



# Navigating Uncertainty: Insights on Charterparty Negotiations

## **Southeaster Maritime Ltd v. Trafigura Maritime Logistics Pte Ltd (The Aquafreedom) [2024] EWHC 255 (Comm)**

In the case of *Southeaster Maritime Ltd v Trafigura Maritime Logistics Pte Ltd* ("Trafigura") (The "Aquafreedom"), the High Court of England and Wales (Commercial Court) examined whether the terms agreed upon by the parties amounted to a binding charterparty and held that they did not. They also concluded that once an offer is opposed, it cannot be accepted thereafter. In conclusion, by providing Owners with summary judgment on the issue, it provides valuable guidance on how to handle charterparty issues and how to interpret fixture negotiations.

### **Background**

In this case, the dispute unfolded against the backdrop of ongoing negotiations between the Claimant, Southeaster Maritime Ltd, and the Defendant, Trafigura Maritime Logistics Pte Ltd, regarding a maritime contract involving the vessel named Aquafreedom. The negotiations revolved around securing a four-year fixture with two optional annual periods for the vessel. Managed by Unisea Shipping Ltd, the vessel was at the centre of discussions conducted through various communication channels, such as Owners-brokers, broker-to-broker, and brokers, Trafigura, utilising platforms including email and WhatsApp.

Importantly, the negotiations were informed by terms previously agreed upon in 2021 between Trafigura and another owner within the same managed fleet as the Aquafreedom. Despite the parties nearing agreement, there existed unresolved differences on several critical terms.

Notably, during the negotiation process, two specific subjects were under review: 'As per previously agreed terms sub review both sides' (Review Sub) and 'Charterers' management approval latest 2 working days after all terms agreed' (CMA Sub).

Following a review of these subjects, the Owners proposed terms to Trafigura, who subsequently countered. However, communication abruptly ceased from the Owners' side. Trafigura interpreted this cessation as a withdrawal from negotiations and attempted to retract its counter-proposals in an effort to revert to the Owners'

earlier terms.

The Owners viewed this action as a 'stunt' and promptly conveyed their position via WhatsApp to the brokers and Trafigura, expressing unwillingness to continue due to unresolved terms (Withdrawal Message). Trafigura responded by attempting to lift its CMA Sub.

The Owners argued that no concluded charterparty emerged from the negotiations, while Trafigura claimed the existence of a binding charterparty, which the Owners purportedly repudiated. Consequently, the Owners sought a declaration from the High Court affirming the non-existence of a charterparty.

## Court Decision

The court made a comprehensive assessment of the contractual negotiations between the parties and ultimately came to a definitive conclusion as to the existence of a contractual charterparty.

The court meticulously analysed the sequence of events leading up to the purported acceptance of terms by Trafigura and scrutinised the legal implications of each party's actions during the negotiation process.

Initially, the parties engaged in negotiations for a four-year time charter ("T/C"), during which a Recap document was produced. This Recap contained subtopics and references to additional terms that remained to be agreed upon. Subsequently, Trafigura proposed further terms, which were commented on by Southeaster Maritime Ltd ("Owners") as "Owners' last," and then countered by Trafigura.

The pivotal moment in the negotiations occurred when the Owners ceased communication, prompting Trafigura to follow up and, in an attempt to conclude the agreement, purportedly accept the "Owners' last" terms. Trafigura further indicated that they were fully committed by lifting all 'subs' referenced in the Recap document.

However, the court's assessment led to the conclusion that the Recap, with its inclusion of subtopics and pending terms, did not constitute a finalised contract. The court emphasised that the Recap, by its nature, implied that further negotiation and agreement were required on the outstanding terms. Therefore, Trafigura's purported acceptance of the "Owners' last" terms was deemed invalid, as the terms were not capable of acceptance and had, in fact, been rejected by the Owners.

Furthermore, the court determined that Trafigura's subsequent conduct, including lifting all 'subs' and declaring themselves fully fixed, did not hold contractual significance in the absence of a concluded charterparty.

Consequently, the High Court granted summary judgment in favour of Southeaster Maritime Ltd, affirming that no binding charterparty had been concluded between the parties. Approximately 94% of the costs incurred by the Owners in the High Court proceedings have been awarded in their favour. It is no longer possible for the Defendant to seek permission to appeal the Commercial Court decision.

## Key takeaways

The Southeast Maritime Ltd v Trafigura Maritime Logistics Pte Ltd case holds significant implications for the maritime sector, particularly concerning charterparty agreements. The court's ruling emphasises the necessity for clarity and consensus in contract negotiations, shedding light on the complexities surrounding the interpretation of Recap documents and the determination of contract conclusiveness.

Consequently, parties engaged in similar negotiations may adopt more vigilant approaches, seeking to ensure all terms are explicitly agreed upon before deeming a contract finalised. This judgment sets a precedent that will likely guide future cases, shaping contractual practices and risk management strategies within the maritime industry. In response, stakeholders may prioritise comprehensive legal advice and due diligence to mitigate risks of disputes and legal challenges. Ultimately, the case underscores the importance of clear communication, diligence, and legal awareness in charterparty negotiations, promoting the development of best practices and adherence to industry standards.

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