

**Wuhan Guoyu Logistics Group Co Ltd v Emporiki Bank of Greece SA [2012]
EWCA Civ 1629**

Payment Guarantee

"Dear Sirs,

1) In consideration of your entering into a Shipbuilding Contract dated 29th November 2006 ("the Shipbuilding Contract") with Tamassos Navigation Ltd as the buyer ("the BUYER") and WUHAN Guoyu Logistics Group CPM LTD and Yangzhou Guoyu Shipbuilding Co. Ltd as the seller ("the SELLER") for the construction of one (1) 57,000 Metric Tons Deadweight OEC known as YANGZHOU GUOYU SHIPBUILDING COMPANY LTD. HULL NO. GY404 ("the VESSEL"), we, EMPORIKI BANK OF GREECE SA, hereby IRREVOCABLY, ABSOLUTELY and UNCONDITIONALLY guarantee, as the primary obligor and not merely as the surety, the due and punctual payment by the BUYER of the 2nd instalment of the Contract Price amounting to a total sum of United States Dollars 10,312,500.00 (Ten million three hundred twelve thousand five hundred only) as specified in (2) below.

(2) The Instalment guaranteed hereunder, pursuant to the terms of the Shipbuilding Contract, comprises the 2nd instalment in the amount of U.S. Dollars 10,312,500.00 (Ten million three hundred twelve thousand five hundred only) payable by the BUYER within five (5) New York banking days after completion cutting of the first 300 MT of steel plate in your Seller's workshop and written notice thereof along with certificate of cutting of steel plate countersigned for approval by the Buyers representative.

(3) We also IRREVOCABLY, ABSOLUTELY and UNCONDITIONALLY guarantee, as primary obligor and not merely as surety, the due and punctual payment by the BUYER of interest on the second Instalment guaranteed hereunder at the rate equal to the three months US\$ LIBOR quoted on page no. 3750 of Telerate, 2 days before the date from which interest becomes effective, plus 1% margin, from and including the first day after the date of instalment in default until the date of full payment by us of such amount guaranteed hereunder.

(4) In the event that the BUYER fails to punctually pay the second Instalment guaranteed hereunder or the BUYER fails to pay any interest thereon, and any such default continues for a period of twenty (20) days, then, upon receipt by us of your first written demand stating that the Buyer has been in default of the payment obligation for twenty (20) days, we shall immediately pay to you or your assignee the unpaid 2nd Instalment, together with the Interest as specified in paragraph (3) hereof, without requesting you to take any or further action, procedure or step against the BUYER or with respect to any other security which you may hold.

(5) We hereby agree that at your option this Guarantee and the undertaking hereunder shall be assignable to the Bank of China Limited, Hubei Branch, 65 Huangshi Road, Wuhan City, Hubei 430013, the People's Republic of China.....

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(7) Our obligations under this Guarantee shall not be affected or prejudiced by any disputes between you as the SELLER and the BUYER under the Shipbuilding Contract or by the SELLER's delay in the construction and/or delivery of the VESSEL due to whatever causes or by any variation or extension of their terms thereof or by any security or other indemnity now or hereafter held by you in respect thereof, or by any time or indulgence granted by you or any other person in connection therewith, or by any invalidity or unenforceability of the terms thereof, or by any act, omission, fact or circumstances whatsoever, which could or might, but for the foregoing, diminish in any way our obligations under this Guarantee.

... IN WITNESS WHEREOF, we have caused this Letter of Guarantee to be executed and delivered by our duly authorised representative the day and year above written."