

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 88

Adm in Rem No 76 of 1993

Between

Kwong Soon Engineering
Company Private Limited

... Plaintiff

And

The owners of and/or other
persons interested in the ship
or vessel "Rainbow Glory"

... Defendant

GROUND OF DECISION

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**Kwong Soon Engineering Company Private Limited v The
owners of and/or other persons interested in the ship or vessel
"Rainbow Glory"**

[1996] SGHC 88

Adm in Rem No 76 of 1993
Chao Hick Tin J
27 April 1996

1

Judgment:

2 JUDGMENT

3 The plaintiffs are shiprepairers. By this action the
plaintiffs claim the sum of \$769,032 being the outstanding amount
due in respect of works and repairs carried out on and material
supplied to the defendants vessel Rainbow Glory during the period
from October 1992 to December 1992. The works done and material

supplied were pursuant to requests of the defendants and they fall in three categories (i) fabrication and installation of two new hatchcovers (ii) other general repair works (iii) rigging posts works. There is a further claim for works for cargo cages which is not disputed by the defendants.

4 At the commencement of the trial, the parties agreed that the court need at this stage only determine certain questions of liability, leaving the question of damages to be assessed later, if necessary.

5 The defendants bought the vessel from the previous owners in July 1992. The vessel was then about 22 years old. On purchase, the defendants decided that some works should be carried out on the vessel, among which was the construction of new hatchcovers for the two holds on the vessel.

6 It is not in dispute that the works were carried out. But a number of issues arose and they are the subject matter of this action. The main points raised by the defence are these. First, the contract for the fabrication of the hatchcovers is a lump sum contract and the plaintiffs are not entitled to ask for more. Second, the construction of the hatchcover pontoons was not carried out in accordance with the design which the defendants had approved and expenses would have to be incurred to put that right. Third, the plaintiffs did not complete the hatchcover job within the time stipulated in the contract, by 15th October 1992, giving rise to loss of hire of the vessel and other consequential damages. Accordingly, the defendants counterclaim for their losses and expenses.

7 **Facts**

8 On 9 September 1992, pursuant to a request of the defendants agents, Jesselton Shipping Pte Ltd, the plaintiffs submitted a quotation for the fabrication of two new hatchcovers for the vessel. That quotation was based on quantity of material supplied and time-rates. The next day plaintiffs gave a quotation for a lump sum of \$220,000 for the job ending with the statement that general services are charged as per previous quotation.

9 Following a meeting on 14 September 1992 the plaintiffs presented a revised quotation to the defendants dated 15 September 1992 (AB45-46), the relevant parts of which read as follows:- Reference is made to our quotation fax Qte/166/92 and Qte/166A/92 dated 9.9.92 & 10.9.92 respectively and our subsequent meeting in your office on 14.9.92 on subject matter.

10 We are pleased to revise our price based upon the following specifications for your kind consideration.

11 Scope of Work

12 1. To fabricate and install new water- tight hatchcover pontoons for No 1 and No 2 cargo holds - sizes (specified) ...

13 Mild steel ship plates of 9.5 mm thick to be used ... detailed drawing will be submitted upon acceptance of order ...

14 On site measurement and calculation of weight to be carried prior to commencement of work ...

15 2. To renew the entire cappings on hatch coamings for No 1 and 2 cargo holds ...

16 3. To renew thirty-five pieces of hatch coaming ...

17 4. To fabricate and install eighteen pieces I beams stanchions

18 Lump sum price for items (1) to (4): \$240,000

19 Notes: a. Mooring/unmooring of vessel upon arrival and departure is charged at S\$150.00 per move.

20 b. Tugs (below 150HP) services is charged at S\$150.00 per tug per hour or part thereof.

21 c. Ships derrick will assist the installation of new pontoons, stanchions and cappings.

22 d. Additional strengthening of hatch coamings and main deck is excluded.

23 e. Kwong Soon Engrg will not be responsible for ship's stability after modification work.

24 Duration: Three weeks for pre-fabrication works from date of order. One week for installation of pontoon/stanchions and renewal of cappings.

25 It seems to me that the word pre-fabrication in the duration clause above must have been a mistake, probably a typographical

error. It should be fabrication . If it were otherwise, it would mean that no period was provided for fabrication. Furthermore, it is not clear what pre-fabrication works are.

26 In a supplementary note (AB46A) signed by both parties at the time, the following requirements, inter alia, were recorded:-

27 Weight of each pontoon must not exceed 4.5 tons each. Each pontoon to be of six feet width.

28 Each pontoon must be capable of taking the weight of two tiers of twenty footer containers of 30 tonnes each.

29 Contractor to produce full drawings by qualified personnel; such drawings must fulfill Classification Society s requirements.

30 Hatchcovers are to be hose-tested for complete watertightness.

31 It is quite clear to me that this revised quotation of 15 September 1992 (as amplified by the supplementary note) stands on

its own and is distinct and separate from the two previous quotations referred to. This revised quotation was accepted by the defendants on 17 September 1992. Thereafter the plaintiffs engaged a consultant, one Mr Banerjee of GB Marine Pte Ltd, to design the two hatch covers.

32 On 6 October 1992 Banerjee forwarded a drawing to Jesselton, the defendants agent, for approval. The pontoons for the hatchcovers were to be of a male/female configuration. There is a dispute as to whether between that date and 17 October 1992 there was another meeting between Banerjee and Alan Eng, the Operations Director of Jesselton, where they discussed and agreed to revise the design. However, on 17 October 1992 a meeting did take place though again what were discussed and agreed upon were in dispute.

33 No work order, as contemplated by the contract, was issued by

Jesselton in respect of the hatchcover job. The vessel arrived at the yard of the plaintiffs on 24 October 1992. On the evidence it would appear that fabrication of the pontoons commenced shortly before 24 October 1992.

34 It is common ground that from 24 October 1992 Jesselton also gave additional repair works to be carried out by the plaintiffs. However, the defendants contended that these additional works were given to the plaintiffs in order to make use of the time while the vessel was idly waiting for the fabrication of the pontoons to complete. The defendants alleged that those additional works did not impede the hatchcover job as the additional works were carried out on board the vessel while the fabrication of the pontoons was carried out in the open yard. The defendants also alleged that the additional works were given on

the understanding that they would not delay the fabrication and installation of the hatchcovers.

35 The fabrication of the pontoons was only completed sometime towards the end of November 1992 and they were then installed on board the vessel, which installation was only completed on 5 January 1992 due apparently in part to the fact that not all the pontoon pieces could fit nicely and adjustments had to be made. However, it was only towards 10 December 1992 that Jesselton expressed surprise that the end pieces of the hatchcover pontoons were not female pieces as designed in the drawing forwarded by Banerjee on 6 October 1992 (exh D1). Jesselton said it was essential that the end pieces should be female pieces to facilitate easy operations of the hatchcovers.

36 Lump Sum Contract The first issue concerns the question

whether this is a lump sum contract or is it one which allows for adjustment in the light of the quantity of steel used for the hatchcover pontoons as contended by the plaintiffs.

37 George Ching (PW1), the Assistant Director of the plaintiffs, accepted that the contract was a lump sum contract. But he claimed there was a conversation with Alan Eng to the effect that if the steel used exceeded 4.5 tons per pontoon, plaintiffs could go back to the unit rate. He said it was orally agreed between Alan Eng and Anthony Teo, the Marketing Manager of the plaintiffs, that if because of modifications the estimate was not correct then the plaintiffs were entitled to revert to unit rates. This fact is not pleaded nor is it stated in the affidavit evidence-in-chief of Anthony Teo. Neither did Anthony Teo say so in court.

38 In re-examination George Ching said that the quotation of \$240,000 was based on a usage of 75-80 tons of steel. He was not specific. He said the extra steel used was on account of changes made here and there. He was quite vague.

39 Reliance is also placed on these words found in the quotation On site measurement and calculation of weight to be carried prior commencement of work. It is suggested that these words meant that the quotation of \$240,000 was only an estimate. I do not see how these words could override the very clear terms of the quotation lump sum price for items (1) to (4) - \$240,000 . As I see it, the reference to calculation of weight was made because it was specified that each pontoon should not exceed 4.5 tons in weight.

40 On the evidence it is quite clear to me that the quotation of 15 September 1992 was intended to supersede that of 9 September

1992. It is clearly a lump sum contract (subject to the five specific exceptions mentioned in the quotation for which additional charges could be imposed). There is no real evidence before me to show that an oral contract was indeed entered into between the parties either superseding or amending the contract entered into, based on the quotation of 15 September 1992 and amplified by the supplementary note. The evidence before me shows that the defendants wanted a lump sum contract for the job rather than a contract which would depend on the amount of material used or on time rates.

41 Of course if variations were ordered by the owners to the works set out in the quotation, the plaintiffs are naturally entitled to charge for the additional work/material. If it is shown that additional steel had to be used because of

modifications to what were set out in the quotation at AB45-46, of course payment has to be made for the additional material and work. As an illustration of a modification: in the quotation only 18 I beams stanchions were to be fabricated and installed. These were modified to be double stanchions.

42 Approval of design I now turn to the central issue of this trial upon which much time was spent. The question is whether the design of the hatchcover pontoons was approved by the defendants. It is not in dispute that on or about 6 October 1992 the plaintiffs submitted a drawing of the design (exh D1) to Jesselton for approval. The important feature of the design in D1 is that the two end pontoon pieces of each hatchcover are to be of the female characteristic.

43 Banerjee told the court that after he issued the drawing in D1

he realized there was a mistake. As two-tier of containers would be placed on the hatchcovers and as each container would only come into contact with the hatchcover at its four ends, and if the contact points are on a female piece of pontoon, the pontoon would sag and cause a gap. Thus the need to change the end piece to a male piece so that when the two-tier containers sit on it, it would press down. This would achieve water-tightness. He said there were discussions over the phone and there was a meeting with Alan Eng between 6 to 10 October 1992 and that Alan Eng agreed to the revision. He said the meeting was on 9 October 1992 and Alan Eng agreed to the alterations of the end pieces as the need to ensure water-tightness was paramount. Thus, on 10 October 1992 he issued the drawing in P5 which he faxed to the plaintiffs and which he also intended to fax to Jesselton. I will

revert to this communication again later. He explained that if Alan Eng had insisted upon retaining the design in D1 he would have to do complete design and even split up end pieces. He said Alan Eng understood the explanation and accepted the change. Banerjee told the court that in the design of the hatchcovers, he was not asked to take into account any other operational requirements of the vessel.

44 As regards the meeting on 17 October 1992 Banerjee said it was to finalize the drawings as set out in P1. P5 only contains a portion of all the drawings in P1. I have no reason to doubt Banerjee's explanation that he changed the design in D1 to that in P5 and P1 because he felt that water-tightness under the design in D1 could not be achieved and that matter was vital; it concerned the seaworthiness of the vessel. Classification Society

would require that the hatchcovers be water-tight.

45 The defendants seem to suggest that between 6 and 17 October 1992 there was no meeting between Banerjee and Alan Eng. But Alan Eng in cross-examination was less certain. He could not recall such a meeting. More importantly, on 10 October 1992 Banerjee wrote a letter addressed to Kwong Soon and copied to Jesselton as follows:-

46 With reference to the various discussions with the owners representative Mr Alan Eng, we have revised the hatchcover arrangement drawing (Dwg No P600-1) and enclosed please find a copy of the same for your reference and kind attention.

47 (What was enclosed was P5, the revised drawing showing the end pieces to be male pieces).

48 However, I accept the evidence of Jesselton that they never received the letter of 10 October 1992 and the revised drawing at P5. The records maintained by Jesselton as to the communications received by them through the fax machine substantiate that assertion. It would seem that while Banerjee intended to copy and fax that letter to Jesselton, due to a lapse, his staff never did it. Be that as it may, what is important about that letter is that it shows, being a contemporaneous recording of events, that there were discussions between Banerjee and Alan Eng. What it shows is that a revised plan was forwarded. I can see no reason why Banerjee should deliberately state any falsehood in that communication if there was no discussion or agreement on a revised plan. Banerjee wrote we (i.e., he and Alan Eng) have revised I repeat, it was a contemporaneous communication.

At the time there was no dispute or quarrel between him and Alan Eng. Banerjee was merely the consultant seeking to have Jesselton's agreement to the drawing. Having heard him I accept his evidence that there was a meeting on or about 9 October 1992 between him and Alan Eng to revise the design of the hatchcover in D1 and that Alan Eng agreed to the revision as shown in P5.

49 As regards the meeting on 17 October 1992 between Banerjee and Alan Eng, the latter said that at the meeting Banerjee wanted to alter the design of the hatchcovers by having the end pieces in D1 changed to male pieces. Alan Eng sought to explain that that would cause problems and thus indicated that the original design (D1) should stay. It was only at that meeting that P5 was shown to him by Banerjee. He admitted that Banerjee did say that if the end pieces were to remain as female pieces water-tightness could

not be assured. But he reiterated that priority had to be given to operational requirements; if water-tightness could not be achieved because end pieces were female pieces, other steps could be taken. He said the result of that discussion was that there would be no change to the design of the end pieces. Alan Eng, however, did make some changes to the middle pieces (Nos 2.5, 2.6, 2.8 and 2.9) which were adopted. He reminded Banerjee to send the final drawing to him for approval. It is significant that even on Alan Eng's version, Banerjee had at the meeting of 17 October 1992 wanted to change the end pieces to male pieces. Banerjee even showed him P5. I cannot imagine Alan Eng saying operational requirements must take priority over water-tightness, a matter that concerns the vessel's seaworthiness. To my mind, the issue of water-tightness was crucial to the defendants, thus

it was stated in the quotation and the supplementary note (AB46A). In contrast the so-called operational requirements are nowhere so stated.

50 On the whole I have considerable reservations whether Alan Eng's evidence is reliable. The following is an example (NE 163):- Q: So when they were trying to put these two end pieces (next to mid-ship platform) did you realize the design was wrong?

51 A: My concern then was how to fit (them) in. It did not occur to me. I assumed the design was as agreed.

52 Q: So even at that stage when they were putting the two end pieces next to the platform, you did not realize the design was wrong?

53 A: At that stage it did not occur to me it was wrong. Q: At that point in time every piece would have been placed, these two

being the last?

54 A: I think these were the last two pieces.

55 It seems to me quite ridiculous for Alan Eng to say that even when every piece of pontoon had been in place except the two end pieces near the mid-ship platform (one of each hatchcover) he was still unaware of the error. He said there were difficulties fitting in the two end pieces. I do not understand why at that point the error had still not been appreciated. Indeed once the piece next to it was installed, being a female piece, it would have been obvious that the end piece would be a male piece. Furthermore, the other two end pieces at the other two ends of the holds would have been installed and they were male pieces. How could he not know? The only explanation for Alan Eng to have that state of mind at that stage is that that was what was

agreed; there was no mistake. The mistake only surfaced after they had encountered so much trouble in installing the two end pieces adjacent to the mid-ship platform.

56 There is another aspect of Alan Eng's evidence which I find strange. He said he asked for a copy of the final design at the meeting with Banerjee on 17 October 1992. He said it was important for him to have the final drawing for approval. He claimed that he pushed for it many times but never got it. If that were so, having regard to what he said was discussed on 17 October 1992 between him and Banerjee, I would have expected him to pay more attention on the pontoons as they were being fabricated. He admitted that he was able to distinguish an end piece.

57 I think I am further fortified in my finding that P5 and P1 were agreed to by the defendants by these matters. First, up to early November 1992, Ho Hoe Theng (DW1), the Managing Director of Jesselton, said that he had been visiting Kwong Soon yard twice a week. After that, his visits intensified to three to four times a week, though I accept that between 21 November to 5 December 1992 he was away from Singapore. On his evidence he was concerned about the delay in the fabrication of the hatchcovers which meant that there would be a delay in putting the vessel into service as he had advertised. Delay would mean a loss of revenue - a serious matter. Any reasonable owner would have kept a close watch over the fabrication, including, in my view, seeing to it that the fabrication was in line with the design. After all he was so interested in this type of design that sometime in September 1992

he went on an espionage trip to look at a similar hatchcover of a competitor's vessel. I would also emphasise that this is not a case where you have hundreds of pontoon pieces to oversee: just

58 twenty-three pieces in all and the end pieces could easily be identified as one side would be completely flushed.

59 Second, Chia, their technical superintendent, was there at the plaintiffs' yard everyday full-time. The defendants alleged that Chia was mainly concerned with the general repairs which the yard was asked to carry out on the vessel. He was not aware of the design of the hatchcovers; he was not involved in the design stage, having joined the defendants only on 1 September 1992. But it was his duty to see that the fabrication of the hatchcover pontoons was properly carried out, in his words to see that the hatchcovers were done in accordance with what was agreed.

Water-tightness of the hatchcovers was also a matter of concern to him. Chia, however, claimed that he did not know what was agreed. He only knew it was of the pontoon type. He was merely to see how many pontoons were being fabricated and to report. This set me thinking what kind of a technical superintendent was he. Accepting that he did not participate at the design stage, but that should not preclude him from knowing and learning of the design. After all, he even went on an espionage trip with Ho Hoe Theng and Alan Eng to look at the hatchcover on a vessel of a competitor. Another curious aspect is this: he said he asked for the design drawing and when he was not given any, he left it at that. To a question by the court, he admitted that he saw P1 at the Master's Cabin though in re-examination he said he was not so sure. Furthermore, Alan Eng had told him the pontoons were to

be of the male-female configuration. I seriously wonder whether Chia was as ignorant as he claimed to be.

60 Third point. Notwithstanding his constant visits to the yard, Ho Hoe Theng also claimed that until everything was mounted on hatch coamings he could not discover the mistake. How could it be so? An end piece is easily identifiable as one side of an end piece will always be flushed without any male/female characteristic. That would be an obvious tell-tale sign. Furthermore, a male end piece would be flat on top. He admitted he could distinguish a male piece from a female piece.

61 All in all, I have grave doubts how Chia was to superintend the fabrication of the pontoons without knowing the approved plan or having it in hand. Chia saw the pontoon pieces being fabricated and the hatchcovers taking shape. Indeed, so did Alan

Eng and Ho Hoe Theng, though not on a daily basis. How could they, particularly Alan Eng and Ho Hoe Theng, have failed to notice the error, if there was indeed an error, until all the pontoon pieces had been placed on the hatch coamings?

62 In my judgment, there was no error. I am satisfied and find that the error only surfaced after they encountered all the problems in trying to install the last two pieces which lay next to the mid-ship platform. Thus in Alan Eng's fax dated 10 December 1992 to the plaintiffs, Alan Eng only complained that the design of pontoon Nos 1.12, 1.13, 2.1 and 2.2 were found to be different from what was earlier agreed. No mention was made of pontoon Nos 1.1, 1.2, 2.9 and 2.10. Accordingly, I hold that there was no breach of contract in so far as the design of the hatchcovers is concerned; the design was approved by the

defendants agents.

63 Before I turn to consider the next main issue I wish only to comment briefly on the defendants allegation that the design has failed to take into account the operational requirements of the vessels. There is a conflict of evidence as to what was said or discussed on that. However, if all that allegation suggests is that the design in D1 (with the amendments to the four mid-pieces) best served the vessel s operational needs, then I have nothing more to add as I have already dealt with that point. But even if it means more than that, I do not think the defendants can complain either, as they approved the design.

64 Failure to complete by 15 October 1992 I now turn to the third issue which is whether the plaintiffs were in breach of contract when they did not complete the fabrication and installation of

the hatchcover pontoons by 15 October 1992. It is common ground that in this case no formal work order was issued by the defendants as contemplated in the quotation of 15 September 1992.

65 According to George Ching (NE3), no fabrication could commence until the design was finalized and the three-week period would only run from that point in time. On the other hand, the defendants said it was a term of the contract that the fabrication and installation of the pontoon pieces would be completed by 15 October 1992 (namely four weeks from date of acceptance, 17 September 1992). Relying on that, they even proceeded to advertise in the Shipping Times giving the vessel's sailing schedules.

66 I think in considering this question, the words detailed drawing will be submitted upon acceptance of order and the words

three weeks for pre-fabrication (sic) work from date of order in the quotation must be borne in mind. It is clear that the parties contemplated a formal work order. Be that as it may, having regard to the conduct of the parties, they must be taken to have waived that requirement, as the parties proceeded to discuss the design drawing. As late as on 17 October 1992 the owners were submitting variations to the design. Obviously, the four weeks could not run from the date of acceptance of the quotation: 17 September 1992. The quotation does not state when the drawing should be submitted by the yard. As a matter of construction, I find that in the absence of any express provisions the plaintiffs were required to submit the drawing within a reasonable time. There is nothing before me to show that the drawing submitted on 6 October 1992 was not within a reasonable time. Thereafter,

there were further discussions on the design which were only concluded on 17 October 1992. Thus, the four weeks for fabrication and installation should be reckoned from 18 October 1992. In any event, I find that by conduct the parties had agreed to vary the commencement date to be from the date following the day the design was approved, namely, 18 October 1992. On this basis, completion should be on 14 November 1992.

67 In this regard, I ought to allude to one other point. Though the plaintiffs admitted that the design was approved on 17 October 1992, nevertheless they say that the drawing (P1) was only finalized and approved on 19 November 1992 as P1 has the date 19 November 1992 stamped on it (AB121) and thus the three-weeks for fabrication should only run from that date. There is no evidence that P1 was only finalized on 19 November 1992. In any

event, this is entirely inconsistent with the course of conduct of the parties. As early as 3 November 1992 (AB108) Jesselton had been pressing the plaintiffs for early completion of the works. The plaintiffs did not reply to say that they were not yet required to start work. Instead, on 11th November 1992 the plaintiffs wrote to Jesselton as follows:-

68 We very much regret that we are unable to complete the whole project due to various unforeseen circumstances. Our target date of 12th November 1992 cannot be fulfilled in this instance. We hereby ask for excuse for this shortcoming and to allow us to re-schedule completion date on 18th November 1992.

69 Please accept our sincere apologies and may we thank you in anticipation.

70 On 14th November 1992 Jesselton in reply, while recognising that the delay could be due to unforeseen circumstances and extending the deadline to 20 November 1992, went on to state that if that deadline was not met, the owners would impose a demurrage charge of \$5,000 per day thereafter. On 18 November 1992, the plaintiffs wrote to Jesselton again admitting they could not complete the fabrication of the hatchcover pontoons. They apologised for the delay and stated we do not wish to give any excuses but to admit our underestimation of this project ... Realistically, we can confirm that all work will be completed by 24th November 1992 and vessel can depart on 25th November 1992. However, they then went on to reject the owners demurrage claim of \$5,000 a day because of the ongoing works accompanied by additional works given by your attending superintending engineer

and the unpredictable weather condition experienced.

71 Of course the question whether the plaintiffs claim that the additional general repair works given had hampered or caused delay to the fabrication of the hatchcover pontoons or their installation is altogether a separate matter, which I will return a little later.

72 Accordingly, I find that the four weeks for fabrication and installation of the new hatchcovers could not run from 17 September 1992 but from 18 October 1992. On this reckoning the date for completing the hatchcover job should be 14 November 1992 (four weeks from 18 October 1992). Of course by Jesselton's letter of 14 November 1992 (AB149) Jesselton has agreed to extend the deadline to 20 November 1992 after stating that whilst we can accept that the delay in completion may be due to unforeseen

circumstances please be reminded that we have cargo commitments that must be fulfilled. This letter shows that even by Jesselton's own reckoning there were grounds warranting an extension of time.

73 Therefore, quite apart from the question as to the proper extension of time on account of the additional works, which I will come to in a moment, the plaintiffs should have completed the job by 20 November 1992, that being the extended date agreed to by Jesselton.

74 Other repair works I now turn to the question whether the completion date for the hatchcover job should be extended on account of the additional general repair works given to the yard. In the words of Chia, when we saw the hatchcovers were not ... ready, we gave other jobs to the yard to do , otherwise the

vessel would be lying there idle (NE 113).

75 It is in a sense ironic that though Chia said progress of the fabrication works had not been satisfactory, yet he kept giving additional jobs to the yard. He said the yard never brought up the point that the additional works would delay the fabrication of the hatchcovers. To Chia, the fabrication and installation of the hatchcovers was the main job though this was not stated in writing. He said it was only in December 1992 that Samad of the plaintiffs mentioned in a conversation with him that the derrick job had interfered with the hatchcover job. Perhaps that could be true as regards Samad. But the plaintiffs did in their letter of 18 November 1992 refer to the additional works in rejecting the defendants claim for demurrage.

76 I find that when the additional works were given to the plaintiffs it was not expressly stated that the same were given on the understanding that they would not interfere with the hatchcover job. It seems to me clear that the shipowners cannot keep loading the yard with additional works and yet assert that the completion date for the fabrication of the hatchcover pontoons should remain the same. Obviously, when more jobs are given to the yard, its manpower has to be stretched and divided. The plaintiffs again made this point in its fax-letter of 24 November 1992 (AB71) to Jesselton where it stated, inter alia, (1) Please be informed of the long list of additional works so freely ordered by your superintendent, Mr Chia (2) These extra jobs were done at the expense of the labour required for the fabrication of the twenty three hatchcovers. The yard also

referred to bad weather as affecting progress of works. There was no reply to this letter or the earlier letter of 18 November 1992.

77 It is true that George Ching admitted that it was the plaintiffs duty to recruit more manpower to fulfil their contractual obligations to complete the hatchcover job within the contract period. Obviously it could not be the owners duty. But I do not think this admission precludes them from showing the problems they encountered in that regard and that the additional works did impede the hatchcover job. At the end of the day the test to be applied is one of reasonableness. Had they done all they reasonably could?

78 Thus the extent to which the additional works did impede the hatchcover job is a matter that has to be gone into in some

detail. There is also the complaint of unpredictable weather condition . I direct that an inquiry be carried out to ascertain (i) what were in fact the additional works (and not part of the hatchcover job) given to the yard; (ii) the extent to which the additional works or inclement weather had impeded or hampered the fabrication or the installation of the pontoons on the vessel. (iii) the extent of delay, if any, in the fabrication and installation of the hatchcovers which was not so caused by the additional works or inclement weather and (iv) the quantum of damages to be awarded against the yard for such inexcusable delay.

79 Rigging posts At this juncture, I should refer to the rigging posts job which was one such additional work given to the yard.

It was awarded pursuant to a discussion held on 24 December 1992

and the terms were set out in a letter of the same date from Jesselton (AB125). It was to be for a lump sum of \$35,000 based on a design prepared by Kenton Marine Pte Ltd and furnished to the plaintiffs. The letter further stated the following:-

80 Agreed date for full completion of works, including installation and satisfactory testing of boom is 31 December 1992. An additional charge

81 of S\$2,500 lump sum would be payable by us if work can be satisfactorily completed before 31 December 1992. Conversely, Kwong Soon Engineering Pte Ltd will pay a penalty charge of S\$2,500 per day if the targetted date for full completion of work is not met...

82 Fabrication and installation of the rigging posts is to be treated as a separate project from existing works currently in

progress on Rainbow Glory and must in no way affect the target dates set earlier for those works.

83 It would appear that modifications were made to the rigging posts job as evidenced by the letter dated 29 December 1992 from Jesselton to the plaintiffs (AB127).

84 This was the first and only time when it was clearly specified that the additional job should in no way give grounds for extending the completion date of the other works. Accordingly, the rigging post job should be excluded from consideration in determining the appropriate extension of time that should be granted for the hatchcover job.

85 However, on the rigging posts job there are also two specific areas of dispute: (i) the quantum of the bill rendered by the plaintiff for the job is higher than \$35,000 and (ii) defendants

claim for liquidated damages for late completion. On (i) the defendants say that the plaintiffs are not entitled to charge more than the quoted amount of \$35,000. However, the plaintiffs say the additional amount was raised on account of variations, giving rise to additional work. The letter dated 29 December 1992 from Jesselton to the plaintiffs (AB127) would appear to show there were modifications made to the rigging posts job. As I see it this question of the excess claim should also go for assessment. As regards (ii), the plaintiffs case is that the liquidated damages clause was unilaterally imposed by defendants and was not agreed to by the plaintiffs. But if it were unilaterally imposed and not acceptable, why was there no immediate objection? In plaintiffs initial quotation for the rigging posts job (AB90) they stated that the job was to be

completed within six normal working days. George Ching said that that would mean excluding Sundays, public holidays and overtime.

I would agree with this view. But in Jesselton's letter of 24 December 1992 (AB125), written after a meeting earlier that day, they stated Agreed date for completion of works, including installation and satisfactory testing of boom is 31.12.92. If that were not correct, why was there no response from the plaintiffs? The silence could only mean one thing - that what was stated was correct or at least that the plaintiffs could accept it, and I do so find. Having said that, I should add that the deadline should only apply to the job as originally described. As I have said, there were modifications made. Whether the modifications would justify any additional payment or extension of time is a matter I would leave to the assessment.

86 Judgment and directions There shall be judgment for the plaintiffs in the sums of \$240,000 (for the hatchcover job as described in AB45- 46A), \$35,000 (for the rigging posts job) and \$3,900 (for cargo cages). However, judgment on those sums shall be stayed until the assessment of damages is made as directed hereinunder. For the purposes of carrying out the assessment there shall be the following directions:-

87 (a) The Registrar shall (i) determine which items of works in the plaintiffs invoice No 3253L were not part of the hatchcover job as described in AB45-46A or rectifications thereof; (ii) assess the reasonable sum due to the plaintiffs for all such additional works; (iii) determine the extent, if any, to which such additional works or inclement weather had impeded or hampered the fabrication or installation of the hatchcovers on

the vessel by 14 Novemebr 1992 and decide on the appropriate extension of time for the completion of the hatchcover job (extended date); and (iv) assess the damages, if any, due to the defendants on account of the delay from 21 November 1992 or any extended date (later than 21 November 1992), as the case may be.

88 (b) The Registrar shall (i) determine which items of works in invoice No 3264L were additional works and were not part of the rigging posts job specified in AB125 or rectifications thereof; (ii) assess the reasonable sums due to the plaintiffs for such additional works; (iii) determine the extent, if any, to which such additional works had impeded or hampered the completion of the rigging post job by 31 December 1992 and decide the appropriate extension of time to complete the rigging posts job (extended date). The plaintiff shall pay liquidated damages for

the inexcusable delay from 1 Jan 1993, or any extended date, as the case may be, at the agreed rate of \$2,500 per day.

89 (c) If there is any overlap in the period for which damages are payable for inexcusable delay under (a) or liquidated damages are payable for such delay under (b), only one set of damages for that period, whichever is the larger, shall be paid.

90 (d) The Registrar shall effect the necessary set-offs in respect of moneys due from one party to the other under (a) to (c) above and if there is still any outstanding due from the plaintiffs to the defendants, the same shall be set-off against the judgment sums given herein to the plaintiffs.

91 Costs

Costs of this action shall be reserved until after assessment.

Kwong Soon Engineering Company Private Limited v The owners of and/or other persons interested in the ship or vessel "Rainbow Glory" [1996] SGHC 88

92 CHAO HICK TIN

JUDGE

93 SINGAPORE

27 APRIL 1996

Chao Hick Tin J

Danny Chua with Kenny Chooi (Khattar Wong & Partners) for the
plaintiffs
Tongel Yeo (Chong Yeo & Partners) for the defendants
