QUEEN'S BENCH DIVISION (ADMIRALTY COURT)

Feb. 17, 18 and 19, 1997

THE "KALININGRAD" AND "NADEZHDA KRUPSKAYA"

Before Mr. Justice RIX

Contract — Breach — Inducement of breach — Plaintiffs in competition with defendants — Plaintiffs sub-sub-chartered the defendants' vessel — Defendants refused to allow performance and "withdrew" vessel — Whether plaintiffs entitled to damages for inducement of breach of contract.

The plaintiffs, Euro-Baltic, an Isle of Man company was set up in November, 1993 and in January, 1994 started a liner trade between St. Petersburg and northern Europe. Towards the end of that year, buoyed by its early success Euro-Baltic began preparations for a new service between St. Petersburg and the United States.

The defendants, Baltic Shipping Co. (BSC), a large Russian shipowner operated inter alia liner services between St. Petersburg and the United States and became concerned about the growth of the competition.

In late January, 1995 Euro-Baltic learned of the opportunity in the market to sub-charter one of BSC's own ships, *Nadezhda Krupskaya* for which the latter had no use. The vessel, because of its design was particularly suitable for service between the Baltic and the U.S./U.S. Gulf/Mexico, given the mixture of break-bulk and containerized cargoes found in that trade; and being a Russian ship it enjoyed preferential port charges in Russia.

In January, 1995 BSC instructed its German subsidiary to find a charter for the vessel. By Jan. 18 a fixture had been agreed with Th. Jacobsen & Co. A.S. of Norway. The fixture was on behalf of a company to be nominated by Jacobsens and was for a period of six months plus six months in charterers' option worldwide trading with usual exceptions. Clause 20 permitted the charterers the option of sub-letting the vessel "giving due notice to the Owners".

On Feb. 1, 1995 the charter to a Jacobsen company, Pe-Be Transport A/S (Pe-Be) and the sub-charter to a Dutch company Puyvast Chartering B.V. (Puyvast) were fixed. The sub-charter was on back-to-back terms save as to hire.

In the meantime Puyvast was also marketing the vessel and on Feb. 1, Euro-Baltic offered U.S.$5000 per day for one round trip from St. Petersburg via Baltic/E.C. Canada/U.S.E.C./U.S. Gulf with an option for one further round voyage. On Feb. 3 a fixture between Puyvast and Euro-Baltic was agreed subject to Euro-Baltic's board approval. The fixture became final on Feb. 7 and the vessel was due to be delivered on Feb. 14.

On Feb. 13, BSC discovered that Euro-Baltic had sub-chartered its own vessel, refused to allow performance and "withdrew" the vessel.

Euro-Baltic claimed damages in tort for inducement of breach of contract.

——*Held*, by Q.B. (Adm. Ct.) (RIX, J.), that (1) the submission by BSC that in a telephone conversation between the German subsidiary and Pe-Be it was agreed that the vessel would not be re-let to Euro-Baltic and that Pe-Be would be allowed three days to find an alternative fixture for the vessel would be rejected; in that telephone conversation Pe-Be did not know that a fixture had already been made with Euro-Baltic; in such circumstances the language that "the vessel would not be re-let" to Euro-Baltic was naturally to be taken to mean no more than that Puyvast would not go through with a prospective sub-letting to Euro-Baltic; there was therefore no promise that the vessel had not already been let to Euro-Baltic or that if already re-let it would not be delivered to Euro-Baltic (*see* p. 39, col. 1);

(2) if Pe-Be had promised, at BSC's demand that an existing sub-fixture to Euro-Baltic would not be fulfilled, that would itself have amounted to an agreement, procured by BSC, to breach such a sub-fixture with the requisite knowledge and intent on the part of BSC (*see* p. 39, col. 1);

(3) even if there had been consideration for an agreement that the vessel would not be re-let to Euro-Baltic, that agreement would have been entered into on the fundamental mutual mistake that the vessel had not yet been re-fixed to Euro-Baltic (*see* p. 39, col. 2);

(4) BSC was guilty of a tortious procurement of a breach of contract effected with the requisite knowledge and intent; BSC's tort was of the variety of direct persuasion, procurement or inducement or direct invasion of another's contractual rights (*see* p. 39, col. 2);

(5) by refusing to deliver the vessel into the head charter BSC made it impossible for Pe-Be and Puyvast in turn to provide the vessel down the chain of charters and ultimately to Euro-Baltic and so procured a breach of contract (*see* p. 39, col. 2);

(6) Euro-Baltic had proved that BSC was liable to it for procuring the breach of Euro-Baltic's sub-charter with Puyvast (*see* p. 40, col. 2);

(7) as to quantum, BSC was entitled to a credit of U.S.$23.26 in respect of the wasted costs of the survey of a steel cargo which was booked by Euro-Baltic but ultimately carried by BSC which were U.S.$1116.74 and not U.S.$1140 as claimed (*see* p. 40, col. 2);

(8) the capacity of the substitute vessel *Mira* was greater than that of *Nadezhda Krupskaya*; on the first westward leg *Mira* carried 11,721 tonnes as against *Nadezhda Krupskaya's* capacity of 11,350 tonnes; Euro-Baltic was to be debited with the value of 371 tonnes at an average rate of U.S.$40 per tonne less 3.75 per cent. in respect of commission on freight (*see* p. 40, col. 2; p. 41, col. 1);

(9) the address commission of 2.5 per cent. payable to Euro-Baltic under the *Mira* charter should be deducted from the additional hire debt engendered by

CA420-001

reason of Mira's greater hire rate (*see* p. 41, cols. 1 and 2);

(10) the total of those three deductions was U.S.$20,380.18 and Euro-Baltic's claim succeeded for U.S.$405,512.82 (*see* p. 41, col. 2).

The following cases were referred to in the judgment:

Hill (Edwin) and Partners v. First National Finance Corporation plc., (C.A.) [1989] 1 W.L.R. 225;

Middlebrook Mushrooms Ltd. v. TGWU, [1993] I.C.R. 612;

Thomson (D.C.) & Co. Ltd. v. Deakin, (C.A.) [1952] 1 Ch. 646;

Winters v. University Building & Loan Association, (1932) 268 Ill. App. 147.

This was an action by the plaintiffs Euro-Baltic Lines Ltd. the sub-sub-charterers of the vessel *Nadezhda Krupskaya* against the defendants, Baltic Shipping Co. the owners of the vessel for damages for inducement of breach of contract in that BSC refused to allow performance of the contract and withdrew the vessel. The action was against the owners of *Kaliningrad*, a sistership of *Nadezhda Krupskaya*.

Mr. Nicholas Hamblen (instructed by Messrs. Dorman & Co.) for the plaintiffs; Mr. Nigel Meeson (instructed by Messrs. Sinclair Roche & Temperley) for the defendants.

The further facts are stated in the judgment of Mr. Justice Rix.

JUDGMENT

Mr. Justice RIX: This is a claim in tort for damages for inducement of breach of contract. The plaintiff, Euro-Baltic Lines Ltd. ("Euro-Baltic") was the sub-sub-charterer of the defendant's vessel *Nadezhda Krupskaya* (the "vessel"). The defendant is Baltic Shipping Co. ("BSC"), a large Russian shipowner which operates inter alia liner services between St. Petersburg and the United States. Euro-Baltic, an Isle of Man company, is a modern competitor, which was set up in only November, 1993. In January, 1994 Euro-Baltic started a liner trade between St. Petersburg and northern Europe. Towards the end of that year, buoyed by its early success, Euro-Baltic began preparations for a new service between St. Petersburg and the United States. This case arises out of BSC's concern about the growth of this competition, exacerbated by the defection to Euro-Baltic of its former liner operations manager, Mr. N. Piatkin.

Euro-Baltic performed its first transatlantic sailing in December, 1994, followed by further sailings in January and February, 1995. In late January it learned of the opportunity in the market to sub-charter one of BSC's own ships, *Nadezhda Krupskaya*, for which the latter temporarily had no use. Because of its design it was particularly suitable for service between the Baltic and the U.S./U.S. Gulf/Mexico, given the mixture of break-bulk and containerized cargoes found in that trade; and, being a Russian vessel, it enjoyed preferential port charges in Russia. When BSC discovered that its competitor had sub-chartered its own ship, it refused to allow performance and "withdrew" the vessel. This action followed.

Euro-Baltic was in fact the sub-sub-charterer of the vessel. The chain of charters was as follows. In January, 1995 BSC had instructed its German subsidiary, Baltic Shipping G.m.b.H. of Bremen ("Baltic Bremen"), to find a charterer for the vessel. By Jan. 18, Mr. Herbert Behrens, the managing director of Baltic Bremen, had agreed a fixture, subject to details, with Mr. Per Bøhaugen, managing director of Th. Jacobsen & Co. A.S. ("Jacobsens") of Sarpsborg in Norway. Jacobsens are a group comprising shipbrokers, operators and managers. The fixture was on behalf of a company to be nominated by Jacobsens, was for six months plus six months in charterers' option, worldwide trading with usual exceptions, at a time charter hire rate of U.S.$4200 per day. On Jan. 24, Mr. Bøhaugen faxed to Mr. Zieler at Baltic Bremen a copy of a working charter on the Baltime form. Clause 20 of the standard wording was a sub-let clause permitting charterers the option of subletting the vessel "giving due notice to the Owners". It was common ground that such a clause gave owners no rights to object to any such sub-letting.

On Feb. 1, 1995 the charter to a Jacobsen company and a sub-charter to a Dutch company called Puyvast Chartering B.V. ("Puyvast") were fixed. The nominated Jacobsen company was Pe-Be Transport A/S ("Pe-Be"). The sub-charter to Puyvast was on back-to-back terms save as to hire, which in that case was U.S.$4500 per day. In other words Jacobsens saw the opportunity for a turn of U.S.$300 per day, which they took through their company Pe-Be.

In the meantime Puyvast was also marketing the vessel. In dealing with Jacobsens (Pe-Be), Puyvast used a firm of brokers called SOL Shipping A.S. ("SOL"), where a Mr. Stein Lunde was handling the business. In seeking a further sub-charterer of the vessel Puyvast employed another firm of brokers called Wonsild & Son ("Wonsild"). On Jan. 24, the vessel was offered to Euro-Baltic by its brokers, Jurgen H. Strauss G.m.b.H. of Hamburg ("Strauss"). The voyage discussed was a time

CA420-002

charter trip via Baltic/Continent to U.S.E.C./U.S. Gulf, and bargaining on hire began at U.S.$6000 per day. On Feb. 1 Euro-Baltic offered U.S.$5000 per day for a round trip from St. Petersburg via Baltic/E.C. Canada/U.S.E.C./U.S. Gulf with an option for one plus one further round voyages. On Feb. 3 a fixture between Puyvast and Euro-Baltic was agreed, subject to Euro-Baltic's board approval, at U.S.$5300 per day. The fixture became final on Feb. 7. Thus by Feb. 7 the chain from BSC to Pe-Be to Puyvast to Euro-Baltic had been completed.

The vessel was due to be delivered, after the completion of some repairs, on Feb. 14. On Feb. 13, however, BSC heard something about Euro-Baltic being the sub-sub-charterer. This may have been triggered off by Jacobsens' request that day to Baltic Bremen that sub-charterers be allowed to paint the vessel's funnel with their initials. The reply was — Who are the charterers? — with a reference of the need for notice to BSC under cl. 20 of the charter. Mr. Behrens says in his statement that he was told by a colleague that Euro-Baltic had sub-sub-chartered the vessel. There followed the first of two telephone conversations between Mr. Bøhaugen and Mr. Behrens. In the first, Mr. Behrens complained that the vessel had been re-let to Euro-Baltic and that there was no way that BSC would deliver the vessel to its rival. Mr. Bøhaugen said that he would speak to Puyvast's brokers, SOL, to find out what was going on; he had not heard of such a re-letting. He telephoned Mr. Lunde at SOL, and Mr. Lunde spoke to his clients, Puyvast. Mr. Lunde then telephoned Mr. Bøhaugen back and said he would be able to find alternative employment for the vessel within three days and that the vessel would not be re-let to Euro-Baltic. Mr. Bøhaugen assumed from this conversation that there was as yet no concluded fixture between Puyvast and Euro-Baltic. He then telephoned Mr. Behrens back to pass on this assurance. He thought at that time that the problem had been solved. He confirmed his second conversation in a fax which was dated Feb. 13, but sent to Baltic Bremen a little after 9 a.m. the next morning. The fax read as follows:

> Re. telecon lately *we hereby confirm on behalf of charterers that abv vessel will not be releted to Eurobaltic*. However, we must say that this info was given us at a very late stage and therefore we need up to 3 days to rearrange for other occupation for the vessel.
>
> we take it for granted that owners can agree to that taken into consideration that we/charterers solved the problem in a smooth way.
>
> Await your confirmation on return.

Within 20 minutes, however, Mr. Bøhaugen had received the following information from SOL, which he immediately passed on without comment to Baltic Bremen, marking his fax for the attention of Mr. Zieler:

> pls be advsd that vsl has been fxd for a t/c relet trip for accnt messrs euro baltic line — douglas
>
> vsl will be delivered into their t/c 18/2.

At about noon the same day Mr. Zieler sent an urgent telex to Mr. Bøhaugen:

> We refer to the telcon between Mr Behrens and Mr Bøhaugen and confirm that Baltic Shipping Comp. is by no means in a position to agree to sublet the vessel to Eurobaltic.
>
> Owners are under circumstances prepared to grant up to 3 days to charterers to find other employment, counting as from to-day (including). We kindly ask you to let us know the name of the operator and the confirmation that
>
> A) vessel does in no way operate for Eurobaltic
>
> B) vessel is not involved in any trade between Baltic Sea and US Gulf/Mexico.
>
> Kindly let us have your confirmation on above before noon.

Following that telex Mr. Bøhaugen spoke on the telephone first to Mr. Lunde at SOL and then to Mr. Zieler. With Mr. Lunde he agreed that Puyvast would try to sort things out within three days so as to satisfy BSC and its points A and B, while reserving the point that any claims from Euro-Baltic would have to be passed up the line to BSC. Mr. Bøhaugen then passed on the effect of that response to Mr. Zieler. Mr. Zieler in turn responded by telex as follows:

> Like to stress our standpoint once more:
>
> 1) Baltic Shipping will in no way have direct discussions with Euro-Baltic.
>
> 2) Euro-Baltic is a direct competitor to Baltic Shipping . . .
>
> 3) Baltic Shipping must therefore insist that the vessel will in no case re-chartered to Euro-Baltic (A) and will not be involved in any trade between Baltic Sea and US Gulf/Mexico (B).
>
> Please understand our position. We have no option but to cancel charter party if do not accept our proposal. Kindly confirm soonest possible.

Mr. Bøhaugen meanwhile telexed SOL as follows:

> Have informed Baltic Shipping verbally that Charts agree to their last telex and that Charts reserve the right to put forward to Baltic Shipping any claim arising from Euro-Baltic Line.
>
> Here u have my proposal for a telex to Baltic Shipping and I ask you to get Puyvast approval before sending . . .

CA420-003

He then quoted a draft response to BSC which, in the event, was never sent:

> Further to your telex today Charts agree to
>
> A) Vessel in no way operates for Eurobaltic
>
> B) Vessel will not be involved in any trade between Baltic Sea and US Gulf/Mexico.
>
> Owners give Charts 3 days grace in order to secure other employment for the vessel...
>
> As CP allows Charts to sublet the vessel Charts reserve the right to forward any claims against them from Eurobaltic Line to Owners and Owners to remain fully responsible as vessel was fully fixed and Charts not in default.
>
> We feel this is a fair demand for Charts side as they are helping Owners out of a difficult situation.

On the next morning, Feb. 15, SOL reverted to Mr. Bøhaugen with a somewhat different message for BSC, viz. that Puyvast inform Euro-Baltic that BSC had withdrawn the vessel, that any such withdrawal be for the risk and account of BSC, and that BSC substitute a sistership for the following month. Mr. Bøhaugen duly passed on this message. On Mr. Zieler's receipt of it, he rejected the proposal and withdrew the vessel. His telex said:

> As vessel can not be chartered to Th Jacobsen or their substitutes we hereby withdraw "N. Krupskaya" without offering any substitute in March.
>
> We do not accept any responsibility for possible consequences resulting from Puyvast's Euro-Baltic subcharter deals.

That "withdrawal" led in due course to the arrest of a sistership in the ownership of BSC, *Kaliningrad*, and thus to this action. Euro-Baltic has also commenced an arbitration against Puyvast under the sub-sub-charter, but here seeks a remedy in tort from BSC itself.

In its defence BSC had pleaded (i) that it was an express term of its charter to Pe-Be that the vessel would not be re-let to Euro-Baltic and that BSC was therefore entitled to refuse to deliver the vessel to Pe-Be and committed no tort in doing so; (ii) that it was an express term of the Pe-Be charter that the vessel would be re-let to Puyvast and no one else, with similar consequences; and (iii) that the charters to Pe-Be and Puyvast were merely a device designed to deceive BSC into chartering its vessel to Euro-Baltic by concealing the ultimate operator in the knowledge that BSC would not have been prepared to charter the vessel directly to Euro-Baltic. None of those three pleas was supported by Mr. Meeson, who has represented BSC at trial.

Instead Mr. Meeson has advanced a new unpleaded defence, for which I have given BSC leave to amend. It is founded on the second telephone conversation between Mr. Bøhaugen and Mr. Behrens on Feb. 13. BSC now alleges that in that conversation Mr. Bøhaugen on behalf of Pe-Be and Mr. Behrens on behalf of BSC agreed (a variation of their charter) that the vessel would not be re-let to Euro-Baltic and that in return Pe-Be would be allowed three days to find an alternative fixture for the vessel; and that that agreement was confirmed in Mr. Bøhaugen's fax dated 13 and transmitted Feb. 14. The only evidence from BSC directly supporting that agreement is Mr. Behrens' statement as follows:

> Per Bøhaugen agreed that the vessel would not be relet by the charterer to BSC's competitors, Euro-Baltic. This was confirmed to me by Th Jacobsen in their fax dated 13 February (received 0907 hours on 14 February 1995). After receipt of Th Jacobsen's confirmation I was not really involved much further...

Based upon this alleged agreement Mr. Meeson submits that since the vessel had in fact been re-let to Euro-Baltic, Pe-Be was in anticipatory repudiatory breach of its charter, entitling BSC to accept that repudiation and to refuse to deliver the vessel. In doing so, BSC committed no tort, alternatively was justified in exercising its contractual rights. Nor did the alleged agreement constitute any tort, for BSC did not at that time know whether Euro-Baltic had sub-chartered the vessel. Indeed, Mr. Behrens, like Mr. Bøhaugen, must have been under the impression at that time that no fixture with Euro-Baltic had yet been completed.

In response, Mr. Hamblen on behalf of Euro-Baltic did not oppose leave to raise this amended case, but otherwise disputed Mr. Meeson's submission root and branch, in fact and law. As to fact, he submitted that no agreement had been made during the Feb. 13 telephone conversation; if any had been made, it did not amount to a contractual warranty that Euro-Baltic was not a sub-charterer, but at most amounted to a promise that the vessel would not in the future be re-let to Euro-Baltic; in any event any agreement was without consideration, for there was as yet no quid pro quo that Pe-Be/Puyvast would be given three days to find new employment, or else was made under a fundamental mutual mistake that the vessel had not yet been sub-chartered to Euro-Baltic. As to law, an agreement in the alleged terms would itself have amounted to an unlawful procurement of breach of contract and could not provide the justification of BSC's subsequent withdrawal in full knowledge of Euro-Baltic's sub-charter and with the intention of destroying it. In any event, a direct intervention in Euro-Baltic's contract with knowledge of it and intent to procure a breach of it was unlawful in itself, and did not require any separate uncontractual conduct to render it tortious; nor could it be justified by the alleged variation,

CA420-004

being subsequent in time to Euro-Baltic's sub-charter.

In my judgment Mr. Meeson's submission fails in fact. In his telephone conversation of Feb. 13 Mr. Bøhaugen did not know that a fixture had already been made with Euro-Baltic, and, as Mr. Meeson accepts was therefore likely, Mr. Behrens would also have been under the impression that a prospective sub-charter to Euro-Baltic was not yet firm. In such circumstances, Mr. Bøhaugen's language that "the vessel would not be relet" to Euro-Baltic is naturally to be taken to mean no more than that Puyvast would not go through with a prospective sub-letting to Euro-Baltic. Any other understanding would have been wholly uncommercial, at any rate without stipulating for an indemnity against Euro-Baltic's claims. There was therefore no promise that the vessel had not already been let to Euro-Baltic, or that, if already re-let, it would not be delivered to Euro-Baltic. In any event, if Mr. Bøhaugen had promised, at BSC's demand, that an existing sub-fixture to Euro-Baltic would not be fulfilled, that would itself have amounted to an agreement, procured by BSC, to breach such a sub-fixture, with the requisite knowledge and intent on the part of BSC.

In any event there was no consideration for any promise by Mr. Bøhaugen. Mr. Behrens in his evidence does not allege any. Mr. Bøhaugen's fax of confirmation is worded in such a way as to indicate that the quid pro quo of a three-day period of grace to find alternative employment is put forward as a proposal not yet agreed. It will be recalled that the vessel was due for delivery that day. Neither Pe-Be nor Puyvast would want the vessel sitting around at its cost while the search went on for a new sub-charterer. If no binding agreement was made in the telephone conversation of Feb. 13, Mr. Meeson does not allege that any subsequent agreement was ever entered into, and the documentary correspondence shows that it was not. The documentary language is the language of counter-offers and proposals. Thus Mr. Bøhaugen's fax says:

> We take it for granted that owners can agree . . . Await your confirmation on return.

Mr. Zieler's reply adds a new stipulation, viz. against trade to U.S. Gulf/Mexico, and concludes "let us have your confirmation". Mr. Zieler's second telex that day ends "We have no option but to cancel charter party if do not accept our proposal". None of this is the language of contract, nor, as I have said, is even alleged to be. Significantly, Baltic Bremen did not at that time correspond on the basis of "You have already committed yourself to break a sub-fixture to Euro-Baltic". If that was not the reaction at the time to the crisis, that seems to me to confirm my judgment that the alleged agreement was never made.

I also agree with Mr. Hamblen's submission that even if there had been consideration for an agreement that the vessel would not be re-let to Euro-Baltic, that agreement would have been entered into on the fundamental mutual mistake that the vessel had not yet been refixed to Euro-Baltic.

Without any agreement to provide the ground on which BSC's withdrawal can be presented as a legitimate response to a repudiatory breach (not as I have observed the way in which the withdrawal was put at the time), Mr. Meeson has no further submission to resist the inevitable consequence that BSC was guilty of a tortious procurement of a breach of contract, effected with the requisite knowledge and intent, and he did not seek to say otherwise. BSC's tort was thus of the variety of "direct" persuasion, procurement, or inducement or "direct" invasion of another's contractual rights spoken of by Lord Justice Jenkins in a classic passage in *D. C. Thomson & Co. Ltd. v. Deakin*, [1952] 1 Ch. 646 at pp. 695–696, where he said:

> Direct persuasion or procurement or inducement applied by the third party to the contract breaker, with knowledge of the contract and the intention of bringing about its breach, is clearly to be regarded as a wrongful act in itself, and where this is shown a case of actionable interference in its primary form is made out: *Lumley v. Gye* . . .
>
> Further, I apprehend that an actionable interference would undoubtedly be committed if a third party, with knowledge of a contract and intent to bring about its breach, placed physical restraint upon one of the parties to the contract so as to prevent him from carrying it out.
>
> It is to be observed that in all these cases there is something amounting to a direct invasion by the third party of the rights of one of the parties to the contract, by prevailing upon the other to do, or doing in concert with him, or doing without reference to the other party, that which is inconsistent with the contract; or by preventing, by means of actual physical restraint, one of the parties from being where he should be, or doing what he should do, under the contract.

See also the restatement of Lord Justice Jenkins's exposition by Lord Justice Neill in *Middlebrook Mushrooms Ltd. v. TGWU*, [1993] I.C.R. 612 at pp. 618E–619A. So here, by refusing to deliver the vessel into the head charter, BSC made it impossible for Pe-Be and Puyvast in turn to provide the vessel down the chain of charters and ultimately to Euro-Baltic, and so procured a breach of contract.

In the circumstances it seems to me that I need not go further and decide Mr. Hamblen's subsidiary

CA420-005

submissions of law to the effect that, even if BSC had been acting in accordance with rights granted under a variation of its head charter with Pe-Be, such conduct would still be unlawful because it amounted to a direct interference with Euro-Baltic's sub-charter, and could not have been justified, because such variation post-dated and did not precede in time that sub-charter. I think I would only say that I was far from satisfied that the contractually valid exercise of a right of withdrawal or of the acceptance of a repudiation under a head charter could ever be tortious, even if done with the intention of destroying some sub-charter or international sale and shipment of goods: and that for these purposes it would not matter whether the head charter had been made before or, as can sometimes happen, after the other contract whose performance itself depended upon presence of the vessel in question.

In this connection Mr. Hamblen relied on passages in Clerk & Lindsell on Torts, 17th ed., 1995, on the subject of what may constitute justification of the procurement of a breach of contract. Thus at par. 23–37 of that work it is said that:

> The defence appears to be limited to fulfilment of a "moral duty" which appeals to the "good sense of the tribunal". It must be special . . . ;

and later in the same paragraph reference is made to —

> . . . the general principle that justification must be based upon a duty and not mere protection of the defendants' own interests.

Mr. Hamblen also referred me, as indeed did Mr. Meeson, to *Edwin Hill and Partners v. First National Finance Corporation plc.*, [1989] 1 W.L.R. 225. There a mortgagee with a legal charge over development property was held to have been justified in demanding that the developer replace his architect as a condition of obtaining further finance, in circumstances where the mortgagee would have been entitled to put in a receiver and foreclose on the security. There are dicta or at any rate indications to the effect that it was important in that case that the defendant was acting in support of his *pre-existing* security: see *e.g.* at pp. 228H–229A and 230H–231A. I am inclined to think, however, that the doctrine of justification by reason of the protection of an "equal or superior right" (see at pp. 231C–D, 233C–H) does not ultimately depend on that right being under a contract pre-existing in time the contract interfered with. If, for instance, a shipowner enters into a time charter on terms (as is standard) which entitles him to withdraw his vessel for late payment of hire, it seems to me that he remains entitled and is justified in validly exercising that right even if he thereby interferes knowingly and intentionally with another contract, even a pre-existing contract, which depends on the availability of his vessel. It seems to me that that example is within the rationale of the protection of an equal or superior right discussed in *Hill v. FNFC*, see for example the citation by Lord Justice Stuart-Smith at p. 233E of the dictum from the American case of *Winters v. University Building & Loan Association*, (1932) 268 Ill. App. 147 at p. 159. However, on the facts before me, I need not decide these additional submissions.

I therefore find that Euro-Baltic has proved that BSC is liable to it for procuring the breach of Euro-Baltic's sub-charter with Puyvast. There remains the question of quantum. Euro-Baltic's claim falls into two parts. The first is concerned with the additional costs of substituting an alternative vessel, *Mira*, to perform the three round voyages which the sub-charter would have entitled Euro-Baltic to perform, and which I find it probably would have performed, with BSC's vessel. The second is concerned more generally with Euro-Baltic's loss of business and profits due to the disruption which the sudden withdrawal of the vessel allegedly caused to its growing business. It is common ground that this second part to Euro-Baltic's claim should be deferred to a subsequent hearing. I am therefore concerned only with the first part of the claim.

This is set out in pars. 1 and 2 of the schedule of loss annexed to Euro-Baltic's statement of claim. The loss there claimed totals U.S.$425,893. This claim has been supported by the evidence of Mr. Peter Cave, a director of Euro-Baltic, whom Mr. Meeson has cross-examined. In the event, only very few points on the schedule have been taken and have survived to the end of the hearing, and I can deal with them briefly.

The first is that the wasted costs of the survey of a steel cargo which was booked by Euro-Baltic, but ultimately carried by BSC, were U.S.$1116.74 and not U.S.$1140 as claimed in the schedule. BSC is entitled to a credit of U.S.$23.26 on this point.

Secondly, Mr. Meeson pointed out that the capacity of *Mira* was greater than that of the vessel. If, as was the case under par. 2.1 of the schedule, Euro-Baltic debited BSC with the greater hire costs of *Mira*, then, he submitted, Euro-Baltic should also bring into account the higher profits earned on the greater carrying capacity of *Mira*. Fair enough, but Euro-Baltic was able to show that, save on the westward leg of the first round voyage, when it had the advantage of a large consignment of steel which it was able to book at the last moment for carriage from Kaliningrad, *Mira* consistently carried less than the capacity of *Nadezhda Krupskaya*. On that first westward leg, however, *Mira* carried 11,721 tonnes, as against *Nadezhda Krupskaya's* capacity of 11,350 tonnes. Mr. Meeson therefore invites me

CA420-006

to debit Euro-Baltic with the value of 371 tonnes of freight at an average rate of say U.S.$40 per tonne. Both parties recognize that that is a rough and ready calculation, but it is one that is left to me to calculate, if I see fit, without a more meticulous examination of the details of the *Mira's* freight account. I think that Mr. Meeson's point is in principle a good one and I shall therefore deduct U.S.$14,283.50 from Euro-Baltic's claim, being 371 × U.S.$40 less a figure which I have taken to be 3.75 per cent. in respect of commission on freight.

Thirdly, Mr. Meeson submits that address commission of 2.5 per cent. payable to Euro-Baltic under the *Mira* charter should be deducted from the additional hire debit engendered under par. 2.1 of the schedule by reason of *Mira's* greater hire rate. Mr. Cave pointed out that that address commission was actually paid away to Euro-Baltic's sister company, Euro-Baltic Shipping Ltd., for brokerage services. It seems to me that that is essentially an in-house disposition, and I agree that the address commission should be deducted. The sum in question is U.S.$27.50 per day in respect of the first and second round voyages and U.S.$30 per day in respect of the third round voyage, totalling U.S.$6073.42.

The total of these three deductions is U.S.$20,380.18. It follows that Euro-Baltic's claim under pars. 1 and 2 of its schedule succeeds for U.S.$405,512.82. The claim under par. 3 is reserved for a further hearing.

CA420-007