

**Monvia Motorship Corporation**            -   -   -   -            *Appellants*

v.

**Keppel Shipyard (Private) Limited**    -   -   -   -            *Respondents*

FROM

**THE COURT OF APPEAL OF SINGAPORE**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 1ST FEBRUARY 1983

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*Present at the Hearing :*

LORD FRASER OF TULLYBELTON

LORD SCARMAN

LORD BRIDGE OF HARWICH

LORD BRANDON OF OAKBROOK

LORD TEMPLEMAN

[*Delivered by* LORD FRASER OF TULLYBELTON]

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The appellants were in 1973 the owners of a ship called the "Master Stelios". The respondents were the owners of a drydock in Singapore. The parties will be referred to hereafter as "the owners" and "the yard" respectively. There are two questions in the appeal. The first is whether there was a completed contract between the owners and the yard relating to the drydocking of the Master Stelios in October 1973. If so, the second question relates to the obligations of the yard under the contract.

On 3rd October 1973 the owners' agents in London, Phocean Ship Agency Limited ("Phocean") sent a telex to the yard in the following terms:—

"Please advise us whether you have a drydock available for our MV Master Stelios 12,900 tons dw for ordinary drydocking and screwshaft survey your immediate reply will be appreciated . . ."

That telex was referred to in the courts below as B1 and will hereafter be so referred to.

The yard replied by telex (B2) dated 4th October 1973 as follows:—

"Master Stelios

Re your enquiry 3/10 we can offer dockspace around 16/17 October. Please confirm early if acceptable."

Finally Phocean replied in a telex (B3) which appears to be undated but must have been sent about 8th October 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:

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).
6. Repaint draught markings forward and aft and plimsoll markings.
7. Open out injection intakes, clean and coat grids and intakes apexior.
8. Take rudder and tailshaft wear down and submit written record to this office.
9. Renew all eroded and/or missing shell anodes and fit owners new anodes (per anode) type Wilson Walton International W 117 and W 124. Open out shell valves as instructed by owner's superintendent, overhaul and close up.
10. Buff propellor by means of wire brushes.
11. Supply sanitary water during stay in drydock unless decent toilet spaces available ashore.
12. Supply fireline water supplies and disconnect on drydocking.
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.
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.
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."

The owners' case, as pleaded, was that as a result of that exchange of telex messages a concluded contract was made between the parties, by which the yard were to provide drydock space in their yard for, and execute general repair work on, the Master Stelios. They further averred that it was a term of the contract, either expressly or by implication, that the yard would "provide the facilities for" a screw-shaft survey, an expression which, as explained in the further and

better particulars of the claim, meant that the yard would do the work, including withdrawing the screwshaft and ancillary work, to enable the survey to be carried out. The ship duly went into the drydock on 16th October 1973, where work was carried out on her rudder and other things, but she was undocked on 19th October without the screwshaft survey having been done. The owners claim that the yard were in breach of contract by failing to carry out the work for the screwshaft survey, and they claim damages. The survey was eventually done in Rotterdam in May 1974.

The yard deny that any contract at all was made by the telexes. If they are wrong about that, they say that their obligation under the contract was only to provide drydock accommodation, and in any event that they were not obliged to withdraw the screwshaft for survey. At the trial which took place before Chua J. and lasted no less than 21 days, the evidence ranged far beyond the issues raised in the pleadings. The learned judge decided in favour of the owners and held that the effect of the three telexes was that a concluded contract came into existence by which the yard undertook to provide a drydock for the specific purpose of a tailshaft survey and for such other dry-docking work as the owners might subsequently require to be carried out. He also held that the yard had undertaken an obligation to withdraw the screwshaft for survey and that they had failed to implement this obligation.

The Court of Appeal allowed the yard's appeal from that judgment and held that no contract had been concluded. Alternatively they held that, even assuming there was a concluded contract to provide drydock space, there were no grounds for implying a term that the yard would do the work involved in a screwshaft survey.

A screwshaft survey is an operation which a ship's classification society require to be carried out periodically. It was due to be carried out on the Master Stelios before the end of April 1973, but it could not be done by that date because the ship was employed in the Persian Gulf where the necessary facilities were not available. The classification society (Lloyd's Register of Shipping) granted an extension of time, but by September 1973 they were insisting that the survey be carried out without further delay. The operation involves removing the propeller from the outer end of the screwshaft (sometimes called the tailshaft) and then withdrawing the shaft into the ship so that it can be examined there by the classification society's surveyor. If it is found to be in satisfactory condition it will be replaced and the propeller will be reattached. If not, it will be replaced by a new shaft.

The Master Stelios arrived at Singapore on 15th October 1973 and entered the yard's drydock on 16th October. The dock was completely dry by 1710 hours on 16th October. Shortly after that the Lloyd's surveyor examined the ship's bottom and discovered that repairs were needed to the rudder. At that stage two unexpected developments had occurred. The first was that the owners' marine superintendent (Mr. Eustathiou) had not yet arrived from Athens. Normally he would have arrived in Singapore before the ship, and he would have authorised whatever work on her was required, and negotiated the cost with the yard. Unfortunately his flight had been delayed by the Arab-Israeli war, and he did not reach Singapore until late in the evening on 17th October. In the absence of the marine superintendent, the owners' principal representative on the spot was the master of the ship. The judge found that the yard were concerned about taking instructions from the master in the absence of the owners' marine superintendent, in case the owners subsequently repudiated the instructions and refused to pay for the work. The judge found further

that the yard's concern on this point was one of two reasons why they did not do the work required for the screwshaft survey, although the master had requested them to do it. The second unexpected development was that the surveyor had discovered that the rudder needed repairs, and had required them to be carried out. The learned judge found that the other reason why the yard did not do the work for the screwshaft survey was that it would not have been possible for both the rudder repairs to have been completed and the screwshaft withdrawn within the time allocated in the yard's schedule for the docking.

Both these developments were dealt with in an exchange of telex messages between the yard and Phocean late on 16th October 1973 (Singapore time). The yard sent the following telex (B10) at 1809 hours Singapore time to London:

"Rudder.

Bottom pintle for'd-aft  $\frac{3}{8}$ " port-sted  $\frac{1}{4}$ "

Class recommends renewal of lining we are therefore proceeding with repairs. Master of vessel unable to decide on other work, your supt. engineer not arrived. Can you authorise master to take charge until your supt. engineer arrives otherwise vessel may have to be undocked. Require your reply immediately."

The reply from London was sent at 1510 hours London time, which would be about 2240 hours Singapore time and was as follows (B11):

"MV Master Stelios

Please proceed with class recommendations as stated. Also authorise master proceed with other work until arrival our superintendent."

Notwithstanding the terms of the latter telex the yard seemed still to have felt concerned about the master's authority to commit the owners to pay for work on the ship.

There was a sharp conflict of evidence as to whether the master had complained to the yard that they were not proceeding with work for the screwshaft survey. The master, supported by other witnesses for the owners, maintained that he had complained repeatedly. The witnesses for the yard said that the question of the screwshaft survey was not raised until the marine superintendent arrived late on 17th October. The learned judge found that the owners' evidence on this matter was to be preferred to that of the yard, and their Lordships therefore proceed on the basis that the master did instruct the work for the screwshaft survey to be done, and did complain repeatedly that it was not being carried out. On 19th October, in spite of protests by the master and the marine superintendent, the yard insisted on undocking the vessel, without the screwshaft survey having been carried out, because the time allotted by the yard for the ship to occupy the drydock was exhausted, and the dock was required for another vessel for which it had been booked.

Their Lordships will consider first the owners' case on the pleadings as to the legal effect of the three telex messages B1 to B3. Their Lordships are of opinion that, as a result of these messages, a concluded agreement between the parties came into existence. The first telex, B1, was merely an enquiry from the owners. B2 was the response and it contained an offer by the yard at least to provide dock space around 16/17 October. The first sentence of B3 was, in their Lordships' view, an acceptance by the owners of the yard's offer contained in B2. That is emphasised by the second sentence in B3, in which the owners promised to advise the vessel's ETA later, indicating that they expected the vessel would be going to the drydock. After that exchange of telexes both parties took action in the belief that they had reached an

agreement. The yard "stemmed" (which means booked or reserved) drydock space for 16th or 17th October, and if (without more) the ship had not taken up the reservation they would have had a claim against the owners for failure to fulfil their part of the contract. The owners, on their side, ordered their ship to proceed to Singapore and if, on arrival, it had found the dock space was not available, the owners would have had a claim against the yard for failure to perform their part of the contract.

The next question is as to the terms of the contract, and in particular, as to the obligations on the yard. As already mentioned, the owners' case on the pleadings was simply that there was a contract whereby the yard were bound to do the work required for a screwshaft survey. But at the trial they seem to have developed an alternative case that the yard was bound to carry out whatever drydock work they (the owners) might subsequently order. It was on this alternative case that the judge decided in the owners' favour. Their Lordships are of opinion that that cannot be right. If that was the effect of the contract, it would impose an open-ended obligation on the yard to keep the drydock available for the ship indefinitely, and it would make it impossible for them to adhere to their programme for other vessels. Counsel for the owners (rightly) did not support that part of the judge's finding, but he did of course maintain that the yard were obliged not only to provide a drydock for the purpose of a screwshaft survey but also to perform the work required to enable such a survey to be carried out.

Their Lordships are unable to accept even that more limited contention. It is based mainly on the terms of the telex B1 which enquires whether a drydock was available for ordinary drydocking "and screwshaft survey". The yard replied in B2 that "we can offer dock space" but they did not expressly offer to perform any work at all. True, B2 was sent in reply to B1, and it begins "Re your enquiry", but their Lordships consider that the effect of the reference in B1 to ordinary drydocking and screwshaft survey was merely to indicate the general nature of the work to be done, and particularly to indicate its probable duration.

The offer in B2 was accepted by the owners in the opening sentence of B3. B3 then contains the words "meantime please quote the following items" and followed by a list of 21 items. Some of the items are for work which is merely part of, or ancillary to, the drydocking—see especially items 1, 2 and 3, but also items 11–19. It may be that, if the quotations for some of these items had been unsatisfactory to the owners, they would have been entitled to resile from the contract altogether, but it is unnecessary to consider that matter. The other items were for work to be done to the vessel's underwater parts while in drydock, and in respect of each of these items it was entirely open to the owners to accept the quotation and instruct the work to be done, or to reject the quotation. The fact that they had asked for a quotation for a particular job would indicate to the yard that they were considering whether to order that work to be done, but that is all.

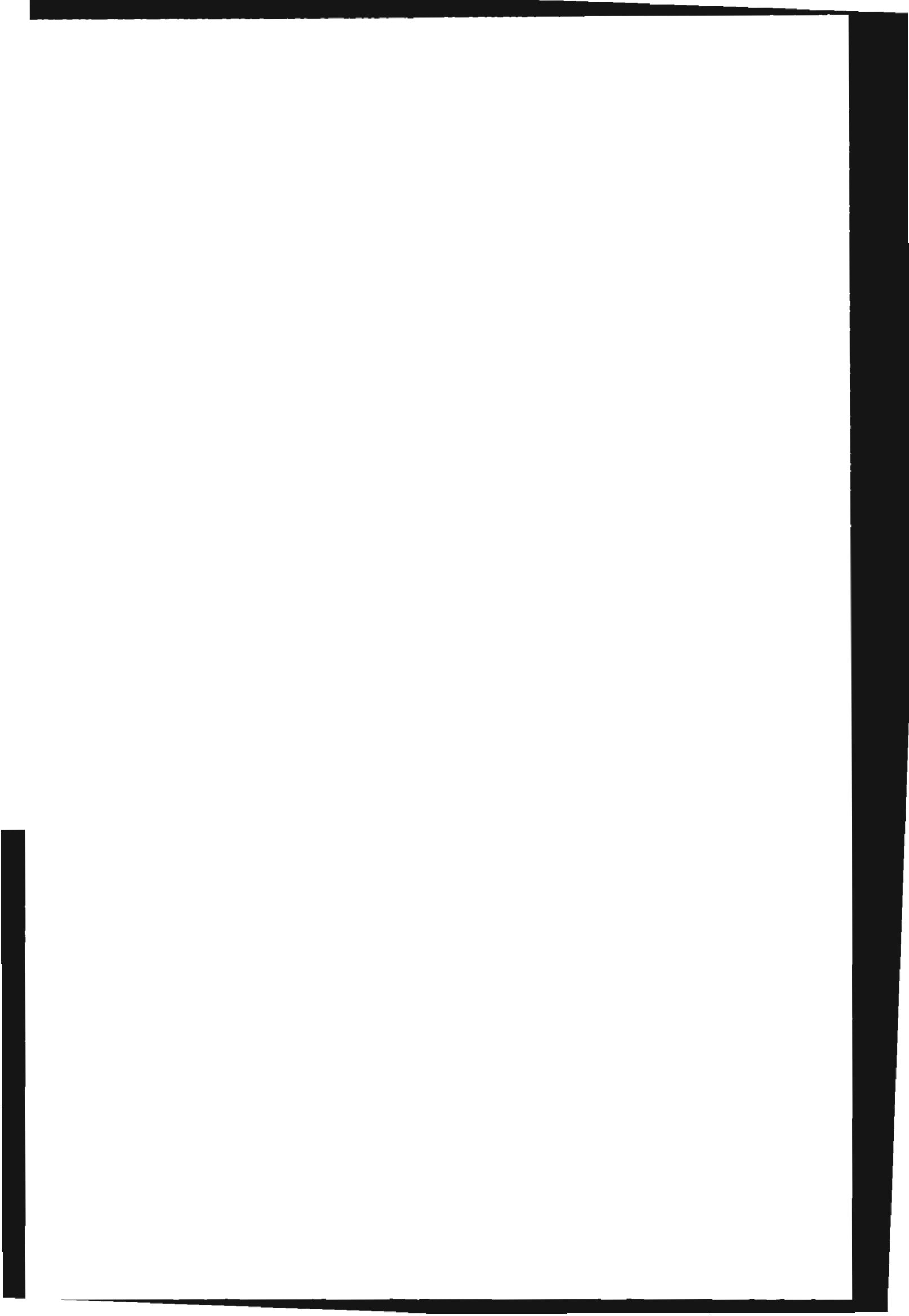
In the opinion of their Lordships the true position was that there was a contract by which the yard were obliged to provide drydock space for a period long enough to allow a screwshaft survey to be carried out, along with such other ordinary drydock work as could be done simultaneously with the screwshaft survey. The yard was not obliged to do any work at all on the ship, unless and until the owners through their marine superintendent or other representative ordered work to be done, but the yard would have become obliged to do work of all or any of the types specified in the 21 items in B3, if their quotations had been accepted by the owners. The owners on their side were bound to pay for the use of the dock for a period long enough to allow a

screwshaft survey to be carried out. In addition they were obliged at least to offer the yard an opportunity of tendering for the work to be done in the drydock, though they were not obliged to accept any offer made.

If that is the correct analysis of the position, the yard were not in breach of contract merely by failing to do the work required to enable a screwshaft survey to be carried out. Moreover on the judge's finding that the time (about three days) allocated by the yard for the screwshaft survey was not long enough to permit them also to do the rudder repairs, they were not in breach because by doing the rudder repairs, which were required by the surveyor, and authorised by Phocean, they made it impossible also to do the screwshaft survey work.

There was another matter which appears to have caused some justifiable doubt in the minds of the responsible officials at the yard about whether the owners intended to have the screwshaft work done or not, and which indicates that there was no concluded contract for that work. Mr. Watson, the Managing Director of the yard, said that the request for quotations of prices for the items in B3 caused him "slight alarm" because it suggested that the owners were "shopping around" among several drydocks and that, if they could get a better price elsewhere, they would cancel their booking with his yard. The doubt was greatest with regard to item 8 ("take rudder and tailshaft wear down and submit written record to this office"), because the wear down, or clearance, would have a bearing on the decision whether to draw the tailshaft. Item 8 therefore suggested to the yard, which was not aware of the pressure by Lloyd's Register to have the screwshaft survey carried out, that the owners had not finally decided to order that work. This may have been an additional reason (in addition to those found by the judge) why the yard did not do the screwshaft work.

Their Lordships therefore dismiss the appeal. The appellants (the owners) must pay the costs of the respondents (the yard) in the appeal to the Board.



**In the Privy Council**

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**MONVIA MOTORSHIP  
CORPORATION**

**v.**

**KEPPEL SHIPYARD (PRIVATE)  
LIMITED**

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**DELIVERED BY  
LORD FRASER OF TULLYBELTON**

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