UCO Bank v Golden Shore Transportation Pte Ltd
[2005] SGCA 42

Case Number : CA 8/2005

Decision Date : 14 September 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Judith Prakash J

Counsel Name(s) : Kenneth Tan SC (Kenneth Tan Partnership), Bazul Ashhab and Ramesh Tiwari (T S Oon and Bazul) for the appellant; Toh Kian Sing and John Seow (Rajah and Tann) for the respondent

Parties : UCO Bank — Golden Shore Transportation Pte Ltd

Admiralty and Shipping – Bills of lading – Bills of lading act – Order bills – Order bills transferred from shipper to consignee via negotiating bank without indorsement in favour of negotiating bank – Whether bills falling within definition of "bill of lading" – Whether consignee becoming lawful holder of bills – Whether consignee having title to sue on bills – Sections 1(2), 2(1), 5(2) Bills of Lading Act (Cap 384, 1994 Rev Ed)

14 September 2005

Chao Hick Tin JA (delivering the judgment of the court):

1 This was an appeal against the decision of the High Court dismissing the appeal of the appellant against the decision of the senior assistant registrar striking out the appellant's action against the respondent based on four bills of lading ("B/L" or "bill" as may be appropriate). The ground for striking out was that the appellant did not have the right to sue on the B/Ls. We heard and allowed the appeal on 27 July 2005, thus restoring the action for further hearing. We now give our reasons.

The background

2 The appellant is the Singapore branch of an Indian bank. The respondent is the owner of the vessel, *Asean Pioneer* ("the Vessel"), which issued four B/Ls, dated 22 to 31 December 2000, to cover four shipments of Sarawak round logs carried on board the Vessel from East Malaysia to Kandla, India. The shippers named on each of the four B/Ls were Shin Yang Trading Sdn Bhd, Millenwood Sdn Bhd, The Sarawak Company (1959) Sdn Bhd and Rapid Wealth Sdn Bhd respectively. All the four B/Ls were made out to "the order of UCO Bank" and the notifying party was specified to be "SOM and UCO Bank". "SOM" is the abbreviation for "SOM International Pte Ltd", a Singapore company.

3 At all material times, SOM was a customer of the appellant. The four shipments were financed by way of three letters of credit ("LCs") issued by the appellant, which LCs were subject to the provisions of the Uniform Customs and Practice for Documentary Credits (1993 Revision) ("UCP 500").

4 The Vessel arrived at Kandla, India, on 15 January 2001. However, unbeknown to UCO, SOM had arranged with the respondent to issue switched bills of lading ("switched B/L") for the four shipments, with SOM being named as the shipper. The respondent did not retrieve the original B/Ls before issuing the switched B/Ls. Apparently, SOM promised the respondent that it would obtain and surrender the original B/Ls later. As security, SOM provided a letter of indemnity to the respondent. Shortly thereafter, SOM indorsed the switched B/Ls over to various buyers and the eventual holders of the switched B/Ls obtained delivery of the cargo from the respondent.

5 In the meantime, the shippers presented drafts drawn under the LCs, together with the four original B/Ls and other requisite shipping documents, to three different branches of the Hongkong and Shanghai Banking Corporation Limited ("HSBC") in Hong Kong for negotiation. For this purpose, the shippers did not indorse any of the original B/Ls either in blank or specifically in favour of HSBC. Thereafter, upon presentation by HSBC of the B/Ls and the other requisite documents, the appellant duly reimbursed HSBC the full amount payable under the three LCs, which in total came to US$556,514.08.

6 Accordingly, the appellant, which had at all material times held the original B/Ls in its possession, sued the respondent for failing to deliver the cargo and sought damages of US$556,514.08. SOM had not reimbursed the appellant the amount which the latter had paid to HSBC under the three LCs.

7 Upon entering appearance, the respondent applied to have the action stayed on the ground that there was a foreign jurisdiction clause in the four B/Ls. That application eventually failed in the High Court, which decision was upheld by this court: see [2004] 1 SLR 6.

8 Following the decision of this court in the stay application, the appellant applied for summary judgment. At the hearing of this application, counsel for the respondent made an oral application under O 14 r 12 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) that the court determine a preliminary question of law, namely, whether the appellant had the title to sue under the original B/Ls.

Governing provisions

9 Section 2(1)(*a*) of the Bills of Lading Act (Cap 384, 1994 Rev Ed) ("the Act") allows the lawful holder of a B/L to sue on it even though he is not a party to that contract. The provision reads:

> Subject to the following provisions of this section, a person who becomes the lawful holder of a bill of lading shall (by virtue of becoming the holder of the bill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.

10 The holder of a B/L is defined in s 5(2) of the Act to mean the following:

> References in this Act to the holder of a bill of lading are references to any of the following persons:
>
> (*a*) a person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates;
>
> (*b*) a person with possession of the bill as a result of the completion, by delivery of the bill, of any indorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill;
>
> (*c*) … [not relevant]
>
> and a person shall be regarded for the purposes of this Act as having become the lawful holder of a bill of lading wherever he has become the holder of the bill in good faith.

11 The basis upon which the respondent challenged the appellant's right to sue was the fact

that upon the shippers' negotiation of the B/Ls to HSBC, the shippers did not indorse the B/Ls over to HSBC, either specifically or in blank, and there was, in turn, also no indorsement by HSBC to the appellant. In view of these circumstances, the respondent contended that the appellant had not become a lawful holder of the B/Ls within the meaning of ss 2(1) and 5(2) of the Act.

12 The argument of the respondent was that in the absence of an indorsement by the shippers, no rights of suit were transferred to and vested in the negotiating bank, HSBC, and, accordingly, the appellant could be in no better a position. The point made by the respondent was that for a case to fall within s 5(2)(*a*), the B/L must be transferred directly from the shipper to the named consignee. The respondent submitted that in the present circumstances, the person entitled to sue on each of the B/Ls was the shipper pursuant to s 2(4) of the Act.

Decision below

13 The judge below recognised that the B/Ls in question were order bills in the conventionally negotiable format. She accepted that ordinarily such a bill, upon being transferred to the named consignee, would give the consignee the right to sue without any indorsement from the shipper. However, she felt that the interposition of HSBC as the negotiating bank altered that position. The judge said at [2005] 2 SLR 735 at [13]:

> The shippers did not use HSBC as their agent to present the documents for collection of payment. The shippers, having sold the drafts to HSBC as the negotiation-bank, were not looking to be paid under the letters of credit by the issuing bank. HSBC, as the negotiation-bank, paid the shippers. The negotiation-bank's presentation of the drafts and shipping documents to the [appellant] for reimbursement was made under a different and independent contract between HSBC and the [appellant].

14 She also held that the proper manner to go about effecting the transaction between the shippers and HSBC would have been for each shipper to indorse the B/L over to HSBC. She said at [14]:

> There is nothing in principle against the shippers indorsing and delivering the original bills to HSBC even though they were initially made out to the order of the [appellant]. The rationale is that the consignee is not a party to the contract of carriage evidenced by the bill of lading; the mere naming of a party in the bill as consignee gives that party so named no rights under the contract …
>
> The consequence of the shipper changing the named consignee by indorsement is that a bill of lading made out to order of a consignee may be varied by indorsement so as to take the case out of s 5(2)(a) into s 5(2)(b) …

15 The judge concluded that as the rights to the B/Ls were never transferred to HSBC by indorsement, there was nothing that HSBC could transfer to the appellant. In this connection, she also relied on s 1(2) of the Act. In her view (at [15]), "the situation does not right itself just because the [appellant] happened to be named consignee" and "have the documents in hand". The appellant did not "become" the "lawful holder of a bill of lading" within the meaning of s 2(1)(*a*) of the Act.

Our analysis

16 We will begin our consideration with an examination of s 1(2)(*a*) upon which the judge placed considerable reliance. We will quote what she said at [15]:

For the purposes of the Act, in the hands of HSBC (neither as consignee or indorsee), the original bills would not fit within the definition of "bill of lading" in s 1(2) although they were described as such by name. It is because they were "incapable of transfer either by indorsement or, as a bearer bill, by delivery without indorsement". As they would not count as "bills of lading", they could not be the means upon which rights of action could be transferred under the Act. HSBC would not have qualified as a holder so much so that when HSBC sent the documents to the plaintiff, it was not passing on anything like a "bill of lading" as defined by s 1(2)(a).

17 Section 1(1) of the Act provides that it applies to, *inter alia*, "any bill of lading". Section 1(2)(*a*) states:

References in this Act to a bill of lading do not include references to a document which is incapable of transfer either by indorsement or, as a bearer bill, by delivery without indorsement.

18 Section 1(2)(*a*) is really a definition section, setting out the scope of the Act. What it says is that the Act does not apply to a B/L which is not transferable either by indorsement or, in the case of a bearer bill, by delivery without indorsement. As far as the four B/Ls in the present case were concerned, being "to order" bills, they were clearly transferable. Thus, they would be governed by the Act. The nature of a B/L is determined as at the date of issue. Its nature does not change by subsequent events. Accordingly, we were of the opinion that s 1(2)(*a*) could have no relevance to the very issue of this appeal.

19 In arriving at her conclusion, the judge seemed to have found support in two cases, namely, *East West Corporation v DKBS 1912* [2002] 2 Lloyd's Rep 182 ("*East West Corporation*") and *The Aegean Sea* [1998] 2 Lloyd's Rep 39. Both of these cases were decided by Thomas J.

20 In *East West Corporation*, goods were shipped by the claimants in Hong Kong on board two vessels owned by the defendants for delivery in Chile. The goods were consigned to the order of named Chilean banks, with "Gold Crown" as the notifying party. The B/Ls were indorsed by the claimants to the Chilean banks and they were eventually conveyed, through an intermediary Hong Kong bank, to the Chilean banks. The Chilean banks had no interest in the goods and their function was only to collect the price due from Gold Crown to the claimants. The Chilean banks were at all times acting on the direction of the claimants. However, the goods were delivered by the defendants to Gold Crown without the production of the B/Ls. Later the B/Ls were returned by the Chilean banks to the claimants without any re-indorsement. Thus, the defendants alleged that the omission of a re-indorsement by the Chilean banks to the claimants was fatal to the latter's claim. At first instance, Thomas J ([19] *supra*) held that, notwithstanding the fact that the Chilean banks had no security interest in the B/Ls, by virtue of the fact that the banks were the named consignees and were, in fact, in possession of the bills, the claimants' rights of suit under the B/Ls were transferred to the banks when they became holders of the B/Ls delivered to them by or with the authority of the claimants. For the rights of suit to be re-vested in the claimants, there must be a re-indorsement of the B/Ls in favour of the claimants. His decision on this issue was upheld by the English Court of Appeal (see [2003] 1 Lloyd's Rep 239).

21 We are unable to see how the actual decision in that case could be of any real assistance in our case. There, it was clear that the Chilean banks had become lawful holders on two bases. First, they were the named consignees. Second, by virtue of the indorsement by the claimants, they had become lawful holders of the B/Ls. Thus, the rights of suit under the B/Ls became vested in the Chilean banks. To re-vest the rights of suit in the claimants, the Chilean banks had to re-indorse the B/Ls back to the claimants. There was nothing there to suggest that, in the context of our present case, because of the interposition of HSBC as the negotiating bank, the appellant, although named as

the consignee and having actual possession of the B/Ls, would not have acquired the rights of suit. Admittedly, the Hong Kong bank there did not negotiate the B/Ls; indeed, it could not, because no LC was involved. Nowhere did Thomas J say that if the Hong Kong bank were to act as a negotiating bank, the position would be different. Of course, in that case, besides the B/Ls coming into the possession of the Chilean banks, the B/Ls were also indorsed to them. Thus, the Chilean banks acquired the rights to sue under both ss 5(2)(*a*) and 5(2)(*b*).

22 In fact, the following reasoning of Thomas J at [22] would appear to suggest that it did not matter whether the intermediary bank was a collecting bank or a negotiating bank as he held that one should not go behind what appears on the face of the B/L. He said at [22]:

> [T]he Chilean banks to whom the bills of lading were sent initially were the consignees identified in the bills of lading within the ordinary meaning of those words in the 1992 Act. I cannot see that it is possible to give the word "consignee" any other construction. When they received the bills, they held possession of them. They therefore fulfilled the definition set out in s. 5(2)(a) and became the lawful holders. In my view it is not appropriate to go behind the facts as they would appear from the face of the bill of lading. As the Law Commission pointed out in their joint report with the Scottish Law Commission which led to the passing of the 1992 Act, "Rights of Suit in respect of Carriage of Goods by Sea", under the law as it then stood a carrier was bound to make delivery against presentation of the bill of lading without enquiry as to the way in which he had acquired the property in the goods; the object of the change was to simplify the law. The construction advanced by the claimants would return a substantial degree of complexity. For example if the claimants were correct, there would need to be an enquiry into the question as to whether the consignee named on the face of the bill of lading had, as between the shipper and the person named as consignee, an entitlement to delivery. It would in another guise re-open the enquiry into the contractual arrangements that the reform brought about by the 1992 Act sought to remove.

23 We now turn to *The Aegean Sea* ([19] *supra*). There, the owners of the vessel, *Aegean Sea*, chartered the vessel to the second defendant, Repsol Oil International Ltd ("ROIL"), for the carriage of a cargo of crude oil from Sullom Voe to "one or two safe port(s) EUROPEAN MEDITERRANEAN". The vessel was directed by ROIL to discharge the cargo at La Coruna. The vessel, while attempting to berth at La Coruna, ran aground and broke into two and exploded, giving rise to a total loss of the vessel and the cargo. Another consequence of the casualty was large-scale pollution of the environment which caused damage to third-party interests.

24 There, two B/Ls were issued for the cargo with two named shippers, "Mobil North" and "Sun Oil". The cargo covered by the Sun Oil B/L was sold to Louis Dreyfus Energy Ltd ("Dreyfus"), which in turn sold it to ROIL. ROIL then sold the cargo under the B/L to Repsol, the first defendant, the holding company of ROIL. The Sun Oil B/L was indorsed to Dreyfus which, in turn, indorsed it directly to Repsol instead of to ROIL. The mistake was discovered by Repsol and the B/L was conveyed back to Dreyfus which voided the indorsement in favour of Repsol and re-indorsed the B/L to ROIL.

25 The owners sought to claim against both ROIL and Repsol for their losses (including the value of the vessel and bunkers *etc*) as well as for those losses suffered by third parties who had made claims against the owners. The basis of the owners' claim against ROIL was that ROIL directed them to berth the vessel at La Coruna, an unsafe port. The basis of their claim against Repsol was that the latter was the lawful holder of the Sun Oil B/L under which there was an implied term as to the safety of the port nominated and an implied indemnity.

26 Many issues were raised in the arbitration and the subsequent court proceedings. Thomas J

held that for a person to become the holder of a B/L, it was not enough that the B/L was indorsed and was sent to him by post. The person must have received and accepted the delivery before he could become a holder. Emphasis was clearly placed by Thomas J on the element of acceptance of the B/L. He said at 60:

> In my view Repsol therefore never obtained possession of the bill of lading as the result of completion by delivery of the bill by endorsement. There was never any delivery of the bill of lading by Louis Dreyfus to Repsol to complete the endorsement. Even if Repsol had obtained possession of the bill of lading from Louis Dreyfus, they never accepted delivery of it as the endorsee or transferee. As soon as they saw the endorsement to them, they sent it back to be endorsed to the rightful endorsee and transferee.

27 We note that there is a part of the judgment which seems to suggest that for there to be delivery of the B/L to Repsol, there must be a direct delivery and not delivery through an independent intermediary. The passage reads (also at 60):

> Moreover the bill of lading was never delivered to Repsol by Louis Dreyfus; Louis Dreyfus sent the bill to ROIL under cover of a letter addressed to ROIL. It was sent to ROIL as principals; it was not delivered by Louis Dreyfus to ROIL to receive as Repsol's agents as it was intended for ROIL and the covering letter was addressed to them. There was therefore no delivery by Louis Dreyfus to Repsol, only a delivery to ROIL. When it was then sent by ROIL to Repsol, it was sent by ROIL not as Louis Dreyfus' agents but by ROIL as principals; it seems that they sent it for Repsol to deal with it as ROIL's agents in the claim to be made against cargo underwriters.

28 However, we think this passage is essentially a factual description of what happened and must be viewed in the context there. We would quote from another part of the judgment of Thomas J on the same page where he said:

> Repsol knew that the bill of lading should have been endorsed to ROIL and not to them, because it was ROIL and not Repsol who had purchased the cargo from Louis Dreyfus; they therefore never accepted the delivery or endorsement of the bill of lading to them.

It would be noted that the crucial factor in the case was that although the B/L was indorsed to and arrived at the premises of Repsol, the latter never accepted and promptly returned it. In those circumstances, it was held that Repsol could not have become the holder of the B/L.

29 Another issue which arose in the case related to the argument that as Dreyfus had indorsed the B/L to Repsol, then the proper course would have been for Repsol to re-indorse the B/L back to Dreyfus. This argument was rejected. Thomas J said (at 61):

> The owners contended that if Repsol had become the lawful holders, then as there was no endorsement back to Louis Dreyfus, Louis Dreyfus could not re-indorse the bill of lading to ROIL. It is clear that there was no endorsement back by Repsol to Louis Dreyfus, but that was no doubt because Repsol never regarded themselves as entitled to endorse the bill as it had been endorsed to them in error. In my view, this submission made by owners reinforces the conclusion that Repsol never became the lawful holders. It cannot have been intended by the draftsman of the Act that a person to whom a bill of lading is endorsed and sent in error has then to act as if he was a person entitled to endorse the bill of lading as a precondition of the person who made the mistake being enabled to rectify his error by re-endorsing and delivering it to the correct party; the person to whom it was sent was not the lawful holder and not therefore entitled to endorse it.

30 On this latter point, the decision of Thomas J, that it was unnecessary for Repsol to re-indorse the B/L back to Dreyfus, was clearly based on the premise that the indorsement to Repsol in the first place was a mistake and Repsol never became the holder of the B/L and thus Repsol had no basis on which to re-indorse the B/L back to Dreyfus. We would observe that this situation must be differentiated from that in *Bandung Shipping Pte Ltd v Keppel TatLee Bank Ltd* [2003] 1 SLR 295; [2003] 1 Lloyd's Rep 619 ("*Keppel TatLee*"), a decision of this court where we held that a re-indorsement of the B/L was necessary by the receiving party of the B/L in order to re-vest the rights of suit back to the forwarding party. We will return to *Keppel TatLee* a little later.

31 The present four B/Ls stated that the goods were deliverable to "the order of UCO". Once the named consignee, the appellant here, came into possession of the B/Ls, the consignee would, pursuant to s 5(2)(*a*) of the Act become the lawful holder of the B/Ls even without any indorsement by the shipper. Charles Debattista*, The Sale of Goods Carried by Sea* (Butterworths, 2nd Ed, 1998) ("Debattista") states at para 4-29 that in such a situation no indorsement by the shipper is required:

> [No] initial endorsement by the shipper is required to kick-start the bill of lading into life. Section 5(2)(a) … includes within the definition of a 'lawful holder of a bill of lading': 'a person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates.' There is here no mention of endorsement, solely of 'possession of the bill' and hence of delivery of the bill. Thus, while the intermediate buyer would need to endorse the bill itself if it wished to sell the goods on in transit, it could not reject the bill of lading against its own seller, the shipper, on the basis that the latter had itself not endorsed the bill.

32 The respondent sought to rely on the last sentence of the above passage from Debattista to suggest that the author has confined the application of s 5(2)(*a*) to a situation where the shipper and transferee are immediate parties. While we are in agreement with the statement in that sentence, we are unable to agree with the respondent's submission that it means that for a case to fall within s 5(2)(*a*) the shipper must transfer the B/L directly to the named consignee. In our opinion, all it seems to say is that the shipper need not indorse the bill to the named consignee for the rights of suit to be transferred to the consignee and that the consignee would not be entitled to reject the bill on the ground that there is no indorsement as no indorsement is needed.

33 Other than the two cases referred to above, no other authority can be found to support the proposition that where a B/L is received by the named consignee through a negotiating bank, s 5(2)(*a*) cannot apply and that, in the absence of an indorsement, the named consignee would not have the rights of suit under the B/L which has come into his possession. As indicated earlier, the two cases did not so decide. Furthermore, it seems to us that the following passages from *Gutteridge and Megrah's Law of Bankers' Commercial Credits* (Europa Publications, 8th Ed, 2001) ("Gutteridge & Megrah") at paras 8-12 and 8-13, which come under the sub-heading, "Transport document a negotiable bill of lading made out to the order of the issuing bank", are contrary to the position contended for by the respondent:

> 8-12 In this situation, upon receipt of the documents from the intermediary bank, the issuing bank has security by way of pledge over the documents and the goods.
>
> 8-13 The position of the intermediary bank is different. Since the bill of lading is not made out to the intermediary bank's order or indorsed in its favour, upon presentation of the documents to the intermediary bank, it does not obtain security by way of pledge of the goods. The fact that the documents come into its possession may give rise to a pledge of the documents and thus an equitable pledge of the goods. It is arguable, however, that because it is agreed under the terms

> of the contract of sale and the credit that the bill of lading be made out to the order of the issuing bank, an intention on the part of the buyer to authorise the seller to confer a special property by way of pledge on the intermediary bank as opposed to the issuing bank is negatived. On the face of the bill of lading the intermediary bank can receive no title to the goods. On the other hand, the intermediary bank receives the documents as a bailee and, if it has undertaken a liability to the beneficiary, only releases the documents against the issuing bank's obligation to reimburse it.

34 These passages in Gutteridge & Megrah do not differentiate between an "intermediary bank" which is a collecting bank and one which is a negotiating bank. Paragraph 8-12 clearly suggests that, where the B/L is made out to the order of the issuing bank, the latter upon receipt of the B/L from the intermediary bank (whether collecting or negotiating bank), will acquire the rights of suit notwithstanding the absence of an indorsement from the shipper to the intermediary bank and a further indorsement from the intermediary bank to the issuing bank. Obviously, an intermediary negotiating bank, which does not have an indorsement in its favour, as noted in para 8-13 of Gutteridge & Megrah, would not have the goods as security. It would have its recourse against the issuing bank of the LC like in the instant case where HSBC had its rights against the appellant. This explains why the appellant promptly paid HSBC upon presentation of the B/Ls and the other requisite documents.

35 As Thomas J said in *East West Corporation* (see [22] above) it is not appropriate to go behind the facts as they appear on the face of the B/L. The case of *The Aegean Sea* does not stand for the proposition that the carrier would be entitled to look behind what appears on the B/L. We would emphasise that the situation in *The Aegean Sea* was quite different. It would be recalled that there, the B/L was indorsed by mistake to Repsol instead of ROIL. Repsol did not accept the B/L and sent it back to Dreyfus which voided the indorsement in favour of Repsol. It was in those circumstances that Thomas J held that as Repsol never accepted the delivery or the indorsement of the B/L, Repsol did not become the lawful holder of the bill.

36 This question of whether one should look behind the B/L came up for consideration before this court in the case of *Keppel TatLee* ([30] *supra*) where this court held that the named indorsee on a B/L, an Indian bank, must re-indorse it in favour of the transferee, if the latter were to acquire the rights of suit. There it was sought to explain why the B/L was indorsed to the Indian bank in the first place, as the latter was no more than a collecting bank. This court refused such a scrutiny, stating at [27]:

> We must reiterate that the court does not look behind a BL to determine who is entitled to delivery. As pointed out by the English and Scottish Law Commissions ("the Law Commissions") in their joint report, which led to the passing of COGSA 1992, under the law as it then stood, a carrier was bound to make delivery against presentation of the BL without inquiry as to the way in which the presenter of the BL had acquired the property in the goods. The change brought about by COGSA was to simplify the law. The Law Commissions further pointed out that if a person who transfers a BL were to retain rights, it would enable him to undermine the security of the new holder and expose the carrier to inconsistent claims. Keppel TL's attempt to rely on their underlying arrangement with the State Bank pursuant to which the BLs were specially indorsed over to the State Bank was, therefore, without merit.

37 The position contended for by the respondent would only lead to uncertainty and dispute, which the enactment of the English Carriage of Goods by Sea Act 1992 (c 50), and, in turn, our Bills of Lading Act, was intended to avoid. An acquisition of rights of suit under s 5(2)(*a*) should be differentiated from that under s 5(2)(*b*). *Keppel TatLee* was a case under s 5(2)(*b*).

38 The respondent had also relied on, *inter alia*, *CP Henderson & Co v The Comptoir D'Escompte De Paris* (1873) LR 5 PC 253, *The Rafaela S* [2004] QB 702 and *APL Co Pte Ltd v Voss Peer* [2002] 4 SLR 481. But the issues in those cases were hardly the same as that raised in the instant case.

39 The wording of s 5(2)(*a*) is clear. A person who is the consignee of a B/L and is in possession of the bill shall thereby become the lawful holder of the bill, so long as he comes into possession of the bill in good faith. The concept of "good faith" was taken in *The Aegean Sea* ([19] *supra* at 60) to connote honest conduct. We do not see why more should be read into the provision than its plain meaning. The respondent asked us to discard the plain sense of s 5(2)(*a*). But we were and are unable to see any justification for taking that course.

40 The respondent placed much importance on the word "becomes" in s 2(1). It argued that because of that word, it is "necessary to consider in what way that party 'becomes' a lawful holder, *ie*, how and from whom he acquires the bill of lading". In our opinion, the respondent had read too much into a simple word like "becomes" which clearly means "to come to be". In this regard one must bear in mind the object behind s 2(1) of the Act which is to transfer the right to sue of the shipper (who is the original party to the contract of carriage as reflected in the B/L) to those categories of persons set out therein. It is to promote international trade and to facilitate the enforcement of rights by third parties against the carrier. The first person who will be holding the B/L will undoubtedly be the shipper or his agent. When someone else should come into possession of the B/L through a transaction or an act of the shipper, that person will become the holder. As stated earlier, the word "becomes" means "to come to be". We cannot see how it could reasonably be suggested to also include "the way" in which that person obtains the B/L. In the context, the word "becomes" relates to a state of circumstances. The named consignee can come into possession of a B/L either directly from the shipper or in any other way. It is obviously to preclude the case where possession is obtained unlawfully, or by other improper means, that s 5(2) prescribes that the person (be he the named consignee or an indorsee) must become the holder in "good faith".

41 Reverting to the instant case, upon receipt of the four B/Ls from HSBC, the appellant had become the lawful holder of the four bills as it had satisfied all the requirements specified in s 5(2)(*a*), namely:

(a) it was in possession of the bills;

(b) it was the named consignee on the bills; and

(c) it was in possession of the bills in good faith.

Nowhere in the Act is it prescribed that the manner in which a named consignee received the bill is relevant.

42 We would hasten to add that the reference in s 2(1)(*a*) to "lawful" cannot mean more than what is prescribed in s 5(2), *ie*, that a person becomes a lawful holder if he has become the holder in good faith. There was no doubt that the appellant here had become the holder of the four B/Ls in good faith, pursuant to the financial arrangements it had made with SOM. The shippers had negotiated the B/Ls with HSBC pursuant to the LCs. HSBC presented the B/Ls and other documents to draw on the LCs. As between the shippers and HSBC, as there was no indorsement of the B/Ls to HSBC, which would give the latter the right to receive the goods and, in turn, the rights of suit, it would be fair to infer that the parties did not intend to transfer the rights to receive the goods to HSBC. In the circumstances, what was clearly intended was that HSBC would tender the B/Ls and

other relevant documents to the appellant, the issuing bank and the named consignee on the B/Ls, to draw on the LCs. The appellant was obliged to pay and would have had no business to ask if HSBC was presenting the documents as a negotiating bank or a collecting bank.

43 The judge had quite rightly pointed out ([13] *supra* at [14]) that "there is nothing in principle against the shippers indorsing and delivering the original bills to HSBC even though they were initially made out to the order of [UCO]": see *Carver on Bills of Lading* (Sweet & Maxwell, 2001) at para 1-012. That was certainly an option available to the shippers and HSBC if they had wanted to go about their transactions in that way. HSBC could then have further indorsed the B/Ls to the appellant. If that route had been taken, the appellant would have become the lawful holder pursuant to s 5(2)(*b*). The fact that the shippers and HSBC did not chose that route did not mean that s 5(2)(*a*) could not apply. It simply meant that the shippers did not intend to change the named assignee. The fact that HSBC would have, pursuant to the negotiation of the documents presented by the shippers and the terms of UCP 500, a distinct and separate cause of action against the appellant upon presentation of the documents, could in no way mean that the appellant had not become a "lawful holder". The independent cause of action which HSBC had against the appellant was pursuant to the terms of the LCs. The existence of this right could, in no way, negate the rights which would vest in the appellant pursuant to s 5(2)(*a*), read with s 2(1).

44 In our opinion, the court would be doing violence to the plain wording of s 5(2)(*a*) if it should accept the construction contended for by the respondent. How the named consignee obtained the B/L is not relevant provided that it was obtained in good faith. Both the LC and the B/L (as defined in the Act) are essential devices to promote international trade. The court should not unnecessarily introduce restrictions which would have the opposite effect.

45 The effect of the respondent's contention would be that it would be able to escape the consequences of its own act, *ie*, delivering the goods without the production of the original B/Ls. The respondent submitted that the shippers could sue on behalf of the appellant under s 2(4) which reads:

> Where, in the case of any document to which this Act applies —
>
> (*a*) a person with any interest or right in or in relation to goods to which the document relates sustains loss or damage in consequence of a breach of the contract of carriage; but
>
> (*b*) subsection (1) operates in relation to that document so that rights of suit in respect of that breach are vested in another person,
>
> the other person shall be entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised.

46 We would make two points here. First, how are the shippers to sue if they are not in possession of the B/Ls and had been paid for their shipments? Second, and more importantly, s 2(4) is not applicable to the situation here. That provision applies where the rights of suit have been vested in another person pursuant to s 2(1). On the respondent's contention, the rights of suit would remain with the shippers, as there was no proper indorsement.