IN THE HIGH COURT OF AUSTRALIA **No P 46 of 2013**

PERTH REGISTRY

BETWEEN:

THE SHIP "GO STAR"

Appellant

DAEBO INTERNATIONAL SHIPPING CO LTD

Respondent

APPELLANT'S SUBMISSIONS

Part I: Publication Certification

1. The appellant certifies that this submission is in a form suitable for publication on the internet.

Part II: Concise Statement of Issue

2. Where a corporation is induced to breach its contractual relations, does the place of the wrong for the purposes of determining the *lex loci delicti* depend only upon the location of the natural individual who causes the corporation to breach its contract at the time when that individual is induced to breach the contract, or does it depend upon where the breach in fact occurs?

Part III: Section 78B Certification

3. The appellant has considered whether any notice should be given in compliance with section 78B of the *Judiciary Act 1903* (Cth) and has concluded that no such notice is necessary.

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Part IV: Citation of Judgments Below

4. *Daebo Shipping Co Ltd v Ship Go Star* [2011] FCA 1015; (2011) 283 ALR 255 (Siopis J)

5. *Daebo Shipping Company Ltd v The Ship Go Star* [2012] FCAFC 156; (2012) 207 FCR 220 (Keane CJ, Rares and Besanko JJ)

Part V: Relevant Facts

General

6. At the commencement of 2009, the *Go Star* was subject to a chain of four time charterparties, all in the form of the 1981 version of the standard form New York Produce Exchange Form for a Time Charter (the "**ASBATIME NYPE Form**"). The vessel had been let from the vessel owners to Breakbulk Marine Services Ltd ("**BMS**"); BMS had let the vessel to Bluefield Shipping Co ("**Bluefield**"); Bluefield had let the vessel to the respondent ("**Daebo**"); and Daebo had let the vessel to Nanyuan Shipping Co Ltd ("**Nanyuan**"). See Trial Judge Reasons ("**TJ**") [2]-[4], [9]-[18].

7. The Nanyuan sub-charterparty was made by way of a clean recap on 30 December 2008. The clean recap provided that the Nanyuan sub-charterparty was governed by English law. See TJ [16]-[18].

8. Each of the four charterparties in the chain contained a standard clause in the form of clause 18 of the ASBATIME NYPE Form, which stated: "*The Owners shall have a lien upon all cargoes and all sub-freight for any amounts due under this Charter ...*". See Full Court Reasons ("**FC**") at [18].

9. The *Go Star* was redelivered to Daebo by a previous sub-charterer (Daeyang Shipping Co Ltd) on 3 January 2009, and Daebo delivered the vessel to Nanyuan on the same day: TJ [28]-[29], [62]; FC [26]-[27], [82].

10. Delivery occurred at Shanghai: TJ [29], FC [4].

11. When the *Go Star* was delivered by Daebo to Nanyuan it had substantial fuel bunkers aboard: 882.62 metric tonnes ("**MT**") of fuel oil and 79.52 MT of diesel oil. These had a contractual value of US $238,786.60. See FC [110].

12. On 4 January 2009 Daebo invoiced Nanyuan for hire due under the sub-charterparty and for the value of the bunkers at the time of delivery: TJ [30].

13. Between 3 and 8 January 2009, the *Go Star* sailed from Shanghai to Fangcheng to load cargo, under instructions from Nanyuan: TJ [29]-[33]; FC [5].

14. On both 8 and 13 January 2009, Nanyuan sent correspondence to Daebo by which it purported to cancel or withdraw from the sub-charter with Daebo: TJ [35]-[36], [39]; FC [7]-[8].

15. There was no suggestion at trial that Nanyuan was lawfully entitled to re-deliver the vessel to Daebo on either 8 or 13 January 2009, or that there had in fact been any re-delivery of the vessel by Nanyuan to Daebo on those dates. Instead, it was contended at trial and on appeal that the vessel had in fact never been delivered to Nanyuan in the first place. That submission was rejected: TJ, [28]-[29], [62]; FC [26]-[27], [82].

16. On 15 January 2009, the vessel owners withdrew the *Go Star* under the terms of the head charterparty, and credited BMS with the value of the bunkers then aboard the vessel: TJ [40]-[41]. At the time of withdrawal, the vessel was still at Fangcheng within the territorial waters of the People's Republic of China ("**PRC**"): TJ [40].

17. As at the time of the withdrawal of the *Go Star*, the amount of fuel aboard the *Go Star* had diminished as a result of the voyage from Shanghai to Fangcheng, and movements at Fangcheng. The amount of fuel aboard the *Go Star* was then 774.95 MT of fuel oil and 51.34 MT of diesel oil. See admission of paragraph 7 of the Further Re-Amended Statement of Claim.

18. On 17 January 2009, the *Go Star* sailed from Fangcheng to Albany in Western Australia, under instructions from a new charterer: TJ [40]-[46].

19. After arrival in Albany, Daebo demanded that the vessel owners deliver to them the amount of bunkers aboard the vessel when it was withdrawn from the head charterparty on 15 January 2009.

Claims made by Daebo

20. Daebo commenced proceedings in which it made two types of claim.

21. First, Daebo claimed that the vessel owners were liable in conversion or detinue for the value of the bunkers which were aboard the vessel when it was withdrawn on 15 January 2009. This claim failed at first instance and on appeal, as title to the bunkers had passed to Nanyuan when the vessel was delivered on 3 January 2009. See TJ [80]; FC [82].

22. Secondly, Daebo also claimed that the vessel owners were liable for the tort of procuring Nanyuan to breach its contractual obligations to Daebo under the sub-charterparty to pay hire and to pay for the value of the bunkers transferred to it. The claim for lost bunkers related to the value of the bunkers at the date of delivery of the vessel in Shanghai, rather than the value of bunkers in Fangcheng when the vessel was withdrawn.

23. The Courts below described this claim as a claim for unlawful interference with contractual relations. See TJ [86], [96], [101], [103]-[104]; FC [46], [49], [52], [62], [63], [68], [107]. Nevertheless, it was evident that the particular interference which the Courts below considered was an inducement to breach a contract. See FC [88]-[93], [106]. This is consistent with the way in which the case was pleaded, which alleged an unlawful interference with contractual relations, but identified the alleged unlawful interference as the appellant knowingly inducing Nanyuan to breach its sub-charterparty. See the Further Re-Amended Statement of Claim, [14](c), [16]. It is also consistent with different descriptions which have been applied to the tort. In ***Sanders v Snell*** (1998) 196 CLR 329 at [20]ff, the High Court discussed the tort of inducing or procuring a breach of contract, in contrast to a possible tort of interference with trade or business interests. However, in ***Zhu v Treasurer of New South Wales*** [2004] HCA 56; (2004) 218 CLR 530 at [33], [36]-[45], [67], [105], [106], [112], [114], [116], [120], [124], [128], [131], [136], [147], the High Court spoke in terms of interference with legal or contractual relations.

24. This claim failed at trial on the basis that the trial judge held that the applicable law for the tort of interfering with contractual relations was the law of the PRC. The vessel owners lead unchallenged expert evidence that there was no such tort known to the law of the PRC. Consequently, the trial judge dismissed Daebo's tortious claim. TJ [103]-[104].

25. However, Daebo's unlawful interference claim was allowed on appeal. The Full Federal Court held (as submitted by the respondent) that the applicable law for the tort of interfering with contractual relations was the law of Singapore, not the law of the PRC. As the vessel owners had not adduced evidence of the law of Singapore, Australian law was applied to determine whether there had been any interference in contractual relations: FC [52], [106].

10 26. The relevant factual matters which led the Full Federal Court to conclude that the vessel owners had interfered in the contractual relations created by the Nanyuan sub-charterparty are referred to below.

Unlawful Interference Claim

27. The basis of the Full Court's finding that the vessel owners had unlawfully interfered with the contractual obligations between Nanyuan and Daebo are four email communications between Mr Nicholas Pantelias, acting on behalf of the vessel owners, and Ms Chen or Captain Hu, on behalf of Nanyuan. These emails were sent on 2, 3, 7 and 9 January 2009. See FC [84]-[85]. The text of each of these emails is set out at TJ [23], [27], [32], [37].

28. The emails on 2 and 7 January were sent to Ms Chen, who was located in the PRC: TJ [98].
20 The emails on 3 and 9 January were sent to Captain Hu, who was located in Singapore: TJ [24]. Ms Chen signed her emails as the person in charge, and was the person who sent initial instructions relating to Nanyuan's sub-charter to the vessel's master: TJ [21].

29. In the email of 2 January 2009 to Ms Chen, Mr Pantelias said that the vessel owners:

> "*hereby exercise their rights under the head charter in respect of lien and kindly request you not to proceed with any payment under your sub-charter and you are being put on notice that should you elect to ignore this notice you may be called upon to pay such sums twice over.*"

30. In the email on 3 January 2009 to Captain Hu, Mr Pantelias urged Captain Hu to read the earlier email once again very carefully and urged Captain Hu to take his own legal advice before making any decisions. Mr Pantelias also warned Captain Hu that if Nanyuan proceed to withdraw from the sub-charterparty with Daebo, they might be in repudiatory breach of that sub-charterparty. Mr Pantelias then said:

> *"We have simply asked you to withhold payments under your charter. In other words our last must be seen as a notice of lien and no more."*

31. In the email of 7 January 2009 to Ms Chen, Mr Pantelias said that, in circumstances where the head charterers were in arrears in paying hire:

> *"... you are kindly requested not to proceed with any payments of any sums under your charter as you may be called upon to pay twice over such sums."*

32. In the email of 9 January 2009 to Captain Hu, Mr Pantelias said that the notices given in the previous emails of 2 and 7 January 2009 to Ms Chen could not be withdrawn as the head charterers were still in arrears.

33. No one from Nanyuan gave evidence at trial, but the trial judge inferred that Ms Chen was the person who acted upon the emails sent by Mr Pantelias because she described herself as the person in charge: TJ [99]. The Full Court reversed that finding, and inferred that Captain Hu was the person who acted on the emails sent by Mr Pantelias: FC [84]-[86]. That is because the Full Court considered that in two telephone conversations between Mr Pantelias and Captain Hu they had discussed contractual matters, and therefore Captain Hu was the person who represented Nanyuan on this serious issue and was Ms Chen's superior: FC [85].

34. The Full Court's decision on this factual matter is not challenged in this appeal.

35. The Full Court also made three critical factual findings about the emails from Mr Pantelias. The Full Court considered that these emails:

(a) contained a request to Nanyuan not to pay for the bunkers on the *Go Star*, as well as a request not to pay sub-hire: FC [91], [93], [105];

(b) were not an immediate exercise of the lien under cl 18 of the head charter but an indication that the vessel owners might choose to exercise their lien at some stage in the future: FC [92]-[93], [98]; and

(c) "were calculated to, and did, induce Nanyuan to breach its obligations to pay hire and for the value of the bunkers on delivery of *Go Star* due under the Nanyuan sub-charter": FC [93].

36. These factual findings are also not challenged in this appeal.

37. Lastly, there was no challenge in the appeal before the Full Court to the finding by the trial judge that "the tort known as unlawful interference with contractual relations in Australian law is not recognised under the law of the People's Republic of China": TJ [103].

Place of Inducement to Breach Contract and Place of Breach of Contract

38. On Sunday 4 January 2009, Daebo invoiced Nanyuan for the first hire payment and the value of the delivered bunkers: TJ [30]. The total invoice was for the amount of US $303,436.60. This was payable within three banking days of delivery (ie, 7 January 2009): TJ [17]. However, Nanyuan did not pay the invoice by 7 January 2009. Instead, by email sent on 8 January 2009, Nanyuan purported to cancel or withdraw from the charter without any legal justification. This termination was "reconfirmed" by the email of 13 January 2009.

39. The relevant breach of contract by Nanyuan, which Daebo relied upon to establish its tortious claim, was the failure by Nanyuan to pay any money due to Daebo, in the context of the alleged repudiation of the sub-charterparty by Nanyuan in the emails which it sent on 8 and 13 January 2009. These emails demonstrated that Nanyuan had no intention of paying any money at all. See the Further Re-Amended Statement of Claim, [15].

40. The context of the emails, and the allegation that Nanyuan had repudiated the sub-charterparty, are significant. They show that the relevant breach relied upon by Daebo was Nanyuan's repudiation of the entire sub-charterparty, evidenced by Nanyuan's failure to make payments which were due, and its statements to the effect that the sub-charterparty

was cancelled. Nanyuan's breach was not simply a delay in making payment by the due date.

41. The trial judge did not specifically determine whether any breach of contract had occurred, because he determined that the place of the tort was the PRC, which did not recognise any tort of inducing a breach of contract. See TJ [93]-[108]. However, the trial judge assessed the place of the tort by reference to the intention of Mr Pantelias to prevent the ship loading and the non-performance of that act by Nanyuan. See TJ [92], [101]. In other words, the trial judge considered the tort of inducing a breach of contract by reference to the intention of Mr Pantelias to cause Nanyuan to repudiate the contract, and Nanyuan's repudiatory conduct in failing to load the vessel.

42. The Full Court held that Nanyuan's failure to pay its debts for the bunkers and hire was the breach of contract induced by the vessel owners. See FC [90]-[93], [96], [106].

43. Nanyuan's purported rejection of the *Go Star* on 8 January 2009 occurred while it was within the territorial waters of the PRC. In substance, the appellant contends that this is where the breach of the Nanyuan sub-charterparty with Daebo occurred.

44. However, on the basis of the Full Court's inference that Captain Hu was the person who decided to cause Nanyuan to cancel or withdraw from the sub-charter with Daebo, the relevant inducement of Captain Hu occurred while he was in Singapore.

Part VII: Statement of Argument

Reasoning of Courts Below

45. The trial judge considered that the *lex loci delicti* was the law of the PRC, for several reasons.

46. The trial judge considered that Ms Chen was the person who decided to cause Nanyuan to cancel or withdraw from the sub-charter, and she was located in China: TJ [97]-[98]. Hence, applying ***Voth v Manildra Flour Mills Pty Ltd*** (1990) 171 CLR 538 at 568, the trial judge considered that the place where the breach of contract was induced was China.

47. However, the trial judge also considered further factors relevant to determining the *lex loci delicti*. These were that the *Go Star* was in Chinese territorial waters; that Mr Pantelias intended that his statements should be acted on in Chinese territorial waters so that the *Go Star* would not be loaded at Fangcheng; and that the statements of Mr Pantelias were in fact acted on by Nanyuan in Chinese territorial waters, by reason of Nanyuan's failure to load the *Go Star* at Fangcheng. See TJ [100]-[101]. In substance, these factors all concerned where the breach of the sub-charterparty occurred.

48. On the other hand, the Full Court determined the *lex loci delicti* simply by reference to the location of Captain Hu in Singapore (as submitted by the respondent): FC [52], [106]. In other words, the Full Court determined the *lex loci delicti* for the tort of unlawfully interfering with contractual relations by reference to the place of the inducement, rather than by reference to the place of the breach. The Full Court did not refer to the further factors relied upon by the trial judge at TJ [100]-[101].

49. The appellant submits that the Full Court erred by determining the *lex loci delicti* by reference to the location of the person who was induced to cause the contracting party to breach its contract.

The Test of Lex Loci Delicti for Foreign Torts

50. In ***Regie Nationale des Usines Renault SA v Zhang*** [2002] HCA 10; (2002) 210 CLR 491 at [75]-[76], it was held that, generally, the substantive law for the determination of rights and liabilities in respect of "foreign torts" is the *lex loci delicti*. See also ***Neilson v Overseas Projects Corporation of Victoria*** [2005] HCA 54; (2005) 223 CLR 331 at [64] (Gummow and Hayne JJ).

51. The expression "foreign tort" is used here in a particular sense to identify a foreign system of law in force at the *locus delicti* which determines whether there has in fact been a "foreign tort" committed. It is that foreign legal system for which allowance is made by the common law rules of choice of law in the particular forum. See ***Blunden v Commonwealth*** [2003] HCA 73; (2003) 218 CLR 330 at [22].

52. In ***Voth*** (1990) 171 CLR 538 at 567-8, Mason CJ, Deane, Dawson and Gaudron JJ approved the test proposed in ***Jackson v Spittall*** (1870) LR 5 CP 542 at 552, and adopted in ***Distillers Co v Thompson*** [1971] AC 458 at 467-468, for determining the *lex loci delicti*. That test is to ascertain the place of the act which gives the plaintiff a cause of complaint, or to ask where in substance did the plaintiff's cause of action arise? See also ***Dow Jones & Co Inc v Gutnick*** (2002) 210 CLR 575 at [43].

53. Due to the variety of different tortious claims, it has not been possible to state a single rule of location, such as a rule that intentional torts are committed where the tortfeasor acts, or that torts are committed in the place where the last event necessary to make the actor liable has taken place. See ***Dow Jones*** at [43].

54. Equally, there is no general rule that the *lex loci delicti* is the place where the plaintiff suffers damage. See ***Voth*** (1990) 171 CLR 538 at 566-567.

55. On the other hand, there is no "flexible exception" which applies to allow discretion in the choice of the applicable law for a foreign tort. See ***Zhang*** [2002] HCA 10; (2002) 210 CLR 491 at [75]. A discretionary approach of the type adopted in some jurisdictions in the United States was deprecated in ***John Pfeiffer Pty Ltd v Rogerson*** [2000] HCA 36; (2000) 203 CLR 503 at [78]-[79]. See also ***Neilson*** [2005] HCA 54; (2005) 223 CLR 331 at [93] (Gummow and Hayne JJ)

56. In these circumstances, it is necessary in this case to state a particular rule which determines where, in substance, the plaintiff's cause of action for the tort of inducing a breach of contractual relations arises.

57. The appellant contends that the appropriate rule is the place where the breach of contract occurs. On the other hand, the Full Court determined that the *lex loci delicti* depended upon the location of a natural individual when that individual was induced to cause a breach of contract.

58. In order to state the appropriate rule, it is first helpful to refer to the juridical basis of the tort of inducing a breach of contractual relations.

Nature of Tort of Inducing Breach of Contractual Relations

59. The juridical basis of the tort of inducing a breach of contractual relations was analysed by the House of Lords in the trilogy of cases in ***OBG Ltd v Allan; Douglas v Hello! Ltd (No 3); Mainstream Properties Ltd v Young*** [2007] UKHL 21; [2008] 1 AC 1.

60. Following ***Lumley v Gye*** (1853) 2 E&B 216, all members of the House of Lords considered that the liability of a person committing this tort is accessory to the liability of the contracting party. Liability for the tort depends upon the contracting party having committed an actionable wrong. See at [5], [8] (Lord Hoffman), [172] (Lord Nicholls), [264] (Lord Walker), [302] (Baroness Hale, agreeing generally on this issue), [320] (Lord Brown).

61. Consequently, on this analysis, the central aspect of the tort is the breach of contract by the contracting party, which is caused by the inducement of the tortious defendant. The inducement by itself is not actionable unless a contracting party actually breaches the contract.

62. The tort is also not actionable unless the person engaging in the relevant inducement seeks to induce a *breach* of contract, as opposed to inducing a lawful termination of contract: ***Sanders v Snell*** (1998) 196 CLR 329 at 339-340. This confirms the centrality of a contractual breach as the substance of the tort.

63. The analysis that liability for the tort should be regarded as accessorial, and derivative upon contractual breach, has been referred to with approval in Australia by Besanko J, on behalf of the Full Federal Court, in ***LED Technologies Pty Ltd v Roadvision Pty Ltd*** [2012] FCAFC 3; (2012) 199 FCR 204 at [53].

64. The rationale which has been relied upon for the tort is that a contractual right is treated as a species of property which deserves special protection, not only by giving a right of action against the contractual party which breaks its contract but by imposing a secondary liability on a person who procures this. This is the basis of the analysis, in a master-servant context, of Kitto J in ***Attorney-General (NSW) v Perpetual Trustee Co Ltd*** (1952) 85 CLR 237 at 294-295, where his Honour described the tort as protecting a "quasi-proprietary right".

However, acceptance of the "quasi-proprietary right" approach also underpinned the reasoning of the High Court in ***Zhu v Treasurer of New South Wales*** [2004] HCA 56; (2004) 218 CLR 530 at [123]-[134], which was decided in the context of a commercial agreement. As well, see ***OBG*** at [32] (Lord Hoffman).

The Lex Loci Delicti for the Tort of Inducing Breach of Contractual Relations

65. Given that the tort of inducing a breach of contract is accessorial and depends upon establishing a breach of contract, the plaintiff's cause of action arises, in principle, at the place where the breach of contract occurs.

66. Further, a test which is based upon the place where the breach of contract occurs is consistent with the analysis of the contractual right to performance as a "quasi-proprietary right". The place where the breach of contract occurs is the place where the quasi-proprietary interest in contractual performance is affected.

67. The correctness of a test which looks to the place of contractual breach is re-inforced by the consideration that the act of inducing the breach of contract is not, of itself, actionable without a breach occurring. Consequently, the place where the inducement occurred is only of secondary significance, as the act of inducement is not the act which gives the plaintiff a cause of complaint.

68. In this respect, a statement which induces a breach of contract is distinguishable from a negligent misstatement which is communicated to and received in a particular place. In such a case, the tort of negligent misstatement may well, in substance, occur in the place where the misstatement was received. See ***Voth*** (1990) 171 CLR 538 at 567-568, 569. The critical aspect of the distinction is that a statement inducing a breach of contract does not by itself create any liability, whereas a negligent misstatement is the very statement which attracts liability.

69. A test which relies upon the place of inducement in order to determine the *lex loci delicti* for the tort of inducing a breach of contractual relations presents various difficulties.

70. For example, it may well produce haphazard results in a modern age of instantaneous communications. For example, in this case, Captain Hu could have been located in any country in the world, either on a permanent or itinerant basis. If he had been travelling in Iceland when Mr Pantelias emailed him, why should the *lex loci delicti* be the law of Iceland? That is a far more arbitrary test than looking at where the breach of contract which was induced actually occurred.

71. A related difficulty about adopting the place of inducement as the applicable test for determining the *lex loci delicti* is that a plaintiff may not know where the inducement actually occurred. In the last example, the location of Captain Hu in Iceland may well have been unknown to Daebo, if he happened to be travelling there and accessing an email account with an address located in another part of the world. By contrast, the place where a contract was breached will be capable of objective determination.

72. A further difficulty about a test for the *lex loci delicti* which is based upon the place of inducement is illustrated by what occurred in the present case. Such a test meant that the Full Court was required to draw inferences based on slender material regarding whether Ms Chen or Captain Hu decided to terminate the charterparty with Daebo. That material pointed in different directions, and by itself provided an insecure basis for determining the *lex loci delicti* (whatever factual finding was made on this material). The same problem will arise in any case where the contracting party which breaks the contract is not called to give evidence.

73. For these reasons, as a matter of principle, the appellant submits that the *lex loci delicti* for the tort of inducing a breach of contractual relations should be the law of the place where the breach of contract occurred.

74. This conclusion is supported by ***Metall und Rohstoff AG v Donaldson Lufkin & Jenrette Inc*** [1990] 1 QB 391 at 447-449. In that case, the English Court of Appeal considered whether the tort of inducing a breach of contractual relations in substance occurred in New York, where the acts of inducement took place, or in London, where the breaches of contract and resulting damage occurred. The Court concluded that the tort of inducing a breach of

contract was, in substance, committed in London. (Note also ***South Adelaide Football Club Inc v Fitzroy Football Club (No 1)*** (1988) 49 SASR 380 at 382-383.)

Application of Test of Lex Loci Delicti to Present Case

75. Applying the test that the *lex loci delicti* for the tort of inducing a breach of contractual relations is the place where the breach occurred, the appellant submits that the law of the place where the breach of contract occurred in the present case is the law of the PRC.

76. This submission raises the question about how to determine where a breach of contract occurs for the purposes of a "foreign tort".

77. The applicable law for the tort of inducing a breach of contractual relations, based upon the place where a breach of contract occurred, bears no necessary relationship with the proper law of the contract, which governs performance of the contract. The proper law of the contract is determined by the consensual agreement of the parties (express or inferred) prior to entry into the contract, and will govern whether a breach by a contracting party has occurred. However, that is different to determining the applicable law for a tort committed by a stranger to the contract. In any event, the respondent has never suggested that the proper law of the contract (English law) governs whether a foreign tort was committed in the present case.

78. The appellant submits that the place where a breach of contract occurs for the purposes of determining the *lex loci delicti* of the tort of inducing a breach of contractual relations is to be determined by reference to the nature of the breach, and the location which is most substantially connected with that breach.

79. That is the logical consequence of the general test stated in ***Jackson v Spittall*** and ***Distillers***, which looks at where, in substance, the cause of the complaint occurred.

80. Even if the party affected by the contractual breach suffers damage elsewhere as a result of the breach of contract, by reason that a contractual payment is not received in another place, the place where damage is suffered is not determinative of where, in substance, the tortious cause of action arises. See ***Voth*** (1990) 171 CLR 538 at 566-567.

81. As explained, the relevant breach of contract which was alleged was the failure of Nanyuan to pay any money due, in the context of the repudiation of the sub-charterparty by the emails of 8 and 13 January 2009, which demonstrated that Nanyuan had no intention of paying any of the money which was due. See the Further Re-Amended Statement of Claim, [15].

82. The repudiation of the contract related to a sub-charter of a ship in the PRC, which meant that Nanyuan did not load the ship in the PRC. In these circumstances, the breach of contract occurred in the PRC. That was the place where the ship chartered pursuant to the repudiated sub-charter was located.

83. It was also where Nanyuan ceased to perform the sub-charter, as Nanyuan did not continue to operate the vessel in accordance with the sub-charter and, in effect, sought to return the vessel.

84. Consequently, on the appellant's test of the *lex loci delicti*, the law of the PRC was the applicable law to determine whether the tort of inducing a breach of contract was committed. There is no controversy that the law of the PRC does not recognise such a tort.

Part VII: Applicable Constitutional and Statutory Provisions

85. There are no directly applicable constitutional or statutory provisions.

Part VIII: Orders Sought

86. The appeal be allowed, the judgment of the Full Federal Court of Australia given on 3 December 2012 be set aside, and in lieu thereof the orders of the trial judge be re-instated and the respondent pay the costs of the appeals to the Full Federal Court of Australia and the High Court of Australia.

Part IX: Time Estimate

87. The appellant estimates that it will require 2 hours to present its oral argument.

Dated: 16 October 2013

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