So what does "in light ballast condition" mean exactly?

In *Regulus Ship Services Pte Ltd v (1) Lundin Services BV (2) Ikdam Production SA [2016] EWHC 2674 (Comm)*, the Court revisited the meaning of *"in light ballast condition"* after it was first considered ten years before in *Ease Faith Ltd v Leonis Marine Management "The Kent Reliant" [2006] 1 Lloyd's Rep 673*, and confirmed it referred to the minimum ballast required to enable a vessel to proceed safely and in a seaworthy condition.

Facts
The dispute concerned the tow of an FPSO from Tunisia (later Malta) to Malaysia, a voyage of over 12,500 nautical miles via the Cape of Good Hope. The claimant was the owner of the tug and it contracted for the tow with the defendants, the owner of the FPSO and its affiliate and disclosed agent, on BIMCO's TOWCON form. It was an express term of the TOWCON that the FPSO would be provided *"in light ballast condition"*.

Prior to the tow, the parties had engaged in correspondence regarding the amount of ballast that the FPSO was to carry, with the claimant requesting de-ballasting to reduce drag through the water and to achieve a significant stern trim in order to increase directional stability. In contrast, the respondents considered that the FPSO would tow more efficiently with sufficient ballast to submerge the blunt vertical plate that had replaced the bulbous bow. Though it was not reported, the respondents likely also considered that this would prolong the life of the FPSO by reducing fatigue on the hull.

The parties agreed that, since the FPSO would be manned, ballast could be adjusted during the voyage, and so the convoy departed Malta on 6 October 2012 with the ballast, displacement, trim and drafts still under discussion.

Almost immediately, and despite some de-ballasting, the convoy was unable to maintain an average speed of 4.5 knots which the claimant thought was possible (and which was the limit imposed by the marine warranty surveyors), using the agreed quota of two of the tug's engines.

The convoy proceeded with the claimant claiming a breach of the term "in light ballast condition" and pressing for their delay claim to be settled. The respondents acknowledged that some sums were due to the claimant.

Following a two week stand-off in Mauritius, the parties reached an interim agreement over payment, thus allowing the convoy to continue. Further negotiations were unsuccessful and the convoy deviated to Singapore in order for the claimant to assert a possessory lien as security for the unpaid delay claim.

After a series of further discussions, a refusal by the FPSO's Master to heave up anchor and commencement of an in personam claim by the respondents, the TOWCON was terminated with both parties alleging that the other had repudiated the contract. The respondents then arranged a separate towage contract with a third party and the FPSO eventually reached Malaysia in April 2013.

Decision
Phillips J rejected the suggestion that, in order to be in “in light ballast condition”, a tow must inter alia be "legally fit" for the towage (i.e. in a condition that meets with the requirements of a marine warranty surveyor, including whatever ballast condition that surveyor deems necessary,

and within the vessel's Class). He concluded that the effect of the decision of Andrew Smith J in Ease Faith Ltd v Leonis Marine Management "The Kent Reliant" [2006] 1 Lloyd's Rep 673, the only previous authority on the meaning of the term, was:
"... that light ballast condition is concerned with ensuring physical fitness, primarily stability, for the tow's voyage ..." and that this consisted of "...the minimum ballast that would enable her to proceed safely and in a seaworthy condition on her intended voyage".

Accordingly, the test was one of physical assessment, capable of producing, in theory, a single ascertainable figure. To adopt a subjective approach would have the effect of removing the protection that the provision was intended to confer for the claimant.

Unfortunately for the claimant, although it succeeded in establishing that the FPSO was never in the required light ballast condition, it failed to prove that the excess ballast caused any loss of progress, which would have entitled it to contractual delay payments under Clause 17 (a)(ii) of TOWCON.

Phillips J concluded that Clause 17 is triggered only by a deliberate decision by a tug to slow-steam, for example, because it considers that the tow cannot be towed at the originally anticipated speed. The Clause does not operate where, for other reasons, the tug does not deploy all of its resources to tow/attempt to tow at the contemplated speed, or where the tow can in fact be performed at that speed (if all resources are utilised or otherwise).

As for the repudiation, the judge found that the claimant had repudiated the TOWCON first by serving an invalid cancellation notice which included a backdated 48 hour notice period, thereby committing an anticipatory breach of the TOWCON, and entitling the respondents to damages for the cost of the alternative tow to Malaysia.

Comment
At the time of writing, it is not clear whether the case will be appealed, although it seems unlikely that the meaning of the phrase "in light ballast condition" is open to further interpretation. It is the minimum quantity of ballast required to enable a vessel to proceed safely and in a seaworthy condition on the intended voyage. As for the termination of the contract, it is a reminder to a party wishing to exercise such an option to do so according to the terms of the agreement, otherwise the termination may amount to an anticipatory breach, which may render that party liable in damages to their contractual counterparty.

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