IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 268

Suit 1439/1992

Between

Ng Siow Cheng

… *Plaintiff*

And

Chitose Petro-Marine Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Ng Siow Cheng v Chitose Petro-Marine Pte Ltd

[1995] SGHC 268

Suit 1439/1992
Lim Teong Qwee JC
09 November 1995

1 **Judgment:**

2 Coram: Lim Teong Qwee JC

3 **Cur Adv Vult**

4 JUDGMENT

5 Sykhn Shipping Pte Ltd ("Company") was incorporated in 1983. It is engaged in the business of shipowning, chartering and marine service contracting according to the report of Deloitte & Touche Management Consultants Pte Ltd ("DTMC") dated 23 December 1991. It has a paid-up capital of $50,000 divided into 50,000 shares of $1 each of which the plaintiff holds beneficially 12,500 shares or 25% and the defendant the remaining 37,500 shares or 75%. Until lately the plaintiff was a director and chairman of the board and in 1991 there were as many as five other directors who were all officers of the defendant or of companies closely associated with it. One of the former directors was Mr Kondo an acquaintance of his who was also the general manager and it was through him that the plaintiff came to invest in the

Company. In July 1991 Mr Kondo resigned as a director and general manager and the plaintiff said that he expressed his wish to terminate his relationship with the defendant either by selling out to it or buying it out. In the event the plaintiff agreed to sell all the 12,500 shares beneficially owned by him. Three documents were signed by the parties. These are:

6 (1) a memorandum dated 7 August 1991 ("Memorandum");

7 (2) a memorandum of understanding dated 8 August 1991 ("MOU"); and

8 (3) an agreement dated 18 October 1991 ("Agreement"). One of the terms of the Agreement is that forthwith upon its execution the plaintiff should resign as a director of the Company and this he has accordingly done. The shares have not been transferred and the price has not been paid and in this action the plaintiff claims specific performance, damages and other reliefs.

9 The agreement for sale and purchase

10 The parties have agreed that the agreement for the sale and purchase of the plaintiff's shares is evidenced by the Memorandum, the MOU and the Agreement. The Memorandum states that it is "made and entered by and between Mr Tadashi Sasano and < the plaintiff > " and after referring to the date and place of making continues:

11 "(1) To evaluate the share of < the Company > . This evaluation shall be done by a third party CPA.

Version No 1: 29 Oct 2026 (23:45 hrs)

12 (2) < The plaintiff > shall sell his holding shares of < the Company > to Mr Sasano or his designated party at the evaluated price of Share done subject to the (1) herewith."

13 It is not in dispute that Mr Sasano's designated party is the defendant. The MOU recites the plaintiff's desire to sell "the Shares" meaning by definition the 12,500 shares owned by him and states in cll 1.1 and 1.2:

14 "1.1 The consideration for the sale of the Shares has yet to be agreed as at todate. In determining the value of the Shares, the parties have agreed to appoint Deloitte & Touche to carry out a share valuation exercise in order to ascertain the value of the Shares ....

15 1.2 The parties have also agreed to appoint Nippon Kaiji Kemtei Kyokai ("NKKK") to determine the value of the two (2) vessels belonging to the Company, namely PETCHEM and CRANE STAR."

16 The Agreement recites the capital of the Company, the plaintiff's beneficial ownership of 12,500 shares referred to as "the Sale Shares", the appointment of "the Valuers" to determine the consideration payable and the agreement of the parties for the sale and purchase of the Sale Shares. Clause 3.1 provides:

17 "The consideration payable for the Sale Shares shall be an amount to be determined by the Valuers. The amount so determined by the Valuers shall be treated as the Consideration and payable to the Vendor in one lump sum on Completion Date."

18 and cl 1.1 gives this definition:

Version No 1: 29 Oct 2026 (23:45 hrs)

19 "`Valuers' means

20 (1) Messrs Deloitte & Touche who are conducting the valuation of the ordinary shares of the Company;

21 (2) Nippon Kaiji Kemtei Kyokai (`NKKK') who are conducting the valuation of the Vessel."

22 The determination of the valuers

23 NKKK were appointed by letter dated 8 August 1991 to value the two vessels. The letter was signed by the plaintiff and includes this para:

24 "This Valuation shall be a fair open market willing buying willing selling price in Singapore because we are intended to use this Valuation Certificates for the purpose of evaluation of the Share price in < the Company > as we are now in the process of selling of Company Shares."

25 This letter was followed up by another from the plaintiff dated 12 August 1991 to reference the market value to 31 July 1991 but nothing turns on this. In two separate survey reports dated 13 August 1991 NKKK valued the M T "PETCHEM" at US$3m and the M T "CRANE STAR" at US$1.6m.

26 Deloitte & Touche ("D&T") were given a letter of appointment dated 8 November 1991 signed by Mr Kanzaki a director of the defendant and the managing director of the Company. It is quite brief and I shall set it out in full. It says:

27 " Letter of Appointment

Version No 1: 29 Oct 2026 (23:45 hrs)

28 1. Company's name: SYKHN SHIPPING PTE LTD

29 2. Share valuation appraisal of the above company is hereby requested.

30 3. Please bill < the Company > for any expenses."

31 This is an agreed translation of the letter which was written in Japanese. Prior to giving this letter Mr Kanzaki had spoken on the telephone on two or three occasions with Mr Takayama a professional associate of D&T and the letter was written at his request and marked for his attention. DTMC issued its report dated 23 December 1991 and the report begins:

32 "At your request as conveyed to our Mr N Takayama, we are pleased to present this valuation report on Sykhn Shipping Pte Ltd (The Company)."

33 and later states:

34 "As of < 30 June 1991 > , the Company had a negative total value of $346,000 or ($6.92) per share. Based on an appraisal of vessels conducted by Nippon Kaiji Kentei Kyokai, we value the company's entire paid-up capital at $2,763,000 or $55.00 per share under the adjusted NTA value method."

35 The plaintiff called for completion on payment to him of $55 per share or a total of $687,500. The defendant refused to complete on payment of such price. In its defence it admits the issue of the DTMC report but denies that the shares were valued at $55 per share or at all. The alternative defence is that the shares were valued at a negative value of $6.92 per share. (Taken literally it means that the plaintiff should pay the defendant $86,500 to take over his 12,500 fully paid shares.) No objection is taken to the accounting date being 30 June

Version No 1: 29 Oct 2026 (23:45 hrs)

1991 and not 31 July 1991 and it is agreed between the parties that the DTMC report is the report of D&T and I shall be referring to it as such.

36 D&T's report was prepared by Mr De Guzman and says that the most common methods used in share valuation were the adjusted net tangible asset value ("NTA"), price-earning multiple ("P/E") and less commonly the present value ("PV") methods. The report discusses the three methods and rules out both the P/E and the PV methods because of the loss-prone nature of the Company and adopts the adjusted NTA method. It says that the total adjusted NTA value of the Company at the relevant date was $2,763,000 or $55.26 per share rounded down to $55 per share. It is apparent from the report that the total adjusted NTA value was arrived at from a trial balance at the relevant date and taking up the surplus on valuation of the two vessels. It is also apparent that the trial balance (without taking up the valuation surplus) gave a negative value of $346,000 or ($6.92) per share. In evidence Mr De Guzman said that the negative value was not the adjusted NTA value. As appears from the report the valuation surplus was $3,109,000 and when this was taken up the total adjusted NTA value was $2,763,000 or $55 per share.

37 Under the Memorandum the shares of the Company were to be "evaluated" and the sale was to be at the "evaluated" price. Under the MOU the parties agreed that in determining the value a share valuation exercise was to be carried out. Under the Agreement the consideration was an amount to be "determined" by "the Valuers" meaning by definition NKKK and D&T. NKKK and D&T have been appointed and they have given their reports. I think that in the circumstances an amount has been "determined". I think it has been established by the two survey reports of NKKK and the report of D&T. In respect of the two vessels NKKK have said in their reports that they have "appraised the value of < the vessels > " to be the total of US$4.6m. D&T have

Version No 1: 29 Oct 2026 (23:45 hrs)

said in their report that the Company had a negative total value but I do not think that they have come to any determination at that point in the report. The report goes on to say immediately after that "we value the company's entire paid-up capital" at $2,763,000. I think this is the determination D&T have arrived at. The negative value ignores the surplus on valuation of the vessels. Even if the negative value can be said to have been determined it would have been determined only by D&T and not by the "Valuers" an expression that includes NKKK. To give effect to the intention of the parties the valuation surplus would have to be taken up and the report of D&T shows how the surplus is arrived at after allowing for the value of the two vessels as appraised by NKKK. The parties intended the determination to be that of both D&T and NKKK and have expressly provided for this in the Agreement. The business of the Company is that of owners and charterers of vessels and the provision of marine services and it would have been unlikely that the valuation surplus was to be excluded. It seems to me that the only determination that is consistent with the intention of the parties as evidenced by the three documents is one that takes into account the valuation surplus in respect of the two vessels and that determination gives a total value of $2,763,000.

38 There is another reason why the negative value is not a determination. D&T have rejected the P/E and the PV methods of valuation because of the loss-prone nature of the Company and adopted the adjusted NTA method. However this is what they say towards the end of the report:

39 "... we view the valuation surplus as unrealisable since it is < the Company's > intention to continue operating the ships until the end of their productive lives. Based on historical trends, the probability of continuing losses in the future is high. The share value based on the adjusted NTA value method would be substantially eroded by the expected future losses."

Version No 1: 29 Oct 2026 (23:45 hrs)

40 I find it difficult to reconcile the two positions taken and Mr De Guzman in his evidence has not given any meaningful explanation for this. This is one of the two reasons given for saying that "it can truly be said that < the plaintiff's > shares should be valued at a negative $6.92 per share". The other reason given is that the vessels were purchased with the corporate guarantee of the defendant and "it can therefore be argued that the benefits of any valuation surplus should accrue solely to < the defendant > even if < the plaintiff> is the owner of 25% of the shares of the Company". That would surely be a preposterous argument. The debts have been fully provided for and accepted by D&T as appears from their report. However Mr De Guzman did say in evidence that the negative value was not the adjusted NTA value. The adjusted NTA value was $55 per share.

41 Finally the instructions to D&T were to provide a "share valuation appraisal of < the Company > ". The only share valuation appraisal of the Company values the shares at $55 per share. Reading the report as a whole together with the two reports of NKKK and the instructions to D&T and NKKK I am of the opinion that an amount has been determined by the two appointed valuers and that the value of the shares of the Company at the relevant date was determined at $55 per share.

42 The consideration payable

43 The plaintiff's case is that under the Agreement the consideration payable on the sale is $55 per share for 12,500 shares. The Memorandum records the sale of the plaintiff's holding i.e. his 12,500 shares at the "evaluated price" in accordance with the instructions "to evaluate the share of < the Company > ". Secondly under the Agreement the consideration is an amount to be determined by the "Valuers" and D&T were said to be "conducting the valuation of the ordinary shares of the Company". The letter of appointment of

Version No 1: 29 Oct 2026 (23:45 hrs)

D&T requested "share valuation appraisal of < the Company > ". The defendant's case is that under the Agreement the consideration for the plaintiff's shares is the amount to be determined. Under the MOU D&T were to be appointed to carry out a share valuation exercise in order to ascertain the value of the plaintiff's shares. And finally D&T have not valued the plaintiff's shares or alternatively have valued the plaintiff's shares at negative $6.92 per share.

44 Clause 3.1 of the Agreement says that the consideration payable for the plaintiff's shares shall be an amount to be determined. The Agreement does not provide the basis for determining the amount. It does not even say what the amount is to be. More to the point the Memorandum, the MOU and the Agreement also do not provide that the amount is the value of the plaintiff's shares as a block of shares held by the plaintiff as opposed to the value of the Company's shares which is to be applied to the number of shares held by the plaintiff. That is not the language used in cl 3.1 of the Agreement. It does not say "an amount to be determined to be the value of the plaintiff's shares" or words to that effect. It only says "the consideration payable for the < plaintiff's shares > " is an amount to be determined. The amount may be determined in so far as cl 3.1 of the Agreement is concerned to be either (1) the value of the plaintiff's shares or (2) the value of the shares of the Company as applied to the number of shares held by the plaintiff but in either case it must be determined consistently with the instructions to NKKK and D&T. It is also not the language used in the MOU. Clause 1.1 of the MOU says that a valuation exercise is to be carried out by D&T in order to ascertain the value of the plaintiff's shares. One construction is that the exercise itself is not a valuation of the plaintiff's shares but a valuation of the Company's shares and that the results of the exercise will be the basis for ascertaining the value of the plaintiff's shares. The other is that the exercise is a valuation of the plaintiff's shares. The Memorandum alone

Version No 1: 29 Oct 2026 (23:45 hrs)

among the three documents beyond any doubt provides for the Company's shares to be evaluated and not the plaintiff's shares and for the plaintiff to sell his shares at the evaluated price. Reading the three documents together I think the intention of the parties is that:

45 (1) An amount is to be determined by D&T and NKKK and this amount is the consideration or price to be paid. See cl 3.1 of the Agreement.

46 (2) D&T are conducting a valuation of the Company's shares and NKKK a valuation of the vessels. See the definition of "Valuers" in the Agreement and see also the MOU.

47 (3) The consideration or price to be paid for the plaintiff's shares is the price ascertained upon evaluation of the Company's shares. See the Memorandum.

48 This is not inconsistent with anything in the Agreement or the MOU and on the contrary is consistent with the definition of "Valuers" in the Agreement and with the terms of the Memorandum. The defendant has also acted on this understanding of the agreement for sale and purchase of the plaintiff's shares as evidenced by the terms of appointment of D&T although I am far from saying that the defendant's conduct in this respect which is subsequent to the making of the agreement for sale and purchase is relevant as an aid to construction. The amount of the consideration has been determined at $55 per share. It is a matter of simple arithmetic to apply this to the plaintiff's 12,500 shares to arrive at the consideration of $687,500. Even if it can be said that two amounts have been determined in the report of D&T i.e. negative $6.92 per share and $55 per share I should have no difficulty in rejecting the former amount without affecting the validity of the determination as regards the latter amount. The two are clearly

Version No 1: 29 Oct 2026 (23:45 hrs)

defined in the report of D&T and severable. The alternative approach is to prefer the latter amount ($55 per share) as this is the determination of both D&T and NKKK as intended by the parties.

49 There will be judgement for the plaintiff for specific performance of the agreement for sale and purchase of the plaintiff's 12,500 shares in Sykhn Shipping Pte Ltd for $687,500. I will hear counsel as to the terms of the order and as to damages and the other reliefs claimed and costs.

50 Dated this 9th day of November 1995.

51 LIM TEONG QWEE

52 JUDICIAL COMMISSIONER

53 SUPREME COURT

54 Solicitors: Chong Yeo & Partners Peter Moe & Partners

Lim Teong Qwee JC

Tongel Yeo and Tay Bee Hoon for the plaintiff
Low Nam Kee for the defendant

Version No 1: 29 Oct 2026 (23:45 hrs)