

# Table of Contents

INTRODUCTION	01
SECTION 2 OF THE SINGAPORE BILLS OF LADING ACT 1992	02
TRADITIONAL MISDELIVERY CASES IN SINGAPORE	03
CHANGING JUDICIAL ATTITUDE TOWARDS BLs?	04
RECENT MISDELIVERY CASES IN SINGAPORE	05
POSSIBLE DEFENCES	06
CONCLUSION	07





# 01

## Introduction

# Introduction

01



BL = Key to warehouse

02



Shipowners cannot  
avoid delivering  
without BL

03



Banks finding it  
difficult to obtain  
summary judgment

04



What's concerning the  
Singapore Courts now





**02**

**Section 2 of  
The Singapore  
Bills of Lading Act  
1992**



# Section 2 of The Singapore Bills of Lading Act 1992

## OVERVIEW

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Section 2 of the Singapore Bills of Lading Act 1992 is in *pari materia* with section 2 of the UK Carriage of Goods by Sea Act 1992.

### *Rights under shipping documents*

2.—(1) *Subject to the following provisions of this section, a person who becomes —*

*(a) the lawful holder of a bill of lading;*

*(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.*

*(2) Where, when a person becomes the lawful holder of a bill of lading, possession of the bill no longer gives a right (as against the carrier) to possession of the goods to which the bill relates, that person shall not have any rights transferred to him by virtue of subsection (1) unless he becomes the holder of the bill —*

*(a) by virtue of a transaction effected in pursuance of any contractual or other arrangements made before the time when such a right to possession ceased to attach to possession of the bill; or*

*(b) as a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.*

# Section 2 of The Singapore Bills of Lading Act 1992

## RIGHTS OF THE LAWFUL HOLDER OF BILL OF LADING

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01

Based on s. 2(1) of the BLA, a lawful holder of a BL can sue the shipowner for breach of the contract of carriage in the BLS as if he had been a party to the contract.

02

According to s. 2(2) of the BLA, the BL holder loses the right to sue if possession of the BL does not give him the right to take delivery of goods.



# Section 2 of The Singapore Bills of Lading Act 1992

## EXCEPTION

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01

Exception in s. 2(2)(a) of the BLA: The BL holder does not lose the right to sue if he becomes the holder of the BL because of a transaction pursuant to any arrangement which pre-dates the time when the BL cannot be used to obtain delivery of the goods.

02

s. 2 of the BLA favours banks who supply credit for sale of goods that are carried onboard ships.



# 03

## Traditional Misdelivery Cases in Singapore



# Traditional Misdelivery Cases in Singapore

## OVERVIEW

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01

**Sze Hai Tong Bank Ltd v  
Rambler Cycle Co Ltd**  
(1959) AC 576

02

**BNP Paribas v Bandung  
Shipping Pte Ltd**  
[2003] 3 SLR(R) 611

03

**The Yue You 209**  
[2020] 3 SLR 573

# Traditional Misdelivery Cases in Singapore

SZE HAI TONG BANK LTD V RAMBLER CYCLE CO LTD (1959) AC 576

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In 1959, there was a **Privy Council decision** in respect of an appeal from Singapore in the case of Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd.



Lord Denning, sitting as one of the 3 Lords hearing the case, said that a shipowner who delivered without production of BL did so at his peril.



In delivering the goods, without production of the BL, to a person who, to its knowledge, was other than one entitled under the BL to receive them, the carrier was liable for breach of contract and conversion.



# Traditional Misdelivery Cases in Singapore

BNP PARIBAS V BANDUNG SHIPPING PTE LTD [2003] 3 SLR(R) 611

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In 2003, the **Singapore High Court** decided the case of BNP Paribas v Bandung Shipping Pte Ltd.



The Judge (who has recently been elevated to the Court of Appeal) followed *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd*. She held that **a holder of a BL was entitled to sue in contract in respect of any breach even if it was committed before the claimant became the holder of the BL.**



She also held that the **contract of carriage generally continued and the BL remained effective until the goods were delivered to the person entitled under the BL.** The defence of consent failed because no evidence that the bank consented to or authorised delivery without production of BL.

# Traditional Misdelivery Cases in Singapore

THE YUE YOU 902 [2020] 3 SLR 573

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In 2020, the **Singapore High Court** decided the case of The Yue You 902.



A **Chinese state-owned company** delivered palm oil without production of BL and its ship was arrested in **Singapore**. The **Malaysian state-owned trading company** who chartered the ship and issued the LOI did not want to furnish security. The Chinese state-owned company sued the Malaysian state-owned company in Malaysia to enforce the LOI.



This case was exciting because there was **evidence that the Bank knew of its customer's practice of delivering without production of BLs**. We **relied on the defences of consent and estoppel**, spent BLs and that **the Bank was not a good faith holder of the BLs**. However, the Bank won.



Although the **Bank** obtained summary judgment in the High Court for its full claim amount plus interest and legal costs, it **settled for a lower amount almost on the eve of the Court of Appeal hearing**.





**04**

**Changing Judicial  
Attitude Towards  
BLs?**

# Changing Judicial Attitude Towards BLs

THE LUNA [2021] 2 SLR 1054

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- ▶ In 2021, there was a Court of Appeal decision called **The Luna [2021] 2 SLR 1054**.
- ▶ Represented a physical bunker supplier whose barge was arrested by Philips 66 (who sold the oil to OW Bunkers) for delivery without production of BL.

01

- Why is there a **BL** when a bunker barge supplies bunkers to ships?
- Practice in Singapore for **some oil terminals to prepare a document entitled “Bill of Lading”**, with usual BL wording and bunker barge representative must sign and stamp it.

02

- Physical supplier **treated the document as a receipt** showing quantity of oil. Did not ask ships to surrender BLs before stemming.
- When OWB **did not pay P66**, P66 arrested the bunker barge for misdelivery.



# Changing Judicial Attitude Towards BLs

THE LUNA [2021] 2 SLR 1054

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01

P66: If it looks like a duck, walks like a duck and quacks like a duck, then it must be a duck!

02

High Court Judge gave judgment to P66 after more than 15 days of trial

03

- **Court of Appeal** allowed physical supplier's appeal and reversed the High Court judgment.
- CA: If looks like a duck, walks like a duck and quacks like a duck, **it does not automatically follow that it is a duck.**
- CA: **Look at parties' intention. If they didn't intend it to be a duck, then ≠ duck!**

# Changing Judicial Attitude Towards BLs

THE LUNA [2021] 2 SLR 1054

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01

- The Court of Appeal held that **there was no intention for the BLs to have contractual effect.**

02

- The Court of Appeal analysed the role of the BL in the factual matrix, including the backdrop of the sales contracts, the delivery process, and the payment terms; recognised that **parties' rights vis-a-vis the BL must be construed with reference to the underlying arrangements which had been agreed.**

03

- Starting from **The Luna**, there is a **shift** in the way that Singapore Courts examine misdelivery cases.



**05**

**Recent Misdelivery  
Cases in Singapore**



# Recent Misdelivery Cases in Singapore

## OVERVIEW

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- ▶ There are three 2022 High Court decisions which demonstrate this shift in mindset.
- ▶ These cases involved **application for summary judgment** by the **claimant bank** on the basis that the **presentation rule was sacrosanct**, and that the **Court should be slow to overturn the simple working principle** that a carrier who delivers without production of an original BL does so at his own risk.

01

The STI Orchard  
(unreported)

02

The Miracle Hope  
(unreported)

03

The Maersk Princess  
[2022] SGHC 242

# Recent Misdelivery Cases in Singapore

THE STI ORCHARD

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In **The STI Orchard**, the central factual issue was whether the claimant bank had given up its rights to the bills of lading as security, giving rise to interrelated issues of good faith, spent bills and consent.



The Court found that triable issues arose as to **whether the claimant bank had intended the bills of lading as security**, and **whether it had consented to its customer taking delivery without production of the original BL for its own use**.



The Singapore High Court thus **granted the defendant shipowner unconditional leave to defend**.

# Recent Misdelivery Cases in Singapore

## THE MIRACLE HOPE

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In **The Miracle Hope**, the financing arrangements similarly gave rise to the interrelated issues of good faith, spent bills and consent, which the Singapore High Court found were triable.

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The Court found that triable issues arose as to **whether the claimant bank had intended the bills of lading as security**, and **whether it had consented to its customer taking delivery without production of the original BL for its own use**.

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The Singapore High Court thus **granted the defendant shipowner unconditional leave to defend**. In other words, no summary judgment.

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# Recent Misdelivery Cases in Singapore

THE MAERSK PRINCESS [2022] SGHC 242

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In **The Maersk Princess**, the High Court summarised the decisions in the recent English cases of **The Nika [2021] 1 Lloyd's Rep 109** and **The Sienna [2022] EWHC 957 (Comm)** and in the Singapore case of **The STI Orchard**, and said that the Courts must examine the question of whether the claimant had regarded the relevant bills of lading as security. In doing so, the Court must consider the precise financing and security arrangements between the claimant bank and its customer.



Based on the evidence, the Singapore High Court found that **this question could not be answered in a summary way**, and **granted the defendant shipowner unconditional leave to defend**.



# 06

## Possible Defences

# Possible Defences

These broad defences seem to be gaining traction:

01

Whether the bank is a **good faith transferee/holder** of the BL (the “**Good Faith Defence**”)

02

Whether the bank **consented to/authorised the delivery** without production of BL (the “**Consent Defence**”)



# Possible Defences

## THE GOOD FAITH DEFENCE

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- ▶ Good faith is a requirement under s. 2(2) of the BLA. Without good faith, a party in possession of a BL ≠ lawful holder of a BL. Therefore, if there is no intention that the transfer of the BL would confer security rights on the bank, that would support a finding that there was no good faith.
- ▶ To find out if the BL was meant to be a security, look at the financing and security arrangements between the financing claimant bank and its customer. This includes the sale and sub-sale transactions in the chain.

# Possible Defences

## THE CONSENT DEFENCE

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- ▶ This requires evidence that the bank had consented or authorised or ratified the delivery without production of BL. When would the shipowner ever communicate with the bank?!!!
- ▶ In **The STI Orchard**, there was evidence to suggest that the bank knew that the oil cargo had been delivered without production of the BL, blended and re-sold and that the bank looked to these sale proceeds, rather than the BL, as collateral. Whether these amounted to *ex post facto* consent or ratification of its customer's instructions to the shipowner to deliver without production of the BL = triable issue.
- ▶ The Singapore High Court also pointed out that, because of the recent English cases of **The Nika** and **The Sienna**, there is now a **triable legal issue** as to whether the lack of communication between the bank and the shipowner would necessarily be fatal to the Consent Defence.



# 07

## Conclusion



# Conclusion

## IN SUMMARY

01



No longer a slam dunk  
for banks to obtain  
summary judgment  
against shipowners  
whenever there is a  
misdelivery

02



Banks will now  
**scrutinise** their own  
arrangements to ensure  
their rights under the BL  
will not be compromised

03



Recent cases are still  
the **exception** rather  
than the norm

04



As international trade  
and bank financing for  
international trade  
become more complex,  
there will be **more  
ammunition for  
defences**

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