

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

[2023] SGHC 302

Admiralty in Personam No 14 of 2023 (Summons No 2034 of 2023)

Between

Hyphen Trading Limited

... Claimant

And

- (1) BLPL Singapore Pte Ltd
- (2) Trafigura Pte Ltd
- (3) Trafigura India Pvt Ltd

... Defendants

Counterclaim of the First Defendant

Between

BLPL Singapore Pte Ltd

... Claimant in Counterclaim

And

Hyphen Trading Limited

... Defendant in Counterclaim

GROUNDS OF DECISION

[Admiralty and Shipping — Sale of cargo *pendente lite* under Order 13 rule 4 of the Rules of Court 2021 — Factors to consider in the exercise of the court's discretion — Whether there was good reason for the cargo to be sold — Whether it was in the interests of justice for the cargo to be sold]

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Hyphen Trading Ltd
v
BLPL Singapore Pte Ltd and others

[2023] SGHC 302

General Division of the High Court — Admiralty in Personam No 14 of 2023
(Summons No 2034 of 2023)

S Mohan J

18 August, 13 September 2023

25 October 2023

S Mohan J:

1 HC/SUM 2034/2023 (“SUM 2034”) was the claimant’s application for the sale of a cargo of nickel briquettes (the “Cargo”) under O 13 r 4(1) of the Rules of Court 2021 (“ROC 2021”) and for the sale proceeds to be placed into court or alternatively in an escrow account to be agreed by the parties, pending the final determination of this originating claim, HC/ADM 14/2023 (“ADM 14”) (*ie*, a sale *pendente lite*). The Cargo is the subject of three bills of lading and presently in the custody of the first defendant, stored at Henry Bath LME warehouse in Port Klang, Malaysia. In ADM 14, questions as to which party is in possession of the true original bills of lading representing the Cargo and/or entitled to the Cargo are contested.

2 I dismissed SUM 2034 on 13 September 2023 and provided brief oral grounds for my decision. Based on counsel’s submissions, there appears to be

no reported case concerning an application under O 13 r 4(1) of the ROC 2021, which provides for the court’s power to “order the sale of any movable property which is the subject matter of or may give rise to any issue in an action”. This was also an instance where I refused to make the order sought by the claimant. Accordingly, while there has been no appeal against my decision, I consider it useful to provide my full grounds of decision.

Facts

The parties

3 The claimant is Hyphen Trading Limited, a company incorporated in the United Kingdom carrying on the business of, *inter alia*, commodity trading.¹ It is the claimant’s case in ADM 14 that it is and was at all material times the owner of the Cargo and the lawful holder of three genuine and original bills of lading relating to the Cargo.² The bills of lading in the possession of the claimant provide for the Cargo to be shipped from Pasir Gudang in Malaysia to Nhava Sheva port, India.³

4 The first defendant is BLPL Singapore Pte Ltd, a Singapore company engaged in the business of shipping, including chartering of ships and boats with crew.⁴ In the present case, the first defendant was the contractual carrier of the Cargo and is alleged to have issued the said bills of lading in August 2022.⁵

¹ Statement of Claim (Amendment No 2) in HC/ADM 14/2023 at para 1.

² Statement of Claim (Amendment No 2) in HC/ADM 14/2023 at para 2; 3rd Affidavit of Alexandros Chirdaris Vieira dated 5 July 2023 (“3-ACV”) at para 7.

³ 1st Affidavit of Alexandros Chirdaris Vieira dated 4 March 2023 (“1-ACV”) at pp 120–129.

⁴ Defence and Counterclaim of the 1st defendant in HC/ADM 14/2023 at para 4(a).

⁵ 3-ACV at para 8; Defence and Counterclaim of the 1st defendant in HC/ADM 14/2023 at para 4; Statement of Claim (Amendment No. 2) in HC/ADM 14/2023 at para 2.

5 The second and third defendants are Trafigura Pte Ltd and Trafigura India Pvt Ltd respectively. In ADM 14, the second and third defendants contend that it is the third defendant who is and was at all material times in possession and the lawful holder of the true, valid and binding original bills of lading and therefore, the third defendant has and had at all material times good title to the Cargo. They also contend that the bills of lading in the third defendant's possession are the bills that the first defendant recognises as having been issued by the latter in respect of the Cargo.⁶ The bills of lading in the possession of the third defendant also provide for the Cargo to be shipped from Pasir Gudang in Malaysia to Nhava Sheva port, India, and bear the same numbers as the set of bills of lading in the claimant's possession.⁷ However, one of the material differences between both sets of bills is that the set in the claimant's possession names a different shipper from that in the third defendant's possession.

Background

6 On 10 February 2023, the English solicitors for the second and third defendants wrote to the first defendant, claiming that the third defendant was in possession and the lawful holder of the original bills of lading for the Cargo, and requested that the first defendant not permit anyone other than the third defendant to interfere with the Cargo.⁸ This followed from the grant by the English High Court of a worldwide freezing injunction in the second and third defendants' favour against various parties, such that those parties could not claim any interest in the Cargo.⁹

⁶ Defence of the 3rd defendant in HC/ADM 14/2023 at para 6; 1st Affidavit of Naeem Ahmed dated 27 July 2023 ("1-NA") at paras 7–8; 1-ACV at p 315.

⁷ 1-NA at pp 24–29.

⁸ 1-ACV at pp 315–316.

⁹ 1-ACV at pp 319–334.

7 On 19 February 2023, the claimant, referencing the aforementioned letter from the second and third defendants’ solicitors, wrote to the first defendant asserting that the claimant was the lawful holder of the original bills of lading for the Cargo and asked for the “swift release of [their] cargo”.¹⁰ On 20 February 2023, NAU Pte Ltd (a claims correspondent and consultant) replied to the claimant on the first defendant’s behalf, stating that the first defendant’s instructions were that the copies of the bills of lading provided by the claimant were not issued by the first defendant and that the first defendant had no knowledge of the same.¹¹

8 Given the apparent competing claims over the Cargo and the first defendant’s refusal to deliver the Cargo to the claimant, the claimant commenced ADM 14 on 3 March 2023 seeking, *inter alia*, a declaration that the claimant, as lawful holder of bills of lading representing the Cargo, is entitled to take delivery of and/or deal with the Cargo.¹²

9 On 7 March 2023, the claimant filed HC/SUM 591/2023 (“SUM 591”) seeking, *inter alia*, an order for the preservation of the Cargo at Henry Bath LME warehouse in Port Klang, Malaysia and for the Cargo to remain in the custody of the first defendant until the final disposal of ADM 14. At the time, part of the Cargo had arrived at Nhava Sheva and was due to be discharged whilst the rest of the Cargo was then awaiting transshipment at Colombo for on-carriage to Nhava Sheva.¹³ According to the claimant, SUM 591 was taken out urgently because an Import General Manifest (“IGM”), akin to a customs

¹⁰ 1-ACV at pp 384–385.

¹¹ 1-ACV at p 387.

¹² 3-ACV at para 10.

¹³ 1-ACV at paras 72–73.

declaration form, had been issued by the third defendant in respect of one of the bills of lading. This could result in the imminent discharge and delivery of that parcel of the Cargo to the third defendant at Nhava Sheva once the IGM was filed with the Indian customs authorities.¹⁴

10 The court granted the order sought in SUM 591 on 7 March 2023 in HC/ORC 1013/2023 (“ORC 1013”). Pertinently, in the affidavit supporting SUM 591, the claimant undertook to bear the costs of maintaining the storage of the Cargo at the Henry Bath LME warehouse.¹⁵ Equally pertinently, one of the orders made in ORC 1013 was for the “costs of such detention and preservation of the Cargo at present location to be paid by the Claimant at first instance but recoverable as part of the Claimant’s claim herein against the Defendants”. I shall address the relevance of the claimant’s undertaking and this particular order in ORC 1013 later in my grounds of decision.

11 On 7 July 2023, the claimant filed the present application seeking, *inter alia*, an order for a sale *pendente lite* of the Cargo.

The parties’ cases

12 The claimant’s professed purpose in bringing the application in SUM 2034 was to “preserve the value of the Cargo as an interim measure pending final resolution of the [m]ain [s]uit in [ADM 14] and to mitigate losses and risks relating to the preservation of the physical Cargo”.¹⁶ The claimant’s case rested primarily on the following reasons:¹⁷

¹⁴ 3-ACV at para 11.

¹⁵ 1-ACV at para 81.

¹⁶ Claimant’s Written Submissions at para 5.

¹⁷ Claimant’s Written Submissions at paras 14 and 28.

- (a) the diminishing value of the Cargo due to the decreasing demand for de-warranted nickel briquettes;
- (b) safety concerns in relation to the long-term storage of the Cargo, in particular the risk of theft and/or fraud; and
- (c) the unnecessary accrual of upkeep costs (comprising storage costs, insurance and hedging costs) with respect to the Cargo.

13 The third defendant's position was that the Cargo should not be sold. The third defendant contended that:¹⁸

- (a) the alleged market risks identified by the claimant did not justify selling the Cargo *pendente lite* and, in any event, the claimant had hedged its position to address such market risks. Accordingly, there was no good reason to crystallise the losses on the Cargo at this stage, particularly given the possible increase in nickel prices forecasted in 2024;
- (b) the claimant's alleged concerns about the safety of the Cargo due to risk of theft and/or fraud were misplaced;
- (c) the alleged costs of storing the Cargo were relatively modest and did not amount to a significant diminution in value of the Cargo in comparison with the value of the Cargo; and
- (d) the sale of the Cargo might potentially prejudice a fair and just disposal of the action.

¹⁸ 3rd defendant's Written Submissions at para 5.

The applicable rule

14 It was common ground between the parties that this application was made pursuant to O 13 r 4(1) of the ROC 2021. The predecessor to O 13 r 4(1) of the ROC 2021 was O 29 r 4(1) of the Rules of Court (2014 Rev Ed)(“ROC 2014”). Both rules are similarly worded and “identical in effect”, save that under O 13 r 4(1), the court can make an order even without an application by the parties: *Singapore Rules of Court – A Practice Guide* (Chua Lee Ming gen ed) (SAL Academy Publishing, 2023) (“ROC 2021 Practice Guide”) at para 13.076.

15 The commentaries on O 13 r 4(1) of the ROC 2021 indicate that the approach to be adopted and relevant considerations to be taken into account under the new rule are no different from those under O 29 r 4(1) of the ROC 2014; thus, case law under the predecessor rule continues to be relevant to O 13 r 4(1) of the ROC 2021: *Singapore Civil Procedure 2022* (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2022) (“Singapore Civil Procedure 2022”) at paras 13/4/1–13/4/2; ROC 2021 Practice Guide at paras 13.075–13.077.

16 Order 13 rule 4(1) provides that:

Sale of perishable property, etc. (O. 13, r. 4)

4.—(1) The Court may order the sale of any movable property which is the subject matter of or may give rise to any issue in an action if —

- (a) that property is perishable;
- (b) that property is likely to diminish in value; or
- (c) it is desirable to sell that property for any other reason.

17 In the present application, it was not disputed that the Cargo is not perishable. Therefore, the limbs of O 13 r 4(1) of the ROC 2021 relevant to this

application were (1)(b) and (1)(c) – “that property is likely to diminish in value” and “it is desirable to sell that property for any other reason”, respectively.

Factors to be considered

18 Ordinarily, a court may order a sale of movable property *pendente lite* where there is good reason for it and it is in the interests of justice to do so: *The Myrto* [1977] 2 Lloyd’s Rep 243 (“*The Myrto*”) at 260; Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) at pp 254–255.

19 The purpose of a sale *pendente lite* is to allow the court, in an appropriate case and when it is in the overall interests of justice, to convert the property which is the subject of the dispute (or as to which a question arises) into cash so that its value is not eroded while the litigation ensues. By doing so, the court can thereby avoid the injustice that might result by the property becoming either valueless or significantly reduced in value in the interval between the application and the conclusion of the proceedings.

20 In exercising its undoubtedly wide discretion on whether to order a sale of movable property *pendente lite*, the court may take, and has taken into account the following non-exhaustive factors, insofar as they are relevant to the facts and circumstances of a particular case (see *Emilia Shipping Inc v State Enterprise for Pulp and Paper Industries* [1991] 1 SLR(R) 411 (“*Emilia Shipping*”) at [27]–[30]; *Five Ocean Corp v Cingler Ship Pte Ltd (PT Commodities & Energy Resources, intervener)* [2016] 1 SLR 1159 (“*Five Ocean*”) at [62]; *The Myrto* at 260, 261; *Unicorn Lines (Pty) Ltd v MV Michalis S 1990 (3) SA 817 (D)* (“*Unicorn Lines*”) at 821; *Banco Do Brasil SA v Alexandros G Tsavliris (The)* [1987], 12 FTR 278 (TD) at [44]–[48]):

- (a) whether (and if so, to what extent) the value of the property is likely to diminish or be eroded due to the deterioration in the quality/condition of the property, even if the property is not strictly perishable;
- (b) whether (and if so, to what extent) the accruing costs and expenses in storing and maintaining the property is likely to eat into and reduce its value (*ie*, whether the property is a wasting asset);
- (c) whether any alternative security or undertaking is forthcoming from any party, including the property owner, to bear the expenses/costs of preserving the same pending the outcome of the proceedings;
- (d) whether the property has been abandoned;
- (e) the sum total of claims relative to the value of the property, taking into account any reduction or diminution in value; and
- (f) whether there are third parties whose interests would be adversely affected if a sale is not ordered.

Assessment of the relevant factors in the present case

Whether the market value of the Cargo was likely to diminish

21 The claimant asserted that (a) the Cargo was likely to be less desirable because it was de-warranted (*ie*, it no longer had the *imprimatur* of the London Metal Exchange or “LME” for short), (b) that one could not be certain that the demand for nickel would not decrease even further by the end of this action, and (c) that due to “diminishing buyer prospects and market risks”, it would be

commercially sensible to sell the Cargo now.¹⁹ Further, the value of de-warranted nickel would only diminish with time, over and beyond the market price of nickel at any given point in time.²⁰

22 However, these amounted to bare assertions, which the claimant did not provide any supporting evidence for.

23 On the other hand, the third defendant adduced some evidence of market value and price forecasts from the Bloomberg Commodity Price Forecasts for Nickel, which indicated that the price of nickel was expected to increase slightly in 2024.²¹ This forecast was, of course, by no means conclusive. Markets, being markets, are inevitably plagued by some degree of uncertainty. In my view, as far as the available evidence on the future market value of nickel was concerned, it was at best either neutral or slightly in favour of the third defendant.

24 The fact remained, however, that the claimant, as the party seeking the sale of the Cargo *pendente lite*, bore the burden of showing that the market value of the Cargo was likely to diminish, if it so chose to rely on this factor to make its case. However, the claimant did not provide the court with any satisfactory evidence in this regard. Neither was this a state of affairs that a court could take judicial notice of.

25 In the circumstances, the claimant failed to make good its case that a sale should be ordered under O 13 r 4(1)(b) because the “property is likely to diminish in value”. I turn then to consider if, under O 13 r 4(1)(c), “it is desirable

¹⁹ 3-ACV at paras 18–21.

²⁰ Claimant’s Written Submissions at para 44.

²¹ 1-NA at p 102.

to sell that property for any other reason”, having regard to the other factors mentioned at [20] above.

Whether the accruing costs and expenses in storing and maintaining the Cargo was likely to reduce the value of the property

Detention and preservation order

26 As summarised at [9] above, on 7 March 2023, the claimant sought and obtained ORC 1013 from the court to preserve the Cargo at Henry Bath LME warehouse in Port Klang and for the Cargo to remain in the first defendant’s custody until the final disposal of ADM 14. To recapitulate, para 4 of ORC 1013 provided as follows:

4. The costs of such detention and preservation of the Cargo at present location to be paid by the Claimant at first instance but recoverable as part of the Claimant’s claim herein against the Defendants.

27 I agreed with the submission of counsel for the third defendant, Ms Una Khng, that the effect of para 4 of ORC 1013 was that the accrued and accruing costs of storing and preserving the Cargo *do not* and *will not* eat into or diminish the monetary value of the Cargo, irrespective of how the court eventually rules on the ownership of the Cargo in ADM 14.

28 Ms Khng submitted that if the claimant succeeds at trial, the accrued costs will, as provided in para 4 of ORC 1013, be recoverable as part of the claimant’s claim against the defendants; on the other hand, if the defendants succeed, the defendants will by default get the full value of the property since the claimant agreed to bear the costs of preserving the Cargo. I agreed with this submission. While counsel for the claimant, Ms Tan Hui Tsing, contended that in the latter scenario, the claimant still reserved its position to recover those costs from *the defendants*, it nevertheless remains the case that those costs will

not eat into the value of *the Cargo*. For this reason, this case stood apart from other cases such as *The Myrto*, *Five Ocean* and *Emilia Shipping*. In all of those cases, no party had undertaken to bear the costs of preserving the property in question and thus, there was a concern that those costs would directly erode the value of the property.

29 In contrast, in the Malaysian case of *The United States of America v The Owners of the Vessels, Jade Phoenix and Golden Phoenix* [1988] 2 CLJ 526, the absence of any charges, expenses or costs that would progressively eat into and diminish the value of the vessels was an important factor in the court's decision in that case to refuse to order the sale of the ships *pendente lite* (p 530 at (d)–(f)). In my view, para 4 of ORC 1013 had, in substance, a similar effect.

Quantum of expenses to be incurred, as compared against current value of the Cargo

30 In any case, the accrued and accruing costs of preserving the Cargo were but a fraction of the value of the Cargo as at 17 July 2023, such that it would, in my view, be unlikely for these costs and expenses to cause any significant reduction to the value of the Cargo during the period leading up to the conclusion of the proceedings.

31 For the purposes of determining the value of the Cargo, I accepted the third defendant's submission that a suitable proxy for and/or indication of the market value of the Cargo is the LME settlement price, represented by the cash seller's price (offer) plus a premium.²² This was not challenged by the claimant. Taking the LME settlement price as at 17 July 2023 (*ie*, US\$20,710 per tonne)²³

²² 1-NA at para 21.

²³ 1-NA at p 105.

and the premium in a nickel sale offer dated 8 July 2022 exhibited in the claimant's affidavit (of US\$65 per tonne)²⁴, the value of the Cargo (weighing a total of 504.776MT)²⁵ as at 17 July 2023 was US\$10,486,721.40.

32 As for the costs and expenses of preserving the Cargo, the claimant's evidence was as follows:

(a) the costs of storing the Cargo at Henry Bath LME warehouse in Port Klang was US\$60.46 per day;²⁶

(b) the claimant renewed its marine cargo insurance policy covering the Cargo for the period April 2023 to March 2024 at a cost of US\$33,349.60 per quarter;²⁷

(c) an insurance premium payable per month applied to the Cargo to cover the storage in an LME warehouse; this was calculated at 0.0114% of the value of the Cargo per month. The costs of insuring the Cargo for June 2023 was US\$1,134.05;²⁸ and

(d) the cost of hedging against market price fluctuations was approximately US\$651.84 per month.²⁹

33 According to the claimant, as at the date of filing its affidavit in support of SUM 2034 (*ie*, on 5 July 2023), the total accrued costs for storing, insuring

²⁴ 1-ACV at p 45.

²⁵ 1-ACV at pp 120–129; 1-NA at pp 24–29.

²⁶ 3-ACV at para 26.

²⁷ 3-ACV at para 27.

²⁸ 3-ACV at para 29.

²⁹ 3-ACV at para 31.

and hedging the Cargo amounted to US\$36,439.17.³⁰ Assuming it would take “at least one year before a determination of [ADM 14]”, a further sum of around US\$132,446.01 would be incurred as storage, insurance and hedging costs.³¹ This would bring the total costs to US\$168,885.18. If the action “proceed[s] to appeal”, it could take “at least another 6 months”, resulting in an additional cost of approximately US\$88,297.34.³² The projected total costs in the latter scenario, assuming it would take about 1.5 years for the proceedings to finally conclude, would amount to approximately US\$220,743.35.³³

34 The third defendant was prepared to accept, *arguendo* for the purposes of SUM 2034, the claimant’s projected expenses at face value. Even so, on the claimant’s best case and assuming it would take 1.5 years for the proceedings in ADM 14 to finally conclude, the total quantum of preservation costs and/or expenses would stand at approximately 2.10% of the value of the Cargo as at 17 July 2023. Even accounting for the first defendant’s alleged claim for delay-in-transit charges of US\$445,445.14,³⁴ the quantum of such costs and/or expenses incurred would approximate only 6.35% of the value of the Cargo as at 17 July 2023.³⁵

35 Evidently, the costs and expenses of preserving the Cargo (both accrued and accruing) are relatively modest when compared to the value of the Cargo in this case. The fact that the costs of storing and maintaining the Cargo pending

³⁰ 3-ACV at para 32.

³¹ 3-ACV at para 33.

³² 3-ACV at para 33.

³³ 3-ACV at para 33.

³⁴ Defence and Counterclaim of the 1st defendant in HC/ADM 14/2023 at para 162.

³⁵ HC/SUM 2034/2023 – Calculation of Diminution in Value (provided by the 3rd defendant).

the conclusion of the dispute are not such as to materially or significantly diminish the value of the property is a relevant consideration against ordering the sale of the Cargo: *Unicorn Lines* at 821.

36 As I noted above at [19], the principal purpose of ordering a sale of movable property *pendente lite* under O 13 r 4(1) of the ROC 2021 is to avoid the injustice that might result from goods becoming of no value or significantly reduced in value in the interval between the application and the conclusion of the substantive proceedings. Ms Khng undertook a comparative analysis of a number of the reported decisions to demonstrate why a sale should not be ordered in the present case. I would highlight two decisions – *Emilia Shipping* and *Five Ocean* respectively.

37 In *Emilia Shipping*, which involved a cargo of wood pulp, the diminution in value on account of accruing storage and other costs amounted to approximately 31% of the value of the cargo. In *Five Ocean*, which involved a cargo of coal, the diminution in value was between 56% – 73% of the value of the cargo. Ms Tan took no particular issue with the accuracy of these calculations, and in both *Emilia Shipping* and *Five Ocean*, the court ordered the sale of the property in question.

38 I accepted that the exercise of discretion is of course not simply a case of the court undertaking a mathematical exercise of calculating the projected expenses as a percentage of the value of the Cargo, and ascertaining whether a theoretical “sweet spot” of unacceptable diminution had been reached. Nonetheless, both mathematically and qualitatively, I was far from satisfied that in the present case, in the event a sale *pendente lite* was not ordered, there would likely be a substantial or significant diminution or deterioration in the value of

the Cargo on account of the alleged mounting costs to store and preserve it. In short, I was not persuaded that the Cargo was a wasting asset.

Whether there was alternative security or undertaking to bear the costs of preserving the Cargo

39 In the present case, as explained at [10], there was an undertaking by the claimant and an order by the court for the claimant to bear the costs of maintaining and preserving the Cargo. Further, as I have explained at [27] above, the effect of para 4 of ORC 1013 (and indeed the claimant’s undertaking) is that the accrued and accruing costs do not have the effect of eating into the value of the Cargo. This factor also tilted the balance away from a sale *pendente lite* being ordered.

Whether there were third parties whose interests might be adversely affected

40 On the present facts, there were no third parties whose interests would be adversely affected if a sale of the Cargo was not ordered. The Cargo was safely stored at Henry Bath LME warehouse pursuant to ORC 1013.

Risk of theft and/or fraud in relation to the Cargo

41 The claimant contended that given the uncertainties and doubts surrounding the Cargo, a sale of the Cargo would “eliminate any risk of further theft or fraudulent dealings.”³⁶ The claimant referred to a news report which reported on a fraud that had occurred in an LME warehouse in Rotterdam and sought to extrapolate that to a risk of fraud in LME warehouses *generally*.³⁷ The

³⁶ 3-ACV at para 25.

³⁷ 3-ACV at pp 57–59.

incident at the LME warehouse in Rotterdam involved bags of stones being passed off as nickel briquettes.

42 At the hearing before me, Ms Tan for the claimant was adamant about the risk of theft and/or fraud in relation to the Cargo. However, the evidence presented was speculative at best. One example of fraud in an LME warehouse in Rotterdam does not a summer make.

43 Further and more pertinently, after the Cargo was stored in the Henry Bath LME warehouse in Port Klang pursuant to ORC 1013, the Cargo was checked and verified *by the claimant* to be nickel, as opposed to scrap metal, stones or some other inferior material.³⁸ No evidence was provided that even suggested that the warehouse was insecure or unsafe. When the claimant applied for the preservation and detention order, the Henry Bath LME warehouse in Port Klang was nominated by the claimant itself as a *secure location* to preserve the Cargo.³⁹ There was thus no basis upon which the court could order the sale of the Cargo *pendente lite*, certainly not on the back of speculative and unfounded fears of a risk of theft and/or fraud. I had no hesitation rejecting this as a reason to order the sale.

Alleged prejudice to the third defendant

44 The third defendant also argued that the sale of the Cargo might potentially prejudice a fair and just disposal of the action. Ms Khng submitted that there might be a need, sometime in the future and before the trial, to inspect the Cargo again to assist in the fair and just disposal of the competing claims to

³⁸ 3-ACV at para 17; 3-ACV at pp 46–53.

³⁹ 3-ACV at para 15.

the Cargo in ADM 14; that obviously could not be done if the Cargo were in the meantime ordered to be sold.

45 I was not convinced that there was such a risk of prejudice. First, the Cargo had already been inspected and was currently in the warehouse in tagged and numbered bags.⁴⁰ Second, if there was any need to re-inspect, test or retain samples of the Cargo prior to the Cargo being sold, the court would, assuming that it was minded to order the sale of the Cargo *pendente lite*, have the power to make appropriate orders before any sale was completed. Thus, even if there was any potential prejudice to the third defendant, it could be appropriately neutralised.

Other factors

46 The claimant contended that if a sale *pendente lite* was not ordered, potential buyers might be reluctant to buy the Cargo later as they would be aware that the Cargo was the subject of court proceedings. I had difficulty understanding the logic of this argument. As things stood, any sale of the Cargo would require the sale proceeds to be paid by the buyer into court. That itself would likely alert any buyer to the fact that the Cargo was the subject of court proceedings. I hence did not place any weight on this argument.

47 The claimant also argued that just as it hedged its position with respect to the Cargo against market price fluctuations, the third defendant was also likely to have done so and therefore a sale of the Cargo *pendente lite* would not crystallise any losses, contrary to the third defendant's contention.⁴¹ In my view, even assuming this factor was relevant, it was a factor *against* ordering a sale

⁴⁰ 1-NA at para 31; 1-NA at pp 131–138; 154–155.

⁴¹ Claimant's Written Submissions at para 48.

pendente lite. If the Cargo was in fact hedged by both parties against price fluctuation risks, then any diminution in value of the Cargo would also be either correspondingly neutralised or minimised. Accordingly, any weight to be placed on the alleged risk of diminution in value of the Cargo would be lessened. Further, the costs of hedging incurred by the claimant were also relatively modest compared to the value of the Cargo as at 17 July 2023.⁴² Thus, this factor did not support the claimant's case and, in fact, worked against it.

Conclusion

48 For the reasons set out above, I was of the view that no good reason had been demonstrated by the claimant as to why a sale of the Cargo should be ordered pending the trial of the action in ADM 14. Based on the evidence presented to me, I could not justifiably come to a conclusion that ordering a sale of the Cargo *pendente lite* in this case would be in the interests of justice. I therefore dismissed the claimant's application.

49 After hearing the parties, I fixed the costs of SUM 2034 at S\$14,000 (including disbursements) to be paid by the claimant to the third defendant.

⁴² 3-ACV at para 31.

50 Finally, I record my appreciation to both Ms Tan and Ms Khng for their helpful and clear submissions, and the assistance they rendered to the court at the hearing of this application.

S Mohan J
Judge of the High Court

Mathiew Christophe Rajoo, Tan Hui Tsing, Lim Min Isabel
(DennisMathiew) for the claimant;
Teo Ke-Wei Ian, Khng Una, Tan Yong Jin Jonathan, Cheng Le En
Leanne (Helmsman LLC) for the third defendant.
