



Neutral Citation Number: [2026] EWCA Civ 641

Case No: CA-2025-002537

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES (KBD)**  
**Mr Andrew Hochhauser KC (sitting as a Deputy Judge of the High Court)**  
**[2025] EWHC 2036 (Comm)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/05/2026

Before :

**LORD JUSTICE COULSON**

**LORD JUSTICE ZACAROLI**

and

**LORD JUSTICE FOXTON**

Between :

**TONZIP MARITIME (SINGAPORE) PTE LTD**  
**(formerly named TONZIP MARITIME LTD)**

**Claimant/**  
**Appellant**

- and -

**2 RIVERS PTE LTD**  
**(formerly named CORAL ENERGY PTE LTD)**

**Defendant/**  
**Respondent**

**Nicholas Vineall KC and Emmet Coldrick (instructed by Wikborg Rein LLP) for the**  
**Appellant**  
**James Shirley and Tom Hall (instructed by HFW Middle East LLP) for the Respondent**

Hearing dates : 6 and 7 May 2026

-----  
**Approved Judgment**

This judgment was handed down remotely at 2pm on 22 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

## **Lord Justice Foxton:**

1. This appeal is brought by the owners of the MV CATALAN SEA (“the Owners”) against the voyage charterers (“the Charterers”) arising from the Owners’ refusal to comply with an order given by the Charterers to lift a cargo of crude oil to be shipped by a Russian oil company.
2. The Owners contend that they were entitled to refuse that order by reference to a clause in the charterparty on an amended ExxonMobil VOY2005 (“the Charterparty”) which has been referred to in this case as the “EPS Sanctions clause”. Sub-clause C of that clause, which is considered in more detail below, permitted the Owners to refuse to comply with an order “which in the reasonable judgment of the Owners is prohibited by sanctions or will expose the Owners, the vessel or its managers, crew, the vessel’s insurers or reinsurers to sanctions”.
3. In his careful and closely reasoned judgment (“the Judgment”), the Judge agreed with the Owners that their entitlement under the last part of this clause to refuse an order arose where the Owners held a reasonable apprehension to a risk of sanctions. However, the Judge accepted the Charterers’ submission that no such reasonable apprehension arose on the facts.
4. The Owners now appeal against that decision, with the leave of the Judge, and also, by way of a subsidiary argument, challenge the Judge’s failure to place reliance on the decision of the General Court of the European Union in Case T-526/21 in *Gutseriev v Council* (“the EU Decision”) which addressed the sanctioned status of a relevant entity. By way of a Respondent’s Notice, the Charterers challenge the Judge’s construction of the EPS clause and the Judge’s conclusion that the EU Decision was admissible. For reasons set out below, it has not been necessary to rule on the competing arguments in relation to the EU Decision.

## **The Facts**

5. With the exception of the evaluation of those facts relevant to the reasonableness of the Owners’ judgment, the facts are not in dispute and we can take them from the Judgment.
6. By the Charterparty, dated 5 November 2021, the Charterers chartered the Owners’ vessel “CATALAN SEA” (“the Vessel”) to carry a cargo of oil from a Russian black sea port in the Ust Luga to Primorsk range to the Mediterranean (intention Aliaga, Turkey).
7. The Charterparty included the EPS Sanctions clause, the essential effect of which I have summarised above. It was and remains common ground that “Sanctions” for the purposes of that clause refers, inter alia, to those provisions contained in the UK’s Sanctions and Anti-Money Laundering Act 2018 (“SAML A”); the Republic of Belarus (Sanctions (EU Exit) Regulations 2019/600; Council Regulation (EC) No 765.2006 of 18 May 2006 concerning restrictive measures in respect of Belarus; and Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus. The Judge referred to these measures collectively as “Relevant Sanctions Laws”.

8. The individuals sanctioned under these measures included Mr Mikhail Gutseriev (“Mr Gutseriev”), a Russian businessman with links to the Lukashenko regime in Belarus. He was sanctioned by the EU on or about 21 June 2021 and by the UK on 9 August 2021.
9. On or about 22 July 2021, it was reported in the Russian financial newspaper, *Kommersant*, that Mr Gutseriev had:
  - i) transferred the ultimate beneficial ownership of a Russian oil company named “Neftisa” to his brother, Mr Sait-Salam Gutseriev, retaining only a 7% share; and
  - ii) been replaced as head of Neftisa's board of directors by Mr Sait-Salam.
10. The *Kommersant* article stated that “according to lawyers, it is not yet clear whether the EU will evaluate the Neftis[a] deal as an attempt to circumvent sanctions.” After noting that companies associated with Mr Gutseriev had experienced difficulties selling spot oil shipments after he was sanctioned by the EU, it stated:

“Counterparties of companies that were previously controlled by Mikhail Gutseriev will be able to painlessly complete transactions that were concluded before the date of the introduction of sanctions, explains the head of the legal practice of Grace consulting Ltd Ekaterina Orlova, but in terms of new transactions the situation is ambiguous.

According to her, further cooperation with companies whose shareholders Mikhail Gutseriev left will depend on how the risk management of counterparties interprets the norms of sanctions restrictions, and most importantly how they will be applied by the European and Swiss regulators (that is, banks, through transactions are taking place).

The main question is whether the transfer / sale of shares in controlled companies to relatives by Mikhail Gutseriev will be regarded as actions aimed at circumventing sanctions, the lawyer explains. Lawyers do not have an unambiguous position on this subject in European jurisdictions: some believe that even if persons are affiliated, this does not indicate an unequivocal action in the interests of each other, however there is a conservative position that family members are somehow recognized as acting in the common interest. In this case, EU Council Decision 642 / CFSP of October 15, 2021, is also relevant, which states that the indirect provision of funds to sanctioned persons is unacceptable. Will interaction with companies controlled by persons affiliated with Mikhail Gutseriev be an indirect provision of funds, in each specific case the regulator decides, Ms Orlova notes ....”

11. By 11 November 2021, the Owners had picked up that the cargo to be loaded under the Charterparty might be shipped by a company called PAO Russneft. On that date, the Owners downloaded a document from Infospectrum, a commercial information provider, about that company (which is an associated company of Neftisa). The document was dated 16 July 2021. It stated that the company was “perceived to be largely controlled by Mikhail Safarbekovich Gutseriev” who had established the company, and referred to Mr Gutseriev’s control of the JSC Safmar Group. A section headed “Recent Developments” stated:

“In its latest annual report, Russneft disclosed that ‘as at 31 December 2020, the person who is able to control the actions of the Company is Mikhail Safarbekovich Gutseriev’. We note that since this point, Mr Gutseriev has been placed on the EU’s sanctions list in June 2021, due to his close relations with, and interests in, the Belarus economy. We emphasise that Russneft is not sanctioned. However, the event has had some ramifications for the relationship between Mr Gutseriev and Russneft, as Mr Gutseriev is widely reported as having stood down from the board of the company, with the likely intention of giving the company the freedom to manoeuvre in the manner to which it is accustomed.”

12. In a section headed “Sanctions Check” the report identified Mr Gutseriev as the “perceived ultimate beneficial owner” and stated that he was on the EU Belarus sanctions list. The report observed of this event:

“We note the EU’s decision to impose sanctions on Mr Gutseriev due to his links with Belarus, but we emphasise that Russneft is not sanctioned. Nevertheless, we detect some distance emerging between Russneft and Mr Gutseriev, as he has reportedly stepped down from a direct management role in the company, possibly to limit any impact on Russneft. Russneft remains well-regarded in principle, and its long-term performance appears likely to be unaffected by the sanctions. However, we would strongly recommend that a close monitor is placed on this situation, hence the short Review Period recommendation.”

13. On 15 November 2021, after Neftisa had been identified as the shipper, the Owners carried out sanctions screening checks on that company and on Mr Gutseriev using Refinitiv World-Check, a platform used by a number of banks and shipowners when managing sanctions issues:

- i) The Refinitiv report on Neftisa stated it was “associated to sanctioned individual – reported 2021 ... Wholesale trade in crude oil (Apr 2008 - ), Indirect owner and Chairman of the Board of directors: Mikhail Safarbekovich Gutseriev (sanctioned individual) (reported July 2015 – Jul 2021)”. Under the heading “Reports”, it stated “Aug 2021 – no further information reported”. The section “connections / relationships” referred to Mr Gutseriev. The report has a series of hyperlinks under the heading “Sources” which included the *Kommersant* article referred to at [10] above, but the Owners did not click on any of the links.
- ii) The Refinitiv report on Mr Gutseriev stated that he was a 54.53% shareholder of the Safmar Group (“June 2021 – ”); Chairman of the board of directors of Neftisa (“Feb 2015 – ”); Chairman of the board of directors of Russneft PJSC (“Feb 2015 - ”); Chairman of the board of directors of the Safmar Group (“ - June 2021”). Under the heading “EU sanctions” the report referred to Mr Guseriev’s reported links with the Lukashenko regime in Belarus. It contained the same hyperlink to the *Kommersant* article.

14. On 17 November 2021, the Vessel arrived at the nominated port of loading, Primorsk, and gave notice of readiness at 00.01 hours. In the Judge’s words, “there was then something of a stand-off” between the Owners and the Charterers, arising from the fact that the Charterers wished to load a cargo to be shipped by Neftisa. The draft bills of lading provided to the Owners in respect of the cargo (which in due course would embody a contract between the Owners and the shipper) identified Neftisa as the

shipper. On 17 November 2021, the Charterers confirmed to the Owners that Neftisa were indeed the shippers, and ordered the Owners to load the cargo. The cargo (“the Neftisa Cargo”) was being sold by Neftisa to the Charterers FOB Primorsk under a sale contract dated 12 April 2021, with title and risk passing at the inlet flange of the hose connection of the Vessel's intake pipe at the load port.

15. It was not in dispute that performance of the carriage of the Neftisa Cargo would have taken place in part within the EU and part within the UK. Two of the Vessel's crew were EU nationals and the Owners' directors were UK nationals, resident in the EU. As a result, it was accepted that the lifting of the cargo took place within the territorial scope of the Relevant Sanctions Laws.
16. The Owners refused to load the Neftisa Cargo and called upon the Charterers to provide alternative voyage orders. The Charterers sought to persuade the Owners to change their mind, providing a letter dated 16 November 2021, on Neftisa headed paper, stating that Mr Gutseriev was not a member of the Board of Directors of Neftisa and “[i]n accordance with the legislation of the Russian Federation is not the controlling person of ‘Neftisa’”. This letter was expressed to be “based on information provided by the sole shareholder of .... ‘Neftisa’”, Dolmer Enterprises Ltd. No indication was given as to the form the information took or who had instigated its provision, nor did the letter address the sanctions position otherwise than by reference to the concept of a controlling person under Russian law.
17. The Charterers also provided copies of legal opinions from the Moscow offices of Herbert Smith Freehills LLP (“HSF”) dated 7 and 12 July 2021 and 17 November 2021 and Baker McKenzie LLP (“BM”) dated 14 July 2021.
18. The HSF Note on Control dated 7 July 2021 provided as follows:
  - i) It addressed the definition of control under Article 81(1) of the Russian Joint Stock Company Law, which provides for an “Ownership Test”, a “Board Appointment Test” and a “CEO Appointment Test”.
  - ii) The conclusions expressed were “subject to the limitations, qualifications and assumptions” in Schedule 1; were stated to be based on information available from the documents in Schedule 2 and subject to the assumption that an adjusted corporate structure chart provided to HSF by Neftisa was accurate and up-to-date.
  - iii) On the basis of a review of the Schedule 2 documents and the structure chart, stated that Mr Gutseriev did not satisfy the Ownership Test, the Board Appointment Test and the CEO Appointment Test.
  - iv) The opinion was stated to be addressed solely to Neftisa and stated that it could not be relied upon by any other person.
  - v) Schedule 1 stated that the note was based on information provided to HSF and no responsibility had been undertaken to carry out further investigations; that HSF had relied exclusively on the accuracy and completeness of the information made available from the Documents (which were identified in Schedule 2) and that HSF had not undertaken any verification of that information. Schedule 1 set out a long list of assumptions.

- vi) Schedule 2 identified three documents. The only document produced after the purported change of control was a “representation letter expressed to be signed by the sole executive body of Neftisa dated 6 July 2021 relating to the controlling persons of Neftisa”.
19. The HSF Opinion dated 12 July 2021 referred to the advice in the Note of Control of 7 July. It stated that none of the information reviewed for the purposes of that note suggested that Mr Gutseriev controlled Neftisa, and that, by reference to the same information, “the information available to us” did not suggest that the criteria for control under EU sanctions were met. Once again, the opinion was addressed to and stated that it could only be relied upon by Neftisa, and Annex I set out the “limitations and assumptions” in similar terms to Schedule 1 to the 7 July Note on Control.
20. There was a further short note from HSF dated 17 November 2021 which did not add to the previous two notes. Finally there was an advice in relation to UK sanctions dated 22 November 2021. This stated that “none of the information reviewed for the purposes of the” Note on Control of 7 July 2021 suggested that Mr Gutseriev controlled Neftisa for the purposes of the UK regulations but that “if on the other hand, Neftisa was owned or controlled by Mr M Gutseriev”, the UK regulations would apply. There was a similar provision about reliance being limited to the addressee.
21. The BM memorandum dated 14 July 2021 was similarly addressed solely to Neftisa for its use, and was also based on “certain key assumptions”. These included the extent of Mr Gutseriev’s shareholding in Neftisa; that Mr Sait-Salam and others “act independently from Mr Mikhail Gutseriev and do not receive any instructions from him” and are not “influenced by Mr Mikhail Gutseriev in the exercise of their voting rights”; and that Mr Gutseriev “does not have any agreements and/or arrangements with Neftisa or other shareholders (whether written or oral) that grant him controlling powers over Neftisa”.
22. The executive summary expressed the conclusion that, based on the information provided, Neftisa “should not be regarded as a company controlled by Mr Gutseriev for the purposes of EU sanctions”, continuing:
- “However, the fact that Mr. Mikhail Gutseriev is the brother of the majority shareholder of Neftisa could suggest that Mr. Mikhail Gutseriev exercises de facto control over Neftisa. Should he exercise de facto control, this would suggest a dominant influence of Mr. Mikhail Gutseriev over Neftisa and a fulfilment of the aforementioned factors (c) - (e), (i) and (j). However, we were informed that this is not the case.
- The fulfilment of the criterion of control must be assessed on a case-by-case basis. The EU competent authorities could come to the conclusion that Mr. Mikhail Gutseriev has control over the voting rights indirectly held by Mr. Sait-Salam Gutseriev. However, assuming that the below key assumptions are simultaneously satisfied, Neftisa should not be regarded as a legal entity controlled by Mr. Mikhail Gutseriev.”
23. The BM memorandum referred to internet sources stating that Mr Sait-Salam Gutseriev was Mr Mikhail Gutseriev’s young brother, and long-time business partner, who “owns large capital and numerous business assets”, with BM stating, “we assume that he is

unlikely to be acting as a nominee shareholder acting on behalf of Mr Mikhail Gutseriev.” In a section applying the “control” test, the BM memorandum stated:

“The question of control over Neftisa hinges on the de facto relationship between Mr. Mikhail Gutseriev and his brother Mr. Sait-Salam Gutseriev with respect to the exercise of voting rights in Neftisa. As long as our assumptions (see Section II) are correct, we consider it rather unlikely that Mr. Mikhail Gutseriev would be considered to control Neftisa. However, different interpretation of factual background by the EU authorities regarding presence of control over Neftisa may not be excluded. In particular, if Mr. Mikhail Gutseriev did have influence over the exercise of the voting rights held by Mr. Sait-Salam Gutseriev, the EU Member States' authorities might conclude that Mr. Mikhail Gutseriev has control over Neftisa ...”

24. The Owners have pointed to the fact that the BM memorandum refers to a extract from Neftisa’s shareholders register dated 31 May 2021 which is said to record Mr Sait-Salam’s ownership (i.e. before Mr Gutseriev was made subject to EU sanctions), yet there was no public reference to such a transfer until July 2021, after EU sanctions. The EU Decision records Mr Gutseriev’s submission that the transfer took place on 10 June 2021.
25. The Charterers refused to provide alternative voyage orders. On 24 November 2021, they sent the Owners an email purporting to cancel the Charterparty on the ground of the Claimant's refusal to load the Neftisa Cargo. Later that same day the Owners replied, stating that the Charterers’ purported cancellation amounted to renunciation of the Charterparty and that the Owners were terminating the Charterparty for repudiatory breach.
26. Three post-termination events which had occurred by the time of the trial should be noted:
  - i) On 29 June 2022, Mr Sait-Salam was sanctioned by the UK authorities.
  - ii) Mr Gutseriev challenged the EU sanctions imposed on him before the EU General Court. In September 2023, that challenge was rejected in the EU Decision. However we note that by a further judgment of the General Court handed down after the argument in this appeal (in Case T-286/25 on 13 May 2026) the General Court upheld a challenge by Mr Gutseriev to a decision of the Council to maintain his name on the sanctions list.
  - iii) In December 2024, the Charterers were sanctioned by the UK authorities, and on 18 July 2025 by the EU.

## **The Judgment**

27. Some of the issues which the Judge had to address are no longer live. The Judge’s conclusions on the three issues which are raised on appeal were as follows.
28. On the construction of the EPS Sanctions clause, the Judge accepted the Charterers’ submission that the clause should be construed *contra proferentem* and thus against the Owners. Nonetheless, he held that the Owners did not have to show that complying

with the Charterers' orders was more likely than not to place Owners in breach of Relevant Sanctions Laws, only that they had formed a reasonable commercial judgment that complying with the order created a risk or a danger that Owners would be in breach of sanctions.

29. The Judge held that the appropriate test was not satisfied for the following reasons (at [132]):
- i) The material obtained by the Owners did not evidence Mr Gutseriev's control of Neftisa in November 2021.
  - ii) It was a matter of speculation whether or not there was such control, and the Owners had not been able to confirm that position and accepted that they did not know whether control continued. The Judge held that that was insufficient to "amount to an objectively reasonable decision that Mr Gurseriev had de facto control".
  - iii) That was "particularly so" because the Infospectrum report was available to the Owners but not made available to all of the contractual decision makers, and it suggested that the rationale for Mr Gutseriev stepping down was to give Neftisa "freedom to manoeuvre in the manner to which it was accustomed".
  - iv) There was no evidence for the Charterers to rebut, but in any event the material presented to the Owners and the *Kommersant* article "all spoke with one voice" and "should have been properly taken into account".
30. The Judge held that the EU Decision was admissible but did not assist because it did not address the position in November 2021.

### **The construction of the EPS Sanctions clause**

31. At this point it is helpful to set out the EPS Sanctions clause. The clause is in three sections, with this case being principally concerned with the third:

“(A) THE CHARTERERS HEREBY WARRANT AND REPRESENT TO THE OWNERS THAT NEITHER THE CHARTERERS NOR ANY PERSON OR ENTITY ON WHOSE BEHALF OR UNDER WHOSE DIRECTION THE CHARTERERS ACT OR ASSIST, OR WHO DIRECTLY OR INDIRECTLY OWNS OR CONTROLS THE CHARTERERS, NOR, TO THEIR KNOWLEDGE, ANY PERSON OR ENTITY AT ANY TIME HAVING AN INTEREST IN ANY OF CARGO CARRIED UNDER THIS CHARTERPARTY, ARE DESIGNATED OR SUBJECT TO ANY NATIONAL, INTERNATIONAL OR SUPRANATIONAL LAW OR REGULATION IMPOSING TRADE AND ECONOMIC SANCTIONS, PROHIBITIONS OR RESTRICTIONS (‘SANCTIONS’) AND THAT ENTRY INTO AND PERFORMANCE OF THIS CHARTERPARTY IS NOT AND WILL NOT BE PROHIBITED OR RESTRICTED BY, AND WILL NOT EXPOSE THE OWNERS, THE VESSEL OR ITS MANAGERS, CREW, THE VESSEL'S INSURERS OR RE-INSURERS TO SANCTIONS .

- (B) THE OWNERS HEREBY WARRANT AND REPRESENT TO THE CHARTERERS THAT NEITHER THE OWNERS NOR ANY PERSON OR ENTITY ON WHOSE BEHALF OR UNDER WHOSE DIRECTION THE OWNERS ACT OR ASSIST, OR WHO DIRECTLY OR INDIRECTLY OWNS OR CONTROLS THE OWNERS, ARE SUBJECT TO SANCTIONS AND THAT ENTRY INTO AND PERFORMANCE OF THIS CHARTERPARTY IS NOT AND WILL NOT BE PROHIBITED OR RESTRICTED BY, AND WILL NOT EXPOSE THE CHARTERERS TO SANCTIONS.
- (C) THE OWNERS SHALL NOT BE OBLIGED TO COMPLY WITH ANY ORDERS FOR THE EMPLOYMENT OF THE VESSEL IN ANY CARRIAGE, TRADE, VOYAGE, SHIP-TO-SHIP TRANSFER OPERATION OR OTHER SERVICE WHICH IN THE REASONABLE JUDGEMENT OF THE OWNERS, IS PROHIBITED BY SANCTIONS OR WILL EXPOSE THE OWNERS, THE VESSEL OR ITS MANAGERS, CREW, THE VESSEL'S INSURERS OR REINSURERS TO SANCTIONS. IN THE EVENT THAT SUCH RISK ARISES IN RELATION TO A VOYAGE THE VESSEL IS PERFORMING, THE OWNERS SHALL BE ENTITLED TO REFUSE FURTHER PERFORMANCE AND THE CHARTERERS SHALL BE OBLIGED TO PROVIDE ALTERNATIVE VOYAGE ORDERS”.

**Is the clause to be construed *contra proferentem* against the Owners?**

32. There was argument before the Judge as to whether sub-clause (C) should be interpreted by reference to the *contra proferentem* principle(s) of construction. The Judge accepted the Charterers’ argument that it should, but nonetheless accepted the Owners’ argument as to the interpretation of the clause. The skeletons filed for the appeal addressed that issue, but the oral argument on the appeal proceeded on the agreed basis that, as a clause limiting the Owners’ obligation to follow the Charterers’ orders, sub-clause (C) engaged the principle in *Modern Engineering (Bristol) Ltd v Gilbert-Ash (Northern) Ltd [1974] AC 689*, namely that, in the absence of clear words, the court should presume that the parties did not intend the contract to derogate from the parties’ normal rights and obligations in a contract of this kind. In these circumstances, it is not necessary for the court to engage with the question of whether sub-clause (C) does engage the *Gilbert Ash* principle, and the force of the presumption in this particular case if it does.

**What is the natural and ordinary meaning of sub-clause (C) of the EPS Sanctions clause?**

33. The key issue is whether the words “expose ... to sanctions” are only satisfied by a reasonable judgment by the Owners, on the balance of probabilities, that sanctions are more likely than not to be contravened if the Charterers’ orders are complied with, or whether it is sufficient that the Owners reasonably formed a judgment that there would be a real risk of such a breach of sanctions.
34. Like Mr Vineall KC, I accept that the appropriate starting point for this enquiry, and in many respects the end point, is the words used in the Charterparty. The word “expose” is used in all three sub-clauses of the EPS Sanctions clause, sub-clauses (A) and (C)

being clauses benefiting the Owners, and sub-clause (B) being for the Charterers' benefit.

35. Sub-clauses (A) and (B) contemplate that entry into or performance of the Charterparty may either be prohibited or restricted by sanctions or, as an alternative, "expose" the [Owners/Charterers] to sanctions. The former words are concerned with the actual legal effect of the sanctions, and the latter with something else. While Mr Shirley argued that interpreting exposure as "risk" would leave little, if anything, for the words "prohibit" or "restrict" to do, the clauses involve wide, mutual, warranties intended to protect one party against sanctions issues arising from the status of the other party and those associated with the other party. In those circumstances, I do not find it surprising that the parties have sought to address the position in broad terms. In any event, Mr Shirley's construction, on which the word "exposure" requires a determination on the balance of probabilities that there is or will be a breach of sanctions, raises the same overlap issue, because it is difficult to see what, if anything, the words "and will not expose" add to the words "will not be prohibited or restricted" on that construction.
36. Sub-clause (C) addresses issues which may arise at two different points in time:
- i) The first is the Owners' obligation to comply with a voyage order when given.
  - ii) The second is the Owners' obligation to continue complying with a voyage order which was already being performed when the sanctions issue arose.

This structure matches the distinction in time charters between the time charterer's primary obligation to order the vessel to a port which is prospectively safe when the order is given, and the charterer's secondary obligation to give alternative orders when a port which was prospectively safe when the order was given becomes unsafe thereafter (see Sir Andrew Baker et al, *Time Charters* (8<sup>th</sup>) [10.50]-[10.51]).

37. The Owners' obligation to obey the order when given does not apply if the Owners make one of two reasonable judgments. The first is when the Owners reach a reasonable judgment that compliance with the order is prohibited by sanctions, which I accept involves a reasonable determination that the voyage is more likely than not to trigger the application of sanctions. The second is a reasonable judgment that compliance will "expose" the Owners to sanctions which, as with sub-clauses (A) and (B), clearly involves a judgment as to something else.
38. However, the terms in which sub-clause (C) addresses the position when the sanctions issue arises after the order has been given, and while it is in the course of being complied with, provide very strong support for the Owners' construction that "exposure" is used in the sense of "put at risk". In the context of an order which is already being performed, the sub-clause refers back to the two matters as to which a reasonable judgment will relieve the Owners of their obligation to comply with the order as "such risk". Given that it is common ground that the same judgment is required both as to whether the Owners are obliged to follow the order when given, and whether they remain obliged to comply with it after it has been given, the Judge was right to conclude that the words "such risk" provide strong support for the Owners' construction. Mr Shirley argues that the words "such risk" means no more than "those conditions", and that words "tucked away" at the end of the second sentence cannot be the tail which wags the construction dog. However, those arguments do not in my

judgment take sufficient account of the structure of the clause (which contains two equally important provisions addressing the same sanctions issues arising at different points in time), nor give sufficient weight to the fact that the words “such risk” have been used to refer to the subject-matter of the Owners’ reasonable judgment when those same issues arise in a post-order context.

39. Mr Shirley submitted that the words “such risk” cannot have any relevance to the meaning of the phrase “expose to sanctions” because those words also refer back to the circumstance that compliance with the order is prohibited by sanctions, and it is accepted that this would not be satisfied by a determination as to the existence of a risk alone. However, in my view, when using a single phrase to refer back to the two elements in the earlier part of sub-clause (C), the sub-clause would be expected to use a word which embraced the lowest common denominator of those two alternatives, namely the risk required by the exposure. It could not realistically be argued that this word would not be capable also of covering the situation when the Owners determined that a continuation of the voyage was likely to lead to a sanctions liability, as well as a determination that it gave rise to a real risk of such a liability.
40. In my view, taken with the other points I have outlined, the language used is sufficiently clear to qualify the Owners’ obligation to follow the Charterers’ orders, notwithstanding any *Gilbert-Ash* presumption which might arise.
41. That conclusion derived from the language used is reinforced by a consideration of the commercial context in which sub-clause (C) operates:
  - i) Sub-clause (C) requires the Owners to make a prospective determination of the effect of future compliance (or continued compliance) with an order, and to do so in circumstances in which the Owners are likely to be much less well-informed than the Charterers as to the factual circumstances bearing on the potential application of sanctions: the beneficial ownership or control of the shipper, and the origins and destination of the cargo.
  - ii) When those issues arise in a sanctions context, they will frequently be hidden from public view, and be eminently contestable.
  - iii) Sanctions laws are generally broadly phrased and complex, with a view to capturing potential evasion of their application, and the sanctions laws of a number of jurisdictions may be engaged by a single transaction.
  - iv) The Owners are required to reach a speedy determination, given the commercial significance of delay in the carriage of goods by sea against a background of moving commodity and freight prices. When the second part of sub-clause (C) operates, the vessel will be at sea heading towards its port of destination at the point when the determination must be reached. The speed with which the Owners are required to make a decision, and the limits of the information likely to be available to them, are to be contrasted with the time, and the information-gathering resources, available to sanctions authorities when determining if the carrying out of the voyage had breached applicable sanctions.
  - v) This is a context in which it is inherently more likely that the Owners are required to reach a reasonable judgment that compliance with the Charterers’ orders will

give rise to a real risk of liability for sanctions, rather than require a determination that such a liability will arise on the balance of probabilities.

42. In addition to his arguments concerning the language of sub-clause (C) which I have already addressed, Mr Shirley advanced two further arguments, the first by reference to other clauses in the Charterparty, and the second by reference to conclusions reached in other cases on clauses using the word “expose”.
43. As to the former, he points to the fact that the Charterparty contained other clauses which use the word “expose” but in combination with language which is more suggestive that the clause is concerned with a risk rather than whether something will happen on the balance of probabilities. He argues, in effect, that these clauses show that when the parties wished a particular consequence to follow from the existence of a determination as to risk alone, they used clearer language to achieve that end.
44. The first of the two clauses relied upon in support of this argument is the BIMCO War Clause for Voyage Charters (“VOYWAR”) 2004, a standard form clause published by the Baltic and International Maritime Council, a market association representing those involved in the maritime industry. This was circulated to the market by BIMCO special circular No 5/2004 which would ordinarily have been admissible in any dispute as to its interpretation.
45. VOYWAR 2004 is a long, dense and detailed clause addressing the consequences of war and war risks, which spans well over one page of single-spaced text in the Charterparty. Among its provisions:
  - i) War risks are defined as certain events (actual, threatened or reported war; act of war etc) “which in the reasonable judgement of the master and/or the owners may be dangerous or are likely to be or to become dangerous to the vessel, her cargo, crew or other persons on board the vessel.” It will be noted that this requires (a) an actual event and (b) a reasonable determination of whether that event may be or is likely to become dangerous. That is a different structure to the present clause.
  - ii) If before loading “it appears that, in the reasonable judgement of the master and/or owners, performance of the contract of carriage, or any part of it, may expose or is likely to expose the vessel, her cargo or crew or other persons on board the vessel to war risks”, the owner can refuse to comply with the order “or such part of it as may expose, or may expose, or may be likely expose” the relevant person to war risks (and in certain circumstances, if alternative orders are forthcoming, cancel the charterparty). This has greater similarity to sub-clause (C), but Mr Shirley points to the language “may expose”, “likely to expose” and “may be likely to expose” which are absent from sub-clause (C).
  - iii) There is also a clause addressing the continuation of the performance of voyage orders “where it appears .. that in the reasonable judgement of the master and/or owners, the vessel [etc] may be, or are likely to be, exposed to war risks”.
  - iv) There is a right to deviate from the customary route in the same circumstances.

46. The second is the “Gulf of Aden Clause”, which is an amended version of a standard form clause produced by Intertanko, a body of tanker industry operators, to address the piracy threat faced by vessels sailing through the Gulf of Aden. This provides that “if the master or owners determine that the vessel, her crew or cargo may be exposed to the risk of acts or piracy” on the normal route, the vessel may deviate. Mr Shirley points to the words “may expose” and “to the risk”.
47. Where a contract incorporates clauses from different sources (for example different sets of standard terms) with an overlapping area of operation, it will be necessary to read them together and do so in a way which resolves inconsistencies (see e.g. *MS Amlin Marine NV v King Trader* [2025] EWCA 1387). The clauses on which Mr Shirley relies do not overlap in their field of operation, albeit it may be said that they address hazards with some degree of familial relationship. He is relying on the wording of two standard form clauses which the Charterparty incorporates not to qualify the operation, but to influence the meaning, of a third in its field of operation. Further, this is not a case in which it is possible to approach these aspects of the Charterparty by reference to the actions of the single legal draftsman contemplated by Diplock LJ in *Prestcold (Central) Ltd v Minister of Labour* [1969] 1 WLR 89, 97 who “aims at uniformity in the structure of his draft.” As the same judge noted in *Lindsay (WN) & Co Ltd v European Grain & Shipping Agency Ltd* [1963] 1 Lloyd’s Rep 437, 443 of the contract before him then:

“As is the case with many standard commercial contracts which have evolved piecemeal over the years, the drafting is not self-consistent, and the nomenclature employed is not uniform. The usual presumption that the same word is used throughout the contract in the same meaning is less strong than in the case of a contract drafted at one time by a single draftsman.”

48. The position must be a fortiori when comparing three standard form clauses of independent origin incorporated into a single contract. I am not persuaded that it is appropriate to assume consistency of linguistic usage across different market standard clauses, which will frequently have their own interpretative matrix (e.g. the accompanying circulars of the BIMCO clauses), simply because they are incorporated into the same charterparty. This point is well-made in Males LJ’s observation in *International Entertainment Holdings Ltd v Allianz Insurance Plc* [2024] EWCA Civ 1281, [18]:

“Where a contract shows signs of having been drafted as a coherent whole, it must be construed accordingly, and it is often a reasonable inference that terminology has been used consistently as between the various clauses. But it is commonly the case that insurance policies are not drafted in this way. Rather, as in the present case, they appear to include a selection of different clauses adopted from other contracts, with no attempt to ensure that language is used consistently throughout the policy. This “pick and mix” approach means that the inference of consistent usage has little or no force, and that reference to the same or similar language in other clauses of the policy may shed little light on the meaning of the term in question. As Mr Charles Dougherty KC for the insurer recognised, there is an obvious danger in trying to find coherence between clauses which have been stitched together with no attempt to ensure such coherence.”

49. In any event, I am unable to find in either the BIMCO 2004 War Clause or the amended Intertanko Gulf of Aden clause any sign that the parties did not intend the word “expose” without more to refer to a risk, still less sufficient to suggest that a clause which later embraces the concept of exposure within the words “such risk” was not intended to do so. Neither of these clauses leads me to doubt the correctness of the conclusion I have reached on the basis of the language of sub-clause (C) and the context of its application.
50. Mr Shirley also relied on authorities which considered the word exposure in a commercial contract, and the court was taken to three. The clauses were all differently worded, and applied in different contexts. For that reason, their ability to influence the proper construction of sub-clause (C) was limited.
51. The case on which Mr Shirley placed the most reliance was *Mamancochet Mining Ltd v Aegis Managing Agency Ltd* [2018] EWHC 2643 (Comm). In that case, a clause in a marine insurance policy relieved the insurers of their obligation to pay an indemnity if doing so “would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws, or regulations of the European Union, United Kingdom or United States of America.” Teare J at [45] referred to dictionary definitions defining expose as “lay open to something undesirable”, “subject to risk” and “leave without protection”. At [46], he contrasted the concept of being “‘exposed’ to a sanction (in the sense of being laid open to a sanction or left without protection from a sanction) or ‘exposed’ to the risk of being sanctioned (in the sense of being subject to the risk of a sanction).” He noted that the clause did not refer “in terms to being exposed to *the risk* of a sanction or prohibition”. He was persuaded that the clause only applied where “payment of the claim in question would be conduct which was prohibited by the applicable laws or regulations.”
52. The clause at issue in *Mamancochet* did not use the concept of being “exposed to sanctions” as an addition to performance being “prohibited by sanctions”, nor did it equate exposure with “such risk” elsewhere in the clause. The commercial context was also different:
- i) At [49], Teare J attached significance to the fact that the clause in question operated to relieve one party of performance of an accrued payment obligation, suggesting that “an assured would only be willing to agree that the insurer was not obliged to pay an otherwise valid claim where the insurer was prohibited in law from paying.” The present context – in which the words “exposed to sanctions” appears in clauses availing both parties, and in which the triggering of sub-clause (C) preserves the Charterers’ ability to issue an alternative order – is very different.
  - ii) The decision whether or not an insurance claim should be paid does not involve a decision “in the heat of the moment” in the manner of a decision to follow or continuing to follow a voyage order.
53. For these reasons, I am not persuaded that the *Mamancochet* decision requires sub-clause (C) to be construed in the manner for which Mr Shirley contends.
54. The second case is *Pacific Basin IHX Ltd v Bulkhandling Handymax AS (The Triton Lark)* [2011] EWHC 2862 (Comm) (“*Triton Lark I*”); [2012] EWHC 70 (Comm)

(“*Triton Lark 2*”). A clause in a time charterparty, BIMCO’s CONWARTIME 1993 clause (which is in many respects similar to VOYWAR 2004), entitled the owner not to follow the time charterer’s orders:

“where it appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgment of the Master and/or the Owners, may be, or are likely to be, exposed to acts of piracy ... which, in the reasonable judgment of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.”

55. In *Triton Lark I* Teare J considered the meaning of the words “may be or are likely to be exposed”. At [38] he observed that “exposure to acts of piracy means that the vessel is subject to the risk of piracy or is laid open to the danger of piracy”. He held that the words “may be or is likely to be” were intended to express the same standard of probability. This did not require a judgment that an attack by piracy was more likely than not, but a “real danger” or “serious possibility” ([40]).
56. The case was restored for further argument after judgment in *The Triton Lark I* was handed down, because it became apparent that the parties had also been in dispute about the meaning of the words “exposed to acts of piracy”, and whether they required an actual engagement with pirates of some kind, or only a risk of such engagement. In *The Triton Lark II* at [7], Teare J referred to dictionary definitions of the verb “expose”. Having regard to the terms of the clause (and in particular its reference in certain places to “danger”), Teare J held that the clause required “a real likelihood that the vessel will be exposed to acts of piracy in the sense that the place will be dangerous on account of acts of piracy” ([11]).
57. The wording in *The Triton Lark* differs significantly from sub-clause (C), both in the language of “may or is likely to” and the references to danger which Teare J regarded as significant, but also in the respects I have referred to at [52]. I am not persuaded that the decision assists on the construction of the clause in this case.
58. The final case, and the closest in its commercial context, is *Ceto Shipping v Savory Shipping* [2025] EWHC 2033 (Comm), a decision handed down on the same day as the Judgment. In that case, Cockerill J had to consider the effect of a provision in a ship management agreement which relieved the managers of their obligations if “in [their] reasonable judgement, it will expose them or [others] to any sanction ... imposed by any State”. There was no dispute in that case that this required a determination as to risk, the issue being the level of risk. At [243], Cockerill J rejected the contention that it was necessary to establish a “virtual certainty”, both because “the wording here is not a ‘result’ wording (e.g. that the act would result in the imposition of a sanction)” and because “such a level of certainty would seem inapt to civil commercial events”. Her conclusion that “a serious possibility of sanctions resulting would entitle Delfi to reasonably form the view that the vessel was exposed to sanctions” is consistent with my interpretation of sub-clause (C), as is her view that a requirement of this kind to trigger the clause’s application was more apt to the commercial context.
59. Finally, Mr Shirley argued that, whatever else might have satisfied sub-clause (C), it was at least necessary for the Owners to show that they positively and reasonably judged that Mr Gutseriev owned or controlled Neftisa. However, there is no warrant for

interpreting the words “exposed to sanctions” as requiring an actual determination on the balance of probabilities of one issue relevant to the application of sanctions, with a real risk being sufficient for other matters. Nor is it likely that the parties would have chosen to single out one of the most evidentially obscure and challenging enquiries for a higher level of determination.

60. For these reasons, I would dismiss Mr Shirley’s cross-appeal against the Judge’s construction of sub-clause (C) of the EPS Sanctions clause, and uphold the Judge’s determination.

**Did the Judge err in concluding that the Owners’ judgment that complying with Charterers’ orders would expose them to sanctions was not a reasonable judgment?**

*The test to be applied on an appeal*

61. I accept that the Judge’s application of sub-clause (C) to the (essentially undisputed) primary facts of this case was an evaluative exercise, and one with which an appellate court should not lightly interfere. Mr Shirley referred the court to *Subesh v Secretary of State for the Home Department* [2004] EWCA Civ 56, [44] where Laws LJ observed:

“An appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one. The divide between these positions is not caught by the supposed difference between a perceived error and a disagreement. In either case the appeal court *disagrees* with the court below, and, indeed, may express itself in such terms. The true distinction is between the case where the appeal court might *prefer* a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning, and the application of the relevant law, *require* it to adopt a different view. The burden which an appellant assumes is to show that the case falls within this latter category.”

62. Where an appeal is brought against a determination of a primary issue of fact, the burden on the appellant was summarised by Lord Reed in *Henderson v. Foxworth Investments Ltd* [2014] UKSC 41, [67] as follows:

“... in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified”.

63. In this case, the Owners do not shy away from the submission that the Judge’s decision “cannot reasonably be explained or justified”, but they also point to what they submit are material errors of law in the Judge’s analysis which they say led him to that conclusion, and which are said to provide a sufficient basis to challenge that conclusion on appeal.

64. The Owners advanced nine grounds of appeal, but the principal criticism of the Judge’s reasoning and conclusion were as follows:
- i) The Judge wrongly relied on the decisions in *Litasco SA v Der Mond Oil and Gas Africa* [2023] EWHC 2866 (Comm) and *Vneshprombank LLC v Bedzhamov* [2024] EWHC 1048 (Ch) in reaching his conclusion, which were addressing different issues and which did not bear the weight which the Judge sought to attach to them.
  - ii) In his application of sub-clause (C), the Judge wrongly proceeded on the basis that the Owners had to reach a reasonable conclusion that Neftisa was subject to Mr Gutseriev’s control (and hence subject to sanctions), rather than a reasonable view that there was a real risk that this was the position.
  - iii) The Judge wrongly assumed that a determination by the Owners would only satisfy sub-clause (C) if it was arrived at by a reasonable process, as opposed to being an outcome which a reasonable shipowner could have reached.
  - iv) The Judge erred in failing to take into account the EU Decision in assessing whether the Owners’ determination of risk was reasonable.
  - v) In any event, the Judge’s conclusion that a reasonable shipowner could not have arrived at the decision reached by the Owners was not a conclusion reasonably open on the evidence.

*The Litasco and Vneshprombank decisions*

65. In reaching his conclusions, the Judge placed particular reliance on two decisions addressing sanctions issues: my decision in *Litasco SA v Der Mond Oil and Gas Africa* and the decision of Cockerill J and Master Kaye in *Vneshprombank LLC v Bedzhamov*.
66. Taking *Litasco* first, the Judge treated it as legal authority for the proposition that a determination by a contractual decision-maker which involved “speculation” could not be a reasonable determination for the purposes of the clause (see in particular [80]). In explaining why *Litasco* does not establish any such proposition, it is necessary to say a little more about the case:
- i) *Litasco* differed from the present case in two important respects. First, the paragraphs on which the Judge relied were not concerned with a clause which gave one party to a contract the right to form a judgment as to the application of sanctions, but a case in which the court was being asked to hold that there was a triable issue that payment of the amount claimed would involve a breach of UK sanctions law. Second, the issue in *Litasco* was not whether there was a real risk of a state of affairs existing, but whether the defendant had a triable defence that it did. Assessments of risk are necessarily going to have to embrace a number of imponderables, and to that extent inherently call for some form of speculative evaluation.
  - ii) The reference to “speculation” in [64] of *Litasco* reflected the difficulty the defendant had in establishing that there was a triable issue of Mr Alekperov’s continuing control when it was not advancing a positive case to that effect

(having had to withdraw a case previously advanced), and had no supporting evidence, but was hoping that “something would turn up” before trial.

- iii) In contrast to the lack of evidence from the defendant, the claimant had adduced evidence that Litasco had continued to conduct business through the international banking chain including banks with branches in the UK, US and EU. It had done so without any suggestion that it or the many counterparties dealing with it were breaching any sanctions laws in doing so on the basis that a Mr Alekperov (who was sanctioned) continued to control a company in which he held only an 8.5% share and of which he had ceased to be a director. There was the further difficulty that the defendant had itself made two payments to Litasco after the relevant date without suggesting that there was any sanctions issue.
  - iv) It was against that background that I held that the defendant’s argument that the case should proceed to trial on the basis that it might be shown that Mr Alekperov was in control of Litasco was “pure speculation, which may explain why their Defence was amended to replace what was once a positive case of such control with a non-admission.”
67. For those reasons, I am satisfied that the Judge misdirected himself in relying on *Litasco* to support a conclusion that the Owners could not have formed a reasonable judgment of the existence of a risk of sanctions without having reached a positive conclusion that Mr Gutseriev’s control continued. Given the extent to which [132(2)] of the Judgment relies on the Judge’s interpretation of *Litasco*, I am satisfied that this error in the Judge’s reasoning of itself requires the court to revisit his conclusion.
68. In *Vneshprombank*, the principal issue was whether the relevant sanctions regulation prohibited dealings with the funder on the basis that there was “reasonable cause to suspect” that the funder was controlled by a sanctioned person, or whether a breach only occurred when there was both such control as a matter of the fact *and* the party dealing with the funder had reasonable cause to suspect such control. The court ruled in favour of the latter interpretation in UK sanctions legislation.
69. At [54] the court summarised a number of legal principles concerning the application of the “reasonable cause to suspect” test. The Judge referred to the first two subparagraphs of that summary at [111] of the Judgment: that the test imports an objective element requiring an evidential foundation and that the suspicion must be fact-based and genuinely reasonable. The court in *Vneshprombank* found that the “reasonable cause to suspect” test would have been satisfied on the facts of that case. In brief:
- i) The court noted that prior to mid-March 2022, sanctioned individuals held 95% of the shares in the funder, and there was evidence to support the conclusion that they were acting together.
  - ii) The arrangements by which sanctioned individuals were said to have disposed of their shareholdings and ceased to be directors were “obscure” and the date of disposal unclear, with documents relied upon to establish that date being produced late, unverified and unexplained.
  - iii) There was material to suggest that the individual said to have acquired the shares (Mr Fayn) had previously acted in a nominee capacity.

- iv) Despite evidence from the new alleged owner that he owned and controlled the funder in full and in his own right, the timing of the transfer and the fact that it occurred in response to sanctions offered “a reason for a cosmetic disposal”, which was coupled with the lack of any rationale for the purchase by Mr Fayn, or any account by him of his ability actively to run the business.
  - v) There were obscurities regarding the reported timing of the sale.
  - vi) There were unexplained curiosities about the funder’s assets as recorded on a balance sheet used to justify the surprisingly low sale price and issues with other financial documents which “provide some basis for concluding that the sale was not an arms’ length commercial sale.”
70. The issue before the court in *Vneshprombank* – what is required before a party will have “reasonable cause to suspect” in penal legislation – was very different to the issue which arises in this case concerning a contractual determination by a commercial party as to whether there was a real risk of breach of sanctions if an order to load cargo was obeyed. Nonetheless, while we doubt that much assistance was to be gained from the decision, we do not think that the Judge’s reliance upon the decision can be said to involve a material error of law save in one respect: that is in relying on the summary of the principles in *Vneshprombank* to support his conclusion that the fact that Mr Tay did not have a positive belief in Mr Gutseriev’s continuing control was fatal to the Owners’ contention that they had made a reasonable determination. Sub-clause (C) only required the Owners to form a reasonable determination of a risk of sanctions, and Mr Tay’s state of mind was in no way inconsistent with a reasonable determination to that effect.
71. Mr Vineall KC sought to argue that *Vneshprombank* positively supported the Owners’ case as to the reasonableness of its conclusion that there was a real risk of sanctions in this case. Beyond the (obvious) fact that *Vneshprombank* shows that in an appropriate case, there may be reasonable cause to suspect the continuation of previous control notwithstanding a purported change of control, I am not persuaded that the case assists here.

*Did the Judge apply the wrong test?*

72. Mr Vineall KC’s second criticism of the Judge’s analysis is that having correctly concluded that sub-clause (C) only requires a reasonable determination of a risk of sanctions liability, the Judge then approached the application of the clause on the basis that what was required was a reasonable determination that following the Charterers’ orders would give rise to a breach of sanctions.
73. Mr Shirley is right to point out that the Judge, having correctly interpreted sub-Clause (C), recorded the issue he had to decide in accurate terms in the heading for the section of his judgment in which [131]-[132] appear. However, there is force in Mr Vineall KC’s submission, which I accept, that the terms of the Judge’s reasoning in those paragraphs suggest that, at least on the specific issue of Mr Gutseriev’s continuing involvement with Neftisa (consistent with the Charterers’ “middle ground” submission rejected at [59] above), his analysis was addressed to a different (and contractually irrelevant) question of whether the Owners had made a reasonable determination that such control continued in fact:

- i) [132(1)] proceeds on the basis that, to invoke the clause, it was necessary for the Owners to have material “which evidences Mr Gutseriev’s control, direct or indirect, of Neftisa in November 2021”, stating that the Refinitiv World-Check reports did not themselves evidence such control. However, all that was necessary was for Owners to have reached a reasonable determination that there was a real risk that this was the position. The Refinitiv reports were clearly material which the Owners could rely upon in concluding that there was such a risk ( a conclusion which I am satisfied a reasonable owner could draw from the reports).
- ii) At [132(2)] the Judge treated the lack of a positive belief on the Owners’ part as to Mr Gutsuriev’s continuing control as fatal to the Owners’ reliance on sub-clause (C). However, the Owners could reasonably form the view that there was a real risk of such control continuing, without reaching a positive conclusion that it did. The Judge’s error in this regard is particularly clear when he states that the Owners’ state of mind “is insufficient to amount [to] an objectively reasonable decision that Mr Gutseriev had *de facto* control and therefore entitled the Claimant to rely on the provisions of sub-clause (C)”. The Owners did not have to reach a reasonable decision that Mr Gutseriev had such control, only that there was a real risk that he did.

74. Once again, I am satisfied that this error of reasoning justifies this Court in reaching its own conclusion on the issue of the reasonableness of the Owners’ determination, particularly when taken together with the error in the Judge’s reliance on the authorities.

*Did the Judge hold that sub-clause (C) required the Owners to follow a reasonable process and, if so, was he wrong to conclude that they did not?*

75. Mr Vineall KC submitted that the Judge’s reasoning suggested that he had held that the Owners’ determination did not meet the requirements of sub-clause (C) not simply because the determination reached was not an outcome which could reasonably be reached, but because the process by which the decision was reached was not reasonable. He points to:

- i) the Judge’s apparent criticism that not all the Owners’ decision-makers had seen the Infospectrum report on PAO Russneft ([132(3)]; and
- ii) the Judge’s finding that the Owners should have taken both the material provided by the Charterers and the *Kommersant* article “properly ... into account” ([132(4)]).

76. The issues of whether and to what extent the decision of a contractual decision-maker can be impugned not simply by reference to the outcome, but the process by which it is reached, is a complex one. In *Braganza v BP Shipping Ltd* [2015] UKSC 17, when addressing a determination discretion in an employment contract, Baroness Hale suggested that both limbs of the *Wednesbury* reasonableness test applied, stating at [29]-[30]:

“If it is part of a rational decision-making process to exclude extraneous considerations, it is in my view also part of a rational decision-making process to take into account those considerations which are obviously relevant to the

decision in question. It is of the essence of ‘*Wednesbury* reasonableness (or ‘*GCHQ* rationality’) review to consider the rationality of the decision-making process rather than to concentrate on the outcome. Concentrating on the outcome runs the risk that the court will substitute its own decision for that of the primary decision-maker. It is clear, however, that unless the court can imply a term that the outcome be objectively reasonable—for example, a reasonable price or a reasonable term—the court will only imply a term that the decision-making process be lawful and rational in the public law sense, that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose. For my part, I would include both limbs of the *Wednesbury* formulation in the rationality test.”

77. In commercial cases, judges have tended to be resistant to the suggestion that the exercise of a contractual discretion can be attacked on process grounds alone. In *Lehman Brothers International (Europe) v. Exxonmobil Financial Services BV* [2016] EWHC 2699 (Comm), Blair J. rejected an argument that a process requirement should be applied to a contractual discretion to value under a repurchase agreement, noting that *Braganza* at [286] had “expressly left open the question of the extent to which procedural judicial review objections could arise in commercial contracts”. At [287] he stated:

“The contractual discretion in the present case is given to a commercial party to a contract with another commercial party on the wholesale financial markets where the decision is as to the valuation of securities in the case of default. The decision is one which can be (and may need to be) taken without delay, and in which the non-Defaulting Party is entitled to have regard to its own commercial interests. In this kind of situation, I do not agree with LBIE that *Braganza* requires the kind of analysis of the decision-making process that would be appropriate in the public law context”.

78. In *The Triton Lark*, to which I have already referred, at [55] Teare J stated:

“Assuming that CONWARTIME 1993 conferred a discretion or power on the Owners to make a decision which could effect both parties there was no necessity to imply any term as to how that discretion or power must be exercised because the clause said expressly that the Owner’s judgment must be ‘reasonable’. The effect of that clause is that the Owners must make a judgment. It must be made in good faith; otherwise it would not be a judgment but a device to obtain a financial gain. Further, the judgment reached must be objectively reasonable. An owner who wishes to ensure that his judgment is objectively reasonable will make all necessary enquiries. If he makes no enquiries at all it may be concluded that he did not reach a judgment in good faith. But if he makes those enquiries which he considers sufficient but fails to make all necessary enquiries before reaching his judgment I do not consider that his judgment will on that account be judged unreasonable if in fact it was an objectively reasonable judgment and would have been shown to be so had all necessary enquiries been made.”

79. In *Ceto Shipping*, [241], Cockerill J stated:

“The first [issue] relates to whether the enquiries posited by Teare J need to be reasonable in order for there to be an objectively reasonable judgment. *Ceto*

suggested that this was the case. I reject that submission. What matters is whether the judgment was objectively reasonable, not whether the process of reaching it was reasonable or sensible. If an objectively reasonable decision was reached it would not matter if it was reached by a process of unparalleled perfection, sketchy soundings – or indeed ‘*scissors, paper, stone*’”.

80. The authorities to which we were referred leave open a number of possible arguments, including as to:
- i) the extent of the enquiries which the contractual decision-maker must make, and whether that too involves a *Wednesbury* judgment (which might arise here in relation to the *Kommersant* article and the *Infospectrum* report);
  - ii) the status of a decision reached on the basis of enquiries which satisfy that test, if more extensive enquiries would have required a different decision;
  - iii) the status of a decision which was not reasonably open on the information before the contractual decision-maker but which would have been reasonably open on the basis of information which a wider enquiry would have revealed; and
  - iv) how far evidence or facts only becoming available after the contractual-decision is made can impact on the objective reasonableness (in the required sense) of the decision – one of the issues raised by the Owners’ appeal in relation to the EU Decision.
81. In my view, it is not necessary to determine any of those issues in this case. Mr Shirley made it clear that he was not arguing that the Owners were at fault in not obtaining and reviewing additional information. In any event, I have concluded that the Owners’ decision that following the Charterers’ orders would have given rise to a real risk of liability for sanctions was an objectively reasonable decision, whether tested solely by reference to the material which all of the Owners’ decision-makers reviewed, or also the additional material referred to by the Judge. I set out my reasons for these conclusions in the section which follows.
82. For that reason, it is also unnecessary to address the many issues raised by both parties in relation to the EU Decision: whether it presumptively engaged the rule in *Hollington v Hewthorn & Co* [1943] KB 27 at all; if so, whether (as the Judge held) it fell within an exception to that rule for judgments in respect of public or general rights; whether it can be relied upon in relation to the reasonableness of a decision taken nearly two years before; what the factual basis of the decision was; and the effect of the recent decision of the General Court of 13 May 2026. Assuming, in the Respondent’s favour, that the EU Decision was not admissible, I am satisfied that the Owners’ decision that following the Charterers’ orders would have given rise to a real risk of liability for sanctions was an objectively reasonable decision.

*Was the Judge’s conclusion that Owners had not reached a reasonable determination reasonably open to him?*

83. I will first consider the position on the information available to all of the Owners’ decision-makers. Mr Vineall KC suggested that the following undisputed facts on their

own entitled a reasonable owner to conclude that following the Charterers' orders involved a real risk of liability for sanctions:

- i) Mr Gutseriev had had a majority ownership stake in the Neftisa ownership structure, which was of a very significant value.
  - ii) After being designated under EU sanctions (and inferentially in response to those sanctions), that interest was said to have been transferred to Mr Gutseriev's half-brother and long-time business partner, Mr Sait-Salam.
  - iii) The transfer of such a large interest to a family member in such circumstances is capable of raising a real risk of non-arms' length dealing. Mr Vineall KC referred in this regard to two documents published after the termination of the Charterparty: a July 2022 Red Alert issued by NCA, National Economic Crime Centre and HM Treasury's Office of Financial Sanctions Implementation and a Council of European Union "Update of the EU Best Practices for the effective implementation of restrictive measures" issued on 3 July 2024. However, the point made in those documents that the purported transfer of an interest to a family member in such circumstances is potentially a red flag of a cosmetic transfer is a matter of common sense.
  - iv) There was no information as to the consideration provided (if any) for the transfer of this substantial interest.
  - v) The Refinitiv report on Neftisa stated the company was "associated to sanctioned individual – reported 2021" (Mr Gutseriev).
84. Had matters rested there, I accept Mr Vineall KC's submission that it was open to a reasonable owner to conclude that there was a real risk that Mr Gutseriev had not in fact wholly alienated his interest in Neftisa, and that it was not reasonably open to the Judge to have concluded (in effect) that no reasonable owner could have formed that view.
85. Matters did not rest there, because the Owners were sent the Neftisa letter and the HSF and BM materials. As to these:
- i) The Neftisa letter only addressed the position under Russian law, and was very brief. The only source of information given was a corporate shareholder and the letter was devoid of detail. It is exactly the sort of letter which would have been sent had there been a cosmetic transfer of Mr Gutseriev's interest for the purpose of seeking to avoid sanctions;
  - ii) The HSF Note on Control dated 7 July 2021 expressed legal conclusions premised on factual assumptions, whereas any risk of sanctions depended on whether or not those factual assumptions were correct. The sole source of information was a single letter from Neftisa's controlling board, and that was not produced. In effect, like the Neftisa letter, this was a self-certification exercise from a body which, had there been a cosmetic transfer to circumvent sanctions, would necessarily have been privy to it. The HSF Opinion of 12 July 2021, the short further note of 17 November 2021 and the opinion of 22 November 2021 did not add to the position, beyond making it clear that "if on the other hand,

Neftisa was owned or controlled by Mr M Gutseriev”, the UK regulations would apply.

- iii) The BM memorandum dated 14 July 2021 was similarly based on “certain key assumptions”, which once again related to the issue which was the source of any sanctions risk. The BM memorandum made it clear a sanctions risk could arise from a wide variety of arrangements between Mr Gutseriev and Neftisa: Mr Gutseriev giving instructions to Mr Sait-Salam or others; or “influencing” them in the exercise of their voting rights; or the existence of agreements or arrangements which gave Mr Gutseriev controlling powers over Neftisa.
  - iv) The BM memorandum clearly flagged a risk of sanctions authorities reaching a different view (something all the more significant for appearing in advice provided to Neftisa). It stated that “the fact that Mr. Mikhail Gutseriev is the brother of the majority shareholder of Neftisa could suggest that Mr. Mikhail Gutseriev exercises de facto control over Neftisa” and that “the EU competent authorities could come to the conclusion that Mr. Mikhail Gutseriev has control over the voting rights indirectly held by Mr. Sait-Salam Gutseriev”. It also stated that “different interpretation of factual background by the EU authorities regarding presence of control over Neftisa” – i.e. different to those BM had been instructed to assume – “may not be excluded. In particular, if Mr. Mikhail Gutseriev did have influence over the exercise of the voting rights held by Mr. Sait-Salam Gutseriev, the EU Member States' authorities might conclude that Mr. Mikhail Gutseriev has control over Neftisa ...”.
  - v) While the BM memorandum referred to independent sources suggesting that Mr Sait-Salam was a wealthy businessman with a large asset base, it also made it clear that Mr Sait-Salam was a long-term business partner of Mr Gutseriev. While the BM memorandum “assumed” that this made it unlikely he was acting as a nominee shareholder, that would not exclude a real risk (at its lowest) that he was willing to hold Mr Gutseriev’s shares or take instructions in relation to them alongside any pre-transfer interest of his own.
86. The package of information provided by Neftisa through the Charterers would ordinarily have been expected to advance the position that there was no sanctions risk in the transaction to its strongest effect. However, the material provided essentially rests on assumptions originating from a source which could not have offered an independent perspective on the reality of any transfer of control. The BM memorandum would, if anything, have led a reasonable owner to be even more confident that following the Charterers’ orders involved a real risk of sanctions liability.
87. That leaves the two documents which were not taken into account, or at least in the case of the Infospectrum report, not known to all of the decision-makers on the Owners’ side:
- i) The *Kommersant* report records the fact of the transfer of Mr Gutseriev’s majority stake to Mr Sait-Salam, with Mr Gutseriev retaining only a 7% share, and Mr Gutseriev’s replacement as chairman of the board by his brother. However, it clearly flags a risk of sanctions authorities not accepting that there had been an effective transfer, recording the views of lawyers that “it is not yet clear whether the EU will evaluate the Neftis[a] deal as an attempt to circumvent sanctions”. It

refers to the ongoing situation so far as sanctions are concerned as “ambiguous”, with lawyers not having an “unambiguous” position on the subject. It clearly contemplates that some potential counterparties may form the view that transacting with Neftisa will involve a risk of sanctions.

- ii) The Infospectrum report on Russneft does state that “Mr Gutseriev is widely reported as having stood down from the board of the company, with the likely intention of giving the company the freedom to manoeuvre in the manner to which it is accustomed”, but offers no view on whether this involved a genuine cessation of control and influence, or merely a change in the external appearance.
- iii) The Charterers and the Judge placed some reliance on the statement that Mr Gutseriev “has reportedly stepped down from a direct management role in the company, possibly to limit any impact on Russneft.” However that is only described as a “possibility”, the statement is not sourced and the question remains of whether there has been a genuine transfer of control, or steps designed to prevent a more favourable appearance. The report strongly recommends that “a close monitor is placed on this situation.”

88. I am not persuaded that these two documents alter the position as it would have appeared to a reasonable owner as compared with the material in fact available to the Owners, still less to such an effect that they must have led a reasonable owner to conclude that there was no real risk of sanctions liability if the Charterers’ orders were complied with. While the Infospectrum report offers a potentially more positive spin, it does so in tentative and unsourced terms, and the *Kommersant* report clearly flags a sanctions risk perceived by some lawyers and which the risk management functions of some potential counterparties were expected to act on. In “one voice” with the material which was before all the Owners’ decision-makers, it clearly flagged a real risk that sanctions authorities might conclude that Mr Gutseriev remained sufficiently involved in Neftisa for sanctions to be engaged.

89. Having regard to all of these matters, I am satisfied that the Judge erred in concluding that the determination made by the Owners that complying with the Charterers’ voyage orders gave rise to a real risk of liability to sanctions was not a determination which any reasonable shipowner could reach.

### **Conclusion**

90. For these reasons, I would allow the Owners’ appeal and dismiss the Charterers’ *cross-appeal*.

### **Zacaroli LJ**

91. I agree.

### **Coulson LJ**

92. I also agree.