IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 42

Court of Appeal / Civil Appeal No 69 of 2024

Between

Winson Oil Trading Pte Ltd

… *Appellant*

And

United Overseas Bank Limited

… *Respondent*

Court of Appeal / Civil Appeal No 70 of 2024

Between

Owner of the vessel
"MAERSK KATALIN"

… *Appellant*

And

United Overseas Bank Limited

… *Respondent*

JUDGMENT

[Admiralty and Shipping — Bills of lading — Delivery of cargo against presentation of bills of lading]

[Contract — Remedies — Damages — Causation]
[Damages — Measure of damages — Contract — Damages for misdelivery of cargo]

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Winson Oil Trading Pte Ltd v United Overseas Bank Ltd and another appeal

[2025] SGCA 42

Court of Appeal — Civil Appeal Nos 69 and 70 of 2024
Sundaresh Menon CJ, Steven Chong JCA, Ang Cheng Hock J
7 July 2025

5 September 2025 Judgment reserved.

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

1 Perhaps the most fundamental principle in the law of carriage of goods by sea is the carrier's obligation to deliver cargo *only* against presentation of the bill of lading. Quite often, for a variety of reasons, the carrier might choose to deliver the cargo to the consignee without presentation of the bill of lading. Invariably, such a carrier would be fully cognisant that in doing so, such delivery would constitute a breach of the contract of carriage. Typically, the carrier would take steps to protect itself by obtaining a letter of indemnity, usually from the charterer or the consignee, to hold itself harmless against the consequences of such a breach.

2 This was precisely what happened in this case when the appellant in CA/CA 70/2024, Maersk Tankers Singapore Pte Ltd ("Maersk"), decided to deliver the cargo to the consignee, Hin Leong Trading (Pte) Ltd ("Hin Leong"), without presentation of the bills of lading ("OBLs"). Instead, delivery was made

against presentation of a letter of indemnity (the "Discharge LOI") by the appellant in CA/CA 69/2024 and the charterer of the vessel, Winson Oil Trading Pte Ltd ("Winson").

3 As in most cases for misdelivery, the underlying claim was brought by the respondent bank, United Overseas Bank Limited ("UOB"), as the indorsee of the OBLs. UOB had financed the purchase of the cargo through the provision of a letter of credit ("the LC"), pursuant to which payment to Winson was effected against a commercial invoice and a letter of indemnity (the "Payment LOI") furnished by Winson. The complication here is that the LC was factually issued by UOB *after* the cargo had been discharged from the vessel. This inspired a barrage of defences which were pursued in the proceedings below, essentially directed to establish that UOB somehow knew that the cargo had been discharged to Hin Leong without presentation of the OBLs *prior* to the issuance of the LC.

4 In the court below, the Judge rejected all the defences advanced by Maersk and Winson (collectively, "the appellants"). In the present appeals, the appellants have largely abandoned the defences pursued below and limited themselves to a single discrete argument. At its core, the appellants' case on appeal is that given the structure of the financing, the terms of both the LC and the Payment LOI and other red flags, UOB did not regard the OBLs as having legal effect and hence did not acquire any rights thereunder. However, at the appeal hearing, the appellants' counsel, Mr Kenneth Tan SC ("Mr Tan"), was quick to emphasise that it is not their case that the OBLs were shams. That must be correct because the OBLs were validly issued by Maersk to acknowledge the shipment of a genuine shipment of cargo onboard the vessel. It will be immediately apparent that while the appellants accept that the OBLs were valid

contracts of carriage giving rise to rights and liabilities as between Maersk and the *original holder* of the OBLs, they somehow ceased to have any legal effect as between Maersk and UOB, the indorsee of the OBLs, notwithstanding the undeniable fact that the OBLs were validly indorsed to UOB.

5 As we alluded to in our recent decision in *Banque de Commerce et de Placements SA, DIFC Branch and another v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 ("*BCP*") at [84], when a party elects to abandon some unsuccessful defences advanced below, it may have a consequential impact on the remaining defence for the appeal where its pursuit would be inconsistent with the findings of the court below. As we will explain, the appellants face insurmountable factual and legal obstacles in the pursuit of the argument that UOB did not regard the OBLs as having any legal effect and hence did not acquire any rights thereunder.

The background facts

6 The facts relevant to these appeals are set out in full at [9]–[38] of *The "Maersk Katalin*" [2024] SGHC 282 ("*Maersk (HC)*"). In this section, we set out only the facts that are pertinent to our analysis of the issues on appeal.

Sale and delivery of the cargo to Hin Leong

7 On 10 February 2020, Winson voyage-chartered the vessel the "MAERSK PRINCESS" (the "Vessel"), which was owned by Maersk, for the carriage of gasoil 10ppm sulphur from Taiwan to Singapore.

8 By way of a sale contract dated 12 February 2020 and amended by an addendum dated 17 February 2020 (collectively, the "Sale Contract"), Winson contracted to sell to Hin Leong approximately 750,000 barrels of gasoil 10ppm

sulphur on delivery *ex* ship ("DES") terms. The cargo was dealt with in the following four parcels at all material times:

(a) "Parcel A" and "Parcel B", which comprised 330,000 and 33,513 barrels respectively, were purchased by Winson from BP Singapore Pte Limited;

(b) "Parcel C", which comprised 330,000 barrels, was purchased by Winson from China Aviation Oil (Singapore) Corporation Ltd; and

(c) "Parcel D", which comprised 59,357 barrels, was purchased by Winson from PetroChina International (Hong Kong) Co. Ltd.

9 Of these parcels, only Parcels A and C, the purchase of which was financed by UOB, form the subject matter of the underlying action in HC/ADM 20/2021 ("ADM 20") and the present appeals. Like the judge in ADM 20 (the "Judge"), we will refer to these parcels collectively as the "Cargo". The other parcels, *ie,* Parcels B and D, were financed by Standard Chartered Bank, Singapore Branch.

10 On 21 February 2020, all four parcels were completely loaded onto the Vessel in Taiwan. The master of the Vessel proceeded to issue the bills of lading in triplicate, including the OBLs for the Cargo.

11 On 26 February 2020, Winson requested that Maersk discharge all the cargo onboard the Vessel to Hin Leong without presentation of the original bills of lading, in return for the Discharge LOI.

12 On 27 February 2020, the Vessel arrived in Singapore and tendered its notice of readiness to discharge (the "NOR"). Discharge and delivery of the

Cargo took place at Universal Terminal, Singapore from 28 to 29 February 2020, without any original bills of lading having been presented.

The financing arrangements between Hin Leong and UOB

13 As mentioned above at [9], Hin Leong's purchase of the Cargo, *ie,* Parcels A and C, was financed by UOB. The following two documents operated as the backdrop to this financing transaction:

(a) Pursuant to a "General Memorandum of Pledge of Goods" dated 6 August 2002 and executed by Hin Leong in favour of UOB, Hin Leong undertook to grant UOB a pledge of any bills of lading subsequently deposited with the bank in respect of the goods it had financed.

(b) By way of a letter of offer dated 6 April 2018, UOB extended to Hin Leong uncommitted banking facilities for a total amount of US$250m under various lines of credit (the "Letter of Offer"). Two particular lines of credit are relevant to the present case: the "LC1" sub-facility for "sold" cargoes and the "LC2" sub-facility for "unsold" cargoes. In relation to the LC2 line, the Letter of Offer required Hin Leong to (a) "allocate" the sale contracts entered into by Hin Leong as seller; and (b) assign the receivables thereunder to UOB, all within 21 days from the date when the letter of credit was issued (the "Allocation Requirement").

14 On 3 March 2020, Hin Leong applied to UOB for a letter of credit in respect of the Cargo. By this time, the Cargo had already been discharged and delivered (see [12] above).

15 On 4 March 2020, UOB approved Hin Leong's application. It issued the LC, which was booked under the LC2 sub-facility. The maturity date of the LC was 27 March 2020. Clause 15 of Field 47A of the LC permitted the presentation of Winson's commercial invoice and the Payment LOI for payment to be effected by UOB, where the following documents were not available:

(a) the OBLs issued or endorsed to the order of UOB;

(b) certificates of quality and quantity at the load port issued or countersigned by an independent inspector; and

(c) a certificate of origin.

16 On 5 March 2020, in accordance with Field 47A of the LC, Winson presented its commercial invoice for a sum of US$43,563,960 (the "Commercial Invoice") and the Payment LOI to its advising and negotiating bank under the LC, Credit Suisse (Switzerland) Ltd ("Credit Suisse").

17 On 11 March 2020, UOB received the Commercial Invoice and Payment LOI from Credit Suisse. On 24 March 2020, UOB informed Credit Suisse that the documents were accepted and that UOB would remit payment to Credit Suisse upon maturity of the LC on 27 March 2020. Payment by UOB was thereafter duly effected.

18 Pursuant to the Allocation Requirement in the Letter of Offer, Hin Leong was obliged to allocate its sale contracts to cover the repayment obligations under the LC by 25 March 2020. However, it only did so on 26 March 2020. Three contracts (the "Rotterdam Contracts") were allocated.

19 On 27 March 2020, Hin Leong drew on the credit under its Trust Receipt (1) sub-facility with UOB in order to notionally settle its repayment obligations in respect of the LC. To be clear, there was not yet a trust receipt issued because UOB had yet to come into possession of the OBLs by this time. Similar to the Judge, we will refer to the arrangement executed on 27 March 2020 as the "Trust Receipt Loan". The Trust Receipt Loan was due for repayment on 8 April 2020. On 8 April 2020, UOB granted Hin Leong's request for a roll-over of the Trust Receipt Loan from 8 April 2020 to 17 April 2020.

20 On 9 April 2020, Hin Leong withdrew its allocation of the Rotterdam Contracts without further explanation.

21 Soon after Hin Leong announced its insolvency on 14 April 2020, UOB began pressing Winson for the OBLs which it eventually received on 15 July 2020.

22 On 18 February 2021, UOB wrote to Maersk to demand delivery of the Cargo. On the same day, UOB issued the writ *in rem* in ADM 20 against Maersk. On 15 September 2021, Winson was granted leave to intervene in ADM 20. It banded together with Maersk in defending against UOB's claims.

The decision below

23 In ADM 20, the Judge considered and rejected four categories of defences raised by the appellants (a) the "Contractual Defence"; (b) the "Consent-Based Defences"; (c) the "Rights of Suit Defences"; and (d) the "Causation Defence". The Judge therefore allowed UOB's claim against Maersk for breach of the contracts of carriage contained in or evidenced by the OBLs, and awarded UOB damages in the sum of US$39,372,300: *Maersk (HC)*

at [8] and [198]. We earlier alluded to the fact that the appellants have elected to abandon most of these defences that were pursued in the proceedings below (see [4]–[5] above). As this will materially impact the relevance and strength of the submissions made on appeal, we set out the contours of the appellants' defences in some detail, as well as the Judge's reasons for rejecting them.

The Contractual Defence

24 The Contractual Defence is premised on the argument that the charterparty required Maersk to deliver the Cargo without presentation of the OBLs, provided that a suitable indemnity was furnished. Maersk cannot be faulted for fulfilling this obligation: *Maersk (HC)* at [42] and [48].

25 The Judge rejected the Contractual Defence. He held that such terms obliging a discharge of cargo without presentation of original bills of lading, which were commonly found in charterparties, merely served to reallocate the legal risk of the carrier's unlawful conduct to the indemnitor. It neither absolved nor authorised the shipowner's breach of the contract of carriage: *Maersk (HC)* at [49].

The Consent-Based Defences

26 The Consent-Based Defences essentially contend that UOB had consented to Maersk's delivery of the Cargo to Hin Leong without the OBLs having been presented, either prior to the discharge or after the fact: *Maersk (HC)* at [43].

27 These defences were also rejected by the Judge. He found that there could not have been any consent by UOB prior to the Cargo's discharge on 28–29 February 2020, because UOB only came into the picture on 3 March 2020

when Hin Leong applied for the LC: *Maersk (HC)* at [54]. Further, the arguments on consent post-dating the discharge were focused on the doctrine of ratification, which required the agent whose act was sought to be ratified to have purported to act for the principal in doing that act. However, there was no evidence to demonstrate that Hin Leong had professed to act on behalf of UOB in taking delivery of the Cargo: *Maersk (HC)* at [62]–[64].

The Rights of Suit Defences

28 The Rights of Suit Defences challenge UOB's rights of suit under the Carriage of Goods by Sea Act 1992 (c 50) (UK) (the "UK COGSA"): *Maersk (HC)* at [44]. They include the following arguments:

(a) the "Spent Bills Defence", which contends that the OBLs were spent by the discharge and delivery of the Cargo to Hin Leong: *Maersk (HC)* at [71];

(b) the "Good Faith Defence", which contends that UOB became the holder of the OBLs by dishonest or improper means, therefore militating against the transfer of the title to sue to UOB pursuant to s 5(2) of the UK COGSA: *Maersk (HC)* at [84]–[86]; and

(c) the "Endorsement Defence", which contends that the endorsement of the OBLs to UOB was incomplete because Winson had no intention to transfer the rights of suit by way of endorsement: *Maersk (HC)* at [107].

29 In relation to the Spent Bills Defence, the Judge found that the OBLs were not spent. It was well-established that bills of lading were not spent by delivery of the cargo to a person not entitled to them under those bills. In the

Judge's view, it was clear that Hin Leong was never the party entitled to the Cargo under the OBLs: *Maersk (HC)* at [73]–[77].

30 As for the Good Faith Defence, the Judge took the view that there was no dishonesty in the way that UOB became holders of the OBLs: *Maersk (HC)* at [88]. The Judge rejected the argument that there was a lack of good faith because UOB never intended for the OBLs to function as security and only demanded them from Winson to contrive a claim against Maersk, on the basis that it was not a want of good faith for a transferee to obtain the bill of lading for mere rights of suit: *Maersk (HC)* at [86(b)] and [88]. Further, the Judge was satisfied that UOB's demand for the OBLs was made on a genuine belief as to its rights and entitlements under the Payment LOI, and without any implicit enticements or threats directed at Winson: *Maersk (HC)* at [105]–[106]. In particular, the Judge found that (*Maersk (HC)* at [99]):

> … it would have been commercially unreal for UOB to knowingly relinquish any entitlement to the OBLs in accepting the Payment LOI, bearing in mind especially that the Payment LOI was only intended as a stop-gap to secure the accomplishment of what the L/C required by default in Field 46A, *ie*, presentation of the full set of OBLs.

31 The Judge held that the Endorsement Defence was without merit: *Maersk (HC)* at [116]. The OBLs all contained signed, unqualified indorsements by Winson, and there was no suggestion that these indorsements were unauthorised or that the physical delivery of the OBLs was not voluntary: *Maersk (HC)* at [111]. The Endorsement Defence was reduced to nothing more than the allegation that there was no subjective intention on Winson's part to transfer the rights of suit to UOB, which found no favour with the Judge: *Maersk (HC)* at [112]. The Judge found that Winson fully understood the significance of the OBLs and the act of endorsing them to UOB: *Maersk (HC)* at [113].

The Causation Defence

32 The Causation Defence denies the causality between Maersk's breach of contract and the loss claimed by UOB in ADM 20: *Maersk (HC)* at [45]. The causal chain was allegedly severed because UOB would have counterfactually authorised the discharge of the Cargo to Hin Leong without presentation of the OBLs: *Maersk (HC)* at [153]. Instead, the proximate or effective cause of UOB's losses was purported to be the financial collapse of Hin Leong, which rendered it unable to repay its debt to UOB: *Maersk (HC)* at [151].

33 The Judge began by considering the incidence of the burden of proof. He held that *UOB* bore the legal burden of proving that Maersk's breach of contract was an "effective" or "dominant" cause of its loss of the Cargo. This legal burden included a burden to establish that but for Maersk's breach of contract, there would have been no loss of the Cargo: *Maersk (HC)* at [154]–[155]. However, it was *the appellants* who bore the evidential burden of establishing that UOB would have counterfactually given its authorisation for the discharge of the Cargo without presentation of the OBLs: *Maersk (HC)* at [156]–[159].

34 The starting position of the Judge's analysis was that "banks like UOB take security for a reason, and the security will not be parted with in the absence of commercial reasons for doing so": *Maersk (HC)* at [157].

35 In respect of the counterfactual, the Judge pointed out that the appellants had failed to specify the intermediate steps that would have transpired between Maersk's initial refusal to discharge the Cargo without production of the OBLs, and UOB's subsequent notional authorisation of that discharge. This was in contrast to the decision in *Unicredit Bank AG v Euronav NV* [2024] 1 Lloyd's

Rep 177 ("*The Sienna (CA)*"), where the bank had in effect conceded the factual steps that it would have taken in the counterfactual. Indeed, the bank in *The Sienna (CA)* ran its case relying on several postulations as to what would have occurred, had the owners declined to deliver the cargo. It was on this basis that the court was able to determine, evidentially, how the bank would have responded to a hypothetical request for authorisation: *Maersk (HC)* at [161]–[162].

36 In this case, there was simply a lack of evidence in respect of the hypothetical steps that would have led to UOB authorising the discharge of the Cargo; instead, the appellants' proposed counterfactual was founded in a "contextual and factual vacuum". The Judge deemed it unsafe to conclude that UOB would have authorised the discharge of the Cargo without presentation of the OBLs. The counterfactual was thus not successfully proven: *Maersk (HC)* at [162]–[164].

37 Even if this was not fatal to the Causation Defence, the evidence also did not support a more general inference that UOB would have consented to the discharge of the Cargo without presentation of the OBLs. There were two key planks to the appellants' argument. They alleged that UOB had issued the LC knowing full well that the Cargo had already been delivered to Hin Leong. This would justify an inference that UOB never looked to the OBLs as security: *Maersk (HC)* at [166(a)]. Next, UOB conducted itself in a manner that evinced a clear disregard for the Cargo or for the OBLs as security: *Maersk (HC)* at [166(b)].

UOB had no knowledge of the prior delivery of the Cargo

38 The Judge did not consider the evidence to demonstrate, on a balance of probabilities, that UOB had known about the prior delivery and/or discharge of the Cargo.

39 The appellants emphasised that UOB (a) knew that Hin Leong was purchasing unsold goods for blending and storage, which may have had the effect of extinguishing certain security interests; and (b) waived its right to a negative pledge by Hin Leong over the cargoes that it had financed, thus permitting Hin Leong to pledge the cargoes without first seeking UOB's consent. However, these arguments related to things done only *after possession of the Cargo had already been taken by Hin Leong*. These factors thus did not aid the Judge in determining whether UOB would have allowed such possession to be taken without presentation of the OBLs: *Maersk (HC)* at [169]–[170].

40 The appellants further submitted that UOB *only* looked to the export receivables from the on-sale contracts (and not the Cargo or the OBLs) as security. This was evinced by the Allocation Requirement, and further, the fact that any on-sale contracts would have to provide for loading prior to the due date for repayment under the import letter of credit. The Judge rejected this argument on the basis that a bank may require a *package* or *suite of securities* in respect of its financing. Even if UOB looked to the export receivables as security, this would not preclude it from *also* looking to the Cargo and the OBLs for the same. In fact, "the superiority of the [OBLs] (as a proprietary form of security) over assignments of accounts receivable (which are only in the nature of a personal security) would render the pledge of the OBLs *all the more* important to UOB" [emphasis in original]: *Maersk (HC)* at [172]–[173].

41 Next, the appellants submitted that UOB's knowledge of the delivery of the Cargo was clear from the following pieces of evidence. UOB's internal transaction form, which it prepared in the course of reviewing Hin Leong's application for the LC (the "Transaction Form"), contained the following points:

> Vessel & ETA: MT Maersk Princess … (***~~ETA~~ arrived*** Singapore 29Feb2020) [amendment made in handwriting]
>
> …
>
> 6) Performing vessel is "MT Maersk Princess". Shipment has been effected around 21Feb2020. … Shipment from Taiwan to Singapore. ***Latest Delivery Date is the NOR tenderred*** [*sic*] ***at discharge port ia 29Feb 2020***. As per copy of Purchase Contract, delivery is between 21-25Feb2020. ***Vessel's checked: ETA Singapore 29Feb2020***
>
> [emphasis added in bold italics]

42 Further, UOB's Ms Christina Foong ("Ms Foong") was heard to ask Hin Leong's Ms Katherine Ong ("Ms Ong") over a phone call whether "the shipment *already effected* right [*sic*]…". There was also a Lloyd's List Intelligence Report of the Vessel generated by UOB on 4 March 2020 (the "4 March LLI Report") which stated that the Vessel stopped at a Singapore liquefied natural gas terminal on 28–29 February 2020. That was when the Cargo was discharged.

43 The Judge did not consider any of these pieces of evidence to constitute a clear and unequivocal indication to UOB's officers that the Cargo had been discharged. The Transaction Form contained a handwritten note stating that the Cargo was "***to be*** discharged to [Hin Leong]" [emphasis added in bold italics]. Regarding the references to "delivery" and shipment having been "effected", UOB's witnesses explained that they understood "delivery" to mean the arrival of the Vessel at the discharge port with the Cargo still on board, and an "effected shipment" to mean that the Vessel had departed from the load port. Regarding

the 4 March LLI Report, this was only generated as part of UOB's standard operating protocol for compliance with anti-money laundering and anti-terrorism rules. The report indicated that the Vessel was still in Singapore on 4 March 2020 and there was no indication in it that the Vessel was discharging. In any event, the Judge considered that while these more minute details may have been at the front and centre of litigation, it was understandable that they might not have been noticed at the time of the material events: *Maersk (HC)* at [174]–[182].

44 Additionally, the appellants highlighted that the Sale Contract was on DES terms and OBLs are generally considered redundant in such sale arrangements. On this basis, UOB must also have known that the Cargo would have been immediately delivered to Hin Leong once the Vessel arrived at the discharge port. However, this argument conflated delivery for the purposes of a contract of sale with delivery for the purposes of a contract of carriage. It was only in relation to the *former* that the OBLs would no longer be as relevant. Moreover, the LC expressly required presentation of the OBLs, notwithstanding that the sale was on DES terms: *Maersk (HC)* at [183]–[184].

UOB did not act in a manner that evinced disregard for the Cargo as security

45 Knowledge of the discharge aside, the appellants also highlighted other pieces of evidence which allegedly evinced UOB's disregard for the Cargo and the OBLs as security. Three submissions were made to this end:

> (a) The Payment LOI reads: "[i]n consideration of your making payment … and *having agreed to accept* ***delivery*** *of the cargo without having been provided with 3/3 [OBLs] and other shipping documents*" [emphasis added in italics and bold italics]. The term "delivery" can only

be read to refer to the *discharge* of the Cargo. By accepting the Payment LOI, UOB must thus have relinquished any right to the OBLs and to the Cargo: *Maersk (HC)* at [186]–[187].

(b) The Trust Receipt Loan that was granted to Hin Leong (see [19] above) was not secured over the OBLs or the Cargo: *Maersk (HC)* at [188]–[189].

(c) UOB did not make any inquiries into the status of the Cargo and/or the OBLs until after Hin Leong's collapse: *Maersk (HC)* at [191].

46 These arguments were rejected by the Judge. The word "delivery" in the Payment LOI could not logically be read to refer to the "discharge" of the Cargo. Otherwise, the recipient of the LOI would in effect have agreed to accept the discharge of the Cargo without having been provided with the OBLs and the shipping documents. Moreover, the immediately preceding sentence in the LOI states: "[i]n consideration of *your* making payment" [emphasis added]. Given that payment was sought from UOB, it would follow from the appellants' logic that it was the discharge of the Cargo into *UOB's* possession that was contemplated. For these reasons, there was nothing probative about UOB having accepted the Payment LOI. The Trust Receipt Loan arrangement also did not affect UOB's rights under the Payment LOI or its anticipated rights as pledgee and holder of the OBLs. In addition, the fact that UOB had failed to inquire into the status of the Cargo did not assist the appellants – it was in the nature of a security that it be pressed into action only when the risk secured materialised or was likely to materialise: *Maersk (HC)* at [187], [190]–[192].

Conclusion on Maersk's liability

47 Having rejected all of the appellants' defences, the Judge found that UOB had succeeded in its contractual misdelivery claim against Maersk: *Maersk (HC)* at [198].

Damages awarded

48 The Judge held that the quantum of damages should "reflect the price that UOB would have had to pay for a substitute cargo of gasoil had it gone into the market on 28–29 February and sought one out": *Maersk (HC)* at [210]. He fixed this at the sum of US$39,372,300: *Maersk (HC)* at [8] and [219]. This was the market value of the Cargo based on the average of the Platts benchmark prices on 28 February and 2 March 2020: *Maersk (HC)* at [209] and [218]. The Judge declined to make any deductions from the market value of the Cargo. In particular, in respect of the appellants' submission that deductions should be made on account of UOB having achieved partial recovery of its loan to Hin Leong, the Judge held that the arrangements between UOB and Hin Leong were of no relevance to the quantum of damages payable by Maersk: *Maersk (HC)* at [229].

The parties' arguments on appeal

The appellants' case

49 The appellants' appeals are premised on two main grounds. First, the Judge erred in finding that Maersk had caused UOB's loss. In this regard, the appellants argue that it was instead Hin Leong's failure to make repayments that caused UOB's loss. Second, the Judge erred in respect of the quantum of damages awarded.

50 In relation to the first ground, the appellants do not dispute the legal principles set out by the Judge. Instead, they take issue with the Judge's application of the legal principles. The appellants argue that in the light of how UOB structured its financing of the Cargo, it did not obtain or consider the OBLs or the Cargo as security, and had relinquished any right to the same. That UOB did not look to the OBLs or the Cargo as security explained why it was not concerned that Maersk had delivered the Cargo to Hin Leong without production of the OBLs. In effect, as far as UOB was concerned, the OBLs were "useless" documents with "no legal effect" as they did not function as security.

51 In relation to the assessment of damages ground, it is undisputed that (a) the measure of damages is the value of the Cargo at the time when and at the place where it should have been delivered; and (b) the relevant date for assessing the value of the Cargo would thus be 28–29 February 2020. However, the appellants contend that the Judge should have approached the assessment of the Cargo's market value from the perspective of UOB as a notional seller, rather than a notional buyer seeking to purchase replacement goods. The Judge erred in his assessment of the quantum of damages. This is because the method he adopted was based on historical pricing, which traders do not rely on. The appellants submit that the appropriate quantum of damages is either US$28,440,060 or US$30,013,500, which were the market values proposed by their expert at the trial below.

52 Further, pursuant to the rule against double recovery, the appellants argue that the quantum of damages awarded should be reduced by US$10,803,959.77, being the sum already recovered by UOB from Hin Leong.

UOB's case

53 UOB submits that both grounds of appeal are without merit.

54 In relation to the appellants' case on causation, UOB argues that the loss in question was the loss of the Cargo, rather than the outstanding debt owed by Hin Leong to UOB. Consequently, UOB only had to show that but for Maersk's misdelivery of the Cargo, the Cargo would have been delivered to UOB. This was the case because had Maersk not delivered the Cargo to Hin Leong and instead retained possession of the same, the Cargo would have been available for delivery to UOB when it demanded this as lawful holder of the OBLs.

55 Further, UOB notes that on appeal, the appellants have abandoned the counterfactual proposed in ADM 20 that UOB would have authorised Hin Leong to take delivery of the Cargo without presentation of the OBLs. The appellants have, however, maintained that (a) UOB did not look to the OBLs and the Cargo as security for its financing; and (b) UOB's loss was caused by Hin Leong's failure to repay it for the purchase of the Cargo. The latter argument is fundamentally misconceived as the loss in question was the Cargo rather than the unrecovered loan extended to Hin Leong. The former argument fails because UOB did consider the OBLs as security.

56 In relation to the quantum of damages, UOB submits that the Judge's decision is correct and supported by the expert evidence. No deductions for UOB's partial recovery of the loan extended to Hin Leong was warranted, as the appellants' argument in this regard proceeds on the flawed premise that the cause of UOB's loss was Hin Leong's failure to make repayment. Even if there was excess recovery by UOB, that was *res inter alios acta* between UOB and Hin Leong's liquidators.

The issues

57 The issues for determination are:

(a) Did UOB acquire rights to the Cargo as an indorsee of the OBLs?

(b) What was the correct quantification of the loss suffered by UOB?

Issue 1: UOB acquired rights to the Cargo as an indorsee of the OBLs

58 We begin by observing that the appellants have framed their appeals in a somewhat unusual and confusing manner. While they purport to advance a "causation" defence, it became clear to us by the time of the hearing that the substance of their argument is that *UOB did not acquire any rights as indorsees of the OBLs* and it therefore *had no legal right to the Cargo*, because it did not regard the OBLs or the Cargo as security. We pause to note that this is distinct from the Causation Defence advanced at the trial because, as Mr Tan confirmed during the hearing, the appellants are no longer pursuing the claim that UOB would have counterfactually consented to the discharge of the Cargo without presentation of the OBLs (see [32] above). In our view, this argument was rightly abandoned as it cannot stand in the light of the fact that UOB only became interested in the Cargo on or about 4 March, *after* the misdelivery. Unlike *The Sienna (CA)* where the bill of lading was already enroute to the financing bank but was simply held up for administrative reasons when the misdelivery occurred, UOB was not even in the picture at the point that the Cargo was misdelivered. Moreover, as the Judge noted (see [35]–[36] above) and contrary to the bank in *The Sienna (CA)*, UOB has not given any indication as to how it would have acted in the counterfactual scenario if it was asked for consent to discharge the Cargo to Hin Leong without presentation of the OBLs.

59 More importantly, the appellants' case is not strictly a "causation defence" at all – the logical corollary to its line of argument is that Maersk would not have owed, and therefore would not have breached, any contractual duty *vis-à-vis* UOB pursuant to the OBLs. If this is correct, the issue of causation would not even arise.

The transfer of rights by the indorsement of a bill of lading

60 To place the appellants' core contention that UOB did not acquire any rights to the Cargo in its proper perspective, it is imperative to first understand how an indorsee of a bill of lading (such as UOB) acquires rights and whether and when those rights can be displaced. Both in the UK and in Singapore, the transfer of contractual rights is governed by statute. At the material time, these were the UK COGSA and the Bills of Lading Act (Cap 384, 1994 Rev Ed) ("BLA") respectively. Pursuant to s 2(1)(a) of the UK COGSA, a person who becomes the "lawful holder of a bill of lading" shall "have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract". Section 5(2) of the UK COGSA provides guidance on when a person is regarded as having become the lawful holder of a bill of lading. Of relevance to the present case is the requirement set out in s 5(2)(b) of the UK COGSA:

> (2) References in this Act to the holder of a bill of lading are references to any of the following persons, that is to say—
>
> …
>
> (b) a person with possession of the bill as a result of the completion, by delivery of the bill, of any indorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill;
>
> …

> and a person shall be regarded for the purposes of this Act as having become the lawful holder of a bill of lading wherever he has become the holder of the bill in good faith.

61 The transfer of rights of suit to the lawful holder of the bill of lading occurs by operation of law: *The Sienna (CA)* at [63], citing David Foxton *et al*, *Scrutton on Charterparties and Bills of Lading* (Sweet & Maxwell, 24th Ed, 2020) at para 6-014; The Law Commission and The Scottish Law Commission, *Rights of Suit in Respect of Carriage of Goods by Sea* (Report, Law Com. No. 196, Scot. Law Com. No. 130, 19 March 1991) at p 54; *The "Aegean Sea"* [1998] 2 Lloyd's Rep 39 at 60. This principle is illustrated by the decision of the English Court of Appeal in *East West Corporation v DKBS 1912 and another; Utaniko Ltd v P&O Nedlloyd BV* [2003] 1 All ER (Comm) 525. The goods in that case were misdelivered by the appellant carriers to a Chilean company without presentation of the bills of lading. The respondent shippers had identified Chilean banks as consignees in the bills and delivered the bills to the banks. One issue before the court was whether the respondents had title to sue the appellants for the misdelivery, or whether they had parted with all contractual rights of suit to the Chilean banks (at [8] and [13]). In this regard, the respondents argued, amongst other things, that they remained holders of the bills through the Chilean banks because the banks were acting as their agents (at [16]). This argument was rejected by Mance LJ (whom Laws LJ and Brooke LJ agreed with), who held that "[t]he express consignment of the goods under the bills to the Chilean banks or order, followed by the delivery of such bills to such banks by or under the authority of the respondents, equates with a personal indorsement" (at [16]). Consequently, the respondents' rights of suit under the contracts of carriage were transferred "by statute" to the Chilean banks, notwithstanding that the banks were the respondents' agents (at [17] and [18]).

62 The position under Singapore law is the same. Sections 2(1)(*a*) and 5(2)(*b*) of the BLA are *in pari materia* with ss 2(1)(a) and 5(2)(b) of the UK COGSA. In *Bandung Shipping Pte Ltd v Keppel TatLee Bank Ltd* [2003] 1 SLR(R) 295, this court held that the question of rights of suit is governed statutorily by the BLA, and such rights operate independently of the banking arrangements which any of the holders of the bill in the chain may have with his bankers (at [20] and [32]). In determining who is entitled to delivery of the associated cargo, the court does not look behind a bill (at [27]).

The formulation of the appellants' cases and its implications

63 We return to the present case with these principles in mind. As a starting point, it is undisputed that Winson had indorsed and delivered the OBLs to UOB on 15 July 2020 (see [21] above). Materially, as a result of the manner in which the appellants have pursued their appeals, there are several other crucial points that also do not appear to be in dispute:

(a) The appellants have abandoned the Endorsement Defence, the gist of which was that Winson did not intend to transfer rights of suit under the OBLs to UOB by way of endorsement (see [28(c)] and [31] above). There is no appeal against the Judge's finding that Winson had "plainly" intended to transfer rights under the contract of carriage to UOB by their signed and unqualified indorsement of the OBLs to UOB's order: *Maersk (HC)* at [110]–[111].

(b) The appellants have abandoned the Good Faith Defence, where it was argued that UOB was not the lawful holder of the OBLs because the OBLs were not obtained in good faith. This defence was premised on the requirement in s 5(2)(b) of the UK COGSA (see [28(b)], [30] and

[60] above). Following from this, the appellants accept that UOB procured the indorsed OBLs in good faith.

(c) The appellants have abandoned their Consent-Based Defences, where they submitted that UOB had agreed to Maersk's delivery of the Cargo without presentation of the OBLs (see [26] and [27] above). In particular, there is no appeal against the finding that such consent could not have been given because UOB only came into the picture after the discharge took place: *Maersk (HC)* at [54].

(d) The appellants have expressly disavowed any argument that the OBLs were shams in so far as they were not intended to confer the legal rights that they purported to confer. Mr Tan confirmed this position at the hearing of these appeals.

64 As we observed at [5] and in our recent decision in *BCP* (at [84]–[85]), a party who elects to abandon unsuccessful defences that were advanced in the proceedings below must consider the implications that this would have on the remaining arguments pursued on appeal. Following from the various concessions made in this case, the appellants are bound to approach the present appeals on the footing that Winson validly indorsed and delivered the OBLs to UOB; that UOB was a holder of the OBLs in good faith; that UOB did not consent to the discharge of the Cargo without the presentation of the OBLs; and that the OBLs were not shams and therefore were intended to confer the legal rights that they purported to confer.

65 The only remaining question, in our view, is what rights UOB would have acquired as a good faith holder and indorsee of the valid OBLs. The answer to this is clearly prescribed by statute – as the lawful holder of the OBLs, "all

rights of suit under the contract of carriage as if [it] had been a part to that contract" would have been transferred and vested in UOB (see [60] above). In the circumstances, it is not open to the appellants to dispute UOB's right under the OBLs to demand delivery of the Cargo. There is also no dispute that UOB did later demand delivery of the Cargo, but by then the Cargo was no longer available (see [22] above).

Whether UOB regarded the OBLs and the Cargo as security is irrelevant

66 In the light of the above, the appellants' extensive submissions on whether UOB regarded the OBLs and the Cargo as security entirely miss the mark. Whether UOB obtained any rights as the lawful holder of the OBLs, and if so, the content of those rights, are objective inquiries to be resolved by considering the nature and effect of the OBLs as legal instruments. Indeed, a party might require that a bill of lading be indorsed to its own order for different purposes – a buyer of a cargo may intend to take delivery of the cargo, or a financier may intend to take security for an advance by having the right to delivery of the bill of lading. However, none of these will have any bearing on the right to delivery of the cargo that is conferred by the valid indorsement of a bill of lading that coheres with the statutory requirements in the UK COGSA and/or the BLA. In other words, the intention with which UOB acquired the OBLs is completely irrelevant to and cannot change the nature of the rights that it acquired by operation of law.

67 As a brief aside, the appellants' undue focus on how UOB regarded the OBLs appears to have arisen out of a misunderstanding or mischaracterisation of UOB's case. Both in the proceedings below and on appeal, UOB's case has consistently been framed as an objective inquiry to be answered by reference to the relevant requirements set out in statute, that is, it is entitled to the OBLs as

the requirements in s 5 of the UK COGSA are satisfied. It seems to us that the appellants have misunderstood the thrust of UOB's case to be based on UOB's subjective belief that it had rights to the OBLs and the Cargo: this appears to be the position taken in the appellants' written submissions, where they state that even if UOB "somehow understood that it had rights [to the OBLs]", that "such a subjective belief cannot give UOB any rights which it does not have". However, for the reasons provided above, UOB's subjective intention is simply irrelevant to the present inquiry.

In any event, UOB looked to the OBLs and the Cargo as security

68 In the interest of completeness, even if it had been necessary for us to consider this issue, we would have disagreed with the appellants' submission that UOB did not look to the OBLs and the Cargo as a form of security.

69 As we stressed during the appeal hearing, it is one thing to suggest that UOB did not place primary reliance on the OBLs, but quite another to suggest that UOB did not regard the OBLs as having the intended legal effect, or *any* legal effect for that matter. As we also highlighted to Mr Tan, the starting point of the analysis must be that the LC ***expressly requires the OBLs to be indorsed to UOB***. At Field 46A(2) of the LC:

> 46A DOCUMENTS REQUIRED
>
> AVAILABLE WITH ANY BANK BY NEGOTIATION WITHOUT DRAFT AT 30 DAYS AFTER NOTICE OF READINESS (NOR) DATE AT DISCHARGE PORT … AGAINST PRESENTATION OF THE FOLLOWING DOCUMENTS IN 1 ORIGINAL PLUS 2 COPIES UNLESS OTHERWISE STATED: --
>
> …
>
> 2. 3/3 SET CLEAN ON BOARD ORIGINAL BILL OF LADING ISSUED OR ENDORSED TO THE ORDER OF 'UNITED

OVERSEAS BANK LIMITED, SINGAPORE' MARKED 'FREIGHT PAYABLE AS PER CHARTER PARTY'

Clause 15 of Field 47A allows for payment to be effected against Winson's commercial invoice and the Payment LOI "in the event that the documents stated [in Field 46A] are not available". However, the LC further provided that the Payment LOI was to include an undertaking on Winson's part to provide UOB with the list of documents in Field 46A, which includes the OBLs, as soon as they came into Winson's possession.

70 In this light, we agree with the Judge that the Payment LOI was only intended as a *stopgap* to secure the fulfilment of what the LC already required, by default, in Field 46A (see [30] above). Put another way, the fact that the indorsement of the OBLs to UOB was a specific contractual requirement in the LC completely undermined any suggestion that UOB never regarded the OBLs as having legal effect. The crux of the appellants' argument is that UOB had agreed to extend an unsecured loan to Hin Leong in spite of the express terms of the LC. That unattractive proposition had to be stated in those stark terms to illustrate its inherent incongruity. We agree fully with the Judge that it would be commercially unreal for UOB to have relinquished its entitlement to the OBLs, in the light of the express contractual requirement that is set out in the LC: *Maersk (HC)* at [99].

71 The appellants rely on various pieces of evidence to say that UOB (a) had known about the delivery of the Cargo without presentation of the OBLs prior to issuing the LC; and/or (b) did not look to the OBLs as security. Briefly, the appellants' five main arguments are as follows:

(a) Blending of the Cargo: The Cargo was financed under the sub-facility which covers the purchase of goods intended for *blending*, which would have extinguished any security interest that UOB may have held in the Cargo. By nonetheless agreeing to finance this transaction, UOB must not have looked to the Cargo (or the OBLs) as security.

(b) The export receivables: UOB considered itself to be sufficiently secured by the export receivables that would be assigned in accordance with the Allocation Requirement (see [13(b)] above). It did not look to the OBLs as further security.

(c) Purchase on DES terms: In a phone call dated 3 March 2020 between Hin Leong's Ms Ong and UOB's Ms Foong (the "3 March Call"), Ms Ong stated that the bill of lading is a "redundant document" in DES sales. As Ms Foong did not refute this comment, this speaks to UOB's belief that the OBLs were not relevant as a form of security.

(d) Evidence from UOB's review processes: The Transaction Form issued by UOB in the course of its review of Hin Leong's LC application stated that the Vessel had "arrived" in Singapore by 29 February 2020. Further, in the 3 March Call, Ms Foong stated that the shipment of the Cargo had already been "effected" by 3 March. These pointed towards UOB's knowledge of the discharge on 29 February 2020.

(e) The Lloyd's List Intelligence ("LLI") Reports: UOB extracted two LLI reports which stated that the Vessel was sighted near Singapore on 27–29 February and that it was subsequently sold by 12 March. UOB must have inferred that the Vessel was docked in Singapore on 27–29 February to unload her laden cargo prior to being sold.

72 On a balance of probabilities, we do not find that any of these arguments can establish that UOB knew of the discharge of the Cargo, or that it did not look to the OBLs as security. All of these arguments were already considered and rejected by the Judge in the proceedings below: see [167]–[193] of *Maersk (HC)* and [38]–[46] above. We see no reason to disturb the Judge's findings of fact for being plainly wrong or manifestly against the weight of the evidence. Importantly, none of these submissions could outweigh the plain fact that UOB had specifically required the OBLs to be indorsed to itself under the terms of the LC. In our judgment, this was fatal to any suggestion that UOB did not intend for the OBLs to have any legal effect.

The Payment LOI conferred on UOB a right to the OBLs and the Cargo

73 Apart from the submission that UOB did not regard the OBLs and the Cargo as security, the appellants point to the Payment LOI as an additional basis for their contention that UOB obtained no right to the Cargo as an indorsee of the OBLs. They contend that the Payment LOI, objectively construed, did not confer UOB with any right to the OBLs or the Cargo. In particular, contrary to UOB's internal payment LOI guidelines (the "UOB Guidelines"), the Payment LOI contained an exclusion of third-party rights clause. Relying on *Trafigura Beheer BV v Kookmin Bank Co* [2005] EWHC 2350 (Comm) ("*Trafigura*"), the appellants submit that this means that UOB had no right to the OBLs and the Cargo.

74 *Trafigura* is of no assistance to the appellants because the facts there are starkly distinct. The financing bank in *Trafigura* commenced proceedings against the beneficiary of the letter of credit for, in substance, its failure to provide the bank with the bills of lading. The bank had only been furnished with two of three copies of the bills of lading, both of which bore the words "voyage

accomplished null and void" (at [36]). As the bank "never became a holder of a valid bill of lading", this deprived it of "any contract with the shipowners" and "property rights in the cargo which it could have asserted against the carrier" (at [32] and [49]). *Trafigura* was thus a case where the bills of lading were not validly indorsed and delivered to the bank. In contrast, there is no dispute here that the OBLs were validly indorsed and delivered to UOB in circumstances where there was no want of good faith. UOB was therefore the lawful holder of the OBLs and acquired all the concomitant rights by operation of law, including the right to the Cargo. Accordingly, we find the appellants' reliance on the *Trafigura* decision to be misplaced.

75 In any event, the appellants' argument that UOB was not entitled to the OBLs because the Payment LOI was intended solely for the benefit of Hin Leong faces several insuperable factual difficulties. While there are certain provisions in the Payment LOI which appear to be for the benefit of Hin Leong, it cannot be seriously argued that the Payment LOI was not intended to benefit UOB at all. After all, it was on UOB's request that the Payment LOI was specifically addressed to it. Moreover, from a commercial standpoint, it makes no sense to suggest that the parties intended for the provision in the LOI regarding the surrender of the OBLs to be for the benefit of Hin Leong. Hin Leong had already taken delivery of the Cargo, and more significantly, it *had not paid* for the Cargo. As we observed at the hearing, it also makes no sense for the Payment LOI – the function of which is to address the allocation of risks arising from the misdelivery – to be directed at Hin Leong. Hin Leong took on no risk in receiving the Cargo. In fact, it was the delivery of the Cargo to Hin Leong without presentation of the OBLs which created the risk to begin with.

76 Consistent with the above, Winson understood that the Payment LOI obliged it to indorse and deliver the OBLs to UOB. It duly did so on 15 July 2020 (see [21] above). As earlier noted, the Judge was unpersuaded by the appellants' argument that the OBLs were obtained from Winson as a result of enticements or threats (at [30] above). Instead, Winson delivered the OBLs to UOB because it considered itself bound to do so: *Maersk (HC)* at [105]–[106]. The appellants do not challenge these findings on appeal.

77 In consideration of the above, we are satisfied that the Payment LOI was also intended to benefit UOB. Thus, there can be no question that UOB obtained rights to the OBLs and the Cargo.

Conclusion on Maersk's liability for misdelivery

78 In sum, we reject the appellants' argument that they should not be held liable for the loss caused to UOB as a result of the misdelivery of the Cargo. As the appellants abandoned the majority of the defences that were pursued in the proceedings below, their appeal on liability turned on a single question of law – that being the rights that UOB obtained as the indorsee of the valid OBLs – the answer to which is clearly prescribed by statute. In any event, we would not have concluded that UOB did not look to the OBLs as security or that it had knowledge of the discharge of the Cargo without presentation of the OBLs. That there were some "wrinkles" in the way UOB handled this LC transaction, such as by deviating from the UOB Guidelines, at best established that it was not particularly strict in enforcing its guidelines *vis-à-vis* Hin Leong. This may not be surprising since it was the appellants' own case that Hin Leong was a premium customer of UOB. None of these factors speak towards the way that UOB regarded the indorsed OBLs as security, or demonstrate that it had no intention to exercise its rights as an indorsee of the OBLs against Maersk. The

submissions regarding the Payment LOI are thus also without merit. In the circumstances, we dismiss the appellants' appeal against liability.

Issue 2: The proper quantification of the loss

The market value of the Cargo on 28/29 February

79 Turning to the issue of damages, it is undisputed that the relevant dates to assess the market value of the Cargo would be 28 and 29 February 2020. That was also the Judge's finding, which we agree with: *Maersk (HC)* at [205].

80 Much ink has been spilled by the appellants over whether the value of the Cargo ought to be assessed from the perspective of a notional *seller*, which the appellants suggest is the correct approach, or a notional *buyer*, which was the approach taken by the Judge: *Maersk (HC)* at [210]. In a case such as the present where there is a readily available market for the Cargo, we agree with UOB that this question should have no bearing on the assessment of the market value. As UOB correctly points out, ultimately, the market value of a good is something that *both the buyer and seller must agree on*. As explained in James Edelman *et al*, *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021), which the appellants themselves cite, at para 32-005:

> … since a market presupposes a place where goods can either be bought or sold, the difference, if any, between the two prices on that market [*ie*, the buying or the selling price] is likely to be only marginal, *so that generally it will not matter whether one takes a selling price of a buying price.*
>
> [emphasis added]

81 It appears to us that the true crux of the dispute lies in the method that the court should adopt in computing the market value of the Cargo on 28/29 February. This analysis is somewhat complicated by the fact that 29 February

was a Saturday, when the markets were not open. There is thus no available Platts benchmark price for the Cargo on 29 February that the court may take reference from.

82 In the proceedings below, the parties' experts proposed six methods for computing the market value of the Cargo on 28/29 February: see *Maersk (HC)* at [209]. Some of the proposals involved taking into account the average of the Platts benchmark prices over a spread of pricing dates: for example, the average of the Platts benchmark prices for 5–31 March 2020 (in "Case 5") or 2–31 March 2020 (in "Case 6"). These were respectively premised on UOB having to take time to enter the market to sell the Cargo, and the fact that contracts for the sale of gasoil are regularly priced on a floating basis: *Maersk (HC)* at [214]–[215].

83 Ultimately, the Judge elected to use the average of the Platts benchmark prices for *28 February* (US$58.67) and *2 March* (US$60.64), thereby placing the price per barrel of the Cargo at US$59.655 (in "Case 2"). 660,000 barrels of gasoil was thus valued at US$39,372,300. The Judge found this approach to be the simplest, most logical and accurate out of the six proposed methods. The average of the Platts prices on these dates provided the "best approximation of the Cargo's per barrel price at (or as close to) the time it was misdelivered": *Maersk (HC)* at [218].

84 We agree with the Judge's approach to use the average of the Platts prices on 28 February and 2 March; following from this, we agree that the market value of the Cargo on 28/29 February was US$39,372,300. However, our reasons for coming to this conclusion differ slightly from those provided by the Judge.

A spot pricing approach should be adopted

85 The anterior question is whether the court should assess the market value of a good (a) by using a spot pricing approach; or (b) by reference to a spread of pricing dates. To explain:

(a) The former approach will consider the *fixed pricing dates* of 28 and 29 February and use the Platts benchmark prices for those dates, or their next best alternatives. In some cases, the spot pricing approach may entail the application of an uplift to the Platts benchmark price to reflect the market conditions at the prevailing time.

(b) The latter approach seeks to mimic the manner in which the good will likely be priced in the market. In the present case, as explained by the parties' experts, parcels of gasoil are commonly priced on a floating basis and with reference to a spread of pricing dates: *Maersk (HC)* at [215].

86 There are at least two prior cases where the spot pricing approach was used to derive the market value of a parcel of cargo. In *BV Oliehandel Jongkind v Coastal International Limited* [1983] 2 Lloyd's Rep. 463, a defendant failed to supply a parcel of gasoil under its contracts of sale with the plaintiff. The loss claimed by the plaintiff was the difference between the market value of the oil at the date of acceptance of the defendant's repudiation (31 August 1981) and the contract prices. In computing the former, the Queen's Bench Division (Commercial Court) ("QBD") considered that the Platts price for 31 August was US$296 to US$302. The court ultimately adopted the top end of this range (US$302) on the basis that a purchase of replacement oil at short notice would have had an uplifting effect on the price (at 470 and 471). In other words, the

court assessed the market value of the oil by reference to the spot Platts price on the relevant date. Pertinently, the plaintiff's expert opined, and the court appeared to accept, that "Platts' prices are a *reliable indication as to market prices for oil products including gasoil*" [emphasis added] (at 470).

87 In *Choil Trading SA v Sahara Energy Resources Ltd* [2010] EWHC 374 (Comm), the QBD sought to assess the market value of a cargo of naphtha that was found to be defective when it was delivered. Since the cargo was rejected on 28 August 2008, the value of the naphtha was to be assessed as at that date (at [131] and [144]). The court held that the "correct figure to take for the sound market value on 28 August, if such a figure was available, would be the price *on that date* of a cargo of the contract quality" [emphasis added] (at [148]). The court eventually took the "average Platts CIF NWE for 28 August", plus a premium to reflect the fact that Platts related to a different kind of naphtha than the one that was relevant (at [148]).

88 There have also been cases where a spread of pricing dates was used. In *Galaxy Energy International Ltd v Murco Petroleum Ltd* [2013] EWHC 3720 (Comm) ("*The Seacrown*"), the QBD sought to assess the quantum of damages to be awarded in respect of a claim for late delivery of a cargo of fuel oil. Similar to the present case, the court had to assess the value of the cargo that was delivered on a Saturday. The inquiry was whether, to determine the market price on a specified date, the court should use "the Platt's quotation for that particular day, or some combination of prior and/or future quotations" (at [30]). The court preferred to adopt a spread of pricing dates based on the way that the late delivered cargo "would have been dealt with in the market" (at [31]). It was also observed that Platts is not a market or an exchange on which sales can be made; instead, Platts merely makes price assessments (at [45]–[46]). Since both

experts in *The Seacrown* agreed that it was common for prices in oil deals to be based on a spread of Platts days, the court concluded that adopting a range of pricing dates would be "closer to the market value for real deals on the day than the single days' Platt's figure" (at [46] and [48]).

89 Having considered this issue carefully, we do not think that the approach taken in *The Seacrown*, *ie*, a spread of pricing dates approach, is appropriate to assess UOB's loss. As was clear from the analysis in that case, the spread of pricing dates approach is premised on a notional buyer entering the market to buy a substitute parcel of cargo, which may typically be priced according to a range of pricing dates. However, in assessing the loss arising from the misdelivery, UOB is *not in fact seeking such a parcel of replacement cargo*. Instead, UOB is seeking to recover the *monetary loss* that has arisen from the misdelivery. This was a loss that would have crystallised over the two days on which the misdelivery occurred. In our judgment, the spot Platts benchmark prices for those dates, or their next best alternatives, would form the best available assessment of the value of the Cargo. We fail to see why UOB's monetary loss should be assessed based on how a notional trader of gasoil would have conducted a hypothetical purchase or sale of a similar parcel of cargo, such as to justify the adoption of a spread of prices on Platts.

90 We also observe that a spot pricing approach avoids the following two difficulties that plague the spread of pricing dates approach:

(a) There will be no question as to who should bear the risk of price fluctuations beyond the breach date. In a case where the price of a good on the misdelivery date is significantly lower than its price in the spread of pricing dates, the effect of adopting a range of prices would mean that

the risk of price fluctuation would fall on the contract breaker and not the owner of the misdelivered cargo.

(b) There will also be no question as to the correct spread of dates that should be adopted. As was the case in the proceedings below, the experts submitted permutations of similar computation models to account for different ranges of pricing dates (see, *eg*, Cases 5 and 6 at [82] above). By contrast, the spot pricing approach allows for certainty in the method of valuation.

91 In the light of the above, we find it appropriate to assess the market value of the Cargo by reference to the *spot prices* as at 28/29 February 2020. As the markets were not open on 29 February, the Platts benchmark price on 2 March – *ie*, the next available day where the markets were open – provides the best approximate for the market value of the Cargo on 29 February. We note that this approach of using the Platts price for 2 March is not disputed by the parties. At the appeal hearing, Mr Tan agreed that if the spread of pricing dates approach was rejected, the price per barrel of the Cargo should be the average of the Platts prices as of 28 February and 2 March.

92 For the reasons provided above, we find that the Judge had correctly assessed the market value of the Cargo to be US$39,372,300.

No deduction should be made for the sum recovered from Hin Leong

93 Finally, we agree with the Judge's finding that no deduction should have been made from the sum of US$39,372,300 to account for the fact that UOB had recovered a portion of its loan to Hin Leong. We highlight two material facts in relation to the sum recovered from Hin Leong:

(a) The bulk of the sum recovered by UOB from Hin Leong (*ie*, US$8,625,761.77 out of US$10,803,959.77) had nothing to do with the present transaction. Instead, it is comprised of: (i) US$8,480,624.32 – receivables from other transactions between UOB and Hin Leong; (ii) US$144,794.58 – payment of interest from Hin Leong to UOB, which UOB applied towards a reduction of the principal amount outstanding; and (iii) US$342.87 – Hin Leong's funds in its current account with UOB.

(b) The balance sum of US$2,178,198 was the 5% cash margin that Hin Leong placed in respect of the relevant transaction, this being 5% of the sum paid pursuant to Winson's commercial invoice. However, UOB has a general right of set-off against any outstanding sums owed by Hin Leong. UOB has also filed a proof of debt for a sum far beyond the amount that was paid out under the LC.

94 As was held in *The "Jag Shakti"* [1985–1986] SLR(R) 448 at [13]–[14] and *Obestain Inc. v National Mineral Development Corporation Ltd. (The "Sanix Ace")* [1987] 1 Lloyd's Rep. 465 at 468, any recovery achieved by a pledgee of a bill of lading under separate arrangements with a debtor is *res inter alios acta*: see also *Maersk (HC)* at [229]. Accordingly, there is no question of refunding any excess recovery sum to Hin Leong. We thus reject the appellants' argument that a deduction of US$10,803,959.77 should have been made from the sum awarded to UOB in damages.

Conclusion

95 We uphold the Judge's decision in respect of both Maersk's liability for a breach of the contracts of carriage contained in or evidenced by the OBLs, as

well as the quantification of damages at US$39,372,300. We award UOB costs in the sum of S$200,000 (all-in), payable by the appellants jointly and severally.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Judge of the High Court

Tan Wee Kheng Kenneth Michael SC (Kenneth Tan Partnership) (instructed), Bazul Ashhab bin Abdul Kader, Lua Jing Ing Priscilla, Prakaash s/o Paniar Silvam, Tan Yu Hang (Oon & Bazul LLP) for the appellant in CA 69;
Tan Wee Kheng Kenneth Michael SC (Kenneth Tan Partnership) (instructed), Khoo Ching Shin Shem, Teo Jia Hui Veronica, Christine Chiam (Focus Law Asia LLC) for the appellant in CA 70;
Lok Vi Ming SC, Mohammad Haireez bin Mohameed Jufferie, C Sivah (LVM Law Chambers LLC) (instructed), Teo Ke-Wei Ian, Chen Zhida, Low Yan Feng (Helmsman LLC) (instructed), Song Swee Lian Corina Mrs Corina Song Jeremiah, Liang Junhong Daniel, KarLuis Quek, Thomas Benjamin Lawrence (Allen & Gledhill LLP) for the respondent.