IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 28

S1016/1990

Between

Merteks Pte Ltd

… *Plaintiff*

And

Straits Engineers Contracting Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Merteks Pte Ltd v Straits Engineers Contracting Pte Ltd

[1995] SGHC 28

S1016/1990
Chao Hick Tin J
02 February 1995

1 **Judgment:**

2 Coram: Chao Hick Tin J

3 JUDGMENT

4 The plaintiffs, Merteks Pte Ltd (Merteks), are in the business of shiprepair, mechanical engineering and fabrication work. The company was incorporated in 1978. It was in 1988 that Merteks acquired a small workshop at Loyang estate and started business. In 1989 it decided that it would be desirable to have a seafront site to expand its business. It applied to Jurong Town Corporation (JTC) for a seafront facility without success. It then seriously scout around the open market for such a facility.

5 It was in early March 1990 that Arthur Teo (Teo), the Managing Director of Merteks and a marine engineer by training, and Alan Chan, a director of Merteks, heard that Nicol & Andrew (Far East) Pte Ltd, a company with a seafront facility, was up for sale.

6 Accordingly, sometime in that month Teo and Chan arranged a lunch meeting with Ambrose Lim (Lim), the Managing Director of Nicol & Andrew. They had a general discussion of the facilities and business of Nicol & Andrew. Lim indicated that the owners were looking at a price of $5.5 million and also indicated that the lease from JTC had twenty odd years left. Though Chan felt the place was small, compared with what they had applied for to JTC, it was still suitable. Lim gave them a set of the accounts of Nicol & Andrew ending March 1989 (which were the latest available accounts then). Lim brought the accounts to the meeting because he was asked to bring them.

7 I should at this juncture mention that Teo and Chan also have an interest in shipping. They own a company, Petroships Pte Ltd (Petroships), which manages a fleet of vessels. The vessels are in turn owned mainly by Teo and Chan through separate companies. Merteks is a wholly owned subsidiary of Petroships. In acquiring Nicol & Andrew, Teo and Chan were basically interested in Nicol & Andrew's physical facilities and the seafront. They hoped to upgrade the capacity of Merteks so that Merteks would join the "upper league" and do high value work.

8 A few days later Lim arranged for an inspection of Nicol & Andrew's premises by Teo and Chan. They felt the premises suited what they wanted. A second meeting was therefore arranged for 29 March 1990 at the office of Petroships at PSA Building, Alexander Road. Lim attended with David Toms, the key person behind Nicol & Andrew. Teo and Chan represented Merteks. All the issued shares in Nicol & Andrew were held by the defendants, Straits Engineers Contracting Pte Ltd (Straits), and Toms was the Managing Director of Straits. The purpose of the meeting was to discuss the sale by Straits to Merteks of Straits' shares in Nicol & Andrew.

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9 The issued and paid up capital of Nicol & Andrew was then one million dollars, consisting of 100,000 shares of $10 each. Toms wanted $5.5 million for those shares. Teo and Chan countered with $4.2 million. The evidence shows that at this meeting on 29 March 1990 there was much discussion on the price. Eventually it was agreed at $5 million. The accounts of Nicol & Andrew for the year ending 31 March 1989, were before the parties. It showed net current assets of $2,277,718.

10 The parties' evidence differs as to what was said on the accounts. Teo and Chan said that they were told by Toms that the accounts for the year soon to end on 31 March 1990 would only be marginally different from what they were for the preceding year, showing trading losses of about $50,000 to $100,000. Chan remembered the figure $70,000 was mentioned. Teo said though the 1990 accounts had yet to be prepared, they were keen to purchase the Nicol & Andrew's site as it would integrate with and expand the businesses of Merteks and Petroships. Teo said they were buying the entire business of Nicol & Andrew, lock stock and barrel, by acquiring all the shares in Nicol & Andrew from the existing owners. It was a purchase of a going concern. Both Teo and Chan said there was no mention by Toms of a "clean company" sale or that the sale was on "without trade debtors or trade creditors" basis.

11 On the other hand, the evidence of Toms is that while he agreed to sell Nicol & Andrew to Merteks, it was on the basis of a clean company, namely, without trade debtors or trade creditors. At the time, as shown in the accounts, Straits owed Nicol & Andrew more money than the other way round, i.e., there was a credit balance in favour of Nicol & Andrew. I shall return to this aspect of the matter later as this is the crux of the issue in this action.

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12 The net result of their discussions on 29 March 1990 ended with the execution by the two parties of a document. As this document is central to this action I shall quote it in full:-

13 "It is agreed between Straits Engineering Contracting Pte Ltd ("the Vendor") and Merteks Pte Ltd ("the purchaser") that:-

14 1. The Vendor has agreed to sell and the purchaser has agreed to purchase the whole of the issued and paid-up shares in Nicol & Andrew (Far East) Pte Ltd, incorporated in Singapore for S$5,000,000 (Singapore Dollars five million).

15 2. The completion date shall be within 60 days or such other date as mutually agreed.

16 3. The Vendor agrees to hold the purchaser fully indemnified against any liability to (sic) any debts, obligations, guarantees, business, contracts, litigation, and such other liabilities that may arise before the completion date.

17 4. The purchaser shall pay the Vendor S$10,000 on signing the contract.

18 This document will hereinafter be referred to as the "March Agreement".

19 The meeting that day commenced in the morning. The document was signed after they had lunch together. Toms signed on behalf of SE and his execution was witnessed by Lim. Chan signed for Merteks and was witnessed by Teo.

20 The draft of the March Agreement was put up by Chan in consultation with Frankie Tan, the financial adviser of Merteks. Apparently some corrections

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were made to the draft by Toms before it was faired and executed. What amendments were made thereto were not clear. One of the alleged amendments (the deletion of the words "assets reduction" in paragraph 3) will be dealt with in some detail later. It is the stand of both parties that the March Agreement constituted a binding contract (NE 429).

21 Teo and Chan said the parties did not agree on any other terms other than the four clauses; there was no mention that Straits would deliver Nicol & Andrew without trade debtors or trade creditors. Both were told that as regards the accounts there was not going to be much difference between the 1989 situation and the 1990 situation. They were prepared to accept the negligible trading losses indicated by Toms. However, Toms said there was a clear understanding that the sale was without trade debtors or trade creditors.

22 Considerable controversies also centred around clause 3. Teo said that the purpose of clause 3 was to safeguard the buyer during the period between the signing of the contract and the completion date 60 days later so that the vendors should not incur extraordinary liabilities that would reduce the value of Nicol & Andrew. Teo and Chan said if Nicol & Andrew carried on its usual business no indemnity would be sought under clause 3 - they accepted that in the course of normal business, the debtors and creditors situations would fluctuate. But in making the offer of $5 million for the shares of Nicol & Andrew, they took all factors into account, the net asset value (less the marginal difference indicated), the waterfront, the other facilities and the potential.

23 Frankie Tan gave evidence for the plaintiffs. He said that clause 3, was suggested by him to cover unforeseen liabilities. He also advised Chan to pay a deposit, thus clause 4 was inserted.

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24 On the other hand, Toms said that clause 3, especially with the deletion of the two words "asset reduction" (as alleged by him), has the effect of making the sale a "clean company" sale.

25 On 4 April 1990, a few days after the execution of the March Agreement, Merteks received a draft agreement from Lim. It was a draft prepared by Straits' solicitors, Ann Tan & Associates. The draft dealt mainly with details but there were two provisions in the draft which Merteks felt were contrary to the March Agreement and which caused them much concern: clause 3(b)((2) and 4(a). I will now quote the two provisions -

26 "3(b)(2) In addition, the Purchaser shall pay to the Vendor the audited difference of the sum between Sundry Creditors and Sundry Debtors, if any, as at 28th May 1990, a List of which is annexed hereto as Schedule 1;

27 4(a) It is understood and agreed that the Vendor shall be responsible for payment of the Company's Trade Creditors and enjoy the benefit of payments from the Company's Trade Debtors as at 28th May 1990, as set out in Schedule 2 annexed hereto. These debts shall be utilised for payment of all Creditors, any insufficiency arising therefrom is the responsibility of the Vendor."

28 On 5 April 1990, Teo and Chan discussed the draft with their solicitor, Chan Kam Foo, and their financial adviser, Frankie Tan. They felt it was necessary to talk to Mrs Ann Tan. They then left to see Ann Tan in her office without prior appointment. They sought clarificaton from Ann Tan on the objectionable clauses in her draft. She explained that her instructions from clients were that Straits were to give Merteks a company without trade debtors or trade creditors. The plaintiffs were to get only the fixed assets. Frankie Tan responded by saying that the current assets belonged to Nicol & Andrew and

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could not be given away or taken away. Teo and Chan were asked by Ann Tan to put up their own draft proposal. Accordingly, the next day Chan Kam Foo & Associates prepared a draft (AB20-31) to counter Ann Tan's draft and it was handed over to Lim.

29 On 11 April 1990 Teo wrote to Straits as follows:-

30 "Further to the Agreement signed on March 29, 1990 we will be pleased to know when we can meet to finalize the sale and purchase arrangements as drafted and handed to your representatives on Friday, April 6, 1990."

31 On 17 April 1990 Merteks sent a reminder stating "let us know when we can meet as we would like to show our Bank the details at an early date."

32 On 18 April 1990 Straits replied stating, inter alia, the following:-

33 "There is already in existence an agreement on our part to sell and your part to buy our above company for S$5 million.

34 We do not agree with your new proposals on how to finalise the sale and purchase arrangements, which is contrary to our written agreement.

35 Please note that on the 28th day of May 1990, the sale will be completed upon your giving us a Cashier's Order for the sum of S$4,990,000.00 made in our favour. In exchange, we shall hand over to you the following:

36 (1) The 100,000 shares of the Company together with the Transfer forms duly executed;

37 (2) The Title Deeds relating to the property;

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38 (3) As at 28th May 1990, you will get a clean company i.e., a company without any Trade Creditors or Trade Debtors as at that date."

39 On 4 May 1990 Merteks responded to the letter of 18 April saying that the March Agreement was reached on the basis of the accounts as at 31 March 1989. It concluded "the scheduled completion would not be helped by the attempt in your letter dated 18 April to read irrational ideas into that part of the agreement that provided the buyers with a simple and customary safeguard"; this last reference to "safeguard" clearly has reference to clause 3.

40 On 25 May 1990, Ann Tan & Associates, writing for Straits, asked Merteks to complete the purchase by 4.00pm on 28 May 1990 at the office of Ann Tan & Associates and required the tender of a cashier's order in the sum of S$4,990,000 in exchange for the 100,000 shares in Nicol & Andrew, with the transfer forms duly executed and the title deeds to the property.

41 On 28 May 1990, Chan Kam Foo & Associates, answered on behalf of Merteks stating, inter alia,

42 "We are instructed by our clients that they are ready to complete ... in accordance with the Agreement dated 29 March 1990, subject to the following:

43 1. Paragraph 4 item 3 of your clients' letter dated 18 April 1990 relating to creditors and debtors being inconsistent with the Agreement dated 29 March 1990 is withdrawn.

44 2. Details of sale and purchase to be finalized as requested by our clients on the 11 April 1990.

45 We are instructed by our clients that despite the exchange of two drafts between our respective clients no meeting has been scheduled to discuss the details."

46 Teo said on 28 May 1990 Merteks was ready and willing to complete the transaction in accordance with the March Agreement.

47 On the same day, Ann Tan & Associates replied disagreeing that there was any inconsistency as alleged in Chan Kam Foo's letter of even date but went on nevertheless to ask for clarification as to the details of the alleged inconsistency. As regards the question of the two drafts setting out the detailed arrangements, Ann Tan & Associates stated that, "it is obvious that neither party agreed to the other's proposed draft of additional conditions. Therefore, the original agreement stands in its entirety." The letter reserved Straits' rights following Merteks' failure to complete on that day.

48 On 31 May 1990 Chan Kam Foo & Associates replied stating that "the whole matter hinges on the issue whether the net current assets are wholly included or not wholly included in the sale and purchase" and that the point was gone into at length at the meeting on 5 April 1990 at the office of Ann Tan & Associates and expressed surprise that there was any need for clarification on the same point. The letter concluded "we are instructed by our clients that the completion has been rendered impossible thus far precisely by your clients' attempt to deduct trade debtors and trade creditors from the net worth of Nicol & Andrew Pte Ltd whereas the price of $5,000,000 was meant for the whole of the issued share capital of the company with net worth at $2,277,718." It expressed the view that the issue might have to be resolved in a court of law.

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49 On 4 June 1990, Ann Tan & Associates wrote to explain why the clarification was required. It enquired, if the purchase was on the basis of net worth of $2,277,718, would it mean that if there was a fluctuation in that figure there should be a corresponding adjustment in the price of $5 million.

50 On 12 June 1990 Merteks filed the present action in the High Court claiming inter alia for specific performance and for damages for breach of contract. Straits was served with the writ either on that day or on the next day. In the defence filed by Straits, it sought a declaration that it was an express term of the March Agreement that Straits would on completion deliver Nicol & Andrew to Merteks free of trade debtors and trade creditors. On the pleadings it is clear that this is the central issue.

51 Following the service of the writ there were discussions between the solicitors of the parties with a view to seeking an amicable solution. By then, Straits had changed its solicitors to M/s Donaldson & Burkinshaw. There were discussions in July - September 1990 on a certain option `c' whereby completion was to be effected by payment of $4.5 or $4.6 million and the difference between this and the contract price of $5 million was to be held by Donaldson & Burkinshaw as stakeholders pending a decision of the court on the dispute. The proposal fell through apparently because Merteks required a completion audit which Straits objected but which Merteks said was essentially procedural in nature, the object of which was to ascertain the present net worth of Nicol & Andrew.

52 Merteks raised the need for a completion audit on 26 July 1990 because, in the words of Chan, they had "lost faith in the vendors." This was intended to find out if there was any manipulation detrimental to Merteks. Merteks wanted a completion audit as part of a settlement. Chan further explained that a

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completion audit was necessary because the position of the parties was then confrontational - there was a need to guard against paper creation of assets. It was a precautionary step, a matter of procedure. Chan said they were easy on the question of the extent of completion audit. But they were worried, and had cause to, as to what was going on. Frankie Tan in evidence said that as at that point in time almost 4 months had elapsed from the last financial year, it was common sense or commercial prudence that there should be an audit before the date of completion.

53 Interestingly, while the parties' solicitors were trying to sort out their differences in order to reach a settlement, unbeknown to Merteks, Straits had secretly, on 9 June 1990, entered into an agreement to dispose of their shares in Nicol & Andrew to an Indonesian party, Cakrawala Nasantara Purnama Agung (CNPA), for a sum of only $4 million and which sale was completed on 27 July 1990, rendering it impossible for Straits to carry out any settlement that might be reached with Merteks. I will be reverting to this aspect later.

54 Main factual issues

55 I will now examine two inter-related factual issues which will be decisive in relation to this action.

56 (i) Was there any discussion or understanding on 29 March 1990 that the sale was on "a clean company basis" or "without trade debtors or trade creditors"?

57 (ii) Were the two words "asset reduction" included in paragraph 3 of the original draft agreement tendered by Chan to Toms on 29 March 1990 for discussion and were the two words deleted on the insistence of Toms?

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58 I would first like to observe that from the evidence there was some confusion in the mind of Toms as to the two terms "clean company" and "without trade debtors or trade creditors". He seemed to use these two expressions interchangeably. Strictly, it is clear that "clean company" is wider than "without trade debtors or trade creditors"; the former means without current assets and current liabilities and the latter means what it says. Chan Ket Teck (DW4), the financial expert called by Straits, admitted that. Current assets would include not only trade debtors and trade creditors but also, for example, money in the bank, stocks, etc. However, in view of the findings I have reached, I do not propose to dwell on this confusion of Toms though some significance was placed by Merteks' counsel on it.

59 Clean Company

60 Toms evidence was that he did on 29 March 1990 raise the point that Straits was selling Nicol & Andrew to Merteks without trade debtors or trade creditors and that there was a clear understanding on it. He explained that in September 1985 when Straits bought over Nicol & Andrew from the previous owner it was on the basis of without trade debtors or trade creditors. Since 1985 he had also sold three other companies on a similar basis. In the sale of these three other companies, Ann Tan acted for Straits and in her evidence in court she confirmed that that was so. She also said that when Toms instructed her to draw the detailed agreement in relation to the present transaction it was also to be on a "clean" basis.

61 Toms further referred to the fact that there were the words "asset reduction" in clause 3 of the draft just immediately after the words "business contracts" which he insisted should be deleted as those words were not only

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inappropriate in the context but would not be consistent with a sale on a without trade debtors/creditors basis and thus the two words were deleted.

62 What troubles me greatly with regard to the evidence of Toms is this. On what he said, it follows that he was aware that if a sale was to be on a without trade debtors/creditors basis, there was a need to provide for it. There was an express clause to that effect in the 1985 agreement when Straits bought over Nicol & Andrew. Yet he did not see fit to include something explicit to that effect in the present transaction. It does not make sense to me why he merely insisted upon the deletion of the two words "asset reduction" and did not ask for the inclusion of explicit terms to cover that situation like what was provided in the 1985 agreement and in the draft put up by Ann Tan on 4 April 1990. After all he had previous experience; not once but four times in all.

63 Even assuming that the words "asset reduction" were in fact deleted from the draft, I do not see how that would suffice to satisfy Toms' desire that the sale should be on without trade debtors/creditors basis when there is nothing in clause 3 which says that debtors of Nicol & Andrew would be removed and assigned to Straits. This is all the more inexplicable when according to Toms there was a great deal of discussions on "clean company" basis and the problem was to get Chan to understand that concept because in Chan's mind it would be illegal to take away the assets of Nicol & Andrew. Toms even said that by the insertion of the two words "asset reduction" he thought "they were trying to sneak it in to buy based on inter-company debts" when he had understood from Lim that at the first luncheon meeting Lim had indicated to Teo and Chan that the sale would be on a without trade debtors/creditors basis. Why then did he leave the issue unclarified?

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64 Having carefully weighed the evidence of Toms and that of Teo and Chan, I find it strange that if the question of "clean company" or "without trade debtors/creditors" was discussed, why was it not expressly spelt out in the March Agreement. Toms knew that what he was going to sign would be a binding contract. I cannot over-emphasise that Toms has had previous experience in such deals. He cannot claim ignorance. I hold, on the evidence, that the question of "clean company" or "without trade debtors/creditors" was not raised or agreed to at the meeting of 29 March 1990. I believe I am fortified in this view by the following:-

65 (i) In all the previous four transactions, they were in each case effected by a detailed agreement. They were not effected like the present with such a short agreement covering only the essentials, leaving matters of details relating to completion to be worked out between the parties. This really differentiates the present transaction from his previous transactions. I can see two possible reasons why Toms was anxious to sell as were Teo and Chan anxious to buy. First, the price of $5 million eventually offered by Teo and Chan was extremely good. As I have mentioned above, on 9 June 1990 Toms sold the shares to the Indonesian party for only $4 million. Even at the price of $4 million, Toms was saying that it was a good price. So $5 million would really be added bonus. This might well explain why Toms did not raise the question of the inter-company debts. It might well be that because Teo and Chan's offer was so attractive he did not want to upset the agreement reached as it was a case of an additional million dollars against an inter-company credit in favour of Nicol & Andrew of four hundred odd thousand dollars. Second, Straits was at that point in time desparately in need of money, having then owed the bank about $4 million so much so that when it appeared in early June 1990 that the deal with Merteks would take sometime to resolve, Toms had no hesitation in selling the shares to

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CNPA on 9 June 1990 in order to get the cash quickly to pay up the bank. I find that Toms entered into the March Agreement with all due deliberations.

66 (ii) In the subsequent sale to CNPA there was also no reference to "clean-company" or "without trade debtors/creditors". First, Toms entered into a short agreement with CNPA on 9 June 1990 in these terms:-

67 "It is hereby agreed between Straits Engineers Contracting Pte Limited, a company incorporated in the Republic of Singapore (hereby called the "Vendor") and PT Cakrawala Nusantara Purnama Agung, a company incorporated in the Republic of Indonesia (hereby called the "Purchaser") that:

68 i) The Vendor has agreed to sell and the Purchaser has agreed to purchase the whole of the issued and paid-up shares in Nicol & Andrew (Far East) Pte Limited, a company incorporated in the Republic of Singapore for S$4,000,000.00 (Singapore Dollars Four Million Only.)

69 ii) The Vendor will have to deliver all necessary documents to the Purchaser no later than sixty (60) days (hereby called the "completion date") or such other date as mutually agreed.

70 iii) The Vendor agrees to hold the Purchaser fully indemnified against any liability to any debts, obligations, guarantees, business contracts, litigation and such other liabilities that may arise before the completion date.

71 iv) The Purchaser shall pay the Vendor S$4,000,000.00 (Singapore Dollars Four Million Only) in advance for all of Nicol & Andrew (Far East) Pte Limited shares no later than fourteen (14) days from the date of this agreement.

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72 v) If the Vendor fails to deliver all the necessary documents to the Purchaser by the completion date, the Vendor hereby agrees to repay the Purchaser the full S$4,000,000.00 (Singapore Dollars Four Million Only) plus fifteen (15) percent interest per annum.

73 Dated this 09th day of June 1990."

74 On 27 July 1990 Straits entered into two detailed documents with CNPA - first a Transfer of Shares Agreement and second, a Sale and Purchase of Shares Agreement. In neither of these two documents was it provided that the sale of the shares of Nicol & Andrew to CNPA was to be on "clean company" or "without trade debtors/creditors" basis. Admittedly, these two doucments were signed in Jakarta by Mr Alan Keet, the Chairman of Straits. Initially, Toms said that he was not present when Keet signed the two documents as if to suggest that Keet signed without proper briefing from him. But Toms had later to admit that he was in fact present when the two documents were signed by Keet in Jakarta. Why was it not mentioned in any of the documents entered into with CNPA that the sale was on a "clean company" or "without trade debtors/creditors" basis? Toms explained that he did not pay attention to those documents. I find that hard to accept.

75 Asset reduction

76 I now turn to the second issue of fact, whether the words "asset reduction" were in the original draft of Chan and which were deleted. Here, I hold that there were no such words in the original draft for these reasons:-

77 (i) Toms seemed to be uncertain as to what were the exact words that he alleged had been deleted from the draft: this is clear from the way his counsel

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cross-examined Teo and Chan and from Toms' own evidence. Another expression referred to was "reduction in asset value".

78 (ii) At no time until the commencement of the trial did Toms tell his counsel that he had the two words deleted from the draft. Why did he not tell his lawyer this when the problem arose whether the sale was on "clean company" or "without trade debtors/creditors". Toms tried to explain that sometimes things do not occur to you until much later. But if it were true that when he saw those two words in the draft he thought that Teo and Chan were trying to "sneak (them) in to buy on inter-company debts", how could he have forgotten about this very crucial fact until the commencement of trial? Once the dispute arose and if what he said is true, his mind would have been jolted and that fact would have been recalled immediately. I find his explanation entirely unconvincing. I must point out that when the problem arose it was barely a week after the execution of the March Agreement. The fact that he could not recall this bit of fact until after a few years later casts serious doubts on what he now claims. I would be inclined to find that this is an afterthought.

79 (iii) If in fact he had those two words deleted and if it occurred to him that the insertion of those words was Chan's sneaky way to undermine the sale on a "clean company" or "without trade debtors/creditors" basis, and if Toms had in fact thought that it was the wrong place to insert those two words, why did he not make the position on "clean company" clear by inserting explicit terms? In those circumstances the need to provide for it would have been clear. I do not think it was beyond his understanding or competence to insert something simple like "the sale was on a clean company basis" if that was intended. Its absence is absolutely baffling.

80 Scope of clause 3

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81 I now turn to consider what is the scope or effect of clause 3 in the March Agreement. It is in evidence that clause 3 was drafted by Chan in consultation with Frankie Tan. Even as between Chan and Frankie Tan their understanding of that clause is slightly different. To Chan clause 3 was intended to protect Merteks against Straits dealing with the assets of Nicol & Andrew (other than its normal business) between the date of contract and the completion date. To Frankie Tan it was to protect Merteks against unforeseen liabilities, as well as foreseen liabilities not adequately provided for.

82 However, in the view of Chan Ket Teck (DW4), clause 3 is a blanket indemnity clause covering all types of liabilities which might arise in Nicol & Andrew from the time of its incorporation until the completion date. Merteks would be entitled to call on the indemnity in respect of any liability which is not discharged as at completion date.

83 In my opinion the scope of clause 3 is not one without some difficulties. We must bear in mind that it was drawn by lay people, even though Frankie Tan, an accountant, had given his imput. But whatever view one may take of it, the clause is clearly to protect the purchaser, Merteks. It would be straining the language to say that it implies a clean company sale or a sale without trade debtors/creditors. One could well argue about the extent of the indemnity provided in clause 3. But what is not in doubt is that clause 3 does not authorize the vendor, Straits, to remove the debtors of Nicol & Andrew; that interpretation as contended by Straits is clearly untenable. To take that interpretation is to read much more into it than is warranted by the language thereof. Bearing in mind that this is a purchase of the entire shares of a company, it is certainly reasonable to hold, in view of the words "may arise" in that clause, that it protects Merteks primarily against extraordinary liabilities (e.g., golden-handshakes) that might arise during the interim period between the contract date and completion date. I

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accept that there may be some room for argument as to whether the indemnity clause also covers the situation where a liability arises in the ordinary course of business.

84 Straits has argued that since clause 3 is a general indemnity clause for the protection of the purchaser, it means that no liability whatsoever would be passed on to the purchaser. Following from that, Straits says that it is absurd to suggest, while no liabilities are intended to be passed on to the purchaser, the purchaser should nevertheless obtain the benefits of the moneys due from trade debtors. While I recognise that the interpretation of clause 3 is not free from difficulties I do not think the construction contended for by Straits is tenable. It overlooked the words "may arise", suggesting a liability which had not arisen at the date of the contract.

85 Straits has further contended that with the deletion of the two words "asset reduction" it would necessarily suggest that Straits could remove the current assets and current liabilities of Nicol & Andrew. I have two comments on that. Firstly, I have found that no such words were deleted from the draft. Secondly, if Straits were correct, why restrict it to current assets and current liabilities only? Logically, on that argument you could wipe out everything from the company and just hand a shell over to the buyer as there is no restriction placed on the meaning of the word "asset". The argument needs only be stated to be rejected.

86 As I see it, Merteks for its own commercial reasons was very anxious to acquire Nicol & Andrew, particularly its seafront site. Similarly Straits (in turn Toms) was anxious to dispose of those shares in Nicol & Andrew because it wished to get the cash to pay off its large debt to the bank. In Toms' own words $5 million was an extremely good price. So he was prepared to commit himself

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just on the four-paragraph agreement instead of his usual practice of having a full-blown agreement being drawn up. On Teo and Chan's part, they had heard that Toms was unpredictable or fickle. Rightly or wrongly, that was their belief. So they were determined to seal the deal just on those four paragraphs though both Teo and Chan probably knew that some procedural details would have to be worked out later. Indeed, so did Toms; after all on 4 April 1990 he sent a draft setting out the details. Teo and Chan committed themselves even before they saw a copy of the JTC lease. This really shows how anxious they were to seal the deal.

87 To my mind the object behind clause 3 was to safeguard the purchaser during the interim period though I agree that it could be better drafted. But I would venture to think that even without clause 3, it would not necessarily follow that it would be proper for Straits to clean out Nicol & Andrew and merely hand a shell over to Merteks. There could be liabilities even without clause 3. But it is certainly good from the purchaser's point of view to have clause 3. It is not in dispute that both sides consider the March Agreement as binding.

88 Net asset value

89 I now turn to consider the concept of net asset value, a matter which was canvassed quite extensively in the evidence. Teo and Chan said that in making the offer of $5 million for the shares, they took into account the net asset value of Nicol & Andrew as shown in the 1989 accounts. They were aware that the accounts were almost one year old but said that they were told by Toms that the accounts for the current financial year which would soon end at 31 March 1990 would only be slightly different from the 1989 accounts. The figures $50,000 to $100,000 were mentioned. Teo and Chan were prepared to accept a depreciation

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of the assets of that dimension. Toms denied that such an indication was given to Teo or Chan.

90 Having heard the evidence I find on a balance of probabilities that Toms did give such an indication to Teo and Chan that the 1990 accounts would only be slightly different from the 1989 accounts. My reasons are:-

91 (i) The accounts that were produced to Teo and Chan ended on 31 March 1989. By 29 March 1990, the accounts would have been almost one year old and in two days' time the then current accounting period would have ended. The fact that Teo and Chan asked them to bring the 1989 accounts showed that they were concerned about the accounts. It is quite unimaginable that they did not ask what would be the probable state of the accounts come 31 March 1990.

92 (ii) There is evidence to show that Toms was kept inform by monthly reports of the management of what the performance of Nicol & Andrew had been in the previous month. On 29 March 1990, Toms and Lim would have known of the performance of Nicol & Andrew up to end February 1990. There would have been no difficulties in Toms giving an estimate of what would the accounts be like at the end of March 1990. It was suggested that Toms does not understand accounts. Even accepting that (which I am not, as I am inclined to think he must know some aspects of accounts, having been in business for some twenty over years; knowledge could be acquired through experience) it does not necessarily show that he could not have given the indication.

93 When a person buys up all the shares in another company, then on purchase that person would effectively be the owner of everything that belongs to that other company. If the vendor of the shares intends to take out something from the company he is selling he must expressly so stipulate in the contract of

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sale. It is not necessary for the buyer who buys up all the shares to expressly stipulate that he is entitled to all the assets of that other company. That follows, of course.

94 Therefore, in considering the evidence of Teo and Chan that they had agreed to buy the shares at $5 million based on the net asset value of $2,277,718 I find what they meant is that that was one of several factors which they took into account in making their offer of $5 million. This explains why Merteks says in its statement of claim that the $5 million was offered for a net asset of $2,277,718. But they were aware, as advised by Toms, that that value could be slightly depreciated. However, for the purposes of the present action the extent of the depreciation for the financial year 1989/1990 is not an issue.

95 My Decision

96 For the reasons above, I hold that Straits was in breach of contract when it claimed that completion of the sale and transfer of the shares should be on a "clean company" or "without trade debtors/creditors" basis. That was not a term of the contract. Straits was wrong to have insisted that as a conditon for completion. I find that that was the real reason why the completion did not go through.

97 In his evidence Toms tried to suggest that on 28 May 1990, Merteks did not have the necessary funds to complete. The first observation I would like to make on this point is that it is not raised as a defence in the pleadings. Be that as it may, I shall nevertheless deal with it. Clearly by mid-April 1990 Merteks had already been in touch with its bankers to seek financing. It seems to me that it was only because of the dispute on clean company basis that Merteks had not made firm arrangements with its bankers. Third, Petroship group is a very

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substantial company, both in terms of assets and monthly revenues, and the accounts show that as at 28 May 1990, the group had cash of about $2.5 million to $2.6 million. There is nothing to suggest that Merteks did not intend to conclude the transaction but for the new term introduced by Straits. I do not think there should be any difficulty for the group to raise another $2.4 to $2.5 million to complete the transaction. In fact, there is oral evidence to suggest that there was some kind of an in-principle approval from the bank.

98 It will be recalled that on 4 April 1990 Lim sent to Merteks a draft of an agreement setting out the detailed arrangements for completion and in which draft unfortunately provisions on clean company sale or sale without trade debtors/creditors were also incorporated. This, in turn, attracted a counter-proposal from Merteks drafted by Chan Kam Foo and Associates. Both parties had failed to come together to narrow the differences in the two draft proposals. My distinct impression is, and I do so find, that the insistence by Straits of clean company sale or without debtors/creditors was the main stumbling block to the parties getting together to work out the details. As it turned out, the two drafts were just left there and no further action was taken by either side.

99 Be that as it may, the evidence shows quite clearly that Straits had insisted from 4 April right up to 28 May 1990 that the sale should be on "clean company" basis and that appears to me to be the reason why Merteks did not finalize the financing arrangement with its bank. By insisting on that term on three separate occasions, 4 April, 18 April and 28 May 1990, Merteks had indicated unequivocably that it would refuse to carry out the March Agreement. Ann Tan in her evidence confirmed that completion on 28 May 1990 would have to be on a "clean company" basis. I do not see how it lies in the mouth of Straits to say that Merteks did not have the funds to conclude the transaction

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because by 28 May it had not yet made firm arrangement with its bankers for the necessary funds.

100 Settlement discussion

101 As stated above, the present action was filed by Merteks on 12 June 1990 and it was served on Straits soon thereafter. In July/August 1990 the parties' solicitors were in contact with a view to seeking a solution. The negotiations were without prejudice but obviously the parties decided to waive that as the relevant correspondence was placed before this court. One option `c' mentioned in the letter dated 17 July 1990 from M/s Donaldson & Burkinshaw seemed to hold out the best prospects for a solution. It reads:-

102 "Option `C'

103 That completion of the sale and purchase takes place as planned within a reasonable time but not later than the end of July 1990 by payment of $4.5 million to the Vendor, and that the difference of $400,000.00 to $500,000.00 be paid to Messrs Donaldson & Burkinshaw to be held as stakeholders, pending the outcome of adjudication by the Court or arbitration by an Arbitrator on the disputed issue."

104 Following a meeting on 24 July 1990, on 26 July 1990 Chan Kam Foo & Associates replied to M/s Donaldson & Burkinshaw stating:-

105 "As our clients have indicated to you that they would go for option C, we are instructed by our clients to request for permission to proceed with the completion audit so that the matter could be completed soonest - possibly August 1990."

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106 However, option `c' ran into difficulties because of the question of completion audit. Straits felt that there should not be any completion audit. As a result no solution was found. Because of this, Straits alleges that Merteks has failed to mitigate its losses.

107 In the meantime something rather surprising happened. As mentioned before, on 9 June 1990 Straits sold the shares to CNPA with a proviso which would allow Straits to back out upon paying interest to CNPA at 15% p.a. There were considerable controversies whether in view of the close business relationship between Straits and CNPA, the sale was in fact genuine. On the evidence I cannot say that there is no basis for one to question the genuineness of that sale to CNPA. Now, accepting that the sale to CNPA was genuine, the transfer of the shares to CNPA was completed on 27 July 1990. But in July the parties' were talking in earnest. In fact, on 26 July 1990 Chan Kam Foo & Associates replied accepting option `c' but suggesting a completion audit. Yet on the very next day in Jakarta Straits proceeded to complete the sale of the shares to CNPA. Here comes the even more extraordinary part. Though after 27 July 1990 Straits had no longer any shares to dispose, Toms still carried on with the negotiation with Merteks. Toms explained that he took this course to expose Merteks, to show that Merteks never intended to complete the transaction. Toms said that when he got the letter of 26 July 1990 from Chan Kam Foo & Associates he felt that Merteks had no desire to complete and was quite determined to be embroiled in a legal battle with Straits.

108 I find the way in which Toms went about his business rather amazing. On the one hand he accuses Merteks of having no bona fide in completing the transaction just because Merteks suggested a completion audit. On the other, he immediately went and dealt with the shares in a manner which rendered it impossible for him to carry out the March Agreement without so much as to

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clarify with Merteks' solicitor on the extent of the completion audit. It seems to me all this is ex-post facto rationalization.

109 Toms seemed to be absolutely fearful of a completion audit as if to suggest that the accounts of Nicol & Andrew could not withstand any scrutiny. Of course, the need for a completion audit was not specified in the March Agreement but I do not think that it is necessarily inconsistent with the March Agreement to ask for a completion audit. Here, we may be going into the realm of implied terms, since the March Agreement bore only the essential terms and left out all the details. Surely the scope and extent of the completion audit could be a matter to be sorted out. All the more so some kind of completion audit may not be out of place, bearing in mind the time lapse between the scheduled date for completion (28 May 1990) and the likely new date of completion.

110 Can it really be said that it was unreasonable for Merteks to have suggested a completion audit as a term of a settlement. There is nothing to suggest that Merteks was looking for trouble and that this was just a ploy used by Merteks to engage Straits in a long drawn out litigation. Without so much as exploring further what should be the scope of the audit, Straits went ahead and disposed of the shares, rendering any solution out of the question. Subsequent conduct of Straits, subsequent to 27 July 1990, must therefore be viewed with caution. I do not think I could place the blame for the failure to arrive at a compromise at the door of Merteks.

111 In fact, I think the completion of the sale of the shares to CNPA on 27 July 1990 had really nothing to do with Chan Kam Foo & Associates' reply of 26 July 1990. Let me explain. Toms has informed the court that when Christine Gan, the accountant with Straits, was sent by him during the trial to check the Indonesian lawyers' file on the sale of the shares to CNPA, there was a written

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instruction issued by Keet on 8 August 1990 to the Indonesian lawyers stating that no one should have access to the file without his written consent. It is necessary for me to quote in full what Keet wrote (exh D16):-

112 "When I was in Jakarta recently to arrange the sale of N & A to P.T. CNPA I was very pleased and surprised to see how quickly and smoothly you were able to complete the whole deal without any written instructions from me.

113 Because there was no written instructions from me I cannot help feeling vulnerable that at any future date some unauthorised person could instruct Makarim & Taira to do things without my written permission.

114 Please advise me what safeguard you have to prevent this and in the meantime could you put a "BAR" on the complete files stating that `nothing must be done without the written consent of myself GERALD ALAIN DENIS KEET'."

115 It beats me why Keet wrote in that way. Neither was Toms able to explain. I was told that Toms and Keet worked as a team. It seems to me obvious that Keet did not want Toms (perhaps among others) to have access to the file. From that letter I get the impression that Keet was acting on his own in disposing of the shares. This is all very mysterious. Therefore, I have every reason to believe that the eventual completion of the sale of the shares to CNPA on 27 July 1990 had nothing to do with the letter of 26 July 1990 written by Chan Kam Foo & Associates wherein a completion audit was requested. It looks to me as if there was something not very wholesome going on within Straits!

116 Two final comments before I move into the area of damages. First, it would have been clear from the above that on issues of fact, I have basically

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found against Straits. In addition to the reasons I have given in respect of each controversial fact, I wish to state that from the way in which Toms testified in court, I do not think I could place too much reliance in what he said. At times he was quite confused and uncertain and at times I felt he was just trying to rationalize on an ex post facto basis. For example, he said (at NE 361) that the "meeting of 29 March 1990 was a set-up." I do not understand the rationale or basis for that assertion.

117 The second comment is this. The March Agreement is far from being a satisfactory form of agreement to effect a sale of this nature. It is not a form I would commend to buyers and sellers. It leaves many things unsaid or unclarified. But a deal was nevertheless struck on that basis with the barest of essential terms not unlike the 3Ps in a sale of real property: parties, property and price. The key factual issue before me is whether the parties did discuss and agree that the sale was to be without trade debtors/creditors. To that question I have found in the negative.

118 Damages

119 I now turn to consider what is the proper quantum of damages to award against Straits for the breach of contract in failing to transfer the shares of Nicol & Andrew to Merteks. Merteks no longer claims for specific performance as that is rendered impossible by the sale to CNPA. Merteks made the following projection of what their revenues and profits would have been for the next ten years if the contract had been carried out and it had acquired Nicol & Andrew (exh P1):-

	1990	1991	1992	Yearly average
				for next 7 years

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	$	$	$	$
Revenue	3,300,000	10,000,000	9,000,000	11,500,000
Direct expenses	2,310,000	7,000,000	6,570,000	8,280,000
Gross Profit	990,000	3,000,000	2,430,000	3,220,000
Fixed cost	636,000	1,320,000	1,328,000	1,488,000
Interest Costs	166,560	241,281	162,440	150,184
Profit before tax	187,440	1,438,719	939,560	1,581,816
Provision for taxation	58,106	446,000	281,868	470,000
profit after tax	129,334	992,719	657,692	1,111,816

120 Exhibit P1 was slightly amended by Frankie Tan in view of some very minor errors. Nothing really turns on that and I do not propose to set out the amended exhibit P1. Merteks claim a total of $9,562,415 being the loss of profits for some ten years. There is evidence that after the breach by Straits, Merteks tried to get another seafront site without success. In working out the profits, Merteks has fixed direct expenses at 70% of the revenues earned.

121 Merteks also gave a rough indication of how they could achieve a revenue of $10 million for 1991 as follows (PB78):-

Revenue	1991 (yearly example)
	$
Ship repairs - average 4 vessels per month x $125,000	500,000
Engineering work - monthly 150,000 Steel fabrication - average 60 tons per month x $2,750	165,000
Others	10,000
Sub-rental	825,000
	15,000

	840,000
per year	10,080,000
rounded to	10,000,000
Estimated yearly growth of 5% in the revenue.	

122 The principle to be borne in mind in determining quantum is that damages are to compensate the plaintiff for the breach. As stated in Engell v Fitch (1869) LR 4QB 659 at 666 the basic object of damages is to put the plaintiff "so far as money can do it, in the same position as if the contract had been performed". But the damages to be awarded "should be such as may be fairly and reasonably to considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it" : Hadley v Baxendale (1854) 9 Exch 341. Damages are based on loss to the plaintiff and not on gain to the defendant: Tito v Waddell (No 2) (1977) CH 106.

123 In examining the projected profits, I have borne in mind the calculations set out in PB78-83 and also the views expressed by the plaintiffs' marine expert, Mr Pereira (PW4) and the defendants' marine expert Mr Downham (DW3). Mr Pereira said that the projected figures are achievable. In his view, having a seafront would be a great advantage. He said the best years for the marine industry in Singapore were 1990 ($2.263 billion) and 1991 ($3.1276 billion). There was a slight dip in 1992 for shiprepair, but the dip was more for shipbuilding. He said the projected revenues for 1993 might not be achievable.

124 Mr Downham noted that of the projected monthly revenues from shiprepairs, three quarters are to be generated from anchorage repairs. In his view the amount of work done at the anchorages in Singapore is only a small

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portion of the total marine industry figure and using certain assumptions he ventured the view that the true value of anchorage repair is probably about 5% of the total repair and conversion work. He also said that with the level of equipment which the plaintiffs proposed to utilize (with no crane barge, generator sets, welding sets or compressors and other essential tools) it would not be possible to achieve the projected revenues. However, he agreed that a turnover of $125,000 a month for repair work at the site of Nicol & Andrew is achievable.

125 Straits cited two companies in the marine industry (Southern Ocean and Atlantis) to show that the projected figures are exaggerated or it would not necessarily follow that Merteks would be that profitable on acquiring Nicol & Andrew. For the years ending March 1990 and 1991, Southern Ocean made an operational loss of $183,296 (on a turnover of $9.69 million) and an operational profit of $298,711 (on a turnover of $25 million) for the two years respectively. For Atlantis, in respect of the year ending December 1990, it made an operational loss of $1.06 million on a turnover of $16.3 million. Both Teo and Pereira explained that Atlantis suffered a loss that year because of large capital outlay. In the case of Southern Ocean, Teo said that that company was mainly concerned with shipbuilding whereas shiprepair is more profitable than shipbuildings.

126 Straits also referred to the fact that Merteks itself in 1990 made a profit of $43,879 but for 1991, notwithstanding a bouyant market, it made a loss of $924,938. For the year ending March 1991, Nicol & Andrew made a loss of $49,376 on a turnover of slightly over $3 million.

127 The financial expert called by Straits, Mr Chan Ket Teck, also expressed the view that there was no basis for Merteks to project that it would be able to

generate $10,000,000 revenues a year. The invoices of Merteks tendered were essentially invoices for small jobs. From those invoices, he and Mr Downham also noted that Merteks had a small customer base. Chan Ket Teck's detailed reasons are set out in his report (exhibit D22) and he came to the conclusion that if Merteks had acquired Nicol & Andrew it was unlikely to be able to achieve and maintain a revenue of $10 million to $12 million per year for 10 years. He also commented that there are insufficient details to support the figures specified for direct expenses. He also noted that while the calculations provide for interest charges (that 50% of the purchase price and investment in equipment is to be from bank loan, totalling, $3.25 million) there is no cash flow projection to show how Merteks proposes to repay the loan to the bank. I would like to add that to the extent that the evidence of Chan Ket Teck touchs on law or question of construction of the March Agreement I have not taken it into account as those areas are not within his area of expertise.

128 It seems to me that the figures postulated by Merteks are highly speculative. In coming to that view, I have noted that Teo said he had good business contacts. It was essentially a theoretical exercise, based on inadequate data. There was no proper study or business plan indicating how Merteks intended to expand its business and obtain a bigger share of the market. Neither was there any manpower planning or proper costing. It was based on assumptions though I would accept that for calculations of such a nature, some assumptions may be inevitable. I accept that on acquiring Nicol & Andrew the capacity of Merteks to undertake repair jobs would be substantially enhanced. I also accept that having a seafront would be a great advantage. However, the following matters are pertinent.

129 (i) The marine business is cyclical, depending to a large extent on the world economy in general, and the shipping business in particular; thus the

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volume of work that could be generated would fluctuate. As volume reduces, competition will become stiffer among shipyards; so will the profit margin be reduced. Pereira has said that the market softened in 1992 and 1993. For 1992, the Association of Singapore Marine Industries (ASMI) in its annual report stated that shiprepairs suffered a 11.7% decline in turnover. In 1993, the shiprepair business suffered a further dip of 11.8%. Pereira said that the revenues projected for 1993 might not be achievable. In my view the projected revenues for 1993 were clearly unattainable. We do not know when there will be an up-turn in the market.

130 (ii) There are a large number of shiprepair yards (big and small) in Singapore.

131 (iii) The margin for direct cost is also variable and that in turn would seriously affect profitability. Just to illustrate. A 5% shift in direct cost would half the projected profits.

132 (iv) The projected provisions for tools and equipment are generally on the conservative side bearing in mind the volume of business Merteks projected to undertake. Of course, I do not accept Straits' claim that there should be a work-barge with crane and canteen as the Jurong anchorages are within a short distance from the site of Nicol & Andrew.

133 (v) There is no provision to improve the site like dredging, which appears to be necessary.

134 (vi) The mooring limits of 71 metres at the site of Nicol & Andrew and a frontage width of 62 metres would necessarily restrict the number and the size of vessels which could be repaired at the site. Most of Petroships' vessels, except

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one, cannot be moored at Nicol & Andrew. Merteks' marine expert had mistakenly based his opinion on a mooring limit of 84 metres. I must also add that Merteks' projection of profit included a leasing out of 20 metres of the seafront. This means that the frontage which Nicol & Andrew could use would be even narrower. Of course, I accept that a larger vessel could be repaired or serviced at the anchorages.

135 (vii) The projection would appear to be based on an assumption that vessels on repair at the site of Nicol & Andrew could from time to time encroach onto the waterfront of neighbouring land as well as a drain reserved lying next to the site of Nicol & Andrew.

136 (viii) Merteks' projection included the carrying out of non-marine engineering and fabrication works. Such works do not fall within the permitted works allowed under the JTC lease to Nicol & Andrew. Permission would have to be sought from JTC as regards such works though I note that there is evidence to suggest that Nicol & Andrew had been doing general fabrication work without the consent of JTC.

137 (ix) Certain of the projected activities would also require the permission of PSA.

138 In the circumstances of the case, there can be no doubt that Merteks is entitled to damages for the breach. Straits knew that Merteks was seeking to acquire Nicol & Andrew to expand its business. The problem is in determining the appropriate quantum. I recognise that I could not fairly use the profit margin which Merteks had in fact achieved (without Nicol & Andrew site) in the last few years as a guide without substantial adjustments. Obviously, had Merteks acquired Nicol & Andrew, its capacity would have been greatly enhanced.

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139 However, while there is some evidence that following the breach, Merteks tried to obtain an alternative seafront site without success, one cannot completely rule out that it could well succeed in the future though this would in turn depend upon numerous factors like the price, the size and location, etc, of the new site. Having considered all the material that is before me, including the factors I have listed above, I am not persuaded that the award in damages in the present case should be based on a straight mathematical calculation as projected by Merteks. That would be grossly excessive. The element of uncertainty is really that much greater in the instant case than say in a case where the court is required to assess the loss of earnings of an individual where we know his past working experience. I am conscious of the remarks of Vaughan Williams LJ in Chaplin v Hicks (1911) 2KB 786 that "... it may be that the amount (of damages) ... will really be a matter of guesswork. But the fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages for his breach of contract." Accordingly, I think the damages I should award here should be more in the nature of compensating Merteks for the loss of a chance or opportunity to make profits rather than that they should be based upon the projected profits stretching over ten years as advanced by Merteks. I must confess that I find this question of determining what would be a fair quantum of damages to award to the plaintiff a matter of great difficulty. But I think it would not be inordinately low or inordinately high if I were to adopt, bearing in mind the contingencies mentioned, something like 15% of the projected profits of Merteks as the measure of damages.

140 There will be judgment for the plaintiffs in the sum of $1,430,000 (rounding off to the nearest ten-thousand). I think this is a fair and adequate quantum in all the circumstances. The defendants' counterclaim for damages is

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accordingly dismissed. The plaintiffs shall be entitled to the costs of this action and the counterclaim.

Chao Hick Tin J

Anwarul Haque (with Sharmini) (Harridas & Ho) for the plaintiffs
Lisa Chong (Lisa Chong & Partners) for the defendants

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