Antariksa Logistics Pte Ltd and Others *v* McTrans Cargo (S) Pte Ltd [2012] SGHC 154

Case Number : Suit No 856 of 2009

Decision Date : 30 July 2012

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Winston Kwek Choon Lin and Joseph Tang (Rajah & Tann LLP) for the plaintiffs; Tan Thye Hoe Timothy and Gho Sze Kee (AsiaLegal LLC) for the defendant.

Parties : Antariksa Logistics Pte Ltd and Others — McTrans Cargo (S) Pte Ltd

Bailment – Lien

Tort – Conversion

30 July 2012

Belinda Ang Saw Ean J:

Introduction

1 This action concerned a claim in conversion. The acts which were the subject of the complaint in conversion were alleged against the Defendant, McTrans Cargo (S) Pte Ltd, whose Indonesian principal was PT Prolink Logistics (hereinafter the Indonesian principal is referred to as "Prolink" or "Prolink Logistics"). The Defendant denied liability for conversion and alleged, *inter alia*, that (a) it was an innocent agent who acted in good faith in relation to the 30 x 40' FCL containers (hereinafter referred to as "the 30 FCL containers" or "the subject containers"), and that it was the named consignee appointed by Prolink to receive the subject containers from the carriers, handle the customs clearance process and store the subject containers in Singapore; (b) the detention of the 30 FCL containers was in lawful exercise of a possessory lien until storage and ancillary charges were paid, and (c) the Plaintiffs were not entitled to the reliefs claimed as their claims were tainted with illegality.

Overview of the proceedings

2 These proceedings have had a lengthy procedural history. The history revealed a striking absence of ordinary commercial behaviour on the part of a small forwarder with limited financial resources like the Defendant. A reasonable and commercially minded party in the Defendant's position would have been anxious to extricate itself from the legal proceedings soonest possible. Instead, it entrenched itself in these proceedings. By the same token, there were opportunities where the Plaintiffs could have adopted a more robust attitude to reign in matters somewhat so that a full blown trial for a case of this nature could be averted. As it happened, the court proceedings dragged on. Even the duration of the trial was extended from 15 days to 20 days.

3 A notable feature of these proceedings was the inconsistent defences adopted by the Defendant that directly advanced Prolink's dispute with the first three Plaintiffs, and the Defendant's own case. The Defendant's conduct at different stages of the proceedings contradicted the Defendant's proclaimed role of an innocent agent acting in good faith in relation to the 30 FCL

containers. Another unusual feature of this case concerned storage charges for the containers and the Defendant's willingness and apparent ability to keep up with the storage charges that were allegedly incurred and continued to be incurred at a third party warehouse and bonded godown. Significantly, no counterclaim was brought against the Plaintiffs to recover any of the alleged outstanding storage and ancillary charges.

4 The Writ of Summons issued on 13 October 2009 was for the 30 FCL containers in the Defendant's possession. Thereafter, the Defendant over a period of time released about 83.84% of the total volume of the goods shipped in the 30 FCL containers to various cargo interests. I will refer to this lot of cargo as the "Group A Cargo". At the time I gave judgment, the Defendant was still in possession of the goods consolidated in three FCL containers (*ie*, the subject matter of the dispute), and I will refer to them as "the Group B Cargo". The three FCL containers were detained at two locations: Goodway Agencies (Shipping) Pte Ltd at Keppel District Park ("Goodway Agencies") and at PSA Keppel Godown F5 Module K ("PSA Godown F5").

5 At the early days of the trial, I was surprised to learn that the parties had no idea of what the value of the Group B Cargo was and the state of its condition since the last survey conducted in late April 2010. It was amazing to see this case come all the way to trial with little inkling and concern on the part of the Defendant as to whether or not the value of the Group B Cargo exceeded the relatively sizable outstanding charges indicated by the Defendant. The condition of the Group B Cargo ought also to have concerned the Plaintiffs since delivery up was their alternative relief. On my prompting, the parties agreed to conduct a condition survey.

6 I found myself sufficiently troubled at the early days of the trial to inquire about the Defendant's intentions. Here was a Defendant who had professed to have no personal knowledge of the subject matter of the various disputes in Indonesia but nonetheless had taken upon itself the task of proving all sorts of matters about liens and relationships arising from bailment as well as the subject of the decisions of the Indonesian courts in connection with the 30 FCL containers.

7 It was incomprehensible that the Defendant, who had claimed a lien and who had actually withheld the 30 FCL containers until the Defendant's and Prolink's charges and expenses were paid, had real difficulties working out the total amount that was being secured by the exercise of the lien for the charges and expenses. Certainly, the difficulties it displayed undermined the credibility of the Defendant's claim. By the end of the trial, it was patently clear that the Defendant's claim of lien to justify the detention of the containers was illusory.

8 The two matters that occupied most of the trial were the proprietary title of the 4th to 8th Plaintiffs, the 10th to 13th Plaintiffs and the 15th Plaintiffs, and the Defendant's illegality defence. Essentially, these Plaintiffs were put to strict proof of their proprietary title. As for the illegality plea, was there really a case for the illegality defence? Notably, the Group A Cargo was released despite the Defendant's position on illegality. It appeared that the Defendant was willing to admit that the illegality did not go to the Plaintiffs' rights to the Group B Cargo so long as they paid for their release. The Defendant's illegality defence involved allegations that the Plaintiffs smuggled the goods in the 30 FCL containers in contravention of Indonesian customs law and regulations to defraud the Indonesian customs authority, but no expert witness was called to testify on Indonesian law. This led to a late application to call an expert on Indonesian law. Suffice it to say that the application was dismissed for reasons that will be explained later in this Grounds of Decision. There were also other legal and evidential problems that caused the illegality defence to fail.

9 On 27 February 2012, I gave judgment in favour of the 4th to 8th Plaintiffs, 10th to 13th

Plaintiffsand the 15th Plaintiff with damages to be assessed. I will refer tothe 4th to 8th Plaintiffs, the 10th to 13th Plaintiffs and the 15th Plaintiffs as "the Group B Plaintiffs". I also found the Defendant liable in conversion as against the first three Plaintiffs, and granted them a declaration that the Defendant was to indemnify them against all liabilities and losses incurred arising from the conversion of the Group A Cargo and Group B Cargo. As for the 14th and 16th Plaintiffs, their claims were dismissed with costs due to their failure to file Affidavits of Evidence-in-Chief and their non-attendance during the trial.The 9th Plaintiff's claim had also been earlier dismissed by the Assistant Registrar on 4 October 2010 due to its failure to file a list of documents for discovery.

Dramatis Personae

10 It would be convenient to begin by briefly identifying the parties to the proceedings, the individuals and their participation in the events giving rise to these proceedings, and those who gave evidence at the trial.

11 The first three Plaintiffs were companies incorporated in Singapore. The companies operated a door-to-door service for shipment of goods from Singapore to Jakarta, Indonesia. The first three Plaintiffs would consolidate goods belonging to different customers into containers for outward shipment to Jakarta. On arrival at the warehouses designated by the first three Plaintiffs in Jakarta, the containers would be devanned and the parcels within separated and delivered to the first three Plaintiffs' customers or to their order. At the Indonesian end, insofar as the first three Plaintiffs (who acted as main forwarders) were concerned, they used agents to receive the containers and to arrange for customs clearance and container transport to the designated warehouses.

12 Tie Hari Mulya ("Hari") was a director of the 2nd and 3rd Plaintiffs. Hari's wife, Linda Irawaty Lim, was the sole director and shareholder of the 1st Plaintiff. The first three Plaintiffs were managed by Hari and his wife. Hari was the person who made arrangements with Nurdian Cuaca ("Cuaca") in respect of the door-to-door services required to be performed at the Indonesian end for the outward shipment to Indonesia in February 2009 and the return shipment to Singapore in September 2009. Hari gave evidence at the trial on behalf of the first three Plaintiffs.

13 Lola Heng Kim Mui ("Lola") was the 3rd Plaintiff's shipping administrator who coordinated the consolidation and shipment of the subject containers from Singapore to Jakarta, Indonesia for discharge and delivery at the container yard designated as "Jakarta UTC 1". [note: 1] Lola had liaised with Radius Artha Djaya ("Radius") of Prolink Logistics on the documentation for the subject containers to be landed at "Jakarta UTC 1" in February 2009. She again liaised with Radius on the documentation for the shipment of the subject containers back to Singapore in September 2009. Lola's impression from her association with Radius was that the latter was from Prolink Logistics. [note: 2] Lola testified at the trial.

14 Kim Sutandi Tan ("Kim") was the first three Plaintiffs' representative in Jakarta. Kim testified at the trial.

15 Cuaca was an Indonesian in the freight forwarding and logistics business. He was Hari's business associate of four years prior to the outward shipment of the subject containers from Singapore to Jakarta in February 2009. Through Hari, the first three Plaintiffs had an oral arrangement with Cuaca who through Prolink, would handle the receipt, custom clearance and container transport to warehouses designated by the first three Plaintiffs. For these services, they would be paid by the first three Plaintiffs. Cuaca did not testify at the trial.

16 In May 2009, Hari agreed with Cuaca to appoint Jonny Abbas ("Jonny") to arrange for the subject containers to be shipped back to Singapore under three bills of lading, two of which were issued by APL Co Pte Ltd ("APL") on 17 September 2009 and one by Samudera Shipping Line Ltd ("Samudera") on 17 September 2009. The three bills of lading are collectively referred to as "the September B/Ls". Jonny and Radius were the controllers of Prolink Logistics and PT Prolink Clare ("Prolink Clare"). Prolink Clare was the party named on the September B/Ls as shipper of the subject containers. The name Prolink Clare also appeared in some documents used in this case. Jonny and Radius did not testify at the trial.

17 The Defendant was the consignee named on the September B/Ls and was at all material times the agent appointed by Prolink Logistics. Fabian Tan ("Fabian"), the sales director of the Defendant was Jonny's contact. Fabian took instructions from Jonny in relation to the subject containers. Fabian testified at the trial.

18 Two other groups also testified at the trial. They were the cargo interests (hereinafter referred to as "the cargo owners") and suppliers of the Group B Cargo. In this case, the Group B Plaintiffs purchased goods from suppliers in Singapore and other countries, and they individually appointed either the 1st Plaintiff, 2nd Plaintiff or 3rd Plaintiff to provide door-to-door freight forwarding services from Singapore to Jakarta. The last two persons who took the witness stand were the surveyors of the Group B Cargo.

Circumstances in which the Defendant came into possession of the 30 FCL containers

February 2009 shipment from Singapore to Jakarta

19 The first stage was the outward shipment from Singapore to Indonesia of the 30 FCL containers in February 2009 ("the February shipment"). In this case, the cargo owners (including the Group B Plaintiffs) purchased general goods from suppliers in Singapore and other countries, and they individually appointed either the 1stPlaintiff, 2nd Plaintiff or 3rd Plaintiff as their freight forwarders to provide door-to-door freight forwarding services. For their services, the customers were charged an "all-in-price". In January 2009 to early February 2009, the customers' general goods were consolidated and stuffed into 40' containers by Euro-Trans Logistics Pte Ltd ("Euro-Trans") who was appointed by the first three Plaintiffs. Besides Euro-Trans, Lola had appointed the Defendant to stuff two full-container-load of general cargo. Thereafter, the 30 FCL containers were shipped on board the vessels *Sinar Sumba* and *APL Shenzhen* pursuant to three bills of lading – B/L No APLU 057309975 and B/L No APLU 057309976 both dated 18 February 2009, and B/L No SSLSGJK1CHB682 dated 15 February 2009 (collectively, "the February B/Ls").

20 The February B/Ls were surrendered in Singapore.

21 Upon the vessels' arrival at the port of discharge, the carriers were to deliver the subject containers to the consignees named on the February B/Ls. It transpired that the carriers could not deliver the subject containers and they were left at a designated area known as the Temporary Hoarding Area (TPS) which was presumably used by the carriers' seeing that the first three Plaintiffs had to pay demurrage to carriers when the time came to ship the subject containers back to Singapore in September 2009.

22 According to Hari, he met Cuaca in Jakarta in February 2009. At this meeting Cuaca informed him that there was a delay as the 30 FCL containers had not yet cleared Indonesian customs. Cuaca was instructed to look into sending the 30 FCL containers back to Singapore if delays persisted. It

transpired, and this was not disputed by the parties, that Prolink had written to the Indonesian customs authority for permission to take out the 30 FCL containers in order to ship them back to Singapore on 26 February 2009. Under Indonesian regulations, the Indonesian customs authority had to give its decision within 30 days of the export request. Contrary to the regulations, the Indonesian customs authority replied on 18 June 2009, after more than 3 months, and in its reply rejected Prolink's request. Prolink then turned to the Jakarta State Administrative Court ("JSA Court") to review the Indonesian customs authority's decision. On 14 August 2009, the JSA Court decided that the Indonesian customs authority's decision of 18 June 2009 was made out of time and directed the latter to issue a "decision letter" to permit export of the February shipment. [note: 3]

September 2009 shipment from Jakarta to Singapore

23 This stage concerned the shipment of the 30 FCL containers from Jakarta to Singapore in September 2009 ("the September shipment"). After the decision of the JSA Court, Cuaca in August 2009 informed Hari that the Indonesian customs authority had finally permitted the February shipment to be returned to Singapore. Hari and Cuaca agreed that the February shipment was to be returned to the first three Plaintiffs, and the arrangement was to name the 1st Plaintiff as consignee on the bills of lading. [note: 4] Kim had liaised with Jonny on the September shipment.

24 In early September 2009, Jonny allegedly requested payment of US$170,000 for the carriers, APL and Samudera, and Rp 1.2 billion as demurrage charges. [note: 5] Kim duly paid the following sums on behalf of the first three Plaintiffs:

(a) US$170,000 to Jonny, of which US$120,000 was paid directly to APL and Samudera for costs incurred in relation to the September shipment;

(b) Rp 1.2 billion being the demurrage fees (specifically for store rent and related expenses). [note: 6]

25 Kim and one Charles Lie ("Charles"), [note: 7] a Singapore representative of the first three Plaintiffs, went to APL's Jakarta office on 17 September 2009 and obtained pro-forma bills of lading, B/L No APLU 073913272 and B/L No APLU 073913274. [note: 8] The 1st Plaintiff was named as consignee on both pro-forma bills of lading. [note: 9] Arrival notices with the 1st Plaintiff as named consignee were also sent to Lola.

26 However, things went awry for the first three Plaintiffs thereafter. I noticed from the September B/Ls that the 30 FCL containers were shipped on board the vessel *Sinar Sumba* on 17 September 2009. Kim learned of the change in the name of the consignee on 18 September 2009. She was informed on 18 September 2009 at 11 am by Samudera's manager, one Dwi, by text message that the consignee for the Samudera bill of lading, B/L No SSLJKSINCF7963, had been changed to the Defendant. [note: 10] Kim asked Jonny about the sudden change of consignee, but was simply told to inform Hari to contact Cuaca. On the same day, Kim also received a call from one Mr Paulus from APL's Jakarta office. Mr Paulus informed her that the APL bills of lading had been telex-released to the Defendant.

27 Hari then tried to call Cuaca. When they eventually spoke sometime on 18 September 2009, Cuaca assured Hari that although the September B/Ls had named the Defendant as consignee, he would arrange for the 30 FCL containers to be released to the first three Plaintiffs. [note: 11]

28 It was against the backdrop of the narrative set out above that the Defendant took possession of the 30 FCL containers from the carriers on 19 September 2009 and stored them with Goodway Agencies and at PSA Godown F5 pending instructions from Prolink.

Circumstances in which the Defendant released the Group A Cargo

Legal proceedings against the Defendants

29 Despite Cuaca's promise to Hari, the September shipment was not released to the first three Plaintiffs in Singapore. As the evidence unfolded, the change of consignee from the 1st Plaintiff to the Defendant had to do with Prolink's claim of Rp 45 billion against the first three Plaintiffs, and Prolink wanted to be paid before the first three Plaintiffs could have the subject containers. The first three Plaintiffs' attempts to secure release of the 30 FCL containers including contacting the Defendant for the same were unsuccessful. On 8 October 2009, Hari met Cuaca during which Cuaca demanded that the first three Plaintiffs pay a further Rp 45 billion for the release of the 30 FCL containers in Singapore. Hari rejected his demand.

30 In the meantime, on Prolink's instructions the 30 FCL containers were unstuffed between 25 September 2009 and 12 October 2009. Radius was present at the unstuffing.

31 After their earlier failed attempts to contact the Defendant for the release of the 30 FCL containers, the first three Plaintiffs appointed Messrs Rajah & Tann ("R&T"), to write to the Defendant on 12 October 2009 demanding that the Defendant deliver up the subject containers to the 1st Plaintiffs. The Defendant did not respond by the deadline stipulated in R&T's letter of demand. Thereafter, the first three Plaintiffs instituted these proceedings on 13 October 2009 and, at the same time, applied for a mandatory injunction *vide* Summons No 5358 of 2009 ("SUM 5358/2009") to compel the Defendant to deliver up the subject containers. The Defendant responded with an application to strike out the Writ of Summons *vide* Summons No 5649 of 2009 ("SUM 5649/2009") on 29 October 2009.

32 I will refer to the two applications (*ie*, SUM 5358/2009 and SUM 5649/2009) as "the 2009 Interlocutory Applications", and affidavits filed in relation thereto as "the Interlocutory Affidavits".

Arrangements between Prolink and the Defendant to release cargo

33 In his Interlocutory Affidavit filed on 29 October 2009, Fabian said that he was contacted by Prolink Logistics on or about 14 or 15 September 2009 to receive the 30 FCL containers. More than a year later, in his Affidavit of Evidence-in-Chief affirmed in May 2011, the contact date was changed to on or about 18 September 2009. The next day, *ie* 19 September 2009, the Defendant took delivery of the 30 FCL containers.

34 At the time the instructions to receive the subject containers were given either on 14, 15 or 18 September 2009, the fact of the matter was that in September 2009, Prolink had clearly *no* authority to represent the cargo owners or deal with their goods. However, the situation had changed by the time Fabian filed his Interlocutory Affidavit on 29 October 2009 whereby Fabian stated in paragraph 11 that the Defendant was obliged to "take instructions from PT Prolink Logistics Indonesia on behalf of the owners of the Cargo with regards to the distribution of the Cargo to the owners of the Cargo in Singapore." It transpired from a later Interlocutory Affidavit filed on 19 November 2009 that Fabian was alluding to Powers of Attorney granted to Prolink by the owners of the Group A Cargo [note: 12] ("the Prolink POAs"). It was nonetheless clear that as at 29 October 2009, the Defendant

did not have copies of the Prolink POAs.

35 What happened was that Prolink had contacted various cargo owners (*ie*, the first three Plaintiffs' customers) to secure the appointment of Prolink Logistics and/or Prolink Clare as attorney to deal with the goods in the Defendant's possession, and Prolink also concurrently sought the revocation of the authority previously given to the first three Plaintiffs. Powers of Attorney were executed at various dates ranging from 14 October 2009 to 13 November 2009. It is worthwhile setting out the text of the standard Power of Attorney, and in particular the paragraph revoking the authority of the first three Plaintiffs:

> KNOW ALL MEN BY THESE PRESENTS that we, ANDY WIRAWAN, the lawful owners of the cargo set out in the list attached hereto, which forms part of the cargo originally shipped from Singapore to Jakarta under APL Bills of Lading No. APLU057309975 dated 18 February 2009 and APLU057309976 dated 18 February 2009 and Samudera Shipping Line Ltd SSLSGJK1CHB682 dated 15 February 2009, which cargo is the subject matter of "Pengadilan Tata Usaha Negara Jakarta Salinan Putusan Nomor 108/G/2009/PTUN-JKT dated 18 August 2009 (State Administrative Court of Indonesia) ("the Cargo") do hereby constitute and appoint **PT PROLINK CLARE INDONESIA** OF Kompleks Karang Anyer No. 55 Blok A-1 No. 22/23 Jakarta-Indonesia, **PT PROLINK LOGISTICS INDONESIA** of Jalan Bukit Raya Ruko Gading Bukit Indah Blok Q Nomor 31, Kelapa Gading Barat, Jakarta Utara and **Endi Martono, SH** and **Benny Suprihartadi**, **SH** from ND Solicitor (Counsellor and Attorney at law) of Bonang No. 23 Street, Menteng Jakarta Indonesia Phone Number +6221-31901006, +6221-31900932, +6221-3162513 Fax +6221-3162513 (herein after referred to as "our said Attorneys") to be our attorneys for and on behalf of us and in our name or otherwise with the powers following exercisable in the Republic of Indonesia or elsewhere including but not limited to the Republic of Singapore that is to say:- To act for and on behalf of us in every respect as fully and effectually as we could act in person in all matters relating and/or concerning the custody, possession, care and/or control of the Cargo and the storage, shipment, transportation, carriage, discharge, delivery, packing, unpacking, stuffing and destuffing of the same and all matters ancillary related and/or in connection thereto all of which we place in the unfettered control and discretion of our said Attorneys with authority to bind us in relation thereto in any manner whatsoever including (but without prejudice to the generality of the foregoing authority) full power to negotiate, liaise, contract, arrange, organize, manage and to sign seal and deliver and execute documents in connection with the foregoing.
>
> And we hereby declare:-
>
> 1. That this Power of Attorney shall be conclusively binding on us and our personal representatives in favour of third parties who have not received notice of the revocation thereof but so that the exercise by our (sic) in person from time to time of any of the powers hereby conferred shall not of itself be deemed to be a revocation.
>
> 2. That any previous authority or approval that had been given to ANTARIKSA LOGISTICS PTE LTD and/or any other third parties by us to deal with or handle the Cargo and/or its shipment and/or delivery and/or to take possession, custody and/or control of the Cargo has been fully and unconditionally revoked and withdrawn and ANTARIKSA LOGISTICS PTE LTD and/or any other third parties have no authority to deal with or handle the cargo and/or its shipment and/or delivery and/or to take possession, custody and/or control of the Cargo.
>
> IN WITNESS whereof we have hereunto set our hand and seal this 19th Oktober day of Two thousand and nine (2009).

SIGNED SEALED and DELIVERED by the abovenamed

Stamp and Signed

ANDY WIRAWAN

the presence of:-

Sgd. Stamp Solicitor

Endi Martono, SH

Sgd.

Benny Suprehartadi, SH

No. 12/Legalization/X/2009

Seen for legalization of signature this document

- Mr Andy Wirawan, at Batu Tulis Street, Number 11-A, Central Jakarta
- Mr Endi Martono, SH of ND SOLICITOR at Bonang No23, Menteng – Central Jakarta
- Mr Benny Suprihartadi, SH of ND SOLICITOR at Bonang No23, Menteng – Central Jakarta

I know all the name and I have readied this document, to the parties come before me

Tangerang, October 19, 2009

Public Notary in Tangerang

Sealed and Signed

Muhamad Ivan Palmar, SH

36 I now turn to the Defendant's Further & Better Particulars filed on 22 June 2010 ("June F&PB") wherein the Defendant acknowledged that Fabian had received oral instructions from Jonny to release the cargo *from about the first week of October 2009* to the third week of November 2009. This was despite the Defendant's averment that it did not know the dates that the Prolink POAs were granted since it was Prolink who had obtained them. [note: 13] However, it was clear that Fabian had wanted the release of the goods to be authorised by cargo owners. Prolink POAs were granted to either Prolink Clare or to both Prolink Logistics and Prolink Clare.

37 In addition, the June F&BP stated the actual release of cargo started as early as 13 October 2009 to Comstar Mobile Pte Ltd ("Comstar"). [note: 14] The documentation covering the cargo released to Comstar included Prolink Clare's cargo release authorisation to the Defendant dated

12 October 2009, which was marked for Fabian's attention [note: 15] as well as the Defendant's Delivery Order to Comstar dated 13 October 2009 [note: 16] and signed by Comstar to acknowledge receipt of the goods. This release to Comstar on 13 October 2009 was *before* the Power of Attorney was executed by Comstar on 14 October 2009. [note: 17] Another instance of an early authorisation to release of cargo was to one Henri Dedy Yanto. [note: 18] The documentation covering the cargo released to UBTS Technologies ("UTBS") on behalf of Henri Dedy Yanto included Prolink Clare's cargo release authorisation to the Defendant dated 13 October 2009 and marked for Fabian's attention. [note: 19] The release authorisation was before the relevant Power of Attorney which was executed a day later. [note: 20] The Defendant's delivery order to UBTS was dated 14 October 2009. [note: 21]

38 As at 19 November 2009, the Group A Cargo was released. [note: 22] Furthermore, the Group A Cargo was released before any substantive hearing of the 2009 Interlocutory Applications.

Subsequent events

Joinder of 4th to 16th Plaintiffs in 2010

39 After the Group A Cargo was released, R&T, on behalf of the remaining cargo owners, repeatedly asked the Defendant to provide the full claim amount of the charges and expenses allegedly owing to the Defendant so that the cargo owners could consider payment into court *in lieu* of the Defendant withholding the Group B Cargo as security. No figure on the quantum was forthcoming. I would venture to state that had the Plaintiffs taken a more robust attitude on this issue, the illusory lien would have come to light much earlier in the proceedings. Instead, their response was to file an application to join the 4th to 16th Plaintiffs to the action, and an order was obtained on 25 January 2010. Their pleaded case was conversion by detention: that the Group B Cargo was detained by the Defendant, and that this detention amounted to conversion. The Defendant adopted the same three defences outlined in [1] above against the Group B Plaintiffs.

Outcome of the Interlocutory Applications

40 SUM 5358/2009 (*ie*, the Plaintiffs' application for mandatory injunction to deliver up) was adjourned numerous times. Eventually, no order was made on SUM 5358/2009 on the final hearing on 28 June 2010. The issue of costs of the application was reserved to the trial Judge.

41 SUM No 5649/2009 (*ie*, the defendant's application to strike out the Writ of Summons) was dismissed by the Assistant Registrar on 20 January 2010.

The main issues

42 The claim in this action was in conversion. The determinative issues raised by the Defendant to challenge the claim in conversion were as follows:

(a) Issue 1: Conversion.

(i) Whether the Plaintiffs had *locus standi* to sue the Defendant in conversion; and

(ii) Whether the Defendant was an "innocent agent", and if not, whether its conduct amounted to acts of conversion rather than mere ministerial acts of a *bona fide* intermediary.

(b) Issue 2: Possessory lien as a defence to conversion

(i) Whether the Defendant enjoyed a lien over the September shipment including the Group B Cargo and was entitled to claim storage and other charges pursuant to a possessory lien.

(c) Issue 3: Illegality

(i) Whether the Plaintiffs' claim was tainted by illegality and as such the Plaintiffs were not entitled to the reliefs claimed.

43 I will set out the grounds for my decision on Issue 1 first. The other two issues were easily disposed of primarily because they were not made out as a matter of law and evidence. The Defendant's blunderbuss arguments not only undermined the credibility of its defences, but also contributed to this lengthy Grounds of Decision.

Issue 1: Conversion

General principles

44 To succeed in a claim for conversion, a plaintiff must show that:

(a) it has actual possession of, or the right to immediate possession of the chattel converted; and that

(b) the right to sue for conversion existed at the time of the conversion; and that

(c) the defendant acted in a manner inconsistent with the plaintiff's superior possessory title.

These elements have been set out in *The Cherry and others* [2003] 1 SLR(R) 471 at [58] ("*The Cherry*") and *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 ("*Tat Seng*") (see also *Clerk & Lindsell on Torts* (Michael A Jones & Anthony Dugdale gen and consultant eds) (Sweet & Maxwell, 20th Ed, 2010) ("*Clerk & Lindsell*"); and Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) ("*The Law of Torts in Singapore*")).

45 Conversion can take many forms. At its core, an act of conversion occurs when there is an unauthorised taking of possession of a chattel with the "intention of exercising a permanent or temporary dominion over it" (*Tat Seng* at [45] affirming R F V Heuston and R A Buckley, *Salmond & Heuston on the Law of Torts* (Sweet & Maxwell, 21st Ed, 1996); see also *Clerk & Lindsell* at para 17-09 to 17-10). Conversion has also been characterised as "conduct which has the effect of denying the claimant of his superior possessory title in the goods" (*The Law of Torts in Singapore* at para 11.004 citing Sarah Green & John Randall, *The Tort of Conversion* (Hart Publishing, 2009) at p 65–66). Generally, it is not a viable defence to a claim in conversion that the defendant was ignorant of the plaintiff's rights or was merely acting innocently as an agent for someone else (*Clerk & Lindsell* at para 17-72 to 17-73).

46 However, an innocent agent's act in ignorance of the plaintiff's rights has been successfully raised as a defence in cases involving an intermediary agent whose act was seen as *prima facie* ministerial because it was performed in good faith and without notice of his principal's lack of title. Given the factual scenario outlined, it is hardly surprising that no presumption of a conversion can be

raised (*Clerk & Lindsell* at para 17-75). The Court of Appeal in *Tat Seng* held at [48] that:

> [A]n intermediary who stores goods, such as a forwarding agent who packs and ships goods or a warehouse operator, does not render himself liable in conversion merely because his employer has no title, if he acts in good faith (see *Clerk and Lindsell* ...at para 17-71). However, where an intermediary agent, such as an auctioneer, interferes with the title of the true owner by making a sale on behalf of a person without title or proper authority, altogether different considerations apply. In the former instance, there is a long line of established authority that accepts that the temporary possession by the carrier or warehouse operator does not *sufficiently interfere* with the title to the goods to warrant liability for conversion (see [57]–[64] below). It will be readily appreciated that in the latter case the involvement of the agent is not merely ministerial. An auctioneer's conduct goes beyond the mere transport or storage of goods and constitutes a *substantial and real interference* with title as he is asked to sell the goods (see [65] below). However, ***it is not always easy to draw a distinction between justifiable handling and acts of conversion when different types of intermediaries handle goods. In the ultimate analysis, the degree of involvement is crucial, as is the question of whether the intermediary was acting in the ordinary course of business.***
>
> [emphasis in original in italics and emphasis added in bold italics]

47 The underlying rationale of the line of cases on innocent intermediaries was explained in *Tat Seng* (at [58]) as arising from "the compelling need to ameliorate the hardship engendered by the remedy of conversion... for intermediaries who deal[t] with goods in good faith". Thus, in *Francis Hollins v George Fowler* (1874–5) LR 7 HL 757 ("*Fowler*") at 766–767 (affirmed in *Tat Seng* at [58]–[60]), Blackburn J observed in *Fowler* that:

> I cannot find it anywhere distinctly laid down, but I submit to your Lordships that **on principle, one who deals with goods at the request of the person who has actual custody of them *, in the bona fide belief that the custodier is the true owner* , *or has the authority of the true owner*** , should be excused for what he does if the act is of such a nature as would be excused if done by the authority of the person in possession, if he was a finder of the goods, or intrusted with their custody.
>
> [emphasis added in bold italics]

In relation to warehousemen (though I should add that the Defendant was not one), Blackburn J observed at 767 that:

> Thus, a warehouseman with whom goods have been deposited is guilty of no conversion by keeping them, or restoring them to the person who deposited them with him, though that person turns out to have had no authority from the true owner...

48 "Ministerial acts" are acts that do not sufficiently interfere with the rights of the true owner, or to put it in another way, are not extensive enough to amount to an encroachment on the true owner's right of use and possession (*Tat Seng* at [87] and [92]). Tuckey LJ in *Marcq v Christie Manson & Woods Ltd* [2004] QB 286 put it as such (at [14]):

> [The submission that any unauthorised possession of goods amounted to conversion] flies in the face of a long line of authority which shows that possession of goods by an agent on the instructions of their apparent owner for the purpose of carrying out what have been described as ministerial acts such as storage or carriage does not amount to conversion. *The possession in*

such cases is inconsistent with the rights of the true owner and is deliberate but does not encroach sufficiently on the owner's title to the goods...

[emphasis added]

49 One way to prove *bona fide* belief is to adduce evidence that whatever was done was consistent with the ordinary business conduct of the intermediary. Once there is *prima facie* evidence of the defendant's *bona fide* belief that it was dealing with the owner or with his authority, the *evidential* burden of proving conversion shifts to the plaintiff (see *Tat Seng* at [87] and [94]).

50 The facts of *Tat Seng*, in brief, are as follows. Orix Leasing Singapore Ltd ("Orix") leased a Heidelberg 4-colour off-set print machine ('the machine") to a company, Rav Graphics Pte Ltd ("RGPL"), on hire-purchase terms. In 2006, RGPL shifted its office from Toh Guan to new premises. One Crispian Tan ("Crispian") who was a director and shareholder of RGPL hired Kenzone Logistics Pte Ltd ("Kenzone") to facilitate the shift. Kenzone then approached Tat Seng to transport the machine to the new premises. The initial instruction from RGPL was to shift the machine to a warehouse owned by a third party, Hock Cheong Transport Co (Singapore) Pte Ltd. The warehouse refused to accept the machine when Tat Seng's lorries arrived. Kenzone then requested Tat Seng to provide temporary storage space for the machine. Tat Seng stored the machine for four days until 4 September 2006, when it was removed from their premises at the request of Crispian and loaded on Malaysian-registered trailers pursuant to an alleged sale that Crispian had arranged. Orix sued Tat Seng for conversion of the machine.

51 The Court of Appeal in *Tat Seng* at [96] helpfully laid down the approach to be applied (and where the burden of proof lies) where a defendant seeks to rely on the argument that it is an innocent intermediary:

(a) When an allegation of conversion is made against a carrier (which includes, in the present summary of principles, a bailee such as a warehouse operator), typically, ***the carrier will be able to absolve itself from a finding of actual notice by showing that it reasonably acted in the ordinary course of business.*** The defendant-carrier must therefore plead in its defence the relevant facts it intends to rely on to show that it reasonably acted in the ordinary course of business. ***To discharge this burden of proof, we think that the defendant-carrier will need to adduce a modest amount of facts to show that the transaction was of the type usually undertaken by it in the course of its ordinary business.*** What will usually be important is the nature of the defendant-carrier's business, how it is normally engaged and the particular circumstances in which it received and carried out the terms of the relevant engagement.

(b) ***Once the defendant-carrier has adduced credible evidence that it has acted in the ordinary course of business*** , ***the evidential burden of proof to establish conversion is then transferred back to the claimant*** . The claimant has to show that the defendant-carrier had notice of some sort of impropriety or was otherwise not acting in the ordinary course of business. ***If the claimant intends to dispute the defendant-carrier's assertion that it acted in the ordinary course of business, the claimant must plead in its reply, all the facts that it intends to rely on to show that the defendant-carrier had actual notice of some impropriety or was otherwise not acting in the ordinary course of business.*** This can be done, *inter alia*, by pleading facts that point towards the defendant-carrier's knowledge that the goods which it was dealing with were the subject of competing claims or that the circumstances in which the engagement was either received or carried out were unusual. If the claimant does not both plead and prove these facts, its claim against the defendant-carrier will fail.

[emphasis added in bold italics]

52 With the above principles and guidance in mind, I now turn to the various issues identified earlier.

Plaintiffs' legal standing to sue

The first three Plaintiffs

53 It is reasonably clear that all that is required to sue in conversion is a right to immediate possession. This right to immediate possession arises from the existence of a legal relationship of bailor and bailee as a matter of general principle of law on bailment.

54 I examined the course of dealings to see whether the first three Plaintiffs and the customers who had engaged them for their door-to-door freight forwarding services in respect of the subject containers stood in a bailor and bailee relationship. I was satisfied that the evidence supported the relationship as described. It was not disputed that the first three Plaintiffs received and through Euro Trans (who was appointed by the first three Plaintiffs) consolidated the goods into containers. At the consolidation stage, so far as the possession of the goods was concerned, the legal position is that the goods were sub-bailed to Euro-Trans into whose actual possession the goods came into. The Defendant was also involved with the consolidation of goods into two other containers. More importantly, the 30 FCL containers were loaded on board the vessels *Sinar Sumba* and *APL Shenzhen* for carriage from Singapore to Jakarta for discharge and delivery at Jakarta UTC 1 container yard. During this voyage by sea, the carriers were in possession of the 30 FCL containers as sub-bailees.

55 The first three Plaintiffs had appointed, as their receiving agent, Prolink Logistics (which Hari believed was Cuaca's company), to make the necessary arrangements for customs clearance of the 30 FCL containers and other services for which the first three Plaintiffs had undertaken responsibility *vis-à-vis* their customers. As such, the first three Plaintiffs would have had a right of indemnity against their sub-bailee in respect of any loss that the first three Plaintiffs might incur.

56 It was not disputed that it was the responsibility of the first three Plaintiffs *vis-à-vis* their customers to send back the 30 FCL containers to Singapore after the carriers could not deliver the 30 FCL containers. After all, the first three Plaintiffs as head bailees under the door-to-door service agreement with their customers who had purchased the goods were entitled, if not obliged, to protect and preserve the February shipment. It was not surprising, and it was clear on the evidence, that the first three Plaintiffs had appointed their receiving agent (*ie*, sub-bailee), Prolink Logistics, to arrange for the 30 FCL containers to be shipped back to Singapore. The first three Plaintiffs' rights and interests in the 30 FCL containers were acknowledged by Cuaca and/or Prolink as evident from the efforts they took to keep the subject containers out of the control and possession of the first three Plaintiffs in order to pressurise Hari into paying what Prolink wanted. It was not clear on the admissible evidence what the precise dispute between Hari and Cuaca and/or Prolink was save that Hari was asked to pay Rp 45 billion. Their dispute presumably had to do with services of Prolink that were rendered to the first three Plaintiffs.

57 After permission to ship back the subject containers was obtained, it was incumbent upon Prolink to ensure that the subject containers were consigned to the 1st Plaintiff as instructed by the first three Plaintiffs, and not to unilaterally send the subject containers to a different consignee. By reason of the unauthorised switch of consignee to the Defendant as Prolink's agent, I held that the sub-bailment ended and the right of possession to the bailed property (*ie*, the 30 FCL containers) re-vested in the first three Plaintiffs as the head bailees (*Tat Seng* at [52]).

58 The legal position (as I found) was that the first three Plaintiffs had (as early as 18 September 2009, and certainly by 13 October 2009) a cause of action in conversion against Prolink, and the cause of action could not be extinguished by virtue of the fact that Prolink had purported to perfect (or perfected) its subsequent possessory title to the goods by virtue of the Prolink POAs obtained from the owners of the Group A Cargo.

59 In the circumstances, the true nature of the Defendant's title to the goods (as I found as a determination of a preliminary question on 15 November 2011) was a bare possessory title. The Defendant's title was only as good as its principal's. The Defendant's bare possessory right was limited in the sense that the Defendant could retain the goods until a party with a superior interest came into the picture to ask for the goods. Lightman J in *Costello v Chief Constable of Derbyshire Constabulary* [2001] EWCA Civ 381 at [14] affirmed the principles laid down in *Webb v Chief Constable of Merseyside Police* [2000] 2 WLR 546 on the strength of a party's bare possessory title as follows:

> (i) The fact of possession of a chattel of itself gives to the possessor a possessory title and the possessor is entitled to rely on such title without reference to the circumstances in which such possession was obtained: his entitlement to do so is not prejudiced by the fact that he obtained such possession unlawfully or under an illegal transaction. His claim can only be defeated by proof of a title superior to his possessory title;
>
> (ii) In the case of competing claims to ownership, (in the case of personalty as in the case of realty), titles are relative and the issue falls to be determined by reference to the relative strengths of the two claims and the party with the better title (however frail it may be) is entitled to succeed...

60 The fact that the Defendant was the named consignee on the September B/Ls did not add anything to its bare possessory title. As named consignee on a bill of lading, this status merely gave the Defendant a contractual right to obtain delivery of the containers *vis-à-vis* the carrier (Sir Richard Aikens, Richard Lord and Michael Bools, *Bills of Lading* (Informa Law, 2006) at para 5.3 ("*Bills of Lading*")). This proposition was succinctly laid down by the court in *The "Future Express"* [1992] 2 Lloyd's Law Reports 79 at 96 (which was affirmed on appeal in *The "Future Express"* [1993] 2 Lloyd's Law Reports 542) (see also *Bills of Lading* at para 5.11 to 5.18):

> As to the second reason why the transfer of the bills [of lading] did not operate as an attornment... once it is held that the effect of a transfer of a bill of lading depends on the presumed intention of the parties, then it makes sense *only to recognize that the parties have used a bill of lading to pass constructive possession of the goods to the transferee if it was intended that following the transfer the transferee should have some property in or possessory right to the goods. This seems to me the reason why there is no reported case where the law has provided a remedy to a party who can establish no more than that he is the lawful holder of a bill of lading.* It may therefore be impossible for a party who acquires no property in or possessory right to the goods to establish a title to sue the owners [in conversion for example] by virtue of an attornment arising simply from the transfer of the bill.
>
> [emphasis added]

61 Therefore, as between the first three Plaintiffs and the Defendant, the former as head bailees had a title superior to the Defendant's bare possessory title to the 30 FCL containers. The first three Plaintiffs had the right to immediate possession of the 30 FCL containers, and, therefore, had the right to sue the Defendant in conversion on 13 October 2009. This was clearly the legal position until

their authority to act for the owners of the Group A Cargo was revoked by the Prolink POAs obtained between 14 October 2009 and 13 November 2009. However, the first three Plaintiffs continued to enjoy the right to immediate possession of the Group B Cargo as against the Defendant.

The Group B Plaintiffs

62 The Defendant also challenged the Group B Plaintiffs' proprietary title to the Group B Cargo. For easier reading of this already lengthy Grounds of Decision, the detailed findings on this issue are found in Annexure A to this Grounds of Decision. Suffice it to say for present purposes that I found for the Group B Plaintiffs on the issue of proprietary title. I was satisfied on the evidence that they had fully paid for their respective goods. Representatives of the Group B Plaintiffs and, in some cases, the suppliers from whom they purchased the goods came to testify that the goods were paid for. Whilst the Defendant tried to attack some of Group B Plaintiffs' proprietary title for the incomplete documentary proof, the overall evidence on a balance of probabilities was in favour of the Group B Plaintiffs' claim to proprietary title. An added factor in their favour was that at no point in time had any other person come forward to make an adverse claim for the goods. I was satisfied with the evidence on the Group B Plaintiffs' proprietary title, and I found in their favour on the issue of ownership of the Group B Cargo.

63 Besides their proprietary title, counsel for the Plaintiffs, Mr Winston Kwek ("Mr Kwek"), submitted that the Group B Plaintiffs had the right to immediate possession by virtue of their "paramount possessory rights" as owners of the Group B Cargo [note: 23], with the reversionary interests or title to sue for their respective goods in the Group B Cargo. [note: 24] I digress for a moment to emphasise that ownership is neither a necessary nor determinative criterion for the purposes of determining whether a party can sue for conversion (see *Tat Seng* at [49] affirming *"The Cherry"* at [58] and [64]). Ownership and the right to immediate possession are distinct concepts and the distinction is important in a claim for conversion (see generally *The Law of Torts in Singapore* at para 11.020 for an explanation of this distinction in a claim for conversion).

64 Returning to the Group B Plaintiffs' status, I was satisfied that the Group B Plaintiffs enjoyed the right to immediate possession as bailors of their respective shares in the Group B Cargo. This is notwithstanding the evidence that the Group B Plaintiffs never came into actual possession of the Group B Cargo – actual possession of the goods is not necessary to constitute a party as bailor (*Belvoir Finance Co Ltd v Stapleton* [1971] 1 QB 219 at 217 ("*Belvoir*")). The learned authors of *Goods in Transit and Freight Forwarding* (Sweet and Maxwell, 2nd Ed, 2010) thus noted at p 165:

> There can be a bailment by an owner without his ever having taken possession of the chattel bailed so long as the title to it or at least the right to possess it has passed to him. Generally it is not necessary for the bailor himself to have made the actual delivery of the goods to the bailee.

65 In *Belvoir*, the plaintiff finance company purchased three cars from motor dealers. Belgravia Car Hire Co Ltd ("Belgravia") obtained these cars from the plaintiff under a hire-purchase agreement. Belgravia then let these cars out on hire. The plaintiff did not take actual possession of the cars; the cars were instead delivered by the dealers directly to Belgravia. The defendant, Belgravia's assistant manager, subsequently sold the three cars to another party, without the plaintiff's consent. The plaintiff sued the defendant for conversion. The defendant sought to argue that the contracts of sale between the motor dealers and the plaintiffs were tainted with illegality, and that the plaintiff had to rely on the illegal contract as it never gained possessory title in the cars. Lord Denning MR dismissed the appeal, holding the following (at p 217):

> Mr. Ross-Munro laid great stress on the fact that here the finance company had never taken

> delivery of the car. It had gone straight from the dealers to Belgravia. He submitted that, where a transferee had never taken possession of the thing, he could not rely on the proposition: "As against a wrongdoer, possession is title": because he never had possession. So the finance company had to rely on the agreement of sale to them in order to give them title or a right to possession. But the agreement was illegal. And the courts would not allow them to rely on it...
>
> I do not accept this distinction taken by Mr. Ross-Munro. I think that the proposition stated in *Singh v. Ali* [1960] A.C. 167, 176, applies even where the transferee has not taken possession of the property, so long as the title to it has passed... The dealers, who sold the car to the finance company, cannot claim it back from anyone. They have received their price and are out of the picture. Belgravia, who re-sold the car illegally to a purchaser, cannot claim it from him or anyone else: for they have received the price too. The only persons who can claim it are the finance company who paid for it and have not been re-paid.

66 While these observations were made in the context of a hire purchase contract, I was of the view that the principle to be drawn was that the party with the "ultimate possessory entitlement" could be a bailor notwithstanding that it never came into actual possession of the goods (*Palmer on Bailment* (Thomson Reuters (Legal) Limited, 3rd Ed, 2009) ("*Palmer on Bailment*") at para 2-015). This was exemplified in the relationship between the Group B Plaintiffs and the first three Plaintiffs. Title passed to the Group B Plaintiffs when the goods they ordered from their suppliers were delivered to the first three Plaintiffs as their appointed agents, or, at the latest, when payment for the goods was made in full (where payment was subsequent to the delivery of possession to the first three Plaintiffs). On the facts, I was satisfied that the Group B Plaintiffs were bailors of the goods with the ultimate right to immediate possession.

Concurrent standing to sue

67 I now turn to a related argument. Mr Timothy Tan ("Mr Tan"), counsel for the Defendant, claimed that the first three Plaintiffs as head bailees and the Group B Plaintiffs as bailors could not concurrently enjoy the right to immediate possession to the Group B Cargo. Mr Tan submitted that "it is not possible for all the Plaintiffs to have rights of immediate possession of all of the [30 FCL containers] all at the same time", [note: 25] and complained that the Plaintiffs had put forth "contradictory and overlapping claims" through the joinder of the Group B Plaintiffs to the action. This submission was ill-founded and erroneous.

68 Mr Tan made no distinction between a bailment for a term and a bailment at will. It is true that where there is a bailment for a term, only the bailee enjoys the right to immediate possession during the subsistence of that term. Hence, only the bailee, and not the bailor, can sue in conversion *(see Siew Kong Engineering Works (a firm) v Lian Yit Engineering Sdn Bhd and another* [1993] 1 SLR(R) 736 at [9] & [10]; *The Law of Torts in Singapore* at para 11.028). On the other hand, under a bailment at will, both the bailor and the bailee enjoy the concurrent standing to sue third parties and sub-bailees for conversion *(The "Endurance 1" ex "Tokai Maru"* [2000] 2 SLR(R) 120 at [33] ("*Tokai Maru*"); *The Law of Torts in Singapore* at para 11.028). In *East West Corpn v DKBS AF 1912 A/S and another; Utaniko Ltd v P & O Nedlloyd BV* [2003] QB 1509, Mance LJ at [27] affirmed the principle that the bailee and bailor's standing to sue in conversion can be concurrent*:*

> [I]n *Transcontainer Express Ltd v Custodian Security Ltd* [1988] 1 Lloyd's Rep 128, 134[,]... The plaintiffs there were international carriers who had subcontracted the United Kingdom leg to another carrier. The argument that they wished to advance was that the subcontract involved a bailment determinable at will, so that their own right to immediate possession at all times remained... The authorities cited included *The Okehampton* [1913] P 173, where... Hamilton LJ

said, at p 182:

> ... the passage cited from Pollock & Wright on Possession in the Common Law, p 166, para 4, is, I think quite sufficient authority for saying that even if the shipowners had possession so as to make them sub-bailees to [the plaintiffs], such bailment was revocable at pleasure, and there was no adverse right in the shipowners, so long as the time-hire was paid by [the head charterers]. Accordingly, there was interest enough in the plaintiffs to entitle them to bring this action."

The passage from Pollock & Wright on Possession in the Common Law (1888) was identified in *Transcontainer Express Ltd v Custodian Security Ltd* [1988] 1 Lloyd's Rep 128, 134, as a passage reading:

> " ***The remedies of the bailee are not always exclusive*** , for the bailor by reason of his right to possession ***may retain concurrently*** with him a sufficient right to maintain trespass and theft against strangers. ***This seems to be the case wherever the bailment is revocable by the bailor at his pleasure either unconditionally or upon a condition which he may satisfy at will*** ."

[emphasis added in bold italics]

69 In this case, the relationship between the first three Plaintiffs and the Group B Plaintiffs was a bailment at will, because the first three Plaintiffs received the Group B Cargo on their behalf for the primary purpose of shipping them to the Group B Plaintiffs in Indonesia, rather than for a term. The Group B Plaintiffs had the right to revoke the bailment at any time; indeed, it was intended that the first three Plaintiffs send the Group B Cargo to the Group B Plaintiffs in Indonesia as quickly as possible. Until delivered, the first three Plaintiffs were obliged to preserve and protect the Group B Cargo. In fact, the Group B Plaintiffs confirmed the authority of the first three Plaintiffs to continue to deal with the Group B Cargo by granting Powers of Attorney in favour of Hari and his wife (below at [82]). My conclusion that the bailment was a bailment at will was reinforced by the ease in which the owners of Group A Cargo could and did revoke at will the first three Plaintiffs' authority by signing the Prolink POAs. Accordingly, both the first three Plaintiffs and the Group B Plaintiffs had concurrent standing to sue in conversion.

70 This proposition is, of course, subject to the rule that if either the bailor or the bailee recovers from a wrongdoer in full, the other may not bring a "separate and independent" claim against the wrongdoer (*Palmer on Bailment* at para 4-116). In *Tokai Maru*, the High Court held at [38] that:

> There stems from the above an important derivative rule which is relevant to this case. It is this: Where there are more than one bailor of a thing and one of them recovers or otherwise deals with a third person the other bailor is barred further recovery from the third person. "The wrongdoer having once paid full damages to the bailee, has an answer to the bailor," said Collins MR in *The Winkfield* at 61.

71 During the course of the trial, Mr Kwek confirmed that there would be no claims for the same loss, and that there were no contradictory and overlapping claims. He confirmed that the reliefs sought by the Group B Plaintiffs were different from that of the first three Plaintiffs whose claim was limited to seeking an indemnity against any recourse by their customers by reason of the Defendant's conversion.

Was the Defendant an innocent intermediary?

Overview

72 The Defendant's sales director, Fabian, who was the Defendant's only witness (other than a cargo surveyor), maintained that the Defendant did not know of the arrangements between the first three Plaintiffs and Cuaca, Jonny, Radius, and Prolink. He maintained that the Defendant was authorised by Prolink to receive the 30 FCL containers on behalf of the cargo owners, and that the Defendant was entitled to take possession of the 30 FCL containers as the consignee named on the September B/Ls. To demonstrate that the Defendant's appointment was in the ordinary course of business, Fabian testified that Prolink had contacted the Defendant to inquire about its charges in July or August 2009, and that he had responded with the usual quotation. He did not hear from Prolink after the quotation was sent until September 2009. [note: 26] Arrival notices from APL and Samudera were then sent to the Defendant on 18 September 2009 ("the Arrival Notices"). The Defendant as consignee took possession of the 30 FCL containers on 19 September 2009. The unstuffing of the 30 FCL containers were authorised by Prolink. The subsequent release of Group A Cargo and detention of Group B Cargo were on the instructions of Prolink. For all intents and purposes, Mr Tan submitted that the Defendant's acts were ministerial in nature and no claim in conversion was maintainable against the Defendant.

73 In response, Mr Kwek pointed out that it would not lie in the mouth of the Defendant to claim that it had no reason to even suspect that the first three Plaintiffs' rights had been interfered with before the Writ of Summons was filed.

74 The Defendant's assertion that it was a mere intermediary carrying out its principal's instructions without notice of any competing claims and in the *bona fide* belief that the principal were in a position to give lawful instructions could not be further from the truth. In fact, the Defendant's acts and conduct were intentional and had the effect of denying the first three Plaintiffs of their superior possessory title to the subject containers. The evidence showed that, at all material times, the Defendant knew that the first three Plaintiffs were entitled to the 30 FCL containers, and that the Defendant's principal had no authority to give lawful instructions in relation to the subject containers. The evidence also showed that the Defendant assisted Prolink to interfere with and to undermine the first three Plaintiffs' right to immediate possession.

Analysis of the evidence

75 In this part of the grounds, the matters set out under the sub-heading "Arrangement between Prolink and the Defendant to release cargo" (above at [33] to [38]) will be considered in the context of my analysis of the overall evidence.

76 A good starting point is 18 September 2009 when Lola spoke to Brendan Wee ("Brendan"), the Defendant's managing drector, [note: 27] about the 30 FCL containers. Her unchallenged testimony was that in that telephone conversation, Brendan acknowledged that the 30 FCL containers were supposed to be consigned to the first three Plaintiffs, but he would require Fabian's permission before releasing the 30 FCL containers to the first three Plaintiffs. Lola called Brendan again on the same day, but was informed that Fabian was in a meeting. Brendan again reiterated that he would need specific instructions from Fabian before he could release the 30 FCL containers to the first three Plaintiffs. [note: 28] Lola and Charles attended the unstuffing of the Cargo from 25 September 2009 to 12 October 2009 at Goodway Agencies after Lola was informed of the unstuffing of the 30 FCL containers by Radius. Lola was further notified by Radius that the unstuffing would go ahead whether Lola was present or not. At the unstuffing, Lola met Radius and she demanded the release of the 30 FCL containers from Radius.

77 Fabian was present at the unstuffing. He admitted in cross-examination that he knew that the first three Plaintiffs were interested in the goods as he saw their representatives at the unstuffing: [note: 29]

Mr Kwek:	... [I]f the first to the third plaintiffs were not interested in the cargo, they had nothing to do with the cargo, they would not have been invited [to jointly *witness the unstuffing of the cargo*]; *do you agree?*
Fabian:	Yes.
Q:	So because they were invited to attend, and witness the unstuffing, that means that they got something to do with the cargo.
A:	I agree.
Q:	To be fair to you, do you know what is their interest? Do you know why they were invited?
A:	I just thought they were invited to joint survey the cargo inspection.
Court:	Sorry can you give me your answer again?
Fabian:	I was told by Jonny Abbas that he had invited them for joint inspections on the cargo for unstuffing.

78 Incidentally, Lola was no stranger to Fabian. As Fabian admitted, she had given him some business by engaging the Defendant to consolidate two full-container-load that was part of the February shipment. [note: 30] The same two containers (*ie*, Container No TCNU 831958-2 (Seal No 0226555) and Container No TRLU 698671-5 (Seal No 0142149)) [note: 31] were returned and received by the Defendant on 19 September 2009.

79 After Lola's oral demands went unheeded, R&T sent a letter of demand on 12 October 2009 on behalf of the first three Plaintiffs. Contemporaneously, the Defendant had received Prolink's instructions to release the goods since the first week of October 2009 (above at [36]). Prolink approached some of the first three Plaintiffs' customers to obtain their Powers of Attorney in exchange for release of their goods in the Defendant's possession. [note: 32] The evidence showed that Powers of Attorney required by the Defendant served two purposes: to revoke the authority of the first three plaintiffs to deal with the goods and in their stead appoint Prolink to deal with the goods. Thus, Fabian's reaction on being told by Brendan of R&T's letter of demand was to "hurry" Jonny to obtain Powers of Attorney from the cargo owners. The reaction was understandable seeing that the Defendant released goods to Comstar on 13 October 2009 before the relevant Power of Attorney was executed on 14 October 2009 (above at [37]). I was satisfied on the evidence that by the time the letter of demand was received, the Defendant already knew that the Defendant's principal had no authority to give instructions to the Defendant for the release of the goods. The urgency of obtaining Powers of Attorney was explained by Fabian under cross-examination: [note: 33]

Mr Kwek:	[after referring to a Prolink Power of Attorney from PT Parastar dated 14 October 2009] ... So in combination with what you have read before in Hari Mulya's affidavit, don't you think it's even stronger that there's something strange?

Fabian: Yes, the point is that I was being sued by the first three plaintiffs, and when we are going through the cargos in order to release, I have told Prolink that you have to do something in order to protect McTrans from releasing the cargo to the rightful owner. So they have tried to get ways and means to the rightful owners. *Before I can release the cargo to the rightful owners,first and foremost, I will need a POA, which Jonny Abbas will go and get all the POAs from the rightful owners...*

So what's wrong with therefore not knowing that the POA I have saw -- because Jonny Abbas has mentioned, without POA, I cannot release the cargo...

Q: You see, [Fabian], what you just said, there's an inconsistency. *You started by saying that you wanted POAs, and at the end you mentioned that Jonny Abbas wanted POAs*.

Fabian: *Because I was being sued. I wanted the POAs to protect McTrans's interest, because I had to release the cargo to the rightful owners*. ...

[emphasis added]

80 Prolink was able to obtain Powers of Attorney (*ie*, the Prolink POAs) from the owners of the Group A Cargo. The text of the standard Power of Attorney has been previously set out (above at [35]). Crucially, the Prolink POAs revoked "any *previous authority or approval* that had been given to Antariksa and/or any other third parties by [the cargo owners] as the [sic] deal with or handle the cargo and/or its shipment and/or to take possession, custody or control of the cargo has been fully and unconditionally revoked and withdrawn [emphasis added]".

81 That was not all. The Defendant's refusal to part with the Group B Cargo continued even after it was stated in clear terms by 18 customers that the first three Plaintiffs were their freight forwarders authorised to deal with the Group B Cargo and not the Defendant's principal.

82 On 16 October 2009, these 18 customers [note: 34] including the Group B Plaintiffs issued Powers of Attorney to confirm Hari (as director of the 2nd and 3rd Plaintiffs) and his wife Linda Irawaty Lim (as director of the 1st Plaintiff) as their appointees. [note: 35] These Powers of Attorney were exhibited in Hari's Interlocutory Affidavit filed on 9 November 2009 ("the Plaintiffs' POAs"). In effect, the Plaintiffs' POAs confirmed that the first three Plaintiffs whose managers were Hari and his wife were authorised to recover and deal with the Group B Cargo and to seek consequential damages from the Defendant. The Plaintiffs' POAs also stated that the grantors did not recognise nor had they authorised the Defendant as their agents in respect of the forwarding or return of the Group B Cargo.

83 Marshalling all the pieces of evidence before me, what transpired between the first week of October 2009 and 14 October 2009 (the date 14 October 2009 was the earliest execution date of the Prolink POAs) was important, and based on the overall evidence, I was able to make the following findings of fact and conclusion of law:

(a) The Defendant was aware of the right of the first three Plaintiffs to immediate possession of the 30 FCL containers, and of the first three Plaintiffs' demand for their release from Lola's telephone conversations with Brendan on 18 September 2009, and her conversation with Radius at the time the goods were being unstuffed from the 30 FCL containers on 25 September 2009;

(b) The Defendant was aware that Prolink could not lawfully instruct it to release the goods in the 30 FCL containers before 14 October 2009;

(c) The Defendant was, however, willing to bypass the first three Plaintiffs and to release the goods to any third party. To safeguard the Defendant, Fabian wanted the cargo owners to revoke the previous authorisation to the first three Plaintiffs, and in their place appoint the Defendant as their attorney to deal with the goods including the release of goods to cargo owners or to parties instructed by cargo owners;

(d) The Defendant intentionally withheld release of the goods to the first three Plaintiffs and continued to withhold the same despite receiving R&T's letter of demand on 12 October 2009. The Defendant did not reply within the time stipulated in the letter of demand. In the context of the prevailing facts and circumstances, it was reasonable to interpret the non-communication or silence as a refusal to release the goods. The non-communication or silence was intentional in order to buy time for the Defendant and Prolink to contact the cargo owners and to persuade them to revoke the authority of the first three Plaintiffs and to execute Powers of Attorney to new attorneys. It was significant that the goods were withheld until such time as Prolink obtained and the Defendant received the requisite revocation of the Group A Cargo owners' previous authority given to the first three Plaintiffs;

(e) As at 13 October 2009, the authority of the first three Plaintiffs had not been revoked; and

(f) As at 14 October 2009, five owners of the goods in the Group A Cargo appointed Prolink as their attorney to deal with the Group A Cargo and, at the same time, revoked the authority of the first three Plaintiffs. The rest of the Prolink POAs were executed thereafter between 19 October 2009 and 13 November 2009.

84 After the Group A Cargo were released, R&T, now also acting for the owners of the Group B Cargo, repeatedly asked the Defendant to provide its claim amount so as to consider payment into court *in lieu* of the withholding of the Group B Cargo. No figure on the quantum was forthcoming. Mr Kwek, for the Plaintiffs, questioned Fabian as to why he did not recognise the Plaintiffs' POAs, but Fabian was evasive and he prevaricated by not answering the question directly. Instead, he complained that the Plaintiffs had not paid for the release of the goods: [note: 36]

Mr Kwek:	So why did you not so recognise [the Plaintiffs' POAs] and release the cargo under this power of attorney?
Fabian:	They don't want to pay my local charges, but then if they want to take, I will be most willing to release. They accused me of wrongful possessions, which I got it legally from the carriers. So I have to get my local charges, and although I wanted to release as soon as I can(?) based on my documents, which 90 per cent of them have taken the cargos from me, why are these 10 per cent so difficult?

85 The detention of the 30 FCL containers and thereafter the Group B Cargo was also to further its principal's interest in these proceedings. The Defendant continued to take instructions from its principal and it withheld the Group B Cargo because its principal had unspecified "charges in Jakarta" to settle with the first three Plaintiffs. [note: 37] The Defendant was instructed not to release the goods until the first three Plaintiffs paid Prolink. This was the pleaded case in the Defence as early as

March 2010, and repeated in the amended Defence filed on 13 September 2011 and deposed to in Fabian's affidavit filed on 20 September 2011 in support of Summons No 4218 of 2011 ("SUM 4218/2011", the Defendant's application for declaration that it had a lien over the remaining cargo that was still in its possession for storage and ancillary charges) in which he stated (at paragraph 10):

> ... Prolink reiterated their position that the Defendants are to release the cargo to the rightful owners of the cargo upon payment of all the outstanding storage and ancillary charges. *As for the 1st to 3rd Plaintiffs, Prolink's instructions to the Defendants were that the 1st to 3rd Plaintiffs can only take delivery of the cargo if they pay all the outstanding storage charge [sic] and ancillary charges as well as all the amounts due and owing by them to Prolink.*
>
> [emphasis added]

86 It was also not disputed that the Defendant's initial legal fees were funded by its principal. A Singapore-incorporated company called D'League Pte Ltd (in which Cuaca was a director with a 70% beneficial interest [note: 38]) provided $15,000 for the Defendant's legal fees. Although there was no further evidence that financial support for the litigation continued, it bears noting that the Defendant as late as 5 September 2011 was still accepting instructions from Prolink. The Defendant continued to withhold the Group B Cargo with the concomitant daily storage charges despite appearing to be balance-sheet insolvent based on the statement of accounts for three successive financial years of 2007, 2008 and 2009. [note: 39] A reasonable and commercially minded party in the Defendant's position would have been anxious to extricate itself from the legal proceedings soonest possible. Instead, the Defendant became firmly entrenched in the proceedings having taken on Prolink's fight with the first three Plaintiffs in Singapore. As stated, it was openly pleaded in the Defence filed on 17 March 2010 that "storage charges and ancillary charges and expenses incurred in respect of or in connection with the cargo, which as at 31 March 2010 stands at S$264,831.67 (*including various charges incurred by Prolink eg*, unstuffing which they have instructed the Defendants to claim and/or exercise a lien over the cargo for)" [note: 40] [emphasis added]. Some 18 months later, the Defendant was still taking instructions from Prolink. In the amended Defence filed on 13 September 2011, the Defendant disclosed Prolink's instructions on 5 September 2011 which the Defendant continued to obey by not parting with the Group B Cargo. The amended pleadings referred to: [note: 41]

> ... a letter from Prolink to the Defendant dated 5 September 2011 that the Defendants are prepared (and Prolink are agreeable to this) to release all the cargo to the rightful owners of the same upon payment of all the outstanding storage and ancillary charges but the 1st, 2nd and 3rd Plaintiffs only take delivery of the cargo if they pay all the outstanding charges and all the amounts due and owing by them to Prolink.

87 Fabian and Cuaca were no strangers to each others. Fabian admitted that Cuaca was Fabian's boss when Fabian was working for another forwarding company in 1996 or 1997. [note: 42] Moreover, the Defendant had enjoyed business relations with Prolink Logistics since 2002 or 2003. [note: 43] Fabian was also on familiar terms with Cuaca, Jonny and Radius. [note: 44] In the circumstances, it was plausible and not unreasonable to deduce that they were people whose goodwill Fabian was willing to further cultivate, develop and maintain for the sake of future business.

88 In conclusion, for all the reasons stated, the Defendant was not an innocent intermediary and its involvement and participation in the detention of the 30 FCL containers could not be characterised as ministerial acts. The Defendant's acts were not performed in good faith and the Defendant knew of

its principal's lack of authority and possessory title.

Decision on the Defendant's liability for conversion

89 In this case, there were two categories of conduct that could amount to conversion: (1) the taking of the 30 FCL containers and (2) the Defendant's refusal to deliver up the 30 FCL containers on demand. I found that there were sufficient facts in evidence to make out a case of conversion in both categories.

90 The Plaintiffs' case in conversion proceeded mainly on the Defendant's refusal to deliver up the 30 FCL containers on demand. The Defendant attacked the first three Plaintiffs' evidence of a "demand and refusal" arguing that the elements of a demand and refusal were not established before issuance of the Writ of Summons, and there was thus no cause of action at the time the Writ of Summons was filed (see *Clayton v Le Roy* [1911] 2 KB 1031 ("*Clayton*")). It should be noted that the plaintiff's case in *Clayton* was based primarily on detinue and not conversion. However, the majority was of the view that the same would apply to a claim in conversion where the plaintiff relied on "demand and refusal" as the mode of proof (notwithstanding a strong dissent by Vaughan Williams LJ). Fletcher Moulton LJ in *Clayton* held at p 1050:

> [T]he plaintiff must establish that at the moment of its issue he was in a position to bring an action of detinue; in other words, that there had been a wrongful denial by the defendant of the plaintiff's title to the watch... *[U]p to the date there was nothing equivalent to a wrongful refusal or conversion on the part of the defendant, and that action therefore cannot be maintained.* It is said that from events that happened subsequently to that date a previous conversion may be proved; I am of the opinion that that view is wrong. If there be any evidence of a conversion before writ, it is possible that there may be acts and admissions afterwards which it would be proper to take into consideration when determining whether there had been in fact a conversion before writ, but if nothing had happened before the writ which is equivalent to a detention, that which happens afterwards cannot mend the flaw.
>
> [emphasis added]

91 Apart from Lola's oral demands, R&T's letter of demand also stated that "unless we receive your confirmation by 3.00 pm today (12 October 2009) that you will forthwith deliver up the Containers and their contents to our clients, our clients shall have no alternative [sic] but to commence legal proceedings to compel you to deliver up the same". I was satisfied that this letter constituted an unequivocal demand for delivery up. As an illustration, in *Tavoulareas v Lau and another* [2007] EWCA Civ 474, it was found there was an unequivocal demand for return as constituted by the following statement at [14] that:

> [i]f the property is not made available for collection by close of business hours on Tuesday 1 March 2005 my client will take all necessary steps to recover the property of its value. In addition, if your clients are set on the intentional deprivation of my client of his property then the matter will be reported to the police"...

92 The written demand was specific (as opposed to a merely general demand) because the 1st Plaintiff claimed to be entitled to the goods in the 30 FCL containers pursuant to the "3 Bills of Lading", which expression was reasonably referable to the pro-forma bills of lading from APL and Samudera for the September shipment enclosed in the letter of demand. The container numbers stated in the pro-forma bills of lading corresponded with that on the Arrival Notices sent to the Defendant on 18 September 2009. It was also not alleged by the Defendant that there was any

misapprehension as to the goods that were the subject of the demand in this letter. The Defendant, however, argued that the letter of demand was not a "proper demand" made for delivery up of the Group B Cargo because the letter was only written on behalf of the 1st Plaintiff, and it was made on the wrong basis given that the Defendant, and not the 1st to 3rd Plaintiffs, was the named consignee on the September B/Ls. This argument was misconceived. The first three Plaintiffs were not demanding for the Group B Cargo as consignee but in their capacity as head bailees, and the direction was for the Group B Cargo to be released to the 1st Plaintiff.

93 In applying the law to the evidence, it is important to start from the point in time when the first three Plaintiffs decided to nominate the 1st Plaintiff to receive the 30 FCL containers in Singapore, and duly instructed Prolink to name the 1st Plaintiff as consignee on the September B/Ls. As regards Prolink's unauthorised and unilateral switch of consignee to their own agent, this act constituted taking of the 30 FCL containers in respect of which no demand in law was necessary (see *Cuff v Broadlands Finance* [1987] 2 NZLR 343). This name change effectively prevented the 1st Plaintiff from taking delivery of the 30 FCL containers from the carriers. The switch also manifested Prolink's intention to exercise dominion or control over the 30 FCL containers for a time and to deprive the first three Plaintiffs of their right to immediate possession of the 30 FCL containers.

94 The receipt of the 30 FCL containers in Singapore by the Defendant as agent for Prolink constituted taking of the 30 FCL containers which excluded the first three Plaintiffs from the containers. I have already analysed the events that transpired between the first week of October 2009 and 14 October 2009 (above at [83]). As I have already found, the Defendant intentionally detained the 30 FCL containers to give Prolink time to get Powers of Attorney from owners of the goods in the 30 FCL containers. Put another way, the Defendant's refusal was in disregard of the first three Plaintiffs' possessory title, and (a) was designed to buy time in order to strip the first three Plaintiffs of their authority, and hence their right to immediate possession of the 30 FCL containers as head bailees; and (b) was for the purpose of enabling Prolink to claim possession of the 30 FCL Containers. Clearly, Prolink and the Defendant had acted in a manner that had the effect of denying the first three plaintiffs of their superior possessory title (*ie*, in their right to immediate possession of the 30 FCL containers), and that denial was a substantial interference with their right, and it was committed with clear intention of exercising a temporary dominance over the 30 FCL containers (*Tat Seng* at [45]) for the purpose of enabling Prolink to claim possession of the 30 FCL containers and give instructions in relation to the same.

95 Mr Tan submitted that the reason the Defendant did not revert by the deadline stipulated in the letter of demand of 12 October 2009 was because the Defendant was taking instructions from Prolink, and that reasonable time should be given for that purpose. I did not accept the submission. First, there was no evidence that Fabian had specifically sought instructions on the letter of demand. This was a case in which the Defendant had been made aware of the first three Plaintiffs' interest in the 30 FCL containers for a considerable period of time before the Writ of Summons was filed. The Plaintiffs had also made several prior attempts to contact the Defendant for the 30 FCL containers. The letter of demand also alluded to this, stating that "[o]ur client's representatives had on several occasions spoken to your Mr Brendan Wee and Mr Fabian Tan, as well as sent SMS to the latter, in relation to release of the Containers and their contents to our clients, but Mr Wee and Mr Tan have not reverted in substance, only to say that they are awaiting instructions". [note: 45] Second, ostensibly the deadline was missed deliberately and I found the Defendant's silence to be tantamount to an unequivocal refusal to release the 30 FCL containers to the first three Plaintiffs (see Eady J's observations in *Schwarszchild v Harrods Ltd* [2008] EWHC 521 at [22]).

96 As at 19 November 2009, the Group A Cargo was released. In my view, the release of Group A Cargo would not assist in determining whether the Defendant converted the Group B Cargo on 13 October 2009. The release of Group A Cargo must be viewed in the context of how the Prolink POAs were obtained.

97 I had no difficulty concluding that as against the first three Plaintiffs, the Defendant had converted the 30 FCL containers.

98 I now come to the Group B Plaintiffs' case.

99 The Defendant raised a technical argument: that no cause of action or "demand and refusal" arose before the issuance of the Writ of Summons. This technical argument would not affect the Group B Plaintiffs' claim in conversion at all. The Group B Plaintiffs were joined as co-plaintiffs on 25 January 2010.

100 I should mention that upon joinder of a person as party to an action, that person becomes a party (and the amendment correspondingly only takes effect) from the date the Writ of Summons was amended and served on him (O 15 r 4(8) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court"); Singapore Civil Procedure (G P Selvam ed) (Sweet & Maxwell, 2007) at para 20/8/3). The amendment does not date back retrospectively to the time the Writ of Summons was first filed (*Ketteman and others v Hansel Properties Ltd and Others* [1987] 1 AC 189). Thus, even if the Group B Plaintiffs' cause of action was not constituted before the Writ of Summons was filed on 13 October 2009, it was sufficient that their cause of action was constituted by the time they were joined as parties to the action (*Teo Gracie v Tay Leng Hong and others* [1987] SLR(R) 315 at [9] to [10]). That was indeed the case here.

101 The Group B Plaintiffs had refused to grant Powers of Attorney in favour of Prolink Logistics. The Group B Plaintiffs had consistently maintained that the Defendant was not in lawful possession of the Group B Cargo, and subsequently engaged R&T to represent them. By letters dated 9, 23 and 28 December 2009, the lawyers proposed that the Defendant specify the nature and quantum of sums demanded from them. It was also stated that they would consider paying these sums into Court to avoid further delay in delivery of their cargo on a without prejudice basis. When no reply on quantum was forthcoming, the Group B Plaintiffs applied to be joined as co-plaintiffs in this action *vide* SUM 6569/2009 filed on 29 December 2009. As previously stated, they were finally joined as party to the action on 25 January 2010.

102 It was patently clear that the Defendant's conduct up till the 25 January 2010 was consistent with an intention to exercise dominion over the Group B Cargo and to act inconsistently with the Group B Plaintiffs' entitlement to the goods:

(a) The Defendant continually maintained that it had the right to detain the Group B Cargo and refused to release the goods to the first three Plaintiffs as the appointed freight forwarders. In its letter of response to R&T, the Defendant maintained that they would "vigorously defend the action brought against them" as well as SUM 5358/2009. [note: 46] As bailors of the Group B Cargo, the Group B Plaintiffs were entitled to interpret this conduct as an act of conversion by the Defendant.

(b) Another act of conversion was evident from the Defendant detention of the 30 FCL containers initially, and thereafter the Group B Cargo, in purported exercise of a lien which I found at [105]–[130] below that the Defendant did not in fact possess (see *Tear v Freebody* (1895) 140 ER 1071).

103 For completeness, I should mention that the 3 February 2010 letter from the Defendant's lawyers in response to the Plaintiffs' proposal that the sums be paid into court (above at [101]) was unhelpful. The Defendant alleged in the letter that it was the Plaintiffs who had failed to contact them and did not provide verification that the Group B Plaintiffs were in fact the owners of the Group B Cargo. [note: 47] Given that the description of the Group B Cargo was provided to the Defendant, [note: 48] and that the release of Group B Cargo was on a without prejudice basis, the reply was with hindsight indicative of the Defendant's inability to fix a quantum. Almost two years later, the Defendant was still struggling to state the quantum at the trial.

104 In conclusion, for the reasons stated, I was satisfied that the Defendant was liable to the Group B Plaintiffs in conversion in respect of the Group B Cargo.

Issue 2: Possessory lien as a defence to a claim in conversion

Whether the Defendant enjoyed a possessory lien over the 30 FCl containers

105 There were fundamental difficulties that stood in the way of the Defendant's possessory lien claim, which was raised as a defence to the claim in conversion. The Defendant was unable legally and evidentially to prove that it had either a contractual lien or warehousemen's lien. Its fallback argument was to claim a freight forwarder's lien by reason of a trade custom but the Defendant did not call a witness to testify on the alleged trade custom in Singapore. A very late application was filed for leave to call as witness a representative from Singapore Logistics Association or a freight forwarding company to testify on trade custom during the trial. This was Summons No 4820 of 2011 filed on 25 October 2011 ("SUM 4820/2011").

106 There was also an earlier application vide SUM 4218/2011 which was filed on 22 September 2011 for a declaration that the Defendant had a contractual and/or customary and/or freight forwarder and/or warehousemen lien over Group B Cargo for the storage and ancillary charges incurred in respect of or in connection with the same. The Defendant also prayed for an order that the Plaintiffs pay $946,601.53 being outstanding storage and ancillary charges as at 30 September 2011, plus a daily accruing rate of S$1,290.00. [note: 49] The Defendant termed SUM 4218/2011 as an "interpleader summons", claiming that the Plaintiffs' amendment to the Statement of Claim to claim for delivery up on 24 August 2011 created "adverse and competing claims".

107 The Defendant cited the eleventh hour amendment to the Statement of Claim to include the alternative relief to deliver up the Group B Cargo as a reason for the filing of SUM 4218/2011. Another reason proffered was that the Defendant was now faced with contradicting and overlapping claims of the first three Plaintiffs and Group B Plaintiffs, and Prolink's instructions not to release the Group B Cargo until the first three Plaintiffs paid Prolink.

108 The Defendant's explanations were untenable. Notably, the Defendant's lawyers had as early as 22 February 2010 cited contradicting and overlapping claims of the first three Plaintiffs and Group B Plaintiffs as a reason for the Defendant to interplead. In any case, as explained, there were no competing claims between the first three Plaintiffs and the Group B Plaintiffs (above at [67]–[71]). Despite the lien claimed by Prolink, and the demands of the first three Plaintiffs for the 30 FCL containers to be released, the Defendant did not see the need to interplead way back in 2009 when the Defendant was first sued. It was only on 24 August 2011 – almost two years after the Writ of Summons was filed – that the Defendant filed SUM 4218/2011. In the context of this case, the Plaintiffs could have sued Prolink or the Defendant, or both. They chose to sue the Defendant and

that ought to have compelled the Defendant to take out interpleader proceedings. Nothing was done after the action started because the Defendant had not taken a neutral stand. The Defendant's alliance with Prolink defined the conduct and set the tone of the proceedings. Its partisan stand persisted and was still evident in the pleaded Defence that the lien which the Defendant asserted and exercised was not only for storage and ancillary charges due to the Defendant but also included all amounts due and owing by the first three Plaintiffs to Prolink. Furthermore, the Defendant at no point in time pleaded its entitlement to storage and ancillary charges as a counterclaim. Instead, it sought to go by the backdoor to obtain a declaration that the Defendant enjoyed a "contractual and/or customary and/or freight forwarder and/or warehousemen lien" over the Group B Cargo in SUM 4218/2011. I will explain my reasons for dismissing SUM 4218/2011 on 27 February 2012 later.

109 During the trial the Defendant asked that SUM 4820/2011 be heard. Mr Tan explained that if SUM 4820/2011 was allowed, the Defendant would ask for the trial to be adjourned to organise the evidence of the witness. The Defendant had even offered not to claim storage charges for the duration of the adjournment. It was in these circumstances that Counsel for the parties were directed to deal with the following preliminary point: whether the Defendant had lawful possession of the 30 FCL containers –"lawful possession" being an important ingredient to found a lien. If there was no lien, the Defendant's detention on the basis of a lien which it did not have would amount to conversion. An answer to the common question would assist in the determination of both SUM 4218/2011 and SUM 4820/2011.

110 In the final analysis, the alleged lien was illusory. The Defendant's detention of the 30 FCL containers was on the basis of a lien which it did not possess. The Defendant could not show that it enjoyed any type of lien recognised in law whether as a contractual lien, warehousemen's lien or freight forwarder's lien. The defence failed because it did not satisfy the test of lawful possession to found a lien. Besides, the Defendant could not show that there was an accrued debt owing from the Plaintiffs to support a lien.

Did the Defendant have lawful possession of the 30 FCL containers to found a lien?

111 I start with the directions made pursuant to O 33 r 2 of the Rules of Court on 25 October 2011. I directed the parties to file and exchange submissions on the following preliminary issues by 8 November 2011:

(a) Whether the Defendant obtained lawful possession of the 30 FCL containers; and

(b) Whether the contracts of carriage contained in or evidenced by the September B/Ls were a nullity, and if so, the consequences of such void contracts in respect of the Defendant's possessory right to the 30 FCL containers. [note: 50]

112 On 15 November 2011, I ruled that the Defendant had no lawful possession to found a lien. Consequently, SUM 4820/2011 for leave to call a witness on trade custom was dismissed. SUM 4820/2011 would also have been dismissed for the reason that the Defendant could not establish that there was an accrued debt owing from the Plaintiffs to support the exercise of a lien by the Defendant.

113 Preliminary question (b) was easily dealt with. This issue related to whether the September B/Ls were a nullity considering that Prolink Clare was purportedly in liquidation but was the named shipper of the contracts of carriage with the carriers. Hari's testimony on the liquidation of Prolink Clare was based on hearsay evidence. The documents relating to the purported liquidation of Prolink Clare were not admissible evidence in the absence of formal proof of their authenticity and contents.

114 I now set out my reasons for my decision on preliminary question (a).

115 A possessory lien is "a right at common law to retain... *rightfully* and continuously in his possession [goods] belonging to another until the present and accrued claims of the person in possession are satisfied [emphasis added]" (see *Halsbury's Laws of England* vol 68 (LexisNexis, 5th Reissue Ed, 2008) at para 802). It is settled law that possession derived from the wrongful act of a third party will not suffice to found a possessory lien (*Bowmaker Ltd v Wycombe Motors Ltd* [1946] KB 505).

116 *Bowstead and Reynolds on Agency* (Peter Watts and F M B Reynolds) (Sweet & Maxwell, 19th Ed, 2010) ("*Bowstead and Reynolds*"), commented (at para 7-078):

> **Lawfully obtained.** A lien cannot be acquired by a wrongful act. Thus, if an agent obtains goods from his principal by misrepresentation, he has no lien over them, though the circumstances in other respects are such that he would have been [sic] a lien if the goods had been obtained lawfully. And where the agent takes goods without authority, or is given goods by the principal after the latter's bankruptcy, he acquires no lien.

117 With these principles in mind, I now turn to the facts.

118 It surfaced during Mr Tan's cross-examination of Lola on her part in preparing documents for the 30 FCL containers to be returned to Singapore that Radius had instructed Lola to prepare some documents for Prolink Logistics. While Mr Tan's line of questioning was on the defence of illegality, the answers potentially implicated the Defendant's claim of a possessory lien seeing that the Defendant had, at the trial, wished to take a wider position that had not been pleaded: that the entire adventure involving the February shipment and the September shipment was unlawful. This wider position invited a counter-argument that the Defendant's very possession of the 30 FCL containers could be tainted. [note: 51] Be that as it may, it was not disputed that false documents were amongst some of the documentation accompanying Prolink Logistics' application to the JSA Court to review the Indonesian customs authority's refusal to allow the 30 FCL containers to be exported to Singapore.

119 The decision of the JSA Court was based narrowly on the JSA Court's interpretation of the applicable regulations to reach the conclusion that Indonesian customs authority's decision refusing export of the 30 FCL containers was made out of time and hence ineffective. Notwithstanding the JSA Court's decision was based on an application that named Prolink Logistics as owner of the subject containers, I am entitled to take cognisance of the false documents. The documents were false and Prolink Logistics derived no ownership or special right in the 30 FCL containers. In these circumstances, the legal position of Prolink Logistics' bare possession of the 30 FCL containers could be likened to that of a thief in possession of stolen goods.

120 It is equally possible to look at the matter in another way instead of characterising Prolink Logistics' bare possession (and hence the Defendant's bare possession) to be akin to that of a thief in possession of stolen goods. Previously, the first three Plaintiffs had agreed to Prolink Logistics arranging the September shipment. Prolink Logistics would be in possession of the 30 FCL containers, and its legal position would be that of a sub-bailee. As stated earlier, the bailment was terminated when Prolink Logistics consigned the goods to the Defendant contrary to the agreement between Hari and Cuaca/Prolink Logistics, and the right of possession to the 30 FCL containers thereby reverted to the first three Plaintiffs. The Defendant's possession as agent was directly traceable to the wrongful act(s) of its principal, Prolink Logistics. The *nemo dat quod non habet* rule applied and in the result, the Defendant did not have lawful possession of the 30 FCL containers to assert a lien.

121 The Defendant's claim that it received the 30 FCL containers from the carriers as the named consignee and that in and of itself gave legitimacy to its possession. This contention ignored the circumstances in which the Defendant came to be named as consignee on the September B/Ls. I agreed with Mr Kwek that even though the Defendant was a named consignee, this did not add anything to the Defendant's bare possessory title.

No contractual lien from want of authority to exercise a lien

122 The Defendant argued that Prolink Logistics had express, implied or ostensible authority from the Plaintiffs to allow the Defendant to take the 30 FCL containers and create a lien for unpaid charges. [note: 52] As a matter of law, it is possible for a freight forwarder to exercise a particular lien *vis-à-vis* a chattel belonging to a person other than his principal provided his principal has the authority to contract for the lien. *Bowstead and Reynolds* at para 7-086 states as follows:

> The possessory lien of an agent attaches only upon goods or chattel in respect of which the principal has, as against third parties, the power to create the lien, and except in the case of money or negotiable securities, and subject to any statutory provision to the contrary, is confined to the rights of the principal in the goods or chattels at the time when the lien attaches, and is subject to all rights and equities of third parties available against the principal at that time.

123 The legal principles are clear. However, there were difficulties in the way of the Defendant's arguments. I will mark out the problems.

124 First, the Defendant's pleaded case did not aver to any express, implied or ostensible authority from the Plaintiffs to allow the Defendant to take the 30 FCL containers and contract for a lien for unpaid charges.

125 Secondly, the Defendant's plea of a contractual lien was not made good by particulars, let alone evidence. The Defendant would not have been able to argue that Prolink Logistics was authorised to contract for a lien on behalf of the Defendant. This argument would have been a non-starter. The first three Plaintiffs did not know the 30 FCL containers were consigned to the Defendant until it was too late to stop Prolink Logistics. The first three Plaintiffs could not have known, let alone agreed to, Prolink Logistics contracting for a lien on the Defendant's behalf. Again it would be a non-starter to advance an argument that Prolink Logistics had an implied or ostensible authority to create the lien. Authority to create a lien may be implied if the freight forwarder's principal was in lawful possession of the goods when possession was transferred to the freight forwarder, and the transfer was not inconsistent with the purposes for which the principal was in possession of the goods as regards the owner of the goods (*Cassils & Co and Sassoon v Holden Wood Bleaching Co Ltd* (1915) 84 LJKB 834). In this case, for the reasons earlier stated, Prolink Logistics did not have lawful possession of the 30 FCL containers. Equally, ostensible authority to create a lien was not pleaded nor particularised. Neither did the Defendant explain how ostensible authority could have arisen.

126 Thirdly, the contention that the Defendant was exercising the lien for Prolink Logistics [note: 53] was also a non-starter. The Defence averred to the detention of Group B Cargo in respect of the Defendant's storage and ancillary charges as well as for the sums due to Prolink. There were no particulars or evidence on how Prolink Logistics' possessed a lien. How and when Prolink Logistics delegated the enforcement of its lien to the Defendant was not particularised, let alone supported by evidence. To this end, the Defendant's attempt to exercise a lien for Prolink Logistics' claim against the first three Plaintiffs was entirely without legal basis.

No debt due from the first three Plaintiffs to the Defendant

127 I will now set out the other problem that faced the Defendant. I found that the Defendant could not claim to enjoy a lien because there was no debt due from the first three Plaintiffs to it at the time the Defendant refused to release the 30 FCL containers. It is settled law that the debt on which the lien is founded must have accrued at the time the lien was exercised (*Crawshay v Homfray* (1820) 4 B & Ald 50). In addition, the party asserting the lien must either claim for a definite amount or give the owners or lienor particulars from which he can calculate the amount for which the lien is due (*Singh v Thaper* (unreported) (28 July 1987) (Transcript Association)). In the present case, there was no debt due from the first three Plaintiffs to the Defendant when the lien was purportedly asserted on 13 October 2009.

128 First, Fabian admitted that the storage and ancillary charges commenced only from 15 October 2009, [note: 54] two days after the first three Plaintiffs sued on 13 October 2009. At any rate, no debt was due when the Defendant took possession of the 30 FCL containers on 19 September 2009. In any event, charges and expenses incurred before the Defendant took possession of the 30 FCL containers (if any) would have been incurred by Prolink Logistics and not the Defendant.

129 In addition, it was telling that the Defendant had struggled to give a definite amount or particulars of its debt throughout the proceedings despite claiming that storage and ancillary charges were owed to it. Fabian was also unable to explain the calculations for the different figures that appeared in the Defence and in his various affidavits. The Defendant finally submitted handwritten calculations to the court on 24 October 2011 showing that the storage costs from 15 October 2009 to 31 May 2011 were S$480,990.11. On 20 February 2012, Mr Tan tendered a revised computation showing that the storage costs from 15 October 2009 to 20 February 2012 were S$787,598.15. Given its elusive history, it would be unwise to accept the latest figure of S$787,598.15 without corroborative evidence. I was mindful that the Defendant was not able to explain how the earlier sums were reached and to explain the disparity between the figures. At the end of the trial, the impression the Defendant left with the court was that the alleged outstanding storage and ancillary charges were decidedly questionable.

Conclusion on Issue 2

130 For the reasons stated, the Defendant did not possess a lien to justify the detention of the 30 FCL containers, and thereafter the Group B Cargo. The lien defence therefore failed.

Issue 3: Illegality

Overview

131 The Defendant's pleaded case was that the Plaintiffs were part of an unlawful adventure to evade Indonesian customs duty for the shipment of the 30 FCL containers from Singapore to Jakarta. Like the lien defence, there were difficulties with this illegality defence. I need only mark out two problems.

132 First, the Plaintiffs' claim in conversion would not be defeated given that it was not founded on the "unlawful adventure" but on superior possessory title. Second, the Defendant could not surmount the evidentiary difficulties to prove that an "unlawful adventure" was even perpetuated. The reliance on the misdescription of the goods on the February B/Ls to infer smuggling and evasion of Indonesian customs duty would have failed without the introduction of evidence on Indonesian customs law and

regulations.

133 The parties referred to the decision of the JSA Court in 2009 and the decisions of the Central Jakarta District Court and Jakarta High Court in 2011 in relation to the release of the subject containers by the Indonesian customs authority. The parties separately urged this court to rely on the findings of the Indonesian courts to advance different points. However, I was not inclined to do so as the narration and findings in the decisions were strictly inadmissible evidence that could not, without more, be taken as evidence of the truth or correctness of the matters that transpired in Indonesia or the participation of persons in any illegality perpetuated there (*Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 at [19] and [107]).

Was there really a case for the illegality defence?

As against the first three Plaintiffs

134 The question to be asked was whether there was really a case for the illegality defence to operate. The Defendant faced a number of difficulties with this defence. The first difficulty was with the scope of the Defendant's case on illegality. The Defendant alleged from the outset that the first three Plaintiffs were engaged in an "unlawful adventure" to smuggle the 30 FCL containers into Indonesia without paying Indonesian customs duty relying on the discrepancy between the actual goods in the 30 FCL containers and the goods declared on the February B/Ls to infer such intention on the part of the first three Plaintiffs.

135 The complaint centred on the manner in which general goods in the 30 FCL containers were described in the February B/Ls:

(a) B/L No APLU 057309975, the shipper being "JIANGHAI NON-WOVEN FABRICS CO LTD", and the consignee being "PT HEGAR MULYA", with the goods on the bill of lading described as "5600 PKGS OF NON WOVEN FABRICS"; [note: 55]

(b) B/L No APLU 057309976, the shipper being "WUXI YIHUA POLYESTER YARN CO LTD", and the consignee being "PT HEGAR MULYA", with the goods on the bill of lading described as "8600 PKGS OF POLYESTER YARN"; [note: 56] and

(c) B/L No SSLSGJK1CHB682, the shipper being "XIAMEN ZHONGTIAN PLASTICS CO LTD", and the consignee being "PT TEXMACO MICRO INDO UTAMA", with the goods on the bill of lading described as "9200 BAGS POLYPROPYLENE GRADE Y 4600". [note: 57]

136 Apart from the misdescription of the cargo on the February B/Ls, no other particulars were provided as to how this unlawful adventure was to be perpetuated by that misdescription. The Plaintiffs had asked for particulars but the Defendant refused, claiming that its pleadings were clear enough. [note: 58]

137 The Defendant's case was made difficult by the fact that much of the evidence as to what transpired in Indonesian after the 30 FCL containers arrived in Jakarta was not within the personal knowledge of the Defendant. It was the Defendant's principal who alleged that the smuggling took place and they should have been called as witnesses to explain how the misdescription *per se* could perpetuate an evasion of Indonesian customs duty.

138 There was also no evidence that the February B/Ls would be required to clear the Indonesian

customs. Factually, the original February B/Ls were already surrendered to the carriers in Singapore after the 30 FCL containers were loaded on board the vessels in Singapore.

139 The Defendant wanted to bolster the smuggling allegation by seeking leave to amend the Defence to include the following additional matters: that the shippers on the September B/Ls were companies that had no relationship with the first three Plaintiffs with addresses merely taken from the Internet; that they were not the intended consignees of the goods; that the shippers' names and description of goods on the February B/Ls were provided to Lola by Radius; [note: 59] and that false documents had been prepared by Lola on Radius' instructions for the September shipment.

140 The Defendant applied *vide* Summons No 4641 of 2011 ("SUM 4641/2011") filed on 14 October 2011 for leave to amend the Defence. SUM 4641/2011 was dismissed on 17 October 2011. I was of the view that allowing the amendment would not have made any material difference to the illegality defence. Whilst misdescription in the nature of the goods, named shippers and named consignees on the February B/Ls could arguably have constituted evidence of extraneous circumstances pointing to an illegal object to avoid Indonesian customs duty, the Defendant had no witnesses to prove this. Without calling Radius, Jonny and Cuaca to testify in these proceedings, the whole of the relevant circumstances of the alleged illegality would not be before this court. In addition, foreign law was not pleaded and no expert on Indonesian customs law and practice was on the Defendant's list of witnesses.

141 I should record another eleventh hour interlocutory application by the Defendant for leave to call an expert on Indonesia law. Illegality as a defence was raised as early as 29 October 2009 in Fabian's Interlocutory Affidavit and it was subsequently pleaded in the Defence filed on 17 March 2010. No valid excuse was proffered for the exceedingly late application filed on 19 October 2011. This was Summons No 4730 of 2011 ("SUM 4730/2011") filed on 19 October 2011. SUM 4730/2011 was dismissed on 24 October 2011 (see Annexure B).

142 The expert witness the Defendant wanted to call in SUM 4730/2011 was one Andrew Sriro who was a foreign qualified lawyer working in Indonesia. Mr Sriro's area of practice was largely in commercial law and advising international clients in corporate transactions. Mr Sriro read law in McGeorge School of Law in Sacramento, California, and practiced corporate and business law in California before moving to Jakarta. Mr Sriro obtained the equivalent of a Masters degree from Universitas Padjadjaran, Bandung, Indonesia but it was not disclosed what the Master degree was in. For the reasons stated, the Defendant had not satisfied me that Mr Sriro was qualified to testify as an expert on Indonesian law in the area of import tax and customs law and regulations.

As against the Group B Plaintiffs

143 The Defendant made the same arguments of illegality against the Group B Plaintiffs as it did against the first three Plaintiffs. Although the Defence was pleaded in broad language to cover all Plaintiffs, no particulars of any illegality were directed against the Group B Plaintiffs. It was also not established in evidence that any of the Group B Plaintiffs were aware or participated in the misdescription or misdeclaration of the goods at all. As a final point, the Defendant also did not cross-examine the Group B Plaintiffs on this illegality defence.

The Plaintiffs' claims were independent of the alleged illegality

144 For completeness, even if, for the sake of argument, there was an unlawful adventure as alleged, the Plaintiffs' claims in conversion could be brought as their rights were independent of the alleged illegality and not tainted as such.

145 *Bowmakers Ltd v Barnet Instruments Ltd* [1945] KB 65 is authority for the proposition that a claimant will be able to reclaim property if doing so does not involve reliance on the illegality. This principle was approved by the House of Lords in *Tinsley v Milligan* [1994] 1 AC 340 ("*Tinsley v Milligan*") which held that the principle applies even where the proprietary interest was acquired in the course of an illegal transaction. This was also followed by the Court of Appeal in *Siow Soon Kim* v *Lim Eng Beng alias Lim Jia Le* [2004] SGCA 4 at [38] (see also *Top Ten Entertainment Pte Ltd v Lucky Red Investments Ltd* [2004] 4 SLR(R) 559 at [34]; *Chee Jok Heng Stephanie v Chang Yue Shoon* [2010] 3 SLR 1131).

146 A good example of the application of the principle is the case referred to in Carole Murray, David Holloway and Daren Timson-Hunt, *Schmitthoff's Export Trade, The Law and Practice of International Trade*, (London, Sweet & Maxwell, 11th Ed, 2007) at p 482 where export invoices were falsified in order to deceive the customs authorities of the importer's country. The exporter was not prevented from recovering damages in England from the carriers when the exporter's goods were stolen from their lorry while in transit to the docks of London.

147 As I noted earlier (above at [62]), I was satisfied that the Group B Plaintiffs established their proprietary interests in the Group B Cargo (see Annexure A). The facts in this case present a stronger basis than *Tinsley v Milligan* because unlike the plaintiff in *Tinsley v Milligan*, the Group B Plaintiffs acquired their proprietary interest independent of any illegal act or transaction. Similarly, the first three Plaintiffs' were head bailees under the door-to-door service agreement with the cargo owners, and as head bailees were persons with right to immediate possession of the 30 FCL containers.

148 In the circumstances, the Defendant's argument that this court should still not grant relief to the Plaintiffs, for to do so would be an "affront to the public conscience", was misconceived.

149 The Defendant cited without developing a myriad of rationales in one paragraph of its submissions [note: 60] underpinning the illegality defence as to why relief should not be granted to the Plaintiffs and that the granting of relief would compromise the dignity and reputation of the courts. I do not propose to dwell on this matter except only to comment on Mr Tan's reliance on *Geismar v Sun Alliance and London Insurance Ltd and Another* [1977] 1 QB 383 ("*Geismar*"). When I queried Mr Tan on the rationale for the illegality defence that he was relying upon in citing *Geismar*, he stated that it was for the public conscience test. The House of Lords in *Tinsley v Milligan* cited *Geismar* but was of the view that no broadly applicable public conscience test could be derived from this case (*Tinsley v Milligan* at 350). In addition, the House of Lords had unanimously rejected the public conscience test as no longer good law in England. Mr Tan also cited *Geismar* without explaining why the public conscience test is part of Singapore law. In addition, the facts in *Geismar* were distinguishable.

Overall conclusion on liability in conversion

150 In conclusion, the Plaintiffs succeeded in the action for conversion against the Defendant.

Remedies

151 I turn finally to the remedies awarded to the Plaintiffs.

152 The first three Plaintiffs claimed the following reliefs:

(a) the sums of US$170,000 and Rp 1.2 billion paid to Jonny and/or Radius and/or APL and/or Samudera;

(b) alternatively, an order of delivery up of all the Group B Cargo in the Defendant's possession (on the Group B Plaintiffs' behalf);

(c) a declaration that the Defendant indemnify the first three Plaintiffs for all liabilities and losses incurred, directly or indirectly against them, arising from the conversion and/or wrongful detention of the 30 FCL containers; and

(d) damages to be assessed. [note: 61]

153 The Group B Plaintiffs each claimed:

(a) damages equivalent to the invoice value of the items they own in the Group B Cargo;

(b) alternatively, delivery up of their cargo in the Defendant's possession; [note: 62]

(c) a declaration that the Defendant indemnify each of them for all liabilities and losses incurred, directly or indirectly against them, arising from the conversion and/or wrongful detention of the Group B Cargo; and

(d) damages to be assessed. [note: 63]

154 In the course of proceedings, Mr Kwek explained that the Group B Plaintiffs were asked to clarify whether they wanted delivery up or damages for the items they owned. He advised that the preferred remedies were as follows:

(a) 4th Plaintiffs: Delivery up;

(b) 5th Plaintiffs: Monetary damages representing the value paid for their cargo (US$85,450.00);

(c) 6th Plaintiffs: Monetary damages representing the value paid for their cargo (US$120,949.00);

(d) 7th Plaintiffs: Delivery up;

(e) 8th Plaintiffs: Delivery up;

(f) 10th Plaintiffs: Monetary damages representing the value paid for their cargo (US$54,270.00);

(g) 11th Plaintiffs: Monetary damages representing the value paid for their cargo (US$52,302.36);

(h) 12th Plaintiffs: Delivery up;

(i) 13th Plaintiffs: Monetary damages representing the value paid for their cargo (US$37,348.00);

(j) 15th Plaintiffs: Delivery up.

The first three Plaintiffs' reliefs

155 I awarded the first three Plaintiffs the declaration that the Defendant indemnify the first three Plaintiffs for all liabilities and losses incurred, directly or indirectly against them, arising from the conversion and/or wrongful detention of the 30 FCL containers. However, I dismissed the first three Plaintiffs claim for US$170,000 and Rp 1.2 billion against the Defendant.

The Group B Plaintiffs' reliefs

156 I awarded damages to be assessed to the Group B Plaintiffs. I did not award delivery up to the 4th, 7th, 8th, 12th and 15th Plaintiffs because the Plaintiffs ran their entire cause of action in conversion rather than detinue (as would be explained below). Strictly, the relief of delivery up is not available in a claim for conversion. The only remedy for a claim in conversion at common law is an award of damages. Diplock LJ in *General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd* [1963] 1 WLR 644 at 649 noted that "the action in conversion is a purely personal action and results in a judgment for pecuniary damages only". At common law, the courts may only order the specific delivery of an asset for an action of detinue. I refer to *Winfield & Jolowicz on Tort* (Sweet & Maxwell, 18th Ed, 2010) ("*Winfield & Jolowicz"*) at para 17-29:

> The only remedy for conversion at common law was the purely personal one of damages. However, when the defendant was in possession of the goods and refused to deliver them up on demand his act was not only conversion but also detinue and the form of judgment in detinue might include an order for the delivery up of the goods. …

157 In seeking the remedy of delivery up, Mr Kwek relied primarily on authorities based on the position in England following the enactment of the Torts (Interference with Goods) Act 1977 (c 32) (UK) ("the 1977 TIGA"). By virtue of the 1977 TIGA, the tort of detinue was abolished in England with the remedies for detinue being made available for the statutory tort of conversion, in particular delivery up. Indeed, the Plaintiffs' counsel themselves cited *Winfield & Jolowicz* at para 17-29 which stated that:

> … Detinue has now been abolished but the remedies for conversion where goods are detained by the defendant are now found in s. 3 of the Torts (Interference with Goods) Act 1977, which is modelled on the common law remedies available for detinue.

158 There is no equivalent statutory reform in Singapore. As a result, the position in Singapore is that the tort of detinue still had to be pleaded if a plaintiff seeks the remedy of delivery. This was noted in *The Law of Torts in Singapore* at para 11.067:

> … In practice, the much broader scope of conversion has rendered the tort of detinue largely obsolete, leading to its statutory abolition in the UK in 1977. For Singapore, however, detinue remains very much a live tort. In practice, the claimant's desire to recover the property constitutes the main reason for pleading the tort. This is because *at common law, a court may only order the specific delivery of the asset in an action for detinue and not for conversion*. For that same reason, detinue is usually only pleaded as against a defendant who is still in possession of the goods.
>
> [emphasis added]

159 A local decision, *Yoong Yuet Hoe v Shenson Engineering & Trading (S) Pte Ltd* [1994] SLR(R) 950, was cited to me for the proposition that delivery up could be ordered in an action for conversion. However in that case, counsel did not appear to put in issue the distinction in remedies between conversion and detinue. I was thus of the view that if the Plaintiffs wanted to claim delivery up as a remedy, it was necessary to plead detinue as a cause of action.

160 Mr Kwek submitted that the Plaintiffs' pleadings, as they then stood, were wide enough to include the tort of detinue. To provide some context, I set out the relevant paragraph of the amended Statement of Claim:

> 33 In the premises, the Defendants and/or Mr Cuaca and/or PT Prolink Logistics and/or PT Prolink Clare and/or Mr Jonny Abbas and/or Mr Radius have converted and/or wrongfully detained the Cargo to their own use and have wholly deprived the Plaintiffs of the use of the same. By reason of the aforesaid matters, the Defendants and/or Mr Cuaca and/or PT Prolink Logistics and/or PT Prolink Clare and/or Mr Jonny Abbas and/or Mr Radius have denied and/or acted in a manner inconsistent with the rights of the Plaintiffs to the Cargo.

161 I was not persuaded by his arguments for various reasons. The parties conducted the trial on the basis of a cause of action in conversion. The plea of demand and refusal was proof of the act of conversion rather than a reliance on the cause of action of detinue. This was the Defendant's objection as well. As an illustration, the Plaintiffs submitted in their Opening Statement at paragraph 3 that:

> The Plaintiffs' primary contention is that the Defendants' failure to forthwith deliver up the cargo to the 1st Plaintiffs upon demands made for the same (beginning with a letter sent on 12 October 2009 from the Plaintiffs' solicitors to the Defendants) and continued detention of the cargo, *amount to conversion of the cargo*.
>
> [emphasis added]

162 I thus awarded damages to be assessed to the 4th to 8th Plaintiffs, 10th to 13th Plaintiffs and the 15th Plaintiff. As for costs, I ordered the Defendant to pay the first three Plaintiffs, 4th to 8th Plaintiffs, 10th to 13th Plaintiffs, and the 15th Plaintiff costs of the action including the costs of SUM 5358/2011 to be taxed, if not agreed, on a High Court scale, and for the costs of the assessment of damages hearing including interest to be reserved to Assistant Registrar hearing the assessment of damages.

163 Several summonses were dealt with at the trial. The outcome of the summonses and costs orders made in relation thereto are enumerated in Annexure B to this Grounds of Decision.

Annexure A: the Group B Plaintiffs proprietary title to the Group B Cargo

1 The Defendant challenged the Group B Plaintiffs' proprietary title to the Group B Cargo claiming that they did not provide proper verification of their title to the goods.On reviewing and evaluating the evidence, I was satisfied on a balance of probabilities that the Group B Plaintiffs had established their proprietary title to the respective goods. There was evidence of payment by the Group B Plaintiffs for the Group B Cargo. Suppliers who sold on credit terms did not reserve title to the goods during the credit period or until payment. For purchasers who were able to their suppliers to testify at the trial, the suppliers testified that the goods were paid for. In all cases, the evidence was that payments were made before August 2009 and with that, title no longer lay with the suppliers.

2 I now turn to evidence adduced by the Group B Plaintiffs as proof of their title.

The 4th Plaintiff's title

3 The 4th Plaintiff claimed ownership of the following items:

(a) 2 units of a complete set w/ABB Motor with Oiler mounted (Tag#PO1242008, Motor S/N# 449100036; Pump Model: 2K2Z1-10ARV Pump S/N# 2DP2980) ("Complete Sets"); [note: 64]

(b) 1 case of parts for a Durco Pump, marked S-3460 C/N 12 ("Pump Parts").

4 The 4th Plaintiff received a purchase order for the Complete Sets from its customer in Indonesia, PT Polysindo EKA Perkasa on 23 July 2008. [note: 65] The 4th Plaintiff then ordered the Complete Sets from its manufacturer, Flowserve Pte Ltd in Singapore ("Flowserve"). [note: 66] The Complete Sets were sent or collected by the 3rd Plaintiff as consignee on 22 January 2009. The 4th Plaintiff was given 30-days credit (from 22 January 2009), [note: 67] but it made payment on 14 April 2009. [note: 68] There was no evidence of the supplier's reservation of title during the period of credit or until payment. I found that the title passed to the 4th Plaintiff on 22 January 2009 when the Complete Sets were delivered to the 3rd Plaintiff on behalf of the 4th Plaintiff, and at the very latest, when payment was made on 14 April 2009.

5 As for the Pump Parts, the 4th Plaintiff's customer in Indonesia, PT Menara Alfasemesta, placed an order for these parts on 13 August 2008. [note: 69] The 4th Plaintiff then ordered the Pump Parts from Flowserve. The 3rd Plaintiff collected the Pump Parts from one of Flowserve's offices in Tuas on 29 January 2009. [note: 70] The 4th Plaintiff also paid for the Pump Parts in full by way of telegraphic transfer on 29 January 2009. [note: 71] As with the Complete Sets, I found that the title to the Pump Parts passed to the 4th Plaintiff on delivery of or collection of the Pump Parts by the 3rd Plaintiff, and at the latest, when payment was made.

The 5th Plaintiff's title

6 The 5th Plaintiff was a supplier and distributor of electronic goods manufactured by JVC in Indonesia. The 5th Plaintiff claimed ownership of the following items:

(a) 582 cartons of JVC Receiver, Marine Case, DV Cassette ("Receivers");

(b) 120 cartons of 120 pieces of JVC LCD TV ("LCD TVs"). [note: 72]

7 The 5th Plaintiff placed orders for various items, including the Receivers and LCD TVs, with JVC Asia Pte Ltd in Singapore ("JVC Asia") on 15 December 2008. [note: 73] Pursuant to the 5th Plaintiff's instructions, JVC Asia delivered the Receivers by truck to the 3rd Plaintiff on 30 January 2009, and the LCD TVs (with 300 pieces of Memory Camera Standard Definition which do not form part of the 5th Plaintiff's claim [note: 74]) on 3 February 2009. The 3rd Plaintiff then shipped the items to the 5th Plaintiff in Indonesia. [note: 75] The 5th Plaintiff paid JVC Asia for the Receivers and LCD TVs in April

2009 by telegraphic transfer, [note: 76] and received a receipt for the sum of US$142,450.00 (inclusive of the 300 pieces of Memory Camera Standard Definition). [note: 77] The 5th Plaintiff's evidence was corroborated by one Tan Kheng Teck, a Sales Executive of JVC Asia, who handled the 5th Plaintiff's orders. [note: 78] I was satisfied that title to the Receivers and LCD TVs passed to the 5th Plaintiff on delivery to the 3rd Plaintiff who received them as agent of the 5th Plaintiff.

The 6th Plaintiff's title

8 The 6th Plaintiff was an Indonesian company which typically placed orders with suppliers in various countries for delivery through the 3rd Plaintiff as its freight forwarder. The 6th Plaintiff claimed ownership of the following items:

(a) The 6th Plaintiff ordered 124 pails of Super White W-0116 Finishing Agent ("Finishing Agent") from Matsui Shikiso Chemical Co Ltd ("Matsui") in July 2008 (reflected in Invoice No MI-22373). [note: 79] This order was shipped from Kobe, Japan, to the 3rd Plaintiff in Singapore on 31 July 2008. [note: 80] The 6th Plaintiff paid for this order on 25 September 2008 by way of telegraphic transfer. [note: 81]

(b) The 6th Plaintiff also ordered 40 drums & 141 pails of Finishing Agent 3648 kgs in December 2008 from Matsui as reflected in Invoice No MI-23114. This order was shipped to the 3rd Plaintiff in Singapore on 15 January 2009. The 6th Plaintiff paid for this order by way of telegraphic transfer on 2 March 2009. [note: 82] The 6th Plaintiff also adduced a letter dated 12 April 2011 from Matsui acknowledging that payment was made on those dates. [note: 83]

(c) The 6th Plaintiff ordered 10 bales/cartons of Screen Printing Squeeqees from Hebei Menopharm Co Ltd ("Hebei Menopharm") in January 2009, as reflected in Invoice TTMN-1001/09 dated 3 January 2009. [note: 84] The 6th Plaintiff made payment for this order two weeks after placing the order with Hebei Menopharm. [note: 85] Eternal Fortune Freight Forwarding Co Ltd issued a bill of lading dated 10 January 2009 in respect of this order, and shipped the order to the 3rd Plaintiff. [note: 86]

(d) The 6th Plaintiff ordered 100 bags of Copa 0-80UM from Wenzhou Huate Hot-Melts Co Ltd in January 2009 ("Wenzhou"), as reflected in Invoice HT-FP09001 dated 5 January 2009. [note: 87] The goods were shipped on 13 January 2009 to the 3rd Plaintiff which was the consignee on the bill of lading. [note: 88] The 6th Plaintiff made payment two weeks after placing the order with Wenzhou. [note: 89]

(e) The 6th Plaintiff ordered 18 pallets of Screen Printing Inks ("Inks") from Polyone-Shenzhen Co Ltd, as reflected in Invoice SO402531/32/33 dated 10 January 2009. [note: 90] The Inks were shipped to the 3rd Plaintiff as consignee in a bill of lading dated 19 January issued by BDP Transport Inc. The 6th Plaintiff paid for the Inks in January 2009. [note: 91]

(f) The 6th Plaintiff ordered 8 cartons of pigment from Day-Glo Color Corp in January, as

reflected in Invoice No 35671. [note: 92] The pigments were flown from Ohio, USA, to Singapore on 16 January 2009. [note: 93] This order was paid for on 16 January 2009 and 30 January 2009. The 6th Plaintiff relied on a letter dated 8 April 2011 from Day-Glo confirming that payment was received on the said dates. [note: 94]

9 In the case of the 6th Plaintiff's goods, I was satisfied that the goods were all delivered and paid for, and title passed to the 6th Plaintiff long before the goods fell into the Defendant's possession on 19 September 2009. While the Defendant's counsel during cross-examination appeared to point to the lack of documentation evidencing payment by telegraphic transfers to the respective suppliers, I found that no countervailing evidence of sufficient weight was adduced to dispute the 6th Plaintiff's claim to the items.

The 7th Plaintiff's title

10 The 7th Plaintiff claims ownership of the following items:

(a) 17 skids of 85,000 pieces of 4" Slim Taper Files ("4" Files") under Invoice No 142142;

(b) 5 skids of 20,000 pieces of 4" Files, 10 loops of Bandsawblade and 3,000 pieces of Bowsawblade Peg Toothing under Invoices No 142665 and 142666. [note: 95]

11 The 7Th Plaintiff purchased the items from Snap-on Tools Singapore Pte Ltd ("Snap-on Tools") for distribution in Indonesia. Snap-on Tools would then order the items from Holland, and the goods would be shipped from Holland to Singapore to the 3rd Plaintiff, for shipment to Indonesia.

12 The 7th Plaintiff placed an order on 25 February 2008 for, *inter alia*, 2,000,000 pieces of 4" Files. [note: 96] The 4" Files were to be shipped in batches. 85,000 out of the 2,000,000 pieces of 4" Files were purchased under Invoice No 142142. The 85,000 pieces of 4" Files were shipped F O B Rotterdam/C I F Singapore to the 3rd Plaintiff in Singapore. [note: 97] The terms of payment was 90 days from the date of invoice (24 December 2008 in this case). [note: 98] The 7th Plaintiff paid Invoice No 142142 in full on 2 January 2009 by way of telegraphic transfer, and received a receipt for the payment from Snap-on Tools. [note: 99] I found that title to these goods passed to the 7th Plaintiff on delivery to the 3rd Plaintiff, or at the latest, on payment of the goods.

13 The second batch consisted of another 20,000 pieces out of the 2,000,000 of 4" Files (in Invoice No 142665 [note: 100]), and 10 loops of Bandsawblade and 3000 pieces of Bowsawblade Peg Toothing (in Invoice No 142666 [note: 101]) ordered on or around 23 January 2009. The 7th Plaintiff paid for the goods in full on 26 March 2009 by way of telegraphic transfer, and received a receipt from Snap-on Tools. [note: 102] This batch of items was sent by Snap-on Tools to the 3rd Plaintiff, and received by the latter on 23 January 2009. For these goods, I was also satisfied that title to the goods passed to the 7th Plaintiff on delivery to the 3rd Plaintiff, or at the latest, on payment. The 7th Plaintiff's evidence was corroborated by Tan Hwee Kiong, the managing director of Snap-on Tools. [note: 103]

The 8th Plaintiff's title

14 The 8th Plaintiff claimed title to the following items:

(a) 1100 cartons of Chamisul Soju;

(b) 30 cartons of POS Materials, *ie* cup / ice bucket.

15 The 8th Plaintiff purchased items from Jinro Limited ("Jinro") in South Korea for supply in Indonesia. The 8th Plaintiff placed an order some time before 19 March 2008 for 2,200 cartons of Chamisul Soju and 60 cartons of POS materials. [note: 104] The 8th Plaintiff paid Jinro for the items on 19 March 2008 by way of bank remittance. [note: 105]

16 The Defendant submitted that the commercial invoice [note: 106] and bill of lading [note: 107] used to evidence shipment from South Korea to Indonesia were dated 4 February 2008 and 24 February 2008 respectively and they did not correspond with the 8th Plaintiff's evidence that the order was only made on 19 March 2008. [note: 108] Notwithstanding this, I was satisfied that title passed to the 8th Plaintiff on payment. Moreover, neither Jinro nor any other party came forward to claim ownership of the goods. There was also no evidence that Jinro retained any right of disposal to the items. The 8th Plaintiff's title to the goods was made out.

The 10th Plaintiff's title

17 The 10th Plaintiff, Ng Roy Dinur, was a distributor of mobile phones in Indonesia. He claimed title to 2 cartons of Sony Ericsson and Nokia mobile phones and spare parts (collectively, "Handphones"). The 10th Plaintiff placed orders for the Handphones with his partners in Hong Kong in January 2009, [note: 109] and paid for the Handphones in full in cash. [note: 110] Payment for the Handphones was made in two instalments of US$20,000 and a third instalment of US$14,270.00 in the first half of 2009. [note: 111] The goods were flown out on 24 January 2009 to the 1st Plaintiff for shipment to the 10th Plaintiff in Indonesia. I was satisfied that title to the goods passed to the 10th Plaintiff when it made full payment for the Handphones at the latest. This was before the 30 FCL containers came into possession of Prolink Logistics or the Defendant.

The 11th Plaintiff's title

18 The 11th Plaintiff claimed ownership of the following items:

(a) 24 cartons of 605 books of cloth samples;

(b) 257 bales of Terylene Cloth. [note: 112]

19 The items were purchased from Shenzhen Daranfang Industrial Co Ltd ("Shenzhen Daranfang") for supply to customers in Indonesia. The items were shipped from Shenzhen, China to Singapore and received by the 3rd Plaintiff sometime in January 2009. The 11th Plaintiff paid for the goods in full by way of telegraphic transfer on 3 June 2008. [note: 113] The 11th Plaintiff's testimony was also corroborated by Sun Yuzhen, the manager of Shenzhen Daranfang who was the person in charge of this sales transaction. I was satisfied that the 11th Plaintiff was the owner of these goods.

The 12th Plaintiff's title

20 The 12th Plaintiff claimed that he owned 2 Caper Multi-purposed Chairs ("Chairs") with adjustable height. His sister-in-law, Jenny Liong visited Xtra Designs Pte Ltd's shop in Park Mall, Singapore, and placed an order on the 12th Plaintiff's behalf. [note: 114] He made payment for this by telegraphic transfer on 7 or 8 February 2009, as indicated in Invoice No LI1467. [note: 115] Even though Invoice No LI1467 was addressed to the 12th Plaintiff's sister-in-law, the circumstances indicated that the true owner of the Chairs was the 12th Plaintiff. The Chairs were sent to 3rd Plaintiff in February 2009 for shipment to Indonesia. I found that title to the Chairs passed to the 12th Plaintiff on payment.

The 13th Plaintiff's title

21 The 13th Plaintiff claimed that it owned 327 cartons of assorted liquor which was purchased from Pernod Ricard Singapore Pte Ltd ("Pernod Ricard"). [note: 116] In February 2009, the 13th Plaintiff placed an order with Pernod Ricard for the purchase of the liquor. The 13th Plaintiff paid for the goods in full by cheque to Pernod Ricard. [note: 117] The liquor was purchased in two orders and both orders were paid for in full on or before 12 February 2009. Pernod Richard then delivered the goods to the 2nd Plaintiff, who was to ship the goods to Indonesia. [note: 118] Lee Khong Qai, Kevin Wilfred, an employee of Pernod Ricard who was the person in charge of the orders, also confirmed that the orders were paid for in full before delivery. He testified that Pernod Ricard would not have delivered the order unless payment for the order had been received. [note: 119] I did not consider the absence of a receipt to be detrimental. [note: 120] I was satisfied that the 13th Plaintiff had established its proprietary title to the 327 cartons of assorted liquor.

The 15th Plaintiff's title

22 The 15th Plaintiff claimed to own the following goods:

(a) 1 Plockmatic Collator;

(b) 1 Plockmatic Belt Stacker with Base;

(c) 1 Plockmatic Booklet Make; and

(d) 1 Base to 310+ (showroom model).

23 The 15th Plaintiff placed the order for the goods with Rota Corporation (Pte) Ltd ("Rota") in Singapore in December 2008. [note: 121] The 15th Plaintiff made full payment for the goods on 20 January 2009. [note: 122] Rota then delivered the goods to the 3rd Plaintiff for shipment to the 15th Plaintiff in Indonesia. This was supported by a United Overseas Bank cash deposit slip dated 20 January 2009. [note: 123] The goods were sent to the 3rd Plaintiff for shipment to the 15th Plaintiff in Indonesia on 22 January 2009. [note: 124] The 15th Plaintiff's evidence was corroborated by Li Hui Zhang, a technician of Rota who managed this transaction. I was of the view that the 15th Plaintiff had established its proprietary title to the goods.

Annexure B: Hearings before Justice Belinda Ang Saw Ean

1. SUM No 4216 of 2011 filed on 22 September 2011 by Defendant for Striking Out

6 October 2011 - Dismissed. No order as to costs.

2. SUM No 4217 of 2011 filed on 22 September 2011 by Defendant for Discovery

6 October 2011 - (i) Documents/correspondence with APL and Samudera and vice versa touching on the issuance of the 3 bills of lading Sin/JKT including whatever documents submitted to APL and Samudera for this shipment; (ii) OIT prayer 2(b); (iii) Plaintiffs to file Supplemental LOD and Affidavit verifying the same by 10/10/11; (iv) Leave to Plaintiffs to file Supplementary AEIC of Lola Heng by 12/10/11 and (v) Plaintiffs to pay the Defendant costs of the application fixed at $1,200.

3. SUM No 4218 of 2011 filed on 22 September 2011 by Defendant for Declaration

27 February 2012 - Dismissed. Costs adjourned to 28.2.12 at 10.00am.

28 February 2012 - The costs order made on 28 February 2012 for costs of the action would include all summonses that require costs orders from the court.

4. SUM No 4442 of 2011 filed on 4 October 2011 by Defendant for leave to file and serve AEIC of Pang Chan Kok William etc

6 October 2011 - No order was made.

5. SUM No 4456 of 2011 filed on 5 October 2011 by Defendant for leave to call Linda Irawaty as witness without AEIC

6 October 2011 - Dismissed. Subpoena set aside. Defendant ordered to pay Linda Irawaty costs of the application fixed at $2,500.

6 . SUM No 4641 of 2011 filed on 14 October 2011 by Defendant for leave to amend Defence (Amendment No 2)

17 October 2011 - Dismissed. Costs reserved.

28 February 2012 - The costs order made on 28 February 2012 for costs of the action would include all summonses that require costs orders from the court.

7 . SUM No 4730 of 2011 filed on 19 October 2011 by Defendant for leave to file, serve and adduce AEIC of Andrew I. Sriro

24 October 2011 – Dismissed with costs fixed at $2,000.

8. SUM No 4820 of 2011 filed on 25 October 2011 by Defendant for leave to file and serve AEIC of a representative from Singapore Logistics Assoc. etc.

15 November 2011 - Dismissed. Costs reserved.

28 February 2012 – The costs order made on 28 February 2012 for costs of the action would include all summonses that require costs orders from the court.

9 . SUM No 5358 of 2009 filed on 13 October 2009 by Plaintiffs for delivery up of certain cargo (COSTS ONLY)

28 February 2012 - The costs order made on 28 February 2012 for costs of the action would include costs of SUM 5358 of 2009 with liberty to the Defendant to raise quantum before Taxing Registrar in relation to the affidavits filed in respect of SUM 5358 of 2009 and AEICs.

[note: 1] 1AB pp 33-35

[note: 2] Transcripts dated 14.10.11, p 23

[note: 3] Defendant's Bundle of Interlocutory Affidavits, Vol 1, Tab 1 p 67

[note: 4] Hari's 1st AEIC filed on 31/5/11, para 23

[note: 5] Kim's AEIC filed on 31/5/11, para 17

[note: 6] Kim's AEIC filed on 31/5/11, para 17; Hari's 1st AEIC filed on 31/5/11, para 24

[note: 7] Lola's AEIC, filed on 31/5/11, para 16

[note: 8] Exhibited at THM 1-Tab 33 and Tab 34

[note: 9] Kim's AEIC filed on 31/5/11, para 22

[note: 10] Kim's AEIC filed on 31/5/11, para 26

[note: 11] Hari's 1st AEIC filed on 31/5/11, para 29

[note: 12] Fabian's 2nd Interlocutory Affidavit filed on 19/11/09, para 11; Fabian's 1st AEIC filed on 27/5/11, para 12.

[note: 13] BP Tab 5, p 72

[note: 14] BP Tab 5, p 69

[note: 15] Fabian's 1st AEIC filed on 27/5/11, p 395

[note: 16] Fabian's 1st AEIC filed on 27/5/11, p 467

[note: 17] Fabian's Interlocutory Affidavit filed on 19/11/09, pp 36-37

[note: 18] BP Tab 5, p 71

[note: 19] Fabian's 1st AEIC filed on 27/5/11, p 560

[note: 20] Fabian's Interlocutory Affidavit filed on 18/11/09, pp68-69

[note: 21] Fabian's 1st AEIC filed on 27/5/11, p 561

[note: 22] Fabian's 1st AEIC filed on 27/5/11, para16

[note: 23] Plaintiffs' Opening Statement filed on 23/9/11, para 26

[note: 24] SOC (Amendment No 1) re-filed on 29/8/11, para 3

[note: 25] Defendant's Opening Statement filed on 26/9/11, paras 25-26

[note: 26] Transcripts dated 21.10.11 at p 27

[note: 27] Transcripts dated 21.10.11 at p 16

[note: 28] Lola's AEIC at para 12

[note: 29] Transcripts dated 24.10.11 at pp 4-5

[note: 30] Transcripts dated 21.10.11 at p 35

[note: 31] Transcripts dated 21.10.11at p 32

[note: 32] Fabian's 2nd Affidavit filed on 19/11/09, para 11; Plaintiffs' Closing Submissions, para 49

[note: 33] Transcripts dated 24.10.11at pp30-31

[note: 34] Hari's Interlocutory Affidavit filed on 09/11/09, para 7

[note: 35] Hari's 1st AEIC filed on 31/5/11, para 40; THM-1 Tab 42

[note: 36] Transcripts dated 24.10.11 at pp 37-38

[note: 37] Transcripts dated 24.10.11 at pp 16 & 19

[note: 38] Hari's 2nd Interlocutory Affidavit filed on 6/11/09, pp 81-83; Plaintiff's Closing Submissions, para 20

[note: 39] 1AB p 52

[note: 40] Defence filed on 17/3/10 at para 19

[note: 41] Defence (Amendment No 1) re-filed on 13/9/11 at para 28

[note: 42] Transcripts dated 21.10.11 at p 21

[note: 43] Transcripts dated 21.10.11 at p 20

[note: 44] Transcripts dated 21.10.11 at pp 22-23

[note: 45] Hari's 1st AEIC filed on 31/5/11, p 1066

[note: 46] Hari's 2nd Interlocutory Affidavit filed on 6/11/09, p 71-74

[note: 47] 2AB, p 321

[note: 48] 2AB, p 325, para 3

[note: 49] Fabian's 5th Affidavit filed on 22/09/11, para 11

[note: 50] Plaintiff's Lien Submissions, para 1

[note: 51] Transcripts dated 14.10.11 at pp 31, 35-36

[note: 52] Defendant's Submissions on Preliminary Issues, paras 22-23

[note: 53] Transcripts dated 14 October 2011, p 55 at lines 21 – 22

[note: 54] Transcripts dated 21 October 2009, p 49, 56-57; Table tendered on 20 February 2012

[note: 55] Lola's 2nd AEIC filed on 12/10/11,, para 19, p 57

[note: 56] Lola's 2nd AEIC filed on 12/10/11, para 19, p 55

[note: 57] SOC (Amendment No 1) filed on 29/8/11, para 10; Lola's 2nd AEIC filed on 12/10/11, p 32

[note: 58] FNBP filed on 23.06.10 & Defence (Amendment No 1) filed on 13/9/11, para 25

[note: 59] Lola's AEIC filed on 31/5/11, para 6; see also Lola's Supp AEIC, para 8, 10, 12,17; p 12-14, p 22 Lola's 2nd AEIC filed on 12/10/11, p 28 (Samudera), 35-40 (APL)

[note: 60] Defendant's Closing Submissions, para 19

[note: 61] SOC (Amendment No 1) re-filed on 29/8/11, p 21

[note: 62] SOC (Amendment No 1) re-filed on 29/8/11, p 21

[note: 63] SOC (Amendment No 1) re-filed on 29/11/11, pp 21 to 29

[note: 64] Budhi Nurpasha's ("Budhi") AEIC filed on 9/6/11, p 9

[note: 65] Budhi's AEIC filed on 9/6/11, para 6.

[note: 66] Budhi's AEIC filed on 9/6/11, p 17

[note: 67] Budhi's AEIC filed on 9/6/11, p 19

[note: 68] Budhi's AEIC filed on 9/6/11, para 11

[note: 69] Budhi's AEIC filed on 9/6/11, para 13

[note: 70] Budhi's AEIC filed on 9/6/11, para 15; p 36

[note: 71] Budhi's AEIC filed on 9/6/11, para 11, p 26

[note: 72] SOC (Amendment No 1) re-filed on 29/8/11, para 3(b); Tan Kheng Teck's AEIC (JVC) filed on 31/5/11, p 9, 11

[note: 73] Teddy's AEIC filed on 31/5/11, para 7

[note: 74] Teddy's AEIC filed on 31/5/11, para 15

[note: 75] TKT's AEIC filed on 31/5/11, para 10

[note: 76] Teddy's AEIC filed on 31/5/11, para 12

[note: 77] Teddy's AEIC filed on 31/5/11, p 21

[note: 78] TKT's AEIC filed on 31/5/11

[note: 79] Goei Hoei Tin ("GHT")'s AEIC filed on 31/5/11, para 6

[note: 80] GHT's AEIC filed on 31/5/11, p 15

[note: 81] GHT"s AEIC filed on 31/5/11, para 8

[note: 82] GHT"s AEIC filed on 31/5/11, para 8

[note: 83] GHT's AEIC filed on 31/5/11, para 8; p 22

[note: 84] GHT's AEIC filed on 31/5/11, para 13

[note: 85] GHT's AEIC filed on 31/5/11, para 11

[note: 86] GHT's AEIC filed on 31/5/11, p 30

[note: 87] GHT's AEIC filed on 31/5/11, para 10

[note: 88] GHT's AEIC filed on 31/5/11, p 26

[note: 89] GHT's AEIC filed on 31/5/11, para 11

[note: 90] GHT's AEIC filed on 31/5/11, p 35

[note: 91] GHT's AEIC filed on 31/5/11, paras 16 and 17

[note: 92] GHT's AEIC filed on 31/5/11, p 45

[note: 93] GHT's AEIC filed on 31/5/11, p 46

[note: 94] GHT's AEIC filed on 31/5/11, p 50

[note: 95] Jie Leong Poe's ("JLP") AEIC filed on 31/5/11, paras 4 and 5;

[note: 96] JLP's AEIC filed on 31/5/11, p 11

[note: 97] JLP's AEIC filed on 31/5/11, pp 15 and 16

[note: 98] JLP's AEIC filed on 31/5/11, p 15

[note: 99] JLP's AEIC filed on 31/5/11, p 18

[note: 100] JLP's AEIC filed on 31/5/11, p 20

[note: 101] JLP's AEIC filed on 31/5/11, p 24

[note: 102] JLP's AEIC filed on 31/5/11, p 31

[note: 103] Tan Hwee Kiong's AEIC filed on 31/5/11, paras 13 to 18

[note: 104] Reimer Simorangkir's ("Reimer") AEIC filed on 31/5/11, para 8

[note: 105] Reimer's AEIC filed on 31/5/11, para 9, p 12

[note: 106] Reimer's AEIC filed on 31/5/11, p 14

[note: 107] Reimer's AEIC filed on 31/5/11, p 16

[note: 108] Transcripts dated 7 October 2011, pp 71-72

[note: 109] Roy Ng's AEIC filed on 31/5/11, para 7

[note: 110] Roy Ng's AEIC filed on 31/5/11, paras 6, 8

[note: 111] Roy Ng's AEIC filed on 31/5/11, para 8

[note: 112] Carlo Setiadi's ("Carlo")AEIC filed on 31/5/11, para 4

[note: 113] Carlo's AEIC filed on 31/5/11, paras 12-13

[note: 114] Santoso Kartono ("Santoso") AEIC filed on 31/5/11, para 6

[note: 115] Santoso's AEIC filed on 31/5/11, para 7

[note: 116] Chew Men Lai's AEIC filed on 31/5/11, para 4

[note: 117] Chew Men Lai's AEIC filed on 31/5/11, para 10

[note: 118] Chew Men Lai's AEIC filed on 31/5/11, para 6

[note: 119] Kevin Lee's AEIC on 31/5/11, paras 8-9

[note: 120] Kevin Lee's AEIC on 31/5/11, paras 8-9

[note: 121] Ronny Awaloei's AEIC filed on 31/5/11, para 8

[note: 122] Ronny Awaloei's AEIC filed on 31/5/11, para 11

[note: 123] Ronny Awaloei's AEIC filed on 31/5/11, p 13

[note: 124] Li Hui Zhang's AEIC filed on 31/5/11, para 8, p 10

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