



THE
MOOT PROBLEM
VICTOR'S MOOT 2023

**THE MOOT SOCIETY
OF SRI LANKA LAW COLLEGE**

THE VICTOR'S MOOT

H. V. Perera QC Memorial International Moot Competition

2023

PARTIES

Claimant: Skywalker Enterprises, 18th Floor, Cloud Tower, Mandalor Avenue, Endor.

Respondent: Taris Petroleum Corporation, No. 414, Naboo Road, Taris City, Navarro

Summary of the Facts

Skywalker Enterprises is a supplier of crude oil and petroleum products to countries around the world and incorporated under the laws of the Republic of Endor. (Identical to the Laws of England)

Taris Petroleum Corporation is an oil company wholly owned by Government and incorporated under the laws of Navarro. (Identical to the Laws of England)

Considering the incidents set out herein, the Claimant proceeds to exercise its right to arbitrate under and in terms of dispute resolution clause of the contract between the Claimant (Skywalker Enterprises) and the Respondent (Taris).

As per the term contract concluded between Claimant and Respondent "it was agreed under Clause 4 that during the period commencing from 10th January 2022 to 10th November 2022, the Respondent (Taris - Buyer) will take delivery of, and Claimant (Skywalker Enterprises - Seller) will deliver ten (10) shipments of crude oil. For each shipment, the Respondent (Buyer) was required to notify the Claimant (Seller) thirty (30) days in advance as to when the shipment must arrive in Navarro during the delivery window.

The Parties agreed for payment to be made via Letters of Credit subsequent to the shipment being delivered as per Clause 5 of the Contract.

STATEMENT OF FACTS IN THE ORDER OF OCCURRENCE

Date	Event
10 th January 2022	Taris Petroleum Corporation (Buyer) entered into a contract with Skywalker Enterprises (Seller) to purchase oil, which includes a dispute resolution clause and is governed by English law. (See Annexure 1) (General clauses are similar to the UNCITRAL Rules of Arbitration)
20 th January 2022	The Respondent made the nomination for the 1 st shipment nominating 22 nd -23 rd February 2022 as the delivery window.
22 nd February 2022	The 1 st shipment was successfully delivered to the Respondent and payment made to the Claimant.
24 th February 2022	The Respondent requested a 2 nd shipment to be scheduled between 25 th -26 th March 2022 as the delivery window.
26 th March 2022	The 2 nd shipment was successfully delivered to Navarro but the Respondent by email informs the Claimant that the Respondent will not accept delivery as the volume of oil delivered is less than the amount stated in the Contract. (Annexure 2)
27 th March 2022	The Claimant by email to the Respondent states that the volume of oil delivered to the Respondent is 3 litres less than the amount agreed to in the Contract because of an oil shortage. The Claimant further requests the Respondent to waive off the 3 litres shortage in the delivery as it is only a small amount. (Annexure 3) There is no response from the Respondent to the email of the Claimant dated 27 th March 2022.
29 th March 2022	The Claimant produces the relevant documents to the bank and the payment is released to the Claimant under the Letter of Credit by the Respondent's bank as the documents are in order.
30 th March 2022	The Respondent made the nomination for the 3 rd shipment nominating 29 th -30 th April 2022 as the delivery window.
30 th April 2022	The 3 rd shipment is delivered to the Respondent but the Respondent refuses to accept delivery.
1 st May 2022	The Respondent issued a force majeure notice (See Annexure 1) and stated that they are unable to accept the delivery or make payment for the delivery until further notice as the Government of Navarro has prohibited the importation of goods from foreign countries as a measure to respond to the economic crisis faced by Navarro at the time.

2 nd May 2022	The Claimant via email requested the Respondent to accept the shipment and to complete the payment due to the Claimant. (Annexure 4)
4 th May 2022	<p>The Respondent via email subsequently notified the Claimant that the Respondent will not be nominating delivery windows for the Fourth (4th) to tenth (10th) shipments during the term of the Contract. (Annexure 5)</p> <p>The Respondent further stated that the Respondent is unable to provide a firm commitment as to placing of an order for the balance shipments.</p>
24 th May 2022	The Claimant via email informed the Respondent that such refusal to accept delivery amounts to a breach of contract if the Respondent does not accept the 3 rd shipment and nominate a delivery window for further shipments. (Annexure 6)
10 th June 2022	<p>The Respondent via email informed the Claimant that the Respondents are no longer able to adhere to the terms of the contract due to the import ban introduced by the Government of Navarro. (Annexure 7)</p> <p>The Respondent did not request for any further shipments from the Claimant.</p>
15 th November 2022	The Claimant through their Attorneys-at-Law sent a Letter of Demand for a sum of United States Dollars Three Million (USD 3,000,000.00) as damages, consequential damages and costs arising out of the non-performance of the Contract.
25 th November 2022	<p>The Respondent through their Attorneys-at-Law denied the claim of the Claimants.</p> <p>The Respondent made a counter claim of USD 50,000 from the Claimant for the payment made on 29th March 2022 even though the Respondent did not accept the delivery of goods due to the 3 litres shortage in the volume of oil delivered.</p>
15 th December 2022	Skywalker Enterprises filed a notice of arbitration at the Endor International Arbitration Centre in terms of the Arbitration Clause in the Agreement.

REQUESTED RELIFES BY THE PARTIES

Claimant

- I. A Declaration that the Respondent is in breach of Contract;
- II. A Declaration that the Claimant is entitled to the amount due to the Claimant after the delivery of the 2nd Shipment delivered on 25th March 2022;
- III. A Declaration that the Respondent is obliged to accept the 3rd shipment delivered on 30th April 2022;
- IV. A Declaration that the Respondent is obliged to make payment for the 3rd shipment delivered on 30th April 2022;
- V. A Declaration that the Respondent was obliged to make the relevant nominations in respect of the remaining Fourth (4th) to Tenth (10th) Consignments at any time prior to 10th November 2022, during the pendency of the Contract;
- VI. An Award directing the Respondent to pay damages in the sum of United States Dollars Three Million (USD 3,000,000.00) as damages, consequential damages and costs arising out of the non-performance of the Contract;
- VII. Interest;
- VIII. Costs of arbitration.

Respondent

- I. Dismiss the Statement of Claim;
- II. An Award directing the Claimant to pay a sum of United States Dollars Fifty Thousand (USD 50,000.00) to the Respondent;
- III. Interest;
- IV. Costs of arbitration.

ISSUES

- (1) Has the Respondent breached the Contract?
- (2) Letters of Credit
 - a) The doctrine of strict compliance: Should the documents presented by the seller-beneficiary to the bank in order to obtain the payment conform strictly on their face with the terms of the credit?
 - b) the autonomy of the letter of credit: Should documentary credit be separate from and independent of the terms of the underlying (sale) transaction?
- (3) Can the Claimant rely on the De minimis Principle of Law?
- (4) Does inaction/ Silence of the Respondent amount to acceptance of the Claimant's request to waive off the discrepancy in the volume of oil delivered in the 2nd shipment?
- (5) Frustration of Contracts / Force Majeure
 - a) Supervening illegality – Does the act of the Government Navarro in banning imports amount to a supervening illegality?
- (6) Is the completion of each delivery a condition precedent for successive shipments to be initiated?
- (7) Is the Claimant time barred from instituting action against the Respondent?
- (8) Jurisdiction of a Tribunal to hear and determine a dispute where any pre-condition as provided in the Dispute Resolution Clause is not fulfilled.

Annexure 1 – Relevant Clauses in the Contract

Clause 4: Delivery of the Shipments

- 4.1 During the period of the Agreement, the Seller shall sell and deliver and the Buyer shall purchase and pay for and take or cause to be taken 1000 litres of Crude Oil per shipment at Millennium Falcon Tanker Berth, Navarro for a period of ten (10) months commencing from 10th January 2022 to 10th November 2022.
- 4.2 For each shipment, the Buyer shall provide written notice to the Seller no later than thirty (30) days in advance of the scheduled delivery date, specifying the date and time by which the shipment must arrive at the delivery point in Navarro (the "Delivery Window"). The Seller shall use commercially reasonable efforts to deliver each shipment in accordance with the Delivery Window specified by the Buyer. The Buyer shall be responsible for any delays or other issues that may arise due to the Buyer's failure to provide timely and accurate notice of the Delivery Window. In the event that the Buyer fails to provide notice of the Delivery Window for a shipment, the Seller may deliver the shipment within a reasonable period of time, and the Buyer shall be deemed to have waived any claims or objections related to such delay.

Clause 5 – Payment

The Buyer shall make payment to the Seller for each shipment of crude oil in accordance with the terms of this Agreement. Payment shall be made via an irrevocable letter of credit issued by a reputable bank acceptable to the Seller. The letter of credit shall be in favor of the Seller and shall be payable at sight upon presentation of the Seller's invoices and shipping documents. The Buyer shall use its best efforts to ensure that the letter of credit is valid and enforceable and that the funds will be available for payment upon presentation of the Seller's documents. In the event that the Buyer fails to provide a valid and enforceable letter of credit, the Seller may, at its option, terminate this Agreement with respect to the undelivered shipments and claim damages for any losses suffered as a result.

Clause 12 - Force Majeure

- 12.1 In this Clause, "Force Majeure" means an exceptional event or circumstance
- I. which is beyond a Party's control.
 - II. which such Party could not reasonably have provided against before entering into the Contract.
 - III. which, having arisen, such Party could not reasonably have avoided or overcome, and
 - IV. which is not substantially attributable to the other Party.

12. 2 Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure. The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Clause 14 - Disputes

Any dispute, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the rules of the Endor International Arbitration Centre (EIAC) for arbitration and in accordance with the Arbitration Rules of the EIAC. The parties further agree that any Claim for arbitration must be made within thirty (30) days from the date of the dispute.

The Arbitration shall be conducted in terms of the UNCITRAL Rules of Arbitration.

Clause 18 - Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of The Republic of Endor and the seat of arbitration shall be Endor.

Clause 20 – Termination of Contract

In the event one of the Parties hereto commits a breach of this Contract and upon being notified by the other Party (Innocent Party) the Party at breach has not remedied the breach specified in such notice within a period of thirty (30) days or such greater number of days as may be specified in the said notice it will amount to termination of the contract by such Innocent Party.

Annexure 2

From: taris.petro@corp.nr

To: helpdesk@skywalker.com

Date: 26.03.2022 at 10.30 am

Dear Sir/Madam,

We regret to inform you that we will not be accepting the shipment of crude oil that was delivered on 25th March 2022 in accordance with our agreement. As you know, the contract called for 1000 litres of crude oil to be shipped, but upon inspection of the shipment, we found that only 997 litres of oil was actually delivered.

It is our understanding that the contract is binding and specifies the quantity of oil that we expect to receive. Since the delivered amount is less than what was agreed upon, we cannot accept the shipment.

We are disappointed that the shipment was not in compliance with the contract, and we would appreciate your prompt attention to this matter.

We look forward to hearing from you soon.

Sincerely,

Ahsoka Ren,

General Manager,

Taris Petroleum Corporation

Annexure 3

From: helpdesk@skywalker.com

To: taris.petro@corp.nr

Date: 27.03.2022 at 11.03 am

Dear Ms. Ren,

Thank you for your recent correspondence regarding the quantity of crude oil delivered in accordance with our agreement. We understand that the delivered amount was less than what was agreed upon in the contract, but upon further inspection, we have determined that the difference is only 3 litres.

While we appreciate your attention to detail, we believe that the difference of 3 litres is immaterial and would kindly request you to waive off the difference. We would still like to proceed with our contractual obligations.

We value our ongoing business relationship and believe that this issue can be resolved amicably. We look forward to continuing to work with you in the future.

Thank you for your understanding.

Sincerely,

Lando Tarkin,

General Manager,

Skywalker Enterprises

Annexure 4

From: helpdesk@skywalker.com

To: taris.petro@corp.nr

Date: 02.05.2022 at 2.05 pm

Dear Ms. Ren,

As you are no doubt aware, the 3rd shipment of crude oil has been delivered to Navarro as agreed upon on 30.04.2022 and it is due for payment. Whilst we are in receipt of your Force Majeure notice dated 1st May 2022 and are aware of the economic difficulties faced by your country, we are obliged to remind you that according to the contractual terms, once the shipment has been delivered, the letter of credit shall be payable at sight upon presentation of the Seller's invoices and shipping documents.

Therefore, we kindly request that you accept the shipment and complete the payment due to us under the terms of our agreement.

We appreciate your prompt attention to this matter and look forward to resolving any outstanding issues as quickly as possible.

If you have any questions or concerns, please do not hesitate to contact us. We value our ongoing business relationship and look forward to continuing to work with you in the future.

Thank you for your attention.

Sincerely,

Lando Tarkin,

General Manager,

Skywalker Enterprises

Annexure 5

From: taris.petro@corp.nr

To: helpdesk@skywalker.com

Date: 04.05.2022

Dear Mr. Tarkin,

We are writing to inform you that we are unable to nominate delivery windows for the Fourth (4th) to tenth (10th) shipments during the term of this contract. Additionally, we regret to inform you that we are also unable to provide a firm commitment as to the placing of an order for the balance of the shipments.

We understand that this may cause some inconvenience, and we apologize for any disruption to your operations. However, due to unforeseen circumstances, we are unable to proceed with the delivery schedule as originally planned.

We appreciate your understanding and cooperation as we navigate these challenges.

Sincerely,

Ahsoka Ren,

General Manager,

Taris Petroleum Corporation

Annexure 6

From: helpdesk@skywalker.com

To: taris.petro@corp.nr

Date: 24.05.2022 at 8.20 am

Dear Ms. Ren,

We are writing to follow up on your recent communication regarding the Fourth (4th) to tenth (10th) shipments during the term of our contract. We acknowledge receipt of your email that you are unable to nominate delivery windows for these shipments and are unable to provide a firm commitment for the balance of the shipments.

However, we would like to remind you that failure to accept delivery of the Third (3rd) shipment and nominate a delivery window for further shipments amounts to a breach of our contract. Under the terms of our agreement, you are obligated to accept and pay for the shipments as specified in the contract.

We remain committed to fulfilling our contractual obligations and meeting the delivery requirements as specified in the contract. We request that you take the necessary steps to fulfil your obligations under the contract.

Please note that failure to do so may result in legal action to recover any damages or losses incurred as a result of your breach of the contract. We appreciate your prompt attention to this matter and look forward to resolving any outstanding issues as quickly as possible.

Sincerely,

Lando Tarkin,

General Manager,

Skywalker Enterprises

Annexure 7

From: taris.petro@corp.nr

To: helpdesk@skywalker.com

Date: 10.06.2022 at 12. 01 pm

Dear Mr. Tarkin,

We regret to inform you that due to the recent importation ban introduced by the Government of Navarro, we are no longer able to adhere to the terms of our contract as originally planned. Please refer to the Force Majeure Notice sent to you on 1st May 2022.

As you may be aware, the government has introduced new regulations that restrict the import of crude oil to Navarro. These new regulations have had a significant impact on our ability to fulfil our contractual obligations, and we are no longer able to proceed with the delivery schedule as originally planned.

We understand that this may cause some inconvenience and disruption to your operations, and we apologize for any inconvenience caused. However, this situation is beyond our control, and we are unable to fulfil the terms of the contract due to circumstances beyond our control.

We remain committed to finding a mutually acceptable solution to this issue and would appreciate your cooperation in this regard. We request that you work with us to find an alternative solution that is agreeable to both parties.

If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Ahsoka Ren,

General Manager,

Taris Petroleum Corporation