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

[2024] SGHC 282

Admiralty in Rem No 20 of 2021

Between

United Overseas Bank Limited

… *Plaintiff*

And

Owner and/or Demise
Charterer of the Vessel
"MAERSK KATALIN"

… *Defendant*

And

Winson Oil Trading Pte. Ltd.

… *Intervener*

JUDGMENT

[Admiralty and Shipping — Bills of lading — Delivery of cargo against presentation of bills of lading]
[Contract — Variation]
[Equity — Defences — Acquiescence]
[Agency — Ratification — Conditions]
[Contract — Waiver]
[Admiralty and Shipping — Bills of lading — Bills of Lading Act]
[Contract — Remedies — Damages — Causation]
[Damages — Measure of damages — Contract — Damages for misdelivery of cargo]

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The "Maersk Katalin"

[2024] SGHC 282

General Division of the High Court — Admiralty in Rem No 20 of 2021
S Mohan J
27 March, 1–5, 9, 11, 15, 17 April, 5 July 2024

4 November 2024 Judgment reserved.

S Mohan J:

1 Bills of lading stand at the intersection between the international sale of goods, the operation of documentary credits mediating those sales, and the carriage of goods by sea. A buyer of goods will typically apply to its bank for the issuance of a letter of credit under pre-arranged credit lines; a letter of credit is then 'opened' in favour of the seller, who will receive payment for the goods from the bank on (or shortly after) presentation by the seller of documents complying with the terms of the credit. In most cases, original bills of lading will number among the documents that the seller will have to present for payment.

2 The bank will ordinarily retain possession of the original bills as security for the financing it has extended. This is usually done pursuant to a pre-negotiated pledge of those bills by its customer. Should the customer default on its repayment obligations, the bank may – as holder and pledgee of the original bills of lading – call on the ocean carrier for delivery of the subject

cargo, which cargo may then be sold by the bank and the proceeds applied in satisfaction of the debt. In circumstances where the carrier has already parted with the cargo other than against presentation of the original bills, the bank as holders will have to make do with a claim against the carrier for *inter alia* misdelivery. It is against that backdrop that bills of lading have come to be regarded as "one of the pillars of international trade": *J. I. MacWilliam Co. Inc. v Mediterranean Shipping Co. S.A. (The "Rafaela S")* [2005] 1 Lloyd's Rep. 347 at [38]. If letters of credit are the 'lifeblood' of cross-border commerce, as they are sometimes described, then it is bills of lading that are responsible for keeping that lifeblood flowing in most trades.

3 It is common knowledge, however, that modern commercial pressures often demand the physical transfer and delivery of cargoes on tight schedules, irrespective of where the bills of lading may be. Carriers are regularly made to release their cargoes at the port of discharge without original bills having been presented to it or its agents. In most instances, this will be done pursuant to instructions from their charterers. To protect themselves against the familiar legal risks and consequences of doing so, carriers will typically comply with such instructions only if they are suitably indemnified by their charterers or the cargo receivers (usually by means of a letter of indemnity). In this way, the legal risk is allocated as between the carrier and the parties to the underlying sale (or sales) of the goods. When things go wrong, banks almost inevitably turn to the carrier for the goods or their monetary equivalent; in turn, the carrier's indemnitor – or, where back-to-back indemnities are given, the last of the indemnitors in the chain – will be in the hot seat.

4 The arrangements for the discharge of cargoes that I have just described above may, in some cases, have been known to the bank; in other cases, the bank may have even enabled them. Circumstances like these have spawned the

incantation in pleadings and submissions that the bank "never looked to the bills of lading as security". In the end, however, there is no magic to these words. At best, they are no more than shorthand for some combination of mental states and conduct that may or may not disclose defences resting on established legal principles. It is therefore vital in every case that the factual and legal analyses are not clouded by recourse to shorthands like these.

5 The present suit was yet another product stemming from the collapse of Hin Leong Trading (Pte) Ltd ("Hin Leong" or "HLT") in 2020. The plaintiff bank ("UOB") claims as holders of certain bills of lading against the defendant shipowner, Maersk Tankers Singapore Pte Ltd ("Maersk"), for the misdelivery of a cargo of gasoil sold to Hin Leong by Winson Oil Trading Pte Ltd ("Winson").

6 That cargo was carried onboard the vessel "MAERSK PRINCESS" (the "Vessel") pursuant to a voyage charterparty between Maersk as owners and Winson as charterers. It is not disputed that the cargo was discharged without original bills of lading having been presented. Maersk did so in reliance on indemnities given by Winson. Winson was granted permission to intervene in this action and has joined forces with Maersk in resisting UOB's claims. In this judgment, and solely for ease of expression, I shall refer to Maersk and Winson jointly as "the Defendants".

7 While admitting that Maersk discharged and delivered the cargo without original bills of lading having been presented, the Defendants have advanced a number of defences against liability for misdelivery. Most of them are bonded together by the overarching assertion that UOB "never looked to the bills of lading as security".

8 Having carefully considered the evidence and parties' submissions, I allow UOB's claim against Maersk for breach of contract and award UOB damages in the sum of US$39,372,300.00. These are my reasons.

The background

The sale and purchase of the cargo

9 This dispute arises out of a shipment of 752,870 barrels of gasoil 10ppm sulphur. That cargo was split into and dealt with in four parcels at all material times:[1]

(a) "Parcel A" and "Parcel B", which respectively comprised 330,000 and 33,513 barrels, were purchased by Winson from BP Singapore Pte Limited ("BP");

(b) "Parcel C" comprising 330,000 barrels was purchased by Winson from China Aviation Oil (Singapore) Corporation Ltd; and

(c) "Parcel D" comprising 59,357 barrels was purchased by Winson from Petrochina International (Hong Kong) Co. Ltd ("PCHK").

10 The entire cargo was eventually on-sold by Winson to Hin Leong on delivery *ex* ship (or "DES") terms pursuant to a sale contract dated 12 February 2020, as amended by an addendum dated 17 February 2020 (collectively, the "Sale Contract").[2] As is customary, that contract provided for payment by

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1 Tung Ching Ching's affidavit of evidence-in-chief dated 31 January 2024 ("TCC") at paras 20 and 22.

2 Agreed Core Bundle ("ACB") dated 19 March 2024 at pp 51–57.

irrevocable letter of credit 30 days after notice of readiness (or "NOR") is tendered by the performing vessel at the port of discharge.[3]

The carriage of the cargo

11 By a charterparty in an amended ASBATANKVOY form dated 10 February 2020 (the "Charterparty"),[4] the Vessel was voyage chartered by Maersk to Winson for the carriage of the cargo.

12 Loading of the cargo commenced at Mailiao, Taiwan on 18 February 2020 and was completed on 21 February 2020,[5] whereupon the following bills of lading were issued in triplicate by the master of the Vessel for each of the four parcels described above (at [9]):[6]

(a) in respect of Parcel A, Bill of Lading 20-MAO-MP20600A ("BL-A") was issued to the order of BP;[7]

(b) in respect of Parcel B, Bill of Lading 20-MAO-MP20600B was issued also to the order of BP;

(c) in respect of Parcel C, Bill of Lading 20-MAOMP20600C ("BL-C") was issued to the order of Crédit Agricole Corporate and Investment Bank, Singapore Branch ("Crédit Agricole");[8] and

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3 ACB at p 52, cl 8.

4 TCC at pp 191–253.

5 Sushil Bhushan's affidavit of evidence-in-chief dated 30 January 2024 ("SB") at p 81.

6 SB at para 11 and pp 86–89.

7 ACB at pp 64–69.

8 ACB at pp 58–63.

(d) in respect of Parcel D, Bill of Lading 20-MAOMP20600D was issued to the order of PCHK.

Formosa Petrochemical Corporation was the shipper named on all the bills of lading.

13 UOB eventually came to be interested in Parcels A and C, and they form the subject matter of this action. I will therefore refer to both these parcels collectively as the "Cargo". I will also refer to BL-A and BL-C collectively as the "OBLs".

14 On 26 February 2020, Winson (through its chartering broker, Swift Maritime Services Pte Ltd) provided Maersk with discharge orders,[9] the relevant parts of which read:

> Receiver: HIN LEONG TRADING (PTE) LTD
> TERMINAL: UNIVERSAL TERMINAL SINGAPORE.
> QUANTITY: ALL ON BOARD QUANTITY (AS PER BL QUANTITY)

That same day, Winson issued a letter to Maersk requesting that Maersk discharge the cargo per its instructions and without presentation of original bills of lading in return for the usual indemnities from Winson (the "Discharge LOI").[10]

15 The Vessel arrived in Singapore and tendered its notice of readiness to discharge on the night of 27 February 2020. Discharge commenced the next morning and was completed shortly before noon the following day on 29

9 TCC at p 325.

10 ACB at pp 70–73.

February 2020.[11] As I mentioned, it is undisputed that all of this took place without any original bills of lading having been presented. At the time, BL-A was indorsed to BP, and BL-C was indorsed to either Crédit Agricole or UniCredit Bank AG ("UniCredit"); the physical location of those bills, however, was unclear on the evidence.

The financing arrangements between Hin Leong and UOB

The letter of credit

16 On 3 March 2020, Hin Leong applied to UOB for a letter of credit to finance its purchase of the Cargo. The remainder (*ie*, Parcels B and D) was separately financed by Standard Chartered Bank, Singapore Branch ("Standard Chartered").[12] It bears emphasising that by the time Hin Leong submitted this application to UOB, the Cargo had already been discharged and delivered at Universal Terminal, Singapore ("Universal Terminal") by Maersk some three days prior (see [15] above).

17 For context, Hin Leong's application to UOB was made pursuant to a letter of offer dated 6 April 2018, by which UOB extended to Hin Leong uncommitted banking facilities for a total amount of US$250,000,000.00 (the "Letter of Offer").[13] This comprised various lines of credit, two of which are relevant for present purposes. The first is the "LC1" sub-facility for "sold" cargoes; the second is the "LC2" sub-facility for "unsold cargoes". More will be said about this distinction shortly.

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11 SB at p 115.

12 TCC at para 21.

13 ACB at pp 8–19.

18 The Letter of Offer was accompanied by a "General Memorandum of Pledge of Goods" dated 6 August 2002 and executed by Hin Leong in favour of UOB. By this document, Hin Leong essentially undertook to *inter alia* grant UOB a pledge of any bills of lading subsequently deposited with the bank in respect of goods it has financed.[14]

19 On 4 March 2020, UOB approved Hin Leong's application and issued Letter of Credit No. 1P1LC019575 (the "L/C").[15] The L/C was booked under the LC2 sub-facility, and its maturity date was 27 March 2020.

20 Of significance to this dispute are the terms of the L/C listing the documents required for a compliant presentation thereunder. Field 46A of the L/C (headed "Documents Required")[16] states that payment is to be made by UOB against the presentation of:

(a) the beneficiary's commercial invoice indicating the date NOR was tendered at the discharge port;

(b) a full set of clean on board bills of lading issued or endorsed to UOB's order and marked "freight payable as per charter party";

(c) certificates of quality and quantity at the load port issued or countersigned by an independent inspector; and

(d) a certificate of origin.

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14 ACB at pp 6–7.

15 ACB at pp 86–91.

16 ACB at pp 86–87.

21 Clause 15 of Field 47A (headed "Additional Conditions") further provides that:[17]

> In the event that documents stated above [*ie*, under Field 46A] are not available upon negotiation, payment will be effected against:
>
> A. Beneficiary's commercial invoice indicating NOR date at discharge port
>
> B. Beneficiary's letter of indemnity duly signed by authorized signatory(s)

The clause then goes on to set out the format and text of the letter of indemnity that the beneficiary (*ie*, Winson) will have to provide under item (B) of cl 15. In essence, this letter of indemnity sets out the beneficiary's undertaking to *inter alia* provide the documents required under Field 46A (which includes the OBLs) to UOB in consideration of the bank making payment without having yet received those documents.

22 On 5 March 2020, Winson – relying on the mechanism provided for by Field 47A of the L/C – presented its commercial invoice for a sum of US$43,563,960.00 (the "Commercial Invoice")[18] and a letter of indemnity (the "Payment LOI")[19] in the required wording to Credit Suisse (Switzerland) Ltd ("Credit Suisse"). Credit Suisse was Winson's advising and negotiating bank under the L/C. At the trial, the court heard evidence from Winson's Executive Director, Ms Tung Ching Ching, that this was done because "the original bills of lading and Other Shipping Documents were not yet available to [Winson]" at the time.[20]

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17 ACB at p 88.

18 ACB at p 109.

19 ACB at p 110.

20 TCC at para 41.

23 On 9 March 2020, UOB was notified by Credit Suisse that "[d]ocuments in strict compliance with LC terms and conditions have been negotiated [by Credit Suisse] and sent to [UOB] by courier service".[21] The Payment LOI and Commercial Invoice were eventually received at UOB's counters on 11 March 2020.[22]

24 On 12 March 2020, UOB sent Hin Leong an email attaching a document titled "Collection Notice Term Bills 1P1TB109504" (the "Collection Notice"). The email also enclosed copies of the documents presented to UOB by Credit Suisse.[23] UOB sought Hin Leong's confirmation as to the correctness of those documents, and Hin Leong returned the Collection Notice to UOB on the morning of 24 March 2020 with its confirmation:[24]

THIS IS A COMPUTER PRINTOUT AND DOES NOT REQUIRE ANY SIGNATURE.

TO : UNITED OVERSEAS BANK LTD
YOUR REF: 1P1TB109504 UNDER L/NO.: 1P1LC019575

WE CONFIRM THE ACCEPTANCE OF THE ABOVE. PLEASE ACT ON THE FOLLOWING INSTRUCTION MARKED |X|

| | WE AUTHORISE DEBIT OF OUR ABOVE ACCOUNT NO./ENCLOSE CHEQUE NO ON DUE DATE.
| | WE HAVE BOOKED EXCH RATE _____ UNDER CONTRACT NO. _____
| | WE REQUIRE TRUST RECEIPT ON THE TERMS AND CONDITIONS OVERLEAF
OR WHERE WE HAVE SIGNED A MASTER TRUST RECEIPT AGREEMENT WITH HIN LEONG TRADING (PTE) LTD.
|X| WE CONFIRM CORRECTNESS OF THE AMOUNT, PRICE/INVOICE VALUE

.....
Authorised Signatories
AUTHORISED SIGNATURE(S) AND COMPANY STAMP

..... DATE

UOB REF: 1P1TB109504 UNDER LC NO: 1P1LC019575

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21 Lim Chen Chen's affidavit of evidence-in-chief dated 31 January 2024 ("LCC") at p 210.

22 LCC at para 38.

23 ACB at p 120.

24 ACB at p 123.

25 UOB then notified Credit Suisse on the same day that the documents presented had been accepted and that UOB will remit payment to Credit Suisse upon maturity of the L/C on 27 March 2020.[25] It is not disputed that payment was eventually made.

Hin Leong's sales allocations

26 At this point, I briefly digress to consider one aspect of UOB and Hin Leong's financing arrangements. Quite apart from the General Memorandum of Pledge, the terms of the Letter of Offer also required Hin Leong to (a) lodge or "allocate" sale contracts entered into by Hin Leong as seller; and (b) assign the receivables thereunder to UOB, all within 21 days from the date of the "import leg" documentary credit being opened under the LC2 line. In the ordinary course of things, the proceeds of those sale contracts would be utilised by UOB in settlement of the financing extended under the documentary credit.[26]

27 As regards the L/C in this case, Hin Leong was obliged to allocate its sale contracts by 25 March 2020, but it only did so on 26 March 2020. Specifically, three contracts (the "Rotterdam Contracts") worth approximately US$90 million on UOB's contemporaneous estimation were allocated to cover Hin Leong's repayment obligations under two import letters of credit, one of which was the L/C. Those allocations were duly accepted by UOB.[27]

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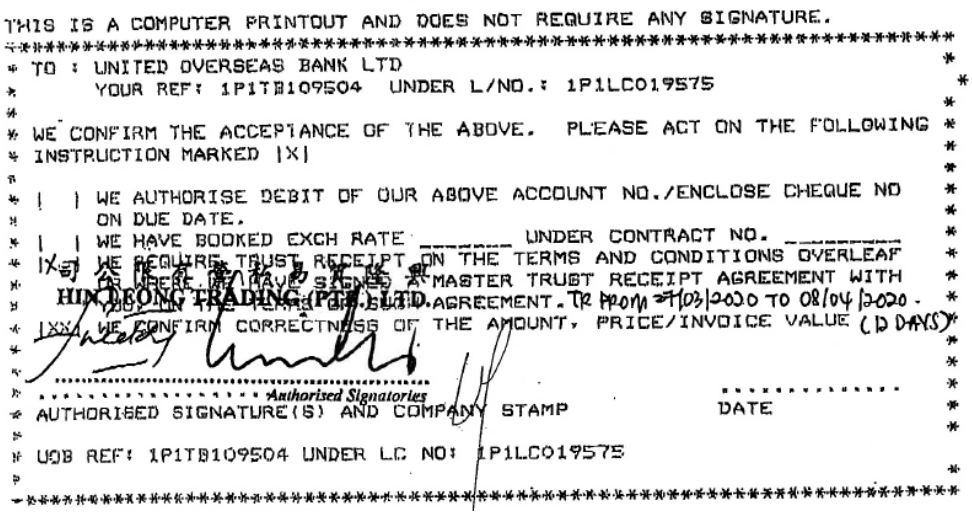
25 LCC at p 229.

26 ACB at p 9.

27 Christina Foong's affidavit of evidence-in-chief dated 31 January 2024 ("CF") at paras 78–97.

The Trust Receipt Loan

28 On 27 March 2020 (being the due date for payment under the L/C), Hin Leong returned a further copy of the Collection Notice requesting the grant of a trust receipt on the terms and conditions set out overleaf:[28]



THIS IS A COMPUTER PRINTOUT AND DOES NOT REQUIRE ANY SIGNATURE.

TO : UNITED OVERSEAS BANK LTD
YOUR REF: 1P1TB109504 UNDER L/NO.: 1P1LC019575

WE CONFIRM THE ACCEPTANCE OF THE ABOVE. PLEASE ACT ON THE FOLLOWING INSTRUCTION MARKED |X|

| | WE AUTHORISE DEBIT OF OUR ABOVE ACCOUNT NO./ENCLOSE CHEQUE NO ON DUE DATE.
| | WE HAVE BOOKED EXCH RATE _____ UNDER CONTRACT NO. _____
|X| WE REQUIRE TRUST RECEIPT ON THE TERMS AND CONDITIONS OVERLEAF AS WHERE WE HAVE SIGNED A MASTER TRUST RECEIPT AGREEMENT WITH YOU ON THE TERMS OF SUCH AGREEMENT. TR from 27/03/2020 to 08/04/2020 - (10 DAYS)
|XX| WE CONFIRM CORRECTNESS OF THE AMOUNT, PRICE/INVOICE VALUE

HIN LEONG TRADING (PTE) LTD.

Authorised Signatories

AUTHORISED SIGNATURE(S) AND COMPANY STAMP DATE

UOB REF: 1P1TB109504 UNDER LC NO: 1P1LC019575

29 A conventional trust receipt involves the bank releasing original bills of lading to its customer, who will then take receipt of the cargo (and any proceeds subsequently generated therefrom) on trust for the bank. It is common ground that because UOB was *not* in possession of the OBLs at the material time (see [33]–[35] below), the bank could not have extended a trust receipt, properly so-called, to Hin Leong.[29]

30 Therefore, what followed in practical terms upon UOB approving Hin Leong's request for a "trust receipt" was an arrangement in which Hin Leong

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28 ACB at p 137.

29 Defendant & Intervener's Closing Submissions ("D&I CS") at para 129; Plaintiff's Closing Submissions ("P CS") at para 183.

drew on credit under its Trust Receipt (1) sub-facility with UOB to notionally settle its repayment obligations in respect of the L/C.[30] The tenor of that loan was 27 March 2020 to 8 April 2020.[31] I will refer to this arrangement as the "Trust Receipt Loan". The original of the Commercial Invoice was then released by UOB to Hin Leong, but not the Payment LOI.[32]

Roll-over of the Trust Receipt Loan

31 On 8 April 2020 (when repayment of the Trust Receipt Loan fell due), Hin Leong sent a letter to UOB requesting for a "roll-over [of] the principal amount of US$43,563,960.00 for period from 08/04/2020 to 17/04/2020".[33] That request was approved on the same day.[34]

32 On 9 April 2020, Hin Leong informed UOB that it was withdrawing its earlier allocation of the Rotterdam Contracts (see [27] above). An explanation was sought by the bank, but it appears from the evidence that no response was given.[35]

Events following Hin Leong's announcement of its insolvency

33 On 14 April 2020, Hin Leong announced its insolvency at a meeting with its creditors. The events that followed are by now notorious. Soon after that meeting, UOB went on to inquire of Winson on the status of the OBLs. As

30 LCC at para 42; CF at para 109.

31 CF at p 373.

32 LCC at para 48(e); CF at para 76.

33 ACB at pp 151–152.

34 CF at p 382.

35 Chuah Jade Lan's affidavit of evidence-in-chief dated 31 January 2024 at para 37 and p 195.

time passed, those inquiries grew in urgency and several of them were accompanied by warnings that UOB would look to Winson for any loss arising out of its failure to convey the necessary documents (including the OBLs) per the Payment LOI's terms.[36]

34 Instructions were thus given within Winson internally "to secure the original Bills of Lading as well as the Other Shipping Documents for redemption of the Payment LOIs."[37] Winson eventually received BL-C from UniCredit on or around 26 June 2020; BL-A was received from BP on or around 7 July 2020.[38]

35 Winson then delivered the OBLs to Credit Suisse with instructions for Credit Suisse to deliver them onwards to UOB. Prior to that, BL-C had been indorsed by Winson to UOB's order. Given that BL-A was then endorsed to Credit Suisse, Winson instructed Credit Suisse to endorse BL-A to UOB's order. Credit Suisse complied with these instructions and the OBLs eventually arrived at UOB's counters on 15 July 2020.[39]

Commencement of these proceedings

36 On 3 February 2021, UOB wrote to the Vessel's then-registered owners, Sri Asih Maritime Ltd ("Sri Asih"), demanding delivery up of the Cargo.[40] UOB also issued a writ *in rem* against the Vessel in HC/ADM 10/2021 ("ADM 10")

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36 TCC at pp 497–509.

37 TCC at para 50.

38 TCC paras 64–65.

39 TCC at para 67; LCC at para 54.

40 LCC at pp 411–412.

on the same day.[41] On 5 February 2021, Sri Asih informed UOB that it only became the Vessel's registered owner on 5 March 2020.[42] In light of this, UOB's action in ADM 10 was eventually discontinued on 16 June 2021.

37 Following Sri Asih's response, UOB wrote to Maersk on 18 February 2021 to demand delivery up of the Cargo – on the evidence before me, that was the very first communication between UOB and Maersk pertaining to the Cargo or the OBLs.[43] The writ *in rem* in the present action was also issued on the same day. On 27 May 2021, the writ was served on Maersk (through its solicitors) as owner of the Vessel at the material time. Winson was granted leave to intervene in this action on 15 September 2021 and it duly entered an appearance as intervener on the same day.

38 To assist the reader, a tabular chronology of the key events described above is annexed to this judgment.

Parties' cases on Maersk's liability for misdelivery

39 As a starting point, it was not seriously disputed that the contract of carriage evidenced by or contained in the OBLs was governed by English law, given the choice-of-law clause incorporated into the OBLs by reference to the Charterparty. Although UOB made no admission of that in its pleadings,[44] expert evidence on English law was led and submissions were advanced by both sides on the footing that English law was indeed the governing law – or at least, there was nothing to indicate otherwise. In any case, nothing of significance to

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41 LCC at pp 426–427.

42 LCC at para 70 and pp 429–430.

43 LCC at pp 71–72.

44 Plaintiff's Reply (Amendment No. 1) at para 6; Plaintiff's Reply to Intervener's Defence (Amendment No. 1) at para 6.

this dispute turned on any divergence between English and Singapore law. Given that extensive references were made by both parties to authorities from both jurisdictions, I took a holistic view of them in approaching the material issues before me.

40 UOB's basic contention is that given the Defendants' admission of Maersk having discharged and delivered the Cargo to Hin Leong without presentation of the OBLs (which remain in UOB's possession as lawful holders), Maersk's liability for misdelivery is cut-and-dried. The claim is chiefly pursued as one in contract, although alternative claims in negligence, bailment and conversion have been pleaded.

41 The Defendants, for their part, have advanced a number of defences. For ease of analysis, I shall broadly organise them under four heads.

42 The first is the "Contractual Defence". The basic argument is that because the contract – or contracts, if one is to be precise – evidenced by or contained in the OBLs positively required Maersk to deliver the Cargo without presentation of the OBLs in return for a suitable indemnity, Maersk cannot be held liable for having done exactly that.

43 The second is the "Consent-Based Defences". These comprise various arguments joined on the premise that UOB had consented (and here, I use the word loosely) to Maersk's delivery of the Cargo to Hin Leong without presentation of the OBLs, whether before or after the event.

44 The third is the "Rights of Suit Defences", and they are directed at challenging UOB's rights of suit under the U.K. Carriage of Goods by Sea Act 1992 (c.50) (the "UK COGSA").

45 The fourth is the "Causation Defence". This defence draws its inspiration from the English Court of Appeal's recent decision in *Unicredit Bank AG v Euronav NV* [2024] 1 Lloyd's Rep 177 ("*The Sienna (CA)*"), and it is aimed at disproving the causality between Maersk's putative breach of contract and the loss for which UOB now claims.

The Contractual Defence

46 I begin with the Contractual Defence. Reliance was placed by the Defendants on that part of Winson and Maersk's fixture recap which reads:[45]

> OWNERS WILL ACCEPT LOI FOR DISCHARGE OF CARGO W/O ORIGINAL B/L AS PER OWNERS P&I CLUB WORDING, BUT LOI WILL NOT BE ACCOMPANIED BY ANY SORT OF BANK GUARANTEE.

47 I was also referred to cl 28 of the Charterparty:[46]

> 28. Bill of Lading
>
> …
>
> Should bills of lading not arrive at discharge port in time, then Owners agree to release the entire cargo without presentation of the original bills of lading against delivery by charterers of mutually acceptable letter of indemnity in accordance with Owners P and I club wording, no bank guarantee, which letter of indemnity shall be limited *to deal exclusively with all claims of holders of original bill(s) of lading in relation to discharge of cargo without presentation of original bills of lading* and shall automatically become null and void against presentation of 1 out of 3 original bills of lading, or after 13 months after completion of discharge, whichever occurs first, provided within such 13 months no legal proceedings have been instituted against Owners.
>
> [emphasis added]

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45 TCC at p 200.

46 TCC at p 249.

48 The Defendants say that by reason of these provisions, Maersk was not only permitted but *obliged* to deliver the Cargo without production of the OBLs at Winson's request, provided that a suitable letter of indemnity was furnished. Maersk was therefore never "under any obligation, whether express or implied, to only deliver the Cargo against the surrender, production or presentation of an original Bill of Lading".[47]

49 I am in no doubt that this defence is a bad one. Shipowners commonly enter into charterparties on terms that oblige them to discharge cargo without presentation of original bills of lading, provided a suitable indemnity is furnished in advance. In agreeing to such terms, the shipowner effectively commits itself to breaching its primary obligation under the bills of lading, which is to deliver the cargo only upon presentation of those bills. By design, the *quid pro quo* of an indemnity acknowledges the wrongfulness of what the shipowner may be called upon to do and contains a promise by the indemnitor to shoulder any consequences flowing therefrom. In this way, the letter of indemnity merely reallocates the legal risk of the carrier's unlawful conduct – it neither absolves nor authorises the shipowner's breach of the contract of carriage.

50 A similar defence was raised in *BNP Paribas v Bandung Shipping Pte Ltd (Shweta International Pte Ltd and another, third parties)* [2003] 3 SLR(R) 611 ("*Bandung Shipping*") on the strength of a contractual provision materially identical to those relied on by the Defendants. It was robustly rejected (at [65]–[69]) for substantially the reasons I have just given, and I have no hesitation in doing the same here.

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[47] Intervener's Defence (Amendment No. 1) ("Winson's Defence") at paras 22 and 23(f); Defendant's Defence (Amendment No. 1) ("Maersk's Defence") at paras 22 and 23(f); Defendant & Intervener's Opening Statement ("D&I OS") at paras 44–45.

The Consent-Based Defences

51 Moving on to the Consent-Based Defences, I begin by reproducing the relevant parts of the Defendants' pleaded case:[48]

> … the Intervener avers that the Plaintiff was aware that the Cargo had already been discharged and delivered to HLT without presentation of the original Bills of Lading, had financed the Cargo as unsold goods to be blended and stored by HLT, had paid against a specifically worded Payment LOI between the Intervener and HLT without requiring presentation of the Bills of Lading, and had granted unsecured extensions of time for HLT to repay the Plaintiff without asking for the Bills of Lading.
>
> …
>
> It is averred that the Plaintiff had or must be taken to have **agreed** to and/or **acquiesced** and/or **consented** and/or **ratified** (ex post facto or otherwise) and/or **authorised** the discharge and delivery of the Cargo to HLT against a letter of indemnity and/or without presentation of the original Bills of Lading and/or **relinquished** its rights to the Bills of Lading. … The Plaintiff, in proceeding to issue the Letter of Credit and/or effect payment under the Letter of Credit on 27 March 2020, had **agreed** to and/or **acquiesced** and/or **consented** and/or **ratified** (ex post facto or otherwise) and/or **authorised** the delivery of the Cargo to HLT without presentation of the original Bills of Lading.
>
> [emphasis added in bold]

52 I should state at the outset that parties do themselves no favours by composing such a turgid medley of pleaded facts and distinct legal propositions. If parties wish to state the legal result flowing from particular facts, the links should be expressed in a coherent manner. It should not be for the court to sieve them out of disjointed pleadings like these.

53 Be that as it may, the gravamen of the Defendants' position is that the bank 'consented' to discharge and delivery of the Cargo to Hin Leong without

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[48] Winson's Defence at para 23(h); Maersk's Defence at para 23(h).

presentation of the OBLs, if not prior to discharge then at any rate after the fact. I use the parenthetical 'consent' as encompassing the various concepts (technical or otherwise) that the Defendants have invoked, and my use of the term in the discussion that follows should be understood in that light.

Consent prior to discharge

54 I start with an obvious point, which is that there could have been *no* consent prior to the Cargo's discharge on 28–29 February 2020 because UOB only came into the picture on 3 March 2020 at the very earliest (on which date Hin Leong's application for the L/C was received by the bank).

55 Were authority needed for the point, I would refer to *The "Yue You 902" and another matter* [2020] 3 SLR 573 ("*The Yue You 902*"). The facts are strikingly similar to those before me. That case concerned a cargo of palm oil that had been sold in the first instance by FGV to Aavanti, and then to Ruchi. The eponymous vessel was chartered by FGV for the carriage of the cargo, which was eventually discharged in New Mangalore, India without original bills of lading having been presented.

56 A day before discharge commenced, the bills of lading indorsed in blank were received by the plaintiff ("OCBC") as Aavanti's bank. Instructions were sought from Aavanti, who duly made an application to OCBC for financing by way of a "trust receipt loan". That application was approved and OCBC made payment to FGV's collecting bank on the day discharge of the cargo was completed. The bills of lading remained in OCBC's possession throughout and after Aavanti defaulted on its loan, OCBC commenced proceedings against the owners for misdelivery of the cargo.

57 A number of defences were mounted by the owners and I shall have more to say about them later on. Relevant for present purposes is the argument that in granting the loan to Aavanti "with the knowledge that the cargo would be or had been delivered against an LOI without presentation of bills of lading, OCBC had consented to the discharge of the cargo without production of the bills of lading" (at [119]). Pang Khang Chau JC (as he then was) rejected those arguments (at [122]):

> … the Defendant was not able to point to anything said or done by OCBC which could have induced the Defendant to conclude that OCBC had consented to the delivery of the cargo without bill of lading. In fact, the Defendant accepts that there were no communications between OCBC and the Defendant prior to the discharge of the cargo. **More importantly, the Defendant's submission is that OCBC's consent was expressed through the grant of the loan. Since it is common ground that the loan was granted only after the discharge of cargo was completed, there could have been no *prior consent* by OCBC to the discharge of the cargo.**
>
> [emphasis in italics in original; emphasis in bold added]

58 In my view, the defence of consent was rightly rejected in *The Yue You 902* and that would make the present case an *a fortiori* one: there is no evidence whatsoever of any material communications between UOB and Hin Leong until some three days after the Cargo had already been completely discharged, and *none* between UOB and Maersk at any material point in time (see [37] above and [64] below). For these reasons, the Defendants' cognate arguments of UOB having agreed to or authorised Maersk's discharge and delivery of the Cargo to Hin Leong are doomed to fail.

59 As for the Defendants' suggestion that UOB had acquiesced in Maersk's misdelivery of the Cargo, the point was apparently abandoned even before trial: nothing was said on the topic in the Defendants' opening statement or any of its

closing submissions. Be that as it may, I shall offer my views on this point for completeness.

60 The doctrine of acquiescence is the precursor to what the law now recognises as estoppel by acquiescence. The classic statement of the law in this regard can be found in *Willmott v Barber* (1880) 15 ChD 96 (at 105–106):

> It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do.

These principles are most commonly invoked to estop assertions of proprietary rights, but the authorities indicate that an estoppel by acquiescence may, in principle, be raised in the context of cargo claims: *F&T Terrix Ltd v CBT Global Ltd* [2021] EWHC 3397 (Comm) at [52], citing *Pacol Ltd. and others v Trade Lines Ltd. and R/I Sif IV (The "Henrik Sif")* [1982] 1 Lloyd's Rep. 456.

61 In this case, the defence of acquiescence is, in my view, a non-starter because Maersk was plainly under no misapprehension as to the legal exposure it had taken on when it discharged the Cargo into Hin Leong's possession – that was precisely why it did so on condition of Winson's indemnification. Moreover, UOB had not even entered the fray at the time of the misdelivery; to that extent, the third to fifth elements of the *Willmott v Barber* test cannot be established: see Richard Aikens *et al*, *Bills of Lading* (Routledge, 3rd Ed, 2021) ("*Aikens*") at para 8.48.

Consent subsequent to discharge

Ratification

62 It follows from what I have just expressed that any arguable defence of 'consent' must relate to 'consent' *post-dating* the discharge and delivery of the Cargo. Recognising this, the Defendants' closing submissions were focused exclusively on the doctrine of ratification:[49]

> VII. THE BANK AUTHORIZED AND/OR RATIFIED HLT TAKING DELIVERY OF THE CARGO TO BLEND AND STORE AND SELL, THUS CAUSING THE OBLS TO BE SPENT
>
> 173. The Bank's case is that it was not aware, on 3 March 2020, that the Cargo had already been discharged to HLT on 28/29 February 2020. However, the Bank then issued the LC on 4 March 2020 under the LC(2) sub-facility for "[HLT's] purchase of Goods for blending and storage purposes". Therefore, the Bank, by entering into this financing arrangement with HLT on 4 March 2020, **authorised and/or ratified** HLT to take delivery of the Cargo without production of the OBLs in order to blend and store the cargo and thereafter repay the Bank.
>
> …
>
> 176. … When the Bank issued the LC on 4 March 2020 pursuant to the LC(2) sub-facility, the Bank knew that the

[49] D&I CS at paras 173 and 176; D&I OS at para 4.

> Cargo was already delivered to HLT, and thus authorised HLT to hold the Cargo at UT on its behalf to blend and store and sell. In any event, the act of issuing the LC on 4 March 2020 for HLT to hold the Cargo at UT must mean that **the Bank had ratified the anterior act leading to HLT holding the Cargo at UT, i.e. the act of HLT taking delivery of the Cargo without production of OBLs**.
>
> [emphasis added]

63 No authority was cited in support of these arguments but it is clear to me that they fail, not least on first principles. It has been settled since the decision of *Firth v Staines* [1897] 2 QB 70 that the agent whose act is sought to be ratified must have purported to act *for the principal* in doing that act (at 75). In other words, no act can be validly ratified by a principal undisclosed to the third party at the time it was done; if the agent professed to act for himself, then it follows that the act is not capable of ratification by anyone. These principles were affirmed by an eight-member *coram* of the House of Lords in *Keighley, Maxsted & Co v Durant* [1901] AC 240.

64 In this case, the act put forward by the Defendants as having been ratified by UOB is Hin Leong taking delivery of the Cargo from Maersk without production of the OBLs.[50] The Defendants' case of ratification therefore hinges on proof that in so taking delivery, Hin Leong had professed to act *on behalf of UOB*. The stark reality, however, is that not a wisp of evidence was led to establish that fact. There is no indication of Maersk having ever directly corresponded with Hin Leong. If anything, Maersk's sole witness, Capt Sushil Bhushan (who was on the operations team that oversaw the Vessel's voyage from Taiwan to Singapore) confirmed in cross-examination that there was never

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50 D&I CS at para 176.

any indication to Maersk that UOB was involved or would be involved with the Cargo:[51]

> Q: Captain Bhushan, would you agree that you did not receive any consent from UOB before discharging this cargo?
>
> A: We received the instructions from the charterers, we don't know at that material time that what's UOB and how they're involved in this one.
>
> …
>
> Q: And you didn't even know at that time that UOB was going to be involved; correct?
>
> A: Yeah, I never knew.

So far as Maersk was concerned, a suitable letter of indemnity had been given in respect of Winson's instructions for discharge of the Cargo, and Maersk never looked behind those instructions because there was no reason to. That was Maersk's bottom-line in these proceedings and on the evidence, that was plainly the case.

65 I should add that the Defendants have not called on any representatives of Hin Leong or Universal Terminal to give evidence. What might have emerged from that evidence is of course speculative, but the Defendants' case on ratification is certainly all the worse for its absence.

66 There are other conditions for ratification that present tremendous difficulties to the Defendants (*eg*, making out a clear act of ratification by UOB). In my view, it is unnecessary to grapple with them because I am not at all persuaded that Hin Leong ever professed to act on behalf of UOB in taking

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[51] Transcript of proceedings on 5 April 2024 ("5 April Transcript") at p 84, ln 12 to p 85, ln 19.

delivery of the Cargo. That finding alone is fatal to the Defendants' arguments on ratification.

Waiver

67 Before leaving the discussion on the Consent-Based Defences, I should briefly consider an argument that one would think follows naturally from the contentions made by the Defendants, and it is that UOB had waived its claims against Maersk in respect of the misdelivery. The point was never taken up by the Defendants in its pleadings or submissions, but it was one that UOB sought to pre-empt[52] and I shall say a few words on it.

68 Broadly speaking, the law recognises two species of waiver. The first is waiver by election, and it occurs when a person, having been presented with a choice between two or more mutually inconsistent rights, elects in clear and unequivocal terms to exercise one of them. The elector will then be regarded as having abandoned those other inconsistent rights *pro tanto*: *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 ("*Audi Construction*") at [54]. This form of waiver is of no relevance here because, plainly, UOB was never presented with a choice between competing rights to begin with.

69 The other form of waiver – that is, waiver by estoppel – involves an "unequivocal representation by one party that he will not insist upon his legal rights against the other party, and such reliance by the representee as will render it inequitable for the representor to go back upon his representation": *Audi Construction* at [57], citing *Motor Oil Hellas (Corinth) Refineries S.A. v Shipping Corporation of India (The "Kanchenjunga")* [1990] 1 Lloyd's Rep.

[52] P CS at paras 118–129.

391 at 399. But this too is not a defence that is available to Maersk on the facts. Quite apart from UOB never having communicated with Maersk, Maersk had no knowledge whatsoever of UOB's involvement with the Cargo until this action had been commenced (see [37] and [64] above). There were hence no representations of *any* kind between UOB and Maersk capable of sustaining an estoppel.

70 In the premises, questions of reliance do not even arise. I would, however, observe that the Discharge LOI was issued and accepted on terms (as provided for in the Charterparty) that it would become null and void either upon presentation of an original bill of lading or "13 months after completion of discharge", whichever should occur first.[53] In my view, that latter hard-stop was plainly intended to ensure that Maersk would be covered until such time as any cargo claims (including claims for misdelivery) became time-barred upon expiry of the 12-month limitation period applicable under the Hague or Hague-Visby Rules. It is therefore obvious to me that Maersk was *alive* to a continuing risk of misdelivery claims being brought against it, albeit Maersk had no reason to be concerned about that risk given the indemnities it had obtained from Winson pursuant to the Discharge LOI. Thus, far from having relied on any promises of forbearance by UOB, Maersk was counting on Winson's credit as its indemnitor under the Discharge LOI.

The Rights of Suit Defences

The Spent Bills Defence

71 I turn now to the Rights of Suit Defences, the first of which is the argument that the OBLs had been "spent by the discharge and delivery of the

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[53] TCC at p 249, cl 28.

Cargo to [Hin Leong] on or around 28/29 February 2020", in which case UOB could have acquired no rights of suit thereunder.[54] I will refer to this as the "Spent Bills Defence".

72 The transfer of rights of suit under bills of lading that are 'spent' – in the sense that their possession "no longer gives a right (as against the carrier) to possession of the goods to which the bill relates" – is governed by s 2(2) of the UK COGSA, which is *in pari materia* with s 2(2) of Singapore's Bills of Lading Act (Cap 384, 1994 Rev Ed) (the "SG BLA"):

> **2 Rights under shipping documents.**
>
> …
>
> (2) Where, when a person becomes the lawful holder of a bill of lading, possession of the bill no longer gives a right (as against the carrier) to possession of the goods to which the bill relates, that person shall not have any rights transferred to him by virtue of subsection (1) above unless he becomes the holder of the bill—
>
> (a) by virtue of *a transaction* effected in pursuance of *any contractual or other arrangements* made before the time when such a right to possession ceased to attach to possession of the bill; or
>
> (b) as a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.
>
> [emphasis added]

The OBLs were not spent

73 It has been confirmed by a long line of cases that bills of lading are not spent by delivery of cargo to a person not entitled to them under those bills: *Bandung Shipping* at [30], followed in *The "Pacific Vigorous"* [2006] 3 SLR(R) 374 at [5] and *The Yue You 902* at [45]–[46] and [74]. The position is

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54 Maersk's Defence at para 23(a); Winson's Defence at para 23(a).

the same under English law: *Standard Chartered Bank v Dorchester LNG (2) Ltd (The "Erin Schulte")* [2015] 1 Lloyd's Rep. 97 ("*The Erin Schulte*") at [53]. Indeed, Dame Elizabeth Gloster (for UOB) and Mr Timothy Young KC (for the Defendants) confirmed in their joint experts' memorandum on English law that:[55]

> Where cargo is delivered against a discharge LOI, rather than upon surrender of the Bill of Lading, the legal status of the Bill of Lading does not generally change: the lawful holder of the Bill of Lading retains the right to the immediate possession of the cargo upon its surrender and is entitled to sue the carrier for breach of contract.

74 In this case, the Defendants' pleaded position is that the OBLs had been spent by the discharge and delivery of the Cargo to Hin Leong on 28–29 February 2020. This contention was initially advanced on the basis that Hin Leong was in fact "the party entitled to the delivery of the Cargo at the time that it was delivered to it".[56]

75 The argument then morphed into an entirely different one in the Defendants' written closing submissions. As I understand it, the revised argument begins with the proposition that "the bill of lading being the symbol of the goods, the office of the symbol is exhausted when the symbol is united with the goods" (citing *The Yue You 902* at [70]).[57] The Defendants then say that, in this case:[58]

> … the unity [arose] on 15 July 2020 when the Bank took possession of the OBLs, *on account of its prior authorisation and/or ratification for HLT to hold the Cargo on its behalf* when

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55 Agreed Bundle of Joint Experts' Memoranda dated 12 April 2024 ("ABJEM") at p 41, para 6.

56 D&I OS at para 42.

57 D&I CS at para 174.

58 D&I CS at para 178.

> the LC was issued and no rights of suit can arise for delivery without production of OBLs.
>
> [emphasis added]

76 The Defendants' original argument is plainly untenable. No reasons were given for the bold assertion that Hin Leong was the party entitled to the Cargo on 28–29 February 2020. One might infer that it rides on the Defendants' case that Hin Leong had taken receipt of the Cargo with UOB's consent or authorisation, but if that were correct – and it is plainly not for reasons which I have already given – the Defendants would have succeeded in its defence of consent/authorisation and the present discussion would be moot. I have also rejected the Defendants' case on ratification and so their revised arguments on the unity of actual and constructive possession likewise cannot stand.

77 On the whole, it is clear to me that at *no point* was Hin Leong the party entitled to the Cargo under the OBLs because Hin Leong was never in possession of the OBLs. The OBLs were not, therefore, spent at the time they came into UOB's possession. Accordingly, the Spent Bills Defence fails.

Rights of suit would nevertheless have passed under s 2(2)(a) UK COGSA

78 Even if I am wrong on the foregoing points and the OBLs had been spent by the time they came into UOB's possession, UOB would, in my judgment, nevertheless have acquired rights of suit pursuant to the proviso in s 2(2)(*a*) of the UK COGSA.

79 The scope of the proviso was considered in some detail in *The Yue You 902* (at [88]–[91]). Here, I would highlight a few principles identified by the learned judge:

(a) It was held in *Primetrade AG v Ythan Ltd (The "Ythan")* [2006] 1 Lloyd's Rep 457 that the word "transaction" refers to the physical process by which the bill is transferred from one person to another while "contractual or other arrangements" refers to the reason or cause for the transfer (at [66] and [84]).

(b) In *The Erin Schulte*, Moore-Bick LJ eschewed any attempt at identifying the "real and effective cause" (as had been done in the court below) and instead considered it "preferable simply to identify the arrangement, if any, pursuant to which the transfer was made" (at [56]).

(c) The authors of *Scrutton on Charterparties and Bills of Lading* (David Foxton *et al*, eds) (Sweet & Maxwell, 24th Ed, 2020) argue that "the phrase 'in pursuance of' requires merely that the pre-existing arrangement provides the trigger for the transfer, not that it creates a legal entitlement to the transfer of the bill of lading" (at para 3-025).

80 The basic facts of *The Yue You 902* have been set out at [55]–[56] above. Pang JC held that the bills of lading in that case were not spent for the reasons I have canvassed at [73] above. The learned judge then went on to say that even if those bills had been spent, he would have held that either the facility agreement governing the trust receipt loan or the sale contract between FGV and Aavanti – both of which pre-dated the cargo's misdelivery – furnished the relevant "contractual or other arrangement" upon which the proviso could operate (at [94]–[96]):

> 94 OCBC's submission finds support in *BNP Paribas* … which similarly involved a buyer's bank who became holder of the bills of lading as pledgee. Ang J held that, if s 2(2) applied, the facility agreement between the buyer's bank and the buyer would constitute the relevant "contractual or other arrangement" … On the other hand, the Defendant's submission harks back to the approach suggested in *The David*

> *Agmashenebeli* … of asking whether the transfer of the bill of lading was "provided for" or "called for" by the "contractual or other arrangement" … But this approach is no longer good law in the light of the decision in *The Erin Schulte (CA)*. For the foregoing reasons, I would accept OCBC's submission and follow *BNP Paribas* in holding that the relevant "contractual or other arrangement" is the facility agreement. It is undeniable that the request and grant of the trust receipt loan were made pursuant to the facility agreement.
>
> 95 For completeness, I should add that, even if there was no facility agreement to rely on (or, alternatively, even if no reliance is placed on the facility agreement), OCBC could rely on the sale contract between FGV and Aavanti as the relevant "contractual or other arrangement". Given the broad approach to causal connection adopted in *The Erin Schulte (CA)*, and the consequent eschewing of the "provided for" or "called for" criteria suggested in *The David Agmashenebeli*, there is no reason why the relevant "contractual or other arrangement" must be one which OCBC is a party to. In other words, if it can be said that the sale contract between Aavanti and FGV is a cause or reason for the trust receipt loan, the fact that OCBC was not a party to the sale contract is no obstacle to the sale contract being regarded as the relevant "contractual or other arrangement" for the purpose of s 2(2)(*a*). In the preceding sentence, I referred to "a cause or reason" instead of "the cause or reason" in the light of the decision in *The Erin Schulte (CA)* that the relevant "contractual or other arrangement" need not be the "immediate reason", "proximate cause" or "real and effective cause" of the transfer.
>
> 96 Returning to the facts of the present case, since Aavanti requested the trust receipt loan from OCBC in order to carry out and fulfil the sale contract, and since OCBC's grant of the trust receipt loan was to enable Aavanti to obtain the bills of lading and the underlying cargo pursuant to the sale contract, I see no difficulty holding that the trust receipt loan was a transaction "in pursuance of" the sale contract. The trust receipt loan served a legitimate commercial purpose (of trade financing) which flows from the sale contract between Aavanti and FGV.

81 I return to the facts of this case. According to the Defendants, the relevant "contractual or other arrangement" was the L/C or the Payment LOI, both of which post-date the Cargo's discharge.[59] UOB, on the other hand, say

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59 D&I OS at para 43.

that the issuance of the L/C (or acceptance of the Payment LOI) was only the relevant "transaction", whereas the "contractual or other arrangement" would be UOB's Letter of Offer or the Sale Contract.[60]

82 I prefer UOB's position. The Payment LOI was the contractual arrangement that supplied the most proximate 'trigger' for the indorsement and delivery of the OBLs to UOB. But even so, the Payment LOI was only an incident of the L/C itself: the Payment LOI was merely an *interim* device that secured a transfer of the OBLs that was already called for under the L/C. The L/C, in its turn, was opened because that was what the Sale Contract required. Indeed, the Sale Contract *expressly* contemplated payment under a documentary credit against presentation of the OBLs:[61]

> PAYMENT SHALL BE MADE IN UNITED STATES DOLLARS BY **AN IRREVOCABLE DOCUMENTARY LETTER OF CREDIT (L/C)** … AGAINST PRESENTATION OF SELLER'S SIGNED COMMERCIAL INVOICE, **FULL SET(S) 3/3 ORIGINAL BILLS OF LADING**, ORIGINAL CERTIFICATE(S) OF QUANTITY AND QUALITY AND ORIGINAL CERTIFICATE OF ORIGIN (OR EQUIVALENT DOCUMENTS).
>
> [emphasis added in bold]

83 All of this is to say that if one were to consider the Sale Contract on its own terms, it will be readily apparent that its performance would culminate in the indorsement and delivery of the OBLs to the buyer's issuing bank. That was precisely what happened in this case, albeit after a significant delay. In my view, the Sale Contract would therefore furnish a clear basis for the operation of s 2(2)(*a*) UK COGSA. In view of this, it is unnecessary for me to further consider if the same may be said about UOB's Letter of Offer.

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60 P CS at para 106.

61 ACB at p 52, cl 8.

The Good Faith Defence

84 Under s 5(2) of the UK COGSA (which is *in pari materia* with s 5(2) of the SG BLA), the transfer of title to sue is conditional on the transferee becoming the holder of the bills of lading in good faith:

> (2) References in this Act to the holder of a bill of lading are references to any of the following persons, that is to say—
>
> …
>
> (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;
>
> …
>
> *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.*
>
> [emphasis added]

85 The concept of "good faith" in this context was also explored in *The Yue You 902* (at [101]–[108]). The following is a summary of the learned judge's analysis and conclusions:

(a) In *Aegean Sea Traders Corporation v Repsol Petroleo S.A. and another (The "Aegean Sea")* [1998] 2 Lloyd's Rep. 39 (at 60), Thomas J rejected an invitation to read "good faith" broadly and instead took the view that the phrase:

> … connotes honest conduct and not a broader concept of good faith such as "the observance of reasonable commercial standards of fair dealing in the conclusion and performance of the transaction concerned".

(b) In *UCO Bank v Golden Shore Transportation Pte Ltd* [2006] 1 SLR(R) 1 ("*UCO Bank*") (at [39]–[40]), the Singapore Court of Appeal

affirmed Thomas J's interpretation of "good faith" as connoting "honest conduct" and added that the requirement was intended to "preclude the case where possession is obtained unlawfully, or by other improper means".

(c) On Pang JC's reading of the authorities, the concept of "good faith" should be stable and circumscribed so that it is capable of unambiguous application. Honesty was therefore the lodestar of the inquiry, and the Court of Appeal's reference to "improper means" in *UCO Bank* ought not be read as roping in conduct that is not dishonest (*The Yue You 902* at [104]–[106]).

(d) The requirement of "good faith" was never intended as a gate against transfers of bills of lading for the purpose of obtaining bare rights of suit – that is the mischief that the provisions on spent bills are intended to meet, and it would be wrong for their functions to be overtaken by expansive interpretations of the "good faith" requirement (*The Yue You 902* at [107]).

86 In this case, the Defendants have essentially put forward two reasons for saying that UOB became the holder of the OBLs by dishonest or improper means (the "Good Faith Defence"):

(a) The first is that UOB, although knowing that it had no entitlement to the OBLs under the Payment LOI, nevertheless demanded them from Winson with implicit enticements or threats of legal consequences.[62]

[62] D&I OS at paras 3(iii) and 37; D&I CS at paras 162, 164, 166, 167, 168 and 170.

(b) The second is that UOB never intended for the OBLs to function as security; instead, UOB eventually called for them at the time it did for the sole purpose of contriving a claim against Maersk and to minimise its exposure to Hin Leong's insolvency.[63]

87 The Defendants referred me to the Assistant Registrar's decision in *The STI Orchard* [2022] SGHCR 6 ("*The STI Orchard*") and the unreported judgment of Kwek Mean Luck J in the appeal therefrom. It was contemplated in both instances that bills of lading may not have been acquired in good faith where the claimant bank suing on them never intended for those bills to function as security to begin with. In my view, the Defendants' reliance on these observations is plainly misplaced because they were only made in the context of proceedings for summary judgment. The bank's application in *The STI Orchard* was refused because the Assistant Registrar felt (and Kwek J agreed) that there were triable issues on the question of whether the banks had acquired the bills of lading in good faith, but there was no sustained analysis of the law or evidence on those points (bearing in mind the nature of the application that was being considered). Nothing was settled in those decisions except that there were triable issues of good faith (or the lack thereof) warranting fuller consideration at trial.

88 In this case, I am of the view that there was no dishonesty in the way UOB became holders of the OBLs. The Defendants' second argument (see [86(b)] above) is a non-starter. It is indistinguishable from an argument that UOB acted dishonestly because it called for and acquired the OBLs to obtain bare rights of suit against Maersk – that argument is bad for the reasons given

63 D&I OS at para 38; D&I CS at paras 163, 171 and 172.

by Pang JC in *The Yue You 902* at [107] (see [85(d)] above). Further, I also note that the parties' experts on English law are agreed that:[64]

> The fact that a transferee of a Bill of Lading may only intend to obtain the Bill for its 'mere' rights of suit (which are rights like any other) is irrelevant to the 'good faith' requirement in [s 5(2) of the UK COGSA]; there may be other issues of 'good faith' on particular facts, but it is not a want of 'good faith' for a transferee to intend to acquire rights rather than, for example, actual possession of the goods carried under it.

89 As for the Defendants' first argument (see [86(a)] above), I accept that – as a matter of general principle – the requirement of good faith may not be satisfied where the holder procured the bills of lading by asserting a legal entitlement to them that was known to be unsubstantiated.[65] But I am far from convinced that that was what had happened in this case.

90 The argument starts with the assertion that UOB in fact had no entitlement to the OBLs under the Payment LOI. This is because the Payment LOI,[66] according to the Defendants, can only be construed as an undertaking *to Hin Leong* and no one else. For instance, the first paragraph of the letter reads:

> WE REFER TO *OUR AGREEMENT* ('THE UNDERLYING AGREEMENT') DATED THE 12TH (DATE) DAY OF FEB (MONTH), 2020 (YEAR) IN RESPECT OF YOUR PURCHASE FROM US OF A CARGO ('THE CARGO') OF 87,683.510 TONS / 660,000.000 BARRELS OF GASOIL …
>
> [emphasis added]

91 This point is somewhat diminished by the fact that there are other parts of the Payment LOI that may equally be read as referring to UOB. For example, the LOI is addressed to "United Overseas Bank Limited, Singapore for account

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64 ABJEM at p 40, para 2.

65 Affidavit of Timothy Young KC dated 30 January 2024 at p 18, para 47.

66 ACB at p 110.

of Hin Leong Trading (Pte) Ltd", and it includes phrases like "[i]n consideration of *your* making payment".

92 More striking is the fact that the Payment LOI contains the following clause (the "Exclusion of Third-Party Rights Clause"):

> NO TERM OF THIS INDEMNITY IS INTENDED TO, OR DOES CONFER A BENEFIT OR REMEDY ON ANY PARTY *OTHER THAN THE NAMED BUYER* UNDER THE UNDERLYING AGREEMENT WHETHER BY VIRTUE OF THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT OF SINGAPORE OR OTHERWISE.
>
> [emphasis added]

93 Evidence was led to show that, at the time UOB processed Hin Leong's application for the L/C, it was aware that the template for a letter of indemnity issued pursuant to Field 47A (see [21] above) in Hin Leong's initial draft contained the Exclusion of Third-Party Rights Clause. This was flagged out[67] as part of the bank's approval processes for being contrary to its internal guidelines,[68] but the clause was ultimately retained in the L/C (and therefore the Payment LOI).

94 Before I proceed further, it is important to emphasise that the present inquiry is *not* concerned with what the parties' true legal positions under the Payment LOI were. This is not an action on the Payment LOI itself, and the issue that I am concerned with is whether UOB acquired the OBLs dishonestly. Thus, if UOB and Winson believed – and in fact acted on the belief – that the Payment LOI's terms entitled UOB to the OBLs, then the Defendants cannot be heard to complain of any dishonesty tainting the transaction and it would be irrelevant that the parties were mistaken as to their true legal positions.

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67 ACB at p 101.

68 Agreed Bundle of Documents (Vol 5) at p 104.

95 The Defendants say that UOB plainly knew but did not care that the Payment LOI conferred no rights upon them (including any rights to the OBLs). UOB's witnesses, however, testified that the bank was content to retain the Exclusion of Third-Party Rights Clause because, as they understood it, UOB's specific inclusion as an addressee of the Payment LOI was sufficient to confer rights upon the bank thereunder.[69]

96 Having considered the evidence, I ultimately prefer UOB's position. Firstly, an internal transaction form was prepared by UOB's staff in the course of reviewing Hin Leong's application for the L/C (the "Transaction Form").[70] That form contained a comment in print that read: "ILC LOI's format does not confer a benefit or remedy on the bank." The form was then sent up for further internal approvals and eventually returned with a handwritten notation next to the printed comment which read: "LOI is addressed to UOB for account of HL." Both the printed comment and handwritten notation were then checked off with ticks:[71]

2) Copy of Purchase Contract not signed by buyer.
3) ILC without showing port of loading and port of discharge. As per borrower, shipment from Taiwan to Singapore.
4) ILC's LOI to be issued by Winson Oil Trading Pte Ltd without counter-signed by a bank.
5) ILC LOI's format does not confer a benefit or remedy on the bank. LOI is addressed to UOB for account of HL.

97 For context, a draft of the L/C wording was first tendered by Hin Leong as part of its application to UOB for the same. In that draft, Hin Leong was the sole addressee named in the template for the Payment LOI. The wording of the template was the subject of some negotiation between Hin Leong and UOB. Of

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69 Transcript of proceedings on 27 March 2024 at p 105, lns 12–23; Transcript of proceedings on 2 April 2024 ("2 April Transcript") at p 69, lns 16–21 and p 73, lns 3–5; Transcript of proceedings on 4 April 2024 ("4 April Transcript") at p 27, ln 23 to p 28, ln 12.

70 ACB at pp 100–102.

71 ACB at p 101.

the changes proposed by UOB, the only one that Hin Leong eventually accepted was the bank's inclusion as an addressee.[72]

98 What is striking, however, is that UOB had also requested for the deletion of the Exclusion of Third-Party Rights Clause altogether. Hin Leong did not agree to that request and insisted that the said clause remain. UOB evidently considered that to have been of no consequence – indeed, that would explain the written annotation added to the Transaction Form. This suggests to me that the UOB officers responsible for reviewing and approving the L/C application (and the draft wording of the Payment LOI) held a genuine belief that the presence of the Exclusion of Third-Party Rights Clause was immaterial, given the bank's specific inclusion as an addressee.

99 More crucial, in my view, is the fact that it would have been commercially unreal for UOB to knowingly relinquish any entitlement to the OBLs in accepting the Payment LOI, bearing in mind especially that the Payment LOI was only intended as a stop-gap to secure the accomplishment of what the L/C required by default in Field 46A, *ie,* presentation of the full set of OBLs. Ms Lim Chen Chen (who was among the officers who had a hand in approving Hin Leong's application) was challenged in cross-examination as to why she thought the bank had rights to the OBLs under the infelicitously worded Payment LOI. Her reply then was, "why is the bank financing these goods if it's not to me?"[73] I have struggled to find a meaningful answer from the Defendants to this retort.

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72 CF at p 127.

73 4 April Transcript at p 48, lns 21–22.

100 The circumstances in which Winson eventually parted with the OBLs are also relevant. There is no contemporaneous evidence of Winson having protested even once against UOB's entitlement to them. The only whiff of discontent from Winson is reflected in an email of 30 April 2020 from Ms Sheena Ng (of Winson's Shipping Department) to Ms Freida Koh (who was UOB's Senior Relationship Manager responsible for Hin Leong's account). Even then, the discontent was directed towards the *time pressure* that UOB was bringing to bear on Winson:[74]

> Dear Freida,
>
> …
>
> Please note that we purchased the goods covered by the two LCs from third party suppliers (i.e. refinery, oil major). We have been closely following up with the relevant suppliers for the delivery of the original bills of ladings. Please note that pursuant to the terms and conditions of the two LCs issued by UOB, all the beneficiaries are only required to produce the original bills of lading as soon as the same come into their possession but not further or otherwise. *There is no time line specified in the relevant LCs. This is well in line with the oil industry practice as it takes time to follow up the original bills of lading under a chain of sale.*
>
> …
>
> *Please be assured that we will continue to follow up closely with our suppliers regarding the rest of bills of lading* ***and will deliver them to you once they are in our possession.***
>
> …
>
> [emphasis added in italics and bold italics]

101 This is consistent with Ms Tung's evidence that her instructions for the indorsement and delivery of the OBLs to UOB were only given for the purpose of redeeming the Payment LOI. When questioned as to why the OBLs were eventually conveyed to UOB and not Hin Leong – as the logic of Winson's case

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74 TCC at pp 447–448.

suggests it should – her answer was that she simply understood that to have been the usual procedure:[75]

> Q: No, so in your understanding, it will be Hin Leong who would be entitled to hold on to the BLs, is it? …
>
> A: Yeah, like I said, when we do LOI redemption, it was always via the banking channel. So from our advising bank, Credit Suisse, of the LC, and they will send it across to the LC-issuing bank. That's how we do LOI redemption.
>
> Q: No. But you see, when you endorsed it to UOB, you could have endorsed it to Hin Leong?
>
> A: But when we do LOI redemption, we refer to the list of -- - cross-refer to the list of shipping documents for redemption.
>
> Q: *So you're saying purely because of the LOI redemption, you therefore agreed that it would be right and proper to endorse the bills of lading to UOB and to hand them physical possession of this original bill; correct?*
>
> A: *I don't know whether it's right or proper, but that's how we do LOI redemption.*
>
> Q. So, purely on the reason for LOI redemption you did that, right? Okay?
>
> A. Yes. We sent it to Credit Suisse to pass on the LC-issuing bank UOB.
>
> [emphasis added]

102 Ms Tung was later questioned on the absence of any contemporaneous objection to UOB's claims to the OBLs. The response she gave when offered an opportunity to explain is telling:[76]

> … at that time when we received the 29 April email from UOB. So, as a layman, we didn't have legal advice and we thought something from a bank, it would have to be true, right? So -- and *I didn't analyse whether UOB was indeed entitled to the*

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75 Transcript of proceedings on 9 April 2024 ("9 April Transcript") at p 51, ln 19 to p 52, ln 17.

76 9 April Transcript at p 93, ln 20 to p 94, ln 14.

> *OBLs or not, be it under the LC or the LOI. So we were just telling UOB that we will only give you the OBLs when we receive the OBLs.*
>
> *And also, we know that we were going to do it, the presentation of the documents, via the banking channel, and it will be from Credit Suisse, our advising bank, to UOB. So that means the documents will arrive at UOB. What is the point of us arguing to UOB and say that, "No, no, no, no, no, you're not entitled to the OBLs"?*
>
> And also, at that time, we're trying to be cooperative. We wanted to do what we can to get the OBLs so that the bank can view our own lines favourably. So that was the context that these emails came about.
>
> [emphasis added]

103 Taken at face value, Ms Tung's evidence quite plainly contradicts the suggestion that Winson endorsed and delivered the OBLs on account of some trickery or unfair pressure from UOB. It is also striking that although Ms Tung says she and her colleagues were content to assume UOB's entitlement to the OBLs, she also maintains that Winson would have endorsed and delivered the OBLs to UOB *anyway* because, so far as Winson was concerned, that was the way things were supposed to be done.

104 Ms Tung also testified that in the course of a phone call with Ms Lim on the evening of 15 April 2020, Ms Lim had intimated that "UOB would consider [Winson's] assistance in securing the documents favourably when reviewing [Winson's] credit line with UOB, including future applications for letters of credit by [Winson]".[77] The context of this evidence was that, at the time, Winson was also one of UOB's customers and UOB was reviewing Winson's credit facilities with UOB (at least according to Ms Tung).

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77 TCC at para 45.

105 There is, however, no contemporaneous evidence of that exchange ever having taken place. One would expect that some documentary record of the conversation would have been made given its significance, but none was presented to me. Ms Lim was not even questioned at trial on this alleged phone conversation between her and Ms Tung. On balance, I do not accept that any such assurance was given by UOB to Winson. Accordingly, I am also unable to accept the suggestion that implicit enticements (or threats) had been made by UOB in relation to its review of Winson's credit lines specifically.

106 Overall, I am entirely unpersuaded that there was any dishonesty involved in how UOB came to acquire the OBLs from Winson. I am satisfied that UOB's demands were made on a genuine (and not unreasonable) belief as to its rights and entitlements under the Payment LOI. Winson, for its part, either shared in that belief or was indifferent to the legal propriety of UOB's demands. On balance, I am more inclined to believe that it was the former. However, nothing turns on this because on either view, Winson considered itself bound to endorse and deliver the OBLs to UOB; it eventually did just that without any protest. For these reasons, I find and hold that UOB did acquire possession of the OBLs in good faith and would accordingly dismiss the Defendants' Good Faith Defence.

The Endorsement Defence

107 I now consider what I shall refer to as the Defendants' "Endorsement Defence". This defence seizes upon Moore-Bick LJ's rejection of the argument in *The Erin Schulte* (at [26]) that "a mere transfer of possession *without an accompanying intention to transfer and accept* the rights under the contract of

carriage is sufficient to complete an indorsement." In this case, it is said that Winson only parted with the OBLs to UOB:[78]

> … because it thought that it was required to do so in order to redeem the Payment LOI, which WOT understood the original copy to be held by the Bank … *WOT had no intention to transfer rights of suit by way of endorsement*. The endorsement was made to the Bank as a matter of routine by looking at the terms of the LC for the documents required to redeem the Payment LOI.

108 Under s 5(2)(*b*) of the UK COGSA and SG BLA, it is the "completion, by delivery of the bill, of any indorsement of the bill" that constitutes a person in possession of the bill as its holder. The cause of the trouble in *The Erin Schulte* was that the claimant bank – who was suing as holders of certain bills of lading for misdelivery of cargo – had initially declined to accept those bills when presented for payment under a documentary credit. The bank, however, held onto those bills to its customer's order and payment was eventually made after the presenting beneficiary commenced an action for payment on the credit. The question that arose was when (if at all) rights of suit passed to the bank.

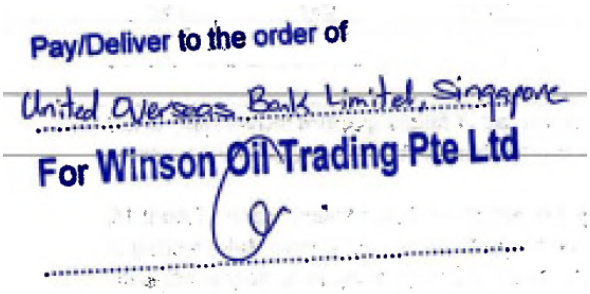
109 It was submitted for the bank that the word "delivery" in s 5(2)(*b*) meant no more than a voluntary transfer of possession, so that the endorsement of the bills of lading to the bank was completed by delivery upon those bills having come into its possession "regardless of the fact that, having examined it for compliance with the letter of credit, [the bank] decided not to accept it" (*The Erin Schulte* at [14]). It was in that context that Moore-Bick LJ made the observations now relied on by the Defendants (see [107] above). Read in context, the key point was that there could have been no "delivery" in circumstances where the putative *transferee* expressed a clear intention not to

[78] D&I OS at para 40; D&I CS at paras 149–158.

accept the bills of lading for itself and instead opted to hold them to the order of someone else (at [28]).

110 I acknowledge that Moore-Bick LJ's conception of "delivery" is reciprocal in that it first requires a "voluntary and unconditional transfer of possession by the *holder* to the indorsee" (at [28]) accompanied by an intention to "transfer … rights under the contract of carriage" (at [26]). Was there such an intention on Winson's part in this case?

111 In my judgment, the answer must plainly be "yes". The OBLs all contain signed, unqualified indorsements by Winson on the reverse. The text of the indorsement reads "Pay/Deliver to the order of United Overseas Bank Limited, Singapore" and every indorsement was accompanied by a signature "For Winson Oil Trading Pte Ltd":



There is no suggestion that these indorsements were unauthorised, or that the physical delivery of the OBLs was anything but voluntary. Indeed, it is Ms Tung's evidence that all of this was done in accordance with her instructions (see [34] and [101]–[102] above).[79]

[79] TCC at para 50.

112 The Endorsement Defence therefore comes down to nothing more than the allegation that there was no *subjective* intention on Winson's part to transfer rights of suit to UOB. There is no need to reach for authority because I am certain that this is not an argument that would find favour with any commercial judge – it certainly finds no favour with me. If the Defendants were correct, the most astonishing results would follow: no business could be transacted on the faith of bills of lading, the value of which would very much depend on subjective (and possibly fickle) states of mind known only to the transferor. I should add that it was agreed between Dame Elizabeth and Mr Young that:[80]

> … *[u]nder normal circumstances the intentional indorsement and delivery of a Bill of Lading will suffice to transfer rights pursuant to [the UK COGSA] without more*. There may be occasions, however, when the transfer of possession is performed in circumstances when it is clear that there is specifically a *mutual* intention not to pass rights, but these will be exceptional and very fact-dependent. *A subjective intention on the part of the transferor is not sufficient.*
>
> [emphasis added]

113 In any event, there is no doubt in my mind that Ms Tung fully understood the significance of the OBLs and the act of endorsing them to UOB. It was Ms Tung's evidence that, having dealt almost exclusively with letters of indemnity (like the Payment LOI) in her line of work, she had no understanding at the time of how bills of lading functioned; to her, the endorsement of bills of lading was nothing more than a ministerial act done to redeem letters of indemnity given to banks:[81]

> Q: No, first, do you understand the word, the meaning of this ["endorsement"]?
>
> A: To be very honest, not quite, because we don't really use OBLs in our trade. So -- but at times when we do receive

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80 ABJEM at p 40, para 1.

81 5 April Transcript at p 119, lns 9–14; p 120, ln 18 to p 121, ln 7.

> this kind of OBLs for redemption, then we just chop accordingly.
>
> …
>
> Q: You didn't understand what the word meant, "endorsement" or "endorsed". Ms Tung?
>
> A: From what I understand, it -- when we endorse the OBLs, it was to redeem the LOI. So –
>
> Ct: Ms Tung, what does it mean, in your mind? Because you used the word "endorsed to UOB".
>
> A: Yes.
>
> Ct: What does it mean when you endorse a bill of lading to UOB?
>
> A: At that time when we endorse, it was to redeem the LOI.
>
> Ct: What does "endorsement" involve?
>
> A: I wouldn't know.
>
> Ct: You don't know?
>
> A: I don't know.

114 Leaving aside the inherent unbelievability of Winson's Executive Director having been ignorant about those matters, Ms Tung betrayed the real extent of her knowledge in re-examination:[82]

> Q: … Can you just explain to us why you say OBLs are useless in oil trade?
>
> A: Because in oil trades, the OBLs always takes time, so we don't really care about the OBLs. When we discharge cargo, it's always against the discharge LOI, and when we are -- sell the cargo, in order to get payment, it's always the payment LOI. So we only need to care about getting the -- as a trader, I only care about getting the cargo and getting paid. So the BL, in a way, is considered useless in oil trade. So it's redundant.
>
> Q: So, as an oil trader, do you use OBLs at all?
>
> A: No. … We only used -- in our oil trade, *we only used OBLs in case there's only disputes to the cargo that we*

[82] Transcript of proceedings on 11 April 2024 at p 26, ln 12 to p 27, ln 10.

> *sold*. So usually we don't use the OBLs. That's why it's not an important document in our day-to-day life.
>
> Q: Can you give us some ideas of a dispute over the cargo?
>
> A: *Say, for example, if -- say I sold the cargo to Hin Leong, and some other traders come and say, "Hey, this is my cargo", then I can give this -- this BL to Hin Leong."*
>
> [emphasis added]

115 It is clear from this exchange that Ms Tung appreciated the importance of a bill of lading to Hin Leong if, for example, there was a dispute as to possession of or title to a cargo that Winson had sold to Hin Leong. This evidence did not sit well with her professed ignorance as to the purpose or significance of endorsing bills of lading other than to redeem letters of indemnity. It was quite apparent to me that Ms Tung knew more than she was letting on.

116 For the foregoing reasons, the Endorsement Defence is, in my view, without merit and also fails.

The Causation Defence

117 I turn finally to the Causation Defence which, until the decision in *The Sienna (CA)*, was long considered to be no more than a final throw of the dice for carriers faced with misdelivery claims.

118 It is trite law that a claimant may recover damages for breach of contract only insofar as the breach was the "effective" or "dominant" cause of the loss claimed for: *Monarch Steamship Co, Limited v Karlshamns Oljefabriker (A/B)* [1949] AC 196. Notwithstanding the vintage of this rule, how it should operate in the context of misdelivery claims is a question that has not been explored until recently.

The authorities

The Nika

119 I begin with *Fimbank Plc v Discover Investment Corporation (The "Nika")* [2021] 1 Lloyd's Rep 109 ("*The Nika*"). In that case, the defendant owners discharged a cargo of wheat into the possession of AOS Egypt against a discharge letter of indemnity and not original bills of lading. The wheat was thereafter transferred to a bonded warehouse and was eventually delivered out of that warehouse against the production of forged bills of lading. At that time, Fimbank was the lawful holders of the originals (albeit that those bills were held by Fimbank's collecting agent in Egypt).

120 It was against that backdrop that Fimbank brought a claim in arbitration against the owners for misdelivery. Freezing orders were obtained by Fimbank in the English High Court, and Mr Justice Baker's decision in *The Nika* was concerned with cross-applications for the continuance or discharge of those freezing orders. One of the grounds advanced by the owners for discharge of the freezing orders was that Fimbank had no "good arguable case" in the arbitration. It was on that basis that Baker J had to inquire into the merits of Fimbank's misdelivery claim.

121 On the facts, Fimbank became interested in the bills of lading pursuant to financing arrangements between it and its customer, AOS Dubai (and not AOS Egypt). The scheme of the transaction was such that the cargo would first be discharged from the performing vessel without production of bills of lading, before being transferred to a bonded warehouse. Fimbank would pay AOS Dubai's sellers against presentation of original bills of lading and then forward those bills to its collecting bank in Egypt with instructions to transfer them onwards to AOS Dubai's end-buyers on a "cash against documents" basis. The

end-buyers would then take delivery from the warehouse by presenting the bills of lading.

122 In furtherance of this scheme, a tripartite stock management agreement ("the SMA") was entered into between Fimbank, AOS Dubai, and Vallis Commodities Ltd (who were the stock managers). Importantly, cl 2.3.4 of the SMA provided:

> [AOS Dubai] shall take delivery of the Goods from the Port of discharge and escort the Goods to the Warehouse(s)/Silo(s) to ensure that the Goods are intact and not appropriated in any way inimical to the interest of Fimbank …

123 Baker J's conclusion that Fimbank did not have a "good arguable case" was reached principally on grounds of a finding that AOS Egypt had in fact been authorised by Fimbank to take delivery of the cargo from the vessel. If AOS Egypt was not a separate legal entity but a branch or trading name of AOS Dubai, then AOS Egypt, in receiving the Cargo, only did what cl 2.3.4 of the SMA expressly authorised it to do (at [26]). Baker J would have found in the alternative that AOS Egypt took delivery as AOS Dubai's agent (at [29]).

124 The learned judge acknowledged the controversy on whether authorisation in circumstances like these meant that there was no breach of contract of carriage to begin with, or if it instead disentitled the claimant holders from substantial damages. Ultimately, the distinction was of no material significance to the learned judge because the freezing order would still have to be discharged in the absence of a "good arguable case" of the owners' liability for substantial damages (at [27] and [32]).

125 Baker J then observed in *obiter* that, questions of authorisation aside, the claim would have run up against "formidable difficulties of causation" because

the tripartite warehousing arrangement had in fact been accomplished; the loss was, in truth, a result of the subsequent fraud (at [30]):

> … the SMA arrangements were in fact successfully accomplished, up to the point only that the bonded warehouse later released cargo against forged documents. That, as it seems to me, had nothing to do legally or factually with the defendant shipowner. In particular, it had no connection whatever to the fact that, as intended by the claimant and required by its financing arrangements, including the SMA itself, the discharge of the cargo and delivery of it by the defendant to AOS Egypt was without production to the defendant of any bills of lading.

126 Of particular interest is how Baker J reached that conclusion. For Fimbank, it was submitted that had the cargo not been discharged other than against presentation of the original bills of lading (at [33]):

> … the claimant, as holder of the bills of lading, one way or the other would have avoided the cargo being capable of being removed from the warehouse, as in the event occurred, against forged bills of lading. That, it was said, provided a sufficient "but for" chain of causation to result in liability on the part of the defendant for the loss of the value of the cargo.

127 As against that submission, Baker J expressed doubt as to whether Fimbank had even posited the correct "but for" question, but then went on to hold that the bank's counterfactual was untenable even on its own premises (at [34]):

> It is not clear to me that, in the circumstances of this case, and the contractual arrangements in place between the claimant and AOS Dubai, [Fimbank's counsel] suggested argument even asks the correct "but for" question. As holder of the bills of lading, the claimant was obliged to meet the ship and take delivery. It may well be, it seems to me, that the proper "but for" analysis would be to ask what would have happened if (which could have occurred if the claimant had wished to proceed in this way) the delivery from the ship – that is to say, the discharge by the ship to AOS Egypt – had been against presentation of the bills of lading, which were (or at least one original of which was) then, if the bank required it, left with the bank to enable it to operate its system of using them additionally as keys to the shore warehouse.

> …
>
> Even if Mr Holroyd posits a correct "but for" analysis, in my judgment in the contractual and factual set-up deliberately structured here by the claimant, the effective cause and the only effective cause of loss is not the shipowner's discharge of the cargo otherwise than against bills of lading that the claimant had no intention of presenting to the ship or allowing the shipowner to take, but rather the breakdown in the arrangements ashore by way of the claimant becoming the victim of a fraud that had nothing to do with the shipowner.

The Cherry

128 Closer to home is Kan Ting Chiu J's decision in *The "Cherry" and others* [2002] 1 SLR(R) 643 ("*The Cherry (HC)*") and the appeal therefrom in *The "Cherry" and others* [2003] 1 SLR(R) 471 ("*The Cherry (CA)*"). They concerned three actions *in rem* that were consolidated at trial.

129 The brief facts are these. The plaintiff in all three actions ("Glencore") purchased four parcels of oil from a company called "Metro". Metro was the time charterer of the vessels "Cherry", "Epic", and "Addax". Glencore in turn voyage chartered those vessels from Metro to carry three oil parcels from Kuwait to a facility operated by Metro in Fujairah, United Arab Emirates.

130 On arrival at Fujairah, the "Cherry" and "Epic" each discharged only a part of the cargoes carried on board; none was discharged from the "Addax" at all. The vessels' owners did so on instructions (backed by indemnities) from Metro. The oil remaining on board the three vessels were then carried elsewhere and released without original bills of lading having been presented. Glencore eventually came into possession of those bills and claimed against the owners of the three vessels for *inter alia* breach of the contract of carriage by reason of the misdeliveries. Metro, who was by then insolvent, was not a party to the proceedings.

131 As for the fourth oil parcel, it had initially been carried from Bandar Mahshahr, Iran to Fujairah by the vessel "Hyperion" pursuant to a voyage charterparty between Glencore as charterers and Metro as owners. The "Hyperion" eventually arrived in Fujairah, whereupon its cargo was transhipped onto the "Cherry" and whisked off elsewhere. The only bills of lading that Glencore had in respect of this parcel were those issued by Metro; in the absence of a contract between Glencore and the owner of the "Cherry" in respect of the fourth oil parcel, Glencore was left to claim in *inter alia* bailment and conversion. These non-contractual claims were disallowed by the Court of Appeal on grounds that Glencore did not have the requisite possessory interest at the time the fourth oil parcel was transhipped in Fujairah. Nothing more need be said in respect of the "Hyperion" and its cargo for now.

132 As regards the oil shipped on board the "Cherry", "Epic" and "Addax", it was argued for the owners at first instance that Glencore would have lost all of the oil even it had been discharged in full at Fujairah (which, according to Glencore, should have been the case). The owners submitted that Metro would in any event have reloaded and sold the cargoes because that was what Metro in fact did on the evidence, albeit only in relation to the oil that was never discharged from the vessels. That argument failed to impress Kan J. The learned judge observed (at [47]) that:

> … The onus on the plaintiffs was to prove that the oil was lost, and that the defendants caused the loss. *They did not have to establish that they would not have suffered loss through other causes.* No support was cited for this proposition. There is no basis for it because no one can tell that the oil would not be lost in other ways if it was discharged at Fujairah. It could, for example, be stolen or delivered to a wrong party. *If the defendants assert that the oil would be lost, they have to establish that.* There was also no basis for assuming that the oil would be sold and shipped by Metro if it was stored in the facilities. While that may happen, its fate in storage is entirely

> a matter of conjecture, and it was by no means inevitable that the oil would be lost.
>
> [emphasis added]

133 The Court of Appeal agreed with the learned judge and held that "to succeed in their argument, the [owners] have to be able to show exactly what would have happened to the oil had it been discharged in full" (at [72]). Having considered the evidence, the court was not persuaded that the oil would have been lost:

> (a) No evidence was led to prove that, had the cargoes been discharged in full, *the very same cargo* would have eventually been removed by Metro for its own use. It was clear that the owners faced insuperable difficulties in doing so because once discharged into Metro's storage tanks and commingled with existing stock, it would be nigh impossible for the owners to show that Metro could and would have simply reloaded the "same" cargoes for shipment later on (at [72]).
>
> (b) As for the on-sales that in fact transpired, there was no evidence that Metro had contracted to sell the specific cargoes that were on board the "Cherry", the "Epic", and the "Addax" (at [73]).
>
> (c) There was evidence that substantial quantities of fuel oil remained in Metro's storage facility at the time of its financial collapse, and so it was entirely possible that the oil carried on board the three vessels would have remained in storage had it been discharged in full (at [75]).

134 A further argument was advanced on appeal by the owners in relation to two "In-tank Transfer Contracts" that Metro and Glencore had entered into. Those contracts pertained to the oil shipped on board the "Cherry" and the

"Epic", and they were concluded some time *after* the short delivery of those cargoes had taken place in Fujairah. By those contracts, Glencore essentially sold the oil – which, to its knowledge, was still sitting in storage – to Metro, with delivery to take place upon Metro's presentation to Glencore of an irrevocable letter of credit for the contract price. Practically speaking, delivery would have involved no physical transfer of the oil but only a transfer on Metro's inventory records.

135 This led the owners to contend that "even if the entirety of the cargoes lately laden on board [the "Cherry" and the "Epic"] had been discharged … Metro would have had full control of such cargoes and the ability to deal with them as Metro deemed fit" well before the time when Glencore had in fact brought its claims against the owners (at [79]).

136 The flaw in that argument, as the Court of Appeal noted, was that it remained for the owners to show that Metro "would have so dealt with all of the oil so as to remove it entirely from the storage facility" before Glencore's claims were brought – this, the owners failed to do (at [85]). The owners thus failed to establish either of their two grounds on the absence of causation.

The Sienna

137 I turn now to the decisions of *Unicredit Bank AG v Euronav NV* [2022] 2 Lloyd's Rep 467 ("*The Sienna (HC)*") and *The Sienna (CA)*, upon which the Defendants placed heavy reliance.

138 The basic facts of the case are these. BP Oil International Ltd ("BPI") agreed to sell to Gulf a cargo of low sulphur fuel oil. BPI separately chartered the vessel from the defendant shipowners for the carriage of the cargo to Fujairah. The cargo was shipped and bills of lading were issued to the order of

BPI or their assigns. The charterparty was subsequently novated so that Gulf became the charterer, but the issues arising out of that are not germane to the present discussion.

139 Gulf's purchase of the cargo was financed in part by a letter of credit issued by the claimant bank, UniCredit. It was intended between UniCredit and Gulf that the cargo would be on-sold to sub-buyers on payment terms that required direct payment from the sub-buyers to UniCredit. In that way, the transaction was intended to be "self-liquidating".

140 As it were, the owners eventually discharged the cargo by ship-to-ship (or "STS") transfer to two other vessels at Sohar (instead of Fujairah) between 26 April and 2 May 2020. It was not disputed that the owners did so without the original bills of lading having been presented. The bills of lading were eventually indorsed and delivered by BPI to UniCredit. By that time, it emerged that Gulf had been guilty of fraud in relation to this and other cargoes. No repayment was made on the sums extended under the letter of credit.

141 So far as issues of causation were concerned, the owners pleaded two closely-related defences. The first was essentially that UniCredit caused its own loss by having authorised the owners to discharge the cargo without production of original bills of lading (*The Sienna (HC)* at [52]):

> Any loss or damage was caused by the Claimant authorising and/or approving and/or requesting and/or permitting Gulf to arrange delivery/discharge of the Financed Cargo by the Defendant without production of the Bill of Lading by the lawful holder of the Bill of Lading.

This was described by Popplewell LJ in the appeal as the "positive causation defence".

142 The second argument was that the owners' breach caused UniCredit no loss – or, put another way, that UniCredit would have suffered the same loss in any event. This was described in the appeal as the "negative causation defence", and it arose out of the following parts of the owners' pleadings (*The Sienna (HC)* at [53]):

> As a matter of law, the Claimant is entitled only to damages to put it in the position it would have been in if the B/L Contract of Carriage had been performed in accordance with its terms. **Since as at late April 2020 the Claimant required the Cargo to be discharged without the production of the Bill of Lading**, the Claimant is required to particularise what it says the Defendant ought to have done (but did not do) in performance of its obligations under the B/L Contract of Carriage at the time of, or prior to, complying with the Claimant's request to discharge the Cargo without the production of the Bill of Lading. The Claimant is, thereby, put to proof that it would not have suffered the alleged loss and damage it claims to have suffered in any event, namely even if there had been no breaches as alleged.

UniCredit's response to this was that, had the owners performed its obligations under the contract of carriage, it would not have discharged the cargo without presentation of the original bills of lading (or would not have done so without valid authorisation).

143 It was common ground in the appeal that Moulder J made no finding on the positive causation defence at first instance. Popplewell LJ, however, doubted the correctness of that position (at [37]) in view of what Moulder J had said at [121] of her judgment, which I reproduce here:

> Against this economic background, having regard to my assessment of the credibility of Ms Bodnya and in the circumstances discussed above including the impact of Covid-19, I find on the evidence that:
>
> *(i)* *the claimant **did permit** and in any event, would have permitted discharge without production of the Bill of Lading;*

> (ii) the claimant would have permitted discharge at Sohar by STS;
>
> (iii) if the claimant had been aware, or told that discharge was to be made by STS at Sohar, the claimant would not have halted discharge and have carried out investigations into Gulf and/or the sub-buyers; and
>
> (iv) the loss would have occurred in any event.
>
> [emphasis added in italics and bold italics]

Be that as it may, Popplewell LJ was content to proceed on the basis of the parties' agreement (namely, that Moulder J had made no finding on the positive causation defence).

144 As I see it, the uncertainty may have been prompted by a distinction that UniCredit sought to draw at trial between (a) authorisation to discharge the cargo to Gulf's sub-buyers *ex* ship at berth in Fujairah without production of original bills of lading (which was the plan that had been communicated to UniCredit); and (b) authorisation to discharge the cargo to Gulf's sub-buyers by STS transfer off Sohar without production of original bills of lading (which was what in fact occurred): *The Sienna (HC)* at [58]. Moulder J was plainly alive to that distinction: in setting out her analysis of the issues, she noted that "[w]hilst STS may not have been discussed with Gulf, the issue is whether it *was agreed or permitted by [UniCredit] as part of a 'general agreement'* or would have been agreed or permitted by [UniCredit]" (at [116]). One would therefore think that in concluding that UniCredit "did permit and in any event, would have permitted discharge without production of the Bill of Lading" (at [121(i)]), Moulder J implicitly took the view that there was indeed a "general agreement" sufficient to encompass discharge by STS transfer off Sohar.

145 In any case, Moulder J went on to accept (in more explicit terms) the owners' negative causation defence, and it was this defence that was at the

forefront of the appeal in *The Sienna (CA)*. At trial, UniCredit itself offered its view on what would have counterfactually followed had the owners refused to discharge the cargo in the absence of original bills of lading (*The Sienna (HC)* at [60]):

> The claimant asserted that the "likely sequence of events" is that the owners would have contacted BP as the Bill of Lading holder to obtain instructions and had BP been contacted, it was "reasonable to assume" that BP would have advised the owners that the Bill had been sent for endorsement and transfer to the Bank, that the endorsement and transfer was likely to take some time due to Covid restrictions and the Bank would have been contacted by the owners and asked what it wanted to do. It is the claimant's submission … (relying on the evidence of [two of its witnesses]) that the Bank would have "engaged with owners and asked them not to discharge the Cargo without its consent".

The owners objected in closing arguments to UniCredit having raised that counterfactual only at the start of trial, but they nevertheless went on to submit that, on the evidence, UniCredit *would have* consented to discharge by STS off Sohar without production of original bills of lading (*The Sienna (HC)* at [61]–[62]).

146 It was against that backdrop that the negative causation defence crystallised into a single question of fact: would UniCredit have given its consent? Having considered the evidence that was led at the trial, Moulder J answered that question in the affirmative and therefore concluded that the owners' breach "did not cause the loss or in the alternative that the Bank would have suffered the same loss in any event" (at [122]).

147 At this juncture, I shall consider Moulder J's analysis of the evidence in some detail. The evidence that the learned judge regarded as significant was set out at [65] to [88] of her judgment. I summarise that evidence as follows:

(a) Before the cargo had been discharged, Ms Bodnya (the representative of UniCredit and the officer that had been communicating with Gulf) made inquiries as to Gulf's intentions for the cargo and, in particular, whether Gulf would be warehousing or re-selling the cargo from the vessel. Gulf informed Ms Bodnya that it intended to sell the cargo in small clips *ex* ship to regular customers (at [68]–[69]).

(b) There were multiple emails in which Ms Bodnya expressed her expectation that the cargo would have reached its end-buyers without original bills of lading having been presented. In fact, as time went on, UniCredit expressed concern at the cargo *not* having yet been delivered, even though UniCredit knew the bills of lading were still making their way through the commercial chain to the bank (at [73]–[74] and [78]–[79]).

148 It was therefore plain on the evidence in that case that UniCredit "had accepted that … the Bill of Lading would not be available until after discharge had taken place" and that "Ms Bodnya was aware and did implicitly (if not expressly) approve discharge without production of the Bill of Lading" (at [90]–[92]). UniCredit was hence not in a position to contend that "there was (or would have been) no approval … to discharge without the production of the [bills of lading]". That explained the bank's nuanced argument that there was "no 'general approval' … and no specific approval for delivery without production of the bill *at Sohar by STS*" (at [93]).

149 This argument was rejected by Moulder J. The learned judge's analysis was set out at [119]–[121] of her judgment:

> 119. … Taking first the reasons advanced by Ms Bodnya as to why she would not have agreed to STS transfer, in my view:

(i) the Bank did not and would not have taken the view that the conditions of the financing had to be "strictly followed" so far as discharge was concerned – the Bank accepted that the Financed Cargo would not be discharged into storage at Fujairah even though this meant that the Bank lost the additional protection of control over the storage facilities;

(ii) any request for STS transfer would not have been the "final straw" – the Bank accepted the various explanations provided by Gulf even where in hindsight at least, it would appear that it should have challenged them, eg the pricing of the sub-contracts; and

(iii) any request for STS transfer would in normal times have been unusual but these were not normal times: " in the circumstances of Covid, where there were problems with the access in the ports, where there were problems with the logistics, where there were problems with the personnel …".

120. Looking at the wider question of whether the Bank would have insisted on production of the Bill of Lading and whether it would have permitted discharge without production of the Bill, including by STS at Sohar, the evidence is that:

(i) The Bank had no specific concerns about Gulf falling into default at this time.

(ii) In relation to the sub-buyers, Gulf had taken out trade credit insurance covering 90 per cent of the receivables under the contracts with the sub-buyers and the Bank had the benefit of an assignment of this policy and thus believed at the time that it was insured as to 90 per cent against credit risk; and the Bank had received (or had no reason to believe that it would not receive) a 10 per cent cash margin which covered the remaining credit risk.

(iii) Ms Bodnya had been told the names of the sub-buyers and had confirmed that they were acceptable and by 4 May 2020, had received the invoices.

121. Against this economic background, having regard to my assessment of the credibility of Ms Bodnya and in the circumstances discussed above including the impact of Covid-19, I find on the evidence that:

(i) the claimant did permit and in any event, would have permitted discharge without production of the Bill of Lading;

> (ii) the claimant would have permitted discharge at Sohar by STS;
>
> (iii) if the claimant had been aware, or told that discharge was to be made by STS at Sohar, the claimant would not have halted discharge and have carried out investigations into Gulf and/or the sub-buyers; and
>
> (iv) the loss would have occurred in any event.

150 Moulder J's line of reasoning and conclusions on the causation issues were upheld on appeal. In doing so, the English Court of Appeal made certain observations that I shall consider a little later below.

Parties' cases

151 Reverting to the case before me, I begin with the Defendants' pleadings:[83]

> Further, it is denied that the Defendant, whether because of the alleged misdelivery of the Cargo or otherwise, is liable for the Plaintiff's loss and/or damage. At all material times, the Plaintiff never regarded the Bills of Lading or the Cargo as security nor intended to take a pledge over the Bills of Lading and the Cargo. … In circumstances where the Plaintiff was aware that the Cargo had already been discharged and delivered to HLT without presentation of the original Bills of Lading, had financed the Cargo as unsold goods to be blended and stored by HLT, had paid against a specifically worded Payment LOI between the Intervener and HLT without requiring presentation of the Bills of Lading, and had granted unsecured extensions of time for HLT to repay the Plaintiff without asking for the Bills of Lading, the Plaintiff is put to strict proof that it would not have suffered the alleged loss and damages it claims to have suffered in any event, namely if there had been no breaches by the Defendant as alleged. It is averred that the proximate or effective cause of the Plaintiff's losses was the financial collapse of HLT, which rendered HLT unable to repay its unsecured loan owed to the Plaintiff.

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83 Maersk's Defence at paras 26–27; Winson's Defence at para 26.

152 The averments I have just set out mirror those of UniCredit's (reproduced at [142] above) in certain respects, but there was no invitation for UOB to particularise what Maersk "ought to have done (but did not do) in performance of its obligations" under the contract of carriage. In any event, the position UOB has taken is that Maersk should have retained possession of the Cargo, whether on board the Vessel or in storage ashore.

153 It should be apparent that the Defendants' pleadings assert an absence of causation in view of the circumstances they have listed, but they do not identify any *specific* mechanism (or mechanisms) by which the causal chain was severed. The argument that has since emerged in the Defendants' closing arguments is that UOB would have counterfactually authorised discharge of the Cargo to Hin Leong without original bills of lading being produced. It was said in the Defendants' written closing submissions that "the Bank's financing arrangement would have HLT obtain the Cargo without production of the OBLs and relied on HLT to repay the Bank."[84] The point then comes out more fully in their written reply submissions:[85]

> The Defendants' main defence has always been causation, i.e. that the effective cause of the Bank's loss was its financing arrangements with HLT that did not regard the OBLs as security, but rather was content to rely on HLT's creditworthiness for repayment. *The counterfactual is therefore not that there would have been ratification of HLT's act of taking delivery, but rather that the delivery of the Cargo to HLT without production of the OBLs would have occurred in any event in light of the Bank's own financing arrangement.*
>
> …
>
> In the present case, *the Bank's financing arrangements would have the Bank agree for HLT to take delivery of the Cargo at UT without production of the OBLs in the counterfactual scenario* as in the case in *The Sienna* and the Bank has not rebutted this.

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84 D&I CS at para 43.

85 Defendant & Intervener's Reply Submissions ("D&I RS") at paras 7 and 19.

[emphasis added]

Analysis

154 In assessing these arguments, I am mindful that the *legal* burden is on UOB to prove that Maersk's breach of contract was an "effective" or "dominant" cause of its loss – and here, it is the loss of the Cargo that is relevant. There are perhaps fine distinctions between contractual rights of possession under contracts of carriage and property rights embodied in bills of lading as documents of title, but it is unnecessary to split those hairs here: however one looks at the matter, the thing of value that was lost relates in the final analysis to the physical goods in question.

155 UOB's legal burden of establishing causation encompasses a legal burden to establish 'but for' causation (or causation in fact). This means that UOB will succeed only if I am satisfied that, on a balance of probabilities, the loss would not have resulted had the breach never occurred. Put another way, UOB would not have discharged its legal burden if, on a balance of probabilities, the same loss would have come to pass even if Maersk never committed the breach.

156 One pathway to the latter scenario is a factual finding that the carrier would have eventually discharged the cargo without presentation of original bills of lading in circumstances where the *carrier* had been authorised by the claimant holder to do so – that much was established in *The Sienna (CA)* on grounds that "the obligation to deliver against a bill of lading is a contractual one which can be varied by express consent to the contrary" (at [108]). Based on *The Nika*, it would seem that the same result may be had where the *receiver* is authorised by the claimant holder to take delivery of the cargo without

presentation of bills of lading, irrespective of whether the carrier knew of that authorisation (*The Nika* at [28]).

157 It is vitally important, however, not to confuse a legal burden of establishing 'but for' causation with a burden to disprove particular facts tending to refute causation. This calls to mind the distinction between 'legal' and 'evidential' burdens that are by now well-understood. In the present context, it does not follow from UOB's legal burden of proving 'but for' causation that the bank should *also* bear the legal burden of proving that it would not have extended the hypothetical authorisation upon which the Defendants' arguments are premised. Quite apart from the unfairness of requiring UOB to prove a negative, the court cannot realistically start from the position that whether a bank will enforce its security turns on a coin-flip – and still less that the bank will *relinquish* its security or otherwise disable itself from relying on it in exchange for nothing. If anything, common sense and logic demands a baseline inference or a starting position that banks like UOB take security for a reason, and the security will not be parted with in the absence of commercial reasons for doing so.

158 In this regard, a parallel may be drawn with the established presumption of inducement in the law of fraudulent misrepresentation. In *Gould and another v Vaggelas and others* (1984) 157 CLR 215, it was helpfully explained (at 238) that:

> Where a plaintiff shows that a defendant has made false statements to him, intending thereby to induce him to enter into a contract, and those statements are of such a nature as would be likely to provide such inducement and the plaintiff did in fact enter into that contract and thereby suffered damage and nothing more appears, *common sense would demand the conclusion that the false representations played at least some part in inducing the plaintiff to enter into the contract. However, it is open to the defendant to obstruct the drawing of that natural*

> *inference of fact by showing that there were other relevant circumstances.* Examples commonly given of such circumstances are that the plaintiff not only actually knew the true facts but knew them to be the truth, or that the plaintiff, either by his words or conduct, disavowed any reliance on the fraudulent representations. It is entirely accurate to speak of an onus resting on a defendant to draw attention to the presence of circumstances such as those I have described in order to show that the inference of the fact of inducement which would ordinarily be drawn from the fraudulent making of a false statement calculated to induce a person to enter into a contract followed by entry into that contract should not, in all the circumstances, be drawn. *But it is no more than an evidentiary onus — an obligation to point to the existence of circumstances which tend to rebut the inference which would ordinarily be drawn from the primary facts*.
>
> [emphasis added]

159 It follows from what I have said that insofar as the Causation Defence hinges on proof of the fact that UOB would have counterfactually given its authorisation, it is for ***the Defendants*** to lead evidence tending to prove that fact and not for UOB to refute it. This was the fundamental point emphasised by Kan J and the Court of Appeal in *The Cherry (HC)* and *The Cherry (CA)* (see [132]–[133] above).

160 In reaching this view, I am mindful of Popplewell LJ's statement in *The Sienna (CA)* that proof of causation in that case required "[UniCredit] to show, on the balance of probabilities, that in the event of performance by Owners, it would have enforced its security against the Cargo so as to recoup its lending" (at [103]). I cannot imagine Popplewell LJ having meant to say that UniCredit would not have discharged its overarching legal burden of proving causation unless it could produce enough evidence to knock out every counterfactual in which it would have relinquished its security over the cargo. Instead, I am more inclined to read those observations as pointing merely to UniCredit's undoubted legal burden of demonstrating that it would have enforced its security – where

the *evidential* goalposts stood (particularly in respect of the authorisation hypothesised *in the counterfactual*) was, however, an entirely different matter.

161 As it were, UniCredit failed to discharge its legal burden of proving causation because the court was satisfied on the evidence adduced that, on a balance of probabilities, the bank would have eventually consented to discharge of the cargo (by STS transfer off Sohar without bills of lading being presented) even if the breach in question never occurred. It is, however, crucial to recall the circumstances leading up to that finding. As I mentioned at [145] above, UniCredit ran its *own case* on the basis of certain postulations as to what would have happened had the owners initially declined to deliver the cargo. In doing so, UniCredit effectively conceded the factual steps that ultimately enabled the court to focus its mind on how the bank would have responded to a hypothetical request for authorisation.

162 The circumstances of the case before me are entirely different. UOB says that, had there been no breach, Maersk would (and should) have retained possession of the Cargo until the OBLs were presented for delivery. The Defendants for their part assert a counterfactual ending with UOB's authorisation of discharge to Hin Leong without presentation of the OBLs and Maersk proceeding to do so; but importantly, nothing was said in the Defendants' pleadings or submissions to frame the intermediate steps – and still less was any evidence led to establish the likelihood of those intermediate steps transpiring. The following difficulties lie in the Defendants' path insofar as their asserted counterfactual is concerned:

(a) Had Maersk taken the initial position that it would not discharge the Cargo without production of the OBLs, Maersk would have

presumably sought instructions from Winson.[86] Indeed, it was Capt Bhushan's evidence on cross-examination that Maersk would have taken instructions from Winson *even if* the OBLs had been tendered.[87]

(b) However, there is no indication whatsoever of how Winson would have responded to such a request for instructions. This is despite Ms Tung having appeared in court to give evidence as the sole witness on Winson's behalf. To the extent that Winson would have contacted the holders of the OBLs, it is worth emphasising that, at the time, BL-A was made out to the order of BP and BL-C was made out to the order of either Crédit Agricole or UniCredit; even as late as April 2020, no one seemed to know precisely where the OBLs were.[88] Whether Winson would have pointed Maersk in Hin Leong's direction is uncertain.

(c) Even if one were to *assume* that Winson would have sought out Hin Leong's views or otherwise directed Maersk to Hin Leong as buyer under the Sale Contract, there is also no evidence of how Hin Leong would have responded thereafter. No one from Hin Leong was called on to testify in these proceedings. More to the point, there is also no evidence that Hin Leong would have directed Maersk *to UOB* – this is entirely unsurprising because UOB was not even in the picture then (*ie*, 27–29 February 2020). It should also be noted that Hin Leong was served by over 20 banks at the time; as I mentioned at [16], Parcels B and D were eventually financed by Standard Chartered.

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86 5 April Transcript at p 54, lns 3–5.

87 5 April Transcript at p 53, lns 12–19.

88 TCC at p 423.

163 In short, the Defendants have invited me to assess, in a contextual and factual vacuum, UOB's likely response to a request that the Cargo be discharged into Hin Leong's possession without the OBLs having been presented. But in what circumstances would it have even fallen onto UOB to make that decision? In this case, the final step of the inquiry is operable only on the basis of numerous unsubstantiated *assumptions*. None of the cases I have discussed, including *The Sienna (HC)* and *The Sienna (CA)*, stand as authority for such an approach; indeed, it was quite plainly deprecated in *The Cherry (HC)* and *The Cherry (CA)*.

164 These evidential gaps are material and they make it unsafe for me to find that UOB would, on a balance of probabilities, have authorised discharge of the Cargo to Hin Leong without presentation of the OBLs should Maersk have initially refused to do so. Given the state of the evidence before me, such a conclusion would be little more than speculation. In my judgment, the Defendants cannot avail themselves of the Causation Defence for this reason and I would therefore reject it.

The evidence

165 Assuming the evidential gaps I have just described are not fatal to the Causation Defence, I shall have to consider the extent to which the evidence supports a more *general* inference that UOB would have consented to Maersk's discharge (or Hin Leong's receipt) of the Cargo without presentation of the OBLs.

166 As I see it, a two-step argument runs through the entire Causation Defence as presented by the Defendants:

(a) First, the Defendants say that UOB issued the L/C knowing full well that the Cargo had already been delivered into Hin Leong's possession – that in itself justifies an inference that the bank never cared for the Cargo or the OBLs as security.

(b) Second, the bank then went on to conduct itself in ways that either (i) further demonstrated its knowledge as to the Cargo's prior discharge; or (ii) independently evinced a disregard for the Cargo or OBLs as security.

On the whole, therefore, the inference said to arise is that UOB was apathetic at best towards any security interest it may have had in the Cargo and would accordingly have been content in any event to allow its discharge to Hin Leong without presentation of the OBLs.

UOB's knowledge of the prior discharge

167 The general argument, while not an inherently bad one in principle, asks too much of the evidence that is actually available. I shall begin the analysis by considering aspects of the evidence that the Defendants say point towards UOB's knowledge (at the time it issued the L/C) of the Cargo having been discharged.

(1) The context of Hin Leong's banking relationship with UOB

168 It was said in the Defendants' pleadings that UOB knew from past experience that Hin Leong had a "practice of taking delivery of cargoes without presentation of bills of lading and not delivering the original bills of lading to

[UOB]".[89] There is not a shred of evidence before me to substantiate this assertion and I therefore reject it.

169 The Defendants then emphasise that the purpose of the specific financing operation was to cover Hin Leong's purchase of "unsold goods" for blending and storage.[90] It was submitted that because UOB "understood that the financing was to allow [Hin Leong] to blend and accordingly destroy any security rights the bank had over the Cargo", UOB "knew that it could not look to the financed cargo as security".[91] Closely allied to this was the observation that UOB had waived its right to a negative pledge by Hin Leong over cargoes financed by the bank, the effect of which was to allow Hin Leong to pledge those cargoes without first seeking UOB's consent.[92]

170 The defect in these arguments is that they relate to things done only *after* possession of the relevant cargo has been taken by Hin Leong. Blending may well have the effect of extinguishing certain security interests, but that is of course entirely predicated on Hin Leong first taking possession of the cargo – and here, the question is whether UOB would have allowed that to happen without presentation of original bills of lading (which bills are, by design, the control on Hin Leong's taking of possession). A *general* liberty to encumber goods that have come into Hin Leong's possession is immaterial for the same reasons.

171 The Defendants further submit that Hin Leong and UOB could not have realistically intended for an arrangement that would (a) bar Hin Leong from

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89 Defence at para 7(b)(1).

90 D&I OS at para 3(ii)(a); D&I CS paras 52–53.

91 D&I CS at para 56.

92 D&I CS at para 60.

dealing with the financed cargo until original bills of lading have arrived at UOB's counters, and yet (b) allow for payment to Hin Leong's supplier upon presentation of a letter of indemnity.[93] But so far as the contractual documents are concerned, that appears to have been the result of what Hin Leong and UOB agreed on. UOB has unsurprisingly stood by it[94] and on the other hand, there is no contrary evidence from Hin Leong to affirm the Defendants' supposition.

172 There is yet another argument that relates to the 'sales allocations' described at [26] above, and it is essentially that any financing under the LC2 sub-facility was intended to be secured only by export receivables generated from the on-sale of the financed cargo. It was because UOB knew that Hin Leong would require 21 days to sell the cargo that the latter was required to provide its sales allocations within 21 days of the import letter of credit being opened under the sub-facility. Furthermore, the on-sale contracts had to provide for loading prior to the due date for repayment under the import letter of credit.[95] The suggestion, therefore, was that UOB considered itself secured against – and only against – the receivables from the on-sale.

173 UOB's response to this was that Hin Leong was at liberty to lodge *unrelated* sale contracts (*ie*, contracts relating to cargoes sold by Hin Leong other than those financed under the import letter of credit).[96] The point is well taken and supported by the contemporaneous evidence; the Rotterdam Contracts that Hin Leong in fact lodged, and which the bank accepted, were unrelated contracts in that sense. But there is, in my view, a yet shorter answer

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93 D&I CS at paras 66–67.

94 Transcript of proceedings on 1 April 2024 ("1 April Transcript") at p 25, lns 10–11 and p 28, lns 17–19.

95 D&I CS at para 61.

96 CF at para 67.

to the Defendants' argument: UOB may have expected repayment out of the assigned receivables whilst *also* looking to the OBLs as security. I see no reason to treat the two as mutually inconsistent or exclusive. If anything, the superiority of the latter (as a proprietary form of security) over assignments of accounts receivable (which are only in the nature of a personal security) would render the pledge of the OBLs *all the more* important to UOB in that context. When questioned in cross-examination on UOB's "package" or "suite" of securities in respect of trade financing it has extended, Ms Lim explained that:[97]

> You have to look at all the documents, the security documents that the bank has taken, which includes the OBL, the assignment of the receivables, the cash margin that we've taken.
>
> …
>
> Money that is received, you have the letter of charge and set-off … Receivables is assignment, goods, BL, pledge of goods.
>
> …
>
> … [the bank is] primarily secured by [the] OBL for [the] transaction first … people can walk away from contract, it's not been performed yet, right, but the OBL under [the] LC is title documents, it's security that [the bank calls] for specifically for [the] LC. So this cannot be taken, like, the security at the primary level, like how I explained it earlier.

(2) Circumstances surrounding the issuance of the L/C

174 With regard to the particular circumstances in which the L/C was issued, the Defendants have placed considerable emphasis on certain statements contained in the Transaction Form referred to at [96] above:[98]

> Vessel & ETA: MT Maersk Princess IMO Number 9308948 (~~ETA~~ arrived Singapore 29Feb2020)

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97 Transcript of proceedings on 3 April 2024 at p 66, lns 20–23 and p 67, lns 7–10; 4 April Transcript at p 63, lns 7–13.

98 ACB at pp 100–102.

> …
>
> Performing vessel is "MT Maersk Princess". Shipment has been effected around 21Feb2020. Pending copy of BL/CQ. Shipment from Taiwan to Singapore. Latest Delivery Date is the NOR tenderred (*sic*) at discharge port ia 29Feb2020. As per copy of Purchase Contract, delivery is between 21-25Feb2020. Vessel's checked: ETA Singapore 29Feb2020

175 My attention was also drawn to a phone conversation between Ms Christina Foong of UOB and Ms Katherine Ong of Hin Leong. In that conversation, Ms Foong was heard to ask:[99]

> Okay. *And then the shipment already effected right…* if we don't really have a copy of BL, copy to CQ. Because the delivery CQ-- delivery date is 29-- was 29, 29th of February.
>
> [emphasis added]

176 Finally, the Defendants referred to a Lloyd's List Intelligence Report of the Vessel that UOB generated on 4 March 2020 in reviewing Hin Leong's application for the L/C (the "4 March Report").[100] That report indicates that the Vessel stopped at a "Singapore LNG Terminal" for a day (*ie*, between 28 and 29 February 2020, which was when the Vessel had in fact discharged the Cargo at Universal Terminal).[101]

177 The Defendants submit that in view of the foregoing matters, UOB plainly knew that the Cargo had already been discharged before it went on to issue the L/C.

178 UOB, on the other hand, denies that it had any knowledge of the discharge at or prior to the time it issued the L/C. So far as the Transaction Form

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99 Plaintiff's 2nd Bundle of Documents filed on 2 April 2024 at p 25, lns 18–21.

100 ACB at pp 92–98.

101 ACB at p 96.

was concerned, there was also a handwritten note that reads "Gasoil, DES at UT, *to be* discharged to HL's own tanks" (emphasis added).[102] I was also referred to an email from Hin Leong to UOB dated 3 March 2020 enclosing the former's application for the L/C. The material parts of the covering email are reproduced below:[103]

> Dear All
>
> Enclose the DOXLC APPLICATION for the subject LC issuance
>
> LOADPORT / ORIGIN – TAIWAN
>
> **INTENDED** PORT OF DISCHARGE – SINGAPORE
>
> …
>
> [emphasis added]

These contemporaneous statements, UOB submits, make good its position that it was in fact unaware at the time that the Cargo had already been discharged.

179 As for the references to "delivery" and shipment having been "effected", UOB's witnesses testified that they understood "delivery" to mean arrival of the Vessel at the discharge port with the Cargo still on board,[104] and a shipment having been "effected" to mean that the Vessel had departed from the load port with the Cargo.[105]

180 Finally, the court heard evidence that the 4 March Report was only generated as part of UOB's "standard operating protocol" for compliance with rules on anti-money laundering and combatting the financing of terrorism.[106] In

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102 4 April Transcript at p 10, ln 11 to p 11, ln 1.

103 ACB at pp 107–108.

104 1 April Transcript at p 4, lns 16–17.

105 2 April Transcript at p 26, lns 8–19.

106 CF at para 46.

any event, the report indicated that the Vessel was still in Singapore on 4 March 2020 and there was no reference in the document to Universal Terminal by name, nor any indication that the Vessel was discharging (or had discharged).

181 I have given the evidence careful consideration and although the answer is far from obvious, I am not persuaded on a balance of probabilities that UOB knew (at the time it issued the L/C) that the Cargo had already been discharged and delivered into Hin Leong's possession. In coming to this view, I am mindful of the fact that the transaction here was one conducted between professional bankers and their clients. The active monitoring of financed cargoes is not one of the bank officers' primary functions – insofar as the Defendants say that UOB generally knew of how Hin Leong would deal with physical cargoes financed by the bank, I have already stated above that there is simply no evidence of that. I am also mindful that the application was made and processed in under two days, no doubt because of the urgency expressed by Hin Leong.[107] Finally – and as is common in disputes like these – details that are at the front-and-centre of litigation may have been scarcely noticed at the time of the material events; it is therefore crucial that a margin of credulity be allowed on account of things becoming obvious only with the benefit of hindsight.

182 It is against that backdrop that I assess what the persons responsible would have gleaned from things said and done at the relevant time. In none of the contemporaneous material was there a clear and unequivocal indication to UOB's officers that the Cargo had already been discharged; the information supplied by Hin Leong was less than helpful in that regard, to say the least. If presented with the same material, persons more experienced in the operational aspects of international sales may have inferred that the Cargo had already been

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[107] CF at para 10.

discharged (or at least, been put on notice of that possibility), but that is beside the point here. UOB's witnesses have offered accounts of their contemporaneous understanding which, in my judgment, are consistent and not so illogical as to be incredible or unbelievable.

183 Before moving on to consider events subsequent to 3–4 March 2020, there are two submissions that I shall have to address briefly. The first relates to the Sale Contract having been on DES terms. Entire lines of questioning and submissions were pursued by the Defendants on the premise that transfers of original bills of lading are "redundant" where DES sales are concerned.[108] It was submitted that the bank understood this, and so the bank must have known that the Cargo would have been immediately delivered into Hin Leong's possession upon arrival of the Vessel at Universal Terminal.[109]

184 As I hinted to counsel at trial, the error in that argument is that it conflates delivery for the purposes of the contract of *sale* with delivery for the purposes of the contract of *carriage*. The OBLs may not have been relevant to the former given that the shipment was on DES terms, but they were certainly not irrelevant to the latter. The Defendants themselves have acknowledged the distinction in their written closing submissions, where it is said that "*as between the buyer and seller* in a DES sale, the tender of the original bills of lading is not fundamental."[110] The argument also overlooks the fact that, notwithstanding the Sale Contract having been on DES terms, the terms of the L/C nevertheless called for presentation of the OBLs (and not, for example, a warranty of title). It was *Hin Leong* that applied for the L/C on those terms, which is unsurprising:

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108 D&I CS at para 70; D&I RS at para 60.

109 D&I OS at para 3(i)(b).

110 D&I CS at para 70.

although the Sale Contract was varied on 17 February 2020 to provide for delivery on DES (instead of CFR) terms,[111] there was no corresponding variation of its *payment* terms which called for an irrevocable credit requiring presentation of *inter alia* original bills of lading as the primary mode of payment.[112]

185 The second point concerns the Defendants' mention of how UOB "was unconcerned that the Cargo on board [the] Vessel would be commingled with other parcels of cargo".[113] I fail to see the relevance of this, even if it were true. It can hardly be suggested that a lawful holder's right to possession of cargo under original bills of lading are somehow dependent on the subject cargo (particularly liquid cargo in bulk) being physically segregated from other like parcels carried on board the performing vessel.

Subsequent conduct evincing a disregard for the Cargo as security

186 It was submitted for the Defendants that, quite apart from having had no expectation of receiving the OBLs, UOB in fact knowingly relinquished any claim to them when it accepted the Payment LOI, the terms of which conferred upon it no enforceable rights to the OBLs. I have rejected a variant of this argument in relation to the Good Faith Defence (see [89]–[99] above) but in the present context, the Defendants make much of the fact that the Payment LOI's text reflects the recipient's (or recipients') agreement "to accept delivery of the cargo without having been provided with 3/3 original bills of lading and other shipping documents".[114]

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111 ACB at p 51, cl 6; ACB at p 57, cl 1.

112 ACB at p 52, cl 8.

113 D&I CS at para 80.

114 ACB at p 110.

187 The Defendants say that "delivery" here can only mean discharge of the Cargo from the Vessel,[115] but that interpretation breaks down when one considers the obtuseness of an agreement to accept discharge of cargo into one's possession "without having been provided with 3/3 original bills of lading and other shipping documents". Moreover, the relevant sentence of the Payment LOI opens with the words "[i]n consideration of *your* making payment of U.S. Dollars 43,563,960.00". Given that payment was being sought from UOB as the issuing bank, it would follow, on the logic of the Defendants' submission, that it was discharge of the cargo into *UOB's* possession that was contemplated. For these reasons, I am not persuaded that there is anything probative about UOB having accepted the Payment LOI in the circumstances and on the wording it did.

188 An argument was also made in relation to the Trust Receipt Loan, and it went as follows:[116]

> The fact that the Bank then proceeded to grant the loan on 27 March 2020 that was not secured by a trust receipt arrangement over the OBLs and the Cargo, coupled with the fact that no enquiries were made of the OBLs and the Cargo when the Bank decided to grant the loan supports the Defendants' case that this financing arrangement was never intended to be secured over the OBLs or the Cargo.

189 I must profess that I had difficulty following the submission. The point, it seems, is that the Trust Receipt Loan amounted to a "loan extension that was not secured over the OBLs and/or the Cargo" because the OBLs were not then in the bank's possession, in which case UOB "would have no pledge over the

115 D&I CS at para 85.

116 D&I RS at para 55.

OBLs and/or the Cargo as security for the [Trust Receipt Loan] financing on 27 March 2020."[117]

190 The argument would have deserved some credit had the Trust Receipt Loan fallen to be considered in isolation, but that is not an approach that can be realistically adopted here. So far as UOB was concerned, there was already a Payment LOI in place that was addressed to it and which obliged Winson to convey the OBLs to them as soon as practicable. It is true that on UOB's books, the Trust Receipt Loan operated as a transfer of Hin Leong's indebtedness from one credit line to another; but again, so far as UOB was concerned, that was of no consequence to its rights under the Payment LOI or its anticipated rights as pledgees and holders of the OBLs. There was therefore no need for the Trust Receipt Loan itself to have been separately secured, whether by another pledge of the OBLs or otherwise – indeed, one would think that the very fact of UOB *not* having asked for further security would fortify the conclusion that UOB was looking to the security that was *already* in place. In my view, this is entirely consistent with Ms Lim's evidence that "UOB deliberately retained (and never released) the original Payment LOI to ensure that the OBLs would ultimately be obtained by UOB",[118] which was what UOB in fact went on to do.

191 Finally, the Defendants stress that at no time prior to Hin Leong's collapse did UOB inquire into the status of the Cargo or the OBLs; instead, the bank had directed its energies towards ensuring that suitable sales allocations were made in respect of the L/C.[119] Even after UOB came into possession of the OBLs in July 2020, UOB took some seven months to commence the present

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117 D&I CS at para 129.

118 LCC at para 48(a).

119 D&I OS at para 3(ii)(e) and 3(ii)(f); D&I CS at paras 73–75.

suit. The Defendants submit that such conduct is further evidence that UOB never regarded the OBLs as security, and that the bank was instead content to rely solely on Hin Leong's creditworthiness for repayment – it was only after that creditworthiness evaporated that UOB devised or contrived its present claims.[120]

192 It is in the nature of a security that it be pressed into action only when the risk secured materialises or becomes likely to materialise. In this case, UOB may not have foreseen the need to do so until news broke of Hin Leong's insolvency. The bank may not have given much thought to the OBLs or the Cargo before then. The evidence may also suggest that UOB looked to Hin Leong's export receivables in the first instance for repayment. But ultimately, none of this meaningfully suggests that the bank ascribed *no* value or significance at all to the OBLs as security.

193 As for UOB's "delay" in bringing this suit, the bank had made it crystal clear to Winson from as early as 29 April 2020 that:[121]

> Given the current situation with Hin Leong Trading (Pte) Ltd, it becomes even more important that all the OBLs are provided to the Bank forthwith. Take note that the Bank will look to Winson Oil for all and any losses and/or damages it may suffer as a result of your failure to deliver the OBLs.

UOB was quite plainly signalling, even in April 2020, its anticipated need to look to the Cargo (or Maersk) for satisfaction of Hin Leong's debt. I am thus unable to regard the seven-month "delay" as suggestive of anything. In any case, I do not think it is open to Winson to now accuse UOB of bringing its claims as a belated afterthought – not least because the alleged delay complained of was

120 D&I CS at paras 130–131.

121 TCC at p 428.

preceded by a delay by Winson of some two months (from the time UOB pressed Winson for the OBLs) or three months (from the time Winson claimed payment under the L/C) in conveying the OBLs to the bank.

Decision on the Causation Defence

194 I return to the question I started with: had Maersk not discharged the Cargo on 28–29 February 2020, would it have eventually done so in circumstances where UOB had authorised Hin Leong's receipt (or Maersk's discharge) of the Cargo without presentation of the OBLs? I am not convinced that the answer is 'yes' on a balance of probabilities.

195 In reaching this conclusion, I have been cautious to weigh the relevant evidence and arguments alongside each other, and not in discrete siloes. I have also kept in mind the dangers of over-analysing evidence with the benefit of twenty-twenty hindsight. Ultimately, there is simply no clarity as to the alleged counterfactual circumstances in which UOB could have made a decision on whether discharge of the Cargo should proceed without the OBLs. It was the Defendants' evidential burden to make out those circumstances and, having failed to do so, the basis for their Causation Defence falls away entirely.

196 In any case, there is also woefully inadequate evidence tending to suggest that UOB would have extended its consent had it been given the opportunity to do so. This is hardly surprising in view of the fact that, at the time of the breach, UOB was not even in the picture yet – this in itself is a feature of the case that materially distinguishes it from *The Nika* and *The Sienna (CA)*. The Defendants have very assuredly submitted that had UOB been asked, "would you have agreed for the Cargo to be delivered without production of the OBLs?", it would have said, "Yes, of course. We know that is what has already

happened".[122] But it is striking that that proposition was never actually tested at trial *with UOB's witnesses*. Instead, I have been invited to form a view based on things done (or not done) by UOB at a time when the misdelivery was a *fait accompli*. Evidence of this sort naturally lends itself to only weak inferences as to how UOB would have acted had it been in a position to stop the misdelivery.

197 For the foregoing reasons, I reject the Defendants' Causation Defence and hold that Maersk's breach was and continued to be the effective or dominant cause of UOB's loss.

Conclusion on Maersk's liability for misdelivery

198 Having failed on all of its pleaded defences, I am led to hold that Maersk is liable to UOB for having misdelivered the Cargo into Hin Leong's possession in breach of the contracts of carriage contained in or evidenced by the OBLs.

199 As I mentioned at [40] above, UOB has also brought alternative claims against Maersk in negligence, conversion, and bailment. None of these claims were seriously explored by UOB in argument, presumably because of the legal difficulties that beset them.

200 To sustain a claim in conversion, the claimant must have had an immediate right to possession (if not actual possession) of the property in question *at the time* of the conversion: *The Cherry (CA)* at [58]–[59]; *Government of the Islamic Republic of Iran v The Barakat Galleries Ltd* [2009] QB 22 at [18] and [30]. It seems to me obvious that UOB cannot bring itself within that rubric, given the time at which it came into the picture.

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122 D&I OS at para 29.

201 Under the English law of negligence, title to sue for loss of or damage to property likewise requires either legal ownership or possessory title to the property in question at the time when the loss or damage occurred: *Leigh & Sullivan Ltd v Aliakmon Shipping Co Ltd (The Aliakmon)* [1986] AC 785 at 809. There is no such requirement under Singapore law: see *Wilmar Trading Pte Ltd v Heroic Warrior Inc* [2020] 4 SLR 357 at [36]–[37]. That difference, however, only raises questions as to the proper law that governs the tort claim which, in the absence of fuller argument by the parties, I am not prepared to indulge in.

202 As for claims in bailment, it has been said that a bailor to whom a carrier has attorned may yet have standing to sue the carrier for breaches of duty *qua* bailee occurring prior to the attornment: N. E. Palmer, *Palmer on Bailment* (Sweet & Maxwell, 3rd Ed, 2009) at para 20-013, citing *Mitsui & Co. Ltd. v Novorossiysk Shipping Co. (The "Gudermes")* [1993] 1 Lloyd's Rep. 311 and *Sonicare International Ltd. v East Anglia Freight Terminal Ltd and others and Neptune Orient Lines Ltd. (third party)* [1997] 2 Lloyd's Rep. 48. Even so, it is not clear to me that there was (or could have been) an attornment by Maersk to UOB well after the Cargo had already been misdelivered and in circumstances where Maersk had no knowledge whatsoever of UOB's involvement with the Cargo at any material time (see [64] above).

203 I emphasise that these are but cursory observations on UOB's alternative claims, which I raise by way of *obiter dicta*. There is no need for me to reach a decided view on them given my conclusion that UOB succeeds on its contractual misdelivery claim against Maersk.

Quantification of damages

204 Having found Maersk liable to UOB for breach of contract, I now move to the assessment of damages to be awarded to UOB. The basic rule established

by over a century of authority is that the measure of damages for non-delivery of cargo is (a) the value of the goods at the time when, and the place where, they should have been delivered, less (b) what the claimant would have had to pay to receive it: *Rodocanachi v Milburn* (1886) 18 QBD 67 ("*Rodocanachi*"); *Attorney General of the Republic of Ghana and Ghana National Petroleum Corporation v Texaco Overseas Tankships Ltd. (The "Texaco Melbourne")* [1994] 1 Lloyd's Rep 473 at 479.

205 In keeping with this rule, it is common ground between the parties that the material date for the purposes of assessing the value of the Cargo is the date on which it was misdelivered, *ie*, 28–29 February 2020.[123] The parties' disagreement lies in (a) how the market value of the Cargo at that time should be computed; and (b) the appropriate deductions, if any, that should be made to that first-mentioned value.

The market value of the Cargo

The proposed calculation methods

206 In the absence of better evidence on market prices and conditions prevailing at the material time, the courts are frequently content to rely on the invoiced purchase price of the misdelivered cargo (or on-sale price, where one has been negotiated) as a proxy for market value: see, *eg*, *The Yue You 902* at [139]–[142]; *Derby Resources A.G. and another v Blue Corinth Marine Co. Ltd. and others (The "Athenian Harmony")* [1998] 2 Lloyd's Rep 410 ("*The Athenian Harmony*") at 416. In this case, there is no suggestion from either side that I should accord any weight to Winson's invoiced price of US$43,563,960.00. Instead, a considerable amount of raw data and expert

123 P CS at para 227; D&I CS at para 184.

analysis have been marshalled by the parties for the task of assessing the Cargo's market value on 28–29 February, and I shall therefore proceed to assess that evidence and arrive at a conclusion on that basis.

207 UOB called on the expert evidence of Mr John Timothy Driscoll, who is a Director at JTD Energy Services Pte Ltd. Mr Driscoll has over 40 years of experience in oil pricing and its adjacent domains. His credentials are not in doubt.

208 The Defendants, for their part, called on the expert evidence of Ms Catherine Jago. Ms Jago is presently a Director of CJH Energy Limited, a privately-owned oil consultancy company, and CJH Experts Limited, a privately owned expert witness and consultancy company. Like Mr Driscoll, she has over 40 years of relevant experience and her credentials are not in question.

209 Together, Mr Driscoll and Ms Jago have proposed a total of six methods for computing the market value of the Cargo on 28–29 February. These methods are summarised in the table below:[124]

Mr Driscoll's proposed methods	
Case 1	Using S&P Global Ratings' Platts benchmark price of US$58.67 per barrel for 28 February 2020 and multiplying it by 660,000 barrels, the market value of the Cargo would be US$38,722,200.

[124] John Timothy Driscoll's affidavit of evidence-in-chief dated 26 February 2024 ("JTD") at pp 11–12, para 27; Catherine Jago's affidavit of evidence-in-chief dated 5 February 2024 at p 14, paras 4.17–4.18.

Case 2	Using the average of the Platts benchmark prices for 28 February (*ie*, US$58.67) and 2 March 2020 (*ie*, US$60.64), the price per barrel of the Cargo would be US$59.655. Multiplying this figure by 660,000 barrels, the market value of the Cargo would be US$39,372,300.
Case 3	Deriving the average of the two normalised values on 28 February 2020 (*ie*, US$58.41) and 2 March 2020 (*ie*, US$60.60) based on a linear extension of the MOPS strip, the Cargo's price per barrel would be US$59.505. Multiplying that by 660,000 barrels, the market value of the Cargo would be US$39,273,300.00.
Case 4	Using the industry standard pricing method for DES cargoes (*ie*, taking the average of prices across the five days after NOR is tendered at the port of discharge), the five-day average for the dates 2–6 March 2020 would be US$59.88 per barrel. Multiplying that by 660,000 barrels, the market value of the Cargo would be US$39,523,440.00.
Ms Jago's proposed methods	
Case 5	Taking the average of the Platts benchmark prices for 5–31 March 2020 and multiplying it by 660,000 barrels, the market value of the Cargo would be US$28,440,060.00.
Case 6	Taking the average of the Platts benchmark prices for 2–31 March 2020 and multiplying it by 660,000 barrels, the market value of the Cargo would be US$30,013,500.

Decision on the market value of the Cargo

210 In evaluating the experts' proposed calculations, I have kept two principles in mind. The first is that the figure arrived at should reflect the price that UOB would have had to *pay* for a substitute cargo of gasoil had it gone into the market on 28–29 February and sought one out. This is because – and going back to first principles – damages are awarded in cases like this to put the claimant in the position it would have been in had the contract been performed in accordance with its terms. The logic of this exercise requires the court to postulate the claimant's notional position as a *buyer* looking for a substitute cargo in order to be made whole (following the shipowner's breach of contract in failing to deliver the cargo carried to the party entitled to them), as opposed to a *seller* looking to dispose of cargo that was never delivered to it: James Edelman *et al*, *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021) at para 32-005; *Aikens* at paras 14.6–14.7. The point is succinctly summarised in *Aikens* as follows (at para 14.6):

> *Where cargo is not delivered at all*, the *prima facie* measure of damages, reflecting the fundamental principle that damages are those that may "fairly and reasonably be considered as arising naturally according to the usual course of things from the breach of contract", is their market value at the time and place at which they should have been delivered. This is often referred to as "sound arrived value". *That is the position at least where there is an available market for such goods, which assumes that the goods owner* ***may purchase a replacement for those lost or damaged*** *…*
>
> [emphasis added in italics and bold italics]

211 Thus, the court should properly approach the quantification of damages in this case with an eye on the notional *buying* price rather than the notional *selling* price, focusing on what it would cost the innocent party (*ie*, UOB in this case) to go into the market to purchase replacement goods.

212 I observe at this juncture that all six of the experts' proposed case scenarios do not apply this principle and instead take as they do the perspective of UOB as a notional *seller* of the Cargo. Similarly, the parties' closing submissions approached the issue from this same (and in my view, incorrect) standpoint.

213 The second principle is that "the value is to be taken independently of any circumstances peculiar to the plaintiff": *Rodocanachi* at 76–77. The point was put another way in *The Athenian Harmony*: "the purpose of the exercise is to ascertain the objective monetary value of the goods and not their utility to the receiver in the circumstances peculiar to him" (at 417).

214 I turn now to consider the experts' proposed valuations. Ms Jago's primary case (*ie*, Case 5) loses much of its appeal in view of her underlying methodology which, as she describes it, begins with an estimation of "how long it would take the Bank to sell the Cargo having gone into the market to sell it either Friday 28th February or Saturday 29th February".[125] Quite apart from the fact that it is the notional buying price that is relevant (as I explained at [211] above), Ms Jago's estimation that UOB would have taken three working days to sell the Cargo was premised on a view of UOB as a bank with little to no direct experience in oil trading (although in fairness, that was a characterisation that Mr Driscoll agreed with in principle).[126]

215 Ms Jago's alternative case (*ie*, Case 6) and Mr Driscoll's Case 4 share a common difficulty in that they both assume a hypothetical on-sale contract priced on a floating basis. While it may be true that contracts for the sale of oil

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125 ABJEM at p 11, s/n 1.3.

126 Transcript of proceedings on 15 April 2024 at p 103, lns 10–22.

regularly adopt such pricing mechanisms, it is in my view undesirable to utilise them where the task is to ascribe a pecuniary value for a particular cargo on a given date. Also, Case 4 (which relies on a five-day pricing period) takes *28* February 2020 as its first pricing day – this was justified on grounds that "it is very common for DES cargoes to be sold on 5-day pricing periods after NOR date", which in this case was either 27 or 28 February 2020.[127] Even if I were inclined to use a floating price mechanism for present purposes, the operating assumption is that UOB would have entered the market on 28–29 February 2020. The evidence indicates that the (mis)delivery by Maersk was only "completed" on 29 February 2020, which was when the Vessel completed discharging the Cargo at Universal Terminal. In those circumstances, it would not be entirely accurate, in my view, to rely on a pricing period that commenced the day before on 28 February; but even if it is not, I do not consider it necessary or appropriate to extend the pricing period to 6 March 2020 (*ie*, under Case 4) or over the entire month of March 2020 (*ie*, under Case 6).

216 As for Case 1, while it avoids the shortcomings described in the preceding paragraph, it relies on a single benchmark price that pre-dates the completion of discharge. In my view, that would not represent the most accurate formula available to me.

217 That leaves Cases 2 and 3, which I shall consider together. Both methods rely on prices published on 28 February 2020 and 2 March 2020 – the latter date was used because 29 February 2020 fell on a Saturday (when markets were closed) and Monday, 2 March 2020 was the next trading day for which Platts benchmark prices were available. The difference is that Case 2 relies on benchmark prices which, simply put, reflect Platts' valuation of the commodity

127 JTD at p 29, para 87.

based on market activity in a given day's trading window. Case 3, on the other hand, relies on the MOPS (or "Mean of Platts Singapore") strip value. Commodities are regularly traded on a floating price basis, and so there can be no way of knowing what the actual published prices will be ahead of time. The MOPS strip value for a given day essentially offers a present reference price for future Platts benchmark assessments, and it is extrapolated from trades in derivatives for cargoes loading 15–30 days in the future.[128]

218 In my view, Case 2 provides the simplest, most logical and accurate answer to the task at hand. The benchmark prices are derived from actual bids, offers and trades on a given day's trading window, and they therefore present the closest indication of the price at which the Cargo would have transacted on the material dates. In my view, the average of the benchmark prices on 28 February and 2 March 2020 provides the best approximation of the Cargo's per barrel price at (or as close to) the time it was misdelivered. On the other hand, I see no reason why I should have regard to MOPS strip values, given that they are proxies for *future* benchmark prices rather than outright prices prevailing on the material dates.

219 For the reasons I have just given, I am prepared to accept Case 2 postulated by Mr Driscoll as being the most accurate. I therefore assess the market value of the Cargo at the time of misdelivery at US$39,372,300.00.

Deductions from the market value of the Cargo

220 I shall go on to consider the various deductions that the Defendants say should be allowed from any damages awarded to UOB.

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128 JTD at p 44.

Hypothetical demurrage or storage costs

221 The Defendants submit that the award of damages "should take into account the fact that [UOB] could not have obtained delivery of the Cargo without discharging the Defendant's contractual lien for demurrage and/or storage costs".[129] They say that on UOB's case, the Cargo would have been delivered by Maersk to UOB on or after 18 February 2021 (that having been the date on which UOB in fact demanded delivery up of the Cargo). Given UOB's position that the Cargo should have remained on board or otherwise been stored ashore until the OBLs were presented for delivery, UOB would have had to pay for the discharge of Maersk's lien for demurrage or storage costs incurred up until 18 February 2021.

222 The Defendants submit that *SA Sucre Export v Northern River Shipping Ltd. (The "Sormovskiy 3068")* [1994] 2 Lloyd's Rep. 266 ("*The Sormovskiy 3068*") is authority for the proposition that "the assessment of damages could take into account the issue of storage charges where a lien clause had been incorporated into the contract of carriage evidenced by the OBLs".[130] That is plainly incorrect in my view and not what the case stands as authority for. There was no mention of liens or storage charges in that case. In fact, the quantification of damages for misdelivery was not even in question, given that the parties had agreed for that issue to be stood over to a later date (save for one factual aspect). Instead, *The Sormovskiy 3068* was, insofar as demurrage is concerned, a case concerned purely with a *counterclaim* by the defendant shipowners against the claimant for *accrued* demurrage. That counterclaim was heard independently of the claimant's claim against the shipowners for damages for misdelivery, and

129 Maersk's Defence at para 25; Winson's Defence at para 25.

130 D&I CS at para 183.

the counterclaim was eventually dismissed (at 286). Reverting to the case before me, quite apart from whether there can be any set-off of demurrage against a misdelivery claim, it is not suggested here that Maersk has any *actual* cross-claim for demurrage against UOB (nor was one pleaded at any rate).

223 I return to the basic rule set out at [204] above. The focus at this juncture is on "the value of the goods *at the time when*, and the place where, they *should* have been delivered". In this case, the Cargo should have been delivered at the location where it had in fact been misdelivered, *viz*, Universal Terminal, Singapore. That was what the contract of carriage required at that time. So far as the time for delivery is concerned, the Defendants' argument posits that the proper time for delivery is upon presentation of the OBLs – otherwise, Maersk would have *mis*delivered the Cargo.

224 I observe at the outset that this argument is problematic because it contradicts the Defendants' position that "the relevant date for assessing the Bank's loss, if any, is the alleged date of breach of the bill of lading contract i.e., 28/29 February 2020".[131] It is on that basis that expert evidence was tendered. If that premise is to mean anything, then the time at which the Cargo ought to have been delivered must be 28–29 February 2020. If so, the Defendants' argument that the court should assume a hypothetical lien over the Cargo for demurrage/storage costs until 18 February 2021 is an opportunistic one. The fallacy of this argument is even more apparent when one considers the undisputed fact that Maersk had sold and transferred ownership of the Vessel to Sri Asih *on or by 5 March 2020*, which was less than a week after the misdelivery had taken place. It would therefore be unreal to construct a

131 D&I CS at para 184.

hypothetical in which the Cargo remained onboard the Vessel until February 2021 for the purposes of assessing damages at this stage.

225 In any case, the Defendants' argument is legally unsustainable because it confuses the time at which the Cargo *should* have been delivered (which speaks to the objective intentions embodied in the contract of carriage) with the time at which the Cargo *would* have been delivered (which is a question of fact answerable only by far-reaching hypotheticals). In my view, the proper time for delivery under any contract of carriage must be the time at which the vessel should have tendered itself ready for discharge of its cargo. If the receiver delays in taking delivery, then he or she will be liable for the consequences of detaining the vessel – that is what the second step of the *Rodocanachi* formula provides for. But it would be most peculiar if the first step should proceed on the basis that the cargo should have been delivered at a time when there was *already* wrongful delay on either the carrier's or the receiver's part.

226 In this case, the Vessel arrived in Singapore and first tendered its NOR at 10.18pm on 27 February 2020. Discharge commenced at 10.18am the next day and was completed by 11.48am on 29 February 2020.[132] It was not suggested by the parties that these operations occurred any later than they should have, leaving aside any questions of laytime having already been exhausted at the port of loading. Thus, the available evidence leads me to conclude that the time at which the Cargo should have been delivered was the time at which the Cargo was in fact misdelivered.

227 It follows from the above that insofar as a deduction for demurrage is to be allowed in this case – whether as a direct obligation to pay or as a payment

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132 SB at p 115.

in discharge of a lien – it must relate to any demurrage that had *in fact* accrued to Maersk. The documentary evidence suggests that there may well have been such a claim:[133] the Charterparty provided for 84 hours of laytime (Sundays and holidays included),[134] all of which was expended at the load port according to Maersk's Statement of Facts dated 18 February 2020.[135] Whether any demurrage claim by Maersk, if one existed, has been satisfied (for example, by Winson) is unclear – Capt Bhushan's evidence was silent on this.

228 More crucially, it is not the Defendants' case that the contract of carriage evidenced by the OBLs imposed a *direct* obligation on its holder to foot the bill. That presumably explains why the Defendants assert a hypothetical *lien* (rather than a hypothetical *liability* for demurrage). But even so, there is no evidence of any lien having ever been asserted or even contemplated by Maersk, and still less that Hin Leong as the receivers paid anything in discharge of such a lien. In these circumstances, I am not convinced that there is any evidential basis at all for a deduction to UOB's award of damages on account of accrued demurrage, even *assuming* there was a legal basis to do so (and on which I express no concluded view).

Part recovery from Hin Leong

229 The Defendants further submit that deductions should be made on account of UOB having achieved partial recovery of its loan to Hin Leong.[136] In my judgment, this submission cannot stand up to the authorities which have made it clear that any recovery achieved by pledgees of bills of lading under

133 SB at para 17.

134 TCC at p 194.

135 SB at pp 81–82.

136 D&I CS at para 182.

separate arrangements with their debtors is *res inter alios acta*: *The "Jag Dhir" and "Jag Shakti"* [1986] 1 Lloyd's Rep. 1 at 6; *Obestain Inc. v National Mineral Development Corporation Ltd. (The "Sanix Ace")* [1987] 1 Lloyd's Rep. 465 at 468–469. Insofar as there are concerns of UOB being doubly compensated, that is not a complaint for the Defendants to make. UOB may well be answerable to Hin Leong or its liquidators for the excess compensation, if indeed there is any – and again, I express no view on the question – but that is ultimately a matter for them *inter se* and of no concern to the Defendants.

Unmitigated losses

230 Finally, the Defendants contend that UOB "breached its duty to mitigate its losses by failing to take reasonable steps to monitor the Cargo despite being aware of the discharge date of the Cargo in the Letter".[137] There is no merit to this submission. The full extent of the loss was realised upon the Cargo having been misdelivered by Maersk by 29 February 2020. In circumstances where UOB only came into the picture on 3 March 2020, I fail to see how any part of that loss caused by Maersk could have been avoided by UOB monitoring anything.

Conclusion

231 To summarise, none of the defences advanced by the Defendants have been made out. I am satisfied that UOB, as lawful holders of the OBLs, has established its claim against Maersk for breach of contract by reason of the latter having discharged and delivered the Cargo without the presentation of the OBLs. Having allowed this claim in contract, it is unnecessary for me to consider UOB's alternative claims in conversion, bailment and negligence.

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137 Maersk's Defence at para 28; Winson's Defence at para 27.

232 Accordingly, I grant judgment in favour of UOB against Maersk in the sum of US$39,372,300.00, together with interest thereon at 5.33% per annum from the date of the writ to the date of judgment. I shall hear the parties separately on costs.

S Mohan
Judge of the High Court

Lok Vi Ming SC, Mohammad Haireez bin Mohameed Jufferie, Thong Ying Xuan (LVM Law Chambers LLC) (instructed), Ian Teo Ke-Wei, Tan Yong Jin Jonathan (Helmsman LLC) (instructed), Song Swee Lian Corina, Liang Junhong Daniel, Karluis Quek and Thomas Benjamin Lawrence (Allen & Gledhill LLP) for the plaintiff;
Gurbani Prem Kumar (Prem Gurbani) (instructed), Khoo Ching Shin Shem, Teo Jia Hui Veronica and Christine Chiam (Focus Law Asia LLC) for the defendant;
Bazul Ashhab bin Abdul Kader, Prakaash s/o Paniar Silvam, Tan Yu Hang and Levin Lin Lok Yan (Oon & Bazul LLP) for intervener.

Annex: Chronology of Events

Date	Event
6 August 2002	Date of the General Memorandum of Pledge.
6 April 2018	Date of the Letter of Offer.
10 February 2020	Date of the Charterparty between Maersk and Winson.
12 February 2020	Date of the Sale Contract between Hin Leong and Winson, which was subsequently amended by an addendum of 17 February 2020.
18–21 February 2020	Loading of the cargo at Mailiao, Taiwan.
26 February 2020	Winson issues discharge instructions and Discharge LOI to Maersk.
28–29 February 2020	Discharge of the cargo at Universal Terminal, Singapore.
3 March 2020	Hin Leong tenders its application for the L/C to UOB.
4 March 2020	UOB approves Hin Leong's application and issues the L/C.
5 March 2020	Winson presents documents to Credit Suisse for payment under the L/C; Maersk delivers the Vessel to Sri Asih.
9 March 2020	Credit Suisse notifies UOB that documents complying with the L/C's terms have been negotiated and couriered to UOB.
11 March 2020	UOB receives Winson's documents.
12 March 2020	UOB sends the Collection Notice to Hin Leong.

24 March 2020	Hin Leong returns the Collection Notice to UOB confirming the correctness of Winson's documents; UOB notifies Credit Suisse of the same and confirms that payment will be remitted to Credit Suisse on maturity of the L/C.
26 March 2020	Hin Leong allocates the Rotterdam Contracts.
27 March 2020	L/C matures; Hin Leong makes its request for the Trust Receipt Loan, which request is approved by UOB on the same day.
8 April 2020	Trust Receipt Loan falls due; Hin Leong requests for a roll-over of the loan, which is approved by UOB on the same day.
9 April 2020	Hin Leong withdraws its allocation of the Rotterdam Contracts.
14 April 2020	Hin Leong announces its insolvency at a meeting with its creditors.
On or around 26 June 2020	Winson receives BL-C from UniCredit.
On or around 7 July 2020	Winson receives BL-A from BP.
15 July 2020	UOB receives the OBLs at its counters.
3 February 2021	UOB demands delivery up of the Cargo from Sri Asih and issues its writ *in rem* in ADM 10.
5 February 2021	Sri Asih informs UOB that it only became the Vessel's registered owner on 5 March 2020.
18 February 2021	UOB demands delivery up of the Cargo from Maersk; writ *in rem* in ADM 20 issued.
27 May 2021	UOB serves its writ in ADM 20 on Maersk.
16 June 2021	UOB discontinues ADM 10.

15 September 2021	Winson granted leave to intervene in ADM 20 and enters an appearance as intervener on the same day.