

1. Lamco has breached its express contractual obligation to present the bills of lading (the "bills") to DSR

- It was undisputed that Lamco did not deliver the bills or the cargoes to DSR as stipulated in the sales contracts between the parties
- The legal rights under the contracts must subsist regardless of whether DSR, HH, and Lamco anticipated that no physical delivery would actually be required (*Garnac Grain v HMF Faure*)

a. Lamco's breach has caused DSR's loss

- DSR would have been expected to withhold the cargo and bill of lading to prevent title and delivery from passing to HH, unless and until payment was received (*BWG v BWF* ("*BWG*") at [48])
- As a result of Lamco's breach, DSR was unable to retain and sell the cargoes to recover the outstanding unpaid purchase price from HH.

b. The damage suffered is not too remote

- The damage arises naturally from Lamco's breach within Limb 1 of *Hadley v Baxendale*
- Alternatively, the damage was reasonably contemplated by DSR and Lamco under Limb 2 of *Hadley*
 - o Lamco being a sophisticated player in the oil trade must have contemplated the importance of delivering the bills to DSR
 - o The issuance of the LOI was an acknowledgement and acceptance by Lamco that "any and all" losses might be suffered by DSR in the event of Lamco's failure to deliver the bills

2. DSR is not estopped from making its claim against Lamco

- The *Nasaka* test for estoppel by acquiescence is not satisfied
 - o Stage 1: Lamco could not possibly have been mistaken as to some legal right to deliver the bills and cargoes directly to the downstream buyers
 - Lamco's issuance of LOIs in lieu of the bills was precisely an acknowledgement that it was obliged to present the bills to DSR
 - o Stage 4: Even if Lamco was mistaken, there is no evidence that DSR was aware of Lamco's mistake
 - There was no evidence of any notification by Lamco that the cargoes would be delivered directly to the downstream buyer

- Stage 5: DSR's abstention from demanding the bills and cargoes could not have encouraged Lamco to deliver them directly to the downstream buyers
 - It is not uncommon for parties to the oil trade to use LOIs in lieu of the original bills in the absence of non-payment by any party to the string of transactions
 - Regardless of the circularity of the transaction, DSR's right to delivery of the bills and cargoes subsisted (*Garnac Grain*), and Lamco being an experienced in the oil trade would have been aware of this
 - The extended abstention from demanding the bills and cargoes between January 2019 and January 2021 may be explained on the basis of DSR's collapse and insolvency which rendered it incapable of encouraging or protesting Lamco's breach

3. The transaction was not a sham

- The present matter differs in material aspects from instances where this court has characterised a circular trade as a disguised financing agreement
 - *BWG* (cargoes which were legally owned by none of the parties to the circle) can be distinguished
 - The DSR-Lamco contracts involved only cargoes that Lamco itself had purchased beforehand
- The *Snook* test is not satisfied as DSR and Lamco were not acting under a common intention to create different legal rights and obligations from the express contractual stipulations
 - Lamco's Ms Bo could not have intended to collude with DSR to disguise any other agreement
 - She conceded that she did not know or care about DSR's intentions for the trade
 - DSR benefited from financial arbitrage, but this is a legitimate commercial benefit that arose from its genuine trades in real physical cargoes:
 - *Goodwood v Southernpec* at [48]
- The Appellant will not be able to proffer a convincing alternative agreement that the parties must have entered into to establish a sham

4. There is a strong policy rationale for the need for bills and cargo

- To release Lamco from its obligation to deliver the bills and cargo, or otherwise excuse Lamco for its failure to do so, would introduce undesirable commercial uncertainty, opportunities for fraud, and onerous commercial obligations.
 - The exact length of time that ought to elapse before a lack of demand for original bills and cargoes releases parties from delivery obligations, is uncertain
 - Sophisticated and experienced operators such as Lamco may take advantage of counterparties' silence to release themselves from obligations to deliver cargoes, creating opportunities for fraud
 - Each party to a trading chain would insist on the "unnecessary rigmarole" (*Voest Alpine v Chevron*) of taking physical delivery of cargoes and bills before transferring them to the subsequent parties in the chain to avoid losses from non-payment by immediate downstream buyers