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

[2024] SGHC 74

Admiralty in Rem No 256 of 2020

Between

Owners of or other persons interested in the cargo lately laden onboard "Jeil Crystal"

… *Plaintiff*

And

Owner of the vessel "Jeil Crystal"

… *Defendant*

JUDGMENT

[Admiralty and Shipping — Bills of lading — Bills of Lading Act 1992 — Vesting of rights of suit under the contract of carriage]
[Admiralty and Shipping — Bills of lading — Switch bills of lading — Breach of contract — Whether shipowner wrongfully issued switch bills of lading in breach of contract]
[Admiralty and Shipping — Bills of lading — Switch bills of lading — Duty of care — Whether shipowner owed trade financing bank duty of care in issuing switch bills of lading — Whether shipowner breached duty of care in agreeing to issue and issuing switch bills of lading]
[Admiralty and Shipping — Bills of lading — Switch bills of lading — Bailment — Whether shipowner as bailee owed trade financing bank duty in bailment — Whether shipowner breached duty as bailee]

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Introduction

1 In HC/ADM 256/2020 ("ADM 256"), a trade financing bank initially claimed damages against a shipowner for conversion of the cargo carried onboard the ship, breach of contract and/or duty and/or negligence, and in particular, for discharging and releasing the said cargo without the production of certain original bills of lading issued by the shipowner.[1] The bank, claiming to be the lawful holder of those bills of lading, arrested the defendant's vessel as security for that claim.[2] In rather unusual circumstances, as detailed below, the bank subsequently withdrew its claim against the shipowner for misdelivery and/or conversion of the cargo entirely, by way of the first amendment to its statement of claim on 16 June 2021. In its stead, the bank pleaded a new claim

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1 Writ of Summons (In Rem) for Admiralty in ADM 256; Statement of Claim filed on 4 November 2020 at paras 5 and 6.

2 Warrant of Arrest HC/WA 39/2020.

against the shipowner on an entirely different premise – one centred on an allegation of wrongful switching of bills of lading.[3]

2 Thus, factually, switch bills of lading are at the heart of this dispute – the plaintiff bank contends that the circumstances in which the defendant shipowner switched the bills of lading in this case were such as to amount to a breach of contract and/or a tortious breach of duty of care owed to the plaintiff bank. The defendant shipowner denies the bank's claim and by its counterclaim, seeks damages from the bank for the wrongful arrest of its vessel.

3 For the reasons elaborated upon in this judgment, I dismiss the bank's claim and partially allow the shipowner's counterclaim. I start by setting out the key facts.

Facts

The parties

4 The plaintiff is Banque Cantonale de Genève ("BCGE"), a bank based in Switzerland. The plaintiff's business involves providing trade financing for international trade. The defendant is Jeil International Co Ltd, the owner of the "Jeil Crystal" (the "Vessel") onboard which the cargo that is the subject of the bills of lading in question were shipped.

5 GP Global APAC Pte Ltd ("GP Global") chartered the Vessel from the defendant pursuant to a charterparty dated 16 May 2022 (the "Charterparty")

[3] Statement of Claim (Amendment No. 1): see para 3 and deleted paras 5–7.

for the carriage of the cargo.[4] The plaintiff provided trade financing to its customer, GP Global.[5]

6 Dae Myung International Pte Ltd ("Dae Myung") is the defendant's Singapore commercial operator. It was set up to oversee the operation of the defendant's vessels (including the Vessel) and was acting as the defendant's agent at all material times.[6] Dae Myung and the defendant are part of the same group of companies.[7]

7 RG Chartering Sdn Bhd ("RG Chartering") was GP Global's broker for the Charterparty and served as the intermediary between Dae Myung and GP Global.[8]

Chronology of key events

8 On 12 May 2020, GP Global entered into a contract with IRPC Public Company Limited ("IRPC") to buy 2,000MT of Lube Base Oil (the "Cargo").[9] GP Global on-sold the Cargo to Prime Oil Trading Pte Ltd ("Prime Oil") on 13 May 2020.[10]

9 On or around 16 May 2020, the defendant and GP Global entered into the Charterparty pursuant to which GP Global chartered the defendant's Vessel

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4 Affidavit of Evidence-in-Chief ("AEIC") of Lee Jang Hyuk ("LJH-1") at para 7(a); 1-Agreed Bundle of Documents ("AB") at pp 85–91.

5 LJH-1 at para 7(b); 1-AB at pp 130–131.

6 LJH-1 at para 1.

7 LJH-1 at para 7(d).

8 LJH-1 at para 7(e).

9 1-AB at pp 75–79.

10 1-AB at pp 80–84.

for a single voyage by which the Cargo would be loaded onboard the Vessel at Rayong, Thailand for shipment to Chattogram, Bangladesh.[11]

10 On or around 27 May 2020, the plaintiff agreed to provide trade financing to GP Global.[12] On 28 May 2020, the plaintiff issued Irrevocable Documentary Credit DC123770/MBX (the "DC") to finance GP Global's purchase of the Cargo, as agreed.[13] Among the documents GP Global had to present under the DC were the beneficiary's (*ie*, IRPC's) signed commercial invoice as well as a full set (3/3) of clean on board bills of lading issued to the order of the plaintiff (*ie*, BCGE).

11 On or around 2 June 2020, RG Chartering sent an email to Dae Myung containing GP Global's voyage instructions which, among other things, stated that "switched B/Ls will be needed – same to be issued in Singapore". RG Chartering also requested that Dae Myung advise on the defendant's "BL switching procedures".[14]

12 On 13 June 2020, after completion of loading, the first set of 3/3 original bills of lading bearing number EX384/2020 (the "First Set BLs") were issued in respect of the Cargo loaded on the Vessel.[15] The First Set BLs were signed by the Master of the Vessel and incorporated the terms and conditions, liberties and exceptions of the Charterparty. In the First Set BLs, IRPC was named as the shipper, and Standard Asiatic Oil Company Ltd ("Standard Asiatic") and

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11 LJH-1 at para 20; 1-AB at pp 85–91.

12 1-AB at pp 98–111.

13 1-AB at pp 143–148.

14 1-AB at pp 163–170.

15 1-AB at pp 226–228; LJH-1 at para 26.

Jamuna Bank Ltd ("Jamuna Bank") were named as the Notify Party. The Consignee was stated to be "TO ORDER OF BANQUE CANTONALE DE GENEVE".

13 On 16 June 2020, RG Chartering (on behalf of GP Global) instructed Dae Myung to switch the First Set BLs, *ie*, to issue a new set of original bills of lading (the "Switch BLs") *in exchange* for the First Set BLs.[16] The instructions were for GP Global to be named as the shipper, and for Standard Asiatic and Jamuna Bank to be named as the Notify Party. The Consignee was stated to be "TO THE ORDER OF JAMUNA BANK LTD".

14 Pursuant to RG Chartering's instructions, and on behalf of the defendant, Mr Lee Jang Hyuk (Managing Director of Dae Myung) ("Mr Lee") and Ms Ma Zongying (Assistant Manager of Dae Myung) ("Ms Ma") were responsible for preparing and circulating various drafts of the Switch BLs to RG Chartering for approval between 16 and 17 June 2020.[17] Initially, Dae Myung used "JC2007CS01" as the identification number for the Switch BLs.[18] Dae Myung also enquired when the First Set BLs would be surrendered as they could not issue the Switch BLs until the First Set BLs were "surrendered and void". Subsequently, RG Chartering specifically requested, in an email sent to Dae Myung on 17 June 2020, for the Switch BLs to bear the same identification number appearing on the First Set BLs (*viz*, EX384/2020) because they (*ie*, GP Global) "[had] to use the same reports for [their] LC negotiation".[19] RG Chartering also indicated that the First Set BLs could be surrendered before

16 1-AB at pp 300–301.

17 LJH-1 at para 37; 1-AB at pp 313–319.

18 1-AB at pp 307–311.

19 1-AB at pp 313–314.

27 June 2020, and asked Dae Myung in the meantime to send the non-negotiable copy of the Switch BLs "for custom clearance". In its reply to RG Chartering, Dae Myung amended the identification number in the draft Switch BLs to mirror that appearing on the First Set BLs (*viz*, EX384/2020) as RG Chartering had requested. However, Dae Myung also indicated that the Vessel's estimated time of arrival (or "ETA") in Bangladesh was 28 June and as the "NNBL of terminal BL still not collect yet " (meaning that the non-negotiable copies of the First Set BLs had not been collected by Dae Myung yet), they could not issue any non-negotiable copies of the Switch BLs.[20]

15 Shortly after that email was sent by Dae Myung, Mr Lee received a call from Mr Kelvin Tan, a senior staff of RG Chartering, seeking to assure Mr Lee that GP Global was requesting for the non-negotiable copy of the Switch BL only for the purpose of having the Vessel clear customs in Bangladesh.[21] Mr Lee eventually agreed to issue one copy of the non-negotiable Switch BL and instructed Ms Ma to arrange for the defendant's shipping agent, Seanco Pte Ltd ("Seanco"), to issue the non-negotiable copy of the Switch BL. Ms Ma in turn emailed Seanco, requesting for Seanco to "assist to issue 1 page NNBL … Charterer need it for customs clearance purposes". Ms Ma also informed Seanco that "OBL will be issued once we have further news from charterer".[22] Later in the evening of 17 June 2020, Ms Ma received a non-negotiable copy of the Switch BL from Seanco[23] and sent it to RG Chartering by email.[24]

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20 1-AB at pp 313, 318–319.

21 Supplementary AEIC of Lee Jang Hyuk ("LJH-2") at para 10(c).

22 1-AB at p 361.

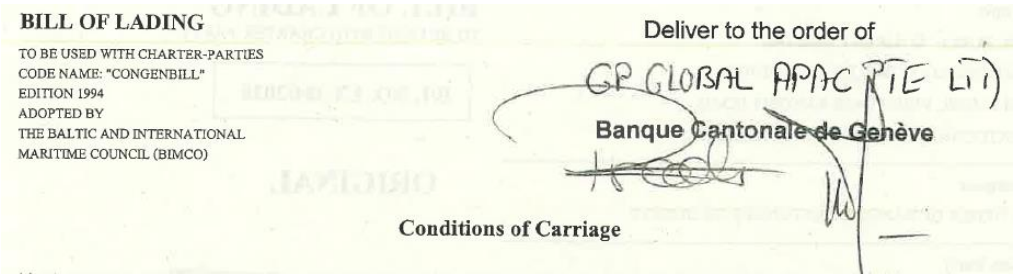
23 1-AB at p 373.

24 Supplementary AB ("S-AB") at pp 19, 24.

16 On the same day (*ie*, 17 June 2020), IRPC's bank in Thailand, Bank of Ayudhya, dispatched the original shipping documents including the First Set BLs to the plaintiff for payment.[25] On 19 June 2020, the plaintiff received these original shipping documents from the Bank of Ayudhya.[26]

17 On 22 June 2020, RG Chartering sent a draft letter of indemnity (the "Draft LOI") to Dae Myung for the discharge of the Cargo without presentation of the Switch BLs.[27] They also stated that they were checking with GP Global on the whereabouts of the First Set BLs (which were to be surrendered to Dae Myung in exchange for the Switch BLs). The Draft LOI referred to a bill of lading "EX 384/2020 DATED 30TH JUNE 2020" and identified that the Cargo was shipped on the Vessel by GP Global and consigned to the order of Jamuna Bank.[28]

18 On 25 June 2020, at GP Global's request, the plaintiff endorsed the First Set BLs to the order of GP Global and forwarded them together with the original shipping documents to GP Global by courier.[29] The endorsement was as follows:


BILL OF LADING

TO BE USED WITH CHARTER-PARTIES
CODE NAME: "CONGENBILL"
EDITION 1994
ADOPTED BY
THE BALTIC AND INTERNATIONAL
MARITIME COUNCIL (BIMCO)

Deliver to the order of

GP GLOBAL APAC PTE LTD

Banque Cantonale de Genève

Conditions of Carriage

25 1-AB at pp 350–358.

26 AEIC of Philippe Maillart ("PM") at para 54.

27 S-AB at pp 28–31.

28 S-AB at pp 30–31.

29 1-AB at pp 473–489.

Therefore, after 25 June 2020, the plaintiff no longer had possession of the First Set BLs.

19 On 27 June 2020, RG Chartering sent a letter of indemnity signed by GP Global to Dae Myung (the "LOI").[30] The LOI referred to bill of lading "EX 384/2020 DATED 30TH JUNE 2020" and identified that the Cargo was shipped on the Vessel by GP Global and consigned to the order of Jamuna Bank – the LOI was issued by GP Global in accordance with the terms of the draft LOI (see [17] above).[31] Pursuant to the LOI, GP Global agreed, among other things, to indemnify the defendant against any consequent liability, loss or damage as a result of the delivery of the Cargo to Standard Asiatic without production of the "original bill of lading".

20 On 29 June 2020, Dae Myung received all three originals of the First Set BLs from GP Global. Dae Myung thereupon issued the Switch BLs and cancelled the First Set BLs by marking the words "NULL AND VOID" on them.[32] Thereafter, Dae Myung emailed soft copies of the Switch BLs to RG Chartering. The originals of the Switch BLs were eventually released to GP Global.[33] A copy each of one original of the First Set BLs and Switch BLs are reproduced at Annex A and Annex B of this judgment respectively.

21 On 30 June 2020, the Vessel arrived at the discharge port at Chattogram, Bangladesh. In accordance with GP Global's instructions, Dae Myung

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30 2-AB at pp 498–502.

31 2-AB at p 502.

32 2-AB at pp 503–516.

33 LJH-1 at para 50.

discharged and delivered the Cargo to Standard Asiatic without production of the original Switch BLs, but against the LOI.[34]

22 On 22 July 2020, Standard Asiatic surrendered the full set of the Switch BLs to the defendant's agent's office in Chittagong, Bangladesh for cancellation and return of the same to Dae Myung. The Switch BLs contained a stamped and signed endorsement by Jamuna Bank on its reverse side, with the words "Please Pay / Deliver to the order of [Standard Asiatic]". Dae Myung marked on the Switch BLs "NULL AND VOID".[35]

23 On 10 August 2020, the plaintiff wrote to the Master of the Vessel, and later to the defendant and the defendant's Protection and Indemnity Club ("P&I Club"), giving notice of its purported interest in the Cargo and stating that the defendant should not release the Cargo without the plaintiff's consent, attaching a copy of the First Set BLs.[36]

24 On 10 October 2020, the plaintiff commenced ADM 256 and obtained a warrant of arrest for the Vessel ("WA 39"). The Vessel was arrested the next day (*ie*, on 11 October 2020).

25 On 12 October 2020, the defendant instructed their solicitors to seek the plaintiff's confirmation that the plaintiff was still in possession of the First Set BLs given that the defendant had advised that those bills of lading had been cancelled, marked "null and void" and were in the defendant's possession.[37] On 13 October 2020, the plaintiff's solicitors replied that they were instructed that

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34 LJH-1 at para 52.

35 S-AB at pp 16–17; LJH-1 at paras 53–54.

36 2-AB at pp 729–730, 736–737, 740–741.

37 2-AB at pp 930–931.

the plaintiff *was* in possession of the First Set BLs.[38] In the event, on 20 October 2020, the defendant furnished security for the plaintiff's claim by paying into court the sum of S$2.1m (representing the plaintiff's security demand) in order to secure the release of the Vessel.[39] The Vessel was released on 21 October 2020.[40]

26 On 4 November 2020, the plaintiff filed its statement of claim in ADM 256, alleging that in discharging and releasing the Cargo without the production of the First Set BLs, the defendant was liable for wrongful conversion of the Cargo and/or breach of contract and/or breach of its duty as bailee or carrier for reward and/or was negligent (see [1] above).[41] On 10 November 2020, the defendant filed a notice to produce documents referred to in pleadings, requesting the plaintiff to produce for its inspection the First Set BLs.[42] In its reply dated 16 November 2020, the plaintiff's solicitors indicated that they were "taking steps to request the Plaintiffs to send the "*original Bill of Lading"* to the Plaintiff's solicitors, and will notify the Defendants' solicitors when it is available for inspection" [emphasis in original].[43] On 10 and 18 December 2020, the defendant's solicitors wrote to the plaintiff's solicitors requesting, again, for the plaintiff to furnish the First Set BLs for their inspection.[44] The plaintiff's solicitors responded on 22 December 2020, stating

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38 2-AB at pp 968–969.

39 Notice of Payment into Court dated 20 October 2020.

40 Sheriff's Notice of Release dated 21 October 2020.

41 Statement of Claim dated 4 November 2020 at paras 6–7.

42 3-AB at pp 1154–1155.

43 3-AB at pp 1158–1159.

44 3-AB at pp 1199, 1216.

among other things that they were still taking their clients' instructions on the matter.[45]

27 On 9 January 2021, the plaintiff's solicitors informed the defendant's solicitors that the First Set BLs were "**not** available for inspection" [emphasis in original] but gave no explanation for why that was the case.[46] On 15 January 2021, the plaintiff filed its reply and defence to counterclaim, acknowledging that it had, in late June 2020, voluntarily released the First Set BLs to GP Global pursuant to the latter's request but did not know that the request was for the purpose of switching the bills of lading.[47] On 4 February 2021, the plaintiff filed an application to amend its statement of claim to abandon its original claim for misdelivery of the Cargo.[48] The amended claim was instead based on an alleged wrongful switch of the bills of lading without the plaintiff's knowledge or consent. In the affidavit supporting that application, Mr Rousseau admitted that the plaintiff had arranged for the First Set BLs to be delivered to GP Global and thus did not have possession of them when ADM 256 was commenced.[49]

28 On 5 February 2021, the defendant filed an application to set aside WA 39, and also to strike out the Writ of Summons dated 10 October 2020 (the "Writ") and ADM 256. That application came before me – in *The "Jeil Crystal"* [2021] SGHC 292 ("*The "Jeil Crystal"* (HC)"), I dismissed the defendant's application to set aside WA 39 and strike out the Writ and ADM 256, and instead, allowed the plaintiff's application to amend its statement of claim.

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45 3-AB at pp 1220–1221.

46 3-AB at p 1261.

47 Reply and Defence to Counterclaim dated 15 January 2021 at paras 3(j), 3(m).

48 Summons for Amendment dated 4 February 2021.

49 LJH-1 at para 93.

29 On 5 October 2021, the defendant filed an appeal against my decision to set aside WA 39. On 8 August 2022, the Court of Appeal allowed the defendant's appeal and set aside WA 39 in *The "Jeil Crystal"* [2022] 2 SLR 1385 ("*The "Jeil Crystal"* (CA)"). Following the Court of Appeal's decision to set aside WA 39, the security furnished by the defendant by way of payment into court was returned to the defendant.

The parties' cases

30 In this section, I summarise the key points of the parties' respective cases and will thereafter delve into further detail when analysing the issues.

31 Shorn of its frills, the nub of the plaintiff's complaint is essentially this: by virtue of the plaintiff being named as a consignee in the First Set BLs, the defendant would have known that the plaintiff (as a trade financier) had acquired an interest in the Cargo and relied on the First Set BLs as security. This, according to the plaintiff, gave rise to a contractual and tortious duty on the part of the defendant vis-à-vis the plaintiff not to do anything that would prejudice or destroy that interest. In agreeing to switch – and in fact switching – the First Set BLs with the Switch BLs, the defendant removed the plaintiff as the named consignee in the First Set BLs without the plaintiff's knowledge or consent. In doing so, the defendant acted in breach of contract and breached its duty of care to the plaintiff. The breach complained of by the plaintiff morphed in the course of the action, but it eventually boiled down to a series of steps taken from 16 June 2020 onwards to "irreversibly" switch the bills of lading.[50]

[50] Plaintiff's Closing Submissions at paras 7–10.

32 In response, the defendant contends that any duty in contract owed by the carrier to the consignee arises only when the consignee is the lawful holder of the bill of lading.[51] In this case, however, the bills of lading were switched on 29 June 2020 and not any earlier, and the plaintiff was *not* the holder of the First Set BLs on 29 June 2020.[52] By endorsing the First Set BLs to the order of GP Global on 25 June 2020 (see [18] above), the plaintiff lost all its rights and interests in the Cargo and/or the First Set BLs.[53] The defendant is similarly not liable to the plaintiff in the tort of negligence.[54]

33 As for its counterclaim, the defendant contends that the manner in which the plaintiff went about arresting the Vessel for its original claim for misdelivery of the Cargo was wrongful, demonstrating at the very least gross negligence implying malice on the part of the plaintiff.[55]

Issues to be determined

34 Based on the parties' closing submissions, the following key issues arise for my determination:

(a) When did the rights of suit under the contract of carriage vest in the plaintiff? Related to this issue is the question of whether the plaintiff was or became a party to the contract of carriage evidenced by or contained in the First Set BLs and, if so, from which point in time;

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51 Defendant's Closing Submissions at paras 10–18.

52 Defendant's Closing Submissions at paras 33–35.

53 Defendant's Closing Submissions at paras 110–118.

54 Defendant's Closing Submissions at paras 41–45.

55 Defendant's Closing Submissions at paras 119–146.

(b) Whether the defendant breached any contractual obligation owed to the plaintiff;

(c) Whether the defendant breached any tortious duty of care owed to the plaintiff;

(d) Whether the defendant breached any duty to the plaintiff as bailee of the Cargo; and

(e) Whether the plaintiff is liable for wrongful arrest of the Vessel and, if so, what are its recoverable damages.

When did the rights of suit under the contract of carriage vest in the plaintiff?

35 The plaintiff asserts that "as a matter of law", it was a "***contracting party*** to the First Set of the BLs, from its inception" [emphasis in original], *ie*, from 13 June 2020, on which date the First Set BLs were issued.[56] In my judgment, that contention could not, with respect, be further from the true position in law.

36 It is hornbook law that a bill of lading generally serves three functions. As summarised in *The "Luna" and another appeal* [2021] 2 SLR 1054 (at [29]), a bill of lading operates as (a) a receipt by the carrier acknowledging the shipment of goods on a particular vessel for carriage to a particular destination; (b) a memorandum of the terms of the contract of carriage; and (c) a document of title to the goods. It is often the case that a bill of lading contains or is evidence of the terms of the contract of carriage between the carrier and the shipper: *The "Star Quest" and other matters* [2016] 3 SLR 1280 at [22]. In the case of a negotiable bill of lading, meaning bills of lading issued "to order" or

[56] Statement of Claim (Amendment No. 3) at para 5(c); Plaintiff's Closing Submissions at paras 43, 45, 52, 59.

"to order of a named party", it serves as a document of title when the transferee or endorsee is in possession of the bill of lading as the lawful holder: *The "Dolphina"* [2012] 1 SLR 992 at [140], [178]; *APL Co Pte Ltd v Voss Peer* [2002] 2 SLR(R) 1119 ("*APL*") at [9]–[10].

37 Further, s 2(1) of the Bills of Lading Act 1992 (2020 Rev Ed) ("BLA") states:

> **Rights under shipping documents**
>
> **2.**—(1) Subject to the following provisions of this section, a person who becomes—
>
> (*a*) the lawful holder of a bill of lading;
>
> …
>
> shall (by virtue of becoming the holder of the bill …) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.

Therefore, s 2(1) of the BLA provides for the transfer of rights of suit to the lawful holder of a bill of lading by virtue of him becoming the holder of the bill: *The "Yue You 902" and another matter* [2020] 3 SLR 573 at [36].

38 Accordingly, it is incorrect for the plaintiff to assert that it was a *contracting party* to the First Set BLs *from 13 June 2020* when the First Set BLs were issued. The parties to the contract of carriage as evidenced by the First Set BLs when they were issued on 13 June 2020 were IRPC as the original named shipper and the defendant as the carrier: Sir Richard Aikens *et al, Bills of Lading* (Routledge, 3rd Ed, 2021) ("*Aikens*") at para 7.24. Alternatively, as IRPC sold the Cargo to GP Global on Free on Board ("FOB") terms[57] and GP Global had chartered the Vessel to perform the sale contract (as FOB buyer), it might be

[57] 1-AB at pp 75–79.

inferred that IRPC (as FOB seller) was GP Global's agent vis-à-vis the issuance of the First Set BLs, such that the shipper was in fact GP Global as the FOB buyer and charterer of the Vessel – in which case, the true contract of carriage would subsist in the Charterparty and not the bills: *The President of India v Metcalfe Shipping Co Ltd, The Dunelmia* [1970] 1 QB 289 ("*The Dunelmia*") at 306; *Aikens* at paras 7.26 and 7.76; Guenter H Treitel & Francis M B Reynolds, *Carver on Bills of Lading* (Sweet & Maxwell, 4th ed, 2017) ("*Carver*") at paras 3-011, 5-055–5-057. In that scenario, the contracting parties would be GP Global and the defendant.

39 I would however add that the latter possibility was not argued by either party in these proceedings. In any case, I do not need to decide if such an inference should be made. In either scenario described above, the plaintiff did *not* become a party to the contract of carriage in respect of the Cargo on 13 June 2020.

40 In my view, it may also be reasonably contended that the plaintiff was not, strictly speaking, a *party* to the First Set BLs *even when* it subsequently came into possession of them (as the lawful holder) between 19 June and 25 June 2020. As I mentioned above (at [37]), s 2(1) of the BLA transfers not the *contract* but the *rights of suit under the contract* to the lawful holder of the bills of lading. Thus, between 19 June and 25 June 2020, the plaintiff (a) was in possession of the documents of title entitling it to possession of the Cargo; and (b) had transferred to and vested in it all *rights of suit* under the contract of carriage *as if* it had been a party to that contract. During that time (and *only* during that time), the First Set BLs embodied the contractual relationship between the plaintiff and the defendant – to be clear, by "embodied", I mean that the *terms* of that contractual relationship were contained *solely* on the front and reverse of the First Set BLs (and any document incorporated into the First

Set BLs by express reference therein). As explained by Judge Anthony Diamond QC in *Partenreederei M/S Heidberg v Grosvenor Grain and Feed Co Ltd, The Heidberg* [1994] 2 Lloyd's Rep 287 at 310, what "is transferred to the consignee or indorsee consists, and *consists only, of the terms* which appear on the front and reverse of the bill of lading" [emphasis added].

41 Thus, accompanying the transfer and vesting of the rights of suit was the corresponding transfer of the terms of the First Set BLs. Accordingly, the rights acquired by the plaintiff, as a lawful holder of the First Set BLs, to sue the carrier (*ie*, the defendant) in contract would be governed exclusively by the terms as contained in the First Set BLs. It is therefore legally imprecise for the plaintiff to contend that it became *a party* to that contract when it came into possession of the First Set BLs as the lawful holder. However, even if I am wrong in my analysis above and one falls back on the traditional expressions that in the hands of a transferee, the bill of lading is or contains the contract of carriage between the carrier and the transferee (see, for example, *Carver* at para 3-009), it would not make any difference to my decision. Let me explain.

42 On the uncontroverted evidence adduced at trial, the plaintiff came into possession of the First Set BLs on 19 June 2020 (see [16] above). The plaintiff then endorsed the First Set BLs to the order of GP Global and handed over possession of the First Set BLs to GP Global on 25 June 2020 (see [18] above). Therefore, any rights of suit under the contract of carriage only vested in the plaintiff as if it were a party to that contract between 19 June and 25 June 2020 – not at any time before that period and, more importantly, not at any time after. Whether it was only the rights of suit (and the corresponding terms in the First Set BLs) that were transferred to the plaintiff or whether there was in fact a change in the contracting parties when the plaintiff came into possession of the First Set BLs, the plaintiff possessed those rights as holder of the bills or that

status as a contracting party *only* between 19 June and 25 June 2020. By endorsing the First Set BLs and delivering the same to GP Global on 25 June 2020, the plaintiff thereby divested itself of any rights or interests in the Cargo or any status vis-à-vis the First Set BLs – that is the plain effect of s 2(5) of the BLA. Thus, when ADM 256 was commenced, the plaintiff did not possess any rights of suit against the defendant, whether as a lawful holder of the First Set BLs or as a contracting party.

43 The plaintiff's reliance on the case of *The "Pacific Vigorous"* [2006] 3 SLR(R) 374 ("*The "Pacific Vigorous"*") in support of its case is erroneous. The plaintiff contends that "as long as a party has possession of the BLs as the lawful holder *at some point*, it is entitled to sue on the BL as a contract for any breach or breaches, even before it became the holder of the BL" [emphasis added].[58] This is legally incorrect and involves a misreading of the true *ratio decidendi* of the decision. *The "Pacific Vigorous"* stands for the proposition that the lawful holder of a bill of lading is entitled to sue in contract in respect of any breach of the contract of carriage committed even prior to the time at which the claimant became holder of the bill, *provided* that the party *is* the lawful holder of the bill of lading *at the time that the action is commenced* (at [5]). If the party is not the lawful holder of the bill of lading when the action is commenced, then that party, quite simply, does not have any right of suit under the contract of carriage.

44 It is therefore wrong to contend that *The "Pacific Vigorous"* is authority for the proposition that a party can sue for any past breach of the contract of carriage represented by bills of lading so long as it had lawful possession of the bill of lading *at some point in time*. If that were indeed the legal position, it

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58 Plaintiff's Closing Submissions at para 45.

would make a mockery of the entire scheme of the BLA, which governs the transfer of rights of suit. Pursuant to s 2(5) of the BLA, a statutory transfer of rights under s 2(1) of the BLA concomitantly *extinguishes* any of the *transferor's* rights acquired by the previous operation of s 2(1) (or the rights of the original party to the contract of carriage). If the plaintiff's argument (based on its reading of *The "Pacific Vigorous"*) is correct, s 2(5) of the BLA would be rendered nugatory as the plaintiff would, effectively, *still* retain rights against the defendant notwithstanding its endorsement and transfer of the First Set BLs to GP Global.

45 To place matters in their proper context, *The "Pacific Vigorous"* was also concerned with a situation where the lawful holder only came into possession of the bill of lading at a time where the shipowner no longer had the goods. Belinda Ang J (as she then was) held that the lawful holder of the bill of lading would still be entitled to sue in contract because "[t]he contract of carriage generally continues and the bill of lading remains effective until the goods are delivered to the person entitled under the bill of lading" (at [5]).

46 Apart from *The "Pacific Vigorous"*, the plaintiff was unable to cite any other authority (whether case law or scholarly commentary) to support its contention that it was a contracting party to the First Set of OBLs from the inception when those bills were issued.

47 It follows from the discussion above that the plaintiff ceased to have any rights of suit under the First Set BLs after 25 June 2020 (on which date it ceased to be the lawful holder of the same); the plaintiff certainly did not have any rights of suit at the time this action was commenced on 10 October 2020 – whether as lawful holder of, or as a contracting party to, the First Set BLs. Further, I observe that my conclusions above are consistent with the

amendments the plaintiff made to its statement of claim upon its realisation that it no longer had the First Set BLs in its possession (see [1] and [27] above).

48 I reiterate that any rights of suit under the contract of carriage were at best vested in the plaintiff only between 19 June and 25 June 2020, during which time it was the lawful holder of the First Set BLs. Similarly, the plaintiff could only ever maintain, *if at all*, that it was or became a party to the First Set BLs between 19 June and 25 June 2020. Accordingly, as the plaintiff has no rights of suit under the contract of carriage or status under the First Set BLs to speak of, its claim against the defendant for breach of contract cannot get off the ground and must fail.

49 Before ending this section of my judgment, I make a final point of clarification. At the start of the trial, the plaintiff was given leave to amend its statement of claim to refer to itself as "the party to whose order the first set of the original Bills of Lading No. EX384/2020 was consigned" instead of the "named consignee" – this amendment would be accurate as the plaintiff was, strictly, *not* the named consignee since the First Set BLs specified the consignee as "*To Order of* Banque Cantonale de Geneve" [emphasis added]. Yet, in its closing submissions, the plaintiff uses these phrases interchangeably. The phrase "*To Order of* Banque Cantonale de Geneve" means that the consignee is whoever the plaintiff orders the carrier to deliver the Cargo to, usually by way of an endorsement of the First Set BLs. That said, the plaintiff, while it was the lawful holder of the First Set BLs, could have demanded delivery of the Cargo to itself since it would have been in possession of the bills as documents of title to the Cargo. However, as the plaintiff was *not* the named consignee, it is incorrect (and somewhat confusing) for the plaintiff to submit that the defendant breached its contractual obligations by removing the plaintiff as the "named

consignee".[59] While ultimately nothing turns on this, it is illustrative of the somewhat amorphous state of the plaintiff's pleaded and argued case.

50 I have found at [47] above that the plaintiff does not have any standing to sue under the contract of carriage as represented by the First Set BLs. That would suffice for me to dismiss the plaintiff's claim for breach of contract entirely. Nevertheless, for completeness and as the parties raised arguments on the point, I turn to consider if the defendant breached any contractual obligation owed to the plaintiff at any point in time.

Whether the defendant breached any contractual obligation owed to the plaintiff

The circulation of draft Switch BLs and the issuance of a copy of the non-negotiable Switch BL were not in breach of any contractual obligation

51 The plaintiff contends that beginning from 16 June 2020, the defendant took a series of steps to "irreversibly switch" the bills of lading and that this amounted to a breach of a contractual obligation owed to the plaintiff – these steps are defined in the plaintiff's closing submissions as the "Impugned Actions".[60] The plaintiff refers in particular to Dae Myung's preparation and circulation of various drafts of the Switch BLs to RG Chartering for approval between 16 and 17 June 2020 (see [13]–[14] above) as well as the issuance of a non-negotiable copy of the Switch BL on 17 June 2020 (see [15] above).[61] In my view, the plaintiff's arguments are misconceived.

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59 Plaintiff's Closing Submissions at paras 1, 54, 77, 89.

60 Plaintiff's Closing Submissions at para 10.

61 Plaintiff's Closing Submissions at paras 99–100.

52 The switching of bills of lading occurred on 29 June 2020 when (a) the First Set BLs were surrendered to the defendant by GP Global (who were the charterers of the Vessel and also the lawful holders of the First Set BLs at that time) and (b) the Switch BLs were issued (see [20] above). The switch did not occur at any earlier point in time. It certainly did not happen when one copy of the *non-negotiable* Switch BL was issued and sent to GP Global on 17 June 2020, nor when drafts of the Switch BLs were prepared and circulated.

53 The plaintiff's attempts to make out a case that the Switch BLs must have been issued *by 17 June 2020* simply because one copy of the *non-negotiable* Switch BL had been issued on that date is not borne out by the contemporaneous evidence and the oral testimony of the defendant's witnesses at trial:

(a) Ms Ma's email instructions to Seanco to assist in issuing one copy of the non-negotiable Switch BL plainly contemplates that the Switch BLs will be issued at a later time:[62]

> Please assist to issue 1 page NNBL as per attached file .Charterer need it for customs clearance purposes.
>
> *OBL* ***will be*** *issued* once we have further news from charterer.
>
> [emphasis added]

(b) In her email to RG Chartering on 23 June 2020, Ms Ma explicitly informed RG Chartering that the Switch BLs would only be issued upon surrender of the First Set BLs:[63]

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62 1-AB at p 361.

63 1-AB at pp 454–455.

> Please be advise we can accept below proposal to issue switch BL first but without sending you scanned BL and without releasing.
>
> Switch BL will be released after 1st set of BL surrendered in Singapore.

(c) Mr Lee maintained in cross-examination that only a *scanned copy* of the non-negotiable Switch BLs was given to GP Global and that the Switch BLs were withheld until the First Set BLs had been surrendered to Dae Myung:

> Mr Lee: … in any case, charterers may request for the issue -- first set -- first one and then BL before we issued the full set original BL. We just prepare for the NNBL, we didn't release BL to customer, we just hold original, just send the scanned copy to GP Global at the time.[64]
>
> Mr Lee: On 17 June, we issued one NNBL because charterer request one NNBL for their custom clearance purpose. We issued one NNBL on 17 June and we didn't release original, just sent scanned copy to that.[65]
>
> Q: In fact, at that time [23 June 2020], the switched bill was already prepared and it was ready to be issued. That's your evidence, right?
>
> Mr Lee: Yes.[66]

(d) Mr Lee clarified in re-examination that although a draft of the Switch BLs had been prepared, it was only released to RG Chartering/GP Global following the surrender and cancellation of the First Set BLs:[67]

> Q: Let me refer you to … look at the question It says:
>
> "Question: So if you look at the history of this matter involving the issue of the request for the switch, as at

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64 Transcript, 18 July 2023, p 81 ln 11–16.

65 Transcript, 18 July 2023, p 88 ln 13–16.

66 Transcript, 18 July 2023, p 134 ln 4–7.

> 23 June 2020, you had already agreed to effect the switch, and you were waiting for the original already. Right?
>
> Answer: Yes.
>
> Question: In fact, at that time, the switched bill was already prepared and it was ready to be issued. That's your evidence, right?"
>
> And then you said, "Yes". Mr Lee, when you say "yes" here, what, in your mind, was prepared on 23 June 2020 and ready to be issued?
>
> Mr Lee: I mean the -- the draft BL, the switched draft BL, the contents already confirm, so we -- we are -- we can issue -- we are ready to issue switched BL after collecting first set -- I mean, the …
>
> …
>
> Q: Can you explain what you mean by "the switched BL, the contents already confirm"? What do you mean by that?
>
> A: It was ready to be issued mean -- I thought I tried to explain that *we could issue switched BL after the collection of the first set bill of lading.* I think there's no further meaning. The -- we just -- we just -- we could develop the charterer's requirement, *not physical readiness.*
>
> [emphasis added]

54 In my view, the plaintiff's argument that the alleged "irreversible switch" had started from 16 June 2020 makes no sense. The circulation of *draft* Switch BLs, as the expression suggests, does not lend itself to the inference that it was destined, from that point onwards, that the Switch BLs *would* be issued come what may. Nor does the issuance of a *copy* of the non-negotiable Switch BL have that effect. These were, in my view, merely preparatory steps to effecting the switch or, in the case of the issuance of the non-negotiable copy of the Switch BL, steps taken to facilitate the Vessel's clearance with Bangladeshi customs. In my judgment, at no time prior to 29 June 2020 was it a foregone conclusion that the Switch BLs would be issued. The defendant's position had

always been, and I accept the defendant's evidence in this regard, that the original Switch BLs could and would only be *issued and released* to GP Global after the First Set BLs had been surrendered to Dae Myung, even if unsigned versions of the Switch BLs may have been prepared or finalised before that.

55 In my judgment, the issuance of a *copy* of the non-negotiable Switch BL on 17 June 2020 is inconsequential. A lot of ink was spilt over the email to Dae Myung from RG Chartering conveying GP Global's explanation that the non-negotiable Switch BL was required for "LC negotiation" and thus the same BL identification number appearing on the First Set BLs had to be used.[68] The plaintiff submits that this was a "red flag" that should have put the defendant on notice, and that the defendant should have checked with the plaintiff as the "named consignee".[69] For the reasons expressed in [49] above, the plaintiff was, firstly, *not* the "named consignee" and the defendant would not have known who the consignee was then. Secondly, the phrase "LC negotiation" could also simply mean that GP Global required the non-negotiable copy of the Switch BL to negotiate the terms of the letter of credit with its end-buyer – a perfectly acceptable explanation and more so since, even according to the plaintiff, it was aware that the Cargo had been on-sold by GP Global to its sub-buyer. There was, in my view, nothing sinister in that email that would or ought to have caused any concern to the defendant.

56 This is especially so when viewed in the context of the defendant's consistent position that it would only issue and release the original Switch BLs after it received the First Set BLs for cancellation. That was how the defendant sought to ensure that at any one time, only one set of original bills of lading

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68 Plaintiff's Closing Submissions at paras 101–110.

69 Plaintiff's Closing Submissions at para 114.

representing the Cargo was in circulation. Viewed through that lens, the issuing of one copy of the non-negotiable Switch BL was not in breach of any contractual obligations that the defendant may have owed. The non-negotiable copy of the Switch BL was, as the phrase self-evidently indicates, *not* negotiable and only a *copy* and thus, it could not be acted upon as a document of title. Nor could it vest rights of suit under the Switch BL, or any other rights for that matter. Legally, the non-negotiable copy of the Switch BL was of no value. Indeed, as the defendant notes in its closing submissions, the parties' experts were agreed that a non-negotiable copy of the Switch BL was useful for information only.[70]

57 This brings me neatly to the plaintiff's reliance on the defendant's alleged concession that the non-negotiable copy of the Switch BL issued on 17 June 2020 is a straight bill of lading.[71] The plaintiff relies on the Court of Appeal's decision in *APL* and argues that, based on the defendant's apparent concession, the non-negotiable copy of the Switch BL was a document of title, the circulation of which put the defendant in breach of its contractual obligations owed to the plaintiff because there would have been two conflicting documents of title in circulation on 17 June 2020 (*viz*, the First Set BLs and the non-negotiable copy of the Switch BL).[72]

58 The plaintiff's submissions are without merit and in my view, take the defendant's alleged concession out of context. In its closing submissions, the defendant submitted that while a "non-negotiable bill of lading (also known as

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70 Defendant's Closing Submissions at para 92.

71 Defendant's Closing Submissions at para 92; Plaintiff's Reply Submissions at para 86.

72 Statement of Claim (Amendment No. 3) at para 5(d)(iii); Plaintiff's Reply Submissions at paras 86–90.

a straight bill of lading) is evidence of the contract of carriage and a receipt for the goods handed over to the carrier, it is *not* a document of title…" [emphasis in original].[73] In its reply closing submissions, the plaintiff latches onto that portion of the defendant's submissions contained in parentheses and contends that the defendant had admitted that the non-negotiable copy of the Switch BL was a "straight bill [of lading]" and "non-negotiable"; it was, therefore, a document of title – at least, according to the following passage in *APL* (at [48]):

> … Ordinarily, the main characteristics of a BL are twofold. First, it is negotiable (*ie* transferable). Second, it is a document of title, requiring its presentation to obtain delivery of the cargo. In the case of a straight bill, while the characteristic of transferability is absent, there is no reason why one should thereby infer that the parties had intended to do away with the other main characteristic, *ie* delivery upon presentation. As the judge below noted, while one cannot indorse a straight bill to transfer constructive possession of the cargo, it does not necessarily follow that the straight bill does not impose a contractual term obligating the carrier to require its production to obtain delivery.

59 I make several observations here. First, reading the defendant's closing submissions carefully, they only make the *general* point that a non-negotiable bill of lading is also known as a "straight bill of lading", and do not accept that a non-negotiable bill of lading is a document of title. For the moment, I refrain from commenting on the correctness of these propositions advanced by the defendant.

60 More importantly, even if I assumed the equivalence between "non-negotiable bills of lading" and "straight bills of lading" – so that the former is a document of title, on the authority of *APL* – it is clear that only *original* non-negotiable bills of lading (and *not copies* of them) can possibly function as documents of title. It is not the defendant's argument that the non-negotiable

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[73] Defendant's Closing Submissions at para 92.

copy of the Switch BL in this case was or could be construed to be a straight bill of lading. Thus, the plaintiff was incorrect to assert that the defendant had admitted that the non-negotiable *copy* of the Switch BL was a straight or non-negotiable bill of lading.

61 However, assuming I am wrong and that the defendant did make the admission the plaintiff now relies on, the defendant's concession would, in my view, be incorrect as a matter of law. Accordingly, I would reject such an admission in any event simply because the non-negotiable *copy* of the Switch BL is *not* a straight bill of lading – comparing the legal status of a *copy* document against an *original* document is a comparison between chalk and cheese. In this regard, I also note that a perverse concession made by counsel on a point of law may be disregarded by the court if it is necessary in the interests of justice to do so: *Seagate Technology International v Changi International Airport Services Pte Ltd* [1997] 2 SLR(R) 57 at [15].

62 The defendant's concession is also incorrect on another point. A "straight" or "non-order" bill of lading, as opposed to a "negotiable" or an "order" bill, is one that makes goods deliverable "to XYZ" and nothing more, meaning that the goods as represented by the straight bill can only be delivered to XYZ and no one else: *APL* at [9]. In the case before me, the non-negotiable copy of the Switch BL was simply a *copy* (marked "non-negotiable") of an "*order*" or "*negotiable*" bill of lading that had, as of 17 June 2020, *yet to be issued* – no more and no less.

63 In summary, it is simply legally incorrect to ascribe the status of a document of title to a non-negotiable copy of an "order" or "negotiable" bill of lading that had not yet been issued. It is also not accurate for the plaintiff to cast that as the defendant's concession. The plaintiff was, quite simply, barking up

the wrong tree. For the foregoing reasons, I dismiss the plaintiff's argument at [57] above.

The self-liquidating nature of the transaction meant that the plaintiff envisaged relinquishing the First Set BLs to GP Global and concomitantly its security

64 The fact that the plaintiff had financed this transaction as a self-liquidating transaction is also of significance as I elaborate on below, but let me first explain the nature of this transaction from the plaintiff's perspective. On the plaintiff's case:[74]

> a. The trade finance provided by the Plaintiffs to GP Global APAC Pte Ltd by way of the D/C was in respect of a self-liquidating transaction comprising of 2 back-to-back parts:
>
> > i. The **first part** was the import or purchase of the goods by GP Global APAC Pte Ltd financed by the Plaintiffs by issuance of the D/C in favour of the IRPC Public Company Limited.
> >
> > ii. The **second part** relates to the export or re-sale of the financed goods by GP Global APAC Pte Ltd to Prime Oil against a payment which was to be made at the Plaintiffs' counters, which were to provide the repayment source of the Plaintiffs' financing. …
>
> b. The structure of this transaction envisaged that payment by the end buyer Prime Oil for the export part would be made at the Plaintiffs' counters which was the repayment source of the Plaintiffs' financing.
>
> c. The payment by the end buyer Prime Oil for the export part would be made pursuant to an invoice issued by GP Global APAC Pte Ltd as the seller.
>
> d. For GP Global APAC Pte Ltd to issue its invoice, it must have been able to discharge the Cargo at the port of destination and deliver the same to Prime Oil. *To do so, GP Global would require the original Bills of Lading endorsed to their order.*
>
> [emphasis in bold in original; emphasis in italics added]

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74 Statement of Claim (Amendment No. 3) at para 4A.

Evidently, the plaintiff knew and envisaged that it would relinquish the First Set BLs to GP Global in order for GP Global to procure the discharge of the Cargo at the port of destination and delivery of the same to Prime Oil (who would then be liable to pay).[75]

65 The evidence at trial shows that the plaintiff (a) knew that there was a risk that the end-purchaser might not pay, and (b) accepted that endorsing the First Set BLs and relinquishing them to GP Global would mean relinquishing its security in the Cargo. Mr Philippe Maillart ("Mr Maillart"), Head of Operations of Global Commodity Finance in BCGE, agreed that in "promptly [giving] up [their] security to the goods", there was an element of risk:[76]

> Q. … What I'm saying is there is an element of risk, isn't there, when you promptly give up your security to the goods --
>
> A. Yes.
>
> Q. --because, let me just explain, you are essentially trusting GP Global to use this bill of lading to procure the discharge of the cargo at the discharge port to Prime Oil and then to invoice Prime Oil for it. That's why there's an element of risk, correct?
>
> A. Yes, exactly. It's an element of.

In the same vein, Mr Julien Sebastien Frederic Rousseau ("Mr Rousseau"), Vice President, Head of Legal, International Division in BCGE, said that the plaintiff had "waive[d] [its] right by giving away the [First Set BLs] and endorsing the [First Set BLs]":[77]

> Q. So from your experience in BNP, is this what the banks typically do in self-liquidating transactions, that they will just lose their security in such a manner and trust that their clients will help them complete this self-liquidating transaction?

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75 See also, Transcript, 11 July 2023, p 124 ln 7–13.

76 Transcript, 11 July 2023, p 20 ln 7–16.

77 Transcript, 12 July 2023, p 29 ln 17–p 30 ln 25.

> A. I think the word "lose" is probably unappropriate [sic]. A self-liquidating transaction is a -- is a process whereby as -- as this figure of speech means, is that the transaction itself will provide the repayment of the corresponding or underlying financing. *So when we waive our right by giving away the original BL and endorsing the BL, we only do so having in mind and with the intent to transform the security in rem over the cargo materialised by the BL into a payment receivable, which is the claim, the payment claim, as against the recipient of the cargo, the end-purchaser. …*
>
> Q. And of course, with all transactions, there could be an element of risk, and yesterday Mr Maillart confirmed that this part of it, where you, to use your words, waive your security, is a risk.
>
> A. That's the bank, that's the bank's job, that's the whole point.
>
> Q. And it's a risk the bank undertook, right?
>
> A. Yes.
>
> [emphasis added]

66 In my view, these were significant concessions as they indicated that the plaintiff was not looking to the Cargo and/or the First Set BLs as security, but as a testament to the creditworthiness of GP Global – this was built into the nature of the transaction itself. That the plaintiff did relinquish all rights and interests in respect of the Cargo and/or the First Set BLs when it endorsed and delivered the First Set BLs to GP Global on 25 June 2020 is reinforced by the fact that the plaintiff did not have any trust receipt arrangement in place, as the plaintiff's witnesses admitted at trial.[78] Nor is there any evidence that the plaintiff reserved any of its rights when it endorsed and handed over the First Set BLs to GP Global. The endorsements were clean, unqualified endorsements followed by the voluntary delivery of the First Set BLs by the plaintiff to GP Global.

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[78] Transcript, 12 July 2023, p 34 ln 7–p 36 ln 9.

67 Insofar as the plaintiff argues that the defendant should have informed the plaintiff of GP Global's proposed switch and the associated preparatory steps where the consignee would no longer be stated to be to the order of the plaintiff, I consider that argument to be an afterthought formulated with the benefit of hindsight – specifically, hindsight of the GP Global group's collapse and the plaintiff's belated discovery of GP Global's possibly fraudulent conduct. The fact of the matter is that the self-liquidating nature of the financing operation meant that, in reality and substance, it was envisaged by the plaintiff that the First Set BLs would be endorsed by the plaintiff to GP Global. Thereafter, it was left to GP Global to deal with the First Set BLs as it saw fit for the purposes of the second leg of the transaction where GP Global on-sold the Cargo. It is, in my judgment, clear from the evidence that the plaintiff did not look to the Cargo and/or the First Set BLs as security to be invoked in the event the transaction went awry; to the contrary, the plaintiff was prepared to (and did in fact) give them up to GP Global in the expectation that the plaintiff's "claim" thereafter would be for the "receivables" (see [65] above). It therefore does not lie in the mouth of the plaintiff to belatedly contend that there was a breach of contract by the defendant.

68 The plaintiff must also have been aware that GP Global would likely be receiving payment from its buyer, whether it was Standard Asiatic or Prime Oil, *via* a letter of credit. There was enough evidence in the First Set BLs to suggest this – for example, the Notify Party was stated to be Standard Asiatic and Jamuna Bank. Yet, at no point did the plaintiff raise any concerns. It is, in my view, a reasonable inference that the plaintiff was not concerned about the identity of the end-buyer or about retaining possession of the First Set BLs as security for the financing that it provided to GP Global. This betrays the plaintiff's repeated references in its closing submissions to its position as the

trade finance bank for the transaction in question and the importance of bills of lading as one of the "pillars of international trade" (echoing Lord Steyn's comments in *MacWilliam (JI) Co Inc v Mediterranean Shipping Co SA, The Rafaela S* [2005] 2 WLR 554 at [38]). The emphasis the plaintiff seeks to place on the importance of the First Set BLs as a pillar of international trade cannot be reconciled with how the plaintiff chose to structure the financing operation in this case or its conduct in relation to the First Set BLs.

The defendant's obligation was to ensure that it did not issue the Switch BLs while the First Set BLs were still in circulation

69 In my judgment, the defendant's obligation, insofar as it is relevant to the present dispute, was to ensure that it did not issue and release the Switch BLs *until* the First Set BLs had been surrendered to the defendant. To do otherwise would undoubtedly amount to a breach by the plaintiff of its obligations to the lawful holder of the First Set BLs, if not the perpetration of a fraud. This obligation is reflected in cl 31 of the Rider Clauses attached to the Charterparty, which was incorporated into the First Set BLs:[79]

> CLAUSE 31: SWITCH BILL OF LADING CLAUSE:
>
> If required, Owners to prepare 2nd set of Bill of Lading, if possible in S'PORE but such Bill of Lading will remain in Owners/Agents office until the first full set is surrendered to Owners/Agents' office. … On received 1st set of OBL, Owners will release full sets of switch BL. …

70 As I have mentioned earlier, it is not disputed that on the date the Switch BLs were issued (*ie*, 29 June 2020) (see [20] above), the plaintiff was no longer the lawful holder of the First Set BLs, and had no rights, interests or status as far as the First Set BLs or the Cargo were concerned. Therefore, there could not

[79] 1-AB at p 90.

possibly have been a breach by the defendant of any contractual obligation owed to the plaintiff *after* it had ceased to be the lawful holder of the First Set BLs.

71 In any case, I am of the view that the defendant was also not in breach of any contractual obligation owed to anyone. On 29 June 2020, GP Global (who was then in possession of the First Set BLs as the endorsee from the plaintiff) surrendered the full set of the First Set BLs to the defendant, who then cancelled the First Set BLs. In their place, and in accordance with cl 31 of the Rider Clauses to the Charterparty, the Switch BLs were then issued and released to GP Global.

72 Thus, even taking the plaintiff's contractual novation analysis at its face,[80] the two 'parties' to the contract of carriage evidenced by the First Set BLs were GP Global and the defendant. To be accurate, as GP Global was the charterer of the Vessel, the relevant contract of carriage between GP Global and the defendant would be the Charterparty while the First Set BLs would, in GP Global's hands, merely be a receipt for the Cargo: *Aikens* at para 7.23; *The Dunelmia* at 306. However, being in possession of the First Set BLs also meant that GP Global held the documents of title to the Cargo and were therefore, in law, entitled to possession of the Cargo as holders of the "keys to the warehouse". As for IRPC, while it is the named shipper and thus an original party to the contract of carriage, by virtue of ss 2(1) and 2(5) of the BLA, the lawful holder of the bills of lading effectively takes over all rights of suit under the contract of carriage as if it had been a party to that contract, while the rights of the shipper are extinguished. The relevant provisions in the BLA provide as follows:

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[80] Statement of Claim (Amendment No. 3) at para 6; Plaintiff's Closing Submissions at para 61.

> **Rights under shipping documents**
>
> **2.**—(1) Subject to the following provisions of this section, a person who becomes—
>
> (*a*) the lawful holder of a bill of lading;
>
> …
>
> shall (by virtue of becoming the holder of the bill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.
>
> …
>
> (5) Where rights are transferred by virtue of the operation of subsection (1) in relation to any document, the transfer for which that subsection provides shall extinguish any entitlement to those rights which derives—
>
> (*a*) where that document is a bill of lading, from a person's having been an original party to the contract of carriage; or
>
> …

73 It is clear that GP Global (as the charterer of the Vessel, the party entitled to possession of the Cargo, and the shipper under the Switch BLs) and the defendant agreed to "vary" and replace the shipper named in the First Set BLs in accordance with the new "terms" as evidenced by the Switch BLs. Similar to the plaintiff, IRPC's rights under the First Set BLs had, by 29 June 2020, already been extinguished. Thus, on 29 June 2020, all *relevant* parties with any rights or interests in the First Set BLs or the Cargo (namely the defendant and GP Global) had consented to the change reflected in the Switch BLs. In my judgment, there was accordingly no breach of *any* contractual obligation – and still less an obligation to the plaintiff – by the defendant to speak of.

74 Finally, I accept that the consignee in the First Set BLs was stated as being to the order of the plaintiff, and this may have suggested that the plaintiff had some role to play in financing the underlying sale and purchase transaction.

In my judgment, however, that is immaterial. That suggestion alone cannot justify imposing upon the defendant a contractual duty of the kind the plaintiff now looks to assert. To take this argument to its logical conclusion, it would potentially place an impossible burden on a carrier. For example, if a bill of lading was simply consigned "To Order" and the carrier was requested to issue switch bills of lading, the carrier would effectively be burdened with (a) contractual obligations to purported contract counterparties it does not even know about and/or (b) obligations to undertake investigations up and down the bill of lading chain to ascertain the identity of the counterparty in order to seek its consent. It appears, in my view, commercially insensible that a carrier should be burdened in this way.

75 To conclude this section, if there was any contractual duty on the defendant, it was to refrain from issuing the Switch BLs *until and unless* the First Set BLs were surrendered to and cancelled by the defendant. That duty was, if at all, owed only to (a) whoever was the lawful holder in possession of the First Set BLs as the party with rights of suit under the contract of carriage and/or the party entitled to possession of the Cargo, or (b) to GP Global as the charterer under the Charterparty (see [69] above). In this case, on 29 June 2020 (when the switch was effected), GP Global was both the lawful holder of the First Set BLs *and* the charterer under the Charterparty. Additionally, even assuming that one accepts and applies the contract novation analysis as argued for by the plaintiff, the contractual duty in this case not to novate the contract of carriage without the requisite consent was, if at all, a duty owed by the defendant to GP Global only (who was the charterer of the Vessel, the party entitled to possession of the Cargo as lawful holder of the First Set BLs, and the shipper under the Switch BLs) – that duty, insofar as it existed, could not have been owed to the plaintiff.

76 While I have my reservations on whether it is even appropriate to have regard to contract novation principles in the scenario before me, I prefer to leave that discussion for another occasion should the question arise again for consideration. It suffices to say, as I have concluded at [73] above, that even if it is assumed that those principles can be sensibly applied in this case, the plaintiff's contractual claim against the defendant fails nonetheless.

Whether the defendant breached any duty of care owed to the plaintiff

77 In addition to or as an alternative to its claim based on breach of contract, the plaintiff also advances a claim against the defendant in the tort of negligence. Preliminarily, a question that arises out of the plaintiff's claim in negligence is whether a tortious duty of care should be imposed bearing in mind the contractual background to the parties' dealings. The law recognises that, as a general rule, where the rights and duties between two parties are governed by contract, that constitutes a cogent policy reason *negating* the imposition of an overlapping tortious duty of care even in circumstances where proximity between those parties can be established: *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 at [114]. In this regard, I would reiterate the views I expressed in *Seatrium New Energy Ltd (formerly known as Keppel FELS Ltd) v HJ Shipbuilding & Construction Co, Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd)* [2023] SGHC 264 (at [58]–[59]): where the parties have privately agreed to an allocation of risk by means of contract, that would militate against the imposition of a duty of care in tort as one cannot avoid the exemptions and limitations imposed by contract between the parties simply by turning to a cause of action in tort.

78 In the present case, there is in my view a clear overlap between the plaintiff's pleaded claim in contract and its pleaded claim in tort:

> **[breach of contract pleading][81]**
>
> The Plaintiffs aver and will contend that by reason of each or all of the matters aforesaid, the Defendants are in breach of the contract of shipment and carriage contained in or evidenced by the Bills of Lading No. EX384/2020 by removing the Plaintiffs as the lawful contracting party with rights and interests in the transaction involving the subject Cargo shipped on board the Vessel, and/or otherwise novating the contract
>
> **[breach of duty of care pleading][82]**
>
> The Plaintiffs aver and will contend that the Defendants breached their duty of care owed to the Plaintiffs in switching the Bills of Lading No. EX384/2020 without the knowledge and/or consent of the Plaintiffs, thereby extinguishing all of the Plaintiffs' rights and interests in the transaction involving the subject Cargo shipped on board the Vessel in consequence of which the Plaintiffs suffered loss and damage.

Having regard to the overlap in the pleadings as set out above, there are, in my judgment, strong reasons militating against the imposition of any duty of care above as pleaded.

79 In any event, even if a tortious duty of care could exist regardless of the contractual background, in my view, that duty would only require the defendant to exercise reasonable care not to interfere with or prejudice the rights and interests of those entitled to the Cargo. At this juncture, two questions arise. First, when would that duty have arisen in the context of this case? Second, did the defendant breach that duty?

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81 Statement of Claim (Amendment No. 3) at para 6.

82 Statement of Claim (Amendment No. 3) at para 8.

80 As to the first question, it is my view that any duty of care would only have arisen at the point the Switch BLs were being issued and released. It is at that point in time that the defendant needed to ensure that it did not, by issuing the Switch BLs, act in a way detrimental or prejudicial to the rights and interests of the holders of the First Set BLs. In my judgment, it would not be fair or reasonable to hold, on the facts of this case, that the defendant was under a tortious duty of care at a point in time earlier than its contractual obligation. To hold otherwise would, in the circumstances of this case, confer upon the plaintiff a more advantageous right than would be available to it in contract – that would not be a just or reasonable outcome.

81 As to the second question, the answer is evidently 'no'. For one, the defendant ensured that the Switch BLs were issued and put into circulation only after the First Set BLs were surrendered and cancelled/marked "null and void". Further, on receiving the First Set of OBLs from GP Global duly endorsed by the plaintiff in favour of GP Global, the defendant was reasonably entitled to assume that the plaintiff had no more rights or interests in the First Set BLs or the Cargo. In ensuring that there was only one set of documents of title in circulation at any point in time, the defendant did exercise reasonable care not to interfere with or prejudice the rights and interests of those entitled to the Cargo. As such, in my judgment, there was no breach of any duty of care by the defendant, even assuming such a duty existed.

82 The preparatory steps of circulating the draft Switch BLs or even issuing the non-negotiable copy of the Switch BL do not speak to a breach by the defendant of its duty to exercise reasonable care not to interfere with or prejudice the rights and interests of those entitled to the Cargo. As explained at [51]–[56] above, these were merely preparatory steps to the actual switch of the First Set BLs and no duty of care existed at those points in time – it was only at

the point that the Switch BLs were issued and released that there would be a change in the persons entitled to possession of the Cargo.

83 The plaintiff raises a second duty of care in its pleadings:[83]

> … at all material times, the Defendants knew or ought reasonably to know that the Plaintiffs, as the trade financiers, had paid for the Cargo and thereby acquired rights and interests in the transaction relating to the shipment of the Cargo described in the Bills of Lading No. EX384/2020 and shipped thereunder. In the premises, the Plaintiffs aver and will contend as follows:
>
> > a. There was at all material times, a sufficient degree of proximity between the Plaintiffs and the Defendants, to give rise to a duty of care on the part of the Defendants to the Plaintiffs to take reasonable care in the custody and care of the Cargo described in the Bills of Lading No. EX384/2020 and shipped thereunder.
> >
> > b. It was reasonably foreseeable on the part of the Defendants, their servants and/or agents, that if they breached the duty of care owed to the Plaintiffs, the Plaintiffs will suffer loss and damage.

84 Leaving aside the question of whether such a duty of care was indeed owed to the plaintiff as the trade financier, the pleaded duty of care is "to take reasonable care in the custody and care of the Cargo". In my view, this refers to the *physical* care of the Cargo (*ie*, ensuring that the Cargo is not damaged or stolen). It does not suggest that the duty extends to informing the plaintiff and/or obtaining the consent of the plaintiff to the switch of the bills of lading. In my view, that is a bridge too far for the plaintiff.

85 Given that I have found that (a) no tortious duty of care was owed to the plaintiff and (b) even if there was such a duty, there was no breach, there is no need for me to consider if there was a *novus actus interveniens* severing the

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[83] Statement of Claim (Amendment No. 3) at para 7.

causal chain – that inquiry presupposes that the defendant owed a duty of care to the plaintiff and that the defendant breached that duty. There is simply no basis to make those suppositions.

86 For the foregoing reasons, the plaintiff's claim in negligence also fails.

Whether the defendant breached any duty as bailee owed to the plaintiff

87 The plaintiff's pleadings on the defendant's breach of its duty as bailee are as follows:[84]

> … the Plaintiffs aver and will contend that at all material times, the Defendants knew or ought to know that the Plaintiffs had provided trade finance by issuing the irrevocable D/C in respect of the Cargo and therefore, the Plaintiffs were the party with full rights and interests in the transaction involving the Cargo which was laden and shipped onboard the Defendants' Vessel, at the material time. In the premises, the Defendants were bailees for reward in respect of the Cargo to which the Plaintiffs had full rights and interests as the trade financiers.
>
> In breach of their duty as bailees for reward, the Defendants, their servants and/or agents, failed to produce or account for the Cargo to the Plaintiffs particularly on or about 10.8.2020, when the Plaintiffs issued the formal notice to the Defendants to maintain custody and possession of the Cargo and not to discharge it without the Plaintiffs' written consent.

88 In my view, there is no legal basis for the plaintiff's claim in bailment. The law is clear that the duties of a bailee arise out of the voluntary assumption of possession of another's goods: *East West Corpn v DKBS AF 1912 A/S and another; Utaniko Ltd v P & O Nedlloyd BV* [2003] 3 WLR 916 at [24]. The contract of carriage as evidenced by bills of lading is "a combined contract of bailment and transportation under which the shipowner undertakes to accept possession of the goods from the shipper, to carry them to their contractual

[84] Statement of Claim (Amendment No. 3) at paras 9–10.

destination and there to surrender possession of them to the person who, under the terms of the contract, is entitled to possession of them from the shipowners": *Barclays Bank v Commissioners of Customs and Excise* [1963] 1 Lloyd's Rep 81 at 88–89. As a general rule of bailment law, only persons to whom the bailee has attorned can enforce the bailee's duties as such; however, "[t]he contribution of the law merchant had been to recognize the attornment as transferrable and therefore the indorsement and delivery of the bill of lading as capable of transferring the endorser's right to the possession of the goods to the endorsee": *Borealis AB (formerly Borealis Petrokemi AB) v Stargas Limited and others* [2001] 2 WLR 1118 at [18].

89 It follows that upon the plaintiff's endorsement and delivery of the First Set BLs to GP Global on 25 June 2020, any duty owed by the defendant *qua* bailee to the plaintiff had thereafter evaporated. As explained at [66]–[67] above, the plaintiff relinquished all rights and interests in the Cargo and/or the First Set BLs when it endorsed and delivered the First Set BLs to GP Global *without* any reservation of its rights or arrangements to remotely indicate that the plaintiff continued to retain (or wished to retain) an interest in the Cargo or the First Set BLs.

90 Accordingly, the defendant could not have breached any of its duties as bailee when it allegedly "failed to produce or account for the Cargo" to the plaintiff on 10 August 2020, that date being when the plaintiff wrote to the Master of the Vessel and the defendant to, among other things, demand that the defendant not proceed with the discharge of the Cargo without the plaintiff's written consent (see [23] above).

91 My analysis above would be sufficient to dismiss the plaintiff's pleaded claim in bailment. However, in its closing submissions, the plaintiff mounted a

different argument: the breach of bailment consisted in the defendant's agreement to switch the bills of lading, the circulation of the draft Switch BLs and the issuance of a non-negotiable copy of the Switch BL – which occurred on 17 June 2020.[85] I have already concluded earlier that these were mere preparatory steps that did not result in any transfer of the rights and interests to the Cargo. Similarly, these preparatory steps could not have amounted to a breach of the defendant's duty as bailee of the Cargo.

92 Finally, the plaintiff submits that the plaintiff "paid" for the freight for the Cargo on 22 June 2020,[86] with the argument presumably being that the plaintiff therefore had an interest in the Cargo. In my view, that is an erroneous submission. The freight was paid *by GP Global* from its account with the plaintiff using the plaintiff's banking facilities.[87] Just because a party uses its banking facilities with its bank to make payment of freight does not make *the bank* the *payer* of the freight; nor does it render the bank the bailor of the cargo shipped onboard. The plaintiff provides no authority in support of its contention, which I reject.

Conclusion on the plaintiff's claims

93 For the reasons above, the plaintiff has not persuaded me that any of its causes of action ought to succeed. Accordingly, I dismiss all of the plaintiff's claims.

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85 Plaintiff's Closing Submissions at paras 158–159, 162.

86 Plaintiff's Closing Submissions at para 160.

87 1-AB at p 432.

Whether the plaintiff is liable for wrongful arrest

94 I turn now to the defendant's counterclaim for damages for wrongful arrest.

The legal test

95 The test for wrongful arrest of a vessel is uncontroversial. As the Court of Appeal in *The "Kiku Pacific"* [1999] 2 SLR(R) 91 ("*The "Kiku Pacific"*") held (at [14] and [30]), the test is one of *mala fides* or gross negligence implying malice, as laid down in the seminal decision of the Privy Council in *The Evangelismos* (1858) 12 Moo PC 352 (at 359):

> The real question, in this case, following the principles laid down with regard to actions of this description comes to this: is there or is there not, reason to say, that the action was so unwarrantably brought, or brought with so little colour, or so little foundation, that it rather implies malice on the part of the plaintiff, or that gross negligence which is equivalent to it?

96 The defendant does not suggest that there was express malice and instead argues that there was gross negligence on the part of the plaintiff implying malice.[88] If the arresting party failed to even apply its mind to whether it could legitimately arrest the vessel at the time it decided to do so, that would constitute gross negligence implying malice. This was explained by the Court of Appeal in *The "Kiku Pacific"* (at [30]):

> In light of the above, we were of the view that the test to be proved by the owners was not whether there was reasonable or probable cause in bringing the action or in rejecting the security offered in March 1996. Instead the test is that laid down by the Rt Hon T Pemberton Leigh in *The Evangelismos* of *mala fides* or gross negligence implying malice. In the context of the appeal, the question would be this; in bringing the action against the owners, did Fal know or honestly belief [believe] that they could not legitimately arrest the ship so as to imply malice, or ***in***

[88] Defendant's Closing Submissions at para 121.

> ***arresting the vessel, did Fal fail to apply their mind as to whether they could legitimately arrest the vessel***, and nevertheless proceeding to arrest the vessel because Fal was bent on putting pressure on the owners to accede to their demand, ***so as to imply gross negligence***; and in refusing the security offered by the owners in March 1996, was Fal's refusal malicious or grossly negligent.
>
> [emphasis added in bold italics]

97 The plaintiff contends that "actual knowledge or actual shutting of eyes to knowledge"[89] is required. I disagree – that is not the correct test in law. The key question is whether the action was so unwarrantably brought, or brought with so little colour, or so little foundation, that it rather implies malice on the part of the plaintiff, or that gross negligence which is equivalent to it (see [95] above). In answering that question, the court can and should consider the evidence *as a whole*, and if it finds that there was gross negligence implying malice (whatever may have been the state of *knowledge* of the arresting party), that would suffice to ground a claim for wrongful arrest and is indeed construed as the "equivalent" of malice in law.

98 I am also cognisant of the cautionary statement of Steven Chong J (as he then was) in *The "Xin Chang Shu"* [2016] 1 SLR 1096 ("*The "Xin Chang Shu"*") at [3]:

> Ship arrest is an extremely draconian remedy. It can be very disruptive and may inflict severe economic hardship on the shipowner's trade and operations. *In order for the protection against this draconian measure to be meaningful and effective, the judicial threshold should not be set too high so as to render the right to damages practically illusory.*
>
> [emphasis added]

89 Plaintiff's Reply Submissions at paras 114–117.

99 In my view, the present case is one where the threshold was crossed and damages for wrongful arrest should be awarded. I elaborate below.

Application to the facts

100 As a starting point, the plaintiff concedes that there was undoubtedly negligence on its part.[90] That was a concession rightly made as the plaintiff was, in my view, indubitably negligent – indeed, I found as much when I heard the defendant's application to strike out the claim and set aside the arrest: *The "Jeil Crystal"* (HC) at [26]. Checking that it was in fact in possession of the First Set BLs was a basic and fundamental step the plaintiff had to take – and take properly – before it even contemplated commencing an action *in rem* against the Vessel and applying to arrest the Vessel as security for the plaintiff's alleged claim against the defendant (*ie*, for misdelivery of the Cargo without production of the original First Set BLs). The very legal basis for the plaintiff to sue for misdelivery hinged on it being the lawful holder of the First Set BLs at the time this action was commenced.

101 It is to be noted in this regard that the plaintiff effectively conceded that had it known (prior to ADM 256 being commenced) that the First Set BLs were no longer in its possession, it would not have initiated the *in rem* action or arrested the Vessel:[91]

> [Mr Rousseau] If we had -- if we had checked, we would obviously checked and ascertained that, in fact, we did not have what we thought we had, ie, the original BLs. Then, obviously, we would never have initiated this action.
>
> Q. You would agree that if it had been ascertained then that the bank did not have the original bills of lading, you would have

90 Plaintiff's Reply Submissions at para 112.

91 Transcript, 12 July 2023, p 15 ln 11–20.

> taken steps to instruct the release of the owner's arrested vessel; would you not?
>
> A. Yes, of course.

102 The critical question before me is whether the plaintiff applied its mind to whether it could legitimately arrest the Vessel prior to doing so. In my judgment, the evidence demonstrates that the plaintiff *did not*. The failings in this case were quite shocking, particularly for a financial institution like the plaintiff. The plaintiff essentially relied on the word of one individual, Mr Sebastien Devaud ("Mr Devaud"), that the plaintiff was in possession of the First Set BLs at the time ADM 256 was contemplated. Mr Devaud was the plaintiff's relationship manager for GP Global at the material time, and who has since left the plaintiff's employ.[92] According to Mr Rousseau:[93]

> At that time when I prepared the letters, I had asked for the documents corresponding to all the floating shipments, especially the Bills of Lading relating to the shipments. I was given the documents by Sebastien Devaud which included the copy of the Bills of Lading.

The reference to "the letters" was a reference to the letters sent to the Master of the Vessel and the defendant (referred to above at [23]). The manner of "checking" whether the plaintiff still possessed the First Set BLs appears to be, at best, perfunctory:[94]

> Q. Did you ask Sebastien Devaud for these documents? He gave them to you, but did you ask him for it?
>
> A. Well, I went and see Sebastien Devaud because we're in the same building, it was very easy to interact and I was basically working with him on a daily basis, and the transaction being -- well, rather, the case taken as a whole, the GP Global case being very complex with several live outstanding transaction and

92 Transcript, 11 July 2023, p 71 ln 8–9.

93 AEIC of Julien Sebastien Frederic Rousseau at para 25.

94 Transcript, 11 July 2023, p 106 ln 22–p 107 ln 8.

> floating cargoes, so I -- I asked him what was the floating cargoes that we needed to consider, and following that line of thought, I asked him to provide me with the BL.

103 It must be highlighted that Mr Rousseau knew that Mr Devaud would only have the *copies* of the First Set BLs, and not the originals. Mr Rosseau was aware that the originals were kept in Mr Maillart's back office:[95]

> Q. … obviously Sebastien gave you some documents and Sebastien is front office.
>
> A. Yes … The shipment documents would be kept – in particular, the original would be kept at Philippe Maillart's department, back office, including the bills of lading. … in effect, original documents would not be kept at front office, it would be kept at back office with Philippe Maillart.

104 Evidently, Mr Rousseau never saw nor asked to see the originals of the First Set BLs. Neither did he approach Mr Maillart to confirm that the plaintiff still possessed the First Set BLs or to ask Mr Maillart to confirm that he had actually seen the originals:[96]

> Q. … earlier on in evidence, I think Maillart had said that they do keep a copy of the endorsed bill of lading. That much, I remember. But you didn't see this -- copy of the endorsed bill of lading, is it?
>
> A. No, because I did not – like I said, I only interacted with front office, who was my natural interlocutor by reason of my position and my kind of work, and I don't really interact and I don't talk with Philippe Maillart unless the matter becomes particularly intricate or technical, which for me was not the case here.

105 In my view, it cannot be that such a perfunctory check with Mr Devaud (whom Mr Rousseau knew would not have the originals of the First Set BLs) is all that is required for the plaintiff to say it held an honest belief that the First Set BLs were in its possession or had applied its mind to this absolutely critical

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95 Transcript, 11 July 2023, p 110 ln 14–p 111 ln 5.

96 Transcript, 11 July 2023, p 126 ln 16–p 127 ln 2.

point on which the plaintiff's right to sue depended. Applying one's mind requires a *proper* application of the mind, and not simply that the thought may have crossed someone's mind. Even so, it appears that in this case, it did not occur to *anyone* within the plaintiff's organisation responsible for the commencement of ADM 256 that they should have *verified* for themselves that the plaintiff did in fact possess the First Set BLs. In my view, it is also unsatisfactory that Mr Devaud did not give evidence in ADM 256, with the result that the court was not apprised of the reason why or how Mr Devaud allegedly came to the conclusion that the First Set BLs were still with the plaintiff at the time ADM 256 was launched and the Vessel arrested. Mr Devaud's explanation would have been material, especially since it was Mr Devaud who agreed to dispatch the First Set BLs to GP Global on 25 June 2020,[97] as part of the plaintiff's self-liquidating transaction.

106 Further, no evidence was led by the plaintiff as to any of its internal procedures, processes, or records for keeping track of important documents of title such as bills of lading; nor was there any evidence of any internal records by which the plaintiff could or did keep track of whether such documents were still with the plaintiff or had been released. As a major trade financing bank, one would expect the plaintiff to have systems in place to check in respect of a particular financing transaction if documents negotiated under a letter of credit were still in its possession and, if so, what those documents were. The absence of any evidence on this point is also unsatisfactory.

107 The Court of Appeal in *The "Jeil Crystal"* (CA) raised doubts as to whether the plaintiff's mistake in claiming to be the holder of the First Set BLs when ADM 256 was commenced was a mere innocent lapse and whether the

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97 PM at para 66; 1-AB at pp 475–476.

plaintiff could have held an honest belief that it had the original First Set BLs (at [58]). Having heard the plaintiff's evidence at trial, I am similarly not persuaded on those points. The plaintiff's allegedly honest belief was founded entirely upon a perfunctory check with Mr Devaud who, as I mentioned above, did not give evidence at trial. As I also mentioned above, no one in the plaintiff's organisation (including its legal counsel, Mr Rousseau) actually checked or verified that the originals of the First Set BLs were in fact with the plaintiff. Even the task force that was established by the plaintiff to discuss the arrest of vessels connected to GP Global following its collapse[98] – which comprised senior trade finance documentation experts in the plaintiff's organisation[99] – did not appear to take any steps to properly verify this crucial threshold element of the plaintiff's cause of action in coming to its decision to arrest the Vessel. In the circumstances, it is difficult to see how the plaintiff can credibly claim to have held an honest belief that (or properly applied its mind to whether) it was entitled, as lawful holders of the First Set BLs, to commence a claim in ADM 256 for misdelivery of the Cargo and arrest the Vessel to obtain security for that claim.

108 In addition, the fact that the transaction was, on the plaintiff's own case, of a self-liquidating nature (see [64] above) should itself have put the plaintiff on guard to properly check and verify if it indeed had the originals of the First Set BLs, prior to commencing ADM 256 and applying for a warrant of arrest against the Vessel. That there may have been an element of urgency due to GP Global's insolvency or several transactions with GP Global that the plaintiff bank was looking at does not afford the plaintiff an excuse. In applying for a warrant of arrest against the Vessel, the plaintiff was seeking to invoke a

98 Transcript, 11 July 2023, p 113 ln 11–14.

99 Transcript, 11 July 2023, p 115 ln 19–p 116 ln 4.

powerful remedy that could be described as a nuclear weapon in an admiralty claimant's arsenal – I hark back to the cautionary statement of Chong J (as he then was) in *The "Xin Chang Shu"* (see [97] above). Thus, even if the plaintiff could only exhibit *copies* of the First Set BLs (rather than the originals themselves) in the affidavit filed in support of its application for WA 39, it was incumbent on the plaintiff to check and verify that it still had the originals of the First Set BLs in its possession at the very least. Indeed, as the plaintiff fairly conceded, had it known that the original First Set BLs were no longer in its possession, it would not have initiated the *in rem* action or arrested the Vessel (see [101] above).

109 The plaintiff's conduct after the arrest of the Vessel is even more troubling and, in my view, indicative of the plaintiff's lackadaisical and grossly negligent conduct in arresting the Vessel. I have detailed the relevant post-arrest events at [24]–[29] above but for good order, I would again highlight the following undisputed facts.

110 On 12 October 2020 (after the Vessel had been arrested), the defendant's English solicitors Penningtons Manches Cooper LLP sought clarification from the plaintiff's solicitors on whether the plaintiff was in possession of the original First Set BLs given that the defendant had advised that those bills of lading had been cancelled, marked "null and void" and were in the defendant's possession.[100]

111 On 13 October 2020, the plaintiff's solicitors replied that they were instructed that the plaintiff *was* in possession of the original First Set BLs.[101]

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100 2-AB at pp 930–931.

101 2-AB at pp 968–969.

Given that it has now been established at the trial, as a matter of fact, that *none* of the First Set BLs were in the plaintiff's possession at that point in time, the plaintiff's response could only mean one of two things: (a) the plaintiff was lying; or (b) *despite* being put on notice of the defendant's position that *the defendant* (and not the plaintiff) was in possession of the First Set BLs (which had been marked null and void), the plaintiff's representatives *still failed* to check the plaintiff's records or with Mr Maillart to verify that the First Set BLs were indeed still in the plaintiff's possession. Yet, and even more egregiously, on 4 November 2020, the plaintiff filed its statement of claim *still asserting* that it was in possession of the First Set BLs as lawful holders.

112 On 10 November 2020, the defendant filed a notice to produce documents referred to in pleadings, requesting the plaintiff to produce for its inspection the First Set BLs.[102] In its reply dated 16 November 2020, the plaintiff's solicitors indicated that they were "taking steps to request the Plaintiffs to send the "*original Bill of Lading*" to the Plaintiff's solicitors, and will notify the Defendants' solicitors when it is available for inspection" [emphasis in original].[103] This response was quite clearly giving the impression that the plaintiff *did in fact* have the original First Set BLs and was making arrangements for them to be sent to the plaintiff's solicitors in Singapore to facilitate inspection by the defendant's solicitors. That impression given by the plaintiff was misleading to say the least. The plaintiff's inability and/or refusal to produce the First Set BLs dragged on. On 10 and 18 December 2020, the defendant's solicitors wrote to the plaintiff's solicitors requesting, yet again, for the plaintiff to produce the First Set BLs for their inspection.[104] The plaintiff's

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102 3-AB at pp 1154–1155.

103 3-AB at pp 1158–1159.

104 3-AB at pp 1199, 1216.

solicitors responded on 22 December 2020, stating among other things that they were still taking their clients' instructions on the matter.[105]

113 It was only on 9 January 2021 that the plaintiff's solicitors informed the defendant's solicitors that the First Set BLs were "**not** available for inspection" [emphasis in original], although this was not accompanied by any explanation.[106] On 15 January 2021, the plaintiff filed its reply and defence to counterclaim, acknowledging that it had, in late June 2020, voluntarily released the First Set BLs to GP Global pursuant to the latter's request but did not know that the request was for the purpose of switching the bills of lading.[107] On 4 February 2021, the plaintiff applied *vide* SUM 586 to amend its statement of claim to abandon its original claim for misdelivery of the Cargo.[108] In the affidavit supporting that application, Mr Rousseau plainly admitted that the plaintiff had arranged for the First Set BLs to be delivered to GP Global and thus did not have possession of them when ADM 256 was commenced.[109]

114 In my judgment, the overall tenor of the evidence demonstrates the plaintiff's near-total disregard for whether it was in fact in possession of the First Set BLs when it arrested the Vessel. To be clear, in coming to this conclusion, I have only assessed the evidence as at the date the Vessel was arrested on 11 October 2020 since that is the relevant point in time at which to assess the plaintiff's state of mind as far as wrongful arrest is concerned. But the evidence demonstrates that this attitude persisted even *after* the defendant

105 3-AB at pp 1220–1221.

106 3-AB at p 1261.

107 Reply and Defence to Counterclaim dated 15 January 2021 at paras 3(j), 3(m).

108 Summons for Amendment dated 4 February 2021.

109 LJH-1 at para 93.

had put to the plaintiff that the plaintiff was *not* in possession of the original First Set BLs. In my judgment, this case is a quintessential example of an arresting party failing to properly apply its mind to whether it could legitimately arrest the Vessel. It bears reiterating that the very foundation and substratum of the plaintiff's original claim was that the plaintiff was the lawful holder of the First Set BLs and therefore had a claim against the defendant for misdelivery of the Cargo – that initial claim, upon which the arrest was premised, was *not* for the alleged wrongful switching of bills.

115 Having considered the evidence as a whole, I find that on the balance of probabilities, there was gross negligence implying malice on the part of the plaintiff when it arrested the Vessel. Accordingly, I find and hold that the plaintiff is liable to the defendant for wrongfully arresting the Vessel.

116 I deal with a final point before I turn to the question of damages. Contrary to the plaintiff's submissions,[110] I disagree that there is any question of the defendant seeking a "second bite of the cherry". With respect to the defendant's earlier application to set aside the arrest and for damages for wrongful arrest in HC/SUM 599/2021, the question of damages for wrongful arrest did not even arise because I declined to set aside the warrant of arrest: *The "Jeil Crystal"* (HC) at [26]. Even though the Court of Appeal eventually set aside the warrant of arrest, it also did not have to decide the issue of wrongful arrest because that issue was not a live one in the appeal. Accordingly, the question of whether the arrest was wrongful has not yet been determined by the court and in fact has thus far not arisen for any court's determination. There is therefore nothing to prevent the defendant from now seeking damages for wrongful arrest by way of its counterclaim in ADM 256, and this court has had

[110] Plaintiff's Closing Submissions at paras 189–192.

the benefit of the evidence given by witnesses from both sides during the trial relevant to the defendant's wrongful arrest claim.

Damages for wrongful arrest

117 The defendant avers that it has suffered and is entitled to the following damages:[111]

S/N	Head of damages	Amount
(a)	Bunker consumption	US$12,380.16
(b)	Voyage cancellation	US$114,000.00
(c)	Loss of use of the Vessel	US$110,000.00
(d)	Additional port charges	S$1,664.00
(e)	Interest on the security furnished by way of payment into court to secure the release of the Vessel	US$28,885.97
	Total	US$265,266.13 + S$1,664.00

Bunker consumption

118 The plaintiff contends that when the Vessel was in port during the period of the arrest, she would have burnt the bunkers remaining on board instead of the new bunkers which were supplied in Singapore. According to the plaintiff,

[111] Defendant's Closing Submissions at para 147; Further and Better Particulars (Amendment No. 1) of the Defence and Counterclaim (Amendment No. 1) re-dated 9 July 2021 at para 2.

the defendant's claim is ill-founded as it is a claim for consumption of the fresh bunkers taken on board in Singapore.[112]

119 In my view, the plaintiff's objections have no merit. First, no evidence was led by the plaintiff to support its contention that the Vessel would first burn her existing bunkers remaining onboard and not the new bunkers, that the new bunkers would be stored in bunker tanks separate from those containing the existing bunkers, or that the quality of the new bunkers was different from that of the existing bunkers. These questions were put to the defendant's witness, Mr Lee, during cross-examination[113] but, as it turned out, there was no positive evidence from the plaintiff to back them up. To that extent, I am of the view that the questions and contentions raised by the plaintiff are speculative. On the other hand, the defendant adduced some evidence that Low Sulphur Fuel Oil, which was the bunkers remaining on board when the Vessel arrived in Singapore, and Very Low Sulphur Fuel Oil, the bunkers that were taken on in Singapore, are used interchangeably by some traders and would, in the present case, be a distinction without a difference.[114]

120 It is not disputed by the plaintiff that the Vessel did burn bunkers during the period it was detained in Singapore. There is also no dispute on the quantity of bunkers consumed by the Vessel during the period of arrest, or at least the plaintiff did not seriously challenge the defendant's evidence in that respect. The evidence adduced by the defendant of the costs of the bunkers stemmed in Singapore is sufficient evidence of the costs of the bunkers on board at the time

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112 Plaintiff's Closing Submissions at paras 231–234.

113 Transcript, 19 July 2023, p 12 ln 2–p 16 ln 4.

114 LJH-1 at para 112(c); 3-AB at p 993; Transcript, 19 July 2023, p 13 ln 22–23.

of the arrest.[115] It was not seriously contended that the costs of the remaining bunkers was significantly different from that of the new bunkers. It was open to the plaintiff to seek the records from the Vessel of her last bunkering prior to the one in Singapore, which would have demonstrated the price of the bunkers remaining on board prior to bunkers being taken on in Singapore. However, the plaintiff did not take it upon itself to do so.

121 Based on the available evidence and the defendant's calculations, I am satisfied on the balance of probabilities that this head of damages should be allowed as claimed.

Additional port charges

122 It does not appear that the plaintiff is contesting this head of damages, given that it made no submissions on the matter in its main and reply closing submissions. In any event, I find that this head of the defendant's claim is made out. Accordingly, I allow this head of damages as claimed for the sum of S$1,664.00.

Voyage cancellation

123 The plaintiff does not seriously dispute this head of loss. The plaintiff's main grievance is that claiming losses from voyage cancellation *and* loss of use amounts to double-counting, which I address in the next section.

124 This head of damages is accordingly allowed as claimed for the sum of US$114,000.00.

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115 LJH-1 at paras 113–114; 3-AB at p 992.

Loss of use of the Vessel

125 The defendant submits that it is also entitled to damages for its loss of use of the Vessel for 11 days at a time charter rate of US$10,000.00 per day.[116] According to the defendant, one consequence of the arrest was that it did not and could not commence negotiations and/or be engaged with other potential charterers of the Vessel.[117]

126 I reject this submission. First, there is no evidence supporting it and accordingly it is a bare statement. Mr Lee's AEIC does not state that the defendant could not commence or engage in any negotiations with other charterers because of the arrest. All that Mr Lee's AEIC states is that Gideon Agri Pte Ltd ("Gideon Agri") had chartered space onboard the Vessel amounting to 3,000MT of cargo[118] and that the Vessel has a dead weight tonnage ("DWT") of 11,616 DWT.[119] Based on a market report dated 5 October 2020 provided by Eastport Maritime, a shipbroking and consultancy company, a vessel with a DWT of about 13,000 with epoxy coated cargo tanks could command a daily time-charter rate of about US$9,000 per day. Extrapolating from this, Mr Lee estimated that the daily time-charter rate for the Vessel was US$10,000 at the material time.[120] There is no mention in Mr Lee's AEIC that the defendant lost the opportunity to commence negotiations with other charterers because of the arrest of the Vessel by the plaintiff. There is also no mention of this in the defendant's further and better particulars of its defence and counterclaim.

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116 Defendant's Closing Submissions at para 159.

117 Defendant's Closing Submissions at paras 157–158.

118 LJH-1 at para 115.

119 LJH-1 at para 126.

120 LJH-1 at paras 127–128.

127 As I see it, there are two main problems with the defendant's case on this head of damages. First, the defendant's estimate of a US$10,000 per day time-charter rate appears to be for the *whole* Vessel (*ie*, on the basis of the market rate for a 11,616 DWT tanker). Therefore, to claim the loss of use at that rate *and* the loss of freight for the 3,000MT chartered by Gideon Agri would, in my view, involve some degree of double-counting.

128 Second, it does not seem logical to me that the defendant would not have commenced negotiating for other potential charters of the Vessel even when the Vessel was already on her way to Singapore prior to her arrest. Yet, the defendant did not provide any evidence of such prior negotiations in respect of chartering the remaining cargo carrying space on the Vessel. The stopover in Singapore would have been a fairly brief one as it was only for the purposes of taking on fresh bunkers.[121] The laycan for loading at Gresik, Indonesia under the Gideon Agri charterparty was 13 to 17 October 2020.[122] The charterparty with Gideon Agri was *concluded* on 8 October 2020, but it stands to reason that negotiations must have commenced earlier, although the defendant did not disclose evidence showing when negotiations with Gideon Agri had commenced. Further, based on the Vessel's itinerary under the Gideon Agri charterparty, she would have been engaged for the whole month of October, with the delivery range at China estimated to be between 26 and 30 October 2020.

129 Given these arrangements with the Vessel, if there were indeed any plans for the chartering of the remaining cargo carrying space on the Vessel during or around the period of her arrest, it is more likely than not that there

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121 Transcript, 19 July 2023, p 13 ln 6–8.

122 2-AB at pp 810–812.

would have been some evidence of the negotiations (*eg*, emails/WhatsApp inquiries or exchanges evidencing negotiations) either in early October 2020 or perhaps even dating back to September 2020. In the absence of any such factual evidence, there is in my view no basis for pursuing the loss of use claim, which is based on little more than bare assertions.

130 I also note that in the further and better particulars of the defence and counterclaim, the defendant claims loss of use "[f]urther and/or in the alternative" to its claim for the voyage cancellation.[123] This suggests that the defendant acknowledges that these claims might only rightly be claimed in the alternative.

131 I therefore disallow the claim for loss of use.

Interest on the security furnished by way of payment into court to secure the release of the Vessel

132 The defendant did not adduce any evidence of the interest that it could have earned had the security amount not been paid into court. There is only one paragraph in Mr Lee's AEIC that is devoted to this, and even then, no figures are provided as regards interest – all Mr Lee says about this head of claim is that during the period the security amount was in court, the defendant "did not have access" to this sum which "could have been used for its daily operations" and that the security amount "came from the Defendant's own cash reserves". Neither does Mr Lee explain the basis upon which this head of damage is advanced. Some breakdown and explanation is given in the Further and Better Particulars of the defendant's Defence and Counterclaim (Amendment No. 1),

123 Further and Better Particulars (Amendment No. 1) of the Defence and Counterclaim (Amendment No. 1) re-dated 17 July 2023 at para 2(c)(i).

but there is no evidence provided as to the pleaded "average monthly interest of 0.9816%".[124]

133 The defendant included a document in the Supplementary Agreed Bundle of Documents that appears to provide some information on US Dollar currency deposit interest rates offered by Busan Bank, which is a Korean bank.[125] I place no weight on this document for two reasons. First, its provenance is unknown and unexplained. Second, I also question its relevance or probative value as the document appears to be indicative of deposit interest rates in September 2022 for US Dollars, whereas the security was furnished by the defendant in Singapore Dollars. Accordingly, the figure claimed by the defendant of US$28,885.97 is not supported by any objective relevant evidence.

134 Unexplained figures aside, the defendant's pleaded case in its further and better particulars is inconsistent with Mr Lee's evidence. As I mentioned above, Mr Lee's evidence is that the security amount "could have been used by the Defendant in its daily operations".[126] However, the defendant's pleaded case is that but for the arrest, the defendant could have earned interest by leaving the security amount in an interest-earning account with Busan Bank for the period of 19 October 2020 to 12 September 2022.[127] Thus, the defendant's pleaded case is at odds with the evidence adduced by Mr Lee at trial.

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124 Further and Better Particulars (Amendment No. 1) of the Defence and Counterclaim (Amendment No. 1) re-dated 17 July 2023 at para 2(e).

125 S-AB at pp 70, 72.

126 LJH-1 at para 132.

127 Further and Better Particulars (Amendment No. 1) of the Defence and Counterclaim (Amendment No. 1) re-dated 17 July 2023 at para 2(e).

135 This was a head of loss that had to be specifically pleaded and proven, but the defendant has failed to do so. I therefore disallow recovery for this head.

136 Finally, the plaintiff argues that the defendant had other means of furnishing security (*eg*, by producing a letter of undertaking from the defendant's P&I Club, known in short as the Japan P&I Club), and therefore the defendant should not be entitled to claim the cost of providing the security to the plaintiff by way of a cash payment into court.[128] While I have my doubts on the merits of the plaintiff's arguments, it is not necessary for me to express any definitive views on them in light of my decision to disallow recovery for this head of loss.

Conclusion on damages claimed

137 For the reasons given above, I award the defendant damages in the sum of US$126,380.16 and S$1,664.00 as tabulated below:

S/N	**Head of damages**	**Amount**
(a)	Bunker consumption	US$12,380.16
(b)	Voyage cancellation	US$114,000.00
(c)	Additional port charges	S$1,664.00
	Total	US$126,380.16 + S$1,664.00

[128] Plaintiff's Closing Submissions at para 239.

Conclusion

138 In *The "Jeil Crystal"* (CA), the Court of Appeal made the following comments in the concluding paragraph of its judgment (at [61]):

> Finally, we also note that [the plaintiff's] amended claim in ADM 256 has raised interesting questions as to whether a *former holder* of a bill of lading like [the plaintiff], who has released and endorsed the bill of lading to the shipper, could nevertheless maintain a claim against the carrier in relation to the cargo shipped under that bill of lading and whether a carrier (contractually or in its capacity as a bailee of those goods) has an obligation, before effecting a switch of those bills, to obtain consent to the switch from a *former* holder of the bill of lading, where the former holder had *consented* to the release and endorsement of the bill of lading which facilitated the switching of the bills of lading in the first place. These are some of the interesting legal questions that [the plaintiff] would have to address at the trial of the substantive action.
>
> [emphasis in original]

139 In its closing submissions, the plaintiff attempted to persuade me that the Court of Appeal's comments above, in particular describing the plaintiff as the "former holder" of the First Set BLs, mischaracterised the plaintiff's true position, namely that its cause of action arose and persisted from the moment the First Set BLs were issued and/or when it became the lawful holder of the First Set BLs.[129] I disagree. In my view, the Court of Appeal captured succinctly the essence of what this claim is about. This remains so notwithstanding that the plaintiff has sought to shift the goalposts somewhat in its subsequent iterations of its statement of claim, which in any event were to no avail.

140 For the reasons detailed above, I dismiss the plaintiff's claims and consequently, also dismiss this action. I partially allow the defendant's counterclaim for damages for wrongful arrest and grant judgment in the

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129 Plaintiff's Closing Submissions at para 81.

defendant's favour on its counterclaim for the sum of US$126,380.16 and S$1,664.00. Interest on these amounts is to accrue at the rate of 5.33% *per annum* from 21 October 2020 (*ie*, the date the Vessel was released from arrest) to the date of this judgment.

141 I will hear the parties on costs separately.

S Mohan J
Judge of the High Court

Liew Teck Huat and Phang Cunkuang (Niru & Co LLC) for the plaintiff;
Tan Chai Ming Mark, Ahn Mi Mi, Genesa Tan Yun Ru and Tan Zu Er Joey (Focus Law Asia LLC) for the defendant.

Annex A: Copy of one original of the First Set BLs

CODE NAME "CONGENBILL" EDITION 1994

Shipper
IRPC PUBLIC COMPANY LIMITED
555/7 ENERGY COMPLEX, BUILDING B,
8TH FLOOR, VIBHAVADI RANGSIT ROAD,
CHATUCHAK, BANGKOK 10900, THAILAND

Consignee
TO ORDER OF BANQUE CANTONALE DE GENEVE

Notify Party
STANDARD ASIATIC OIL COMPANY LTD.
GUAPTAKHAL, PATENGA, CHITTAGONG 4205, BANGLADESH
(BIN NO. 000225553-0501) AND JAMUNA BANK LTD.
AGRABAD BRANCH, FROX TOWER (2ND FLOOR), 92, AGRABAD
C/A, CHITTAGONG, BANGLADESH (BIN NO. 001901948-0202)

Vessel
" JEIL CRYSTAL "

Port of loading
RAYONG PORT, THAILAND

Port of discharge
CHATTOGRAM SEAPORT, BANGLADESH

BILL OF LADING

TO BE USED WITH CHARTER-PARTY

B/L NO. EX 384/2020

ORIGINAL

Marks & Nos	Description of goods	Quantity
NO MARKS	BASE OIL BS 150	1,920.365 MT 1,890.035 LONG TONS 13,396 US BARRELS AT 60 DEG F.
	GOODS ORIGIN : THAILAND PACKING : IN BULK CLEAN ON BOARD	

Freight and Charges

"FREIGHT PAYABLE AS PER CHARTER PARTY "

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Number of original B/L

THREE (3/3)

Place and date of issue

RAYONG PORT, THAILAND
JUNE 13, 2020

SHIPPED at the Port of Loading in apparent good order and condition on board the Vessel for carriage to the Port of Discharge or so near thereto as she may safely get the goods specified above.
Weight, measure, quality, quantity, condition, contents and value unknown.

IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.

Signature

CAPT. KU CHUN U
AS MASTER OF " JEIL CRYSTAL "

Annex B: Copy of one original of the Switch BLs

BILL OF LADING

FIRST ORIGINAL

Shipper

GP GLOBAL APAC PTE. LTD.
8 TEMASEK BOULEVARD, NO.24-03,
SUNTEC TOWER 3,SINGAPORE 038988

Consignee

TO THE ORDER OF JAMUNA BANK LTD
AGRABAD BRANCH,FROX TOWER (2ND FLOOR),92,AGRABAD C/A,CHITTAGONG,BANGLADESH

Notify Party

1)STANDARD ASIATIC OIL COMPANY LTD. GUPTAKHAL,
PATENGA, CHITTAGONG 4205 BANGLADESH
2) JAMUNA BANK LTD.,AGRABAD BRANCH,
FROX TOWER(2ND FLOOR), 92 AGRABAD C/A,CHITTAGONG, BANGLADESH

On board the Tanker M/T JEIL CRYSTAL Loading Completed Dated 13TH JUNE., 2020 Voy. 2007C

Port of Loading RAYONG SEAPORT THAILAND

Port of Discharge CHATTOGRAM SEAPORT,BANGLADESH

Shipper's description of cargo quantity in bulk

COMMODITY : BASE OIL BS 150
PACKING : IN BULK
FREIGHT PAYABLE AS PER CHARTER PARTY
A. H.S.CODE NO.2710.19.21
B. LCA FORM NO. JBL-96402
C. TIN NO.199232408996,
D. APPLICANT BIN NO.000225553-0503
E. ISSUING BANK BIN NO.001901948-0202
L/C NO. : 30382001 0064 DATED : 14.05.2020

QUANTITY:
1,920.365 MTS

WEIGHT SAID TO BE:

OCEAN CARRIAGE STOWAGE

Issued pursuant to Charter Party dated AS PER CHARTER PARTY BETWEEN AS PER CHARTER PARTY

AND AS PER CHARTER PARTY as Charterer, and all the terms whatsoever of the said Charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment.

FREIGHT & CHARGES

Freight payable at as per Charter-Party above.

"This shipment of long tons (Metric tons) was loaded on board the vessel as part of one original lot of ( ) long tons (metric tons) stowed in ( ) with no segregation as to parcels. For the whole shipment sets of bill(s) of lading have been issued, for which the vessel is relieved from all responsibilities to the extend it would be if one set only would have been issued.
Cargoes were commingled at the request, risk and liability of the shipper. Neither the vessel nor the Owners or their agents assume any responsibility whatsoever for the consequences of the commingling nor for any consequences of the separation of the commingled cargo at the time of delivery.
The Vessel undertakes to deliver only that portion of cargo actually loaded, which is represented by the percentage that the total amount specified in the Bill (s) of Lading bears to the total of the commingling shipment delivered at destination."

The Vessel weight, measure, quality, quantity, condition, contents and value unknown for carriage to the Port of Discharge or so near thereto as she may safely get, always afloat, the goods specified above.
The Shipper, Consignee, Owner of the cargo and Holder of the Bill of Lading shall be liable for and shall indemnify the Carrier or Vessel for all fines and/or losses which the Carrier may incur or have incurred pertaining to or arising from any non-observance of any customs house and/or import/export requirements.
Copy of the Charter may be obtained from the Shipper or Charterer. The freight is earned concurrent with loading, ship and/ or cargo lost or not lost or abandoned and shall not be refunded if the cargo is lost.
In the event that the Charterers fail to pay the agreed freight within the agreed period, the Carrier shall have the right to charge 1.5% interest per month in addition of the outstanding freight against the Charterers.
The Carrier shall have an absolute lien on the cargo for all freight, dead freight, demurrage/ detention and costs/expenses including attorney's fees of recovering the same and for all other amounts due under the Charterparty, which lien shall continue after delivery of the cargo into the possession of the Charterer or of the Holders of any Bills of Lading covering the same, or of any storagemen. The Carrier shall be entitled to sell the goods privately or by auction to cover any amounts due including but not limited to all costs, expenses and legal fees.

In Witness whereof, the Master has signed (THREE) Bills of Lading all of this tenor and date, any one of which being accomplished the others shall be void.
Issued at SINGAPORE AS AT RAYONG,THAILAND this 13TH day of JUNE., 2020

for and on Behalf of the Master

SEANCO PTE LTD
AS AGENT FOR AND ON BEHALF OF
THE MASTER OF M/T JEIL CRYSTAL: CAPT. KU CHUN U

SEANCO PTE LTD AS AGENTS ONLY

B/L NO.
EX 384/2020

For Conditions of Carriage see overleaf.