for non-payment of freight.

VII. COMPUTATION OF DAMAGES

[A] THE CHARTERERS ARE ENTITLED TO CLAIM THE ADDITIONAL COSTS OF OBTAINING A SUBSTITUTE CHARTER AS A RESULT OF THE FAILURE TO FURNISH THE VESSEL IN TIME

47. It is submitted that the Charterers can recover the costs of obtaining a substitute charter from the Owners. The Charterers had to incur additional freight as a result of the breach on the part of the Owners, which necessitated the hire of a substitute voyage, at an increased rate.[128] Applying the test of reasonable foreseeability in *Hadley v Baxendale,* the costs of obtaining a substitute fixture for the same voyage, in the event of the failure to provide a vessel due to inordinate delay, must have been within the reasonable contemplation of the parties at the time the contract was concluded, and cannot be said to be an *unlikely* result of the breach.[129] Further, the Charterers discharged their duty to mitigate the loss consequent to the breach without delay,[130] by expeditiously securing a replacement voyage at the best available market rate.[131] Further, this cost remains recoverable notwithstanding that the charter was cancelled under the cancellation clause.[132]

48. The ruled laid down in *Mercator* posits that, in certain exigencies, the damages being in the reasonable contemplation of parties is not enough, and must be accompanied by a concomitant *assumption of responsibility.* The existence of a predictable spot tanker market,[133]

---

[129] *Hadley v Baxendale* (1854) 9 Exch 341; *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528 CA; *Koufos v Czarnikow Ltd (The Heron II)* [1967] 2 Lloyd’s Rep 457; *Nissho v Livanos* (1941) 69 Ll L Rep 125; *Fyffes Group Ltd v Reefer Express Lines Pty Ltd* [1996] 2 Lloyd's Rep 171, 194.
[130] *East Ham Corp v Bernard Sunley & Sons* Ltd [1966] AC 406; *Pacific Interlink Sdn Bhd v Owner of the Asia Star* [2009] 2 Lloyd's Rep 387; *British Westinghouse Electric Co Ltd v Underground Electric Rlys* [1912] AC 673, 689.
[131] Page 98, 99 of Bundle.
[132] *Thomas Nelson & Sons v Dundee East Coast Shipping Co Ltd* 1907 SC 197 (Scotland); *Maredelanto Compania naviera SA v Bergbau-Handel GMBH (The Mihalis Angelos)* [1971] 1 QB 164 *;* TE Scrutton, *Scrutton on Charterparties and Bills of Lading* (Stewart C Boyd and others, 21st edn, Sweet and Maxwell 2008) art 194.
[133] TD15 short term WS six week rate moves graph, Page 99 of Bundle.

coupled with the absence of special circumstances requiring special knowledge,[134] rendered the freight differential as predictable and quantifiable.[135] This obviated the need for the assumption of responsibility under the *Mercator* rule, and no further limit to recovery can be imposed;[136] the mere knowledge of probable and natural losses is sufficient.[137] Therefore, it is submitted that the Charterers are entitled to:

(i). Increased costs of $824,000 being the difference between the costs of the substitute fixture and the freight saved; *or alternatively,*

(ii). The total costs of $6,018,804 the substitute fixture, in the event that advance freight is found to have been earned by the Owners.

[B] THE CHARTERERS ARE ENTITLED TO RECOVER THE INCREASED COSTS AT THE LOADPORT AND DISPORT

49. Due to the Owners' failure to meet the laycan, the Charterers had to incur further costs at the Loadport and the Disport.[138] It is widely recognised that increase costs at the load-port and the diminution of the sale price at the disport are *not an unlikely consequence* of the breach of a charterparty.[139] This is best expressed as the difference between the increased rate payable and the originally stipulated price at the port of loading[140] (amounting to US$ 100,000), which was a negotiated sum of the claimed figure of US$ 150,000 under the terms of the relevant contract,[141] thus further satisfying our duty to mitigate.[142] Similarly, the difference between the initial contract rate of sale and the lowered rate that the Charterers are now compelled to accept at the

---

[134] *Hadley v Baxendale* (1854) 9 Exch 341.
[135] *Sylvia Shipping Co Ltd v Progress Bulk Carriers Ltd* [2010] EWHC 542 (Comm); *Transfield Shipping Inc v Mercator Shipping Inc* [2008] 2 Lloyd's Rep 275.
[136] *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2008] 2 Lloyd's Rep 275; GH Treitel, The Law of Contract (Edwin Peel, 12th edn, Sweet & Maxwell 2007) para 20-087.
[137] *Monarch Steamship Co Ltd v Karlshamns Oljefabriker (A/B)* [1949] AC 196, 225.
[138] Page 112 of Bundle.
[139] *Fetherston v Wilkinson* (1872-73) LR 8 Ex 122; *Geogas SA v Trammo Gas Ltd (The Baleares)* [1993] 1 Lloyd's Rep 215; *Koufos v Czarnikow Ltd (The Heron II)* [1967] 2 Lloyd's Rep 457.
[140] *Geogas SA v Trammo Gas Ltd (The Baleares)* [1993] 1 Lloyd's Rep 215.
[141] Cl 22c, SC's Claim submission, Page 112 of Bundle.
[142] *Pacific Interlink Sdn Bhd v Owner of the Asia Star* [2009] 2 Lloyd's Rep 387; *British Westinghouse Electric Co Ltd v Underground Electric Rlys* [1912] AC 673, 689.

port of discharge (amounting to US$ 300,000)[143] as well as all other ancillary expenses associated with the delay at both ports are also due to them.[144]

50. The Owners cannot evade liability on the grounds that they were not aware of the nature of subsequent contracts. Any reasonable businessman in their position must have known, that they were being shipped for the furtherance of a subsequent contract. Therefore, such knowledge can be imputed to the Owners as well, and the losses accruing from such contracts must be regarded to be in the reasonable contemplation of the parties.[145]

51. Even if the tribunal were to believe that the damages at load port and disport were consequential damages,[146] it is submitted that the special circumstances[147] leading to such damages were communicated to the Owners as they were made aware about the planned shutdown of terminal at disport.[148] Further, they had assumed the responsibility[149] for such a loss as is evidenced by their communication dated November 19, 2011.

52. The *proxima causa* is not the cause latest in time,[150] but the one proximate in efficiency.[151] Where the breach by the defendant is one of the two causes of loss both co-operating, damages would be awarded against him.[152] The existence of multiple causes does not demand the determination of a more effective cause, and merely the establishment of a breach as an effective cause is sufficient.[153] It is contended that the breach by the Owners was an effective

---

[143] *Dunn and others v Bucknall Brothers* [1902] 2 KB 614.
[144] *Geogas SA v Trammo Gas Ltd (The Baleares)* [1993] 1 Lloyd's Rep 215.
[145] *Ströms Bruks Aktie Bolag v John & Peter Hutchison* [1905] AC 515, 523 (Lord Macnaghten).
[146] *Hadley v Baxendale* (1854) 9 Exch 341.
[147] Page 3, 89 of Bundle.
[148] *Hadley v Baxendale* (1854) 9 Exch 341; *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528 CA.
[149] *Transfield Shipping Inc v Mercator Shipping* Inc [2008] 2 Lloyd's Rep 275; *Sylvia Shipping Co Ltd v Progress Bulk Carriers Ltd* [2010] EWHC 542 (Comm).
[150] *Yorkshire Dale Steamship Co v Minister of War Transport* [1942] AC 691.
[151] *Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd* [1918] AC 350.
[152] *Heskell v Continental Express Ltd* [1950] 1 All ER 1033, 1048 (Devlin J).
[153] *County Ltd v Girozentrale Securities* [1996] 3 All ER 834; John Arthur, 'Damages and Equitable Compensation in a Commercial Setting' (2010) < http://www.gordonandjackson.com.au/uploads/documents/seminar-papers/Damages_and_Equitable_Compensation_-_John_Arthur.pdf> accessed 1 May 2014.

cause of the loss as it the predominant reason[154] that necessitated a replacement voyage which was the subsequent cause of a delay at load-port and disport. Hence, the Owners are liable to pay the additional costs incurred by Charterers at Loadport and Disport.

PRAYER

In light of the above submissions, the Charterers request the Tribunal to declare:

1. That the Owners' claims are not maintainable;
2. That the Owners are in breach of their obligations under the charter; namely –
    a. The obligations under the Estimated Time of Arrival clause; and
    b. The obligation to proceed without unreasonably delay.
3. That the Owners are not exempted from liability for damages arising from such breach;
4. That the Charterers are not entitled to any advance freight, or, alternatively, the Charterers may recover such dues.

And it is therefore prayed for the following reliefs:

1. USD 1,224,000 or alternatively USD 6159368.75;
2. Compound or alternatively simple interest under S.49 of the Arbitration Act of England at such rests and at such rates as the tribunal deems fit;
3. Costs with compound or alternatively simple interest on costs;
4. Further or other reliefs.

[154] *Yorkshire Dale Steamship Co v Minister of War* Transport [1942] AC 691; *Monarch Steamship Co Ltd v Karlshamns Oljefabriker (A/B)* [1949] AC 196.