IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 98

Suit No 11 of 2019

Between

Golden Star Marine Pte Ltd

… *Plaintiff*

And

Star Formula Marine Services Pte Ltd

… *Defendant*

JUDGMENT

Commercial Transactions — Sale of goods — Breach of contract
Commercial Transactions — Sale of services — Breach of contract
Debt and Recovery — Counterclaim

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Golden Star Marine Pte Ltd
v
Star Formula Marine Services Pte Ltd

[2021] SGHC 98

General Division of the High Court — Suit No 11 of 2019
Lai Siu Chiu SJ
13–14 July, 9–12 November 2020, 14 January 2021

21 April 2021 Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 Golden Star Marine Pte Ltd ("the plaintiff") is a company incorporated in Singapore and is in the business of (i) chartering of boats and barges with crew as well as (ii) vessel-bunkering and (iii) retailing of petroleum products and oil trading.

2 Star Formula Marine Services Pte Ltd ("the defendant") is in the business of operating barges, tugboats and bumboats. It is also a wholesaler of crude petroleum and provides marine services to harbour craft.

3 One of the plaintiff's directors, Chew Hoe Soon, also known as Bernard Chew ("Bernard"), and the Defendant's director Chua Chee Seng ("Martin") have known each other for many years and were once close friends.

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4 Besides the plaintiff, Bernard is also a director of two other companies, namely, Shipmate Pte Ltd ("Shipmate") and Singaport Cleanseas Pte Ltd ("Singaport"). Shipmate is involved in ship management while Singaport is in the oil recycling business. In his affidavit of evidence-in-chief ("AEIC"), Bernard deposed that his group of companies currently operates around 20 vessels and he has been managing the three companies for more than 15 years.[1]

The facts

5 According to Bernard's AEIC and the plaintiff's statement of claim,[2] sometime in early 2016, Martin approached Bernard with a business proposition ("the Vietnam Project"). A Vietnamese party wanted to buy a large quantity of marine gas oil ("MGO" or "cargo"), but Martin did not have the resources to sell it to the Vietnamese buyer. Martin was in fact then on the brink of bankruptcy. (In cross-examination[3] Bernard also claimed Martin's company then owed the plaintiff $500,000.) Martin requested Bernard's help with the Vietnam Project.

6 After due consideration, Bernard decided to participate in the Vietnam Project using vessels belonging to the plaintiff. He would use the plaintiff's funds to purchase the MGO to sell to the Vietnamese buyer.[4]

7 Bernard then approached Soo Yong Chieg, known to him as Jack ("Jack"), of Bunkers Marine Pte Ltd ("Bunkers Marine") for supply of the

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1 Bernard's AEIC at [3].

2 Bernard's AEIC at [4].

33 Transcript, 9 November 2020, at p 18, lines 21-24.

4 Bernard's AEIC at [8].

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MGO. Jack did not trust Martin's financial standing and he wanted the plaintiff to stand as guarantor for the Vietnam Project should Bunkers Marine agree to be the supplier. After discussions, Bunkers Marine agreed to be the supplier for the Vietnam Project. Martin and Bernard agreed that the plaintiff and the defendant would share the profits on a 50:50 basis.[5]

8 At the material time, Ong Teck Beng ("Derrick") was a mutual friend of Bernard and Martin. Derrick operated a company called Searights Maritime Services Pte Ltd ("Searights"), which was then facing financial difficulties and in fact eventually ceased operations. At the time of its closing down, Searights owned several vessels, including the "Eustance", the "Sea Frontier" and the "Victoria Strike" (collectively "the vessels"). The vessels were apparently sold or mortgaged to a company called RS Marine Investments Pte Ltd ("RS Marine").[6]

9 Derrick approached Martin to take over the vessels from RS Marine. After a discussion with Martin, Bernard agreed that the vessels would be taken over by the defendant and the plaintiff in equal ownership.[7] Martin's role was to procure the vessels while Bernard would manage the vessels and provide the facilities for the vessels' operations through Shipmate. Martin was assisted by Lee Cheng Guan (known as "Tony") in the Vietnam Project. Tony was in charge of accounts for the defendant.[8]

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5 Bernard's AEIC at [10].

6 Bernard's AEIC at [11].

7 SOC at [9(f)].

8 Bernard's AEIC at [12]-[14].

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10 Because of the mutual trust between them arising from their decades-long friendship and cooperation on many projects over the years, not to mention that Bernard had known Martin's father (David Chua) for 30 to 40 years, Martin and Bernard decided it would not be necessary to have Bernard's name in the agreements made with RS Marine.[9]

11 Bernard and Martin further agreed that, once full payment was made for the vessels, their ownership would be transferred to a new company jointly owned by them. Towards that intent, a company called MB Marine Pte Ltd ("MB Marine") was eventually incorporated with Bernard holding 50% of the shares.[10]

12 Martin managed to persuade the MGO buyer to advance a portion of its payment for the Vietnam Project to procure the vessels. Martin then paid RS Marine the first instalment for the purchase price of the vessels. However, all subsequent instalments save the last two were paid by the plaintiff from the plaintiff's account. Funds received from the MGO buyer were also taken into the plaintiff's account and applied towards the purchase of MGO from Bunkers Marine.[11]

13 Operation of the vessels commenced after Shipmate sourced and hired crew for the vessels. Bernard, however, never had direct contact with the MGO buyer throughout the Vietnam Project. As agreed between them, Martin was the

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9 Bernard's AEIC at [15]-[16].

10 Bernard's AEIC at [17].

11 Bernard's AEIC at [18].

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sole point of contact with the buyer, and he updated Bernard on any information or payments from the buyer.[12]

14 Initially, for any purchase of MGO, the end-buyer would transfer the required funds directly to the plaintiff. Subsequently, this arrangement was changed by Martin such that payment was made to Bunkers Marine by the defendant after the end-buyer had paid the defendant. The change in payment was made on 8 March 2017 without Bernard's knowledge or consent.[13]

15 Bernard was disappointed by Martin's conduct. The two held discussions after which it was agreed as a compromise and moving forward, that the two would incorporate MB Marine to manage the accounts and receive the funds from the Vietnam Project. It was also agreed that upon full payment, the ownership of the vessels would be transferred to MB Marine. Hence, MB Marine was incorporated even before full payment had been made for the purchase price of the vessels.[14]

16 In the course of the Vietnam Project, Martin introduced a member of his staff called Christine to Bernard. Christine requested that Bernard and the plaintiff support the defendant's businesses of the retail and supply of oil as she wanted to improve the defendant's revenue; Bernard agreed.[15]

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12 Bernard's AEIC at [20].

13 Bernard's AEIC at [20]-[21], [24].

14 Bernard's AEIC at [25].

15 Bernard's AEIC at [27].

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17 Consequently, from 2016 onwards, the plaintiff supplied MGO or marine fuel oil ("MFO") or both to the defendant. Christine would pass to Bernard orders that she received and Bernard would fulfil the orders. Upon delivery of the cargo ordered, the plaintiff would bill the defendant. Documentation for the trades included WhatsApp communications, emails, invoices and delivery orders. These orders were described as retail orders by Bernard.[16]

18 Without first giving notice or obtaining the plaintiff's consent, Martin used the defendant's account to make payment of the last two instalments for the bareboat charter of the vessels. Martin went further and subsequently transferred the vessels to parties other than MB Marine, in breach of his agreement with Bernard.[17]

19 Disappointed, Bernard decided he did not want to have any more dealings with Martin or the defendant. He requested the defendant to pay all the outstanding sums then due to the plaintiff forthwith. This (according to Bernard) prompted Martin to come up with baseless and unjustified claims against the plaintiff.[18]

20 Bernard and Martin met on 31 July 2018 ("the 31 July meeting") in the presence of Bernard's brother, Tony and Tan Hock Lian ("THL"), who is a shareholder of Singaport. At the 31 July meeting, Martin presented Bernard with a financial statement containing, *inter alia*, management salaries, office

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16 Bernard's AEIC at [28].

17 Bernard's AEIC at [29].

18 Bernard's AEIC at [31].

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rental, loading adjustment and interest owed to RS Marine. The various items totalled USD691,483.77; Bernard was shocked. He deposed that some items listed pertained to allegedly outstanding sums in respect of which the defendant had never issued and delivered valid invoices (contemporaneous or otherwise) to the plaintiff.[19]

21 Bernard added that the defendant continued to charge such unfounded sums to the plaintiff even after the plaintiff commenced these proceedings in Suit 11 of 2019 ("the Suit") on 2 January 2019.[20]

22 On 12 July 2019, the defendant rendered the following invoices to the plaintiff for bareboat charters and supply of marine lubrication oil:[21]

Date	Invoice number	Amount in SGD
30 June 2016	S1606-004	315,000.00
30 September 2016	S1609-006	315,000.00
31 December 2016	S1612-014	315,000.00
2 February 2017	S1702-001	12,000.00
31 March 2017	S1703–024	315,000.00
30 June 2017	S 1706-021	315,000.00

19 Bernard's AEIC at [32].

20 Bernard's AEIC at [33].

21 Bernard's AEIC at [33].

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Total		1,587,000.00

23 It was the plaintiff's case that, prior to 12 July 2019, the defendant had never raised to the plaintiff the issue of bareboat charters, whether in meetings, WhatsApp messages or emails. In any case, the defendant had no basis to charge the plaintiff for chartering any of the vessels. Bernard pointed out that if the alleged claims were true, it would not make sense and it was out of character for the defendant to leave the alleged claims unaddressed for more than a year in view of the significant sums involved.[22]

24 Bernard contended that the bareboat invoices were in reality monies owed by Martin or the defendant to the plaintiff. Martin had used the vessels to supply smaller vessels with cargo meant for the Vietnam Project. The plaintiff was entitled to deduct the invoice amounts for those supplies as the plaintiff had paid the supplier for the oil. Bernard accused Martin of usurping and stealing the joint venture business of the parties even though Bunkers Marine invoiced the plaintiff for the fuel supplies it provided.[23]

25 To substantiate the plaintiff's contention that the defendant's claims were not genuine, Bernard referred to the defendant's financial statements for the years ended 2017 and 2018. He pointed out that if the bareboat charter claims were genuine, the amounts would have been reflected as revenue in the defendant's financial statements, but they were not.[24]

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22 Bernard's AEIC at [34]-[35].

23 Bernard's AEIC at [36], [42].

24 Bernard's AEIC at [37].

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26 Bernard also noted that the alleged bareboat charters' periods took place during the Vietnam Project. Further, the "Victoria Strike" was drydocked between May and October 2016, while the "Eustance" was drydocked from about April to June 2017. In addition, as far as Bernard knew, the defendant's Maybank account did not exist at the time the defendant raised the purported invoices for the alleged bareboat charters, which included details of the defendant's Maybank account.[25] At the material time, the defendant maintained a DBS account.

27 Bernard criticised other claims raised by the defendant which form the subject matter of the defendant's counterclaim. These will be dealt with when the court addresses the defendant's counterclaim and the evidence presented by the parties.

28 When the trial of the Suit first commenced on 13 July 2020, Bernard was not scheduled to testify as one of the plaintiff's witnesses, and he had not filed any AEIC. The plaintiff's witness who took the stand that day was Ng Guat Hoon, known as Doris ("Doris Ng"). She is a director of the plaintiff and is Bernard's wife. In his AEIC, Bernard deposed[26] that initially, Doris Ng stood in for him as a witness as she knew how much he trusted Martin not only as a business partner but also as a very good friend. Doris Ng took it upon herself to confront the defendant so as to save Bernard from having to face Martin, whom he once called a friend.

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25 Bernard's AEIC at [43].

26 Bernard's AEIC at [41].

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29 However, in the course of Doris Ng's cross-examination, it became evident to the court that Bernard's testimony was crucial to the plaintiff's case. Consequently, the plaintiff's counsel (i) applied first to adjourn the trial and (ii) subsequently obtained leave from this court for Bernard to be called as the plaintiff's witness and for his AEIC to be filed.[27]

30 Not surprisingly, the defendant (in particular its witness Martin) disputed the plaintiff's and Bernard's version of events.

The pleadings

31 In the statement of claim, the plaintiff claimed from the defendant invoices priced in SGD as well as USD.[28] There were only four invoices issued in 2016 and 2017 totalling SGD5,804.50 whilst for the USD invoices, the invoices commenced from 21 February 2016 and ended on 21 June 2018 totalling USD5,910,436.51. The plaintiff alleged that by its employee Lee Kar Mun ("Carmen"), it had sent numerous emails to the defendant's representative Kammy Choo ("Kammy") since 6 September 2018 to demand payment of the outstanding invoices to no avail.[29]

32 In its defence and counterclaim, the defendant admitted that the parties had a long-standing business relationship and that Bernard and Martin had been close friends for many years.[30]

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27 HC/ORC 4689/2020.

28 Statement of Claim (Amendment No 1) ("SOC") at [10].

29 SOC at [13].

30 Defence & Counterclaim (Amendment No 1) ("D&CC") at [4]-[5].

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33 The defendant denied that it was agreed that the parties would jointly own the vessels. Instead, the defendant contended that the defendant entered into a Novation Agreement dated 29 March 2016 ("the Novation Agreement"). Under the Novation Agreement, the defendant took over the vessels by taking over the benefit of a Memorandum of Agreement dated 25 February 2016 ("the MOA"), which had been executed by RS Marine, Searights and New Finley Assets Limited ("New Finley"). The defendant asserted that, upon full payment of the purchase price of the vessels to RS Marine, the vessels rightfully belonged to the defendant.[31]

34 The defendant admitted that the funds from the Vietnam Project were paid to the plaintiff but denied that MB Marine was incorporated to own the vessels and/or that it was jointly owned by Bernard and Martin.[32] The defendant denied that it changed the manner of paying for supplies of MGO ordered by buyers in the Vietnam Project as alleged by Bernard (see [14] above).[33]

35 The defendant averred that it had no knowledge of Shipmate and/or of Shipmate's role in the Vietnam Project, including its role in crewing and paying the vessels' expenses.[34]

36 In essence, the defendant denied all the material allegations made by the plaintiff and the latter's role in the Vietnam Project as well as in the purchase of the vessels.

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31 D&CC at [10], [15].

32 D&CC at [11].

33 D&CC at [14].

34 D&CC at [12].

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37 The defendant also raised a setoff against the plaintiff's claim. The setoff was for "services and goods sold to the [p]laintiff at the [p]laintiff's request" for invoices variously dated 2016, 2017 and 2018. The earliest invoice was dated 30 June 2016 and the most recent was dated 21 June 2018. There were 31 invoices in total amounting to SGD1,587,000.00 ("the SGD counterclaim") and USD4,484,129.84 ("the USD counterclaim").[35]

38 The defendant also asserted that the plaintiff's claim failed to take into account the following sums paid by the defendant.[36]

Date	**Amount in USD**
5 May 2017	51,409.47
5 October 2017	2,000.00
25 October 2017	150,224.42
8 September 2017	200,000.00
2 March 2018	500,000.00
20 April 2018	250,000.00
Total	1,153,633.89

39 It was the defendant's case that the above sum of USD200,000 paid on 8 September 2017 was made to a third party, Far East Shipping & Trading Pte Ltd ("Far East"), at Bernard's behest as the plaintiff owed the amount to Derrick whose wife owns Far East.

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35 D&CC at [28].

36 D&CC at [29].

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40 The defendant added that, using the exchange rate of SGD1.00 to USD0.74 as at the date of the writ (2 January 2019), the defendant's SGD claim would be equivalent to USD1,174,380. After the setoff of the sums listed in [37] and [38] above from the plaintiff's claim, the defendant asserted that the plaintiff owed the defendant USD904,707.00.[37]

41 In the plaintiff's reply and defence to the counterclaim, the plaintiff disputed six of the defendant's invoices for the USD counterclaim and all of the defendant's invoices for the SGD counterclaim.[38]

S/N	Invoice number	Amount	Remarks
1	S1702-011	USD51,492.16	Plaintiff paid the invoice on or about 16 February 2017.
2	S1704-004	USD58,466.95	Plaintiff paid the invoice on or about 26 April 2017.
3	S1706-007	USD33,916.86	Plaintiff paid the invoice on or about 13 June 2017.
4	S17010-008	USD20,979.70	Plaintiff paid the invoice on or about 30 October 2017.
5	S1807-017	USD214,576.24	Plaintiff was unaware of the invoice as it was never sent to plaintiff before it was stipulated in the Defence.

37 D&CC at [31].

38 Reply & Defence to Counterclaim (Amendment No 1) ("Reply") at [19].

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6	S1804-020	USD49,065.08	Plaintiff was unaware of the invoice as it was never sent to plaintiff before it was stipulated in the Defence.
7	S1606-004	SGD315,000.00	Plaintiff was unaware of the invoice as it was never sent to plaintiff before it was stipulated in the Defence.
8	S1609-006	SGD315,000.00	Plaintiff was unaware of the invoice as it was never sent to plaintiff before it was stipulated in the Defence.
9	S1612-014	SGD315,000.00	Plaintiff was unaware of the invoice as it was never sent to plaintiff before it was stipulated in the Defence.
10	S1702-001	SGD12,000.00	Plaintiff was unaware of the invoice as it was never sent to plaintiff before it was stipulated in the Defence.
11	S1703-024	SGD315,000.00	Plaintiff was unaware of the invoice as it was never sent to plaintiff before it was stipulated in the Defence.

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12	S1706-021	SGD315,000.00	Plaintiff was unaware of the invoice as it was never sent to plaintiff before it was stipulated in the Defence.

The amounts in the disputed USD invoices total USD428,496.99. The largest sums, however, were the six SGD invoices for bareboat charter hire which the plaintiff claimed it never received.

The evidence

42 The plaintiff had two other witnesses besides Bernard and Doris Ng, namely, Carmen, who is the plaintiff's accountant, and Jack of Bunkers Marine (see [7] above). The defendant also had four witnesses, namely, Martin, Derrick, THL and Tony (see [9] and [20] above).

(i) The plaintiff's case

43 In her AEIC, Carmen deposed that she took over duties from the plaintiff's former accountant Irene when the latter left the plaintiff's services in May 2018. Carmen's duties included chasing the plaintiff's debtors to recover outstanding sums owed to the plaintiff. In reviewing the plaintiff's accounts, Carmen realised that the defendant owed sums to the plaintiff ("the defendant's outstanding debts").[39]

44 Carmen reviewed Irene's files and records of correspondence between Irene and Kammy, who was the defendant's accountant at the material time.

[39] Carmen's AEIC at [3].

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Carmen noted from Irene's records that there were email exchanges between Irene and Kammy and WhatsApp exchanges between Irene and Tony on the defendant's outstanding debts.[40]

45 Following her perusal of the plaintiff's records, Carmen started liaising with Kammy. When Carmen first emailed Kammy about the defendant's outstanding debts, Kammy requested that Carmen send to her relevant or corresponding statements of account of the plaintiff. Carmen obliged even though she noted from the files that Irene had sent Kammy various statements of account on many prior occasions. These included the "Accounts payable" and "Accounts receivable" pertaining to the Vietnam Project.[41]

46 Carmen tabulated some of her exchanges of communication with the defendant as follows:

> (a) On 18 September 2018, Carmen received an email from Tony attaching handwritten accounts which were purportedly a record of the defendant's statements of accounts. The handwritten records were dated 29 June 2018 and showed an alleged outstanding sum of SGD414,101.10 due from the plaintiff to the defendant. This was inconsistent with the plaintiff's accounting records. Further, the handwritten records made no reference to any invoices;[42]

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40 Carmen's AEIC at [4].

41 Carmen's AEIC at [5] and [6].

42 Carmen's AEIC at [7(b)].

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(b) On 19 September 2018, Carmen attached the following documents in an email to Kammy and Tony:

(i) The latest ageing details for MB Marine;

(ii) Debtors' and creditors' ageing details of the defendant;

In the email, she informed Kammy that the defendant's invoice S1804-026 did not tally with the defendant's statement and that Kammy had failed to include in her statement of accounts the plaintiff's invoice 8207/18;[43]

(c) On 20 September 2018, Kammy requested Carmen to do a contra between the parties' accounts. Although this required Martin's approval, Kammy told Carmen that she could follow Tony's records of the accounts to expedite the process.[44]

47 Carmen's AEIC then repeated the plaintiff's defence to the defendant's counterclaim set out at [41] above. She deposed that the plaintiff disputed the following invoices presented to the plaintiff on 12 July 2019, as these had never appeared in the plaintiff's records prior thereto.[45]

S/N	Date	Invoice number	Summary of Carmen's remarks
1	30 June 2016	S1606-004	Not in any email exchange

43 Carmen's AEIC at [7(c)].

44 Carmen's AEIC at [7(a)].

45 Carmen's AEIC at [8].

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2	30 September 2016	S1609-006	Not in any email exchange
3	31 December 2016	S1612-014	Not in any email exchange
4	30 March 2017	S1703-024	Not in any email exchange
5	30 June 2017	S1706-021	Not in any email exchange
6	2 February 2017	S1702-001	Not in any email exchange
7	17 January 2018	S1870-017	This invoice has never appeared in any email exchanges between the parties. WhatsApp records show that the defendant previously claimed under invoice S1901-017, dated 16 January 2018, the same amount of USD214,576.24. The invoice was untraceable and resurfaced in the defendant's counterclaim.

48 Carmen added that invoice 1804-020 (see S/N 6 in [41] above), dated 12 April 2018, was a double-billing – it was also billed to and paid by a related company of the plaintiff called GSM Maritime Pte Ltd ("GSM").[46]

49 During cross-examination, Carmen demonstrated her familiarity with the plaintiff's accounts – she had no difficulties explaining to the defendant's

[46] Carmen's AEIC at [9].

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counsel how the plaintiff's statements in the agreed bundles[47] added up to the amount claimed in the statement of claim. This included an advance of SGD180,000 made to the defendant in two payments. The first payment of SGD120,000 was made on 14 November 2016, and the second payment of SGD60,000 was made on 26 January 2017.[48]

50 Carmen drew to the court's attention the fact that the first five of the defendant's invoices listed in [47] above contained particulars of the defendant's Maybank account. Those invoices were variously dated 2016 or 2017. However, the plaintiff's records of the defendant's invoices from 2016 to 2018 showed that the Maybank account was never used. During those years, the defendant's invoices gave its DBS account for payment purposes.[49] Carmen referred to Bernard's AEIC[50] where he had deposed that the defendant's Maybank account did not exist until 2019.[51]

51 When cross-examined on why this piece of evidence was missing from her AEIC, Carmen explained that as it was in the AEIC of her "boss" Bernard, it was not necessary to include it in her written testimony.[52]

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47 Agreed Bundle ("AB") vol 2.

48 Transcript, 10 November 2020, p 11, lines 7–8; p 15, lines 13–23.

49 Transcript, 10 November 2020, p 20, lines 2–20.

50 Bernard's AEIC at [43].

51 Transcript, 10 November 2020, p 21, lines 28–31.

52 Transcript, 10 November 2020, at p 23, lines 4–7.

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52 Bernard's testimony as it appears in his AEIC has already been set out earlier (see [4]–[26] above). The court turns to the evidence that was adduced from him during cross-examination.

53 Bernard was not familiar with the statements of accounts between the plaintiff and the defendant. He requested that questions on the same be directed to Carmen, particularly on the contra arrangement between the two parties' accounts.

54 Counsel for the defendant made much of the fact that the plaintiff's auditor's confirmation statement of the balance position between the parties as at 31 December 2018 was not countersigned by the defendant. The audit confirmation stated as follows:[53]

Due from [the defendant]	USD5,186,932.37
	SGD5,804.50
Due to [the defendant]	USD4,125,531.5
	USD2,045,145.20
Advance payments to [the defendant]	SGD180,000

55 Bernard explained that Bunkers Marine was not the sole but a main supplier of MGO for the Vietnam Project.[54] For such service, Bernard testified

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53 AB vol 2 at 380.

54 Transcript, 9 November 2020, at p 20, lines 8–14.

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that Bunkers Marine would be paid USD3.00 per tonne of oil as commission.[55] On its part, the plaintiff would act as guarantor in case the buyer failed to pay for Bunkers Marine's cargo. By that Bernard explained (during re-examination) that the plaintiff was required to honour the price quoted by Bunkers Marine for its supply of MGO for the Vietnam Project even if the market price for the cargo fell after Bunkers Marine gave its quotation but before it supplied.[56]

56 Bernard did not dispute the fact that he had no documents to substantiate his claim that the vessels were meant to be co-owned by the plaintiff and the defendant.[57] He said it was a matter of trust between Martin and himself due to Bernard's friendship with Martin's father. MB Marine was incorporated for the plaintiff and the defendant to co-own the vessels.

57 As Bernard knew nothing of the plaintiff's accounts, he was unaware of Martin's alleged unhappiness with the plaintiff's accounts.[58] That was the reason (according to the defendant's counsel)[59] that Martin eventually bypassed the plaintiff and paid Bunkers Marine directly for the MGO supplied for the Vietnam Project. Martin further arranged for the Vietnamese buyer to pay the defendant directly.

58 It was Bernard's evidence that his other company Shipmate was the vessels' manager and took care of the crewing arrangements, maintenance and

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55 Transcript, 9 November 2020, at p 23, lines 28–30.

56 Transcript, 9 November 2020, at p 62, lines 7–23.

57 Transcript, 9 November 2020, at p 27, line 31 to p 28, line 1.

58 Transcript, 9 November 2020, at p 32, line 26 to p 33, line 2.

59 Transcript, 9 November 2020, at p 33, lines 3–6.

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repairs of the vessels. Bernard testified during re-examination that, at the time of this trial, the defendant still owed sums to Shipmate for its management of the vessels.[60]

59 Bernard was shown the plaintiff's bunker delivery notes in the plaintiff's supplementary bundle of documents[61] for bunkers supplied to the "Eustance" on various dates in 2016. These (according to Bernard) related to retail trades in fuel supply sales to other vessels.[62] The defendant's staff Christine brokered these trades for the defendant, and the plaintiff fulfilled them (see [16]–[17] above).

60 Nothing turns on Jack's testimony, which was brief and non-controversial. Jack's AEIC confirmed Bernard's version of the facts set out earlier at [5]-[7] and [14].

61 During cross-examination, Jack testified that, to him, the expenses incurred for the joint venture Vietnam Project between the plaintiff and the defendant would include bareboat charges.[63] He explained that Bunkers Marine would only do business with the plaintiff at the material time because he knew Bernard long before he knew Martin and the plaintiff was in a better financial position than the defendant.[64] However, operations-wise, because he had to deal with the end-user of the cargo, Jack testified he dealt more with Martin and

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60 Transcript, 9 November 2020, at p 64, lines 5–9.

61 AB vol 3 at 27, 29 and 37.

62 Transcript, 9 November 2020, at p 48, lines 24–28.

63 Transcript, 9 November 2020, at p 74, lines 4–12.

64 Transcript, 9 November 2020, at p 74, lines 16–23.

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Tony for co-ordination reasons with regard to loading and payment of the cargo supplied by Bunkers Marine.[65]

62 Jack testified that Bunkers Marine would invoice the plaintiff for the cargo it supplied to the Vietnam Project. Sometimes, when Martin urgently required the cargo, the defendant would pay on behalf of the plaintiff but Bunkers Marine always billed the plaintiff.[66] For the Vietnam Project, Bunkers Marine received USD66,949,840.00 in total from the defendant.[67] Contrary to Bernard's testimony at [55] above, Jack testified he was paid $2 per tonne as commission for the supplies of MGO by Bunkers Marine.

63 Jack confirmed Bernard's evidence (see [0] above) that, by guarantee from the plaintiff, he meant that the plaintiff must honour and accept the price(s) he had quoted to the plaintiff whenever there was an order placed for MGO under the Vietnam Project. He explained that Bunkers Marine would have booked the quantity of MGO ordered by the plaintiff from its own suppliers at a certain price based upon which he gave a quotation to the plaintiff. Bunkers Marine would still be liable to its supplier(s) based on the price provided to it, even if the price fell after it placed its order for the plaintiff's cargo – Jack needed the plaintiff's commitment to the price he had quoted to the plaintiff to avoid incurring any loss for Bunkers Marine.[68]

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65 Transcript, 9 November 2020, at p 74, line 31 to p 75, line 7.

66 Transcript, 9 November 2020, at p 75, line 12 to p 76, line 5.

67 Transcript, 9 November 2020, at p 77, lines 20–21.

68 Transcript, 9 November 2020, at p 79, lines 4–20.

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(ii) The defendant's case

64 As indicated earlier (see [42] above), the defendant also had four witnesses. The court will first address the testimony of Martin, who was the defendant's most important witness. In his AEIC,[69] Martin deposed that the oral agreement between himself and Bernard was that:

> (a) the plaintiff and the defendant would purchase oil from one another to fulfil the requirements of their respective customers;
>
> (b) they would provide each other with services such as de-bunkering and de-slopping;
>
> (c) the plaintiff would sell and deliver oil to the defendant's customers and would invoice the defendant accordingly; and
>
> (d) the plaintiff's and the defendant's invoices would be set off against one another.

65 Martin claimed he does not know Carmen and has only dealt with her predecessor Irene.[70] He added that Kammy, whom Carmen said she liaised with by way of emails in September 2018, is not an employee, agent or representative of the defendant but rather an external accountant engaged by the defendant. He deposed that Kammy also dealt with Irene and not Carmen.[71]

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69 Martin's AEIC at [8]–[9].

70 Martin's AEIC at [15].

71 Martin's AEIC at [16].

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66 Referring to the defendant's payments set out in [38] above which the plaintiff disputed, Martin claimed that, at Bernard's request, the defendant paid on his behalf USD200,000 and USD250,000 to Derrick on 8 September 2017 and on 20 April 2018 respectively. Martin deposed that Bernard owed monies to Derrick.[72] Derrick deposed that both sums were paid to his wife's company, Far East.[73] I should point out that this important fact was not pleaded by the defendant in either its defence or counterclaim.

67 According to Martin, not only did the defendant not owe money to the plaintiff, but also the plaintiff owed the defendant the sums claimed in the defendant's counterclaim.

68 During his cross-examination, it was elicited from Martin that there was no charter documentation to evidence the defendant's alleged charter of the vessels to the plaintiff. He testified it was a matter of trust between him and Bernard. In the past, he had also chartered vessels to Bernard without documentation.[74] He said the defendant purchased the vessels from RS Marine by instalment payments.[75] At one stage[76] Martin testified that the plaintiff paid the charter hire for the vessels, which the defendant paid in turn to RS Marine.

69 When questioned why he invoiced the plaintiff for charter hire for usage of the vessels to deliver MGO in the Vietnam Project, Martin explained that it

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72 Martin's AEIC at [19].

73 Derrick's AEIC at [8]–[11].

74 Transcript, 10 November 2020, at p 29, lines 2–7.

75 Transcript, 10 November 2020, at p 30, lines 4–13.

76 Transcript, 11 November 2020, at p 67, lines 29–31.

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was because the vessels belonged to him notwithstanding that the Vietnam Project was a joint venture between the parties. He testified that he provided the vessels to carry the cargo whereas the plaintiff did not provide "anything".[77] In addition, the Vietnamese buyer sent payment to Singapore before buying the cargo.[78] The defendant charged the plaintiff different amounts for the purported hire of the vessels – SGD120,000 per month for the "Sea Frontier", SGD100,000 per month for the "Eustance" and SGD45,000 per month for the "Victoria Strike". Martin explained it was due to the vessels being of different sizes.[79] There was no documentation to support the defendant's different rates of hire for the vessels.

70 Questioned further why he purchased the MGO for the Vietnam Project through the plaintiff instead of going directly to Bunkers Marine, Martin's illogical answer was that Jack and the plaintiff were partners and the plaintiff wanted to pay commission of $3.00 per tonne of cargo to Bunkers Marine, to which he agreed.[80]

71 As regards the Novation Agreement referred to earlier (see [33] above), it is noteworthy that the plaintiff was not a party thereto. Hence, it would not know the contents. According to cll 3 and 4 of the Novation Agreement, Searights's obligations to buy the vessels from RS Marine were novated to the defendant, but Searights remained a guarantor to ensure that the defendant honoured the obligations it took over from Searights.

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77 Transcript, 10 November 2020, at p 33, lines 12–13.

78 Transcript, 10 November 2020, at p 33, lines 14–15.

79 Transcript, 10 November 2020, at p 46, lines 23–31.

80 Transcript, 10 November 2020, at p 52, lines 15–23.

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72 Martin had exhibited to his AEIC the Novation Agreement. Schedule 1 of the Novation Agreement had a payment schedule of eight instalment payments to RS Marine totalling $240,037.92 for the payment of the bareboat charter of the vessels as stated under cl 3.2 therein. Martin relied on the payment schedule in his testimony, but nothing in the document proved that the defendant paid the instalments to become the vessels' owner. Martin denied the plaintiff's suggestion that the parties eventually agreed to jointly own the vessels through MB Marine. However, he admitted that eventually it was MB Marine that purchased cargo from Bunkers Marine for the Vietnam Project.[81]

73 Separately, on the same day the Novation Agreement was executed, Searights, the defendant and RS Marine entered into another novation agreement ("the Second Novation Agreement") for the defendant to take over the six-month bareboat charterparty dated 26 February 2016 made between Searights and RS Marine.[82] Indeed, the defendant was described as "the new charterer" in the Second Novation Agreement. The Second Novation Agreement had a payment schedule of eight instalments totalling SGD2,240,354.08.

74 Martin's AEIC further exhibited the MOA executed by New Finley, RS Marine and Searights that provided that, once Searights had paid the monthly charter hire of USD425,600 for six months, RS Marine would then transfer ownership of the vessels to Searights for a token payment of USD10.

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81 Transcript, 10 November 2020, at p 57, lines 5–9, lines 15–20.

82 AB vol 1 at 358–366.

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75 It seemed to the court that the charter hire agreed to be paid by the defendant pursuant to the Second Novation Agreement was actually hire purchase instalments – once the defendant made the six payments, RS Marine would transfer ownership of the vessels to the defendant for a nominal sum of USD10.

76 What was noteworthy from Martin's cross-examination was the fact that, despite being the defendant's director and its main witness, he knew nothing about the accounts upon which the defendant relied heavily for its counterclaim and setoff against the plaintiff's claim. At one point, he went to the extent of not accepting the accounts that were prepared by the defendant as shown in the agreed bundle marked 2AB.[83]

77 However, despite repeatedly stating that Kammy was in charge of, and he was unable to answer questions on, the accounts,[84] the defendant did not call Kammy as a witness and provided no explanation for her absence.

78 In addition, it was only when Martin was confronted with the defendant's own invoice[85] dated 31 December 2016 to the plaintiff showing a deduction of SGD480,000 that Martin conceded that the charter hire due to RS Marine for the vessels (in this case for October to December 2016) was paid by the plaintiff. Martin further agreed that the instalment payments for the vessels were paid by the plaintiff but disagreed that the money came from the profits of

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83 AB vol 2 at 168–170.

84 Transcript, 11 November 2020, at p 33, lines 16–25.

85 AB vol 1 at 307.

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the Vietnam Project.[86] He further disagreed that it was part of the plaintiff's obligations under the joint venture to bear the instalment payments.[87]

79 Martin's AEIC did not mention the Vietnam Project. Bernard dealt with it at length in his AEIC but Martin did not refer to it at all. Pressed repeatedly by counsel for the plaintiff and the court for the reason, Martin's lame explanation was that there was "no black and white" on the Vietnam Project.[88] He added that the plaintiff also did not refer to the Vietnam Project "right from the beginning [and] it was only towards the end that they mentioned this".[89]

80 Martin's assertion is incorrect. In his affidavit filed on 11 August 2020 (the "August affidavit") to oppose the plaintiff's application to call Bernard, Carmen and Jack as witnesses and file their AEICs, Martin had deposed that the Vietnam Project and the vessels are not issues in these proceedings.[90] Yet, in the next breath,[91] Martin deposed that the 31 July meeting, the bareboat charter invoices and the sums of USD200,000 and USD250,000 set out in [38] above are live issues. Martin's stand is inconsistent. The bareboat charter invoices are disputed by the plaintiff, and they arose from the purported charters of the vessels to the plaintiff under the Vietnam Project. Hence, the Vietnam Project and the vessels cannot be "irrelevant" to these proceedings as Martin contended in the August affidavit.

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86 Transcript, 10 November 2020, at p 62, lines 9–30.

87 Transcript, 10 November 2020, at p 65, lines 6–12.

88 Transcript, 10 November 2020, at p 53, line 31 to p 54, line 6.

89 Transcript, 10 November 2020, at p 55, lines 5–6.

90 Martin's Affidavit in Reply at [11].

91 Martin's Affidavit in Reply at [12].

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81 The court also notes that the AEICs of the plaintiff's additional witnesses, Bernard and Carmen, were filed on 27 August 2020 and copies were extended to the defendant thereafter. The defendant had every opportunity before the trial dates to file further AEICs to address the issue of the Vietnam Project if it wanted to, and this court would have granted the necessary leave to do so. Further, the Vietnam Project was pleaded in the plaintiff's Statement of Claim (Amendment No 1)[92] filed on 4 September 2020.

82 Notwithstanding the omission of the Vietnam Project from the AEICs of the defendant's witnesses, Martin agreed that the Vietnam Project was a 50:50 joint venture between the parties and that the vessels were used in the joint venture. Despite making that concession, Martin unreasonably asserted that the plaintiff had to bear the expenses of the joint venture and that division of profits was based on gross not net profit.[93] Martin claimed he knew nothing of Shipmate's role in managing, maintaining and crewing the vessels, which in any case was not his concern. He maintained that the plaintiff had to pay charter hire because they made use of the vessels sometimes "to do some of [Bernard]'s other things".[94] Martin had no documentation to prove this allegation but asserted that THL could corroborate his evidence.[95] However, he also agreed during cross-examination[96] and confirmed in re-examination[97] that the plaintiff paid all the expenses for the vessels.

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92 At [9].

93 Transcript, 10 November 2020, at p 61, lines 8–31.

94 Transcript, 10 November 2020, at p 63, line 13.

95 Transcript, 10 November 2020, at p 63, lines 14–16, 29–30.

96 Transcript, 10 November 2020, at p 61, lines 16–19.

97 Transcript, 11 November 2020, at p 65, lines 28–32.

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83 One concession that Martin did make (after considerable prevarication and after being pressed by the court) was that the defendant could not charge the plaintiff for charter hire when any of the vessels were in drydock.[98] That means that the defendant's claim for charter hire for the vessel "Victoria Strike" between 4 July and 19 October 2016 is unsustainable and so too is its claim for charter hire for the vessel "Eustance" when she was dry-docked between 24 April and 9 June 2017.

84 Another concession made by Martin was his late acknowledgment that the plaintiff did send him accounts. He conflated the issue that he did not accept the plaintiff's accounts with the fact that the plaintiff sent the accounts to the defendant.[99]

85 Many of the points raised by Martin during cross-examination were not pleaded in either the defendant's defence or its counterclaim or even stated in his AEIC. These included an allegation that it was at the plaintiff's behest that he requested more and more deposit(s) from the buyer in the Vietnam Project because the plaintiff was short of cash.[100] Hence, it serves little purpose for the court to address those (unsubstantiated) allegations.

86 After intense cross-examination, it was adduced from Martin that deliveries of the cargo to buyers other than under the Vietnam Project were made on the instructions of his employee Christine, who brokered such transactions for which she was paid commission. Notwithstanding that fact,

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98 Transcript, 10 November 2020, at p 67, line 15 to p 68, line 8.

99 Transcript, 10 November 2020, at p 95, lines 1–3.

100 Transcript, 10 November 2020, at p 76, lines 23–26; p 77, lines 1–2; p 79, lines 8–16.

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Martin asserted that the defendant could and did charge the plaintiff for using the vessels to deliver the cargo to buyers sourced by Christine.[101]

87 What was common ground between the parties was that the contra arrangement of the accounts between the parties required both parties' agreement. The contra exercise took place first between Irene and Tony representing the plaintiff and the defendant respectively. After Irene left the plaintiff's employment, Carmen succeeded her. It was also clear from the evidence (which Martin attempted to dispute) that the contra arrangement extended to the Vietnam Project.

88 As for the two payments allegedly made to Far East by the defendant at Bernard's request (see [66] above), Martin had no evidence of such requests – he claimed Bernard made those requests by way of telephone calls.[102]

89 It was Martin's own evidence that the defendant's counterclaim for bareboat charges from the plaintiff does "not have much evidence, because everything was done verbally".[103] It is noteworthy that, unlike the plaintiff, the defendant did not even send an audit confirmation statement to the plaintiff to sign on the counterclaim amount of USD1,587,000.

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101 Transcript, 10 November 2020, at p 84, line 21 to p 87, line 21.

102 Transcript, 11 November 2020, at p 25, lines 17–29.

103 Transcript, 11 November 2020, at p 32, lines 6–10.

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90 Next, the court turns to Tony's testimony. His evidence related to the accounts. In his AEIC, Tony supported Martin's claim that the defendant had settled all the plaintiff's invoices for sums owed by the defendant.[104]

91 However, under cross-examination, it was adduced from Tony that he was unaware that some invoices claimed by the defendant to be outstanding had already been paid. One example was invoice S1702-11 (see S/N 1 in [41] above) for which payment was made by way of a Citibank cheque[105] for SGD72,552, which was equivalent to USD51,492.16. Evidence of the plaintiff's payment of the defendant's invoices S1704-004 and 1706-007 was also shown to Tony whilst invoice 1710-008 was contra'd with the plaintiff's invoice 7998.[106]

92 Tony had deposed at para 10 of his AEIC that the 17 invoices therein mentioned were handed over to either Irene or Yvonne or Carmen or Bernard. He claimed that Bernard would visit the defendant's office 3 to 4 times a week and Tony would pass the invoices to Bernard whenever he saw Bernard but there was no acknowledgment.[107] One such invoice was S1807-017 dated 17 January 2017 for USD214,576.24, which the plaintiff disputed. Tony hazarded he would have handed that invoice to Bernard around that date. He recalled the occasion distinctly because Bernard apparently tore up the invoice. When cross-examined why the defendant did not follow-up on the non-payment until after

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104 Tony's AEIC at [5].

105 AB vol 2 at 99.

106 Transcript, 11 November 2020, at p 81, line 14 to p 86, line 25.

107 Transcript, 11 November 2020, at p 88, lines 4–6; p 89, lines 1–9.

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the suit was commenced, Tony explained it was because the defendant would include it in the contra exercise (but it never did).[108]

93 Tony's attention was drawn to para 18 of Martin's AEIC (repeated at para 29 of the Defence) where the latter had deposed:

> The Defendant also avers that the Plaintiff has in its claim failed entirely to take into account the following payments that had been made to the Plaintiff:

Date	**Amount paid to Plaintiff in USD**
05.10.2017	$2,000.00
05.05.2017	$51,409.47
25.10.2017	$150,224.42
08.09.2017	$200,000.00
02.03.2018	$500,000.00
20.04.2018	$250,000.00
Total	$1,153,633.89

According to Martin's AEIC, the payments of USD200,000.00 and USD250,000.00 were made to Far East by the defendant at Bernard's request.

94 The evidence adduced from Tony proved that Martin's above assertion was not borne out. Indeed, the evidence adduced from Tony proved that the defendant's accounts were wholly unreliable. For example, the defendant had

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108 Transcript, 11 November 2020, at p 89, lines 14–30; p 92, lines 10–13.

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issued invoice S1804-020 dated 12 April 2018 for USG49,065.08 to GSM[109] and it was paid. Despite such evidence of payment, Tony maintained the defendant did not receive payment of this invoice.[110]

95 The plaintiff produced a list of[111] and the invoices that had been contra'd between the parties for a total sum of USD150,849.73. Tony would not confirm the invoices that had been contra'd, using the excuse that he could not remember due to too many invoices being contra'd. However, he could not dispute the plaintiff's figures and calculation for the contra'd items.[112] Indeed, after counsel for the plaintiff took Tony through the lengthy and tedious exercise of looking at the invoices in the plaintiff's documents in the bundle marked 2AB, Martin's contention that the plaintiff failed to account to the defendant for the amounts totalling USD1,153,633.89 (see [93] above) was refuted.

96 As for the sum of USD450,000, which the defendant purportedly transferred to Far East at Bernard's request, not only the plaintiff's counsel but also the court questioned Tony[113] why he would act on the instructions (even if it was true) of someone who is not his employer or from his company to transfer such substantial sums to a third party. Tony had no evidence to substantiate Bernard's alleged requests. The court further addresses this claim when it refers to Derrick's testimony (see [102]–[104] below).

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109 AB vol 3 at 118.

110 Transcript, 11 November 2020, at p 93, lines 13–31.

111 AB vol 2 at 113–115.

112 Transcript, 12 November 2020, at p 10, line 11 to p 11, line 16.

113 Transcript, 12 November 2020, at p 26, lines 1 –20.

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97 Even more interesting was Tony's admission that the six invoices totalling USD1,153633.89 (see [93] above) were never the subject of the parties' contra arrangement. Questioned on this omission, Tony's unconvincing explanation was that the invoices were from "a long time ago".[114] That would have been all the more reason (the court told Tony) why those invoices should have been part of the contra arrangement between the parties.

98 It was equally noteworthy that the defendant's counterclaim for SGD1,587,000.00 for charter hire (which included supply of marine lubrication oil) was not reflected in the audited accounts of the defendant for the financial years ended 31 July 2017[115] and 31 July 2018.[116] In those accounts,[117] the "trade receivables" item had a figure of SGD$668,317 and SGD240,100 for 2017 and 2016 respectively. Both years' figures excluded the alleged outstanding charter hire. The court's inquiry of Tony for such a significant omission drew an unsatisfactory response that "Kammy was the one who prepared [the accounts]".[118]

99 The same omission was reflected in the 2018 accounts[119] of the defendant, where the item for "trade receivables" of SGD1,398,516 again excluded the claim for outstanding charter hire. When cross-examined on the

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114 Transcript, 12 November 2020, at p 37, lines 23–28.

115 AB vol 2 at 129–161.

116 AB vol 2 at 238–270.

117 AB vol 2 at 136.

118 Transcript, 12 November 2020, at p 34, line 14 to p 35, line 4.

119 AB vol 2 at 245.

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omission, Tony explained it was because "[b]oth bosses were in an argument. Monies were not paid, so we didn't include it". [120]

100 An even more significant omission from the defendant's annual accounts, be it for 2017 or 2018, was its counterclaim against the plaintiff of USD5,637,763,.73 – it was not recorded as a trade receivable or debt due from the plaintiff. Neither did the defendant send audit statements to the plaintiff for confirmation that the counterclaimed sums of USD5,637,763.73 and SGD1,587,000 were due and owing from the plaintiff. As with the defendant's charter hire claim, Tony could not or did not provide any satisfactory explanation for this omission.

101 In summary, at the close of Tony's testimony, the plaintiff had shown that the following invoices of the defendant had been paid.

Invoice number	**Amount in USD**
S1702-011	51,492.16
S1704-004	58,466.95
S1706-007	33,916.86
S17010-008	20,979.70

The plaintiff had also shown that the following payments by the defendant had been taken into account in the parties' contra exercise.

Date	**Amount paid to plaintiff in USD**
5 October 2017	$2,000.00

120 Transcript, 12 November 2020, at p 36, lines 1–2.

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5 May 2017	$51,409.47
25 October 2017	$150,224.42
2 March 2018	$500,000.00

102 The testimony of the defendant's two remaining witnesses can be disposed of quickly. Derrick's evidence was solely to confirm that the defendant had repaid on Bernard's behalf the two sums of USD200,000 and USD250,000 Bernard allegedly borrowed from Derrick. Apart from deposing that Bernard orally requested the two loans (which Bernard denied), Derrick's evidence of the two loans was only a bare assertion and questionable. The first sum of USD200,000 was transferred from the defendant's DBS account to that of Far East on 8 September 2017.[121]

103 The second sum of USD250,000 was not even extended by the defendant but was a cheque numbered 621185 issued from MB Marine's DBS account[122] on 20 April 2018. It was accompanied by a payment voucher addressed to Derrick and approved by Bernard.[123] There was nothing on record to prove that the first remittance had anything to do with Bernard or the plaintiff. Doris Ng had testified[124] that Martin called Bernard when Martin was away in Vietnam and requested Bernard to issue a cheque for the amount on Martin's behalf to Far East to help Derrick who (Martin said) was in financial trouble.

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121 AB vol 1 at 319.

122 AB vol 1 at 321.

123 AB vol 1 at 322.

124 Transcript, 13 July 2020, at p 80, lines 17–19.

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On his part, Bernard had deposed in his AEIC[125] that he signed DBS cheque numbered 621185 for the amount in blank and it was undated. Bernard corroborated his statement by exhibiting in his AEIC[126] a copy of the undated and blank cheque. Neither Bernard nor Doris Ng knew the actual purpose of the cheque. Derrick's testimony that he repeatedly chased Bernard to return the two alleged loans was also unsupported.

104 As the plaintiff's counsel suggested to Derrick, the appropriate witness should have been Derrick's wife since Derrick claimed in his AEIC that his wife owns Far East, he owed her money and the alleged payment of US200,000 she received from the defendant was to clear his debt to her as well as the defendant's debt(s) owed to the plaintiff.[127] It was disclosed by Derrick when questioned by the court[128] and subsequently in cross-examination[129] that he is employed as a manager of Far East. The court is therefore a little sceptical of Derrick's financial ability to advance such substantial loans to Bernard.

105 Finally, the court turns to the testimony of THL, who is a mutual friend of both Bernard and Martin. THL's AEIC referred to his attendance at two meetings in May and August 2018 to which he was invited by Bernard's brother. He deposed that the meetings were held to resolve the accounts between the parties; the outcome was that Bernard allegedly agreed that the plaintiff owed

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125 Bernard's AEIC at [39].

126 Bernard's AEIC at Exhibit CHS-3.

127 Derrick's AEIC at [8]–[9].

128 Transcript, 12 November 2020, at p 44, lines 2–5.

129 Transcript, 12 November 2020, at p 48, line 30 to p 49, line 6.

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sums to the defendant. However, the parties were unable to agree on how much the plaintiff owed the defendant.[130]

106 THL deposed to what Martin told him[131] as well as to a telephone conversation he overhead between Martin and Bernard.[132] When he was asked the reason for his attendance at the two meetings, THL said he was to "be a witness to the dispute" as for "1-plus years to 2 years", the plaintiff had not given any documents to the defendant on the Vietnam Project despite the latter's chasing the former.[133] Nothing turns on THL's testimony, which was largely hearsay.

The issues

107 It is common ground that the parties had a contra arrangement for their accounts to be squared. The issues for the court's determination are:

(a) Was the Vietnam Project a 50:50 joint venture between the plaintiff and the defendant?

(b) Did the parties' contra arrangement on their accounts extend to the Vietnam Project?

(c) Did the plaintiff take into account in the contra exercise the payments allegedly made by the defendant (set out in [93] above) totalling USD1,153,633.89?

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130 THL's AEIC at [7]–[8].

131 THL's AEIC at [6].

132 Transcript, 12 November 2020, at p 55, line 30 to p 56, line 2.

133 Transcript, 12 November 2020, at p 55, lines 27–30.

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(d) Does the defendant have a valid counterclaim?

The findings

(i) Was the Vietnam Project a 50:50 joint venture between the plaintiff and the defendant?

108 There is no doubt on the evidence that the plaintiff and the defendant had a 50:50 partnership in the joint venture until Martin unilaterally took over the entire project and cut out the plaintiff's share. Jack, who worked closely with Martin in supplying the MGO to the Vietnamese buyer(s), attested to the arrangement.

(ii) Did the parties' contra arrangement on their accounts extend to the Vietnam Project?

109 In the light of the evidence adduced from Carmen, Doris Ng and Bernard, the court finds that the contra arrangement extended to the Vietnam Project. Indeed, contrary to Martin's evidence that the Vietnam Project has nothing to do with the plaintiff's claim, the defendant's closing submissions[134] argued that the contra arrangement applied.

110 Further, again contrary to the defendant's closing submissions,[135] the plaintiff knew exactly what it was claiming. The plaintiff's amended claim is reflected in its Statement of Claim (Amendment No 1). I should add that Carmen was not only a credible but also a competent witness, unlike her counterpart Tony from the defendant. Every statement of account disputed by

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134 Defendant's Closing Submissions ("DCS") at [42].

135 DCS at [7]–[12].

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the defendant could be corroborated by her from the plaintiff's documents, while payments the defendant claimed were not taken into account by the plaintiff were refuted by Carmen's testimony and/or Tony's cross-examination.

111 As compared with Carmen's evidence, Tony's cross-examination showed that the defendant kept poor records and that its version of its running account with the plaintiff was unreliable. Despite being in charge of the defendant's accounts, Tony came across as disorganised if not incompetent – he was not even aware of certain payments made by the plaintiff notwithstanding the undisputed evidence produced by the plaintiff. His conduct (including his handwritten records (see [46(a)] above)) speaks volumes of the haphazard and unreliable manner in which the defendant maintained its records and statements of accounts. As observed earlier (see [77] above), the defendant could have and should have called Kammy to testify. The fact that she is not an employee of the defendant is neither here nor there. The court was not told she was not available. Although not requested in the plaintiff's closing submissions, the court makes an adverse inference under s 116 Illustration (*g*) of the Evidence Act (Cap 97, 1997 Rev Ed) that, if Kammy had been called as a witness, she would not have agreed with the defendant's version of the running account between the parties and would not have corroborated the figures in the defendant's defence or counterclaim.

112 The defendant's submissions heavily criticised Bernard's testimony. True, the court encountered some difficulty at times in comprehending Bernard's answers in cross-examination as often he did not speak in complete sentences. It was obvious that he did not familiarise himself with the plaintiff's statements of accounts before he came to court. The court appreciates, however,

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that the accounts of the plaintiff were not within his purview as a director of the plaintiff – he is not expected to know the exact numbers or the state of the accounts between the parties. Despite his shortcomings, Bernard did not come across as either dishonest or evasive.

113 Indeed, Bernard fared much better as a witness than Martin. Martin's lengthy cross-examination elicited rambling and irrelevant testimony, and he prevaricated and was often evasive. What emerged from his cross-examination was that portions of his AEIC were clearly false – he was shown to have been untruthful in many instances. Some instances were highlighted earlier in [78], [82], [83] and [84] above.

114 The court finds (which Bernard confirmed during re-examination[136]) that the plaintiff and Bernard tolerated Martin's behaviour despite the frustrations Martin caused because it was Martin who brought the Vietnam Project to the plaintiff as business and the plaintiff had no contact whatsoever with the buyer(s). The plaintiff had no choice but to put up with Martin's misconduct, which culminated in Martin taking away from the plaintiff the Vietnam Project and the vessels from MB Marine.

115 Martin's contention that the plaintiff did not contribute anything to the Vietnam Project (see [69] above) ignores the fact that, without the plaintiff's participation and guarantee to Bunkers Marine, Jack would not have agreed to supply MGO to Martin for the Vietnam Project (see [63] above). Moreover, through Shipmate, Bernard crewed, managed and maintained the vessels throughout the duration of the Vietnam Project until Martin cut the plaintiff off.

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136 Transcript, 9 November 2020, at p 62, line 28 to p 63, line 4.

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In addition, save for the first instalment, which Martin paid from the advance payment made by the cargo buyer under the Vietnam Project, the plaintiff paid to RS Marine the hire purchase instalments (disguised as charter hire) for the vessels. As Bernard alleged, Martin then diverted the vessels away from MB Marine. The court not only did not find Martin to be a credible witness, he was ungrateful and dishonest in his dealings with Bernard and the plaintiff.

116 The defendant's closing submissions[137] argued that the plaintiff's account of the Vietnam Project was unbelievable. The court disagrees. The plaintiff's version through Bernard (and Doris Ng) of the genesis of the Vietnam Project is more than credible, and it was corroborated by Jack, whose testimony the court accepts as unbiased and true. Jack has nothing to gain by siding with either party as the plaintiff introduced him to the Vietnam Project but subsequently Martin cut the plaintiff off and dealt directly with Bunkers Marine. Jack had disclosed[138] that the defendant paid Bunkers Marine USD66,949,840 for supply of MGO under the Vietnam Project. If Jack were to be biased, he would have favoured the defendant.

117 Apart from a brief reference to Carmen,[139] the defendant's closing submissions studiously avoided all mention of Carmen's testimony.

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137 DCS at [17]–[22].

138 At [62].

139 DCS at [29(b)].

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(iii) Did the plaintiff take into account in the contra exercise the payments made by the defendant of USD1,153,633.89?

118 The answer is undoubtedly yes. This was proven in the cross-examination of Tony, who was taken through all the relevant documents and accounts by counsel for the plaintiff. Tony agreed that the plaintiff had contra'd the defendant's payments save where no payment was made by the defendant or its figures were incorrect (see [95] above).

119 In the light of the evidence adduced from the plaintiff's witnesses, particularly from Carmen, the court finds on more than a balance of probabilities that the plaintiff has proven its claim of USD5,910,436.51 and SGD5,804.50.

120 In its Reply and Defence to Counterclaim (Amendment No 1)[140] as well as its closing submissions,[141] the plaintiff admitted to 19 of the 25 invoices claimed in para 28 of the Defence amounting to USD4,055,632.85. Deducting USD4,055,632.85 from the plaintiff's claim of USD5,910,436.51, the plaintiff is awarded final judgment with costs for the balance sum of USD1,854,803.66 as well as SGD5,804.50. Interest is awarded on the two sums from the date of the writ (2 January 2019) until payment.

(iv) Does the defendant have a valid counterclaim?

121 The court answers this fourth issue in the negative. The defendant's invoices for its alleged setoff and/or counterclaim below are unsubstantiated.

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140 At [19].

141 Plaintiff's Closing Submissions at [136].

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S/N	Invoice number	Amount	Court's reason for rejecting invoice
1	S1807-017	USD214,576.24	No supporting evidence
2	S1804-020	USD49,065.08	Issued to and paid by GSM
3	S1606-004	SGD315,000.00	Fabricated bareboat charter claims
4	S1609-006	SGD315,000.00	
5	S1612-014	SGD315,000.00	
6	S1702-001	SGD12,000.00	
7	S1703-024	SGD315,000.00	
8	S1706-021	SGD315,000.00	

122 Martin's claim for charter hire allegedly due to the defendant was nothing less than dishonest. As the plaintiff contended, the claims for charter hire were fabricated for the sole purpose of engineering a counterclaim against the plaintiff. This can be seen from the fact that the defendant charged for charter hire even when the vessels "Eustance" and "Victoria Strike" were in drydock.

123 The court's view on the lack of *bona fides* of the defendant's counterclaim is reinforced by the following evidence which the defendant could not or did not challenge and did not address in its closing submissions:

(a) As noted earlier (see [98]–[99] above), the defendant's counterclaim was not reflected as trade receivables in the defendant's audited accounts for the years 2016, 2017 and 2018;

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(b) Neither was the plaintiff recorded as a debtor for the three years' accounts for the supposedly huge sums it owed the defendant;

(c) Further, the plaintiff's previous solicitors had sent a letter of demand to the defendant dated 9 October 2018[142] for its claims of USD5,910,436.51 and SGD5,804.50. In its reply dated 16 October 2018[143] signed by Martin, the defendant denied owing any monies to the plaintiff but did not state that the plaintiff owed monies to the defendant;

(d) It was only after the plaintiff filed its statement of claim on 2 January 2019 that the defendant for the first time raised the issue of its counterclaim against the plaintiff in its defence and counterclaim filed on 25 January 2019;

(e) The defendant's insertion of its Maybank bank particulars in the invoices supposedly issued to the plaintiff for charter-hire was a major slip-up as the account did not exist in 2016 and 2017 when (according to the plaintiff) the defendant only maintained a DBS account;

(f) Neither Tony nor Kammy mentioned the charter-hire invoices in the contra exercise between the parties from 2016 to 2018.

124 The defendant's claim for USD250,000 was equally dishonest as the cheque for the amount was not even issued by the defendant but came from MB

142 AB vol 2 at 282–283.

143 AB vol 2 at 284.

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Marine's bank account. Far East could not therefore have extended this loan to Bernard or the plaintiff.

125 As for the claim for USD200,000 purportedly as repayment by the defendant of a loan extended to the plaintiff by Far East, there was not one iota of evidence to show that Far East extended this loan to the plaintiff in the first place (apart from Derrick's and the defendant's bare assertions). As observed earlier (see [66] above), the payments to Far East allegedly on the plaintiff's or Bernard's behalf were also not pleaded in the defence or counterclaim.

126 Consequently, the court dismisses the defendant's counterclaim with costs to the plaintiff. Both sets of costs awarded to the plaintiff are on a standard basis to be taxed if not agreed.

Lai Siu Chiu
Senior Judge

Hua Yew Fai Terence (IRB Law LLP) for the plaintiff;
Ranjit Singh and Ravleen Kaur Khairal (Francis Khoo & Lim) for the defendant.

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