The Importance of Providing Compliance Documents Under MOA Clauses in Ship Sale and Purchase Transactions

In ship sale and purchase transactions, compliance with Memoranda of Agreement (MOA) clauses is critical to ensuring deposits are properly triggered and legally enforceable. This article analyses a recent UK Supreme Court decision and its implications for MOA compliance documents, deposit obligations, and debt claims.

The recent court decision in King Crude Carriers SA and others v Ridgebury November LLC & Ors [2025] UKSC 39 considers what should happen when one party prevents the fulfilment of a pre-condition to another's debt obligation under a MOA.

Background to the dispute

The parties finalized three Memoranda of Agreements (MoAs)[1] for the sale and purchase of three (3) vessels[2] on similar terms but at varying prices. It was agreed that the Buyers[3] would remit a 10% deposit of the purchase price to a deposit holder, within three (3) banking days of the deposit holder notifying the Buyers that an account has been created for that purpose. It was further agreed that parties would provide all of the compliance documentation required to create it without delay. However, the Buyers failed to provide the documents to the deposit holder upon signing the MoAs.

As a result of that failure the Sellers[4] terminated the three (3) contracts. They did not claim damages, but they did request that the amount of the unpaid deposits stipulated in the MOA's should stand as a debt and should be returned to them.

Arbitration and appeal history

The Sellers succeeded in obtaining an Arbitration Award for the return of the deposits. That decision was appealed. After a number of appeals, the buyers lodged an appeal in the Supreme Court. The legal argument centered around the decision in *Mackay v Dick* (1881) 6 App Cas 251. This principle states that when a party prevents the fulfilment of the pre-condition to another's debt obligation, the obligation is deemed fulfilled. The

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Buyers argued before the Supreme Court that the principle set out in Mackay v Dick did not exist in English law and the Sellers' claim should fail.

Key legal issues before the Supreme Court

Secondary issues were also raised in the appeal. The Sellers argued that the deposits became due as debts when the MoAs were concluded. On the other hand, the Buyers argued that even if the rights to the deposit had accrued, on the terms of the MoAs, the deposits were not to be forfeited on termination of the MoA.

The Sellers made a claim in debt, because the market price of the vessels upon termination of the contract had risen, and the Sellers would only be entitled to nominal damages as it suffered no loss from the Buyer's breach. However, a debt claim entitled the Sellers to the promised sums, even if no loss of bargain was suffered in the vessel sale transaction.

The Supreme Court's reasoning

After a detailed review of existing case laws and scholarly works, the Supreme Court held there was no *Mackay v Dick* principle in English law. The reasons given for this position were that:

- Lord Watson in *Mackay v Dick* did not rely on any English law authorities in reaching his decision, rather he relied on a borrowed civil law principle.
- The existence or not of the principle from case laws are divided. In cases where the principle was applied, the same result could have been achieved by applying the English law principles on damages for breach of contract.
- The principle was criticised in *Colley v Overseas Exporters[5]* . The Judge in Colley stated that it would bear 'extraordinary' and 'far reaching' consequences if applied to sale of good contracts where there is a failure to comply with a pre-condition for the passing of title to goods.
- The formulation of the principle as stated in case laws are fictional. This was conceded by Rix LJ in *Companie Noga d'Importation et d'Exportation SA v Abacha* (No 3) [2002] CLC 207.
- English law promotes certainty and predictability by giving effect to the express and implied terms of contracts.
- Non-recognition of the *Mackay v Dick* principle does not cause injustice as damages adequately compensates for the breach. The debt claim exceeds the claimant's net loss and disregards parties' contractual terms.

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Application to MOA deposit clauses

The Supreme Court found that the principle that a party cannot take advantage of its own wrong was not applicable in the case. The Buyers were relying on the MoA clauses to defend the debt claim made against it (by showing that a debt claim cannot be made until the MoA clauses have been satisfied), not to get an advantage in the dispute arising from the ship sale and purchase agreements.

The Court rejected the contention that a term should be implied into the MoA terms preventing the strict application where the Buyers wrongfully prevented the fulfilment of its terms. It would unworkable and contrary to the parties' bargain to imply such a term into the MoA.

Furthermore, the court found that parties had agreed under Clause 13 of the MoA that in cases where the Buyers failed to pay the deposit, the Sellers are entitled to cancel the MoA and claim compensation, and that clause should be given effect to. Accordingly, the court held that the Sellers were entitled to damages and not a debt claim for unpaid MOA deposits.

Conclusion: implications for MOA compliance and deposits

The case clarifies in ship sale and purchase transactions, when deposits accrue and are due to be paid, and whether upon the non-fulfilment of pre-conditions to the Buyers obligation to pay the deposits, the Sellers would be entitled to damages or debt. The Supreme Court firmly rejected the existence of any *Mackay v Dick* principle in English law, confirming instead that contractual rights and obligations must be derived from the terms of the MoAs and the principle of damages.

By refusing to imply terms that would override the clear allocation of risk and responsibility under the MoAs, the Court reinforced the primacy of the parties' bargain and the need for certainty in commercial contracts and ship sale agreements. In holding that the deposits did not accrue as a debt until the contractual pre-conditions were satisfied, the Court concluded that the Sellers were not entitled to recover the deposits as debts but were instead restricted to damages under Clause 13. The decision ensures coherence with long-standing principles governing contractual construction, clarifies the purpose of deposits, and the limits of implication and legal fictions.

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[1] Norwegian Saleform 2012, with amendments and additions.

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[2] The Makronissos, the Ridgebury Astari, and the Ridgebury Alina L.

[3] King Crude Carriers SA, Prince Crude Carriers SA, and Zenon Crude Carriers SA

[4] Ridgebury November LLC, Ridgebury Sierra LLC, and Makronissos Special Maritime Enterprise

[5] (1921) 3 KB 302.

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