LLOYD'S
LAW REPORTS

Editor:
Miss M. M. D'SOUZA, LL.B.
of the Middle Temple, Barrister

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STATUTES CONSIDERED

CASES JUDICIALLY CONSIDERED

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[1985] VOL. 1] The "Ocean Frost" PART 1

COURT OF APPEAL

June 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
July 2, 3, 4, 5 and 6, 1984

ARMAGAS LTD.
v.
MUNDOGAS S.A.

(THE "OCEAN FROST")

Before Lord Justice STEPHENSON, Lord Justice DUNN and Lord Justice ROBERT GOFF

Charter-party (Time) — Redelivery — Whether three year charter valid and authorized — Whether procured by bribery — Whether defendants entitled to redeliver vessel — Whether plaintiffs entitled to damages for premature redelivery.

On May 30, 1980, the defendants, Mundogas, agreed to sell the vessel *Havfrost* (now *Ocean Frost*) to a company to be nominated through the shipbrokers and to charter her back. The bargain was partly reduced to writing by a contract of sale and a charter-party. The plaintiffs, Armagas, as the nominated company, signed both documents. However the brokers signed the contract of sale on behalf of Mundogas and Mr. Magelssen, the vice-president (transportation) and chartering manager signed the charter-party on behalf of Mundogas. That charter was for a period of three years.

There was in addition an oral term that the charter would be kept strictly private and confidential. Even the chartering and operations department of Mundogas were not to know of it.

In April, 1981, Mundogas delivered the vessel to Armagas pursuant to the contract of sale and on Apr. 17, 1981 she commenced chartered service with Mundogas.

On Apr. 9, 1982, Mundogas redelivered the vessel at Terneuzen. Armagas protested that the charter was for three years and that redelivery was premature. Mundogas replied that the vessel had been hired under a one year charter dated Nov. 28, 1980 and that charter had expired. They said that they had no knowledge whatsoever of a charter-party dated May 30, 1980.

On Apr. 17, 1982, Armagas purported to treat that as a repudiation of the three year charter and claimed over $8 million as damages for breach of contract in respect of the two years unexpired.

The exchange of telexes between the broker and Mr. Magelssen apparently showed that an agreement was reached at the end of November, 1980, for Mundogas to charter the vessel from Armagas for 12 months. The operating department therefore employed the vessel for one year without knowing of the three year charter.

For Mundogas it was argued that the charter was not binding since Mr. Magelssen had no authority, actual or ostensible to agree or sign the three year charter; the charter was void for uncertainty in that the rate of hire remained an item to be agreed; there was no intention to create legal relations and the charter could therefore be rescinded or determined.

———*Held*, by Q.B. (Com. Ct.) (STAUGHTON, J.), that (1) on the facts and the evidence Mr. Magelssen did not have actual authority to agree or sign the three-year charter on behalf of Mundogas; Mr. Magelssen had been appointed vice-president (transportation) and chartering manager and allowed to act as such so that Mundogas represented to the brokers that Mr. Magelssen was authorized to notify approval by top management of chartering transactions and in the circumstances Mr. Magelssen had ostensible authority;

(2) there was no doubt that the parties intended the contract to be what was written in the charter-party and the addendum and there was a clear distinction here between the written contract by which the parties were bound and their collateral discussion or understanding as to how in practice it would work and accordingly the contract was not void for uncertainty;

(3) the brokers in this case were not the agents of either party in a general sense; they occupied the position of intermediate brokers and did not owe a fiduciary duty to either side but either party could clothe them with a limited authority so as to make

them (the brokers) their agents to receive communications; the broker was given authority by Armagas to purchase the vessel but that did not mean that the broker was also the agent of Armagas to receive the information that the charter was made without authority and was not intended to be binding; the Court would not have held that the claim in this action failed on the ground of no intention to create legal relations;

(4) on the facts and the evidence there was no breach of contract by Armagas in the acts and omissions of Mr. Jensen, one of its principal shareholders; what he failed to do was to disclose to Mundogas when he discovered that Mr. Magelssen had taken an interest in the transaction; he supposed that Mundogas already knew; there was no bribery in this transaction so far as Armagas was concerned; and there would be judgment for Armagas for damages to be assessed.

On appeal by Mundogas the questions for decision being (1) was Mr. Magelssen acting within the scope of his ostensible authority in concluding the three year charter-party so that Mundogas were bound by its terms? (2) were Mundogas vicariously liable for damages in deceit to Armagas for the fraudulent misrepresentation that he was authorized to conclude the three year charter? (3) did the offer by Mr. Johannesen of the shipbrokers to Mr. Magelssen of "a piece of a ship" constitute a bribe for the consequences of which Armagas were liable?

———*Held*, by C.A. (STEPHENSON, DUNN and ROBERT GOFF, L.JJ.), that (1) in this case Mr. Magelssen, without the knowledge or permission of Mundogas, held himself out as having authority to communicate to Armagas that the board of Mundogas approved a transaction which they had not approved; there was no representation express or implied by Mundogas that Mr. Magelssen had authority either to conclude the transaction or to communicate the approval of the board of Armagas; in these circumstances there was no estoppel and no ostensible authority whereby Mundogas were bound by the three year charter (*see* p. 34, col. 2; p. 37, col. 2; p. 39, col. 2; p. 67, cols. 1 and 2; p. 68, cols. 1 and 2);

(2) what Mr. Magelssen did was so clearly and extravagantly unusual for a man in his position that it should not only have put Armagas on inquiry but it fell right outside the scope of his authority or employment; authority to sell the ship did not give him authority to back the sale with the charter; Armagas took the risk of Mr. Magelssen's representation of authority being untrue and could not hold Mundogas responsible for this fraudulent misrepresentation either in contract or tort (*see* p. 34, cols. 1 and 2; p. 67, cols. 1 and 2; p. 68, cols. 1 and 2; p. 71, col. 2);

(3) even if that was wrong Mundogas would still not have been liable unless they would also have been liable in Danish law and the learned Judge was right in his conclusion that he accepted the experts' evidence that Mundogas would not be vicariously liable in Danish law for the fraud of Mr. Magelssen (*see* p. 34, col. 2; p. 39, col. 2; p. 71, col. 2; p. 72, col. 1);

(4) on the facts and evidence the offer of "a piece of ship" was a continuing offer and was made within the scope of the broker's (Mr. Johannesen's) actual authority, and constituted a bribe; if Mundogas were bound by the three year charter with Armagas they were justified by reason of the bribe in bringing the contract to an end; if Mundogas were vicariously liable to Armagas in damages for the deceit of their servant Mr. Magelssen, nevertheless Armagas were liable to Mundogas in damages for the bribe of their agent Mr. Johannesen to Mr. Magelssen and Mundogas was entitled to set off such damages against Armagas' claim for damages for deceit (*see* p. 34, col. 2; p. 41, cols. 1 and 2; p. 74, col. 1; p. 75, col. 1);

(5) the appeal would be allowed; the learned Judge's finding that Mr. Magelssen had ostensible authority to conclude the three year charter would be reversed; and there was no bribe for which Armagas were liable (*see* p. 35, col. 2; p. 41, col. 2; p. 75, cols. 1 and 2).

The following cases were referred to in the judgments:

Barry v. The Stoney Point Canning Co., (1917) 55 S.C.R. 51;

Barwick v. English Joint Stock Bank, (1867) L.R. 2 Ex. 259;

Benmax v. Austin Motor Co. Ltd., (H.L.) [1955] A.C. 370;

Berryere v. Firemen's Fund Insurance Co., (1965) 52 D.L.R. (2d) 603;

Boys v. Chaplin, (H.L.) [1971] A.C. 356.

Bradford Building Society v. Borders, [1941] 2 All E.R. 205;

British Bank of the Middle East v. Sun Life Assurance Co. of Canada (U.K.) Ltd., (H.L.) [1983] 2 Lloyd's Rep. 9;

Bugge v. Brown, (1919) 26 C.R.L. 110;

Crabtree Vickers Pty. Ltd. v. Australia Direct Mail Advertising and Addressing Co. Pty. Ltd., (1975) 133 C.L.R. 72;

C.T.I. International Inc. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd., (C.A.) [1984] 1 Lloyd's Rep. 476;

Cypress Disposal Ltd. v. Inland Kenworth Sales (Nanaime) Ltd., (1975) 54 D.L.R. (3d) 598;

Diamond v. Bank of London & Montreal Ltd., (C.A.) [1979] 1 Lloyd's Rep. 335; [1979] Q.B. 333;

Dyer v. Munday, (C.A.) [1895] 1 Q.B. 742;

Farquharson Brothers & Co. v. King & Co., (H.L.) [1902] A.C. 325;

Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd., (C.A.) [1964] 2 Q.B. 480;

Hamlyn v. John Houston & Co. (1905) 1 K.B. 81;

Heatons Transport (St. Helens) Ltd. v. Transport & General Workers Union (H.L.) [1973] A.C. 15;

Hely-Hutchinson v. Brayhead Ltd., (C.A.) [1968] 1 Q.B. 549;

Hern v. Nichols, (1700) 1 Salk 289;

Houghton & Co. v. Nothard Lowe & Wills, [1927] 1 K.B. 246;

Ilkiw v. Samuels, (C.A.) [1963] 1 W.L.R. 991;

Jensen v. South Trail Mobile Ltd., (1972) 28 D.L.R. (3d) 233;

Joyce v. Yeomans, (C.A.) [1981] 1 W.L.R. 549;

Kleinwort Sons & Co. v. Associated Automatic Machine Corporation, (1934) 50 T.L.R. 244;

Kooragang Investments Ltd. v. Richardson & Wrench Ltd., [1981] 3 W.L.R. 493; [1982] A.C. 462;

Lickbarrow v. Mason, (1787) 2 Term Rep. 63;

Lloyd v. Grace Smith & Co., (H.L.) [1912] A.C. 716;

Mackay v. Commercial Bank of New Brunswick, (1874) L.R. 5 L.P. 394;

Mahesan (T) S/O Thambiah v. Malaysia Government Officers Co-operative Housing Society Ltd., [1979] A.C. 374;

Montgomerie & Co. Ltd. v. Wallace-James, [1904] A.C. 73;

Navarro v. Moregrand Ltd., (1951) 2 T.L.R. 674;

Panama & South Pacific Telegraph Co. v. India Rubber Gutta Percha & Telegraph Works Co. (1875) L.R. 10 Ch. App. 515;

Powell v. Streatham Manor Nursing Home, (H.L.) [1935] A.C. 243;

Raffaella, The, [1984] 1 Lloyd's Rep. 102;

Rose v. Plenty, (C.A.) [1976] 1 Lloyd's Rep. 263; [1976] 1 W.L.R. 141;

Ruben v. Great Fingall Consolidated, [1906] A.C. 439;

Russo-Chinese Bank v. Li Yau Sam, [1910] A.C. 174;

Slingsby v. District Bank Ltd., [1932] 1 K.B. 544;

Smith v. Martin & Kingston-upon-Hull Corporation, [1911] 2 K.B. 775;

Uxbridge Permanent Building Society v. Pickard, [1939] 2 K.B. 248;

Watt (Thomas) v. Thomas, [1947] A.C. 484;

Whitechurch (George) Ltd. v. Cavanagh, (H.L.) [1902] A.C. 117;

United Africa Co. Ltd. v. Sake Owonde, (P.C.) [1955] A.C. 130.

This was an appeal by the defendants Mundogas S.A. from the decision of Mr. Justice Staughton given in favour of the plaintiffs, Armagas Ltd. and holding inter alia that Mr. Magelssen had ostensible authority to conclude the three year charter with Mundogas.

Mr. Justice STAUGHTON delivered the following reserved judgment on Sept. 16, 1983: (1) *The people involved:* In 1972 Torben Gunnar Jensen and Jorgen Poulsen Dannesbøe formed a shipowning company called Armada Shipping A.P.S. in Denmark. The business prospered, and expanded into the Armada group. That included Guldan Maritime Ltd., incorporated in Liberia in 1973; Armada Shipping S.A. incorporated in Switzerland in January, 1981; and Armada Shipping Inc., which was formed in Texas in April, 1980. From October, 1980, Mr. Jensen and Mr. Dannesbøe ceased to be resident in Denmark; Mr. Jensen now operates from Houston, and Mr. Dannesbøe from Switzerland. For reasons which will appear, they are the de facto plaintiffs in this action. Others concerned in the Armada group were Mr. Sorensen, managing director of Armada Shipping A.P.S. in Denmark; and Mr. Valentin, senior vice-president of Armada Shipping Inc. in Houston.

The defendants, Mundogas S.A., are a Panamanian corporation, incorporated in 1946. Their headquarters are in Hamilton, Bermuda, and they have offices at a number of places in the world, including London. Their principal activities are trading in liquid petroleum gas (L.P.G.) and chemicals, shipowning and the chartering of ships. Their shareholders were initially the Mobil Oil group, the Lorentzen group in Norway, and a subsidiary of the Ultra group in Brazil. In 1970, P. & O. replaced Mobil Oil; in 1979 Thyssen-Bornemisza Europe N.V. replaced Lorentzen. Mr. Jack Schoufour was a member of the board of management of Thyssen-Bornemisza.

It is necessary to examine in some detail the management structure of Mundogas. There was a board of directors, consisting of delegates of the three shareholders and their alternates. The chairman of the board of directors was Henry Schneider, a lawyer practising in New York. The chief executive officer, operating in Bermuda, was Howard Phillips Dutemple. His post was designated chairman of the board of management. Under him was the president and chief operating officer, Sandro Bronzini; and Trevor John Williams, vice-president (finance) and treasurer. The commercial departments,

that is to say, trading, shipping and operations, came under Mr. Bronzini. In charge of shipping was Harald Magelssen, vice-president (transportation) chartering manager until October 1981. The main issue in the case turns on his authority.

Other witnesses called on behalf of Mundogas were Philippe Faure, who became general manager (shipping) in March 1982; Michael John Hollis, chartering manager, but the subordinate first of Mr. Magelssen and later of Mr. Faure; Alan Kenneth Wyatt, chartering assistant and later chartering manager in the London office; Janet Rosmary Day, an expert witness on typewriting; Eunace Grant, an expert witness on documents; and Ian Taylor, a partner in Messrs. Freshfields, solicitors for Mundogas. In addition, a number of statements were produced under the Civil Evidence Act on behalf of Mundogas.

Between the Armada group and Mundogas there intervened World Marine Chartering A/S, shipbrokers in Denmark. One of the partners in that company was Jon Tony Johannesen. He was called as a witness on behalf of the plaintiffs. So was his secretary, Lone Berbel Brock. Mr. Johannesen had known Mr. Magelssen since 1960, and they became very close friends. But I suppose that the friendship ceased before this action was brought. Another partner in World Marine was Hans-Christian Olrik.

Mr. Magelssen, Mr. Johannesen and World Marine are listed as third parties in the title to this action. But the defendants did not proceed with their claims against them, and the third parties were not represented before me as parties to the action.

The plaintiff company, Armagas Ltd., was incorporated on June 12, 1980. The shares were owned, as to 51 per cent. by Guldan Maritime Ltd., and therefore effectively by the Armada group, or Mr. Jensen and Mr. Dannesbøe, or their relations or nominees. The remaining 49 per cent. were owned by Rugas Shipping Inc., a Liberian corporation formed on Jan. 13, 1981. The beneficial ownership of the shares in Rugas is, initially, a matter in dispute. But at any rate by Jan. 25, 1982, it was agreed that they should be owned as to one third each by Mr. Johannesen, Mr. Olrik and Havicha Shipping Corporation. That company was formed by Mr. Magelssen, and its name was derived from the names of his children.

Thus it can be seen that the plaintiffs, Armagas Ltd., are, or were at one time, owned as to 51 per cent. by the Armada group; as to two-thirds of 49 per cent. by partners in World Marine, the brokers; and as to one third of 49 per cent. by a company formed by Mr. Magelssen, who was until October, 1981 an employee of Mundogas, the defendants.

There are only two other names that I need mention, to complete the cast of this affair. The first is International Gas Corporation of Oslo. They were in 1979 the owners of an L.P.G.-carrying vessel, the M.T. *Havfrost*, later renamed *Ocean Frost* ("the vessel"). The other is Pemex. They were a Mexican corporation, with a need to charter vessels as L.P.G.-carriers. In a sense they would therefore be the ultimate consumers of the services of the vessel, if they should charter her either directly from the owners, or from head charterers who had a right to let out her services in the capacity of disponent owners.

(2) *The background:* On Oct. 24, 1979 International Gas, as owners of the vessel, let her on time-charter for a period of 12 months, 15 days more or less, to Mundogas. Delivery was in February, 1980. The charter-party contained these additional clauses:

> 42. Purchase option:
>
> Charterers shall have the option to purchase the vessel for delivery at the end of the C/P period at a fixed price of US $5,200,000 cash, such option to be declared by Charterers latest June 6th, 1980.

There then followed details of the purchase terms, if the option should be exercised.

> 44. Board approval:
>
> The above to be subject to Mundogas Board approval latest 14 working days after all terms/details agreed . . .

In addition a formal contract of sale was drawn up, also dated Oct. 24, 1979, on the Norwegian sale form and signed on behalf of International Gas and Mundogas. This document too contained terms as to the exercise of the option and as to board approval. World Marine participated as brokers or agents in the formation of both the charter-party and the contract of sale. Both were signed by Mr. Magelssen on behalf of the charterers/buyers.

By Jan. 16, 1980, if no earlier, it was apparent to Mundogas that the vessel was worth more than the option price of $5.2 million, and that there was money to be made out of the exercise of the option. But it had to be exercised by June 6, 1980. Mundogas apparently did not contemplate a straight purchase for their own account, at any rate as a primary objective. Discussions ensued in which some or all of three features occurred: (1) Resale of the vessel by Mundogas to a purchaser at a profit; (2) a

joint venture agreement between Mundogas and the purchaser; (3) a charter of the vessel back by Mundogas from the purchaser.

Mr. Williams conducted negotiations with the Lorentzen group, which led to what was known as the Lorentzen deal, although it never became effective. At the same time Mr. Magelssen had discussions with an Australian concern called Boral, the Paus group in London, and Grunstad Shipping Corporation.

By May 21, 1980, the Lorentzen deal had taken shape. Mr. Dutemple sent a telex on that day to Mr. Schneider's firm in New York, with copies to the P. & O. Group and Thyssen-Bornemisza setting out the terms agreed. They were in substance: (1) Mundogas, having exercised their option, would re-sell the vessel for $6.4 million to a joint venture company, which would be owned equally by Lorentzen and Mundogas and financed to a large extent by a bank loan; (2) Mundogas would charter the vessel back for three years at rates varying from $325,000 to $370,000 per calender month; (3) there was a bail out clause which permitted Mundogas to cancel the charter after year one and sell the vessel in certain circumstances. The telex asked for the approval of shareholders by May 29, 1980.

On May 28 Mr. Schneider gave his approval on behalf of the Ultra group shareholder at 11 50 Bermuda time. But a little earlier, at 10 11, a telex reach Mundogas from Thyssen-Bornemisza which, while "not categorically opposed to converting the option to purchase", raised a number of comments and questions.

The Lorentzen deal was not consummated.

(3) *The present dispute:* In the course of the next two days a bargain was ostensibly reached between Mundogas and a company to be nominated by the Armada group, through Mr. Johannesen of World Marine. It is not now disputed that the bargain, if otherwise valid, is binding upon and enforceable by Armagas Ltd. as the nominee of Armada group. The bargain was partly reduced into writing, by two documents. The first was a contract of sale dated May 30, 1980, whereby Mundogas agreed to sell the vessel to a company to be named by the Armada group, for the sum of $5,750,000. Delivery was to take place not earlier than Feb. 1, 1981, and not later than Mar. 15, 1981. That was, of course, some time ahead, since the Mundogas option to purchase from International Gas did not provide for completion until after the expiry of the one-year charter between International Gas and Mundogas. The sale contract was signed by Mr. Johannesen of World Marine on behalf of Mundogas, and by Mr. Dannesbøe on behalf of Armagas Ltd.

Secondly there was a charter-party, also dated May 30, 1980, by which a company to be named by the Armada group agreed to let the vessel to Mundogas for a period of 36 months, one month more or less. This provided for delivery not before Feb. 1, 1981, and that the charterers might cancel if the vessel were not ready for delivery by Mar. 30, 1981. The rate of hire was to be "as agreed". An addendum provided as follows:

> (a) the rate as per clause 7 of this C/P is agreed to be minimum US $350,000 (three hundred and fifty thousand US dollars) per month. (b) the owners, in their option, declarable latest 10th January 1981, shall have the right to cancel this charterparty.

Both the charter-party and the addendum were signed by Mr. Dannesbøe on behalf of Armagas Ltd. and by Mr. Magelssen on behalf of Mundogas.

I have said that the bargain was partly reduced into writing. In addition there was first a term, agreed orally, that the charter-party should be kept strictly private and confidential. Even the chartering and operations departments of Mundogas were not to know of it—only the top management. Secondly, it was agreed, between Mr. Jensen and Mr. Johannesen, that the Armada group would own 51 per cent. of the company to be nominated, and that World Marine or its associates (possibly including Mundogas) would own 49 per cent. That was not in terms part of the agreement reached between Mr. Johannesen and Mr. Magelssen purporting to act on behalf of Mundogas. They had agreed that World Marine would have an unspecified share in the company to be nominated, and that some part of that share (a) should belong to Mundogas (Mr. Johannesen's version), or (b) should belong to Mr. Magelssen (Mr. Magelssen's version). I shall have to decide later which of these versions is correct.

Thirdly it was agreed (at any rate between Mr. Jensen and Mr. Johannesen) that if Armagas should find a buyer for the vessel at $6.5 million or more, on or before Jan. 10, 1981, then the vessel would be sold, the charter-party cancelled, and the profit divided equally between the Armada group, World Marine and Mundogas. That explained the term as to cancellation in the addendum to the charter-party. Neither the charter-party nor the sale contract was in fact executed on the date that it bore, viz. May 30, 1980. As is the almost invariable practice in shipping circles, they were

dated as of the day when agreement was reached in negotiations.

Ten months later, on Apr. 2, 1981, the vessel was delivered by International Gas to Mundogas, pursuant to the sale contract of Oct. 24, 1979, the option having been exercised; and was then delivered by Mundogas to Armagas, pursuant to the sale contract of May 30, 1980 (albeit with some extension of the delivery date). On Apr. 17, 1981, the vessel commenced chartered service with Mundogas, they paying hire monthly to Armagas, at the rate of $365,000. I shall explain later how they came to pay more than the minimum figure of $350,000 per month.

On the surface all went well for a further year; the vessel performed services for Mundogas, and hire was paid to Armagas. Then on Apr. 9, 1982 Mundogas purported to redeliver the vessel at Ternezuen. Armagas protested that the charter-party was for 36 months, and that redelivery was premature. Mundogas replied that they had been hiring the vessel under a charter-party dated Nov. 28, 1980, for one year, which had now expired; they said that they had no knowledge whatsoever of a charter-party dated May 30, 1980. On Apr. 17, 1982, Armagas treated that as a repudiation of the three-year charter-party, and accepted it as such.

As will already be apparent, the market for ships such as *Havfrost*/*Ocean Frost* had fallen. In these proceedings Armagas claim over $8 million as damages for breach of contract, in respect of the two unexpired years of the charter-party. Alternatively, by a late amendment, they claim damages for deceit on the basis of fraudulent misrepresentations alleged to have been made by Mr. Magelssen in the course of his employment. In fact the lateness of the amendment was somewhat technical, since it consisted largely of incorporating some allegations from the points of reply into the points of claim. It was allowed (and indeed not opposed) on condition that any issue which Mundogas might raise as to Danish law, or any other foreign law, on the subject of deceit by a servant in the course of his employment, should be deferred until after the trial of other issues of liability in this action. Nevertheless I ordered that any such issue should be tried as soon as convenient after judgment is given on the issues that have been tried. There is obviously a possibility that this dispute will go further. In my view it would not be right for it to reach the Court of Appeal with issues as to liability still undecided.

It was agreed between the parties that issues of quantum should likewise be deferred. There is nothing objectionable in such an agreement in the context of a case such as the present, and I welcome it. But it has not been incorporated in an order of the Court. I seem to recall asking that it should at least be agreed in formal terms; but that has apparently been overlooked, no doubt because of the number of other tasks falling upon the legal advisers of the parties in this complex case. It is to be hoped that difficulties will not hereafter arise as to what is or is not an issue of quantum.

The defence of Mundogas is in essence fourfold. First they say that Mr. Magelssen had no authority, actual or ostensible, to agree or sign the three-year charter-party on their behalf. So it is not binding upon them. (A charter-party is typically regarded as binding when agreement is reached upon its terms, rather than when they are recorded in a formal document and signed by the parties; so the agreement of Mr. Magelssen is just as important as his signature.)

Secondly, Mundogas say that the charter-party was void for uncertainty, because the rate of hire remained an item to be agreed, even after the addendum provided that it should be a minimum of $350,000 per month.

Thirdly, they say that there was no intention to create legal relations, because it was expressly agreed between Mr. Magelssen and Mr. Johannesen that the charter-party was concluded without the authority of Mundogas and was not to be binding. Armagas deny that there was any such agreement; alternatively, they deny that Mr. Johannesen was acting on their behalf, if such an agreement was concluded.

Fourthly, Mundogas say that the charter-party was procured by bribery. Hence it can be rescinded, or determined; or they can recover damages or money had and received from Armagas by their counterclaim.

It will be observed that Mundogas do not seek to rescind or determine the sale contract, by which they agreed to sell the vessel to Armagas. That contract has been performed, and the very last thing that Mundogas would want is that it should be rescinded. Indeed it was the change in market conditions, by April 1982, which caused such alarm to Armagas when Mundogas claimed to redeliver the vessel from time charter in that month. They had paid $5.75 million for a vessel, and she was evidently no longer worth that amount.

It will also be observed that Mundogas do not seek to rescind the transaction, whatever it was, by which they received the services of the vessel from April, 1981 to April, 1982, and in return paid hire at the rate of $365,000 a month.

In those circumstances it might be thought that Mundogas were seeking to approbate part of the bargain made on May 30, 1980, and to reprobate the rest; to pick out the plums and leave the duff. There is an argument put forward on those lines in connection with the issue of bribery, and as to whether rescission is no longer possible. But otherwise no such argument is put forward on behalf of Armagas. It is agreed on all sides that the sale contract was valid and was authorized by Mundogas; but that is not said to answer the question whether the three-year charter-party was valid and authorized.

Nor is it said that the one year's service which the vessel in fact performed for Mundogas operates as a ratification, or in any other way prevents them from repudiating the three-year charter-party. The reason for that state of affairs is the facts relating to a further, one-year, charter-party to which I now turn.

(4) *The one-year charter-party:* It was, as I have said, a term of the bargain of May 30, 1980 that the chartering and operations departments of Mundogas should not know of the three-year charter-party. Such an agreement was of course most unusual. But I am satisfied that it did not put Mr. Jensen or Mr. Dannesbøe on enquiry as to the validity of the charter-party; commercial reasons could justify such secrecy—for example, a desire that Pemax should not learn that Mundogas had tied themselves to the vessel for three years, as that might weaken the bargaining position of Mundogas with Pemex.

It meant that the charter-party could not be mentioned in telex correspondence with Mundogas, since telexes would be circulated to all departments. But when the time came for service under the three-year charter-party to begin, in April, 1981, the problem would be must greater. How could Mundogas employ the vessel without their operations department knowing that they were doing so?

It was not an insuperable problem. The rate of hire under the charter-party was to be a minimum of $350,000 per month. It was the expectation of Mr. Jensen—although not, in my view, a term of the contract—that discussions would ensue in order to decide whether it should be any higher than that figure. Towards the end of November or early in December, 1980, it was agreed between Mr. Jensen and Mr. Johannesen that the rate would be $365,000 for the first 12 months. Mr. Johannesen said that, for internal reasons, Mundogas would like to have a 12-month charter-party drawn up containing that rate. Mr. Jensen was prepared to agree to that proposal, provided an addendum to the three-year charter-party was also drawn up saying that it was reduced from 36 to 24 months. Otherwise he would not agree to it. The terms of the addendum were settled in March 1981. Mr. Johannesen produced a 12-month charter-party for Armagas to sign; but Mr. Jensen refused to sign it unless the addendum was also signed. In the result the 12-month charter-party never was signed on behalf of Armagas.

Meanwhile in Bermuda the telex traffic between Mr. Johannesen and Mr. Magelssen apparently showed that an agreement was reached at the end of November, 1980, for Mundogas to charter the vessel from Armagas for 12 months, with delivery at the expiry of the existing charter (from International Gas), at a rate of $365,000 per month. (It was in fact agreed that Mundogas as charterers should have an option of a second 12-month period; but that was never inserted in the charter-party document that was drawn up.) Both Mr. Johannesen and Mr. Magelssen knew that this telex traffic was at best somewhat less than a frank reflection of the whole truth, since it did not mention the three-year charter-party at all. Mundogas also received, at some stage, a copy of the 12-month charter-party, not signed by Armagas. Mr. Hollis became increasingly concerned when a copy signed by Armagas did not arrive. But he never appreciated the reason why Armagas would not sign.

The objective was thus achieved. The operating department of Mundogas employed the vessel for 12 months without knowing of the three-year charter-party; hire was paid at the rate of $365,000; it was thus that they came to tender redelivery of the vessel at Terneuzen in April, 1982; that was why they contended, as mentioned in section (3) above, that they had been hiring the vessel under a charter-party dated Nov. 28, 1980 for one year.

(5) *The central issues of fact:* I have already described in outline the bargain that was reached on May 28 to 30, 1980, between Mr. Johannesen and Mr. Magelssen. As to the details of their agreement, two aspects are of great significance.

(A) *Validity of the charter-party*

According to the evidence of Mr. Magelssen, he told Mr. Johannesen that he did not have authority to sign a three-year charter-party, and that it would not be recorded in the normal way in the files and papers of Mundogas; only he and Mr. Johannesen would know about it. Mr. Johannesen said that the charter-party would be kept in a safe in World Marine, and that only one man in Armada would know about it.

If that version be the truth, it will be relevant to consider whether Mr. Johannesen was agent