PT GE Astra Finance v The Owners of the Ship or Vessel "Pioneer Glory" [2001] SGHC 156

Case Number : Adm in Rem 72/1998, 73/1998

Decision Date : 29 June 2001

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Yap Yin Soon and Ruth Chan (Allen & Gledhill) for the plaintiffs; Leonard Chia (JC Ho & Kang) for the defendants

Parties : PT GE Astra Finance — The Owners of the Ship or Vessel "Pioneer Glory"

JUDGMENT:

Grounds of Decision

The background

1. PT GE Astra Finance (the plaintiffs) appealed (in Registrar's Appeal No. 600031 of 2001) against the decision of the Assistant Registrar in refusing to award them the sum of US$476,250 alternatively, the sum of US$617,150 they had claimed as damages against the owners (referred to collectively as the defendants) of the tug 'Pioneer Glory' and the barge 'POE 2410' arising from a shipment of the plaintiffs' equipment from Samarinda, Indonesia, to Singapore. The defendants filed a cross-appeal (in Registrar's Appeal No. 600030 of 2001) against the orders of the Assistant Registrar awarding the plaintiffs the sums of US$187,360.38 and US$158,750 for loan interest and depreciation (on the equipment) respectively. The assessment of damages was pursuant to an order of court dated 9 April 1998 made by Khoo J.

2. I heard both appeals after which I allowed the plaintiff's appeal but dismissed the defendants' cross-appeal. The defendants have now filed a notice of appeal (in Civil Appeal No. 600038 of 2001) against my decision.

The facts

3. The plaintiffs are an Indonesian finance company.. They leased out 14 pieces of heavy equipment (the equipment) to an Indonesian company PT DML Resources (DML) for a (mining) project in Kalimantan owned by PT Tanito Harum (Tanito), under a lease agreement dated 17 March 1995. The equipment was the 'Komatsu' brand and was supplied to the plaintiffs by an Indonesian company called PT United Tractors (UT). At the time of their purchase, the plaintiffs had entered into two (2) repurchase agreements (the repurchase agreements) with UT for the latter to repurchase the equipment at agreed prices.

4. Upon completion of the project, and as required under its agreement with DML, Tanito arranged for the equipment to be exported out of Indonesia as otherwise, DML would have to pay import duty if the equipment remained in Indonesia. The plaintiffs decided to send the equipment to Singapore with a view to finding buyers who could offer better prices than what UT had agreed to pay under the repurchase agreements. That was the beginning of the plaintiffs' problems.

5. The equipment was shipped to Singapore under 14 bills of lading (which named the plaintiffs as the consignees and DML as the notify party) on board the barge 'POE 2410' towed by the tug 'Pioneer Glory', both being named as the vessel in the bills of lading. The shipment arrived in Singapore on 3 December 1997 but neither the plaintiffs' shipping agents (Sembawang Kimtrans Pte Ltd) nor the

plaintiffs were able to take delivery. This was because the defendants claimed to have a lien on the cargo due to the fact that the charterers (Nakhoda Bestari Sdn Bhd) of the tug/barge owed them charter freight of $177,597.

6. As attempts by the plaintiffs and their solicitors in securing delivery of the equipment were fruitless, the plaintiffs commenced these two (2) suits on 31 January 1998. On 11 March 1998, Selvam J made an interim order (on the plaintiffs' application) for the plaintiffs to take delivery of the equipment at their own expense, and adjourned the substantive question of wrongful detention on the part of the defendants, for later consideration.

7. On 9 April 1998, the question of wrongful detention was heard by Khoo J who:

> a. ordered that both suits be consolidated;
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> b. declared that the defendants' detention and or purported exercise of a lien on the equipment shipped under the 14 bills of lading was wrongful;
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> c. ordered the defendants to pay damages to the plaintiffs (to be assessed) including all costs incurred by the plaintiffs in implementing the order of court of 11 March 1998, arising out of the wrongful detention, and awarded costs to the plaintiffs.

The equipment was not discharged until 20 April 1998 as arrangements had to be made therefor; discharge was completed on 22 April 1998. While the barge was at the yard of Ban Choon Shipyard Pte Ltd for the purpose of discharging the equipment, the plaintiffs commissioned Insight Marine Services Pte Ltd (Insight) to conduct a survey – to record any damage that may be sustained by the barge during the discharge operation and, to note the condition of the equipment. Khoo J gave the grounds for his decision on 14 July 1998.

The assessment

8. Pursuant to Khoo J's order dated 9 April 1998, assessment of damages took place before the Assistant Registrar between 15-17 January 2001, pursuant to a summons for directions filed by the plaintiffs on 26 March 1999. Damages were awarded on 31 January 2001.

9. Affidavits were filed for the assessment hearing and their deponents cross-examined. For the plaintiffs, an affidavit was filed by Frans Louis Lewerissa (Lewerissa) their marketing manager at the material time, who is also their director. In his affidavit, Lewerissa claimed the following items:

> (a) cancellation fees (for permit to discharge) S$600.00
> (b) extension of insurance policy for period of detention US$4,724.68
> (c) insurance for discharge S$750.00
> (d) survey fees (of Insight Marine Services Pte Ltd) S$4,124.00
> (e) transportation costs (air-fare of Lewerissa) US$ 278.66
> (f) accommodation costs (of Lewerissa) S$212.00
> (g) damages (fall in value of equipment) US$476,250.00
> (h) or, fall in repurchase price US$617,150.00
> (i) additional interest paid on loan US$187,360.38
> (j) interest on judgment sum
> (k) costs pursuant to Order of Court dated 9 April 1998

Of the above breakdown, items (a) to (f), (j) and (k) were conceded by counsel for the defendants in his closing submissions. The awards for items (g) and (h) were the subject of the plaintiffs' appeal while that for item (i) was the subject of the defendants' cross-appeal together with the court's award of US$158,750 for item (g).

10. The plaintiffs had called a valuer John Rounce (Rounce) to testify; he is a director of Henry Butcher Plant & Machinery Sdn Bhd (HB) who are international plant and machinery consultants. Rounce (who described himself as a specialist in valuation of plant and machinery for over 25 years) gave a valuation report dated 26 February 1999 on the equipment. He had seen the equipment on or about 22 October 1998 at the storage yard of Sembawang Kimtrans after its discharge from the barge. Rounce's role was to assess the fall in value of the equipment over the period of detention, based on time factor alone. Rounce opined that from December 1997 to April 1998, the equipment had fallen in value by 15% based on US$3,175,000, which translated into a loss of US$476,250.

11. On their part, the defendants called their managing-director John Koh to testify, together with their (former) shipping executive Alvin Lim. They had appointed Tay Kes Siong (Tay) from Marine Management Surveyor & Services Pte Ltd (MSS) to conduct a survey of the equipment when the vessels arrived in Singapore on 3 December 1997. Another surveyor Chan Weng Fatt (Chan) from MSS conducted a second survey (between 20-22 April 1998) before the equipment was discharged from the barge, at the same time that Insight carried out the plaintiffs' survey. Both Tay and Chan rendered reports of their respective surveys which were exhibited to their affidavits and upon which they were cross-examined.

12. In her grounds of decision (para 6), the Assistant Registrar stated that she allowed the plaintiffs' claim for interest (US$187,360.38) as it was incurred in the natural course of events, as an extension on an already existing loan. The extension was necessitated by the detention of the equipment and hence the defendants are liable. In this regard, she must have accepted the evidence of Lewerissa (see paras 71 to 76 of his affidavit). He had explained that the plaintiffs' purchase of the equipment had been funded by a loan (the loan) from GE Capital International Holdings Corporation (GE Capital) pursuant to a Revolving Credit Agreement dated 1 July 1997 (which copy he exhibited to his affidavit). He identified the various clauses pertaining to payment of interest in the document. He deposed that had the equipment not been detained by the defendants, it would have been resold to UT by the beginning of February 1998 and the sale proceeds applied to repay the loan. The defendants' detention of the equipment delayed the plaintiffs' resale to UT until November 1998; UT also paid the resale price by instalments with the last payment being made in February 1999. Each time UT paid, the plaintiffs applied the instalment payment towards reduction of the loan.

13. The Assistant Registrar however, reduced the plaintiffs' claim for the fall in value and disallowed their alternative claim for the fall in the repurchase price from UT, of the equipment. In her grounds of decision, she opined that the consequential loss for the defendants' wrongful action which the plaintiffs could claim was from 9 December 1997 (when formal notice to deliver the equipment was tendered) until 20 April 1998 (when the equipment was delivered to the plaintiffs). She held that the defendants cannot be held liable for the period in which the plaintiffs had difficult relations with UT under the repurchase agreements. The Assistant Registrar felt that the claim for the fall in the repurchase price was too remote. Based on the evidence adduced, she said that notwithstanding the wrongful detention, the plaintiffs would have encountered problems in obtaining payment from UT in any event, because the latter was in financial difficulties. I take judicial notice of the fact that the events in question took place when Indonesia went through a political as well as economic, crisis in 1998.

14. The court below also held that the damage arising from the wrongful detention could not be as

great as Rounce had estimated. She observed that Rounce only had sight of the equipment after its discharge. She said (see paras 11 to 14 in her grounds) that Rounce's contribution was to show a trend analysis of the equipment's market prices, based on time factor alone. Rounce did not produce evidence to show the actual depreciation suffered by the equipment although she appreciated the fact that such evidence was hard to come by (Rounce had deposed that at the date of his valuation there was no market for such equipment in Singapore). Further, the comparative figures produced by Rounce were not for the actual machines in the equipment, one example being the two (2) models of excavators he used to establish market prices even though only two (2) of the 14 pieces of equipment were hydraulic excavators and, one (1) of them was an extra large model which was manufactured in limited numbers.

15. The Assistant Registrar considered that rust had damaged the equipment before the barge was detained. She observed that the plaintiffs did not call their surveyor (from Insight) to testify on the extent of the damage claimed by the plaintiffs although they were present at the points of detention and delivery. A further consideration she took into account was, that the equipment was stored in conditions not entirely different from other construction equipment when it is leased out to contractors. Finally (which factor was the most important to her mind), she noted that the average life-span of such equipment is/was 10 years. She could not accept that five (5) months of inactivity (when the equipment was sitting on the barge) could cause the extent of depreciation estimated by Rounce. Accordingly, she reduced his 15% depreciation to 5% and the plaintiffs' claim of US$476,250 was accordingly adjusted to US$158,750.

The appeal

(i) the plaintiffs' submissions

16. In his submissions, counsel for the plaintiffs referred to Lewerissa's affidavit (see paras 49 to 70). According to Lewerissa, a few interested buyers had offered to buy the equipment when it was still under detention. However, the plaintiffs did not/could not accept the offers because they did not know when the same would be released. Parties who were interested to purchase the equipment after its release either offered prices which were too low or, eventually lost interest. Consequently, the plaintiffs served notice on UT on or about 13 May 1998 to repurchase the equipment. Based on formulae set out in the repurchase agreements (which were dependent on the number of lease payments made by DML), the agreed repurchase prices for the 14 pieces of equipment were fixed at US$3,317,150 as at February 1998. By a letter dated 2 July 1998 however, UT informed the plaintiffs they did not agree with the plaintiffs' exercise of the buy-back option; the company complained that the equipment had deteriorated under the extended period of detention without protection in a corrosive environment and, the batteries therein had weakened because the engines had not been turned on daily during that period.

17. In October 1998, after negotiations between the parties (in which Lewerissa participated), UT agreed to pay the plaintiffs US$2,142,510 for the equipment, claiming that US$832,129.84 was needed to recondition/repair the equipment and that the market price then was only about US$1.8m. The parties finally agreed on US$3.3m as the approximate repurchase price less the agreed repair cost of US$832,129.84. After further negotiations, the repurchase price was fixed at US$2.9m on the following terms:

> (a) after receipt of the equipment in their yard in Singapore, UT would pay the plaintiffs a first instalment of US$1m;
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> (b) the balance of US$1.9m would be paid by 19 monthly instalments of

US$100,000 each;

(c) ownership would be transferred to UT in stages in accordance with the sums paid by the company.

Lewerissa said the plaintiffs decided to accept UT's reduced offer because they had not received any better offers from interested buyers, given the equipment's deteriorated condition and the regional economic crisis.

18. UT paid the first instalment of US$1m around 30 November 1998 followed by the second and third instalments of US$100,000 each at end December 1998 and January 1999. In February 1999 however, UT informed the plaintiffs that the company was under debt-restructuring and proposed that the equipment be sold immediately. In that regard, UT had reached agreement with an Australian buyer to sell the equipment at US$1.5m and proposed that the plaintiffs accept the US$1.5m in full and final settlement of what UT owed. The plaintiffs decided to accept UT's proposal (which meant a reduction of US$200,000 from US$2.9m to US$2.7m); it was Hobson's choice. Otherwise more time and expense would be wasted in negotiating with UT or having to find new buyers which would result in further deterioration to the equipment. Lewerissa pointed out that US$2.7m was in any case close to Rounce's valuation of US$2,698,750 as at April 1998. UT backdated their purchase order for US$2.7m to 8 July 1998 and paid the balance US$1.5m to the plaintiffs by telegraphic transfer around 19 February 1999.

19. In his arguments, counsel defended the plaintiffs' decision to accept UT's initial offer of US$2.9m in November 1999 – they had to make a judgment call whether to accept the offer or to negotiate further with UT or look for other viable options. The plaintiffs decided they had no other options as, they could not sell in the market nor could they sue UT. The plaintiffs had little expertise, hence it was not practical for them to conduct an inspection of the equipment to verify the accuracy of UT's complaint on the condition of the machines involved. Even so, they were not so nave as to believe and accept UT's figure of US$800,000 for repair cost; they used that figure as a starting point for negotiations with UT. In this regard, counsel disagreed with the survey findings made by the defendants' two surveyors. Tay had stated (at p 4 of his report) that *all units (of the equipment) were noted to be in used condition…However, all units were noted to be intact with no damage apparent* while Chan had said throughout his report that all items were *noted to be stained with 'old' marks or appeared to be in original undisturbed condition and considered to be pre-shipment damage/defect* and no further damage was sustained in transit from the barge to the open (storage) yard. Counsel argued that the surveyors could only confirm there was no apparent visual damage.

20. Counsel submitted that as it turned out, the plaintiffs' judgment call was correct, because of UT's debt-restructuring in February 1999. For the same reason, the plaintiffs had little choice but to accept UT's further reduced offer of US$2.7m; otherwise they may not be able to recover anything from the company. He said the defendant's detention played a big part in the fall in value of the equipment which UT used to its advantage. He urged the court to recognise the circumstances existing at the time.

(ii) the defendants' submissions

21. Counsel disputed firstly, the commencement period of the defendants' wrongful detention. He said it should start on 24 and not 9 December 1997 as the plaintiffs had admitted that they formally informed the defendants of DML's instructions for discharge of the equipment on 24 December whilst the plaintiffs' shipping agents had obtained approval for discharge from the port authorities on 26 December 1997. Hence, the relevant date for purposes of valuation of the equipment should be 27

December and not, 9 December 1997. Further, discharge could have taken place well before 9 April 1998 had it not been for the plaintiffs' unreasonable insistence on using the defendants' barge as a floating workshop to carry out repairs to the equipment. Consequently, the period of detention for depreciation purposes should only be from 27 December 1997 to 9 March 1998.

22. Counsel also criticised Rounce's valuation as being highly speculative and without adequate substantiation to a standard required of an expert. Rounce did not compare like with like. I should point out Rounce's methodology was to use trade figures to depreciate the equipment over the period of detention. He had used guide prices from the European Trade Guide publication (the guide) a reputable publication frequently relied on by trade buyers and by valuation experts. Using the prices in the guide, Rounce had calculated the average depreciation rates on a reducing balance basis, for the different types of Komatsu machinery in question, over a five (5) year period, from either 1992 to 1996 or from 1993 to 1997 as, these were the years closer to the detention period. Although the guide provided trade and market prices. Rounce used the (lower) trade prices for his valuation because the equipment was not in showroom condition. As the guide did not have figures for the exact models in question, Rounce adopted the figures in respect of models which were most similar to the equipment (nearest in technical specifications). He had opined that the equipment would have fallen in value by 6% between December 1997 and April 1998 purely due to age. However, the actual fall in value was between 10% and 25% because there was a general oversupply in the world market for such equipment during the period in question, due to the economic downturn in Asia. He had consulted his colleagues (who are specialists in the field) in America and England before arriving at a figure of 15% depreciation.

23. Counsel criticised Rounce's valuation as unreliable, he said it was an exercise in calculating a theoretical not actual, depreciation consequent upon detention; it did not discharge the plaintiffs' burden of having to prove actual loss. Based on Rounce's methodology, counsel submitted that the plaintiffs had suffered no loss. In the alternative, he submitted that the plaintiffs failed to mitigate their loss by not selling to UT at higher prices in a falling market. He contended it was unreasonable of the plaintiffs to increase their loss by accepting a higher proportion of liability for the condition of the equipment when, UT's claim of the cost of repair/reconditioning was not borne out by the defendants' surveyors' reports and was due to pre-shipment damage. As the damage if any, was due to prior use of the equipment by DML, the defendants should not be held liable. He added that the defendants made good all tyre deflation and battery draining problems of the machines, at their own expense.

24. The defendants' criticisms of the valuation of Rounce must have been accepted to some extent by the Assistant Registrar as she reduced his figure of 15% depreciation by 10%. In allowing the appeal, I increased her figure by 7% to 12% based on a market value of $3,175,000 to give US$381,000 as depreciation in place of her award of US$158,750.

The decision

(i) the defendants' cross-appeal

25. I shall first set out my reasons for dismissing the defendants' cross-appeal before giving my reasons for allowing the plaintiffs' appeal. The general object of an award of damages is to compensate the claimant for the losses, pecuniary and non pecuniary, sustained as a result of the defendant's tort (see *Clerk & Lindsell* on Torts 18 ed pg 1559 para 29-06). More specifically, the assessment process is said to aim at restitutio in integrum. The general principle is, in the oft-quoted words of Lord Blackburn [in *Livingstone v Rawyards Coal Co* (1880) 5 AC 25 at p 39], that the court should award "that sum of money which will put the party who has been injured, or has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now

getting his compensation or reparation". Attendant to that principle of law is the principle that the damages claimed must not be too remote or, put another way, they must be reasonably foreseeable.

26. I was also conscious of the fact that an appellate court should not, save in very exceptional circumstances disturb the findings on facts made by a court below. In this regard, I note that the Assistant Registrar had commented (para 9 of her grounds of decision) that the defendants' managing-director misrepresented facts in his testimony. She further found that the defendants' case was lacking in their submissions on the law. I have no reason not to respect such findings.

27. In dismissing the defendants' cross-appeal, I had affirmed the decision of the court below in awarding the plaintiffs interest of US$187,360.38 for the additional interest incurred on their extended loan from GE Capital. This expense was a direct consequence of the delay in repaying the loan arising from the defendants' detention of the equipment. I agreed with the plaintiffs' submission that it was entirely foreseeable that the plaintiffs purchased the equipment either with their own monies or, with a loan. The defendants knew as a fact that the plaintiffs shipped the equipment to Singapore for the purpose of sale; this was admitted in the affidavits of John Koh (paras 27 to 32) and Alvin Lim (paras 8, 11 to 17). If the equipment was purchased by means of a loan, then it was equally foreseeable to the defendants that the sale proceeds would be applied towards repayment of the loan. The fact that John Koh and Alvin Lim claimed they were not told about any lease agreement on the equipment makes no difference on the issue of foreseeability.

The plaintiffs' appeal

28. In England, the action in detinue has been abolished by the Torts (Interference with Goods) Act 1977, the reason being that the tort of conversion had expanded in scope to cover almost every case of detinue resulting in the latter action becoming largely redundant. In Singapore, the common law position is retained. According to *Clerk & Lindsell* (at pp 773-4 para 14-103) at common law, the claimant is limited to claiming the value of the goods upon their return [which was the defendants' contention] and could only claim further damages if he could show actual loss (for example that he lost the opportunity, which he would have exercised, to sell the goods at an advantageous price). The plaintiffs in this case are claiming such further damages. In Lewerissa's affidavit, they had exhibited (at p 236 of FL-17) correspondence with a company which had offered US$3.8m some time in April 1998 and at page 241 of the same exhibit, they produced an offer they had received from MAC Equipment Inc of only US$1.4m on 6 September 1998, barely five (5) months later, showing the impact of the economic and political crisis in the interval. I accept that such evidence substantiates the plaintiffs' position that it was not unreasonable of them to continue negotiations with UT as the company represented the only realistic prospect of achieving the best recovery for the equipment. I note that the defendants do not dispute that the plaintiffs are entitled to claim depreciation of the equipment; what they dispute is the quantum of depreciation – they say it was minimal for the period of detention involved whereas the plaintiffs contend it was much more than the 5% allowed by the court below.

29. Before I go into the reasons why I increased the percentage of depreciation to 12%, I need to revert to an argument put forward by counsel for the plaintiffs as to why the court below erred in not accepting Rounce's valuation. Counsel pointed out that Rounce had testified that the value of the equipment fell by approximately $476,250.00 over the period of detention, based on time factor alone (see para 8 of his affidavit). The Assistant Registrar however, did not accept that portion of Rounce's testimony, for the reasons set out in paras 14 and 15 above.

30. I increased her percentage of depreciation by 7% from 5% as I was of the view that the latter figure was too conservative and insufficient weight had been given to the evidence of Rounce. Cross-

examined, Rounce had said that rusting was not a significant factor and the condition of the equipment upon his visual inspection was consistent with actual/normal usage and age; he took into account the age and the hours of usage. As such, it was incorrect for the court below to conclude that rusting of the equipment before it was detained played a significant role and to take into account the (open) storage condition of the equipment after it was released. Rounce had pointed out that his brief from the plaintiffs was to provide the market value of the equipment under standard terms, not under forced sale terms. His valuation was on the assumption that the equipment would have been marketed properly although perhaps not at its full market value. It was also premised on sale of such equipment being conducted by public auctions worldwide on a quarterly basis and if not, then by negotiated sale. In this connection, Singapore is a trading centre albeit it does not attract the whole market. Rounce had also searched for records of sales on the internet to check the last transacted prices. He had also explained that he was unable to produce a single sale for the exact models of the equipment in question because, firstly, the excavator model PC1000 was very limited and secondly (as regards to the dump trucks), the machines were not made to order. Even if all other factors remained the same, Rounce had deposed that all equipment of this nature depreciated with time, whether or not they are used. Hence, it did not matter that the plaintiffs encountered difficulties in their relationship with UT during the period of detention; that factor played no part in the market valuation of the equipment, particularly as the Assistant Registrar had disallowed the plaintiffs' alternative claim (with which decision I agreed) based on the repurchase price of the equipment from UT.

31. What should have been borne in mind is, that the detention took place during the Asian economic crisis which resulted (according to Rounce) in no contracts (requiring such equipment) being awarded while several large contracts were cancelled. Consequently, a significant quantity of equipment came onto the market; prices would accordingly have been depressed; this was a possibility which should or ought to have been, foreseen by the defendants, in a downturn in any economy. The situation in this case was exacerbated by the political crisis in Indonesia in May 1998. Yet another factor I took into consideration was, that the defendants did not call any witness to rebut what Rounce said; therefore his testimony stood largely unchallenged. As a parallel, it is a known fact that new vehicles depreciate greatly, even just one (1) day after registration. Consequently, the Assistant Registrar should not have emphasised the fact that Rounce did not provide evidence of actual depreciation; it was not for want of trying on his part. Rounce was unable to find such evidence due to the very specialised nature of the equipment itself. He had deposed (para 13 of his affidavit) that equipment of the quality and quantity in question would normally be sold either to an end-user who has an existing contract or future contract for its use or, to a trade dealer who buys it for stock. Both categories of buyers would have been adversely affected by the economic crisis of 1997-98. Although I accepted his valuation and the basis thereof, I still did not apply the 15% depreciation figure used by Rounce. I decided to be conservative and reduce his percentage by 3%, as a precaution in case he had erred on the generous side in the plaintiffs' favour.

32. Apart from increasing the depreciation percentage to 12%, I had also made the following orders in allowing the plaintiffs' appeal:-

> a. Interest of 6% per annum on the increased judgment sum of $381,000 (instead of $158,750) for 32 and not 36 months;
>
> b. other orders made below to stand:
>
> c. costs of appeal to the plaintiffs to include the dismissal of the defendants' cross-appeal.

I had reduced the period of interest by four (4) months as I found that it was unreasonable of the plaintiffs to have waited until 26 March 1999 before applying for directions for assessment of their claim for damages, followed by their notice of appointment for assessment of damages (filed on 23 November 2000). The Rules of Court [O 37 r 1(1)] require the plaintiffs to apply to the Registrar for directions within one month from the date of the judgment ordering damages to be assessed. Granted that the plaintiffs cannot be faulted for reaching agreement with UT on the repurchase price only on 6 November 1998 (by their letter of that date to UT) which was some seven (7) months after the order of court dated 9 April 1998. Thereafter however, there was no reason for the plaintiff to have delayed applying for directions and assessment; their failure to expedite the assessment of their claim after November 1998 was inexcusable. Their counsel sought to explain the delay by referring to the instalment plan the plaintiffs had agreed with UT; he said they had to wait until February 1999 (when they received full payment from UT) before they could proceed with assessment. I rejected that argument – once agreement had been reached with UT, the question of deferred payment should not be a factor in the assessment process. Accordingly, interest was only awarded for 32 instead of 36 months (from 31 January 1998 to 31 January 2001) allowed by the court below as, I was of the view that the four (4) months' delay in applying to court (on 26 March 1999) after November 1998 was not justified. However, I increased the interest rate to 6% from 3% for the pre-judgment period as I saw no reason to make a distinction between pre-judgment and post-judgment interest in this case; the plaintiffs had already suffered the loss in depreciation before the damages were awarded, after the proceedings were commenced.

Sgd:

LAI SIU CHIU
JUDGE