IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 276

Adm in Rem 139/1998

Between

Petromar Energy Resources Pte Ltd

… Plaintiff

And

The Owners of the Ship or Vessel "Epic"

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Petromar Energy Resources Pte Ltd v The Owners of the Ship or Vessel "Epic"

[1999] SGHC 276

Adm in Rem 139/1998
Lai Siu Chiu J
19 October 1999

JUDGMENT:

Cur Adv Vult

The facts

1. Petromar Energy Resources Pte Ltd (the plaintiffs) are a Singapore company whose principal activities are wholesale trading and in particular they act as oil brokers. One of their directors is Michael Tziolas (Tziolas) whose wife Irene is the other director. Prior to incorporating the plaintiffs in June 1995 (and its related company Petromar Enterprises Inc in November 1994), Tziolas was an oil trader for almost 16 years with an American oil company (until he left in February 1995). The defendants are a Maltese ship-owning company called Crest Shipping Ltd. At the material time,

by a time charterparty dated 6 November 1997 (the charterparty) the defendants chartered the vessel "**Epic**" (the vessel) to a Liberian company called Metro Bunkering & Trading Company (Metro).

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2. On 31 January 1998, the plaintiffs entered into a contract (the contract) with Sanko Oil Pte Ltd (the sellers) to purchase 20,000 metric tons of fuel oil HSFO 180CST (the fuel oil).

3. Under the terms of the contract, title and risk in the fuel oil passed to the plaintiffs at the loading port which was the Van Ommeren Terminal, off Singapore. Further, the plaintiffs were to and they did, nominate a ship namely the vessel which they had sub-chartered from Metro, pursuant to a spot (voyage) charterparty dated 10 February 1998 (the spot charter). The plaintiffs were required to pay US$42,804.91 to Metro as freight (the sub-freight) for shipping 19,024.406 metric tons of the fuel oil.

4. On 10 February 1998, the plaintiffs opened an irrevocable letter of credit (the LC) through their bankers Credit Lyonnais, Singapore (the Bank) in favour of the sellers. Under the terms of the LC, payment would be available 30 days from the bill of lading date against presentation of documents which included:

a. signed commercial invoices;

b. original ‘on board’ ocean bills of lading issued or endorsed to the order of the Bank and,

c. certificate of origin.

5. The fuel oil was loaded on the vessel on or about 14 February 1998, for discharge at Pulau Sebarok and the bill of lading (no. 3138) issued accordingly. However, on or about 16 February 1998, the Master of the vessel informed the plaintiffs that he had been instructed not to discharge the fuel oil. This was followed by a letter dated 16 February 1998 to the plaintiffs from the

defendants' (Greek) agents Dynacon Tankers Management Ltd (the agents) stating that Metro owed the defendants US$350,551 for charter hire, bunkers and port charges; the agents demanded payment of the sub-freight before the defendants would instruct the Master to discharge the fuel oil.

6. The plaintiffs (by Tziolas) telexed the agents on the same day (16 February 1998) indicating their willingness to pay to the defendants the outstanding sub-freight. In lieu of the original bill of lading (which was in the process of being negotiated as part of the L/C), Tziolas offered a letter of indemnity (LOI) in exchange for the discharge of the fuel oil. The agents replied by telex on the same day indicating that the plaintiffs would discharge the fuel oil upon notification by the Master of receipt of an irrevocable bank draft for US$42,804.91. Shortly thereafter however, the agents reverted to the plaintiffs to say that the defendants were exercising their lien '*not only on the sub-freight but also on the cargo for all amounts due to them under the charterparty*'; the amounts stated to be due consisted of US$194,878.12 for freight, US$46,020 for bunkers and US$70,000 in respect of port charges. The telex also stated that the agents had learnt '*to [their] great surprise, that Messrs Petromar is an affiliated subsidiary of [their] principals' debtor Metro…*'. The agents demanded payment of US$310,898.12 before the defendants would agree to the discharge of the fuel oil. Further, the defendants required presentation of the original bill of lading duly endorsed to the Master or in lieu thereof, a LOI signed by the plaintiffs and endorsed by the Bank as confirmation the latter undertook liability under the LOI.

7. On 17 February 1998, Tziolas sent a telex to the agents denying that the plaintiffs were an affiliate/a subsidiary of Metro; he stated that the plaintiffs would arrange with the Bank to furnish a LOI for the discharge of the fuel oil.

On the same day, the plaintiffs telexed a LOI to the agents duly countersigned by the Bank, covering the full price of the fuel oil; the plaintiffs reiterated that they would pay the sub-freight to the Master by way of a bank draft. Metro's local agents (Centinium) informed the agents separately that they had received funds from their principal to pay the outstanding port charges.

8. On or about 18 February 1998, the sellers presented the LC to their bankers (Deutsche Bank Singapore) for payment together with the documents listed in para 4 above including the original bill of lading which they endorsed in favour of the Bank. In turn, the Bank re-endorsed the bill of lading to the plaintiffs' favour.

9. As no response was received from either the defendants or the agents, the plaintiffs commenced these proceedings on 20 February 1998 and applied (ex-parte) to court on the same day for an order that the defendants release the fuel oil on terms. The court granted the application on condition that the plaintiffs furnish a banker's guarantee in the amount of US$270,000 to the defendants. The order of court was served on the vessel on 21 February 1998 despite which the defendants failed to release the fuel oil.

10. Consequently, on 25 February 1998, the plaintiffs applied to vary the order of court which was granted, to increase the banker's guarantee sum to US$577,564.36. The same was furnished to the defendants and the fuel oil was delivered to the plaintiffs on 27 February 1998. A day earlier, the defendants' solicitors had demanded US$430,139.29 before they would release the fuel oil to the plaintiffs.

The pleadings

11. The facts set out above were repeated in the plaintiffs' statement of claim wherein they prayed for damages against the defendants. They alleged that a collateral contract came into being as a result of the exchange of telexes between the plaintiffs and the defendants on 16 February 1998 – the defendants agreed to discharge the fuel oil to the Bank (for the plaintiffs' account) without production of the bills of lading, in consideration of the plaintiffs' agreement to indemnify the defendants and upon the plaintiffs' undertaking to pay to the defendants the sub-freight due to Metro by way of a draft from the Bank to be presented to the Master.

12. The plaintiffs alleged that by a subsequent telex dated 16 February 1998, the defendants wrongfully repudiated the collateral contract and wrongfully purported to exercise a lien on the fuel oil for an amount of US$310,898.12 allegedly due and owing to the defendants by Metro under a time charterparty. The plaintiffs averred that the purported lien, which was denied, was limited to freight payable by the plaintiffs to Metro under the spot charter and could not be exercised over the fuel oil as, the bill of lading did not incorporate the terms of the charterparty. If the defendants were otherwise entitled to exercise the lien (which the plaintiffs denied), the plaintiffs pleaded that the defendants' lien for the amount of US$310,898.12 was excessive.

13. The plaintiffs claimed that the defendants wrongfully detained and interfered with the fuel oil between 16 and 28 February 1998. In the alternative, the plaintiffs alleged that they tendered to the Master of the vessel a banker's draft in the sum of US$42,804.91 being the sub-freight due to Metro and a bank guarantee in the amount of US$240,898.12 to secure the defendants' alleged lien over the fuel oil. Wrongfully and in breach of the contract of carriage evidenced by the bill of lading, the defendants refused to discharge the fuel oil.

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In the premises, the defendants wrongfully detained the fuel oil between 21 and 28 February 1998.

14. The defendants denied the plaintiffs' allegations in their defence. However, they acknowledged that the fuel oil was discharged on 28 February 1998 when the plaintiffs presented the original bill of lading together with a banker's guarantee in the sum of US$577,564.36 to secure the defendants' lien over the fuel oil, founded on cl 26 of the charterparty which terms were incorporated in the bill of lading no. 3138. The defendants also denied they had wrongfully detained the cargo but admitted that the plaintiffs had tendered to the Master of the vessel a bank draft in the sum of US$42,804.91 on 21 February 1998.

15. In the alternative, the defendants alleged that the plaintiffs and Metro were one and the same legal entity such that Metro, not the plaintiffs, owned the fuel oil; the defendants particularised their allegation as follows:

> a. the defendants had produced a chart which showed that the plaintiffs and Metro are controlled by the Kilakos group of companies who own 65% of the shares in the plaintiffs and 100% of the shares in Metro;
>
> b. in the plaintiffs' financial statements for the year ended 1996, it was declared by the plaintiffs that Anita Holdings Ltd (Anita) of Liberia are its owner; Anita however, is controlled by the Kilakos group;
>
> c. the Kilakos group undertook to be responsible for a claim made by Glencore International AG in the English courts; one of the companies named in the Kilakos group was the plaintiffs. Further, Metro and Petromar Enterprises Inc shared office premises in Voula, Greece;
>
> d. the head of Metro's legal department in Greece had confirmed that the plaintiffs are an affiliated company;
>
> e the plaintiffs' director Tziolas had signed a letter in December 1997 on Metro's behalf for an oil contract. Another director Ioannis Kilakos, is a member of the Kilakos family which controls the Kilakos group;

> f. the plaintiffs, Petromar Enterprises Inc. and Metro Trading (USA) Inc. are listed in the Kilakos website as Metro's '*world-wide contacts*'. The plaintiffs' minority shareholder Edward Motte Griffen is the chief executive, president and sole shareholder of Metro Trading (USA) Inc.;
>
> g. it is common market knowledge that the names of 'Petromar' and 'Metro' are used interchangeably especially for futures and swap contracts;
>
> h. the voyage instructions were received by the Master of the vessel from Metro who advised that the voyage was fixed for account of Metro.

The defendants counterclaimed the charter-hire and other charges owing by Metro.

The evidence

(i) the plaintiffs' case

16. The plaintiffs called the Bank's regional manager for its Singapore branch to testify. Charles Maulino (Maulino) confirmed he had sent on the Bank's behalf a telex dated 10 February 1998 (PB32) to Deutsche Bank Singapore, the sellers' bankers. The telex set out the LC terms established by the plaintiffs in favour of the sellers in the sum of US$176,000, covering 20,000 mt of the fuel oil, plus or minus 5%. He added that the LC was negotiated by the sellers subsequently.

17. On the Bank's behalf, Maulino (together with Sheena Kwan, the head of operations) sent a telex on 17 February 1998 to the agents; the telex was carbon copied to the defendants and to Metro. In this telex, the Bank confirmed they countersigned the plaintiffs' letter of indemnity to the defendants for the discharge of the fuel oil from the vessel without production of the original bill of lading. The Bank quoted the text of the plaintiffs' letter of indemnity together

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with their undertaking to pay the sub-freight of US$42,804.91 to the defendants, by way of a bank draft to be delivered to the Master. The Bank concluded the telex with the following paragraph:

> This telex message is the operative instrument and no mail confirmation will follow.

the reason (according to Maulino) being that the Bank could not put a signature on the telex.

18. Maulino was certain the telex was received by the agents because its answer back code **Dyna GR** appeared after the telex was sent. He added that it was common industry practice for banks to furnish letters of indemnity by telex; such a telex is considered a binding commitment by the Bank as the names of its officers were stated; the Bank did not receive any response to the telex.

19. Maulino was referred to a fax which his assistant Marie-Christine Papon sent to the agents on 19 February 1998 inquiring whether the LOI in the telex form was acceptable to the defendants. Maulino confirmed it was indeed sent because the Bank's fax transmission result report showed the agents' telephone number which received the telex and the remark *'ok'* against the column *'result'*. Cross-examined, Maulino agreed that the transmission result did not mean that the agents received the fax, only that it was transmitted to their telephone number. However, as the Bank did not receive any indication that there was any trouble with the transmission, he assumed the fax went through to the agents. He clarified that something akin to a tested key telex was not possible in this case because that can only be done between banks or other organisations that have a test key agreement; for international trade, it was impossible to have test keys with everybody, hence the Bank could have only visual correspondence with the defendants or their agents. As to how a recipient

of a telex from a bank could be certain that the sender was indeed a bank, Maulino said the former could always insist on authentication by another bank. Maulino could not recall why the Bank had copied its telex dated 17 February 1998 to Metro, it could have been on the instructions of the plaintiffs so as to inform Metro that the Bank would be issuing a LOI to pay for the fuel oil.

20. Questioned by the court why the Bank did not send a fax instead of a telex to the agents, as it would then have been possible for his signature and that of his assistant to appear on the fax, Maulino explained that it was because a telex has the advantage of answer back codes, to identify both the recipient as well as the sender. Further, on the part of the Bank, access to the telex room is restricted.

21. Tziolas next testified for the plaintiffs. He confirmed he ran the operations for the plaintiffs and Petromar Enterprises Inc. (Petromar Inc.) although he had two assistants (Steven Tan and John Benjamin) in Singapore. In effect he was/is the plaintiffs' chief trader, chief trading manager and its managing director – he decided when to buy and when to sell and his assistants would follow-up on his decisions. With regards to Metro, Tziolas said he dealt mainly with Stramatis Kilakos on sales and purchases.

22. Tziolas denied the defendants' allegation that the plaintiffs were controlled by the Kilakos group (in particular by John Kilakos) who also controlled Metro. He contended that the agreement between Glencore and the Kilakos group annexed to the affidavit of the defendants' counsel Lim Tean (as exhibit LT-6) filed on 24 February 1998 (which suggested that Kilakos group owned 55% of the plaintiffs' shareholdings and owned Metro) had no evidential value as the plaintiffs did not sign it. John Kilakos resigned as a director of the plaintiffs in April 1998 as Tziolas could not get him to sign the resignation letter earlier. He

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was aware that Metro had a pending suit in the Greek courts (commenced in February 1998) to declare the agreement in exhibit LT-6 null and void. He had also telephoned Stramatis Kilakos (Stramatis) for an explanation when he saw the agreement. Stramatis explained that the chart attached to Lim Tean's affidavit was prepared in July-August 1997 when the Kilakos group was applying to a group of banks for a refinery loan. Stramatis thought his son John owned Anita Holdings which in turn held 55% of the shares in the plaintiffs. Stramatis did not know that Tziolas had bought over Anita Holdings from John.

23. Tziolas maintained that the plaintiffs are an independent company and neither Stramatis nor John Kilakos were involved directly or indirectly in its running or management; neither are the decisions made by the plaintiffs influenced by either one. However, he did not dispute the fact that the plaintiffs and Metro had a good commercial relationship and very often the plaintiffs acted as Metro's brokers for oil cargoes shipped on board the defendants' vessels, although not exclusively, as the plaintiffs also brokered for other suppliers.

24. As for the defendants' allegation that the plaintiffs shared the same office as Metro in Greece, Tziolas pointed out that two other companies occupy the same building in Athens and the tenants do not have a separate unit number assigned to their respective premises; the plaintiffs occupy the first floor whereas Metro occupy the second floor. They do not share the same office as alleged nor the same fax, telex or telephone numbers but only a common entrance to the building.

25. With regards to the defendants' allegation that the head of Metro's legal department had confirmed that the plaintiffs are an affiliate company of Metro,

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Tziolas testified that even if that allegation was true, it had no evidential value. He pointed to an article published by Tradewinds magazine on 31 July 1998 which corrected its earlier article (published on 30 January 1998) wherein it was mentioned that the plaintiffs and Petromar Inc. were affiliated to the Metro group; the magazine quoted Metro as confirming that the plaintiffs and Petromar Inc. are separate, distinct and independent entities from Metro.

26. Questioned by counsel for the defendants, Tziolas confirmed he was aware that Metro was near to collapse around 15 February 1998. Tziolas explained that one reason why the plaintiffs chartered the vessel was convenience as it had been spot-chartered by Singapore Petroleum Company (SPC) earlier; the plaintiffs used the exact terms in the spot charter as SPC used in their charter. He agreed that previously, the plaintiffs had nominated another vessel the **Ouranos** to carry the fuel oil; usually the plaintiffs reserved the right to change the vessel in their purchase contracts by using the words …*or substitute* in the terms. The plaintiffs substituted the vessel for the **Ouranos** because the fuel oil was originally destined for Malaysia and meant for Petronas, the Malaysian national oil company; hence a term in the proposed charter of the **Ouranos** that **destination** would be *one safe port Malaysia*. In fixing the spot charter with Metro, the plaintiffs dealt with their Captain Fotis on operations and with Margaret Gene on the price. Tziolas denied that the cargo on the vessel actually belonged to Metro.

27. Counsel drew Tziolas' attention to a telex dated 12 February 1998 (Metro's telex) from Metro to the Master of the vessel, copied to the plaintiffs and to Metro's Singapore agents (Centinium). It stated that the vessel had been fixed for account of Metro. Tziolas explained that it was a typographical error which he only noticed when these proceedings were started. He had in fact telephoned

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Captain Fotis to inquire about the error and was assured by the latter that it had been corrected by a subsequent fax, which he did receive, hand-written by Captain Fotis. At that time there was a dispute between Metro and Glencore International AG (Glencore), an international (oil) trading company based in Switzerland. The dispute resulted in documents of Metro being taken away by Glencore and Tziolas understood from Captain Fortis that administration wise, Metro's office was in a mess resulting in the latter not even being able to type/transmit a telex. I should point that the plaintiffs became embroiled in the dispute when Glencore seized the plaintiffs' documents under an Anton Piller order obtained (ex-parte) in Suit No. 920 of 1998 (coupled with an injunction), which was the subject matter of the plaintiffs' successful appeal in *Petromar Energy Resources Pte Ltd v Glencore International AG* [1999] 2 SLR 609; I shall return to this case later.

28. Tziolas explained that the plaintiffs had purchased part (50,000 mt) of the oil cargo on the **Ouranos,** leaving an unsold balance of 30,000 mt; the purchase was on 'open credit' terms meaning, payment would be made 30 days from bill of lading date; there was no need to provide a letter of credit beforehand. However, the plaintiffs' order was eventually cancelled on or about 15 February 1998 because of the dispute between Metro and Glencore, after which the cargo was returned to Glencore. Prior thereto, the plaintiffs were told the **Ouranos** had 'engine trouble' as which result it could not discharge the cargo. Tziolas explained that he was merely following Metro's instructions when he handed the (original) bills of lading for the **Ouranos** shipment to Glencore.

29. Tziolas disagreed with counsel's suggestion that there was no agreement between the plaintiffs and the defendants (made through the agents) as at 16 February 1998 for the release of the fuel oil in exchange for the LOI. He said

that eventually, the fuel oil was discharged at the Caltex Terminal and delivered to the plaintiffs' customer. Arising from the delay the plaintiffs claimed that they suffered damages as the delay in discharge of the fuel oil resulted in the plaintiffs' being in breach of their contractual obligations to various customers with consequential losses including but not limited to loss of profits, survey fees, storage and insurance charges.

30. Re-examined by his counsel, Tziolas revealed that the plaintiffs had made a claim against Metro in the Greek courts for the **Ouranos** shipment, adding that Metro had 'filed for bankruptcy' in Athens.

(ii) the defendants' case

31. I turn next to the evidence of the defendants' witnesses starting with the testimony of George Gaitas (Gaitas) the in-house legal counsel of the agents. Gaitas deposed that the reason he had, in his (first) telex dated 16 February 1998 agreed to discharge the fuel oil on receipt of an irrevocable bank draft for the sum of US$42,804.91 was because he was unaware (until a few hours later), that the plaintiffs were part of the Metro group. Once he found out, he sent another (second) telex on 16 February 1998 to the plaintiffs demanding payment of all sums (besides the sub-freight) owed by Metro before the defendants would discharge the fuel oil, in exercise of the defendants' lien under the charterparty which lien was incorporated into the terms of the bill of lading.

32. Gaitas said the plaintiffs' demands that the defendants discharge the fuel oil in exchange for payment of US$42,804.91 were '*preposterous*' since the defendants' terms for discharge were not complied with. Further, the plaintiffs' offer of the LOI was insufficient as the defendants required the same to be

countersigned by a bank. Gaitas said the fact that the Bank joined in the LOI by telex on 17 February 1998 did not suffice as it should have been but was not, countersigned by the Bank.

33. Cross-examined, Gaitas denied that a binding agreement had been effected between the plaintiffs and the defendants by his first telex of 16 February 1998. As far as he was concerned, the terms set out in his second telex that day governed the parties' relationship and as the plaintiffs failed to comply with those conditions, no agreement was reached for the discharge of the fuel oil from the vessel. Gaitas said he had no knowledge of and questioned, the alleged subcharter between Metro and the plaintiffs, pointing out that Metro's telex to the Master of the vessel dated 12 February 1998 stated: *vessel has been fixed acct Metro Trading International Inc.* Neither did he see the Bank's fax dated 19 February 1998 inquiring whether the (telex) LOI of 17 February 1998 confirmed by the Bank was acceptable. The fax was not received by him or anyone who dealt with the matter as it was addressed to Mr Zako of the agents' chartering department (who has since passed away). Gaitas also denied receiving a copy of the hand-written fax dated 13 February 1998 (PB40) from Captain Fotis to the Master of the vessel correcting Metro's (earlier) telex on who had fixed the vessel. He said the Master of the vessel had also confirmed that the vessel did not receive the corrective fax, exhibiting in his affidavit, a telex from the Master to that effect on 12 March 1998. Gaitas testified that he did reply to the plaintiffs' telex of 17 February 1998 (marked **top urgent)** wherein the plaintiffs had offered (without prejudice) to hand to the defendants a LOI countersigned by the Bank and a bank draft for US$42,804.91; the telex stated:

> If we do not hear from you within two hours from receipt of this telex we will have no alternative but to hand over this matter to our lawyers.

In his fax reply dated 17 February 1998 (see D4) to the plaintiffs, Gaitas described the plaintiffs as an affiliate and subsidiary of Metro, which fact had been confirmed to the agents *repeatedly by persons in [Metro's] organisation who were in a position to know and indeed do know*. Gaitas also claimed there was 'verbal communication' on the LOI at that point in time between Tziolas and one George Procopiou of his office, done in his presence. I should add that when he was recalled to the witness stand for his views on D4, Tziolas denied receiving that fax.

34. Counsel drew Gaitas' attention to the allegations pleaded in para 14 of the (amended) defence and paras 42 to 47 of his affidavit, which are set out in para 15 above. They had also been raised by Glencore in *Petromar Energy Resources Pte Ltd v Glencore International AG (supra)* in an affidavit filed by one David Toh. An additional allegation raised by Glencore was, that the directors of the plaintiffs are Irene and Michael Tziolas and Ioannis Kilakos. Further, in his own affidavit, Gaitas had referred to a letter of confirmation (for a contract) dated 15 December 1997 which Tziolas had signed on behalf of Metro as evidence of the close relationship between the plaintiffs and Metro. Counsel for the plaintiffs pointed out that although the document (see DB18) was a letter addressed to Itochu Petroleum Co (S) Pte Ltd and written on the plaintiffs' letterhead, it was signed by Tziolas for and on behalf of Metro.

35. Although he acknowledged that Metro's voyage instructions (dated 12 February 1998) to the Master could not/did not amount to evidence of title unlike a bill of lading, Gaitas opined that the words contained therein *Acct*

Metro Trading International Inc suggested that the cargo-owner was Metro as those words were routinely used when cargo belonging to Metro was shipped on board the vessel. As proof, he produced telexes (see D3) pertaining to shipping instructions given to the Master of the vessel in 1997 for various voyages. Similarly Gaitas said, the names of the parties to whom the voyage instructions were copied, namely the plaintiffs and Metro Greece, were routinely inserted in every voyage instruction given by Metro to vessels carrying cargo from Fujairah to Singapore and Malaysia; they had no significance at all.

36. Gaitas conceded that the ultimate owners of the fuel oil could be the plaintiffs by reason of endorsement of the bill of lading in their favour by the consignees stated on the bills of lading. However Gaitas asserted that as at the date of the LOI, the owner was Metro. Counsel drew his attention to cl 13(b) of the charterparty which stated (after setting out the usual employment and indemnity provision in the main clause):

> Notwithstanding the foregoing, owners shall not be obliged to comply with any orders from the charterers to discharge all or part of the cargo
>
> (i) at any place other than that shown on the bill of lading and/or
>
> (ii) without presentation of an original bill of lading
>
> unless they have received from charterers both written confirmation of such orders and an indemnity as per owners' standard P & I Club wording. Charterers have the right to invoke, by telex/fax LOI, as presented by fax (261196 reference Dynacom – LOI invocation clause) on each and every occasion for the period of this charter.

Gaitas asserted that the above clause could only be invoked by Metro as owners for cargo for which they were unable to produce the original bills of lading to take delivery; he disagreed that other parties including the plaintiffs, could

invoke the LOI clause. In any case he thought the LOI given on behalf of Metro was *worthless* (N/E208) because of the company's reported insolvency.

37. I should point out that the stand taken by Gaitas is at odds with a telex from Rima Marine (Metro's German agents) dated 12 February 1998, addressed to the Master of the vessel, which relayed a telex from the agents stating as follows:

> Pls be advised that the invoked LOI for non production of original bills of lading at disport Singapore is in our hands. Therefore Master has been instructed to commence discharge on arrival Pulau Sebarok Terminal and deliver the cargo of abt 20,000 mt fuel oil, without production of original bs/l as per Metro Trading International Inc orders, at Singapore. Pls confirm.

The above telex related not to the fuel oil but to an earlier shipment sold by Metro to Singapore Petroleum Company (SPC). The Master of the vessel (Jawed Y Patankar) at the material time confirmed that in that shipment (and other earlier shipments) he had, on the agents' instructions, released the cargo on board the vessel to SPC or to whoever was the then cargo-owner, without production of the original bills of lading but against a LOI furnished by Metro. However, the Master testified that he never received the correction fax sent on 13 February 1998 by Captain Fotis advising that the vessel was chartered not by Metro but by the plaintiffs and, he denied knowledge of the spot charter. The Master pointed out that it was strange for the correction to be faxed to him when the usual mode of communication between the vessel and Metro was by telex.

38. Regardless of whether Metro was the owner of the fuel oil on the vessel as evidenced by the bill of lading, Gaitas took the stand that the defendants had a lien on the fuel oil for all sums due and owing from Metro, based on cl 26 of the charterparty which states:

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> Owners shall have a lien upon all cargoes and all freights, subfreights and demurrage for any amounts due under this charter and Charterers shall have a lien on the vessel for all monies paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.

However, pressed further by counsel for the plaintiffs, Gaitas admitted that when he demanded payment from the plaintiffs (on 16 February 1998) of the outstanding sums owed by Metro, he was not relying on cl 26 of the charterparty for exercising the lien on the fuel oil but, on his information that the plaintiffs were an affiliate/subsidiary of Metro.

39. As Gaitas was unable to explain why the demand (US$240,898.12) he made on the plaintiffs as at 16 February 1998 included charter-hire up to 27 February 1998, the agents called another representative from the agents to testify -- she was Crissa Pantelia (Pantelia) who heads the freight collection department. Pantelia admitted that as at 16 February 1998, charter hire had been paid by Metro up to and including 14 February 1998. She clarified that the figure US$240,898.12 included time (one day) required to discharge the fuel oil as well as, an estimate of the quantity of bunkers and steaming time required (10 days) for the vessel to sail to Fujairah, which was the port of re-delivery under the charterparty.

40. Pantelia pointed out that under the charterparty, charter hire was payable ten (10) days in advance. Cross-examined, she agreed that as at 16 February 1998, the defendants were only entitled to claim advance charter hire up to and including 24 February 1998 amounting to US$149,540.62 and not the sum of US$194,878.12 which the agents demanded on 17 February 1998. However, she was unable to explain why the defendants' solicitors (according to counsel for the plaintiffs, there being no documentary evidence) had demanded an

increase in the bank guarantee sum (from US$240,000 to US$430,139.29) for the discharge of the fuel oil, on 26 February 1998.

The issues

41. There are four (4) main issues to be determined in this case, they are:-

> (i) were the plaintiffs (as they contended) the owners of the fuel oil or did it belong to Metro (as the defendants contended)?
>
> (ii) did the plaintiffs sub-charter the vessel from Metro at the material time under a spot charter dated 10 February 1998?
>
> (iii) did a collateral contract come into being between the plaintiffs and the defendants arising out of the exchange of telexes between the plaintiffs and the agents on 16 February whereby the defendants agreed to release the fuel oil to the plaintiffs in exchange for payment of the sub-freight?
>
> (iv) did the bill of lading no. 3138 incorporate the terms of the charterparty so as to entitle the defendants to exercise a lien on the fuel oil pursuant to cl 26 thereof, for sums owed by Metro?

The findings

42. I should make it clear from the outset that my findings are based on my assessment of the evidence adduced from the witnesses as the documents tendered to court speak for themselves.

(i) who owned the fuel oil?

43. I shall now address the issues in the order they have been set out in para 41. With regards to item (i), there is little doubt on the evidence that the plaintiffs were the owners of the fuel oil carried on the vessel under bill of lading no. 3138. My finding is supported by the following documentary evidence:

> a. the contract between the plaintiffs and the sellers dated 31 January 1998;

> b. invoice no. 23356 of the sellers to the plaintiffs dated 18 February 1998 which referred to bill of lading no. 3138 dated 14 February 1998 (see PB69);
>
> c. the LC issued by the Bank on the plaintiffs' behalf in favour of the sellers and which was negotiated by Deutsche Bank on the sellers' behalf; and
>
> d. the endorsement of the bill of lading by the sellers in favour of Deutsche Bank who endorsed it in turn to the Bank who re-endorsed it to the plaintiffs

as well as by the testimony of Tziolas and Maulino.

44. The defendants on their part adduced no credible evidence to support their defence that the fuel oil belonged to Metro in the (mistaken) belief that Metro and the plaintiffs were one and the same entity. They did not produce any primary evidence to support the allegations which I set out in para 15 above. Instead, they relied, inter alia, on the hearsay/inadmissible evidence of the head of Metro's legal department (Margaret Gene) who purportedly confirmed to the defendants that the plaintiffs were an affiliate company. Their other allegations were similar to or the same as, those canvassed by Glencore and dismissed by the Court of Appeal in *Petromar Energy Resources Pte Ltd v Glencore International AG* (supra).

45. At the commencement of trial, counsel for the defendants had voiced his objections (N/E15F) to being bound by the decision in the above case -- not only were his clients not a party to the action but, the Court of Appeal there was considering whether the Anton Piller order and or Mareva injunction obtained by Glencore should be discharged, based on affidavit evidence; hence the principle of *res judicata* would not apply. That is correct; however the fact remains, as was confirmed by Gaitas under cross-examination (N/E 159-176), that the exact same allegations made by the defendants against the plaintiffs

were also raised by Glencore against the plaintiffs there. That being the case, I do not think it would be wrong for me to accept the findings made by the Court of Appeal on which I have had the benefit of oral testimony; I reproduce herewith the relevant extracts from the decision of the appellate court to prove my point:

….

In support of their contention that there was a real risk of Petromar dissipating their assets and destroying relevant evidence, Glencore relied heavily on the close association between Petromar and Metro and suggested that Petromar had a role in the alleged fraud, in particular the unauthorised diversion of the oil cargoes from Fujairah and the issue of falsified documents to cover up the diversion. They alleged Petromar was substantially controlled by Metro and the Kilakos group of companies, to which Metro belonged, and produced evidence in support of this allegation. Petromar did not dispute that they had a close commercial relationship with Metro but denied that they were substantially controlled by Metro or that they were knowingly involved in the alleged fraud. Petromar's application for the discharge of the two orders was dismissed, and they appealed.

Held

, allowing the appeal:

> 1. On the evidence, Glencore had not made out a case for the Mareva injunction and Anton Piller order. Their case rested wholly on the close relationship between Petromar and Metro, and not on any evidence of wrongdoing on Petromar's part. The important fact was that Petromar's operations were at no time controlled by Metro or the Kilakos group. Looking at the evidence as a whole, the most that could be safely said was that Petromar and Metro had a very close commercial relationship

> but it did not follow that Petromar was knowingly involved in the alleged fraud. On the contrary, the evidence relied on by Glencore to support their allegations against Petromar did not really implicate Petromar.

Paragraphs 7 to 10 of the judgment detailed the allegations of Glencore in wording which was similar to if not the same as, what the defendants pleaded in their defence.

46. Hence, although the defendants were not a party to that action, I am of the view that I can apply the findings made by the Court of Appeal to our case --- the plaintiffs were a party in that case and they were defending themselves against the very same allegations raised by the defendants here.

(ii) did the plaintiffs spot charter the vessel from Metro?

47. I hold that there was such a spot charter. In addition to the oral testimony from Tziolas, there is a fax from the plaintiffs to Metro (see PB30) setting out the terms of the spot-charter Tziolas said he agreed with Captain Fotis for the vessel, although Metro's telex dated 12 February 1998 suggests otherwise. The agents (through Gaitas) and the Master had denied receipt of Captain Fotis' hand-written fax dated 13 February 1998 correcting Metro's telex (to the Master that the vessel was fixed for the account of Metro). Tziolas had testified that he was able to produce a copy in court as he obtained the original of that fax from Metro's liquidators. In their closing submissions, the plaintiffs argued that it was likely Captain Fotis made a typographical error in Metro's telex. Counsel also submitted that in any event, Metro's telex should not be given any credence as the maker Captain Fotis was not called to testify. By the same token, if I accept that argument, then Captain Fotis' correction fax sent a day later should also not be given any consideration. Neither document however, was crucial in

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my determination of the second issue for reasons which I shall elaborate on, in the following paragraphs.

48. Under cross-examination, Tziolas had explained that the original fax (dated 10 February 1998) in PB30 pertaining to the spot charter could not be produced because the document was likely to have been amongst those seized by Glencore in the execution of the Anton Piller order on or about 12 June 1998, five (5) of which boxes had not yet been returned. Counsel pointed out that in Tziolas' affidavit filed (on 20 February 1998) in support of the plaintiffs' application for an injunction in this suit, Tziolas had exhibited (at p 12 of MT2) a copy of the spot charter; therefore the document could not have been fabricated for purposes of this trial. Furthermore, he pointed to the fact that the plaintiffs' list of documents filed on 16 December 1998 disclosed the spot charter. As the defendants' solicitors did not avail themselves of counsel's invitation to inspect the plaintiffs' documents by the deadline of 13 January 1999 and they did not serve a notice on the plaintiffs' solicitors challenging the authenticity of the spot charter, the defendants were deemed to have admitted its authenticity, under O 27 r 4(2) of the Rules of Court. Hence the copy produced in court by the plaintiffs was admissible as secondary evidence, pursuant to s 65 read with s 67(c), of the Evidence Act Cap 97.

49. Counsel for the defendants argued that the spot charter was a sham created by the plaintiffs after the event so as to defeat the defendants' counterclaim. He submitted that if indeed the original had been seen by plaintiffs' counsel as Tziolas claimed when proceeding started, then the plaintiffs or their solicitors should still have the original at the trial. Further, if indeed the original formed part of the documents seized under Glencore's Anton Piller order, it would have been recorded and itemised. With respect, these assertions are based on an

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incorrect reading of the evidence – Tziolas did not say that the plaintiffs' counsel had seen the original but only that the document in PB30 meaning a copy, had been seen by their counsel (N/E 61). The second assertion is without basis as no evidence was adduced on the manner in which the Anton Piller order was executed, let alone that the independent solicitors who supervised the execution listed out all the documents seized from the plaintiffs. Another argument put forward by the defendants was that the persons who concluded the spot charter were not called to testify; he identified Steven Tan, Margaret Gene and Captain Fotis as those persons; with respect, that is again incorrect. The fax from the plaintiffs' Steven Tan to Metro in PB30 started off as follows:

> We refer to the various telecons between Mike/Capt. Fotis on the above spot charter. We are pleased to provide the terms and conditions as follows:

In other words, the spot charter had already been agreed between Tziolas and Captain Fotis; Steven Tan was asked to do the follow-up but neither he nor Margaret Gene concluded the contract.

50. Another point which the defendants said supported their contention that the spot charter was a sham was its timing – it was apparently fixed one day before the plaintiffs nominated the vessel to the sellers via telex (on 11 February 1998). They asserted that Tziolas' explanation that the plaintiffs' said telex meant the vessel *or substitute* was highly unsatisfactory.

51. On a balance of probabilities, I am prepared to accept there was indeed a spot charter by the plaintiffs of the vessel. It was a common enough practice for the plaintiffs to fix such spot charters when the cargo being carried on board a vessel had been on-sold to them by the original buyers in the course of the voyage, more often than not by Metro. In this regard, I accept Tziolas' testimony

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that convenience was the main reason for such practice, in order to move cargo from point A to point B in Singapore. As SPC had previously accepted the vessel for its cargo also purchased from the (same) sellers and, both the fuel oil and SPC's cargo were loaded by Hin Leong Trading Pte Ltd (see PB42-44), Tziolas said there was no reason for the sellers not to accept the vessel; hence the spot charter preceded the nomination. He added that there were occasions where within one (1) day, the plaintiffs changed nominations three (3) times (N/E102). I would observe that the defendants adopted an inconsistent stand – before they did a volte face by the agents' second telex of 16 February 1998, they had impliedly accepted (by the first telex) that there was such a spot charter, by their agreement to accept from the plaintiffs, the sub-freight of US$42,804.91 due to Metro. I should in fairness point out that Gaitas had, under cross-examination (N/E146) explained he had accepted the sub-freight offered on 16 February 1998 taking the plaintiffs at their word. He said he changed his mind a few hours later after he had spoken to Margaret Gene and John Kilakos. Counsel for the defendants said the plaintiffs' offer of US$42,809.91 could also refer to the freight payable under the bill of lading; I accept that was a possibility but highly unlikely because the bill of lading freight would cover a (very short) voyage from the Van Ommeren terminal to the Pulau Sebarok terminal.

52. At this juncture, I need to address a side-issue which arose in the course of cross-examination of Gaitas and the Master. The Master had questioned why Captain Fotis would send a (hand-written) fax to him when the standard method of communication between Metro and the vessel (evidenced by the documents produced in court) was by telex. Yet Gaitas himself claimed to have sent the fax in D4 to the plaintiffs on his own personal computer! This exhibit was only revealed in the course of his re-examination. I find D4 highly questionable and I reject it totally; his counsel had confirmed that the document had not been

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disclosed in either the defendants' list or supplementary lists of documents; indeed counsel himself was only told about the existence of D4 on the evening prior to Gaitas' re-examination. There was no independent evidence of its transmission to the plaintiffs apart from Gaitas' claim and Tziolas had denied receiving it.

(iii) did a collateral contract come into existence on 16 February 1998 between the parties?

53. To determine this issue, I turn to the exchange of telexes on 16 February 1998. In the plaintiffs' telex of that date, they had set out the terms of the LOI they were prepared to furnish to the defendants in exchange for delivery of the fuel oil without production of the original bill of lading; the telex further stated:

> For the discharge of the above [20,000 mts HSFO 180 CST +/- 5 pct currently on board mt 'Epic'] we Petromar Energy Resources Pte Ltd undertake to pay the freight agreed between the time charterer and Petromar Energy Resources Pte Ltd for US$42,804.91 (B/L qty 19,024.406mts x USD2.25mt).
>
> Payment will be made by bank draft from Credit Lyonnais favouring Crest Shipping Ltd and this draft will be presented to the Master of mt 'Epic' tomorrow (17 February 1998). Please confirm that you will instruct Master to discharge the cargo upon Master notifying you of receipt of above draft tomorrow.
>
> Please confirm the above arrangement is fully acceptable to yourselves by return telex asap.

The agents responded to the above telex on the same day (copied to Metro) as follows:

> With reference to your telex dd 16 February 1998, on behalf of our principals, owners of the mt Epic, we confirm the vessel will discharge the cargo once Master notifies us of receipt of the irrevocable bank draft in the amount of USD42,804.91 duly confirmed by the bank.

According to Tziolas, his telex to the agents was sent at 1032 hours Singapore time and received by the agents at 2.32pm Athens time; at 4.35pm Athens time the agents sent their telex acceptance only to change their mind three hours later at 7.25pm by which time it was already the early hours of 17 February 1998 in Singapore.

54. It cannot be disputed that at law, the plaintiffs' telexed offer had been accepted by the defendants (through the agents) without qualification -- an offer of payment in consideration for the release of the fuel oil was accepted which agreement was collateral to the main contract to be found either in the charterparty and or bill of lading (which will be considered later). My view is reinforced by the agents' second telex which stated:

> We learned to our great surprise that Messrs Petromar is an affiliated subsidiary of our principals' debtor i.e. Metro Trading... This fact had not been disclosed to us or to our principals before we agreed to the arrangements which were offered by Messrs Petromar….(emphasis added)

Accordingly, the agents' second telex of 16 February 1998 cannot rescind the concluded contract and in attempting to do so, the defendants were in breach. In this regard, the case cited by the defendants *Hussey v Horne-Payne* [1879] 4 AC 311 has no relevance.

55. It was obvious from the cross-examination of Gaitas that the only reason the defendants had a change of heart was because they believed the plaintiffs and Metro were one and the same entity, which belief was held to be unfounded by the Court of Appeal. To say the least, the defendants' stand in refusing to deliver the fuel oil to the plaintiffs was unreasonable. The agents had demanded and had been offered by the plaintiffs, a LOI for the release, confirmed by the Bank. Yet Gaitas said the LOI was not in the format required by the defendants

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because it was not countersigned by the Bank. Granted that is true due to the very nature of a telex transmission. However, the Bank had followed up on the LOI two (2) days later this time by fax (PB72) to inquire whether the terms of the LOI were acceptable. Questioned by counsel why the agents did not respond to this inquiry, Gaitas claimed he never saw the fax as it was attentioned to one Mr Zako; I reject that convenient excuse just as I reject the suggestion that the fax was not received by the agents. Based on Maulino's testimony and the Bank's transmission report in PB75, there is no doubt that the fax transmission went through successfully. If so, there is no reason why the receiving party (the agents) would not have received it. If the format of the LOI offered by the plaintiffs/Bank was unacceptable, the agents should have reverted to the former to advise accordingly. Their conduct is all the more inexcusable as the plaintiffs themselves had sent the agents a reminder on 17 February 1998 (PB53) at the same time stating they had the Bank's draft for US$42,804.91 in readiness for handing over. The defendants cannot now rely on the agents' omission as a defence. The agents' demand for charter hire of US$194,878.12 up to 26 February 1998 was also excessive -- hire had been paid by Metro up to and including 14 February 1998; ten (10) days' advance hire should only have been payable up to 24 February 1998. The agents' demand for US$310,898.12 which included hire up to re-delivery of the vessel at Fujairah, port charges and bunkers was clearly unreasonable.

(iv) did the bill of lading incorporate the terms of the charterparty so as to allow the defendants to exercise their lien on the fuel oil?

56. The plaintiffs submitted that if any charterparty terms were incorporated into the bill of lading, it would be those in the spot charter citing *The SLS Everest* [1981] 2 Lloyd's Report 389; *The Sevonia Team* [1983] 2 Lloyd's Rep 640 and

The Heidberg [1994] 2 Lloyd's Rep 287 in support. The spot charter was a voyage charter whilst the charterparty was a time charter. In such situations when faced with a clause like cl 26, *Scrutton* on Charterparties states (20 ed at p 76 article 38):

> Where the incorporating clause refers to, but does not identify, a charterparty, the court will assume that the reference is to any charter under which the goods are being carried. Difficulties can arise where there are two charters, one between the shipowner and a charterer, and one between the charterer and a sub-charterer. It is submitted that the general reference would normally be construed as relating to the head charter, since this is the contract to which the shipowner, who issues the bill of lading, is a party. But this will not invariably be so, and the court may conclude, on examining the facts, that the intention was to incorporate the sub-charter…

Footnote 48 to the above comment states:

> The position is less clear where it is a time charter, the terms of which are in many respects inapposite to the carriage of goods on a voyage. The court might well hesitate to hold the consignee liable for, say, unpaid time charter

The footnote referred to the case of *The Nanfri* [1978] 1 Lloyd's Report 581 which was not cited by either party; I shall return to this case later.

57. I turn now to review some of the cases cited by the parties in support of their respective positions. In *The SLS Everest* the plaintiffs entered into a voyage charter with a firm called Drumplace Ltd for **The SLS Everest** (the Everest) who would arrange to load cargo at Casablanca and carry it to Chittagong. Drumplace subsequently time-chartered the Everest from her Panamanian owners. The bill of lading (signed by the Master) for the plaintiffs' cargo stated:

> Freight and other conditions as per_____ including the exoneration clause…

The blank in the clause was never filled in. The plaintiffs sued the shipowner for damage sustained by the cargo while the Everest was at Casablanca. The Court of Appeal (inter alia) held, that the bill of lading evidenced not only receipt of the goods but also a contract between the shipowner and the plaintiffs and, that the word *freight* in the bill of lading could only have referred to a charterparty and it was a necessary implication that the voyage charter was incorporated into the bill of lading.

58. The defendants on their part cited the case of *Diederichsen v Farquharson Brothers* [1898] 1QB 150 for their proposition that the words

> Freight and all other conditions and expectations as per Charterparty dated in_ freight payable as per charterparty

on the bill of lading meant that so much of the charterparty as relates to the payment of freight (and other conditions to be performed on the delivery of the cargo) were incorporated into the bill of lading. Hence cl 26 of the charterparty was imported into bill of lading no. 3138 and gave the defendants an absolute lien on the vessel for amongst others, dead freight (see *Kish v Taylor* [1912] AC 604). As neither *Diederichsen v Farquharson Brothers* nor *Kish v Taylor* dealt with two (2) conflicting charterparties, they are not particularly helpful not to mention that they are old cases; further the definition of "freight" has changed in recent times. In *The Nanfri* [1978] 2 Lloyd's Rep 132 Lord Denning said (at p 139):

> At one time it was common to describe the sums payable under a charterparty as "freight". Such description is to be found used by judges and textbook writers of great distinction. But in modern times a change has come about. The payments due under a time charter are usually now described as "hire" and those under a voyage charter as "freight". This change of language corresponds, I believe, to a recognition that the two things are different. "Freight" is payable for carrying a quantity of cargo from one place to another. "Hire" is payable for the right

> to use a vessel for a specified period of time, irrespective of whether the charterer chooses to use it for carrying cargo or lays it up, out of use.…So different are the two concepts that I do not think the law as to "freight" can be applied indiscriminately to "hire"….

59. Both parties referred to a case more in point namely '*The Cebu' 2 (Itex Itagrani Export SA v Care Shipping Corporation & Ors)* [1990] 2 Lloyd's Rep. 316 in their submissions. *Scrutton* had referred to this case in the footnote (at p 354 article 174) for the following comment:

> Time charters usually provide that owners shall have a lien upon all cargoes and all sub-freights for all amounts due under the charter.… The lien does not come into operation until payment of hire is due. The phrase "subfreights" does not apply to hire payable under a time charter but only to freight payable under a bill of lading or a voyage charter.

60. In *The Cebu 2* Justice Steyn had to determine whether the owners of a vessel effectively exercised rights under their contractual lien on sub-freights under cl 18 of a New York Produce Exchange (NYPE) time charter in respect of hire due under a sub-sub-time charter. He accepted Lord Denning's definition that "freight" included only bill of lading freight and freight payable under a voyage charter. He therefore held that sub-freights under cl 18 meant sub-freights payable under bills of lading or a voyage charter and did not include sub-time charter hire. There was nothing in the NYPE form nor the typed additional conditions to justify the stretching of the ordinary meaning of freight to cover hire.

61. In *Miramar Maritime Corporation v Holborn Oil Trading Ltd* [1984] 1 AC 676 the House of Lords had to consider whether a bill of lading (which provided that freight was payable as per charterparty) which contained the following clause:

> This shipment is carried under and pursuant to the terms of the charter dated 19 May 1980 between Miramar Maritime Corporation Monrovia and SEA Petroleum Ltd Singapore, 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.

incorporated the demurrage clause rendering the charterers and in turn the consignees, liable for demurrage. Their lordships held that on a true construction of the language of the bill of lading, it was the intention of the parties to the bill of lading contract that the charterer alone should be liable for demurrage.

62. In the light of the authorities reviewed above, I answer issue (iv) in the negative. I am of the view that the bill of lading does not incorporate the terms of the charterparty so as to entitle the defendants to exercise their lien on the fuel oil, pursuant to cl 26, for the sums due and owing by Metro. The defendants are only entitled to payment of the sub-freight from the plaintiffs. Based on the testimony of Gaitas, it is in any event clear that the defendants did not rely on cl 26 at the material time -- the reason they refused to release the fuel oil to the plaintiffs in exchange for payment of the sub-freight was because they (erroneously) believed that the plaintiffs and Metro were one and the same entity. I would add that I was not impressed with Gaitas, the defendants' key witness. At times he was evasive and on other occasions he contradicted himself. Tziolas on the other hand, came across as a more credible witness, who gave his answers without hesitation.

The conclusion

63. Accordingly I find for the plaintiffs on their claim and dismiss the defendants' counterclaim with costs. There will be interlocutory judgment for

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the plaintiffs with costs and the Registrar is directed to assess the damages due to the plaintiffs arising from the defendants' breach of contract; the costs of such assessment are reserved to the Registrar.

LAI SIU CHIU

JUDGE

19 October 1999

Lai Siu Chiu J

Tongel Yeo (as counsel), Yoga Vyjayanthimala and Song Ruoh Jin (Gillett Kian Fong) for the plaintiffs
Lim Tean, Minn Naing Oo and Steven Lau (Rajah & Tann) for the defendants

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