Important new Sanctions Judgment: The Catalan Sea – Court of Appeal clarifies the test for sanctions risk: A reasonable apprehension of a real risk of sanctions

The Court of Appeal has handed down an important judgment on sanctions clauses in voyage charterparties in ***Tonzip Maritime (Singapore) Pte Ltd v 2 Rivers Pte Ltd, "The Catalan Sea"*** [2026] EWCA Civ 641. The appeal arose from the owners' refusal to comply with an order to lift a cargo of crude oil to be shipped by a Russian oil company, Neftisa due to sanctions concerns.

The owners relied on a sanctions clause in the charterparty (an amended ExxonMobil VOY2005 form) which permitted them to refuse to comply with an order which, *"in the reasonable judgment of the Owners",* was prohibited by sanctions or would expose the owners, the vessel, its managers, crew, insurers or reinsurers to sanctions.

The Court of Appeal, in a judgment given by Foxton LJ, with whom Coulson LJ and Zacaroli LJ agreed, held that the clause was concerned with a reasonable judgment as to real risk, not proof on the balance of probabilities that sanctions would be breached. The Court upheld the first instance judge's construction of the clause (who had concluded that the relevant threshold was "*a reasonable apprehension to a risk of sanctions"*) but the Court of Appeal allowed the appeal on its application to the facts.

The Sanctions Concern

The concern arose because Neftisa was associated with Mr Mikhail Gutseriev, who had been sanctioned by the EU in June 2021 and by the UK in August 2021. Public and compliance materials indicated that, after those designations, Mr Gutseriev had allegedly transferred his ultimate beneficial ownership of Neftisa to his brother, Mr Sait-Salam Gutseriev, retaining only a 7% shareholding.

That alleged transfer was itself the difficulty. Contemporaneous material recorded uncertainty as to whether the transaction might be viewed as an attempt to circumvent sanctions, and whether dealings with companies controlled by persons affiliated with Mr Gutseriev might amount to the indirect provision of funds to a sanctioned person.

When the vessel arrived at Primorsk, charterers confirmed that Neftisa was the shipper and ordered owners to load. It was common ground that performance fell within the territorial scope of the relevant UK and EU sanctions regimes. Owners carried out a sanctions screening check (using Refinitiv World-Check, a platform used by a number of banks and shipowners when managing sanctions issues) which showed that Neftisa was associated with a sanctioned individual). Owners therefore refused to load and called for alternative voyage orders.

Charterers tried to persuade Owners to change their minds by providing legal opinions on the sanctions issue. This did not resolve the Owners' concerns. Charterers refused to provide alternative voyage orders and purported to cancel the Charterparty on the ground of the Claimant's refusal to load the Neftisa Cargo. Owners' position was that the purported cancellation amounted to renunciation of the Charterparty and that the Owners were terminating the Charterparty for

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repudiatory breach.

The key legal question

The key legal question was the threshold required before owners could invoke the relevant sanctions clause. Did "expose … to sanctions" require a reasonable judgment that sanctions would probably be contravened or was it enough that owners reasonably judged that there was "a real risk" of such a breach (see [33]).

That distinction mattered because the alleged sanctions concern turned on beneficial ownership and control: matters which are often opaque, fact-sensitive, and difficult to determine with certainty in real time.

The approach at first instance

At first instance, Andrew Hochhauser KC, sitting as a Deputy High Court Judge, accepted Owners' construction of the clause in principle. He held that Owners did not have to show that compliance was "more likely than not" to breach sanctions. It was sufficient that they had formed "a reasonable commercial judgment" that complying with the order created "a risk or a danger" of breach: [28].

However, the judge held that the threshold was not met on the facts. Foxton LJ summarised the decision below as holding that owners' entitlement arose where they had "a reasonable apprehension to a risk of sanctions", but that "no such reasonable apprehension arose on the facts": [3].

In particular, the judge focused on whether the material evidenced Mr Gutseriev's actual control of Neftisa in November 2021, and whether owners had made "an objectively reasonable decision that Mr Gutseriev had de facto control": [29].

The Court of Appeal's approach and assessment

Foxton LJ, agreeing with the submission of Mr Vineall KC, held that the natural starting point, "and in many respects the end point", was the wording of the charterparty: [34]. The words "prohibited by sanctions" addressed the actual legal effect of sanctions. The additional words "expose … to sanctions" had to mean something different: [35]–[37].

The second sentence of sub-clause C referred back to the relevant matter as "such risk". That gave "very strong support" to owners' construction that "exposure" was used in the sense of being "put at risk": [38].

The Court's approach was reinforced by the commercial context. Owners may have to make urgent prospective judgments on incomplete information about beneficial ownership, control, cargo origin and cargo destination. Those matters are often "hidden from public view" and "eminently contestable", while sanctions regimes are broadly framed, complex and may overlap across jurisdictions: [41].

The Court also held that the judge had placed too much weight on *Litasco SA v Der Mond Oil and Gas Africa* [2023] EWHC 2866 (Comm). That case concerned whether there was a triable defence that payment would involve a breach of UK sanctions law. It was not about a contractual decision-maker assessing sanctions risk prospectively under a "reasonable judgment" clause. Nor did *Vneshprombank LLC v Bedzhamov* [2024] EWHC 1048 (Ch), concerning the statutory test of "reasonable cause to suspect", require a higher threshold in this contractual context.

On the facts, several matters supported the reasonableness of owners' judgment. Mr Gutseriev had previously held a valuable majority interest in the Neftisa structure. After his designation, that interest was said to have been transferred to his half-brother and long-time business partner. There was no information about the consideration for the transfer. The Refinitiv report described Neftisa as associated with a sanctioned individual. The Judge concluded that the additional material provided by Charterers did not enough to dispel the Owners' reasonable concerns and if anything

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confirmed the same as they were based on material from a "*source which could not have offered an independent perspective on the reality of any transfer of control*" [86].

The correct test

The result is a clear and practical test. Where a clause permits owners to refuse orders which, in their reasonable judgment, would "expose" them or the vessel to sanctions, owners need not prove that performance would in fact breach sanctions, or that breach is more likely than not. The question is whether owners made an objectively reasonable judgment that performance would give rise to a real risk of sanctions exposure. In a case concerning ownership or control, that does not require owners to establish actual control. It is enough that there is a reasonable basis for concluding that there is a real risk of such control.

Wider significance

The decision is significant because it confirms that, where a sanctions clause is framed by reference to "reasonable judgment" and "exposure", the relevant threshold may be a reasonable judgment of real risk, not proof that sanctions would in fact be breached.

It also recognises the commercial realities of sanctions decision-making in shipping. Owners may have to act quickly, on incomplete information, where ownership and control structures are opaque and the consequences of getting the decision wrong may be severe.

For charterers, the judgment underlines that sanctions concerns cannot necessarily be answered by producing legal opinions which depend on unverified factual assumptions. For owners and insurers, it provides valuable appellate guidance on when a sanctions risk assessment will justify refusal to comply with voyage orders.

The judgment is likely to become a significant reference point in future shipping, insurance and international trade disputes concerning sanctions clauses, contractual discretions and risk-based decision-making.

Nick Vineall KC acted for the Owners, together with Emmet Coldrick, instructed by Wikborg Rein LLP. James Shirley and Tom Hall (of Quadrant Chambers) appeared for the Charterers, instructed by HFW Middle East LLP.

Read the full judgment here.

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