**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[1994] SGHC 234**

S266/1992

Between

Magenta Resources (S) Pte Ltd

*… Plaintiff*

And

Intraco Resources Pte Ltd

*… Defendant*

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# GROUNDS OF DECISION

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# Magenta Resources (S) Pte Ltd v Intraco Resources Pte Ltd

**[1994] SGHC 234**

S266/1992
Goh Joon Seng J
12 September 1994

1 **Judgment:**

2 CORAM: The Honourable Justice GOH JOON SENG

3 **GROUNDS OF DECISION**

4 The plaintiffs, by contract in writing dated 12 October 1991 < `the contract' > , agreed to sell to and the defendants agreed to buy from the plaintiffs 50,000 metric tons of prilled urea of U.S.S.R. origin.

5 By cl 12 of the contract, payment was to be by irrevocable letter of credit < `LC' > at sight on presentation of specific documents.

6 Clause 16 of the contract stipulated that the plaintiffs should provide a performance bond for 2% of the value of the LC.

7 Clause 17 on force majeure read:

8 A. Force majeure means the situation/condition being not under human control, meaning act of God, such as storms, fire, war, military action, government emergency order, stop order of strike, transportation accident, etc.

9 B. The seller will not be responsible < for > the non-performance of this contract in case of force majeure but, when force majeure happens, the seller must immediately telex or cable and send to the buyer within 30 days thereafter by registered airmail, certificate of force majeure issued by a competent government authority at the place where the force majeure occurred as evidenced thereof.

10 C. ... ...

11 D. Should the effect of the force majeure continue for more than 120 consecutive days, the buyer and the seller shall discuss through friendly negotiation as soon as possible, their obligation to continue to perform under the terms and conditions of the contract.

12 Pursuant to cl 12, the defendants opened the LC in favour of the plaintiffs through the Development Bank of Singapore Ltd on 21 October 1991. By the terms of the LC shipment should be effected after 7 November 1991 but not later than 30 November 1991.

13 Pursuant to cl 16, the plaintiffs procured the issue by Banque Francaise Du Commerce Exterieur a stand-by letter of credit dated 30 October 1991 in favour of the defendants for US$95,150.00 < `the performance bond' > .

14 The last shipment date of 30 November 1991 was then extended to 14 December 1991.

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15 On 13 December 1991, the plaintiffs advised the defendants by fascimile transmission as follows:

16 " Our supplier has just cfn tt due to d recent n continuing political upheavals in d USSR, leading to d decentralization of local authorities n formation of independent republics, d said urea cld not b transported n exported as originally planned under d previous licence(s) n permit(s) i.e. in early Dec. D previously issued licence/permit(s) for d urea apparently were no longer recognised or accepted at face value by d various local authorities, who required new licence/permits to replace or amend/validate d old licence(s) n permit(s). This caused immense transportation problem n has resulted in d port of loading to B changed more than once n there4 exceedingly diff to cfn d vessel. Tremendous communicatn problems in n out of USSR was also compounded delay.

17 D upheavals n changes in licence/permits stopped n delay all trptn n shpt arrgmts tt had been made for early Dec 91 which had d effect of halting our urea shpmt. We hv bn assured by our supplier tt they r sparing no efforts including expense to fulfil d contr obligations.

18 We there4 gv u notice under clause 17 of our contr n declare `force majeure'. As of this dd, all terms of abv contr hv been fulfilled by us except d shpmt dd, which we expect wl b o or b4 3rd Jan 1992.

19 We wld appr yr full cooperation in view of d unforeseen problems indicated abv n wld b obliged if Y wld kindly amend d L/C accdly."

20 On 23 December 1991 the defendants replied:

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21 "Re yr tlx of 13.12.91 V agree to accept shipmt on 3 Jan 1992. However V reserve our right to sue for damages and losts < sic > ."

22 On the same day, the defendants called on the performance bond due no doubt to the fact that it was due to expire on 26 December 1991.

23 On 26 December 1991, at the request of the plaintiffs, the defendants withdrew their call on the performance bond stating as follows:

24 "We agree to accept the amendment to extend the expiry date from 26.12.91 to 8.3.92 upon the condition that we reserve the right to submit our claim for reimbursement unconditionally at anytime before 8.3.92.

25 We hereby authorise the return of our reimbursement claim dated 23.12.91."

26 On 31 December 1991, the plaintiffs requested the defendants to amend the LC's expiry date of 9 January 1991 and also the shipment date. Their letter read:

27 "We refer to the above and your agreement to extend the validity of our performance bond to 8th March 1992.

28 Please also arrange to amend your L/C validity date, which is due to expire 9th January 1992, and shipment date accordingly.

29 Things have closed down in Europe and the new Commonwealth of Independent States (formerly USSR) for the holiday season period.

30 We expect to be contacting our supplier again in the beginning of the new year, and to be able to resolve the problems caused by the state of `force majeure' before March when the situation should have stabilized more over there."

31 On 2 January 1992, the defendants replied:

32 "As per our tlx 612/T dd 31 Dec 91 < should read 23 December 1991 > , V agreed to accept yr rqst fr shipmt extension till 03 Jan 92. H/ever V wll only consider any further rqst fr extension of L/C if there are signs that shipmt will be effected. Otherwise it is a waste of time, money n effort.

33 Furthermore, U did not in yr fax ref no. F2110/91 state when U cld effect shipmt n that of extension of shipmt date n L/C validity date U wld require."

34 On 13 January 1992, the plaintiffs sent by facimile a letter to the defendants with what purported to be a certificate of force majeure issued by the Deputy Trade Representative of the USSR in Singapore. The letter read:

35 " We refer to the above and hereby attach the original copy of the letter confirming the confusing situation in the former USSR, which resulted in the delay of our shipment.

36 Please rest assured that we all are doing our utmost to clear this force majeure situation as soon as is possible. At the moment, it is very difficult to communicate with and receive communication from any part of the former USSR, especially Moscow. Most, if not all, of the government employees and officials are reluctant to commit themselves and become involved in matters that concerned the former USSR prior to 31st December 1991. With the

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formation of the Commonwealth of Independent States, their priorities are understandably elsewhere.

37 If we receive any further communication, we shall forward the same to you at our soonest. If you have anything further, please do not hesitate to contact us."

38 The certificate read:

39 "Embassy of the USSR of the Republic of Singapore

40 13.01.92

41 Magenta Resources pte ltd 53 Kim Keat Road Hex No 01-00 Singapore 1232

42 Dear Sir

43 RE: Urea Shipments

44 I would like to inform you that the political situation in the former Soviet Union has changed very seriously. There is much changes in the governments and their authorities and agencies and departments.

45 One of main problems is prior transportation and export licenses < sic > and permits must be reissued and rescheduled under newly issued licenses from originating republics or states. Additional arrangements must also be make < sic > for such restricted goods to travel through a republic or state not that of original issuance of license or to use port in a republic not issuing the export license. This can cause shipments under old license to halt or delay.

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46 Sincerely yours,

47 Office of Trade Representative of the USSR in the Republic of Singapore

48 Signed: V. Vershinin Deputy Trade Representative"

49 On the same day the plaintiffs also transmitted by facsimile copy of what purported to be another certificate of force majeure of 18 December 1991 signed by one Sergei I Semenov, Vice Chairman of the Scientific Technological Centre of the USSR. The certificate read:

50 "18 December 1991

51 TO WHOM IT MAY CONCERN

52 RE: SHIPMENT OF 25,000 mt UREA IN 50 kg BAGS UNDER CONTRACT NO IR-MR-WMG- 10/91

53 We wish to confirm that since the middle of November 1991, the political events in the USSR has caused very much turmoil in the Governments here and their authorities and agencies and departments so that the above urea shipment cannot be shipped yet due to the force majeure conditions.

54 One of the main problems is all prior transportation and export licenses issued must be reissued and rescheduled under newly issued licenses from originating republics. Additional arrangements must also be made for such restricted goods to travel through a republic not that of original issuance of to license or to use port in a republic not issuing the export licence.

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55 Sincerely yours.

56 Sgd: Sergei I Semenov VICE CHAIRMAN"

57 On 14 January 1992, the defendants called on the performance bond and the sum of US$95,150.00 was paid over by Banque Francaise Du Commerce Exterieur to the defendants.

58 On 12 February 1992, the plaintiffs commenced these proceedings. In their statement of claim they alleged that the political situation in the former USSR constituted force majeure within cl 17 and that they had given notice of the same with the requisite certificate and that such notice had been accepted. Consequently they were not in breach of contract for non-performance thereof; alternatively by cl 17 (D), the contract was suspended for a minimum period of 120 days in the event of continuous force majeure. Accordingly the plaintiffs claimed loss of profits in the sum of S$904,044.77 or damages and the refund of US$95,150.

59 The relevant paragraphs of the Statement of Claim are set out below:

60 "Statement of Claim

61 Para 11 - The said notice < of force majeure > was accepted by the Defendants.

62 Para 15 - On the 20th day of December 1991 and at all other material times, the Plaintiffs kept the Defendants updated on the continuing status of force majeure and submitted documentary evidence to support the same.

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63 Para 16 - In the premises, the Defendants took cognisance at all material times of the fact that there was a force majeure situation prevailing and accepted the same."

64 The defendants by their Defence, by para 5 denied that there was a force majeure situation; alternatively by para 6 they denied that the notice purportedly given was a valid notice under cl 17 or that they had accepted the same. The plaintiffs then filed their Reply para 7 of which read:

65 "With respect to paragraphs 5 and 6 of the Defence, the Plaintiff avers that at all material times, the Defendant took cognisance of the state of force majeure and accepted the Plaintiff's notice and intimations of force majeure unconditionally. This is supported inter alia by all or any of the following:

66 (a) In recognition of force majeure, the Defendant consented to extending the validity of the Standby Letter of Credit to the 8th of March 1992.

67 (b) The Defendant acknowledged that they could not rely on the last stated shipment date in the Documentary Letter of Credit.

68 (c) The Defendant at all material times never challenged the existence of force majeure and conducted themselves on the premise that force majeure was afoot."

69 After the Reply had been filed, the Defendants on 11 November 1992 requested for particulars under inter alia paragraphs 11, 15 and 16 of the Statement of Claim and paragraph 7 of the Reply. In compliance with the request, the plaintiffs on 18 December 1992 filed their particulars. The

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defendants viewed those particulars inadequate. But the plaintiffs refused to supply further particulars.

70 The defendants thereafter applied to the registrar in summons-in-chambers 1535 of 1994 for the requisite order. Their application was dismissed by the learned registrar on 30 March 1994. They then appealed. Their appeal was allowed by Lai Kew Chai J on 28 April 1994 and he ordered the plaintiffs to furnish further and better particulars in answer to the `further request' set out in his order < Lai J's order > . The relevant parts of Lai J's order are set out hereunder:

71 "1. ... ...

72 2. ... ...

73 3. The Plaintiffs do file and serve on the Defendants the following Further and Better Particulars of their Statement of Claim and Reply to Defence and the following Further and Better Particulars to the Further and Better Particulars of the Statement of Claim and Further and Better Particulars of the Reply to Defence filed pursuant to Request dated the 11 November 1992 within 7 days of the date of the Order made hereon:

74 Statement of Claim -

75 Under paragraph 11

76 To the request,

77 Of `The said notice was accepted by the Defendants.' state whether the notice was accepted in writing or orally.

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78 (1) If in writing, identify the relevant document(s).

79 (2) If orally, (a) state the date or dates when the Defendants were alleged to have accepted the notice;

80 ... ...

81 The answer was

82 (1) Not applicable. The Plaintiffs reserve their right to refer to the Defendants' relevant correspondences to the Plaintiffs and/or third parties to show the unequivocal conduct amounting to acceptance on the part of the Defendants.

83 (2)(a) The Defendants accepted the notice on or about the 15th day of December 1991 and on various occasions in conversations from the 15th day of December 1991 to on or about the commencement of this action.

84 ... ...

85 Further Request

86 (1) Of `... the Defendants' relevant correspondences to the Plaintiffs and/or third parties to show the unequivocal conduct amounting to acceptance on the part of the Defendants.' in the answer to request (1) above,

87 (a) identify all `the Defendants' relevant correspondences'

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88 (2) Of `... on various occasions in conversations from the 15th day of December 1991 to on or about the commencement of this action.' in the answer to request (2)(a) above,

89 (a) identify the number of the `various occasions';

90 (b) identify the precise dates of the `various occasions';

91 (c) identify the Plaintiffs' representative(s) at each of the `various occasions';

92 (d) identify the Defendants' representative(s) at each of the `various occasions';

93 (e) state the identities of any other persons present on each occasion at the `various occasions', if any;

94 (f) state where the `conversations' were made;

95 (g) state how such `conversations' were made;

96 Under Paragraph 15

97 To the request,

98 Of `On the 20th of December 1991 and at all other material times, the Plaintiffs kept the Defendants updated on the continuing status of force majeure and submitted documentary evidence to support the same.'

99 (1) state whether the Plaintiffs kept the Defendants updated in writing or orally.

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100 (a) If in writing, identify the relevant document(s).

101 (b) If orally,

102 (i) state the date(s), other than 20th December 1991, when the Plaintiffs kept the Defendants updated;

103 ... ...

104 (2) Identify the `documentary evidence.'

105 The answer was,

106 (1)(a) The Plaintiffs' correspondences to the Defendants inter alia their letters of the 20th day of December 1991 with the enclosures therein, the letters of the 13th day of January 1992 with the enclosures therein and the letter of 15th day of January 1992. The Plaintiffs reserve their rights to raise such relevant correspondences with the respective documents at the Trial for their full effects.

107 (b)(i) On various dates from on or about the 15th day of December 1991 to the commencement of this action. The Plaintiffs reserve their rights to rely on their notice of the 13th day of December 1991 for its full terms and effects.

108 (2) The `documentary evidence' is in the hands of the Defendants who have full knowledge thereof and have also been exhibited in court documents.'

109 Further Request

110 (1) Of `The Plaintiffs' correspondences to the Defendants inter alia their letters of the 20th day of December 1991 with the enclosures therein, the letters

of the 13th day of January 1992 with the enclosures therein and the letter of 15th day of January 1992.' referred to in the answer to request (1)(a) above,

111 (a) identify all `the Plaintiffs' correspondences to the Defendants' apart from their letters of 20th December 1991 (with enclosures), 13th January 1992 (with enclosures) and 15th January 1992.

112 (2) Of `The Plaintiffs reserve their rights to raise such relevant correspondences with the respective documents at the Trial ...' referred to in the answer to request (1)(a) above,

113 (a) state whether `the respective documents' refer only to the letters and enclosures of 20th December 1991, 13th January 1992 and 15th January 1992;

114 (b) identify all other `respective documents' if they do not refer only to the letters and enclosures of 20th December 1991, 13th January 1992 and 15th January 1992.

115 (3) Of `On various dates from on or about the 15th day of December 1991 to the commencement of this action.' referred to in the answer to request (1)(b)i) above,

116 (a) identify precisely all the `various dates', other than 15th December 1991.

117 (4) Of `The documentary evidence is in the hands of the Defendants who have full knowledge thereof and have also been exhibited in Court documents.' referred to in the answer to request (2) above,

118 (a) identify all `documentary evidence' .. exhibited in court documents.

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119 Under Paragraph 16

120 To the request,

121 Of `In the premises, the Defendants took cognisance at all material times of the fact that there was a force majeure situation prevailing and accepted the same',

122 ... ...

123 (2) state whether the Defendants took cognisance in writing or orally.

124 (a) If in writing, identify the relevant document(s).

125 (b) If orally,

126 (i) state the date(s) when the Defendants took cognisance;

127 ... ...

128 The answer was

129 (2)(a) The Defendants took cognisance by their conduct as well as impliedly in their correspondences at all material times which did not challenge or dispute the existence of the force majeure situation at all. The same follows from inter alia the Defendants' telex to the Plaintiffs dated the 23rd day of December 1991, the telecopier message dated the 26th day of December 1991 read with the Plaintiffs' fax of the 24th day of December 1991 and with requisite correspondences as well as the acceptance of all the Plaintiffs' documents confirming force majeure sent to the Defendants.

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130 (b)(i) On various occasions, prior to the notice of 13th day of December 1991 and from the 13th day of December 1991 to the commencement of this action in particular on the 15th day of December 1991.

131 Further Request

132 (1) Of `The Defendants took cognisance by their conduct as well as impliedly in their correspondence at all material times which did not challenge or dispute the existence of the force majeure situation at all.' referred to in the answer to the request in (2)(a) above,

133 (a) identify all the `correspondences at all material times'.

134 (2) Of `The same follows from inter alia the Defendants telex to the Plaintiffs dated the 23rd day of December 1991, the telecopier message dated the 26th day of December 1991 read with the Plaintiffs' fax of the 24th day of December 1991 and with requisite correspondences as well as the acceptance of all the Plaintiffs' documents confirming force majeure sent to the Defendants.' referred to in the answer to request (2)(a),

135 (a) identify `all the Plaintiffs' documents confirming force majeure sent to the Defendants.'

136 (3) Of `On various occasions ...' when the Defendants allegedly orally took cognisance that there was a force majeure situation prevailing and accepted the same, referred to in answer to request (2)(b)(i),

137 (a) identify the number of these `various occasions';

138 (b) identify the precise dates of each of these `various occasions';

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139 (c) identify the locations of these `various occasions';

140 (d) state the identities of other people present on each of these `various occasions' apart from Mr Sam Chong Keen and Mr A L Sim, if any.

141 ... ... ..."

142 "Reply

143 Under Paragraph 7

144 To the request,

145 Of `1. With respect to paragraphs 5 and 6 of the Defence, the Plaintiff avers that at all material times, the Defendant took cognisance of the state of force majeure and accepted the plaintiff's notice and intimations of force majeure unconditionally.'

146 (1) state whether the Defendants took cognisance in writing or orally;

147 (a) ... ...

148 (b) if orally,

149 (i) ... ...

150 (ii) state the precise manner in which the Defendants took cognisance.

151 (2) state whether the Defendants accepted the Plaintiff's notice and intimations of force majeure in writing or orally;

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152 (a) if in writing, identify the relevant document(s);

153 (b) if orally,

154 (i) state the date(s) when the Defendants accepted the notice and intimations;

155 ... ...

156 The answer was

157 (1)(b)(ii) In conversations.

158 1(2)(a) Not applicable. The Plaintiffs reserve their rights to refer to the Defendants' relevant correspondences to the Plaintiffs and/or third parties to show the unequivocable conduct amounting to acceptance on the part of the Defendants.

159 (2)(b)(i) The Defendants accepted the notice on or about the 13th day of December 1991 and on the 15th day of December 1991 and on various occasions in conversations from the 15th day of December 1991 until the commencement of this action.

160 Further Request

161 (1) Of `In conversations' as alleged to be the precise manner in which the Defendants took cognisance referred to in answer to request (1)(b)(ii) above, identify:

162 (a) the number of such `conversations';

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163 (b) the precise date of each of these `conversations';

164 (c) the Defendants' representative(s) in each of these `conversations'; and

165 (d) the Plaintiffs' representative(s) in each of these `conversations'.

166 (2) Of `The Plaintiffs reserve their right to refer to the Defendants' relevant correspondences to the Plaintiffs and/or third parties to show the unequivocable conduct amounting to acceptance on the part of the Defendants.' in answer to request 1(2)(a) above, identify

167 (a) all `the Defendants' relevant correspondences to the Plaintiffs'; and

168 (b) all `the Defendants' relevant correspondences to third parties.'

169 (3) Of `... on various occasions in conversations from the 15th day of December 1991 until the commencement of this action' in the answer to request 1(2)(b)(i) above,

170 (a) state how many such `various occasions' there were;

171 (b) state precisely the dates of each of these `various occasions';

172 (c) identify the Defendants' representative(s) on each of these `various occasions';

173 (d) identify the Plaintiffs' representative(s) on each of these `various occasions';

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174 (e) identify other persons present on each of these `various occasions', if any.

175 ... ... ... 4. ... ...

176 5. In the event the Plaintiffs should fail to comply with the Order made in terms of paragraph 3 herein within the time specified therein, paragraphs 11, 15, 16, 18 and 20 of the Statement of Claim and paragraphs 4, 7 and 13 of the Reply be struck out and as a consequence thereof the Plaintiffs' Statement of Claim and Reply be struck out, and the Defendants be at liberty to enter Judgment against the Plaintiffs dismissing the Plaintiffs's action with costs including the costs of and occasioned by the application."

177 Thus under paragraph 11 of the Statement of Claim and the particulars thereon of 18 December 1992 alleging that the notice of force majeure had been accepted by the defendants, the plaintiffs were ordered to identify the relevant correspondences thereon and to give particulars of the alleged conversations relating thereto. Similar further and better particulars were ordered in respect of paragraphs 15 and 16 of the Statement of Claim and paragraph 7 of the Reply and the particulars thereon of 18 December 1992.

178 In purported compliance with Lai J's order, the plaintiffs on 20 May 1994 furnished the following further answers:

179 FURTHER ANSWERS UNDER PARAGRAPH 11

180 "(1) (a) The `Defendants' relevant correspondences' refers to all the Defendants' correspondences which have been set out in the List of Documents exhibited in the Plaintiffs' and Defendants' Affidavits verifying List of

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Documents. The Plaintiffs' Affidavit verifying List of Documents was filed on the 24th March 1993. The Defendants' Affidavit verifying List of Documents was filed on the 13th of May 1993.

181 (2) (a) The Plaintiffs are unable to identify the exact number of `occasions' on which the aforesaid conversations were held but will aver that from and on or around the 13th of December 1991 to the 13th of January 1992, conversations were held between the Plaintiffs' and Defendants' representatives at least once a day on every working day. Thereafter up to the commencement of this action, the said conversations were held about once a week.

182 (b) The said conversations took place at least once every working day between the 13th of December 1991 to the 13th of January 1992. Thereafter the said conversations took place about once a week up to the commencement of this action; i.e. conversations took place on the 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 26th, 27th, 30th 31st December 1991 and 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th January 1992. The plaintiffs are unable to identify the precise dates when the said conversations took place after the 13th of January 1992.

183 (c) Rodger Eu.

184 (d) The Plaintiffs will aver that on the vast majority of the occasions (about 95% of the occasions) the Defendants representative was Al S.M. Sim. On the remaining occasions, the Defendants' representative was Sam Chong Keen.

185 (e) Chu Soh Ching, an employee of the Plaintiffs was present at some of the occasions.

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186 (f) In Singapore.

187 (g) Largely through the telephone and on some occasions in person."

188 FURTHER ANSWERS UNDER PARAGRAPH 15:

189 "(1) (a) `The Plaintiffs' correspondences to the Defendants' refers to all the Plaintiffs' correspondences to the Defendants as enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on 24th March 1993 and 13th May 1993 respectively.

190 (2) (a) No.

191 (b) All other `respective documents' refers to all documents that have been enumerated and set out in Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on 24th March 1993 and 13th May 1993 respectively.

192 (3) (a) The `various dates' refer to the same dates set out above at Further Answers No 2(a) and (b) to paragraph 11 of the Statement of Claim.

193 (4) The `documentary evidence ...' exhibited in Court Documents refers to all correspondences sent by the Plaintiffs to the Defendants that have been enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on the 24th March 1993 and 13th May 1993 respectively."

194 FURTHER ANSWERS UNDER PARAGRAPH 16

195 "(1) (a) All `correspondences at all material times' refers to all the Defendants correspondences which have been enumerated and set out in the

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Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on 24th March 1993 and 13th May 1993 respectively.

196 (2) (a) `all the Plaintiffs' documents confirming force majeure sent to the Defendants' refers to all the Plaintiffs' correspondences to the Defendants as enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on 24th March 1993 and 13th May 1993 respectively.

197 (3) (a) The Plaintiffs are unable to identify the exact number of `occasions' on which the Defendants orally took cognisance and accepted that there was a force majeure situation prevailing but will aver that from or around the 13th of December 1991 to the 13th January 1992, the Defendants' representatives in the course of conversations with the Plaintiffs' representatives, took cognisance and accepted that there was a force majeure situation prevailing.

198 (b) The said `occasions' took place at least once in every working day between the 13th of December 1991 to the 13th of January 1992. (As to the precise dates, see Further Answer 2(b) to Paragraph 11 of the Statement of Claim). Thereafter the said `occasions' took place about once every week up to the commencement of this action. The Plaintiffs are unable to identify on which precise dates the said occasions took place after the 13th of January 1992.

199 (c) Singapore.

200 (d) Rodger Eu and/or Miss Chu Soh Ching."

201 On the Reply:

202 FURTHER ANSWERS UNDER PARAGRAPH 7:

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203 "(1) (a) See Further Answer to Further Request No 3(a) under Paragraph 16 of the Statement of Claim.

204 (b) See Further Answer to Further Request No 3(b) under Paragraph 16 of the Statement of Claim.

205 (c) Sam Chong Keen and/or Al S.M. Sim.

206 (d) See Further Answer to Further Request No 3(d) under Paragraph 16 of the Statement of Claim.

207 (2) (a) The `Defendants' relevant correspondence to the Plaintiffs' are all the correspondences from the Defendants to the Plaintiffs which have been enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying their List of Documents filed respectively on the 24th of March 1993 and 13th of May 1993.

208 (2) (b) The `Defendants' relevant correspondence to third parties' are all the correspondences from the Defendants to third parties which have been enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying their List of Documents filed respectively on the 24th March 1993 and 13th May 1993.

209 (3) (a) See Further Answer to Further Request No 1(a) under Paragraph 7 of the Reply.

210 (b) See Further Answer to Further Request No 1(b) under Paragraph 7 of the Reply.

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211 (c) See Further Answer to Further Request No 1(c) under Paragraph 7 of the Reply.

212 (d) See Further Answer to Further Request No 1(d) under Paragraph 16 of the Reply.

213 (e) The Plaintiffs are unable to furnish any further information as the same is not within the Plaintiffs' knowledge."

214 The further answers given purportedly in compliance with Lai J's order still did not identify the relevant documents on the matters alleged in paragraphs 11, 15 and 16 of the Statement of Claim and paragraph 7 of the Reply and the particulars thereon of 18 December 1992 when the same were in writing and gave no further and better particulars relating to conversations from 14 January 1992 to date of commencement of proceedings when the matters alleged were oral.

215 The plaintiffs' list of documents of 30 March 1993 contained 126 documents. The defendants' list of 13 May 1993 contained 65 documents. Included in their lists were correspondences relating to the negotiation leading to the signing of the contract, opening of the LC and various amendments and extensions of shipping dates. These documents could not have any bearing on the issue of force majeure, cognisance of force majeure, notice of force majeure and acceptance of the same by the defendants. Therefore the plaintiffs' pleadings were not sufficiently specific. Hence Lai J's order.

216 By the further answers furnished, the plaintiffs had clearly not complied with Lai J's order. The defendants therefore requested for full particulars in terms of Lai J's order. But the plaintiffs refused to comply. So on 18 June 1994,

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the defendants filed an application in summon-in-chambers No 3597 of 1994 seeking a declaration that the plaintiffs had not complied with Lai J's order and for an order that unless there was compliance within 7 days, the plaintiffs' action be struck out.

217 The application came before me on 1 July 1994. I gave the declaration applied for but gave plaintiffs further time to comply. I ordered that `unless the Plaintiffs comply with the Order of Court dated 28 April 1994 by furnishing fully the particulars ordered to be furnished under paragraphs 11, 15 and 16 of the Statement of Claim and paragraph 7 of the Reply within 7 days of the date of the order hereon, the Statement of Claim and the Reply be struck out, and the Plaintiffs' action be dismissed without further order with costs to be taxed and paid by the Plaintiffs to the Defendants.'

218 In purported compliance with Lai J's order and my order, the plaintiffs on 6 July 1994 furnished the following further and better particulars:

219 FURTHER ANSWERS UNDER PARAGRAPH 11

220 "(1) (a) The `Defendants' relevant correspondence' refers to all the Defendant's correspondences which have been set out in the List of Documents exhibited in the Plaintiffs' and Defendants' Affidavits verifying List of Documents and which may be identified as follow:

221 i. Telex from Defendants to Plaintiffs dated 23rd of December 1991.

222 ii. Telex from Defendants to BFCE dated 26th December 1991.

223 iii. Telex from Defendants to Plaintiffs dated 31st December 1991.

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224 The Plaintiffs' Affidavit verifying List of Documents was filed on the 24th of March 1993. The Defendants' Affidavit verifying List of Documents was filed on the 13th of May 1993.

225 (2) (a) The Plaintiffs are unable to identify the exact number of `occasions' on which the aforesaid conversations were held but will aver that from and on or around the 13th of December 1991 to the 13th of January 1992, conversations were held between the Plaintiffs' and Defendants' representatives at least once a day on every working day. Thereafter up to the commencement of this action, the said conversations were held about once a week.

226 (b) The said conversations took place at least once every working day between the 13th of December 1991 to the 13th of January 1992. Thereafter the said conversations took place about once a week up to the commencement of this action; i.e. conversations took place on the 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 26th, 27th, 30th, 31st December 1991 and 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th January 1992. The Plaintiffs are unable to identify the precise dates when the said conversations took place after the 13th of January 1992.

227 (c) Rodger Eu was the Plaintiffs representative at each of the aforesaid occasions.

228 (d) The Plaintiffs will aver that on the vast majority of the occasions (about 95% of the occasions) the Defendants representative was Al S.M. Sim. On the remaining occasions, the Defendants' representative was Sam Chong Keen. The Defendants representative on the following occasions was Al S.M. Sim: 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 26th, 27th, 30th and 31st December 1991 and 2nd, 6th, 7th, 8th, 9th, 10th, and 13th January 1992. The

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Defendants representative on the following occasions was Sam Chong Keen: 24th December 1991, 3rd January 1992.

229 (e) Chu Soh Ching, an employee of the Plaintiffs was present at some of the occasions when conversations were held between the Plaintiffs representative and the Defendants representative over the telephone. The Plaintiffs have furnished the best particulars available to them and are unable to furnish any further particulars in this regard.

230 (f) In Singapore.

231 (g) Largely through the telephone and on some occasions in person. The Plaintiffs will aver that on the 3rd of January 1992, the Plaintiffs representative, Rodger Eu met the Defendants' representative Sam Chong Keen in person. The aforesaid representatives met on the 3rd of January 1992 at the lounge of the Marco Polo Hotel in Singapore. On all other occasions, the conversations were held via the telephone."

232 FURTHER ANSWERS UNDER PARAGRAPH 15:

233 "(1) (a) `The Plaintiffs' correspondence to the Defendants' refers to all the Plaintiffs' correspondence to the Defendants as enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on 24th March 1993 and 13th May 1993 respectively and which may be identified as follows:

234 i. Fax from the Plaintiffs to Defendants dated 2nd December 1991.

235 ii. Telex from Plaintiffs to Defendants dated 11th December 1991.

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236 iii. Telex from Plaintiffs to Defendants dated 13th December 1991.

237 iv. Fax from Plaintiffs to Defendants dated 20th December 1991 enclosing extract from the Fertilizer Market Bulletin dated 16th December 1991.

238 v. Fax from Plaintiffs to Defendants dated 24th December 1991.

239 vi. Fax from Plaintiffs to Defendants dated 31st December 1991.

240 vii. Fax from Plaintiffs to Defendants dated 13th January 1992 enclosing letter from the USSR Embassy in Singapore dated 13th January 1992.

241 viii. Fax from Plaintiffs to Defendants dated 13th January 1992 enclosing a letter from the USSR Government Authority dated 18th December 1991.

242 ix. Fax from Plaintiffs to Defendants dated 15th January 1992.

243 (2) (a) No.

244 (b) All other `respective documents' refers to all documents that have been enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on 24th March 1993 and 13th May 1993 respectively and which may be identified as follows:

245 i. Fax from the Plaintiffs to Defendants dated 2nd December 1991.

246 ii. Telex from Plaintiffs to Defendants dated 11th December 1991.

247 iii. Telex from Plaintiffs to Defendants dated 13th December 1991.

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248 iv. Fax from Plaintiffs to Defendants dated 24th December 1991.

249 v. Fax from Plaintiffs to Defendants dated 31st December 1991.

250 vi. Fax from Plaintiffs to Defendants dated 13th January 1992 enclosing letter from the USSR Embassy in Singapore dated 13th January 1992.

251 vii. Fax from Plaintiffs to Defendants dated 13th January 1992 enclosing a letter from the USSR Government Authority dated the 18th of December 1991.

252 (3) (a) The `various dates' refer to the same dates set out above at Further Answers No 2(a) and (b) to Paragraph 11 of the Statement of Claim. That is to say, the Plaintiffs kept the Defendants orally updated on the continuing status of force majeure on the 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 26th, 27th, 30th, 31st December 1991 and 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th January 1992. The Plaintiffs will aver that on the vast majority of the aforesaid occasions (about 95% of the occasions) the Defendants representative was Al S.M. Sim. On the remaining occasions, the Defendants' representative was Sam Chong Keen. The Defendants representative on the following occasions was Al S.M. Sim: 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 26th, 27th, 30th and 31st December 1991. 2nd, 6th, 7th, 8th, 9th, 10th and 13th January 1992. The Defendants representative on the following occasions was Sam Chong Keen: 24th December 1991, 3rd January 1992.

253 (4) The "`documentary evidence ...' exhibited in Court Documents" refers to all correspondences sent by the Plaintiffs to the Defendants that have been enumerated and set out in the Plaintiffs' and Defendants' Affidavits

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verifying List of Documents filed on the 24th March 1993 and 13th May 1993 respectively and which may be identified as follows:

254 i. Telex from Plaintiffs to Defendants dated 11th December 1991.

255 ii. Telex from Plaintiffs to Defendants dated 13th December 1991.

256 iii. Fax from Plaintiffs to Defendants dated 20th December 1991 enclosing extract from the Fertilizer Market Bulletin dated 16th December 1991.

257 iv. Fax from Plaintiffs to Defendants dated 24th December 1991.

258 v. Fax from Plaintiffs to Defendants dated 31st December 1991.

259 vi. Fax from Plaintiffs to Defendants dated 13th January 1992 enclosing letter from the USSR Embassy in Singapore dated 13th January 1992.

260 vii. Fax from Plaintiffs to Defendants dated 13th January 1992 enclosing a letter from the USSR Governmental Authority dated 18 December 1991.

261 viii. Fax from Plaintiffs to Defendants dated 15th January 1992."

262 FURTHER ANSWERS UNDER PARAGRAPH 16:

263 "(1) (a) All `correspondences at all material times' refers to all the Defendants correspondences which have been enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on 24th March 1993 and 13th May 1993 respectively and which may be identified as follows:

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264 i. Telex from Defendants to Plaintiffs dated 23rd of December 1991.

265 ii. Telex from Defendants to BFCE dated 26th December 1991.

266 iii. Telex from Defendants to Plaintiffs dated 31st December 1991.

267 (2) (a) `all the Plaintiffs' documents confirming force majeure sent to the defendants' refers to all the Plaintiffs' correspondences to the Defendants as enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying List of Documents filed on 24th March 1993 and 13th May 1993 respectively and which may be identified as follows:

268 i. Fax from the Plaintiffs to Defendants dated 2nd December 1991.

269 ii. Telex from Plaintiffs to Defendants dated 11th December 1991.

270 iii. Telex from Plaintiffs to Defendants dated 13th December 1991.

271 iv. Fax from Plaintiffs to Defendants dated 20th December 1991 enclosing extract from the Fertilizer Market Bulletin dated 16th December 1991.

272 v. Fax from Plaintiffs to Defendants dated 24th December 1991.

273 vi. Fax from Plaintiffs to Defendants dated 31st December 1991.

274 vii. Fax from Plaintiffs to Defendants dated 13th January 1992 enclosing a letter from the USSR Embassy in Singapore dated 13th January 1992.

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275 viii. Fax from Plaintiffs to Defendants dated 13th January 1992 enclosing a letter from the USSR Governmental Authority dated 18th December 1991.

276 ix. Fax from Plaintiffs to Defendants dated 15th January 1992.

277 (3) (a) The Plaintiffs are unable to identify the exact number of `occasions' on which the Defendants orally took cognisance and accepted that there was a force majeure situation prevailing but will aver that from or around the 13th of December 1991 to the 13th of January 1992, the Defendants' representatives in the course of conversations with the Plaintiffs' representatives, took cognisance and accepted that there was a force majeure situation prevailing.

278 (b) The said `occasions' took place at least once on every working day between the 13th of December 1991 to the 13th of January 1992. (As to the precise dates, see Further Answer 2(b) to Paragraph 11 of the Statement of Claim). That is to say the Defendants orally took cognisance and accepted that there was a force majeure situation prevailing on the 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 26th, 27th, 30th, 31st December 1991 and 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th January 1992. Thereafter the said `occasions' took place about once every week up to the commencement of this action. The Plaintiffs are unable to identify on which precise dates the said occasions took place after the 13th of January 1992.

279 (c) Singapore.

280 (d) Rodger Eu and/or Miss Chu Soh Ching, with Rodger Eu being the Plaintiff's representative at each of the occasions and Miss Chu Soh Ching,

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being present at the office of the Plaintiffs at some of the occasions when the conversations were held over the phone. The Plaintiffs are unable to furnish any better particulars in this regard."

281 Reply

282 FURTHER ANSWERS UNDER PARAGRAPH 7:

283 "(1) (a) See Further Answer to Further Request No 3(a) under Paragraph 16 of the Statement of Claim. That is to say, the Plaintiffs are unable to identify the exact number of `occasions' on which the Defendants orally took cognisance and accepted that there was a force majeure situation prevailing but will aver that from or around the 13th of December 1991 to the 13th of January 1992 the Defendants' representatives in the course of conversations with the Plaintiffs' representatives, took cognisance and accepted that there was a force majeure situation prevailing.

284 (b) See Further Answer to Further Request No 3(b) under Paragraph 16 of the Statement of Claim. That is to say, the said `occasions' took place at least once on every working day between the 13th of December 1991 to the 13th of January 1992 (As to the precise dates, see Further Answer 2(b) to Paragraph 11 of the Statement of Claim). That is to say the Defendants orally took cognisance and accepted that there was a force majeure situation prevailing on the 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 26th, 27th, 30th, 31st December 1991 and 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th January 1992. Thereafter the said `occasions' took place about once every week up to the commencement of this action. The plaintiffs are unable to identify on which precise dates the said occasions took place after the 13th of January 1992.

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285 (c) Sam Chong Keen and/or Al S.M. Sim. The Plaintiffs will aver that on the vast majority of the occasions (about 95% of the occasions) the Defendants representative was Al S.M. Sim. On the remaining occasions, the Defendants' representative was Sam Chong Keen. The Defendants representative on the following occasions was Al S.M. Sim: 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 26th, 27th, 30th and 31st December 1991 and 2nd, 6th, 7th, 8th, 9th, 10th and 13th January 1992. The Defendants representative on the following occasions was Sam Chong Keen: 24th December 1991, 3rd January 1992.

286 (d) See Further Answer to Further Request No 3(d) under Paragraph 16 of the Statement of Claim. That is to say, Rodger Eu and/or Miss Chu Soh Ching, with Rodger Eu being the Plaintiffs' representative at each of the occasions and Miss Chu Soh Ching, being present at the office of the Plaintiffs at some of the occasions when the conversations were held over the phone. The Plaintiffs are unable to furnish any better particulars in this regard.

287 (2) (a) The "Defendants' relevant correspondences to the Plaintiffs" are all the correspondences from the Defendants to the Plaintiffs which have been enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying their List of Documents filed respectively on the 24th of March 1993 and 13th of May 1993 and which may be identified as follow:

288 i. Telex from Defendants to Plaintiffs dated 23rd of December 1991.

289 ii. Telex from Defendants to Plaintiffs dated 31st December 1991.

290 (b) The "Defendants' relevant correspondences to third parties" are all the correspondences from the Defendants to third parties which have been

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enumerated and set out in the Plaintiffs' and Defendants' Affidavits verifying their List of Documents filed respectively on the 24th of March 1993 and 13th May 1993 and which may be identified as follows:

291 i. Telex from Defendants to BFCE dated 26th December 1991.

292 (3) (a) See Further Answer to Further Request No 1(a) under Paragraph 7 of the Reply.

293 (b) See Further Answer to Further Request No 1(b) under Paragraph 7 of the Reply.

294 (c) See Further Answer to Further Request No 1(c) under Paragraph 7 of the Reply.

295 (d) See Further Answer to Further Request No 1(d) under Paragraph 7 of the Reply.

296 (e) The Plaintiffs are unable to furnish any further information as the same is not within the Plaintiffs' knowledge."

297 On perusal of these further and better particulars of 6 July 1994 the defendants' solicitors M/s Allen & Gledhill took the view and rightly so, that the plaintiffs did not comply with Lai J's order and my order in that although they identified some documents they effectively still included all the correspondences in the lists of documents. Messrs Allen & Gledhill also took the view that the further and better particulars of the conversations were inadequate. So on 7 July 1994 they gave notice to the plaintiffs' solicitors Messrs Manjit & Partners that they would be applying to court for a ruling that the two orders of court had not been complied with. On Saturday 9 July 1994, Messrs

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Allen & Gledhill attempted to serve the application in summons-in-chambers 4038 of 1994 on Messrs Manjit & Partners. Though the latter's office was open no one would accept service. Service by fascimile was then attempted. But the facsimile machine of Messrs Manjit & Partners had been turned off. They had also refused to accept service of my order on 8 July 1994.

298 The application then came before me on the following Monday morning, 11 July 1994 in chambers. Counsel for the plaintiffs informed me that the application had not been served on him and that they did not work on Saturdays though their office might be open. Because of this I decided to hear the application in open court pursuant to the inherent powers of the court to enforce its orders.

299 At the hearing in open court I sought clarification from Mr Manjit Singh thus:

300 "His Honour: ... ... are you relying just on the documents identified or on all the documents?

301 Mr Manjit Singh: I am relying on all the documents identified in my Statement of Claim right down to the last Further and Better Particulars.

302 His Honour: I'm relying on all the ... The what?

303 Mr Manjit Singh: I'm relying on all documents identified from my Statement of Claim to my last pleading.

304 His Honour: This doesn't tell me very much, you know.

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305 Mr Manjit Singh: I think I can explain that, your Honour, and I reserve my right to rely on all documents that come before this Court that necessarily may not have come up in pleadings but may be the subject matter of examination by the Court.

306 His Honour: One minute. You reserve your right to rely on documents that come before this court though not specifically referred to?

307 Mr Manjit Singh: Though not specifically referred to in pleadings so long as they relate to cross-examination of the Defendants' pleadings and to any examination by the court of law. I don't want to prejudge my submissions, your Honour. I'll explain when it's my turn.

308 His Honour: So long as they relate to any cross-examination, Defendants' witnesses ...

309 Mr Manjit Singh: No, not `witnesses'; so long as it relates to Defendants' pleadings, cross-examination of Defendants' witnesses on their pleadings.

310 His Honour: So long as they relate to cross- examination of Defendants' witnesses on Defendants' ...

311 Mr Manjit Singh: On Defendants' pleadings, yes.

312 His Honour: On their pleadings, and then anything else?

313 Mr Manjit Singh: And if there are any questions raised by court on those documents. That is not my full submisison, your Honour. When it's my turn, I'll submit exactly what I mean.

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314 His Honour: Yes.

315 Mr Chan: Your Honour, what my learned friend has said, this merely confirmed my fears and I don't wish to belabour the point except to say that there's a difference between reserving a right to refer to evidence and pleading with particularity, and insofar as they are relying on the Defendants' conduct, they must identify the documents upon which they're relying.

316 His Honour: Well, paragraph 15 refers to the updating of this force majeure situation and if we look at the list of documents, there are documents dating about 10 months before that. Document number 1 is one of those listed.

317 Mr Chan: That's the essence of the Defendants' complaint: that the generality of the previous pleadings has not, inspite of an Order of Court, been restricted and narrowed down. That this is just another expression of the Latin phrase `inter alia' and not a very elegant one at that. Your Honour, wherever we have objected to the generality of the previous pleadings and objected to their wholesale incorporation of documents given in discovery, they have used the same formula. It is an insidious way of making the --- or leading the Defendants to believe that the documents, the class of documents have been narrowed down when in fact they have not been. As far as documents are concerned, I need only say this: if the documents are all that have been enumerated in a later set of particulars filed on the 6th of July, then there's no need, it's superfluous to refer to all the documents. If they are not, then they are under a duty to particularise the remainder of the documents. That's a very, very simple point really, your Honour. And I think that the plaintiffs can understand that point."

318 After hearing counsel for both parties for the whole day I was convinced that the way in which the further answers of the 6th July 1994 were couched

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was a deliberate flouting of Lai J's order and of my order which was to give the plaintiffs further time to comply with Lai J's order.

319 Accordingly I ordered that the Statement of Claim and Reply be struck out and plaintiffs' action dismissed with costs.

Goh Joon Seng J

Manjit Singh (Samuel Chacko) for the plaintiffs
Chan Hian Young (Leonard Goh) for the defendants

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