IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (KBD)

[2025] EWHC 1878 (Comm)

The Honourable Mr Justice Knowles CBE

BETWEEN:

BATAVIA EXIMPT & CONTRACTING (S) PTE LTD

Appellant

-and-

PEDREGAL MARITIME SA

Respondent

SKELETON ARGUMENT ON

BEHALF OF THE RESPONDENT

IN APPEAL CL-2023-000147

References to the Joint Core Bundle are in the form ***[B/Tab/Page]***

(A) INTRODUCTION

1. This appeal gives rise to a short question of construction of Article III,6 of the Hague-Visby Rules ("the HVR") as to whether the time bar contained therein can be satisfied by the bringing of *in rem* proceedings for security.

2. The answer to this question is an obvious "no". It is well established that the suit which must be commenced in order to satisfy the Article III,6 time bar is a suit to establish liability under the HVR. It is equally well established that the purpose underlying the time bar is to achieve finality and allow the carrier to clear his books.

3. As such, whether by reference to the authorities as to the meaning of "suit", or to the authorities on the object of the Article III,6 time bar, proceedings which are commenced for the purposes of obtaining security do not suffice to preserve time.

4. Indeed, the Appellant's argument has remarkable consequences. If the Appellant is correct, then the act of bringing proceedings for security satisfies the Article III,6 time bar once and for all, such that the cargo claimant is thereafter subject to no limitation period of any sort for the bringing of substantive proceedings, with the carrier being left in limbo. This cannot be right.

5. Accordingly, the Court is asked to find that proceedings brought for the purposes of obtaining security do not constitute "suit" for the purposes of Article III,6 and to dismiss the appeal.

6. Even if the present Court were minded to conclude that proceedings to obtain security can constitute suit, the Respondent has a further reason why the appeal should fail. Where a cargo claimant seeks, in one set of proceedings, to rely on the commencement of a prior set of proceedings as satisfying Article III,6, such reliance will fail if the prior proceedings are no longer valid and effective at the time the Article III,6 defence falls to be determined in the subsequent proceedings. Hence, as the proceedings for security in the present case had been stayed when the time bar defence was ruled upon, those proceedings could not constitute suit for that further reason.

(B) FACTUAL BACKGROUND

7. The relevant background has been accurately summarised in paragraphs 12-24 of the Appellant's skeleton argument **[B/7/100-101]**.

8. As can be seen, for the purposes of the present appeal, the Arbitrator had to decide firstly whether the Singaporean Proceedings were capable of constituting suit at all (having found that they were initially commenced for the sole purpose of obtaining security), and thereafter what the effect was of those proceedings subsequently having been stayed.

9. The Arbitrator answered these questions as follows:

    a. It was "fairly obvious" that suit for the purposes of Article III,6 should be before a competent court having the appropriate jurisdiction to determine the claim on its merits (Award, at [79]) **[B/4/54]**.

    b. Proceedings which are brought solely for the purpose of obtaining security, and in which the substantive claim cannot be pursued without the claimant being in

breach of contract, do not amount to "suit" for the purposes of Article III,6 (Award, at [81]) **[B/4/55-56]**.

c. In any event, the proceedings which are said to constitute "suit" must remain valid and effective at the time when the carrier seeks to rely on Article III,6. Because the Singaporean Proceedings had been stayed at the time the arbitration proceedings were commenced (and remained stayed at all times thereafter), the Singaporean Proceedings could not constitute "suit" for the purposes of Article III,6 (Award, at [83]) **[B/4/56]**.

10. The Judge accepted that proceedings commenced for the purposes of obtaining security could not constitute suit for the purposes of Article III,6. His reasoning was as follows:

a. The starting point was the object and purpose of Article III,6, namely "to achieve finality and to enable accounts and books to be closed" (Judgment [15]) **[B/1/4]**.

b. The Singaporean Proceedings were "for security"; any determination on the merits of the Appellant's misdelivery claim would (absent further agreement) "require arbitration" (Judgment [16]) **[B/1/4-5]**.

c. Taken in isolation, the ordinary meaning of "suit" is capable of extending to validly brought proceedings for security, but "in the context and in the light of the object and purpose of the treaty provision" they do not qualify as "suit" (Judgment [17]) **[B/1/5]**.

d. The Judge rejected the Appellant's complaint that this involves "an unjustified gloss on the text". On the contrary, it is a construction which is "faithful to the text in its context and in the light of the object and purpose of the treaty provision", because "the passage of a year with no action on the merits does clear the books" and substantive proceedings commenced within the year give the parties "certainty that there is a claim and it is underway, towards finality and clearing the books" (Judgment [18]) **[B/1/5]**.

e. The Judge accepted that a carrier who knows the holder of the bill is seeking security knows it is not safe to close its books, but held that knowledge that

security has been sought is not enough because it does not clear the books (Judgment [19]) **[B/1/5]**.

f. On the Appellant's analysis, the carrier is required to leave its books open "for an indefinite period of time". The Judge described that as a consequence that is "uncommercial, when the context of the words of the treaty provision is commercial" (Judgment [20]) **[B/1/5]**.

11. In light of that reasoning, the Judge did not go further into the Arbitrator's alternative ground based on the need for the earlier proceedings to remain "valid and effective" (Judgment [21]) **[B/1/5]**.

12. The Respondent invites this Court to dismiss the appeal from the Judgment on both grounds[1].

13. This skeleton will first address the question of whether security proceedings can constitute suit by reference to: (a) the approach to the construction of the HVR; (b) the text of Article III,6 and the HVR more widely; (c) the purpose underlying Article III,6; (d) English authorities; (e) foreign authorities. Thereafter, the question of whether such proceedings needed to remain valid and effective will be considered.

(C) THE APPROACH TO THE CONSTRUCTION OF THE HVR

14. The HVR form part of an international convention. The proper approach to their construction is not in dispute and was summarised by Lord Hamblen in The Giant Ace [2025] 1 Lloyd's Rep 637 at [34], following The CMA CGM Libra [2021] 2 Lloyd's Rep 613. In short, the Court is to interpret the HVR:

a. In good faith, in accordance with the ordinary meaning of the words used, in their context and in the light of the object and purpose of the convention (Vienna Convention, Art 31).

b. With recourse to the travaux préparatoires and background as a supplementary aid (Art 32), and with an eye to the need for uniform interpretation, taking

[1] For the avoidance of doubt, a Respondent's Notice **[B/8/120-128]** was issued by the Respondent seeking to uphold the Judgment on the basis that the Singaporean Proceedings were no longer valid by the time the Arbitrator came to determine the time bar defence.

appropriate account of decisions in other jurisdictions and leading commentaries.

(D) THE TEXT OF ARTICLE III,6 AND THE HVR

(1) The text of Article III,6

15. The Appellant contends that the wording of Article III,6 supports its case because "suit simply means suing", i.e. instituting and/or pursuing a legal process before any court or tribunal, and that Article III,6 is "not prescriptive or restrictive about the nature of the legal process which qualifies" (Skeleton [45]) **[B/7/104]**.

16. This is a simplistic analysis which was rightly rejected by the Judge.

17. Obviously, "suit" cannot for the purposes of Article III,6 literally mean any and every legal process before any court or tribunal. For instance, a cargo claimant which happened to bring an entirely separate claim in respect of a different shipment could not, on any view, be said to have "brought suit" for the purposes of Article III,6. There must at least be a nexus between the suit and the goods carried under the relevant bill, and there must be a limitation on the kind of proceedings that constitute "suit" for these purposes.

18. Unsurprisingly, and consistent with the foregoing, there are various authorities which confirm that suit does not in the context of Article III,6 have as broad a meaning as is suggested by the Appellant.

19. Firstly, a "suit" under Article III,6 must be brought by the right claimant and against the right defendant: Cia Colombiana de Seguros v Pacific Steam Navigation Co [1965] 1 QB 101; The Leni [1992] 2 Lloyd's Rep 48; The Nordglimt [1988] QB 183.

20. Secondly, the suit must be brought in a competent court or tribunal meaning that, save in exceptional cases, proceedings brought in clear breach of an exclusive jurisdiction clause or an arbitration agreement are not treated as a "suit" for the purposes of Article III,6: The Havhelt [1993] 1 Lloyd's Rep 523; The Finnrose [1994] 1 Lloyd's Rep 559; Thyssen Inc v Calypso Shipping Corp SA (The Markos N) [2000] 2 Lloyd's Rep 243.

21. Whilst the above authorities do not directly establish that security proceedings do not constitute "suit" for the purposes of Article III,6, they demonstrate the falsity of the

Appellant's argument that because the term "suit" is capable of bearing a very broad meaning, it must bear such a meaning in the context of Article III,6.

22. More importantly though, and in a way which is directly contrary to the Appellant's case, there are authorities which establish that the relevant suit must be one to determine the merits of the claim against the carrier.

23. The first of these is The Kapetan Markos [1986] 1 Lloyd's Rep 211 in which Parker LJ stated at p232[2]:

"Discharged from all liability" must mean "discharged from all liability under the rules". "Unless suit is brought" must therefore mean "unless suit to establish liability under the rules is brought".

24. Proceedings which have been brought solely for the purpose of obtaining security do not constitute suit to establish liability under the HVR.

25. The second relevant case is The Leni [1992] 2 Lloyd's Rep 48 which HHJ Diamond QC stated at 53:

"Bearing these points in mind I turn to consider what has to be done under the rule to preserve the continuing validity of a claim and to prevent the carrier from being discharged from all liability in respect of it. It seems to me that all that is necessary is that a suit must have been brought to enforce the claim within the one year period. For the suit to qualify as one brought to enforce the claim it must, I think, be one to enforce a claim in respect of loss or damage arising under a "contract of carriage" as defined in art. I (b) of the Convention and as also referred to in art. II. Provided that the suit has been brought in time and has been brought to enforce a claim arising under the particular contract of carriage in question, then prima facie the carrier is not discharged from liability under the rule"

26. Proceedings to enforce a claim must mean proceedings in which the substantive claim is advanced against the carrier. Again, security proceedings do not satisfy this requirement.

27. The Appellant in its skeleton seeks to contend that The Leni is not on point because the Court was not being asked in that case to consider whether security proceedings constitute "suit" for these purposes. Whilst that is strictly true, it does not detract from the fact that in The Leni the Court gave authoritative guidance as to the kind of proceedings which are required to satisfy Article III,6. At worst for the Respondent, the views of HHJ Diamond

[2] This was followed by Hobhouse J in The Nordglimt at p476.

QC, a well-recognised expert on the HVR, as to the kind of proceedings that are required to satisfy Article III,6, must carry considerable weight.

28. Thirdly, in Thyssen Inc v Calypso Shipping Corporation SA [2000] 2 Lloyd's Rep 243, it was suggested that proceedings in the US in which the vessel had been arrested constituted suit for the purposes of Article III,6. This was rejected by David Steel J in robust terms at [14]:

"There can be no doubt that the first proposition is of breathtaking proportions. It would mean, for instance, that if the claimants in the present case had instituted proceedings in rem in any jurisdiction in the world which was a party to the 1952 Convention on Arrest of Ships, or otherwise recognised jurisdiction in rem for cargo claims, regardless of whether the vessel was in the jurisdiction at the time, let alone whether, following arrest the proceedings were later stayed in the face of an arbitration clause, those proceedings would remain a suit for the purposes of art. III, r. 6."

29. The Appellant has sought to marginalise this decision by suggesting that David Steel J only had in mind security proceedings which were commenced but never served. This is wrong, as can be seen from: (a) the facts of the case (the vessel was in fact arrested and so the US proceedings were served); and (b) the above passage which makes it clear that the Judge was also addressing the position where the arrest proceedings had been served.

30. The three authorities mentioned above are directly against the Appellant. In addition, there are other authorities which implicitly demonstrate that "suit" means substantive proceedings to determine the carrier's liability:

    a. In The Golden Endurance [2016] EWHC 2110 (Comm), the Court had to consider whether proceedings brought in Morocco constituted "suit" for the purposes of Article III,6, notwithstanding the fact that the Court in the Moroccan proceedings was going to be determining the cargo claimant's claim by reference to the Hamburg Rules rather than the HVR. As is recorded in the [3]-[4] of the judgment, before the substantive proceedings had been brought in Morocco, the cargo claimant had brought security proceedings in Morocco and had the vessel arrested. Thus, if the Appellant is right on the current issue, there was a very simple answer available in The Golden Endurance that counsel and the Court both overlooked (i.e. that the earlier arrested proceedings constituted "suit"). That is an unlikely proposition – it is much more likely that all concerned were of the view that the earlier security proceedings could not

possibly suffice for the purposes of Article III,6. The Judge also noted at [66] of his judgment that Article III,6 specifies *"a period in which claims against the carrier must be commenced"*. This can only be understood as a reference to a substantive claim.

b. In The Alhani [2018] EWHC 1495 (Comm) at [116], the Court identified certain narrow categories of cases in which a claimant who has commenced proceedings before a court of competent jurisdiction, but is then required to proceed in an alternative forum for reasons which are not the claimant's responsibility, is entitled to rely on the first set of proceedings as satisfying Article III,6. The Judge did not include in his categorisation cases where the first set of proceedings had been brought solely for the purposes of obtaining security. Given that the latter constitutes perhaps the most obvious example of a scenario where a cargo claimant could find itself bringing two sets of proceedings against a carrier, this indicates that the Court evidently did not think that security proceedings counted for the purposes of Article III,6.

31. Accordingly, notwithstanding the fact that "suit" is capable of bearing a wide meaning, it is well established not only that it does not bear a wide meaning in the context of Article III,6, but also that it only encompasses substantive proceedings on the merits against a carrier.

(2) Other provisions of the HVR

32. A number of contextual points also contradict the Appellant's construction of Article III,6.

33. First is the structure of Article III,6 itself. It is a discharge provision: the carrier "shall be discharged from all liability… unless suit is brought within one year…". On a natural reading, one would expect the relevant "suit" to be proceedings which put that liability in issue and seek a determination of it. It would be a strange use of language if Article III,6 could be satisfied by proceedings which can never result in any adjudication of the carrier's liability in respect of the goods.

34. The second contextual point concerns the Appellant's reliance on the contrast between "suit" in Article III,6 and "action" in Article III,6bis and Article IVbis (Skeleton [47]-[51]) **[B/7/105]**. The Appellant positively avers that "action", as used in the latter provisions, is

a reference to substantive proceedings on the merits, and that it can be inferred from the fact that Article III,6 uses a different term, "suit", that something less than a substantive claim on the merits can satisfy Article III,6.

35. The Appellant's point is a bad one. Not only is "suit" synonymous with action[3], but there is a very simple explanation for the fact that Article III,6 uses the word "suit" rather than "action". If the term "action" was transposed into Article III,6, it would read "unless action is brought". That is not a form of wording that anyone conversant with the English language would use (let alone lawyers responsible for the drafting of an international convention).

36. Any doubt on this point is removed by a consideration of the authentic French text of the HVR. In the original 1924 Hague Rules, the French version of Article III,6 provides that the carrier and the ship are discharged from all liability "*à moins qu'une action ne soit intentée dans l'année*…" (underlining supplied). The term "*action*" is also used in the French version of Article III,6bis and IVbis[4].

37. This demonstrates two points. Firstly, that the use in the English text of "suit" rather than "action" is not because the latter term was not intended to feature in Article III,6, but simply because it did not work linguistically within that article.

38. Secondly, and more damningly for the Appellant, as the French text uses the word "action" in each of Article III,6, Article III,6bis and Article IVbis, that demonstrates that the drafters had the same concept in mind throughout. Thus if, as the Appellant positively asserts, "action" in Article III,6bis and Article IVbis means an action on the merits, then "action" as used in the French text of Article III,6 must also have that same meaning. It then inevitably follows that "suit" as used in the English text of Article III,6 is also referring to an action on the merits.

39. As a final point under this heading, the Respondent would note that the Appellant's argument results in an anomaly in that an ordinary cargo claimant can bring any sort of suit against the carrier to satisfy the Article III,6 time bar, but that a party seeking an

[3] See the judgment of Lord Dawson in the Scottish case, RM Supplies v EMS Trans [2003] SLT 133, which considered the meaning of "suit" in Article III,6 HVR. The Judge said that "suit", was in his view, synonymous with "action" (at [9]).
[4] Article III,6bis: "*les actions récursoires*"; Article IVbis: " *à toute action contre le transporteur*".

indemnity against the carrier under Article III,6 bis needs to bring substantive proceedings to achieve this aim. This would be a curious result. Both Article III,6 and Article III,6bis contain a time bar discharging the carrier from liability and state what must be done to prevent that discharge. One would therefore expect the act required to stop time to be of the same nature in each case: the bringing of a competent suit. This is a further reason for construing Article III,6 as requiring the commencement of substantive proceedings.

(E) THE OBJECT OF ARTICLE III,6

40. The main object of Article III,6 is finality. The one year time bar substantively extinguishes the claim, in order to give the carrier certainty and to protect against stale claims:

    a. In The Aries [1977] 1 WLR 185, Lord Wilberforce stated that discharge after 12 months "*meets an obvious commercial need, namely, to allow shipowners, after that period, to clear their books*" (at 188F-G).

    b. The same understanding runs through the later authorities. Bingham LJ in The Captain Gregos [1990] 1 Lloyd's Rep 310 referred to Article III,6 as intended to enable the carrier "to clear his books" and prevent "stale claims" ([1990] 1 Lloyd's Rep 310, 315-316). Tomlinson J in Linea Naviera v Abnormal Load [2001] 1 Lloyd's Rep 763 at 769 even observed that the desire to achieve finality meant that the Court should, in case of doubt, lean towards holding that the time bar applies.

41. The parties are in agreement about the above constituting the purpose behind Article III,6. The Appellant nonetheless contends that the bringing of proceedings for security satisfies this purpose because it makes it clear to the carrier that it cannot close its books.

42. This is wrong both as a matter of principle and authority.

43. The aim of finality dictates that, at the end of the year, the carrier is in one of two positions:

    a. Either no competent substantive proceedings have been brought, in which case the claim is extinguished and the carrier can clear its books; or

    b. A competent suit has been brought by the correct claimant against the correct defendant in a competent forum to determine liability, in which case the books remain open because there is a live dispute which will be resolved in that suit.

44. By contrast, under the Appellant's construction "finality" is supposedly achieved by virtue of the carrier having been required to provide security to a cargo claimant pursuant to proceedings in a forum which cannot and will never determine liability. This is despite the fact that the carrier will not know after the expiry of the 12 month period whether proceedings to establish liability will ever be brought, or where.

45. Indeed, the position for the carrier is much worse than this on the Appellant's case. If security proceedings satisfy Article III,6, then the cargo claimant is subject to no further time bar thereafter for the bringing of substantive proceedings. As a matter of English law, the normal 6 year limitation period does not apply because of section 39 of the Limitation Act 1980.[5] That means that the cargo claimant is free to sit on its security and delay in bringing substantive proceedings for a period of years (indefinitely even). This was rightly described by the Court in Thyssen as an "absurd result" (see [15] thereof).

46. Moreover, if the Appellant is right that all that is needed is for the cargo claimant to take any step which puts the carrier on notice that it is "not safe to close its books" then a variety of different court proceedings would satisfy the time bar. An application for pre-action disclosure would constitute suit, as would one for a Vasso Order (i.e. for the inspection of a ship). Such steps are often exploratory in nature and may not result in any claim being brought against the carrier at all. However, according to the Appellant, the bringing of such an application would satisfy the time bar because it would indicate to a carrier that it is not safe to close its books. So the carrier is left in limbo.

47. Taking the Appellant's argument to its logical conclusion, one can fairly ask why the drafters required "suit" at all, rather than just a written notice of claim (such as a letter before action). The Appellant, in recognition of this point, has suggested that it might be difficult to define what letter should be sufficient to stop time running (Skeleton [58]) **[B/7/106]**. This point is somewhat undermined however by the fact that the first paragraph of Article III,6 states that delivery will be assumed to have been made after a certain point in time absent a written notice of damage or loss being given to the carrier. The drafters evidently felt that the concept of a written notice of loss or damage posed no particular

[5] This reads: "This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by or under any other enactment (whether passed before or after the passing of this Act)."

problem. It remains the position therefore that on the Appellant's analysis of the purpose underlying Article III,6, there is no real need for suit to have been brought at all.

48. In light of the above points, there are, unsurprisingly, various authorities which make it clear that the Appellant's approach is wrong:

    a. Notwithstanding the fact that the bringing of proceedings in the wrong forum clearly puts the carrier on notice that it is not safe to close its books, such proceedings clearly have been held not to constitute suit in the cases referred to in paragraph 20 above.

    b. In Compania Colombiana de Seguros v Pacific Steam Navigation Co [1963] 1 QB 101[6] Roskill J stated at p.123C that the object of the time bar was "*to protect shipowners from being subjected to claims for loss of or damage to cargo which have not been promptly made and promptly pursued*" (underlining supplied). The Appellant's construction means that a cargo claimant is under no incentive or obligation to promptly pursue substantive proceedings against the carrier.

    c. In The Leni, it was said that the purpose of the time bar is to speed up the settlement of claims and provide the carrier with protection against stale claims (see [49] of the judgment). This purpose is not achieved if anything less than substantive proceedings satisfies Article III,6.

    d. In The Finnrose, Rix J commented at p574 that the purpose of the rule was to ensure "the *prompt pursuit of litigation*" (referring to the cases immediately cited above). Again, this requires the commencement of substantive proceedings.

49. As a final throw of the dice, Batavia suggests that it is unfair to require the cargo claimant to start substantive proceedings within 12 months in circumstances where the holder of the bill of lading may not know where such proceedings are to be commenced (because the bill incorporates the terms of a charter that the cargo claimant is not a party to).

[6] NB – this decision was not followed by Hobhouse J in The Nordglimt on the question of whether "suit" for the purposes of Article III,6 can only be the suit in which the time bar defence is being determined.

50. That is an inherent feature of Article III,6 however and is something that applies to any cargo claimant, secured or unsecured. In any event, it causes no unfairness because in such a scenario the cargo claimant will be aware of the need to act promptly so as to obtain security (if desired) and ascertain the correct forum in which to commence proceedings well before the expiry of 12 months.

51. It would also not be unfair to require a cargo claimant to commence substantive proceedings without having first obtained security (CF Skeleton [71]) **[B/7/109]**. In any event, this is not the effect of Article III,6. Article III,6 just has the effect that a cargo claimant needs to act promptly if it only wants to bring a substantive claim if it can first obtain security. Equally, and in any event, it is not unfair to require a cargo claimant who has not and may not be able to obtain security to commence substantive proceedings, given that this is not an onerous or expensive step.

(F) THE AUTHORITIES: ENGLISH LAW

52. Most of the relevant English authorities have been addressed above. As such, the Respondent will just consider in this section the other cases cited by the Appellant.

53. The Appellant seeks to rely on The Aiolos [1983] 2 Lloyd's Rep 25 (CA), The Kapetan Markos [1986] 1 Lloyd's Rep 211 (CA), The Pionier [1995] 1 Lloyd's Rep 223 (Phillips J) and The Nordglimt [1987] 2 Lloyd's Rep 470 (Hobhouse J) (Skeleton [94]-[106]) **[B/7/113-115]**.

54. None of these authorities stand for the proposition that proceedings merely for arrest qualify as "suit" for the purposes of Article III,6. On the contrary, in every one of them, the proceedings said to satisfy the time bar were formal proceedings on the merits:

    a. In The Aiolos, the writ and statement of claim were a straightforward cargo claim in contract under the bills of lading. The problem was not the lack of suit but who was suing and on what title.

    b. In The Kapetan Markos, the claimants had already brought a formal claim under the Hague Rules for misdelivery / salvage within a year. The issue was whether, after the time bar had expired, they could reformulate their claim without losing the protection of Article III,6.

c. The Pionier likewise concerned a cargo claim fully pleaded on the merits within a year. The claimant then mistakenly amended its claim to rely on a Gencon charter to which the defendant was not party. The issue was whether this meant that the claim ceased to be a "competent suit" such that it was time barred under Article III,6.

d. In The Nordglimt, the "suit" relied upon was the Belgian in personam proceedings on the merits, brought within time in a competent court by competent claimants.

55. These authorities show that where substantive proceedings are brought in time, courts have been slow to let defects of title or pleading to deprive cargo interests of the protection of Article III,6. But in none of them did the court treat anything less than formal proceedings on the merits, still less action for security, as sufficient to commence suit.

56. The Nordglimt [1987] 2 Lloyd's Rep 470 is also relied on by the Appellant as establishing that an action in a foreign court can be "suit" and that Article III,6 is not to be applied with undue technicality (Skeleton [102]-[106]) **[B/7/114-115]**. The Respondent does not disagree. But The Nordglimt was concerned with a foreign action on the merits. Hobhouse J expressed the test in terms of the correct claimant bringing proceedings in a competent court "to enforce the claim" within the year. Accordingly, The Nordglimt is, if anything, against the Appellant.

57. Finally, the Appellant has sought to rely on the decision in The Sibi [1998] 2 Lloyd's Rep 229 (Skeleton [59]) **[B/7/106-107]**, [66] **[B/7/108]**). In this case, the cargo was shipped from Spain (a HVR contracting state) but pursuant to a bill of lading providing for Pakistan law and jurisdiction. In Pakistan, the Hague Rules and not the HVR would have been applied (meaning that the package limit would have been much lower). The cargo interests thus commenced proceedings in England. It was held by the English Court that this was a reasonable decision and that, in accordance with Article III,8 of the HVR, the English proceedings would only be stayed on terms that the carrier was to waive any time bar that might arise as a result of proceedings not being brought in time in Pakistan.

58. Again, this case is not on point. It does not address the meaning of "suit" in Article III,6 at all. The Court held that the cargo claimant had not been required to bring parallel proceedings in Pakistan, not because something less than substantive proceedings were

required, but because it had brought such proceedings in England. It was the substantive proceedings in England that satisfied the purpose of Article III,6.

(G) FOREIGN AUTHORITIES

59. Such little foreign authority as there is on this point supports the Respondent's rather than the Appellant's position.

60. RM v EMS [2003] SLT 133 is a Scottish case. The pursuers arrested the carrying vessel in Scotland within the one year period. The German ship owners were served after one year. The pursuers argued, in substance, that the arrest itself was enough to satisfy the requirement that "suit… [is] brought within one year" for the purposes of Article III,6.

61. Lord Dawson rejected that argument in terms. He held that, under Scots law, an action is "commenced, that is to say 'started' or even 'brought' when a summons is served on a defender." He went on to say: "'Suit', the word used in the Hague-Visby Rules is, in my view, synonymous with 'action'… Arrestment ad fundandam jurisdictionem is a preliminary process… Neither of these processes have any effect in getting legal proceedings by way of civil suit underway."

62. The Appellant points to the South African decision in Dave Zick Timbers Ltd v Progress Steamship Co [1974] ZAENGTR 114 as reaching the "opposite conclusion" to RM v EMS (Skeleton, [107]-[108]) **[B/7/115]**. Properly understood, it does no such thing. Here, the court held that attachment to found jurisdiction counted as the bringing of "suit" – but only because, under South African procedure, that attachment was a legally necessary first step in bringing an action on the merits in that same court. The judge also observed that "'to bring suit' is to be interpreted as meaning 'to pursue the appropriate remedy by the appropriate procedure'" (adopting The Merak), consistently with the Respondent's case.

(H) RESPONDENT'S NOTICE: PROCEEDINGS NOT "VALID AND EFFECTIVE"

63. If, contrary to the submissions above, the Court finds that proceedings for the purposes of obtaining security were theoretically capable of constituting "suit" for the purposes of Article III,6 of the HVR, the Respondent relies on the alternative ground identified in the Respondent's Notice **[B/8/120-128]** and correctly applied by the Arbitrator, namely, such proceedings will not have the effect of preserving time unless they remain valid and

effective at the time when the time bar issue is determined in any subsequent proceedings on the merits.

64. This follows from the decisions in The Finnrose, Thyssen and The Alhani.

65. In The Finnrose, Rix J had to consider whether proceedings which had been struck out for want of prosecution constituted "suit" for the purposes of Article III,6. The Court held that they did not and that Article III,6 involved a consideration of not just whether suit had been commenced within one year, but also whether that suit could survive a subsequent challenge on jurisdictional, procedural or even merits based grounds (p. 574 of the judgment). As such, a suit which has been or is liable to be dismissed for want of prosecution could not satisfy Article III,6.

66. In Thyssen, the claimant's second argument was that as the ship owner had admitted that the American courts had jurisdiction, the US proceedings constituted "suit" for the purposes of Article III,6.

67. The Court dismissed that argument. When doing so, it drew upon the judgment in The Finnrose and held that where a cargo claimant sought to rely on the commencement of a first set of proceedings as satisfying Article III,6, those proceedings must remain valid and effective at the time when the carrier seeks to rely on the time bar contained in that provision in the second set of proceedings ([21]-[22] of the judgment).

68. In The Alhani, the Court reviewed and applied the aforementioned authorities for the purposes of deciding at what point in time the validity of the first set of proceedings was to be assessed in any subsequent proceedings. The Court's conclusion on this issue is considered below and for present purposes the key point is that the Court in The Alhani, by applying The Finnrose and Thyssen, implicitly accepted the correctness of those decisions.

69. The Appellant first seeks to suggest that the present case can be distinguished from the aforementioned ones because they concern situations where either the first set of proceedings has been struck out, or where those proceedings were defective from the outset (Skeleton [118]-[122]) **[B/7/117-118]**. However, in none of the above cases did the Court hold that the first set of proceedings needed to remain valid and effective in the limited sense suggested by the Appellant. Rather, the Court's decision was that they needed

to remain valid and effective generally, in the sense that they needed to remain in existence when the time bar defence is determined (The Alhani [109]). The Singaporean Proceedings were clearly not valid and effective in this sense when the Arbitrator came to rule on the Article III,6 defence.[7]

70. The Appellant's fallback argument is that the decision in The Finnrose is wrong. This is on the basis that it causes uncertainty and complications (Skeleton [125-127]) **[B/7/118-119]**.

71. Slightly oddly, the Appellant relies on the decision in The Alhani as illustrating the existence of these complications. However, in The Alhani the Court addressed and resolved the issues identified by the Appellant. It did this by stating that the question of whether the claim is time barred is something which is to be determined once and for all in the second set of proceedings at the time the time bar defence falls to be ruled upon (The Alhani, at [112]). If at that point in time it has not been definitively ascertained by the court or tribunal in the first set of proceedings whether those proceedings can be pursued, the court or tribunal in the second set of proceedings will have to determine on the balance of probabilities whether those proceedings are likely to remain effective (The Alhani, at [113]).

72. The Appellant thus needs to contend that both The Finnrose (and Thyssen which applied The Finnrose) and The Alhani were wrongly decided. Not only is it inherently unlikely that each of Rix J, David Steel J and David Foxton QC got this point wrong, but the Appellant's skeleton does not even suggest that the decision in The Alhani was wrong (let alone make any attempt to grapple with the reasoning in that case).

73. Moreover, the reasons given by the Court in each of these cases for its conclusion are compelling. In particular, if the first set of proceedings does not need to remain valid and effective in order to constitute "suit" for the purposes of Article III,6 of the HVR, then this

[7] The Appellant also suggests that the Singaporean Proceedings were stayed because they had "served their purpose" of obtaining security (Skeleton [119]) **[B/7/117]**. That mischaracterises the position. Security was provided and NAVIOS KOYO was released on 25 September 2020 but Batavia did not discontinue or stay the proceedings. Instead, it resisted the Respondent's application for a stay and appealed (twice) against the stay orders. The Singaporean Court granted an unconditional stay because the claims fell within the London arbitration clause and because the Appellant's persistence in the Singaporean Proceedings after security had been provided was held to be in breach of that agreement (Award [71], [74]) **[B/4/50] [B/4/52]**.

would mean that a cargo claimant could bring proceedings against the carrier, conduct those proceedings in such a manner that its claim is struck out, and nonetheless be free to bring a further claim against the carrier, and to do so at any point in time in the future (Article III,6 having been satisfied by the first set of proceedings). That cannot be right.

74. Accordingly, even if the Singaporean Proceedings could theoretically have constituted "suit" for the purposes of Article III,6, because those proceedings had been stayed, and the stay was in effect both before the commencement of the arbitration proceedings and at the time the Arbitrator ruled on the Respondent's Article III,6 time bar defence, they did not in fact amount to suit so as to defeat that defence.

(I) CONCLUSION

75. The appeal should therefore be dismissed, and the Judge's conclusion that Batavia's claim (save in respect of the deck cargo) is time barred should be upheld.

CHRIS SMITH K.C.

MAYA CHILAEVA

9 December 2025

Quadrant Chambers