



[2026] JMCC Comm 21

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

ADMIRALTY DIVISION

CLAIM NO.SU2024AD0001

BETWEEN	WORLDWIDE FOODS LIMITED	CLAIMANT
AND	M/V CRYSTAL A 018A	1 st DEFENDANT
AND	MSC MEDITERRANEAN SHIPPING COMPANY S.A	2 nd DEFENDANT
AND	MSC MEDITERRANEAN SHIPPING COMPANY JAMAICA LIMITED	3 rd DEFENDANT

Ms Shanique Scott instructed by McLeod Scott Law for the claimant

Miss Amanda Montague instructed by Myers Fletcher and Gordon for the 3rd defendant

Heard: May 12, 2025 and July 24, 2026

Civil Procedure - Striking out statement of case - Bills of Lading - Himalaya Clauses - Challenging the court's jurisdiction - Summary Judgment and admiralty claims in rem - CPR 9.6, 15.3(e), 26.3(1)(c)

CORAM: JARRETT, J

Introduction

[1] Two thousand two hundred and thirty-seven (2,237) cases of frozen chicken feet (“the goods”) were transported on the M/V CRYSTAL A 018A, a ship registered in Singapore (“the 1st defendant”), on a voyage from the Port of

Vancouver in Canada, to the Port of Kingston in Jamaica, between July 29, 2023, and August 29, 2023. The charterer, the 2nd defendant, is a company registered under the laws of Switzerland. Its local agent is the 3rd defendant. On arrival at the Port of Kingston, the goods were condemned by the local authorities and declared unfit for human consumption. The claimant, the consignee of the goods, has sued all three defendants for breach of bailment, negligence and/or breach of contract. Currently before the court is the 3rd defendant's application to strike out the claimant's statement of case, on the basis that it discloses no reasonable grounds to bring the claim against it. In addition to asking that the claim against it be struck out, the 3rd defendant also asserts that Jamaica is not the appropriate forum in which to bring the claim. In the alternative, it seeks summary judgment.

- [2] In a Joint Notice of Discontinuance filed by the claimant and the 1st defendant on November 7, 2025, the claim against the 1st defendant was discontinued. The 2nd defendant has not been served with the claim, consequently, the only defendant currently before the court is the 3rd defendant. I propose to outline the claim and the 3rd defendant's defence, before turning to the 3rd defendant's application and my analysis of it.

The claim

- [3] On May 12, 2025, at the start of the hearing of the 3rd defendant's application, it came to the court's attention that two business days earlier, on May 8, 2025, the claimant had filed an amended particulars of claim, seeking to include pleadings referring to a contractual relationship between the 3rd defendant and the claimant, for the former to provide reefer plug-in services to the latter at the Port of Kingston. This allegation had hitherto not been part of the earlier pleadings filed on August 27, 2024. Citing **CPR 20.4** and the decision of this court in **David Stewart v National Commercial Bank Jamaica Limited [2025] JMCC Comm 4**, Miss Montague, counsel for the 3rd defendant, objected to the amended pleadings, coming as it did, at a time after her client's application to strike out the claim and without an application seeking the court's permission to amend the pleadings. Miss Montague was absolutely correct in her objection.

In the absence of such an application by the claimant, I ruled that the amended pleadings were improperly filed, and so I would have no regard to them.

[4] In its particulars of claim filed on August 27, 2024, the claimant alleges that the 2nd and 3rd defendants were contracted to carry the goods (delivered to them in good order and condition), on board the 1st defendant in a refrigerated container number TCLU102228-1 from the Port of Vancouver to the Port of Kingston, and deliver them in like good order and condition, at an agreed freight pursuant to Bill of Lading number MEDUVC492422 (“the Bill of Lading”). It was the duty of the 2nd and 3rd defendants to make the refrigerating and cool chambers in which the goods were carried fit and safe for their “reception, carriage and preservation”.

[5] It is pleaded further that it was the duty of the 2nd and 3rd defendants to carefully, carry, keep, care for and discharge the goods. It is alleged that they negligently, and/or in breach of contract and their duties as bailees, failed to deliver the goods in good order and condition and instead, delivered them damaged by failing to make the refrigeration unit for the container, fit and safe for their reception, carriage and preservation. Reliance is placed on the doctrine of *res ipsa loquitor*, and a survey report dated March 3, 2024, prepared by R.S. Gamble (1998) Limited (“R.S. Gamble Report”), which, it is alleged, shows that the goods were damaged because of the malfunctioning of the refrigerating unit for container number TCLU102228-1. Because the goods were damaged, they were seized and declared condemned pursuant to the Public Health Act.

[6] The claimant alleges that because of the defendants’ breach of contract, bailment and/or negligence, it suffered loss and damage of JMD \$ 9, 162,126.89 and USD \$33, 584.40, as well as damage to its business.

The 3rd defendant’s defence

[7] In its defence filed on, October 28, 2024, the 3rd defendant says it is the local agent for the 2nd defendant. It is not a party to the Bill of Lading, clause 2 of which states that the contract it evidences is between the carrier and the merchant. Under the Bill of Lading the carrier is the 2nd defendant, and the merchant is the claimant. By virtue of clause 4.2 of the Bill of Lading, the

claimant undertook not to make any claim or allegation, whether arising in contract, bailment, tort or otherwise, against any agent of the carrier, which imposes any liability on the agent. The 3rd defendant is, therefore, not a proper party to the claim. Additionally, clause 10.3 provides that any suit by the claimant should be filed exclusively in the High Court of London, and English Law shall exclusively apply, thus the claim is brought in the wrong jurisdiction.

- [8] In any event, any loss suffered by the claimant was due to its own failure to take delivery of the goods in reasonable time. The shipment was discharged at Kingston Wharves Limited on August 29, 2023, and an arrival notice issued on August 30, 2023. Under the Customs Laws, the cargo was to be cleared in 14 days, failing which the goods would be deposited in the Queen's Warehouse for auction. The claimant did not clear the cargo, and the goods were condemned in February 2024.

The application

- [9] In its application filed on March 24, 2025, the 3rd defendant seeks the following orders:

- “1. That the Claimant's claim against the 3rd defendant is struck out.
2. Alternatively, summary judgment is entered in favour of the 3rd Defendant against the claimant.
3. Costs to the Applicant/ 3rd Defendant to be agreed or taxed.
4. Such further relief as this Honourable Court deems fit.”

- [10] The grounds being relied on can be summarised as follows:

- a. The Bill of Lading outlines the parties to the contract, the forum for disputes and the laws applicable in the event of a dispute.
- b. The parties to the contract are the claimant and the 2nd defendant.

- c. Under the Bill of Lading, the claimant undertook not to bring any claim against agents of the 2nd defendant.
- d. The 3rd defendant is an agent of the 2nd defendant and had no contractual relationship with the claimant.
- e. The claim is brought in the wrong jurisdiction.

[11] The affidavit of Roger Hines was filed on March 24, 2025, in support of the application. He is a director of the 3rd defendant. As his affidavit mirrors the 3rd defendant's pleadings, it is unnecessary to recount its contents.

The claimant's response

[12] Mr Douglas Chin ("Mr Chin") is the managing director of the claimant. His affidavit in response to the 3rd defendant's application was filed on May 8, 2025. I will not have any regard to those aspects of this affidavit which speak to allegations not contained in the pleadings. Since the claim against the 1st defendant was discontinued after arguments on the 3rd defendant's application were heard, I will also not consider the 1st defendant's defence, as those pleadings are no longer before the court.

[13] In his affidavit, Mr Chin refers to the R.S. Gamble Report in which it is said that the goods were damaged because the refrigeration unit was not working properly. According to him, the claim is not only about the Bill of Lading, but also a separate agreement the claimant had with the 3rd defendant to provide reefer plugin services while it awaited customs clearance and collection of the goods. He says that the claimant has a "real and serious" claim against the 3rd defendant, and the 3rd defendant has not shown that the claimant does not have a real chance of succeeding.

Analysis and discussion

[14] In maritime transport, a bill of lading has very important legal and commercial functions. Although it is not the contract of carriage, it evidences that contract, is unquestionable proof of its terms and conditions, and is an essential reference where there is a dispute. In describing its function in international

trade, Lord Bingham of Cornhill in **J I MacWilliam Co. Inc. v Mediterranean Shipping Co. S A [2005] UKHL 11**, gives a very helpful description of bills of lading at paragraphs 37 and 38 of his judgment:

- “37. [W]hat started as a bailment receipt of goods developed into a receipt containing the contract of carriage, and in the course of time acquired a third characteristic, that of a negotiable document of title...”
38. In modern commercial usage the bill of lading is one of the pillars of international trade, providing the credit necessary for the financing of mercantile trade. The principal characteristics of the modern bill of lading are threefold. It operates as:
- (a) a receipt by the carrier acknowledging the shipment of the goods on a particular vessel for carriage to a particular destination;
 - (b) a memorandum of the terms of the contract of carriage, which will usually have been concluded before the signing of the document;
 - (c) a document of title to the goods which enables the consignee to take delivery of the goods at their destination or to dispose of them by the endorsement and delivery of the bill of lading.”

Who are the parties to the contract evidenced by the Bill of Lading?

[15] In the present case, clause 2 on the reverse of the Bill of the Lading ¹, provides that the contract it evidences is between the “Carrier” and the “Merchant”. Carrier is defined as MSC Mediterranean Shipping Company SA, the 2nd defendant, and Merchant includes:

“Shipper, Consignee, holder of this Bill of Lading, the receiver of the goods and any person owning, entitled to or claiming the possession

¹ The Bill of Lading was not attached to the particulars of claim although it was said to be affixed to it and marked “A”, in paragraph 5. The 3rd defendant however attached it to its defence and it was an exhibit to the affidavit of Mr Douglas Chin.

of the Goods or of this Bill of Lading or anyone acting on behalf of this person.”

- [16] The definition of Carrier does not include its servants or agents or anyone acting on its behalf. It is therefore plain, that this Bill of Lading is evidence of a contract between the claimant and the 2nd defendant. The particulars of claim, however, allege, that both the 2nd and 3rd defendants were contracted to carry the goods from the Port of Vancouver to the Port of Kingston pursuant to the Bill of Lading. The allegation also is that both defendants had a duty to make the refrigeration unit, in which the goods were carried, safe for their “reception, carriage and preservation”, they failed in that duty to “keep, care for and discharge the goods”, and did not deliver the goods in good order and condition. It is obvious, that the Bill of Lading which the claimant expressly relies on, does not support its allegation that the contract it had was with the 2nd and 3rd defendants.

Is the 3rd defendant liable under a separate contract?

- [17] Written in hand, on the face of the Bill of Lading, in the top right-hand corner, are the words and figures: “Reefer Plugin USD 67.72 p/day”. Miss Scott, counsel for the claimant, perhaps in recognition of the fact that the Bill of Lading states that the contract it evidences is between the claimant and the 2nd defendant, argues that the inclusion of these words and figures, on the face of the document, raise a reasonable inference that the reefer plugin services were to be provided by the 3rd defendant and this was by way of agreement between the claimant and the 3rd defendant. I find it difficult to accept this argument. There is nothing in the claimant’s pleadings to lead to any such inference. There is no indication in those pleadings, that reefer plugin services were to be provided by the 3rd defendant by way of a contract it had with the claimant. The claimant, therefore, cannot rely on this allegation or make any factual argument in relation to it. (See **CPR 8.9A**).

- [18] Miss Scott argues in her written submissions that once the goods were discharged, liability shifted to the 3rd defendant to ensure the container remained in a condition suitable for storing and preserving the goods. She argues that it was for the 3rd defendant to provide reefer plugin services after

the goods were discharged by the carrier, and this is the basis on which the claim is made against the 3rd defendant. She says it was a separate contract distinct from that evidenced by the Bill of Lading. Learned counsel relies on clause 5.3 of the Bill of Lading as well as the Carriage of Goods Act, to argue that the liability of the carrier ended on discharge of the goods. According to her, the pleaded duty to preserve the goods, was the contractual responsibility of the 3rd defendant, who was to provide reefer plugin services after discharge but before delivery, to maintain the appropriate temperature in the container. To bolster her argument, Miss Scott submitted that the survey report² on which the claimant relies and which is referred to in its pleadings, states that the goods were damaged due to the malfunctioning of the refrigeration unit after discharge.

- [19] While I generally agree, with counsel's interpretation of clause 5.3 of the Bill of Lading, I part ways with her on the rest of her argument. In paragraph 5 of the particulars of claim, the contract which is alleged to have been entered into by the claimant with the 2nd and 3rd defendants is pleaded as being pursuant to the Bill of Lading. In fact, paragraph 5 falls under the rubric: "**Bill of Lading**": This is what it pleads:

THE BILL OF LADING

"5. The 2nd defendant and its servants and /or agent, the 3rd defendant were at all material times contracted to carry on board the 1st defendant in a refrigerated container no. TCLU10228-1, 2237 cases of frozen chicken feet ("the Goods"), duly delivered to them in good order and condition from the Port of Vancouver to the Port of Kingston and there to deliver the Goods in like good order and condition for an agreed freight, pursuant to the Bill of Lading No. MEDUVC492422. A copy of the Bill of Lading is attached and marked "A"."

² A copy of the Standard Survey Report prepared by R.S. Gamble (1998) Ltd. which is pleaded at paragraph 10 and said to be attached to the particulars of claim and marked "B", was seemingly omitted in error but was provided to the court as an exhibit to the Affidavit of Mr Douglas Chin.

[20] I earlier made the observation that the Bill of Lading evidences the contract between the claimant as merchant and the 2nd defendant as carrier - not the 3rd defendant. There is no reference in the Bill of Lading to reefer plugin services being provided by the 3rd defendant after the discharge of the goods by the 2nd defendant. I fail to see how the survey report, which the claimant relies on, supports the argument that the claim against the 3rd defendant relates to its contractual duty to provide reefer plugin services after discharge. This report identifies several significant matters, which, in my view, do not support that argument. One of which is that the goods were in the custody of the “Wharves Authorities”, between discharge, and the delivery of the container to the premises of CKL Trading Co. Ltd. (CKL), where the survey took place³. This means that upon discharge, but before the goods were removed from the wharf, custody in the goods was not in the 3rd defendant. Another, is that after discharge but before delivery was taken by the claimant, the container was plugged up into an electrical outlet alongside the 1st defendant’s discharging berth, in safe and secure storage at Kingston Wharves Limited, while in the custody of the “Wharves Authorities”.⁴ A reasonable inference to be drawn from this, is that these plugin services were being provided by Kingston Wharves Limited, who billed the 2nd defendant for these costs, which were then passed on, through the 3rd defendant, to the claimant. Yet another significant matter, is that at CKL (located at 76 Marcus Garvey Drive, where the survey took place), the container was on a loading bay and was plugged up to an electrical power outlet with the refrigeration unit running.⁵ This means that plugin services were being provided at this location as well, at a time when the claimant had taken delivery of the goods. The report states that the goods were discharged on August 29, 2023,⁶ began the transit to CKL on February 19, 2024,⁷ arrived at the location on that day⁸, and was delivered into the claimant’s custody, that same day as well.⁹

³ Ibid, question 7a

⁴ Ibid, question 7c

⁵ Ibid, narrative

⁶ Ibid, 5e

⁷ Ibid, 6b

⁸ Ibid, 6c

⁹ Ibid, 18a

[21] The narrative in the report goes on to state several other significant findings. These include the fact that on inspection of the container, the “Digital Display” of the refrigeration unit, revealed an alarm code AL60, set point temperature of -18°C and air temperature of -2.5°C. The container remained plugged up to an electrical power during the survey, the temperature was monitored and recorded, but it was observed that the: “inside air temperature fluctuated between -2.5°C to 1.7°C”. CKL personnel advised that this fluctuation in temperature occurred ever since the container’s arrival at that location, and the temperature never attained the required temperature of -18°C. The report concludes that the container’s refrigeration unit is not working properly, demonstrated by temperatures higher than the required and set point temperature of -18°C which was recorded. It also states that an alarm code AL60, is an indication of a likely failure of the defrost temperature sensor, which is triggered by opening the heat termination thermostat, or a failure of the defrost temperature sensor. In the end, the report attributes the damage to the goods to the malfunction of the container’s refrigeration unit. It seems very plain to me, based on this report, that the damage was not caused by reefer plugin services, which the 3rd defendant either provided or failed to provide. Instead, it was caused by a malfunctioning refrigeration unit.

[22] A careful review of the claimant’s pleadings reveals that the pleaded duty of the 2nd and 3rd defendants, relates to the transportation of the goods from the Port of Vancouver to the Port of Kingston. There are no allegations about any duties and breach of duties, after the goods arrived at the Port of Kingston and were discharged. The focus of the pleadings is on the fitness of the refrigerated container/ refrigeration unit, with the allegation being that it is because the refrigerated container was unfit and unsafe, that the goods became damaged. This is evident from paragraph 7 of the particulars of claim, where it is alleged that the 2nd and 3rd defendants had a duty to “make” the refrigeration and cooling chambers fit and safe for the goods’ “reception, carriage and preservation”. While in paragraph 8, the allegation is that these defendants had a duty to “carry, keep, care for and discharge” the goods. Then, following on these averments, is the alleged breach in paragraph 9. The breach (said to be grounded in either negligence, contract or bailment), is the alleged failure by

the defendants to “deliver”, the goods in good order and condition, and, the delivery of the goods damaged by a failure to make the refrigeration unit: “fit and safe for their reception, carriage and preservation”.

- [23] The expression: “fit and safe for their reception, carriage and preservation”, is the language of the Carriage of Goods Act. In the rules relating to bills of lading, Article III, sets out the responsibilities and liabilities of a carrier:

“1. The carrier shall be bound, before and at the beginning of the voyage to exercise due diligence to-

(a) make the ship seaworthy;

(b) properly man, equip and supply the ship;

(c) **make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.”** [Emphasis added]

So, under the Act, where the rules apply, the duty to ensure that the “refrigerating and cool chambers” are fit for the reception, carriage and preservation of the goods is that of the carrier and that duty begins before and at the beginning of the voyage.

- [24] The allegation in the particulars of claim, that “the defendants”, had a duty to make the refrigerating and cooling chambers “fit and safe for the reception” of goods, must mean, in my view, that the reefer was to be properly prepared and suitable to receive the goods at the time of loading at the Port of Vancouver. The alleged duty to make the cooling chambers “fit and safe for the carriage” of the goods, must mean that the reefer ought to be operating properly and capable of transporting the goods safely during the voyage from the Port of Vancouver to the Port of Kingston.

- [25] In relation to the alleged duty to make the cooling chambers, “fit for the preservation” of the goods, it seems to me that this means that the refrigeration unit in the container is to be capable of maintaining the stipulated temperature

conditions necessary to preserve the goods throughout the voyage from the Port of Vancouver to the Port of Kingston.

[26] In the context of these pleadings, a duty to make the cooling chambers “fit for the preservation” of the goods, cannot mean a contractual duty on the 3rd defendant to provide reefer plugin services. Even if I am wrong, the report on which the pleadings rely and in which the claimant seeks safe harbour, states that the damage to the goods was caused by a malfunctioning refrigeration unit, and not the provision or lack of provision of reefer plugin services.

[27] I therefore see no basis in the pleadings to contend that the 3rd defendant had a separate contractual duty, outside of the Bill of Lading, to provide reefer plugin services for the claimant and that it breached that duty leading to the losses claimed to have been incurred by the claimant.

Does Clause 4.2 amount to a contractual bar to bringing the claim?

[28] Another plank in the 3rd defendant’s challenge to the pleadings, is clause 4.2 of the Bill of Lading, by which the claimant undertook not to bring a claim against the 2nd defendant’s agents, whether arising in contract, bailment or tort. Miss Montague argues that because of this clause, the claimant is barred from bringing this claim against the 3rd defendant. It is necessary to set this clause out in full:

“4.2. The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort or otherwise shall be made against any servant, agent or Subcontractor of the Carrier which imposes or attempts to impose upon any of them or any Vessel owned or chartered by any of them any liability whatsoever in connection with the Goods or the carriage of the Goods whether or not arising out of negligence on the part of such Person. If any such claim or allegation should nevertheless be made, the Merchant agrees to indemnify the Carrier against all the consequences thereof. Without prejudice to the foregoing, every such servant, agent and Subcontractor shall have the benefit of all terms and conditions of whatsoever nature contained herein or otherwise benefitting the Carrier under this Bill of Lading, as

if such terms and conditions were expressly for their benefit. In entering into this contract, the Carrier, to the extent of such terms and conditions, does so on its own behalf, and also as agent and trustee for such servants, agents and Subcontractors.”

[29] This is a Himalaya clause. By it, the merchant expressly promises not to bring a claim against the carrier’s servants, or agents, or subcontractors arising out of the carriage of the goods. If such a claim is brought, the merchant is obliged to indemnify or reimburse the carrier for all the consequences of such a claim. Under the clause, the carrier’s servants, or agents or subcontractors also receive the same contractual protections as the carrier arising from the Bill of Lading and may rely on them as if they were themselves, parties to the Bill of Lading. It also provides that the carrier contracts as agent and trustee for its servants, agents or subcontractors. This allows the carrier’s servants, agents or subcontractors to themselves, enforce the protections under the Bill of Lading.

[30] Lord Hoffman in **Homburg Houtimport BV v Agrosin Private Ltd (The Starsin) [2003] UKHL 12**, described Himalaya clauses, how they work and their legal effect, at paragraph 93 of his judgment: -

“A Himalaya clause in a contract of carriage is designed to create contractual relations between the shipper and any third parties whom the carrier may employ to discharge his obligations. It does so without infringing the English doctrines of privity of contract and consideration, which until the Contracts (Rights of Third Parties) Act 1999, prevented third parties from claiming benefits under contracts. The way it works is this. The shipper makes an agreement through the agency of the carrier with the third-party servant or contractor. Such third party may have authorised the carrier in advance to contract on their behalf or they may afterwards ratify the agreement. The terms of the agreement are that if such third party renders any services for the benefit of the cargo owner in the course of his employment by the carrier he will be entitled to the exemptions and immunities set out in the clause. At that stage, the agreement is not a contract. The third party makes no

promise to the shipper to render any services and until he has actually rendered them, no contract has come into effect. It is the act of rendering the services which provides the consideration and brings into existence a binding contract under which the third party is entitled to the exemptions and immunities.”

[31] In my view, clause 4.2 in the Bill of Lading provides a contractual bar to the claimant bringing this claim against the 3rd defendant. The indemnity provision in it, provides an additional protection for the 2nd defendant, in the event that the claimant brings a claim against the 3rd defendant and the 2nd defendant suffers loss as a result. Miss Scott has not argued a different interpretation of the clause. Her argument is that the 3rd defendant can only rely on it, if the damage to the goods occurred in transit, since carriage under the Bill of Lading is Port to Port, which, according to clause 5.1 means that:

“(a) The period of responsibility of the Carrier for any loss of or damage to the Goods shall commence only at the moment that the Goods are loaded on board the Vessel and shall end when the Goods have been discharged from the Vessel”.

[32] According to Miss Scott, if damage to the goods occurred after discharge, the clause is unhelpful to the 3rd defendant. The obvious weakness in this argument is, as noted earlier, that the pleadings make no allegations about any duties or breaches of duty occurring after the goods were discharged. It seems to me that the 3rd defendant is entitled to rely on clause 4.2 as a contractual bar to the claim being brought against it.

Is Jamaica the proper jurisdiction to bring the claim?

[33] Clause 10.3 of the Bill of Lading provides, to the extent relevant to these proceedings, that: -

“It is hereby specifically agreed that any suit by the Merchant and save as additionally provided below any suit by the Carrier, shall be filed exclusively in the High Court of London and English Law shall

exclusively apply, unless the carriage contracted for hereunder was to or from the United States of America ...”.

- [34] Miss Montague says this clause prevents the claim being brought in Jamaica. Miss Scott in response argues, that the 3rd defendant has in fact submitted to this court’s jurisdiction. I agree with her. The 3rd defendant has not followed the procedure set out in **CPR 9.6** for challenging the court’s jurisdiction. Having not done so, by virtue of **CPR 9.6(5) (b)**, the 3rd defendant is treated as having accepted that the court has jurisdiction to try the claim. Besides, it is my view that the 3rd defendant has indeed submitted to this court’s jurisdiction by filing a defence and making the extant application to strike out the claim.

Should the claim be struck out against the 3rd defendant?

- [35] The 3rd defendant is seeking to strike out the claim under CPR 26.3(1)(c). This rule provides that:

“In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

...

...

(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending the claim.”

It is now settled, that on such an application, the court is limited to the pleadings along with the documents referred to in them and which are attached to them. The test to be applied has been discussed in numerous authorities from this court and the Court of Appeal. To succeed, an applicant must show that the impugned statement of case is unsustainable, and unarguable, and assuming all the facts are true, has no real legal basis. (See for example **Wayne Robinson v Basil Jarrett [2025] JMCA Civ 8**; **National Solid Waste Management Authority v Louie Johnson & Ors [2018] JMCA App 22**).

[36] Given, as discussed earlier in this judgment, that the Bill of Lading on which the claim is premised, does not evidence a contract between the claimant and the 3rd defendant, I see no reasonable grounds for the claimant to bring a claim for breach of contract against the 3rd defendant, for the reasons that have been earlier stated. *A fortiori*, the Himalaya clause in the Bill of Lading (clause 4.2), is a contractual bar to the claimant bringing a claim against the 3rd defendant, who is the 2nd defendant's agent.

[37] In paragraph 9 of the particulars of claim, the defendants' failures are said to lie in contract, negligence and/ or bailment. As mentioned previously, in her submissions, Miss Scott said that in relation to the 3rd defendant, its alleged failing, is in relation to the provision of contractually agreed reefer plugin services to meet its duty to make the refrigeration unit fit and safe for the preservation of the goods. However, distinct from that which is evidenced by the Bill of Lading, there is no pleading of a separate contract between the claimant and the 3rd defendant. If one were to accept this interpretation of paragraph 9, the very findings of the survey report, referred to in the pleadings and relied on by the claimant, make this allegation unsustainable and unarguable. This is because the report indicates that reefer plugin services were provided after discharge, when the goods were in the custody of the "Wharf Authorities", seemingly by Kingston Wharves Limited, and thereafter, when the claimant took delivery and the survey was being conducted on its behalf. The pleadings make no allegation against the 3rd defendant or for that matter, any defendant, in respect of the period after the claimant took delivery. Furthermore, the conclusion made in the report is that the damage to the goods was caused by the malfunctioning of the refrigeration unit, not because reefer plugin services were provided or not provided by the 3rd defendant.

[38] Having regard to all the circumstances, I see no real legal basis for bringing this claim against the 3rd defendant. I accordingly find that the claimant's statement of case against the 3rd defendant ought to be struck out, as disclosing no reasonable ground for bringing it.

[39] Having found for the 3rd defendant in relation to the primary relief it seeks, summary judgment, which was sought in the alternative is now otiose. I,

however, make the following observation in passing. Although it is now doubtful whether the current claim is an admiralty claim in rem, with the discontinuance against the 1st defendant, the originating process remains an *admiralty claim form in rem*, consequently, by virtue of **CPR 15.3(e)** (which exempts admiralty proceedings in rem from summary judgment applications), summary judgment could not have been obtained in these proceedings.

Disposition

[40] In the result, I make the following orders: -

- i. The claim against the 3rd defendant is struck out.
- ii. Costs to the 3rd defendant to be agreed or taxed.

A Jarrett
Puisne Judge