Neutral Citation Number: [2023] EWHC 391 (Comm)

Claim No. CL-2022-000088

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (KBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 February 2023

Before :

Sir Ross Cranston sitting as a High Court Judge

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Between:

PAN OCEAN CO LTD — **Claimant/ Respondent in Arbitration**

-and-

DAELIM CORPORATION — **Defendant/ Claimant in Arbitration**

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- -

MICHAEL DAVEY KC and ROBERT WARD (instructed by **CAMPBELL JOHNSTON CLARK**) for the **Claimant**

MARK JONES (instructed by **MARINE LAW**) for the **Defendant**

Hearing date: 16 February 2023

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Approved Judgment

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

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SIR ROSS CRANSTON:

Introduction

1. This is an appeal by the claimant Charterers, Pan Ocean Co Ltd, against an arbitration award ("the Award'') made as a result of a dispute between them and the defendant Owners of the vessel *DL LILAC*, Daelim Corporation. Permission to appeal was granted by Andrew Baker J under section 69 of the Arbitration Act 1996 ("the 1996 Act"). His order states succinctly the issue of law before the court:

   > "Leave to appeal is granted on the following question of law, namely whether there was an implied term of the subject time charter having the effect that where the vessel was off hire under clause 69 after a failed holds inspection and the Master advised that hold cleaning had been completed and called for a reinspection, the charterer was obliged 'to have the vessel re-inspected without delay'."

2. In the Charterers' submission, the Tribunal erred in law by applying the wrong test for the implication of terms and should have found that the parties were obliged only to exercise reasonable diligence to cooperate in the organisation of a reinspection of the cargo holds, mentioned in Andrew Baker J's order. Based on the findings of fact made by the Tribunal, they contend, there was no delay for which they were responsible, and the Award should be varied to dismiss the Owners' claim in respect of loss of hire and the cost of bunkers because of the delay in the reinspection of the cargo holds.
3. The Owners' position is that on a fair reading of the Award the Tribunal's decision as to the implied obligation, and that the Charterers were in breach of it, was broadly correct. In as much as there was an error in the Award, it should be remitted to the Tribunal to enable it to determine the application of the implied term and the financial consequences of any breach of it. In any event, the Owners submit, the Charterers should have acted earlier and are precluded from challenging the Award now.

The Time Charter

4. The parties entered a charterparty in early 2017 on an amended NYPE 1993 form. It was a time charter trip to carry a cargo of urea in bulk.
5. It is necessary to refer to only two clauses of the charterparty. Clause 45 provided for London arbitration. Clause 69 was headed "BIMCO Hold Cleaning/Residue Disposal For Time Charter Parties" and provided:

   > "Vessel's holds on delivery or on arrival 1st load port to be clean swept/washed down by fresh water and dried so as to receive Charterers intention cargoes in all

respects free of salt, rust scale and previous cargo residue to the satisfaction of the independent surveyor.

If vessel fails to pass any holds inspection the vessel to be placed off-hire until the vessel passes the same inspection and any expense/time incurred thereby for Owners' account."

The Award

6. On the 27 January 2022 the Tribunal of three LMAA arbitrators issued the Award. Two disputes were submitted to them, but the present appeal concerns only one of these. That was over the Charterers' deduction of US$110,765 in hire and US$16,308 in bunkers arising out of the failure of a cargo holds inspection at Jubail (the loading port): Award, para 7.
7. The Award describes how the vessel was delivered into the Charterers' service on 12 February 2017 at Abu Dhabi, it arrived at Jubail on 13 February 2017, and it berthed there at 2354 on 15 February 2017: para 8.
8. The Tribunal went on to make a number of findings:
   i. The holds were inspected by a surveyor from the cargo and vessel inspection service, SGS, between 0700 and 1230 on 16 February 2017 but were failed due to the presence of rust, paint flakes and cargo residue: Award, para 9.
   ii. The Owners submitted that SGS was not an independent surveyor, being appointed by the shippers, but the Tribunal considered that the complaint was raised too late in the proceedings to be considered and in any event that nothing was said contemporaneously: Award, para 10.
   iii. At 1530 on 19 February 2017, the Master of the vessel notified the agents that the vessel had been cleaned and requested a reinspection: Award, para 11. The vessel's holds were clean at that point: Award, para 16.
   iv. The vessel had been ordered off-berth at 1430 that day (para. 17) and she shifted to the inner anchorage at 2218: Award, para 11.
   v. The vessel reberthed at 2042 on 3 March 2017: Award, para 11.
   vi. At 0700 on 4 March 2017, the vessel holds were re-inspected by SGS with reinspection completed some four hours later, by 1100, and the vessel passed the inspection: Award, para 12.
9. The Tribunal accepted that the terminal "may have been under pressure because the evidence from witness statements showed that there was a certain amount of

congestion at the port and therefore there was pressure on the berths": Award, para 23.

10. Further, the Tribunal accepted that once unberthed, efforts were made to expedite the reinspection, but these came to nothing. It added:

    "[I]t appeared that a reinspection taking place at anchorage was not possible to arrange but no persuasive reasoning was given for this which we concluded caused further delay to the vessel passing the reinspection which could not be the fault of the Owners": Award, para 24.

11. As regards the Owners' submissions to the Tribunal, the Award records at paragraph 12 that they contended that from 1530 on 19 February 2017 until the reinspection the vessel was in all respects ready to load cargo and the holds were free of salt, rust scale, and any residue of previous cargo. Further,

    "The Owners contended that it was an implied term of the charter party that required the Charterers to carry out any reinspection with reasonable diligence and without any undue delay and the Charterers were in breach of that implied term because the reinspection took so long to arrange": Award, para 12.

12. The Owners also submitted that the Master advised the Charterers at 1530 on 19 February that his vessel was ready for reinspection, and they should have taken steps to arrange for the reinspection to take place but failed to do so. The Owners submitted further that the reason for this lack of action on the part of the Charterers was because the cargo was not available for loading: Award, para 13. The Charterers denied this: Award, para 20.

13. The Owners argued further that the Charterers were not entitled to treat the vessel as off-hire after 1530 on 19 February because any loss of time after then was caused by the Charterers' breach of their obligation to arrange a reinspection with diligence: Award, para 14.

14. The Owners submitted that after the vessel de-berthed the Charterers did nothing to cooperate to arrange a reinspection. They submitted further that inspections of holds are regularly carried out at the Jubail anchorage and it was irrelevant that the shippers required inspections to take place when the vessel was berthed: Award, para 21. (The evidence was that it was the shippers who arranged the inspections.)

15. The Award records the Charterers' contention that the statement of facts showed that at 1430 on 19 February the terminal advised the vessel to shift off the berth, an hour prior to the Master advising that the vessel was ready for reinspection. The terminal

advised the agents that hold inspections could only be carried out once a vessel was berthed, and therefore the vessel would shift to the anchorage until a berth became available: Award, para 17.

16. The Charterers rejected the Owners' implied term. They submitted that they should not be burdened with the surveyor's actions, acting independently and not wholly in their interests. In addition, the application of an implied term would be inconsistent with the express clauses in the charterparty: Award, para 15.

17. The Tribunal's conclusion on the implied term issue is set out at paragraph 25 of the Award:

> "We found the Owners' implied term argument most persuasive. We decided that, once the vessel advised that cleaning had been completed and the Master called for a reinspection, it was reasonable for the Charterers to be under an implied obligation to have the vessel re-inspected without delay. We concluded that keeping the vessel at anchor from 19 February until 3 March, a period of about 12 days, was unreasonable. The Charter Party did not contain any provision for dealing with such a situation and consequently without such an implied obligation the Charterers would be under no obligation to keep any delays to a minimum. In fact, without such an implied obligation they would have been under no pressure to expedite the re-berthing at all and we did not accept that the Owners could be responsible for such delays or loss of time in such circumstances and therefore we find that their claim succeeds in full in the amounts of USD$106,611.92 (US$110,765.63 less 3.75% address commission) in respect of hire plus US$16,308.93 in respect of bunkers."

18. The Owners' implied term argument, referred to in the opening sentence of paragraph 25, was set out at paragraph 12 of the Award, quoted earlier. The details were in their closing submissions. After referring to other situations where terms had been implied in other areas of export and shipping law, the Owners also referred in their closing submissions to an arbitration report in Lloyd's Maritime Law Newsletter ("LMLN") 17/10 "where the clause used is virtually identical to that adopted here." The Owners' closing submissions continued:

> "The commercial arbitrators [in LMLN 17/10] accepted the need for the implied term… We adopt the arbitrators' reasoning for that…. Commercially any other interpretation would permit [the charterers] to do nothing, potentially for months – during which time they paid no hire while the ship sat there ready."

19. LMLN 17/10 involved a surveyor rejecting cargo holds, the owners arguing that there was an implied term that the charterers were under a duty to ensure that any reinspection happened as soon as possible. The report in the LMLN states:

    "In the tribunal's view, it seemed wholly reasonable that, in circumstances such as prevailed in the present case, the charterers should be under some duty to act reasonably in ensuring that their surveyor did not delay any reinspection. Not only was that reasonable, but it was necessary to give business efficacy to the contract, since otherwise the charterers might delay reinspection until whatever time suited them, e.g., when a berth became available or when they had a cargo stem. Further, there was no doubt that, if asked at the time of entering into the contract, the parties would both have said that of course some such term was to be implied."

The Judge's decision on permission

20. In granting leave to appeal under section 69(2) of the Arbitration Act 1996 on the question of law set out earlier in the judgment, Andrew Baker J reasoned that for the Tribunal to say it was "reasonable for the charterers to be under such an implied obligation" was an obviously unsound basis for the implication of a term. In his view there was no need for further reasons from the arbitrators in order properly to determine this application. The findings of fact in the Award, he said, did not support a contention that the Charterers may have unreasonably refused or obstructed reinspection so as to support a finding of breach if the Charterers were correct as to the term to be implied.
21. Further, he did not agree that there was a failure by the Charterers to exhaust an available arbitral process of review, or to make an available application under section 57 of the 1996 Act. There was no ambiguity in the Award, and no explanation of a specific point or part of the Award that the Charterers might properly have sought from the arbitrators under paragraph 27 of the LMAA Terms that might have cured the error of law, if there was one. The basis upon which the arbitrators implied the term was clearly stated and the facts were sufficiently found.

The threshold issue

22. The Owners' contention before me was that it was not open to the Charterers to appeal against the Award because challenges to it should have been the subject of an application to the Tribunal under section 57 of the 1996 Act and article 27 of the LMAA Terms 2017. The Charterers should have reverted to the Tribunal in respect of

the reasoning in the Award on the issue relating to the implied term now before the court. Not having done so, they were precluded by section 70(2) of the 1996 Act from doing so now.

23. The Charterers' response was that there was no available recourse under section 57 or article 27 of the LMAA Terms 2017 in light of their scope. Further, it was not open to the Owners to renew these arguments in the appeal since the issue as to whether section 70(2) applied was a question of the court's jurisdiction to hear the appeal, and Andrew Baker J had already determined that the court had jurisdiction.

(1) The statutory/LMAA provisions

24. Section 69(2) of the 1996 Act provides that an appeal to the court on a question of law shall not be brought except with (a) the parties' agreement or (b) the leave of the court. Section 69(2) adds:

> "[T]he right to appeal is also subject to the restrictions in section 70(2)..."

25. Under section 69(3) to grant leave to appeal the court must be satisfied (a) that the determination of the question will substantially affect the rights of one or more of the parties; (b) that the question is one which the tribunal was asked to determine; (c) that, on the basis of the findings of fact in the award (i) the decision of the tribunal on the question is obviously wrong, or (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt; and (d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

26. Section 70 of the 1996 Act contains provisions regarding challenges and appeals under sections 67-69 of the Act. Section 70(2) provides that an application or appeal

> "may not be brought if the applicant or appellant has not first exhausted –
>
> > (a) any available arbitral process of appeal or review, and
> >
> > (b) any available recourse under section 57 (correction of award or additional award)".

27. Section 57(3) of the 1996 Act provides that the tribunal may on the application of a party

> "(a) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award…"

28. Article 27 of the LMAA Terms 2017 provides:

> "27(a) In addition to the powers set out in section 57 of the Act, the tribunal shall have the following powers to correct an award or to make an additional award:
>
> > (i) The tribunal may on its own initiative or on the application of a party correct any accidental mistake, omission or error of calculation in its award.
> >
> > (ii) The tribunal may on the application of a party give an explanation of a specific point or part of the award."

(2) Application to Tribunal under s.57/art.27 required?

29. The Owners submitted, and I accept, that in combination the powers under section 57(3) of the 1996 Act and article 27 of the LMAA Terms 2017 are wide, encompassing the correction of accidental mistakes or omissions, the correction or removal of errors arising from accidental omissions, the provision of clarification of ambiguities, and the giving of an explanation of a specific point or part of an award. As regards the power to clarify or provide further explanation, that could include a doubt as to a tribunal's reasoning process whether it be on a matter of law, whether the tribunal has dealt with an issue, or whether the tribunal has made an accidental mistake or omission.

30. I also accept the Owners' submission that the width of those powers evinces a clear intention on the part of the LMAA (and hence the parties) that, wherever possible, issues arising out of the award should be referred back to the tribunal chosen by the parties for clarification or correction before a party resorts to court proceedings. As regards section 57 this interpretation is consistent with the statutory policy to keep disputes within the confines of arbitration if at all possible: see *Torch Offshore LLC v Cable Shipping Inc* [2004] EWHC 787, [2004] 2 All ER (Comm) 365, [28], per Cooke J: *Sinclair v Woods of Winchester Ltd* [2005] EWHC 1631, [38], per HHJ Peter Coulson QC (as he then was); *Bulk Ship Union SA v Clipper Bulk Shipping Ltd, The Pearl C* [2012] 2 Lloyd's Rep 533, [29]-[32]), Popplewell J (as he was).

31. The Owners conceded, however, that albeit very wide in their scope the combination of section 57 of the 1996 Act and article 27 of the LMAA Terms 2017 did not extend to reopening or overturning a tribunal's intended decision, even if wrong in law, so long as any "mistake" in that regard was properly seen as deliberate and considered rather than accidental.

32. In this case, the Owners submitted, the Tribunal had proceeded on the basis of an oversight in not following through every step of an intended legal analysis which it would otherwise have taken into account. Consequently, the resulting mistake could be described not as deliberate and considered but as an accidental mistake or an accidental omission. In their submission the oversight here was analogous to the accidental slip in reading the tenancy agreement in *Rees v Earl of Plymouth* [2020] EWHC 2986 (Ch).

33. In my view, the Tribunal's finding at paragraph 25 of the Award was intentional and not covered by section 57(3) of the Act or article 27 of the LMAA Terms 2017. It was a considered and deliberate decision that immediately the Master notified the Charterers that the vessel had been cleaned the Charterers were in breach even though an inspection had not taken place. As explained later in the judgment that decision was wrong as a matter of law. It was inconsistent with the term the Tribunal implied in the contract and with clause 69 of the charterparty, which is that the vessel is off-hire until it passes the reinspection. The Award was clear and it was not a case where an application to the Tribunal under section 57 or article 27 would have been appropriate. As the Charterers put it, this was not a situation which could be corrected by the Tribunal being asked to think again or by any clarification. There was no choice but for them to appeal. Section 57(3) is not intended to enable a tribunal to change its mind on any matter decided by an award: *Al-Hadha Trading Co v Tradigrain SA* [2002] 2 Lloyd's Rep. 512, 526 (citing *Mustill & Boyd on Commercial Arbitration*, 2nd ed, Companion volume, 2001, 341); *Torch Offshore LLC v Cable Shipping Inc*, supra, [26].

Effect of Andrew Baker J's grant of permission under s.69(3)

34. As indicated, I agree with Andrew Baker J's reasons in his section 69 permission decision that there was no failure by the Charterers to exhaust an available arbitral process of review or to make an available application under section 57 of the 1996 Act. Consequently, section 70(2) has no purchase in this case.

35. However, there was argument before me about the preclusionary effect of the reasoning set out in Andrew Baker J's order should I have taken a different view of the section 57/article 27 issue. The Charterers invoked the decision of Waksman J (as he now is) in *Agile Holdings Corpn v Essar Shipping Ltd* [2018] Bus LR 1513. In *CVLC Three Carrier Corp v Arab Maritime Petroleum Transport Co* [2022] 1 All ER (Comm) 839 Cockerill J endorsed that approach and said that "the permission stage is

intended to be a qualifying hurdle which is not revisited and that, while it may not be impossible to revisit the various component parts of the permission decision, there will have to be highly unusual circumstances justifying this course": [34].

36. Neither *Agile Holdings* nor *CVLC Three Carrier Corp* addressed relevant conditions in sections 69(2) and 70(2). In my view the principles in those cases concerning section 69(3) do not apply with equal force in this context. The situation here is closer to that facing the Court of Appeal in *Bunge SA v Kyla Shipping Co Ltd* [2013] EWCA Civ 734, [2013] 2 Lloyd's Rep 463 where in refusing permission to appeal Flaux J (as he was) differed from the permission judge, Hamblen J (as he was), as to whether the case was one of general importance. The Court of Appeal rejected the argument that the decision of Hamblen J was binding on Flaux J as bordering on "nonsensical": at [16].

37. As a matter of interpretation, the provision in section 69(2) - "The right to appeal is also subject to section 70(2)…" - is separate to the permission provision in section 69(2)(b). Section 70 contains freestanding rules that apply to any challenge or appeal under sections 67, 68 or 69. The restrictions listed in sections 70(2) apply separately from the requirement to obtain leave to appeal under s.69(2). Consequently, it would have been open to me to revisit Andrew Baker J's conclusions as regards section 70(2) in this full hearing of the appeal, albeit that I would have been reluctant to do so because of his great experience in the field.

Error of law

38. The substantive issue in this case is whether at paragraph 25 of the Award the Tribunal was wrong as a matter of law in finding the implied term they did. Consideration of the matter divides into three: (1) whether the Tribunal was in error in the test it used in implying a term; (2) if not, whether the content of the implied term imposed strict obligations, and on the Charterers alone; and (3) whether the implied term meant that the vessel was back on hire immediately the Master called for a reinspection on the holds being cleaned.

(1) *Implication of term*

39. It was common ground between the parties that the correct test for the implication of terms in the charterparty was that set out in Lord Neuberger's judgment in *Marks & Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2016] AC 742. That is that whether, on an objective basis, the term to be implied is necessary to give business efficacy to the contract or is so obvious (to an objective observer at the time

of contracting) that it goes without saying that it was included in the agreement: [16], [21]. Lord Neuberger quoted from Lord Simon's judgment in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 setting out five requirements for an implied term: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that it goes without saying; (4) it must be capable of clear expression; and (5) it must not contradict any express term of the contract.

40. The content of an implied obligation and whether there has been compliance with it are fact dependent. As the editors of *London Maritime Arbitration* (4th ed, 2017) at §22.14 express the point:

    > "Questions as to the proper construction of a contract (or the existence of a contractual obligation) are treated as pure questions of law. However, often these questions are fact specific, for example whether a term is to be implied as a matter of business efficacy, and will depend on the relevant factual matrix, including market practice and what was reasonably known to the parties. If the question is highly fact specific a judge may be more likely to give weight to the tribunal's market experience and will only reverse the decision if satisfied that the tribunal has come to the wrong answer."

41. The Charterers contended that on the face of the Award there was an error in the reasoning of the Tribunal in that it is said in paragraph 25 that it was "reasonable" for the Charterers to be under the implied obligation they identified. Reasonableness by itself is certainly not sufficient for the implication of a term. Consequently, the Charterers submitted, the Tribunal did not apply the correct legal test about whether a term was necessary for the business efficacy of the charterparty or was so obvious that it went without saying that it was intended to be included. In the Charterers' submission there was no legitimate interpretation of the Tribunal's findings which could save the Award.

42. When interpretating arbitral awards, the courts strive to uphold them and read them in a reasonable and commercial manner. Awards are to be read as a whole. Furthermore, not only will the court not be astute to look for defects, but in cases of uncertainty it will so far as possible construe an award in such a way as to make it valid rather than invalid: *Zermalt Holdings SA v Nu-Life Upholstery Repair Limited* [1985] 275 EG 1134, per Bingham J; *MRI v Erdenet* [2013] EWCA Civ 156; [2013] 1 Lloyd's Rep

638, [35], per Tomlinson LJ. Admittedly, the court cannot give an award a meaning which plainly was not intended by its authors: *Bunge SA v Nibulon Trading BV* [2013] EWHC 3936 (Comm); [2014] 1 Lloyd's Rep 393, [35]-[36], per Walker J.

43. Applying these well-established authorities, I have concluded that the Award can be read in such a way that the Tribunal did in fact apply the correct legal test for implied terms notwithstanding the reference to "reasonable" in paragraph 25 of the Award. In the opening words of paragraph 25 the Tribunal indicated that it was adopting the Owners' implied term argument. As mentioned earlier in the judgment the Owners' closing submissions had referred to the "need" for an implied term, and that commercially any other interpretation was not sensible – a reference to the necessity and obviousness benchmarks in Lord Neuberger's judgment in *Marks & Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2016] AC 742. The Owners had also quoted from the arbitration reported at LMLN 17/10, where in analogous circumstances the arbitrators had implied a term on the grounds (as quoted earlier in the judgment) of necessity and obviousness since otherwise, the tribunal in that case had reasoned, the charterers might delay reinspection until whatever time suited them.

44. In other words, on a fair reading of the Award this experienced Tribunal did apply the correct test as to whether there was an implied obligation as to reinspection. The language of paragraph 25 must be read in the context of the Award as a whole.

(2) *Content of the implied term – unilateral and strict?*

45. The issue becomes whether the Tribunal was correct in its formulation of the content of the term it implied. At paragraph 25 of the Award the Tribunal stated that the implied term was to the effect that charterers were "to be under an implied obligation to have the vessel reinspected without delay."

46. The Charterers contended that the content of the implied term as found by the Tribunal was wrong in law in imposing a strict obligation on them alone in circumstances where the appointment of an independent surveyor clearly required cooperation by both sides. They invoked clause 69 of the charterparty in support, which refers to inspection by an independent surveyor, in other words, one appointed by both sides (citing *The Protank Orinoco* [1997] 2 Lloyd's Rep 42). Given that the appointment of the surveyor had to be a joint act, the Charterers submitted, any implied term as to the steps to be taken in that respect could not impose a strict obligation on them alone.

47. The Owners accepted that there was no issue that they would have had to agree to the surveyor so as to make it a joint appointment, in line with *The Protank Orinoco*, and said they would readily have done so.
48. In my view the Charterers are correct that any implied term had to oblige both parties to take reasonable steps to cooperate to organise a reinspection without undue delay. That was all that would be required under the test of necessity for an implied term to protect both parties from delay of the other side. Such a term would accord with necessity and business efficacy. It would be consistent with clause 69.
49. Adopting a fair and supportive reading of the Award, I have concluded that this is what the Tribunal decided as to the content of the implied term. Paragraph 25 is certainly not ideal in its expression, but in my view it is shorthand for the content of the term they were implying.
50. The building blocks for this conclusion are as follows. First, the Tribunal stated explicitly that they were adopting the Owners' submission about an implied term. It will be recalled that at paragraph 12 of the Award the Tribunal summarised the Owner's submission with reasonableness as the content of the implied term, "to carry out any reinspection with reasonable diligence and without any undue delay." That as the content of the implied term was supported by their reference in their closing submissions to the determination in the arbitration reported at LMLN 17/10, where the tribunal in that case had determined that the charterers "should be under some duty to act reasonably in ensuring that their surveyor did not delay any reinspection".
51. Paragraph 25 does indeed place the onus on the Charterers. That paragraph is heavily fact oriented, and the reference to the Charterers alone must be seen in context. I accept the Owners' submission that the Tribunal was not purporting to set out an implied term that would apply in all cases, which might indeed have required the Owners to cooperate to the extent reasonably required in the circumstances.
52. As regards the facts of this case I recall that the original SGS inspector had been appointed by the shippers - the Tribunal found that it was too late to raise any issue about his independence - and that SGS also conducted the reinspection. That may have led the Tribunal to be satisfied that as regards the reinspection the Owners did not need to do anything and that it considered that in the circumstances it was now for the Charterers to act with reasonable diligence and arrange the reinspection without delay.

(3) *Immediate breach*

53. The implied term did not oblige an immediate reinspection upon the Master informing them that the holds were clean and requesting a reinspection, nor that they were immediately in breach on such notice being given. What the implied term required was for reasonable diligence to be exercised to have the vessel reinspected without undue delay.
54. It was common ground that the Tribunal was wrong in law to make the determination it did that the vessel was immediately back on hire once the Master had notified the agents on 19 February 2017 that the holds were ready for reinspection. That was inconsistent with clause 69 of the charterparty, that the off-hire period ceased at the point of a successful reinspection. Nor did not it accord with the implied term as found by the Tribunal. No tribunal properly instructed could have reached this conclusion. As with the most accomplished judges, experienced maritime arbitrators can sometimes err in law.
55. What the Tribunal needed to do was to decide by when the reinspection should have been undertaken had there been compliance with the implied obligation to exercise reasonable diligence to have the vessel reinspected without undue delay. It would follow that the vessel was back on hire at that point, not when the Master requested a reinspection once the holds had been cleaned.

Remedy

56. Under section 69(7) of the Act the court should not set aside an award in whole or in part unless satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.
57. While accepting that remission is in principle possible, the Charterers submitted that it should not be ordered in this case since the Owners could not demonstrate that the Charterers were in breach of any implied term to exercise reasonable diligence to procure a reinspection. That submission turned on certain assumptions as to the facts which were not among those found by the Tribunal. It was also premised on the Owners' case to the Tribunal recorded at paragraph 14 of the Award that the Charterers were not entitled to treat the vessel as off-hire after 1530 on 19 February 2017, which was obviously wrong and from which the Owners have now resiled. To my mind the Owners' case before the Tribunal has no bearing on whether the matter should be remitted, although the Tribunal will need to consider whether it has any bearing on costs.

58. In my view remission is the appropriate course in this case. The arbitrators will be able to decide the issues which are now highlighted given that the content of the implied term is clearer than stated in paragraph 25 of the Award. Both sides accepted that in light of the implied term the Tribunal would need to decide what could and should have been done by the parties regarding reinspection, whether either party was in breach in this regard, the relevant timescales (e.g., the time within which the reinspection could have been arranged and completed had there been no breach of the implied obligation), and the financial consequences of any breach.
59. The Award will be remitted to the Tribunal to enable it to determine expeditiously, and as best it can on the evidence before it, these and other relevant matters which arise as a result of this judgment. This includes the costs of the arbitration.