

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 344

Suit No 1214/95

Between

Industrial Valve Services Pte
Ltd

... Plaintiff

And

Crosby Valve Pte Ltd

... Defendant

And

Christopher Philip Sperring

... Third Party

GROUND OF DECISION

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

**Industrial Valve Services Pte Ltd v Crosby Valve Pte Ltd
(Christopher Philip Sperring, Third Party)**

[1997] SGHC 344

Suit No 1214/95
Chao Hick Tin J
27 December 1997

1

Judgment:

2 1 In 1992 a company known as The

Nexus Corporation Pte Ltd (Nexus) was carrying on business at 11 Tuas Crescent, Singapore

2263 (the premises). It had four main areas of activities, two of which were (a) the

production and servicing of industrial valves division (IVS division) and (b) aluminium

offshore division. The IVS division was headed by one Christopher Sperring,

the third party in these proceedings.

3 2 Nexus suffered losses in its

business. On 30 November 1992, pursuant to a deed of debenture, Credit Lyonnais appointed

Price Waterhouse Intrust Ltd as the Receivers & Managers of Nexus (the Receivers).

Under that debenture, the major shareholder of Nexus, one Awang Mohd Hassan Bin Hj Mohd

Yusof (Awang Hassan), a prominent Brunei businessman, stood as guarantor for the loan

extended by Credit Lyonnais to Nexus. Eventually, the assets of Nexus were insufficient to

pay off Credit Lyonnais and the shortfall was made good by Awang Hassan.

4 3 Before the appointment of the

Receivers, the management of Nexus had decided to save the industrial valve and aluminium

offshore businesses as they felt that these two areas had some future potential.
Thus

steps were taken to incorporate two new companies to take over the two
businesses. On 9

December 1992, the plaintiff-company, Industrial Valve Services Pte Ltd
(IVSPL), were

formally incorporated with an initial capital of \$3/- to take over the business of
the IVS

division. It seems to me clear that this move was approved by the Receivers
when they came

into the picture; thus they did not take any steps to undo what the management
had set in

train. Soon after incorporation, Awang Hassan increased the paid-up capital to
\$100,000.

IVSPL were occupying the same premises as those used by IVS division of
Nexus.

5 4 Shortly before the incorporation

of IVSPL, Henry Butcher, Auctioneers and Valuers, were requested by the
Receivers to value

certain assets of the IVS division (some of which were on hire-purchase) which had been

identified by the Receivers should be put up for sale. The valuation list was submitted by

Henry Butcher on 7 December 1992 (hereinafter referred to as the "HB1 list").

6 5 I ought to mention that in

December 1992 another company, Unique Corporation was also occupying 11 Tuas Crescent.

Unique had earlier sold the premises to Nexus and was winding-up its business. Sometime in

January 1993 Unique ceased business completely. However, it left behind certain items and

metal scraps, intended as gifts to IVSPL. The Managing Director of Unique told Sperring

that those were left as gifts.

7 6 It was also in January 1993, that

Sperring, who was put in charge of IVSPL by Awang Hassan, felt that IVSPL

required joint

venture partners to advance. Accordingly, Sperring prepared a proposal which he sent to a

number of potential joint venture partners, including the defendants, Crosby Valve Pte Ltd

(CVPL), a Singapore company and a subsidiary of a large US corporation. CVPL are in the

business of selling, assembling and servicing safety relief valves and related products.

The joint venture proposal would involve IVSPL in offering expertise, market exposure,

goodwill and other assets and the prospective partner in contributing working capital and

funds to purchase the assets in HB1 list, including those on hire purchase.

8 7 In about January/February 1993,

in order to facilitate consideration by potential partners, Sperring asked his son to do a

full listing of all assets found in the premises (hereinafter called "CS-15

list"). However, ultimately none of the potential partners were interested to come in

as joint venture partners. In the case of CVPL, it was not their policy to enter into

joint venture but they indicated interest in taking over the workshop premises, some

assets and staff. I will return to this later.

9 8 In the meantime in late February

1993, Awang Hassan was anxious to sell off his interest in IVSPL. Sperring decided to buy

over the shares of Awang Hassan as he then felt that he could strike a deal with some of

the potential partners (including CVPL) who seemed to indicate interest. On 12 March 1993,

all the shares of Awang Hassan in IVSPL were sold to Sperring at a price of \$10,000.

Sperring felt that it was a good bargain, considering the capital put in by Awang Hassan.

At the same time, the Receivers offered IVSPL to buy up the assets set out in HB1 list but

the offer was not taken up because Sperring could not raise the necessary capital. Instead

Sperring put the Receivers in touch with CVPL who showed interest to buy the assets, take

over the premises and also to employ Sperring (and other staff) to run the workshop. That

was in late March/early April 1993.

10 9 Negotiations between the

Receivers and CVPL ensued, letters were exchanged, a full inventory was taken, culminating

in the execution of an agreement dated 22 April 1993 (Assets Sale Agreement) and a licence

Agreement under which CVPL would take over the exclusive occupation of 11 Tuas Crescent.

11 10 In the meantime in early April

1993 Sperring asked Henry Butcher to carry out another listing and valuation (HB2) of all

assets at 11 Tuas Crescent. Henry Butcher submitted it on 6 April 1993 (hereinafter

referred to as "HB2 list").

12 11 The assets purchased by CVPL

from the Receivers were listed out in a schedule to the Assets Sale Agreement (hereinafter

referred to as "ASA list"). Those are referred to in the Statement of Claim as

the Schedule I assets. A stock-check was carried out by CVPL. There is, however, a dispute

as to the date on which the stock-check was undertaken, was it before or after the

execution of the Assets Sale Agreement. According to Sperring it took place on 23 April

1993 but according to CVPL it was on 12-13 April 1993. Sperring said he was not present at

the stock-check but before the check he gave to Philip Carter of the defendants

two lists,

HB1 list and the CS-15 list.

13 12 As part of CVPL's plans to

acquire the Schedule I assets, CVPL were anxious to having Sperring, in view of his

knowledge and skill, joined them as an Operation Service Manager. CVPL made an offer in

writing dated 16 April 1993 which was accepted by Sperring. Nevertheless, there was no

binding agreement of employment as the letter of offer of CVPL to Sperring was expressly

subject to the reservation that it "does not form a legal contract of

employment" and that Sperring "will be required to sign a contract of employment

with the company on acceptance in writing of the offer of employment." Subsequently,

there appears to be some terms which the parties could not reach agreement. A formal

contract was thus never executed. I am unable to accept CVPL's submission, in the

face of the express terms, that a binding written agreement came into being upon Sperring's acceptance in writing.

14 13 CVPL also contend that the terms of employment of Sperring were partly oral and partly in writing. One of the written terms

was that Sperring would wind-up IVSPL within 90 days. An oral term was that Sperring would

procure the sale of all the assets which were in the use and/or possession of IVS division

of Nexus to CVPL. An implied term was that Sperring was not to compete in any form against

the normal business activities of CVPL.

15 14 At the time when CVPL took occupation of the premises, some other assets were also there besides those in the ASA

list. These are the assets set out in Schedule II to the Statement of Claim. IVSPL say

that the Schedule II assets belong to IVSPL, having been transferred to IVSPL by Nexus in

December 1992. Sperring explained why he did not take the IVSPL assets (Schedule II

assets) away and instead permitted them to be retained at the premises and be used by

CVPL. More on this later.

16 15 After Sperring's employment

with CVPL was terminated in November, he reactivated the business of IVSPL and on 1

February 1994 asked CVPL for the return of the Schedule II assets. CVPL refused. Thus the

present action in which IVSPL are claiming for damages for conversion of the Schedule II

assets and for losses and damages on account of IVSPL being deprived of the use of those

assets.

17 16 The defence of CVPL is two

pronged. First, the Schedule II assets constituted part of the assets sold by the

Receivers to CVPL. Second, that Sperring, on behalf of IVSPL, by conduct acquiesced _____ or

allowed the Receivers to represent that Nexus had title to the Schedule II assets and this

induced CVPL to enter into the Assets Sale Agreement and that IVSPL are
estopped from

setting up their own alleged title to the Schedule II assets. In any case, CVPL also deny

that the Schedule II assets are the property of IVSPL.

18 Title to assets

19 17 I think it is necessary for me

at the outset to consider the question of ownership of the Schedule II assets. That _____ formed

the bulk of the CVPL's final submission. It is settled law that to succeed in an action in conversion a plaintiff must establish that he has "a right of possession and a right of property in the goods at the time of the alleged conversion or detention": *Halsbury Laws of England* Vol 45 (4th Edition) para 1433.

20 18 CVPL submitted that there is no documentary evidence showing that either Nexus or the Receivers had transferred the ownership of the Schedule II assets to IVSPL. They relied on the fact that the debenture

under which Credit Lyonnais exercised the right to appoint the Receivers created a fixed and floating charge over all the assets of Nexus.

21 19 In his evidence in court Roger Langdale (PW1), a Chartered Accountant, who was a Consultant to Nexus and who was involved in the decision making process relating to its financial problems, receivership and

restructuring, said that a transfer of the assets, other than those in HB1 list, was made

pursuant to an arrangement reached between the Receivers, Credit Lyonnais and Awang

Hassan, as guarantor - NE5. The Receivers agreed to let Awang Hassan take over IVSPL on

condition that he injected \$100,000 into it and took over the staff of IVS division of

Nexus. Langdale said "(Nexus) need not have to deal with retrenchment benefit problems." Langdale was present at the discussions with the Receivers.

22 20 Gil Radovan, who was a director of Nexus and of IVSPL, when it was incorporated, confirmed the following evidence deposited

in the affidavit of evidence-in-chief of Sperring:-

23 "In end November 1992 the bank appointed Price Waterhouse (P.T. Hong) as receiver and manager ("The Receiver")

under the debenture and it was agreed soon after as follows:-

24 (a) The main assets of all four divisions would be sold by the Receiver. Most of these assets were under hire purchase, or some form of financing.

25 (b) As guarantor, the balance due to the bank would be paid by Haji Awang Hassan. In fact he paid the balance sum, and the debt of Nexus was fully repaid.

26 (c) Haji Awang Hassan would buy the shares in the two new companies and inject new capital of at least \$100,000.00 into each company. Each company would take over the employees transferred to them.

27 (d) The backdrop of the entire matter was that Haji Awang Hassan was the major shareholder of Nexus and that he was

responsible for its debts as guarantor. In this sense, it did not matter what sum the

Receiver recovered or how, or what assets were sold or transferred, as Haji Awang Hassan

was liable for and would pay the final outstanding sum due."

28 In addition, he further deposed to the following:-

29 " The plaintiffs were to take over the operations of IVS division of Nexus Corporation and when IVS division was

incorporated into the plaintiffs, the Plaintiffs were not merely a 'shell'

company. It had assets and I recall these to be minor tools, some furniture and tools that

were fabricated by Christopher Sperring for use in the services that IVS division was

providing. When Haji Awang Hassan incorporated the Plaintiff company, it

30 was with the intention to spin off
IVS division

31 into a profitable venture with the
assets that were not wanted by the Receiver."

32 21 It is the evidence of Sperring
that it was understood by all parties concerned that the plaintiffs would take
over the

assets, goodwill and business of IVS division, except those in HB1 list. Sperring
said

that "otherwise the incorporation of the plaintiffs would make no sense at all."

33 22 In so far as CVPL are concerned,
they have no knowledge whatsoever of the said events. Their case, on this point,
rests

wholly on the fact that there is no documentary evidence of any transfer of the
Schedule

II assets by either the Receivers or Nexus to IVSPL. They also relied upon two
letters

written by Sperring to the Receivers on 7 March 1994 and 15 April 1994. It is necessary

for me to set them out in full to understand the background and reason for their being

written.

34 Letter of 7th March 1994

35 "As Robin explained by phone,

Crosby Valve is refusing to release a substantial number of items, which were in the old

IVSPL workshop when they took over the tenancy, but which do not belong to them. As

requested I enclose a list of these items which are in four categories:

36 (1) Scrap items or scrap and

refurbished by IVS.

37 (2) Items fabricated by IVS.

38 (3) Items acquired by IVS from Nexus.

39 (4) Items fabricated or acquired by IVS Pte Ltd.

40 These are all the items in the workshop in early April 1993 which are not on the list of equipment specifically retained

by Nexus in December 1992 and later purchased by Crosby.

41 Many of the items are very useful in a workshop but of little saleable value. Categories (1) to (3) were acquired before

IVSPL was incorporated on 9th December 1992, so they were undoubtedly originally the property of Nexus.

42 When the business of IVS was transferred to IVSPL on 9th December 1992, Nexus specifically retained

ownership of the main items of equipment which were listed in an inventory taken by Henry Butcher.

43 When I purchased IVSPL from Awang Hassan in March 1993, I assumed that the equipment, other than that on the inventory of retained assets, belonged to the company. However this was not documented, so the situation is not clear.

44 When Crosby employed me last April, they purchased the specifically, retained equipment from you as Receiver for The Nexus Corp and took over the tenancy of IVSPL's workshop. I regarded this as a long term career change and I was happy to be able to continue operating in the existing workshop with all my equipment.

45 However, in a cost cutting exercise of Crosby, my employment was terminated last November. I therefore resumed operating under IVSPL and asked Crosby to return those items of equipment which were in the workshop when they took it over last April but which they had not purchased.

46 Crosby have refused to return the
equipment, saying it is their property. I enclose copies of my letter of 28th
January 1994
to Crosby and Drew & Napier's reply of 28th February.

47 D&N say the assets in my list
were purchased from Nexus. But these are specifically the items which are not
in the list
of equipment purchased by Crosby. So it can be shown that they do not belong
to Crosby.

48 However, possession being nine
points of the law, a claimant needs to show that the assets do belong to him. I

write now

therefore to ask you to review the situation and to do one of the following to prevent

Crosby simply appropriating the equipment by default:

49 - Claim the equipment as Receiver of Nexus.

50 or - Confirm that this equipment

was passed over to IVSPL on 9th December 1992 when it took over the business and

obligation of the IVS department of Nexus.

51 Please call me or Robin if you wish

to discuss any points."

52 Letter dated 15 April 1994

53 "Further to my letter of 7th

March, regarding certain assets being wrongly held by Crosby Valve, and following your

phone discussion with Robin Langdale, I write to inform you of further developments. The

matter presently rest with Drew and Napier's letter of 28th February of which you

have a copy. This claims that all the assets in questions were included in the package of

assets purchased by Crosby from Nexus. You have confirmed to Robin that this is not the

case and that the sale to Crosby was of a specific list of items only.

54 To get an idea of the market value

of the items belonging to Nexus which are being held by Crosby (the highjacked items), I

asked Neil Smith of Henry Butcher what they could fetch. His

55 opinion is that at auction these

items would sell for \$3,000 to \$5,000 but that the expense involved would be prohibitive.

56 On the other hand these items would

be very useful in my workshop. I am therefore prepared to offer \$5,000 for all the

highjacked items on an as is where is basis. I would then bear the cost and risk of

reclaiming them from Crosby.

57 I would however need the following help from you:

58 1. A letter from you as Receiver confirming that the assets sold to Crosby comprised only of those specifically listed in your offer at the time.

59 2. An invoice for the highjacked items to be sold to IVSPL and a receipt for the consideration paid.

60 3. A letter confirming that assets per an attached list (the highjacked items) have been sold to IVSPL.

61 I would then reclaim these items

along with those that already belong to IVSPL. In this connection I have noticed that Item

23 on the schedule of items sold by Nexus to Crosby is a lathe, which actually is the

property of IVSPL. I enclose copies of the relevant page from the schedule of assets and

the invoice from Sunbeam selling this lathe to IVSPL in January 1993.

62 As this lathe is specially adapted

for IVSPL work I intend to recover it. This will obviously involve some financial

compensation to Crosby. Perhaps I could settle this with them in consultation with you,

and deduct the amount from IVSPL's payment for the highjacked items."

63 23 It seems to me clear that the

aim of these two letters to the Receivers was to obtain a quick solution to the problem in

the face of the stand taken by CVPL. Sperring was obviously concerned about the absence of

documents evidencing the transfer of the Schedule II assets from Nexus to IVSPL, so much

so that he was even prepared, notwithstanding the December 1992 arrangement, to buy them

over for \$5,000/-, in order to ensure that there could be no room for CVPL to quibble on

the point of ownership. He was trying to avoid a legal tussle. However, the law does not

require that a transfer of such articles should be evidenced in writing: it could be

effected orally. We have here the direct evidence of Langdale as to the understanding at

the time. Equally consistent with what Langdale said was that of Radovan. I have heard

Langdale and, while the defendants sought to attack his reliability, there is really

nothing to suggest to me that his evidence is untruthful. In coming to this view, I have

evaluated his evidence in the light of the factual matrix. I have noted the

argument that

Langdale's evidence on the arrangement with the Receivers only surfaced in cross-examination and was not expressly deposed to in his affidavit of evidence-in-chief.

I do not think this necessarily suggests it is not truthful. It was a spontaneous answer

to questions in cross-examination. It was not contrived. To be fair, his affidavit of

evidence-in-chief does suggest some arrangement reached with the Receivers. There is

nothing from CVPL to counter what Langdale, who was involved in the arrangement, said. I

accept his evidence.

64 24 I am conscious that either party

could have called Mr P.T. Hong, from Price Waterhouse Intrust Ltd, who was the person

dealing with the matter, to shed more light on the point. But both parties decided against

it. That was their choice and I can understand why that is so. It is not critical to IVSPL's case to call Mr Hong, though Mr Hong's evidence could boost their case.

In the case of CVPL, they did not know what Mr Hong would say. I suppose they therefore

decided not to call. Of course, the burden of proving title is not on CVPL. However,

considering the circumstances giving rise to the incorporation of IVSPL, the fact that

only specific items in the workshop were identified by the Receivers and in respect of

which Henry Butcher were requested to make a valuation (the HB1 list), the fact that Awang

Hassan injected \$100,000 capital into IVSPL and took over the staff of IVS division of

Nexus, the fact that what the Receivers eventually sold to CVPL on 22 April 1993 were

specifically identified (which was based on HB1 list), and the fact that Awang

Hassan

eventually made good the shortfall due to Credit Lyonnais, the debenture holder,
I accept

the evidence of Langdale that there was an agreed transfer of the assets of the
IVS

division of Nexus to IVSPL, other than those in the HB1 list, with the consent
of the

Receivers. There was really no reason for the Receivers to object. Accordingly,
on

balance, I find that IVSPL have proven that ownership in the Schedule II assets
vests in

them. I should add that the Schedule II assets include not only assets transferred
from

IVS division of Nexus but also the gifts from Unique and new items fabricated
or acquired

by IVSPL post 9 December 1992 until the date when CVPL took over
possession of the

premises.

65 Extent of purchase from the

Receivers

66 25 I now turn to the other issues.

CVPL contend that they bought everything in the workshop premises, including the Schedule

II assets. This can hardly be correct. I shall first refer to a letter of understanding

(AB117-122) which was prepared by Kenneth Hayward, a director of CVPL,
on 12 April 1993.

It is sub-headed "CVPL intention to pursue with CP Sperring the acquisition of certain

fixed assets of the Nexus Corporation in receivership ..." Some of the pertinent clauses are:-

67 "1.1 Crosby will attempt to

obtain title to all hire purchase equipment financed by Hong Leong Finance Limited, such

equipment will not include any items not required by

68 the ongoing operation. For example

the overhead crane and transfer of such assets will require confirmation by Hong Leong and

the receiver appointed for Nexus, Price Waterhouse.

69 1.2 All other fixed assets

defined in the listings so far reviewed and required for the ongoing operation are

understood to be the

70 property of Nexus in receivership

and Crosby will attempt to purchase outright all such assets through negotiation with

the

71 receiver, Price Waterhouse.

72 1.3 Crosby will work with C.P.

Sperring in dealing for assets and undertakes to make reasonable offers but Crosby's

decision on a final offer will be Crosby's decision alone.

73 Note (b)

74 Crosby requires that a full inventory be carried out by Crosby personnel of all assets listed, concurrent with negotiations for title.

75 5.2 All other IVS Assets and Liabilities

76 Crosby will have no claim to any IVSPL assets other than those reviewed herein." (Emphasis added).

77 26 What CVPL intended to buy were

set out in the Receivers' letter of 14 April 1993 and which CVPL confirmed in their

letter of 19 April 1993 (AB135-143). They were subsequently reflected in the Assets Sale

Agreement of 22 April 1993 and the ASA list.

78 27 According to Sperring he offered
to sell the Schedule II assets to CVPL on 3 occasions:-

79 (i) on 28 March 1993 at a meeting
with Hayward, where Sperring showed him CS-15 list. Sperring could not
remember if on that
occasion he gave Hayward a copy of the CS-15 list.

80 (ii) on or about 1 April 1993 at a
meeting with Hayward.

81 (iii) on or about 8 April 1993 at a
meeting with Hayward and James McIntosh (from CVPL head office), where
he showed them the
CS-15 list and offered for sale to them what were on CS-15 list less those on
HB1 list

(the Schedule II assets), but they were not interested. Roger Langdale was
present at the
meeting and he confirmed in Court that the offer was made by Sperring though
he could not

recall if a list was shown to

82 Hayward/McIntosh.

83 However, CVPL deny that any such offer was made.

84 28 Sperring gave three reasons why he did not remove the Schedule II assets from the premises after CVPL refused to buy them.

First, they were bulky. Second, he was in full-time employment of CVPL and IVSPL would not

be carrying on any business and would not need them. Third, he was in charge of the

premises where the Schedule II assets were kept and he was using them thinking that he had

good long term prospects with CVPL.

85 29 I find that Sperring did at

least on one occasion tell CVPL, that is on 8 April 1993, that there were those

assets in the workshop which belonged to IVSPL.

Two reasons for this. First, as

I have indicated, I find Langdale to be a reliable witness. He could be considered an

independent witness as far as the parties hereto are concerned. It has not been suggested

that he has any interest in IVSPL. Second, paragraph 5.2 of the letter of Understanding of

12 April 1993 lends support to this view. Moreover, it is not disputed that by 8 April

1993 CVPL did have in their possession the CS-15 list. A simple comparison would have

clearly indicated, and CVPL would not have failed to note, that the assets in the ASA list

did not contain all the items in the CS-15 list. If what CVPL intended to buy was

everything in the workshop, it would have been a simple matter to set them all

out. The

fact that it was not done points only to one conclusion: that what CVPL bought were only

those listed and nothing else. I must observe that in the ASA list even items of only

\$50/- in value (and there are several of them) were specifically identified.

86 30 I should at this juncture also

refer to item 24 of the ASA list which reads:-

87 "Store Loose Tools &

Equipment, including:- E.U.V(S\$) F.S.V(S\$)

88 An "Iwatsu" SSS702

Oscilloscope S/N 12250046

89 a "Soar" 5403 Multimetre:

Air Operated Drills,

90 Grinders & Linishers; Hand

Portable Electric

91 Drills, Grinders; Handtools,
Bolt-croppers,

92 Spanners and Wrenches. Extension
Leads

93 and Power points, etc. (An
Allowance for

94 the above) 4,250 2,100"

95 31 Is it reasonable to construe
that within this so-called omnibus item all the assets in Schedule II are to fall?
I can

understand, and it is probably reasonable to argue, that under "wrenches" all
types of wrenches would come within that. It would clearly be unreasonable to
argue, when

the Assets Sale Agreement identified even a \$50 table, to say that a "marking
table" of an estimated value of \$2,600 or a "15 feet working bench" of an

estimated value of \$1,400 or a "Spectroscope" of a value of \$6,277 (valuation from an objective source) would come under item 24, which item as a whole was only given a value of \$4,250/- and a forced sale value of \$2,100?

96 32 Accordingly, I find that what the plaintiffs bought were only those which were expressly listed in the Assets Sale

Agreement subject to two qualifications arising out of item 24: (i) All types of wrenches

would come within that item (except for impact wrenches and torque wrenches which were

gifts to IVSPL from Unique) and should be taken out of Schedule II assets; (ii)

Consumables should also be taken out of Schedule II as they would come under

"stores" in item 24. There is no clear evidence as to what were the consumables

left behind by Nexus to IVSPL and what are the consumables, if any, bought by IVSPL

between December 1992 to April 1993.

97 Estoppel/Acquiescence

98 33 The essential averment of CVPL

on this issue is that when CVPL were negotiating with the Receivers on the purchase of

assets, Sperring acted as the intermediary, assisting and encouraging CVPL in procuring

the purchase of the assets, including the Schedule II assets. CVPL say that at all

material times Sperring never made any claim to the ownership of the Schedule II assets on

behalf of IVSPL and had by his representations and/or conduct induced CVPL into believing

that the Schedule II assets were the property of Nexus and which were offered by the

Receivers to CVPL for sale; that Sperring was present and assisted CVPL at the stock-check

of the assets in the premises carried out on 12-13 April 1993; that the items tagged at

the stock-check included the Schedule II items; and that from April 1993, CVPL

enjoyed the

use of the Schedule II assets.

99 34 CVPL also say that following the

execution of the Assets Sale Agreement, CVPL requested the
Receivers/Sperring for

documents to show title to the assets. A number of documents furnished touched
on some of

the Schedule II assets. As for the rest Sperring said that the documents could no
longer

be traced and that Sperring had assured CVPL that Nexus had good title to all
the assets,

including those in the Schedule II list. At no time up to 1 February 1994 had
Sperring

ever uttered that the Schedule II assets belonged to IVSPL.

100 35 In the alternative, CVPL say

they had acted under the mistaken notion that the Receivers had good title to the
Schedule

II assets and proceeded to enter into the Assets Sale Agreement with that mistaken notion,

and Sperring knew of that mistaken notion and yet did not take steps to correct that

notion. Thus it would be unconscionable for IVSPL to insist on enforcing their strict

legal rights.

101 36 For the considerations dealt

with in paragraphs 25-31 above, I cannot see how CVPL could assert that they were misled.

From the evidence of Hayward, on 8 April 1993 CVPL had CS-15 list as well as the HB2 list

(Sperring denies that HB2 list was given to CVPL at the time and without me making a

finding on this dispute of fact), how could they have been misled by Sperring into

thinking that they were buying everything in the workshop from the Receivers, including

the Schedule II assets, when the ASA list was clearly a reduced list and some of the

Schedule II assets are fairly significant ones. I repeat, it would have been a simple

thing to set out all the items in the Assets Sale Agreement (as in CS-15 list) if CVPL

thought, or was misled into thinking, that they were buying everything in the workshop.

The fact that this was not done is telling.

102 37 A fair amount of evidence

adduced in court centred on the question as to the date on which the stock-check and

tagging of the items were carried out. As mentioned above, CVPL say it was on 12-13 April

1993 and Sperring on 23 April 1993. Even if I were to accept CVPL's version, that it

was done on 12/13 April 1993, then CVPL would have obtained the full list covering all the

assets in the premises and if it were the whole lot of assets they were buying the

simplest thing to do would have been to use the stock-check list and/or CS-15 list and

incorporate that as part of the Assets Sale Agreement. I fail to see how there could be

any reliance to give rise to any estoppel, all the more so when I find that Sperring had

on 8 April 1993 offered to sell the IVSPL assets to CVPL. CVPL knew what they had bought.

Paragraph 5.2 of the letter of understanding of 12 April 1993 does not lend support to

what they contend.

103 Damages

104 38 In the light of my findings

above, I hold that the assets in Schedule II, less the wrenches (items Nos 46 and 67) and

the consumables, belong to IVSPL and should have been returned to them. CVPL have

committed conversion when they refused to return them to IVSPL.

105 39 A very difficult question is the

quantum of damages to be awarded against CVPL. In his affidavit of evidence-in-chief,

Sperring gave an estimate of the value of each item of assets in Schedule II, making a

total of S\$108,009. Wherever objective evidence on valuation is available, that is

provided. CVPL have not submitted any evidence to contradict those valuations. The values

of the wrenches and consumables, which should be excluded, amounted to \$902.95 and

\$5,554.72 respectively. Thus, the total value claimed would have to be reduced to

\$101,551.33. I recognise the estimates given by Sperring are his estimates and are also

based on the prices of the articles as new and those in Schedule II are not new. I have no

information as to their age or condition. Doing the best I can, I do not think it would be

unfair if I should discount the values by 50%, making it \$50,775.67. I would round it down

to \$50,000.

106 40 Another component in the damages

claimed by IVSPL relates to the deprivation of the use of the assets in Schedule II from

1994 February to present. The quantification of this aspect is even more difficult.

However, I can see merits in the argument that there were probably opportunities lost on

account of the deprivation of those assets. Again, using a very broad yardstick, I would

take 10% as the yearly loss. I believe this is neither too high nor too low.

107 41 Accordingly, I award the

plaintiffs, IVSPL, damages in the sum of \$50,000, plus a further sum equivalent

to 10%

p.a. on \$50,000, calculating from the date of the Writ, 14 July 1995, to this date.

The

plaintiffs shall have the costs of the action.

108 Third party proceedings

109 42 Finally, I will now deal briefly

with the third party proceedings issued by CVPL against Sperring personally
where CVPL

claimed indemnity/contribution from Sperring in the event that CVPL should
be held liable

to IVSPL on the main claim in this action. The basis upon which the third party
claim is

made is that, and here I would quote from the Notice itself:-

110 "(a) as an employee of the

Defendants between the period 1 April 1993 and 22 November 1993 and a

111 majority shareholder and director

of the Plaintiffs during the same period, you owed a duty to the Defendants
disclose the

nature of ownership of the assets set out in Schedule II of the Statement of Claim
insofar

as it was within your knowledge and in breach of your duty owed to the
Defendants as

employee, you had failed to disclose the same and/or

112 (b) in breach of your terms of

employment, you had failed to wind-up the Plaintiffs within 90 days from 16
April 1993 or

at all; and/or

113 (c) you had acted fraudulently by

virtue of the fact that in spite of your alleged knowledge that the assets in
Schedule II

of the Statement of Claim belonged to the Plaintiffs, you had deliberately
omitted and/or

neglected to clarify or to inform the Defendants of the same, and had in fact
permitted or

induced the Defendants to believe that the said

114 assets belonged to the Receivers

and Managers of Nexus by your representations and/or conduct and/or acquiescence and/or

encouragement to that effect."

115 43 For the reasons given above, the

allegations in (a) and (c) must fail. I have found that on 8 April 1993 Sperring did

inform Hayward and McIntosh that certain assets in the premises belonged to IVSPL.

116 44 As for the allegation that

Sperring had failed to wind-up IVSPL within 90 days from 16 April 1993, I need only add

that CVPL expressly stated in their letter of 16 April 1993 that it did not constitute a

legal contract of employment. Sperring's written acceptance of employment was also

subject to contract. The parties contemplated a formal contract to be executed.
As I see

it, this approach was deliberately adopted as at the time CVPL had not yet
concluded the

deal to purchase the Schedule I assets from the Receivers. CVPL did not want
to be tied

down to a legally binding written contract. Later, due to differences on the
non-competition clause and the intellectual property rights clause, the written
agreement

never materialized. Other than an inquiry, at no time did CVPL ever complain
that Sperring

did not wind-up IVSPL. It seems to me probable that CVPL did not bring this
up again

because they knew that a formal contract with Sperring had yet to be executed
and they had

nothing to hold Sperring to. In any case even if there was a breach of that clause
to

wind-up IVSPL, it did not give rise to any real situation of conflict because

while

Sperring was so employed by CVPL, IVSPL was dormant. There was no damage caused.

117 45 I would at this point venture a

view as to what I think could be the true position. CVPL clearly knew that the ASA list

did not include everything in the workshop. I have found that CVPL were so informed by

Sperring. Even if Sperring had not so informed them, CVPL must have known, having seen

CS-15 list and, as they have alleged, the HB2 list. There was also the stock-check. The

letter of understanding further reinforces this view. But as Sperring was joining CVPL as

a full-time employee, CVPL did not feel the need to purchase or deal with the assets

belonging to IVSPL, because to their mind IVSPL were the same as Sperring, so CVPL could

make use of the assets for free. I could see the element of mutual benefit there.

I note

the meticulous way in which CVPL had gone about this transaction. Their approach is

demonstrated in the letter of understanding. I have no doubt that if it were expressly

discussed between Sperring and Hayward that upon Sperring joining CVPL the Schedule II

assets would go to CVPL, or if those things were in the mind of CVPL, they would have been

expressly referred to in writing.

118 46 Accordingly I dismiss the third

party claim. The defendants shall bear the costs of the third party.

119 **CHAO HICK TIN**

120 **JUDGE**

121 **SINGAPORE**

122 **DATE: 27TH DECEMBER 1997**

Industrial Valve Services Pte Ltd v Crosby Valve Pte Ltd (Christopher Philip Sperring, Third Party) [1997] SGHC 344

123 *Counsel:* *Mr* *S.* *Sreenivasan* *for*

plaintiffs

124 *Ms Cheyrl Tan for defendants*

125 *Firms:* *M/s* *Derrick* *Ravi* *&*

Partners

126 *M/s Drew & Napier*

Chao Hick Tin J

S Sreenivasan (Derrick Ravi & Partners) for the plaintiffs
Cheyrl Tan (Drew & Napier) for the defendants
