

# PARENT COMPANY GUARANTEES:

ADEQUATE SECURITY? FOR WHAT?

Neil Hart KC

- “Traditional” guarantee
- Secondary liability
- ‘See to it’
- (Parent) company guarantors
- Statute of Frauds
- Variation sensitive

- Less “traditional”
- No Statute of Frauds
- Independent
- Primary liability (‘as primary obligor’)
- E.g. Demand “guarantee”
- Banks
- Pay first, argue later
- Compliant demand

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- ***Shanghai Shipyard Co Ltd v Reignwood Investment Co Ltd*** [2021] EWCA Civ 1147, [2021] 1 WLR 5408 at [22-28]
    - *Unaffected by dispute on underlying*
    - *Absolutely / unconditionally*
    - *'not merely as surety'*
    - *Immediate payment*
  
  - ***Rubicon Vantage International Pte Ltd v Krisenenergy Ltd*** [2019] EWHC 2012 (Comm), [2020] 1 Lloyd's Rep. 383
  
  
  - ***Marubeni Hong Kong Ltd v Mongolian Government*** [2005] 1 WLR 2497

- **CVLC Three Carrier Corp v Arab Maritime Petroleum Transport Company [2021]**  
EWHC 551 (Comm); 1 All ER (Comm) 839



### First reference: Owner v Guarantor

- Owners' claim: breach of contract of guarantee
- Guarantor's vessel arrested as security
- Guarantor sought expedited declaration from arbitrator: that owner "*would not seek additional security in respect of matters covered by*" guarantee
- Tribunal: Mr H sole. Granted declaration.

### Second reference: Owner v Charterer

- Damages for breach of charter (failure to pay hire)
- Tribunal: Mr H plus two

# THREE CARRIER CORP: JUDGE ON PAPER = JUDGE ON APPEAL

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- "the permission stage is intended to be a qualifying hurdle which is not revisited and that, while it may not be impossible to revisit the various component parts of the permission decision, there will have to be highly unusual circumstances justifying this course": [34].

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- Judge on papers not wrong to grant permission
  - Deprivation – common law remedies
  - Stringency – implied terms
  - Guarantee given as security for what?:
    - Arbitrator: exhaustive, as against guarantor
    - Cockerill J: not exhaustive as against guarantor
    - Guarantor: primary obligor, not surety. Guarantor immediately in breach. So security against guarantor, for its own breach

# Guarantee: exhaustive of security rights v. Charterer?

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- ***The Pacific Pearl*** [2022] EWCA Civ 798, [2023] 1 All ER (Comm) 213
    - ASG form 1: LOU
    - ASG form 2: English jurisdiction agreement & exchange reasonably satisfactory security
    - Teare J: not obliged to accept / give up rights

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- CA: (obiter): implied a term “*that a party offered security in a reasonably satisfactory form would accept that security within a reasonable time*”; other party cannot thereafter seek other security

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- Not in parent company guarantee scenario:
    - Consideration to enter into charter
    - Exclusory effect
    - Fail necessity test
    - Argued in writing but dropped orally in ***Three Carrier***
    - Cockerill J: good call