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# COMMODITIES IN FOCUS WEEKLY - ISSUE 154

## DOES AN INSTRUCTION TO ISSUE DELIVERY ORDERS CONSTITUTE CONVERSION?

**In the case of *Valency International Pte Ltd v JSW International Tradecorp Pte Ltd and others and another appeal* [2026] SGCA 1, the Singapore Court of Appeal held that instructions to issue delivery orders, without more, did not constitute conversion; the instructions had to be acted upon before any liability could attach.**

### BACKGROUND

Valency International Pte Ltd (“**Valency**”), the claimant in the case, financed the purchase of 55,000MT of non-coking steam coal (the “**Cargo**”) by K.I. (International) Limited (“**Kamachi**”) from JSW International Tradecorp Pte Ltd (“**JSW**”). The Cargo was represented by 22 bills of lading (the “**22 BLs**”).

For the carriage of the Cargo, JSW voyage chartered the vessel MV Stella Cherise (the “**Vessel**”) from Oldendorff Carriers GmbH & Co.

KG (“**Oldendorff**”). Oldendorff had voyage chartered the Vessel from Cara Shipping Pte Ltd (“**Cara**”), who in turn time chartered the Vessel from its owner, Stella Cherise Pte Ltd. Cara had appointed Unicorn Maritimes (India) Pvt Ltd (“**Unicorn**”) as the discharge port agent for the Vessel, on the nomination of JSW.

### Discharge of the Cargo

The Vessel discharged part of its cargo at Gangavaram Port, before sailing to and discharging the Cargo at Krishnapatnam Port into a bonded storage area (“**Storage Area**”) between 27 to 31 August 2018 against back-to-back letters of indemnity issued by Kamachi to JSW, and up the charterparty chain from JSW to Oldendorff, and Oldendorff to Cara.

After the discharge of the Cargo, Kamachi, JSW and Unicorn prepared respective letters confirming that the Cargo would only be released from the Storage Area with approval from Valency. Crucially, Unicorn’s letter was addressed to Valency, and it acknowledged, amongst others, that the Cargo would only be released upon surrender of the 22 BLs or on Valency’s written instructions (the “**Unicorn Letter**”).



### **The trust receipt arrangements between Valency and its bank, HSBC**

On 10 September 2018, Valency applied to its bank, HSBC, for a loan to finance the Cargo (“**Loan**”). Under the Loan, Valency was to repay HSBC by 24 September 2018; various shipping documents, including the 22 BLs, were pledged by Valency to HSBC as security for the Loan (the “**Pledge**”).

At the same time, Valency made a separate application to HSBC to take physical possession of the 22 BLs on trust receipt terms, which Valency needed to take or control delivery of the Cargo from the Storage Area (the “**Trust Receipt**”). Under the Trust Receipt, Valency undertook to hold the 22 BLs, the Cargo, and/or the proceeds of any sale thereof on trust for HSBC and solely to HSBC’s order. Pursuant to the Trust Receipt, Valency collected the 22 BLs from HSBC on 11 September 2018.

### **The delivery of the Cargo to Kamachi**

Around two weeks after the Cargo had been discharged from the Vessel and into the Storage Area, on 13 September 2018, Oldendorff instructed Unicorn to issue delivery orders (“**Oldendorff Release Instruction**”), and on 17 September 2018, JSW instructed Unicorn to release delivery orders for the Cargo (“**JSW Release Instruction**”).

Over a period of about two months from 17 September to 15 November 2018, Unicorn issued 14 delivery orders (the “**Delivery Orders**”) which Kamachi eventually used to obtain delivery of the entire Cargo from the Storage Area without Valency’s knowledge. Thereafter and on 3 occasions, Unicorn lied to Valency about the closing balance of the Cargo held in the Storage Area.

It is also relevant to the background that there had been previous transactions between the same parties – Unicorn was aware of the need to await Valency’s instructions to release the Cargo.

### **Issues**

Valency claimed against JSW, Unicorn and Oldendorff for, amongst others, conversion. The trial Judge held, amongst others, that:

- (a) Valency did not have title to sue JSW and Oldendorff for conversion;

- (b) the JSW Release Instruction did not constitute conversion; and
- (c) the Oldendorff Release Instruction constituted conversion.

Valency appealed against the Judge’s decision, whilst Oldendorff cross-appealed. The Court of Appeal (“**Court**”) therefore had to determine the following issues:

- (a) whether the issuance of the JSW Release Instruction and the Oldendorff Release Instruction amounted to acts of conversion (the “**Act of Conversion Issue**”); and
- (b) whether Valency had the standing to sue JSW and Oldendorff in the tort of conversion (the “**Standing Issue**”).

### **ACT OF CONVERSION ISSUE**

For Valency to establish that JSW and Oldendorff were liable for conversion, Valency must prove the chain of causation between their respective Release Instructions and the issuance of the Delivery Orders by Unicorn.

In this regard, the Court held that the alleged defaults by JSW and Oldendorff were inchoate until such time that Unicorn proceeded to release the Delivery Orders (which in turn paved the way for Kamachi to take delivery of the Cargo without Valency’s knowledge or consent). The Release Instructions could not, without more, have amounted to acts of conversion; the instructions had to be acted upon before any liability in conversion could attach. This is because a bare denial of title will not, in the absence of conduct directly affecting the goods, give rise to a liability in conversion.

On the facts, the Court was not satisfied that either the JSW or Oldendorff Release Instruction caused Unicorn to release the Delivery Orders (as opposed to Unicorn simply having acted on a frolic of its own).

In respect of Oldendorff, the Court took the view that the Oldendorff Release Instruction, issued 4 days in advance of the JSW Release Instruction, did not cause Unicorn to issue the Delivery Orders.



If Unicorn was acting pursuant to the Oldendorff Release Instruction, Unicorn would have released all Delivery Orders soon after, and not progressively over a period of 2 months.

The Court also found that the facts which militated against a finding that the JSW Release Instruction caused Unicorn to issue Delivery Orders, similarly applied to Oldendorff:

- (a) At the time of the JSW Release Instruction, Unicorn remain bound by the Unicorn Letter, pursuant to which it had undertaken to Valency not to release the Cargo without Valency's instructions.
- (b) The fact that Unicorn lied to Valency about the closing balance of the Cargo on 3 occasions demonstrated that Unicorn knew it still needed Valency's instructions before issuing the Delivery Orders.
- (c) The prior transactions between JSW, Unicorn and Valency indicated that Unicorn was aware that it needed to wait for Valency's instructions before releasing the Cargo.

The only fact tending to suggest that Unicorn had acted on the JSW Release Instruction was the fact that Unicorn issued the first of the Delivery Orders a few hours after receiving the JSW Release Instruction. However, the Court was of the view that the coincidence in timing is not sufficient on its own to establish causation, particularly when viewed in light of the above.

## STANDING ISSUE

It is undisputed that where the cargo is pledged, it is the pledgee that has the exclusive right of possession and is therefore entitled to sue for conversion.

However, it is common for pledgees to redeliver a pledged asset to the pledgor under a trust receipt arrangement, stipulating that the redelivery is for some designated purpose. In determining whether a pledge (and thereby the right to sue for conversion) has been extinguished/returned to the pledgor by the redelivery of the pledged assets to the pledgor, the Court will examine the terms of the trust receipt and other circumstances surrounding the redelivery.

On the facts, the Court held that the terms of the Trust Receipt make clear that HSBC did not intend to surrender its special interest in the 22 BLs, despite the redelivery to Valency. The purpose of the redelivery of the 22 BLs was solely to allow Valency to take delivery of the Cargo and/or sell the Cargo to repay the sums owing the Loan.

In this case, Valency had obtained redelivery of the 22 BLs in its capacity as HSBC's agent. The terms of the Trust Receipt provide that Valency was to take delivery of, store, and subsequently sell the Cargo on behalf of HSBC and in HSBC's name (i.e. qua agent).

The mere fact that Valency physically held the 22 BLs did not suffice to give Valency standing to sue in conversion. Even if Valency had presented the 22 BLs to the carrier to demand delivery, it would have done so as HSBC's agent.

## CONCLUSION

Even though the tort of conversion can hold liable parties that had acted inconsistently to the rights of a claimant with exclusive possession of the goods (albeit without a positive intention to challenge the claimant's rights), this case makes clear that the claimant has to show a causative link between the acts of the parties and the claimant's loss in order to establish liability.

Stephenson Harwood (Singapore) Alliance firm Virtus Law LLP, led by Managing Partner Lauren Tang and supported by associate Ooi Chit Yee, acted for Oldendorff and successfully appealed in the Court of Appeal against the trial Judge's decision that Oldendorff's act of instructing the discharge port agent to issue delivery orders constituted conversion.



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