

4/83

IN THE PRIVY COUNCIL

No.44 of 1980

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)

RECORD OF PROCEEDINGS

HOLMAN FENWICK & WILLAN,
Marlow House,
Lloyds Avenue,
London, EC3N 3AL

Solicitors for the
Appellant

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD

Solicitors for the
Respondent

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)

RECORD OF PROCEEDINGS

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E X H I B I T S

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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)

RECORD OF PROCEEDINGS

No.1

STATEMENT OF CLAIM
INDORSED ON WRIT OF
SUMMONS (AS AMENDED)

In the Supreme
Court

No.1
Statement of
Claim
14th February
1975
(as amended)
26th September
1977

1. As a result of exchanges of telex messages between the Defendants and the Plaintiffs' agents, Messrs. Phocean Ship Agency Limited of London, an agreement was concluded between the Plaintiffs and the Defendants on or about 8th October, 1973 by which the Defendants were to provide drydock space in their shipyard for and execute general repair work on the Plaintiffs' ship "MASTER STELIOS" in October, 1973.

2. It was a term of the said agreement made expressly and/or by implication from the circumstances thereof that the Defendants would provide the facilities for a screwshaft survey.

3. In breach of the said agreement the Defendants failed or refused to provide the facilities for the said screwshaft survey, as a result of which the Plaintiffs had to put the ship in drydock again at Rotterdam in order to complete the said screwshaft survey.

In the Supreme
Court

No.1
Statement of
Claim
14th February
1975
(as amended)
26th September
1977
(continued)

4. By reason of the foregoing, the
Plaintiffs have suffered loss and damage.

PARTICULARS OF SPECIAL DAMAGES

| | | | |
|----|---|--|----|
| 1) | Cost of executing screwshaft survey services at Rotterdam by Rotterdam Drydock Company | £ 5,244.00 | |
| 2) | Payment of off-hire as per charterer's statement and bunkers consumed during the period of off-hire | £24,614.80 | 10 |
| 3) | Superintendence for 6 days at £20 per day | £ 120.00 | |
| 4) | Hempels' Marine Paints account | <u>£ 1,170.61</u> | |
| 5) | Deck department expenses | <u>£31,149.41</u> <u>£ 2,785.53</u> | |
| | | <u>£33,934.94</u> | |

At exchange rate of S\$5.8833 to
£1 = ~~S\$183,261.32~~ ~~£197,942.50~~

And the Plaintiffs claim:

- i) Damages;
- ii) Interest; and
- iii) Costs.

20

Dated the 14th day of February, 1975.

Signed Drew & Napier,
Solicitors for the Plaintiffs

FURTHER AND BETTER
PARTICULARS OF
STATEMENT OF CLAIM

No.2
Further and
Better Particu-
lars of
Statement of
Claim

15th March
1975

1. Particulars of the general repairs work, the subject of the Agreement are contained in a telex of the 8th October, 1973 and the 10th October, 1973 from the Plaintiffs' agents Phocean Ship Agency to the Plaintiffs.

10

2. As to the telex message alleged to constitute the agreement therein :

The telex messages are as hereunder:

Telex dated the 3rd October 1973 from Phocean Ship agents, Agents of the Plaintiffs to Defendants.

Telex dated the 4th October, 1973 from Defendants to the said agents.

Telex dated the 8th October, 1973 from Plaintiffs' agents to Defendants.

20

3. The facilities of the screwshaft survey consisted of providing a dock, disconnecting the vessel's propeller and drawing in the shaft to a convenient place where it can be examined and assist the surveyor to measure the clearance between the shaft and stern bush and to renew part or the whole of the bushing if necessary and rewooding the stern bush if necessary.

Served the 15th day of March, 1975.

30

Signed Drew & Napier
Solicitors for the Plaintiffs

To:

The Defendants and their
Solicitors Messrs. Rodyk & Davidson.

AMENDED DEFENCE

No.3
Amended
Defence
17th March 1975
Amended on
5th October
1977

1. The Defendants make no admission as to paragraph 1 of the Statement of Claim and put the Plaintiffs to strict proof thereof. **The Defendants will contend that the Plaintiffs' instructions as contained in the telex dated 8th October, 1973 did not include a screwshaft survey.**

2. Paragraphs 2 and 3 of the Statement of Claim are denied. 10

3. The Defendants put the Plaintiffs to strict proof of paragraph 4 of the Statement of Claim.

4. Save as hereinbefore expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed.

~~Dated and Delivered the 17th day of March, 1975.~~ 20

Re-Delivered and Amended the 5th day of October, 1977 as shown in red pursuant to Order made by Mr. Justice Chua on the 26th day of September, 1977.

Signed Rodyk & Davidson
Solicitors for the Defendants

To: Messrs. Drew & Napier,
Solicitors for the Plaintiffs,
Singapore. 30

OPENING ADDRESS OF
COUNSEL FOR THE PLAINTIFFS

No.4

Opening address
of Counsel for
the Plaintiffs

26th September
1977

NOTES OF EVIDENCE

Coram: CHUA, J.

Counsel:

Mr. J. Grimberg for the Plaintiffs
Mr. P.Selvadurai for the Defendants

Dates of hearing:

10 26.9.77
27.9.77
28.9.77
29.9.77

Notes of Evidence

Monday, 26th September, 1977

Grimberg for Plaintiffs.
Selvadurai for Defendants.

20 G: I apply to amend the pleadings -
particulars of Special Damage - page 2
of Statement of Claim. I will produce
a re-typed copy of Statement of Claim.
My learned friend has no objection.
My learned friend applies to amend the
Defence in manner shown in the draft.
I have no objection.

Court: Application to amend granted.

30 G: Claim for damages for breach of contract.
Outlines plaintiffs' case.
Classified Society in Lloyd's Register
of Shipping. For a vessel to remain
in class the requirements of the
Classification Society have to be
adhered to.

One of the requirements of all
classification societies is for a
screwshaft survey to be conducted at
stipulated intervals.

I produce a diagram of a propeller
shaft - Ex. P.1.

No.4
Opening address
of Counsel for
the Plaintiffs

26th September
1977

(continued)

Two bundles of documents - Ex. A
& B. A - Bundles of Documents not agreed
and B - Agreed Bundle.
Goes through Bundles.

A 1 "Tailshaft survey" identical
with - "screwshaft survey"

B 2 - the telex can only be with
reference to the work at B 1 - dry
docking and screwshaft survey.

10

B 3 - those messages I submit
constituted a binding contract between
the parties - Defendants contracted to
provide a dry dock for the purposes,
inter alia, of a screwshaft survey.
Then Plaintiffs asked for Defendants'
tariff. My learned friend will say
those items were the works the Defendants
were intended to do and drawing of shaft
not included in one of those items they
were not contractually bound to draw the
shaft. If Court accepts my learned
friend's contention then the first two
messages and top part of B 3 are meaning-
less.

20

A 7 - He was to fly to Singapore from
Greece to supervise the work to be carried
out by Defendants and in particular the
tailshaft survey (A. 13).

B 9 - message from Defendants, garbled
message.

30

A 14 - 16 extracts from vessel's log
which is in Greek. Lloyd's representative
ready to carry out screwshaft survey had
the screwshaft been withdrawn.

B 10 - Telex by Defendants to
Plaintiffs shortly after vessel had
entered drydock. "Tailshaft clearance
3/16" is relevant to a screwshaft survey.
When they took that clearance they
contemplated that the screwshaft would
have to be withdrawn.

40

B 13 - message from Defendants to
their agents. Swan Hunter - a very
important telex - Defendants are saying
things which are not very accurate.

Notes of Evidence

In the Supreme Court

No.4

Opening address of Counsel for the Plaintiffs

26th September 1977

(continued)

10 They forget that the principle purpose of dry docking is a screwshaft survey - this made clear when they were first approached and when they stemmed the dock for this and other purposes. Our evidence will be they were asked by the master when the ship got here. They received a frantic phone call from one of my witnesses in the early hours of the 18th before B 13 was sent asking why they did not draw the shaft. Wholly inaccurate for Tham to say they had just been approached.

B 3 was not intended as a list of works to be carried out by the Defendants, it was a request for Defendants' tariff in respect of those items.

- Adjourned to 2.30 -

Signed F.A. Chua.

Hearing resumed.
Grimberg continues :-

G: B 2, B 7, B 67 - Stemming of Kim Hock on 19th October knowing well they would not be able to finish work on our vessel.

Now, no argument between parties as to what "screwshaft survey" means.

30 B 77 - From that letters - they therefore accept that any yard would know that by screwshaft survey is meant an operation which entails the drawing of the shaft in order for that survey to take place and thereafter for the recommendation of the classification society survey to be carried out.

S: I would not agree to the second part of that statement. We are not admitting that yard would have known that work entails:

Grimberg calls :-

In the Supreme
Court
Plaintiffs
Evidence

No. 5
EVIDENCE OF V.I.
LEONTORAS

No.5
V.I.Leontoras
Examination

26th to 28th
September 1977

P.W.1 - Capt. Vasilios I. Leontoras - s.s.
(in English):

Xd. by Mr. Grimberg:

Living at Snjkiada Chios Island, Greece,
ship's captain.

I was in command of the "Master Stelios"
for the period 4th February 1972 to 8th May, 1974. 10
The Master Stelios is a liner type twin-decker
cargo vessel owned by the Plaintiffs.

In the early part of 1973 I knew that a
screwshaft survey was due before the end of
April 1973. All certificates concerning the
ship's classification were carried on board
including the tailshaft survey. It was my
practice to inspect these certificates. I
inspected these certificates before I arrived at
each port in order to inform myself whether any 20
survey was due.

A screwshaft survey was due before the end
of April, 1973. It was not carried out before
the end of April 1973 because at that time the
ship was loaded in the Persian Gulf and there
was no suitable opportunity for the survey.

In July 1973 my vessel was at Santos in
Brazil. While I was there I telephoned to Capt.
Korkodilos in London. He is employed by the 30
vessel's London Agents as its principal marine
superintendent. I reminded him that the screw-
shaft survey was overdue. Capt. Korkodilos is
in Court today (id.). He told me that after the
ship carried a cargo of sugar from Santos to
the Persian Gulf he would arrange a drydock for
screwshaft survey and other works.

I carried the sugar from Santos to a port of
Bandashapour in Iran. I arrived there at the
end of August 1973. It took us 40 days to
discharge the cargo. We finished discharging 40
on 2nd or 3rd October. My ship sailed from
Bandashapour on 2nd or 3rd October.

While I was at sea I received a cable from
Capt. Korkodilos. I produce the cable I received
(Ex. P 2). As a consequence of that cable I

sailed towards Colombo. In the course of my voyage I received another telegram from Capt. Korkodilos which I now produce (Ex. P 3). I received Ex. P 3 via Colombo. As a consequence of it I proceeded to Singapore.

In the Supreme
Court _____
Plaintiffs
Evidence

In my mind the principal reason for dry-docking in Singapore was for the screwshaft survey.

No.5
V.I.Leontoras
Examination
26th to 28th
September 1977
(continued)

10 My vessel arrived in Singapore at 1730 hrs on 15th October and anchored at the Eastern Anchorage. After I anchored I was contacted by the ship's agents MacAlister. They told me that the dock would not be available before the 18th. As a result of that the pilot ordered me to sail to the Western Anchorage because there were too many ships at the Eastern Anchorage and few ships at the Western Anchorage.

20 Immediately after I anchored at the Western Anchorage, someone from the Keppel Shipyard came on board, that was on the 15th. He told me to get the ship ready to go into drydock the next morning.- the 16th.

I entered the dry dock on the 16th. I produce the log of the vessel for that period (Ex. P 4). Log is in the Greek language and it is in my handwriting. I have compared the entries in the log with the translation in Bundle A pp.14 to 16 and I am satisfied about the translation.

30 From the morning I entered the drydock I was very busy; this is quite usual. I have to attend the crew's requirements; ship's supplies, consular requirements and also the Lloyd's surveyor who came on board immediately. Lloyd surveyor came on board at 1730 hrs on 16th, less than one hour after the dock was dried. I discussed with him a list of works which I had just received from Capt. Korkodilos.

(G: A 9)

40 That was the list I received. The last page - one of the items discussed was the screwshaft survey referred to on the last page of A9. That list was a copy of the list that Capt. Korkodilos had sent to Mr. Eustathiou the marine superintendent of the Plaintiffs. I expected to see Mr. Eustathiou in Singapore when I arrived but he was not here due to the Arab-Israeli war.

In the Supreme
Court

Plaintiffs
Evidence

No.5
V.I. Leontoras
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September 1977

(continued)

After the vessel was docked the yard carried out certain measurements, the tailshaft and rudder requirements. The yard was prepared to accept my instructions. They asked London by telex whether they could accept my instructions in the absence of Mr. Eustathiou. They showed me the telex later on together with the answer. A 16 was the telex they showed me and B 11 the answer, they showed me and handed me a copy of B 11. They showed me B 10 and gave me a copy of B 11 at 10 p.m. on the 16th. The boss of the yard showed me B 10 and gave me a copy of B 11. I have seen this "boss" in Court this morning but he is not here now (S: He is Mr. Chen Jen Li). He showed me the documents on board in my office. As far as I was concerned Mr. Chen was satisfied that I had authority. I told him what work should be carried out. I told him to start with the tailshaft first. I gave him another list of works to be done. I gave the list verbally and he wrote them down. If I see the list I can remember (witness shown a list). This is the list of work I gave him (G: This document supplied by my learned friend - Ex. D 1). The list was not typed in my office. This list does not refer to the drawing of the tailshaft because the tailshaft was already referred to in the telex from London. The work on Ex. D1 was some deck work, not very important.

10

20

30

I told Mr. Chen, I stressed, that the tailshaft was the most important reason why we came to dry dock.

After I dictated the list to Mr. Chen I took him down to the Chief Engineer so that the engineer could give him a list of engine room repairs.

I gave Mr. Chen my list after 10 p.m. on 16th October, between 10 and 11 p.m.

(G: The log book).

40

Work started at about 2000 hrs on the 16th when the yard commenced rudder repairs. Work was carried out throughout the night of 16th/17th. On morning of 17th I saw Mr. Chen; I went to his office before 9 a.m. I asked him why they had not started with the screwshaft. He told me they would still have time if Mr. Eustathiou arrived on the 17th. I told him it was not necessary for him to wait for Mr. Eustathiou because according to the telex they had received I had full authority. At 9 a.m.

50

10 on the 17th I took 2 crew members to the doctor in Singapore and from there I went to the Greek Consulate and from there I went to the ship's agents, MacAlister & Co. There the agents handed me a telex message, a copy of B 12, saying that Mr. Eustathiou would be arriving in Singapore to attend to the dry-docking and informing me that I was authorised to proceed with class recommendation until his arrival.

In the Supreme Court

Plaintiffs Evidence

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I then returned to the ship that afternoon. (continued)
When I returned no work had been done in connection with the tailshaft survey. I went again to the office of Mr. Chen. I asked him why they had not started with the screwshaft. He told me they still had time if Mr. Eustathiou arrived that night. I said "Listen, I don't want you to come back and say that there is no time to do this job", and I left his office.

20 Mr. Eustathiou arrived that evening at 2200 hrs. I complained to him that the yard had still not started with the screwshaft. He went immediately to the ship's office and made a telephone call to London. He spoke to Capt. Korkodilos; I was not present. I did not speak to Capt. Korkodilos. After that we went immediately to Mr. Chen's office. Mr. Chen was there.

30 Mr. Eustathiou complained to Mr. Chen and told him that the screwshaft survey was the main reason for the drydocking. Mr. Chen told Mr. Eustathiou that the yard had not been required by London to draw the tail shaft. This was the first time Mr. Chen said that London did not require the yard to draw the tail shaft. I said that London had required a tail shaft survey by telex and also that I had told him this after I had been authorised by London. When this
40 conversation took place with Mr. Chen the Chief Engineer was also present. He is Nikolaos Vrontakis. Mr. Chen asked whether we wished the yard to sandblast the bottom plating. He gave me a quotation but it was very high and I cannot remember what it was. If we had agreed to sandblasting they would have had time to draw the tailshaft; that was what Mr. Chen told me. We did not agree to the sandblasting. We then returned to the ship and telephoned London. Mr. Eustathiou spoke to Capt. Korkodilos and told
50 him about our conversation with Mr. Chen; we both spoke. The conversation with Capt. Korkodilos was around midnight Singapore time. We telephoned Capt. Korkodilos at his office.

In the Supreme Court

Plaintiffs Evidence

No.5
V.I.Leontoras
Examination
26th to 28th
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(continued)

On morning of 18th we again went to see Mr. Chen and spoke to him. Mr. Chen again mentioned sandblasting. (G: Log 18/10/75). They had already started painting the bottom. I asked Mr. Chen how they could do the sandblasting since they had already started painting. He said, "If you agree I will stop painting immediately and start sandblasting". Mr. Eustathiou said sandblasting was not a class recommendation and that he did not agree to it.

10

Not true the yard was first asked to draw the tailshaft at about 5.30 p.m. on the 18th Oct.

The vessel was undocked at about 12.34 on 19th October. In fact the yard sent a pilot on board earlier when the engine repairs had not been completed. I went to Mr. Chen again and I said I would not leave before the engine repairs were completed. I sent the pilot ashore and telephoned Capt. Korkodilos at his home in London.

20

About 1½ hours later they completed the essential repairs and I then sailed to the Eastern Anchorage and anchored there. There the yard carried on with some minor work.

My impression was that they wanted me to sail because there was another ship waiting.

When I finally sailed from Singapore the tailshaft survey had not still been carried out. It was eventually carried out at the beginning of May, 1974 at Rotterdam. It was at this port and at this time that I ceased to be the master of the "Master Stelios" and I was placed in command of the "Master Petros". At the moment I am on vacation in between two commands. I have specially been brought to Singapore to give evidence in this case.

30

- Adjourned to 10.30 tomorrow -

Signed F.A. Chua

Tuesday, 27th September, 1977

40

Continuation of Suit No. 503 of 1975

Hearing resumed.

P.W.1 Capt. Vasilios I. Leontoras - o.h.f.o.
(s. English) :

CROSS-EXAMINATION

In the Supreme Court

XXd. by Mr. Selvadurai.

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I first became master of any vessel on the 4th February, 1972; since then I have been master of 3 vessels. I have not taken any other vessel for drydocking work except the Master Stelios and this has happened only once, yes in Singapore.

10 Yes I said I had all my ship's certificates on the vessel. Before I arrived at each port I checked those certificates.

20 In February 1973 Capt. Korkodilos, when the vessel was in Germany - Bremen or Hamburg, told me that the screwshaft survey would be due at the end of April 1973, in two months time. He telephoned me from London. And he said he had arranged at the first opportunity to draw the tailshaft. In April 1973 we were in the Persian Gulf and it was not possible to draw the tailshaft. At the beginning of February we loaded at various European Ports from the Persian Gulf. The vessel was then on time charter and the time charter said that the discharging at the Persian Gulf would be very quick. So I and Capt. Korkodilos thought there was time after discharging at the Persian Gulf to carry out the tailshaft survey. But we completed discharging on about 16th May by which time we already had an extension of time from
30 the Classification Society.

40 From the Persian Gulf I was ordered to go to Brazil, order from London, by cable, time charter to an American Company. At that time I did not know that we had been granted an extension by the Society. From Brazil I telephoned Capt. Korkodilos and reminded him that the screwshaft survey was already due at the end of April and he told me "O.K. after you discharge the cargo of sugar at Persian Gulf I would arrange for tailshaft survey to be carried out." From Brazil I went to the Persian Gulf and I discharged the cargo of sugar. During the telephone conversation from Brazil I asked the Capt. if there would be any trouble with regard to the classification and he told me not to worry and that he would arrange it and I thought he got an extension.

I discharged sugar at the Persian Gulf from 24th or 25th August to 2nd or 3rd October.

In the Supreme Court

Plaintiffs Evidence

No.5
V.I.Leontoras
Cross-Examination
26th to 28th
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(continued)

Yes I had on board with me the charter parties. The charter party that governed the carriage of cargo from Europe to the Persian Gulf was open, two to three months, delivery of vessel in Europe and re-delivery of vessel at Muscat, Persian Gulf and the charter party expired.

From Muscat I went to Brazil on a new charter party which commenced from Muscat, new charterers. This charter party expired at Muscat when we returned there from Brazil. I received this charter party in Brazil and I kept it on board.

10

Yes I said the main purpose of going to Singapore was for the screwshaft survey. I arrived in Singapore on the 15th October. Yes someone from MacAlister came on board and he told me that no drydocking before the 18th; he said he got this message by telephone from the yard. I do not know the name of the man from MacAlister. He also told me that due to great traffic I had to ship the vessel from Eastern Anchorage to Western Anchorage.

20

When I reached the Western Anchorage someone from this yard boarded my vessel and told me that the vessel could drydock the next day in the morning.

(S: B 2 - telex sent by yard to your "office dock space around 16/17 Oct.").

30

Yes.

(S: B.79, 2nd column under Queen's Dock "16th, 17th, 18th "Master Stelios").

Yes.

Yes according to the records there was no change in schedule.

Yes my vessel went to dry dock on the 16th October. Yes at 17.30 Lloyd's representative surveyed the bottom (A.15). He is Mr. Harper. I do not know that Mr. Harper had an office in the yard. Yes I know that Mr. Harper was in the yard everyday; I saw him there everyday. Yes I said I discussed with him the list of work which I had just received from Capt. Korkodilos. Screwshaft survey was in the list that Capt. Korkodilos sent me and I discussed it with Mr. Harper. No one else

40

was with me when the discussion took place.
It took place in my office in the vessel.

In the Supreme
Court

To Court: Yes A 9 is the list.

Plaintiffs
Evidence

The list was addressed to me c/o the
Agents, MacAlister. The original list was sent
to Mr. Eustathiou and copies to myself and the
Chief engineer.

No.5
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Examination

Yes A 7 is the letter sent to Mr.
Eustathiou forwarding the list A9.

26th to 28th
September 1977

(continued)

10 When going through the list A9 with Mr.
Harper he told me that we would have to do the
necessary repairs and that he would check them
one by one. He said nothing else.

I do not know where Mr. Harper is now.
I don't know if he is now in Singapore.

(S: He is in K.L.)

20 Yes Mr. Eustathiou is the son of Mrs.
Eustathiou who is the owner of the Plaintiff
company. Yes Mrs. Eustathiou has two sons;
yes Mr. Eustathiou, the marine superintendent,
is the younger of the two sons. He is younger
than me, but I don't know his age, around 28
to 30.

(S: A7 - letter dated 10th October, 1973).

30 I did not receive a copy of this letter.
But I received a letter from London together
with the list A9 stating that the list was sent
to Mr. Eustathiou and that the list enclosed
was a copy. The letter to me was in English.
I don't know where the letter is now, I received
it 4 years ago.

(S: reads A 7)

I have some of the documents like ship's
certificate in my file. I do not have the file
referred to in the letter A 7.

(S: "I am enclosing.....Engineer.")

To Court: The letter enclosing a copy of
A9 was sent to me by the London
office.

40 (G: Writer of A7 will be called).

In the Supreme Court

Plaintiffs Evidence

No.5
V.I.Leontoras
Cross-Examination

26th to 28th
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(continued)

(S: "We think it will..... any quotations.....October 6th.")

"Quotation" - may be they asked for some prices from the yard. It is normal to ask for prices. For screwshaft survey if the price is too high or too low it does not matter but for other items if the price is too high we might not want to do the work.

(S: "Certainly.....deck and engine".)

Mr. Eustathiou has attended other dry-dockings and he knew about the policy; he has good experience. "Policy" is the way he followed in previous drydocking, his policy relates to prices, and jobs and surveyors and everything else to do with the dry docking. I do not know what was his policy as regards prices; this was the first time we were together in dry dock. "Quotations" - yes from the yards. He got from me and the Chief Engineer the items of repairs that had to be done and he decided with me and the engineer the repairs to be carried out. If I have the authorisation of my London office I could decide what repairs had to be carried out. On entry to dry dock I had no such authority but later I received the same day authority from London. London had authorised me by telex sent to the yard and the yard gave me a copy. Yes the authorisation I am talking about is B 11. Yes it was received after 10 p.m. Singapore time on the 16th. The next morning I received a telex from MacAlister telling me that Mr. Eustathiou was coming. Yes the telex is B 12. (S: "Please keep work to a minimum"). It means "keep other work at a minimum", work other than work included in classification requirements.

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(S: A 8 list of works to be compiled by Mr. Eustathiou.)"

As soon as I received the telex B 11 I gave to the yard boss Mr. Chen a list of repairs other than those with regard to classification.

40

(S: "Bearing in mind.....roughly".)

"a lot of time" - if they had drawn the tailshaft the yard needed a lot of time to draw the tailshaft and during that time their quotations could be considered by London.

(S: "The ship will be").

"Ship will be free" - yes it means we could fix new charters. "Overtime work" - before Mr. Eustathiou came I had told the yard to work throughout the night and I was not concerned with overtime. Yes overtime charged by the yard. Yes this letter said the overtime should not exceed \$3500 to \$4000.

In the Supreme Court

Plaintiffs Evidence

No.5
V.I.Leontoras
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Examination

26th to 28th
September 1977

(continued)

(S: A 9 - the list).

I received A9, A 10, A 11, A 12, A 13.

10

(S: A 12 para. 4).

"List of surveyable items", this is a photo copy of Lloyd's book of the ship which shows the last day of survey of all the items. I do not know where the list is now but I did receive it from Mr. Eustathiou. I had the same list before, once every three months.

(S: A 7 "I am enclosing also lists.....).

Yes same list as the one referred to in para. 4 of A 12.

20

(S: A 9 para.2).

Yes addressed to Mr. Eustathiou. I did not check with Lloyd's on the 18th October afternoon Mr. Eustathiou arrived in Singapore.

(S: A 10 para. 3)

30

I wrote them a letter saying that the coupling was not fitting easily and I asked them to repair. It was repaired. It was repaired by the yard. I gave instruction for repair to Mr. Chen on the night of the 16th. The list I gave to Mr. Chen on the 16th I also gave to Mr. Eustathiou.

(S: A 11 para. F).

I did not give any instruction on this to the yard.

(S: A 11 para. G).

We kept both tanks separate from grading of fuel without instructions.

40

Yes I received A 9 to A 13. These were instructions to Mr. Eustathiou but before Mr. Eustathiou arrived in Singapore I received instruction from the London office by telex, B 11.

In the Supreme Court

Plaintiffs Evidence

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V.I.Leontoras
Cross-
Examination
26th to 28th
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(continued)

Yes I say by virtue of the telex B 11 the instructions in A 9 to A 13 became instructions to me.

Yes I said as soon as the vessel dry docked Mr.Chen came on the vessel to see me. I have not recorded in the log book the visit of Mr. Chen. He came soon after the vessel entered the dry dock. Yes he came before the Lloyd's representative who came at 1730 hrs.

Mr. Chen asked me to give him the repair list that I had. At that time I did not give it to him but later I did. I told him I had no authority.

10

(Witness shown a work list).

Yes he showed me a copy of this list (Ex. D 2), but I told him I had no authority for the work. I said if he had orders from London he could proceed with the work. (S: Sheet 3 of Ex. D 2 had already been marked as D 1). What Mr. Chen showed me was the first two pages (i.e. Ex. D 2). (Ex. D 2 is now two pages, sheets 1 and 2, sheet 3 Ex. D 1 and sheet 4 is D 3).

20

(S: All 4 sheets sent to my learned friend some time ago as he wanted inspection - only sheet 3 was used by my learned friend yesterday).

(S: Ex. D 2 and B 3, 4, 5 and 6 - telex received by the yard on 8th October).

I think the yard showed me this telex, I don't remember the date.

30

(S: Compare the items in Ex. D 2 and the items in the telex. You will find all the items in Ex. D 2 were extracted from the telex).

(S: We say that Ex. D 2 represents the items of work authorised by Plaintiff's London office. D 1 and D 3 represent the items of work in respect of which instructions were given to the yard both by this witness and Mr.Eustathiou.)

40

- Adjourned to 2.30 -

Signed F.A. Chua

Hearing resumed.

In the Supreme
Court

P.W.1 - o.h.f.o. (in English):

Plaintiffs
Evidence

XXD: (Contd.)

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V.I.Leontoras
Cross-
Examination
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(continued)

10 Yes I said I received once every month
list of surveyable items from Lloyds. (S: Capt.
Korkodilos said this is the list from Lloyds
set out just before the vessel drydocked). Yes
this is the list; the handwriting that appears
in the 2nd column on righthand page is my
handwriting - Ex. P. 5). Yes the 1st and the
2nd columns are entries of dates. It is not a
works list; it merely said when survey certifi-
cates expire and when they are due.

(S: I come back to D 2. Mr. Chen will say
he saw you on the 16th on board your
vessel. You went through the list
Ex. D 2 item by item).

I agree.

20 (S: When you reached item 12.05 which
related to sandblasting, you instructed
Mr. Chen not to carry out that work).

That is not so.

(Witness shown a rough sketch of the vessel).

Yes it is roughly accurate (Ex. D 4).

30 The sandblasting is of boot top and bottom
as well. I told Mr. Chen not to carry out the
work relating to 12.05 in Ex. D 2, because I
thought this item was very expensive and I had
to wait for my superintendent Mr. Eustathiou.
Yes when Mr. Eustathiou arrived on the 17th
there was a discussion between Mr. Chen, Mr.
Eustathiou and myself on item 12.05. (S: Mr.
Chen will say that he told Mr. Eustathiou that
there was no need for that item to be carried
out as he had had a look at the vessel). That
is not true. After Mr. Chen gave us the price,
it was too high and Mr. Eustathiou told Mr.Chen
not to do the work. I don't remember exactly
40 the price but it was very high. (S: Will it
surprise you that the yard does not carry out
sandblasting but contracted it out). I only
talked to Mr. Chen. I agree that when sand-
blasting work is being carried out you cannot
carry on any other work in the vicinity, yes
because of sand particles; 4 or 5 metres around.
Sandblasting of the bow you can work after

In the Supreme Court

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No.5

V.I.Leontoras

Cross-Examination

26th to 28th September 1977

(continued)

easily. If sandblasting of boot top and bottom had to be carried out I don't know how long it would take, I have no experience. (S: I am told it would take 3 nights - 5 p.m. up to next morning). I don't think they could do it 3 nights; it is a big job.

Yes I said my impression was I had to leave the dock because there was another vessel waiting. They asked me to leave before my engine was repaired. The pilot came on board between 10 and 11 am. and I sent him away and he came back about one hour later. Yes I said the yard was in a hurry. 10

Yes I said Mr. Chen asked if we wanted to bootblast the bottom plating and he gave me a quotation which was very high, I can't remember what it was. Yes I said if I had agreed to the sandblasting the yard would have had time to draw the tailshaft. Yes I said I did not agree to the sandblasting. I don't why Mr. Chen should say about sandblasting which would take at least 3 nights; it was his business. I deny that my evidence about sandblasting is a fabrication; it is true. 20

Mr. Chen discussed with me once about sandblasting and twice with Mr. Eustathiou.

Yes I complained to Mr. Chen 3 times about not withdrawing the tail shaft. Yes the first occasion was on the 16th night after 10 p.m., that was when I told him that the main reason for coming to Singapore was to withdraw the tail shaft. Mr. Chen came to see me on the 16th; yes with the telexes B 10 and B 11. Yes after the telex the yard was prepared to accept my instructions. Before 10 p.m. the yard had no problem about accepting instructions from me. Yes I said after 10 p.m. Mr. Chen was satisfied that I had authority. Before 10 p.m. Mr. Chen was working with D2 except for sandblasting. After B 11 I gave Mr. Chen instructions to draw out the tailshaft and I gave him another list of work to be done, that is list D 1. 30 40

(S: D 1 and D 3).

Yes D 1 is dated 18th October and D 3 the 19th. I gave instruction with regard to items which appear in D1 and D3 on the night of the 16th after 10 p.m. I showed D 1 and D 3 to Mr. Eustathiou when he came. I gave my instructions verbally and Mr. Chen wrote them down. 50

(Witness shown a copy of a handwritten document).

In the Supreme Court

Yes this is the list written by Mr. Chen (Ex. D 5 f.i.).

Plaintiffs Evidence

(S: At the bottom of first page of D 5 is a signature).

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Examination

I cannot say if it is Mr. Eustathiou's signature. If it is, Mr. Chen must have shown D 5 to him after his arrival and he signed it.

26th to 28th
September 1977

(continued)

10 (S: The contents of D 1 and D 3 were typed out from D 5).

That is right.

20 I agree my instructions to withdraw the tailshaft is not in D5. (S: Mr. Chen will say it is because you did not tell him to withdraw the tailshaft.) I told him both before I gave the list and after I gave the list at the same time. My evidence I asked Mr. Chen to start work to withdraw the shaft is completely true. He did not record it in D5.

(S: Ex. D 2).

I agree there is no item relating to the withdrawing of the tail shaft.

(S: Telex B 3 from your London Office).

30 I agree no item there relating to withdrawing the tailshaft but in telex B 11 my London office instructed the yard to proceed with class recommendation. Yes "as stated". (S: The class stated is in B 10). Yes. (S: "Class recommends renewal of lining.") Yes. Yes it refers to the rudder.

(S: B 11 "Class recommendation as stated.")

40 Yes it refers to "class recommends renewal of lining" but I knew that the tailshaft survey was due, and I told the yard the same night, the 16th. I told this to Mr. Chen both before and after he wrote D 5. I did not tell Mr. Chen that the survey was due. I did not tell Mr. Chen that the tailshaft survey certificate was due. But I told him that the main reason for coming to Singapore was to draw out the tailshaft.

Yes I told Mr. Chen to draw out the tailshaft on the 16th after 10 p.m. Yes I saw Mr.

In the Supreme Court

Plaintiffs Evidence

No.5
V.I.Leontoras
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26th to 28th
September 1977
(continued)

Chen a second time on the 17th before 9 a.m. and asked him why they had not started to withdraw the tailshaft. Yes I said Mr. Chen told me there was still time to withdraw the tailshaft, and that he had to wait for Mr. Eustathiou and I told him there was no need for him to wait for Mr. Eustathiou and that I had authority. (S: Mr. Chen will say he was not in his office at 9 a.m. on the morning of the 17th). He was always in the yard. Before 9 a.m. on the 17th I went to his office and he was there. (S: Mr. Chen will say as it was his practice he was out in the yard and not his office before 9 a.m.). He was in the office on the 17th before 9 a.m. I did see him in the office, it might be 7.30 or 8 a.m.

10

(S: Mr. Chen will say he came to the office at 10 a.m.) No. (S: When the usual morning meeting between himself and his other officers took place).

20

Yes I said I went same morning to the doctor, consulate and MacAlister and returned to the ship in the afternoon. When I found no work had yet been done on the shaft I went to see Mr. Chen and asked him once again and I showed the telex B 12 to Mr. Chen.

(S: B 12).

I asked Mr. Chen why they had not started work on the tailshaft. Yes I complained to him. Mr. Chen said there was still time if Mr. Eustathiou arrived that night. Yes I said I told Mr. Chen "Listen, I don't want you to come back and say there was no time to do this job". Yes, I then left Mr. Chen's office. (S: Mr. Chen will say this conversation never took place). It did. I am saying the truth.

30

(S: Your 3rd complaint).

Yes it took place on 17th October in the evening after Mr. Eustathiou's arrival at 2200 hours. Yes I said I complained to Mr. Eustathiou that the tailshaft work had not been done. Yes Mr. Eustathiou made a call to London. He spoke to Capt. Korkodilos. After that I, Mr. Eustathiou and the Chief Engineer went to see Mr. Chen at his office. I told Mr. Chen once again the main reason for coming to Singapore was to withdraw the tail shaft. It was Mr. Eustathiou who said that because he was the superintendent. Yes, Mr. Chen said

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50

they were not required by London to draw the shaft. I pointed out London had requested it by telex. I was referring to B 11. There was another conversation on the 18th. On night of the 17th Mr. Chen asked Mr. Eustathiou about sandblasting.

In the Supreme Court

Plaintiffs Evidence

No.5
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Cross-Examination

26th to 28th
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(continued)

On the 18th Mr. Chen again talked about sandblasting.

- Adjourned to 10.30 tomorrow -

Signed F.A. Chua

10

Wednesday, 28th September, 1977

Suit No. 503/75: (Contd.)

P.W.1 - Vasilios I. Leontoras - o.h.f.o. s
(in English):

XXd. by Mr. Selvadurai (Contd.)

(S. tenders original of Ex. D 5).

Yes I had 5 conversations with Mr. Chen. The first one was the instruction I gave; the second one was a complaint about the tailshaft not having been drawn. The third one was also a complaint. The 4th all of 3 met on evening of 17th, yes it was also a complaint. First I complained to Mr. Eustathiou and we went to see Mr. Chen. Mr. Eustathiou complained to Mr.Chen. On morning of 18th Mr. Eustathiou again complained to Mr. Chen and I was with Mr. Eustathiou. Yes I said Mr. Eustathiou had telephoned London, the complaint was relayed to our London office by Mr. Eustathiou.

20

Yes I said the main reason why the vessel came to Singapore was to have the tail shaft drawn; yes I have said this over and over again.

30

Yes these complaints were serious complaints.

(S: A14, 15, 16 - Log entries - no entries in the log of your serious complaints to Mr. Chen or of your several discussions with Mr. Chen about the drawing of the tailshaft.)

That is so. I made no entries because I did not think they would not do what I said. I had in mind they had to do what I said. The log was written everyday by me. Up to 17th when Mr. Eustathiou he told us and also on 18th

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morning if we agreed to sandblasting they would draw the tailshaft. So I did not write in the log on the 16th and 17th and therefore I could not write on the 18th as I did not mention it before.

To Court: Mr. Chen said if we agreed to the sandblasting they would draw the tailshaft. We did not agree to the sandblasting.

Yes so the tailshaft was not carried out. Yes that was made clear to me on the 18th since there was to be no sandblasting the tailshaft was not carried out. 10

To Court: Mr. Chen said if we agreed to the sandblasting they would draw the tailshaft; he said that on the evening of the 17th and the morning of the 18th.

(S: 18th morning).

Yes it was clear to me on 18th morning that the tailshaft was not carried out. I did not put it in the log because I made no entries on the 16th and 17th and therefore I could not make an entry on the 18th. 20

The sandblasting was raised by Mr. Chen on the evening of the 17th and Mr. Eustathiou was present.

To Court: That was the first time Mr.Chen mentioned sandblasting.

Mr.Eustathiou told Mr. Chen no sandblasting because the price was too high. Yes it was clear to us on evening of 17th since there was not going to be sandblasting the tail shaft was not carried out. I did not make a log entry of that fact on the 17th because Mr.Eustathiou had telephoned London. He told London that the yard would not draw the tail shaft because Mr. Eustathiou would not agree to sandblasting. He told London he would try once again to get the tail shaft done. 30 40

Yes I made a complaint on the afternoon of the 17th. Yes Mr. Chen said there was time and yes I said "I don't want you to come back and say there was no time to do the job". I said that because I knew that for normal drydocking it would no more than 2 or 3 days; all the other repairs except tail shaft and

sandblasting are normal; so I had in mind the next day or the day after they would finish the other normal repairs. I had in mind that one or two days were insufficient for tailshaft work. Yes inspite of my protest I did not record this fact in my log book.

Yes I said I did not make entries in the log book because I thought they had to do what I told them.

10 Yes, I complained on morning of 17th, afternoon of 17th, evening of 17th and morning of 18th and the yard was not carrying out my instruction. Yes I did not make entries of these complaints in my log book; because even on the afternoon of the 17th Mr. Chen told me they still had time to draw the tailshaft.

20 The purpose of the log book is to write the main events concerning the ship and crew. (S: Some of the entries are trivial matters e.g. A 16 entry Thursday 2100 - cook had lost his seaman's book.) I record the most important events concerning the ship and crew.

I deny that my evidence as to the complaints is a fabrication. I did not mention in the log book the conversation I had with any person like agents and shipchandlers unless they hand me letters or document. I never record such conversation.

30 (S: Entry at A 16 Friday 08.30 hrs.
"agents and local authorities were advised about loss of cook's seaman's book.")

I made this entry because on the 18th I had made an entry that the cook declared that he had lost his seaman's book.

Yes I advised the agents and local authorities. Probably I gave them a letter.

40 (S: A 20 - letter of 19th October from Jansen, Tehcnical Manager of Plaintiffs' London office to Secretary of Lloyd's Register).

I have never met Mr. Jansen, I have heard about him.

(G: He is dead).

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(continued)

(S: No mention in A 20 of the complaints which you alleged you and Mr. Eustathiou made to Mr. Chen. No mention of sandblasting. Only reason given was that there was another vessel coming in - A 21 "Our own feeling on the motive of the shaft not having been dealt with.....).

I did not write this letter.

Yes on the 19th the pilot came on board 10.30 - 11. (S. reads witness' evidence). Yes I said I sent the pilot away and went to see Mr. Chen and told him I would not leave until my engine had been repaired. Immediately after that I telephoned Capt. Korkodilos at his home and he told me to refuse to take the ship out before the completion of the engine repairs. After this conversation with Capt. Korkodilos I sent the pilot down. I did not enter this fact in my log book. (S: Your entry "12.30 Pilot boarded. Engine standby). That was the second time the pilot went on board.

10

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(S: The engine room repairs not done).

I think some pipes of the electrical generator had to be installed.

The pilot first came on board at 10.30 to 11 a.m. If the engine had been repaired and the gates had been opened the vessel could have moved out immediately.

30

It would take 4 hours to fill the dock with water, now I say $3\frac{1}{2}$ hours. Yes they started to let in the water at 8 a.m. and the dock was filled at 11.30.

Yes the work to the engine was inside the vessel. The engine room repairs were completed at about 12 noon.

I do not know if movement into and out of drydock in Singapore depends on the tide, as that was my first visit to dry dock in Singapore. 40

Yes I said some of the repairs were completed after my vessel had gone to the Eastern Anchorage. These repairs we carried out and completed could be by the yard. General repairs; not so important ; deck and engine repairs.

Yes I said I started to give instructions to Mr.Chen after I received the telex B 11. As to drydocking I had no authority before B 11 except with regard to the list produced by Mr.Chen when he boarded the vessel on the 16th morning. But, where there is big damage and I go into port I would be able to give instruction without authorisation from London.

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(S: B 3, 4, 5, & 6. B 3 - item "Touch up Boottop.....").

Yes "Owner's superintendent" refers to Mr.Eustathiou.

(S: B 4 "Open out shell valves.....")

Yes again Mr. Eustathiou.

(S: B 5 "All charges.....B6.....
.....superintendent engineer only.")

20

The "Superintendent Engineer" could be anyone of a number of superintendent engineers of the Plaintiffs. It means the extra work had to be given by the superintendent engineer. I have to give the list of extra work to the superintendent engineer who would give instructions to the yard. This applies not only to Singapore but to all drydocking anywhere so far as my company is concerned. Everytime a ship of the Company goes into dry dock a superintendent, either marine engineer or engineer is sent out by the Company.

30

To Court: I don't know if Mr.Eustathiou is an engineer, I did not ask him.

(S: My learned friend says a marine superintendent is not an engineer and that Mr. Eustathiou is not an engineer).

Yes the person sent out by my Company to supervise this drydocking was Mr.Eustathiou.

(S: B 10 - telex by yard to Plaintiffs' London agents "Class recommends renewal of lining").

40

Yes it means that Mr. Harper, the Lloyd's Representative had recommended renewal of lining; yes he recommended after seeing the rudder measurements. I don't think he made any recommendation for the tailshaft.

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I can give instruction to the yard concerning the renewal of the lining of the rudder as this was a class recommendation. The yard did not come to me for instruction to carry out the renewal of lining; they already proceeded with the work without asking. This is not extra work; it is a class recommendation.

I do not know that after Mr. Harper had made his recommendation Mr. Tham had to telephone to Plaintiffs' London office for instruction to renew the lining.

10

(S: "Master of vessel unable to decide on other work").

As I told Mr. Chen I had some extra work and I cannot give instruction and I was waiting for my superintendent.

(S: "Can you authorise master..... undocked").

For extra repairs I was waiting for the superintendent. I deny for the work of drawing the tail shaft I was waiting for the arrival of Mr. Eustathiou; this was a class recommendation. I deny I was not in a position to give instruction in respect of all works.

20

Yes Mr. Eustathiou finally arrived on night of the 17th; yes the reason was because of the Arab-Israeli war. I think he came from Greece. Yes I have travelled by planes quite often. I don't know you can get flights from Greece to Singapore without having to go through the war zone. I cannot remember what Mr. Eustathiou told me about his trip; we had to talk about the work. I don't know that Mr. Eustathiou was in Bangkok before he arrived in Singapore.

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RE-EXAMINED

Re-examination

Rxd: by Mr. Grimberg

Before I became captain I was a Chief Officer for 4 years. I served as Chief Officer on the Master Stelios and during that period the vessel went into dry dock twice, both at Rotterdam. The first was in May 1970 for 3 or 4 days and the second October/November 1971 for over a month but I was on board for only 15 days. Of course a Chief Officer participates

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in drydocking; he takes a big part.

(G: Drydocking in Singapore).

Before I arrived in Singapore I did not know that London had asked Keppel for quotations. A master of a ship had nothing to do about getting quotations; it is the business of the owners and the superintendent.

My position in this drydocking was an unusual position, that was because Mr. Eustathiou had not arrived.

(G: Ex. D 2).

Shortly after the ship had docked Mr. Chen showed me Ex. D 2. I thought he probably got the list from London. D 2 contains normal drydocking items; only the sandblasting is not normal.

The main reason for entering the dry dock was to draw the tailshaft. There is no other reason for entering the dry dock. The other items were normal drydocking items.

When I saw D 2 I told Mr. Chen he could proceed with those items except for sandblasting because this was a big job; I was not prepared to take the responsibility and I wanted to wait for Mr. Eustathiou.

(G: B 3)

When Mr. Chen showed me D 2 he did not show me B 3; he never showed me. I first saw B 3 when I came to Court.

(G: Read first 3 lines of B 3 "Regarding our previous messages.....items").

Now I have seen B 3 I do not regard the items set out in B 3 as a repair list; it is a request for quotations.

(G: The items in B 3 have been copied into D 2)

When I was shown D 2 by Mr. Chen I did not know that he had copied it from B 3; I did not know that B 3 existed.

The only list that I gave Mr. Chen was D 1 and D 3. Mr. Chen wrote them down in his handwriting. I specially mentioned to him the

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(continued)

drawing of the tail shaft; that was the first thing I mentioned. (G: We now know that Mr. Chen did not write it down). I do not know why he did not write it down. He was sitting 2 or 3 feet from me and I could not see what he was writing. He did not show me what he wrote and he did not ask me to sign. I gave him the list on the 16th. On D 1 the date is "18/10/73" and on D 3 "19/10/73". I am sure I gave him these lists on the 16th night.

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There is a signature on D5. If it is Mr. Eustathiou's signature the first time he could have signed it would be the evening of the 17th. There is no date on D 5 but it says "Instruction from Master". D 1 says "instruction from Master" and D 3 says "Instruction from Superintendent". Both were my instruction, even the one which says "from Superintendent" and this had to do with navigational items.

(G: Conversation with Mr. Chen before
9 a.m. on the 17th).

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I am certain this conversation took place in Mr. Chen's office. When I first met Mr. Chen that morning I think he was in the yard and I followed him to his office.

(G: Log A 15 17/10/73).

At 0900 hours I left the yard and went to Singapore and that is why I said conversation with Mr. Chen must be before 9 a.m.; I can't say how long before 9 a.m.

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(G: Your evidence this morning; entries
in the logbook.)

The loss of a seaman's book is very important because I cannot keep the man on board without this document.

(G: My learned friend referred you to
A 20 - Jansen's letter).

I did not from Singapore speak to Mr. Jansen; I did not speak at anytime. I don't think Mr. Eustathiou spoke to Mr. Jansen from Singapore; he always spoke to Capt. Korkodilos.

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- Adjourned to 2.30 -

Signed F.A. Chua

Hearing resumed.

P.W.1 - o.h.f.o. s (in English)

RXD: (contd.)

My impression was that the yard wanted to undock me because of another vessel that was to come in; that was what Mr. Chen told me. Mr. Chen told me if we agreed to sandblasting then it was his business how to arrange for the other vessel.

10 (G: Conversation with Mr. Chen before 9 a.m. on the 17th.)

When I spoke to him I cannot remember exactly, but I think the Chief Engineer was with me.

(Witness Released)

Signed F.A.Chua

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No. 6

EVIDENCE OF N.VRONTAKIS

Plaintiffs Evidence

No.6
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P.W.2 - Nikolas Vrontakis - s.s. (in Greek):

20 Xd.by Mr. Grimberg:

Living at Evdoxou 56 Neos Cosmos, Athens, Chief Engineer, serving on board the Master Stelios at this time.

I was the Chief Engineer serving on this vessel in October 1973. I recall the vessel entering Keppel dry dock at this time.

30 When the vessel entered the dry dock, a survey was due. There were 3 things that had to be done; (1) some of the auxiliary machine parts; (2) the cross bearing of the main engine and (3) the tailshaft due to be surveyed.

(G: A 9 - A 13).

I have seen that document before. I first saw it before the vessel docked in Singapore; on the way to Singapore this document came on board the ship from London either at Bandashapour,

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(continued)

Persian Gulf, or at the Eastern Anchorage in Singapore via the ship's agents in Singapore. If in Singapore that would be just before drydocking. I cannot remember exactly at which of these ports it arrived but I remember it was received before drydocking. This document said about tailshaft survey, see A 13 item B. "Main outstanding item, Tailshaft Survey" (said in English). I can read technical English. This document came from London, I presumed from the technical department of the Head Office in London. The document received was a photo copy of the original. I believe the original was sent to the captain. I received a photo copy.

10

After the vessel entered dry dock I remember somebody from the drydock came. I don't remember his name but I could recognise him. He is not in this Court-room at this moment. I saw him for a while yesterday outside the Court room. (Chen Jen Li produced). This was the man.

20

Mr. Chen came into my own office after the vessel had decked. He came to visit me in order to give him details of what kind of repairs he had to carry out. During the trip from Bandashapour to Singapore I prepared a list of works that should be done at the dry dock in Singapore and I submitted this list to Mr. Chen and Mr. Chen started to write down one by one in his writing the repairs required and together we went into the engine room and I showed him the repairs required. I met Mr. Chen in my office about 10 to 10.30 p.m. and it was on the 16th October.

30

I saw Mr. Chen again the following morning around 10 to 11 o'clock; he was trying to find the captain. The captain was not on board at that time. I asked Mr. Chen what he wanted and he answered he wanted to see the Capt. I told him the captain was not on board. Then we sat in the rest room of the ship along with the surveyor, Mr. Harper of Lloyds. The 3 of us sat together.

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I discussed with Mr. Harper the repairs that had to be done; the parts that must be surveyed by him. The most important of those parts was the tail shaft and the two cross bearings of the engine. At that time the tail shaft had not been drawn. This was on the 17th. When this conversation was taking place the Capt. had left the ship with some members

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of the crew to be examined by the doctor.

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Court

Before the captain went ashore with the crew members I had a conversation with him; I discussed with the captain about going to see a responsible officer of the dry dock to find the reason why they did not draw the tailshaft. After our conversation the Capt. left telling me that he was going to find out a responsible officer to find out about the tail shaft.

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(continued)

When I arrived in Singapore I expected to see a marine superintendent from London. A telegram was received from London that the Superintendent would be in Singapore. I don't know when the telegram was received. The Capt. told me that the superintendent was expected to arrive here while we were anchoring at the Eastern Anchorage. I knew the marine superintendent was to be Mr. Eustathiou.

When we arrived in dry dock Mr. Eustathiou was not in Singapore. He arrived on the 17th October, in the evening. He came to the ship at about 10 p.m. to 11 p.m. At the time Mr. Eustathiou arrived on the ship the tail shaft had not been drawn.

I went with Mr. Eustathiou and the Capt. to visit Mr. Chen that same night, with regard to the drawing of the tailshaft. We found Mr. Chen at his office. Mr. Eustathiou spoke to Mr. Chen about the tail shaft; the Capt. and I were present. Mr. Eustathiou spoke to Mr. Chen about the tail shaft and Mr. Chen showed Mr. Eustathiou some samples of grits for sandblasting. I asked Mr. Eustathiou what it was all about and he told me he was offered by Mr. Chen regarding sandblasting of a ship; he received an offer from Mr. Chen for sandblasting of the ship. Mr. Eustathiou did not accept the offer as he found it expensive. I asked Mr. Eustathiou and he told me it was expensive to do sandblasting here in Singapore.

I have served on a bigger ship which underwent sandblasting. According to my estimate sandblasting of the Master Stelios would take $2\frac{1}{2}$ to 3 days.

Mr. Eustathiou spoke to Mr. Chen in English. As far as I understood Mr. Eustathiou was talking to Mr. Chen about the drawing of the tail shaft and in return Mr. Chen was referring to the sandblasting. What I understood was if

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we undertake the sandblasting job then we could draw the tailshaft as well, that will give them the time to draw the tailshaft.

After the conversation with Mr. Chen the 3 of us left Mr. Chen's office and went back to the ship and Mr. Eustathiou and the Capt. went to the captain's room to trunk call London. I did not go with them.

The next day, the 18th October, I saw Mr. Chen again. I was then with the Capt. and Mr. Eustathiou. It was in the morning. The 3 of us went to Mr.Chen's office and saw him there. The purpose of our going there was to ask Mr. Chen once again about the tailshaft. It was not asking but telling him to do this job, to draw the tailshaft as it was due for survey. Mr. Chen refused to undertake the drawing of the tailshaft because he had no time. Mr.Chen referred once again about the sandblasting of the ship whether Mr. Eustathiou and the Capt. had thought about doing it in Singapore. Mr. Eustathiou told Mr. Chen what we really need was the drawing of the tailshaft now. Mr. Eustathiou said it was not necessary for sandblasting to be done now. I asked Mr. Eustathiou and he told me that if we had accepted Mr. Chen's offer of sandblasting then they would undertake the drawing of the tailshaft as well. Mr. Eustathiou refused.

The next day, the 19th, the vessel was undocked. The pilot came on board in the morning but due to some other repairs the ship was not ready for undocking. These repairs were of the cooling pipes which were supposed to be welded and these pipes were in front of the main engine in the engine room. When the pilot came on board the Capt. asked me whether the engine was ready for undocking and my answer was in the negative. The Capt. then told the pilot we were not ready to move and the pilot left the ship. The vessel was undocked approximately between 1 and 3 p.m.; I don't recall the time but it was in the afternoon. It was 5 to 6 hours after the pilot left that we undocked. By that time part of the repairs had been done in order to start the engine and the rest of the repairs were completed at the anchorage.

CROSS-EXAMINED

Cross-examination

XXD. by Mr. Selvadurai
(S: The undocking of the vessel). 50

10 Yes I said the vessel undocked 5 to 6 hours after the pilot left. The pilot came in the morning. I don't recall at what time he came but it was recorded in the log. He came approximately at 8 to 9 o'clock in the morning. I knew it because the Capt. told me and he asked me if the engine was ready. I was not then in the engine room; I was in the main deck at hold No.4. The Capt. came out of his office and called me and asked me if the engine was ready. He looked out of his window and saw me down on the deck and he called me. I did not meet the pilot but I saw him enter the ship accompanied by the 3rd officer of the vessel.

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20 When the pilot arrived the repairs in the engine room were still going on. These repairs were being carried out by workers of the shipyard. Yes these repairs could be carried out outside the dock, the workers carried on the repairs at the anchorage; the workers carried on the repair while the ship was undocking and made her way to the Eastern Anchorage. There was no disruption in the repair job.

- Adjourned to 10.30 -

Signed F.A. Chua

Thursday, 29th September, 1977

Suit No. 503/75 (Contd.)

Hearing resumed.

30 P.W.2 - Nikolaos Vrontakis - o.h.f.o.
s (in Greek)

XXd. by Mr. Selvadurai

40 Yes I said there was no interruption in the engine room repairs as the vessel left the dock. The non completion of the engine room repairs did not permit the vessel from leaving the dock earlier. The ship could not leave when the Capt. asked to stand by, some repairs had to be done. It was the cooling pipes that had to be repaired and without them there was no electricity to start the engine. I don't recall the Capt. telling the yard that we could not leave because it would take some time to warm up the engine.

(S: A 16 log entries, Finding 19/10/73. - 0800 hrs.)

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(continued)

Yes they commenced filling drydock with water. Yes it was in preparation for undocking the vessel.

(S: At 11.30 filling of water was completed)

Yes.

Yes drydock opened at 1200 hrs. Yes at 1230 pilot boarded and vessel came out of drydock at 1234 hrs. I agree to all these since the log book said so.

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Yes I said as far as I recollect the pilot first came on board on the 19th on 8 or 9 a.m. It was around coffee time in the morning and it should be around 8 to 9.30 a.m.

(S: According to the record of the shipyard - Movements Order Book - the pilot for the undocking of the Master Stelios was booked by the yard for 12.30 hrs on the 19th - Ex. D 6 f.i.).

I don't know about it. I am the first engineer and not the Capt.

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(S: Again according to the record the pilot arrived a little earlier at 12.20 or 12.25)

I know that I saw the pilot twice on board my ship.

(S: The vessel undocked at 1225 hrs and departed at 1240 hrs. The next vessel, the Kim Hock, came into the dock at 1335 hrs. The pilot's name is Hamid).

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(S: The discussion with Mr. Chen at which you were present - discussion on 13th October).

Yes, I, the Capt. and Mr. Eustathiou went to see Mr. Chen on the evening of the 17th. Yes I said after the discussion Mr. Eustathiou and the Capt. went to make a trunk call to London, but I did not accompany them. While we were walking out of Mr. Chen's office on the way to the ship, Mr. Eustathiou and the Capt. asked me if I wanted to go along with them to the Capt's room to place a call to London and I told them I had to go to the Engine room and I went down to the engine room. It should be

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around 11, 11.30 p.m.

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Yes Mr. Eustathiou first boarded the vessel on the evening of the 17th. Yes I met him then, he called me to a meeting with the Capt. While I was with the Capt. and Mr. Eustathiou no telephone call was made to London. Maybe a call was made before I came. They did not mention to me about the telephone call. We had short discussion about the tailshaft, and the 3 of us went to Mr. Chen's office. The discussion in the Capt's room - Mr. Eustathiou asked me why they did not start the preparation of drawing the tailshaft. I said I had already discussed about the drawing of the tailshaft with Mr. Chen on the evening of the 16th but according to Mr. Chen he was waiting for Mr. Eustathiou to discuss the matter. All of us were discussing about the tailshaft. I don't recall specifically

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anything mentioned or said by the Capt. Our short discussion, all 3 of us, was around the tailshaft. At this discussion, both myself and the Capt. complained to Mr. Eustathiou the delay of the yard in not withdrawing the tailshaft. During my presence there was no telephone call placed to London. I don't know if there were 2 or 3 telephone calls to London that evening; the only one I recall was the one after the 3 of us had visited Mr. Chen and the Capt. and Mr. Eustathiou told me they were going to call London.

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(S: All trunk calls pass through the Keppel Shipyard switchboard and are recorded) I have an extract from the returns of telephone calls made through the Shipyard - Ex. D 7 f.i. - no trunk call made on 17th to London by anybody or anyone else.)

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This is something I can't say. I did not go with them to place the phone call.

(S: You will see that the first phone call made by Mr. Eustathiou was on the 18th).

I once more wish to clarify that I was not present when any telephone call was made to London.

50

I deny that my evidence that I was told that Mr. Eustathiou and the Capt. were going to make a telephone call to London on evening of the 17th is false. I deny that my evidence of

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the 3 of us met Mr. Chen on the evening of 17th is false. The meeting did take place.

I did not see Mr. Chen when Mr. Eustathiou was boarding the vessel on the 17th. I did not meet Mr. Chen on board at all on the evening of the 17th.

(S: The meeting of the 18th).

Yes the Capt., Mr. Eustathiou and I went to see Mr. Chen at his office. I don't remember the precise time but it was in the morning. I was present in Mr. Chen's office only once on the 18th. Not true Mr. Eustathiou raised the question of drawing the tailshaft for the first time at that meeting. It was first raised by Mr. Eustathiou on the evening of the 17th and again raised on the 18th; according to me when I met Mr. Chen on the 16th I had mentioned to him that we wanted to draw the tailshaft. Mr. Chen did not say on the 18th that it was too late to draw the tailshaft as the vessel had to undock on the 19th. The discussion was whether we wanted to do sandblasting and Mr. Chen gave some samples to Mr. Eustathiou. Although we referred to Mr. Chen to the drawing of the tailshaft Mr. Chen was coming back to the sandblasting. Yes it is my evidence that Mr. Chen said that if we did sandblasting there would be time to draw the tailshaft. My evidence is true.

(S: points to Mr. Tham Yeng Fai sitting in Court)

I don't well recognise him, but I think I saw him once in Mr. Chen's office; I saw him once in an office and I don't know if it was Mr. Chen's office or Mr. Tham's office. On the 18th we went to an office, whether it was Mr. Chen's office or Mr. Tham's office I don't know but from this office we did not go to another office. I saw Mr. Tham in the office where Mr. Eustathiou, the Capt. and I were discussing with Mr. Chen. There was another person who discussed with Mr. Eustathiou, whether that person is Mr. Tham I am not sure; it may be Mr. Tham. It was a discussion between Mr. Eustathiou and that other person; I was present and the Capt. present but the two of us did not take part in the discussion. Mr. Chen was also there.

I wish to clarify. When we first went to the office there was Mr. Chen on one side

and the other side was Mr. Eustathiou, the Capt. and myself. Later on another person came from the shipyard, it might be Mr. Tham, and Mr. Tham discussed with Mr. Eustathiou and I took no part.

In the Supreme Court

Plaintiffs Evidence

No.6
N.Vrontakis
Cross-
Examination

28th to 29th
September 1977

(continued)

Whether we moved from one office to another I can't remember but I am sure that later another person from the shipyard joined the discussion.

10 (S: Mr. Tham was the Marine Manager at that time. Mr. Chen will say that you all went to see Mr. Tham to ascertain when the Master Stelios had to undock).

That is not true. The reason why we visited the office of the yard was to discuss about the drawing the tailshaft and not about the undocking of the vessel.

20 Whether Mr. Eustathiou and Mr. Chen discussed about the undocking of the ship on the 19th I don't know. All I know is that we visited Mr. Chen to discuss about the tailshaft.

(S: Mr. Tham will say when you arrived at his office Mr. Eustathiou told him that he wanted the tailshaft drawn).

The main discussion on the 18th was about the drawing of the tailshaft.

30 (S: Mr. Tham will say he said the tailshaft could not be drawn as the vessel had to undock on the 19th but he offered to re-schedule the docking of the Master Stelios after the Kim Hock.)

I don't know if such discussion took place between Mr. Tham and Mr. Eustathiou. Yes it was because the discussion was in English and it was discussed too fast for me to understand.

(S: Your meeting with Mr. Chen on the 16th)

40 Yes I said it took place around 10 p.m. in my office; between myself and Mr. Chen. Yes I said I gave Mr. Chen a lot of repairs to be done in the engine room; I dictated the list to him, a list which I had prepared before hand; Mr. Chen wrote it down. (S: My instructions are the person you met was not Mr. Chen). The person that I met on evening of the 16th was the person I identified yesterday. I insist that I

In the Supreme Court

Plaintiffs Evidence

No.6
N. Vrontakis
Cross-Examination
28th to 29th
September 1977
(continued)

saw and discussed with the person I identified yesterday. Mr. Chen did record the list I gave him.

(S: Meeting of the 17th).

Yes I said at 10 or 11 a.m. Mr. Chen came on board looking for the Capt. I saw Mr. Chen coming alone searching for the Capt. and later I saw Mr. Chen coming down from the Smoke Room and at that time I saw Mr. Harper boarding the ship. In fact Mr. Chen asked me where the Capt. was. The discussion took place in the Smoke Room. (S: Mr. Chen will say both he and Mr. Harper were looking for the Capt.) I met Mr. Chen in the Smoke Room and he was searching for the Capt. Later Mr. Harper joined us in the Smoke Room. Whether Mr. Harper was searching for the Capt. or not I don't know. The three of us sat in the Smoke Room and I produced a list...Mr. Harper already had a list of things that had to be surveyed by Mr. Harper and which we then proceeded to discuss. (S: On the contrary Mr. Chen will say when Mr. Harper tried to find out from you the parts that had to be surveyed you were not very helpful and you merely said you did not have the records for the survey and therefore no decisions were made at this discussion). What Mr. Chen will say is not true. Mr. Harper had a photostat copy of the list of the parts to be surveyed and I collaborated with Mr. Harper by telling him which part was to be surveyed. I recall very well telling him that he could survey everything in the list except the cross bearing of the main engine as we were expecting the yard to draw the tailshaft. So I was co-operative. I recall very well Mr. Harper had mentioned to Mr. Chen that the tailshaft was due for survey. What I have said is true.

10

20

30

"Cross bearing" that connects the top rod.

40

(G: We are agreed it is called cross head bearing).

I agree no work had been done on the cross head bearing. It is not one of the items mentioned in the list.

(S: Meeting on 18th in office of Mr. Tham - he will say that the meeting took place in his office at about 5.30 p.m. on the 18th)

10 On the 18th we had 2 to 3 rounds of talk with Mr. Chen, one of which was with Mr. Tham as well. I recall one was in the morning and two meetings in the afternoon, about time I cannot recall. The morning meeting was around 10 to 11 a.m. and the other two meetings were in the afternoon, I can't recall the time; on the 18th we met Mr. Chen 2 or 3 times the whole day; one was in the morning and the other one or two in the afternoon but I can't recall the time. Mr. Tham was present at only one meeting; I can't recall if I saw Mr. Tham at the first meeting or the last meeting but I am sure it was only once.

In the Supreme Court

Plaintiffs Evidence

No.6
N. Vrontakis
Cross-Examination
28th to 29th
September 1977
(continued)

(S: Yesterday you talked only of one meeting on the 18th, not two or 3 meetings)

20 I had attended on the 18th only one meeting with the Capt. and Mr. Eustathiou. I did not attend the other meetings on the 18th. The meeting I attended was in the morning. I heard of the other meetings from the Capt. and Mr. Eustathiou. I don't know whom they were going to contact but I knew they were going to have meetings with the shipyard. That is so I do not know if the other meetings were with Mr.Chen. They did not mention whom they were going to meet, all they said they were going to meet the people of the yard to discuss the matter of the tailshaft. They did not tell me whom they met but there was no result as regards the drawing of the tailshaft.

RE-EXAMINED

Re-examination

RXd. by Mr. Grimberg

(G: The cross head bearing.)

40 Normally the crew does this job. If there is work being done on the tailshaft work cannot be concurrently done on the cross head bearing. First must be done the tailshaft and then the necessary work on the cross head bearing. I am sorry - correction; the tailshaft cannot be drawn when there are repairs on the main engine therefore the cross head bearing cannot be opened if the tailshaft has to be drawn.

- Adjourned to 3 p.m. -

Signed F.A. Chua

In the Supreme Court

Plaintiffs Evidence

No.6

N.Vrontakis Re-examination

28th to 29th September 1977

(continued)

Hearing resumed.

P.W.2 - o.h.f.o. s (in Greek) :-

RXD by Mr. Grimberg (Contd.)

Among the surveys to be carried out while the vessel was in drydock was the cross head bearing survey and the tailshaft survey. The dismantling of the cross head bearing for the purposes of the cross head bearing survey cannot be carried out while the tailshaft was being drawn. Both could not be done at the same time. 10
Either the drawing of the tailshaft is done first and then the dismantling of the cross head bearing. When the vessel entered drydock I expected the tailshaft would be drawn first. So I held back on the dismantling of the cross head bearing.

The cross head bearing was not dismantled while the vessel was in drydock. Because I was waiting for the drawing of the tailshaft by the yard. Eventually the cross head bearing was dismantled when the vessel was anchored in the Western Anchorage. The survey of the cross head bearing took place in the anchorage; it was carried out by Mr. Harper. This survey took place during 20th, 21st October by Mr. Harper including some other items. 20

(G: The 19th the day the vessel was undocked.)

I saw the pilot on two occasions on the 19th; the interval of time between the 2 occasions was approximately 2½ hours to 3 hours. On the first occasion when the pilot boarded the vessel, the vessel was not ready to sail, quite apart from the fact that the dock was not filled, the reason the ship was not ready was because they had not joined the cooling water pipes. If the pipes were not joined the generator could not work to produce electricity to start the engine. 30 40

While the vessel was being undocked and proceeding to anchorage work was proceeding in the engine room; this work had nothing to do with the surveyable items.

The first time I discussed with Mr. Chen the necessity of drawing the tailshaft was the night of the 16th. When I saw Mr. Chen again the following day with Mr. Harper

Mr. Chen already knew of the necessity of drawing the tailshaft.

In the Supreme Court _____

(G: Meeting with Mr. Harper).

Plaintiffs Evidence

10 I saw Mr. Harper outside the Smoke Room on the 17th. I did not see him actually boarding the vessel. I don't know whether he boarded the vessel with Mr. Chen or not. As far as I knew he might have boarded the vessel with Mr. Chen. I did not actually see Mr. Chen board the vessel. When I first saw Mr. Chen on the 17th he was outside the Smoke Room coming down the stairs of the Capt's room; that was shortly before the 3 of us sat in the Smoke Room.

No.6
N. Vrontakis
Re-examination
28th to 29th
September 1977
(continued)

(G: The night of 17th when you were summoned to the Capt's room after Mr. Eustathiou arrived.)

20 I cannot precisely say how long Mr. Eustathiou had been in the Capt's room before I was summoned, but it was probably after one hour. I knew it was when they called me upstairs I asked Mr. Eustathiou when he arrived on board the ship. I had not seen him come on board.

After leaving Mr. Chen's office they told me they were going to make a telephone call. I don't know if the telephone call took place; and if it did I do not know when it took place.

Signed F.A. Chua

30 G: I ask Court to record that the alleged schedule of telephone calls produced by my learned friend, D 7, was not put to P.W.1 the Capt. who was the only witness who said two calls took place. Now he has returned to Greece there is no opportunity of recalling him. It was not put to the Capt. that Mr. Tham participated at any meeting at which he was present. Since the Capt. speaks better English than P.W.2 the Plaintiffs are thereby put to a disadvantage.

40 S: That is a matter for submission and not to ask Court to record it.

Signed F.A. Chua

- Adjourned to an early date to be fixed by the Registrar. Counsel say they would need another 10 days -

Signed F.A.Chua

In the Supreme
Court

Plaintiffs
Evidence

No.7
Address of
Counsel for
the Plaintiffs
14th February
1978

No. 7

ADDRESS OF COUNSEL FOR
THE PLAINTIFFS

Tuesday, 14th February, 1978

P. heard Suit No. 503/75: (Contd.)

Hearing resumed.

Parties and Counsel as before.

G: I wish to remind Court of Plaintiffs' case. Real disputes fall within a very narrow compass. At the end of the day it will be a simple matter of construction. This is a claim for breach of contract and the Plaintiffs say that Defendants contracted to make their shipyard available to the Plaintiffs' vessel "Master Stelios" for some general work to be done but most importantly for the drawing of that vessel's tailshaft or screwshaft so as to enable a survey to be carried out. That survey was already overdue and it was vital for the Plaintiffs it should be carried out without further delay as the Classification Society was insisting that the survey be carried out. If requirements of Classification Society not met the vessel does not remain in class. It was this situation which led Plaintiffs' London representative Phocean to send the Defendants a telex on 3rd October, 1973. Bundle B is the agreed bundle - 3 documents at root of this case: (1) p.1, telex of Phocean to Defendants; (2) p.2. This can only have been with reference to the works stipulated in B 1 "for ordinary drydocking and screwshaft survey". It was Defendants' offer of their yard for the works stipulated by the Plaintiffs. (3) p.3, a telex of 8th October in reply. That exchange of messages constituted a concluded contract between the parties pursuant to which the Defendants were to provide the dockyard for the works stipulated in B 1. The matter does not stop there; B3 goes on to say "meanwhile quote the following items" and sets out some items which do not include the drawing of the screwshaft. The vessel came and went and the screwshaft survey was not carried out because the Defendants failed or refused to draw the shaft so as to enable the survey to be carried out.

10 What does the Yard say, that is the
crucial issue. The Defendants say the list
of items was an exhaustive list of what
they were required to do and as it did
not make reference to drawing shaft they
were not obliged to do it. (S: We have
not yet stated our stand). I should put
it the other way. The Plaintiffs will
contend that the list of items in B 3
was no more than a request for quotations
for those items and was never intended
as a work list and the Plaintiffs will
point to 3rd line of B 3 "meantime please
quote following items" and they will say
these words in no way affected the
Defendants' obligation to draw the shaft
for which the Plaintiffs had stipulated in
B1 and for which the Defendants had agreed
to provide their services in B2. The
20 Plaintiffs will also say any experienced
yard looking at list of items in B3 could
not possibly have taken that list to
constitute a work list because certain
items in it were mutually contradictory.
As I understand it at this point the task
before Court is to decide whether B1, B2
and B3 constituted a binding contract
which required the Defendant yard to draw
the tail shaft of this vessel and if so
30 whether that contract was in any way
affected by the list of items appearing in
B 3. That is the short point in this case.
The evidence which Court has heard already
as the evidence of the master Leontoras
and the evidence of the Chief Engineer
Vrontakis who said they came to Singapore
on this vessel that entered the yard on
16th October, 1973 and that it was undocked
on 19th October, 1973, and that despite
40 their protests the yard declined to draw
the shaft. There was an unusual feature in
the undocking of this vessel. Usually
when a vessel is drydocked the Co. owning
the vessel sends out a marine superintendent
prior to vessel entering drydock and that
marine superintendent discusses the items
of work to be carried out with the yard
and generally supervises its work. In
50 this case these discussions did not take
place prior to the vessel's entry into the
dry dock because the Plaintiffs' represent-
ative, Plaintiffs' marine superintendent
Mr. Eustathiou was delayed in Athens as a
consequence of a disruption in flights due
to the Arab-Israeli conflict of October,
1973. So Mr. Eustathiou did not arrive

In the Supreme Court

Plaintiffs
Evidence

No.7
Address of
Counsel for
the Plaintiffs
14th February
1978

(continued)

In the Supreme
Court

Plaintiffs
Evidence

No. 7
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Counsel for
the Plaintiffs
14th February
1978
(continued)

here until evening of 17th October, 1973, whereas the vessel was in dry dock with the dock already pumped out by 2.20 p.m. on the 16th. So that he was unable to discuss the individual items of work to be done by the yard but in his absence the master had been authorised to do so and did in fact do so and it is very important to note that the only items which were for discussion were the items relevant for an ordinary drydocking in the words of B 1 because the drawing of the tail shaft had already been expressly stipulated for and absolutely no discussion was necessary, or called for and if it were necessary then the master and the Chief engineer on their arrival here confirmed that this work should be done and indeed pressed for it to be done as did Mr. Eustathiou when he arrived at the yard on the night of 17th and the early hours of the 18th October. That is really the crux of this dispute subject to what my learned friend has to say.

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Calls:

No.8
S.S.Eustathiou
Examination
14th to 16th
February 1978

No.8

EVIDENCE OF S.S.
EUSTATHIOU

P.W.3 - Steven Stelios Eustathiou - a.s.
(in English)

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Xd. by Mr. Grimberg

Living at Kuosson, No.2, Kalamaki, Athens.

I am 25 years old and I am in the shipping business. I own a small ship of my own since December 1975. I also engage in ship brokering and I am the exclusive distributor in Greece of the marine products of the Gulf Oil Co., it is the third biggest oil company in the States.

I commenced my own business in December 1975. Prior to that I was employed by Phocean Shipping Agency of London and that firm was the representative of the Plaintiffs.

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Phocean is a family business since 1923, first started by my grandfather, then passed on

to my father and after his death in 1968 taken over by our mother on our behalf; I mean my brothers and my sisters and myself. Among the vessels it represents is the Master Stelios.

In the Supreme Court

Plaintiffs Evidence

No.8
S.S.Eustathiou Examination

14th to 16th
February 1978

(continued)

10 I began to work for Phocean in 1969 when I was seventeen. I was a trainee superintendent and I worked under marine superintendent employed by the Co. and I went with them to various drydockers in Europe and elsewhere where work had to be carried to vessels managed by the Co. In 1969 as a trainee superintendent I was flown out to Bhavnagar in India to join the vessel Machitis which was grounded. I joined the vessel and we came to Singapore where it underwent repairs at the Defendants' yard. I took part in the refloating operation at Bhavnagar, in fact the first 3 days of the operation I was alone preparing as per orders of the office till the superintendent came. I remained a trainee superintendent until 1971, always working under marine superintendent.

20 In 1971 I began undertaking the supervision of small repairs and annual surveys on my own; I did so on a number of occasions. As far as dry docking was concerned I continued to undertake this work with experienced marine superintendent up to 1971 and amongst these marine superintendents was Capt. Korkodilos who is in Court today.

30 I also sailed in a number of vessels even before 1971. The total time I spent at sea up to 1971 was 15 to 20 months. Shipping was the family business. It is true to say I lived with it since boyhood.

40 At the end of 1971 I went to Sulzer, one of the biggest marine diesel engine manufacturers in the world and they carry on business in Switzerland. The purpose of my going there was to refine my technical knowledge on these engines which also were on the Master Stelios and on other vessels managed by Phocean. We have exclusively Sulzer engines. My course with Sulzer lasted one year with interval of one month when I was requested by the London Office to go to Brazil where a vessel of ours Master Nikos was aground. The refloating operations were exclusively in my hands with of course the salvage people.

50 After I completed my course in Switzerland I returned to Phocean and took charge of major

In the Supreme Court

Plaintiffs Evidence

No.8
S.S.Eustathiou Examination

14th to 16th February 1978

(continued)

repairs and drydocking on my own. I was then 21 years old. This was a very young age for such a responsibility but we are as marine superintendents not alone, we have to co-ordinate with master mariners, classification, London Office and the yards where they are co-operative. At the age of 21 I had an unusually varied experience as a result of my family interests.

(G: Period July 1972 and end of 1973).

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During that period I undertook major repairs and drydocking in respect of the following vessels: The Mimina, The Machitis, the Master Nikos, the Michalakis, the Marpesa, the Master Stelios and the Matrozos. These repairs and drydocking were at Amsterdam, Hong Kong, Singapore and Hamburg.

(G: The case in question).

In the early part of October 1973 I was in Athens. On or about 5th October, 1973 I received a message from Korkodilos in London. He informed me that we had to dry dock the Master Stelios in Singapore. I was asked to make reservations with airline and be in Singapore and attend the dry docking. Capt. Korkodilos told me I should be in Singapore on the 14th October, 1973. He told me the dry dock would be available about 16th/17th of the same month. My instructions from Capt.Korkodilos were by telephone, as we normally phoned two or three times a day when I am not in London. Before I left Athens I received a letter from Capt. Korkodilos. It is at A7; it is the translation of the original Greek letter I received. It was dated 10th October 1973. That letter advised me of the work to be put in hand in Singapore. It advised me I should do the drydocking of the vessel, of course leaving me a free hand to arrange for other works, if and when I arrived I find there was other minor work to be done I had to do it.

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(G: A 13).

My attention was drawn to "many outstanding items. Tailshaft survey".

(G: B 3).

I recognise it as a copy of a telex I received under cover of A7. I now produce the actual document I received under cover of A7

(Ex. P6). There is a slip of paper attached to P6, it is in the handwriting of Capt. Korkodilos (reads). Both the slip and the attachment mean that there is a quotation request from Phocean to the yard for various jobs and that no reply had been received from the yard for quotation.

In the Supreme Court

Plaintiffs
Evidence

No.8
S.S.Eustathiou
Examination

14th to 16th
February 1978

(continued)

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Before I left Athens for Singapore I was not aware of any other communication between Phocean and the yard; there should not have been any anyway. What I am trying to say is there was no reason there should have been any communication with the yard.

When Capt. Korkodilos spoke to me from London that I was required to go to Singapore, he told me the main purpose for the drydocking in Singapore was the tailshaft survey, which I anyway knew.

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Soon after I instructed my office at Athens to get me a ticket for Singapore. I intended to arrive in Singapore on the 14th. At that time it was not easy to get a ticket. There were many problems with the airlines; other flights were booked, other flights cancelled or re-routed due to the consequences of the Arab-Israeli war. The war I think started on the 5th and 6th October. I managed to get a ticket for departure on the 14th; that would have got me to Singapore on the 15th. When I arrived at the Athens Airport I cannot remember exactly what was the reason why the flight was cancelled; I think it was re-routed and not passing through Athens, something like that. Eventually I was able to get a flight leaving on the 16th October by SIA. I did not change planes; it was a direct flight and I have not been in Thailand generally. When I left Athens on the 16th October I hoped I would get to Singapore in time as I was told the vessel was stemmed for 16th or 17th; that was stated in B3, a copy of which I received.

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I arrived in Singapore on the 17th October at about 8 p.m. I was met by a representative of MacAlister, the shipping agents in Singapore. I was told the vessel had already entered the dry dock. I went straight to the Defendants' yard. I arrived on board at about 10 p.m. I was greeted by both the master and the chief engineer. I went with them to the saloon on board for a light snack. We discussed the progress of works and I was informed in a form of a complaint, by the master, that the yard

In the Supreme Court

Plaintiffs
Evidence

No.8
S.S.Eustathiou
Examination

14th to 16th
February 1978

(continued)

was not doing the removal of the tailshaft. The master could not explain it at all; he told me that he had spoken to the yard about it. I was very surprised especially when I saw that not even preparation had been made for the removal of the tailshaft. I was surprised in view of the time the ship had already been in dock.

After our conversation I booked telephone calls for Athens and London. I spoke to Capt. Korkodilos in London informing him of the situation, involving the tailshaft, everything. I phoned my fiancée at Athens to tell her of my safe arrival. I phoned twice to Athens; once she was not in and I spoke to her sister. These calls were made I cannot say if they were before midnight, possibly at 12 but I can't be sure. I am certain the calls were made, as sure as I am in this Court.

10

After I spoke to Capt. Korkodilos a Chinese gentleman from the yard came on board. I made three calls from the ship's telephone. The Chinese gentleman, I am not sure, I don't think he is in Court today. I remember I asked him why he had not made preparation for the removal of the tailshaft since he had not removed it already. He did not seem to know very much about it. His concern was if we wanted to do sandblasting. I spoke to the master about it and we also went for a quick look at the bolts of the vessel, with the master and the Chinese gentleman. We then returned about 10 minutes to the lounge where I said to the gentleman that it was not required on account of the condition. I received a brief quotation from the gentleman. He looked very displeased.

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I went out with the master to the officer-in-charge, the yard's officer-in-charge; he was in his office, very close to the ship. There I saw I think that gentleman there (S: Goh Hock Chai). At that time I recalled it was a Mr. Chen that I saw. I had just completed a 17-hour flight; I cannot remember the person very well. I complained first of all for the tailshaft not being done; meanwhile the time had past already since I saw the first man who came on board and they had already started painting; the paint work done was very bad because we did not agree to do the sandblasting but they did not scrape and check some areas at our request before painting. I complained about the failure to draw the tailshaft, that

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was the main complaint, I also complained about the painting.

In the Supreme Court

10 The officer told me that he was not informed by the yard to carry out the removal of the tailshaft. I was very angry and surprised; because (a) the job was not done which should have been done; (b) I could not understand what he meant. After this conversation I went back to the vessel. I phoned Capt. Korkodilos, the master was with me. The master also spoke to Capt. Korkodilos. I told Capt. Korkodilos exactly what happened. He told me that I should leave it to him for the night and he would deal with the matter via London. By that time it was well after midnight, 2 or 3 a.m. of the 18th October. I then went to sleep on the vessel.

Plaintiffs
Evidence
No.8
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Examination
14th to 16th
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(continued)

20 When I woke up, all that day I was going backwards and forwards to the yard's office to request that the tailshaft removal should be done. I remember the first person I saw in the morning was a Mr. Tan; I think he is in Court today (S: Tham Yeng Fei). Mr. Tham had a separate office. On most of my morning visits to the yard's office I saw Mr. Tham and when Mr. Tham was not there I went to another office to ask what was happening. I was angry and lost my temper. I had travelled 17 hours. In the afternoon I also visited the yard's office on a number of occasions. On these occasions I think
30 I saw an English gentleman; he was the man who decided basically and I was annoyed when he put it bluntly to me "You can say what you like, the ship is going out and that's that." By that he meant the ship was going to be undocked without the tailshaft having been drawn. On the morning, on the first visit to Mr. Tham, there was complaint by Mr. Tham as to why sandblasting was not to be done. Sandblasting on a vessel like the Master Stelios needs about 3
40 days; since they were prepared and had the time for the sandblasting they obviously had the time to remove the tailshaft as well. The impression I had was that if I had agreed to the sandblasting they would have done the removal of the tailshaft. If all goes well 3 days needed to remove the tailshaft, carry out the survey and replace the tailshaft. It would depend on the result of the survey and what work if any the surveyor required to be done. On the 18th I was in touch with the
50 London office all the time by telephone; I also telephoned the director of the company in Athens and also my mother the Chairman. On the 18th I made about 8 telephone calls.

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No.8
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(continued)

I remained on board the vessel until the 19th and she was undocked on the 19th. By that time the tailshaft had still not been drawn.

- Adjourned to 2.30 -

Signed F.A.Chua

Hearing resumed.

CROSS-EXAMINED

Cross-
examination

P.W.3 - Steven Eustathiou - o.h.f.o.
s. (in English)

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XXd. by Mr. Selvadurai

(S: Your meeting with the Englishman on the 18th).

I remember speaking to an Englishman and I remember I was left with the impression that this man decides, his name I do not remember. I met him at the yard, I can't remember at what time I met him; I met him at the offices of the yard. I don't know if it was his room but I talked to him in an office. I met this man again I think on doing the accounts about the 20th October.

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(S: Your meeting with him on the 18th).

I cannot remember if I barged into his office or I was invited. Obviously I was expected because when I started to speak to him he knew what it was all about. He knew I had already complained. If you say 18th October 1973 was a Friday, it is so.

Yes when I talked of settling of accounts I meant the payment to the yard for the work done. I understand that I said that the accounts were settled about the 20th. If the Defendants say the accounts were settled on the 19th it was probably so. It is possible soon after the vessel had left the dock on the afternoon of the 19th I was with the Commercial Manager of the yard settling the accounts. I cannot remember the name of the Commercial Manager; I would be able to recognise him but I had difficulty in recognising Mr. Tham who I saw a few times. (S: His name is Mr. Khor Tiek Lin). The person I spoke to

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on the 18th and on the 19th was this Englishman. Yes while I was waiting to settle the accounts on the 19th I met the same Englishman; it may be well so. (S: The Englishman is Neville Watson). I can remember the name Watson, he is tall. (S: He was at the time the Managing Director of the yard). I do not know. There was conversation with Mr. Watson on the 18th and the 19th but I would not say there was an argument.

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(S: I am dealing now with your second meeting with Mr. Watson, on the 19th).

I can't recall very much of the conversation on the 18th and it was already decided the vessel was leaving the dry dock. My main force and power to explain the situation was on the 18th. I remember there was settling of the accounts. Yes I met Mr. Watson at the reception on the first floor of the office. I can't remember if there was an angry exchange of words with Mr. Watson, but I am not surprised to hear it. If you say Mr. Tham was there it is so, but I can't remember. It could be so that the Commercial Manager Mr. Khor was also present. I don't remember for the present if Mr. Watson gave me a dressing down. I can't recall Mr. Watson making comments about my long hair. I would like Court to note that in 1973 you could not enter Singapore unless you had a good haircut. If Mr. Watson wondered how I was allowed into Singapore with my long hair it does not concern him. If he said that to me I would give him an appropriate answer, it was none of his business. I cannot remember what I said to Mr. Watson. I told Mr. Watson if they let me in it was alright. I am trying to think what replies I gave; I don't say those were the replies I gave. I deny the evidence I gave this morning was what I thought I said and did.

Yes after that I went up to Mr. Watson's room. I remember that clearly. A discussion of the accounts took place; that I remember clearly. I don't remember when the accounts were closed. I remember telling Mr. Watson about the bad attitude of the yard towards us. I complained on the 19th of their decision not to allow the ship to remain in dry dock; also as I have said about the way the painters continued to paint the hull when I had complained to them on the night of the 17th; and also for the yard actually bullying me around; possibly one of my complaints could be apart from the complaints of job not being done. I complained

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to Mr. Watson about the possible comments that he made to me, my long hair; I am sure he would not comment about my attitude towards my work; if he did he would be unreasonable. I can't remember if I made any other complaints to Mr. Watson.

(S: The bills).

I can't recollect saying anything about the bills to Mr. Watson; I gave my opinion about the bills, complaining that they were high but also because the yard was worried that we might not finalise the accounts. I told them that our agents in Singapore would guarantee whatever payment is mutually decided by the yard and the late Mr. Jansen in London. Mr. Jansen was the director of the technical department of our London Office and he kept a current record of prices and quotations for jobs done to ships and that was why I decided to leave it to him. He had many friends and he had his own way of being informed of prices, quotations of many shipyards and ship repairers. We have a problem that we did not have the yard's quotations.

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I cannot remember exactly what Mr. Watson said to my complaints but I can say he was at the time had his own opinion on every subject. You could not talk to him very easily, that was the reason why the ship went out of the dock very quickly, matters were in his hands.

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The meeting in Mr. Watson's room lasted $\frac{3}{4}$ to one hour. Yes I remember I left the meeting in a huff. It is very true I told Mr. Tham outside that I was not going to settle the bills at all but that was as I was concerned but not my Co. The way things are going there was no mutual understanding between us. I am afraid I was not going to settle the bill and I have said Mr. Jansen would take it up. I said the bills would be settled via London.

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Yes I knew this case was heard over 4 days previously. To be honest I have not gone through the bundles A and B, but some of the documents connected with me I have seen on the airplane coming here. I have seen the bundles and saw some of the documents but I have not studied them. Yes I read some of the pages; very few; I have not had the time to read the documents of what other people had said. I must admit I went through the evidence of the master but not carefully. As I said I left Athens exactly

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2 days ago. I had taken delivery at Athens of 150 drums of oil as agent of Gulf; I had documents of Greek Government regarding tax etc. and I did not have the time to deal with other things and I was very tired.

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(continued)

10 I was in October 1973 and now a very good ship superintendent. Yes in October 1973 I was about 21 years old. The functions of a superintendent are in line with the policy of the managing company. Some companies give a list of jobs to the superintendent to do and they strictly do not allow the superintendent to deal with prices, and extra jobs to be done; he cannot do anything else unless it is with agreement of the Co. No, I am not that type of superintendent. In our Company one superintendent of ours is of the above type. I received a letter or I am informed what jobs must be done and are expected to be done, what surveys are due and then I have a free hand to decide on part of the recommended work unless London has clearly already agreed price and the necessity of the work to be done. Yes if the price has been agreed between the yard and Capt. Korkodilos I would have discretion on minor items. Whatever I decide I have to inform London. London trusted me; if I thought a job had to be done I would proceed and inform London.

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- Adjourned to 10.30 tomorrow -

Signed F.A. Chua

Wednesday, 15th February, 1978

(Contd.) P. heard S. 503/75:

Hearing resumed.

P.W.3 - Steven Eustathiou - o.h.f.o.
s. (in English):

XXd. by Mr. Selvadurai (Contd.)

(S: The bills - look at B 16 & 17 - bills rendered to Phocean).

Cross-Examination

I don't remember.

(S: Look at this man Khor Teck Lin).

I don't know him.

(S: He was the Commercial Manager of the yard).

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I do not remember the gentleman.

(S: The afternoon of 19th October - a Saturday).

I remember I had a discussion about the final bills. (S: Mr. Khor will say you were having a discussion about the bills with him). I don't remember the gentleman. I don't remember discussing it with this Commercial Manager but I remember I discussed it with someone at the yard. (S: Let us assume it was Mr. Khor. He will say you were going through the items and the prices with him and that before Mr. Watson arrived you had virtually agreed items to an amount of about S\$54,000). I don't remember. (S: You further told him so far as the balance of the bills was concerned you wanted the yard to settle with Phocean by exchange of correspondence). I remember that at one stage I passed the matter over to Phocean, I don't know if it was for the balance and what balance. I don't remember when I passed it to Phocean. It should be before 19th, it should not be after the 19th, but I don't remember. I don't remember how I passed it on to Phocean. (S: Mr. Khor will say that after your return from your meeting with Mr. Watson at Watson's office you said you were not going to settle the bill at all and you wanted the yard to take it up with the agents). I remember referring the case to London Office via MacAlister, I don't remember the Commercial Manager; if I said it to him after or before my meeting with Mr. Watson I don't remember.

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(S: The functions of a ship's superintendent).

Yes the usual practice is to send the ship's superintendent before the ship is docked. Yes the ship's superintendent would sit down with the officers of the yard and work out the list of works to be done by the yard on the vessel. It is also possible he would discuss prices with the yard; it depends on the circumstances; circumstances that apply at that time. If prices have been agreed between shipyard and owners' officers there would be no discussion of prices between ship's superintendent and the yard and that again would depend on the circumstances, possibly the work was not done correctly, no other factors that I can think of. It is possible that the ship's superintendent may amend the work list. Where prices have not been agreed before hand between yard

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and owners it is possible that the ship's superintendent would discuss the prices with the yard; it all depends on circumstances at the time. I cannot think of any circumstances.

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(S: Ex. P6 - ship's superintendent and the Works List - the ship attached to Ex. P6).

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(Witness reads the slip). Yes I was going to compile the works list.

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10 (S: A 7 - letter of 10th October 1973 to you from Phocean at A7 bottom "Certainly, we are.....A8.....(deck and engine").

(continued)

20 Yes that refers to the work list to be compiled by me. (S: How would you go about compiling the work list?) I arrived late and already the master had given out works, jobs. If I had arrived earlier and master had not prepared list I would see what jobs are required, co-ordinating what the master, the chief engineer and the London Office have told me and what I think is necessary and give it to the yard with instructions to carry out that work list. If yard had not given quotations I would have discussed prices with the yard but it can happen if we knew the yard and the yard knew us I would leave the question of prices to be settled by the yard with London after the work had been done. In this specific case I don't
30 remember if there was an understanding that prices would be settled after the work had been done between the yard and London Office.

Yes in compiling the work list I would base it on the telex B3, B4, B5 and B6. Yes that is the same as P6.

I agree if the yard did not have the work list they would not know what jobs were to be done.

(S: A 7).

40 Yes I received this letter in Greece.

Yes written by Capt. Korkodilos.

(S: 1st para.)

I was to see what work was to be done as regards the surveyable items. No the lists enclosed in the letter were not for the master

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and the chief engineer. I did not understand the question. I now say those lists were to be handed over by me to the master and the chief engineer but I was the one to compile the work list; these lists were for the mutual use of the three of us. Yes I said I was to compile the work list out of these lists as well. These lists are for me to compile the work list, as I have already said, in co-ordination with the master and the chief engineer. As these lists were copies, if I remember correctly, I could leave them with the master and chief engineer for their record, if they had not other copies of the same document. I don't know why I should know if they had other copies; I agree it was not mentioned in the letter A7.

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(S: The master's evidence at p.18 "When going through the list A9... ..I did not receive a copy of this letter (A7) but I received a letter with list A9"")

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I do not remember if the master showed me the letter which he said he received from London. (S: That letter is missing). I do not know anything about it.

(S: A7, at A8 "Bearing in mind that the tailshaft will be surveyed..... in order repairs to be completed shortly". Overtime work).

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Sic

Capt. Korkodilos tells me, he instructed me in this letter, what I should agree the overtime should come to. I am not supposed to control overtime; this is supposed to be a guidance. (S: "Overtime must not exceed..... \$3500 - \$4000"). It is supposed to guide what the Co. thinks that they would be satisfied with overtime money. This letter is a guidance to me. I will not tell the yard the overtime was not to exceed that figure. If overtime would come about and will exceed this figure I would telephone London and seek instructions. Yes based on these instructions I would discuss the overtime with the yard.

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(S: The list at A9 - A13).

Yes I had a number of functions to perform and decisions to make.

Yes re para. 2 it relates to collision with Pier at Khoramshahr. Yes I was to refer

to Lloyd's first whether repairs required to bring it up to class. Yes if repairs are required I would instruct the yards of those repairs. (S: "Therefore, if repairs..... A10.....underwriters"). I could do what the letter says.

(S: Item 3A Anchor windlass "Please arrange inspection and repair").

10 Yes to inspect and repair. I can't remember who was to inspect but if repairs necessary the yard would repair. Yes I would instruct the yard to repair if it was necessary.

Yes this letter A7 gave me certain instructions with respect to repairs to the Master Stelios and it was dated 10th October, 1973. Yes I said I was and is a very good ship's superintendent. I cannot remember the case, but I was to make the arrangement to inspect.

20 (S: All, item D Radio Station).

Yes it is my judgment and decision.

(S: Item 6 - oil tanks).

Yes I was told not to carry out the work at Singapore as the price is prohibitive. It is an expensive job anyway.

(S: Machinery A).

Yes I was instructed not to carry out that work in Singapore.

(S: Machinery B).

30 Yes it is to be subject to my judgment and decision.

(S: Item 4 - continuous survey).

Yes same item as in para. 1 at A7.

Yes they ask me to hand the list of surveyable items to the master and chief engineer.

(S: If Capt. K. had sent a list to the master there was no necessity to ask you to hand the list to the master).

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What type of precautions for any matter concerning the London Office are not my business.

To Court: I don't know why Capt. K. sent the list twice - once to the master and the other to me to be handed to the master.

I agree A7 was written to me on the assumption that I would be in Singapore before the arrival of the vessel, so that I could hand the list to the master and chief engineer when the ship arrives.

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(S: A7 was not shown to the yard, they do not know the existence of it).

I don't remember if I showed the letter to the yard. No, I would not have shown the letter to the yard.

I did tell the yard that the tailshaft survey was due for class purposes. I said yesterday that I told the yard that the tailshaft had to be drawn. It is obvious it was for survey for class purposes. I did tell the yard that the tailshaft survey was due for class purposes. I said that when I asked why the tailshaft had not been removed; I said that to 3 or 4 people, also to Mr. Tham, Mr. Chen, Mr. Watson and when I arrived at the ship I told that to the Chinese officer of the yard who came on board. On many occasions when I told that to the yard officers, the master and the chief engineer were present. (S: Neither the master nor the Chief Engineer had told this Court this). I don't know what they said. I don't know how the master and the chief engineer wanted to express themselves. (S: What they said was that they tried to impress on the yard that the most important purpose why they came to Singapore was to draw the tailshaft). Apart from what I said to the yard, what the Chief Engineer and the master said and how they expressed it is none of my business. Screwshaft removal is a class request. A screwshaft removal is a difficult job; this survey would only be carried out for class purposes and if the shaft is removed anyway the class would be invited.

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When a screwshaft survey is done for class purposes, the next survey would be in 4 years time. Yes for class purposes a survey has to be carried out once every 4 years. No screwshaft survey is done between the 4 years because at dry dock which is every two years maximum you

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check externally the readings and you get a picture of the shaft linings and everything else. If I have problem with the shaft in between the 4 years I would have a survey and I would ask the class to come and survey; yes the class would ask us to draw the shaft. Yes over-heating is one of the problems; a crack is another problem. Yes I would inform the class who would ask us to draw the shaft and have repairs done and the survey would approve it for class purposes.

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(S: The problems of classification are between the owner of the vessel and the classification society and is no concern of the yard).

I have no opinion on this; it is none of my business. I don't know if a yard would become involved in any problem between the owners and the classification society.

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(S: B4 item 8 "Take rudder and tailshaft wear-down.....this office").

Yes they are talking of measurements. Those measurements were for the record of wear-down in comparison with time.

(S: B10 - telex from depts.to London "Tailshaft clearance 3/16").

Yes that was the measurement the yard had taken.

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Yes in between surveys once every 4 years for class purposes we have annual dry docking, it could be every two years. At each dry docking the yard takes the tailshaft measurements on the instruction of the owners.

If the measurements are found to be excessive we would re-wood the two parts of the shaft without removing the shaft; without taking it out of the ship; you have to draw the shaft. It is a classification survey; yes it was not because the certificate was due to expire.

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- Adjourned to 2.30 -

Signed F.A. Chua

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(continued)

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(continued)

Hearing resumed.

P.W.3 - o.h.f.o. s (in English):

XXd. Contd.

(S: B 10 measurement of 3/16" clearance).

I agree it is not excessive; there are many ways in which you can look at it; it is not over the measurement but it needs doing. I can't answer yes or not, it is not excessive; it is not excessive, it is not over the maximum but it needs doing; the surveyor will not let the ship out; he will not be pleased to let it out. The maximum is 5 m.m.

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It needs doing, if you enter for a survey of a two-year dry docking measurement and you are near 4 m.m. the surveyor will not request re-wooding. I don't know if 3/16" is near 4 m.m.

Yes I said I arrived in Singapore on the evening of 17th October, 1973, and then I proceeded immediately to the vessel and arrived there at about 10 p.m. The master made a complaint to me that the yard had not drawn the tailshaft. Yes I said I then booked telephone calls to London and Athens. Yes I said I made all the calls from the vessel. I don't remember any special way I booked those calls. Yes I had to go through the exchange of the yard. Yes I had to give particulars of myself, the telephone number at London and Athens, not necessarily the person I want to speak to at the other end. It is hard to remember the time I made my first call to London or Athens; it is hard to remember if it was before or after midnight. (S: p.11N/E - master's evidence of these telephone calls). Maybe the master did not remember we had a light snack. I don't know what else he did not remember. (S: "after that we went immediately to Mr. Chen's office. Mr. Chen was there.....12 returned to the ship and telephoned London). I remember making the second telephone call to London. (S: Mr. Eustathiou spoke to Capt. K. around midnight Singapore time.....office"). The second telephone call to Capt. K. was well after midnight; maybe 2.30 or 3.00 o'clock on morning of the 18th.

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(S: See Ex. D 7 - Yard's monthly telephone returns of overseas calls - no call by you on the 17th).

So I see. I have not introduced this refinement that my telephone calls were near midnight, well after midnight.

(S: On 18th you made 11 calls).

Yes, as per this list. Yes I said I recollected making 8 calls. I really cannot remember how many calls I made. Now, seeing this list..... (S: I tender a file of daily trunk call statements - October 1973 to December 1975 Ex. D 8 f.i.).

(S: No trunk call can be made from the ship via the yard's exchange after 10.20 p.m. on any evening till 7 a.m. the next morning).

That can't be correct as I definitely made my calls near midnight and well after midnight. The exchange was open. I am telling the truth about these calls. Not true I made these calls on the 18th after 7 a.m. No question of my making the calls outside; they were all made from the ship.

(S: Mr. Chen will say that soon after your arrival at the vessel on the 17th he boarded the vessel and met you).

Mr. Chen I remember seeing him on the first visit at the yard. I don't remember meeting Mr. Chen on the vessel.

(S: He will say he discussed on board the vessel the list of items of work that appears on B3, 4, 5 & 6 and that on question of sandblasting he told you that the ship did not require sandblasting).

The man I spoke to on board referring to B3, 4, 5 and 6 definitely wanted us to do sandblasting. I was talking to him and compiling jobs on the basis also of B3, 4, 5 and 6. I cannot remember if this was also on the vessel.

Yes I said if sandblasting was to be done it would take 3 days. I agree if the whole vessel was to be sandblasted it would take 10 days. That is so when I was talking of 3 days it was not sandblasting of the whole vessel, but the sides of the vessel from bow to stern; not the entire side but a certain height above the boottop belt, not very much.

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Yes I said this man also gave me a quotation for the sandblasting. I cannot remember the quotation. I cannot remember if it was around S\$10,000; I don't want to assume.

Yes I said the question of sandblasting was discussed by me with Mr. Tham. Yes I said Mr. Tham insisted that sandblasting ought to be made. Yes I said Mr. Tham insisted that sandblasting ought to be made. Yes I said I met Mr. Tham on the 18th. Yes I said the impression I had from that man and Mr. Tham was that if I agreed to sandblasting they would draw the tailshaft. Yes I did not agree to this. Yes if I had agreed the vessel would be on the dry dock for another 3 days.

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(S: Back to the 17th your conversation with the man about sandblasting).

Yes I said when I told the man I did not want sandblasting he was very displeased. I cannot remember exactly how he showed his displeasure. Yes I said after that I and the master went to see the officer-in-charge of the yard. As I said yesterday I cannot remember who was who out of the first two I saw but the third person I saw on the 18th was Mr. Tham.

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I went to see the officer-in-charge after midnight, probably the meeting took place before and after midnight.

The meeting with the first man was on board and we sat down and I compiled the list of works and that was before midnight.

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(S: Mr. Chen will say he was the man who saw you on board the evening of the 17th).

I can't remember if it was Mr. Chen.

(S: No meeting on the 17th at the yard's office).

No, there was with the officer-in-charge.

Not true I only met one person from the yard after my arrival and I did meet any officer of the yard until the 18th morning after daylight.

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(S: The master talks of one meeting with one person. G: Two meetings with one person).

I don't remember which was the first person I met.

(S: P. 11N/E: "Mr. Eustathiou arrived.... Mr. Chen was there.....12..... and spoke to him.")

I do not agree. I said the officer-in-charge could be Mr. Chen.

I don't remember who was the first man I saw on board. I don't remember if the officer-in-charge I saw was the first person who came on board. The officer-in-charge could be Mr. Chen.

I saw the man on board the ship and I spoke to him and we sat down and I compiled a list of works. The master possibly had forgotten about this meeting on board the ship.

(S: Mr. Tham will say that the very first time that he met you was the evening of 18th at about 5.30 p.m.)

That is not so.

Yes according to me throughout the 18th I was having a series of meetings with Mr. Tham and others. I saw Mr. Tham several times on the 18th. I cannot remember if I had the master and the chief engineer at those meetings.

(S: Mr. Tham did not feature in the evidence of the master. He remembered when cross-examined he had a meeting with Mr. Tham on evening of the 18th).

My evidence of meeting Mr. Tham on the morning of the 18th is true.

(S: You met Mr. Tham for the first time on evening of 18th at 5.30 p.m. and for the first time you raised the question of the drawing of the tailshaft and Mr. Chen took you, the master, and the chief engineer to see Mr. Tham in Mr. Tham's office..... At 5.30 p.m. on the 18th you told Mr. Chen that you wanted the tailshaft drawn, this meeting took place at Mr. Chen's office. Mr. Chen told you that was not possible as it was too late and took all three of you to see Mr. Tham at Mr. Tham's office to find out what the stemming schedules were.)

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I saw Mr. Chen and Mr. Tham in the course of the day, possibly I met Mr. Chen at 5.30. I asked for the shaft to be drawn even on the 17th. Not true that I raised the question of drawing the tailshaft at 5.30.

(S: Mr. Tham confirmed they could not draw tailshaft as they received instruction from you for the first time at 5.30 and that it was too late).

That is not so.

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(S: Mr. Tham will further say he proposed to you instead to undock the vessel on the 19th because another vessel, the Kim Hock, was due to be drydocked on the 19th and to bring your vessel back into the dock after the yard had completed the work on the Kim Hock).

I never heard this thing; he never said it to me.

(S: He will say you rejected the offer and insisted that your vessel should remain in the dock and have her tailshaft drawn).

20

I did not reject the offer as there was no offer. I always insisted that the vessel should stay in dry dock and complete the job it arrived for.

(S: Not a single telex from London of your complaints).

I issued my complaints to Capt. Korkodilos on the 17th 18th night. The Capt. told me he would take it up via London, he would deal with it himself from London. What telex to Phocean is none of my business.

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(S: No telex sent by Phocean to the yard of the complaints of the three of you).

I do not know. I have not seen the records.

(S: None of you, placed your complaints to the yard in writing).

That is so, because anyway Capt.Korkodilos would take it up via London.

40

(S: None of you, made these so called complaints to the yard).

That is not true.

I deny that I raised the question of drawing the tailshaft for the very first time on the 18th at about 5.30 p.m.

- Adjourned to 10.30 tomorrow -

Signed F.A.Chua

Thursday, 16th February, 1978

P. heard Suit 503/75: (Contd.)

Hearing resumed.

10 P.W.3 - o.h.f.o. s (in English):

XXd. (contd.)

20 Yes I can remember this gentleman (Chen Jen Li). I saw him in the Court the other day and I was told he was Mr. Chen. Capt.Korkodilos told me this must be Mr. Chen. I recollect that this was the gentleman. I saw him definitely at the yard, at the yard's office on the night of 17th/18th; I would not know if it was after midnight; 3 hours after midnight or 1 or 2 hours before midnight. I am not sure if he was the man I met on board on the 17th and sat down with him and I compiled the works list.

(S: B 3 - telex received by the yard).

(S: Mr. Chen will say that he met you on board the vessel on the evening of 17th and worked with you on board to compile the work list).

30 I remember I saw Mr. Chen was the man I saw in the yard's office. I cannot remember if he was the man who came on board and I thought I saw him the other day at Court.

(S: Ex. D1, D2, D3, D5 - the works lists).

40 I can't remember the documents but I recognise my signature on Ex. D5. I can't remember seeing other documents. I have signed Ex. D5. (S: Ex D1, D2, D3 and D5 represent the sum total of the items of work agreed between, we say, this witness and the yard). Basically I cannot agree to that, 4 years have passed and I cannot recollect all the jobs agreed upon. I don't doubt D1, D2, D3 and D5 but I cannot

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recollect.

(S: B 10 - telex from yard to Phocean - tailshaft clearance 3/16" - Mr. Chen will say when he met you on board on the evening of the 17th he gave you the tailshaft clearance measurements and asked you if in the light of that measurement you wanted the tailshaft drawn).

The man who came on board did not produce to me the tailshaft readings. I did ask him to remove the shaft. 10

(S: Your answer was that you would refer to London and let the yard know).

That is not true.

(S: Your evidence regarding the vessel Machitis).

I recall the evidence I gave in Court. I was not the ship's superintendent in charge when that vessel was in dock in Singapore. I can remember who was the superintendent; he was Mr. Kouloumbis and at times Mr. Sellas attended as Chief marine superintendent of the London Office. My brother Nicholas came to Singapore also; the technical supervisor was Mr. Kouloumbis. It was such a big repair and I really cannot give a better recollection than what I have been given. I know my brother attended but as what I can't say. I did not have a big part to play. 20 30

(S: Your travel to Singapore).

Yes I said I went to the airport and that flight was cancelled. I cannot remember by what airline I was travelling. I finally travelled by SIA leaving Athens on the 16th. I did not travel by first class; by economy class. When I said "I have not been in Thailand generally" I meant that I have never been to any part of Thailand apart from the stops in transit; never outside the airport. 40

Re-examination

RE-EXAMINED

RXd:

(G: Drydocking of the Master Stelios).

In my experience that particular drydocking

was unusual. It was unusual - first of all through no fault of mine or Phocean. I could not arrive in Singapore before the vessel's docking and also because I had not quotations for the jobs in response to B3.

In the Supreme Court

Plaintiffs Evidence

No.8
S.S.Eustathiou
Re-
Examination
14th to 16th
February 1978
(continued)

10

When I was acting as superintendent my functions were both technical and deciding on prices; but more technical. The quotations and prices generally were dealt through London and as I said previously I phoned or kept in contact with Mr. Jansen for advice due to his superior knowledge.

Prices were agreed sometimes before and sometimes during the work and in comparison with good relations with shipyards it was left to be dealt after the work was done.

20

Before the trouble arose the relationship between the owners of the Master Stelios and the Defendant yard was excellent. As you have heard before the m.v. Machitis was repaired at Keppel which vessel I had joined in India and the repairs came, as far as I recollect, to £250,000. S.\$1½ million. Repairs were done very well and the bill was paid.

(G: The 19th).

30

It is true on the 19th I declined to close accounts with the Defendants. I decided to leave it to be dealt with by London because my relationship with the yard regarding feelings was a little bit tense because my job had not been done. I am specifically referring to the tailshaft survey removal.

(G: The man you met on board).

40

Prior to my arrival on board work had been going on the ship and to be more accurate I checked the master's jobs already given - I checked the piece of paper. The pieces of paper I checked - I cannot remember if they were D1, D2, D3 and D5. I signed Ex. D5. I think the pieces of paper had already been written out. To Court; I think they had been typed, but I can't remember.

(G: Look through the sheets and see if there is any reference to the drawing of the tailshaft).

No reference in D1, D2, D3 and D5 to the drawing of the tailshaft.

In the Supreme Court

Plaintiffs Evidence

No.8
S.S.Eustathiou
Re-examination

14th to 16th
February 1978

(continued)

(G: B1 - telex, read it out).

It is from Phocean to Keppel. This is a telex from Phocean asking Keppel to offer a dry dock for the Master Stelios for ordinary drydocking and a screwshaft survey. The shaft would have to be drawn for the purposes of that survey.

(G: B2).

That is a telex from Keppel to Phocean (reads). That is a reply of Keppel to Phocean offering the requested dock for the ordinary dry dock and the screwshaft survey.

10

When I arrived in Singapore I did not change or cancel the request for facilities for a screwshaft survey; certainly not; I did not definitely and no one else did because when I arrived on board the Master and the Chief Engineer immediately complained to me about the tailshaft not drawn. I myself spoke about it to the gentleman who came on board.

20

(G: Your version of 17th/18th differs from that of the master).

It is 4 years and I would be surprised if my recollection and the master's and the chief engineer's would be identical. These are details, the master might be right, I might be right. I have tried to give you my best recollection of all events.

(G: A7).

That is the English translation of a letter I received from Capt. Korkodilos; enclosed with that letter was a list of surveyable items which is to be found at pp.9 - 13).

30

(G: The evidence of the master - he said he also received a copy of that list).

That is certainly not unusual. The London Office supplies the Superintendent and the masters with copies of documents so they can co-ordinate when they meet.

(G: A9 - m.l.f. took you through many of the items on pp.9-13 and you agreed that you were instructed to inspect certain items e.g. the anchor windlass and decided whether repairs should or should not be carried out.)

40

I remember that.

(G: You agreed with m.l.f. in those instances you had a discretion).

That is so.

(G: But my learned friend did not refer you to p.13 to item B "main outstanding item Tailshaft survey").

10 I had no discretion as to this item, certainly not. This item I knew from the letter that I had to do and also from my knowledge of the vessel's survey and docking planning.

(G: p.8).

This letter specifically refers to the tailshaft survey, 2nd para.

(G: Your evidence yesterday when you said the tailshaft clearance was not excessive but it needed doing).

20 By that I meant that the clearance the tailshaft had was not excessive but it would be wise to be attended to, to draw the shaft in other words, because at the clearance it had it would not last till 2 years which is the next dry docking, 4.5 mm is equivalent to 3/16". I worked it out last night at 4.5 m.m. bearing in mind maximum 5 it is definitely border line.

(G: It has been suggested to you when the man came on board you were specifically asked if you wanted the tailshaft drawn).

That is not true.

30 (G: The telephone calls).

When I attend a drydocking it is not usual for as many as 11 calls to be made in one day to London and Athens; only when I would have a problem I would phone my superiors so many times. It must be a serious problem for me to telephone 11 times in a day.

(G: It is suggested that the first time you requested the tailshaft to be drawn was at 5.30 p.m. on the 18th).

40 That would not be consistent with the number of the telephone calls I made on the 18th. I

In the Supreme Court

Plaintiffs Evidence

No.8
S.S.Eustathiou
Re-examination
14th to 16th
February 1978

(continued)

In the Supreme
Court

Plaintiffs
Evidence

No.8
S.S.Eustathiou
Re-examination
14th to 16th
February 1978
(continued)

could never have made these calls if for the first time the problem arose at 5.30 p.m. on the 18th.

(G: B 1 - request for dock space for the tailshaft survey).

That also would not be consistent with what I am alleged to have asked. It is ridiculous because when London Office has made arrangements for the job to be done so much in advance and I knew it, how can I inform at 5.30 p.m. of the 18th 24 hours after my arrival, 20 hours after my arrival - about 2 days from ship's arrival at dry dock.

10

Signed F.A.Chua.

G: My next witness is Mr. Harper, he is coming back to Singapore from Kuching and will be here I hope by 2.30. The arrangement is that he is to accept a subpoena outside the Court. He is now based in K.L.

No. 9
P. Korkodilos
Examination
16th to 23rd
February 1978

No. 9

20

EVIDENCE OF P. KORKODILOS

P.W.4 - Petros Korkodilos - s.s. (in English):

Xd. by Mr. Grimberg

Living at 24 Huxley Gardens, London, N.W.10.

In 1973 I was the Principal Marine Superintendent working with Phocean Ship Agency in London. They were then the representatives of the Master Stelios.

I hold a Greek foreign going master's certificate and I have been working with Phocean since 1956. I joined them first as a cadet and worked my way up. Eventually I obtained my foreign going master's licence in 1964. I then had command of 3 vessels managed by Phocean over a period of over 4 years. In 1971 I came ashore as marine superintendent for Phocean.

30

From July 1973 I was in correspondence with Lloyds Register of Shipping concerning

40

the Master Stelios.

(G: I will produce originals and carbon copies of the following documents in bundle A, A1, A2, A3, A4, A5, A6, A20 and A21, A22, A27, A29 and A30.)

10 I now produce the originals and carbon copies of the documents in bundle A Counsel has just mentioned. (Put in as a bundle Ex.P7). (G: m.l.f. has seen them). They were taken from Phocean's file in London. The originals are letters from Lloyds Register of Shipping to Phocean and the carbon copies are Phocean's replies. The replies I believe were all dictated by me.

Lloyds Register of Shipping is the classification society with which the Master Stelios is entered.

20 From July 1973 Lloyds was pressing me to arrange the vessel's, the Master Stelios, tailshaft survey. That survey in fact became due in April 1973.

(G: A1).

This was the first letter I received from Lloyds on the subject.

(G: A2)

That is my reply dated 6th August 1972. That includes the tailshaft survey.

(G: A4).

Letter from Lloyds dated 1st October, 1973.

30 (G: A5).

My reply.

40 A classification society is a non-profit organization that deals with classification of vessels, the compilation of rules for construction of vessels and the inspection of vessels for the purpose of ascertaining that they maintain their standard. The requirements of the classification society have to be adhered to if the vessel is to remain in class. If the vessel is taken out of class then immediately the ship owner will have difficulty in securing employment for his vessel as he will have no way of proving that the vessel is of a predetermined

In the Supreme Court

Plaintiffs Evidence

No.9

P. Korkodilos Examination

16th to 23rd February 1978

(continued)

In the Supreme
Court

Plaintiffs
Evidence

No.9
P.Korkodilos
Examination

16th to 23rd
February 1978

(continued)

standard and furthermore the maintenance of class for a Greek vessel is a requirement by the Government of Greece.

So the matter of the outstanding tailshaft survey was a matter of great importance.

(G: A4).

Lloyds were becoming impatient with regard to the outstanding tailshaft survey. From that point I put my mind to finding a dock for a tailshaft survey. There was other general work to be done apart from the tailshaft survey. I did try I believe 3 yards.

10

(G: B1).

This is a copy of a telex I sent to the Defendants as consequence of the pressure applied by Lloyds over the tailshaft survey. Sent 2 days after I received A4.

On seeing the words "screwshaft survey" an experienced yard I expected to anticipate that the propeller must be loosened, the intermediate disconnected and the tailshaft drawn into the vessel for the purpose of being surveyed by the classification society's surveyor.

20

When I sent the telex B1 the vessel was in the final stages in completing discharging at the Persian Gulf.

(G: P3; witness reads).

That was my instruction to the master to proceed to Singapore for drydocking. It was a radio telegraph.

30

(G: B2).

Prior to sending P3 I had received the telex B2 from the Defendants. I understood that telex to refer to our inquiry of October 3rd and offering us docking space for the specific purposes requested around 16/17th Oct.

I responded to Keppel by telex at B3. "Stem" means "to book", "to reserve".

Had there not been this exchange of telexes I would not have sent P3.

40

(G: B3 "meantime please quote following items" followed by a list of 21 items.) In the Supreme Court

Plaintiffs
Evidence
No.9
P. Korkodilos
Examination
16th to 23rd
February 1978
(continued)

10 I asked for the quotations for items 1 to 21 as I did not have the record of Keppel's tariff prices at the time and I requested them to advise us their prices for works we could carry out during the drydocking. By "could" I mean "it could be possible." It was not inevitable that all those items would be carried out; it was not even possible for all these items to be carried out. Items 4, 5 are inconsistent to items 20 and 21.

20 Items 4 and 5 required the yard to clean the boottopping area of the bottom of the vessel by power hose and scraping and having permitted the hull to dry to apply paint. These items are inconsistent with items 20 and 21 because in item 20 we were asking for a quotation for grit or sandblasting of the vessel's boottopping area and the vessel could only have carried out one or the other. Items 4 and 5 and 20 and 21 refer to the same area and refer to different processes.

All the items 1 to 21 were all normal drydocking items.

A screwshaft survey is not a normal drydocking item.

30 Phocean's practice was to obtain tariff prices and furthermore check these prices before drydocking.

- Adjourned to 2.30 -

Signed F.A.Chua

Hearing resumed.

P.W.4 - o.h.f.a. s (in English):

Xd. (Contd.)

(G: B4)

Item 8 is a normal drydocking item.

40 After sending my message at B3 I regarded the drydocking as having been stemmed for ordinary drydocking and screwshaft survey. On 10th October I wrote a letter to Lloyds to be found at A6. On the same day I wrote to one of the owner's marine superintendents in Athens and

In the Supreme Court

Plaintiffs Evidence

No.9
P. Korkodilos
Examination
16th to 23rd
February 1978
(continued)

he was P.W.3. I produce a carbon copy of my letter in the Greek language and attach to it a list of surveyable items in English (Ex.P.8). These documents correspond to A7 to A13, A7 and A8 being the letter and A9 to A13 being the list. At A13 I stated the "main outstanding item" was "Tailshaft survey". P.W.3 had no discretion with regard to this item. In the second para. at A8 I referred to the tailshaft survey and when I wrote that para. I had no doubt in my mind that a tailshaft survey was to be carried out, none whatsoever.

10

(G: A7 and A8).

I did not send a copy of this letter to any other person but I sent a copy of the list A9 to A13 to the master of the Master Stelios, Capt. Leontoras; I sent it to him at Singapore c/o the ship's agents, MacAlister.

(G: B3).

I did not receive a reply to my request for quotations. I did not receive any message from Keppel's between B3 and the time the vessel was docked. B9 was my telex to Keppel that the ETA of the Master Stelios was the 14th October. (G: Keppel's reply also at A9 "MOM SVP" = "one moment if you please" and said "Sorry we will revert later OK" and then Phocean replied "OK, thanks, Bye Bye"). Keppel did not revert before the vessel was docked.

20

I was not very concerned they did not response to my request for quotations at B3.

30

(G: A7, 3rd para. "We think it will..... October 6th" - A8, 2nd para. "Bearing in mind.....roughly ").

By those two paragraphs I was advising P.W.3 of the fact that we had not yet received any reply to our inquiry regarding quotations and as I thought there would be time available I have asked him to obtain quotations from the yard in order to know the expenditure that would be involved. I expected work to be going on in the meanwhile, normal drydocking work. While those quotations were forthcoming the yard would have to prepare additional quotations for the repairs that may have been necessary.

40

(G: P6).

When I wrote to P.W.3 A7 I sent him Ex.P6.

The slip of paper attached to P6 is my handwriting.

In the Supreme Court

The departure of P.W.3 from Athens to Singapore was delayed due to disruption of airlines on account of the Arab-Israeli conflict; I was advised of this by telephone from our Athens office. Meanwhile the vessel had drydocked on the 16th October. I received a telex from Keppel to that effect at B 10.

Plaintiffs Evidence

No.9

P. Korkodilos Examination

16th to 23rd February 1978

10 It was unusual for the superintendent not to have arrived before the vessel is docked because it is from the superintendent that the yard obtains the work list. It also occurs that items of work are agreed between owners and shipyard direct.

(continued)

20 Having received B 10, I replied by B 11 on the same day, B 11 sent by my secretary. By that telex Phocean was conferring full authority on the master. 5 minutes later at B 12 I sent the master a telex via MacAlister.

(G: You are authorized to proceed with class recommendations)

"Class recommendations" include anything to do with the classification work of the vessel, that includes the work to the tailshaft.

My office was advised of the eventual departure of P.W.3 from Athens to Singapore; he was to leave Athens on the 16th October arriving Singapore on the 17th.

30 On 17th October I attended my office in the usual way; I arrived there around 10 a.m. In the course of that day I received communication with regard to the Master Stelios. P.W.3 called me by telephone from Singapore, he told me that he had arrived, he had seen the master and chief engineer, the yard was working on board but work on the tailshaft had not commenced and other work was being done. I told him to go and complain to the foreman. I received that call in the afternoon, between 4 and 5 London time. That was not the last I heard of the Master Stelios that day.

40 P.W.3 rang me up again within about one hour, between 5 and 6 p.m. He told me that the ship had to undock on the 19th and the shaft could not be attended to. I was perplexed and angry. I discussed it with Mr. Jansen, our technical manager and then we decided to

In the Supreme
Court
Plaintiffs
Evidence

No.9
P.Korkodilos
Examination
16th to 23rd
February 1978
(continued)

telephone the yard's managing director, C.N. Watson. It was about 5 or 6 p.m. in London and it would be around past midnight in Singapore on the 18th.

I did call Mr. Watson at his home. That call was made around 7 p.m. London time, about 2 a.m. Singapore time on the 18th. I spoke to Mr. Watson. I introduced myself and told him our Master Stelios was at that time at the Keppel yard where drydock had been arranged for drawing the vessel's tailshaft and I was now advised that the vessel had to undock on the 19th without this survey being carried out. That was what I told him. He told me that the vessel had to undock due to the yard's programme. There was conversation for a period of 6 to 7 minutes. I said I could not understand why she had to undock on the 19th and he replied again due to the yard's programme. This conversation took place in the presence of Mr. Jansen. When Mr. Jansen realised that I could not, I mean that Mr. Watson could not be persuaded Mr. Jansen asked me to pass the telephone to him. Mr. Jansen then started discussion with Mr. Watson. He was not anymore successful than I was. The conversation ended. Mr. Jansen was quite angry. 10 20

Mr. Jansen, the next morning, spoke to the yard's London representative, Swan Hunter, B.14 18th October. This telex was in consequence of Mr. Jansen's call on Swan Hunter. 30

B 13 is from the yard to Swan Hunter.

G: (To Court) I submit B 13 is in reply to B 14).

(G: After reading B 13: It suggests B 13 comes before B 14.) (G: B 15 is in response to B 14).

We thereafter wrote to Lloyds after the vessel had undocked to the effect that the tailshaft survey had not been carried out. My letter is at A20, letter dated 19th October 1973 the very day the Master Stelios was obliged to undock; letter written by Mr. Jansen. 40

Lloyds responded by A 22 on 24th October.

On 25th October Phocean's chartering department fixed the Master Stelios for a short time charter with Telfair Shipping Corp. for

one trip, A23. As a consequence of that charter I wrote on the 29th October to Lloyds at A27 requesting a further extension for the tailshaft survey. By their letter at A 29 my letter was acknowledged and by letter at A30 a further extension until end of April 1974 was granted but not beyond that date.

In the Supreme
Court

Plaintiffs
Evidence

No.9
P.Korkodilos
Examination

16th to 23rd
February 1978

(continued)

10 Following the execution of the voyage charter the vessel proceeded to Santos, Brazil and there loaded a cargo of sugar for Basrah, Iran. She proceeded there, discharged her cargo and an extension of the charter party for a further period of 12 to 15 months was obtained. This would have taken the period of the charter beyond the end of April 1974 which was the last date for executing the tailshaft survey. Phocan therefore took the precaution of securing the charterer's consent to the vessel being drydocked prior to end of April 1974 and a time and place to be agreed. A 31 is the extension of the charter party.

20 Following the execution of A31 the vessel continued to perform until she arrived at Casablanca on 14th April 1974. From there she was to sail to Santos but that would not have been possible without breaking the charter time imposed by Lloyds for the tailshaft survey. It was therefore imperative for me to secure a drydock for the tailshaft survey before the end of April. As a consequence I tried to find dry dock accommodation at Casablanca, in Lisbon and in Rio as well as in Cadiz or Sevilia and Bilbao. I was unsuccessful in all these attempts.

30 (G: B 23 - 49).

These are telexes to and from trying to get dry dock.

40 I then tried the Rotterdam Drydock Co. We had used this dry dock on previous occasions. I was able to get accommodation. The vessel drydocked at Rotterdam on 5th May, 1974.

- Adjourned to 10.30 on Monday -

Signed F.A. Chua

In the Supreme
Court

No. 10

Plaintiffs
Evidence

EVIDENCE OF D.E. HARPER

No.10
D.E.Harper
Examination
20th February
1978

Monday, 20th February, 1978

Suit 503/73 (Contd.)

Hearing resumed.

G: I ask for leave to interpose a witness
- Mr. Harper.

(sic) P.W.5 - Derreck Earnest Harper - s.s. (In
English)

Xd. by Mr. Grimberg:

10

Living at 6 Jalan Mengkuang, K.L.

I am presently the Sr. Surveyor and
Manager of Lloyds Register of Shipping
(Overseas) Ltd.

In October 1973 I was stationed in
Singapore. On 16th October 1973 I was the
surveyor concerned in the drydocking of M.V.
Master Stelios at Keppel Ship Yard. Prior to
the vessel's docking I was advised by my
London Office by telex on 18th October of the
outstanding survey concerning this vessel.
One of the outstanding surveys was tailshaft
survey.

20

The owner of the vessel is given in a
quarterly listing and that listing would set
out the surveys that are due. This listing
is not sent to every office of Lloyds Register
of Shipping around the world, it is sent only
to a major office, Singapore certainly is a
major office. The Singapore Office would
have a monthly record of outstanding surveys,
whereas the owners would only have a quarterly
record.

30

In October 1973 that monthly record in
the Singapore Office would have shown that the
tailshaft survey of the Master Stelios was due.

Before I attend a particular drydocking
it is my practice to familiarise myself with
the record of that particular vessel.

Prior to the docking of the Master
Stelios in October 1973 I would have known

40

amongst other things that the tailshaft survey of the vessel was due.

In the Supreme Court

Flaintiffs Evidence

No.10

D.E.Harper Examination

20th February 1978

(continued)

Cross-examination

CROSS-EXAMINED

XXd. by Mr. Selvadurai:

The initial negotiations for the tailshaft survey are carried out between Lloyds and the owners. We have no dealings with the shipyards.

RXD.: Nil.

10

(Witness Released)

Signed F.A.Chua.

No. 9 (Resumed)

EVIDENCE OF P. KORKODILOS

No.9 (Resumed)

P.Korkodilos Examination

P.W.4-Capt. Korkodilos - o.h.f.o.
s (in English):

Xd. (Contd.)

(G: Your telephone conversation with Mr. Watson).

20

In going back to the hotel last Thursday I checked on my passport and I noticed that on 17th October I was in Germany therefore my conversation with Mr. Watson must have taken place on the evening of the 18th and he would have received the call in the early hours of the 19th October and not the early hours of the 18th October.

30

Even if a drydock had been available for the Stelios at Casablanca the owners would have suffered some loss, due to the fact that we would have to dry dock after completion of discharging in order to deal with the tailshaft survey therefore incurring additional expenditure of deviating to Rotterdam which is our major claim against Keppel. I believe it was no fault of ours that the dry dock was not available in Casablanca.

In the Supreme Court

Plaintiffs Evidence

No.9
P.Korkodilos
Examination
(Resumed)
16th to 23rd
February 1978
(continued)

(G: Officer of defendants to undock the vessel on 19th and redock her after they had completed work on the Kim Hock). (sic)

That suggestion was not communicated to me when the Stelios was still in dock. It was never mentioned in any subsequent correspondence that Defendants ever made this suggestion.

(G: Claim for damages - 1st item). 10

Re item 1 - I now produce the bill of the Rotterdam Drydock Co. - Ex. P.9. (G: That bill corresponds to A.38 - A.44. That bill is in a number of sections and one of the sections is headed "General Expenses". It is with that section and another section "Deck Department" that we are now concerned. I now produce the original receipt from Rotterdam Drydock Co. in payment of the whole bill and at the back of the receipt the payment is split up into the 4 sections of the bill. 20

General Expenses - all these items are attributable to the vessel having been drydocked for the tailshaft survey which the Defendants failed to perform in Singapore. That amount of 21,405 Dutch florins has been converted to Sterling and is equivalent to item 1 in the Particulars of Special Damages - £5244.00. The conversion was calculated on the date the expenditure was incurred around 25th October, 1974. 30

Deck Department Expenses - That is the second section of the Rotterdam Drydock's bill, divided into 3 sub-para. 1st para - we are entitled to claim this. Scraping is the regular work which is done every time a vessel drydocked; as it is a recommendation of all paint manufacturers I could not see how this could have been avoided this time. A prudent shipowner does not put his vessel into drydock without scraping and painting the bottom and sides. You see, the anti-fouling paint is destroyed when it is not submerged in the water; it is therefore necessary to repaint the vessel's bottom and sides before the vessel goes back into the water, it is in other words essential. This repainting cannot be done without the scraping. 40

The last para. of this account, it appears that the plug of the cofferdam No.3 was removed

and the cofferdam drained. This item is not attributable to scraping and painting. The amount attributable to this item should be 150 to 200 florins; a very minor item.

In the Supreme Court

Plaintiffs Evidence

Item 5 of my claim of \$2,785.53 is the equivalent of the Deck Dept. account.

No.9
P.Korkodilos
Examination
(Resumed)

16th to 23rd
February 1978

(continued)

10 Item 2 of Plaintiffs' claim - the largest item that is for off-hire and bunkers consumed; that amount was deducted by the then time-charterers Telfair Shipping Corp. to whom the vessel was then chartered as a consequence of the vessel having to deviate to Rotterdam. I now produce the original of the time charterer's account prepared by Messrs. Golditz on behalf of the time charterers. The item making up the claim of £24,000 circled is not in this account (Ex. P 11). (G: P 10 is A45; P 11 is A34 and 35). The sum of these 3 items deducted from the charterer's hire which the Plaintiffs would otherwise have earned but for the necessary deviations to Rotterdam for the purpose of the tailshaft survey. Ex. P 11 shows the precise loss suffered by Plaintiffs in terms of charter hire and costs of bunkers for the period of the deviation and while the vessel was in drydock in Rotterdam.

20
30 Item 3 of Plaintiff's claim - while the vessel was in drydock in Rotterdam it was necessary for a marine superintendent of the Plaintiffs to be in attendance; for the period between 5th and 10th of May 1974, six days. We claim sum of £20 per day; they are in respect of board and lodging incurred by the marine superintendent which I believe for a normal European port is not excessive. There are no bills and receipts in support of this item.

40 Item 4 of Plaintiff's claim - I now produce the original bills of Hempels' Marine Paints dated 24th May, 1974 and marked as having been paid on 13th June, 1974 in respect of the supply of anti-corrosive, anti-fouling and other materials utilised during this drydocking - (Ex. P.12). These items would have been employed for the purpose of the work carried out and referred to in the Deck Dept. invoice which is part of Ex. P.9.

50 We are not claiming for the actual cost of the drawing of the tailshaft because that part would have been incurred in Singapore had the work been carried out in Singapore by Keppel.

In the Supreme Court

Plaintiffs Evidence

No.9
P.Korkodilos
Examination
(Resumed)
16th to 23rd
February 1978
(continued)

The claim in Ex. P 12 is for £1,170.61, all the conversions into £ sterling were made at the time payment was effected.

The total amount of Plaintiffs' claim is £33,934.94 (G: converted into Singapore dollars at the date of issue of Writ - \$197,942.50)

That is the amount of Plaintiffs' claim in these proceedings.

Cross-examination

CROSS-EXAMINED

XXd. by Mr. Selvadurai:

10

Normally the Master Stelios drydocked at intervals of 2 years, yes that is for class purposes.

(S: A38 - 44 - bill of Rotterdam Drydock Co.)

Apart from the drawing of the tailshaft the works done were the Deck Dept. sterns and also some engine repairs; I do not notice them in these bills. The engine repairs were mainly pipe renewals and other minor matters. I cannot recall item by item but certainly these repairs needed no drydocking. Apart from these engine repairs no other work done on this vessel.

20

(S: A 31 - extension of the charter party)

Yes I said Phocean took the precautions of securing the charterer's consent to the vessel being drydocked prior to April 1974.

(S: A 31 "Owners have liberty to drydockagreed").

30

Yes A 31 relates to the extension of the charterparty which was concluded after the vessel had sailed from Singapore. Yes it was a time charter dated the 25th October, 1974, it was for two or three months. Yes in any charter party an off-hire claim is normal. (S: A23 - 26 the time charter). Yes the off-hire clause is at clause 15 at A 24.

(S: A1, 2, 3, 4, 5, 6, 27, 28, 29 & 30 - copies of your correspondence with Lloyds).

40

Yes. Yes substance was the class classification survey of the Master Stelios. I agree before the documents were produced for the purposes of these proceedings the Defendants were unaware of these correspondence.

In the Supreme Court

Plaintiffs Evidence

(S: A7 - A16 your letter of 10th October and enclosures sent to Mr.Eustathiou).

No.9
P. Korkodilos
Cross-Examination

10 Yes. I agree the ship was ignorant of this letter, I did not send them a copy. Yes as also A17 telex from McAlister to Phocean; yes the yard was ignorant of that telex, I would say so.

16th to 23rd
February 1978
(continued)

Yes by time of vessel's drydocking the tailshaft survey for class was overdue, that was why we came here, yes, due in April 1973. A classification society normally extends the time of survey for a period of six months, yes from date of expiry of the certificate.

20 After the vessel left drydock on 19th October, 1973, we obtained an extension for a further six months, on the merits of the case. It was not an excuse, we told Lloyds it was due to the failure of the Defendants to remove the tailshaft; see A 27 for the reasons given. Yes reply from Lloyds is at A 29 followed by A 30 giving us till end of April 1974 to carry out the tailshaft survey.

30 (S: B 1; you have not stated in B 1 that the 4-year period for screwshaft survey for class purposes was due).

The reason for a screwshaft survey is for classification purposes.

(S: You have not answered the question).

To me screwshaft survey was for classification purposes. I don't agree in between the 4 years you can have screwshaft survey for classification purposes.

40 (S: In between the 4 years survey if the shaft were to suffer damage would you not drydock the vessel for purposes of carrying out repairs).

Yes.

(S: Such repairs would extend the drawing of the tailshaft?)

In the Supreme Court

Plaintiffs Evidence

No.9

P.Korkodilos Cross-Examination

16th to 23rd February 1978

(continued)

Yes. This would be a damage survey and not a classification survey. Yes there is difference between damage survey and classification survey. The work for a damage survey and a classification survey would be almost the same. The tailshaft will have to be drawn. But in a damage survey details of the damage will be given by the owners to the yard. Yes we would inform the classification society of the details of the damage. Yes the society would become interested in the damage survey. It is not relevant for classification purposes, but the society would recommend the necessary repairs; these repairs are relevant for classification purposes. I have not changed my mind. I said in the case of damage, the society will be called in to recommend the necessary repairs but in the case of a tailshaft survey the society would be automatically informed.

10

20

To Court: I agree it would be for classification purposes.

Yes screwshaft survey involves the drawing of the screwshaft. Yes it would be a screwshaft survey.

(S: You do not say in B1 why you want a screwshaft survey).

By that I meant I want the shaft to be drawn for classification purposes.

(S: When the yard received B1 Defendants' witnesses will say that their understanding of your telex was that the intended work, the proposed work, may involve the drawing of the tailshaft, that was their first impression).

30

I do not agree to that.

(S: And that when they sent you their reply B 2 offering you dock space around 16/17 Oct., that was all they did, they offered you dock space for purpose of work that may involve the drawing of the tailshaft).

40

No. When I received B 2 I understood the shipyard was offering docking space, in other words facilities, on 16/17 October for the vessel's ordinary drydocking and screwshaft survey and I believe if they had any doubt they ought to mention so in their reply.

10 (S: B 3, you requested the yard among other things to stem the drydock for 16/17 October, pursuant to which if you looked at B 79, the daily dry-docking schedule, you will find the yard had stemmed the Master Stelios for Tuesday, 16th, Wednesday 17th and Thursday 18th and you will find that on Friday 19th the next vessel Kim Hock was due to dry dock).

I see this is what happened but not what we planned.

(S: B 3, 4, 5 and 6, you have asked for quotations for items of work which you have enumerated).

Yes.

(S: Those were the items of work that were to be carried out by the yard).

20 No. This was a request for quotations, which are normal drydocking items.

(S: Let us assume that these were items of normal drydocking work, they were nevertheless the items you want the yard to carry out).

30 No. These are items which I asked the yard for the prices. I did not ask them here to carry out these items. That is so. The items on B3, 4, 5 & 6 were not my instructions to the yard to carry out the works. That is so I did not receive the quotations. I don't know if in the legal sense the yard is not obliged to give the quotations but in a commercial sense they ought to give the quotations.

(S: Suppose the yard does not give you quotations what happens).

40 Either I take or leave it. In the circumstances I thought there would be plenty of time since the tailshaft was going to be dealt with for the superintendent to obtain these tariffs; yes and to work the final work list. Yes which would include the negotiation of price as well.

(S: You have told us items in B3, B4, 5 and 6 are not what you asked the yard to carry out).

Yes. It is for the yard to let me have

In the Supreme Court

Plaintiffs Evidence

No.9

P.Korkodilos Cross-Examination

16th to 23rd February 1978

(continued)

tariff prices of those items. I agree I have asked the yard to give me tariff prices. That is so so far as the telex is concerned nothing had been agreed between us and the yard as regards these items.

(S: In fact from pages B1 to B6 nothing has been agreed between you and the yard on the question of prices).

That is correct. I have not received a reply.

10

(S: When did you give instruction to the yard in respect of these items B3 to B6?)

The instructions were given by B1. Prices not agreed. I told them to stem the dry dock for ordinary drydocking and screwshaft survey.

The item in B 3 to B 6 are items which are down in normal drydocking.

(S: What was agreement reached with the yard for the items in B 3 to B 6).

20

In the legal sense I don't know. As far as I am concerned I had reached agreement with them..... The items in B3 to B6 I have not reached agreement with the yard to carry out those works.

- Adjourned to 2.30 -

Signed F.A.Chua

Hearing resumed.

P.W.4 - o.h.f.o. s (in English):

30

XXd. (Contd.)

I don't agree that the items in B3 to B6 were the proposed work list. This is a request for quotations and as far as I can see having been typed by the shipyard and presented to the master as a work list. I was willing to have the yard's tariff prices in respect of those items. These are drydock items. In the course of drydocking these items might have been done. I said there are items which might have been carried out by the yard. Not necessarily that all the items I wanted the yard to carry out; maybe less maybe

40

more; yes may be less maybe more is to be decided by the marine superintendent in his negotiations with the yard.

In the Supreme Court

Plaintiffs Evidence

No.9
P.Korkodilos
Cross-
Examination
16th to 23rd
February 1978
(continued)

10 I agree it is usual for the marine superintendent to arrive before the vessel enters the dry dock. (S: And to settle the work to be carried out by the yard and their prices.) Yes. Yes while negotiations were going on regarding the items to be done and the prices work or some of the items would be put in hand at the same time.

(S: One of the items in B 4 is "Take rudder and tailshaft wear down and submit written record to this office").

20 "Tailshaft wear down" means the measuring by filler gauge of the clearances between tailshaft and the stern bush, for record purposes as well as to assess whether the tailshaft is to be drawn or not.

(S: No where in that list of items have you mentioned the drawing of the tailshaft. Were you not interested in finding out the tariff for that item?)

30 No. On the contrary I was interested to have this work dealt with at any cost. But drawing of the shaft only would not have given me any idea of the expenditure involved as I did not know what repairs the shaft itself might have required.

40 (S: Two aspects to this; there is a tariff for the drawing of the shaft only without any regard to any extra ancillary work that may have to be done; the other aspect is the tariff in respect of any extra work that may have to be done after the tailshaft has been drawn. Were you not interested in finding out when you sent out the telex what the yard's tariff was for the drawing of the shaft.)

No matter what the price was this was something that I have to do and not knowing the ancillary work I did not ask for the price.

(S: You did not state in your telex that you wanted the tailshaft drawn regardless of price).

In the Supreme
Court

Plaintiffs
Evidence

No.9

P. Korkodilos
Cross-
Examination

16th to 23rd
February 1978

(continued)

This I believe, Sir, I have made clear
in my original telex to the yard i.e. B 1.

(S: Where does it say you want tailshaft
drawn without pricing?)

It was said that the screwshaft survey
definitely means drawing of the tailshaft;
therefore having specifically requested to
stem the dry dock for this purpose I believe
it is clear.

(S: Does B 1 **mean** they were to draw
tailshaft regardless of price? Yes
or No.)

10

Yes.

(S: A 17 - telex of McAlister to you -
"were commencing repairs as per work
list you telexed to shipyard").

Yes McAlister were our agents. McAlister
never received a copy of B3, 4, 5 and 6.
Apparently they had been told so by the ship-
yard. I do not know if McAlister had been
told by yard that was in fact the worklist,
but I surmised it from the telex. The master
never received a copy of the telex B3. The
master I think had been given a retyped copy
of the telex; I believe it is one of the
exhibits, Ex.D2 is a copy of the telex with
certain items slightly modified and the so
called repairs list D2, clearly states
"instructions from repair list (Telex)". Yes
the master could have told McAlister that was
the work list, but I don't know. (G: This was
not put to the master).

20

30

(S: McAlister treated your telex as the
work list because that is the usual
practice in ship repair work. Mr.
Eustathiou said when he arrived they
used the telex as the basis on which
the work list was compiled. Most of
the items in your telex are also to
be found in D1, D2, D3 and D5).

40

D2 is a copy with slight modifications
of the telex message appearing in B3, 4, 5 and
6. However, the top part of the telex has
not been retyped and if it had been put to
the master it is probable that he may have
been confused. Furthermore, items 20 and 21
in B5 are inconsistent to items 4 and 5 in B3.

10 If one examines this telex it will be clear that prices are required as it is possible to ask for services per man per day as appears in item 13. AB4 or State Cost of KW/ton for shore current including attendance item 15 B5; item 17 in B5 "State cost per ton" etc.; item 19 "Supply crane hire; cost per ton attendance", items 20 and 21 prices are required per square metric. It is therefore obvious that this telex is a request for quotations; it goes without saying that these are in relation to the Master Stelios because the name of the vessel appears on the top of the telex and furthermore the telex speaks "regarding our previous messages" and that relates to B1 and B2" please arrange stern dry dock.....meantime please quote following items."

In the Supreme Court

Plaintiffs Evidence

No.9
P. Korkodilos
Cross-Examination
16th to 23rd
February 1978
(continued)

20 (S: The telex B3 to B6 was shown to the master soon after the vessel drydocked on the 16th)

(in answer to question by witness).

The telex from McAlister, A17, was sent Singapore time 1630 on 16th. Now, the vessel entered dry dock at 1420 (S: No.1300 G: According to log at p. A 15 it commenced mooring at 1300). The master could have told McAlister, but the master had been told that this was the work list by the yard.

30 (S: p. 8 N/E evidence of the master - (reads) - p.9 (reads) where in the record that the master was told by the yard that your telex as set out in B3, 4, 5 and 6 was in fact the work list?)

(G: I will call someone from McAlister).

(S: According to Mr. Eustathiou when he arrived on 16th he and officer of yard sat down and he compiled a worklist on basis of the telex).

40 He arrived late, work was in progress and he had to continue what was going on so he had used my telex in conjunction with the yard.

(S: B 6 "No extra work to be executed unless sanctioned by owners' superintendent engineer only).

In the normal course of events this telex would have been my last communication to the yard.

In the Supreme Court

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P.Korkodilos Cross-Examination

16th to 23rd February 1978

(continued)

I wanted to prevent unauthorised persons instructing the yard to do work without the knowledge of the superintendent.

(S: You were talking of the work list).

In B5 "all charges for numbered items to be inclusive of work, staging etc." and thereafter I am advising the yard of our policy that work would be put in hand by the superintendent only.

The "unauthorised persons" could be officers of the vessel; yes that would include the master and chief engineer.

10

(S: The so called contradictions of items 4 and 5 in B3 and 20 and 21 - B 5).

Yes I said B3 to B6 could not be a work list because certain items were mutually contradictory. Yes I knew what I was talking about.

(S: Would you agree that all the work involved in items 4 and 5 and 20 and 21 could have been carried out during the drydocking of the Master Stelios if so ordered by marine superintendent in the following sequence item 4 was down hull with high pressure jets and to scrape off persistent barnacles (G: Those were not the words of item 4). We will call an expert on this).

20

Yes item 4 involves washing down hull with high pressure water jet and scraping off of persistent barnacles.

30

(S: Next step is item 20 - grit or sandblast boottop belt - it means that rusty areas on boottop belt were to be grit blasted to remove all scales and rust, do you agree?)

I am asking all prices per square metre, one could assume I mean rusty areas but I mean the whole boottop belt.

(S: Does it mean the work I have described?)

40

Yes.

(S: Next step is item 21 cost boottop beltthat means apply 2 primary

coats on the grit blasted area).

In the Supreme
Court

That is right.

Plaintiffs
Evidence

(S: Finally item 5 -"apply one full coat of owners (Hempels)..... " that means the ship is to apply the paint as specified by you).

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P. Korkodilos
Cross-
Examination

That is right.

16th to 23rd
February 1978

(S: Where is the contradiction?)

(continued)

10 What about the last part of item 5. "Touch up boottop belt.....(Hempels)". Touching up of boottop belt and bottom areas, means paint areas where the paint has gone, i.e. without paint, or where additional scraping is required and I cannot see how this could be done if rusty areas are being dealt with and grit blasting and priming under items 20 and 21.

20 (S: Suppose under items 20, 21 the whole of the boottop belt was not sandblasted you would then touch up boottop belt and bottom areas as required - yes or no?)

Touch up means scaling and painting; my answer is "No ".

(S: You are saying because of the last paragraph in B 3 items 20 and 21 cannot be carried out).

30 I said it is contradictory, I did not say it cannot be carried out. I said either one or the other can be carried out. If you carry out items 20 and 21 there is no need to carry out last item of item 5.

(S: If you carry out 20 and 21 can you carry out 4 and 5 without the last para. of item 5).

You can.

In the sequence that counsel had described the last paragraph of item 5 and B 3 sticks out as a sore thumb.

- Adjourned to 10.30 tomorrow -

40

Signed F.A. Chua

In the Supreme Court

Plaintiffs Evidence

No.9

P. Korkodilos Cross-Examination

16th to 23rd February 1978 (continued)

Tuesday, 21st February, 1978

P. heard Suit 503/75 (Contd.)

Hearing resumed.

P.W.4 - o.h.f.a. s (in English) :-

XXD. (Contd.)

(S: A 70 - telex of McAlister - dated 16th October 1973 - "Ri M Steven Eustathiou noted").

Yes they are referring there to an early telex from Phocean regarding Mr. Eustathiou. I do not know what has happened to the telex; I have asked for copy of the telex from Phocean and they do not have it.

10

(S: Telephone conversation you had with Mr. Eustathiou - reads his evidence).

Yes call was at 4/5 p.m. London time; yes that would be 11.30 p.m. and midnight of the 13th Singapore time. The second call was 5/6 p.m. London time; yes that would be soon after midnight Singapore time on 18th October.

20

Yes I have listened to the cross-examination of the Master, the chief engineer and Mr. Eustathiou (S: You must be aware of Defendants' contention that these calls could not have been made between 10.30 p.m. on evening of 17th and 7 a.m. on morning of the 18th because during those hours the telephone exchange of the yard was close). I still insist that I received those telephone from Mr. Eustathiou. Yes. Mr. Eustathiou said he made all these calls from the ship. I do not know how he had made those calls; all I know is that he had phoned me during these hours. I deny I am not telling the truth; I am telling the truth.

30

(S: The 3rd telephone call - reads his evidence; you changed your evidence, originally the call to Mr. Watson was on the 18th October past midnight Singapore time).

Yes I said I called Mr. Watson at his house.

40

(S: You have since changed your evidence; after studying your passport you found that on 17th October you were in Germany.....)

10 My call to Mr. Watson took place past midnight Singapore time on the 19th October, London time 7 p.m. on the 18th. I made this call from my office in London. I called Mr. Watson at his house. I looked at my passport last Thursday. Yes I have my passport here (shown to Counsel). I arrived in London from Germany on the 17th October 1973 and I remember I have arrived after midnight about 2.30 a.m. It is stamped on my passport by the German immigration that I left Germany on the 18th early hours in the morning. But English immigration had stamped that I arrived on the 17th October 1973. So if I had left Germany on the 18th I could not have arrived in England on the 17th. My call to Mr. Watson was at early hours of the 19th Singapore time.

20 (S: B 18 - letter from Watson to Mr. Nomicos, in Greece of 2nd November, 1973).

Yes I have seen this letter before

(S: Important letter reads).

Yes Mr. Nomicos is a director of Phocean.

(S: Mr. Jansen's telephone call; Mr. Watson says that call came on the night of the 18th, do you dispute that?)

The time we spoke to Mr. Watson was 7 p.m. London time and past midnight Singapore time.

30 (S: Another point in that letter - tailshaft clearance - B 18 - last year "The vessel docked.....The tailshaft clearancemargin for rewooding").

40 Yes I knew what Mr. Watson meant. What he means there is that although rewooding is not absolutely required clearances were high, "clearances were high" - when I say that I mean that they are above average and near to the point where rewooding would be required. According to me if the clearance is above 4 m.m. I would consider that rewooding is necessary, that is my view. Mr. Watson meant that although the clearances were high rewooding is not absolutely required. (S: Watson did not use the words "clearances were high", he said "on the margin for rewooding". You used the word "high"). Mr. Watson in his letter has used the word "margin" which in other words means that the clearances were in the border line. I cannot understand the

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Evidence

No.9
P. Korkodilos
Cross-
Examination
16th to 23rd
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(continued)

In the Supreme Court

Plaintiffs Evidence

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(continued)

suggestion that clearances are in the margin for rewooding but they are not high. (S: We did not use the word "high").

(S: If the clearance is marginal it is not absolutely necessary to rewood, do you agree?)

That is exactly what I said.

(S: You said if clearances were high re-wooding must be done).

I said if the clearances were high without defining the borderline re-wooding must be done. 10

(S: No where in this letter did Mr.Watson use the word "high").

I agree the word "high" is my word not Mr. Watson's.

When you say something is on the margin that means in my English, I have not been educated in England, is in a point which around the permissible limit. Margin is when we have reached the end of a page. I am trying to explain my understanding of the word "margin". ... Margin in the way it is used in Mr.Watson's letter means that the clearances are on the verge where re-wooding would have been absolutely necessary. Mr. Watson said "on the margin". (S: There is no difference between "clearances on the margin" and "clearances are high"). What this letter means is that the clearances are in the borderline, that is how I understand it. Yes "clearances on the margin" same as "clearances are high". 20 30

(S: A22 - letter from Lloyds to Phocean of 24th October 1973 - B 10 telex about tailshaft clearance given by yard to Phocean 3/16th").

Yes tailshaft clearance given by yard to Phocean is 3/16". Yes in A 22 the clearance given by Singapore Lloyds surveyors was 4.7 m.m. Those two readings are the same. (S: On the basis of that reading you can employ that vessel without having to rewood for another year). In extreme cases this may be so but Lloyds gave us an extension only up to April 1974 and it appears to me in that letter A 22 they are pointing out to the clearance of 4.7 m.m. on account of it being on the borderline for rewooding. Yes the vessel could be 40

employed for another year without re-wooding.
(S: If the 4 yearly classification survey was
not due and you had obtained that measurement
of 4.7 m.m. you will agree with me that on that
basis of that reading there would not have
been any need to carry out rewooding for
another year.) No, Sir. I would not agree
with you. (S: You would agree the yard did
not know about your dealings with Lloyds). I
agree, they did not have copies of our corres-
pondence. (S: You heard what Mr. Harper said,
Lloyds had no dealings at all with the yard).
Yes I heard that. (S: You will agree the yard
did not know about your dealings with Lloyds).
I agree; they did not have copies of our
correspondence. (S: You heard what Mr. Harper
said, Lloyds had no dealings at all with the
yard). Yes I heard that. (S: You will agree
in the matter of classifications surveyors
relating to the Master Stelios the yard and
Lloyd have nothing to do with one another).
The yard and Lloyds may have nothing to do with
one another, but the shipyard must have known
from B1 that the screwshaft survey was to be
dealt with this drydocking. (S: Would you say
the yard should have drawn the tailshaft despite
the fact that you did not give them specific
instructions to draw it out). I did request
them to arrange the drydocking for ordinary
drydocking and screwshaft survey and therefore
I have expected them to draw out the shaft.
(S: But you did not draw them specifically
anywhere to draw the shaft, do you agree").
That was to be done as a screwshaft survey
would require. (S: But you did not instruct
specifically to draw the shaft). I did say
please stem for tailshaft survey. (S: But you
did not say "please draw it"). Screwshaft
survey means the drawing of the shaft.

In the Supreme
Court

Plaintiffs
Evidence

No.9

P.Korkodilos
Cross-
Examination

16th to 23rd
February 1978

(continued)

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(S: B 23 - telex from Phocean to Seville
Yard).

Yes it is an inquiry.

(S: B 24 - telex "Also tailshaft to be drawn
for classification society's survey".
Very different from B1 sent to
defendants).

50

Yes it is different. Only I am explaining
to them what a screwshaft survey is. (S: You
were telling them the work to be done). By saying
screwshaft survey I have indicated that the
tailshaft had to be drawn.

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Court

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Evidence

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Examination

16th to 23rd
February 1978

(continued)

(S: B 31 - telex from Phocean to Lisnave).

In Lisbon.

(S: B 31 bottom Repair List - B 32 "Draw
tailshaft for survey and refit....."
- you give specific instruction to the
shipyard as to the work to be done,
you agree?)

That is a request for quotations.

(S: B32 "Tailshaft survey is also to be
drawn for classification society").

10

(S: B 33 - another telex to another
shipyard).

This is at Casablanca.

(S: B 34 "Draw tailshaft for survey and
refit.....Vit....." "Tailshaft survey
is also to be drawn for classification
society.")

I was only asking for quotations.

(S: B 42 - telex).

It is from ship's agent at Casablanca to
Phocean. (S: Reply "It is only for tailshaft
survey.....")

20

Yes from me to the Agents.

(S: A 23 - Time charter - A 31 extension).

The first voyage was from Singapore; vessel
left on 27th October and came to an end on the
28th Jan. 1974, I believe; ended at Basra.
The second voyage, I cannot read the date. The
closest shipyard to Basra is Karachi. I did
not try to stem the drydock at Karachi for the
survey. Yes there are Lloyd's agents in Karachi.
Yes there is also Bombay where drydocking could
have taken place for screwshaft survey, there
are Lloyd's agents in Bombay. I did not try to
stem the vessel in Bombay. Yes there is Colombo
as well; yes where Lloyds are also represented.
I did not try to stem the vessel there.

30

If I would have stemmed a dry dock at
those places I would have incurred deviation
expenses; I did not want to do so. Deviation
expenses - the vessel would have had to proceed
from Basra to one of those places and therefore

40

we would have incurred a loss. When I say "deviation" it is as a seaman; I have to go from one place to another. I mean I would have to take the ship from Basra, to Karachi, Bombay or Colombo for the specific purpose of dealing with this survey and the distance and Basra and these ports would have what I called deviation. I did not do so as I wanted to avoid unnecessary expenditure.

In the Supreme Court

Plaintiffs Evidence

No.9
P. Korkodilos
Cross-
Examination

16th to 23rd
February 1978

(continued)

10 Yes when the Master Stelios was diverted to Singapore she had just completed a voyage, yes at the Persian Gulf. Yes Basra also in the Persian Gulf. Yes before the second voyage commenced I took the opportunity to drydock at Singapore.

I would have incurred expenditure again by means of taking the ship from Basra to whichever of these places and furthermore we would have incurred loss of hire.

20 (S: You could have negotiated the extension of the time charter in such a way that there would not be any loss of time).

Yes I said first voyage ended at Basra. The hire was never interrupted.

(S: Before you concluded A 31, the charter would have come to an end).

Yes.

30 (S: Before you have concluded A 31 you could have provided for drydocking for the survey and commence the voyage after the survey).

40 When the vessel is being re-delivered the hire stops being paid in other words no remuneration from where the vessel had been redelivered up to when she would have completed this docking survey provided the time charterers would not have added any difference in sailing time and bunkers consumed up to the time that the vessel would have been in a position meeting with costs from Basra to Santos.

(S: The 2nd Voyage under the extension commenced at Basra).

Yes.

(S: If before you had agreed to A31 you had negotiated with time charterers

In the Supreme Court

Plaintiffs Evidence

No.9
P.Korkodilos
Cross-Examination
16th to 23rd
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(continued)

that you had drydocking obligations for classification purposes and you wanted to drydock it at a shipyard closest to Basra before commencing the second voyage there would be firstly no deviation at all and no bunkering charges etc. as you explained earlier, the only consequence would be that the vessel would be unemployed during the duration of the drydocking and thereafter you would have started your second contract when the vessel returned to Basra, without incurring all the expenses and losses which you now claim).

10

No. I do not agree at all. This would have happened only if a drydock was available in Basra; otherwise the ship would have to move from Basra to a drydocking port and in accordance with Counsel's suggestion return to Basra thus incurring expenditure and loss of profit. By continuing the charter we had more opportunity to go to a port where a dry dock was available for the purpose of dealing with the survey. It was no fault of ours that a dry dock was not available during this time.

20

When I deviated the vessel to Keppel there was no charter party in existence, but expenditure in deviating the ship to Singapore had been incurred as unfortunately a ship cannot be moved from one place to another without incurring expenses. That is so I did not incur deviation expenses under any charter party.

30

If I went to the port nearest to Basra I would have incurred loss of profit. Basra to Karachi is 5 to 6 sailing days.

- Adjourned to 2.30 -

Signed F.A. Chua

Hearing resumed.

P.W.4 - o.h.f.o. s (in English):

40

XXd. (Contd.)

(S: A 31).

Pursuant to A 31 the voyage commenced on completion of discharging at Basra and she went to Santos, Brazil, via the Cape of Good Hope and then she went to Mombasa, Durban, Buenos Aires,

Santos, Casablanca and from there to Rotterdam.

In the Supreme Court

After drydocking at Rotterdam she returned to Santos.

Plaintiffs Evidence

No.9

10 On the first voyage she was in ballast. From Santos onwards she was laden with cargo. From Santos to Mombasa, Kenya, she was laden with cargo; from Mombasa to Durban she was in ballast, no cargo. From Durban to Buenos Aires she was in ballast; Buenos Aires to Santos she was partly laden and from Santos to Casablanca she was fully laden. She discharged her cargo completely at Casablanca.

P.Korkodilos Cross-Examination 16th to 23rd February 1978

(continued)

From Rotterdam to Santos she was again in ballast.

(S: A 23 - Time Charter).

20 Yes dated 25th October, 1973. The ship was delivered to the charterers at Singapore after drydock. She travelled from Singapore to Santos in ballast.

Before the commencement of the charter A 23 I believe there was no shipyard available to dry dock the vessel. I have been advised by our local agents that there was no shipyard available for a period of 3 weeks after the vessel undocked in Singapore.

(S: A 34 - Invoice of Goleditz & Co. - "Less: off hire as per attached statements, 14 days 8 hours 48 minutes).

30 Yes the offhire statements appear at A 35.

40 Sailing time from Casablanca to Rotterdam and till she sailed from Rotterdam to Santos was 10 days, 8 hours, 5 minutes. They added a further 4 days and 43 minutes because of "differential in sailing time." That is the difference in sailing time from Rotterdam to Santos as against Casablanca to Santos, and it is estimated that the distance the ship should cover as described in the charter party which she was then forming. That is not a deviation. Yes the entire offhire time of 14 days, 8 hours 48 minutes is in fact a deviation.

Yes I know Mr. Eustathiou, but not very well. Yes I have met him in London, yes also in Athens. He loves cars but I don't know if he loves fast cars. I don't know if in October

In the Supreme Court

1973 he had a Jaguar E Type.

Plaintiffs Evidence

RE-EXAMINED

RXd. by Mr. Grimberg:

No.9
P.Korkodilos
Cross-
Examination

(G: Engine repairs at Rotterdam in addition to the tailshaft survey).

16th to 23rd
February 1978
(continued)

The engine repairs were minor repairs that would not have been carried out in Rotterdam but for the fact that the ship was in dry dock there and it was a convenient time to have them dealt with. If you will check in Rotterdam Dockyard receipt (Ex. P. 10) you will see that these repairs have amounted to a small proportion of the total bill; see the reverse of Ex. P.10-19, 305 f. whereas the other works for which we are claiming in these proceedings are f. 21,405 + f. 11,230.

10

Re-examination

It was not possible to drydock the vessel during the charter A 23 for purposes of the tailshaft survey. There was a clause, No.21, which precluded us from drydocking except in an emergency and therefore we would not have been able to take advantage of the offhire clause. A dry dock for the purpose of tailshaft survey would be a breach of the charter party.

20

(G: Classification survey of tailshaft and a damage survey of the tailshaft).

There is no difference between these two surveys insofar as pre-preparation is concerned. In both cases the shaft must be drawn.

(G: B 1).

30

It does not matter for the purposes of this telex whether the survey was a classification survey or a damage survey. The yard must have known that the shaft had to be drawn.

(G: It was suggested that when yard saw this telex B1, they would have concluded that the shaft may have to be drawn but not that it must be drawn. What do you say to that?)

I disagree with that entirely. They must have known that the shaft had to be drawn.

40

(G: Docking Schedule B 79).

By looking at this schedule I am not able to say if it was prepared before or after the vessel was docked. It may have been prepared by way of forward planning or it may have been prepared to show when the vessel docked and undocked after the event.

In the Supreme Court

Plaintiffs Evidence

No.9

P. Korkodilos Re-examination

16th to 23rd February 1978

(continued)

10

(G: B7 - addressed "To whom it may concern" signed by Guan Guan Shipping Co. re Kim Hock - stemmed for dry-docking for 3 days at Keppel Shipyard and this stemming was made firm on 11th October 1973).

This document conveys to me that the shipyard had stemmed a drydock for the "Kim Hock" on the 11th October for a period of 3 days from 19th October. That was a firm booking.

When I stemmed the dock for the Master Stelios I did not know about this.

20

The significance of B7 as far as the Master Stelios is concerned is that, it meant that whatever the work on the Master Stelios she had to undock on the 19th to make way for the Kim Hock.

(G: B 1)

30

When the yard received B1 the yard would not know how long the work referred to in the telex would take. The extent of the work would have been known after the tailshaft survey whether for classification purposes or even if it was a damage survey. That was because the survey would disclose what work had to be done.

The yard would know that Lloyds' surveyor would be in attendance to carry out the survey and furthermore that the surveyor may have required additional work which could have taken a long time. In fact he did just that by requesting the repairs to the rudder which took almost 3 days to complete and that took place in Singapore.

40

(G: B 10)

This Keppel's telex to Phocean of 16th October informing us of Lloyd's recommendation for the rudder. The renewal of the lining itself took 3 days. The repairs to the rudder and the drawing of the tailshaft took place at the same section of the vessel. It is not easy to do both at the same time. In my experience

In the Supreme
Court

Plaintiffs
Evidence

No.9
P.Korkodilos
Re-examination

16th to 23rd
February 1978

(continued)

it will add about 24 hours for this work,
both jobs concurrently.

It was imprudent for the yard to stem the
dock for the Kim Hock for the 19th. In my
opinion it was imprudent to confirm the
drydocking of the Kim Hock on the 11th October.

(G: B 3 to B 6 suggestion was it a work
list).

There is no mention in B3 to B6 of the
repairs to the rudder. That work was in fact
carried out and it was a major work.

10

(G: A7, your letter to Mr. Eustathiou
before he left Athens for Singapore,
you sent with that letter copy of B3
to B6).

Yes. Ex. P6 was the copy I sent to Mr.
Eustathiou.

(G: 2nd para. of A8 "Bearing in mind....")

What I intended Mr. Eustathiou to conclude
from the 2nd para. in A8 and the ship attached
to P6 is that this telex P6 was intended as a
request for quotations from the yard.

20

(G: B4, item 8 take rudder and tailshaft
weardown.....").

This is done irrespective of whether the
tailshaft is to be surveyed or not.

I said items B3 to B6 were all normal
drydocking items.

As the ship was to undergo a normal
drydocking I was expecting most of these items
to be carried out except of course the conflic-
ting items 4, 5 and 20, 21.

30

The choice of which items would be carried
out would have been made by the attending
superintendent upon his arrival and prior to
the docking of the vessel. That was not possible
in this case due to the latter arrival of Mr.
Eustathiou. In the absence of Mr. Eustathiou
I authorised the master.

(G: B 11).

40

That is my telex to the Defendants
informing them that the master had the authority

to give instructions for the work until Mr. Eustathiou's arrival.

In the Supreme Court

When I asked for the dock to be stemmed in B1: it was not to be stemmed for a specific time; it was to be stemmed for as long as it is required to complete the necessary work - ordinary drydocking and tailshaft survey.

Plaintiffs Evidence

No.9

P. Korkodilos
Re-examination

16th to 23rd
February 1978

(continued)

(G: Question of items 4 and 5 and 20 and 21 are contradictory).

10 I maintain they are contradictory. Item 4 is a request for the vessel's bottom and boot-top belt to be cleaned. Item 5 is a request for the same area to be painted after touching up. Item 20 is for the complete gritting or sand-blasting of the boottop belt and item 21 for the priming or painting of this whole area. I do maintain that they are contradictory. It never entered my head when I have requested the yard to quote for these items that they would have believed that item 4 was to be carried out first, then items 20 and 21 and then item 5. Although in theory this could have been possible, items 4, 5 and 20, 21 could not have been carried out completely, it is either one or the other. Why ask for the boottop to be power-hosed under item 4 and then permitted to dry if under the second stage in item 20 you have to grit or sandblast the same area. That is ridiculous.

(G: Time of these telephone calls).

30 I have my passport. There is a German stamp on my passport for the 18th October, an exit stamp. There is an English entry stamp for the 17th October. The English stamp said that I have entered England on the 17th October and apparently it was wrong; I had entered Britain on the 18th. I had made two trips to Germany one in October and one in December 1973. I left Britain on 16th October to go to Germany and there is a stamp to that effect and there is a stamp that I left Germany on the 18th. To Court: I cannot remember how many days I was in Germany because I had been to Germany on two occasions for the same purpose.

I am saying the telephone calls which I said took place on the 17th October could not have taken place but they took place on the 18th.

(G: The master, the chief engineer and Mr. Eustathiou said the calls were on the 17th).

In the Supreme
Court

Plaintiffs
Evidence

No.9
P. Korkodilos
Re-examination
16th to 23rd
February 1978
(continued)

Apparently they were wrong because I was in Germany on the 17th. I went to Bremen, to negotiate a new shipbuilding contract.

(G: Mr. Watson's letter B 18).

I said Mr. Watson meant the clearances were high. He meant they were up to the limit, just on the borderline. That being so, it would have been prudent to rewood.

(G: Fixing the charter - A23).

After the vessel was undocked on the 19th October the vessel remained in Singapore until she was fixed. It would not have been prudent to turn down that charter. I had discussed with Lloyds who had advised me that the matter of the survey would be passed to the committee with a recommendation that an extension be granted.

10

(G: A 23).

A 23 concluded at Basra on January, 1974, we were offered the extension at A 31. It would not have been prudent to turn down the extension and stem a drydock for the tailshaft survey. It would not be prudent on account of the general conditions of the freight market as later it would have been very difficult to secure employment. Already in 2 months' time from October 1973 when we would have fixed the Master Stelios for US\$4250 per day, in January 1974 we have been fixed to accept a rate of US\$3250. The difference in the rate between A 23 and A 31 over 3 months is already over US\$1000 per day. That was the time of the oil crisis. After January 1974 the freight rates declined until finally we came to a point where even employment could not be secured.

20

30

If I had declined this renewal A 31 and taken the Master Stelios to Karachi, Bombay or Colombo I would have incurred the expense of getting the vessel there and eventually would have to fix her at a much lower rate.

40

Signed F.A.Chua

- Adjourned to Thursday
23rd to 10.30 a.m. -

Signed F.A.Chua

Thursday, 23rd February, 1978

In the Supreme
Court

P/heard - 503/75: (Contd.)

Plaintiffs
Evidence

Hearing resumed.

No.9

P.W.4 - o.h.f.o. s (in English):

P. Korkodilos
Re-examination

RXd. (Contd.)

16th to 23rd
February 1978

(G: B 24, B31, B33 and B 42).

(continued)

10

G: Telexes to other yards requesting a dock for screwshaft survey; in them you were quite specific about the shaft having to be drawn whereas in B1 you only referred to a screwshaft survey and made no mention of the shaft having to be drawn. Explain.

Having had this unfortunate experience with Keppel I thought of being more specific than necessary with the other yards.

Signed: F.A.Chua

No. 11

EVIDENCE OF F.K.T.ANN

No.11
F.K.T.Ann
Examination

23rd February
1978

20

P.W.6 - Frederick Kuek Tiang Ann - s.s.
(in English):

Xd. by Mr. Grimberg:

Living at 27 West Coast Place; Divisional Manager, Shipping, of McAlister Co.Ltd.

McAlister are agents in Singapore for Phocean and were agents of Phocean in October 1973 when the Master Stelios entered Keppel Shipyard for drydocking. I was the person in McAlister concerned with the drydocking of that vessel in October, 1973.

30

(G: A 17).

This is a telex from Mc Alister to Phocean dated 16th October 1973. I think I did personally send this telex; it has been so many years I can't quite remember.

(G: Look at the words "Vessel entered drydock 1300 where commencing repairs

In the Supreme
Court

as per work list you telexed to ship-
yard").

Plaintiffs
Evidence

No.11
F.K.T. Ann
Examination
23rd February
1978

(continued)

The worklist was prepared by the yard as per the list prepared on their letterhead and when we saw this worklist we therefore mentioned it in the telex to Phocean. We would get this information most probably from the shipyard. I say that because it would seem that Keppel Shipyard received a telex directly from Phocean, on principals. I would be in daily communication with the shipyard. It was one of my duties to keep our principals informed of the progress of the work. That sentence in the telex was sent in pursuance of that duty.

10

(G: Look at that sentence again "Worklist you telexed to shipyard and look at B3 to B6 - 21 items).

I don't think I was shown this telex by anyone, to the best of my recollection.

McAlister generally keep the ship's file until all the accounts have been settled and then we close the ship's file and after a year we send it to the incinerator. No documents survive in McAlister with reference to this drydocking.

20

I first discussed this case with Capt. Korkodilos and Counsel two days ago during lunch time. I was then shown some documents by Capt. Korkodilos. As a consequence of being shown these documents I remember contacting Keppel Shipyard whether they could drydock the vessel; I was told Mr. Kung Yew Hock of the yard that they could take the Master Stelios depending on the availability of the drydock schedule. As a consequence of my conversation with Mr. Kung I sent a telex to Phocean; this is the telex message I sent (reads): (G: The garbled part). How I would read is.....give me time They have not officially accepted vessel" and I go on to ask Phocean that if Keppel is not able to accept vessel whether they wished to drydock vessel in other local shipyards. The date of this message is 10th October, 1973 (telex Ex. P.13).

30

40

My conversation with Mr. Kung was probably on or about the 10th October, 1973. Then I sent the telex. Subsequently I sent this cable to Phocean on the 13th October. Cable says (reads) (Ex. P.14). I must have got an answer from Keppel that they were able to take the ship

50

and I sent the cable P 14.

Eventually the vessel was docked on the 16th.

From my conversation with Keppel at that time the impression that I got was that they were very busy at that time.

McAlister's relationship with Keppel was a good relationship.

In the Supreme Court

Plaintiffs Evidence

No.11
F.K.T. Ann
Examination

23rd February
1978

(continued)

CROSS-EXAMINED

Cross-
Examination

10 XXd. by Mr. Selvadurai;

(S: Ex. P 13).

Yes I said date of this telex was 10th October, 1973. It is recorded in the message. (S: That is so). Yes I have read the telex with the word "Not" in it. It is correct so far as the actual message is concerned the word "not" is not in it. Yes P 13 is a copy of the telex sent. Yes the original should be with Phocean and we would have original in our
20 telex machine and also a copy; our original is no longer available. Ex.P 13 is not our copy; it was shown to me by Capt. Korkodilos.

(S: A 17, your telex to Phocean).

Yes I said I was in daily communication with the yard and it was my duty to inform our principals of the progress.

I believe Mr. Eustathiou was the superintendent of the Master Stelios in October 1973. Yes I have met him. When there is a superintendent around generally we leave it to the superintendent to check all matters relating to repairs and generally we do not report to our principals.
30

Yes when a vessel enters port we usually meet the Master. Normally we visit the master everyday unless he is away visiting the Greek Consul or shopping.

(S: This work list, look at B 3 to B 6).

No, I was not referring to B3 to B6 as
40 worklist in my telex. Always the worklist would be on the Keppel's letterhead.

In the Supreme
Court

Plaintiffs
Evidence

No.11
F.K.T. Ann
Cross-
Examination
23rd February
1978
(continued)

(S: A 17 "per work list you telexed to
shipyard").

I was not referring to B3 to B 6 but to
the work list typed out in Keppel's letterhead.

Yes I said I received that information
from the shipyard. The shipyard prints numer-
ous copies of the worklist and ~~leave~~ them at
the superintendent's office at yard, this
office is for the use of all ship's superin-
tendents. Sometimes the ship repair manager
of the yard would give the printed worklist to
the ship's superintendent. I could have
obtained it from the ship's superintendent or
by going to superintendent's office at the
yard and pick up the printed worklist.

10

Re-examination

RE-EXAMINED

RXD:

(G: Telex P 13 - word "not" does not
appear).

Yes I read the "not" into it. I read the
word "Not" into the message as it seems that
"not" should be in the message otherwise the
message would be odd. If the word "not" did
not appear..... (S: I concede the word
"Not" should be there. G: I am greatly
obliged to my learned friend).

20

When superintendents are around I
normally do not report to principal when I
sent A 17

(S: I accept Mr. Eustathiou was in
Singapore then.)

30

Signed F.A.Chua

No.12
L.M.S. Bell
Examination
23rd February
1978

No. 12
EVIDENCE OF L.M.S. BELL

P.W.7 - Leonard Murray S. Bell - ss (in
English):

Xd. by Mr. Grimberg:

Living at 55F, K.P.M., Flats, Nutmey
Road, Singapore; partner in Ritchie & Bisset,
Consulting Engineers and Marine Surveyors.

40

10 Ritchie & Bisset have been in Singapore for 106 years under various names. I have been a partner for 6 years. I first came to Singapore in 1952 and I joined Ritchie & Bisset in 1965. I am a First Class Board of Trade Steam & Diesel Engineer, a Fellow of the Institute of Marine Engineers and a Fellow of the Institute of Naval Architects. I qualified as a marine engineer in 1962. I have been to sea and for 5 years served as Chief Engineer on board a number of British vessels. Since I joined Ritchie & Bisset I have had experience of all shipyards carrying on business in Singapore including Keppel Shipyard, quite extensively.

In the Supreme Court

Plaintiffs Evidence

No.12
L.M.S. Bell
Examination
23rd February
1978

(continued)

(G: B 1 - telex from Phocean to Keppel - "screwshaft survey").

20 I see the expression "screwshaft survey"; in the context of that message I understood it to mean that the vessel is to be drydocked, so that the tailshaft or screwshaft can be withdrawn for examination by classification surveyor.

(G: Supposing the survey required is not the usual recurring classification survey but a damage survey, would any difference in procedure be involved?)

30 Only possibly in the magnitude of the survey required, namely as well classification survey you would effect a damage survey by an insurance surveyor.

(G: If the expression "screwshaft survey" in B1 was intended to mean a damage survey of screwshaft would you expect the shaft to be withdrawn in the same way as for a normal classification survey?)

Definitely yes.

(G: B 57).

40 This letter is signed by Mr. D. Arnott, my senior partner until he returned at the end of last year. He became a partner in Ritchie & Bisset approximately in 1963.

(G: reads B 57, addressed to Mr. Grimberg, whose letter is at B 54).

I agree with the contents of Mr. Arnott's letter to Mr. Grimberg.

In the Supreme
Court

Plaintiffs
Evidence

No.12
L.M.S. Bell
Examination

23rd February
1978

(continued)

(G: B 73 - letter from Mr. Grimberg to
Mr. Arnott and B 74 Mr. Arnott's
reply).

I agree that "tailshaft survey" is
exactly the same thing as "screwshaft survey"
same procedure.

Mr. Arnott is a naval architect of some
30 years experience.

(G: I am calling you as an expert. I want
you to tell Court whether any reason-
ably experienced yard would understand
the reference to a screwshaft survey
at B1 to be a survey which would entail
the screwshaft being drawn.)

10

Yes it would be completely automatic.

(G: B3 - B6 "Regarding.....later"
"Meantime please quote following
items" followed by G 21 items. If
you have been a yard manager receiving
that telex would you have treated
items 1 to 21 inclusive as constituting
a worklist?)

20

No.

(G: Why not and what you have treated the
telex as?)

A quotation, a request for prices, so that
the owners can decide whether to effect repairs
or not or where to effect those repairs.

This sort of telex from owners to yard is
quite usual. I have sent many myself.

30

(G: Scan the 21 items).

They are normal drydocking items.

(G: Direct your attention to items 4 and 5
and your attention to items 20 and
21. Is it feasible in your opinion
for all the 4 items to appear on the
same worklist?)

Definitely not. You are duplicating. If
you are going to do 4 and 5 you would not do
the second half of 5 if you are going to do
20 and 21.

40

(G: Look at item 15).

I would not expect to find such an item in a worklist. You would not put it in that wording.

(G: Look at item 17, would you expect it in a worklist).

No.

(G: B 1, put yourself in the position of the yard receiving that telex, would you know how long the vessel would be in dock?).

I would leave to estimate.

(G: How long would you have allowed).

Very minimum 3 to 4 days.

(G: Supposing after the vessel had dry-docked it transpired that work was also necessary to the rudder, would your estimate have had to be increased?)

Yes. At the very minimum by at least one full working day.

(G: Is the drawing of the shaft and the work to the rudder carried out in the same area of the ship?)

Yes.

(G: One job interfering with to the other to a certain extent?)

Yes.

(G: I am telling you as a matter of fact that the Master Stelios entered the drydock on the afternoon of 16th October, when could work have started in earnest on the drawing of the shaft).

On actually physically withdrawing the shaft not until well after the drydock is dry, as you have to remove the propeller which cannot even be started until the drydock has been pumped dry.

(G: AB 15 - vessel's log - dock completely dry at 1710; 20.00 rudder repairs commenced. When is the earliest you could reasonably have expected work to begin in regard to the drawing of the

In the Supreme Court

Plaintiffs Evidence

No.12
L.M.S. Bell
Examination

23rd February
1978

(continued)

In the Supreme
Court

Plaintiffs
Evidence

No.12
L.M.S. Bell
Examination
23rd February
1978

(continued)

shaft?)

Do you mean preparation on actual drawing?

(G: Both).

You can start preparation to draw the tailshaft before the dock is dry, namely removal of coupling belts, internally in the tunnel space.

(G: The actual drawing having regard to rudder repairs had commenced at 2000 hours?)

10

If working overtime or a night shift I would estimate under normal circumstances a shaft would be ready to withdraw late p.m. early a.m. on the next day, namely the 17th October. I got it all wrong, it should be late a.m. or early p.m. - before noon or early afternoon of the 17th.

(G: Assuming also that the yard had stemmed this dock firm for another vessel on the 19th October, had they let themselves, in your opinion, with enough time to deal with rudder repairs and the screwshaft survey?)

20

No.

(G: Is work on the rudder and a screwshaft survey in 2 days possible?)

No.

Cross-
examination

CROSS-EXAMINED

XXd. by Mr. Selvadurai:

(S: We will ourselves be calling an expert).

30

I did my initial training at 16 at a company - Mactaggart & Scott; I was there for 5 years as apprentice engineer. Thereafter I proceeded to sea as a sea-going engineer; I was at sea from then until 1951 not allowing for periods ashore for examinations and leaves. After 1951 I continued examinations; I am sorry the dates are wrong. I was at sea until 1964; I was doing examinations during the period I was at sea. After 1964 I carried on further examinations and worked in Britain until 1965 when I came to Singapore.

40

Yes I said I have done a fair amount of drydocking of vessels at Keppel Shipyard; yes as ship's superintendent on behalf of owners; as classification surveyors and insurance surveyors.

In the Supreme Court

Plaintiffs Evidence

No.12

L.M.S. Bell

Cross-

Examination

23rd February 1978

(continued)

10

Yes as superintendent I tell the shipyard what I want done, I do not negotiate; I give them a worklist or depending on your familiarity with the yard in question you give verbal orders to ship repairs manager.

(S: How do you compose this worklist as ship's superintendent?)

I myself would initially produce what I would call a standard list. Then afterwards I would probably enlarge on this worklist or even decrease it.

(S: From what data would you prepare the standard worklist?)

20

I would base it upon repairs I have to effect, surveys I have had to carry out, initially, and then on my own findings during the drydocking survey and any recommendations made by the classifications surveyors and any additional work requested by the master or chief engineer.

(S: Before you prepare the standard worklist you would have received prior instructions from the owners of the vessel).

30

It depends on the owners. I am changing my answer, I now say "yes".

Yes normally I would have received these instructions from the owners before the ship arrives. Yes normally having received those instructions I would prepare the standard worklist. Yes thereafter I would discuss the standard worklist with the yard.

(S: How did you normally discuss your standard worklist with Keppel?)

40

Normally with the ship's repairs manager. Generally I would speak on the work to be effected and instruct him to carry out the items of work that I produce to him. At that time normally I would not discuss the prices. I would possibly have asked for quotations prior to the vessel anyway. I would make out

In the Supreme Court

Plaintiffs Evidence

No.12
L.M.S. Bell
Cross-Examination

23rd February 1978

(continued)

a standard worklist and send it to the yard and we would not discuss the worklist until the vessel is in the dock yard. Keppel and all shipyards in Singapore have a published list of standard items e.g. docking and their prices. If you are thinking of effecting work that is not governed in this list of tariffs you would request quotations. This is for superintendents in Singapore.

(S: If there was a quoted tariff would you still negotiate prices?)

10

Yes, at the end of the day when they send the draft account. This is normal. You do have exceptions.

Yes in 1973 Keppel had published tariffs.

- Adjourned to 2.30 -

Signed F.A. Chua

Hearing resumed.

P.W.7 o.h.f.o. s (in English)

XXd. (Contd.)

20

Usually you would see the ship repair manager as the ship came into the dockyard and discuss, very briefly general items, then do a drydock inspection and then hold further discussion with regard to work to be effected. The actual worklist can be spread over quite a number of days as you find an item that requires repairing. Yes as you go along you give instruction for the items of work you want done. I would qualify that, you may have an item for instance, withdraw tailshaft for survey, normal procedure and then on having the tailshaft withdrawn and examined it you find you have to carry out what you call additional repair. You would then make out another item. Yes the actual list evolving all the time. There are exceptions of course. I always try to stop putting any further item in hand, unless of emergency nature, so that I can allow my schedule time for completion of the repairs; let us say 2 days before what the yard estimated it to be for completion of the works. In Keppel you have a small note pad comprising of pages of order forms, when you fill these in you will sign them e.g. "12 annodes to be renewed as per sample" and you sign it. The items in the order forms were

30

40

sent to Keppel and distributed accordingly.

In the Supreme
Court

Plaintiffs
Evidence

No.12

L.M.S. Bell

Cross-

Examination

23rd February
1978

(continued)

10

It is not strictly true that before the yard carries out work on any item they would have received orders from me in respect of those items. It is not largely true in any instance. I am well known to Keppel, I give these orders verbally, the foreman or even the repairs manager will fill in the small work order, start the work and send it to be added to the large work sheets. I would subsequently get the work sheet. Yes in other words in respect of the items of work to be carried out by the yard I would have given orders orally before hand or in writing subsequently, but not always, sometimes I don't give it in writing.

20

Normally the yard would not carry out the work on any item without being instructed by me orally or in writing, but there are exceptions. For instances you have a pump. You instruct to remove it ashore, open it up and overhaul; on opening it up in the machine shop certain parts are found to be badly worn and the yard would proceed to renew these parts. Quite often because you are too busy to go; they know the individual and they know what it requires; yes it was done on a very personal basis, there would be minor works, relatively minor works. If you have to renew a piston they would come and ask me first.

30

(S: B 1 - first telex received by the yard).

Yes that is an inquiry if a dry dock is available. It is not an order to the yard to carry out ordinary drydocking and screwshaft survey.

(S: B2 - yard's reply).

Yes dock replies "we can offer dock space around 16/17".

40

(S: Phocean to yard - B3).

Yes they are asking yard to reserve space. Stem means "we will put our vessel in dry dock for 16/17". It is a firm booking of dock space. Yes in this telex they are not ordering the work of ordinary drydocking and screwshaft survey to be carried out.

In the Supreme
Court

Plaintiffs
Evidence

No.12
L.M.S. Bell
Cross-
Examination
23rd February
1978

(continued)

(S: "Meantime please quote following items.....")

Yes I said they were asking the tariffs for these items, that is what I would take it to be.

(S: Is it not a reasonable inference from this list that what the owner is doing was to give a list of intended work to be carried out and at the same time to ask for quotations for those items?)

10

Not quite. I mean, there are certain items in that list which will have to be done e.g. item 1.

(S: Any other items that have to be done) e.g.

Item 2; 3 if they found it necessary to come alongside; item 4; only certain aspects of item 5; 6 might not be necessary; 7 might not be necessary; 8 would be necessary; 9 might not be necessary; 10 not necessary; in certain instances 11 not necessary, the vessel has its own septic tanks; depending on where you are docking the vessel... (S: At Queensdock). I would consider it prudent to do 12 and 13; the same for 14, it could be prudent; 15 is merely a request; 16 not completely necessary depending on what the refrigerator was carrying; 17 an enquiry; 18 not completely necessary; 19 not completely necessary, if owner wishes he could use ship's crew and equipment; 20 not completely necessary; you don't need to do it; the ship is not going to sink if you don't do it; 21 is already covered by item 5; if you are going to do 5 without doing 20 you would not put a prime coating; in that instance you would only do 21 if you do 20; if you do 20 I would not do all of 5, it is up to the Superintendent; I would examine the vessel's bottom and boottop plating, evaluate the condition and if I consider it necessary would grit blast the boottop, then give it one full coat of primer, see how good that was and then after touch up of the bottom plating give it one full coat of anti-corrosive up to deepload line which would possibly be into the boottop, then give the remainder of the boottop one full coat of boottop paint and the remainder of the plating below that one full coat of anti-corrosive making sure this was applied within 24 hours of the vessel undocking.

20

30

40

Yes I said it is not feasible for items 4

50

and 5 and 20 and 21 to appear in a worklist. If you are going to do 20 and 21 you would not do the second half of 5, also depending on the scraping necessary I would not carry out item 4 also. I would include all the 4 items in the work list in different orders with many modifications and alterations. Yes these modifications and alterations would be decided upon by me after I had examined the state of the hull. However, in certain instances being familiar with the vessel I may know that it would be prudent to grit blast wind and water plating.

In the Supreme Court

Plaintiffs Evidence

No.12

L.M.S. Bell Cross-Examination

23rd February 1978

(continued)

10

(S: B 78 - drydocking schedule).

Yes stemming schedule.

(S: B 79 Queensdock - Master Stelios 16th 17th and 18th, 19th Kim Hock).

20

In my dealings with Keppel I know how stemming is done. Yes Keppel's stemming schedule is flexible. They would normally allow the minimum time to do the repairing that they have been requested to do or they know they have to do. In the course of doing that work and it becomes necessary to extend the stay of the vessel, it depends on who you are and the yard's workload and whether they have firmly booked ship in the dock before the stay is extended. Yes for me these adjustments have been made; even if a subsequent vessel had been firmly booked Keppel has approached me to make adjustments or I have had to be firm and to say you must complete the work in dock or face the consequences, not put into these words but it was understood; I might not go back to Keppel or I cut the bills. It is usually settled amicably.

30

(S: The illustration you gave about what may turn up after the shaft had been drawn.)

40

I don't agree that the allocation of 3 full working days for the drawing of the shaft for survey is not more than adequate; it is tight; it is at a minimum.

(S: Have you had occasions with Keppel that after the shaft was drawn and it was discovered that repairs had to be carried out to the shaft involving say, an extra 5 or 6 days in dry dock Keppel had in fact undocked the vessel,

In the Supreme
Court

Plaintiffs
Evidence

No.12
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23rd February
1978

(continued)

carried out repairs to the components
and redocked the vessel and complete
the work?)

I know this had been done.

(S: At the end of the day after the work
had been done, if there any disputes
between you and the yard as to whether
any work has been properly carried or
not carried out at all, what do you
normally do as ship's superintendent?)

10

Once again this depends on what has not
been done or what has not been properly done.

(S: Suppose you have given specific
instructions for a major item to be
done and at end of the day that item
has not been done what will you do as
ship's superintendent?)

I would do everything in my power to have
this done before undocking; if it became
impossible or I was overruled by dockyard,
they would not do it, I would have to do it
somewhere else and I would immediately hold the
yard completely responsible for the costs of
additional for the consequences.

20

(S: What would you do when Keppel submits
its bills for work done?)

I would immediately negotiate on my terms,
yes in respect of the work undone and additional
costs; yes before I paid the bill, naturally.

Re-examination

RE-EXAMINED

30

RXD:

(G: B 13, m.l.f. suggested to you that
his clients' docking schedule was
flexible. Look at B 13 - cable to
Keppel's agents in London "Have told
superintendent.....").

At that point in time I knew that that
dockyard was not flexible. I know that of my
own personal knowledge. That telex indicates
that the dockyard was not flexible.

40

(G: B 14 - Swan Hunter's reply to Keppel;
B 15 Keppel's reply to Swan Hunter -
"Sorry about.....in dock).

In this instance the dockyard was not flexible and not capable of being flexible.

In the Supreme Court

(G: B 3 - B 6 items 4 and 5 and items 20 and 21, you said it would not appear in the same worklist in its entity or in that form, would you expect them to appear even in an altered form in that sequence?)

Plaintiffs Evidence

No.12
L.M.S. Bell
Re-examination

23rd February
1978

No.

(continued)

10 (G: Would you ever expect them to appear in that sequence as a remote possibility in a firm worklist?)

It is possible if the person if the person who was drawing the worklist half way through numbered these items and put them in.

(G: But this would not be put in in that form?)

I would not put them in that form.

20 (G: You told us if you have received B3-B6 you would not regard it as a worklist; put yourself in the position the vessel having arrived and there having been no ship's superintendent in Singapore to settle the worklist with. Look at top of B 3 "Regarding....." means B1 and B2 what would you have considered your responsibility obligations were with reference to B1 which refers to screw-shaft survey?)

30 As a yard I would have regarded my obligation to withdraw the tailshaft for survey. I would of course have taken certain steps. I would have spoken to the classification surveyor in the presence of the person who I would consider to be the owners' representative if no superintendent was there, namely the Master of the vessel.

40 (G: If the classification surveyor informs you as a dockyard that the tailshaft survey was overdue would that confirm in your mind that you were to draw the tailshaft for survey?)

Yes moreover I would request the master as owners' representative to confirm this to me, if he would not or could not I would, being a prudent ship repairer, telex owners direct and

In the Supreme Court

Plaintiffs
Evidence

No.12
L.M.S. Bell
Re-examination

23rd February
1978

(continued)

Cross-
Examination
by Court

inform them in no uncertain terms of the situation.

(G: Would you in any circumstance do nothing at all?)

I cannot visualise how anybody could do nothing at all.

CROSS-EXAMINED BY COURT

XXD. through the Court:

I have never been a manager of a dry dock.

Q. If the classification surveyor were to say that he had nothing to do with dockyard with regard to the classification requirements of vessel..... 10

I would have been amazed in Singapore. As dockyards and classification societies in Singapore have a very good working relationship.

(Witness Released) Signed F.A. Chua

G: Case for Plaintiffs.

(Adjourned to an early date - 10 days required.)

20

Certified true copy.

Signed Quek Chip Leng

Private Secretary to Judge
Court No.2
Supreme Court, Singapore.

OPENING ADDRESS OF COUNSEL
FOR THE DEFENDANTS

No.13
Opening address
of Counsel for
the Defendants

Wednesday, 10th April, 1978

10th April 1978

P/heard - Suit No. 503/75:

Monvia Motorship Corporation

vs.

Keppel Shipyard Pte Ltd.

Counsel as before.

10 Selva: Our case is that no concluded contract
materialises from the first 3 telexes which
appear at B1, B2 and first 3 lines of B3, as
submitted by my learned friend during his case.
We will be contending that B1 was merely an
inquiry, relating to the availability of dock
space for ordinary drydocking and screwshaft
survey and that inquiry was dated 3rd October,
1973. Keppel's reply B2 dated 4th October, 1973,
merely offered dock space around 16/17 October.
20 The reply from Plaintiffs dated 8th October, 1973
merely requested the shipyard to reserve dock
space for the vessel from 16/17 April. Apart
from that everything else was at large. It will
be our evidence the nature and extent of work
to be carried out was a matter for agreement in
the future as soon as the ship superintendent
of vessel arrived. We will seek to establish
that this is normal practice with regard to ship
repair contract. With regard to the list of
30 items B3, B4, B5 and B6 are concerned we will
contend that the Plaintiffs were there giving
an indication to the shipyard as to the provi-
sional work to be done; they were asking for
prices and we will contend by that list the
shipyard was put on notice that the work in
respect of the vessel was not yet a confirmed
job; prices were yet to be agreed, the actual
lists of works to be carried out were also yet
to be agreed and as was the usual practice in
40 ship repair work these items were to be agreed
by the ship superintendent of the owners and the
shipyard. As Court already has some indication
in our cross-examination our evidence will be
that the first lists of works were agreed upon
when Mr. Eustathiou, the ship's superintendent,
finally signed the lists, as at that time prices
for the work actually carried out by the shipyard
were still being negotiated. Court already has

In the Supreme Court

No.13
Opening address of Counsel for the Defendants
10th April 1978
(continued)

evidence that even on 20th October, 1973, a Saturday, the negotiations with regard to Keppel's bills for work done were still not concluded.

I refer to p. 75 bundle B - letter of 23rd June 1977 by my learned friend to us. Case was originally fixed for 21st and 22nd July, 1977, and even as at date barely one month before the prospective hearing plaintiffs have given indication that they had misconceived their case; they state the issue of case turned on the meaning of "Screwshaft survey" and on the premise they had gone to write to Mr. Arnott of Ritchie & Bisset to clarify the meaning of the words "Screwshaft survey" and that letter appears at page 54 Bundle B.

10

B 75 - last para. "If you are prepared76.....costs" and we replied on 19th July, 1977, B 77, we would be prepared to accept what Mr. Arnott says about tail shaft survey. The real question was whether there was a concluded contract between Plaintiff and Defendant to draw the tailshaft out.

20

- Calls :

Defendant's Evidence

No.14
C.N. Watson Examination
10th April 1978 to 11th April 1978

No. 14

EVIDENCE OF C.N. WATSON

D.W.1 - Cecil Neville Watson - s.s. (In English)

Xd. by Mr. Selvadurai:

30

Living at 120 King's Avenue, Singapore 27; at present Managing Director of Sembawang Shipyard Ltd. Between 1971 - 74 I was Managing Director of Keppel Shipyard Ltd.

I am 46 years old. In 1953 I obtained an honours degree in naval architecture at Durham University. In 1955 I obtained my post graduate qualification as naval constructor at Royal Naval College, Greenwich. Thereafter I spent 2 years in naval dockyards in charge of warship repairs - Rosyth Dockyard and Davenport Dockyard both in Britain. I served in other dockyards during training - Portsmouth and Davenport. For 3 years thereafter

40

In the Supreme Court

Defendant's Evidence

No.14
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10th April 1978 to 11th April 1978

(continued)

10 I served as a naval architect with Greek shipowners, the Onassis Group. From 1960 - 1968 I was with the Malta Drydocks and I rose from Hull Manager to Yard Manager and finally manager of production. Malta Drydock is one of the major ship repairs yards in the Mediterranean. From 1968-70 I was the Assistant Managing Director of Sembawang Shipyard (Pte) Ltd. From 1971-74 I was Managing Director of Keppel Shipyard Pte. Ltd. and since 1974 I have been Managing Director of Sembawang Shipyard Ltd, my current position. I have spent 20 years in ship repair yards and 3 years with ship owners.

I knew something of the trouble which arose out of the drydocking of the Master Stelios in October 1973.

(S: B 79 - daily drydocking schedule).

20 At that time this was prepared in the planning office which reports to the Marine Manager. Above the Marine Manager is the General Manager and he would have daily control of the stemming list. I would have overriding control of docking policy. In October 1973 the Marine Manager was Mr. Tham (Tham Yeng Fai id.) and the General Manager was Mr. Chua Chor Teck.

(S: Master Stelios stemmed for 16th, 17th, 18th and 19th October).

Yes.

30 (S: B 18 - letter written by you dated 2nd November 1973 to Mr. Nomicos (reads) "I observe.....to the office". Telex B3, item you referred to is item 8?)

Yes.

40 The point that I was going to make was that there had been confusion about what the owner wanted doing. In his first inquiry he asked for screwshaft survey, B1. His later telex he was talking about taking clearances. For a shipyard this would mean that the job is not a definite job. It would be dependent on the clearances and commercial factors and his own part of it, he knows if he had to do the job or not.

(Sel: "the vessel docked.....the repairs". That telex is at B 10).

In the Supreme Court

Defendant's Evidence

No.14
C.N.Watson
Examination

10th April
1978 to 11th
April 1978

(continued)

Yes. It is a clearance that if he was going to run his vessel for a year or more he may decide to do the job now rather than put it off. But it is entirely his choice and his relation with classification whether he does the job or not. Shipyard would stay out of that i.e. his relationship with classification. You would want his decision quite urgently.

10

(Sel: B 19 "The owners' telex.....
tailshaft work.....by telephone").

Before the owners' representative raised the matter with me on the 18th, speaking from memory, I remember that a situation was developing on the Master Stelios that the owners' representative had on that evening asked for the tailshaft to be drawn. It would be normal in such a situation for the management to warn me of the situation, so that when the Superintendent came to see me I knew the facts.

20

When the Superintendent came to see me on the 18th I remember only vaguely what happened. He wanted to stay in drydock and I would have said it was too late; he had to come out the next day. I really don't remember the time the Superintendent saw me; I remember writing this letter. I would suppose it was around 6.30 p.m. to 7 p.m.

30

Thereafter I received a telephone call from London from Mr. Jansen. My recollection was that the call came through from somebody else and Mr. Jansen was called, the first caller handed the phone to Mr. Jansen. The call was quite late, I think around midnight, at my home. To sum up, Mr. Jansen tried to bully the shipyard into keeping the ship in drydock; he said he would report us to the Greek shipowners Association, to Lloyds and other threats. That was not the first that I received this kind of telephone call from shipowners' representatives, other shipowners. It happens, in my experience, once a year, twice a year. It is the kind of bluff, threat when they want to get their own way.

40

I advised Mr. Jansen that it was far too late, that the ship was undocking the next morning and it certainly was not our fault. The conversation I think lasted 10 minutes and I must have said a lot of things and he as well. But the essence is what I have said.

50

(S: "Mr. Jansen adopted an aggressive....
on the first day).

In the Supreme
Court

She was stemmed for 3 days, 16, 17, 18.

Defendant's
Evidence

(S: Evidence was that vessel came into
drydock on afternoon of 16th dock
closed around 4.30 p.m. on 16th).

No.14
C.N. Watson
Examination

10 If we had received firm instruction on the
16th there was sufficient time, just about, to
draw the tailshaft for the survey and do the
re-wooding if necessary. I would emphasize that
3 days need fast decision.

10th April
1978 to 11th
April 1978

(continued)

(S: B 20 "We, of course, regret.....
..... a later date").

20 There are many cases I can remember when
we carried out work without clear instruction,
clear authority only to have the costs disputed.
The danger is you don't get paid. Sometimes
the owners' representatives would adopt the
attitude "Thank you very much but I am not going
to pay for it" because we acted in advance of
his instruction; by instruction I mean the
owners' representative at the shipyard at the
time. In my experience and certainly my organi-
sation Keppel and Sembawang, work lists have to
be re-confirmed by the owners' representative
even when you have an acceptance quotation.
Owners ask for price and time for a list of
works, your quotation might be accepted and when
30 ship arrives at the shipyard items are cancelled,
items are amended, items are added. This applies
to all ship owners including the most illustrious
down to the single ship owning companies like
the Plaintiffs. There must be a representative
to re-confirm each item.

40 Sometimes a shipyard do take instructions
from the classification surveyor if they have
good relation with the surveyor and the shipowner
in question. Taking instruction from the classi-
fication surveyor is not to be encouraged amongst
our management.

(S: "As far as the.....later date").

I have at the present time a case at
Sembawang shipyard. I have a dispute about
payments because the ship repairs manager carried
out work on the chief engineer's instructions
and the owner is arguing that he will not pay.
Another example is a major oil company about
15 years ago when I was hull manager. We had an

In the Supreme
Court

Defendant's
Evidence

No.14
C.N.Watson
Examination

10th April
1978 to 11th
April 1978

(continued)

acceptance quotation for steel plate renewal. It was a dock job and therefore critical and so I prepared, cut, the plates before the ship arrived. When the ship came into dock the owners' representative cancelled the job. I learnt from these experiences and I try to avoid such situations. The cancellation of items of work which have been indicated before hand is a daily occurrence after the ship comes into dock.

10

(S: The telexes B3, B4, B5 and B6).

My impression when he asked for prices when he had previously confirmed the contract is that the owner is not sure what work he was doing to do. In fact, the telex causes some alarm. Perhaps I should explain why. It is common for ship owners to make inquiries with more than one shipyard and it is common also for some shipowners to keep their options open. When a shipowner asks for prices after he has made a firm booking it can be interpreted that he is shopping around. If he gets a better price elsewhere they cancel the booking with you. That is why I say the telex causes slight alarm when they ask for prices. Item 8 means take the clearances, give it to them, London, and wait for instructions. The clearances would have a bearing on the owners' decision to draw the tailshaft. It would depend if the clearances were excessive, in which case he will have to re-wood the tailshaft; if not excessive he may still decide to rewood depending on his trading pattern plus class requirements, plus price.

20

30

Looking at the telexes at B1 - B6 I say there was no instruction given by the owners to the yard to draw out the tailshaft and there was no agreement between owner and yard to draw out the tailshaft.

(S: Your second meeting between you and Eustathiou on the afternoon of Saturday, 20th October, 1973).

40

I recall having met him that afternoon. I met him at the bottom of the first flight of stairs, coming down from my office at Keppel Shipyard. By that time the ship had undocked. He had been going through the draft bills with the Commercial Manager Mr. Khor Teik Lin. He apparently had threatened not to pay for the drydocking. I also knew by then that he had

50

attempted to put the blame on the shipyard to his London office. I did not have a favourable impression of the young man from his demeanour and style of doing a job. He had not got his priorities right when he came, he did not apply himself to the key issue, that is my view. I thought he was immature for the job. I think inevitably in these circumstances we exchanged strong words and I believe I reprimanded him. We did contemplate holding the vessel for payment when faced with a threat that we would not be paid. I think that was the last time I met the young man.

In the Supreme Court

Defendant's Evidence

No.14

C.N.Watson Examination

10th April 1978 to 11th April 1978

(continued)

10

(Sel: Shipyard practice).

20

It is vital for a shipowner to have a representative in overall charge of the work while the ship is in dock. Because information is changing by the hour as a result of survey work. You must have immediate decision in order not to delay the ship's programme and the shipyard's programme as well.

Shipyards would normally not accept instructions from ship's captain or chief engineer. Shipyards are normally wary of accepting instructions from masters and chief engineers; primarily because they do not carry responsibility for money for payment of the works.

30

The usual practice for shipyards is almost always to take instructions from representative of owners' office.

40

It is not shipyard's business to know which are critical jobs to the owner. Where we can we try to keep track where possible critical items, for our own protection. For example, we have cases where ship will be given dock for a normal drydocking; when she has for example a bottom damage to repair and required by classification, sometimes shipowner is disguising this information in order to obtain drydocking. He may know that shipyard could only give him 2 or 3 days when the job would take much longer he would therefore try to disguise the fact this job was due, the bottom repair, in order to get into your drydock and stay put. By trying to follow the ship on the classification register you might be able to find out such information in which case we would confront the owner with this job, the actual job to be done. We would argue it out and it becomes an open situation. I should explain that only certain classes of customers that come into this category. In our

50

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Court

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(continued)

Cross-
Examination

business we deal with people from all over the world and people from some places are tricky operators. An indication would be the way the vessel is owned and registered. Shipyards draw their own conclusions when they are dealing with single ship owning companies registered in Panama, Liberia and Cyprus.

CROSS-EXAMINED

XXd: by Mr. Grimberg:

- (G: A1 - letter from Lloyds to Phocean - 26th July 1973 (reads). A2 (reads) A3 (reads). A4 (reads). A5 (reads) 10
- Q: Would you agree that it was beyond doubt that it was in classification society's mind and owners' mind that the screwshaft survey was overdue and has to take place as a matter of urgency?
- A: I agree.
- Q: That last letter on A5 was written was it not on the same day as the telex B1 which was sent to Keppel. 20
- A: Yes.
- Q: And in B1 your then Co. was asked for drydocking accommodation for ordinary drydocking and for screwshaft survey which they had been pressed for by Lloyds.
- A: We also know nothing about the communications between owners and Lloyds.
- Q: I accept that, but looking at B1 now it was sent in consequence of the correspondence which I have just read. 30
- A: I am looking at A5 where it is stated the vessel was sailing from Persian Gulf and owners probably asked for $\frac{1}{2}$ dozen yards for dock space.
- Q: Notwithstanding that, look at B 2, your yard replied that they would offer dock space around 16/17 October in effect for ordinary drydocking and screwshaft survey.
- A: I agree. 40

| | | |
|----|---|--|
| | Q: And the telex at B2 asked for confirmation. | In the Supreme Court |
| | A: Yes. | Defendant's Evidence |
| | Q: Turn to A6 (reads) I accept yard do not know this correspondence. But do you agree now that you have seen this correspondence that it was in owners' mind and the mind of Lloyds that this work, namely the drawing of shaft for purpose of survey would take place at that dry dock? | No.14 C.N.Watson Cross-Examination 10th April 1978 to 11th April 1978 |
| 10 | | |
| | A: I would say that from the letter A6 that the owners were drydocking to do the screwshaft survey, but their telex of 8th Oct. B3 partly contradicts their intention to do screwshaft survey as in that telex they talk about taking wear-down readings at item 8. If we had had both the letter A6 and the telex B3 we would have seen this contradiction and queried it. Yes I said B3 partly contradicts the intention to carry out the screwshaft survey at this drydocking. | (continued) |
| 20 | | |
| | Q: Do you agree that no where in B3 does it appear that the owners' intention to carry out a screwshaft survey as manifested in B1 is withdrawn or countermanded specifically? | |
| | A: I do not clearly agree with that. My reading of these two telexes B1 and B3, that he has not made up his mind on the tailshaft survey. | |
| 30 | | |
| | Q: In coming to that conclusion are you not ignoring the words appearing in the 3rd line of B3 "meantime please quote following item"? | |
| | A: My view, having seen the correspondence with Lloyds, the person who sent B3 made a mistake, because it is almost incidental in asking for a price in taking wear-down which is a small job if it is really owners' intention to do a tailshaft survey which is a much more significant job. | |
| 40 | | |
| | Q: That may be a matter of interpretation. But is it not a fact no where in B3 is there a specific countermanding of the intention to carry out a screwshaft survey? | |
| | A: In B3 item 8 the final words were "and submit written records to this office", a | |

In the Supreme
Court

Defendant's
Evidence

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(continued)

shipyard would interpret that that the tailshaft survey and probable rewooding had to be decided on the result of the wear-down readings, so in that respect I would not agree with you.

Q: I have asked the question twice and I put the question again, anything specific that we did not intend to carry out the tailshaft survey?

A: No.

10

Q: The first 2 lines of B3 are a specific instruction are they not to stem the drydock for the specific purpose of ordinary drydocking and screwshaft survey?

A: That means he accepts the drydock.

Q: For the specific purpose he mentioned in B1?

A: I don't agree. B3 means he wants to drydock, the work he wants to do in that drydock would as always be decided during the actual drydocking.

20

Q: Are you saying the yard was entitled to ignore entirely the contents of B1?

A: I am not saying that. I am saying B1 is owners' preliminary intention of what he wanted to do in drydock.

Q: That was changed somehow by B3?

A: It is changed by B3 because all of B3 is asking for prices.

30

Q: How can a request for quotations change the substance of what your customer has asked for and which you have agreed by your telex B3 to provide?

A: Presumably when he asks for a price he is going to decide whether he does the job or not i.e. he retains his options.

Q: I put it to you that it is on the basis of that presumption and the fact that you required the dock for another vessel or vessels that this whole case arose?

40

A: Well, I disagree. On the original inquiry

we provided for 3 days and there is no reason why we should not do this job. 3 days is sufficient for a tailshaft survey. Yes I said it was just sufficient.

- Adjourned to 2.30 -

Signed F.A. Chua

Hearing resumed.

D.W.1. - C.N.Watson - o.h.f.o. s. (in English):

XXd. by Mr. Grimberg (contd.)

In the Supreme Court

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10th April 1978
to 11th April
1978

(continued)

10

Q: I put it to you that the yard was wrong in presuming that simply because quotations were asked for in B3 that any change had occurred in owners' plans to have the tailshaft drawn during this drydocking, what do you say to that?

A: I disagree.

Q: Did it occur to the yard that the quotations might have been asked for quite independently of this dry docking?

20

A: We believe this was asked for in connection with this drydocking.

Q: That is not what I asked. (Question put again).

A: No.

Q: The Plaintiffs have said they wanted these quotations in order to update their records of quotations that yards worldwide were giving for ordinary drydocking. Could this be possible?

30

A: It is a possibility but I would have hardly thought it likely as it would have meant confusing current drydocking with this general updating of information as you say.

Q: B3, line 3 does say meanwhile please....

A: "Meantime".

Q: Does it not suggest to you that the inquiry that followed was independent of the reason for which the dock had been stemmed.

A: Not in my experience.

In the Supreme Court

Defendant's Evidence

No.14

C.N. Watson
Cross-
Examination

10th April
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(continued)

- Q: So your evidence is that, item 8 was enough to throw the position into some doubt.
- A: In substance, yes.
- Q: You were not involved at this stage of these proceedings?
- A: I would read all the telexes everyday and I would know there was a stem for the vessel and I would have seen this telex of 8th Oct. 10
- Q: Do you also see outgoing telexes?
- A: Generally, yes, sometimes with say 12 hours delay.
- Q: You told us item 8 tended to throw the matter into some doubt; is it surprising no attempt was made on part of yard to clarify that doubt.
- A: To understand a little more on what basis we take bookings. By itself 1st inquiry which asks for screwshaft survey does not in the eyes of a shipyard not in the minds of the shipyard manager mean that the owner definitely intends to do the job, therefore when in the subsequent telex of 8th Oct., B3, a somewhat different requirement of the tailshaft is asked for this is not an unusual feature. 20
- Q: You don't think it deserved at least a telex message from shipyard requesting clarification. 30
- A: We had allowed sufficient time to do either job. We expected to clarify such item with the owners' representative so that it was not critical at this point in time one week before the event.
- Q: Despite the doubt created by item 8.
- A: Yes, such doubt is usual and common.
- Q: Of course it was a matter of facilitating a check on whether the vessel's screwshaft survey was due for the classification register was it not? 40
- A: This is not always an easy thing to do; the reason being the register is often

some months behind the event. Shipyards often obtain this information from the classification surveyor in their shipyard. On this occasion I am not sure whether we received information or not.

In the Supreme
Court

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Evidence

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C.N. Watson
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10th April
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(continued)

Q: Mr. Harper, the Lloyds' surveyor had an office at the shipyard at this time.

A: He did. Not exactly an office, a base.

Q: And he was always nearby at the yard?

10 A: Yes.

Q: If there is any doubt as to the classification society requirements a question to Mr. Harper would resolve it.

A: Not necessarily immediately, he would speak with his London Office to get such information and this would resolve it. But the matter still remains a matter between the owners and the classification society.

20 Q: Is it your position that pp. 3 - 6 of Bundle B constituted owners' work lists.

A: Not necessarily. It is a general indication.

Q: If it is a general indication I still do not understand and I would like you to explain why it should have affected the position created by B1, B2 and the first two lines of B3. If that was not a worklist why should it have been taken into account at all and more specifically why should item 8 been taken into account at all?

30 A: Item 8 is taken into account as it contradicts the first inquiry. First inquiry is indicating screwshaft survey; item 8 was going only as far as wear-down readings.

Q: If item 8 was not part of any worklist why should it have been elevated to the point of contradicting anything that went before?

40 A: At that time, 8th October, no decision had been taken which stopped the tailshaft survey being carried out. What we have at that time are two communications which on the face of it appears to be contradictory but this will be resolved by the owners' representative who is mentioned in the telex in the final sentence.

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(continued)

Q: You have conceded that B3 - B6 do not constitute a worklist, it was only an indication of work that was to be required. I will hand you Ex. D2, a document prepared by the yard and you will see it is headed "Repair List" and it will be obvious when you read it and it says so at the very top it was prepared by the yard from B3 - B6. Do you agree?

A: I would agree that this list was made out from the information B3-B6. 10

Q: And it is headed Repair List.

A: Yes Repair List (Telex).

Q: Do you agree that the yard regarded B3 - B6 as my clients' worklist?

A: As an indication of your clients' worklist. If you look at the worklist it has several places where instructions by owners' superintendent are required; there are other places where there are no quotations; such items are therefore open items, they need further instructions. 20

Q: My question is a simple one. Is it not as clear as daylight that the yard in preparing the worklist registered B3 - B6 as the owners' worklist and does it not say so in so many words?

A: If you mean the definite work to be carried out, my answer is no. The purpose of this first repair list, D2, is partly to warn the production department and secondly to provide a cost code for charging as soon as the vessel is in the yard. But almost any item on such a list can be cancelled, amended, changed by the owners' representative. 30

Q: I suggest to you you are saying this with the benefit of hindsight. Look at B 15, a telex sent by Mr. Chua the General Manager and now the Managing Director of the Defendants; it is sent to your agents in London, Swan Hunter, and it was sent after my clients became very angry at your failure to draw the shaft. Let us see what Mr. Chua says (reads). That was the true appreciation of B3 at the relevant time, was it not? 40

| | | |
|----|--|---|
| A: | If you are emphasising the word "Complete" then by itself it does not represent the accurate position. | In the Supreme Court |
| Q: | Are you saying Mr. Chua was wrong and you are right after 4 years. The yard was not regarding B3 as a complete worklist? | Defendant's Evidence |
| A: | I probably am saying that, but you should consider this is a telex written at 7 p.m. under stress to the shipyard's own agent. If Chua had realised it would be used in such condition he would probably have been more accurate in his choice of words. | No.14 C.N.Watson Cross-Examination 10th April 1978 to 11th April 1978 (continued) |
| Q: | I suggest to you Mr. Chua's choice of words which were contemporaneous with events and came from a man who was sitting on the top of the situation are likely to be of greater value than your interpretation of events nearly 4 years later when you are confronted with a difficult situation. | |
| A: | If the point you are making is complete worklist, you need only..... | |
| Q: | The point I am making is that the yard at the time regarded B3 - B6 as the worklist and not merely as a request for quotations which you have come very close to accepting today. | |
| A: | I accept what you say except for one word that this is an indicative worklist, an indication of the sort of work the yard would be asked to carry out. | |
| Q: | Turn to B 18, your letter which m.l.f. spent sometime on this morning, look at 2nd para. "We accepted.....but a later telex....." You were making the same mistake in regarding B3 as a work list. | |
| A: | I maintain it is an indicative worklist. | |
| Q: | But that very same paragraph accepted the first telex requesting ordinary drydocking and screwshaft survey. If B3 was not a work list then nothing changed B1; I put that to you. | |
| A: | Well, I don't agree; even if something is not logical and contradictory you must take account of it; by that I mean the telex B3 is apparently contradicting B1 in so far as the screwshaft survey is concerned. | |

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(continued)

- Q: That apparent contradiction does not arise unless you regard B3 as containing a work list. If you regarded it, as was the fact, as a request for quotations, no contradiction of any sort arose. That is my proposition to you.
- A: We are talking one week before the ship came; to the shipyard it looked from these telexes that the shipowner had not made up its mind; this would have been resolved with the owner's representative and shipyard had provided sufficient time to do the tailshaft survey if it were required. 10
- Q: Only just sufficient time as you had said.
- A: Agreed.
- Q: Supposing it was also necessary to carry out work which tended to increase the time for which the dock had been stemmed; look at B10, message from your yard to Phocean in London (reads) "Vessel in drydock....". 20
- A: Yes lining to the rudder.
- Q: "Class recommends" means Lloyds surveyor Mr. Harper required the renewal of the lining, would that be right?
- A: That would be right.
- Q: That meant in turn that the rudder had to be removed?
- A: I believe so.
- Q: Now, would you agree that if the rudder had to be removed and work carried out in respect of re-lining that work plus the drawing of the tailshaft plus the replacement of the rudder and plus the replacement of the tailshaft could not be performed in 3 days? 30
- A: The work on the rudder would be carried out concurrently with the tailshaft. If there was not much work to be done on the shaft we could do that job and the rudder in about 3 days. As manager at that time I would have accepted that the shipyard might have overrun by half a day or maximum 1 day. 40
- Q: What you are saying is that 3 days for

drawing the shaft and carrying out repairs to the rudder, for rudder to be removed, is too short.

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(continued)

10

A: My reply is that it would be tight time to do the rudder and tailshaft survey at the same time.

Q: Very probably the time would be overrun by a day.

A: It would be. Usually it is the rudder that is the limiting factor. Usually a rudder job is longer than a tailshaft survey. In this case the shipyard has done a very fast rudder job.

Q: Which they managed to complete in just 3 days, is that not?

A: Yes, just within 3 days.

Q: Work of drawing the shaft is carried out in the same area as work to the rudder.

A: Both jobs are carried out at the after end.

20

Q: By separate teams of labour.

A: There may be some common labour; the heavy lift people would be the same.

Q: And the fact that labour had to be shared between the 2 jobs contribute to the extra time the two jobs would take.

A: It could.

Q: Do you know Mr. Len Bell (P.W.7)?

A: Yes.

30

Q: He is a surveyor of some experience and a partner in Ritchie & Bisset.

A: Yes.

Q: Page 170 N/E, evidence of Bell "no (G: B1 put yourself....one full working day." Do you say that evidence was reasonable.

A: I would say that evidence was reasonable. Keppel would plan 3 days for the tailshaft survey. We would plan on the tight side in order to provide a stimulus for production.

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Court

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(continued)

- Q: So that in stemming the dock for 3 days Keppel was taking into account the intended screwshaft survey.
- A: That is correct.
- Q: Was October 1973 can you remember a busy time for Keppel yard?
- A: I believe so.
- Q: In fact if you look at B18, your letter, para. 2 "We accept.....".
- A: Yes, that suggests we were pretty busy. 10
- Q: It is usual of course for owner's superintendent to be in time for the drydocking.
- A: Yes.
- Q: Have you encountered a case apart from this where owners' superintendent was not present for one reason or another?
- A: Yes, there had been such cases in my experience.
- Q: Do these cases frequently give rise to difficulties? 20
- A: Yes they do.
- Q: When Keppel received B1 it knew of the intention to draw the shaft because as you have said it stemmed the dock for 3 days, right?
- A: Yes.
- Q: But at that point 4th October you did not know that work to the rudder would be necessary?
- A: That is correct. 30
- Q: Turn to B7, a certificate from Guan Guan Shipping dated 11th Oct. '73 (reads). Stemming made firm on 11th October, therefore on 11th October before Keppel realised there would be rudder repair to the Master Stelios as well as the drawing of the shaft the dock was stemmed from the 19th, would that be a fair proposition?
- A; Yes, that is fair.

| | | | |
|----|----|--|---|
| | Q: | Turn to B 10, 16th Oct., tells us that on that day class recommended certain repairs to the rudder which meant that more time was necessary to an already tight stemming, do you agree? | In the Supreme Court |
| | A: | Not necessarily. The rudder was completed within the 3 days, you would normally expect a rudder repair to be the longer job, between tailshaft and the rudder. | Defendant's Evidence No.14 G.N. Watson Cross-Examination |
| 10 | Q: | The tailshaft was not even done. | 10th April 1978 to 11th April 1978 |
| | A: | I am talking in general. | (continued) |
| | Q: | If both had to be done bearing in mind Mr. Bell's evidence, which you agree was reasonable, I suggest to you the 2 jobs could not be completed in 3 days. | |
| 20 | A: | I don't agree. I am sure we can find shipyards in the world that could complete both jobs in 3 days. For Keppel to do both jobs in 3 days would have been tight, but the planning could have allowed an overrun of say half a day. | |
| | Q: | The planning when in relation to 16th Oct. when yard first realised it had to do work on the rudder. | |
| 30 | A: | The planning is reviewed daily and the programme can often accommodate changes up to 1 day. I would maintain that at that time would have done both these jobs within 4 days if there had been an overrun and the programme would probably allow for that. There is a great difference of an overrun of 2 to 3 days which would have shut out the next ship. | |
| | Q: | What would have been the position if it was not a case of only 1 ship the Kim Hock waiting but another ship as well, would it have made it tighter. | |
| | A: | Yes, it could have made it tighter. | |
| 40 | Q: | I suggest it would have made it impossible unless the owners of the late ships were prepared to be accommodating. | |
| | A: | My reply is that shipyards are often faced with approximately impossible situations such as this. Changes occur almost daily in your stemming programme. The dates of | |

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(continued)

the ship often fall back. There are sometimes late cancellations.

Q: I put it to you the stemming of this dock for Kim Hock placed the Keppel Shipyard in a fix.

A: I do not agree.

Q: I further put it to you that either the yard could do both jobs on the Master Stelios i.e. the tailshaft and the rudder and turn away the Kim Hock or only do the rudder of the Master Stelios and accommodate the Kim Hock and it chose to do the latter.

10

A: Your argument is illogical. The tailshaft is the more straightforward job, a job that could be done in 3 days. Your chances with the rudder job are often more problematical. If the yard wanted a choice it would be simpler to take the tailshaft which after all had been the job talked of from the very beginning.

20

Q: Except that that it would be directly contradictory to a specific recommendation from Lloyds, look at B 10 "class recommends renewal of lining" and B 11 "Please proceed with class recommendation." That I suggest put it beyond Keppel to do the tailshaft and completely ignore class recommendations which owners instructed it to proceed with. It had no option, the yard, but to proceed with the rudder repairs.

30

A: I disagree. Rudder repair was an unexpected repair and the yard would have taken the view that it had no labour available or no dock available.

Q: It did not take that view did it?

A: It did not.

- Adjourned to 10.30 tomorrow -

Signed F.A.Chua

40

Tuesday, 11th April, 1978

Suit 503/75: (Contd.)

Hearing resumed.

D.W.1. - o.h.f.o. s (in English):

In the Supreme
Court

XXd: by Mr. Grimberg (Contd.)

Defendant's
Evidence

I cannot remember in detail what the works on the Kim Hock were; only drydocking works.

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10

Yes Kim Hock was owned by Guan Guan. Yes it is one of the important shipowners. It was a regular customer of Keppel at that time. It is not necessarily so that Keppel recommended Guan Guan at the expense of a one-ship company. I think it could be said having provided 3 days drydock for Master Stelios and because the owners have not made clear their requirements for tailshaft survey in sufficient time Keppel were not prepared to inconvenience another customer on that account. Yes Guan Guan represented on going business. A ship repair yard has to make judgment like this between customers quite often. Sometimes you have to decide against the very best kind of customers; you have to make a judgment with an overall view, yes of course you have to risk the consequences. Keppel's relationship with Guan Guan was a good one and they were a fairly tolerant customer. Usually they will accept changes in dates for drydocking. In this case they probably would have accepted a delay of say one day but it would have been unfair and improper to squeeze them out completely as would have been the case if Keppel had started the tailshaft survey on the 18th when it was asked for.

(continued)

20

30

Yes I agree the preparation for drawing of the shaft of Master Stelios should have commenced as soon as possible after the vessel had been docked and the dock pumped dry. I disagree that the interpretation of B3 was wrong.

40

Q: Page 7 bundle B certificate from Guan Guan. I suggest to you now that in view of the tight schedule to which you have admitted already the dock would not have been stemmed for Kim Hock but for Keppel's anxiety to preserve its relationship for that particular customer.

50

A: I think the reason for stemming Kim Hock was much more simple. It was an offer of a contract which could be fitted into the programme. Shipyard planned sufficient time for Master Stelios and there was no reason to turn down this opportunity for

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Kim Hock. The most important aspect in maximising revenue in a shipyard is to keep your drydock busy.

Yes the Master Stelios was to be undocked on 19th October. Yes that was the date the dock had been stemmed for Kim Hock.

Q: Look at B 79, right hand column about 1/3rd way down. Remarks "Kim Hock Arr Trojan Arr". That docking schedule shows that Kim Hock and Trojan were ready to be docked on the 18th. 10

A: It looks like that Kim Hock and Trojan were waiting outside the dock on the 18th October.

Q: Which suggests that dock had been stemmed for Trojan as well.

A: Yes. May I add? You don't necessarily stem a dry dock to be available on the vessel's arrival. More usually a vessel will have some days afloat alongside a repair berth as well as in dry dock. 20

Q: Look at 2nd column from left - Queen's Dock. That shows Kim Hock was docked on 19th October as planned.

A: Yes.

Yes she remained in dock for 3 days and undocked on 21st October and Trojan was docked on the 22nd October.

Yes Trojan was substantially larger than Master Stelios and Kim Hock. I don't remember who owned Trojan; I guess from the name she is owned by I don't know. I am not aware now the nature of the work carried on the Trojan. 30

Q: Look under Queen Dock against 29th October letter "MT".

A: It means dock was empty.

Q: 30th October, letter not legible.

A: At that time Kings Dock was the largest dry dock operated by Keppel. No. No. 1 dock was not large enough to accommodate Trojan. Yes Kings Dock was not available as it was occupied by one of the Maersk Line boats. 40

| | | |
|----|---|---|
| | Q: Really the position on 19th was that it was essential for Keppel to get my client's vessel out. | In the Supreme Court |
| | A: Yes. | Defendant's Evidence |
| | Q: If any confirmation of that is necessary it can be found at the telex B 15 "We will be in a real mess". | No.14 C.N.Watson Cross-Examination |
| 10 | A: Yes that was the position. The words of the telex as I said yesterday are directed to the London agent with the objective of having him explain the situation to the owner. The words therefore should be taken in that context. | 10th April 1978 to 11th April 1978 (continued) |
| | Q: Let us qualify the words. If you had prolonged the stay of the Master Stelios you could be in a real mess. | |
| | A: It would have caused disruption to the programme and it would have caused delays to other vessels. | |
| 20 | Q: More particularly to one established customer Guan Guan and another customer who had a large vessel which required a substantial job to be done to it. | |
| | A: These people would have been inconvenienced because of the mistakes of the Master Stelios' representative. | |
| 30 | Q: I put it to you that in the light of Keppel's interest in the Kim Hock and Trojan they considered the interest of Master Stelios to be expendable. | |
| | A: The shipyard felt that the Master Stelios had had its agreed time in drydock and because it had not made proper use of it, it was no reason to disrupt other customers. | |
| | Q: Who agreed 3 days, we did not. Were they not allotted by the yard quite arbitrarily? | |
| | A: The 3 days were allotted by the yard based on yard's experience of time required for a tailshaft survey. | |
| 40 | Q: Without taking into account that other class recommendations might be forthcoming as turned out to be the case. | |
| | A: You have to understand that a shipowner when | |

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he books a dry dock 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 3 days thereabout would be sufficient for the Master Stelios.

Q: I suggest when you discovered work had to be carried out both to rudder and tailshaft you decided that only one of these 2 jobs could be done and you proceeded with the rudder repairs only.

10

A: I do not agree.

(G: I will go back to the telexes).

Q: Would I be fair to suggest that after receipt of B3 the yard to all intents and purposes ignored B1?

A: No.

Q: Is that not what you said yesterday?

A: I don't think the yard formed definite opinions on either B1 or B3. They noticed the contradiction but believed it would be clarified by the owners' representative.

20

Q: I must join issue with you on that. If after receipt of B3 the yard was paying any further heed to B1 why was there no reference to the drawing of the shaft when the yard prepared the list D2 which I showed you yesterday. No reference there to drawing of the shaft. I suggest to you that after the receipt of B3 the yard forgot all about B1 and B2 and treated those telexes as if they did not exist. That is a fact, they were ignored.

30

A: Not at all. Item 16.02 in Ex. D2 repeats the owners' request to take tailshaft wear down and to submit written record to owner's office. The yard would know from that that the tailshaft survey and tailshaft withdrawal may be necessary. The other point I make is that the yard maintained the same time in drydock for planning purposes. Still, providing sufficient time to do the tailshaft job.

40

Q: I suggest you have not given me a straightforward answer to my question. My question

was, to all intents and purposes after B3 was received your yard ignored B1 and B2. You said "No" and pointed to item 16.02 in Ex. D2; you knew very well that item was taken word for word from B4 item 8. I suggest you are being very tortious in giving that answer.

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(continued)

- 10 A: The yard in this worklist has put down what it believes the owner wants to do.
- Q: That belief being acquired from B3?
- A: If you look at the words in B3 and the worklist it is obvious that other works and other decisions are going to be required.
- 20 Q: That may or may not be so. My proposition is that once B3 was received they forgot all about B1 because they misinterpreted B3 to be a work list and ignored the Plaintiffs' original intention which was to stem the dock for the drawing of the shaft.
- A: We are talking about B3. I understand the owners to be claiming there was a request for quotation and not a worklist. However there are items there which are definitely worklist items. Item 1 dry docking.....
- 30 Q: I concede many of the items are worklist items but you can properly ask for prices on worklist items.
- A: It can be construed as unusual after making a firm booking to ask for quotations.
- Q: You are suspicious of Monvia as a one-ship owning company and therefore I thought it odd to ask for quotations after firm booking?
- A: Yes my reading of that is that he might be booking with other shipyards at the same time.
- 40 (G: You said it was usual for owners' superintendent to be on hand when vessel arrived for docking but you have known occasions when superintendent was not here.)
- A: Yes. Yes, one of the alternatives is for the owners to give the Master the authority.

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(continued)

(G: Bll - telex to Keppel "authorised master")

Yes Master was authorised to give instructions to the yard with regard to other repairs.

Q: Do you know that there was some unpleasantness on 19th October because Keppel were in such a hurry to undock the Master Stelios that they sent a pilot on board before engine repairs were completed?

10

A: Only vaguely.

Q: The master was constrained to ask the pilot to leave because repairs were not completed.

A: My recollection was there was a delay in clearing the dry dock. This sometimes happens for many reasons.

Q: Was it reported to you the pilot went on board and was asked to disembark because engine repairs were not completed.

20

A: Only vaguely. The operational details came through later.

Yes arrangement for pilot would be made by Keppel.

Q: More evidence of Keppel's extreme anxiety to rid itself of Master Stelios.

A: In Keppel Harbour the docks must be worked on the tides and if you miss the tides you may not be able to get the ship out that day at all.

30

Q: I must put to you that was not the case because the ship was undocked a few hours later.

A: I think tide is a matter of fact and they vary day by day. Sometimes you have a good period of slack water.

I am saying a record of tides exists. You can find whether the period is 2 hours or 3 hours when ship can be undocked.

Q: I hope you will accept that letters in bundle A pp. 1 - 5 are evidence of Lloyds' anxiety that the tailshaft survey which

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was overdue should take place without delay and also evidence of my clients' willingness to arrange for a dockyard to carry out the work.

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(continued)

A: I accept that.

Q: Do you accept also that B1 was sent to Keppel as a consequence of A1 to A5?

A: Yes I do.

(G: Your evidence of telephone conversation with Mr. Jansen).

10

Yes I said he tried to bully the yard into keeping the ship in dock. It is true to say he was angry and upset. I accept he was upset because of the Plaintiffs' understanding that the tailshaft of Master Stelios would be drawn.

(G: B 3).

Yes I said B3 introduced a doubt in yard as to owners' intention. It was item 8 in particular. I agree wear-down readings would not be relevant if tailshaft survey was already overdue; but it would be normal for wear-down to be recorded.

20

Q: Your yard should not have been misled by item 8 because despite the presence of that item it may have been mandatory for the shaft to be removed?

A: The yard was not aware that it was mandatory; I am not clear what you mean.

Q: It was wrong for yard to draw any conclusion as to owners' intention from a mere reading of item 8.

30

A: As I have said before with these 2 telexes there has been introduced an element of contradiction but the yard expected to resolve it with owners' superintendent.

Q: Was it ever reported to you that in consequence of B 11 the master asked the yard on a number of occasions before Mr. Eustathiou's arrival why it had not taken steps for the drawing of the shaft.

40

A: No.

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(G: Your confrontation with Mr. Eustathiou on your second meeting with him in Singapore).

It is difficult to say, with some Greeks sometimes it was genuine anger, it is an act. I suppose he was angry. Yes I said I reprimanded him. No, I don't usually reprimand my customers. No, I did not take exception to him because he was scruffy and outspoken. What annoyed me was because his behaviour and attitude towards the job had caused a situation to arise and this put us into dispute with the owners and the shipyard was getting the blame. Yes the attitude was as reported to me by my officers. I had the reports from the management and then I met him and observed his style and behaviour. No, I did not like his style.

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Q: I put it to you that the root of this whole dispute is the fact that the Defendants wrongly interpreted B3 as being a worklist as appears clearly from B 15 and from your own letter at B 18, 2nd para. And having done so, completely ignored B1, B2 and the first 2 lines of B3 pursuant to which the Defendants' dock was stemmed for the purposes of a tailshaft survey.

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A: I do not agree.

Re-examination

RE-EXAMINED

RXd: by Mr. Selvadurai:

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(S: The question of stemming the Master Stelios for 3 days to do tailshaft survey. My learned friend said you had a good customer, Guan Guan, and their Kim Hock was due to dry dock on 19th and after Kim Hock you had the Trojan owned by another important customer. Therefore, it was important for Keppel for the Master Stelios to be undocked on the 19th. Look at A 20 - letter from Jansen to Lloyds, he gave excuses as to why tailshaft was not drawn. A 21 "Our own feeling.....in dry dock").

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Q: Is that factually true following the reading of the screwshaft survey the yard realised that re-wooding was necessary and that would take 2 days more.

A: The clearance was borderline and needed a decision. When the clearances were taken on the 16th there were another 2 days provided.

(S: Question of yard's tight schedule. What has Mr. Eustathiou got to say? A 18 and A 19 "Tailshaft.....").

10

I don't understand what he was talking about this sandblasting. At that time sandblasting work was not profitable and the yard did not look for such a job. We would have refused to extend the time in dry dock for sandblasting. This telex made no sense. It gives the impression that Keppel's schedule was flexible.

(S: B 15 - telex from Keppel to London Agents, sent on the 18th October).

20

Yes sent on 18th October. By which date the final worklist Ex. D1 - D5 had been signed by the ship's superintendent. One signature is dated the 18th and second signature on 19th.

(S: Compare items D1 - D5 with items in B3)

Most of the items in B3 are to be found in D1 - D5, of course there are some additional items. D2 is very similar to B3. D5 is actually not signed by ship's superintendent.

(S: My learned friend said B3 was not a worklist at all).

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Q: All items in B3 went into D1 - D5 (G: I would go that far).

Q: If Keppel had received firm instructions to draw the tailshaft on the 16th and if work had also to be done on the rudder which was actually done, do you think both jobs could be done during the time allocated?

40

A: I would have pressed the yard to hold to the 3 days but I would have expected overrun of $\frac{1}{2}$ day to 1 day because of the interference of the one job with the other.

Q: This overrun is it usual?

A: Unfortunately yes.

In the Supreme Court

Defendant's Evidence

No.14
C.N. Watson
Re-examination

10th April
1978 to 11th
April 1978

(continued)

In the Supreme Court

Defendant's Evidence

No.14
C.N. Watson
Re-examination

10th April
1978 to 11th
April 1978

(continued)

Q: When you have this situation it is usual to get in touch with the owners of the next vessel.

A: We would negotiate with the following owner for a delay. Usually you persuade him to accept a day or so and that could have been accommodated.

(Witness Released)

Signed F.A.Chua.

No.15
T.Y.Fai
Examination

11th to 13th
April 1978

No. 15

EVIDENCE OF T.Y. FAI

10

D.W.2 - Tham Yeng Fai - s.s. (in English):-

Xd. by Mr.Selvadurai:

Living at 3 Lynwood Road, Singapore 13, Commercial Manager of Defendants. In October 1973 I was the Marine Manager.

As Marine Manager my main duties were to co-ordinate the entire operation of the shipyard which involves around 3000 people with 6 drydocks, located at 2 shipyards, all the wharves and workshops.

20

The stemming schedules come within my responsibilities as Marine Manager.

(S: B 78 to B 79).

These are copies of daily drydocking schedules for September, October and November 1973. They are the final form of the stemming schedules.

How they are prepared. First as we get the enquiries they are written down in pencil on the schedule. As and when the events happen they are then inked up and become the record of events. I mean this, for example, Queen's Dock B 78, 2nd vessel was Dynamic Mariner; this might have been programmed for the 2nd of that month and if this was so it would have been written in pencil at time of planning. For example, there was an overrun of 1 day on the previous vessel that would

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then mean that the Dynamic Mariner would drydock 1 day later than scheduled. So when this happened we then inked it. We go on that basis in respect of the other vessels. We inked it from day to day. When we finally inked the Dynamic Mariner for the 3rd she would have already been drydocked. We did the inking after the event.

In the Supreme Court.

Defendant's Evidence

No.15
T.Y. Fai
Examination

11th to 13th
April 1978

(continued)

10

(S: B 79 Queens Dock - Master Stelios, Kim Hock and Trojan).

I had a hand in stemming those 3 vessels.

(S: B 1 - first telex received by yard with regard to Master Stelios).

Yes.

Our reply is at B 2 where yard offered 16/17 for stemming. By B 3 owners confirmed the 16/17 stemming.

20

On receipt of B1 we would make a note of the vessel and placed her on provisional stem. Upon receipt of B7 we would then place the vessel on firm stem; we would have to assess the number of days a vessel would have to be in drydock based on the information available to us at that time. The information available at that time was that the vessel would probably be requiring ordinary drydocking and screwshaft survey which I had interpreted as requiring approximately 3 or 4 days. This would be in pencil.

30

From memory I would say I stemmed the Master Stelios probably for 3 days, but this is not critical as the stemming programme has certain flexibility. For example some ships would take longer in dry dock and others would be on schedule and some would require less time than anticipated. Also the entire work force can be programmed in such a way to meet the targets that are required. In other words, if we were behind schedule in one dry dock we could deploy the 2nd or 3rd shifts, afternoon and night shifts, to improve the completion time.

40

If we find we had to overrun by a day or two and I had sufficient notice of this I would immediately look for ways to re-organise the drydocking of the vessels which are immediately following. Also I would also try to determine in detail if possible the drydock work which was required on the vessels that are following

In the Supreme Court

Defendant's Evidence

No.15
T.Y.Fai
Examination
11th to 13th
April 1978
(continued)

and by careful planning and scheduling of manpower and facilities we may then be able to improve on the drydocking times which had been originally allocated.

- Adjourned to 2.30 -

Signed F.A.Chua

Hearing resumed.

D.W.2 - Tham Yeng Fai - o.h.f.o. s (in English)

Xd. (contd.)

(S: B 79 - remarks column Kim Hock & Trojan). 10

Those comments denote the arrival of these two vessels at the Keppel Shipyard on the 19th October and on same column at B 79 and 80 there is indication when the two vessels departed. Kim Hock departed on the 22nd October and Trojan on 3rd November.

(S: B 79 - Queens Dock - 29th October - MT).

"MT" means the dock was empty. "Out" means the day the vessel left drydock. 30th October Queens Dock could be empty as well. 20

B 78 - B 80 are photostats of the original schedules. I can produce the original.

(S: The telexes relating to the stemming of the Master Stelios - in first two lines of B3 - forgetting for the moment the items of the work).

Normally in ship repairing practice B1, B2 and the first 2 lines of B3 are not taken as contract. Rather it would be taken as a reservation for dock space and the facilities. Because, very frequently after the shipowner has indicated the stemming with the shipyard he will modify this subsequently, advance or retard the drydocking date. And also in many instances they have come back to cancel their drydocking stem. We had instances when owners cancel a firm stem of vessel. 30

On the normal drydocking and repairs as was the Master Stelios we waited for the vessel to come and go through with the superintendent or the owners' appointed representative of 40

what he required the shipyard to do and they would be subsequently modified, added, reduced or changed to suit the repairs required. For this kind of job I would presume that the contract is concluded at a point when the superintendent engineer has agreed the bill and has agreed also when he should pay the shipyard.

In the Supreme Court

Defendant's Evidence

No.15

T.Y.Fai Examination

11th to 13th April 1978

(continued)

10

A worklist is necessary in the sense that this will enable the shipyard to commence work or at least to commence some kind of planning before the arrival of the vessel. For a simple drydocking like the Master Stelios it would be quite easy for a competent superintendent to write out the worklist upon his arrival.

20

In this case the superintendent did not arrive until the night of the second day. So at the time of the drydocking on the 16th there was no one to give the yard instructions on the worklist. Even before the arrival of the vessel we had taken the list of items appearing in the telex B3 and we have issued this out with code numbers for charging on our standard repair formats. The repair formats appear in exhibits D2, D3, D5 and D6. We used the items in B3 as the provisional worklist.

30

After the vessel arrived on the 16th and before arrival of the superintendent the yard did some preliminary work on the vessel. We took the tailshaft and rudder clearances as requested in item 8 of B4. We informed the owners as they had requested and our telex is B 10. I sent B 10; my initials appear in B 10 - TYF.

(S: "Class recommends renewal of lining we are therefore.....not arrived").

40

The ship manager of the yard Mr. Chen Jen Li, came to see me with the readings for the rudder and tailshaft. He also told me that class had recommended renewal of the rudder lining; he also said that the chief engineer of the vessel said he had no authority to decide on works. As the superintendent had not arrived I sent B 10 to seek their instructions. Normally the master would be consulted on deck work and the chief engineer on engineering work. When Mr. Chen saw me, to be frank, I cannot remember if he said chief engineer or master but in B 10 I mentioned master. I advised them to authorise master to take charge until the superintendent engineer arrived otherwise the vessel would have

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In the Supreme Court

Defendant's Evidence

No.15
T.Y. Fai
Examination

11th to 13th
April 1978
(continued)

to be undocked. I said that on the 16th because when the vessel comes into dry dock there must be work for us to do. If there is no work to be done we shall have to undock the vessel otherwise a very valuable dock space would be occupied for no purpose.

(S: "Master of vessel.....or other work").

On reflection I would have taken that "other work" meant work other than appearing in B 3 and also the reference sheet B2, which was prepared before the arrival of the vessel.

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After having sent B 10 I phoned our London agent on the same afternoon, late afternoon, to ask him to contact Phocean to reply to our telex. I think I telephoned Mr. Wilmot.

(S: B 15).

This is a telex sent by Mr. Chun Cher Teck to Mr. Cabrey on 18th October, 1973.

(S: "You will no doubt.....Tham phoned you on 16/10 night....programme").

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That is the same telephone call I made to Mr. Wilmot.

Having sent B 10 I took the precaution to telephone our London agent as I wanted to make sure that I will get a reply to my telex. That reply appears in B 11, it is dated 16/10/73; I would only have seen it on the morning of the 17th.

(S: They said "Please proceed.....").

5 minutes after sending the telex B 11 the owners telexed the master of Master Stelios through MacAlister and that appears at B 12. The yard did not know the existence of B 12 until the hearing of this case. So far as I am concerned after receipt by me of B 11 the next significant event would be when the ship manager Mr. Chen came to see me on the afternoon of the 18th October to tell me that the superintendent engineer required the tailshaft to be drawn. Mr. Chen saw me in my office; I cannot tell the exact time but it was around 5 p.m. At that time I did not know who the superintendent engineer was; I had not yet met him. I told Mr. Chen to tell the superintendent engineer that it would not be possible to draw the tailshaft. I also told Mr. Chen that should

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he be in difficulty with the superintendent that he would bring him to see me.

In the Supreme Court

Defendant's Evidence

No.15
T.Y. Fai
Examination

11th to 13th
April 1978

(continued)

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As far as I can remember Mr. Chen and the superintendent together with the master and chief engineer turned up in my office at around 5.30 to 6 p.m. of 15th October. I believe that was the first time I met the three of them. The superintendent, Mr. Eustathiou, insisted that we should pull the tailshaft; I explained to him that at the late stage it was not possible to change the programme; that the Master Stelios had already been programmed to undock on the 19th and arrangements with the PSA pilot for the movement of the ships in the Keppel and Tanjong Pagar yards had been finalised. I also offered him, offered to try to schedule for a dock space later on for the Master Stelios; I suggested that we could proceed to draw the tailshaft and then blank the stern tube and undock the vessel as scheduled and then to bring her back at a later date to complete the work. Mr. Eustathiou said it was not on. So I did not pursue the matter with him anymore. That was in essence what he told me. I remember there was a heated exchange between him, the mate and chief engineer in Greek after I told him that he would have to undock the next day as his instructions came too late. After he refused my offer to redock he stormed out of my office.

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I realised that he would be phoning to his London office and I also realised the first person to be contacted by the owners in London would be our London agents. So I sent a telex to our London Agent, B 13, from me to Mr. Wilmot. I sent it at 6.22 p.m. on 18/10/73 soon after my conversation with Mr. Eustathiou.

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When I received the instructions for the first time to withdraw the tailshaft if he had agreed to redock at a later time I certainly would have been able to accommodate him.

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If I had drawn the tailshaft after receiving the instruction, assuming that a complete re-brushing of the stern tube would be required, then we would need a minimum of 3 days to complete the work. Re-bushing first the tailshaft has to be drawn out; the bush is a component in which the tailshaft runs, after sometime this bush gets worn out; in the case of Master Stelios the bush was in two sections and consists of segments of lignum vitae; these segments had to be removed and new segments put in.

In the Supreme
Court

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Evidence

No.15
T.Y. Fai
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11th to 13th
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(continued)

It was past 5 p.m.; it would be difficult; almost impossible to contact the owners of the Kim Hock. Arrangements with the PSA Pilot had already been made. I suppose if I had managed to contact the owners of Kim Hock there may have been a slight chance of their agreement but as it turned out it was.... this event was brought on by the Master Stelios personnel themselves and in such a case I would normally hesitate to contact the other side, Kim Hock; I think it is not very fair on the Kim Hock or any other vessel for that matter.

10

Q: If you had received instruction to draw out the tailshaft soon after the vessel had drydocked on the 16th and knowing also that you have to do some extra work on the rudder, how long do you think it would take the yard to complete both jobs.

A: It would have taken a minimum of 4 days. I had stemmed Master Stelios for 3 days.

20

I could have given the Master Stelios the extra day because on the 16th it would have given me sufficient time to re-schedule the Kim Hock to allow the Master Stelios to stay the extra day. That would have meant that the Kim Hock would drydock a day later. The drydocking of the Trojan was not critical. She had substantial work to be done afloat. As can be seen from B 79 the Trojan came into the yard on the 18 October and departed on 3rd November, a total of 16 days at the yard. The drydocking of the Trojan could have taken place at any time within those two dates. We had greater flexibility in drydocking the Trojan.

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(S: Meeting of 18th with Mr. Eustathiou).

After sending the telex to the London agent I was not further involved that day. After sending the telex I went home.

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I met Mr. Eustathiou on the Saturday, 20th, after lunch. He was in the process of settling the bill with the Commercial Manager Mr. Khor Teik Lin; this was at the reception area on the first floor of the office of Keppel shipyard. We exchanged pleasantries and small talk. We began to talk about the tailshaft incident and he mentioned to me that his mother was not very pleased with him; also he had spoken to his brother Nikolas, whom I

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knew as he had docked a previous vessel with us; he mentioned in particular that his mother was not very pleased because he could not get the tailshaft survey done and it would not look good in his favour.

In the Supreme Court

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No.15
T.Y. Fai
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11th to 13th
April 1978

(continued)

(G: No part of this was put to Mr. Eustathiou in cross-examination).

10 as his mother thought that he was a playboy and good only at driving his Jaguar E Type around.

- Adjourned to 10.30 tomorrow -

Signed F.A.Chua

Wednesday, 12th April, 1978

P/heard: Suit 503/76

Hearing resumed.

D.W.2 - Tham Yeng Fai - o.h.f.o. s (in English):

Xd. (Contd.)

20 I now produce the original stemming book (Ex. P 9). B 78 - 80 made from Ex. P9. The pencil entries I talked about are made in this book P9. Those pencil entries were eventually erased and inked in as the events occur.

(S: A19 - translation of a telex sent by Mr.Eustathiou to Phocean (reads) "I believe.....sandblasting.....four/five days").

30 We never said such thing. The yard was not particularly keen to do sandblasting on the Master Stelios. Sandblasting especially hull blasting creates a nuisance factor. It chokes up the dry dock pumps, and dust is everywhere, causing heavy maintenance of shipyard equipment like cranes and other things which are in the vicinity. Definitely no question of the yard making more money for sandblasting. At that time we did not do sandblasting ourselves - October 1973. It would be done by a contractor. Generally we would only carry out sandblasting if the shipowner or his representative specifically requested for this. There could be no question of the yard pushing sandblasting to an unwilling owner.

40 (S: D7 - Daily trunk call record).

In the Supreme
Court

Defendant's
Evidence

No.15
T.Y. Fai
Examination
11th to 13th
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(continued)

Ex. D8 is the file containing the daily trunk call statement for the period October 1973 to December 1975. This file is a complete record of all trunk calls going out from the shipyard. All the ship's telephones are within the shipyard network and all trunk calls from the ships have to be made through the shipyard telephone operator between the hours of 7 a.m. and 10.20 p.m. daily, including Sundays. Between 10.20 p.m. and 7 a.m. no trunk calls could be made from the ships outwards.

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(S: The page for October - Ex. D7).

I made a call to London agents on the evening of the 16th October, 1973; that call is recorded in D7 - third line, with London telephone No. 01-2833811/2, that was my call to Mr. Wilmot. The 2nd item was also a call to the same number in London but it was cancelled because there was no line at that time. The first item to London 01-2839241 was also in respect of the Master Stelios. That number is the Phocean's London number. I made the call. I wanted to speak to Mr. Nicholas Eustathiou in respect of instructions for work on the vessel. I got through but he was not in. I asked for anyone in the technical department who could assist. they said there was nobody there and that ended that telephone call.

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Cross-
examination

CROSS-EXAMINED

XXD. by Mr.Grimberg:

(G: D7).

Yes dates are given but the times of the calls not given in D7. It is not possible to put an international call from the yard at 1 a.m. It would be possible for me to make an international call 24 hours a day from the yard but it was not possible for an outsider, because I have a code number which is only known to myself and several other people in the yard above me, also the call will have to be made either at the switchboard or a pre-arranged extension. This code number is the number I gave the telecoms operator. The yard telephone operator was not in October on duty 24 hours; the switchboard was not manned 24 hours a day.

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Q: What would happen if someone on a ship booked a call before 10.20 p.m. and the

call was connected after 10.20 p.m.?

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Court

A: After 10.20 p.m. all incoming calls are connected to specific lines. As far as my memory goes at that time these calls would be directed to the surveyor's office or night shift office. The night shift manager or the messenger would answer the call.

Defendant's
Evidence

No.15

T.Y. Fai
Cross-
Examination

11th to 13th
April 1978

(continued)

10

Q: Mr. Eustathiou's evidence was that he booked a call from the ship telephone. Is it not a fact that if he booked the call before 10.20 p.m. from the ship the operator would have channelled that call back to the ship if it were to have come after 10.20 p.m.?

A: That is not possible for the operator to do. This would require a T.A.S. technician to accomplish.

20

Q: There is no way for the operator before he left the switchboard to leave a line open for the ship, that is what you are saying?

A: Yes.

(G: Look at D7, there were 3 calls from Mr. Eustathiou to Athens and London on 18th October).

There are more than 3 calls.

(G: 3 calls before the Kalimantan Haji call).

Yes.

30

Q: From D8 can you say at what time those 3 calls were made?

A: These calls would have been made between 7 a.m. and 10.20 p.m. Not possible to find from D 8 the precise times these 3 calls were made.

(G: The general procedure in your office).

40

When I received an inquiry for a stem by telex or correspondence that goes to a particular file. That file would be for the vessel in question. The file will not contain the stemming arrangement, it would be in the stemming book.

In the Supreme Court

Defendant's Evidence

No.15
T.Y. Fai
Cross-Examination

11th to 13th
April 1978

(continued)

Q: All correspondence, cables, telex passing between the yard and owners of the Trojan in respect of October 1973 stemming where would they go?

A: The correspondence, cables and telexes which the General Manager directs to the Marine Manager is kept in that file by the Marine Manager.

That is so some correspondence does not reach the Marine Manager. The correspondence which does not reach the Marine Manager is retained by various people depending on what it deals with. 10

At this moment the marine manager's file relating to the Trojan drydocking in October 1973, the cover is still with me but its contents have been moved around a little bit. Yes their contents still exist. I cannot guarantee that I will be able to get all the contents but I shall try to gather what I can. 20

(G: Bundle B, look at B3, D2).

Yes D2 is the initial repair list prepared by the yard. Yes it was prepared before the vessel entered the dock. Yes it showed the position of the vessel at Keppel Harbour. Mr. Chen would be instrumental in producing D2. It is very possible that he had prepared it from B3. Yes Mr. Chen would have had B3 by then. It is very very likely that Mr. Chen used B3 as the basis in preparing D2. I would have given Mr. Chen B3. He would be concerned with other documents also, as I would have handed him the file containing the documents for the vessel which were in my possession. It would on the 16th have contained the telexes and any other correspondence on the matter. Yes I said not necessarily all telexes and correspondence reach my file. I would imagine that when I handed the file to Mr. Chen on the 10th it would contain the telexes relating to the stemming of the dry dock, otherwise I would not have recorded the stemming in the stemming book. At that time Mr. Chen was ship's repair manager. He was fully in charge of that particular vessel. He was not exclusively concerned with repairs and work to be done on the vessel, he was also responsible or concerned with the organisation and co-ordination of all repair personnel and also to liaise with the superintendent engineer or the owners' representative in respect of work. 30
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Q: Your evidence is that Mr. Chen's total responsibility consisted of dealing with repairs and work, deals with the organisation and co-ordination of all the repair personnel and also to liaise with the superintendent engineer or the owners' representative in respect of repairs and works.

In the Supreme Court

Defendant's Evidence

No.15

T.Y.Fai
Cross-Examination

A: Yes.

11th to 13th
April 1978

10

(G: The drydocking schedule - Ex. D9 - the erasure just above the entry of the Master Stelios on 16th October). (continued)

I cannot remember how the erasure arose. It would not be so that another vessel was stemmed for the 15th and there was a late cancellation.

20

Yes I was present at most of the hearing of this case. (G: p.7 N/E - master's evidence "My vessel arrived....contacted by ship's agentsdock would not be available before the 18th He told me to get ship ready....the 16th).

I do not recall there was a change in plan and accepting the Master Stelios.

Q: I am seeking to limit this evidence with the erasure on Ex. D9 against the 15th. Does the erasure indicate there was some change in the stemming schedule for the 15th?

30

A: I have explained before.... As far as I can remember the alteration that can be seen on the 15th would have no relation with what has been pointed out to me.

Q: Tell me then what that erasure could have resulted from?

A: That erasure would have arisen during the planning which happens daily of the stemming schedule of the drydock schedule.

Not necessarily so that erasures occur when I have a tight stemming schedule.

40

Yes the vessel immediately before the Master Stelios was the Esso Adventure. At this point of time I cannot remember for how long that vessel was stemmed but from the records it would appear to be 3 days in drydock.

In the Supreme
Court

Defendant's
Evidence

No.15
T.Y.Fai
Cross-
Examination
11th to 13th
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(continued)

Q: Was it ever intended by the yard to drydock a vessel between the Esso Adventure and the Master Stelios?

A: From my own reasoning I would never have done such a thing.

Q: Can you tell us why?

A: The reason would be that the vessel would be less than one day between the undocking of the Esso Adventure and the drydocking of the Master Stelios.

10

Q: That of course assumes that you were prepared to dock the Master Stelios on the 16th, does it not?

A: That is correct.

(G: Look at B2 - "Dock space around 16/17").

Yes I was leaving the stemming of the Master Stelios flexible, at the time of the sending of this telex.

I agree the Master Stelios would have no cause for complaint if she had been docked on the 17th or 18th, yes if looking at B2.

20

Q: Therefore there would have been 2 or 3 days available on that basis between the Esso Adventure undocking and the Master Stelios being docked.

A: That is incorrect.

Q: The Esso Adventure undocked when?

A: Sometime during the 15th October.

Q: If the Master Stelios had been docked on the 18th there would have been 2 clear days, 30 forgetting partial days, for another vessel to be docked before the Master Stelios, is that not right?

A: That is so.

Q: I put it to you that it is more than likely that there was an alteration in the stemming schedule for Queens Dock which enabled you to accept the Master Stelios on the 16th October instead of 18th October as the master was originally told when he arrived.

40

A: That is not so.

In the Supreme
Court

Q: Is it not true that the main objective of the yard apart from giving a good service is to have the largest possible turnover of ships through its docks?

Defendant's
Evidence

No.15
T.Y.Fai

A: I am afraid you have been very lacking in your description of our shipyard's philosophy.

Cross-
Examination

11th to 13th
April 1978

(continued)

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Q: Would I be right in saying that one of the yard's objectives was to have the greatest possible turnover of vessels through its docks?

A: Can I guddy it a little bit? One of our objectives would be to optimise the utilisation of our docks.

Q: With the view to taking as many ships as possible.

20

A: This may not be so, as if one vessel in dry dock for a relatively long period has enough work to justify its staying in the drydock.

Yes I know Mr. Bell (P.W.7) I have seen him occasionally at Keppel Shipyard.

Q: He instructs me you have a large signboard at the yard proclaiming the number of vessels that had docked at Keppel.

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A: There is a board which is a record of the number of vessels drydocked. It does not proclaim the number of vessels. As we also have a board showing the number of accidents at the shipyard.

Q: One as a matter of pride and the other as a matter of regret.

A: Not a matter of pride, it is a record.

40

We do not have these figures in our records unless they appear in an insignificant position. Yes in our yard's record we do have the figures of accidents and vessels docked. There was a need to put the boards for our employees to look at. If our surveyors also look at them we cannot stop them. Yes the board records the number of ships docked was for the employees to look at. I do not believe that in itself it would spur the employees to greater efforts.

In the Supreme Court

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Cross-Examination

11th to 13th
April 1978

(continued)

It is not a matter of juggling the case by case and then to co-ordinate all the vessels which schedule, it is a matter of weighing the vessels available which number over 20 at anyone time into a sensible and coherent programme.

Q: Is profit a motive as far as Keppel Shipyard is concerned?

A: Profit is one of our aims.

Q: And is keeping your docks as fully occupied as possible relevant to your profit?

10

A: This would be a relevance to our profit.

(G: Watson's evidence - there are occasions when a vessel's stemming is overrun by unforeseen repairs having to be carried out).

I remember him saying that.

Q: He said the repairs to Master Stelios could have been overrun by up to 1 day if the rudder repairs and the drawing of the shaft had commenced on the 16th October. Do you agree with that estimate?

20

A: Yes I agree with that estimate.

Q: Mr. Bell has estimated it could have overrun up to 2 days, what do you say?

A: In my experience as marine manager, that may be an over allowance.

Q: If there had been an overrun of 2 days you would have been in a fix with the Kim Hock, would you not?

A: A marine Manager is never in a fix, as it is his duty to use all his experience and knowledge to re-schedule.

30

I have been marine manager for about 10 months in October 1973. Yes at that point in time Mr. Chua was the general manager. He was not in our shipyard for some period and he was not marine manager at Keppel's. Before coming to Keppel he was at Singapore Slipways, a subsidiary of Keppel's.

(G: B15 - Chua's telex to your agents in London - first sentence "Sorry....

40

be in a real mess.....dock").

In the Supreme
Court

Yes I said a marine manager does not get into a fix. A "fix" means you are in a position where you cannot move. A "real mess" would be that you are in a bit of an untidy situation. Yes an untidy situation which I am able to resolve.

Defendant's
Evidence

No.15

T.Y. Fai
Cross-
Examination

Q: Why did you not keep the Master Stelios?

11th to 13th
April 1978

(continued)

10

A: I did offer to re-programme the vessel for redocking but as my offer was rejected I did not look into it further.

Q: The Master Stelios was under no obligation to being undocked and re-docked?

A: I would say she was obliged to undock in due time.

Of course she was under no obligation to accept my offer to undock and redock at some unspecified time in the future.

20

To Court: When I made the offer I did not stipulate the time when she would be redocked.

- Adjourned to 2.30 -

Signed F.A.Chua

Hearing resumed.

D.W.2 - Tham Yeng Fai - o.h.f.o. s (in English):

XXd. (Contd.)

30

I would think under the circumstances it would have been wise decision to accept my offer. Dock hire would be incurred in any case; pilotage charges would be additional but insignificant; the additional that would be incurred would be the difference between the dock hire on the first day and the dock hire for the subsequent day. Yes tugs would be needed for docking and undocking, yes this would be additional charges; we do not normally charge for wharfage, not at that time.

40

It is quite normal under the circumstances when a vessel requires additional time to dry-dock for us to offer to redock.

In the Supreme
Court

Defendant's
Evidence

No.15
T.Y. Fai
Cross-
Examination
11th to 13th
April 1978
(continued)

Q: My question is your offer to undock and redock the Master Stelios was quite a significant event in the whole episode. Do you agree?

A: As marine manager at that time it was quite a normal event.

(G: Look at B 18 - letter from Watson to Nomicos - Keppel side of the story).

Yes - setting out the events. Mr. Watson was at some stage directly involved though at some stage he was not. The basic information with regard to the undocking of the vessel came from me. I do not think it is strange that the letter did not relate my offer to redock the Master Stelios; because my offer was rejected immediately at that time I could not see its importance.

10

Q: If what you are saying is true that it was Mr. Eustathiou's fault that the work was not done - drawing of the shaft - was not this a vital factor for you to relate to Mr. Watson?

20

A: It was the owners' fault rather than for everything to be directed to Mr. Eustathiou. Because the master was given authority on the 16th evening to decide on repairs on authority which he never exercised.

Q: You have made the point in your examination - in -chief that you made a very reasonable offer to Mr. Eustathiou to redock his vessel and he rejected it out of hand without giving it a thought. If he had accepted that offer we would not be here, would we?

30

A: Yes this particular dispute would be solved.

Q: My question to you is if that being so why did you not tell Mr. Watson so that he could put it in his letter to Nomicos?

A: Because to make such an offer is nothing unusual and in the same way that it was dismissed by Mr. Eustathiou I did also did not think of it anymore.

40

Q: But you thought of it again 4 years later?

A: Yes, because I was required to think of it.

Q: I put it to you this offer was never made. In the Supreme Court
A: The offer was made. Defendant's Evidence
Q: When a vessel enters dry dock is it usual for the class surveyor to be in close contact with the Dock Manager, in this case Mr. Chen? No.15
A: I would say the class surveyor should be in close contact with the owners' superintendent. T.Y. Fai
Cross-Examination
11th to 13th April 1978
(continued)

10 (Question put again).

A: In contact but not in close contact.

Q: And would that contact commence before the vessel was docked?

A: It would not.

20 It would not commence as soon as the vessel was docked. It would commence as soon as the dock is dry. It would be most unusual for class surveyor to discuss with the dock manager the class requirements. It would, however, be usual for him to discuss it with the superintendent engineer of the vessel.

Q: This was an unusual case because the superintendent had not arrived.

A: It was unusual in that sense but we have had other vessels from other companies dry docking with authority given to the master.

Q: Did you hear the class surveyor, Mr. Harper, say in Court that the tailshaft survey was overdue?

30 A: I did hear in Court.

Before the vessel was docked I did not hear that the tailshaft survey was overdue.

(G: Look at B 1 "For ordinary drydocking and screwshaft survey").

40 When I read B1 it did not convey to me that the screwshaft survey was due or overdue; because from the previous drydocking tailshaft reading it may come to the knowledge of the owners that it is necessary to carry out a tailshaft survey even before it is due or overdue.

In the Supreme
Court

Defendant's
Evidence

No.15

T.Y. Fai

Cross-
Examination

11th to 13th
April 1978

(continued)

Q: Was it apparent to you from B1 that at that stage the owners required the shaft to be drawn.

A: It was apparent to me that at that stage the owners required drydock space of sufficient period to enable them to draw the tailshaft if required.

Q: You mean to say that that telex did not convey to you that the shaft would inevitably be drawn?

10

A: We are ship repairers and we are told to carry out work by the owners. It is not our business to interpret classification requirements; these requirements are the business of the shipowner. Excepting where the requirements govern standard of quality of workmanship.

Q: Try and answer this question simply. Does the shaft have to be drawn for a "screwshaft survey"?

20

A: For a screwshaft survey the shaft shall have to be withdrawn.

(G: D1 again).

Yes it does say that the drydock was required for "a screwshaft survey". But it does not say to draw the tailshaft. Let me give an example. If I receive a similar telex asking for dry dock for bottom damage survey, this does not construe that we have an order to do any work.

30

Q: Let me put it to you in another way. Mr. Watson told us when you received B1 it was that that determined that the dock should be stemmed for 3 days, correct?

A: Yes that is correct.

Q: He said it would be cutting it fine but the shaft could be drawn and any necessary re-wooding done and the shaft replaced within that time. Does that not mean when you got B1 you anticipated having to draw the shaft?

40

A: That is exactly why we approached the owners to ask them for their instruction to proceed, for work.

Q: Is the answer to my question "yes".

In the Supreme
Court

A: As we have anticipated this we have asked the owner for instructions.

Defendant's
Evidence

Q: I come back to the first question I put. When you received B1 you anticipated the shaft had to be drawn.

No.15
T.Y. Fai
Cross-
Examination

A: I anticipated that the shaft may be drawn. Yes. I stemmed the dock for 3 days in any case.

11th to 13th
April 1978

(continued)

10

Q: B3 then came a few days later and Mr. Watson said that that was a partial retraction or words to that effect and threw the matter into some doubt. Do you agree?

A: Regarding partial retraction I have no comment, but as to throwing the matter into some doubt I do not fully agree with Mr. Watson. My views were that B 3 was a request for quotation and also a worklist. There should really be no conflict with B1 apart from B4 item No.8.

20

When I handed the file to Mr. Chen I don't remember what I told him but I can tell what my normal procedure was....I would have given Mr. Chen the complete file, ask him to study it and then to report back for my programming purposes.

There were at that time 6 dry docks at Keppel. On 16th October 1973 they were all occupied. After the Master Stelios docked all 6 docks were occupied. As far as I can remember Mr. Chen was managing the repairs to the Master Stelios at that time. Although there were 6 ships in dry dock overall there would be 15 to 20 ships undergoing repairs in the dockyard at that time. The maximum each ship repair manager would have charge of would be 2 ships at a time.

30

Q: On receipt of B3 were you certain that the shaft would not have to be drawn?

A: It cannot be certain until the classification has informed the owners' representative whether it is required or not.

40

Q: That would not arise if the survey was already overdue, do you agree?

A: If the survey is already overdue then the owner has no option, if he requires to keep his vessel in class and provided the class

In the Supreme Court

Defendant's Evidence

No.15
T.Y. Fai

Cross-Examination

11th to 13th
April 1978

(continued)

would not give him an extension.

When I handed Mr. Chen the file, it was not an unusual drydocking, a very routine one indeed and there was no need for me to draw his attention to any particular document.

(G: B3).

Yes I said I regarded items 1 to 21 as a worklist as well as a request for quotations. As I see B3, B4 and B5, it is in my mind it is also a worklist but these things do not affect the drydocking as instructions from the ship-owners' representative should clarify everything. 10

Q: I am asking you as you look at it did it occur to you that B3 - B5 might be a request for quotations only and have nothing to do with a worklist.

A: Looking at B3 - B5 from items 1 to 21 it certainly looks like a worklist.

Q: Did it occur to you it would be a request for quotations only and not a worklist. 20

A: No. There was no reason for me to think that.

(G: Look at line 3 in B3 "Meantime please quote following items.")

Q: Did you give sufficient weight or any weight to these words?

A: This is a very common request, a request for quotation or a worklist is a very common thing.

Q: Is your answer therefore is, you give no weight? 30

A: Personally I was not in charge of quotations; it was handed to the commercial manager Mr. Khor to deal with.

Yes normally the Commercial Manager would telex the answers to the owner. That is so, this did not happen in this case. It did not happen not because the yard regarded B3 as a worklist. I do not know the exact reason why there was no reply to the request for quotations, but there could have been many reasons. 40

I do not share Mr. Watson's suspicion of

the Liberian and Panamanian one-ship companies; in the sense that I do not rely on suspicion to judge shipowners. I have suspicion of some one-ship companies registered in those areas.

In the Supreme Court

Defendant's Evidence

I do not know if a Plaintiff is a one-ship company registered in Liberia. Mr. Watson was making a general comment; he was trying to draw an illustration of why a shipyard must secure written work orders.

No.15

T.Y. Fai

Cross-Examination

11th to 13th

April 1978

10

(G: You said if you had contacted owners of Kim Hock there was a chance to postpone that vessel's drydocking). (continued)

I did not try to contact them on the evening of the 18th because I would have required at least another 3 days and I thought that the owners of Kim Hock may not agree.

(G: I will point out your evidence: "If I had had instructions to draw the shaft on the 16th itself.....of 4 days").

20

Yes I remember saying that. The maximum under normal circumstances would be $4\frac{1}{2}$ days unless there are problems.

Yes when I stemmed the dock for the Kim Hock on the 11th for the 19th I interpreted that the tailshaft of Master Stelios would be drawn. Correct I did not know until the Stelios docked that rudder repairs would be necessary.

30

Q: Would you concede as Mr. Watson did that 3 days for the drawing of the shaft and the rudder repairs together with whatever work might have been necessary to the shaft would not have been enough?

A: In ship repairing we cannot make unforeseen allowances; these when they turn up are taken in our stride.

Q: You still have not answered my question.

(Question put again).

A: 3 days would not have been enough for the rudder and the tailshaft.

40

Q: And the overrun you have said would be a minimum of 1 day and maximum of $1\frac{1}{2}$ days - correct?

A: Yes.

In the Supreme Court

Defendant's Evidence

No.15
T.Y. Fai
Cross-Examination
11th to 13th
April 1978
(continued)

Yes a minimum of 4 days and maximum of 4½ days which I would have been able to accommodate.

Q: Mr. Bell (P.W.7) suggested 5 days for the 2 jobs. Would you say that is very far off the mark?

A: From a ship repairer's view it is off the mark.

Q: Very far off?

A: By ½ a day.

10

Q: That ½ day might have made all the difference in terms of tide, might it not, from the point of view of docking the next vessel?

A: The maximum difference would be 22 hours.

Q: Meaning Kim Hock could have been delayed up to 3 days, 2½ days.

A: 2 days.

Q: 2 days on your computation and 2½ days on Mr. Bell's?

20

A: 22 hours is the maximum, there are some days when you can dock and undock the whole day.

Q: Do you agree with Mr. Watson that Guan Guan, the owners of Kim Hock in 1973, were regular customers of Keppel?

A: Yes they were regular customers.

Yes by Singapore standard they had a large fleet of vessels. At this point of time they are not so regular customers as their credit rating is poor and the shipyard is afraid to take too many of their vessels. In 1973 they were regular customers, they were good value but not the best value. They did their afloat repairs themselves.

30

The owners of the Trojan I do not know. You may still not be able to tell who the owners are from the file.

- Adjourned to 10.30 tomorrow -

Signed F.A.Chua

40

Thursday, 13th April, 1978

In the Supreme Court

P/heard Suit 503/75: (Contd.)

Defendant's Evidence

Hearing resumed.

No.15

D.W.2 - Tham Yeng Fai - o.h.f.o. s (in English)

T.Y. Fai

XXd. by Mr. Grimberg (Contd.)

Cross-Examination

(Witness produces 3 files relating to the Trojan - Ex. D 10 first file).

11th to 13th April 1978

(continued)

(G: In the file D 10 copies of 3 telex messages).

10

This file would contain all the telex messages relating to the stemming of the dry dock for the Trojan. I think there may be a few telexes relating to the Trojan of the owners of a nature not connected with the stemming of the drydock; I have those telexes and messages. I don't mind showing them (S: May I have a look at them?)

20

(G: The first telex in D 10 is dated the 15th Oct. 1973 and it confirms the stemming of the dock for the Trojan, does it not?)

Yes it does.

Q: Prior to receipt of that telex had Keppel been advised of the nature and extent of the work to be carried out?

A: Only very generally, as the vessel had around the 8th October or thereabouts suffered damage caused by a hurricane.

Q: How had you been advised, by telex?

30

A: I believe this was by telephone between Mr.Chua and Mr. Olsen of the owners.

40

Yes I said the dock was stemmed firmed on 15th October, it would appear so from the telex. The dock was stemmed for around the 22nd October without any specific date being mentioned. The nature of the dry docking was that it was damaged by the hurricane and apart from the initial dry docking required for inspection of the damage no other firm booking dates were made. Our agents in New York with which we were in communication informed the owners in New York of the date of stemming. Mr. Chua informed

In the Supreme Court

Defendant's Evidence

No.15
T.Y. Fai
Cross-Examination
11th to 13th April 1978
(continued)

Mr. Olsen of the date by telephone; this is also mentioned in the telex in D 10, telex of 15th October.

(G: The 2nd telex in D 10 is dated 16th October, the date on which the Master Stelios was docked and it is from Mr. Chua to Mr. Christensen).

Yes Mr. Christensen was our New York agent.

(G: This telex says reads....."Small gap in programme").

10

Q: What small gap was referred to in terms of dates?

A: I would refer you to B 79, look at the place where Trojan is indicated and also the 3 days following that when the dock was empty, this then is the small gap empty and this was a small gap.

Before the Trojan was confirmed the dock would have been empty for 9 days. We would refer to the 9 days as a small gap when we are speaking to our agents. We could not anticipate that the Trojan would be a big job. In the event we presented a total bill of S\$400,000 to the owners of the Trojan. The total bill we presented to the owners of the Stelios was about S\$78,000; I do not have the figures of the bill presented to owners of Kim Hock but I would anticipate it was a small bill; yes probably smaller than the Stelios.

20

I have ascertained who were the owners of the Trojan. They were Burco Corporation. We had no dealings with them before, not to my knowledge. But the managers of the shipping company who were the Marine Transport Lines, also of U.S.A., are familiar to us.

30

(G: The 3rd and last telex in D 10, from Mr. Christensen to Mr. Chua).

Yes dated 17th October; yes by which time Stelios had already been docked and Kim Hock had been stemmed for 2 days later.

40

Mr. Christensen had been our agent for sometime, at that time. Yes we do place some reliance on Mr. Christensen's words.

(G: The telex in reference to the owners of Trojan he says "We do a lot of

business.....they are good people").

In the Supreme
Court

What is conveyed to us was that these owners are credit worthy and probably worthwhile to do business with, but we knew that the chances of much business would be slim because most of their vessels fly the U.S. flag. That is so the owners were Liberian or Panamanian one-ship company.

Defendant's
Evidence

No.15
T.Y.Fai
Cross-
Examination

11th to 13th
April 1978

(continued)

10

Q: I suggest to you that you had more than an inkling that the Trojan job would be a big one compared with the Kim Hock and Stelios?

A: That is not so because vessels flying the US flag and doing routine maintenance and dry docking outside the U.S. are subject to a premium of a 100%, on their repairs bills and as such owners will try and keep work to the vary minimum. Only emergency and damage repairs are free from this premium.

20

Q: I am looking at the worklist relating to the Trojan in another file Ex. D 11 and it is apparent that much more than an emergency work was carried out, do you agree?

30

A: This file does not relay anything to that effect. I would refer you to another file containing the original work orders given to us by the superintendent (file Ex. D 12). The schedule repairs specification which is in white paper is much less than the unscheduled repairs which were written by the superintendent in his own handwriting after the survey in our shipyard. As a matter of fact the attending surveyor from Salvage Association was Mr. Walter McKenzie who is sitting in Court.

Q: Were the repairs carried out to the Trojan more than just emergency repairs?

40

A: They were more, but the bulk of it were emergency repairs, damage repairs and non-routine repairs.

Q: When a vessel is docked for emergency repairs is it not the practice to take the opportunity to carry out other necessary drydocking repairs?

A: In the case of a U.S. flag vessel as the Trojan was, the owners shall have to weigh this carefully bearing in mind the 100%

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Court

Defendant's
Evidence

No.15
T.Y. Fai
Cross-
Examination
11th to 13th
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(continued)

premium on ordinary work.

- Q: The prospect of such work being carried out is always there is it not?
- A: The prospect of such work is always there but very unpredictable.
- Q: I am looking again at D 10 which contains only 3 telex messages and I find it very odd that in none of them is the date of the stemming mentioned. What do you say to that? 10
- A: It is not odd. The Trojan was proceeding from Subic Bay in the Philippines when she ran into a typhoon, typhoon opal, when she suffered damage amongst other things to her hull. She was also standing by to assist a smaller vessel in greater distress than herself and no doubt this was probably the reason why no firm date was mentioned.
- Q: Surely then during the voyage to Singapore some indication would have been given in some telex message of at least an approximate date for which the dock had been stemmed? 20
- A: There was no telex giving a definite or approximate date for which the dock was stemmed. The superintendent was arriving on the 16th I think and we knew we would be able to sort this out with him and work out the programme upon his arrival, which was exactly what we did. 30
- Q: Are you saying when in the 2nd telex there is a reference "a small gap in programme", this gap was never identified in the telex?
- A: No, it was not identified in any telex.
- Q: I suggest to you that your evidence to the effect that you did not expect with any conviction to execute repairs other than emergency repairs when the Trojan was docked is not borne out by the 2nd telex in D 10 in which Mr. Chua states that "Vessel stemmed with us for dry-docking and annual repair". That suggests to me that the repairs and work anticipated went beyond emergency repairs? 40

A: I have never said at any stage that I did not expect the vessel to have any other repairs apart from emergency repairs

(G: I pass on to D 12, amongst other things, it contains owners' specification for dry docking).

10 The specification in white has been presumably printed by us upon receipt of the superintendent's copy which he carried with him and was given to us on his arrival. The first 7 pages consist of general notes and dockyard services and facilities; the remaining pages constitutes work, most of which is of a standard nature. It can also be seen that the superintendent has cancelled a number of items in his attempt to minimise the routine work.

(G: There was some controversy about painting - items 4 and 5 and items 20 and 21 in B3 - B5 were contradictory).

20 Q: Does it not appear from items 2 -2 and 2 - 3 in the owners' specification in D 12 that the Trojan owners' painting requirements or standard painting requirements only called for sweep washing down, touching up and applying 2 coats of prima and 2 coats of boot topping?

30 A: Each owner has his own standard requirements, and if this appears in their specification I would not doubt it. As in the Stelios' case items 4 and 5 of B3 and items 20 and 21 of B5 also are their standard requirements, I would presume.

Q: Are you saying that no part of items 4 and 5 and items 20 and 21 of B3 - B5 were contradictory?

A: I am saying that they are not contradictory. I have a bill here of work which had actually been carried out in a similar manner.

40 To Court: It was a bill of vessel Emma Bakhe done in April 1977 which shows these items can be carried out concurrently. Also on the same bill it records that the tailshaft, rudder and re-wooding were carried out in 3 days.

Q: What was the nature of the work carried out on the rudder?

In the Supreme Court

Defendant's Evidence

No.15
T.Y. Fai
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(continued)

In the Supreme
Court

Defendant's
Evidence

No.15
T.Y.Fai
Cross-
Examination
11th to 13th
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(continued)

A: It is set out in full in the bill (Ex. D 13). The ship is even slightly bigger than the Stelios.

Q: Was overtime worked on the Emma Bakhe?

A: The shipyard has a 3-shift system which is applied to every vessel in dry dock. We therefore normally work 3 shifts when a vessel is in dry dock whether the owners request for this or not. This is because dock space is precious to us. There is overtime in Keppel.

10

Q: Was overtime worked on the Emma Bakhe?

A: I am sure there were also some overtime work.

I do not recall having received a request not to work overtime from the owners of the Stelios. I would clarify, the decision to work overtime or not is decided by the shipyard for their overall programming purposes and such overtime is not directly reflected in our bills to the owners. In other words if we do it for our purpose then we bear the overtime premium ourselves.

20

(G: The events when the Stelios was docked).

The first time when I met Mr. Eustathiou was when Mr. Chan, the ship repairs manager, brought him to see me. We communicated well.

Mr. Eustathiou appeared a little upset when I told him that we were unable to retain Stelios in dock beyond 19th October. But judging by the way he spoke to his master and ship engineer I could not really tell. Yes I said there was heated exchange between them in Greek. I do not understand Greek.

30

Yes I met Mr. Eustathiou for the second time after lunch on the 20th October.

Q: Your evidence of this communication was as follows: "We began to talk about the tailshaft incident.....mother was not pleased with him.....". That must have suggested to you that he blamed himself for what had happened?

40

A: I did not make any conclusion at that time. I treated it as a conversation.

| | | |
|--------|--|--|
| Q: | Did that conversation assume some significance to you when these proceedings were commenced? | In the Supreme Court |
| A: | The conversation itself was just a conversation. I do not know whether this conversation is important or unimportant to these proceedings. | Defendant's Evidence No.15 T.Y. Fai Cross-Examination |
| 10 Q: | When you heard Mr. Eustathiou give his evidence in this Court and put the blame for failing to draw the shaft fairly and squarely on Keppel, did you then appreciate the significance of Mr. Eustathiou's remarks to you at your second meeting? | 11th to 13th April 1978 (continued) |
| A: | Up till now I am not sure whether this remark is important or unimportant to these proceedings. | |
| Q: | Did you tell Keppel's solicitors of this remarks? | |
| A: | I did and everything else. | |
| 20 Q: | Before Mr. Eustathiou gave his evidence. | |
| A: | Yes. | |
| Q: | I put it to you that it is very strange that Counsel for Defendants did not put to Mr. Eustathiou the fact that you alleged that he made this damaging remark. | |
| A: | It is difficult for me to answer. | |
| 30 (S: | This witness did tell me when I began having general discussions with Keppel before the commencing of the hearing and although I had wanted to put this question to Mr. Eustathiou in cross-examination, it really slipped my mind). | |
| (G: | Sandblasting - A 19, English translation of a message which Mr. Eustathiou sent to his mother. He sent it on the 18th October in the afternoon which was the very time you told him you could not keep his vessel in dock). | |
| 40 | Looking at the date 18th October, that is the date but it was sent at 1500 hrs. | |
| | (S: 1500 hrs was Greek time, 8 p.m. Singapore time. G: I accept that). | |

In the Supreme Court

Defendant's Evidence

No15
T.Y.Fai
Cross-Examination

11th to 13th
April 1978

(continued)

Q: In that message he said "I believe thatsandblasting.....five days". Are you saying that that was at no time put into Mr. Eustathiou's head by one or more of Keppel's officers?

A: I have never put such an idea into Mr. Eustathiou's mind and I think that no Keppel officer in his right mind would do it also.

Q: In your evidence in chief yesterday you said "There is no question of yard receiving more money as a result of sandblasting, definitely not". Are you really suggesting that if sandblasting had been undertaken it would have been a totally profitless venture from Keppel's point of view?

10

A: At that time yes, as these jobs were carried out by contractors.

On the total assessment at the end of the year we find that we had not made any real profit. The assessment of profit for a shipyard is a very complicated affair and an accurate assessment may be made on an annual basis. Yes we charge the owner more than what the contractor charges us, but it would be insufficient to cover our expenses and we would rather not do the job.

20

We are not doing the job now ourselves; we use Camrex Contractors mostly, joint venture of Keppel and Camrex U.K. Camrex contractors specialise in tank internals of a product, carriers and chemical carriers.

30

Q: Yesterday you said "Now we do it ourselves".

A: By that I meant Camrex Contractors in whom we have a controlling interest and which is now part of the Keppel Group of Companies.

Hull blasting as in the case of Stelios is still unattractive, although tank coating and chemical carriers could be attractive.

40

Q: Go to Bundle B. After the receipt of B3 did the earlier telexes, B1 and B2, assume less significance?

A: It is not possible for me to say whether one telex should receive more or less significance than another telex unless

there is a specific question put to me.

In the Supreme
Court

Q: When you received B1 and anticipated the drawing of the shaft were any arrangements made for a heavy gang to stand by before the vessel docked?

Defendant's
Evidence

No.15
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Cross-
Examination

11th to 13th
April 1978

(continued)

10

Q: Did you arrange for a heavy gang to be in readiness for the drawing of the shaft which I anticipated would be necessary when you received B1.

A: We never reserve men for jobs which have not firmly materialised. Such work to our shipyard is very routine and can be carried out without any fuss or bother and at very short notice.

20

Q: Did you at any time talk to Mr. Harper the class surveyor either before, during or after the docking of the Stelios concerning that vessel?

A: I do not remember having spoken to Mr. Harper specifically on the Master Stelios although it could have been mentioned in passing conversation sometime or other.

Q: Do you remember specifically any reference to a screwshaft survey of the Stelios in any conversation with Mr. Harper?

A: I do not remember such a reference.

30

Q: Did you ever look at the classification register either before or while the Stelios was docked to ascertain whether a screwshaft survey was due or overdue?

A: We do not normally refer to such register. It is duty of classification surveyor to refer to his records and to inform the owners and it falls on the owner to have his survey carried out in time.

40

Q: I put it to you Keppel went about its duties in regard to the docking of the Stelios as though B1, B2 and the first 2 lines of B3 did not exist.

A: That is not so. The drydocking procedure, the stemming procedure were carried out as

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Court

Defendant's
Evidence

No.15

T.Y. Fai

Cross-
Examination

11th to 13th

April 1978

(continued)

similar to other vessels.

Q: There was a major dissimilarity in this case was there not because the owners' superintendent did not arrive in time.

A: It is usual for owners' superintendent.... it was and it was not a dissimilarity, so I have to explain. It was in the sense that it is usual for a vessel to have an attending superintendent but it was not unusual in the sense that we have carried out many vessel's drydocking where the master was not in charge and without a superintendent.

10

Q: The master was put in charge in this case.

A: The authority was given by the owners to the master to be in charge.

Q: I put it to you that the master as stated in his evidence reminded the yard on more than one occasion of the need to draw the shaft, as did Mr. Eustathiou after his arrival.

20

A: That is very definitely not so.

Q: I further put it to you that the ignoring of the yard of B1, B2 and first 2 lines of B3 together with its anxiety not to disturb the stemming of Queens Dock for Kim Hock and Trojan was at the root of this whole dispute.

A: It is not correct to say that we had ignored B1, B2 and first 2 lines of B3. We were waiting for specific instruction from the master and from the superintendent on his arrival for any work that he may have required us to do. Even if he had given us the tailshaft withdrawal and re-wooding it can be seen from the bill which is submitted in the Emma Bakhe and also for 2 other bills which I have here that the tailshaft job and the rewooding could have been carried out in two days and so there was no question of Kim Hock stemming affecting the Stelios' drydocking.

30

40

Q: D2 was prepared before any specific instructions were received from the master.

A: Yes I have given the reasons for preparing D2.

Q: Prepared from B3.

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A: Yes.

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Q: Why did not D2 include a reference to drawing of the tailshaft which was clearly necessary as a consequence of B1.

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A: In my mind B1 does not indicate that a tailshaft withdrawal was clearly necessary and also B4 item 3 contradicts B1. As is usual in every case the work and the work-list shall be cleared and discussed with owners' representative upon his arrival.

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(continued)

10

Q: Using your own words did B3 - B5 indicate that any of those items were "clearly" necessary. You say B1 did not indicate "clearly" that the tailshaft was to be withdrawn.

A: It is for owner or his representative to indicate to shipyard what is necessary.

- Adjourned to 2.30 p.m. -

20

Signed F.A.Chua

Hearing resumed.

D.W.2. - o.h.f.o. s (in English):

XXd. (contd.)

Q: What I was trying to find out from you is were any of the items in B3 - B5 clearly necessary applying the same yard sticks?

A: If the owner wants to dry dock then it will follow that items like tug-boats, pilots and some other dockyard services shall become necessary.

30

Q: My question is were all the items in B3 - B5 clearly necessary?

A: Not all the items can be considered clearly necessary in the view of a shipowner but as a shipyard there is no way to decide what is necessary or not necessary.

G: Absolutely right.

Q: So despite the fact that all the items in B3 - B5 were not necessary they were included in D2.

40

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- A: I did not say they were not necessary.
- Q: Despite the fact that all the items in B3 - B5 were not clearly necessary all of them were included in D2, were they not?
- A: They were.
- Q: If some unnecessary items were included in D2 why was the drawing of the shaft which in your words not clearly necessary not included in D2? 10
- A: I will explain this in 2 phases. First, making it clear it is not I who prepared the worklist, but I would think the reason why Mr. Chen, the ship repair manager, did not issue an item requesting for the withdrawal of the tailshaft was because that this was not requested by the owner and was also to a certain, to a large extent, amended by item 8.
- Q: Give me an answer, is it not a fact that tailshaft clearances are taken even though the shaft is to be drawn for a survey. 20
- A: This may or may not be the case; it is entirely up to the owners.
- Q: Therefore I put it to you item 8 on B4 did not conflict with B1.
- G: I think it has a certain amending effect.

Re-examination

RE-EXAMINED

RXD. by Mr. Selvadurai

(S: Sandblasting - passing on the bill to the owners). 30

For example if we had blasted the complete boottop of the Master Stelios this would be an area of say approximately 800 sq. mile (sic) basing at changing rate of approximately \$20.00 per sq. metre this will result in a bill for \$16,000. Normally, when the contractor sends his bill we add on varying margins of overheads but on the average shall we say 20%. So that for a bill of \$16,000 we would have an overhead recovery of \$3200. This will have to go to defray the cost of cleaning the dock bottom, for cleaning the crane rails on the dock side, cleaning of the dock pumps, maintenance to dock 40

pumps, that is added maintenance and added maintenance to cranes and other shipyard facilities. And also we have to bear the financing costs as the shipowner would not pay us until some months later and also the risk that we may never be paid at all in some cases. I should think that there would be no profit on the overhead of \$3200.

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(continued)

10

(S: Stemming schedule of Stelios, of Kim Hock and Trojan).

20

The date of the dry docking of Trojan was not fixed. The actual date would be fixed after discussion with Superintendent after his arrival, that was how it was fixed. The Superintendent was Mr. Jerry Drescher. We were only given an indication of the approximate date of arrival of the vessel before Mr. Drescher's arrival. The actual date was in doubt, we did not even have the work list. Mr. Drescher arrived on the 16th October; that was the date the Master Stelios was dry docked. So on that date, the actual date of the dry docking of the Trojan was still an open question.

The stemming schedule of the yard is in flux on a day to day basis.

(S: Time involved in drawing tailshaft, work on rudder and sandblasting if necessary. You produced Ex. D 13 regarding Emma Bakhe).

30

I said that vessel was larger than the Stelios. The Master Stelios was about 8900 gross tonnes. The tailshaft of the Emma Bakhe was drawn, there was rudder work as well, rewooding of top and bottom half of the stern bush and we did 240 sq. m. of sandblasting, grit blasting, altogether it took us 3 days.

40

I said I had 2 other bills in respect of two other vessels. First the Golden Fortune, second Jati Barang. In these 2 cases we drew the tailshaft. Both ships were completed in 2 days in dry dock; no rudder work but there was rebushing of the tailshaft. (Bills Ex. D.14 and D15).

(S: The Trojan - file D 11 and D 12).

D 11 contains worklist and D 12 contains the work orders. The worklist were presented as a result of the work orders. The worklist was settled on the basis of discussion with the

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(continued)

Superintendent engineer Mr. Drescher. First we went through the printed repair orders which is the one in white, then Mr. Drescher between the 18th and 21st October gave additional orders as represented by the yellow pages here. Having received firm instructions from him we then could proceed with the work. The reference sheets are printed, we have referred to them as the worklist, based on the work orders received. When Mr. Drescher arrived he brought with him a provisional worklist which was the one in white. The items in the provisional worklist were amended by Mr. Drescher, a number of them were cancelled and some others would have been amended by his additional orders. 10

(S: B1, B2 and B3. You said B1 did not instruct or order the yard to draw the tailshaft. My learned friend asked if you did not anticipate that tailshaft may be drawn and you said you did not anticipate). 20

There is a distinct difference between being instructed to withdraw the tailshaft and our anticipating the tailshaft may be withdrawn.

Q: In this context you have given an illustration with regard to bottom damage survey, B1. Suppose in that telex the owner had said "Please advise us whether you have dry dock available for our Master Stelios for ordinary dry docking and bottom damage survey. Would this mean you had to dry dock the vessel and carry out work in respect of the bottom damage survey without receiving instructions from the owners. 30

A: No, we cannot. We can only anticipate that there may be work with regard to the bottom damage. We can only commence repairs upon receipt of firm instructions from the owner or his representative, in spite of the fact that classification requirements for the repairs may be known to us. 40

Q: In anticipating the work to be done for the bottom damage survey, how much time would you have allowed in stemming the drydock for this purpose?

A: If the owner has indicated that he is not going to carry out the repairs prior to the vessel's arrival then we would allow 1 or two days. But if the owner has indicated his intention to do the repairs then 50

we will allow an approximate number of days depending on the owner's estimated amount of repairs.

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(S: There is another file relating to the Trojan, which my learned friend has seen but has not made use of - Ex. D 16).

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(continued)

10

Q: After the work on the Trojan was completed there was, as was the usual practice, the question of the bill to be rendered by the yard to the owners and that bill was also subject to negotiation.....

A: The bill was not ready at the date of Mr. Drescher's departure. But the details would be in the file D. 16.

20

A cable was received from Maritime Transport Lines the Managers of the Trojan on 31st October. It says "Attention Mr. Watson.....", it asked us to have our bills ready before Mr. Drescher departed. We replied we could not produce the invoices on such short notice and Mr. Drescher agreed that it would be alright if we sent in the invoice within a month. That reply is also in the file, dated 31st October.

Signed F.A.Chua

No. 16

EVIDENCE OF W.C.C.McKENZIE

No.16
W.C.C.McKenzie
Examination

13th April 1978
to 28th June
1978

D.W.3 - Walter Campbell Chapman McKenzie -
s.s. (in English)

30

Xd. by Mr. Selvadurai:

Living at 26 Oriole Crescent, Singapore 11, marine engineer employed in Singapore by the Salvage Association, London. My designation is Principal Surveyor, covering the South East Asia Region, which comprises Singapore East and West Malaysia, the whole of Indonesia, Burma, South Vietnam, part of Australia, we also cover parts of India and Ceylon.

40

From 1944 to 1949 I completed my apprenticeship in heavy marine engineering with Messrs. Hall, Russel Co.Ltd. Shipbuilders & Engineers. They are a long-established shipbuilding and engineering company in Aberdeen, Scotland. By

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No.16
W.C.C.McKenzie
Examination

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(continued)

long I mean approximately 100 years. During this time I obtained my national certificate - a level of technical education in night school.

From 1949 to 1958 I sailed at sea with Messrs. Shaw Saville Line Shipping Co.Ltd., in the course of which I served in various positions from Junior Engineer upwards. The top post I achieved was Sr. Second Engineer on a passenger vessel and I obtained a combined Chief Engineer's Certificate of Competency for the Ministry of Transport examination.

10

From 1959 to 1964 I was employed in Aden as an assistant and eventually as Works Manager of Messrs. Luke Thomas & Co., a firm of engineers and ship repairers, exporters and importers who were also the Lloyds Agents for Aden. During this period I supervised numerous and various repairs of all types of sea-going vessels. During the same period I was also employed as a non-exclusive surveyor to Lloyds Register of Shipping & Salvage Association, London, when I was based at Aden.

20

From 1964 to the present time I have been employed by the Salvage Association, London, in various positions such as surveyor in Antwerp for 5 years, as Sr. Surveyor in Japan for 4 years and now in Singapore as Principal Surveyor for the S-E Asian Region.

I was involved in the drydocking of the Trojan in Singapore in October 1973. I was the surveyor representing the vessel's underwriters in London for damage which the ship had sustained approximately between the 6th and 9th or 10th October, 1973, on passage from Subic Bay to the Middle East for loading; she was a tanker. She had left Subic Bay on 5th October and immediately was affected by the effects of typhoon Opal. She arrived in Singapore, I believe, on the 11th October.

30

She had sustained damage to her underwater plating from pounding which caused leakage into the forward body tank. The crew did some temporary repairs after arrival at the Eastern Anchorage which consisted of fitting several cement boxes which took about 3 days till the 14th October.

40

After 14th October the ship left Singapore to clear and gas free her cargo tanks which were empty. She returned to Singapore on 18th October.

She entered the Keppel Shipyard, I think, on the morning of the 19th and berthed alongside the repair berth, not in dry dock. She eventually went into dry dock on the 22nd October, 1973 I think. She undocked, I think, on the afternoon of the 28th October. She then laid alongside the repair berth and completed, from memory, repairs on 1st or 2nd November, 1973.

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(continued)

10 I am not aware of any problem in relation to the dry docking of the vessel, that is in relation to any delay in the docking. As far as I am aware there was no intention for the ship to come to Singapore until she sustained typhoon damage.

20 Between 6th and 10th October on her passage to Singapore she stood by a vessel called the Fusan which was in distress and was calling for assistance, somewhere in the South China Sea, between here and the Philippines.

- Adjourned to 26th June, 1978 -

Signed F.A.Chua

Tuesday, 27th June, 1978

Suit No. 503/75 (P. heard)

Counsel as before.

Hearing resumed.

D.W.3 - W.C.C. McKenzie - o.h.f.o. s (in English):

Xd. by Mr. Selvadurai (Contd.)

30 (S: p. 290 N/E - your evidence. "After 14th Oct.....November 1973).

40 I have with me my report of the drydocking. To my certain knowledge there was no intention to drydock the Trojan by the owners in Singapore at all. The request for vessel to be drydocked was made by representatives of the U.S. Coast Guard in Singapore; this instruction was made, from my records, on the 14th October. It was upon receipt of this instruction to drydock the vessel that the owners then elected to have the ship proceed to sea for tank cleaning in contemplation of bottom damage sustained during the pounding of the vessel during typhoon Opal. No one had any knowledge of any damage existed to the ship's bottom at that time other than the

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(continued)

fact that there was a leak affecting the seaworthiness integrity of the vessel. No decision could be taken of the stemming of the Trojan before 14th October 1973. This would be substantiated by the mere fact that the vessel was in the 5 days ballast passage from Subic Bay at which time if she had been stemmed for docking the tanks would have been cleaned; that would have been the normal procedure.

10

It is my experience that no foreign shipyards outside American waters or jurisdiction can expect to repair any American flag vessel on a regular basis, such repairs if carried out outside American jurisdiction or waters are always subject to a very severe penalty tax by the American Government. This I understand is to protect American shipyards' viability. The only repairs which are allowed outside American Waters or American jurisdiction without such penalties being imposed are those which repairs to be dealt with immediately for seaworthiness.

20

I have seen the documents contained in Bundles A and B. I was not sitting in Court when Mr. Watson gave evidence.

(S: Bundle B pp. 1 - 6 - telexes exchanged between owners of Master Stelios and Keppel Shipyard).

The telex at p.1 - my interpretation of this telex is a standard inquiry by an owner who is looking around for dry dock availability with a suggestion that he intends to carry out a standard docking examination and propeller shaft survey of the vessel.

30

Telex at p. 2 - Keppel's reply merely infers that they do have drydock space available on a given date if the owner wishes to avail himself of the offer; the indicated dates were 16/17 October. It is an offer, it is a suggestion; nothing firm about the offer.

40

Telex at p.3 - The whole telex taken in the general context is a normal or standard inquiry by an owner who has an intention to drydock his ship for various repairs and work and wishes to have some indication of what this is likely to cost. From any reply the normal owner will then decide what he really wants to do.

(S: Looking at telexes pp. 1 - 6).

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Court

I would say that so far there has been no acceptance by the owner of any work to be done to the vessel other than the docking which was offered. The docking was firmed by the owner by the first two lines of telex at p.3.

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10

Under usual circumstances most ship owners have an idea of what they intend to do; they either send a Company representative or superintendent from the home port to Head Office or alternatively appoints a suitable consultant surveyor to act in their interest. He will normally discuss the relevant repairs considered necessary immediately before or on vessel's arrival in the shipyard. Any work decided upon is then usually confirmed or modified as circumstances dictate. It is usual to prepare work orders; these are sometimes written given to the shipyard by the representative. Occasionally it can be given at first verbally and later confirmed in writing if shipyard and owner know one another sufficiently.

20

(continued)

(S: Can the witness' report on the "Trojan" be marked? (Marked Ex. D 17)).

(S: Look at Exhibits D2, D3, D5).

They appear to me to be the worklist. I am familiar with that kind of document used by Keppel Shipyard.

30

(S: Compare the items in D2, D3 and D5, with the items appearing in pp.3 to 6 of Bundle B).

Most of items in D2, D3 and D5 are included or coincided with the items that appear in pp.3 to 6 of Bundle B. Items in D2 correspond with the items that appear in pp.3 to 6 of Bundle B. D3 seems to apply to additional works requested by the owner. D5 is further additional extra works requested by the owner.

40

(S: pp.3 to 6 of Bundle B. It is contended by my learned friend that items 1 to 21 do not constitute a proposed worklist or a tentative worklist because among other things as contended by Plaintiffs' witnesses there is a contradiction between items 4 and 5 on the one hand and items 20 and 21 on the other. They contend that items 4 and 5

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(continued)

and items 20 and 21 are mutually exclusive. If you do items 4 and 5 you would not do items 20 and 21 or vice versa. Do you agree with that?)

I cannot agree with that statement. It is standard practice in any dockyard to power hose a ship as she is lying in the drydock - item 4. The intention of this being simply to remove all hard shell and seaweed and other underwater growths which normally accumulate on the ship's bottom and lower sides, for inspection.

10

The next step would be if you decide to either to hard scrape corroded areas if they are local or if you consider it necessary you may decide to grit blast of either a local area again or complete area if sufficiently bad - item 20 where no definite area was given; this would be determined after inspection during the drydocking.

20

The shipyard would then do whatever the owner has decided he wants to do.

(S: In relation to items 5 and 21).

If the shipyard is asked to sandblast the sides to bare metal; it is essential then to apply to this area a primer paint, item 21. After application of the primer paint they will then put on a coat of top paint as described in item 5 - one full coat of anti-corrosive on top of the primer paint and anti-fouling on the underwater area and boottopping on the upper area.

30

They are basically normal items when asking for quotations.

(S: It is also contended by my learned friend that items at pp.3 to 5 were merely request for quotations for the purpose of updating their information on prices. Would you agree to that?)

40

If I were a owner and docking the ship I would ask these questions, Nos. 1 to 21 with a view as a prudent owner to establish what this particular docking and the work required or proposed is likely to cost me. This is a standard procedure with any ship-owner that I am aware of.

(S: Page 10 of Bundle B - telex by Keppel to owners dated 16th October 1973, the date on which the Master Stelios docked).

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10 My understanding of that telex is that they were complying with the request of the owner in item 8 on p.4 of Bundle B and they were there asking for immediate and urgent instruction as to what work the owner then wishes them to undertake.

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(S: "We are therefore.....immediately").

(continued)

I would say that the shipyard acted remarkably promptly in forwarding sufficient information to the owner advising them of the situation and it is my understanding that this was done less than one hour after the ship was dried. They were faced with a situation in which no one was willing to make a decision.

20 (S: Look at telexes at pp. 11 and 12 of Bundle B. 11, telex by owner to shipyard in reply to p.10. Five minutes later owner sent telex to the Master through their agent unknown to the shipyard).

30 Page 12 confirms the requirements or instructions to the master to carry out any specific work recommended by the class society surveyor for purpose of maintaining vessel in a class position. Page 11 would appear to give the master authority to proceed with other unspecified works which he consider necessary. Page 12 would be interpreted as an instruction to the master to put the class recommendations including the cleaning and painting of the underwater body, hull, and he was clearly instructed to keep all other work to a minimum and to co-operate with Mr. Eustathiou who would assume duty on arrival.

40 The class recommendation referred to in page 11, by my interpretation, refers to the middle pintle lining and the class recommendation referred to in pp. 11.....

(G: The interpretation is for Court and not for this witness).

(S: Turn to pp. 78, 79 and 80 of Bundle B - daily drydocking schedules of Keppel).

Every shipyard has to be flexible in the use

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of the drydock and the stemming of ships for the dock. This must be done to ensure maximum utilisation of a valuable and expensive piece of property.

Each shipyard has its own method of stemming. It depends on the number of dry docks available to each shipyard will normally allocate a particular dock to a particular ship that they had full access to and knowledge of what work is required.

10

(S: p.79, Master Stelios entered for Queens Dock for 16th to 19th October. Based on information contained in telexes pp. 1 to 6 of Bundle B, can you tell the days allocated for the job was reasonable?)

I have only seen suggested quotations and inferred work, the inferences being that they may withdraw the tailshaft. Based on that information, if you did the work described in pp. 1 to 6, the time given is perfectly adequate.

20

To Court: That would include very definitely the withdrawal of the tailshaft.

Cross-
examination

CROSS-EXAMINED

XXd. by Mr. Grimberg:

(G: The Trojan).

My understanding from information given owners had no intention of drydocking the Trojan in Singapore until 14th October. I first received instruction from the owners on 23rd October. Yes this was an unusual case. As a matter of fact the owners of the Trojan tried a number of yards; he tried at least one other shipyard.

30

The total value of work done on the Trojan which concerned the underwriters came to a total of S\$73,000.00. Yes that was solely the typhoon damage. The ship entered dry dock and other works were also done. I have no idea of the value of the other works. Yes it was a worthwhile job for Keppel to take on or any other shipyard. I cannot answer when the Trojan was actually stemmed.

40

(G: Look at Bundle B p.79 - Friday 19th
"KIM HOCK arrived, TROJAN arrived").

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Court

It indicates to me the two ships arrived
on the 19th and recorded on the 19th.

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Evidence

(G: Trojan did not enter drydock until
the 22nd).

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That is so.

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(G: Bundle B - p.1. What does the owner
want the drydock for?)

(continued)

10

The word "inference" is used because my
interpretation of this telex is that the owner
is inferring this is what he wants the dry dock
for. The word "presumed" is my presumption or
interpretation of what the owner wants.

(G: I put it to you there is no question
of inference, that is a statement).

It is a telex asking a question "Do you
have a dry dock available", the fact that he
says for ordinary docking and screwshaft survey
....

20

In my view it is an inference that intends
to pull the tailshaft.

(G: p.2. What were they offering dock space
for).

I don't know what they were offering it for.

(G: Look at p.1).

They were asking for ordinary drydocking
and screwshaft survey.

30

(G: p.2 - What were they offering the dock
space for).

They were offering the dock for drydocking
and presumably for screwshaft survey which owner
indicated he was likely to do it.

(G: Where does the presumption come in?)

The presumption comes in to my part.

(G: No presumption arises on the telex).

There is an inference of what he intends
to do.

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(continued)

(G: p.3. "Regarding.....instant" - what were they asking for the dock to be stemmed for bearing in mind pp. 1 and 2?)

At that stage I would suggest the owner asked the dock to be stemmed for purposes probably of pulling or withdrawing the tail-shaft.

Yes I regard myself as a professional man.

(G: Where do you extract probability rather than certainty from pp. 1, 2 and 3?). 10

The owner has asked for a firm docking to be stemmed for 16/17th Oct. and in none of the 3 telexes is there any firm commitment by the owner.

(G: Show me the words which raise probability?)

"Please advise us....survey". There is a distinct probability, it is an inquiry as to availability of a dock, yes for owner's own certain purposes. 20

(G: B2 is a response to that certain purposes of the owner).

It is.

(G: First 2 lines of B3 constituted confirmation of stemming the dry dock for those certain purposes).

Yes.

(G: The docking was firmed by the 1st two lines of B3 you said). 30

Yes, I said that.

(G: Look at 3rd line of B3 "Meantime please quote following items." Does that mean in the context of 1st 3 lines we have firmed the booking of the dock please tell us your prices for the following items. That is what it means).

Yes. 40

(G: Items 4 and 5 and items 20 and 21).

(Q: If you were making out a worklist will you ever include in it items 4 and 5 and items 20 and 21 all the 4 items?)

I would include items 4 and 5; I would include items 21 if I intended at any time to do item 20.

(G: Would you ever prepare a worklist which included all 4 items?)

10 Yes, I would.

(G: Item 20 you have told us consists of hand-scraping corroded areas).

I would do hand scraping for local area, that is item 4.

(G: If you are going to do item 4 which includes hand-scraping why would you do item 20 which included grit or sandblasting).

20 Handscraping would only remove loose and localised patches of rust, scales and corroded areas. If this is of a greater area or beyond effective dealing by handscraping you may have to gritblast the area.

Items 4 and 20 are not alternatives. The usual procedure you water wash or power hose the lower hull to remove the surface, seaweed and marine growths and then you hardscrape the small area.

30 (G: If I were a shipowner and I wanted to do item 20, I would not do item 4 would I?)

I do not see any relevance between the 2 at all.

(G: If I wished to sandblast my ship's bottom, it would not be required to be scraped, would it?)

It would be required to be scraped.

(G: Would not the sandblasting remove all the corrossions?)

40 You will not be able to see the corrosion because of the seaweed and marine growth. I

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(continued)

have never in my whole experience, which stands for some 30 years, known of a ship bottom to be sandblasted before water washing or hard scraping.

Yes I know Mr.Bell. Yes I agree he is a person of some experience in these matters.

(G: Mr. Bell tells me you will in no circumstances hardscape if you are going to gritblast; do you agree?)

I do not agree.

10

Yes handscraping is a manual process; power hosing is also manual process.

- Adjourned to 2.30 -

Signed F.A.Chua

D.W.3 - o.h.f.o. s (in English):

XXd. (contd.)

I should imagine sandblasting is a mechanical process. No difference between sandblasting and gritblasting.

Sandblasting will remove corrosion; I have no experience of it being used for removing marine growth. I doubt if it would remove hard shell; I think it would be ineffective against marine growth to any extent whatsoever. If the hardshell were allowed to dry I would imagine it would be easily removed by sandblasting. The normal process is that this marine growth is removed immediately, concurrently with the dock drying whilst marine growth is soft and pliable; to use grit on wet marine growth I would imagine would simply amount to be wet marine growth absorbing marine growth with no effective removable. The whole purpose of prompt removal of wet marine growth is to speed up the cleaning process of the hull. The use of grit blasting under any circumstances will severely prolong the ship staying in dry dock if it is at the ship's bottom.

20

30

I think hand scraping should be described in this case. If it is to be done which seldom it is, it is an expensive process. I would not be surprised if this is included in the same worklist as sandblasting.

40

(G: My proposition where sandblasting is specified it becomes unnecessary to scrape).

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10 The wording on item 4 para. 3 clearly requests clear boottop and scraping as required. Item 20 page 5 confines itself solely to grit blasting to boottop belt area only; this area is the most important area in any ship for purposes of commercial advantages, economic running effect on ship's speed and performance which is presumably why the owner has confined himself to gritblasting to the boottop area only.

(G: Item 4 "Clear boottop belt by scraping". Item 20 "Grit boottop belt" both dealing with same area?)

They are.

20 (G: So scrape boottop belt and grit boottop belt are dealing with same area. The greater includes the lesser, if you grit that area you need not scrape that area).

30 When a shipowner stems a dry dock items 1, 2, 3, 4, 5 in its entirety, 6, 7 and 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 automatically follow the request to dry dock the ship. Those are items that have to be done concurrently with the docking. Item 9 the first 3 lines particularly are on owner's option, it is not a necessity to be done when a ship is docked. Items 20 and 21 are also owner's option.

40 To return to item 4 - it is standard practice to clear the vessel's hull of the easily removed debris, marine growth etc. by power hose or jet. The words "scraping as required" should be taken in their proper context of scraping the localised areas of possibly resistant marine growth, not removed by the power hose, and patches of corrosion and loose scale adhering to the hull. It can under no circumstances be construed as hard scraping the entire hull. Having locally scraped as requested in item 4 small patches to bare metal. We then remove to the last 3 lines of item 5 and locally touch up these bare metal. The 3 lines of item 5, it is imperative that these be covered by primer paint. Once that process has been done you then move to the top 3 lines of item 5. If you do 20 and 21, as is quotation are requested for, the
50 only duplication in the work requested to be

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quoted for are the last 3 lines in item 5, which is the only duplication. Yes there is an area of duplication in the last 3 lines of item 5. Item 5 refers to both boottop areas whilst item 21 refers to boottop belt only.

I don't recall admitting B3 - B6 was a worklist, it was a request for worklist which may possibly be done on which the owner would make his own decision.

Items 1 to 21 are fairly standard request by most owners, but since 18 of them follow automatically the docking it seems strange to me that an owner should request these figures or quotations for items over which he has little or no control and omit a request for a quotation of the one item whose single total cost is likely to equal or even exceed the total of the other 18.

Yes the owner has to comply with class requirements. I did not know in this case the tailshaft survey was long overdue; but I know now from Mr. Tham's evidence.

(G: Bundle A).

I have seen these correspondence before; I have not studied them.

(G: A1, at last sentence "Your early..... committee" A 4).

I would agree the classification society showed some concern over the tailshaft survey. Yes it would appear that when the vessel was in Singapore in October 1973 the owner was obliged to carry out the survey. I don't agree that the owners would have to carry out the survey whatever the price. I agree the owners could negotiate with the shipyard. I agree the other works to be done were not of the same urgency as the tailshaft survey. Yes the owner should be interested to find out what the costs of the optional items would be.

(G: B 12 telex owner to master).

Yes I said telex was referring to the rudder pintle. Yes that is my presumption.

(G: I suggest to you it refers to all class recommendations. You have now seen the correspondence in bundle A, reference to tailshaft survey).

It is normal to have the class surveyor to attend the vessel once the vessel is dried. In the Supreme Court

Yes I know Mr. Harper, for 10 years.

It is usual class surveyor would know what was required of the vessel as regards class requirements.

Lloyds have an office in Singapore, their surveyor has a room in most of the shipyards which they utilise.

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(continued)

10 (G: Harper's evidence p.121 "In October 1973.....tailshaft survey").

I have not read it before.

(G: Bearing that in mind and correspondence in Bundle A, would you agree looking at p.12 of B when he talks about "You are authorised.....", it refers to both the rudder and the rudder).

20 I don't agree. This telex for owners to master was dated 16th October. Telex to Harper was 18th October.

Classification surveyor would not normally discuss class requirements with the shipyard. Normally he discusses his requirements with the owner.

30 (G: Let us assume that when ship arrived on the 16th the yard had to draw the tailshaft. We knew dock was stemmed for 3 days. We also know that a few hours after the vessel was dry class was recommending the renewal of the rudder lining. The rudder had to be removed. Would you agree that 3 days was too short a time in which to draw the shaft, remove the rudder, reline the rudder, replace the rudder and replace the shaft).

I would say 3 days would be quite sufficient to do the job.

40 (G: At least 2 people disagreed with you. First was Mr. Bell, second was Mr. Watson. Turn to page 210 of Notes of Evidence "Now, would you agree..... 211.....limited factor." evidence of Mr. Watson - any comment?)

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Mr. Watson at p. 211 said it might overrun by $\frac{1}{2}$ a day or maximum 1 day.

(G: At page 211 he said in answer to my question "Very probably....a day" and he said: it would be Mr. Watson as M.D. of the yard who was in a better position than you who are merely giving theoretical evidence).

I cannot be responsible for Mr. Watson's answer. He gave a fair assessment of 3 days in answer to your question. Under pressure he agreed possibly $3\frac{1}{2}$ or 4 would be more reasonable. My answer from my own experience which is not insubstantial I have known a large number of similar cases to have taken approximately 3 days, no major defects being found. As I recall it Mr. Tham substantiated this by quoting 3 examples. If given the time I believe from my own records and file I also could dig up similar cases requiring not more than 3 days. Comparisons are not easily made.

10

20

(G: When a tailshaft is removed a tailshaft survey and reading show a $\frac{3}{16}$ clearance you expect rewooding to take place?)

There is no simple answer. If, as I now know this ship was overdue for special survey, or had she been shortly due, it is that factor which determines whether rewooding is to take place at that time.

30

Having regard to the fact that the shaft had to be drawn I would expect the lower half of the shaft bearing to be rewooded and this would lengthen the time marginally. Most tailshaft bearings are wholly or partially rewooded by fitting preformed wooded staves. The time margin is very inconsequential.

I am not authorised to make out a worklist for owners. But I have drawn up work specification for tender by different shipyards. Unless the owner or his accredited representative authorises me in writing the actual issuance of that worklist is the owner's responsibility. I have not made out a worklist for a yard in Singapore. I have acted as Superintendent for my own company on a temporary basis in UK and Europe, for a short period, in the absence of the Superintendent, period would be a week at the most.

I agree it would be within Mr. Bell's ordinary duties to make out worklist for yards in Singapore and to act as owner's superintendent. May I clarify? You ask me if I ever issued, I never issued. Mr. Bell has issued worklist in normal course of his duties, if so instructed by the owner.

- Adjourned to 10.30 tomorrow -

Signed F.A.Chua

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(continued)

10 Wednesday, 28th June, 1978

Suit No. 503/75 (Contd.)

Hearing resumed.

D.W.3 - o.h.f.o. s (in English)

XXd. (Contd.)

(G: B12 - 2nd sentence of telex "We have advised...." You said that referred to the rudder).

Yes.

20 (G: N/E 121 - evidence of Mr. Harper "Prior to vessel's....." You pointed out telex received by Mr. Harper was 18th October).

I agree that sentence contains a contradiction (S: As vessel had in fact docked on 16th October).

(G: N/E 121 "The owner of the vessel..... 122....was due").

Yes I see that.

30 (G: Where a survey is due or overdue it is surveyor's duty to recommend that the work be done?)

(G: In the ordinary course of events would you not have expected Mr. Harper to make that recommendation?)

If he had been aware of the overdue survey I would have expected him to recommend.

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(G: In his evidence he was saying he was aware of the overdue survey?)

I cannot answer for Mr. Harper. He said "I would have known".

I have never written a report for owners on an ordinary drydocking.

Yes I said since 1964 I have been a surveyor employed by the Salvage Association. The Salvage Association is an association of surveyors, yes which is exclusively employed by underwriters; damage surveys constituted 35% or 40% of the work of my Singapore office, damage work constitutes very much less of my own personal work, I am talking of last year for example. The rest; the 60% to 68% is concerned with loss prevention, reports for solicitors on collision cases, approval surveys for cargo loading; these are the major items.

10

It is correct I am never concerned in an annual drydocking where only classification surveys and owners' repairs are to be effected. I must qualify....As I understand it the Master Stelios was such a dry docking. We have on occasions conducted condition survey usually on behalf of brokers and occasionally the owners and also underwriters. Sometimes classification surveys form part of condition survey. I agree that substantially a condition survey is independent of an annual drydocking in which an owner is concerned with classification survey and owners' repairs.

20

30

(G: You said you prepare tenders).

In most cases they were damage tenders; when I talked about tenders yesterday I was talking about tenders for example where there has been a fire on board, or a grounding or an engine has been damaged due to an accident, in such cases we do it to assist the owners. Yes these are all damage tenders. Yes they are never concerned with owner's repairs and ordinary annual drydocking.

40

Yes as I know it the docking of the Master Stelios was for owners' repairs.

It is perfectly correct that I am never concerned with classification surveys. In general it is true that Salvage Association surveyors are precluded from being concerned with classification, owner's superintendency

or consulting where there is no claim upon the underwriters. Yes as was the case in Master Stelios.

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10 Ritchie & Bisset is a firm to my knowledge, employed in Singapore as a non-exclusive surveyor to several classification societies. The individual surveyors within Ritchie & Bisset organisation, to my understanding, are not employed nor do they sign official documents for these societies. "Non-exclusive" means they are appointed by a particular classification society or underwriters survey organisation such as any...or the US Salvage Association or other national society of a similar nature.

20 Germanischer Lloyd is one of the larger such classification societies. Yes Bureau Veritas is one such classification society. Yes I have heard of the Korean Register of Shipping and the China Corporation Register of Shipping. Yes Norske Veritas is also a well known classification society, a Norwegian Society. Yes Registera Italiano is an Italian classification society.

(G: See these 3 documents, do they identify Mr. Bell as the non exclusive surveyor for Germanischer Lloyd, the Korean Register and the China Register).

They do.

30 (G: If I told you from the Bar that Mr. Bell has in his office a letter of appointment from Bureau Veritas appointing him their non exclusive surveyor, will you accept it?)

Yes.

I would like to point out that all the 3 major societies mentioned have opened their own exclusive offices in Singapore. Bureau Veritas in 1972 and Germanischer Lloyd in 1973.

40 (G: Are you prepared to accept notwithstanding some of these societies have opened their own offices in Singapore Mr. Bell has continued and continues to carry out surveys for them?)

I do.

(G: You are precluded).

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I am not precluded from consultancy work, but before accepting such instruction I always clear this with my Head Office in London to ensure there is no conflict with underwriters' interest. I would like to add that I on behalf of my own Association appoint Mr. Bell from time to time to carry out surveys on our behalf. We do not think it is essential to put on paper that we are appointing Mr. Bell as the other classification societies found it to be necessary.

10

(G: Whereas you have admitted that your functions do not extend to ordinary dry docking and classification surveys, Mr. Bell's ordinary duties extend to both these areas, do they not?)

I cannot answer for Mr. Bell's duties. Perhaps, Mr. Bell would like to offer his current percentage work separating owner's instructions from classification instructions and other instructions, on a similar basis to the percentage breakdown of my type of work.

20

(G: Do you concede that Mr. Bell's duties and the business of Ritchie & Bisset of which he is a partner extend to ordinary drydocking and classification requirements?)

I have not come across personally Mr. Bell in a classification function for approximately 2 years. I have come across Mr. Bell in recent times acting as owners' consultant. This is not to say I disagree with the question put forward, I simply cannot answer it.

30

Re-examination

RE-EXAMINED

(S: The suggestion is that you are not qualified as regards ordinary dry-docking and classification survey).

That seems to be so.

An ordinary drydocking survey as the name ordinarily implies indicates it is a fairly simple routine whereas most of them, more often, drydocking a ship for a particular damage survey is very usually a very complex and difficult work. Damage survey can relate to damage sustained by tailshaft, damage sustained by rudder, damage sustained by hulls of vessels. When a vessel sustains this kind of damage, classification societies also become

40

involved. If any claim is made on underwriters for this kind of damage I become involved. I can see no difference in the nature of the work that I do and the work that Mr. Bell does.

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I have not done any classification surveys in Singapore but I have done them elsewhere. There is no difference in the work of classification survey in Singapore and that done elsewhere.

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(G: Tender documents).

(continued)

As far as my recollection goes I have never written a report for owners in an ordinary drydocking. It does not form part of my daily duties. Under my present employment terms I do not act for owners, this is entirely because I act for underwriters and there is a possible conflict of interest. It may be of interest that we have in our Singapore office at this moment a large instruction from owners to conduct a survey on behalf of the owners' interest on a vessel. We have also been appointed by underwriters. It is normal for us to accept such instruction. I am just illustrating a point.

Tender documents more correctly specification for repairs, are drawn up detailing minutely the fullest extent possible, which then submitted by the owners to a variety of shipyards who are considered capable of carrying out these repairs. The shipyards concerned are then invited to submit tender quotations to the shipowner so that he can evaluate the best quotation received both from a monetary time loss and commercial aspect. It is for the owners we are assisting, it is part of our duties when acting for underwriters. In most cases they are issued by the owner directly to the shipyards that are invited. On a few occasions, one or two of which I can recall, I personally having drafted the specification of repairs have also issued them to the various shipyards concerned. They do not become worklists but they do form a very definite basis upon which both the shipyard and the owners and ourselves work. They can be modified as conditions may dictate. There are usually very minor changes. They can be the basis of a worklist. I myself have not made out a worklist for owners. I have done it for damage repair in Singapore. It usually takes a fair amount of expertise to prepare a worklist, it is mostly commonsense. It is not difficult for a competent surveyor to prepare a worklist. A

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normal exclusive classification surveyor is not familiar with drawing a worklist and specification for repairs.

(S: Keppel's stemming of Master Stelios for 3 days and evidence of Mr. Bell, 5 days. N/E 170 - 4 to 5 days, Mr. Watson's estimate 4 to 4½ days).

Mr. Watson's estimate was 3½ to 4. I said from my own experience work on tailshaft and rudder would take at the most 3 days. Without knowing anymore details, excluding defects which may be found subsequent to the withdrawal of the shaft the 3 days would be more than sufficient. My opinion is that the rudder would not substantially alter the 3 days. I am confining my remarks now exclusively to the extra rudder work that was subsequently found.

10

(S: My learned friend made certain assumption.)

20

In my view 3 days would be sufficient to do both the tailshaft and the rudder provided the work commenced immediately.

(S: The actual 3 cases referred by Mr. Tham - page 284 of N/E bottom "I said that vessel.....285.....").

(S: B3, items 4 and 5 and 20 and 21).

No owner in his right senses would grit-blast the bottom of the vessel.

(S: B3, items 4 and 5 and 20 and 21).

30

I listed 3 optional items; rest are automatic once ship is drydocked. The question is why did not the owner ask for quotation for drawing the tailshaft which was the most expensive single item.

I strongly object to the suggestion by Mr. Grimberg that there was no doubt for whom I was giving evidence. At no time in the past has the question of fees or costs been raised. I was originally asked for my opinion about B1 to B6. I am in somewhat difficult position of being employed by the underwriters whose clients are the owners of Master Stelios; subsequent to Mr. Tham's evidence purely fortuitously I became involved in the dispute as to the timing of the docking of Trojan,

40

their owners are also clients of my principals. On both occasions I was sufficiently concerned and I spoke to my London office for advice as to whether I should accept the brief or not. I was advised by my principals that provided I confine my remarks to facts or reasonable opinion there would be no conflict.

(S: Mr. Harper's evidence, 12 N/E).

10 The recommendation made by any classification surveyor should always be directed to the owner, never to the shipyard, they may be present. No classification surveyor or underwriter's surveyor has any authority to put work in hand.

(Witness Released)

Signed F.A.Chua

Adjourned to 2.30

Signed F.A.Chua

No.17

20 EVIDENCE OF C.J. LI

D.W.4 - Chen Jeng Li - s.s. (in English):

Xd. by Mr.Selvadurai:

30 Living at 121 Thomson Green, Singapore 20, at present General Manager of Sing-Marine Shipyards (Pte) Ltd., a subsidiary of Keppel Shipyards. A chartered engineer; received my qualification in early 1972 from the Institute of Marine Engineers, London. In October 1973 I was employed by Keppel as ships repair manager. At that time there were in all 12 to 14 ship repair managers in Keppel.

I remember the vessel Master Stelios which came into dry dock on 16th October 1973. I was in charge of everything concerning the repairs and supervision of the jobs on that vessel.

(S: Look at Bundle B pp. 1, 2,3, 4, 5 and 6)

I recall having seen these telexes. These were given to me by Mr.Tham; it would be a day or two before the vessel arrived. They were in

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(continued)

a file and as I was in charge of the vessel he handed the file to me. I asked Mr. Tham when the vessel would be here and when she was due for drydocking and for how long. I also asked him who would be the superintendent for the vessel. He told me that according to the telex the vessel would be arriving around 16th or 17th October and would dock immediately on arrival. He mentioned that the superintendent would be Mr. Eustathiou but he did not mention when Mr. Eustathiou would be in the yard.

10

I looked at the repair list and waited for the vessel to arrive. There was nothing unusual in the repair list, it was normal. The repair list was the one that we made out from the telex B3 - B6.

(S: D2, D3 and D5)

These are the repair lists. D2 was the first one; D3 the additional; D5 is the work list. I took down after listening to the instructions of the master. D5 some of the instructions from the master and some from Mr. Eustathiou.

20

Before the ship arrived the worklist I saw was D2. D3 and D5 were prepared after the ship arrived.

The Commercial Dept. of the yard prepared D2 from the telex B3 to B6.

D3 - the original work order was written by me and handed to the Commercial Dept. who then typed it out in the form D3. In this particular instance D2 was not recorded by me but by the electrical foreman who handed it to the Commercial Dept. and informed me of it.

30

D5 was recorded by me.

The vessel arrived on 16th October 1973. She came into the yard at about 1 p.m. and went straight into the dry dock. She was dry by about 4.30 p.m.

40

I waited until the gangway was placed on board the ship and went up to see the master of the ship. I did see him. That was the first time I boarded the vessel. I saw the master in his cabin.

As in all normal procedure, in the absence

of the Superintendent I saw the master to discuss with him the repair list. I had D2 with me. I discussed D2 with the master. We went through D2 item by item. He said for the time being to leave out item 12.05 which corresponds with item 2 - in B5 - grit or sandblasting of boottop belt. Nothing much transpired; those were the only items to be done. He did not give me any further instruction.

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(continued)

I left the ship and waited for the dry dock to be dry. I was with the master for 5 to 10 minutes. Nothing could be done until the dock was dry. The dock was dry at around 4.30 p.m. I then went with the surveyor to the dock bottom; the surveyor was Mr. Harper of Lloyds. The master and Chief Engineer were also at the dock bottom. We went round the dock bottom doing the bottom survey of the vessel. Nothing happened during the survey. During the survey we were taking clearances of the tailshaft and the rudder pintle - that was one of the items set out in D2. By the time we finished the bottom survey the clearances were already taken. I showed the readings to the master. The surveyor was there and he also saw the readings; the surveyor recommended that the rudder pintle bush should be renewed. After that I left there and went to see the Marine Manager, Mr. Tham. When I left there they were still at the dock bottom.

Mr. Tham was in his office. I saw him it would be close to 6 p.m. I informed Mr. Tham of the Lloyd's surveyor's recommendation concerning the rudder. Then I left Mr. Tham. I also told Mr. Tham of the clearances.

I went back to my office to wait for Mr. Tham who said he would send a telex to London about the clearances and recommendation and get a decision. I knew Mr. Tham sent a telex; B 10 is the telex, sent at 1809 hrs.

(S: "Class recommends.....work").

The master told me he had to wait for the arrival of the superintendent as he had no authority.

Half an hour or one hour later Mr. Tham told me to go ahead with the renewal of the bush to the rudder. So I contracted the foreman and told him to proceed with the renewal of the rudder bush. That night I supervised the other

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repairs and make sure that all arrangements were made. Small repairs, bits and pieces of D2 - the dock work involved, cleaning of the hull, sea valves were removed, renewal of the zinc annodes, that was all. The arrangements I talked about were in relation to the removal of the rudder - we had to arrange for the cement on the rudder pump to be chipped off, for the shift work to continue on the rudder during the night. The work went on throughout that night. After making these arrangements I went home; that would be around 7 p.m.

10

The next day, the 17th, I went to see the master with a telex. I saw the master at around 8 a.m. The telex is B 11. I asked the master if there was any further work to be done. The master saw the telex. He gave me a list of works to be done. He read out to me the works to be done, he read from a piece of paper. As he was reading it out I recorded it. What I recorded is attached to D5, the master read out only the deck items - items 20.04, 18.02, 22.02, 18.03, 12.05; that is the first section. The other items, the second section were from the ship's engineer. The Chief Engineer gave a list to the master who read it out to me. After that I left them. We were in the master's cabin.

20

I then left the vessel and went to look for my foreman and told him of the additional work to be done. I then went round to check the progress of various jobs. I then went back to my office around 10 a.m. and there was the usual meeting with the Marine Manager, Mr. Tham about the progress of the work in the yard. I did not tell Mr. Tham what had transpired between me and the master that morning.

30

I then went back to check the progress on the vessel until lunch time. After lunch nothing of significance happened.

40

The next time I saw the master was on the night of the 17th about 10 p.m. or so on board the ship. I remained at the yard till 10 p.m. as I heard from Mr. Tham that the ship's superintendent was arriving that evening. Mr. Tham told me this sometime during the day. It is normal for me to meet the superintendent when he arrives, that was why I waited for the superintendent.

I went on board at 10 p.m. and the superintendent was there. He was Mr. Eustathiou.

50

10 He was in the master's cabin. The master and chief engineer were also there. I showed Mr. Eustathiou the work list D2 and D5; we discussed all the items on D2 and D5. The only thing Mr. Eustathiou was instructed was item 12.05 on D2; he was keen to do the grit blasting of the boottop belt. He said the hull was in a very bad state and he would like to do the grit blasting of the boottop belt. I told him it was not necessary as I had seen the hull myself but he still asked me what the price was per square metre if he were to do the job. I indicated the price to him verbally. I can't remember the price I quoted but I knew the price at that time was \$22 - \$23 per square metre.

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(continued)

20 We went out of the cabin to look at the hull from the dock side. We did not go round the ship; we went from mid-ship to the after end on both sides. I, the master and Mr. Eustathiou did that. Mr. Eustathiou agreed with me that the hull was in good condition and there was no need for grit blasting.

I also showed Mr. Eustathiou the clearances of the tailshaft and the rudder. I asked him what he thought of the clearances. Mr. Eustathiou said he would check with London on the matter. I presume it was in connection with the tailshaft. I left them after that; that would be 10.30 or thereabouts. I went home.

30 - Adjourned to 10.30 tomorrow -

Signed F.A.Chua

No. 18

EVIDENCE OF C.C. TECK

No.18

C.C.Teck Examination

29th June 1978

Thursday, 29th June, 1978

Suit No. 503/75: P. heard

Hearing resumed.

D.W.5 - Chua Chor Teck - s.s. (in English):

Xd: by Mr. Selvadurai:

40 Living at 7 Holland Hill, Singapore 10, Managing Director of Keppel Shipyard; became Managing Director in February 1974. Before that

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I was with Singapore Slipway & Engineering Co.
(Pte) Ltd., a subsidiary of Keppel Shipyard.

I am a Bachelor of Science, Naval Architect,
University of Newcastle-on-Tyne, United
Kingdom. I obtained my degree in June 1968.
I did a 5-year engineering apprenticeship with
H.M. Dockyard, Singapore, before I went to
the University. I am a Fellow of the Institute
of Engineers, Singapore. I am a Fellow of the
Royal Institute of Naval Architecture and a
Fellow of the Institute of Marine Engineers,
United Kingdom.

10

I was the ships repair manager of Keppel
Shipyard in 1969 immediately after graduation;
I became General Manager of Keppel in June 1972.

I am Chairman of the Industrial Training
Board for one year from July 1975. I am a
member of the Board of Jurong Corporation in
1972 for one year.

I am the President of the Singapore
Association of Shipbuilders and Repairers.
also President of the Society of Naval Archi-
tects in Singapore. Member of the Ngee Ann
Technical College Council.

20

I am aware of the problem that arose
from the drydocking of the Master Stelios in
Keppel Shipyard in October 1973. I was then
the General Manager of the Shipyard and the
Managing Director was Mr. Watson. The
Marine Manager at that time was Mr. Tham Yeng
Fai. The ship repair manager concerned was a
Mr. Chen Jen Li.

30

As Managing Director of Keppel in October
1973 I was responsible for the complete
operation of the shipyard and there was a very
close communication system between myself and
the 4 heads of departments - Marine headed by
Mr. Tham at that time; Commercial Dept. headed
by Mr. Khor Teck Lin at that time, the Works
Dept. headed by Mr. Loke Wing Siew; the
Marketing Dept. headed by Mr. Ng Siong Tee.
In order to plan and review the shipyard
actively on a day-to-day basis a meeting was
held daily at 8.30a.m. six days a week. During
the meeting, various telexes that come in
concerning such matters as booking of dock
space would be discussed and appropriate action
taken. At the same time the meeting was also
concerned with all the ship repair works in the
yard; particularly in respect of those vessels

40

10 which were in dock. It is very important for a shipyard to ensure that there is good occupancy in our dock space and therefore there is an urgent need everyday to review the progress of works on ships in the dry dock. If there is any apparent delay action is immediately taken through the Marine Manager and the Works Manager. As a further review of the day's activities the Marine Manager meets me every day in the evening between the hours of around 5.30 and 8.30. In our shipyard a great deal of communication with shipowners throughout the world are done by telexes. As General Manager all the outgoing telexes must be approved by me. The incoming telexes would also be sent to my office immediately before copies are sent to the other departments.

In the Supreme Court

Defendant's Evidence

No.18

C.C.Teck Examination

29th June 1978

(continued)

20 Most of the telexes are set out in the name of the General Manager especially communication with our overseas agents. But there were occasions when telexes were sent in the name of the various heads of departments.

(S: Bundle B pp. 1 to 6)

I recall those telexes.

(S: B9, B10, B11).

I recall those telexes.

(S: B 13, B 14, B 15).

I recall those telexes as well.

(S: B 15).

30 It was a telex sent in my name. You will notice that it was addressed to Calvey of Swan Hunter's office in London. He was then the manager in London. Although it was not standard practice in the yard for me to sign my name, when communicating with Mr. Calvey, it was always done whenever we communicated with Calvey. It was a matter of protocol. The agents we had all over the world would work with us on a personal basis and I know Calvey personally for
40 many years and his dealing with the shipyard was always done through the G.M. which was then myself. So in order to respect him as Manager of his London Office I sign my name.

Today Mr. Calvey is employed by Keppel to run Keppel's office in London.

In the Supreme Court

(S: The circumstances that led you to send telex B 15).

Defendant's Evidence

No.18
C.C.Teck
Examination
29th June 1978
(continued)

As I have said earlier I was very much in the picture in this case from the moment the vessel docked on the 16th. The progress of the work was extensively discussed on the 16th evening between Mr. Tham and myself and the 17th morning when I had the usual meeting with the heads of departments and again with Mr. Tham on the evening of the 17th and on 18th morning with the heads again. So by evening of 18th between 5 and 6 my meeting with Mr. Tham as usual. Mr. Tham told me that the owners' representative was insisting the withdrawal of the tailshaft for survey. If we accepted the demand which means the ship would not undock for another 3 days and in any case the ship was already in dock for 3 days since the 16th, we felt that it was extremely unreasonable for the owners at the very last moment to insist on doing the major job. So I felt it necessary to notify our agent in London in this case Calvey and gave him the background of the problems of the case. This was to enable him to answer the shipowner who was likely to call on our London agent to complain about us. So I sent the telex.

10

20

(S: Why did you say "very last moment"?)

From the earlier telexes from the owners B1 and B3 we gained an impression of the possible kind of work which the owner may eventually instruct us to do. There was some indication that these might be tailshaft withdrawal job; the indication I got was from the first telex B1. On this basis we had allocated 3 days for the vessel because we knew that if tailshaft was to be done it would be the longest job item. All our planning efforts of 16th, 17th and 18th were geared towards the completion of the dry dock work by 18th night so that the vessel could be undocked the following day. To me, therefore, to be asked to do the tailshaft work on the evening of the 18th is really a last hour request.

30

40

(S: B 15 "Sorry.....dock" - "Real mess").

In this context I meant to convey to Calvey that if we gave in to owner's request to draw the tailshaft on the evening of the 18th there would be a disruption of our docking programmes ahead and I might add I know Calvey personally for several years and have been

50

liberal with our choice of words in our telexes. I suppose in this case in the late hours of the day with other pressures I might have that day I might have got a little emotional in choosing the words "real mess".

(S: B 78, B 79 and B 80).

10 They are the Daily Drydocking Schedule. They reflect the final dry docking programme on a day-to-day basis. I might add it was finalised up to the particular..concerned and beyond that is again subject to changes. Various forms of changes - firstly the changes in the arrival dates of ships, this very common. Other forms of changes - owner cancelling the booking or postponing the booking to other months; once this happens then we have to re-arrange the schedule again. If I remember
20 correctly these were extracts from a book carried by the Marine Manager every day and he would only ink in the name of the ship which had actually arrived at the dock. Other ahead firm bookings are left in pencil. Ex. D 9 the book. I would say it is a very flexible affair.

30 (S: B1, first 2 lines of B3 "Regarding....
.....16th /17th instant." It is contended by the owners that when you received B 3 you were contractually bound to draw the tailshaft of the Master Stelios as soon as she drydocked without any further instruction from the owners and that you had the necessary instruction to withdraw the tailshaft is contained in B1 itself. Do you accept that?)

I cannot accept that.

(S: Why?)

40 To me B1 merely makes inquiry of the dock availability for Master Stelios and in same telex an indication of the likely type of work to be done is given. B3, first 2 lines merely confirms that they have booked dock space with us.

(S: In normal shipyard practice when would you receive the instruction to draw the tailshaft?)

The instruction is always given when the owner's representative arrives at the shipyard and having obtained the clearances reading.

In the Supreme Court

Defendant's Evidence

No.18
C.C.Teck
Examination

29th June 1978
(continued)

In the Supreme
Court

Defendant's
Evidence

No.18
C.C.Teck
Examination
29th June 1978
(continued)

In the normal course of our business we received many telexes like B1 from owners, but with variation of the indications of the broadwork to be done. For example, we have received request such as this but with request for ordinary docking and machinery survey, docking for damage repairs, docking for rudder survey and repairs and so. Wherever possible owners try to give general headings of indication of work so that the shipyard can plan the number of days for the vessel to be in dock. In all these cases the shipyard has never proceeded to do the work based on telexes as B1 without further instruction. In fact the instructions from me at that time to the shipyard operational people such as the ships repair manager was that for non-regular customers no work should be put in hand without the written authority of the owner's representative; this is to ensure that the item of work we put in is not disputed when we present our bill. We have also many unfortunate cases, proceeded with work on instruction of the Capt. or Chief Engineer with the result that the owners simply refused to pay the bill because to them this was unauthorised work.

10

20

In October 1973 before me was Mr. Watson. He was kept apprised of the more critical work and also on works which we anticipate complaints from owners. I apprised Mr. Watson as General Manager, usually about once a day.

30

Cross-
examination

CROSS-EXAMINED

(G: To ensure good occupance of dock space).

Yes we would accommodate as many vessels in dry dock as possible. Yes we rarely turn a customer away. As much as we can we like to keep to our promise as regards the date of docking.

(G: Docking of Master Stelios).

40

Yes I was kept very much in the picture.

(G: You said progress of work was extensively discussed on the evening of the 16th.)

When I used the word "extensively" I meant

the 16th, 17th and 18th.

(G: B1. It is for Court to decide what is the contractual effect of what B1, B2 and B3 was but are you saying that after the two lines of B3 the shipyard was entitled to ignore B1?)

From B3 we reserved dock space in anticipation that there may be tailshaft withdrawal work and we were therefore awaiting definite instruction. Yes after B3 had happened B1 was only significant as an indication of the type of work we might be asked to do.

(G: Items 1 to 21 in B 3).

We did not regard them as the work list, not exactly. The owner might want to decide on prices as well.

(G: See D2, it was prepared by the Commercial Dept.)

Yes that was the usual procedure.

(G: and D2 was based on items 1 to 21 and treated items 1 to 21 as a work list. What do you say to that?)

Actually in our shipyard D2 is sometimes called a reference sheet where the vessel will be given a number and the jobs are also coded so in the absence of other instructions our Commercial Dept. has used the items on B3 and made up this list. In any case most of the work on D2 are the common works normally put in hand by the owner when the vessel enters dry dock. Of course some of the jobs can be cancelled by the owner even though they appear on the reference sheet. Yes on D2 are typed "Repair List (Telex)". D2 was prepared from B3 in substance. In the absence of other instructions and with the ship docking on the 16th there is urgent need for yard to issue this reference sheet so that the man hours used in movement and docking operations would be charged.

(G: Did the person who prepared D2 on the face of it treat B3 as owner's repair list bearing in mind the words in D2 "Repair List (Telex)").

The person who prepared D2 was aware that the owners had requested for the price for these items of work and therefore the work can only be

In the Supreme Court

Defendant's Evidence

No.18

C.C.Teck

Cross-

Examination

29th June 1978

(continued)

In the Supreme Court

Defendant's Evidence

No.18
C.C.Teck
Cross-Examination
29th June 1978
(continued)

put in hand if the owner's representative confirms with a written order with the yard.

(G: Is your answer to my question is "No"?)

I agree he treated it as owner's work list.

(G: B 13 - telex from Mr. Tham to Mr. Wilmot).

Mr. Wilmot is Mr. Calvey's assistant.

(G: Look at "Original worklist.....or rudder". Would you agree that Mr.Tham was also treating B3 as owner's work list just like the maker of D2 did?)

10

On the basis of this telex yes. We must also recognise we were communicating with our own agent in London.

(G: B 15 "This.....mentioned." You too regarded B3 as owner's complete work list?)

I should have used "indicative work list".

(G: I put it to you your contemporaneous use of language is more significant than the language you choose to use in this Court with the benefit of hind-side.)

20

I was communicating with our own agent, a person whom I had known for many years and I was therefore quite free in my choice of words.

(G: And I suggest also quite honest with the choice of words?)

These were words which came to my head.

30

(G: B 79 Friday 19th, last column "Kim Hock arrived, Trojan arrived.")

Yes I see those words.

(G: Do you agree that Queen's Dock had been stemmed for both these vessels?)

Yes.

(G: That was the dock occupied by the Master Stelios).

Yes.

(G: Both Kim Hock and Trojan were waiting to enter that dock on the 19th).

In the Supreme Court

I know Kim Hock was stemmed for the 19th.

Defendant's Evidence

Yes both vessels were waiting to enter Queen's Dock, but only Kim Hock was due to enter on the 19th.

No.18
C.C.Teck
Cross-
Examination

(G: Look at B7 - a certificate given by owners of Kim Hock).

29th June 1978
(continued)

10 Yes it was a firm stemming for the Kim Hock for the 19th.

Yes I said the docking schedule is a very flexible affair.

(G: B 15 "Sorry about.....dock")

(G: If these schedules are a very flexible affair why would you be in a real mess?)

20 There would be no problem if we were to prolong the Master Stelios in dock for another 1 or 1½ days but the demand from the owners on evening of 18th October to withdraw the tailshaft means that we had to keep the ship for another 3 days in dock; this would disrupt the overall programme.

Yes, owners of Kim Hock, Guan Guan, were our regular customers. Yes they had a firm stem for the 19th October.

30 (G: When you have stemmed a dock firm for a regular customer on a particular day you are very reluctant, are you not, to delay his vessel at all?)

As far as possible we would like to keep our promise.

(G: Would I be correct in thinking that like anyone else who has a service to give, your yard gives a preference to regular customers over non-regular customers?)

We have, but not necessarily in the case of Kim Hock and Master Stelios.

40

RE-EXAMINED

Re-examination

In my assessment there was no difference

In the Supreme
Court

Defendant's
Evidence

No.18
C.C.Teck
Re-examination
29th June 1978
(continued)

between the owners of Kim Hock and Master
Stelios.

To Court: I was not giving preference to
Kim Hock.

Owners of Kim Hock were our regular
customers. In the past we have given preference
to regular customers. Although Guan Guan were
regular customers they were bad paymasters.

(G: D2 and B3).

On the 16th October no one in Keppel
treated B3 as the final worklist.

10

(S: B 15, you said you should have used
"indicative work list").

Indicative work list to us means the list
of works which the owner might want to put in
hand but he also had the option to cancel or
amend the list.

(Witness Released)

Signed F.A.Chua

(Adjourned to 2.30)

20

Signed F.A.Chua

No.17
(Resumed)

C.J. Li
Examination

28th to 30th
June 1978

(continued)

No.17 (Resumed)

EVIDENCE OF C.J.LI

Xd. by Mr. Selvadurai (Contd.)

The next day, the 18th, in the morning,
was a normal routine day. It was only after
lunch at 2 p.m. that I went back to the ship.
In the morning I went to the ship off and on
and I did not meet the master or the Chief
Engineer; there was no need to meet them.

30

In the afternoon at 2 p.m. I went to the
ship to see Mr. Eustathiou. I saw him on the
main deck in front of the ship's superstructure.
He was alone. My reason for seeing him was to
ask him about a few items that I could not
finish as the ship was leaving the next morning.
Only one item which was of importance that I

10 knew which we could not finish in time. That was the work on the anchor windlass, this item is not in work list. We were supposed to free up some gears and brakes of the windlass. I told Mr. Eustathiou that we would do the best we can up to the time the ship leaves. He said we had actually done nothing at all on that windlass. I told him he was wrong and that we had managed to free up some parts of the windlass. At first he said he was not going to pay for the windlass. After I pointed out that we did manage to free some parts he agreed to pay us 3-man days for the job. I agreed. I then went around the ship to check the various works undergoing repairs. I returned to my office at 5 p.m.

In the Supreme Court _____

Defendant's Evidence

No.17
(Resumed)

C.J. Li
Examination

28th to 30th
June 1978

(continued)

20 At about 5.30 p.m. Mr. Eustathiou, the master and the Chief Engineer came to see me in the office. Mr. Eustathiou said he wanted the tailshaft to be drawn for survey. I told him it was too late at this point to carry out the tailshaft survey. He said it was not too late, he said all I needed to do was to remove the propeller and get the surveyor to see the taper of the shaft. I told him class required the tailshaft to be drawn for survey and that just inspecting the taper would not be sufficient; the class would never agree to it. Mr. Eustathiou said in that case pull out the shaft. I pointed out the ship had to leave the dry dock the next morning. I said I would bring him to see Mr. Tham, the Marine Manager.

30 I brought them all to Mr. Tham's room. I told Mr. Tham that Mr. Eustathiou had just requested for a tailshaft survey and to remove the tailshaft for survey. Mr. Tham also told Mr. Eustathiou that it was not possible to do the job; Mr. Tham also offered to re-dock the vessel, that means to undock the ship and come into the dry dock again some other day. There was a lot of conversation among Mr. Eustathiou, the master and the Chief Engineer. Mr. Eustathiou insisted on the ship remaining in the dry dock for the tailshaft survey to be carried out. Mr. Tham offered to remove the tailshaft first and blank off the stern tube undock the vessel and when the survey is finished the vessel could be drydocked. The tailshaft would remain inside the ship. That was not accepted. All three of them left the office. Shortly after that I went home.

50 I did not have anything else to do on the 19th as regards the Master Stelios.

In the Supreme Court

Defendant's Evidence

No.17 (Resumed)

C.J. Li Examination

28th to 30th June 1978

(continued)

Cross-Examined

Vaguely I can remember that the Chief Engineer refused to let the ship out of the dry dock; he said the engine was not ready; I heard this from someone. I do not know what was wrong with the engine, we did not do any work on it.

The vessel left the dry dock shortly after-noon, about 12.30 on the 19th.

CROSS-EXAMINED

Yes I said I was one of the 12 to 14 ship repair managers. In seniority I was 4th or 5th. At that time, October 1973, I was 30 years old. Yes I had qualified about 18 months prior to October 1973 as a Chartered Engineer.

10

(G: Handing of the file to you by Mr.Tham and you asked when the ship was due to drydock).

It was a normal question to ask. If I looked into the file I would get part of the answer. Yes B 3 was in the file. Yes that told me the dock had been stemmed for the 16th/17th.

20

(G: "I looked at the repair list and waited for the vessel to arrive.", you said "There was nothing unusual in the repairs").

I was looking at D2 which was prepared from B3.

(G: The vessel had docked).

Yes I went to see the master. Yes I said I discussed D2 with the master.

30

(G: Your first meeting with the master - the master said he told you that the tailshaft was the most important reason for the Master Stelios having docked at Singapore - Notes of Evidence, p. 10).

The master did not say that to me.

When Mr. Tham handed the file to me D2 had already been prepared by the Commercial Dept. Yes it is correct that as far as the file was concerned my attention was focussed mainly on D2. I would know some background to the arrange-ment if there is a major job to be done. Yes

40

in this case I regarded it as a normal dry docking with no major job to be done.

In the Supreme Court

(G: You and master and Mr. Harper went down to the bottom of the dock).

Defendant's Evidence

No.17

(Resumed)

C.J. Li

Cross-Examination

28th to 30th June 1978

10 Yes. The tailshaft clearances were taken by some of Keppel's personnel. I did not actually witness the taking of the clearances, yes they were reported to me while I was still at the bottom of the dock. Mr. Harper did not tell me that the tailshaft survey was overdue.

(continued)

(G: When a classification survey is due or overdue and a class surveyor is present with the master of vessel also present, is it your experience that the surveyor will generally mention the fact of an overdue survey?)

Normally yes.

Yes the bottom inspection took place late afternoon early evening of 16th October.

20 (G: The master said at p.10 "The work started.....rudder repairs").

That is correct.

(G: "The work was carried.....17th).

I agree.

(G: p. 10 "On morning of 17th..... with the screwshaft").

30 That is not true. Before that time I went on board at 8 something to see the master, he did not say anything to me about a tailshaft survey.

(G: The master said you answered you still had time to do the tailshaft if Mr. Eustathiou arrived on the 17th - p.10 N/E. and he told you it was not necessary to wait for Mr. Eustathiou because the master had full authority).

That is not true.

40 I was not really worried that Mr.Eustathiou had not arrived because the master already had the authority and there was nothing significant or large to be done.

In the Supreme Court

Defendant's Evidence

No.17
(Resumed)

C.J. Li

Cross-Examination

28th to 30th
June 1978

(continued)

Yes later that morning I went on board to see the master. Actually I did not want to see him, it was Mr. Harper who wanted to see him. Yes the master had gone ashore into Singapore. I went with Mr. Harper on board. Yes I saw the Chief Engineer. Yes I sat in the saloon with Mr. Harper and the Chief Engineer for a little time.

(G: p. 45 N/E. Chief Engineer's evidence: "I saw Mr. Chen again.....46..... together.")

10

Yes that is substantially correct.

(G: "I discussed with Mr. Harper.....of the engine").

I did not hear the Chief Engineer discussing that with Mr. Harper. If he had said it to Mr. Harper I would have heard it. He did not say it.

(G: You said the next time you saw the master was on the 17th Oct. about 10 p.m.)

20

Yes, yes that was shortly after Mr. Eustathiou's arrival on board the ship.

(G: p.11 N/E, master's evidence - "Mr. Eustathiou complained to Mr. Chenby London to draw the tailshaft").

This is not true.

(G: "This was the first time.....12..... also present.")

Chief Engineer was present but this conversation did not take place.

30

(G: Substantially the same account of this conversation was given by the master, Mr.Eustathiou and the Chief Engineer- are you saying all their accounts are untrue?)

Yes.

(G: Your version of what happened on the 17th).

Yes I showed Mr. Eustathiou D2 and the additional work set out in D5. Yes I said I discussed all the items in these two lists.

40

Yes by that time the vessel had already been in dry dock for over 24 hours and some of the items had been completed.

In the Supreme Court

Defendant's Evidence

No.17

(Resumed)

C.J. Li

Cross-Examination

28th to 30th June 1978

(continued)

(G: I put it to you that on night of 17th October Mr. Eustathiou and the master made it clear to you that they were alarmed at the fact that no preparation had yet been made for the drawing of the shaft.)

10

That is not true as in going through the work list item by item I showed him the clearances recorded for the rudder and tailshaft and informing him of the progress of the rudder work and asked him what were his instructions with respect to the tailshaft clearance and he said he would refer the matter to London.

20

(G: Your evidence, the morning of the 18th, I put it to you on the morning of the 18th both Mr. Eustathiou and the master complained to you yet again of the fact that no effort had been made to draw the shaft for survey, is that true?)

That is not true. Yes I say Mr. Eustathiou and the master were not telling the truth when they gave their evidence as to that.

(G: This afternoon you said that you knew that class requires that when a tailshaft is to be surveyed it must be drawn).

30

That is correct, yes nothing else would do; you must draw out the shaft.

(G: B 1 first telex your yard received).

Yes that means the shaft had to be drawn for such a survey.

40

Yes I said that on the 18th I was already telling Mr. Eustathiou that you would not be able to complete the windlass repairs as I had to undock the vessel on the 19th. Yes I saw in my mind on the 19th as the deadline. Not correct that there was no flexibility. The work on the windlass repair could be carried out outside the dry dock. I spoke of it because the vessel was due to undock on the 19th and sail the same day.

(G: The 19th).

In the Supreme Court

Defendant's Evidence

No.17

(Resumed)

C.J.Li

Cross-

Examination

28th to 30th

June 1978

(continued)

Yes among the repairs I had to do were repairs to the cooling pipes situated in front of the main engine. Yes some of these pipes had to be welded. Yes until this welding was done the engines could not be started.

- Adjourned to 10.30 tomorrow -

Signed F.A.Chua

Friday, 30th June, 1978

Suit No. 503/75 (Contd.)

D.W.4 - Chen Jeng Li - o.h.f.a. s (in English)

10

XXd. by Mr. Grimberg (Contd.)

Yes it was necessary for the welding to be done while the vessel was in dock.

(G: p. 49 N/E - evidence of Chief Engineer - "The next, the 19th.....undocked. The pilot.....the anchorage".)

That is not correct. These pipes were finished at 9 a.m. on the 19th and the pipes were tested at 10 something and I believe the pilot came on board between 11 and noon. He was not sent ashore because the vessel was not ready; the vessel was ready to move. Yes I am speaking from memory of what happened 4 years ago. No, I have no reason to anticipate the question but Counsel has just asked me. Yes I said yesterday I remembered the Chief Engineer refusing to allow the ship to leave; according to him the engine was not ready; I vaguely recall he said he required a few hours for warming up.

20

30

(G: I put it to you your yard was in a hurry to get this vessel out so much so that the pilot was sent on board as Chief Engineer recounted before the engines were not ready).

That is not true because undocking of vessels in the yard depended entirely on the tide. The pilot was ordered half an hour or so before the vessel was due to move out.

(G: The tidal conditions which enable a vessel to be undocked prevail over a substantial period).

40

Sometimes it can be quite short. Can be as short as 2 hours; yes as long as 8 but very rarely. Yes it is the yard that orders the pilot on board.

In the Supreme Court _____
Defendant's Evidence

RE-EXAMINED

No.17
(Resumed)
C.J. Li
Cross-
Examination

(S: This welding of the pipes).

28th to 30th
June 1978

10 If it is in connection with the main engine cooling - if the vessel is required to move out of the yard completely then it is required to be completed before the vessel leaves the dock. But if the owner can spare a few more hours alongside the yard then it can be completed outside the dry dock whilst she is lying alongside the wharf. You cannot run the engine inside the dry dock. If the vessel is going to leave the yard completely it is a matter of convenience to complete the work while the vessel is in dry dock. It is not necessary for the vessel to remain in dry dock for this kind of work to be carried out.

(continued)

Re-examination

20 (S: Your record of experience).

I was a ship's engineer from October 1964 with Alfred Holt & Co. of Liverpool now known as Ocean Transport Ltd. who are one of the biggest shipping companies in the United Kingdom. I held this post till October 1970. To Court: I worked on board the ship.

30 I was ship repair manager of Keppel from March 1971 and I handled the repairs of approximately 30 to 40 vessels per year.

(Witness Released)

Signed F.A.Chua

- Adjourned to another 2 days to be fixed -

Signed F.A.Chua

In the Supreme
Court

No. 19

Defendant's
Evidence

EVIDENCE OF K.T. LIN

No.19
K.T.Lin
Examination
10th July 1978

Monday, 10th July, 1978

Suit No. 503 of 1975 (P. heard)

Hearing resumed.

D.W.6 - Khor Teik Lin - s.s. (in English):

Xd. by Mr. Selvadurai:

Living at 7 Jalan Puteh Jerneh, Singapore 10; employed by Vosper (Pte) Ltd. as Manager of Repairs Division. Before that I was employed by Singapore Shipbuilding & Engineering (Pte) Ltd. and before that by Keppel Shipyard. I left Keppel in May, 1977. 10

In October 1973 I was the Commercial Manager of Keppel Shipyard. As Commercial Manager I was responsible for the estimates of jobs, the invoicing of bills and the vetting of sub-contractors' bills and passing them.

I remember the vessel Master Stelios.

(S: Look at D2, D3 and D5). 20

I recognise them. D2 is the worklist, D3 also the worklist and D5 the order chits on the basis of which we bring out the worklist.

D2 was prepared by the Commercial Department under me.

(S: How do you normally prepare D2?)

The worklist is prepared in this manner. The owners will give the shipyard the specifications of work to be done and on that basis we bring out the work list for distribution to the workshop and the operations people down the lines. Normally we receive the specifications of work from the owners in letter form. We would normally expect it to be on the Company's letterhead and duly signed by a person responsible. After receiving the work specifications we prepare the worklist for distribution. 30

As far as I can recall that was not the case in the Master Stelios. I recall we received telex and on the basis of the telex 40

we prepared the worklist out.

(S: B3, B4, B5 and B6).

This looks like a copy of the telex. We received a copy of this telex. Normally when a telex comes in we get a copy either from the telex operator or from the General Manager.

(S: What is the purpose of your preparing D2 from the telex).

10 Only we received the telex - I mean the General Manager, the Marine Manager, myself as Commercial Manager and the Managing Director for information. Without issuing the work list the various operational departments would not know what was to be done as the vessel arrived at the shipyard and also the work list with the item numbers would enable proper costing of labour and materials to be charged. We call it in Keppel sub-code numbers; on each vessel
20 there is a code number and the individual items are sub-code numbers.

(S: B 16, B 17).

This is the Bill of works carried out and submitted by Keppel. The signature at bottom of B 17 is my signature, as Commercial Manager. The main code number of the vessel would be on top left hand corner - it is R 1684/73.

30 After the work is completed on a vessel we first prepare and finalise the bill. We have to collect costs from various departments and these are fed to the Accounts Dept. and from there costs incurred would be fed to the Commercial Dept. In the Commercial Dept. we collate all the costs and compare with our standard tariff and we also take into consideration the difficulty of the job and the overtime incurred if any and we finalise the invoices on the basis of the data we have got. Next we send to the owners or to their agents for settlement.

40 As regards the Master Stelios we presented to Mr. Eustathiou, the owners' representative. I met Mr. Eustathiou, I remember, it was a Saturday afternoon, can't remember the date. (S: It was the 20th October.) I met him in the reception area of the Keppel main office. It was I think after lunch, between 1 and 2 p.m. I had not met him before. I met him again in Court after the commencement of hearing of this case. He has grown fatter and his hair was trimmed.

In the Supreme Court

Defendant's Evidence

No.19
K.T. Lin
Examination

10th July 1978
(continued)

In the Supreme
Court

Defendant's
Evidence

No.19
K.T.Lin
Examination
10th July 1978
(continued)

When I met Mr. Eustathiou on that Saturday afternoon, we went to the Asst. Marine Engineer's office to negotiate the bill. We went item by item and as usual the owners think we were expensive and we justified that we were reasonable; in other words we bargained. Finally after 1 hour or 1½ hours he agreed to pay us \$43,000 out of the \$78,980.20. The balance would be subjected to further negotiations by correspondence. We then came out of the Asst. Marine Engineer's office. At that time the Managing Director, Mr. Watson, came back from somewhere and we met him somewhere in the reception area, it was around 4 p.m. Mr. Watson and Mr. Eustathiou had some exchange of words. I cannot recall what the exchange of words were. As a result of the exchange of words Mr. Eustathiou told me that I could send the bill to the agents, the owners' agents. Mr. Eustathiou would make arrangement with the agents to pay us \$43,000. Then Mr. Watson went up to his office and Mr. Eustathiou went away, we dispersed.

Cross-
examination

CROSS-EXAMINED

Yes I said it was usual for me to receive written specifications of work from owners. At that time we had to use B3 - B6 as the basis for putting the work list out. Yes B3 - B6 was the only document we had from the owners. Yes I used this document to prepare D2. I don't remember using any other document to prepare D2; that is so I did not receive any other document from the owners.

(G: The negotiation of the bill between you and Mr. Eustathiou).

That is so, there was nothing unusual in that.

(G: The difference between \$43,000 and \$78,000).

Yes, the balance was paid in due course, subject to certain deductions.

RXd. (Nil)

(Witness Released)

Signed F.A. Chua

EVIDENCE OF A.S. KARNI

In the Supreme
Court

Defendant's
Evidence

D.W.7 - Ahmad Saud Karni - a.s. (in English):

No.20

A.S. Karni

Examination

Xd. by Mr. Selvadurai:

10th July 1978

Living at 14 Lorong Kismis, Singapore 21;
employed by Keppel Shipyard as Head Foreman
Shipwright.

10 In October 1973 I was the Head Foreman
Shipwright in Keppel. I joined Keppel in 1971
as Foreman Shipwright and was on probation for
6 months. I was promoted to Head Foreman Ship-
wright Designate for 6 months after I had worked
for Keppel for 2 or 3 months. I was confirmed
after another six months, that was in early 1972.

20 My major responsibility was the docking and
undocking, berthing and unberthing of vessels.
I was in charge of the overall charge of the
painting section, carpentry, rigging, tugboats
and all floating crafts and also cleaning of
vessels, which includes cleaning of hulls, all
painting work required by the ship. I make
appointments with the pilots.

(S: D 6 Movements Order Book).

I maintain this book. The actual entries
were made by my assistant but I make the
decisions before the entries are made.

(S: The undocking of the Master Stelios
on the 19th October, 1973).

30 There is an entry in D6. The Master Stelios
was booked for Friday, 19th October, 1973, from
Queens Dock to go to Eastern Roads at 12.30 p.m.
That was the time for the pilot to board the
vessel.

Normally the pilot would go on board 10 to
15 minutes before the time fixed for boarding.

The undocking operation is done by the
assistance of tugs. The vessel is towed out of
the dock.

40 (S: See this sketch of Queens Dock - Ex.
D 18).

In fixing the time for the pilot to board

In the Supreme
Court

Defendant's
Evidence

No.20

A.S. Karni
Examination

10th July 1978

(continued)

I have to look at the tide table. I produce a copy of the 1973 Singapore Tide Tables (Ex. D 19). I would be looking for the time of the slack period because normally it is good seamanship practice to dock and undock vessels in slack water or near slack water.

(S: Turn to the tables for 19th October, 1973 pp. 88 and 89).

On that day there was slack water at 0215 and another one at 1507 hrs and the maximum current or tide was at 0915 hour rate of 1.4 knots and at 2125 rate of 1.8 knots. They appear in the 2nd column under "Western Roads".

10

With this date as guide I decided that the Master Stelios be booked for 12.30 p.m.

When the current is at its highest it is not safe to dock and undock.

According to the table the maximum strength of current was at 9.35 a.m. So it was unsafe to dock and undock a vessel at that time.

20

(S: Is there any special feature in the position of Queens Dock that influences docking and undocking of vessels?)

Yes, first is the position of the entrance of the dock itself as compared with the vessel's approach into and out of the dock. The vessel has to approach at right angle to the dock first and then making a 90° turn into the dock.

(Witness at request of Court marks with X on D 18 the entrance to the Queens Dock).

30

It is because of the presence of an island opposite the dock entrance - Pulau Hantu. Secondly because of the channel which results in the flow of current being stronger than at the anchorage.

When undocking the vessel's engines start after clearance is granted by the Port Control Office and the after lines of the vessel have been let go and the pilot has positioned the vessel with the assistance of the tugs clear of dock entrance.

40

(S: Mark on D 18 the position of the vessel after she had left the dock when she would have started her engine. Mark it "vessel").

I have done so.

In the Supreme
Court

On 19th October, 1973, by studying the tide tables and studying the previous days' tides I observed that I had about 2 or 3 hours before the slack water which was at 1547 hrs at Western Anchorage. Which means I had this time 2 or 3 hrs before slack water to undock the Master Stelios and to dock another vessel. That means it would be around 12.30 p.m. to commence undocking the Master Stelios.

Defendant's
Evidence

No.20
A.S. Karni
Examination
10th July 1978
(continued)

(S: Painting and cleaning hulls of vessels).

I was in charge of gritblasting operations. Normally when a vessel comes into dock I would find underwater growth. In my experience it is not normal to grit blast the underwater growth as soon as she is drydocked. After inspection and after the growth on the hull had been cleared by scraping and by high pressure hose, then a decision would be taken as to whether there should be grit blasting and the area to be grit blasted. The area normally to be grit blasted would be the rusted areas or areas where the owner decisions the paint work to be done.

(S: This is a photo of a vessel with underwater growth - Ex. D 20).

There is a lot of underwater growth. I see a worker there using a high pressure hose cleaning the growth. That is a normal operation.

CROSS-EXAMINED

Cross-
examination

(G: D6).

Yes I said the Master Stelios was booked for undocking at 12.30 p.m. on 19th October. As per Keppel's practice she was booked the day before. In Keppel we always have vessels waiting to be docked.

Yes the vessel that was docked immediately after the Master Stelios was the Kim Hock. Kim Hock was docked at 1335 on the 19th October; yes more than 2 hours before slack tide. Yes 1547 was the extreme slack tide for the 19th October; yes slack condition sometimes prevails both before and after the extreme time shown in the table in D 19. I say sometimes as these data are only predictions. Sometimes there will be no slack after the predictional time. I agree there must be a build up. Yes slack persists for sometime until the maximum is reached.

In the Supreme
Court

Defendant's
Evidence

No.20

A.S. Karni

Cross-

Examination

10th July 1978

(continued)

I don't agree it only takes a few
minutes to undock a vessel.

(G: A 16 - log of the Master Stelios -
look at 12.30 pilot boarded).

Yes that is in accordance with my record.

(G: A 16 shows that 12.55 the tugs were
cast off).

Yes.

(G: The whole undocking operation took
25 minutes).

10

Yes, after the pilot boarded.

(G: In view of the relative short time
necessary to undock the vessel and
in view of the fact that slack would
have prevailed for sometime after 1547
on your own evidence there was no
need for you to begin undocking
operation for the Master Stelios as
early as 12.30 p.m.).

12.30 was the right time to enable the
Kim Hock to be docked.

20

(G: You told us Kim Hock was docked more
than 2 hours before slack).

Yes I said that.

(G: Can you recall whether the pilot had
boarded the Master Stelios on an
earlier occasion on the 19th October).

I cannot recall and I don't think he did.

(G: I suggest the reason why the Master
Stelios was undocked as early as 12.30
p.m. was because Keppel was anxious
to dock Kim Hock as soon as possible).

30

I would not say that. Every vessel booked
is as per programme with suitable tides and
12.30 was considered suitable.

(G: I suggest simply because 12.30 p.m.
had been fixed for the undocking of
the Master Stelios that was your
programme and the yard was not
prepared to accommodate the Master
Stelios any longer).

40

I do not accept that.

Yes I said the pilot is booked the day before; I say the pilot is never booked more than 24 hours ahead. The Marine Manager gives me the instruction to book the pilot; at that time it was Mr. Tham.

(G: If you had undocked the Master Stelios instead of 12.30 but at 2.30 p.m. you could still have undocked her safely and docked the Kim Hock safely).

I could, but I had to bring the Trojan.... we had programmed for the Trojan to come alongside Cable Wharf. Yes because of the Trojan I had to take the Master Stelios early. With tides we cannot be very flexible.

RE-EXAMINED

(S: D 19 - tide conditions for October 19th, you were referred to the tides as for Western Roads).

Yes.

(S: Look at 3rd column "Off B.P. Jetty", the slack tide is stated to be at 1450 hrs).

Yes.

(S: A difference of how many hours).

Nearly one hour.

B.P. Jetty is closer than Western Anchorage to Queens Dock. BP Jetty is about one mile from Queens Dock.

(S: Pages 40 and 41 of D 19, Victoria Dock 19th October, 1973).

For Victoria Dock on 19th October, 1973. it states that at 0138 the highest height of tide is at 0438, at 0933 is 1.6; at 1510 is 2.5 and 2234 is 0.6. The tide link between 1510 and 2234 has gone down by 1.9 m. It will be ebb tide, which means the flow would be from West to East and as per direction of Pilot Officer during ebb tide no docking or undocking operations should take place. Victoria Dock is 1 mile to 1½ miles from Queens Dock.

In the Supreme Court

Defendant's Evidence

No. 20

A.S. Karni

Cross-Examination

10th July 1978

(continued)

Re-examination

In the Supreme Court

Defendant's Evidence

No.20
A.S. Karni
Cross-examination
10th July 1978
(continued)

XXd.with leave of Court:

Yes when I gave the figures in examination-in-chief I was giving the figures for the Western Roads. Yes that was the date I was using as a guide when booking the pilot; I also use the data at pp.40 and 41, which gives the height.

(Witness Released)

Signed F.A.Chua

Case for the Defendants.

10

- Adjourned to 2.30 -

Signed F.A.Chua

Plaintiff's Evidence

No.12
(Resumed)
L.M.S.Bell
Cross-Examination
10th July 1978
(continued)

No.12 (Resumed)

EVIDENCE OF L.M.S. BELL

CROSS-EXAMINATION

Hearing resumed.

P.W.7 (recalled) L.M.S.Bell - o.h.f.o. s (in English):

XXd. by Mr. Selvadurai

(S: Give us the percentage of the ordinary drydock service that you have done on an annual basis for 1974).

20

I have not got the exact figures but I have the percentage of the total service carried out by myself. The percentages are divided into 3 namely classifications, insurance, and owners and the percentages are as follows:
1974 - 18% class, 38% insurance, 44% owners;
1975 - in same order 40%; 40%; 20%; 1976 - 36%; 27%; 37%; 1977 - 24%; 24%; 52%; 1978 to today's date - 24%; 16% and 60%.

30

(S: Your 1974 figures).

Yes class, would include damage service, but very few; in fact there was no damage service but there might be some in the 18%. Of the 18% about 3% to 4% ordinary drydocking service.

(S: Your 1974 - owners 44%).

In 1974 I think I did for owners only about 3 damage service or 4. Majority of work was superintending and a large percentage of that was dockings - 10 dockings I did in 1974. I did 11 dockings, six of them were ordinary docking.

(S: 1975).

40% class - about 5% damage service; I did 7 annual dockings for class, that would be roughly 30%.

20% owners - one damage survey was done, 6 annual dockings for owners. The proper term is "annual docking" or "docking" and not "ordinary docking".

(S: 1976)

36% class - 8 were annual dockings about 15% of 36%; as far as I can recollect no damage service.

37% owners - 8 annual dockings, about 15% of the 37%; none for damage service.

(S: 1977).

24% class - 10% was annual dockings, 3 annual dockings; none for damage service.

52% owners - 4 annual dockings about 15% of the 52%. None for damage service.

(S: 1978)

24% class - 10% annual dockings, one annual docking; one damage service.

60% owners - 2 annual dockings, about 10% of 60%; no damage service, wait, I did 2 damage service, sorry.

The figures I have given for 1974 - 1978 were my own personal work and not that of Ritchie & Bisset.

(S: 1976)

37% owners - I did 8 annual dockings for owners. Yes, it would mean 8 separate ships. For the other years they would involve one ship per docking.

In the Supreme Court

Plaintiff's Evidence

No.12
(Resumed)

L.M.S. Bell
Cross-
Examination

10th July 1978
(continued)

In the Supreme
Court

RE-EXAMINED

Plaintiff's
Evidence

No.12
(Resumed)

L.M.S. Bell
Re-examination

10th July 1978
(continued)

In response to Mr. Grimberg's request I have prepared a schedule of surveys undertaken by me for the years 1968 - 1978 inclusive. I now produce the schedule (Ex. P.15). 1968 includes only 2 months - November and December - I have no records going back further than November 1968.

In the class surveys I would not have been dealing in repair lists apart from the fact that at class surveys the owners' representatives might have given a copy of the repair list to me indicating what items he wanted me to survey.

10

In the case of owners' survey I would be dealing with repair lists in a high percentage of cases.

The Master Stelios is a case of an annual docking, involving owners' repairs.

(G: Ex. P. 15 on right column you have given percentage of class and owners' survey and insurance).

20

(G: London Salvage, Lloyds Agents and other insurance).

They would be concerned with damage surveys.

To Court: "Ultra" means ultra sonic work measuring hull thickness of hull plates.

Annual dockings for class and owners 27 in 1969; 1970 - 23; 1971 - 24; 1972 - 19; 1973 - 29.

30

(G: I make it on what you have given us between 1969 and 1978 you were concerned in approximately 160 annual docking; the vast majority of these would not be concerned with damage).

No. Put it this way, in the vast majority of cases the vessels would not have been docked because of damage but there might have been damage discovered during the docking survey, which I carried out.

40

(G: The vast majority of the 160 cases the vessels would have come here for class surveys and repairs as in case of Master Stelios).

Quite a large number would have come for ordinary repairs and class surveys as in case of the Master Stelios.

In the Supreme Court

Plaintiff's Evidence

No.12
(Resumed)

L.M.S. Bell
Re-examination
10th July 1978

(continued)

10

(G: In terms of your experience and Mr. McKenzie's, look at P.15, Mr. McKenzie would in Singapore have been concerned with the 3rd, 4th and 5th categories of survey, namely London Salvage, Lloyds Agents and other insurances, would I be right?)

Yes. For the exact numbers you must ask Mr. McKenzie.

To the best of my knowledge and belief Mr. McKenzie would not have been concerned with class and owners' survey in Singapore but you will have to ask Mr. McKenzie.

EXAMINED (at the request of Mr. Selvadurai)

Examination

20

Q: When a ship gets into dry dock for annual docking do you survey the hull and the machinery?

A: I might do and I might not.

Q: When you survey the hull and machinery do you consider it as 2 surveys.

A: Yes. I consider it as 2 surveys, as there would have to be 2 separate reports.

In respect of one ship you can have several surveys - maximum 10.

(Witness Released)

Signed F.A.Chua

30

S: Case for the Defendants

- Adjourned to an early date -

Signed F.A.Chua

CLOSING SPEECH OF COUNSEL
FOR THE DEFENDANTS

No.21
Closing speech
of Counsel for
the Defendants
31st July 1978

Friday, 31st July, 1978
Suit No.503/75 (Contd.)

Hearing resumed.

Selvadurai addresses Court:- (Submits
written notes).

P.10 of Notes - para. (9) Kie Hock bad
paymaster. 10

P.32 - para.7 - evidence of Mr. Eustathiou,
Master and Engineer - they had complained on a
number of occasions about the drawing of the
tailshaft and that they had complained to Capt.
Korkodilos. Yet not a single telex of complaint
or telex asking for tailshaft to be withdrawn.
Their evidence cannot be believed.

P.28 - Law - Chitty on Contracts, 24th Ed.
p.51 para.104. When ship came in what was
intended between the parties was that they
would agree to negotiate a contract for work to
be done on the vessel and that came into being
when the worklist was agreed between the parties
and the prices also agreed. 20

Trollope's case, p.333 h.n.

When Mr. Eustathiou arrived contract
concluded and it did not include the drawing of
the tailshaft. The request to draw tailshaft
came later; it came too late for the work to be
carried out. 30

Plaintiff required to mitigate damages -
we offered to redock the vessel, this offer not
accepted; such thing is usually done; if they
had accepted offer, Plaintiff would not have
suffered damages.

If they had accepted offer of sandblasting,
which they said was made by Chen, the tailshaft
would have been drawn and Plaintiff would not
have suffered damages.

Payzer's case (1919) 2 K.B.581; 588
"it is plain.....". 40

REPLY OF COUNSEL FOR
THE PLAINTIFFS

No.22
Reply of Counsel
for the Plain-
tiffs

Grimberg replies (hands in written notes). 31st July 1978

- Adjourned to 2.30 -

Signed F.A.Chua

Hearing resumed.

Grimberg continues :-

P.15 of Notes - Chan Cheng Kum's case -

10 (1) My learned friend's written submission
pp. 1 - 3 - "They thought that.....screwshaft
survey" - nothing of the sort; it is my learned
friend who misconceived the central issue. You
cannot look at B 64 in isolation, it is in
reply to my letter B 55 of 2nd February, 1977,
2nd para. Look at the Pleadings as they stood
on 2nd February, 1977 - no indication what their
defence would be. On same date I wrote B 55.
20 I wrote to Mr. Arnott B 54 who replied at B 57,
B 60, B 62, B 63. All this time no reply to my
letter B 55. Three months later my learned
friend's firm wrote B 64. Only when trial
commenced that Pleading was amended and we
became aware that Defendants would contend that
thetelex messages B 1, B 2 and B 3 did not
amount to a contract to withdraw the tailshaft.
B 75.

30 (2) My learned friend said no significant
mandate to the master in absence of Mr.Eustathiou
but look at B 12, B 11.

(3) P.23 of my learned friend's submission
"This was because.....too late". But see
correspondence between owners and Society.
Unreasonable conclusion made by my learned
friend.

40 (4) Defendants have only produced 3
instances when this work was done in 3 days. I
am not saying it is impossible but I say on
Defendants' own evidence they could have overrun
by 2 days and this was something they could not
afford to do considering how busy they were and
the extent they value the following works.

In the Supreme
Court

No.22

Reply of
Counsel for the
Plaintiffs

31st July 1978

(continued)

(5) My learned friend said effect of B 1, B 2 and B 3 is that the parties agree to agree and that it was anticipated that further negotiations would take place before a contract came into being when the worklist was ultimately agreed. My learned friend asks you to imply a term to that effect. (S: It is not that). If this work is subject to contract then I submit the parties would have said so; nor was it suggested that there was no binding agreement to draw the shaft until a more formal arrangement had been concluded. Nor was it necessary for Court to imply such a term because B 1, B 2 and B 3 had business efficacy without such an implication. The meaning is clear. I submit the facts of this case take it out completely out of the ambit of Trollope's case. B 1 was the inquiry, B 2 was the offer and B 3 was the acceptance and in accepting the Defendants knew as regards the survey exactly what the scope of the duties were. Mr. Chen said "We would have to draw the shaft for the survey".

10

20

(6) Mitigation - my learned friend said we should have agreed to undock and redock. First, that offer was never made; second, had it been made it would most naturally have been referred to in B 18. My learned friend said we should have stayed and accepted the sandblasting. That is wrong on the evidence. By the time 19th October came the offer to draw the tailshaft if we agree to sandblasting had been superseded by Defendants' firm requirement for that drydock and option to accept the sandblasting on 19th no longer existed. That is common ground between the parties. Our only recourse was to find another dock in Singapore; we did try but unsuccessful. We had no alternative but to accept the charter while the vessel was still here. I submit Plaintiffs acted reasonable in the situation in which they found themselves.

30

40

- C. A. V. -

Signed F.A.Chua

Certified true copy.
Signed Kwek Chip Leng
Private Secretary to Judge
Court No.2
Supreme Court, Singapore.

10 The Plaintiffs in this case are the owners of the motor vessel "Master Stelios" and they claim damages against the Defendants for breach of contract. The Plaintiffs plead that "As a result of exchanges of telex messages between the Defendants and the Plaintiffs' agents, Messrs. Phocean Ship Agency Ltd. of London, an agreement was concluded between the Plaintiffs and the Defendants on or about the 8th October 1973 by which the Defendants were to provide drydock space in their shipyard for and execute general repair works on the Plaintiffs' ship "Master Stelios" in October 1973", and that "It was a term of the said agreement made expressly and/or by implication from the circumstances thereof that the Defendants would provide the facilities for a screwshaft survey."

20 The following telex messages passed between Phocean Ship Agency Ltd. (Phocean) and the Defendants :-

(1) On the 3rd October, 1973, Phocean sent this telex to the Defendants:

30 "PLEASE ADVISE US WHETHER YOU HAVE A DRYDOCK AVAILABLE FOR OUR MV MASTER STELIOS 12900 TONS DW FOR ORDINARY DRYDOCKING AND SCREW-SHAFT SURVEY YOUR IMMEDIATE REPLY WILL BE APPRECIATED THANKS PHOKAIS TLX NO 886878."
(B 1).

(2) On the 4th October, 1973, the Defendants replied as follows :

"RE YOUR ENQUIRY 3/10 WE CAN OFFER DOCKSPACE AROUND 16/17 OCTOBER. PLEASE CONFIRM EARLY IF ACCEPTABLE. " (B 2).

(3) On the 8th October, 1973, Phocean telexed the Defendants as follows :

40 "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: "

Thereafter were set out twenty-one items of works and the telex ended "NO EXTRA WORK TO BE EXECUTED UNLESS SANCTIONED BY OWNERS SUPERINTENDENT

In the Supreme Court

No.23
Judgment of
Chua, J.

6th October
1978

(continued)

ENGINEER ONLY." (B3 - B6).

The case of the Plaintiffs is this. The tailshaft survey of the "Master Stelios" was due in April, 1973. By October, 1973, it was vital for the Plaintiffs that the tailshaft survey should be carried out without further delay as the Classification Society (Lloyd's Register of Shipping) was insisting that the survey be carried out. If the requirements of the Classification Society are not met the vessel does not remain in class. It was this situation which led Phocean to send the Defendants the telex of the 3rd October, 1973. (B1).

10

The vessel arrived in Singapore on the 15th October, 1973, and went into drydock (Queen's Dock) on the 16th October. The Plaintiffs' marine superintendent, Mr. Eustathiou, had not yet arrived in Singapore. Usually it is the owner's marine superintendent who would discuss with the shipyard the items of work to be carried out and generally supervises the work.

20

In this case, in the absence of the marine superintendent, the master of the "Master Stelios", Capt. Leontaras (P.W.1) had been authorised to discuss with the Defendants the individual items of work to be done by the yard and in fact the master did so on the 16th October with Mr. Chen Jeng Li (D.W.4), the Defendants' ships repair manager. The items that were discussed were items set out in a work list (Ex. D2) which was prepared by the Defendants and which were taken from the telex B3 - 6 but the list omitted the drawing of the tailshaft. The items on the worklist D2 are items relevant for an ordinary drydocking. The drawing of the tailshaft is not a normal drydocking item. No discussion took place about the drawing of the tailshaft as no discussion was necessary or called for as such was expressly stipulated for in the telex B 1. However, the master and the Chief Engineer, Mr. Vrontakis, reminded Mr. Chen Jeng Li, prior to the arrival of the marine superintendent Mr. Eustathiou, of the fact that the drawing of the tailshaft was the most important reason for the vessel having to dock at Singapore and told Mr. Chen to start work on the tailshaft first. Work was started on the 16th but not on the tailshaft. The next day the master saw Mr. Chen in the morning and in the afternoon and asked why work had not started on the tailshaft and

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Mr. Chen said there was still time if Mr. Eustathiou arrived on the 17th. Mr. Eustathiou arrived on the evening of the 17th only to find that the tailshaft had not been drawn. Mr. Eustathiou complained about the failure to draw the tailshaft that night but did not get a satisfactory reply. So he rang up his London office and was told that London would take up the matter. The following day Mr. Eustathiou went to the yard's office to request that the tailshaft removal should be done and was subsequently told that the "Master Stelios" would be undocked the following day. The vessel was undocked on the following day. By that time the tailshaft had still not been drawn. Eventually the tailshaft survey was carried out at the beginning of May, 1974, at Rotterdam.

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(continued)

The case of the Defendants is that the telex exchanges B1, B2 and B3 do not constitute a contract for doing any work at all apart from booking dock space for a proposed tailshaft survey and ordinary drydocking and letting the vessel come into drydock. The Defendants allege that Mr. Eustathiou only raised the question of the drawing of the tailshaft for the first time late in the afternoon of the 18th October, by which time it was too late to draw the tailshaft since the vessel was to be undocked by the following day, the 19th October.

Let us now consider the meaning and effect of the three telex messages.

B1 makes a specific inquiry - "Do you have dockspace for the "Master Stelios" for ordinary drydocking and tailshaft survey?" At the trial there has been no serious disagreement between the parties as to what a tailshaft survey entails. 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. Having received B1, the Defendants replied by B2 offering dockspace around 16/17 October. In making this offer they were specifically referring to B1 and their offer of dockspace can only have been with reference to Plaintiffs' request for "ordinary drydocking and screwshaft survey". The Defendants' offer was accepted by the Plaintiffs in the first two lines of B3. The Plaintiffs contend that at that point of time a 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 dry-docking work as the Plaintiffs might subsequently

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require to be carried out.

It appears that the Defendants misread B3 - 6; they treated items 1 to 21 as a definitive worklist whereas it clearly is not. The list was preceded by the words: "Meantime, please quote the following items", in other words the Plaintiffs were asking the Defendants, "Please let us know how much you would charge for any or all of the following items." The evidence is that the Defendants stemmed the dock for three days in view of the intended drawing of the tailshaft. On the 15th October (the day before the arrival of the "Master Stelios") the Commercial Department of the Defendants prepared a worklist for the "Master Stelios" (Ex. D2) and it was headed "Repair List (Telex)". Quite clearly, the Defendants regarded the items 1 - 26 on the telex B3 to B6 as a worklist and not as was the fact a simple request for quotations. Equally clearly, the Defendants forgot all about or ignored B1, B2 and the first two lines of B3 which contained a firm commitment on the part of the Defendants to draw the tailshaft of the "Master Stelios" for survey. No other documents other than B3 - 6 were utilised for the purpose of preparing the worklist D2.

Now, if things had followed their ordinary course the Plaintiffs' marine superintendent, Mr. Eustathiou, would have been in Singapore before the arrival of the "Master Stelios" and he would have put right the Defendants' mistake. But, unfortunately, Mr. Eustathiou's flight to Singapore was held up due to the Arab-Israeli conflict of October, 1973, and he did not get to the vessel until the 17th October at 10 p.m., some 30 hours after the vessel had already docked. On the afternoon of the 16th October, when the vessel docked, Mr. Chen Jeng Li (D.W.4), one of the Defendants' ships repair managers, went on board the vessel with the worklist D2 and saw the master of the "Master Stelios". It is at this point that the conflict in the evidence commences. The conflict in the evidence was over what was said by the witnesses to each other between the 16th October when the vessel was docked and the afternoon of the 18th October when the Defendants say that the question of drawing the tailshaft was first raised.

The evidence covering this period can be tested by what happened before it and what happened after it. The evidence is this.

Before the docking of the vessel the Classification Society was pressing for the overdue tailshaft survey to be carried out. It was with this survey in mind that Capt. Petros Korkodilos (P.W.4), the Principal Marine Superintendent of Phocean, arranged the docking in Singapore and advised Mr. Eustathiou. When the vessel arrived in Singapore Mr. D.E. Harper, the Lloyd's surveyor in Singapore, attended the drydocking of the vessel as the tailshaft survey was due. As soon as the Plaintiffs were told by Mr. Eustathiou that the Defendants had declined to draw the tailshaft the Plaintiffs complained to the Defendants' agents in London, Swan Hunter, and Swan Hunter cabled the Defendants (B 14). Capt. Korkodilos and Mr. Jansen, the technical manager of Phocean, telephoned Mr. C.N. Watson, the then Managing Director of the Defendants, in the middle of the night at his house on the 18th October to protest. On the very day the vessel was undocked the Plaintiffs protested in writing in no uncertain terms to Lloyds (A 20). All the evidence immediately before and immediately after the controversial period is entirely consistent with the evidence of the Plaintiffs' witnesses in Singapore. On the balance of probabilities and having regard to the contemporaneous documentary evidence the Plaintiffs' evidence is to be preferred to that of the Defendants.

One may well ask, if the Defendants were reminded by both the master and the Chief Engineer soon after the vessel was docked that the tailshaft was to be drawn, "Why didn't the Defendants do it?" It seems to me that there were two reasons. The Defendants were concerned about taking instructions from the master in the absence of the Plaintiffs' marine superintendent, in case the Plaintiffs subsequently repudiated the instructions and refused to pay the work. The second reason is that 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 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.

The difficulties began shortly after the vessel was docked on the 16th October. Soon

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(continued)

after the dock was dry clearances of the tailshaft and rudder pintel were taken. The readings were shown to Mr. Harper, the Lloyd's surveyor, who recommended that the rudder pintel bush be renewed. The Defendants then sent a telex (B 10) to the Plaintiffs in London on the 16th October giving the tailshaft and rudder clearances and stating that "class recommends renewal of lining". Then on the same day the Plaintiffs replied "Please proceed with class recommendation as stated" and also "authorise master proceed with other works until arrival our supt." 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. 10

Mr. Tham Yeng Fai (D.W.2), the then Marine Manager of the Defendants, says in cross-examination that he offered to re-programme the "Master Stelios" for redocking but his offer was rejected by Mr. Eustathiou. This offer had it been accepted would have resolved the problem. But the question is was this offer made? In truth, the offer to re-dock was never made. In his letter dated the 2nd November, 1973, (B 18 - 20) to Mr. D.L. Nomicos in Greece, who is a member of the Board of Directors of Phocean, Mr. Watson in giving the Defendants' version of the whole episode did not refer to the offer to re-dock the vessel. If such an offer had been made it is inconceivable that the fact of the offer and its refusal would not have been referred to in Mr. Watson's letter. The truth of the Defendants' position is contained in the Defendants' telex of the 18th October to their agents in London, Swan Hunter, (B 15) in which they stated: "SORRY ABOUT OWNERS REACTION BUT WE WILL BE IN A REAL MESS IF WE PROLONG THIS VESSEL IN DOCK." 30 40

I have considered what Counsel for the Defendants have said on certain aspects of the evidence of some of the Plaintiffs' witnesses which he submits cast doubt on their veracity. The evidence of Capt. Leontaras, Mr. Vrontakis and Mr. Eustathiou is that Mr. Chen Jeng Li said in effect to them: "If you agree to sandblast the bottom plating, we will draw the tailshaft." Mr. Chen Jeng Li had categorically 50

denied this. The Defendants' evidence is that in 1973 sandblasting was an unprofitable item of work which the Defendants were keen to avoid if possible, and if they undertook such work they would in fact subcontract the work out. Counsel says that these witnesses of the Plaintiffs could not have known these facts otherwise they would not have said what they did about Mr. Chen's great interest in sandblasting the boot-top belt and bottom of the vessel.

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There was absolutely no reason for these Plaintiffs' witnesses to invent this evidence. They could simply have said that the Defendants refused to draw the tailshaft and no more.

Counsel for the Defendants says that in an effort to add plausibility to their evidence and to give it a consistent pattern of credibility Capt. Leontaras, Mr. Vrontakis and Mr. Eustathiou over-reached themselves by their evidence relating to their so-called telephone conversations with Capt. Korkodilos in London on the evening of the 17th October. Counsel says that Defendants have established that no trunk calls could be made from the vessel via the yard's exchange between 10.20 p.m. on any evening and 7 a.m. the next day and therefore there can be no truth in the evidence of these witnesses for the Plaintiffs that the calls were made.

It is evident from D 7 that Mr. Eustathiou did make a number of trunk calls on the morning of the 18th October. It is clear that the trunk calls which Mr. Eustathiou said he made were made on the morning of the 18th October and not the night of the 17th. I do not think that these Plaintiffs' witnesses should be considered as untruthful if they were unable to place with any exactitude the time of the telephone conversations which were made five years earlier.

I am of the view that when the Plaintiffs in the first two lines of the telex B 3 accepted the offer of the Defendants in B2, at that point of time, a 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.

In the result the Plaintiffs succeed in their claim.

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(continued)

The Plaintiffs' claim is for the equivalent of £33,934.94 which at the date of the issue of the Writ, amounted to S\$197,942.50.

The first item of their claim is for "costs of services at Rotterdam by Rotterdam Drydock Company" amounting to £5244.00. These are general expenses which are attributable to the vessel having been drydocked for the tailshaft survey which the Defendants failed to perform in Singapore. The Plaintiffs' evidence was never challenged or rebutted.

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The second item is for "payment of off-hire as per charterer's statement and bunkers consumed during the period of off-hire... £24,614.80".

After the vessel was undocked the Plaintiffs had the choice of either finding another yard in Singapore to do the tailshaft survey or accepting a fresh charter commencing at Singapore. There was no yard available at Singapore so the Plaintiffs entered into a charterparty commencing at Singapore on the 26th October and it concluded at Basra on or about the 28th January, 1974. The Classification Society was pressing for the survey and it eventually agreed to the postponement of the tailshaft survey until sometime before the end of April, 1974, but not beyond that date. Just prior to the end of the charter, the parties agreed to extend the charter period and the increased period was twelve to fifteen months but the Plaintiffs were given liberty to drydock the vessel prior to April, 1974, at a time and place to be mutually agreed. During the extended charter the Plaintiffs tried to secure yards to deal with the outstanding tailshaft survey. Eventually space was offered at Rotterdam by the Rotterdam Drydock Co., where the vessel was docked between the 6th and 10th May, 1974.

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As a consequence of the interruption of the extension to the charter, the vessel was off-hire for a total of 14 days, 8 hours and 48 minutes, during which time bunkers were utilised on the Plaintiffs' account. The sum debited to the Plaintiffs in respect of off-hire was US\$46,691.45 and for bunkers consumed US\$12,814.29. They form the largest item of the Plaintiffs' claim against the Defendants and were converted to sterling to amount to £24,614.80.

40

Now, none of the Plaintiffs' evidence on this item was seriously challenged, nor was

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rebutting evidence called. Counsel for the Defendant, however, criticised the Plaintiffs for accepting the extension. It is idle to suggest that the Plaintiffs should have declined an extension of the charter and deviate from Basra to Karachi or Bombay to have the tailshaft survey. As Capt. Korkodilos said it would not have been prudent to turn down the extension "on account of the general conditions of the freight market as later it would have been difficult to secure employment.

In the Supreme Court

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Judgment of
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1978

(continued)

The next item is for £120.00 being "superintendence for six days at £20 per day." While the vessel was in drydock at Rotterdam it was necessary for a marine superintendent of the Plaintiffs to be in attendance for the period between 5th and 10th May, 1974, (six days). The sum of £20 per day is for board and lodging incurred by the marine superintendent. Again the Plaintiffs' evidence was unchallenged.

The next item is for £1,170.61 being "Hempels' Marine Paints Account." The bills of Hempels' Marine Paints dated 24th May, 1974, and marked as having been paid on the 13th June, 1974, was produced. They were in respect of the supply of anti-corrosive, anti-fouling and other materials utilised during the drydocking in Rotterdam. The Plaintiffs' evidence went unchallenged and unrebutted.

The fifth and last item is for £2,785.53 being "Deck department expenses". The bill of the Rotterdam Drydock Co. (Ex. P 9) is in a number of sections and one of them is headed "Deck Department" and under it are set out the works carried out which the Plaintiffs say they are entitled to claim. Again the Plaintiffs' evidence went unchallenged.

In the result I give judgment for the Plaintiffs in the sum of S\$197,942.50 plus interest at the rate of 8% per annum from the date of the Writ to judgment and costs.

Signed F.A.Chua
JUDGE

Dated this 6th day of October, 1978

Certified true copy
Signed Kwek Chip Leng
Private Secretary to Judge
Court No.2
Supreme Court, Singapore.

In the Supreme
Court

No.24

FORMAL JUDGMENT

No.24
Formal Judgment

6th October
1978

The 6th day of October, 1978

This action having been tried before the Honourable Mr. Justice Chua on the 26th, 27th, 28th, 29th and 30th days of September, 1977, the 14th, 15th, 16th, 20th, 21st and 23rd day of February, the 10th, 11th, 12th and 13th days of April, the 27th, 28th, 29th and 30th days of June, and the 10th and 21st days of July, 1978, and the Judge having this day ordered that Judgment as hereinafter provided be entered for the Plaintiffs IT IS ADJUDGED that the Defendants do pay the Plaintiffs \$197,942.50, interest thereon at the rate of 8% per annum from the 14th day of February, 1975, the date of the Writ herein, to the date hereof, and its costs of action to be taxed.

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Entered in Volume 198 page 132 at 10.50 a.m. 20 of the 20th day of October, 1978.

Signed Tan Seck Sam
ASSISTANT REGISTRAR

In the Court
of Appeal

No.25

NOTICE OF APPEAL

No.25
Notice of
Appeal

19th October
1978

Take notice that the abovenamed Appellants being dissatisfied with the decision of the Honourable Mr. Justice Chua given at Singapore on the 6th day of October, 1978 appeal to the Court of Appeal against the whole of the said decision.

30

Dated the 19th day of October, 1978.

Signed Rodyk & Davidson
Solicitors for the Appellants

To: The Registrar, Supreme Court, Singapore
And to: The abovenamed Respondents and their
Solicitors, Messrs. Drew & Napier,
Singapore.

The address for service of the Appellants is c/o Messrs. Rodyk & Davidson, 24 Chartered Bank Chambers, Battery Road, Singapore.

In the Court
of Appeal

No. 25
Notice of Appeal
19th October
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(continued)

No. 26

PETITION OF APPEAL

10 IN THE COURT OF APPEAL IN SINGAPORE

Civil Appeal No. 67 of 1978

Between:

KEPPEL SHIPYARD (PRIVATE) LTD. Appellants

and

MONVIA MOTORSHIP CORPORATION Respondents

(In the matter of Suit No. 503 of 1975

Between:

MONVIA MOTORSHIP CORPORATION Plaintiffs

and

20 KEPPEL SHIPYARD (PRIVATE) LTD. Defendants)

PETITION OF APPEAL

To the Honourable the Judges of the Court of Appeal.

The Petition of the abovenamed Appellants showeth as follows :-

30 1. The appeal arises from a claim by the Plaintiffs for £33,934.94 equivalent to \$197,942.50 being the amount of damages allegedly suffered by them as set out in the Amended Statement of Claim indorsed on the Writ.

2. By judgment dated the 6th day of October, 1978, judgment was given for the Plaintiffs against the Defendants in the sum of \$197,942.50 with interest and costs to be taxed.

3. Your Petitioners are dissatisfied with the said judgment on the following grounds :-

40 (1) The learned Judge erred in fact and in law in deciding that a binding contract to draw the tailshaft of the vessel "Master Stelios" had been concluded by the Appellants and the Respondents in the exchange of telexes B1, B2 and the first two lines of B3 as referred to in page 6 of the Judgment dated the 6th day of October, 1978.

In the Court
of Appeal

No. 26
Petition of
Appeal

7th December
1978

- (2) The learned Judge erred in law in disregarding the items 1 to 26 contained in the telex B3 to B6, in construing the legal effect of the telexes B1, B2 and B3 exchanged between the Appellants and the Respondents. In this regard, the learned Judge failed to consider the significance of the evidence given by Mr. C.N. Watson, the then Managing Director of the Appellants, Mr. Walter McKenzie, the expert witness called by the Appellants, Mr. Bell, the expert witness called by the Respondents and Mr. Tham Yeng Fai of the Appellants, relating to the formation of ship-repair contracts. 10
- (3) The learned Judge erred in law in treating as a relevant factor in the construction of the said telexes B1, B2 and B3, the correspondence that had taken place between the Respondents and the Classification Society in view of the fact that the Appellants were totally ignorant of the said exchange of correspondence and, were never at all material times, informed of the existence of the said correspondence. 20
- (4) The learned Judge erred in fact and in law in impliedly holding that the Appellants had to do the rudder repairs to the vessel at the expense of drawing the tailshaft of the vessel. He failed to appreciate that the Appellants could have turned down the rudder-repair work, if in fact such work had to be done at the expense of the work of drawing the tailshaft of the vessel. The learned Judge further, failed to appreciate the fact that the work on both the rudder repairs and the drawing of the tailshaft could have been done together and in this and other respects, he failed to appreciate the significance of the evidence given by the Appellants' witnesses in respect of similar work that was done by the Appellants on the vessels the "EMMA BAKHE", the "GOLDEN FORTUNE" and the "JATI BARANG". 30 40
- (5) The learned Judge failed to consider the implications of the evidence given by the Respondents' witnesses with regard to the telephone calls the said witnesses were said to have made from Singapore to London. The said evidence had a bearing on the veracity of the Respondents' witness. The learned 50

Judge further, failed to appreciate the significance, in relation to the said telephone conversations of the difference in time of 7½ hours between Singapore and London when he found as follows:-

In the Court
of Appeal

No. 26
Petition of
Appeal

7th December
1978

(continued)

10 "It is evident from D7 that Mr. Eustathiou did make a number of trunk calls on the morning of the 18th October. It is clear that the trunk calls which Mr. Eustathiou said he made were made in the morning of the 18th and not the night of the 17th. I do not think that these Plaintiffs' witnesses should be considered as untruthful if they were unable to place with any exactitude the time of the telephone conversations which were made five years earlier."

20 In so finding the learned Judge failed to recognise that, in view of the evidence given by Captain Korkodilos of the Respondents, the said telephone conversations could not have taken place before the afternoon of the 18th October thereby sustaining the Appellants' contentions as to when instructions were first given by the Respondents to the Appellants to draw the tailshaft out.

- 30
- (6) The learned Judge erred in law in awarding as part of the damages to the Respondents, the sum of £24,614.80 representing the off-hire expenses or losses of the said vessel. The said item of damages is legally remote.
- 40 (7) The learned Judge erred in law in awarding by way of damages, the costs and expenses incurred by the Respondents at Rotterdam in drawing out the tailshaft. He failed to appreciate that the said expenses must have been incurred by the Respondents wherever the drawing of the tailshaft was done, be it Singapore, Rotterdam or elsewhere. The said costs and expenses must hence be to the Respondents' account in any event and could not be recovered to from the Appellants as damages.
- 50 (8) The learned Judge's findings of fact generally are against the tenor of the entire evidence recorded at the trial.

In the Court
of Appeal

No.26
Petition of
Appeal

7th December
1978

(continued)

(9) In ruling 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, a 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", the learned Judge decided the issue of law in vacuo without regard to the peculiar circumstances in and procedures by which ship-repair contracts between dockyards and ship-owners are negotiated and finally agreed. The said circumstances emerge clearly from the evidence recorded at the trial and in failing to take the said circumstances and procedures into consideration, the learned Judge erred in law.

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4. Your Petitioners pray that such judgment may be reversed varied or set aside and for such further or other order as to this Honourable Court may seem fit.

Dated the 7th day of December, 1978

Signed Rodyk & Davidson
Solicitors for the Appellants

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Judgment of
Court of Appeal
31st January
1980

No.27

30

JUDGMENT OF COURT
OF APPEAL

Coram: Wee Chong Jin, C.J.
D.C. D'Cotta, J.
A.P. Rajah, J.

This appeal arises from a claim by the Respondents (Plaintiffs) against the Appellants (Defendants) for £33,934.94 equivalent to S\$197,942.50, being the amount of damages allegedly suffered by them as set out in their Amended Statement of Claim.

40

By judgment dated 6th October, 1978
judgment was given for the Plaintiffs against

the Defendants in the sum of S\$197,942.50 with interest and costs to be taxed.

In the Court
of Appeal

The story begins with three telexes exchanged between the Plaintiffs' agents, Phocean Ship Agency Limited of London, and the Defendants. On the 3rd October, 1973 Phocean sent this telex to the Defendants :-

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Judgment of
Court of Appeal
31st January
1980

(continued)

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"Please advise us whether you have a drydock available for our MV Master Stelios 12900 tons dw for ordinary dry-docking and screwshaft survey your immediate reply will be appreciated thanks Phokais Tlx No. 886878".

On the 4th October, 1973 the Defendants replied as follows :

"Master Stelios
Re your enquiry 3/10 we can offer dockspace around 16/17 October. Please confirm early if acceptable".

20

On the 8th October 1973 Phocean telexed the Defendants as follows :-

"MV Master Stelios
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:

30

1. Drydock, shore unshore and undock vessel.
2. Provide the necessary tugboats and pilot to move vessel into and out of drydock.
3. Provide mooring crew ashore only. To moor vessel alongside a yard berth after or prior to drydocking.
4. Clean boottop belt and bottom by power hose and scraping as required and permit hull to dry.
5. Apply one full coat of owners (Hempels) boottop. One full coat of owners (Hempels) anti-corrosive and one coat of anti-fouling compositions. Touch up boottop belt and bottom areas as required and instructed by owner's superintendent with owner's primers (Hempels).

40

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(continued)

6. Repaint draught markings forward and aft and plimsoll markings.
7. Open out injection intakes, clean and coat grids and intakes with apexior.
8. Take rudder and tailshaft wear down and submit written record to this office.
9. Renew all aroded and/or missing shell anodes and fit owners new anodes (per anode) type Wilson Walton International W 117 and W 124. 10

Open out shell valves as instructed by owner's superintendent, overhaul and close up.
10. Buff propeller by means of wire bushes.
11. Supply sanitary water during stay in drydock unless decent toilet spaces available ashore.
12. Supply fireline water supplies and disconnect on drydocking. 20
13. Supply fireguards during period of repairs, per man per day.
14. Supply shore current during stay in drydock and disconnect on undocking.
15. State cost of kw/hour for shore current including attendance.
16. Supply domestic refrigerator cooling water during stay in drydock and disconnect on undocking. 30
17. State cost per ton including attendance for refrigerator circulating water.
18. Supply telephone connection during vessel's stay at yard and disconnect upon departure of vessel.
19. Supply crane hire for owners stores or spares. Cost per hour attendance.
20. Grit or sandblast boottop belt inclusive per square metre. 40

21. Coat boottop belt two full priming coats per square metre, owners paints (Hempels).

All charges for numbered items to be inclusive of work, staging, etc.

No extra work to be executed unless sanctioned by owners superintendent engineer only. "

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(continued)

10 The M.V. "Master Stelios" (hereinafter referred to as "the vessel"), the subject matter of the telexes, arrived in Singapore and anchored at the West Anchorage at 2200 hours on the 15th October, 1973. On the following morning, 16th October, she proceeded to the Defendants' shipyard and was in drydock at 1420 hours. The ship owner's representative, Mr. Stylianos Eustathiou, to whom categorical reference was made in the third and last telex, arrived in Singapore on Wednesday, 17th October and boarded the vessel at 2200 hours. A great deal of evidence was led on both sides as to matters before these three telexes and as to what happened on arrival of the vessel in drydock on the 16th October 1973 and before her leaving drydock on the morning of the 19th October. During the drydock period there was no screwshaft survey but the Defendants executed repairs specifically requested by the master.

20
30 It was the Plaintiffs' case by their Statement of Claim that as a result of the exchanges of these three messages an agreement had been concluded between the Plaintiffs and the Defendants on or about the 8th October, 1973 by which the Defendants were to provide drydock space in their shipyard for, and execute general repair work on, their vessel in October 1973. The Plaintiffs further alleged that it was a term of the said agreement made expressly and/or by implication from the circumstances thereof that the Defendants would provide the facilities for a screwshaft survey. The Plaintiffs' case was that the Defendants had failed or refused to provide the said facilities for a screwshaft survey and were thus in breach of contract. The facilities for a screwshaft survey, as pleaded by the Plaintiffs in their Further and Better Particulars consisted of "providing in dock, disconnecting the vessel's propellor and drawing in the shaft to a convenient place where it can be examined and to assist the surveyor to measure the clearance between the shaft and stern bush and to renew part or the whole of the bushing,

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if necessary, and rewooding the stern bush
if necessary".

The Defendants in their Defence made no admission that these three telex messages resulted in a concluded agreement by which they would provide drydock space in their shipyard for and to execute general repairs. They also denied that it was a term of the said agreement made expressly or by implication from the circumstances thereof that they would provide the facilities, as particularised by the Plaintiffs, for a screwshaft survey. 10

It is plain from the pleadings that the determination of this case turns on the true construction of these three telex documents. It is also plain that on the face of these documents there was no express term of the alleged concluded contract that the Defendants would provide the facilities, as particularised, for a screwshaft survey. It seems to us that on the pleadings the Plaintiffs' claim must necessarily fail unless on the true construction of these telex documents a contract had been concluded between the parties whereby the Defendants agreed to provide drydock space in their shipyard for and to execute general repair work on the Plaintiffs' said vessel and there was an implied term of that concluded contract that the Defendants would provide the facilities set out in the Plaintiffs' Further and Better Particulars. 20 30

As regards whether or not there was a concluded contract to execute general repair work on the Plaintiffs' vessel while in drydock in the Defendants' shipyard, it is to be observed that there was no express agreement as to the repair work to be done and the price to be paid. It is also to be noted that in the third and last telex document the Defendants were asked by the Plaintiffs to quote charges for 21 specific items of work or materials, if supplied. 40

In order to constitute a binding contract "there must be a concluded bargain, and a concluded contract is one which settles everything between the parties and leaves nothing to be settled by agreement between the parties. Of course it may leave something which still has to be determined, but then that determination must be a determination which does not depend upon the agreement between the parties... As a matter of general law of contract all the 50

essentials have to be settled. What are the essentials may vary according to the particular contract under determination". (per Viscount Dunedin in May and Butcher v. Rex [1934] 2 K.B. 17n at 21).

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(continued)

10 In the case of commercial agreements, although the courts will not make a contract for the parties where none exists, they will seek to uphold bargains made between businessmen wherever possible, recognising that they often record the most important agreements in crude and summary fashion, and will seek to construe any documents fairly and broadly, without being too astute or subtle in finding defects. If satisfied that there was an ascertainable and determinate intention to contract, the courts will strive to give effect to that intention, looking at the substance and not at the form (see Halsbury's Laws of England 4th Ed. Vol.9 para. 269 and cases cited therein).

20 Applying these principles can it be said that on the true construction of the three telex documents, looking at the substance and not at the form, there was an ascertainable and determinate intention on the part of the parties binding the Plaintiffs, on the one hand, to take their vessel to the Defendants' shipyard to drydock and to engage the services of the Defendants to execute general repair work and to pay the Defendants a reasonable price for any repair work done and reasonable prices for materials supplied in the course of such repair work and, on the other hand, binding the Defendants to have drydock space available for general repair work and to execute any general repair work that the Plaintiffs may require them to carry out to the vessel and to supply the necessary materials at reasonable prices.

30 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 inquiry for drydock space for a vessel for "ordinary drydocking and screwshaft 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. The expert witnesses who gave evidence at the trial were not questioned at all

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(continued)

as to what a shipyard would have understood when asked to provide "drydock space for ordinary drydocking and screwshaft survey". Indeed the evidence of the Plaintiffs' expert witness was that by the third telex message the Plaintiffs were not ordering the work of ordinary drydocking and screwshaft survey to be carried out and that the first telex message was merely an inquiry by the Plaintiffs whether a drydock was available and was not an order to the Defendants to carry out ordinary drydocking and screwshaft survey.

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It follows, in our judgment, that on the true construction of the three telex documents, although there must have been an intention by both parties, continuing up to the arrival of the vessel at the shipyard, to make a contract, the parties were not ad idem on the terms which they, on the arrival of the vessel, regarded as being required in order that a contract should come into existence. In our opinion while it is clear that the parties intended to make a contract for such work as would be required during ordinary drydocking and to enable a screwshaft survey to be carried out, the exact terms were left for future agreement.

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Furthermore, in our opinion there was no evidence from which the Court could, assuming there was a concluded contract by the Defendants to provide drydock space for and to execute "general repair work" on the Plaintiffs' vessel, import a term by implication that the Defendants would "provide in dock, disconnect the vessel's propeller and draw in the shaft to a convenient place where it can be examined and to assist the surveyor to measure the distance between the shaft and stern bush and to renew part or the whole of the bushing, if necessary, and rewood the stern bush if necessary". To imply such a term on the evidence before us would be to make an entirely different contract for the parties. It has often been said terms are not to be implied merely because they are desirable, or merely because the parties, if they had considered the question, would probably as reasonable men have agreed such terms. A term can only be implied where it is necessary in order to give "business efficacy" to the contract. In the present case the concluded contract was merely a contract binding the Defendants to accept the Plaintiffs' vessel in drydock for a period of days around 16/17 October 1973 for ordinary drydocking and screwshaft survey

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10 purposes. The Defendants could not have known, nor was there any evidence that they in fact knew, on receipt of the third telex message that the Plaintiffs were obliged for classification purposes to carry out a screwshaft survey for their vessel. Even though it may be necessary to give business efficacy to imply a term that the Defendants agreed to execute such repairs as are ordinarily required to a vessel when it drydocks we are of the opinion that there was no such necessity to imply a term as particularised in the Plaintiffs' Further and Better Particulars. Indeed the evidence was that the work entailed to enable a screwshaft survey to be carried out does not fall within the understood meaning of work normally done to a vessel during "ordinary drydocking".

20 For these reasons the appeal is allowed with costs here and in the Court below.

Signed WEE CHONG JIN
CHIEF JUSTICE
SINGAPORE

Signed D.C. D'COTTA
JUDGE

Signed A.P. RAJAH
JUDGE

Singapore 31st January, 1980

CERTIFIED TRUE COPY

30 Signed Ng Peck Chuan

In the Court
of Appeal

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1980

(continued)

In the Court
of Appeal

No.28

FORMAL JUDGMENT

No.28
Formal Judgment

31st January
1980

CORAM: THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE D'COTTA
THE HONOURABLE MR. JUSTICE A.P. RAJAH

IN OPEN COURT

THIS APPEAL coming on for hearing this day
in the presence of Mr. Pathmanaban Selvadurai
of Counsel for the Appellants and Mr. Joseph
Grimberg of Counsel for the Respondents
AND UPON READING the Record of Appeal filed
herein AND UPON HEARING Counsel as aforesaid
IT IS ORDERED that :-

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1. This Appeal be and is hereby allowed and
that the Judgment of the Honourable Mr. Justice
F.A. Chua dated the 6th day of October, 1978
be set aside.

2. The costs of the Appeal herein and in the
Court below be taxed and paid by the Respondents
to the Appellants.

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3. The deposit of \$500.00 paid into Court by
the Appellants as security for the Respondents'
costs of the Appeal herein be paid out to the
Appellants or their Solicitors, Messrs. Rodyk &
Davidson.

Dated the 31st day of January, 1980

Signed TAN SECK SAM

ASSISTANT REGISTRAR

No. 29

ORDER GRANTING LEAVE
TO APPEAL TO JUDICIAL
COMMITTEE

In the Court
of Appeal

No.29
Order granting
leave to appeal
to Judicial
Committee

21st April 1980

CORAM:

THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE T.S. SINNATHURAY
THE HONOURABLE MR. JUSTICE CHUA

10 Upon Motion made unto the Court this day
by Counsel for the Respondents AND UPON READING
the affidavits of Joseph Grimberg and P.
Selvadurai filed on the 31st day of March and
the 16th day of April, 1980, respectively
AND UPON HEARING Counsel for the Respondents and
for the Appellants IT IS ORDERED that

- 20
1. The Respondents be at liberty to appeal
to the Judicial Committee from the
Judgment of the Court of Appeal dated the
31st day of January, 1980.
 2. The Respondents furnish security for costs
in the sum of \$70,000.00 and in a manner
to be settled by the Registrar.

Dated the 21st day of April, 1980

Signed: Yap Chee Leong
ASSISTANT REGISTRAR

IN THE PRIVY COUNCIL

No.44 of 1980

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)

RECORD OF PROCEEDINGS

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