Antara Koh Pte Ltd v Eng Tou Offshore Pte Ltd
[2005] SGHC 166

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Decision Date : 05 September 2005

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Bazul Ashhab (T S Oon and Bazul) and Brij Raj Rai (Just Law LLC) for the plaintiff; Loo Dip Seng and Goh Wee Ling (Ang and Partners) for the defendant

Parties : Antara Koh Pte Ltd — Eng Tou Offshore Pte Ltd

Admiralty and Shipping – Limitation of liabilities – Shipowner seeking declaration limiting liability under s 136 Merchant Shipping Act in respect of loss arising from casualty – Shipowner failing to prove pleaded case that casualty caused by act or omission of third party – Whether shipowner entitled to limit liability – Section 136 Merchant Shipping Act (Cap 179, 1996 Rev Ed)

5 September 2005

Belinda Ang Saw Ean J:

1 By this limitation action, the plaintiff, Antara Koh Pte Ltd ("Antara Koh") as the registered owner of the crane barge, *Antara Koh B8,* seeks a decree limiting its liability under s 136 of the Merchant Shipping Act (Cap 179, 1996 Rev Ed) ("the MSA") in respect of the loss or damage arising from the sinking of the tug *Tambat* and the loss of seven lives when the crane mounted on *Antara Koh B8* toppled over on 15 February 2003 at Sungei Johor, near Pulau Juling. The only party contesting the limitation action is the defendant, Eng Tou Offshore Pte Ltd ("Eng Tou"), who was, at the material time, the registered owner of the tug *Tambat*.

2 The loss of the *Tambat* gave rise to an *in rem* action (Admiralty in Rem No 204 of 2003) commenced on 31 July 2003 against *Antara Koh B8* for the purpose of determining responsibility for the casualty. In default of the Order of Court dated 28 January 2004, the Defence was struck out and Eng Tou entered interlocutory judgment against Antara Koh on 19 February 2004. Assessment of damages was by Order of Court dated 7 June 2004 stayed, pending the outcome of this limitation action. Separately, liability for the casualty was admitted by Jimmy Koh ("Koh"), the managing director of Antara Koh, in his Affidavit affirmed on 19 October 2004 in this limitation action. I shall return to the judgment in default later.

3 Section 136(1) of the MSA reads:

> The owner of a ship shall not, where all or any of the following occurrences take place without his actual fault or privity:
>
> …
>
> (*d*) where any loss or damage is caused to any property ... through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship, or in the loading ... of its cargo ... or through any other act or omission of any person on board the ship,
>
> be liable to damages beyond the following amounts:

…

(ii) in respect of such loss, damage or infringement as is mentioned in paragraphs (*b*) and (*d*), … an aggregate amount not exceeding in the currency of Singapore the equivalent of 1,000 gold francs for each ton of the ship's tonnage.

Section 136(1)(*c*) deals with claims for loss of life where the "occurrences" specified are similar to sub-s (1)(*d*) and the limitation is 3,100 gold francs for each ton of the ship's tonnage.

4 A condition of a shipowner's statutory right to limit its liability, whether in respect of loss of life or of damage to another vessel or to property, is that it must have occurred without the shipowner's "actual fault or privity". The onus lies on Antara Koh to establish that Eng Tou's loss was not caused by its "actual fault or privity".

5 Besides disputing absence of "actual fault or privity" on the part of Antara Koh, Eng Tou submits that one other reason preventing Antara Koh from enforcing its statutory right to limit its liability is that the latter has not established that Eng Tou's claims against *Antara Koh B8* for breach of the towage agreement and/or in negligence are claims that fall within one of the "occurrences" specified in s 136(1)(*d*) of the MSA. One subsidiary question in this action relates to the tonnage of the crane barge for the purpose of limitation. I need only deal with this subsidiary question if I rule that Antara Koh is entitled to a limitation decree.

6 By way of background facts, the tug *Tambat* was chartered in February 2003 to tow *Antara Koh B8* to Sungei Johor to retrieve an anchor and anchor chain lying on the river bed. Mounted on *Antara Koh B8* was a FMC Linkbelt crane model TG 1900. The anchor and anchor chain were salvaged from the river bed and loaded on board the *Antara Koh B8*. Thereafter, the four anchors of the *Antara Koh B8* were recovered before Antara Koh proceeded to load the anchor handling boat, *AB III*. In the lifting process, the boom of the crane collapsed. Antara Koh's pleaded case is that the crane's upper structure and boom fell on the *Tambat*. The defendant's version of the events is that the boom collapsed and fell on the port side of the bridle rope attached to the crane barge and tug. Either way, the tug sank, as she was dragged and weighed down underwater. The tug was rendered a total or constructive total loss. One crew member survived whilst the other six perished in the casualty together with the crane operator.

7 Given the default judgment in the liability action, parties were directed to submit on whether Antara Koh in this limitation action could raise and rely on a completely new allegation, that is to say, the crane operator's negligence as the cause of the casualty. Antara Koh in its Defence, which was struck out, blamed the casualty on the tug master and the crew of the *Tambat*. Error on the part of the crane operator was never part of its pleaded case in the liability action. Notably, Antara Koh failed in its application to set aside the default judgment before the assistant registrar on 10 March 2004 and again on appeal to the judge in chambers on 25 March 2004. The only question left to be determined in the *in rem* action is the amount of damage Eng Tou has suffered.

8 As a matter of general principle, a judgment in default is capable of giving rise to issue estoppel: see *Kok Hoong v Leong Cheong Kweng Mines Ltd* [1964] AC 993. In response to the court's query, both parties for different reasons submitted that there was no issue estoppel. As such, Antara Koh in this limitation action could argue that the negligent acts or omissions of those on board the *Antara Koh B8* were those of the crane operator or for that matter raise any of the other allegations pleaded in the Amended Statement of Claim filed. That being the end position that is common to the parties, the court is not invited to scrutinise and rule on the grounds upon which the judgment in default was actually founded. Suffice it to say that the legal consequence of the judgment in default

is that Antara Koh is solely to blame for the casualty.

9 What is then the cause of the casualty? Koh in his written testimony alluded to a combination of the following factors as contributing to the tragic accident on 15 February 2003:

(a) listing of the barge at the material time;

(b) the sea conditions at the material time, and jerking and swinging that occurred during loading of the anchor handling boat; and

(c) error of the crane operator in the operation of the crane at the material time.

10 The evidence led on behalf of the plaintiff did not support Koh's "combination of factors" theory. Ng Chin Yan ("NCY"), the site engineer, is the only eyewitness. He was on board the *Antara Koh B8* on that fateful day. According to him, the list of the barge before lifting the anchor handling boat was within the company's allowable operational tolerance. At the relevant time, the sea was calm and the weather was good. There was a small current of less than 1 knot and that was considered to be insignificant. The only factor that is left of Koh's list of "combination of factors" is "error of the crane operator". In that connection, it is useful to turn to the pleadings to see what that statement entails.

11 In para 5 of the Amended Statement of Claim, the averment there is that the casualty was caused by the negligence of those on board the crane barge in the management of the crane barge in that:

(a) the crane operator and the plaintiff's engineer had failed to exercise reasonable care in inspecting the crane; and

(b) the crane operator was negligent in the operation of the crane and had failed to give due regard to the sea conditions and the list of the barge when operating the crane to lift the anchor boat.

12 In the Further and Better Particulars dated 17 September 2004, the plaintiff identified NCY as the person in charge of the operation of the barge and Sim Mui Guan ("Sim") as the crane operator. The particulars of the failure of Sim and NCY to exercise reasonable care in inspecting the crane was explained as a failure to check the anchor chain on one side of the deck of the crane barge before operating the crane. Further, the crane operator and site engineer did not ensure that the crane barge would be stable or would not list while using the crane to lift the anchor handling boat. The plaintiff pleaded that it did not know the list of the barge at the material time and that it did not know the date and time and when the aforementioned inspection took place.

13 The particulars provided in respect of para 5(b) of the Amended Statement of Claim are as follows:

> The crane operator failed to take into account the anchor chain on one side of the crane barge deck, which could have affected the stability of the crane barge when the crane was being operated. The Plaintiff [did] not know the list of the barge at the material time.

14 The pleaded case in para 5A of the Amended Statement of Claim is that the casualty was caused by acts or omissions of those on board the crane barge in one or more of the following respects:

(a) The plaintiff's crew and/or its crane operator and/or its site engineer had failed to exercise reasonable care before and/or during the lifting and/or loading the anchor handling boat onto the barge at the material time.

(b) The plaintiff's crane operator negligently and/or without exercising reasonable caution suddenly swung the crane to the port side causing the crane to topple and fall.

(c) The plaintiff's site engineer had failed to properly supervise the lifting and loading operation of the anchor boat.

(d) The plaintiff's crane operator and/or its site engineer had failed to give due regard to the sea conditions and the list of the barge when operating the crane and/or when lifting the anchor handling boat.

15 In the further alternative, para 5B of the Amended Statement of Claim states that the casualty was caused in the loading of cargo, namely the anchor handling boat within s 136(*d*) of the MSA.

16 The debate centred on the various acts or omissions pleaded in paras 5 to 5B of the Amended Statement of Claim filed in the limitation action. However, in closing submissions, counsel for the plaintiff, Mr Bazul Ashhab (instructed by Mr Brij Raj Rai), put the blame squarely on the crane operator. In other words, except for the matters pleaded in para 5A(b) of the Amended Statement of Claim, the rest of the pleaded case was not pressed, given the evidence before the court. The negligence of the crane operator, as the argument goes, constitutes "any other act or omission of any person on board the ship" within the meaning of s 136(1)(*d*).

17 Counsel for Eng Tou, Mr Loo Dip Seng who was assisted by Ms Goh Wee Ling, rejected the plaintiff's contention that the loss of the tug was caused by the act or omission of the crane operator, arguing failure of the boom due to inadequate welding of the boom connectors at the bottom boom insert as the cause of the casualty.

18 Sim was an experienced crane operator. He could operate different types of cranes: crawler crane, pedestal crane as well as the cranes on crane barges. Sim joined Antara Koh in 1981 as a general worker. Later, he attended a crane operator's course and obtained a crane operator's licence in 1988. Sim was eventually employed by Antara Koh as a crane operator in 1992. In September 2000, he attended a refresher course for mobile crane operators.

19 According to NCY, the *Antara Koh B8* was working through the night to salvage the anchor and anchor chain. He admitted that they were working under "tight time constraints" as the *Antara Koh B8* had a schedule to meet. Sim had worked from 1930 hours on 14 February 2003 to 0120 hours on 15 February 2003 with three breaks of 15 minutes each time.

20 NCY claimed that he personally checked and found all the wire ropes properly secured to *AB III*. Sim and he checked the lifting chart before carrying out the test lift of *AB III*. At that time, the weather was fine and the sea was calm. Sim successfully test-lifted the *AB III* at 0120 hours on 15 February 2003. The signal was given to Sim to proceed with the actual lift. Sim was to place the *AB III* on top of the concrete H-beams which were lying on the starboard side of the crane barge. NCY in para 21 of his Affidavit of Evidence-in-Chief recounted the moments before the incident:

> The crane was about to place "ABIII" on the starboard stern side of "ANTARA KOH B8" and was hoisted or hanging about 0.5m from the resting "H" beams where she was to be placed. Suddenly,

> the boom of the crane swung to the portside of "ANTARA KOH B8" together with the anchor boat "ABIII". My assistants and I ran from the stern side to the starboard winch location. The boom was hoisted as though the crane operator had lifted it up and was swinging to the portside left. Then "ABIII" dropped to the sea and the crane boom broke at midsection and fell backwards. The broken crane boom then landed on the tugboat "TAMBAT" which was berthed at the stern of "ANTARA KOH B8".

21 NCY in cross-examination revealed that the anchor handling boat was hoisted again by another 0.5m–0.8m when it was 0.5m away from the H-beams. At that time, NCY thought that Sim had wanted to try again to place the *AB III* on the H-beams. All of a sudden, the crane boom and the *AB III* swung to port. NCY acknowledged that he was in no position to verify as he did not know whether the crane operator had deliberately slewed the crane boom to port. He could not be sure that (and it would be pure guesswork on his part) to attribute error on the part of Sim.

22 Sim had no reason to slew the crane to port. He was not given instructions to move the crane to port. He was after all an experienced crane operator. For NCY to be able to estimate the height of the load from the H-beams as being 0.5–0.8m, Sim would have paused long enough over the H-beams. Any deliberate slew of the crane to port would, as Mr Loo pointed out, be inexplicable since *AB III* was already positioned over the H-beams where it was to be stowed.

2 3 Chua Kok Seng ("Chua"), the defendant's expert, is a marine engineer and has investigated several casualties involving cranes on board barges and cargo vessels. Chua interpreted the sudden swing of the crane to port as indicative of the crane operator having lost control of the crane rather than inadvertence on his part. Sim lost control of the crane because of equipment failure. There is indisputable evidence of inadequate welding of the socket connectors to the boom chords.

24 The state of the welding which Chua saw and described in para 26 of his report was the same as that which Andrew Lee Chong ("Lee Chong") himself observed except that Lee Chong did not agree with Chua that the inadequate welding was due to poor workmanship. Chua wrote:

> From my examination of the parted ends of both the bottom and center boom inserts, I note that the welding seams on the chords did not adhere to the socket connectors, in other words, the welds did not penetrate into the connector metal and fuse with the connector metal. The nature of the damage showed that there was no adhesion in the welds between the chords and their socket connectors. This indicates that the welding process was bad due to poor workmanship and was not properly and/or satisfactorily carried out. As a consequence, the socket connectors were pulled out of the chords during the incident as evident by the buckling of the chords.

25 Although Lee Chong, a director from Insight Marine Services Pte Ltd, did not agree with Chua that the inadequate welding was due to poor workmanship, he did not proffer an alternative explanation. Besides, I do not find his reason for disagreeing with Chua particularly persuasive. Lee Chong disagreed that the welding was due to poor workmanship because the boom was factory manufactured and it would have gone through quality control checks before leaving the factory. Mr Loo pointed out that Lee Chong had not ascertained where each boom section had come from, or where the failed boom section had come from. There is evidence that Antara Koh had purchased boom extensions not from the original crane manufacturer Cornell Crane Manufacturing Ltd but from Muhibah Engineering Sdn Bhd in Malaysia who are authorised by Australian crane makers, Favelle Favco Cranes Pty Ltd, to fabricate crane booms. Boom extensions were purchased as it was necessary to lengthen the original length of the boom for the type of work undertaken or to replace damaged sections or parts.

26 Both Lee Chong and Chua saw and concurred as to the state of the welding. In the absence of an alternative plausible explanation for the state of the welding, I am left with Chua's view which I find to be rational, fair, and reasonable. The socket connectors were to be joined to the boom chords by welding. Chua noticed that the welds adhered only to the chords and not the socket connectors. The lack of adhesion was a strong sign that the welding was deficient. Irrespective of who did the welding, Chua remained of the view, and quite rightly so, that the welding at the area of the failure was not properly done. Chua was convinced that the collapse of the boom was due to inadequate welding. Lee Chong conceded in cross-examination that the presence of any inadequate welding lent itself to serious structural weakness in the boom. Lack of boom strength could lead to the boom buckling or twisting or coming apart as it did in the present case.

27 In cross-examination, NCY said that the crane boom collapsed first and then the body of the crane was lifted off its pedestal. This testimony is relevant as it fits in with Chua's explanation as to why the boom did not free-fall onto the deck of the crane barge. In this case, the top of the boom that broke off flipped back and did not fall on the deck of the crane barge because of the angle of the boom. From Chua's calculations, the angle of the boom was 80° based on a radius of 9.14m, and boom length of 45m. His calculations were not seriously challenged by the plaintiff. The detachment of the crane body from the turntable was the consequence of the sudden release of load. He explained that the collapse of the boom and sudden release of load (*ie*, *AB III*) caused the crane to topple backwards or to "back slam".

28 Lee Chong was the surveyor who investigated the casualty. He was not testifying as the plaintiff's expert. Nonetheless, he ventured to opine that the major contributory factor was the crane operator's fault. On what objective evidence was his views founded upon? He was not able from his investigations to offer the court a satisfactory explanation. Furthermore, Antara Koh led no evidence to show that the inadequate welding had no bearing at all on the failure of the crane.

29 In my judgment, the negligent act causing the loss of the *Tambat* was in the plaintiff, its servant or agent using the crane with welding of the socket connectors that was inadequate to hold the boom section together. I interject to point out that proof that Antara Koh is in breach of the common law duty of care does not of itself mean that the latter is guilty of actual fault or privity. Winn LJ in *The Lady Gwendolen* [1965] P 294 at 348 said:

> First, a shipowner who seeks to limit his liability must establish that, although he is responsible for the immediate cause of the occurrence on the basis of respondeat superior, in no respect which might possibly have causatively contributed was he himself at fault. An *established* causative link is an essential element of any *actionable* breach of duty: therefore, "actual fault" in this context does not invariably connote actionable breach of duty. Second, a shipowner is not himself without actual fault if he owed any duty to the party damaged or injured which (a) was not discharged; (b) to secure the proper discharge of which he should himself have done, but failed to do so, something which in the given circumstances lay within his personal sphere of performance.

30 In the light of my conclusion in [29] above, I accept Eng Tou's submissions that Antara Koh has not established its pleaded case identified earlier in [11] to [15]. The Amended Statement of Claim did not for the purpose of the limitation action cover the question whether the relevant liability, *ie*, the aforesaid negligence in [29] causing the damage, constitutes an "occurrence" specified in s 136(1)(*d*), namely, improper management of the *Antara Koh B8*. If so pleaded, in the context of s 136(1)(*d*), management of the crane barge would include the ship's equipment fitted for the purposes of the ship and her cargo: see *The Athelvictor* [1946] P 42. In this case, the equipment would be the FMC Linkbelt Crane Model TG 1900 mounted on the *Antata Koh B8* for its use as a crane

barge. Using a defective crane for lifting the anchor handling boat was, in my view, improper management of the barge's equipment which was necessary for the barge's operational purpose as a crane barge and, therefore, is within the meaning of s 136(1)(*d*).

31 No doubt the conclusion reached is enough to dispose of the limitation action in Eng Tou's favour. As the parties have covered much ground on the issue of actual fault or privity, I should say something on the facts and considerations upon which the issue depends. So the question is: Did the use of a defective crane and damage occur without the actual fault or privity of the Antara Koh? Buckley LJ in *Asiatic Petroleum Company, Limited v Lennard's Carrying Company, Limited* [1914] 1 KB 419 ("*Lennard's Carrying Co*") at 432 said:

> The words "actual fault or privity" in my judgment infer something personal to the owner, something blameworthy in him, as distinguished from constructive fault or privity such as the fault or privity of his servants or agents. But the words "actual fault" are not confined to affirmative or positive acts by way of fault. If the owner be guilty of an act of omission to do something which he ought to have done, he is no less guilty of an "actual fault" than if the act had been one of commission. To avail himself of the statutory defence, he must [show] that he himself is not blameworthy for having either done or omitted to do something or been privy to something. It is not necessary to [show] knowledge. If he has means of knowledge which he ought to have used and does not avail himself of them, his omission so to do may be a fault, and, if so, it is an actual fault and he cannot claim the protection of the section.

32 I have already referred to Winn LJ's speech at 348 in *The Lady Gwendolen* ([29] *supra*). It is sufficient if the alleged fault might have been a contributing cause of the loss; it does not have to be the sole or dominant cause. As Megaw LJ said in *The England* [1973] 1 Lloyd's Rep 373 at 380:

> It is for the [shipowners] to prove that the fault was not a cause of the casualty — and I stress the words "a cause"; because, in my judgment, here, as in so many other cases where causation is relevant, it is not necessary that it should be established that a particular matter is the one and only sole and exclusive cause of the casualty. It is sufficient if it is established that it is a substantial cause.

I should highlight that the fault or privity of the shipowner must be in respect of that which causes the loss or damage in question: see *Paterson Steamships, Ltd v Robin Hood Mills, Ltd* (1937) 58 Ll L Rep 33.

33 In the case of a corporate shipowner, the identification of particular individuals within a corporate structure as directing minds of that company is a question of mixed fact and law. As Lord Reid observed in *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153 at 170:

> It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent.

34 The actual fault where the shipowner is a corporation need not necessarily be confined to the conduct of the person who is, in the words of Viscount Haldane LC in *Lennard's Carrying Company, Limited v Asiatic Petroleum Company, Limited* [1915] AC 705 ("*Lennard's Carrying Co*") at 713–714 "the very ego and centre of the personality of the corporation … somebody for whom the company is liable because his action is the very action of the company itself". Willmer LJ at 343 in *The Lady Gwendolen* said, referring to *Lennard's Carrying Co*:

> But neither in the Court of Appeal nor in the House of Lords was it said that a person whose

actual fault would be the company's actual fault must necessarily be a director. Where, as in the present case, a company has a separate traffic department, which assumes responsibility for running the company's ships, I see no good reason why the head of that department, even though not himself a director, should not be regarded as someone whose action is the very action of the company itself, so far as concerns anything to do with the company's ships. In the present case Boucher was not only the head of the traffic department, but he was also the registered ship's manager.

35 After discussing *Charlotte v Theory* (1912) 9 Ll L Rep 341 and *H R Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd* [1957] 1 QB 159, Willmer LJ concluded at 344:

> On the principles stated in these cases I should be disposed to say that actual fault on the part of Boucher, as registered ship's manager and head of the traffic department, would be sufficient in the particular circumstances of the present case to constitute actual fault or privity of the company. But I do not find it necessary to reach any final conclusion upon this point — for it seems to me that in the particular circumstances of this case all concerned, from the members of the board downwards, were guilty of actual fault in that all must be regarded as sharing responsibility for the failure of management which the facts disclose. Certainly I would not dissent from the judge's view that D.O.Williams, the responsible member of the board, must be regarded as guilty of actual fault.

36 With these principles in mind, I turn to the present case.

37 Antara Koh is in the civil engineering and marine construction business. It specialises in marine construction work in Singapore, Malaysia, Indonesia, Bangladesh and India. At the material time, the company was organised into five divisions each with its divisional head. They are (a) Finance; (b) Human Resources; (c) Plant and Machinery; (d) Operations and (e) Procurement. The company is also a shipowner with 13 vessels such as flat top barges, crane barges, piling barges and work boats (or anchor handling boats) under its ownership. The division responsible for the maintenance of the vessels owned by the company is Plant and Machinery and the plant manager at that time was Ng Peng Kin ("NPK"). The division responsible for the employment of the vessels including *Antara Koh B8* is Operations. The head of Operations is the general manager of the company, Tay Yew Chong, a civil engineer. Tay Yew Chong was not called as a witness.

38 At the time of the casualty, the company had three directors: Koh, his wife and his lawyer. The other two directors have no executive functions. To all intents and purposes, Koh carries out the functions of management and speaks and acts as the company. In short, he exercises the powers of the company. In fact, Koh is the boss of the company. He is not responsible to another person in the company for the manner in which he discharges his duties in the sense of being under that person's orders.

39 It is clear from the evidence that Koh had instructed NPK to maintain the crane as required by the Operator's and Maintenance Manual ("the Operator's Manual"). NPK confirmed that the company required him to maintain the crane according to the Operator's Manual. In fact, Koh disclosed in his affidavit verifying the plaintiff's supplementary list of documents that there were no standing orders for inspection and maintenance save for the Operator's Manual. The Operator's Manual prescribed that the boom chords and lattices were to be inspected after every 40 hours of usage for signs of damage. NPK could not be sure that inspections were actually carried out as reported to him. There was, as he admitted, no system in place to ensure that the boom chords and lattice were inspected every 40 hours. On top of that, there was no record at all of the usage of the crane or of the loads it had lifted. NPK agreed with Ms Goh Wee Ling that there was no system of

checks by management to ensure that management's directions were complied with. He confirmed that Koh did not check that he (NPK) complied with the recommendations on maintenance in the Operator's Manual. Koh left it to him to do his job. NPK conceded to there being a causal link between the failure to observe the requirements of the Operator's Manual and the failure of the crane on 15 February 2003.

40 Koh said that he occasionally read through the departmental head's reports and did spot checks. He claimed that he would go to the Plant Manager's office to see that he "globally does his job properly". He did not elaborate further. There was, as the evidence showed, no systematic supervisory measures in place. Koh claimed that he had personal knowledge that this crane barge was kept in very good working condition. This crane barge was used to relocate the Merlion in 2002 to her present vista point. For that assignment, the plant and machinery division had to ensure that the crane was in good working condition. I tend to believe NPK whose evidence is that Koh left it to him to do his job. If anything, the Merlion assignment was important enough for Koh to have gone to look at the crane barge personally. The plaintiff relied upon the Lifting Equipment Certificate dated 4 September 2002 to show that the crane was fit and safe for use at the material time. Mr Loo has objected to the admissibility of the certificate. The maker was not called to testify as to the correctness of the statements made in the certificate.

41 Mr Bazul accepted in closing submissions that Antara Koh had failed to comply with the maintenance requirements provided in the Operator's Manual. The fallback position was that the plaintiff's plant manager had failed to exercise responsible care in ensuring that the crane was maintained in accordance to the Operator's Manual and, as NPK acknowledged, this had caused or contributed to the incident. The argument, it seems, was that the fault of the plant manager could not be treated as the fault of the company itself.

42 Koh's management style and attitude, where his manager is held accountable, would not assist Antara Koh. It is common in business for senior management to delegate responsibility. Koh could appoint someone to head the Plant and Machinery division but, if Antara Koh seeks to establish the statutory defence under s 136 of the MSA, it has to show that Koh, as the person who is identified as the company, has exercised reasonable care. The mere appointment of a competent person will not suffice. If Koh does nothing after making the appointment to see that proper steps are in fact being taken to comply with his directions, it cannot be said that he has exercised reasonable care. Reliance on the appointee's self-discipline (which was said to be the company's philosophy) is hardly enough. It is incumbent upon senior management to implement a system of checks and balances.

43 An owner may be in actual fault because he has not taken some measures to ensure that his servants perform the duties delegated to them or he does not define sufficiently what is to be done by them: see *James Patrick and Company Limited v The Union Steamship Company of New Zealand Limited* (1938) 60 CLR 650 at 672. An illustration is *The Marion* [1984] AC 563. In that case, the shipowner allowed the master to navigate with an obsolete chart on which the position of an oil pipeline was not marked. The high standard of care on the shipowner to ensure adequate and up-to-date charts was not met. The law lords held that the mere delegation of that function to the master did not absolve the shipowner of being personally at fault. There was no system for supervising the way in which the master performed that task and therefore no means by which the shipowner could know whether those responsibilities were discharged or not.

44 Koh was at fault in failing to institute a proper system to ensure that the duties of the plant manager delegated to NPK were performed. His omission contributed to the occurrence of the loss or damage. Koh's fault was attributable to the company. The weakness in the boom was not detected

until eventually it could not support the load imposed on it and it failed on 15 February 2003. The crane barge was permitted to operate in conditions where the effect of deficiencies of the crane boom created a substantial risk of causing loss to property as well as Antara Koh's employees and others in attendance like the tug and her crew. The crane had been lifting submerged objects (*ie*, the anchor and anchor chain belonging to a very large crude carrier) for several hours that evening and that, according to the Operator's Manual, would increase the weight of the load. Koh was aware that the crane was rated for land-based conditions and had not been recalibrated or rated downwards for use at sea. It is for Antara Koh to prove that the fault did not contribute to the loss or damage. Significantly, Antara Koh did not lead evidence to show that even with a system in place, the inadequate welding would still not have been detected: see *The Norman* [1960] 1 Lloyd's Rep 1 at 12.

45 I have already stated that Antara Koh has failed to prove that the casualty was due to the act or omission of the crane operator. Separately, for the reasons given, it cannot be said that the casualty took place without Antara Koh's fault. It follows that Antara Koh is not entitled to a limitation decree. Eng Tou shall have the costs of the limitation action.