IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 218

Suit 994/1992, RA 410/1996, RA 430/1996

Between

Energy Shipping Co Ltd

… Plaintiff

And

UDL Shipbuilding (Singapore) Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Energy Shipping Co Ltd v UDL Shipbuilding (Singapore) Pte Ltd

[1998] SGHC 218

Suit 994/1992, RA 410/1996, RA 430/1996
G P Selvam J
30 June 1998

1 **Judgment:**

2 The appeal

3 This judgment is in respect of two appeals (Nos 410/96 and 430/96) to a Judge-in-Chambers from an assessment of damages for breach of a shipbuilding contract. It was a sequel to a decision made by me and an appellate decision delivered by Thean JA for the Court of appeal.

4 The shipbuilder was UDL Shipping (Singapore) Pte Ltd ("the defendants)" and the intended shipowner was Energy Shipping Co Ltd of Taiwan ("the plaintiffs"). The plaintiffs entered into a shipbuilding contract with Argos Engineering Pte Ltd whereby the latter undertook to build and deliver to the plaintiffs a ship at the price of US$7,460,000 payable by instalments ("the shipbuilding contract"). Two instalments of US$373,000 each were paid by the plaintiffs to Argos.

5 Construction commenced, but because of financial problems, Argos was unable to proceed further with the construction. This led to a novation agreement dated 7 March 1992 entered into between the plaintiffs, Argos, the defendants' parent company, UDL Holdings of Hong Kong and Argos' parent company, Chung Wah ("the novation agreement"). The effect of the novation agreement was that the shipbuilding was undertaken by the defendants. A formal deed of novation was made between the plaintiffs and the defendants on 12 March 1992 ("the deed of novation") whereby the defendants assumed all the liabilities and obligations as well as the benefits of Argos under the shipbuilding contract and the novation agreement. Argos was also concurrently released from all liabilities thereunder. Pursuant to the novation agreement, the plaintiffs made two instalment payments amounting to $2,000,000 to the defendants.

6 Clause 7 of the novation agreement provided: 'Energy shall establish a revolving letter of credit of up to the limit of … S$8m in favour of UDL or the assignee according to the terms of purchase orders issued by UDL or the assignee for the purchase of material and equipment required for the completion of the vessel … If this letter of credit is not established within 60 days of the execution of the agreement, the contract shall become null and void.' UDL were the defendants' parent company and the defendants became the assignee who undertook the construction.

7 The plaintiffs and defendants subsequently entered into negotiations to substitute a standby letter of credit for the revolving letter of credit as provided in cl 7 of the novation agreement. The negotiations were not completely followed through. The defendants then terminated the agreement on 15 May 1992, on the ground that by cl 7, the plaintiffs were required to establish the (revolving or standby) letter of credit by 6 May 1992 (60 days after 7 March

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

1992), but had failed to do so. The plaintiffs sued the defendants for breach of contract and delivery up of the hull, material and equipment purchased for the construction of the ship. The defendants counterclaimed for a declaration that the contract was null and void and for damages for breach of contract. I dismissed the plaintiffs' claim and allowed the counterclaim at the end of the trial by giving an interlocutory judgment with damages to be assessed. The plaintiffs appealed. The Court of Appeal affirmed my decision and ordered the damages to be assessed. See ***Energy Shipping Co Ltd v UDL Shipping (Singapore) Pte Ltd*** [1995] 3 SLR 25.

8 At this stage, mention must be made of an order of variation made by the Court of Appeal. The defendants became a party to the contract by way of novation. They were substituted in the stead of Argos. As mentioned earlier, before the novation, the plaintiffs had made part payments to Argos. They also paid $2,000,000 to the defendants. By reason of the novation, the payments made to Argos must be considered as payments made to the defendants because the defendants inherited all the benefits as well as all the burdens of Argos. I had ruled that the defendants must give credit for the payments made to them by the plaintiffs. This naturally included the payments made to Argos. The Court of Appeal declared that in computing the damages payable by the owners credit must be given to such payments. The Court of Appeal had made explicit what was implicit in my judgment. The defendants readily conceded that they must give credit to the payments made to Argos.

9 At the assessment of damages proceedings, what the defendants claimed and what Assistant registrar Miss Teh Hwee Hwee awarded were as follows :

10 UDL's claim Amount Awarded

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

11 Net Reliance Loss $3,874,514.74 $1,984,980.74

12 Net Expectation Loss $5,603,763.24 $ 344,005.00

13 Injunction Damages $1,712,937.50 $1,121,862.13

14 Third Party claims $ 817,307.31 $ 817,307.31

15 The plaintiffs have appealed against the entire decision. According to them, substantial amounts were due to them and they did not have to pay anything to the defendants on the counterclaim. The defendants appealed against the decision in respect of two items, that is net reliance loss and net expectation loss, and also a direction given in respect of third party claims.

16 My decision

17 After considering the contention of both parties, the law and the evidence, I have concluded that the awards made by the Assistant Registrar were just and proper and must not be disturbed. This was a complex case. the Assistant Registrar has admirably understood the applicable principles of the law of damages and evidence given that both sides made strange propositions. She handled the numbers with fairness and meticulous care. she also made the correct findings of fact. The grounds of her written decision showed that at no time she lost her clarity of thought in making the conclusions. As the amounts in question were substantial, I shall add my thoughts on the matter.

18 the defendants' computations of the first two items, that is "net reliance loss" and "net expectation loss", are annexed to this judgment. The defendants declared that they wanted only one set of damages, either "reliance loss" or "expectation loss" and not both. Curiously, they included a claim for "wasted

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

expenditure" to their claim for "expectation loss", that is to say loss of profits. There appeared to be a conceptional confusion on the part of the defendants because "wasted expenditure" is the same as "reliance loss" or "reliance interest." The defendants appeared in one breath to make an election of one of the two and in the same breath seek to recover both which they were entitled to recover if the evidence supported both claims. The reason why both are recoverable is because that is the only way to justly compensate the innocent party as contemplated by the deed of novation incorporating some of the provisions of the novation agreement and the shipbuilding contract. The defendants properly added the claim for "wasted expenditure" to the loss of profits claim. The amount of claim, however, was incorrect. I shall soon explain why it was so.

19 In presenting their claim the defendants said, "If the Court should rule that Argos and UDL are to be treated as one entity in the computation of damages suffered by UDL, the defendants shall be relying on the "reliance loss" head of damages. If the Court should find that UDL is to be treated as distinct from Argos, then the defendants shall elect to claim "expectation loss". Alternative two was a cryptic statement. Argos and the defendants were of course distinct parties but it did not follow that the Court must reject what had been done by Argos and what had been received by Argos. To do so would be utterly unrealistic and unjustifiable as it would tantamount to ignoring the meaning and effect of the principle of novation.

20 The law

21 It would be apt now to state the applicable legal principle. The basic principle which underlies assessment of damages is succinctly stated in ***Benjamin's Sale of Goods***, Fourth Edition, Para 16-027 as follows :

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

> Damages for breach of contract are a compensation to the innocent party for the damage, loss or injury he has suffered through that breach: he is, as far as money can do it, to be placed in the same position as if the contract had been performed. Damages are primarily intended to give him the value of the promised performance of which the breach deprives him, which has been called the plaintiff's "expectation interest" *e.g.* his expectation of making a profit through the transaction. The plaintiff may also have a "reliance interest" which should be protected by the award of damages: this interest relates to the expense or loss which the plaintiff has himself incurred in reliance on the expected performance of the contractual promise made by the defendant and which is wasted by the breach. This "reliance interest" is illustrated by many cases in the sale of goods, in one of which the Court of Appeal has discussed whether the plaintiff can recover *both* his expected profit *and* the expenses he has incurred in reliance on the defendant's promise. Subject to the doctrine of mitigation, the plaintiff is, however, entirely free to elect between a claim for lost profits or one for wasted expenditure.

22 "Expectation interest" and "reliance interest" are the same as "expectation loss" and "expectation lost" the terms used by the defendants.

23 In simple terms, the defendants were entitled to recover the notional profits they would have made as well as the wasted expenditure.

24 Expectation interest

25 having stated the law, I shall now consider the contentions in the light of the evidence. First, a preliminary observation on the plaintiffs' contention that this was a loss-making contract. The plaintiffs conceded that they carried the onus of proving that this was a loss-making contract. it would have been a loss-making contract if, and only if, the cost of completing the construction and delivery of the ship would have exceeded the contract price. On the evidence, that was not the case. The plaintiffs had the opportunity to consider all the evidence of the defendants. Nonetheless they did not succeed in demolishing the finding by the Assistant Registrar. The Assistant Registrar made a finding

that the new contract price which had been increased by some $2,000,000 exceeded the budgeted cost of construction of the ship as shown below :

26 Final Contract price $16,770,798.00

27 Final Budgeted cost with overheads $16,426,793.00

28 Final Expected profit $ 344,005.00

29 Assistant Registrar Miss Teh Hwee Hwee found that there was no evidence to support a finding that it was a loss-making contract. I find no reason to differ with her. The profits found by her gives a profit of less than 2.5% which is eminently an entirely reasonable and realistic expectation. No one will enter into a contract of this kind without an expectation of at least 5% profits. I therefore hold that the defendants were entitled to recover the sum of $344,005 as anticipated profits. This is in accordance with well established principles. ***C & P Haulage v Middleton*** [1983] 3 All ER 94 cited by the plaintiffs was decided on its peculiar facts. The party in breach under the contract in question was entitled to retain the result of the expenditure and innocent party was given alternate premises rent-free. Innocent party was therefore not worse off by reason of the breach. The facts of the present case are very different. The plaintiffs contention has no merits at all.

30 The defendants for their part did not challenge the figures. They would not accept the formula. In my judgment, the Assistant Registrar applied the correct formula. There is always an element of speculation in the anticipation of profits because they do not know the actual cost of construction until the construction is completed. That is no reason to reject the claim for profits unless it is shown that the costing was unrealistic and the failure to complete the

construction and sell the completed ship in the market was also unreasonable. That was not the case here. The defendants claimed a profit of $3,318,153.51. This was wrong in principle because it failed to reckon in the full admitted estimated cost of construction which must be expended in order to reap the profit. I therefore reject the claim for loss of profits as claimed by the defendants and affirm the decision below of Assistant Registrar Miss Teh Hwee Hwee.

31

32 Wasted Expenditure

33 I now come to the wasted expenditure. This claim would ordinarily not succeed if the defendants had completed the building and sold the completed ship in the market for no less than the cost of construction. It would not also succeed if the completed vessel was sold for a price which together with the moneys paid by the plaintiffs was not less than the total sum expended in the construction. In this case, a company related to the defendants purchased it for $1,300,000. The Assistant Registrar found that the defendants acted reasonably in selling it to them and I find no reason to differ with her. This is a paltry sum compared with the contractual price of the completed ship or the amount expended up to the time of the repudiation of contract. The latter amount was :

34 Amount expended by Argos $5,326,473.81

35 Amount expended by defendants $1,404,471.23

36 $6,730,944.04

37 I have excluded from this the overhead charges of $700,000 proposed by the defendants since that was not actually expended by the defendants

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

specifically towards the construction of this hull before the repudiation and injunction. Out of this amount, Argos and the defendants received $3,570,964.30 in the aggregate from the plaintiffs. What the defendants spent was an amount of $1,404,471.23 but this was out of $2,000,000 the defendants received from the plaintiffs. In one sense therefore the defendants retained a sum of $429,036 being the difference between $2,000,000 received from the plaintiffs and $1,404,471.23 applied by them for the construction of the ship. In addition, they received $1,300,000 from the sale of the partially constructed ship.

38 The ultimate question therefore is whether the defendants are entitled to the benefit by the expenditure by Argos. The answer to this must be found in some contractual provision. The starting point is the deed of novation to which the defendants were a party. The central provision read as follows :

> In consideration of, inter alia, Energy releasing Argos from its liabilities and obligations under the Contract, UDL Shipbuilding agrees to assume the liabilities and obligations thereunder to which effect the Contract shall be and hereby novated with UDL Shipbuilding as party thereto instead of Argos and UDL Shipbuilding shall be entitled to all the rights, title and benefits thereunder.

39 Then follows the only other clause in the deed of novation. By this provision the defendants agreed as follows: "the variations made to the Contract as set out in clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 14 of the Agreement and undertakes to be bound by the said provisions as if UDL Shipbuilding (the defendants) were a party." The agreement was made between the plaintiffs and, among others, the defendants' parent company, UDL holdings Limited. Clause 11 of the agreement read as follows :

> Upon execution of this Agreement, Energy shall become the owners of materials and equipment as and when these are ordered, procured or used for the ship. Energy shall become

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

> owners of the hull, machinery and vessel in general as the building work progresses. The foregoing provision notwithstanding, the Assignee may exercise their right to retain the vessel pursuant Article XI of the Contract.

40 Article XI of the shipbuilding contract preserved :

> All claims of the BUILDER for the proven loss and damages caused by such BUYER's default and apply the instalment or instalments paid by the BUYER to the BUILDER as of that time for the compensation of such proven loss and damages which the BUILDER shall have sustained by reason of BUYER's default.

41 Article XI further provided that :

> Also any lien, interest or property right that the BUYER may have in and to the VESSEL, and to any parts or equipment hereof, and to any material or parts acquired for construction of the VESSEL, but not utilized yet for such purpose, shall forthwith cease, and said VESSEL and any part or equipment thereof shall become the sole property of the BUILDER provided that the proceeds thereof obtained at the public auction or the private sale by the BUILDER shall be applied by the BUILDER for mitigation of the damages caused by the BUYER's default.

42 Article XI additionally said that :

> In the event instalment or instalments paid by the BUYER, and the proceeds from the public auction or the private sale as aforesaid are insufficient to adequately compensate the BUILDER for the proven loss or damages which the BUILDER has sustained from the BUYER's default, the BUYER shall be liable for and shall pay the BUILDER additional compensation to cover such proven loss or damages. If the sale brings out more than the BUILDER's proven loss and/or damages, any amount in excess or BULDER's proven loss and/or damages shall be paid by the BUILDER to the BUYER.

43 It would appear that the above provisions were not brought to the notice of the Assistant Registrar. They came to my mind because of my memory of the trial. The net result of the above provisions is that the defendants are entitled to what had been spent by Argos. The Assistant Registrar came to the result by the

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

application of the principle of novation and by that route she arrived at the same correct result.

44 Injunction damages

45 In respect of the loss suffered during the period the injunction was in force, the Assistant Registrar awarded $1,121,862.13. The damages arose because the defendants, by reason of the injunction, could not dispose of the uncompleted hull upon the repudiation of the agreement. there was also opportunity cost involved because the hull was sitting at the defendants' place, not to mention the inevitable deterioration of the hull. These damages were in addition to the previous two heads because they did not logically come under them and were accordingly excluded. That the defendants were entitled to recover this claim is unarguable. Furthermore the quantum assessed was based on reasonable and correct principles. Again I see no reason to disturb the award.

46 Future claims

47 Finally, the claim for indemnity. The plaintiffs argued that this item ought not to be assessed because the indemnity claim was not mentioned in my judgment. This was being pedantic. The order to assess damages meant complete compensation. It includes what they would have gained by way of profits, all expenses thrown away, opportunity cost and reimbursement of what has been or must be paid to third parties provided it related to contracts made before the repudiation. The amounts awarded in respect accrued claims were reasonable and proper. As regards the future claims, the Assistant Registrar directed them to be brought as and when they arose. This is a correct direction because justificability of such claims must be preserved should there be a dispute over them.

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

48 In the result, both appeals are dismissed.

49 G P SELVAM

50 JUDGE

G P Selvam J

Alvin Yeo with Tay Peng Cheng (Wong Partnership) for the plaintiffs
Tan Siew Tong with (Gurbani & Co) for the defendants

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