Neutral Citation Number: [2022] EWHC 2636 (Comm)

Case No: CL-2022-000277

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

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

Date: 21/10/2022

Before :

MR JUSTICE ANDREW BAKER

- -

Between :

CETO SHIPPING CORPORATION	**Claimant**
- and -	
SAVORY SHIPPING INC	**Defendant**

- -
- -

Chris Smith KC & Celine Honey (instructed by **Stephenson Harwood LLP**) for the **Claimant**
Julia Dias KC (instructed by **Waterson Hicks**) for the **Defendant**

Hearing dates: 7, 14 October 2022

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Approved Judgment

This is a reserved judgment to which CPR PD 40E has applied.
Copies of this version as handed down may be treated as authentic.

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MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker :

Introduction

1. This Part 8 Claim concerns a bareboat charter of the product tanker m.t. *Victor 1* (previously named m.t. *Spirit*). The charter was dated 28 February 2019 and was on the Barecon 2001 form, as amended and supplemented by the parties. It was further amended by an addendum dated 24 December 2019. When I refer below to 'the charter', unless the context indicates otherwise, I shall mean the charter as amended in December 2019.

2. Pursuant to the charter, *Victor 1* was leased by the defendant, her owner, to the claimant demise charterer, for a period of 36 months at a hire rate of US$7,386 per day. The charter period expired on 1 April 2022.

3. The charter provided for the sale of the ship by the defendant to the claimant on the terms of an appended MoA on the Saleform 2012 form dated 28 February 2019, as amended by the parties. The sale price was stated as US$12,000,000 less a down payment of US$5,000,000 and bareboat hire paid under the charter. That would mean a sale price reduced to nil if hire were paid in full for 36 months. As I set out below, the sale price came to be stated slightly differently in the December 2019 amendment, but nothing turns on that.

4. The standard Barecon provisions dealing with redelivery were deleted, presumably in the expectation that they would not be needed because the MoA would be performed at the end of the charter period. That does not mean that the MoA was bound to be performed, because the parties included preconditions, the meaning and effect of which is now contentious between them. The position is, then, that if all went well there would be a sale under the MoA at the end of the charter, and the parties did not include in their contract any provision dealing in terms with what was to happen if the preconditions were not satisfied as the charter period ended so that title was not transferred then.

5. Technical and crew management was delegated by the claimant to Delfi SA, a company associated with the defendant, under a management contract dated 28 February 2019.

6. Clause 39.1 of the charter, as originally concluded, was in these terms:

   "*On expiration of this charter, and provided that the Charterers have fulfilled their obligations under this Charter, it is agreed that the Charterers will fulfil their obligation to purchase the Vessel. [The] sale will be in accordance with the MoA appended to this contract.*"

7. The addendum in December 2019 resolved a dispute between the parties and amended the charter. The defendant had sent an email withdrawing the ship and cancelling the charter on the basis of non-payment of hire and technical management fees by the claimant. At the instance of the claimant, the ship had been arrested at Khor Fakkan. By Clause 2.1 of the addendum, the defendant agreed to withdraw its withdrawal notice and the parties agreed that it was to be treated as null, void and of no effect. By Clause 3.1 of the addendum, the parties agreed that US$1,133,275.77 had been paid

by the claimant to the defendant since the withdrawal notice and that they would reconcile accounts, and any balance under the charter or the management agreement would be paid by the charterer, within 21 days. Clause 4 of the addendum dealt with getting the ship released from arrest.

8. Clause 6 of the addendum substituted new Clauses 39.1 and 39.2 for original Clause 39.1, in the following terms:

"*39.1 Purchase and Sale obligations*

On expiration of this charter, and provided that the Charterers have paid all hire and any other sums due under this Charter and provided that the Charterers have also paid all management fees and any other sums due under the Management Agreement to Delfi, it is agreed that Owners will sell the Vessel to Charterers for no further consideration, that title to the Vessel will automatically transfer to Charterers and Charterers will automatically be required to purchase and will be deemed to have purchased the Vessel. The sale will be in accordance with the MOA appended to this contract.

39.2 Purchase Option

*Notwithstanding any provisions in this Charter, the Charterers shall have the option to purchase the Vessel on an "as is where is" basis … any time prior to the expiration of the Charter period by giving the Owners 28 days' notice in writing ("**Notice to Exercise Option**") together with payment to the Owners of the following:*

(i) all outstanding Charter hire and any other amounts due under this Charter;

(ii) all amounts that would be due under the Charter at the expiry of the Notice to Exercise Option; and

(iii) the balance of: the Purchase Price of USD12,976,880, as to which (i) the Down Payment of USD5,000,000 and (ii) any Charter Hire paid under this Charter shall be credited to this figure.

Provided that Charterers have also paid all management fees and any other sums due under the Management to Delfi.

Following the expiry of the 28 days' notice contained in the Notice to Exercise Option, Owners will tender Notice of Readiness in accordance with Clause 5 of the MoA and title to the Vessel shall Vessel [sic.] will automatically transfer to Charterers and Charterers will be deemed to have purchased the Vessel."

9. There are now further disputes between the parties. In the summer of 2020, the claimant replaced Delfi as technical and crew managers, placing technical and crew management instead with Saint James Shipping Ltd under a management agreement dated 17 August 2020. The ship is now under arrest and due to be sold in Singapore. The claimant admits that there are claims against it for which, if they are valid claims, it has responsibility under the charter:

i) by Delfi under the February 2019 management agreement, for c.US$2 million;

ii) by Saint James Shipping under the August 2020 management agreement, for c.US$3.5 million;

iii) by the claimant's crew, for unpaid wages, by bunker suppliers, for bunkers supplied during the charter, and by ship chandlers, for supplies to the ship during the charter, for c.US$1.5 million in aggregate.

10. The order for the sale of the ship was made by the Singapore court on 3 October 2022 at the instance of the crew, the claimant having failed to pay or secure the crew's claim.

11. The claimant disputes liability in respect of the claims by Delfi and Saint James Shipping. It accepts that at least a substantial proportion of the other claims are valid, so as to be its responsibility as between itself and the defendant under Clause 10(b) of Barecon 2001.

12. By this Claim, the claimant seeks a declaration that "*Clause 39.1 of the Charter (as amended by the Addendum), on its proper construction, means that the title of the Vessel automatically transfers from the Defendant to the Claimant upon the expiry of the Charter on 1 April 2022, notwithstanding any disputed sums allegedly claimed by … Delfi in respect of the Original Management Agreement.*"

The Hearing

13. The final hearing of the Claim was listed, upon the parties' estimate of half a day, in my Friday list for Friday 7 October 2022. That should not have happened. The Commercial Court Guide (11th Ed.) spells out what is meant by a half-day hearing in this court:

> "**F5.4** The time required for a hearing should be estimated on the basis that the Judge will aim to give immediate judgment at the hearing on any application listed for a hearing of no more than half a day. Therefore:
>
> (a) a hearing of more than half a day must be sought when an application is listed unless the parties are confident that their hearing estimate of half a day or less will be sufficient for (i) the argument of the application, (ii) judgment on the application, and (iii) argument and rulings on costs and other consequential matters arising out of the judgment;
>
> (b) an application should not be treated or listed as an ordinary application (F7.6) unless the parties reasonably expect to require no more than one and a half hours to argue the application."

14. On no sensible view was this hearing ever a half-day hearing, given that explanation. In the event, with interventions from and dialogue with the court (which should be allowed for in estimating the time likely to be required for argument), Mr Smith KC took 2 hours *for his opening submissions*. Ms Dias KC's submissions in response took 1½ hours, followed by a 1-hour reply by Mr Smith KC. So the argument occupied 4½ hours when, by seeking and fixing a hearing on a half-day estimate, the parties were effectively assuring the court of their confidence that they would complete the argument within 1½ hours. It is true that this was the trial of a Part 8 Claim, not a case management conference or interlocutory application. However, if there was any doubt as to whether the court would approach the half-day time estimate differently,

particularly given that the hearing was fixed for an ordinary Friday list, that should have been clarified with the court when obtaining the listing. As practitioners in this court should not need to be told, the limit of half a day on time estimates for hearings in the Friday list is designed, amongst other things, to ensure so far as possible that those hearings do not generate reserved judgments.

15. Fortuitously for the parties, I was scheduled not to have a Friday list the following week, so that I could complete a trial in the Admiralty Court within that week. I therefore had this case listed to resume, part heard, at 9.30 am on Friday 14 October, with the Admiralty trial to follow not before 11.00 am. By further fortuity, the Admiralty trial concluded the previous day, so this case could be re-listed to 10.00 am, and counsel were not under as much time pressure in completing the argument as they would otherwise have been.

16. Without those elements of good fortune, the hearing of this Claim would have been adjourned to be re-listed, not reserved to me, with a time estimate of 1 day. That would have meant a fresh hearing, starting the argument over, in early 2023, unless there was then a successful application to the judge in charge for an expedited listing.

17. If there had been a real prospect that a rapid determination of this Claim might enable matters in Singapore to be resolved without a court-ordered sale of the ship, there might have been a case for an expedited final hearing here. It is far from clear to me that there was any such prospect – and in the event the sale of the ship has been ordered anyway – but be that as it may, it is not appropriate for parties, without making the necessary application to the judge in charge, to achieve expedition *de facto*, by securing a half-day listing in the ordinary Friday list for something that is never going to be a half-day hearing as that is understood in this court, hoping that through luck or indulgence they will get the longer hearing they need rather than an ineffective outing and a direction to re-list.

The Issues

18. The Claim Form, after stating that the charter expired on 1 April 2022, alleges that the claimant asked the defendant to complete the steps necessary to transfer registered ownership to the claimant in April 2022 and that the defendant refused to do so "*on the basis that it is not required to do so because there are amounts allegedly claimed by … Delfi under the Original Management Agreement*", noting that the claimant "*denies that any such sums are due and owing*". It asks the court to determine the question "*whether the Defendant is required to take the steps necessary to transfer the registered ownership of the Vessel to the Claimant, and/or whether the Vessel's title has been automatically transferred to the Claimant, in accordance with clause 39.1 of the Charter and the MoA, (as amended by the Addendum), notwithstanding that disputed sums are allegedly claimed by … Delfi in respect of the Original Management Agreement.*"

19. That is not an accurate description of the parties' dispute or the question of construction arising. The defendant's position was and is that the claimant *does owe* c.US$2 million to Delfi under its management agreement with the claimant, and *therefore* the claimant had not when the charter expired (and, if relevant, still has not) "*paid all management fees and any other sums due under the Management Agreement to Delfi*" within the meaning of Clause 39.1 of the charter.

20. The defendant's further position is that the valid claims by the crew, bunker suppliers, and ship chandlers, make it common ground that the claimant had not when the charter expired (and, if relevant, still has not) paid all "*hire and any other sums due under this Charter*" within the meaning of Clause 39.1. It also says that the claim by Saint James Shipping, if sound, is another claim for "*other sums due under this Charter*".

21. The claimant does not seek to prove, in support of this Claim for declaratory relief, that it does not owe either Delfi or Saint James Shipping the sums they say are owed.

22. The main issues of construction on which counsel made submissions, therefore, were:

    i) whether a sum owed to Delfi under its management agreement is not a sum "*due under the Management Agreement to Delfi*" if the claimant disputes the debt;

    ii) whether in "*hire and other sums due under this Charter*", "*other sums*" includes debts owed to third parties that by Clause 10(b) of the charter the claimant as demise charterer promised the defendant that it (the claimant) would pay.

23. The second of those issues does not arise for determination unless the claimant is correct on the first. The Claim seeks a declaration, in substance, that there was no impediment to title passing under Clause 39.1 when the charter period expired, because the claimant was disputing Delfi's claim that sums were due to it under its management agreement. The primary defence is that there *were* (and are) sums due to Delfi, meaning that the conditions for title to transfer were not met, and therefore there should be no such declaration, since the claimant does not seek in this Claim to prove that nothing was due to Delfi. The alternative defence is that in any event, there were (and are) sums due to others that under Clause 10(b) the claimant had promised the defendant it would pay, and that that also means the conditions for title to transfer were not met. If the primary defence is sound, the declaration sought should not be granted, and it is not necessary to go any further to dispose of this Claim.

24. The argument on the main issues revealed a further issue, namely whether the claimant's obligation and entitlement to acquire the ship, and the defendant's corresponding obligation and entitlement to transfer title, persisted beyond the expiry of the charter if the conditions set by Clause 39.1 for title to transfer were not met at expiry. For the claimant, Mr Smith KC argued that those rights and obligations either crystallised or expired, once and for all, when the charter period came to an end. His argument was that this supported the claimant's case on the first main issue, namely that upon the proper construction of Clause 39.1 "*sums … due under the Management Agreement to Delfi*" refers, and refers only, to sums that the claimant admits to be due to Delfi, or disputes in bad faith, and sums that, having been disputed by the claimant in good faith, have been determined by arbitration or judgment to be due to Delfi.

25. For the defendant, Ms Dias KC's skeleton argument for the hearing contended, to the contrary, that the rights and obligations concerning title to the ship survived beyond the expiry of the charter, so that if within a reasonable time after expiry the claimant satisfied the conditions for title to transfer, and there had been no termination of the parties' relationship on other grounds in the meantime, then title transferred. On that

argument, and all other things being equal, the ship after expiry of the charter would be in the same position as any other ship whose owner had concluded an MoA to sell her to a buyer under which completion had not yet occurred and would only occur if certain as yet unfulfilled conditions set by the MoA were met by the buyer. This was said to support the defendant's case on the first primary issue, which was that 'due means due', such that wherever the parties' dispute may go next, in this court or elsewhere, the declaratory relief sought by this Claim should not be granted and this Claim should be dismissed.

26. In her oral argument, however, Ms Dias KC confirmed her client's primary position to be that Mr Smith KC's 'once and for all' argument is correct, but 'due means due' nonetheless. The argument against 'once and for all' in her skeleton therefore became the more subtle argument that if, contrary to that primary position, 'once and for all' and 'due means due' were in tension, in the sense advocated by Mr Smith KC that if both were true the result was uncommercial, then it was 'once and for all' that could and should give way, because that could be accommodated sensibly by the language of Clause 39.1 whereas 'due does not mean due' could not.

Discussion

27. I start with s.20(2)(h) of the Senior Courts Act 1981, by which (reflecting Article 1(1)(d) of the 1952 Arrest Convention), the Admiralty jurisdiction of the High Court, and therefore the availability of an action *in rem*, extends to "*any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship*". The equivalent provision in the 1999 Arrest Convention is to the same effect.

28. A substantial, repeated theme in Mr Smith KC's opening argument was that there was no difficulty for Delfi if the transfer of title in the ship to the claimant occurred while Delfi was still owed substantial sums under its management agreement, because if the claimant disputed the debt Delfi could pursue an action *in rem* for the debt so as to ensure it became secured while the dispute was resolved.

29. In my judgment, that is a bad argument. It proves both too much and too little; and the latter means that the true position in relation to rights of arrest supports the defendant's case on Clause 39.1.

30. The argument proves too much because if Delfi could have the ship arrested, that would be true for unpaid debts under its management agreement, whether they were admitted by the claimant, or disputed in bad faith by the claimant, or disputed in good faith by the claimant (and in that case whether before or after the dispute had been resolved by arbitration award or court judgment). The posited availability to Delfi of an action *in rem* is therefore no reason to suppose that the parties might have been conveying to each other by their choice of language in Clause 39.1 something other than 'due means due'.

31. The argument proves too little because Delfi was the technical and crew manager. It was entitled to fees from the claimant (and an indemnity in respect of any debts or other liabilities arising out of its provision of management services under the agreement, e.g. if it had a liability for crew wages or ship's supplies) in respect of:

i) technical management services as set out in Clause 3 of the agreement, for example ensuring compliance with Flag State requirements and the requirements of the ISM Code, the ISPS Code and Class, arranging and supervising dry dockings, repairs, and maintenance, and arranging for the supply of spares, lubricating oils and provisions;

ii) crew management services as set out in Clause 4 of the agreement, for example recruiting and engaging crew, ensuring that Flag State and medical fitness requirements were met, and arranging transportation for deployment to or repatriation from the ship;

iii) insurance services as set out in Clause 5 of the agreement, for example arranging hull and machinery, P&I and war risks cover, and handling and settling insurance, average, salvage and other claims and disputes.

32. That is not an agreement relating to the use or hire of the ship. Delfi were not her commercial managers, and any debts owed to them do not concern the use or hire of the ship. In *The Stella Nova* [1981] Com LR 200, Sheen J upheld as a valid claim *in rem* a claim by a commercial manager with the exclusive right to conclude charters, for damages for breach of that right of exclusivity, the owner having chartered the ship to BP Oil Ltd without reference to the manager. In *The Peppy* [1997] 2 Lloyd's Rep 722, David Steel QC (as he was then, sitting as a High Court judge), tried two conjoined actions, one of which was an action *in rem* commenced by a commercial manager relying on the predecessor to s.20(2)(h) of the 1981 Act. There is no indication from the report of that case that jurisdiction *in rem* was disputed, so the decision adds nothing and, with respect, *Berlingheri on Arrest of Ships* (5th Ed.) overstates matters by suggesting (at 3.140, n.74) that *The Peppy* decides anything as to the scope of s.20(2)(h).

33. On no view do those cases about commercial managers, or any questions there might be as to what types of claims arising out of the commercial management of a ship fall within s.20(2)(h), have anything to say in this case concerning debts due to Delfi under its technical and crew management agreement. Mr Smith KC also referred me to *Harms Bergung Transport und Heavylift GmbH & Co KG v Harms Offshore AHT 'Uranus' GmbH & Co KG et al* [2015] EWHC 1269 (Admlty), where claims were made by a technical and commercial manager of six anchor-handling tugs, but the point was not considered because it was common ground that the claims made were within s.20(2)(h), and the question was whether the claims should be stayed in favour of arbitration.

34. Nor do I accept a suggestion by Mr Smith KC that s.20(2)(p) of the 1981 Act might apply to Delfi's claim against the claimant (s.20(2)(p) applies to "*any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship*"). I do not regard it as arguable that Delfi's management fees fall within s.20(2)(p); they are not a ship's disbursement. Nothing in *The Sea Friends* [1991] 2 Lloyd's Rep 322 suggests otherwise. There, the Court of Appeal confirmed that s.20(2)(p) does not apply to a claim by insurance brokers in respect of hull insurance premium for which they had a liability to the hull underwriters at Lloyd's.

35. Thus, contrary to Mr Smith KC's argument, Delfi had a strong and obvious commercial interest in the defendant, its associated company, continuing to own

Victor 1 until it (Delfi) had been paid in full whatever it was owed under its management agreement. That in turn meant that the defendant had a strong and obvious commercial interest in not being obliged to transfer title if Delfi, its associated company, had not been paid in full. That suggests strongly that when the claimant and defendant agreed that title would only be transferred if the claimant had paid "*all management fees and any other sums due under the Management Agreement to Delfi*", they meant what that appears to say, which is that there should be no unpaid debt owed to Delfi under its management agreement.

36. It is true that, if title transferred despite the claimant owing money to Delfi under its management agreement, and if the claimant had not incurred and did not incur liabilities that *would* give rise to entitlements *in rem* against the ship in excess of the difference between the realisable value of the ship and whatever was owed to Delfi, and if the claimant did not sell the ship, the claimant would have, in the ship, a valuable asset against which, ultimately, Delfi might be able to levy execution if it obtained an arbitration award or judgment against the claimant. But that does not detract from what I have said above. It does not cast doubt on the notion that reasonable parties in the position of the claimant and the defendant, expressing their agreement as they did, would surely have meant 'due to Delfi' to mean 'due to Delfi'.

37. That is only reinforced further if it is borne in mind, as of course the parties would have had in mind, that:

    i) by the original Clause 39.1, the transfer of title required the claimant to have "*fulfilled their obligations under this Charter*", plainly a reference to the actual position (whatever it might be) and not (if different) to what had been admitted by the claimant, disputed by the claimant in bad faith or determined by award or judgment;

    ii) the revised Clause 39.1 was part of an addendum to wipe the slate clean after a dispute over whether the claimant had paid all that was due to the defendant in hire and to Delfi in management fees.

38. Ms Dias KC submitted, and I agree, that on its own terms, and in the context of the addendum with its immediate background as just summarised, Clause 39.1 indicates a joint intention that there be no payment obligation outstanding on the claimant's side, before title passed. The transfer of title, Clause 39.1 appears to be saying, is intended to occur only if there is a clean slate as regards the claimant's indebtedness to *inter alia* Delfi. That would not be achieved if title would pass even though there were US$2 million owed to Delfi and unpaid under its management agreement.

39. Mr Smith KC's contrary argument, despite the craft with which it was constructed, came down to this, namely that it was unfair to the claimant, or awkward for the parties, or both, if at the end of the charter a *bona fide* dispute over whether the claimant had fulfilled all its payment obligations created uncertainty over whether the conditions for title to transfer under Clause 39.1 had been met. As to that, I agree with Ms Dias KC's submission that there is nothing unfair to the claimant in a provision requiring that it should have fulfilled all of its payment obligations before it acquires title; and that as regards uncertainty in case of dispute, that is the nature of disputes, and the position is not materially different from any other contract under which an

asset is to be transferred but only if conditions are met and there might be a disagreement, when the time comes, over whether the conditions have been met.

40. Interpreting 'due' to mean admitted or determined to be due, or disputed in bad faith, might narrow somewhat the scope for there to be a dispute, or (more accurately, I think) might modify the nature of the dispute that would need to arise for the position as to title to be in dispute. But in my judgment that does not suggest that a demise charterer and its owner in the situation of the claimant and defendant, if considering the matter reasonably, would have that meaning in mind, and conclude that the other must have it in mind so that by contracting upon the language of Clause 39.1 that must be what was being agreed. If asked whether due means due or something more complicated or nuanced, it seems to me the reasonable business person in the position of these parties would have said that due means due and that if they had meant to contract on the basis of something more complicated or nuanced, they would have done so, i.e. they would have spelled that out.

41. It was obviously to be expected, when the addendum was entered into, that the parties would be in communication as the expiry of the charter period drew near, so that the claimant would be expected to make it known whether it was anticipating taking title to the ship because it considered that there would be no relevant outstanding payment obligations. The defendant would have to take a view on that and whether, therefore, it accepted that title would pass so that it would be obliged to take the formal steps necessary to enable the claimant to register its title. If it did not agree with the claimant, in any event if it failed to enable the claimant to take over as registered owner, the claimant would be protected by a claim for specific performance and/or damages, in support of which it would expect to be able to have the ship arrested, if it was in the right that title had passed and the defendant had misjudged the position.

42. As Ms Dias KC contended, therefore, the claimant's position was protected and satisfactory, on the defendant's construction of Clause 39.1; but on the claimant's construction, Delfi's position was not protected and that might well be considered unsatisfactory by the defendant.

43. I do not think anything I have said is substantially affected if, as Mr Smith KC contended, title either transferred or did not transfer, once and for all, when the charter period expired. If that were the case, it would place greater pressure on the claimant to ascertain whether there was any dispute or doubt over the existence or extent of any outstanding payment obligations and, if possible, get that dispute or doubt resolved during the charter period. Ultimately, though, it would mean no more than that as the charter period came to an end, the claimant would have to take a view, as businesses have to all the time under all manner of contractual arrangements, and act at its risk if it chose not to meet a claim it was not content to accept.

44. It is not necessary, therefore, to decide whether Clause 39.1 operated, if at all, once and for all at the end of the charter period, in order to conclude, as I do, that in its reference to "*all management fees and any other sums due under the Management Agreement to Delfi*", due means due. By this Part 8 Claim, the claimant sought to establish a different construction of Clause 39.1 so as to justify a declaration to the effect, in substance, that it acquired title to the ship on 1 April 2022 even if it then owed (and still owes) US$2 million to Delfi under its management agreement. I am

clear that that is not the correct construction of Clause 39.1, so that this Claim should be dismissed.

45. Some of the considerations leading to the conclusion that 'due means due', as regards sums payable to Delfi under the management agreement, support the defendant's position on the second issue of construction that was considered in argument, namely whether when Clause 39.1 refers to "*hire and other sums due under this Charter*", "*other sums*" includes debts owed to third parties that by Clause 10(b) of the charter the claimant as demise charterer promised to pay. But it is not necessary to take a final view as to that in order to determine this Claim, since the primary defence has succeeded (see paragraph 23 above).

46. In his reply submissions, Mr Smith KC urged me to reach a final conclusion on that issue and on his 'once and for all' argument, come what may, since (he suggested) those points have now been fully argued and it would assist the parties to know where they stand. Ms Dias KC had submitted that I should not decide more than was required to determine the claim brought. I agree with Ms Dias KC.

47. Whatever the position might have been if the facts had been different, now that the ship is to be sold there is no particular urgency about this case. How much more, if anything, it will be necessary or appropriate for this court to deal with, once the sale of the ship has been completed and these parties, the other interested parties, and the Singapore court, have all been able to take stock, I consider uncertain. The appropriate course is to decide now what needs to be decided to determine this Claim, as brought by the claimant, and to leave other matters to be determined at a different time, if they need to be.

48. In that regard, I note, the claimant having asked that this be recorded here and the defendant not objecting to my doing so, that it is common ground between the parties that the claimant has the same rights (if any) in any proceeds of sale of the ship under the Singapore court's order as it would have had in the vessel herself (had she not been sold) in the circumstances which have occurred.

Conclusion

49. In my judgment, upon the proper construction of Clause 39.1 of the charter, title to the ship did not pass to the claimant, and the defendant was under no obligation to transfer title, if the claimant owed management fees or any other sum to Delfi under its management agreement. This Part 8 Claim sought a determination that, to the contrary, title passed even where sums were due to Delfi, if the claimant disputed the debt in good faith and the dispute had not yet been finally resolved, and a declaration giving effect to that determination. It therefore fails.

50. Subject to any observations that counsel may have, I envisage that there should be a final Order, recording the court's conclusion on the point of construction that has been determined, and that for the purpose of this Claim the claimant did not seek to establish that it had paid all management fees and other sums due to Delfi, whether prior to the expiry of the charter or since, and on that basis dismissing the Claim with costs.