2. ADMIRALTY AND SHIPPING LAW

TOH Kian Sing SC
LLB (Hons) (National University of Singapore), BCL (Oxon);
Advocate and Solicitor (Singapore).

Vivian **ANG**
LLB (Hons) (National University of Singapore),
LLM (University of Wales);
Advocate and Solicitor (Singapore);
Consultant, Allen & Gledhill LLP.

[NB: The admiralty law section is contributed by Toh Kian Sing SC; and the shipping law section is contributed by Vivian Ang.]

ADMIRALTY LAW

2.1 The Singapore courts handed down four salient admiralty judgments in 2024; three by the High Court (*The Victor 1*,[1] *The World Dream*[2] and *The Tina I*[3]) and one by the Court of Appeal (*The Sea Justice*[4]). These decisions are reviewed below.

I. *The Victor 1*

A. Material facts

2.2 In *The Victor 1*,[5] the plaintiff, Meck Petroleum DMCC ("Meck") commenced action against the *Victor 1* ("Vessel"), claiming for the price of unpaid bunkers supplied to her from April to July 2021.

2.3 The Vessel had been demise chartered by her registered shipowner, Savory Shipping Inc ("Savory") to Ceto Shipping Corporation ("Ceto") pursuant to a charterparty dated 28 February 2019 ("Charterparty"). Clause 35.1 of the Charterparty provided that the period of chartering of the Vessel would terminate 36 months after the date the Vessel was delivered, *ie*, 1 April 2022.

1 [2024] 5 SLR 237.
2 [2024] 4 SLR 1255.
3 [2025] 3 SLR 121.
4 [2024] 1 SLR 1118.
5 [2024] 5 SLR 237.

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2.4 Prior to this action being commenced, the Vessel's crew commenced HC/ADM 19/2022 ("ADM 19") and arrested the Vessel. The Vessel was then sold *pendente lite* pursuant to the court's decision in ADM 19.

2.5 Over a year later, Meck commenced HC/ADM 26/2023 ("ADM 26"). In its originating claim, the defendant was listed generally as the "Owner and/or Demise Charterer of the Vessel". Ceto (*ie*, the demise charterer) filed a notice of intention to contest ("NIC") as "Owner and/or Demise Charterer".

2.6 After filing its statement of claim in ADM 26, Meck and Ceto purportedly reached a settlement agreement, prompting Meck to inform the court that parties intended to record a consent judgment.

2.7 However, sometime after the consent judgment was recorded, Savory filed its own NIC in ADM 26 as "Owner" of the Vessel. Savory then made an application under HC/SUM 3438/2023 ("SUM 3438"), seeking for orders that:

(a) Ceto's NIC and Meck's claim in ADM 26 against the "demise charterer" be struck out;

(b) Ceto be removed as a party to ADM 26; and

(c) the Consent Judgment be set aside.

2.8 The assistant registrar ("AR") allowed SUM 3438 in its entirety. Meck and Ceto brought appeals against the AR's decisions to a judge of the High Court, which is the subject of the judgment in question.

2.9 On appeal, the primary issue was whether a demise charter could survive a judicial sale of the chartered vessel, so as to: (a) allow Meck to institute and maintain an action *in rem* against the proceeds of the vessel where liability *in personam* lies against the Ceto (as opposed to Savory); and (b) entitle Ceto to appear in the *in rem* action as the *in personam* defendant.

B. Proper **in personam** *defendant*

2.10 S Mohan J held that Ceto was not entitled to appear as an *in personam* defendant to ADM 26.

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2.11 The starting point of determining the proper *in personam* defendant is s 4(4) of the High Court (Admiralty Jurisdiction) Act 1961[6] ("HCAJA"). In *The Bunga Melati 5*,[7] the Court of Appeal conclusively set out a five-step test that a claimant must satisfy in order to validly invoke the court's admiralty jurisdiction pursuant to s 4(4) of the HCAJA.[8]

2.12 Pertinently, Mohan J was satisfied that Step 5 of *The Bunga Melati 5* test was not met.[9] Step 5 required the claimant to prove that, on the balance of probabilities, "the relevant person was, at the time the action was brought: (i) the beneficial owner of the offending ship as respects all the shares in it or the charterer of that ship under a demise charter; or (ii) the beneficial owner of the sister ship as respects all the shares in it".[10]

2.13 Meck and Ceto contended that Ceto fulfilled this requirement because it was either the Vessel's demise charterer or beneficial owner at the time Meck's originating claim was issued. However, Mohan J disagreed.

C. Ceto not Vessel's demise charterer

2.14 Mohan J held that Ceto was not the Vessel's demise charterer at the time the action was brought for two reasons. Firstly, Ceto was not a demise charterer of the Vessel at the time ADM 26 was brought. Mohan J rejected Meck and Ceto's contention that the Charterparty could not have ended because no notice of withdrawal, termination or cancellation was given. Instead, he held that the wording of Clause 35.1 of the Charterparty was such that it would automatically bring the Charterparty to an end with the effluxion of time. In this regard, the Charterparty came to an end well before ADM 26 was brought on 12 April 2023.[11]

2.15 Secondly, the Charterparty would have expired upon the Vessel's judicial sale on 16 January 2023. In doing so, Mohan J rejected Meck and Ceto's arguments that the rights against the demise charterer continued to subsist and "followed" the Vessel into its sale proceeds after the judicial sale was completed.[12] This argument was held to be unsound.

6 2020 Rev Ed.
7 [2012] 4 SLR 546.
8 *The Bunga Melati 5* [2012] 4 SLR 546 at [106].
9 *The Victor 1* [2024] 5 SLR 237 at [18]–[21].
10 *The Bunga Melati 5* [2012] 4 SLR 546 at [106].
11 *The Victor 1* [2024] 5 SLR 237 at [44]–[46].
12 *The Victor 1* [2024] 5 SLR 237 at [24]–[27].

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2.16 Citing *The Turtle Bay*,[13] Mohan J reiterated the trite legal proposition that upon the completion of the judicial sale of a vessel, clean title passes to the purchaser free from all liens and encumbrances, and any rights of action *in rem* against the previous owners and/or demise charterers can no longer be levied. In view of the foregoing, Mohan J reasoned that the onus lies with the claimant, who intends to exercise his contractual rights by commencing an action *in rem*, to do so without delay.

2.17 Mohan J also agreed with the AR's reasoning that the hallmark of the demise charter is the transfer of possession and control of the vessel from the owner to the charterer (citing *The Chem Orchid*).[14] It thus followed that the Charterparty came to an end when possession of the Vessel was irretrievably lost, pursuant to the judicial sale.

2.18 Additionally, Mohan J noted that the reference in s 4(4) of the HCAJA to the "ship under a charter by demise" could not be read to mean "the proceeds of the judicial sale of that ship" without doing substantial violence to its plain meaning.[15]

D. Ceto not Vessel's beneficial owner

2.19 Ceto argued that it was the beneficial owner of the Vessel at the time ADM 26 was brought. This was pursuant to the Charterparty, which expressly provided for the conditional sale of the Vessel by Savory to Ceto upon its expiry.

2.20 However, Mohan J rejected Ceto's argument and highlighted that the Charterparty imposed conditions to the transfer of title to Ceto. Crucially, one condition for the transfer to be effected was for all management fees and sums due to the ship managers to be paid. As there were outstanding sums which remained due to the ship managers, Mohan J held that there was no transfer of title.

2.21 In arriving at his decision, Mohan J cited various precedent cases[16] which stand for the proposition that the transfer of title is contingent not only upon the payment of the purchase price, but also the performance of any other obligation or condition in the sale agreement.[17]

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13 [2013] 4 SLR 615.
14 [2015] 2 SLR 1020.
15 *The Victor 1* [2024] 5 SLR 237 at [40].
16 *Bevin v Smith* [1994] 3 NZLR 648; *The Pangkalan Susu/Permina 3001* [1977–1978] SLR(R) 105; *Ceto Shipping Corp v Savory Shipping Inc* [2002] EWHC 2636 (Comm).
17 *The Victor 1* [2024] 5 SLR 237 at [55]–[59].

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E. Conclusion

2.22 For completeness, it should be noted that Mohan J's decision was reached, on the strength of the parties' affidavit evidence, as the parties did not opt for the inquiry to be tried as a preliminary matter.

2.23 *The Victor 1*[18] is a notable case which sheds light on the effect of a judicial sale on continuance of a demise charterparty and the requirements for a transfer of title. It makes clear that upon completion of such a sale, a demise Charterparty will come to an end as the charterer is not in a position to take possession and control of the vessel. Consequently, the demise charterer is no longer able to appear as the "relevant person" for the purposes of the action *in rem*. This decision also reaffirms the principle that beneficial ownership of a vessel is transferred not only upon payment, but also upon the performance of any other condition in the parties' agreement governing such a transfer.

II. *The Sea Justice*

A. Material facts

2.24 *The Sea Justice*[19] concerned a collision between vessels *A Symphony* ("AS") and *Sea Justice* ("SJ") which occurred in Chinese territorial waters. The owners of AS ("Appellant") arrested SJ in Singapore, in order to satisfy their claims for collision damage and consequential losses. This was notwithstanding the various proceedings which had already commenced in the Qingdao Maritime Court in the People's Republic of China ("PRC"), including:

(a) the owners of AS constituting a limitation fund for oil pollution damage pursuant to the International Convention on Civil Liability for Oil Pollution Damage 1992;[20]

(b) the owners of AS and SJ commencing claims for collision liability; and

(c) the owners of SJ constituting a limitation fund pursuant to the tonnage limitation regime under PRC law.

18 [2024] 5 SLR 237.

19 [2024] 1 SLR 1118.

20 Originally International Convention on Civil Liability for Oil Pollution Damage (29 November 1969) (entered into force 19 June 1975), this Convention was replaced by the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1969 (27 November 1992) (entered into force 30 May 1996).

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2.25 In response to the arrest, the owners of SJ ("Respondent") applied for a stay of proceedings, on the grounds that the Singapore court was not the most appropriate forum to hear the matter. The assistant registrar granted the stay application and ordered the security to be returned to the owners of SJ.

2.26 On appeal to the High Court, the Appellant conceded that Singapore was *forum non conveniens*. However, they sought to challenge the decision for the security to be returned. The Appellant thus sought a *limited* stay of proceedings, one which would allow them to retain the security provided by the Respondent pursuant to the arrest ("Limited Stay"). Both the High Court and the Court of Appeal denied the Limited Stay request.

2.27 The principal reason furnished by the Appellant for the Limited Stay was to allow them to return to lift the stay of the Singapore action after they obtain judgment in the PRC proceedings.

B. Court should not award retention of security for purpose of securing foreign judgment

2.28 The Court of Appeal observed that the request for a Limited Stay was in effect a request for the court to review the application of the second stage of the two-stage test in *Spiliada Maritime Corp v Cansulex Ltd*[21] ("*Spiliada* test"), *ie*, whether the claimant has some legitimate personal or juridical advantage in the Singapore proceedings that is of such importance that it would cause injustice to deprive the claimant of it.[22]

2.29 To that end, the Court of Appeal held that the loss of security was not a legitimate juridical advantage. On the facts of this case, there was already a limitation fund available for the Appellant's claims constituted by the Respondent in the PRC proceedings. The Appellant did not object to the constitution of that fund and had in fact already lodged a claim against that fund by the time the Singapore proceedings were commenced.[23]

2.30 The Court of Appeal noted that the limitation regime in the PRC is different as the PRC is not a signatory to the 1976 Convention

21 [1987] AC 460.
22 *The Sea Justice* [2024] 1 SLR 1118 at [12].
23 *The Sea Justice* [2024] 1 SLR 1118 at [13] and [16].

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on Limitation of Liability for Maritime Claims.[24] However, the court reiterated that the existence of a different limitation regime in another jurisdiction does not constitute a legitimate juridical advantage under the second stage of the *Spiliada* test.[25]

2.31 In substance, the court identified that the appeal was an attempt to circumvent the shipowner's choice of the PRC as the forum to limit its liability. By seeking to retain the security obtained from the Singapore arrest, the Appellant was in effect arguing against the loss of access to a limitation regime with higher limits (*ie*, Singapore's limitation limit). On this basis, the court reaffirmed that the right to choose the forum for limitation belongs to the shipowner alone.[26] The court emphasised that a shipowner is only required to establish one limitation fund, out of which all claims are paid.[27]

C. Court will only lift stay order in exceptional circumstances

2.32 The Appellant also argued that it intended to lift the *forum non conveniens* stay after obtaining judgment in the PRC proceedings, in the event the Respondent was unable to satisfy the judgment in full.

2.33 The court rejected this contention and highlighted that its discretion to lift a *forum non conveniens* stay is only exercised where there are exceptional circumstances striking at the very basis on which the stay was granted.[28] Given that the stay was granted based on a multitude of factors which established that the Qingdao Maritime Court was the more appropriate forum, the fact that the Respondent might not satisfy the PRC judgment in full would not strike at the basis on which the stay was granted.[29]

2.34 Further, the court highlighted that the Appellant appeared to have taken conflicting positions. Although the Appellant conceded that it intended to be bound by the Qingdao Maritime Court's judgment, its arguments suggested that it nevertheless intended not to abide by any findings on proportionate liability on account of the limitation fund

24 Convention on Limitation of Liability for Maritime Claims (19 November 1976) (entered into force 1 December 1986).

25 *The Sea Justice* [2024] 1 SLR 1118 at [13] and [15]. See also *The Reecon Wolf* [2012] 2 SLR 289 at [54]–[55].

26 *The Sea Justice* [2024] 1 SLR 1118 at [14], citing *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [47].

27 *The Sea Justice* [2024] 1 SLR 1118 at [14].

28 *The Sea Justice* [2024] 1 SLR 1118 at [19], citing *Rotary Engineering Ltd v Kioumji & Eslim Law Firm* [2017] 1 SLR 907 at [25].

29 *The Sea Justice* [2024] 1 SLR 1118 at [19].

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constituted there. In this regard, the court opined that the Appellant's position was not likely to find favour with a Singapore court being asked to exercise its discretion to lift a stay order.[30]

D. The decision of The Rena K

2.35 For completeness, the Court of Appeal considered the Appellant's reliance on *The Rena K*.[31] However, the court swiftly distinguished this case because it was not decided in the context of a *forum non conveniens* stay and has, in any event, been rendered otiose in Singapore, pursuant to the enactment of s 7(1) of the International Arbitration Act 1994.[32]

E. Conclusion

2.36 *The Sea Justice* is a salutary reminder that the shipowner, and not the claimant, has the right to choose the limitation forum. Further, where a limitation fund has already been constituted in a foreign jurisdiction of the shipowner's choice, the court will not assist the claimant by granting retention of security, as it will effectively circumvent the limitation proceedings commenced there.

III. *The World Dream*

A. Material facts

2.37 In *The World Dream*,[33] the claimant bank ("KfW") assisted the defendant ("WDL") to finance the construction and acquisition of the *World Dream* ("Vessel"). As security for the loan, KfW was granted a registered mortgage of the Vessel.

2.38 Subsequently, events of default occurred, prompting KfW to accelerate the loan. KfW then commenced HC/ADM 16/2022 ("ADM 16") and arrested the Vessel as security for its claims against WDL arising out of the default. Default judgment was entered against WDL by consent, and the Vessel and its bunkers were eventually judicially sold.

2.39 WDL then entered an appearance in ADM 16, applying for a declaration that any "gaming equipment" on board the Vessel did not fall within the scope of the mortgage. S Mohan J dismissed the application

30 *The Sea Justice* [2024] 1 SLR 1118 at [19].
31 [1979] QB 377.
32 2020 Rev Ed. See *The Sea Justice* [2024] 1 SLR 1118 at [18].
33 [2024] 4 SLR 1255.

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for two reasons. Firstly, he was satisfied that the evidence put forth by WDL could not sustain their application.[34] Secondly, he was also persuaded that the legal interpretation of the contract encompassed the "gaming equipment".

B. Meaning of "ship"

2.40 With respect to the second aspect of the decision, Mohan J was satisfied that the reference to "ship" in the mortgage included the "gaming equipment". In arriving at this conclusion, he agreed with KfW's interpretation of the word "ship", which encompassed any object that is either:

(a) necessary to the navigation of the ship, and without which no *prudent* person would sail (the "Navigation Articles"); *or*

(b) necessary to the prosecution of the adventure (the "Adventure Articles").[35]

2.41 WDL contended that the criteria of "prudence" applied to both limbs (a) and (b) of the above formulation. However, Mohan J disagreed. He referred to *Coltman v Chamberlain*,[36] whereby Charles J consistently adopted the language of "prudence" in relation to the Navigation Articles exclusively.[37] Charles J also cited the following extract from Wills J's decision in *In re Salmon & Woods, Ex parte Gould*:[38]

> It has been argued that 'ship' is equivalent to 'ship and its appurtenances', and to a certain extent that is doubtless so. It would include spare sails, duplicate anchors—*anything, in fact, which it would not be prudent to send a ship to sea without*. … [emphasis added by the court in *The World Dream* in italics]

2.42 Mohan J concluded that the above excerpt clearly established that "prudence" applied only to the Navigation Articles. The objects referred to were more in the nature of Navigation Articles, and the reference to "a ship" indicated in it that the statement related to seaworthiness and safe navigation, rather than the fulfilment of any commercial or personal objective.

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34 *The World Dream* [2024] 4 SLR 1255 at [23].
35 *The World Dream* [2024] 4 SLR 1255 at [42]–[43].
36 (1890) 25 QBD 328.
37 *Coltman v Chamberlain* (1890) 25 QBD 328 at 333–334.
38 (1885) 2 Mor Bky Cas 137 at 141.

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2.43 In relation to the Adventure Articles, Charles J relied on *Gale v Laurie*[39] for the proposition that articles on board which were needful for the accomplishment of the objects of the voyage were to be regarded as part of the "ship". The learned judge did not make any reference to "prudence" when discussing this issue.[40]

2.44 Mohan J also dismissed WDL's argument that omitting the "prudence" standard from the Adventure Articles would lead to a definition that was too wide. The learned judge maintained that necessity remains a controlling factor in the definition of a "ship". Whether an object is necessary is an intensely fact-sensitive inquiry.[41]

C. Meaning of "necessary"

2.45 The starting point of determining whether objects are "necessary" to the prosecution of the adventure is to determine the vessel's adventure. In this case, Mohan J observed that the Vessel was for all intents and purposes a floating resort, and its object was to provide its passengers with a multifaceted entertainment and leisure experience. In this regard, the learned judge held that the "gaming equipment" was in fact necessary for the accomplishment of that object.[42]

2.46 The above was further bolstered by the fact that the Vessel itself had a total of nine distinct spaces on board offering gaming facilities to its passengers.[43]

2.47 Mohan J further rejected WDL's argument that the "gaming equipment" only amounted to one facet of the multifaceted entertainment experience that was the object of the Vessel. Instead, he directed that the proper inquiry was whether the article was necessary for some discrete form of entertainment and leisure that the Vessel was intended to provide, the sum of which was the multifaceted experience that parties referred to.[44]

D. Conclusion

2.48 In conclusion, *The World Dream* demonstrates that, for the purpose of defining a "ship" in a mortgage deed, the criterion for

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39 (1826) 5 B & C 155.
40 *The World Dream* [2024] 4 SLR 1255 at [45].
41 *The World Dream* [2024] 4 SLR 1255 at [50].
42 *The World Dream* [2024] 4 SLR 1255 at [57].
43 *The World Dream* [2024] 4 SLR 1255 at [63].
44 *The World Dream* [2024] 4 SLR 1255 at [68].

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prudence applies solely to the Navigation Articles. Further, with respect to the Adventure Articles, it is necessary to determine the object of the adventure in order to assess whether a given article qualifies as "necessary".

IV. *The Tina I*

A. Material facts

2.49 The underlying dispute in *The Tina I*[45] arose out of a collision which occurred on 22 November 2020 between two vessels, the *Tina I* and the *Shahraz*. At the material time, the *Shahraz* was owned by Oghiaanous Khoroushan Shipping Lines Co of Kish ("Claimant"), an Iranian company, while the *Tina I* was owned by AQ Maritime Co Limited ("Defendant"), a Greek company.[46]

2.50 Notably, both the Claimant and the *Shahraz* were listed as "Specially Designated Nationals and Blocked Persons" by the US Office of Foreign Assets Control, making them sanctioned entities under US law. However, there were no applicable sanctions against the Claimant or the *Shahraz* in Singapore.[47]

2.51 Following the collision, the Claimant brought an admiralty action in Singapore against the Defendant for damages to the *Shahraz* and losses. The parties subsequently entered into a Collision Liability Agreement, under which the Defendant accepted 100% liability for the collision.[48]

2.52 To avoid the arrest of the *Tina I*, the parties negotiated the provision of security for the Claimant's claim. They agreed on the quantum (S$653,476.16) and the form (payment into court).[49] However, a dispute arose over the Defendant's insistence on the inclusion of a sanctions clause as a term of the security. This clause would allow the Defendant to refuse payment out of the security if, in its reasonable opinion, such payment would breach or risk breaching sanctions laws (notably US sanctions laws), or if any bank in the payment chain was unable to process the payment ("Sanctions Clause").[50]

45 [2025] 3 SLR 121.
46 *The Tina I* [2025] 3 SLR 121 at [4].
47 *The Tina I* [2025] 3 SLR 121 at [6]–[7].
48 *The Tina I* [2025] 3 SLR 121 at [8]–[9].
49 *The Tina I* [2025] 3 SLR 121 at [10].
50 *The Tina I* [2025] 3 SLR 121 at [11]–[12].

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2.53 The Defendant applied to the court for an order that security be provided by payment into court, subject to the Sanctions Clause. The Defendant argued that the clause was necessary to protect itself and its insurers from the risk of violating US sanctions, relying on US legal advice that secondary sanctions could be imposed for making payments to sanctioned entities.[51]

2.54 The Claimant objected to the inclusion of the Sanctions Clause, arguing, *inter alia*, that it was unsupported by proper US law evidence, and inconsistent with the authority of the Singapore court to determine payment out.[52] More pertinently, the Claimant also contended that the clause would render the security inadequate, as it would introduce uncertainty and vest discretion in the hands of the Defendant whether to effect payment.

B. Court's findings

2.55 Navin Anand AR affirmed the court's jurisdiction to determine the form, quantum, and terms of security in admiralty actions, emphasising that security must be adequate and enforceable.[53] The court's power to control security is rooted in its inherent jurisdiction to prevent oppressive use of court procedures, such as ship arrest.[54] Adequate security must be one that covers the claimant's best arguable case, including interest and costs, and is readily enforceable.[55]

2.56 The court found no evidential basis for including the Sanctions Clause. To begin with, the US legal advice relied upon by the Defendant did not comply with the requirements for expert evidence under the Rules of Court 2021. Substantively, the advice did not address the risk of sanctions arising from payment into court in Singapore dollars, focusing instead on other forms of security.

2.57 The court held that payment into court results in the Defendant relinquishing full title to the funds, which then become subject to the court's orders.[56] The Sanctions Clause, which has the effect of conferring on the Defendant a discretion to refuse payment out, was inconsistent

51 *The Tina I* [2025] 3 SLR 121 at [16].
52 *The Tina I* [2025] 3 SLR 121 at [18].
53 *The Tina I* [2025] 3 SLR 121 at [20].
54 *The Tina I* [2025] 3 SLR 121 at [21].
55 *The Tina I* [2025] 3 SLR 121 at [22].
56 *The Tina I* [2025] 3 SLR 121 at [35]–[36].

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with this legal framework, as only the court, as opposed to the Defendant should determine entitlement to payment out.[57]

2.58 The court reasoned that if the Claimant had arrested the vessel, it could have sought a judicial sale and looked to the sale proceeds to satisfy its claim, as well as enjoyed a high priority as a maritime lien claimant in the distribution of the proceeds of sale. Accepting security subject to the Sanctions Clause would leave the Claimant in a worse position, as enforcement would be uncertain and subject to the Defendant's discretion, thus emasculating the adequacy of the security.[58]

2.59 The court distinguished the present case from English decisions,[59] where sanctions clauses were accepted in Club Letters of Undertaking under specific contractual frameworks.[60] In those cases, the parties had contractually agreed to accept reasonable security, including sanctions clauses, whereas in the present case, the Claimant had not agreed to such terms and the court was being asked to impose them.[61]

2.60 The court declined to include the Sanctions Clause as a term of the security. Instead, it ordered that the Defendant could provide security by paying the agreed sum into court, without prejudice to its right to moderate the amount. The court concluded that such security would be adequate for the Claimant's claims.[62]

C. Conclusion

2.61 This decision is significant as it reaffirms the judicial policy to ensure that the adequacy of security provided to an admiralty claimant is not compromised by sanctions considerations which Protection and Indemnity ("P&I") Clubs and other underwriters may be concerned about. *Quare* if the outcome might affect the utility of P&I letters of undertaking as security in ship arrest.

57 *The Tina I* [2025] 3 SLR 121 at [35]–[38].
58 *The Tina I* [2025] 3 SLR 121 at [39].
59 *M/V Pacific Pearl Co Ltd v Osios David Shipping Inc* [2022] 1 Lloyd's Rep 261 (HC); [2022] 2 Lloyd's Rep 448 (CA).
60 *The Tina I* [2025] 3 SLR 121 at [40]–[44].
61 *The Tina I* [2025] 3 SLR 121 at [44(c)].
62 *The Tina I* [2025] 3 SLR 121 at [45].

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SHIPPING LAW

2.62 Three important shipping law decisions were delivered by the Singapore courts in 2024; two by the High Court (*The Maersk Katalin*[63] and *The Jeil Crystal*[64]) and one by the District Court (*Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd*[65]).These cases examined issues in relation to claims arising out of and/or in connection with bills of lading.

I. *The Maersk Katalin*

A. Introduction

2.63 The dispute in *The Maersk Katalin*[66] arose from the shipment of a cargo of gasoil ("Cargo") carried on board the *Maersk Princess* ("Vessel"). The plaintiff bank ("UOB") claimed as holders of certain bills of lading against the defendant shipowner, Maersk Tankers Singapore Pte Ltd ("Maersk"), for the misdelivery of the Cargo, which had been sold to Hin Leong Trading (Pte) Ltd ("HLT") by Winson Oil Trading Pte Ltd ("Winson").[67] UOB succeeded in its claim.

B. Material facts

2.64 The dispute related to the Cargo which had been bought by Winson from four suppliers and onsold to HLT pursuant to a sale contract dated 12 February 2020, and amended by an addendum dated 17 February 2020 ("Sale Contract").[68]

2.65 Winson then voyage chartered the Vessel from Maersk to carry the Cargo.[69]

2.66 Loading commenced at Mailiao, Taiwan on 18 February 2020 and was completed on 21 February 2020 whereupon the bills of lading were issued for each of the four parcels.[70]

63 [2024] SGHC 282.
64 [2024] 4 SLR 1691.
65 [2024] SGDC 141.
66 [2024] SGHC 282.
67 *The Maersk Katalin* [2024] SGHC 282 at [5].
68 *The Maersk Katalin* [2024] SGHC 282 at [10].
69 *The Maersk Katalin* [2024] SGHC 282 at [11].
70 *The Maersk Katalin* [2024] SGHC 282 at [12].

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2.67 UOB eventually became interested in two of these parcels which formed the subject matter of the action. Hereafter, "Cargo" will refer to both these parcels unless otherwise indicated.[71]

2.68 On 26 February 2020, Winson issued a letter to Maersk requesting that Maersk discharge the Cargo *per* its instructions and without presentation of original bills of lading in return for the usual indemnities from Winson ("Discharge LOI").[72]

2.69 Between 28 and 29 February 2020, the Cargo was discharged and delivered from the Vessel without presentation of the original bills of lading ("OBLs") against the Discharge LOI provided by Winson to Maersk.[73]

2.70 On 3 March 2020, HLT applied to UOB for a Letter of Credit ("LC") to finance its purchase of the Cargo. By this time, the Cargo had already been discharged and delivered at Universal Terminal, Singapore, by Maersk – some three days prior.[74] For context, HLT's application was made pursuant to a letter of offer dated 6 April 2018, by which UOB extended to HLT uncommitted banking facilities for a total amount of US$250,000,000 ("Letter of Offer").[75]

2.71 On 4 March 2020, UOB approved HLT's application and issued the LC. A full set of clean on board bills of lading, issued or endorsed to UOB's order and marked "freight payable as per charter party", was one of the documents required for compliant presentation.[76]

2.72 In the event that any of the documents were not available, the LC provided an additional condition allowing payment to be effected against:[77]

> A. Beneficiary's commercial invoice indicating NOR date at discharge port
>
> B. Beneficiary's letter of indemnity duly signed by authorized signatory(s)

2.73 On 5 March 2020, Winson presented its commercial invoice and a letter of indemnity ("Payment LOI") in lieu of the OBLs in the

71 *The Maersk Katalin* [2024] SGHC 282 at [13].
72 *The Maersk Katalin* [2024] SGHC 282 at [14].
73 *The Maersk Katalin* [2024] SGHC 282 at [15].
74 *The Maersk Katalin* [2024] SGHC 282 at [16].
75 *The Maersk Katalin* [2024] SGHC 282 at [17].
76 *The Maersk Katalin* [2024] SGHC 282 at [20].
77 *The Maersk Katalin* [2024] SGHC 282 at [21].

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required wording to Credit Suisse (Switzerland) Ltd ("Credit Suisse"), as the OBLs and other shipping documents were not yet available to Winson.[78] Credit Suisse was Winson's advising and negotiating bank under the LC. The Payment LOI and commercial invoice were sent to and received by UOB on 11 March 2020 and HLT confirmed to UOB the correctness of the documents on 24 March 2020.[79] UOB then informed Credit Suisse that the documents presented had been accepted and it was not disputed that payment was eventually made.[80]

2.74 HLT subsequently collapsed on or about 14 April 2020.[81] UOB requested Winson to deliver the OBLs to them as *per* the Payment LOI's terms. Winson secured the OBLs from its suppliers, delivered them to Credit Suisse with instructions for Credit Suisse to deliver them onwards to UOB. The OBLs were all endorsed to UOB's order. UOB received these OBLs on 15 July 2020.[82]

2.75 On 18 February 2021, UOB wrote to Maersk to demand delivery up of the Cargo. This was the first communication between UOB and Maersk. On the same day, the writ *in rem* in this action was commenced. It was served on 27 May 2021 and on 15 September 2021, Winson was granted leave to intervene in the action. It did so and duly entered an appearance as an intervener on the same day.[83]

C. Parties' cases on Maersk's liability for misdelivery

2.76 It was not disputed that the contract of carriage was governed by English law. However, the court observed that nothing of significance turned on any divergence between English law and Singapore law and took a holistic view of the authorities referred to from both jurisdictions in approaching the material issues before it.[84]

2.77 UOB's claim was chiefly pursued in contract for misdelivery, with alternative claims in negligence, bailment and conversion. Its basic contention was that, given Maersk's admission of having discharged and delivered the Cargo to HLT without presentation of the OBLs (which remained in UOB's possession as lawful holders), Maersk's liability for misdelivery was cut-and-dried.[85]

78 *The Maersk Katalin* [2024] SGHC 282 at [22].
79 *The Maersk Katalin* [2024] SGHC 282 at [23]–[24].
80 *The Maersk Katalin* [2024] SGHC 282 at [25].
81 *The Maersk Katalin* [2024] SGHC 282 at [33].
82 *The Maersk Katalin* [2024] SGHC 282 at [34]–[35].
83 *The Maersk Katalin* [2024] SGHC 282 at [37].
84 *The Maersk Katalin* [2024] SGHC 282 at [39].
85 *The Maersk Katalin* [2024] SGHC 282 at [40].

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2.78 Maersk raised various defences which were all dismissed. The court categorised the defences under four heads as follows:[86]

(a) the "Contractual Defence";

(b) the "Consent-Based Defences";

(c) the "Rights of Suit Defences"; and

(d) the "Causation Defence".

(1) The Contractual Defence

2.79 The "Contractual Defence" was basically that, because the contract(s), evidenced by or contained in the OBLs positively required Maersk to deliver the Cargo without presentation of the OBLs in return for a suitable indemnity, Maersk could not be held liable for having done exactly that.[87]

2.80 This defence was quickly dismissed by the court as a "bad one". The court observed that shipowners commonly enter into charterparties on terms that oblige them to discharge cargo without presentation of original bills of lading, provided a suitable indemnity is furnished in advance. The court explained that in agreeing to such terms, the shipowner effectively commits itself to breaching its primary obligation under the bills of lading, which is to deliver the cargo only upon presentation of those bills. By design, the *quid pro quo* of an indemnity acknowledges the wrongfulness of what the shipowner may be called upon to do and contains a promise by the indemnitor to shoulder any consequences flowing therefrom. In this way, the letter of indemnity merely reallocates the legal risk of the carrier's unlawful conduct – it neither absolves nor authorises the shipowner's breach of the contract of carriage. Reference and reliance were placed on *BNP Paribas v Bandung Shipping Pte Ltd*[88] where a similar defence was raised and robustly rejected by the court.[89]

(2) The Consent-Based Defences

2.81 The gravamen of the defence was that the bank had "consented" to discharge and delivery of the Cargo to HLT without presentation of the OBLs, if not prior to the discharge then at any rate after the fact. The term "consent" was used by the court "loosely", as encompassing the various defences raised by Maersk including: (a) consent (in its true

86 *The Maersk Katalin* [2024] SGHC 282 at [41]–[45].
87 *The Maersk Katalin* [2024] SGHC 282 at [42].
88 [2003] 3 SLR(R) 611.
89 *The Maersk Katalin* [2024] SGHC 282 at [49]–[50].

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sense); (b) estoppel by acquiescence; and (c) ratification.[90] Each of these defences was dismissed by the High Court.

(a) Consent prior to discharge

2.82 The court said that there could have been no consent from UOB prior to the Cargo's discharge on 28 to 29 February 2020 because UOB only came into the picture on 3 March 2020 at the very earliest (when HLT's application for the L/C was received by UOB).[91] There had been no communication between UOB and HLT until some three days after the Cargo had already been completely discharged, and none between UOB and Maersk at any material point in time. Maersk's arguments of UOB having agreed to authorise Maersk's discharge and delivery of the Cargo to HLT were therefore doomed to fail.[92]

2.83 Although the court recognised that estoppel by acquiescence may, in principle, be raised in the context of cargo claims, it held that Maersk's defence of acquiescence was a "non-starter" because Maersk was under no misapprehension as to the legal exposure it had taken on when it discharged the Cargo into HLT's possession – that was precisely why it required the LOI from Winson. Moreover, UOB had not even entered the fray at the time of the misdelivery and so to that extent, the other requirements for a defence of estoppel by acquiescence as laid down in *Willmott v Barber*[93] were not made out.[94]

(b) Consent subsequent to discharge

(i) Ratification

2.84 As there could be no consent prior to discharge, any arguable consent must relate to "consent" post-dating the discharge and delivery, and Maersk, recognising this, focused exclusively on the doctrine of ratification in its closing submissions.[95]

2.85 The court held that UOB could not have ratified HLT's act of taking delivery of the Cargo – so as to absolve Maersk from liability – because the agent whose act is sought to be ratified must have purported to act *for the principal* in doing that act. In other words, no act can be validly ratified by a principal undisclosed to the third party at the time

90 *The Maersk Katalin* [2024] SGHC 282 at [53].
91 *The Maersk Katalin* [2024] SGHC 282 at [54].
92 *The Maersk Katalin* [2024] SGHC 282 at [58].
93 (1880) 15 Ch D 96.
94 *The Maersk Katalin* [2024] SGHC 282 at [60]–[61].
95 *The Maersk Katalin* [2024] SGHC 282 at [62].

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it was done; if the agent professed to act for himself, then it follows that the act is not capable of ratification by anyone.[96] In this case, Maersk's case on ratification hinged upon proof that in so taking delivery, HLT had professed to act on behalf of UOB. However, there was "not a wisp" of evidence to establish that fact and accordingly, Maersk's arguments on ratification also failed.[97]

(ii) Waiver

2.86 Although Maersk did not raise an argument based on waiver, UOB sought to pre-empt this point, and the court chose to say a few words on it.[98]

2.87 Firstly, the court found that there was no waiver by election, which was one species of waiver, as plainly UOB was never presented with a choice between competing rights to begin with.[99]

2.88 Secondly, the court also held that there could be no waiver by estoppel, which was the other species of waiver, as that involved an "unequivocal representation by one party that he will not insist upon his legal rights against the other party, and such reliance by the representee as will render it inequitable for the representor to go back upon his representation".[100]

2.89 The court found that UOB never communicated with Maersk, and that Maersk had no knowledge whatsoever of UOB's involvement with the Cargo until this action had been commenced. Consequently, there was no representation of any kind between UOB and Maersk capable of sustaining an estoppel, and questions of reliance did not even arise.[101] Although questions of reliance did not arise, the court observed that Maersk was relying on Winson's credit as its indemnitor under the Discharge LOI, rather than any promises of forbearance by UOB.[102]

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96 *The Maersk Katalin* [2024] SGHC 282 at [63], citing *Firth v Staines* [1897] 2 QB 70 and *Keighley, Maxsted & Co v Durant* [1901] AC 240.
97 *The Maersk Katalin* [2024] SGHC 282 at [64].
98 *The Maersk Katalin* [2024] SGHC 282 at [67].
99 *The Maersk Katalin* [2024] SGHC 282 at [68].
100 *The Maersk Katalin* [2024] SGHC 282 at [69], citing *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 at [57].
101 *The Maersk Katalin* [2024] SGHC 282 at [69].
102 *The Maersk Katalin* [2024] SGHC 282 at [70].

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(3) *The Rights of Suit Defences*

2.90 The Rights of Suit Defences which were directed at challenging UOB's rights of suit under the UK Carriage of Goods by Sea Act 1992[103] ("UK COGSA") comprised three arguments:

(a) the "Spent Bills Defence";[104]

(b) the "Good Faith Defence";[105] and

(c) the "Endorsement Defence.[106]

(a) The Spent Bills Defence

2.91 Maersk argued that the OBLs had been "spent by the discharge and delivery of the Cargo to [HLT]", in which case UOB could have acquired no rights of suit under s 2(2) of the UK COGSA, which is *in pari materia* with s 2(2) of the Singapore Bills of Lading Act 1992[107] ("SG BLA").

2.92 In respect of this argument, the court reiterated the long-standing principle that bills of lading are not spent by delivery of cargo to a person not entitled to them under those bills.[108] In the present case, however, the court found that at no point was HLT the person entitled to the Cargo under the OBLs, since it was never in possession of the OBLs. Consequently, any delivery of the Cargo to HLT would not have resulted in the OBLs being spent and the Spent Bills Defence failed.[109]

2.93 The court also held that even if it were wrong on the first point and the OBLs were spent by the time they came into UOB's possession, UOB would nevertheless have acquired rights of suit pursuant to s 2(2)(a) of the UK COGSA.[110]

2.94 In this case, Maersk contended that the relevant "contractual or other arrangement" was the LC or the Payment LOI, both of which post-dated the Cargo's discharge. UOB, on the other hand, said that the issuance of the LC (or acceptance of the Payment LOI) was only the

103 c 50 (UK). See *The Maersk Katalin* [2024] SGHC 282 at [44].
104 *The Maersk Katalin* [2024] SGHC 282 at [71]–[83].
105 *The Maersk Katalin* [2024] SGHC 282 at [84]–[106].
106 *The Maersk Katalin* [2024] SGHC 282 at [107]–[116].
107 Cap 384, 1994 Rev Ed. See *The Maersk Katalin* [2024] SGHC 282 at [71]–[72].
108 See *The Maersk Katalin* [2024] SGHC 282 at [73], citing *BNP Paribas v Bandung Shipping Pte Ltd* [2003] 3 SLR(R) 611 at [30]; *The Pacific Vigorous* [2006] 3 SLR(R) 374 at [5]; and *The Yue You 902* [2020] 3 SLR 573 at [45]–[46] and [74].
109 *The Maersk Katalin* [2024] SGHC 282 at [77].
110 *The Maersk Katalin* [2024] SGHC 282 at [78].

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relevant "transaction" where the "contractual or other arrangement" would be UOB's Letter of Offer or the Sale Contract.[111]

2.95 The court preferred UOB's position and found that if one were to consider the Sale Contract on its own terms, it would be readily apparent that its performance would culminate in the endorsement and delivery of the OBLs to the buyer's issuing bank. That was precisely what happened in this case, albeit after a significant delay. The Sale Contract would therefore have furnished a clear basis for the operation of s 2(2)(a) UK COGSA and it was unnecessary for the court to consider if the same may be said about UOB's Letter of Offer.[112]

(b) The Good Faith Defence

2.96 Under s 5(2) of the UK COGSA (which is *in pari materia* with s 5(2) of the SG BLA), the transfer of title to sue is conditional on the transferee becoming the holder of the bills of lading in good faith.[113]

2.97 In respect of this defence, Maersk advanced the following two arguments to suggest that UOB became the holder of the said OBLs by dishonest or improper means, namely that:[114]

> (a) UOB, although knowing it had no entitlement to the OBLs under the Payment LOI, nevertheless demanded them from Winson with implicit enticements or threats of legal consequences; and
>
> (b) UOB never intended for the OBLs to function as security; instead, it eventually called for them at the time it did for the sole purpose of contriving a claim against Maersk and to minimise its exposure to HLT's insolvency.

2.98 In relation to the first reason, the court recognised that, as a matter of general principle, a holder may fail to satisfy the "good faith" requirement where it procures the bills of lading by knowingly asserting a legal entitlement to them that was known to be unsubstantiated.[115] Based on the evidence before it, the court held that UOB did acquire the OBLs in good faith as UOB's demands were made on a genuine (and not unreasonable) belief as to its rights and entitlements under the Payment LOI. Winson, for its part, either shared in that belief or was indifferent to

111 *The Maersk Katalin* [2024] SGHC 282 at [81].
112 *The Maersk Katalin* [2024] SGHC 282 at [83].
113 *The Maersk Katalin* [2024] SGHC 282 at [84].
114 *The Maersk Katalin* [2024] SGHC 282 at [86].
115 *The Maersk Katalin* [2024] SGHC 282 at [89].

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the legal propriety of UOB's demands. In either case, Winson considered itself bound to endorse and deliver the OBLs to UOB and eventually did just that without any protest.[116]

2.99 The court found the second reason to be indistinguishable from an argument that UOB acted dishonestly because it called for and acquired the OBLs to obtain bare rights of suit against Maersk. It considered this to be a bad argument for the reasons given in *The Yue You 902*,[117] *ie*, the requirement of "good faith" was never intended as a gate against transfers of bills of lading for the purpose of obtaining bare rights of suit – that is the mischief that the provisions on spent bills are intended to meet, and it would be wrong for their functions to be overtaken by expansive interpretations of the "good faith" requirement.[118]

2.100 Overall, the court was of the view that there was no dishonesty in the way UOB became the holder of the OBLs and found that UOB had acquired possession of the OBLs in good faith. The Good Faith Defence was accordingly dismissed.[119]

(c) The Endorsement Defence

2.101 The court considered this defence to be nothing more than the allegation that there was no subjective intention on Winson's part to transfer rights of suit to UOB.[120] There was no doubt in the court's mind that Winson fully understood the significance of the OBLs and the act of endorsing them to UOB.[121] This defence was therefore found to be without merit and failed.[122]

(4) The Causation Defence[123]

2.102 This defence was aimed at disproving the causality between Maersk's putative breach of contract and the loss claimed by UOB.[124] The court first considered a series of cases where such a defence was raised.[125]

116 *The Maersk Katalin* [2024] SGHC 282 at [90]–[106].
117 [2020] 3 SLR 573 at [107].
118 *The Maersk Katalin* [2024] SGHC 282 at [85(d)] and [88].
119 *The Maersk Katalin* [2024] SGHC 282 at [106].
120 *The Maersk Katalin* [2024] SGHC 282 at [112].
121 *The Maersk Katalin* [2024] SGHC 282 at [113]–[115].
122 *The Maersk Katalin* [2024] SGHC 282 at [116].
123 *The Maersk Katalin* [2024] SGHC 282 at [117]–[197].
124 *The Maersk Katalin* [2024] SGHC 282 at [45].
125 See The Maersk Katalin [2024] SGHC 282 at [119]–[150], citing *Fimbank Plc v Discover Investment Corporation (The Nika)* [2021] 1 Lloyd's Rep 109; *The Cherry* [2002] 1 SLR(R) 643 (HC), [2003] 1 SLR(R) 471 (CA); and *Unicredit Bank AG v*

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2.103 Maersk argued that the effective cause of UOB's loss was its financing arrangements with HLT. It did not regard the OBLs as security, but rather, was content to rely on HLT's creditworthiness for repayment. Consequently, UOB would have counterfactually authorised discharge of the Cargo to HLT without original bills of lading being produced.[126]

2.104 The court recognised that a claimant may recover damages for breach of contract only in so far as the breach was the "effective" or "dominant" cause of the loss claimed for,[127] and that the legal burden was on UOB to prove that Maersk's breach of contract was an "effective" or "dominant" cause of the loss of the Cargo (*ie*, to prove, on a balance of probabilities, that the loss would not have resulted had the breach never occurred).[128] The court emphasised, however, that the legal burden of proof should not be confused with the burden to disprove particular facts tending to refute causation, *ie*, the evidential burden.[129]

2.105 The court held that the "baseline inference" in such cases is that banks like UOB would not part with their security (*eg*, the original bills of lading) without commercial reasons for doing so.[130] Therefore, it was for Maersk to lead evidence tending to prove that UOB would have counterfactually given its authorisation for the Cargo to be discharged without presentation of the OBLs and not for UOB to refute it.[131]

2.106 The court ultimately rejected the Causation Defence and held that Maersk's breach was, and continued to be, the effective or dominant cause of UOB's loss for the following reasons:

> (a) There was simply no clarity as to the alleged counterfactual circumstances in which UOB could have made a decision on whether discharge of the Cargo should have proceeded without the OBLs. It was Maersk's evidential burden to make out those circumstances, and having failed to do so, the basis for their Causation Defence fell away entirely.[132]

Euronav NV [2022] 2 Lloyd's Rep 467 ("*The Sienna (HC)*"), [2024] 1 Lloyd's Rep 177 ("*The Sienna (CA)*").

126 *The Maersk Katalin* [2024] SGHC 282 at [153].

127 *The Maersk Katalin* [2024] SGHC 282 at [118].

128 *The Maersk Katalin* [2024] SGHC 282 at [154]–[155].

129 *The Maersk Katalin* [2024] SGHC 282 at [157].

130 *The Maersk Katalin* [2024] SGHC 282 at [157].

131 See *The Maersk Katalin* [2024] SGHC 282 at [159], citing *The Cherry* [2002] 1 SLR(R) 643 (HC), [2003] 1 SLR(R) 471 (CA). See especially the Court of Appeal judgment in [2003] 2 SLR(R) 471 at [85].

132 *The Maersk Katalin* [2024] SGHC 282 at [195].

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(b) There was also woefully inadequate evidence tending to suggest that UOB would have extended its consent had it been given the opportunity to do so, which was not surprising since, at the time of the breach, UOB was not even in the picture yet, making it materially distinguishable from *Fimbank Plc v Discover Investment Corporation* (*The Nika*)[133] and *Unicredit Bank AG v Euronav NV*.[134]

D. Alternative claims in negligence, conversion and bailment

2.107 The court found that none of the above alternative claims were seriously explored by UOB, and there was no need to reach a decided view on them, given its conclusion that UOB succeeded on its contractual misdelivery claim against Maersk.[135]

E. Quantification of damages

2.108 Having found Maersk liable to UOB for breach of contract, in quantifying damages, the court applied the basic established rule that the measure of damages for non-delivery of goods is: (a) the value of the goods at the time when, and the place where they should have been delivered; less (b) what the claimant would have had to pay to receive it.[136]

2.109 The court held that quantification should be properly approached with an eye on the notional buying price rather than the notional selling price, focusing on what it would cost the innocent party (*ie*, UOB in this case) to go into the market to purchase replacement goods;[137] and that the value was to be taken independently of any circumstances peculiar to the plaintiff.[138]

2.110 After analysing the proposed valuations put forward by the expert for each party, the court found that the average of the benchmark prices – derived from actual bids, offers and trades on a given day's trading window – presented the closest indication of the price at which the Cargo would have been transacted at the material dates. The court was of the view that the average of the benchmark price on 28 February

133 *Fimbank Plc v Discover Investment Corporation (The Nika)* [2021] 1 Lloyd's Rep 109.
134 [2024] 1 Lloyd's Rep 177. *The Maersk Katalin* [2024] SGHC 282 at [196].
135 *The Maersk Katalin* [2024] SGHC 282 at [199]–[203].
136 See *The Maersk Katalin* [2024] SGHC 282 at [204], citing *Rodocanachi v Milburn* (1886) 18 QBD 67 and *Attorney General of the Republic of Ghana v Texaco Overseas Tankships Ltd (The Texaco Melbourne)* [1994] 1 Lloyd's Rep 473 at 479.
137 *The Maersk Katalin* [2024] SGHC 282 at [210]–[211].
138 *The Maersk Katalin* [2024] SGHC 282 at [213].

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2020 to 2 March 2020 provided the best approximation of the Cargo's per barrel prices at (or as close to) the time it was misdelivered.

2.111 The court also rejected Maersk's attempt to reduce the claim by deducting hypothetical demurrage or storage costs that would have accrued to Maersk until the time when UOB demanded delivery of the Cargo. In this regard, the court held that only demurrage that had in fact accrued to Maersk may be deducted.[139] Therefore, as there was no evidence of any lien ever having been asserted or contemplated by Maersk, and still less that HLT as receivers had paid anything in discharge of such a lien, no deduction was allowed.[140]

2.112 Maersk's attempt to deduct UOB's partial recovery of its loan from HLT also failed, as the court found that such recovery formed separate arrangements purely between UOB and HLT and was not a matter of concern to Maersk.[141]

2.113 Finally, Maersk's contention that UOB had breached its duty to mitigate its losses by failing to take reasonable steps to monitor the Cargo despite being aware of the discharge date of the Cargo also failed, as the court did not see how any part of the loss caused by Maersk could have been avoided by UOB monitoring anything. This is because UOB only came into the picture after its loss had been fully realised upon the misdelivery of the Cargo.[142]

F. Conclusion

2.114 Of all the four main defences raised, the Causation Defence was long considered to be no more than "a final throw of the dice for carriers faced with misdelivery claims" until the case of *Unicredit Bank AG v Euronav NV*[143] ("*The Sienna (CA)*").[144] Despite *The Sienna (CA)* being seen as new hope for shipowners in defending misdelivery claims, it is now clear that this defence is not a "get-out-of-jail-free card". The burden remains on shipowners to persuade the court as to why the financing bank would have given up the bills of lading without receipt of the cargo – an evidently challenging task, as illustrated in this case.

139 *The Maersk Katalin* [2024] SGHC 282 at [227].
140 *The Maersk Katalin* [2024] SGHC 282 at [228].
141 *The Maersk Katalin* [2024] SGHC 282 at [229].
142 *The Maersk Katalin* [2024] SGHC 282 at [230].
143 [2024] 1 Lloyd's Rep 177.
144 *The Maersk Katalin* [2024] SGHC 282 at [117].

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II. *The Jeil Crystal*

A. Introduction

2.115 *The Jeil Crystal*[145] touches on issues of shipping law and admiralty law. The admiralty law aspects have been dealt with in an earlier issue of the *Singapore Academy of Law Annual Review of Singapore Cases*.[146] As such, this section will focus on the shipping law issues.

2.116 The dispute in this case arose from the shipment of a cargo of lube base oil ("Cargo") on board the *Jeil Crystal* ("Vessel"). The case addressed complex legal issues surrounding the switching of bills of lading and their implications under contract, tort and bailment laws, and examined, *inter alia*, the duties owed by a carrier when switched bills of lading are involved.

B. Material facts

2.117 The plaintiff, Banque Cantonale de Genève ("BCGE"), was a trade financing bank. The defendant, Jeil International Co Ltd ("JICL"), was the owner of the Vessel.[147]

2.118 IRPC Public Company Limited ("IRPC") sold the Cargo to GP Global APAC Pte Ltd ("GP Global") on 12 May 2020 and GP Global onsold the same to Prime Oil Trading Pte Ltd ("Prime Oil").[148]

2.119 On or around 16 May 2020, GP Global chartered the Vessel from JICL for a single voyage for the carriage of the Cargo from Thailand to Bangladesh ("Charterparty").[149]

2.120 On or around 27 May 2020, BCGE agreed to provide trade financing to GP Global. On 28 May 2020, BCGE issued an Irrevocable Documentary Credit ("DC") in favour of IRPC to finance GP Global's purchase of the Cargo. Pursuant to the DC, GP Global was required to present IRPC's signed commercial invoice as well as a full set (3/3) of clean on board bills of lading issued to the order of BCGE.[150]

145 [2024] 4 SLR 1691.
146 Teo Kian Sing SC & Vivian Ang, "Admiralty and Shipping Law" (2022) 23 SAL Ann Rev 38 at 38–42.
147 The Jeil Crystal [2024] 4 SLR 1691 at [4].
148 *The Jeil Crystal* [2024] 4 SLR 1691 at [8].
149 *The Jeil Crystal* [2024] 4 SLR 1691 at [9].
150 *The Jeil Crystal* [2024] 4 SLR 1691 at [10].

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2.121 On or around 2 June 2020, GP Global's broker ("RG Chartering") sent an e-mail to JICL's Singapore commercial operator ("Dae Myung") containing GP Global's voyage instructions which, among other things, stated that "switched B/Ls will be needed – same to be issued in Singapore". RG Chartering also requested that Dae Myung advise on JICL's "BL switching procedures".[151]

2.122 On 13 June 2020, the first set of original bills of lading were issued in respect of the Cargo loaded on the Vessel ("First Set BLs"). The First Set BLs incorporated the terms and conditions, liberties and exceptions of the Charterparty. It also named IRPC as the shipper, and Standard Asiatic Oil Company Ltd ("Standard Asiatic") and Jamuna Bank Ltd ("Jamuna Bank") as the notify party. The consignee was stated to be "TO ORDER OF BANQUE CANTONALE DE GENEVE".[152]

2.123 On 16 June 2020, RG Chartering instructed Dae Myung to issue a new set of original bills of lading ("Switch BLs") in exchange for the First Set BLs. The instructions were for GP Global to be named as the shipper, and for Standard Asiatic and Jamuna Bank to be named as the notify party. The consignee was stated to be "TO THE ORDER OF JAMUNA BANK LTD".[153]

2.124 Between 16 and 17 June 2020, Dae Myung prepared and circulated drafts of the Switch BLs in accordance with RG Chartering's instructions but indicated that as non-negotiable copies of the First Set BLs had not been collected by Dae Myung yet, they could not issue any non-negotiable copies of the Switch BLs.[154]

2.125 Shortly after that, at the request of RG Chartering and their assurance that the non-negotiable copy of the Switch BL was only for the purpose of having the Vessel clear customs in Bangladesh, JICL agreed to issue one copy of the non-negotiable Switch BL and this was sent to RG Chartering by e-mail.[155]

2.126 On 17 June 2020, IRPC's bank in Thailand, Bank of Ayudhya, despatched the original shipping documents, including the First Set BLs to BCGE for payment. On 19 June 2020, BCGE received these original shipping documents from the Bank of Ayudhya.[156]

151 *The Jeil Crystal* [2024] 4 SLR 1691 at [11].
152 *The Jeil Crystal* [2024] 4 SLR 1691 at [12].
153 *The Jeil Crystal* [2024] 4 SLR 1691 at [13].
154 *The Jeil Crystal* [2024] 4 SLR 1691 at [14].
155 *The Jeil Crystal* [2024] 4 SLR 1691 at [15].
156 *The Jeil Crystal* [2024] 4 SLR 1691 at [16].

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2.127 On 22 June 2020, RG Chartering sent a draft letter of indemnity ("LOI") to Dae Myung for the discharge of the Cargo without presentation of the Switch BLs and said they were checking with GP Global on the whereabouts of the First Set BLs.[157] On 25 June 2020, at GP Global's request, BCGE endorsed the First Set BLs to the order of GP Global and forwarded them together with the original shipping documents to GP Global by courier. Therefore, after 25 June 2020, BCGE no longer had possession of the First Set BLs.[158]

2.128 On 27 June 2020, GP Global issued the LOI agreeing to indemnify JICL against any consequent liability, loss or damage as a result of the delivery of the Cargo to Standard Asiatic without production of the "original bill of lading".[159]

2.129 On 29 June 2020, Dae Myung received all three originals of the First Set BLs from GP Global. Dae Myung thereupon issued the Switch BLs and cancelled the First Set BLs. Thereafter, Dae Myung e-mailed soft copies of the Switch BLs to RG Chartering. The originals of the Switch BLs were eventually released to GP Global.[160]

2.130 On 30 June 2020, the Cargo was discharged and delivered from the Vessel to Standard Asiatic against the LOI without production of the Switch BLs.[161]

2.131 On 10 October 2020, BCGE commenced an admiralty *in rem* action and arrested the Vessel. BCGE's initial claim against JICL was for wrongful conversion of the Cargo, and/or breach of contract, and/or breach of its duty as bailee or carrier for reward, and/or was negligent.[162] However, when it transpired that the BCGE was not in possession of the First Set BLs, it abandoned its original claim and amended its claim to one based on an alleged wrongful switch of the bills of lading without its knowledge or consent.[163]

2.132 BCGE contended that the circumstances in which JICL switched the bills of lading amounted to a breach of contract and/or a tortious breach of duty of care owed to BCGE, as well as a breach of JICL's duty as bailee.[164]

157 *The Jeil Crystal* [2024] 4 SLR 1691 at [17].
158 *The Jeil Crystal* [2024] 4 SLR 1691 at [18].
159 *The Jeil Crystal* [2024] 4 SLR 1691 at [19].
160 *The Jeil Crystal* [2024] 4 SLR 1691 at [20].
161 *The Jeil Crystal* [2024] 4 SLR 1691 at [21].
162 *The Jeil Crystal* [2024] 4 SLR 1691 at [24] and [26].
163 *The Jeil Crystal* [2024] 4 SLR 1691 at [27].
164 *The Jeil Crystal* [2024] 4 SLR 1691 at [31] and [34].

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2.133 In response, JICL contended that any duty in contract owed by the carrier to the consignee arises only when the consignee is the lawful holder of the bill of lading. As BCGE had endorsed the First Set BLs to the order of GP Global before the switch, BCGE had lost all its rights and interests in the Cargo and/or the First Set BLs, and therefore, JICL was not liable to BCGE in contract or in tort.[165]

C. Court's findings

2.134 The court dealt with the issues raised as follows.

(1) When did the rights of suit under the contract of carriage vest in BCGE?

2.135 The court dealt first with the issue as to whether BCGE became a party to the contract of carriage evidenced by or contained in the First Set BLs and, if so, from which point in time. The court clarified at the outset that it was incorrect for BCGE to assert that it was a contracting party to the First Set BLs from 13 June 2020 when the First Set BLs were issued. The contracting parties were the original named shipper and JICL.[166]

2.136 The court observed that s 2(1) of the Bills of Lading Act 1992[167] ("SG BLA") transfers not the *contract* but the *rights of suit under the contract* to the lawful holder of a bill of lading by virtue of him becoming the holder of the bill.[168]

2.137 The court noted, however, that BCGE came into possession of the First Set BLs on 19 June 2020, endorsed the First Set BLs to the order of GP Global and handed over possession of the same to GP Global on 25 June 2020. Therefore, any rights of suit under the contract of carriage only vested in BCGE as if it were a party to that contract between 19 and 25 June 2020 – not at any time before that period and, more importantly, not at any time after. Whether it was only the rights of suit (and the corresponding terms in the First Set BLs) that were transferred to BCGE, or whether there was in fact a change in the contracting parties when BCGE came into possession of the First Set BLs, BCGE possessed those rights as holder of the bills or that status as a contracting party only between 19 and 25 June 2020. By endorsing the First Set BLs and delivering the same to GP Global on 25 June 2020, BCGE thereby

165 *The Jeil Crystal* [2024] 4 SLR 1691 at [32].
166 *The Jeil Crystal* [2024] 4 SLR 1691 at [38]–[41].
167 2020 Rev Ed.
168 *The Jeil Crystal* [2024] 4 SLR 1691 at [37] and [40].

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divested itself of any rights or interests in the Cargo or any status *vis-à-vis* the First Set BLs. Thus, when BCGE commenced proceedings on 10 October 2020, BCGE did not possess any rights of suit against JICL, whether as a lawful holder of the First Set BLs or as a contracting party.[169]

2.138 The court also rejected BCGE's argument that, as long as a party had possession of the bills of lading as the lawful holder *at some point*, it was entitled to sue on the bills of lading as a contract for any breach or breaches, even before it became the holder of said bills of lading. In this regard, BCGE was wrong to rely on *The Pacific Vigorous*[170] *in support*. *The Pacific Vigorous* stands for the proposition that the lawful holder of a bill of lading is entitled to sue in contract in respect of any breach of the contract of carriage committed even prior to the time at which the claimant became holder of the bill, *provided* that the party *is* the lawful holder of the bill of lading at the time that the action is commenced. If not, the claimant simply would not have any right of suit under the contract of carriage.[171]

2.139 Pursuant to s 2(5) of the SG BLA, a statutory transfer of rights under s 2(1) concomitantly *extinguishes* any of the *transferor*'s rights acquired by the previous operation of s 2(1) (or the rights of the original party to the contract of carriage). Consequently, if BCGE's argument was correct, s 2(5) of the SG BLA would have been rendered nugatory as BCGE would have, effectively, *still* retained rights against JICL notwithstanding its endorsement and transfer of the First Set BLs to GP Global.[172] The court's finding that BCGE ceased to have any rights of suit under the First Set BLs after 25 June 2020, when it ceased to be the lawful holder of the same, and at the time the action was commenced, was sufficient to dismiss BCGE's claim for breach of contract.

(2) Whether JICL breached any contractual obligations owed to BCGE

2.140 Notwithstanding the above finding, the court nevertheless went on to consider the other arguments raised for completeness.[173] The court recognised that if there was any contractual duty on JICL, it was to refrain from issuing the Switch BLs until and unless the First Set BLs were surrendered to and cancelled by JICL. However, such an obligation was only owed to: (a) whoever was the lawful holder in

169 *The Jeil Crystal* [2024] 4 SLR 1691 at [42].
170 [2006] 3 SLR (R) 374.
171 *The Jeil Crystal* [2024] 4 SLR 1691 at [43].
172 *The Jeil Crystal* [2024] 4 SLR 1691 at [44].
173 *The Jeil Crystal* [2024] 4 SLR 1691 at [47]–[50].

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possession of the First Set BLs as the party with rights of suit under the contract of carriage and/or the party entitled to the Cargo; or (b) to GP Global as the charterer under the Charterparty.[174]

2.141 The court found that the switching of the First Set BLs only took place on 29 June 2020, when the First Set BLs were surrendered by GP Global to JICL, and the Switch BLs were issued.[175] The circulation of the drafts and the issuance of the non-negotiable copy of the Switch BLs were merely preparatory steps to effect the switch.[176] This was especially so where JICL's consistent position was that it would only have issued and released the original Switch BLs after it received the First Set BLs for cancellation. By the date the Switch BLs were issued (*ie*, 29 June 2020), BCGE was no longer the lawful holder of the First Set BLs, and had no rights, interests or status as far as the First Set BLs or the Cargo were concerned. Therefore, there could not possibly have been a breach by JICL of any contractual obligation owed to BCGE *after* it had ceased to be the lawful holder of the First Set BLs.[177]

2.142 The court also dismissed BCGE's attempt to rely on JICL's alleged concession that the non-negotiable copy of the Switch BL issued on 17 June 2020 was a straight bill of lading as the alleged concession was taken out of context, and it was not JICL's argument that the non-negotiable *copy* of the Switch BL could have been construed as a straight bill of lading. However, even if there was any such admission, the court would have rejected it, as a non-negotiable *copy* of the Switch BL was not a straight bill of lading.[178]

2.143 The court also found that BCGE did not look to the Cargo and/or the First Set BLs as security, as on the evidence, BCGE: (a) knew that there was a risk that the end purchaser might not pay; and (b) had accepted that endorsing the First Set BLs and relinquishing them to GP Global would mean relinquishing its security in the Cargo.[179] BCGE's argument – that JICL should have informed BCGE of GP Global's proposed switch and the associated preparatory steps, where the consignee would no longer be stated to be to the order of BCGE – was therefore held to be an afterthought, formulated with the benefit of hindsight.[180]

174 *The Jeil Crystal* [2024] 4 SLR 1691 at [75].
175 *The Jeil Crystal* [2024] 4 SLR 1691 at [52].
176 *The Jeil Crystal* [2024] 4 SLR 1691 at [54].
177 *The Jeil Crystal* [2024] 4 SLR 1691 at [70].
178 *The Jeil Crystal* [2024] 4 SLR 1691 at [58]–[63].
179 *The Jeil Crystal* [2024] 4 SLR 1691 at [65].
180 *The Jeil Crystal* [2024] 4 SLR 1691 at [67].

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2.144 In any case, the court was of the view that JICL was not in breach of any contractual obligations owed to anyone, as it was clear that on 29 June 2020, all relevant parties with any rights or interests in the First Set BLs or the Cargo (namely GP Global) had consented to the change reflected in the Switch BLs.[181]

(3) Whether JICL breached any tortious duty of care owed to BCGE

2.145 BCGE's attempt to frame a claim in tort was also dismissed by the court.

2.146 Preliminarily, a question that arose out of BCGE's claim in negligence was whether a tortious duty of care should have been imposed, bearing in mind the contractual background of the parties' dealings. The court affirmed the general rule that "where the rights and duties between two parties are governed by contract, that constitutes a cogent policy reason *negating* the imposition of an overlapping tortious duty of care even in circumstances where proximity between those parties can be established".[182] On the facts of the case, the court found that there were strong reasons militating against the imposition of any duty of care, in light of the clear overlap between BCGE's pleaded claim in contract and its pleaded claim in tort.[183]

2.147 Even if a tortious duty of care could exist regardless of the contractual background, the court held that such duty only required JICL "to exercise reasonable care not to interfere with or prejudice the rights and interests of those entitled to the Cargo".[184] In this regard, the court found that JICL had not breached its duty of care (if any was owed) for the following reasons:

> (a) A duty of care would have only arisen at the point the Switch BLs were issued and released, as holding that JICL was under a tortious duty of care at a point in time earlier than its contractual obligation would confer on BCGE an unjustifiable advantage over a right in contract, which would not be a just or reasonable outcome.[185]

181 *The Jeil Crystal* [2024] 4 SLR 1691 at [73].
182 *The Jeil Crystal* [2024] 4 SLR 1691 at [77].
183 See *The Jeil Crystal* [2024] 4 SLR 1691 at [77]–[78], citing *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 at [114] and *Seatrium New Energy Ltd v HJ Shipbuilding & Construction Co, Ltd* [2023] SGHC 264 at [58]–[59].
184 *The Jeil Crystal* [2024] 4 SLR 1691 at [79].
185 *The Jeil Crystal* [2024] 4 SLR 1691 at [80].

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(b) On the facts, JICL ensured that the Switch BLs were only put into circulation after the First Set BLs were surrendered by GP Global and cancelled or marked "null and void". Further, on receiving the First Set of OBLs from GP Global, duly endorsed by BCGE in favour of GP Global, JICL was reasonably entitled to assume that BCGE had no more rights or interests in the First Set BLs or the Cargo. By ensuring that there was only one set of bills of lading in circulation, JICL did exercise the reasonable care required of it.[186]

(c) The preparatory steps of circulating the draft Switch BLs, or even issuing the non-negotiable copy of the Switch BLs, was not a breach by JICL of its duty to exercise reasonable care not to interfere with or prejudice the rights and interests of those entitled to the Cargo, as these were merely preparatory steps to the actual switch of the First Set BLs and no duty of care existed at those points in time.[187]

(4) Whether JICL breached any duty to BCGE as bailee of the Cargo

2.148 Finally, the court also dismissed BCGE's claim in bailment. The duties of a bailee arose out of the voluntary assumption of possession of another's goods. Only persons to whom the bailee had attorned could enforce the bailee's duties as such. The endorsement and delivery of the bill of lading would transfer the endorser's right to the possession of the goods to the endorsee.[188]

2.149 It followed therefore that upon BCGE's endorsement and delivery of the First Set BLs to GP Global on 25 June 2020, *without* any reservation of its rights or arrangements to remotely indicate that BCGE continued to retain (or wished to retain) any interest in the Cargo or the First Set BLs, BCGE relinquished all rights and interests in the Cargo and/or the First Set BLs.[189]

2.150 Consequently, any duty owed by JICL *qua* bailee to BCGE thereafter evaporated. Accordingly, JICL could not have breached any of its duties as bailee when it allegedly "failed to produce or account for the Cargo" to BCGE on 10 August 2020, *ie*, the date on which BCGE wrote to the master of the Vessel and JICL to, among other things, demand

186 *The Jeil Crystal* [2024] 4 SLR 1691 at [81].
187 *The Jeil Crystal* [2024] 4 SLR 1691 at [82].
188 *The Jeil Crystal* [2024] 4 SLR 1691 at [88].
189 *The Jeil Crystal* [2024] 4 SLR 1691 at [89].

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that JICL not proceed with the discharge of the Cargo without BCGE's written consent.[190]

2.151 BCGE's alternative argument that the breach of bailment consisted of: (a) JICL's agreement to switch the bills of lading; (b) the circulation of the draft Switch BLs; and (c) the issuance of the non-negotiable copy of the Switch BLs on 17 June 2020 was also dismissed by the court. The court reiterated that these were mere preparatory steps that did not result in any transfer of the rights and interests to the Cargo, and therefore, could not have amounted to a breach of JICL's duty as bailee of the Cargo.[191]

2.152 Finally, BCGE's submission that it had paid for the freight for the Cargo on 22 June 2020, with the argument presumably being that it therefore had an interest in the Cargo also failed, as the freight was paid by GP Global from its account with BCGE using BCGE's banking facilities. That did not make BCGE the payer of the freight; nor did it render BCGE the bailor of the Cargo.[192]

D. Conclusion

2.153 A lawful holder of bills of lading ceases to have any rights or interests in the Cargo once it endorses the bills of lading and delivers the same to another party. In *The Jeil Crystal*, amending the original claim to one based on the Switch BLs also did not assist, as BCGE was not the lawful holder of the original bills of lading at the time the action was commenced. Attempting to impose a duty of care in tort would also fail where the parties have privately allocated risk by means of a contract, as one cannot avoid the exemptions and limitations imposed by contract between the parties simply by turning to a cause of action in tort.

III. *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd*

A. Introduction

2.154 In *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd*,[193] three containers of glass panels ("Cargo") were shipped from Chennai, India, to Singapore ("Shipment") onboard the "*Xin Pu Dong*"

190 *The Jeil Crystal* [2024] 4 SLR 1691 at [90].
191 *The Jeil Crystal* [2024] 4 SLR 1691 at [91].
192 *The Jeil Crystal* [2024] 4 SLR 1691 at [92].
193 [2024] SGDC 141.

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(“Vessel”).[194] This case examined, among other things, the circumstances in which a bill of lading functions as a contract of carriage.

B. Material facts

2.155 The plaintiff in this case was Ever Radiant Shipping Pte Ltd (“ERS”), who was in the business of logistics and acted as a non-vessel operating common carrier.[195] The registered business activities of the first defendant, KPRSG International Pte Ltd (“KPRSG”), included the business of wholesale trading of goods, but it had been dormant since its inception with no business transactions and no significant assets. The second defendant, Mohamed Naina Haja Kuthbudheen, (“Mr Mohamed”) was the majority shareholder of KPRSG as well as its sole local director.[196]

2.156 ERS’s claims were for breach of contract, fraudulent misrepresentation and conspiracy. The claims essentially arose out of KPRSG’s refusal to pay ERS’s invoice and take delivery of the Cargo in Singapore, premised on the assumption that the bill of lading issued for the Shipment (“Bill of Lading”) had contractual effect.[197]

2.157 It was common ground that there were no dealings between the ERS, KPRSG and Mr Mohamed prior to the issuance of the Bill of Lading.[198]

2.158 The Bill of Lading (the authenticity of which was in dispute) was issued by Ever Radiant Shipping & Logistics (“ERSL”) and signed by ERSL as “AGENT FOR CARRIER”. The bill of lading named: (a) Astromar Logistic Pvt Ltd (“Astromar”) as the shipper of the Cargo; (b) KPRSG as the consignee; and (c) ERS as the notify party and delivery agent.[199]

194 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [1].
195 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [5].
196 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [6]–[7].
197 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [2].
198 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [8].
199 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [9].

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2.159 The reverse side of the Bill of Lading also contained a set of terms, which included provisions for the "governing law and jurisdiction", "delivery" and "freight and charges".[200]

2.160 The Cargo was packed in three twenty-foot-long containers and shipped on board the Vessel. The port of loading was Chennai and the port of discharge was Singapore.[201] Whilst bills of lading are usually issued in sets of three originals, only one original Bill of Lading was issued for the Shipment. In addition, the front of the Bill of Lading contained the notation "OBL SURRENDERED IN CHENNAI".[202]

2.161 Given that the Bill of Lading was issued in Chennai, the notation "OBL SURRENDERED IN CHENNAI" meant that the only original was surrendered at the time of or shortly after its issuance. The evidence before the court did not, however, reveal whom the original Bill of Lading was surrendered to.[203]

2.162 Upon the Vessel's arrival in Singapore, the Cargo was discharged and put into storage.[204] Thereafter, on 14 October 2019, ERS notified Mr Mohamed of the arrival and discharge of the Cargo, and sought payment of S$1,000 from KPRSG before it could take delivery of the Cargo. KPRSG did not pay ERS's invoice.[205] Despite further exchanges between ERS and the two defendants, ERS's invoice was not paid, and the defendants did not take delivery of the Cargo.[206]

2.163 ERS commenced proceedings against KPRSG for breach of contract, fraudulent misrepresentation and unlawful means conspiracy, but this review will focus only on the claim for breach of contract which was premised on the Bill of Lading.[207]

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200 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [10].
201 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [9(b)].
202 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [9(c)].
203 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [11].
204 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [12].
205 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [13].
206 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [14]–[17].
207 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [18]–[25].

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2.164 In relation to this claim, ERS's case in essence, was that the Bill of Lading evidenced a contract of carriage between ERS and KPRSG, and that KPRSG had breached the contract by refusing to pay ERS's invoice and take delivery of the Cargo. As a result, ERS was compelled to store the Cargo and claim the costs of storage pursuant to the terms of the Bill of Lading.[208]

C. Court's findings

(1) Bill of Lading was not a contract of carriage

2.165 The court, following the Court of Appeal's decision in *The Luna*,[209] held that the enquiry as to whether the Bill of Lading functioned as a contract of carriage (in addition to being a receipt for the Shipment) is directed towards the formation or existence of a contract; specifically, the parties' intentions behind the issuance of the Bill of Lading and whether they had intended for it to have contractual force. The court also noted that in such cases, the touchstone is whether the conduct of the parties, objectively ascertained, supports the existence of a contract. The court is entitled to consider all the relevant circumstances of the case, and draw the appropriate inferences as to what the parties had objectively intended by the issuance of the Bill of Lading.[210]

2.166 After considering all the arguments and materials before it, the court held that ERS had failed to prove that the Bill of Lading functioned as a contract of carriage for the following reasons:

(a) Authenticity of the Bill of Lading was not proven

2.167 As a general rule, s 66 of the Evidence Act 1893[211] ("EA") requires all documents to be proved by primary evidence, *ie*, the document itself should be produced for inspection by the court. Where the original document cannot be produced, secondary evidence may be given in the prescribed circumstances under s 67 of the EA.[212] However, in the present case, ERS had only adduced a *copy* of the Bill of Lading rather than the Bill of Lading itself. Furthermore, it had failed to bring itself within any of the circumstances under s 67 of the EA which could have

208 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [22].
209 [2021] 2 SLR 1054.
210 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [34].
211 2020 Rev Ed.
212 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [38].

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permitted it to prove the Bill of Lading by secondary evidence. Since ERS had not proven the authenticity of the Bill of Lading, the document was not admitted into evidence, and consequently there was no evidential basis for ERS's claim in contract to stand on.[213]

(b) Bill of Lading did not have contractual effect

2.168 Even assuming the Bill of Lading was admissible, the court found that the totality of the evidence did not support a finding that the parties intended the Bill of Lading to have contractual force.[214]

2.169 First, there was a complete absence of evidence as to how the Bill of Lading came to be issued. Documents and communications passing between the shipper and the carrier (or their respective agents) – discussing terms of the carriage such as freight, loading and discharge, and the carrying vessel – which one would normally see before the contract is concluded, was inexplicably missing.[215] Although ERS adduced two documents which preceded the issuance of the Bill of Lading, namely a draft letter of credit and a packing list, these documents did not take ERS very far. Leaving aside their authenticity, the documents could not prove whether a letter of credit was eventually issued for payment of the Cargo or shed any light on whether the parties intended the Bill of Lading to have contractual effect.[216]

2.170 Furthermore, presentation of the original bill of lading, which is described as the essence of a bill of lading contract, was not required to take delivery of the Cargo. Based on the notation on the OBL, the court found that the Bill of Lading was surrendered at the loading port in Chennai at the time or shortly after its issuance and was never received by the defendants at any time. What was required to obtain delivery of the Cargo was: (a) payment of ERS's invoice; (b) the issuance of a delivery order by ERS after receiving payment; and (c) the collection of the Cargo using the delivery order. Consequently, the Bill of Lading could not have been intended to have contractual effect, since the contemplated delivery

213 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [39]–[40].

214 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [41].

215 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [42].

216 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [43].

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mechanism did not require the original Bill of Lading to be presented to take delivery of the Cargo.[217]

(c) ERS had no standing to sue as a notify party

2.171 The court also held that even if it were wrong about the contractual status of the Bill of Lading, ERS's claim would have failed because it had no standing to sue, as it was only the notify party in the bill of lading and not a party to the bill of lading contract. In general, the original parties to a bill of lading contract are the shipper and the carrier.[218]

(d) KPRSG not liable as consignee

2.172 Finally, the court also dismissed ERS's reliance on s 3(1) of the SG BLA in support of its contractual claim. More specifically, ERS could not explain how KPRSG, as a consignee and thus someone who was generally not an original party to a bill of lading contract, could be subject to liabilities under the Bill of Lading.[219]

2.173 The court highlighted that the imposition of liabilities under s 3(1) of the SG BLA is based on the principle of mutuality – namely, that a person who seeks to enforce the contract of carriage against the carrier must accept the corresponding liabilities to the carrier under that contract.[220]

2.174 What was clear from the court's reading of s 3(1) of the SG BLA was that there needed to be either a demand for delivery of the Cargo, or a claim against the carrier under the Bill of Lading, before KPRSG could be subject to liabilities under the Bill of Lading. However, it was undisputed that neither took place and consequently, s 3(1) of the SG BLA had no application to the case.[221]

2.175 The court also found that the terms of the Bill of Lading which purported to make a consignee liable as merchant did not assist ERS either, because the general rule is that a party who procures a shipment

217 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [44].
218 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [49]–[50].
219 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [51].
220 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [53].
221 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [54].

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for the ultimate benefit of a consignee does not thereby contract with the carrier as agent for the consignee, and there was no basis to infer that KPRSG had authorised Astromar (or any other person for that matter) to contract on its behalf.[222]

2.176 Consequently, KPRSG could not be liable as consignee even if the Bill of Lading had contractual effect.[223]

D. Conclusion

2.177 In reaching its finding, the court took into account all the circumstances of the case, including:

(a) the lack of authenticity of the Bill of Lading;

(b) the terms on the front and reverse of the Bill of Lading;

(c) the absence of pre-contractual discussions between the parties;

(d) the lack of the need for the original Bill of Lading to be presented in order to take delivery of the Cargo;

(e) the fact that the plaintiff and first defendant in this case were the notify party and consignee respectively, neither of whom were parties to the Bill of Lading; and

(f) the lack of demand by the first defendant for delivery up of the Cargo.

This case, therefore, helpfully illustrates the process undertaken by the court in determining whether or not a bill of lading has any contractual effect.

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222 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [55].

223 *Ever Radiant Shipping Pte Ltd v KPRSG International Pte Ltd* [2024] SGDC 141 at [56].

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