

Neutral Citation Number: [2022] EWHC 2800 (Comm)

Case No: CL-2022-000569

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: 3 November 2022

Before :

Mr Justice Andrew Baker

Between :

SEFE Marketing & Trading Limited

Claimant

- and -

Vitol S. A

Defendant

Alex Gunning KC and Saul Lemer (instructed by **DLA Piper UK LLP**) for the **Claimant**
Anna Boase KC and Patrick Harty (instructed by **Slaughter and May**) for the **Defendant**

Hearing date: 3rd November 2022

JUDGMENT

(Approved Transcript)

Mr Justice Andrew Baker
(17:32 pm)

Thursday, 3 November 2022

Judgment by **MR JUSTICE ANDREW BAKER**

1. My conclusions overall, which can be stated in open court, are that: I am persuaded, but only just and by a fine margin, that the claimant has raised a serious issue to be tried as to whether Vitol presently does not have the right to suspend performance that it has threatened to exercise; however, by reference to the material that has been considered in private session, I am not persuaded that if an injunction is not granted the claimant will suffer harm, if Vitol then suspends performance and if in due course it is concluded that it is acting in breach of contract by doing so, for which damages will not prove to be an adequate remedy.
2. Without trespassing on to detail that would involve revealing matters that have been kept confidential, in summary I am not persuaded that the claimant has shown a seriously arguable case that a suspension will cause it significant short or medium term difficulties, and I regard the suggestions that if the claimant is not caused such difficulty nonetheless the mere fact of a suspension and a *bona fide* commercial dispute between the parties needing to be resolved in court will have some wider calamitous impact that the court should take into account as entirely speculative.
3. For those summary reasons, which are sufficient in my judgment, this is not an application that is well founded, and I decline to grant any interim injunctive relief.
4. It remains the case, as it seems to me in principle, that the dispute between the parties as it stands today, and as it may evolve if Vitol does suspend performance from next week and the claimant asserts that in doing so Vitol is acting in breach, may be of commercial importance, clearly, to these parties, and also both within a relatively narrow compass and potentially such as to justify expeditious resolution by the court if the court can accommodate that. I do, therefore, encourage the parties -- if they do not find that in the light of this application failing they are able in a different way commercially to resolve matters, either generally or at least in a way that removes

any urgency -- I do encourage the parties to engage constructively through their solicitors to consider whether there are sufficient but very streamlined processes that could be agreed and proposed to the court on an application, which would need to be made to Mr Justice Foxton, as judge in charge, for the urgent and expeditious resolution of the substantive issue between the parties, which is whether Vitol indeed has the right to terminate the commercial arrangement, and as a result the right under one of the contracts to suspend performance that it has asserted that it has and has been indicating that it may exercise next week.

5. I can indicate to the parties, having made enquiries, that as things stand, were the parties to find that they could propose streamlined processes to bring the substantive issue forward for resolution at a trial hearing that would not require more than one sitting week, it is not impossible that the court might be able to offer them dates in the second half of next term, that is to say in late February or March. I would urge the parties, without being in a position to say that that availability will necessarily remain from day to day, and certainly without being in any position to tie the hands of the judge in charge as to what he makes of the case if an application is made, to engage constructively in the way I have described but to do so on an extremely rapid timescale, so that if an application -- and it may even be if the parties are cooperating a joint application -- for expedition with a bespoke streamlined process is to be presented, it might be presented to Mr Justice Foxton in very short order, by which I mean certainly within next week at the latest.