

ON APPEAL

FROM THE COURT OF APPEAL OF SINGAPORE

BETWEEN : -

MONVIA MOTORSHIP CORPORATION

Appellant
(Plaintiff)

- and -

KEPPEL SHIPYARD (PRIVATE) LTD

Respondent
(Defendant)

CASE FOR THE APPELLANTS

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1. This is an appeal from the judgment of the Court of Appeal of Singapore (Chief Justice Wee Chong Jin, Mr. Justice D. C. D'Cotta and Mr. Justice A. P. Rajah) dated 31st January 1980 allowing the Respondent's appeal from the judgment of Mr. Justice F. A. Chua on 6th October 1978 whereby judgment was given for the Appellants in the sum of S\$197,942.50 plus interest and costs.

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2. The Facts.

The Appellants were in 1973 the owners of the vessel "Master Stelios" which was managed by the Appellants agents Messrs. Phocean Ship Agency Limited of London ("Phocean"). The Respondents own and operate a drydock in Singapore. The parties are hereinafter referred to as "the Owners" and "the Yard" respectively.

3. On 3rd September 1973 Phocean sent a telex to the Yard in the following terms:;

"PLEASE ADVISE US WHETHER YOU HAVE
A DRYDOCK AVAILABLE FOR OUR MASTER
STELIOS 12900 TONS DW FOR ORDINARY
DRYDOCKING AND SCREWSHAFT SURVEY

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YOUR IMMEDIATE REPLY WILL BE
APPRECIATED THANKS PHOKAIS TLX
NO. 886878"

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4. On 4th October 1973 the Yard replied as follows:

"RE YOUR ENQUIRY 3/10 WE CAN OFFER
YOU DOCKSPACE AROUND 16/17 OCTOBER.
PLEASE CONFIRM EARLY IF ACCEPTABLE"

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5. On 8th October 1973 Phocean telexed the Yard as follows :

"REGARDING OUR PREVIOUS MESSAGES,
PLEASE ARRANGE STEM DRYDOCK FOR
16TH/17TH INSTANT. WE SHALL ADVISE
YOU VESSEL'S ETA LATER. MEANTIME
PLEASE QUOTE FOLLOWING ITEMS. "

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Thereafter were set out 21 items of works and the telex ended:

"NO EXTRA WORK TO BE EXECUTED UNLESS
SANCTIONED BY OWNERS SUPERINTENDENT
ENGINEER ONLY. "

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6. The vessel duly arrived at Singapore and went into the drydock on 16th October. On the evidence of the Owners' witnesses (which was accepted by the learned Judge) both the Master of the vessel and the Chief Engineer told the Yard's repair manager on arrival that the drawing of the tailshaft was the most important reason for the vessel having to dock at Singapore and told him to start work on the tailshaft first. (At the trial there was no serious disagreement as to what a "screwshaft survey" entails. The learned Judge found that "in short it requires the tailshaft to be completely withdrawn in order for the survey to be carried out by the classification society's surveyor").

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7. Work was begun on the vessel on the 16th but on different work. On the following day the Master saw the repair manager in the morning and asked why work had not started on the tailshaft. The Owners' marine superintendent, Mr. Eustathiou (who had been unavoidably delayed in travelling to Singapore) arrived on the 17th. He immediately complained about the failure to draw the tailshaft. When he made a further complaint on the 18th he was told that the vessel would be undocked on the following day. The yard refused thereafter to perform

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work connected with a screwshaft survey and further refused to permit the vessel to remain in the drydock. Consequently the vessel had to come out of drydock on the 19th October without the screwshaft survey having been carried out.

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8. As a result the vessel had to go into drydock for a second time in Rotterdam on 4 days between 6th and 10th May 1974 to enable a screwshaft survey to be carried out.

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10 9. The Owners accordingly suffered loss by reason of the fact that the vessel had to go into drydock for a second time for the same purpose and they claimed this loss from the Yard. No question as to the details of the Owners' loss arises in this Appeal. The loss consisted of five items totalling £33,934.94 or S\$197,942.50. Of these, the two largest items were £5,244 relating to the general drydock expenses (i. e. the costs of going into and out of the drydock, drydock dues, etc) and £24,614.80 relating to the vessel's loss of earnings through being
20 "off hire" to enable her to go into drydock at Rotterdam.

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10. The Judgment of Mr. Justice Chua.

The learned Judge held in favour of the Owners that by virtue of the three telexes set out in paragraphs 3 to 5 above :-

"a concluded contract came into existence by which the Defendants (the Yard) undertook to provide a drydock for the specific purpose of a tailshaft survey and for such other drydocking work as the Plaintiffs (the Owners) might subsequently require to be carried out".

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The learned Judge regarded the telexes as containing "a firm commitment on the part of the Defendants to draw the tailshaft of the "Master Stelios" for survey".

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11. As to damages, the learned Judge rejected such challenges as were made to the Owners' claim for damages and gave judgment for S\$197,942.50.

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12. The Judgment of the Court of Appeal.

The Court of Appeal held:

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(i) that it was "plain" that on the face of the three telexes "there was no express term..... that the (Yard) would provide the facilities, as particularised for a screwshaft survey".

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(ii) that, before the binding contract could be concluded, it was necessary that all the essentials should be settled; and, as there was no sufficient evidence of the meaning of "for ordinary drydocking and screwshaft survey", no contract had been concluded. "The exact terms were left for future agreement".

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(iii) that "even assuming there was a concluded contract to provide drydock space for and to execute general repair work on the Plaintiffs' vessel", there were no grounds for implying a term that the Yard would do the work involved in a screwshaft survey, as particularised by the Owners in the Further & Better Particulars of their Statement of Claim.

13. The Issues.

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Two short issues arise in this Appeal as follows :-

- (a) Was a contract concluded between the Owners and the Yard?
- (b) If so, did it oblige the Yard to draw the vessel's tailshaft and to carry out such other work as is ordinarily done by a Yard when a screwshaft survey is performed?

14. The Owners' Submissions.

Issue (a) Was a Contract concluded?

It is submitted that the answer is clearly yes; that the Judgment of Mr. Justice Chua is correct; and that the three telexes set out at paragraphs 3, 4 and 5 above are a classic example of an invitation to treat, an offer and an acceptance of that offer giving rise to a concluded contract.

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15. The Owners further submit as follows :-

- (a) On the wording of the three telexes it is clear that, in the second, the Yard were offering

"dockspace around 16/17 October"; that this was to be dockspace "for ordinary drydocking and screwshaft survey" (as requested by the Owners in the first telex); and that this offer was accepted by the Owners in the third telex when they said "please arrange stem drydock for 16th/17th instant".

10 (b) The words are simple words of plain English. The Court of Appeal were wrong in saying that because "there was no evidence either of trade custom or normal practice" the parties were not "ad idem".

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20 (c) If (as may be the case) the Court of Appeal considered that there was no binding contract because "there was no express agreement as to the work to be done and the price to be paid" and consequently "the exact terms were left for future negotiation", that conclusion was clearly wrong. In any event there was an offer and acceptance of dockspace for a named vessel of 12900 tons around 16/17 October and such agreement was, in itself, sufficient to constitute a binding contract. In addition, there was an offer and acceptance of dockspace "for screwshaft survey" (see issue (b) below). The price payable by the Owners would be a quantum meruit (or possibly a price calculated in accordance with the Yard's published tariff, if there was one).

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30 (d) it is not necessary to refer in detail to the well-known authorities such as May and Butcher -v- Rex 1929, reported in a footnote at [1934] 2 K.B. 17; Foley -v- Classique Coaches [1934] 2 K.B. 1; Scammell -v- Ouston [1941] A.C. 251; British Bank for Foreign Trade -v- Novimex [1949] 1 K.B. 623; Nicolene -v- Simmons [1953] 1 Q.B. 543; Sykes (Wessex) -v- Fine Fare [1967] 1 Lloyd's Rep. 53. The Court of Appeal were conscious of the proper tests to apply in deciding whether there was a concluded contract but failed properly to apply those tests to the facts of the present case.

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16. Issue (b). Did the Contract oblige the Yard to carry out such work as is ordinarily done by a Yard when a screwshaft survey is performed? .

The point is the shortest possible point of

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construction. The answer is submitted to be "Yes" for the following reasons:-

- (a) The answer "No" would mean that there was merely a contract obliging the Yard to accept the vessel in drydock for a period of one or more days around 16/17 October 1973 and obliging the Owners to incur the expense and time involved in proceeding to Singapore and placing the vessel in drydock; but that the Yard might then charge and receive drydock dues while refusing to carry out any work at all. This is a wholly extraordinary construction. 10
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- (b) Some meaning should be given to the words "for.....screwshaft survey". The Court of Appeal's decision involves rejecting these words as meaningless. The error lies in the assumption that "it is plain that on the face of these documents there was no express term.....that the Defendants would provide the facilities.....for a screwshaft survey". 20
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- (c) The Owners submit that the offer of a drydock "for screwshaft survey" means a drydock at which the Yard will perform such work as is ordinarily done by a Yard when a screwshaft survey is carried out. It is therefore submitted that Mr. Justice Chua was right in holding that the express terms of the telexes "contained a firm commitment on the part of the Defendants to draw the tailshaft of the "Master Stelios" for survey.
- (d) As to the words "for ordinary drydocking", one possible view is that these words do not add much to the request for an offer of a drydock, but that this is in no way surprising since the words are followed by a request for specific work to be carried out, namely, "and screwshaft survey". 30
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- (e) Alternatively, it is submitted (as was held in substance by Mr. Justice Chua) that the offer made and accepted was :-
- (i) to provide dockspace for the vessel around 16/17 October for such period of time as might reasonably enable the work involved in "ordinary drydocking and screwshaft survey" to be carried out, and 40

(ii) To carry out the screwshaft survey and (within the limits of (i)) such other work of the above description as might reasonably be requested by the Owners.

(f) In the further alternative, if the Court of Appeal is right in suggesting at the end of its judgment that the Yard's contractual obligation depended on there being a specific request by the Owners, subsequent to the telexes, to carry out a screwshaft survey on their vessel, then on the findings of the learned Judge, such a request was made and reiterated throughout the period that the vessel was in drydock by the Master, the Chief Engineer and the Owners' Superintendent.

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17. It is therefore humbly submitted that this Appeal should be allowed for the following, among other

R E A S O N S

- (1) THAT the three telexes set out in paragraphs 3, 4 and 5 above constituted a binding contract between the Owners and the Yard.
- (2) THAT such contract obliged the Yard to carry out such work as is ordinarily done by a Yard when a screwshaft survey is performed.
- (3) THAT Mr. Justice Chua was right and the Court of Appeal were wrong on both issues.

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ANTHONY DIAMOND

SIMON CROOKENDEN

No. 44 of 1980

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