Neutral Citation Number: [2019] EWHC 2522 (Comm)

Case No: CL-2018-000429/CL-2018-000451

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings
Fetter Lane, London EC4A 1NL

Date: 02/10/2019

Before :

MR. JUSTICE TEARE

- -

Between :

Bilgent Shipping PTE Ltd.	**Claimant/ Appellant**
and	
ADM International SARL	**Defendant/ Respondent**
And Between	
ADM International SARL	**Claimant/ Appellant**
And	
Oldendorff Carriers GmbH & Co KG	**Defendant/ Respondent**

"Alpha Harmony"

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Charles Priday (instructed by **Winter Scott LLP**) for **Bilgent**
James M. Turner QC (instructed by **Hill Dickinson LLP**) for **ADM**
Michael Davey QC and Mark Stiggelbout (instructed by **MFB Solicitors**) for **Oldendorff**

Hearing date: 26 July 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr. Justice Teare :

1. These are two appeals from two related arbitrations, pursuant to section 69 of the Arbitration Act 1996. Permission to appeal was given by Knowles J. The appeals concern a question of law relating to the cancellation of a voyage charterparty on the grounds that a valid notice of readiness had not been given in time. When granting permission Knowles J. observed that the answer on each appeal may be different.

2. The appeals arise out of two charterparties which were not in identical form. The Head Charter was dated 13 November 2014 and was on an amended Norgrain 1973 form. It was between Oldendorff as Owner and ADM as Charterer. It provided for two voyages from Brazil, Argentina or Uruguay to China. The Sub-Charter was dated 5 November 2014 and was on an amended Baltimore Form C Berth Grain form. It was between ADM as Disponent Owner and Bilgent as Sub-Charterer. It provided for a voyage from Brazil to China. The vessel nominated to perform the voyage from Brazil to China was the ALPHA HARMONY.

3. The Head Charter provided for two laycan periods, the second of which ended on 31 May 2015. The Sub-Charter provided for a laycan period ending on 31 May 2015. On 2 April 2015 the laycan spread was narrowed by Bilgent to 1-10 May 2015 and also by ADM under the Head Charter. The vessel tendered notice of readiness by email at 0704 on 10 May 2015 which was a Sunday. The email stated that the vessel had arrived at 0250.

4. Under both charters a clause provided for notice of readiness to be delivered between 0800 and 1700 on a weekday and between 0800 and 1100 on a Saturday. No express provision was made for delivery of a notice of readiness on a Sunday. Laytime was to commence at 0800 on the next working day after a valid notice of readiness had been tendered.

5. Bilgent cancelled the Sub-Charter at 2047 on Sunday 10 May 2015 and ADM cancelled the Head Charter at 0555 on Monday 11 May 2015. The question is whether the cancellations were lawful in circumstances where, although notice of readiness had been tendered before the relevant time on the cancelling date, it had not been tendered during the permitted hours. The arbitration panel in both arbitrations held that the cancellations were not valid. Bilgent appeals the award made against it in favour of ADM. ADM resists that appeal but appeals against the award made against it in favour of Oldendorff.

The relevant terms of the Sub-Charter

6. Clause 14 dealt with notice of readiness in these terms:

> "Notification of the vessel's readiness to load at the loading port must be delivered by mail/fax at the office of Charterers or their agents, between 0800 hours and 1700 hours from Monday to Friday, between 0800 hours and 1100 hour on Saturday, Vessel also having been entered at the Custom House. Laytime is to commence 0800 hours the next working day, also see Clauses 43,44,74."

7. Clauses 43 and 44 concerned the discharge port. Clause 74 repeated the provisions concerning notice of readiness at both the loading and discharge port.

8. Clause 16 dealt with the cancelling date in these terms:

> "Should the Notice of Readiness at loading port not be delivered as per Clause 14 by twelve o'clock noon on the 31st day of May 2015, the Charterers or their Agents shall at said hour and at any time thereafter, but not later than the presentation of Notice of Readiness together with the required certificates at said office, have the option of cancelling this Charter Party. Charterers to narrow into "10" days spread latest in 40 days advance prior to first layday."

The relevant terms of the Head Charter

9. Clause 4 concerned Laydays and Cancelling. It provided as follows:

> "Laytime for loading, if required by Charterers, not to commence before 0001 on 01st day of April/May 2015. Should the vessel's notice of readiness not be tendered and accepted as per Clause 17 before 2359 on the 30th/31st day of April/May of 2015, the Charterers or their Agents shall at any time thereafter, but not later than one hour after the notice of readiness is tendered, have the option of cancelling this Charterparty. Charterers to narrow Laycan into a 10 days spread latest 30 days prior first Layday …… "

10. Clause 17 concerned Time Counting and provided as follows:

> "(a) Notice of readiness and Commencement of Laytime See also Clause 70
>
> Notice of vessel's readiness to load and/or discharge at the first or sole loading and/or discharging port, shall be delivered in writing or by cable/telex/email to Charterers/Receivers (or their Agents). See also Clause 70. Such notice of readiness shall be delivered when vessel is in the loading or discharging port and is in all respects ready to load/discharge in case loading/discharging berth is occupied vessel to be allowed to tender Notice of readiness whether in port or not, whether in berth or not, whether customs cleared to not, whether in free pratique or not.
>
> Following receipt of notice of readiness to load or discharge as above, laytime will commence at 0800 on the next working day, after the valid Notice of readiness has been tendered and hold passed, laytime to commence to restart at 0800 hours on Monday or the day following a public holiday. ……"

11. Clause 70, which dealt with Notice of Readiness and Layime and to which the reader of clause 17 was directed to see, provided as follows:

> "Loading port:
>
> If loading at East Coast South America, the Notice of readiness to be tendered within office hours 0800-1700 hours Monday to Friday and 0800-1100 hours Saturday. Layime to commence at 0800 hours the next working day after valid Notice of Readiness being tendered. ……"

The submissions in summary

12. The submission made by Mr. Priday on behalf Bilgent was simple. Clause 16 of the Sub-charter identified when Bilgent had an option to cancel, namely, in the event that notice of readiness was not delivered as per clause 14 by 12 noon on 10 May 2015. Clause 14 required the notice of readiness to be delivered within certain hours on a weekday or on a Saturday. The notice of readiness had not been delivered within those hours. It had been delivered on Sunday 10 May at 0704. It followed that from Sunday 10 May at 12 noon Bilgent had a right to cancel.

13. The primary submission made by Mr. Turner QC on behalf of ADM was that the arbitral tribunal was right to say that no right of cancellation had accrued. He submitted that, when construing the words "as per clause 14" in clause 16, only those parts of clause 14 as are sensible to include and are not in conflict with clause 16 should be read into clause 16. He submitted that there was a tension between "an entitlement to cancel if the notice of readiness has not been delivered by noon on a Sunday" and the "stipulation that notice of readiness cannot be delivered after 11 am on a Saturday." The office hours requirement should not therefore be incorporated into clause 16. He submitted that the right to cancel in clause 16 arose if no notice of readiness had been delivered before noon on Sunday 10 May. A notice of readiness had been delivered by noon on Sunday 10 May; for it had been delivered at 00704 on that Sunday.

14. The alternative submission made by Mr. Turner on behalf of ADM was that under the Head Charter a notice of readiness could only take effect during the office hours identified in clause 70. The notice of readiness relied upon by Oldendorff was tendered out of office hours and therefore could not prevent the right to cancel from arising at 2359 on Sunday 10 May. This alternative submission reflected the submission made by Mr. Priday under the Sub-Charter appeal.

15. The submission made by Mr. Davey QC on behalf of Oldendorff was that clause 4 of the Head Charter provided for an option to cancel where there had been no notice of readiness as per clause 17 before 2359 on the cancelling date. Clause 17 contained no office hours requirement; such a requirement had been in the standard form of the Norgrain charterparty but had been deleted. Accordingly, in order for there to be a right to cancel, there had to have been no notice of readiness tendered and accepted by 2359 on 10 May. There had been a notice of readiness at 0704 on 10 May and so there was no right to cancel.

Approach to questions of construction

16. The court is concerned with a question of construction. The Court of Appeal has recently summarised the correct approach to matters of construction; see *Ark Shipping Company LLC v Silverburn Shipping (IOM) Ltd.* [2019] EWCA Civ 1161 at paragraph 41 per Gross LJ:

> 41. Rather than adding to an all too well travelled area, it suffices to adopt (with respect) Lord Hodge's synthesis as to interpretation in *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; [2017] AC 1173, at [10] – [15]:
>
> "10. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of the drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning……[including] the potential relevance….of the factual background known to the parties at or before the date of the contract, excluding evidence of the prior negotiations…..
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> 11. ….Interpretation is….a unitary exercise; where there are rival meanings, the court can give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with business common sense…..
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> 12. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated…..
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> 13. Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement…..
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> 15. The recent history of the common law of contractual interpretation is one of continuity rather than change. One of the attractions of English law as a legal system of choice in commercial matters is its stability and continuity, particularly in contractual interpretation."
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> See too, Popplewell J's helpful summary, in *The Ocean Neptune* [2018] EWHC 163 (Comm); [2018] 2 All ER 108, at [8], together with that of Carr J in the present case, at [26].”

The Sub-Charter

17. It is convenient to start with the dispute under the Sub-Charter. It was entered into before the Head Charter and Mr. Priday opened the appeal hearing.

18. Mr. Priday submitted that the requirement in clause 16 that the notice of readiness be "as per clause 14" meant that the notice of readiness be "in accordance with the requirements of clause 14". One such requirement was that the notice of readiness be delivered within the stated office hours. Where a notice of readiness is delivered before office hours and is not taken away it can be found as a matter of fact to have been delivered when office hours next open; see *Galaxy Energy International Ltd. v Novorossiysk Shipping Co., "The Petr Schmidt"* [1998] 2 Lloyd's Rep. 1 at pp.6 and 7 per Evans LJ and Peter Gibson LJ. Thus in the present case where the notice of readiness was sent by email at 0704 on Sunday 10 May it took effect at 0800 on Monday 11 May when office hours commenced at 0800. Mr. Priday said that a valid notice of readiness had two effects. One was to identify when laytime commenced. The other was to identify when an option to cancel arose. There was no scope for saying that the notice of readiness was invalid for one purpose but valid for the other purpose. He disputed Mr. Turner's suggestion that there was a tension between clause 14 and clause 16. Clause 16 merely defined the moment when the option to cancel arose. Clause 16 was not in conflict with clause 14 because it did not define what was a valid notice. Mr. Priday relied upon the decision in *Cheikh Boutros Selim El-Khory v Ceylon Shipping Lines Ltd., "The Madeleine"* [1967] 2 Lloyd's Rep. 224 where there was a provision giving an option to cancel if the vessel were not delivered by a certain date and it was held that the reference to delivery was a reference to delivery in accordance with the requirements of the clause dealing with delivery both as to the vessel's condition and as to office hours. Roskill J. said at p.238-9:

> "Nor do I think he is right in saying that in order to avoid cancellation the owners can tender the ship to the charterers between 6 pm and midnight. Mr. Staughton's latter argument, if right, would indeed produce a strange result, because it would mean that there was a no-man's land of time between 6 pm and midnight during which delivery could not be made for the purposes of clause 1 and yet could be made for the purposes of avoiding cancellation under clause 22."

19. Mr. Priday said that the alternative construction led to uncommercial results because it would undermine the purpose of the clause in ensuring that notice of readiness was communicated to the charterers during office hours. Reference was made to *Trafigura Beheer BV v Ravennavi SPA, "The Port Russel"* [2013] 2 Lloyd's Rep. 57 where Popplewell J. said at paragraph 15:

> "The giving of Notice of Readiness has important commercial and financial consequences. It starts the running of layime and those involved both in the giving and receiving of such Notices are assisted by certainty as to whether the Notice has been validly given."

20. In response Mr. Turner said that cancellation was a draconian remedy and referred to *Noemijulia Steamship Co. Ltd. v Minister of Food* [1951] 1 KB 223 where Devlin J. described a cancellation clause as "a forfeiture clause and so not to be applied lightly". He submitted that depending upon the words chosen by the parties to express their

bargain, an option to cancel might not be dependent upon the giving of a notice of readiness by a particular time if the vessel was in fact ready by that time; see *Aktiebolaget Nordiska Lloyd v J. Brownlie and Company (Hull) Ltd.* (1925) 30 Com. Cas. 307. For the reasons which I have already summarised he submitted that in the present case the office hours requirement was not incorporated into clause 16. He pointed out that on Bilgent's construction of the charterparty a notice of readiness delivered at 1059 on a Saturday would not give rise to a right to cancel after midday on the Sunday but that a notice of readiness delivered at 1101 on a Saturday would give rise to a right to cancel after midday on the Sunday. He submitted that that would be uncommercial. Similarly, he said that it was unattractive and uncommercial for the charterer to be entitled to cancel a charterparty when there had in fact been a notice of readiness delivered by email before 12 noon on the Sunday. The charterer can be expected to check his emails before he exercises his option to cancel.

21. The arbitrators decided in favour of the disponent Owners, ADM. The arbitrators noted the tension identified by Mr. Turner between clauses 14 and 16. They said this at paragraph 11 of their Award and Reasons:

> "It is difficult to accept the charterers' submission which in effect means that the parties in clause 16 agreed the cancelling date and time as 1200 on 10 May but nevertheless intended that a provision specifically agreed in clause 14 should necessarily override or restrict that cancelling time and date. ……..Now, we accept that such an interpretation is possible, but we consider that it lacks the clarity and simplicity which is desirable in commercial contracts. The practical effect of the charterers' submissions is that the latest at which notice of readiness could properly be tendered is pushed forward until 1100 on Saturday 9 May, as opposed to the contractually negotiated later time of 1200 on Saturday 10 May. That to us is a commercially and legally unattractive solution. "

Discussion

22. As interesting as it is to look at how the court has construed similar but different provisions in other charterparties the starting point must be the words of this charterparty. Clause 16 is the clause which provides the charterers with the option to cancel. It defines when that option arises. It arises when "the Notice of Readiness at loading port" has not been delivered "as per Clause 14 by twelve o'clock noon" on 10 May. Thus the wording of the clause refers the reader back to clause 14 and one finds in clause 14 a requirement that the Notice of Readiness must (i) be delivered by mail/fax, (ii) at the offices of the Charterers or their Agents and (iii) between the stated hours. I accept Mr. Priday's submission that the words "as per clause 14" mean that the Notice of Readiness must be in accordance with the requirements of clause 14. Of course, if any of the requirements in clause 14 were inconsistent with clause 16 then the process of reading the terms together might require the inconsistent requirement to be ignored. I am not, however, persuaded that there is any inconsistency between clause 16 and the requirements in clause 14. As Mr. Priday submitted, there is nothing in clause 16 which defines the requirements of a Notice of Readiness. Mr. Turner submitted that there was a "tension" between the two clauses and the experienced arbitrators appear to have recognised such a tension. If there is a tension it does not arise if the cancelling

date is a weekday. If notice of readiness is given by email before 0800 on a weekday it will take effect, in accordance with the approach followed in the *Petr Schmidt*, at 0800 that day. The suggested tension only arises if the cancelling date is a Saturday or a Sunday. If it is a Saturday and notice of readiness is given after 1100 but before 1200 or if it is a Sunday and notice of readiness is given after 1100 on the Saturday the charterer may say that notice of readiness has not been given "as per clause 14". I have asked myself whether that truly is an inconsistency or tension between causes 14 and 16. I do not consider that it is. Rather, it is simply a working out of the words "as per clause 14" when enquiring whether, on certain facts, there has been a notice of readiness "as per clause 14". I do not consider, therefore, that it is appropriate to cut down the words "as per clause 14" in the manner suggested by Mr. Turner. That being so the wording of clause 16 suggests to me that the construction of clause 16 favoured by ADM and the arbitrators was not one which was permitted by the language of clauses 14 and 16.

23. The arbitrators found the interpretation placed on clause 16 by Bilgent to be "lacking in clarity and simplicity" and to be a "commercially and legally unattractive solution."

24. I would not agree that Bilgent's interpretation lacks clarity and simplicity. The words "as per clause 14" are clear and simple. They refer the reader back to clause 14 for the requirements of a valid notice of readiness. Of course, if a reader fails to note those words and simply asks himself whether a notice of readiness had been delivered by 12 noon on Sunday 10 May he may conclude, on the facts of this case, that a notice of readiness had been delivered at 0702 that morning. But if a reader takes note of those words he would immediately see that such notice was not "as per clause 14".

25. As to whether the charterer's interpretation was a commercially and legally unattractive solution, Mr. Turner has endeavoured to explain why it is. He pointed out that on Bilgent's construction a notice of readiness delivered at 1059 on a Saturday would mean that there was no right to cancel after midday on the Sunday but that a notice of readiness delivered at 1101 on a Saturday would mean that there was a right to cancel after midday on the Sunday. That is true but once one restricts the time within which notice of readiness may be validly given there will be such consequences. I do not agree that that renders the construction uncommercial. By the same token, on ADM's construction, a notice of readiness delivered at 1159 on 10 May would not give rise to an option to cancel whilst a notice of readiness delivered at 1201 on 10 May would.

26. Further, Mr. Turner said it was unattractive and uncommercial for the charterer to be entitled to cancel a charterparty when there had in fact been a notice of readiness delivered by email before 12 noon on the Sunday. The charterer can be expected to check his emails before he exercises his option to cancel. There is, it seems to me, some force in this. However, the custom by which notices of readiness are to be provided to the charterer within working hours is longstanding. It can be seen in *Aktiebolaget Nordiska Lloyd v J. Brownlie and Company (Hull) Ltd.* (1925) 30 Com. Cas. 307 and in *Cheikh Boutros Selim El-Khory v Ceylon Shipping Lines Ltd., "The Madeleine"* [1967] 2 Lloyd's Rep. 224. It no doubt reflects a time when the communication of notices of readiness to charterers could only be guaranteed if they were delivered during office hours. With the advent of email and the ability of charterers to check whether they have received an email at any time of day or night the office hours requirement may well be outdated. However, it was used by the parties to this sub-charterparty and

cannot be ignored simply on account of it being, arguably, outdated. I am therefore not persuaded that the construction favoured by Bilgent is uncommercial.

27. Rather, it seems to me, as observed by Popplewell J. in *Trafigura Beheer BV v Ravennavi SPA, "The Port Russel"* [2013] 2 Lloyd's Rep. 57, that terms which identify what is a valid notice of readiness have a commercial purpose, namely, they assist those involved in the giving and receiving of notices of readiness to know whether a notice of readiness has been validly given. It would promote uncertainty if, notwithstanding the words "as per clause 14" in clause 16, a notice of readiness could be invalid for one purpose (the running of laytime) but valid for another (the option to cancel). That would be the sort of "strange result" condemned by Roskill J. in in *Cheikh Boutros Selim El-Khory v Ceylon Shipping Lines Ltd., "The Madeleine"* [1967] 2 Lloyd's Rep. 224. Charterparties may not make the option to cancel dependent upon a notice of readiness (as in *Aktiebolaget Nordiska Lloyd v J. Brownlie and Company (Hull) Ltd.* (1925) 30 Com. Cas. 307) but when they do, as in the present case by the words "as per clause 14", a failure to give those words their ordinary and natural meaning risks causing uncertainty where the parties had endeavoured to create certainty.

28. For these reasons, and with considerable respect to the arbitrators, I have reached a different conclusion from that which they reached. In my judgment Bilgent were entitled to cancel the Sub-Charter when they did.

The head charter

29. Mr. Davey, on behalf of Oldendorff, the Head Owner, accepted that under the unamended Norgrain form, the effect of clauses 4 and 17, when read together, was that a notice of readiness which had not been delivered within the hours stated in clause 17 was invalid for the purposes of assessing whether there was a right to cancel. That stance is of course consistent with the decision which the court has reached on the appeal in the Sub-Charter.

30. Mr. Davey submitted that the amendment to clause 4 by providing for the relevant time on the cancelling date to be 2359 rather than 1200 was inconsistent with a requirement that notice of readiness be delivered within office hours. He further submitted that the deletion of the office hours requirement in clause 17 was consistent with the amendment to clause 4. It had the effect that all that clause 17 required was that the notice of readiness be delivered in writing or by cable/telex/email at the office of the charterers or their agents. It followed that a notice of readiness delivered at 0702 on Sunday 10 May was valid for the purposes of assessing whether there had been a notice of readiness before 2359 on 10 May. Reference was made to *Punjab National Bank v De Boinville* [1992] 1 WLR 1138 at p.1148 per Staughton LJ in support of the proposition that what had been deleted assisted in showing what the parties did not want in their agreement.

31. Mr. Davey next dealt with the words "See also Clause 70" in clause 17 which occurred in the first line and after the deleted office hours requirement. Clause 70 made express reference to the office hours requirement for the tender of a notice of readiness. He submitted that the words "See also Clause 70" were not words of incorporation, relying upon *The Lipa* [2001] 2 Lloyd's Rep. 17 at paragraph 19 per Andrew Smith J. They were simply words which notified the reader that there were laytime provisions in clause 70. They did not have the effect of incorporating the office hours requirement

into clause 4 which specifically dealt with the option to cancel and made no reference to clause 70.

32. Clause 4 uses the language of tendering and accepting notice of readiness whereas clause 17 requires delivery of the notice of readiness. It was not suggested by Mr. Davey that these differences were material in the present dispute.

33. Mr. Turner submitted that clause 4 had to be construed in the context of the charterparty as a whole, which included both clause 17 and clause 70. Clause 70 stipulated the times at which notice of readiness must be tendered in order to be effective. He noted that clause 4 required the notice of readiness to be tendered and accepted before 2359 and suggested that it was very difficult to see how a notice of readiness could coherently be treated as accepted outside office hours. If so then a notice of readiness tendered out of office hours could not prevent the right to cancel from arising because it could not be both tendered and accepted out of office hours. There was therefore nothing in the "see" rather than the "as per" point. It was uncommercial to construe the charterparty in such a way as involved permitting the notice of readiness to be tendered out of office hours for cancellation purposes but required it to be tendered during office hours for laytime purposes.

34. The tribunal decided that the effect of the amendment to clause 4, by which the option to cancel arose in the event that the notice of readiness was not tendered and accepted before 2359 on 10 May, coupled with the deletion of the office hours requirement in clause 17 resulted in ADM having no right to cancel because notice of readiness was tendered at 0704 on 10 May. They agreed that the words "See also Clause 70" did not incorporate into clause 17 the office hours requirement and that clause 70 was principally concerned with laytime.

Discussion

35. The aim of the court in construing the charterparty is to identify "the objective meaning of the language which the parties have chosen to express their agreement."

36. The amendment to the standard wording of the Norgrain form is striking. First, clause 4 expressly provides that the option to cancel arises if there has been no notice of readiness before 2359 on the cancelling date. 2359 is long after office hours have closed whatever the day of the week. Second, although clause 4 still requires the notice of readiness to be "as per clause 17" the parties have removed from clause 17 the office hours requirement. The combined effect of clauses 4 and 17 as amended manifests, objectively, an intention that, for the purposes of the cancelling clause, there is no requirement that the notice of readiness be delivered within office hours.

37. Thus the parties appear to have jettisoned the requirement that the notice of readiness be delivered within office hours and to have contemplated that in the event that notice of readiness was delivered at any time before 2359 on the cancelling date there would be no option to cancel. Mr. Turner submitted that the words in clause 17, "See also Clause 70", are sufficient to incorporate in clause 17, and hence in clause 4, the office hours requirement for the delivery of a notice of readiness. That is supported by the circumstance that clauses 17 and 70 both deal with laytime and that clause 4 must be construed in the context of the charter as whole. There is, however, a cogent argument that that is not the objective meaning of the charterparty. First, there must have been a

purpose in deleting the office hours requirement from clause 17 and then including an office hours requirement in clause 70 (though in slightly different terms). It is likely that the purpose was to make clear that for cancellation purposes, the subject of clause 4, notice of readiness did not have to be delivered within office hours but that for laytime purposes, the subject matter of clause 70, a notice of readiness had to be delivered within the stated office hours. Second, the specially agreed time of 2359 in clause 4 would be an odd time to select for the purposes of the option to cancel if a notice of readiness for that purpose had to be delivered within office hours. Third, clause 4 referred to a notice of readiness "as per clause 17", not to a notice of readiness "as per clause 70".

38. The conclusion urged by Mr. Davey gives rise to the "strange result" condemned by Roskill J. in in *Cheikh Boutros Selim El-Khory v Ceylon Shipping Lines Ltd., "The Madeleine"* [1967] 2 Lloyd's Rep. 224, namely, that a notice of readiness may be valid for one purpose (avoiding the option to cancel) but invalid for another purpose (the commencement of laytime). But the parties are free to agree upon different regimes if they so wish.

39. I have reached the conclusion that the amendments to clauses 4 and 17 were objectively intended to have that result. Indeed, it seems to me that unless that is the objective intention of the parties it is impossible to identify any reason why the parties substituted 2359 for 1200 in clause 4, removed the office hours requirement from clause 17 and then reinstated that requirement in clause 70. Clause 70 deals with laytime and is not the clause which is incorporated in clause 4, which deals with cancellation.

40. Mr. Turner suggested in his oral submission that the reason for a later time for cancellation in the Head Charter than in the Sub-Charter was because ADM, typically, would decide whether to cancel after Bilgent had done so and so needed more time. However, this suggestion does not explain why, coupled with the later time in clause 4, the office hours requirement was deleted from clause 17.

41. Mr. Turner pointed to the difficulty of a charterer "accepting" a notice of readiness outside office hours and suggested that it followed that a notice could not be tendered out of office hours. I was not persuaded by this argument. Whilst the standard form of the Norgrain charterparty provided that a charterer shall not be required to accept a notice on Saturday after 1200 or on Sunday or holidays, that provision was deleted. That suggests that acceptance was contemplated out of office hours on a Saturday or a Sunday.

42. I am persuaded that the amendments to clauses 4 and 17 were intended to create a different notice of readiness regime from that which applied for laytime purposes. I have therefore reached the conclusion, in agreement with the arbitrators, that ADM had no option to cancel the Head Charter because there had been notice of readiness before 2359 on 10 May 2015.

43. That being my conclusion the further point of law, namely, was the cancellation at 0555 too late, does not arise.

Conclusion

44. Bilgent's appeal is allowed. ADM's appeal is dismissed. The reason for the different results in the two appeals is that the two charters were not on back to back terms.