

IN THE SUPREME COURT OF THE UNITED KINGDOM
Claim No. UKSC/2025/0178

ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)
[2025] EWCA CIV 1210

BETWEEN:

ORION SHIPPING AND TRADING LTD LLC

Appellant/Claimant

-and-

GREAT ASIA MARITIME LTD

Respondent/Defendant

STATEMENT OF FACTS AND ISSUES

1. At Annex I is a tabular chronology of the relevant factual and procedural background to the appeal.

I. STATEMENT OF RELEVANT FACTS

2. The relevant factual background is set out in the Award of an LMAA Tribunal (the “**Tribunal**”) dated 7 September 2023 (the “**Award**”). References in the form [A/xx] are to the paragraphs of the Award.
3. On 4 June 2021, the Appellant (“**Sellers**”) and the Respondent (“**Buyers**”) entered into an MOA on amended NORWEGIAN SALEFORM 2012 terms (the “**MOA**”) for the sale by Sellers and the purchase by Buyers of the M/V LILA LISBON (the “**Vessel**”) [A/22].
4. The MOA provided (*inter alia*) as follows [A/17]:

MHB/1253-1270

MHB/145

MHB/142

“5. Time and place of delivery and notices

(a) The Vessel shall be delivered and taken over safely afloat at a safe and accessible berth or anchorage at/in mainland China exclude Taiwan, Macao, Hong Kong (~~state place/range~~) in the Sellers’ option.

Notice of Readiness shall not be tendered before: 20th July 2021 (date)

Cancelling Date (see Clauses 5(c), 6(a)(i), 6(a)(iii) and 14): 20th August 2021

However, the Vessel shall effect delivery to Buyers immediately after present laden voyage from South Africa to Qingdao China (ETA Qingdao on around 18th July 2021) and no more laden voyage allowed.

(b) The Sellers shall keep the Buyers well informed of the Vessel's itinerary and shall provide the Buyers with twenty (20), ten (10), five (5) and three (3) days' notice of the date the Sellers intend to tender Notice of Readiness and of the intended place of delivery.

(c) If the Sellers anticipate that, notwithstanding the exercise of due diligence by them, the Vessel will not be ready for delivery by the Cancelling Date they may notify the Buyers in writing stating the date when they anticipate that the Vessel will be ready for delivery and proposing a new Cancelling Date. Upon receipt of such notification the Buyers shall have the option of either cancelling this Agreement in accordance with Clause 14 (Sellers' Default) within three (3) ~~Banking Days~~ running days of receipt of the notice or of accepting the new date as the new Cancelling Date.

[...]

(d) Cancellation, failure to cancel or acceptance of the new Cancelling Date shall be entirely without prejudice to any claim for damages the Buyers may have under Clause 14 (Sellers' Default) for the Vessel not being ready by the original Cancelling Date.

[...]

14. Sellers' default

Should the Sellers fail to give Notice of Readiness in accordance with Clause 5(b) or fail to be ready to validly complete a legal transfer by the Cancelling Date the Buyers shall have the option of cancelling this Agreement. [...] In the event that the Buyers elect to cancel this Agreement, the Deposit together with interest earned, if any, shall be released to them immediately.

Should the Sellers fail to give Notice of Readiness by the Cancelling Date or fail to be ready to validly complete a legal transfer as aforesaid they shall make due compensation to the Buyers for their loss and for all expenses together with interest if their failure is due to proven negligence and whether or not the Buyers cancel this Agreement."

5. The Vessel was a 176,423 mt deadweight capesize bulk carrier built in 2003. The agreed purchase price was USD 15 million and the original cancelling date was 20 August 2021 (the “**Original Cancelling Date**”) [A/20] & [A/22]. MHB/145
6. The MOA stated that the Vessel was currently on a laden voyage from South Africa to Qingdao and provided that the Vessel’s expected date of arrival at Qingdao was around 18 July 2021 [A/22]. MHB/145
7. In the event, the Vessel arrived at Qingdao on 26 July 2021, was due to berth on 31 July 2021, and Sellers gave 5 and 3 days’ notice of delivery in Qingdao on 1 August 2021 [A/24]. MHB/146
8. There was a dispute between the parties relating to the balance of the purchase price and the condition of the Vessel, which was settled on 6 August 2021 by way of Addendum No. 2. As part of that settlement, the parties agreed that the berthing schedule of 31 July 2021 was cancelled. Addendum No. 2 contemplated delivery of the Vessel between 13 and 15 August 2021 [A/25-26]. MHB/146
9. On 12 August 2021, Sellers wrote to Buyers informing them that “*the Vessel will not be ready for delivery within the Cancelling Date*”. Sellers proposed that the Vessel be delivered at an alternative location and that the cancelling date be changed to 15 October 2021 (the “**New Cancelling Date**”) [A/27]. MHB/146
10. On 14 August 2021, Buyers responded, saying they agreed to the New Cancelling Date pursuant to Clause 5(c) of the MOA, but without prejudice to their rights under the MOA [A/28]. MHB/146 - 147
11. On 16 August 2021, Sellers concluded a voyage charter with Vale on subjects, which was finalised by a fixture note dated 19 August 2021 (the “**Vale Charter**”). The Vale Charter was for the carriage of a cargo of iron ore from Malaysia to 1-3 safe ports China or Korea in charterers’ option [A/30]. MHB/147
12. Having taken on bunkers at Zhoushan, from where she departed on 17 August 2021, the Vessel carried the iron ore cargo from Teluk Rubiah, Malaysia to Zhanjiang, Guangzhou between 13 September and 4 October 2021 [A/31]. MHB/148

13. In August and September 2021, there was correspondence between the parties about the delivery location, with Buyers initially indicating a willingness to take delivery in Japan [A/32]. MHB/148
14. On 23 September 2021, Sellers tendered a 20 day notice of readiness of delivery at Nagasaki, Japan, which Buyers rejected on the basis that the MOA provided for delivery in mainland China [A/33-34]. MHB/148
15. On 24 September 2021, Buyers obtained an order arresting the Vessel at Zhanjiang and requiring Sellers to provide security of USD 3 million (the “**First Arrest**”) [A/35-36]. MHB/148
16. On 6 October 2021, Buyers gave Sellers notice commencing arbitration [A/38]. MHB/148
17. On 11 October 2021, Sellers provided security in the sum of USD 2.85 million and the Vessel was released on 12 October 2021 [A/37]. MHB/148
18. On 18 October 2021, Buyers applied to arrest the Vessel again in Zhanjiang as security for further claims of USD 5 million. The application to court stated that the New Cancelling Date had expired and that Buyers were “*entitled to withdraw the MOA and claim all the losses thus incurred, including but not limited to the gap between the contract price and the market price*” [A/39]. MHB/148 - 149
19. Still on 18 October 2021, the Guangzhou Maritime Court made an order for the arrest of the Vessel (the “**Second Arrest**”) [A/40]. MHB/149
20. Also on 18 October 2021, Sellers’ former lawyers wrote to Buyers, referring to the Second Arrest, denying that “*Buyers are entitled to recover any losses or damages from the Sellers as a result of Buyers’ cancellation, which cancellation the Sellers hereby accept as bringing the MOA to an end, or at all*” [A/42]. MHB/149
21. On 22 October 2021, Buyers’ lawyers sent a notice stating that Buyers were cancelling and/or terminating the MOA on the basis of Sellers’ repudiatory breaches [A/44]. MHB/150
22. On 23 October 2021, Sellers provided security in the sum of USD 4.125 million and the Vessel was released on 24 October 2021 [A/41]. MHB/149

II. THE TRIBUNAL'S RELEVANT FINDINGS

23. The key findings of the Tribunal were as follows:

24. The revision of the Original Cancelling Date to 15 October 2021 did not negate Sellers' obligation to effect delivery immediately, and without a further laden voyage. Sellers were in breach of that obligation since they did not effect delivery immediately and undertook a further laden voyage by way of the Vale Charter [A/59].

MHB/153
- 154

25. Sellers were in breach of the laden voyage provision in Clause 5(a) of the MOA (the "**Laden Voyage Clause**") because they undertook the Vale Charter between 16 August 2021 and 14 October 2021 [A/47-48], [A/57-59], & [A/190(a)].

MHB/150,
152-154
& 190

26. Sellers failed to give notice of readiness by the Original Cancelling Date. This was due to Sellers' proven negligence [A/78] (the "**First Phase of Negligence**"). There was negligence on the part of the Sellers in their failure to take reasonable care in making arrangements for the disembarkation of crew at Qingdao to enable delivery to take place by 20 August 2021 [A/78-85].

MHB/159

27. As a consequence of the First Phase of Negligence in relation to the Original Cancelling Date, Buyers were entitled to compensation calculated by reference to the actual profit that would have been earned if Buyers had possession of the Vessel [A/114], with the Tribunal assessing those damages at USD 1,650,992 [A/115] & [A/190(b)].

MHB/169- 170
MHB/170 MHB/190

28. Sellers failed to give notice of readiness by the New Cancelling Date. This was also due to Sellers' proven negligence [A/151] (the "**Second Phase of Negligence**"). There was negligence on the part of Sellers in undertaking the Vale Charter and their failure to take adequate steps to make arrangements by 29 September 2021 to enable delivery to take place by 15 October 2021 [A/148-151].

MHB/181

29. The Tribunal's reasoning on the cancellation of the MOA in October 2021 was that:

- (a) The Second Arrest was a purported cancellation or termination by Buyers. By applying for (and obtaining) an order for arrest on 18 October 2021, Buyers were

MHB/180
- 181

unequivocally evincing an intention to bring the MOA to an end and referred to cancellation. [A/135].

MHB/175

(b) Buyers' conduct in making the Second Arrest and seeking market damages on the basis of loss of bargain was unequivocal in evincing an intention to bring the MOA to an end, but that would not preclude Buyers from justifying the termination by reference either (i) to a repudiatory breach by Sellers, or (ii) an entitlement to cancel pursuant to Clause 14 [A/136].

MHB/175

(c) Sellers did not evince an intention to breach the MOA in relation to their conduct between 23 September 2021 and 15 October 2021 [A/138-140].

MHB/175
- 177

(d) It follows by necessary inference that the Tribunal held that by making the Second Arrest Buyers exercised a contractual right to cancel pursuant to clause 14.

30. As a consequence of the Second Phase of Negligence in relation to the New Cancelling Date, Buyers were entitled to compensation under Clause 14 of USD 1,850,000 based on the difference between the market price of the Vessel as at 18-22 October 2021 (USD 16,850,000) and the MOA price (USD 15,000,000) [A/152-165], [A/179], & [A/190(f)].

MHB/181-185
MHB/188
MHB/190

31. The Tribunal made the following finding in relation to causation: "*Accordingly, the cause of Buyers' loss of profits was Sellers' failure to deliver, and this caused Buyers to bring the MOA to an end*" [A/165].

MHB/185

32. For the avoidance of doubt, it is Sellers' position that the statements made by the Tribunal at [A/165] in relation to causation are matters of law and were wrong. It is Sellers' position that, in law, the cause of the loss of bargain to Buyers was Buyers' decision to exercise their contractual termination right.

MHB/185

III. PROCEDURAL HISTORY

33. On 5 October 2023, Sellers sought permission to appeal under section 69 of the Arbitration Act 1996 (the "AA96") against the finding of the Tribunal that Buyers were entitled to market damages in respect of the Second Phase of Negligence.

34. By a Respondent's Notice dated 9 November 2023, Buyers sought to uphold the Award for the reasons stated by the Tribunal, or alternatively, on the basis that time was of the essence of Sellers' delivery obligations.

35. On 20 March 2024, Bright J granted permission on the following question of law:

MHB/136
-137

“If a Memorandum of Agreement on the SALEFORM 2012 form is lawfully cancelled by a buyer under clause 14 because the vessel is not delivered by the cancelling date as a result of the seller's “proven negligence”, is that buyer entitled to recover loss of bargain damages absent an accepted repudiatory breach of contract?”

36. At first instance, and by a judgment dated 9 August 2024, Dias J held neither Clause 5 nor any other provision of the MOA imposed any obligation to deliver, to give NOR, nor to be ready to validly complete a legal transfer by the Cancelling Date. Dias J also held that the Tribunal were wrong to conclude that, on a proper construction of Clause 14, Buyers were entitled to loss of bargain or market damages. Finally, Dias J rejected Buyers' alternative Respondent's Notice argument that the findings in the Award could be justified on the basis that Clause 14 was a condition.

MHB/117
- 135

37. Buyers obtained leave to appeal to the Court of Appeal from Dias J on the following grounds:

MHB/114
- 116

(a) Ground 1: The Judge was wrong to conclude that there was no obligation on Sellers to tender NOR nor to be ready to validly complete a legal transfer by the Cancelling Date. There were such obligations.

(b) Ground 2: The Judge was wrong to conclude that Clause 14 only allows Buyers to recover losses and expenses which have accrued prior to cancellation. Clause 14 entitled Buyers to recover loss of bargain damages.

38. The Court of Appeal allowed Buyers' appeal on both grounds and restored the Award of the Tribunal. It held:

- (a) There was a positive obligation on Sellers to use reasonable or due diligence to deliver the Vessel by the Cancelling Date.
- (b) Loss of bargain damages were recoverable under Clause 14 of the MOA without any need to show repudiatory breach.
39. The Court of Appeal refused permission to appeal to the Supreme Court on 2 October 2025. Sellers applied to the Supreme Court for permission to appeal on 28 October 2025 on the sole ground that *“the Court of Appeal [...] was wrong to hold that Buyers under a SALEFORM 2012 MOA are entitled to loss of bargain compensation following a contractual termination under Clause 14, absent an accepted repudiatory breach”*. MHB/74 - 75
MHB/195
40. The Supreme Court (Lords Reed and Hamblen and Lady Simler) granted permission to appeal on 18 December 2025.
41. Sellers gave their notice of intention to continue the appeal on 31 December 2025.
42. By a document filed in support of their Notice of Acknowledgment dated 13 January 2026, Buyers seek to uphold the Court of Appeal decision for the reasons it gave, or alternatively, for the further reason that, insofar as there is any principle that the exercise of a contractual termination right following a breach of contract does not ground recovery of loss of bargain damages, any such principle does not apply to claims for non-delivery (and non-acceptance) under sale of goods contracts. MHB/194

IV. ISSUES FOR THE APPEAL

43. The central issue for the Supreme Court to determine is whether, if an MOA on the NORWEGIAN SALEFORM 2012 form is cancelled by Buyers under Clause 14, are Buyers entitled to recover loss of bargain damages absent a repudiatory breach?
44. It is common ground/ no longer in dispute that:
- (a) Sellers failed to give NOR by the New Cancelling Date.

- (b) Buyers exercised their Clause 14 contractual right to cancel the MOA on 18 October 2021.
- (c) Sellers' failure to give NOR by the New Cancelling Date was due to Sellers' proven negligence.
- (d) Sellers were not in repudiatory or renunciatory breach of the MOA, nor in breach of a condition.
- (e) Clause 14 provides that Sellers "[...] shall make due compensation to the Buyers for their loss and for all expenses [...]".

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8 April 2026

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ANNEX I: CHRONOLOGY

| DATE | Event |
|-------------------|--|
| 2021 | |
| 4 June 2021 | Buyers and Sellers enter into the MOA |
| 4 June 2021 | Addendum No.1 of the MOA (in fact signed on 28 June 2021) |
| 6 August 2021 | Addendum No.2 of the MOA contemplating delivery of the Vessel between 12 and 14 August 2021 |
| 12 August 2021 | Sellers propose the New Cancelling Date of 15 October 2021 |
| 14 August 2021 | Buyers agree to the New Cancelling Date |
| 20 August 2021 | Original Cancelling Date under the MOA |
| 24 September 2021 | Buyers arrest the Vessel at Zhanjiang, China |
| 6 October 2021 | Buyers issue the Notice of Arbitration |
| 12 October 2021 | The Vessel was released from the First Arrest |
| 15 October 2021 | The New Cancelling Date under the MOA |
| 18 October 2021 | Buyers re-arrest the Vessel in Zhanjiang, China (and thereby unequivocally cancelled or terminated the MOA) |
| 22 October 2021 | Buyers' solicitors wrote to Sellers stating that they were cancelling the MOA on the basis of repudiatory breach. |
| 2023 | |
| 3-7 July 2023 | The hearing of the arbitration took place |
| 7 September 2023 | The Tribunal of Ms Clare Ambrose, Mr Peter Jago and Mr Toh Kian Sing SC issued the Partial Final Award. |
| 5 October 2023 | Sellers sought permission to appeal under s. 69 of the AA96 |
| 2024 | |
| 20 March 2024 | Bright J granted permission on the papers on the basis that the question was one of general public importance and that the decision of the Tribunal was open to serious doubt. |
| 11 June 2024 | 1-day hearing in front of Dias J |
| 9 August 2024 | Dias J handed down judgment ([2024] EWHC 2075 (Comm); [2025] 1 Lloyd's Rep. 101) and made an order consequent on judgment. |

| | |
|------------------|---|
| 5 September 2024 | Buyers sought permission to appeal to the Court of Appeal from Dias J |
| 9 September 2024 | Dias J granted permission to appeal to the Court of Appeal |
| 2025 | |
| 10 July 2025 | The Court of Appeal (Phillips, Nugee, Birss LJJ) heard the appeal |
| 2 October 2025 | The Court of Appeal handed down judgment ([2025] EWCA Civ 1210) and made an order consequent on judgment. |
| 28 October 2025 | Sellers sought permission from the Supreme Court. |
| 11 November 2025 | Buyers filed its Notice of Objection to the Supreme Court. |
| 18 December 2025 | Permission to appeal to the Supreme Court granted by Lord Reed, Lord Hamblen and Lady Simler |
| 31 December 2025 | Sellers filed its Notice of Intention to Continue |
| 2026 | |
| 13 January 2026 | Buyers filed Document in support of the Notice of Acknowledgment |