Press Summary

22 July 2026

Great Asia Maritime Limited (Respondent) *v* Orion Shipping and Trading LLC (Appellant)

[2026] UKSC 23

On appeal from: [2025] EWCA Civ 1210

Justices: Lord Briggs, Lord Hamblen, Lord Burrows, Lord Stephens and Lord Doherty

Background to the Appeal

This appeal concerns the correct interpretation of clause 14 of the 2012 version of the Norwegian Saleform (the "NSF"). The NSF is the most commonly used standard form contract for the sale and purchase of second-hand ships.

The essential issue raised is whether, absent a repudiatory (i.e. serious) breach (as explained at **[21]**), buyers are entitled to recover "loss of bargain" damages under clause 14 where they have terminated the contract in accordance with their right to cancel in the event of a delay in delivery caused by sellers' proven negligence. Loss of bargain damages refer to compensation based on the difference between the contract price and the market price of making a substitute contract of sale.

In June 2021, the respondent (the "Buyers") and the appellant (the "Sellers") entered into a Memorandum of Agreement (the "MOA") based on the 2012 version of the NSF for the purchase of the vessel "LILA LISBON" (the "Vessel") for US$15 million.

The Sellers failed to have the Vessel ready by the amended "Cancelling Date", following which the Buyers terminated the MOA and brought arbitration proceedings. The arbitrators held that the Sellers had breached clause 14 by failing to give notice of readiness by the amended "Cancelling Date" due to their proven negligence (by undertaking an intervening voyage). Under clause 14 the Buyers are entitled in such circumstances to recover "due compensation" for "their loss and for all expenses together with interest". It was held that the Buyers were entitled to recover as their "loss" US$1,850,000, representing the Buyers' loss of bargain damages (i.e. the difference between the market price of the Vessel (US$16,850,000) and the MOA price (US$15,000,000)).

The Sellers appealed this decision to the High Court under section 69 of the Arbitration Act 1996. The High Court allowed the appeal, holding that the Buyers were not entitled to recover loss of bargain damages under clause 14 in the absence of a repudiatory breach of contract.

The Buyers appealed to the Court of Appeal. The Court of Appeal allowed the appeal, restoring the arbitrators' original award.

The Sellers now appeal to the Supreme Court. The Sellers seek to rely on two arguments to suggest that loss of bargain damages are not recoverable under clause 14. First, they argue that, unless the Sellers' breach of contract was repudiatory in nature, the Buyers' loss of bargain from the MOA's termination was not caused by the Sellers' breach. Instead, it was the Buyers' decision to terminate under an express termination clause (which clause 14 provides) which caused such loss. This argument was referred to as the "causation principle". Second, they argue that since loss of bargain damages would not be recoverable at common law in the absence of a repudiatory breach of contract, "clear words" would be needed in clause 14 to produce this result but these were absent. This argument was referred to as the "clear words principle".

Judgment

The Supreme Court unanimously dismisses the appeal. Lord Hamblen and Lord Burrows deliver the judgment, with which Lord Briggs, Lord Stephens and Lord Doherty agree.

Reasons for the Judgment

<u>The interpretation of clause 14</u>

The language of clause 14 supports the view that "loss" includes loss of bargain suffered by buyers consequent on the cancellation of the contract. In particular, the term "loss" is general and unqualified, loss of bargain is the most obvious form of loss which will be suffered by buyers in the event of cancellation and, unless "loss" covers loss of bargain, it is unclear what loss would be covered in such circumstances **[24]-[25]**.

This is supported by a number of contextual matters. First, the corresponding clause for buyers' defaults under the NSF (clause 13) has been previously interpreted to allow for recovery of loss of bargain damages. It would be surprising if clause 14 did not mirror this result **[27]-[28]**. Second, this interpretation aligns with the normal measure of damages under the Sale of Goods Act 1979 for non-delivery **[29]**. Third, it accords with past decisions of the courts on, practice in relation to, and the established meaning of, clause 14 of the NSF standard form. Such factors demonstrate that, at the time of entering into the MOA, there was an established meaning that loss of bargain damages would be recoverable under clause 14 **[30]-[39]**. As stressed in numerous authorities, in the interests of certainty, consistency, and predictability, where a clause of a standard form contract has an established meaning, unless that meaning is clearly wrong, that is the meaning that would be conveyed to the reasonable person in the position of the parties at the time of contracting **[40]-[46]**.

Finally, consideration of the differing commercial consequences of the rival interpretations of clause 14 further supports the conclusion that loss of bargain damages are recoverable by buyers. For sellers to be allowed to reap the benefit of their negligence and default by keeping the vessel with its increased market value is an uncommercial outcome. On the Sellers' case, they gain from the cancellation whilst the Buyers lose from it, the reverse of what would be expected commercially **[47]-[51]**.

Given this strong initial conclusion based on the wording of clause 14, the Court turns to consider whether the causation principle or the clear words principle lead to a different conclusion. The Court decides that they do not do so.

The causation principle

The Sellers argue that the causation principle results from the Court of Appeal's decision in *Financings Ltd v Baldock* [1963] 2 QB 104 ("*Financings*"). They submit that *Financings* is authority for the proposition that, where a party terminates under an express termination clause rather than at common law for a repudiatory breach, loss of bargain damages cannot be recovered by the terminating party. After explaining that it would be inappropriate for the Court to consider the correctness of *Financings* in the present appeal **[55]**, and highlighting the immediate difficulties with the Sellers' causation analysis of *Financings* **[64]-[66]**, the Court considers that, even assuming that the Sellers are correct regarding *Financings* **[67]**, it does not assist them on clause 14. This is because, in contrast to *Financings*, clause 14 includes a valid express compensation clause (setting out what the Buyers can recover for breach) **[68]**; and there is no good reason to interpret an express compensation clause as excluding damages for loss of bargain unless there are words to that effect **[70]**. Further, if *Financings* applied, it would logically mean that there could here be no recovery for wasted expenses under clause 14. However, the Sellers accept that wasted expenses are recoverable **[71]**.

The clear words principle

The Sellers also submit that "clear words" are required to create a right to damages where, as here, no right would arise at common law, relying on *Novasen SA v Alimenta SA* [2013] EWHC 345 (Comm) **[73]**. The Court holds that, whilst there is a well-known principle of contractual interpretation that clear words are required to *take away or exclude* a party's common law rights or remedies **[74]-[81]**, this is a significantly different situation than where the contract is conferring *additional* rights or remedies on a party **[84]**. There is no justification for requiring clear words in clause 14 to enable a party to recover loss of bargain damages **[85]**. The case of *Novasen* is distinguishable as it concerned a contractual clause conferring a right to compensation in circumstances where the party had suffered no loss at all **[86]-[89]**. In those circumstances, "clear words" would be needed, but clear words are not needed where, as here, the Buyers have in fact suffered a loss of bargain **[95]**.

References in square brackets are to paragraphs in the judgment.

NOTE:
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: Decided cases - The Supreme Court