Neutral Citation Number: [2025] EWHC 1464 (Comm)

Case No: CL-2024-000700

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

7 Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 01/05/2025

Before :

THE HON. MR JUSTICE BRYAN

- -

Between :

(1) MSC MEDITERRANEAN SHIPPING COMPANY S.A.

(2) MEDITERRANEAN SHIPPING COMPANY NIGERIA LTD

(3) MV MSC LIPSIA III

Claimants / Applicants

- and -

(1) INTERGLOBAL TECHNOLOGIES LIMITED

(2) INTERGLOBAL CONSTRUCTION LTD

(3) ZHENGZHOU SANQGROUP MACHINERY AND EQUIPMENT CO. LTD

Defendants / Respondents

- -
- -

Mr Edward Jones and **Ms Aphiwan Natasha King**
(instructed by **Wikborg Rein LLP**) for the **Claimants**
Mr Oba Nsugbe KC (instructed by **Akin Palmer LLP**) for the **Defendants**

Hearing date: 1 May 2025

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Approved Judgment

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MR JUSTICE BRYAN :

A. INTRODUCTION

1. The parties appear before the Court on the adjourned return date in relation to the Interim Anti-Suit Injunction (the "Interim ASI") granted by Dias J on 20 December 2024 in favour of MSC Mediterranean Shipping Company S.A. ("MSC") and two other entities who have each been sued in Nigeria (collectively the "Claimants") by Interglobal Technologies Limited and Interglobal Construction Ltd (collectively "Interglobal") (the consignees) and Zhengzhou Sanqgroup Machinery and Equipment Co. Ltd ("ZSME") (the shippers) in relation to contracts of carriage in regards to containers carried by MSC from China to Nigeria pursuant to MSC bills of lading which the Claimants say contain terms including an exclusive jurisdiction clause in favour of the High Court of England with English law to apply, in breach of which the Claimants have commenced proceedings in Nigeria (and which they have continued notwithstanding the terms of the ASI).

2. There are two applications for determination before the Court today:

   (1) Interglobal's application for the Interim ASI to be discharged / set aside (and the Claimant's application for the ASI to be continued until trial in this jurisdiction), and

   (2) The Claimants' application for an Interim Anti-Anti Suit Injunction ("AASI") restraining the Defendants from bringing any proceedings in Nigeria seeking to restrain or require termination of or impose sanctions upon or otherwise interfere with the Interim ASI (set against the backdrop of further Nigerian proceedings to do just that, albeit that those proceedings have recently been discontinued).

3. The dispute relates to the carriage of containers pursuant to contracts of carriage contained in four bills of lading Nos. MEDUEM356618, MEDUEP002052, MEDUEP716214, and MEDUQR070952 (the "Bills of Lading"). As already noted, the container line MSC (the First Claimant) was the carrier under the Bills of Lading, whilst the First and Second Defendants (Interglobal) were the consignees and the Third Defendant (ZSME) was the shipper.

4. Following delivery of the containers under the Bills of Lading, the Defendants brought proceedings against the Claimants in the Nigerian courts relating to alleged breaches of contract under the Bills of Lading (the "Nigerian Proceedings"). Those proceedings included claims for the return of *c.* USD 32,000 of container demurrage; and what are described as "punitive", "exemplary" and "loss of reputation" damages in the sum of around USD 35 million.

5. In order to secure their claims, the Defendants obtained an order for the arrest of a laden container ship, the MSC Tasmania (the "Vessel"), at Port Harcourt, Nigeria on 22 November 2024 (the "Arrest").

6. On 19 December 2024, the Claimants sought urgent interim relief from the Commercial Court on the basis that each of the Bills of Lading contained an exclusive jurisdiction clause in favour of the English courts. At the ex parte hearing, Dias J granted the Interim ASI, on the basis that the Nigerian Proceedings were brought in breach of the exclusive

jurisdiction clauses, and that the Arrest was vexatious and oppressive in circumstances where, amongst other matters, the Defendants were refusing reasonable alternative security (as per the Order of 20 December 2024).

7. The Defendants have failed to comply with the Interim ASI, and the Nigerian Proceedings have not been stayed or discontinued.

8. The Arrest was also maintained notwithstanding the provision of a P&I Club Letter of Undertaking in the sum of USD 500,000 by way of alternative security as ordered by this Court. As a consequence, the Claimants were ultimately forced to tender a bank guarantee of USD 10 million in order to secure the Vessel's release, which occurred on 23 January 2025.

9. The Claimants seek the continuance of the Interim ASI to trial in this jurisdiction. In contrast, Interglobal applies to discharge the Interim ASI on four grounds (per its Application Notice and Further Information):

   (1) First, that Interglobal is not bound by the terms of the Bills of Lading (including the exclusive jurisdiction clauses therein);

   (2) Second, that the jurisdiction clauses are "void" as a consequence of Section 20 of the Nigerian Admiralty Jurisdiction Act 1991;

   (3) Third, that the Claimants have submitted to the jurisdiction of the Nigerian Courts; and

   (4) Fourth, that the Claimants failed to comply with their duty of full and frank disclosure on the ex parte hearing before Dias J.

10. For their part, the Claimants submit that such grounds are misconceived, and at the heart of the Defendants' stance (and application) is a fundamental failure to focus on the relevant contract of carriage and its terms in circumstances in which (say the Claimants), Interglobal is plainly not only bound by the terms of the Bills of Lading (including as to the exclusive jurisdiction clause and English law as the law governing the contract of carriage), but the Defendants are themselves relying upon the contract of carriage contained in or evidenced by the Bills of Lading by expressly suing the Claimants in the Nigerian Proceedings for "breach of the contract of shipment in Bill of Lading No MEDUQR070952" as is clear from the Defendants' own Writ of Summons in Nigeria.

11. In such circumstances the Claimants submit that a provision of a foreign statute (s.20 of the Nigerian Admiralty Jurisdiction Act 1991) is of no relevance to a contract of carriage governed by English law, and in any event has no bearing on the determination of the issues before the Court. The Claimants deny they have submitted to the jurisdiction of the Nigerian Courts (asserting that the steps they have taken, to date, in Nigeria have been limited to those necessary to protect the Claimants' property and to procedural matters), and assert that they fully complied with their duty of full and frank disclosure on the ex parte application.

12. As already foreshadowed, in late February 2025, the Second Defendant brought a further set of proceedings in Nigeria seeking an anti-suit injunction against these

proceedings, as well as what are described as further "general, exemplary, and punitive damages" in an amount of GBP 10 million. These additional proceedings were received by the Second Claimant on 7 March 2025.

13. On 2 April 2025 (and in the context of the adjourned return date on the Interim ASI of 1 May 2025), the Claimants made a further application to the Court requesting an interim anti-anti-suit injunction to be granted until trial (the "Interim AASI"), such application being supported by the fourth witness statement of Mr Ian Chetwood ("Chetwood 4").

14. Extensive correspondence then followed between the parties, with the Defendants objecting to such evidence and the hearing of the Interim AASI application at the present hearing. In the event the matter came before Foxton J as paper applications judge who directed on 14 April 2025 that the Claimants AASI application was to be listed at the same time as the Defendants' application to discharge the Interim ASI, and that the Claimants' evidence was to be limited to that required for the AASI application. It was also directed that if the Claimants wished to adduce further evidence in response to the Defendants' discharge application, they must file an application. In the event, it was the Defendants who filed response statement to Chetwood 4 in the form of a fourth witness statement of Godswill Mrakpor dated 25 April 2025 ("Mrakpor 4").

15. Following the ASSI application, on 14 April 2025, Interglobal discontinued the new proceedings in Nigeria, but has declined to provide undertakings that they will not recommence such proceedings in the future and has declined to pay the Claimants' costs of the application.

16. The Claimants' position is that Interglobal have never provided any clear or satisfactory explanation as to why the new Nigerian proceedings were discontinued. In this regard, in Interglobal's covering letter to the Court it was stated that those proceedings were discontinued "to avoid the danger of unfairly introducing fresh evidence in the ASI matter and the risk of the case not completing within a day…". The Claimants' position is that there remains a real and genuine concern that further proceedings of a similar sort may be instigated, and accordingly maintain their AASI application.

17. At the time of skeleton arguments for this hearing, there was continued debate as to the scope of Chetwood 4 and whether it should be admitted in its entirety on both applications, and if so whether the Defendants should be permitted to rely upon Mrakpor 4 in response. I decided at the start of the hearing that the most efficient use of time would be to admit both Chetwood 4 and Mrakpor 4 without debate on what evidence went to which application, as any other course would, in reality, have de-railed the hearing given the time available, whilst allowing the parties to make any points they wished as to what particular evidence was relevant to what issues.

18. Accordingly, there is before me the first witness statement of Mr Chetwood dated 19 December 2024 ("Chetwood 1"); the second witness statement of Mr Chetwood dated 24 January 2025 ("Chetwood 2"); further information from Interglobal dated 21 February 2025 (the "Further Information"), the second witness statement of Mr Godswill Mrakpor dated 7 February 2025 ("Mrakpor 2"); the first witness statement of Mr Oluwafemi ("Femi") Peter Atoyebi dated 6 March 2025 ("Atoyebi 1"); the third witness statement of Mr Chetwood dated 7 March 2025 ("Chetwood 3"); the first witness statement of Mr Wasiu Akindele dated 14 March 2025 ("Akindele 1"); the third

witness statement of Mr Mrakpor dated 14 March 2025 ("Mrakpor 3"); as well as Chetwood 4 and Mrakpor 4. I confirm I have read, and had regard to, all such evidence.

19. I also have detailed Skeleton Arguments from Mr Oba Nsugbe KC on behalf of the Defendants, and from Mr Edward Jones and Ms Aphiwan Natasha King on behalf of the Claimants. I am grateful to all counsel for the quality of their written and oral submissions before me.

B. THE FACTS

20. The factual background is set out in some considerable detail in the evidence before me which I have borne well in mind. I identify below those matters which it is necessary to set out to place the applications before me in context. There is also before me a helpful Chronology of key dates prepared by the Claimants.

B.1 The Parties

21. The First Claimant, MSC, is a well-known international shipping company based in Switzerland, and was the contractual carrier under the original Bills of Lading. The Second Claimant ("MSC Nigeria") is MSC's local shipping office in Nigeria. The Third Claimant ("MSC Lipsia III") is a vessel within the MSC group which the Defendants originally sought to arrest, but it is still named as a party in the Nigerian proceedings together with MSC and MSC Nigeria.

22. The First Defendant was the named consignee under the Bills of Lading. The evidence before me, which is relevant, is that the First and Second Defendants, which I have referred to collectively as "Interglobal" are in fact one company, which was originally named Interglobal Technologies Ltd and changed its name on 18 March 2024 to Interglobal Construction Ltd (the entity is registered with the Nigerian Corporate Affairs Commission under company number 264349).

23. It appears from Interglobal's own Statement of Claim in the Nigerian Proceedings (at paragraphs 1 and 3) that Interglobal is in the business of undertaking construction and infrastructure projects in Nigeria. It states that it is a "major Nigerian construction company and contractor to the Federal Government of Nigeria … as well as large corporations", and "regularly use[s]" MSC's services for the importation and shipment of equipment" (which is, itself, of potential relevance in relation to any professed ignorance of MSC's Terms).

24. The Third Defendant, ZSME, is a Chinese manufacturing company and was the shipper of the containers carried under the Bills of lading. Whilst ZSME is a claimant in the Nigerian action, it appears from evidence before me, including emails from ZSME, that the Nigerian proceedings may have been brought without their knowledge and assent. Interglobal have neither addressed this issue, nor taken any steps to remove ZSME from the Nigerian proceedings. In such circumstances if I conclude that the Claimants are entitled to the relief sought, I am satisfied that such relief should also be granted against ZSME.

B.2 The Bills of Lading

25. The dispute between the Claimant and Defendant relate to contracts of carriage contained in and/or evidenced by four Bills of Lading, MEDUEM356618 dated 6 December 2023, MEDUEP002052 dated 8 January 2024, MEDUEP716214 dated 11 April 2024, and MEDUQR070952 dated 4 June 2024.

26. The Bills of Lading were standard form non-negotiable bills of lading issued by MSC as "Carrier". As is commonplace (if not usual) the Bills of Ladings comprised of both information on the front side and detailed terms and conditions on the reverse side (the "MSC Terms"). The front facing page of the Bills of Lading refers to the terms on the reverse, and also refers to a larger, accessible version found online on MSC's website. I gratefully adopt, and set out in Schedule 1 hereto, Appendix 1 to the Claimant's Skeleton Argument which sets out terms in each Bill of Lading.

27. The process by which each of the Bills of Lading is issued is addressed in Chetwood 3 (at paragraphs 13 to 15), which reflects the process employed by MSC internationally. In summary, I am told that there is contact with shippers' agents, MSC provides a booking confirmation and the draft Bills of Lading and then the original Bills of Lading were issued to those agents.

B.2 The Relevant Terms of the Bills of Lading

28. The terms of the Bills of Lading are set out in Schedule 1 hereto. However of particular relevance to the issues arising are the following:

    (1) Clause 1 provided that the Merchant was defined as "the Shipper, Consignee, holder of this Bill of Lading, the receiver of the Goods and any Person owning, entitled to or claiming the possession of the Goods or of this Bill of Lading or anyone acting on behalf of this Person."

    (2) Clause 2 provided, in relevant part, that "[t]he contract evidenced by this Bill of Lading is between the Carrier and the Merchant."

    (3) Clause 10.3 provided that any suit by the Merchant shall be filed exclusively in the High Court of London and English law shall exclusively apply.

B.3 Delivery under the Bill of Lading

29. The evidence before me (as set out in Chetwood 3), is that by a process known as "telex release", the shipper requested that MSC deliver the goods to the consignee without production of the original Bills of Lading at the discharge port, and that if MSC so agreed, the original Bills of Lading would be returned or surrendered to MSC. In each instance, that was duly agreed. The original Bills of Lading were thus returned and retained in MSC's office in China.

30. The contracts of carriage contained in the Bills of Lading were performed. However, some containers (which belonged to MSC) were returned late by Interglobal. As such, and pursuant to clause 14.8 and 14.9 of the MSC Terms, container demurrage and detention charges became due to MSC. There were then delays to payment, and MSC exercised its express contractual right to withhold containers shipped under

MEDUQR070952, which arrived on around 26 July 2024, in order to secure payment of the overdue sums (as addressed in Chetwood 1, at paragraphs 17 to 20).

31. In August 2024, Interglobal asserted damages claims relating to alleged delays in the carriage of the containers, in the sum of USD 2.1 million. There was no suggestion, at that stage, that the Defendants would bring those claims in Nigeria.

32. The outstanding sums were eventually paid and the containers subject to Bills of Lading MEDUQR070952 were released on 9 September 2024.

B.4 The Nigerian Proceedings

33. On 30 September 2024 the Defendants issued the Nigerian Proceedings against the Claimants, and the same were served on MSC (at their head office in Geneva) on 24 October 2024.

34. The relief sought by the Defendants in the Nigerian Proceedings includes:

    (1) Declarations that the Claimants breached the contract of carriage under Bill of Lading MEDUQR070952;

    (2) Claims for the repayment of demurrage and detention charges of NGN 49,831,137.50 (around USD 32,000); and

    (3) Consequential loss including what are described as "punitive", "exemplary" and "loss of business reputation" damages said to total USD 35,000,000.

35. At the hearing on 20 December 2024, Dias J stated that the consequential loss claims, "have all the hallmarks of being spurious and speculative" and "at the very least, of dubious merit and unlikely to succeed in an English forum" - see the judgment reported at [2024] EWHC 3488 (Comm) at [6] (the "Judgment").

B.5 Arrest of the Vessel

36. Thereafter, and having issued the Nigerian Proceedings, the Defendants repeatedly attempted to arrest vessels operated by the MSC group, ultimately succeeding in arresting the Vessel on 22 November 2024.

37. On 28 and 29 November 2024, the Claimants filed a memorandum of conditional appearance in Nigeria, together with an application to set aside the Arrest. The Defendants filed their response to that application on 10 December 2024. The evidence before me is that the Claimants were advised that the Nigerian Courts would not be able to deal with the Arrest until after the holiday season, which was of considerable concern to MSC as the Vessel was partly laden at the time and had perishable cargo onboard.

B.6 The Ex Parte Hearing before Dias J

38. On 19 December 2024, the Claimants applied to the Commercial Court for the Interim ASI to restrain the Nigerian Proceedings and the Arrest. That application was heard ex parte on 20 December 2024 before Dias J who was satisfied to "the requisite degree of high probability" that the Bills of Lading contained exclusive jurisdiction clauses and that the disputes were subject to the jurisdiction of this Court (see Judgment at [5]). The

Court granted the Interim ASI, and further ordered that the Arrest be lifted on the condition that the Claimants tendered a P&I Club LOU in the sum of USD 500,000 (see Judgment at [14] and Order at paragraph 4).

B.7 Service of the Interim ASI

39. On 20 December 2024, the Claimants tendered an LOU in the sum of USD 500,000 and provided copies of the Interim ASI and supporting materials to Interglobal by email. Attempts were then made to effect service by courier, as permitted by this Court, but the evidence before me is that the documents were repeatedly rejected. Service was ultimately effected on 13 January 2025 through the Claimants' Nigerian lawyers. The Court has subsequently confirmed that service was regular (Order of Cockerill J dated 31 January 2025).

B.8 Release of the Vessel

40. The Defendants did not comply with the Interim ASI in respect of either the Nigerian Proceedings or the Arrest. The Claimants accordingly had no choice but to tender a bank guarantee (and in the sum of USD 10 million being the amount of security set by the Nigerian Courts) in order to secure the Vessel's release. The Vessel was released on 23 January 2025.

B.9 Continuance Hearing Before Cockerill J

41. The Interim ASI was listed for a return date of 31 January 2025 before Cockerill J, who was satisfied that the Interim ASI should be maintained until this hearing or further order, and also made various ancillary orders. In circumstances in which the Vessel has now been released, it was not necessary for the Claimants to maintain those parts of the Order dealing with the Arrest, and the Claimants did not pursue continuance of those aspects of the Interim ASI and arrest period.

B.10 Interglobal's Application for Discharge / Set Aside and the Claimant's Application for an AASI

42. By application notice dated 7 February 2025, Interglobal applied for the Interim ASI to be discharged and/or set aside. The Claimants considered that there was a lack of clarity as to Interglobal's case, and so the Claimants served a Request for Further Information (RFI) which Interglobal provided. After the exchange of evidence, but following Interglobal's commencement of further proceedings in Nigeria effectively seeking to restrain the proceedings in this jurisdiction, the Claimants issued the AASI application.

C. APPLICABLE PRINCIPLES OF ANTI-SUIT INJUNCTIONS

43. The applicable principles where an English Court will grant an anti-suit injunction, whether it be in relation to breach of an arbitration clause to arbitrate, or breach of an exclusive jurisdiction clause to proceed in the High Court, are well established and well-known, and were not in dispute before me.

44. It suffices to quote the convenient summary or Dias J in *Renaissance Securities (Cyprus) (Ltd) v Chlodwig Enterprises Lt & Ors* [2023] EWHC 2816 Comm at [34],

referring to *The Angelic Grace*, [1995] 1 Lloyd's Rep 87 (which are equally applicable to exclusive jurisdiction clauses):

> "The court has the power under section 37(1) of the Senior Courts Act to grant an interim injunction whenever it is just and convenient to do so. The touchstone is what the ends of justice require;
>
> ii) This power includes the grant of an ASI, although the jurisdiction to grant such injunction is to be exercised with due circumspection;
>
> iii) Where proceedings are brought in breach of an arbitration clause, an ASI will ordinarily be granted unless the respondent shows strong reasons to refuse relief: "*The Angelic Grace*", [1995] 1 Lloyd's Rep. 87;
>
> iv) The applicant must demonstrate to a high degree of probability that there is an arbitration clause which governs the dispute in question, whereupon the burden shifts to the respondent to show strong reasons for nonetheless refusing the injunction;
>
> vi) Where foreign judicial proceedings are commenced in breach of an arbitration clause, damages are generally not considered to be an adequate remedy: *The Angelic Grace* (supra);
>
> vii) An applicant must act promptly and before the foreign proceedings are too far advanced: *The Angelic Grace* (supra)."

D. THE ISSUES

45. I am satisfied that, as identified by the Claimants, there are three issues to be determined at the present hearing in relation to the ASI, which will be determinative in relation to whether the Interim ASI should be continued (as advocated by the Claimants) or should be set aside (as advocated by the Defendants):

    (1) Whether the Bills of Lading included the MSC Terms and the jurisdiction clauses;

    (2) whether Interglobal were bound by the MSC Terms and jurisdiction clauses; and

    (3) whether there are any other "strong reasons" to set the interim ASI aside.

46. Issues (1) and (2) are to be determined to the "high probability" standard. Issue (3) is a matter for the Court's discretion. I will address each of these issues in turn.

E. ISSUE 1 – THE TERMS OF THE BILLS OF LADING

47. The crucial (and fundamental) point to be noted at the outset is that it is not in dispute between the parties that there were contracts of carriage between them which were contained in and/or evidenced by the Bills of Lading. Indeed this is implicitly acknowledged in Mrakpor 2 at paragraph 10 where it is asserted "the terms and

conditions which were said to be incorporated **within the agreement between the Parties** were included in the front page of the Bill of Lading" (emphasis added).

48. Indeed, it is plain beyond per adventure that Interglobal is relying upon, and seeking to sue the Claimants in relation to, the contracts contained in and/or evidenced by the Bills of Lading. It is accordingly bound by the terms contained in such Bills of Lading. In this regard in the Nigerian Proceedings, Interglobal have specifically sought declaratory relief for "breach of the contract of shipment in Bill of Lading No MEDUQR070952", (an implicit averment that it has title to sue under the Bills of Lading).

49. It adopts the same position in these proceedings in the Further Information (which is supported by a Statement of Truth) in which it is expressly pleaded that "the "Parties" to the contract were (1) the First Claimant; (2) the Third Defendant (3) the First Defendant, as per the Bill of Lading" (see the Further Information at paragraph 1(a)).

50. At the heart of Interglobal's pleaded case (and submissions) is a denial that the MSC Terms on the reverse of the Bills of Ladings were validly incorporated into those contracts of carriage, including the exclusive jurisdiction clause (see the Further Information at paragraph 1(c)). That is a challenging submission given established authority on the point. It also appears from Interglobal's evidence – although the point is not addressed in Interglobal's Skeleton Argument but was developed orally before me – that Interglobal is alleging that the contracts are governed by Nigerian law and subject to the jurisdiction of the Nigerian courts. That is another challenging submission, given established authority on the point.

51. I am satisfied that there is no merit in either of these arguments, which fail to focus on the contract of carriage by which the goods were carried by MSC, and the initial parties thereto. The contracts of carriage were indisputably concluded between the carrier (MSC) and the shipper (ZSME) on the terms of the Bills of Lading. Each of the original Bills of Lading as issued incorporated the MSC Terms found printed on the reverse side of the Bills of Lading as well as on MSC's website as is clear from the copies of the signed and issued original bills that are before me.

52. It is equally well established that reference to the location of the MSC Terms on MSC's website would of itself be sufficient (see *Scrutton on Charterparties and Bills of Lading* (24th Edition) ("*Scrutton*") at paragraph 5-021; and *Maersk Guine-Bissau SARL v Almar-Hum Bubacar Balde SARL* [2024] EWHC 993 (Comm)).

53. Such concluded contracts of carriage between the carrier and shipper incorporated both the exclusive jurisdiction clause and English law governing clause. Indeed, the contrary is not arguable.

54. It is from this point onwards that the points made by Interglobal (as to whether or not it is bound by the MSC Terms) are simply not apposite. In this regard I am satisfied that Interglobal has failed to appreciate that, to the extent that it obtains any rights under the Bills of Lading *qua* consignee, it does so subject to all rights and obligations of the contracts of carriage as originally agreed, as is well established in the authorities and which I address under issue 2 below.

55. Accordingly there is very much more than a high probability that the Bills of Lading included the MSC Terms and the jurisdiction clauses. They did so as a matter of English law, and I so find.

F. ISSUE 2 – IS INTERGLOBAL BOUND BY THE BILLS OF LADING AND THE MSC TERMS?

56. This involves a consideration of English law and (principally) the operation of the Carriage of Goods by Sea Act 1992 ("COGSA 1992"). None of this was addressed or grappled with by Interglobal in its Skeleton Argument, and I am satisfied that Interglobal had no answer to the points made in this regard in the course of Interglobal's oral argument, as advanced by Mr Nsugbe KC.

57. Rather than grapple with such points, Interglobal have advanced allegations concerning the authority of the agent at the discharge port and points about whether they physically saw the reverse of the Bills of Lading, which I am satisfied are ultimately irrelevant to the issues that arise (including in the context of the allegations of a failure by MSC to make full and frank disclosure on the ex parte application as addressed below).

F.1 Carriage of Goods by Sea Act 1992

58. As a matter of English law, the MSC Terms were binding not only between the shipper and carrier, but also as between the shipper and consignee by operation of COGSA 1992.

59. As the putative proper law of the Bills of Lading is English law, the Court is bound to apply COGSA 1992 - see in this regard *Primetrade AG v Ythan Ltd ("the Ythan")* [2006] 1 Lloyd's Rep 457 at [14] to [15] (per Aikens J), and *Seniority Shipping Corp SA v City Seed Crushing Industries Ltd ("The Joker")* [2021] 1 Lloyd's Rep 169 at [16] (per Andrew Baker J).

60. Section 1 of COGSA 1992 provides (amongst other matters) as follows:

> "**1 Shipping documents etc. to which Act applies.**
>
> (1) This Act applies to the following documents, that is to say—
>
> (a) any bill of lading;
>
> (b) any sea waybill; and
>
> (c) any ship's delivery order.
>
> (2) References in this Act to a bill of lading—
>
> (a) do not include references to a document which is incapable of transfer either by indorsement or, as a bearer bill, by delivery without indorsement; but
>
> (b) subject to that, do include references to a received for shipment bill of lading.

> (3) References in this Act to a sea waybill are references to any document which is not a bill of lading but—
>
> (a) is such a receipt for goods as contains or evidences a contract for the carriage of goods by sea; and
>
> (b) identifies the person to whom delivery of the goods is to be made by the carrier in accordance with that contract."

61. In the present case, each of the Bills of Lading is "straight" and "non-negotiable", identifying a named consignee and as such cannot be endorsed to third parties (in this regard the "Consignee" box expressly states that the Bill of Lading is non-negotiable unless marked "To Order" or "To Order of"). Accordingly, the Bills of Lading fall within the statutory definition of (and are to be treated as) "sea waybills" under s.1(1)(b) of COGSA 1992, see in this regard *Scrutton* at paragraph 3-005. The Defendants refer to the bill as "telex bills" (whatever they may mean by that). In terms of their characterisation under COGSA 1992 they are clearly "sea waybills."

62. Section 2 and 3 of COGSA 1992 provide as follows:

> "**2 Rights under shipping documents.**
>
> (1) Subject to the following provisions of this section, a person who becomes—
>
> […]
>
> (b) the person who (without being an original party to the contract of carriage) is the person to whom delivery of the goods to which a sea waybill relates is to be made by the carrier in accordance with that contract; or
>
> (c) the person to whom delivery of the goods to which a ship's delivery order relates is to be made in accordance with the undertaking contained in the order, shall (by virtue of becoming the holder of the bill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.
>
> […]
>
> **3 Liabilities under shipping documents.**
>
> (1) Where subsection (1) of section 2 of this Act operates in relation to any document to which this Act applies and the person in whom rights are vested by virtue of that subsection—
>
> (a) takes or demands delivery from the carrier of any of the goods to which the document relates

> (b) makes a claim under the contract of carriage against the carrier in respect of any of those goods; or
>
> (c) is a person who, at a time before those rights were vested in him, took or demanded delivery from the carrier of any of those goods,
>
> (d) that person shall (by virtue of taking or demanding delivery or making the claim or, in a case falling within paragraph (c) above, of having the rights vested in him) become subject to the same liabilities under that contract as if he had been a party to that contract."

63. The effect of s.2 and s.3 of COGSA 1992 is that a new contract springs up between the carrier and consignee on the terms of both the front and reverse of the Bills of Lading: see *Carver on Bills of Lading* (5th Edition) at paragraph 9-114. This includes any jurisdiction or arbitration clause - see *Aikens, Bills of Lading* (3rd Edition) ("*Aiken*") at paragraph 9.37 and see also, in respect of arbitration clauses, *Aline Tramp SA v Jordan International Insurance Co* [2016] EWHC 1317 (Comm) at [34] to [40].

64. As Popplewell J explained in *Sea Master Shipping Inc v Arab Bank (Switzerland) Ltd ("The Sea Master")* [2019]; 1 Lloyd's Rep 101at [39]:

> "The operation of section 2 of COGSA involves a lawful holder becoming a party to the arbitration clause in the contract of carriage contained in or evidenced by the contract of carriage because the section treats him as if he had been a party to that contract. The holder is a party to that separate arbitration agreement, with all the consequences which flow from such agreement, including the mutual obligation to have any dispute falling within the scope of the agreement determined in arbitration, irrespective of whether it owes any substantive obligations under the matrix contract contained in the bill."

65. In the present case, Interglobal is identified in each of the Bills of Lading as the consignee. It is not disputed, and cannot be disputed on the evidence and correspondence, that the consignments were in fact delivered to Interglobal. It is clear, as already addressed, that Interglobal has advanced claims under the Bills of Lading and for breach of the contracts of carriage under the Bills of Lading in Nigeria.

66. I am satisfied that in such circumstances Interglobal became subject to the same rights of suit and liabilities as if it had been a party to the original contract of carriage. There are three reasons for this, each of which would suffice.

67. First, Interglobal was the person to whom "delivery of the goods to which a sea waybill relates is to be made by the carrier in accordance with that contract" for the purposes of s.2(1)(b) of COGSA 1992. Interglobal was the named consignee on the Bill of Lading.

68. Equally, each of the telex release letters authorised delivery to Interglobal without production of the Bills of Lading at the discharge port. Even if, contrary to my finding based on established authority, the contract of carriage was not contained in and/or

evidenced by the Bill of Lading, but was to be found in the telex release letters (upon which Interglobal focuses) the position would, I am satisfied, be the same, as the MSC Terms were expressly incorporated in the telex release letters and these would constitute delivery orders falling within s.1(1)(c) and s.2(1)(c) of COGSA 1992 – see in that regard *MSC Mediterranean Shipping Company SA v Glencore International AG* [2017] EWCA Civ 365 at [42] to [46], and the acknowledgement of telex release letters that are before me.

69. Secondly, Interglobal was the person who took "delivery from the carrier of any of the goods to which the document relates" for the purposes of s.3(1)(a) of COGSA 1992. In this regard it would appear from the evidence before me that Interglobal took delivery of the consignments on or around the following dates: in respect of Bill of Lading MEDUEM356618 16 February 2024; in respect of MEDUEP002052, 2 April 2024; Bill of Lading MEDUEP716214, 10 June 2024; and in respect of MEDUEP716214, shortly after 9 September 2024.

70. At paragraph 32 of the Defendants' Skeleton Argument, the Defendants rely on the case of *Habbas Sinai Tibbi Gazlar Isthisal Endustri AS v Sometal SAL* [2010] EWHC 29 (Comm); [2010] 1 Lloyd's Rep 661 and the very well known case of *TW Thomas & Co Ltd v Portsea Steamship Co Ltd (The Portsmouth)* [1912] AC 1. I am satisfied that those cases are not apposite as they were dealing with a different issue, namely the incorporation of charterparty terms into a bill of lading by reference. They do not address the operation of COGSA 1992 defining the consignee (as explained in *The Sea Mast*er, supra).

71. Thirdly, Interglobal has bound itself to the terms of the Bills of Lading for the purposes of s.3(1)(b) of COGSA 1992) by making claims under the Bills of Lading (and for breaches of the contracts of carriage under the Bills of Lading) in Nigeria – see *Borealis AB v Stargas Ltd ("The Berge Sisar")* [2002] 2 AC 205 at [32]-[33].

72. As was developed in oral argument before me by Mr Jones today, it is important to note that the effect of s.3 of COGSA 1992 is that where any of s.3(1)(a)(b) or (c) applies, the person becomes subject to the same liabilities under the contract as if they had been a party to that contract (see *The Berge Sisar* at [31] per Lord Hobhouse).

73. This includes any jurisdiction (or arbitration) clauses. As I stated in *Ulusoy Denizilik AS v Cofco Global Harvest (Zhangjiagang) Trading Co Ltd (The "Ulusoy-11")* [2020] EWHC 3545 (Comm) at [52] and [53]:

> "52. …and by s.3(1) of the same, the defendant became bound by the original contracting party's liability under the contracts of carriage contained in and evidenced by the bills of lading.
>
> 53. It is well-established and trite law that one such liability binding upon the lawful holder of a bill of lading is the obligation to resolve any claim under the bill of lading in accordance with its terms, including the agreement to resolve disputes in a particular forum - see *Essar Shipping Ltd v Bank of China Ltd (The Kishore)* [2016] 1 Lloyd's LR 427 at para.31 (where the proposition was common ground)".

See also the discussion in *Aikens* at paragraph 9.36 and the cases there cited (in footnote 51).

74. Accordingly, by virtue of COGSA 1992, and via any of these routes, there is very much more than a high probability Interglobal are bound by the MSC Terms and the jurisdictions clauses. They are so bound, and I so find.

75. Nevertheless in deference to the arguments made on behalf of Interglobal on the discharge application (which largely proceed on an erroneous factual and legal basis as a consequence of the above analysis). I will address the arguments raised by Interglobal below. I am satisfied that none of them lead to a different conclusion or would justify the setting aside of the Interim ASI.

F.2 Single Sided Copies and Reasonable Notice of MSC Terms

76. Interglobal says that whilst it was provided with copies of the Bills of Lading by the shippers, the scans that it received omitted the reverse side of the Bills of Lading on which the MSC Terms could be found. The first point to note, it that the copies were provided by the shipper (not MSC) (as had indeed been acknowledged in the Defendants' Skeleton Argument at paragraph 4(iii)). Interglobal's argument is that this meant that Interglobal did not have sufficient notice of the MSC Terms (paragraph 16 and 17 of the Defendants' Skeleton Argument where it is stated "The Claimants' failure to give notice to the Defendants of the MSC Terms"). This point was reiterated by Mr Nsugbe KC in the course of his oral submissions before me.

77. The Claimant submits that the suggestion that Interglobal only ever received the front side of the Bills of Lading should be treated with caution. In this regard the Claimants have repeatedly requested full disclosure of all exchanges between Interglobal and shippers in relation to the carriage of goods. Those requests have been rejected. The Claimants submit that if Interglobal wished to advance the argument they never received the full terms, they should have provided full disclosure of all relevant exchanges so that such argument could be properly tested.

78. Even on the basis of what has been provided, the Claimants urged caution. First, the Bills of Lading exhibited by Interglobal are folded over at the top left-hand corner, so, they say, that a small part of the reverse side is visible from (what can be seen suggests that they are part of the printed terms and it is difficult to see what else it would be other than the MSC Terms). Secondly, the email correspondence submitted by Interglobal does not establish any difficulty accessing MSC's website. On the contrary, Interglobal request from MSC that their "conditions on container retention to be made clearer on [their] website" which suggests that Interglobal was in fact able to access the terms (as one would expect given that the reference was to www.msc.com).

79. Due to the limitations of the evidence before me (responsibility for which lies with Interglobal in terms of proof of what they had specific notice of), I am not in a position to make a finding as to whether or not Interglobal did in fact receive sight of the rear of the Bills of Lading. However, I am satisfied that the arguments made by Interglobal, in consequence of the assertion they only had sight of the front of the Bills of Lading, take Interglobal nowhere given that they are based on a false premise.

80. As already addressed, contracts of carriage between the carrier and consignee arise from the operating statute under s.2 and 3 of COGSA 1992. There is no requirement that the consignee has specific notice of the terms of the original contract. It is treated "as if" it had been a party from the outset – see in this regard what I stated in "*The Ulusoy-11*" supra at [30]:

> "… As a matter of practical reality it is very common for cargo receivers to become bill of lading holders without being aware of or seeing the terms of any charterparty in the bills, and without being, I should add (from my own experience), very curious about what those terms are. The reason for that is clear and well understood, which is, of course, that the contract of carriage will come into existence at the time of issue of the bill of lading signed by the ship owner and issued to the shipper. In relation to the provisions of the Carriage of Goods by Sea Act 1992, the receiver only comes into the picture at a later stage and is presented with whatever those terms of that contract of carriage are. It is very well established in English law what practical consequences arise in relation to contracts of carriage under bills of lading."

81. The Claimants acknowledged that Interglobal's argument might, in theory, be relevant to the question of the terms of any implied contract (per *Brandt v Liverpool Brazil & River Plate Stream Navigation Co Ltd* [1924] 1 KB 575) or bailment – see *East West Corp v DKBS AF* [2003] EWCA Civ 83; [2003] QB 1509 at [30], [36] and [69]. However, I am satisfied there is no need to consider such matters, given the provisions of COGSA 1992 as already addressed, and the claims which are made by Interglobal which are that the contracts of carriage are contained in and/or evidenced by the Bills of Lading.

82. Even were it necessary to consider the position at common law, which I am satisfied it is not, the relevant test would be whether Interglobal was on reasonable notice as to MSC's standard terms and conditions, not whether it had in fact received or read those terms and conditions – see *Transformers & Rectifiers Ltd v Needs Ltd* [2015] EWHC 269 (TCC) at [42] per Edwards-Stuart J. Equally, whether the jurisdiction clause was validly incorporated is still an issue of English law as the putative law – see *The Joker*, supra at [16].

83. I am satisfied that the position would be equally clear in this context. First, the front facing pages of the Bills of Lading were clearly marked "TERMS CONTINUED ON REVERSE" and contained express references to various sources (see, for example Clause 14, 7.3 and 14.1), which could not have been understood except by reference to the detailed terms and conditions. Secondly, and in any event, the front of the Bills of Ladings specifically refers to terms and conditions on the MSC website, stating, "See website for larger version on the reverse … www.msc.com." MSC included a URL reference which could have been typed and were marked as "Standard Edition – 01/2017".

84. It is well-established that directing a party to standard terms found on a website is sufficient notice – see *Parker-Grennan v Camelot UK Lotteries Ltd* [2024] EWCA Civ

185 at [46] to [51]; and *Maersk Guine-Bissau SARL v Almar-Hum Bubacar Balde SARL* [2024] EWHC 993 (Comm) at [70] to [85].

85. Furthermore, the parties had contracted on the same terms on three separate occasions – December 2023, January 2024 and April 2024 – with no questions as to what terms governed their relationship – see in this regard *Circle Freight International Ltd v Medeast Gulf Exports Ltd* [1988] 2 Lloyd's Rep 427 at 433. Over that period, Interglobal did not request a copy of those terms, nor did it indicate that it had any trouble accessing the terms on MSC's website.

F.3 Notice of Arrival

86. Interglobal places reliance on matters concerning the receipt of Notices of Arrival, as addressed at paragraphs 9 and 17 of the Defendants' Skeleton Argument. However I am satisfied that such matters and associated argument could only arise if, contrary to my finding, Interglobal was not bound under COGSA 1992 or was not given adequate notice of the MSC Terms.

87. In relation to each delivery under the Bills of Lading, MSC issued a Notice of Arrival which contained the following paragraph:

> "5. In case of Sea Waybill or Telex Release, no release of container(s) will be authorized until a Letter of Undertaking has been signed and stamped by the Consignee through which it acknowledges its awareness of the MSC Bill of Lading/Sea Waybills Terms and Conditions and its acceptance. Both MSC Bills of Lading and MSC Sea Waybills Terms and Conditions can be found online at https://www.msc.com/che/contract-of-carriage. In any event, by requesting release, a Consignee will be bound by the MSC Sea Waybills Terms and Conditions."

88. Interglobal argues that "in order for a consignee to be bound by the Terms and Conditions they would have needed to have had knowledge of, and to have complied with, the steps required by the Notice of Arrival documentation" which they say did not occur. However, Clause 1 makes clear that the Notices of Arrival are provided as a "mere commercial courtesy of MSC…" and as such (as with most pre- and post-contractual documents concerning carriage) are merely a reminder that the MSC Terms apply.

89. Mr Akindele goes on to argue that the Notices of Arrival were never in fact received by Interglobal because they were sent by email to an individual unknown to it, (see Akindele 1, at paragraph 9.) I do not consider that it is necessary to determine that issue. If it was of any relevance, it appears that Notice of Arrivals were sent to Gain Boxx Projects and Daylight Integrated Logistics, which would appear to be clearing agents, and the consignments were duly collected by Interglobal.

F.4 Agency?

90. Interglobal advanced a number of arguments in relation to various letters of authority provided to MSC Nigeria in exchange for the release of the consignments under the Bills of Lading. Specifically, Interglobal complained that two individuals named on

those documents – Shaun Dice and Henry Chibuike per Interglobal's evidence – are entirely unknown to it and were neither its employees nor its agents. Yet further, shortly before the hearing in their Skeleton Argument at paragraph 18, Interglobal has gone so far as to assert that these documents were in fact falsified.

91. I do not consider it necessary to opine on the veracity of such evidence and such assertions. They are not relevant to Interglobal as a party to the contract of carriage on MSC's Terms. It is right to note in passing the Claimants' own submission that such assertions are hard to credit. In this regard, as addressed in Chetwood 4 at paragraph 14, the email address of Shaun Dice was provided by shippers to the carriers and the Claimants submit it is clear from the documentation that the individuals in question were not employed by Interglobal, but rather would appear to have been, for all intents and purposes, acting as Interglobal's clearing agents. It is not in dispute that the containers were in fact delivered to the correct consignee: Interglobal itself. Self-evidently, they must have got there somehow. Even if those agents were not properly authorised to act on Interglobal's behalf, by reason of the operation of COGSA, any problems that might otherwise have arisen were resolved for the purposes of COGSA at the moment that Interglobal, as named consignee, took delivery of the goods.

92. Accordingly, I am satisfied to a high degree of probability that Interglobal is bound by the exclusive jurisdiction clauses in respect of any disputes arising out of the Bills of Lading.

G. ISSUE 3: OTHER ALLEGED "STRONG REASONS"

G.1 Nigerian Admiralty Jurisdiction Act 1991

93. Section 20 of the Nigerian Admiralty Jurisdiction Act 1991 (the "Nigerian Admiralty Jurisdiction Act") provides that any agreement which seeks to oust the jurisdiction of the Nigerian Federal Court will be null and void if (i) it relates to an admiralty matter falling within that statute; and (ii) if, amongst other grounds, "the place of performance, execution, delivery, act or default is or takes place in Nigeria" (see s.20(a)).

94. The Admiralty jurisdiction is defined under s.1(1)(a) of the Nigerian Admiralty Act as "any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of this Act". S.1(3) of the Nigerian Admiralty Act specifies that "[a]ny agreement or purported agreement, monetary or otherwise, connected with or relating to Carriage of Goods by Sea, whether the contract of carriage is executed or not, shall be within the admiralty jurisdiction of the Court."

95. Interglobal argue that by virtue of the operation of the Nigerian Admiralty Jurisdiction Act and s.20 thereof, the exclusive jurisdiction clauses are "void". There is a debate between Nigerian lawyers instructed on behalf of the parties as to which claims fall within s.20.

96. However, I am satisfied that all of this is irrelevant as the Court must apply English conflict of law principles. The Bills of lading are expressly governed exclusively by English law. Questions relating to the validity of the jurisdiction clauses are thus questions for the proper law of the contract: i.e. English law – see *Dicey, Morris & Collins on the Conflict of Laws* (16th Edition) paragraphs 12-069 to 12-070. Accordingly, it is irrelevant what the position would be if the Bills of Lading were

governed by Nigerian law. See also *Tidewater Marine International Inc v Phoenixtide Offshore Nigeria Ltd* [2013] EWHC 2960 Comm at [29] and *Vitol S v Arcturus Merchant Trust Ltd* [2009] EWHC 800 Comm at [33] to [34] (quoting what was stated by Longmore J in *OT Africa Line Ltd v Magic Sportswear Corporation & Ors* [2005] 2 Lloyd's Rep, 170 at [32]).

G.2 Forum Non Conveniens

97. Interglobal has also objected to the jurisdiction on the basis of forum non conveniens on the basis of an assertion that, "the facts and circumstances of the case occurred mainly in Nigeria" (Mrakpor 2 at paragraph 33) coupled with the assertion in the Defendants' Skeleton at paragraph 41 that "the place of performance of the contract is Nigeria" (an assertion that does not bear examination given this dispute relates to goods shipped by a Chinese shipper via a Swiss carrier to a Nigerian consignee).

98. In any event, considerations of forum non-conveniens are not relevant. As Lord Leggatt explained in *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] 3 WLR 659 at [67]:

> "In *Spiliada* the House of Lords was not addressing the situation where the parties have agreed on a forum for the resolution of the dispute. In such cases it is not relevant to evaluate whether a forum other than the English court is more appropriate or suitable for the trial of the action. The basic principle applied is "pacta sunt servanda" (agreements must be kept). As Lord Hobhouse pointed out in *Turner v Grovit* [2001] UKHL 65; [2002] 1 WLR 107, para 25, where a person has a contractual right to be sued only in a particular forum, that person "does not have to show that the contractual forum is more appropriate than any other; the parties' contractual agreement does that for him."

See also, in this regard, what is said in *Gee on Commercial Injunctions* (7th Edition) at paragraph 14-022.

99. A further point that was previously raised by Interglobal (in Mrakpor 2 at paragraph 2), though not pursued in the Defendants' Skeleton Argument, was an assertion that the Interim ASI is not enforceable in Nigeria because it takes the form of interim relief. I am satisfied that that point, even if established, would have been irrelevant. Anti suit injunctions are granted to enforce the contractual bargain between the parties concerned and bite upon the defendant(s) concerned.

G.3 Submission to Jurisdiction

100. The Defendants have asserted that the Claimants have submitted to the jurisdiction of the Nigerian Court, a point maintained in paragraph 42 of the Defendants' Skeleton Argument. I am satisfied that the Claimants did not submit to the jurisdiction of the Nigerian Court.

101. In terms of the applicable principles, an anti-suit injunction may be refused where the applicant has voluntarily submitted to the jurisdiction of the foreign court, although submission is not necessarily fatal (see *SAS Institute Inc v World Programming Ltd*

[2020] EWCA Civ 599 at [114]). It is simply one of several factors to be weighed in determining whether to grant anti-suit relief (see *Pan Ocean Co Ltd v China-Base Group Co Ltd (formerly China-Base Ningbo Foreign Trade Co Ltd)* [2019] 2 Lloyd's Rep 335 at [57].

102. Whether the applicant has submitted to the foreign jurisdiction is itself a question of English law – see *Pan Ocean Co Ltd* (supra) at [56]. Specifically, s.33 of the Civil Jurisdiction and Judgments Act 1982 provides that:

> "(1) For the purposes of determining whether a judgment given by a court of an overseas country should be recognised or enforced in England and Wales or Northern Ireland, the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of the court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes, namely—
>
> …
>
> (c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings."

103. The position was addressed by the Claimants at the ex parte hearing before Dias J with the Claimants providing the following explanation, which has been repeated before me today by Mr Jones:

(1) First, the Claimants had entered a "Conditional Appearance", which effectively preserved the position as regards the substantive jurisdiction of the Nigerian Courts.

(2) Secondly, the Claimants' appearance had been limited to the opposition of interlocutory applications concerned with the arrest(s) which, as a matter of Nigerian law, does not amount to a voluntary submission to substantive jurisdiction.

(3) Thirdly, the Claimants had taken no steps in the substantive proceedings and had not filed a Defence (which remains the case).

(4) Fourthly, the Claimants' actions had been concerned with attempts to prevent the seizure and detention of their property falling within s.33(1)(c) of the Civil Jurisdiction and Judgments Act 1982 (as to which see *Motorola Credit Corpn v Uzan* [2004] EWHC 3169 (Comm) at [52] to [53] (per Cooke J) and see *The Joker* supra at [37] (i) and (ii)] (per Andrew Baker)).

104. Having heard those submissions, Dias J was satisfied that, by the Claimants entering conditional appearances before the Nigerian Court, "they have not done anything which would constitute a submission to the substantive jurisdiction of the Nigerian courts in relation to the substantive claim" (see the Judgment at [13]). I am also so satisfied.

105. In this regard, I am satisfied that none of Interglobal's complaints, nor any further proceedings in Nigeria to date, have displaced that position. In this respect it has been acknowledged that all of the Claimants' appearances to date have solely been either in

relation to the Arrest of the Vessel and thus subject to the protections of s.33(1)(c) of the Civil Jurisdiction and Judgments Act 1982 or, in the context of interlocutory applications, and not on the merits – see Atoyebi 1, paragraphs 12 to 29 and Chetwood 3 at paragraph 22.

106. Interglobal alleges that there has been a failure to raise a timely objection in Nigeria to Nigerian jurisdiction and that this has somehow "rendered the conditional appearance as unconditional" (see Mrakpor 2 at paragraph 17). However, I am satisfied that this is legally irrelevant as it is solely an issue of jurisdiction as a matter of Nigerian law, not whether the Claimants have submitted to Nigerian jurisdiction as a matter of English law.

107. In any event, I am satisfied that such argument is wrong as a matter of Nigerian law on the evidence before me. Whilst Interglobal appeared to argue that Order 29 of the Nigerian Federal High Court Civil Procedure Rules require that any challenge to jurisdiction had to be raised within 30 days (per Mrakpor 2 at paragraph 22) I am satisfied that, as explained by Mr Atoyebi, the proper position is that jurisdictional objections can be raised at any time (see Atoyebi 1, at paragraph 42). Interglobal has now accepted that "there is no time limit to challenge the substantive jurisdiction of the court" (see Mrakpor 3 at paragraph 19 and also at paragraph 27, "jurisdictional objections can technically be raised at any time").

108. I would only add that even had Interglobal's position been correct (which I am satisfied it is not), any submission of the Claimants to the jurisdiction in Nigeria could not be characterised as voluntary. This is not a case where an applicant has clearly submitted to the jurisdiction of the foreign court, such as by engaging in substantive proceedings or filing a counterclaim. I am satisfied that this would not alone provide a "strong reason" to set aside the injunctive relief.

H. ISSUE 4: ALLEGED FAILURE TO GIVE FULL AND FRANK DISCLOSURE

H.1: Preliminary Points

109. Interglobal has raised a number of points relating to alleged breaches of the duty of full and frank disclosure by the Claimant. These were by their very nature serious allegations. However, I agree with the Claimants' characterisation that they were advanced in a vague manner, notwithstanding the Order of Cockerill J which required Interglobal to "adequately identify and particularise" the basis of its application. A request for clarification by the Claimants led to further particulars being provided by Interglobal (see Further Information at paragraph 7(8)(g)). The Claimants asked Interglobal either to narrow or withdraw these allegations.

110. The Defendants did not do so, though their main complaint has mutated into a previously unforeshadowed complaint that the Claimants failed to alert the Court that this was a case involving the telex release of cargo as advanced in the Defendants' Skeleton Argument at paragraph 4(vii). I am satisfied that the point is without merit, in circumstances where this is not a case about notice and incorporation of terms.

111. Equally, whilst I am conscious of the Defendants' submission at paragraph 22 of the Defendants' Skeleton, I do not consider that the Claimants' case has "changed" as is alleged. The Claimants' case has always been that the Bills of Lading were subject to

and incorporated the MSC Terms, with those terms being binding on the consignee. What is key in that respect is what the contract of carriage is that came into existence between the shipper and carrier. That was correctly identified and addressed on the ex parte application.

112. What has subsequently occurred is that the Defendants have advanced their own case, including that they only received the front facing page of the Bills of Lading. In that context, the facts surrounding the telex release procedure have been explored and explained by the Claimants for the purpose of putting Interglobal's arguments in their proper context, and to explain why Interglobal's stance is irrelevant to them being bound by MSC Terms, including the exclusive jurisdiction clause.

H.2 Alleged Breaches

113. Interglobal's allegations are set out in the Further Information. They are rebutted at some considerable length in Chetwood 3 at paragraphs 24 to 50. I am satisfied that they are not of any relevance. Particularly, they do not focus on the real issues in relation to the contract of carriage and governing law and involve misunderstandings or mistakes of the legal and factual position.

114. I will address each of them in turn.

(1) Interglobal asserts that the Claimants "failed to alert the Court that there might be an issue to the agreement to the jurisdiction clause because only the front pages of the Bills of Lading had been exchanged between the Parties" (see Mrakpor 2 at paragraph 11 and the Further Information at paragraph 7(a)). This misunderstands how a contract of carriage of goods by sea arises in the context of the issues of a bill of lading between a carrier and shipper, and how a consignee becomes bound by such terms. In any event, and as has been addressed above, the scanned copies of the Bills of Lading were provided by the shipper to Interglobal (as is now acknowledged and common ground at paragraph 4(iii) of the Defendants' Skeleton Argument). As one would expect, the Claimants had no knowledge, at the time of the ex parte hearing, as to what exactly had been provided to the consignee by the shipper. While this was made clear to the Court at the time (see Chetwood 3 at paragraph 29 to 33) the fact is that the Claimants were under no obligation to bring such matters to the attention of the Court, given that both in fact and law they are irrelevant. The central issues were what the terms if the contract of the carriage were, (as set out in the Bills of Lading) and whether the same had been breached by Interglobal by the commencement of the Nigerian Proceedings (as they clearly had been).

(2) Interglobal asserts that the Claimants "failed to inform this Honourable Court of the provisions of section 20 of the Nigerian Admiralty Jurisdiction Act 1991 and the impact it might have on the enforceability of any jurisdiction clause which breached it" (see Mrakpor 2 at paragraph 11 and Further Information at paragraph 7(b)). However, such matters are irrelevant in the context of a contract of carriage governed by English law and English conflict of law principles (quite apart from the irrelevance of the Act in any event). Nevertheless, the position as a matter of Nigerian law was brought to the Court's attention (see, in this regard, Chetwood 3 at paragraphs 34 to 36).

(3) Interglobal, asserts that the Claimants "failed to alert the Court to the effect of Order 29(4) of the Nigerian Federal High Court (Civil Procedure) Rules 2019, their failure to mount a challenge to the jurisdiction within the time limit envisaged and that this might be treated as a submission to the Nigerian jurisdiction" (see Mrakpor 2 at paragraphs 11 and the Further Information at paragraph 7(c)). In fact, as addressed above, it appears that there is in fact no time limit (and Interglobal now accepts as much). However, whether it is accepted or not, the Claimants did address what had occurred in Nigeria, and the fact that the Claimants had not applied to challenge jurisdiction in Nigeria was brought to the Court's attention (see Chetwood 3 at paragraphs 40 to 42).

(4) Interglobal state that "[i]t was not disclosed to the Court that the filing of a memorandum of conditional appearance must be promptly followed by a challenge to the court's jurisdiction and that the issue must be raised at the earliest opportunity" (see the Further Information at paragraph 7(d)). However, as addressed above, I am satisfied that this is legally irrelevant. It is solely an issue of jurisdiction as a matter of Nigerian law, not whether the Claimants have submitted to Nigerian jurisdiction as a matter of English law, which I am satisfied they have not (see also Chetwood 3 at paragraph 43).

(5) Interglobal assert that the Claimants "downplayed their involvement and active participation in the Nigerian proceedings and how that might be construed as submission to the Nigerian court's jurisdiction" (see Mrakpor 2 at paragraph 11 and the Further Information at paragraph 7(e)). I do not consider that such criticism is justified. I am satisfied that this issue was raised, and in appropriate terms, at the ex parte hearing (see, in this regard, Chetwood 3 at paragraphs 44 to 45).

(6) Interglobal assert that the Claimants "failed to alert the Court that there was a live issue as to the true ownership of the various vessels in this litigation" (see Mrakpor 2 at paragraph 11.) The allegation seems to be a complaint relating to the basis on which the Claimants argued against the arrest of the vessel in the Nigerian Court (see Mrakpor 2 at paragraphs 36 to 39). I do not consider that such matters have any relevance to the ex parte application.

(7) It is now further asserted, for the first time, that the facts surrounding the telex release, and the Notices of Arrival, should have been put before the Court. I do not consider that such matters should have been addressed and put before the Court at the ex parte hearing. There focus was rightly upon the contract of carriage and the Bills of Lading. The facts surrounding the telex release and the Notices of Arrival were investigated and explained in light of Interglobal's assertions that it only received the front page of the Bills of Ladings (which even if true fails to grapple with the process by which a consignee becomes bound to the terms of the contract of carriage under COGSA 1992). I do not consider that there was any failure to give full and frank disclosure in this regard.

115. In the above circumstances, I do not consider there was any failure to give full and frank disclosure on the ex parte application, and in any event, if there were any matters that should have been disclosed which were not, I do not consider that they militate against the continuance of the Interim ASI injunction.

116. Accordingly, and for the reasons given herein, I am satisfied, to the high probability standard, that the Bills of Lading included the MSC Terms and the jurisdiction clauses, and that Interglobal are bound by the MSC Terms and the jurisdiction clauses. I am also satisfied that there are no strong reasons to set aside the Interim ASI, and I consider that the ASI should continue to trial in the context of Interglobal's continuing breach in failing to discontinue the Nigerian proceedings.

117. The Interglobal application to set aside the Interim ASI is therefore dismissed and I make an Order in the terms sought in relation to the continuation of the ASI to trial.

G. THE INTERIM ANTI-ANTI-SUIT INJUNCTION

118. I can deal with the Claimants' application for the Interim AASI in short order in circumstances in which Interglobal has already sought to interfere with the proceedings which have been properly brought in this jurisdiction and associated ASI relief by bringing further related proceedings in Nigeria, and in circumstances where the withdrawal of such further proceedings in Nigeria has all the hallmarks of having been tactical and solely for the purpose of the present hearing.

119. I consider that there is a very real risk that if the AASI is not granted in the terms sought, Interglobal will hereafter take steps to litigate further injunctive proceedings in Nigeria in an attempt to thwart the ASI relief granted by this Court. My view in that regard is only fortified by the fact that Interglobal has declined to give appropriate undertakings not to do so. In such circumstances, and subject to considering the reasons given by Interglobal as to why I should not make such an order, I am minded to do so.

120. Interglobal resist the Claimants' application for an AASI on two bases: first, alleged delay and second, practical inefficacy (or lack of utility/necessity) in view of the discontinuance of the new Nigerian proceedings (see paragraph 10 of the Defendants' Skeleton Argument) and all of the existing terms of the ASI. I do not consider that there is any substance in these points. I will consider them in turn.

121. I do not consider there to be any relevant delay, or of such magnitude, as would militate against granting the AASI. The new Nigerian proceedings were served on 7 March 2025 and the application was made on notice on 2 April 2025, in circumstances where the Claimants were required to obtain advice from both Nigerian and English Counsel on the new proceedings. There is no suggestion that any prejudice has been caused by that delay, if indeed it could be characterised as a delay, which I do not consider it can. Equally, it is not suggested that any delay led to the new Nigerian proceedings being advanced (see Chetwood 4, paragraph 12) and they have in an any event now been discontinued. I am satisfied there is nothing in the delay point.

122. I have already addressed why the discontinuance of the new Nigerian Proceedings appears to have been purely tactical, with there being a real risk of similar proceedings being brought in the future. I consider there is both a utility and indeed a necessity to grant such an injunction, and my consideration in that regard has been further fortified by the fact that Interglobal have refused to provide any undertakings to the effect that it will not commence any similar proceedings. I also note that the terms of the existing Interim ASI, which the Defendants submit are wide enough to prohibit that which the Defendants did, were not themselves sufficient to deter Interglobal from pursuing those proceedings in Nigeria, and I am in no doubt the relief sought should be granted to

prevent any reoccurrence of such interference with the English proceedings which were rightly brought amongst other matters, in recognition of Interglobal's breach of the exclusive jurisdiction clause.

123. Accordingly, I further make an AASI in the terms sought.

H. COSTS

124. The next matter that appears before me is the question of costs. The position of the Claimants is that they are the successful party in relation to the continuation of the anti-suit injunction. They are also the successful party in relation to the application for an AASI. The position therefore is that the costs should follow the event and, realistically that was not challenged on behalf of the Defendants.

125. The next point that arises is the basis upon which such costs should be awarded. Mr Jones, on behalf of the Claimants, draws to my attention to two cases in relation to indemnity costs and draws my attention to a passage in *Gee* at paragraph 14-021 on page 538:

> "Where a party is proceeding in breach of contract costs ought normally to be awarded on an indemnity basis for costs incurred as a result of that breach."

126. He also refers in this regard to the case of *A & B (Costs)* [2007] EWHC 54 (Comm); 1 Lloyd's Rep. 358. Here the Defendants have breached the terms of the exclusive jurisdiction clause, and as such I am satisfied that the costs should be on the indemnity basis in relation to the continuation/discharge applications in relation to the anti-suit injunction.

127. Mr Nsugbe KC submits that in relation to the anti-anti-suit injunction, costs should be on the standard basis because, following the issue of the application, the further Nigerian proceedings were withdrawn. However, the rationale and the reasoning for costs being on an indemnity basis, in this context, is because the party concerned has proceeded in breach of contract, and it has been necessary for the other party to come to Court to obtain relief against such conduct. That is what the Defendants did by issuing new proceedings. The fact that Interglobal withdrew proceedings following the issue of the application simply means that the particular breach was not continuing. MSC were entitled to come to this Court to obtain the further relief sought that I have found they were entitled to, given the breaches that had occurred to date and the risk of future breaches that justified the application and the relief granted. As such I am satisfied that costs should be on an indemnity basis in relation to the AASI application as well.

128. Turning then to the summary assessment of the costs, there are two Statement of Costs for summary assessment, firstly in relation to the ASI, and the sum claimed is £123,567.67, and the second in relation to the AASI, in the sum of £20,778.75.

129. The points made on behalf of the Defendants are that the use of three different fee earners - a former partner, associate, and another fee earner – is inappropriate and not proportionate and has led to more costs than there should be awarded on an indemnity

basis, and secondly that the overall amount claimed in relation to the ASI, for £123,567.67, is simply too much for what was a one-day hearing.

130. With the greatest respect to the manner in which such points were eloquently put, I do not consider that there is any substance in either of those points. Mr Jones rightly points out that this is a matter of very serious importance for MSC in the face of what is a USD 35 million claim in Nigeria and MSC have been forced, notwithstanding the terms of the order of Dias J, to put up a security in the sum of USD 10 million, and in such circumstances it was necessary to prepare this case properly and thoroughly, and the costs claimed should be recoverable against a contract breaker assessed on the indemnity basis. I agree. I am satisfied that the costs incurred are proportionate in the context of the issues that arise on what was, on any view, a heavy application. In this regard there is actually no difference between the costs claimed by the Claimants and those that would have been claimed by the Defendants had they been successful on their application.

131. I do not consider that there is any evidence of any overlap between the former partner, the associate and the fee earner. They all had a useful role to play in relation to the preparation of the case, and using different levels of fee earners including those with lower hourly rates, where appropriate, will have reduced costs. There is no evidence of inappropriate duplication of time between the partner and the associate.

132. I summarily assess the costs on the ASI on the indemnity basis in the sum of £123,567.67.

133. So far as the AASI is concerned, those sums by their very nature are more modest at the figure of £20,778.75, and I summarily assess cost, on the indemnity basis in the figure claimed of £20,778.75.

Schedule 1: Key Terms

FRONT TERMS
See website for large version of the reverse …. www.msc.com
IN ACCEPTING THIS BILL OF LADING THE MERCHANT EXPRESSLY ACCEPTS AND AGREES TO ALL TERMS AND CONDITIONS, WHETHER PRINTED, STAMPED OR OTHERWISE INCORPORATED ON THIS SIDE AND ON THE REVERSE SIDE OF THIS BILL OF LADING AND THE TERMS AND CONDIITONS OF THE CARRIER'S APPLICABLE TARIFF AS IF THEY WERE ALL SIGNED BY THE MERCHANT.
TERMS CONTINUED ON REVERSE
REVERSE TERMS
1. DEFINITIONS The following definitions shall apply in this Bill of Lading: **Carrier**: means MSC Mediterranean Shipping Company SA […] **Merchant**: includes the Shipper, Consignee, holder of this Bill of Lading, the receiver of the Goods and any Person owning, entitled to or claiming the possession of the Goods or of this Bill of Lading or anyone acting on behalf of this Person.
2. CONTRACTING PARTIES AND WARRANTY The contract evidenced by this Bill of Lading is between the Carrier and the Merchant. Every Person defined as "Merchant" is jointly and severally liable towards the Carrier for all the various undertakings, responsibilities, and liabilities of the Merchant under or in connection with this Bill of Lading and to pay the Freight due under it without deduction or set-off. The Merchant warrants that in agreeing to the terms and conditions in this Bill of Lading, he is the owner of the Goods, or he does so with the authority of the owner of the Goods or of the Person entitled to the possession of the Goods or of this Bill of Lading. (b) This Bill of Lading shall be subject to the Hague Rules unless the governing law makes the Hague or the Hague Visby Rules compulsorily applicable in which case the said Hague or Hague-Visby Rules will apply to this Bill of Lading only to the extent that they are compulsorily applicable.
4. SUBCONTRACTING AND INDEMNITY […]

4.2 The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort or otherwise shall be made against any servant, agent, or Subcontractor of the Carrier which imposes or attempts to impose upon any of them or any Vessel owned or chartered by any of them any liability whatsoever in connection with the Goods or the carriage of the Goods whether or not arising out of negligence on the part of such Person. If any such claim or allegation should nevertheless be made, the Merchant agrees to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent and Subcontractor shall have the benefit of all terms and conditions of whatsoever nature contained herein or otherwise benefiting the Carrier under this Bill of Lading, as if such terms and conditions were expressly for their benefit. In entering into this contract, the Carrier, to the extent of such terms and conditions, does so on its own behalf and also as agent and trustee for such servants, agents, and Subcontractors.

8. SCOPE OF VOYAGE, DELAY, CONSEQUENTIAL DAMAGES

The scope of voyage herein contracted for may or may not include usual or customary or advertised ports of call whether named in this Bill of Lading contract or not and may include transport of the Goods to or from any facilities used by the Carrier as part of the carriage, including but not limited to off-dock storage. The Carrier does not promise or undertake to load, carry or discharge the Goods on or by any particular Vessel, date or time. Advertised sailings and arrivals are only estimated times, and such schedules may be advanced, delayed or cancelled without notice. In no event shall the Carrier be liable for consequential damages or for any delay in scheduled departures or arrivals of any Vessel or other conveyances used to transport the Goods by sea or otherwise. If the Carrier should nevertheless be held legally liable for any such direct or indirect or consequential loss or damage caused by such alleged

10. NOTICE OF CLAIMS, TIME BAR AND JURISDICTION

10.2 **Time bar -** In any event, the Carrier shall be discharged from all liability if suit is not commenced within one (1) year after delivery of the Goods or the date that the Goods should have been delivered for claims related to loss or damage during the Port-to-Port carriage, and for claims related to loss or damage during Inland Transport the shorter of nine (9) months or any time limit provided for by any applicable international convention, national law, regulation or contract by virtue of clauses 5.2.2 (a) or (b).

10.3 **Jurisdiction -** It is hereby specifically agreed that any suit by the Merchant, and save as additionally provided below any suit by the Carrier, shall be filed exclusively in the High Court of London and English Law shall exclusively apply, unless the carriage contracted for hereunder was to or from the United States of America, in which case suit
shall be filed exclusively in the United States District Court, for the Southern District of New York and U.S. law shall exclusively apply. The Merchant agrees that it shall not institute suit in any other court and agrees to be responsible for the reasonable legal expenses and costs of the Carrier in removing a suit filed in another forum. The Merchant waives any objection to the personal jurisdiction over the Merchant of the above agreed fora.

In the case of any dispute relating to Freight or other sums due from the Merchant to the Carrier, the Carrier may, at its sole option, bring suit against the Merchant in the fora agreed above, or in the countries of the Port of Loading, Port of Discharge, Place of Delivery or in any jurisdiction where the Merchant has a place of business.

14. DESCRIPTION OF GOODS AND MERCHANT'S RESPONSIBILITY

[…]

14.8 The Carrier allows a period of free time for the use of the Containers and other equipment in accordance with the Tariff and as advised by the local MSC agent at the Ports of Loading and Discharge. Free time commences from the day the Container and other equipment is collected by the Merchant or is discharged from the Vessel or is delivered to the Place of Delivery as the case may be. The Merchant is required and has the responsibility to return to a place nominated by the Carrier the Container and other equipment before or at the end of the free time allowed at the Port of Discharge or the Place of Delivery. Demurrage, per diem and detention charges will be levied and payable by the Merchant thereafter in accordance with the Tariff.

14.9 The Merchant shall redeliver, to a place nominated by the Carrier, the Containers and other equipment in like good order and condition, undamaged, empty, odour free, cleaned and with all fittings installed by the Merchant removed and without any rubbish, dunnage, or other debris inside. The Merchant shall be liable to indemnify the Carrier for any and all costs incurred reinstating or replacing Containers and other equipment not returned in the condition as specified above, including the reasonable legal expenses and costs of recovering the costs incurred and interest thereon.

23. SEPARABILITY AND VARIATION OF TERMS, FINAL CONTRACT

The terms of this Bill of Lading shall be separable and, if any term or provision hereof or any part of any term or provision shall be invalid to any extent, it shall be invalid to that extent, but no further and such circumstance shall not affect the validity or enforceability of any other term or provision hereof. This Bill of Lading is the final contract between the parties which supersedes any prior agreement or understanding, whether in writing or verbal, save where this Bill of Lading has been issued pursuant to another contract between the Merchant and the Carrier, when such other contract and this Bill of Lading shall be construed together. This Bill of Lading and its terms and conditions may not be changed orally.