IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 220

Admiralty in Rem No 9 of 2015

Between

Janata Flour & Dal Mills Ltd

… *Plaintiff*

And

Owner of the vessel "DREAM STAR"

… *Defendant*

JUDGMENT

[Admiralty and shipping] — [Collision] — [Regulations]

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Belinda Ang Saw Ean J:

Introduction

1 This action *in rem* is brought by the owner of the *Meghna Princess* for damages arising out of a collision between two bulk carriers, the *Meghna Princess* and the *Dream Star*, in Singapore waters on 16 May 2014 at approximately 12:30:40 (all timings in this judgment will be in local time). The defendant, the owner of the *Dream Star*, has counterclaimed. The collision occurred in good weather and visibility. The wind was light, and the sea was slight.

2 Both sides have, amongst other things, alleged breaches of the International Regulations for Preventing Collisions at Sea 1972 ("the COLREGS"). The COLREGS have been incorporated as collision regulations for the purposes of the Merchant Shipping Act (Cap 179, 1996 Rev Ed) pursuant to s 3 of the Merchant Shipping (Prevention of Collisions at Sea) Regulations (Cap 179, Rg 10, 1990 Rev Ed); reg 28 of the Maritime and Port Authority of

Singapore (Port) Regulations (Cap 170A, Rg 7, 2000 Rev Ed), which applies to vessels within the port limit of Singapore, also provides that the COLREGS apply for the purposes of navigation and anchoring of vessels.

3 The trial is on the issue of liability alone. Counsel for the plaintiff, Mr Navinder Singh ("Mr Singh"), claims that the *Dream Star* was solely responsible for the collision. The case for the plaintiff is that the vessels were on a crossing path and that the *Dream Star* being the give-way vessel failed to take action in ample time to keep out of the way of the *Meghna Princess* in breach of rule 15 of the COLREGS thereby causing the collision. The defendant takes a diametrically opposite position. Counsel for the defendant, Mr Richard Kuek ("Mr Kuek"), asserts that the *Meghna Princess* should shoulder more blame for the collision and that liability should be apportioned 80:20 in favour of the defendant. The defendant's case by counterclaim is that the *Meghna Princess* as the overtaking vessel did not keep out of the way of the *Dream Star* under rule 13 of the COLREGS. In response to Mr Singh's argument that the two vessels were in a crossing situation in the main action, Mr Kuek argues that the plaintiff as the stand-on vessel neither acted in due time nor with the skill and care expected of a good (competent) seaman to avoid a collision. To denote the standard of good seamanship, the notion of a "competent seaman" has been used interchangeably with that of a "prudent seaman".

4 Ultimately, the questions for determination in this judgment are: (a) whether the *Dream Star* is, as Mr Singh alleges, the vessel that is solely to blame for the collision; and (b) if both vessels were at fault, how liability should be apportioned. The first question is complicated by the experts' contention on the situation encountered by the two vessels – on the one hand, the expert for the *Dream Star* saw the encounter between the vessels as an overtaking situation,

but on the other hand, the expert for the *Meghna Princess* saw the encounter as a crossing situation. It is important to determine whether the vessels were in an overtaking or crossing situation before considering the respective alleged fault of each vessel.

5 This judgment will also examine whether the collision was the result of a lack of appreciation of the situation or a misapplication of the overtaking or crossing rules that led to uncertainty as to the status and responsibilities of the vessels. A related question of significance is what blame, if any, could be attached to the vessels for the Very High Frequency ("VHF") exchange between them, which took place minutes before the collision – *ie*, who was culpable for the conversation and whether the VHF conversation was causative of the collision. As regards the alleged breaches of other rules of the COLREGS, this judgment will likewise examine the nature and effect of these breaches in terms of culpability and causation.

The vessels

6 The *Meghna Princess* is a single screw bulk carrier built in 1995. She is 26,381 tons gross register, 189.99m in length overall and breadth of 30.53m. The vessel loaded cargo at Cam Pha, Vietnam and whilst *en route* to a discharge port at Chittagong, Bangladesh, she called at Singapore for bunkers on 15 May 2014. At the time of collision, the *Meghna Princess* was laden with 46,105 metric tons of cement clinker. She was fitted with modern navigational equipment that was functioning correctly.

7 The *Dream Star* is a newer and larger bulk carrier built in 2014. She is 43,008 tons gross register, 228.99m in length overall and breadth of 32.26m. At the time of collision, the *Dream Star* was laden with 78,750 metric tons of coal.

The *Dream Star* was transiting the Singapore Strait westbound to the Eastern Boarding Ground B to pick up her pilot before proceeding to anchorage for bunkers. She was fitted with modern navigational equipment that was functioning correctly as well.

8 I pause here to make a brief observation on an evidential deficiency in how the parties presented their cases. As stated, both vessels had cargo on board at the time of the collision and they were bulk carriers of different sizes, the *Dream Star* being the larger of the two. The *Meghna Princess* had already taken on bunkers and was sailing out of the port whereas the *Dream Star* was calling at Singapore for bunkers. This being the case, it would have been helpful for the court to take into consideration evidence as to each vessel's manoeuvrability, as ascertained from the subject vessel's stopping distances and turning characteristics at different speeds having regard to, *inter alia*, the vessel's laden conditions and other factors. No such evidence was adduced.

9 At all material times, there were two other vessels in the vicinity. The first is the *Ishwari*, which was heading towards the Eastern Boarding Ground B at a distance behind the *Dream Star*. The second is the *Pioneer 93*, a tug with a barge in tow. On 16 May 2014, at 12:15, the *Pioneer 93* was heading in a south-westerly direction approximately 0.8 nautical miles (or nm for short) away from the *Dream Star*. There is no information as to the barge or the length of the tow line. The *Pioneer 93* is 140 tons gross register, 23.50m in length overall and breadth of 7.33m.[1] According to the defendant, the navigation of the *Dream Star* was to some extent affected by the presence of the *Pioneer 93* which caused the former to alter course to port as is shown on a plot annexed to this judgment

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[1] Captain White's report dated 29 Nov 2016 at para 2.3.

(see Annex 1). I will elaborate on Annex 1 and explain the selection of it later in the judgment (see below at [12]). Suffice to say that the alteration to port is depicted in Annex 1 as starting to shape from C-18 (or 12:13) and completing at about C-12 (or 12:19). The *Dream Star* and the *Pioneer 93* fully cleared each other after 12:27 (see [72] below).

The collision on 16 May 2014

10 The location of the collision was fixed at latitude 01º 15.57'N, longitude 103º 57.52'E. This fix is about 0.28 nm east-south-east of the pilot Eastern Boarding Ground B and located between the southern-most boundary line of Singapore Port Limit and the northern-most boundary line of the westbound lane of the Traffic Separation Scheme in the Singapore Strait ("TSS"). As stated, the time of collision was at approximately 12:30:40. There is no allegation that the weather, wind and tidal conditions at and before the collision affected the navigation of either vessel.

11 At all material times up to the collision, the Master of the *Meghna Princess,* the Second Officer and the Third Officer were on her bridge; the Second Officer was the officer on watch (the three officers hereinafter will be referred to collectively as "the bridge team"). The Chief Engineer of the *Meghna Princess* also testified at the trial. In this judgment, all the four officers who testified at the trial will be referred to collectively as "the crew" There was a good deal of evidence available from the *Dream Star*, but no factual witness was called on her behalf. Significantly, even though the officers of the *Meghna Princess* testified at the trial, the entries in her Bell Book, Chief Officer's Log and Engine Manoeuvre Book for the period leading up to the collision were patently unreliable. I will elaborate on the unreliability of these records later in the judgment. In this judgment, the narrative of the events before and at the time

of collision are based on the movements of the vessels (latitude, longitude, heading, distance, speed and time at one minute intervals) gathered from the electronic data on board the vessels and subsequently agreed to by the experts, Captain Christopher Phelan ("Captain Phelan"), who is for the plaintiff, and Captain Nicholas White, ("Captain White") who is for the defendant.

12 Specifically, the plots depicted in Annex 1 to this judgment serve to demonstrate in a graphic way the positions and relative bearings of the vessels at different time points (marked C-21 to C-0) between 12:09:58 and 12:30:54. Captain White has also made use of an electronic charting application called SeaPro to process raw data from the vessels' Automatic Identification System ("AIS") as well as data from the Vessel Traffic Information System ("VTIS"), a tracking and monitoring system used by the Maritime Port Authority of Singapore ("MPA"). I digress to mention that MPA monitors traffic in the Malacca and Singapore Straits by sectors via numerous VTIS work stations operated by MPA. Each sector is assigned a VHF radio channel, and vessels are required to maintain a listening watch on the appropriate sector channel. VTIS data is monitored real-time and when an operator notices something of concern (either a contravention of traffic rules or any potential danger), the operator would alert the vessels in question over the assigned VHF channel.

13 The plaintiff had appended to its closing submissions a graphic depiction of the vessels' movements before and at 12:30. This annexure to the closing submissions is the same as the plaintiff's exhibit marked P1. I choose not to use P1 for two reasons. First, P1 is not drawn to scale; and second, it also contains some ambiguities or inaccuracies. For instance, P1 indicates that the *Meghna Princess* had gone full astern and turned 32º starboard at 12:27. This information is not borne out by the agreed facts. The joint expert report indicates

that the *Meghna Princess* had maintained a steady heading instead – at 12:24, her heading was 230º; at 12:26, her heading was 232º; at 12:27, her heading was 236º; at 12:28, it was still 236º; and at 12:29, it was 242º. For these reasons, I prefer Captain White's version instead, which is referred to and appended to this judgment as Annex 1 for convenience. I am mindful that the plots in Annex 1 are illustrations; as Steel J said of the plots produced in *The "Sitarem"* [2001] 2 Lloyd's Rep 107 (at [16]), they show what might have happened, not what did happen.

14 The plot in Annex 1 begins at 12:09:58. Be that as it may, I prefer to start the background narrative from a much earlier point in time.

15 At 11:03, the *Meghna Princess* was anchored at the Eastern Bunkering Anchorage B. The *Dream Star* was transiting in the Singapore Strait westbound to pick up her pilot at the Eastern Boarding Ground B. The defendant's view is that the tug *Pioneer 93* with a barge in tow was coming up on the *Dream Star* from astern on the starboard side to the north of the westbound lane. At about 11:46, the *Pioneer 93* drew abreast of the *Dream Star* on her starboard side. I pause here to mention the disagreement between the parties on the matter of whether the overtaken vessel was the *Pioneer 93* or the *Dream Star*. The plaintiff's view is that the *Dream Star* was the overtaking vessel and she was obliged to keep clear of the *Pioneer 93*. Having reviewed the evidence, I agree with Captain White that Captain Phelan, the Master and the Second Officer of the *Meghna Princess* were wrong in their assessment that the *Pioneer 93* was the overtaken vessel. In his second report, Captain White plotted out the positions of the *Dream Star* and the *Pioneer 93* from 11:30 to 12:15, demonstrating that, at least from 11:30, the *Pioneer 93* was overtaking the *Dream Star*, and I so find.

16 At about 11.48, a pilot boarded the *Meghna Princess*. Her anchor was away and she began to manoeuvre out of the Eastern Petroleum Anchorage area. At about 12:00, both the *Pioneer 93* and the *Dream Star* appeared to be converging, and at 12:08, the *Dream Star* contacted the relevant VTIS operator (hereafter referred to as VTIS) to find out the intention of the *Pioneer 93*. At or about this time, the *Meghna Princess* had just entered the Tanah Merah Ferry Fairway.

17 Given the close presence of the *Pioneer 93* on the *Dream Star's* starboard side, the *Dream Star* began to shape its course to port from 270º (C-18) to 252º (at about C-12). Earlier at 12:11:36, which is approximately at C-19, the *Dream Star* gave orders for her engine to be stopped because of how close she was to the *Pioneer 93*. The drop in the *Dream Star*'s speed between 12:12 and 12:17 was captured and recorded in the *Dream Star's* Voyage Data Recorder ("VDR").

18 At C-16 (or 12:15), the *Dream Star* was almost directly south of the *Meghna Princess*. Her bearing was about 359º, and 1.29 nm from the *Dream Star*. At C-15 (or 12:16), the *Meghna Princess* was drawing abreast of the ferry buoy demarcating the outer end of the Tanah Merah Ferry Fairway ("the Ferry Buoy"). Based on Annex 1, the *Dream Star* was ahead of the *Meghna Princess* at a distance of 1.21 nm. The *Pioneer 93* began to turn to starboard in order to give way to the *Dream Star*.

19 At C-13 (or 12:18), the *Meghna Princess*, having gone past the Ferry Buoy, began to turn to starboard. At or about that time, VTIS called the pilot on board the *Meghna Princess* informing him that the *Pioneer 93* was 8 cables away (0.8 nm) at a bearing of 190º from the *Meghna Princess*, and that the

Pioneer 93 was trying to stay clear of the *Dream Star*, which was heading to the Eastern Boarding Ground B. The pilot on board the *Meghna Princess* replied:[2]

> No problem, I saw the two of them I will keep more to the starboard side of the channel.

At this time, the *Meghna Princess* was at a bearing of about 8º, and at a distance of about 1.06 nm from the *Dream Star*. The *Meghna Princess* was also now about 22.5º abaft the starboard beam of the *Dream Star*, with the *Dream Star* maintaining a speed of about 4.4 knots and the *Meghna Princess* keeping to a speed of about 5.9 knots. After the *Pioneer 93* turned starboard and began clearing away from the *Dream Star*, at about 12:20, the *Dream Star* began to alter her course back towards the Eastern Boarding Ground B.

20 At C-11 (between 12:19 and 12:20), the *Meghna Princess* was still about 22.5º abaft the starboard beam of the *Dream Star*, with the *Dream Star* maintaining speed at about 4.5 knots and the *Meghna Princess* increasing her speed to 6.5 knots. Between C-9 and C-6 (12:22 and 12:25), the *Dream Star* continued to shape starboard from 270º to 284º. Her speed gradually increased from 5.2 to 5.6 knots. During that same period, the *Meghna Princess* maintained a heading of about 230º, and increased her speed over ground from 7.1 to 8.2 knots.

21 Between 12:25 and 12:26, the following exchange then took place between the *Meghna Princess* and the *Dream Star*:[3]

> 12:25:32 [MP] Dream Star, This is Meghna Princess, ah… **Let me pass**, ah we are getting closer, close already, so ah, **we are now speeding up, so let**

[2] Captain White's report dated 29 Nov 2016 at Appendix B.

[3] Defendant's Bundle, Tab 19 at p 96.

	me join the lane and then you can pass astern.
12:25:42	[DS] So I am just picking up my pilot, where are you, where are you?
12:25:47	[MP] I am on your starboard bow, starboard bow.
12:25:52	[DS] So what's the name of your vessel, what's the name of your vessel?
12:25:54	[MP] The name is Meghna Princess, Meghna Princess, **we are going to join the lane, so I'm just requesting to ah, to slow down, let me let me join the lane then you can pass my stern**.
12:26:33	**Meghna Princess* calls *Dream Star**
12:26:36	**Dream Star* responds to *Meghna Princess**
12:26:41	[MP] **You can speed up, speed up, I'm reducing my speed, I'm reducing my speed, I'm waiting for you, you can pass my bow**.
12:26:48	[DS] Ok, **Ok I will increase my speed now**…
12:26:54	[MP] **Ok**, thank you.

[emphasis in bold]

22 At 12:25, the *Meghna Princess* was at a bearing of about 12º and 0.58 nm from the *Dream Star*. At 12:26, the *Meghna Princess* was at a bearing of about 15º and 0.49 nm from the *Dream Star*. The relative positions of the two vessels from C-4 to the point of collision are depicted in Annex 1. The speeds of both vessels starting from 12:20 onwards are as follows:[4]

Time	**Speed over ground (*Meghna Princess*)**	**Speed over ground (*Dream Star*)**
12:20	6.42	4.6
12:21	6.86	5.0

4 Defendant's Bundle, Tab 32.

12:22	7.16	5.2
12:23	7.47	5.5
12:24	7.83	5.6
12:25	8.17	5.6
12:26	8.38	5.6
12:27	8.19	5.5
12:28	7.76	5.4
12:29	7.22	5.5
12:30	6.44	5.7
Point of collision	5.8	6.0

23 At 12:29, VTIS called the *Meghna Princess* twice and after the *Meghna Princess* responded, the following conversation ensued:[5]

> 12:29:45 [VTIS] Keep clear from the Dream Star, looks like you are on a collision course with Dream Star, over.
>
> 12:29:50 [MP] We have stopped engine, that vessel came very close, I don't know why. That vessel came very close, we informed him maybe 10 minutes ago. We stopped our engine, but the vessel came so close, we don't we will have nothing to do.
>
> 12:30:05 *VTIS Central calls *Dream Star* thrice without response*
>
> 12:30:25 [MP] VTIS Central see what is she doing, what is she doing, we have stopped engine, we have nothing to do. That vessel came to us… That vessel is… We have given full astern, we have stopped engine, nothing to do.

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5 Captain White's report dated 29 Nov 2016 at Appendix B.

…

12:30:45	[MP] VTIS Central, Meghna Princess, Dream Star already collided with us, so we have stopped engine, already 20 minutes ago that vessel came to us and just collided now.

24 At 12:30:41, a loud sound resembling the impact of steel on steel was heard on the audio channels of the *Dream Star*. Captain Phelan took the view that the collision took place at 12:30:40; Captain White posited that it had taken place at 12:30:47. Nothing, however, turns on this difference.

25 I make a brief note on the point of collision contact between the two vessels. According to the *Dream Star*, her heading was about 286º before she turned 26º to port to 260º,[6] and the steel to steel contact was between the port side of the *Meghna Princess* in the vicinity of her forward cargo hold (the plaintiff's description was port hull amidship) and the *Dream Star*'s starboard quarter. The approximate angle of blow between the two vessels was about 41º. The *Meghna Princess* gave her heading at first contact as 265º and the *Dream Star* gave hers as 262º.

26 The plaintiff submits that the *Dream Star* struck the *Meghna Princess* whereas the defendant's position is that both vessels collided into each other. The plaintiff's account of events is that at the point of collision, the *Dream Star*'s engine was ordered to full ahead with her rudder hard-to-port. The *Dream Star*'s rate of turn to port was about 30º per minute and that "dramatically" swung her stern to starboard, striking the *Meghna Princess* at her port hull at an angle of 41º.[7] The defendant disagrees, contending that the rate of turn hard-to-

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6 Defendant's Written Submissions ("DWS") at para 153.

7 Captain Phelan's report dated 25 Nov 2016 at paras 18 and 86; Captain Phelan's report dated 19 Jan 2017 at para 5.3.21.

port was about 8º per minute having regard to the fact that the experts had accepted that the *Dream Star's* heading changed from 286º to 260º from 12:28 to 12:30:40 and that meant that it took 2 minutes and 40 seconds for the *Dream Star*'s heading to change 26º. During the same period, the *Meghna Princess* had turned 29º to starboard from 236º to 265º at the rate of about 9.5º per minute. To Captain White, it is therefore incorrect to say that the *Dream Star* had struck the *Meghna Princess*.[8] Having regard to Captain White's analysis of each vessel's respective rate of turn and the court's findings on the effect of the VHF conversations decided below, it is more probable than not that both vessels collided into each other, and I so hold.

Preliminary evidentiary issues

The plaintiff's objection to Captain White's reports

27 I begin with Mr Singh's principal evidentiary objection which relates to the "VTIS and VDR recordings" referred to in Captain White's reports.[9] To narrow the issue, the plaintiff is primarily concerned with the *audio recordings* that Captain White had transcribed in his report, as opposed to the *positional depiction* of the vessels in Annex 1. In fact, in a joint expert statement, the parties agreed on the longitudinal and latitudinal data of the two vessels between 11:59 and 12:29, heading, distance and speed, and there is no suggestion that Annex 1 is inaccurate or misleading in depicting the positional data recorded by the parties.

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8 DWS at para 153; Captain White's report dated 16 Jan 2017 at para 4.8.11.

9 Plaintiff's Written Submissions ("PWS") at para 62.

28 Mr Singh's objection is that the recordings in Captain White's *second* report dated 16 January 2017 has limited or no probative value because, as Captain White had accepted at trial, he had not personally listened to *all* of the recording clips while preparing the supplementary report – instead, he had obtained assistance from a colleague. There is really no need to dwell on Mr Singh's objection since the bridge team who testified at the trial had either accepted the accuracy of the transcripts of the audio recordings or recollected the conversation when the audio recording was played back to them.

29 This leads me to the transcripts of the audio recordings prepared by Captain Phelan. In relation to the VHF conversation between both vessels starting from 12:25, Captain Phelan's prepared transcript did not contain the portion where the *Meghna Princess* told the *Dream Star* to pass at her bow. At trial however, the exchange between 12:26:33 and 12:26:54 set out above at [21] as transcribed was read out to the Master and the Second Officer, who duly accepted the accuracy of the transcript, having recalled that the conversation did in fact take place.[10]

30 On a separate note, both parties (the plaintiff more than the defendant) question the expertise and experience of the expert witness appointed by the other side. Mr Singh argues that Captain Phelan's evidence should be preferred simply because Captain Phelan's credentials were more impressive than Captain White's, and Captain White's qualifications and experience were limited. At the same time, Mr Kuek points to Captain Phelan's limited merchant sailing experience. As I see it, the debate in this collision related to the navigational situations encountered by both vessels in Singapore waters and

[10] Transcript dated 15 February 2017 at p 118; Transcript dated 21 February 2017 at pp 100–101.

they are matters well within the competence of the experts, so I accept their respective qualifications for what they stand for. How the experts conducted themselves in the witness box is an entirely different matter. An expert's independence and impartiality is a matter that bears on the weight of the opinion evidence (see [36] below).

Role of an expert witness who previously investigated the casualty

31 Captain Phelan said that he was appointed the plaintiff's expert witness on 14 October 2015. From his first report, it appears that when he was appointed, his role at the outset as master mariner was to look into the circumstances of the casualty after the reports of the previous surveyor were found to be inaccurate and incomprehensible. It was necessary to start investigations into the casualty afresh, seeing that the Preliminary Act of 8 January 2015 was based on the erroneous reports of the previous surveyor. Captain Phelan said he met the crew in March 2016 to talk about what happened and to find out their views.[11] As Captain Phelan said, the Preliminary Act was subsequently amended on 13 February 2017 on his advice and he even provided the plaintiff with his own revised edition of the Preliminary Act, which formed the basis of the amended Preliminary Act filed in court. Captain White was not involved in the casualty investigations at all.

32 Oftentimes, the person who investigated the casualty is subsequently called as an expert witness as there are time and cost savings to be enjoyed by the party concerned. Generally, there is no bar to such a person's appointment as an expert witness save that the party should disclose his expert's earlier role as investigator. There is an important distinction between the two roles. Hence,

[11] Transcript dated 22 February 2017 at p 136.

an expert who was involved in the investigation of a marine casualty is best deployed as a witness of fact to testify on matters relating to the investigations, and this approach keeps the investigator's role separate from the person who is an expert witness giving opinion on matters of his or her expertise (see Mark James, *Expert Evidence: Law and Practice* (Sweet & Maxwell, 4th Ed, 2015) at para 6-018).

33 When cross-examining Captain White, Mr Singh tried to cast doubt on Captain White's opinion expressed in his expert reports simply because he had not interviewed the crew of the *Dream Star*.[12] Seemingly, Mr Singh was under a misconception that an expert witness must interview the crew to elicit their evidence on the navigation of the vessel leading up to the collision. If the master mariner who investigated the marine casualty is called to testify in his capacity as an investigator, he is, as I have stated, treated as a witness of fact. In this case, Captain White and Captain Phelan were called to testify as expert witnesses, and their respective duty is to assist the court on matters within his expertise irrespective of who instructed or called them to testify as the expert: O 40A r 2 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

34 In his capacity as an expert witness, Captain Phelan was tasked to express his opinion on what has been embodied in the written evidence of the crew or adduced in the oral testimony of the crew at trial. It was thus patently wrong of him to refer to what the crew told him during an interview that was conducted in March 2016 as though it was factual evidence that could be introduced in court through his testimony as an expert witness. By way of illustration, Captain Phelan insisted that the *Meghna Princess* had sounded five

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12 Transcript dated 24 February 2017 at pp 17–18.

short blasts on her whistle because that was what the bridge team of the *Meghna Princess* had told him previously,[13] even though he was reminded by Mr Kuek that the evidence of the bridge team's AEICs and oral testimony in court was that only one loud blast was sounded.[14] In introducing factual evidence which was not found in the written or oral evidence of the bridge team, Captain Phelan blurred his two separate roles, and inappropriately made use of hearsay information as a factual basis for an expert opinion on rule 34(d) of the COLREGS.

35 The duties and responsibilities of an expert witness must be borne in mind. The following principles are relevant (see *The "Ikarian Reefer"* [1993] 2 Lloyd's Report 68 at 81; *Pacific Recreation Pte Ltd v SY Technology Inc* [2008] 2 SLR(R) 491 at [70], citing *Vita Health Laboratories Pte Ltd v Pang Seng Meng* [2004] 4 SLR 162):

> (a) Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
>
> (b) An expert's opinion must be objective and unbiased. He should neither attempt nor be seen to be an advocate of or for a party's cause.
>
> (c) An expert witness should state the facts or assumptions on which his opinion is based. He should not omit to consider material facts which detract from his concluded opinion.

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13 Captain Phelan's report dated 25 Nov 2016 at para 84; Captain Phelan's report dated 19 January 2017 at para 7.9; Transcript dated 22 February 2017 at pp 135–136 and 174–175.

14 Transcript dated 22 February 2017 at pp 134–136 and 175.

36 The transcripts of Mr Kuek's cross-examination of Captain Phelan will show the former's exasperation on occasions when Captain Phelan came across as espousing the plaintiff's case. On one occasion, it was pointed out to Captain Phelan that he had omitted to consider key facts such as the full contents of the VHF conversation between the *Dream Star* and the *Meghna Princess* beginning from 12:25 (see above at [21]). However, Captain Phelan doggedly refused to accept that the conversation described above had taken place even after the audio recordings were played twice in court and the transcripts of the oral testimony of the Master and the Second Officer were read to him.[15] Captain Phelan's insistence that *Meghna Princess* had sounded five short blasts on her whistle in the face of the bridge team's evidence to the contrary (see above at [34]) was another such occasion.

37 The independence and impartiality of an expert witness are paramount as the expert's duty is to assist the court to come to a decision. Under s 47(4) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"), the court has a discretion to exclude the expert's evidence in circumstances where, as Professor Pinsler suggests, the expert's opinion would have a confusing and misleading effect as when there are doubts about good faith of the expert: Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 5th Ed, 2015) ("*Pinsler*") at para 8.040. Even if I choose not to exercise this discretion, I am of the view that the weight I give to an expert's opinion could well be reduced by the expert's lack of independence and impartiality.

38 Generally, to resolve conflicting views of the experts, the court will evaluate the views by taking into account honest errors, adversarial bias

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[15] Transcript dated 22 February 2017 at pp 56–60.

stemming from the possibility that the experts may be influenced by their clients' interests, an evaluation of the expert's opinion in light of the overall evidence, and the quality of the experts' reasoning itself – *ie*, whether his opinion is sustainable, credible, reasonable and fair. The paper credentials of an expert may be relevant for determining the weight to be accorded to a piece of expert evidence since it is indicative of his familiarity with the subject. But credentials are not solely determinative. It is often more productive to look at other considerations such as the methodology by which an expert reached his conclusions, or his demeanour: see generally *Tan Mui Teck v Public Prosecutor* [2003] 3 SLR(R) 139 at [11] on the court's approach to resolving conflicting expert evidence.

The defendant's case based on expert evidence alone

39 The next evidentiary point pertains to the absence of the crew of the *Dream Star* at trial to testify as factual witnesses. In the absence of the *Dream Star*'s crew at trial, it is not surprising that the defendant's case was entirely dependent on expert evidence. This approach is not objectionable in principle if the expert opinion is solely premised on digital and electronic data or records that are not in dispute, as in this case. Notably, both Captain White and Captain Phelan were able to agree on a common set of data which was contained within a joint statement dated 6 February 2017. In preparation for their respective reports, Captain Phelan looked at AIS data (latitude, longitude, heading and speed) for both vessels at one-minute intervals between 12:16 and 12:29 as downloaded from the VDR of the *Meghna Princess*; whereas Captain White made use of the AIS data downloaded from his company's "shore based" AIS receiver. Notwithstanding some differences of up to 5 meters in location and 1º in heading noted at some time points – which both experts accepted were

"minor" – both sets of AIS data were accepted to be similar. Following the experts' agreement on the AIS data, Captain Phelan prepared a table setting out the distance and bearing between the two vessels from 11:59 to 12:29. The data in the table was accepted by both experts. In other words, the parties by agreement accepted the presumption in relation to electronic records provided in s 116A(1) of the Evidence Act (see also *Mitfam International Ltd v Motley Resources Pte Ltd* [2014] 1 SLR 1253 at [26]). I should mention that the experts' agreement did not extend to the *interpretation* of the data, which was a wholly different matter that the experts disagreed on.

40 Naturally, the defendant's decision to have the case tried on expert evidence alone carries some risk, especially where the crew's evidence is required to establish compliance with the COLREGS. In this case, nobody testified as to the *Dream Star*'s maintenance of a proper lookout. This, coupled with how the *Dream Star* had to ask the *Meghna Princess* where she was at 12:25:42 (see [21] above), led Captain White to conclude that the *Dream Star* had not complied with rule 5 of the COLREGS. Indeed, without the testimony of the crew on board the *Dream Star*, there was simply no evidence that the crew maintained a proper *visual* lookout at the relevant times. It is therefore not surprising that the defendant did not seriously challenge the plaintiff's allegation that the *Dream Star* had breached rules 5 and 7 of the COLREGS which are closely linked. In failing to keep a proper lookout (rule 5), the *Dream Star* would not have constantly appraised the situation around the vessel and this would have led to a breach of rule 7 which requires the vessel to use the information gathered from a proper lookout to continuously assess whether there is a risk of collision. Potentially, there is a need to hear from the *Dream Star*'s crew on issues relating to their perception of the encounter between the two vessels. This matter has to be analysed especially where one vessel saw the

encounter as an overtaking situation and the other vessel saw it as a crossing situation. Be that as it may, the prerequisite of vessels having to be in sight of one another before the overtaking and crossing rules are engaged (discussed at [43] below) would resolve, at an early stage, the debate on the applicability of the overtaking or crossing rules.

41 The plaintiff's position is a lot harsher on the defendant. According to Mr Singh, the consequence of not calling the *Dream Star*'s crew as factual witnesses is that the court should draw adverse inferences under s 116(g) of the Evidence Act as to the crew's "understanding of the COLREGS, practices of good seamanship, if they were negligent in their discharge of the duties imposed by the COLREGS and/or good seamanship and if their failure to discharge the duties caused the collision".[16] This assertion, however, must be scrutinised in the context of Mr Singh's claim that the defendant breached rules 5, 6, 7, 8, and 16 of the COLREGS and good seamanship. Good seamanship is considered in light of compliance with the rules in COLREGS. Broadly speaking, depending on the circumstances, the issue of whether there has been a breach of rule 16 or a failure to obey the dictates of good seamanship involves an objective test that can be resolved with reference to technical data such as the speed, heading, position and relative bearing of the vessels without having to rely on oral evidence from any factual witnesses. Teare J in *The "Samco Europe" and "MSC Prestige"* [2011] 2 Lloyd's Rep 579 ("*The Samco Europe*"), albeit commenting on good seamanship in light of rule 17(a)(*ii*) of the COLREGS, affirmed the principle that questions of navigational fault are to be assessed objectively (at [63]):

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16 PWS at para 82.

> Questions of navigational fault are assessed objectively by reference to what the prudent mariner, following the Collision Regulations and the dictates of good seamanship, would or would not do. Thus a vessel will be required to exercise the liberty to alter course and speed provided by rule 17(a)(ii) when good seamanship so requires; see *The Koscierzyna* [1996] 2 Lloyd's Rep 124 at page 129 per Sir Thomas Bingham MR. I respectfully agree with Gross J in *The Topaz* [2003] 2 Lloyd's Rep 19 at para 50 that the test is objective.

42 This is an appropriate juncture to highlight the Court of Appeal's reminder in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [23] that "the court must put its mind to the *manner* in which the evidence that is not produced is said to be unfavourable when drawing the adverse inference under s 116(*g*)". It would be apparent in the light of this judgment as a whole, that Mr Singh's submission for adverse inferences to be drawn is misplaced.

43 I conclude this section with two final comments. First, the defendant's decision not to call any factual witness did create an evidentiary gap pertaining to a prerequisite for the crossing and overtaking rules to be engaged. Rules 13 and 15 are found under Section II of the COLREGS, which contains rules governing the "conduct of vessels in sight of one another". Rule 11 states that rules under Section II would only "apply to vessels in sight [of] [*sic*] one another", and rule 3(k) provides that "vessels shall be deemed to be in sight of one another only when one can be observed visually from the other". Rule 3(k) makes clear that there must be a visual observation by the officers on watch; that is, a radar observation would not suffice (see *Marsden and Gault on Collisions at Sea* (Sweet & Maxwell, 14th Ed, 2016) ("*Marsden*") at para 5-176). To plug this evidentiary gap, Mr Kuek relies on *The "Lucile Bloomfield"* [1966] 2 Lloyd's List Law Reports 239 ("*The Lucile Bloomfield*") where at 245, Karminski J held that "in sight", in his view, "means something which is visible if you take the trouble to keep a lookout". Mr Kuek therefore submits that

vessels are "in sight" when both vessels are *in each other's line of sight* such that they would have seen each other with a proper lookout.[17] The difficulty with this submission is that he does not state the time at which both vessels were in each other's line of sight and he seems to have forgotten Captain White's opinion that there was no proper lookout. Without calling the crew to testify on the defendant's behalf, there is no evidence of visual sighting to satisfy the prerequisite question of rule 11 read with rule 3(k). All said, it was unsatisfactory that while Mr Kuek is adopting the position that an overtaking situation started and subsisted from a specific time point (12:18[18]), the question of when rule 11 read with rule 3(k) was satisfied (and therefore when rule 13 was applicable) is left unanswered.

44 The second comment relates to the inaccuracies in the entries made in the *Meghna Princess*'s various logbooks and the upshot of these inaccuracies. Between 12:20 and 12:25, the *Meghna Princess* was increasing its speed from 6.42 knots to 8.17 knots whereas the Bell Book entries indicated that the *Meghna Princess* was slowing down during that same period. Specifically, between 12:22 and 12:23, the records in the Bell Book showed that the engine movements of the *Meghna Princess* went from dead slow astern to slow astern, to half astern, and finally to full astern. The Bell Book also recorded the time of collision as 12:25 and not 12:30 (see [24] above).[19] The same issues plague the Engine Movement Book which contained entries copied from the Bell Book. The Chief Engineer's explanation was that some engine movements were not recorded down because of the "abnormal" collision situation.[20] When asked to

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17 DWS at para 42.

18 DWS at para 41.

19 Plaintiff's Bundle of Documents at p 86.

clarify what entries were copied, the Chief Engineer claimed to be unable to recall which were copied.[21] That said, this court does not have to make findings on the dubious entries since the plaintiff has accepted that the entries in the Bell Book on the time and movements were inaccurate, and has turned to the AIS and VDR data instead in its closing submissions.[22]

45 What remains a point of curiosity is how the bridge team sought to reconstruct the events leading to the collision the hard way. The reconstruction was dependent on guesswork and the bridge team seemed to have forgotten that their vessel was equipped with a VDR, which is the marine equivalent of an aircraft's black box (see *Marsden* at para A18-001) that would have enabled casualty investigators to review procedures and instructions in the moments before the collision in order to identify the cause of the collision. As VDRs continuously maintain sequential records, the bridge team's method of reconstructing the *Meghna Princess*'s movements through "discussions" after the collision[23] calls for a better explanation; the lack of any compelling explanation serves only to cast doubt on the veracity and reliability of the bridge team's testimony. Above all, the bridge team's claim to having personal knowledge of the events from the time the pilot disembarked (at 12:20) up to the time of collision is demonstrably untrue. The bridge team's reconstruction of events does not square with the electronic data recorded on board the vessels. The upshot of this is that the testimonies of all the factual witnesses would have to be scrutinised and tested against the objective evidence in court. More to the

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20 Plaintiff's Bundle of Documents at p 87; Transcript dated 16 February 2017 at pp 21–22.

21 Transcript dated 16 February 2017 at p 25.

22 PWS at paras 87–88.

23 Transcript dated 16 February 2017 at p 55.

point, it seems to me that the false entries were made to cover up any possible blame on the part of the bridge team for the collision. It was also a misguided attempt to corroborate the lie told to VTIS at 12:29:30 that the *Meghna Princess* had stopped her engine but the *Dream Star* continued towards the *Meghna Princess* (see [23] above). It is deplorable conduct. Fortunately, the events that in fact occurred could be ascertained from the VDR data gathered from the vessels, and the effect of the false entries were contained. Nevertheless, the bridge team's conduct and extent of their personal knowledge of the events leading to the collision bear on the veracity of their factual evidence and credibility as factual witnesses.

The unreliability of the evidence given by the Meghna Princess*'s bridge team*

46 The final evidentiary issue I will address is Mr Kuek's criticisms of the factual witnesses' written testimonies. Given the court's criticisms in [45] above, doubts as to the factual witnesses' personal knowledge of the collision survive to affect the quality of their respective affidavits of evidence-in-chief ("AEICs"). From Mr Kuek's cross-examination of the bridge team, it is clear that most of the details contained within the AEICs were "fed" to them. Each of the bridge team's AEICs contained details with precision that beggars belief. More than two years after the collision, they were able to depose in their AEICs precise headings, speeds of vessels, and distances based on a minute-by-minute analysis of the events prior to the collision. Yet, when asked to disclose what their source of information was, the bridge team either gave vague replies or lied on the stand. The Master claimed to have written his affidavit after "[hearing] from so many sources, whatever sources is required, because [he had] to give the statement… [he] cannot, go, go, go blind".[24] The Second Officer

claimed to have made reference to a "survey report" that he "cannot exactly remember".[25] The Third Officer gave contradictory explanations for being able to go into the level of detail shown in his affidavit – first, that he had made reference to "survey reports" as well; second, that he had recorded down the figures in a personal handbook after overhearing them provided by the Second Officer to the Master. The Third Officer then said that the journal had already been disposed of two to three years ago, before further contradicting himself by claiming to have thrown this journal away the last few weeks before trial.[26] None of the explanations provided were satisfactory. Prevarications aside, it is trite that a witness should only be giving evidence based on what he directly know of and perceived, rather than to facts in issue or relevant facts perceived by other persons and fed back to him: *Pinsler* at para 4.001. By parroting or relying on information found in extraneous sources like "survey reports", the bridge team's AEICs were arguably based on hearsay evidence (though this point was not really pursued and admissibility was not explicitly raised by Mr Kuek). In any case, there is ample reason to be very circumspect about relying on the factual witnesses' evidence unless there is objective evidence in support. It is not surprising that recognising the difficulty with the evidence of the factual witnesses, the plaintiff in its closing submissions ended up relying on expert evidence in the same way as the defendant.

Negligence and COLREGS

47 Collisions between vessels often give rise to a cause of action in negligence. Typically, claimants have to establish breach of duty (that a vessel

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24 Transcript dated 21 February 2017 at p 141.

25 Transcript dated 15 February 2017 at pp 11–12.

26 Transcript dated 16 February 2017 at pp 39 and 90.

owes a duty of care to other vessels is well-established) that caused or contributed to the collision and damage (see *Marsden* at paras 4-023 and 5-071; *Halsbury's Laws of Singapore* vol 17(3) (LexisNexis, 2016 Reissue) at para 220.0597). The standard of care applicable in collision cases is the exercise of "good seamanship" which is tantamount to the exercise of reasonable skill or care expected of a competent/prudent seaman to prevent the vessel from doing injury (see *Stoomvart Maatschappy Nederland v Peninsular and Oriental Steam Navigation Company* (1880) 5 App Cas 876 at 890; *Marsden* at para 4-028). The duty of good seamanship requires the crew of a vessel to observe the COLREGS or local regulations. In other words, good seamanship is considered in light of compliance with the rules in COLREGS.

48 *Marsden* at para 5-01 describes the purpose of the COLREGS as follows:

> The object of the International Regulations for Preventing Collisions at Sea 1972 is to prevent collisions and to minimise their effect. The rules are made not merely for the sake of the vessel which has to observe them but for the sake of other vessels which may be approaching or manoeuvring at close quarters, and which have every right and reason to suppose the rules will be observed, and none to suppose they will be broken.

49 The mere fact that the rules in COLREGS have been broken or that the vessels have not been navigated in a seamanlike manner does not *ipso facto* give rise to a finding of fault on the part of the breaching party. Simply put, not all breaches of the COLREGS will give rise to a finding of fault on the part of the breaching party; the breach must have caused or contributed to the collision. Notably, the apportionment of liability in collision cases is premised on fault (see the Maritime Conventions Act, 1911 (Cap IA3, 2004 Rev Ed) ("Maritime Conventions Act")). This has been the long-standing position, which is

buttressed by the abolition of the statutory presumption of fault in the UK in 1911, the vestige of which can be found in the explanatory note found in s 4 of the Maritime Conventions Act.

50 Where there is some degree of fault on the part of all the vessels involved in a collision, a court may apportion liability between the vessels according to the degree to which each vessel was at fault in causing the collision (see s 1(1) of the Maritime Conventions Act). Ng J in *The Owners and/or Demise Charterers of the Ship or Vessel "MCC Jakarta" v The Owners and/or Demise Charterers of the Ship or Vessel "Xin Nan Tai 77"* [2017] HKCFI 981 ("*The MCC Jakarta*") has helpfully set out the principles applicable to the apportionment of liability for breach of the COLREGS. These are the principles relevant to this case:

> 72 Second, one of the most important principles underlying good seamanship and COLREGS is to avoid, so far as possible, close quarters situations: *The "Sanwa"* [1998] 1 Lloyd's Rep 283, 299 (Clarke J).
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> 73 Third, as a matter of law, there is no higher duty on the give-way vessel to keep out of the way of the stand-on vessel than there is on the part of the stand-on vessel to maintain course and speed. In any particular case, the need for the give-way vessel to take helm or engine action may assume greater or less importance than the need for the stand-on vessel not to embarrass the give-way vessel by altering course or speed: *The "Savina"* [1975] 2 Lloyd's Rep 141, 145 (Cairns LJ); affirmed on appeal [1976] 2 Lloyd's Rep 123, 132 (Lord Simon of Glaisdale).

51 For expediency, the other principles will be set out at [124] below, where the topic of apportionment is discussed. With the principles set out at [50] in mind, I now turn to the issues in this case.

Were the vessels in an overtaking or crossing situation?

52 The arguments from both sides present an encounter in which one vessel, the *Dream Star,* believed that the *Meghna Princess* was the give-way vessel in an overtaking situation and the other vessel, the *Meghna Princess*, saw the encounter as a crossing situation in which she was the stand-on vessel and the *Dream Star* was the give-way vessel. It will be helpful to set out rules 13 and 15 of the COLREGS:

Rule 13

Overtaking

(*a*) Notwithstanding anything contained in the Rules of Part B, Sections I and II, any vessel overtaking any other shall keep out of the way of the vessel being overtaken.

(*b*) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight of that vessel but neither of her sidelights.

(*c*) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.

(*d*) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

Rule 15

Crossing Situation

When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

Overtaking situation

53 Captain White opined that the *Meghna Princess*, having altered course around the Ferry Buoy at about 12:18, was coming up on the *Dream Star* from more than 22.5º abaft the starboard beam of the *Dream Star*, making the *Meghna Princess* an overtaking vessel. The *Meghna Princess* continued on a course towards the Eastern Boarding Ground B.

54 The question of whether there was an overtaking situation is a short point that can be swiftly resolved. As stated in [43] above, section II of the COLREGS is relevant as it concerns the conduct of vessels in sight of each other. But for the defendant to rely on rule 13 of the COLREGS, the prerequisite under rule 11 must first be satisfied. This is a point that I have already dealt with above – under rules 11 and 3(k) of the COLREGS, the rules under section II of the COLREGS will only apply to vessels in sight of one another, and vessels shall be deemed to be in sight of one another only when they can visually observe each other.

55 The defendant asserts that that an overtaking situation subsisted from a specific time point (12:18) and the defendant's expert came to this view that there was an overtaking situation from 12:18 onwards based on his analysis of the vessels' AIS data for the vessels' positions, headings, speeds and bearings. The defendant therefore submits that rule 13 applies. I am unable to accept this assertion. The phrase "observed visually" does not mean seen by radar; it means observing by eye or with aid of binoculars. In addition, for the reasons explained in [43] above, Mr Kuek's reliance on *The Lucile Bloomfield* is misplaced. Without the testimony of the *Dream Star'*s crew*,* evidence of visual sighting by the crew to satisfy rule 11 read with rule 3(k) is missing. I therefore find that the defendant has not proved the alleged overtaking situation for rule 13 to apply.

56 The parties submitted extensively on whether the vessels were in an overtaking or crossing situation. I will comment on this. The point here is that the *Dream Star* believed that the *Meghna Princess* was the overtaking vessel and that a subsequent change of bearing between the two vessels could not impinge on the *Dream Star'*s status as the overtaken vessel. Under rule 13(b) of the COLREGS, the overtaking vessel must be "coming up" with another vessel from a direction more than 22.5º of the beam. The phrase "coming up" is accepted to mean that the overtaking vessel must at least have been travelling faster than the overtaken vessel (see *The Main* (1886) 11 PD 132 at 140; *Marsden* at para 5-371). An overtaking situation may arise even when there is no risk of collision (see *The "Nowy Sacz"* [1977] 2 Lloyd's Rep 91 at 98). I would add that it is unhelpful to say that both vessels must be on a parallel or an almost parallel course.[27]

57 Both experts agreed that the *Meghna Princess* was more than 22.5º abaft the beam of the *Dream Star* between 12:18 and 12:19. The experts also agreed that the speed of the *Meghna Princess* during that period was 5.99 knots while the *Dream Star*'s speed was between 4.3 and 4.4 knots. Assuming that rule 11 of the COLREGS was satisfied, on a plain reading of rule 13(b), it is arguable that the *Meghna Princess* satisfies the definition of an overtaking vessel. But in my view, that would be too rigid an application of the overtaking rules.

58 An analysis of the status of the *Dream Star* based on the relative position and the angle of approach of the vessels is incomplete. Between 12:18 and 12:19, the *Dream Star* had taken a brief evasive manoeuvre – that is, it had veered to port from 270º to 252º (at C-12 or 12:19) to create distance between

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[27] PWS at paras 15, 19 and 20; Transcript dated 24 February 2017 at p 27.

herself and the *Pioneer 93*. This evasive manoeuvre was known to the *Meghna Princess* from the call that the pilot on board the *Meghna Princess* had received from VTIS. This call was acknowledged by the pilot so the *Meghna Princess* must have known that the *Dream Star* was merely making an evasive manoeuvre which turned out to be momentary anyway. It was with those circumstances in mind that Mr Singh questioned, in his closing submissions, the rigidity inherent in Captain White's approach of mapping the vessels' respective locations on a diagram and then determining whether an overtaking situation subsisted based on a geometric analysis. I agree that the present case is similarly one where rule 13 should not be rigidly applied.

59 The proposition that there is some flexibility when it comes to the application of the overtaking rules finds support in *The "General VII"* [1990] 2 Lloyd's Rep 1 ("*The General VII*"). In *The General VII*, a small tug had passed another vessel (the *Rora Head*) on her starboard side – the *Rora Head* had slowed down to pick up a pilot. After the *Rora Head* proceeded off, she collided with the tug further up river. One issue the court addressed was whether the small tug could be an overtaking vessel. Counsel for the *Rora Head* had submitted that the tug remained under its duty to keep out of the way (as overtaking vessel) because she was never "finally past and clear" under rule 13(d). While it was not contended that the small tug would have satisfied rule 13(b) of the COLREGS, Sheen J held that the overtaking rules did not apply. Sheen J commented that "when the overtaking rules cease to apply may be regarded as a matter of seamanship" and the nautical assessor's view, which Sheen J adopted, was that the "overtaking rules had no application to the navigation of either vessel [for the next eight or nine minutes after the pilot embarked each vessel]" because each vessel was able to navigate the river

without any regard for the presence of the other vessel (see *The General VII* at 3).

60 Mr Kuek submits that rules 13(c) and (d) of the COLREGS are also relevant. Under rule 13(c) of the COLREGS, the hinder vessel was to assume that an overtaking situation and the concomitant rules applied if there were any doubt as to whether a vessel was overtaking another. Under rule 13(d), no change in bearing would make an overtaking vessel a crossing one – hence the nautical adage, "once an overtaking vessel, always an overtaking vessel" (see also *Marsden* at para 5-375). Reliance on rules 13(c) and 13(d) is unhelpful in the present context. Rule 13(c) was meant to address the difficulty of ascertaining with certainty whether an overtaking or crossing situation applied (see *Marsden* at para 5-373); it should not be used by a vessel to claim to be a stand-on vessel by declaring that an overtaking situation applied based on a momentary evasive manoeuvre she undertook herself. On this note, reliance on rule 13(d) of the COLREGS in the present case is also unhelpful since the pertinent question is whether the vessel's relative positions at 12:18 and 12:19 were such that the overtaking rules *began* to apply. Rule 13(d) – that "[a]ny *subsequent* alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel…" [emphasis added] – is a rule that governs alterations of bearing *after* an overtaking situation is found to apply. Supposing the vessels fell within an overtaking scenario even before 12:18 and the *Dream Star* had been keeping a constant course, rule 13(d) could be invoked to make the point that the *Dream Star*'s turn to port would not have disapplied the overtaking rules. In the present case, however, the movement of the *Dream Star* between C-13 and C-11 was a momentary deviation from the *Dream Star*'s course instead, and Mr Kuek is seeking to invoke rule 13(d) of the COLREGS

to cast such a deviation as the time point from which an overtaking situation arose and persisted. Such an argument seems too fanciful.

Crossing situation

61 The plaintiff's position is that the *Meghna Princess* believed that she was the stand-on vessel in a crossing situation and the *Dream Star* was the give-way vessel. Mr Kuek disagrees arguing that the bridge team on board the *Meghna Princess* had not appreciated that a crossing situation was developing at all. Like rule 13, rule 15 is under section II which concerns the conduct of vessels in sight of each other. The threshold question is whether the prerequisite for the application of rule 15 was satisfied in this case. Mr Singh, in his written submissions, claims that the Master of *Meghna Princess* had visually seen the *Dream Star* at 12:16 at a distance of 1.2 nm, and at that point in time the *Meghna Princess* was just abaft the beam of the *Dream Star*. For this point, Mr Singh cites the Master's AEIC, but what the Master deposed was quite different. For a start, the paragraph on the events that occurred at 12:16 simply states that "[a]t 12:16 the pilot commenced a turn to starboard to proceed towards the pilot boarding area for him to disembark".[28] As for the issue of when the vessels were visually in sight of one another, the Master's AEIC states that at 11:59, "visibility was clear" and that he saw on the vessel's port bow a tug and barge. The *Dream Star* was behind the tug and barge. At that point in time, the vessels were about 2 nm apart.[29] 11:59 *could* therefore be the point from which Rule 11 of the COLREGS is satisfied – though at [46] above, I have expressed doubt as to the reliability of the AEICs of the *Meghna Princess*'s bridge team.

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28 Mohammad Nasir Hussain's AEIC at para 15.

29 Mohammad Nasir Hussain's AEIC at para 11.

62 Mr Singh identifies the time of visual sighting as 12:16. It was about the time VTIS called the pilot on the *Meghna Princess* to watch out for *the Dream Star* and the *Pioneer 93* (see [19] above). The pilot had replied that he saw the two vessels and would keep more to the starboard side of the channel. From that exchange, the plaintiff inferred that the bridge team had visually sighted the *Dream Star* at 12:16. However, the plaintiff's inference is not supported by the factual witnesses. The Second Officer and the Master did not testify as to any visual sighting at 12:16. I agree with Mr Kuek that the Third Officer's oral testimony that he visually observed the *Dream Star* coming towards the *Meghna Princess* at 12:22 is also dubious. If the Third Officer is to be believed, there would be evidence of the *Meghna Princess* reducing her speed to slow down; instead, as the table at [22] above shows, she continued to increase her speed from 7.16 knots (at 12:22) to 8.17 knots (at 12:25) and then 8.38 knots (at 12:26).[30]

63 In any case, at the very latest, both vessels would have had sight of each other at about 12:25 when the *Dream Star* asked for the position of the *Meghna Princess* over VHF and the *Meghna Princess* advised that she was at the *Dream Star's* starboard bow (see above at [21]). On a side note, reference to starboard bow was a mistake; it was not disputed that the *Meghna Princess* was at the *Dream Star's* starboard beam. However, the *Dream Star* had never acquired the *Meghna Princess* on her automatic radar plotting aid ("ARPA"),[31] and based on the entire VHF conversation (see above at [21]), it is more probable than not that the vessels would have visually observed each other at 12:25 – that is to say

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30 Transcript dated 16 February 2017 at pp 62 and 67; Defendant's Bundle, Tab 32 at p 161.

31 Captain White's report dated 29 Nov 2016 at para 5.3.8.

during the time of the first VHF conversation which started at 12:25:32 and ended at 12:25:54, and I so find. Unless precise timing down to seconds is required, in this judgment, I will refer to "12:25" as the point in time when rule 11 read with rule 3(k) of the COLREGS was satisfied.

64 In addition, for rule 15 of the COLREGS to be engaged, there must exist a risk of collision within the meaning of rule 7. Mr Singh's submits that a crossing situation "appertained from 12:16 to 12:30 hours".[32] His timing of 12:16, however, contradicts with the evidence given by the Master of *Meghna Princess* – that even after the pilot had disembarked at 12:20, the *Dream Star* was still "involved with [*Pioneer 93*], and did not appear to present any danger at a distance of about one mile".[33] At 12:16, the distance of the two vessels as agreed between the experts was 12.1 cable (1.21 nm) and the bearing of the *Meghna Princess* from the *Dream Star* was 2º.

65 As Captain Phelan rightly pointed out, in a busy port, "crossing situations are occurring all day every day. It's only when they have a risk of collision that rule 15 comes into play."[34] I understand from the context of his testimony that he was using "crossing situations" in a loose sense. Captain Phelan took the view that at 12:20, the *Meghna Princess* did not see the *Dream Star* as presenting any danger; instead it was only until 12:25 that "[t]he concern on [the *Meghna Princess*] did indeed come to the fore".[35] According to Captain Phelan's second report, a risk of collision was only apparent "after [the *Dream Star*] had completed a 34º turn to starboard to close with [the *Meghna Princess*]

32 PWS at para 22.

33 Mohammad Nasir Hussain's AEIC at para 19.

34 Transcript dated 22 February 2017 at p 37.

35 Captain Phelan's report dated 19 January 2017 at paras 6.20 and 6.60.

which she had not previously seen".[36] Captain Phelan did not pinpoint the time when the turn to starboard was completed but based on a turn of 34º starboard (252º to 286º), he would have in mind 12:26. However, further below in that same report, Captain Phelan used "32º" instead of "34º", relying on a starboard turn of 252º (at 12:19) to 284º (at 12:25).[37] In fact, he also testified that the *Dream Star* was not perceived to be a danger to the *Meghna Princess* until 12:25.[38] Looking at the VDR data of the *Dream Star*, which the experts do not dispute, the starboard turn was complete at about 12:25 when the *Dream Star*'s heading was 284º. It then remained fairly constant up to 12:29, the minute before the collision.

66 Captain White agreed that for rule 15 to apply, a risk of collision has to be present, and in Captain White's view, a risk of collision was not present at the time the *Dream Star* passed close ahead of the *Pioneer 93* at a distance of about 1.7 cables (at [71] below). He opined in his report that on an application of rule 7(d)(*ii*) of the COLREGs, a risk of collision arose at about 12:17, but that it was not until 12:25 when the vessels were 0.58 nm apart that the *Meghna Princess* took note that such a risk existed.

67 As stated, the heading of the *Dream Star* was constant after the starboard turn was completed at 12:25 (at [65] above). I prefer Captain Phelan's evidence that the risk of collision within the meaning of rule 7 existed at 12:25, and I so find. This view follows on from Captain White's opinion (based on his analysis of all available data) in his first report that the *Dream Star* was concentrating on

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36 Captain Phelan's report dated 19 January 2017 at para 1.5(v).

37 Captain Phelan's report dated 19 January 2017 at para 5.1.21.

38 Transcript dated 21 February 2017 at p 186.

the situation with the *Pioneer 93* from about 12:00 until the *Pioneer 93* was clearing away from the *Dream Star* at about 12:19. It was only at about 12:20 that the *Dream Star* started to shape her course back to starboard.

68 To conclude, a crossing situation subsisted from 12:25 onwards, with the *Dream Star* as the give-way vessel and the *Meghna Princess* as the stand-on vessel.

Fault of the Dream Star

Was the give-way vessel alone to blame?

69 The plaintiff submits that the *Dream Star* was alone to blame for the collision because the *Dream Star*, as the give-way vessel in a crossing situation, failed to keep clear of the *Meghna Princess,* the stand-on vessel. At 12:25, the *Meghna Princess* was on the *Dream Star's* starboard beam at a distance of 0.58 nm away. The *Dream Star's* speed was 5.6 knots and her heading was 284º. The *Meghna Princess* was heading 231º at a speed of 8.17 knots. The plaintiff's complaint against the give-way vessel rests on two limbs: first, that it was the *Dream Star*'s 32º turn to starboard (252º to 284º) that charted the *Dream Star* on a collision course with the *Meghna Princess* from 12:25 onwards; and second, as the give-way vessel, the *Dream Star* ought to have taken early and substantial action to keep clear of the *Meghna Princess* in accordance with rules 8 and 16 of the COLREG. For the reasons explained below, the plaintiff has not shown that the *Dream Star* was alone to blame for the collision, and I so hold.

Starboard turn to heading of 284º

70 The first limb deals with the plaintiff's allegation that by turning 32º to starboard, the *Dream Star* set the stage for the collision. Captain Phelan opined

that upon completion of the turn to starboard, the *Dream Star* was in the path of the *Meghna Princess* so as "to instigate a collision situation with the *Meghna Princess*".[39] In his view, the *Dream Star*'s alteration from her original course of 270º, first to port and then to starboard onto a heading of 284º could not be considered to be "making good her course"; instead, it was "erratic navigation and poor seamanship without due regard to other ships in the area".[40] Captain White disagreed that the turn to starboard presented a danger of collision to the *Meghna Princess*. He also disagreed that the *Dream Star*'s navigation was erratic and in violation of the dictates of good seamanship. The alterations were to increase the distance between the *Dream Star* and the *Pioneer 93*. He opined that the combined actions of both the *Dream Star* (to port) and the *Pioneer 93* (to starboard) increased the distance between them to about 1.7 cables at about 12:20. At that time (12:20), the *Dream Star* had already begun to shape starboard to steer towards the Eastern Boarding Ground B.

71 As I have found above at [9] and [15], up until the two vessels cleared each other, the *Pioneer 93* was the overtaking vessel and the *Dream Star* was the overtaken vessel. The *Dream Star* had always been at the port side of the *Pioneer 93*, and she had turned to port because the *Pioneer 93* had come up too close to the *Dream Star* at about 12:15. I should add, for the avoidance of doubt, that the *Dream Star*'s starboard turn to cross ahead of the *Pioneer 93* at a distance of 1.7 cables at 12:20 did not give rise to a crossing situation between the *Pioneer 93* and the *Dream Star*. Under rule 13(d) of the COLREGS, once an overtaking vessel, always an overtaking vessel and in this case, the *Pioneer 93* would remain as the overtaking vessel despite any subsequent alteration of

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39 Captain Phelan's report dated 19 Jan 2017 at para 1.5(vi).

40 Captain Phelan's report dated 19 Jan 2017 at para 6.24.

bearing between the *Dream Star* and her. She was required to keep clear of the *Dream Star* and pass astern of the *Dream Star*, and that was what happened.

72 Captain Phelan accepted that the *Dream Star*'s turn to starboard was to cross ahead of the *Pioneer 93* at a distance of 1.7 cables at 12:20 and that manoeuvre would later on enable the *Pioneer 93* to pass the *Dream Star* by her stern. Captain Phelan referred to a screenshot at 12:25 showing the *Dream Star* emerging from behind the *Pioneer 93* on a heading of 284º with the *Meghna Princess* on her starboard side. It was only at 12:26 that the *Dream Star* was ahead of the *Pioneer 93*, and the tug cleared the *Dream Star*'s stern sometime after 12:27. Finally, I should mention Captain White's view that in confined waters, it was acceptable seamanship for the *Dream Star* to cross ahead of a smaller tug travelling at a slow speed at a passing distance of 1.7 cables.

73 On the evidence, the *Dream Star*'s turn to starboard was also to allow the *Dream Star* to head in the direction of the Eastern Board Ground B to pick up her pilot. Based on the *Dream Star*'s AIS data, at 12:25, the pilot boat was 1.82 nm away, and by the time the first VHF conversation ended (before 12:26), the pilot boat's distance from the *Dream Star* had closed to 1.42 nm.[41]

74 It follows from the above that the *Dream Star* turned to starboard at 12:20 for two reasons: to create distance between the *Pioneer 93* and herself, as well as to fetch her pilot from the pilot boarding ground. This was therefore not "erratic navigation and poor seamanship", as the plaintiff alleges. This point is corroborated by how the bridge team was aware from as early as 12:17 that the *Dream Star* was going to the Eastern Boarding Ground B and that after clearing

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41 Captain White's report dated 16 Jan 2017 at para 4.7.22.

the *Pioneer 93*, the *Dream Star* would have turned to starboard to pick up her pilot (see below at [112]).[42] I therefore find that there was no fault to be attributable to the *Dream Star* for her starboard turn towards the Eastern Boarding Ground B.

Early and substantial action to keep clear

75 I now come to the second limb which is that the *Dream Star* as the give-way vessel ought to have taken early and substantial action to keep clear of the *Meghna Princess*. Both experts agree that at 12:25, there was still time to react before the collision occurred.[43] With rule 8 (action to avoid collision) and rule 16 (give-way vessel to keep clear) in mind, the question therefore is this: what could the *Dream Star* have done at 12:25? Captain Phelan's contention is as follows:[44]

> In conformity with the Collision Regulations, a competent and careful Master on DREAM STAR would have immediately put the helm hard-to-starboard to proceed around the stern of MEGHNA PRINCESS, using the engine if necessary, before reducing speed or stopping the engine. …
>
> … In fact, DREAM STAR did not alter course until about one minute before the collision, when she went hard-to-port.

76 This view runs into two difficulties. First, given the close proximity of the two vessels, Captain White opined that a prudent master on board the *Dream Star* would not have considered the manoeuvre suggested by Captain Phelan since the *Dream Star* would have to pass very close ahead of the *Meghna Princess*. As Captain White explained in his report:[45]

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42 Transcript dated 21 February 2017 at p 73.

43 Transcript dated 22 February 2017 at p 64; Transcript dated 24 February 2017 at p 104.

44 Captain Phelan's report dated 25 Nov 2016 at paras 79–80.

> Had "DS" put the helm hard-to starboard at 1225 hours while maintaining a speed of about 5 knots, "DS" would have advanced about 4.7 cables and a transfer to starboard of about 1.6 cables, before completing the full turn to starboard, and this would have taken about 3.8 minutes. However, this manoeuver would mean that "DS" would be required to turn in towards "MP" before being able to pass clear astern of "MP", with "MP" advancing and getting closer all the time… *The plot would indicate that "DS" might have passed very close ahead of "MP".* Although my calculation for advance and transfer is speculative, I believe that it shows that an alteration of course to starboard was not an option… [emphasis added]

77 Captain White's analysis above raises a plausible dilemma to Captain Phelan's proposed manoeuvre that lacked substantiation. I accept Captain White's expert evidence on this matter. In support of his view, he had produced an illustration of how a sharp right turn by the *Dream Star* would have panned out – *ie*, the *Dream Star* would have to pass very close ahead of the *Meghna Princess*.[46] It should be noted that rule 8(d) of the COLREGS provides that action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. It bears repeating that Captain Phelan, on the other hand, had made a bald assertion and he had not supported his view with any diagrammatical analysis.

78 Second, it must be noted that at 12:25, the *Pioneer 93* was still in the vicinity, between but slightly behind the *Dream Star* and the *Meghna Princess* – *ie*, the *Pioneer 93* was at the starboard quarter of the *Dream Star* (see also [71]–[72] above).[47] While Captain Phelan had referred to the close presence of the *Pioneer 93* which persisted until the *Dream Star* steered clear of the *Pioneer 93* at 12:27 (at 12:26, the *Pioneer 93* had only come abreast of the stern of the

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45 Captain White's report dated 16 Jan 2017 at para 4.8.9.

46 Captain White's report dated 16 Jan 2017 at Appendix XVI.

47 Defendant's Bundle, Tab 26.

Dream Star),[48] he did not state whether his proposed manoeuvre took into consideration the presence of the *Pioneer 93*. Neither of the experts dealt with this factor at length, but it appears to me that as at 12:25, the *Pioneer 93* had not cleared the *Dream Star*, and the experts ought to have clarified one way or the other whether the *Dream Star* could have put the helm hard to starboard and slowed down without creating again a precarious close-quarters situation with the *Pioneer 93* and the barge in tow (the barge is not reflected in Captain White's plots and there is no information as to the barge and the length of the tow line). On this point, rule 8(c) of the COLREGS, which states that if there is sufficient sea-room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it *does not result in another close-quarters situation*, is instructive. To be sure, it is not clear whether it was open to the *Dream Star* to simply reduce speed without altering course as well, especially since the *Pioneer 93* had a barge in tow. Captain White had mentioned reduction of speed as an option under rule 8, but his conclusion was that it was not a realistic option since the *Dream Star* would require sufficient steerageway to maintain a steady course in the general direction of the traffic flow and the current at the time was coming from the port quarter of the *Dream Star* at about 1.0 knot.[49] This point was not countered by Captain Phelan. The upshot of the above observations is that Captain Phelan's proposed course of action is not feasible.

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48 Captain Phelan's report dated 19 January 2017 at para 5.1.4; Captain Phelan's report dated 25 Nov 2016, Appendix 15; Defendant's Bundle, Tab 26.

49 Captain White's report dated 29 Nov 2016 at para 6.41.

Failure to keep a proper lookout

79 Rule 5 of the COLREGS stipulates that every vessel shall at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions. A proper lookout comprises the use of radar, including the use of ARPA in circumstances where it would be of assistance (see *Marsden* at para 5-184). In waters where numerous small ships may be encountered, an efficient radar lookout must be employed: *The "Golden Mistral"* [1986] 1 Lloyd's Rep 407 at 413. On a related note, rule 7(b) states that proper use shall be made of radar equipment if fitted and operational to obtain early warning of risk of collision.

80 The defendant is not seriously disputing that the *Dream Star* had breached rules 5 and 7 of the COLREGS by failing to keep a proper lookout. This was clearly evinced by the crew's inquiry as to the location of the *Meghna Princess* at 12:25:42 (see above at [21]). At trial, Mr Kuek made a veiled attempt to explain away this portion of the conversation with the contention that the bridge team of the *Meghna Princess* had misinformed the *Dream Star* that she was at her starboard bow[50] when she was in fact at her starboard beam. This explanation is unsatisfactory because it does not address the suggestion, based on the *Dream Star*'s query, that she had not used her *radar* equipment to maintain a proper lookout or obtain early warning of risk of collision. It therefore follows that the *Dream Star* was in breach of rules 5 and 7(b) of the COLREGS. In fact, this was also Captain White's expert evidence that the defendant quite rightly did not attempt to refute (see [40] above).

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[50] See, *eg*, Transcript dated 15 February 2017 at pp 99–100.

81 The *Dream Star*'s breaches of rules 5 and 7(b) of the COLREGS are significant – if she had tracked the *Meghna Princess* on her ARPA, she would have been aware of the *Meghna Princess*'s presence and location even before the first VHF conversation, notwithstanding the close-quarters situation she found herself in with the *Pioneer 93*. As a result, by the time the *Dream Star* became aware of the *Meghna Princess*'s presence, a risk of collision in a crossing situation had already arisen. I agree with the experts that had the *Dream Star* maintained a proper lookout, she would have taken into account the *Meghna Princess*'s navigation along with the *Pioneer 93*'s to assess and react to the situation at hand. That said, it must be emphasised that the experts had taken the view that even at 12:25, there was still time left to avoid the collision (see above at [75]), and after 12:25, it was not disputed that the *Dream Star* had seen the *Meghna Princess*, and was maintaining a lookout by hearing, as was evident from her VHF communications with the *Meghna Princess*.[51] These circumstances have some repercussions when it comes to the determination of causative potency which I will come to later (see below at [130]).

The Dream Star*'s supposedly slow response after request to speed up*

82 Much was also made of the *Dream Star*'s "tardy reaction" to the direction for her to pick up speed.[52] This direction was acknowledged at 12:26:48 (see above at [21]), but the engine movement records collated by Captain White indicate that it was only acted upon at 12:28:30.[53]

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51 Captain Phelan's report dated 19 Jan 2017 at para 6.34.

52 PWS at para 110(d).

53 Captain White's report dated 16 Jan 2017 at p 42.

83 This point can be disposed of quickly. In this instance, the *Dream Star* was being asked to increase its speed when the vessels were less than 0.49 nautical miles apart. It should also be noted that *Meghna Princess* had within 47 seconds countermanded her earlier direction for the *Dream Star* to slow down. I note that Mr Kuek and Mr Singh had, during the course of the trial, referred to a time gap of 40 seconds between the first and the second VHF conversations but presumably, this is out of convenience for the VDR records indicate 47 seconds instead, and in this judgment, we will refer to 47 seconds.

84 Mr Kuek submits that some reaction time is to be expected on the part of the *Dream Star*. This was a point made by Captain White during cross-examination:[54]

Mr Singh:	That's sometime after the conversation, correct? A minute and a half later?
Captain White:	Your Honour, I've explained earlier, I would not expect a prudent master to take immediate action from a request from another vessel without first ascertaining his position and whether or not he was comfortable with taking that action.
Mr Singh:	But again you cannot speak for the crew, can you?
Captain White:	I cannot. I can only speak as a master mariner myself in the actions that the -- the prudent actions that a prudent master would take, a prudent master just because a vessel has told him to speed up would not immediately put the engine ahead or take whatever necessary steps were to speed up without assessing his situation.

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[54] Transcript dated 24 February 2017 at pp 135–136.

The Master had also accepted unequivocally that "a prudent master must first assess the situation before he [increases] the speed" of a vessel.[55]

85 As the crew of the *Dream Star* was absent at the trial, I am not persuaded by Mr Kuek's explanation that the time gap between 12:26:48 (time of direction) and 12:28:30 (time of engine movement to go slow ahead) was needed to assess the feasibility of the direction. His explanation had not taken into consideration of the fact that during the second VHF conversation (see above at [21]), the *Dream Star* had within seconds responded to the *Meghna Princess*'s direction to speed up with "Ok, Ok I will increase my speed now". This affirmative reply casts doubt on Mr Kuek's explanation above because an equally plausible situation is that the *Dream Star* had already assessed the situation and expressed a willingness to increase her speed. But the point here is that the *Meghna Princess* had given the direction for the *Dream Star* to increase her speed without the aid of any radar or navigational instruments (a point I will make below at [110]), and there is also evidence that this direction to the *Dream Star* to increase her speed was incorrect and inconsistent with good seamanship, having regard to Captain Phelan's opinion that he would have the *Dream Star* put her engine full astern and helmed hard to starboard instead (see [100] below). More importantly, there is no evidence that if the *Dream Star* had increased her speed earlier, the collision would have been averted or less serious. This allegation is a distraction because in my view, the misuse of the VHF is the critical point and this has to be considered when determining the blameworthiness of the *Meghna Princess*. The fact remains that the misuse of the VHF by the *Meghna Princess* led to uncertainty as to the status and

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55 Transcript dated 21 February 2017 at p 107.

responsibilities of the vessels and navigational action or inaction which conflicts with the requirements of the COLREGS or of good seamanship.

Fault of the *Meghna Princess*

Critical minutes before the collision: VHF conversations between 12:25 and 12:26

86 Having regard to the findings made in [63] and [67] above, the vessels were in a crossing situation and a risk of collision existed at 12:25. But as stated, both experts agree that at 12:25, there was still time to react before the collision occurred at 12:30:40. The plaintiff's contention is that the *Dream Star* as the give-way vessel ought to have taken early and substantial action to keep well clear of the *Meghna Princess* under rule 16 of the COLREGS.

87 A significant feature of this collision is the VHF contact initiated by the *Meghna Princess* at 12:25, which is when the crossing situation arose, and the time point from which the *Dream Star* as the give-way vessel ought to have taken action to keep clear of the *Meghna Princess*. It is useful to pause here to touch on the obligations of the give-way vessel in a crossing situation by returning to the statements of principle recounted by Ng J in *The MCC Jakarta* at [50] above. In summary, Ng J reminded that: (i) one of the most important principles of seamanship and the COLREGS is to avoid close quarter situations (citing *The "Sanwa"* [1998] 1 Lloyd's Rep 283); and (ii) the duty of the stand-on vessel to maintain course and speed under rule 17(a)(*i*) is of equal importance to the duty of the give-way vessel to give way. In my view, the contents of the VHF conversations initiated by the *Meghna Princess* as the stand-on vessel (see [21] above) were in breach of the statements of principle as described. During these VHF conversations, the directions given by the *Meghna Princess* conflicted with the requirements of the COLREGS or of good seamanship. .

88 I will go into the VHF conversations in more detail below. Suffice to say for now that it is plain that the purpose of the VHF conversations was not to inform the *Dream Star* that the *Meghna Princess* was the stand-on vessel. Neither was it to find out what action the *Dream Star* as the give-way vessel was intending to take to keep clear of the *Meghna Princess* in compliance with the COLREGS. Instead, the "directions" given by the *Meghna Princess* during the VHF conversations were contrary to the requirements of the COLREGS. Specifically, the VHF conversations were to the effect that the *Meghna Princess*, as the stand-on vessel, was not going to maintain her course and speed. In my view, the directions were neither helpful nor justified in the circumstances. On the evidence, the misuse of the VHF enhanced the risk of collision instead of limiting it, and brought about the dangerous close-quarters situation.

Applicable principles

89 The English authorities have consistently criticised the use of VHF when mariners should have been concentrating on avoiding collision by appropriate navigation according to the COLREGS and the dictates of good seamanship.

90 I begin with the observations of Sheen J in *The "Maloja II"* [1993] 1 Lloyd's Rep 48 ("*The Maloja II*") on the use of the VHF by mariners as the vessel's first resort in collision avoidance and why this is frowned upon. Sheen J explained (at 52) that any attempt to use the VHF to agree on the manner of passing would be fraught with the danger of misunderstanding, especially since the crew on board the vessels might be of different nationalities. Furthermore, use or attempted use of VHF might distract mariners from paying attention to their radars.

91 Similarly, Steel J in *The Owners of the Cargo Lately Laden on Board the MV Sun Cross v The Owners and/or Demise Charterers of the MV Rickmers Genoa* [2010] EWHC 1949 (Admlty) held at [23] that reliance on VHF contact as the method of first resort in collision avoidance is to be deplored for it enhances the risk of collision instead of limiting it. That vessels should navigate in accordance with the requirements of the COLREGS and not make "arrangements" over the VHF that are contrary the scheme of the regulations is a rule that has been repeated in *The "Aleksandr Marinesko" and "Quint Star"* [1998] 1 Lloyd's Rep 265 at 278, *The Samco Europe* at [55], and *The "Nordlake" and The "Seaeagle*" [2016] 1 Lloyd's Rep 656 ("*The Nordlake*") at [76].

92 Significantly, misuse of the VHF is a factor that goes towards the degree of culpability of the respective vessels. In *The "Mineral Dampier"* and *"Hanjin Madras"* [2001] 2 Lloyd's Rep 419 ("*The Mineral Dampier*"), Lord Phillips MR held (at [39]):

> In a case where misuse of the VHF has contributed to inappropriate navigational action, or inaction, the fact that those in charge of the navigation have misused the VHF may make their culpability the greater. The effect of culpability on the apportionment of liability in a collision action depends, however, not upon the absolute degree of culpability of those responsible for the collision, but on the relative degree of culpability of each. Thus, where both vessels are open to criticism for a VHF agreement about navigation which should never have been made, **that conversation may have the effect of reducing the culpability of one vessel, while increasing that of the other.** The direct cause of a collision will always be the navigational action or inaction which conflicts with the requirements of the collision regulations or of good seamanship. Misuse of VHF is relevant when determining the extent to which the improper action or inaction of a vessel was blameworthy. [emphasis added in bold]

93 I hasten to add that good seamanship does not mandate an "embargo on all VHF communications" as VHF communications remain helpful for information dissemination in some circumstances. Such "circumstances" include situations where the give-way vessel informs the stand-on vessel of action being taken to comply with the COLREGS, or when the stand-on vessel is asking the give-way vessel what action the latter is taking in order to comply with the COLREGS (see *The Mineral Dampier* at [37] and [38]). None of these situations arise in the present case.

Application to the facts

94 I will now examine the following matters: (a) what was communicated to the *Dream Star* during the VHF conversations; (b) the actions taken by the vessels after the VHF conversations; and (c) whether the VHF conversations led to the close-quarters situation and whether it was causative of the collision.

95 As set out in [21] above, four to five minutes before the collision, the *Meghna Princess* contacted the *Dream Star* directing the *Dream Star* to slow

down and informing her that the *Meghna Princess* would increase speed to pass the *Dream Star*'s bow. Shortly after (about 47 seconds later), the *Dream Star* was asked to increase her speed and to pass the *Meghna Princess* at her bow. The *Dream Star* acted on the *Meghna Princess*'s directions. This was the conclusion that Captain White drew after studying the VHF conversations and the *Dream Star*'s Engine Telegraph Logger Printout. Captain White noted that after the first VHF call, the *Dream Star*'s engine was put to "Stop" at 12:26:26. However, after the second VHF call (at 12:26:41) directed the *Dream Star* to increase her speed, the *Dream Star's* engine movement was increased to "Slow Ahead" at 12:28:30, "Half Ahead" at 12:29:00, and "Full Ahead" at 12:29:30. In addition, during the second VHF conversation, the defendant's response to the plaintiff's direction at 12:26:48 is as follows: "Ok, Ok I will increase my speed now…" (see [21] above).

96 It cannot be gainsaid that the VHF conversations had a material effect on the collision. The plaintiff's explanation for the VHF conversations is that the *Meghna Princess*'s directions were entirely consistent with her status and duty as the stand-on vessel and the *Dream Star*'s status and duty as the give-way vessel. This submission is premised on how the first VHF conversation commenced at 12:25:32 – *ie*, when the *Meghna Princess* was asking the *Dream Star* to "let [her] pass" and directing the *Dream Star* to slow down and then pass astern (see [21] above). But this submission must be scrutinised further, having regard to the part of the message in which the *Meghna Princess* had also informed the *Dream Star* that she would be *speeding up*. This part of the message is critical because it contradicts her duty as a stand-on vessel under rule 17(a)(*i*) of the COLREGS, "[w]here one of two vessels is to keep out of the way the other shall keep her course and speed." By adding that she would be speeding up instead of maintaining her course and speed, the *Meghna Princess*

breached the third statement of principle in *The MCC Jakarta* (see [50] above) and obfuscated matters. In short, the *Meghna Princess*, contrary to Mr Singh's submission, was not providing information that she was the stand-on vessel and she was also not inquiring about the action that the give-way vessel was intending to take to keep clear of the *Meghna Princess*. In my view, the first VHF conversation plainly demonstrates the Master's lack of appreciation of the situation or misapplication of the rules. Evidently, the first VHF conversation was a misuse of the VHF and it created uncertainty as to the status and responsibilities of the vessels.

97 To complicate things further, the *Meghna Princess* then contacted the *Dream Star* less than a minute after to direct the *Dream Star* to speed up instead, and to inform the *Dream Star* that the *Meghna Princess* would be reducing her speed and allowing the *Dream Star* to pass her bow. In my view, this created further uncertainty as the *Meghna Princess* was essentially conveying her intention to give way to the *Dream Star*. The VHF conversations were inappropriate because they sought to depart from the requirements of the COLREGS, were contrary to good seamanship, and brought about the dangerous close-quarters situation that arose.

98 In closing submissions, Mr Singh, relying on rule 17 of the COLREGS, regards the second VHF call as "emergency action informing [the *Dream Star*] accordingly".[56] No further explanation is given. Presumably he is referring to either rule 17(b) of the COLREGS, which states that the stand-on vessel may "take such action as will best aid to avoid collision" where she finds herself "so close that collision cannot be avoided by action of the give-way vessel alone",

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[56] PWS at para 109(d).

or rule 17(a)(*ii*), which states that the stand-on vessel may "take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with [the COLREGS]". There are, however, three difficulties with this argument.

99 First, rules 17(a)(*ii*) and (b) relate only to actions that the *stand-on vessel* may take in exceptional circumstances, notwithstanding that such actions would fall afoul of the general rule under rule 17(a)(*i*) of the COLREGS that the stand-on vessel is to maintain her course and speed. That the focus is on the action that a stand-on vessel may take is incontrovertible: see generally *The "Topaz"* [2003] 2 Lloyd's Rep 19 at [40]. After all, rules 17(a)(*ii*) and (b) are engaged only when the give-way vessel is not taking appropriate action or where action on the part of the give-way vessel alone is insufficient such that the stand-on vessel has to take action. Here, the second VHF conversation must be understood in the context of the first VHF conversation. As such, the *Meghna Princess*'s directions to the *Dream Star*, the give-way vessel, to take action cannot be regarded as "emergency action" under the COLREGS.

100 Second, Captain Phelan did not support the so-called "emergency action" argument – *ie*, he *did not* corroborate the plaintiff's view that instructing the *Dream Star* to increase her speed while the *Meghna Princess* reduced hers can be considered as "action to avoid collision" or good seamanship. Instead, Captain Phelan's position was that if he was on board the *Dream Star*, he would have put the engine full astern and helmed hard to starboard instead.[57]

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57 Transcript dated 22 February 2017 at p 63.

101 Furthermore, when given a chance to explain, the Master of the *Meghna Princess* could give no satisfactory answer as to why the second VHF call was made:[58]

> Mr Kuek: … The simple question is: when you finished the first VHF call and the beginning of the second VHF call, there was only 40 seconds. And I'm relying on the 40 seconds according to the time. Right? So when you make up the first mind, 40 seconds, the clock start running. When the second VHF call comes in place, the clock stop – start running again so that period of 40 second cannot be changed… So I'm asking you, why do you change your mind in 40 seconds?
>
> Master (MP): I have not changed the mind because the situation has been changed.

102 There is nothing to corroborate the account of the Master. From Annex 1, the table at [22] above and the expert's joint statement, it would appear that the situation had not changed. The *Dream Star* had maintained its speed and there was only a 2º change in heading between 12:25 and 12:26. In fact, when cross-examined on his direction to the *Dream Star* to slow down in the first VHF communication, the Master indicated that the direction was meaningless – *ie*, he did not intend for it to be followed:[59]

> Mr Kuek: So it was quite clear that they were doing what you tell them to do, reduce speed, wasn't it?
>
> Master (MP): No, you see actually this – what I say – what I say is one thing and what they should do pass that is a different thing.
>
> Mr Kuek: No, what you say is to reduce speed to let you pass ahead. And that is what they did, they reduced speed, they read "to stop" and after that they had to move astern bit, after that they had

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58 Transcript dated 21 February 2017 at p 104.

59 Transcript dated 21 February 2017 at p 95.

> to dead slow ahead to get manoeuvrability, isn't that clear?
>
> Master (MP): No, see whatever I say is one thing and whatever they have to do is different thing.
>
> Mr Kuek: Yes, so what you are saying, what you say is what you say. They should do something you never say?
>
> Master (MP): No, no. They should they should act as per the rules.

103 This begs the question: why then did the Master initiate the VHF conversation? In my view, the answers he gave exposed his misuse of the VHF and his disregard for how it could materially interfere with the safe navigation of the vessels concerned.

104 Thirdly, the excuse that the *Meghna Princess* gave the second direction for the *Dream Star* to speed up only because of the *Dream Star*'s "unwavering action"[60] (that the give-way vessel is not taking appropriate action to comply with the COLREGS is a prerequisite to rule 17(a)(*ii*)) is also untenable. The Third Officer of the *Meghna Princess* claimed to be unaware of the manoeuvring of the *Dream Star*:[61]

> Mr Kuek: Would I be right to say that it is wrong for you to say there was no response by the *Dream Star*?
>
> Third Officer (MP): Sir, your Honour, this is the manoeuvring of that ship. How can I know from my ship?
>
> Mr Kuek: You didn't know, but now you know, so do you agree that it is wrong to say that there was no response?

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60 Captain Phelan's report dated 19 January 2017 at para 6.62.

61 Transcript dated 17 February 2017 at pp 10–11.

> Third Officer (MP): No, I don't agree because that was not evident to me at that time.
>
> …
>
> Mr Kuek: You didn't know of this engine movement by the Dream Star.
>
> Third Officer (MP): I don't know anything about this –
>
> Mr Kuek: About this?
>
> Third Officer (MP): -- about that ship.

105 At best, the Third Officer, who was asked to keep visual watch, had visually observed the *Dream Star* for no longer than 40 seconds before concluding that the *Dream Star* was not responding. This conclusion was too prematurely drawn, as Captain White explained in answer to Mr Singh's question:[62]

> Mr Singh: So we come to 6.62 of your affidavit where you try to explain this in relation to the calls, 341, right, you say:
>
> "The first VHF conversation was quickly followed up by a second VHF conversation again initiated by 'MP' at about 1226 hours, as detailed at paragraph 5.3.14 above, reversing the first advise 'MP' gave 'DS' by requesting 'DS' to now speed up in order that 'MP' could pass under the stern of 'DS'."
>
> You wouldn't agree with me that Meghna Princess had to take whatever she saw fit when Dream Star was not reacting to her calls?
>
> Mr White: No, your Honour. There was not enough time between the two VHF conversations, it was 40 seconds, and for the sake of -- we, captain Phelan has mentioned it, the master mentioned it, the second officer mentioned it, the third officer mentioned it, vessels just don't slow up [*sic*] that fast or speed up that fast.

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62 Transcript dated 24 February 2017 at pp 138–139.

That large vessels do not accelerate or decelerate instantly was a point that the Master and Third Officer accepted as well.[63]

106 All matters considered, the VHF conversations that *Meghna Princess* initiated were unhelpful and unjustifiable. Significantly, the *Meghna Princess* relied on VHF communications as her first resort in collision avoidance, as is evident from the events that transpired after the initial VHF contact. As the authorities I have referred to above at [91] have stressed, this is to be deplored. *Before* the first VHF conversation was initiated, the vessels were 0.58 nautical miles apart,[64] which Captain White did not consider to be a close-quarters situation within the Singapore Strait and Singapore port limit.[65] I accept Captain White's view that the VHF conversations conveyed directions that created the dangerous close-quarters situation that arose,[66] and I so hold. It also bears repeating that the VHF conversations were completely inappropriate. It set both vessels on a collision course and enhanced the risk of collision. As held in *The Mineral Dampier* (see above at [92]), inappropriate VHF conversations such as those in the present case are to be factored in the calibration of the culpability of the respective parties. I should add that *Meghna Princess*'s ill-conceived VHF direction to the *Dream Star* to increase speed was clearly one that was made without having properly charted the paths of the two vessels (see below at [110]), and this was a factor that further increased the *Meghna Princess*'s culpability. I will deal with the causative effect of the VHF directions at [128] below.

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63 Transcript dated 16 February 2017 at p 181; Transcript dated 21 February 2017 at p 96.

64 Defendant's Bundle, Tab 32 at p 167.

65 Transcript dated 24 February 2017 at pp 98–99.

66 Transcript dated 24 February 2017 at pp 137–138.

Failure to keep a proper lookout

107 The defendant's case on lookout is that the bridge team of the *Meghna Princess* ought to have marked successive radar plots of an approaching vessel in the radar display to obtain its relative track, and then verify whether it was likely to pass through the centre or near the centre of the radar display – if so, the approaching vessel would be on a collision course. This view finds support in Sheen J's judgment in *The Maloja II* at 55, where Sheen J elaborated on how rule 5 of the COLREGS requires the employment of such "simple anti-collision techniques". Similarly, Captain White's view is that the officer on watch has to make "full and complete use of the ARPA radar, and AIS to identify, *acquire and track vessels*… in order that he can have a visual awareness of the vessels that have been acquired and are being tracked" [emphasis added].[67] During Mr Kuek's cross-examination of the Second Officer and the Master of the *Meghna Princess*, these obligations were not disputed. The Second Officer went on to add that a good lookout requires manually acquiring vessels as targets on ARPA, and to key in the Closest Point of Approach ("CPA") and time to CPA ("TCPA"); when a target comes within the CPA and TCPA range, the ARPA alarm will go off.[68]

108 The plaintiff's position is that the *Meghna Princess* had observed the presence of the *Dream Star*, and that the *Meghna Princess* had tracked the *Dream Star* on her ARPA throughout as she was also able to obtain the CPA of the *Dream Star*.[69] This was what the Second Officer had deposed as well, in his affidavit; specifically, the Second Officer claimed that after the pilot on board

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67 Captain White's report dated 29 Nov 2016 at para 6.6.

68 Transcript dated 14 February 2017 at pp 49–50.

69 PWS at para 115(b); Captain Phelan's report dated 19 Jan 2017 at para 7.1.

the *Meghna Princess* had disembarked and the *Dream Star* had altered her course to starboard, he had gone to the ARPA and seen that the *Dream Star* "had a CPA of 0.2nm".[70] The veracity of the Second Officer's claim is very much in doubt. During the course of Mr Kuek's cross-examination of the Second Officer, the Second Officer was unable to explain the time point at which the *Dream Star* was 0.2nm away[71] or recall the TCPA pre-sets he put in place.[72] In any event, if indeed they had been using their ARPA and obtained a reading of 0.2nm, there would have been no reason to reconstruct the events leading up to the collision using guesswork instead of relying on the information that the *Meghna Princess*'s VDR would have recorded (see [45] above). I have also expressed doubts on the veracity of the bridge team's evidence.

109 The Second Officer went further to say that the ARPA alarm was ringing constantly and that the bridge team had to repeatedly reset the alarm.[73] But Mr Kuek submits that the ARPA alarm never went off. He cites two reasons. First, the Third Officer gave evidence to this effect.[74] Second, the VDR of the *Meghna Princess* also never recorded any alarm.[75] In fact, even Captain Phelan's evidence contradicts the Second Officer's account because his position was that the guard rings for the alarm would not have been turned on; otherwise, the alarms would have been going off continually because there were so many ships

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70 Md Wahiduzzaman's AEIC at para 17.

71 Transcript dated 15 February 2017 at p 82.

72 Transcript dated 14 February 2017 at pp 52–53; Transcript dated 15 February 2017 at p 83.

73 Transcript dated 14 February 2017 at p 55.

74 Transcript dated 16 February 2017 at p 195.

75 DWS at para 107; Captain White's report dated 29 Nov 2016 at Appendix B.

around.[76] The preponderance of the evidence squarely contradicts the Second Officer's account of events.

110 I should add that the Master was also unable to give any details to support his account that the *Meghna Princess* had tracked the *Dream Star*.[77] In addition, the Master also accepted, when cross-examined, that he had never conducted a trial manoeuvre on the ARPA, and could not remember using an electronic bearing line to determine the compass bearing of the *Dream Star*.[78] Clearly, the *Meghna Princess* had failed to employ the "simple anti-collision techniques" she was required to use (see [107] above). Taking the totality of the circumstances into account, I reject the bridge team's version of events. I find that the ARPA was never used to acquire or track the *Dream Star*.

111 In the light of the failure to maintain an ARPA watch and the misuse of the VHF by the *Meghna Princess* that led to uncertainty as to the status and responsibilities of the vessels and navigational action or inaction which conflicts with the requirements of the COLREGS or of good seamanship, it was the bridge team on board the *Meghna Princess* who brought the *Meghna Princess* towards the *Dream Star* and created a close-quarters situation. The apportionment of fault must reflect this.

The Meghna Princess*'s approach towards the Eastern Boarding Ground B*

112 At 12:17:59 (at about C-13), just after the *Meghna Princess* had gone around the Ferry Buoy, she received and acknowledged VTIS's communication

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76 Transcript dated 22 February 2017 at p 25.

77 Transcript dated 21 February 2017 at p 90.

78 Transcript dated 21 February 2017 at pp 84–85.

that the *Dream Star* was approaching the Eastern Boarding Ground B, and that the *Pioneer 93* was in the vicinity and trying to keep clear from the *Dream Star*.[79] A preliminary factual point of contention that I will address at the outset is whether the pilot of the *Meghna Princess* had advised the bridge team on board the *Meghna Princess* to slow down. Based on Captain White's transcription of the VDR data, the following conversation took place:[80]

12:07:06	[MP] (Pilot to Master) You have 2 Bulk carriers on your port beam, not the red one, the black one, and the other is further over… that one, going through to pick up a point at one two… zero… pilot boarding ground… So what I tell you to do is, I pass this one on the port side… on the starboard side, after that it will increase speed… When we are ready we will slow down.
…	
12:15:48	[MP] Ok DREAM STAR ISHWARI coming to Boarding Ground Bravo, thank you…
12:15:54	[MP] (Pilot) Just turn like this, keep going seaward and then slow down… Starboard 20.

113 The plaintiff's position is that these conversations never took place, and that the recordings were unintelligible. Also, its earlier objection (see [28] above) – that Captain White had not personally listened to all of the recording clips while preparing the supplementary report, which is where the above conversation is found – is to be noted here as well. To the extent that any reliance is placed on Captain Phelan's inability to decipher what the recordings were about, this is misplaced. Given Captain Phelan's role as an expert witness in the proceedings, his opinion on whether the conversation took place or not as a matter of fact is, frankly, quite immaterial. Instead, what is crucial is that the

[79] Defendant's Bundle, Tab 19 at p 95; Transcript dated 21 February 2017 at p 73; Transcript dated 24 February 2017 at pp 139–140.

[80] Defendant's Bundle, Tab 19.

Master of the *Meghna Princess* recalled the pilot's advice once the transcript was read to him.[81] The Second Officer and Third Officer recalled this set of instructions as well, although according to them, the pilot was instructing the bridge team to slow down for his disembarkation.[82] This suggestion is untenable as the pilot disembarked from the *Meghna Princess* at 12:20, and the *Meghna Princess* was actually increasing its speed instead between 12:19 and 12:21.[83] That aside, the bridge team of the *Meghna Princess* accepted that such a conversation took place, and it should therefore be factored into my analysis.

114 I find that the *Meghna Princess* was cognisant of the *Dream Star*'s intentions all along, and the *Meghna Princess* was not taken by surprise when the *Dream Star* made its starboard turn towards the pilot boarding ground.[84] This is significant because it meant that this was not a situation where the *Meghna Princess* was forced to react to a situation at 12:25, but a situation where she should have seen the approach of the *Dream Star* and then continued to maintain a proper lookout. She should also have slowed down her speed after 12:20. The *Meghna Princess*'s knowledge that the *Dream Star* was bound for the Eastern Boarding Ground B is therefore a factor that goes towards apportionment of liability. As Teare J held in *The Nordlake* at [149(iv)], "[i]n most cases though not all it will be right to treat the fault of a ship that creates a situation of difficulty or danger as greater than that of the ship that fails to react properly to such situation after it has been created." I will come back to this point below,

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81 Transcript dated 21 February 2017 at pp 43–44.

82 Transcript dated 15 February 2017 at pp 68–72; Transcript dated 16 February 2017 at p 181.

83 Defendant's Bundle, Tab 32.

84 Transcript dated 15 February 2017 at p 88.

but I should re-emphasise both experts' view that as at 12:25, there was ample time for the vessels to avoid each other.

115 I note that in the AEICs of the *Meghna Princess*'s bridge team, reference was made to an alleged conversation at 12:20 when the pilot purportedly informed the Master of the *Meghna Princess* that the *Dream Star* would be reducing her speed as she approaches the "Pilot Station", "thereby permitting [*Meghna Princess*] to pass".[85] In my view, this conversation was a fabrication. When cross-examined on this conversation, the bridge team of the *Meghna Princess* gave inconsistent accounts of where the conversation between the pilot and Master took place and how they got to know of this conversation. For instance, the Second Officer's evidence was that the conversation could not have taken place at the wings, but later said it could have been "between bridge and wings door".[86] The Third Officer also gave two version of events – the first being that he learnt about this conversation from the Master (not the pilot), the second being that he overheard the conversation between the pilot and the Master at the door of the bridge before the pilot disembarked.[87] The bridge team's prevarications are also laid bare when one factors in the pilot's instructions given at 12:07 and 12:15 (which contradicts this alleged conversation) and the fact that the conversation was not captured on VDR. It is also telling that in the plaintiff's closing submissions, no mention is made of this conversation.

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85 Md Wahiduzzaman's AEIC at para 15; Mohammad Nasir Hussain's AEIC at para 18; Md Joynal Abedin's AEIC at para 18.

86 Transcript dated 15 February 2017 at pp 55 and 58.

87 Transcript dated 16 February 2017 at pp 145 and 151.

116 Turning back to the facts at [112], the Master's decision not to follow the pilot's advice set out above and his failure to reconsider her intended course and to slow down instead when nearing the Eastern Boarding Ground B were contrary to good seamanship.[88] The rationale of compulsory pilotage is to guide and provide ship masters with advice to navigate safely through a congested port. The experts accepted that pilots with local knowledge know the port better, and their advice should be seriously considered.[89] In the light of this, it is unsurprising that the Master became evasive when Mr Kuek asked him about whether he had accepted and implemented the pilot's advice, and was reluctant to divulge the truth and say that he had not.[90]

117 What the *Meghna Princess* did following that VTIS conversation was to head to the westbound channel of the TSS by transiting across the Eastern Boarding Ground B while picking up speed from 5.99 knots at C-13 to a speed of 8.38 knots at C-5. Should more fault be attributed to the plaintiff because of the *Meghna Princess*'s actions?

118 At the outset, I deal with the suggestion in Mr Singh's closing submissions that the *Meghna Princess* had to cut across the Eastern Boarding Ground B the way she did because the VTIS operator had informed the pilot of the situation between the *Dream Star* and the *Pioneer 93*.[91] According to Mr Singh, the "manoeuvre by [the *Meghna Princess*] was also admitted as necessary by [Captain] White". In support of this argument, Captain White's

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88 Captain White's report dated 29 Nov 2016 at paras 6.30, 7.3 and 7.4.

89 Transcript dated 21 February 2017 at p 147; Transcript dated 24 February 2017 at p 83.

90 Transcript dated 21 February 2017 at p 44.

91 PWS at para 92.

testimony on the last day of trial was cited. To the extent that Mr Singh is suggesting that the *Meghna Princess* had *no choice but* to *cut across the Eastern Boarding Ground B* – this is erroneous. The cited portions simply relate to Captain White's view that the *Meghna Princess* was indeed coming down the Tanah Merah ferry fairway, *but also that she did have a choice as to when she turned starboard*.[92] Indeed, VTIS's message was that the *Dream Star* and the *Pioneer 93* were approaching the Eastern Boarding Ground B, and the pilot's response was that he would keep "more to the starboard side of the channel" (see above at [19]), presumably to avoid that area and the two vessels. Captain White had opined in his report that the *Meghna Princess* could have "run on further to the south before turning to starboard to take up a course that would allow [the *Meghna Princess*] to join the westbound lane at a narrow angle as required by Rule 10".[93] Hence, the suggestion that the *Meghna Princess*'s navigation through the Eastern Boarding Ground B was a *necessary* manoeuvre does not stand up to scrutiny and is plainly wrong.

119 I take the view that the *Meghna Princess*'s actions can be faulted for two reasons. First, its decision to cut through the Eastern Boarding Ground B was not consistent with the dictates of good seamanship. As Captain White explained, any prudent ship master would try to avoid a pilot boarding area which would have several vessels arriving and waiting for pilots.[94] In fact, even the Second Officer agreed that it would be good seamanship to avoid a pilot boarding area unless the vessel was heading to the pilot boarding ground.[95]

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92 Transcript dated 24 February 2017 at p 48.

93 Captain White's report dated 29 Nov 2016 at para 6.13.

94 Captain White's report dated 29 Nov 2016 at para 6.26; Transcript dated 24 February 2017 at p 94.

95 Transcript dated 15 February 2017 at p 30.

120 Second, the Master's decision not to slow down (as advised by the pilot) and the manner in which she approached the Eastern Boarding Ground B also contravened rules 6 and 8 of the COLREGS, which required her to maintain a safe speed and avoid any risk of collision. What is a "safe speed" is to be determined based on the circumstances of each particular case (see *Marsden* at para 5-219), taking into account factors such as visibility, traffic density, manoeuvrability of the vessel, the state of wind, sea and current, and the draught in relation to the available depth of water. Crucially, stopping distance is an important consideration in the calculation of what a safe speed is: *The "ER Wallonia"* [1987] 2 Lloyd's Rep 485 at 489. However, as stated [8] above, there is no evidence on the stopping distances of the vessels at different speeds.

121 All in all, *Meghna Princess*'s decision to cut through the Eastern Boarding Ground B at an increasing speed over time brought her to a crossing situation with the *Dream Star*. The *Meghna Princess*'s speed at 12:26, just four minutes from the collision, was 8.38 knots.[96] I accept Captain White's view that 8.38 knots is an unsafe speed for a vessel heading right into a pilot boarding area. It also follows that the *Meghna Princess*, in cutting across the Eastern Boarding Ground B at an unsafe speed despite knowledge of the *Dream Star*'s intent of heading to the same violated rule 8(d) of the COLREGS, which provides that action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. Not only was the *Meghna Princess*'s navigation a failure to *avoid* the risk of collision, it had intensified it. At 12:25, even after the Master took the view that the crossing situation was more "acute" and that there was some risk of collision,[97] the *Meghna Princess* had told the

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96 Defendant's Bundle, Tab 32.

97 Mohammad Nasir Hussain's AEIC at paras 19–20.

Dream Star that she would be increasing its speed, before telling the *Dream Star* to increase its speed 47 seconds later. All of these actions made it unlikely that the two vessels would pass each other at a "safe distance" and jeopardised the two vessels even further. As an aside, Mr Kuek had suggested to the Master at trial that if the *Meghna Princess* had chosen to slow down at 12:25 (her engine was stopped only at 12:27:25[98]), the collision would have been avoided.[99] In my view, that seems highly probable on the face of the plots, but since neither expert had commented on this, I will say no more save to conclude that the *Meghna Princess* had breached rules 6 and 8 of the COLREGS.

Other alleged infringements of the COLREGS

122 Before I deal with the apportionment of liability, I wish to highlight that I have considered all of the other alleged transgressions. The interactions that the *Dream Star* had with the *Pioneer 93,* the *AGEAN Blue* and the *ASIAN HERCULES II* prior to 12:00 were too remote to the collision to be relevant. Captain White also took the view that the *Pioneer 93* did not, in the circumstances, prevent any party from complying with the COLREGS.

123 As for the one long blast that the Third Officer made slightly more than 40 seconds before the collision (when both vessels were at C-1), I accept that it was not, strictly speaking, in accordance with rule 34(d) of the COLREGS (at least five short and rapid blasts on the whistle should have been given), but nobody was confused about what it meant, and it certainly did not seem that if rule 34(d) was complied with, the outcome would have been any different.

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98 Captain White's report dated 16 January 2017 at p 42.

99 Transcript dated 21 February 2017 at p 121.

Apportionment of liability

124 In this section, I will continue setting out the principles that are applicable to the apportionment of liability in collision cases (see also [50] above). Section 1 of the Maritime Conventions Act reads as follows:

> **Rule as to division of loss**
>
> 1.–(1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault, except that if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally. …

125 It is therefore clear that the determinative factor for apportionment is fault. More specifically, only causative fault is relevant. It is not a question of distributing moral blame but the comparative appreciation of the degree in which the respective faults of the vessels have contributed to the result of the collision (see *The "Buccinum"* (1936) 55 Lloyd's Law Rep 205 at 218; Nigel Meeson and John A Kimbell, *Admiralty Jurisdiction and Practice* (Informa, 4th Ed, 2011) at para 7.100).

126 A comprehensive exposition of how apportionment is to be done can be found in *The Nordlake*, wherein Teare J held (at [148]–[149]):

> 148 In *The Samco Europe and MSC Prestige* [2011] 2 Lloyd's Rep 579 the court summarised the task of apportionment of liability in this way:
>
> > "81 **Apportionment of responsibility for a collision depends upon an assessment of the blameworthiness and causative potency of both vessels**: see *The British Aviator* [1965] 1 Lloyd's Rep 271 at page 277 per Willmer LJ. **The assessment is of the relative degree of responsibility of each vessel**: see *The Mineral Dampier* [2001] 2 Lloyd's Rep 419 at para

> 39. For that reason Admiralty judges often consider, where one ship is more to blame than the other, how many more times to blame one vessel is than the other…

> 149 … In his article Sir Henry Brandon described **the proposition that both culpability and causative potency must be taken into account as the "true principle of law applicable"** (see page 1031 and 1032). Whilst there were no universal rules with regard to the assessment of culpability or causative potency he identified ("on the basis of practical experience of apportionment in numerous cases over many years") certain broad lines of approach which can be used when apportioning liability (see pages 1037 to 1041). They may be summarised as follows:
>
> > (i) The number of faults on one side or the other is not decisive. **It is the nature and quality of a ship's faults, rather than their number, that matter.**
> >
> > (ii) Breaches of the obligations imposed on ships in certain defined situations by the Collision Regulations will usually be regarded as seriously culpable…
> >
> > (iii) Causative potency has two aspects. The first is the extent to which the fault contributed to the fact that the collision occurred. The second is the extent to which the fault contributed to the damage resulting from the casualty.
> >
> > (iv) In most cases though not all **it will be right to treat the fault of a ship that creates a situation of difficulty or danger as greater than that of the ship that fails to react properly to such situation after it has been created.**
> >
> > (v) The fact that a fault consists of a deliberate act or omission may in certain circumstances justify the court in treating it as more culpable than a fault which consists of omission only.
>
> 150 The court deals with questions of apportionment in a fairly broad way (or as it was put in *The Volute* [1922] 1 AC 129 at page 144: "somewhat broadly and on common sense principles")…
>
> [emphasis added in bold]

127 The principles set out in [148] and [149] of *The Nordlake* were also adopted in *The MCC Jakarta*. The parties do not dispute that these principles are applicable in Singapore as well. In sum, the apportionment of liability is a

broad, commonsensical and qualitative assessment of the culpability and causative potency of both vessels.

128 In terms of causative potency, the primary fault lies with the *Meghna Princess*. While the *Dream Star*'s failure to look out for the *Meghna Princess* meant that there was a risk of collision in a crossing situation at 12:25, it was common ground between both experts that there was time available to avoid the collision. Hence, the critical period to be examined is the period between 12:25 and the time of collision. Crucially, at 12:25:32, the *Meghna Princess* initiated VHF contact with the *Dream Star*, such contact being her first resort in collision avoidance. As stated above, these VHF conversations caused uncertainty as to the status and responsibilities of the vessels. Specifically, the directions given by the *Meghna Princess* in the VHF conversations conflicted with the requirements of the COLREGS or of good seamanship. Additionally, the VHF directions to the *Dream Star* were given without having done proper radar observations or trial manoeuvres. Based on the engine movements of the *Dream Star*, the *Meghna Princess*'s VHF directions were acted upon. As stated, the misuse of the VHF by the *Meghna Princess* led to navigational action or inaction which conflicted with the requirements of the COLREGS or of good seamanship.

129 An antecedent fault of the *Meghna Princess* was its decision to transit through the Eastern Boarding Ground B to get to the TSS when she could have gone on a different route. She was also at fault for not reducing her speed despite knowing that the *Dream Star* was also heading to the Eastern Boarding Ground B. There was no satisfactory explanation for increasing her speed when her pilot had earlier told the bridge team on board the *Meghna Princess* to alter course to

20º to starboard and then slow down instead. Her breach of good seamanship and the COLREGS had a causal link with the collision.

130 On the other hand, in terms of causative potency, the *Dream Star*'s breaches of rules 5 and 7(b) of the COLREGS are significant because it meant that the *Dream Star* had not taken the *Meghna Princess*'s navigation into account up until 12:25, thereby contributing to the creation of a risk of collision. But it must be highlighted that even at 12:25, there was still time to avoid the collision, so the VHF contact reduced the causative potency of the *Dream Star*'s breach.

131 Having regard to the matters stated above in relation to causative potency, I am satisfied that the *Meghna Princess* is more to blame for the collision. I should clarify that in the present case, I have not drawn any distinction between the two aspects of causative potency referred to in [149(iii)] of *The Nordlake*. The two aspects are inextricably related because of my finding that the two vessels collided into one another rather than the *Dream Star* coming into contact with the *Meghna Princess* first.

132 In terms of culpability, the *Meghna Princess*'s violation of rule 5 is more blameworthy since she had been notified by VTIS 15 minutes before the collision that the *Dream Star* was headed to Eastern Boarding Ground B, which the *Meghna Princess* acknowledged (see [112] above). At the very latest, the *Meghna Princess* learnt about the *Dream Star*'s intent at 12:15 – yet she failed to maintain a proper lookout and continued to approach the pilot boarding ground at speed of more than 8 knots (at 12:25) despite having been advised by the pilot to slow down from a speed of 5.99 knots (at 12:19). Granted, the *Dream Star* should also be faulted for not complying with the rules despite the fact that

she was distracted with the close-quarters situation with the *Pioneer 93*. After all, situational awareness is required under rule 7. The situation with the *Pioneer 93* did not exculpate the *Dream Star* from her breaches of the COLREGS, but *Meghna Princess*'s transgressions (which include her misuse of VHF) have made her relatively more culpable than the *Dream Star*. In my view, the *Meghna Princess*'s misuse of the VHF communication breached the standard of good seamanship and that fault caused the collision. The *Meghna Princess* is therefore more at fault (see *The Nordlake* at [149(iv)] and [149(v)]).

133 Taking the totality of the circumstances into account, I am of the view that the *Meghna Princess* must bear the majority of the fault for the collision. An appropriate and fair way to apportion liability in this case would be 70:30 in favour of the defendant and I so order.

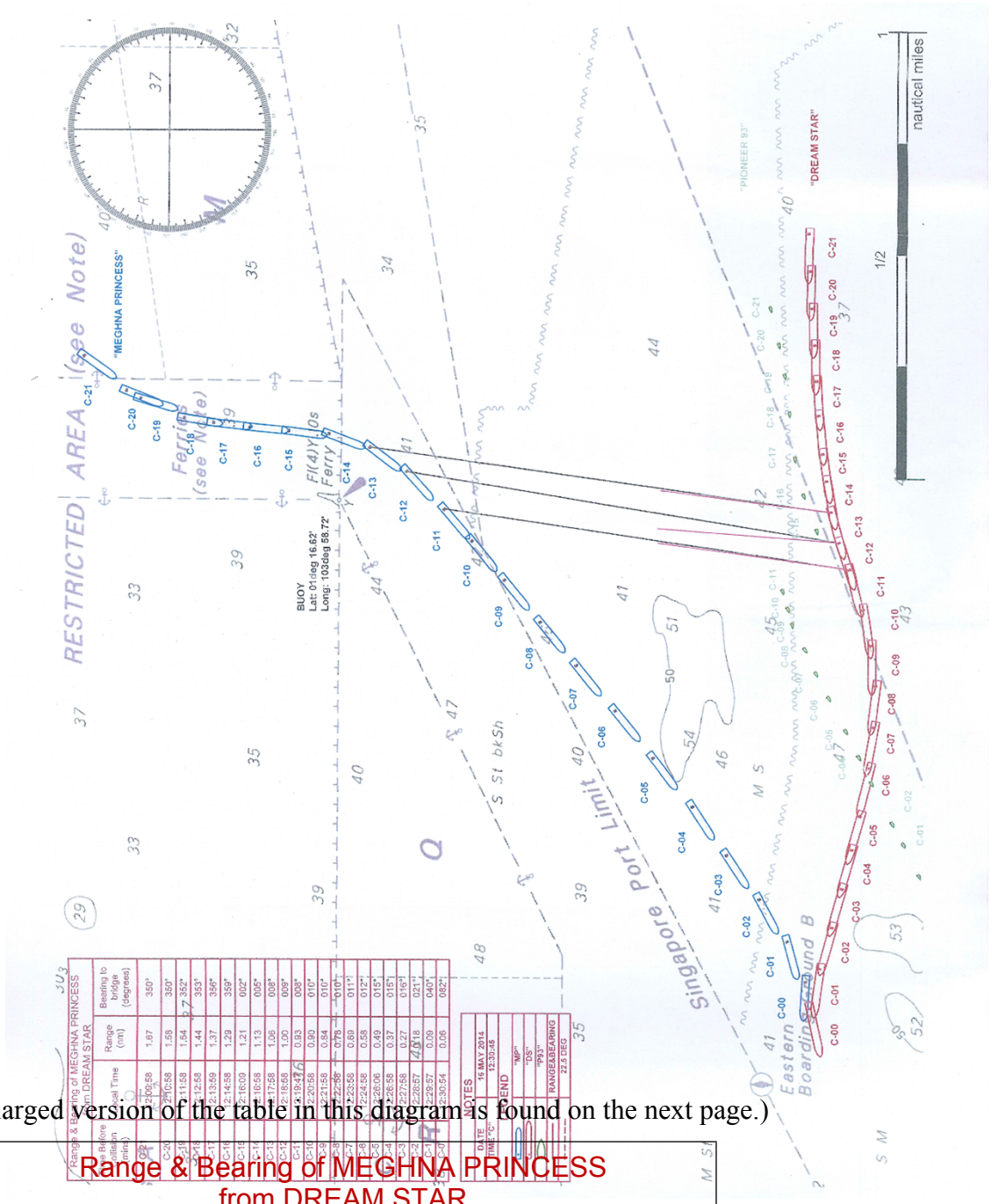
Conclusion

134 Accordingly, for the defendant, there is interlocutory judgment with damages to be assessed and apportioned in accordance with the ratio above. With this outcome, it follows that the defendant's counterclaim which is premised on an overtaking situation is dismissed. As the issues in the main action and counterclaim overlap, there ought to be one set of costs. The parties are to make submissions by letter (limited to two pages) on how the issue of costs should be dealt with, bearing in mind that damages have yet to be assessed before a registrar and parties have already submitted their costs schedules. These submissions are to be filed within seven days of the date of this judgment.

Belinda Ang Saw Ean
Judge

Mr Navinder Singh (KSCGP Juris LLP) for the plaintiff;
Mr Richard Kuek Chong Yeow, Mr Eugene Cheng Jiankai and Mr Kevin Chan Wai Yi (Gurbani & Co LLC) for the defendant.

Annex 1



(An enlarged version of the table in this diagram is found on the next page.)

Range & Bearing of MEGHNA PRINCESS from DREAM STAR			
Time Before Collision (mins)	Local Time	Range (nm)	Bearing to bridge (degrees)
C-21	12:09:58	1.67	350 º

C-20	12:10:58	1.58	350º
C-19	12:11:58	1.54	352º
C-18	12:12:58	1.44	353º
C-17	12:13:59	1.37	356º
C-16	12:14:58	1.29	359º
C-15	12:16:09	1.21	002º
C-14	12:16:58	1.13	005º
C-13	12:17:58	1.06	008º
C-12	12:18:58	1.00	009º
C-11	12:19:47	0.93	008º
C-10	12:20:58	0.90	010º
C-9	12:21:58	0.84	010º
C-8	12:22:58	0.78	010º
C-7	12:23:58	0.69	011º
C-6	12:24:58	0.58	012º
C-5	12:26:06	0.49	015º
C-4	12:26:58	0.37	015º
C-3	12:27:58	0.27	016º
C-2	12:28:57	0.18	021º
C-1	12:29:57	0.09	040º
C-0	12:30:54	0.06	082º