INTERNATIONAL MARITIME LAW ARBITRATION MOOT, 2024

TEAM CODE: G

IN THE MATTER OF ARBITRATION UNDER THE INTERNATIONAL ARBITRATION ACT, 1994

AND

THE ARBITRATION RULES OF THE SINGAPORE CHAMBERS OF MARITIME ARBITRATION (4TH EDITION, 2022)

between

TOMAHAWK MARITIME S.A.

……CLAIMANT

AND

VEGGIES OF EARTH BANKING LTD.

……. RESPONDENT

MEMORIAL FOR THE CLAIMANT

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LIST OF ABBREVIATIONS

Abbreviation	Full Form
SPC	Supreme People's Court
SCMA	Singapore Court of Maritime Arbitration
CAA	Chinese Arbitration Act
PRC	People's Republic of China

B/L	**Bill of Lading**
LOI	**Letter of Indemnity**
VOE	**Veggies of Earth Banking Ltd.**
L/C	**Letter of Credit**
Charterers	**Yu Shipping Ltd.**
Claimants	**Tomahawk Shipping Ltd.**

STATEMENT OF FACTS

1. The CLAIMANT is Tomahawk Maritime S.A, a company registered under the laws of Panama and the owners of the vessel Mt. NIUYANG **("Vessel").** RESPONDENT is Veggies of The Earth Banking Limited, a bank under the laws of Hong Kong.

The Charterparty

2. The Voyage Charterparty **("Charterparty")** was executed between the Charterers, Yu Shipping **("Charterers")** and the CLAIMANT for carriage of 17,000 tons of Palm Oil **("Cargo")** between Bintulu (Malaysia) and Busan (South Korea).
3. The goods were financed by the RESPONDENT Bank through a Letter of Credit **("L/C")** payable upon presentation of Bills of Lading or a Letter of Indemnity **("LOI").**
4. Clause 37 of the Rider Clauses in the Charterparty stated that the vessel was further time chartered with a Laycan between 1st and 14th October 2023.
5. The vessel left Bintulu on 6th September, 2023 and arrived at Busan on 20th September. Upon arrival, it tendered an NOR which was accepted on the same date.

Delay

6. Despite several correspondences between the CLAIMANT and the Charterers, no order for unloading was given.
7. A letter was dispatched on the 3rd of October reminding the charterers about the Vessel's subsequent employment and requesting for compensation in case it was missed.
8. An order for delivery on the presentation of a LOI was given and the same was heeded.

9. The unloading started on the October 4th 2023 and finished at 23:48 on 7th October and departed at 2:14 am. on 8th October.

Cancellation

10. On the Way to Kaohsiung for its next fixture, the vessel encountered a storm which caused further delay.
11. The subsequent charterers exercising their option to cancel, did the same on 16th October, 2023.
12. Post negotiations, the contract was renewed but at a lower hire rate of $30,000 as compared to the $35,000 of earlier.

Compensation

13. The Charterers underwent liquidation and correspondence with the Liquidators indicated that the CLAIMANT's request for compensation was being considered.
14. On 29th November, 2023, the RESPONDENT wrote to the CLAIMANT claiming to be the owners of the Original Bill of Lading.
15. The CLAIMANT asked for a compensation for the delay to the tune of $3.65 Million. The damages were the difference between the original rate of hire and the newer rate of Hire.

Arbitration

16. Upon getting no further Reply, the CLAIMANT sent a notice of arbitration to the RESPONDENT, to commence arbitration in Singapore under the Arbitration clause of the Charterparty.

TIMELINE OF EVENTS

1st September, 2023	**Voyage charterparty signed between Claimant and Charterer**
3rd September, 2023	**Arrival of Vessel at Bintulu**
6th September, 2023	**Completion of Loading**
6th September, 2023	**Issuance of B/L and consigned to VOE**
20th September, 2023	**Arrival at Busan, tendering of NOR and acceptance**
20th September, 2023	**Charterer's application for trust receipt upon presentation of L/C Documents**
29th September, 2023	**Respondent Informed about vessel's subsequent employment.**
3rd October, 2023	**Presentation of LOI and invoice under L/C**
3rd October, 2023	**Request for trust receipt declined**
3rd October, 2023	**Charterers told by Bank to do as they deem fit.**
3rd October, 2023	**B/L received by bank**
3rd October, 2023	**Delivery based on LOI given by Charterer**
7th October, 2023	**Completion of Unloading**
8th October, 2023,	**Vessel departs for Kaohsiung**
16th October, 2023	**Cancellation of subsequent employment**
15th November, 2023	**Message sent to Liquidators of Charterer regarding compensation for losses suffered due to delay**

22nd November, 2023	**Reply by liquidators stating that request being considered**
29th November, 2023	**Message by Respondent claiming to be holder of original B/L. Further correspondence regarding compensation and allegations of mis delivery.**
5th January, 2024	**Notice for arbitration sent by Claimant**

ISSUES RAISED

1) *Whether the tribunal has jurisdiction over the dispute.*

2) *Whether the* RESPONDENT *is entitled to damages for mis delivery.*

3) *Whether the* CLAIMANT *is entitled to consequential damage.*

SUMMARY OF ARGUMENTS

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1. <u>The arbitration agreement is valid and Singapore is the seat of arbitration.</u>

The arbitration agreement is legally valid because the three elements of Article 16 of the Chinese Arbitration Act, namely "agreement to arbitrate", "matter of arbitration" and "designating an arbitration commission" are present **[1.1].** *Secondly,* the seat of arbitration is Singapore because the law of the place of arbitration institution is applicable **[1.2].** In the Alternative, the seat of arbitration is England **[1.3].**

2. <u>The CLAIMANT is not liable for misdelivery.</u>

The CLAIMANT is not liable for mis delivery because, *firstly,* the RESPONDENT is estopped from claiming mis delivery [2.1]. *Secondly,* the RESPONDENT caused its own loss [2.2].

3. <u>The CLAIMANT is not entitled to claim damages from the RESPONDENT</u>

The CLAIMANT is not entitled to claim damages from the RESPONDENT because *firstly,* there is a causal connection between the breach of contract and the resultant loss **[3.1].** *Secondly,* the RESPONDENTS are consignees are bound by the terms of the charterparty **[3.2].**

ARGUMENTS ADVANCED

1. THE ARBITRATION AGREEMENT IS LEGALLY VALID AND SINGAPORE IS THE SEAT OF ARBITRATION

The arbitration agreement is legally valid because the three elements of Article 16 of the Chinese Arbitration Act, namely "agreement to arbitrate", "matter of arbitration" and "designating an arbitration commission" are present [1.1]. *Secondly,* the seat of arbitration is Singapore because the law of the place of arbitration institution is applicable [1.2]

1.1. The requirement of arbitration commission is fulfilled

Article 16 of the Chinese Arbitration Act **("CAA")** mandates the requirement of "Arbitration Commission" for the validity of an arbitration.[1] This requirement has been interpreted to refer to both domestic and foreign arbitration commissions.[2]

The Ningbo Intermediate People's Court upheld the ICC administered arbitration in Beijing in the Duferco Case (2009). It stated that the award, being Non domestic in nature, can be validly enforced under Article 260 of the CPL of PRC.[3]

The Anhui case of the SPC, further held that Arbitration seated in China by a foreign arbitral body was valid under Chinese Law.[4] It stated that the requirements of Article 16 were fulfilled and

[1] Arbitration Law of the People's Republic of China, 1994, §16, No. 31, Acts of Standing Committee of 8th National People's Congress, 1994 (China)
[2] Chinalight International Trade Co. Ltd. v Tata International Metals (Asia) Ltd. ("Chinalight v. Tata"), (2017) Jing 04 Min Te No 24
[3] Duferco SA v. Ningbo Art & Craft Import & Export Corp. (Ningbo Interm. People's Ct. Apr. 22, 2009)
[4] Anhui Longlide Baozhuang Yinshua Youxian Gongsi yu BP Agnati S.R.L. [Longlide Packaging Co. Ltd. v. BP Agnati S.R.L.] (Anhui Higher People's Ct. Jan. 30, 2013).

widened the meaning of the term Arbitration Commission.[5] It was followed in the Daesung case where, additionally, it was observed that limiting the definition of arbitration commission to domestic arbitration commission would render Article 128(2) of the PRC's contract law defunct.[6]

1.2. Singapore is the Seat of Arbitration

It is submitted that Singapore is the seat of arbitration because, law of the place of arbitration institution is applicable.

Article 18 of the Law of the PRC on Choice of Foreign Related Civil Relationships lays down the law applicable to an arbitration agreement.[7] It states that in the absence of choice of law applicable to the arbitration agreement, the law applicable may either be the law of the place of arbitration or the law of the place of arbitration institution.[8] Article 14 of the Law of the People's Republic of China on Choice of Foreign Related Civil Relationships has been interpreted by the courts to mean that Chinese Law is applicable to the arbitration Agreement in the absence of a choice of law governing the arbitration agreement or a choice of the arbitration institution.[9] Further, Article 4 of the 2006 SPC interpretation recognizes that reference to an arbitration institution may be done by choosing the rules of the arbitration institution.[10]

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[5] id.
[6] Daesung Industrial Gases Co., Ltd. v. Praxair (China) Investment Co., Ltd. ([2020] Hu 01 Min Te No. 83) ("Daesung").
[7] Law of the People's Republic of China on Foreign Related Civil Relationships, 2010, §18, Acts of the Standing Committee of the 11th National People's Congress, 2010 (China).
[8] id.
[9] Law of the People's Republic of China on Foreign Related Civil Relationships, 2010, §14, Acts of the Standing Committee of the 11th National People's Congress, 2010 (China).
[10] SPC Interpretation to The Arbitration Law of the People's Republic of China, 2006, § 4, Interpretation No. 7, Supreme People's Court, 2006 (China).

This was followed in the Jiangmen Farun case, where the designated arbitration rules indicated the arbitration institution, (the CIETAC) and the SPC held the agreement to be valid.[11] The choice of the arbitration institution is an indicator towards the place of arbitration as held in the Xiamen Xinjiexing case. It was held that the parties agreement to conduct the arbitration in "China's foreign economic and trade arbitral institution or litigation at the local court." implied the Mainland as the place of arbitration.[12] Article 32 of the SCMA rules states that, the seat of arbitration would be Singapore subject to an agreement to the contrary.[13] Additionally, Articles 12 and 13 of the Chinese Arbitration Act state that the arbitrators are to be appointed by the Chinese Government.[14]

In the present dispute, the arbitration agreement is governed by the SCMA rules indicating that the arbitration is to be held in Singapore.[15] Additionally, the parties have decided on the number of arbitrators and have themselves appointed the arbitrators.[16] Thus, the parties intended Singapore to be the seat of arbitration.

1.3. <u>In the Alternative, the seat of arbitration is England.</u>

The seat of arbitration is England because, *firstly* it is implied by the choice of English law as law governing the underlying contract. [1.3.1]. Secondly, the intent of principle of separability is to ensure the survival of the arbitration clause if the principal contract is void. It cannot be used as a justification for stating separate laws of the agreement and the arbitration clause [1.3.2].

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[11] Jiangmen Farun Glass Co. Ltd v. Stein Heurtey Company and Shanghai Stein Heurtey Mecc Industrial Furnace Co. Ltd, The Supreme People's Court (16 May 2006).
[12] Xiamen Xinjiexing Industry & Trade Co., Ltd, and She Wenbin v. Xiamen Fengruite Industry & Trade Development Co., Ltd, The Supreme People's Court (26 February 2009)
[13] Art. 32(1) of SCMA Rules, (4th Edition, 2022).
[14] Arbitration Law of the People's Republic of China, 1994, §12, No. 31, Acts of Standing Committee of 8th National People's Congress, 1994 (China), Arbitration Law of the People's Republic of China, 1994, §13, No. 31, Acts of Standing Committee of 8th National People's Congress, 1994 (China).
[15] Moot Problem, p. 9.
[16] id.

1.3.1. The seat of arbitration is England because the law governing the arbitration agreement is English Law.

The Sulamerica case laid down the three ways to choose the law deciding the validity of an arbitration agreement.[17] *Firstly*, the law choosing the arbitration agreement may either be expressly mentioned, in the absence of which, it may be implied. Lastly, the law with the closest connection to the arbitration agreement which is usually the law of the seat is chosen to be the law applicable.[18] The Implied law is the law of the underlying contract.[19]

In the present case, the law of the underlying contract is explicitly chosen to be English law, thus it is the law determining the validity of the law of the arbitration agreement

1.3.2. The principle of separability cannot be used to state that different laws are applicable to the main agreement and the arbitration clause.

It was held that the principle of separability cannot be stretched so far as to exclude the application of the law of the underlying contract. Its purpose is to ensure the survival of the arbitration agreement even if the underlying contract is void.[20] The same was formulated in the Kababji case where it the law of the underlying contract was stated to be the law of the arbitration agreement.[21]

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[17] *Sulamerica CIA Nacional De Seguros SA and others v Enesa Engenharia SA and others* [2012] EWHC 42 (Comm).
[18] Enka v Chubb [2020] UKSC 38
[19] BNA V BNB & Anr. [2019] SGCA 84.

[20] Kabab-Ji SAL v Kout Food Group [2021] UKSC 48, BCY. v. BCZ. [2016] SGHC 249.
[21] id.

2. THE CLAIMANT IS NOT LIABLE FOR MISDELIVERY.

The CLAIMANT is not liable for mis delivery because, *firstly,* the RESPONDENT is estopped from claiming mis delivery [2.1]. *Secondly,* the RESPONDENT caused its own loss [2.2].

2.1. Respondent is Estopped from claiming mis delivery.

The RESPONDENT is estopped from claiming delivery because, *firstly,* the RESPONDENT did not become the holder of the B/L in good faith [2.1.1]. *Secondly*, the RESPONDENT authorized the delivery against the LOI [2.1.2].

.*2.1.1. Respondent did not become holder of bill of lading in good faith*

VOE would become lawful owners under Section 2(1)(a)[22] and 5(2)(b)[23] of the goods of carriage act if they acted in good faith. Even though the act doesn't define 'good faith', the definition of "good faith" in the business context of B/L should be clear, consistent with use in other situations and nations, and unambiguous.[24] Therefore, it refers to honest conduct and not a more general definition.[25] Further, as discussed in the STI orchard,[26] the internal arrangements of the financier bank and its customer also have to be considered when talking about good faith.

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[22] The Carriage of Goods by Sea Act, §2(1)(a).
[23] The Carriage of Goods by Sea Act, §2(1)(b).
[24] Agean Sea Traders Corporation v Repsol Petroleo SA (The Agean Sea), [1998] 2 Lloyd's Rep. 39, at page 61.
[25] id.
[26] Oversea Chinese Banking Corporation Ltd v Owner and/or Demise Charterer of the Vessel 'STI Orchard' Winson Oil Trading PTE Ltd, [2023] 1 Lloyd's Rep. 22, at page 55.

The CLAIMANT argues that the RESPONDENT did not use the cargo as security for the loan repayment. Evidence suggests the RESPONDENT financed the purchase using a L/C payable against shipping documents or a LOI[27] and the same was done on 3rd October. There is further evidence that RESPONDENTS were provided with a copy of the charterparty,[28] and the Charterers' intention to invoke clause 57 for delivery.[29] Even then, RESPONDENTS did not order discharge upon NOR tendering.[30] This implies they held proceeds from cargo sale, and not the cargo itself, as security, only hesitating to discharge after reviewing Yu Shipping's financial condition.[31] This is corroborated by the delay in bringing a claim until November 29,[32] despite claiming continuous possession of the Bill of Lading since October 3. Had they looked at the cargo as security, such a lapse in time would not have occurred.

Thus, the RESPONDENT did not become the holder of the bill of lading in good faith.

2.3.2. Respondent consented to or authorized to delivery against LOI

Even though this defense covers a wide range of scenarios, in essence it states that the holder of the bill gave, or is deemed to have given the shipowner instructions who followed the same and therefore is not liable for any violation.[33] Instructions emanating from someone who did not hold the bill of lading at the time of delivery, but became a holder subsequently are covered by the defense of consent.[34] Consent can be given in many ways, it can be express[35] or it can be an

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[27] Moot Problem, p 43.
[28] Moot Problem, p 43; Moot Problem p 8, ¶11.
[29] Moot Problem p 40, ¶13.
[30] Moot Problem p 8, ¶9.
[31] Moot Problem p 46.
[32] Moot Problem p 10, ¶17.
[33] Oversea Chinese Banking Corporation Ltd v Owner and/or Demise Charterer of the Vessel 'STI Orchard' Winson Oil Trading PTE Ltd, [2023] 1 Lloyd's Rep. 22, ¶70.
[34] Id.¶ 71.
[35] Forsa Multimedia Ltd v C&C Logistics (HK) Ltd [2011] HKCU 254, ¶22.

acquiescence in the form of inaction in situations where it is reasonable to infer that holder consents to the discharge without the presentation of bills of lading.[36]

In the present dispute, although RESPONDENTS claim they became holders of the bill after the discharge begun, their consent will be considered valid as they did subsequently become the holders. The RESPONDENT can be said to have both acquiesced to the discharge and give express consent. Even though Respondent was informed of the arrival of the vessel on multiple occasions, they failed to take any action. The Vessel did not receive any discharge instructions despite the NOR being accepted and it was only on 28th Sept. 2023 that the Charterers notified that they were waiting for discharge instructions from the RESPONDENTS.[37] Further, the RESPONDENT financed the transaction under a L/C against a LOI[38] which should have made them aware that delivery happened without bills of lading and yet they not act upon it. Therefore, their conduct confirms their acquiescence. RESPONDENT'S express consent can be inferred from their mail to the charterers on 3rd October. They were initially hesitant in permitting the cargo to discharge without the bills of lading, however they ultimately grant consent saying "*you must do as you deem fit as Charterers and we will not interfere as long as the loan is repaid."*

Thus, the RESPONDENT consented to or authorized to delivery against LOI.

[36]The Neptra Premier [2001] 2 SLR(R) 754, ¶38.
[37] Moot Problem p 7, ¶10.
[38] Moot Problem p 43.

2.2. The Respondent caused its own loss

It is submitted that the RESPONDENT'S own conduct was the cause of its loss. The counterfactual in a finance bank's mis delivery claim must demonstrate that the bank would have acted differently had they possessed the B/L.[39]

In the present dispute, the bank would have suffered the loss even if the discharge happened against the bill of lading and not a LOI. The internal financial arrangements suggest that the Charterers were supposed to use the proceeds from the sale of the Cargo to repay the RESPONDENTS.[40] However, even when cargo was sold to the Korean buyers, as confirmed by the Charterers,[41] there is no information about what happened to the proceeds. Further, the bank even after having possession of the bills of lading since 3rd Oct. 2023 they waited till 29th November to bring a claim.[42] The RESPONDENTs had also financed the transaction against a LOI and did not want to discharge the cargo only after reviewing the Charterer's financial conditions. Therefore, it can be inferred that even if the RESPONDENT possessed the bills of lading, they would still be in the same position, as it was their own conduct and Yu Shipping's unsound financial condition that caused loss.

Thus, RESPONDENT'S own conduct was the effective cause of loss.

[39] UniCredit Bank v EuroNav NV 'The Sienna', [2023] EWCA Civ 417.
[40] Moot Problem p 44.
[41] Moot Problem p 47.
[42] Moot Problem, 37, ¶16.

3. THE CLAIMANT IS ENTITLED TO CLAIM DAMAGE FROM THE RESPONDENTS

The claimant is not entitled to claim damages from the respondent because *firstly,* there is a causal connection between the breach of contract and the resultant loss **[3.1].** *Secondly,* the respondents are consignees are bound by the terms of the charterparty **[3.2].**

3.1. <u>There is a causal connection between the breach of contract and the resultant loss.</u>

The established maritime jurisprudence provides that to claim damages, the aggrieved party must prove that the loss was caused by the breach of the contract, thus, a contractual breach is a *conditio sine qua non*.[43] Therefore, establishing causality between the breach and loss is essential, however, it is immaterial whether the breach caused the damage directly or indirectly, as long as the damages were foreseeable by the party in breach at the time of entering the contract.[44] Furthermore, the chain of causation between the breach of contractual obligation and resultant loss should be undisturbed.[45] As provided in Amro Bank, for breaking the chain of causation it is required that the claimant acted in a way in which no prudent uninsured would have acted as the innocent party has the duty to mitigate.[46] Hence, a positive imprudent act on the part of claimant is essential. The above-mentioned principle of causality is universally observed in the international commercial statutory landscape such as the International Convention on Contracts for the International Sale of Goods.[47]

In the present case, there was a breach of a contractual obligation on the part of the respondents within the meaning of the dictum of Eternal Bliss as submitted earlier. Because, the Rider clauses

[43] Sia-Potash International Investment (Guangzhou) Co Ltd. [2023] EWHC 1119 (Comm).
[44] Monarch SS Co Ltd v A/B Karlshamns Oljefabriker [1949] AC 196, HL.
[45] National Oilwell (UK) Ltd. v Davy Offshore Ltd [1993] 2 Lloyd's Rep 582
[46] BN Amro Bank NV v Royal & Sun Alliance Insurance plc [2021] Lloyd's Rep IR 467.
[47] Kantonsgericht Zug (14 December 2009) CISG-online 2026, para. 11.

to the Charterparty give the Respondent the notice about the next fixture of the ship and the mandatory requirement of laycan 1-14 Oct. 2023 at the port of Kaohsiung and cancellation of the fixture in the event the ship fails to observe the laycan.[48] Furthermore, by the communication dated 29 Sept. 2023, charterers further informed the Respondents that that it was important to discharge the cargo by 7 Oct. 2023, otherwise, it would not be possible for them to meet the requirement of laycan.[49] Thus, damages arising out of the delay was foreseeable to the Respondents at the time of entering the contract.

Furthermore, the chain of causation between the breach of the contract and the loss suffered does not break merely due to the adverse wind and sea condition as argued by the Respondent, because, there was no imprudent act on the part of the Claimants which is essential for breaking the chain of causation as per the dictum of Amro Bank case. Further, even after discounting the adverse weather conditions, the ship could not reach Kaohsiung before the expiry of the laycan period, as evident from the communication dated 9 Sept. 2023 where the Claimant reminded the Charterers that the Vessel had to sail from Busan by 7 Oct. 2023, at the latest.[50] This communication implicates that if the ship failed to sail afloat from the port Busan latest by 7th Oct. 2023 it would not be able to meet the laycan and would loose on the next fixture. However, the ship was only able to leave the port of Busan on 8th Oct. due to the delay on the part of the Respondent in allowing the discharge of cargo, thereby preventing the ship from reaching the port of Kaohsiung before the expiry of the laycan period and the resultant cancellation and a subsequent re-negotiation of the next fixture on a reduced price, ultimately causing loss to the Claimants.

[48] Moot Problem, Rider Clauses to the Charterparty Cl.38, p.25.
[49] Moot Problem, Annex A, p.43.
[50] id.

3.2. Respondents as consignees are bound by the terms of the charterparty

It is settled law that the rules applying to the construction of contracts generally are also applicable to the construction of bills of lading. Further, to verify if a particular term of the charterparty has been incorporated in the bill of lading in a way to bound the consignees, the incorporating clause in question, must be understood to see if it is wide enough to bring a prima facie incorporation of that term.[51] If it is found to be wide enough, the term sought to be incorporated must be examined to ensure that it makes sense in the context of the bill of lading.[52] When specific terms of incorporation are used, a certain degree of manipulation of the clause is allowed to give effect to the parties expressed intention.[53] Additionally, it has also been accepted that one of the features of a bill of lading is that the cargo interests may have no knowledge of the terms of the charterparty when they decide to accept the documents.[54] This position has been further illustrated and affirmed in the Channel Ranger[55] case where it was held that the consignee would be bound by the charterparty clause which the parties had clearly intended when referring to it.

In the present dispute, the incorporating clause on the overleaf of the bill of lading[56] was wide enough to incorporate the charterparty term regarding discharge within laytime, and also that the cargo interests would take delivery in reasonable time. Further, the charterers had informed the cargo interests of the Vessel's next laycan and were also provided with a copy of the charterparty.[57] The e-mail correspondence between the charterers and the respondents also mentioned that the vessel would need to leave the port by 7th October.[58] Therefore, owing to the knowledge of the

[51] Herculito Maritime Ltd and others v Gunvor International BV and others, [2024] UKSC 2, at page 26.
[52] Id.
[53] Herculito Maritime Ltd and others v Gunvor International BV and others, [2024] UKSC 2, at page 30.
[54] Herculito Maritime Ltd and others v Gunvor International BV and others, [2024] UKSC 2, at page 28.
[55] Caresse Navigation Ltd v Zurich Assurances MAROC & Ors, [2014] EWCA Civ 1366.
[56] Moot Problem, p 31.
[57] Moot Problem, p 8; Moot Problem p 11.
[58] Moot Problem, p 47.

Respondents regarding the vessel's next employment and the magnitude of losses it could potentially suffer should the Vessel be unable to reach Kaohsiung, they can be held liable for damages. Therefore, the Respondents can be said to be bound by the terms of the charterparty and be sued for damages.

PRAYER FOR RELIEF

***In the Light of the Above Submissions, the Claimants requests the Tribunal to Declare that*:**

1. The Hon'ble Tribunal have the jurisdiction to hear and decide the present dispute and the applicable law for determining the validity of the arbitration clause is the Singapore law.
2. The Respondent is not entitled to claim damages in counterclaim as the e Respondent's conduct was the effective cause of the loss. In any case, the delivery of the Cargo pursuant to a letter of indemnity tendered by the Charterer did not cause the Respondent to suffer any loss.
3. The claimant is entitled to claim for unliquidated damages in addition or as an alternative to demurrage as all the parties were aware of the Vessel's next employment and the magnitude

of the losses that the Claimant will suffer if the Vessel could not be delivered into the next charterparty at Kaohsiung.

And pass any other order that it may deem fit in the interest of justice, equity and good conscience.

And for this act of kindness, the Claimant shall duty-bound forever pay.

Sd/-

(Counsel for the Claimant)