Neutral Citation Number: [2025] EWHC 1684 (Comm)

Case No: CL-2021-000341

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: 04/07/2025

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between:

Trafigura Pte Ltd	**Claimant**
- and -	
El Soobat Energy Co Ltd	**Defendant**

- -
- -

David Walsh KC (instructed by **Schjødt LLP**) for the **Claimant**
The Defendant did not appear and was not represented.

Hearing date: 2 May 2025
Draft judgment circulated to parties: 25 June 2025

Approved Judgment

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Mr Justice Henshaw:

(A) INTRODUCTION

1. The Claimant applies for summary judgment in respect of sums claimed to be due to it as sellers pursuant to a contract dated 17 January 2020 between the Claimant and the Defendant ("***the Contract***") for the sale of gasoline.

2. The Contract is subject to English law and jurisdiction (see clause 17).

3. The Claimant's application is for:

    i) permission to seek summary judgment against the Defendant pursuant to CPR 24.4(1)(i), on the basis that the Claimant should have the opportunity to apply for judgment on the merits so as to ensure that the judgment is more readily enforceable in jurisdictions where the Defendant's assets may be located; and

    ii) summary judgment against the Defendant under CPR 24.2, on the grounds that the Defendant has no real prospect of successfully defending the Claimant's claims and there is no other compelling reason for the claims to be determined at trial.

4. On 2 May 2025, I heard and granted this application and indicated that written reasons would follow. For the reasons set out below, I concluded that the Claimant's claims succeeded in full and gave summary judgment accordingly.

(B) PROCEDURAL HISTORY

5. The Claimant issued these proceedings on 28 May 2021. The Claim Form and Particulars of Claim sought the sum of USD 3,114,383.52 (now revised to USD 2,118,534.49) and interest pursuant to section 35A of the Senior Courts Act 1981.

6. The Defendant is a private limited company registered in the Republic of Sudan and has not appointed solicitors in England and Wales. The Republic of Sudan is not a party to the Hague Convention and, pursuant to Rule 6.40(3)(a)(ii) and Rule 6.42(2), service is normally effected by sending the relevant documents to the Foreign Process Section of the Royal Courts of Justice (the "***FPS***"), which in turn passes the documents to the Foreign, Commonwealth & Development Office (the "***FCDO***") for transmission to the competent local judicial authority for service.

7. Prior to the issue of the Claim Form, the Claimant's solicitors, Schjødt LLP, made enquiries of the FPS about the estimated time for service in the Republic of Sudan. The FPS advised that the time for service via this method was unknown. As a result, before handing the documents to the FPS, the Claimant filed an application dated 15 July 2021 to extend the validity of the Claim Form by 12 months to 28 May 2022. This order was granted by HHJ Pelling KC (sitting as a Judge of the High Court) on 19 July 2021.

8. The Claim Form and accompanying documents were accepted by the FPS and dispatched for service on 26 August 2021.

9. After failing to receive confirmation from the FPS that service had been effected, on 24 May 2022 the Claimant made another application to extend the validity of the Claim Form by a further 6 months to 28 November 2022. This was granted by Calver J on 10 June 2022. On 8 November 2022, the Claimant applied to extend the validity of the Claim Form by a further 6 months to 28 May 2023. This was granted by Butcher J on 10 November 2022.

10. After 17 months had elapsed, on 15 November 2022 the Claimant applied for an order permitting service by an alternative method under CPR Rules 6.15(1) and 6.27(1). The order sought was granted by Bryan J on 17 November 2022 (the "***17 November Order***") and permitted service on the Defendant:

    i) at its office address as stated at clause 2 of the Contract (paragraph 1.a);

    ii) at the last address recorded on file at the Sudanese Commercial Registrar General (paragraph l.b); and

    iii) by email to almogran.161@gmail.com (an address stated in the contract), tigerenergy20@gmail.com (the address of the Defendant's Sales & Marketing Manager, Mr Hashim) and Hussainomer123@hotmail.com (the address of another senior officer/employee of the Defendant) (paragraph l.c). As at the date of the alternative service application, the Claimant had been in recent email contact with Messrs Hashim and Mahmoud; and Schjødt had received an email response from the almogran.161 gmail address (on 27 April 2021) since the issue of the claim form.

11. In late December 2022, Schjødt LLP contacted Mr Osama Ombada, a partner at Aztan Law Firm in Khartoum, Republic of Sudan to seek assistance with service on the

Defendant at the two addresses in the Republic of Sudan listed at paragraphs l.a and l.b of the 17 November Order. Mr Ombada advised that the office address was no longer current, and that the Defendant had moved its operations to a nearby building on Abdallah Altayeb Street, adjacent to White Nile Sugar Company in Khartoum, Republic of Sudan.

12. Consequently, on 27 January 2023, the Claimant applied to vary the 17 November Order and Calver J approved this variation on 30 January 2023.

13. The Claim Form, Particulars of Claim and other documents (including Arabic language translations) listed in the Annex to Schjødt's cover letter to the Defendant were served:

    i) on 27 March 2023 in hardcopy at the Defendant's office address per paragraph l.a. of the 17 November Order as amended by the Order of Calver J; and

    ii) on 4 April 2023 by email per paragraph l.c of the 17 November Order,

    and were recorded in the Certificates of Service dated 4 April 2023.

14. As the Contract contained an exclusive English jurisdiction clause, permission was not required to serve the Defendant out of the jurisdiction.

15. Under CPR 58.6(3), 6.35(5) and PD6B paras 6.1 and 6.2 the Defendant had 22 days from the date of service of the Particulars of Claim to file an Acknowledgement of Service, being:

    i) at the earliest, 18 April 2023 for the set of documents served in hard copy; and

    ii) at the latest, 26 April 2023 for the set of documents served by email.

16. The Defendant thus had been duly served with and was aware of the proceedings. However, it failed to file an Acknowledgment of Service or a Defence.

17. On 7 October 2024, Schjødt LLP wrote to Mr Ombada (from who they had previously sought advice as to the permitted methods of service) to seek his assistance with service of the proposed summary judgment application on the Defendant at either of the two addresses specified in the 17 November Order and the 30 January 2023 Order. Mr Ombada responded to say that both addresses were situated in Khartoum which was a "war zone" and that businesses had ceased to operate there since April 15, 2023.

18. On 15 October 2024, the Claimant issued the present application. On 21 October 2024, Mr Ombada informed the Claimant that the Defendant's registered address was still in Khartoum and no alternative address was provided. On 31 October 2024, the Claimant effected service of the Summary Judgment Application on the Defendant by sending an email which appended a zip file containing the summary judgment application, as well as a covering letter, to the following three email address detailed in the 17 November Order: almogran.161@gmail.com, Hussainomer123@hotmail.com and tigerenergy20@gmail.com. Mr Walker explained in his 7th witness statement that service could not be effected at the physical addresses because Khartoum was reported by Mr Ombada to be in a war zone.

19. On 18 November 2024, Schjødt LLP sent a further email to each of the permitted email addresses and one additional email address listed on the Defendant's website,

mohamed@elsoobategroup.com. The Claimant reminded the Defendant that the deadline for replying to the Application Notice dated 15 October 2024 had expired on Friday 15 November 2024. The email explained that if no response was received to the Application by Thursday 21 November 2024, the Claimant would attend the Court's Listing Office to fix a hearing date. Schjødt LLP requested read and delivery receipts to this email.

20. Two of the email addresses, almogran.161@gmail.com and tigerenergy20@gmail.com returned messages to the effect that "*delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server*" (a standard message which does not suggest any difficulty has been encountered with delivery), and the other two email addresses returned "undeliverable" messages. No further responses were received from the Defendant to the Claimant's emails of 31 October 2024 and 18 November 2024.

21. On 27 November 2024, the summary judgment hearing was fixed for half a day on 2 May 2025. Each of the email addresses upon which permission for service was granted by the 17 November Order and the additional email address mentioned in § 19 above were copied into this email. Later that day, the Claimant sent further emails to the Defendant's email addresses to confirm the hearing date for the summary judgment application and received the same responses as indicated at § 20 above. I was informed that the Claimant's skeleton argument and the link for the hearing were also sent to those email addresses.

22. The hearing duly took place on 2 May 2025. The Defendant failed to appear and was not represented at the hearing, nor made any approach to the Claimant or the court with a view to participating in the hearing. I therefore considered whether to proceed with the hearing in its absence pursuant to CPR 23.11. In doing so I took account, by analogy, of the factors identified by the Court of Appeal in *R v Hayward, Jones and Purvis* [2001] EWCA Crim 168, [2001] 2 Cr. App. R. 11 at § 22.5.

23. The evidence showed that:

    i) the proceedings had been served on the Defendant at its office address on 27 March 2023 and by email on 4 April 2023, as indicated in § 13 above;

    ii) the Defendant had not filed an Acknowledgement of Service or Defence within time, or at all;

    iii) the Claimant's present application (together with the evidence in support) was served on the Defendant on 31 October 2024;

    iv) on 25 November 2024, the Claimant notified the Defendant, using the email addresses permitted for service, that their Counsel's clerk would be attending the Commercial Court Listing Office at 2pm on Wednesday 27 November 2024 to fix a date for the hearing;

    v) notice of the hearing on Friday 2 May 2025 was sent by email to the Defendant on 27 November 2024 using the same email addresses; and

    vi) on 11 March 2025 the Claimant sent emails to the same email addresses reminding the Defendant that the hearing would take place on 2 May 2025,

attaching a copy of the Claimant's Seventh Witness Statement and the accompanying Exhibit with certified Arabic translations. As before, automatic responses indicated that the emails had been delivered to two out of the four email addresses.

24. In these circumstances, I was satisfied that:-

i) the Defendant had been given appropriate notice of the proceedings, the present applications and the hearing, and had been given ample opportunity to attend and/or be represented at the hearing;

ii) there was no reason to believe that an adjournment would be likely to result in the Defendant attending the hearing at a later date;

iii) there was no reason to believe that the Defendant wished to be represented at the hearing;

iv) the Defendant had voluntarily waived its right to appear or to be represented at the hearing, and was voluntarily absent; and

v) there was a public interest in the matter proceeding without further delay.

25. I therefore indicated that I would proceed with the hearing, and asked counsel for the Claimant to ensure that the court was made aware, so far as possible, of such points as the Defendant might reasonably have been expected to make had it been present or represented at the hearing. I am satisfied that this was done, and at the hearing on 2 May 2025 counsel for the Claimant took me carefully through the transaction documents and other relevant evidence.

(C) PRINCIPAL FACTS

(1) The parties and the Contract

26. The Claimant is a Singaporean commodity trading company, with a branch office in Geneva, Switzerland. The Defendant is a petrochemical company registered in Sudan and located in Khartoum.

27. Under the Contract, the Claimant agreed to sell the Defendant 40,000 metric tonnes of gasoline +/-10% in the Claimant's option CFR/ex-tank ("***the Product***"). The Product was to be delivered at one safe port in Sudan with an initial estimated arrival time of 15-20 February 2020.

28. Clause 8 provided that the unit price in US dollars per metric tonne CFR/ex-tank would be deemed equal to the average of the mean quotation for premium unleaded 10PPM detailed in Platts European Marketscan with a differential of US$24.20 per metric tonne. This amount would be calculated by reference to the quotations published during the month of delivery, to be determined by the date of the notice of readiness (NOR) tendered by the vessel at the discharge port.

29. By virtue of clause 9, the Defendant agreed to make an advance payment in Arab Emirates Dirham (AED) of the full cargo value within 3 Dubai banking days of receiving the Claimant's commercial invoice for the Product.

30. Clause 12 provided for laytime of 36 hours SHINC (Saturdays and holidays included). Clause 13(A) provided for the Defendant to pay discharge port demurrage to the Claimant at the performing charterparty rate, and, if the performing charterparty was a time charter, the applicable rate would be the daily hire plus bunker costs.

31. Clause 17 provided that the Contract was governed by English law and that the High Court of Justice in England would have exclusive jurisdiction to settle any dispute which arose out of or in connection with it, notwithstanding the Claimant's right to commence and pursue proceedings for interim or conservatory relief against the Defendant in any court and jurisdiction. The clause also provided:

> "Promptly upon request from Trafigura, the Buyer shall notify Trafigura of an address for service of proceedings in England and Wales and the contact details of lawyers in the jurisdiction appointed to represent them.
>
> A judgment relating to the contract which is given or would be enforced by the High Court shall be conclusive and binding on the parties and may be enforced without review in any other jurisdiction."

32. Clause 30 provided:

> **"30. Events of default/termination**
>
> An event of default ("Event of Default") shall mean any of the following:
>
> (A) The failure of the Buyer to make any payment under the contract
>
> […]
>
> Upon the occurrence of an Event of Default and during the investigation by the Seller of any potential Event of Default of which the Seller has notified the Buyer in writing. Any and all payments due from the buyer to the Seller shall become immediately due and payable and the Seller may in its sole discretion:
>
> (A) notify the Buyer of an early termination date (which shall be no earlier than the date of such notice) on which date the contract shall terminate (the "Early Termination Date")
>
> [...]
>
> If a notice of an Early Termination Date is given under this clause, the early termination will occur on the designated date whether or not the Event of Default of the Buyer is then continuing.
>
> If an Event of Default occurs and an early termination date is established, the Seller may (in its absolute discretion) treat this

> contract as terminated by repudiation on the part of the Buyer. The Seller may then (in its absolute discretion) proceed to set off any or all amounts which the Buyer or one or more of its affiliates owes to the Seller or one or more of its affiliates (under the contract. Any other contract and/or on any account whatsoever) against any or all amounts which the Seller or one or more of its affiliates owes to the Buyer or one or more of its affiliates (whether under the Contract, any other contract and/or on any account whatsoever)
>
> [...]
>
> The Buyer shall indemnify and hold the Seller harmless from all losses, damages, costs and expenses including legal fees that the Seller would not have incurred but for the Event of Default and/or the exercise by the Seller of any of its remedies hereunder."

(2) Defendant's failure to pay the sums due

33. The Claimant presented its commercial invoice for the Product ("***the Invoice***") in the amount of AED 80,709,667.50 on 17 February 2020. In the meantime, the Claimant's performing vessel, MT Alpine Marina ("***the Vessel***"), had arrived at Port Sudan and tendered NOR at 20.30 on 18 February 2020.

34. The Defendant failed to make advance payment within three days of receiving the Invoice (20 February 2020), as required under clause 9 of the Contract. The Claimant contacted the Defendant by telephone to ask it why this payment had not been made, and the Defendant explained that the delays were due to their transferring the funds from Sudan to the Claimant's bank account in Dubai. The Claimant was not immediately concerned as this had been resolved within a few days in prior instances. However, as the delays persisted the Claimant became increasingly concerned that it was incurring demurrage on the Vessel.

35. To limit demurrage liabilities, the Claimant and Defendant agreed that the Claimant would discharge the Product into tank storage, which the Claimant leased from the Sudan Petroleum Company ("***SPC***") at Port Sudan, and then deliver it to the Defendant ex-tank once payment was received.

36. On or about 12 March 2020, the Defendant made a partial payment in the amount of AED 1,000,000. The Defendant undertook to make a further partial payment of AED 5,000,000 the same day but did not do so.

37. The Defendant made further partial payments of AED 1,200,000 on 16 March 2020, AED 8,300,000 on 24 March 2020 and AED 2,200,000 on 26 March 2020. No further payments of the purchase price were made by the Defendant, and there remained an outstanding balance of AED 66,761,612.76.

38. The total amount of demurrage that the Claimant incurred, as a result of the Vessel waiting off Port of Sudan from 18 February 2020 to 3 April 2020, was USD 750,809.28 (on demurrage for 42.904167 days at a daily demurrage rate of US$17,500).

(3) Notice of Demand and termination of the Contract

39. Accordingly, the Claimant served a Notice of Demand on the Defendant on 19 March 2020, with two further notices on 13 May 2020 and 08 June 2020. Having made several attempts to see if the Defendant was able to perform the Contract, the Claimant was informed by a representative of the Defendant over the telephone that the Defendant would not be able to perform the Contract. Subsequently, the Claimant terminated the Contract and sent a notice to that effect on 3 July 2020.

(4) Resale to the Sudan Petroleum Company

40. The Claimant attempted to sell the Product to other potential customers in Sudan and concluded that there was no other alternative local buyer than SPC. The Claimant reached this conclusion in light of several factors including the heavy restriction placed on the sale of gasoline by the Sudanese Government and the difficulty in finding buyers outside of Sudan that would want the specific grade of the Product – as it had been tailored for sale in the Sudanese market. Additionally, there were concerns that SPC would expropriate the Product if the Claimant attempted to export it from Sudan.

41. Accordingly, the Claimant decided to sell the Product to SPC. However, SPC had no available funds to pay for the Product. Both parties agreed to enter into swap agreements to exchange gasoil owned by SPC with the Claimant's Product, as the gasoil had a greater likelihood of being resold by the Claimant in Sudan than gasoline did, due to less stringent regulations.

42. The Claimant concluded a total of five such swap agreements with SPC between 6 August 2020 and 25 September 2020. By the time of the swap agreements, the market price of gasoline had fallen, meaning that the value obtained for the Product was less than the Contract price that would have been paid by the Defendant. The swap transactions and the reasons for them are explained in the witness statement dated 2 October 2024 of the distillates trader involved, Mr Mustafa Alaskari of Trafigura. His evidence is as follows:

> "26. We considered whether the Product could be sold to other potential customers in Sudan or the wider region.
>
> 27. Based on my previous interactions with the Defendant, I was also aware that whenever the Defendant had bought gasoline from Trafigura, it had then sold the gasoline on to SPC with extended credit terms, and I knew that there were a small number of other Sudanese companies who operated a similar model.
>
> 28. However, having made enquiries of these companies, we reached the conclusion that there was no alternative local buyer other than SPC in Sudan. This was not surprising as there were a very limited number of companies in Sudan who operated this model, because the sale of gasoline (and therefore the Product) was heavily restricted by the Sudanese government. We also determined that it would be very difficult to find a buyer outside of Sudan as the grade of the Product was very specific to the Sudanese gasoline market. There were also logistical issues, as any sale outside of Sudan would have required us to incur the

cost of chartering a vessel and re-loading the Product for transport to any new buyer.

29. We were also concerned that SPC would expropriate the Product for themselves as, on 29 April 2020, SPC wrote a letter to us saying that we had to remove the Product from the tanks within 30 days otherwise they would expropriate the Product. SPC sent a further letter on 21 June 2020, to which Trafigura responded on 29 June 2020 [MA1/08/38-41].

30. In addition to the specific threats from SPC above, we were concerned that SPC would not let us remove the Product from the tanks if it suspected that the intention was to export it from Sudan. The Sudan government had a serious need for gasoline in order to avoid fuel shortages and there was a real danger that SPC, as the state-owned oil company, would not allow a substantial quantity of gasoline to be removed from the jurisdiction, regardless of the fact that Trafigura owned that gasoline.

31. Upon receipt of these letters from SPC, and having determined that it would not be possible to sell the Product to another local customer or to a party outside of Sudan, we reached the conclusion that the only realistic option was to sell the Product to SPC.

32. However, SPC informed us that it had no available funds to pay for the Product. As a result, we suggested to SPC that we enter into swap agreements pursuant to which SPC exchanged gasoil that it brought to Port of Sudan, with (Trafigura's) Product that was contained in the tanks at the Port of Sudan. This worked for us because it was much easier to on-sell gasoil in Sudan because, unlike gasoline, the sale of gasoil was only a quasi-regulated market in Sudan and there were many more potential customers to whom Trafigura could sell this product.

33. The way that these swap arrangements worked is that SPC would advise us what quantity of Product they required. We would then determine the market prices of both the Product and gasoil in order to calculate what quantity of gasoil SPC would need to deliver to Trafigura on its side of the swap.

34. Each time SPC requested a swap, we would consider the market and propose a price for the Product to SPC, based on our assessment of the prevailing market prices. There would then be a discussion with SPC, who would put forward their own views as to the correct market price. In each case, the prices were fixed by reference to average quotations for "Premium Unleaded l0ppm", published by Platts European Marketscan under the heading "Mediterranean Cargoes — FOB Med (Italy), plus an agreed premium of USD 34.00 per MT.

> 35. It is common for gasoline prices to be calculated by reference to the Platts index, although in the case of the swaps, this effectively resulted in a fixed price, because the pricing periods for each delivery had already completed at the time each swap was agreed. That is why four out of the five swap agreements specified fixed prices rather than setting out the index linked pricing formula. The exception was the third swap agreement dated 2 September 2020. I am not sure why the pricing formula was left in that contract rather than the fixed price, but the result was the same, as the pricing periods had expired and so the parties knew what the fixed price was at the time of concluding the agreement.
>
> 36. Once the price for the Product was agreed, we would go through the same process to agree a price for the gasoil leg of each swap.
>
> 37. Once the prices were agreed for both the Product and the gasoil, we could calculate what quantity of gasoil was required at the agreed price to ensure that the quantities of gasoil and Product delivered under each swap were of the same value. SPC would then release the appropriate quantity of gasoil into Trafigura's tanks at Port of Sudan, and Trafigura would then release the appropriate quantity of Product to SPC.
>
> 38. There were five swaps in total, as confirmed in contracts dated 6 August 2020, 20 August 2020, 2 September 2020, 16 September 2020 and 25 September 2020. The relevant contracts are attached at [MA1/09/42-90]. There was no written contract for the 6 August 2020 swap, but its pricing/terms were confirmed in the letter that I sent to SPC on 5 October 2020 [MA1/10/91]."

43. That evidence is in my view consistent with the available documents, and plausible, and I see no reason not to accept it.

(5) The Claim

44. The Claimant now claims damages and/or an indemnity under clause 13 of the Contract in the amount of USD 2,118,534.91, and interest pursuant to section 35A of the Senior Courts Act 1981, calculated as follows:

    i) losses on the physical transaction in the sum of USD 4,825,860 calculated as the difference between the sale price to the Defendant (USD 553.55 pmt) and the weighted average sale price achieved on resale to SPC pursuant to the swap agreements (USD 429.81 pmt); plus

    ii) demurrage liabilities in the sum of USD 750,809.28; minus

    iii) AED 12,700,000, representing the pre-payments made by the Defendant identified above, equivalent to USD 3,458,134.79 at the exchange rate prevailing at the time of termination (USD 1 = AED 3.6725);

amounting to USD 2,118,534.49. As to (i) above, Mr Alaskari explains that the claim advanced in the Particulars of Claim uses the weighted average approach. If the losses are calculated taking the five swap transactions individually, the result is the slightly higher aggregate loss of USD 4,846,316.05. However, Trafigura is content to abide by the slightly lower figure of USD 4,825,860 stated in the Particulars of Claim.

45. The Claimant also sought to recover pre-judgment interest under section 35A of the Senior Courts Act 1981, which, using a rate of US Prime with no uplift amounted to US$601,928.61 as at the date of the hearing.

46. The Claimant does not pursue its claim for hedging losses in the amount of USD 995,378.18 as part of the present application.

(D) PERMISSION TO APPLY FOR SUMMARY JUDGMENT

47. CPR 24.4(1) provides:

> "A claimant may not apply for summary judgment until the defendant against whom the application is made has filed – (a) an acknowledgement of service; or (b) a defence, unless – (i) the court gives permission; or (ii) a practice direction provides otherwise."

48. There is no requirement for a party to obtain permission under CPR 24.4(1) before issuing a summary judgment application: both applications can be made in the same application notice: *FBN Bank (UK) Ltd v Leaf Tobacco A Michailides SA* [2017] EWHC 3017 (Comm) § 17 (Andrew Baker KC); *European Union v Syria* [2018] EWHC 1712 (Comm) § 62 (Bryan J); and *Punjab National Bank (International) Ltd v, Boris Shipping Ltd* [2019] EWHC 1280 (QB) § 30-32 (Christopher Hancock KC).

49. Bryan J summarised the principles relevant to the exercise of the court's discretion under CPR 24.4(1) in *European Union v Syria*:

> "(1) The purposes of the rule are to ensure that no application for summary judgment is made before a defendant has had an opportunity to participate in the proceedings and to protect a defendant who wishes to challenge the Court's jurisdiction from having to engage on the merits pending such application.
>
> (2) Generally, permission should be granted only where the Court is satisfied that the claim has been validly served and that the Court has jurisdiction to hear it. Once those conditions are met there is generally no reason why the Court should prevent a claimant with a legitimate claim from seeking summary judgment.
>
> (3) The fact that a summary judgment may be more readily enforced in other jurisdictions than a default judgment is a proper reason for seeking permission under CPR 24.4(1)." (§ 61)

50. In relation to (3), in my view it is sufficient that the claimant has a reasonable belief that a summary judgment may be more readily enforced than a default judgment. There

is no justification for the court subjecting any such belief to minute examination, when the permission the claimant is seeking is no more than the opportunity to obtain a reasoned judgment on the merits of its claim.

51. In the present case:

i) The Claimant validly served the Claim Form on the Defendant in accordance with the court's orders, as set out in §§ 10-13 above. The Defendant has had multiple opportunities to participate in these proceedings or to challenge jurisdiction and has chosen to do neither.

ii) The court has jurisdiction to hear the claims, since the Contract contained an exclusive jurisdiction agreement in favour of the English courts. The court thus has jurisdiction under CPR 6.33(2B) (b).

iii) A summary judgment may be more readily enforced in other jurisdictions than a default judgment.

52. The evidence indicates that Sudanese legal advice obtained by the Claimant indicates that for a foreign judgment to be enforceable in Sudan, it must be final and conclusive in the sense that it cannot be varied, re-opened or set aside by the court which delivered it or by any court of co-ordinate jurisdiction, although it may be subject to appeal to a court of higher jurisdiction. A default judgment does not fulfil these criteria because it is open to the Defendant to apply to have a default judgment set aside. Accordingly, the evidence suggests that the Sudanese courts would be much less likely to refuse to recognise and enforce a reasoned English judgment following a hearing on the merits.

53. Further and in any event, there may be assets belonging to the Defendant that are found outside Sudan, in which case a simple default judgment may not be effective for enforcement purposes.

54. In all the circumstances, it was clearly just to grant the Claimant permission to apply for summary judgment, and I did so at the hearing on 2 May 2025.

(E) SUMMARY JUDGMENT

(1) Principles

55. Under CPR 24.3, the court may give summary judgment "*against a claimant or defendant on the whole of the claim or on an issue if — (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial*".

56. In The LCD Appeals (*Iiyama (UK) Ltd and others v Samsung Electronics Co Ltd and others*) [2018] EWCA Civ 220, the Court of Appeal approved the following considerations applicable to summary judgment applications, 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 respondent has a "*realistic*" as opposed to a "*fanciful*" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

ii) a "*realistic*" claim or defence is one that carries some degree of conviction. This means a claim or defence 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 respondent 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 respondent has a case which is bound to fail, then it is in their interests to know as soon as possible that that is the position: *Swain v Hillman* [2001] 1 All ER 91 § 94.

57. If an applicant for summary judgment adduces credible evidence in support of the application, the respondent then comes under an evidential burden to prove some real prospect of success or other reason for having a trial: *Sainsbury's v Condek* [2014] EWHC 2016 (TCC) § 13.

(2) Application to the present case

(a) No real prospect of successful defence

58. In the present case, the Defendant has no real prospect of successfully defending the Claimant's claims. The Claimant's claims are for damages for breach of contract and for demurrage liabilities under the terms of the contract.

59. First, the written contract's authenticity and validity are undisputable, and have not been challenged by the Defendant. Secondly, the Defendant failed to pay the full advance payment required under clause 9 and, with the exception of a few payments which the Claimant gives credit for, the Defendant has otherwise failed to fulfil its obligations under the Contract. Further or alternatively, the Defendant's actions properly understood constituted an "Event of Default" within the meaning of clause 30(A) of the Contract.

60. The Defendant's breach led the Claimant to enter into swap arrangements with an alternative buyer and ultimately resell the product at a loss.

61. The *prima facie* measure of loss under section 50(3) of the Sale of Goods Act 1979 is the market measure. However, that measure applies only where there is an available market. *Benjamin's Sale of Goods* (12th ed.) states that *"[t]he availability of buyers and sellers, and their ready capacity to supply or to absorb the relevant goods is the basic concept of an 'available market'"* (§ 16-068). In the present case, the evidence quoted above of Mr Alaskari indicates that the Claimant was not faced with *"available buyers"* but rather, effectively, a local monopoly in the form of SPC. The Claimant considered whether the Product could be sold to other potential customers in Sudan or the wider region. Having made enquiries, it concluded that there was no alternative local buyer other than SPC because the sale of gasoline was heavily restricted by the Sudanese government. Further the Claimant concluded that it would be very difficult to find a buyer outside of Sudan as the grade of the Product was very specific to the Sudanese gasoline market; and any sale outside of Sudan would have required the Claimant to incur the cost of chartering a vessel and re-loading the Product for transport to any new buyer; and, in any event, SPC had threatened to expropriate the Product.

62. *Benjamin* goes on to explain that:

> "If s.50(3) does not apply, because there is no available market, the court is thrown back on the general principle enunciated in s.50(2): *"... the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract"*... If, despite the absence of an available market, the seller has in fact been able eventually to find a substitute buyer, the resale price may be evidence to fix the seller's loss, if the terms of the resale are substantially similar to those in the original sale." (§ 16-079)

63. The Claimant's sale of the gasoline to SPC, via and on the terms of the swap agreements, was the best and probably only realistic course open to the Claimant, and was a reasonable step to take in mitigation. The prices thereby achieved were the best reasonably available to the Claimant. Accordingly, the difference set out above between the contract price and the prices achieved under the swap agreements represents the "*estimated loss directly and naturally resulting, in the ordinary course of events"* from the Defendant's breach of contract for the purposes of section 50(2) of the Sale of Goods Act, and provides the appropriate measure of damages.

64. Additionally, the Defendant is clearly liable for demurrage under clause 13 of the Contract and has not paid the outstanding amounts to date.

65. Thus, the sums claimed, including contractual interest as claimed, are undoubtedly due. The Defendant has never put forward any defence or any basis on which the Claimant's claims might be challenged.

66. I am satisfied that the Claimant's counsel has considered whether any other possible defences might be available to the claims and drawn them to my attention. In this regard, counsel for the Claimant noted that the Defendant might have contested quantum if it had participated in the proceedings but suggested that their defence would not have a real prospect of succeeding for two reasons, and I concur with these reasons.

67. First, as regards the loss on the resale of the Product, the Claimant gave the Defendant ample opportunity to fulfil its obligations and to take delivery of the Product. When it became clear that this would not be possible, the Claimant took steps to resell the Product in order to mitigate its losses. Given that the cargo had already been discharged into tank at Port Sudan in the hope that the Defendant would perform its obligations, it made commercial sense to sell the product in Sudan. For the reasons I have already given, it is difficult to criticise the Claimant's decision to sell the Product to SPC, as it was the best option available to the Claimant due to the lack of alternative local buyers other than SPC in Sudan, the logistical issues associated with pursuing a sale to buyers outside Sudan, and the threats of expropriation of the Product by SPC during the relevant time.

68. Secondly, the Claimant's demurrage claim was calculated in accordance with clauses 12 and 13 of the Contract, which set out a procedure for the running of laytime and the calculation of demurrage. The Defendant has no basis to, and indeed does not, contest the Claimant's calculations.

(b) No other compelling reason for trial

69. There is no compelling reason for the claim to be determined at trial. There are no disputed facts nor any reason to believe that further investigation into the underlying facts would reveal any material matters. There is no other reason why a trial would be appropriate. On the contrary, it would waste court time and legal costs. In such circumstances, summary determination is clearly appropriate (*Sagicor Bank Jamaica Ltd v Taylor-Wright* [2018] UKPC 12 § 16 per Lord Briggs).

70. The Claimant's application for summary judgment therefore succeeds.

(F) COSTS

71. The Claimant is entitled to its costs of the proceedings, including the summary judgment application. I was asked to determine the costs of the whole proceedings, in circumstances where the application for summary judgment was undefended and there must realistically be some doubt about the recoverability of further sums from the Defendant. In those circumstances, there was an obvious risk that to direct a detailed assessment of costs would mean the Claimant would have to spend further substantial sums of money, which might in practice be irrecoverable. I therefore concluded that I should summarily assess the costs of the proceedings.

72. I do not think it is appropriate to set summary assessment at 100 per cent level, as experience suggests there is generally some discount even on a detailed assessment notwithstanding that (as in the present case) the hourly rates and counsel's fees being claimed seem reasonable. Moreover, I note that some of the costs claimed may have related to the hedging claim that is no longer being pursued. Therefore, I applied a modest discount to the amounts claimed. In the result, I summarily assessed the costs in the total amount of £190,000.

(G) CONCLUSION

73. The Claimant is granted permission to apply for summary judgment and is entitled to summary judgment on its claims, including interest, and costs. I am grateful to the Claimant's counsel for his clear and candid submissions.