

Judgment handed down in Orion Shipping and Trading LLC v Great Asia Maritime LTD [2025] EWCA CIV 1210

THE LILA LISBON: LOSS OF BARGAIN DAMAGES FOR FAILURE TO DELIVER BY THE CANCELLING DATE UNDER THE NORWEGIAN SALEFORM 2012

On 2 October 2025, the Court of Appeal handed down a ground-breaking decision on the recovery of loss of bargain damages under the Norwegian Saleform 2012 for a seller's failure to deliver by the cancelling date. [Alexander Wright KC](#) and [Robert Scrivener](#) acted for the sellers, instructed by Ed Mills-Webb, Ross Attfield and James Stephenson of Preston Turnbull.

The underlying dispute concerns the cancellation of a Memorandum of Agreement for the sale of the vessel the "Lila Lisbon". Clause 14 of the Norwegian Saleform 2012 provided that, in the event the sellers failed to provide notice of readiness by the cancelling date in clause 5, "...they shall make due compensation to the Buyers for their loss and for all expenses together with interest if their failure is due to proven negligence and whether or not the Buyers cancel this Agreement."

Following cancellation of the contract by the buyers because notice of readiness was not served by an extended cancelling date, an arbitration tribunal determined that, although the sellers had not repudiated the contract, clause 14 nevertheless permitted the buyers to damages reflecting the difference between the market price of the vessel and the contract price as at the date of termination (i.e., loss of bargain damages).

On an appeal under s.69 of the Arbitration Act 1996, Dias J sitting in the Commercial Court decided the tribunal was wrong and the sellers were not liable for loss of bargain damages, because (a) the sellers were under no obligation to tender notice of readiness by the cancelling date, and (b) clause 14 did not permit a recovery for loss of bargain damages. Dias J also decided that any obligation on the sellers to meet the cancelling date (if, contrary to her view, there were any such obligation at all) was not a condition, such that the sellers were not in repudiatory breach anyway.

On a further appeal, the Court of Appeal has now decided that:

1. Under the Norwegian Saleform 2012, a seller is under an obligation to use reasonable diligence to deliver the vessel by the cancelling date, closely analogous to an owner's obligation of reasonable diligence to meet a charterparty laycan (The Democritos [1976] 2 Lloyd's Rep 149).
2. Clause 14 permitted the recovery of loss of bargain damages. This was because, in the Court's view, where there was a contractual cancellation of a contract for delayed delivery, that cancellation causes a loss of the parties' bargain (even where there is no repudiation). It was, according to the judgment, this loss which clause 14 was intended to compensate.

There was no appeal against Dias J's finding that any obligation to deliver by the cancelling date was not a condition.

This judgment is essential reading for anyone advising on the Norwegian Saleform 2012, as it is the first time the nature of a seller's obligation to deliver the vessel has been held to be one of reasonable diligence to meet the cancelling date.

It is also the first time it has judicially been decided that loss of bargain damages are recoverable under clause 14. In that regard, the Court's judgment is interesting for its discussion of the principle in *Financings Ltd. v Baldock* [1963] 2 QB 104 (about the extent to which loss of bargain damages may be recovered following a contractual cancellation). Nugee LJ's judgment suggests – without finally deciding – that there is scope for saying that the principle does not apply to a “contract for a single transaction such as a sale” (paragraph [119]).

The judgment can be found [here](#).