

COMMODITIES | JUNE 2021

## UNJUST ENRICHMENT BY PREPAYMENT - A RECENT ENGLISH DECISION

*BP Oil International Ltd v Vega Petroleum Ltd and another*<sup>1</sup> involved successful restitutionary claims for millions of US dollars that BP Oil International Ltd (BPOI) had paid to the Defendants for crude oil that was never delivered. The Commercial Court's judgment contains helpful analysis of the law on restitution for total failure of consideration (now more commonly referred to as failure of basis).

Under a series of contracts, BPOI paid around US\$17m to the Defendants for Gulf of Suez Mix crude oil (GOSM) over a two-year period. The contracts provided for delivery to be FOB Ras Shukheir Terminal.

The Defendants were part of a joint venture that acted as the operator of the Ras El Ush oilfield. The Defendants essentially sold their share of production from the field to BPOI.

It was common ground at the trial that the Defendants had not delivered any GOSM to BPOI after July 2013. BPOI had however continued to pay the Defendants periodically until early 2015. BPOI claimed the Defendants had been unjustly enriched by the sums prepaid because there had been a total failure of consideration and that it was entitled to restitution.

The Defendants argued that both parties had understood the payments to be unconditional, and that, by making the payments, BPOI was acquiring the right to lift GOSM, rather than a right to have GOSM delivered. BPOI contended that the contracts unambiguously required FOB delivery.

The Court held that the Defendants' position was not supported by the language of the contracts, concluding that there was "*nothing which pulls against the natural reading of the words in any way*". The Court described the Defendants' analysis as "*convoluted and extremely uncommercial to the eye of a commodities lawyer*."

Having found that the contracts required the Defendants to deliver GOSM on an FOB basis, the Court held that the Defendants' failure to deliver the GOSM was a failure of the basis of the contracts. BPOI was therefore entitled to restitution of its prepayments on the grounds that the Defendants had been unjustly enriched.

BPOI's claim succeeded in full.

### Comment

This judgment is of interest for its consideration of the nature of prepayments under oil sale and purchase contracts and the application of the law of unjust enrichment in this context. HFW (Alistair Feeney, Clare Chyb and Catherina Yurchyshyn) acted for BPOI.

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<sup>1</sup> [2021] EWHC 1364 (Comm)

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