IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 1

Court of Appeal / Civil Appeal No 31 of 2025

Between

Valency International Pte Ltd

… *Appellant*

And

(1) JSW International Tradecorp Pte Ltd
(2) Unicorn Maritimes (India) Pvt Ltd
(3) Oldendorff Carriers GmbH & Co. KG

… *Respondents*

Court of Appeal / Civil Appeal No 32 of 2025

Between

Oldendorff Carriers GmbH & Co. KG

… *Appellant*

And

Valency International Pte Ltd

… *Respondent*

In the matter of Suit No 297 of 2020

Between

Valency International Pte Ltd

… Plaintiff

And

(1) JSW International Tradecorp Pte Ltd
(2) Unicorn Maritimes (India) Pvt Ltd
(3) Oldendorff Carriers GmbH & Co. KG

… Defendants

JUDGMENT

[Tort — Conversion — Whether the giving of instructions to release delivery orders constitutes an act of conversion]
[Tort — Conversion — Standing to sue]
[Admiralty and Shipping — Bills of lading — Financier pledging bills of lading to issuing bank as security for loan — Bank returning bills of lading to financier under trust receipt arrangement — Whether pledge was extinguished by redelivery of the bills to the financier]

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Valency International Pte Ltd
v
JSW International Tradecorp Pte Ltd and others and another appeal

[2026] SGCA 1

Court of Appeal — Civil Appeal Nos 31 and 32 of 2025
Steven Chong JCA, Belinda Ang Saw Ean JCA, Ang Cheng Hock JCA
13 November 2025

12 January 2026 Judgment reserved.

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

1 The appeals in CA/CA 31/2025 ("CA 31") and CA/CA 32/2025 ("CA 32") concern a claim brought by Valency International Pte Ltd ("Valency") in conversion of a large shipment of coal on the MV Stella Cherise (the "Vessel") from Richards Bay Coal Terminal, South Africa, to any port in India. Although framed in conversion, the underlying claim was essentially for the delivery of the cargo without production of the relevant bills of lading, *ie*, it was in essence a misdelivery claim. Various parties were involved in the transaction in one capacity or another. This included the contractual carrier who issued the bills of lading; the voyage charterer; the seller and buyer of the cargo; and the discharge port agent of the vessel. However, the appellant was none of the above – it was the party who financed the buyer for the purchase of the cargo.

2 Typically, in such cases of misdelivery, the usual and most obvious defendants would either be the contractual carrier, for discharging or delivering the cargo without production of the bills of lading; or the buyer, for failing to pay for the cargo. However, neither entity was sued in this action commenced in Singapore. By the time this action was commenced, the claim against the contractual carrier had become time-barred. While Valency did take some action against the buyer in India, it appears that for reasons unknown, the recovery against the buyer was not successful.

3 It was in this context that Valency decided to seek recovery against other entities whom it believed played some role in the discharge or delivery of the cargo. As such, the main defendants in the action below are the first and third respondents in CA 31. The first respondent, JSW International Tradecorp Pte Ltd ("JSW"), was the seller of the cargo and sub-sub-voyage charterer of the Vessel from the third respondent, Oldendorff Carriers GmbH & Co. KG ("Oldendorff"), who in turn sub-voyage chartered the Vessel from the head time-charterer. In order to bring a claim in conversion against them, Valency had to identify the acts of JSW and Oldendorff which were said to constitute the conversion of the cargo. This was eventually premised on their separate instructions to the Vessel's discharge port agent and second respondent in CA 31, Unicorn Maritimes (India) Pvt Ltd ("Unicorn"), for release of certain delivery orders for the cargo to the buyer.

4 Difficulties in establishing causation arose from the fact that JSW and Oldendorff had given separate instructions for the release of the delivery orders on different dates, as well as the fact that the delivery orders had been issued by Unicorn progressively – and as the evidence demonstrated, *surreptitiously* – over a period spanning more than two months. Moreover, the relevant bills of

lading had been pledged by Valency to its own financing bank. In the proceedings below, a judge of the General Division of the High Court (the "Judge") found that:

(a) Valency had no standing to sue JSW or Oldendorff in conversion by reason of the pledge and dismissed the claims accordingly. The Judge was also unpersuaded that JSW's instructions to Unicorn disclosed any act of conversion. These findings are the subject of Valency's appeal in CA 31.

(b) The Judge went further, however, in concluding that Oldendorff's instructions to Unicorn would, in principle, have constituted an act of conversion. Oldendorff challenges the correctness of this finding in CA 32.

(c) So far as Unicorn was concerned, the Judge reasoned that Valency had acquired the requisite *locus standi* following the termination of the pledge and that Unicorn's issuance of delivery orders from that time was actionable in the tort of conversion. The Judge therefore allowed in part Valency's claim in conversion against Unicorn (who neither participated in the trial below nor appealed against this adverse decision).

5 Both appeals ultimately turn on two key issues, *ie*, Valency's standing to sue and whether the evidence disclosed any acts of conversion by JSW or Oldendorff. After considering the parties' submissions, we find that the release instructions given by JSW and Oldendorff did *not* constitute acts of conversion. In any event, we agree with the Judge that at the time of the alleged conversion, Valency did not have the immediate right to possession of the cargo and

therefore lacked the standing to sue these parties in conversion. Accordingly, we dismiss CA 31 and allow CA 32.

The facts

6 The facts underlying the parties' dispute were set out by the Judge in *Valency International Pte Ltd v JSW International Tradecorp Pte Ltd and others* [2025] SGHC 50 (the "Judgment") (at [7]–[51]).

7 By way of a sale and purchase agreement dated 16 May 2018, JSW sold 55,000MT of non-coking steam coal (the "Cargo") to K.I. (International) Limited ("Kamachi").

8 By a charterparty of even date, JSW voyage chartered the Vessel from Oldendorff for the carriage of the Cargo from Richards Bay Coal Terminal to any port in India. Oldendorff had voyage chartered the Vessel from Cara Shipping Pte Ltd ("Cara"), who in turn time chartered the Vessel from its owner, Stella Cherise Pte Ltd ("Stella Cherise").

Kamachi's financing arrangement with Valency

9 On 6 July 2018, Kamachi approached Valency for financing in respect of its purchase of the Cargo from JSW. Valency agreed and two documents were executed in connection with the arrangement:

(a) The first was a sale and purchase contract (the "Valency-Kamachi Contract") backdated to 1 June 2018, by which Valency purportedly agreed to sell the Cargo to Kamachi.

(b) The second was a term sheet dated 6 July 2018 setting out Valency's conditions for providing Kamachi with the financing it sought. The term sheet provided that "[a]ll obligations under the purchase [would] remain between … [Kamachi] and [JSW]". Valency would "organize only the letter of credit with no other contractual responsibility".

10 On 24 August 2018, Valency proceeded to open a letter of credit (the "Valency LC") in favour of JSW with the Hongkong and Shanghai Banking Corporation Limited ("HSBC").

11 On 30 August 2018, JSW discounted the Valency LC with its negotiating bank, Standard Chartered Bank ("SCB"), and received payment of US$5,444,092.97.

The carriage of the Cargo from South Africa to India

12 From 5 to 7 June 2018, 164,996MT of coal was loaded onto the Vessel at Richards Bay Coal Terminal. Two sets of bills of lading were then issued on 7 June 2018 in respect of the entire bulk:

(a) "Initial BL No 1" was issued in respect of 55,000MT of coal (*ie*, the Cargo) with Kamachi as the named notify party; and

(b) "Initial BL No 2" was issued in respect of the balance.

13 On 25 June 2018, Oldendorff informed JSW that Cara had appointed Unicorn as the discharge port agent for the Vessel. This was done on the nomination of JSW, who provided Oldendorff with Unicorn's contact details.

Discharge at Gangavaram Port

14 The Vessel arrived at Gangavaram Port, India ("Gangavaram Port") on 26 June 2018. Three days later, Unicorn sent a letter to JSW by which the former undertook to release the Cargo to the buyer (*ie*, Kamachi) only "upon written instructions from [JSW] who are the title owners of the cargo and hold the financial lien of cargo at [Gangavaram Port]". We shall refer to this as the "Unicorn-JSW Undertaking".

15 After some delay, part of the cargo was discharged from the Vessel at Gangavaram Port from 19 to 21 August 2018. Importantly, this did not include the Cargo that was the subject of Initial BL No 1.

Discharge at Krishnapatnam Port

16 Having completed discharge at Gangavaram Port, the Vessel set sail for Krishnapatnam Port, India ("Krishnapatnam Port") and arrived on 23 August 2018.

17 At or around the time of the Vessel's arrival at Krishnapatnam Port, JSW requested for Initial BL No 1 to be 'switched' into 22 bills of lading, each for 2,500MT of coal. These bills of lading were received by Oldendorff from Cara's shipbroker on 24 August 2018. For the purposes of this judgment, we shall refer to these switch bills as the "22 BLs" collectively and the individual bills in their numeric order (*ie*, "BL-1", "BL-2", and so forth). Kamachi and Valency were jointly named as notify parties in BL-1 to BL-16; Kamachi was the sole notify party named in BL-17 to BL-22.

18 We pause at this juncture to note certain arrangements that were entered into before discharge of the Cargo commenced at Krishnapatnam Port:

(a) On 24 August 2018, Kamachi requested that JSW "deliver" the Cargo to "[Kamachi or] to such party as [JSW believed] to be or to represent [Kamachi], or to be acting on behalf of [Kamachi] *without production of the* [*22 BLs*]" [emphasis added]. Kamachi undertook to indemnify JSW against any loss which it might incur in complying with this request (the "Kamachi-JSW Discharge LOI").

(b) Having received the Kamachi-JSW Discharge LOI, JSW then issued its own back-to-back letter of indemnity to Oldendorff (the "JSW-Oldendorff Discharge LOI") on 27 August 2018. We note that while the Kamachi-JSW Discharge LOI had been issued in support of a request for the Cargo to be delivered to *Kamachi alone*, the JSW-Oldendorff Discharge LOI contemplated delivery to Kamachi *and Valency*.

(c) On the day it received the JSW-Oldendorff Discharge LOI, Oldendorff issued its letter of indemnity to Cara on back-to-back terms, *ie*, for delivery to be made to Kamachi *and Valency* (the "Oldendorff-Cara Discharge LOI"). Cara thereafter informed the Vessel's captain that it had received the Oldendorff-Cara Discharge LOI and that the Cargo "[would] be discharged against LOI due to unavailability of [the 22 BLs]".

19 Between 27 and 31 August 2018, the remaining coal was discharged at Krishnapatnam Port. The Cargo, in particular, was landed into a bonded storage area operated by the port authority (the "Storage Area"). It is undisputed that Valency knew, by 31 August 2018 at the latest, that the Cargo had been discharged at Krishnapatnam Port without production of the 22 BLs.

The events leading to the delivery of the Cargo

The Control Letters

20 On 31 August 2018, Valency requested that Kamachi procure letters from Unicorn and JSW confirming that they would only release the Cargo from the Storage Area against presentation of the 22 BLs (collectively, the "Control Letters"). Kamachi responded to say that the Control Letters could only be provided after JSW had been paid for the Cargo.

21 That notwithstanding, Kamachi, JSW and Unicorn variously prepared and signed the following Control Letters on the same day (but without issuing the same to Valency immediately):

(a) The first was the "Kamachi Letter" addressed to Valency. By this letter, Kamachi agreed that because Valency had a "financial hold" on the Cargo, it would not physically move the Cargo from the Storage Area until it received written instructions from Valency or its appointed agent; instead, Kamachi would only take physical delivery of the Cargo "against issuance of fresh [delivery orders] from [Valency or Valency's agent]".

(b) The second was the "JSW Letter" addressed to Unicorn. By this letter, JSW instructed Unicorn to take Valency's instructions in relation to the issuance of delivery orders as well as the physical delivery of the Cargo to Kamachi. JSW also informed Unicorn that delivery orders were only to be issued against the surrender of the 22 BLs to the Vessel's agents. The JSW Letter was sent to Unicorn on 3 September 2018.

(c) The third was the "Unicorn Letter" addressed to Valency. By this letter, Unicorn acknowledged that the Cargo would only be released upon surrender of the 22 BLs or on Valency's written instructions. It also acknowledged Unicorn's receipt of the JSW Letter and recognised Valency's title to the Cargo.

22 On 3 September 2018, SCB presented the relevant shipping documents – including the 22 BLs, which had been indorsed in blank – to HSBC for collection of payment under the Valency LC. Upon Valency's confirmation that the documents were in order, payment on the discounted Valency LC was remitted by HSBC to SCB on 10 September 2018.

23 On the same day (*ie*, 10 September 2018), Valency informed Kamachi that JSW had received payment for the Cargo and therefore asked that the Control Letters be delivered to it on an urgent basis. It was not until 18 September 2018, however, that Kamachi sent the JSW Letter and Unicorn Letter to Valency; the Kamachi Letter was forwarded to Valency the next day, *ie*, on 19 September 2018.

The trust receipt arrangements between Valency and HSBC

24 On 10 September 2018, Valency applied to HSBC for the sums outstanding on the Valency LC to be repaid (at least notionally) by way of a "import loan" of 14-day tenor under a separate credit facility. HSBC agreed and by this arrangement (described as an "Import Trust Receipt Loan", or the "Loan" for short), Valency's obligation to repay the bank was effectively stood over to 24 September 2018. Various shipping documents, including the 22 BLs, were pledged by Valency to HSBC as security for the Loan (the "Pledge").

25 At the same time, a separate application was made for Valency to take physical possession of the 22 BLs on trust receipt terms, which Valency needed to take or control delivery of the Cargo from the Storage Area (the "Trust Receipt"). The essence of this arrangement, which HSBC likewise agreed to, was an undertaking by Valency to hold the 22 BLs, the Cargo, and/or the proceeds of any sale thereof on trust for HSBC and solely to HSBC's order. Pursuant to this, Valency collected the 22 BLs from HSBC on 11 September 2018.

The delivery of the Cargo to Kamachi

The Oldendorff Release Instruction

26 On 27 August 2018, the same day the JSW-Oldendorff Discharge LOI was issued (see [18(b)] above), JSW requested that Oldendorff hold off on releasing the Cargo to Kamachi because JSW had yet to receive payment from Kamachi for demurrage incurred at Gangavaram Port (see [15] above). Oldendorff agreed to do so and instructed Unicorn "not [to] issue delivery order until our further instructions [*sic*]".

27 Some two weeks later, on 13 September 2018, Oldendorff wrote to JSW to say that it was being pressed by Kamachi for release of the delivery orders. While Oldendorff understood that JSW wished to withhold delivery, it informed JSW that it would instruct Unicorn to release the delivery orders unless JSW gave "clear and explicit instructions" not to do so. JSW replied on the same day to ask for more time and that Oldendorff bear with Kamachi's pressure.

28 It does not appear that Oldendorff responded to JSW's e-mail. Instead, Oldendorff proceeded to issue the following instructions to Unicorn on 13 September 2018:

(a) At 3.57pm, Oldendorff instructed Unicorn to "release delivery order for [the Vessel]".

(b) At 4.18pm, Unicorn replied that these instructions were "noted". However, it sought to "re-confirm" that it should "issue delivery order for entire discharge [quantity]" for both Gangavaram Port and Krishnapatnam Port.

(c) At 4.32pm, Oldendorff confirmed that Unicorn should "issue delivery order for both ports".

(d) At 4.36pm, Unicorn replied that it would "act accordingly" and "issue delivery order for both ports".

We will hereafter refer to the instructions at (a) and (c) above as the "Oldendorff Release Instruction".

The JSW Release Instruction

29 At the time the Oldendorff Release Instruction was issued, JSW had yet to receive payment from Kamachi for the demurrage incurred at Gangavaram Port. After those instructions were given, however, JSW suggested to Oldendorff that any issue of demurrage should be settled between Oldendorff and Kamachi – a suggestion which Oldendorff refuted on grounds that JSW was liable for the same. The question of demurrage aside, Oldendorff also sought JSW's "clear and explicit instructions" in relation to the Cargo at

Krishnapatnam Port, failing which Oldendorff would "instruct agents to release [the] delivery order accordingly".

30 No response was forthcoming from JSW until 17 September 2018, on which date it e-mailed Oldendorff (attaching the Unicorn-JSW Undertaking; see [14] above) to say that "no delivery will be given without JSW written instruction to [Unicorn]". JSW also maintained that it was "solely [Oldendorff's] strategy" whether it wished to hold the Cargo before receiving payment for demurrage from Kamachi.

31 Oldendorff responded several hours thereafter to inform JSW that (a) all the Cargo had been discharged against the JSW-Oldendorff Discharge LOI; and (b) Unicorn had already been instructed to issue the delivery orders. On that basis, Oldendorff declared that its obligations "with regards to delivery … [were] fulfilled", and that it would "not be involved in [JSW's] decision to hold the [Cargo] from their receivers or in any such instructions by [JSW] to their agents".

32 Having received this e-mail from Oldendorff, JSW provided the following instructions to Unicorn on 17 September at 5.51pm (the "JSW Release Instruction"):

> … Please release Delivery order for the balance 55,000 [MT] at Krishnapatnam [Port].
>
> Kamachi will advise the corresponding BL numbers for the above quantity.

The Delivery Orders

33 Over a period of about two months from 17 September to 15 November 2018, Unicorn issued 14 delivery orders (the "Delivery Orders") which

Kamachi eventually used to obtained delivery of the entire Cargo from the Storage Area. It does not appear that Valency had any contemporaneous knowledge of the Cargo having been so delivered.

34 Separately, however, Valency sought to collect payment for the Cargo from Kamachi and appointed the Union Bank of India ("Union Bank") as its collecting bank. Valency sent two sets of "Trade Collection Instructions" to Union Bank enclosing BL-1 to BL-16 (on 14 September 2018) and BL-17 to BL-22 (on 25 September 2018).

35 Additionally, the Import Trust Receipt Loan fell due on 24 September 2018 (see [24] above). Given that Valency had not received payment for the Cargo from Kamachi by this point, it took out two further loans from HSBC dated 24 and 25 September 2018 by discounting the 22 BLs with HSBC with recourse to Valency. The Pledge (see [24] above) was thus brought to an end by 25 September 2018.

36 After delivery of the Cargo was completed, Kamachi paid Valency for a total of 5,000MT of coal:

(a) On 30 November 2018, Kamachi paid for 2,500MT of coal covered by BL-1. With Valency's agreement, Kamachi took delivery of 2,500MT of coal from a separate inventory that was on board another vessel, but which was also owned by Valency.

(b) On 18 December 2018, Kamachi paid for 2,500MT of coal covered by BL-2. This parcel of coal was taken from the 55,000MT parcel (representing the Cargo) discharged at Krishnapatnam Port.

In other words, by 18 December 2018, payment for 50,000MT of the Cargo remained outstanding to Valency (the "Unpaid Cargo"). That parcel of coal was the subject of BL-3 to BL-22.

The commencement of the proceedings below

37 From 18 December 2018 to 30 August 2019, Unicorn informed Valency on several occasions that the closing balance for the Cargo was 52,500MT. These were misrepresentations, given that Kamachi had already taken delivery of all the Cargo by 15 November 2018.

38 On 17 September 2019, Union Bank notified HSBC that Kamachi had failed to make payment for the Unpaid Cargo. BL-3 to BL-22 were thus returned to Valency. On 23 January 2020, Valency notified Kamachi, Cara and Unicorn that it wished to take possession of the Unpaid Cargo to arrange for its sale. On 29 January 2020, JSW incorrectly informed Valency that the Cargo had already been delivered in around August or September of 2018 when the Cargo was in fact delivered to Kamachi between September to November 2018 instead.

39 On 31 March 2020, Valency initially commenced HC/S 297/2020 in the General Division of the High Court claiming against JSW, Stella Cherise and Unicorn. On 17 August 2021 (by then the claim against Stella Cherise had been struck out), the writ was amended to include Oldendorff, claiming against:

> (a) JSW, Oldendorff and Unicorn for conversion of the Unpaid Cargo, on the basis that they instructed and/or allowed and/or facilitated the Cargo to be delivered to Kamachi.

(b) JSW and Unicorn for (i) breach of an implied structured financing agreement; and (ii) conspiracy to injure Valency by unlawful means.

(c) JSW for (i) breach of an alleged contract under which JSW agreed to sell and Valency agreed to buy the Cargo; (ii) inducing Unicorn and Kamachi to breach an implied structured financing agreement; and (iii) inducing Kamachi to breach the Valency-Kamachi Contract.

The decision below

40 The Judge dismissed all of Valency's claims save for its claim in conversion against Unicorn, which was allowed in part: Judgment at [112]–[136] and [139(b)].

41 So far as Valency's claims in conversion against JSW and Oldendorff were concerned, those were dismissed first on the ground that Valency had no standing to bring them: Judgment at [73]. Further, the Judge opined that while the JSW Release Instruction did not constitute an act of conversion, the Oldendorff Release Instruction did: Judgment at [82]–[101].

Valency's standing to sue in conversion

42 The foundational premise of Valency's conversion claim was that it was entitled to immediate possession of the Unpaid Cargo at the times of the alleged conversion because it was (a) the owner of the Unpaid Cargo; or (b) the holder of the 22 BLs, which therefore conferred upon it the right to immediate possession of the Unpaid Cargo: Judgment at [55].

43 In relation to the first plank of Valency's case, the Judge found that Valency had not proven its ownership of the Unpaid Cargo – there was no evidence that Valency had purchased the Unpaid Cargo from JSW, and the mere fact that Valency had financed Kamachi's purchase from JSW did not make it the owner of the Unpaid Cargo. The Judge further observed that ownership was, in any event, not *ipso facto* sufficient to give Valency the requisite standing to sue. The crux of the inquiry was whether Valency had the immediate right to possess the Unpaid Cargo at the time of the alleged acts of conversion, and not whether it was the owner of the same: Judgment at [57]–[58].

44 The Judge then noted that, on Valency's case, Oldendorff and JSW had converted the Unpaid Cargo when they gave their instructions for release of the Delivery Orders (*ie*, on 13 and 17 September 2018 respectively). The Judge reasoned that on those dates, the 22 BLs had been pledged to HSBC as security for the Loan (see [24] above), in which case it was HSBC – and not Valency – who had the right to immediate possession of the goods and therefore standing to sue for conversion. In reaching this conclusion, the Judge observed that the terms of the Trust Receipt expressly preserved HSBC's security interest in the 22 BLs, and he therefore rejected Valency's argument that its receipt of the 22 BLs pursuant to the Trust Receipt (see [25] above) had terminated the Pledge: Judgment at [61], [65]–[68] and [73].

45 On the other hand, the Judge accepted that Valency acquired the immediate right to possession of the Cargo on 25 September 2018, that being the date on which the Pledge came to an end (see [35] above). On that footing, it was held that Valency had the requisite standing to sue Unicorn for acts of conversion it may have perpetrated on or subsequent to 25 September 2018: Judgment at [77]–[78].

Whether the evidence disclosed any acts of conversion by the defendants

46 Although the finding that Valency had no standing to claim against JSW or Oldendorff in conversion was dispositive of the claim, the Judge proceeded to consider whether JSW's and Oldendorff's instructions to Unicorn could, in principle, have constituted acts of conversion.

47 So far as the Oldendorff Release Instruction was concerned, that question was answered in the affirmative for the following reasons:

(a) Before the Judge, it was submitted for Oldendorff that its instructions and the Delivery Orders had only been issued to facilitate the Vessel's berthing and discharge of the Cargo at Krishnapatnam Port (as opposed to allowing Kamachi to take receipt of the Cargo). The Judge rejected Oldendorff's argument principally on the ground that it was inconsistent with Oldendorff's pleaded defence: Judgment at [92]–[94].

(b) In any case, the Judge took the view that Oldendorff's unpleaded defence was without merit. The Cargo had been fully discharged at Krishnapatnam Port some two weeks prior to the issuance of the Oldendorff Release Instruction – it could not, therefore, have been the case that those instructions were issued in connection with the Vessel's berthing or the discharge of the Cargo to the Port. Further, prior to the issuance of the Oldendorff Release Instruction, JSW had requested that Oldendorff hold off on giving instructions to Unicorn for release of the Delivery Orders in order to pressure Kamachi to pay for the outstanding demurrage (see [26] above). This must have meant that the Delivery

Orders were for the delivery of the Cargo to Kamachi; otherwise, there would have been no leverage against Kamachi: Judgment at [95]–[99].

48 A different view was taken, however, in respect of the JSW Release Instruction. The Judge reasoned that, when understood in the context of the JSW Letter and the Unicorn Letter, it was clear that those instructions were only intended to release Unicorn from its obligations owed to JSW under (a) the Unicorn-JSW Undertaking; and (b) the JSW Letter. The JSW Release Instruction did not, and could not, release Unicorn from its undertaking to *Valency* under the Unicorn Letter, *ie*, that the Cargo would only be released upon surrender of the 22 BLs or on Valency's written instructions. JSW knew of this obligation as it had received a copy of the Unicorn Letter. This meant that in giving its instructions to Unicorn, JSW could not have intended to interfere with Valency's interest in the Cargo: Judgment at [82]–[85]. The Judge considered this finding to be consistent with JSW's and Unicorn's conduct in two previous transactions which likewise involved Kamachi and Valency: Judgment at [86]–[89].

49 Turning then to Unicorn's role in the material events, the Judge observed that the Delivery Orders clearly called for delivery of the Cargo to Kamachi as "Receiver". In the absence of any written instructions by Valency to that effect or presentation of the 22 BLs (as required by the Unicorn Letter), the Judge was satisfied that the issuance of the Delivery Orders on or after 25 September 2018 constituted acts of conversion by Unicorn: Judgment at [102].

The issues

50 To recapitulate, CA 31 is Valency's appeal against the Judge's finding that (a) it had no standing to sue Oldendorff and JSW in the tort of conversion;

and (b) the giving of the JSW Release Instruction did not constitute an act of conversion. CA 32, on the other hand, is Oldendorff's cross-appeal against the Judge's conclusion that the giving of its instructions to Unicorn for the release of the Delivery Orders was an act of conversion to which liability could attach.

51 On that footing, there were two categories of issues that arose for our determination, namely:

(a) whether the issuance of the JSW Release Instruction and the Oldendorff Release Instruction amounted to acts of conversion (the "Act of Conversion Issue"); and

(b) whether Valency had the standing to sue JSW and Oldendorff in the tort of conversion (the "Standing Issue").

The Act of Conversion Issue

The timing of the alleged acts of conversion

52 Before delving into the question of whether the Oldendorff and JSW Release Instructions constituted acts of conversion, we make some preliminary observations regarding the *dates* of the alleged acts of conversion. Valency submits that although JSW and Oldendorff issued their Release Instructions on 17 and 13 September 2018 respectively, they should remain liable for conversion until the date on which the final Delivery Order was issued and Kamachi completed taking delivery of the Cargo, *ie*, 15 November 2018 (see [33] above). In other words, Valency submits that the Judge misunderstood its case to be that the acts of conversion occurred *only* on 13 and 17 September 2018 (see [44] above). It had also allegedly "relied on the dates when Unicorn

acted on the said instructions" as giving rise to liability on the part of JSW and Oldendorff.

53 We reject this argument for several reasons. First, it was, at best, unclear whether Valency had taken the same position in the proceedings below:

(a) In its Statement of Claim (Amendment No. 2) dated 17 August 2021, Valency pleaded that the Cargo had been converted "sometime from on or about 17 September 2018 *up until on or about 15 November 2018*" [emphasis added].

(b) In its Opening Statement at the trial, Valency maintained the position that *Oldendorff* should remain liable for the extended period until Kamachi completed taking delivery of the Cargo. However, in particularising its claim *vis-à-vis* JSW, Valency did not expressly state whether it was taking a similar position that there was an extended period of liability. Valency simply argued that JSW had issued a Release Instruction and that it was therefore liable in conversion.

(c) In its Written Closing Submissions, Valency continued to omit any reference to *JSW* being liable for such an extended period of time. Again, it highlighted the issuance of the JSW Release Instruction and argued that in issuing the Instruction, JSW converted the Cargo. In relation to its claim against *Oldendorff*, Valency framed its case in the following terms:

> Valency's position is that Oldendorff converted the cargo **when it issued instructions to Unicorn on 13 September 2018** to issue delivery orders to Kamachi for the Cargo.
>
> [emphasis added in bold]

There was similarly a conspicuous absence of any submission regarding Oldendorff's extended liability until 15 November 2018.

(d) Finally, in oral closing submissions, the Judge sought to clarify Valency's position on the dates of the alleged conversion in its claim against Oldendorff. We consider the following exchange to be material:

> COURT: Mr Haridass, can I confirm your case against Oldendorff is based on the 13th [September]? I think you have said that?
>
> MR HARIDASS: **Yes, your Honour. And for the purpose of assessment of damages, those were the dates as well, your Honour**.
>
> [emphasis added in bold]

54 It is therefore apparent to us that Valency had changed tack in the course of the trial below – while it initially pleaded that JSW and Oldendorff were liable until 15 November 2018 (see [53(a)] above), it was by no means clear whether Valency was still pursuing that line by the close of the trial. That was precisely why the Judge sought clarification from Valency on this issue, following which Valency apparently confined its case on conversion to the dates on which the respective Release Instructions were issued to Unicorn. That was how the Judge understood Valency's case, and we see no basis to disagree. In any event, even if Valency's case on appeal is premised on the extended period of liability, we would have rejected the argument all the same and arrived at the same conclusions. We elaborate on this below.

55 While Valency relied on the case of *Ong Teck Soon v Ong Teck Seng* [2017] 4 SLR 819 ("*Ong Teck Soon*") to argue that "an act of conversion is not merely giving the instructions but also when the instructions are acted upon", that case is entirely distinguishable from the present factual matrix. In *Ong Teck*

Soon, the court considered a situation where a single defendant acting alone had pursued a course of conduct that amounted to the conversion of certain cheques. Materially, the defendant had (a) inserted face values and payee names onto a set of cheques that had been pre-signed by a testator; and (b) misappropriated the withdrawn funds by depositing them into his own bank account. The court held that *both* acts disclosed a "clear exercise of dominion over the cheque" and were therefore acts of conversion: at [22].

56 Those facts stand in stark contrast to the dispute before us. Valency avers that the JSW and Oldendorff Release Instructions had induced Unicorn, *a separate party*, to issue the Delivery Orders to Kamachi. We note that Valency made no submissions to the effect that Unicorn was acting as JSW's or Oldendorff's agent, or that the former's acts should be attributable to the latter. It has also not appealed against the Judge's finding that there was no unlawful means conspiracy between JSW and Unicorn: Judgment at [126]–[130]. In the circumstances, the observation at [22] of *Ong Teck Soon* is of no assistance to Valency. In our judgment, for Valency to positively establish that JSW and Oldendorff were liable for the misdelivery of the Cargo to Kamachi, it must prove the *chain of causation* between the respective Release Instructions and the issuance of the Delivery Orders by Unicorn. It is this crucial point that we now turn to address.

Valency has not demonstrated the causal nexus between JSW's and Oldendorff's instructions and Unicorn's issuance of the Delivery Orders

57 The tort of conversion is committed when the defendant deals with the claimant's goods in such a manner as to constitute either an unjustifiable denial of the latter's rights in them or an assertion of rights inconsistent therewith: *Bansal Hemant Govindprasad v Central Bank of India* [2003] 2 SLR(R) 33

at [22]. It has therefore been said that "[i]nconsistency is the gist of the action", such that "there is *no need* for the 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*" [emphasis added]: *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 ("*Tat Seng*") at [45]. Consistent with this is the observation in *Bunnings Group Ltd v CHEP Australia Ltd* [2011] NSWCA 342 that "[i]t is important to appreciate that the intention as to the act or dealing should be assessed in the real (here commercial) context in which the act takes place" (at [127]).

58 It will be readily apparent that in contrast to the paradigmatic instances of conversion – where the defendant's wrongful act coincides with the claimant's loss or injury to its rights – JSW's and Oldendorff's alleged defaults, as was highlighted by counsel for Oldendorff, Mr Kenneth Tan SC, were inchoate until such time as Unicorn proceeded to release the Delivery Orders, which in turn paved the way for Kamachi to take delivery of the Cargo without Valency's knowledge or consent. While a similar concession had not been made explicitly in the proceedings below, Valency's counsel, Mr Ajaib Haridass, fairly accepted at the hearing before us that the giving of JSW's and Oldendorff's instructions could not, without more, have amounted to acts of conversion; those instructions had to be *acted upon* before any liability in conversion could attach. This is consistent with Valency's acceptance that "merely giving instructions to release the [Cargo] does not result in conversion as it is still *inchoate* until Unicorn takes steps to act on the instructions and issues the [Delivery Orders]" [emphasis added].

59 Mr Haridass's concession would be consistent with the view that a bare denial of title "will not, in the absence of conduct directly affecting the goods,

give rise to a liability in conversion": Michael Bridge *et al, The Law of Personal Property* (Sweet & Maxwell, 3rd Ed, 2022) at para 33-016. This proposition is well illustrated by several cases which we now turn to. On the facts of these cases, intentional acts or conduct that directly affected or impacted the subject property was factually linked to the claimant's loss of right to possess, use or control of that subject property.

60 *Smith (Administrator of Cosslett (Contractors) Ltd) v Bridgend County Borough Council* [2002] All ER 292 concerned a dispute over a coal washing plant between the local council and a company (the "company") who had entered into administration. The council argued that it did not commit any act of conversion of the plant because even though the council had entered into a contract which gave a third-party contractor ("Burrows") the right to take away the plant, the company had no right to possession *at the time* of entering into the contract (at [37]). The court rejected this argument, observing (at [39]):

> The council consented to the removal of the plant by Burrows in violation of the company's right to possession. The fact that they gave such consent in advance, at a time when the company was not entitled to possession, can make no difference. The consent remained effective until the moment when Burrows took the plant. This was sufficient to amount to a conversion.

61 In *Empresa Exportadora de Azucar v Industria Azucarera Nacional S.A. (The "Playa Larga" and "Marble Islands")* [1983] 2 Lloyd's Rep 171, a cargo of sugar was being discharged when a decision was made by the defendant seller and the Cuban government to withdraw the vessel from the discharge port. This was despite the claimant buyer having already paid for and acquired title to the cargo. Before the English Court of Appeal, the seller argued that they "played [no] further part in the diversion of the vessel or the disposal of the sugar" after the initial decision to withdraw the vessel, and there was therefore no intention

to permanently deprive the buyer of its sugar (at 180–181). The court rejected these arguments. Pertinent to the appeals at hand was the court's observation that it would have been apparent to the seller "that the decision [to withdraw the vessel] was irrevocable without the concurrence of the politicians"; the effect of the decision was to deprive the buyer of its sugar and "everything that occurred thereafter was done in pursuance of that decision" (at 181). The short point, therefore, is that the seller remained liable in conversion for the eventual consequences of a decision which it was a party to.

62 It seems to us obvious that a bare denial of title remains an inchoate act in the absence of proof that it had *caused* the event which ultimately crystallised the injury to the claimant's interest. In short, Valency must establish the factual causality of JSW's and Oldendorff's instructions – that their instructions had in a way actually interfered, intentionally, with Valency's loss of right to possess, use or control the Cargo.

63 That Valency needed to establish this causal nexus was a point taken up by Oldendorff in its written closing submissions before the Judge. The argument was that on a proper analysis of the prevailing circumstances, the Oldendorff Release Instruction was "not the proximate cause for the issuance of the delivery orders by Unicorn". JSW did the same (although perhaps more obliquely) in its written closing submissions, where it was argued that "[the] issuance of the JSW Release Instructions did not facilitate or enable or affect Unicorn's ability to issue the [Delivery Orders]". Unfortunately, the factual causal link was not explored at any length in the Judge's decision and it is on this score that we have come to a different view of JSW's and Oldendorff's instructions to Unicorn. In particular, we are not satisfied that Valency has proven that either the JSW Release Instruction or the Oldendorff Release Instruction caused Unicorn to

release the Delivery Orders (as opposed to Unicorn simply having acted on a frolic of its own).

64 Looking first to the JSW Release Instruction, those instructions cannot be understood without regard to the surrounding context of communications leading up to the instruction. In our view, the following facts militated against a finding that the JSW Release Instruction caused Unicorn to issue the Delivery Orders:

(a) First, at the time of the JSW Release Instruction, Unicorn remained bound by the Unicorn Letter, pursuant to which it had undertaken to Valency not to release the cargo without Valency's instructions. Unicorn would have been aware of its concurrent obligations to Valency under the Unicorn Letter. We find it inherently unlikely – and no evidence was put before us showing otherwise – that (a) Unicorn would have understood the JSW Release Instruction as an instruction to breach its obligations to Valency or to supersede its obligation to Valency, and (b) even if it was so understood, Unicorn had acted on such an instruction in any event.

(b) Second, and as the Judge pointed out at [90] of the Judgment, Unicorn lied to Valency about the closing balance of the Cargo on three occasions. We agree with his finding that these lies demonstrated that Unicorn knew it still needed Valency's instructions before issuing the Delivery Orders. If the JSW Release Instruction had indeed been operative on Unicorn's decision to release the Cargo, the obvious and self-interested course of action when confronted by Valency would have been to shift the blame to JSW by informing Valency that JSW had instructed them to release the Delivery Orders – Unicorn did not do so.

(c) Third, we agree with the Judge that the prior transactions between the same parties were indicative that Unicorn was aware of the need to wait for Valency's instructions before releasing the Cargo (Judgment at [87]–[88]).

65 The only fact tending to suggest that Unicorn had acted on the JSW Release Instruction was the fact that Unicorn issued the first of the Delivery Orders a few hours after receiving the JSW Release Instruction. However, we do not think that this coincidence in timing is sufficient on its own to establish causation, particularly when viewed in light of the contraindications identified above.

66 Considering our observations above in relation to the JSW Release Instruction, we have similar (if not even greater) difficulties with finding that the Oldendorff Release Instruction caused Unicorn to issue the Delivery Orders, since that instruction was given some four days in advance of the JSW Release Instruction.

67 In any event, the Oldendorff Release Instruction, on its face, was not an instruction or direction for Unicorn to either deliver the Cargo without presentation of the 22 BLs or Valency's written consent; nor do we see any reason to read such an instruction or direction into the words used by Oldendorff.

68 The last point we would make on factual causation is that there was insufficient evidence to shed light as to which of the two release instructions Unicorn had chosen to follow (if any). In the absence of more conclusive evidence, it struck us as arbitrary to find that one but not the other had been

operative on Unicorn's decision to release the Delivery Orders. This is especially since the Oldendorff Release Instruction was issued four days before the JSW Release Instruction. Having regard to the chronology of events, it was at least arguable that Unicorn did not act on the earlier instructions from Oldendorff. Therein lies the importance for Valency to establish the critical causal link, which it has unfortunately failed to do. In addition, the fact that the Delivery Orders were released progressively over a period of two months would point against any inference that either or both of JSW's or Oldendorff's Release Instructions had been operative on Unicorn's mind. If Unicorn was acting pursuant to those release instructions, *all* of the Delivery Orders would have been released soon thereafter instead.

69 At this juncture, we pause to consider Valency's submission that the instructions given by Oldendorff and JSW had to be appreciated in the context of the JSW-Oldendorff Discharge LOI:

> (a) The argument begins with the observation that in Oldendorff's e-mail to JSW of 17 September 2018, the former stated that "all cargo has been discharged against LOI and agents have been instructed to issue delivery orders accordingly". On Valency's case, these remarks indicated that the Oldendorff Release Instruction had been given by Oldendorff with the view to accomplishing its obligations under the JSW-Oldendorff Discharge LOI (*ie*, to deliver the Cargo to Kamachi without the bills of lading having been presented) and without any intention that such delivery should be further gated by any consent on Valency's part. The submission, in other words, is that Oldendorff intended for its instructions to be directly acted upon and in disregard of Valency's interest in the Cargo.

(b) As regards the JSW Release Instruction, a related argument made by Valency is that JSW would also have known that Oldendorff was acting on the JSW-Oldendorff Discharge LOI and if JSW truly intended for delivery to be made only on Valency's instructions (per the Unicorn Letter), then JSW should have informed Oldendorff that the LOI had since been superseded by the Unicorn Letter.

70 We reject these arguments for two reasons. First, Valency's proposed interpretation of the Oldendorff Release Instruction is untenable. The JSW-Oldendorff Discharge LOI had been issued on 27 August 2018, the same day the Vessel commenced discharge at Krishnapatnam Port. Viewed together with the contemporaneous correspondence, we are of the view that the parties had intended for the LOI to indemnify Oldendorff against *discharge* of the Cargo at Krishnapatnam Port (notwithstanding that on its face it referred to "delivery"):

(a) On 24 August 2018, Oldendorff e-mailed Unicorn stating "[w]e are waiting for LOI from charterers regarding discharge w/o [original bills of lading]".

(b) On 27 August 2018, Unicorn's e-mail to Oldendorff reads: "[u]understand from receivers / chtrs jsw sg necessary LOI have already submitted from discharge instruction". Oldendorff responded saying "[w]e are in the middle in processing LOI. Trust discharge instructions will come from owners shortly".

(c) On 17 September 2018, Oldendorff wrote to JSW informing them that "all cargo has been discharged against LOI and agents have been instructed to issue delivery orders accordingly" (see above at [31]).

If the parties' expectation was for the JSW-Oldendorff Discharge LOI to indemnify potential liabilities arising out of the discharge of the Cargo, this puts paid to Valency's argument that the JSW-Oldendorff Discharge LOI was still operative on the parties' minds when the release instructions were issued.

71 For these reasons, we allow Oldendorff's cross-appeal in CA 32 and hold that the giving of its instructions to Unicorn for release of the Delivery Orders attracted no liability in the tort of conversion. That we have arrived at the same conclusion in respect of JSW's instructions is also dispositive of Valency's appeal in CA 31.

The Standing Issue

72 In the preceding section, we explained our reasons for finding that the Oldendorff and JSW Release Instructions were not acts of conversion. On this basis, we allow CA 32 and dismiss CA 31. We now turn to explain why we agree with the Judge that Valency had no standing to sue JSW and Oldendorff in the tort of conversion in any event, which conclusion furnishes additional grounds for dismissing CA 31.

73 To recapitulate, Valency submits that:

(a) The Trust Receipt could not have preserved HSBC's interest in the 22 BLs and that their release to Valency sufficed to bring the Pledge to an end, not least because Valency never took the 22 BLs *qua* HSBC's agent. The argument, therefore, is that at the time of the alleged acts of conversion, it was Valency – not HSBC – who had the right to immediate possession of the Cargo (and hence standing to sue).

(b) Even if the Pledge had not been so extinguished, Valency had the right to immediate possession of the Cargo by virtue of its status as holder of the 22 BLs, the presentation of which would have entitled it to demand delivery of the goods.

74 For the reasons that follow, we were not persuaded by these arguments.

An overview of the applicable legal principles and Valency's arguments

75 Conversion is a common law cause of action that imposes liability for "wrongful interference with the *right to* ***possession*** of a chattel" [emphasis added]: *MCC Proceeds Inc v Lehman Brothers International (Europe)* [1998] 2 BCLC 659 at 671. Therefore, it is well-established that a party will have the right to sue in conversion if and only if he had, at the time of the alleged conversion, either (a) *actual* possession of; or (b) the *immediate right to possess* the relevant goods: *The "Cherry"* [2003] 1 SLR(R) 471 ("*The Cherry*") at [58]. Both in the trial below and in the appeals, it is not disputed that Valency did not have actual possession of the Cargo at the time of the alleged conversion. The crux of the Standing Issue is thus whether Valency was entitled to *immediate possession* of the Cargo at the material times.

76 It is important to highlight that the title owner of the allegedly converted goods will not always be the holder of the right to immediate possession, *ie*, the owner will not always have the standing to sue in conversion: *The Cherry* at [64]; *Tat Seng* at [49]; *365 Business Finance Ltd v Bellagio Hospitality WB Ltd; Court Enforcement Services Ltd v Marston Legal Services Ltd* [2020] 3 WLR 777 at [61]. In a case where the owner of a chattel owns the *complete bundle of rights* attached to ownership, including the right to possess the goods, it is uncontroversial that he or she will be the proper party to sue in conversion. Or,

if the owner enters into a bailment at will and passes possession of the chattel to a bailee on the understanding that the bailor will at any time be able to require the return of the chattel, there is no doubt that the bailor (owner) holds superior possessory title to the chattel and is entitled to sue in conversion: Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at paras 11.020 and 11.036. However, in a case where a chattel is let or pledged and where the contract confers the right of possession unto the hirer or pledgee (as the case may be), it is the hirer or the pledgee that will have the exclusive right to possess the chattel for the duration of the contract or pledge *vis-à-vis* the owner; and thus, it is the hirer or pledgee that is entitled to sue in conversion: Andrew Tettenborn *et al*, *Clerk & Lindsell on Torts* (Sweet & Maxwell, 24th Ed, 2023) ("*Clerk & Lindsell*") at para 16-61.

HSBC's special interest in the 22 BLs and the Cargo was preserved by the Trust Receipt arrangement

77 A pledge – such as that of the 22 BLs by Valency to HSBC described at [24] above – generally involves the actual or constructive delivery of a good to a pledgee, who then acquires a "***special*** property" in the pledged asset. Subject to the specific terms of the pledge, the pledgee will generally be entitled to retain possession of the good until the pledge is honoured; or failing which, to sell the good and take repayment from the sale proceeds. The pledgor, on the other hand, holds the "***general*** property" in the good, which generally refers to the badge of ownership: *Chase Manhattan Bank NA v Wong Tui Sun* [1992] 3 SLR(R) 436 at [24]; Roy Goode & Louise Gullifer, *Goode and Gullifer on Legal Problems of Credit and Security* (Sweet & Maxwell, 6th Ed, 2017) at para 1-47; Hugh Beale *et al*, *The Law of Security and Title-based Financing* (Oxford University Press, 3rd Ed, 2018) at para 5.18.

78 In a case such as the present where a set of bills is pledged to a bank as security for an advance, it will often be necessary for the bank to return physical possession of the pledged bills to the borrower; allowing the latter to deal with the documents or the goods and subsequently repay the advance: *The "Yue You 902"* [2020] 3 SLR 573 at [116], citing Michael Bridge *et al*, *Benjamin's Sale of Goods* (Sweet & Maxwell, 10th Ed, 2017) at para 18-286. Given that a pledge consists in the delivery of the good to the pledgee (see [77] above), it may appear that an unconditional return or redelivery of the good to the borrower-pledgor will effectively put an end to the pledge. Therefore, to circumvent such an outcome, it is common for pledgees to redeliver a pledged asset to the pledgor under a trust receipt arrangement – this was precisely what occurred in the present case. Quite commonly, the trust receipt or letter of trust governing the redelivery of the pledged asset will stipulate that the redelivery is for some designated purpose (*eg*, for the pledgor to hold, take delivery, or deal with the goods represented by the redelivered bills). It may also state that the pledgor is receiving the pledged articles on behalf of the pledgee, who will thus continue in constructive possession: see Roy Goode & Ewan McKendrick, *Goode and McKendrick on Commercial Law* (LexisNexis, 6th Ed, 2020) at para 35.150.

The proper approach to determining whether a pledge is extinguished by the redelivery of the pledged assets to the pledgor

79 Following from the above, the first (and main) inquiry in the Standing Issue is this: what is the test to determine whether a trust receipt arrangement has sufficiently preserved a pledgee's special property in the pledged good, such that the pledgee reserves the standing to sue in conversion *vis-à-vis* the pledgor? On Valency's case, the pledge would only be preserved if the terms of the trust receipt established an ***agency*** *relationship* between pledgor and pledgee. Absent the establishment of such a relationship, if the pledgor merely held the

redelivered asset as the pledgee's *trustee*, the pledge would effectively be put to an end. In this case, Valency averred that there was no agency relationship created by the Trust Receipt between HSBC and itself – therefore, when HSBC delivered the 22 BLs to Valency on 11 September 2018 (see [25] above), the Pledge was put to an end and HSBC had thus relinquished its "special property" in the Cargo.

80 Valency's argument is premised on a narrow and strained interpretation of three key English authorities:

(a) In *Official Assignee of Madras v Mercantile Bank of India, Limited* [1934] All ER Rep 237 ("*Mercantile Bank*"), a bank financed a borrower's purchase of a parcel of cargo against the pledge of a set of blank endorsed railway receipts. When the cargo arrived, the bank returned the receipts to the borrower to enable it to take delivery of the goods. The court found that the redelivery of the railway receipts did not extinguish the pledge. Materially, Lord Wright held (at 243–244):

> The borrowers did not part with the possession of the goods or receipts in the juridical sense of that word; they merely parted with the custody, by entrusting the receipts to the borrowers as their **agents or mandatories for the special purpose of convenient dealing with the goods** by collecting them from the Port Trust and unloading them from the railway wagons or transit sheds and putting them into the X godown warehouse **on behalf of the borrowers**. **Such action does not involve a parting with possession and accordingly, it does not in any way affect rights of pledge** …
>
> [emphasis added in bold]

(b) In *Re David Allester, Limited* [1922] 2 Ch 211 ("*David Allester*"), a bank financed a borrower's purchase of a parcel of goods

on the security of the deposit of the documents of title to the goods. The bank later released the documents to the borrower to allow it to take delivery of the goods. The release was governed by a letter of trust, which stated that the borrower held the goods "in trust *on [the bank's] account*" [emphasis added], and that it "[undertook] to hold the goods when received, and their proceeds when sold as [the bank's] trustees". In relation to the nature of this letter of trust, Astbury J observed as follows (at 216–217):

> The pledge rights of the bank were complete on the deposit of the bills of lading and other documents of title. These letters of trust are **mere records of trust authorities given by the bank and accepted by the company stating the terms on which the pledgors were authorized to realize the goods on the pledgees' behalf**. The bank's pledge and its rights as pledgee do not arise under these documents at all …
>
> …
>
> In the present case the **letters of trust were not issued for the purpose of creating a security at all; the security existed, and they were mere records of authorities given to the pledgors to act as trustee agents for sale on behalf of the bank**.
>
> [emphasis added in bold]

(c) In *North-Western Bank, Ltd v Poynter, Son, and Macdonalds* [1891–94] All ER Rep 754 ("*North-Western*"), a borrower pledged a bill of lading to a bank in order to obtain an advance from the bank. The bank later returned the bill to the borrower against presentation of a letter of trust, which stated that the borrower (a) would hold the bill "as trustees for [the bank]"; (b) was empowered to "enter into contracts for the sale of the [good] on [the bank's] behalf"; and (c) would "pay the proceeds of all such sales … to [the bank]" (at 755–756). Lord Herschell LC observed that the borrower was holding the bill as the bank's "*agent*

> for the purpose of sale" [emphasis added], and the redelivery thus did not put an end to the pledge (at 757 and 759).

81 Valency highlights that in the cases summarised above, the courts either referred to the pledgor as being the pledgee's agent (in *Mercantile Bank* and *North-Western*) or stated that the pledgor would act on the pledgee's behalf (in *David Allester*). Valency avers that this was the proper legal basis on which the pledge was found to have been preserved. In cases like the present where the pledgor was merely holding the bills as the pledgee's trustee, this would not suffice to preserve the latter's special property in the goods.

82 We were unable to accept Valency's argument for a number of reasons. As a starting point, it did not appear to us that the English courts had intended to draw any such stark distinction between a "trustee" and an "agent". Rather, the courts used these terms interchangeably when referring to the pledgor who took redelivery of the pledged asset. For instance, Astbury J referred to the pledgor as the pledgee's "trustee agent" in *David Allester* (at 217); in *North-Western*, the terms of the letter of trust also stated that the pledgor would repossess the goods *qua* "trustee" (at 755).

83 In any event, as this court recently emphasised in *Re Fullerton Capital Ltd* [2025] 1 SLR 432 (at [51]), the words and phrases used in a judgment should not be analysed as if they bear the same textual authority as the words of a statute. In our judgment, nothing in the three English cases turned on whether there was an agency relationship between the borrower and bank; to the contrary, this seemed to be nothing more than a convenient way for the courts to describe the reason or capacity in which the pledgor received the goods from the pledgee. Instead, the focus in each of these cases appeared to be on the

circumstances surrounding the redelivery of the pledged goods – including the language of the trust letter and the purpose for which redelivery was made – to determine whether the respective banks intended to surrender their interest in the pledged asset. This was also the observation of the High Court of the Justice Queen's Bench Division in the more recent decision of *Bassano v Toft* [2014] EWHC 377 (QB) ("*Bassano*"). Having conducted a survey of the English caselaw, including the three cases summarised above (see *Bassano* at [53]), Popplewell J identified the general principle to be as follows (at [57]):

> I consider the relevant principle to be this. The pledgee's special interest, whether or not properly described as proprietary in nature, may be defeated by a superior property interest held by someone other than the pledgor, such as that of a true owner from whom the pledgor had derived no good title, or a subsequent bona fide purchaser for value without notice of the pledge (see *Babcock v Lawson* (1880) 5 QBD 284 per Bramwell LJ at 286). **But in the absence of a superior property claim by a third party, the pledgee's special interest is not lost by parting with possession of the chattel unless he does so in circumstances which constitute a voluntary surrender of his interest**. **What is required is a voluntary surrender of his special interest as pledgee, rather than simply a surrender of physical possession**. **The voluntary surrender of possession will not be treated as a surrender of his special interest as pledgee unless the circumstances of such surrender are inconsistent with the preservation of that special interest. If the loss of possession is involuntary, or where voluntary, consistent with an intention to preserve his special interest, such interest is not thereby lost**.
>
> [emphasis added in bold]

84 We agree with the analysis in *Bassano*, *viz*, that a pledge will be extinguished if the redelivery of the asset takes place in circumstances that constitute a voluntary surrender of the pledgee's interest in the same. To this end, in cases where a pledgee returns the asset to the pledgor to deal with it as his agent, this would be indicative of the pledgee's interest *not* to surrender his special interest in the good. However, this will certainly not be the only factor

that the court has reference to when assessing the circumstances surrounding a redelivery. More to the point, and contrary to what Valency appears to suggest, the creation of an agency relationship is not the logical or legal foundation for the retention of the pledgee's special interest in the good.

85 Moreover, the approach in *Bassano* is also consistent with that taken in two prior local decisions. In *BNP Paribas v Bandung Shipping Pte Ltd (Shweta International Pte Ltd and another, third parties)* [2003] 3 SLR(R) 611, an issue arose as to whether a bank was entitled to sue a shipowner in conversion, on the basis that the bank was the pledgee of a set of generally indorsed bills of lading that were returned to the borrower for a short period of time. The High Court began by citing the *same* three English authorities for the proposition that "[t]he release of the original bills of lading to [the borrower] under the various trust receipts did not put an end to the pledge" (at [40]). Pertinently, the court went on to consider the specific terms of the trust receipt, which stated *inter alia* that (a) the borrower undertook to return the bills and goods per the bank's demand at any time prior to the sale of the goods; and (b) the bank had the liberty to exercise its rights as pledgee of the goods. It was on the basis of these clauses that the court found that the pledge was not extinguished by the release of the bills (at [41]).

86 In *Pars Ram Brothers (Pte) Ltd v Australian & New Zealand Banking Group Ltd* [2017] 4 SLR 264, several banks financed a borrower's purchase of a parcel of cargo on the security of pledges of the underlying shipping documents. To enable the borrower to sell the cargo to its end buyers, the banks released the shipping documents under various trust receipts, which *inter alia* required the borrower to hold and store the goods in the banks' names and/or pay the proceeds of sale of the goods into designated bank accounts: at [2(b)].

With these terms in mind, the court held that the trust receipts should be treated as a "means of securing the continuance of the pledge rather than as an independent security device", and that they "maintain[ed] the bank's security in the pledged [cargo] despite the bank releasing the bill of lading to the [borrower]": at [6].

87 As may be observed, our courts examined the terms of the trust receipt and other circumstances surrounding the redelivery to determine if the pledgee-banks intended to surrender their interest in the pledged assets or if the pledge was otherwise extinguished, which is entirely consistent with the approach articulated in *Bassano* (see [83]–[84] above).

The Trust Receipt preserved HSBC's special property in the Cargo

88 We return to the facts of the appeals with these principles in mind. In our judgment, the terms of the Trust Receipt between Valency and HSBC make clear that the latter did not intend to surrender its special interest in the 22 BLs, despite the redelivery to Valency. As was correctly submitted by counsel for JSW, Mr Jason Chan SC, the terms of the Trust Receipt must be construed as a whole and viewed in their proper context. To begin with, cl 1 of the Trust Receipt acknowledges that the Cargo and the 22 BLs are "*now*" in pledge to HSBC, and cl 11 provides that the undertakings in the Trust Receipt "shall be *in addition to* and *not in substitution for* any other rights and security [Valency] … may give or have already given to [HSBC]". Thereafter, cll 2, 4 and 5 state that the Cargo must be stored in HSBC's name; that HSBC may take possession of the Cargo at any time and deal with it in any manner that it deems fit; and that the proceeds of any sale are to be held on trust for HSBC or be received by it directly. Clauses 3 and 9 impose further restrictions on Valency's right to deal with the Cargo, *ie*, that it may not sell the Cargo without HSBC's consent or

pledge the Cargo as security for any other advances except in accordance with the terms of the Trust Receipt.

89 When the terms above are viewed in their totality, it became clear to us that HSBC did not intend to voluntarily surrender its special interest in the 22 BLs and the Cargo. The purpose of the redelivery of the 22 BLs to Valency was solely to allow it to take delivery of the Cargo and/or to sell the Cargo to repay the sums owing under the Import Trust Receipt Loan. In fact, if HSBC had truly agreed to relinquish its interest in the Cargo by returning the 22 BLs to Valency, it would, in effect, have been surrendering its sole security for the Import Trust Receipt Loan sum, without receiving any substitute instrument or payment in exchange. There was no reason for HSBC to have done this, nor did the evidence demonstrate that it in any way intended to.

90 We thus reject Valency's argument that the Pledge was extinguished on 11 September 2018 when the 22 BLs were redelivered to Valency. HSBC did not intend to relinquish its special interest in the Cargo, and the Trust Receipt secured the continuance of the Pledge.

There was an agency relationship between HSBC and Valency

91 While it is strictly unnecessary as a matter of law for an agency relationship to exist in order to preserve a pledgee's interest in the pledged good, it appears to us that Valency in fact obtained redelivery of the 22 BLs in its capacity as HSBC's agent.

92 The two "core elements" of an agency relationship are (a) the consent of both the principal and agent; and (b) the authority conferred or power granted to the agent to legally bind the principal: *Alwie Handoyo v Tjong Very*

Sumito [2013] 4 SLR 308 at [147]; see also *Teo Chee Wei Kelvin v Wong Lulong Wilson* [2025] SGHC 210 at [117]. It is clear to us that both of these elements were satisfied. First, there is no dispute that HSBC and Valency had both agreed to the terms of the Trust Receipt. In relation to the authority element, the terms of the Trust Receipt stipulate that Valency is to (at cl 2) "h[o]ld" the 22 BLs, the Cargo and the proceeds of their sale, "on trust for [HSBC] and solely to [HSBC's] order and [Valency] shall pay the proceeds to [HSBC] immediately on receipt thereof or of each portion thereof". Further, at cl 5, the Cargo "shall be stored in [HSBC's] name and any warrants for the [Cargo] shall be delivered to [HSBC]". The net effect of these clauses is that Valency was to take delivery of, store, and subsequently sell the Cargo – or, in other words, to deal with the Cargo – on behalf of HSBC and in HSBC's name, *ie*, *qua* agent.

Valency's physical possession of the 22 BLs bore no legal significance

93 Finally, following from the analysis above, the mere fact that Valency physically held the 22 BLs and was entitled to demand delivery of the Cargo from the carrier (see [73(b)] above) would *not* have sufficed to give it the standing to sue in conversion.

94 As was held in *The "Star Quest"* [2016] 3 SLR 1280 (at [52]) in the context of considering whether a party had the standing to sue in conversion, "the passing of possessory interest in [a cargo] depends on the *intention of the parties* to the underlying sale contracts which is to be *objectively ascertained from their terms*" [emphasis added]. A similar finding was made in *East West Corpn v DKBS AF 1912 A/S* [2003] 3 WLR 916, where, on the facts of the case, the court held that the banks – the transferees of the bills of lading – did not acquire sufficient possessory interest in the parcels of cargo shipped by the

claimants (*ie*, the owners of the goods) to pursue a claim in bailment. However, even if it did, the transferees were "never more than agents at will in relation to the claimants, who retained a sufficient immediate right to possession throughout to enable them to pursue claims in bailment": at [49].

95 As we explained above, even if Valency had presented the 22 BLs to the carrier to demand delivery of the Cargo, it would have done so as HSBC's agent and it would have been bound by the terms of the Trust Receipt. For the same reasons given at [88]–[89] above, it is clear to us that HSBC did not intend to pass any possessory interest in the Cargo to Valency in this case. Thus, the mere fact that Valency was the physical holder of the 22 BLs bears no legal significance to the present appeal.

Conclusion

96 For the reasons given above, we dismiss CA 31 and allow CA 32 and award JSW and Oldendorff costs in the sum of $150,000 *each*. While JSW is not a party to CA 32, it also considered and made submissions on the Oldendorff Release Instruction, which is the subject of CA 32, to the extent that this is relevant to its case in CA 31. In other words, both parties addressed us on both key issues raised in the appeals, notwithstanding the identity of the parties in each appeal. It is thus fair to ensure parity in the costs awarded to JSW and Oldendorff. As regards disbursements, we award (a) JSW and Oldendorff the sum of reasonable disbursements incurred in CA 31; and (b) Oldendorff the sum of reasonable disbursements incurred in CA 32.

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

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Kenneth Tan Wee Kheng SC (Kenneth Tan Partnership) (instructed), Lauren Tang Hui Jing and Ooi Chit Yee (Virtus Law LLP) (instructing) for the third respondent in CA/CA 31/2025 and appellant in CA/CA 32/2025;
The second respondent in CA/CA 31/2025 absent and unrepresented.
