Lantana Services Sdn Bhd **… Plaintiff**

AND

M.O,P.S. Sdn Bhd **… Defendant**

(High Court of Brunei Darussalam)
(Civil Suit No. 56 of 2024)

Edward Timothy Starbuck Woolley, J.C.
Date of Hearing: 21st October, 2026.
Date of Reasons for Judgment: 31st October, 2026.

Headnote: Claim for unpaid invoices under a Charter Party – defence of misrepresentation and illegality – whether arguable defence established – effect of upstream Charter Party for the same vessel – charterer enjoying benefit of Charter Party – whether entitled to decline payment

Miss Evelyn Lee and Dk Hjh Nurun Najdah binti Pg Hj Abdul Rahman (M/S Y.C. Lee and Lee) for the Plaintiff.
Mr Czar Calabazaron and Mr Adam Ang Wen Li (M/S Rudi Lee, Annie Kon & Associates) for the Defendant.

Case cited:
JN Teguh Energy Sdn Bhd v UMD Energy Sdn Bhd & Anor [2024] MLJU 2056

DECISION

Woolley, JC:

These proceedings arise out of a BIMCO SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels dated 22 November 2017, by which the Defendant chartered the vessel *Dayang Indah* from the Plaintiff for 9 months at a daily rate of B$3,400.00, upon the expiry of which two further extensions were made: from 27 August 2018 to 21 December 2018 and from 26 February 2019 to 3 May 2019 (the downstream charter). During this time the Defendant utilized the *Dayang Indah* and the Plaintiff issued invoices to the Defendant some of which remain unpaid, for which the Plaintiff claims the sum of B$497,483.56, and are the subject of these proceedings.

2 On 20 November 2017, two days before this charter, the Plaintiff had entered into a BIMCO Time Charter for the same vessel with the owner, Lim Enterprise (the upstream charter). However, in Part 1 of the downstream charter, in Box 2 *"Owners/place of business"* the Plaintiff had put the name of their company. The Defendant in their defence claim that this was a

misrepresentation and that accordingly the charter is null and void or unenforceable and the Plaintiff can make no claim for payment under it.

3 The Plaintiff's case is that the defence put forward shows no real prospect of success in that the alleged misrepresentation provides no basis for avoiding liability for charter services already fully performed.

Appeals

4 I now have before me two appeals from a decision of the Hon Senior Registrar Hjh Noor Amalina binti DP Haji Alaihuddin given on 14 September 2026 dismissing the Plaintiff's application for summary judgment and giving the Defendant leave to defend conditional upon giving security in the sum of B$300,000.00 within 28 days, and giving leave for the Defendant's counterclaims to proceed only in respect of the sum of B$42,225,00 being a claim for fuel bunkering, and the claim for fraudulent misrepresentation. The learned Senior Registrar also struck out the Defendant's counterclaim for marine crew catering, but gave leave to amend the defence. It is not clear from this whether an amendment would enable the Defendant to reinstate this claim, however this part of the decision is not appealed by either party so the matter can no doubt be pursued at a later date if necessary.

5 The Plaintiff's appeal seeks summary judgment for the full sum claimed with interest and that the counterclaim for fraudulent misrepresentation be struck out. The Defendant's is for unconditional leave to defend, alternatively that security be varied from payment to a guarantee or undertaking.

Misrepresentation

6 It is the pleaded case of the Defendant that the Plaintiff represented that they were the owner of the vessel, that the Defendant would not otherwise have chartered the vessel, and that the Plaintiff had no legal right to sub-charter it without the consent of the owner. In support of this they rely on the Plaintiff's name being inserted in the charter document as "owners", as noted in paragraph 2 above. As to the right to sub-charter, they refer to clause 20(a) in the upstream charter which requires the consent of the owner to sub-charter the vessel, no evidence having been given of such consent, and in submissions before the court also refer to Box 29 in Part 1 of the same charter which reads: "*Sublet (state amount of daily increment to charter hire) (Cl. 20)*" and in which the words "*Not applicable*" have been inserted. The Defendant submits the latter shows that sub-chartering was prohibited. I will look at this further below.

7 In the affidavits in opposition, and in submissions before me, the Defendant has added a number of further allegations, namely that Brunei Shell Petroleum (BSP), to whom they were contracted, required them to charter directly from the registered owner of the vessel or to approve any sub-charter, and that other risks might flow from their non-compliance with this including insurance difficulties. However, no evidence was put forward as to this, which remain bare allegations. In any event, the charter having been completed and none of the risks envisaged having materialized, while the Defendant has had the benefit of the charter, it is difficult to see what damage has been suffered by the Defendant even if their allegations are correct.

8 Returning to the alleged misrepresentation, the Defendant has to show not only that the representation made was false, but that they would not have entered into the contract had they known it was false, and that doing so gives rise to a claim against the Plaintiff which they can use

as a defence. They base their claim of misrepresentation wholly on the apparent description of the Plaintiff as owner of the vessel *Dayang Indah* in the downstream charter. However, in Annex "A" to the charter party which sets out the specifications for the vessel, the "Owner/Operator" are clearly entered as "Enterprise/Lantana Services Sdn Bhd". It is contended on behalf of the Defendant that this annex was not attached to the charter party when it was signed and only appended later by the Plaintiff. I note that there is no evidence given as to when this was alleged to be added and, if that was while the charter was under way, why it was not raised then and the charter terminated. I find it difficult to believe that the Defendant was unaware of this document. In his original affidavit in opposition to the Plaintiff's summons for judgment under Order 14, Venkata Sivannarayana Raju Nadimpalli, in support of his contentions that the charter party and the vessel should adhere to the requirements of BSP, he quotes clause 40 of the additional terms in the Addendum to the downstream charter party which reads:

> "*At all times the specifications of the vessel shall comply to requirements of BSP agreed at this point of commencement date, and any deviation shall be rectified under the Owner account as soon as possible.*"

Two points immediately arise from this: the first is that this is the only documentary evidence put forward by the Defendant in support of their contention that requirements of BSP are critical to the contract and this clearly relates only to the specifications of the vessel, not to any of the other requirements of BSP alleged by the Defendant; the second is, if the Defendant was so insistent on those requirements being adhered to, as claimed in the above affidavit, they will no doubt have scrutinized this document to ensure that the vessel complies before, or at the time of, entering into the charter party. If they did so, the ownership, which is clear from the wording, would become apparent.

9 The Plaintiff submits that, in any event, the Defendant had prior knowledge of the ownership of *Dayang Indah*, as there had been previous dealings between the parties concerning this vessel. In particular there is exhibited to the Plaintiff's affidavit in reply by Mr Lim Kian Tar an email to *inter alia* Md Abdul Nurafiq bin Hj Abdul Wahab and Haji Rakawih Haji Daud of the Defendant, dated 5 February 2016 regarding the same vessel, which also gave the vessel's name and registration number, and stated the owner as Lim Enterprise and the manager as Lantana (Brunei) Sdn Bhd. Both recipients of the email, named above, were, as admitted by the Defendant, at meetings in October and November 2017 when this downstream charter was negotiated. Further, there had been a previous charter party entered into between the Plaintiff and Defendant in respect of the same vessel in March 2017 with an identical Annex "A", with the same information, which was signed by the parties, and in which the Plaintiff was again named in Part 1 as the owner without any query by the Defendant.

10 This is clearly not unusual situation. In *JN Teguh Energy Sdn Bhd v UMD Energy Sdn Bhd & Anor* [2024] MLJU 2056, in similar situation to this, Ong Chee Kwan J said, at paragraphs 36 and 37:

> "*The 1st Defendant contended that the Plaintiff had misrepresented itself as the Owner of the vessel, VT Handler. This is premised on the fact that the Plaintiff's name had appeared in the box label "owner" in the VT Handler Charter Party'*

> *With respect, this is a non-starter for the 1st Defendant. It is very common for a charterer to sub-charter the vessel to another party and beyond, without necessarily being the owner of the vessel but describing itself as the "owner" in the charterparty agreement.*"

11 It follows that I am far from satisfied that the Defendant has established an arguable defence as to whether there was a misrepresentation here at all, and whether they relied on it in entering into the downstream charter.

12 In any event, I am also not satisfied that, had misrepresentation been established, the Defendant would have had a defence in the circumstances here. I have been referred by Miss Lee for the Plaintiff to the provisions of the Contracts Act, Cap. 106. Under section 19 of that Act, where consent to an agreement is caused by misrepresentation, the contract is voidable at the option of the party whose consent was so caused. Leaving aside the fact that no option has been exercised here by the Defendant to void the contract, merely to claim that it is unenforceable, it is pertinent to look at sections 65 and 66 of the same Act which relate to the consequences of the rescission of a voidable contract and the obligation of a person who has received an advantage under a void agreement, or a contract that becomes void. Section 65 states, *inter alia*, that:

> "*The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.*"

And under section 66:

> "*When an* agreement *is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or make compensation for it, to the person from whom he has received it.*"

It is clear from this that the legislation never intended that a party to a contract, even if entered into following a misrepresentation, and the contract having been fully carried out, could decline to account for the benefits under the contract they had received and the Defendant accordingly has no ground upon which to refuse to pay the fees they agreed for the charter which has been completed.

Other matters

13 Although this is sufficient to deal with the Defendant's claim to have an arguable defence to the Plaintiff's claim, for the sake of completeness I will look at three other matters raised by the defence in their attempt to show that they have an arguable defence.

14 The first of these is the contention that the upstream charter has a prohibition on sub-letting. This is based on Box 29 referred to in paragraph 6 above which the Defendant maintains is the prohibition referred to. The box is headed "*Sublet (state amount of daily increment to charter hire)*". Try as I might, as a matter of simple English, I can find no interpretation of this other than a place to state the extra fee, if any, payable to the owner in the event of a sub-charter. By putting "Not applicable" it can only mean that no extra fee is payable. It certainly does not lend itself to the any interpretation implying a prohibition on sub-letting. In any event, this is part of the contract between the Plaintiff and the owner and, if the Plaintiff were to be in breach of that, the Defendant has not shown why this should affect their liability to pay under the downstream charter. It is further contended that, as the upstream charter provided, under clause 20, the prior approval of the

owner, there is no evidence that the owner had given such approval. The first point to be made about this is, again, that the Defendant is not a party to that contract and any breach is a matter between the owner and the Plaintiff. The second is that, as above, the Defendant has not demonstrated the legal consequences that flow from any breach of the Plaintiff's contract with the owner, or why this should affect the Defendant's obligations under the downstream charter.

15 The next matter raised by the Defendant is the fact that the upstream charter expired on 27 August 2018 while the invoices claimed on relate to later periods. In response to this the Plaintiff has exhibited two variations to the upstream charter extending the period of charter to include the period of the sub-charter. The Defendant has cast doubt on the authenticity of these, without any evidence or other justification, and seeks to submit that the Plaintiff be required to establish that they are genuine. This has all the appearance of a fishing expedition. The Defendant has no evidence that there is anything amiss with the variations of the upstream charter and is looking to the Plaintiff to provide it.

16 The Defendant further contends that the principal sum and interest remain disputed. However, in the defence there is no challenge to the calculation of the sums claimed merely a blanket denial of any breach of the agreement and putting the Plaintiff to strict proof. There have since been no submissions put forward that dispute the accuracy of the sums claimed only a repeat of the argument that, as a result of misrepresentation, nothing is payable. I have dealt with that argument above. In any event, in the downstream charter, in clause 12(e), there is specific provision for disputing an invoice, which must be done before the due date, specifying the reason. There is no evidence of any dispute being raised in respect of any invoice in accordance with the contract or at all.

17 As to interest, the Plaintiff claims, under clause 12(e) of the charter party and Box 25, interest at 1% per month from the due date of each unpaid invoice. Although they have claimed in the statement of claim for interest on the total sum from 1 June 2019, they now accept this is incorrect and interest is due only as stated in the charter party. The Defendant says that contractual interest is disputed without giving the grounds of such dispute, and says that the calculation cannot be determined summarily. This is incorrect. Where the basis of calculation of interest is clearly set out in the contract, and there is no valid argument or evidence disputing that, it can be determined summarily as with any claim for payment under a contract.

Fraudulent misrepresentation

18 In the counterclaim, the Defendant claims loss and damage in respect of fraudulent misrepresentation. This can be dealt with quite shortly. First, there is no allegation of fraud in the defence and fraudulent misrepresentation is mentioned for the first time in the counterclaim. Secondly, no damage or loss is pleaded which could give rise to such a claim. As I have noted in paragraph 7 above, even if the Defendant's allegations were proved to be correct, what damage has been suffered? They have had the benefit of the charter party for the whole of the time covered by it, and have paid some of the invoices for it. None of the possible adverse results from diversions from BSP requirements, which the Defendant claims, have happened. In short, they entered a contract which has been completed to their benefit and now seek to disclaim liability for payments due under the contract. In any event, were the Defendant able to establish fraudulent misrepresentation, the same principles apply under the Contracts Act as set out in paragraph 12 above.

Conclusion

19 For the above reasons I allow the Plaintiff's appeal and give judgment with costs under Order 14 for the sum of B$497,483.56 with interest at the contractual rate of 1% per month on each unpaid invoice from the due date of that invoice to the date of judgment and thereafter at the judgment rate, with liberty to apply in the event of any dispute as to the calculation. The Defendant's appeal is dismissed. This leaves the only matter before the court being the counterclaim in the sum of B$42,225.00 and, subject to any applications to the court in respect of the learned Senior Registrar's order as to the amendment, and its effect, whatever claims remain to the Defendant.

20 I also order that that the Defendant pay the costs of this appeal and the costs of the application before the Senior Registrar, to be taxed if not agreed.

EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner