An Admiralty Swansong

James M. Turner QC

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End of an era as Teare J retires as Admiralty Judge with one last collision judgment.

This morning, 5 October 2020, Sir Nigel Teare handed down judgment in a three-handed collision dispute: ***Sakizaya Kalon & Osios David v Panamax Alexander*** [2020] EWHC 2604 (Admlty). This was Sir Nigel's last case as Admiralty Judge, a post he has held for more than a decade – the fourth member of what is now Quadrant Chambers to do so in succession, following Sir David Steel, Lord Clarke and Sir Barry Sheen.

In the years between Sir Barry's and Sir Nigel's retirements, collision actions have altered almost beyond recognition. In Sir Barry's last case, ***The Vegaland v The Coral Essberger*** (1993, unreported), computers had yet to intrude at all (other than as word processors). Plots of the navigation for which each side contended were still prepared with pencil on graph paper, often with the assistance of expert master mariners such as the great Norman Cockcroft. And the real focus of the forensic dispute was to establish where and how the vessels had come into collision.

Fast forward three decades. The advent and (nowadays) ubiquity of VDR, AIS and ECDIS mean that – once the computers have done their work interpreting the data – it is now vanishingly rare for there to be a dispute of substance regarding where and how the vessels collided. The focus has instead shifted to why they did. The availability of bridge audio recordings has opened up previously unthinkable vistas for cross-examination of mariners as to their lookout, assessment of risk of collision and ship-handling. (Of course, the preparation of the necessary transcripts, which often involve translation from two or more languages, is time-consuming, expensive and contentious, requiring a high level of co-operation between the parties and robust case management.)

In the opening paragraphs of his lengthy, detailed and careful judgment, the judge reflected on these changes in collision disputes, remarking that *'… the wealth of material contained in the VDR audio record provides much scope for detailed submissions (and cross-examination) as to why a vessel was navigated as she was, which submissions can be relevant to, but not determinative of, questions of fault and can also be relevant to the degree of blameworthiness. In the present case counsel's closing written submissions totalled some 176 pages".*

The other intrusion of technology into the case concerned the format of the trial. As a result of the Covid pandemic, it was conducted entirely remotely. The three masters were cross-examined: from Greece; from onboard ship alongside in Chile; and from his ship in the middle of the South Atlantic – a first, even in the Admiralty Court.

The vessels came into collision after dark on 15 July 2018, during south-bound transit of the Suez Canal. The Panamax Alexander (PA) collided with the Sakizaya Kalon (SK), which at the time was anchored and stationary alongside the east bank of the Canal; both vessels then collided with the Osios David (OD), which was moored and anchored on the west bank of the Canal, about 2 cables south of the SK. OD broke free from her moorings and all the vessels collided with each other again before finally coming to rest.

Although the most obviously to blame, PA fought hard to show that it was not. Its argument boiled down to criticising OD and SK for not keeping it informed about where and when they planned to moor, and pointing up the difficulties caused by the 2-3 knot following current and the presence in the Canal of submarine cables over a stretch of 1.5km, where anchors could not be used. Its forensic difficulty lay principally in having failed to ensure that there was enough space between it and SK, and thus in showing that it had nevertheless kept a good lookout with a proper appreciation of the risk of collision or planned to stop and moor in good time. In addition, both SK and OD had managed to stop and moor in the prevailing current, and there was no reason why PA could not have managed to do so as well.

In the event, the judge held that PA was causatively at fault for failing to appreciate the risk of collision and moor before the stretch of cables mentioned above – and for failing after that to drop an anchor as soon as it could after passing those cables. In a rare example of an Admiralty Judge disagreeing with advice from the Elder Brethren, OD was also found to have been at fault for failing to inform SK of where it planned to moor. However, that failure was not causative, because PA could not show that it would have navigated any differently if it had known OD's intention sooner than it could have done from its own lookout. The judge rejected PA's arguments that OD and SK should have attempted to carry on down

the Canal once they realised that PA was having trouble stopping. SK, although some of its attempts to moor had been *"certainly open to question"*, was also held free from blame.

In addition to underscoring the need, in collision cases, for a thorough understanding of seamanship and ship-handling on the part of the lawyers and the Court, the judgment contains –

» Valuable guidance on the proper use to be made of nautical assessors (including an affirmation of the practice developed over the past 15 years or so for the parties to have an opportunity to make submissions about the questions asked of and answers given by them).

» Welcome confirmation of the death of the so-called "last opportunity rule".

» Good examples of mariners being held not to blame when *"on the horns of a dilemma"* (or in the grip of a casualty) created by another's negligence, following the authorities of ***The Bywell Castle*** and ***The Regina D*** (the latter a case in which Sir Nigel appeared as counsel).

» A robust dismissal, following the authority of ***The Calliope***, of PA's attempt to argue fault on the part of the other vessels in relation to the subsequent collisions.

In his concluding paragraphs, the judge remarked that *"this, my last case as the Admiralty Judge, [was] a pleasure to decide"*. Certainly, the judgment bears all the hallmarks of an experienced judge, at the top of his game, thoroughly enjoying his swansong.

All the counsel in the case are members of Quadrant Chambers. James M. Turner QC was counsel for *Osios David*, on the instruction of Reed Smith LLP. *Sakizaya Kalon* was represented by Chirag Karia QC, instructed by HFW LLP. *Panamax Alexander* was represented by Robert Thomas QC and Ruth Hosking, instructed by Ince Gordon Dadds LLP.

Following his retirement, Sir Nigel Teare has joined Arbitrators at 10 Fleet Street as a full-time arbitrator.

James M. Turner QC

James specialises in cross-border commercial disputes in international arbitration, energy, shipbuilding, offshore construction, shipping and banking.

"A skilled tactician who can be entrusted with anything" (Chambers UK), as an advocate – with *"a deservedly excellent reputation"* (Chambers UK) – he appears most often in arbitration, before tribunals operating under LCIA, ICC, HKIAC or LMAA Rules, as well as in ad hoc matters. His Court work is almost exclusively in the Commercial Court and on appeals up to and including the Supreme Court.

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