

Vitol SA v Beta Renewable Group [2017] EWHC 1734 (Comm) 7th July 2017

Mrs Justice Carr has handed down judgment in a biofuels trading dispute in which James Watthey acted for the successful buyers, Vitol.

Vitol contracted to buy 4500MT of “UCOME” biofuel from Beta, FOB Bilbao. They also hedged on the gasoil futures market. Unfortunately, after two agreed extensions, Beta confirmed that they would not be able to deliver the product. They did this before the time for nomination of the carrying vessel (27 June 2016) and it was admitted to be a renunciatory breach. There was no express acceptance of breach until after the nomination deadline (7 July 2016).

Thus two important points of principle arose:

1. Did Vitol’s decision not to nominate constitute an acceptance of Beta’s admitted renunciatory breach?
2. If not, was nomination of a vessel a condition precedent to Beta’s obligation to deliver?

Vitol’s witness was clear that he considered the contracts to be at an end and that he had deliberately chosen not to nominate because it would be pointless. However, with “some hesitation”, the Judge held that the decision not to nominate was not sufficiently unequivocal when viewed against the past extensions and some of the correspondence chasing Beta for updates.

This meant that the contract continued in place until after the deadline for nomination of a vessel. Beta argued that this meant they no longer had any obligation to deliver. The Judge disagreed. Vitol was ready and willing to perform its contractual obligations, whereas Beta was not. It would have been a commercial nonsense to require Vitol to incur the costs of nominating a vessel in those circumstances. In particular, she was persuaded by the authority of *Forrestt & Son Ltd v Aramayo* [1900] 83 LT 335 as cited in *Benjamin’s Sale of Goods* at 20-053.

The dispute was also of interest because at the CMC it was transferred onto the pilot Shorter Trials Scheme established by Practice Direction 51N. This scheme is available for “document light” disputes in the Rolls Building Courts with a trial length of 4 days or shorter. They are managed by a single Judge, there is no Costs Budgeting and the Judge is encouraged to deliver judgment within 6 weeks of closings. In this case, judgment was delivered within 10 days.

A fuller note will appear in our [Maritime Bulletin](#) in due course. In the meantime, the judgment is available on [Bailii](#).