

LLOYD'S LAW REPORTS

Editors:

Michael Daiches, Barrister
Professor Robert Merkin

2007
Volume 2

informa

LONDON

2007

All editorial correspondence to: Lloyd's Law Reports,
Informa Law, Informa House, 30–32 Mortimer Street,
London W1W 7RE.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording and/or otherwise, without the prior written permission of Informa Law.

The Law Reports contained in this part are verbatim judgments and while every care has been taken to ensure their accuracy neither the editor nor Informa Law can accept any responsibility for any loss occasioned to any person acting or refraining from acting as a result of any statements contained therein.

Informa Law
Informa House
30–32 Mortimer Street
London W1W 7RE

an Informa Business

© 2007 Informa UK Ltd

ISSN 0024–5488
ISBN 978–1–84311–508–3

Subscriptions

Subscriber Helpdesk: Tel: +44 (0)20 7017 5532, Fax: +44 (0)20 7017 4781,
Email: law.enquiries@informa.com

Subscriptions for the Far East should be addressed to Informa Law Asia, No 1 Grange Road,
#08–02 Orchard Building, Singapore 239693 (Tel: +65 6835 5151, Fax: +65 6734 2938,
Email: grant.rowles@informa.com)

Subscriptions for Australia and New Zealand should be addressed to Informa Law, Level 2, 120
Sussex Street, Sydney, NSW 2000, Australia (Tel: +61 (0)2 9080 4428, Fax: +61 (0)2 9299 4622,
Email: tammy.waughman@informa.com)

Lloyd's Electronic Law Reports includes the full archive from 1919 to date. Please telephone customer services for more information.

Lloyd's and the Lloyd's crest are the registered trade marks of the society incorporated by the Lloyd's Act 1871 by the name of Lloyd's.

CASES JUDICIALLY CONSIDERED

ABB AG v Hochtief Airport GmbH [2006] 2 Lloyd's Rep 1; [2007] 2 Lloyd's Rep 302
ABCI v Banco Franco-Tunisienne [2003] 2 Lloyd's Rep 146, **applied:** [2007] 2 Lloyd's Rep 579; [2007] 2 Lloyd's Rep 308
Agip (Africa) Ltd v Jackson [1990] Ch 265, **applied:** [2007] 2 Lloyd's Rep 187
Akai Pty Ltd v People's Insurance Co Ltd [1998] 1 Lloyd's Rep 90, **applied:** [2007] 2 Lloyd's Rep 367
Al Midani v Al Midani [1999] 1 Lloyd's Rep 923, **distinguished:** [2007] 2 Lloyd's Rep 56
Al-Naimi v Islamic Press Agency Inc [2000] 1 Lloyd's Rep 522, **applied:** [2007] 2 Lloyd's Rep 1
A L Underwood Ltd v Bank of Liverpool & Martins [1924] 1 KB 775, **considered:** [2007] 2 Lloyd's Rep 471
Andrea Merzario Ltd v Internationale Spedition Leitner Gesellschaft GmbH [2001] 1 Lloyd's Rep 490, **applied:** [2007] 2 Lloyd's Rep 363
Angelic Grace, The [1995] 1 Lloyd's Rep 87, **applied:** [2007] 2 Lloyd's Rep 367
Angus v Clifford [1891] 2 Ch 449, **applied:** [2007] 2 Lloyd's Rep 187
Anziani, Re [1930] 1 Ch 407, **applied:** [2007] 2 Lloyd's Rep 397
Arab African Energy Corporation Ltd v Olieprodukten Nederland BV [1983] 2 Lloyd's Rep 419, **distinguished:** [2007] 2 Lloyd's Rep 87
Armstrong v Strain [1951] 1 TLR 856, **applied:** [2007] 2 Lloyd's Rep 187
ASM Shipping Ltd of India v TTMI Ltd of England [2007] 1 Lloyd's Rep 136, **considered:** [2007] 2 Lloyd's Rep 548
Assicurazioni Generali SpA v Arab Insurance Group (Practice Note) [2003] 1 WLR 577, **considered:** [2007] 2 Lloyd's Rep 114
Associated Electric and Gas Insurance Services Ltd v European Reinsurance Co of Zurich [2003] 1 WLR 1041, **applied:** [2007] 2 Lloyd's Rep 367
Athletic Union of Constantinople v National Basketball Association (No 2) [2002] 1 WLR 2863, **applied:** [2007] 2 Lloyd's Rep 87; **considered:** [2007] 2 Lloyd's Rep 548
A v B [2007] 1 Lloyd's Rep 237, **applied:** [2007] 2 Lloyd's Rep 367
A v B (No 2) [2007] 1 Lloyd's Rep 358, **applied:** [2007] 2 Lloyd's Rep 367
AXA General Insurance Ltd v Gottlieb [2005] Lloyd's Rep IR 369, **distinguished:** [2007] 2 Lloyd's Rep 187
Balfour Beatty v Technical General Guarantee Company Ltd [1999] 68 Constr LR 180, **applied:** [2007] 2 Lloyd's Rep 187
Banco Nacional de Cuba v Cosmos Trading Corp [2000] BCC 910 (CA), **referred to:** [2007] 2 Lloyd's Rep 440
Bank of Baroda v Vysya Bank Ltd [1994] 2 Lloyd's Rep 87, **considered:** [2007] 2 Lloyd's Rep 72
Bank of Credit & Commerce Hong Kong v Sonali Bank [1995] 1 Lloyd's Rep 227, **considered:** [2007] 2 Lloyd's Rep 72
Barlow Clowes International v Eurotrust International Ltd [2006] 1 Lloyd's Rep 225, **applied:** [2007] 2 Lloyd's Rep 187
Bell v Lever Brothers Ltd [1932] AC 161, **referred to:** [2007] 2 Lloyd's Rep 449
Bettinson v Bettinson [1954] P 465, **applied:** [2007] 2 Lloyd's Rep 155
Bier BV v Mines de Potasse d'Alsace SA, Case 21/76 [1976] ECR 1735, **applied:** [2007] 2 Lloyd's Rep 308
Birse Construction Ltd v St David Ltd [2000] BLR 57, **applied:** [2007] 2 Lloyd's Rep 1
Black Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1981] 2 Lloyd's Rep 446, **applied:** [2007] 2 Lloyd's Rep 367
Bols Distilleries BV v Superior Yacht Services Ltd [2007] 1 Lloyd's Rep 683; [2007] 1 WLR 12, **considered:** [2007] 2 Lloyd's Rep 138
Brennero v Wendel Case 258/83, [1984] ECR 3971, **distinguished:** [2007] 2 Lloyd's Rep 484
Brown Jenkinson & Co Ltd v Percy Dalton (London) Ltd [1957] 2 QB 621, **referred to:** [2007] 2 Lloyd's Rep 187
BTC Bulk Corporation v Glencore International [2006] EWHC 1957 (Comm), **applied:** [2007] 2 Lloyd's Rep 302
Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co [1903] AC 426, **considered:** [2007] 2 Lloyd's Rep 164
Capelloni & Aquilini v Pelkmans [1986] 1 CMLR 388, **distinguished:** [2007] 2 Lloyd's Rep 484

- Cargill International SA v Bangladesh Sugar & Foods Industries Corporation [1996] 2 Lloyd's Rep 524, **distinguished**: [2007] 2 Lloyd's Rep 187
- Casio Computer Co Ltd v Sayo [2001] EWCA Civ 661, **considered**: [2007] 2 Lloyd's Rep 138
- Cetelem SA v Roust Holdings Ltd [2005] 2 Lloyd's Rep 494, **applied**: [2007] 2 Lloyd's Rep 8; **considered and applied**: [2007] 2 Lloyd's Rep 87
- CGU International Insurance plc v AstraZeneca Insurance Co Ltd [2007] 1 Lloyd's Rep 142, **considered**: [2007] 2 Lloyd's Rep 548
- Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd [1993] 1 Lloyd's Rep 291, **applied**: [1993] AC 334; [2007] 2 Lloyd's Rep 367; [2007] 2 Lloyd's Rep 8
- China Pacific SA v Food Corporation of India (The Winson) [1982] 1 Lloyd's Rep 117; [1982] AC 939, **considered**: [2007] 2 Lloyd's Rep 397
- Circle Freight International Ltd v Medeast Gulf Exports Ltd [1988] 2 Lloyd's Rep 427, **distinguished**: [2007] 2 Lloyd's Rep 87
- Claims Direct Tests Cases, In the Matter of [2002] EWCA Civ 428, **considered**: [2007] 2 Lloyd's Rep 411
- Commissioner for Railways (New South Wales), The v Cavanough [1935] 53 CLR 220, **considered**: [2007] 2 Lloyd's Rep 231
- Commissioners of Taxation v English, Scottish and Australian Bank Ltd [1920] AC 683, **considered**: [2007] 2 Lloyd's Rep 471
- Compagnie Nouvelle France Navigation SA v Compagnie Navale Afrique du Nord (The Oranie and the Tunisie) [1966] 1 Lloyd's Rep 477, **referred to**: [2007] 2 Lloyd's Rep 8
- Companhia de Seguros Imperio v Heath (REBX) Ltd [2001] 1 WLR 112, **considered**: [2007] 2 Lloyd's Rep 231
- Compania Merabello San Nicholas SA, Re [1973] Ch 75, **referred to**: [2007] 2 Lloyd's Rep 440
- Coppée-Lavalin SA/NV v Ken-Ren Chemicals and Fertilisers Ltd [1994] 2 Lloyd's Rep 109, **applied**: [2007] 2 Lloyd's Rep 588
- Coulthard v Disco Mix Club Ltd [2000] 1 WLR 707, **considered**: [2007] 2 Lloyd's Rep 231
- County Personnel Ltd v Alan R Pulver & Co [1987] 1 WLR 916, **considered**: [2007] 2 Lloyd's Rep 164
- Credit Suisse Fides Trust SA v Cuoghi [1998] 1 QB 818, **considered**: [2007] 2 Lloyd's Rep 484
- Credit Suisse Financial Products v Societe Generale d'Entreprises [1997] CLC 168, **considered**: [2007] 2 Lloyd's Rep 411
- Dardana Ltd v Yukos Oil Co [2002] 2 Lloyd's Rep 261, **considered and dicta disapproved**: [2007] 2 Lloyd's Rep 588
- Davenport v Corinthian Motor Policies at Lloyd's 1991 SLT 774, **distinguished**: [2007] 2 Lloyd's Rep 138
- Denison Mines Ltd v Ontario Hydro (2002) 56 OR (3d) 181, **applied**: [2007] 2 Lloyd's Rep 87
- Den Norske Bank v Antonatos [1999] QB 271, **applied**: [2007] 2 Lloyd's Rep 382
- De Ponte Nascimento v United Kingdom 2002, application 55331/00, decision 31 January 2002, **considered**: [2007] 2 Lloyd's Rep 548
- Delfini*, The [1990] 1 Lloyd's Rep 252, **referred to**: [2007] 2 Lloyd's Rep 187
- Derry v Peek (1889) 14 App Cas 337, **applied**: [2007] 2 Lloyd's Rep 187
- Deweert v Belgium (1980) 2 EHRR 439, **distinguished**: [2007] 2 Lloyd's Rep 31
- Di Placito v Slater [2004] 1 WLR 1605, **applied**: [2007] 2 Lloyd's Rep 31
- Dodd Properties v Canterbury City Council [1980] 1 WLR 433, **considered**: [2007] 2 Lloyd's Rep 164
- Domicrest Ltd v Swiss Bank Corporation [1999] 1 Lloyd's Rep 80, **applied**: [2007] 2 Lloyd's Rep 308
- Donohue v Armco Inc [2002] 1 Lloyd's Rep 425, **applied**: [2007] 2 Lloyd's Rep 367
- Downing v Al Tameer Establishment [2002] BLR 323, **applied**: [2007] 2 Lloyd's Rep 1
- Drouot Assurances SA v Consolidated Metallurgical Industries, Case 351/96 [1999] QB 497, **considered**: [2007] 2 Lloyd's Rep 463
- DSQ Property Co Ltd v Lotus Cars Ltd, *The Times*, 28 June 1990, **applied**: [2007] 2 Lloyd's Rep 579
- Dubai Islamic Bank PJSC v Paymentech Merchant Services Inc [2001] 1 Lloyd's Rep 65, **applied**: [2007] 2 Lloyd's Rep 367
- Dumez France SA v Hessische Landesbank, Case C-220/88 [1990] ECR I-49, **applied**: [2007] 2 Lloyd's Rep 308
- East India Trading Co Inc v Carmel Exporters and Importers Ltd [1952] 1 Lloyd's Rep 456, **distinguished**: [2007] 2 Lloyd's Rep 579
- East West Corporation v DKBS AS [2003] 1 Lloyd's Rep 239, **applied**: [2007] 2 Lloyd's Rep 397
- E D & F Man Sugar Ltd v Harayanto, 17 July 1996, unreported, **applied**: [2007] 2 Lloyd's Rep 579
- Edward Owen Engineering Ltd v Barclays Bank International Ltd [1978] 1 Lloyd's Rep 166, **applied**: [2007] 2 Lloyd's Rep 47
- Edwards v United Kingdom (1992) 15 EHRR 417, **applied**: [2007] 2 Lloyd's Rep 31
- El Amria*, The [1981] 2 Lloyd's Rep 119, **applied**: [2007] 2 Lloyd's Rep 367
- Eleftheria*, The [1969] 1 Lloyd's Rep 237, **applied**: [2007] 2 Lloyd's Rep 367
- Elektrim SA v Vivendi Universal SA (No 2) [2007] 2 Lloyd's Rep 8, **applied**: [2007] 2 Lloyd's Rep 420
- El Nasharty v J Sainsbury plc [2004] 1 Lloyd's Rep 309, **applied**: [2007] 2 Lloyd's Rep 1
- English & American Insurance v Axa Re SA [2007] Lloyd's Rep IR 359, **considered**: [2007] 2 Lloyd's Rep 509
- Erlanger v New Sombrero Phosphate Co (1878) 3 App Cas 1218, **considered**: [2007] 2 Lloyd's Rep 56

- Fidelitas Shipping Co Ltd v V/O Exportchleb [1965] 1 Lloyd's Rep 223, **considered**: [2007] 2 Lloyd's Rep 231
- Fiona Trust & Holding Corporation v Privalov [2007] EWCA Civ 20, **applied**: [2007] 2 Lloyd's Rep 1
- Galaxia Maritime SA v Mineralimportexport (The Eletherios and Grecian Legend) [1982] 1 Lloyd's Rep 351, **applied**: [2007] 2 Lloyd's Rep 484
- General Accident Fire and Life Assurance Corporation Ltd v Tanter (The Zephyr) [1984] 1 Lloyd's Rep 58, **applied**: [2007] 2 Lloyd's Rep 278
- Ginzberg v Barrow Haematite Steel Co Ltd [1966] 1 Lloyd's Rep 343, **applied**: [2007] 2 Lloyd's Rep 187
- Glencore International AG v Metro Trading International Inc [2001] 1 Lloyd's Rep 284, **applied**: [2007] 2 Lloyd's Rep 397
- Glencore International v Exter Shipping Co [2002] 2 All ER (Comm) 1, **applied**: [2007] 2 Lloyd's Rep 420
- Gower v Gower [1938] P 106, **applied**: [2007] 2 Lloyd's Rep 155
- Grupo Torras SA v Sheikh Fahad Mohammed Al-Sabah [1995] 1 Lloyd's Rep 374, **applied**: [2007] 2 Lloyd's Rep 420; [2007] 2 Lloyd's Rep 579
- H (Minors), Re [1996] AC 563, **applied**: [2007] 2 Lloyd's Rep 187
- Hadkinson v Hadkinson [1952] P 285, **applied**: [2007] 2 Lloyd's Rep 155
- Hadley v Baxendale (1854) 9 Exch 341, **considered**: [2007] 2 Lloyd's Rep 555
- Hagen, The [1908] P 189, **considered**: [2007] 2 Lloyd's Rep 440
- Hakansson v Sweden (1991) 13 EHRR 1, **applied**: [2007] 2 Lloyd's Rep 31
- Harbour Assurance Co (UK) Ltd v Kansa General International Insurance Co Ltd [1993] 1 Lloyd's Rep 455, **applied**: [2007] 2 Lloyd's Rep 213; **considered**: [2007] 2 Lloyd's Rep 267
- Hasham v Zenab [1960] AC 316, **considered**: [2007] 2 Lloyd's Rep 231
- Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465, **applied**: [2007] 2 Lloyd's Rep 449
- Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd [2000] 2 Lloyd's Rep 625, **applied**: [2007] 2 Lloyd's Rep 87
- Heron II, The [1967] 2 Lloyd's Rep 457; [1969] 1 AC 350, **considered**: [2007] 2 Lloyd's Rep 555
- Honourable Society of the Middle Temple v Lloyds Bank plc [1999] 1 All ER (Comm) 193, **considered**: [2007] 2 Lloyd's Rep 471
- Hornal v Newberger Products Ltd [1954] 1 QB 247, **applied**: [2007] 2 Lloyd's Rep 187
- Hulton v Hulton [1917] 1 KB 813, **considered**: [2007] 2 Lloyd's Rep 56
- Hummingbird Motors Ltd v Hobbs [1986] RTR 276, **distinguished**: [2007] 2 Lloyd's Rep 449
- Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1989] 1 QB 433, **referred to**: [2007] 2 Lloyd's Rep 31; **distinguished**: [2007] 2 Lloyd's Rep 87
- Internet FZCO v Ansol Ltd [2007] EWHC 226 (Comm), **considered**: [2007] 2 Lloyd's Rep 8
- International Alltex Corporation v Lawler Creations Ltd [1965] 2 IR 264, **distinguished**: [2007] 2 Lloyd's Rep 579
- International Tank and Pipe SAK v Kuwait Aviation Fuelling Co [1975] 1 QB 224, **considered**: [2007] 2 Lloyd's Rep 367
- Jolly v Carmel Ltd [2000] 2 EGLR 154, **considered**: [2007] 2 Lloyd's Rep 325
- Kalfelis v Bankhaus Schröder, Münchmeyer, Hengst & Co [1988] ECR 5565, **considered**: [2007] 2 Lloyd's Rep 138
- Kalmneft v Glencore International AG [2002] 1 Lloyd's Rep 128, **applied**: [2007] 2 Lloyd's Rep 213
- Kelly v Cooper [1993] AC 205, **applied**: [2007] 2 Lloyd's Rep 278
- King of the Two Sicilies v Wilcox (1859) 1 Sim NS 301, **referred to**: [2007] 2 Lloyd's Rep 382
- Kleinwort Benson Ltd v Glasgow City Council [1999] 1 AC 153, **considered**: [2007] 2 Lloyd's Rep 138
- Knox v Gye (1872) LR 5 HL 656, **considered**: [2007] 2 Lloyd's Rep 231
- Konkola Copper Mines plc v Coromin Ltd [2006] 1 Lloyd's Rep 410, **considered**: [2007] 2 Lloyd's Rep 138
- Kriti Palm, The [2007] 1 Lloyd's Rep 555, **applied**: [2007] 2 Lloyd's Rep 187
- Latreefers Inc, Re [2001] BCC 174, **referred to**: [2007] 2 Lloyd's Rep 440
- Lavarack v Woods of Colchester Ltd [1967] 1 QB 278, **considered**: [2007] 2 Lloyd's Rep 164
- Leavis v Leavis [1921] P 299, **applied**: [2007] 2 Lloyd's Rep 155
- Leibinger v Stryker Trauma GmbH [2006] EWHC 690, **referred to**: [2007] 2 Lloyd's Rep 213
- Lennon v Scottish Daily Record [2004] EWHC 359; [2007] 2 Lloyd's Rep 308
- Lesotho Development v Impregilo SpA [2005] 2 Lloyd's Rep 310; [2007] 2 Lloyd's Rep 302
- Lesotho Highlands Development Authority v Impregilo SpA [2006] 1 AC 221, **applied**: [2007] 2 Lloyd's Rep 367
- Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd [1994] 1 AC 85, **applied**: [2007] 2 Lloyd's Rep 427
- Lloyds Bank Ltd v The Chartered Bank of India, Australia and China [1929] 1 KB 40 at page 59, **considered**: [2007] 2 Lloyd's Rep 471
- L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd (The Boucraa) [1994] 1 Lloyd's Rep 251; [2007] 2 Lloyd's Rep 382
- London Helicopters Ltd v Heliportugal LDA-INAC [2006] EWHC 108, **applied**: [2007] 2 Lloyd's Rep 308
- Mackender v Feldia AG [1966] 2 Lloyd's Rep 449; [1967] 2 QB 590, **considered**: [2007] 2 Lloyd's Rep 267
- Magee v Pennine Insurance Co [1969] 2 QB 507, **referred to**: [2007] 2 Lloyd's Rep 449

- Mahesan v Malaysia Government Officers' Cooperative Housing Society* [1979] AC 374, **applied:** [2007] 2 Lloyd's Rep 382
- Mannesman Handel AG V Kaunlaran Shipping Corporation* [1993] 1 Lloyd's Rep 89, **considered:** [2007] 2 Lloyd's Rep 187
- Marfani & Co Ltd v Midland Bank Ltd* [1968] 1 Lloyd's Rep 411, **considered:** [2007] 2 Lloyd's Rep 471
- Marine Contractors Inc v Shell Petroleum Development Co of Nigeria Ltd* [1984] 2 Lloyd's Rep 77, **distinguished:** [2007] 2 Lloyd's Rep 87
- Messiniaki Tolmi, The* [1981] 2 Lloyd's Rep 595, **applied:** [2007] 2 Lloyd's Rep 155
- Metall und Rohstoff AG v Donaldson Lufkin & Jenrette Inc* [1990] 1 QB 391, **applied:** [2007] 2 Lloyd's Rep 579
- Mihalis Angelos, The* [1970] 2 Lloyd's Rep 43, **considered:** [2007] 2 Lloyd's Rep 164
- Miliangos v Frank (Textiles) Ltd* [1976] 1 Lloyd's Rep 201, **considered:** [2007] 2 Lloyd's Rep 164
- Millar v Dickson* [2002] 1 WLR 1615, **considered:** [2007] 2 Lloyd's Rep 31
- Molnlycke AB v Procter & Gamble Ltd* [1992] 1 WLR 1112, **considered:** [2007] 2 Lloyd's Rep 138
- Morris v Beaconsfield Motors* [2001] EWCA Civ 1322, **considered:** [2007] 2 Lloyd's Rep 397
- Morris v C W Martin & Sons Ltd* [1965] 2 Lloyd's Rep 63, **applied:** [1966] 1 QB 716; [2007] 2 Lloyd's Rep 397
- Motorola Credit Corporation v Uzan* [2003] EWCA Civ 752, **applied:** [2007] 2 Lloyd's Rep 484
- National Justice Compania Naviera SA v Prudential Assurance Co Ltd (No 2) (The Ikarian Reefer)* [2000] 1 Lloyd's Rep 129, **applied:** [2007] 2 Lloyd's Rep 579
- Naviera Amazonica Peruana SA v Compania Internacional de Seguros del Peru* [1988] 1 Lloyd's Rep 116, **applied:** [2007] 2 Lloyd's Rep 367
- Newsat Holdings Ltd v Zani* [2006] 1 Lloyd's Rep 707, **applied:** [2007] 2 Lloyd's Rep 308
- Noble Assurance Co v Gerling-Konzern General Insurance Co (UK)* [2007] Lloyd's Rep IR Plus 33, **applied:** [2007] 2 Lloyd's Rep 367
- Nordstrom-Janzon v The Netherlands*, Application No 28101/95, 27 November 1996, **applied:** [2007] 2 Lloyd's Rep 31
- North and South Trust Co v Berkeley* [1970] 2 Lloyd's Rep 467; [1971] 1 WLR 470, **applied:** [2007] 2 Lloyd's Rep 278
- North Range Shipping Ltd v Seatrans Shipping Corporation* [2002] 2 Lloyd's Rep 1, **considered:** [2007] 2 Lloyd's Rep 548
- North Sea Energy Holdings NV v Petroleum Authority of Thailand* [1999] 1 Lloyd's Rep 483, **considered:** [2007] 2 Lloyd's Rep 164
- Nouvion v Freeman* (1889) 15 App Cas 1, **applied:** [2007] 2 Lloyd's Rep 579
- O'Sullivan v Management Agency and Music Ltd* [1985] 1 QB 428, **considered:** [2007] 2 Lloyd's Rep 56
- OT Africa Line Ltd v Magic Sportswear Corporation* [2005] 2 Lloyd's Rep 170, **applied:** [2007] 2 Lloyd's Rep 367
- Pacol Ltd v Joint Stock Co Rossakhar* [2000] 1 Lloyd's Rep 109, **applied:** [2007] 2 Lloyd's Rep 302
- Panama and South Pacific Telegraph Co v India Rubber* (1875) LR 10 Ch App 515, **applied:** [2007] 2 Lloyd's Rep 382
- Paragon Finance plc v D B Thakerar & Co* [1999] 1 All ER 400, **considered:** [2007] 2 Lloyd's Rep 231
- Petrotrade Inc v Smith* [2000] 1 Lloyd's Rep 486, **applied:** [2007] 2 Lloyd's Rep 382
- Pfeifer and Plankl v Austria* (1992) 14 EHRR 692, **applied and considered:** [2007] 2 Lloyd's Rep 31
- Pioneer Container, The* [1994] 1 Lloyd's Rep 593 (sub nom *The K H Enterprise*); [1994] 2 AC 324, **applied:** [2007] 2 Lloyd's Rep 397
- Pritchett v English and Colonial Syndicate* [1899] 2 QB 428, **applied:** [2007] 2 Lloyd's Rep 440
- Rederi Kommanditselskaabet Merc-Scandia IV v Couinatis SA (The Mercanaut)* [1980] 2 Lloyd's Rep 183, **referred to:** [2007] 2 Lloyd's Rep 493
- Rhone Mediterranee Compagnia Francese di Assicurazioni E Riassicurazioni v Achille Lauro* (1983) 712 F 2d 50, **applied:** [2007] 2 Lloyd's Rep 1
- Richco International Ltd v International Industrial Food Co SAL* [1989] 2 Lloyd's Rep 106, **distinguished:** [2007] 2 Lloyd's Rep 155
- Robinson v Harman* (1848) 1 Ex 850, **applied:** [2007] 2 Lloyd's Rep 164
- Royal Bank of Scotland v Etridge (No 2)* [2002] 2 AC 773, **considered:** [2007] 2 Lloyd's Rep 56
- R v Cruttenden* [1991] 2 QB 66; [2007] 2 Lloyd's Rep 382
- R v Smith* [1960] 2 QB 423; [2007] 2 Lloyd's Rep 382
- R v Switzerland*, Application No 10881/84, 4 March 1987, **applied:** [2007] 2 Lloyd's Rep 31
- R v Williams* [1998] EWCA Crim 1508, **distinguished:** [2007] 2 Lloyd's Rep 382
- Safa Ltd v Banque du Caire* [2000] 2 Lloyd's Rep 600, **considered:** [2007] 2 Lloyd's Rep 47
- Salotti v RUWA Polsteremaschinen GmbH* [1976] ECR 1831, **considered:** [2007] 2 Lloyd's Rep 138; [2007] 2 Lloyd's Rep 411
- Santa Fe (UK) Ltd v Gates Europe NV*, unreported, 16 January 1991 (CA), **distinguished:** [2007] 2 Lloyd's Rep 138
- Sarrio SA v Kuwait Investment Authority* [1998] 1 Lloyd's Rep 129; [1999] 1 AC 32, **considered:** [2007] 2 Lloyd's Rep 463
- Scandinavian Trading Co AB v Zodiac Petroleum SA (The Al-Hofuf)* [1981] 1 Lloyd's Rep 81, **considered:** [2007] 2 Lloyd's Rep 542

- Schuler-Zraggen v Switzerland (1993) 16 EHRR 405, **applied**: [2007] 2 Lloyd's Rep 31
- Seb Trygg Holding AG v Manches [2005] 2 Lloyd's Rep 129, **considered**: [2007] 2 Lloyd's Rep 131
- Shamil Bank of Bahrain EC v Beximco Pharmaceuticals Ltd [2004] 2 Lloyd's Rep 1, **considered** and **applied**: [2007] 2 Lloyd's Rep 56
- Shogun Finance Ltd v Hudson [2004] 1 Lloyd's Rep 532, **distinguished**: [2007] 2 Lloyd's Rep 213
- Siskina (Owners of cargo lately laden on board) v Distos Compania Naviera SA [1979] AC 210, **applied**: [2007] 2 Lloyd's Rep 8
- Smith v Chadwick (1884) 9 App Cas 187, **applied**: [2007] 2 Lloyd's Rep 187
- Smith v Land & House Property Corporation (1884) 28 Ch D 7, **distinguished**: [2007] 2 Lloyd's Rep 449
- Sociedade Nacional v Lundqvist [1991] 2 QB 310, **referred to** and **applied**: [2007] 2 Lloyd's Rep 382
- Société Eram Shipping Co Ltd v Cie Internationale de Navigation [2004] 1 AC 260, **considered**: [2007] 2 Lloyd's Rep 440
- Solo Industries UK Ltd v Canara Bank [2001] 2 Lloyd's Rep 578, **applied**: [2007] 2 Lloyd's Rep 47
- Somes v Directors of British Empire Shipping Co (1860) 8 HL Cas 338, **considered**: [2007] 2 Lloyd's Rep 397
- South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provinciën" NV [1986] 2 Lloyd's Rep 317, **applied**: [2007] 2 Lloyd's Rep 8
- Standard Chartered Bank v Pakistan National Shipping Corporation [2000] 1 Lloyd's Rep 218, **referred to**: [2007] 2 Lloyd's Rep 187
- Star Sea*, The [2003] 1 AC 469, **distinguished**: [2007] 2 Lloyd's Rep 187
- State of Norway's Application, In re [1990] 1 AC 723, **considered**: [2007] 2 Lloyd's Rep 231
- Stolp & Co v Browne & Co [1930] 4 DLR 703, **distinguished**: [2007] 2 Lloyd's Rep 579
- Sumitomo Bank v BBL [1997] 1 Lloyd's Rep 487, **distinguished**: [2007] 2 Lloyd's Rep 449
- Sumitomo Heavy Industries Ltd v Oil & Natural Gas Commission [1994] 1 Lloyd's Rep 45, **applied**: [2007] 2 Lloyd's Rep 367
- Sun Life Assurance Co of Canada v CX Reinsurance Co Ltd [2004] Lloyd's Rep IR 58, **distinguished**: [2007] 2 Lloyd's Rep 1
- Suovanieni v Finland Application No 31737/96, 23 February 1999, **applied** and **considered**: [2007] 2 Lloyd's Rep 31
- Surrendra v Sri Lanka (The Apj Akash) [1977] 1 Lloyd's Rep 653; [1977] 1 WLR 565, **considered**: [2007] 2 Lloyd's Rep 509
- Sze Hai Tong Bank Ltd v Rambler Cycle Co [1959] AC 576, **referred to**: [2007] 2 Lloyd's Rep 187
- Tate Access Floors Inc v Boswell [1991] Ch 512, **referred to**: [2007] 2 Lloyd's Rep 382
- Tatry*, The, Case C-406/92 [1995] 1 Lloyd's Rep 302; [1999] QB 515, **considered**: [2007] 2 Lloyd's Rep 463
- Thoday v Thoday [1964] P 181, Fidelitas Shipping Co Ltd v V/O Exportchleb [1965] 1 Lloyd's Rep 223, **considered**: [2007] 2 Lloyd's Rep 231
- Thyssen Canada Ltd v Mariana Maritime SA [2005] 1 Lloyd's Rep 640, **applied**: [2007] 2 Lloyd's Rep 213
- Tonicstar Ltd v American Home Assurance Co [2005] Lloyd's Rep IR 32, **applied**: [2007] 2 Lloyd's Rep 420
- Tradigrain SA v State Trading Corporation of India [2006] 1 Lloyd's Rep 216, **applied**: [2007] 2 Lloyd's Rep 187
- Tutova*, The [2001] 1 Lloyd's Rep 104, **considered**: [2007] 2 Lloyd's Rep 131
- Twinsectra Ltd v Yardley [2002] UKHL 12, **applied**: [2007] 2 Lloyd's Rep 187
- United Trading Corporation SA v Allied Arab Bank Ltd [1985] 2 Lloyd's Rep 554, **applied**: [2007] 2 Lloyd's Rep 47
- Universal Cargo Carriers v Citati [1957] 1 Lloyd's Rep 174; [1957] 2 QB 401, **considered**: [2007] 2 Lloyd's Rep 542
- University of Reading, The v Miller Construction Ltd (1996) 75 BLR 91, **distinguished**: [2007] 2 Lloyd's Rep 8
- Van Uden BV v KG Deco-Line [1999] QB 1225, **referred to**: [2007] 2 Lloyd's Rep 484
- Vee Networks Ltd v Econet Wireless International Ltd [2005] 1 Lloyd's Rep 192, **applied**: [2007] 2 Lloyd's Rep 302
- Verein für Konsumenteninformation v Karl Heinz Henkel [2002] ECR I-8111, **considered**: [2007] 2 Lloyd's Rep 138
- Victoria Laundry (Windsor) Ltd v Newman Industries Ltd [1949] 2 KB 528, **considered**: [2007] 2 Lloyd's Rep 555
- Vimeira*, The [1984] 2 Lloyd's Rep 66, **applied**: [2007] 2 Lloyd's Rep 302
- Weissfisch v Julius [2006] 1 Lloyd's Rep 716, **applied**: [2007] 2 Lloyd's Rep 8; [2007] 2 Lloyd's Rep 367
- Wertheim v Chicoutimi Pulp Co [1911] AC 301, **applied**: [2007] 2 Lloyd's Rep 164
- Westacre Investments Inc v Jugoinport-SDPR Holding Co Ltd [1999] 2 Lloyd's Rep 65, **applied**: [2007] 2 Lloyd's Rep 213
- Westinghouse Uranium Contract, In re [1978] AC 547, **referred to**: [2007] 2 Lloyd's Rep 382
- West Tankers Inc v Ras Riunione Adriatica di Sicurtà SpA (The Front Comor) [2007] 1 Lloyd's Rep 391, **considered**: [2007] 2 Lloyd's Rep 367
- With v O'Flanagan [1936] Ch 575, **distinguished**: [2007] 2 Lloyd's Rep 449

- World Pride Shipping Ltd v Daiichi Chuo Kisen Kaisha (The Golden Anne) [1984] 2 Lloyd's Rep 489, **referred to**: [2007] 2 Lloyd's Rep 493
- XL Insurance Ltd v Owens Corning [2000] 2 Lloyd's Rep 500, **applied**: [2007] 2 Lloyd's Rep 367
- X Ltd v Morgan Grampian [1991] 1 AC 1, **applied**: [2007] 2 Lloyd's Rep 155
- Yewbelle Ltd v London Green Developments Ltd [2006] EWHC 3166 (Ch), **considered**: [2007] 2 Lloyd's Rep 325
- Youell v Bland Welch & Co Ltd (The "Superhulls Cover" Case) (No 2) [1990] 2 Lloyd's Rep 431, **applied** and **distinguished**: [2007] 2 Lloyd's Rep 278
- Youell v Kara Mara Shipping Co Ltd [2000] 2 Lloyd's Rep 102, **applied**: [2007] 2 Lloyd's Rep 420
- Zelger v Salinitri (No 2), Case 129/83 [1984] ECR 2397, **applied**: [2007] 2 Lloyd's Rep 463
- Zermalt Holdings SA v Nu Life Upholstery Repairs Ltd [1985] 2 EGLR 14; [2007] 2 Lloyd's Rep 302

STATUTES JUDICIALLY CONSIDERED

	PAGE
EUROPEAN UNION—	
COUNCIL REGULATION 44/2001	
arts 23	138, 411
art 2	138
art 5.1(b)	341
art 5(3)	138
art 47	47, 484
EUROPEAN CONVENTION ON HUMAN RIGHTS	
art 6	79
art 8	548
UNITED KINGDOM—	
ARBITRATION ACT 1996	8
ss 2, 4	367
s 7	213
s 9	1, 31, 267
s 24	155
s 32	131
s 58	367
s 66	579, 588
s 67	213, 352, 493
s 67(4)	548
s 68	213
s 68(2)(a)	302
s 69	79, 155, 164, 213
s 70	213
s 99–104	588
CARRIAGE OF GOODS BY ROAD ACT 1965	397
CHEQUES ACT 1957	
s 4(1)	471
CIVIL AVIATION ACT 1982	
s 71	249
CIVIL AVIATION (AIR TRAVEL ORGANISER'S LICENSING) REGULATIONS 1995	
reg 3	249
CIVIL JURISDICTION AND JUDGMENTS ACT 1982	
schedule 4	308
s 25	484
CIVIL LIABILITY (CONTRIBUTION) ACT 1978	138
CONTRACTS (APPLICABLE LAW) ACT 1990	
sch 1, art 4	72
FRAUD ACT 2006	
s 31	382
LIMITATION ACT 1980	
s 7	579
s 29(5)	509
s 36	231
MISREPRESENTATION ACT 1967	440
SUPREME COURT ACT 1981	
s 37	8, 382

CONTENTS

**NOTE: These Reports should be cited as
“[2007] 2 Lloyd’s Rep”**

	COURT	PAGE
7E Communications Ltd v Vertex Antennentechnik GmbH....	[CA]	411
<i>Achilleas</i> , The.....	[CA]	555
AIC Ltd v Marine Pilot Ltd (The “Archimidis”).....	[QBD (Comm Ct)]	101
Albon v Naza Motor Trading Sdn Bhd (No 3).....	[Ch D]	1
Albon v Naza Motor Trading Sdn Bhd (No 4).....	[Ch D]	420
Arab Metals Co (The “UB Tiger”):— P&O Nedlloyd BV v.	[CA]	148
Arab Metals Co (The “UB Tiger” (No 2)):— P&O Nedlloyd BV v	[CA]	231
<i>Archimidis</i> , The.....	[QBD (Comm Ct)]	101
Architects of Wine Ltd v Barclays Bank plc	[CA]	471
ASM Shipping Ltd of India v TTMI Ltd of England (No 2).	[QBD (Comm Ct)]	155
Atlantic and Orient Shipping Corp (The “Double Happi- ness”):— Front Carriers Ltd v	[QBD (Comm Ct)]	131
AWB (Geneva) SA, Pioneer Metals Logistics Co Ltd BVI v North America Steamships Ltd, Wolridge Mahon Ltd.....	[CA]	315
Banco Nacional de Comercio Exterior SNC v Empresa de Telecomunicaciones de Cuba SA, British Telecommuni- cations plc (Intervening)	[CA]	484
Banque Saudi Fransi v Lear Siegler Services Inc.....	[CA]	47
Barclays Bank plc:— Architects of Wine Ltd v	[CA]	471
BEA Hotels NV v Bellway LLC.....	[QBD (Comm Ct)]	493
Bellway LLC:— BEA Hotels NV v.....	[QBD (Comm Ct)]	493
British Energy Power & Energy Trading Ltd & Others v Credit Suisse & Others.....	[QBD (Comm Ct)]	427
Chevron USA Inc (The “Luxmar”):— ERG Raffinerie Medi- terranee SpA v.....	[CA]	542
Civil Aviation Authority:— R (on the Application of the Association of British Travel Agents Ltd) v.....	[CA]	249
Commonwealth Secretariat, The:— Sumukan Ltd v	[CA]	87
Credit Suisse & Others:— British Energy Power & Energy Trading Ltd & Others v	[QBD (Comm Ct)]	427
C v D	[QBD (Comm Ct)]	367
Datec Electronics Holdings Ltd v United Parcels Service Ltd... D:— C v	[HL]	114
DDT Holdings Ltd:— DDT Trucks of North America Ltd v.	[QBD (Comm Ct)]	367
DDT Trucks of North America Ltd v DDT Holdings Ltd.....	[QBD (Comm Ct)]	213
Demirel v Tasarruff Mevduati Sigorta Fonu	[QBD (Comm Ct)]	213
Denfleet International Ltd & Another v TNT Global SpA & Another	[CA]	440
<i>Double Happiness</i> , The.....	[CA]	504
Easy Managed Transport Ltd:— T Comedy (UK) Ltd v	[QBD (Comm Ct)]	131
Edwinton Commercial Corporation & Another v Tsavliris Russ (Worldwide Salvage & Towage) Ltd (The “Sea Angel”).....	[QBD (Comm Ct)]	397
	[CA]	517

CONTENTS—*continued*

	COURT	PAGE
E D & F Man Sugar Ltd v Lendoudis	[QBD (Comm Ct)]	579
Elektrim SA v Vivendi Universal SA (No 2)	[QBD (Comm Ct)]	8
Empresa de Telecomunicaciones de Cuba SA, British Telecommunications plc (Intervening):— Banco Nacional de Comercio Exterior SNC v	[CA]	484
ERG Petroli SpA:— Lia Oil SA v	[QBD (Comm Ct)]	509
ERG Raffinerie Mediterranee SpA v Chevron USA Inc (The “Luxmar”)	[CA]	542
Fiona Trust & Holding Corporation & Others v Privalov & Others	[CA]	267
Football Association Ltd:— Stretford v	[CA]	31
Front Carriers Ltd v Atlantic and Orient Shipping Corp (The “Double Happiness”)	[QBD (Comm Ct)]	131
<i>Fu Ning Hai</i> , The	[QBD (Comm Ct)]	223
Gater Assets Ltd v NAK Naftogaz Ukrainiy	[CA]	588
Golden Strait Corporation v Nippon Yusen Kubishka Kaisha (The “Golden Victory”)	[HL]	164
<i>Golden Victory</i> , The	[HL]	164
Goldman Sachs International:— IFE Fund SA v	[CA]	449
Halpern:— Halpern v	[CA]	56
Halpern v Halpern	[CA]	56
HBC Hamburg Bulk Carriers GmbH & Co Kg v Tangshan Haixing Shipping Co Ltd (The “Fu Ning Hai”)	[QBD (Comm Ct)]	223
Hewden Tower Cranes Ltd v Wolffkran GmbH	[QBD (TCC)]	138
HIH Casualty and General Insurance Ltd v JLT Risk Solutions Ltd	[CA]	278
Huntsman International LLC:— Rhodia International Holdings Ltd & Another v	[QBD (Comm Ct)]	325
IFE Fund SA v Goldman Sachs International	[CA]	449
Istil Group Ltd:— Republic of Kazakhstan v	[CA]	548
JLT Risk Solutions Ltd:— HIH Casualty and General Insurance Ltd v	[CA]	278
Kensington International Ltd v The Republic of the Congo	[QBD (Comm Ct)]	382
Lear Siegler Services Inc:— Banque Saudi Fransi v	[CA]	47
Lendoudis:— E D & F Man Sugar Ltd v	[QBD (Comm Ct)]	579
Lia Oil SA v Erg Petroli SpA	[QBD (Comm Ct)]	509
<i>Luxmar</i> , The	[CA]	542
Marconi Communications International Ltd v PT Pan Indonesia Bank Ltd TBK	[CA]	72
Marine Pilot Ltd (The “Archimidis”):— AIC Ltd v	[QBD (Comm Ct)]	101
Mediterranean Shipping Company SA (The “MSC Amsterdam”):— Trafigura Beheer BV & Another v	[CA]	622
Mercator Shipping Inc (The “Achilleas”):— Transfield Shipping Inc v	[CA]	555
<i>MSC Amsterdam</i> , The	[CA]	622
NAK Naftogaz Ukrainiy:— Gater Assets Ltd v	[CA]	588
Naza Motor Trading Sdn Bhd (No 3):— Albion v	[Ch D]	1
Naza Motor Trading Sdn Bhd (No 4):— Albion v	[Ch D]	420
New Century Shipbuilding Co Ltd:— Ravennavi SpA v	[CA]	24
Nippon Yusen Kubishka Kaisha (The “Golden Victory”):— Golden Strait Corporation v	[HL]	164
North America Steamships Ltd, Wolridge Mahon Ltd:— AWB (Geneva) SA, Pioneer Metals Logistics Co Ltd BVI v	[CA]	315
OAO Northern Shipping Co v Remolcadores de Marin SL	[QBD (Comm Ct)]	302

CONTENTS—*continued*

	COURT	PAGE
Occidental Exploration & Production Co (No 2):— The Republic of Ecuador v	[CA]	352
Othon Ghalanos Ltd:— Scottish & Newcastle International Ltd v	[CA]	341
Owners and/or Demise Charterers of the Tug “Sea Tractor”, The v The Owners of the Ship “Tramp” (The “Tramp”) ...	[QBD (Admlty Ct)]	363
Owners of the Ship “Tramp” (The “Tramp”), The:— The Owners and/or Demise Charterers of the Tug “Sea Tractor” v	[QBD (Admlty Ct)]	363
P&O Nedlloyd BV v Arab Metals Co (The “UB Tiger”).....	[CA]	148
P&O Nedlloyd BV v Arab Metals Co (The “UB Tiger” (No 2)).....	[CA]	231
Privalov & Others:— Fiona Trust & Holding Corporation & Others v	[CA]	267
PT Pan Indonesia Bank Ltd TBK:— Marconi Communications International Ltd v.....	[CA]	72
Ravennavi SpA v New Century Shipbuilding Co Ltd.....	[CA]	24
Remolcadores de Marin SL:— OAO Northern Shipping Co v ..	[QBD (Comm Ct)]	302
Republic of the Congo, The:— Kensington International Ltd v	[QBD (Comm Ct)]	382
Republic of Ecuador, The v Occidental Exploration & Production Co (No 2).....	[CA]	352
Republic of Kazakhstan v Istil Group Ltd.....	[CA]	548
RH Freight Services Ltd & Others:— Sony Computer Entertainment Ltd v	[QBD (Comm Ct)]	463
Rhodia International Holdings Ltd & Another v Huntsman International LLC.....	[QBD (Comm Ct)]	325
R (on the Application of the Association of British Travel Agents Ltd) v Civil Aviation Authority	[CA]	249
Scandinavian Airlines System Denmark–Norway–Sweden:— Sunrock Aircraft Corporation Ltd v	[CA]	612
Scottish & Newcastle International Ltd v Othon Ghalanos Ltd.	[CA]	341
<i>Sea Angel</i> , The.....	[CA]	517
<i>Sea Tractor</i> , The.....	[QBD (Admlty Ct)]	363
<i>Seaward Quest</i> , The	[QBD (Comm Ct)]	308
Sony Computer Entertainment Ltd v RH Freight Services Ltd & Others	[QBD (Comm Ct)]	463
Standard Bank plc:— Uzinterimpex JSC v.....	[QBD (Comm Ct)]	187
Stretford v Football Association Ltd	[CA]	31
Sumukan Ltd v The Commonwealth Secretariat	[CA]	87
Sunderland Marine Mutual Insurance Co Ltd v Wiseman (The “Seaward Quest”)	[QBD (Comm Ct)]	308
Sunrock Aircraft Corporation Ltd v Scandinavian Airlines System Denmark–Norway–Sweden.....	[CA]	612
Tangshan Haixing Shipping Co Ltd (The “Fu Ning Hai”):— HBC Hamburg Bulk Carriers GmbH & Co Kg v	[QBD (Comm Ct)]	223
Tasaruff Mevduati Sigorta Fonu:— Demirel v	[CA]	440
T Comedy (UK) Ltd v Easy Managed Transport Ltd	[QBD (Comm Ct)]	397
TNT Global SpA & Another:— Denfleet International Ltd & Another v	[CA]	504
Trafigura Beheer BV & Another v Mediterranean Shipping Company SA (The “MSC Amsterdam”).....	[CA]	622
<i>Tramp</i> , The.....	[QBD (Admlty Ct)]	363
Transfield Shipping Inc v Mercator Shipping Inc (The “Achilleas”).....	[CA]	555

CONTENTS—*continued*

	COURT	PAGE
Tsavliris Russ (Worldwide Salvage & Towage) Ltd (The “Sea Angel”):— Edwinton Commercial Corporation & Another v.....	[CA]	517
TTMI Ltd of England (No 2):— ASM Shipping Ltd of India v.....	[QBD (Comm Ct)]	155
<i>UB Tiger</i> , The.....	[CA]	148
<i>UB Tiger</i> , The (No 2).....	[CA]	231
United Parcels Service Ltd:— Datec Electronics Holdings Ltd.....	[HL]	114
Uzinterimpex JSC v Standard Bank plc.....	[QBD (Comm Ct)]	187
Vertex Antennentechnik GmbH:— 7E Communications Ltd v.....	[CA]	411
Vivendi Universal SA (No 2):— Elektrim SA v.....	[QBD (Comm Ct)]	8
Wiseman (The “Seaward Quest”):— Sunderland Marine Mutual Insurance Co Ltd v.....	[QBD (Comm Ct)]	308
Wolffkran GmbH:— Hewden Tower Cranes Ltd.....	[QBD (TCC)]	138

LLOYD'S LAW REPORTS

Editors: Michael Daiches, Barrister
Professor Robert Merkin

PART 1

Albon v Naza Motor Trading Sdn Bhd (No 3)

[2007] VOL 2

CHANCERY DIVISION

9, 12; 29 March 2007

ALBON
v
NAZA MOTOR TRADING SDN BHD
(NO 3)

[2007] EWHC 327 (Ch)

Before Mr Justice LIGHTMAN

Arbitration — Claimant bringing proceedings in England — Defendant asserting existence of joint venture agreement containing arbitration clause — Claimant arguing that joint venture agreement a forgery — Stay of proceedings under inherent jurisdiction of court — Whether trial should be ordered on validity of joint venture — Effect of Arbitration Act 1996, section 9.

On 10 August 2005 the claimant, Mr Albon, issued a claim form against the defendant, Naza Motors, seeking sums allegedly overpaid by the claimant under an agreement between the parties (the UK Agreement), sums owed under a further agreement (the German Agreement) and reimbursement for sums expended by the Mr Albon on behalf of the Naza Motors while its controller, Mr Nasim, was visiting London. Permission for service of the claim form on Naza Motors in Malaysia was given on 26 August 2005. In earlier proceedings, *Albon v Naza Motor Trading Sdn Bhd* [2007] 1 Lloyd's Rep 297, Lightman J set aside the permission for service outside the jurisdiction in respect of the claims under the German Agreement and in respect of expenses, leaving only the claim in respect of the English agreement. Subsequently, in *Albon v Naza Motor Trading Sdn Bhd* (No 2) [2007] EWHC 327 (Ch), Lightman J held that an alternative service order granted to Mr Albon would not be discharged.

In the present proceedings Naza Motors sought a stay of the claim in respect of the English agreement. Naza Motors asserted that on 29 July 2003 the parties had entered into a Joint Venture Agreement (JVA) which provided for arbitration in Malaysia governed by Malaysian law of all claims between the parties, and

that the terms of the arbitration clause were apt to include the disputes in respect of the UK Agreement. Naza Motors purported to commence arbitration proceedings pursuant to the JVA in Malaysia.

Mr Albon contended that the JVA was a forgery and on that ground refused to participate in the arbitration proceedings. In the present case Naza Motors applied to the court for a stay of the action under the UK Agreement so that the dispute could be referred to arbitration in accordance with the arbitration clause. The issue for the court was whether the genuineness or otherwise of the JVA should be determined by the arbitrators in the arbitration proceedings, in which case the action would be stayed pending that determination and the stay would only be removed if the arbitrators decided that the JVA was a forgery, or whether the court should determine that issue and order a stay only if it was concluded that the arbitration clause was genuine.

— *Held*, by Ch D (LIGHTMAN J) that a stay would be refused and that a trial on the question on the validity of the arbitration clause would be ordered.

(1) Until the validity of the arbitration clause had been determined the court had no jurisdiction under section 9 of the Arbitration Act 1996 to grant a stay.

(a) The court could not order a stay under section 9(1) of the 1996 Act unless two threshold requirements had been satisfied: that there was a concluded arbitration agreement; and that the issue was a matter which under the arbitration clause was to be referred to arbitration. Unless and until the court was satisfied that both these conditions were fulfilled the court could not grant a stay under section 9. The court could stay its proceedings so that these matters could be resolved by the arbitrators, but only under its inherent jurisdiction and not under section 9 (*see* paras 14 and 17);

— *Birse Construction Ltd v St David Ltd* [2000] BLR 57, *Al-Naimi v Islamic Press Agency Inc* [2000] 1 Lloyd's Rep 522, *Fiona Trust & Holding Corporation v Privalov* [2007] EWCA Civ 20, applied.

(b) The power of the court to refuse a stay under section 9(4) of the 1996 Act, where the arbitration agreement was "null and void, inoperative or incapable of being performed", assumed that an arbitration agreement had been concluded, and was concerned with the situation where issues arose whether that

concluded agreement was devoid of legal effect (*see* para 18);

—*Rhone Mediterranee Compagnia Francese di Assicurazioni E Riassicurazioni v Achille Lauro* (1983) 712 F 2d 50, *Downing v Al Tameer Establishment* [2002] BLR 323, applied; *Sun Life Assurance Co of Canada v CX Reinsurance Co Ltd* [2004] Lloyd's Rep IR 58, distinguished.

(2) It would not be right for the court to exercise its inherent jurisdiction to grant a stay. The court should exercise its inherent jurisdiction to grant a stay and decline to decide the issue of the conclusion of the arbitration agreement or of the scope of the arbitration agreement in an exceptional case. The court might very exceptionally order such a stay if virtually certain that the arbitration agreement was concluded, or if there were exceptional but less compelling circumstances (eg overwhelming considerations of convenience and cost). In the present case it was relevant to take into account whether that the court proceedings preceded the arbitration proceedings and that the Malaysian courts had no statutory jurisdiction to review or interfere with any decision by the arbitrators in Malaysia (*see* paras 24 and 25);

—*Al-Naimi v Islamic Press Agency Inc* [2000] 1 Lloyd's Rep 522, *El Nasharty v J Sainsbury plc* [2004] 1 Lloyd's Rep 309, applied.

The following cases were referred to in the judgment:

Al-Naimi v Islamic Press Agency Inc (CA) [2000] 1 Lloyd's Rep 522;

Birse Construction Ltd v St David Ltd [1999] BLR 194; (CA) [2000] BLR 57;

Downing v Al Tameer Establishment (CA) [2002] BLR 323;

El Nasharty v J Sainsbury plc [2004] 1 Lloyd's Rep 309;

Fiona Trust & Holding Corporation v Privalov (CA) [2007] EWCA Civ 20;

Rhone Mediterranee Compagnia Francese di Assicurazioni E Riassicurazioni v Achille Lauro (1983) 712 F 2d 50;

Sun Life Assurance Co of Canada v CX Reinsurance Co Ltd (CA) [2004] Lloyd's Rep IR 58.

This was an application by the defendants for a stay of the claim against them so the dispute could be referred to arbitration.

David Waksman QC and Adrian Jack, instructed by Sheridans, for the claimant; Stephen Nathan QC and Dr Colin Ong, instructed by Finers Stephens Innocent, for the defendants.

The further facts are stated in the judgment of Lightman J.

Thursday, 29 March 2007

JUDGMENT

Mr Justice LIGHTMAN:

Preliminary

1. In this action the claimant Mr Albon ("Mr Albon") trading as NA Carriage claims relief against the first defendant Naza Motor Trading Sdn Bhd ("Naza Motors"), a company incorporated with limited liability in Malaysia, in respect of a contract between the parties ("the UK Agreement") which (as is common ground) provided for the supply of agency services by Albon in respect of the sale of cars imported into this country by Naza Motors and (according to Mr Albon but disputed by Naza Motors) for the sale and export of cars by Mr Albon from England to Naza Motors in Malaysia.

2. On 26 August 2005 Mr Albon obtained permission to serve proceedings out of the jurisdiction in Malaysia on Naza Motors and on Tan Sri Dato Nasimuddin Amin ("Mr Nasim"), the controlling director and shareholder of Naza Motors. In those proceedings Mr Albon made two claims against Naza Motors, one in respect of the UK Agreement and one in respect of another agreement, and two claims against Mr Nasim. I shall refer to Naza Motors and Mr Nasim together as "the defendants".

3. In a judgment given on 23 January 2007 I rejected a challenge by Naza Motors to the grant of permission to serve Naza Motors out of the jurisdiction so far as the proceedings related to claims in respect of the UK Agreement but I set aside the grant of permission to serve Naza Motors out of the jurisdiction so far as it related to claims in respect of the other agreement and to serve Mr Nasim in respect of either claim against him. I directed that Mr Nasim should cease to be a party to this action.

4. On 18 January 2006 Mr Albon obtained an order under CPR Part 6.8 authorising service by a method not authorised by the CPR on Naza Motors and Mr Nasim. In a judgment given on 9 March 2007 I rejected a challenge by Naza Motors to that order. In view of my previous order that Mr Nasim should no longer be a party, no question arose requiring determination whether the order should have been made in respect of Mr Nasim.

5. Naza Motors contends that on 29 July 2003 it and Mr Albon in Malaysia entered into a Joint Venture Agreement ("the JVA") which provided for arbitration in Malaysia governed by Malaysian law of all claims between the parties. The terms of

the JVA are apt to include the disputes in respect of the UK Agreement the subject of this action and Naza Motors has commenced or purported to commence arbitration proceedings pursuant to the JVA in Malaysia ("the arbitration proceedings"). Mr Albon however contends that the JVA is a forgery and on that ground refuses to participate in the arbitration proceedings. The issue which I have now to resolve is whether: (1) (as contended by Naza Motors) the genuineness or otherwise of the JVA should be determined by the arbitrators in the arbitration proceedings, in which case this action should be stayed pending that determination and the stay should only be removed if the arbitrators decide that the JVA is a forgery; or (2) (as contended by Mr Albon) this court should determine that issue, in which case a stay should only be ordered if the court holds that the JVA is genuine.

Relevant chronology

6. The claim form in this case was issued on 10 August 2005. There were two heads of claim against each of Naza Motors and Mr Nasim. On 26 August 2005 permission was given to serve each of Naza Motors and Mr Nasim out of the jurisdiction. By letter dated 16 December 2005 Naza Motors and Mr Nasim gave Notice of Dispute-Conciliation under the JVA seeking resolution of the dispute with Mr Albon. By letter dated 11 January 2006 Mr Albon's solicitors disputed that Mr Albon had signed the JVA. On 18 January 2006 Mr Albon obtained an order under CPR Part 6.8 authorising service by a method not authorised by the CPR on the defendants. Pursuant to that order on 7 February 2006 Mr Albon served the claim form on the defendants. By letter dated 17 February 2006 Naza Motors and Mr Nasim gave "Notice of Arbitration" under the JVA on Mr Albon. By letter dated 22 February 2006 Mr Albon's solicitors again disputed that Mr Albon had signed the JVA. Mr Albon has taken no steps in the arbitration proceedings. On 13 March 2006 Naza Motors and Mr Nasim served an Acknowledgement of Service under CPR Rule 11 for the purpose of challenging jurisdiction accompanied by a Notice of Application to that effect. On 28 March 2006 Mr Albon applied for inspection of the JVA.

7. On 22 May 2006 in response to the notification of intention by Naza Motors to press ahead with the arbitration proceedings Mr Albon made a without notice application and was granted by Warren J an interim injunction restraining Naza Motors and Mr Nasim proceeding with the arbitration proceedings. By orders dated 23 May 2006 (the return date of the application) Warren J directed that the application should be stood over to come on as an application by order and he continued the injunction in the interim. On 12 September 2006 Briggs J adjourned

Mr Albon's application and continued the injunction over the meantime to cover this hearing. Naza Motors has responsibly indicated to the court that it may agree not to take further steps in the arbitration proceedings until the court has decided the issue whether the JVA is genuine if the court decides: (1) that it (and not the arbitrators) shall determine the authenticity of the JVA; and (2) that this determination by court is a necessary preliminary to the grant of a stay under section 9 by reason of the arbitration agreement. Accordingly I do not need in this judgment to determine whether the injunction ought ever to have been granted and whether it ought now to be continued. By reason of the refusal of Mr Albon to participate in the Arbitration Proceedings and the grant of this injunction the arbitration proceedings have not proceeded beyond the appointment by Naza Motors of its choice of arbitrator

The JVA

8. I should at this stage say a word about the issue as to the genuineness or otherwise of the JVA. Mr Nasim and a Mr Naidu (an employee of Naza Motors) have made witness statements to the effect that Mr Albon signed the JVA or acknowledged his signature on the JVA in their presence at the offices of Naza Motors in Kuala Lumpur on 29 July 2003. Mr Albon has made a witness statement to the effect that he never agreed to or signed the JVA and he suggests that his signature was "lifted" from a document which he signed at about that time at the request of Mr Nasim to be provided to the Malaysian tax authorities. Mr Albon points out a number of features of Naza Motors' case which (he argues) calls into question the evidence of Mr Nasim and Mr Naidu. These include that: (1) the JVA was allegedly made on 29 July 2003 but according to its terms was deemed to have commenced six years earlier in March 1997. One of Naza Motors' witnesses, Ms Amin in part of her evidence states that the explanation for this given to her by Mr Nasim is that this earlier date was the date when the importation of cars into the UK commenced. Mr Nasim in his later evidence and Mr Albon however agree that trading only started in November 1997; (2) Naza Motors have produced no other document referring to the JVA; (3) Naza Motors first asserted the existence of the JVA in a letter from their solicitors FSI dated 22 December 2005; (4) though (according to Naza Motors) the JVA was drafted by Mr Naidu who (according to Mr Nasim) "had many years experience in drafting legal documents on behalf of the Naza group of companies" and though Mr Albon, Naza Motors, Mr Nasim and NA Carriage are named as parties, the document is signed only by Mr Albon and Mr Nasim personally, and there is no reference to Naza Motors at all on the