Neutral Citation Number: [2013] EWHC 1063 (COMM)

Case No: FOLIOS 1616 AND 1617

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/05/2013

Before :

HIS HONOUR JUDGE MACKIE QC

- -

Between :

BEIJING JIANLONG HEAVY INDUSTRY GROUP	**Claimant**
- and -	
(1) GOLDEN OCEAN GROUP LIMITED **(2) GOLDEN ZHEJIANG INC** **Defendants (Folio 1616)**	**Defendant**
and	
(3) SHIP FINANCE INTERNATIONAL LIMITED **(4) SFL BULK HOLDING LIMITED** **Defendants (Folio 1617)**	

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Simon Rainey QC and Benjamin Coffer (instructed by **Reed Smith**) for the **Claimant**
Richard Gillis QC and **Conall Patton** (instructed by **Clyde & Co**) for the **Defendant**

Hearing date: 10 April 2013

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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.

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Judge Mackie QC :

1. These two arbitration claims under Section 67 of the Arbitration Act 1996 concern one point which arises in each of the five cases before the Court. If an English law guarantee is (or, as in this case, is assumed to be) unenforceable because it involves the commission in a foreign country of acts that are unlawful under local law is its provision for London arbitration also unenforceable?

2. As both claims raise essentially the same issue, it has been agreed that they should be heard and determined together. I have two bundles of documents, and witness statements from Lianjun Li for the Claimant and from Rupert Gordon for the Defendants. I bear in mind that an application under Section 67 is not an appeal but an independent and fresh evaluation of the issues.

3. The claim in Folio 1616 relates to a single partial final award made by Steven Berry QC, as sole arbitrator, on 15 November 2012 (as corrected on 19 November 2012). This arbitration was commenced under a letter of guarantee dated 26 February 2010 given by the Claimant ("Jianlong") to Golden Ocean Group Limited ("Golden Ocean") and subsequently novated, by a Novation and Amendment Agreement made on or about 31 August 2011 to Golden Zhejiang Inc. The guarantee relates to a time charterparty on NYPE form dated 24 February 2010 whereby Golden Ocean chartered a vessel (ultimately the "Golden Zhejiang") to Hong Xiang Shipping Holding (Hong Kong) Limited ("HXS"), a subsidiary of Jianlong. The charterparty was also subsequently novated to Golden Zhejiang. Jianlong did not cooperate in the appointment of an arbitrator so Mr Berry QC was appointed by Order of Gloster J on 12 October 2012.

4. The claim in Folio 1617 relates to partial final awards, in similar terms, made in four arbitrations heard concurrently by a tribunal consisting of Mr Patrick O'Donovan, Mr Clive Aston and Mr Christopher Moss (the Moss Tribunal), on 14 November 2012 (as corrected on 20 November 2012). These arbitrations were commenced under four letters of guarantee dated 29 September 2010 given by Jianlong in respect of HXS' performance as charterer under four time charterparties made by Ship Finance International Limited and/or SFL Bulk Holding Limited in respect of the vessels "SFL Kent", "SFL Medway", "SFL Spey" and "SFL Trent". The terms of the SFL guarantees were similar to the Golden Ocean Zhejiang Guarantee but also contained certain differences.

5. The substantive claims in all five arbitrations contend that HXS repudiated its obligations under the charterparties and that Jianlong is liable to the Defendants under the guarantees. Jianlong's principal defence under the guarantees is that the parties knew that it is illegal under Chinese law for a Chinese legal person to give a guarantee to a foreign entity without having obtained the prior authorisation of the State Administration for Foreign Exchange ("SAFE"), that the guarantees did not and could not have had such authorisation, and that the funds needed to meet any demand on the guarantees would inevitably have to have been transferred from China, in contravention of Chinese law. On this basis, Jianlong contends that the guarantees are unenforceable as a matter of English public policy.

6. The five partial awards each declare that the relevant tribunal has substantive jurisdiction over the dispute that has been referred to it and grant final anti-suit

injunction relief which restrains Jianlong from continuing the proceedings it has commenced in the Tianjin Maritime Court ("TMC") in China and requires Jianlong immediately to take effective steps to discontinue and withdraw such proceedings.

7. The injunctions were sought because the Claimants took action in China well after the SFL arbitrations were under way. On 1 June 2012, Jianlong issued a motion in the TMC seeking a declaration that the arbitration agreement in the Golden Zhejiang Guarantee was invalid. Jianlong issued similar motions in respect of the arbitration agreements in the SFL Guarantees on 18 June 2012. The motions before the TMC prompted the Defendants to apply to the tribunals on 5 October 2012 (in the SFL Arbitrations) and 23 October 2012 (in the Golden Zhejiang Arbitration) for the awards which were later made.

8. Jianlong served defence submissions on jurisdiction in the arbitrations, claiming that both the Guarantee and the Arbitration Agreement formed part of a scheme the object and intention of which was to break the laws of China in China and were therefore unenforceable.

9. The Defendants' applications required the tribunals to make final determinations that they had substantive jurisdiction. It was common ground, once Jianlong had objected to that course, that the tribunals could not determine any questions of fact on a summary basis. It was therefore accepted by the Defendants that for the purposes of its applications the tribunals were required to take Jianlong's case at its highest and to proceed on the assumption that Jianlong would make good its factual case.

10. The applications in the SFL Arbitrations were heard by the SFL Tribunal on 30 October 2012 and the application in the Golden Zhejiang Arbitration was heard by Mr Berry QC on 12 November 2012. Partial final awards were published by the SFL Tribunal on 14 November 2012 and by Mr Berry QC on 15 November 2012, making the anti-suit orders sought by the Defendants. Both tribunals concluded that, on the assumed facts, the Arbitration Agreements would not be void or unenforceable. It is that conclusion which Jianlong challenges.

The assumed facts

11. The assumed facts upon which the tribunals were asked to determine their own jurisdiction, (by the second hearing the assumed conduct of the Defendants had become more culpable), are set out in the witness statements of Lianjun Li and in detail in the skeleton of Mr Rainey QC and Mr Coffer for Jianlong and, abbreviated, are as follows.

12. Jianlong is incorporated in China and the Defendants in Bermuda and Liberia respectively. Chinese foreign exchange regulations apply mandatorily to 'foreign guarantees' (i.e. guarantees issued by Chinese companies to foreign entities). It is illegal under Chinese laws for a Chinese legal person to make a foreign guarantee in favour of a foreign legal entity without having obtained the prior authorisation of SAFE or to transfer funds out of China in order to make payment pursuant to a foreign guarantee which has not been approved and registered by SAFE. Violation of these requirements results in the invalidity and unenforceability of the guarantee and penalties applicable to the 'guarantor' and its officers. The Chinese courts will apply the mandatory provisions of Chinese foreign exchange law when considering the

validity of the Guarantees, even though they contain a clause purporting to provide for the application of English law.

13. During the negotiation of the charterparties and the guarantees, the Defendants and/or the individuals negotiating on the Defendants' behalf were aware and/or believed that the guarantees had to be approved by and registered with SAFE as a matter of Chinese law. Jianlong and the Defendants deliberately conspired together to contravene Chinese law, knowing of the requirement for prior authorisation and subsequent registration of the Guarantees, intending to break and/or evade the Chinese foreign exchange control law.

14. The Arbitration Agreements were part of the unlawful scheme to execute illegal guarantees and were themselves agreements with the improper purpose of furthering the illegal scheme. The parties and/or their representatives knew that the Chinese courts would not recognise or permit enforcement of the guarantees because of their illegality. The sole purpose of the parties in concluding the arbitration agreements in the light of the known and intended contravention of Chinese law was to provide a forum where the illegality could be concealed and/or its effects evaded or mitigated and/or the prospects of recovery under the Guarantees improved.

15. The facts are assumed only for the purpose of the applications. The Defendants strongly deny the truth of most of them.

The issue between the parties

16. While it is necessary to consider the legal position as a whole it is now conceded by the Defendants that on the assumed facts the guarantees are unenforceable because they were entered into as part of a scheme the object or intention of which was to procure the carrying out of illegal acts in China. The issue is the arbitration clauses.

Legal matters which are common ground or not much in dispute.

17. The issue turns on the application of the principle in Foster v Driscoll [1929] 1 KB 470 to an arbitration provision which is, particularly since Section 7 of the Arbitration Act 1996, an agreement distinct and separate from the contract of which it otherwise forms part. The parties disagree about many aspects of the law but there is some common ground and this seemed to increase at the hearing.

18. The principle in Ralli Brothers v Compania Naviera Sota y Aznar [1920] 2 KB 287, holds that an English law contract will not be enforceable where performance of that contract is forbidden by the law of the place where it must be performed (the *lex loci solutionis*). Hence, in Ralli Brothers itself, an agreement for the payment in Spain of chartered freight beyond the maximum permitted by Spanish law was held not to be enforceable in England.

19. The related ("*from the same rootstock*"- see Robert Walker LJ in Ispahani v Bank Melli Iran [1998] Lloyd's Rep. Bank. 133 at 140) principle established by the Court of Appeal in Foster v Driscoll [1929] 1 KB 470 and approved by the House of Lords in Regazzoni v KC Sethia [1958] AC 301 holds that an English law contract will not be

enforceable if the common intention of the parties was to perform in a foreign friendly country some act which is illegal under the law of that country. The Ralli Brothers doctrine is directed solely at unlawful performance required by the terms of the contract but Foster v Driscoll applies where the real object and intention of the parties, at the time of the contract, was the commission of conduct that would be unlawful in the relevant country, even if that conduct was not necessarily required by the terms of the contract. Accordingly, in Foster v Driscoll, the English court refused to give effect to an agreement to ship 7,500 cases of whisky to North America during prohibition. Although the contract did not provide for delivery to take place within the territory of the United States, that was clearly the object of the enterprise. Similarly, in Regazzoni, a contract for the sale of jute bags c.i.f. Genoa was held unenforceable where both parties intended (even though this was not a term of the contract) that the bags should be manufactured in India and resold in the Union of South Africa, in breach of an embargo which had the force of law in India.

20. In Ispahani the then Robert Walker LJ made clear, as the Claimant accepts to be the law,

> "*Nevertheless, the point does now come before this court for decision and, in my judgment, this court should decide it by ruling that the intended commission of prohibited acts within the territory of a friendly foreign country (whose laws prohibit those acts) is an essential and necessary ingredient of the principle in Foster v Driscoll.*"

21. It follows that the arbitration provisions, which require nothing to be done in China, will not of themselves fall within Foster-v-Driscoll which can only apply if those provisions can be brought within the principle because they form part of the same overall transaction as the Guarantees.

22. It is common ground that this is a Foster v Driscoll, not a Ralli Bros, case.

23. An arbitration agreement is to be treated as a distinct and separable agreement from the contract of which it forms part. Mere unenforceability of the contract will not of itself result in the unenforceability of the arbitration agreement: Fiona Trust & Holding Corporation v. Privalov [2007] UKHL 50, [2007] 4 All ER 951 and section 7 of the Arbitration Act 1996. However, an arbitration agreement may be rendered void or unenforceable if it is directly impeached on grounds which relate to the arbitration agreement itself and are not merely a consequence of the invalidity of the underlying contract.

24. The concept of separability was codified in s.7 of the Arbitration Act 1996, which expressly provides that an arbitration agreement which forms part of another agreement "*shall not be regarded as invalid, non-existent or ineffective*" and shall be "*treated as a distinct agreement*"

25. In Fiona Trust Lord Hoffmann said (at para 19):

> "*It amounts to saying that because the main agreement and the arbitration agreement were bound up with each other, the invalidity of the main agreement should result in the invalidity of the arbitration agreement. The one*

> *should fall with the other because they would never have been separately concluded. But section 7 in my opinion means that they must be treated as having been separately concluded and the arbitration agreement can be invalidated only on a ground which relates to the arbitration agreement and is not merely a consequence of the invalidity of the main agreement.*"

Lord Hope said (at para 45):

> "*The appellants' argument was not that there was no contract at all, but that they were entitled to rescind the contract including the arbitration agreement because the contract was induced by bribery. Allegations of that kind, if sound, may affect the validity of the main agreement. But they do not undermine the validity of the arbitration agreement as a distinct agreement. The doctrine of separability requires direct impeachment of the arbitration agreement before it can be set aside. This is an exacting test. The argument must be based on facts which are specific to the arbitration agreement. Allegations that are parasitical to a challenge to the validity to the main agreement will not do. That being the situation in this case, the agreement to go to arbitration must be given effect.*"

26. It is common ground that if the public policy ground on which the underlying contract is unenforceable also taints the arbitration agreement, the latter will similarly be unenforceable.

The requirement that the enforceability of the arbitration agreement is separable from that of the principal contract was explained and illustrated by the Court of Appeal in Harbour Assurance v Kansa General International Insurance [1993] 1 Lloyd's Rep 455. The Court held that the doctrine of separability could apply so as to preserve the arbitration agreement, even where the principal contract was alleged to be not merely voidable but void *ab initio*. Hoffmann LJ said (at 467, col. 2) that whether the arbitration agreement should be treated as forming part of the principal contract or as a separate agreement depended on the terms and purpose of the rule which made it necessary to ask the question. He continued (at 469, col. 1):

> *"In every case it seems to me that the logical question is not whether the issue goes to the validity of the contract but whether it goes to the validity of the arbitration clause. The one may entail the other but, as we have seen, it may not. When one comes to voidness for illegality, it is particularly necessary to have regard to the purpose and policy of the rule which invalidates the contract and to ask ... whether the rule strikes down the arbitration clause as well. There may be cases in which the policy of the rule is such that it would be liable to be defeated by allowing the issue to be determined by a tribunal chosen by the parties. This may be especially true of contrats d'adhésion in which the arbitrator is in practice the choice of the dominant party. Thus, saying that arbitration clauses, because separable, are never affected by the illegality of the principal contract is as much a case of false logic as saying*

> *that they must be. As Ralph Gibson LJ has pointed out the same is true of allegations of fraud.*
>
> *In deciding whether or not the rule of illegality also strikes down the arbitration clause, it is necessary to bear in mind the powerful commercial reasons for upholding arbitration clauses unless it is clear that this would offend the policy of the illegality rule. These are, first, the desirability of giving effect to the right of the parties to choose a tribunal to resolve their disputes and secondly, the practical advantages of one-stop adjudication, or in other words, the inconvenience of having one issue resolved by the court and then, contingently on the outcome of that decision, further issues decided by the arbitrator."*

Foster-v-Driscoll-Claimant's submissions

27. Mr Rainey QC and Mr Coffer submit that the arbitration provisions form part of the overall transaction or adventure by which the unlawful guarantees were provided and concealed and so fall with them as the ancillary contracts did in Foster-v-Driscoll. If the parties' unlawful purpose is given effect to by a 'bundle' of different agreements, each of those agreements will be void or unenforceable, by virtue of the illegality of the scheme of which they form a part. It is not necessary to establish that each individual agreement making up the "illegal adventure" envisaged the performance of an unlawful act in the foreign country in question. In Foster v. Driscoll itself, one of the issues on the appeal was the formal validity of a bill of exchange for £4,812. The majority of the Court of Appeal (Lawrence LJ and Sankey LJ) considered that it was unnecessary to consider the formal validity of a bill of exchange because it was entered into as part of a bundle of agreements giving effect to a scheme which had as its purpose the importation of whisky into the U.S.A., notwithstanding that the bill itself merely provided for payment of the specified sum. Sankey LJ explained (at 522) that he had "*arrived at the conclusion that the Courts of this country ought not to entertain actions of this character, that the whole adventure was illegal, and that all the actions in the Court below should have been dismissed.*" (see also, to the same effect, Lawrence LJ at 514). Mr Rainey QC in oral argument emphasised the breadth of the decision by pointing to how Scrutton LJ described it in his dissenting judgment when pointing to the consequences of his colleagues' views: *"the whole adventure is illegal: the whole transaction is illegal and one in which the Court can give no relief "*(at 499).

Foster-v-Driscoll-Defendants' submissions

28. Mr Gillis QC and Mr Patton submit that Foster v Driscoll itself is far too slender a basis for such a sweeping proposition. The case concerned the enforceability of the main agreement for the purchase of the whisky that was to be smuggled, and of two bills of exchange in payment for the whisky under the terms of that agreement. The majority held all three contracts to be unenforceable, but they did not lay down any general rule to the effect that any and every separate contract, including an arbitration agreement, will be swept away if it forms part of the alleged unlawful adventure.

29. Rather, the true rule is that explained by Hoffmann LJ in Harbour Assurance, where (as set out above) he said that it was always necessary to ask whether the policy of the rule that invalidates the main contract might also entail the invalidity of a separate but related contract, such as an arbitration agreement.

30. On the facts of Foster v Driscoll itself, it is easy to see why the policy of the rule that required the English court not to enforce a contract to smuggle whisky into the United States also entailed the invalidity of the bills of exchange that were intended to pay for the smuggled whisky. The policy of the rule would have been defeated by enforcing the instruments of payment, because that would have been to sanction the smuggling that was the object of the main contract.

31. The starting point is that the Court is not directly concerned with any illegality that may be said to arise under Chinese law. Foreign law illegality is relevant only insofar as it may give rise to a public policy defence as a matter of English law: Tamil Nadu Electricity Board v ST-CMS Electric Company [2007] EWHC 1713 (Comm), [2007] 2 All ER (Comm) 701 at para 37 *per* Cooke J.

Impeachment

32. The Claimant's primary case is that the arbitration agreements are directly impeached on grounds which relate to the agreements themselves and not merely as a consequence of the invalidity of the Guarantees. Mr Rainey and Mr Coffer put the point as follows at para 37 of their skeleton argument-

> (1) "The inclusion of an agreement providing for arbitration in London substantially improves the chances of a full recovery by the Defendants under the Guarantees by:
>
> i. Preventing the issue of the validity of the Guarantees coming before the Chinese courts (who would, applying the mandatory provisions of Chinese law, refuse to enforce the Guarantees).
>
> ii. Permitting the Defendants to have the validity of the Guarantees determined instead by an English arbitral tribunal applying English law.
>
> (2) On the assumed facts, the Arbitration Agreements therefore served an important purpose: they enabled the parties to circumvent the applicable provisions of Chinese law by preventing the validity of the Guarantee coming before the Chinese courts. This was the sole purpose for which they were entered into.
>
> (3) The Arbitration Agreements are therefore directly impeached by the principle in Foster v. Driscoll: they were themselves entered into as a separate but at the same time integral part of a scheme the object or intention of which was to procure the carrying out of illegal acts in China."

33. The public policy ground on which the Guarantees are unenforceable also taints the Arbitration Agreements. The same public policy considerations require the courts not to enforce a contract which is concluded by the parties to an illegal adventure to assist in the furtherance of the illegal purpose or scheme and/or is concluded to assist in the concealment of the illegal purpose or scheme or the evasion of the foreign law which is being broken in relation to the contract: Soleimany v. Soleimany [1999] QB 785. It has been suggested that the English court might, on this basis, refuse to recognise an agreement between highwaymen to arbitrate their differences. The arbitration agreements were concluded to assist in the furtherance of the illegal foreign guarantees and are in the highwayman category.

34. Mr Gillis QC and Mr Patton for the Defendants reject those submissions. They say that the policy underlying Foster v Driscoll is that it would be contrary to comity for the English courts to assist the breach of the laws of other friendly countries within their territories. That policy would not be defeated by giving effect to the arbitration agreements in the present case. A London arbitration would not involve any act in China that would contravene any provision of Chinese law. The consequence of giving effect to the arbitration agreement is that the arbitrators will be permitted to determine the merits of Jianlong's contention, i.e. by determining whether Jianlong's evidence come up to proof and by applying English law (including the Forster v Driscoll principle) to the facts as ultimately found. If the arbitrators conclude that the guarantees do fall foul of the Foster v Driscoll principle, they will be obliged (in their eventual awards) to refuse to enforce the guarantees or decline to award damages for their breach. It cannot be contrary to the policy of the Foster v Driscoll principle for the arbitrators to be allowed to apply that very principle to the facts of the present case, if the assumed facts are proven and the point arises. The arbitrators would be performing exactly the same function as the Court of Appeal in Foster v Driscoll itself and the House of Lords in Regazzoni. Far from undermining the policy of the Foster v Driscoll principle, the arbitrators would be giving effect to that principle.

35. Jianlong's response to this point is to say that the inclusion of the Arbitration Agreements nevertheless increases the Defendants' prospects of recovering under the guarantees, because the arbitrators will refuse enforcement only if they are satisfied that the parties entered into them with the intention of breaking Chinese law in China (such that the rule in Foster v Driscoll has been infringed), whereas a Chinese court would apply Chinese law regardless of the parties' intentions and regardless of their choice of English law.

36. The Defendants say that this amounts to saying that the rule in Foster v Driscoll requires the Arbitration Agreements to be struck down because the arbitrators would otherwise be bound to apply the rule in Foster v Driscoll to determine the validity of the guarantees. That would be paradoxical.

37. Accordingly, when it comes to the enforceability of an arbitration agreement, the question becomes whether the policy of the rule that invalidates the principal contract is such that it would be liable to be defeated by allowing a dispute about the parties' substantive rights and obligations to be determined by a tribunal chosen by the parties. If it did, this would have to be balanced against the powerful commercial reasons for upholding arbitration clauses "*unless it is clear*" that to do so would offend the policy of the illegality rule.

38. The Defendants say that the case is very different from *Soleimany.* It is important to appreciate that the invalidating rule, whose policy must be considered, is not the rule of foreign law that is alleged to have been contravened (here, the Chinese exchange control regulations) but the rule of English public policy whereby a contract that is intended to involve unlawful conduct in the foreign country is rendered unenforceable, i.e. the principle in Foster v Driscoll.

Decision

39. As Lord Hoffmann put it in Harbour at 469 when referring to an insurance contract and whether a statutory provision applied to it:*"Is there anything in such a provision which would be undermined by allowing the issue of whether it applied to be determined by arbitration?"* In my view no.

40. In Foster v Driscoll the court held as contrary to public policy and unenforceable (and void) all the contracts (one involving performance in England and two in Scotland) which would have implemented the scheme not just that which would have involved performance in the foreign country, illegal under its laws. That decision was approved without reservation by the House of Lords in Regazzoni. While it is correct that the majority wished to give the parties no assistance in their dispute resolution ("*The Courts of this country ought not to entertain actions of this character….* Sankey LJ at 515), there was no arbitration clause before the court and, if there had been, the law applied to it would not have been that of today. The nature and function of an arbitration clause is distinct and different from that of other contractual provisions- see the observations of Lord Macmillan and Lord Wright in Heyman v Darwins referred to by Hoffmann LJ in Harbour at 469. The effect of Foster v Driscoll is not as I see it simply to "sweep away" (as it was put by the Claimant before the arbitrators) the arbitration provisions. Those provisions must be evaluated to see whether or not they are impeached on the basis set out above. So I prefer the approach of the Defendants to Foster v Driscoll.

41. If the assumed facts are proved in the arbitrations the illegality will be established and the Guarantees will not be enforced. This would not, as I see it " *be contrary to our obligation of international comity as now understood and recognised and would therefore offend against our notions of public policy*" per Lawrence LJ at 510 and also Sankey LJ at 519). This outcome will not, as that comity was identified in Foster v Driscoll, furnish any foreign government with just cause for complaint or breach the obligation of international comity identified by the case. The policy and purpose of the rule which invalidates the Guarantees does not strike down the arbitration provisions.

42. The fact that the task faced by the arbitrators, as a result of the choice of law and forum provisions, is different and potentially less favourable to the Claimant than it would have been if the issue had been one of Chinese law before the Chinese courts seems to me to irrelevant. It is certainly not a reason for seeing the arbitrations provisions as impeached.

43. This is not a 'palpable' case. First as Mr Gillis points out this is not a highwayman case because we are concerned at one remove with the law of China and not of England. The public policy behind the illegality of arbitrating disputes about the spoils of crime in England is not the same as that behind Foster v Driscoll. Further as

I see it the observations by Waller LJ in Soleimany at 797 and 8, upon which both parties have focused have to be read in context as part of the discussion in a case different from this. I respectfully agree with what Mr Berry QC says about this case at paragraphs 49 to 51 of his award.

44. Cases of this kind have to be examined on their particular facts to see what if any action is required in the light of the applicable public policy considerations. I notice from ParkingEye v Somerfield Stores, a decision of the Court of Appeal reported since the hearing at [2013] 2WLR 939, a case about illegality in contract in a different context, that Toulson LJ (as he then was) describes as *'mild'* the description by his colleague Sir Robin Jacob of the doctrine of illegality in the law of contract as *'knotty'*. The Court also implicitly endorses the views expressed by Etherton LJ, (as he then was) in Les Laboratoires Servier v Apotex Inc [2012] EWCA Civ 593, as to why these cases inevitably turn on their own facts. (Of course I have not had the benefit of the views of Counsel on this case and they are free to make further submissions if they consider that my view of the case is wrong and that it may make any difference).

45. The position is not affected by what are to be assumed to be the bad motives and intentions in adopting arbitration to conceal wrongdoing. As Mr Berry QC pointed out in his award, there is no public policy requiring the exposure of criminals for punishment in China.

46. The powerful commercial factors in support of upholding arbitration provisions, respecting the parties' choice and providing a one stop process apply to this otherwise very conventional charterparty guarantee case.

47. It follow that I share the views of the arbitrators in these cases and that the applications fail.

48. I shall be grateful if Counsel will let me have no later than 72 hours before hand down of this judgment a list of corrections of the usual kind and a draft order, both preferably agreed, and a note of any matters they wish to raise at the hearing.

49. I am grateful to Counsel and solicitors for the admirable preparation and presentation of this case.