

## **KS.14. No Safe Harbour for Misdelivery of Cargo Sans Bill of Lading**

### **Madras High Court Grants Summary Judgement Rejecting Carrier's Causation Defence**

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#### **Introduction**

1. In a significant judgment in 2022, reaffirming the sanctity of delivering cargo against presentation of original bills of lading in international trade, the Madras High Court, in *Banque Cantonale de Genève v. Owners and Parties Interested in the Vessel MV Polaris Galaxy [2025] MHC 1599*, granted summary judgment in favour of a trade finance bank in a misdelivery claim. This is the first reported decision post *The Sienna [2024] 1 Lloyd's Rep 177* to summarily reject the carrier's causation defence (requiring the Court to conduct the so-called counterfactual enquiry), marking a notable departure from recent trends in English and Singaporean courts.
2. The law on misdelivery is straightforward and has been well-settled for over a century- **a shipowner who delivers cargo without presentation of original bills of lading (OBLs) does so at its peril. This is precisely why trade finance banks, who finance the purchase of cargo by their customers for onward sale, insist on being the named consignee in the OBLs and having the OBLs made out to their order, so as to hold the OBLs as security for their financing.**
3. However, a recent spate of misdelivery claims in the UK and Singapore by trade finance banks against carriers has complicated what was once seen as 'open and shut'.
4. In *The Sienna* (UK Court of Appeal) and *Maersk Tankers [2022] SGHC 242* (Singapore High Court), carriers successfully resisted misdelivery claims—either at trial or by successfully defending applications for summary judgment by relying on a range of defences, notably:
  - (i) **the causation defence**, which involves the (hypothetical) argument that had the carrier sought the financing bank's consent for delivery without the OBLs, such consent would have been granted and accordingly, the misdelivery was not the proximate cause of the bank's loss; and
  - (ii) **the implied consent or knowledge defence**, where the carrier contended that the bank either knew or tacitly acquiesced in delivery of the cargo without production of the OBLs.
5. The Madras High Court in its recent judgement adopted the traditional view and refused to relegate matters to trial by reaffirming the absolute liability of the carrier for

mis delivery of cargo by summarily rejecting both the causation defence and the implied consent/knowledge defence.

## Facts

6. In this case, Banque Cantonale de Genève (“**BCGE**”) financed Gulf Petrochem’s purchase of marine fuel oil from Indian Oil Corporation for onward sale to Aramco Trading Fujairah FZE (“**Aramco**”), under a letter of credit that required, as a condition for payment, that the OBLs name BCGE as consignee or be issued to its order. Accordingly, BCGE was named as the consignee and became the lawful holder of the original bills of lading dated 21 May 2020 issued by the Master of the vessel MT Polaris Galaxy (“**Vessel**”).

7. On 24 May 2020, whilst the Vessel was en route from Kandla (load port) to Singapore (disport), the voyage charterer of the Vessel- Profitable Wealth Inc. issued a letter of indemnity to the Carrier instructing it to deliver the cargo to Chevron Pte Ltd (“**Chevron**”) without presentation of OBLs. Accordingly, the Carrier delivered the cargo to Chevron without presentation of OBLs.

8. BCGE initiated in rem admiralty proceedings before the Madras High Court and sought and obtained the arrest of the Vessel. Subsequently BCGE applied for summary judgment against the carrier for mis delivery of its cargo.

## The Decision

9. The Court on finding that it was undisputed that the carrier had delivered the cargo to a third party without presentation of OBLs, held that the onus of proof lay on the carrier to demonstrate a real prospect of defending the claim at trial.

10. The carrier relying on the English Court of Appeal’s judgement in *The Sienna*, contended that BCGE’s loss was not caused by its breach but was instead caused by its financing arrangements. It argued that had the bank been asked by the carrier it would have authorised delivery of the cargo to Chevron—or any other party, as approved by Gulf Petrochem, without presentation of the OBLs. The carrier asserted that this hypothetical scenario could only be tested at trial by cross examining BCGE’s witnesses.

11. Distinguishing the *Sienna*, the Madras High Court held that a counterfactual enquiry was inappropriate on the facts of this case. Here the cargo was not delivered to the bank’s approved sub-buyer, Aramco, but to an unrelated third party, Chevron. The entire financing arrangement was premised on the fact that cargo was to be ultimately on-sold by GP to Aramco and not Chevron. The Court concluded the counterfactual defence may have warranted consideration at trial had the delivery occurred—without OBLs—to Aramco, the bank’s approved sub buyer. However, in the absence of any indication that

BCGE contemplated delivery to Chevron, the defence lacked merit even at a *prima facie* level.

12. The Court also rejected the carrier's argument that the absence of a clause in the Gulf Petrochem–Aramco sales contract requiring presentation of OBLs implied that BCGE had no objection to delivery of the cargo without OBLs. It held that the LOI—issued by the charterer to indemnify the carrier against claims for delivery without OBLs—clearly showed that BCGE was neither informed of nor had consented to delivery to Chevron.

13. The Court distinguished the Singapore High Court decision in *The Maersk Tankers* on the basis that, in that case unlike the present one, the letter of credit opened by the financing bank expressly indicated that the cargo had already been delivered to its customer, thereby suggesting that the bank knew and/or tacitly approved of delivery without presentation of the OBLs.

14. On the issue of quantum, the Court held that the value stated in the invoice raised by Gulf Petrochem on Aramco was a reliable indicator of the market value of the cargo at the discharge port. BCGE had also placed on record the S&P Global Platts Report for the relevant period, which reflected a higher market value. However, the bank confined its claim to the lower invoice value. In the absence of any evidence from the carrier regarding the market value of the cargo, the Court concluded that the invoice value was a reasonable and acceptable basis for computing the measure of loss.

### **Key Takeaways**

15. This decision comes as a breath of fresh air, given the recent reluctance of English and Singaporean courts to grant summary judgment in misdelivery claims. It is not sufficient for carriers to mechanically plead standard defences—such as implied consent or the causation defence—in order to resist summary judgment, absent any special or peculiar circumstances showing either that the OBLs did not constitute security in the hands of the bank, or that the bank clearly approved delivery without presentation of the OBLs.

16. The decision will also have a significant impact on the development of summary judgment jurisprudence in India, which is still evolving. The Court reiterated that a defendant seeking to resist summary judgment must properly plead its case and place on record all necessary documentary evidence in support of its defence. It is not sufficient to merely assert that the matter should proceed to trial in the hope that something might emerge during the course of proceedings.

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Madras High Court Documents