

**NATIONAL UNIVERSITY OF SINGAPORE
FACULTY OF LAW**

**LL4434V, LL5434V, LL6434V
INTERNATIONAL COMMODITY TRADING LAW CLINIC
AY 20/21**

Assignment 2 (v2)

You are a lawyer with Helmsman LLC. You have just been instructed as counsel by one of the parties on appeal:-

Appellant (BAT)	Nikhil Daniel Angappan	Michael Ang Zheng Hui	Ng Wei Qi
Respondent (Navire)	Ho Jie, Shaun	Tan Li Yan, Nicole	Timothy James Chong Wen An

The facts are attached.

It was agreed between the parties that the only issues on appeal are as follows:-

- a. Whether the bills of lading are “spent”?
- b. Whether the defence of consent applies?
- c. Whether there are some other reasons for the matter to go to trial?

You are required to submit the skeletal arguments by **26 March 2021**. You should submit your assignment in word format via email to zhida.chen@helmsmanlaw.com.

The Supreme Court Practice Directions do not apply. There are no requirements on the format except that it should be in Arial font size 11 with 1.0 line spacing. The judgment should be no less than 10 pages and no more than 15 pages.

Any clarifications should be raised by no later than **18 March 2021**.

Facts

1. On 11 March 2019, SIM Trading Sdn Bhd (“**SIM**”) entered into a voyage charterparty with Navire Shipping Co Ltd (“**Navire**”) (who was, at the material time, the owner of the vessel, LE BATEAU) to charter the vessel for two voyages. The laycan for the first voyage was 10–15 April 2019 while that for the second voyage was 22–29 April 2019.
2. On 4 April 2019, BTC Industries Pte Ltd (“**BTC**”) contracted with Kent Ridge Soya Industries Pte Ltd (“**KRI**”) to sell 10,000 metric tons of refined, bleached, and deodorised palm olein (“**the palm oil**”) to KRI.
3. On 5 April 2019, BTC contracted with SIM to purchase 10,000 metric tons of the palm oil from SIM, on “Incoterms CNF Mangalore, India”. The payment term for the contract between SIM and BTC was cash against documents.
4. On 5 April 2019, Navire received instructions for LE BATEAU to transport 10,000 metric tonnes of the palm oil from Lubuk Gaung, Indonesia to Chittagong, Bangladesh. On 12 April 2019, Navire received revised instructions for the palm oil to be transported to New Mangalore, India instead.
5. On 15 April 2019, LE BATEAU took on 9,999.964 metric tonnes of the palm oil from Lubuk Gaung, Indonesia. Fourteen bills of lading, LB-01 to LB-14, were issued on behalf of Navire for the palm oil. The bills of lading identified the shipper as PT Minyak Kelapa Sawit and the consignee as “To Order”. They also named New Mangalore, India as the port of delivery and KRI as the notify party. The bills of lading were released to SIM on 19 April 2019 following payment of freight to Navire.
6. Clause 11 of the voyage charterparty between SIM and Navire provided that:

“If original bills of lading are not available for presentation at discharging port(s) prior to [vessel’s] arrival, [vessel] to discharge the [charterer’s] entire cargo to receivers against [charterer’s] LOI (with text according to owner’s P[&I] club format) without any supporting bank guarantee.”
7. Clause 6 of the sale contract between SIM and BTC similarly provided that:

“At discharge port, in the absence of original B/L, buyer/receiver to receive cargo by providing letter of indemnity (wording as per vessel owner’s P and I club format) with first class bank guarantee.”
8. On 22 April 2019, SIM issued an LOI to Navire, requesting Navire to deliver the cargo to KRI without production of the original bills of lading. On the same day, BTC issued a back-to-back LOI to SIM requesting SIM to deliver the cargo to KRI without production of the original bills of lading. KRI had, on 19 April 2019, also issued a back-to-back LOI to BTC requesting BTC to deliver the cargo to KRI without production of the original bills of lading. Thus, there was a chain of back-to-back LOIs from the ultimate buyer, KRI, to the sub-seller, BTC, and then to the ultimate seller, SIM, and finally to Navire.
9. SIM’s delivery instructions to Navire are contained in its LOI to Navire dated 22 April 2019. It reads:

“The above cargo was shipped on the above ship by the above shipper and consigned to the above consignee for delivery at the port NEW MANGALORE, INDIA but the bill of lading has not arrived and we, SIM TRADING SDN BHD, hereby request you to deliver the said cargo to KENT RIDGE SOYA INDUSTRIES LIMITED ... without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.”

10. The draft LOI was accompanied by an e-mail on 18 April 2019 from DC Tankers Services Pte Ltd (“**DC Tankers**”), which Navire accepted were SIM’s brokers. DC Tankers’ representative e-mailed Navire stating “*draft LOI for delivery of cargo without OBL at New Mangalore for your approval*” [emphasis added].
11. LE BATEAU arrived at New Mangalore on 24 April 2019, and began discharging the cargo on 27 April 2019 at 5:05pm local time. The cargo was completely discharged on 29 April 2019 at 8:55am local time (11:25am Singapore time).
12. In the meantime, Banque d’Angleterre (commonly referred to as BAT) received the 14 bills of lading from SIM through June Bank on 26 April 2019 under cover of a documents against payment collection schedule. The bills of lading were blank endorsed by SIM. On the same day, BAT informed BTC of the arrival of the documents and requested payment instructions from BTC. BTC replied requesting financing for the entire purchase price of USD7,454,973.16 by way of a trust receipt loan. On 29 April 2019, BAT granted the loan for the sum requested with a tenor of 21 days. Payment of the purchase price was effected by BAT to June Bank at 8:32pm on the same day. In other words, the cargo had been completely discharged from LE BATEAU before BAT remitted the purchase price to June Bank.
13. In other words, the bills of lading were received by BAT and presented to BTC for acceptance one day before the discharge of the cargo commenced. The bills of lading were accepted by BTC (when BTC requested the trust receipt loan) and paid for by BAT three days later, within hours after completion of the discharge operation. (The discharge operation lasted almost 40 hours.)
14. In the course of the hearing, BAT agreed to concede the point that it had only become the holder of the bills of lading at 8:32pm on 29 April 2019 solely for the purposes of the summary judgment proceedings, while reserving its right to show, in subsequent stages of these proceedings (if it becomes necessary) that BAT became the holder of the bills of lading before 29 April 2019.
15. It is not clear when BTC made the request for the trust receipt loan, although it is indisputable that it must have been made between 26 and 29 April 2019.
16. At the end of the 21-day tenor, BTC obtained an extension of time from BAT till 3 June 2019 but nevertheless failed to repay the loan. After BTC defaulted on the loan, BAT proceeded on 14 June 2019 to enforce its security over the bills of lading by demanding delivery of the cargo from Navire, which Navire failed to do. BAT then initiated proceedings

against Navire pursuant to the 14 bills of lading for breach of contract of carriage, breach of contract of bailment, conversion and detinue.

17. The evidence tendered by Navire included:-

- (a) An affidavit filed on behalf of BTC in support of its application for leave to convene a meeting of creditors to consider a scheme of arrangement pursuant to s 210 of the Companies Act (Cap 50, 2006 Rev Ed). In the said affidavit, **BTC alleged that it was part of its usual course of business to obtain delivery of shipped cargo to KRI on the basis of LOIs**, without bills of lading. The affidavit **further alleged that** BTC's institutional lenders, such as **BAT, were "aware of and acquiesced to" this practice**; and
- (b) An expert opinion on banking industry practice, stating that:-
 - a. **BAT would, from its dealings with BTC, have knowledge of: (i) how its customer BTC conducts its business**, (ii) the commodities industry in which BTC trades, and (iii) the shipping cycle of the commodities in which BTC trades;
 - b. from such knowledge, **"BAT would have been aware that BTC's commercial arrangement with their buyers would require the discharge of the Cargo without the production of BLs"**
 - c. **BAT would have performed a due diligence check with the International Maritime Bureau ("IMB") of the International Chamber of Commerce to ascertain whether LE BATEAU had arrived at the port of discharge before granting the trust receipt loan.** The expert further opined that he *"would have expected BAT to enquire with BTC, after receiving BTC's request for the Trust Receipt, on the status of the Cargo such as whether the Cargo has been discharged ..."*.

18. On 8 December 2019, BAT applied for summary judgment.

19. On 23 February 2020, Navire applied for specific discovery against BAT, seeking four categories of documents, namely:-

- (a) All affidavits filed by BAT and BTC in BTC's application for a scheme of arrangement under Section 210 of the Companies Act (Cap 50) in HC/OS 9001/2020 and all summonses thereunder;
- (b) All documents, including correspondence, meeting notes or due diligence reports in respect of and in relation to a Credit Facility which BAT extended to BTC;
- (c) All documents, including correspondence, meeting notes or due diligence reports in respect of and in relation to the Limited Debenture – Security over Goods Financed by BAT;
- (d) All correspondence exchanged between BAT, BTC, SIM and/or their representatives (including their bank(s), broker(s) and other agents) in respect of the relevant bills of lading in this action.

20. The specific discovery application was dismissed on 31 March 2020 on the basis that the documents sought was not *necessary* for Navire to show cause in the summary judgment

application as the burden of proof was on BAT to show that Navire had no defence to the claim and Navire only had to raise triable issues. On 13 April 2020, Navire appealed against the dismissal of its discovery application. Justice Geoffroy heard the appeal and upheld the Assistant Registrar's decision on 26 May 2020.

21. On 11 September 2020, BAT obtained summary judgment against Navire for USD7,454,973.16 with interest of 5.33% per annum. Following the summary judgment, Navire filed Registrar's Appeal No. 1822 of 2020 against the Assistant Registrar's decision granting summary judgment.
22. RA 1822/2020 was heard before the Honourable Justice Goodman on 29 January 2021. Both Navire and BAT relied on the same arguments raised by the shipowner and OCBC in the case of YUE YOU 902 [2020] 3 SLR 573.
23. After hearing submissions, Goodman J allowed RA 1822/2020, and overturned the AR's decision to grant summary judgment. In his brief grounds of decision, Goodman J wrote:

"History has a tendency of repeating itself. This case is very similar on the facts to YUE YOU 902 [2020] 3 SLR 573.

Mr Peter Ng, the counsel for BAT, is effectively asking me to follow the decision in YUE YOU 902, whereas Ms Tan Hwee Hwee, the counsel for Navire, is arguing that YUE YOU 902 is wrong and therefore should not be followed.

Having heard the submissions by both parties, I agree with Ms Tan and have to respectfully depart from the decision of the Honourable Judge in YUE YOU 902.

I am of the view that the bills of lading are "spent".

In the alternative, even if the bills of lading are not "spent", I find that Navire is entitled to rely on the defence of consent.

In any case, I agree that there is "some other reason" for a trial, in particular, because most of the facts and evidence relevant to whether BAT had actual knowledge of the discharge of the cargo and consented thereto are under BAT's control.

Accordingly, I will allow RA 1822/2020. I will hear parties on costs."

24. Dissatisfied with the outcome, BAT filed an appeal against the decision of Goodman J.