# INTERNATIONAL MARITIME LAW ARBITRATION MOOT 2024

## UNIVERSIDAD CARLOS III DE MADRID

## TEAM O

## MEMORANDUM OF THE CLAIMANT

| ON BEHALF OF | AGAINST |
|---|---|
| Tomahawk Maritime S.A. | Veggies of Earth Banking Ltd. |
| **CLAIMANT** | **RESPONDENT** |


**COUNSEL**

Ana Rodríguez  Lucía Amarelo  Paloma Azcona  Sara Dólera  Thalia Jimenez

## TABLE OF CONTENTS

## TABLE OF ABBREVIATIONS

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|---|---|
| Claimant | Tomahawk Maritime S.A. |
| Respondent | Veggies of Earth Banking Ltd. |
| Vessel | MT “NIUYANG” (IMO No. 392817). |
| Charterparty/ Charter | Charterparty between Tomahawk Maritime S.A. and Yu Shipping Ltd. |
| Charterer | Yu Shipping Ltd. |
| Shipper | Good Oil Sdn Bhd. |
| Buyer | Gileum Refinery Co. Ltd. |
| Loading Port | Bintulu. |
| Destination Port | Busan. |
| B/L | Bill of Lading No. COW-001A. |
| Cargo | 16,999.01 MT cargo of crude palm oil. |
| Rider clauses | Tomahawk Maritime Rider Clauses. |
| Owner | Tomahawk Maritime S.A. |

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|---|---|
| Discharge LOI | Discharge letter of indemnity issued by Yu Shipping Ltd to Tomahawk Maritime S.A. on 3 October 2023. |
| Payment LOI | Payment Letter of Indemnity issued by Good Oils SDN BHD to Veggies of Earth Banking LTD for account of Yu Shipping LTD on 3 October 2023. |
| SCMA | The Singapore Chamber of Maritime Arbitration. |
| L/C | Letter of Credit issued by Veggies of Earth Banking Ltd. to Yu Shipping Ltd. in order to purchase the Cargo. |

# LIST OF AUTHORITIES

**Statute.**

*International Arbitration Act 1994 (Singapore, 2020 Rev Ed)*

**Books and articles.**

*Advantages and disadvantages of institutional arbitration. In: Liber Amicorum Bernardo Cremades, page 868. MULLERAT, Ramón (2010).*

*Benjamin's sale of goods (Vol. 11). Benjamin, J. P. (2012)*

*Chapter 5: International Arbitration Agreements: Non-Signatory Issues. In: International Arbitration: Law and Practice (Third Edition), page 118. BORN, Gary (2021).*

*Chapter 7 Arbitration Agreements - Validity and Interpretation. In: Comparative International Commercial Arbitration, page 143. LEW, Julian; MISTELIS, Loukas and KRÖLL, Stefan (2003).*

*Chapter 8: Parties in international Arbitration: Consent v. Commercial Reality. In: The evolution and future of International Arbitration, page 147. BREKOULAKIS, Stavros (2016).*

*Fouchard, Gaillard, Goldman on International Commercial Arbitration, page 258. GAILLARD, Emmanuel and SAVAGE, John (1999).*

*Maritime letters of indemnity. Arizon, F., & Semark, D. (2014). Informa Law from Routledge.*

*Scrutton on Charterparties, 24th Edition (2020).*

**Cases and arbitral awards.**

*Compania Espanola de Petroleos SA v Nereus Shipping SA 527 F 2d 966, 973 (2d Cir 1975).*

*Court of Appeal (Civil Division) 1983. Skips A/S Nordheim and Others v. Syrian Petroleum Co. Ltd and Petrofina S.A. EWCA Civ J1005-1.*

*Delhi High Court (2020) Shapoorji Pallonji and Co. Ptv Ltd v. Rattan India Power Ltd.*

*Delhi High Court of Justice (2021) Ansal Props. Infrastructure Ltd v. Dowager Mahranis Residential Accommodation Welfare & Amenities.*

*Federal Bulk Carriers Inc v. Itoh & Company Ltd (Federal Bulker): Swiss Federal Tribunal (2020) Judgement of 13 November 2020, DFT 4A_124/2020.*

*Judgement of 16 December 2014, N° 68/2014; Madrid Tribunal Superior de Justicia (2014).*

*Judgement of 28 December 2020, DFT 4A_124/2020; Swiss Federal Tribunal (2020).*

*Paris Court of Appeal, 30 November 1988, Société Korsnas Marma v. Société Durand-Auzias.*

*Singapore High Court (13 de octubre de 1999) Concordia Agritrading Pte Ltd v Cornelder Hoogewerff (Singapore) Pte Ltd, (2000) 3 Int ALR N-42.*

*Singapore High Court (28 de diciembre de 1999) Macon (BVI) Investment Holding Co Ltd v Heng Holdings SEA (PTE) Ltd.*

*The Achilleas.*

*The "Pacific Vigorous" [2006] SGHC 103.*

*The Bonde. Richco International Ltd v Alfred C Toepfer International GmbH [1991] 1 Lloyd's Rep 136*

*The Heron II. C Czarnikow Ltd v Koufos (HL) [1967] 2 Lloyd's Rep 457, page 3 par. 27.*

*The Nika (QBD (Comm Ct)) [2020] EWHC 254 (Comm); The Sienna [2022] 2 Lloyd's Rep 467, UniCredit Bank AG v Euronav NV.*

*The Sormovskiy 3068 [1994] 2 Lloyd's Rep 266, 274. SA Sucre Export v Northern River Shipping Ltd.*

*The Stone Gemini [1999] 2 Lloyd's Rep 255.*

*Trafigura Beheer BV v Kook.*

*Oversea-Chinese Banking Corporation Ltd v Owner and/or Demise Charterer of the Vessel "STI Orchard"; Winson Oil Trading Pte Ltd (Intervening) [2023] 1 Lloyd's Rep 22.*

## STATEMENT OF FACTS

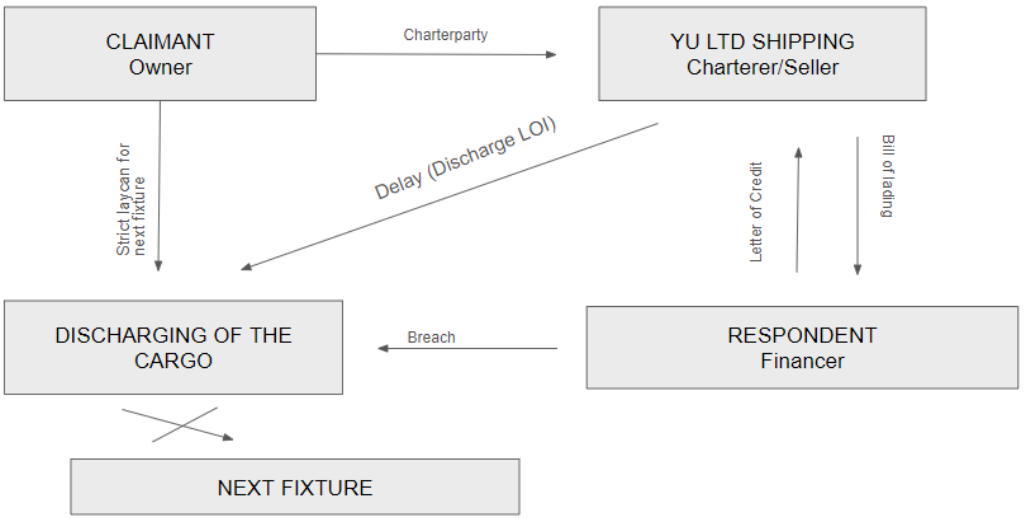
1. CLAIMANT is Tomahawk Maritime S.A., a company registered under the laws of Panama and owner of the vessel *MT "NIUYANG"* (the "**Vessel**"), and RESPONDENT is Veggies of Earth Banking Ltd., a company registered under the laws of Hong Kong.
2. On 1 September 2023, the CLAIMANT entered into a Voyage Charterparty ("**Charterparty**") with Yu Shipping Ltd (the "**Charterer**") to employ the vessel to carry a cargo of palm oil from Bintulu, Malaysia, to Busan, South Korea.
3. The Charterer was informed within negotiation on the Charterparty's terms that after the intended voyage to Busan, the Vessel was to be delivered into a two year charterparty at Kaohsiung with a very strict laycan of 1-14 October 2023, and it was therefore agreed that the carriage to Busan would be completed by 30 September 2023 in order to give enough time for the Vessel to reach Kaohsiung within the laycan established in the next charterparty.
4. Pursuant to the Charterparty, the Vessel arrived at Bintulu on 3 September 2023 and it presented its Notice of Readiness at 0300 LT that same day. The loading of the Cargo finished on 6 September 2023, and that same day the Vessel departed Bintulu. The Bill of Lading No. COW-001A (the "**B/L**") was issued on 6 September 2023 for the Cargo and consigned to "Veggies of Earth Banking Ltd or Order".
5. The Vessel arrived at Busan on 20 September 2023, Notice of Readiness tendered and accepted on the same day. However, no berthing and discharge instructions were received. Repeated chasers were sent to the Charterers but it was only on 28 September 2023 that they responded to state that they were waiting for instructions from the cargo interests.
6. On 29 September 2023, the CLAIMANT reminded the Charterers of the next charterparty and the strict laycan, stating that the Vessel had to sail from Busan by 7 October 2023, at the latest, in order to meet said laycan. The reply to this statement reassured that all parties were aware of

the Vessel's limitations and that a copy of the Charterparty was delivered to the consignee. Daily reminders continued to be issued without effect.

7. On 3 October 2023, the CLAIMANT sent a message to the Charterers stating that they would look to Charterers to recover all losses and damages incurred in the event that they did not meet the strict laycan for the next fixture, given that they had confirmed that all parties were aware of said limitation on the Vessel's timeframe and the next charterers had stated that they would be exercising their right to cancel were the Vessel not to meet the terms of the laycan.
8. The Charterers replied stating that they were in disagreement with the CLAIMANT given that the delay was covered by the demurrage and invoked the option to deliver using a Letter of Indemnity under the Clause 57 of the Charterparty. The discharge of the Cargo started on 4 October 2023 and was completed on 7 October 2023 at 2348 LT. The Vessel departed Busan at 0214 on 8 October 2023.
9. Due to adverse weather conditions, the Vessel was still approximately 300 nautical miles from Kaohsiung when the charterers of the Vessel's next fixture issued their notice of cancellation of the charterparty on 16 October 2023. After negotiations, the CLAIMANT reinstated the Vessel's employment but at a lower hire rate.
10. On 15 November 2023, the CLAIMANT issued a demand to the Charterers claiming USD 3,650,000 as compensation for the cancellation of the Vessel's charterparty. On 22 November 2023, the CLAIMANT received a response from Carry On Advisory Services LLP as the interim liquidators appointed over the Charterers and that the CLAIMANT's demand was being considered.
11. On 29 November 2023, the RESPONDENT wrote to the CLAIMANT as the holder of the Bill of Lading. As a holder of the document, it was the RESPONDENT's responsibility to discharge the Cargo within the laytime permitted or in a reasonable amount of time, failing to do so and causing the loss of the Vessel's next employment at Kaohsiung, this loss amounting

to USD 3,650,000. On 22 December 2023, the CLAIMANT informed through a notice of arbitration of the lawful commencement of an arbitration procedure against RESPONDENT.

**Figure 1: Outline of Contractual Relationships**



## JURISDICTION

### I. THE ARBITRAL TRIBUNAL HAS JURISDICTION TO DECIDE ON THIS DISPUTE.

12. In this section we will demonstrate that the Arbitral Tribunal has jurisdiction to rule on the present dispute, taking into account that; (A) the seat of arbitration is Singapore; (B) the applicable law is Singapore law; and (C) the SCMA is an arbitral commission. On the assumption denied, if it is determined that the seat of arbitration is Guangzhou, then we will demonstrate the applicability of English law (D).

### A) THE SEAT OF ARBITRATION IS SINGAPORE.

13. To determine the place of arbitration, it is important to refer to the will of the parties. In this case, the arbitration agreement provides as follows: *"76. Law and Arbitration: General Average and Arbitration, if any, to be in Guangzhou with three arbitrators and SCMA Rules. English law to apply to the CP."*

14. As can be seen, the will of the parties is clear in choosing the SCMA Rules as those applicable to the arbitration. This choice has a binding effect, as it implies that the provisions of the SCMA Rules shall form an integral part of the arbitration agreement agreed by the parties[1].

15. In this regard, the provisions of SCMA Rules should be taken into account, as an integral part of the parties' agreement. Rule 32 of SCMA Rules provides that unless otherwise agreed by the parties, the seat of arbitration shall be Singapore.

16. In this case, the parties have not expressly agreed on the seat of arbitration. Therefore, and in the absence of such agreement, in agreeing to the application of the SCMA Rules, the parties also agreed that the seat of arbitration would be Singapore, in accordance with Rule 32 of the SCMA Rules.

17. Although it is true that there is a reference to Guangzhou in the arbitration clause, it is important to bear in mind that this reference is only made as the place where the hearings will

[1] *MULLERAT, Ramón (2010) Advantages and disadvantages of institutional arbitration. In: Liber Amicorum Bernardo Cremades, page 868.*

be held, since it was not expressly agreed that Guangzhou would be the seat of arbitration.

18. It is also important to take into account the original will of the parties. This is because, regardless of the reference to "Guangzhou", the will of the parties in the arbitration agreement was that when a dispute arises, it should be settled by arbitration.

19. According to FOUCHARD[2], arbitrators or courts shall prioritise effective interpretation over any rule favouring validity, will uphold the arbitration clause by clarifying the true intent of the parties, which may have been obscured by their lack of understanding regarding arbitration procedures.

20. The principle that when a clause can be understood in two different ways, the interpretation that allows the clause to be effective should be chosen over one that renders it ineffective is widely embraced. This rule, which prioritises giving meaning to the words rather than rendering them meaningless, is endorsed not only by courts but also by arbitrators who recognize it as a universally acknowledged rule of interpretation. For instance, in the context of interpreting a problematic clause, an arbitral tribunal ruled that when parties include an arbitration clause in their contract, it is presumed that they intended to establish an efficient mechanism for resolving disputes covered by the arbitration clause.

21. In view of the foregoing, it has been demonstrated that the reference to Guangzhou in the arbitration clause was made as the place where the hearings would be held. Consequently, and in the absence of an express choice of the place of arbitration, in application of Rule 32 of the SCMA Rules, the place of arbitration is Singapore.

**B) THE LAW APPLICABLE TO THE ARBITRATION IS THE LAW OF SINGAPORE.**

22. Having determined that the seat of arbitration is Singapore and that the parties have chosen the application of the SCMA Rules, in accordance with Rule 32, the application of the International Arbitration Act of Singapore - International Arbitration Act (Chapter 143A) - is

[2] *GAILLARD, Emmanuel and SAVAGE, John (1999) Fouchard, Gaillard, Goldman on International Commercial Arbitration, page 258.*

applicable.

23. This criterion is in line with the application of the seat theory, in which it is determined that the law of the seat of arbitration is the law that will govern the arbitration. According to BELOHLAVEK: *"(...) this approach states that the law of the seat of arbitration,whether chosen by the parties or determined by the arbitrators or the court, shall govern the arbitration."*[3]

24. Now, while it is true that the arbitration agreement has made a reference to English law: *"English law to apply to the CP"*, the fact is that this choice of applicable law is an express reference to the law that will govern the merits of the dispute, i.e., the Charterparty contract.

25. In this regard, in accordance with the separability between the arbitration agreement and the contract, it has been clearly established that the reference to English law is in relation to the charterparty contract. Therefore, there is no express reference to the law applicable to the arbitration agreement.

26. Thus, it has been demonstrated that the law applicable to the arbitration agreement, according to the will of the parties, is the International Arbitration Act (Chapter 143A).

**C) THE SINGAPORE CHAMBER OF MARITIME ARBITRATION IS AN ARBITRAL COMMISSION.**

27. In the event that the arbitral tribunal determines that the applicable law is the PRC Arbitration Law, it has to be taken into consideration that, despite the peculiar wording chosen in the rules, the term "arbitral commission" is not different from the commonly used term "arbitral institution"[4].

28. In that sense, it is clear that the Singapore Chamber of Maritime Arbitration is an arbitral institution and therefore qualifies as an arbitral commission. Although the status of foreign

[3] *BELOHLAVEK, Alexander (2013) Importance of the Seat of Arbitration in International Arbitration: Delocalization and Denationalization of Arbitration as an Outdated Myth., page 266.*
[4] *PUERTAS, Omar; FERNÁNDEZ, Ana and JIN, Jane (2021) Can foreign arbitration institutions validly administer cases in mainland China: The last update, page 123.*

institution is ambiguously maintained, the Supreme People's Court's (SPC) has tacitly recognised that foreign arbitral institutions can administer "foreign-related" arbitration cases in China.

**D) IN CASE DENIED, THE SEAT OF ARBITRATION IS GUANGZHOU, THE LAW APPLICABLE TO THE ARBITRATION IS ENGLISH LAW.**

29. If, however, the Arbitral Tribunal determines that the seat of arbitration is Guangzhou, this does not determine that the law of arbitration must be the law of arbitration of the People's Republic of China. For this, we must refer to what is expressly stated in clause 76, which indicates that English law shall apply to the CharterParty.
30. This is notwithstanding the fact that, under the interpretation of the opposing party, English law is understood to apply to the merits of the dispute. It should be borne in mind that, even in that case, English law applies to the arbitration agreement, as it is the law which has the closest connection with it.
31. This is supported by BLACKABY, REDFERN and HUNTER[5] who point out that, given that the arbitration clause is only one of many clauses in a contract, it is reasonable to assume that the law chosen by the parties to govern the contract is also the law that will govern the arbitration clause.
32. With this in mind, and taking into account the parties' agreement on the applicable law, even if this reference is to the merits of the dispute, the fact remains that the English law agreement is contained in an arbitration clause in the Charter Party contract. Therefore, the law applicable to the arbitration should be English law.

## II. RESPONDENT IS PART OF THIS ARBITRATION.

33. In this section we will demonstrate that RESPONDENT is a party to this arbitration. This is because (A) the arbitration clause contained in the charterparty has been validly incorporated

[5] *BLACKABY, Nigel; PARTASIDES, Constantine and REDFERN, Alan (2023) 3. Applicable laws. In: Redfern and Hunter in International Arbitration, point 3.08.*

in the bill of lading, and (B) RESPONDENT has impliedly consented to the arbitration agreement.

**A) THE ARBITRATION CLAUSE CONTAINED IN THE CHARTERPARTY HAS BEEN INCORPORATED BY REFERENCE IN THE BILL OF LADING.**

34. To address this point, it is important to bear in mind that, according to BREKOULAKIS[6], an arbitration agreement enjoys autonomous validity and effectiveness. It can therefore be extended to the parties who, by their acts, have shown that they were aware of the existence of the arbitration agreement and have consented to it. This was determined by the Paris Court of Appeal in Korsnas Marma v. Durand-Auzias[7].

35. This incorporation finds its legal basis in the law applicable to the arbitration, in accordance with the provisions of the International Arbitration Act (Chapter 143A), which establishes the following: *(7) A reference in a contract to any document containing an arbitration clause shall constitute an arbitration agreement in writing if the reference is such as to make that clause part of the contract."*

36. In that sense, it is clear that an arbitration agreement can be incorporated into another contract by reference. In this case, we invoke this theory because clause 1 of the Conditions of Carriage of the Bill of Lading, in which RESPONDENT was listed as consignee, makes an express reference to the Charter Party Agreement, which was signed by TOMAHAWK and YU SHIPPING.

37. Clause 1 of the Conditions of Carriage of the Bill of Lading provides as follows: *"All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the*

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*[6] BREKOULAKIS, Stavros (2016) Chapter 8: Parties in international Arbitration: Consent v. Commercial Reality. In: The evolution and future of International Arbitration, page 147.*

*[7] Paris Court of Appeal, 30 November 1988, Société Korsnas Marma v. Société Durand-Auzias: "an arbitration clause included in an international contract has an autonomous validity and effectiveness, which calls for the clause to be extended to parties directly involved in the performance of the contract and in the disputes arising out of the contract, provided that it is established that their activities raise the presumption that they were aware of the existence and the scope of the arbitration clause, irrespective of the fact that they did not sign the contract including the arbitration agreement." at 694. See also: Paris Court of Appeal, 14 February 1989, Société Ofer Brothers v. The Tokyo Marine and Fire Insurance Co Ltd et autres, at 691.*

*Law and Arbitration Clause, are herewith incorporated."*

38. This was concluded in the case Skips A/S Nordheim and Others v. Syrian Petroleum Co. Ltd and Another[8], in which the English Court of Appeal ruled that incorporation of an arbitration clause in the bill of lading by reference to its existence in the charterparty is sufficient for the parties to the bill of lading to be subject to arbitration.

39. As is evident from case law, an arbitration agreement can be incorporated by reference to other documents. However, what has to be taken into consideration is how specific this reference has to be. In these cases, LEW[9] indicates that the prevailing view seems to be that a general reference is sufficient[10]. While its true, there are divergent views as to whether a general reference to the charterparty is sufficient to incorporate the arbitration agreement. According to US courts, broadly worded arbitration clauses, not limited to the direct parties involved, can be incorporated into the bill of lading through a simple general reference[11].

40. Even if the arbitral tribunal considers that a specific reference is necessary[12], we must take into consideration all the stipulations set out in the bill of lading. This being so, the arbitral tribunal will be able to verify that, in addition to clause 1 referred to above, the Bill of Lading also makes specific reference to the Charterparty entered into between TOMAHAWK and YU SHIPPING, entered into on 01 September 2023[13]. Thus, the contract whose arbitration clause is referred to in clause 1 is clearly identified. Consequently, there is a specific reference for the arbitration agreement to extend and bind RESPONDENT.

41. In conclusion, it has been demonstrated that the arbitration agreement contained in the

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*[8] Court of Appeal (Civil Division) 1983. Skips A/S Nordheim and Others v. Syrian Petroleum Co. Ltd and Petrofina S.A. EWCA Civ J1005-1.*

*[9] LEW, Julian; MISTELIS, Loukas and KRÖLL, Stefan (2003) Chapter 7 Arbitration Agreements - Validity and Interpretation. In: Comparative International Commercial Arbitration, page 143.*

*[10] Singapore High Court (28 de diciembre de 1999) Macon (BVI) Investment Holding Co Ltd v Heng Holdings SEA (PTE) Ltd. See also: Singapore High Court (13 de octubre de 1999) Concordia Agritrading Pte Ltd v Cornelder Hoogewerff (Singapore) Pte Ltd, (2000) 3 Int ALR N-42.*

*[11] Compania Espanola de Petroleos SA v Nereus Shipping SA 527 F 2d 966, 973 (2d Cir 1975).*

*[12] Federal Bulk Carriers Inc v. Itoh & Company Ltd (Federal Bulker): "… it is clear that an arbitration clause is not directly germane to the shipment carriage and delivery of goods. … It is, therefore, not incorporated by general words in the bill of lading. If it is to be incorporated, it must either be by express words in the bill of lading itself … or by express words in the charterparty itself … If it is desired to bring in an arbitration clause, it must be done explicitly in one document or the other."*

*[13] MOOT Scenario page 4*

Charterparty has been incorporated by reference into the bill of lading. Accordingly, RESPONDENT is a party to this arbitration.

**B) RESPONDENT IMPLICITLY CONSENTED TO BE A PARTY IN THIS ARBITRATION.**

42. Without prejudice of the foregoing, one has to take into consideration the fundamental role played by RESPONDENT in the charterparty, which evidences its implicit consent to be bound by the arbitration agreement. Under the application of the theory of implied consent, a party may become a party to a contract, including its arbitration agreement, if its conduct or statements demonstrate its implied consent[14].

43. In this case, RESPONDENT has been designated as the consignee of the shipment, in accordance with the Bill of Lading. As Consignee, RESPONDENT has had a fundamental participation, as it is in charge of the goods at their destination and appears as the responsible person in the bill of lading, in charge of the transport documents for customs purposes. In other words, RESPONDENT has been responsible for taking the necessary steps for the clearance of the vessel at the port.

44. The role played by RESPONDENT is relevant, therefore, according to BORN[15] and the application of the theory of implied consent, where a party conducts itself as if it were a party to a commercial contract, by playing a substantial role in negotiations and/or performance of the contract[16], it may be found to have impliedly consented to be bound by the contract.

45. Taking this into consideration, and in the light of the acts performed by RESPONDENT, it is evident that by its active and decisive participation in the execution of the contract, RESPONDENT has implicitly consented to the arbitration agreement of the charterparty and,

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*[14] Swiss Federal Tribunal (2020) Judgment of 13 November 2020, DFT 4A_124/2020: "A third party who interferes with the performance of a contract containing an arbitration clause shall be deemed to have consented to the arbitration clause by implied act". See also: Madrid Tribunal Superior de Justicia (2014) Judgment of 16 December 2014, N° 68/2014; Delhi High Court of Justice (2021) Ansal Props. Infrastructure Ltd v. Dowager Mahranis Residential Accommodation Welfare & Amenities; Delhi High Court (2020) Shapoorji Pallonji and Co. Ptv Ltd v. Rattan India Power Ltd.*

*[15] BORN, Gary (2021) Chapter 5: International Arbitration Agreements: Non-Signatory Issues. In: International Arbitration: Law and Practice (Third Edition), page 118.*

*[16] ICC Case N° 6519 (1991) Final award.*

consequently, has consented to be a party to this arbitration.

## ARGUMENTS ON THE MERITS OF THE CLAIM

46. CLAIMANT submits that it is entitled to unliquidated damages in addition to or as an alternative to demurrage (I). Furthermore, CLAIMANT contends there is no misdelivery (II) and that RESPONDENT is prevented from claiming loss or damage (III).

### I. CLAIMANT IS ENTITLED TO CLAIM FOR UNLIQUIDATED DAMAGES IN ADDITION TO OR AS AN ALTERNATIVE TO DEMURRAGE.

47. CLAIMANT submits this due to the fact that RESPONDENT breached its obligation to discharge within laytime which is specifically identified in the B/L (A), and/or it also breached this obligation as consignees (B). In any case, demurrage does not cover consequential losses (C).

#### A) RESPONDENT BREACHED THE OBLIGATION TO DISCHARGE CARGO WITHIN LAYTIME IN ACCORDANCE TO THE B/L.

48. In accordance with the inclusion of the terms of the Charterparty into the B/L provision, and the B/L itself, RESPONDENT breached the obligation to discharge the Cargo within laytime.

49. The holder of a Bill of Lading, as a negotiable and transferable document, is well known to be obliged to comply with its terms and obligations. In the present case, RESPONDENT assumed its obligations as holder from the moment it made use of its prerogatives to decide on the unloading of the goods at destination[17]. Additionally, the B/L signed on the 4th of September clearly indicated its submission to the terms of the Charter dated 01.09.2023 between Tomahawk Maritime S.A., as Owner and Yu Shipping Ltd. as Charterers[18]. Furthermore, such a

[17] *MOOT Scenario page 46.*
[18] *MOOT Scenario page 4.*

contract makes RESPONDENT liable to it as consignee of the Cargo and party to the contract[19].

50. In this sense, if an analysis of the Charter was to be made one could clearly see the breach in the obligation contained in Part I letter E to discharge the Cargo within 96 hours. This laytime shall commence either at the expiration of six running hours once the notice of readiness is tendered or immediately upon the Vessel's arrival in berth, whichever first occurs[20].

51. In the present case, the laytime began at 0915LT of the 20th September 2023, when the notice of readiness was accepted by the Charterers. Notwithstanding the repeated communications of CLAIMANT to ensure discharge with sufficient time for the Vessel to depart on the 7th October, the discharge was not completed until that very same day at 2348LT. RESPONDENT, therefore, exceeded the laytime provisioned by more than 96 hours, in fact, by more than *fifteen* days.

52. For all the above mentioned, a clear breach of the contract of carriage has been incurred by RESPONDENT for which damages arising from the loss of profit shall be awarded to CLAIMANT as it will be shortly analysed.

**B) ALTERNATIVELY, RESPONDENT BREACHED THE OBLIGATION TO DISCHARGE WITHIN REASONABLE TIME AS CONSIGNEES.**

53. As consignees of the Cargo and, subsequently, lawful holder of the Bill of Lading[21], RESPONDENT assumed an obligation to receive the Cargo at a reasonable time so the Vessel could meet its subsequent fixture at Kaohsiung. Consequently, and due to the breach of that obligation, RESPONDENT shall be held liable for the payment of the loss of profit incurred by CLAIMANT.

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[19] As stated in the B/L: "*The contract of carriage evidenced by this Bill of Lading is between the shipper, consignee and/or owner of the cargo and the owner or demise charterers of the Vessel named herein to carry the cargo described above".*
[20] *MOOT Scenario page 14. Clause 4 of the charterparty.*
[21] *BHP Trading Asia Ltd v Oceaname Shipping Ltd (1996) 67 FCR 211 at 222 per Hill J; Hi-Fert Pty Ltd v Kiukiang Maritime Carriers Inc (2000) 173 ALR 263 at 267 [23] per Tamberlin J.*

54. While the loss in use of the Vessel due to exceeded laytime may be considered to be a general loss arising from the natural flow of a breach in the contract, the loss of a specific subsequent fixture may be well considered a special kind of loss.

55. RESPONDENT was informed about the conditions of the Charterparty[22] and, therefore, about the special situation contained in clause 38 indicating the Vessel's next employment at Kaohsiung. In this sense, when the contract was negotiated and signed on 1st September he was aware of the subsequent fixture.

56. To properly ascertain whether a party is liable for the payment of consequential losses in a contract (i.e. losses that do not flow naturally from a breach of contract but rather arise from a special circumstance), understanding of the contract itself together with the intentions and positions of the parties is entirely necessary. In the present case, RESPONDENT shall be considered to be liable as it had the knowledge of the special situation, the loss of profit arising from the breach was foreseeable and not too remote[23] to be considered as damages, RESPONDENT clearly assumed responsibility for the risk.

57. Regarding the foreseeability of the loss, one could not but say that the loss of profit of the subsequent fixture, of which RESPONDENT was informed about, was not unlikely and indeed was reasonably foreseeable. No doubts would arise regarding this point. The moment the Vessel departed later than the specified date provided by CLAIMANT, there was a great possibility (and it would be the consequence in the great majority of cases) that the Vessel would lose its subsequent fixture at Kaohsiung as it would not be able to arrive on time.

58. Nonetheless, while it is true that the special circumstance was communicated to the parties and the possibility of the loss arising out of the non-fulfillment of the contract was therefore

[22] *MOOT Scenario page 43.* VOE was provided a copy of the charterparty between Tomahawk MARITIME and Yu Shipping dated 1 september 2023.

[23] *"Hall's case must be taken to have established that damages are not to be regarded as too remote merely because, on the knowledge available to the defendant when the contract was made, the chance of the occurrence of the event which caused the damage would have appeared to him to be rather less than an even chance. I would agree with Lord Shaw that it is generally sufficient that that event would have appeared to the defendant as not unlikely to occur." C Czarnikow Ltd v Koufos (The Heron II) (HL) [1967] 2 Lloyd's Rep 457, page 3 par. 27.*

foreseen by the parties, the question on whether the loss of profit is a kind of loss for which RESPONDENT should be held liable for may still be in need of clarification.

59. The truth is that, being RESPONDENT informed and being the loss as not unlikely to occur for the breach, the liability of RESPONDENT shall be extended to the loss of profit.

60. This may well be understood as a different type of loss which will only be recoverable if the defendant had sufficient knowledge of them to make it reasonable to attribute to him acceptance of liability for such losses. As so, CLAIMANT acted diligently when drawing the attention of the parties to such special circumstance in clause 38 of the Rider Clauses at the time of signature of the contract[24].

61. Based on the straight facts of the present case, RESPONDENT was assuming responsibility for the risk of loss of a particular follow-on fixture concluded by CLAIMANT, and not simply for the abstract loss of use of the vessel covered by demurrage. It is, therefore, not only that RESPONDENT may well have contemplated the loss when entering the contract but, additionally, that it clearly assumed the consequences when being informed of it[25].

62. Another important point regarding the assumption of responsibility, is that RESPONDENT had the control on the situation and could quantify (or at least be very close to) the possible losses that would arise from its acts[26].

63. The subsequent fixture duty of the Vessel was not general and in open-ended terms, it was a "next employment…with strict laycan…for a period of two years". Therefore, RESPONDENT knew the potential damages were likely to be high and that a breach of its obligations would result in a cancellation of the fixture.

64. Finally, this last idea is further reinforced by the fact that CLAIMANT diligently carried out all the possible actions aimed to procure the departure of the Vessel with sufficient time to ensure

[24] *As Lord Hope of Craighead stated in The Achilleas, "in contract, if one party wishes to protect himself against a risk which to the other party would appear unusual, he can direct the other party's attention to it before the contract is made, and I need not stop to consider in what circum- stances the other party will then be held to have accepted responsibility in that event."*
[25] *The Achilleas page 286, secondly, the position on damages might also…*
[26] *The Achilleas page 283.*

the arrival at Kaohsiung in time, trying to mitigate the possible damages that may arise. In this sense, he communicated RESPONDENT about the situation repeatedly and on numerous occasions[27], as well as arriving at port with more than sufficient time to ensure the discharge in time[28]. On this basis, it would not seem reasonable to bear CLAIMANT with a loss that he has tried to avoid in all possible manners.

## C) DEMURRAGE DOES NOT COVER THE CONSEQUENTIAL LOSSES ARISING FROM THE FAILURE TO COMPLETE DISCHARGE WITHIN LAYTIME.

65. The concept of demurrage may well be defined as the *"sum agreed by the charterer to be paid as liquidated damages for delay beyond a stipulated or reasonable time for loading or unloading."*[29], that is, the time exceeding the stipulated laytime.

66. Based on this, it seems almost impossible to settle a dispute involving a contract clause without having a clear understanding on what the exact aim of the clause is. In this sense, demurrage clauses have long been used to cover the losses arising from the loss of general and abstract subsequent fixtures originated on the detention and loss of use of the vessel by the owners of it[30].

67. In the present case, the demurrage provision contained in clause 11 of the Charterparty does not cover the loss of profit of the specific subsequent fixture neither as a remedy for the breach of the B/L laytime stipulation nor for the breach of the obligation of the consignee to discharge the cargo within reasonable time.

68. The idea that supports the first statement is that the ultimate aim of the demurrage provision, as previously stated, shall be seen from a narrow perspective. In this sense, the exceeded laytime

[27] *MOOT Scenario page 8-9. Repeated chasers were sent to the Charterers without answer, followed by a new reminder on the 29th September. Further daily reminders continued after that ending with a new message sent to Charterers on 3rd October.*
[28] *MOOT Scenario page 8. The Vessel arrived at Destination Port on the 20th September, more than two weeks were granted to proceed with the discharge.*
[29] *Scrutton on Charterparties, 24th Edition (2020).*
[30] *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde) [1991] 1 Lloyd's Rep 136, where Andrew Baker J held (at para 61) that "agreeing a demurrage rate gives an agreed quantification of the owner's loss of use of the ship to earn freight by further employment in respect of delay to the ship after the expiry of laytime, nothing more".*

incurred by RESPONDENT as holder of the B/L had as a consequence the loss of subsequent fixtures in general terms (covered by demurrage) and, additionally, the breach of subsequent specific obligations of CLAIMANT.

69. In that sense, demurrage does not cover the loss of profit of the follow-on fixture. Those losses arise from a separate obligation and shall be quantified in a different manner. Demurrage, as a liquidated damages clause, would only cover the loss of freight of the days exceeding laytime but the additional days and profit loss would remain unpaid. The demurrage provision shall, therefore, be viewed in narrowed terms as only covering the general and abstract loss of freight of the Vessel for those extra days taken to discharge the cargo exceeding laytime.
70. Additionally, and since RESPONDENT breached an additional obligation of the Charterparty (i.e. the obligation to discharge within a reasonable time to ensure the Vessel would meet its subsequent fixture), the consequential losses from this breach (the loss of profit) would not be covered by demurrage[31].
71. The fact that the loss of profits entails a *kind of loss* for which RESPONDENT should be held liable for, according to its assumption of responsibility, had already been analysed. This, together with the idea that RESPONDENT breached an additional obligation of the Charterparty different from the obligation to discharge within laytime, leads to the logical conclusion that RESPONDENT should be responsible for the loss of profit of the subsequent fixture at Kaohsiung.
72. For all the arguments exposed, CLAIMANT submits the obligation of RESPONDENT to indemnify the former with the amount of USD 3,650,000, representing loss of profit for the subsequent two year fixture.

[31] *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde) [1991] 1 Lloyd's Rep 136, the Commercial Court decided: "where a charter-party contains a demurrage clause, then in order to recover damages in addition to demurrage for breach of the charterers' obligation to complete loading within the lay days, it is a requirement that the plaintiff demonstrate that such additional loss is not only different in character from loss of use but stems from breach of an additional and/or independent obligation"*

## II. THE MISDELIVERY COUNTERCLAIM.

73. CLAIMANT submits that RESPONDENT knew or ought to have known that the Cargo would be delivered to a third party without production of the B/L (A). Further, given its actual or constructive knowledge, RESPONDENT consented to delivery (B) and/or waived their right to delivery (C). Alternatively, RESPONDENT is estopped from claiming misdelivery (D).

### A) RESPONDENT KNEW OR OUGHT TO HAVE KNOWN THAT CLAIMANT WOULD DELIVER THE CARGO TO A THIRD PARTY WITHOUT PRODUCTION OF THE B/L.

74. RESPONDENT possessed actual knowledge or should have reasonably foreseen that CLAIMANT would deliver the cargo to a third party without presenting the B/L. RESPONDENT's awareness of this eventuality is evidenced by several factors.

75. First, the L/C issued by RESPONDENT as the financier of the Cargo expressly provided that payment would be made against presentation of the Payment LOI or alternatively the B/L[32].

76. Second, Clause 57 of the Rider Clauses which modify the Charterparty and are integral to the Contract of Carriage expressly contemplates and authorises delivery of the Cargo where a Letter of Indemnity has been issued[33].

77. Moreover, the industry-standard practice of releasing goods against a Letter of Indemnity[34], without the accompanying Bill of Lading, is acknowledged as commonplace by relevant pieces of case law such as *The Sormovskiy 3068*[35]. Both the L/C and the Rider Clauses acknowledge and accommodate this customary practice, thereby implying RESPONDENT's familiarity with it, notwithstanding its status as a banking institution.

78. Third, the Payment LOI issued by the Shippers and sent to RESPONDENT expressly provides that *"We, Yu Shipping Ltd, hereby represent and undertake that we are the party lawfully*

[32] *MOOT Scenario page 40 point 12.*
[33] *MOOT Scenario page 28.*
[34] *Arizon, F., & Semark, D. (2014). Maritime letters of indemnity. Informa Law from Routledge.*
[35] *SA Sucre Export v Northern River Shipping Ltd (The Sormovskiy 3068) [1994] 2 Lloyd's Rep 266, 274.*

*entitled to delivery of the said Cargo and request you to deliver the said Cargo to (...) without production of the original Bill(s) of Lading"*[36]. This acknowledgment serves as additional evidence of RESPONDENT's awareness of the impending delivery, particularly given the Vessel's arrival date (20th September) and the strict laycan provision in place which had to be met for the following employment.

79. Lastly, RESPONDENT cannot credibly claim ignorance of these documents, as adherence to the UCP 600 rules and the Standard of Examination of Documents mandates banks to meticulously scrutinise all stipulated documents to ensure compliance with the terms and conditions of the credit.

**B) CLAIMANT CONSENTED TO THE DELIVERY OF THE CARGO TO A THIRD PARTY WITHOUT PRODUCTION OF THE B/L.**

80. Based on the information available to RESPONDENT regarding the potential delivery of the Cargo without the presentation of the B/L (as explained in the preceding argument), it is evident that RESPONDENT tacitly agreed to such delivery. The defence of implied consent applies when actions or statements by RESPONDENT lead CLAIMANT to believe there was consent to delivery without the B/L[37]. This defence is substantiated for two primary reasons:

81. Firstly, despite being notified by the Charterers of the Cargo's possible release against a Discharge LOI, RESPONDENT did not object to the release and neglected to make inquiries. Additionally, RESPONDENT explicitly stated in an email on October 3rd, after being informed by the Charterers of the vessel's impending departure, to *"do as you deem fit.*[38]*"*

82. Secondly, RESPONDENT's acceptance of the Payment LOI and subsequent payment without awaiting the B/L implies consent to deviate from the standard rule of delivery against presentation of the Bill of Lading. This circumstance differs from cases involving financial institutions under Letters of Credit, where there was no indication that the party in question

[36] *MOOT Scenario page 33.*
[37] *Yue You 902 [2019] 2 Lloyd's Rep 617.*
[38] *MOOT Scenario page 46 (top).*

lacked possession of the Bills of Lading, thus not implying consent to delivery without their presentation[39].

83. Consequently, the CLAIMANT consented to the delivery of the Cargo without the Bill of Lading and is precluded from asserting any rights to delivery.

**C) RESPONDENT WAIVED ITS RIGHT TO DELIVERY.**

84. Additionally, or as an alternative argument, RESPONDENT's actions of not contesting the delivery of the Cargo to the Buyer and making payment under the Payment LOI should be construed as a waiver of its rights concerning the Cargo's delivery.

85. CLAIMANT asserts that RESPONDENT waived its rights, as a waiver occurs when there exists a *"forbearance from exercising a right or (...) an abandonment of a right"* in such a manner that it cannot be asserted at a later time. As elucidated by the House of Lords in *The Kanchenjunga*, a waiver may be either by election or unilateral. In the present context, both scenarios are conceivable[40].

86. On one hand, we are concerned with a waiver by election, in the sense of abandonment of a right which arises by virtue of a party making a choice. RESPONDENT with knowledge of the relevant facts, has conducted itself in a manner indicative only of having chosen one of the two divergent and incompatible paths available, this path being for delivery to be made without the B/L[41].

87. On the other hand, RESPONDENT's actions also constitute a unilateral waiver given by what was communicated to the rest of the parties by words and conduct (as explained in paragraphs 72-81).

88. It is sufficient for RESPONDENT to have been aware of the pertinent facts giving rise to any potential claim for misdelivery; it is not imperative for the RESPONDENT to have had explicit

[39] *Yue You 902 [2019] 2 Lloyd's Rep 617, The Stone Gemini [1999] 2 Lloyd's Rep 255, The "Pacific Vigorous" [2006] SGHC 103.*
[40] *Refineries S.A. v Shipping Corporation of India (The "Kanchenjunga") [1990] 1 Lloyd's Rep 391, 399.*
[41] *Kammins Ballroom Co v Zenith Investments [1971] AC 850.*

knowledge of the specific right to claim misdelivery that it was forgoing[42]. Taking into account that RESPONDENT explicitly allowed the Charterers to do as they deemed fit and the fact that the L/C allowed delivery to be made against a Discharge LOI RESPONDENT knew of the impending delivery and thus, abandoned its right.

**D) RESPONDENT IS ESTOPPED FROM CLAIMING MISDELIVERY.**

89. Further or in the alternative, RESPONDENT is estopped by convention from claiming misdelivery of the cargo.

90. Even though delivery of goods against a Letter of Indemnity does not necessarily imply that the Bills of Lading will be exhausted as this would detract from their function as a document of title, a different conclusion may be reached if the party entitled to delivery of the goods under the Bill of Lading behaves in a manner inconsistent with its lawful claim to possession of the cargo[43]. In this case the party will be estopped from claiming misdelivery.

91. An estoppel by convention has been defined as a mutually agreed set of facts presumed to be true by the convention of the parties, which serves as the basis for a forthcoming transaction. Consequently, when parties engage in a transaction based on the mutually accepted presumption that certain facts are accurate, each party is precluded from challenging the veracity of those assumed facts[44].

92. The principles of an estoppel by convention were reviewed by the House of Lords in *Republic of India and Another v India Steamship Co. Ltd* reaching the following three principles[45]. First, it is essential that the assumption be agreed for there to be an estoppel by convention. Second, agreement does not need to be expressed and may be inferred from conduct. Third, and alternatively, agreement may be inferred from silence.

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[42] *Refineries S.A. v Shipping Corporation of India (The "Kanchenjunga") [1990] 1 Lloyd's Rep 391, 399.*
[43] *Arizon, F., & Semark, D. (2014). Maritime letters of indemnity. Informa Law from Routledge.*
[44] *Furness Withy (Australia) Pty Ltd v Metal Distributors (UK) Ltd [1990] 1 Lloyd's Rep 236, p. 251;K Lokumal & Sons (London) Ltd v Lotte Shipping Co Pte Ltd [1985] 2 Lloyd's Rep 28 at 35; Moorgate Mercantile Co. Ltd v Twitchings [1977] AC 890, p. 903.*
[45] *Republic of India and Another (Appellants) v India Steamship Co. Ltd [1997] 3 WLR 818.*

93. In the present dispute, the basis of the transaction was a L/C which allowed delivery to be made against a Discharge LOI which constitutes the agreed upon assumption. This assumption was reiterated in the Payment LOI where RESPONDENT was informed that delivery would take place against the Discharge LOI and in the Rider Clauses. Thus, by conduct, the acceptance of the Payment LOI, and silence, RESPONDENT is estopped from questioning these previously agreed facts.

94. The importance of the construction of the L/C was emphasised in the *Trafigura Beheer BV v Kookmin Bank Co* case wherein the seller and the buyer under the Letter of Credit agreed that payment in the absence of shipping documents would take place against a Letter of Indemnity[46]. In the current dispute, as there was no allegation of any express misrepresentation by RESPONDENT nor any basis for suggesting that any mistake had occurred, it is imperative to consider that the terms of the L/C were mutually accepted as true by the parties[47]. Consequently, they are estopped by convention from negating the enforceability of these terms.

95. In conclusion, it falls upon RESPONDENT, as the financing institution, to issue letters of credit with terms that afford it satisfactory security[48]. Should it opt for payment against a LOI, RESPONDENT cannot substantiate a valid claim against CLAIMANT who abided by the terms stipulated in the L/C.

## III. RESPONDENT CANNOT CLAIM LOSS NOR DAMAGES.

96. It is widely acknowledged that a Bill of Lading plays a pivotal role in trade financing, serving as a document of title. Financial institutions such as RESPONDENT typically use Bills of Lading as security for the financing provided to their customers for the acquisition of goods[49]. Furthermore, sections 2(1)(a) and 5(2)(b) of COGSA 1992, emphasise that in order to be

[46] *Trafigura Beheer BV v Kookmin Bank Co [2005] EWHC 2350 (Comm).*
[47] *Arizon, F., & Semark, D. (2014). Maritime letters of indemnity. Informa Law from Routledge.*
[48] *Arizon, F., & Semark, D. (2014). Maritime letters of indemnity. Informa Law from Routledge.*
[49] *Star Quest, The (SGHC) [2016] SGHC 100; [2017] Lloyd's Rep Plus 50; [2016] 3 SLR 1280.*

recognized as the lawful holder of a Bill of Lading, one must acquire this status through the completion of an endorsement by delivery and in good faith.

97. CLAIMANT contends that RESPONDENT cannot be deemed as having interest in the Cargo as it did not regard the B/L as security (A)[50], thereby preventing RESPONDENT from claiming damages as his and only his actions caused him loss (B)[51].

**A) RESPONDENT DID NOT VIEW THE B/L AS SECURITY.**

98. This can be seen in two main aspects.

99. Firstly, the underlying arrangements indicate that RESPONDENT did not intend to secure its position through the pledging of the B/L and consequently, the Cargo, as delivery was conceded against a Discharge LOI within the same L/C and acknowledged by the bank in the Payment LOI[52]. Consequently and given the fact that RESPONDENT did not object to the delivery, RESPONDENT submits that it was always intended by RESPONDENT that the cargo could be discharged without production of the B/L.

100. Secondly, RESPONDENT agreed to extend a Trust Receipt Loan to the Charterers upon the presentation of the "export" Letter of Credit by the Korean buyers and the B/L[53]. As defined by Michael Bridge in *Benjamin's Sale of Goods*, trust receipts *"are by no means uniform in content, but their essential features are as follows. They provide for the release by the bank of the bills of lading to the debtor as trustee for the bank, and authorise him to sell the documents or the goods on behalf of the bank. The debtor, for his part, undertakes to hold the*

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[50] *Yue You 902 [2019] 2 Lloyd's Rep 617, The Stone Gemini [1999] 2 Lloyd's Rep 255.*
[51] *Aegean Sea Traders Corporation v Repsol Petroleo SA (The Aegean Sea) [1998] 2 Lloyd's Rep 39; UCO Bank v Golden Shore Transportation Pte Ltd [2006] 1 SLR(R) 1.*
[52] *UniCredit Bank AG v Euronav NV (The Sienna) [2022] 2 Lloyd's Rep 467, Fimbank plc v Discover; Investment Corporation (The Nika) (QBD (Comm Ct)) [2020] EWHC 254 (Comm); Oversea-Chinese Banking Corporation Ltd v Owner and/or Demise Charterer of the Vessel "STI Orchard"; Winson Oil Trading Pte Ltd (Intervening) [2023] 1 Lloyd's Rep 22.*
[53] *UniCredit Bank AG v Euronav NV (The Sienna) [2022] 2 Lloyd's Rep 467, Fimbank plc v Discover; Investment Corporation (The Nika) (QBD (Comm Ct)) [2020] EWHC 254 (Comm); Oversea-Chinese Banking Corporation Ltd v Owner and/or Demise Charterer of the Vessel "STI Orchard"; Winson Oil Trading Pte Ltd (Intervening) [2023] 1 Lloyd's Rep 22.*

*goods and their proceeds in trust for the bank, and to remit the proceeds to the bank, at least up to the amount of the advance.*[54]*"*

101. This indicates that RESPONDENT was considering the proceeds from the sale of the Cargo as collateral, rather than the current set of B/L[55]. Consequently, RESPONDENT (a) did not consider the Bills of Lading as security at the time of financing the Cargo, and (b) it is now endeavouring to pursue a claim on such purported security[56].

**B) RESPONDENT CAUSED ITS OWN LOSS**

102. In accordance with Justice Baker's ruling in *The Nika*, the appropriate *"but for"* question regarding a misdelivery would involve examining the hypothetical scenario of what would have transpired if the delivery from the vessel had been against a Bill of Lading[57].

103. In the current dispute, had the delivery been contingent upon the presentation of the B/L , RESPONDENT would have extended a Trust Receipt Loan to the Charterers, who in turn would have sold the Cargo to the Korean buyers. However, due to the Charterers' bankruptcy, RESPONDENT would have incurred losses resulting from the forfeiture of the Cargo and any proceeds derived from its sale[58].

104. Therefore, the primary cause of the loss was not CLAIMANT's discharge of the Cargo without B/L presentation, but rather the insolvency of the Buyers. Consequently, since financial institutions bear the responsibility of selecting financially stable clients[59], the misdelivery did not directly contribute to the losses incurred by RESPONDENT, and therefore, they are precluded from seeking damages.

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[54] *Benjamin, J. P. (2012). Benjamin's sale of goods (Vol. 11). Sweet & Maxwell.*
[55] *Oversea-Chinese Banking Corporation Ltd v Owner and/or Demise Charterer of the Vessel "STI Orchard"; Winson Oil Trading Pte Ltd (Intervening) [2023] 1 Lloyd's Rep 22.*
[56] *Professor Francis D Rose, "Misdelivery claims no longer a defenseless case for carriers". Lloyd's Maritime and Commercial Law Quarterly.*
[57] *Fimbank plc v Discover; Investment Corporation (The Nika) (QBD (Comm Ct)) [2020] EWHC 254 (Comm).*
[58] *Professor Francis D Rose, "Misdelivery claims no longer a defenseless case for carriers". Lloyd's Maritime and Commercial Law Quarterly.*
[59] *Arizon, F., & Semark, D. (2014). Maritime letters of indemnity. Informa Law from Routledge.*

## REQUEST FOR RELIEF

For the reasons set out above, CLAIMANT requests that the Tribunal:

a) Declare that the arbitral tribunal has jurisdiction on the grounds of the validity of the arbitration clause;

b) Declare that the seat of arbitration is Singapore;

c) Declare that the law applicable to the arbitration agreement is Singapore law or, in the subsidiary position, is English law;

d) Declare RESPONDENT is a party to this arbitration;

e) declare RESPONDENT is liable for the CLAIMANT losses;

f) declare RESPONDENT is liable for the payment of demurrage which does not cover said losses;

g) declare that RESPONDENT consented delivery be made without the B/L;

h) declare that RESPONDENT is estopped from claiming misdelivery;

i) declare that RESPONDENT caused its own loss.