Caught Between a Rock & a Red Flag: Sanctions, Shipowners & Speculation


Prakaash Silvam
Partner
Head of Shipping


Tan Yu Hang
Senior Associate
Litigation & Dispute Resolution


Vedanta Vishwakarma
Foreign Lawyer
Litigation & Dispute Resolution

Introduction

The imposition of sanctions against Russia have once again resulted in novel developments in the common law world. In Tonzip Maritime Ltd v 2Rivers Pte Ltd, the English High Court considered whether a shipowner could lawfully refuse to load cargo due to sanctions concerns, and whether its reliance on a sanctions clause was objectively reasonable. The decision offers important guidance on interpreting sanctions clauses, clarifies the evidential burden placed on shipowners, and highlights the limits of commercial discretion when navigating geopolitical risks and potentially misleading information in shipping transactions.

Background Facts

The claimant ("**Tonzip Maritime**") was the owner of a vessel and entered into a charterparty with the defendant charterer ("**2Rivers**") on 5 November 2021. In June and August 2021, the European Union and United Kingdom respectively imposed sanctions against Mr G. Mr G proceeded to transfer his shares in the company ("**Neftisa**") to his brother, who then replaced the former as chair of the Board. Neftisa was the shipper of the cargo that 2Rivers intended to load on board. Following sanctions screening checks, Tonzip Maritime refused to load the cargo pursuant to a sanction's compliance clause ("**EPS Sanctions Clause**") in the charterparty. 2Rivers initially sought to persuade Tonzip but later purported to cancel the charterparty. Tonzip Maritime accepted the repudiation and claimed damages against 2Rivers. 2Rivers counterclaimed for damages for the supposed wrongful refusal to load the cargo onto the vessel.

Therefore, the principal issue which arose was whether Tonzip Maritime was entitled to refuse to load the cargo. This depended on the interpretation of the EPS Sanctions Clause in the charterparty.

Interpreting the EPS Sanctions Clause

The EPS Sanctions Clause stated that the "the owners shall not be obliged to comply with any orders for the employment of the vessel … which in the reasonable judgment of the owners … will expose the owners … to sanctions" and that "in the event that such risk arises … the owners shall be entitled to refuse performance".

As a starting point, the court held that the contra proferentem approach applied to the EPS Sanctions Clause. When a contractual clause is interpreted contra proferentem, the clause is construed narrowly and any ambiguity in the words of the clause is to be resolved against the party seeking to rely on them. Although the contra proferentem approach is mostly applied to exclusion clauses, it is also applied to clauses that permit a party to withhold contractual performance. The EPS Sanctions was one such clause of the latter category.

The court further held that Tonzip Maritime bore the burden of proof in establishing that it made an objectively reasonable decision in assessing whether it would be exposed to sanctions. This meant that it had to show that it had reached a judgment that a reasonable shipowner could reasonably have come to in the circumstances that

the listed parties were exposed to sanctions, in that they were subject to the risk of sanctions or were open to the danger of sanctions. In holding such a standard, the court firmly rejected 2Rivers's submission that the clause required Tonzip Maritime to establish that any of the listed parties would be in breach of sanctions (and therefore exposed to them).

Evidence of Risk of Sanctions

In assessing the reasonableness of Tonzip Maritime's decision in refusing to load the cargo, the court held that it was entitled to have regard to material that was available to Tonzip Maritime at the

time the decision was made, even if such material may not have been considered by it when making the decision. This necessarily excluded materials that were not in existence at the time of the decision, or which were in existence at the time of the decision but did not relate to the existing state of affairs.

The considered material had to be directed to the inquiry of whether Mr G owned or controlled Neftisa, or whether it was reasonable to judge that he did. When considering such material, the court reiterated that a fair-minded review must be conducted, which takes into account all relevant information including information or evidence which undermines what might otherwise be reasonable grounds to suspect control. The court also emphasised that the accuracy and credibility of the sources of evidence relied upon should be evaluated and verified, although such evidence is not limited to that which would be admissible in court.

Applying the test to the current facts, the court found that Tonzip Maritime did not make a reasonable objective decision that the listed persons were subject to the risk of sanctions or were open to the danger of sanctions. This was because on close examination of the Refinitiv reports on Mr G and Neftisa, which Tonzip Maritime heavily relied on, there was nothing in them which evidenced Mr G's control, direct or indirect, of Netfisa in November 2021. As such, Tonzip Maritime's decision was based on mere speculation as opposed to substantive proof of Mr G's control. Furthermore, it was found that Tonzip Maritime did not properly consider the Infospectrum report, which stated that Mr G had "the likely intention of giving [Neftisa] the freedom to manoeuver in the manner to which it is accustomed". Therefore, it was held that Tonzip Maritime was not entitled to refuse 2Rivers's orders to load the Cargo.

Takeaways

This case underscores the limitations of sanctions screening tools. Automated databases such as Refinitiv or World-Check can flag potential risks, but they cannot replace a thorough and balanced assessment. Courts will look for evidence that a shipowner or charterer engaged in a critical review of all available information, rather than acting on isolated red flags. Documenting the reasoning process, testing the reliability of sources, and ensuring compliance teams understand the limits of automated tools are therefore essential safeguards against speculative decision-making.

Furthermore, the case highlights the risk of exposure where decisions are not backed by positive evidence. The court required Tonzip Maritime to show concrete proof of de facto control by a sanctioned party, rejecting reliance on general suspicions. This strict standard therefore puts

OON & BAZUL

ASIAN EXPERTISE·GLOBAL REACH

owners in a difficult position: acting cautiously to protect against sanctions may still lead to wrongful termination claims if the evidential threshold is not met.

In that same vein, the case does reveal a lack of clarity on what constitutes sufficient evidence in practice. While documents such as board minutes, audited accounts, or proof of share transfers may help, these are rarely available in time-critical chartering contexts. The judgment does not resolve how owners should proceed when counterparties are uncooperative or evasive. Against this backdrop, parties are advised to review their sanctions compliance clauses and seek specialist legal advice from an experienced law firm that specialises in dealing with sanctions and regulatory compliance before taking irreversible steps such as refusing orders or terminating contracts.

*This update was authored by Partner and member of the Association of Certified Sanctions Specialists (ACSS), **Prakaash Silvam**, Senior Associate **Tan Yu Hang**, and Foreign Lawyer **Vedanta Vishwakarma**. The authors thank Brandon Lim, from the University of Cambridge, for his valuable assistance with the article.*

Businesses who do not have an internal compliance department may find it difficult to navigate the maze of United Nations, United States, European Union and United Kingdom regulations and sanctions.

Oon & Bazul's Sanctions and Regulatory Compliance Practice is frequently called upon to advise businesses, financiers, and insurers on the application of fast-evolving domestic, regional, and international regulatory and sanctions frameworks. Oon & Bazul is a leading disputes-focused law firm in Singapore. Our team of distinguished dispute resolution lawyers regularly advises on sanctions & regulatory compliance. As a conflict-free firm, we are uniquely positioned to act for a wide range of clients without institutional limitations.

If you require any legal advice on sanctions related matters, please do not hesitate to get in touch with the authors above.