IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 339

Originating Application No 138 of 2023

Between

Marchand Navigation Company

… *Claimant*

And

(1) Olam Global Agri Pte Ltd
(2) Sinco Shipping Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Admiralty and Shipping — Carriage of goods by sea — Liens over sub-freights, sub-hires and demurrages and time for detention]
[Arbitration — Stay of court proceedings — What constituted a dispute]

TABLE OF CONTENTS

Marchand Navigation Co
v
Olam Global Agri Pte Ltd and another

[2023] SGHC 339

General Division of the High Court — Originating Application No 138 of 2023
Kwek Mean Luck J
11 July, 7 September, 18 October 2023

29 November 2023

Kwek Mean Luck J:

Introduction

1 This case surfaced two main issues in relation to the shipowner's "lien" over sub-freights, sub-hires or demurrages and time for detention, the nature of which was last considered in the Court of Appeal decision of *Diablo Fortune Inc v Duncan, Cameron Lindsay and another* [2018] 2 SLR 129 ("*Diablo*"). The clause in this case was cl 18 of the New York Produce Exchange (the "NYPE") 1946 Time Charter, a standard form time charter, which provided ("Clause 18"):[1]

> That the Owners *shall have a lien upon* all cargoes, and all sub-freights or hire or sub-hires or *demurrages* and time for detention, if any *for any amounts due under this Charter*, including General Average contributions, and the Charterers to

[1] 1st Affidavit of George D Gourdomichalis dated 1 February 2023 at 24.

> have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel.
>
> [emphasis added]

2 The first issue was whether a dispute between the owner of a vessel and the charterer as to whether there were "any amounts due under this Charter" affected the right of the owner to exercise Clause 18 *as against a sub-charterer* owing demurrage to the charterer. The key sub-issue here was, where the owner steps in to pay for bunker fuel which was the contractual responsibility of the charterer to pay, whether the moneys paid by the owner could be considered as an "amount due under" the charter for the purposes of Clause 18. The second issue was whether the existence of an arbitration clause in the charter affected the right of the owner to exercise Clause 18 *as against a sub-charterer* owing demurrage to the charterer. I held that the existence of a dispute and the presence of the arbitration clause *did not* affect the right of the owner to exercise Clause 18 *as against a sub-charterer*. As these issues traversed hitherto unchartered waters in our local jurisprudence, I set out my full grounds of decisions below.

Background facts

3 The claimant, Marchand Navigation Company ("Marchand"), was the (disponent) owner of the *Maria Theo 1* (the "Vessel"). The Vessel was chartered to the second defendant, Sinco Shipping Pte Ltd ("Sinco"), a Singaporean company, pursuant to a charterparty dated 29 April 2022. I shall refer to the charterparty between Marchand and Sinco as the "Charterparty". The Charterparty was based on the NYPE standard form. Sinco sub-chartered the Vessel to the first defendant, Olam Global Agri Pte Ltd ("Olam"), another Singaporean company. I shall refer to the voyage charterparty between Sinco

and Olam as the "Voyage Charter". Marchand therefore stood in the position of the owner, with Sinco as the charterer and Olam as the sub-charterer.

4 Marchand brought this action, HC/OA 138/2023 ("OA 138"), against Olam and Sinco, and sought in the main the following orders:

> (a) a determination that Marchand may exercise the Clause 18 "lien" contained in the Charterparty, in respect of all freight and/or demurrage owed by Olam to Sinco under the Voyage Charter; and
>
> (b) that pursuant to Clause 18, Olam shall pay to Marchand all hire, freight and/or demurrage due and owing from Olam to Sinco, being in particular the sum of US$190,112.

Although I am mindful that it is now established law that the "lien" under Clause 18 is in the nature of a floating charge (*Diablo* at [58]), for convenience and in accordance with the parties' submissions, I shall also refer to it as a "lien" or simply as Clause 18.

5 Aside from Clause 18 (above at [1]), the Charterparty also included an arbitration clause at cl 17 of the Charterparty, read with cl 46 of the rider clauses to the Charterparty, which together provided (the "Arbitration Clause"):[2]

> 17. Arbitration, if any, to be in London and English Law to apply for both substance and procedures. See clause 46.
>
> **Clause 46 – BIMCO Law and Arbitration Clause 2020**
> (English Law | London Arbitration)
>
> (a) This contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this contract shall be referred exclusively to

[2] 1st Affidavit of George D Gourdomichalis dated 1 February 2023 at 24; 4th Affidavit of George D Gourdomichalis dated 13 September 2023 at 18

> arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause. The seat of arbitration shall be London even where any hearing takes place in another jurisdiction.
>
> …

Neither Marchand nor Sinco had taken any steps to initiate or commence arbitration proceedings at the time I heard OA 138.

6 Under the Charterparty, the Vessel was chartered to Sinco, which in turn sub-chartered the Vessel to Olam under the Voyage Charter. There was no direct contract between Marchand and Olam. After the voyage had been performed under the Voyage Charter, there was demurrage incurred under the Voyage Charter. Following negotiations, Olam and Sinco agreed on or around 21 December 2022 that the sum due under the Voyage Charter was US$190,112 (being demurrage in the sum of US$192,812 less dunnage and hold cleaning in the sum of US$2,700). It was undisputed that Olam therefore owed the sum of US$190,112 to Sinco under the Voyage Charter.[3]

7 On 11 January 2023, Marchand issued a notice of exercise of the Clause 18 lien to Olam (the "11 January 2023 Notice"), with Sinco in the loop. The 11 January 2023 Notice informed Olam that Sinco was in breach of the terms of the Charterparty by failing to pay hire due and owing to Marchand, as well as set out the amount claimed by Marchand from Sinco. It expressly referred to, and set out the entirety of, Clause 18, and instructed Olam to "treat this message as Notice of Lien over any balance of freight(s) and/or hire(s) and/or demurrage due". Marchand requested that Olam confirm the amounts due from Olam to Sinco, and to arrange for payment of the said amounts to Marchand, not to

---

[3] 1st Affidavit of Sarah Nicole Boys dated 24 March 2023 at paras 6–7 and 18.

Sinco. Olam was warned that Marchand reserved the right to recover these amounts from Olam, should Olam fail to take heed of the 11 January 2023 Notice by making payment to Sinco.[4] It was not disputed that the 11 January 2023 Notice was formally valid and had been issued to Olam before Olam made payment of the US$190,112. However, Sinco informed Olam: (a) that Sinco objected to Marchand's exercise of the lien; (b) that *no sums* were due and owing under the Charterparty; and (c) that Olam was to pay the US$190,112 owed to Sinco, not to Marchand.[5]

8 Olam was therefore faced with two competing claims from Marchand and Sinco. Olam informed Marchand that, in order to avoid the risk of having to pay twice, Olam would hold onto the moneys and make payment in accordance with any agreement subsequently reached between Marchand and Sinco. No agreement materialised. Olam also offered to pay the US$190,112 into escrow pending resolution of the dispute between Marchand and Sinco.[6] Despite Olam's efforts to reach an amicable resolution, Marchand commenced OA 138 and claimed against Olam for payment of the US$190,112. Subsequently, Sinco was added as a party to these proceedings on 21 April 2023. After all the parties appeared before me on 7 September 2023, I directed that the US$190,112 be paid into court, pending the determination of Marchand's application.

Parties' cases

9 Olam was ready, willing, and able to make payment, but maintained that it was in no position to determine the dispute between Marchand and Sinco.

---

4 1st Affidavit of George D Gourdomichalis dated 1 February 2023 at 122–123.

5 1st Affidavit of Sarah Nicole Boys dated 24 March 2023 at para 24.

6 1st Affidavit of Sarah Nicole Boys dated 24 March 2023 at paras 27–34.

Accordingly, Olam took no position on the issues in OA 138.[7] The substance of the dispute therefore lay between Marchand and Sinco.

Marchand's case

10 Marchand relied on Clause 18 of the Charterparty, the material part of which provided:[8]

> … [Marchand] *shall have a lien upon* all cargoes, and all sub-freights or hire or sub-hires or *demurrages* and time for detention, if any *for any amounts due under* [*the Charterparty*], including General Average contributions …
>
> [emphasis added]

Marchand primarily submitted that there were "amounts due under the Charterparty", in the sum of US$406,401.47, being amounts paid by Marchand in respect of unpaid bunkers. Consequently, as Marchand had issued effective notice by the 11 January 2023 Notice, Marchand was entitled to exercise a lien over the US$190,112 in demurrage owing from Olam to Sinco (above at [6]).

11 Marchand's submission was based on the following:[9]

(a) Bunkers in the amount of US$406,401.47 were supplied by Integr8 Fuels Inc ("Integr8") to the Vessel on 28 June 2022, during the term of Sinco's charter of the Vessel under the Charterparty (the "Integr8 Sum");

---

7 1st Defendant's Submissions dated 28 June 2023 at paras 3 and 25–27.

8 1st Affidavit of George D Gourdomichalis dated 1 February 2023 at 24.

9 2nd Affidavit of George D Gourdomichalis dated 29 May 2023 at paras 7–14; Claimant's Written Submissions dated 31 August 2023 at paras 30–38.

(b) Sinco had acknowledged that Integr8 was its bunker creditor in its list of creditors set out in an affidavit filed on 10 November 2022 for the purposes of HC/OA 886/2022 (the "OA 886 Affidavit"), which was an application by Sinco for a Scheme of Arrangement;

(c) in the OA 886 Affidavit, Sinco stated that it intended to repay its bunker creditors in full as part of its Scheme of Arrangement proposal;

(d) on 2 March 2023, at the hearing of Sinco's application in HC/OA 886/2022, Justice Hri Kumar Nair noted that Sinco intended to pay off its bunker creditors in its Scheme of Arrangement proposal;

(e) Marchand had paid the Integr8 Sum to Integr8 pursuant to a settlement agreement between Marchand and Integr8, after Sinco defaulted on payment and Integr8 threatened to arrest the Vessel due to the unpaid bunkers; and

(f) after Marchand paid the Integr8 Sum on behalf of Sinco, Integr8 assigned its claim against Sinco to Marchand in full, as was evidenced by:

(i) a written settlement agreement and addendum dated 15 and 24 September 2022 respectively;

(ii) records of the remittances made by Marchand to Integr8 from 26 September 2022 to 14 February 2023; and

(iii) an email dated 21 February 2023 where Integr8's counsel wrote to Sinco's counsel, informing Sinco that the claim for the Integr8 Sum had been assigned in full to Marchand, and that Marchand was thus Sinco's creditor in respect of the sum of US$406,401.47.

12 Sinco did not dispute the purchase of bunkers from Integr8 nor did it dispute that bunkers were stemmed during the term of the Charterparty. Sinco also did not dispute the validity of the assignment of the claim for the Integr8 Sum from Integr8 to Marchand.

13 Marchand submitted that the phrase "any amounts due under [the Charterparty]" in Clause 18 would clearly include the cost of bunkers which were ordered by Sinco, but paid for by Marchand, and for which Marchand is entitled to reimbursement (*ie*, the Integr8 Sum). This was because disbursements made by owners of a vessel which, by the terms of the charter, were the responsibility of the charterers and in respect of which the owners were entitled to reimbursement, were sums for which the Clause 18 lien could be exercised.[10]

14 Marchand relied on an extract from Terence Coghlin *et al*, *Time Charters* (Informa Law, 7th Ed, 2014) ("*Time Charters*") at para 30.3, which provided:

> **For what are the liens security?**
>
> "any amounts due under this Charter"
>
> 30.3 The owners liens can be exercised in respect of hire and other sums due from the charterers under the charter. *This will include disbursements made by the owners which, by the terms of the charter, are the responsibility of the charterers and in respect of which the owners are entitled to reimbursement* …
>
> The *Lindenhall* was employed under a time charter which provided that the owner should have a lien upon all cargoes and all sub-freights for any amounts due under the charter. Hire was payable in advance. The ship was ordered to load cargo in the US for Japan. The charterers issued bills of lading (to which the owners were not a party) under which part of the freight was payable on delivery. In the course of the voyage the charterers

[10] Claimant's Written Submissions dated 28 September 2023 at paras 20–23.

> became insolvent and *the owners had to pay for fuel* and incur other disbursements which were the charterers' responsibility under the terms of the charter …
>
> Walton, J, held that:
>
> …
>
> (2) *The owners' lien covered the cost of fuel and other disbursements incurred on the voyage since these were the responsibility of the charterers and thus "amounts due under this Charter".*
>
> [emphasis added]

Accordingly, Marchand submitted that the Integr8 Sum fell within the ambit of the phrase "any amounts due under [the Charterparty]" in Clause 18.

15 Marchand submitted that the 11 January 2023 Notice was an effective exercise of the lien, as it informed Olam, the sub-charterer, that: (a) Marchand was the assignee of debts owed by Olam; (b) the debts that were assigned; (c) amounts were due to Marchand under the head charterparty (*ie*, the Charterparty); and (d) Marchand required the assigned debts to be paid directly to them.[11] Marchand therefore submitted that the floating charge in Clause 18 had crystallised and it was accordingly entitled to the US$190,112 as demurrages due from Olam to Sinco under the Voyage Charter.

16 Marchand accepted that disputes arising out of or in connection with the Charterparty had to be referred exclusively to arbitration in London pursuant to the Arbitration Clause.[12] However, Marchand submitted that the Arbitration Clause did not apply, because there was *no dispute* referrable to arbitration, given that Sinco had admitted that the Integr8 Sum was due and owed. For this, Marchand mainly relied on purported admissions contained in the OA 886

---

11 Claimant's Written Submissions dated 31 August 2023 at para 20.

12 NE, 7 September 2023, at 3, lines 20–21.

Affidavit. Marchand submitted that even if the Arbitration Clause applied, it did not affect Marchand's exercise of Clause 18.[13]

Sinco's case

17 Sinco submitted that disputes had to be resolved through arbitration in London, pursuant to the Arbitration Clause (above at [5]). Sinco submitted that there were *no* sums due and owing under the Charterparty, and that it therefore disputed Marchand's claim.[14] In relation to the Integr8 Sum, Sinco submitted that this claim should also be pursued in arbitration. Sinco further submitted that the terms of the Charterparty did not permit the exercise of the lien for a payment of bunkers. Consequently, any payment related to bunkers, such as the one relating to the Integr8 Sum, should not have been subjected to a lien and Marchand should not be claiming payment from Olam under the lien.[15]

Decision

18 As I have summarised at the outset, OA 138 turned on two issues: whether Marchand's exercise of Clause 18 *as against Olam* was affected by: (a) the existence of a dispute between Marchand and Sinco as to whether there were any "amounts due under [the Charterparty]"; and/or (b) the Arbitration Clause. Before setting out my analysis, I must emphasise that the focus in this case was on Olam's position as a sub-charterer who was not a party to the Charterparty. The question was whether Olam was required to pay Marchand the US$190,112 following Marchand's exercise of the lien through issuing the 11 January 2023 Notice to Olam. In other words, the crux was the obligations of a sub-charterer

---

13 Claimant's Written Submissions dated 28 September 2023 at paras 5–19 and 25.

14 2nd Defendant's Written Submissions dated 6 September 2023 at paras 4 and 8.

15 2nd Defendant's Written Submissions dated 6 September 2023 at paras 8–10.

in Olam's position. It is critical to distinguish this from issues relating to the contractual rights and obligations as between Marchand and Sinco *under the Charterparty*. The question was *not* whether Marchand's exercise of Clause 18 was proper or improper as a matter between Marchand and Sinco under the terms of the Charterparty.

19 To resolve the two issues, I first considered the sub-issue of the proper interpretation of Clause 18, which was whether Marchand's payment of the unpaid bunkers (*ie*, the Integr8 Sum) on behalf of Sinco was an "amount due under [the Charterparty]" under Clause 18. I then considered Marchand's submission that there was no "dispute" referrable to arbitration under the Arbitration Clause, before returning to address the two main issues.

Whether the Integr8 Sum was an amount due under the Charterparty

20 Under Clause 18, Marchand was to have a lien on all demurrages. This would include demurrage owing from Olam to Sinco under the Voyage Charter. This was not contested by Sinco. In my judgment, the US$190,112 could therefore in principle have been subject to the lien in Clause 18.

21 However, Clause 18 further states that the lien would be "for any amounts due under this Charter". This therefore raised the question of whether the Integr8 Sum was an "amount due under [the Charterparty]". Sinco submitted that the terms of the Charterparty did not allow the exercise of the lien in relation to Marchand's payment of bunkers on behalf of Sinco. However, Sinco did not provide any authority for this submission. In its written submissions, Sinco did not advance any explanation for its position and did not highlight whether there were any specific terms which would clearly exclude the claim for the Integr8 Sum, given the broad language employed by Clause 18. Neither was counsel for

Sinco able to point to any such specific term when I queried him on the basis of this submission at the hearings on 7 September 2023 and 18 October 2023. Counsel for Sinco instead confirmed that this submission was based *only* on his interpretation of the plain language of Clause 18.[16]

22 I thus considered Clause 18 as it stood, taking into account the fact that Clause 18 was a clause from the NYPE standard form. In my judgment, the phrase "any amounts due under this Charter" was wide enough to encompass the Integr8 Sum.

23 On the evidence, I accepted that the bunkers were stemmed during the term of the Charterparty. Sinco did not pay Integr8, even though Sinco was obliged to do so. Marchand paid Integr8 when Integr8 threatened to arrest the Vessel if the bunkers were not paid for. This would have been to the detriment of Marchand, as the disponent owner of the Vessel, and to the ongoing operation of the Charterparty. Marchand therefore paid the Integr8 Sum for the bunkers, on behalf of Sinco. As part of the settlement between Marchand and Integr8, Intreg8 assigned the full claim for the Integr8 Sum to Marchand, and Integr8 expressly informed Sinco of the assignment.

24 The learned authors of *Time Charters* had (at para 30.3) considered the ambit of the phrase "any amounts due under this Charter" contained in cl 18 of the NYPE standard form (*ie*, Clause 18). There, they set out the principle that owners' liens can be exercised in respect of hire and other sums due from the charterers under the charter. This would include disbursements made by the owners which, by the terms of the charter, were the responsibility of the charterers and in respect of which the owners were entitled to reimbursement

---

16 NE, 18 October 2023, at 3, lines 21–26.

(above at [14]). This drew on the decision in *Samuel v West Hartlepool* (1906) 11 Com Cas 115 and (1907) 12 Com Cas 203 ("*Samuel*"). Walton J had held in that case that the owners' lien covered the cost of fuel and other disbursements incurred on the voyage, since these were the responsibility of the charterers and thus qualified as "amounts due under this Charter" under Clause 18.

25 *Alpha Marine Corp v Minmetals Logistics Zhejiang Co Ltd* [2021] Bus LR 1391 ("*Alpha Marine*") provides further support for the principle set out in *Time Charters*. This was a case between the owners of a vessel and the charterers, arising from an arbitration. The clause in question was also cl 18 of the NYPE standard form (*ie*, Clause 18). The charterers had contended in the arbitration that *no amounts* were due under the charterparty and that the owners were therefore not entitled to exercise the lien under Clause 18 when they had purported to do so (at [16]). The owners had successfully claimed in the arbitration for the payment of bunkers consumed in the performance of the charterparty. This was on the basis that it was the charterers who were obliged under a clause of the charterparty to pay for shortfall in the fuel on redelivery, a claim that the charterers did not submit on and therefore did not appear to dispute (at [19]). The court in *Alpha Marine* considered and dismissed the charterers' submission that there should be an implied term that would prevent an owner from intervening and withdrawing their authority to collect freight, on the basis that owners were already under an obligation to account to the charterers for any excess collected over the amounts due under the charterparty (at [44]–[55]). More relevant to OA 138 was the fact that the court in *Alpha Marine* considered, in *obiter*, that the owners' liquidated claim in relation to the bunkers was indeed a sum due under the charterparty (at [56]–[57]).

26 *Time Charters*, *Samuel*, and *Alpha Marine* therefore take the position that a claim for the payment for bunkers by an owner on behalf of the charter is

a claim that falls within the ambit of the phrase "any amounts due under this Charter" in Clause 18, where the responsibility for making such payment falls on the charterer.

27 I found that the language of Clause 18, which expansively includes "*any* amounts due under this Charter", was, on a plain reading, wide enough to encompass the payment of bunkers by Marchand to Integr8 on behalf of Sinco. Such a reading of Clause 18 was fortified by the principles set out in *Time Charters*, by the holding of Walton J in *Samuel*, and by the *obiter dicta* in *Alpha Marine*. These authorities all supported the expansive reading based on the plain language of Clause 18, namely that the fuel disbursements incurred by the owners was properly the responsibility of the charterers and would hence be regarded as "amounts due under this Charter". Sinco agreed with this statement of principle.[17]

28 In this case, cl 2 of the Charterparty provided that "whilst on hire the Charterers shall provide and pay for all the fuel except as otherwise agreed".[18] This meant that Sinco was under an express obligation to provide and pay for all the fuel during the term of the hire. I found that the bunkers had been provided by Integr8 to the Vessel during the term of Sinco's hire under the Charterparty (above at [23]). Thus, under the terms of the Charterparty, fuel disbursements to Integr8 were indeed the responsibility of Sinco as the charterers. Marchand had paid the Integr8 Sum when it was the responsibility of Sinco to do so, and Marchand was entitled to be reimbursed. This placed this case firmly within the principles identified in *Time Charters* and *Samuel*.

---

17 NE, 18 October 2023, at 3, lines 4–8.

18 1st Affidavit of George D Gourdomichalis dated 1 February 2023 at 22.

29 Bearing these principles in mind, I was satisfied that on the facts of this case, the payment by Marchand to Integr8, of the Integr8 Sum, would be regarded as an "amount due under this Charter" for the purposes of Clause 18. Consequently, Marchand would be entitled to exercise a lien over the demurrage owing from Olam to Sinco, being the sum of US$190,112. However, the forgoing analysis is *potentially* subject to one caveat, as Sinco disputed that any sum was owing under the Charterparty and submitted that the use of the Integr8 Sum as justification for the exercise of the lien by Marchand, was an issue that ought to have been referred to arbitration.[19]

Whether there was a "dispute" within the meaning of the Arbitration Clause

30 The next question was therefore whether the issues in this case were caught by the Arbitration Clause (*ie*, cl 17 read with cl 46 of the Charterparty). Marchand's case was that there was *no dispute* referrable to arbitration, based on purported admissions by Sinco in the OA 886 Affidavit (above at [11]).

31 In my view, this raised two *distinct* sub-issues. First, whether there was a "dispute" within the meaning of the Arbitration Clause, which therefore had to be referred to arbitration. Second, even if there was a dispute that was referrable to arbitration *as between Marchand and Sinco*, whether this prevented Marchand from exercising the lien under Clause 18 *as against Olam*. I therefore distinguished, on one hand, the issue of the *propriety* of Marchand's exercise of the lien as a matter of contract between Marchand and Sinco under the terms of the Charterparty, from the distinct question of whether Marchand was thereby *prevented* from exercising the lien as against Olam, who was a third party that was not privy to the Charterparty.

---

19 2nd Defendant's Written Submissions dated 6 September 2023 at paras 8–9.

32 In so far as the first sub-issue was concerned, *viz*., whether there was a "dispute" that fell within the scope of the Arbitration Clause, I observed that the authorities established a high threshold before the court would find that something fell outside the scope of a "dispute" as defined in arbitration clauses. Marchand relied on the Court of Appeal decision of *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 ("*Tjong Very Sumito*"). As highlighted by Marchand itself, in *Tjong Very Sumito*, the Court of Appeal set a very high bar before the court would be willing to find that there was no "dispute" referrable to arbitration. The Court of Appeal held that the court would refuse to grant a stay in favour of arbitration "only in obvious cases" and that such an exception would "*only be made where there has been a clear and unequivocal admission*" such that it could "*be said that there exists no dispute mandatorily referable to arbitration*" [emphasis in original] (at [59]). In other words, a finding that there was *no dispute* was truly exceptional. The Court of Appeal provided further guidance (at [49], [61], and [62]):

> … it *is* sufficient for a defendant to simply assert that he disputes or denies the claim in order to obtain a stay of proceedings in favour of arbitration … the court is not to examine whether there is "in fact" a dispute, or a genuine dispute … A dispute that a claimant was always likely to succeed in remains, until adjudicated on, none the less a dispute.
>
> …
>
> *… In essence, we are of the view that generally speaking, the court ought to be ordinarily inclined to find that there has been a denial of a claim in all but the clearest of cases. It should not be astute in searching for admissions of a claim.*
>
> … the lack of a meritorious defence does not entitle a claimant to bypass the prior agreed dispute resolution mechanism *unless the defendant has admitted the claim*, and an open-and-shut case must be distinguished from an admission … The court … will therefore be very slow to allow a claimant to circumvent the arbitration agreement unless there has indeed been a clear and unequivocal admission by the defendant …
>
> [emphasis in original]

33 Notably, the examples given by the Court of Appeal in *Tjong Very Sumito* of what would amount to a "clear and unequivocal" admission were rather stark. The first example (based on *Getwick Engineers Limited v Pilecon Engineering Limited* [2002] 1020 HKCU 1) was where there had been an attempt to pay the amount claimed by way of a cheque, but where the cheque was subsequently dishonoured. Such a cheque, which would be treated as cash, would be regarded a clear and unequivocal admission of both liability and quantum (*Tjong Very Sumito* at [57] and [59]). The second example was the case where the defendant admits to liability but simply says that they are unable to pay, which would similarly be a clear and unequivocal admission (*Tjong Very Sumito* at [59]). I would add that in *Gulf International Holding Pte Ltd v Delta Offshore Energy Pte Ltd* [2023] SGHC 151, another case which Marchand also relied on, the debtor had simply sought multiple extensions of time to make repayment and did not dispute liability until before the court (at [32]). To bring the present case within the scope of the exception in *Tjong Very Sumito*, Marchand therefore needed to satisfy the court that any purported statements by Sinco rose to the exceptional level of such a "clear and unequivocal" admission.

34 While Marchand initially proceeded on the basis of the list of creditors in the OA 886 Affidavit filed for Sinco's Scheme of Arrangement application (above at [11(b)]), to support its submission that Sinco had admitted that it owed a sum of US$2,755,404.21 to Marchand, Marchand subsequently narrowed its case when it filed its further written submissions to focus only on the Integr8 Sum. Unlike the initial sum of US$2,755,404.21, the Integr8 Sum appeared to have surer footing because of Sinco's clearly expressed intention to repay its bunker creditors (which included and named Integr8) in the OA 886 Affidavit and Integr8's undisputed assignment of the entire claim for the Integr8 Sum to Marchand (above at [11]).

35 Nevertheless, Sinco *did* dispute the use of the Integr8 Sum as the justification for the exercise of the lien by Marchand and submitted that this claim ought to have been resolved by arbitration. Notably, I observed that while Sinco contended that the sum of US$406,401.47 (*ie*, the Integr8 Sum) did not come within the ambit of "any amounts due under [the] Charter" in Clause 18, this was not, based on Sinco's limited submissions, because it disputed that the US$406,401.47 was in fact owed by Sinco to Intgr8 or that the claim for this sum had not been assigned from Integr8 to Marchand.

36 Leaving aside the merits of Sinco's submissions, there was nevertheless arguably a "dispute" for the purposes of the Arbitration Clause. Following the guidance of the Court of Appeal in *Tjong Very Sumito*, the mere assertion of a dispute would be sufficient. An open-and-shut case must be distinguished from a clear and unequivocal admission. I therefore had some difficulty accepting Marchand's submission that Sinco had made a sufficiently "clear and unequivocal" admission in the OA 886 Affidavit, such that I would be able to find that there was no "dispute" referrable to arbitration under the Arbitration Clause.

Whether Marchand was entitled to exercise the lien against Olam

37 However, as I have foreshadowed, even if there was a dispute for the purposes of the Arbitration Clause, there was still the *distinct* issue of whether the presence of such a dispute prevented Marchand's exercise of the lien under Clause 18 *as against Olam*. In my view, it did not, and Olam was therefore entitled to make payment of the US$190,112 to Marchand for the purposes of these proceedings. I reached this conclusion for three reasons.

38 First, Olam was not a party to the Charterparty, which was between Marchand and Sinco. Hence, Olam was not privy to the Arbitration Clause. Olam was therefore *not* bound to arbitrate pursuant to the Arbitration Clause and Olam was entitled to a determination by the court of its rights and obligations as a sub-charterer in receipt of the 11 January 2023 Notice. For this same reason, Olam likewise had no control over any arbitration proceedings between Marchand and Sinco (if any) and had no means of compelling them to take out arbitration proceedings to resolve their dispute. Despite Sinco's submission that the issue (of whether the Integr8 Sum was an amount due under the Charterparty) was one that ought to have been resolved by arbitration, no steps had been taken to arbitrate the dispute by either Marchand or Sinco. Unless either Marchand or Sinco took such steps, the dispute between them would continue to be left in the doldrums. This was despite Olam's expressed willingness and readiness to pay out the sum of US$190,112. Olam was certainly not in any position to adjudicate the dispute between Marchand and Sinco. In my view, the scope of a sub-charterer's obligations upon their receipt of a valid notice of exercise of a lien should not depend on, or be significantly altered by, the presence of an arbitration clause or the presence of a subsisting dispute referrable to arbitration as between the owner and charterer. This is important because the effect of Clause 18 extended beyond the parties privy to the Charterparty and could affect third party sub-charterers such as Olam, and indeed sub-sub-charterers (if any exist) further along the chain (*Diablo* at [30]). It is established that, given its effect on third parties to the charterparty in which the clause is contained, Clause 18 does not operate solely as a contractual right (*Diablo* at [34]). The lien in Clause 18 is ubiquitous (*Diablo* at [1] and [4]), and much of its effect and purpose would be denuded if any apparent dispute along the chain would be sufficient to preclude its exercise.

39 Second, the Arbitration Clause only required that *the parties to the Charterparty* submit to arbitration where there was a dispute arising out of or in connection with the Charterparty. There was nothing in the language of the Arbitration Clause that constrained the operation of the lien under Clause 18 against a sub-charterer – for example, by imposing the need for an arbitration to have been commenced or an arbitral award to be presented before the lien could be exercised – if it could be so exercised pursuant to the plain terms of Clause 18. From the perspective of the sub-charterer against whom notice of exercise of a lien was issued, there was similarly no requirement in law that the notice *must* be accompanied by proof of a final determination of any dispute between the owner and charterer, such as an arbitral award. Counsel for Sinco was unable to point to any authority to justify the imposition of such a requirement.[20]

40 I therefore affirmed my prior analysis that the claim for the Integr8 Sum would be regarded as an "amount due under this Charter" for the purposes of Clause 18. The lien could therefore be exercised in respect of the US$190,112, to secure the claim for the Integr8 Sum, by issuing notice of the exercise of Clause 18 to Olam (*Diablo* at [37] and [58]). I only qualified this analysis to the extent of limiting this determination to Olam's position as a sub-charterer with notice. Marchand's exercise of the lien by way of the 11 January 2023 Notice was therefore valid *in so far as Olam was concerned*. I emphasise that this conclusion does not purport to determine the merits of any arbitrable dispute *as between Marchand and Sinco* that falls within the scope of the Arbitration Clause, such as the issue of the *propriety* of Marchand's exercise of Clause 18

[20] NE, 18 October 2023, at 4, line 28, to 5, line 1.

as a matter of contract between Marchand and Sinco under the terms of the Charterparty.

41 Third, the case of *Care Shipping Corporation v Latin American Shipping Corporation* [1983] 1 QB 1005 ("*Care Shipping*") provided direct support for this approach. *Care Shipping* was cited by the Court of Appeal in *Diablo*, but not on this specific point. Nonetheless, I found *Care Shipping* highly persuasive given the many factual parallels with this case. In *Care Shipping*, the owners of the vessel, Care, gave notice of the lien in cl 18 of the NYPE standard form to the sub-charterer and sub-sub-charterer of the vessel. The lien in that case was not materially different from Clause 18 here. The head charterer, Naviera, similarly disputed the exercise of such lien on the basis that no amounts were due under the head charter. This dispute between the owner and the head charterer was the subject of an *ongoing* arbitration at the time of the litigation. Both the owner, Care, and the head charterer, Naviera, agreed that it was the outcome of the ongoing arbitration that would finally determine the rights *as between Care and Naviera*. The purpose of the litigation was to determine to whom the moneys purportedly subject to the lien was to be paid in the time being (at 1009F–1010F). The court ruled in favour of the owners, holding that the moneys claimed under the liens belonged to them. This was notwithstanding the presence of an arbitration clause in the head charter between the owner and head charterer, and notwithstanding the fact that arbitration proceedings were still underway, and no arbitration award had been issued at that stage. Applying *Care Shipping* to the present case, the fact that there appeared to be a dispute between Marchand and Sinco that could have been referrable to arbitration *does not* prevent Marchand's exercise of the lien under Clause 18 as against a sub-charterer, Olam. Having received notice by the 11 January 2023 Notice, Olam

was therefore entitled to make payment of the US$190,112 to Marchand in discharge of Olam's debt to Sinco (*Diablo* at [29]–[30]).

Conclusion

42 Therefore, for the reasons above, I held that Marchand was entitled to exercise its lien pursuant to Clause 18 of the Charterparty dated 29 April 2022 in respect of the US$190,112 owed by Olam to Sinco. Payment of this sum was to be made to Marchand, with the final outcome of the arbitration (if any) being determinative of the rights to this money as between Marchand and Sinco *inter se*. As this sum had been paid by Olam into court, I ordered that there be payment out to Marchand.

43 Olam had proposed certain amendments to prayers 1 and 2 of OA 138, to clarify the scope of those prayers.[21] Marchand did not have any objections to the amendments. I agreed that the amendments provided better clarity on what was sought by Marchand. I therefore granted prayers 1 and 2 of OA 138, as amended by Olam. The sums paid in by Olam, being the US$190,112 in demurrage owed by Olam to Sinco, was to be the sums paid out to Marchand.

44 As costs follows the event, Marchand was entitled to costs from Sinco. I awarded Marchand costs in the amount of $13,000 plus reasonable disbursements. Olam's costs of this application were occasioned by the position taken by Sinco. Sinco's actions, in effect, caused Olam to be sued. Sinco was

---

21 1st Defendant's Submissions dated 28 June 2023 at para 28.

hence ordered to also pay costs to Olam. I awarded costs to Olam in the amount of $9,000 all in.

Kwek Mean Luck
Judge of the High Court

Tan Hui Tsing and Deborah Koh Leng Hoon (DennisMathiew) for the claimant;
Teo Ke-Wei Ian and Tan Yong Jin Jonathan (Helmsman LLC) for the first defendant;
Tan Wen Cheng Adrian (August Law Corporation) for the second defendant.