23rd ANNUAL INTERNATIONAL MARITIME LAW

ARBITRATION MOOT JULY 2024

In the matter of an arbitration under the SCMA Arbitration Rules

Between

Tomahawk Maritime SA

…Claimant

And

Veggies of Earth Banking LTD

…Respondent

- Claimant's Memorandum -

TEAM CODE C

Chiara BESSON - Maha CHAFFRI - Laetitia LEMAUX - Eva DEVOS

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LIST OF ABREVIATIONS

ABBREVIATION	TERM
BoL	Bill of Lading
VCP	Voyage Charterparty
LoI	Letter of Indemnity
LoC	Letter of Credit
OBL	Original Bill of Lading
VOE	Veggies of Earth Banking

I. STATEMENT OF FACTS

A. THE PARTIES

1. Tomahawk Maritime S.A (hereinafter Tomahawk Maritime or the **Claimant**), is a Panama company, and registered owner of the MV NIUYANG (hereinafter, the MV NIUYANG or the **Vessel**). Veggies of Earth Banking LTD (hereinafter Veggies of Earth Banking or the **Respondent**) is a Chinese company, more precisely a banking institution. The vessel was chartered by Yu Shipping LTD (hereinafter Yu Shipping or the **Charterer**).

2. On august 14, 2023, Yu Shipping Ltd (hereinafter Yu Shipping or the **charterer** or the **Buyer**) ordered 16,999.01 metric tons (MT) of "Crude Palm Oil (Edible Grade)" (hereinafter the **Cargo**) from Good Oil Sdn Bhd for a total of USD 4,249,752.50[1]. The purchase was financed by the respondent via a letter of credit[2].

B. THE CHARTER PARTY AND BILL OF LADING: THE CONTRACTS FOR THE CARRIAGE OF THE CARGO

3. On September 1st, 2023, Tomahawk Maritime and Yu Shipping, entered into a voyage charterparty (hereinafter the VCP)[3]. On September 6, 2023, at 2106 LT, the Cargo was loaded onboard the Vessel in Bintulu, Malaysia and was to be delivered in Busan. A set of Bills of

[1] As specified in the Letter of Indemnity from the seller, Moot scenario p. 45
[2] As specified in an email between the claimant and the respondent's liquidators, Moot scenario p. 43
[3] As specified in the Tanker Voyage Charter Party, Moot scenario p. 12

ladings (**BoL**) no. BT-COW-001A were issued on September 4, 2023, and consigned to the respondent.

C. THE LATE DELIVERY OF THE CARGO

4. On September 20, 2023, the Cargo arrived in Busan[4]. The Claimant informed multiple times that he has a strict laycan to respect to fulfill its next employment[5]. However, the respondent took too much time to deliver the BoL, and so, the delivery was delayed. After failure from the respondent to deliver all the **BoL** to take delivery of the cargo, the Charter requested delivery of the cargo without the original **BoL**, on October 3, 2023.

5. In compliance with Rider Clause 57 of the Charter Party as mentioned in the Fixture [*"57. In the absence of original b/ls at discharge port(s), owners to release the entire cargo to* ***receivers*** *against charterers'* ***LOI*** *without bank guarantee (LOI wording always to be in Owners' P and I Club format)*][6] upon delivery of the Cargo the Charterer issued a letter of indemnity (**LoI**) the same day.

[4] As specified in the Statement of claim of the claimant, paragraph 9, Moot scenario p. 8
[5] Rider Clause 38 – Next Employment, Moot scenario p.25
[6] Rider Clause 57 – Discharge without bills of lading, Moot scenario p.28

II. SUMMARY OF THE ISSUES

- Whether the Tribunal has jurisdiction over the case
- Whether there is a breach of contract on the part of the defendant for not taking delivery of the cargo within the laytime indicated in the contract
- Whether the clauses of the charter party can be enforced to the defendant
- Whether the Claimant has a certain interest to act for compensation of the negotiated discount on its next contract

III. THE TRIBUNAL HAS JURISDICTION OVER THE CASE

A. THE ENGLISH LAW GOVERNS THE ARBITRATION AGREEMENT

6. The seat of the arbitration means the" *juridical seat of the arbitration designated by the parties to the arbitration agreement, or by any arbitral or other institution or person vested by the parties with powers in that regard, or by the arbitral tribunal if so authorized by the parties, or determined, in the absence of any such designation, having regard to the parties' agreement and all the relevant circumstances*"[7].

[7] Article 3, Arbitration Act, 1996

7. In the present case, the Bills of Lading incorporate an arbitration clause through Riders clause, which provides for "*Guangzhou Arbitration, Three arbitrators and SCMA Rules, the English law govern the charter party"*[8].

8. Rule 31.1 of the Singapore Chamber of Maritime Arbitration Rules[9] provides that if the parties failed to designate a law applicable to the dispute, the Tribunal shall determine and apply the law which it considers applicable.

9. Rule 32.1 further provides that the juridical seat of arbitration shall be Singapore unless otherwise agreed by the parties[10]. Where the seat of the arbitration is Singapore, the International Arbitration Act (Chapter 143A) shall apply.

10. In the present case, both parties agreed on the arbitration agreement to be held in Guanghzou under the SCMA Rules and governed by the English law. Therefore, the respondent claim that the law applicable should be the one of the People's Republic of China is not valid. From the moment the parties contractually agreed on additional specifications[11] that determine the place of the arbitration and the law governing it, the arbitration agreement is similarly valid, according to the Arbitration Act and the SCMA Rules.

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[8] Rider Clause 78 – Law and Arbitration, Moot scenario p. 28
[9] *Singapore Chamber of Maritime Arbitration, 'SCMA Rules' (4th edition, january 2022*)
[10] *Singapore Chamber of Maritime Arbitration, 'SCMA Rules' (4th edition, january 2022*)
[11] Tomahawk Maritime Rider Clause, Moot Scenario p.21

B. THE DISPUTE IS COVERED BY THE ARBITRATION CLAUSE INCLUDED IN THE CHARTER PARTY RIDER BETWEEN THE CLAIMANT AND THE CHARTERER

11. In this case, on September 1, 2023, Tomahawk Maritime S.A, and Yu Shipping Ltd, entered into a Voyage charterparty (VCP). The clean fixture for this charter party is considered as accepted by the charterer (Yu Shipping) and the owner of the vessel (Tomahawk Maritime). It mentions the Tomahaw Maritime's Rider clauses as a reference to determine the applicable law and the terms and conditions relating to the arbitration. The 78 clause mentions the applicable law and the competent court in case of dispute: "English Law, Guanghzou arbitration as per SCMA Rules and three arbitrators".[12] The bill of lading indicates on its reverse side the presence of an arbitration clause here incorporated[13].

1. THE ARBITRATION CLAUSE CONTAINED IN THE CHARTER PARTY IS INSERTED BY REFERENCE IN THE BILLS OF LADING

12. Charter party bills of lading incorporate the terms of the underlying charter party, which almost systematically includes an arbitration clause. This is the case in particular for the widely used Baltic and International Maritime Council (BIMCO) Congenbill Bill of Lading. Clause 1 of the Conditions of Carriage provides that: "*all terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the law and arbitration clause/dispute resolution Clause, are herewith incorporated.*"

[12] Rider Clause 78 – Law and Arbitration, Moot scenario p. 28
[13] Conditions of Carriage, BoL, Moot Scenario p.31

13. Under Common Law, the Queen's bench division in ***Crooks v Allan***[14] decision delivered in 1879, set out two main conditions of incorporation of an arbitration clause by reference in a bill of lading. The reference must be express and the parties must intend the clause to be binding. Even if the common law admits easily the incorporation of an arbitration clause by reference in the bill of lading[15], English courts still apply the stricter test of incorporation. These two main conditions have been reaffirmed by the English courts in 1912, the case ***TW Thomas & Co v Portsea Steamship***[16] in which the clause must be expressly referenced to be valid; and in 2010 in the case ***Habas v Somental***[17] in which the parties must demonstrate their intention to contract according to the precise terms of the referenced clause.

14. However, regarding the condition relating to the express terms of the clause referred in the maritime document, the English Court of Appeal has been asked to rule on this issue in the ***Channel Ranger case***[18]. The Bill of Lading stated, "*all terms, and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration clause are herewith incorporated.*" The Court of Appeal upheld the decision of the court of first instance which considered that the parties' intention was to incorporate the jurisdiction clause

[14] Crooks v Allan - Queen's Bench Division [1879] 5 Q.B.D. 38
[15] Section 5.3 UK Arbitration Act [1996]
[16] TW Thomas & Co Ltd v Portsea Steamship Co, Ltd - House of Lords [1912] A.C. 1
[17] Habas v Somental - Lloyd's Rep. 661, 675 (68), [2010]
[18] Caresse Navigation Ltd. v Office National de l'Electricité & Ors, Court Of Appeal [2013] EWHC3081

although the charter party contains the qualification of an arbitration clause, the solution is likely the same.

15. In our claimant's case, the bill of lading mentions clearly in its first clause of the terms of carriage: "*all terms and conditions, liberties and exceptions, dated as overleaf, including the law and arbitration clause, are herewith incorporated*". According to the common law's precedent, the arbitration clause contained in the charter party between the charterer (YU SHIPPING LTD) and the owner of the vessel (TOMAHAWK MARITIME S.A) seemed to be clearly referenced in the bill of lading. In the first instance, the express words "*arbitration clause incorporated*" make no doubt that the parties in the bill of lading intend to refer to the charter party arbitration clause and make it legally binding. Secondly, the Court of Appeal of England has upheld this wording and allows it to be the legal basis for any action on the maritime document in which the referenced clause is found.

16. Consequently, the two main conditions for the valid incorporation of the arbitration clause are filled. Thus, the reference is valid, and a third-party holder may implement the arbitration clause with the sufficient knowledge principle.

2. THE PRINCIPLE OF "SUFFICIENT KNOWLEDGE" ALLOWS THE CLAIMANT TO RELY ON THE ARBITRATION CLAUSE

17. In this case, the arbitration clause included in the charter party is not explicitly reproduced in the Bill of Lading and the underlying question is whether the referenced clause is binding on the holder of the document and whether he can invoke the clause against the signatories of the charter party.

18. Common law's precedent has previously defined the conditions for incorporating an arbitration clause by reference into the Bill of Lading. The clause can only be enforced if the reference is clear, express and binding. If, however, the reference to the clause is valid but the clause is not reproduced in those exact terms in the Bill of Lading, the Commercial Court of England ruled in ***Kallang Shipping***[19] decision in 2008 on the binding nature of the arbitration clause for the third-party holder of the Bill of Lading. As a third-party holder, the subrogated cargo rightful beneficiary, in possession of the Bill of Lading, can benefit from the arbitration clause of the charter party with condition that he has "sufficient knowledge" of the arbitration clause. This principle does not imply absolute knowledge of the clause even with extensive research. The English court applies the principle of "sufficient knowledge".

19. In this case, as defined above, the conditions for incorporating the arbitration clause by reference in the b/l are fulfilled. Under a documentary credit between the respondent and the buyer of the goods (Yu Shipping), the respondent could only release the funds upon delivery of a documentary package including the charter party. The Claimant was therefore at least aware of the existence of a charter party, even if it was not ultimately transmitted to him.

20. The claimant can benefit the sufficient knowledge principle. Furthermore, in a mail dated on September 29, 2023, Yu shipping sent a copy of the Charter Party documents to the respondent.

[19] Kallang Shipping S.A. Pan. v Axa Assurances Sen. - Commercial Court [2008] EWHC2761[64]

This, as a matter of facts, means that the respondent had full knowledge of the content and clauses of the charter party or rider clauses. Then, it is hard to understand how the respondent can contest the validity of the arbitration agreement.

21. Consequently, the Claimant is entitled to enforce the arbitration clause inserted by reference in the Bill of Lading. It is validly referenced and also applicable to the Respondent, as the third-party holder, based on the sufficient knowledge principle.

22. Based on these two legal grounds which allow the Claimant to assert his claim before the arbitral tribunal.

IV. BILL OF LADING BINDS THE RESPONDENT CONTRACTUALLY AND ESTABLISHES HIS LIABILITY

A. RIGHTS UNDER BILLS OF LADING TO VEST IN CONSIGNEE OR ENDORSEE

23. The Bill of Lading can be considered as the extension of the VCP or as a contract itself. Usually, the BoL is the document that the consignee of the cargo has to deliver in order to take delivery of it. The consignee isn't often the party that concluded the VCP contract. Indeed, it can be a third party at the first contract.

24. Nevertheless, the Bill of Lading Act says that "*Every Consignee of Goods named in a Bill of Lading, and every Endorsee of a Bill of Lading to whom the Property in the Goods therein mentioned shall pass, upon or by reason of such Consignment or Endorsement, shall have transferred to and vested in him all Rights of Suit, and be subject to the same Liabilities in*

respect of such Goods as if the Contract contained in the Bill of Lading had been made with himself "[20].

25. In the present case, the Respondent is the BoL holder. And so, the consignee, is a third-party to the first contract between Tomahawk and Yu Shipping. Considering the above statements, we can easily consider him as a party to the BoL contract and by extension, to the Charter party. This allows the Claimant to engage the responsibility of the Respondent for its failure to respect its primary obligation, which is the very subject of the contract of carriage: taking delivery of the cargo.

B. DEFENDANT'S FAILURE TO TAKE DELIVERY OF THE CARGO

26. The consignee of the cargo, as the contractual party to the contract BoL, has the obligation to take delivery of the said cargo, in the determined time that featured on the Charter Party.

27. In the present case, the goods have not been delivered within the specified laytime featured in the VCP "*96 hours for loading, 96 hours for unloading*"[21]. Laytime begins upon receipt and acceptance of the Notice of Readiness. The exact number of laytime is agreed by both parties and can't be subject to modifications once the Charter Party is issued. Therefore, the "*number*

[20] Article 1 - Bill of Lading Act, (1855).
[21] Clause E - Total Laytime, Part I, Charter Party, Moot scenario p.12

of running hours specified as laytime in Part I shall permitted the Charterer for loading, discharging…"[22] as mentioned in the VCP between the claimant and Yu shipping.

28. The Notice of Readiness was communicated on the vessel's arrival on September 20, 2023, and accepted immediately thereafter. Discharging began on October 4, 2023, Clause 4, Part II of the Charter party stipulates that "*laytime begins 6 hours after expiry of the notice of readiness"*[23]. It also states that laytime must begin as soon as the vessel arrives at the port of loading or discharging.

29. Even if delay of discharge can happen in maritime operations, the Claimant has specified many times to the charterer that he was entitled to a strict laycan to fulfill its next employment. The charterer shared this important information to the Respondent for the first time on September 29, 2023, in an e-mail exchange[24].

30. The Claimant mentioned a strict laycan in the charter party, of 1-14 October[25], which means that its next contract could be cancelled within this period, if the vessel wasn't at the loading port or on its way to. The Claimant couldn't take the risk to lose this next contract, signed for a 2 yearlong charter party, and that information was given to the Respondent.

[22] Clause 5 - LAYTIME, Part II, Charter Party, Moot scenario p.14
[23] Moot scenario p. 14
[24] Exchange of mails between the charterer and the respondent, Moot scenario p.48
[25] Moot scenario

31. Thus, if we consider that laytime began on September 20, 2023, the 96 hours stipulated were exceeded on September 24, 2023. As one day is equal to 24 hours, and the laytime determined is 96 hours, this represents four days.

    From this point onwards, the demurrage will compensate the loss of time for discharging the cargo[26], which in this case is set at USD 1,500 per hour. Discharging ends on October 7, 2023. Thus, from September 24 to October 7 there are 14 days, as 24 hours x 14 days = 336 hours, then 336 hours x the USD 1,500 comes to USD 504,000 of demurrage in compensation for the late delivery.

32. As the rightful holder of the bill of lading, the defendant (Veggies or Earth Banking) was bound to take delivery of the cargo within a reasonable time (laytime) in accordance with the terms of the charterparty incorporated in the bill of lading. By failing to issue instructions on time, the defendant breached this contractual obligation to the Claimant, and is entitled to pay the demurrages.

[26] Clause G, Part I, Charter Party, Moot scenario p. 13

C. THE PRINCIPLE OF BREACH OF CONTRACT IN CONTRACT LAW (COMMON LAW)

33. The existence of the breach must be ascertained. It is often disputed between the parties, factually and legally. For instance, in a sale of goods, if delivery was delayed, the seller may argue that he did not breach the contract because a force majeure event caused the delay.

34. First, for a breach to exist, there must be an **obligation**. Sometimes, a party's behaviour differs from what is expected from him, without this being a breach, because the expected behaviour was not an obligation. For instance, if a passenger having paid its plane ticket does not show up at the airport on the day of departure, this is not perceived as a breach of contract.

35. Second, a breach of contract is a **failure** by a party to fulfil an obligation. It can result from a total absence of performance or a defective performance. For instance, goods may be delivered later than stipulated in the contract (*defective performance*) or not delivered at all (*non-performance*). Delay in performing an obligation is a breach of contract, giving the victim the right to claim damages.

36. In the present case, the Respondent had the obligation to take delivery of the cargos, as it is what is written on the BoL and what is bounding him with the Claimant. In the first place, the behavior of the Claimant to not take delivery of the cargo in time is not expected, but nevertheless, was his primary obligation, so can be consider as an obligation. In a second place, his failure to respect the laytime featured on the contract is considered as a failure to his primary obligation.

37. As both criteria are fulfilled, the Respondent has breached his most important obligation towards the claimant on the contract law principle.

V. CLAUSES OF THE CHARTER PARTY CAN BE ENFORCED TO THE RESPONDENT

A. THE RESPONDENT RESPONSIBILITY REGARDING THE IMMOBILIZATION OF THE VESSEL

38. The vessel was detained because the goods were not discharged within the agreed laytime. Despite the fact the Respondent was aware of the time limitation that the Claimant had, regarding his next employment.

39. This situation made it impossible to carry out the other charter party, as negotiated with the Claimant. In fact, the Claimant had concluded a 2-year contract with another customer, with a freight rate of 35,000 USD per day, i.e. 35,000 x 365 x 2 = 25,550,000 USD. However, due to the delay of delivery, the next charterer initially wished to terminate the contract, after several warning made to the Claimant within the laycan.

40. The Claimant succeeded in negotiating to maintain the contract but agreed to lower the freight rate to 30,000 USD per day, thus 30,000 x 365 x 2 = 21,900,000 USD.

41. The difference of income for the Claimant is of USD 5,000 per day (5,000 x 365 x 2 = 3,650,000), giving a loss of USD 3,650,000 on a 2-year contract.

42. This loss is entirely due to the incapacity of the respondent to fulfill his only contractual obligation. The delay of delivery immobilized the vessel at Busan port during a long period of time. This period of time eventually overtaken the laycan of the Claimant and so threatened his other commercial contracts.

43. The Respondent must then, be taken responsible for this financial loss suffered by the claimant, in addition to the demurrage.

B. THE WEATHER ARGUMENT OF THE RESPONDENT IS NOT VALID

44. The laycan planned by the Claimant made it possible to arrive at the port of Kaohsiung (its next employment) within a reasonable time. Indeed, weather conditions would not have had a major impact on the vessel's arrival at its destination on schedule, as the vessel was due to leave the port of Busan on September 30, 2023, and had until October 14 to arrive at the port of Kaohsiung.

45. The Respondent’s failure to take delivery of its goods delayed the vessel's departure until October 8, 2023 (meaning 9 days late) instead of September 30.

    These 9 days would have been more than sufficient for the ship to arrive at its destination, since by leaving on October 8, 2023, the ship could have arrived at its destination on October 16, i.e. 8 days after its departure.

46. Assuming that the ship left on the 30th as agreed and completed the crossing in 8 days, it would have arrived on October 7, 2023, and therefore within the specified laycan (October 1-14)[27].

47. Therefore, the Respondent cannot argue on the random weather conditions in order to avoid liability for its behavior. His lack of professionalism and inability to take delivery of the goods in a reasonable time is the only reason which explains the applicant's delay to fulfill its obligation in its next contract.

VI. THE CARGO WAS NOT MISDELIVERED TO THE CHARTERER BY THE CLAIMANT

48. It is common practice that the consignee of the cargo does not hold the original Bill of Lading at time of the delivery. To avoid delays and blocking the ships, the carrier may be allowed or may often agree (but has no obligation to agree[28]) to release the cargo in exchange of a LOI.

A. RELEASING THE CARGO WITHOUT THE ORIGINAL BILL OF LADING IS NOT NECESSARILY A CAUSE OF DAMAGE AND THIS MAY BE DONE BY THE CARRIER

49. The courts have continuously ruled that cargo can be delivered without presenting an original Bill of Lading. This solution has been confirmed several times by the Courts and is considered as a common practice amongst maritime professionals.

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[27] Rider clause n°38 – next employment, Moot scenario p.25
[28] Kuwait Petrolum Corporation v I&D Oil Carriers Ltd (The Houda) [1994] 2 Lloyd's Rep. 541 (CA)

50. In 2022, the UK Commercial Court recently judged[29] that in the event of a contract of carriage, the loss caused to a bank does not result from the fact that the cargo was released without the Bill of Lading. The Judge ruled that the bank had knowledge and accepted, even implicitly, that the cargo could be released without the Bill of Lading. In this case, the bank had financed the purchase of the Cargo via a LOC (a letter issued by a bank to another to guarantee payments made to a specified person under specified conditions) and had failed to get paid by the company who started to encounter financial difficulties.

51. This case is not far different from ours since the respondent did not come forward until Yu Shipping's probable insolvency arose. The Respondent took time to deliver the documents necessary for the delivery to the Charterer. In an E-mail exchange on October 3, 2023, the respondent said to the charterer that "*he must do as he deem fit as Charterers and we (the respondent) will not interfere as long as the loan is repaid"*[30] .

52. This e-mail prove that the respondent was aware of the delay situation and the fact that the charterer will be the ones who takes delivery of the cargo. This demonstrates a lack of due diligence and good faith from the Respondent who would have reacted sooner if they really wanted the commodities to be delivered to them and not a third party.

[29] Unicredit Bank Ag. V. Euronav Nv [2022] Ewhc 957 (Comm)
[30] E-mail exchange between the charterer and the respondent, Moot scenario p.46

53. The existence of the alleged damage in this case is therefore questionable since there appears to be no misdelivery.

B. THE USE OF A LOI IS AUTHORIZED AND WIDELY ACCEPTED IN PRACTICE AND IN OUR CASE AS IT WAS CONTRACTUALLY PROVIDED

54. By handing over the LoI, the carrier breaches the contract of carriage. This behavior, although theoretically contrary to the law, is nevertheless unanimously accepted in practice. Moreover, the validity of the letter of guarantee is recognized by the courts[31] . Even the P&I Clubs provide their members with model letters of guarantee to be used in the event of delivery without a bill of lading.

55. Delivery of cargo without the original bill of lading can be done with the use of a letter of indemnity. A letter of indemnity is a legal document in which the shipper agrees to indemnify the carrier against any losses or damages that may arise because of releasing the cargo without the original Bill of Lading.

[31] Pacific Carriers Ltd v BNP Paribas [2004] HCA 35; Kuwait Petrolum Corporation v I&D Oil Carriers Ltd (The Houda) [1994] 2 Lloyd's Rep. 541 (CA)

56. In 2022, the High Court of Justice, in *The Miracle Hope* Case[32] ruled that the terms of the LOI should be detailed in the fixture recap at the time of the charter party negotiations to allow the delivery of the cargo without the original Bill of Lading.

57. In our case, the conditions relating to the LOI are mentioned in the Tomahawk Maritime Rider Clauses 57: "*In the absence of original b/ls at discharge port(s), owners to release the entire cargo to receivers against charterers' LOI without bank guarantee (LOI wording always to be in Owners' P and I Club format)*"[33].

58. A LOI was provided on October 3, 2023, by the Charterer to the Claimant ordering him to release the Cargo without the OBL in accordance with what was provided in the Tomahawk Maritime Rider Clauses. Therefore, the Claimant correctly delivered the Cargo to Yu Shipping without the Bill of Lading and in accordance with the Charter Party.

[32] Trafigura Maritime Logistics Pte Ltd v Clearlake Shipping Pte Ltd (The Miracle Hope) (No 5) [2022] EWHC 2234 (Comm)
[33] Moot scenario p.28

VII. THE CLAIMANT IS ENTITLED TO FULL COMPENSATION FOR THE LOSS OF ITS NEXT CONTRACT AS A RESULT OF THE RESPONDENT'S BREACH OF CONTRACT

59. The principle of mitigation in Common Law establishes that the party who suffers damages must take reasonable steps to limit those damages, ***British Westinghouse Electric and Manufacturing Co. Ltd. v Underground Electric Railways Company of London Ltd***[34]. However, in this case, Claimant did not breach this principle because it acted reasonably and took steps to limit its losses. He informed the charterer by multiple times of its limited laycan for its next employment, which was later shared with the respondent. The respondent had a reasonable time to take actions by September 29, 2023.

60. ***Hadley v Baxendale***[35] is also important at common law for issues relating to contractual liability. In this case, the court established the basic principle that a party cannot be held liable for consequential or special damages that are not the natural and probable result of a breach of contract. However, the responsible party may be liable for such damages if it was aware of their possibility when the contract was concluded.

61. It follows from ***Payzu Ltd. v Saunders***[36] that the court held that the party who suffers damages is not required to take extravagant measures to limit his losses, but only reasonable measures.

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[34] British Westinghouse Electric and Manufacturing Co. Ltd. v Underground Electric Railways Company of London Ltd (1912)
[35] Hadley v Baxendale (1854)
[36] Payzu Ltd. v Saunders (1919)

The court also pointed out that the party responsible for the breach of contract cannot excuse its own breach by invoking an alleged breach of the mitigation principle by the party suffering damages.

62. In this case, the Respondent breached its obligation to take delivery of the goods as stated in the contract between the parties. The Respondent had a clear and unequivocal obligation to take delivery of the goods on time but failed to do so. This caused significant financial losses to the Claimant, which could have been mitigated if the Respondent had fulfilled its contractual obligation and made all necessary arrangements.

63. Firstly, the Respondent took possession of the original bill of lading on September 4, 2023[37] and was therefore able to demand delivery of the goods on September 20, 2023, when the vessel arrived in Busan, because it is the owner of the goods under the original bill of lading. However, delivery of the goods took much more time. The chartered had to take delivery of the goods instead of the respondent -when he didn't show interest into taking actions - by the application of an LoI issued by Good Oils Sdn Bhd on October 3 2023[38].

64. The Claimant therefore acted swiftly in bringing an action against the Respondent for delay to take delivery of the cargo, on January 5, 2024, i.e. three months after the date for delivery of the cargo.

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[37] Bill of Lading, Moot scenario p.4
[38] Letter of Indemnity, Moot scenario p.45

65. Finally, it should be noted that a breach of the principle of mitigation should not be invoked to justify a breach of contract by the Respondent. The Respondent had an obligation to take delivery of the goods as the consignee and on time, regardless of the efforts the Claimant might have made to mitigate its losses. The Respondent's breach of this obligation cannot be excused based on an alleged breach of the mitigation principle by the Claimant.

66. In conclusion, the Claimant did not violate the mitigation principle because it acted reasonably and took steps to limit its losses. The Claimant acted promptly to recover the goods and brought an action against the consignee to recover the losses incurred. The Respondent failed to fulfill its contractual obligations, which caused the Claimant significant financial losses. The Claimant should therefore be able to recover these losses from the Respondent, who has incurred liability by having committed this fault. The claim for compensation is therefore well founded.

VIII. PRAYER FOR RELIEF

For the reasons set out above, the Claimant requests the Tribunal to:

FIND that the Tribunal has jurisdiction over this case.

AWARD the sum of USD 3 650 000, or alternatively, damages to be assessed, or further alternatively, interests, costs or other relief as the Tribunal deems fit.

AWARD the sum of USD 504 000 for demurrage, or alternatively, damages to be assessed, or further alternatively, interests, costs or other relief as the Tribunal deems fit.

AWARD interests and costs in favor of the claimant.

Dated May 2nd, 2024.

Solicitors for the claimant

Beefeater Solicitors LLP