IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
ADMIRALTY COURT (QBD)

Royal Courts of Justice
Rolls Building, Fetter Lane, London EC4A 1NL

[2021] EWHC 113 (Admlty)

26 January 2021

Before:

MR ADMIRALTY REGISTRAR DAVISON

- -

AD-2020-000121

Between:

P&O PRINCESS CRUISES INTERNATIONAL LIMITED

Claimant

- and -

THE DEMISE CHARTERERS OF THE VESSEL 'COLUMBUS'

Defendant

And between-

AD-2020-000122

P&O PRINCESS CRUISES INTERNATIONAL LIMITED

Claimant

- and -

THE OWNERS AND/OR DEMISE CHARTERERS OF THE VESSEL 'VASCO DA GAMA'

Defendant

AND IN THE MATTER OF the claim for Port Dues by PORT OF TILBURY LONDON LIMITED

- -

Mr James M. Turner QC (instructed by **Pinsent Masons**) for **the Port of Tilbury**
Ms Philippa Hopkins QC (instructed by **Salvus Law Ltd** and others) for **the Cautioners**

Hearing date: 14 January 2021 (by Microsoft Teams)

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.30am on 26th January 2021

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Introduction

1. On 1 October 2020 Andrew Baker J made *Queen of the South* orders in respect of the vessels "COLUMBUS" and "VASCO DA GAMA" ("the Vessels"). In return for an undertaking from the Port of Tilbury not to exercise its statutory rights of detention and sale, he ordered that all charges properly owing to the Port in relation to the Vessels up to the date of delivery to the purchasers of the Vessels in respect of which the Port would have power to exercise a statutory right of detention or sale were to be payable by the Admiralty Marshal to the Port as one of his expenses of sale, provided that the amount so payable did not exceed the net proceeds. He gave directions for the determination of the Port's charges, which included the right of interested parties, i.e. other persons with claims against the Vessels, to object, to file evidence in support of the objection and to appear at the hearing to determine the charges.

2. By order dated 19 November 2020, I gave some further directions and fixed the hearing for 14 January 2021. One of the directions was that parties who had notified opposition to the Port's claim were to appear by jointly instructed counsel. Ms Philippa Hopkins QC appeared for those parties, (who have come to be called "the Cautioners", though not all of them entered cautions). Mr James M. Turner QC represented the Port. I am extremely grateful to both counsel for their cogent and economical submissions.

Factual background

3. The Vessels are cruise ships. They were owned by Carnival Plc ("Carnival"). They formed part of the Cruise & Maritime Voyages ("CMV") fleet and were managed by Global Cruise Lines Ltd ("GCL"), which was part of the CMV Group. Both of the Vessels were demise chartered to a Liberian single-purpose company within the group. The demise charterer of the "COLUMBUS" was Lyric Cruise Ltd ("Lyric") and that of the "VASCO DA GAMA" was Mythic Cruise Ltd ("Mythic").

4. The Port of Tilbury had had previous dealings with the CMV fleet. Its vessels had called there regularly and been billed for berthing and associated fees at specifically agreed rates. The invoices were issued to Lyric and Mythic but, until this dispute arose, it does not appear that anyone gave much thought as to the precise identity of the contracting party on the Vessels' side.

5. By mid-March 2020, the Covid-19 pandemic was in full swing and CMV had been forced to suspend operations. They had a pressing need to lay-over their vessels until they could resume trading. On 13 March 2020, Mr Chris Coates of CMV informed Mr Steve Lyons of the Port that CMV was suspending operations until 24 April 2020 because of the pandemic. In response, Mr Lyons assured Mr Coates "of our full support". Mr Coates replied that the message was "very much appreciated from CMV's premier port partner" and also thanked him "for securing the lay-over berths for us".

6. The reference to lay-over berths included berths for "COLUMBUS" and "VASCO DA GAMA". Earlier that day, Ms Onufriyenko of GCL had written to Mr Lyons stating: "Understand you are holding 4 berths for us for a possible lay-up due to the current situation. Taking into consideration the critical aspect of the whole thing, please let me know your best charges PER BERTH/PER DAY (lump sum all inclusive please) and I hope you will be very generous and understanding!!". Mr Lyons for the Port had responded as follows: "… In round figures £3k per ship per week or part thereof. Lock charges per tariff". (The reference to a "tariff" was intended to be to the Port's Schedule of Extra Charges, which includes figures for lock charges.) Ms Onufriyenko stated that she would pass the message on to management and "get back to you". She subsequently spoke to Mr Lyons and agreed verbally to the £3,000

per vessel per week rate. At that time, the 4 vessels that were in contemplation were the "COLUMBUS", the "VASCO DA GAMA", the "MAGELLAN" and the "ASTORIA".

7. "COLUMBUS" arrived at the Port on 14 April 2020 and was berthed at the outer landing stage.

8. "VASCO DA GAMA" arrived at the Port on 1 May 2020. The Port was reluctant to take her but, in view of the longstanding commercial relationship between the Port and CMV, agreed to do so. Indeed, the Port subsequently agreed to take a yet further CMV vessel, the "ASTOR", thereby bringing the total number of vessels on lay-over up to five.

9. On 14 May 2020, Mr Lyons e-mailed Ms Onufriyenko summarising the terms that had been agreed. He confirmed that CMV's vessels, including the Vessels, could be accommodated, and recognised that one (the "MAGELLAN") might wish to stay "for a prolonged period". He noted that the positioning of the "VASCO DA GAMA" "would have to be reviewed on a week by week basis depending where other operations are taking place". As to the rates, he stated, "Rates £3k per week. This is offered to Global-CMV ships only during this difficult period".

10. The evidence from the Port, which I have no difficulty in accepting, was that it did not look with favour on extended lay-bys as these tended to interfere with the trading upon which the Port's business model was based. Vessels on extended lay-by blocked berths that could otherwise have been in use for working vessels whose quick turnaround enabled the Port to charge for embarking and disembarking passengers and goods and for other services. The "VASCO DA GAMA" provided a particular problem as there was not an available berth for her and she has had to be moved many times to accommodate movements of other vessels. The "COLUMBUS" was berthed at the outer landing stage, which was not designed for long stay. In the light of these factors, the agreed rate of £3,000 was not a good return for the Port.

11. Invoices for the lay-over charges (plus charges for water, sewage disposal and so on) were issued by the Port to Lyric and Mythic, c/o GCL and were paid up until June 2020.

12. On 19 June 2020, the Vessels were detained by the Maritime and Coastguard Agency for non-payment of crew wages. A month later, the CMV empire collapsed. Some of the CMV companies went into administration on 20 July 2020. Those companies did not include Lyric and Mythic. The collapse was widely reported in the maritime press. At 22.43 pm on the same day, Mr Lyons e-mailed his various contacts at CMV and GCL, including Mr Coates, Ms Onufriyenko and Mr Christian Verhounig, the Director of Operations at GCL, with the subject line "CMV ships", as follows:

> "Good evening. Sorry to hear the news announced today.
> Can I confirm that WEF tomorrow 10:00 hours the preferred reduced rate for lay-by in the Port of Tilbury will end.
> All ships will be charged per our published tariff on our marine link as of that time.
> Ship services for waste and water will need confirmation of payment prior to receipt of services.
> These charges are applicable to ships and associated costs linked to ships as follows:
> Magellan
> Astor
> Astoria
> Columbus
> Vasco
> All outstanding debts attributable to these ships will have to be paid in full prior to vessels being allowed to leave the ports control.

> This applies to all services and supplies, haulage carries out on the ships behalf including any attributed costs.
> Any vessels attempting to leave will be in breach of our terms and conditions."

13. Mr Verhounig responded on the same day. He said that Mr Lyons' message was "well received and noted". He also set out the text of "self-explanatory message as sent to the various authorities incl. MCA, Port Health, ITF, flag state etc". He expressed the "hope that the administrators will manage to find a solution for the group going into the future". The "self-explanatory message as sent to the various authorities" stated as follows:

> "Obviously the insolvency filing of CMV has an effect on the entire group. As a result of this filing, the shipowners will be left with no source of income and, as a result, the managers will be have no option other than to terminate their ship management appointments.
> As a result, we would like to inform you that Global Cruise Lines has no option other than to relinquish, with immediate effect, the management of the M/V Columbus, M/V Vasco da Gama, M/V Magellan, M/V Marco Polo, M/V Astor and M/V Astoria.".

14. There were further exchanges between Mr Lyons and Mr Verhounig by WhatsApp as to where correspondence for the attention of Lyric and Mythic should be sent. On 23 July 2020 the Port delivered letters by hand to the Vessels and also sent copies to Lyric and Mythic in Liberia. Those letters stated that the Vessels were required to remain at the Port until all charges then due and owing were paid, and further stated as follows:

> "We are keen to engage with you in regard to the outstanding sums and the continued safe berthing of the Vessel at the Port. Please note that berthing and all other services provided by Port of Tilbury London Limited will, as of 10:00 on 22 July 2020, be charged at the published tariff for the Port, unless otherwise agreed by the Harbour Master. Further, we confirm that for so long as the Vessel remains at the Port, we require the Vessel to comply with the following…"
>
> (The letters then set out the Port's requirements with regard to the condition of the Vessels and their remaining crewed.)

15. No response was received to these letters.

16. It is common ground that the Port's reference to the "published tariff" was intended by the Port to mean the rate set out in the "Extra Charges Schedule" found on the Port's website and disseminated to regular port users (which included the Vessels' former agents) by Notice to Mariners. Relevantly, the Extra Charges Schedule provided as follows:

> "Lay-by Charge:
> Upon notification of the completion of cargo operations, a required time of departure from the occupied berth will be communicated to the vessel. …
> Should the Master of the vessel be unable or unwilling to depart at the communicated time a lay-by berth will be designated …
> Once granted, for any vessel requiring the use of a berth, the lay-by charge will be applicable for each 12 hour period or part thereof, calculated on the length overall (LOA) of the vessel in metres:
>
> Charges per metre LOA, per 12 hour period or part thereof GBP £29.00
>
> Any vessel detained at the Port, on any berth, for any reason, which is outside the control of the Port, will be subject to lay-by charges and lock transit charges as applicable and advertised."

And over the page:

> "Extended lay-by:
> Subject to berth availability, extended lay-by for specific vessels can be negotiated, subject to separate agreements to reflect the level of service required. Applications should be made to the Harbour Master directly."

17. On 4 August 2020, Carnival appointed V-Ships as new managers for the Vessels and proceeded to make arrangements for crewing, repairs and so on. There were some discussions between V-Ships and the Port in early August 2020 with a view to agreeing a lay-by rate for the Vessels going forward of £10,000 per vessel per week. However, V-Ships did not respond to this proposal.

18. In contrast to the inaction of V Ships, the mortgagee of the "MAGELLAN" and the "ASTOR", Macquarie Bank, paid the outstanding charges and agreed the £10,000 rate from 1 August 2020.

19. Thereafter, on 21 August 2020, the Vessels were arrested by another company in the Carnival group, P&O Princess Cruises International Limited ("POPCIL"), which had taken assignments of claims against each Vessel from a chart supplier.

20. On 2 September 2020, Andrew Baker J made an order for the appraisement and sale of the Vessels. The "COLUMBUS" was sold on 13 October 2020 for US$5,534,480.29 and the "VASCO DA GAMA" on 9 October 2020 for US$10,434,797.98.

The question for decision

21. The issue centres on the effect of the email of 20 July 2020 and/or the letters of 23 July 2020 which purported to switch the Vessels from the agreed lay-over rate of £3,000 per week to the "published tariff" rate. As noted above, on the Port's case, that rate was £29 per metre LOA per 12 hour period. In comparison to the agreed rate of £3,000 up to that point, the difference was dramatic. The tariff rate for "COLUMBUS" came to £88,914.00 per week and for "VASCO DA GAMA" £99,713.60, an increase accurately described by Ms Hopkins QC for the Cautioners as "eye-watering". The Cautioners say that the Port has no entitlement to charge that rate and is stuck with the agreed rate.

22. If the new rate is to be applied from 21 July 2020, the total claim for the Vessels is approximately £2.493 million, as opposed to £78,000 if the old or "agreed" rate were maintained.

The legislative framework

23. The legislative framework is not familiar and I record my gratitude to Mr Turner QC for his lucid exposition of the relevant provisions, which are contained in the Harbours Act 1964, the Port of London Act 1968 and the Port of Tilbury's General Trading Regulations 2005. For present purposes, (and avoiding extensive citation), I can summarise as follows.

24. The combined effect of sections 26 and 31 of the Harbours Act 1964 was neatly encapsulated by Lightman J in *The Winnie Rigg* [1999] QB 1119 at 1125B:

> "The Act of 1964 in section 26 provides that harbour authorities shall (notwithstanding any provision in earlier legislation) be free to charge such "ship, passenger and goods dues" as they think fit (subject only to the provision of a right of objection under section 31 to the Secretary of State);"

25. Section 31 contains a code for making an objection to the Secretary of State. The code appears to be directed more at what I might call "industry challenges" to ship dues, rather than to a charge levied on a particular ship on a particular occasion.

26. The only relevant qualification to a harbour authority's right to charge as they think fit is contained in section 30, which provides for an obligation to maintain an accessible list of charges failing which "no ship dues … exigible … shall be levied".

27. Section 22 of the Port of London Act 1968 conferred on the Port Authority the power to make Charges Regulations governing the time and manner in which charges can be made and collected. The 2005 Regulations were made under this power. By subsections (3) and (4) of Section 22 of the 1968 Act the Regulations were to be binding provided that "a relevant extract from subsisting regulations" was "included in each schedule of charges published by the Port Authority". The term "relevant extract" is not defined.

28. Under section 39 of the 1968 Act, if a charge in respect of a vessel is not paid on time, the Port has the power to detain that vessel (sub-section (2)(c)) and, on giving 7 days' notice, sell it (sub-section (4)). This is the source of the power which, as recited in the orders of 2 October 2020, the Port undertook not to exercise. Charges can also be recovered as debts (sub-section (1)).

29. The 2005 Regulations provide, by paragraph 5:

> "5. CHARGES
> 5.1 The Charges shall be in accordance with the Extra Charges Schedule or as agreed with the Customer.
> 5.2 The Charges shall be paid on or before twenty eight (28) days from the date of the invoice issued by the Company or if required by the Company prior to the removal of Goods and/or Vessel. Interest at 5% over the Bank of Scotland base rate calculated on a daily basis shall be payable on overdue accounts.
> 5.3 All Charges shall be paid in full without any set off and notwithstanding any claim or counter-claim by the Customer against the Company howsoever arising.
> 5.4 The Charges are in respect of Goods and/or Vessels presented in accordance with these Regulations or for Services to be performed by the Company.
> 5.5 All Charges are exclusive of VAT and all other statutory impositions unless otherwise stated.
> 5.6 The Charges may be subject to adjustment at any time for extraordinary items and/or significant increases or decreases in volume and/or significant changes in the delivery profile or storage characteristics. The Company may also vary Charges at any time upon giving reasonable prior notice to the Customer.
> …
> 5.9 The Charges are subject to an annual scope review. Should the nature of the operations change significantly the Company reserves the right to review the scope of operations and increase the Charges accordingly.
> 5.10 It is an essential condition that the Sailing Schedule will be met at all times, and the Charges have been calculated accordingly. If the Sailing Schedule is not met at any time during the period of the Contract for any reason, the Company may revise the Charges upward to take account of any loss it sustains as a result."

30. The "Extra Charges Schedule" is defined in Regulation 1.1(vii) as "the charges listed in the booklet published from time to time by the Company setting out the Charges and the Conditions ("the Port Charges Conditions") relative to the Charges…" The "Charges" is also a defined term, under Regulation 1.1(iii): "the charges which are the subject of the Contract and shall be included but not be limited to the fares, tolls, rates and dues of every description as

specified from time to time in the Extra Charges Schedule published, imposed or levied by the [Port] or as otherwise published by the Port".

31. In the context of the global pandemic, with effect from 26 June 2020 the Insolvency Act 1986 was amended by the Corporate Insolvency & Governance Act 2020. The amendments included section 233B:

> "233B – Protection of supplies of goods and services
> (1) This section applies where a company becomes subject to a relevant insolvency procedure.
> (2) A company becomes subject to a relevant insolvency procedure for the purposes of this section where—
> (b) the company enters administration,
> (3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision—
> (a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or
> (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure."

32. The Explanatory Notes to the 2020 Act state that a purpose of the amendments was "to introduce greater flexibility into the insolvency regime, allowing companies breathing space to explore options for rescue whilst supplies are protected, so they can have the maximum chance of survival".

The Port's case

33. In summary, Mr Turner QC, for the Port, put the case as follows.

34. The insolvency of the CMV Group of companies evinced an inability to perform in accordance with the contracts entitling the Port to terminate them and levy the tariff rate, which in these circumstances was £29 per metre LOA per 12 hour period, as stipulated in the Extra Charges Schedule. Alternatively, and irrespective of whether there had been a repudiatory breach, the Port could, under Regulation 5.6, vary the rate on reasonable prior notice, which is what it had done. The rate as varied was the £29 rate because that was what the email of 20 July 2020 and the letters of 23 July 2020 had stated.

35. Whichever legal route was correct, the communications by email and letter and the construction of the Extra Charges Schedule were clear and no question of the Port being restricted to a "reasonable" rate arose. The statute empowered the Port to make such charges as it saw fit, subject only to a right of objection to the Secretary of State (which had not been exercised). If the Port's rights rested on contract, the result was no different as the tariff rate was the rate which, under Regulation 5.6, the Port was entitled to impose by way of variation. Regulation 5.6 could not be read as subject to any requirement of reasonableness and no such term could be implied.

36. Although section 233B of the Insolvency Act 1986 was capable of qualifying the right of a supplier of services to terminate or "do any other thing" in respect of a company which had entered administration, that was not relevant here because the counterparties to the contracts were Mythic and Lyric, neither of which were in administration.

The Cautioners' case

37. In summary, Ms Hopkins QC, for the Cautioners, put the case as follows.

38. The relationship between the parties in this case was governed or principally governed by contract. The 2005 Regulations were the "standard terms" of that contract; see Regulation 2.1. There had been no repudiatory breach and hence neither the email of 20 July 2020 nor the letters of 23 July 2020 could have accepted any such breach. In any event, the language of both was far removed from that of termination. Hence, the court was in the territory of a variation under Regulation 5.6.

39. Those communications were, however, ineffective to vary the contract, which consequently remained on foot throughout at the rate of £3,000 per week per vessel. This was because:

    i) The Port did not give reasonable notice. The email gave less than 12 hours' notice; the letters gave no notice at all.
    ii) On a true construction of Regulation 5.6, the Port could only vary the rate by a reasonable amount whereas, on their case, they had raised it thirtyfold.
    iii) Neither the email nor the letters were sufficiently clear to have the effect of imposing such a rate. The new rate was so onerous that, for it to bind the counterparties, it had to be drawn to their attention very clearly indeed, whereas that had not been done.
    iv) The purported increase was prohibited by section 233B of the Insolvency Act 1986, which, on a purposive construction, applied to this situation notwithstanding that Lyric and Mythic were not in administration.

40. If, contrary to the above, the email and letters were effective to give notice of variation then that could only take effect (a) after a reasonable period and (b) to a reasonable level of charges. A reasonable period would be measured in weeks not hours and the range for a reasonable level of weekly charge per vessel was £3,000 to £10,000.

41. Reasonable prior notice was the explicit requirement of Regulation 5.6. On a proper construction of Regulation 5 as a whole, the variation contemplated by Regulation 5.6 was also qualified by a requirement of reasonableness, or, such a requirement was to be implied either because it was obvious or in order to make sense of / give business efficacy to the provision. This was because the focus of Regulation 5 was to calibrate the charges against the services actually being provided. The Regulation was not intended to allow a thirtyfold increase in charges where the scope and extent of the services had not changed.

42. If a variation to a higher than "reasonable" figure was permissible, a close analysis of the email / letters and the Extra Charges Schedule were required. Those documents were to be construed in the light of the remarks of Lightman J in *The Winnie Rigg*, albeit that those remarks concerned statutory, not contractual, interpretation. A *Queen of the South* order gave the Port a priority over other creditors in that the Port's claim was treated as a cost of arrest. With that type of consideration in mind (and having decided that "ship dues" did not extend to mooring charges for a private yacht and that the yacht was not subject to distraint), Lightman J said:

> "The construction I favour accords with the approach which should be adopted to resolving doubts when construing legislation of the character under consideration: (i) ambiguities in legislation should be resolved against according to a creditor a priority in respect of the recovery of his debt over other creditors …"

43. The reference in the email and letters to "the published tariff on our marine link" was meaningless since the Extra Charges Schedule contained no tariff applicable to an extended lay-by. On the contrary, the Schedule stipulated that such charges had to be negotiated. The "Lay-by Charge" in the Schedule applied where a vessel had failed to depart the port when

required to do so and was then designated a lay-by berth. It did not apply to an extended lay-by. That part of the Schedule dealing with detained vessels was, on a proper construction, referring to vessels which were unable to meet a required time of departure because of the detention, which was not this case. It was not intended nor apt to apply to a vessel on extended lay-by which was then detained. If the provision could be construed more widely than this, it still did not assist the Port because it purported to apply "lay-by charges … as applicable and advertised", but there were none such. If the provision had been meant to apply the £29 per metre rate, it could and would have simply specified that rate.

44. To the extent that the Port's case rested not on contract but on statute, Ms Hopkins QC submitted that the 2005 Regulations were not binding because section 22(3) & (4) of the 1968 Act (relevant extract to be included in schedule of charges) had not been complied with. There was no extract of the Regulations at all included on the Extra Charges Schedule.

45. I emphasise that the above is a summary. The submissions were detailed and they developed over the course of the hearing (perhaps, without meaning criticism, Mr Turner's more than those of Ms Hopkins). I have condensed and, in places, re-ordered them.

Discussion and analysis

46. The email of 20 July 2020 and/or the letters of 23 July 2020 did not operate to terminate the contractual relationship. Neither communication was couched in the language of termination. On the contrary, they treated the contract as remaining on foot for all purposes. The only element which they purported to change was the charging rate. Further, even if the email and the letters had been differently expressed, there was no repudiatory breach to accept. CMV had gone into administration. That was not a repudiatory breach. No authority supports the proposition that it was. The aim or goal of administration is, of course, the company's revival and continued trading.

47. As Mr Turner QC conceded at the hearing, the better (or "more comfortable") analysis was that the email and/or the letters operated as a notice to vary pursuant to Regulation 5.6 of the 2005 Regulations.

48. Section 233B of the Insolvency Act 1986 did not prevent that. The wording of subsection (3) is probably wide enough to capture a variation provision such as Regulation 5.6 because it refers not only to "termination" but also to doing "any other thing", which would include an upwards variation of the charge for (the same) services. The Explanatory Notes to CIGA 2020 state that the Section was intended to "prevent suppliers … relying on termination clauses or doing 'any other thing' due to a company entering a restructuring or insolvency procedure". Prior to 20 July 2020, the Port was providing services to CMV and GCL as well as to the demise charterers of the Vessels and the administration of the CMV Group of companies would, all other things being equal, have triggered the effect of the Section. The difficulty, however, is that on 20 July 2020, CMV / GCL had terminated the ship management arrangements and, effectively, abandoned the Vessels. From that point onwards, the Port was not dealing with CMV / GCL. The Port was dealing directly with the demise charterers, Lyric and Mythic. These companies were not in administration or any other insolvency process and Section 233B could have no, or no further, relevance.

49. Regulation 5.6 required "reasonable prior notice". That requirement was manifestly not complied with because the email gave less than 12 hours' notice and the letters gave no notice at all. Less than 12 hours' notice would not qualify as "minimum practicable", let alone reasonable, notice.

50. Self-evidently, what would be reasonable would depend on all the circumstances of the case. Here, those circumstances included the facts that the Vessels had been laid-over for a period

of 3 months and that the pandemic had put many other vessels into the same position so that alternative berthing arrangements were not easily to be found. Although there is no direct evidence of that from the side of the Vessels or the Cautioners, it is an inference from the Port's evidence as to the numerous enquiries it received from other vessels wishing to lay-over, which it had to turn away. It is also common knowledge. My view is that a reasonable period in those circumstances would have been 28 days. This coincides with the period allowed by Regulation 5.2 for the payment of charges levied (and which is also some indication of the scale of a reasonable period of notice). The fact that the email and the letters stipulated a shorter period, or no period, did not deprive them of all effect and no authority was offered by Ms Hopkins QC for this proposition. They were quite clearly intended to give notice of a variation and were effective to do so, albeit that they must be construed according to my finding as to what the length of reasonable notice was.

51. Regulation 5.6 is not qualified by a requirement that charges may only be varied by an amount which is reasonable. As a matter of statute, the Port was free to charge such ship dues as it thought fit and, as a matter of contractual interpretation, the Regulations were also not subject to any such constraint. The wording of Regulation 5 cannot be said to restrict the Port to upwards variations neatly calibrated in accordance with increases in the scope of the services provided, or which reflect "losses". The situations addressed by the Regulation are too diverse to admit of such a restriction. The wording of 5.6 was clearly intended to give the Port complete freedom to increase the charges as it saw fit, on reasonable notice. It would be odd indeed if the Port was unable to exercise that power to terminate what was clearly a preferential rate intended to operate only for a temporary period and substitute a new rate which was more in accordance with its business model, which was to encourage the quick turnaround of vessels and to discourage extended lay-bys. In those circumstances, it cannot possibly be said to be necessary to imply a requirement of reasonableness in order to give the contract business efficacy or because it is so obvious that it goes without saying. Neither of those familiar tests for the implication of terms was remotely made out.

52. The phrases "the published tariff on our marine link" (the email) and "the published tariff for the Port" (the letters) were clearly referring to the Lay-By Charge of £29 per metre LOA per 12 hour period. There was only one published tariff, which was the Extra Charges Schedule on the Port's website, and it contained only one charge for Lay-By. No one could reasonably have been confused or uncertain that that was what "the published tariff" meant. And there is no evidence that anyone was in fact in that state of mind either at the date of the email of 20 July and the letters of 23 July, or later, when there was discussion with the new managers, V Ships, about a new rate of £10,000 per week per vessel. To switch from the agreed, concessionary rate to the tariff rate on the website did not bring the Port into the territory of Lord Denning's well-known "red ink … with a red hand pointing to it" test; see *J. Spurling Ltd v Bradshaw* [1956] 1 WLR 461 at 466. But even if it had, the new rate was brought fairly and reasonably to the attention of those representing the Vessels in clear and unequivocal language.

53. In those circumstances, it is not strictly necessary to embark on a separate consideration of the Extra Charges Schedule. But if the email and the letters, instead of referring to the "published tariff", had used words such as "charges per Extra Charges Schedule" or similar the result would be no different. In that scenario, no one on the Vessels' side could have thought that the part of the Schedule referring to "negotiated" rates for "extended lay-by" was the applicable part – because the negotiated rate had just been withdrawn. Equally, this was not a case of a failure to leave a berth at the required time "on completion of cargo operations". That left only the rate for a vessel "detained at the port". The Vessels had indeed been detained at the Port. So the rate could only be the rate stipulated for that situation, which was the "lay-by charges … as applicable and advertised". The only advertised rate for lay-by was the £29 per metre LOA rate. No one could reasonably have thought otherwise and nor did they.

54. In arriving at these conclusions, I have not had to have recourse to the principle of construction referred to by Lightman J in *The Winnie Rigg*. Such principles only come into play in a case of doubt or ambiguity and here there is none.

55. The foregoing is a contractual analysis, which Ms Hopkins QC impressed upon me (and I agree) is the correct approach in the circumstances of this case. But if and to the extent that it was necessary for the Port to rely upon the Regulations' statutory origin for their binding effect, then Section 22 of the 1968 Act would not prevent that. This provision makes the binding effect of the 2005 Regulations subject to a requirement that "a relevant extract from subsisting regulations" was "included in each schedule of charges published by the Port Authority". In 1968 that would, no doubt, have taken the form of the Regulations (or at least Regulation 5) being cited alongside the Extra Charges Schedule or perhaps included in the same booklet or fixed to the same notice board. Provisions such as this have to be interpreted in the light of changing times and technology. The Extra Charges Schedule stated in the top line, immediately below the title, that it was to be read in accordance with the Port of Tilbury's General Terms and Conditions – 2005 Edition. That was, and was acknowledged to be, a reference to the 2005 Regulations which were on the same website. That plainly satisfied the requirements of Section 22, the statutory intention of which was to bring the 2005 Regulations to the attention of the Port's users and to make them readily accessible.

Overall conclusion

56. It follows from the above that the Port is entitled to recover its charges at the tariff (or "default") rate from 20 August 2020, being 28 days after the date of the letter of 23 July 2020 to 16 October 2020 ("VASCO DA GAMA") and 22 October 2020 ("COLUMBUS"), which were the dates of final delivery to purchasers.

57. The charges so calculated are very high, as to which I would make the following comments.

58. By implementing an increase from the agreed rate to the "tariff" rate, the Port, which already had a privileged position under statute, has considerably advanced that privileged position at the expense of other creditors. That observation is tempered by the fact that the Port was willing to reduce its rate to £10,000 per week (which, had it been necessary, I would have designated a "reasonable rate") provided that the arrears were brought up to date. It was not the Port's fault that that did not happen. Nevertheless, the overall recovery of the Port remains disproportionate to the services provided, the size of the available funds from the sales of the Vessels and the other claims against those funds.

59. The Admiralty Court has no residual jurisdiction to moderate a claim so characterised. This claim, as with any claim, has to be assessed in accordance with the Port's legal rights. I have found those rights to be clear.

60. I invite counsel to submit an order reflecting the above.