

A&N SEAWAYS V ALLIANZ BULK CARRIERS DMCC [2025] EWHC 2126 (COMM)

A CASE STUDY IN HOW EARLY PROCEDURAL DECISIONS
CAN SHAPE THE OUTCOME OF AN ARBITRATION CHALLENGE

WHAT HAPPENED

The parties entered into a trip time charterparty for the MV BHARADWAJ on 5 July 2023. Hire fell into arrears, the vessel was withdrawn on 22 September 2023, and charterers accrued liabilities of USD 304,912.75. Owners commenced London seated arbitration on 6 November 2023.

Charterers sent an "interim response" disputing the charterparty's validity on the basis that one director lacked authority; they subsequently sought and obtained a three week extension of time to file submissions but ultimately filed none. The arbitrator treated the interim response as the defence and, on 9 July 2024, issued an award ordering the charterers to pay USD 295,508.13.

On the 28th day after the award, charterers filed a claim under s.72(2)(a) of the Arbitration Act 1996 alleging lack of substantive jurisdiction; no evidence accompanied the filing. Months later, they sought to amend their challenge to plead fraud. The Court refused permission, struck out the challenge, and ordered indemnity costs.

WHAT THE COURT DECIDED

1. THE CHARTERERS HAD "TAKEN PART" IN THE ARBITRATION

The Court held that charterers' conduct amounted to participation in the arbitration; this included submitting an interim response and, critically, requesting an extension of time. The judge found such steps were inconsistent with a true abstention and therefore incompatible with a s.72 challenge, which is available only to a party who "takes no part in the proceedings."

2. THE CHALLENGE WAS PROCEDURALLY DEFECTIVE AT THE OUTSET

The Court emphasised that an arbitration claim form must contain a "complete, particularised statement of the case" and be filed with supporting evidence. The claim form filed on the final day: lacked particulars; lacked evidence; and was brought on the wrong form. The Court observed that "all this suggests that the claim was brought hurriedly and at the very last minute." Late amendments could not cure the defects.

3. THE PROPOSED FRAUD AMENDMENT WAS OUT OF TIME AND UNSUPPORTED

The Court refused permission to amend because:

- the fraud allegations were raised months after the claim was filed;
- no adequate explanation for the delay was provided;
- the alleged primary facts were "more consistent with honesty ...than dishonesty"; and
- the allegations had no real prospect of success.

4. AUTHORITY AND AFFIRMATION WERE ESTABLISHED BY OUTWARD CONDUCT

The Court found multiple indicators of apparent authority: use of the company stamp; use of a company email address; involvement of other staff; and port clearance obtained in the company's name. The Court also held that the charterparty had been affirmed through subsequent unambiguous conduct by individuals other than the director.

5. INDEMNITY COSTS WERE JUSTIFIED

Given the lateness of the challenge, the absence of evidence, and the attempt to introduce unsustainable fraud allegations, the Court awarded costs on the indemnity basis, describing the amendment application as "completely hopeless."

WHY IT MATTERED

This judgment demonstrates how procedural decisions taken early in an arbitration may determine the fate of any later challenge. The Court emphasised precision, timeliness, and consistency: a party cannot reserve rights in theory yet participate in practice; nor can it file incomplete material in the hope of supplementing it later. The Court also reaffirmed the strict requirements for pleading fraud and the ease with which outward conduct may create apparent authority or affirm a contract.

LESSONS FOR MEMBERS

1. DECIDE PARTICIPATION STRATEGY AT THE OUTSET

A s.72 challenge depends on taking no part in the arbitration; even limited procedural engagement such as extension requests may remove this protection. Alignment between internal decision makers and external correspondence is critical. Once a party participates in an arbitration, the jurisdictional escape route under s.72 of the Arbitration Act 1996 is effectively closed, leaving only the much narrower and harder-to-satisfy section 68 regime (a post-award challenge based on serious procedural irregularity). This case illustrates how procedural outcomes can turn on strategic decisions taken early in the arbitral process, rather than on the substantive merits of the underlying dispute.

2. PREPARE ANY CHALLENGE EARLY

Challenges must be fully particularised and supported by evidence at filing. Drafting should begin well before the 28 day deadline. Incomplete filings risk dismissal and cannot be cured later.

3. TREAT FRAUD ALLEGATIONS WITH UTMOST CARE

Fraud must be pleaded promptly, squarely, and with coherent primary facts. Without a clear evidential foundation, such allegations will not be permitted and may increase cost exposure.

4. MANAGE AUTHORITY RISKS INTERNALLY

Operational and commercial teams should understand that outward conduct, including stamping documents, email communications, and routine instructions, may establish apparent authority or affirm contractual terms.

5. ANTICIPATE COST CONSEQUENCES

Procedurally weak or poorly supported challenges may result in indemnity costs. The Court's willingness to award indemnity costs underscores the financial risk of weak or procedural challenges. Members should assume that the window for a viable challenge is extremely narrow and front loaded.

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