23RD ANNUAL INTERNATIONAL MARITIME LAW ARBITRATION MOOT

UNIVERSITY OF QUEENSLAND

AUSTRALIA

MEMORANDUM FOR RESPONDENT

Team N

CLAIMANT	v	RESPONDENT
Tomahawk Maritime S.A.		**Veggies of Earth Banking Ltd**

COUNSEL

Simaima Gordon | Elijah Larsen | Asha Varghese | Heidi Willis

MEMORANDUM FOR RESPONDENT

Team N

CLAIMANT	v	RESPONDENT
Tomahawk Maritime S.A.		**Veggies of Earth Banking Ltd**

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ABBREVIATION	TERM
BoL	Bill of Lading No. COW-011A
Charterparty	VEGOILVOY Charterparty dated 1 September 2023 between Tomahawk Maritime S.A. and Yu Shipping Ltd
CLAIMANT	Tomahawk Maritime S.A.
Contract of Carriage	The contract of carriage as evidenced by Bill of Lading No. COW-011A
Kaohsiung charter	The MV NIUYANG's 2-year time charterparty at the port of Kaohsiung with the laycan 1-14 October 2023
LC	Letter of Credit
LoI	Letter of Indemnity
RESPONDENT	Veggies of Earth Banking Ltd.
Cargo	16,999.01 metric tonnes of crude palm oil (edible grade) carried by the MV NIUYANG
Vessel	MV NIUYANG
Yu Shipping	Yu Shipping Ltd
SCMA	Singapore Chamber of Maritime Arbitration
PRC	People's Republic of China

LIST OF AUTHORITIES

A Articles/Books
Berger, "Re-examining the Arbitration Agreement: Applicable Law - Consensus or Confusion?", in *Van den Berg (ed)*, (2006) ICCA Congress Series Vol 13, 301
Bernard Eder et al., *Scrutton on Charterparties*, (Sweet & Maxwell, 22nd Ed, 2011)
G H Treitel et. al, *Carver on Bills of Lading* (Sweet & Maxwell, 3rd Ed, 2011)
Gary Born, *International Commercial Arbitration* (Kluwer Law International, 3rd Ed, 2021)
Interpretation of the Supreme People's Court Concerning Several Matters on Application of the Arbitration Law of the People's Republic of China, Fa Shi [2006] No.7, Asian Legal Information Institute
L Collins et al., *Dicey, Morris & Collins, The Conflict of Laws*, (Sweet & Maxwell, 15th Ed 2012)
Liang Zhao and Zhen Jing, '*Conflict of jurisdiction between the UK and China and enforcement of arbitral awards and judgements*', LMLQ, 11 May 2023
Michael Bridge, *Benjamin's Sale of Goods* (Sweet & Maxwell, 11th Ed, 2021)
RR Cornah, RCG Sarll and JB Shead, *Lowndes & Rudolf: General Average and York-Antwerp Rules* (Sweet & Maxwell, 15th ed, 2018)

B Cases
ABB Lummus Global Ltd v Keppel Fels Ltd [1999] 2 Lloyd's Rep 24.
Aktieselskabet Reidar v Arcos Ltd [1927] 1 KB 352.
Amin Rasheed Shipping Corp v Kuwait Insurance Co (The Al Wahab) [1984] AC 50.
Anglo-Saxon Petroleum Co Ltd v Adamastos Shipping Co Ltd [1959] AC 133 [161]; [1958] 2 WLR 688.
Arnold v Britton [2015] UKSC 36; AC 1619.
Associated Portland Cement Manufacturers (1900), Ltd v Houlder Brothers & Co., Ltd (1917) 86 LJ (KB) 1495.
Attorney General of Belize v Belize Telecom [2009] UKPC 10; 1 WLR 1988.
Barclays Bank Ltd v Commissioners of Customs and Excise [1963] 1 Lloyd's Rep 81.
Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 QB 428; [1968] 1 All ER 1068.
BCY v BCZ [2016] SGHC 249; [2016] 2 Lloyd's Rep 583.
BNA v BNB [2019] SGCA 84; 1 Lloyd's Rep 55.
BP Refinery (Westernport) Pty Ltd v President, Councillors and Ratepayers of the Shire of Hastings ('*BP Refinery'*) (1977) 180 CLR 266.
Canary Wharf (BP4) T1 Ltd v European Medicines Agency [2018] EWHC 335.
Carpatsky Petroleum Corpn v PJSC Ukrnafta [2020] EWHC 769 (Comm); [2020] Bus LR 1284.
Carslogie Steamship Co [1952] AC 292; [1952] 1 All ER 20; [1951] 2 Lloyd's Rep 441.
Cie Tunisienne de Navigation SA v Cie d'Armement Maritime SA [1971] AC 572.
Company v Sampson (1874-75) LR 19 Eq 462.

Czarnikow v Koufos, The Heron II [1969] 1 AC 350.
Daesung Industrial Gases Co Ltd v Praxair (China) Investment Co Ltd [2020] 4 CMCLR 1.
Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan [2008] EWHC 1901 (Comm); [2009] 1 All ER (Comm) 505.
Dias Compania Naviera v Louis Dreyfus ('The Dias') [1978] 1 WLR 261.
*East West Corp. v DKBS AF 1912 A/*S [2003] EWCA Civ 83; 3 WLR 916; 1 Lloyd's Rep 239.
ENE Kos 1 Ltd v Petroleo Brasileiro SA (No 2) [2012] UKSC 17.
Enka Insaat ve Sanayi AS v OOO Insurance Company Chubb ('*Enka*') [2020] UKSC 38; 1 WLR 4117; [2020] 2 Lloyd's Rep 449.
Fairchild v Glenhaven Funeral Services Ltd [2002] UKHL 22; [2003] 1 AC 32, [2002] 3 All ER 305.
Federal Bulk Carriers Inc v C. ITOH & Co Ltd and others (The 'Federal Bulker') [1989] 1 Lloyd's Rep.
Fimbank plc v Discover Investment Corpn ('*The Nika*') [2020] EWHC 254 (Comm); [2021] 1 Lloyd's Rep 109.
Fraser Turner Ltd v PricewaterhouseCoopers LLP [2018] EWHC 1743.
Galoo v Bright Grahame Murray [1994] WLR 1360 CA.
Georizika DD v MMB International Ltd (The Greed Island) [2010] EWCA Civ 459; [2010] 2 Lloyd's Rep 1.
Glyn Mills (1882) 7 App Cas 591.
Great Eastern Shipping Co Ltd v Far East Chartering Ltd ('The Jag Ravi') [2012] EWCA Civ 180; 2 All ER (Comm) 707; 1 Lloyd's Rep 637
Hadley v Baxendale (1854) 23 LJ Ex 179; 9 Exch 341; [1843-60] All ER Rep 461.
Herculito Maritime Ltd v Gunvor International BV (*'The Polar'*) [2024] UKSC 2; 2 All ER 263; 1 Lloyd's Rep 85.
Hong Kong & Shanghai Banking Corp v GD Trade Co Ltd [1998] CLC 238.
Inverkip Steamship Company, Limited, v Bunge & Co [1917] 2 KB 193.
K Line Pte Ltd v Priminds Shipping (HK) Co Ltd (*The 'Eternal Bliss'*) [2021] EWCA Civ 1712; [2022] 3 All ER 396; 1 Lloyds Rep 12.
Kabab-Ji SAL v Lout Food Group ('*Kabab-Ji*') [2021] UKSC 48; 2 All ER 911.
Kuwait Airways Corp v Iraqi Airways Corp (Nos 4 and 5) [2002] UKHL 19; [2002] 2 AC 883; [2002] 2 WLR 1353.
Kuwait Petroleum Corpn v I & D Oil Carriers Ltd ('*The Houda'*) [1994] 2 Lloyd's Rep 541.
Lavender Shipmanagement Inc v Ibrahima Sory Affretement Trading Sa and Others (The "Majesty") [2020] EWHC 3462 (Comm); [2021] 2 Lloyd's Rep 23.
Leduc v Ward (1888) 20 QBD 475.
Lickbarrow v Mason [1794] 5 TR 683.
Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd (*The Ocean Neptune*) [2018] EWHC 163 (Comm); [2018] 2 All ER (Comm) 108; [2018] 1 Lloyd's Rep 654.
Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd ('*Marks v*

Spencer') [2015] UKSC 72; [2016] AC 472; [2015] 3 WLR 1843.
Miramar Maritime Corporation v Holborn Oil Trading Ltd ('The Miramar') [1984] AC 676 at 685; 3 WLR 1 at 6 ; 2 Lloyd's Rep 129.
Mobil Shipping & Transportation Co v Shell Eastern Petroleum Ltd ('*The Mobil Courage'*) [1987] 2 Lloyd's Rep 655.
Motis Export Ltd. v Damp-skibsselkabet AF 1912 Aktieselskab and Aktieselskabet Dampskibsselskabet Svendborg [1999] 1 Lloyd's Rep 837.
Naviera Amazónica Peruana SA v Compania Internacional de Seguros del Peru [1988] 1 Lloyd's Rep 116.
Nederlandsche Handelmaatschappij v Strathlorne Steamship Company (1931) 39 Ll. L. Rep 171.
Nelson Line (Liverpool) Ltd v James Nelson & Sons Ltd [1908] AC 16.
Oldendorff GMBH & Co KG v Sea Powerful II Special Maritime Enterprises ('The Zagora') [2016] EWHC 3212 (Comm); [2017] 1 Lloyd's Rep 194.
Oversea-Chinese Banking Corpn Ltd v Owner and/Or Demise Charterer of the Vessel STI Orchard ('*STI Orchard*") [2022] SGHCR 6; [2023] 1 Lloyd's Rep 22.
Prime Sight Ltd v Lavarello [2013] UKPC 22, [2014] AC 436
Printing and Numerical Registering Company v Sampson (1874-75) LR 19 Eq 462.
Rainy Sky SA v Kookmin Bank [2011] UKSC 50; 1 WLR 2900; [2012] 1 Lloyd's Rep 34.
Richco International Ltd v Alfred C Toepfer GmbH ('The Bonde') [1991] 1 Lloyd's Rep 136.
Rosenblatt v Man Oil Group SA [2016] EWHC 1382 (QB).
Ross T Smyth & Co v TD Bailey and Son Ltd [1940] 3 All ER 60.
Russell v Duke of Norfolk (1949) 1 All ER 109.
SA Sucre Export v Northern River Ltd ('*The Sormovskiy 3068'*) [1994] 2 Lloyd's Rep 266.
Sanders Bros v Maclean & Co (1883) 11 QBD 327.
Sea Master Shipping Inc v Arab Bank (Switzerland) Ltd (The Sea Master) [2020] EWHC 2030 (Comm); [2021] 1 Lloyd's Rep 500.
Seniority Shipping Corporation SA v City Seed Crushing Industries Ltd (The "Joker") [2019] EWHC 3541 (Comm); [2021] 1 Lloyd's Rep 169
Shagang South-Asia (Hong Kong) Trading Co Ltd v Daewoo Logistics [2015] EWHC 194 (Comm); 1 All ER (Comm) 545; 1 Lloyd's Rep 504.
Songa Chemicals AS v Navig8 Chemicals Pool Inc ('*Songa Winds*') [2018] EWHC 397 (Comm); 2 Lloyd's Rep 47, decision overturned on appeal [2018] EWCA 1901 (Civ); [2019] 1 All ER (Comm) 1085; [2018] 2 Lloyd's Rep 374.
SS Ardennes (Owners of Cargo) v SS Ardennes (Owners) [1951] KB 55.
Standard Chartered Bank Ltd v Maersk Tankers Singapore Pte Ltd ('*The Maersk Princess'*) [2022] SGHC 242; [2023] 1 Lloyd's Rep 508.
Star Shipping A.S. v China National Foreign Trade Transportation Corporation (The "Star Texas") [1993] 2 Lloyd's Rep 445.
Suisse Atlantique Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale; [1967] 1 AC 361; [1966] 2 WLR 944; [1966] 1 Lloyds Rep 529.
Sulamérica Cia Nacional de Seguros SA v Enesa Engenharia SA [2012] EWCA Civ 638;

WLR (D) 148; 1 Lloyd's Rep 671.
Supershield Ltd v *Siemens Building Technologies FE Ltd* [2010] EWCA Civ 7; [2010] 2 All ER (Comm) 1185; [2010] 1 Lloyd's Rep 349.
Sylvia Shipping Co Ltd v Progress Bulk Carriers Ltd [2010] EWHC 542 (Comm).
Sze Hai Tong Bank, Ltd v Rambler Cycle Co Ltd [1959] AC 576; 3 All ER 182; (1959) 2 Lloyd's Rep 114.
Taylor Asia Pacific Pte Ltd v Dyna-Jet Pte Ltd [2016] SGCA 238; [2017] 1 Lloyd's Rep 59.
The "Yue You 902" and Another Matter [2019] SGHC 106; [2019] 2 Lloyd's Rep 617.
The Alnak [1985] 1 Lloyd's Rep 557.
The Calliope [1970] P 172 at 185; 1 All ER 624.
The Future Express [1993] 2 Lloyd's Rep 542.
The Heidberg [1994] 2 Lloyd's Rep 287.
Thomas & Co Ltd v Portsea SS Co Ltd [1912] AC 1.
Trafigura Beheer BV v Mediterranean Shipping Co SA ('*The MSC Amsterdam'*) [2007] EWCA Civ 794; [2008] 1 All ER (Comm) 385; [2007] 2 Lloyd's Rep 622.
Transfield Shipping Inc v Mercator Shipping Inc ('The Achilleas') [2008] UKHL 48; [2009] AC 61; [2008] 2 Lloyd's Rep 275.
Unicredit Bank AG v Euronav NV (*'The Sienna*') [2023] EWCA Civ 471; 1 All ER (Comm) 36; [2024] 1 Lloyd's Rep 177.
UniCredit Bank v Ruschemalliance LLC (2024) EWCA Civ 64; [2024] 1 Lloyd's Rep 350.
Union of India v E B Aaby's Rederi A/S (*'The Evje'*) [1975] AC 797.
Vardinoyannis v The Egyptian General Petroleum Corporation ('*The Evaggelos TH')* [1971] 2 Lloyds Rep 200.
Victoria Laundry (Windsor) Ltd v Newman Industries Ltd [1949] 2 KB 528.
Volcafe Ltd v Sud Americana de Vapores [2018] UKSC 61; [2019] AC 358; [2019] 1 Lloyd's Rep 21.
Western Steamship Co Ltd v Amaral Sutherland & Co Ltd [1913] 3 KB 366.
Wood v Capita Insurance Services Ltd [2017] UKSC 24; 2 WLR 1095.

C Legislation
Arbitration Law of the People's Republic of China 1994
Swiss Law on Private International Law
Carriage of Goods by Sea Act 1992 (UK)

D Other
Singapore Chamber of Maritime Association Rules, 4th ed 2022.
United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

STATEMENT OF FACTS

The Voyage

1. Tomahawk Maritime S.A. (**CLAIMANT**) is the owner of the '*MV Niuyang'* (the **Vessel**).[1] On 1 September 2023, Yu Shipping chartered the Vessel from CLAIMANT for a voyage from Bintulu, Malaysia to Busan, South Korea, carrying 16,999 tonnes of palm oil (the **Cargo)**.[2]
2. Details of this voyage are evidenced in Bill of Lading No. COW-011A (the **Bol**).
3. Veggies of Earth Banking (**RESPONDENT**) is a financial institution[3] and the named consignee on the Bol.[4]
4. The Vessel sailed from Bintulu on 6 September 2023 and arrived in Busan on 20 September 2023.[5] Following the voyage, CLAIMANT had subsequent two-year time charterparty at Kaohsiung with a strict cancelling date of 14 October 2023 (**the Kaohsiung charter**).[6]

The financing arrangement

5. RESPONDENT bought the Cargo from Good Oils Sdn Bhd (**Good Oils**), the party named as shipper on the BoL.
6. This purchase was made by way of a Letter of Credit (**LC)** on 14 August 2023 pursuant to a trade finance facility with its customer, Yu Shipping.[7]
7. Under this financial arrangement Yu Shipping was to sell the Cargo to Gileum Refinery Co., Ltd. (the **Korean Buyer**) and repay the amount of the Good Oils LC to RESPONDENT.[8]

---

[1] Record at 7 [1],[3]; Record at 36 [10].
[2] Record at 7 [3]; Record at 36 [10].
[3] Record at 7 [2]; Record at 36 [10].
[4] Record at [4]; Record at 8 [8]; Record at 36 [10].
[5] Record at [9]; Record at 36 [10].
[6] Record at 7 [5]; Record at 36 [10].
[7] Record at 37 [15]; Record at 43 (email from Al Swell to Butcher Kim and Hong Rou on 22 December 2023 at 3:14pm).
[8] Record at 37 [15], 43 (Email from Al Swell (Carry On Advisors LLP) to Kim Butcher (Tomahawk Maritime) at 22 December 2023 at 3:14 pm).

Delay at Busan

8. Following the vessel's arrival at Busan,[9] laytime expired on 24 September 2023.[10]

9. At 12:17pm on 3 October 2023, CLAIMANT reminded Yu Shipping that the Vessel is likely to miss its next employment. It also notified Yu Shipping that the Kaohsiung charter will cancel the fixture if the Vessel misses the cancelling date.[11]

10. At 1:37pm on 3 October 2023 Yu Shipping requested that CLAIMANT commence discharge,[12] and attached a letter of indemnity (**LoI**).[13] It did this without authorisation from RESPONDENT.

11. At 3:18pm, RESPONDENT notified Yu Shipping that it had received the LoI from Good Oils.[14] Yu Shipping then requested a trust receipt, and notified RESPONDENT that the cargo had been sold.[15]

12. At 4:42pm, RESPONDENT reiterated that it was not going to issue Yu Shipping a trust receipt because it had not received the BoL from Good Oils.[16]

13. CLAIMANT commenced discharge at 6:30am on 4 October 2023 without presentation of the BoL, against Yu Shipping's LoI.[17] Delivery was completed on 7 October 2023.[18] The Korean Buyers paid Yu Shipping pursuant to a LC.

14. The Vessel departed Busan on 0214 8 October 2023.[19] In the approach voyage to Kaohsiung, the Vessel encountered *'adverse'* weather which delayed its progress. The Vessel was still

[9] Record at [9]; Record at 36 [10].
[10] Record at 12, Record at 48 (email from 'E-Operations' (Yu Shipping) to 'Trade Finance (VOE) on 22 September at 5:01pm).
[11] Record at 47 (email from 'E-Operations (Yu Shipping) to 'Trade Finance' (VOE) on 29 September 2023 at 12:17pm).
[12] Record at 9 [14]; Record at 36 [10].
[13] Record at 33.
[14] Record at 47 (email from 'Turn Ip' (VOE) to 'E-Operations' (Yu Shipping) on October 3 2023 at 3:18pm).
[15] Record at 47 (email from 'E-Operations' (Yu Shipping) to 'Trade Finance' (VOE) on 3 October 2023 at 3:47pm).
[16] Record at 46 (email from Turn Ip (VOE) to E-Operations (Yu) 3 October 2023 4:02pm).
[17] Record at 9 [14]; Record at 36 [10].
[18] Record at 9 [14].
[19] Record at 9 [14]; Record at 36 [10].

300 nautical miles from Kaohsiung when, on 16 October 2023, the Kaohsiung charterer cancelled the fixture.[20]

15. Yu Shipping, then went insolvent without paying RESPONDENT. [21] CLAIMANT managed to re-negotiate with the Kaohsiung charterer, but at a lower hire rate.[22]

16. On 29 November 2023, RESPONDENT wrote to CLAIMANT, claiming to be the holder of the BoL.

17. CLAIMANT instituted arbitral proceedings in Singapore on 22 December 2023. CLAIMANT claims USD $3,650,000.00 from RESPONDENT, being the difference between the original and the re-negotiated hire rate for the Kaohsiung fixture.[23]

18. RESPONDENT denies the Tribunal's jurisdiction. Additionally, it denies being liable for more than demurrage; and claims the value of the Cargo from CLAIMANT.

THE TRIBUNAL LACKS JURISDICTION

1. The purported arbitration agreement is found in cl 76 of the rider clauses to the Charterparty between CLAIMANT and YU SHIPPING.[24] RESPONDENT accepts cl 76 is incorporated into the Contract of Carriage by clause 1 of the BoL.[25]

2. CLAIMANT and YU SHIPPING agreed that '*Arbitration, if any, to be in Guanghzou with three arbitrators and SCMA Rules*'.[26] However, this Tribunal does not have jurisdiction because **(I)** PRC law governs the validity of the arbitration agreement and **(II)** the arbitration agreement is invalid under PRC law.

I. PRC LAW GOVERNS THE ARBITRATION AGREEMENT

3. In circumstances where there is a live question about the law which governs the arbitration

[20] Record at 9 [15]; Record at 36 [10].
[21] Record at 9-10 [16]; Record at 43-44.
[22] Record at 9 [15]; Record at 36 [10].
[23] Record at 10 [20].
[24] Record at 28 [76].
[25] Record at 31 [1].
[26] Record at 28 [76].

agreement, English conflict of laws rules should be used to determine the proper law of the arbitration agreement.[27] That is because, if English law governs the arbitration agreement, the arbitration agreement would be valid.[28]

4. Under English conflict of laws rules, in the absence of an express choice of law governing the arbitration agreement, the arbitration agreement is governed by the law impliedly chosen by the parties or, failing an implied choice, the law with the closest connection to the agreement.[29]

5. PRC law governs the arbitration agreement in the Contract of Carriage because **(A)** Guangzhou is the seat of arbitration; **(B)** CLAIMANT and Yu Shipping made no discernible choice of law to govern the arbitration agreement, and PRC law has the closest connection to the arbitration agreement; and **(C)** alternatively, if a choice was made at all, by its choice of the seat CLAIMANT and Yu Shipping impliedly chose PRC law to govern the arbitration agreement.

A. GUANGZHOU IS THE SEAT OF ARBITRATION

6. Under English law, it is well established that providing for arbitration '*in*' a geographical place designates that place as the seat.[30] Accordingly, when the parties agreed arbitration '*to be in Guangzhou*', the parties designated PRC as the seat.[31]

7. The result would be the same if Singaporean law applied, where the phrase arbitration 'to

---

[27] *Neilson v Overseas Projects Corporation of Victoria Ltd* (2005) 223 CLR 331; 221 ALR 213 at [13] per Gleeson CJ, at [91], [102] (Gummow and Hayne JJ), at [171], [174] (Kirby J), at [261] (Callinan J), at [271] (Heydon J).
[28] *Kabab-Ji SAL v Lout Food Group* ('*Kabab-Ji'*) [2021] UKSC 48; 2 All ER 911 at 920 [27], citing *Dicey, Morris & Collins, The Conflict of Laws*, 15th ed (2012) at [32R-106], [32-110] – [32-113]; and *Born, International Commercial Arbitration*, 3rd ed (2021) at 623, 637, 3786.
[29] *Enka Insaat ve Sanayi AS v OOO Insurance Company Chubb* ('*Enka*') [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 at [170].
[30] *Kabab-Ji* [2021] UKSC 48; 2 All ER 911 [48]; See also *Naviera Amazónica Peruana SA v Compania Internacional de Seguros del Peru* [1988] 1 Lloyd's Rep 116 at 119; *ABB Lummus Global Ltd v Keppel Fels Ltd* [1999] 2 Lloyd's Rep 24 at 31; *Shagang South-Asia (Hong Kong) Trading Co Ltd v Daewoo Logistics* [2015] EWHC 194 (Comm); 1 Lloyd's Rep 504; *BNA v BNB* [2019] SGCA 84; 1 Lloyd's Rep 55, 64-66; *Wilson Taylor Asia Pacific Pte Ltd v Dyna-Jet Pte Ltd* [2016] SGCA 238; [2017] 1 Lloyd's Rep 59.
[31] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 at [70], citing *Carpatsky Petroleum Corpn v PJSC Ukrnafta* [2020] EWHC 769 (Comm); [2020] Bus LR 1284 [67]-[71].

be in' constitutes agreement on the seat of arbitration.[32]

8. The agreement to arbitrate '*in Guangzhou*' cannot be read down as a mere agreement on the location of any physical hearings in the arbitration. It is unlikely that the parties to a one-sentence arbitration agreement in an international transaction expressly chose to reflect in their written agreement the physical place of hearings, but not a concept '*of paramount importance*' in international arbitration – the seat.[33]

9. The reference in the arbitration agreement to '***General Average** and Arbitration … **to be in Guangzhou***' (emphasis added) suggests that CLAIMANT and YU SHIPPING indeed had a *legal* place in mind when they agreed to arbitrate. That is because clauses which specify the place of General Average have the effect that the adjustment of General Average will be governed by the law and practice of the specified place.[34]

10. The Tribunal should not ignore an express designation of Guangzhou as the seat simply because PRC law would invalidate the arbitration agreement.[35] That would do unjustified violence to the actual words agreed by CLAIMANT and Yu Shipping.[36]

11. Because the parties have expressly chosen Guangzhou as the seat of the arbitration, the SCMA default rule that Singapore is the seat does not apply.[37]

B. IN THE ABSENCE OF A DISCERNIBLE CHOICE, THE PROPER LAW GOVERNING THE ARBITRATION AGREEMENT IS PRC LAW

i. There is no discernible choice of law for the arbitration agreement

12. It is '*rare*' for the governing law of an arbitration agreement to be expressly identified.[38]

---

[32] *BNA v BNB* [2019] SGCA 84; [2019] 1 Lloyd's Rep 55, 64-66
[33] *Star Shipping A.S. v China National Foreign Trade Transportation Corporation (The "Star Texas")* [1993] 2 Lloyd's Rep 445, 452. See also *Born, International Commercial Arbitration,* 3rd ed (2021) at 2209.
[34] *Union of India v E B Aaby's Rederi A/S (The Evje)* [1975] AC 797, 808–9 (Lord Morris), 817 (Lord Salmon); See also RR Cornah, RCG Sarll and JB Shead, *Lowndes & Rudolf: General Average and York-Antwerp Rules* (Sweet & Maxwell, 15th ed, 2018) 545 [30.10].
[35] *BCY v BCZ* [2016] SGHC 249; [2016] 2 Lloyd's Rep 583.
[36] *BCCI v Ali* [2001] UKHL 8; [2002] 1 AC 251 at [39].
[37] *Singapore Chamber of Maritime Arbitration Rules*, 4th Ed, Art 32.1.
[38] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep. 449 at [43].

While it is possible in certain circumstances to infer the parties' choice through the process of contractual construction,[39] English law recognises that, sometimes, the parties do not exercise their right to choose the law governing their arbitration agreement.[40] In this case, the parties did not exercise their right.

13. Clause 76 designates arbitration '*to be in Guangzhou*' and English law *'to apply to the CP*': the express choice of the seat of arbitration on the one hand, and the express choice of a different law governing the charterparty on the other. The clause itself therefore points to differing putative laws of the arbitration agreement.[41]

14. Although '*generally*' the choice of governing law for the contract will prevail,[42] that is because English courts assume that, where the parties have expressly chosen a particular law to govern their agreement, there is no reason to infer that they intended some different law, not expressly chosen, to govern the arbitration agreement within their broader contract.[43]

15. In this case, however, the '*general*' position is contradicted by the terms of the Charterparty, which expressly identifies a further two potentially relevant laws: the law of New York and the law of Singapore.

16. The potential applicability of the law of New York is raised by cl 31, which provides that any dispute arising out of the Charterparty '*shall be settled in New York ... conducted in conformity with the provisions and procedure of the United States Arbitration Act*'.[44] Clause 76 of the riders also incorporates the SCMA Rules, which provide that Singapore is the seat of arbitration unless otherwise agreed by the parties. These clauses point to yet

[39] *UniCredit Bank v Ruschemalliance LLC* (2024) EWCA Civ 64; [2024] 1 Lloyd's Rep 350 at [53].
[40] See, eg, *Cie Tunisienne de Navigation SA v Cie d'Armement Maritime SA* [1971] AC 572 at 583 (Lord Reid), 595 (Lord Wilberforce); *Amin Rasheed Shipping Corp v Kuwait Insurance Co (The Al Wahab)* [1984] AC 50 at 69 (Lord Wilberforce); *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 at [36]–[37].
[41] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 [170(iv)–(vi)].
[42] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep. 449 at [170(iv)].
[43] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep. 449 at [43].
[44] Record at 19 [31].

further potentially applicable proper laws within the contemplation of the parties.[45]

17. Accordingly, there are potentially four laws which might govern the arbitration agreement: England, PRC, New York, and Singapore. There is no *prima facie* discernible preference in the Charterparty for any one of these laws. This is not surprising, as there is no indication that the charterparty was '*drafted by skilled professionals*'.[46]

i. The law with the closest connection to the arbitration agreement is PRC law

18. In circumstances where the parties have made no discernible choice as to the law governing the arbitration agreement, the law with the closest connection to the arbitration agreement is the governing law.[47]

19. PRC law has the closest connection to the agreement because Guangzhou is the seat.[48] In the absence of an express or implied choice, applying the law of the seat is consistent with relevant international law,[49] and provides legal certainty.[50]

C. ALTERNATIVELY, CLAIMANT AND YU SHIPPING IMPLIEDLY AGREED THAT PRC LAW GOVERNED THE ARBITRATION AGREEMENT

20. In the event that CLAIMANT and Yu Shipping made a choice of governing law for the arbitration agreement in clause 76, that choice should be taken to be that of the law of the seat: PRC law.

21. Here, although the parties' choice of English law as governing the underlying contract is a strong indication of the parties' choice of the law governing the arbitration agreement, that

---

[46] *Trafigura Maritime Logistics Pte Ltd v Clearlake Shipping Pte Ltd (The "Miracle Hope") (No 4)* [2022] EWHC 2234 (Comm); [2023] 2 Lloyd's Rep 610 at [27(viii)].
[47] *Enka* [2020] UKSC 38; 1 WLR 4117 at [119] – [120]; 2 Lloyd's Rep 449; *Sulamérica Cia Nacional de Seguros SA v Enesa Engenharia SA* ('*Sulamérica*') [2012] EWCA Civ 638; WLR (D) 148; 1 Lloyd's Rep 671.
[48] Ibid at [121] – [144]; *Sulamérica* [2012] EWCA Civ 638; WLR (D) 148; 1 Lloyd's Rep 671 [32]; *C v D* [2007] EWCA Civ 1282; [2008] Bus LR 843 [26]; See further *Dicey, Morris & Collins, The Conflict of Laws*, 15th ed (2012) at [32-073].
[49] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 [125] – [141]; *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958), art V(1)(a). See further *Berger*, "Re-examining the Arbitration Agreement: Applicable Law - Consensus or Confusion?", in *Van den Berg (ed)*, (2006) ICCA Congress Series Vol 13, 301, pp 316-317.
[50] Ibid [144].

indication can and should be rebutted.[51] That is because the parties' choice of Guangzhou as the seat of arbitration indicates that the parties intended the arbitration agreement to be governed by PRC law.[52]

i. PRC law applies in the absence of express agreement

22. Under PRC law (by interpretation of Article 16 of the PRC Arbitration Law)[53] PRC law applies to govern the arbitration agreement if the parties have not expressly agreed on an applicable law.[54]

23. In this case, by designating a seat which would apply its own law to the arbitration agreement, the parties impliedly agreed that their arbitration agreement would be governed by PRC and, therefore, the PRC Arbitration Law.[55]

ii. The validation principle provides no reason for preferring English law

24. The fact that PRC law would act to invalidate the arbitration agreement is not decisive in this case. That is because even if the Tribunal holds that the proper law of the arbitration agreement is English law and that the arbitration agreement is valid (as urged by CLAIMANT), it remains that the arbitration agreement does not comply with the arbitration law of the seat.

25. The place at which an award is made, the seat,[56] '*is always of paramount importance*' in

[51] *Kabab-Ji* [2021] UKSC 48; 2 All ER 911 at [35]; *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 at [170]; *Sulamérica* [2012] EWCA Civ 638; WLR (D) 148; 1 Lloyd's Rep 671.
[52] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 [170(vi)].
[53] Arbitration Law of the People's Republic of China, Clause 16. See *Interpretation of the Supreme People's Court Concerning Several Matters on Application of the Arbitration Law of the People's Republic of China*, Fa Shi [2006] No.7, Asian Legal Information Institute.
[54] See further *Liang Zhao and Zhen Jing,* '*Conflict of jurisdiction between the UK and China and enforcement of arbitral awards and judgements*', LMLQ, 11 May 2023; *Daesung Industrial Gases Co Ltd v Praxair (China) Investment Co Ltd* [2020] 4 CMCLR 1.
[55] *Carpatsky Petroleum Corpn v PJSC Ukrnafta* [2020] EWHC 769 (Comm); [2020] Bus LR 1284 [67]-[71].
[56] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 at [128]; *Kabab-Ji* [2021] UKSC 48; 2 All ER 911 [11]; *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan* [2008] EWHC 1901 (Comm); [2009] 1 All ER (Comm) 505. See also *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958), art V(1)(a); Travaux préparatoires, United Nations Conference on International Commercial Arbitration, Summary Records of the Twenty-third Meeting, E/CONF.26/SR.23, p. 14; *Gary B Born, International Commercial Arbitration* (Kluwer Law International, 2009) p514, 460-466.

international arbitration:[57] '*[b]y agreeing to a seat of arbitration the parties submit themselves to the jurisdiction of the courts of that place and to its law and coercive powers for the purposes of deciding any issue relating to the validity or enforceability of their arbitration agreement*'.[58]

26. Even if the law governing the arbitration agreement is English law, the fact that the arbitration agreement does not comply with the law of the seat (PRC law) gives rise to a serious risk that any award ultimately rendered in this arbitration would be denied recognition and enforcement under art V(1) of the *New York Convention*.[59]

27. The raison d'être of the validation principle in English law is to give the parties the benefit of their agreement to finally determine their dispute by arbitration:[60] that justification cannot apply here. In light of the appreciable risk that an ultimate award rendered by this Tribunal would be unenforceable, any 'validation' at this stage would be illusory.

28. Party autonomy is also a fundamental principle of English law.[61] While it may seem incongruous to determine that the parties agreed to subject their arbitration agreement to a system of law which would invalidate it, '*it is not the function of the court to improve their bargain*',[62] nor reject the natural meaning of the provision because it would be '*very imprudent*'.[63] Thus, CLAIMANT should be held to the actual arbitration agreement it concluded with YU SHIPPING, now thrust upon RESPONDENT, regardless of how

[57] *Star Shipping A.S. v China National Foreign Trade Transportation Corporation (The "Star Texas")* [1993] 2 Lloyd's Rep 445, 452. See also *Born, International Commercial Arbitration,* 3rd ed (2021) at 2209.
[58] *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 at [121].
[59] *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958) arts V(1)(a), (e), art V(2)(b). See *Sulamérica* [2012] EWCA Civ 638; WLR (D) 148; 1 Lloyd's Rep 671 at [30]–[32]; *Enka* [2020] UKSC 38; 1 WLR 4117; 2 Lloyd's Rep 449 at [109].
[60] See *Sulamérica* [2012] EWCA Civ 638; WLR (D) 148; 1 Lloyd's Rep 671 at [32]; *Re Missouri Steamship Co* [1889] 42 ChD 321, CA. See also *Singapore Chamber of Maritime Arbitration Rules*, 4th Ed, art 28.1.
[61] *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827, 848; *Printing and Numerical Registering Company v Sampson* (1874-75) LR 19 Eq 462, 465. See also *Prime Sight Ltd v Lavarello* [2013] UKPC 22, [2014] AC 436 [47].
[62] *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; 2 WLR 1095 [41].
[63] *Miracle Hope* [2022] EWHC 2234 (Comm); [2023] 2 Lloyd's Rep 610 at [27(viii)].

unfavourable it may be.[64]

29. The Tribunal should not give the Claimant a pyrrhic victory at this stage, only for any award rendered – in favour of either party – to be potentially unenforceable.

II. THE ARBITRATION AGREEMENT IS INVALID UNDER PRC LAW

30. Clause 16 of the PRC Arbitration Law outlines the '*essential features*' of an arbitration agreement under PRC law, which include an '*Arbitration Commission selected by the parties*'. This requirement is common ground between CLAIMANT and RESPONDENT, and there is no dispute as to the contents or interpretation of Chinese law.[65]

31. There is no designation of an 'Arbitration Commission' in the arbitration agreement in the Contract of Carriage, hence there is no valid arbitration agreement PRC law.[66] This also appears to be common ground.[67]

32. In the absence of a valid arbitration agreement, the Tribunal has no jurisdiction and should terminate this arbitration.

RESPONDENT IS NOT LIABLE FOR UNLIQUIDATED DAMAGES

33. RESPONDENT is not liable for unliquidated damages for delay because **(I)** demurrage liquidates all losses arising from delay. In any event, **(II)** RESPONDENT did not cause CLAIMANT'S loss, and **(III)** CLAIMANT'S loss is too remote.

I. DEMURRAGE LIQUIDATES ALL LOSSES ARISING FROM DELAY

A. THE MEANING OF CLAUSE 11

34. '*Demurrage*' has a well-established meaning in maritime commerce: it liquidates all damages arising from a failure to complete cargo operations within laytime.[68] The High

[64] *Canary Wharf (BP4) T1 Ltd v European Medicines Agency* [2018] EWHC 335, [39].
[65] Procedural Order No. 1 at [1 (v)].
[66] Clause 16, Arbitration Law of the People's Republic of China. See also Clause 10.
[67] Procedural Order No. 1 at [1 (v)].
[68] *K Line Pte Ltd v Priminds Shipping (HK) Co Ltd (The 'Eternal Bliss')* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12 [52]. See also *Dias Compania Naviera v Louis Dreyfus ('The Dias')* [1978] 1 WLR 261 at 263.

Court in *The Eternal Bliss*[69] observed that the exact language of cl 11 did not alter this well-established meaning. [70] This observation was not disturbed on appeal.[71]

35. This accepted construction achieves certainty, avoids controversy in the assessment of unliquidated damages and enables the parties to know where they stand at an early stage.[72] This is critical where the BoL is negotiable and can therefore impose obligations on any subsequent third party holder.[73]

36. In order to recover damages in addition to demurrage, CLAIMANT must demonstrate that it suffered both a breach of an obligation separate from the laytime provisions, and a loss separate to that which demurrage compensates. [74]

B. THERE IS NO SEPARATE BREACH

37. Damages in addition to demurrage are not available to CLAIMANT because there has been no breach of any express or implied term other than the laytime provisions.

i. The extrinsic agreement between CLAIMANT and Yu Shipping does not apply to RESPONDENT

38. In the hands of RESPONDENT, the BoL is conclusive evidence of the Contract of Carriage.[75]

39. The agreement[76] between CLAIMANT and Yu Shipping that the carriage of the Cargo to Busan was to be completed by 30 September is extrinsic to the Contract of Carriage evidenced in the

[69] *K Line Pte Ltd v Priminds Shipping (HK) Ct Ltd (The 'Eternal Bliss')* [2020] EWHC 2373 (Comm); [2021] Bus LR 213; [2020] 2 Lloyd's Rep 419.
[70] *Eternal Bliss* [2020] EWHC 2373 (Comm); [2021] Bus LR 213; [2020] 2 Lloyd's Rep 419 at 424 [29(b)(ii)]
[71] *Eternal Bliss* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12.
[72] *Eternal Bliss* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12 at [15], [59].
[73] *Federal Bulk Carriers Inc v C. ITOH & Co Ltd and others (The 'Federal Bulker')* [1989] 1 Lloyd's Rep 103 at [105-107].
[74] *Eternal Bliss* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12 at [52]; See also *Richco International Ltd v Alfred C Toepfer International GmbH ('The Bonde')* [1991] 1 Lloyds Rep 136 at 142; *Suisse Atlantique Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1967] 1 AC 361; [1966] 1 Lloyds Rep 529 at 539.
[75] *Carriage of Goods by Sea Act* 1992 (UK) ('COGSA') s 5(a); *Leduc v Ward* (1888) 20 QBD 475; *SS Ardennes (Owners of Cargo) v SS Ardennes (Owners)* [1951] KB 55; See also *Carver on Bills of Lading* (Sweet & Maxwell), 3rd Ed 2011 at 234 [5-028].
[76] Record at 7 [6].

BoL.[77] Accordingly, the agreement between CLAIMANT and Yu Shipping cannot affect RESPONDENT'S rights and liabilities[78] nor displace the established meaning of '*demurrage'*.

ii. Clause 38 does not impose a separate obligation on RESPONDENT

(a) The meaning of Clause 38

40. Clause 38 of the rider clauses does not impose any obligation on any party. It provides: '*After this voyage, Vessel's next employment is at Kaohsiung with strict laycan 1 – 14 October 2023 for period of 2 years.'* These words are unambiguous, and the Tribunal must not rewrite the express terms agreed by the parties.[79]

41. The effect of cl 38 is to provide written notice of the Vessel's next employment, reflecting the extrinsic agreement between CLAIMANT and Yu Shipping, and nothing more. It does not impose any substantive obligation on any party.

42. CLAIMANT and Yu Shipping have fallen short of agreeing that a strict obligation will be added into the charterparty.[80] By their nature, charterparties are often drafted in *'crude and summary fashion,*'[81] and '*ill-considered expressions find their way into a contract*' to the effect that clauses are meaningless.[82] The Tribunal cannot rewrite the parties' bargain.

(b) Clause 38 is not incorporated into the Contract of Carriage

43. Because cl 38 does not impose any obligations, it is not germane to the BoL. [83]

44. No matter how wide the incorporation clauses on the BoL, only clauses which are '*directly*

---

[77] *The Heidberg* [1994] 2 Lloyd's Rep 287.
[78] *Leduc v Ward* (1888) 20 QBD 475; *SS Ardennes (Owners of Cargo) v SS Ardennes (Owners)* [1951] KB 55; *Georizika DD v MMB International Ltd (The Greed Island*) [2010] EWCA Civ 459; [2010] 2 Lloyd's Rep 1; *The Alnak* [1985] 1 Lloyd's Rep 557 at 560; See also *Carver on Bills of Lading* at [5-028].
[79] *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50; [2011] 1 WLR 2900 at [23].
[80] *Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd* (*The Ocean Neptune*) [2018] EWHC 163 (Comm); [2018] 2 All ER (Comm) 108; [2018] 1 Lloyd's Rep 654 at [8].
[81] *Anglo-Saxon Petroleum Co Ltd v Adamastos Shipping Co Ltd* [1959] AC 133 [161]; [1958] 2 WLR 688 at 702.
[82] *Nelson Line (Liverpool) Ltd v James Nelson & Sons Ltd* [1908] AC 16 at 19-20.
[83] *Herculito Maritime Ltd v Gunvor International BV* (*'The Polar'*) [2024] UKSC 2; 2 All ER 263; 1 Lloyd's Rep 85 at [84].

relevant'[84] to the subject matter of the BoL are germane and will be incorporated.[85]

45. Taking CLAIMANT'S case at its highest, any obligations imposed by cl 38 would relate only to matters occurring after discharge, which are not germane to the BoL and therefore cannot be incorporated into the Contract of Carriage as evidenced by the BoL. [86]

(c) In any event, even if incorporated Clause 38 does not bind RESPONDENT

46. Even if cl 38 is incorporated into the Contract of Carriage, the Tribunal should not construe it as imposing any obligation on RESPONDENT. If cl 38 imposes any obligation, it would be an obligation that reflects the extrinsic agreement between CLAIMANT and Yu Shipping. That extrinsic agreement can only impose an obligation on Yu Shipping, as charterer.[87] Accordingly, any obligation contained in cl 38 would not extend to RESPONDENT or any subsequent holder of the BoL.

47. The Tribunal should not interpret cl 38 as imposing any broader obligation in circumstances where the BoL is negotiable and may be lawfully indorsed to unnamed third parties who have no way of discovering the terms of the extrinsic agreement between CLAIMANT and Yu Shipping.[88]

iii. There is no implied term imposing any separate obligation

(a) No implied term to take delivery in a 'reasonable time'

48. It is well established that there is no implied term which would require RESPONDENT to take delivery in a '*reasonable time'*.[89] That is because there is no way of determining what a

[84] *The Polar* [2024] UKSC 2; 2 All ER 263; 1 Lloyd's Rep 85 at [84].
[85] *Thomas v Portsea* [1912] AC 1; *Miramar Maritime Corporation v Holborn Oil Trading Ltd ('The Miramar')* [1984] AC 676 at 685; 3 WLR 1 at 6 ; 2 Lloyd's Rep 129.
[86] *The Polar* [2024] UKSC 2; 2 All ER 263; 1 Lloyd's Rep 85 at [84]; *Thomas v Portsea* [1912] AC 1 at [6] (Lord Atkinson).
[87] See, eg, *Leduc v Ward* (1888) 20 QBD 475; *Carver on Bills of Lading* 3rd Ed (Sweet & Maxwell) 2011 at [5-028].
[88] *The Miramar* [1984] AC 676 at 685; 3 WLR 1 at 6; 2 Lloyd's Rep 129 at 132; *Hong Kong & Shanghai Banking Corp v GD Trade Co Ltd* [1998] CLC 238.
[89]See eg., *Inverkip Steamship Company, Limited, v Bunge & Co* [1917] 2 KB 193*; Richco International Ltd v Alfred C Toepfer GmbH ('The Bonde')* [1991] 1 Lloyd's Rep 136; *K Line Pte Ltd v Priminds Shipping (HK) Co Ltd* (*'The Eternal Bliss'*) [2021] EWCA Civ 1712; [2022] 3 All ER 396; 1 Lloyds Rep. 12; *Suisse Atlantique*

reasonable time past the end of laytime is;[90] CLAIMANT'S putative implied term[91] would have the Tribunal determine "*what is a reasonable degree of unreasonableness*".[92]

49. Further, an implied term requiring RESPONDENT to take delivery in a 'reasonable time' is not necessary to give business efficacy[93] to the Contract of Carriage because demurrage already compensates CLAIMANT for delay.[94]

(b) No implied term to take delivery by a specific date

50. A term requiring delivery by a specific date cannot be implied because *first,* it is not necessary to give business efficacy to the Contract of Carriage, *second,* is inequitable, and *third*, is not '*so obvious that it goes without saying*'.[95]

51. *First*, an implied term to take delivery by a certain date is not necessary to make the Contract of Carriage function.[96] It is not enough to show that the term is reasonable,[97] would improve the contract, [98] or make carrying it out more convenient.[99] The contract is effective without this implied term[100] – as are the vast majority of voyage charterparties.[101]

52. *Second*, no '*reasonable person in the position of the parties*'[102] would have agreed to such

---

Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale [1967] 1 AC 361; [1966] 2 WLR 944; [1966] 1 Lloyds Rep 529.

[90] *Inverkip Steamship Company, Limited, v Bunge & Co* [1917] 2 KB 193 at 201.

[91] Record at 10 [18].

[92] *Inverkip Steamship Company, Limited, v Bunge & Co* [1917] 2 KB 193 at 201.

[93] *Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* ('*Marks v Spencer*') [2015] UKSC 72; [2016] AC 472; [2015] 3 WLR 1843.

[94] See below [18]; See also *Sea Master Shipping Inc v Arab Bank (Switzerland) Ltd (The Sea Master)* [2020] EWHC 2030 (Comm); [2021] 1 Lloyd's Rep 500; *Western Steamship Co Ltd v Amaral Sutherland & Co Ltd* [1913] 3 KB 366; *Inverkip Steamship Company, Limited, v Bunge & Co* [1917] 2 KB 193 *Suisse Atlantique Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1967] 1 AC 361; [1966] 2 WLR 944; [1966] 1 Lloyds Rep. 529.

[95] *BP Refinery (Westernport) Pty Ltd v President, Councillors and Ratepayers of the Shire of Hastings* ('*BP Refinery'*) (1977) 180 CLR 266, at 26; cited with approval in *Marks and Spencer* [2015] UKSC 72; [2016] AC 472; [2015] 3 WLR 1843 at [18]; *Wells v Devani* [2019] UKSC 4; [2020] AC 129; [2019] 2 WLR 617 at [28].

[96] *Marks and Spencer* [2015] UKSC 72; [2016] AC 472; [2015] 3 WLR 1843 at [21], [77]

[97] *Marks and Spencer* [2015] UKSC 72; [2016] AC 472; [2015] 3 WLR 1843 at [23], See also *Rosenblatt v Man Oil Group SA* [2016] EWHC 1382 (QB) at [59].

[98] *Attorney General of Belize v Belize Telecom* [2009] UKPC 10; 1 WLR 1988 at [16].

[99] *Russell v Duke of Norfolk* (1949) 1 All ER 109.

[100] *BP Refinery* (1977) 180 CLR 266 at 26, cited with approval restated in *Marks and Spencer* [2015] UKSC 72; [2016] AC 472; [2015] 3 WLR 1843 at [18]; *Wells v Devani* [2019] UKSC 4; [2020] AC 129; [2019] 2 WLR 617 at [28].

[101] *Eternal Bliss* [2020] EWHC 2373 (Comm); [2021] Bus LR 213; [2020] 2 Lloyd's Rep 419 at [53].

[102] *Marks and Spencer* [2015] UKSC 72; [2016] AC 472; [2015] 3 WLR 1843 at [21].

a term because the loss resulting from its breach would be wholly uncertain, within the sole control of the shipowner and therefore '*completely unquantifiable'*.[103]

53. *Third*, no '*maritime officious bystander*'[104] would look at the Contract of Carriage and find that there is an implied term requiring delivery by a certain date, because such a term is completely novel.[105]

(c) No implied term limiting the period for which demurrage is payable

54. Any implied term limiting the period for which demurrage is payable would directly contradict cl 11 (which states demurrage is payable for '*all time*').[106] On this basis alone, the term should not be implied.[107]

iv. No breach of an express term, other than laytime

55. RESPONDENT has not breached any express terms of the Contract of Carriage. Any clause which specifies that the Charterer will be responsible for its performance, cannot be manipulated to make RESPONDENT liable for its breach.[108] Clause 27[109] demonstrates the parties' intention that the consignee will only be liable for a breach where they are expressly named.[110]

C. THERE IS NO SEPARATE LOSS

56. In any event, demurrage liquidates the loss suffered by CLAIMANT.[111]

57. Demurrage liquidates all losses arising from a failure to complete cargo operations within

[103] *Transfield Shipping Inc v Mercator Shipping Inc ('The Achilleas')* [2008] UKHL 48; [2009] AC 61; [2008] 2 Lloyd's Rep 275 (Lord Hoffman).
[104] *Vardinoyannis v Egyptian General Petroleum Corp* [1971] 2 Lloyd's Rep 200.
[105] See, eg, *Eternal Bliss* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12 at [52]*; The Bonde* [1991] 1 Lloyd's Rep 136; *Suisse Atlantique Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1967] 1 AC 361; [1966] 1 Lloyds Rep 529; *Inverkip Steamship Company, Limited, v Bunge & Co* [1917] 2 KB 193; Cf *Aktieselskabet Reidar v Arcos Ltd* [1927] 1 KB 352.
[106] Record at 16 at [11a].
[107] *Fraser Turner Ltd v PricewaterhouseCoopers LLP* [2018] EWHC 1743 at 48, approved on appeal at [2019] EWCA Civ 1290 at 33; *Marks and Spencer* [2015] UKSC 72; [2016] AC 472; [2015] 3 WLR 1843 at [21].
[108] *The Miramar* [1984] AC 676; 3 WLR 1; 2 Lloyd's Rep 129.
[109] Record at 24.
[110] *The Miramar* [1984] AC 676; 3 WLR 1; 2 Lloyd's Rep 129.
[111] *Eternal Bliss* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12 at [52].

laytime.[112] In the Contract of Carriage there is nothing to displace this presumption.

58. It would be '*unusual and surprising*'[113] if commercial parties intended to limit demurrage and where they do so it should be expressly stated.[114] There are no express words limiting demurrage in the Contract of Carriage.

59. RESPONDENT breached only the laytime provisions and are therefore only liable to pay demurrage. CLAIMANT did not seek to recover demurrage within the 90-day time limit and are now time-barred.[115]

II. RESPONDENT DID NOT CAUSE THE LOSS

60. RESPONDENT did not cause CLAIMANT'S loss. This is because **(A)** RESPONDENT did not cause the breach and **(B)** in any event, the adverse wind and sea conditions constitute an intervening event.

A. RESPONDENT DID NOT CAUSE THE BREACH

61. Yu Shipping was the cause of the delayed discharge.

62. It is the responsibility of the charterer to issue berthing and discharge instructions.[116] Under this Contract of Carriage, RESPONDENT did not have the right to demand delivery without presentation of the BoLs.

63. If Yu Shipping had exercised its contractual rights under cl 57 of the Charterparty, and provided CLAIMANT with an LoI to discharge the cargo to RESPONDENT, the delayed discharge would have been prevented. Yu Shipping did not need RESPONDENT'S authority to do so.[117] Instead, Yu Shipping sought only to protect its financial interests as it refused to permit discharge without RESPONDENT issuing it a trust receipt.

---

[112] *Eternal Bliss* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12 at [52].
[113] *Eternal Bliss* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12 at [52]
[114] *Eternal Bliss* [2021] EWCA Civ 1712; [2022] Bus LR 67; 1 Lloyd's Rep 12 at [59]; *The Bonde* [1991] 1 Lloyd's Rep 136 at 142.
[115] Record at s 22 at [14].
[116] Record at 14 [6(a)], at 24 [34].
[117] Record at 28 [57].

64. But for[118] Yu Shipping's failure to permit discharge within the laytime, the breach would not have occurred.

B. IN ANY EVENT, THE WEATHER EVENT BROKE THE CHAIN OF CAUSATION

65. The weather which '*hampered'* the Vessel's progress[119] broke the chain of causation between discharge and the loss of the Vessel's contracted hire rate.

66. The Vessel left Busan on 0214 8 October. This was 2 hours after the last date that the Vessel was expected to sail in order to meet the Kaohsiung laycan.[120] Due to the adverse weather, by 16 October 2023, the Vessel was still approximately 300 nautical miles from Kaohsiung.[121] It is common sense[122] that the severity of the wind and sea conditions the Vessel encountered on its journey were the dominant cause of the loss, the delayed discharge merely provided the occasion for the loss. [123]

67. The weather event therefore breaks the chain of causation.[124]

III. CLAIMANT'S LOSS IS TOO REMOTE

68. In any event, CLAIMANT'S losses are too remote as they were not reasonably within the contemplation of the parties at the time of contracting.[125]

69. This case, as in *The Achilleas,* requires departure from the 'ordinary foreseeability' rule to account for the unique circumstances of the maritime context. The Tribunal should consider

---

[118] *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22; [2003] 1 AC 32, [2002] 3 All ER 305 at [37] (Lord Nicholls); *Barnett v Chelsea and Kensington Hospital Management Committee* [1969] 1 QB 428; [1968] 1 All ER 1068.
[119] Record at 9 [15].
[120] Record at 8 [11].
[121] Record at 9 [15]
[122] *Galoo v Bright Grahame Murray* [1994] WLR 1360 CA at 1357A.
[123] *The Calliope* [1970] P 172 at 185; 1 All ER 624 at 640 (Brandon J); [1970] 1 Lloyd's Rep 84 at 102; *Galoo Ltd v Bright Grahame Murray* [1994] 1 WLR 1360 at 1374 (Glidewell J); Cf *ENE Kos 1 Ltd v Petroleo Brasileiro SA* (No 2) [2012] UKSC 17 at [12]; [2012] 2 AC 164; [2013] 1 All ER (Comm) 32 (Lord Sumption).
[124] *Carslogie Steamship Co* [1952] AC 292; [1952] 1 All ER 20; [1951] 2 Lloyd's Rep 441; *Associated Portland Cement v Houlder* (1917) 86 LJKB 1495.
[125] *Hadley v Baxendale* (1854) 23 LJ Ex 179; 9 Exch 341; 156 ER 145 at 151 [354-355]; *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528 at 537-539; *Czarnikow v Koufos, The Heron II* [1969] 1 AC 350 at 358; *Transfield Shipping Inc v Mercator Shipping Inc ('The Achilleas')* [2008] UKHL 48; [2009] AC 61; [2008] 2 Lloyd's Rep 275 at [9], [11], [60], [91]; *Sylvia Shipping Co Ltd v Progress Bulk Carriers* Ltd [2010] EWHC 542 (Comm) at [27-28].

whether RESPONDENT assumed responsibility for the liability for the loss. [126]

70. It is immaterial that RESPONDENT knew of the Vessel's next employment.[127] Prior to contracting, RESPONDENT only knew the dates and period of the subsequent charterparty.[128] This is merely background knowledge, which is insufficient to show that RESPONDENT contemplated the type of loss that occurred.[129]

71. The general understanding in the shipping market is that liability for loss of a future employment is restricted to the difference between the market rate and the charter rate for the overrun period.[130]

72. Further, RESPONDENT'S liability for CLAIMANT'S loss hire rate depends entirely on the success of its negotiation with a third party – a matter wholly outside of RESPONDENT'S control. That resulting liability is '*unquantifiable, unpredictable, uncontrollable or disproportionate*'.[131]

73. Therefore, the only damages available to the Claimant are the damages awarded in *The Achilleas*, being the difference between market rate and the initial charter for the period of delay.

74. Finally, when determining whether to award damages the question of remoteness '*cannot be isolated from consideration of the purpose of the contract'* and must be considered in light of underlying policy objectives.[132] It would be illogical and unfair to hold Respondent liable for unquantifiable and unpredictable damages for a Contract of Carriage they were not initially a party to.

---

[126] *Sylvia Shipping Co Ltd v Progress Bulk Carriers* Ltd [2010] EWHC 542 (Comm); [2010] 2 Lloyd's Rep 81 at [42]; *The Achilleas* [2008] UKHL 48; [2009] AC 61; [2008] 2 Lloyd's Rep 275 at [9], [11], [36].
[127] *The Achilleas* [2008] UKHL 48; [2009] AC 61; [2008] 2 Lloyd's Rep 275, at [71] (Lord Hoffman).
[128] Record at 43.
[129] *The Achilleas* [2008] UKHL 48; [2009] AC 61; [2008] 2 Lloyd's Rep 275, at [71];
[130] *Sylvia Shipping Co Ltd v Progress Bulk Carriers* Ltd [2010] EWHC 542 (Comm); [2010] 2 Lloyd's Rep 81 at [33], citing *The Achilleas* [2008] UKHL 48; [2009] AC 61; [2008] 2 Lloyd's Rep 275 at [24].
[131] *Sylvia Shipping Co Ltd v Progress Bulk Carriers* Ltd [2010] EWHC 542 (Comm); [2010] 2 Lloyd's Rep 81 at [73].
[132] *Supershield Ltd* v *Siemens Building Technologies FE Ltd* [2010] EWCA Civ 7; [2010] 2 All ER (Comm) 1185; [2010] 1 Lloyd's Rep 349 at [40].

RESPONDENT IS ENTITLED TO DAMAGES FOR MISDELIVERY

75. RESPONDENT is entitled to USD 4,249,752.50 arising from CLAIMANT'S misdelivery of the Cargo. This is because: (**I**) CLAIMANT misdelivered the Cargo in breach of the Contract of Carriage, (**II**) Clause 57 does not excuse RESPONDENT'S misdelivery, (**III**) CLAIMANT'S misdelivery caused RESPONDENT'S loss, and (**IV**) alternatively, CLAIMANT breached its duty as bailee and converted RESPONDENT'S Cargo. Furthermore, (**V**) CLAIMANT cannot rely on any defence.

I. CLAIMANT MISDELIVERED THE CARGO IN BREACH OF THE CONTRACT OF CARRIAGE

76. CLAIMANT was required to deliver the cargo only against production of the BoL.[133]

77. The BoL names RESPONDENT as consignee but is also capable of indorsement to a third party by RESPONDENT, as indicated by the words '*or order'*.[134] Therefore, RESPONDENT was *prima facie* entitled to take delivery in the absence of presentation of the BoL by another party to whom RESPONDENT had indorsed the BoL.

78. At all times the BoL retained its function as a document evidencing RESPONDENT'S title,[135] even despite the subsequent sale of the Cargo to the Korean buyers.[136] This is because the sale of the cargo by Yu Shipping to the Korean buyers was done on a LC,[137] whilst Yu Shipping had an outstanding debt to RESPONDENT for the cost of the Cargo.[138] Therefore, RESPONDENT retained a proprietary interest in the Cargo[139] secured by the BoL as a document of title, until payment of both accrued debts was made.

79. Accordingly, even if the Korean Buyer was the party ultimately entitled to possession,

---

[133] *Sanders Bros v Maclean & Co* (1883) 11 QBD 327 at 341 (Bowen LJ); *Kuwait Petroleum Corpn v I & D Oil Carriers Ltd* ('*The Houda'*) [1994] 2 Lloyd's Rep 541at 556; *SA Sucre Export v Northern River Shipping Ltd* ('*The Sormovskiy 3068*') [1994] 2 Lloyd's Rep 266 at 270 (Clarke J) citing *Barclays Bank Ltd v Commissioners of Customs and Excise* [1963] 1 Lloyd's Rep 81 at 88–89 (Diplock J); See also Record at 30.
[134] Record at 4.
[135] *Trafigura Beheer BV v Mediterranean Shipping Co SA* ('*The MSC Amsterdam'*) [2007] EWCA Civ 794; [2008] 1 All ER (Comm) 385; [2007] 2 Lloyd's Rep 622 at [29].
[136] Record at 47 (Email from (E-Operations (Yu) to Trade Finance (VOE) 3 October 2023, 3:47pm).
[137] Record at 46 (Email from Turn Ip (VOE) to E-Operations (Yu) 3 October 2023, 4:02pm).
[138] Record at 37 [15].
[139] *Ross T Smyth & Co v TD Bailey and Son Ltd* [1940] 3 All ER 60 at 68.

delivery to the Korean Buyer in the absence of presentation of the BoL, and in circumstances where the BoL retained its function as a document of title, is still a breach of CLAIMANT'S obligation.[140] The BoL is not spent because delivery was not made to RESPONDENT. [141]

80. Because the BoL retained its function as a document of title, CLAIMANT was required to only deliver the Cargo upon presentation of that BoL by RESPONDENT (or a third party to whom the BoL had been indorsed by RESPONDENT).[142] Its failure to do so was a breach of the Contract of Carriage.

II. CLAUSE 57 DOES NOT EXCUSE RESPONDENT'S MISDELIVERY

81. Clause 57, which requires discharge against Yu Shipping's LoI in the absence of the BoL at the port of discharge, does not excuse CLAIMANT'S failure to deliver the Cargo to RESPONDENT.[143]

82. Clause 57 presupposes that CLAIMANT will remain liable to the lawful holder of the BoL – here, RESPONDENT. It does not permit CLAIMANT to make delivery otherwise than on production of the BoL without consequence:[144] '*a shipowner who delivers without production of the [BoL] does so at his peril*'.[145] CLAIMANT made delivery in this manner notwithstanding the risks.

83. Yu Shipping's LoI only provided an assurance to CLAIMANT that it would be indemnified if it delivered otherwise than on production of the BoL.[146] CLAIMANT is entitled to call on

[140] *East West Corp. v DKBS AF 1912 A/*S [2003] EWCA Civ 83; 3 WLR 916; 1 Lloyd's Rep 239; *The Houda* [1994] 2 Lloyd's Rep 541at [550]-[552], [556].
[141] *East West Corp. v DKBS AF 1912 A/*S [2003] EWCA Civ 83; 3 WLR 916; 1 Lloyd's Rep 239 at [19]; Cf *The "Yue You 902" and Another Matter* [2019] SGHC 106; [2019] 2 Lloyd's Rep 617.
[142] *Motis Export Ltd. v Damp-skibsselkabet AF 1912 Aktieselskab and Aktieselskabet Dampskibsselskabet Svendborg* [1999] 1 Lloyd's Rep 837 at 845, upheld on appeal [2000] 1 Lloyd's Rep 211.
[143] *Sze Hai Tong Bank, Ltd v Rambler Cycle Co Ltd* [1959] AC 576; 3 All ER 182; (1959) 2 Lloyd's Rep 114 at 120 (Lord Denning); *Glyn Mills* (1882) 7 App Cas 591 at 610; See also *The Houda* [1994] 2 Lloyd's Rep 541 at 556.
[144] *The Sormovskiy 3068* [1994] 2 Lloyd's Rep 266 at 274.
[145] *Sze Hai Tong Bank, Ltd v Rambler Cycle Co Ltd* [1959] AC 576; 3 All ER 182; (1959) 2 Lloyd's Rep 114 at 120 (Lord Denning).
[146] *The Houda* [1994] 2 Lloyd's Rep 541 at 552.

the LoI to recover the amount of its liability to RESPONDENT from Yu Shipping.[147] Its ability or otherwise to do so is a matter for CLAIMANT.[148]

III. CLAIMANT'S MISDELIVERY CAUSED RESPONDENT'S LOSS

84. RESPONDENT has lost the total value of the Cargo, in the amount of USD 4,249,752.50.[149] *Prima facie* this loss was caused by CLAIMANT'S misdelivery of the Cargo.

A. RESPONDENT LOOKED TO THE BILL OF LADING AS SECURITY

85. CLAIMANT cannot establish that the cause of the loss was RESPONDENT'S financing arrangements with Yu Shipping. This is because RESPONDENT always looked to the BoL as security.

86. Once Good Oils was paid by RESPONDENT, Good Oils would provide either a LoI or the BoL pursuant to the LC transactions.[150]

87. RESPONDENT financed Yu Shipping's purchase of the Cargo from Good Oils by way of LC (the **Good Oils LC**)[151], on Yu Shipping's promise to repay the amount of the Good Oils LC to RESPONDENT.[152] RESPONDENT has paid Good Oils under the Good Oils LC.[153] However, at no point has RESPONDENT been repaid that amount by Yu Shipping. RESPONDENT looked to the BoL as security for repayment by Yu Shipping, for the very reason that the BoL entitled the holder to take delivery of the Cargo.[154]

88. Upon RESPONDENT paying Good Oils under the Good Oils LC, Good Oils provided RESPONDENT with, *first*, a LoI, and *secondly*, the BoL. Even after receiving the LoI,

---

[147] Record at 33.
[148] Record at 9-10 [16].
[149] Record at 37 [19].
[150] Record at 43 (Email from Al Swell (Carry On Advisors LLP) to Kim Butcher (Tomahawk Maritime) at 22 December 2023 at 3:14 pm); See also record at 47 (email from 'Turn Ip' (VOE) to E-Operations (Yu Shipping) on 3 October 2023 at 3:18pm); And record at 46 (email from 'Turn Ip (VOE)' to 'E-Operations (Yu)' sent at 4:02PM October 3 2023).
[151] Record at 45.
[152] Record at 37 [15], 43 (Email from Al Swell (Carry On Advisors LLP) to Kim Butcher (Tomahawk Maritime) at 22 December 2023 at 3:14 pm).
[153] Record at 43 (Email from Al Swell (Carry On Advisors LLP) to Kim Butcher (Tomahawk Maritime) at 22 December 2023 at 3:14 pm).
[154] *The Future Express* [1993] 2 Lloyd's Rep 542 at 546 (Lloyd LJ).

RESPONDENT refused to give approval (in the form of a trust receipt)[155] to Yu Shipping to take delivery.

89. RESPONDENT'S refusal to allow Yu Shipping to take lawful possession of the Cargo until RESPONDENT received the BoL indicates that RESPONDENT always viewed the BoL as its security for the transaction, and more specifically, for repayment by Yu Shipping. In fact, RESPONDENT informed Yu Shipping that a trust receipt was unable to be granted until '*export LC from Korean buyers lodged with us* ***and*** *bills of lading are received from Good Oils*' (emphasis added).[156]

90. This financing arrangement is distinguishable from the financing arrangement in *The Sienna*.[157] In that case, the financing agreement between the customer and claimant bank expressly provided that the cargo would be discharged '*in any event'* without the production of the BoL.[158]

91. Here, there is nothing in the communications between Yu Shipping and RESPONDENT to suggest that RESPONDENT agreed that the Cargo could be delivered without presentation of the BoL.[159] In fact, as explained above,[160] the evidence indicates the opposite.

92. This is not a case where the financier (RESPONDENT) had, or even could have, permitted discharge of the goods into a warehouse.[161] Further, RESPONDENT never contemplated that discharge or delivery would occur before RESPONDENT became the lawful holder of the

---

[155] See *Oversea-Chinese Banking Corpn Ltd v Owner and/Or Demise Charterer of the Vessel STI Orchard* ('*STI Orchard*') [2022] SGHCR 6; [2023] 1 Lloyd's Rep 22 at [56] quoting M Bridge, *Benjamin's Sale of Goods* (Sweet & Maxwell, 11th Ed, 2021) at [18-504]: 'These documents 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 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.'

[156] Record at 46; cf *Standard Chartered Bank Ltd v Maersk Tankers Singapore Pte Ltd* (*The Maersk Princess*) [2022] SGHC 242; [2023] 1 Lloyd's Rep 508 at [46].

[157] Cf *Unicredit Bank AG v Euronav NV* (*'The Sienna*') [2023] EWCA Civ 471; 1 All ER (Comm) 36; [2024] 1 Lloyd's Rep 177 at [9].

[158] *The Sienna* [2023] EWCA Civ 471; 1 All ER (Comm) 36; [2024] 1 Lloyd's Rep 177 at [89–90].

[159] Record at 46.

[160] *Supra* [88].

[161] *Fimbank plc v Discover Investment Corpn* ('*The Nika*') [2020] EWHC 254 (Comm); [2021] 1 Lloyd's Rep 109 at [29-30].

BoL.[162]

B. RESPONDENT DID NOT AUTHORISE DELIVERY AGAINST A LETTER OF INDEMNITY

93. CLAIMANT cannot point to RESPONDENT'S direction to '*do as you deem fit as Charterers'* as authorisation for delivery against Yu Shipping's LoI.

94. *First,* in order to make good that submission, CLAIMANT must establish that there was some communication from RESPONDENT to CLAIMANT which '*clearly*'[163] authorised CLAIMANT (not the charterer, Yu Shipping) to discharge without production of the BoL.[164] There is no evidence of any communication to CLAIMANT of this nature.

95. Further, RESPONDENT'S communication to Yu Shipping is far from a clear authorisation to arrange discharge and delivery in a manner contrary to the Contract of Carriage. In fact, RESPONDENT made clear in the communication that it was addressing Yu Shipping in its capacity as charterer, not as a customer of its trade finance facility.

96. *Second,* RESPONDENT'S communication to Yu Shipping in fact occurred after the latter had already issued a LoI to CLAIMANT.[165] RESPONDENT'S communication cannot authorise conduct which had already occurred, and therefore cannot intervene in the causal chain leading to misdelivery.

97. *Third,* nothing in the communication indicated that RESPONDENT was disavowing reliance on the BoL as security.[166] Rather, it made clear that it would only '*not interfere as long as the loan is repaid*.'[167]

IV. ALTERNATIVELY, CLAIMANT BREACHED ITS DUTY AS BAILEE AND CONVERTED RESPONDENT'S CARGO

[162] *The Sienna* [2023] EWCA Civ 471; 1 All ER (Comm) 36; [2024] 1 Lloyd's Rep 177 at [121]; *STI Orchard*, [2022] SGHCR 6; [2023] 1 Lloyd's Rep 22 at [56].
[163] *Nederlandsche Handelmaatschappij v Strathlorne Steamship* Company (1931) 39 Ll. L. Rep. 171 at 173, 175–176 (Court of Session).
[164] Ibid.
[165] Record at 9 [13]; Record at 46 (Email from Turn Ip (VOE) to E-Operations (Yu) 3 October 2023 4:42pm).
[166] See *Supra* Section III (A).
[167] Record at 46 (Email from Turn Ip (VOE) to E-Operations (Yu) 3 October 2023 4:42pm).

98. For the reasons set out above, RESPONDENT has title to the Cargo at common law.[168] By entrusting care of the Cargo to CLAIMANT, as carrier, RESPONDENT and CLAIMANT entered into a bailment relationship. CLAIMANT acknowledged its role as bailee of the Cargo by issuing the BoL.[169]

99. By delivering the Cargo to a party other than RESPONDENT, CLAIMANT has breached its duty as bailee.[170]

100. Furthermore, for these same reasons, CLAIMANT is liable in conversion for the value of the Cargo, being the loss resulting from its misdelivery.

V. CLAIMANT CANNOT RELY ON ANY DEFENCE

101. There are no defences available to excuse CLAIMANT'S breach.

A. CLAIMANT CANNOT RELY ON A DEFENCE THAT THEY HAD AN HONEST BELIEF IT WAS DELIVERING TO THE PARTY ENTITLED TO DELIVERY

102. There is scarce authority for the proposition that a shipowner's '*honest belief'* that it is delivering to the party so entitled is a defence to liability.[171]

103. Even if such a defence exists CLAIMANT could not have honestly believed that Yu Shipping was lawfully entitled to take delivery. That is because Yu Shipping was not the named consignee on the BoL and Yu Shipping provided no evidence that the Bol had been indorsed to it by RESPONDENT.

104. The bare assertion by Yu Shipping in the LoI that it was entitled to take delivery of the Cargo could not have induced an honest belief on CLAIMANT'S part that Yu Shipping was

---

[168] *Infra,* section III. These same facts give rise to title to the goods at common law: *Lickbarrow v Mason* [1794] 5 TR 683 at 685-6.
[169] See *Volcafe Ltd v. Sud Americana de Vapores* [2018] UKSC 61; [2019] AC 358; [2019] 1 Lloyd's Rep 21 at [8].
[170] *Kuwait Airways Corp v Iraqi Airways Corp (Nos 4 and 5)* [2002] UKHL 19; [2002] 2 AC 883; [2002] 2 WLR 1353 at [39].
[171] Cf *Songa Chemicals AS v Navig8 Chemicals Pool Inc* ('*Songa Winds*') [2018] EWHC 397 (Comm); 2 Lloyd's Rep 47 at [52]-[56], decision overturned on appeal [2018] EWCA 1901 (Civ); [2019] 1 All ER (Comm) 1085; [2018] 2 Lloyd's Rep 374; Also cf *Oldendorff GMBH & Co KG v Sea Powerful II Special Maritime Enterprises ('The Zagora')* [2016] EWHC 3212 (Comm); [2017] 1 Lloyd's Rep 194 at [34].

so entitled.[172] The mere fact an LoI is provided to a shipowner does not excuse the shipowner from liability, particularly where the shipowner knows that delivery would be made to a party not entitled to the Cargo.[173]

B. CLAIMANT CANNOT RELY ON THE DEFENCE THAT DISCHARGE WAS NECESSARY TO AVOID FURTHER DELAY

105. Further, it is no defence that the Vessel needed to discharge the Cargo in order to meet the Kaohsiung fixture. As set out above, CLAIMANT'S losses for any delay are compensated by demurrage.[174]

106. In any event, CLAIMANT could have organised for the Master to carry a BoL which could be handed to RESPONDENT upon the Vessel's arrival at Busan, in order to allow RESPONDENT to take delivery of the Cargo and mitigate any delay. Indeed, such a practice is common in the oil trade.[175]

PRAYER FOR RELIEF

For the reasons set out above RESPONDENT seeks the following relief:

1. A declaration that the Tribunal does not have jurisdiction and that the proceedings are thereby dismissed.

In the event that the primary relief sought by RESPONDENT is not granted, RESPONDENT seeks the following relief:

2. CLAIMANT'S claim for loss of hire under the Kaohsiung charter be dismissed.
3. CLAIMANT pay RESPONDENT the amount of USD 4,249,752.50 by way of damages for misdelivery of the Cargo.
4. Costs.

---

[172] Cf *Songa Winds* 2018] EWHC 397 (Comm); 2 Lloyd's Rep 47 at [55].
[173] *Great Eastern Shipping Co Ltd v Far East Chartering Ltd ('The Jag Ravi')* [2012] EWCA Civ 180; 2 All ER (Comm) 707; 1 Lloyd's Rep 637 at [50]-[53] (Tomlinson LJ).
[174] *Supra* at Section [I. Demurrage liquidates all losses arising from delay].
[175] *Mobil Shipping & Transportation Co v Shell Eastern Petroleum Ltd* ('*The Mobil Courage'*) [1987] 2 Lloyd's Rep 655 at 657.