JUDGMENT : The Honourable Mr Justice Morison : Commercial Court. 11th April 2006.

Background

1. This is an application by the Defendants challenging the jurisdiction of this Court.

2. I will call the parties Andromeda [the Claimants], a Panamanian company, and OW Bunker [the Defendants], a Danish Company. Andromeda own a vessel, the MV Mana, registered in Panama. It was time chartered to an American Company, Sea Bridge. In the charterparty, the charterers agreed not to allow a lien or encumbrance over the vessel and undertook that during the charter period "they will not procure any supplies or necessaries or services, including any port expenses and bunkers, on the credit of the Owners or in the Owners' time."

3. In April 2005 Sea Bridge ordered bunkers from OW Bunker who produced a Sales Confirmation notice that bunkers were supplied for the account of *"the Master and/or Owners and/or Charterers and/or MV MANA and/or Sea Bridge"*. The contract for the supply of bunkers was, by virtue of OW Bunker's own terms and conditions subject to the law and jurisdiction of the English Courts. Bunkers to the value of US$240,570 were delivered to the vessel. It is Andromeda's case that the Master made known to OW Bunker representatives on board the vessel, and before delivery, of the non-lien clause and the fact that the bunkers were to be delivered solely for the account of Sea Bridge. After delivery of the bunkers on board, the Master signed a receipt which stated that the bunkers delivered had been delivered to the sole account of Sea Bridge. On 28 April OW Bunker billed Sea Bridge for payment by 8 May 2005. The invoice was marked "*MV MANA AND/OR OWNERS/CHARTERERS*." Sea Bridge have gone into Chapter 7 Bankruptcy, and OW Bunker have lodged proof for the debt in that liquidation, since proceedings against a company in this type of bankruptcy cannot be maintained.

4. OW Bunker then turned their attention to Andromeda and asserted that they had a maritime lien and referred to the Bominflot terms that had been incorporated into the Sales Confirmation issued to Sea Bridge. The communication from OW Bunker was in the form of an Email dated 28 September 2005 which reads: *"As per your request we hereby attach the Bominflot General Terms and Conditions that covered the supply for the MANA. Your special attention is drawn on clauses 2.5 and 7.14. As for the stamp affixed on the Bunker Delivery Receipts same fact has been discussed with our US lawyers as well, who advised that such stamp with reference to above clauses has no value and the maritime lien on the vessel as per US law remains valid."*

5. By clause 2.5 it was provided that no statement outside the contract should have contractual effect; and clause 7.14 provided that products were not only delivered on account of the buyer but also on account of the receiving vessel over which the buyer warranted that the seller was entitled to assert and enforce a lien.

6. Andromeda argued that the Master's stamps on the receipt preceded the delivery and OW Bunker were aware of the non-lien clause and therefore the Bominflot terms and conditions had been introduced too late and the delivery took place on the basis of the receipt signed by the Master. It is also their case that a US Court would apply English Law to decide whether there was a maritime lien in respect of the bunkers and no such lien would apply.

7. The terms of the reply to the Email, from the Owners' managers reads as follows: *Thank you for your e-mail of September 28 2005, together with the attachment (Bominflot terms and conditions).*

   In regard to the stamp on the bunker receipts, which is not legible to us, we take it from your comments that the language of the stamp is such that it notifies the supplier that the delivery is for charterer's account and not for the owners and/or the vessel, or at least language to that effect. We will also ask owners whether they have a clear copy of the bunker and receipts and revert.

   In further response to your comments about the validity of the stamp, we were a little surprised to read that Mr. Seele advised that such clauses have no value. Assuming that the time charter between Sea Bridge and owners contained a prohibition of lien clause (we are in the process of obtaining a copy of the charter party from owners) and also that the stamp or stamps on the bunker receipts were placed before the delivery was made, thus giving the supplier actual notice of the no lien clause, there is case law in the U.S. that would support owners' position to defeat a theory of maritime lien. This, of course, assumes that U.S. law would apply to this claim, which we would deny, as opposed to English law (per clause 18.1 of Bominflot's terms and conditions). It is our understanding

from previous cases that English law does not provide for a maritime lien in favour of a supplier. In this regard please note that there is considerable legal authority in the U.S. which would recognise the choice of law provision contained in the agreement, therefore even if litigation was initiated in the U.S. against the vessel the U.S. court would most likely enforce clause 18.1 of the terms and conditions and apply English law.

We have requested from owners legible copies of the bunker receipts and if necessary we are also prepared to contact Bominflot who should have legible copies.

8. On 5 January 2006, an action was commenced in this jurisdiction by Andromeda against OW Bunker for negative declaratory relief that Andromeda "*have no liability to the Defendants under the Agreement and in particular that they are not liable to the Defendants for the sum of US$241,320.00 or any part thereof*" [see paragraph 10 of the undated Particulars of Claim]. The claim was issued in a form intended for service out of the jurisdiction on the basis of an endorsement in the following terms: *"I state that the High Court of England & Wales has power under the Civil Jurisdiction and Judgments Act 1982, the defendant being a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1 or 3C to that Act or paragraph 12 of Schedule 4 to that Act applies, to hear the claim and that no proceedings are pending between the parties …"*

9. The claim form and particulars were served on 25 January 2006 and an acknowledgment of service was filed on 7 February indicating that OW Bunker intended to challenge the jurisdiction of this court.

10. In February 2006 OW Bunker caused the vessel to be arrested in Portugal and it was released after provision of the usual security. There is a dispute between the parties as to the basis of the arrest. OW Bunker say that they arrested the vessel pursuant to an alleged maritime lien over the vessel arising out of the delivery of fuel to it [an action in rem]; Andromeda say that the claim against them was based upon an alleged contract between Andromeda and OW Bunker.

11. In their statement of case it appears that Sea Bridge were alleged to be "jointly liable" for the payment under the contract; thereby implying that they were liable jointly with the other two named defendants, namely Andromeda and the vessel's managers. It was averred that the "said supply was contracted with the 3rd Respondent Sea Bridge at the time of chartering the ship, but with the express indication that responsibility for the payment lay with it "*and/or with the Captain or owner of the Ship and/or of the charterers and/or of the ship MANA"* and reference was made to the Sales Confirmation Document which was attached to the claim. The court received the evidence of a witness for OW Bunker and reviewed the papers which were filed and produced findings of fact including a finding that *"The supply referred to was contracted with the 3rd Defendant, at that time charterer of the ship, however with the express direction that this letter 'and/or the Captain or owner of the Ship, and/or the charterers and/or the Ship MANA' was/ were responsible for payment*".

12. This finding was incorporated into the Judgment of the Court, which indicated that the court's powers derived from Article 406, no. 1, of the Code of Proceedings which state that *"a creditor who has a reasonable suspicion of losing the security over the capital of its credit is enabled to make application for the arrest of the property of the debtor"*

13. In the Judgment there are two important paragraphs: *"The specific content of the charter contract in question is unknown in terms of whether the commercial management of the ship and the responsibility for expenses in respect of the supply of oil are deemed to have been transferred.*

Nevertheless, the mere ownership of the ship and the existence of preferred credit [a phrase which might be better translated as maritime lien] *imputes legitimacy on the first defendant* [Andromeda] *i.e. independently of the declared holder of the debt, [Andromeda] shall always be a legitimate party for the effects of undertaking defence against judicial seizure of property belonging to it."*

14. The evidence filed, late, by OW Bunker confirms that the claim was based upon a maritime lien and not an *in personam* claim based on an alleged contract. This is second-hand evidence from their Portuguese lawyers and is consistent with the two paragraphs cited above. At this stage of the application I have to say that despite some passages cited above which might be regarded as inconsistent with this conclusion, there is nothing compelling to show that the Portuguese lawyers are wrong. As I read the Court's judgment it was saying that whatever the contractual position 'the mere ownership of the vessel

was sufficient to make the vessel liable'. The responsibility of the vessel was at least consistent with what was typed onto the Confirmation of Order referred to by OW Bunker.

15. The following day, February 10, the arrest was lifted by order of the Lisbon court upon Andromeda, through their club, putting up security.

The Parties' Arguments

16. For OW Bunker, Mr Blackwood made the following submissions:

(1) Article 17 of the Brussels Convention provides that *"If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which may have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. …*"

In the present claim it is precisely the case for Andromeda that they were not parties to the contract for the sale of bunkers; they assert as much in paragraph 4 of their particulars of claim and seek a declaration to that effect. Yet they assert that this court has jurisdiction by virtue of a clause in a contract to which they were not a party. Accordingly, this is not a case, as the claimants themselves assert, where the parties have agreed to the jurisdiction of the English Court. OW Bunker is 'domiciled' in Denmark and should have been sued there.

(2) There is no provision in the Convention similar to the provisions of Part 6.20(7) of the CPR which provides that *"A claim is made for a declaration that no contract exists where, if the contract was found to exist it would comply with the conditions set out in paragraph (5)."*

The Convention is simply distributing jurisdiction between the Member States by specific rules; if the claimant asserts that there is no contract and no agreement to confer jurisdiction on the courts of a State other than where the putative defendant is domiciled then only the courts of the domicile are the courts to whom disputes have been allocated, in cases such as this.

(3) In any event, OW Bunker have never asserted that Andromeda were parties to the contract. The Email of 28 September makes it clear that they were asserting a maritime lien over the vessel by virtue of US law. OW Bunker have made it clear that they exercised the right of arrest so as to secure the claim to a maritime lien and proceedings have been commenced in the Texas District courts making that assertion. The claim is, therefore for a negative injunction which is entirely hypothetical.

17. For Andromeda, Ms Karen Troy-Davies submitted that:

(1) The question at issue is whether the Claimant can demonstrate a good arguable case that Article 17 of the Brussels/Lugano Convention applies in the circumstances which pertained at the time when the proceedings were issued [or served]. In ***ISC Technologies Ltd & Another v James Howard Guerin & Others*** [1992] Vol 2 Lloyd's Law Reports page 430 at page 434 Hoffmann J. said this: "*Mr Crystal said I should look at the position today. An application made under RSC O.12 r.8 is a re-hearing of the application to the Master and the exercise of a fresh discretion. It should therefore take into account whatever has happened since. I do not agree. The application is under RSC O12 rule 8(1)(c) to discharge the Master's order giving leave to serve out. The question is therefore whether that order was rightly made at the time it was made. Of course the Court can receive evidence which was not before the Master and subsequent events may throw light upon what should have been relevant considerations at the time. But I do not think that leave which was rightly given should be discharged simply because circumstances have changed. That would mean that different answers could be given depending upon how long it took before the application came on to be heard."*

(2) As at January 2006, it was the case for OW Bunker that Andromeda were party to a contract which contained a jurisdiction clause to this effect; "*This agreement is subject to the law and jurisdiction of the courts of England … However, nothing in this clause shall, in the event of breach of the Agreement by Buyer, preclude Seller from taking any such action as it shall in its sole discretion consider necessary to enforce, safeguard or secure its rights under the Contract in any court or tribunal in any state or country*."

(3) The fact that when their present solicitors came on the scene in March 2006 they said that it was not OW Bunker's case that Andromeda were party to the contract, does not thereby render the issue and service of the proceedings academic or change the arguments under Article 17, which must be judged

as at January 2006. Despite what the English solicitors said, in the USA in in rem proceedings issued on March 13 2006, OW Bunker alleged that *"In the exercise of commerce, on 6 April 2005, the plaintiff entered into a contract at the request of the Master and/or those in charge of the vessel and upon the credit of the vessel for the supply of bunkers … all in accordance with the sales confirmation …"*

At paragraph 11 of the complaint, the plaintiff relied upon the Maritime Lien Act and at paragraph 11 and 12 the plaintiff sought to recover (i) interest "as contractually and legally allowed, both pre- and post-judgment at the highest rate allowable by law or contract"; and (ii) "as a result of defendants breaches of contractual agreement … attorneys' fees and expenses incurred by it resulting from said breaches." It is clear, she submitted, that whilst OW Bunker were saying one thing in this jurisdiction, they were saying the opposite in another.

Furthermore, in that action, contrary to what the court was initially told, the plaintiffs in the USA proceedings are asking for the vessel to be seized by the US Marshal "to be held as security against any judgment to be entered herein." It was OW Bunker's case that they were not intending to arrest the vessel for the second time to obtain security, with the risk that this would be unlawful under the Arrest Convention [Article 3(3)]. Yet the claim for seizure was stipulated to be for the purpose of security. There is some evidence that the claim in contract was not between the Owners and OW Bunker but rather between the vessel and OW Bunker. I ought to express no view on the issue as to whether it would be lawful for the vessel to be arrested in the USA. That is an issue for the courts of that country.

(4) For the purposes of Article 17, the express term of the Agreement relating to jurisdiction is to be treated as an exclusive jurisdiction clause.

(5) Ms Troy-Davies referred me to the case of ***Dresser UK Ltd v Falcongate Ltd*** [1992] 1QB 502 at page 511. There, the Court of Appeal was considering whether an exclusive jurisdiction clause in a bill of lading bound entities which were not parties to the contract. At page 511, Bingham LJ concluded: "*Here is the defendants' difficulty. Had the question arisen between Falcongate and the defendants, there would be no doubt that the clause had been agreed between them. Had Falcongate contracted as agents of the plaintiffs, the answer would have been the same. So it would if the plaintiffs sued as holders of the bill of lading to whom all Falcongate's rights and obligations under the contract of carriage had been transferred:* ***Partenreederei ms. Tilly Russ v. Haven & Vervoebedriff Nova N.V****. [1985] Q.B. 931. But none of these situations existed here. So the question which has to be asked is whether the plaintiffs agreed with the defendants that the Rotterdam court should have exclusive jurisdiction to entertain disputes between them. Even accepting the defendants' explanation of the doctrine of bailment on terms as depending on the bailor's express or implied consent to the bailee's sub-bailment of goods on certain terms, the resulting relationship between the bailor and sub-bailee cannot in my view be aptly described as depending on agreement. The doctrine has evolved because the bailor cannot sue the sub-bailee in contract; but a contract is what, as I think, the first sentence of article 17 demands.*

*After what I take to have been briefer argument, the judge formed the same view. He said: "****The plaintiffs have not agreed…to submit the claim that they are making in this action to the courts of the Netherlands. Article 17 of the Brussels Convention accordingly does not apply.****"*

Although with some reluctance, because the doctrine of bailment on terms is a pragmatic legal recognition of commercial reality, I feel bound to hold that, even where it applies, it cannot satisfy the requirements of article 17."

(6) She then referred me to a decision of the European Court of Justice in the matter of ***Corek Maritime GmbH v Handelsveem BV and Others***, [2000] ECR 1-09337 which, she submitted, gave support for the proposition that Article 17 applied where a person who was not a party to the contract with the choice of jurisdiction clause in it, and had not succeeded to the rights, had otherwise accepted the jurisdiction clause in question. Here there was a good arguable case that Andromeda had accepted the jurisdiction clause as binding on them in relation to the claims made against them by OW Bunker as was clear from the issue of the proceedings in this jurisdiction. She relied upon the fact that OW Bunker had alleged that the Bominflot terms bound Andromeda; OW Bunker were relying on the

Confirmation of Order document in the Portuguese proceedings and it was not until 1 March 2006 that OW Bunker, for the first time averred that they did not hold Andromeda liable under the contract with Sea Bridge. And on this point she referred me to a decision of the Norwegian Supreme Court ***Nordic American Shipping AS v KS AS Manhattan Tankers*** [1996] International Litigation Procedure at page 400. There, the court held that a charterer's claim in general average based on the charterparty which contained a jurisdiction clause conferring jurisdiction on the English Courts "must take place in the chosen forum even if it is against an entity other than the plaintiff's immediate contracting party, such as an earlier charterer in a chain of cub-charters."

(7) Her third main argument was that the Contracts (Rights of Third Parties) Act 1999 applied. Here, there was a term which purported to confer a benefit on Andromeda under section 1(1)(b) of the Act. She submitted that the Sales Confirmation document properly identified Andromeda and the Vessel so as to fulfil the requirements of section 1(3). In these circumstances, Andromeda had available to them any remedy which they would have had had they been a party to the contract, including, as here a right to negative injunctive relief.

Decision

18. In my view, the contentions on behalf of Andromeda are not well founded.

19. Had a letter before action been sent it would have given OW Bunker the opportunity to state their position on the contractual issue with certainty. The position is that Andromeda's solicitors first wrote to OW Bunker on the same day as they had issued the Claim Form in this case. The immediate response to this letter was from OW Bunker's Danish lawyers who expressed surprise and indicated that the claim would be *"rejected vigorously"* and *"our clients will now consider which appropriate legal steps should be taken (and in which jurisdiction) in order for them to enforce their maritime lien in the vessel."* Their documentation and the Email were, as I see them, ambiguous: OW Bunker wanted to try and tie in as many targets as they could for the payment of their invoice, when the bunkers were supplied. I suspect that this is common form. In certain jurisdictions a maritime lien is created in relation to bunkers, including, in particular the USA. It would, frankly, be commercially sensible if bunkers were always regarded as for the ship's account, as between supplier and ship, but that is not the position. As an apparent response to the service of the present proceedings in this jurisdiction, OW Bunker took it upon themselves to arrest the vessel in Portugal. That seems to me to have been a quite unnecessary step since if Andromeda were in law liable for the bunkers there was no question as to their ability to pay. Had the parties been communicating sensibly in January I do not believe that the arrest would have taken place or these proceedings been started in such a rush that an appropriate letter was not sent. This appears to be a lawyers' bean feast since the amount involved is probably less than the legal costs which have already been incurred.

20. I turn to the arguments. It seems to me that the proper approach to the interpretation of Article 17 is set out in the case of **Corek**. These are the relevant passages from the Court's Judgment:

"13. The Court has held that, by making the validity of a jurisdiction clause subject to the existence of an 'agreement between the parties', Article 17 of the Convention imposes on the court before which the matter is brought the duty of examining first whether the clause conferring jurisdiction upon it was in fact the subject of consensus between the parties, which must be clearly and precisely demonstrated, and that the purpose of the requirements as to form imposed by Article 17 is to ensure that consensus between the parties is in fact established (Case 24/76 ***Estasis Salotti v RÜWA*** *[1976] ECR 1831, paragraph 7, Case 25/76* ***Segoura v Bonakdarian*** *[1976] ECR 1851, paragraph 6, and Case C-106/95* ***MSG v Gravières Rhénanes*** *[1997] ECR 1-911, paragraph 15).*

14. However, if the purpose of Article 17 of the Convention is to protect the wishes of the parties concerned, it must be construed in a manner consistent with those wishes where they are established. Article 17 is based on a recognition of the independent will of the parties to a contract in deciding which courts are to have jurisdiction to settle disputes falling within the scope of the Convention, other than those which are expressly excluded pursuant to the fourth paragraph of Article 17 (Case 23/78 ***Meeth v Glacetal*** *[1978] ECR 2133, paragraph 5).*

15. It follows that the words 'have agreed' in the first sentence of the first paragraph of Article 17 of the Convention cannot be interpreted as meaning that it is necessary for a jurisdiction clause to be formulated in such a way that the competent court can be determined on its wording alone. It is sufficient that the clause state the

objective factors on the basis of which the parties have agreed to choose a court or the courts to which they wish to submit disputes which have arisen or which may arise between them. Those factors, which must be sufficiently precise to enable the court seised to ascertain whether it has jurisdiction, may, where appropriate, be determined by the particular circumstances of the case. ……

22. *By its third question, the national court essentially asks whether a jurisdiction clause which has been agreed between a carrier and a shipper and appears in a bill of lading is valid as against any third party bearer of the bill of lading or whether it is only valid as against a third party bearer of the bill of lading who succeeded by virtue of the applicable national law to the shipper's rights and obligations when he acquired the bill of lading.*

23. *It is sufficient to note that the Court has held that, in so far as the jurisdiction clause incorporated in a bill of lading is valid under Article 17 of the Convention as between the shipper and the carrier, it can be pleaded against the third party holding the bill of lading so long as, under the relevant national law, the holder of the bill of lading succeeds to the shipper's rights and obligations (**Tilly Russ**, paragraph 24, and **Castelletti,** paragraph 41).*

24. *It follows that the question whether a party not privy to the original contract against whom a jurisdiction clause is relied on has succeeded to the rights and obligations of one of the original parties must be determined according to the applicable national law.*

25. *If he did, there is no need to ascertain whether he accepted the jurisdiction clause in the original contract. In such circumstances, acquisition of the bill of lading could not confer upon the third party more rights than those attaching to the shipper under it. The third party holding the bill of lading thus becomes vested with all the rights, and at the same time becomes subject to all the obligations, mentioned in the bill of lading, including those relating to the agreement on jurisdiction (**Tilly Russ**, paragraph 25).*

26. *On the other hand, if, under the applicable national law, the party not privy to the original contract did not succeed to the rights and obligations of one of the original parties, the court seised must ascertain, having regard to the requirements laid down in the first paragraph of Article 17 of the Convention, whether he actually accepted the jurisdiction clause relied on against him.*

27. *Accordingly, the reply to the third question must be that a jurisdiction clause agreed between a carrier and a shipper which appears in a bill of lading is enforceable against a third party bearer of the bill of lading if he succeeded to the rights and obligations of the shipper under the applicable national law when he acquired the bill of lading. If he did not, it must be ascertained whether he accepted that clause having regard to the requirements laid down in the first paragraph of Article 17 of the Convention*."

21. The agreement must be clearly and precisely demonstrated not just by looking at the words of the contract but at all the circumstances. In this case the question is whether it can be said that Andromeda has agreed by acceptance to be bound by the jurisdiction clause. It might, I suppose, be possible for an acceptance to be demonstrated by the issue of proceedings in the chosen jurisdiction; but it does not seem to me that Andromeda can be said to have accepted, let alone accepted clearly and precisely, the jurisdiction clause when the purpose of the proceedings is to deny that they are bound by the contract which contained the clause. In my judgment, Andromeda have never accepted that they are bound by the clause and I am very doubtful whether in law it was open to Andromeda to accept the clause without accepting everything else, including the obligation to pay, on the facts of this case. Before a jurisdiction clause can be "accepted" within the meaning of Article 17, there must have been some kind of offer capable of being accepted. All that was 'on offer' was acceptance of the contract as a whole, or nothing.

22. In **Corek**, the Court was dealing with the case of a holder of a bill of lading who had not, as a matter of law, succeeded to the rights and obligations of the shipper. In my view, the Court was indicating that nonetheless the holder could rely on Article 17 if he accepted the terms on which the Bill had been issued, including the jurisdiction clause. I do not read the Court as establishing that a person might pick and choose which clauses he will and will not accept. But here, I see no evidence of Andromeda ever having accepted the jurisdiction clause or the contract in which it was contained. This is not like the case where a person asserts that they were a party to a contract with a jurisdiction clause in it but that the contract has come to an end [for example, because of an accepted repudiatory breach or illegality].

Article 17 will still apply even when the claimant is seeking a declaration that the contract is void: ***Francesco Benincasa v Dentalkit Srl*** [1997] Case No. C-269/95, paragraph 29 of the Court's decision. *"Article 17 of the Convention sets out to designate, clearly and precisely, a court in a Contracting State which is to have exclusive jurisdiction in accordance with the consensus formed between the parties, which is to be expressed in accordance with the strict requirements as to form laid down therein. The legal certainty which that provision seeks to secure could easily be jeopardized if one party to the contract could frustrate that rule of the Convention simply by claiming that the whole of the contract was void on grounds derived from the applicable substantive law."*

23. Here, Andromeda assert that they were never parties to the agreement in the first place.

24. On a proper analysis of the evidence I do not consider that OW Bunker ever actually asserted that Andromeda were parties to the contract. They had dressed documents up to give them such an argument and referred to the Bominflot terms, which at least was consistent with such assertion. But the Email was about the existence of a maritime lien which does not depend for its existence on a contract. Further, in the light of the evidence filed, I am not prepared to hold that in the Portuguese proceedings OW Bunker were relying on a contractual claim; that is denied by the lawyer presenting the case for them and the documents are at best for Andromeda somewhat equivocal. Therefore, at the time the proceedings here were started Andromeda had no good basis for seeking negative declaratory relief to deny a proposition which was not in fact being advanced. Whilst I do not understand the difference between a contract with the vessel and a contract with the Owners, that appears to be the case being advanced in the USA. Again, I think OW Bunker are trying to keep their options open and leaving the position murky. But that does not justify bringing an action in the wrong court.

25. Had it been necessary to decide the issue, I would hold that the time when the court must judge whether jurisdiction is properly asserted is the time when the challenge to the jurisdiction is before it. The case relied upon by Ms Troy-Davies simply reflects the fact that under the rules then in force the question of jurisdiction and whether permission should be given was first decided by a Master and then, on appeal by the Judge. The issue was whether the matter crystallised at the first stage or not. Such issues do not now arise. Ms Troy-Davies relied upon the Portuguese proceedings as assisting her case yet those proceedings occurred after the claim was brought and served. Apart from that inconsistency, it seems to me that the issue is to be decided on the basis of the material before the court and not the material before her clients when they started. But whichever is the right conclusion on this issue makes no difference to the result. Nothing has happened to lead Andromeda on into bringing proceedings which are unnecessary and serve no useful purpose.

26. As to the 1999 Act, I agree with Mr Blackwood for OW Bunker that it does not apply to the contract between them and Sea Bridge let alone the jurisdiction clause. It cannot be said that the contract or clause are conferring a benefit on a third party. The supply contract was placing a burden on the buyer to pay [there was a benefit in having the supply but that is not the benefit said to be conferred on Andromeda] and the jurisdiction clause giving one-sided rights to OW Bunker does not appear to me to be a benefit falling within the Act.

27. In my judgment this court does not have jurisdiction to hear Andromeda's claim for negative injunctive relief. This claim should have been brought in the Danish Courts, if it were to be brought at all.

28. I will hear the parties as to the form of the order and the question of costs.

Ms Karen Troy-Davies (instructed by Brookes & Co) for the Claimant
Mr Guy Blackwood (instructed by Barlow Lyde & Gilbert) for the Defendant