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 RESPONDENT

TABLE OF CONTENTS

1. Guangzhou is the seat of arbitration and Chinese Law applies to the arbitration agreement 12

1.1. In the absence of indicators to the contrary, the law of the venue is the law of the seat of arbitration. 12

1.2. The principle of party autonomy states that Guangzhou is the seat of arbitration 13

1.3. Foreign governed arbitrations are invalid in China because of Chinese mandatory law. 14

2. Claimant is Liable for the Mis-delivery of the Cargo 16

2.1. Respondent was Entitled to the Cargo 16

2.2. Misdelivery and Breach of Contract 18

2.2.1. Breach of Contract: Delivery without the B/L 18

2.2.2. Respondent did not consent to the delivery....................19

2.3. Bill of lading Remains Undischarged 20

2.4. Loss Caused to the Respondent....................21

2.4.1. Loss of rights of the Pledgee 22

2.4.2. Claimant's Act Amounts to Conversion 23

3. The Respondent is not liable to pay the damages suffered by the Claimant....24

3.1. The Conduct of the Respondent was not the direct cause of the loss suffered by the claimant. 25

3.1.1. The Respondent did not have knowledge regarding the further employment of the vessel. 25

3.1.2. The act of the Respondent was not the cause of the loss suffered by the claimant. 26

3.2. In the alternative, the claimant has not been able to show a second breach of the charterparty so as to entitle it to damages apart from demurrage. 27

Prayer for Relief 29

Index of Authorities

Cases

Adelfamar S.A. v. Silos E Mangimi Martini S.p.A. (The "Adelfa") [1988] 2 Lloyd's Rep. 466 22
Aktieselskabet Reidar v Arcos Ltd (1926) 25 Ll L Rep 513, at p. 516. 25
Barber v. Meyerstein. (1870). L.R. 4 H.L. 317. 18
Barclays Bank v. Commissioners of Customs and Excise, [1963] 1 Lloyd's Rep 81. 17
BNA v. BNB [2019] SGCA 84 11
BNP Paribas v Bandung Shipping Pte Ltd (SGHC) [2003] SGHC 111; [2003] 3 SLR(R) 611 ...16
Bristol & West of England Bank v. Midland Rly Co. [1891] 2 Q.B. 653, 660. 19
C Czarnikow Ltd. V Koufos (The "Heron II") [1969] 1 AC 350. 23
Crédit Agricole Corporate and Investment Bank, Singapore Branch v. PPT Energy Trading Co Ltd [2023] Lloyd's Rep. Plus 25 14
FIM Bank v. KCH Shipping, [2022] EWHC 2400 (Comm). 18
German Züblin International GmbH v. Wuxi Woco General Engineering Rubber Co., Ltd, Supreme People's Court (8 July 2004). 11
Hadley & Anr. v. Baxendale & Ors. [1854], EWHC J70. 23
Hai Tong Bank v. Rambler Cycle Co [1959] AC 576; The Starsin [2003] 1 Lloyd's Rep 571, 575; The Dolphina [2012] 1 Lloyd's Rep 304, 329 15
Immobiliaria Palacio Oriental SA v. Anhui Foreign Economic Construction (Group) Co. Ltd, The Supreme People's Court of China, (2017) Zui Gao Fa Min Zai No. 134 10
Inverkip Steamship Co Ltd v Bunge & Co (1917) 22 CC 200 25
Jiangsu Textiles Import & Export Group Co., Ltd. v. Fujian Hua Xia Transportation Co., Ltd., (2003), Hu hai fa shang chu zi, No. 299 11
K Line Pte v Priminds Shipping (HK) Co. Ltd (The "Eternal Bliss") [2021] EWCA Civ 1712 ¶58. 25
Kuwait Airways Corp. v. IAC [2002] UKHL 19. 20
Kuwait Petroleum Corp. v. D Oil Carriers Ltd [1994] 2 Llyod's Rep. 541. 15
London Joint Stock Bank v. British Amsterdam Maritime Agency, (1910) 16 Com Cas 102. 18
Margarine Union GmbH v Cambay Prince Steamship Co Ltd (The Wear Breeze) [1967] 2 Lloyd's Rep 315, 334; [1969] 1 QB 219, 246 21
Margarine Union GmbH v Cambay Prince Steamship Co Ltd.[1967] 2 Lloyd's Rep 315, 334...19
Motis Exports v. Dampskibs AF 1912 [1999]. 15
Nederlandsche Handelmaatschappij v. Strathlorne Steamship Company (1931) 39 Ll L Rep 171, ...16
Primetrade AG v. Ythan Limited ("The Ythan") English Commercial Court: Justice Aikens: [2005] EWHC 2399 (Comm) 2005. 13
Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde) [1991] 1 Lloyd's Rep 136, at p. 142. 25
Shagang South-Asia (Hong Kong) Trading Co. Ltd v Daewoo Logistics [2015] EWHC 194 (Comm). 9

Shenhua Coal Transportation Sale Corp. v. Marinic Shipping Company, The Supreme People's Court (4 February 2013) 10
Shenzhen Food Group Co. Ltd v. Noble Resources Co. Ltd (Singapore), Supreme People's Court (9 June 2010) 8
Standard Chartered Bank v. Dorchester LNG Ltd (The Erin Schulte) [2014] EWCA 1382. 20
Suisse Atlantique [1965] 1 Lloyd's Rep 533, at p. 539. 25
The "YUE YOU 902" And Another Matter [2019] SGHC 106. 16
The Dolphina [2012] 1 Lloyd's Rep. 304. 15
The Erin Schulte [2013] 2 Lloyd's Rep 338; [2015] 1 Lloyd's Rep 97 (CA). 13
The Future Express, [1992] 2 Lloyd's Rep 79 18
The Odessa, [1916] 1 A.C. 145. 19
The Stone Gemini [1999] 2 Lloyd's Rep 255. 16
Total transport Co. v. Amoco Trading Co. (The "Altus"), [1985] 1 Lloyd's Rep. 423 22
Transfield Shipping Inc v Mercator Shipping Inc (The "Achilleas") [2008] UKHL 48. 23
Yang X. v. Zhong X., (2011), Guang hai fa chu zi, No. 373 11

Statutes

Arbitration Law of the People's Republic of China, 1994, §16 8
Carriage of Goods by Sea Act, 1992, § 5 (2)(a) 13
Carriage of Goods by Sea Act, 1992, §§. 2(1), 5(2). 13
Carriage of Goods by Sea Act, 1992, §§. 2(2). 14
Laws Applicable to Foreign Related Civil Relations, 2011, §3 12
Laws Applicable to Foreign Related Civil Relations, 2011, §4 10
PepsiCo Inc. v. Sichuan Pepsi-Cola Beverage Co., Ltd., [2008] Cheng Min Chu Zi No. 912. 12
Rome I Regulation, 2008, §9 11
SCMA Rules, 2022, Art. 31 (4th ed. 2022). 10

Other Authorities

UNCITRAL Model Law on International Commercial Arbitration, 21 June, 1985, UN Doc A/40/17, Annex I. 9

Treatises

PAUL TODD, 'BILLS OF LADING & BANKERS DOCUMENTARY CREDITS' 546 (Routledge, 4th ed. 2007). 19
SIMON BAUGHEN, SHIPPING LAW, 4 (4th ed. 2009): 19

Index of Abbreviations

Abbreviation	Full Form
SPC	Supreme People's Court
SCMA	China 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.

1. 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.

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.
4. The Cargo was further to be sold to Korean Buyers **("Buyers")** upon delivery to Busan.

Delay

5. The Vessel arrived to Busan on 20th September 2023, and tendered a NOR on the same date which was accepted by the Charterers.
6. The Charterer requested for a trust receipt for release of goods in order to be delivered to the Buyers. The same was denied as the documents were not presented against the B/L.
7. On 29th September, 2023, it came to the Notice of the RESPONDENT that the vessel had a subsequent employment at Kaohsiung.
8. On 3rd October, the LOI and the invoice were presented against the L/C. However, a trust receipt could not be granted because the financials of the Charterers were precarious.

9. Upon further request by the charterers, they were told to do as they deemed fit provided that the payment was made to the bank.

<u>Delivery against the LOI</u>

10. The Respondents received the B/L on 3rd of October, 2023.
11. Upon receiving the message to do as they deemed fit, the Charterers asked the Claimants to discharge the goods upon presentation of a LOI.
12. Post discharge, the vessel left on 8th October, at 2:14 am.

<u>Compensation</u>

13. The Charterers went bankrupt and were unable to pay the amount in the L/C. Consequently, the Respondent suffered a loss amounting to $ 4.25 million.
14. The Respondent set a letter to the Claimant on 29th November stating to be the holders of the original B/L.
15. The Respondents received a letter from the claimants requiring payment of compensation for loss incurred in the subsequent employment of the Claimants.
16. The Respondents received a notice of arbitration regarding the compensation to be held in Singapore.

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 matter.*

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

3) *Whether the Respondent is liable to pay consequential damages.*

Summary of Arguments

1. **<u>Guangzhou is the seat of arbitration and Chinese Law applies to the arbitration agreement.</u>**

Guangzhou is the seat of arbitration and Chinese law applies to the arbitration agreement because in the absence of indicators to the contrary, the law of the venue of arbitration becomes the law of the seat **[1.1].** *Secondly* the principle of party autonomy dictates that the seat of arbitration is Guangzhou **[1.2].** *Thirdly,* Foreign governed arbitrations are invalid in China because of Chinese Mandatory Law **[1.3].**

2. **<u>Claimant is liable for the misdelivery of the cargo</u>**.

The claimant is liable for the misdelivery of the cargo because, *firstly,* Respondent was entitled to the cargo **[2.1].** *Secondly*, there was a Mis delivery and Breach of Contract **[2.2].** *Thirdly,* the Bill of lading remains undischarged **[2.3].** *Fourthly,* there was a loss caused to the respondent **[2.4].**

3. **<u>The Respondent is not liable to pay damages suffered by the claimant</u>**

The Respondent is not liable to pay damages suffered by the claimant as the Act of the respondent was not the direct cause of the loss suffered by the claimant **[3.1].** In the alternative, the claimant has been unable to prove a second breach of contract so as to get damages above demurrage **[3.2].**

Arguments Advanced

1. Guangzhou is the seat of arbitration and Chinese Law applies to the arbitration agreement

Guangzhou is the seat of arbitration because in the absence of indicators to the contrary, the law of the venue becomes the law of the seat of arbitration **[1.1]** *Secondly,* according to the principle of party autonomy, Guangzhou is the seat **[1.2].** *Thirdly,* foreign governed arbitrations being invalid in China, Guangzhou becomes the seat of arbitration **[1.3].**

1.1. In the absence of indicators to the contrary, the law of the venue is the law of the seat of arbitration.

In the absence of indicia to the contrary, the law of the venue becomes the law of the seat of arbitration.

Article 16 of the Supreme People's Court's Interpretation of the PRC Arbitration Law states that in absence of any indicia to the contrary, the law of venue becomes the law of seat of arbitration.[1] In *Shenzen Food Group Co. Ltd. v. Noble Resources Co. Ltd*, the Supreme People's Court held that in absence of parties' agreement to the place of arbitration, the law of the venue becomes the law of the seat of arbitration.[2] Article 16 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Arbitration Law of the People's Republic of China states that in absence to any instances which may indicate to the contrary, the law of the place of arbitration will be the law applicable to arbitration. Moreover, it provides that in instances

[1] Arbitration Law of the People's Republic of China, 1994, §16.

[2] Shenzhen Food Group Co. Ltd v. Noble Resources Co. Ltd (Singapore), Supreme People's Court (9 June 2010).

where parties have not agreed on applicable laws but only to the place of arbitration, the law of the place of arbitration would apply. In *Shagang South Asia (Homg Kong) Trading Co Ltd. v. Daewoo Logistics*, the court held that deciding on a venue of arbitration without specifying the seat makes the law of the venue as the law of the seat of arbitration.[3]

In the present case, the SCMA rules as agreed by the parties are only guiding procedural laws and not a replacement of the laws of *lex arbitri*. Furthermore, in absence of any indicia to the contrary regarding the seat of arbitration, the law of the venue becomes the seat of arbitration.

1.2. The principle of party autonomy states that Guangzhou is the seat of arbitration

Guangzhou is the seat if arbitration because of the principle of party autonomy. Article 28(1) of the UNCITRAL Model Law on International Commercial Arbitration states that the arbitration tribunal shall apply the rules of law and when decided by the parties.[4] Sub clause (4) provides that the arbitral tribunal should decide the issue in consonance with the terms of the contract.[5] In *Immobiliaria Palacio Oriental SA v. Anhui Foreign Economic Construction (Group) Co. Ltd.,* the court accepted the jurisdiction of Chinese courts and upheld the law of party autonomy.[6] Article 31 of SCMA rules upholds party autonomy and provides that the tribunal should apply the law as decided by the parties.[7]

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[3] Shagang South-Asia (Hong Kong) Trading Co. Ltd v Daewoo Logistics [2015] EWHC 194 (Comm).
[4] UNCITRAL Model Law on International Commercial Arbitration, 21 June, 1985, UN Doc A/40/17, Annex I.
[5] id.
[6] Immobiliaria Palacio Oriental SA v. Anhui Foreign Economic Construction (Group) Co. Ltd, The Supreme People's Court of China, (2017) Zui Gao Fa Min Zai No. 134.
[7] SCMA Rules, 2022, Art. 31 (4th ed. 2022).

In the present case, the arbitration agreement stated that the arbitration was to be held in Guangzhou and therefore, as in accordance with the principle of party autonomy, Guangzhou is the seat of arbitration.

1.3.Foreign governed arbitrations are invalid in China because of Chinese mandatory law.

The UNCITRAL's Analytical Commentary on Draft Text of a Model law on International Commercial Arbitration provides that the freedom of parties to determine the rules of arbitration is subject to mandatory provisions.[8] In *Shenhua Coal Trading Co. v. Mainic Shipping Company*, the court held that the term 'arbitration commission' does not apply to foreign arbitration institutions and only refers to Chinese arbitration institutions.[9] Article 4 of the PRC's Act on the Application of Law to Foreign Related Civil Relations reads that where there exists a provision of PRC law in respect to Foreign related civil relation, the concerned PRC provision would apply.[10] In the case of *Yang X v. Zhong X*, the Guangzhou Maritime Court held that party autonomy is subjected to the mandatory principles of law.[11] Article 194 of the opinions of the SPC on Several Issues concerning the Implementation of General Principles of the Civil Law of the PRC provides that, any foreign law shall be subjected to prohibitive and mandatory provisions of China.[12] In *Jiangsu Textiles Import & Export Group, Ltd. v. Fujian Hua Xia Transportation Co. Ltd.*, where the party violated the mandatory provision under Article 71 of the Maritime Law of PRC, the

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[8] UNCITRAL, *supra* note 1.

[9] Shenhua Coal Transportation Sale Corp. v. Marinic Shipping Company, The Supreme People's Court (4 February 2013).

[10] Laws Applicable to Foreign Related Civil Relations, 2011, §4.

[11] Yang X. v. Zhong X., (2011), Guang hai fa chu zi, No. 373.

[12] Jiangsu Textiles Import & Export Group Co., Ltd. v. Fujian Hua Xia Transportation Co., Ltd., (2003), Hu hai fa shang chu zi, No. 299.

Shanghai High Court therefore held it to be void.[13] In *BNA v. BNB and Another*, wherein the arbitration clause provided to submit its jurisdiction to the Singapore International Arbitration Centre. However, the Singapore Court of Appeals pointed out that foreign governed arbitrations being invalid in china, PRC was the law of the seat and therefore had the jurisdiction over the matter.[14] Article 9 of the Rome I Regulation provides that the laws decided by the parties are subjected to the mandatory laws of the seat of arbitration.[15] In *Zublin International GmbH v. Wuxi Woco General Rubber Engineering Co. Ltd*, wherein the arbitration agreement stated for the usage of ICC rules, the SPC court held that as the parties did not refer to any arbitration institution but rather to only the rules to be applied, simultaneously, while also choosing Shanghai and therefore PRC had jurisdiction.[16]. In *PepsiCo v. Sichuan Pepsi and Pepsi China v. Sichuan Yun Lu*, the court has denied jurisdiction and enforcement holding that foreign governed arbitrations are invalid in China.[17] According to Article 3 of the PRC Law on the Laws applicable to Foreign Related Civil Relations, Chinese law will govern contracts where Chinese mandatory law applies regardless of whether an alternative applicable law was indicated in the arbitration agreement due to Chinese mandatory laws.[18]

In the present dispute, as it is invalid for a PRC seated arbitration to be governed by a foreign arbitral institute as in accordance with the mandatory provisions of Chinese law, SCMA rules will not apply and Guangzhou will be the seat of arbitration. Further, Article 76 of the Tomahawk Rider

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[13] Jiangsu Textiles Import & Export Group Co., Ltd. v. Fujian Hua Xia Transportation Co., Ltd., (2003), Hu hai fa shang chu zi, No. 299.
[14] BNA v. BNB [2019] SGCA 84.
[15] Rome I Regulation, 2008, §9.
[16] German Züblin International GmbH v. Wuxi Woco General Engineering Rubber Co., Ltd, Supreme People's Court (8 July 2004).
[17] PepsiCo Inc. v. Sichuan Pepsi-Cola Beverage Co., Ltd., [2008] Cheng Min Chu Zi No. 912.
[18] Laws Applicable to Foreign Related Civil Relations, 2011, §3.

Clauses states that SCMA rules will be applicable, however, it fails to mention the arbitral institute. Following the rule laid down in *Zublin*, the omission of the arbitral institute invalidates the clause and thus, grants PRC jurisdiction over the present matter and makes Guangzhou the seat of arbitration.

2. Claimant is Liable for the Mis-delivery of the Cargo

In the present case, the defendant, as the lawful holder of the B/L was entitled to the delivery of the cargo **[2.1].** *Secondly,* the act of the claimant of discharging the cargo without production of the B/L was in violation of the carriage contract and the mandatory duty of the shipowner to deliver against the production of B/L **[2.2].** *Thirdly,* such duty was not waived by the Respondent expressly or impliedly. Therefore, the B/L remains undischarged even after the delivery of the cargo along with the rights and duties enumerated **[2.3]**. *Fourthly*, the Respondent is entitled to be compensated by the claimant **[2.4]**.

2.1. Respondent was Entitled to the Cargo

The Carriage of Goods by Sea Act ('COGSA') of 1992 provides that the carrier or its agents will deliver the goods to the "lawful holder of a bill of lading".[19] Thereby separating the idea of mere physical possessor and lawful holder of the B/L, who is entitled to the delivery of the cargo on the presentation of the B/L.[20] Further, the legal rights related to the transaction can only be availed by the lawful owner of the B/L, including an action against the ship owner for the mis-delivery or

[19] Carriage of Goods by Sea Act, 1992, §§. 2(1), 5(2).
[20] The Erin Schulte [2013] 2 Lloyd's Rep 338; [2015] 1 Lloyd's Rep 97 (CA).

non-delivery of the cargo.[21] According to the COGSA, "...a person shall be regarded for the purposes of this Act as having become the lawful holder of a bill of lading wherever he has become the holder of the bill in good faith".[22] The 'good faith' can be deciphered from the fact that "whether in the particular context the conduct would be regarded as commercially acceptable by reasonable and honest people."[23] Furthermore, it is established jurisprudence that when a bank issue a L/C to finance a transaction and takes B/L as security, in such case, the Bank would be the lawful holder of the B/L, therefore, entitled to the cargo.[24]

In the present dispute, the Respondent was the lawful holder of the B/L and not a mere possessor, and the same was known to the claimant as became evident from the conversation between the claimant and the buyer, dated 01.09.2023.[25] The Respondent became the holder of the B/L before the discharge of the cargo, as the 3/3 set of original B/L was delivered by the shipper to the Respondent on 3rd October, and has since than Respondent has not parted with possession of B/L.[26] Whereas the discharge of the cargo commences on 4th October, when the Respondent was entitled to the delivery of the goods. Hence, the Respondent is entitled to claim relief for the misdelivery of the cargo.[27] Furthermore, the Respondent's actions were in 'good faith' in the absence of any commercially imprudent act. The delay in discharging the cargo was caused due to the delay in delivery of the B/L and till 3rd October (date of delivery of B/L), the respondent was not entitled to the delivery of the cargo.

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[21] Primetrade AG v. Ythan Limited ("The Ythan") English Commercial Court: Justice Aikens: [2005] EWHC 2399 (Comm) 2005.
[22] Carriage of Goods by Sea Act, 1992, § 5 (2)(a).
[23] id.
[24] Crédit Agricole Corporate and Investment Bank, Singapore Branch v. PPT Energy Trading Co Ltd [2023] Lloyd's Rep. Plus 25.
[25] Moot Problem, p.43, ¶ 3.
[26] Moot Problem, p 37, ¶ 16.
[27] Carriage of Goods by Sea Act, 1992, §§. 2(2).

2.2. Misdelivery and Breach of Contract

The was a breach of contract on the part of the Claimant because *firstly,* the Claimant discharged the Cargo without production of the B/L **[2.2.1].** Further, the defense of the consent/acquiescence cannot be availed by the Claimant **[2.2.2]**. This resulted in mis delivery of the cargo and consequently the breach of the contract.

2.2.1. Breach of Contract: Delivery without the B/L

It has been established for well over a century that under a B/L contract, a shipowner is both entitled and bound to deliver the goods against the production of an original/L.[28] The strictness of the rule is so well defined that even where a carrier delivers in good faith against surrender of a bill of lading which he reasonably but erroneously believes to be a valid original bill it being in fact a forgery he is still liable for mis- delivery.[29] Furthermore, the purpose of a letter of indemnity as a supposed alternative to the B/L is not to serve as a replacement, but only to protect the carrier from "what he is not contractually obligated to do."[30] Even express contractual terms allowing for discharge/delivery against an LOI does not change the fundamental obligation of the Carrier to lawfully deliver goods only against the B/L.[31]

[28] Hai Tong Bank v. Rambler Cycle Co [1959] AC 576; The Starsin [2003] 1 Lloyd's Rep 571, 575; The Dolphina [2012] 1 Lloyd's Rep 304, 329.
[29] Motis Exports v. Dampskibs AF 1912 [1999].
[30] Kuwait Petroleum Corp. v. D Oil Carriers Ltd [1994] 2 Llyod's Rep. 541.
[31] The Dolphina [2012] 1 Lloyd's Rep. 304.

In the present dispute, claimants delivered the cargo to the buyers on a LOI, in violation of their absolute duty, i.e., delivery on the production of the original B/L. Additionally, the Charterparty clause allowing the shipowner to discharge the cargo in lieu of a LOI,[32] does not absolve the shipowner of their absolute duty. Lastly, the fact of delivering the cargo against the LOI is admitted by the Claimant, without any reservations.[33] Therefore, the claimant is liable for breach of the carriage contract.

2.2.2. Respondent did not consent to the delivery

The B/L is spent only when the cargo had been delivered on the production of B/L, except, when the cargo is delivered without the presentation of B/L but with the knowledge and authorization of the holder of the B/L.[34] The defense of consent/acquiescence requires that something was said or done by the pursuers which affected the mind of shipowner, induced him to conclude that they were consenters, and thus encouraged him to make delivery without production of the B/L.[35] Further, in Yue You case, it was held that the mere fact that the LoC arrangement between the issuing bank and the buyers allowed payment against presentation of the shipping documents or, in its lieu a letter of indemnity, does not amount to consent/acquiescence on the part of the issuer of the LoC to discharge the goods without presentation of B/L.[36] Additionally, to give such a construction to the above-mentioned clause would be inherently contradictory with the concept of the LoC arrangement where the bank took the document of title, i.e., B/L as security for the credit advanced.[37] Additionally, the Bandung Shipping reiterating the long established position of the

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[32] Moot Problem, Charterparty, Cl. 57.
[33] Moot Problem, p.9, ¶13.
[34] The Stone Gemini [1999] 2 Lloyd's Rep 255.
[35] Nederlandsche Handelmaatschappij v. Strathlorne Steamship Company (1931) 39 Ll L Rep 171,
[36] The “YUE YOU 902” And Another Matter [2019] SGHC 106.
[37] BNP Paribas v Bandung Shipping Pte Ltd (SGHC) [2003] SGHC 111; [2003] 3 SLR(R) 611.

maritime law held that the whole transaction has to be interpreted in a commercial setting, thus, for the bank to destroy its own security for the recovery of the credit by giving consent to release of cargo against a letter of indemnity does not make any commercial sense.[38]

In the present dispute, Respondent did not consent to the discharge of cargo without the presentation of B/L. Though the LoC clause allows for payment against an LoI in alternative to shipping documents, the same cannot be construed as consent on the part of the Respondent to deliver the goods without the B/L, as argued by the Claimant.[39] Furthermore, the conversation dated 3rd Oct. 2023, when the Respondent told Yu Shipping that "You must do as you deem fit as Charterers and we will not interfere as long as the loan is repaid", when interpreted in the commercial context of the scheme of the B/L, as a security for the credit advanced under the LoC, the same cannot be construed as consent on the part of the Respondent to allow the Claimant to deliver the cargo without B/L. In any event, without prejudice to the above contentions, the said email does not expressly provide consent for the discharge of goods to be made without presentation of an original B/L, thus any other interpretation of the said communication would be a stretched inference and an afterthought, because in discharging cargo only in lieu of an LOI, the Claimant was aware that he/she/it is liable to the Respondents for the cargo.

2.3. Bill of lading Remains Undischarged

A contract for the carriage of goods by sea is a combined contract of both bailment and transportation which is not discharged until the shipowner has delivered the goods to the person

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[38] id.
[39] Moot Problem, p.40, ¶ 12.

entitled under the terms of the contract to obtain possession of them.[40] Therefore, whether the B/L was discharged depends on whether the person who took delivery was actually entitled to delivery.[41] Because even after the mis-delivery of the cargo, the B/L is still being negotiated by banks as it still is a valid document of title.[42] Moreover, the B/L will continue to be in force even if such mis-delivery takes place against a LOI.[43] In such a situation, to hold that a B/L becomes spent would greatly jeopardizes the value of B/L as documents of title to goods, thus, compromising on the credibility of the B/L, which makes the backbone of the international commercial transactions.[44] Therefore, in a case of mis-delivery against a LOI, the B/L still remains enforceable along with all the rights, duties and remedies provided by the B/L.

In the present dispute, the Respondent was the only one entitled under the B/L to receive the goods, being the issuer of the LOC, financing the whole transaction and holding the cargo as a security. Therefore, the contract of carriage is not discharged when the cargo was delivered to the buyer under a LOI instead of the Respondent. Therefore, the B/L continues as an instrument connoting the ownership interest of the holder of the B/L, i.e., the Respondents in the cargo, and all the legal rights emanating from the B/L remain intact including the right to receive the delivery of the cargo against the presentation of B/L.

2.4. Loss Caused to the Respondent

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[40] Barclays Bank v. Commissioners of Customs and Excise, [1963] 1 Lloyd's Rep 81.
[41] London Joint Stock Bank v. British Amsterdam Maritime Agency, (1910) 16 Com Cas 102.
[42] FIM Bank v. KCH Shipping, [2022] EWHC 2400 (Comm).
[43] Barber v. Meyerstein. (1870). L.R. 4 H.L. 317.
[44]The Future Express, [1992] 2 Lloyd's Rep 79.

It is submitted that the mis delivery of the cargo resulted in an actual loss to the Respondents. *Firstly,* the Respondent held the B/L as a pledgee, thereby acquiring a special property in the cargo **[2.4.1].** *Secondly* the Respondent has the right to immediate possession of the cargo **[2.4.2].**

2.4.1. Loss of rights of the Pledgee

In the pursuance an LOC arrangement, the possession of the B/L is delivered to the issuing bank as a security for the repayment of the amount advanced.[45] The bank obtains a special property in the goods under the B/L as pledgee.[46] However, the bank's legal title at any rate depends on the pledgor having property in the goods at the time of the pledge.[47] As pledgee, the bank was invested with a special legal title, i.e., though the bank has no right to enjoy the goods, but has the right to retain them until the contract has been fulfilled and in case of non-fulfillment of the contract, the bank has the right to sell the goods and reimburse itself.[48] An important consequence of this special property is to protect the pledgee against the bankruptcy of the pledgor since if the pledgor goes bankrupt, the pledgee can bring the pledged properties to sale.[49]

In the present case, the buyer purchased the goods on 14 August 2023 from the Good Oils Sdn. Bhd. and the transaction is financed by the Respondent under the LOC arrangement entered b/w the Respondent and the buyer.[50] In pursuance of the same, the Respondent was made the consignee of the cargo as a security for the amount advanced under the LOC.[51] Thereby acquiring special property in the goods as pledgee and on the bankruptcy of the buyer, the Respondent became

[45] Margarine Union GmbH v Cambay Prince Steamship Co Ltd.[1967] 2 Lloyd's Rep 315, 334.
[46] The Future Express [1993] 2 Lloyd's Rep 542, 548–549.
[47] Id.
[48] The Odessa, [1916] 1 A.C. 145.
[49] Bristol & West of England Bank v. Midland Rly Co. [1891] 2 Q.B. 653, 660.
[50] Moot Problem, p.43.
[51] Moot Problem, Tanker Bill of Lading, p.4.

entitled to recover the amount advanced under the LoC by selling off the cargo pledged under the B/L. However, due to Claimant's misdelivery, the Respondent was no longer in a position to sell the cargo and recover the amount under the LOC facility. Thus, the security of B/L became practically infructuous and the Respondent lost his rights as a pledgee for the recovery of the amount supplied under the LOC facility.

2.4.2. Claimant's Act Amounts to Conversion

The B/L being the only common law document of title,[52] encumbers upon its holder, the constructive possession of the underlying goods, along with the immediate right to possession which accords them the right to sue for conversion as well.[53] However, when the shipowner delivers the goods deliberately at the prejudice of the lawful recipient to any party except that which has the immediate right to possession constitutes conversion.[54] Furthermore, the act of mis delivery will not cause the B/L to be exhausted,[55] and as long as the B/L harbors the general or the special property of a pledgee, it confers a title to sue in conversion to its holder.[56] However, even when such misdelivery took place before the delivery of the B/L, conferring rights under a pledge, the same is immaterial because the holder is nonetheless entitled to make a fresh demand for delivery of the cargo.[57]

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[52]SIMON BAUGHEN, SHIPPING LAW, 4 (4th ed. 2009):
[53] PAUL TODD, 'BILLS OF LADING & BANKERS DOCUMENTARY CREDITS' 546 (Routledge, 4th ed. 2007).
[54] Kuwait Airways Corp. v. IAC [2002] UKHL 19.
[55] The Future Express [1992] 2 Lloyd's Rep 79, 96, 100, Standard Chartered Bank v. Dorchester LNG Ltd (The Erin Schulte) [2014] EWCA 1382.
[56] The Future Express [1992] 2 Lloyd's Rep 79, 96
[57] Margarine Union GmbH v Cambay Prince Steamship Co Ltd (The Wear Breeze) [1967] 2 Lloyd's Rep 315, 334; [1969] 1 QB 219, 246

In the present case, the Respondent was the lawful holder of the B/L, entitling him to the constructive possession and the right to immediate possession of the goods under B/L. Furthermore, the Claimant deliberately delivered the goods underlying the B/L to Yu Shipping, without the presentation of the B/L, knowing fully well that the Respondent was always the lawful holder of the B/L under the LoC facility between the Respondent and the buyer and delivering the cargo to the buyers would render this arrangement practically infructuous, therefore, deliberately causing loss to the respondent. Lastly, the respondent became the holder of the B/L on 3rd Oct., whereas, the delivery of the cargo commenced on 4th Oct., alternatively, even if the contrary is proven, the same is immaterial as the Respondent was still entitled to ask for the delivery of cargo on becoming the lawful holder of the B/L. Therefore, the claimant is liable for the tortious act of conversion extending to the value of the cargo amounting to 4,249,752.50 USD together with interest and costs.

3. The Respondent is not liable to pay the damages suffered by the Claimant

The Respondent is not liable to pay the damages suffered by the Claimant because, *firstly,* the conduct of the respondent is not the direct cause of the loss suffered by the Claimant. **[3.1].** *Secondly,* Claimant is unable to prove a second breach of contract in order to claim damage in addition to demurrage **[3.2].**

3.1. The Conduct of the Respondent was not the direct cause of the loss suffered by the claimant.

It was held in the *Adelfa* that a separate head of damage equated to an "essentially distinct claim."[58] In the *Altus*, it was held that such damages must flow indirectly or consequentially from the breach.[59]

It is submitted that the loss suffered by the CLAIMANT was not the consequence of the actions of the RESPONDENT because, *firstly,* the RESPONDENT was unaware of the further employment of the ship **[3.1.1].** *Secondly*, the act of the RESPONDENT was not the cause of the loss suffered by the c CLAIMANT **[3.1.2].**

3.1.1. The Respondent did not have knowledge regarding the further employment of the vessel.

It is submitted that, the RESPONDENT did not have the knowledge regarding the further employment of the vessel, thus failing to satisfy the test for damages laid down in Hadley v. Baxendale. The second limb of *Hadley v. Baxendale* requires the damages to be in contemplation of the parties at the time they made the contract.[60]

The *Heron II* laid down that damages arising out of the consequences of a breach of contract must be of a kind which, the defendant when he made the contract, ought to have realized was not unlikely to result from the breach.[61] The words "not unlikely" denoting a degree of probability considerably less than an even chance, but never the less not very unusual and easily foreseeable. The *Achilleas* held that the application of the aforementioned rule cannot be inflexible and must

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[58] Adelfamar S.A. v. Silos E Mangimi Martini S.p.A. (The "Adelfa") [1988] 2 Lloyd's Rep. 466.
[59] Total transport Co. v. Amoco Trading Co. (The "Altus"), [1985] 1 Lloyd's Rep. 423.
[60] Hadley & Anr. v. Baxendale & Ors. [1854], EWHC J70.
[61] C Czarnikow Ltd. V Koufos (The "Heron II") [1969] 1 AC 350.

be capable of rebuttal.[62] It further held that liability of damages must be founded upon the objectively ascertainable intention of the parties as all contractual liability is voluntarily undertaken.

In the present dispute, the RESPONDENTS did not have knowledge regarding the next voyage of the vessel. This information was given to them on 29th of September 2023, when the vessel was already past its laytime.[63] The charterparty was also given to the RESPONDENTS on 1st October 2023. In light of these circumstances there is no intent to be bound to pay for damages which arose as a consequence of the delay.[64]

3.1.2. The act of the Respondent was not the cause of the loss suffered by the claimant.

Assuming that the act of the RESPONDENT was a breach of contract, there is a break in the chain of causation. The first limb of *Hadley v. Baxendale* requires that the damages arise naturally according to the usual course of things from such breach of contract.[65] It was further stated that it was not merely enough to prove that the damages arose due to the breach but whether they could be attributed fairly and reasonably to arise naturally from the breach.[66] Thus, there must be a chain of causation between the breach and the consequent damages. [67]

The adverse weather conditions delayed the ship substantially. The Ship departed at 2:14 A.M. on 8th October 2023 giving it a week to travel the distance between Busan and Kaohsiung.[68] It covered the distance of approximately 4,000 kilometers between Bintulu and Busan in 14 days.[69] Thus, it

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[62] Transfield Shipping Inc v Mercator Shipping Inc (The “Achilleas”) [2008] UKHL 48.
[63] Moot Problem, p. 43.
[64] id.
[65] Hadley & Anr. v. Baxendale & Ors. [1854], EWHC J70.
[66] id.
[67]
[68] Moot Problem, p. 9.
[69] id.

is reasonable to assume that it could cover the less than half the distance in more than half the time. Thus, there was a break in the chain of causation and the RESPONDENT is not liable for the loss suffered.

3.2. In the alternative, the claimant has not been able to show a second breach of the charterparty so as to entitle it to damages apart from demurrage.

It is submitted that the CLAIMANT has been unable to prove a separate breach of charterparty. The decision in *Reider v. Arcos* gave rise to the principle of separate breach.[70] It states that, to claim damages in addition to demurrage, a separate breach of the charterparty must be shown.[71]

It was affirmed in the ruling given in the *Suisse Atlantique* case where it was held that damages in addition to demurrage could only be claimed when a separate breach of contract could be shown arising from the same circumstances.[72] In *Inverkip,* it was held that demurrage continued till the cargo operations were completed. Additionally, it was held that all breaches, the effect of which was a claim for detention were covered under demurrage.[73] Therefore, until the effect of a breach resulted in some other kind of loss, it would be covered under demurrage.[74] The recent Eternal Bliss judgment upheld the formulation that, to claim damages in addition to demurrage, a separate breach of the contract must be shown.[75]

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[70] Aktieselskabet Reidar v Arcos Ltd (1926) 25 Ll L Rep 513, at p. 516.
[71] id.
[72] Suisse Atlantique [1965] 1 Lloyd's Rep 533, at p. 539.
[73] Inverkip Steamship Co Ltd v Bunge & Co (1917) 22 CC 200.
[74] Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde) [1991] 1 Lloyd's Rep 136, at p. 142.
[75] K Line Pte v Priminds Shipping (HK) Co. Ltd (The "Eternal Bliss") [2021] EWCA Civ 1712 ¶58.

In the present dispute, there is no separate breach of the contract by the RESPONDENT except breach of the Laytime clause.[76] It is mentioned the last date for discharge was October 7th 2023 and the ship finished discharge at 23:48 on the same date.[77] Thus, there is no separate breach of the charter and the CLAIMANT is not entitled to additional damages.

[76] Moot Problem, p. 25.
[77] Moot Problem, p. 9.

Prayer for Relief

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

1. The Hon'ble Tribunal does not have the jurisdiction to hear and decide the present dispute and the applicable law for determining the validity of the arbitration clause is the PRC law.
2. The was a misdelivery of cargo on the part of the Claimant thereby resulting in a loss amounting to USD 4, 249, 752.50 to the Respondent.
3. Further, in the event the Tribunal determines that the arbitration clause is valid and there was breach of laytime provisions, the Claimant is not entitled to claim for negotiated discount and the Claimant's claim for loss is limited to a claim for demurrage only.

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 Respondent shall duty-bound forever pay.

Sd/-

(Counsel for the Respondent)