

"X"
17 October 2018
W. Bridgman

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Before the Honourable Acting-Judge Bridgman

Cape Town: Wednesday, 17 October 2018

CASE NO: 5910/2018

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

(Registration number: 1962/000738/06)

and

ERONGO FISHING (PTY) LTD

(Registration number: 2004/010150/07)



CASE NO: 10553/18

In the matter between:

MARIANNE KUTTEL

Applicant

And

ERONGO FISHING (PTY) LTD

First Respondent

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Second Respondents

THE EMPLOYEES OF ERONGO FISHING (PTY) LTD

Third Respondent

THE COMPANIES AND INTELLECTUAL PROPERTY

Fourth Respondent

COMMISSION

CASE NO: AC 30/2018

Name of ship: MV "TARASKA"

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

MV "TARASKA"

First Respondent

ERONGO FISHING (PTY) LTD

Second Respondent

Application for leave to sell the
Respondent vessel, its equipment,
stores, bunkers and lubricating oils in terms
of section 9 of the Admiralty Jurisdiction
Regulation Act, 105 of 1983

ORDER

HAVING HEARD counsel for the parties, and having read the documents filed
of record:

IT IS ORDERED THAT:



**IN RESPECT OF THE MATTER UNDER CASE NUMBER AC 30/2018 ("the
Sale Application"):**

By agreement between the parties:

IT IS ORDERED

[A] THE ORDER

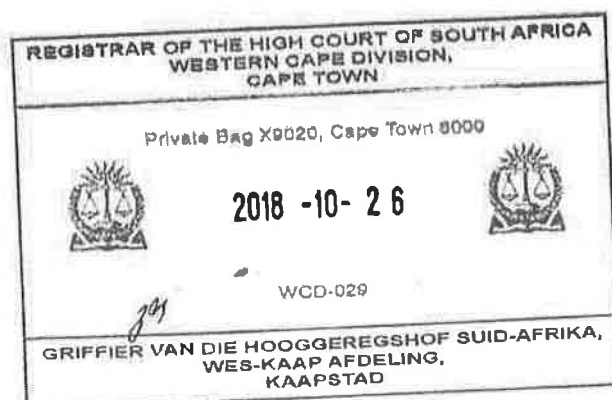
That this application be heard as a matter of urgency and that the normal forms and service be dispensed with insofar as may be necessary.

1. The Sale

1.1. That in terms of Section 9 of the Admiralty Jurisdiction Regulation Act No. 105 of 1983, as amended ("the Act"), the MV "TARASKA" including its equipment, furniture, stores, bunkers and lubricating oils as are on board at the time of the sale thereof, be sold, the said sale to be by sealed tender in accordance with the following terms and conditions:

1.2. Definitions

1.2.1. "the Admiralty Rules" refers to the rules regulating the conduct of the admiralty proceedings of the several provincial and local divisions of the High Court of South Africa;



- 1.2.2. "the appraised value" refers to the desktop valuation prepared and submitted by Paul Coxon & Associates dated 17th August 2018 in the sum of between R15 million and R17 million South African Rand;
- 1.2.3. "the Broker" refers to the person appointed by the court in terms of paragraph 2.3 below;
- 1.2.4. "business day" refers to a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.2.5. "the claimants" refers to those parties who lodge claims with the Referee in terms of paragraph 8 and include the Owner of the Ship;
- 1.2.6. "the Crew" refers to any Master, officers and crew members employed on the Ship at any time;
- 1.2.7. "the Fund" refers to the proceeds of any property sold in terms of this Order;
- 1.2.8. "the Referee" refers to the person appointed in terms of Rule 21(4)(l) of the Admiralty Rules and whose functions are more fully set out in paragraph 7;



1.2.9. "the Sale" refers to the sale of the Ship by sealed tender in terms of section 9(1) of the Act in terms of this Order and the Conditions of Sale, and includes the sale of all

the Ship's equipment, furniture, stores, bunkers and lubricating oils as are on board at the time of the sale thereof;

1.2.10. "the Sale Process" refers to the sealed tender process conducted to and under the exclusive control of the Broker;

1.2.11. "the Sheriff" refers to the Sheriff of Cape Town East or his duly authorised representative;

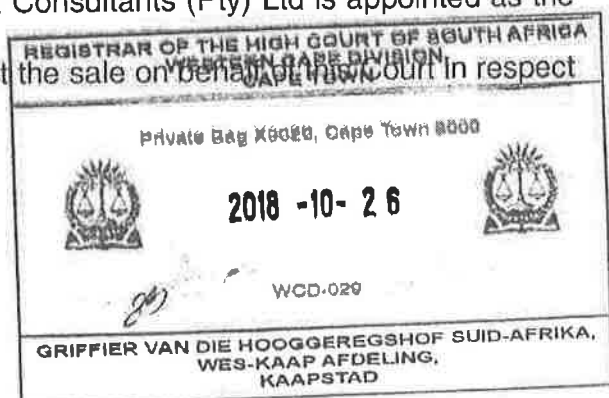
1.2.12. "the Ship" is the MV "TARASKA" including its equipment, furniture, stores, bunkers and lubricating oils as are on board at the time of the sale thereof.

2. The conduct of the Sale

2.1. The Ship shall be sold by the Sale Process, subject to the conditions set out in Annexure "A" hereto.

2.2. The Sale Process shall run for a period of 30 calendar days from 9 November 2018. The Broker may extend the period of the Sale Process, as it in its sole discretion deems necessary, up to a maximum aggregate extension of 10 calendar days.

2.3. Admiralty Shipbrokers & Consultants (Pty) Ltd is appointed as the Broker and shall conduct the sale on behalf of this Court in respect of the Sale.



2.4. The Broker shall conduct the Sale Process in the following manner:-

2.4.1. He shall prescribe, not less than 10 (ten) calendar days prior to the date upon which he opens the sale process, the date and time by which all sealed tenders shall be lodged with him and shall provide, by advertisement on his website, and by email to any interested buyers known to him, a physical and email address to which tenders may be submitted, and stipulate the currency in which tenders shall be made.

2.4.2. He is authorised but not obliged to provide a copy of the valuation of the vessel or provide information on request to interested persons that he deems necessary (in consultation with the legal practitioners of The Standard Bank of South Africa Limited ("Standard Bank")), to procure the sale at the best possible price.

2.4.3. He shall receive and consider all sealed tenders submitted to him by the date stipulated by him in terms of paragraph 2.4.1 above, having noted the time and date of receipt of each Tender.



2.4.4. Within 2 (two) days of the date stipulated by him in terms of paragraph 2.4.1 above he shall advise the person who has submitted the highest tender that he or she has been declared to be the Purchaser.

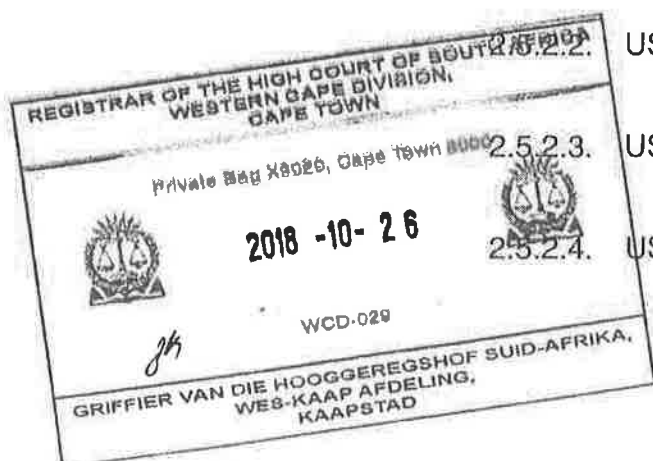
- 2.4.5. He shall thereafter proceed with the sale according to the Conditions of Sale, annexure "A" hereto.
- 2.4.6. He shall take all other reasonable steps that the Broker, in consultation with the attorneys of Standard Bank, deem necessary, to procure the Sale at the best possible price.
- 2.4.7. He shall open the Sale Process for the submission of tenders.
- 2.5. The Broker be entitled to and shall be paid –
- 2.5.1. All expenses incurred in terms of paragraph 2.4; and
- 2.5.2. A commission on the purchase price of the Ship (as defined in paragraph 2.8 of the Conditions of Sale referred to in paragraph 2.1, which commission shall be deemed to have been earned upon the conclusion of the Sale and payment of the purchase price, plus VAT thereon, if applicable, and shall be calculated as follows:

2.5.2.1. 0 to US\$ 500,000.00 - 3%

2.5.2.2. US\$ 500,001.00 to US\$ 1 million – 2.5%

2.5.2.3. US\$ 1,000,001.00 to US\$ 1.5 million – 2%

2.5.2.4. US\$ 1,500,001.00 to US\$ 2 million – 1.5%



2.5.2.5. US\$ 2,000,001 to US\$ 2.5 million – 1%

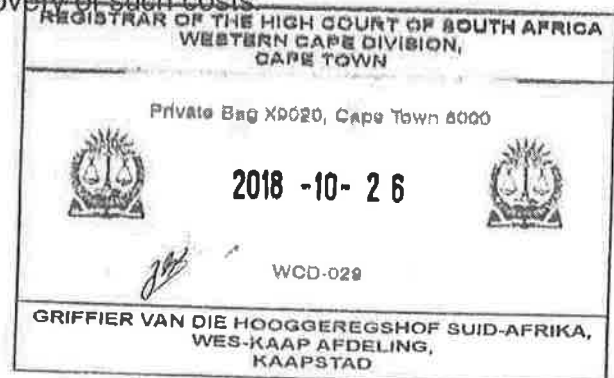
2.5.2.6. thereafter, 0.5% on any amount over US\$ 2.5 million.

2.6. In the event of the Sale not proceeding:

2.6.1. Then the Broker shall be paid all of the expenses incurred in terms of paragraph 2.4 above and shall be entitled to be remunerated at a rate of R 1,500.00 per hour, excluding VAT, in respect of any time reasonably spent by him in implementing this Order; and

2.6.2. Standard Bank shall be entitled to proceed against any party responsible for the postponement or cancellation of the Sale or release of the Ship (as further provided in this Order), or against the Ship, or her owners, or the proceeds of any insurance policy, whichever may be appropriate, for the recovery of such expenses; and

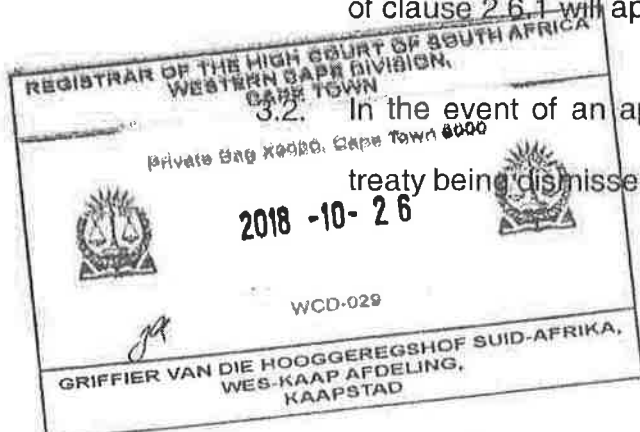
2.6.3. Standard Bank shall be entitled to the payment of its taxed or agreed attorney and own client costs on a full indemnity basis and shall be entitled to proceed against the Ship or her owners or the proceeds of any insurance policy for the recovery of such costs.



- 2.7. The Ship will be sold free of all liens, encumbrances, preferences and charges. The presence of crew aboard the ship shall not constitute an encumbrance.
- 2.8. All arrests and attachments of the Ship shall be discharged on the passing of ownership to the Purchaser.
- 2.9. A copy of this Order (but without the Conditions of Sale, being Annexure "A" hereto) together with a certificate from the Broker to the effect that the Ship has been sold and the purchase price paid or secured, shall be sufficient proof to the Harbour Master of the Port of Cape Town and the South African Revenue Service that the Ship is free of any arrests, attachments, encumbrances, preferences, charges and liens which arose prior to the sale.

3. The sale of the Ship by private treaty and related relief

- 3.1. Standard Bank and/or Erongo Fishing (Pty) Ltd are given leave to approach the Court as a matter of urgency, on the same application papers, supplemented as necessary, for an order suspending the Sale Process and/or varying or discharging this order, and for the Ship to be sold by way of private treaty, in which case the provisions of clause 2.6.1 will apply unless otherwise directed by the Court.



the suspension of the Sale Process referred to in the preceding paragraph shall be uplifted.

- 3.3. Unless otherwise directed by the Court, the proceeds of the sale by private treaty shall be paid into the Registrar's bank account, described in paragraph 6.1.1 below and, to the extent applicable, distributed in accordance with the provisions of paragraphs 6.1.2, 6.1.3 and 6.1.5 below, save that Standard Bank's attorneys shall, as part of the costs described in paragraph 11, be entitled to recover any amounts paid to the Broker in terms of paragraph 6.1.2 following the collapse of the Sale Process.

4. Removal of documents

- 4.1. The Master of the Ship, or the person in charge of the Ship or the Owner, is ordered and directed to deliver to the Sheriff, who is ordered and directed to take into custody, the following documents (both in paper and electronic form) wherever they may be within the jurisdiction of this Court:

- 4.1.1. The original Ship's registration certificate and all the Ship's classification, statutory certificates and class status reports;

All "rough" and "smooth" deck and engine room logbooks, including the bell book;



- 4.1.3. All bunker and lube oil receipts for the last 12 (twelve) months;
- 4.1.4. All receipts for stores and provisions for the Ship for the last 12 (twelve) months;
- 4.1.5. All repair invoices for the last 12 (twelve) months;
- 4.1.6. All records of port and canal dues for the last 12 (twelve) months;
- 4.1.7. All records of disbursements by the Master for the last 12 (twelve) months;
- 4.1.8. The Ship's Articles;
- 4.1.9. Any Master's general account;
- 4.1.10. With regard to the Crew:
 - 4.1.10.1. All crew contracts;
 - 4.1.10.2. Any collective agreement/s, wage accounts, overtime and bonus records in respect of crew members;
 - 4.1.10.3. All communications received by the Master relating to the payment of crew wages, overtime and bonuses; and



4.1.10.4. Records of all cash received on board for the
last 18 (eighteen) months;

4.1.11. All other records, invoices and/or receipts in respect of
any other goods sold and delivered or services rendered
to the Ship within the last 12 (twelve) months;

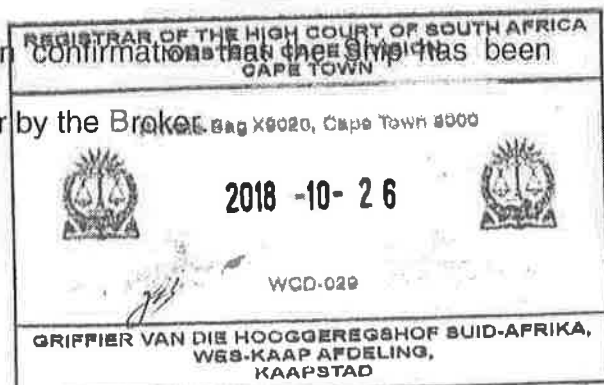
4.1.12. All charter parties or service agreements pertaining to
the use and deployment of the Vessel;

4.1.13. All correspondence between the Master or other officers,
and owners, operators, managers and all charterers;

4.1.14. All certificates or policies of insurance issued in respect
of the Vessel or its operation.

4.2. The Sheriff is ordered and directed to obtain a statement from the
person referred to in paragraph 4.1 stating the reasons for the non-
production of any documents referred to in sub-paragraphs 4.1.1
through to 4.1.14.

4.3. The Sheriff shall deliver to the Referee copies of the documents
and any statement which copies and statement shall be available
to the Broker and any claimant for inspection and copying during
normal business hours and to hold the originals for delivery to the
Purchaser at the Sale on confirmation that the Ship has been
delivered to the Purchaser by the Broker.



4.4. The Sheriff shall be entitled to appoint any relevant person to assist him / her in the identification and collation of the documents and compilation of the statement referred to in sub-paragraphs 4.1 and 4.2 and pay that person reasonable remuneration for his / her attendances, such remuneration to be recoverable by the Sheriff from the Fund in terms of paragraph 6.1.2.

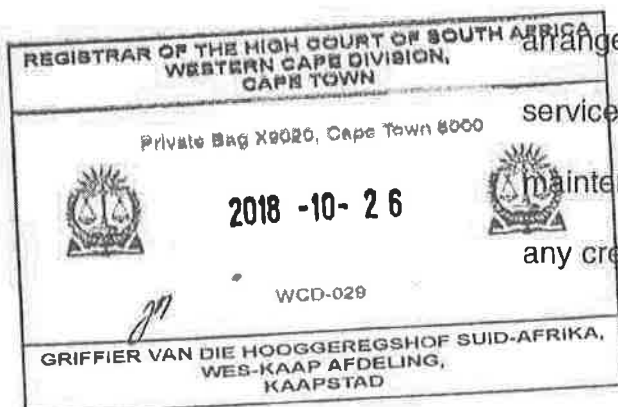
4.5. The Broker is authorised to attend on board the Ship, if necessary for the purpose of conducting an inspection to facilitate the performance of his duties in terms of this Order.

5. The Sheriff

5.1. That the Sheriff, in the exercise of his or her powers in terms of Admiralty Rule 21, be and is hereby appointed and directed to do the following from the date of this Order to the Sale, in consultation with Standard Bank's attorneys:

5.1.1. Employ such security personnel, including any member of the Crew, as may be necessary for the safeguarding of the Ship;

5.1.2. Provide fuel and oil to the Ship when necessary and to arrange for the provision of any necessary supplies, services or repairs requisite for the preservation and maintenance of the Ship and to see to the wellbeing of any crew on board the Ship or her crew;



5.1.3. Make arrangements for the Ship to put into port or for the shifting or berthing of the Ship if so required in the exercise of the Sheriff's custody and preservation of the Ship or by any authority or at the request of the Broker;

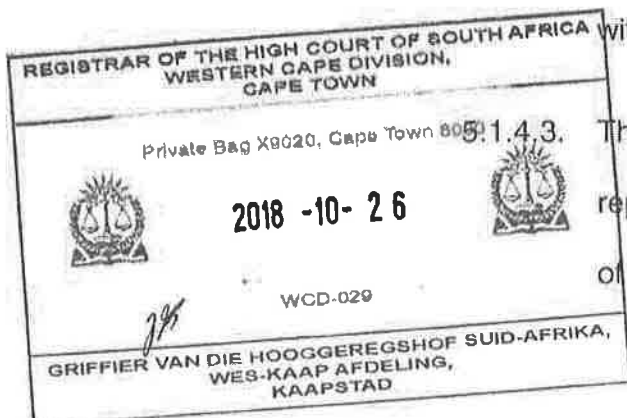
5.1.4. Repatriate any and all crew members currently on board the Ship that are not required for the preservation or operation of the Ship pending its sale by judicial auction subject to the condition that:

5.1.4.1. No crew member shall be repatriated against his wishes; and

5.1.4.2. Each crew member to be repatriated shall confirm to the Sheriff in writing that he has no objection to being repatriated and he has been advised and understands the procedure for lodgement and recovery of any claim that he might have as detailed in paragraph 10 below and provided further that such crew members as may agree to be repatriated shall have had sufficient opportunity beforehand to consult

with their attorney;

5.1.4.3. The decision of a crew member not to be repatriated in spite of the reasonable exercise of the Sheriff's powers to request such crew



member to leave the Ship shall not, subject to the terms of his contract of employment and any right to claim severance (or retrenchment pay or damages in respect thereof) thereunder, entitle that crew member to demand further remuneration by virtue of his or her continued presence on board the Ship;

5.1.5. Employ and pay any person, be they a member of the current crew, a replacement crew or a suitable third party, to take such steps as are necessary to preserve the Ship pending the Sale;

5.1.6. Appoint a Ship's agent to assist in attending to the matters referred to in paragraphs 5.1.1 to 5.1.5;

5.1.7. Appoint any other suitably qualified person, in consultation with Standard Bank's attorneys, to assist with the exercise of the Sheriff's powers and obligations herein so as to facilitate the Sale;

5.1.8. Establish full details of any hull and machinery and liability insurance that is in place in respect of the Ship

and the identity of the insured party under such insurance, and, if necessary, to insure the Ship's hull and machinery and liabilities, including but not limited to port risks, in his or her own name on suitable terms against



the loss of or damage to the Ship for the period up to and including the date of delivery of the Ship to the Purchaser or declared purchaser or second highest bidder;

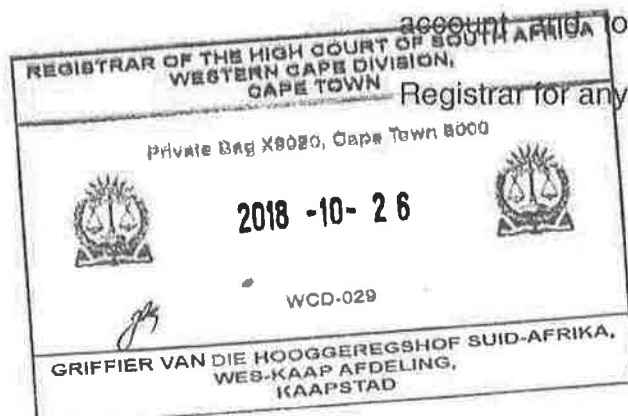
5.1.9. Take only such other steps as the Court may order from time to time.

6. The Fund

6.1. A Fund will be established from the proceeds of the Sale which shall be dealt with as follows:

6.1.1. The Fund shall be held by and subject to the control of the Registrar in such manner that such proceeds shall be available for distribution in due course and may, subject to any relevant exchange control regulations, be held in such currency and in such bank or deposit-taking institution, whether in the Republic of South Africa or in the United Kingdom or Europe or the United States of America, as the Registrar of this Court, in consultation with Standard Bank's attorney, may direct, the Brokers and/or Standard Bank's attorney being hereby authorised, to the extent necessary, to open the said

account and to make application on behalf of the Registrar for any necessary Exchange Control approval;

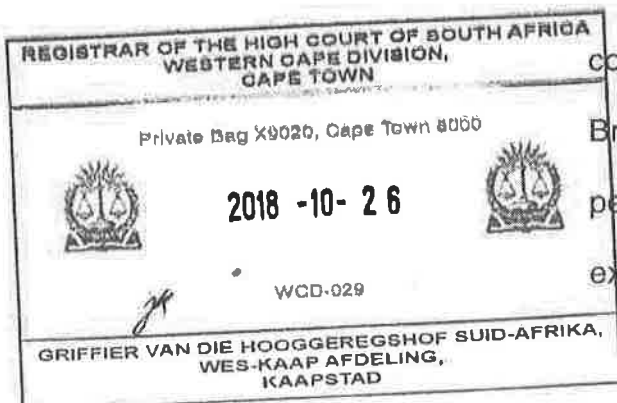


6.1.2. The Broker, the Sheriff and/or any other party authorised by the Sheriff to incur such expenses on behalf of the Sheriff, shall within 10 days of the payment of the full purchase price or 10 days after the collapse of the Sale Process, as the case may be, compile a properly documented report of their respective attendances and services provided in implementing this Order, which shall include a schedule of the relevant expenses incurred and/or fees claimed, and be accompanied by relevant vouchers and other supporting documents, which shall be submitted to Standard Bank's attorneys who shall:

6.1.2.1. Advise all known creditors of the receipt of the schedule; and

6.1.2.2. Make the schedule available for inspection for 5 (five) business days; and thereafter

6.1.2.3. Absent any written objection from any creditor received during the five day period referred to in paragraph 6.1.2.2 above, give written authority to the Registrar to pay the commission and/or fees and expenses of the Broker, the Sheriff, alternatively such other person authorised by the Sheriff to incur expenses on the Sheriff's behalf;

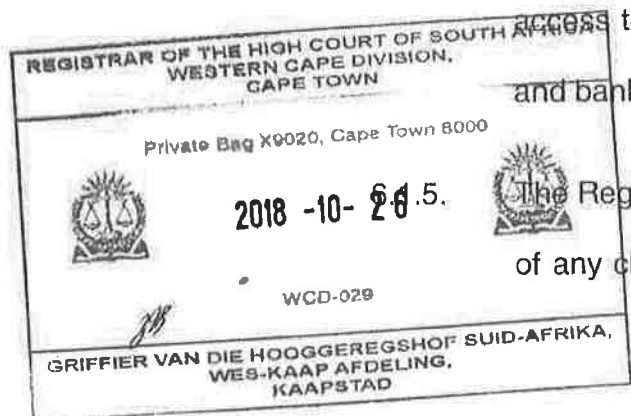


6.1.2.4. In the event of an objection as contemplated in 6.1.2.3 above, Standard Bank's attorneys shall advise the Referee of such objection(s) and the Referee shall then determine a date for the delivery of any reply to any such objection, and shall, within 2 (two) weeks of delivery of such reply or submission to the Referee of such information and/or representations as he may request in terms of paragraph 7.6.1 hereof, as the case may be, file an interim report containing his recommendations with regards to the validity, ranking and payment of the said fees and expenses.

6.1.3. Thereafter, by paying out of the Fund all other claims which have been submitted to the Referee in accordance with the procedures set out in paragraph 8 below, and which the Court has so ordered may be paid out of the said Fund.

6.1.4. A claimant may, on written notice to the Registrar, obtain to, and copies of, the bank account information and bank statements relating to the Fund.

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The Registrar shall authorise the bank to make payment of any claim in terms of an Order of this Court within 2



(two) business days of receipt by the Registrar of a written request to authorise payment accompanied by the relevant order authorising such payment.

7. The appointment of the Referee and the lodging of claims

7.1. That Mr Michael Wragge SC of the Cape Bar be and is hereby appointed as Referee in respect of the Fund to receive, examine and report to this Court on the validity and ranking of claims in respect of the Fund.

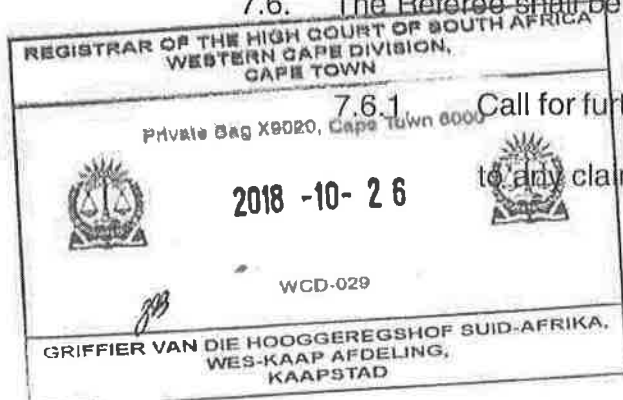
7.2. The Referee shall be remunerated at the rate of R3,000.00 (excluding VAT) per hour of work reasonably spent on fulfilling his obligations plus reasonable disbursements.

7.3. The Referee shall submit an account in respect of the Fund to the claimants for approval.

7.4. On obtaining such approval, the Referee shall advise the Registrar accordingly who shall then authorise payment out of the Fund.

7.5. Failing such approval, the Referee's accounts shall be submitted to the Registrar of this Court for taxation.

7.6. The Referee shall be entitled to:



7.6.1. Call for further information or representations with regard to any claims, objections, replies or rejoinders to claims;

7.6.2. Require any information or representations to be made within such time as he may decide;

7.6.3. Engage and remunerate any person, on reasonable notice to the claimants, to perform any function or to render such assistance to the Referee as he or she may reasonably require;

7.6.4. Extend the time within which any claim, objection, representation, reply or subsequent submission called for by the Referee shall be delivered by a further period of 5 (five) business days and only on good cause shown, provided that this shall not entitle the Referee to file his Report with this Court at a later date than that provided for elsewhere in this Order, save with the leave of the Court.

8. Claims

8.1. Save as otherwise provided in this Order, all claims shall be delivered to the Referee within 10 (ten) business days of the date of the Sale, or date that the Sale is confirmed by this Honourable Court, as applicable.



8.2. The Referee shall, as soon as possible, but not more than 5 business days after the closing date for the delivery of claims, notify all parties who have lodged claims of:

8.2.1. The identity of each claimant and the nature and value of each claim; and

8.2.2. The address for service of each claimant; and

8.2.3. Whether any claim has already been paid.

8.3. Any person wishing to object to or make representations with regard to any claim shall, within 10 (ten) business days of the date of notification by the Referee referred to in paragraph 8.2 above:

8.3.1. Deliver such objections or representations to the Referee;

8.3.2. Deliver such objections or representations on the claimant or its legal representative.

8.4. The Referee shall, as soon as possible, but not more than 5 business days after the receipt by him of any objections or representations notify all persons who have delivered claims of the objections or representations and that those are available for inspection.

8.5. Any claimant wishing to reply to the objections or representations shall within 10 (ten) business days of the date of the notification by



8.5.2. Deliver a copy of the reply on the person or their attorney of record.

8.6. The Referee may call for any party to deliver a rejoinder to any reply, provided that the right of any party to file a rejoinder shall, unless the Referee indicates to the contrary, be confined to new matters raised in reply.

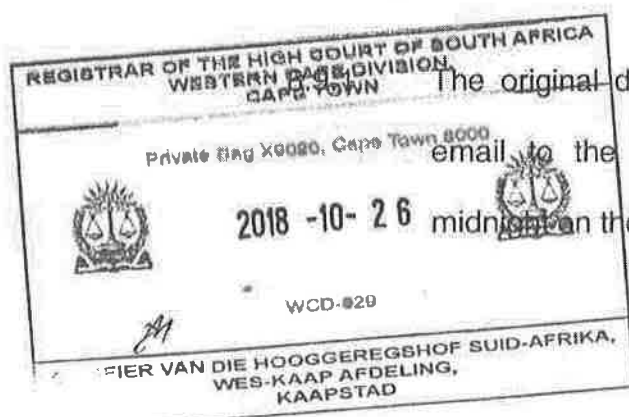
8.7. All claims, objections, representations, replies and rejoinders thereto, shall comply with Rule 21(8) of the Admiralty Rules.

8.8. All documents delivered to the Referee shall be delivered in the following manner:

8.8.1. The original document shall be scanned and sent by email to michaelw@netactive.co.za by midnight on the applicable day;

8.8.2. The original document shall be served on the Referee at 6th floor, Huguenot Chambers, Queen Victoria Street, Cape Town, within 2 (two) weeks of the applicable day.

8.9. All documents delivered to a claimant shall be delivered in the following manner:



The original document shall be scanned and sent by email to the claimant or its appointed attorney by midnight on the applicable day;

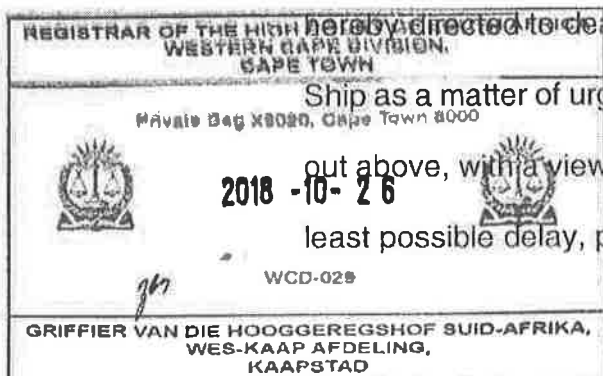
8.9.2. The original document shall be served on the claimant at its nominated address for service, within 2 (two) weeks of the applicable day.

9. The Referee's report

- 9.1. The Referee shall file a report with regard to the Fund with this Court within 20 (twenty) business days after expiry of the time period provided for in terms of paragraph 8.5 or alternatively 8.6, if applicable, and shall notify all persons who have lodged claims, objections or representations that he has reported to the Court.
- 9.2. Any person shall be entitled, at their own expense, to obtain a copy of any claim, objection, representation, reply or rejoinder and of the Referee's reports.
- 9.3. Any person shall be entitled to make application, on notice to all persons who have filed claims with the Referee, for an appropriate order with regard to the recognition of any claims and payment of claims from the Fund.

10. Crew claims

- 10.1. Notwithstanding any other provision of this Order, the Referee is hereby directed to deal with the claims of any crew member of the Ship as a matter of urgency and without regard to the time limits set out above, with a view to finalising and paying such claims with the least possible delay, provided that such claims are received by the

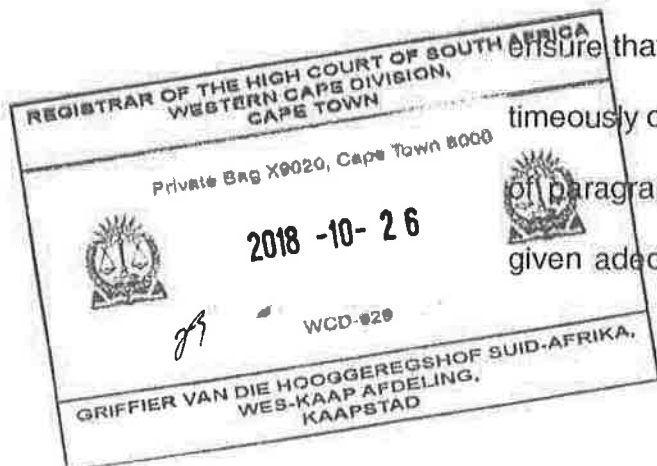


Referee no later than 3 (three) business days from the date of the sale of the Ship, alternatively the date of confirmation by the Court, as the case may be;

10.2. In order to give effect to paragraph 10.1 above, the Referee is hereby authorised and directed to:

10.2.1. Follow such procedure and set out time limits as he deems appropriate to enable him to consider the claims referred to in paragraph 10.1 above, to advise all known creditors of the Fund of the identity of each claimant and the nature and value of each claim lodged with him to afford such claimants an opportunity to make representations or objections with regard to any such claim filed with him, to determine the time periods for the filing of such representations and any replies thereto, with a view to finalising and paying such claims, or verifying and approving prior payments with the least possible delay;

10.2.2. Take all such steps as may be reasonably necessary to ensure that all known creditors of the Fund are advised timeously of the procedure he proposes to adopt in terms of paragraph 10.1 above and that such claimants are given adequate opportunity to make representations or



objections thereon and on the claims in question, subject thereto that the least possible delay be incurred;

10.2.3. File an interim report containing his recommendations with regard to the validity, ranking and payment of the claims referred to in paragraph 10.1 above.

11. Costs

That the costs of Standard Bank in bringing the Sale Application be allowed on an attorney and own client scale and be paid from the Fund as a claim in terms of Section 11(4)(a) of the Act.

[B] SERVICE

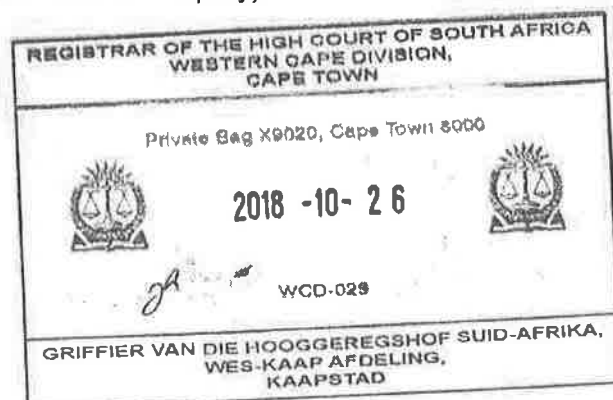
12. Service of this Order will be effected by Standard Bank's attorneys by publishing an abbreviated version thereof:-

12.1. once in an English language newspaper circulating in Cape Town;
and

12.2. once in a national publication;

within 5 (five) business days after the granting of this Order; and

12.3. once in an international shipping publication (being one of Lloyd's List, TradeWinds and/or Fairplay).



[C] THE FAILURE TO SELL THE SHIP

13. In the event of no bids having been received for the Ship by the end of the Sale Process, as described in paragraph 2 above, Standard Bank is granted leave, *inter alia*, to approach the Court, on these papers, supplemented as may be necessary, for further relief in relation to the Ship.

IN RESPECT OF THE MATTER UNDER CASE NUMBER 10553/18 ("the Business Rescue Application"):

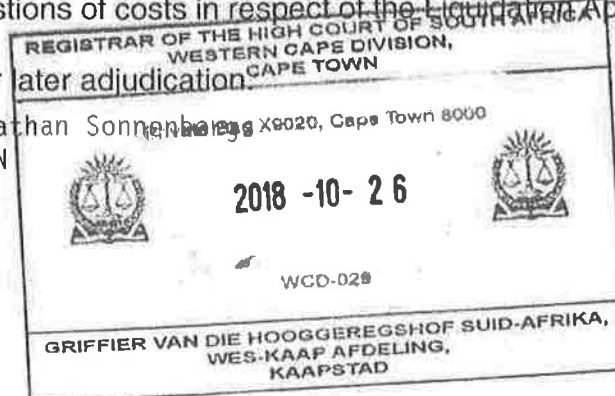
1. The Business Rescue Application is withdrawn.
2. Erongo Fishing (Pty) Ltd ("Erongo") is to pay Standard Bank's costs in the Business Rescue Application as agreed between Standard Bank and Erongo, or as taxed on an attorney-and- client scale.

IN RESPECT OF THE MATTER UNDER CASE NUMBER 5910/2018 ("the Liquidation Application"):

1. The Liquidation Application is postponed to Tuesday, 13 March 2019 for hearing on the semi-urgent roll.
2. All questions of costs in respect of the Liquidation Application are to stand over for later adjudication.

123 Edward Nathan Sonnenberg, 123 X5020, Cape Town 8000
CAPE TOWN

/avz



BY ORDER OF THE COURT

[Signature]
COURT REGISTRAR

ANNEXURE "A"

CONDITIONS OF SALE BY SEALED TENDER

MV "TARASKA"

ORDER OF COURT

1. The sale of the motor vessel "TARASKA" takes place in terms of and subject to an Order of the High Court of South Africa, Western Cape Division, Cape Town (in the exercise of its Admiralty Jurisdiction), case number AC 30/2018 (hereinafter referred to as "the Order of Court").

DEFINITIONS

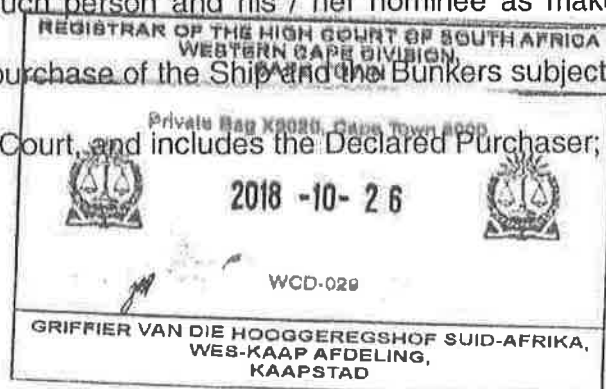
2. The following words shall have the meanings herein ascribed to them:

2.1. "Appraised value" of the vessel shall be such value as is described in paragraph 1.2.2 of the Order of Court;

2.2. "Broker" shall mean the person appointed as such in paragraph 2.3 of the Order of Court;



- 2.3. "Bunkers" shall mean all Bunkers including lube oils on board the ship as at the date of the sale;
- 2.4. "conforming tender" refers to a tender which complied with all of the requirements of the Order of Court, these Conditions of Sale and the Broker;
- 2.5. "day" shall mean a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 2.6. "Declared Purchaser" shall mean the person or his / her nominee declared to be the Purchaser in terms of the provisions of clause 22 of these Conditions of Sale;
- 2.7. "Fund" shall mean the Fund as defined in paragraph 1.2.7 of the Order of Court;
- 2.8. "the highest tenderer" refers to the person who submitted the highest conforming tender during the Sale Period;
- 2.9. "the next highest tenderer" refers to the person who submitted the second highest conforming tender during the Sale Period;
- 2.10. "Purchaser" shall mean such person and his / her nominee as makes the successful tender for the purchase of the Ship and the Bunkers subject to the provisions of the Order of Court, and includes the Declared Purchaser;



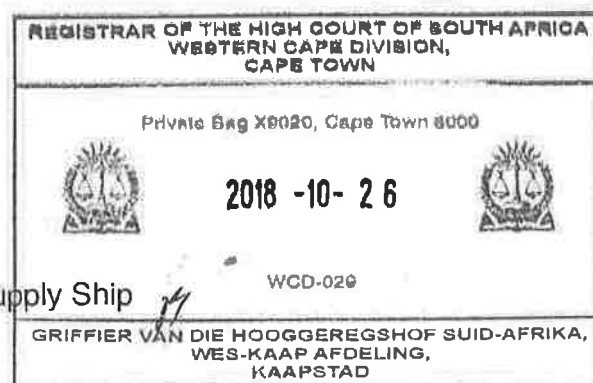
- 2.11. "Purchase Price" shall mean such amount as is offered in respect of the ship, and accepted as the highest tender, or declared to be so accepted in terms of clauses 13 and 22 hereof, including such interest as is payable in terms of clauses 25 and 26 hereof, and the amount to be paid for the Bunkers which value is calculated in terms of clause 27;
- 2.12. "Registrar" means the Registrar of the High Court of South Africa, Western Cape Division, Cape Town, Republic of South Africa;
- 2.13. "the Sale Period" refers to the 30 day period or any extended period, as described in paragraph 2.2 of the Order of Court;
- 2.14. "the Sale Process" refers to the sealed tender process conducted by and under the exclusive control of the Broker, in accordance with the Order of Court and these Conditions of Sale;
- 2.15. "Sheriff" shall mean the Sheriff of the High Court for the district of Cape Town East;
- 2.16. "Ship" shall mean the MV "TARASKA" registered in Cook Islands with the following particulars:

Type of vessel:

Offshore Supply Ship

Flag:

Cook Islands



Built: 05/2000 at A&B Industries of Morgan City –
Morgan City, LA, United States of America

GRT: 370 tonnes

NRT: 110 tonnes

IMO Number: 8964393

Call Sign: E5U2755

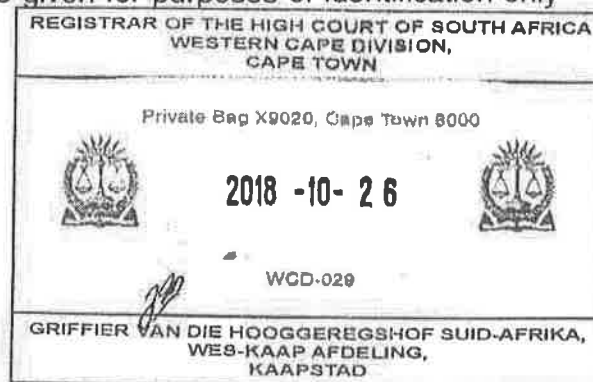
together with such equipment, furniture and stores on board at the time of delivery to the Purchaser and that are the property of the owners of the ship at the time of the sale. For the avoidance of doubt, the Bunkers are sold with the Ship, and form part thereof, but are priced separately. Any reference to the Ship includes, save as expressly stated or appears otherwise from the context, a reference to the Bunkers.

The above description of the Ship is given for purposes of identification only and without warranty.

ACKNOWLEDGEMENT BY PURCHASER

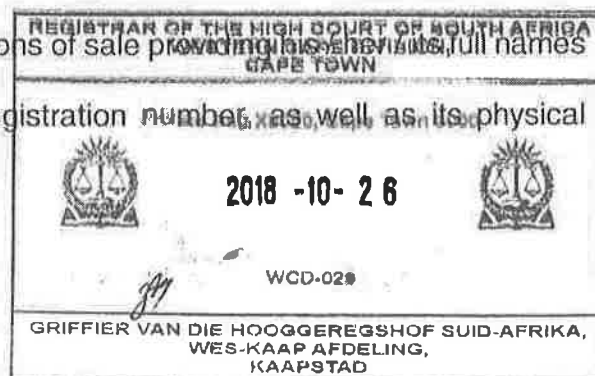
3. The Purchaser acknowledges –

3.1. That an opportunity has been afforded to him or her to view the ship;



- 3.2. That he or she has satisfied him or herself and is aware of the nature, extent and condition of the ship, its equipment, furniture and stores of whatsoever nature and its Bunkers;
- 3.3. That the ship and the Bunkers are sold as is, where is (voetstoots), completely without any warranty, guarantee or the like whether express or implied and without any representation of any nature whatsoever having been made;
- 3.4. That neither the Registrar, the Broker, any claimants, applicant or plaintiff participating in or claiming against the Fund, nor any of the above parties' servants, attorneys, advocates, agents or advisors shall be responsible for any defect in the ship or its fittings, engines, machinery, equipment, appurtenances, the Bunkers and title whether patent or latent;
- 3.5. That the Bunkers shall be valued on the basis described in clause 27 below, and that the Ship is sold with the Bunkers and that the Purchaser shall be obliged to take delivery of such Bunkers and pay for same in addition to the Purchase Price for the Ship, both such amounts constituting the Purchase Price as defined in clause 2.11 hereof.
- 3.6. That where the Purchaser elects to nominate a nominee, such nominee:

- 3.6.1. Shall sign these conditions of sale providing his or her full names and contact details, registration number, as well as its physical address;



- 3.6.2. Submits to the jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town, Republic of South Africa for all purposes connected with or arising from the sale of the ship, the Bunkers or these Conditions of Sale and the Order of Court;
- 3.6.3. Notwithstanding his / her nomination, remains liable jointly and severally with the Purchaser in fulfilling all the terms of these Conditions of Sale and the Order of Court.

SALE FREE OF ENCUMBRANCES

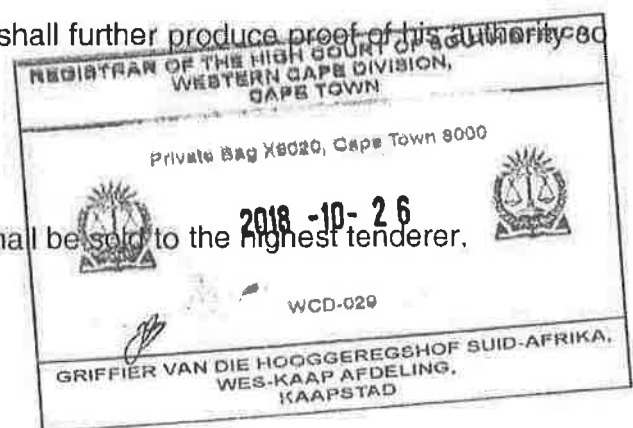
4. The Ship and the Bunkers are sold in terms of South African law by virtue of the Order of Court for their sale, free of all liens, encumbrances, preferences and charges, and all arrests and attachments effected before the passing of ownership of the ship and the Bunkers to any purchaser in terms of any such sale shall be discharged against the ship on the passing of ownership of the ship and the Bunkers to the purchaser.

TENDER PROCESS AND SALE

5. The Sale Process shall run for a period of 30 calendar days from 9 November 2018. The Broker may extend the period of the Sale Process, as it in its sole discretion deems necessary, up to a maximum aggregate extension of 10 calendar days.
6. Subject to the provisions of clause 3 of the Order of Court, the sale of the Ship by sealed tender (the Sale Process) shall be subject to the exclusive control of the Broker who shall have the power, in his sole discretion, to adjourn the Sale Process.



7. All tenders shall be made in United States Dollars unless another currency is stipulated by the Broker, in which event tenders shall be made in that currency. The final decision as to the applicable currency for tenders shall rest with the Broker. The amount of the deposit shall be calculated on the Purchase Price in United States Dollars or such other declared currency.
8. Any value added tax (VAT) payable in respect of the sale of the Ship shall be payable by the Purchaser and each tender shall be deemed to be exclusive of VAT.
9. Every tender made shall constitute an offer to purchase the Ship at the amount of the tender and shall be subject to the provisions of these Conditions of Sale and to the Order of Court.
10. Every tender shall be submitted to the Broker in the form prescribed by the Broker. In the tender the person tendering shall identify himself to the Broker and, if applicable, the party he or she represents, and shall furnish together with his or her address the address of the party he or she represents, as well as an address(es) in Cape Town at which any notices or proceedings in terms hereof may be served on him / her / them.
11. In the event of his having submitted a tender on behalf of a third party, he or she shall disclose the name of his principal and shall further produce proof of his authority to act.
12. Subject to clause 14 below, the Ship shall be sold to the highest tenderer,



13. Should the highest two conforming tenders be in the same amount, the Broker shall advise the persons having submitted those tenders and give them forty-eight hours within which to submit a revised tender. The Broker shall be entitled to repeat this process until such time as there is one highest tender. In the event of there being two or more tenders that remain as tenders for the highest amount, the Broker shall be entitled to accept the tender of the person who delivered his or her first tender to the Broker earliest. Should there be a dispute as to which tender was delivered earliest, the Broker shall have the sole discretion to determine the dispute and declare any party to such a dispute to be the Purchaser.
14. The Broker shall not be obliged to accept the highest conforming or any other tender made. The Broker shall be entitled, but not obliged, to declare the sale to be of no force and effect and thereafter immediately or at such time indicated by him, to sell the ship on like Conditions of Sale.

CONFIRMATION OF THE SALE OF THE COURT

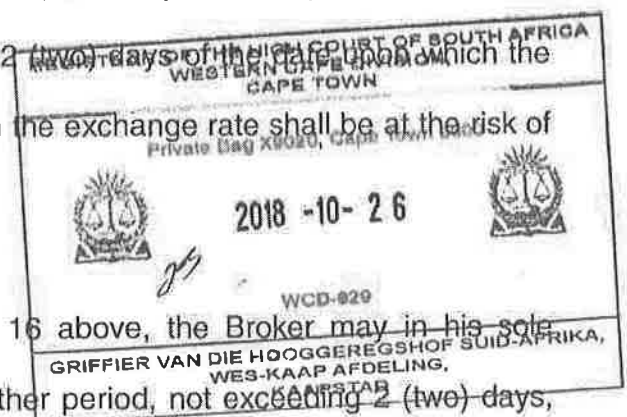
REGISTRAR OF THE HIGH COURT OF SOUTHERN AFRICA WESTERN CAPE DIVISION, CAPE TOWN	
Private Bag X8020, Cape Town 8000	
	2018 -10- 26
WCD-029	
GRIFFIER VAN DIE HOOGGEREGSHOF SUID-AFRIKA, WESTERSE KAAPSTAD	

15. In the event that the tender accepted by the Broker is not in excess of 75% of the lower limit of the Appraised Value of the ship, or the equivalent thereof in the currency of the tender calculated with reference to the prevailing rate of exchange as at 17th August 2018, the sale shall be subject to confirmation by the Court within 14 (fourteen) days, or as soon as possible thereafter, of the conditional acceptance of such tender and in the event of the sale not being so confirmed the ship shall forthwith or on such date as directed by the Court, be resold subject to the terms and conditions (excluding those relating to the service of the Order of Court) as appear in the Order

of Court and these Conditions of Sale, or on such other terms and conditions as may be ordered by the Court.

PAYMENT

16. The highest tenderer shall pay ten percent (10%) of the Purchase Price within 2 (two) days of being advised by the Broker that his or her tender has been accepted or provisionally accepted, as the case may be, which payment shall be made either by way of a direct telegraphic transfer into the account of the Registrar, or by way of a bank draft or cheque drawn on a commercial bank registered in South Africa, and payable upon presentation in Cape Town, and which is guaranteed by such bank as being good for the amount of the cheque.
17. In the event of the sale to the Purchaser requiring confirmation, in accordance with clause 15 above, and of it not being confirmed, the ten percent deposit so paid shall be refunded to the highest tenderer within 2 (two) days of the date upon which the Court refuses confirmation. Any variation in the exchange rate shall be at the risk of the highest tenderer.
18. Notwithstanding the provisions of clause 16 above, the Broker may in his sole discretion allow the highest tenderer a further period, not exceeding 2 (two) days, within which to pay the ten percent deposit.
19. Subject to the provisions of clause 20 hereunder, the balance of the Purchase Price shall be paid in US Dollars, or such other currency as may have been designated by the Broker, either by way of a direct telegraphic transfer into the account of the Registrar, or by way of a bank draft or by cheque in the form described in clause 16

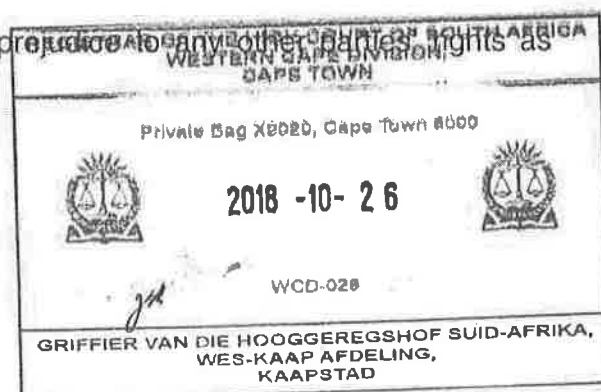


above, and payable in Cape Town by 16h30 South African time on the fifth (5th) day after the date upon which the highest tenderer was advised by the Broker that his or her tender was accepted, or the third (3rd) day after the date of confirmation of the sale by the Court, should confirmation be necessary and granted.

20. Notwithstanding the provisions of clauses 19 above, the Broker may in consultation with the Registrar and with his or her consent, or with the leave of a Judge in Chambers, accept that the balance of the Purchase Price as referred to in clause 19 above shall be paid within such further period, not exceeding five (5) days, alternatively shall not be paid by direct transfer, bank draft or by bank cheque, but shall be secured by an irrevocable guarantee, draft or letter of credit in favour of the Fund, payable on demand in Cape Town and expressed in US Dollars or such other currency as may be designated by the Broker, on such terms, including as to interest, as the Broker in consultation with the Registrar and the Applicant's attorneys, and with their consent, or with the leave of a Judge in Chambers, may deem appropriate.

BREACH AND DECLARATION OF NEXT HIGHEST TENDERER AS PURCHASER

21. In the event of the highest tenderer failing to pay the balance of the Purchase Price in terms of clause 19 above, or to secure such balance in terms of clause 20 above, the deposit paid in terms of clause 16 above shall forthwith and *ipso facto* be forfeited to the Fund, and the highest tenderer shall have no claim whatsoever in respect thereof, which forfeiture shall be without prejudice to any other parties' rights as stipulated herein.



22. In the event of the deposit aforesaid not being paid as required, or the balance of the Purchase Price not being paid or secured, the Broker may in its discretion cancel the sale and either –

22.1. forthwith make application to Court on notice to the Registrar for such further directions as the Court may deem appropriate, whether for the re-sale of the Ship in terms of these conditions or otherwise; or

22.2. declare the second highest tenderer to be the Purchaser or Provisional Purchaser.

23. The Declared Purchaser shall pay ten percent (10%) of the Purchase Price (including the price of the Bunkers) within two (2) days of the Broker's aforesaid declaration, and shall be obliged thereafter to effect payment of the balance of the Purchase Price or to lodge the required security by close of business on the fifth (5th) day after such declaration, and the provisions of clauses 18, 19, 20 and 21 shall apply *mutatis mutandis*.

24. The said procedure shall be without prejudice to the right of the Broker, the creditors or any other parties to claim damages against the defaulting purchaser, either on their own behalf or on behalf of the Fund or any other party entitled thereto.

INTEREST ON UNPAID OR UNSECURED BALANCE OF PURCHASE PRICE



25. In any event, the balance of the Purchase Price unpaid or unsecured at any time shall bear interest at the rate quoted by The Standard Bank of South Africa Limited from time to time as being the deposit rate for the currency concerned, calculated from the date on which payment thereof was due to the date of the payment of the balance of the Purchase Price or the provision of security in respect thereof.
26. The said interest shall be payable and shall form part of the Purchase Price for all purposes in terms of these conditions.

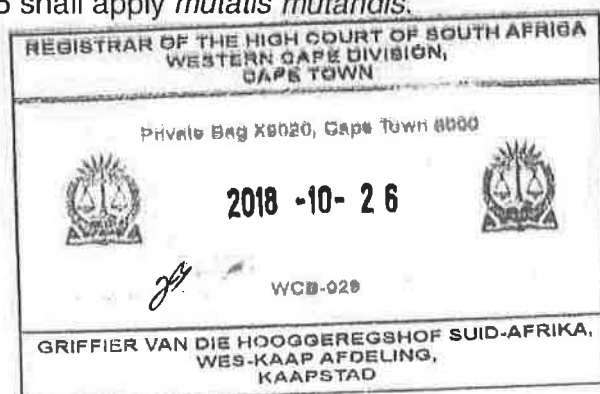
BUNKERS

27. The Purchaser shall, together with and in addition to payment of the balance of the Purchase Price of the Ship in terms of clause 19 above, pay to the Broker the Purchase Price in respect of the Bunkers and –

27.1. The Purchase Price for the Bunkers shall be fixed in relation to the prevailing price for such Bunkers at the port of Cape Town on the date upon which the Purchaser was advised that his or her tender was accepted;

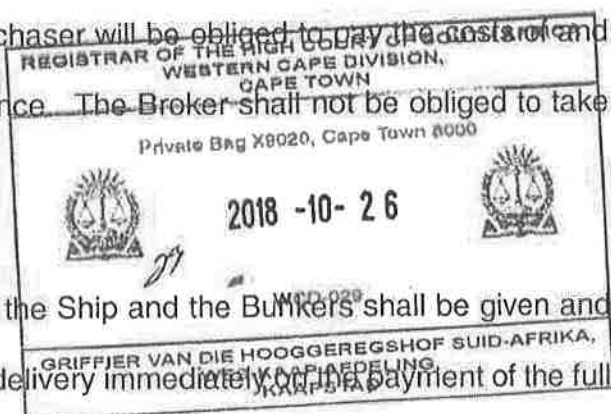
27.2. The Purchase Price shall be paid in United States Dollars unless another currency is declared by the Broker;

27.3. The provisions of clauses 16 – 26 shall apply *mutatis mutandis*.



RISK AND DELIVERY

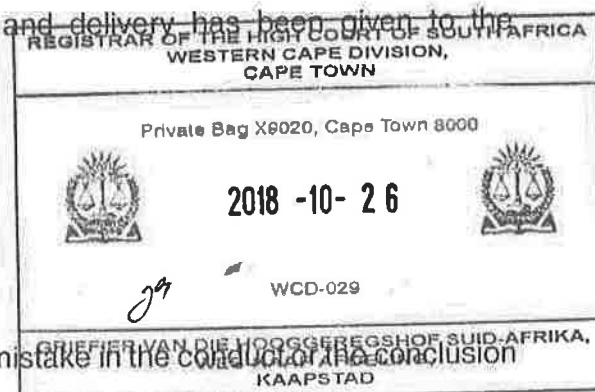
28. The risk in and to the ship and the Bunkers shall pass to the Purchaser on delivery or at 16h30 on the date on which the balance of the Purchase Price is due in terms of clause 19 or 23 (as the case may be), whichever shall occur first. The passing of risk shall not be delayed notwithstanding any extension of time for payment or other indulgence afforded to the Purchaser in terms of these conditions. The Purchaser shall be liable on the passing of risk for the payment of all costs in respect of the ship, including but not limited to the costs of the preservation and maintenance of the ship, all port dues and other charges and levies in respect of the ship, the cost of maintaining the crew on board and all Bunkers consumed.
29. The Purchaser shall immediately upon the passing of risk to such Purchaser insure the ship and her machinery and equipment for the full Purchase Price in the name of the Purchaser and the Registrar (representing the Fund) for their respective rights and interest in the ship and shall forthwith deliver the policy of insurance to the Broker. Such policy shall remain in force for as long as the balance of the Purchase Price or any other charges remain unpaid or unsecured. In the event of the Purchaser failing to insure the ship, the Broker may in his discretion insure the ship on behalf of the Fund and/or the Registrar and the Purchaser will be obliged to pay the costs and incidental to taking out the said insurance. The Broker shall not be obliged to take out such insurance.
30. Subject to these conditions delivery of the Ship and the Bunkers shall be given and the Purchaser shall be obliged to take delivery immediately on the payment of the full Purchase Price or on such payment being secured to the satisfaction of the Broker.



31. Receipt of delivery shall be confirmed in writing by the Purchaser forthwith upon delivery having been effected.
32. In any event and notwithstanding any dispute whatsoever and howsoever arising, the Purchaser shall be obliged to accept delivery when tendered and a refusal or delay to do so shall be a breach of the Purchaser's obligations in terms hereof, entitling but not obliging the Broker to cancel the sale and declare that the deposit be forfeit to the Fund and any other amounts paid to be forfeit to the Fund without recourse to the Purchaser.
33. Ownership in and to the Ship and the Bunkers shall pass to the Purchaser only when the full Purchase Price is paid or secured ~~and delivery has been given to the~~ Purchaser.

GENERAL

34. In the event of the Broker making any error or mistake in the conduct or the conclusion of the sale, such error or mistake shall not be binding on the Broker or the Registrar or the Court, any of whom shall be entitled to require the ship to be re-sold on like terms. No representation made by the Broker not in accordance with these Conditions of Sale or the said Order of Court shall be binding on the Broker or the Registrar of the Court.
35. As stated in clause 8 above, the Purchaser shall be liable to make payment of any value added tax or other tax or duty payable to the South African authorities or to any other authority and, in the event of the ship or Bunkers being sold to a South African interest, shall be responsible for obtaining any import permit or other authority



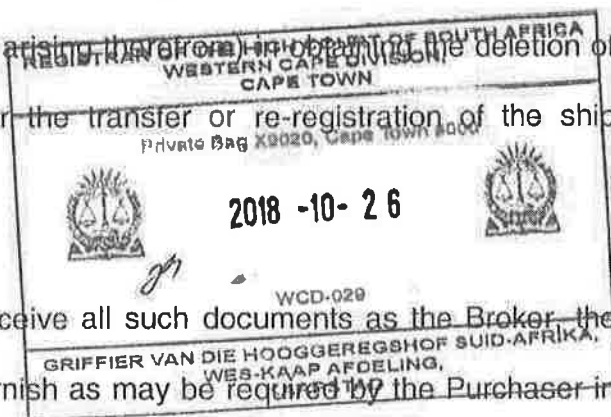
required. It shall be the Purchaser's duty to provide proof of compliance with these provisions when required to do so by the Registrar or the Broker.

36. It shall be the Purchaser's obligation to obtain, and he shall pay all costs necessary for the transfer of the registration of the ship into the name of the Purchaser and, if required, the deletion of the ship from her current registry and effecting registration thereof in the Purchaser's name in any registry and all other expenses or fees in connection with the production of a Bill of Sale and for documentation in relation to the transfer of the vessel to the Purchaser.

37. Neither the Registrar, the Broker nor any other participating creditor of or to the Fund nor any of their servants, attorneys, advocates or agents shall be liable for any delays and/or inability (or any consequences arising therefrom) in obtaining the deletion of the ship from her current registry or the transfer or re-registration of the ship howsoever caused.

38. The Purchaser shall be entitled to receive all such documents as the Broker, the Sheriff or the Registrar are able to furnish as may be required by the Purchaser in order to effect transfer of the ship into the Purchaser's name, which documents shall only be delivered upon full payment of the Purchase Price and all other outstanding amounts. The sale shall not be invalidated by the failure or inability of the Registrar or the Broker to deliver any of the aforesaid documents or in the event of any of the documents so provided, or quoted from, proving to be illegally obtained.

39. For the purposes of these conditions the Purchaser and any other tenderer are deemed by having made a tender to have submitted to the jurisdiction of the High



Court of South Africa, Western Cape Division, Cape Town, Republic of South Africa
(in the exercise of its Admiralty Jurisdiction) in respect of any action arising in any
manner whatsoever for any amount, including but not limited to recovery of any
damages or the balance of the Purchase Price or other charges, or otherwise.

40. Any sale which comes into effect in terms hereof shall be subject to South African
law.

Signed on this _____ day of _____, 2018 at _____

NAME: _____

DESIGNATION: _____

FOR AND ON BEHALF OF: _____

IDENTITY OF PRINCIPAL OF NOMINEE (if applicable): _____

