

4/83

No.44 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF SINGAPORE

B E T W E E N :

MONVIA MOTORSHIP CORPORATION Appellant  
(Plaintiff)

- and -

KEPPEL SHIPYARD (PRIVATE) LIMITED Respondent  
(Defendant)

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CASE FOR THE RESPONDENT

RECORD

1. Only one issue is raised by this Appeal. Did the Respondent ("the Yard") enter into a binding contract to carry out a screwshaft (or tailshaft) survey on the Appellant's ("Owners") vessel "MASTER STELIOS" in October 1973?

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2. A screwshaft survey can only be carried out in drydock. It involves disconnecting the propeller, withdrawing the propeller shaft for inspection and, if necessary, re-wooding the stern bush.

3. The Owners contend that by telexes B1, B2 and B3 a contract was concluded under which the Yard agreed to carry out a screwshaft survey on the "MASTER STELIOS". The Yard contend that no such contract was concluded by these telexes for the following, interrelated, reasons :

Exhibits  
pp. 5-8

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(i) The parties did not at the time of the telexes intend to conclude a contract as to the work to be performed on the vessel

(ii) The telexes lack the certainty necessary to constitute a concluded contract.

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No intention to conclude a contract

pp.56,77,89,  
109,129,185,  
219

4. Where Owners send their vessel into a dock for repairs, the usual practice is for the details of the work to be carried out and the prices to be charged to be agreed between the Yard and a Marine Superintendent representing the Owners. The Marine Superintendent usually arrives at the Yard before the vessel docks to agree work and prices. It is submitted that in such circumstances it is only when the Yard and the Owners' Marine Superintendent agree details of work and prices that a binding contract as to the work to be carried out on the vessel is concluded. 10

pp. 48,49  
pp. 48,57,58  
p. 49

5. In the present case Owners sent their Marine Superintendent, Mr. Eustaphiou to the Yard. It was intended that he should arrive on the 14th October 1973, two days before the vessel was due to dock. Once he arrived, Mr. Eustaphiou intended to instruct the Yard as to the work to be carried out and to agree prices. In the event Mr. Eustaphiou was delayed by the outbreak of the Arab-Israeli war and did not arrive until the evening of the 17th October, over 24 hours after the vessel docked. 20

6. Thus, at the time of the three telexes, the Owners had no intention of entering into a binding commitment to have carried out specific items of work. The particulars and prices of the work to be performed remained to be agreed by their Marine Superintendent, and Owners had no reason to fear that he would be unable to agree these in good time. 30

pp. 127,128,  
129,136,153,  
154,155

7. The Yard, for its part, considered the Owners' telexes as no more than preliminary indications of the work Owners would require to be carried out. The Yard expected final details to be negotiated with the Owners' Marine Superintendent in accordance with the normal practice. Thus the Yard had no intention of concluding a binding contract as to the work to be performed when exchanging the initial telexes with the Owners. 40

Lack of certainty

8. It is not possible to extract from the wording of the three telexes a binding commitment on the part of the Owners to have any specific items of work effected by the Yard, nor agreement on the part of the Yard to effect such work. 50

9. The initial telex, B1, indicated an intention on the part of Owners to have a screwshaft survey carried out. The Yard so interpreted that telex. Telex B2 was an offer by the Yard to provide dock space for a period sufficient to carry out a screwshaft survey. In fact the Yard allocated three days of its dry-docking programme to the "MASTER STELIOS" and this was a sufficient period - but only just sufficient - to carry out a screwshaft survey.
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10. Telex B3, is relied upon by the Owners as constituting an acceptance by them of an offer by the Yard to carry out a screwshaft survey. The Yard did not so interpret this telex, but concluded from it that Owners were undecided as to the work they would have effected in drydock. It is submitted that the Yard was justified in its interpretation of telex B3 for the reasons which follow.
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11. Telex B3 contains no express instructions to carry out any specific item of work. It asks for a quotation on 21 items. Most of these were items that a Shipowners would normally want carried out as part of an "ordinary drydocking". Some, however, were not. The natural inference from the wording of telex B3 was that the Owners would decide precisely which items of work to have effected after they had received the Yard's quotation.
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12. Owners did not ask for a quotation for the various stages of a screwshaft survey. They did, however, ask for a quotation for taking the tailshaft wear down /Item 9/. If the Owners were in any event going to have a full screwshaft survey, it made no sense simply to ask for a quotation for taking the tailshaft wear down. To carry out this operation on its own is something that is only done in order to decide whether it is necessary to draw the tailshaft in order to carry out further work on the shaft and its bearings. The natural inference from the inclusion of Item 9 in telex B3 was that the Owners would not decide what further work, if any, should be carried out on the screwshaft until they received the wear down reading. Thus the Yard, rightly, read telex B3 as being inconsistent with a firm decision on the part of the Owners to have a full tailshaft survey effected.
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13. The Yard now accepts that, at the time
- RECORD  
Exhibits p.5  
Record  
pp.125,135,153  
170  
Exhibits p.5  
pp.127, 133,  
139, 145, 171  
Exhibits  
pp. 7-8  
Record  
pp.125,128,132  
Record  
p.201  
Record  
p. 89  
Record  
pp.125,128,131  
135, 137, 149,  
185

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telexes B1 to B3 were sent, it was Owners' firms intention to have a screwshaft survey effected at the Yard. The survey was overdue under the Rules of the vessel's Classification Society. The Yard was, however, unaware of this fact and had no knowledge of the factors motivating the Owners. Mr. Watson, the Yard's Managing Director, observed that whoever drafted telex B3 made a mistake in that he failed to convey Owners' firm intention to have a screwshaft survey carried out, but included an item (Item 9) which seemed inconsistent with this. It is submitted that Mr. Watson's criticism of telex B3 was justified. 10

p.131

14. It was Owners' pleaded case that telexes B1 to B3 constituted a binding contract to effect not only a screwshaft survey but specific items of general repair (presumably those in telex B3, though this is not clear from the pleadings). The Court of Appeal decided the case against the Owners on the issues raised on the pleadings and, it is submitted, did so correctly. 20

pp.1, 3

pp. 263-265

Owners' alternative case

15. At the trial the Owners developed a case that was not raised on the pleadings. This was to the effect that by telexes B1 to B3 the Yard had bound itself to effect not merely a screwshaft survey, but any other work that Owners might require to be effected while the vessel was in drydock. When the "MASTER STELIOS" was examined in drydock, an urgent repair was found to be needed on her rudder, which had not been anticipated. It was not possible within the three days allocated by the Yard to do both this job and a screwshaft survey. Owners instructed the Yard to repair the rudder and the Yard did so. Owners contended at the trial that the rudder repair made it impossible for the Yard to carry out the screwshaft survey within the time allocated for this and that the Yard was in breach of contract for failing to extend the vessel's drydocking period in order to do both jobs. 30 40

pp.142,145,  
146

16. It was on the basis of the Owners' alternative case that Chua J. found in their favour :

p. 251

"When the "MASTER STELIOS" docked, it was discovered that the rudder repairs were necessary, and it would not have been possible for both the rudder repairs to have been completed and the tailshaft 50

drawn, surveyed and replaced within the time allocated for the docking. The docking would have had to be extended significantly, thus disrupting the Defendants' schedule which provided for a firm stemming for the "KIM HOCK" on the 19th October and the "TROJAN" after her ..... Work to the rudder was never anticipated and it meant that the work would have to be carried out in the same area as the work related to the drawing of the tailshaft. There was less than three days left to the "MASTER STELIOS". Both jobs could not be done in the time available, so as to enable the "KIM HOCK" and then the "TROJAN" to be docked on anything approaching docking schedule..... I am of the view that when the Plaintiffs in the first two lines of the telex B3 accepted the offer of the Defendants in B2, at that point of time, the concluded contract came into existence by which the Defendants undertook to provide a drydock for the specific purpose of a tailshaft survey and for such other drydocking work as the Plaintiffs might subsequently require to be carried out."

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p. 252

p. 253

17. The Court of Appeal reversed Chua J. and rejected Owners' alternative case :

"The expression "general repair work" is used by the Plaintiffs in their Statement of Claim as being the nature of the work which they allege the Defendants had agreed to execute to the vessel. Those words are not to be found in the Plaintiffs' first telex message dated 3rd October. There was no evidence either of trade custom or normal practice of the trade that offering drydock space for a vessel in response to an enquiry for drydock space for a vessel for "ordinary drydocking and screw-shaft survey" is understood to mean an offer to execute whatever general repair work that the Owners of the vessel may require to be done. Nor was there any evidence that the Defendants so understood it."

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p. 265

18. It is submitted that Chua J. was wrong and the Court of Appeal was correct. Even if it is assumed (contrary to the Yard's contention) that telexes B1 to B3 constituted a contract, the contract could amount to no more than an

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undertaking to provide drydocking time sufficient to effect a screwshaft survey and the work normally carried out during "an ordinary dry-docking", i.e. the items in telex B3, which can be done simultaneously with a screwshaft survey. The Yard could be under no obligation to prolong the drydocking period in order to carry out a screwshaft survey once Owners had instructed the Yard to do the unanticipated urgent repair on the rudder which could not be done simultaneously with the screwshaft survey. As Mr. Watson said :

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pp. 145-146

"You have to understand that a shipowner when he books a drydock does not thereby have an option for an unlimited period in that drydock, we could never plan our business on that basis, we believed at that time on the information received that three days thereabouts would be sufficient for the "MASTER STELIOS". "

19. The Yard accordingly submits that this Appeal should be dismissed for the following among other

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R E A S O N S

BECAUSE the Yard at no time entered into a binding contract with the Owners to effect a screwshaft survey on the "MASTER STELIOS".

NICHOLAS PHILLIPS

HILARY HEILBRON

No.44 of 1980

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MONVIA MOTORSHIP                      Appellant  
CORPORATION                              (Plaintiff)

- and -

KEPPEL SHIPYARD (PRIVATE)  
LIMITED                                      Respondent  
    (Defendant)

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CASE FOR THE RESPONDENT

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