Neutral Citation Number: [2025] EWHC 1569 (Ch)

Case No: BL-2021-000590

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 23 June 2025

Before :

MR JUSTICE RAJAH

- -

Between :

RASMALA TRADE FINANCE FUND **Claimant**

- and –

TRAFIGURA PTE LIMITED **Defendant**

- -
- -

RICHARD POWER and **LAURENTIA DE BRUYN** (instructed by **Hill Dickinson LLP**) for the **Claimant**
NEIL KITCHENER KC and **JAMES NADIN** (instructed by **Reed Smith LLP**) for the **Defendant**

Hearing dates: 27 March – 8 April 2025

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APPROVED JUDGMENT

Mr Justice Rajah :

Introduction

1. This is my judgment after a trial in which the Claimant seeks restitution of five multi-million dollar payments that it made to the Defendant between August 2017 and March 2018 on the basis that, due to a fraud perpetrated by a third party, the payments were made on a mistaken basis.

2. The Claimant is Rasmala Trade Finance Fund ("**Rasmala**"), a fund incorporated in the Cayman Islands which is managed by Rasmala Investment Bank Limited ("**RIBL**"). It acts as a trade financier specialising in providing short-term, structured financing to companies trading physical assets. The Defendant is Trafigura PTE Ltd ("**Trafigura**"), an international commodities trader incorporated in Singapore.

3. Farlin Energy & Commodities FZE ("**Farlin**") was, in 2017 and 2018, a coal trader and an established customer of Trafigura. Between August 2017 and March 2018 Rasmala provided Farlin with financing for five coal trading contracts for the supply of coal to Farlin by Trafigura. Rasmala made five payments to Trafigura, totalling $21,596,630, in respect of those contracts. It has since transpired that Farlin had forged or doctored those contracts, none of which were genuine or valid. Trafigura applied the payments it received from Rasmala to the discharge of Farlin's debts to Trafigura on other contracts so that Farlin remained within the credit limit set for it by Trafigura and continued to trade with Farlin. In respect of all but the last payment, Farlin provided Trafigura with tri-partite agreements ("**TPAs**") between Trafigura, Rasmala and Farlin agreeing to the manner of Trafigura's intended application of the payment. However, it is now apparent that Rasmala's signatures to those TPAs were forged by Farlin, and Rasmala was unaware of them.

4. The key questions to be determined are whether there has been an unjust enrichment of Trafigura and if so whether there has been a bona fide change of position by Trafigura caused by the payments which makes it inequitable for Trafigura to be required to repay all or part of what it received.

5. Rasmala's pleaded case is that Trafigura was party to the fraud by Farlin but at the beginning of the trial it sought to withdraw the bulk of the allegations of dishonesty. It maintains its allegations of dishonesty against Mr Harsh Jasani, the trader at Trafigura who dealt with Farlin.

Trial

6. Rasmala called Mr James Douglas Bitcon as a witness. Mr Bitcon was head of credit strategies at RIBL at the relevant time, although has since left Rasmala. He gave evidence of Rasmala's unsuspecting dealings with Farlin until Rasmala was tipped off by a whistleblower at Farlin. While he was partisan, he was an honest witness.

7. Trafigura called Mr Gaurav Sanjay Gupta and Mr Saurabh Gokhale. Mr Gupta was the Operator for Coal Operations in Trafigura's Mumbai Office. Mr Gokhale was his immediate superior. They worked with Mr Jasani in Trafigura's dealings with Farlin. I had the clear impression that there had been discussion of the events which they were to give evidence about over the years and possibly in the run up to the hearing. There was a tendency to stick to a party line of not remembering whether they had noticed something potentially suspicious (such as a false contract number), but adding that, if they had, they would not have realised its significance. That said, I considered the party line to be an essentially honest one, and that these witnesses were giving honest evidence. Their honesty was not challenged by Mr Power.

8. Trafigura also called Mr Rajat Maroo, the Regional Credit Manager based in Mumbai, and Mr Ken Loughnan, who was Head of Bulk Commodities in the Pacific Region. Mr Raoul Bajaj provided a witness statement in respect of which a hearsay notice was served. Mr Bajaj was Chief Executive Officer of Trafigura India Private Limited from 2010 to April 2022 when he retired. Again, I consider them to be honest witnesses.

9. There are approximately 2000 contemporaneous documents, but they are not the complete universe of documents. Trafigura has a document retention policy which permanently deleted documents not specifically earmarked for retention after 6 months. When Mr Jasani left Trafigura in 2019, his laptop was rebuilt and reissued without any backup being made.

10. I set out below the facts as I find them.

Facts

Farlin and Trafigura

11. Farlin had been a customer of Trafigura since September 2015 and Trafigura has entered dozens of contracts with Farlin over the years.

12. Mr Harsh Jasani was the trader who dealt with Farlin, and Farlin was an important client to him. Once a trader had agreed the commercial terms of a trade with a counterparty, Mr Gupta and Mr Gokhale became part of the day-to-day operational relationship with the counterparty. At the time Mr Gupta worked with four traders, one of whom was Mr Jasani. As they all sat close to each other in the office, communication between them was mainly oral.

13. Behind the trader and the operations team at Trafigura lay a complex organisation. There was the credit team, headed by Mr Maroo, which was responsible for assessing the credit risk of counterparties and specific trades. There was a treasury team responsible for managing Trafigura's bank accounts and dealing with the allocation of payments. There was a contracts administration team responsible for drafting contracts for sale and purchase of commodities, incorporating core terms agreed by the traders. More complex legal issues, including the TPAs, were dealt with by the legal team.

14. In 2016, Trafigura granted Farlin an open credit limit that was approximately $2 million. By 2017, that open credit limit had been increased to approximately $10 million. Mr Maroo explained that it was the credit team who had been responsible for assessing Farlin's credit risk. In 2017, the credit team assessed Farlin's creditworthiness as a B+, which Mr Maroo described as a "decent rating for a coal trading company", as coal trading companies are in general rated lower than other entities. In December 2016, Trafigura increased Farlin's credit limit to $11 million, supported by insurance cover for 50% of the limit. Trafigura made some small adjustments to Farlin's open credit limit in 2017 and early 2018, with the limit moving between $10 – 11 million.

15. By July and August 2017, Farlin was struggling to remain within the credit limit which Trafigura had set for it and was late in making payments.

Farlin and Rasmala

16. Meanwhile, Rasmala was introduced to Farlin by Danny Jones, a Portfolio Manager at RIBL, in 2017. Farlin were seeking to obtain financing from Rasmala. Mr Bitcon was part of the first meeting with Farlin and had the impression that they were a "*well-established, profitable coal trading business with a reasonable balance sheet and client base*." After conducting extensive due diligence and a review by UAE external lawyers, Rasmala concluded that Farlin was a suitable client for a Shari'a compliant Murabaha facility.

17. On 16 July 2017, Rasmala entered into a Murabaha Facility Agreement (the "**MFA**") with Farlin. The Murabaha facility was a one-year facility of $20 million which could be used for coal trading by Farlin. Each drawdown was to be structured as a purchase of the relevant coal by Rasmala (acting directly or through Farlin as its purchasing agent) (referred to in the MFA and elsewhere as a **"Purchase Transaction**") and its subsequent sale to Farlin for the purchase price plus an agreed profit rate for Rasmala (a "**Murabaha Sale**"). A Purchase Transaction and a Murabaha Sale comprised a "**Murabaha Transaction**". Each drawdown was to be for up to 85% of the proposed purchase price with the balance being provided by Farlin. Rasmala's agreement was required for each Murabaha Transaction and drawdown. When Farlin wished for Rasmala to finance a transaction, it would initiate it by raising a formal request (defined as a "**Murabaha Request**"), asking Rasmala to enter into a Murabaha Transaction. If Rasmala did not communicate its acceptance of the Murabaha Request within 7 business days, it was deemed rejected with no liability on the part of Rasmala and no requirement for Rasmala to give reasons. Mr Bitcon explained that each proposed Murabaha Transaction was discussed and approved by the investment committee of Rasmala, which consisted of himself, Mr Jones and Eric Swats, the Senior Executive Officer at RIBL.

18. Although Rasmala had the option of entering into Purchase Transactions directly, Mr Bitcon explained that it was reluctant to do so because of the potential liabilities it might expose itself to. It was envisaged, therefore, that Farlin would act as Rasmala's undisclosed agent in connection with any Purchase Transactions. Rasmala and Farlin executed an agency agreement (the "**Agency Agreement**") as part of the document suite for the Murabaha facility. By the Agency Agreement Farlin agreed to act as Rasmala's undisclosed agent in respect

of an approved Purchase Transaction on the terms set out there if Rasmala asked it to do so. A point to note is that Farlin was appointed agent only to give effect to the Purchase Transaction that Rasmala had approved in the relevant Murabaha Request and only to sign purchase documents on behalf of Rasmala in a form approved by Rasmala.

19. There were several layers of security intended to provide Rasmala with protection. Prior to a Purchase Transaction, Farlin was required to have a binding contract for onward sale to an end buyer and to have supplied Rasmala with executed documents from Farlin and the end buyer, securing that the proceeds of sale were paid directly to Rasmala to be used in settlement of the Murabaha Transaction. Rasmala was to receive title to the coal immediately upon completion of a Purchase Transaction. It also had additional security in the form of a Promissory Note from Farlin, a Personal Guarantee from the owner of the Farlin Group, a Corporate Guarantee from another group company, Farlin Timber Pte Ltd and a Credit Insurance Policy against Farlin becoming insolvent or failing to pay, with Rasmala named as the insured.

20. In practice, this intended structure did not take place.

21. First, it was clear from the Murabaha Transactions presented to Rasmala that it could not acquire title to the commodities on the entry into a Purchase Transaction. Under the Trafigura contracts (irrespective of whether entirely fake or doctored), 20% of the purchase price was payable on delivery of the coal and Rasmala would not have obtained title unless and until this sum was paid after delivery. Mr Bitcon explained in his evidence that while Farlin had indicated that it only required shipment and receivables financing, it became clear that what it required was an advance payment facility.

22. Second, under the intended Murabaha facility operation, Farlin was supposed to pay its 15% deposit to Rasmala, who would then make the advance payment to Trafigura. However, after the first transaction, Rasmala permitted Farlin to pay its 15% deposit directly to Trafigura. This meant that, even if title to the goods could have passed to Rasmala on receipt of the advance payment, Rasmala's title was dependent on Farlin making the payment of the 15% deposit.

23. Third, Farlin appears to have forged the documents from end buyers agreeing to pay Rasmala directly. On 18 January 2018, Rasmala approved buyer payments being made to Farlin first. This was because Farlin informed Rasmala that funds from Indian banks could only be remitted to Farlin, the apparent principal on the trade documents, due to Indian regulations.

Payment 1

24. On 19 July 2017, Arun Pinto from Farlin contacted Mr Jones with the proposed details of a sale. Mr Pinto was described as the "Operations" person at Farlin. The proposed details were a purchase from Trafigura of coal with an 80% advance payment and 20% payable "against documents" on delivery. The 80% advance payment amounted to USD 6.84 million. Farlin provided Rasmala with a sales contract bearing the number 1475551 (the "**551 Contract**") that purported to represent an agreement between Farlin and Rasmala dated 4 July 2017 for

delivery of coal in September 2017 (later purportedly amended to October 2017). The 551 Contract never existed nor did the subsequent amendment; it was a forgery.

25. Between 2 August and 20 August 2017, a formal Murabaha Request was made by Farlin and accepted by Rasmala, and several ancillary documents executed. As with each of the subsequent Purchase Transactions Rasmala thought it was agreeing to, Farlin was appointed to act as Rasmala's undisclosed agent. On 17 August 2017, Farlin paid USD $1,999,000 to Rasmala, which was treated by Rasmala as Farlin's 15% deposit for the first and second sale.

26. On 21 August 2017, Rasmala made a payment of USD $6,840,000 to Trafigura's account with Deutsche Bank ("**Payment 1**").

27. Rasmala sent Farlin a letter dated 21 August 2017 to be provided to Trafigura ("**the remittance confirmation letter**") in relation to Payment 1 confirming that it had made Payment 1 on behalf of Farlin and that it represented "*the 80% advance payment with respect to sales contract no. 1475551*".

28. For Trafigura, Payment 1 was unheralded. Mr Gokhale's evidence was that after receipt of Payment 1, a phone call took place between Mr Jasani and a Mr Samdani at Farlin. Mr Gokhale says that Mr Jasani told him that he had learnt that Rasmala had made a payment to Trafigura on behalf of Farlin and that Rasmala was some kind of financier.

29. On 21 August 2017, Mr Pinto of Farlin emailed Mr Gokhale (as well as Mr Jasani) to send Rasmala's KYC documents as well as the remittance confirmation letter and payment SWIFT message. However, the remittance confirmation letter from Rasmala was manipulated by Farlin to remove the reference to the payment representing the 80% advance payment for the 551 Contract. This version of the letter therefore did not suggest that Payment 1 was made for any particular contract or purpose. The SWIFT message did contain within the code heading for Remittance Information the following text "*FARLIN SALES CONTRACT 1475551*". This does not clearly identify that the 1475551 number is supposed to be a Trafigura designation for a sales contract with Farlin, as opposed, say to a Farlin internal designation.

30. Following receipt of these documents, on 21 August 2017, Mr Gupta emailed Trafigura's treasury team with the details from the SWIFT message and asked them to confirm that the payment had been received. Mr Solanki from the Treasury team confirmed receipt and asked to which contract it should be allocated. His email contained auto generated information from Trafigura's bank accounts – one line of which in a section entitled "*Details*" referred to "*Contract 1475551*". Mr Gokhale and Mr Gupta paid no attention to the inclusion of this contract reference, but they understood, presumably from Mr Jasani, that the payments related to future deliveries.

31. It was at this time Trafigura's practice where it received a payment from a third party on behalf of a customer to require the customer and the third party to enter into an agreement confirming their agreement to Trafigura's proposed use of the payment. Accordingly, on 22 August 2017, Mr Gokhale sent an email to Trafigura's in-house lawyer, Ms Alexandra Gordon, attaching the documents provided by Mr Pinto and asking for a draft of an appropriate document for Payment 1. Mr Gokhale spoke to Ms Gordon and explained that Trafigura had an established client called Farlin, that Trafigura had received a payment from a third party called Rasmala, and that this payment was on behalf of Farlin.

32. On 23 August 2017, Ms Gordon responded providing a draft TPA following discussions with Mr Jasani. Ms Gordon plainly understood from Mr Jasani that Payment 1 was intended for specific future shipments. The relevant part of her email said:

> *"Please note that I have drafted this on the basis that the funds paid to [Trafigura] by Rasmala (US $6.85m) are to be applied towards specific shipments under the 1493888, 1493889, 1493890, 1493891 trades (Sept-Dec). I need your clarity on which shipments these will be since this should be recorded in the document. This means that the document does not allow for a blanket third party agent type structure to be used going forward, which I understand is not the commercial intent in any case…"*

33. However, after an intervention by Mr Maroo, Ms Gordon revised the draft TPA so that Trafigura could use Payment 1 to cover outstanding payments due as well as payment in respect of future shipments. Her covering email made clear that her understanding was that this was not the basis on which the payment had been made by Rasmala, and that Rasmala and Farlin would have to agree to this revised wording.

34. Mr Jasani emailed Mr Samdani of Farlin attaching the updated version of the TPA, and explained:

> *"We have sighted the payment of $6.84 Million. Thank you for the same, however we have received the same from an unrelated party (Rasmala) which complicates the situation. We are unable to allocate the payment towards Farlin outstanding since Rasmala Fund is not a counterparty on any contract between Trafigura and Farlin. We understand that Rasmala are financing your trades and hence our legal team has drafted a tripartite agreement that elucidates the funds received are for future shipments of Alam Jaya for which we have entered into a term contract, however can be used to offset old outstanding including demurrage.*
>
> *Appreciate if you can get the same signed by Rasmala as well as Farlin and send the same back to us."*

35. Farlin initially pushed back. Mr Samdani's email on 23 August 2017 made a number of points and contained a sentence on which Rasmala now relies very heavily. He said that Rasmala were just financing the deal and "*They will never sign any tripartite agreement allowing offset of this money again [sic] existing liability including demurrages etc*." His email entreated Mr Jasani to treat the

money as a security deposit while Farlin cleared its outstanding debts within the next 3 weeks, at which point it could be returned to Rasmala or used against some ongoing contract.

36. Mr Gokhale's evidence was that there were discussions between Mr Jasani and Mr Samdani, who relented and eventually confirmed that Rasmala had agreed to the allocation of Payment 1 to Farlin's outstanding dues. Farlin sent back a revised draft TPA with amendments, one of which was material to the fraud being perpetrated. Clause 5 of Ms Gordon's draft was amended so that Trafigura was authorised to communicate only with Farlin, such communications being deemed to have been received by Rasmala. On 28 August 2017, Farlin provided Trafigura a final version of the TPA ("**TPA 1**") which was signed by Farlin and purportedly signed by Rasmala. In fact, Rasmala was oblivious to these communications about a TPA. Its signature to TPA 1 had been forged.

37. In line with TPA 1, Payment 1 was allocated by Trafigura to the discharge of Farlin's oldest debts – described by Trafigura's witnesses as a "first in, first out" or "FIFO" basis. The effect of this payment was to bring Farlin's exposure within the credit limit set by Trafigura, and so Trafigura continued to trade with Farlin.

Payment 2

38. Payments 2 to 5 followed the same pattern. Farlin made a Murabaha Request in relation to a forged or manipulated contract with Trafigura, which resulted in the payment. Farlin provided Trafigura with a TPA with a forged signature on behalf of Rasmala authorising the use of the relevant payment on a FIFO basis.

39. So, on 7 September 2017, Mr Pinto emailed Danny Jones with the proposed details of payment 2. The purchase would be from Trafigura, with 80% advance payment, 20% against documents. On 13 September 2017, Mr Pinto emailed Mr Jones providing a forged sale contract with the reference number 1493888 purporting to be between Trafigura and Farlin dated 7 September 2017. Contract 1493888 dated 7 September 2017 was a forgery using a genuine contract 1493888 dated 19 July 2017 as its basis. Also attached to that email were two sale contracts supposedly entered into between Farlin and two end buyers.

40. In a departure from the terms of the Murabaha facility Rasmala agreed with Farlin that it would transfer 85% of the advance payment due under the false contract directly to Trafigura and Farlin could pay its 15% share directly to Trafigura and not to Rasmala for onward transmission. Farlin later provided Rasmala with a purported copy of the SWIFT message which was supposed to evidence its payment of the 15% balance of the advance payment (in the amount of USD $769,920). However, this SWIFT message may have been forged.

41. On 18 September 2017, Rasmala paid USD $4,362,880 from its Ajman Bank account to Trafigura's Deutsche Bank account ("**Payment 2**"). The SWIFT message included under the code for remittance information the following text: "FARLIN / SALES CONTRACT 1493888".

42. Rasmala sent Farlin a remittance letter to be provided to Trafigura referring to Payment 2 and Sales Contract 1493888. Unlike Payment 1, however, it does not appear that Farlin sent any version of this remittance letter to Trafigura.

43. Upon receipt of Payment 2, Mr Solanki contacted Mr Gokhale and Mr Gupta to inform them that Trafigura had received the funds. This email with the Payment 2 details included a reference to "FARLIN/SALES CONTRACT/1493888". The provision of a contract number in the '*Details'* section of an email from Trafigura's treasury team was a repeated occurrence in relation to the five Rasmala payments and a central part of Mr Power's cross-examination of Trafigura witnesses. Trafigura contracts consist of a seven-digit number and therefore Rasmala suggests that Trafigura would have known, or should have at the very least noticed, that the payments had been made to fund Farlin's liabilities under the contracts specified in the SWIFTs. However, Mr Gokhale and Mr Gupta were steadfast in their evidence that they would not have paid attention to the SWIFT information or the details in the emails from the Treasury team. Mr Gupta explained that their focus was only on confirming that the funds had been received. I accept their evidence that, rightly or wrongly, after Payment 1 and TPA 1, they did not realise that Rasmala was making its payments in respect of a specific contract to be performed in the future.

44. Mr Gupta identified the sales invoices to which the payment should be allocated on a FIFO basis and notified Mr Solanki and Farlin and asked Farlin to provide a TPA confirming this allocation. On 16 October 2017 Farlin provided Trafigura with a TPA to that effect ("**TPA 2**") with forged execution on behalf of Rasmala. Like TPA 1, clause 5 stipulates that Trafigura may communicate only with Farlin.

Payment 3

45. On 25 January 2018, Mr Pinto of Farlin emailed Mr Jones of Rasmala with the proposed details for another sale. That email provided that the terms would be 80% in advance and 20% against documents. A few days later, Mr Pinto sent Rasmala a purported sale contract 1573891, dated 25 January 2017 for delivery of coal during April 2018. As with Payment 2, Contract 1573891 was a genuine contract with Trafigura, but the version supplied to Rasmala had been fraudulently altered.

46. On 5 February 2018, Rasmala made payment in the amount of USD $2,788,000 to Trafigura's Deutsche Bank account ("**Payment 3**") representing 85% of the advance payment under the purported contract. On the same day, Rasmala provided Farlin with the SWIFT details and a remittance confirmation letter addressed to Trafigura. As with Payment 2, however, it seems that the remittance letter for Payment 3 was not passed onto Trafigura. The next day Farlin provided Rasmala with a purported SWIFT confirmation of payment of its 15% share to Trafigura.

47. Farlin forwarded the SWIFT confirmation of Payment 3 to Mr Gokhale on 6 February 2018 who forwarded it on to Mr Gupta. As with the first two payments, the Payment 3 details provided the contract number: "FARLIN/SALES CONTRACT/1573891". Neither Mr Gokhale nor Mr Gupta noticed these details. Mr Gupta explained that, by this stage he believed that Trafigura and Farlin had

a process in place whereby he would check with the treasury team that the funds had "hit" Trafigura's account, and he would then proceed to allocate the payment to outstanding invoices, which would be confirmed in a TPA provided by Farlin and Rasmala.

48. Farlin provided a TPA dated 8 February 2018 executed by Farlin and supposedly, but not actually, by Rasmala ("**TPA 3**").

Payment 4

49. On 12 February 2018, Mr Pinto sent Mr Jones the proposed details of Payment 4, with Trafigura as the supplier and the payment terms as 80% in advance and 20% against documents. Subsequently, on 15 February, Farlin emailed Rasmala (i) a forged sales contract bearing the contract number 1573892; and (ii) a forged sales contract between Farlin and the alleged end buyer.

50. Before proceeding with Payment 4, Rasmala required Payment 1 and Payment 2 to be repaid, as repayment was overdue. After receipt of repayment, Rasmala approved Payment 4, executing the drawdown documents and sending them to Farlin. On 8 March 2018, Rasmala paid USD $4,245,750 to Trafigura's Deutsche Bank account ("**Payment 4**"). On 13 March 2018, Farlin sent Rasmala a purported SWIFT confirmation for the 15% deposit payment in relation to Payment 4.

51. Unlike Payments 1 – 3, it seems that Farlin did not request a remittance letter for Payment 4 and as such none was prepared by Rasmala. Therefore, Trafigura did not receive a remittance letter for Payment 4 either.

52. On 8 March 2018 Mr Samdani of Farlin sent a WhatsApp message to Mr Gokhale that attached a photo of the SWIFT for Payment 4. The payment details include this text "FARLIN/SALES CONTRACT/1573892". As with the other payments, Mr Gokhale did not realise this was a purported reference to a Trafigura contract and did not check the details. Mr Gupta allocated Payment 4 to outstanding debts and requested a TPA from Farlin. On 15 March 2018, Farlin sent Trafigura a TPA for Payment 4 ("**TPA 4**"). As with all the other TPAs, Rasmala's purported execution of TPA 4 was a forgery.

Payment 5

53. On 13 March 2018, Mr Pinto emailed Mr Jones setting out the details for another proposed sale, with an 80% advance payment and 20% against documents. The next day Mr Pinto followed up by attaching a forged sales contract bearing the number 1573894 dated 26 February 2018 between Farlin and Trafigura.

54. Rasmala transferred USD $ 4,386,000 to Trafigura's Deutsche Bank account on 21 March 2018 ("**Payment 5**"). No remittance letter for Payment 5 was prepared

by Rasmala. No purported Swift confirmation was provided by Farlin as proof of its payment of 15% of the advance payment.

55. Over at Trafigura, Mr Samdani sent Mr Gokhale the SWIFT for Payment 5 on 22 March 2018. Following the usual course of action, on 22 March 2018, Mr Gupta requested a TPA from Farlin and provided the proposed allocations for Payment 5.

56. Trafigura never received a TPA, despite follow-up requests. Sometime in March 2018, a management meeting took place in Mumbai. The allocation of Payment 5 was discussed, and it was decided that Payment 5 should be allocated to Farlin's outstanding debts. From Mr Gokhale's evidence it seems that Trafigura assumed that a TPA would be forthcoming eventually from Farlin.

Trafigura's Rabobank and Deutsche Bank Accounts

57. Each of Payments 1 to 5 was made into Trafigura's Deutsche Bank account. Typically, customers were directed to make payment into Trafigura's account with Rabobank, whereas the Deutsche Bank account was mainly 'other' payments such as demurrage. This was a source of repeated internal complaint by Trafigura's Treasury team, but neither Mr Gokhale nor Mr Gupta considered this a significant issue.

Post payment 5

58. After Payment 5, Trafigura's trading relationship with Farlin slowed and eventually ceased as Farlin quickly reached its credit limit. There were two further contracts between Farlin and Trafigura after Payment 5, the last on 8 May 2018. Farlin eventually stopped trading. At this point, Trafigura was owed $11,985,349 on 5 contracts and there were further charges for demurrage.

59. On 19 September 2018, Mr Jones of Rasmala contacted John Lim and Thomas Grandjean at Trafigura asking them to confirm what they were being told by Farlin:

> *"Dear John/Thomas,*
>
> *…*
>
> *One of our obligors is a company by the name of Farlin Energy & Commodities FZE ("Farlin"), who are a customer of Trafigura Pte Limited for the supply of steam (non coking) coal. The facility we provide to Farlin is on the basis of a Murabaha, wherein they act as our undisclosed purchase agent to purchase goods on our behalf, which are then sold to Farlin's end buyers.*
>
> *We now have past dues with Farlin and they have now advised us that the payments made to Trafigura (see below. Kindly note that under the facility, Farlin contribute 15% to each purchase, hence the payments made by Rasmala represent the balance 85%) for the purchase of steam (non coking) coal under*

the mentioned sales contracts (attached), have been used by Trafigura to offset against past dues Farlin owe to Trafigura under the credit line they hold with yourselves and the shipments in fact were never made.

Can I please ask if you can find out if the above statement is true and confirm if or not the shipments were made? Can you also confirm what the status of the current relationship is with Farlin i.e. are you still trading with them and if there are any further past dues with Trafigura? Any other relevant information would be kindly appreciated."

60. Although Rasmala's email was circulated internally, Trafigura did not respond.

61. Having been tipped off by a whistleblower at Farlin that a fraud had been perpetrated, Mr Bitcon visited Trafigura's offices in August 2019 and met with Trafigura's regional counsel, Mr Jason Barnes. They agreed that Rasmala would send copies of the sales contracts it had advanced money against and Trafigura would review them. However, Mr Bitcon received no response to any of the emails that he sent. Trafigura has provided no explanation for this.

62. In 2020, Rasmala finally received official confirmation via Trafigura's solicitors that the contracts for Payment 1, Payment 4 and Payment 5 were bogus.

63. On a separate note, Farlin made payments to Rasmala towards the sums due under the Murabaha Transactions relating to Payment 1 and 2. Rasmala received $10.56 million from Farlin in 2018 which was allocated to Payments 1 and 2. Rasmala says that it does not need to give credit for these payments. Rasmala had advanced monies on other fraudulent contracts purportedly between Farlin and a non-Trafigura counterparty. Rasmala has reallocated those payments to Farlin's debts to it on two of those non-Trafigura contracts. In solicitor correspondence dated 4 October 2022, Rasmala's solicitors at that time, Crowell & Moring, explained Rasmala's position as follows:

"1. Our client's decision to re-allocate the Farlin Payments was not based on a suspicion that those funds were the proceeds of fraud. In contrast to the Payments that are the subject of the current claim, the Farlin Payments were received direct from Farlin, with no indication that Farlin had been deceived into making them. We do not consider that we are obliged to explain why our client formed the view that it was entitled to retain the Farlin Payments, which were made directly from its debtor, and which were intended by Farlin to be applied against correctly identified and genuinely existing debts. The circumstances of the Farlin Payments are to that extent different from the Payments that are the subject of the current claim.

2. Our client decided in December 2019 that it could re-allocate the Farlin Payments. The trigger for that decision was that Rasmala became aware of the matters that are the subject of these proceedings, and formed the view that it was entitled to claim against Trafigura for the value of the Rasmala Trade Finance Fund payments in question. The specific re-allocations, on a first in-time basis, were then made in July 2021…."

64. Rasmala maintained this position at trial.

Mr Jasani's alleged dishonesty

65. Rasmala has tried several times to reformulate its Particulars of Claim, and its allegations of fraud.

66. On 8 April 2021, Ms Nicola Phillips, a solicitor from the firm Crowell & Moring, who formerly acted for Rasmala, produced a witness statement in support of Rasmala's application to serve the claim form out of the jurisdiction. Ms Phillips' witness statement made clear that Rasmala's case focused on Mr Gupta, Mr Gokhale and Mr Jasani, as the members of Trafigura's staff who "*must have been aware that Rasmala was being defrauded and that it is likely that they took receipt of the Payments in the knowledge thereof*".

67. By the time of the Re-Amended Particulars of Claim ("**RAPOC**") dated 18 November 2022 Rasmala's case was that Trafigura had dishonestly put the TPAs in place (and dishonestly not told Rasmala about them) to enable it to use the Payments to discharge Farlin's debts, knowing that Rasmala did not consent to the TPAs. The RAPOC focused on Mr Gupta as the ringleader of a dishonest trio. These forms of words are used throughout the RAPOC on the issue of Trafigura's knowledge:

> *" As Mr Gupta (and Mr Gokhale and Mr Jasani) knew"*
>
> *" As Mr Gupta (and/or Mr Gokhale and Mr Jasani) knew";*
>
> *"As Mr Gupta (and it is to be inferred Mr Gokhale and Mr Jasani) knew"*

68. On 17 May 2024, Trafigura's solicitors contacted Rasmala asking whether Rasmala intended to advance allegations about Trafigura's imputed knowledge beyond that of just Messrs Jasani, Gokhale and Gupta. Rasmala did not respond to this request.

69. Witness statements were exchanged in October and November 2024.

70. On 17 December 2024, after receiving the witness statements and learning that Mr Jasani would not be giving evidence, Hill Dickinson wrote to Trafigura stating that it was "*a striking feature of this case that your client has chosen not to call Mr Jasani to give evidence notwithstanding that he was the individual who played* ***the central role in the events giving rise to the proceedings****."* (emphasis added). This heralded a shift in Rasmala's case because the RAPOC did not plead a case that Mr Jasani, rather than Mr Gupta, had a central role.

71. The Pre-Trial Review for this trial was listed to be heard on 27 February 2025 but it was vacated at the parties' joint request on the basis that the only outstanding matter was the trial timetable and start date. Surprisingly, the next day (28 February 2025) Rasmala sent Trafigura draft Re-Re-Amended Particulars of Claim ("**the draft RRAPOC**"). The draft RRAPOC sought to withdraw the bulk of the allegations of dishonesty made against Trafigura and its witnesses.

Trafigura refused to consent to those amendments. A further iteration of the draft RRAPOC was served, but Trafigura did not agree to it. Rasmala, through its solicitors, informed Trafigura's solicitors that Rasmala would not pursue the allegations that it had attempted to delete from the RAPOC.

72. These proposed amendments were not mentioned in Rasmala's trial skeleton, and there was no application to amend. At trial, Rasmala maintained that it was sufficient to advance a narrower case than the wider case that was pleaded in the RAPOC and that therefore no application to amend was necessary. At my request a revised version of the RAPOC has been produced marking up the allegations which are no longer pursued ("**the narrowed down RAPOC**").

73. Of course, the deletion of a sentence here and some words there can fundamentally change the meaning of what remains. Rasmala's narrowed down RAPOC shifts Rasmala's case onto Mr Jasani as the only culprit behind Trafigura's alleged dishonesty. Mr Gokhale and Mr Gupta are no longer alleged to be dishonest. The previous formula of words is now proposed to be read as:

"As ~~Mr Gupta (and Mr Gokhale and~~ Mr Jasani~~)~~ knew"

" As ~~Mr Gupta (and/or Mr Gokhale and~~ Mr Jasani~~)~~ knew";

"As ~~Mr Gupta (and it is to be inferred Mr Gokhale and~~ Mr Jasani~~)~~ knew".

Rasmala's case at trial was that Mr Jasani suspected that Rasmala had not consented to the TPAs (and presumably suspected that the TPAs were forgeries and part of some fraud being perpetrated on Rasmala) but dishonestly turned a blind eye.

74. The primary facts from which Mr Jasani's dishonesty is to be inferred appear to be the same facts which were previously relied on to infer Mr Gupta and Mr Gokhale's dishonesty but whom Rasmala now accepts are not dishonest. They intend to prove those same facts but seek only to infer dishonesty against Mr Jasani. The pleaded primary facts appear to be consistent with both honesty and dishonesty. This is fatal. The primary facts from which fraud is to be inferred must be pleaded and if the facts are consistent with innocence, it is not open to the Court to find fraud: see *Three Rivers DC v Governor and Company of Bank of England* (No.3) [2001] UKHL 16; [2003] 2 AC 1, Lord Millett at [186].

75. The unpleaded matters on which Rasmala sought to rely to raise an inference of fraud were as follows.

i) Rasmala says that Mr Jasani had an incentive in turning a blind eye, because Farlin was a big account for Mr Jasani. I observe that most people have at some level a financial incentive to be dishonest but are not. On its own that is not sufficient to infer dishonesty.

ii) As stated above, at [29], on 21 August 2017 Mr Pinto of Farlin emailed Mr Gokhale (as well as Mr Jasani) the doctored remittance confirmation letter and payment SWIFT message which removed the reference to the payment being in respect of the 551 Contract. At some point that day, presumably before Mr Pinto's

email, an apparently earlier draft of the remittance confirmation letter was sent to Mr Gokhale and Mr Jasani by Farlin. Mr Gokhale had no idea why he had been sent it and I accept his evidence. The gist of the letter was the same as the doctored remittance confirmation letter. There was no explanation accompanying the draft as to why it was being sent. It seems likely that it had been preceded by a conversation between Mr Pinto and Mr Jasani. Rasmala contends that it is very odd that Mr Pinto was discussing with Mr Jasani the drafting of a letter to come from Rasmala. It is not odd at all. It is not uncommon to check with a receiving party whether the proposed form of a letter from the sender will meet the receiving party's requirements. Mr Gokhale confirmed in cross-examination that this was commonplace in Trafigura's dealings with counterparties. There was nothing in the draft sent to Mr Jasani which indicated that reference to the 551 Contract had been deliberately excluded, and nothing from which it could properly be inferred that Mr Jasani was or might be colluding with Farlin in producing a doctored remittance confirmation letter.

iii) Rasmala placed reliance on the 23 August 2017 email from Farlin which said that Rasmala "*will never sign any tri-partite agreement allowing offset of this money against existing liability*" to assert that it is suspicious that Mr Jasani so readily accepted Rasmala's change of heart and apparent signature of the TPAs. However, the 23 August 2017 email was in my judgment just ordinary to-and-fro in a commercial negotiation and the fact that Farlin later said that Rasmala had agreed, and TPAs were produced with Rasmala's apparent signature, were not the "red flags" Rasmala seeks to argue that they were. Rasmala's reliance on the fact that only Mr Jasani and Mr Samdani of Farlin had been party to the call in which Farlin said that Rasmala had consented, and there is no evidence of what was said, is a point which goes nowhere. Mr Power says that, absent evidence as to what was said, it is impossible to understand how the red flags which must have been in Mr Jasani's mind as to how Rasmala had come to change its mind were allayed. The short answer is that there were no red flags.

iv) Rasmala submitted that an adverse inference should be drawn from Trafigura's failure to call Mr Jasani to give evidence that he had no answer to the case of dishonesty being asserted. I observe that apart from the bald assertion of dishonesty, there is no real "case" of dishonesty to answer. Whether to draw such an adverse inference is, as Lord Leggatt JSC observed in *Efobi v Royal Mail Group Ltd* [2021] 1 WLR 3863 at [41], a matter of common sense. Common sense dictates that no adverse inference is drawn. Mr Jasani left Trafigura in 2019 and now lives in India managing his family's business interests which keep him very busy. Mr Loughnan gave evidence which was not challenged that Trafigura would have liked Mr Jasani to give evidence but it has no means of securing his cooperation. This is not a case in which some inference could be drawn from a party's choice not to call a witness. Mr Jasani could have voluntarily chosen to give evidence and Mr Loughnan confirmed that had he done so Trafigura would have paid his travel and expenses. His decision not to do so is consistent with any number of innocent explanations, such as the absence of any personal interest in the outcome of these proceedings, the demands on his time of his business or his family, a belief there was no real case to answer and no real risk to his reputation, an absence of any specific recollection about these events eight years

ago, or a multitude of other innocent reasons. I decline to draw an adverse inference from his failure to give evidence.

76. The allegation of fraud and dishonesty against Mr Jasani is hopeless. He appears to have been singled out because he is the only one of Mr Gupta, Mr Gokhale and Mr Jasani who was not attending to give evidence as a witness, and therefore not able to deny the speculative theories advanced by Mr Power on behalf of Rasmala. I deprecate this cynical approach to the plea of a serious allegation of impropriety. It is an allegation which must not be made unless there is credible evidence supporting it and there must be a genuine belief on the part of the client that the allegation is true. There is no credible evidence of Mr Jasani's dishonesty, but even if there were, it is not acceptable to allege fraud because the plea can be justified, unless there is a genuine belief that the allegation is true. It is not acceptable that an allegation of fraud is made for tactical reasons just because the plea can be justified. Whatever may have been the picture as it seemed to Rasmala when these proceedings were commenced, by the time of the trial and the abandonment of the allegations of dishonesty against Mr Gupta and Mr Gokhale I very much doubt, and I have seen and heard no evidence, that anyone on the Rasmala side genuinely believed that Mr Jasani and Trafigura were dishonestly turning a blind eye to the fraud perpetrated against Rasmala.

77. I will add that the evidence of Mr Jasani's superiors and colleagues, Mr Bajaj and Mr Loughnan, which I accept, was that Mr Jasani was honest and trustworthy and they did not believe he would have behaved dishonestly as Rasmala alleges.

Unjust enrichment

78. In a claim for unjust enrichment the Claimant must prove (1) that the Defendant has been enriched, (2) that the enrichment is at the Claimant's expense and (3) the enrichment at the Claimant's expense is unjust. If the Claimant does so then it is for the Defendant to prove that there is a defence (such as the provision of good consideration or a change of position). See *Samsoondar v Capital Insurance Co Ltd* [2021] 2 All ER 1105 per Lord Burrows at [18], *Barton v Morris* [2023] AC 684, per Lady Rose at [77].

Enrichment

79. Rasmala made the Payments to Trafigura. Trafigura accepts that it was enriched as a result of receiving them.

At the Claimant's expense

80. It is not enough that Trafigura has received a benefit from the payments. A reversal of unjust enrichment is premised on Rasmala having suffered a loss because of the provision of the benefit; see *Investment Trust Companies v Revenue & Customs Comrs* [2018] AC 275 at [43]-[44]. On the face of it Trafigura has been benefitted by the value of the payments made to it directly by Rasmala and Rasmala has suffered a reciprocal loss of the value of the payments.

81. However, Trafigura says that the payments were made by Rasmala as Farlin's agent pursuant to the TPAs and discharged Farlin's debts to Trafigura. Therefore, Trafigura says, the payments were made at Farlin's expense and not Rasmala's expense. This requires consideration of the effect of the arrangements between each of the three parties with each other.

(i) Rasmala and Farlin

82. The implementation of the MFA in respect of each transaction leading to each payment had the following consequences:

i) Rasmala was the intended purchaser of the coal in the bogus contract with Trafigura.

ii) Farlin was to act as Rasmala's undisclosed agent (and Rasmala was to be an undisclosed principal) in relation to that bogus contract.

83. As between Rasmala and Farlin, Rasmala was not acting as Farlin's agent in respect of any of the Payments. The Payments were by Rasmala as the intended principal. Farlin's authority to act as Rasmala's agent was limited to giving effect to contracts which did not in fact exist, and so Farlin's actual authority to act on behalf of Rasmala was for present purposes, non-existent.

(ii) Farlin and Trafigura

84. Trafigura understood that it was dealing with Farlin as principal in relation to contracts for the supply of coal. By the TPAs Farlin agreed with Trafigura that Rasmala was Farlin's payment agent and authorised Trafigura to use the sums received from each Payment in the manner specified in the TPAs. As between Farlin and Trafigura, Farlin held out Rasmala as its agent and could not now deny, as against Trafigura, liability for steps within that apparent authority which were taken by Rasmala. Rasmala did not agree to the matters in the TPA – its signature to each of the TPAs was forged. Farlin did not have actual authority to bind Rasmala to the TPAs – see the preceding paragraph.

(iii) Trafigura and Rasmala

85. There was no contractual relationship between Trafigura and Rasmala. Rasmala believed it was the intended undisclosed principal on fictitious contracts for the supply of coal by Trafigura. Trafigura believed Rasmala was providing finance to Farlin and had agreed to the application of the Payments on a FIFO basis pursuant to the TPAs – but Rasmala knew nothing about the TPAs, Farlin had no authority to bind it to the TPAs and its signature was forged. As between Trafigura and Rasmala, Farlin's fraudulent and unauthorised holding out of Rasmala as Farlin's paying agent had no legal effect.

(iv) Drawing the strings together

86. This analysis shows that the Payments were not made by Farlin. They were not made by Rasmala as Farlin's agent. Farlin had no authority to determine how those payments should be used. They did not discharge Farlin's debts.

87. The consequence is that Trafigura's enrichment from the payments was at the expense of Rasmala and not Farlin.

Which is Unjust

88. In this context, the Claimant must show that there exists one of the established unjust factors (sometimes referred to as grounds for restitution), or at least some incremental development of it; *Samsoondar* at [19]-[20]. A payment made because of a mistaken belief as to the true facts is a long-established unjust factor and the payer is *prima facie* entitled to recover the payment; see *Barclays Bank Ltd v WJ Simms, Son & Cooke (Southern) Ltd* [1980] QB 677 at 695C to 696C. Although some time was spent at trial exploring whether Rasmala could and should have spotted Farlin's fraud, it is well established that a claimant may recover, however careless it may have been; *Dextra Bank v Bank of Jamaica* [2001] UKPC 50 at [45].

89. The only pleaded mistake on which Rasmala now relies is that Rasmala made the payments because it mistakenly believed that the sums were due under the contracts presented to them by Farlin. In fact, the contracts presented by Farlin to Rasmala were fraudulent and there was no payment obligation under them. Mr Bitcon's witness statement evidence that each payment was made as an advance payment against each of the sale contracts so presented, and his explanation of the process by which that occurred, was not challenged. The payments were made by Rasmala because of its mistaken belief that it was making advance payments on genuine contracts.

90. Mr Kitchener faintly submitted that Rasmala could not show that the payments had been made by mistake. He pointed to the following facts: (a) that only Mr Bitcon gave evidence, (b) that Mr Bitcon had only authorised Payments 3 and 5, (c) that on Payment 1 (at least) the documents purported to record and agree things which the parties knew were not happening or going to happen in practice. This all points to a casual approach to making the legal documentation reflect the actual transaction being implemented. But Mr Kitchener goes further. He says it is impossible to know what was in the minds of the individuals who signed those documents when they have not given evidence, and impossible to know whether they would have cared if the funds applied were applied for historic debts. That may or may not be so, but that is not the relevant mistake – if Rasmala had not made a mistake in thinking it was making payments in respect of genuine contracts the payments would not have been made.

Good consideration

91. It is a defence to a claim for unjust enrichment in respect of a payment that the payment is "*made for good consideration, in particular if the money is paid to discharge, and does discharge, a debt owed to the payee (or a principal on whose*

behalf he is authorised to receive the payment) by the payer ***or by a third party by whom he is authorised to discharge the debt***" (emphasis added); *Barclays Bank Ltd v WJ Simms, Son & Cooke (Southern) Ltd, per* Goff J at 695.Trafigura contends that the Payments were applied to discharge Farlin's debts to Trafigura, the debts were in fact discharged and therefore Trafigura gave good consideration for the Payments.

92. When it made the payments, Rasmala did not intend to discharge Farlin's old debts – it intended to purchase coal pursuant to the Murabaha arrangements. It did not know of or sign the TPAs which purported to make it Farlin's paying agent with authority to discharge specific debts of Farlin, and so the TPAs had no legal effect on Rasmala. As discussed above at [82] to [87], Farlin's unauthorised holding out of Rasmala to Trafigura as its paying agent in the TPAs does not bind Rasmala. Rasmala was not Farlin's agent. Farlin had no authority to bind Rasmala as to how the Payments made by Rasmala were to be applied by Trafigura. The Payments did not discharge Farlin's debts.

Change of Position

93. A Defendant can escape liability in unjust enrichment where his position has so changed that it would be inequitable in all the circumstances to require him to make restitution, or alternatively restitution in full; *Lipkin Gorman (a Firm) v Karpnale Ltd* [1991] 2 AC 548. The defence is established in respect of a mistaken payment if the Defendant has in good faith changed his position in some way which, but for the payment he would not have done, and he would now suffer substantial detriment if required to repay all, or alternatively part of the sum received; see *Australian Financial Services and Leasing Pty Ltd v Hills Industries Ltd* [2014] HCA 14 per Gageler J at [157]-[158].

But for

94. There must be a relevant causal connection between the enrichment and the change of position. Subjective knowledge of, and voluntary action in reliance upon, an enrichment is not necessary. It is sufficient that the defendant's position has materially altered and the enrichment has caused that change of position; *Delta Petroleum (Caribbean) Ltd v British Virgin Islands Electricity Corp* [2021] 1 WLR 5741 at [62]. However, it follows that where the change of position has been caused by voluntary action, the voluntary action must have been caused by the enrichment.

95. Rasmala contends that Trafigura relied upon the TPAs to discharge Farlin's historic debts and so its change of position was caused by the TPAs and not the receipt of the Payments. In relation to Payment 1, Trafigura knew that Rasmala had not made the payment to discharge Farlin's historic debts. Trafigura's witnesses confirmed that if Farlin had not provided a TPA purportedly signed by Rasmala for Payment 1 the payment would have been returned to Rasmala.

96. Rasmala relies upon the case of *Rose v AIB Group* [2003] 1 WLR 2791. In that case, the defendant bank released a legal charge on the basis that payments received by it from its customer company had discharged the company's overdraft, even though it knew that the liquidator of the customer company had a good restitutionary claim for the return of those payments. Warren J rejected the bank's change of position on two alternative grounds. Firstly, since the bank had known when it released the charge that there was at least significant exposure to a restitutionary claim by the liquidator, its change of position in releasing the charge, albeit in good faith, had been made in reliance not on the initial validity of the credits to the overdrawn account but on an assumption that the liquidator would not make a claim to assert their invalidity. Secondly, and alternatively, that the bank had taken a risk that its assumption that no claim would be made was wrong and it could not complain when the risk became a reality.

97. *Rose v AIB Group* is a case where what has caused the change of position is not the payment, which the Defendant knew was invalid, but the belief that the claim would not be enforced; see paragraphs [55] and [56]. What *Rose v AIB Group* shows is that where a change of position is caused by voluntary action, then it will be a question of fact whether that voluntary action was caused by the payment or by something else.

98. Trafigura says that the Payments caused Trafigura to continue to trade with, and supply coal to, Farlin. Trafigura's witnesses, such as Mr Maroo, were clear, and I accept, that if the Payments had not been made, further deliveries to Farlin would not have been made because they would have exceeded Farlin's credit limit with Trafigura. There is an example of this happening on the shipment in February 2018, where Trafigura refused to allow the MV Ocean Beauty to discharge its cargo at port to Farlin until Payment 4 was made. Because the Payments were received, a further 15 new contracts were entered into by Trafigura for the supply of coal to Farlin between 22 September 2017 and 8 May 2018 with an invoice value of just under $60 million.

99. TPAs are not common or standard practice in the industry, but it is Trafigura's policy to have them whenever it receives a payment from a third party. They gave Trafigura a contractual right as against Rasmala and Farlin to treat payment from Rasmala as payment on behalf of Farlin in respect of a specified contract. They avoided misunderstanding and provided transparency as to how Trafigura would deal with the monies it had received. But had there been no payment there would have been no TPA. A TPA was simply a step Trafigura required to process the payment it had received or was to receive. What caused Trafigura to continue to trade with Farlin was that it had received a payment on what it considered were satisfactory terms as to how it could use that payment. That is a sufficient causal connection between the enrichment and the change of position.

100. It does not matter that it may not have been Rasmala's fault that its signature was forged on the TPAs, or that it may have been negligent for Trafigura not to have picked that up (as long as it was acting in good faith – see below). The concept of relative fault is not part of the English law of restitution; *Dextra v Bank of Jamaica* [2001] UKPC 50.

101. Rasmala contends that as a matter of risk allocation Trafigura should take the risk that the TPAs are invalid. But this is a case, unlike *Haugesund Kommune v Depfa ACS Bank* [2012] QB 549 on which Rasmala relies, where the money was paid to Trafigura to keep and treat as its own money. In *Haugesund* the defendant received money knowing it had to be repaid. The Court of Appeal considered it obviously inequitable for the defendant who then lost much of the money in disastrous investments to rely on that as a change of position so as to resist repayment. The obligation and risk of repayment had always been assumed by the defendant. In this case there was no expectation by Rasmala or Trafigura that any of the Payments would ever be repaid. Whether internally the Payments were treated by Trafigura as discharging a historic debt of Farlin or treated as discharging a new debt of Farlin was immaterial. It was paid with the intention, and received with the understanding, that it was to be used to meet Farlin's obligations to Trafigura and that it would become Trafigura's money. The payment, however it was applied, had the effect of reducing Farlin's overall liability to Trafigura below Trafigura's credit limit and so permitted future trading. In such circumstances, I do not consider that it is inequitable for Trafigura to rely on its continued trading with Farlin as a change of position.

102. It follows that the absence of a TPA for Payment 5 does not prevent Trafigura having a change of position defence. The change of position is its continued trading with Farlin because of the payment.

Detriment

103. Detriment does not necessarily mean financial detriment or detriment capable of being measured in financial terms; *Commerzbank AG v Price-Jones* [2003] EWCA Civ 1663 per Mummery LJ at [39] and Munby J at [65]-[66]. Where the detriment can be readily quantified change of position may provide a defence to only part of a claim, and only to the extent of the detriment. Where the detriment is not quantifiable, but is substantial and irreversible, it may be inequitable to require any repayment; see for example *Australian Financial Services* per French CJ at [4],[17],[22],[27]-[31], joint at [95]-[96], Gageler J at [158] and [166].

104. Surprisingly, there is no documentary record of the running account between Farlin and Trafigura. Nevertheless, Mr Maroo's evidence, which I accept, is that immediately before Payment 1, Farlin had reached the extent of its credit limit with Trafigura. That credit limit was $10 or 11 million. At that point Trafigura had an additional exposure on demurrage of somewhere between $1.7 and 3 million giving a total approximate exposure somewhere between $12m and $14m. When Trafigura eventually stopped trading with Farlin it was owed approximately $12 million and about $3 million in demurrage – a total of about $15m. Trafigura was in a slightly worse position from having continued to trade with Farlin then it was before Payment 1. Trafigura was able to make some recoveries from Farlin and to claim on its credit insurance to reduce its overall loss to $7 to 7.5 million. Credit insurance would also have been available if it had stopped trading with Farlin before Payment 1 and sought to recover the then outstanding sum. It is impossible to say with certainty whether it would have been able to make greater or lesser recoveries if it had stopped trading with Farlin before Payment 1 was received.

105. It is also not clear what profit Trafigura made on the 15 further contracts after Payment 1, but it seems that the margins are small. Mr Loughnan said that the profit margin on a sale of coal might be half a per cent or one per cent. This would suggest Trafigura has made less than £600,000 in profit from the 15 contracts. In substance, apart from that small profit margin, the monies received by Trafigura in respect of Farlin's contracts were being used to meet the costs of supplying coal to Farlin.

106. When one looks at these figures, it is obvious that Trafigura would be financially worse off if it was required to repay the Payments in full or even in part. It has continued to trade with Farlin since Payment 1 and continued to supply coal. If it must repay Rasmala, then it will incur a loss of a further $22 million on top of the $15 million which it was owed when it ceased trading - $37 million. That compares to its exposure of $12 to $14 million before Payment 1. (In these figures, I have ignored the profit on the 15 contracts for the purposes of simplicity as it is too small to make any significant difference).

107. In addition, Trafigura lost the opportunity to stop trading with Farlin before Payment 1 and to take steps to recover its then debts. Mr Maroo's evidence was that Trafigura's dealings with Farlin would have been very different if the Payments had not been made. His credit team would have prevented further deliveries to Farlin and further contracts with Farlin, and Trafigura would have placed pressure on Farlin to pay, involving the legal team if the payment situation did not improve. That is a lost opportunity to take a different course which is not quantifiable. It is impossible to say what recoveries Trafigura might have achieved if it had followed that course, but it is possible that it would have been able to make greater recoveries than it was able to make when Farlin eventually failed. This is not a remote possibility. Farlin had access to several sources of financing and it is not fanciful to suggest that if Trafigura had demanded repayment Farlin would have found funds from elsewhere to repay, so that it could keep trading with other suppliers. This is irreversible detriment which is substantial. While I do not accept Mr Nadin's submission that unquantifiable detriment provides Trafigura with a trump card which makes its change of position defence unanswerable, I accept that substantial and irreversible detriment may mean that the retention of a payment made by mistake is not a disproportionate or unfair outcome.

108. In the circumstances of this case, it would be inequitable to require Trafigura to make any repayment of the Payments.

In good faith

109. In *Niru Battery Manufacturing Co v Milestone Trading Ltd* [2002] EWHC 1425, in a passage approved by the Court of Appeal, Moore-Bick J declined to attempt a definition of good faith for the purposes of a change of position defence but said that good faith is capable of embracing a failure to act in a commercially acceptable way and sharp practice of a kind that falls short of outright dishonesty. Clarke LJ in the Court of Appeal said that the question is whether the recipient's knowledge is such that, with all the other facts and circumstances of the case, it would be inequitable to allow the recipient to retain the benefit; *Niru Battery*

Manufacturing Co v Milestone Trading Ltd [2004] QB 985 at [162] . If a recipient subjectively has, or thinks he has, good reason to believe that the payment is mistaken then he will usually not be acting in good faith if he changes his position without first making inquiries of the payer; *Niru* (Moore-Bick J) at [135]. Knowledge of facts giving rise to a right to repayment, even if that consequence is not appreciated, will usually defeat the defence; *Niru* (CA) at [153]. See also *Commerzbank AG v Price-Jones* [2003] EWCA Civ 1663 where the defendant failed to appreciate the payment was repayable because of his own negligent mistake.

110. Trafigura's insistence on TPAs was good commercial practice. No one at Trafigura knew the terms of the Murabaha financing, and this was as Rasmala intended, having authorised Farlin to act as its undisclosed principal. As far as Trafigura was aware, Rasmala was simply providing finance to Farlin. I accept the evidence of Trafigura's witnesses that they would not normally deal directly with a customer's financiers and that they thought they were dealing with Rasmala through Farlin. The TPAs appeared on their face to resolve any doubt as to how Trafigura could use the Payments. The fact that Rasmala made further payments after Payment 1 simply reinforced the belief that all was in order.

111. Rasmala says that Trafigura was on inquiry as to whether Rasmala had consented to the TPAs. This is because Trafigura understood that Rasmala had made Payment 1 in respect of future deliveries and the email sent initially by Farlin when presented with TPA 1 was that Rasmala would "*never*" sign a TPA permitting the application of Payment 1 to historic debts (see [35], [36] and [75(iii)] above). Rasmala also relies on the fact that there were other anomalies. Trafigura's Treasury team were clearly unable to match the Payments to existing invoices and asked to which debts they should be allocated. Further Trafigura's standard practice of copying in the third party in communications and its standard practice as to which bank account payments were made to were not followed ([36] and [57] above). In failing to make enquiries of Rasmala directly, Rasmala says that Trafigura's approach was casual and insouciant and not as a reasonable person would have acted.

112. I reject that submission. These matters fall a long way short of establishing that anyone at Trafigura had knowledge of facts which gave them, or should have given a reasonable person, reason to believe that the TPAs had not been signed by Rasmala or that the Payments were repayable. The "never" email, which is the high point of why Rasmala says Trafigura was or should have been on inquiry, is (as discussed above at [75(iii)]) an unremarkable example of the to-and-fro of commercial negotiation and it did not have the immutable status to which Rasmala sought to elevate it. The fact that Farlin relented and later said it had managed to persuade Rasmala to enter TPA1 was not a red flag.

113. I am satisfied that Trafigura's acceptance of the Payments and continued trading with Farlin in consequence was without knowledge or suspicion of anyone at Trafigura that the TPAs were invalid or the Payments were repayable and was in good faith for the purposes of a change of position defence.

Conclusion

114. Rasmala's personal claim for restitution in unjust enrichment fails. It had a proprietary claim in the alternative that Trafigura held the Payments on constructive trust from the point that it had actual or constructive notice that the Payments were repayable, but as Rasmala has failed to establish that the Payments are repayable the constructive trust claim fails too. The question of whether Rasmala needed to give credit for the payments it received from Farlin in discharge of Payments 1 and 2 and which it reallocated to non-Trafigura contracts also does not arise. No term of the MFA was identified, and no authority was cited by Rasmala to support its claimed entitlement to re-allocate a payment made by a debtor to discharge a specified debt towards the discharge of another debt. I would have found that it was not open to Rasmala to reallocate a payment made by Farlin for the discharge of a specific debt it owed Rasmala without Farlin's agreement.