IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 239

Suit 233/1994

Between

Chin Ming Trading Pte Ltd

… Plaintiff

And

Alkemal Singapore Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Chin Ming Trading Pte Ltd v Alkemal Singapore Pte Ltd

[1996] SGHC 239

Suit 233/1994
Judith Prakash J
22 October 1996

1 **Judgment:**

2 **Cur Adv Vult**

3 JUDGMENT

4 1. Both the plaintiffs and the defendants are traders in plywood and other timber related products. In 1993, the plaintiffs bought Indian blockboard and Indian and Myanmar plywood from the defendants. The plaintiffs say that the Indian goods supplied were defective and that the defendants reneged on a settlement agreement whereby they would take the goods back. They also complain about a partial delivery of the Myanmar plywood. The defendants in turn allege that the Indian goods were perfectly acceptable for Indian origin blockboard and plywood and that it was the plaintiffs who breached the contracts by not paying for the goods in full. The defendants have put forward a counterclaim.

5 Outline of the facts

2. By three written contracts dated 28 May 1993, 13 June 1993 and 13 July

1993, the defendants agreed to sell and the plaintiffs to purchase the following goods:

(i) about 500 m of commercial blockboard of 'MR DBBCC' quality of Indian origin ('the blockboard') at US$390 per m ;

(ii) about 400 m of plywood of 'MR DBBCC' quality of Indian origin('the Indian plywood') at US$417 per m for part of the consignment and US$410 per m for the other part of it; and

(iii) about 21,200 pieces of plywood of 'MR DBBCC' quality of Myanmar origin ('the Myanmar plywood') at US$625 per m .

6 3. To fulfil the plaintiffs' contracts for the Indian goods, the defendants placed orders with two Indian manufacturers, M/s Durian Trading and M/s Sushil Enterprises. Sushil Enterprises told them that in order to supply the goods quickly, it would divert a shipment originally meant for a customer in the Middle East to Singapore. The quantities, both of blockboard and Indian plywood, ready for shipment, were greater than the quantities needed to supply the plaintiffs' contracts. The defendants, however, instructed Sushil Enterprises to send the entire shipment to Singapore.

7 4. The blockboard ordered from Durian Trading arrived in Singapore in mid June aboard the vessel Kota Naga . The defendants made a delivery of about 24.8 m of blockboard to the plaintiffs worth some US$9,675.39 and received payment. The Indian plywood ordered from Durian Trading arrived here on board the vessel Tradefast on 12 July 1993. The defendants delivered some 232.80 m of the goods to the plaintiffs and duly received payment of the invoice value of US$97,675.34 despite some discrepancies in the documents they presented to the bank.

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8 5. The Indian goods supplied by Sushil Enterprises arrived in Singapore on or about 14 July 1993 on board the vessel 'Norasia Sun'. The defendants informed the plaintiffs of the additional quantities available and offered them for sale. According to the defendants, the plaintiffs stated that they would purchase 10 out of the additional 12 containers of blockboard and two additional containers of Indian plywood. The plaintiffs, on the other hand, asserted that they had not agreed to buy these additional goods but had simply agreed to store them temporarily on the defendants' behalf.

9 6. On 16 July the defendants issued an invoice for the Norasia Sun shipment. The plaintiffs were billed US$196,433.09 for approximately 503.6 m of blockboard and US$103,253.29 for approximately 251.8 tons of Indian plywood, making the total amount payable, US$299,686.38. The quantities billed for were the balance of those ordered under the contracts. There was no invoice for the additional goods.

10 7. The contracted goods and the additional goods were delivered, between 17 and 21 July, to the plaintiffs' own warehouse and to another warehouse which they had rented. Shortly after delivery began, the plaintiffs' managing director, Mr Ng Ah Kuan, telephoned Mr Jasvinder Singh, a director of the defendant company, to complain that the goods were defective. To address these complaints, the two directors of the defendant company (Mr Jasvinder Singh and his elder brother, Mr Daljit Singh) accompanied by one Mr Hemant Banker from Sushil Enterprises attended a meeting with Mr Ng on 22 July.

11 8. There are contradictory accounts as to what happened at that meeting. According to Mr Ng, he took the three visitors to his warehouse and pointed out the defects that he had found in the goods. In particular, he complained that the

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edges of the Indian plywood had been painted. Thereafter, Mr Ng told the three men that the defendants' goods were of low quality and not worth the agreed price. Their response was to say they would discuss the matter and give the plaintiffs a reply subsequently. According to Mr Jasvinder, however, during the joint inspection, Mr Ng was unable to point out any actual defects to Mr Banker and all he could manage was to say that there were some paint marks along the edges of the Indian plywood. Thereafter, Mr Ng agreed orally to accept all the goods and to pay for all of them including the additional quantities.

12 9. The next occurrence was that on 23 July Mr Ng signed the delivery order dated 16 July 1993 which the defendants had issued in respect of the goods. He did not make any remark on this document on the state of the goods. On the same day, the defendants presented documents to the plaintiffs' bank in order to obtain payment under the letter of credit which had been established for the goods. The total amount due was US$299,686.38. The defendants were not paid, however, because of discrepancies in their documentation. On 30 July, Mr Jasvinder sent the plaintiffs a telex complaining about their failure to accept the discrepancies and asserting that during the inspection the plaintiffs had confirmed that they were going to accept the goods. The defendants asked the plaintiffs to accept the discrepancies immediately and stated that they would 'settle any problems later'.

13 10. On 5 August, the plaintiffs wrote to the defendants stating that the goods were of inferior quality. The complaints in respect of both blockboard and plywood were of short cores, core overlapping, uneven thickness, skip sanding, over sanding and keruing oily face. In addition the blockboard was said suffer from 'underthickness (not within tolerance)' while the plywood sheets had paint on all their edges. The plaintiffs said that they were unable to accept the discrepancies due to these defects. At the same time they asked the defendants

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for their 'suggestion in order to solve the discrepancies'. The next development was that on 23 August, the plaintiffs paid the defendants US$200,000 as part payment for the goods.

14 11. On 30 August, the defendants issued an invoice for US$93,908.75 for the Myanmar plywood. On 2 September, the defendants notified the plaintiffs that the Myanmar plywood had arrived and asked them for immediate payment of the invoice. The payment term for this consignment was cash against delivery. The plaintiffs, however, did not take delivery immediately because of the outstanding problems over the Indian goods. Instead, on 3 September, they asserted that the inferior quality of the Indian goods was totally unacceptable in the market and they wanted advice on an alternative way of disposing of the Indian goods. They indicated that if the advice was not received within three days, they would either dispose of the Indian goods at whatever price was available and hold the defendants responsible for their losses or they would reject the whole lot.

15 12. The defendants responded in writing the following day expressing their disappointment over the plaintiffs' stance in view of their acceptance of the Indian goods during the first inspection. They asserted that as a result the plaintiffs had made the part payment and promised to pay the balance shortly which they had failed to do. The defendants pointed out that the Myanmar plywood had been sold on C and F terms and that the plaintiffs were obliged to pick it up from the port immediately. As they had not done so, the defendants were incurring storage charges which would have to be for the plaintiffs' account. The defendants then proposed to release the Myanmar plywood without immediate payment if the plaintiffs paid the balance due for the Indian goods. Thereafter, the parties could sit down and settle all amounts due from the plaintiffs to the defendants. The defendants added that whilst they would be

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responsible for all quality defects, any change in the price of the Indian goods since the dates of the contracts had to be for the plaintiffs' account.

16 13. The parties exchanged further letters between 7 and 13 September 1993. On 13 September, the plaintiffs suggested that the defendants take back all the Indian goods. The defendants' view was that the plaintiffs were trying to renege on their contractual obligations because of a drop in the market prices of the goods. The plaintiffs denied this and asserted that their main concern was with quality. In the meantime, the defendants had arranged for Mr Banker to come back to Singapore with the view to resolving the impasse. On the 13 September itself, another meeting between the plaintiffs and the defendants took place at the plaintiffs' premises. According to the plaintiffs, at this inspection they were able to show the defendants the additional defect of unsquareness, but the defendants say that Mr Banker was able to convince the plaintiffs that there were no substantial defects in the Indian goods and that they were acceptable.

17 14. On the next day, the plaintiffs proposed that the problem be solved either by the goods being treated as rejected grade goods and sold to them at US$190 per m or by the defendants returning the US$200,000 paid by the plaintiffs and taking the goods back. According to the plaintiffs, the next development was a meeting on 15 September among all the persons who had attended the meeting of 13 September. At this meeting, it was agreed that the defendants would take back all the Indian goods, that the plaintiffs would pay the defendants US$10 per m as compensation, that the defendants would refund the US$200,000 less the compensation, and thirdly that the defendants would bear the miscellaneous charges incurred by the plaintiffs in connection with the Indian goods. The defendants' agreement to take back the Indian goods and details of the plaintiffs' miscellaneous charges were documented in a letter which the plaintiffs sent the defendants on 16 September.

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18 15. The defendants denied that there was any meeting on 15 September. In his affidavit, Mr Jasvinder said that when he received the plaintiffs' letter of 16 September he immediately called the plaintiffs on the telephone to protest because it was untrue but the plaintiffs continued to insist that the defendants take back the Indian goods. In court, Mr Jasvinder said that he went to the plaintiffs' office on 16 September to lodge his protest against the plaintiffs' letter and he and Mr Tan then had a meeting. On 17 September, Mr Jasvinder sent a letter to the plaintiffs in which he said, inter alia, that 'during our meeting' the plaintiffs had agreed that they would compensate the defendants by paying them US$10 per m of the goods. The defendants also stated that they would like to plaintiffs to crate the Indian goods and would do their best to ship them by the end of September 1993. In evidence, Mr Jasvinder explained that when it became clear to the defendants that the plaintiffs were not going to pay the balance sum, the defendants felt that they had no choice but to take back the goods.

19 16. The parties continued to exchange correspondence in which there were disputes over the terms which had been agreed. According to the plaintiffs, these disputes were resolved around the end of September. On 5 October, the defendants took redelivery of the Indian blockboard and on the next day the plaintiffs wrote to the defendants confirming the redelivery and stating that the plaintiffs were awaiting the defendants' further instructions regarding delivery of the Indian plywood. The letter also stated that as promised by Mr Jasvinder, the plaintiffs were expecting the defendants to make payment to them of the amounts set out in their letter of 24 September on either 5 or 6 October 1993. The defendants did not, however, make any refund to the plaintiffs thereafter.

20 17. About a month later, on 4 November, the defendants asked the plaintiffs to redeliver 500 pieces of the Indian plywood and said that they would

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settle the plaintiffs' account immediately everything was in order. Mr Tan telephoned a Mr Yeo from the defendants' office and said that the defendants should make payment first as agreed and that thereafter they could collect the Indian plywood. In response, on 8 November the defendants sent a letter to the plaintiffs in which they drew up the accounts between the parties as they saw them and indicated that the plaintiffs should keep the Indian plywood, pay the defendants the difference due to them after taking into account the cost of the Indian plywood, the cost of the Myanmar plywood and the compensation for the blockboard and thereafter collect the Myanmar plywood.

21 18. On 10 November, the plaintiffs demanded payment of their refund and miscellaneous charges. About a week later, they asked the defendants to release the Myanmar plywood and pressed them to take back the Indian plywood. The plaintiffs stated that if the defendants did not confirm the release of the Myanmar plywood on the same day, they would treat 'it as cancelled'. According to Mr Tan, he spoke to Mr Yeo later and was told that the plaintiffs could collect all the Myanmar plywood. When the plaintiffs' transport contractor went to the defendants' warehouse on 22 September to collect the Myanmar plywood which consisted 50 crates of 3'x6' plywood and 56 crates of 4'x8' plywood, however, the latter was only allowed to collect the 50 crates of 3'x6' plywood. According to Mr Jasvinder, his instructions to Mr Yeo had been to release only the 50 crates of 3'x6' Myanmar plywood in accordance with the credit balance which the plaintiffs then had with the defendants.

22 19. The plaintiffs were very upset by the short delivery of the Myanmar plywood and sent a letter to the defendants on 22 November stating that they would treat the contract as being void. The defendants' reply the next day was to reaffirm that the plaintiffs owed them approximately US$47,000 and to assert that they had been good to the plaintiffs by releasing part of the Myanmar

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plywood although full payment had not been received for it. They then insisted that payment of the balance be made before the remaining goods were collected. There were no further negotiations between the parties.

23 The action 20. The plaintiffs commenced this action in February 1994. As regards the Indian goods, they pleaded that in breach of contract, the defendants had delivered goods which did not correspond with the contractual description and/or defective goods which were worth much less than the contract price. They also asserted that they had incurred expenses for the inspection, handling and storage of the Indian goods. In the alternative, they pleaded that the defendants were in breach of a compromise agreement to take back the Indian goods. As for the Myanmar plywood, the plaintiffs' contention was that it was an implied condition of the contract that they were not bound to accept delivery by instalments or partial delivery and that, in breach of the contract, the defendants only delivered 10,000 pieces of 3'x6' plywood. They asserted that they had rejected the goods but that the defendants had refused to take back the Myanmar plywood.

24 21. The reliefs sought by the plaintiffs at end of the trial were the following:

(1) US$111,627.77 being the amount overpaid in respect of the Indian plywood;
(2) $23,138 being trucking, unstuff and container charges for the Indian goods;
(3) $43,110 and $1,000 per month from February 1996 being storage charges for the Indian plywood and Myanmar plywood; and
(4) the right to reject the 50 crates of Myanmar plywood or to dispose of them and account to the defendants for the net proceeds of sale.

25 22. The defendants denied the plaintiffs' claim and put in a counterclaim. They contended that the Indian goods were not defective and that the plaintiffs

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were not entitled to reject those goods. They also alleged that the plaintiffs had failed to resell the Indian plywood within a reasonable time and had sustained losses due to the fall in the market price of plywood during the period in question. As regards the Myanmar plywood, the defendants denied that the plaintiffs had the right to reject it and contended that even if they had had such right, they had lost it in the circumstances of the case. They also put in a counterclaim for the damages they had sustained by reason of the plaintiffs' breaches.

26 The evidence (i) Ng Ah Kuan 23. Mr Ng Ah Kuan stated in his affidavit of evidence in chief that the first two shipments under the contracts for the supply of blockboard and Indian plywood had arrived in June and July 1993 and that the goods had been in good condition. On 14 July, the plaintiffs were notified by the defendants that the third shipment was estimated to arrive that day as well and that on board the same vessel there were 12 extra containers of blockboard and two extra containers of Indian plywood. They were asked to advise 'best price payable' for these additional goods. In a subsequent telephone conversation, Mr Jasvinder asked Mr Ng whether the plaintiffs could take the additional goods because the defendants had no warehouse space of their own. Mr Ng gave a non-committal reply. Mr Ng then instructed Mr Tan, his manager, to confirm with the defendants that the plaintiffs would store the additional goods at their warehouse. His intention was to find out what price could be obtained for these goods before making any offer to the defendants. In court he denied that he had ever agreed to buy the additional goods from the defendants.

27 24. Between 17 and 21 July, the goods, including the additional goods, were transported by the plaintiffs' freight forwarder to their store where they were unloaded from the containers in which they had been shipped and repacked into open crates. These crates were delivered to the plaintiffs' own warehouse

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and to rented space at a nearby warehouse belonging to M/s N S Trading Pte Ltd. The goods delivered included the 10 additional containers of blockboard and four additional containers of plywood. Upon inspecting the crates as they came in, Mr Ng found that many of the plywood sheets had painted edges which were not acceptable in the trade. He thought it would be difficult to sell these goods as the plaintiffs' buyers would not accept them as 'DBBCC' grade plywood. In cross-examination he explained that this was the first time he had seen plywood with painted edges and that no one would want to buy it because the plywood looked ugly.

28 25. Mr Ng telephoned Mr Jasvinder to complain about the painted edges and Mr Jasvinder then arranged for a meeting between the plaintiffs, the defendants and Mr Banker. By the time of the meeting, about 20% to 30% of the cargo had been delivered to the plaintiffs and Mr Ng and Mr Charlie Tan had inspected it again.

29 They had found the following defects in the goods:
Blockboard
(a) short core - gap between boards
(b) core overlapping resulting in waviness between the veneered surfaces
(c) uneven thickness
(d) under thickness
(e) wet stained
(f) skip sanding
(g) over sanding
(h) keruing oily faced
Plywood
(a) short core
(b) core overlapping

(c) uneven thickness
(d) skip sanding
(e) over sanding
(f) painting on all edges
(g) keruing oily faced

30 26. On 13 September when the defendants' representatives arrived at the plaintiffs' office, Mr Ng took the three of them to the warehouse and showed them the paint on the plywood edges. He also removed a few pieces of the goods from one or two of the crates and pointed out the other defects mentioned above. As a comparison, he also showed the three men other 'MR DBBCC' grade plywood in the store bought from another supplier which did not have any of these problems. He told them that if their goods were of the same standard the plaintiffs would accept them. The defendants did not agree that the goods were defective.

31 27. The meeting continued in the plaintiffs' office. Mr Ng told the defendants' representatives that the goods were of low quality and not worth the agreed price. He asked whether they wanted to take the goods back or whether they would give him a lower price so that he could sell them as lower grade items. Under cross-examination, he maintained that he had not been asking for a discount. What he had wanted was a counter offer to reflect the quality of the goods delivered. The response was that the defendants would discuss the matter and give him a reply later.

32 28. The next day, Mr Jasvinder and Mr Banker returned to Mr Ng's office to ask him to sign the delivery order. He did so. In court he said that he did not read the document but had signed it to acknowledge that he had received the goods at his warehouse. He asserted that he had reminded Mr Jasvinder and

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Mr Banker about the offer on the price of the goods and they had repeated that they would come back to him later. Under questioning he maintained that the reason he signed the delivery order was simply to acknowledge receipt and not to indicate that he had accepted the defects. He confirmed that between the time he signed this document and 30 July, the plaintiffs did not send any written protest to the defendants on the condition of the goods.

33 29. On 30 July, the defendants sent the plaintiffs a telex complaining about their failure to accept the discrepancies in the documents submitted for payment under the letter of credit which the plaintiffs had established. In that telex they stated that Mr Ng had confirmed that he would accept the goods and had reconfirmed this position the previous morning. They pointed out that the plaintiffs also had possession of the additional goods which were worth about US$145,000 and said that they would appreciate it if the discrepancies were accepted immediately. Any problems would be settled later.

34 30. In his affidavit, Mr Ng maintained that the defendants' claim that he had confirmed acceptance of the goods was untrue. He admitted in court that his response to the defendants' telex was not made until a letter sent on 5 August. That letter from the plaintiffs contained a listing of the defects that they had found in the goods and said that because of these defects they were not able to accept the discrepancies. Instead they were waiting for the defendants' suggestion 'in order to solve the discrepancies'. This letter was sent in order to put the plaintiffs' complaints on record. However, the defendants just kept on asking for payment and delayed making any offer of a reduced price. In view of the defendants' repeated requests for payment and their indication that they would like to solve the problem but needed to settle their indebtedness to the bank, on 23 August Mr Ng paid the defendants US$200,000 as a part payment for the goods.

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35 31. It was put to him that up to the time of payment neither the plaintiffs nor the defendants had in fact made any counter proposal on the price of the goods. Mr Ng's response was that there were various telephone conversations between Mr Jasvinder and himself and between Mr Daljit and himself. He asked them to take the cargo back or offer a lower price because otherwise he would have to dispose of the cargo at a lower price because it was not 'DBBCC' grade. The defendants kept saying 'yes, yes' but never gave him a substantive reply. His reason for not himself counter offering a reduced price was that at the time the prices of plywood were unstable and he did not know at what prices the defendants or Mr Banker wanted to sell the goods.

36 32. On 2 September, the defendants informed the plaintiffs that the Myanmar plywood had arrived. In order not to get stuck with another lot of goods and to solve the outstanding problems with the Indian goods, on 3 September, the plaintiffs gave the defendants three days to make a proposal in respect of the Indian goods failing which the plaintiffs would either exercise their right to dispose of the goods and hold the defendants responsible for their losses or they would reject the whole lot. The next day, the defendants made a counter proposal the gist of which was that the plaintiffs pay the balance of US$99,686.33 due for the Indian goods after which the Myanmar plywood would be released (without payment) and the parties could then sit down to settle the balance amount payable by the plaintiffs to the defendants. Mr Ng did not find this proposal acceptable and send out a letter on 7 September insisting on a solution for the defective goods. In court, he contended that he had never promised the defendants that he would pay the US$99,000 odd but had kept asking for a price for the Indian goods so that the plaintiffs could dispose of the cargo.

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37 33. On 8 September, the defendants again demanded payment of the balance due. They alleged that Mr Ng had said 'the quality was okay'. They also said that the plaintiffs were not allowed to sell 'any of our blockboard/plywood till you have our agreement' which Mr Ng understood to mean that the defendants accepted that the plaintiffs could still reject and return the Indian goods. On 10 September, Mr Ng gave notice to the defendants to take back the Indian goods by 13 September, return the plaintiffs' payment and pay the plaintiffs' warehousing charges. He threatened to sell the goods at half price if the defendants did not take them back. In court, Mr Ng admitted that this letter was the first time that the plaintiffs had expressly asked the defendants to take the goods back.

38 34. On 13 September, the second inspection which Mr Banker attended took place. This inspection was arranged by the defendants. At it, Mr Ng showed the defendants that the defects affected the entire consignment. Further, a new defect was pointed out ie that the goods were 'unsquare - they were not rectangular but trapezoid in shape. After the inspection, the defendants' directors asked the plaintiffs to make an offer. So the next day, they offered US$190 per metric ton for both blockboard and plywood on the basis that the goods were reject grade.

39 35. On 15 September, another meeting took place among the same persons. After negotiation the defendants agreed to take the goods back and Mr Ng asked Mr Tan to work out the charges payable for the costs incurred by the plaintiffs in respect of the goods. It was also agreed that the plaintiffs would pay the defendants $10 per m (approximately US$7,555 in total) as compensation and that the US$200,000 would be refunded less this compensation. Mr Ng did not explain why the plaintiffs agreed to compensate the defendants when the

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goods were supposedly defective. He said that this compensation was negotiated by Mr Tan.

40 36. Mr Ng was cross-examined in detail as to what had occurred at the meeting of 15 September. He was asked whether he was telling the court that during this meeting, the compensation had not been worked out. His reply was that it was not worked out with him at that meeting but was agreed to by Mr Tan probably on the same date. He was also asked whether the defendants had agreed to pay the plaintiffs' charges at the meeting itself. His first response was that this part of the negotiation was also left to Mr Tan and when the question was put to him again he replied that the defendants had not agreed but the plaintiffs wanted them to pay these charges. Finally, it was put to him that on 15 September the defendants had not agreed to a settlement in the manner stated in the plaintiffs' letter of 16 September. His response was that since the defendants wanted to collect the cargo, the plaintiffs had to work out their costs which the defendants had to bear. He did not answer a question posed on the subsequent correspondence between the parties on the basis that after the meeting of 15 September he had left all the negotiations and replies to Mr Tan so that he was not so clear about what had happened. He had been busy with other work and had subsequently been away from Singapore.

41 37. As regards the Myanmar plywood, Mr Ng agreed that according to the terms of sale, the plaintiffs were required to pay for and collect the plywood on its arrival. He did not do so because the defendants had already given him problems with the Indian plywood and he did not know whether there would be quality problems with the Myanmar plywood as well. That was why he asked the defendants to settle the first problem first. He did agree, however, that the Myanmar plywood contract was separate from the other two contracts.

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42 38. Mr Ng gave evidence on the prices of blockboard and plywood during the material period. He disagreed that these prices were rising from May 1993 until they peaked in or about July 1993. He asserted that plywood prices in 1993 started to pick up sometime after Chinese New Year and gradually went up until about June or July. They remained stable for the next two or three months or so and then started to fall. He produced the plaintiffs' sales transactions to prove that during the period May to October 1993 prices were still stable (plus or minus 5% to 10%). He agreed that the graph produced by the defendants showed that prices had risen steeply in May/ June, reached a peak in July/August, fell slightly in September/October and plunged between November and December 1993. He also agreed that the prices improved somewhat in 1994 but did not reach close to the July/August 1993 levels.

43 39. Mr Ng stated that blockboard and plywood graded 'MR DBBCC' could be used for making furniture, interior fittings like panelling, and also for construction. He agreed that when this type of plywood or blockboard was used in the manufacture of furniture it would not be exposed because it would be covered by a laminate or decorative plywood. He maintained that if the original material had a wavy and uneven surface this would show through the laminate and the product would not be good. Further, despite this covering, plywood with painted edges would not be acceptable in the trade. He substantiated this statement by an assertion that customers who had come to inspect the Indian plywood in the plaintiffs' premises had rejected it straight away because they did not want plywood with painted edges.

44 40. He also said that by the time of the second inspection on 13 September the plaintiffs had had the problem of customers rejecting the Indian plywood because of its painted edges. He was asked whether he had told the defendants or Mr Banker about this and his response was yes he told them

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several times that paint was not acceptable in the market. But when he was asked whether he had told them that actual customers had rejected the Indian plywood on that ground, his response was that he was not sure. He did admit that the plaintiffs had tried to sell the plywood prior to that meeting.

45 41. In his affidavit, Mr Ng did not explain what the description 'MR DBBCC' meant in relation to plywood and blockboard. All he said was that at the trial his lawyers would refer to the Indian Standard Plywood for General Purposes - Specification (3rd Revision) ('the Indian Standards') to show that the defendants' Indian goods did not meet that standard. He was asked in cross-examination how he knew that the Indian Standards applied to 'DBBCC' plywood when the document itself did not expressly describe such a grade. Mr Ng's explanation was that the letter 'D' referred to the type of glue used which is either type 2 or 'MR' meaning moisture resistant. The letters 'BB' referred to the face of a sheet of plywood and 'CC' to its back. He pointed out that the Indian Standards refer to grades of the faces of plywood sheets and asserted that what had formerly been grade 'B' now appeared in the Indian Standards as 'A' and what had been grade 'C' now appeared in the Indian Standards as 'B'. He noted that the Indian Standards did give specifications for grades 'A' and 'B'.

46 42. When pressed as to where in the Indian Standards it was stated that 'BB' had been converted to 'A' and 'CC' to 'B', Mr Ng conceded that he was not sure that the statement in the Indian Standards that 'This revision deletes face 'A' and 'D' quality of plywood, and retains face 'B' and 'C' now renamed as 'A' and 'B'...' meant, but asserted that in the trade the usual term for the face of the plywood was 'BB' and the term for the back of the plywood was 'CC'. He also admitted that he had not seen the Indian Standards prior to the institution of this action. When the contract was made he had wanted to buy 'DBBCC' grade plywood and the defendants had told him that Indian plywood was equivalent

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to Malaysian plywood of that grade. He asserted that the 'DBBCC' grade was the standard internationally used for sale and purchase.

47 43. Mr Ng also asserted that the usual standard applied in Singapore in the plywood trade was the Japanese standard known as the Japan Plywood Inspection Corporation (or JPIC) standard. He was shown the JPIC document and it was pointed out that the grades of plywood described there were entitled grade 1, grade 2 and grade 3. Grade 1 was 'AA'. Grade 2 was 'AB' and grade 3 was 'BB'. When asked whether there was a grade 'CC' in the JPIC standard, Mr Ng did not answer. When asked whether the contractual grade 'BBCC' was described in the JPIC, his reply was that the plaintiffs treated that grade as being equivalent to the grade 3 prescribed by JPIC and applied it to the face of the plywood purchased. The plaintiffs did not grade the back of the plywood as that was less important than the face. Since grade 3 was the lowest of the Japanese standards, it was used for the face and 'BBCC' was regarded as general-use plywood. He confirmed that when he ordered the Indian goods with grading 'BBCC', he understood that grade in accordance with JPIC standard and that 'BB' was equal to grade 3. He had to confirm, however, that there was no reference made to the JPIC standards in either of the contracts relating to the Indian goods.

48 (ii) Charlie Tan Yew Kee 44. Mr Tan confirmed that after the plaintiffs were asked to advise the best price possible for the additional goods upon their arrival, he had, on Mr Ng's instructions, telephoned Mr Jasvinder and told him that for the time being the plaintiffs would store the additional goods for the defendants and would find out what they could sell them for before making any offer to the defendants for the goods.

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49 45. He confirmed that upon his first inspection of the Indian goods as they came in he found that many of the plywood sheets had painted edges and upon a further examination of the goods conducted with Mr Ng, he had seen the other defects which Mr Ng had mentioned. Mr Tan also gave evidence on insect infestation found in the blockboard. When the goods first arrived, he had not observed any insect bores in the blockboard but later there were signs of insect attack. He told Mr Jasvinder of this and they carried out a joint inspection before 13 September. Mr Tan pointed out the signs of insect infestation in the blockboard to Mr Jasvinder. By 13 September, the signs of such infestation were very obvious.

50 46. Mr Tan explained in court that insects had nothing to do with the grade of the wood and whatever grade was supplied had to be free of insect infestation as otherwise the insects would spread to other pieces of wood and if the wood was used for making furniture the insects would spread to other furniture in the buyer's home. He also confirmed that the insect infestation was confined to the blockboard and no signs of such infestation were found in the other goods (supplied by other parties) stored in the same warehouses as the Indian goods. When he was asked, however, whether the insect infestation took place between the arrival of the goods and 13 September when the insect bores were really obvious, his reply was that he did not know.

51 47. Mr Tan was not very helpful on the quality standards which the Indian goods had to meet. He asserted that the defects that the plaintiffs detected in the Indian goods put the goods out of the JPIC standards. When it was pointed out to him that the contracts did not state that the goods were to meet JPIC standards, his reply was that whenever cargo was received in Singapore he would always treat it on the basis of the JPIC standards. Under re-examination, he explained that the Indian goods were out of the standards in that the

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difference in the thickness of the goods ordered and the goods supplied was beyond the tolerance prescribed by the standards. Further, the defects described as 'shortcore' and 'unsquareness' were also beyond the prescribed tolerances. He had measured all the pieces in one crate and found that the shortcore was more than the prescribed tolerance of 2mm. He then gave quite a detailed description of the defects he had found in the goods.

52 48. Mr Tan had been in the plywood business for less than a year at the time that the Indian goods arrived in Singapore. He asserted that even then he had been able to grade timber in accordance with the JPIC standard and had been familiar with that standard in July 1993. Using that standard, he stated that the Indian plywood delivered by the defendants was grade 3 plywood. He agreed, however, that according to the JPIC standard, keruing oily face was acceptable. He agreed too that the JPIC standard allowed slight core overlapping. Mr Tan confirmed that in July 1993 he had not been familiar with the Indian Standards.

53 49. Mr Tan asserted that the first time that the Indian goods were rejected in writing was by the plaintiffs' letter of 3 September. Under further examination, he agreed that in that letter, the plaintiffs gave the defendants three options as to the way in which the goods should be dealt with and that in fact nowhere in the letter did they say to the defendants: 'take the goods away, we reject them'. Later, he added that when he was talking to Mr Jasvinder he had always mentioned that the defendants should not deny the fact of the uneven thickness and unsquareness of the goods and the insect attack and these matters were enough to allow the plaintiffs to reject them. He then asserted that he had rejected the goods over the phone. During these telephone conversations Mr Jasvinder had not accepted the allegations of defects in the goods but had simply said that he had to talk to his brother.

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54 50. According to Mr Tan, the inspection of 13 September was carried out both at the plaintiffs' warehouse and at the warehouse of N S Trading. During this inspection, the plaintiffs showed the defendants that the defects affected the entire consignment and also pointed out that the goods were unsquare and that the blockboard had been attacked by wood boring insects. He asserted that after the inspection, Mr Jasvinder and his brother and Mr Banker admitted that the goods had defects. When the parties returned to the plaintiffs' office after the inspection, the plaintiffs asked the defendants to give a price for the cargo. The defendants' response was that it was better the plaintiffs offered the price because it was already in their possession. The plaintiffs said that this was very difficult so the defendants indicated that they would revert on price. Since, however, no price was forthcoming, the next day the plaintiffs made their own offer.

55 51. On the meeting of 15 September, Mr Tan stated that that was when the defendants agreed to take back the whole shipment and repay the plaintiffs the US$200,000 less the compensation and also to pay the trucking, container unstuffing and other miscellaneous charges incurred by the plaintiffs. He said that the compensation was suggested by him because during the meeting there was some 'ding dong here and there' which was resolved when he made the compensation suggestion. His intention all the while had been to solve the problem amicably. He explained why he had suggested paying compensation even though the plaintiffs were alleging that the goods were defective. Giving the compensation meant that both parties would be losing a little bit but that the problem would be solved. If each party maintained its stand rigidly there would be no solution and therefore each had to give way a little. It was a compromise.

56 52. On 16 September, Mr Tan sent out the letter detailing the plaintiffs' miscellaneous charges. Thereafter, Mr Jasvinder came to see him and they

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discussed the charges further. This further meeting took place either on 16 September itself or on the next day. The plaintiffs agreed to waive two items which had been included in their letter. Mr Tan also confirmed in court that the compensation was meant to be paid in respect of the contracted goods and that no compensation was payable for the additional goods. He admitted, however, that the defendants might have mistakenly thought that the compensation was for all the goods. He agreed that the first disagreement that the parties had about the compromise was whether the compensation applied to the additional goods or not. Mr Tan did not agree, however, that there was a second disagreement over the charges which the plaintiffs wanted the defendants to pay. He asserted that these were agreed and admitted by the defendants' letter of 22 September. He maintained that the defendants had always understood what the plaintiffs' terms of compromise were. On 17 September, the defendants had proposed that the plaintiffs waive all their charges, that they crate the Indian goods for the defendants and that if the defendants were unable to collect the Indian goods before 30 September, the store rent payable by the defendants should be only $5 per crate. The plaintiffs replied that they insisted on their charges being paid but agreed to crate the goods for the defendants.

57 53. On 20 September, the defendants asked the plaintiffs when they would be taking delivery of the Myanmar plywood. Two days later they sent another fax stating the amounts payable to the plaintiffs would be S$18,495.38 and US$95,010.45. This had been worked out on the basis that the cost of the Myanmar plywood would be deducted from the US$200,000, the compensation would be on both the contracted and the additional goods and the plaintiffs would reimburse some insurance costs incurred by the defendants. The plaintiffs rejected all these deductions. On 28 September the plaintiffs told the defendants

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that because of the problems existing over the Indian goods they were not going to pay for the Myanmar plywood without inspecting it.

58 54. Then Mr Tan received a call from Mr Yeo who stated that he had Mr Jasvinder's instructions to allow the plaintiffs to return the Indian goods. When Mr Tan asked when the plaintiffs would be paid back the difference in price, Mr Yeo said by 5 or 6 October 1993. The blockboard was redelivered on 5 October. On 6 October and for some days thereafter, Mr Tan telephoned Mr Yeo and asked about when the Indian plywood was to be redelivered. He also called the defendants and asked for payment many times but no payment was received. On 4 November, the defendants asked for redelivery of 500 pieces of the Indian plywood and Mr Tan responded by telling Mr Yeo that when payment was made, the plywood could be collected.

59 55. The defendants' response was to send a letter on 8 November wherein they indicated that the plaintiffs should keep the Indian plywood, collect the Myanmar plywood and then pay the defendants US$44,260.10 and S$2,692.15 as the difference due to them. Mr Tan considered that the defendants were going back on their promise. He responded by a fax on 19 November to the effect that the problem should be solved in accordance with the agreement and that the defendants should release the Myanmar plywood and take back the Indian plywood.

60 56. Subsequently, Mr Tan spoke to Mr Yeo who told him that the plaintiffs could collect all the Myanmar plywood. Mr Tan explained that his understanding, after discussions he had had with Mr Jasvinder in September or October, was that the defendants would take back all the Indian goods and the plaintiffs would collect all the Myanmar plywood and then the payment by the defendants would be the difference between the US$200,000, the compensation

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and the price of the Myanmar plywood. The plaintiffs' transport contractor was, however, only allowed to collect the 50 crates of 3'x6' plywood. Mr Tan sent the defendants a letter the same day (22 November) stating that since they had only made partial delivery of the Myanmar plywood, the plaintiffs were treating the Myanmar plywood matter as void.

61 57. In court Mr Tan stated that by this letter of 22 November, he was telling the defendants that since they did not deliver the whole consignment the plaintiffs were treating the Myanmar contract as cancelled. He was asked whether that letter was a rejection. His response was 'we cancelled the contract'. He agreed that he did not state in the letter that the plaintiffs were rejecting all the Myanmar plywood. His personal understanding was that cancelling and rejecting were almost the same thing. He also confirmed that he did not in the letter tell the defendants to take redelivery of the 50 crates.

62 58. Mr Tan also testified that he had never come across painting on the edges of plywood prior to this transaction. He treated it as an unacceptable defect because he was not able to sell the plywood. In July 1993 he had asked potential buyers who had gone to the plaintiffs' warehouse to look at the Indian plywood whether they wanted it and they said that they did not. He agreed that if the plywood was used in panelling or for making furniture it would be covered by another material. He was not able, however, to indicate what difference, if any, it would make to the manufacturer that the edges of the plywood had been painted.

63 (iii) Chua Kian Lup 59. Mr Chua is a director of a company which carries on business as a timber importer, wholesaler and trader. He has been in the plywood/blockboard and timber business for more 20 years.

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64 60. In June 1994, Mr Chua's company purchased from the plaintiffs about 186 m of Indian plywood at the price of US$240 per metric ton. Mr Chua personally inspected the goods before buying them. He noted the following problems with the goods:
(1) they were unsquare - the plywood were not of equal length and width;
(2) the sides of the plywood were painted;
(3) shortcore - there were many gaps between the top and bottom veneers of the plywood sheets;
(4) core overlapping - causing waviness on the surface of the plywood;
(5) uneven thickness not sanded and some sheets were whereas others had been over-sanded.

65 61. As a result of the above features, Mr Chua was of the opinion that the plywood was not suitable for use in furniture making or in other interior building construction. It was of very low grade and only suitable for rough use, for example for making crates or pallets in the packing and stevedoring industries. In Mr Chua's view the plywood did not meet the 'DBBCC' grade for which the market price was around US$403 per m in June 1994. 'DBBCC' grade plywood would not have had the features which he found in the consignment he bought from the plaintiffs. He also stated that he would have rejected that plywood if it had been sold to him as 'DBBCC' grade.

66 62. In cross-examination, Mr Chua was asked what was meant by 'DBBCC' quality plywood. He replied that it referred to goods of the quality which his company bought from Malaysia. He was not sure whether there were any published standards to measure the quality of 'DBBCC' plywood. He said that the grade higher than 'DBBCC' was 'BBB' and the grades below it were utility, soft grade and rejected grade in descending order of quality. He testified that it was his experience which enabled him to tell whether a piece of plywood

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which was supposed to be 'DBBCC' grade was actually of that grade. He said that plywood of that grade came in many sizes, usually rectangular, rarely square. The left hand and right hand lengths had to be identical and the top and bottom widths had also to be identical. The surface and the thickness of the plywood should both be very even. Where he had ordered plywood of 12mm thickness, he would be willing to accept sheets which were not less than 11.5mm thick, ie a tolerance of about 4%. In re-examination, he amplified that the diagonals on plywood sheets had to be equal as well and they could only differ by about 3mm before exceeding the tolerance allowed. As regards plywood that was 18mm thick, he would accept sheets of 17.2mm, a tolerance of about 4.9%.

67 63. Mr Chua was asked why plywood with painted edges would not be suitable for use in the furniture business. His response was that furniture makers would not want to buy such painted plywood but under cross-examination, he was unable to give any coherent reason why not. He testified that the plywood with painted edges which he had bought from the plaintiffs had been sold to his customers who wanted lower quality plywood. In re-examination, Mr Chua was asked to indicate which of the defects he had noted in the Indian plywood would still have been visible after lamination. His response was that the differences in length and width would be detectable whereas the detection of the painted edges would depend on whether the laminate used was dark or light. In the later case, the painted edges would be detectable through the laminate. Lamination would cover the gaps in the core caused by 'shortcore' but core overlapping, and uneven thickness would still be detectable.

68 (iv) Han Kin Seng 64. Mr Han is a director of a company carrying on the business of marine and cargo surveys. On 16 September he received instructions from the plaintiffs to attend at their warehouse and also at the

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warehouse of M/s N S Trading for the purpose of ascertaining the condition of the Indian goods. Mr Han carried out the required inspections the same day.

69 65. At both warehouses, he saw that the blockboard and plywood sheets had been neatly packed in crates of between 20 to 45 sheets each. There were 293 crates of blockboard and 48 crates of plywood at M/s N S Trading's premises and 110 crates of blockboard and 140 crates of plywood at the plaintiffs' premises. Mr Han's findings were as follows:

70 (1) insect attack - he found evidence of what looked like insect attack along the side edges of numerous crates of blockboard sheets with various isolated spots of mounds of powdery substance apparently raised up by the insects which had bored their way into the sheets. In some sheets, the mounds were found in a continuous row.

71 (2) unsquare - about five to 10 crates of blockboard and plywood sheets were selected at random and unpacked. Each sheet was manually aligned piece by piece on one side and edged. He observed that the opposite sides and edges of the sheets thus aligned were variously protruding and not uniformly aligned. Random measurements taken revealed that the opposite lengths and widths of the sheets were unequal, thus indicating that the sheets were unsquare. In his affidavit, Mr Han disclosed that the variation in widths were from about 2mm to about 15mm.

72 (3) difference in thickness - about six crates of blockboard were randomly measured using an ordinary measuring tape as well as a vernier gauge and the average thickness of each sheet was found to vary from 17.5mm to 19.86mm.

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73 (4) painted edges - the side edges of the plywood sheets were noted to be quoted with a kind of emulsion paint.

74 (5) surface waviness - with some difficulty, Mr Han was able to detect a very slight waviness on the surface of some of the plywood and blockboard sheets shown to him.

75 66. Under cross-examination, Mr Han confirmed that he was basically a marine hull and general surveyor, and had no qualification regarding the grading of plywood or blockboard. He agreed that he was not familiar with the grade 'DBBCC' for plywood. He also confirmed that he knew nothing about the test for squareness or the tolerance limits prescribed by the Indian Standards.

76 67. Mr Han was asked about the unsquareness which he had found. He confirmed that he did not follow the procedure for determining unsquareness laid down in the Indian Standards. What he had done was to align the sheets in the stacks. One length side was evenly aligned and one width was also evenly aligned. This alignment enabled him to inspect whether the stacks were unsquare or not. Mr Han pointed to various photographs which he had taken which showed the various protrusions of the blockboard and the plywood sheets. The edges were not uniform. He was presented with five to 10 crates of the consignments but did not determine the number of crates of plywood as against the numbers of crates of blockboard. He determined that each crate contained pieces that were unsquare. He was not asked to count the number of pieces but simply to determine whether the crates were unsquare.

77 68. As regards the surface waviness, Mr Han confirmed that the sheets that he had examined had been presented by Mr Tan and the plaintiffs' workers. He had not picked up any pieces on his own.

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78 Explaining his statement that he had had some difficulty in detecting slight waviness he said that if one was not specialised in the trade one might have that difficulty. One had to pay close attention, sometimes to the extent of moving one's hand across the surface to ascertain whether it was wavy.

79 (v) Hemant Dirajlal Banker 69. Mr Banker stated that Sushil Enterprises had been in the business of manufacturing plywood and allied products since 1960. He himself had been in the business for the previous 20 years. Sushil Enterprises exports its plywood and blockboard to countries in the Middle East and South East Asia as well as to South Africa and England. The plywood exported to England is of the higher WBR grade. All other markets purchase the 'MR DBBCC' grade.

80 70. On the technicalities of quality, Mr Banker explained that 'MR' is an abbreviation for 'moisture resistant' as opposed to 'WBP' which means 'water boiling proof' for plywood which has been treated to withstand the elements and is meant for external use. Wood marked 'MR' is generally for internal use only. The grade "DBBCC" is one of the lowest grades of quality in the timber/plywood industry. In India, commercially acceptable plywood would include plywood of 'DBBCC' quality. Mr Banker confirmed that the grading for plywood and blockboard is similar but the strength tolerance is different in that plywood is expected to be the stronger material. Commercial plywood is the second lowest of the grade of plywood manufactured by Sushil Enterprises. It is moisture resistant plywood. Each plywood sheet of this type is measured for thickness and if the thickness varies by more than 5%, then the sheet would be unacceptable. Mr Banker said that this 5% tolerance is specified in the Indian Standards.

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81 71. During cross-examination Mr Banker was shown a copy of the Indian Standards. He agreed that the category 'plywood for general purposes' appearing in that document referred to what he called commercial plywood. In relation to the sentence 'This revision deletes face 'A' and 'D' quality of plywood, and retains face 'B' and 'C' now renamed as 'A' and 'B' thereby permitting in all three types of plywood based on appearance.', he stated that previously 'A', 'B', 'C' and 'D' were the grades for the face and the back of the plywood sheets. Thus, this sentence in the Indian Standards meant that the previous four grades of face and back had been replaced by two grades of face and back.

82 72. The new grades for moisture resistant plywood were 'MR AA', 'MR AB' and 'MR BB'. 'MR AA', the first grade, meant both face and back were of 'A' grade whilst 'MR AB' meant that the face was of 'A' grade whilst the back was of 'B' grade and 'MR BB' meant both face and back were of 'B' grade. Mr Banker said that Sushil Enterprises' commercial plywood came within the three grades established by the Indian Standards in that for the export market, it manufactured 'MR AB' plywood. However, the plywood exported by Sushil Enterprises was not described as 'MR AB' but rather as 'MR DBBCC'. Mr Banker explained that that term came into use when Middle East buyers visited his factory and informed him that his 'AB' plywood would be accepted in the Middle East under the 'MR DBBCC' grade. Until then he had not heard of the 'DBBCC' grade. He stated that he had never seen any standards in which the grade 'DBBCC' was described and his assertion that his goods of the Indian grade 'AB' were equivalent to 'DBBCC' was made solely on the basis of his Middle Eastern customer's information.

83 73. In mid July 1993, Mr Daljit informed Mr Banker that the plaintiffs had rejected the Indian goods claiming that they were defective and were refusing to pay for them. At that stage, the only complaint that was mentioned

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was the painting round the edges of the plywood. At Mr Daljit's request, Mr Banker agreed to come to Singapore to handle the complaint. On 22 July he met Mr Ng at the plaintiffs' premises. According to his affidavit, at this meeting Mr Banker repeatedly asked Mr Ng whether he could point out any defects in the plywood but the latter did not do so apart from pointing to the paint marks along the edges. Mr Banker then explained that the goods were originally meant for a customer in the Middle East who had asked for the painting to be done but that as the defendants had stated that the plaintiffs' order was urgent, Mr Banker had diverted the goods to Singapore instead. Hence, the paint marks were not defects at all. Mr Ng was satisfied with this explanation and eventually agreed orally, in Mr Banker's presence, to accept and pay for the Indian goods.

84 74. With respect to the meeting of 13 September, in his affidavit Mr Banker stated that he, Mr Daljit and Mr Jasvinder remained in Mr Ng's office as he seemed reluctant for them to go to the plaintiffs' store to examine the goods. Mr Banker stated that he did not know the reasons for this. He then asserted that he had asked Mr Ng to refer any defects to him but Mr Ng was unable to point out any defects. Mr Banker even offered to go through all the plywood/blockboard sheets and was willing to take back defective pieces but Mr Ng refused this offer as he knew if he did so that the number of pieces with defects, if any, would be negligible. Mr Ng eventually grudgingly conceded to Mr Banker that the Indian plywood supplied was of acceptable standard and agreed to accept the goods but he asked for some time to make payment.

85 75. During cross-examination, Mr Banker was asked whether on 13 September Mr Ng was reluctant to go to the yard. His reply was 'yes' but when he was asked to confirm that he had never got around to seeing the goods, his response was that reluctantly Mr Ng had taken him and the other two men to the godown behind the office and showed them two crates of plywood. Mr Ng tried

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to explain but could not show any defects. He then complained about slight unsquareness, overlapping of core veneer and the use of keruing face veneers. In court, Mr Banker went on to say that he had explained to Mr Ng that keruing face veneer was an internationally accepted timber and that Sushil Enterprises had used only the timber with a little oil so that delaminating did not take place. Regarding overlapping, he requested Mr Ng to show plywood him with overlapped core veneers. Mr Ng was unable to do so. Regarding unsquareness, Mr Banker said that they had measured sheets diagonally to Mr Ng's satisfaction. There were differences with some sheets within the tolerance ie about 1mm difference. All four men then went back to Mr Ng's office. They did not go to a warehouse at a different location.

86 76. Later in the cross-examination, it was put to Mr Banker that he had also gone to the warehouse of N S Trading on 13 September. He replied 'That, I don't recall'. The next matter put to him was that he had been shown again the various defects raised earlier and the fact that the blockboard had been attacked by insects. He denied this. He also denied that he and Mr Jasvinder and Mr Daljit had then asked the plaintiffs to offer a price for the goods.

87 77. At another point in his cross-examination, Mr Banker was asked whether there was a discussion on 13 September to try and settle the problem. His reply was that as far as he could see there was no quality complaint and the matter was solved from his side. Mr Daljit, Mr Jasvinder and Mr Ng were having a discussion and to his knowledge the matter regarding the complaint was not there and therefore he presumed that the matter was settled. When asked whether there was a discussion between the three men as to what to do with the goods, his answer was 'not to my knowledge' and when asked specifically what the discussion between the three was, his reply was that the others were talking in a language which he did not understand and were not speaking in English

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except for a few words. Mr Banker maintained that he had not met Mr Ng again after 13 September. He denied having attended any meeting on 15 September or that on that date Mr Jasvinder and Mr Daljit had, in his presence, agreed with the plaintiffs to take all the goods back.

88 78. In court, Mr Banker agreed that his commercial plywood was used essentially for the manufacture of furniture. He agreed that for that purpose it was important that plywood be as square as possible and he defined squareness as meaning that the width on either side must be the same and the length on either side must be the same plus the two diagonals should be the same. He agreed that there was a tolerance of 0.2% for squareness.

89 79. As far as waviness was concerned, he testified that plywood should not be wavy. If one face was slightly wavy, it could be used for the inner side. He was shown exhibit P1, a sample of plywood tendered by the plaintiffs as being part of the Indian plywood supplied by the defendants. He agreed that the face of P1 was wavy to the touch though not visibly wavy and asserted that it could be put to any use. The back was not wavy and both sides were, in Mr Banker's opinion, grade 'A' faces. He said that he would use the smooth side as the face and wavy side as the back. The word 'oversanded' was written on P1. Mr Banker said that that was not correct. P1 had variation in the thickness of the core veneer and that was why it was uneven. It was not because of oversanding. He agreed that surface waviness could be the result of core overlapping. Mr Banker said that there was no measure by which one could say that a particular piece of plywood had exceeded the acceptable limit for core overlapping. The requirement of the Indian Standards was simply to have a reasonably smooth surface.

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90 80. As far as insect infestation was concerned, Mr Banker explained that the high temperatures, chemicals and processes used to manufacture plywood and blockboard would kill any insects that might be in the wood at the time it entered the factory. He agreed, however, that after manufacture plywood or blockboard could be infested. He was shown the one of the photographs taken by Mr Han and identified that the powdery wounds shown on the blockboard had been caused by insects.

91 81. Under re-examination, Mr Banker agreed that the defects which the plaintiffs had described in their letter of 5 August 1993 would have rendered the Indian goods unfit for the common uses of 'DBBCC' quality blockboard and plywood. Mr Banker maintained, however, that the goods which he saw on two occasions on the plaintiffs' godown did not contain those defects. He also said that if the only defect of the Indian plywood was the paint on all the edges, it would not be unfit for the uses he had enumerated.

92 (vi) Jasvinder Singh 82. According to Mr Jasvinder's affidavit, when the plaintiffs received the defendants' fax of 14 July offering them the additional goods, the 'plaintiffs' representative' accepted the offer in a telephone conversation with him and agreed to purchase the additional goods at the same prices as agreed in the two contracts. He further stated that 'the plaintiffs' Mr Ng Ah Kuan and/or Mr Charlie Tan' orally represented to him that payment would be made after delivery of the additional goods. Mr Jasvinder accepted this representation in good faith since Mr Ng was well known to him personally. Acting on that representation, the defendants permitted delivery of the additional goods to the plaintiffs without first issuing an official invoice. That is why there was no written contract in respect of the goods. But Mr Jasvinder did not think that this was going to be a problem since the plaintiffs and defendants had had a long established and amicable course of dealings.

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93 83. On quality, Mr Jasvinder affirmed that persons in the plywood/blockboard business would or should know that plywood/blockboard is sold according to the standards of quality commercially acceptable in the country of origin or manufacture. Therefore plywood/blockboard of 'Indian origin' would be plywood/blockboard which was commercially acceptable in India. The goods sold and delivered to the plaintiffs were of Indian origin and conformed to Indian standards of quality. This the plaintiffs were fully aware of. Further Mr Jasvinder had expressly informed Mr Ng that the price of the Indian goods was much lower than that of Malaysian plywood/blockboard.

94 84. In his affidavit, Mr Jasvinder also asserted that plywood/blockboard of Indian origin is of a lower standard of quality than the JPIC standard or Malaysian/ Indonesian standards. These goods are therefore sold at a much lower price. Those in the industry also understand and do business on the basis that the standards of the goods they buy or sell are directly related to the price and the quality of the goods is based almost entirely on the price.

95 85. Mr Jasvinder confirmed that shortly after the Indian goods arrived, Mr Ng telephoned him and complained that the goods had defects. Mr Ng threatened to reject the goods because of these defects. He confirmed Mr Banker's evidence that during the first joint inspection on 22 July 1993, Mr Ng was not able to point out any actual defects to Mr Banker apart from the paint marks along the edges of the plywood. After discussion, Mr Ng had agreed to accept all the goods and to pay for all of them including the additional goods.

96 86. After the defendants received part payment of US$200,000, Mr Jasvinder spoke to Mr Ng on the telephone and the latter promised that the plaintiffs would pay the balance sum a week later but they did not do so. In mid September, when the plaintiffs again raised allegations about the goods being

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defective, Mr Jasvinder and his brother were concerned. They felt they should do what they could to maintain good business relations with the plaintiffs although it was clear to them that the plaintiffs were being difficult with their payment because the prices of plywood and blockboard had fallen. So the second inspection with Mr Banker took place on 13 September. During that meeting, both Mr Ng and Mr Tan were again asked to point out specific defects in the goods but were unable to do so.

97 Eventually they conceded that the goods supplied were of acceptable standard according to Indian quality. For the second time the plaintiffs seemed to have agreed to accept the goods and they asked for time to make payment. On 16 September, however, the defendants received a letter from the plaintiffs claiming that the defendants had agreed to take all the goods back. Mr Jasvinder called the plaintiffs immediately to protest because that allegation was untrue but they insisted that the goods be taken back.

98 87. When it became clear to Mr Jasvinder and his brother that the plaintiffs were not going to pay the balance sum and that they had merely been making one excuse after another to try and convince the defendants to take back the goods, they felt that they had no choice but 'to collect back the goods which had not been paid for and which the plaintiffs were not going to pay for'. They felt played out by the plaintiffs. That is why on 22 September Mr Jasvinder sent a letter to Mr Tan referring to their discussions the previous day. This letter was sent with a view to settling the dispute.

99 88. The plaintiffs' responses of 23 and 24 September showed that the parties had not reached any real agreement on how to resolve their dispute. Subsequently many letters were exchanged. Since the various proposals and counter-proposals were not fully agreed upon, the parties could not reach any

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binding compromise. All this was because the plaintiffs had refused to pay the balance due and for the Myanmar plywood. By Mr Jasvinder's calculation, at that time the defendants had bought goods for the plaintiffs worth more than US$500,000 of which approximately US$330,000 had still not been paid.

100 89. The defendants felt that they had been pushed into a corner by the plaintiffs' unreasonable attitude just because they would suffer losses on their purchases since prices had fallen substantially. As they did not want to become bogged down in legal proceedings with the plaintiffs, the two brothers decided that they had no choice but to take something back even though they were not legally bound to do so. So on 5 October the defendants took back the blockboard but left the Indian plywood which was equivalent in value to US$149,591.35 (this figure included the sum of US$5,036.75 which the plaintiffs had agreed to pay to the defendants as compensation for the blockboard) as the plaintiffs had already accepted the plywood and made part payment of US$200,000. Because the plaintiffs had already these goods, Mr Jasvinder did not see why the defendants had to make any refund. Instead he decided to leave with the plaintiffs goods worth about US$200,000.

101 90. As for the Myanmar plywood, when the plaintiffs stated in 19 November 1993 that they wished to collect it, Mr Jasvinder informed Mr Yeo to tell the plaintiffs that they could come to collect the Myanmar plywood but only up to the value of credit balance they had with the defendants. On 22 November accordingly, the plaintiffs' agents were allowed to collect 50 crates of Myanmar plywood even though the relevant contract expressly provided for 'cash against delivery order' and the plaintiffs had still not paid. This was because the defendants had earlier collected back goods in excess of what had been intended. The defendants permitted the plaintiffs' agents to collect part of

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the shipment of Myanmar plywood on the basis that the balance would be released upon payment.

102 91. Under cross-examination, Mr Jasvinder informed the court that he had joined the defendant company in March 1993 though prior to that he had been working in another timber and plywood exporting firm and had had experience in the business since 1980. He confirmed that, however, he had never seen Indian origin plywood and blockboard prior to the arrival of the first shipment from Durian Trading. He agreed that the goods which Durian Trading shipped aboard the 'Tradefast' arrived in Singapore on 12 July and although there had been discrepancies in the defendants' documents, the plaintiffs had nevertheless paid fully for these goods. He was asked why in that case the plaintiffs had refused to pay for the shipment aboard the 'Norasia Sun' which had arrived two days later. His explanation was that when the plaintiffs took delivery of the latter cargo there were signs that the market had stabilised. Delivery started on 16 July and was completed on 19 July. During that period the prices were stable and there were no signs of their going up or down. He asserted that prices had peaked around early July and that at that time prices were about US$30 to US$35 per m higher than they had been in May/June 1993. In July 1993, plywood prices were between US$440-445 per m and blockboard prices were between US$410-415 per m . These prices remained in place up to 19 July.

103 92. He was then asked to explain why the plaintiffs had not immediately disposed of the Indian goods in the open market instead of requiring the defendants to bring Mr Banker to Singapore for an inspection. Mr Jasvinder's reply was that the prices had stabilised and there was no signs of them going up any further. When it was suggested that the plaintiffs could have sold off the Indian goods and made a profit of US$30-35 per m at that time, there was a long

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pause before Mr Jasvinder stated that he really did not know why the plaintiffs did not sell the goods when they arrived but he believed that as stockists the plaintiffs would stock the plywood.

104 93. As regards quality, Mr Jasvinder at first said that he was not really familiar with the JPIC standard, that he had a basic familiarity with Malaysian/Indonesian standards but was not familiar with the Indian Standards. He confirmed that there were no published Malaysian standards for 'MR DBBCC' plywood. In response to a question as to what the trade understood the Malaysian standards to mean in respect of 'MR DBBCC' plywood, Mr Jasvinder asserted that anyone who had been in the plywood trade for a long time would know that plywood supplied by Indonesia was of higher quality of that from Malaysia in the sense that the finish was better.

105 94. He asserted that in respect of Malaysian plywood the tolerance for thickness was plus or minus 10%. He agreed that he was saying that he would accept a 10% variation in thickness for plywood that was thicker than 6mm. When Mr Jasvinder was asked that whether it would surprise him to know that the Indian Standards allowed for only plus or minus 5% for thickness of more than 6mm, his reply was that he was not surprised because these were two different standards. Whilst he accepted that the Indian Standards allowed for 5% only, Mr Jasvinder believed that these standards did not refer to 'BBCC' quality at all. He then agreed with counsel that on the assumption that the Indian Standards referred to 'BBCC' quality, the Indian Standards would be higher than the Malaysian standards.

106 95. The witness was referred to paragraph 9 of his affidavit in which he had stated that plywood and blockboard of Indian origin are of a lower standard of quality than the JPIC or Malaysian/Indonesian standards. It was put to him

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that that was not correct if the link between the Indian 'AB' and 'BBCC' could be established. Mr Jasvinder's response was that when he spoke about quality he was speaking about general quality and not just the thickness tolerance. I then asked him what basis he had for making the assertion in his affidavit when he did not know anything about various standards and his reply was that the information was given by his supplier to explain the cheaper prices of Indian goods. He also confirmed that he had told Mr Ng that prices of the Indian goods were very much lower than Malaysian or Indonesian prices and as such he could not expect the same quality.

107 96. Counsel then went on to ask the witness various questions about the Indian Standards and whether the requirements laid down applied to Malaysian standards. In the course of his replies, Mr Jasvinder said that all or most Malaysian mills would follow the JPIC standard though just prior to that he had asserted that he was not familiar with the JPIC standard. He also said that he did not know whether Malaysian plywood would or would not meet the Indian Standards.

108 97. As far as the paint on the edges of the plywood was concerned, Mr Jasvinder said that it was not the practice of Malaysian suppliers to paint the edges of Malaysian plywood, but that when film face plywood ie plywood with film laminated on its face, is supplied the edges are always painted. The grade of such plywood could be either 'DBBCC' or 'utility', a lower grade.

109 98. As regards the defendants' letter to the plaintiffs on 4 September wherein Mr Daljit had stated that the defendants would be responsible for 'all quality defects', Mr Jasvinder explained that the term 'quality defects' could have meant defects which had not previously been shown to the defendants. He confirmed that a week later he had been to one of the warehouses and had been

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shown a few pieces of blockboard which had insect holes. At the same time Mr Tan tried to show him that the blockboard was uneven but his conclusion was that the unevenness was negligible in that he saw only a few pieces out of the more than 10,000 which had been supplied. In any case, the deviation in thickness he observed was may be of 0.5mm which he thought was within tolerance.

110 99. Mr Jasvinder was asked whether anything was resolved at the meeting of 13 September. His reply was that for a second time the plaintiffs seemed to have accepted the goods. When asked what he meant, he said that Mr Ng showed them a few pieces and pointed out the same defects but did not say anything about rejection or a discount. When asked why in that case Mr Ng had shown the defects, the reply was that probably Mr Ng wanted a discount but after Mr Banker's explanation he did not say anything. According to Mr Jasvinder, he could have been speaking in Hokkien or Malay to Mr Ng but Mr Ng and Mr Tan themselves spoke English all the time.

111 100. When the defendants received the plaintiffs' letter of 14 September proposing to buy the goods at US$190 per m or otherwise to return them, Mr Jasvinder said that he and his brother sat down and thought of a way of settling the problem. They decided that because they had been played out they would take back all the blockboard. They did not, however, tell the plaintiffs of this decision. According to Mr Jasvinder, it was only when he went to protest against the plaintiffs' letter of 16 September asserting a settlement, that Mr Tan told him that if the defendants took back all the Indian goods the plaintiffs would pay compensation. He confirmed in court that he had agreed to pay some of the charges indicated on the letter of 16 September as the defendants had no choice. He and his brother decided, in response to the plaintiffs' offer, that the defendants should salvage as much as possible and therefore would take

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whatever was offered and make a claim later. On 16 or 17 September they agreed to take the Indian goods back.

112 101. In relation to the defendants' letter of 17 September, Mr Jasvinder confirmed that it was sent to make the plaintiffs believe that the defendants would take back all the Indian goods although their intention was take back the blockboard only and leave the plaintiffs in possession of goods worth the US$200,000 that the plaintiffs had paid. If he had not sent this letter, the plaintiffs would not have released the blockboard. He also agreed that the defendants had subsequently taken the blockboard back and had also taken the compensation of US$10 by allowing it in the calculation in their claim. Later in his cross- examination, Mr Jasvinder confirmed that by the time the defendants and the plaintiffs came to an agreement, the prices of plywood had dropped very badly and the defendants had no intention of taking back the Indian plywood.

113 102. Mr Jasvinder was subjected to intensive cross-examination on the documents which the defendants had produced to establish their counterclaim for loss in regard to the blockboard which they had taken back. It was clear from the documents and his responses that the defendants had sold Indian blockboard as Malaysian blockboard and had also sold Indian blockboard as commercial plywood. They had also made a false declaration of origin in respect of Myanmar plywood which had been sold as Malaysian plywood. He explained that for lower quality markets, Indian blockboard could be passed off as Malaysian blockboard and that he had not sold blockboard as plywood but had described it as such in the documentation because his sales agent had wanted him to do so. In re-examination, he compounded matters by saying that it was necessary to describe the Indian blockboard as something else because the defendants had the goods in stock and he had to sell at the best possible prices

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to minimise the defendants' losses. He said that it was possible if the goods had been sold as what they actually were the sale price would have been lower.

114 103. In re-examination also, Mr Jasvinder was asked whether any agreement was made in respect of compensation for the additional goods. His reply was that originally he thought that the plaintiffs had agreed to compensation for all the goods lying in their store but later the plaintiffs informed the defendants that they would only pay for the contracted quality. Mr Jasvinder asserted that he had no choice but to agree to this because the plaintiffs were holding goods worth more than US$300,000 and after accepting the goods, they had turned around and said something different. He explained that the goods being held back were the Myanmar plywood and when I commented that those were with the defendants his response was that the price had fallen and that was why the defendants had insisted that the plaintiffs take the Myanmar plywood. I asked why in that case when the plaintiffs came to collect it the defendants had not given it all to them and sued for the balance of the price. Mr Jasvinder replied 'We could have but we did not want to be involved in legal proceedings'.

115 (vii) Mr Daljit Singh 104. Most of Mr Daljit's evidence was a repetition of his brother's and did not add very much to the defendants' case. He confirmed that most of the telephone conversations and negotiations between the plaintiffs and the defendants were conducted by his brother whereas he had conducted most of the negotiations with Sushil Enterprises. In relation to the part payment, however, there had been a conversation between Mr Ng and Mr Daljit in which Mr Ng had requested that the plaintiffs be allowed to pay the defendants the sum of US$200,000 first as otherwise they might exceed the limit of their bank credit facilities.

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116 105. In his affidavit Mr Daljit asserted his belief that the plaintiffs had reneged on their agreement to accept the Indian goods and the additional goods because prices for plywood and blockboard had started falling from July 1993 onwards. In connection with this assertion, he was asked whether the prices had fallen below the original contract prices. His response was that he could not recollect the prices but that some time towards the third week of July 1993 when the plaintiffs were taking delivery of the goods, China said that it was no longer buying plywood. As a result everyone in the trade became jittery and expected a collapse in prices. Mr Daljit confirmed that in relation to the 'Tradefast' shipment, the plaintiffs had made payment on 19 July. He was asked whether this payment was made on or after the Chinese declaration of intention and he replied that he was not sure about that. He agreed that the plaintiffs had made no complaint about the quality of the 'Tradefast' goods which were also of Indian origin and had made payment promptly.

117 106. As regards quality of the goods, Mr Daljit said that basically the Indian Standards are only intended for the higher grades of plywood and that there were no published standards for 'DBBCC' grade in India.

118 107. In respect of the subsequent sale of the Indian blockboard as Malaysian blockboard, Mr Daljit stated that if the Indian blockboard or plywood had come from a good and reputable manufacturer, it could pass as blockboard or plywood produced in Malaysia. He included Sushil Enterprises in the category of good and reputable manufacturers. He was asked whether he was aware that one of the defendants' invoices was for Indian blockboard being passed off as Malaysian blockboard. He said 'It may be or may not be. I don't know.' However, he accepted that would be the case if Mr Jasvinder confirmed it to him and when asked for his reaction to this was, he replied 'At that time we were very desperate. We had always maintained our reputation. Normally we

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tell the buyers we have goods of Indian origin. Sometimes the buyer requests us to declare them as of Malaysian origin.' On being further questioned, Mr Daljit said that it was possible that in order to minimise losses the defendants had not told their customers the truth of the origins of the goods sold.

119 Issues (i) Whether the Indian goods were of merchantable quality or corresponded with their description

120 108. The defendants by their contract ALK/SC/17/93 agreed to supply the plaintiffs with 'Commodity: commercial blockboard - Indian origin. Quality: MR DBBCC. Specification: 4'x8'x18mm'. By their contract ALK/CM/18/93, they agreed to supply 'Commodity: plywood - Indian origin. Quality: MR DBBCC. Specification: 4x8x12mm - 200M3 - US$417 and 4x8x18mm - 200M3 - US$410'. The parties accepted that both of these contracts were for the sale of goods by description. Accordingly, under s 13(1) of the English Sale of Goods Act 1979 ('the Act') which was then applicable, each of the contracts contained an implied condition that the goods supplied would correspond with their description.

121 Further, under s 14(2) of the Act there was an implied condition that the goods would be of merchantable quality which meant as explained in s 14(6) that the goods would be as fit for the purpose or purposes for which goods of that kind are commonly bought as it was reasonable to expect having regard to any description applied to them, the prices and all other relevant circumstances.

122 109. The first part of the description of the Indian goods was the size of the sheets. The blockboard sheets were to have the dimensions of 4 feet by 8 feet with a thickness of 18 millimetres. Mr Han testified that in respect of the six crates of blockboard that he measured, the thickness of each sheet varied

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from 17.5mm to 19.86mm ie there was a difference of between 0.43mm to 1.86mm from the specification. This was a variation in thickness of between 2.5% to 10%. Mr Jasvinder too testified that he had seen unevenness in a few sheets of blockboard though he dismissed this unevenness as being negligible in view of the number of sheets which he had seen and his own estimation that the deviation in thickness which he observed was only about 0.5mm.

123 110. Mr Chia, counsel for the plaintiffs, submitted that the defendants were bound to deliver blockboard of 18mm in thickness and not of about 18mm in thickness in the absence of any evidence of a definite margin by trade usage. He relied on the dictum of Lord Atkins in Arcos Limited v E.A. Ronaasen < 1933 > AC 470 at p 479 as follows; 'It was contended that in all commercial contracts the question was whether there was a substantial compliance with the contract: there always must be some margin: and it is for the tribunal of fact to determine whether the margin is exceeded or not. I cannot agree. If the written contract specifies conditions of weight, measurement and the like, those conditions must be complied with. A ton does not mean about a ton, or a yard about a yard. Still less when you descend to minute measurements does 1/2 inch mean about 1/2 inch. If the seller wants a margin he must and in my experience does stipulate for it. Of course by recognized trade usage particular figures may be given a different meaning, as in a baker's dozen; or there may be even incorporated a definite margin more or less: but there is no evidence of finding such a usage in the present case.'

124 111. In this case the plaintiffs' evidence is that by trade usage the margin is 5%. Mr Banker who relied on the Indian Standards also indicated that the margin is 5%. Mr Jasvinder and Mr Daljit, however, asserted that the margin is 10%. They were not able to substantiate this assertion since Mr Jasvinder was not familiar with any published standards and could only cite information from

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some unidentified supplier as being the source of his information. In any case, the defendants' position was that the plaintiffs were bound to accept goods of such quality as would be acceptable in India as commercial plywood/blockboard. As Mr Banker himself said that to qualify as such the deviation in thickness would have to be within the 5% margin, the defendants' attempt to put forward a different standard cannot be accepted.

125 112. Thus the trade margin established by the evidence was 5%. If I had found that no trade margin had been established I would hold that the defendants were bound to deliver 18mm blockboard, no more, no less. I am satisfied from the evidence that the blockboard which the defendants delivered had variations in thickness which exceeded the acceptable margin. I recognise that Mr Han carried out a sampling of a rather small portion of the goods. However, he did measure each sheet in six crates of blockboard chosen at random and since he found not some but all of these sheets to vary in thickness, it is in my opinion a fair inference that the rest or most of the rest of the blockboard sheets also varied in thickness beyond the acceptable margin. I therefore hold that the blockboard delivered did not correspond with the description of the blockboard contracted for.

126 113. The other part of the contractual description of the Indian goods was the specification 'Quality: MR DBBCC'. As would have been noted from the account of the testimony of the various witnesses, there was considerable confusion as to what requirements the goods had to meet in order to qualify as being of 'DBBCC' quality. The parties were, however, in agreement that plywood and blockboard of this quality is used in the manufacture of furniture and in interior decoration and is always covered by another material such as laminate or paint.

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127 114. In their defence, the defendants pleaded that the Indian goods conformed to Indian standards of quality and by this, they meant that the Indian goods would have been commercially acceptable in India although generally lower in quality than goods that met the JPIC standard or Malaysian/Indonesian standards. These assertions of a lower Indian standard were repeated by Mr Jasvinder in his evidence in chief. When he was cross-examined on it, however, it became clear that Mr Jasvinder was not familiar with the JPIC standard or the Indian Standards and that although he asserted familiarity with the Malaysian/Indonesian standards, he was not aware of the difference amongst the various standards. He also said that in lower quality markets, Indian blockboard could be passed off as Malaysian blockboard (which implies no difference in standards) and finally, that the basis for his assertion that the Indian Standards were lower than those of Malaysia/Indonesia was information supplied by Sushil Enterprises. Mr Banker himself, however, did not assert that his plywood was overall of a lower quality than Malaysian and Indonesian plywood though he did admit that the Indian sanding was not as good as that of the other two nations.

128 115. As indicated earlier, Mr Banker's evidence was that his plywood which met the requirements of grade 'MR AB' as specified by the Indian Standards was accepted internationally as 'MR DBBCC' grade. He confirmed that what would be commercially acceptable in India for this grade would be goods which met the following specifications: (i) no more than 5% variation in thickness, (ii) tolerance for 'squareness' was 0.2%, (iii) the surface of the boards had to be reasonably smooth and (iv) there should be no live insects in the boards. Mr Banker also confirmed that if the Indian goods had actually contained the defects which the plaintiffs complained of, they would not be fit for the purposes for which commercially acceptable plywood in India was

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usually sold. Given that all parties agreed on the uses of 'DBBCC' plywood and that these were the same uses to which Mr Banker's 'MR AB' grade plywood was put in India, it appears to me that there is no substantial difference in the Malaysian/ Indonesian standards for 'DBBCC' goods and the Indian Standard 'MR AB' produced by Mr Banker. In fact, as Mr Chia pointed out, the Indian Standards met the JPIC standard for grade 3 in at least three areas ie those relating to core void, overlapped core and uneven thickness of core, and finishing. In the result, I am satisfied that the defendants have been unable to establish their contention that they were entitled to deliver lower quality goods because the goods were of Indian origin. I find that under the contracts the defendants' obligation was to deliver goods that would be of 'DBBCC' quality in that they would be suitable for use in the manufacture of toys and furniture and in interior decoration.

129 116. As regards the defects themselves, I accept the evidence of the plaintiffs. There was independent evidence on the variation in thickness, the 'unsquareness' exceeding the tolerance, the presence of wood boring insects and the waviness of the surface of the sheets. This all came from Mr Han. Mr Jasvinder too testified that he had seen signs of insect attack in the blockboard and had been shown uneven sheets. In addition, Mr Chua confirmed that the plywood which he saw and bought from the plaintiffs had the defects which they had complained about right from the time that the goods were first delivered. Although the defendants sought to raise a doubt in submissions whether the plywood Mr Chua bought was the Indian plywood supplied by them, I consider that there is no real doubt about this. First, Mr Ng's evidence that he sold part of the Indian plywood to Mr Chua's company was not challenged in cross-examination and secondly, the plywood which Mr Chua bought had painted edges which was a feature that none of the parties had seen

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before this transaction and even Mr Banker confirmed that his plywood was only painted at the special request of a client. It is highly unlikely therefore that the plywood Mr Chua bought could have come from any source other than the defendants.

130 117. The plaintiffs were also consistent in their complaints. Although the complaints were not put in writing until 5 August, they were, as the defendants themselves confirmed, made orally from the time delivery of the Indian goods started. The plaintiffs and defendants had had a good relationship prior to this transaction and there was no suggestion that previously the defendants had been inclined to complain without cause. It is also worth noting again that the 'Kota Naga' and 'Tradefast' shipments were accepted without any complaint and payment was made promptly although documents were discrepant. Further, on the whole, I found Mr Tan and Mr Ng to be truthful witnesses and although there was some inconsistency in their evidence, I do not consider that such inconsistency affects the substantial truth of their accounts.

131 118. The defendants denied the existence of the defects. Their explanation of the plaintiffs' repeated complaints was that the plaintiffs were trying to get out of the contracts on any excuse because of the fall in the prices of plywood after mid July 1993. This explanation was, however, inconsistent with Mr Jasvinder's own evidence that at the time of the arrival of the Indian goods, the prices of plywood and blockboard had increased by about US$30 to US$35 per m from the time the contracts had been made and that that level had been maintained as at 19 July 1993. It is also clear from the charts which the defendants produced that although prices peaked in July, they remained at that level until August and thereafter began a slow decline. It was only in November 1993 that prices plunged drastically. In those circumstances, it seems to me highly unlikely that the plaintiffs' complaints were driven by falling prices. At

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the time the goods were first received, the plaintiffs could have sold them off at a profit and even thereafter when prices had fallen, they would not have made great losses if they had been able to sell the goods as 'DBBCC' quality. There were signs that prices were softening and in those circumstances, I agree with Mr Chia's submission that it did not make commercial sense for the plaintiffs to dally about calling for an inspection, procrastinating on whether to accept the goods or not and risking losing their profits as the market turned if the quality of the goods was what it was supposed to be.

132 119. The next sub-issue is whether the goods were unmerchantable. The evidence establishes that the plaintiffs were unable to sell the Indian plywood as 'DBBCC' quality. They had to sell part of the goods as utility grade to Mr Chua. I accept Mr Chua's evidence that he bought the Indian plywood for the purpose of on-sale to buyers who wanted lower quality plywood. Although he was not aware of any published standards to measure the quality of 'DBBCC' plywood, Mr Chua had long experience in the plywood business and from this experience was able to identify what features plywood needed to qualify as what the trade described as 'DBBCC' quality. I found his explanation of such features to be coherent and rational. I also accept his evidence that persons in the trade would not buy plywood with painted edges if they needed 'DBBCC' plywood.

133 120. The plaintiffs also showed the Indian plywood to other customers who did not find it acceptable as 'DBBCC' plywood. Although this evidence emerged more clearly from cross- examination than from their affidavits of evidence in chief, I do not think that this means it was not true. It was in fact against the plaintiffs' interests to admit that they had shown the Indian goods to prospective buyers with the intention of selling them while they were still disputing the transaction with the defendants. Thus, this admission is probably

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the truth. Finally, Mr Banker agreed that goods with the defects mentioned would not be fit for the usual uses of 'DBBCC' plywood/blockboard.

134 121. In my opinion, there is sufficient evidence to justify a finding that the Indian goods did not comply with their description as being of 'DBBCC' quality and that they were not fit for the purposes for which the plywood and blockboard of that quality are generally purchased.

135 (ii) Did the plaintiffs lose their right to reject the Indian goods? 122. Theoretically the finding that I have made above would entitle the plaintiffs to reject the Indian goods. The defendants argued very strongly, however, that the plaintiffs by their conduct lost the right to reject the goods and should have been limited to a claim in damages. Having considered the evidence as a whole, I must agree with the defendants.

136 123. First of all, the Indian goods had all been received by the plaintiffs by 21 July 1993. It is not disputed that a buyer who wishes to exercise his right to reject goods which are not in accordance with the contract must exercise such right within a reasonable time after receipt. This means after he has had a reasonable opportunity of inspecting the goods and assessing whether they comply with the contract. In this case, as soon as delivery started the plaintiffs inspected the goods and even before all the goods had been delivered, they had started complaining about them. The first joint inspection was held on 22 July and on that date although Mr Ng says he told the defendants to take back the goods, he did not unequivocally reject them since at the same time he asked whether the defendants would give him a lower price so that he could sell them as lower grade plywood and blockboard.

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137 124. The only inference that I can draw is that the plaintiffs were still willing to buy the Indian goods but they did not want to pay 'DBBCC' quality prices. This attitude was confirmed the next day when Mr Ng signed the delivery note and again asked about the price of the goods. Thereafter, the plaintiffs were showing the goods to prospective purchasers and trying to ascertain whether they were acceptable and at what price. This was another indication that they had not totally rejected the goods. The plaintiffs were trying to keep their options open. In doing this Mr Ng probably led the defendants to believe that they were willing to accept the goods and were only bargaining about the price. It is significant that the plaintiffs did not repudiate the assertion in the defendants' letter of 30 July that Mr Ng had twice indicated his willingness to accept the Indian goods.

138 125. The part payment of US$200,000 that the plaintiffs made on 23 August more than a month after the goods had been delivered is a further confirmation of their acceptance of them. What the plaintiffs' actions indicate to me is their willingness to buy the goods at a reduced price. I do not accept Mr Tan's evidence that he orally repudiated the goods several times as I think that if he had done so he would have made reference to such repudiation in one of the numerous letters he sent out before 3 September. It was only when the defendants did not respond on the price adjustment but kept on nagging for payment of the balance due under their invoice that the plaintiffs decided that they might consider rejecting the goods. Even then they did not reject the goods outright. As their letter of 3 September makes clear, they were offering the defendants three alternative ways of resolving the dispute and sending back the goods was only one of these. It was only on 10 September that they expressly asked the defendants to take the goods back. In my judgment, the plaintiffs had by then lost their right of rejection.

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139 126. The next question is whether this right of rejection was or could have been revived by the actions of the defendants. On 8 September the defendants told the plaintiffs that the latter were not allowed to sell any of the defendants' blockboard/plywood until they had the defendants' agreement. Subsequently on 11 September, the defendants said that they were willing to go through all the goods with the plaintiffs and take back all the defective pieces. In court, Mr Jasvinder confirmed that as at 11 September the defendants were prepared to take back all defective pieces of plywood and blockboard.

140 127. Neither counsel offered me much guidance on this issue. I was not pointed to any authority which discussed whether a right of rejection once lost could be revived. My own inclination is that, in the interests of certainty, once the right is lost it cannot be revived by incidental statements from the party who would otherwise be expected to take the goods back and can only be revived by an express agreement to that effect or by circumstances giving rise to an estoppel against denying the loss of the right of rejection. Neither of those exceptions apply in the present case. No doubt in their letter of 8 September the defendants responded to the plaintiffs' threats of 3 and 7 September to sell the goods by telling them not to do so without consent but this cannot be construed as an agreement to take the goods back since in that very same letter, the defendants twice urged the plaintiffs to pay the balance due for the Indian goods. Obviously, they did not want to take the goods back at that stage and were of the view that the balance was due and owing to them. Mr Jasvinder's statement was also not an unqualified agreement to take the goods back since he was only prepared to take back defective pieces and the defendants' stand all along had been that very few pieces were defective bearing in mind that they thought that the plaintiffs were not entitled to goods which would meet the Malaysian/Indonesian 'DBBCC' standard. It was therefore a very limited

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concession that the defendants were making and could not have revived the right of rejection.

141 (iii) Did the plaintiffs agree to buy the additional goods? 128. I accept the plaintiffs' evidence that they did not agree to buy the additional goods but were simply providing storage for them as a favour to the defendants. The defendants' contention that Mr Ng agreed to buy the goods at the same prices as the contracted goods is not supported either by documents or the defendants' subsequent conduct. The defendants never issued any invoice for the additional goods and Mr Jasvinder's explanation that he did not do so because of the long established and amicable relationship between the parties is very weak since issuing a document which indicated the exact amount delivered and the sum payable would be normal business practice for a seller who wanted payment for his goods and be expected by the buyer who would also want the document for the purpose of his own records. Throughout the subsequent correspondence when the defendants were insisting on payment for their goods, no mention was made at all of the amount payable for the additional goods. After they received the part-payment of US$200,000, the defendants kept asking for the balance due of US$99,686.33. If they had considered themselves entitled to payment for the additional goods, they would surely have added that sum to the balance due for the contracted goods. I find their omission in this respect to be very significant.

142 (iv) Was there a compromise agreement and if so, what were its terms? 129. Before I deal with this issue, I would like to make some observations on the credibility of the two directors of the defendants. I must say that I found them to be unsatisfactory witnesses in several respects. It was clear from Mr Jasvinder's evidence that he had in the course of his business falsified documents and mis-described goods sold by him. He had falsely declared that goods of Indian origin were of Malaysian or Burmese origin and he had sold

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blockboard as plywood. His excuse for the mis-description of blockboard as plywood was that he had been asked to do this by his foreign agent. The same agent also asked him to invoice goods which had measurements of 1 7/8 by 1 7/8 as being goods having the measurements of 1 3/4 by 1 3/4 . When questioned as to whether he had done as requested, Mr Jasvinder's reply was an evasive 'can't remember'.

143 130. Mr Jasvinder also acknowledged that he had been dishonest in his dealings with the plaintiffs in that he had agreed with Mr Tan that he would take back all the Indian goods in return for the agreed compensation when all along the defendants' firm intention was to retrieve the blockboard alone. He admitted that his letter of 17 September was sent to deceive the plaintiffs into believing that the defendants would take back all the Indian goods as he knew that if he did not commit the defendants by this letter, the plaintiffs would not believe them at all and would not release the blockboard. It is interesting that in that same letter Mr Jasvinder said that he would like the plaintiffs to crate the blockboard and plywood for the defendants and asked them to advise their charges. In court it was pointed out that the defendants had claimed crating charges from the plaintiffs and Mr Jasvinder was asked whether he agreed that the defendants were not entitled to these charges. His response was to disagree and to say that the defendants had to crate the goods because the buyers would not accept them loose and he did not know why the plaintiffs had taken loose goods. This answer was in complete contrast to his earlier acceptance of the defendants' responsibility to pay the crating charges which in itself was a recognition that the plaintiffs had had no choice but to take the goods loose as they had been shipped that way in the containers from India.

144 131. Overall, the impression that I had of Mr Jasvinder was that he would do whatever was necessary to give the defendants an advantage and, if

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possible, gain them some extra money. Mr Daljit appeared to be of a similar character. When he was asked whether he knew about Indian origin blockboard being passed off as coming from Malaysia, his answer was it may or may not have been done, he did not know. Subsequently when I asked what his reaction would be if he was told by Mr Jasvinder that this had been done, his answer was that at that time the plaintiffs were very desperate. He then conceded that it was possible that in order to minimise losses, the defendants had not told their buyers the truth.

145 132. The plaintiffs' stand was that the compromise agreement was reached on 15 September at a meeting attended by the defendants' directors and Mr Banker. The defendants denied such meeting ever took place. I do not accept the defendants' denial. First, Mr Jasvinder admitted that after receiving the plaintiffs' letter of 14 September by which they offered to buy the goods at US$193 per m or return them, he and his brother had decided to try and salvage what they could by taking back all of the blockboard.

146 The settlement meeting is alleged by the plaintiffs to have taken place on 15 September, the day after that decision was made. It is consistent with that decision being made that the defendants should have gone the next day to see the plaintiffs to discuss the terms on which they would take back the goods. I should add here that I do not find Mr Banker to have been a totally reliable witness. The account which he gave in his affidavit of the 13 September meeting and his subsequent court testimony on that meeting were at variance in several respects. Also, he did not specify the time he left Singapore on 15 September and therefore it was not established that he could not have attended that later meeting.

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147 133. Secondly, the day after the settlement meeting the plaintiffs sent the defendants a letter recording it and the agreement. The defendants who had sent the plaintiffs reams of correspondence previously setting out their stand did not respond by letter to deny that there was such a meeting or such an agreement. Instead, according to Mr Jasvinder, he went on his own to see Mr Tan in order to protest verbally at the sending of an untrue letter. He also said, however, that although his original intention was to protest when he in fact met Mr Tan he eventually agreed to take back all the goods and to pay the plaintiffs' miscellaneous charges. I find it very difficult to believe that having gone there to berate the plaintiffs for making up a story, the defendants would end up by agreeing on a settlement on the very terms which the plaintiffs had set out in their letter. I accept Mr Tan's evidence that Mr Jasvinder's visit was merely for the purpose of working out which of the charges put forward by the plaintiffs were acceptable to the defendants and which were not.

148 134. I therefore find that, as of 16 September, the defendants had agreed to take back the Indian goods on payment of the US$10 per m and had also agreed to pay the plaintiffs certain miscellaneous charges as discussed between Mr Tan and Mr Jasvinder that day. The subsequent correspondence between the parties resulted mainly from the defendants trying to impose extra charges on the plaintiffs and trying to get them to pay compensation for the additional goods. There was no basis on which the latter claim could be made since the plaintiffs had not agreed to buy those goods. The subsequent disagreements cannot change the fact that the compromise agreement had been concluded and the defendants were therefore obliged to take back all the Indian goods and refund the payment made by the plaintiffs less the agreed compensation.

149 135. There was a submission made on behalf of the defendants that the terms of the compromise were uncertain. I do not accept that submission. The

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main terms were agreed and although there were later difficulties regarding the mechanics of refund and collection of the goods, these cannot detract from the certainty of the original agreement. It is also significant that the defendants themselves acted as if the compromise was in force in that they not only actually took back the blockboard but also, when it came to calculating their counterclaim, took into account the agreed compensation. Obviously in so doing, they had no doubts as to the validity of the compromise.

150 136. In their submissions, the defendants contended that they should not be bound by the compromise agreement because the plaintiffs had applied such pressure on them as to amount to economic duress. As a result the compromise agreement would be voidable at law. They submitted that the evidence showed that economic duress was brought to bear by the plaintiffs in that first, the defendants made protests over the loss being incurred by them at the time the compromise was reached. Secondly, at that time the defendants did not really have an alternative cause of action open to them. As Mr Daljit testified, in their 35 years of existence prior to that time, the defendants had not ever been involved in legal proceedings and therefore recourse to the court was not a viable option. Furthermore, by the time the matter would have been resolved by due process of law, had the defendants sought to rely on their legal rights, they would have gone out of business. In this respect, they relied on Mr Daljit's evidence that they were in a desperate situation.

151 Thirdly, the defendants did not seek any independent advice. Fourthly, the plaintiffs had taken coercive action by threatening to dispose of the Indian goods at half the contract price, by refusing to pay the defendants the balance of the price, and by threatening to sue the defendants for the plaintiffs' losses. The defendants were desperate since the working capital of their business is tied up in these goods.

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152 137. I cannot accept this submission of economic duress. In the first place, it was not pleaded at all. Neither was it raised during the hearing until the time of submission. Instead the defendants' pleaded defence was that the parties were trying to reach an agreement as to the terms of the intended compromise which ultimately failed to materialise as they could not agree. As Mr Chia submitted, the plaintiffs therefore presented their case on the basis that the issue to be proved was that there was a concluded compromise and if the defendants are allowed now to rely on this line of defence, the plaintiffs would be severely prejudiced.

153 138. During the cross-examination of Mr Jasvinder, it emerged that he had in fact agreed on the terms of the compromise with the plaintiffs. The plaintiffs stopped there and made no attempt to adduce any evidence on the compromise nor discredit the defendants' version of the circumstances and motivation behind their agreement to it as these details were irrelevant in the context of the issues as framed by the defendants at that time.

154 If the plaintiffs had known that the defendants were going to rely on assertions of coercive actions and desperate circumstances they could have investigated the defendants' financial position further and would have been better able to prepare for the case which the defendants ultimately put forward.

155 139. I agree that allegations of duress must be pleaded and properly particularised before a party can rely on them. The defendants did not apply at the trial for leave to amend their pleadings and must therefore be bound by them. Further, I found the submissions made on their behalf unconvincing. It did not appear to me logical that simply because a party had never been involved in litigation previously he would not consider litigation as a recourse at all when another party was in breach of contract. Further, the plaintiffs' statement that

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they would reject the goods or alternatively sell them and look to the defendants to compensate their loss could not in my view be regarded as a threat. It was a legitimate form of commercial pressure. If the defendants were so sure that they were in the right, having got US$200,000 out of the plaintiffs already, they could have easily reverted by stating that the plaintiffs could do anything they liked but they themselves would sue for the balance of the price. Finally, no real evidence was produced by the defendants of their desperate financial situation at that time. I am expected to accept that they were in such circumstances because Mr Daljit said so. As I have said earlier in this judgment, Mr Daljit was not a satisfactory witness and I cannot make a finding as to the defendants' financial position on the basis of his assertions alone.

156 140. In the result, I find that the defendants were in breach of the compromise agreement in that they failed to take back the Indian plywood as they were obliged to and to pay the miscellaneous charges agreed on and refund the amount paid in respect of the Indian goods less the compensation.

157 (v) Was the Myanmar plywood properly rejected? 141. By contract ALK/SC/20/93 which the plaintiffs entered into with the defendants for the purchase of the Myanmar plywood, the plaintiffs were obliged to pay cash for the goods against the defendants' delivery order. As the plaintiffs admitted, this meant that when the goods arrived in Singapore the defendants would invoice them, the plaintiffs would pay cash for the goods and in exchange would obtain a delivery order which would allow them to clear the goods from the premises of the port.

158 142. What actually happened is that when the goods arrived around 30 August 1993, the dispute concerning the Indian goods was still unresolved and although the defendants issued their invoice for the Myanmar plywood on the

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same day and reminded the plaintiffs three days later about payment, the plaintiffs failed to pay for it. The Myanmar plywood therefore remained in the port until the defendants, who had to pay the port charges, finally cleared it and took it to their own yard for storage. At this stage, the plaintiffs were clearly in breach of their contract for the purchase of the Myanmar plywood. This was a totally separate matter from the Indian goods and there was no basis for them to refuse to take delivery of the Myanmar plywood because of the defects that they had found in the Indian goods.

159 143. Matters changed after the compromise agreement was reached. At that stage, since they had agreed to take back the Indian goods, the defendants were holding about US$200,000 of the plaintiffs' monies in their hands and this was more than sufficient to cover the US$93,908.75 which was owing to them in respect of the Myanmar plywood. The plaintiffs could, therefore, have taken immediate delivery of these goods without any further outlay if they had been prepared for the price to be set off against their monies in the defendants' hands. However, when the defendants sent them a letter on 22 September in which they deducted the cost of Myanmar plywood from the funds they held, the plaintiffs responded by saying that the Myanmar plywood was a separate issue and should not be confused with the settlement.

160 At that stage, they wanted the defendants to refund their US$200,000 first before they would make payment for and collect the Myanmar plywood. In fact there was even some suggestion in the plaintiffs' letters that they had not made any commitment in respect of the latter goods.

161 144. When Mr Tan came to court, however, he said that the arrangement reached sometime in September or October 1993 was that the defendants would take back the Indian goods and the defendants would refund the difference

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between the money paid by the plaintiffs and the price of the Myanmar plywood. This assertion of an agreement in September or October is not supported by the documents but the plaintiffs' letter of 19 November indicates that by then they were willing to off-set the price of the Myanmar plywood against the money owing to them. They asked the defendants to release the goods to them on 22 November and wanted the defendants' confirmation of this otherwise they would treat it as cancelled.

162 145. Mr Tan's evidence was that Mr Yeo from the defendants' office had contacted him and told him that the plaintiffs could collect all the goods. I accept this. The defendants did not call Mr Yeo to testify as to exactly what he told Mr Tan nor did they explain to the court why he could be called. There was thus no corroboration of Mr Jasvinder's claim in his affidavit that he had instructed Mr Yeo to inform the plaintiffs that they could only collect Myanmar plywood up to the value of the credit balance that they had with the defendants and that Mr Yeo had in fact told the plaintiffs this. In fact, an adverse inference has to be drawn against the defendants in this respect since they chose not to produce Mr Yeo. Further, in court, Mr Jasvinder contradicted his affidavit evidence by saying that Mr Yeo had not been told of the defendants' plan not to collect the Indian plywood so that the total value of goods in the plaintiffs' possession would add up to US$200,000. I find Mr Jasvinder's evidence to be of doubtful veracity and accept that the plaintiffs were told they could collect all the Myanmar plywood. If they had not been told this, I doubt that they would have sent their transport contractor to the defendants' premises at all much less with a sufficient number of lorries to collect all the goods.

163 146. The defendants, accordingly, were in breach of contract when they released only 50 crates of the goods to the plaintiffs. The question is whether the plaintiffs were entitled to and did in fact repudiate the goods on the basis of

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a partial delivery. As regards legal entitlement, under s 31 of the Act it is clear that unless otherwise agreed, the buyer of goods is not bound to accept delivery by instalments and, by s 30(1) where the seller delivers to the buyer a quantity of the goods which is less than he contracted to sell, the buyer may reject them. The defendants did not challenge these legal principles.

164 147. The more difficult issue is whether Mr Tan's letter of 22 November constituted a repudiation of the goods. He said that since the defendants had refused to release the goods the plaintiffs believed that they would settle the goods themselves and 'thus, we wish to state that with effect from 23/11/93 we treat this Myanmar plywood matter is (sic) duly void'. In court Mr Tan admitted that this letter did not state explicitly that the plaintiffs were rejecting all the Myanmar plywood but that by his terminology he was making it clear that the contract was treated as cancelled and as far as he was concerned, cancelling and rejecting were almost the same thing. Mr Jasvinder confirmed that when he received that letter he understood that because of the partial delivery, the plaintiffs wanted to cancel the contract and he also agreed that by cancelling the contract, the plaintiffs were rejecting his goods. This was in cross- examination. In re-examination, he refined this answer by stating that when he had said that the plaintiffs had rejected his goods he meant that they had rejected the 56 crates which were lying in the defendants' store because they had not been released to the plaintiffs.

165 148. In my judgment, whilst the words chosen by Mr Tan were not elegant nor the most appropriate, the intention behind them was clear. The plaintiffs wanted nothing more to do with the Myanmar contract nor the goods because once again the defendants had gone back on their promise. Mr Jasvinder clearly understood what they meant as he admitted in cross-examination. His answer in re- examination was merely an attempt at damage control and could

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not be taken at face value. I therefore hold that the plaintiffs had validly exercised their right of rejection of the goods on 22 November.

166 149. There is one other issue relating to the Myanmar plywood. I have found that the plaintiffs were in breach of contract in not paying for and collecting the goods upon their arrival and, after the settlement agreement, in not agreeing to set-off their price against the monies in the plaintiffs' hands until 19 November. During this period, the defendants incurred transport and storage charges for the Myanmar plywood. The plaintiffs must bear these costs to the extent proved.

167 (vi) What damages are the plaintiffs entitled to recover? (a) In respect of the contracts for the Indian goods 150. In December 1993, the plaintiffs through their solicitors gave notice to the defendants to take back the Indian plywood as well as the 50 crates of Myanmar plywood. The defendants did not do so and on 5 April 1994, by a further letter from their solicitors, the plaintiffs gave the defendants notice that if they did not take back all the goods within the following seven days the plaintiffs would dispose of them at the prevailing market prices.

168 151. Subsequently, on various dates between 26 April and 24 June 1994, the plaintiffs managed to sell a total of 6,022 sheets or 322.6739 m of the Indian plywood at various prices. They received a total of US$80,880.70. The average price of the goods sold was US$250.65 per m . Using this price the plaintiffs made a calculation of the value of the total quantity of Indian plywood which they had received (ie 352.5722 m including the additional goods) at the end of that period. That worked out to US$88,372.22. The plaintiffs therefore calculated that they were entitled to the return of the US$200,000 they had paid to the defendants less US$88,372.22 which meant US$111,627.77.

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169 152. The defendants, on the other hand, submitted that the Indian plywood should be valued using the unit price of the first sale made by the plaintiffs in April 1994. This was approximately US$300 per m . Their justification for this was that the plywood ought to have been disposed of in mitigation much earlier than between April to June 1994. It appeared from the evidence, however, that in April 1994 the resale prices were no lower than those available in December 1993 when the plaintiffs gave the defendants the first ultimatum regarding the collection of the goods. The graph marked PSB70 which the parties accepted as evidence of price movements from January 1993 to May 1994 shows that in April and May 1994 prices were higher than they had been in December 1993. The other graph used in the case, marked PSB71A, shows that June 1994 prices for Malaysian plywood were also higher than the December 1993 prices. Thus it does not appear that the defendants had suffered any prejudice by reason of the Indian plywood not being sold before April 1994.

170 153. In my judgment, the plaintiffs are entitled to set-off the actual sale prices they received for the Indian plywood rather than notional prices based on their first sale as it could not reasonably be expected that they would be able to sell all the Indian plywood at the same time and at the same price. A period of two months for disposal of most of the Indian plywood is a reasonable one. I also think that the way in which the plaintiffs calculated the value of the Indian plywood which they had not sold at the end of June 1994 is reasonable. I therefore accept that the total value to be ascribed to the Indian plywood for the purposes of this calculation is US$88,372.22. In my opinion, however, in calculating how much should be refunded of the US$200,000, the plaintiffs have also to take into account the compensation which they had agreed to pay for both the blockboard and the Indian plywood. According to the plaintiffs' calculation in their letter of 23 September 1993 the total amount due as

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compensation was US$7,555.12 being US$5,036.75 for the blockboard and US$2,518.37 for the plywood. The fact that the defendants have not mentioned this in their counterclaim is irrelevant since the plaintiffs are relying on the compromise agreement to justify their entitlement to the return of the US$200,000 and therefore cannot recover more than they could have if the compromise had been strictly adhered to.

171 154. In my judgment, therefore, the amount which the defendants should pay the plaintiffs in respect of the Indian plywood is US$200,000 - US$88,372.22 - US$7,555.12 = US$104,072.76. Also, of course, the defendants have to pay the plaintiffs the sum of $23,138 being the miscellaneous charges which they had accepted under the compromise agreement.

172 155. The plaintiffs also claimed storage charges in respect of the Indian plywood at $5 per crate from October to December 1993 and at $20 per crate from January to April 1994. The $5 per crate rate was obtained from the defendants' letter of 17 September when they agreed that if they were unable to remove the Indian goods from the plaintiffs' warehouse by the end of September, the plaintiffs could charge them rent at that rate. In December 1993, the plaintiffs' solicitors' letter stated that whilst the goods remained in the plaintiffs' possession they would be claiming storage charges of $5 per crate up to 31 December 1993 and at the rate of $20 per crate from 1 January 1994. The defendants never agreed to the latter rate and the plaintiffs did not adduce any evidence of how they calculated it.

173 As the claim for storage charges is essentially a claim for special damages, the plaintiffs have to show either that the rate was agreed or that it was a commercial rate that they could have obtained had the defendants' goods not been occupying the space.

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174 The plaintiffs did not do so. In my judgment, therefore, they are only entitled to claim the rate of $5 per crate for 188 crates of Indian plywood from October 1993 to April 1994. That totals $6,580.

175 (b) In respect of the Myanmar plywood 156. The defendants should have taken back the Myanmar plywood in December 1993. They did not do so. The plaintiffs gave them a final ultimatum in April 1994. The defendants' response on 8 April 1994 was that the goods belonged to the plaintiffs and that the latter were free to deal with them as they chose. In the event, the plaintiffs kept the Myanmar plywood and in court they asked for a declaration that they were entitled to reject the goods or to dispose of them and account to the defendants for the net proceeds of sale. In addition, they claimed storage charges for the goods to the date of trial.

176 157. The defendants' submission was that the plaintiffs should have mitigated their damages being the on-going storage charges by selling the Myanmar plywood after it became quite clear in April 1994 that the defendants wanted nothing further to do with it. They say that the damages to which the plaintiffs are entitled would be the difference between the store rent up to that date and the prevailing market price of the 50 crates of the goods which the plaintiffs then had. If the store rent exceeded the market price of the goods, then the defendants would have to pay the plaintiffs the difference. On the other hand if the market price of the goods exceeded the store rent then it would be the plaintiffs who would have to account to the defendants for the difference.

177 158. I accept the first part of the defendants' submission. I agree that the plaintiffs ought to have mitigated their loss by selling the goods after it became clear in April 1994 that the defendants had totally repudiated them. They should not have kept the goods in their store room on an indefinite basis. Going on the

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time that it took the plaintiffs to thereafter dispose of the Indian plywood, I consider that they could have sold all or most of the Myanmar plywood by, at the latest, the end of July 1994. Any store rent that they incurred subsequently cannot be charged to the defendants. As for the rate of the storage charge, I think that $5 per crate per month is reasonable on the basis of the evidence as referred to earlier. Accordingly, I award the plaintiffs as the storage charges incurred by them for the 50 crates of Myanmar plywood, the sum of $2,000 (ie 50 crates x $5 x 8 months).

178 159. I do not, however, agree with the second part of the defendants' submission ie that the goods should be valued at the value they had in April 1994 and the difference between that value and the storage charges paid to them. The plaintiffs were under no obligation to sell the goods for the account of the defendants. They were entitled to keep the goods at their own expense until the defendants took them back. Now that the case has ended and it is clear that their repudiation of the goods was valid, since the goods are still in existence, the defendants should take them back and dispose of them themselves.

179 Conclusion 160. For the reasons that I have given above, the defendants' counterclaim has no substance except in respect of the storage and transportation charges that they incurred for the Myanmar plywood between September and November 1993. The defendants claimed $475 for their transport charges from the port to their store, $1,051.15 being the amount they had to pay the Port of Singapore Authority, $106 as loading and unloading charges and store rent from 7 September 1993 to 22 November 1993 at $5 per crate per month which for 106 crates comes up to $1,590.

180 161. The plaintiffs submitted that there was no documentary or affidavit evidence of the claims in respect of the transport and port charges and as regards

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the store rent, they did not agree with the amount claimed nor the period of the claim. The plaintiffs' objections in relation to the transport and port charges have force but as far as the store rent is concerned, I think that the plaintiffs have to pay the defendants what they themselves charged. I therefore award the defendants $1,590 for the storage charges incurred for the Myanmar plywood between September and November 1993.

181 162. In the result, there will be judgment for the plaintiffs in the following amounts:

(a) US$104,072.76;

(b) $23,138;

(c) $6,580;

(d) $410 (being the difference between the $2,000 storage charges due to the plaintiffs for the Myanmar plywood and the $1,590 which they have to pay to the defendants for their storage charges).

182 I also award the plaintiffs interest on items (a) and (b) at the rate of 8% per annum from the date of the writ of summons to date of judgment and on items (c) and (d) at the same rate from May and July 1994 respectively to the date of judgment. I dismiss the counterclaim and order that the defendants shall pay the plaintiffs' costs of the action and the counterclaim.

183 163. Finally, in respect of the Myanmar plywood I order that the defendants be at liberty to take redelivery of the same at their own expense within 14 days of this judgment. If they do not do so, the plaintiffs shall be entitled to sell the goods at whatever price they can obtain for it and to refund the proceeds less store rent at the rate of $5 per crate per month starting from 14 days hereafter up to the date(s) of sale to the defendants without interest.

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184 JUDITH PRAKASH

JUDGE

SINGAPORE

Date: 22 October 1996

Judith Prakash J

Joseph Chia (Joseph Chia & Co) for the plaintiffs
Eric Low with Wang Tiak Kweng (Khattar Wong & Partners) for the defendants

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