IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 33

Court of Appeal / Civil Appeal No 1 of 2025

Between

(1) Banque de Commerce et de Placements SA, DIFC Branch
(2) Banque de Commerce et de Placements SA

… *Appellants*

And

China Aviation Oil (Singapore) Corporation Ltd

… *Respondent*

In the matter of Suit No 675 of 2020

Between

(1) Banque de Commerce et de Placements SA, DIFC Branch
(2) Banque de Commerce et de Placements SA

… *Plaintiffs*

And

China Aviation Oil (Singapore) Corporation Ltd

… *Defendant*

And

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Shandong Energy International
(Singapore) Pte Ltd

… *Third Party*

And

Golden Base Energy Pte Ltd

… *Fourth Party*

JUDGMENT

[Bills of Exchange and Other Negotiable Instruments — Letter of credit transaction — Presentation of letter of indemnity — Whether representations in letter of indemnity were false — Whether representor made representations with no honest belief in their truth — Whether documents presented to issuing bank contained representations made to the issuing bank]
[Tort — Misrepresentation — Fraud and deceit — Whether honest belief in representation is to be assessed by reference to representor's or representee's subjective understanding of the representation]

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Banque de Commerce et de Placements SA, DIFC Branch and another
v
China Aviation Oil (Singapore) Corp Ltd

[2025] SGCA 33

Court of Appeal — Civil Appeal No 1 of 2025
Sundaresh Menon CJ, Steven Chong JCA, Belinda Ang Saw Ean JCA
14 May 2025

7 July 2025 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 This appeal raises some interesting issues arising from the prevalent use of letters of indemnity to facilitate payment under letters of credit. This practice is particularly common in transactions involving the sale and purchase of bulk or liquid cargo where multiple parties in a chain of contracts would each be selling and buying the same parcel of the cargo, usually on identical terms save for the price.

2 For such chain contracts, it is usual for the parties to facilitate payment through a letter of credit payable against a letter of indemnity issued by the relevant seller in lieu of the shipping documents, including the original bill of lading. This is in recognition of the fact that in transactions involving chain contracts, the shipping documents will not be in the possession of every seller

in the chain to enable each seller to present these documents for the purpose of obtaining payment under the letter of credit. This is to be expected given the back-to-back nature of the contracts in the chain. In this light, the letter of indemnity would typically warrant, *inter alia*, that the shipping documents are valid, and that the seller is entitled to possession of the documents of title to the cargo, in particular the original bills of lading.

3 Where a letter of credit does not permit payment against a letter of indemnity, payment would only be made upon the presentation of the shipping documents that are in conformity with the requirements of the letter of credit. In particular, the critical shipping document is the bill of lading because this would signify to the issuing bank that the cargo has been loaded, *ie*, that there is a genuine transaction involving physical cargo and more importantly, that the issuing bank would be able to exercise control over the delivery of the cargo *via* its possession of the bill of lading as lawful holder of the bill of lading. In a chain of back-to-back sale contracts where title to the cargo is passed sequentially and instantaneously, it must be appreciated that when an issuing bank that is financing a sale in the chain agrees to accept a letter of indemnity in lieu of the shipping documents, in consideration of making payment under a letter of credit, it is in essence acknowledging that it will no longer have any control over the delivery of the cargo. That is not to say that the issuing bank would thereby be deemed to have consented to the delivery of the cargo without production of the bill of lading, bearing in mind that such letters of indemnity are designed to manage misdelivery risks. However, as we will elaborate below, the use of letters of indemnity to obtain payment under letters of credit in the context of chain contracts will have a significant bearing on the relevance of the *timing* of the endorsement of the bill of lading to the order of the issuing bank.

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4 The above perspective is crucial for a proper understanding of the purpose and effect of a letter of indemnity in the context of a transaction financed by a letter of credit. In this case, the second appellant ("BCP Geneva") issued a letter of credit (the "Geneva LC") to finance the purchase of a parcel of gasoil by its customer, Zenrock Commodities Trading Pte Ltd ("Zenrock"), from the respondent ("CAO"). The Geneva LC expressly provided for payment against presentation of a letter of indemnity, "in the event that [the] original [bills of lading] and/or shipping documents … are not available at the time of presentation". BCP Geneva agreed to finance the Geneva LC on the strength of a bare assignment of receivables payable by PetroChina International (East China) Co Ltd ("PetroChina") to Zenrock, the party who was contracted to buy the same parcel of cargo from Zenrock. Significantly, the purchase by PetroChina was not secured by any letter of credit. This meant that in the event of PetroChina's cancellation of the back-to-back contract with Zenrock, BCP Geneva's recourse would be against the credit of Zenrock, given that BCP Geneva had accepted that it would not be able to exercise any form of control over the delivery of the cargo. This was a risk which BCP Geneva was well aware of and readily accepted. That risk later materialised when PetroChina cancelled its contract with Zenrock and Zenrock became insolvent.

5 It was under these circumstances that the appellants brought a claim against CAO to recover the sum paid up under the Geneva LC. Various causes of action were pursued in the court below but in this appeal, the claim is limited to the tort of deceit on the premise that the representation in CAO's letter of indemnity was false and was made without an honest belief in the truth of that representation.

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6 Both parties proffered competing interpretations of the representation. The judge below (the "Judge") preferred CAO's version and on that premise found, *inter alia*, that the representation was not false and was not fraudulently made. The claim was thus dismissed with costs. While we agree that the Judge was correct in accepting CAO's interpretation of the representation, as we will elaborate below, the outcome will be no different even if the appellants' version is to be preferred. This is because the question of whether the representation was fraudulently made, *ie*, whether CAO had an honest belief in its truth, is to be assessed with reference to CAO's subjective understanding of the statement made.

The material facts

7 BCP Geneva, the second appellant, is an entity registered in Switzerland and the head office of a bank specialising in commodity trade financing. At the material time, the first appellant, Banque de Commerce et de Placements SA, DIFC Branch ("BCP Dubai") was a branch of the bank that was registered in the Dubai International Financial Centre ("DIFC"). The relationship between these entities was such that any financing or loan transactions that BCP Dubai undertook were subject to approval by BCP Geneva. In other words, BCP Geneva could disapprove any transaction or customer proposed by BCP Dubai. The appellants will collectively be referred to as "BCP", for ease of reference. CAO (the respondent) is a Singapore-incorporated company that is in the business of trading jet fuel and other oil products.

8 As we alluded to earlier, this appeal stems from a series of back-to-back sale and purchase transactions initiated by Zenrock involving 260,000 (+/- 5%) barrels of gasoil containing 500 parts per million sulphur (the "Cargo"). At the material time, Zenrock was a Singapore-incorporated trading house and an

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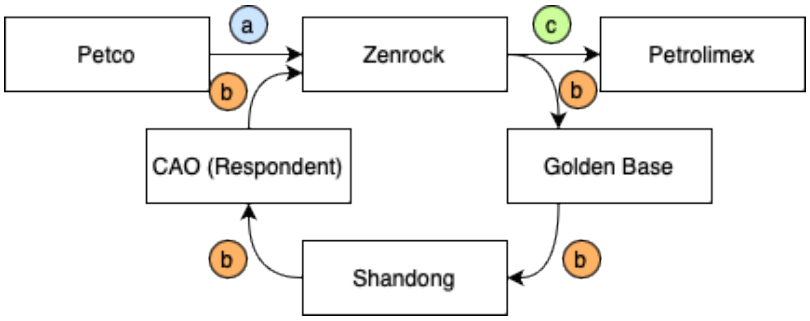
approved trading counterparty of CAO. Zenrock entered into judicial management in July 2020 and has since been wound up.

9 It is not disputed on appeal that Zenrock had engineered a series of transactions relating to the Cargo. After Zenrock purchased the Cargo from Petco Trading Labuan Company Ltd ("Petco"), it initiated a circular transaction in which the title to the Cargo was passed instantaneously and sequentially through a series of parties and eventually back to itself – title to the Cargo passed first from Zenrock to Golden Base Energy Pte Ltd ("Golden Base"), then to Shandong Energy International (Singapore) Pte Ltd ("Shandong"), then to CAO, and finally back to Zenrock who in turn on-sold the Cargo to Petrolimex Singapore Pte Ltd ("Petrolimex"). In other words, contrary to BCP's expectations, the Cargo was never eventually sold to PetroChina (see [4] above and [12] below).

10 Depicted diagrammatically, title to the Cargo passed as follows –



11 As may be observed, CAO, the respondent in this appeal, was party to the set of transactions labelled (b) in the diagram above. In particular, it had contracted to purchase the Cargo from Shandong by way of the "Shandong-CAO Contract", and then to sell the Cargo to Zenrock by way of the "CAO-

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Zenrock Contract". Both Contracts were dated 21 January 2020. According to CAO, it had agreed to serve as an intermediary between Zenrock and Shandong because the former wanted to purchase the Cargo on 45-day credit terms while the latter was only willing to offer 10-day credit terms. CAO earned a profit of US$62,254.32 for its part in this transaction.

BCP's financing of the CAO-Zenrock Contract

12 On 18 January 2020, Zenrock approached BCP Dubai to seek financing for its purchase of the Cargo from CAO. The proposed financing transaction was on the following terms:

(a) The "import leg": BCP Dubai would finance Zenrock's purchase of the Cargo from CAO for an estimated amount of US$20m. Payment was to be made by way of a deferred LC, the due date for payment being 45 days after the date of the bill of lading issued in respect of the Cargo.

(b) The "export leg": Zenrock would then on-sell the same Cargo to PetroChina on an open account basis, with payment falling due 45 days after the date of the bill of lading issued in respect of the Cargo. The proceeds of Zenrock's sale of the Cargo to PetroChina would be directly credited into Zenrock's account with BCP Dubai.

In this manner, BCP Dubai's financing was to be on a "self-liquidating" basis, in that the proceeds of Zenrock's sale to PetroChina (the *export* leg) would be used to directly reimburse the financing that BCP Dubai provided to Zenrock (the *import* leg).

13 While BCP Dubai considered the deal to be "doable", it requested Zenrock to provide further details regarding *inter alia* whether there would be

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any payment undertaking from PetroChina, given that the export leg was to be on an open account basis. It also requested copies of the Shandong-CAO Contract and the CAO-Zenrock Contract, along with the draft terms of the Geneva LC that was to be issued. Zenrock provided these documents to BCP Dubai. Materially, the draft LC provided that CAO could claim payment against presentation of its commercial invoice and a suitable letter of indemnity, in the event that the original bills of lading and shipping documents were unavailable at the time of presentation. Zenrock also informed BCP Dubai that PetroChina "[would] not issue any [payment undertaking] or [parent company guarantee]" as per their market practice.

14 As negotiations with Zenrock were ongoing, BCP Dubai simultaneously began preparation of an internal memorandum with respect to the proposed deal, for the approval of BCP Geneva's Credit Committee (see [7] above). In this memorandum, BCP Dubai noted that "a [c]orporate [g]uarantee or undertaking of any sort will not be provided by [PetroChina's] mother/holding company". It also highlighted that payment under the Geneva LC could be alternatively triggered by CAO's presentation of an invoice and letter of indemnity, in the event that the shipping documents were unavailable.

15 BCP Geneva's Credit Committee responded positively to the transaction proposed in this memorandum. Notably, BCP's then-head of commodity trade finance, Mr Yvan Rodo, opined that the transaction was to be classified as "[transactionally]/unsecured", given that the LC issued would be "possibly negotiable against commercial invoice and LOI" if the shipping documents were "missing". However, since the invoice and letter of indemnity were to be issued by a "reputable supplier" (*ie*, CAO), this was to be regarded as a "*strong mitigating risk factor*" [emphasis added]. Mr Rodo also considered Zenrock's

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financial standing to be "acceptable versus the underlying transaction and risk proposed to the bank". Mr Pierre Galtié, who was also BCP's head of commodity trade finance, noted that although "[n]egotiation possible both side against LOI [*sic*] … the *recourse on Zenrock is satisfactory*" [emphasis added]. In the circumstances, BCP Dubai's proposed financing transaction with Zenrock received unanimous approval by BCP Geneva's Credit Committee.

16 BCP Geneva later informed BCP Dubai that the Geneva LC was to be "issued through BCP Geneva indicating as applicant bank BCP Dubai" – in other words, BCP Geneva would issue the Geneva LC in favour of CAO as the beneficiary.

17 Hence, on 23 January 2020, BCP Dubai issued a letter of credit numbered DUB-101026/MSK (the "Dubai LC") to BCP Geneva. On the same day, BCP Geneva issued a letter of credit numbered GE-157465/AJP in favour of CAO. This was the Geneva LC (see [4] above). As CAO did not consider BCP Geneva to be an investment-graded bank, CAO required the Geneva LC to be confirmed by UBS Switzerland AG ("UBS"). UBS duly added its confirmation to the Geneva LC on 30 January 2020.

Payment terms under the Geneva LC

18 The Geneva LC confirmed that CAO was entitled to claim payment under the CAO-Zenrock Contract, in either of the following ways:

(a) Delivery of the shipping documents: Under Field 46A of the Geneva LC, CAO would receive payment after delivering the original copies of: (i) CAO's signed commercial invoice; (ii) a full set of 3/3 of the clean on-board bills of lading "made out or endorsed to the order of

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[BCP Dubai]" (the "endorsed b/ls"); (iii) certificates of quantity and quality issued or countersigned by an independent inspector at the load port; and (iv) a certificate of origin (collectively, the "Shipping Documents").

(b) Presentation of a letter of indemnity: If CAO could not provide original copies of the Shipping Documents including the endorsed b/ls, Field 47A(10) of the Geneva LC stated that CAO could nevertheless claim payment by delivering its signed invoice alongside a letter of indemnity prepared in the form prescribed, which required CAO to "represent and warrant the existence, authenticity and validity of the [original Shipping Documents]".

The issuance of the CAO LOI

19 The Shandong-CAO and CAO-Zenrock transactions were managed by CAO's gasoil operator, Ms Chng Chai Ling, Cindy ("Ms Chng"). From 23 to 27 January 2020, Ms Chng received regular updates from Inspectorate Malaysia Sdn Bhd (the "Inspectorate") regarding the loading status of the Cargo on board the nominated vessel, the PETROLIMEX 18 (the "Vessel"). The time at which the Cargo was loaded onboard the Vessel was designated in both the Shandong-CAO and CAO-Zenrock Contracts as the time at which the title to the Cargo would be passed.

20 On 27 January 2020, the Inspectorate informed Ms Chng that the loading operation was completed. Alongside documents verifying the existence, quality and quantity of the Cargo, Ms Chng also received copies of the non-negotiable bill of lading numbered PP 052/19 (the "NN b/ls"), which state:

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> In the like order and condition at VANPHONG BONDED TERMINAL, VIETNAM or so near thereto as she may safely get and there discharge, always afloat, unto TO THE ORDER OF NATIXIS, SINGAPORE or order.
>
> …
>
> IN WITNESS whereof the Master of the said Vessel hath affirmed to 3 (THREE) Bills of Lading all of this tenor and date one of which being accomplished the others to stand void.

21 As may be observed, the NN b/ls contained an attestation clause which confirmed that the Master of the Vessel had signed a set of three original b/ls. In her affidavit, Ms Chng testified to her belief that the original b/ls were in the possession of Petco, but that they would subsequently be delivered to Natixis, Singapore ("Natixis"), as the bank financing the purchase of the Cargo from Petco. Ms Chng believed that the original b/ls would eventually be endorsed and delivered to CAO down the chain of the sale contracts (see [9] above).

22 On 5 February 2020, Ms Chng received Shandong's commercial invoice and letter of indemnity (the "Shandong LOI") in relation to the Cargo. The Shandong LOI provided:

> ALTHOUGH WE HAVE SOLD AND TRANSFERRED TITLE OF SAID CARGO TO YOU, WE HAVE BEEN UNABLE TO PROVIDE YOU WITH THE FULL SET OF 3/3 ORIGINAL BILLS OF LADING AND OTHER SHIPPING DOCUMENTS COVERING THE SAID SALE.
>
> IN CONSIDERATION OF YOU PAYING TO US THE FULL PURCHASE PRICE … WE HEREBY EXPRESSLY WARRANT THAT WE HAVE MARKETABLE TITLE, FREE AND CLEAR OF ANY LIEN OR ENCUMBRANCE TO SUCH MATERIAL AND THAT WE HAVE FULL RIGHT AND AUTHORITY TO TRANSFER SUCH TITLE AND EFFECT DELIVERY OF SUCH MATERIAL TO YOU.
>
> WE FURTHER AGREE TO MAKE ALL REASONABLE EFFORTS TO OBTAIN AND SURRENDER TO YOU AS SOON AS POSSIBLE THE FULL SET OF 3/3 ORIGINAL BILLS OF LADING AND OTHER SHIPPING DOCUMENTS AND TO PROTECT, INDEMNIFY AND SAVE YOU HARMLESS FROM AND AGAINST

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> ANY AND ALL DAMAGES, COSTS AND EXPENSES WHICH YOU MAY SUFFER BY REASON OF THE FULL SET OF 3/3 ORIGINAL BILLS OF LADING AND OTHER SHIPPING DOCUMENTS REMAINING OUTSTANDING …

23 After confirming that the Shandong documents were in order, Ms Chng proceeded to prepare CAO's commercial invoice (the "CAO Invoice") and letter of indemnity (the "CAO LOI"), in order to claim payment under the Geneva LC (see [18(b)] above). As previously agreed to by BCP and Zenrock, the CAO LOI stated that:

> IN CONSIDERATION OF YOUR MAKING FULL PAYMENT OF USD 19,051,378.28 FOR 34,681.239 METRIC TONS/259,393.000 OF THE SAID PRODUCT IN ACCORDANCE WITH THE [CAO-ZENROCK CONTRACT] AND HAVING AGREED TO ACCEPT DELIVERY OF THE PRODUCT WITHOUT HAVING BEEN PROVIDED WITH RELEVANT DOCUMENTS REQUIRED UNDER THE AGREEMENT INCLUDING BUT NOT LIMITED TO THE FULL SET OF SIGNED BILL OF LADING ISSUED OR ENDORSED TO THE ORDER OF [BCP DUBAI] ('THE DOCUMENTS'), **WE HEREBY REPRESENT AND WARRANT THE EXISTENCE, AUTHENTICITY AND VALIDITY OF THE DOCUMENTS** : THAT WE ARE ENTITLED TO POSSESSION OF THE DOCUMENTS: WE WERE (IMMEDIATELY PRIOR TO THE PRODUCT COMING TO YOUR POSSESSION) ENTITLED TO POSSESSION OF THE PRODUCT: WE HAD (IMMEDIATELY BEFORE TITLE PASSED TO YOU) GOOD TITLE TO SUCH PRODUCT: AND THAT TITLE IN THE PRODUCT HAS BEEN PASSED AS PROVIDED IN THE AGREEMENT TO YOU FREE FROM ALL LIENS, SECURITIES, CHARGES OR ENCUMBRANCES OF WHATEVER KIND …
>
> [emphasis added in bold]

We will refer to the bolded statement above as the "Representation". As will become clear, the outcome of the present appeal turns almost entirely on the proper construction of this Representation.

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Events leading to the commencement of the proceedings below

24 On 6 February 2020, CAO paid Shandong for the Cargo pursuant to the Shandong-CAO Contract. Eight days thereafter, on or about 14 February 2020, CAO presented its Invoice and LOI to UBS in order to claim payment from Zenrock under the CAO-Zenrock Contract.

25 On 12 March 2020, BCP Geneva paid a sum of US$19,091,491.80 to UBS, who in turn disbursed the same sum to CAO. BCP Geneva went on to debit BCP Dubai's inter-branch account for the same amount, pursuant to the terms of the Dubai LC (see [17] above). BCP Dubai, in turn, debited this amount from Zenrock's account with BCP and credited its inter-branch account with BCP Geneva.

26 BCP Dubai expected this sum to be repaid by the receivables due under the contract between Zenrock and PetroChina (see [12] above). However, despite numerous chasers sent to PetroChina, repayment was not received. On 29 April 2020, BCP Dubai received a copy of a tripartite agreement between Zenrock, PetroChina and Golden Base, stating that Zenrock had agreed to sell the Cargo to PetroChina, who would subsequently sell the Cargo to Golden Base. It had also been agreed that PetroChina would be absolved from any liability if it did not receive the Cargo from Zenrock or payment from Golden Base, and that PetroChina was entitled to unilaterally terminate its contracts with Zenrock and Golden Base, without any consequence. On the same date, BCP Dubai discovered that the tripartite agreement had been cancelled. No explanation was provided to BCP as to why the contract was cancelled. Several days later, on 4 May 2020, an application was taken out by a separate party to place Zenrock under interim judicial management.

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27 Zenrock was wound up in September 2020. In the course of insolvency proceedings, BCP discovered that there were no endorsed b/ls, *ie*, original b/ls endorsed to the order of BCP Dubai, in existence. BCP Dubai and BCP Geneva thus commenced HC/S 675/2020 ("Suit 675") against CAO on 28 July 2020, to recover the sum of US$19,091,491.80 that was disbursed under the Geneva LC.

The decision below

28 In *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2024] SGHC 145 (the "Judgment"), the Judge below ("the Judge") dismissed all of BCP's claims against CAO.

BCP Dubai had no standing to sue CAO

29 As a preliminary point, the Judge held that BCP Dubai did not have standing to claim against CAO. During cross-examination, it was revealed that BCP Dubai had ceased to operate as a branch of BCP Geneva since June 2022 and had instead been operating as a representative office. BCP had not discharged its burden of proving that BCP Dubai should be allowed to maintain the suit as an emanation of BCP notwithstanding its change in status: Judgment at [36].

30 The Judge therefore observed that the proper plaintiff in Suit 675 was BCP Geneva, as the issuing bank of the Geneva LC. However, BCP Dubai had duly credited BCP Geneva under the Dubai LC – in effect, BCP Geneva, as the only party who had legal capacity to sue, might not be able to show that it had suffered compensable losses: Judgment at [38].

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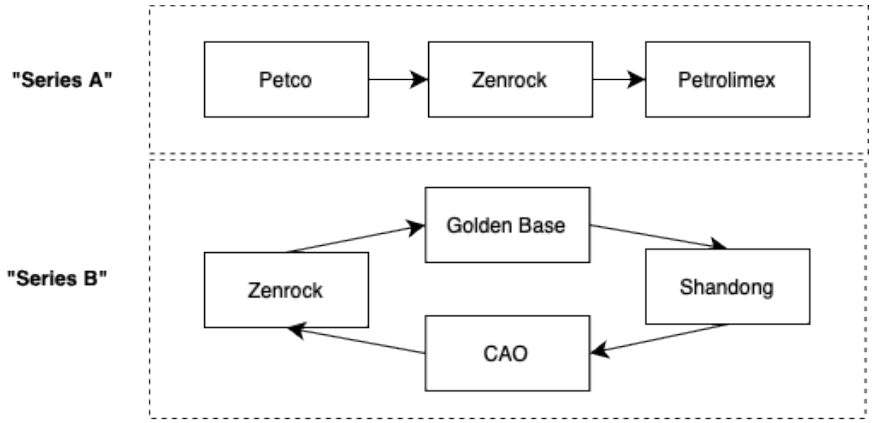
The CAO-Zenrock Contract was not a sham or fraudulent transaction

31 BCP argued in the proceedings below that the CAO-Zenrock Contract was a sham or a fraudulent transaction, and that CAO did not sell any physical cargo to Zenrock. BCP's case was that there had been two chains of transactions (respectively, "Series A" and "Series B"), only one of which involved genuine sale and purchase of the Cargo (*ie,* Series A) –



32 These arguments were rejected by the Judge. The evidence in Suit 675 demonstrated CAO's intention to enter into genuine contracts involving genuine cargo. That the CAO-Zenrock was part of a circular trade did not *ipso facto* render it a sham; there are legitimate reasons for contracting parties to enter into such circular trade agreements, including to earn arbitrage profits, brokerage fees, or to obtain liquidity of funds while trading: Judgment at [55]–[71]. The Judge also found that the Series A and Series B transactions formed a *single chain of contracts*. Accordingly, the CAO-Zenrock Contract was a genuine contract that took place against the broader Series A transactions: Judgment at [126]–[135].

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CAO was not liable in the tort of deceit

33 The outcome of BCP's claim in the tort of deceit turned primarily on the proper interpretation of the Representation. The parties put forth the following competing interpretations:

(a) Literal Interpretation: BCP argued that the Representation should be construed literally, *ie*, that CAO had represented the actual existence, authenticity and validity of the endorsed b/ls. Since there were no endorsed b/ls in existence *at the time* when the Representation was made, the Representation was thus false: Judgment at [178].

(b) Purposive Interpretation: CAO averred that the Representation must be construed with reference to the broader context in which the CAO LOI was issued. Accordingly, the Representation spoke only to the existence, validity and authenticity of the b/ls in their unendorsed form. There was then the additional warranty that the b/ls would be endorsed to the order of BCP Dubai in due course, after they were received from CAO's seller (*ie*, Shandong): Judgment at [179], [187]–[188].

34 The Judge began by observing that the exercise of interpreting the Representation would bear some similarity to the interpretation of contractual terms, in so far as the court can have regard to the context in and purpose for which the statement was made: Judgment at [173]–[175]. Having considered the commercial purpose of the CAO LOI and the terms of the other relevant agreements, the Judge found CAO's proposed interpretation to be the "only logical way" to read the Representation: Judgment at [187].

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35 Field 47A(10) of the Geneva LC stated that CAO may present a letter of indemnity to claim payment, "in the event that [the original bills of lading] and/or shipping documents … are not available at the time of presentation". In other words, the unavailability of the endorsed b/ls was a precondition to the presentation of the CAO LOI: Judgment at [181], [188]. BCP's argument that CAO had warranted the actual existence of the endorsed b/ls at the time of presentation would render Field 47A(10) of the CAO LOI completely otiose: Judgment at [181], [187].

36 The Judge also found this purposive interpretation to be consistent with the terms of the CAO-Zenrock Contract and the internal context of the CAO LOI. The CAO-Zenrock Contract stated at cl 8(c) that CAO may obtain payment by presenting a letter of indemnity, "in the *absence* of … a full set of clean original bills of lading" [emphasis added]. The CAO LOI refers to Zenrock "having agreed to accept delivery of the [Cargo] *without having been provided* with relevant documents required under the [CAO-Zenrock Contract] including … the [endorsed b/ls]" [emphasis added]. BCP's literal interpretation of the Representation would run contrary to the effect of these clauses and statements: Judgment at [182]–[186].

37 Following from the above, the Judge found that the Representation was not false. CAO did not represent to BCP that it had possession of the endorsed b/ls and original shipping documents at the time when CAO presented the CAO LOI and Invoice: Judgment at [190]. In any event, CAO did not make the Representation to BCP, as both the CAO LOI and Invoice were addressed to Zenrock. This would have made clear to any reasonable bank in BCP's position that the contents of these documents were not directed at nor promised to BCP: Judgment at [160], [193]. Additionally, these documents were presented to UBS

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(the confirming bank) rather than BCP. BCP's proper recourse would have been either to refuse reimbursing UBS or to pursue recovery of payment from UBS if there had been fraud on the documents: Judgment at [160]. Lastly, the Judge found that BCP had suffered no detriment as a result of the Representation. Properly construed, the proximate cause of BCP's loss was Zenrock's fraud and subsequent insolvency: Judgment at [197].

BCP failed in all of its other claims

38 Given that the appeal is limited to the tort of deceit, it is not necessary to address the Judge's rejection of BCP's other claims including the fraud exception, negligent misrepresentation, breach of contract, unjust enrichment and unlawful means conspiracy.

The parties' submissions on appeal

Whether BCP Geneva could have suffered loss in its capacity as the issuing bank

39 BCP is not appealing against the Judge's finding that BCP Geneva was the only proper plaintiff in Suit 875. It submits, however, that "loss suffered by BCP Dubai is loss suffered by BCP Geneva", because BCP Dubai was a branch office of BCP when the transactions were entered into. CAO disagrees. It submits that even if BCP Dubai suffered loss, BCP Geneva suffered no loss as the issuing bank. BCP treated losses suffered by different branches differently, keeping different accounts. The separate treatment of BCP Dubai and BCP Geneva was manifested by BCP Geneva debiting BCP Dubai's inter-branch account with the losses; and BCP Dubai issuing the Dubai LC to BCP Geneva, before the latter issued a separate letter of credit to UBS.

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Whether the Representation was false

40 There is no appeal against the Judge's finding that the CAO-Zenrock Contract was not a sham and that the Series A and Series B transactions formed part of a single sale chain. Instead, its case on appeal rests fundamentally on its interpretation of the Representation – all of BCP's arguments proceed on the premise that this court should accept its proposed interpretation over that submitted by CAO.

41 BCP submits that the Representation should be read to warrant the existence, authenticity and validity of the b/ls that had been endorsed to the order of BCP Dubai, *at the time* when the CAO LOI was presented. BCP argues that the Judge erred in engaging in a wholesale importation of the principles of contractual interpretation. While indicia such as the parties' shared commercial purpose may be relevant to construing a contractual term, this should be irrelevant to the proper construction of a tortious misrepresentation. This is because the law of contract and the tort of deceit are fundamentally aimed at protecting different private rights – while the former is intended to preserve a shared purpose underlying a promise or a bargain, the latter protects a representee's right not to be lied to. To this extent, the Judge wrongly accepted CAO's purposive approach in interpreting the Representation.

42 BCP also contends that even if such a purposive approach was to be applied, CAO's proposed interpretation goes beyond what the plain wording of the Representation can bear. The Representation refers to the b/ls as having been "issued or endorsed" to the order of BCP Dubai – in the past tense and as an accomplished fact, with no reference made to a future endorsement and/or issuance of the bills. The extended sentence in which the Representation was situated also contained representations as to existing or past facts, *viz*, that CAO

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"*were* … entitled to possession of the [Cargo]", that it "*had* … good title to the [Cargo]" and that "title [to the Cargo] *has been passed* as provided in the [CAO-Zenrock Contract]" [emphasis added]. This must be contrasted against other parts of the CAO LOI which clearly refer to promises as to future events, *viz*, that "[Zenrock] *will have* the benefit of warranty as to enjoy of quiet possession" [emphasis added].

43 The essence of CAO's case is that the Judge correctly interpreted the Representation by reference to the underlying context of the transaction and the terms of related documents, including the CAO LOI, the Geneva LC and the CAO-Zenrock Contract.

Whether the Representation was fraudulently made

44 BCP avers that CAO had made the Representation fraudulently because CAO either knew that the Representation was false, or had no honest belief that it was true, or was reckless as to its truth.

45 The first plank of BCP's argument on appeal follows directly from its submission that the Representation was not capable of any other meaning other than its proposed literal interpretation. If this is to be accepted, then CAO's interpretation of the Representation should be considered to be "destitute of all reasonable foundation" or "so incredible or unreasonable as to infer an absence of honest belief": *DBS Bank Ltd v Carrier Singapore (Pte) Ltd* [2008] 3 SLR 261 ("*Carrier Singapore*") at [51]–[53] and *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and others* [2007] 1 SLR(R) 196 ("*Raiffeisen*") at [43]. Implicit in BCP's case is that the literal interpretation should be given effect even if there was no commercial reason to

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require the b/l to be endorsed to the order of BCP Dubai *at the time* of the presentation of the CAO LOI.

46 The second plank of BCP's argument is that the Judge erroneously assessed the evidence to conclude that CAO had no fraudulent intention. CAO was at the very least reckless as to the truth of the Representation because there was a "clear and present danger" that the b/ls would not have been endorsed to the order of BCP Dubai. BCP raises several points in support of this, the most salient of which are that: (a) the warranties contained in the Shandong LOI did not represent the existence of the original bills that were endorsed to the order of BCP Dubai; (b) the NN b/ls were made in favour of Natixis as the consignee, which was a departure from CAO's own documentary instructions requiring clean b/ls made out to the order of CAO; (c) Ms Chng deleted words in a draft LOI circulated by Zenrock which stated that CAO would "make all reasonable efforts to obtain and surrender" the b/ls to Zenrock; and (d) CAO did not take further steps to investigate Natixis' role in the transaction or to satisfy itself that the bills of lading could at some point be issued/endorsed to BCP Dubai.

47 In response, CAO submits that it had genuinely and reasonably believed in the truth of the Representation in the purposive sense. CAO took various steps to ascertain the truth of the statements in the CAO LOI, including receiving regular updates from the Inspectorate and Shandong and cross checking the relevant copy shipping documents and assurances provided in the Shandong LOI. In the circumstances, CAO honestly believed that there was a genuine shipment of Cargo and that the b/ls had been issued; and further, that Shandong would endorse and hand down these Shipping Documents to CAO in due course.

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48 CAO avers that the alleged indicia of dishonesty highlighted by BCP must be weighed against the various operational steps taken by CAO to verify the truth of the contents of the CAO LOI. In any event, BCP's argument regarding the NN b/ls is unmeritorious because the documentary instructions related to the *endorsement* of the original b/ls to CAO rather than the *issuance* to CAO as the named consignee. Therefore, the fact that the NN b/ls named Natixis as the consignee was not a departure from the documentary instructions. The fact that Ms Chng had deleted certain terms from a draft version of the CAO LOI does not prove dishonesty or recklessness. CAO explains that it did not know precisely when the b/ls would be received from Shandong, and thus did not wish to provide a corresponding undertaking to Zenrock. Lastly, CAO was under no obligation to investigate Natixis' role in the chain of sale contracts.

Whether the Representation was made to BCP

49 BCP argues on appeal that the Judge erred by applying the wrong inquiry. The correct inquiry is whether representations were made "with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff": *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14]. Applying that inquiry, the Judge ought to have concluded that CAO intended for BCP to act upon the CAO LOI such that the Representation was made to BCP, for the following five reasons:

(a) First, the CAO LOI acknowledged a benefit to BCP by representing the existence of bills of lading issued or endorsed to the order of BCP Dubai.

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(b) Second, CAO was not a stranger to the subject-matter of the Representation, as the latter dealt squarely with CAO's representation as to the state of the full set of bills of lading issued or endorsed to the order of BCP Dubai (rather than Zenrock).

(c) Third, whom the CAO LOI was addressed to is not determinative, as issuing banks often rely on representations made on the face of documents presented for payment.

(d) Fourth, the Judge's decision as to reliance substantially undermines the manner in which the existing documentary credit system is practised, where shipping and cargo documents are often not addressed to banks but are required under the letter of credit. Banks only trade on documents and it is therefore imperative that all documents are materially accurate as to their content.

(e) Fifth, although the CAO LOI was presented to UBS rather than BCP, UBS was BCP's agent for receiving, reviewing and remitting documents presented for payment under the LC. Consequently, representations made to UBS under the CAO LOI pursuant to the Geneva LC are to be attributed as having been made to BCP: referring to *Grains and Industrial Products Trading Pte Ltd v Bank of India and another* [2016] 3 SLR 1308 ("*Grains*") at [73].

50 CAO argues that the Judge correctly held that CAO did not make any representation to BCP, much less with any intention for BCP's reliance. The CAO LOI was addressed to Zenrock and CAO twice rejected Zenrock's attempt to have the CAO LOI addressed to BCP during negotiations. Furthermore, CAO had insisted on a confirmed letter of credit; the interposition of a confirming

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bank militates against any intention by CAO to make representations to BCP. CAO also presented the CAO LOI to UBS, not BCP.

51 Additionally, under Field 78 of the Geneva LC, BCP Geneva's obligation to reimburse UBS was triggered on receipt of UBS's SWIFT confirmation of a compliant presentation, and not on BCP's own determination of compliance (or reliance on the contents of the presented documents). Field 78 was specifically inserted into the Geneva LC at UBS's insistence, who had rejected an earlier version of Field 78 which provided that BCP's reimbursement obligation would only be triggered on BCP Geneva's receipt of the complying documents.

52 In response to BCP's points, CAO submits:

(a) The mere reference to the endorsed b/ls does not confer a benefit to BCP. In any event, the inserted reference to the endorsed b/ls in the CAO LOI was not intended to confer a benefit on BCP; CAO had understood it as *Zenrock's instructions* to CAO on the intended endorsee of the endorsed b/ls.

(b) The contents of the CAO LOI, including the Representation, were, by their nature, directed and addressed exclusively to Zenrock.

(c) BCP led no evidence supporting its claim that the Judge's decision would undermine the documentary credit system. Moreover, just because "banks only trade on documents" (*ie*, the principle of autonomy), does not mean that banks invariably rely on representations in presented documents or that beneficiaries intend such representations to be made to banks.

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(d) BCP did not plead that UBS was its agent. In any case, UBS was not BCP's agent because (i) Field 78 does not include instructions for UBS to receive and review the documents on BCP's behalf; and (ii) BCP's reliance on *Grains* is misplaced, as *Grains* concerned a nominated bank, not a confirming bank.

Whether BCP relied on the Representation

53 BCP submits that the Judge applied the wrong test in determining reliance. He applied the "proximate cause" test in *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong* [2007] 4 SLR(R) 460 ("*JSI Shipping*") at [141] and *Standard Chartered Bank (Singapore) Ltd v Maersk Tankers Singapore Pte Ltd* [2023] 4 SLR 572 ("*Maersk*") at [51], [56]–[57] and [60]. These cases, BCP argues, are inapposite as they dealt not with the tort of deceit, but with the tort of negligence, and breach of contract and the tort of conversion respectively.

54 The correct test for reliance under the tort of deceit is, according to BCP, found in *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie Handoyo*") at [187]–[188]. This court considered it to be settled law that reliance exists where "… a misrepresentation plays a real and substantial part, though not by itself a decisive part, in inducing a plaintiff to act". The representation need only be *an* inducing cause, not *the* inducing cause.

55 CAO counters that the Judge correctly applied the "proximate cause" test in *Maersk* and *JSI Shipping*, given BCP's pleaded case that the representations and warranties in the CAO LOI were contractual warranties, and its cause of action in negligence. In any event, BCP as the representee must show that the misrepresentation was actively present in its mind or operated in

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its mind in inducing it to act. That could not have been true here as (a) the Representation was not made to BCP, and UBS, not BCP, paid CAO; (b) BCP considered its security to be the PetroChina receivables, not the endorsed b/ls; and (c) BCP reimbursed UBS pursuant to its reimbursement obligation rather than in reliance on any representation by CAO.

Whether the Representation caused BCP's loss

56 CAO argues on appeal that causation must be proved independently from reliance in a claim for deceit, referring to *Raiffeisen* at [7] and [52]–[73]. Since BCP Geneva as the issuing bank had been fully reimbursed by BCP Dubai, any purported reliance on the Representation could not have caused *BCP Geneva's* loss. Zenrock's fraud and insolvency was the cause of BCP's loss.

57 In response, BCP relies on *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 at 284-285 for the proposition that the court adopts a pragmatic and commonsense test of whether the fraud was a substantial factor in producing loss to establish a sufficient causal connection. The fraud need not be the sole cause. In this case, BCP's loss from the disbursement of moneys under the LC was plainly caused by the presentation of the CAO LOI (containing the Representation). This chain of causation was not severed by BCP Dubai reimbursing BCP Geneva, as they are one legal entity. Nor was it severed by Zenrock's insolvency, as it was only wound up on 20 September 2020, months after moneys were disbursed on 12 March 2020.

58 In any event, CAO admits that the use of the CAO LOI was the "alternative trigger to payment" under the LC. CAO's fraud (assuming it existed) was therefore proximate both in time and in terms of its contractual impact in triggering payment under the LC.

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The issues

59 The appeal gives rise to the following issues:

(a) whether BCP has the standing to sue;

(b) whether the Representation was false;

(c) whether the Representation was fraudulently made;

(d) whether the Representation was made to BCP; and

(e) whether there was reliance by BCP which caused the loss.

Our decision

Whether BCP Geneva suffered loss in its capacity as the issuing bank

60 It is undisputed that BCP Dubai had no standing to sue CAO, as it was merely a branch office (later becoming a representative office) of BCP Geneva. Under Singapore law, which applied by default since DIFC law was not pleaded, a bank's branches are considered emanations of the main bank, forming a single legal entity: *Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd* [2024] 3 SLR 476 at [49].

61 The Judge and CAO appeared to take the view that BCP Geneva did not suffer any loss, because it was BCP Dubai who suffered the loss. With respect, we disagree. In cases involving an issuing bank as the victim of deceit, the loss is considered suffered as soon as the bank pays out the money in reliance on the false representations made: *Carrier Singapore* at [110], referring to *Standard Chartered Bank v Pakistan National Shipping Corp and others* [2001] 1 All ER (Comm) 822 at [52], *per* Potter LJ. When BCP Geneva disbursed funds to CAO

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via UBS in March 2020, BCP Dubai was still a branch office of BCP Geneva, meaning they were legally one entity. Therefore, under Singapore law, any loss "incurred" by BCP Dubai was legally speaking a loss incurred by BCP Geneva.

62 It is irrelevant that BCP accounted for the losses suffered by different branches separately. We agree with the Judge's observations that "the question of how commercial parties relate to each other in relation to a letter of credit is conceptually different from the juridical status of a party to sue in a particular court": Judgment at [37]. Similarly, regardless of how a single legal entity might organise its accounting structure across different departments, that does not alter the principle that these departments collectively constitute one legal entity.

63 Hence, BCP Geneva has standing to sue CAO, and is entitled to be compensated for the loss if CAO were indeed liable under the tort of deceit.

Whether the Representation was false

64 In order to assess whether the Representation was false, it is first necessary to determine the precise meaning that was conveyed by it. Unlike in most cases involving the tort of deceit where the dispute is over whether the representation was made fraudulently or without any honest belief in its truth, the parties here disagree over the proper interpretation of the Representation. In a case where the representation is capable of multiple interpretations, the onus is on the ***representee*** – *ie,* BCP – to show in which of the possible senses it understood the representation, and that in that sense the representation was false: *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 ("*Trans-World*") at [63]; *Koh Chong Chiah and others v Treasure Resort Pte Ltd* [2013] 4 SLR 1204 at [118]; *Chuan Bee Realty Pte Ltd v Teo Chee Yeow Aloysius and another* [1996] 2 SLR(R) 134 at [18].

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65 It is important to highlight at this juncture that in considering a claim in the tort of deceit, the court must first assess whether the representation was false, and then separately, whether it was made fraudulently. These are discrete inquiries that must be conducted from different perspectives: *Krakowski and another v Eurolynx Properties Ltd and another* (1995) 130 ALR 1 at 11 and Spencer Bower, Turner & Handley, *Actionable Misrepresentation* (LexisNexis, 5th Ed, 2014) at para 4.12. In particular:

(a) In assessing ***falsity***, the court will have regard to the sense in which the representation would be understood by a reasonable person in the position of the *representee* (see [71] below). The court "does not consider the *representor's* perspective in assessing substantial falsity" [emphasis in original]: *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*Ernest Ferdinand*") at [173]. Therefore, for the purpose of the falsity analysis, it is relevant and necessary for a court to objectively assess the proper meaning that was conveyed by a representation when understood from the perspective of the representee, to arrive at a "correct interpretation" of the statement that was made.

(b) As regards ***fraud***, however, this must be assessed with reference to the *representor's subjective understanding* of the statement made. To this end, the objectively correct interpretation of the representation, which was arrived at for the purpose of the falsity analysis, is generally irrelevant. We will elaborate on this point at [97]–[107] below.

66 Following from the above, in the context of the present appeal, while we will examine whether the Judge correctly preferred CAO's interpretation of the Representation over BCP's, this determination will ultimately have no impact

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on the crucial inquiry of whether CAO had an honest belief in the truth of the Representation; and following from this, whether there can be a finding of fraud. Nevertheless, it remains a necessary plank of the falsity inquiry.

The Judge correctly preferred CAO's interpretation of the Representation

67 To recapitulate, the competing interpretations of the Representation put forth by the parties are as follows. BCP avers that the Representation should be read literally to warrant the actual existence, authenticity and validity of the ***endorsed*** b/ls, *at the time* when the CAO LOI was presented. CAO, on the other hand, argues that the Representation should be construed purposively. To that end, the Representation can only speak to the existence, authenticity and validity of the ***unendorsed*** b/ls, and more specifically, that: (a) the original b/ls had been issued; though (b) they were not available in that they had yet to be issued or endorsed to the order of BCP Dubai at the time of presentation of the CAO LOI; but (c) they would be endorsed to BCP Dubai's order in due course, after CAO had received the b/ls from its seller (Shandong).

68 As is clear from the above, it is common ground that the Representation concerned the existence, authenticity and validity of the Shipping Documents, including the original b/ls issued or endorsed to the order of BCP Dubai. The crux of the dispute is whether the b/ls had to be so issued or endorsed *at the time* when the CAO LOI was presented.

(1) The contextual approach to interpretation

69 We begin by rejecting BCP's submission that the Judge applied the wrong approach in construing the Representation. The gist of BCP's argument is that, by applying the principles of contractual interpretation and by accepting

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CAO's purposive interpretation of the Representation, the Judge failed to consider the nuances of a claim founded in the tort of deceit. Given that this tort protects a representee's right not to be lied to, the focal point of the inquiry should have been what BCP, as the representee, objectively understood the Representation to mean. To this end, the parties' shared commercial purpose underlying the transaction and CAO's own commercial purpose in presenting the CAO LOI, should have been irrelevant to the exercise of the interpretation.

70 As a matter of terminology, we should note our preference for the phrase '*contextual* interpretation' rather than 'purposive interpretation', the latter being more commonly associated with the exercise of statutory interpretation. With that said, nothing turns on the Judge's (or CAO's) use of such a phrase.

71 Where a claim in deceit is mounted on a written representation, it is clearly necessary for the court to first determine its proper meaning. While BCP rightly points out that this inquiry must be conducted from the perspective of a reasonable person in the representee's position, a court is by no means confined to adopting a literal reading of the statement made. It is well-established that the particular words used must be read *in the context that they were used*. This may, depending on the facts of each case, require a consideration of any or all of the following non-exhaustive list of factors: (a) the purpose for which a document came into existence; (b) why the statements contained in the document were made; (c) by whom the statements were intended to be read; and (d) the entire course of negotiations leading up to the making of the representation: *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Anna Wee*") at [36], citing with approval *Society of Lloyd's v Jaffray and others* [2002] EWCA Civ 1101 ("*Jaffray*") at [52]; *Ernest Ferdinand* at [173] and *The Law of Contract in*

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Singapore (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*Phang*") at para 11.013.

72 In other words, it will always be open to the court to take into account the context of the underlying transaction to arrive at the proper interpretation of a representation that was made in the course of the transaction. We see no reason why the parties' shared commercial purpose should not be considered as part of that context. Moreover, it must also be appreciated that the Representation is contained within the CAO LOI, a contractual document as between CAO and Zenrock. Although BCP may not have been privy to that contractual relationship, this does not alter the nature of the CAO LOI and of the representations contained therein, especially since BCP is claiming to have relied on it. Therefore, in so far as the Judge applied contractual interpretation principles in his interpretation of the Representation, we do not find this approach to be objectionable. This was not a case where the claim in deceit was founded upon an oral statement, or any other representation made in a non-contractual context.

(2) The use of letters of indemnity in chain contracts

73 Following from the above, it is clear that a proper interpretation of the Representation will first require an understanding of the purpose and effect of the CAO LOI. Typically, in transactions involving liquid cargo such as gasoil, it is common to find a chain of contracting parties that each make a margin from a series of back-to-back sale and purchase transactions. In this case, there can be no dispute that such a chain of contracts was expressly contemplated by the relevant parties: (a) Zenrock requested CAO to act as an intermediary between itself and Shandong, such that CAO entered into both the Shandong-CAO and CAO-Zenrock Contracts (see [11] above); and (b) BCP was equally aware that

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the transaction would involve a chain of parties; it was at least aware that Zenrock had purchased the Cargo from CAO under a back-to-back sale arrangement with PetroChina (see [12] above). To be clear, it is neither relevant nor necessary for a party in the chain (such as CAO) to know the identity of *all* the contracting parties in the chain of transactions. The point is that both BCP and CAO would at least have had a contractual expectation for the Shipping Documents, including the original b/ls, to move down and along the sale chain.

74 In the nature of chain contracts, it is also usual for parties to arrange for payment by letter of credit against the presentation of a letter of indemnity. It is apparent from the terms of the Geneva LC, the CAO LOI, and the CAO-Zenrock Contract, that this arrangement was expressly agreed to in this case:

(a) The Geneva LC: Field 47A(10) expressly provided that payment under the Geneva LC could be made against presentation of the CAO LOI and commercial invoice, in the event that the Shipping Documents including the original b/ls were not available (see [18(b)] above).

(b) The CAO LOI: Pursuant to the express terms of the CAO LOI, Zenrock, the purchaser of the Cargo, "agreed to accept delivery of [the Cargo] without having been provided with the [Shipping Documents] including … the full set of signed [b/ls] endorsed to the order of [BCP Dubai]" (see [23] above).

(c) The CAO-Zenrock Contract: Pursuant to cl 8(c) of the Contract, CAO could receive payment for the Cargo from Zenrock by presenting its signed invoice and letter of indemnity "in the absence of [the Shipping Documents]".

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75 The net effect of these provisions is that both Zenrock and BCP had agreed to accept delivery of the Cargo and to make payment to CAO without having been provided with the original b/ls endorsed to the order of BCP Dubai. By agreeing to accept the CAO LOI in lieu of the original Shipping Documents, BCP had in effect accepted that the receipt of the endorsed b/ls would *no longer be time sensitive* for the purpose of making payment under the Geneva LC. This is because BCP would be aware that Zenrock would already have taken delivery of the Cargo without having been provided with the original b/ls endorsed to the order of BCP Dubai. In the circumstances, it would make no commercial sense for BCP to assert that the b/ls had to be endorsed to its order at the time when the CAO LOI was presented.

76 In response to the above, BCP raised an interesting argument that the presentation of a letter of indemnity to trigger payment under a letter of credit does not in and of itself imply that the required shipping documents were unavailable. BCP relies on the decision of the England and Wales High Court ("EWHC") in *Trafigura Beheer BV v Kookmin Bank Co* [2005] EWHC 2350 (Comm) ("*Trafigura*"), where it was held that a letter of indemnity could be used to claim payment in two alternative situations, either where the shipping documents were *unavailable* for presentation, or when these documents *did not conform* with the form or requirements as agreed to by the parties: *Trafigura* at [25].

77 To provide some brief context, the defendant in *Trafigura* ("Kookmin") issued a letter of credit in favour of the plaintiff ("Trafigura") to finance Trafigura's purchase of a parcel of cargo (the "Kookmin LC"). While the Kookmin LC provided for payment against a full set of b/ls endorsed to the order of Kookmin, it also allowed for payment against presentation of

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Trafigura's commercial invoice and letter of indemnity, in the event that the b/ls were "not available" at the time of negotiation. Trafigura later received a set of discrepant b/ls which referred to the wrong port of shipment and discharge port and were not endorsed to the order of Kookmin. In view of these discrepancies, Trafigura presented its commercial invoice and letter of indemnity to Kookmin to obtain payment under the Kookmin LC.

78 Kookmin claimed against Trafigura on the basis that it had fraudulently misrepresented that the b/ls were "not available". Kookmin submitted that this representation was false because Trafigura did in fact have a set of b/ls available to it for presentation. The EWHC rejected Kookmin's argument, construing the term "not available" to encompass a situation where there were no *conforming* b/ls available for presentation (at [25]):

> Under Field 47A(M) payment could be made against other documents "if documents required are not available at the time of negotiation". It is self-evident that the "documents required" are documents which conform to the terms of the credit and which would trigger payment. *It is clear therefore that the provision in Field 47A(M) is intended to apply where conforming documents are not available so that this provision is directly applicable not just where there are no documents available but also where there are non-conforming documents which are available.* The argument raised by Kookmin to the effect that the provision is inapplicable where Trafigura had available to it Bills of Lading which were non-compliant is to be rejected out of hand. It follows that, contrary to Kookmin's submissions, the presentation of the LOI cannot in itself constitute a representation that Trafigura did not have any Bills of Lading available to it. *At most it could constitute a representation that it did not have conforming documents available to it which, it is common ground, was true.*
>
> [emphasis added]

79 Given that the present appeal does not concern a situation where CAO was in possession of non-conforming b/ls but nonetheless chose to present the

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CAO LOI to claim payment, we express no concluded view on the correctness of the *Trafigura* decision. With that said, it would be pertinent for us to point out that letters of indemnity are generally intended as an *alternative* means for a party to claim payment, if the required shipping documents are unavailable for presentation. It is at least arguable that an implicit representation would follow, *viz*, that the required documents would ***otherwise have been compliant*** with the form and requirements as agreed to by the parties, had they been available at the time of presenting the letter of indemnity. It appears to us that the *Trafigura* judgment cannot be interpreted as a license for a beneficiary to present a letter of indemnity, in a case where it clearly knows that the required shipping documents in its possession are non-conforming.

80 In any event, properly understood, we find that the *Trafigura* decision does not assist BCP's case for two reasons. First, as confirmed by Mr Siraj at the appeal hearing, BCP's case is that CAO had represented the existence, authenticity, and validity of the endorsed b/ls at the time that the CAO LOI was presented, even though these b/ls had yet to be passed down to CAO. BCP contends that this is a possible interpretation of the Representation because CAO could have given documentary instructions to its seller, Shandong, to endorse the b/ls to the order of BCP Dubai up the chain of sale contracts. We will fully address this submission at a later juncture (see [87]–[89] below). At this point, it suffices for us to note that BCP's case presents a wholly different scenario from what was considered in *Trafigura.* We thereby reject BCP's reliance on that decision.

81 Second, even if we were to adopt the decision in *Trafigura* and accept that a letter of indemnity can be used to claim payment when the required documents are non-conforming, this will not ultimately assist BCP. Even if

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CAO had possessed a set of non-conforming b/ls which it elected not to present, BCP would still have suffered the same loss. BCP would still not have had possession of the endorsed b/ls and would thus have remained unable to control delivery of the Cargo prior to making payment under the Geneva LC.

(3) CAO's interpretation of the Representation is to be preferred

82 Having outlined several general principles by reference to which the Representation should be interpreted, we now explain our agreement with the Judge's (and CAO's) interpretation of the Representation.

83 The starting point is that the Representation cannot be construed in silos (see [72] above). The Representation warrants the existence, authenticity and validity of the Shipping Documents; and *on that basis*, that CAO is entitled to possession of Documents, and the Cargo, and has good title to the Cargo (see [23] above). These parts of the CAO LOI are not independent of each other and must be read in tandem in order to properly understand the purpose and effect of the Representation.

84 Next, there were several arguments that BCP made in the proceedings below but which it has since abandoned on appeal. However, several significant consequences flow from these concessions, and we summarise them in turn.

(a) BCP is not appealing against the Judge's finding that the CAO-Zenrock Contract was not a sham (see [40] above). It therefore follows that BCP accepts that the CAO-Zenrock Contract was a genuine contract involving actual cargo. This was confirmed by Mr Siraj at the appeal hearing. By extension, BCP must thus accept that the Shandong-CAO Contract was similarly genuine, since the two contracts were on a back-

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to-back basis. It would also follow that CAO's representations that it was entitled to possession of the Shipping Documents and to the Cargo, and that it had good title to the Cargo, were true. Indeed, BCP argued in the proceedings below that these statements were false, but has since abandoned them on appeal.

(b) BCP has also abandoned the Series A and Series B dichotomy which it pursued at great lengths in the proceedings below (see [31] above). BCP would thus appear to accept that the b/ls which were issued on 27 January 2020 for the shipment of the Cargo onboard the Vessel and as evidenced by the NN b/ls (see [20] above), would apply to the CAO-Zenrock Contract. Since it is also now common ground that the CAO-Zenrock Contract was part of a single chain of sale contracts, CAO would expect the original b/ls to be issued or endorsed to the order of each successive buyer down and along the chain, and finally to itself. In fact, this was also the understanding of BCP's factual witnesses as gleaned from the trial transcripts (see [89] below).

85 Considering these points in the round, BCP's proposed interpretation of the Representation can no longer stand. The general principle is that terms or statements made in a commercial context should be interpreted in a way that aligns with "business common sense": *Ang Tin Yong v Ang Boon Chye and another* [2012] 1 SLR 447 at [12]; *Ngee Ann Development Pte Ltd v Takashimaya Singapore Ltd* [2017] 2 SLR 627 at [84]–[85]; see also *Phang* at paras 06.106–06.109. The nub of BCP's case is that the timing of endorsement of the original b/ls was critical, *ie*, it had to be endorsed to the order of BCP Dubai *at the time* when the CAO LOI was presented notwithstanding that it was not in CAO's possession. However, this ignores the undeniable fact that by

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agreeing to accept the CAO LOI in lieu of the endorsed b/ls, BCP had in effect accepted that it would no longer have the ability to control delivery of the Cargo. The endorsement of the b/ls to BCP Dubai would thus have ceased to be time sensitive.

86 BCP's interpretation of the Representation also runs contrary to the manner in which chain contracts are intended to be carried out and the fact that the b/ls in this case were negotiable by nature. As the b/ls were originally issued with respect to the sale and purchase agreement between Petco and Zenrock, it is hardly surprising that they were not made out to the order of BCP Dubai when they were first issued. That was a requirement under a separate contract, *ie*, the CAO-Zenrock Contract. The subsequent parties down the chain, including CAO, could and would then endorse the b/ls to the relevant party under the relevant contract *when the b/ls came into their possession*. This is how chain contracts are designed to function and aligns with the negotiable nature of b/ls. For CAO to have endorsed the b/ls to the order of BCP, it must first have come into possession of these bills. To this end, we agree with the Judge's findings at [184]–[188] of the Judgment.

87 BCP disputes this by stating that CAO could have given documentary instructions to its seller, Shandong, to endorse the b/ls to the order of BCP Dubai up the chain of sale contracts. In essence, BCP is contending that CAO had warranted, by way of the Representation, that it would or intended to instruct Shandong to endorse the b/ls to the order of BCP Dubai. In this manner, BCP would have understood that the *endorsed* b/ls already existed, at the time that the CAO LOI was presented. In advancing this argument, BCP relies on *The "Maersk Katalin"* [2024] SGHC 282 ("*The Maersk Katalin*"), where a beneficiary of an LC instructed its advising and negotiating bank to endorse and

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deliver a set of bills to the order of the issuing bank of the LC even before the beneficiary came into physical possession of said bills: *The Maersk Katalin* at [35].

88 We find this to be a creative but ultimately misguided argument. The fact that CAO could, in theory, instruct Shandong to endorse the b/ls to the order of BCP Dubai, does not mean that the omission to do so would carry legal consequences. In addition, BCP's above understanding of the Representation is not supported by the facts and the evidence before us. As we stated earlier, the nature of chain contracts (which did not apply on the facts in *The Maersk Katalin*) and negotiable instruments is such that each successive party along the chain will endorse the b/ls to the next relevant party, after receiving the b/ls from their corresponding seller. Absent any contractual requirement by BCP or Zenrock for CAO to instruct Shandong to endorse the b/ls to the order of BCP Dubai – and there was no such requirement – a reasonable representee in BCP's position would not interpret CAO to be representing that it would inform or intended to inform Shandong to endorse the b/ls to BCP Dubai, before CAO received the b/ls in its possession. This is especially since CAO would itself be able to endorse the b/ls to BCP Dubai once it received the b/ls from Shandong.

89 In addition, the evidence led by BCP's factual witnesses is also consistent with CAO's understanding that *CAO* would have to be the one to endorse the b/ls to the order of BCP Dubai, not some other seller up the sale chain. Mr Oce, BCP Dubai's first Vice President at the time, agreed in cross-examination that "***CAO*** would have to wait for the original [b/ls] to be endorsed to it either by Natixis or some intermediate suppliers before ***it*** *can endorse the [b/l] to BCP Dubai*" [emphasis added in italics and bold italics]. Mr Galtié, BCP Dubai's Head of Commodity Trade Finance, also agreed that CAO was

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warranting that when it received the b/ls from Shandong, it would "*in turn,* endorse them over to BCP Dubai" [emphasis added].

90 For the reasons provided above, we agree with the Judge's interpretation of the Representation, *ie*, that CAO had represented the existence, authenticity and validity of the *unendorsed* b/ls. CAO had also represented its intention, at the time of presenting the CAO LOI, that it would duly endorse the b/ls to the order of BCP Dubai, once the original bills were received from Shandong.

91 BCP's interpretation of the Representation is accordingly rejected. As this submission was the foundational plank to BCP's appeal, we will now go on to explain why, having rejected BCP's interpretation, the entire appeal must fail.

The Representation was not false

92 When the Representation is situated in its proper context, it is clear that the part of the Representation which referred to the existence, authenticity and validity of the *Shipping Documents*, was true. As we have explained above at [84], BCP is no longer disputing that CAO had entered into two genuine contracts: the Shandong-CAO Contract to purchase the Cargo from Shandong, and the CAO-Zenrock Contract to on-sell the same parcel of Cargo to Zenrock. The Shandong-CAO Contract provides that CAO was entitled to possession of the Shipping Documents and the Cargo contained therein. The CAO-Zenrock Contract then provides that CAO was entitled to pass title of the Cargo to Zenrock. As borne out by the NN b/ls, the Cargo was actually loaded onboard the Vessel. Therefore, the Representation that the *unendorsed b/ls* existed, were authentic and valid, was equally true. We find it to be fundamentally circular for BCP to suggest that the Representation was false because the b/ls were not made out to the order of BCP Dubai when the CAO LOI was presented. As

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explained earlier, the parties' contractual agreement to permit the presentation of an LOI for the purposes of claiming payment was precisely because the b/ls had not yet come into CAO's possession at that time.

93 The only manner in which BCP may establish that the Representation was false, is thus to prove that CAO had *no intention to endorse the b/ls* to the order of BCP Dubai once it received the bills from Shandong. There is simply no evidence to suggest that this was the case. To the contrary, there is every reason why CAO would endorse the bills upon receipt. By the time CAO came into possession of the bills, it would already have received payment under the Geneva LC and would thus have had no reason whatsoever to withhold the endorsed b/ls from Zenrock or BCP. This may explain why BCP's case was not mounted on the premise that CAO had no such intention.

94 Before concluding on this point, we note that CAO's interpretation of the Representation carries an element of futurity, *ie*, a promise to do something in the future. The Judge also acknowledged this: Judgment at [188]. We emphasise that, as the law stands, statements which convey promises as to future intention cannot constitute actionable representations for the purposes of a claim in deceit: *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 at [94]. However, a promise as to the future may sometimes contain implied representations of past or present fact, which may, depending on the facts, form actionable representations: *Ernest Ferdinand* at [172(a)]; *UniCredit Bank AG v Glencore Singapore Pte Ltd* [2023] 2 SLR 587 ("*UniCredit (CA)*") at [85]–[87]. With that said, since BCP's pleaded interpretation of the Representation contains no element of futurity and has been rejected, we need not determine whether any actionable implied representations arise from *CAO's* interpretation of the Representation.

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95 We therefore find that BCP's claim in fraudulent misrepresentation was correctly dismissed by the Judge.

Whether the Representation was fraudulently made

96 Although the above findings are sufficient to dispose of the appeal, we will nevertheless proceed to explain why, even if we had accepted BCP's interpretation of the Representation and found that it was false, BCP's appeal would still have failed for the lack of a finding of fraud.

CAO's honest belief should be assessed with reference to its subjective understanding of the Representation

97 Had BCP been successful in establishing that its interpretation of the Representation was to be preferred, and by that meaning that the Representation was false, the question that would have followed is whether CAO's honest belief should be assessed by reference to: (a) the meaning of the Representation as was objectively determined by the court for the purpose of the falsity analysis; or (b) as it was subjectively understood by CAO. In our judgment, it is the *latter* approach that must be correct. Indeed, Mr Siraj confirmed at the appeal hearing that this was also BCP's position.

98 It is well-established that dishonesty is the touchstone of a claim in deceit. To prove dishonesty, it must be shown that a false representation was made: (a) knowingly; (b) without belief in its truth; or (c) recklessly, careless whether it be true or false: *Chan Pik Sun v Wan Hoe Keet (alias Wen Haojie) and others and another appeal* [2024] 1 SLR 893 ("*Chan Pik Sun*") at [67], citing with approval *Derry v Peek* (1889) 14 App Cas 337 at 374. As will become clear from the cases discussed below, these indicia should be assessed by reference to the ***representor***'s subjective understanding of the representation

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made. This will be the case, even if the court accepts the *representee*'s pleaded interpretation of the statement as being objectively correct for the purpose of the falsity analysis.

99 In *Anna Wee*, an ex-husband represented that he was prepared to pay a fixed amount in child maintenance "*despite* his financial position". It later emerged that the husband had failed to disclose substantial portions of his assets, and the wife argued that the husband had made a fraudulent misrepresentation. The term "despite his financial position" was considered to be ambiguous – it could refer either to the husband being financially unable to pay any higher sum of child maintenance (as argued by the wife-representee), or it could be the case that the husband was merely posturing to pay a lower monthly maintenance sum. The latter interpretation was preferred, and it was held that the husband had not made a false representation.

100 Nonetheless, this court went on to observe that even if there was a false representation (*ie,* if the wife-representee's interpretation was to be accepted), there would be no finding of fraud. The court held that it was the *husband's* subjective state of mind that should be relevant in ascertaining whether he was guilty of fraud; in fact, his state of mind would be "of particular importance … because the statement … [was] capable of more than one interpretation": at [72]. Further, if the husband did not intend for the statement to convey the meaning that he had no assets capable of being divided, "then his statement, however false or misleading, cannot constitute fraud": at [74]. The court also cited with approval the following passage from Edwin Peel, *Treitel: The Law of Contract* (Sweet & Maxwell, 13th Ed, 2011) at para 9–006:

> A statement may be intended by the representor to bear a meaning which is true, but be so obscure that the representee understands it in another sense, in which it is untrue. In such

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> a case the representor is not liable if his interpretation is the correct one; and *even if the court holds that the representee's interpretation was the correct one, the representor is not guilty of fraud.* This is so *in spite of the fact that the representor's interpretation was an unreasonable one, so long as he honestly believed in it.* A fortiori the representee has no remedy in deceit if the representation is ambiguous and he did not in fact understand it in a different sense from that intended by the representor.
>
> [emphasis added]

101 A similar view was adopted by the High Court of Australia in the case of *John McGrath Motors (Canberra) Pty Ltd v Applebee* BC6400270. In that case, a car salesman made a representation to a buyer that a car was "new". This term was ambiguous, *ie*, it could have meant that the car was: (a) brand new; or (b) not second hand. In determining whether a fraudulent misrepresentation had been made, the court held that it was "unnecessary to express a concluded opinion on the meaning to be given to the words 'new car' … [because] that [was] not the point". Instead, the crucial inquiry was to determine the "meaning with which [the salesman] used the words and, in the light of that meaning, whether his statement was, to his knowledge, false or made with reckless indifference as to its truth or falsity": at p 2.

102 Finally, in *Goldrich Venture Pte Ltd and another v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990, the High Court considered a consultant's representation that "*Halcyon* had many big marine projects" to be potentially ambiguous, in that "Halcyon" could refer: (a) only to the defendant in that suit; or (b) to the defendant and its subsidiaries. Although the latter interpretation was preferred and the claim was dismissed on the basis that the representation was not false, the court went on to consider whether the representation was made fraudulently. The court held (at [139]):

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> The relevant inquiry here is the *subjective belief* of [the representor]. In order to make good their case, the plaintiffs have to show that when [the representor] made the alleged representation, he *subjectively knew* that (a) *the defendant* had no projects; (b) that the plaintiffs' workers could not have worked on the projects of the subsidiaries; (c) nevertheless went to represent that *the defendant* had many projects for which the plaintiffs' workers could be deployed. ***In so far as (c) is concerned, given that the expression "Halcyon" is ambiguous, the plaintiffs must go on to prove that [the representor] – at the time he made the representations – subjectively intended "Halcyon" to be understood by [the representee] to mean the defendant (rather than the Halcyon Group).***
>
> [emphasis in original in italics; emphasis added in bold italics]

103 Drawing from the above authorities, we emphasise that it is the ***representor's*** *subjective understanding* of a representation that will be relevant in assessing whether there was fraud or a lack of honest belief in the truth of the statement that was made. Generally, the objectively correct interpretation of the representation derived for the falsity analysis is irrelevant.

104 With that said, there may be cases where a representor's subjective interpretation of a statement is *not capable of being supported* by the plain words that were used and the surrounding facts that are in evidence. The cases refer to such interpretations as being "destitute of all reasonable foundation" or "so incredible or unreasonable" such that the court may infer an absence of honest belief: see [45] above, citing *Carrier Singapore* at [53] and *Raiffeisen* at [43]. In such cases, the representor will *not* be entitled to rely on his subjective interpretation. As held in *Chan Pik Sun* at [71], a finding that a representation is destitute of all reasonable foundation would "suffice of itself that [the representor's pleaded interpretation] was not really entertained, and that the representation was a fraudulent one". In our view, such an approach prevents

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unfairness in a case where the representor claims genuine belief in an absurd understanding of the representation.

105 The assessment of whether a representor's subjective understanding is destitute of reasonable foundation will *not necessarily* turn on the court's earlier determination of which interpretation is objectively correct. For instance, even if we had preferred BCP's interpretation of the Representation for the purpose of the falsity analysis, this would not invariably mean that CAO's interpretation was not also capable of being supported by the Representation; much would depend on the content of each representation and the facts of the particular case.

106 Nonetheless, in determining whether a representation is destitute of all reasonable foundation (for the purpose of the fraud analysis), reference may still be had to the objectively correct meaning of the representation (for the purpose of the falsity analysis). For example, if the court accepts the representor's understanding of the statement made, then it must *ipso facto* follow that such an understanding would not be destitute of all reasonable foundation.

107 For completeness, we reiterate that once the representor's interpretation is found not to be destitute of reasonable foundation (*ie*, it can be supported by the words used in the representation and the facts), the analysis will turn to whether the representor was dishonest or reckless in making the representation *in the sense in which he or she understood it.* As stated in *Raiffeisen* at [42], "[b]elief, not knowledge, is the test. Good faith need not be rational, it may indeed be opposed to reason and good sense, but it must be good faith, *ie,* it must be sincere". For the purpose of this analysis, the objectively correct interpretation of the representation is irrelevant.

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108 To summarise, the principles applicable to a case where a representation made is ambiguous and capable of multiple interpretations, are as follows:

(a) The onus will be on the ***representee*** to plead and demonstrate in which of the possible senses it understood the statement, and that in that particular sense, the representation was false: see [64] above.

(b) In determining whether there is a finding of fraud, the court will refer to the meaning of the statement as *subjectively* understood by the ***representor*** provided the representation and the facts are capable of supporting that meaning. This is irrespective of which interpretation of the statement was *objectively* accepted by the court as being correct for the purpose of the falsity analysis. Further, the onus will be on the ***representee*** to prove that the representor intended for the ambiguous statement to be understood in that false manner: see [97]–[107] above.

CAO's honest belief is amply supported by the evidence

109 We reject BCP's argument that CAO's proposed interpretation of the Representation is "completely destitute of all reasonable foundation" such that CAO could not have honestly believed in its truth (see [45] above). To the contrary, we find the evidence to demonstrate that CAO had an honest belief in the truth of the Representation, in the manner that it subjectively understood it.

110 The starting point, again, must be that CAO had entered into genuine contracts to purchase and sell the Cargo. The Cargo was duly loaded onboard with a set of original b/ls issued to evidence its shipment. We reiterate that BCP does not dispute these factual findings made by the Judge (see [84] above).

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111 We accept CAO's submission that it had taken various operational steps to verify the truth of the contents of the CAO LOI. As found by the Judge, CAO had taken steps to confirm that Shandong and Zenrock were approved trading counterparties, it had properly considered the operational and contractual risks of dealing with these parties and ensured that all risk management measures were properly complied with. CAO appointed the Inspectorate as an independent cargo surveyor to manage the loading and discharge of the Cargo and received regular updates from the Inspectorate regarding the loading status of the Cargo. Further, Ms Chng had also received copies of the Shipping Documents after the loading of the Cargo had been completed. CAO also had sight of the NN b/ls which evidenced that the Master of the Vessel had signed a set of 3/3 original b/ls (see [21] above). CAO then received warranties from Shandong that it had "marketable title" to the Cargo and "full right and authority" to transfer such title and effect delivery of the Cargo to CAO. While Shandong was unable to provide the full set of original bills to CAO at that time, Shandong "agreed to make all reasonable efforts to obtain and surrender" the bills to CAO.

112 Taking these points together, we find that CAO had genuinely believed that there was shipment of the Cargo and that the 3/3 original b/ls were issued and in the course of being delivered and endorsed to it. The evidence also demonstrates CAO as having carried out its due diligence at every stage of the transaction and therefore there was no basis whatsoever to claim that CAO was reckless as to the truth of the Representation made.

BCP's alleged indicia of CAO's dishonesty are not made out

113 BCP raises several indicia of dishonesty which allegedly point towards CAO having no honest belief that they would eventually be in a position to

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endorse the b/ls to the order of BCP Dubai (see [46] above). We do not accept these submissions.

114 First, the fact that the Shandong LOI did not warrant the existence of the b/ls endorsed to the order of BCP Dubai, does not indicate any dishonesty on CAO's part. As stated earlier, the requirement for endorsement to the order of BCP Dubai was only set out in the CAO-Zenrock Contract (see [86] above). There would be no reason or obligation for Shandong to warrant the existence of such endorsed b/ls. Again, pursuant to the nature of such chain contracts, it was *CAO* that would be obliged to endorse these bills to BCP Dubai.

115 Second, BCP argues that CAO's fraudulent intention is evinced by the fact that CAO was aware of, but did not raise concern with, the fact that the NN b/ls were made to Natixis as the consignee. This is because CAO's documentary instructions to Shandong required the b/ls to be made to the order of CAO as consignee. However, the fact that the NN b/ls were *consigned* to Natixis would not preclude the original b/ls from subsequently being *endorsed* to BCP Dubai. It would also not indicate that CAO had no intention to endorse the b/ls to BCP Dubai once the bills came into its possession.

116 Ms Chng explained that the naming of Natixis as consignee on the NN b/ls, had merely led CAO to believe that Natixis had financed the purchase of the Cargo up the chain before the Cargo was sold to Shandong and eventually to CAO. The b/ls would then be passed down and successively endorsed to the order of each relevant party. This aligns fully with the manner in which chain contracts are generally executed (see [73], [86], [88] above). CAO's deputy head of finance and one of the two signatories of the CAO LOI, Mr Koh Jian Min ("Mr Koh"), also testified that even though what he had seen in the copy

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NN b/ls appeared to be "inconsistent with the description of the [b/ls] in the [CAO LOI]", that CAO was nonetheless content to issue the CAO LOI because "based on [CAO's] contract with [Shandong], [CAO] would expect to receive the [b/ls] from [Shandong] … [o]nly upon receipt, we can then endorse to [BCP Dubai]". For these reasons, we do not find the purported discrepancy in the NN b/ls to indicate any dishonest intention on CAO's part.

117 Third, BCP takes issue with the fact that Ms Chng deleted a warranty from an early draft of the CAO LOI that CAO would "make all reasonable efforts to obtain and surrender" the b/ls to Zenrock. However, Ms Chng testified (and BCP does not dispute) that this was merely CAO's standard counter to draft LOI terms, given that CAO could not know precisely when it would come into possession of the b/ls. We do not find that this would point towards dishonest intention. In fact, and contrary to BCP's submission, we find the evidence of the parties' negotiations regarding the terms of the CAO LOI to *support* CAO's honest belief that it would be able to endorse the b/ls to the order of BCP Dubai. In the course of negotiations, Zenrock had instructed BCP to issue the Geneva LC on the basis that the b/ls were to be endorsed to *Zenrock's* order. However, BCP unilaterally amended the endorsement requirement when it issued the Geneva LC to state that the b/ls were to be endorsed to BCP Dubai. On receipt of the Geneva LC, CAO did not object to this amendment. Ms Chng testified that "as far as [CAO was] concerned, this is an instructions [*sic*] from BCP". In our judgment, the absence of objection by CAO is consistent with CAO's genuine belief that it would be in a position to endorse the b/ls to the order of BCP Dubai when the b/ls came into its possession down the chain.

118 Fourth, and finally, we reject BCP's submission that CAO's failure to investigate into Natixis' role is indicative of fraud. This is a *non-sequitur*. As

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we have explained above, there is no requirement for a party in the chain of contracts to know or investigate the identities of all the parties in the chain (see [73] above). In fact, these identities are typically kept confidential to prevent parties to contract directly with other parties in the chain.

119 Considering our finding that the Representation was true and was in any event not fraudulently made, it is strictly unnecessary to address whether the Representation was made to BCP, nor to address the reliance and causation arguments, save to make some salient observations.

Whether the Representation was made to BCP

120 The test in determining whether a representation was made to a plaintiff is to ask whether representations were made "with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff": *Panatron* at [14]. Therefore, the mere fact that a letter of indemnity is not addressed to an issuing bank does not determine that the representations therein were not made to the bank. For this reason, this court in *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corporation Ltd and another appeal* [2024] 1 SLR 1054 ("*Winson Oil (CA)*") went on to examine the applicability of the fraud exception to the principle of autonomy, despite the letter of indemnity in that case being addressed to the *seller* rather than to the two issuing banks.

121 The Judge correctly recognised at [152] of the Judgment that the relevant inquiry is whether the Representation was made to BCP as opposed to whom the document was addressed to. He then referred to *Carrier Singapore*, noting that the issuing bank in that case successfully relied on the fraudulent misstatements in the delivery order and the packing list notwithstanding the fact

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that they were addressed to the buyer and not the bank. The distinguishing factor, the Judge explained, was that in *Carrier Singapore*, the documents were created to satisfy the issuing bank's requirements for payment: Judgment at [152]; see also *Carrier Singapore* at [64].

122 We fail to see how *Carrier Singapore* is distinguishable from this case. Here, while the CAO LOI was not addressed to BCP, it is undeniable that the precise purpose of the CAO LOI was to obtain payment ***under the Geneva LC*** issued by BCP. After all, the CAO LOI was required to be presented to BCP to obtain payment under the LC if the shipping documents were not available. Further, BCP was specifically mentioned in the CAO LOI in that CAO warranted the existence, authenticity and validity of the b/l issued or endorsed *to the order of BCP*.

123 CAO appears to argue that the principle of autonomy for letters of credit means that an issuing bank is not intended to, and does not, rely upon representations emanating from the presented documents (see [52(c)] above). In so far as CAO argues as such, we would disagree. We explain.

124 For context, the principle of autonomy dictates that banks deal with documents and are not concerned with the substantive agreement underlying the letters of credit. The principle of autonomy supports two distinct assurances: (a) that the seller/beneficiary will be paid by the issuing bank as long as documents that conform to the requirements of the credit are presented, *regardless of any dispute with the buyer*; and (b) that the bank can confidently pay a seller/beneficiary who presents conforming documents, and it will be entitled to claim reimbursement thereafter without having to look into issues in the underlying sale contract: *Winson Oil (CA)* at [30]. This principle, however, is

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subject to exceptions, notably the fraud exception. The fraud exception states that where there is fraud on the documents, *ie*, the beneficiary fraudulently presents to the bank documents that contain material representations of fact that he knows are untrue, the bank may withhold payment: *Winson Oil (CA)* at [34].

125 In *Standard Chartered Bank v Pakistan National Shipping Corp (No 2)* [2000] 1 All ER (Comm) 1 at [35], the English Court of Appeal held that the principle of autonomy does not preclude the bank's reliance upon the customer's implied representation that the documents presented are, to his knowledge, both genuine and truthful. This aspect of the case was not reversed on appeal. In our view, this proposition is correct, as it is a mere corollary to the principle of autonomy and the fraud exception *read together*. Indeed, the very existence of the fraud exception means that an issuing bank is entitled to verify the truthfulness of representations made in the documents. After all, to succeed on the fraud exception, the bank would have to show that the representations were false and fraudulently made. It logically follows that the principle of autonomy and the fraud exception, read together, does not preclude representations from being made to an issuing bank.

126 Another factor indicating that BCP was intended to rely on the Representation is that BCP was the party who had introduced the Representation into the CAO LOI:

> (a) On 23 January 2020 at about 7pm, the final draft of the Geneva LC was sent by Zenrock to BCP Dubai and contained the wording, "duly endorsed in *your* favour" [emphasis added]. Zenrock requested BCP to "complete LC issuance by today and send us swift copy once available".

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(b) On the same day, BCP Dubai issued the Dubai LC to BCP Geneva, and BCP Geneva issued the Geneva LC to UBS. Both LCs contained an LOI format which had the wording "endorsed *to the order of [BCP Dubai]*" [emphasis added].

(c) On 24 January at about 11am, Zenrock sent a copy of the Geneva LC to CAO. The issued Geneva LC contained an LOI format which had the wording "issued or endorsed to the order of [BCP Dubai]".

It did not appear that CAO resisted such a change. Indeed, CAO proceeded to include the Representation in the CAO LOI.

127 CAO therefore must have known that the Representation was *important to BCP*. This suggests that CAO, by leaving the Representation in the CAO LOI, intended for BCP to rely on the Representation.

128 We turn now to address our recent decision in *UniCredit (CA)*. In *UniCredit (CA)*, Hin Leong Trading (Pte) Ltd ("Hin Leong") applied to UniCredit Bank AG ("UniCredit") for an irrevocable letter of credit to finance a sale contract for goods. This sale was part of an arrangement where Hin Leong would buy goods from Glencore Singapore Pte Ltd ("Glencore") and immediately sell them back. This complete arrangement, however, was not disclosed to UniCredit. UniCredit issued the letter of credit in Glencore's favour in November 2019, which, like the present case, required the presentation of either bills of lading or a letter of indemnity (the "Glencore LOI"). The Glencore LOI's format and wording were provided by Hin Leong and incorporated with no changes into the letter of credit by UniCredit.

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129 When UniCredit later argued that Glencore had, through the LOI, made representations to UniCredit with respect to a specific representation about its intention to surrender the original bills of lading to Hin Leong (the "Surrender Representation") and about the genuineness of the purchase, this court rejected this argument. We found that UniCredit could not rely on the fraud exception as there was no fraud on the documents tendered by Glencore for payment under the LC, and the underlying transaction was not a sham: *UniCredit (CA)* at [51]–[52]. Regarding the claim in the tort of deceit which was ill-founded, at [55]–[57], we held that Glencore had not made any relevant representation to UniCredit; the statements in the Glencore LOI were made to Hin Leong as addressee and on the facts the alleged representation was not made with the intention that it should be acted on by UniCredit or a class of persons including UniCredit. The Glencore LOI was not structured in terms that the bills of lading were to be delivered to the bank. The further promise to indemnify for loss was made to Hin Leong, not UniCredit. Moreover, we found that on the facts, the representation was true and there was no fraudulent intent on Glencore's part: *UniCredit (CA)* at [67]–[74].

130 On the facts, UniCredit had not established the elements of the tort of deceit set out in *Panatron.* We clarify that UniCredit did not establish a general principle that representations cannot be made to an issuing bank merely because the presented documents are not addressed to it. As we have explained (at [120]–[122] above), such a principle would contradict the position in *Carrier Singapore* and *Winson Oil (CA)*, and *UniCredit (CA)* should not be construed as a departure from this position.

131 In the circumstances, CAO had intended BCP to rely on the Representation despite CAO addressing the CAO LOI to Zenrock.

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132 The interposition of UBS as the confirming bank (at the insistence of CAO) and the fact that the CAO LOI was presented to UBS and not BCP does not change the analysis. The interposition was due to CAO's concern about BCP Geneva's creditworthiness (see [17] above). That does not change the fact that BCP Geneva was still the issuing bank of the Geneva LC under which payment would be made for the CAO-Zenrock contract. Hence, the interposition of UBS as the confirming bank does not alter the fact that CAO "created" the CAO LOI (adopting the language of the Judgment) to ultimately obtain payment from BCP.

133 CAO's argument – that BCP Geneva's obligation to pay upon receiving UBS's SWIFT confirmation of a compliant presentation shows that BCP was not intended to rely on the Representation (see [50]–[51] above) – is, with respect, incorrect. BCP Geneva's obligation to pay under the documentary credit is a separate matter from the question of reliance for the purposes of deceit. Even if BCP Geneva was compelled to disburse funds to UBS, this does not preclude BCP as the issuing bank from pursuing a claim in deceit *against CAO*, if CAO had fraudulently made representations intended for BCP's reliance on the presented documents. This coheres with the rationale of the tort of deceit which, as stated in *UniCredit (CA)* at [16], is to protect a representee's right not to be lied to. There is simply no logical connection between BCP Geneva's obligation to pay UBS upon receiving the SWIFT confirmation and the issue of whether CAO had intended BCP to rely on the Representation. The latter is a question to be answered by examining the facts and evidence of intention, and we have explained how the facts demonstrate that CAO intended BCP to rely on the Representation (see [120]–[122] and [126]–[127] above). It is thus unnecessary to address whether an agency relationship exists between an

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issuing bank and a confirming bank, and we leave that question to be decided when the issue is squarely before us.

Whether BCP relied on the Representation

134 In our view, the Judge erred in using the "proximate cause" test in determining whether BCP had relied on the Representation. Instead, we agree with BCP that the correct test for reliance under the tort of deceit is that set out in *Alwie Handoyo* (at [187]–[188]). A representee relies on a misrepresentation when the latter plays a real and substantial part, though not by itself a decisive part, in inducing the representee to act. It is immaterial as to how strong or how numerous other matters may have been in inducing him to act – the representation need only be ***an*** inducing cause, not *the* inducing cause.

135 In this case, the CAO LOI, including the Representation (which was important to BCP; see [127] above), clearly played a real and substantial part in inducing BCP to release the money under the Geneva LC. After all, the CAO LOI was the relevant trigger for payment under the Geneva LC – without the CAO LOI being presented to BCP, BCP would not have disbursed moneys to CAO. Furthermore, as explained above, the Representation was intended for BCP's reliance.

136 As BCP pointed out, the staff at BCP had reviewed the CAO LOI and, on that basis, certified that a complying presentation was made. On 18 February 2020, Zenrock's Mr Zhang Taiming emailed BCP to indicate that documents had been presented under the Geneva LC "last Fri" (*ie*, on Friday, 14 February 2020). In response, on 24 February 2020, BCP's Muhammad Saqib Khan emailed Zenrock's staff to attach the presented documents (including the CAO LOI). Significantly, this email provided that "[a]t our counters, since documents

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are clean We [*sic*] will settle the bill as per terms of the l/c". This shows that BCP had relied on the CAO LOI and the Representation in making payment under the Geneva LC.

137 We reject CAO's argument that that the Judge was justified in applying the "proximate cause" test, given BCP's pleaded case regarding contractual warranties in the CAO LOI and its pleaded action in negligence (see [55] above). The Judge applied the "proximate cause" test *while discussing reliance under the tort of deceit*: Judgment at [196]–[197]. That was the wrong test to apply for the tort of deceit.

138 CAO also submitted that because BCP was bound to reimburse UBS upon receiving UBS' SWIFT confirming a complying presentation, BCP had no right to examine the documents presented to UBS for compliance with the Geneva LC terms, and could only review the documents on their face to check for compliance without the representation acting on its mind. We disagree. As we have explained above, an issuing bank is entitled to sue a party who fraudulently made representations on the documents intended for the bank's reliance under the tort of deceit, regardless of whether there is a confirming bank in the picture (see [125] and [133] above).

139 For the foregoing reasons, had it been necessary to decide the point, we would have held that BCP had relied on the Representation.

Whether BCP's loss was caused by its reliance on the Representation

140 We have already established that CAO's presentation of the CAO LOI was an inducive cause for BCP to disburse payment. This disbursement led to BCP's loss of money. It does not matter that the presentation of the CAO LOI

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was not the only cause for BCP's loss. Indeed, in *Carrier Singapore*, where Carrier had made a fraudulent misrepresentation to DBS in a Delivery Order, the court held that "DBS paid under the LC in reliance upon the Delivery Order and thereby suffered loss", and "[t]he connection could not be clearer" (at [89]). In that case, Carrier argued that DBS' loss was caused by its inability to obtain repayment from its customer which had gone bankrupt, but the court rejected that argument, holding that it was insufficient to break the chain of causation flowing from the deceit (at [91]). Similarly, Zenrock's fraud and insolvency are insufficient to break the chain of causation flowing from CAO's Representation (assuming it was false and made fraudulently).

141 As for the argument that BCP Dubai's reimbursement towards BCP Geneva broke the chain of causation, that argument is a non-starter. As we have already established, any loss which may arise from CAO's fraudulent misrepresentation suffered by BCP Dubai was in fact loss incurred by BCP Geneva (see [61]–[63] above). BCP Dubai's "reimbursement" to BCP Geneva was nothing more than an internal transfer of funds within BCP Geneva – it could not break the chain of causation flowing from CAO's Representation.

142 We would thus have held that the Representation did cause the loss to BCP, had it been necessary to decide the point.

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Conclusion

143 Since the Representation was neither false nor made fraudulently, the tort of deceit is not made out. The appeal is thus dismissed and BCP Geneva is ordered to pay costs fixed at $100,000 (all-in) to CAO.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Siraj Omar SC, Larisa Cheng and Fitzgerald Hendroff (Siraj Omar LLC) (instructed), Khoo Ching Shin Shem, Teo Jia Hui Veronica and Ng Wei Kit Joshua (Focus Law Asia LLC) for the appellants;
Toh Kian Sing SC, Lin Yong'En Nathanael, Marcus Chiang Mun Leong, Tan Zhi Rui and Muhammad Salihin bin Mohd Zahrin (Rajah & Tann Singapore LLP) for the respondent.

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