

The “real risk” threshold for sanctions exposure

The Court of Appeal in The Catalan Sea

9 June 2026

On 22 May 2026, the Court of Appeal handed down its judgment in *Tonzip Maritime (Singapore) Pte Ltd v. 2 Rivers Pte Ltd (The Catalan Sea)*, allowing the owners’ appeal and clarifying the evidential threshold that a charterparty sanctions clause imposes when it permits the refusal of orders that would “expose” the vessel or its insurers to sanctions. The court held that the clause requires no more than an objectively reasonable judgment of a real risk of sanctions liability, and that the trial judge had erred in demanding positive proof that the sanctioned beneficial owner of the cargo retained actual control.¹

Background

The dispute arose from a voyage charter dated 5 November 2021 for the carriage of a cargo of crude oil from the Russian Baltic ports of Ust-Luga and Primorsk to Aliğa in Turkey. The charter incorporated an amended sanctions clause under which the owners were not obliged to comply with employment orders that, in their reasonable judgment, were prohibited by sanctions or would “expose the owners, the vessel or its managers, crew, the vessel’s insurers or reinsurers to sanctions”, and under which the charterers warranted that no person with an interest in the cargo was a designated person. The named shipper was a Russian oil company, JSC Neftyanaya Kompaniya Neftisa (Neftisa), which the owners’ screening associated with Mr. Mikhail Gutseriev, an individual designated by the European Union on 21 June 2021 and by the UK on 9 August 2021 in connection with the situation in Belarus. Shortly before those designations, Mr. Gutseriev had transferred his majority interest in the relevant corporate chain to his brother, retaining a holding of approximately 7%.²

The owners’ screening through a commercial sanctions database recorded Neftisa as “associated to sanctioned individual” and identified Mr. Gutseriev as an indirect owner until 2021. On that basis, the owners refused to load and called for alternative orders.

The charterers responded with a letter on Neftisa’s headed paper stating that Mr. Gutseriev was neither a board member nor the controlling person of the company, together with legal opinions from two international firms to the same effect; the charterers then purported to cancel the charter, and the owners terminated for repudiation on the same day. At first instance, the Commercial Court accepted that the clause required only a real risk of sanctions liability rather than proof of an actual breach, but held that no reasonable owner could have concluded that such a risk existed on the material before it, because that material did not establish that Mr. Gutseriev controlled Neftisa as of November 2021. The owners’ claim accordingly failed, and the charterers’ counterclaim succeeded.³

The decision

The Court of Appeal upheld the construction adopted by the Commercial Court but reversed its application to the facts. On construction, the Court of Appeal confirmed that to “expose” a party to sanctions means to put that party at risk of sanctions, so that a real risk or serious possibility of liability suffices, and proof on the balance of probabilities is not required.

¹ *Tonzip Maritime (Singapore) Pte Ltd v. 2 Rivers Pte Ltd (The Catalan Sea)* [2026] EWCA Civ 641; on appeal from [\[2025\] EWHC 2036 \(Comm\)](#).

² [Council Implementing Regulation \(EU\) 2021/997](#) and [Council Implementing Decision \(CFSP\) 2021/1002](#) of 21 June 2021 (listing Mikhail Gutseriev); designation under the [Republic of Belarus \(Sanctions\) \(EU Exit\) Regulations 2019](#) (SI 2019/600), 9 August 2021; *The Catalan Sea*, *supra* n. 1 (charterparty terms and screening).

³ *The Catalan Sea*, *supra* n. 1 (first-instance judgment, [2025] EWHC 2036 (Comm), on the reasonableness of the refusal and the disposition of claim and counterclaim).

That reading placed the clause within the line of authority on charterparty risk clauses exemplified by *Pacific Basin IHX Ltd v. Bulkhandling Handymax AS (The Triton Lark)*, in which a comparable formulation directed to war risks was construed as requiring “a real likelihood, in the sense of a real danger” rather than a certainty, and distinguished it from the insurance clause in *Mamancochet Mining Ltd v. Aegis Managing Agency Ltd*, where the words “would expose” the insurer were held to require that payment be actually prohibited.⁴

The reversal turned not on construction but on the question the trial judge had asked of the facts. The clause imported an objective standard: the owners were required to reach, in good faith and after such enquiries as were reasonable, a judgment that was objectively reasonable, and mere speculation would not suffice. The Court of Appeal held that the judge had misdirected himself in two related respects. Firstly, he had drawn on the ownership-and-control case law decided under the sanctions regulations, to require the owners to have reached a positive conclusion that Mr. Gutseriev’s control of Neftisa continued. Secondly, and in consequence, he had asked whether the owners had reasonably determined that control continued, rather than the contractually relevant question of whether they had reasonably judged that a real risk of sanctions exposure existed. That distinction is central to the decision: the contractual threshold is a reasonable apprehension of risk, whereas proof of actual ownership or control in fact is the test for an actual breach of the sanctions prohibitions, and the two are not to be conflated.

Applying the correct question, the Court of Appeal identified a series of factors that, taken together, were capable of grounding an objectively reasonable judgment of a real risk of sanctions exposure. A very substantial interest had been transferred to a family member after the European designation; there was no information as to the consideration given for it; the screening database carried an express “associated to sanctioned individual” flag; and contemporaneous press reporting relied on by the charterers had itself observed that it was not yet clear whether the European Union would treat the transfer as an attempt to circumvent sanctions. The court regarded the Neftisa letter as exactly the kind of document that would have been produced had there been a cosmetic transfer of Mr. Gutseriev’s interest for the purpose of avoiding sanctions, and it noted that the legal opinions tendered by the charterers themselves proceeded on assumptions that flagged a real risk of liability. Those materials, the court held, did not dispel the risk; if anything, they tended to confirm that a reasonable owner could apprehend one.⁵



Ownership and control

The decision’s wider significance lies in the methodology it endorses for assessing whether a nondesignated entity is in truth owned or controlled by a designated person. Both the European Union and the UK treat divestments executed close in time to a designation as a recognised indicator of evasion. The National Crime Agency (NCA) and the Office of Financial Sanctions Implementation (OFSI), in a red alert on sanctions–evasion typologies published on 12 July 2022, identified changes to corporate ownership that reduce a designated person’s stake below the relevant threshold shortly before or after designation, particularly transfers to family members on non–arm’s–length terms, as a principal red flag, and instructed firms presented with such documentation to conduct enhanced due diligence and to carry out their own legal assessment rather than relying on the counterparty’s. The Council of the European Union’s updated Best Practices of 3 July 2024 codify analogous indicators, including transfers of shares close to the time of designation, the use of front persons, and the use of trusts and shell companies, and confirm that control extends to the *de facto* power to exercise dominant influence. The two regimes are not identical: the council aligned the ownership threshold at 50% or more of the proprietary rights, whereas the UK’s test under Regulation 7 of the Russia (Sanctions) (EU Exit) Regulations 2019 continues to turn on a holding of more than 50% or on the ability to ensure that the entity’s affairs are conducted in accordance with the designated person’s wishes.⁶

The case law on the control limb sharpens the point. In *Mints v. PJSC National Bank Trust*, the Court of Appeal held, in observations not strictly necessary to its decision, that the statutory control test contains no limit on the means or mechanism by which a designated person may “call the shots,” a breadth that prompted the Foreign, Commonwealth and Development Office (FCDO) to issue guidance on 17 November 2023 stating that it would not automatically presume that a designated public official controls a public body by virtue of office.

⁴ [Pacific Basin IHX Ltd v. Bulkhandling Handymax AS \(The Triton Lark\)](#) [2011] EWHC 2862 (Comm); [Mamancochet Mining Ltd v Aegis Managing Agency Ltd](#) [2018] EWHC 2643 (Comm).

⁵ [Vneshprombank LLC v. Bedzhamov](#) [2024] EWHC 1048 (Ch); *Tonzip Maritime*, *supra* n. 1.

⁶ [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) (SI 2019/855), Reg 7; National Crime Agency and OFSI, *Financial Sanctions Evasion Typologies: Russian Elites and Enablers* (Red Alert, 12 July 2022); Council of the European Union, [Update of the EU Best Practices for the Effective Implementation of Restrictive Measures](#), Doc 11623/24 (3 July 2024).

Against that, precedent holds that speculation as to a designated person's continued control of a nondesignated entity does not establish such control in fact. The Court of Appeal in *The Catalan Sea* drew the two lines together: the trial judge had erred precisely by importing the actual-control inquiry from that line of authority into the contractual question, when the clause asked only whether a reasonable owner could apprehend a real risk.⁷

The instability of the underlying European designations reinforces the temporal dimension of the inquiry. Mr. Gutseriev's initial 2021 listing and its 2022 retention were upheld by the General Court and, on appeal, by the Court of Justice in May 2025; the General Court subsequently annulled his February 2024 and February 2025 relistings, in October 2025 and May 2026 respectively, on the grounds that the council had relied on outdated material without making a fresh assessment of whether he could still be regarded as benefiting from or supporting the regime. The lesson for screening is that association evidence dates: a designation may be sound when made and yet rest, years later, on a record that no longer supports it, and a screening flag drawn from earlier facts may overstate a present connection.⁸

Outlook

For operators, the decision carries several practical implications. Firstly, a divestment by a designated person to a family member or close associate executed close to a designation, and unsupported by evidence of genuine consideration, should be treated as a red flag warranting enhanced due diligence and, where appropriate, engagement with OFSI, rather than as a matter resolved by the counterparty's assurances. Secondly, self-serving letters and legal opinions emanating from the designated party's side carry little weight; the Court of Appeal's treatment of the Neftisa letter confirms that a firm is expected to conduct its own assessment of ownership and control. Thirdly, screening output is a starting point rather than an answer: a hit, combined with red flags such as an unexplained family transfer, can ground a reasonable judgment of a real risk, but the party relying on it is expected to engage with the underlying material, including any hyperlinked sources, rather than to read the result mechanically.

The decision also bears on the drafting of sanctions clauses. A clause that turns on "exposure" or the owner's "reasonable judgment" sets a risk threshold, of the kind the Commercial Court applied contemporaneously in *Ceto Shipping Corp v. Savory Shipping Inc (The Victor 1)* when it upheld a refusal to perform on the basis of a serious possibility of designation; a clause that turns on conduct that "would breach" or "would be prohibited" sets the higher prohibition threshold construed in *Mamancochet*.

Parties adopting the objective-test architecture of the Baltic and International Maritime Council (BIMCO) sanctions clauses of 2020 should appreciate that, in removing the discretionary "reasonable judgment" formula of the earlier forms, this may afford an owner less protection where the enforcement posture hardens without a corresponding change in the law.

Three developments would change the analysis. The breadth of the control test in *Mints* may yet be narrowed, whether by the Supreme Court or by amendment of the regulations, in which case what counts as a real risk would require reassessment; the Court of Appeal in *The Catalan Sea* found it unnecessary to rule on the relevance of the European listing decisions, leaving that interaction open. The annulments of Mr. Gutseriev's later relistings signal that stale association evidence may be insufficient to prove a current connection, a point that bears both on listing challenges and on the weight a tribunal will give to dated screening data. A reference now before the Court of Justice on whether a holding of exactly 50% engages the ownership test under the Belarus regulation may, depending on its outcome, refine the threshold at which the ownership limb bites.

How we can help

Our International Trade & Foreign Investment Practice advises shipowners, charterers, commodity traders, financial institutions and their insurers on the full range of questions this decision raises: the construction and drafting of sanctions and risk-allocation clauses; ownership-and-control and beneficial-ownership analysis; the design of screening and due-diligence frameworks; and engagement with OFSI and other competent authorities. We work closely with our Commodities & Shipping Group on charterparty disputes and with our wider Litigation and Regulatory teams on contested designations and enforcement. If you would like to discuss the implications of this development for your business, please contact any member of the team listed below or your usual contact at the firm.

⁷ Foreign, Commonwealth and Development Office, guidance on the ownership and control of entities (17 November 2023); [Mints v. PJSC National Bank Trust](#) [2023] EWCA Civ 1132 [229]; [2023] EWHC 2866 (Comm), *supra* n. 5; *Vneshprombank*, *supra* n. 5.

⁸ Case [T-526/21 Gutseriev v Council](#) EU:T:2023:512 (General Court, 6 September 2023), appeal dismissed Case [C-681/23 P](#) EU:C:2025:327 (8 May 2025); Case [T-233/24 Gutseriev v Council](#) (General Court, 22 October 2025) [91]; Case [T-286/25 Gutseriev v Council](#) (General Court, 13 May 2026) [113].

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