

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)**

BP OIL INTERNATIONAL LIMITED

Claimant

and

PANORO EQUATORIAL GUINEA INC

Defendant

**AGREED NOTE OF
EX TEMPORE JUDGMENT OF HHJ PELLING KC
Monday, 17 August 2026**

1. This is my Judgment on the application of BP Oil International (“**BP**”) for an interim injunction against Panoro Equatorial Guinea Inc (“**PEGI**”).
2. BP and PEGI are parties to an Offtake Agreement, for the extraction and sale of Ceiba Crude Oil from the Ceiba Field and Okume Complex of Block G, offshore of Equatorial Guinea.
3. Save as permitted by clause 5.1 of the Offtake Agreement (“**OTA**”), it was agreed that BP would market the Defendant’s entitlement to the oil I have just referred to. The Defendant was entitled to extract the oil under a concession agreement with the Government of Equatorial Guinea. The OTA has 13 years to expire. PEGI has, by notice, sought to terminate the OTA. BP’s case is that PEGI repudiated the contract, and that BP expressly affirmed the contract.
4. In response, PEGI claimed that the oil had been committed to a third party, which presented an insurmountable barrier to the interim relief sought by BP. This application was issued following that response. PEGI does not dispute that it was in breach of contract, and there is no dispute as to the merits of the breach of the OTA.
5. In repudiating the OTA, the conduct of PEGI was unconscionable and unprincipled, and deserves severe commercial criticism. The question on this Application is whether BP should be granted the injunction it seeks.

6. Against that background, I turn to the terms of the OTA.
7. Under the OTA, BP agreed to buy, and PEGI agreed to sell, 100% of the oil in the field, which I refer to as crude product. The obligation to sell is in clause 2.3, which is restricted by clause 5.1. Clause 5.1 and 7.1 together limit this sale to its Crude Oil Entitlement, less a single cargo per year to a third party. The pricing of each cargo is complicated, and I do not address it in detail. I only pause to observe that BP is entitled to a marketing fee on each cargo. The structure was designed to ensure that the best possible price could be obtained by BP, with BP entitled to a discount of \$0.25 per barrel plus applicable marketing fees (see clause 12.1).
8. Clause 4.2 deals with termination of the OTA, and precludes termination until after the initial term of 13 years, other than where there is a breach by BP, which has not been alleged. The OTA also contemplated a change of control, notice of which was required under clause 14.3, and under clause 14.1 PEGI agreed that it would procure a novation of the OTA to add that party. BP places particular emphasis on clauses 5.1 and 8.1 of the OTA. Clause 5.1 provides *“The quantity of Crude Oil to be supplied by the Seller and purchased by the Buyer under this Agreement shall be one hundred per cent (100%) of the Seller’s Crude Oil Entitlement for the duration of this Agreement, excluding the portion of the Seller’s Crude Oil Entitlement attributable to a single cargo which the Seller may contract out with a third party”*. Clause 8.1 provides *“The Buyer shall be exclusively responsible for marketing the Seller’s Crude Oil Entitlement, utilising its global capabilities as a trader of crude oil to identify potential buyers whose valuation represents the most competitive bids for the Crude Oil.”*
9. The Claimant submits both of these clauses have a positive and negative element, that the seller would not sell or entrust marketing of any part of its entitlement to anyone else. I accept that that is at least reasonably arguable.
10. The detail of the repudiation of the OTA and the subsequent affirmation is not important, except to note that the breach was premeditated and deliberate, as part of the transfer from Kosmos to Panoro. It was that which triggered the repudiation, as is apparent from PEGI’s letter.
11. The governing agreement of the transfer was a SPA dated 24 February 2026. Its terms are immaterial save as to its clause 3.1, which included a requirement for Kosmos to terminate the OTA, described as the Marketing Services Agreement, and the contract also included an indemnity for the termination of the OTA at section 9.3, which provides that *“The Seller shall procure that the Marketing Services Agreement shall be terminated at Completion and the Seller, and its Affiliates, shall indemnify, defend, and hold the Group Companies harmless in respect of all claims and liabilities arising directly under the Affiliate Contracts, including the termination of the Marketing Services Agreement, up to, including and after the Completion Date.”*
12. PEGI’s principal response is the summary in the 26 June 2026 letter from its solicitors. That reads as follows:

“Our response is necessarily limited by confidentiality obligations owed by Panoro and PEGI to a third party, the counter-party to the arrangements. Nevertheless, we are able to confirm that the offtake from PEGI’s participating interest in the Ceiba and Okume complex is committed to a third party. This commitment forms an integral part of a wider transaction, including related financing arrangements. These arrangements, which are complex and followed extensive arm’s length negotiations, pre-date the material facts set forth in the Draft Application. In our view, they represent an insurmountable barrier to any form of injunctive relief relating to the offtake of PEGI’s participating interest in the Ceiba and Okume complex, consistent with the legal principles set forth in our 23 June 2026 letter.

...

The above also demonstrates that your client could and should reasonably have been aware of the transaction of which it complains for over seven weeks. That is yet another reason why there is no basis for your client to bring the Threatened Injunction Application.

In light of the above, our client Kosmos repeats yet again its proposal to work directly with BP at a senior level to resolve this matter expeditiously. To that end, please confirm whether and when BP’s representatives are available for a meeting.”

13. This response ignores two points. First, the arrangements were created by the seller and buyer of PEGI who chose to repudiate the agreement. In those circumstances, the prejudice is a result of the actions of those who purchased it and sold it and was entirely an eyes wide open repudiation of the agreement. It was at least foreseeable that BP would affirm the agreement.
14. Secondly, although an emphasis is placed on timing, that is misplaced. On 21 May 2026 BP wrote to PEGI regarding the press release:

“Hi Sanjay,

We refer to your 24 February 2026 press release which confirmed that Kosmos Energy had entered into an agreement to sell its interest in the Ceiba Field, by way of a share sale of Kosmos Equatorial Guinea Inc., to Panoro Energy. The press release also stated that the transaction is expected to close in mid-2026.

*We further refer to Agreement for the Offtake and Marketing of Ceiba Blend Crude Oil dated 6 August 2021 between Kosmos Equatorial Guinea Inc. (**KEGI**) and BP Oil International Limited (the **Offtake Agreement**).*

Please confirm that you have provided the Offtake Agreement to Panoro Energy? Please also confirm that Panoro Energy has acknowledged to Kosmos Energy that KEGI remains be bound by the obligations of the Offtake Agreement post-completion?

Per Clause 19.2 of the Offtake Agreement, our consent would have been required to disclose the details of the Offtake Agreement to Panoro Energy. We are not aware that we received such a request, however, in the circumstances we will consider waiving this apparent breach

of the Offtake Agreement if the above confirmations are provided not later than 5pm GMT on Monday, 25 May.

If, on the other hand, you have not yet disclosed the details of the Offtake Agreement to Panoro Energy, we will proceed to do so and accordingly request Kosmos Equatorial Guinea Inc.'s consent not later than 5pm GMT on Monday, 25 May. If this is the case, please also explain how the transaction to sell KEGI could have been entered into without the disclosure of such an important agreement to the buyer.

All of bp's rights are reserved."

15. This resulted in a response on behalf of the Respondent from Mr Josh R Marion, who is the senior VP and General Counsel of Kosmos, who said:

"Dear Matt,

We've not had the opportunity to meet previously, but my name is Josh Marion, and I am the General Counsel for Kosmos Energy. I refer to your email below of 21 May 2026.

Kosmos confirms that Panoro Energy has been provided with a copy of the Offtake and Marketing of Ceiba Blend Crude Oil dated 6 August 2021 between Kosmos Equatorial Guinea Inc. (KEGI) and BP Oil International Limited (BPOIL) (the Offtake Agreement). BPOIL has no basis to object to this disclosure, given that your email clearly states that BPOIL "will proceed" to provide Panoro Energy with a copy of the Offtake Agreement if Kosmos has not already done so.

You will appreciate that the potential transaction referenced in your email with Panoro Energy is a confidential and commercially sensitive transaction that has not yet closed, and therefore, BPOIL's request for further information in relation to the potential transaction is inappropriate.

For the avoidance of doubt, should BP seek to tortiously interfere with that transaction, including by approaching Panoro Energy, Kosmos will hold BP liable for such interference.

Kosmos reserves all of its rights."

16. No further communications were received by BP until 15 June 2026, repudiating the OTA. I should note at this point that PEGI and Kosmos have offered undertakings on the basis that PEGI is correct that damages are an adequate remedy, and that are designed to offer comfort that any damages will be paid.
17. I now turn to the arguments of the parties. BP's point is that the order sought is purely negative, and it is thus entitled to the injunction it seeks for the reasons I will develop.
18. BP argues that a negative injunction will generally be granted to give effect to the public policy to enforce contract. The inadequacy of damages will play little role in how to proceed.
19. PEGI admits that it is in breach of contract, but denies that BP can affirm the agreement and argues it is not entitled to such an injunction. This ignores the unconscionable conduct of the Defendant.

20. PEGI submits that there is a triable issue as to whether damages is an adequate remedy. Both parties rely on the Judgment of David Edwards KC in Priyanka Shipping Ltd. v Glory Bulk Carriers Ltd. [2019] 1 W.L.R. 6677 as providing assistance in identifying the correct approach. In that case, the defendant had agreed that the vessel in issue was not to be traded, and then proceeded to trade the vessel. Mr Edwards KC was deciding the claim as to whether a final injunction should be granted. Mr Edwards carried out a review of the authorities, including *Doherty v Allman* to *SDI Retail Services*, before he concluded 5 fundamental principles at [91]:

“(i) Negative covenants will ordinarily, although not invariably, be enforced by injunction.

(ii) It is not a precondition to enforcement by injunction that the party seeking an injunction should prove that it would otherwise suffer damage.

(iii) An injunction is nonetheless an equitable, and therefore a discretionary, remedy (I do not consider that the fact that in clause 19 the Buyer “guaranteed” that the Vessel would not be traded further, a point relied upon by the Seller, changes the position in this regard).

(iv) So far as the exercise of discretion is concerned, there may be cases where the circumstances are such that the grant of an injunction would be unconscionable (Colman J in Insurance Co v Lloyd’s Syndicate [1995] 1 Lloyd’s Rep 272) or oppressive (Elias LJ in Araci v Fallon [2011] LLR 440), and in such circumstances an injunction should be refused. Whilst a mechanistic approach should not be followed, inconvenience or hardship to the defendant is, however, not enough;

(v) The burden lies on the party bound by the negative covenant to show why the ordinary rule should not apply, i e, why the covenant should not be enforced by injunction.”

21. In relation to damages being an adequate remedy, having been referred to a number of authorities, he concluded that the correct approach was in [95]-[97]:

“95 What Lindley LJ stated, however, was the prima facie position. There is a strong policy in favour of enforcing contracts, and the authorities support the proposition that a defendant should not, by paying damages, be able to buy the privilege of infringing the claimant’s contractual rights.

96 I note, furthermore, that the question Lindley LJ posed was whether damages were “the proper remedy”, and the adequacy of damages should, in my judgment, be considered in this sense, i e, whether it would be just to confine the claimant to his remedy in damages. The answer to that question will, of course, depend upon the circumstances of the particular case, including whether the case involves the breach of a contractually agreed negative covenant.

97 The answer to the question posed, therefore, is in my judgment this: in determining whether it would be unconscionable or oppressive to grant an injunction enforcing a negative covenant, and whether an injunction should be refused in the exercise of the court’s discretion, the consequences of the grant or the refusal of an injunction for both parties will be relevant, and that may include consideration of whether damages would be a sufficient

and appropriate remedy for the claimant. But that does not detract from the position that ordinarily negative contractual covenants will be enforced by injunction.”

22. Of the cases analysed by Mr Edwards in his comprehensive analysis, two cases are relevant. First is Attorney General v Barker [1990] 3 All ER 257, and the second is Insurance Co v Lloyd's Syndicate [1995] 1 Lloyd's Rep. 272.
23. The first was concerned with the breach of a negative covenant. Having noted it was probable a final injunction would be granted at trial, the Court of Appeal applied the American Cyanamid principle and in applying it concluded that damages were inadequate. It then considered that the balance of justice required that an injunction should be granted.
24. In Insurance Co, Mr Justice Colman included the following
“the effect of the authorities can be summarised as follows.
(1) Express or implied negative covenants will in general be enforced by injunction without proof of damage by the plaintiff.
(2) The principle does not depend on whether the plaintiff is a person or a corporation. The ready availability of the remedy is not the consequence of equity's regard for the plaintiffs personal feelings, but of equity's perception that it is unconscionable for the defendant to ignore his bargain.
(3) Although absence of damage to the plaintiff is not in general a bar to relief, there may be exceptional cases where the granting of an injunction would be so prejudicial to a defendant and cause him such hardship that it would be unconscionable for the plaintiff to be given injunctive relief if he could not prove damage. In such cases an injunction will be refused and the plaintiff will be awarded nominal damages”.
25. This formulation emphasises the conclusion that it is unconscionable for a man to not follow his bargain.
26. Subject to omitting the word “exceptional” from the quotation, this formulation was approved by the Court of Appeal in D v P [2016] EWCA Civ 87; [2016] ICR 688.
27. Although the facts of Araci v Fallon [2011] EWCA Civ 668 are different from this case, it is worth noting the conclusions of Lord Justice Jackson, at [65] he concluded “*The defendant voluntarily entered into a contract for substantial reward containing both positive and negative obligations. There is nothing special about the world of racing which entitles the major players to act in flagrant breach of contract. The defendant has promised in the context of a commercial agreement that he will not compete against Native Khan in the Derby this afternoon. In my view, that promise should be enforced.*”
28. Lord Justice Elias agreed, setting out at [69]-[70]:
“I recognise that there has as yet been no trial and that Mr Fallon's contention that he understood that he would be required to ride Native Khan in the French Derby, but not the Epsom Derby, has not been fully tested. But for the reasons given by the judge below, I am

satisfied even on the limited material we have that Mr Fallon's defence is fanciful and has no prospect of success. On that premise, if the injunction were to be granted at trial there is no reason why it should not be granted even at this interlocutory stage, essentially for the reasons given by Megarry J in Hampstead & Suburban Properties Ltd v Diomedus [1969] 1 Ch. 248, 259 and by Nourse LJ in Attorney General v Barton [1990] 3 All ER 257, 262. In a case where the breach of a negative covenant is clear, there is no magic in the fact that the injunction is being sought at an interlocutory stage. All questions of balance of convenience are then immaterial, as the Lord Chancellor, Lord Cairns made clear in Doherty v Allman (1878) 3 App Cas 709, 720 in the passage reproduced by Jackson LJ in his judgment.

70. So the question becomes whether the injunction should be granted following a trial. There were two reasons relied upon by the judge why it should not. First, he considered that damages would be an adequate remedy. However, that is not generally a relevant consideration when the injunction restrains the breach of a negative covenant. The court is by granting the injunction simply enforcing what the parties have agreed: see the discussion in Chitty on Contracts, 30th Edition, para 27-060. Exceptionally an injunction may be refused if it would be oppressive to the defendant to grant it, but it can hardly be said to be oppressive to prevent Mr Fallon from acting in cynical disregard of the obligations he has voluntarily undertaken."

29. In the circumstances of this case, the breach of contract was deliberate and can be properly characterised as cynical, by reference to the communications that passed between the parties and the language of the agreement. Whether damages would be an adequate remedy is not generally relevant where an injunction enforcing a negative covenant is sought. Although there may be circumstances where the grant of an injunction is oppressive or unconscionable, this is not the case here. The circumstances relied on as constituting the prejudice relied upon by the Defendant are purely the result of an eyes wide open decision to proceed without BP's consent to the discharge of the agreement and in the face of BP seeking to maintain the agreement. There is a high threshold for oppression, and it would be an abuse of language to conclude so here, where the third party arrangements were entered into deliberately, on an eyes wide open basis and where there is no strong evidence of any real prejudice likely to result if the injunction is granted.
30. In any event I am not satisfied that damages are an adequate remedy given the complexities of calculating the price payable and the additional complexity in calculating future loss for the contractual term remaining. In particular it would be close to impossible to replicate the judgements made by BP under clause 9.2 of the agreement, which can result, on the evidence (which is unchallenged), in a benefit to BP of between 40c and \$2 per barrel. Providing for this sort of adjustment is likely to result in an erroneous under assessment of damage.
31. The other point on which the Defendant relies is the cooperation of PEGI. This is only an issue that can be resolved at trial. The Claimant's evidence is as follows:

"I have read what Mr Caher says about the operation of the Offtake Agreement in practice at paragraphs 12-13 and 19-21 of his statement. I consider that Mr Caher overstates the

role that KEGI historically played in the operation of the Offtake Agreement. It is correct that my team would provide to KEGI: information about bids received; market feedback; pricing information; and, ultimately, sale confirmations. However, this was all provided by way of information only. We did not need KEGI's approval or decisions as to how to proceed with the marketing of cargoes under the Offtake Agreement."

32. The Defendant suggests that the reality is different – it relies on the language of the OTA and does not engage with how the contract has been performed as a matter of practice for years – the impression left by paragraph 13 of Mr Caher's statement is that this is a lawyers' construct, rather than a reflection of how the agreement operates.
33. I conclude: (a) that whether damages would be adequate is immaterial; (b) at a factual level damages are not an adequate remedy; and (c) the cooperation required between the parties has been overstated. The order sought gives effect to negative covenants, does not engage with positive obligations and, as formulated, does not require cooperation between the parties, much less judicial supervision.
34. The remaining submission is that the injunction is tantamount to specific performance. In my judgment, the authorities such as The Scaptrade [1983] 2 AC 694 and VTB Commodities v JSC Antipinsky [2020] 1 W.L.R. 1227 are distinguishable from cases such as the present and have no impact on the present case. In my judgment the principles are instead those identified by Lord Justice Mance in LauritzenCool AB v Lady Navigation Inc [2005] 1 W.L.R. 3686. That case was concerned with an injunction restraining a ship owner from withdrawing two vessels from a management pool. The Court of Appeal upheld the injunction, where the argument of the owners (relying on The Scaptrade) was that leaving the vessel in the management pool was tantamount to an order of specific performance. The key part of the judgment starts at [12], At [13] Mance referred to one authority cited by Diplock for the proposition that the court would never grant specific performance of a services agreement before noting that in that case a negative injunction was granted.
35. Mance then cited at [13] from the judgment of Lord St Leonards which was expressed in terms which bear repeating:

"Wherever this Court has not proper jurisdiction to enforce specific performance, it operates to bind men's consciences, so far as they can be bound, to a true and literal performance of their agreements; and it will not suffer them to depart from their contracts at their pleasure, leaving the party with whom they have contracted to the mere chance of any damages which a jury may give. The exercise of this jurisdiction has, I believe, had a wholesome tendency towards the maintenance of that good faith which exists in this country to much greater degree perhaps than in any other; and although the jurisdiction is not to be extended, yet a Judge would desert his duty if he did not act up to what his predecessors have handed down as a rule for his guidance in the administration of such an equity."

As Lord St Leonards added in Lumley v Wagner (1852) 1 De G.M. & G. 604 at [619]:

“I have not the means of compelling [the defendant] to sing, but she has no cause of complaint if I compel her to abstain from the commission of an act which she has bound herself not to do, and thus possibly cause her to fulfil her engagement...”

36. Having reviewed various authorities, Lord Justice Mance then said this at [22]:

“In the first sentence, Nourse LJ was clearly referring to injunctive relief which either expressed or was pregnant with a positive decree of performance of the contract. The second sentence deals with injunctions of a purely negative nature that Cooke J granted. The case was particularly concerned with the problem that can arise even in relation to such injunctions where “the human necessity” of maintaining “some special skill or talent, whose continued display is essential to the psychological and material, and sometimes to the physical, well-being of the servant” may “practically bind the servant to the contract, compelling him to perform”. It is an obvious non sequitur to derive from this reasoning a conclusion that, whenever the practical effect of negative injunctive relief would be to bind any party to any contract for services to the contract, compelling him to perform it, the court will or should refuse such relief.”

37. Thus, on the assumption that the OTA is a contract for services for marketing rather than an agreement purely for the sale of crude oil, it takes matters no further (see Lord Justice Mance at [33]). In those circumstances, and in addition to the conclusions expressed earlier, I also conclude that the Defendant is wrong to submit that in a case such as this it would be wrong to grant an injunction because it may force the Defendant to comply with its obligations. Such an approach is in any event objectionable given the unconscionable conduct of the Defendant.
38. VTB is not relevant to the present case, as the judge proceeded on the basis that the contract in dispute was a pure sale of goods contract governed by the relevant provisions of the Sales of Goods Act and different principles apply.
39. Returning to the order sought in this case: There is plainly a serious issue to be tried, not least as the Defendant admits the breach, damages are not an adequate remedy, and what is sought is giving effect to negative clauses. Whether damages are an adequate remedy is immaterial unless the order sought is unconscionable or oppressive. The Claimant’s damages are not suggested to be an inadequate remedy if ultimately the claim fails, and the balance of justice lies in granting the injunction in particular in adherence with the policy identified by Lord St Leonards 175 years ago and repeated and upheld again by the Court of Appeal in LauritzenCool 150 years later and because the order doesn’t compel the parties to continue with a broken down relationship. I conclude the application should succeed.

Following a short break:

40. This is an application for costs in relation to the injunction I granted. The Claimant asks for its cost now, where the application was fought tooth and nail where it should not have been,

and in circumstances where what the Defendant was seeking to do was avoid the consequences of breaching a negative covenant entered into on an eyes wide open basis, in breach of contract for commercial gain. The submission of the Defendant is to reserve the question of costs to trial, relying on the statements of the Chancellor Julian Flaux in Dos Santos v Unitel SA [2024] EWCA Civ 1109 at [116] and following. Where, at [116]-[117], he said this:

“116. In so far as there is a general rule as to the costs of contested interlocutory or procedural applications, it is that a party who contests an application and fights it tooth and nail on every point, thereby causing the successful party to incur costs which would not otherwise be incurred, should be ordered to pay the successful party’s costs at the conclusion of the application. This is clear from CPR 44.2(2) and is the general rule applied in the Business and Property Courts in relation to contested interlocutory applications. The Court will not usually reserve costs to the trial judge of, for example, a contested jurisdiction or disclosure application which the defendant has lost, merely because the defendant points out that it might succeed in defeating a claim at trial. Were it otherwise trial judges and, in turn costs judges, would be inundated with having to make rulings on costs of interlocutory applications which had been reserved by the judges who heard the applications.

117. Of course the Court has a discretion to make a different order on a contested interlocutory application, including reserving the costs to the trial judge, as CPR 44.2(b) provides. One situation in which the Court will usually make an order that the costs be reserved is in the case of an American Cyanamid interim injunction as the authorities from Desquenue onwards establish. However, that is because, on the balance of convenience, the Court is prepared to grant an interim injunction which allows a party to rely upon a right or obligation, the existence of which has yet to be established, effectively holding the ring pending the trial. If at trial the right or obligation is established then the injunction can be made final and permanent or other relief granted. However if the claimant’s case fails at trial, then it can generally be said that the interim injunction should not have been granted, since the right or obligation did not exist or was not established. Hence it is generally more appropriate for the costs of the application for the interim injunction to be reserved to the trial judge.”

41. So far as I am concerned, there are features of this case that make it stand out from the norm. Firstly, this was, as I characterised it, an eyes wide open, deliberate, unconscionable and cynical decision to breach the contract for the purpose of commercial gain. This is not conduct any English court should countenance for reasons identified 175 years ago and repeated in modern language by Mance in the two judgments I referred to. This is not a case where the existence of the contract was in doubt or the breach of contract in doubt as the breach of that contract is admitted and indeed couldn’t be denied having regard to the correspondence. This was conduct which is worthy of commercial criticism and this case is lifted out of what would otherwise be a general run of American Cyanamid cases.

42. The point made by the Claimant, and which I accept, is that an injunction is normally granted to enforce negative covenants. The attempt to rely upon decisions such as The Scaptrade without really grappling with the other authorities was not an appropriate way to proceed. This was an application made clearly on the basis the Claimant was entitled to enforce negative covenants and should have been acceded to. There is no real answer to the application and in those circumstances I conclude it is appropriate in this exceptional case that costs be paid by the Defendant.
43. The question which remains is whether or not I assess on an indemnity or standard basis. The submission made on behalf of the Claimant is that costs be assessed on an indemnity basis. In the particular circumstances of this case as I have characterised it the cynical conduct of the Defendant that takes the case away from the norm or what Mr Fealy characterised as the rough and tumble of ordinary commercial life. English courts have consistently maintained that contracts are to be upheld and parties to be held to their contractual obligations and I accept the point made by Mr Fealy and accept this is an appropriate case where indemnity costs ought to be assessed.

Following a short break:

44. This is a summary assessment of the Claimant's costs of and occasioned by the application. I have directed that they be assessed on an indemnity basis. The points that stand out are firstly that it was an interlocutory application that lasted a day and second the grand total of the sum claimed is in excess of £357,000 and third that it would appear to be suggested it was reasonable for no less than 4 fee-earning solicitors to attend at the hearing.
45. I turn first to rates. So far as I am concerned it is perfectly true that rates have a primary role for assessment on a standard basis where proportionality plays a significant role, but that would justify in the circumstances of this case an argument as to whether an application for an injunction engaging entirely conventional principles should be moved from London 2 to London 1 or slightly above. So far as this case is concerned, as costs are on an indemnity basis I am prepared to accept that London 1 is the correct starting point.
46. The question is therefore whether anything has been identified which would result in the conclusion that it is reasonable to charge an hourly rate in excess of London 1 in respect of work carried out for which payment is otherwise recoverable. With some hesitation I am prepared to say a margin is appropriate but not to adopt the rates claimed. I am therefore prepared to accept there was sufficient urgency and sufficient concern for the Claimant about the application that a modest increase above London 1 is appropriate and the uplift is 5%. The rates recovered are therefore London 1, +5%.
47. However, it was not reasonable to have 4 fee earners attending at the hearing when the Claimant was represented by an experienced silk. The question is then who should be allowed to attend and who can then recover fees for preparation and attending. In light of the facts of this case, and that costs are to be ordered on the indemnity basis, I am satisfied that the appropriate person is Mr Baily, the partner with conduct of this case. I wish to make clear

that, had I been assessing costs on a standard basis, I would have expected a more junior colleague. It follows from my decision that the costs of attendance for the other fee earners should be disallowed.

48. On the documents schedule, the only item in dispute is preparation for the hearing. As I have explained above, I am prepared to allow Mr Baily's time, however it is unclear what the others would be doing when the party is represented by an experienced silk. I am prepared to accept grade D time for the preparation of bundles and other related tasks, but 27 hours I consider to be too high, and I reduce this to 15 hours. I disallow grade B and C time.
49. For Counsel fees, there is no objection to Mr Fealy's fee. For Mr O'Leary, it is unclear what the fee of £40k is for, given he did not attend the hearing. It is a significant sum of money and is not said to be done for work on documents, and it is difficult to see what work on documents would have been done by counsel. I am prepared to accept a fee for some work on the skeleton. I therefore reduce Mr O'Leary's fee to £15,000. For Mr Molloy, it is unclear to me what he did and I disallow those fees.

Following a short break:

50. I now turn to directions leading up to the CMC. The parties have agreed the following dates:
 - 50.1. The Particulars of Claim by – Friday 21 August.
 - 50.2. The Defence 28 days later – Friday 18 September.
 - 50.3. The Reply 21 days later – Friday 9 October.
51. In each case the relevant deadline is 4pm.
52. The parties have agreed three weeks to undertake the steps necessary for disclosure prior to the CMC. As such, I direct that a CMC should be listed on the first available date three weeks after the reply, being 30 October, with a time estimate of 2 hours. The scope of the CMC should include disclosure and cost budgeting, if relevant.
53. I also direct that the CMC should be expedited, which should be recorded in a recital to the Order.
54. I will include in the Order a direction that the parties use best endeavours to resolve the dispute by mediated dispute resolution.

Following a short break:

55. I now turn to the application of the Defendant for permission to appeal from my Judgment. The question is whether there is a realistic prospect of success in the Court of Appeal or there is some other reason for permission to be granted.

56. The submission made on behalf of the Defendant is that the Court of Appeal may take the view that Scaptrade and VTB together should have led me to the conclusion that the injunction should be refused in the circumstances of this case.
57. In my view, the Defendant's application is unarguable for the following reasons. In so far as it relies on VTB, that case concerns a sale of goods contract, and Phillips LJ gave judgment reflecting this, including by reference to specific sale of goods legislation and not by reference to any suggestion of a contract for services. In relation to the Scaptrade, this is a case that has undergone some criticism since it was made not least because a large number of cases going back many years appear not to have been considered. It is a case which even on its own terms should be confined to its shipping law context.
58. The more general point in all the authorities, which go back 175 years, is that an injunction for negative obligations gives effect to the fundamental policy that contracts should be upheld and not broken for the purpose of commercial reward. In those circumstances and having regard to all the other authorities, there is no realistic prospect of the Court of Appeal coming to a different conclusion particularly in the circumstances which led to the admitted breach of contract by the Defendant.