# THE "JEIL CRYSTAL" - SWITCHING BILLS OF LADING

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Trade finance is often described as a lubricant of trade as it provides the necessary credit and guarantees for the international trade to take place and accordingly. The trade financier is therefore a fairly ubiquitous presence in the international sales and carriage of goods.

A trade financier would usually obtain security in the cargo that is financed. One of the most common forms of security taken over cargo to be carried by sea is a pledge of the bills of lading[1]. Very often a trade financier's interest in the cargo will be apparent to the carrier when the carrier is asked to cut the bills of lading "to the order of a *[insert bank name]*".

In mis-delivery cases (where cargo is delivered without presentation of bills of lading) brought by a trade financier, common arguments raised by the carrier involve variations of the following theme about the trade financier's knowledge – i.e. that the trade financier knew about shipping industry practice of delivering against an indemnity, the trade financier therefore had knowledge of the delivery without presentation of bills of lading, and accordingly cannot be heard to complain of the mis-delivery.

It is rare that the complaint goes the other way – where the allegation is that the carrier knew of the trade financier's interest and was therefore under a duty not to interfere with it.

In a judgment delivered on 15 March 2024, the Singapore High Court in **The Jeil Crystal** [2024] SGHC 74 had to grapple with this reverse situation.

## The Facts

The claimant in **The Jeil Crystal** was a Swiss bank, Banque Cantonale Vaudoise ("**BCV**"), who had extended financing for the purchase of a cargo of lubricating oil to be shipped from Thailand to Bangladesh. The vessel "Jeil Crystal" (the "**Vessel**") was chartered by BCV's customer, GP Global APAC Pte. Ltd. ("**GP Global**"), for the carriage of the cargo.

The cargo was shipped onboard the "Jeil Crystal" with bills of lading (the "**1st Set BLs**") issued on 13 June 2020 and consigned "To Order of [BCV]". The 1st Set BLs were presented to BCV as part of the shipping documents required under BCV's letter of credit issued to pay for the purchase.

At GP Global's request, BCV endorsed and delivered the 1st Set BLs to GP Global on 25 June 2020.

The 1st Set BLs were then tendered to the defendant owners of the Vessel on 29 June 2020 in exchange for new bills of lading (the "Switch BLs"). The Switch BLs named GP Global as shipper and were consigned to the order of Jamuna Bank. The 1st Set BLs were cancelled by the defendant owners by marking them "Null and Void".


Concurrent with the processes sent in motion to switch the bills of lading, the defendant owners agreed to provide a non-negotiable copy of the Switch BLs (the "**Non-Negotiable Copy BL**") to GP Global for customs clearance.

The cargo was eventually delivered, on or about 30 June 2020, by the defendant owners without presentation of bills of lading in exchange for an indemnity issued by GP Global.

The Switch BLs were thereafter surrendered to the defendant owners on 22 July 2020 and also cancelled.

The Vessel was arrested in Singapore on 10 October 2020 by the claimant bank, claiming for mis-delivery of the cargo as holders of the 1st Set BLs. The claimant bank, however, could not produce for inspection the 1st Set BLs when requested to do so and eventually admitted that it had endorsed and released the 1st Set BLs to GP Global.

## Setting-Aside the Arrest and Switching the Case

Recognising a problem with its standing to sue on the 1st Set BLs, the claimant bank changed tack by amending its case. In its amended case, the claimant bank's case was that the defendant owners had wrongfully allowed the switch of the bills of lading without the claimant bank's knowledge or consent.

[1] See for e.g. **The Yue You 902** [2020] 3 SLR 573

However, the amendment of the case could not preserve the claimant bank's security obtained through its arrest of the Vessel. On an application by the defendant owners, the Singapore Court ultimately held[2] that the arrest was invalid because it was founded on an invalid cause of action and the security was returned. A further application by the defendant owners to strike out the claim was not allowed – setting the stage for the wrongful switching claim to go to trial.

## The Decision on Wrongful Switching

The claimant bank's case on wrongful switching was cast in contract, the tort of negligence, and bailment.

In relation to the contractual claim, the claimant bank argued that the issuance of the Copy Non-Negotiable BL was a breach of contract as it resulted in there being two documents of title in circulation at the same time (i.e. the 1st Set BLs and the Copy Non-Negotiable BL).

Unsurprisingly, this was rejected by the Court as the Copy Non-Negotiable BL was not a document of title[3].

The claimant bank also appeared to argue that the switching of the bills of lading was a novation of the contract of carriage which was not approved by the claimant bank.

This argument was rejected since it was clear that the claimant bank was not a party to the contract of carriage at the time when the 1st Set BLs were switched and its consent was therefore not required[4].

A third argument in contract was rejected[5] – that there was a duty on the part of the defendant owner to also obtain the consent of the claimant bank on the basis that it was originally named as the "to order" consignee.

In its analysis, the court reiterated its previous reasoning that the claimant bank was not a party to the contract of carriage at the material time when the 1st Set BLs were switched, and also held that such a term would not be imposed. On the imposition of terms, the court observed that to do so would be too onerous as it would impose contractual obligations to contractual counterparties that a carrier would not know of and/or an obligation to undertake investigations to ascertain the counterparties in order to seek consent.

Turning to the tortious claim[6], the court declined to impose a duty on the claimant bank to take reasonable care not to switch the 1st Set BLs without the knowledge and/or consent of the claimant bank. The first reason for the court's decision was that the risks had already been allocated by the parties by means of contract and it would be inappropriate to circumvent the contractual set-up.

Secondly, even if a duty existed to exercise reasonable care not to interfere with the rights of those entitled to the cargo, there was no breach because the claimant bank was not a person entitled to the cargo at the time when the 1st Set BLs were switched.

The claimant bank argued that there was a second duty in tort[7] – to take reasonable care of the cargo.The court dismissed the argument as it held that the carrier's duty was at most limited to physical care of the cargo not the legal status of the 1st Set BLs.

Finally, on the bailment claims, the court rejected this as well on reasoning which was substantially similar to the claims in contract and tort – namely that the claimant bank had no interest in the cargo and was therefore not owed a duty[8].

## Wrongful Arrest[9]

Given the decision on the merits of the claim, the court moved on to consider whether the Vessel had been wrongfully arrested by the claimant bank. In this regard, the court concluded that the threshold for an arrest being wrongful had been crossed – i.e. that the claim was so unwarrantably brought or brought with so little colour or foundation that it implies malice, or gross negligence which is equivalent to it.

Underlying the court's decision was its finding that the claimant bank had essentially relied on the word of its relationship manager that the original 1st Set BLs were in the claimant bank's possession, and that nobody had bothered to check otherwise.

## Case Comment

This case is defining in its orthodox approach to the roles that a trade financier and carrier play in international trade and shipping. While the court accepted that there may be broader knowledge of the persons and parties involved in a transaction, this did not form a basis to extend the responsibilities and obligations of a carrier further then its roles in relation to the physical care, custody, and carriage of the cargo. This is consonant with the approach in mis-delivery cases where a trade financier's knowledge of the use of indemnities to obtain discharge of cargoes without presentation of bills of lading is, without more, irrelevant.

This case also sends a signal reminder to claimants intending to arrest vessels in Singapore that some degree of due diligence ought to be carried out. Failure could possibly amount to wrongful arrest. Claimants would be assisted in this regard by the need, under Singapore law, to provide full and frank disclosure of all material facts when applying for the issuance of a warrant of arrest.

[2] The "**Jeil Crystal**" [2022] 2 SLR 138
[3] See [51] - [63]
[4] See [35] - [50] and [68] - [72]
[5] See [73] - [76]
[6] See [77] - [82]
[7] See [83] - [86]
[8] See [87] - [92]
[9] See [95] - [137]