



Letters of indemnity and the quest for an undisclosed principal: The “Xing Zhi Hai”

Simon Rainey KC & Christopher Jay

18 September 2024

The judgment of Christopher Hancock KC in the case of *Yangtze Navigation (Asia) Co Ltd & anor v. TPT Shipping Ltd & ors (The “Xing Zhi Hai”)* [2024] EWHC 2371 (Comm), handed down on 18 September 2024, will be widely welcomed in the shipping community for promoting certainty when it comes to the effect of, and the persons liable under, letters of indemnity.

Simon Rainey KC and **Christopher Jay** (instructed by Ian Short and Richard Guy of **Campbell Johnston Clark**) appeared for TPT Forests Ltd (“**Forests**”), which successfully argued that, contrary to the arguments of the claimant ship owners (“**Owners**”), represented by Timothy Young KC and Michal Hain, it was not liable as undisclosed principal under letters of indemnity issued by Forests’ affiliated company, TPT Shipping Ltd (“**Shipping**”). The Exporters (as defined below), represented by David Bailey KC and James Goudkamp, were also successful in their parallel arguments.

The judgment is a salutary reminder of the reluctance of the Court to allow agency principles to be marshalled against and erode the doctrine of separate corporate personality, as well as of the unwillingness of the Court to permit claimants to rely on speculative arguments in resisting a jurisdiction challenge.

The Facts

The claim concerned three separate voyages by which cargoes of logs were transported from New Zealand to India.

The logs were produced by the Third to Fifth Defendants (“the Exporters”), which had each entered into so-called Log Marketing and Sales Agency Agreements (“the LMSAAs”) with Forests, under which Forests acted as their agent for the sale and promotion of their logs overseas. The LMSAAs envisaged that, in certain circumstances, the logs would be transported on board vessels that had been chartered by Shipping.

In its turn, Forests had contracted with Shipping on the terms of a shipping services agreement (“the SSA”). The SSA made clear that Forests contracted with Shipping solely as agent for and on behalf of the Exporters.

Ultimately, Shipping entered into three relevant voyage charterparties with the claimant owners in its own name, pursuant to which the Exporters’ logs were carried from New Zealand to India.

At the discharge port, in the absence of original bills of lading, Shipping issued letters of indemnity (again, in its own name). Claims were subsequently made by the bill of lading holders alleging misdelivery against Owners, and various ship arrests occurred in support.

The Claim Against Forests

Owners had originally commenced proceedings against Shipping. However, when Shipping responded by entering into administration (and, subsequently, liquidation), Owners began looking for alternative defendants (in the event: Forests and the Exporters).

Owners’ claim was advanced against Forests on two principal bases. First, it was argued that Forests was the true charterer of the vessels because it was Shipping’s undisclosed principal under the charterparties. Accordingly, so it was said, the letters of indemnity were also issued on behalf of Forests. Secondly, it was argued that Forests had expressly authorised Shipping to issue letters of indemnity on its behalf. For these purposes, Owners relied on various correspondence between Shipping and Forests that had been disclosed in the proceedings.

The Decision

The judgment deals with Forests’ Part 11 challenges to the Court’s jurisdiction, finding in favour of Forests and the Exporters that the Court had no jurisdiction.

The applications are a somewhat unusual illustration of Part 11 in practice. That is because there was almost complete overlap between the jurisdictional and substantive issues: for both these purposes, the relevant question was whether Forests/the Exporters were Shipping's undisclosed principals under the letters of indemnity. Nonetheless, it was solely by reference to the Part 11 test that the Court was addressed and the issues determined.

The Judge had *"little hesitation"* in rejecting Owners' first argument, namely that Forests was the charterer of the vessels, and placed particular reliance in so doing on the other contracts that had been disclosed (including the LMSAAs and the SSA) as being consistent with Shipping having contracted as principal not agent.

The Judge specifically rejected Owners' submissions to the effect that they should be allowed to investigate the matter through disclosure and at trial: "The suggestion that there might be further documentation which would give the lie to what has been disclosed to date is in my view simply speculative. The same is true of the suggestion that cross-examination of witnesses might lead the Court to reject what, on the face of it, the documents show."

Owners' second case became perverse in light of the Judge's finding on their first: since Forests was not a party to the charterparties, it had no obligation or reason to authorise Shipping to contract on its behalf. Owners' case was made still more difficult by the fact that, as the Judge found, Shipping was incorporated specifically to insulate Forests from charterparty risks. Moreover, Owners were unable to show that the correspondence on which they relied was consistent only with Shipping acting as Forests' agent. As the Judge accepted, "there is an obvious reason why Shipping would want to seek Forests' approval for the issuance of a LOI and the discharge of the goods, which was that the goods represented security for payment for those goods. When those goods were discharged, that security would be lost." As a result, Owners' submission that, by dint of Shipping asking for Forests' approval to issue the letters of indemnity and by Forests giving that approval, Forests must be taken to have authorised Shipping to issue those letters on Forests' behalf was rejected.



@QuadrantLaw



Quadrant Chambers



Quadrant Chambers



QuadrantChambers



Simon Rainey KC

"Simon is renowned and with good reason... He is the person you take difficult questions to. Simon is one of the best silks in shipping." (Chambers UK, 2024)

Simon Rainey KC is one of the best known and most highly regarded practitioners at the Commercial Bar. He has a reputation which is second to none for his intellect and legal analysis ("fantastically intelligent and tactically astute"). He is acclaimed for his advocacy skills ("a stunning advocate") and his cross-examination ("excruciatingly superb"). But he is equally well known to his clients as a cheerful team player, who rolls up his sleeves in long and complex trials and arbitrations and who prides himself on high standards of client care.

[>view Simon's full profile](#)

simon.rainey@quadrantchambers.com



Christopher Jay

'He is exceptionally bright, enormously diligent and industrious, always willing to go the extra mile for his leader and his clients, and forward-thinking - with the result that he plans ahead in order meet the needs of those around him.' (Legal 500, 2023)

Chris has a broad international commercial practice that encompasses dry shipping, shipbuilding, commodities, energy, banking, cross-border insolvency and insurance. He is typically instructed as junior counsel in respect of particularly complex or high-value disputes. He prides himself on finding innovative solutions to difficult problems, and on providing a user-friendly and client-focused service. Chris also regularly accepts instructions as sole counsel in all areas of his practice and has represented clients in the High Court and arbitration.

[>view Chris' full profile](#)

christopher.jay@quadrantchambers.com