Neutral Citation Number: [2025] EWHC 1835 (Comm)

Case No: CL-2024-000132

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

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

Date: 18/07/2025

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between:

URANIA SHIPPING COMPANY LTD

Claimant

- and –

(1) NORDTRADE SIA
(2) NORDTRADE TASIMACILIK TIC. AS

Defendants

- -
- -

Stephen Du (instructed by **Nautica Law**) for the **Claimant**
Emmet Coldrick (instructed by **Shoreside Law**) for the **Second Defendant**

Hearing dates: 2 May 2025
Draft judgment circulated to parties: 7 July 2025

Approved Judgment

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Approved Judgment
Mr Justice Henshaw

Mr Justice Henshaw:

(A) INTRODUCTION

1. The Second Defendant ("***D2***"), Nordtrade Tasimacilik Tic. AS, applies pursuant to CPR Part 13.3 to set aside a default judgment dated 24 January 2025 in favour of the Claimant, on the ground that it has a real prospect of success in defending the claim.

2. The dispute arises out of a voyage charterparty in respect of the vessel *"IDA"* ("***the Vessel***"), actually or purportedly entered into between the Claimant and a Turkish company, BFT Wood Products Agriculture Food Machinery Medical Industry and Foreign Trade LLC ("***BFT***"). BFT's director, Mr Selim Bertung Peker, subsequently disclaimed the alleged charterparty, though BFT subsequent acquired the cargo, ostensibly at least pursuant to a further transaction. The Claimant has sued the Defendants, which are Latvian and Turkish companies in the same group of companies as each other, for breach of warranty of authority, though the Claimant has so far not succeeded in serving the First Defendant ("***D1***")

3. For the reasons set out below, I have reached the conclusion that the default judgment should be set aside and D2 permitted to defend the claim against it.

(B) FACTS

4. The Claimant is a Liberian company. It is the registered owner of the Vessel, which is a bulk carrier.

5. D1 is a Latvian company and D2 is a Turkish company. They are members of the Nordtrade group, which provides shipbroking, ship management, multi-modal logistics and consulting services.

6. On 24 March 2023, a clean fixture recap, confirming all subs lifted, was sent from drycargo@nordtrade.eu, referring to a charterparty of the same date, naming BFT as

the charterer and receiver, for the carriage of bulk wood pellets from St Petersburg to Turkey. The shippers were identified as ULK Group, Russia and RWA Russian Wood Alliance.

7. The sender of the recap was stated as follows:

> "Regards,
>
> Aivars Enkuzens
>
> Nordtrade Ltd
>
> Shipping department
>
> As broker only
>
> ph: +7 812 xxxxxx [a Russian telephone number]
>
> ph: +371 xxxxxx [a Latvian telephone number]
>
> email: drycargo@nordtrade.eu
>
> Skype: xxxxxxxx"
>
> (telephone and Skype details anonymised)

8. The fixture recap followed a series of emails on 23 and 24 March 2023, alleged by the Claimant to include warranties of authority to act on BFT's behalf, written by Mr Enkuzens using the email address and footer quoted above.

9. It is common ground that there is no company named "*Nordtrade Ltd*". Counsel for D2 submitted that D1's post-nominal acronym "*SIA*" might reasonably be translated as "*Limited*". I enquired about the meaning in English of D2's name, Nordtrade Tasimacilik Tic. AS, and was informed that it translated as "*Nordtrade Transport*". (I do not believe there was any evidence to that effect, though it was not contested.) There is a website with the address "*nordtrade.eu*" whose "*Get in Touch*" section sets out the full style, registered addresses, and registration numbers of both Defendants.

10. D2's solicitor exhibits what is said to be a signed copy of the charterparty, apparently circulated on or about 30 March 2023, which on its first page identifies D1 *("Nordtrade SIA*") as the shipbroker and BFT as the charterer. The document bears, or purports to bear, in two places each of the signatures and stamps of the Claimant as owner and BFT as charterer.

11. The Claimant makes the point that the two purported signatures on behalf of BFT are identical to each other and to an earlier contract of sales of goods by BFT dated 1 August 2022. The Claimant submits that the stamps and signatures appear to be scanned copies of each other.

12. D2's evidence is that D1 had brokered two previous charterparties for BFT, in respect of the vessels "*Balkan Marmara*" and "*Navis-6*", both of which had been performed by

BFT. D2's solicitor, Mr Mavroghenis, in his witness statement dated 14 February 2025, states:

> "… in the negotiation and agreement of the Charterparty, NordTrade Latvia (and/or, insofar as they played a role in that, which is denied, NordTrade Turkey) dealt with Mr Makhonko, with whom they had dealt as the Charterers' representative in relation to two previous charterparties which had been performed by the Charterers. These were:
>
> a. a charterparty dated 22 June 2022 in respect of the vessel "BALKAN MARMARA" ("the BALKAN MARMARA Charter") [PM1/149-150];
>
> b. a charterparty dated 4 October 2022 in respect of the vessel "NAVIS-6" ("the NAVIS-6 Charter") [PM1/151-160].
>
> Fourthly, after the allegation that the Charterparty was not duly agreed by the Charterers was made, Mr Khassine contacted Mr Makhonko and spoke to him on the telephone on several occasions. Mr Khassine informs me, and I believe, that Mr Makhonko told him that he, Mr Makhonko, was authorised by the Charterers to agree, and did agree on the Charterers' behalf, the Charterparty, as well as the BALKAN MARMARA Charter and the NAVIS-6 Charter."

Mr Mavroghenis exhibits copies of the two earlier charterparties. In his second witness statement, Mr Mavroghenis says:

> "Mr Kheilik [of the Defendants] also informs me that Mr Makhonko was formerly the General Manager of the Factor Terminal at the port of Ust-Luga, Russia, a major Russian timber cargo terminal. This is borne out by a document [PM2/8-22] that NordTrade Turkey's legal team found online by a Google search. Mr Kheilik informs me, and I believe, that Mr Makhonko has been involved in the Russian timber trade for many years and that he was the co-founder of the Russian Pellet Council, a trade organisation focused on the timber pellet trade. An online search by the NordTrade Turkey's legal team revealed that, in connection with a biomass conference in London organised by Argus (a London based business intelligence provider [PM2/23-28]) in 2022, Argus offered a white paper including an interview with Mr Makhonko, who was referred to as Co-Founder of the Russian Pellet Council [PM2/28-30]. I mention these matters as they indicate that Mr Makhonko is a serious business person with an established reputation in the timber trade."

13. As to the present transaction, Mr Mavroghenis states:

> "The email exchanges between Igor Kalinin (for NordTrade Latvia as brokers) and Mr Makhonko (for the Charterers)

> following the Charterparty recap email were in Russian, as both men are native Russian speakers. According to an automatic translation using Google's translation service, Mr Kalinin's email of 13.28 on 29 March (марта) 2023 can be translated as: "Alexander signed charter included. Re-sign on your part." By this email, NordTrade Latvia sent the Charterers a copy of the drawn-up charterparty signed/stamped by the Owners and asked the Charterers to counter-sign. Mr Makhonko replied to Mr Kalinin at 18.40 on 30 March 2023 attaching a copy of the Charterparty counter-signed and stamped by the Charterers. Again, according to a Google machine translation, Mr Makhonko's email stated "Igor, hello I am sending the signed contract". Mr Khassine is a native Russian speaker. He has confirmed to me that the Google translations to which I have referred are accurate."

This version of events is not, or not fully, accepted by the Claimant, which among other things submits that there is no evidence of Mr Kalinin, who worked for Soltrans Ltd and whose email address was soltransltd@yandex.ru, acting for either Nordtrade entity.

14. Returning to the current transaction, the Vessel arrived at the load port of St Petersburg on 11 April 2023. It loaded a cargo of wood pellets at the First Stevedore Company terminal during 11-15 April 2023 and a further cargo of wood pellets at Moby Dick Terminal during 18-19 April 2023.

15. The 15 April 2023 bill of lading gave the quantity of the cargo carried under that bill as 9,078.579mt. The shipper was identified as Transport Logistics Business Service LLC, of Uzbekistan, and the notify party was 2NFB Hijyen Urunleri Sanaya Ve Ticaret Limited of Istanbul ("***2NFB***"). The 19 April bill gave the quantity of cargo carried under that bill as 5,019mt. The shipper was identified as BFT and the notify party was the same as for the 15 April bill.

16. There was uncertainty about the precise quantity of cargo loaded, as the ship and shore figures did not agree. A letter of indemnity was issued ("***the LOI***"), at least purportedly on behalf of BFT, indemnifying the Vessel against any consequence of complying with BFT's request to issue a document for customs purposes stating the shore scale figures but to issue original bills of lading stating the Vessel's quantity figures. The Claimant notes that that letter too appears to have a scanned BFT signature and stamp, though it is notable that the signature appears to be different from the one which appears on the purported charterparty.

17. On 25 April 2023, the Vessel's commercial managers, Blumenthal Asia Pte. Ltd. ("***Blumenthal***"), issued an invoice for freight and dead freight in the amount of US$1,009,919.83 net of commission and port expenses ("***the Freight Invoice***"). The Charterparty provided for payment of freight within 4 banking days after signature and release of the bills of lading and on receipt of the Claimant's freight invoice, or in any case before breaking bulk (written as 'BBB'). The freight was not paid when the Vessel arrived on the coast near Izmir on 4 May 2023.

18. The Vessel arrived at Izmir, Turkey on 4 May 2023. Not having received payment of freight, the Claimant declined to bring the Vessel into berth, and it waited at anchorage off the Turkish coast. Arrangements were eventually made for 2NFB to put D2 in funds to pay the Freight Invoice, which D2 did in three tranches from 5 to 13 July 2023. Mr Mavroghenis says in his second witness statement that:

> "The payments were made via NordTrade Turkey [D2]'s bank account for pragmatic reasons: the Buyers made their payments in Turkish lira and NordTrade Turkey were better placed than NordTrade Latvia to receive Turkish lira funds and arrange for the funds to be passed on to the Owners in US dollars in payment of the freight."

19. On 13 July 2023, Mr Enkuzens of the Defendants sent Blumenthal a copy of the remittance slip in respect of the third of the three tranches of the freight payment and stated *"Charterers instruct the owners to proceed for berthing and discharging upon receiving the freight without any further delay. Demurrage settlement procedure to be as per the charter party"*. However, the Owners still refused to berth the Vessel. On 17 July 2023, Ms Orzelek of Blumenthal emailed Mr Enkuzens acknowledging receipt of the freight but stating "*Owners still waiting confirmation of payment for demurrage invoices*". D2 makes the point that the charterparty provided for payment of demurrage only after completion of discharge: "*Demurrage/dispatch to be paid within 15 working days after completion of discharging and mutual agreement of laytime calculation for load/disch ports. Laytime calculation to be always supported with nor, s/f and invoice*".

20. On 26 July 2023, Mr Peker of BFT issued a declaration stating, among other things, that "…*we are not a party to any recap (pre-negotiation) or charter party contract*". This was followed by a further declaration on 28 July 2023: "*1-There is no recap or charter party that has been signed with us in negotiation law*." However, Mr Peker stated, BFT had purchased the cargo from 2NFP:

> "…
>
> 2 - 14.097,579 kilograms of the said item was purchased from TLBS company by 2NFB HYGIENE PRODUCTS SANAYI TICARET LIMITED SIRKETI in the form of CIF delivery for 1.296.977,27.USD (proforma invoice is also attached) and the carrier agent of the item, NORDTRADE TASIMACILIK TICARET ANONIM SIRKETI, issued an invoice of 28.951.268,50.TL dated 22/06/2023 to 2NFB HIJYEN URUNLERI SANAYI TICARET LIMITED SIRKETI.
>
> …
>
> 4 - The contents of the bill of lading dated 15/04/2023 numbered 519/4497 and the 9.078,579 kilograms of the goods in question (CIF DELIVERY without expense on the ship) were purchased by us for 1.180,210,07 USD (31.135.239,88.Tl) by the invoice inventor dated 26/06/2023 and the invoice related to this is attached. Our payments were completed on 12/07/2023. ..."

Mr Peker's declarations did not refer to the 19 April 2023 bill of lading (which, as noted earlier, identified BFT as the shipper), but, as is evident from the text quoted above, claimed that BFT had acquired the whole cargo as sub-purchaser from 2NFB.

21. On 27 July 2023, the Claimant's solicitors wrote to Mr Kheilik, asking a detailed list of questions regarding his authority to conclude a charter with BFT. On 30 July 2023, the Claimant's solicitors wrote to Mr Kheilik again, stating that if no answer was received the Owners would take it as an admission that (a) the contents of BFT's declaration were true; (b) BFT was named as charterer without authorisation; and (c) he had no reasonable belief that he was authorised to contract on behalf of BFT. Mr Kheilik did not respond to these emails.

22. On 21 August 2023, the Claimant entered into a Settlement Agreement with BFT, where BFT agreed to pay US$775,000 to the Claimant in return for discharge and release of the cargo, now at Aliaga. Recital C recorded that *"There is presently a dispute as to the existence and/or validity of a document purporting to be a charterparty concluded between Owners and BFT dated 24 March 2023. BFT deny that they are a party to any charterparty whatsoever."* US$330,000 was to be paid upfront, before the Vessel proceeded to berth. The Vessel was then to berth and discharge the Cargo, but 4,000mt of the Cargo was to be stored in a bonded warehouse subject to a lien in the Claimant's favour pending payment by BFT of the balance of US$445,000. Clause 1 of the Settlement Agreement provided for the Claimant to issue an invoice to BFT in respect of the US$775,000 providing that US$575,000 was in respect of freight (notwithstanding that the freight under the Charterparty had in fact already been paid) and US$200,00 in respect of demurrage. Clause 12 provided for full and final settlement of all claims as between the Claimant and BFT, but only after the deemed delivery of the 4,000mt of liened cargo, which was to occur after all sums due to the Claimant under the Settlement Agreement were paid.

23. On 28 and 31 August 2023, the Claimant received US$220,000 and US$130,000 from BFT. The Vessel was then ordered to discharge. Discharge did not commence until 10 September 2023, and was completed on 13 September 2023. It appears, though, that BFT did not pay the Claimant the balance of US$425,000 (US$775,000 less the payment made of US$220,000 and US$330,000), and it is unclear what has happened to the goods stored in the warehouse.

(C) PROCEDURAL HISTORY

24. The Claimant issued these proceedings on 5 March 2024, alleging that D1 and D2 *"purported to conclude as brokers a voyage charterparty between the Claimant and a company called BFT …"*. Paragraph 6 of the claim form alleges that the Defendants "*are in breach of their warranty of authority and/or are liable for damages for deceit*". However, no evidence has been adduced to the effect that either of the Defendants knew that BFT had not authorised the charterparty.

25. On 27 March 2024, the Claimant applied for permission to serve out of the jurisdiction on D1 in Latvia and on D2 in Turkey. The application was supported via witness statement by the Claimant's representative on 27 March 2024, and I granted permission to serve out on 19 April 2024.

26. On 17 May 2024, Turkish lawyers instructed by the Claimant wrote to D2 enclosing a copy of the claim form and related documents (including the order giving permission to serve out).

27. The Claimant's solicitors, Nautica Law, wrote to D2's solicitors, Shoreside Law, on 4 June 2024 saying:

> "As previously mentioned, the documents have been sent to your Clients in Turkey on an informal basis to let them know that proceedings have been commenced. We are in the process of serving formally both in Turkey and in Latvia but obviously the Hague Convention channels will take some time and will result in substantial costs.
>
> If your Clients intend to challenge the jurisdiction of the English Court in any event then we would propose that you acknowledge service on behalf of both Nordtrade entities strictly without prejudice to your Clients' position on jurisdiction and make any application to challenge the jurisdiction of the Court that your Clients wish to make.
>
> We can of course provide you with the supporting documents for the application to serve out if your intention is to acknowledge service.
>
> This would be the most cost and time effective way to deal with this matter and we therefore look forward to hearing from you."

However, Shoreside indicated that they did not have instructions to accept service.

28. On 13 September 2024, the Claimant filed a certificate of service stating that service had been effected on D2 on 24 August 2024 *"[i]n accordance with the order of the Turkish Court dated 2 September 2024"* (i.e., it appears, an order with retrospective effect) by delivering the claim form and associated documents to D2's principal office, in Istanbul. The Claimant then prepared Particulars of Claim dated 18 September 2024, and on 29 November 2024 filed a certificate of service stating that they had been served on D2 on 31 October 2024 in the same manner, *"[i]n accordance with Art. 35 of the Notifications Code of Turkey and the order of the Turkish Court of 27.11.24"* (i.e., it appears, another order with retrospective effect). On 29 November 2024, the Claimant filed a Request for Judgment form with this court, and a default judgment was issued on 25 January 2025 in the principal amount of $1,076,593.75 plus interest of $153,613.71 and costs. There was no email communication with D2 or Shoreside in relation to any of these matters.

29. As to what happened to the documents served, Mr Mavroghenis provides this evidence:

> "Having taken instructions and discussed with NordTrade Turkey's Turkish lawyer Mr Sahin, my understanding is that:

> a. NordTrade Turkey has (and had at the time service was purportedly effected) no employees physically present at its registered address.
>
> b. The building in question has 8 floors, with NordTrade's office address being on the 7th floor. The entrance to the building is manned by a security guard. However, the security guard (or any other persons, not employees of NordTrade, present) are not under any obligation to accept service of documents on NordTrade's behalf and would probably refuse to do so.
>
> c. The method of 'Article 35' substituted service employed by the Owners requires the documents to be handed to someone legitimately connected to the recipient (here, an employee of NordTrade Turkey). But if no authorised person is found, that may simply be recorded by the process server and service under Article 35 will be deemed to have been effected, without the intended recipient having received the documents at all."

30. The Particulars of Claim and default judgment appear to have come to the actual attention of D2 and Shoreside on 4 February 2025, when a copy of the default judgment was attached to an email serving arbitration papers on D2 in relation to a different matter. D2 on 14 February 2025 applied to set aside the default judgment. Mr Mavoghenis's evidence about these matters is as follows:

> "32. We were not instructed by the Defendants to accept service. Our assumption, and that of the Defendants, was that the Owners would therefore complete service in accordance with the Hague Convention. However, nothing was received by the Defendants by way of service.
>
> 33. On 4 February 2025, out of the blue, the Owners' solicitors sent a copy of the Default Judgment to my colleague Mr Primikiris by email. The Default Judgment came as a shock to NordTrade Turkey. Their understanding was that the claim form had not been served on them. On 6 February 2025, my firm wrote to the Owners' solicitors inviting them to consent to the setting aside of the Default Judgment and requesting copies of the application for default judgment and supporting evidence.
>
> 34. On 7 February 2025, the Owners' solicitors replied, providing a copy of the N225 form by which default judgment had been requested, a certificate of service, the Particulars of Claim and other documents including what appeared to be a Turkish court order (without translation) dated 27 November 2024. The Owners' solicitors declined to consent to the setting aside of the Default Judgment and asserted that "[t]here are no grounds to set aside the Default Judgement" and "[a]ny application by your clients to set aside the Default Judgement would be bound to fail".

> 35. On 11 February 2025, my firm wrote to the Owners' solicitors requesting copies of all documents referred to in the Particulars of Claim, a copy of an earlier Turkish court order referred to in one of the documents that had been provided on 7 February 2025 and a translation of the Turkish court order of 27 November 2024. The Owners' solicitors replied later the same day, providing a copy of a Turkish court order dated 2 September 2024 (without translation) but declining to provide anything further.
>
> 36. NordTrade Turkey has taken advice from a Turkish lawyer (Yuksel Sahin of Sahin Law Firm, Şakayık Sk. Evranos Apt. N. 21/11, Teşvikiye Mah. 34365 Istanbul) as to whether the claim form was validly served as a matter of Turkish law. Privilege over that advice is not waived. However, I can say that if any attempt were made to enforce the Default Judgment in Turkey, that would be resisted by NordTrade Turkey on the basis, among others, that the procedure adopted was a 'substituted service' type procedure which was not appropriate in cases of foreign as opposed to domestic Turkish proceedings. NordTrade Turkey's understanding is that pursuant to Turkish law, the claim form ought to have been served via Turkey's Hague Service Convention 'Central Authority' (the Turkish Ministry of Justice, Directorate General for International Law and Foreign Relations) or under a relevant bilateral judicial assistance treaty, but that was not done.
>
> 37. However, for present purposes, NordTrade Turkey has decided for pragmatic reasons to apply to set aside the Default Judgment only pursuant to CPR 13.3 (defendant has a real prospect of successfully defending the claim) and not also pursuant to CPR 13.2 (claim form not validly served). For the reasons given below, NordTrade Turkey believes, and I believe, that it has, at very least, a real prospect of successfully defending the claim and that it plainly is in the interests of justice for the Default Judgment to be set aside. In those circumstances, a highly technical debate about matters of Turkish civil procedure in the context of the service of foreign proceedings is unnecessary and better avoided."

31. The Claimant states that it has not so far been able to serve D1 with the proceedings.

(D) PRINCIPLES

32. CPR 13.3 provides in material part as follows:

> "13.3(1) …the court may set aside or vary a judgment entered under Part 12 if –
>
> (a) the defendant has a real prospect of successfully defending the claim; or

> (b) it appears to the court that there is some other good reason why –
>
> (i) the judgment should be set aside or varied; or
>
> (ii) the defendant should be allowed to defend the claim.
>
> (2) In considering whether to set aside or vary a judgment entered under Part 12, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly."

33. It is common ground that the 'real prospect' test is the same as the summary judgment test, except that the burden lies on the defendant applying to set aside the default judgment. The summary judgment test was summarised by the Court of Appeal in *The LCD Appeals* [2018] EWCA Civ 220, quoting with approval the following considerations taken from passages in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) and *Swain v Hillman* [2001] 1 All ER 91 at 94:-

i) the court must consider whether the claimant has a "*realistic*" as opposed to a "*fanciful*" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

ii) a "*realistic*" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 § 8;

iii) in reaching its conclusion the court must not conduct a "*mini-trial*": *Swain v Hillman*;

iv) this does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* § 10;

v) however, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 3;

vii) on the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. If it is possible to show by evidence that, although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725; and

viii) a judge in appropriate cases should make use of the powers contained in Part 24. In doing so, he or she gives effect to the overriding objective as contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose; and it is in the interests of justice. If the claimant has a case which is bound to fail, then it is in the claimant's interest to know as soon as possible that that is the position: *Swain v Hillman* [2001] 1 All ER 91 § 94.

34. The Court of Appeal in *FXF v English Karate Federation Ltd* [2023] EWCA Civ 891 held that an application under CPR 13.3 is an application for "*relief from sanctions*", to which the criteria set out in *Denton v TH White Limited* [2014] 1 WLR 3926 apply with full rigour. In applying the test the court should first consider the specific requirements under r.13.3. The court should then apply the three stage criteria in *Denton* as a key part of the exercise of its general discretion. A central part of the exercise of its general discretion will be whether the breach prevented the court or the parties from conducting the litigation efficiently and at proportionate cost, and the need to enforce compliance with rules and orders (see, in particular, *FXF* § 67). In *Gentry v Miller* [2016] EWCA Civ 141 (one of the cases followed in *FXF*), Vos LJ at paragraph 24 explained that the first issue, whether there has been a serious or significant breach, refers not to the delay after the judgment was entered but to the default in serving acknowledgment that gave rise to the sanction of default judgment; the second stage is a consideration as to why the failure that occurred applies; and the third stage is to consider all the circumstances of the case, including the promptness of the application (promptness thus featuring both in the requirements of CPR part 13.3(2) and in the third *Denton* limb).

35. White Book note 13.4.1 includes the following:-

> "Rule 13.4(3) does not expressly require a witness statement but does require the application to be "supported by evidence". The filing and service of a witness statement to support the application is undoubtedly the better practice. It is also preferable to exhibit a draft defence. In a clear case the service of the witness statement may induce the claimant not to oppose the application. Even where the claimant does wish to oppose, the service of the witness statement gives time for the claimant

> to consider their position and file and serve a witness statement in reply."

36. *Decker v International Medical Supplies Ltd* [2023] EWHC 2742 (Comm) was an example of a CPR 13.3 case where service had been effected without that fact also having been drawn to a party's attention by email. Dias J said:-

> "[41] At first blush it seems somewhat improbable, given the evidence in his first witness statement that no-one else had access to his letter-box apart from him and his wife, and that he checked it regularly. On the other hand, the video shows that the documents were contained in a slim white envelope which although marked "Private and confidential" did not have any other marking to indicate that they contained important documents. I also take account of the fact that all other communications from Excalibur and their solicitors have been made or accompanied by email. However, there was no email on this occasion to say that service had been effected or was on its way, and so there was no particular reason for Mr. Decker to be looking out for service of the claim form at that time."

(E) ANALYSIS

(1) Realistic prospect of successful defence

37. On D2's behalf, Mr Mavroghenis' s evidence is broadly to the effect that (i) the broker was D1, not D2, and (b) BFT did authorise the entry into the charterparty, and Mr Peker's declaration (if actually made by him) is untrue or incorrect.

(a) Alleged warranty of authority by D2

38. The Claimant's essential case is that the fixture recap and other emails written by Mr Enkuzens, said to contain warranties of authority, were written on behalf of "*Nordtrade Ltd*", which the Claimant submits *"must be a reference to the companies identified at nordtrade.eu, including both D1 and D2"*, adding that D2 has not offered any alternative interpretation of *"Nordtrade Ltd"*.

39. The Claimant further submits that the formal charterparty document, circulated on or about 30 March 2023, which names D1 as the broker, (i) could not supersede the fixture recap, because it was unauthorised, (ii) could not superseded earlier warranties of authority provided on 23 March 2023 at the time at which the contract was purportedly concluded, and (iii) cannot be relied on to construe those earlier warranties of authority. Alternatively, if post-fixture events can be relied on, then the fact that D2's bank account was used to process payments in relation to the transaction is consistent with both Defendants being brokers and *"entirely inexplicable if only D1 was the broker involved in the purported charter"*.

40. In my view, D2 has at least a realistic prospect of defeating those arguments. It is well arguable that the more natural interpretation of any warranty of authority contained in the communications sent on behalf of *"Nordtrade Ltd"* is that it was given by a single entity, rather than two entities in the same group. Absent any reason to believe that D2

rather than D1 was the entity in question, that in itself indicates that D2 has a realistic prospect of resisting the claim. However, there is also the further argument that the name *"Nordtrade Ltd"* may fairly be regarded as a loose translation of D1's company name, but that cannot be said of D2, whose name when translated includes the word "*Transport*" or "*Transportation*". In reality, the documents provide no cogent basis on which to conclude that D2, as opposed to D1, gave any warranty of authority.

41. Furthermore, although the charterparty document subsequently circulated may not be admissible strictly as an aid to the construction of the fixture recap or its surrounding emails, it can arguably be taken into account as an indication of the identity of the warranting party. True it is that the same might then be said of the use of D2's account to make payments, but the reasoning for that as set out by Mr Mavroghenis raises a triable issue on which D2 in my view has a realistic prospect of success.

(b) Alleged lack of authority

42. In any event, D2 in my view would also have a realistic prospect of defeating the allegation that BFT did not authorise the entry into the charterparty.

i) On the face of the documents, both the charterparty and the letter of indemnity were stamped and signed on behalf of BFT.

ii) The fact that the stamp and signature on the charterparty appear to have been scanned from an earlier document may call for explanation and merit investigation at trial, but does not clearly point to there having been a forgery: it would depend among other things on BFT's *modus operandi* with regard to the execution of documents. It does not mean that D2 has failed to show a realistic prospect of defending the claim.

iii) Further, for the forgery analysis to make any real sense, the signatures on both the charterparty and the letter of indemnity would have to be forgeries. The fact that they are different from each other arguably points slightly (albeit not strongly) against the forgery theory.

iv) The fact that BFT (a) was identified as shipper on one of the bills of lading and (b) ended up acquiring the cargo makes the lack of authority version of events somewhat curious. Was it merely an odd coincidence that Mr Makhonko and/or Nordtrade for some reason decided to purport to bind BFT to a charterparty for the purpose of carrying a cargo which happened to be one that BFT actually wished to acquire, and for part of which was identified as the shipper?

v) There is a potentially plausible explanation for the Peker declarations – which contain no statement of truth – namely an attempt to acquire the cargo without having to satisfy the Claimant's demand for a demurrage payment.

vi) The evidence that the Nordtrade group had previously dealt with BFT via Mr Makhonko, even though his role in the present transaction may be contested, is potentially important, raising a triable issue as to whether there may have been authority conferred or evidenced by a course of dealing.

43. The Claimant makes the point that D2 has not provided a draft Defence, providing particulars of the basis on which Mr Makhonko is said to have had authority to act on BFT's behalf: for example, whether pursuant to a board resolution, other written authority or oral authority, and precisely how and when such authority was conferred. (There was some disagreement between the parties about whether D2 had received from the Claimant the documents it considered necessary in order to respond in detail to the claim, though I doubt that that debate bears on the question of Mr Makhonko's authority.) D2 has not to date alleged that Mr Makhonko was a director or other officer of BFT, and has not produced a witness statement from Mr Makhonko. On the other hand, it is clear from Mr Mavroghenis' s evidence that there is at least an argument that Mr Makhonko had actual or ostensible authority as a result of a course of dealing, during which he had purported to bind BFT to charterparties which they had then performed. In addition, the signature and stamp on the charterparty *prima facie* indicate BFT through Mr Peker having bound itself to or ratified the contract.

44. In all the circumstances, I am satisfied that D2 has shown a realistic prospect of success on this issue despite not having to date provided a draft Defence. I also take account of Mr Kheilik's non-response to the Claimant's solicitors' questions referred to in § 21 above, though I bear in mind that he was an individual shipbroker, not necessarily in receipt of legal advice at that stage, being asked for details by a counterparty's solicitors in circumstances where (on D2's evidence) he had simply been acting in the ordinary course of dealing with BFT as on previous transactions.

(c) Other matters

45. D2 also provided evidence and submissions to the effect that the Claimant was not entitled to recover the full amount claimed, particularly as regards the demurrage claim. In view of the conclusions I reach in sections (a) and (b) above, it is unnecessary to consider those matters further.

(2) Promptness of application

46. It is common ground that D2 applied promptly to set aside the default judgment after the judgment came to its and its solicitors' attention on 4 February 2025.

(3) Other relief from sanctions factors

47. D2 accepts that failing to file an acknowledgement of service is a serious or significant breach.

48. As to good reason, D2's evidence is that it was not actually aware that it had been served until the communication of 4 February 2025 referred to earlier. D2 can fairly be criticised on the basis that, having declined to instruct its solicitors to accept service, it ought to have taken steps to ensure that legal process taken to its registered office would be accepted or identified, and acted upon. Conversely, though the Claimant was not strictly obliged to notify Shoreside that process had been served, it would have been a natural step to take (even though Shoreside had not specifically requested it), given that the Claimant knew that Shoreside had been involved in the matter: and it would have been likely to have avoided the situation that has now arisen.

49. The Claimant claims to have served D2 on late September 2024, so some time has clearly been lost, partly due to the period between then and February 2025 when the application was made, and partly due to the time taken for the application to be heard and the judgment prepared. On the other hand (a) the Claimant has, it appears, not yet succeeded in serving D1, which may (for the reasons given above) turn out to be the more important defendant, and (b) the relevant events took place in mid 2023, i.e. not so long ago as to mean that the delay will seriously have impaired the prospects of a fair trial. It will in my view remain possible, if the judgment against D2 is set aside, for the litigation to be conducted efficiently and at proportionate cost. That will particularly be the case given that, at the hearing before me, counsel for D2 confirmed that if the default judgment were set aside, then his instructions were that a joint Defence would be filed on behalf of D1 and D2. (I shall hear argument as to whether that should be made a condition of the setting aside of the default judgment.) In all the circumstances, and even taking account of the need to enforce compliance with rules and orders, I consider the just course to be to set aside the default judgment.

(F) CONCLUSION

50. The Second Defendant's application succeeds, subject only to consideration of the possible imposition of a condition as indicated in § 49 above. Subject to that, the default judgment will be set aside. I shall hear the parties as to the appropriate consequential directions. I am grateful to both counsel for their cogent and persuasive submissions.