

A confirmation that Owners may reasonably refuse early redelivery

With the global economic crisis showing little sign of abating, the legalities surrounding early redelivery remain a hot topic for shipowners. In the recent decision in *Isabella Shipowners SA v Shagang Shipping Co Ltd (Aquafaith) [2012] EWHC 1077 (Comm)*, the High Court has at last recognised the owner's right to reasonably refuse early redelivery under Time Charters.

Background

The vessel, Aquafaith, was chartered on an amended NYPE form for a duration of 59 to 61 months, with an express warranty that she was not to be redelivered before a minimum of 59 months had expired. In anticipatory breach of the charterparty, Charterers informed Owners of their intention to redeliver around 4 months early. Owners contested this and commenced arbitration proceedings prior to redelivery, seeking a partial final award to allow them to refuse early redelivery and to affirm the charterparty. The arbitrator held that Owners were required to accept redelivery and mitigate their losses by placing the vessel on the spot market, before they could claim damages.

Decision

The case was appealed under s69 of the Arbitration Act 1996, seeking to clarify as a matter of law, whether the Owners were entitled to refuse early redelivery of the vessel and affirm the charter, or whether they were bound in law to accept the early redelivery with their only remedy being damages for breach of contract.

In his judgment overturning the arbitrator's award, Mr Justice Cooke determined that Owners may reasonably refuse early redelivery where charterers are in repudiatory breach of charterparty by attempting to redeliver the vessel earlier than agreed. In doing so, he confirms that the House of Lords' decision in *White and Carter (Councils) Ltd v McGregor [1962] AC 413* applies in the context of Time Charters. Owners are therefore entitled to affirm the contract and claim the hire due, rather than having to accept the redelivery and claim damages, subject to the following exceptions:

- a) where the Owner has no legitimate interest in seeking to perform: and
- b) where the Owner is reliant on Charterers/the defaulting party for performance.

This case suggests that the *White and Carter* principle applies to Time Charters, though not bareboat charters, and confirms that an innocent party is able to require/affirm performance and is entitled to refuse to accept a repudiatory breach bringing the contract to an end and instead hold the party to the terms of the contract.