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

[2025] SGHCR 34

Originating Claim No 173 of 2025

Between

UBS Switzerland AG

… *Claimant*

And

(1) Koch Shipping Pte Ltd
(2) Koch Refining International Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Stay of proceedings — Forum non conveniens]

TABLE OF CONTENTS

BACKGROUND **3**

THE PARTIES' CASES IN SUM 1108 ..... **9**

THE KOCH ENTITIES' CASE 9

UBS'S CASE 9

THE LAW **10**

ISSUES TO BE DETERMINED **12**

MY DECISION **12**

STAGE ONE: WHETHER SWITZERLAND IS THE CLEARLY MORE APPROPRIATE FORUM THAN SINGAPORE 14

Connection of witnesses *14*

(1) Convenience 15

(2) Compellability 26

Governing law *30*

(1) Law governing the CTF Security Agreement and CTF Master Agreement 32

(2) Law governing the torts of wrongful conversion and inducement of breach of contract 35

STAGE TWO: WHETHER THERE ARE SPECIAL CIRCUMSTANCES THAT JUSTIFY REFUSING THE STAY 41

Jurisdiction of the Swiss courts *43*

Time bar *46*

Swiss law does not recognise the tort of inducing breach of contract *57*

CONCLUSION **60**

Version No 1: 07 Oct 2025 (11:26 hrs)

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UBS Switzerland AG
v
Koch Shipping Pte Ltd and another

[2025] SGHCR 34

General Division of the High Court — Originating Claim No 173 of 2025
(Summons No 1108 of 2025)
Assistant Registrar Gerome Goh Teng Jun
4 and 8 July 2025, 1 October 2025

1 October 2025

Assistant Registrar Gerome Goh Teng Jun:

1 In HC/OC 173/2025 ("OC 173"), the claimant, UBS Switzerland AG ("UBS"), claims against the defendants, Koch Shipping Pte Ltd ("Koch Shipping") and Koch Refining International Pte Ltd ("Koch Refining") (and collectively, the "Koch Entities"), in tort for wrongful conversion of cargo and inducement of breach of contract and/or bailment.

2 Prior to filing their defence, the Koch Entities filed an application, HC/SUM 1108/2025 ("SUM 1108"), to stay OC 173 on the ground that Singapore is not the appropriate forum for the resolution of the dispute (*ie*, *forum non conveniens*). The Koch Entities submit that Switzerland is clearly or distinctly the more appropriate forum for the trial of OC 173. Apart from the fact that the Koch Entities are incorporated in Singapore, there are no real and

substantial connecting factors to Singapore. There is no substantial injustice to UBS if the action is stayed in favour of Switzerland.[1] UBS, on the other hand, contends that most of the connecting factors point away from Switzerland and Switzerland is not the clearly more appropriate forum for OC 173.[2]

3 The *forum non conveniens* analysis is not to identify the *most* appropriate forum in the absolute sense. Instead, the court undertakes a *relative* analysis of the competing forums to determine the more appropriate forum. In cases where no forum can be said to be comparatively more appropriate than any other or if the available competing forums are equally appropriate, the stay application will be refused. If it can be shown that there is another forum relative to Singapore that is clearly or more distinctly appropriate for the substantive dispute to be tried in, the stay application will *prima facie* succeed unless substantial injustice is occasioned by the stay (*JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [53] and [111]; *Kuswandi Sudarga v Sutatno Sudarga* [2022] SGHC 299 at [39]). Ultimately, the lodestar for a court tasked with this inquiry is whether the factual connections point towards a jurisdiction in which the case may be "tried more suitably for the interests of all the parties and for the ends of justice" (*Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 at [72]).

4 Having carefully considered the affidavits filed by the parties and the submissions made, I allow SUM 1108. On a relative analysis, I find that Switzerland is clearly the more appropriate forum than Singapore. UBS fails to raise any special circumstances that justify refusing the stay.

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1 Defendants' written submissions dated 30 June 2025 ("DWS1") at para 3.

2 Claimant's written submissions dated 30 June 2025 ("CWS1") at para 3.

Version No 1: 07 Oct 2025 (11:26 hrs)

Background

5 UBS is a bank incorporated in Switzerland, whose business includes the financing of trade finance activities.[3] The Koch Entities are incorporated in Singapore and its offices are in Singapore.[4]

6 UBS granted uncommitted trade finance facilities to its customer, Gulf Petrochem FZC ("GP") by way of an agreement named "CTF Master Agreement" dated 14 February 2017, as amended and/or supplemented by Amendment No. 1 dated 21 June 2018, Amendment No. 2 and Accession Agreement dated 19 June 2019 which includes Annexes 1 and 2 thereto ("CTF Master Agreement") and an agreement named "CTF Security Agreement" entered into by UBS and GP dated 20 July 2018 ("CTF Security Agreement").[5] Clause 17 of the CTF Security Agreement and cl 10 of the CTF Master Agreement provide that these agreements are governed by and construed in accordance with Swiss law.[6]

7 In or around 28 April 2020, UBS financed the purchase of a cargo of 93,686.299 MT of Low Sulphur Fuel Oil ("LSFO" and "LSFO Cargo") by GP from Astra Resources FZC ("Astra").[7] The LSFO Cargo was loaded on the vessel MT KUTCH BAY (the "Vessel"), chartered by Alphabet Maritime Inc

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3 1st Affidavit of Francesca Marisa Angela Bianchi dated 19 June 2025 ("Francesca's Affidavit") at para 6.

4 1st Affidavit of Sean Patrick Tarantino dated 21 April 2025 ('Sean's Affidavit") at paras 5 and 6.

5 Statement of Claim ("SOC") at para 4.

6 Francesca's Affidavit at pp 33 and 55.

7 Sean's Affidavit at paras 8 to 12 and Francesca's Affidavit at paras 6 and 13.

Version No 1: 07 Oct 2025 (11:26 hrs)

("Vessel Owners") by a time charterparty dated 23 April 2020 ("Charterparty").[8]

8 UBS also provided GP with charter hire financing for the shipment of the LSFO Cargo on the Vessel from the load port of Sohar, Oman to United Arab Emirates ("UAE") and to hedge the price risk of the LSFO Cargo.[9] The financing disbursed by UBS included:

(a) the sums of USD 12,461,141.39 and USD 2,997,097.95 paid to Astra for GP's purchase of the LSFO Cargo; and

(b) the sum of USD 616,900 paid to GP Shipping Ltd for charter hire of the Vessel for the period from 1 to 31 May 2020.[10]

9 UBS pleads that its agreement to provide financing to GP to purchase the LSFO Cargo provided *inter alia* that: (a) the original bills of lading for the LSFO Cargo were to be made out to the order of UBS and lodged with UBS; (b) the LSFO Cargo would not be discharged from the Vessel without prior authorisation from UBS; and (c) the financing tenor would be for a period of three months, with possible rollover(s) of one to two months each time.[11]

10 As security for the financing of the LSFO Cargo, UBS received from GP two sets of 3/3 original bills of lading, BL-No-KUBAY/01/05/2020 dated 27 April 2020 issued at Sohar, Oman, for carriage of 75,522,069 MT of LSFO from Sohar, Oman to any port in the UAE and BL-No-2020/06 dated 25 April

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8 Sean's Affidavit at para 9 and Francesca's Affidavit at para 6.

9 Sean's Affidavit at para 11 and Francesca's Affidavit at para 6.

10 CWS1 at para 7 and Francesca's Affidavit at para 6.

11 CWS1 at para 9 and Francesca's Affidavit at para 14.

Version No 1: 07 Oct 2025 (11:26 hrs)

2020 dated 25 April 2020 issued at Sohar, Oman for carriage of the quantity of 718,16.230 MT of LSFO, which were made out to the order of UBS for the LSFO Cargo laden on board the Vessel on or around 22 May 2020 (the "UBS BLs"), which UBS continues to retain possession of.[12] Pursuant to cl 2(a) of the CTF Security Agreement, the LSFO Cargo and the UBS BLs were pledged to UBS as security for the financing extended to GP. Pursuant to cl 8 of the CTF Security Agreement, UBS was also vested with a power of sale in the LSFO Cargo on *inter alia* the occurrence of an event of default under the CTF Master Agreement.[13]

11 According to the Koch Entities, by an agreement as contained in and/or evidenced by an exchange of emails and contract confirmations between 28 to 30 June 2020, GP sold to Koch Refining 100,000 MT (+/- 10%) of Very Low Sulphur Fuel Oil ("VLSFO") on board the Vessel on CFR Fujairah terms and on an exchange of futures for physical basis, with delivery between 26 to 30 June 2020 ("GP-Koch Refining Contract"). The purchase was the physical leg and part of an exchange of futures for physical contract, or a sale and buyback transaction, where GP would be obliged to repurchase the LSFO Cargo CFR at Fujairah under the futures leg with delivery 26 to 30 September 2020.[14]

12 To give Koch Refining possession of the VLSFO cargo that is the subject matter of the GP-Koch Refining Contract, the Vessel Owners, Koch Shipping and GP entered into a novation agreement dated 29 June 2020 pursuant to which Koch Shipping replaced GP as the time charterer of the

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12 Francesca's Affidavit at para 15.

13 SOC at para 11.

14 Sean's Affidavit at para 15.

Version No 1: 07 Oct 2025 (11:26 hrs)

Vessel.[15] Koch Shipping appointed a company incorporated in Slovenia, Spectis d.o.o ("Spectis"), as its superintendent.[16]

13 The Koch Entities claim that they corresponded with both GP and Spectis regarding the cancellation of previous sets of bills of lading issued for the LSFO Cargo and the issuance of a new switched bill of lading for the LSFO Cargo, BL No. 2020/FUJ-02 dated 29 June 2020 for 94,293.065 MT of LSFO Cargo on board the Vessel consigned to the order of Koch Shipping ("Koch BL").[17] On 14 July 2020, Koch Shipping received one of each of original bills of lading that were previously issued for the LSFO Cargo marked null and void and the Koch BL.[18]

14 On 21 July 2020, Koch Refining and GP agreed to revise the terms of the futures leg such that instead of selling the LSFO Cargo onboard the Vessel back to GP, Koch Refining agreed to sell another parcel of VLSFO to GP on a CFR Fujairah basis on a vessel to be nominated by Koch Refining.[19]

15 On 27 July 2020, another version of the Koch BL was issued for the 94,293.065 MT of LSFO Cargo on board the Vessel, consigned to the order of Koch Refining.[20]

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15 Sean's Affidavit at para 16.

16 Sean's Affidavit at para 17.

17 Sean's Affidavit at para 18.

18 Sean's Affidavit at para 19.

19 Sean's Affidavit at para 24.

20 Sean's Affidavit at para 25.

Version No 1: 07 Oct 2025 (11:26 hrs)

16 Between 31 July 2020 to 2 August 2020, the LSFO Cargo on board the Vessel was discharged to another vessel, JAG Laxmi in Sohar, Oman.[21] The LSFO Cargo was sold by Koch Refining to Repsol on 6 August 2020.[22] Thereafter, Koch Refining agreed on 7 August 2020 that the buyback leg be cancelled on certain conditions, including that the Charterparty between the Vessel Owners and Koch Shipping be novated back to GP on 1 September 2020.[23]

17 In OC 173, UBS's case is that it was the lawful holder and named consignee in the UBS BLs at the material time and was also the pledgee of the LSFO Cargo and the UBS BLs. Thus, UBS had the immediate right of possession of the LSFO Cargo.[24] UBS alleges that the Koch Entities instructed: (a) the Vessel to proceed back to the load port of Sohar, Oman from Fujairah, UAE, on or about 1 July 2020; (b) the Master and/or the Vessel Owners to issue the Koch BL without the cancellation of the UBS BLs; and (c) the Master to deliver and discharge the LSFO Cargo to Koch Refining on or around 31 July 2020 notwithstanding that the Koch Entities knew or ought to have known that there remained in circulation an earlier set of bills of lading which had been issued in respect of the LSFO Cargo (*ie*, the UBS BLs).[25] By doing so, the Koch Entities had prejudiced, negated or acted in a manner inconsistent with UBS's possessory right or interest in the LSFO Cargo or its rights as the lawful holder of the UBS BLs and wrongfully converted the LSFO Cargo.[26] Further and/or

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21 Francesca's Affidavit at Tabs 6 and 7.

22 Sean's Affidavit at paras 26 and 27.

23 Sean's Affidavit at para 28.

24 SOC at para 19.

25 SOC at paras 13 to 20.

26 SOC at paras 19 to 22.

Version No 1: 07 Oct 2025 (11:26 hrs)

alternatively, the Koch Entities caused and/or induced the Vessel Owners to breach the contracts of carriage between UBS and the Vessel Owners evidenced by the UBS BLs.[27] UBS claims for the market value of the LSFO Cargo at the time of conversion, or alternatively, damages to be assessed for conversion or inducement of breach of the contracts of carriage contained in or evidenced by the UBS BLs.[28]

18 Without prejudice to their right to set out its full defence on the merits, the Koch Entities submit that their intended defence in OC 173 is as follows:

(a) With respect to the claim in conversion, there are doubts over whether the UBL BLs were genuine and/or were issued by the Vessel Owners and/or with the Vessel Owners' authority and, if genuine and authorised, whether the UBS BLs relate to the LSFO Cargo on board the Vessel. The Koch Entities corresponded extensively with GP, Spectis and the Master of the Vessel, Zubair UR Rehman, who is a Pakistani national[29] ("Master"), but none of them mentioned the existence of the UBS BLs. The Koch Entities acted in good faith and did not have notice that GP allegedly had no authority to dispose of the LSFO Cargo. Accordingly, Koch Refining acquired good title to the LSFO Cargo.[30]

(b) With respect to the claim in inducing breach of the contracts of carriage between UBS and the Vessel Owners and/or bailment, the Koch Entities did not know of the alleged contracts of carriage and/or the alleged bailment relationship between UBS and the Vessel Owners. The

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27 SOC at paras 23 to 30.

28 SOC at paras 31 to 32.

29 Francesca's Affidavit at para 35.

30 DWS1 at para 10(a) and Sean's Affidavit at paras 35 to 36.

Version No 1: 07 Oct 2025 (11:26 hrs)

> Koch Entities therefore could not and did not intend to induce any breach of the alleged contracts of carriage and/or alleged bailment relationship between UBS and the Vessel Owners.[31]

The parties' cases in SUM 1108

The Koch Entities' case

19 The Koch Entities' case in SUM 1108 is that apart from the fact that they are incorporated in Singapore, there are no real and substantial connecting factors to Singapore. On the contrary, the location and compellability of key witnesses and the governing law of the dispute point towards Switzerland as the clearly more appropriate forum.[32] There is also no substantial injustice to UBS if OC 173 is stayed since the Swiss courts have jurisdiction over the dispute and UBS fails to show that it would be barred from prosecuting its alleged claims in Switzerland.[33]

UBS's case

20 UBS's case in SUM 1108 is that Switzerland is not the clearly more appropriate forum than Singapore for OC 173. The relevant factual issues raised by the Koch Entities do not require evidence from any third-party witnesses let alone any based in Switzerland.[34] Notwithstanding that the CTF Security Agreement is governed by Swiss Law, this is not a relevant connecting factor

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31 DWS1 at para 10(b) and Sean's Affidavit at paras 37 and 38.

32 DWS1 at para 15.

33 DWS1 at paras 52 to 60.

34 CWS1 at para 43.

Version No 1: 07 Oct 2025 (11:26 hrs)

given that the Koch Entities have not challenged UBS's pledge over the LSFO Cargo and the only issues raised by the Koch Entities are factual ones.[35]

21 If the court is of the view that Switzerland is the clearly more appropriate forum, UBS submits it would suffer substantial prejudice if OC 173 is stayed in favour of Switzerland because it would effectively shut out UBS from obtaining any relief against the Koch Entities in the Swiss courts. This is because: (a) it is unclear whether the Swiss courts have jurisdiction over the Koch Entities; (b) UBS's claims may be time-barred in Switzerland; and (c) Swiss law does not recognise a cause of action in inducement of breach of contract.[36]

The law

22 The principles governing this application are set out in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada* test") as applied by the Court of Appeal in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*") at [12]–[14]. At the first stage of the *Spiliada* test, the defendant must show that "there is another available forum which is clearly or distinctly more appropriate than Singapore. The natural forum is one with which the action has the most real and substantial connection" (*CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [26]).

23 The connecting factors which point away from Singapore must point to a more appropriate forum than Singapore and they might not do so if those connections are dispersed amongst several jurisdictions (*Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 ("*Siemens AG*") at [4]). Singapore

35 CWS1 at paras 40 to 42.

36 CWS1 at paras 73 to 87.

Version No 1: 07 Oct 2025 (11:26 hrs)

can only be *forum non conveniens* if the connecting factors identify a distinctly more appropriate forum than Singapore and not merely if those dispersed connections outweigh those which point to Singapore (*Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd* [2024] 3 SLR 476 ("*Sinopec*") at [61]). The relevant connecting factors are non-exhaustive and include (*JIO Minerals* at [41]–[42]):

(a) The personal connection of the parties and witnesses, which would involve a consideration of the "location of the parties, relevant witnesses, facts, and evidence". This involves considering the convenience in having the case decided in the forum where the witnesses are ordinarily resident and the compellability of those witnesses (at *JIO Minerals* at [63]).

(b) The connection to relevant events and transactions.

(c) The governing law of the dispute.

(d) The overall shape of the litigation, which refers to "the manner in which the claim and the defence have been pleaded".

24 When engaging in the inquiry under the first stage of the *Spiliada* test, the court can and should attribute different weight to each connecting factor depending on the nature of the dispute, and more weight can be ascribed to those connecting factors corresponding to the incidences that are likely to be material to the fair determination of the dispute. Since the search is for connections that have the most relevant and substantial associations with the dispute, the quality of the connecting factors (rather than the mere quantity of factors) is crucial in this analysis. The court will also weigh the connecting factors with likely reference to the issues, and connections which have little or no bearing on the

Version No 1: 07 Oct 2025 (11:26 hrs)

adjudication of the issues in dispute between the parties will generally carry little weight (*Sinopec* at [62]).

25 If the first stage is satisfied, the Court will ordinarily grant a stay, unless there are circumstances by reason of which justice requires that a stay should nevertheless be refused at the second stage of the *Spiliada* test. At the second stage, the legal burden is on the claimant to establish with cogent evidence the existence of those special circumstances such that it will be denied substantial justice if the case stayed in the forum. The main consideration is whether substantial justice can be obtained in the foreign *prima facie* natural forum (*Sinopec* at [63]; *JIO Minerals* at [43]).

Issues to be determined

26 The issues to be determined in this application are as follows:

(a) whether Switzerland is the clearly more appropriate forum than Singapore; and

(b) if so, whether there are special circumstances that justify refusing the stay.

My decision

27 I turn first to address two preliminary issues. First, counsel for UBS, Mr Toh Kian Sing *SC* ("Mr Toh"), pointed out at the hearing that Mr Sean Patrick Tarantino, who filed the supporting affidavit on behalf of the Koch Entities ("Mr Sean") for SUM 1108, is not employed by the Koch Entities and it is unclear on what basis he attests to the Koch Entities' beliefs. Mr Sean's affidavit dated 21 April 2025 ("Mr Sean's Affidavit") states that he is "an Associate General Counsel, Litigation in the employ of Koch Capabilities,

Version No 1: 07 Oct 2025 (11:26 hrs)

LLC" and that he is duly authorised to make this affidavit on behalf of the Koch Entities. I granted permission to the Koch Entities to clarify this point. The Koch Entities duly filed an affidavit by Chee Siew Yen, a director of the Koch Entities, on 18 July 2025 ("Ms Chee's Affidavit"), clarifying that Koch Capabilities LLC ("Koch Capabilities") and the Koch Entities are part of the Koch group of companies. Koch Capabilities and Mr Sean provide legal services and legal representation to the Koch Entities with respect to this matter and Mr Sean has carriage of this matter.[37] Given this clarification, I see no issue with considering Mr Sean's affidavit for the purposes of SUM 1108 and proceed on this basis.

28 Second, counsel for the Koch Entities, Mr Lok Vi Ming *SC* ("Mr Lok"), took the point that UBS admits that Switzerland is an appropriate forum. They rely on a letter from UBS's solicitors in the United States of America ("US"), Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss") to the Koch Entities' parent company, Koch Industries Inc ("Koch Entities' Parent Company"), dated 15 November 2022 ("Paul Weiss Letter") stating that in their view, Texas and Switzerland are the jurisdictions with the greatest connection to the wrongs committed.[38] In response, UBS's position is that the Paul Weiss Letter has no bearing on nor is it relevant to this Court's determination of whether Switzerland is the clearly more appropriate forum since that opinion is based on US law and it focuses on a fraud instead of the torts of wrongful conversion and inducement of breach of contract.[39] In my view, I do not consider the Paul Weiss Letter to be of any assistance to the Koch Entities

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37 1st Affidavit of Chee Siew Yen dated 18 July 2025 ("Chee's Affidavit") at paras 6 to 7.

38 DWS1 at paras 49 to 51.

39 CWS1 at para 69.

Version No 1: 07 Oct 2025 (11:26 hrs)

insofar as the application of stage one of the *Spiliada* test is concerned. It suffices to say that the Paul Weiss Letter was merely a preliminary view expressed by UBS's US solicitors for the purposes of settlement negotiations and does not have any legal effect in precluding UBS from taking the position it now takes in SUM 1108. I decline to place any weight on this for the purpose of considering whether Switzerland is the clearly more appropriate forum than Singapore. However, as I discuss below at [97]–[99], I consider the contents of the Paul Weiss letter in relation to UBS's argument that there is substantial injustice as a result of its claims being time-barred if OC 173 is to be heard in Switzerland.

Stage one: Whether Switzerland is the clearly more appropriate forum than Singapore

29 At stage one of the *Spiliada* test, the burden of proof is on the stay applicant to persuade the court that there is another clearly more appropriate forum than Singapore. The Koch entities primarily rely on the personal connection of the key witnesses and the governing law of the dispute which they say point towards Switzerland as the clearly more appropriate forum.[40]

Connection of witnesses

30 As UBS is incorporated in Switzerland and the Koch Entities are incorporated in Singapore, parties do not make any submissions on the personal connections of the parties. Instead, their submissions focus on the connection of the witnesses as the dominant connecting factor. Connections relating to witnesses encompass two distinct factors: (a) the convenience in having the case decided in the forum where the witnesses are ordinarily resident (*ie*, the

[40] DWS1 at para 15.

Version No 1: 07 Oct 2025 (11:26 hrs)

locations of the witnesses); and (b) the compellability of those witnesses (*JIO Minerals* at [63], *Sinopec* at [81]).

(1) Convenience

31 The starting point is where the key witnesses reside. The Koch Entities submit that the key witnesses are resident in Switzerland. They identify the key witnesses as Mr David Bleasdale ("Mr Bleasdale"), Ms Julieta Diaz ("Ms Diaz") and Mr Sambit Pradhan ("Mr Pradhan"), who were employees of the Koch Entities at the material time, based on UBS's pleadings that these persons committed the alleged acts of conversion and/or inducement of breach of contracts of carriage and/or bailment.[41] While Ms Diaz remains an employee of Koch Shipping, Mr Bleasdale is no longer employed by the Koch Entities. [42] The Koch Entities also say that two of UBS's factual witnesses, Mr Cyril Masson ("Mr Masson") and Ms Marie Schmitt ("Ms Schmitt"), who are employees of UBS, are also resident in Switzerland. Even though Mr Masson and Ms Schmitt have confirmed that they are prepared to provide evidence in OC 173 and attend trial in person in Singapore, time and resources would be saved if the trial is held in Switzerland, where the witnesses reside.[43]

32 In Mr Sean's Affidavit, he avers that "Ms Diaz is based in Switzerland, and to the best of the [Koch Entities'] belief, Mr Bleasdale is also based in Switzerland".[44] He does not state where Mr Pradhan is resident even though I note that the Koch Entities assert in their written submissions that he is not

41 DWS1 at para 18.

42 Sean's Affidavit at paras 45 to 46.

43 DWS1 at paras 20 to 22.

44 Sean's Affidavit at para 45.

Version No 1: 07 Oct 2025 (11:26 hrs)

resident in Singapore.[45] In UBS's reply affidavit filed by Ms Francesca Marisa Angela Bianchi dated 12 June 2025 ("Ms Francesca's Affidavit"), she acknowledges that the Koch Entities say that Ms Diaz and Mr Bleasdale are based in Switzerland but does not dispute this factual assertion.[46] In its written submissions, UBS also did not challenge this assertion. However, Mr Toh raised the point that the Koch Entities' belief that Mr Bleasdale and Ms Diaz are resident in Singapore is unsubstantiated.

33 The existence of a fact which shows that a jurisdiction is *forum conveniens* or vice versa is a question of fact and the party who alleges the fact bears the burden of proving it (*Siemens AG* at [6]). In a stay application, the burden is on the stay applicant to depose on affidavit the factual circumstances on which it relies to support the facts it asserts (*Chang Chee Kheo v Fatfish Investment Partners Ltd and others* [2023] SGHCR 12 at [29]). A stay applicant cannot be permitted to manufacture a connecting factor by asserting without substantiation that it requires foreign witnesses (*JIO Minerals* at [67]). In the same vein, a stay applicant cannot simply make bare assertions that foreign witnesses are resident in a particular jurisdiction to manufacture a connecting factor.

34 In my view, Mr Sean's averment on affidavit (see [32] above) is patently unsatisfactory since it fails to explain the basis for his belief that Mr Bleasdale and Ms Diaz are resident in Switzerland. In seeking to discharge their legal burden to establish the facts it relies on to persuade the court to stay the proceedings, it is not adequate for the Koch Entities to simply say that UBS did not contend otherwise in their reply affidavit. This is so particularly since

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45 DWS1 at para 18.

46 Francesca's Affidavit at paras 36 and 37.

Version No 1: 07 Oct 2025 (11:26 hrs)

O 9 r 7(2)(*b*) of the Rules of Court 2021 provides that no further affidavits are to be filed after one exchange of affidavits without the Court's approval. The Koch Entities ought to have provided the factual basis for its belief that their key witnesses are resident in Switzerland in their supporting affidavit.

35 However, considering that UBS does not raise a factual dispute on the residence of those witnesses and given the importance of Mr Bleasdale to the Koch Entities' case in SUM 1108, I granted permission to the Koch Entities to file a supplementary affidavit to substantiate their belief that Mr Bleasdale is resident in Switzerland. In Ms Chee's Affidavit, she explains that:

> (a) According to a copy of Mr Bleasdale's LinkedIn profile obtained from an internet search on or around 4 July 2025, he has been employed as a distillates trader in E3 Energy DMCC, which appears to be an energy trading company in Dubai, since March 2024. However, his profile states that he is in "Geneva, Switzerland".
>
> (b) According to a Human Capital Market Review report for Q1 2024 ("HCMR Report"), Mr Bleasdale "has joined E3 Energy, in Geneva, as a Distillates Trader".[47]

36 UBS argues that there is nothing showing that the information in Mr Bleasdale's LinkedIn profile and the HCMR Report are accurate till date, when the LinkedIn profile was last updated, and the Koch Entities do not appear to have made enquiries with Mr Bleasdale.[48] However, given that UBS has also not adduced any evidence to rebut the factual assertion by the Koch Entities, I

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47 Sean's Affidavit at paras 45 to 46 and Chee's Affidavit at para 5.

48 Claimant's further submissions pursuant to the directions dated 9 July 2025 in Rajah & Tann Asia LLP's letter to the Registry dated 31 July 2025.

Version No 1: 07 Oct 2025 (11:26 hrs)

accept that Mr Bleasdale is resident in Switzerland for the purposes of SUM 1108 as the LinkedIn profile (retrieved on or around 4 July 2025) and the HCMR Report in Q1 2024 both provide objective corroboration that he is likely to be residing in Switzerland at this time.

37 As regards the other witnesses highlighted by the Koch Entities, I place little weight on the alleged residence of Mr Pradhan given that no evidence of his present residence is offered on affidavit. While there is similarly no evidence to support Mr Sean's averment that Ms Diaz resides in Switzerland, I note that Ms Diaz remains an employee of Koch Shipping till date.[49] This is not disputed by UBS.[50] I thus proceed on the basis that Ms Diaz is resident in Switzerland for the purposes of SUM 1108.

38 I now turn to whether the evidence of Mr Bleasdale and Ms Diaz is material to OC 173. To appreciate the significance of witness connections as a connecting factor, the court must consider what evidence would likely be needed in relation to the claims made in the action before the forum (*Ivanishvili, Bidzina and others v Credit Suisse Trust Ltd* [2020] 2 SLR 638 ("*Ivanishvili*") at [85]). The court will focus on the issues that are in dispute and what evidence is needed in respect of those issues. In this regard, the focus is not on the evidence the claimant requires to establish its allegations, but on the potential prejudice to the defendant in running its defence if evidence from particular witnesses is unavailable (*Ivanishvili* at [86]). A defendant who argues that the presence of witnesses in a foreign jurisdiction renders it the more appropriate forum should at least show that the evidence from those foreign witnesses is arguably relevant to its defence (*JIO Minerals* at [67]).

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49 DWS1 at para 28.

50 DWS1 at para 28; Francesca's Affidavit at para 37.

Version No 1: 07 Oct 2025 (11:26 hrs)

39 However, it is not required to demonstrate exactly how the testimony of those witnesses will be used and whether it is material to its defence because the court should not, at this interlocutory stage, predetermine the witnesses that the parties should call (*JIO Minerals* at [66]; *Sinopec* at [83]). In considering the evidence the defendant would need, the court is entitled to draw appropriate inferences based on such information as is available about the nature of the defendant's case. The relevance of certain witnesses or documents to the likely defence may be obvious in many instances. However, if the defendant is reticent in elucidating its defence, it does not lie in the defendant's mouth to complain that the court does not address its mind to a particular defence or case theory the defendant wishes to pursue. This is all the more so where there are overlapping potential sources of information, in oral testimony and documentary evidence, which speaks to the points in contention. A defendant seeking to persuade the court to grant a stay should carefully consider the level of detail which is needed to explain what evidence it needs would be unavailable in proceedings in Singapore which may include an indication of what evidence (such as the identities and approximate roles of witnesses) it needs (*Ivanishvili* at [87] and [94]).

40 The Koch Entities submit that the relevance of the evidence of Mr Bleasdale and Ms Diaz is apparent from UBS's statement of claim in which UBS alleges that the acts of Mr Bleasdale and Ms Diaz form the torts. Further, their evidence is critical to the Koch Entities' case because they were personally involved in corresponding with GP, Spectis and the Master to ensure that all previous sets of original bills of lading issued in respect of the LSFO Cargo be returned to the Vessel Owners and/or the Master for cancellation before the

Version No 1: 07 Oct 2025 (11:26 hrs)

issuance of the Koch BL and their evidence on their alleged knowledge of the UBS BLs is material to the Koch Entities' case.[51]

41 In my view, the Koch Entities have established that the evidence of Mr Bleasdale and Ms Diaz is arguably relevant to their defences in OC 137. UBS's claim is that the Koch Entities wrongfully converted the LSFO Cargo without the production of the UBS BLs notwithstanding that they knew or ought to have known that an earlier set of bills of ladings which had been issued in respect of the LSFO Cargo (*ie*, the UBS BLs) remained in circulation,[52] and that the wrongful conversion caused and/or induced the Vessel Owners to breach the contracts of carriage between UBS and the Vessel Owners evidenced by the UBS BLs (see [17] above).[53] The Koch Entities' intended defence is that they acted in good faith, had no notice that GP allegedly had no authority to dispose of the LSFO Cargo and acquired good title to the LSFO Cargo.[54] They also did not know of the alleged contracts of carriage and/or the alleged bailment relationship between UBS and the Vessel Owners and could not have intended to induce any breaches of the alleged contracts of carriage and/or alleged bailment relationship (see [18] above).[55]

42 In my judgment, the evidence of Mr Bleasdale and Ms Diaz is arguably relevant to the intended defences by the Koch Entities. UBS pleads the following as regards the two witnesses:

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51 DWS1 at para 19.

52 SOC at paras 17, 18 and 21.

53 SOC at paras 23 to 30.

54 Sean's Affidavit at para 36.

55 DWS1 at para 10(b) and Sean's Affidavit at paras 37 to 38.

Version No 1: 07 Oct 2025 (11:26 hrs)

(a) As regards Ms Diaz, she corresponded with the Master and instructed him on 30 June 2020 not to send any VESLINK reports to Weathernews Inc, instructed the Vessel on 1 July 2020 to sail from Fujairah to Sohar and asked the Master of the Vessel on 16 July 2020 to provide a copy of the "null and void original bills of lading" as the Koch Entities needed "to track the full document chain".[56]

(b) As regards Mr Bleasdale, he instructed Koch Shipping's agent, Sharaf Shipping Agency, on 16 July 2020 to issue the Koch BL. He also asked the Master on 17 July 2020 to confirm if the UBS BLs had been cancelled and for the null and void documents referred to the bills of lading "drawn upon the vessel loading via STS from MT Sienna (Quantity approximately 104kt)".[57]

These pleadings are under the header "Instructing the Vessel to shift to Sohar and Delivery and Discharge of the LSFO Cargo to [Koch Refining]". It should be noted that these pleadings are *particulars* of UBS's broader claim that the Koch Entities knew or ought to have known that there existed an earlier set of bills of lading that had been issued in respect of the LSFO Cargo (*ie*, the UBS BLs) and that they needed to track the whereabouts of the UBS BLs and/or that the same had been cancelled or voided by the time the Koch BL were issued.[58]

43 Considering UBS's own pleadings which relies on the acts of Ms Diaz and Mr Bleasdale as particulars of the Koch Entities' alleged knowledge of the existence of the UBS BLs, I find their evidence to have clear relevance to the

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56 SOC at paras 13 to 15 and 17(b).

57 SOC at paras 17(c) and 17(d).

58 SOC at para 17.

Version No 1: 07 Oct 2025 (11:26 hrs)

disputed issues in OC 137. It can hardly be said that the evidence of Ms Diaz and Mr Bleasdale on the context in which those emails were written and their knowledge of the UBS BLs at that time is immaterial to OC 137 when UBS relies on those particular emails to establish that the Koch Entities knew or ought to have known of the existence of the UBS BLs. While the Koch Entities have not specifically identified what evidence they expect from Mr Bleasdale and Ms Diaz and how it would be material to their defences, I consider their evidence to be arguably relevant to the Koch Entities' intended defences that they had no notice that GP allegedly had no authority to dispose of the LSFO Cargo and did not know of the alleged contracts of carriage formed by the UBS BLs or the alleged bailment relationship between UBS and the Vessel Owners. Specifically, their evidence would provide the necessary context to assist the trial court in making the factual finding of whether the Koch Entities knew or ought to have known of the existence of the UBS BLs.

44 In this regard, UBS argues that conversion is a strict liability tort and the Koch Entities' state of mind and/or knowledge of UBS's possessory rights in the LSFO Cargo is therefore irrelevant. They say that it is not a viable defence that the Koch Entities were ignorant of UBS's rights or that they acted in good faith and did not have notice that the person making the disposition of the LSFO Cargo had no authority to make the same.[59] As for the claim of inducement of breach of contract, there is overwhelming documentary evidence of the Koch Entities' knowledge of a prior set of bills of lading for the LSFO Cargo and the issuance of the Koch BL on their instructions. Thus, little or no oral evidence is required from the Koch Entities' witnesses.[60]

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59 CWS1 at para 53.

60 CWS1 at para 63(a).

Version No 1: 07 Oct 2025 (11:26 hrs)

45 I am guided by the Court of Appeal's caution in *Ivanishvili* at [90] that the relative strength or weakness of the suit or defences is irrelevant when the court is engaged in the inquiry at stage one of the *Spiliada* test. At this interlocutory stage, I decline to evaluate whether the Koch Entities' defences are valid and confine my analysis to whether the evidence of Ms Diaz and Mr Bleasdale is arguably relevant to UBS's claims and the Koch Entities' defences (whether or not their defences are likely to succeed). Furthermore, even if the tort of wrongful conversion is a strict liability tort and there is no need for a defendant to know that the goods belonged to someone else or for the defendant to have a positive intention to challenge the true owner's rights (*Tai Seng Machine Movers Pte Ltd v Orix Leasing Pte Ltd* [2009] 4 SLR(R) 1101 at [43] and [45]), their evidence on whether the Koch Entities knew or ought to have known of the existence of the UBS BLs remains nevertheless at least relevant to the tort of inducement of breach of contract. As UBS concedes in their written submissions,[61] an element of the tort of inducement of breach of contract is that the defendant knew of the existence of the contract although knowledge of the precise terms of the contract is not necessary (*Turf Club Auto Emporium v Yeo Boong Hua* [2018] 2 SLR 655 at [311]).

46 I also reject UBS's argument that the contemporaneous correspondence shows that the Koch Entities were aware that a prior set of bills of lading for the LSFO Cargo had been issued and that little or no oral testimony is required from the Koch Entities' witnesses.[62] The alleged knowledge of the Koch Entities of the UBS BLs is ultimately a factual finding to be determined by the trial court after hearing testimony from the relevant witnesses at trial. Even if contemporaneous correspondence before the court appears to be probative or

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61 CWS1 at para 60(a).

62 CWS1 at paras 46 to 47.

Version No 1: 07 Oct 2025 (11:26 hrs)

reliable at first glance, the Koch Entities must surely have the opportunity to adduce evidence from Ms Diaz and Mr Bleasdale at trial in aid of their defence. I thus accept that the evidence of Ms Diaz and Mr Bleasdale is arguably relevant to the determination of OC 137.

47 I now briefly discuss the other witnesses raised by parties. UBS intends to adduce evidence from Mr Masson and Ms Schmitt regarding UBS's financing of the LSFO Cargo and the UBS BLs.[63] No evidence has been adduced as to where these witnesses are resident. However, given that Mr Masson and Ms Schmitt remain employed by UBS, UBS is incorporated in Switzerland and UBS avers that they are prepared to provide evidence in OC 173 and attend the trial in person in Singapore,[64] I proceed on the basis that they are likely to be resident in Switzerland. In this regard, I agree with the Koch Entities that there will nevertheless be some savings of time and resources if the trial is held in Switzerland, where Mr Masson, Ms Schmitt and Ms Diaz reside[65] even though the weight given to this is reduced since they are likely to be able to attend the trial in person in Singapore as well.

48 UBS also raises the point that there are other potential witnesses such as Mr Hirotsugu Kowaguchi ("Mr Kowa"), Mr Alan Johnson ("Mr Johnson"), Ms Sandy Yu ("Ms Yu") and Mr Harivel Prabu ("Mr Prabu") who they believe are based in Singapore and whose evidence the Koch Entities would be able to procure voluntarily.[66] UBS says that they believe Mr Kowa is in Singapore because of a Human Capital Market Report from Q2 2021 that he left Koch

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63 Francesca's Affidavit at para 33.

64 Francesca's Affidavit at para 34.

65 DWS1 at paras 20 to 22.

66 Francesca's Affidavit at para 39 and CSW1 at [51].

Version No 1: 07 Oct 2025 (11:26 hrs)

Refining and joined Gunvor Singapore Pte Ltd, a company incorporated in Singapore.[67] As for Mr Johnson and Ms Yu, UBS relies on the fact that the GP-Koch Refining Contract and contract confirmations show that they are based in Singapore and have Singapore phone numbers.[68] As for Mr Prabu, UBS says that Mr Prabu's LinkedIn profile and his WhatsApp exchange with Mr Bleasdale show that he was based in Singapore and employed by GP Global APAC Pte Ltd, a Singapore company.[69]

49 In this regard, the Koch Entities have not adduced any evidence to contradict UBS's assertion that Mr Kowa, Mr Johnson, Ms Yu and Mr Prabu are based in Singapore. I thus proceed on the basis that they are resident in Singapore for the purposes of SUM 1108. UBS, however, does not aver that they wish to call these witnesses but instead simply characterises them as *potential witnesses* that may be called. UBS also does not take the position that the evidence of these witnesses is important to their case. UBS only says that Mr Kowa was Koch Refining's trader who negotiated the GP-Koch Refining Contract and the futures leg (see [11] above) and that Mr Johnson, Ms Yu and Mr Prabu were copied in the relevant email exchanges.[70] It appears to me that the evidence of these witnesses is of peripheral importance to whether the torts of wrongful conversion and inducement of breach of contract in OC 173 are made out. I do not consider them to be key witnesses to the dispute such that there will be significant savings of time and resources if the trial is held in Singapore where they reside.

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67 Francesca's Affidavit at para 39(a) and pp 275 to 277 and 283.

68 Francesca's Affidavit at para 39(b) and p 334.

69 Francesca's Affidavit at para 39(c) and pp 273, 274, 311, 320 and 340.

70 Francesca's Affidavit at para 39.

Version No 1: 07 Oct 2025 (11:26 hrs)

50 Insofar as UBS suggests that these potential witnesses provide evidence instead of Mr Bleasdale for the Koch Entities because they received emails sent to or by Mr Bleasdale and may provide contemporaneous evidence of their correspondence with Mr Bleasdale,[71] I see no merit in this argument. It is surely the Koch Entities' prerogative as to who they wish to call to provide their evidence of their defence. I also do not accept that simply because these other witnesses may have received emails sent to or by Mr Bleasdale that they can offer any evidence of his state of mind and knowledge and the context in which he sent those emails which are relevant to the determination of the Koch Entities' alleged knowledge of the UBS BLs.

51 In sum, I find that the convenience in having the case decided where the key witnesses are ordinarily resident is clearly in favour of Switzerland as the key witnesses of the parties, Mr Bleasdale, Ms Diaz, Mr Masson and Ms Schmidt are resident in Switzerland. As it is the quality of the connecting factor that is crucial, it is more convenient for the trial to be held where the key witnesses are located and it is typically easier to secure the evidence of these witnesses in the jurisdiction where they are located. This outweighs the potential witnesses, Mr Kowa, Mr Johnson, Ms Yu and Mr Prabu, who are resident in Singapore as it has not been established that their evidence is likely to have substantial bearing on the determination of the issues in OC 137 and they are not key witnesses.

(2) Compellability

52 I now turn to the aspect of compellability of the witnesses. Where there is a high likelihood of there being relevant witnesses who are non-compellable

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[71] CWS1 at paras 51 and 52.

Version No 1: 07 Oct 2025 (11:26 hrs)

in Singapore, that would in principle be a factor pointing away from Singapore as the appropriate forum, even if such witnesses have not actually been identified (*Ivanishvili* at [94]). Our courts will ordinarily proceed on the basis that compellability is in issue, unless shown otherwise. This could include evidence of the willingness of a foreign witness to testify in Singapore (*Sinopec* at [90]).

53 I note that Mr Bleasdale's evidence is the centre of contention since he is a third-party witness not in the employ or control of the parties to the dispute such that parties may not be able to persuade him to give evidence voluntarily in the absence of his compellability (see *Ivanishvili* at [84]) and his evidence is likely to be material to the Koch Entities' intended defence in OC 173. In contrast, the evidence of Ms Diaz, Mr Masson and Ms Schmidt would likely be easily procured since they remain in the employ of the parties to the dispute.

54 The Koch Entities submit that there is a real risk that the Koch Entities will be irreparably prejudiced if Mr Bleasdale is unwilling to testify on their behalf if the dispute is heard in Singapore as he will not be compellable before the Singapore courts but he will be compellable before the Swiss courts.[72] In turn, UBS argues that since Singapore and Switzerland are both parties to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters on 18 March 1970 (the "Hague Evidence Convention"), this reduces the weight to be given to the location of witnesses outside jurisdiction.[73]

55 There are two modes to the giving of evidence by a witness resident in Switzerland through a live-video-link for Singapore proceedings:

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72 DWS1 at paras 29 and 30.

73 CWS1 at para 49.

Version No 1: 07 Oct 2025 (11:26 hrs)

(a) First, under Chapter 1 of the Hague Evidence Convention, indirect taking of evidence from a witness may be conducted by a Swiss judge and the foreign authorities participating by video-link to the hearing. A witness resident in Switzerland may be compelled to testify for the purposes of proceedings before the Singapore courts if the Swiss courts give effect to a Letter of Request from the Singapore courts.[74]

(b) Second, under Chapter 2 of the Hague Evidence Convention, evidence may be taken directly by the Singapore courts via video-link hearing.[75] However, a witness resident in Switzerland cannot be compelled to testify before the Singapore courts.[76]

56 UBS submits that the Swiss courts are likely to give effect to a Letter of Request (under Chapter 1 of the Hague Evidence Convention) from the Singapore courts seeking their assistance with taking evidence from persons in Switzerland for use in OC 173. Mr Bleasdale may be compelled by the Swiss courts to appear for a hearing under Chapter 1 of the Hague Evidence Convention.[77] While the Koch Entities accept that it is possible for evidence to be taken from Mr Bleasdale by a Swiss judge from a witness under Chapter 1 of the Hague Evidence Convention if he refuses to participate in the taking of evidence under Chapter 2 of the Hague Evidence Convention, they submit that this is sub-optimal. They also say it is unsuitable for Mr Bleasdale's evidence to be taken by deposition as he is a potentially critical witness of the Koch

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74 DWS1 at para 37 and CWS1 at para 49(d).

75 DWS1 at para 37.

76 DWS1 at para 38 and CWS1 at para 49(d).

77 CWS1 at paras 49(a), 49(c) and 50.

Version No 1: 07 Oct 2025 (11:26 hrs)

Entities, and it would be desirable for him to be compellable to give evidence before the trial court in Singapore.[78]

57 In my view, the Koch Entities' submission that evidence taken by way of Chapter 1 of the Hague Convention will be sub-optimal is not established based on the evidence before me. Our courts have noted that taking evidence by deposition through mutual judicial assistance may not be suitable where the witness in question is a critical witness in relation to whom an assessment of credibility may be important in assisting the trial court's determination of the truth of the matter (*UBS AG v Telesto Investments* [2011] 4 SLR 503 at [70]; *Vibrant Group Ltd v Tong Chi Ho and others* [2022] SGHCR 8 at [28(b)]). However, while I accept that Mr Bleasdale's evidence is arguably relevant to the Koch Entities' intended defence (see [43] above), the Koch Entities have not descended to the detail of the type of evidence expected from Mr Bleasdale or the importance of the evidence to its defences. In this light, the Koch Entities fail to satisfy me that an assessment of Mr Bleasdale's credibility is going to be important in the determination of the truth of the matter or any factual findings to be made such that the mode of taking evidence by way of deposition would be inappropriate.

58 However, Mr Bleasdale cannot be said to be compellable pursuant to Chapter 1 of the Hague Evidence Convention in Singapore. I am guided by the observations of Ang Cheng Hock J (as he then was) in *Sinopec* at [156] that while the Hague Evidence Convention provides for mechanisms by which foreign witnesses may testify in civil proceedings in Singapore, this is only *if and when* the relevant authorities accede to a request for judicial assistance by the Singapore courts. Thus, they are *facilitative* rather than mandatory in nature.

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78 DWS1 at paras 29 to 40.

Version No 1: 07 Oct 2025 (11:26 hrs)

Where the request is not acceded to, the witness cannot be compelled to testify. Thus, while some weight should be accorded for the fact that there is a facilitative evidence mechanism to allow Mr Bleasdale's evidence to be taken for use in OC 137 by way of Chapter 1 of the Hague Evidence Convention and the evidence before me is that the Swiss courts are likely to give effect to a letter of request by the Singapore courts, it cannot be said that Mr Bleasdale is certainly compellable to testify pursuant to Chapter 1 of the Hague Evidence Convention if the trial is held in Singapore.

59 Given that Mr Bleasdale's evidence is relevant to the Koch Entities' intended defence and he is a third-party witness who is not within the employ of the parties to the dispute, I am of the view that the lack of certainty as to his compellability is a factor weighing towards Switzerland as the clearly more appropriate forum than Singapore.

Governing law

60 The starting point is that the governing law of the dispute is a connecting factor that points to the courts of the jurisdiction from which that system of law originates as the more appropriate forum because there will clearly be savings in time and resources if a court applies the laws of its own jurisdiction to the substantive dispute (*Rickshaw Investments* at [42]). In terms of the weight to be given to this factor, the following may be considered:

(a) First, the extent of similarity between the governing law and the laws of the forum. If they are substantially similar or are within the common law system, the identity of the governing law will usually be of little significance. If the court has to apply unfamiliar systems of law, the governing law factor may be a weightier one (*Lakshmi Anil*

Version No 1: 07 Oct 2025 (11:26 hrs)

Salgaocar v Jhaveri Darsan Jitendra [2019] 2 SLR 372 ("*Lakshmi*") at [55]–[57]).

(b) Second, if the dispute turns on questions of interpretation of the law or novel issues of foreign law rather than merely the factual application of the law, the governing law may be of more relevance (*Lakshmi* at [55]; *Sinopec* at [79]).

(c) Third, if the foreign court applies different conflict of laws principles, it may possibly end up with that foreign court also applying a foreign law which may weaken the proposition that that foreign court is more appropriate that the forum (Adrian Briggs, *Civil Jurisdiction and Judgments* (Informa Law, 6th Ed, 2015) ("*Briggs*") at p 409).

(d) Fourth, where there are multiple legal issues, to which different laws apply, the persuasive strength of this connecting factor may be reduced (*Briggs* at p 409).

(e) Fifth, the extent of identification of the disputed issues. A vague and general assertion that "foreign law applies" will be generally unpersuasive as a contention that foreign law has to be applied must be demonstrated by identifying the particular issues on which that law will be applicable (*Briggs* at p 409).

61 At this interlocutory stage, the court only has the pleadings and minimal affidavit evidence as background. It is therefore appropriate for the court to form only a provisional view of the governing law. If the identity of the applicable law cannot be ascertained even on a provisional basis on the pleaded case and the interlocutory evidence adduced, the court may treat the issue of the applicable law a neutral factor in stage one of the *Spiliada* test, leaving the

Version No 1: 07 Oct 2025 (11:26 hrs)

matter to be settled at trial on the merits of the case (*Bunge SA v Indian Bank* [2015] SGHC 330 at [49]).

(1) Law governing the CTF Security Agreement and CTF Master Agreement

62 The Koch Entities rely on Swiss law as governing the issues of whether UBS has a valid pledge over the LSFO Cargo and the UBS BLs and consequently whether UBS has an immediate right to possession of the LSFO Cargo and the enforcement of the pledge by way of a contractual power of sale. The Koch Entities point out that UBS's alleged pledge arises from cl 2(a) of the CTF Security Agreement. Clause 8 of the CTF Security Agreement provides for the enforcement of the pledge by way of a contractual power of sale. Clause 17 of the CTF Security Agreement and cl 10 of the CTF Master Agreement provide that these agreements are governed by and construed in accordance with Swiss law (see [6] above). Insofar as UBS relies on the CTF Security Agreement and the CTF Master Agreement to derive its right of immediate possession for its claim in conversion (see [9] above), the Koch Entities submit that the issue of whether UBS has a right to immediate possession of the LSFO Cargo is governed by Swiss law.

63 Further, they submit that UAE law, as the law of the place where the LSFO Cargo is situated (*ie*, *lex situs*) since the Vessel and LSFO Cargo were in UAE on the date UBS received the UBS BLs (*ie*, 22 May 2020), is also applicable to the issue of conversion and whether the Koch Entities' subsequent interest can prevail over UBS's prior encumbrance.[79] In this regard, the Koch Entities cite Dicey, Morris & Collins, *Conflict of Laws* (16th Ed, 2022) at para

[79] Defendant's supplementary written submissions dated 22 July 2025 ("DWS2") at paras 3 to 13.

Version No 1: 07 Oct 2025 (11:26 hrs)

25R-001 for the proposition that "the validity of a transfer of a tangible movable and its effect on the proprietary rights of the parties thereto and of those claiming under them in respect thereof are governed by the law of the country where the movable is at the time of the transfer (*lex situs*)". Thus, this issue may be governed by both Swiss law and UAE law but not Singapore law.[80]

64 However, UBS submits that Swiss law being the governing law of the pledge is not a relevant connecting factor for the determination of the factual issues because the Koch Entities do not dispute whether UBS has a pledge over the LSFO Cargo and UBS BLs, and the only issues raised by the Koch Entities are factual issues. Further, no evidence has been adduced to show that the validity and/or UBS's rights under the pledge would be determined differently under Swiss law.[81]

65 In my view, the applicability of Swiss law to the CTF Security Agreement and CTF Master Agreement is a connecting factor in favour of Switzerland, albeit a weak one. I note that UBS pleads that it will rely on the full terms and effect of the CTF Security Agreement.[82] While UBS had not in fact exercised its contractual power of sale to sell the LSFO Cargo since the LSFO Cargo had in fact been sold to Repsol, I accept that the contractual power of sale is of relevance to UBS's case. UBS quantifies its loss and damage by way of the market value of the LSFO Cargo at the time of conversion, on the assumption that it would have been able to exercise the contractual power of sale and sell the LSFO Cargo if not for the torts.[83] The plausible related issue of

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80 DWS1 at paras 43 and 44 and DWS2 at paras 3 to 8.

81 CWS1 at paras 40 to 42, 54 and 56.

82 SOC at para 11.

83 SOC at para 31.

Version No 1: 07 Oct 2025 (11:26 hrs)

whether UBS would be able to enforce the pledge by way of a contractual power of sale arising from the CTF Security Agreement and CTF Master Agreement would be governed by Swiss law.

66 While the Koch Entities have not filed their defence yet, it does not appear that there are any questions of interpretation of Swiss law that is important in the resolution of OC 173. The disputes raised in the Koch Entities' intended defences on whether the UBS BLs are genuine, issued with the Vessel Owner's authority and, if they are, whether the UBS BLs relate to the LSFO Cargo on board the Vessel[84] are factual issues which, at most, may involve the application of Swiss law. Similarly, the issues of whether UBS has a valid pledge over the LSFO Cargo and the UBS BLs or whether UBS has an immediate right of possession of the LSFO Cargo would involve only the application of Swiss law.

67 It is also apparent that there are multiple issues in OC 173 to which multiple laws may apply. For the UBS BLs itself, the Koch Entities themselves submit that to the extent that the law governing the Charterparty which was allegedly incorporated into the UBS BLs is English law, the issue of validity of the alleged UBS BLs and whether they allegedly relate to the LSFO Cargo on board the Vessel is governed by English law (as the law of the alleged contract of carriage).[85] From the parties' submissions, it appears that Swiss law, UAE law, Omani law, English law or Singapore law may also potentially govern the tort of wrongful conversion and tort of inducement of breach of contract. This reduces the persuasiveness of Switzerland being the clearly more appropriate

84 DWS1 at para 10(a)(i).

85 DWS2 at para 14.

Version No 1: 07 Oct 2025 (11:26 hrs)

forum on the sole basis that Swiss law is the governing law of the CTF Security Agreement and CTF Master Agreement.

68 For completeness, I note that the Koch Entities does not adduce evidence of foreign law to show how the validity of UBS's rights under the pledge would be determined differently under Swiss law. In this regard, our courts have recognised that if foreign law is not pleaded, it would be presumed to be the same as the relevant position under Singapore law (*Rickshaw Investments* at [43]; *Sinopec* at [78] and *The Chem Orchid* [2015] 2 SLR 1020 at [159]). However, it has also been recognised that strict proof of the differences between the foreign law and the forum law is not necessary and the court may take notice that the laws of other jurisdictions are likely to be different (see *Rickshaw Investments* at [43] and *JIO Minerals* at [96]). Even if I take notice that Swiss law is likely to be different from Singapore law, this connecting factor nevertheless has limited persuasive value given that the issues raised by the Koch Entities in its intended disputes are predominantly factual issues instead of legal issues.

(2) Law governing the torts of wrongful conversion and inducement of breach of contract

69 Turning now to the torts of wrongful conversion and inducement of breach of contract, parties disagree on the applicable laws to these torts. Under Singapore conflict of laws principles, the place where a tort was committed is *prima facie* the natural forum for that tortious claim (see *The "Reecon Wolf"* [2012] 2 SLR 289 at [16] and *JIO Minerals* at [106], citing *Rickshaw Investments* at [39]). To ascertain the law of the place where the tort occurred (*ie*, the *lex loci delicti*), the court has to first determine the place of the tort by

Version No 1: 07 Oct 2025 (11:26 hrs)

looking at the events constituting the tort and asking where in substance the cause of action arose (*JIO Minerals* at [89]–[90]).

70 While the Koch Entities take the position in Mr Sean's Affidavit and its written submissions dated 30 June 2025 that the applicable law for both torts is UAE law,[86] their position after having been directed to address the point in further submissions is that the potentially applicable laws for both torts are Swiss law or UAE law for the following reasons:[87]

(a) The claim in conversion is governed by UAE law or Swiss law because the events constituting the conversion took place in UAE and Switzerland. The LSFO Cargo that was alleged converted was situated in UAE, the Koch BL was issued in UAE and the alleged instructions by Ms Diaz and Mr Bleasdale emanated from Switzerland.[88]

(b) The claim in inducement of breach of contracts of carriage and/or bailment and whether the alleged acts make out the torts are governed by Swiss law or UAE law because the alleged breaches would have taken place in UAE where the Vessel was situated, the instructions given by Ms Diaz and Mr Bleasdale emanated from Switzerland.[89] This is notwithstanding that the alleged contracts of carriage as evidenced by the UBS BLs may be governed by English law as the law governing the Charterparty which was allegedly incorporated into the UBS BLs.[90]

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86 Sean's Affidavit at para 54.

87 DWS2 at paras 15 to 31.

88 DWS2 at paras 22 to 25.

89 DWS2 at para 29.

90 DWS2 at para 27.

Version No 1: 07 Oct 2025 (11:26 hrs)

71 The Koch Entities also submit that it would be more convenient and there would be savings in time and resources if the dispute is heard in Switzerland rather than Singapore since Switzerland and the UAE are both civil law jurisdictions and it would be more convenient to try Swiss and/or UAE law governed claims in Switzerland as opposed to Singapore. There would also be an added lawyer of inconvenience if the matter were to be tried in Singapore as the Singapore courts apply the double actionability rule but the Swiss courts do not.[91]

72 UBS submits that the applicable law of the torts is Singapore law or Omani law for the following reasons:

(a) For the tort of conversion, each of the potential acts of conversion were undertaken for and/or on behalf of the Koch Entities, which are Singapore-incorporated companies with offices in Singapore. While the Koch group has many entities all around the world, the group chose to undertake the transactions and acts giving rise to the claim in OC 173 by two Singapore incorporated companies and it follows that the acts of conversion emanated from Singapore notwithstanding that the persons who gave instructions may have been spread out across various locations.[92] In the alternative, the place of the tort of conversion may be Omani law because the instructions from Koch Shipping was to discharge the LSFO Cargo in Charlie Anchorage, Sohar (a port in

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91 DWS2 at para 31.

92 Claimant's supplementary written submissions dated 22 July 2025 ("CWS2") at paras 11 to 13.

Version No 1: 07 Oct 2025 (11:26 hrs)

Oman)[93] which was where the LSFO Cargo was located at the time of conversion and discharged to the JAG LAXMI.[94]

(b) Similarly for the tort of inducement of breach of contract and/or bailment, the various acts of the inducement undertaken by and on behalf of the Koch Entities emanated from Singapore and therefore Singapore law may be applicable. Oman was the place where the LSFO Cargo was discharged in breach of the terms of the UBS BLs and therefore Omani law may be applicable. The Court will also have to consider issues of English law when considering breaches of the underlying contracts since English law governs the Charterparty.[95]

In essence, the applicable laws do not point towards Switzerland as a connecting factor. There is no basis for the allegation that the Swiss courts would be better placed to apply UAE law than the Singapore courts.[96]

73 Applying the substance of the tort test (at [69] above) and considering the alleged acts of the Koch Entities constituting the tort, my view is that the *lex loci delici* for the torts is not Swiss law and the substantive law applicable to the torts is thus not a connecting factor in favour of Switzerland. Even if the instructions given by Ms Diaz and Mr Bleasdale were given whilst they were in Switzerland, this must be seen in the context that these instructions were given on behalf of the Koch Entities, which are incorporated in Singapore and have offices in Singapore. In this light, the more prominent factual connection

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93 CWS2 at para 14; Claimant's bundle of documents at p 156 and Francesca's Affidavit at para 225 to 260.

94 CWS2 at paras 14 and 15.

95 CWS2 at paras 18 to 19.

96 CWS1 at para 58.

Version No 1: 07 Oct 2025 (11:26 hrs)

pointing to the substance of where the cause of action accrued would be the location of the LSFO Cargo at the material time, the location at which the tortious wrongs of conversion or inducement of breach of contract took place, and the location where the harm was caused.

74 The LSFO Cargo was initially situated in UAE when the Koch Entities allegedly directed the Vessel to sail from Fujairah, UAE to Sohar, Oman on or about 1 July 2020.[97] The LSFO Cargo was in Omani waters when the Master discharged the LSFO Cargo to JAG LAXMI after receiving the letter of indemnity issued for and on behalf of Koch Refinery dated 31 July 2020.[98] The Koch BL was issued in "Fujairah, UAE".[99] It is not necessary for me to determine the *lex loci delici* for each tort given my conclusion that it is not Swiss law and the substantive law of the torts is not a connecting factor for the purposes of this inquiry. However, my provisional view is that the underlying factual matrix of the tort of wrongful conversion appears to be most closely connected to Omani law since the LSFO Cargo was in Omani waters when it was discharged to JAG LAXMI. As for the tort of inducement of breach of contract, it appears to be most closely connected to UAE law given that the alleged breaches such as the instruction for the Vessel to sail from UAE to Oman was received in UAE and the issuance of the Koch BL was in UAE.

75 I dismiss the Koch Entities' argument that the Swiss courts may be in a better position than the Singapore courts to apply Omani law or UAE law because the legal systems of Switzerland, Oman and UAE share the commonality of being civil law systems whereas Singapore is a common law

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97 SOC at para 20.

98 Francesca's Affidavit at pp 214 and 220 and CSWS2 at para 14.

99 Sean's Affidavit at p 62.

Version No 1: 07 Oct 2025 (11:26 hrs)

system. There is no evidence before me of how similar Swiss law is to Omani law or UAE law in respect of the specific legal issues that will be engaged in the parties' dispute. It is somewhat simplistic to assume that Swiss law will be similar in substance to that of Omani law or UAE law for those specific legal issues simply because they are civil law systems. Unless there is evidence before me showing the degree of similarity of the relevant laws of the two forums, I am not inclined to place much weight on the mere fact that the legal systems of Switzerland, Oman and UAE are civil law systems. Thus, I consider it to be a neutral factor that the law governing the torts is Omani law or UAE law insofar as the relative analysis between Singapore and Switzerland as the natural forum is concerned.

76 As for the Koch Entities' argument that it would be more inconvenient if the matter were to be tried in Singapore as the Singapore courts apply the double actionability rule but the Swiss courts do not,[100] I agree with UBS that this is not a connecting factor in favour of Switzerland. Even if it may be true that UBS would potentially have to prove actionability of its alleged torts under both Singapore law and the *lex loci delicti* if the trial is held in Singapore, this would be the natural consequence of the choice made by UBS for bringing OC 173 in Singapore. It does not bring the Koch Entities' case any further that Switzerland is the clearly more appropriate forum or enhance the degree of connection with Swiss law.

77 For the connecting factor of the governing law, I consider that the applicability of Swiss law to the CTF Security Agreement and CTF Master Agreement is a connecting factor weakly in favour of Switzerland relative to Singapore. The weight given to this connecting factor is slight because the

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100 DWS2 at para 31.

Version No 1: 07 Oct 2025 (11:26 hrs)

issues raised by the Koch Entities are mostly factual and there are several applicable laws governing the distinct issues in OC 137. As the law governing the torts is either UAE law or Omani law, this is a neutral factor in the inquiry.

78 In sum, considering that the key witnesses of the parties, Mr Bleasdale, Ms Diaz, Mr Masson and Ms Schmidt are resident in Switzerland, Mr Bleasdale's compellability in Switzerland, and Swiss law is applicable to the CTF Security Agreement and CTF Master Agreement, I find that Switzerland is the clearly more appropriate forum than Singapore at stage one of the *Spiliada* test.

Stage two: Whether there are special circumstances that justify refusing the stay

79 At stage two of the *Spiliada* test, the burden of proof is on the stay defendant to satisfy the court that there are special circumstances that the court ought to refuse the stay. In this regard, UBS makes three arguments:

(a) First, it is unclear whether the Swiss courts have jurisdiction over the Koch Entities in relation to UBS's claims in OC 173 which is dependent on whether the place of commission of the torts are in Switzerland or the result of the tortious acts occurred in Switzerland. Since the parties' experts disagree on how the Swiss courts analyse these factors, there is no certainty that the Swiss courts would accept jurisdiction if OC 173 is stayed in favour of Switzerland.[101]

(b) Second, UBS's claims may be time-barred in Switzerland as the time bar for tortious claims in Switzerland is three years after a claimant

101 CWS1 at paras 74 to 76.

Version No 1: 07 Oct 2025 (11:26 hrs)

becomes aware of all relevant facts giving rise to the tort and the identity of the tortfeasor.[102] If OC 173 is heard in Switzerland and the Swiss courts take the view that the applicable law for UBS's claims is Swiss law, UBS's claims would be time-barred.[103]

(c) Third, the experts agree that Swiss law does not recognise the tort of inducement of breach of contract and UBS would thus be precluded from obtaining a remedy for the Koch Entities' inducement of breach of contract before the Swiss courts.[104]

80 The Koch Entities' responses to those arguments are as follows:

(a) First, the Swiss courts have jurisdiction over the dispute because the result of the torts occurred in Switzerland.[105] Even if the stay is granted, it remains open to UBS to return to the Singapore courts to seek an order lifting the stay if for whatever reason the Swiss courts were to decide that they do not have jurisdiction.[106]

(b) Second, regardless of whether the dispute is heard in Singapore or in Switzerland, the time bar applicable is that of the applicable law that governs the dispute as determined by the respective conflict of laws principles of each forum. If the dispute is heard in Singapore, to the extent that according to Singapore conflict of laws principles, the law governing the torts is UAE law, the Singapore courts will apply the

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102 CWS1 at paras 77 to 85.

103 CWS2 at para 26.

104 CWS1 at paras 86 to 87.

105 DWS1 at para 56.

106 DWS2 at para 41.

Version No 1: 07 Oct 2025 (11:26 hrs)

limitation period of UAE law pursuant to Section 3(1) of the Foreign Limitation Periods Act 2012 ("FLPA"). If the dispute is heard in Switzerland and the Swiss courts find that UAE law is the applicable law, it will also apply the limitation period of UAE law.[107]

(c) Third, while Swiss law does not recognise the tort of inducement of breach of contract as an independent cause of action, conduct which would amount to such torts under common law systems may give rise to liability under the general tort provisions of Swiss law, particularly Art 41 of the Swiss Code of Obligations which establishes liability for unlawful acts causing damage.[108]

81 UBS's expert, Ms Aurelie Conrad Hari ("Ms Hari"), is a Swiss qualified lawyer with 20 years of experience.[109] The Koch Entities' expert, Mr Marc Gillieron ("Mr Gillieron"), is also a Swiss qualified lawyer registered at the Geneva Bar with over 25 years of experience.[110]

82 In my judgment, UBS fails to raise any special circumstances that justifies the court refusing the stay. I deal with UBS's arguments in turn.

Jurisdiction of the Swiss courts

83 The experts agree that under Art 129 of the Federal Act on Private International law ("PILA"), the Swiss courts will have jurisdiction over the dispute if: (a) the defendant's domicile or habitual residence is in Switzerland;

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107 DWS2 at paras 33 to 35.

108 DWS1 at para 59.

109 1st Affidavit of Aurelie Conrad Hari dated 25 June 2025 ("Hari's Affidavit") at para 3.

110 1st Affidavit of Marc Gillieron dated 24 June 2025 ("Gillieron's Affidavit) at para 2 and p 9.

Version No 1: 07 Oct 2025 (11:26 hrs)

(b) the tort's place of commission is in Switzerland; or (c) the tort's place of result is in Switzerland.[111]

84 However, their evidence diverges as to whether the Swiss courts have jurisdiction over the parties' disputes:

> (a) Ms Hari submits that the Swiss courts would not have jurisdiction based on the Koch Entities' residence, which she understands is Singapore, or the place of commission of the torts, UAE or Oman. Therefore, the only potential basis for jurisdiction in Switzerland would be if the result of the tort occurred in Switzerland. However, even if that were the case, the claimant has the ability to choose among the available fora. She opines that in the present case "it is highly unlikely that a Swiss court would have had to take jurisdiction, since the claimant may choose where to commence proceedings" and there "would be a significant risk that the Swiss courts would not take jurisdiction because UBS would have to prove that the result of the tort occurred in Switzerland, which is not at all straightforward since the [LSFO Cargo] was not discharged in Switzerland".[112]
>
> (b) Mr Gillieron submits that any location where an event causing damage occurred may qualify. For instance, if the damage is caused by a written document, it is generally considered to have been committed at the place of despatch. Where several acts contribute to the damage, the Swiss courts of the place where any one of those acts occurred has jurisdiction over the entire claim. Given that a significant part of the

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111 Hari's Affidavit at p 17 (para 29) and Gillieron's Affidavit at p 11 (para 8).

112 Hari's Affidavit at pp 17 and 18 (paras 29 to 32).

Version No 1: 07 Oct 2025 (11:26 hrs)

> conduct alleged against the Koch Entities occurred through the sending of various correspondence and instructions by Ms Diaz and Mr Bleasdale who were based in Switzerland at the time of the communications, at least part of the allegedly wrongful conduct was committed in Switzerland which is sufficient to ground the Swiss courts' jurisdiction.[113] Further, Switzerland is where UBS's legal rights and financial interests were allegedly impaired.[114]

85 On the evidence before me, I am not persuaded that there is a strong likelihood that the Swiss courts will decline jurisdiction over the dispute. I note that Ms Hari's opinion is tentative in that she does not assert that the Swiss courts does not have jurisdiction over OC 173 but that the Swiss courts would not "have had to take jurisdiction", UBS may choose amongst the available fora and there is a significant risk that the Swiss courts may not take jurisdiction as it is not straightforward for UBS to prove that the result of the tort occurred in Switzerland since the LSFO Cargo was not discharged in Switzerland. She does not go further to say that the Swiss courts is not an available forum because no facts suggest that the result of the tort occurred in Switzerland. In determining the place of commission of the torts, the Swiss courts may well consider that the sending of various correspondence and instructions by Ms Diaz and Mr Bleasdale who were based in Switzerland at the time of the communications or that UBS's legal and financial interests were impaired in Switzerland as its place of domicile may be sufficient to ground its jurisdiction.

86 In any case, given my conclusion that Switzerland is clearly the more appropriate forum, I am of the view that the Swiss courts ought to hear the

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113 Gillieron's Affidavit at p 11 (paras 8 to 12).

114 Gillieron's Affidavit at p 19 (paras 44 to 45).

Version No 1: 07 Oct 2025 (11:26 hrs)

question of jurisdiction at first instance and decide for itself if it is appropriate to take jurisdiction. If the Swiss courts decline jurisdiction, it remains open to UBS to make an application to the Singapore courts to lift the stay if the Swiss courts subsequently decline to take jurisdiction over the parties' dispute. A stay is suspensory only and is conceptually distinct from a dismissal or discontinuance. Consequently, the court granting a stay remains seised of the proceedings and may in principle lift the stay at a later date. For instance, the court might assume that another jurisdiction is available, but it might later turn out that that other jurisdiction is not willing to take jurisdiction for some reason (*Rotary Engineering Ltd and others v Kioumji & Eslim Law Firm and another and another appeal* [2017] 1 SLR 907 at [24]). While I note that this may occasion some wastage of costs if the Swiss courts ultimately decline jurisdiction, I consider this justified in view of the recognition that Switzerland is the clearly more appropriate forum for this dispute.

Time bar

87 In the landmark case of *Spiliada*, Lord Goff set out the relevant considerations when an action may be time barred in a foreign jurisdiction, at 483-484:

> … Again, take the example of cases concerned with time bars. Let me consider how the principle of forum non conveniens should be applied in a case in which the plaintiff has started proceedings in England where his claim was not time-barred, but there is some other jurisdiction which, in the opinion of the court, is clearly more appropriate for the trial of the action, but where the plaintiff has not commenced proceedings and where his claim is now time barred. Now, to take some extreme examples, suppose that the plaintiff allowed the limitation period to elapse in the appropriate jurisdiction, and came here simply because he wanted to take advantage of a more generous time bar applicable in this country; or suppose that it was obvious that the plaintiff should have commenced proceedings in the appropriate jurisdiction, and yet he did not trouble to issue a protective writ there; in cases such as these, I cannot

Version No 1: 07 Oct 2025 (11:26 hrs)

> see that the court should hesitate to stay the proceedings in this country, even though the effect would be that the plaintiff's claim would inevitably be defeated by a plea of the time bar in the appropriate jurisdiction. Indeed a strong theoretical argument can be advanced for the proposition that, if there is another clearly more appropriate forum for the trial of the action, a stay should generally be granted even though the plaintiff's action would be time barred there. But, in my opinion, this is a case where practical justice should be done. And practical justice demands that, if the court considers that the plaintiff acted reasonably in commencing proceedings in this country, and that, although it appears that (putting on one side the time bar point) the appropriate forum for the trial of the action is elsewhere than England, the plaintiff did not act unreasonably in failing to commence proceedings (for example, by issuing a protective writ) in that jurisdiction within the limitation period applicable there, it would not, I think, be just to deprive the plaintiff of the benefit of having started proceedings within the limitation period applicable in this country. … The appropriate order, where the application of the time bar in the foreign jurisdiction is dependent upon its invocation by the defendant, may well be to make it a condition of the grant of a stay, or the exercise of discretion against giving leave to serve out of the jurisdiction, that the defendant should waive the time bar in the foreign jurisdiction, this is apparently the practice in the United States of America.

Lord Goff's dictum has been accepted in Singapore in *Brinkerhoff Maritime Drilling Corp v PT Airfast Services Indonesia* [1992] 2 SLR(R) 345 at [38]–[39] (see also *Dinesh Kishin Kikla (as Administrator of the Estate of Lalitha Kishin Kikla also known as Laita Kishin Kikla, Deceased) v The Hong Kong Shanghai Banking Corporation Limited and others* [2013] SGHCR 6 at [44]).

88 The starting point is that a claimant does not invariably succeed in opposing a stay application simply because its claims may be time barred in the foreign court. Since the court has determined that the foreign court is the clearly more appropriate forum at this stage, the court's inquiry on whether substantial injustice will be occasioned as a result of the time bar now turns to the reasonableness of the claimant's conduct in all the circumstances of the case. In this inquiry, the court would consider: (a) the claimant's awareness of the time

Version No 1: 07 Oct 2025 (11:26 hrs)

limitation; (b) the extent to which the natural forum is connected to the claim and how obvious the natural forum is or ought to be to the parties; and (c) whether the claimant allowed the limitation period to elapse in the appropriate jurisdiction with the intent to take advantage of a more generous time bar applicable in Singapore as a strategic decision (Yeo Tiong Min, *Commercial Conflict of Laws* (Academic Publishing, 2023) at para 04.047). The burden of proof is on the claimant to show that it acted reasonably. If the claimant satisfies the court that it had not acted unreasonably in failing to take out protective proceedings in the foreign court within the limitation period applied by the courts of that country, it may be unjust to deprive the claimant of the juridical advantage of pursuing his claim in the forum where it is not time barred as a matter of practical justice. It has been noted that a time bar situation may be overcome by a defendant providing an undertaking not to rely on the time bar (*TGT v TGU* [2015] SGHCF 10 at [42]). In this regard, the Koch Entities do not voluntarily undertake not to rely on the time bar in the Swiss courts.[115]

89 UBS's case is that its claims may be time-barred in Switzerland as the time bar for tortious claims in Switzerland is three years after a claimant becomes aware of all relevant facts giving rise to the tort and the identity of the tortfeasor.[116] If OC 173 is heard in Switzerland and the Swiss courts take the view that the applicable law for the torts is Swiss law under Swiss conflict of laws principles, UBS's claims would be time-barred.[117] UBS argues that where the natural forum is not obvious and the claimant acted reasonably in not preserving time in the foreign jurisdiction, the stay should be refused.[118] In this

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115 Defendant's letter to Court dated 9 September 2025 at para 4.

116 CWS1 at paras 77 to 85.

117 CWS2 at para 26.

118 CWS1 at paras 77 to 78.

Version No 1: 07 Oct 2025 (11:26 hrs)

regard, it says that it was advised that the jurisdiction of the Swiss courts over the disputes was unclear and there are other factors that point towards Switzerland not being an obvious natural forum such as: (a) the Koch Entities and GP are not Swiss companies; (b) the LSFO Cargo was not stored or located in Switzerland; (c) the UBS BLs and Koch BL were not issued in Switzerland; and (d) the torts originated from the Koch Entities, which are incorporated in Singapore.[119]

90 In order to rely on a time bar to show substantial injustice, the burden of proof is on UBS to adduce evidence sufficient to satisfy the court that its claims would be time-barred if the matter is heard in Switzerland. In my judgment, UBS falls short of meeting its burden of proof to establish that there would be substantial injustice if the stay is granted in favour of Switzerland as a result of a time bar.

91 As a preliminary point, UBS has not established that its claims will be time-barred if OC 173 is heard in the Swiss courts. UBS's submission that the three-year time bar under Swiss law will apply to bar UBS's claims is premised upon the Swiss courts' application of Swiss conflict of laws principles resulting in Swiss law governing the torts. In relation to the period of limitation, both the Singapore courts and the Swiss courts would apply their own conflict of laws principles to determine the substantive law governing the claims and apply the limitation period of that substantive law.

92 As regards Singapore law, the position is set out in s 3(1) of the FLPA which states:

Application of foreign limitation law

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119 CWS1 at paras 82 and 83.

Version No 1: 07 Oct 2025 (11:26 hrs)

> 3.—(1) Subject to the following provisions of this Act, where in any action or proceedings in a court in Singapore the law of any other country is required (in accordance with rules of private international law applicable by any such court) to be applied to determine any matter —
>
> (a) the law of that other country relating to limitation applies in respect of that matter for the purposes of the action or proceedings; and
>
> (b) the law of Singapore relating to limitation does not so apply.
>
> …

Under s 3(1) of the FLPA, Singapore law applies the limitation period of the substantive law applicable to the action as determined by Singapore conflict of laws principles. In the present case, the substantive law applicable to the torts will be either UAE law or Omani law (see [74] above).

93 Similarly, as regards Swiss law, the parties' experts agree that the limitation period is governed by the law applicable to the substantive claim as determined by Swiss conflict of laws principles.[120] The parties' experts also agree that, under Art 133 para 2 of the PILA, the applicable law is the law of the place where the tortious act committed. If the loss or injury occurred in a different country and the tortfeasor could have foreseen that result, the law of the country where the loss or injury occurred may apply.[121] However, they diverge on which substantive law governs the torts under Swiss conflict of laws principles:

(a) Ms Hari submits that the substantive law applicable to the torts is most likely UAE law or Omani law but not Swiss law. In her view,

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120 CWS2 at para 23 and DWS2 at para 36.

121 Gillieron's Affidavit at pp 17 and 20 (paras 34(iii) and 37) and Hari's Affidavit at pp 19 to 20 (paras 43 to 44).

Version No 1: 07 Oct 2025 (11:26 hrs)

the applicable law should be determined based on where the tort was committed and not where the result occurred. This is because the claim by UBS is not that the Koch Entities had specific knowledge of the actual holder of the UBS BLs but knew or should have known that there was another unidentified holder or pledgee. Thus, it follows that it was not predictable for the Koch Entities to know that the damage would occur specifically in one place. Most of the unlawful actions (the issuance of the Koch BL, change of the Vessel's route, breach of contract and/or bailment) attributed to the Koch Entities occurred in the UAE, and to a lesser extent in Oman or international waters.[122]

(b) Mr Gillieron submits that the substantive law applicable to the torts is Swiss law. Since UBS's alleged loss constitutes a pure economic loss which consists of the financial loss stemming from the non-repayment of the credit facility granted to GP, the alleged harm stems from where UBS's legal rights and financial interests were impaired which is Switzerland as the domicile of UBS. Further, the rights allegedly infringed (as lawful holder, consignee, pledgee or bailee) derive from or are incorporated in the UBS BLs which are held in Switzerland.[123]

94 If the application of Swiss conflict of laws principles points towards UAE law or Omani law governing the torts, there would be no difference whether the claim is heard in the Singapore courts or the Swiss courts since both courts would apply the limitation period of UAE law or Omani law. In this regard, while there is no evidence of the limitation period of UAE law or Omani

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122 Hari's Affidavit at paras 46 to 55.

123 Gillieron's Affidavit at pp 17 to 18 (paras 33 to 46).

Version No 1: 07 Oct 2025 (11:26 hrs)

law before me, this would be immaterial to the inquiry of substantial injustice since both courts would be aligned in applying the same limitation period. There would thus be no merit to UBS's submission that it would be occasioned substantial injustice if OC 137 was heard in Switzerland. However, if the Swiss courts find that Swiss law governs the claims instead, the three-year time bar would apply and may potentially bar UBS's claims.

95 I am unable to say that either Ms Hari or Mr Gillieron's opinion on the application of Swiss conflict of laws principles is more persuasive at this interlocutory stage. In this regard, I note that the parties do not make any submissions on why either of the expert's reasoning is more persuasive or credible than the other and are content to proceed on the basis that there are differing expert opinions on this point. I thus accept that there is a possibility that UBS's claims may be time-barred in Switzerland if the application of Swiss conflict of laws principles points towards Swiss law governing the torts.

96 However, the fatal flaw in UBS' submission is that UBS fails to state its position on affidavit on when the limitation period commences. All that is stated in Ms Francesca's Affidavit is as follows:

> The Claimant shall rely on Swiss law evidence to show that substantial justice would be denied to the Claimant if the action is stayed in favour of Swiss jurisdiction. The Claimant understands that: (i) the time bar for a claim in conversion under Swiss law is three years; and (ii) Swiss law does not recognise the tort of inducement of breach of contract and/or bailment. In the circumstances, if this action is stayed in favour of Swiss jurisdiction, the Claimant would be barred from prosecuting its claims in Switzerland.

The parties' experts are in agreement that the commencement of the time bar is when the claimant has full knowledge of the tortfeasor, the damage and the facts

Version No 1: 07 Oct 2025 (11:26 hrs)

underlying the claim.[124] However, as correctly pointed out by the Koch Entities,[125] UBS ought to have stated on affidavit when it had knowledge of all the relevant facts giving rise to the torts and the identities of the tortfeasors to establish when the limitation period commences and to persuade the court that its claims would be time barred in the Swiss courts now. In my view, this is a fact within UBS's knowledge that it must aver to in order to satisfy its burden of proof to rely on a time bar to establish special circumstances which justify a refusal of the stay.

97 On this point, Mr Toh points to the Paul Weiss Letter which states in Appendix A:[126]

> [UBS] reached out to Koch on 14 August 2020 – from Richard Strub (counsel at HFW) to Gideon Hollis (counsel at Koch Supply & Trading Ltd.) – informing Koch of [UBS's] rights in the [LSFO Cargo]. [UBS] continued its outreach to Hollis and Lucy Longmore (counsel at Koch Supply & Trading Ltd) and, on September 3 2020, informed Koch that "UBS has not consented to any sale and has not received payment in receipt of the [LSFO Cargo]," and that "any purported sale of the [LSFO Cargo] would be unlawful." [UBS] reached out again on September 7, questioning Koch's status as a bona fide purchaser. On September 9, 2020, Koch brusquely responded that "the concerns and questions … raised are not matters for Koch."

Mr Toh submits that this is evidence showing that UBS was aware of all the relevant facts giving rise to the torts and the identities of the tortfeasors by 14 August 2020 and its claims would be time-barred under Swiss law by 14 August 2023.

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124 Hari's Affidavit at p 23, paras 57 to 60; Gillieron's Affidavit at p 16, paras 28(i) and 31.

125 DWS1 at para 58(c).

126 Sean's affidavit at p 97.

Version No 1: 07 Oct 2025 (11:26 hrs)

98 In my view, while the extract of Appendix A may support the fact that UBS asserted its rights in the LSFO Cargo and stated its position that any purported sale of the LSFO Cargo would be unlawful, this in itself is insufficient to provide the factual basis for the court to infer that UBS had knowledge of *all* the relevant facts giving rise to the torts asserted in OC 173 and the identities of the tortfeasors on 14 August 2020 or even 7 September 2020 such that the limitation period commenced on either of those dates. As this extract states that UBS wrote to the counsel of Koch Supply & Trading Ltd ("Koch Supply"), it is also unclear whether the "Koch" referred to in the extract refers to the Koch Entities, Koch Supply or the Koch Entities' Parent Company. It does not establish that UBS had knowledge at that time that the Koch Entities were the tortfeasors. The mere assertions that the sale of the LSFO Cargo would be unlawful or that "Koch" was not the *bona fide* purchaser of the LSFO Cargo does not amount to an allegation that the Koch Entities had committed the aforesaid torts. This surely cannot be taken to be determinative of whether the limitation period for the claims in OC 173 commenced from those dates.

99 In my view, it is imperative for UBS to state on affidavit its position on when the limitation period commences based on its knowledge of the facts constituting the torts in order to rely on the time bar. It would be prejudicial to the Koch Entities to accept the Paul Weiss Letter as establishing the commencement of the limitation period in the absence of an express averment by UBS on affidavit. The Koch Entities would not have had an opportunity to consider whether to seek permission to adduce more evidence in response to challenge this factual averment. This is sufficient for me to dismiss UBS's contention in respect of the time bar.

100 Finally, even if UBS had met its burden of proof in showing that its claims would be time-barred at the factual level, I am not persuaded on the

Version No 1: 07 Oct 2025 (11:26 hrs)

evidence before me that UBS's conduct in choosing not to commence proceedings in the Swiss courts before the expiry of the limitation period and allowing the limitation period there to lapse is reasonable.

101 Turning first to the extent to which Switzerland is connected to the claim and how obvious the natural forum is or ought to be to the parties, I accept that this is not a case where all the connecting factors of the dispute unequivocally point only to Switzerland as the sole natural forum. As UBS rightly points out, some of the factual connections of the dispute point towards different potential fora: (a) the Koch Entities are incorporated in Singapore; (b) the LSFO Cargo was located in UAE and Oman; and (c) the issuance of the UBS BLs and Koch BL were not in Switzerland.

102 However, there are also significant factual connections to Switzerland which suggest that UBS should have considered that Switzerland may be an appropriate forum for the claims in OC 137 to be heard. These include: (a) UBS being domiciled in Switzerland; (b) the instructions given by Ms Diaz and Mr Bleasdale which are alleged to be the torts emanated from Switzerland; (c) Swiss law governs the CTF Security Agreement and CTF Master Agreement which establishes UBS's pledge over the LSFO Cargo and the UBS BLs; and (d) the damage to UBS's legal and financial interests could be said to have been impaired in Switzerland.

103 Indeed, the evidence suggests that UBS did in fact contemplate proceedings in Switzerland in 2020. The Paul Weiss Letter shows that UBS indicated their intention to take legal action in the Swiss courts or the US courts against the Koch Entities (albeit in relation to fraud or deceit) on the basis that the employees of the Koch Entities worked in and took the complained-of

Version No 1: 07 Oct 2025 (11:26 hrs)

actions from Texas and Switzerland. They also expressed that these are the jurisdictions with the greatest connection to the wrongs committed here.[127]

104 Even if there are multiple potentially appropriate fora, I do not think that UBS's conduct should invariably be considered reasonable in picking a forum of its choice and allowing the limitation period in all other fora to lapse. The burden of proof remains on UBS to adduce sufficient evidence to show that its conduct was reasonable in all the circumstances. In this regard, UBS does not adduce any evidence in support of the decision not to commence proceedings in the Swiss courts before the expiry of the limitation period. It only provides an explanation in Ms Francesca's Affidavit that it did not commence proceedings in Switzerland because it was informed by Paul Weiss that they had taken informal Swiss law advice from the Swiss law firm Homburger to the effect that the jurisdiction of the Swiss courts over the disputes and the Koch Entities was unclear.[128]

105 However, given that UBS is a bank incorporated in Switzerland and the LSFO Cargo was purchased for a significant sum of US$15,458,239.34 (see [8] above), I would consider it reasonable for UBS to take legal advice on the limitation period applicable in Switzerland amongst the other available fora and, if necessary, take out the necessary protective proceedings to preserve its rights. It is unclear to me why UBS chose only to take "informal legal advice" through Paul Weiss. Ms Francesca's explanation is also deficient in that she does not state when this advice was taken (for instance, whether it was after the expiry of the limitation period in the Swiss courts), whether UBS was aware of the applicable limitation period in the Swiss courts and whether it was UBS's

127 Sean's Affidavit at p 93.

128 Francesca's Affidavit at para 45.

Version No 1: 07 Oct 2025 (11:26 hrs)

strategic decision not to take out protective proceedings there. Since the contents of the "informal legal advice" is also not before me, there is no evidential basis for me to find that UBS's reliance on the "informal legal advice" and its decision not to take out protective proceedings in the Swiss courts before their claims were time-barred there was reasonable in all the circumstances.

106 For completeness, if UBS had met its burden of proof to establish that its claims would be time-barred if OC 137 was heard in the Swiss courts and it acted reasonably in failing to take out protective proceedings there, I would have been prepared to consider whether to exercise my discretion to impose a stay conditional upon the Koch Entities undertaking to waive the time bar defence in the Swiss courts even though this was not sought by UBS as an alternative nor offered by the Koch Entities voluntarily. That said, I note that a further difficulty is that the expert evidence before me was silent on whether the time bar under Swiss law is dependent on invocation by the defendant. However, given my conclusion that UBS has not established that it would face substantial injustice on the basis of a time bar if OC 137 is heard in Switzerland, this point is moot.

Swiss law does not recognise the tort of inducing breach of contract

107 The parties' experts agree that Swiss law does not recognise the tort of inducing breach of contract.[129] I note, however, that this is only of relevance insofar as the applicable Swiss conflict of laws principles dictate that Swiss law governs the torts in OC 173. Otherwise, the Swiss court would apply principles

[129] Gillieron's Affidavit at p 19 (para 47) and Hari's Affidavit at p 26 (para 74).

Version No 1: 07 Oct 2025 (11:26 hrs)

of the applicable law which may include torts foreign to the Swiss legal system. As Ms Hari explains in her report:[130]

> 80 In principle, Swiss conflict of laws permit the recognition of foreign legal concepts. If Swiss courts must apply foreign law due to a conflict of laws rule (e.g., Singapore law), which recognizes claims for inducement to breach a contract), they must give effect to all relevant provisions, provided that they do not contradict Swiss public policy (art. 13 [Swiss Private International Law Act]). Thus, the Swiss courts would apply the principles of the applicable law to the claim of inducement to breach a contract.
>
> 82 … In the case of a foreign decision recognizing the tort of inducement of breach of contract, and ordering compensation for damages, Swiss authorities would, in principle, recognize the decision unless it is contrary to Swiss public policy. There is no reason to believe that public policy would be applicable in the present case.

On UBS's best case, it *may* be unable to pursue a claim of inducement of breach of contract if the applicable Swiss conflict of laws principles dictate that Swiss law governs the torts.

108 I am not satisfied that UBS has established that there will be substantial injustice if the proceedings are stayed in favour of the Swiss courts by reason that the Swiss courts do not recognise the tort of inducing breach of contract. In this regard, UBS relies on the Court of Appeal's decision in *Trisuryo Garuda Nusa Pte Ltd v SKP Pradiksi (North) Sdn Bhd and another and another appeal* [2017] 2 SLR 814 ("*Trisuryo*") where the court found that there was strong cause amounting to exceptional circumstances that justified refusing the stay application in favour of Indonesia despite the existence of applicable exclusive jurisdiction agreements pointing towards Indonesia because the claimant would "simply not have been able to obtain any remedy in the foreign court by virtue

130 Hari's Affidavit at p 27 (paras 80 to 82).

Version No 1: 07 Oct 2025 (11:26 hrs)

of the nature of their claim" and the "prejudice that they would have suffered were a stay to be granted was clear and compelling" (at [91], [99] and [100]).

109 In my view, this reliance is misplaced as the facts in this case are distinguishable from that in *Trisuryo*. For one, UBS relies on two alternative causes of action which are the torts of wrongful conversion and inducing breach of contract. Even if it is unable to pursue the latter tort if Swiss law governs the torts, UBS would not be wholly denied any relief as it would still be able to pursue its claim for unlawful conversion. For another, the relief pleaded by UBS is as follows: [131]

> **VI. DAMAGES SUFFERED BY UBS**
>
> 31. If not for the [Koch Entities] converting the LSFO Cargo as aforesaid, and/or causing, instructing, inducing, and/or procuring the [Vessel Owners] to breach their obligations owed to UBS under the contracts of carriage and/or the Attestation Clause contained in or evidenced by the UBS BLs, and/or duty as bailors, as aforesaid, UBS would have been able to present the UBS BLs to the [Vessel Owners], take delivery of the LSFO Cargo, and sell the same, and thereafter apply the proceeds of sale to the outstanding sums which GP owed to UBS. …
>
> 32. As a result of the [Koch Entities'] conversion and/or inducement of the breach of the contracts of carriage contained in or evidenced by the UBS BLs, UBS has suffered loss and damage.
>
> Particulars
>
> (a) The market value of the LSFO Cargo at the time of conversion.
>
> (b) Alternatively, "damages to be assessed".
>
> **IN THE PREMISES, UBS CLAIMS:**
>
> (1) The market value of the LSFO Cargo at the time of conversion, or alternatively, damages to be assessed for

[131] SOC at para 32.

Version No 1: 07 Oct 2025 (11:26 hrs)

> conversion or inducement of breach of the contracts of carriage contained in or evidenced by the UBS BLs and/or bailment;
>
> …

In other words, UBS claims to be entitled to the same relief from the alleged wrongful acts of the Koch Entities under either cause of action. Furthermore, the evidence before me shows that the Koch Entities' alleged wrongful conduct remain actionable by other legal doctrines under Swiss law. In this regard, Mr Gillieron's evidence is that the alleged conduct by UBS could potentially amount to tortious liability if it can be established that: (a) there is unlawful appropriation of the LSFO Cargo or (b) UBS's possessory interest in the LSFO Cargo has been interfered with.[132] As such, UBS would be able to vindicate its claims in the Swiss courts unlike the claimant in *Trisuryo* which would have been denied of *any remedy*. I find that UBS fails to establish that it would be substantially denied justice from Swiss law not recognising the tort of inducing breach of contract.

110 In the premises, none of the circumstances raised by UBS justifies a refusal of the stay at stage two of the *Spiliada* test.

Conclusion

111 In sum, I allow SUM 1108 on the basis that, on a relative analysis, Switzerland is the clearly more appropriate forum than Singapore and UBS has failed to establish that there are special circumstances such that it will be denied substantial justice if the case is not heard in Singapore.

112 I express my appreciation to counsel for their dedication in assisting the Court in the numerous disputed issues in SUM 1108. Their comprehensive oral

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132 Gillieron's Affidavit at p 21 (paras 53 to 55).

Version No 1: 07 Oct 2025 (11:26 hrs)

and written submissions were invaluable and elucidated the key issues with precision.

113 As regards costs of SUM 1108, the Koch Entities submit that $45,000 is appropriate given that SUM 1108 was heard over two half-days, the complexity of the application, 77 authorities were cited by the parties and Senior Counsel argued for the parties. As for disbursements, the Koch Entities submit that $8,420 was incurred for filing fees and $63,000 was incurred as expert fees. UBS, in contrast, submits that $20,000 for costs is appropriate given that there was considerable overlap of authorities cited and it was successful on certain issues. UBS was happy to take the figures for the disbursements raised by the Koch Entities at face value.

114 In consideration that there was involvement of two Senior Counsel, two half-day hearing slots were required for submissions to be made, three rounds of submissions were filed and the issues raised were of some complexity and required expert evidence on Swiss law, I fixed costs and disbursements at $98,000 to be paid by UBS to the Koch Entities forthwith.

Gerome Goh Teng Jun
Assistant Registrar

Version No 1: 07 Oct 2025 (11:26 hrs)

Toh Kian Sing *SC*, Lim Yong'en Nathanael and Ravi Dharini (Rajah & Tann Singapore LLP) for the claimant;
Lok Vi Ming *SC*, Mohammad Haireez Bin Mohameed Jufferie, Zhuang Wenxiong and Ow Jiang Meng Benjamin (LVM Law Chambers LLC) for the defendants.

Version No 1: 07 Oct 2025 (11:26 hrs)