The Owners of the Ship or Vessel "Pioneer Glory" and Another v P.T. GE Astra Finance [2002] SGCA 8

Case Number : CA 600038/2001

Decision Date : 15 February 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA

Counsel Name(s) : Lim Soo Peng (Lim Soo Peng & Co) and Chia Chee Hyong Leonard (JC Ho & Kang) for the appellants; Yap Yin Soon and Chan Lin Wai Ruth (Allen & Gledhill) for the respondents

Parties : The Owners of the Ship or Vessel "Pioneer Glory"; Anor — P.T. GE Astra Finance

Damages – Measure of damages – Tort – Fall in value of equipment during detention – Detention wrongful – Damages payable in tort – Principle of restitutio in integrum – Whether fall in value claimable – Whether interest incurred on loan taken on equipment claimable

Judgment

GROUNDS OF DECISION

1. This appeal relates to a question of the proper quantum of damages which the appellants should pay to the respondents for the wrongful detention of fourteen pieces of "Komatsu" brand of equipment, namely, three bulldozers, one wheel loader, two excavators and eight dump trucks ("the equipment").

Background

2. The facts giving rise to these proceedings may be briefly stated as follows. The plaintiff-respondents ("Astra") are an Indonesian finance company. The defendant-appellants are the owners of a barge "POE 2410" and a tug "Pioneer Glory" ("the barge and/or tug").

3. The equipment was sold to Astra by another Indonesian company called PT United Tractors (UT). At the time of the sale, UT also entered into two repurchase agreements with Astra for the former to repurchase the equipment from the latter at agreed prices in accordance with a formula. To finance the purchase from UT, Astra obtained a loan from a related party. The bona fides of this loan are not in question. Astra then leased out the equipment to a third Indonesian company, PT DML Resources (DML) to work at a mining project in Kalimantan, pursuant to a written agreement dated 17 March 1995 ("the lease agreement"). DML was owned by a fourth Indonesian company, PT Tanito Harum (Tanito).

4. Upon completion of the project, Astra arranged for the equipment to be exported out of Indonesia. Astra hoped to find buyers in Singapore who would pay a better price for the equipment than what UT agreed to pay under the repurchase agreements. Each of the fourteen pieces of equipment was shipped under a separate bill of lading on board the barge, which was towed by the tug.

5. The equipment arrived in Singapore on 3 December 1997. But neither Astra, nor their agents, could obtain delivery of the equipment because the appellants claimed to have a lien on the equipment on the ground that the charterers of the barge and tug (Nakhoda Bestari Sdn Bhd) owed them charter freight of $177,597.

6. On 31 January 1998, as all attempts to seek delivery of the equipment failed, the present two admiralty actions were instituted by Astra. On 18 March 1998, the High Court made an interim order releasing the equipment to Astra. However, the discussions between the parties to arrange for the discharge took some time before actual discharge could take place.

7. The substantive question as to the alleged wrongful detention of the equipment came up before Warren Khoo J on 9 April 1998 whereupon he ordered that the two actions be consolidated. After hearing arguments, he also declared that the detention was wrongful and the owners of the barge and tug (the owners) were ordered to pay damages to Astra to be assessed ("9 April 1998 order"). Costs of the action were awarded to Astra. Khoo J was of the view that the equipment should have been discharged on 26 December 1997. It was only after the 9 April 1998 order was made that the parties managed to finalise arrangements for the discharge of the equipment. So actual discharge only commenced on 20 April 1998 and it was completed on 22 April 1998.

8. The assessment of damages was carried out before the Assistant Registrar, where the following items of claim were made by Astra.

(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$4,124.00
(e)	transportation costs (air-fair of Lewerissa)	US$ 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	

9. At the close of the assessment proceedings, only three items remained in controversy, namely, (g), (h) and (i). Of course, items (g) and (h) were in the alternative. The Assistant Registrar awarded only US$158,750 in respect of item (g), with pre-judgment interest at 3% from 31 Jan 1998 to the date of assessment. She also awarded the sum of US$187,360.38 in respect of item (i) and here too she granted interest at 3% on the sum from 19 February 1999 to the date of assessment.

10. Astra appealed to the High Court against the award of the Assistant Registrar in two areas: (i) in respect of item (g), Astra contended that the full sum claimed should have been given; (ii) in respect of the rate of pre-judgment interest awarded, Astra said it should have been 6% instead of 3%.

11. On the other hand, the owners of the barge and tug appealed against the awards given in respect of items (g) and (i).

12. The appeal came before Lai Siu Chiu J who dismissed the owners' appeal and allowed Astra's appeal by enhancing the award for item (g) to US$381,000. She also increased the rate for pre-judgment interest to 6% but deferred the commencement date for calculating that interest by 4 months.

13. The appellants filed a notice of appeal against the decision of Lai J in respect of items (g) and (i), as well as the rate for pre-judgment interest. However, in the appellants' Case, they withdrew their appeal on the issue of pre-judgment interest. Therefore, there are only two issues which are

now before this Court:-

(i) whether Astra are entitled to damages for the fall in value of the equipment which was assessed to be US$381,000;

(ii) whether Astra are entitled to damages for the additional interest it incurred on account of the loan by reason of the wrongful detention of the equipment.

14. In the meantime, on 13 May 1998, seeing that the equipment could not be successfully sold off to third parties, Astra exercised its option under the repurchase agreements requiring UT to repurchase the equipment. Based on the formula set out in the repurchase agreements, Astra had originally asked that UT pay US$3,317,150. UT, however, relying on the ground, inter alia, that the condition of the equipment had deteriorated during the period of detention, demanded that the price be revised downwards and it was agreed at US$2.9 million. UT made three instalment payments totalling US$1.2 million before they made known to Astra that they could not pay further because of their debt position. They asked that the price be further revised to US$2.7 million and indicated that they would pay the balance in one sum. Astra eventually agreed and UT paid in full on or about 19 February 1999.

Fall in value

15. In view of the wrongful detention of the equipment, there can be no doubt that the appellants are liable to pay for all reasonable losses proven to have been suffered by Astra on account thereof. We shall now examine the two issues in turn. First is the question of the fall in value, which is the main issue.

16. At the outset, it would be useful to note the state of the equipment at the time of their discharge. This was an aspect of the evidence greatly emphasised by the owners to contend that the detention did not cause any significant damage, which was their main plank of defence. Their valuers, Victor Morris, who inspected the equipment on 15 April 1998, stated that the overall physical condition of the equipment was "good and satisfactory", with the exception of a few tyre deflations in two dump trucks, which were subsequently rectified by the owners.

17. The owners' surveyors, Marine Management Surveyors and Services Pte Ltd had also inspected the equipment, immediately before their discharge from the barge on 20-22 April 1998, and found some 'old marks' on them which they considered to be 'pre-shipment damage/defect'. However, with respect to one excavator, one bulldozer, and one dump truck, they were damaged during discharge due to "the driver's negligence and inadvertent accident."

18. Even Astra's surveyors, Insight Marine Services Pte Ltd, who inspected the equipment on 20-22 April 1998, only found the following items were possibly affected by the long delay in discharging the cargo and/or by their exposure to the elements during the period of delay:

(i) Two batteries on the dump truck s/n 4337 and Bulldozer s/n 10376 were flat;

(ii) some rust on the dumper of the dump trucks due to water collected on the dumpers over a period of time;

(iii) One dump truck (s/n 4347) rear brakes were faulty and the system had to be purged of air;

(iv) Windscreen of wheel loader s/n 10107 was cracked (not certain at which phase this damage occurred).

19. But that was not the basis of Astra's claim for their loss due to the fall in value of the equipment. There was evidence that, at the time of the discharge of the equipment, a potential buyer made an offer of US$3.8 million. But apparently upon sight of the equipment the buyer lost interest. Furthermore, during the period of detention, there were also other potential buyers. They came to view the equipment but as they could not test-drive them, their interest fizzled out.

20. Therefore, on 13 May 1998, Astra gave notice to UT to repurchase the equipment. It was only on 2 July 1998 that UT replied stating that it would not repurchase because the lessee in Indonesia, DML, had failed to properly maintain the equipment and the equipment had deteriorated further due to their exposure to a corrosive environment during the period of detention.

21. We may add here that some ten days later, UT inspected the equipment and found that only minimal or insignificant damage of a visual nature was caused to the equipment by the owners' detention.

22. Some five months after the discharge, Astra engaged Henry Butcher Plant & Machinery Sdn Bhd ("Henry Butcher"), international plant and machinery consultants, to produce a valuation report. Henry Butcher inspected the equipment on 22 October 1998 and their valuation report was available only on 26 February 1999. Henry Butcher was asked to ascertain, on a fair market basis, the value of the equipment on 9 December 1997, the date around which the equipment would have been discharged from the barge had it not been detained, and on 20 April 1998, the date of commencement of the discharge of the equipment.

23. Mr John Rounce, a director of Henry Butcher, told the court that they were not asked to assess whether the equipment was damaged during the period of detention but only to assess "the fall in value of the equipment over the period of detention, based on the time factor alone, as all equipment of this nature depreciates with time, even if all other factors remained consistent." In his opinion, under normal market conditions, such an equipment in question would have fallen by about 15.9% per annum, and this in turn meant that the fall for the period in question would be about 6%. But he explained that as during the period in question, there was a general over-supply in the world market of such equipment, caused by the economic downturn in Asia, the drop in value during the period was sharper. After giving an account of his method of valuation, Mr Rounce valued the equipment to be US$3,175,000 at the commencement of the detention. Furthermore, based on actual sales figures of similar equipment from the "Last Bid", an American publication which listed auction prices achieved at major auctions held world-wide, he determined that the value of the equipment in question had depreciated by approximately 10% to 25% over the period of the detention. In this regard, he consulted colleagues in US and UK before concluding that the actual fall in value for the equipment in question during the period of detention was probably around 15%. This meant a fall in value of US$476,250 (i.e., 15% of US$3,175,000).

24. The evidence of Mr Rounce formed the foundation for Astra's claim for the fall in value during the period of detention

Defence case

25. The owners emphasised the fact that prior to the shipment of the equipment to Singapore, the equipment had been used for a mining and construction project in Indonesia for a period of about 2

years. Those were intensive uses. They also pointed out that during the period, from the arrival of the barge in Singapore until the actual discharge of the equipment, they gave Astra and potential buyers access to the equipment. Here, we must hasten to add that the point is without merit, as the Assistant Registrar found on the evidence that no proper access was given to Astra.

26. The owners considerably highlighted the fact that during the period of detention, no significant damage was caused to the equipment.

27. The third point taken by the owners was that Astra should have insisted that UT fulfilled their commitment to repurchase at $3,317,150. Instead of doing that, Astra eventually agreed to relieve UT of their obligations and lower the price to $2.7 million and now seeks to foist their loss onto the appellants.

28. Accordingly, the owners submitted that it was not shown that the detention in fact caused damage to the equipment, and thus loss to Astra. In the absence of proof of loss, Astra should only be entitled to nominal damages.

Decision below

29. The Assistant Registrar did not accept the submission of the owners but she nevertheless decided that the fall in value estimated at 15% was too steep. She felt it was probably only 5%. She was of the view that a period of five months was not a considerable period and in any case, for that period the equipment had remained idle. It was not used daily such as to cause rapid depreciation in value.

30. As mentioned above, Lai J enhanced the percentage of the fall in value to 12% as she felt that the Assistant Registrar had not taken into account the fact that the economies of this region were taking a dive at the time.

Arguments before us

31. Before us, the owners reiterated the point made below that whatever damages sustained by the equipment were sustained when the equipment were being used by DML for heavy duty work in Indonesia during the period of 2 years of lease. Whatever additional damage that arose during the period of unlawful detention was quite insignificant, like some additional rust and some batteries going flat which were replaced. The amount of damages awarded for the tort should really be nominal.

32. The owners also contended that if Astra should be entitled to claim damages for any loss, it should direct the claim to UT, who contracted to repurchase the equipment at the price of US$3,317.150 but failed to fulfil that commitment. This price was higher than the value which Mr Rounce placed on the equipment at the commencement of the detention. Instead Astra agreed to let UT have the equipment at a much lower price of $2.7 million. If Astra had insisted on UT fulfilling their commitment, Astra would have suffered no loss.

Our decision

33. On this issue, it seems to us that the owners have missed the point raised by Astra. Astra were not alleging that during the period of unlawful detention, substantial physical damage was caused to

the equipment. Their claim was based wholly on the fall in value on account of the lapse of time during the period of the unlawful detention. The amount claimed represented the depreciation of the market value of the equipment during the said period. Such a depreciation had nothing to do with physical damage. It was based purely on age, in the light of market demand.

34. To put it simply, Astra's case was that the owners detained the equipment and as a result, Astra were not able to sell them. During that period, there was a sharp fall in the value of the equipment due to the economic crisis which was then sweeping through the region. That was a known fact which the courts were entitled to take judicial notice of.

35. The basic principle for the measure of damages in tort is that there should be *restitutio in integram*. In the words of Lord Blackburn in *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 39:-

> "where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who 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."

36. Where a thing is wrongfully detained, the mere return of the thing would not be sufficient compensation if there is a fall in value between the date on which the unlawful detention takes place and the date of its release and there was an intention on the part of the plaintiff to sell the thing. In the present case, such an intention is not in dispute. That the law allows such a claim based on a fall in value can be seen from the following passage in *McGregor on Damages (13th Edn)* at 1036:-

> If the market falls between the time that the defendant is in default and the time of judgment, then the market value is still given at the date of judgment, but the difference between the market value at these two dates can be awarded to the plaintiff as part of the damages for detention. The authority for this proposition is *Williams v Archer* (1847) 4 CB 318, an action of detinue for scrip certificates, the market value of which had fallen between the time the plaintiff demanded them from the defendant, and the time the defendant handed them over to the plaintiff. The amount by which the market had fallen in this period was awarded as damages for detention.

37. As rightly noted by Lai J below, *William v Archer* was concerned with an action in detinue, a tort which was abolished in England by the Torts (Interference with Goods) Act 1977. The reason for that abolition was because the tort of conversion had expanded in scope to cover almost every case of a claim in detinue, resulting in the latter action becoming largely redundant. However, in Singapore there is no similar Act to abolish the tort of detinue. Of course, in the present case nothing turned on the distinction between the two torts.

38. The owners did not adduce any evidence regarding this aspect of Astra's claim. The Assistant Registrar and the judge below had before them the evidence of Mr Rounce and nothing else. There was no rebuttal or contrary evidence.

39. With regard to the owner's argument that the equipment were heavily utilised when they were being leased to DML and therefore their value might not be what Mr Rounce estimated, the fact remained that there was no other evidence of what the correct market value of the equipment would be at the commencement of the unlawful detention. Two further points may be made here. First, it

would appear that the equipment were used by DML for the purposes for which they were manufactured. There is no evidence that they were used for any unintended purposes or that they were badly damaged at the time of their shipment to Singapore. Second, and more importantly, the owners' valuers who inspected the equipment before their discharge, stated that their condition was good and satisfactory. That being the position, we do not see how the owners can be heard to argue that the condition of the equipment was so bad that the valuation given to the equipment by Rounce would be out of line. The owners cannot be allowed to be selective in the interpretation of the evidence.

40. Clearly, at the time when the owners decided to detain the equipment (in early December 1997) Singapore and the countries in the region were at the threshold of an economic crisis, which continued well into 1999. No one who was in business then could have been unaware of that. It is thus not at all surprising that Mr Rounce in his evaluation, after taking into account sales of near comparable equipment, should come to the conclusion that during the period of the detention, the value of the equipment had come down by about 15%. We would reiterate that there was no evidence from the owners to counter that view. Merely as illustrations, we would refer to the offer of $3.8 million which Astra received in April 1998 (though that offer fizzled out) and another offer in early September 1998, barely five months later, of only US$1.4 million. We note that the potential buyer making the $3.8 million eventually backed out apparently, among other reasons, because the condition of the equipment was not good. It might well be that this reason was just a convenient excuse in a falling market. Even without in any way taking these figures as an accurate reflection of the market condition, the difference between the two offers cannot be described otherwise than phenomenal. So a drop of $476,250 as determined by Rounce, in a period of four and a half months and in a falling market, is certainly not that implausible.

41. On an issue such as this, it is necessary that the court acts with the aid of expert witnesses. But it does not follow that the court must accept everything that an expert witness say. The judge can reject any part of the evidence with reasons. In the absence of any evidence to the contrary, the judge below was entitled to act on the evidence of Mr Rounce. However, instead of accepting the evidence of Mr Rounce entirely, she decided to be a little more cautious, in case Mr Rounce had erred on the generous side in favour of Astra. Accordingly, she reduced the fall in value of the equipment to only 12% instead of 15%. We think she was within her rights to do so.

42. It seems to us that, the Assistant Registrar, in reducing the rate of the fall in value to only 5%, probably did not give sufficient consideration to the fact that the region was then going through a crisis and thus the rate of fall was sharper. It would also appear that she might not have been conscious that the 15% depreciation was on the reducing balance basis. This comes out from her comparison of the five month period with the average life span of such equipment of 10 years.

43. In this connection we ought to refer to the report of Victor Morris where they stated that the value of the equipment at mid-April 1998 was US$3.5 million to US$4 million. However, Victor Morris did not explain how that valuation was arrived at; nor did they mention what the fall in value was during the period of detention.

44. Finally, we come to the point raised by the owners that Astra should have held UT to their contractual commitment to repurchase at the agreed price of US$3,317,150 and should not have entertained UT's demands to negotiate the price downwards. The following matters must be borne in mind in considering this contention.

First

, by shipping the equipment to Singapore it was not Astra's intention to exercise their rights under the repurchase agreements to require UT to repurchase them. Astra's object was to sell the equipment in the open market for a better price.

Second

, in view of the unlawful detention, Astra lost the opportunity to sell the equipment in the open market and in the light of a falling market, Astra had no choice but to exercise their option under the repurchase agreements.

Third

, the prescribed formula for determining the price at which UT should repurchase the equipment was far from clear as it was based on a percentage of the original cost, depending on the number of "lease payments". Did it mean lease payments actually made or lease payments as they fell due. The former would give a repurchase price of US$3,317,150 and the latter US$2,995,050. Understandably, in their negotiations with UT, Astra took the first interpretation knowing the weakness of that position. The second interpretation was more in line with common sense as that meant the repurchase price would correspond with the age of the equipment. The first interpretation could lead to the absurd result of Astra being liable to pay for a higher price just because the lessee defaulted in making payments.

Fourth

, the detention gave UT a ground to push down the price. It was after prolonged negotiations with UT, with market sentiments getting more depressed, that an agreement was reached with UT around November 1998 for UT to repurchase at US$2.9 million, a figure quite close to the figure of US$2.995.050 million under the second interpretation. UT also relied on the ground that the equipment was in a bad state due in part to the fact that the equipment was sitting on a vessel at the harbour without adequate protection in a corrosive environment and without any maintenance. UT mentioned a repair cost of US$832,129 to put things right. The owners' surveyors, Mr Cheong, conceded that in a salt laden environment, rusting would be accelerated. More importantly, short of sending the equipment to an appropriate workshop for a good technical inspection, non-visual damage would not be known. For example, according to the manufacturer, the excavators had to be swiveled at least once a week in order to avoid damage to the ring gears. This obviously was not done during the period of detention.

Fifth,

the sum of US$2.9 million was to be paid in instalments and it was after US$1.2 million was paid that UT indicated they could not pay any more because of their debt position which was being restructured. UT proposed making one final payment of US$1.5 million in full settlement for the equipment. In the circumstances, the only practical approach available to Astra was to settle at US$2.7 million, instead of holding UT to their commitment at US$2.9 million. Furthermore, as UT's debt position was bad, insisting upon legal rights would probably be unproductive and could amount to throwing good money after bad. There was then no offers from any party which was near to US$2.7 million. Bearing in mind that it was then a falling market, and UT were then encountering financial problem and there were no takers in the open market, one could hardly fault Astra for having agreed to a further reduction of US$200,000. Time was not on Astra's side. Any further delay would only mean that the equipment would fetch even less.

45. In our judgment, Astra had done everything reasonable in order to mitigate their losses by

disposing of the equipment at the best achievable price. We accept the following submission of Astra as to why it would not be prudent to take a wholly legal stand against UT:-

> "It would have been ludicrous and commercially unsound for the respondents to have gone to extremities to pursue and exert their strict legal rights under the Repurchase Agreement in Indonesia as suggested by the Appellants in their Appellants' Case, when the outcome of any such action against UT would be unpredictable, more costs would have been incurred and more time would have been wasted in such litigation, and there was no guarantee that UT could pay even if the court should take the view that UT were bound to pay a higher repurchase price."

46. Before we leave the issue, we would like to refer to three cases cited by the owners to contend that Astra should only be entitled to an award of nominal damages: *Brandeis Goldschmidt & Co Ltd v Western Transportation Ltd* [1981] 1 QB 864, *Chartered Electronics Industries Pte Ltd v Comtech IT Pte Ltd* [1998] 3 SLR 502 and *Williams v The Peel River Land & Mineral Co Ltd* (1887) LT Vol LV 689.

47. We do not think these cases really assist the owners. There is no universal rule for assessing damages for wrongful detention of goods. In each instance, it is a question whether proof of damage is adduced and whether the damage claimed is remote.

48. In *Brandeis Goldschmidt,* copper was detained by the defendant-transporters. The plaintiffs obtained an order for delivery. The plaintiffs claimed for damages based on the fall in the price of copper during the period of detention and the interest on overdraft paid to their bankers. An important factor to note was that the plaintiffs there did not acquire the copper for the purpose of selling it on the market but for use as a raw material on the production of cathodes. No evidence was given as to what would have happened to the copper if it had not been detained, or when it would have been used for manufacture and sold, or the date by which the proceeds of sale would have been applied in reduction of their overdrafts at the bank. In view of this, the Court of Appeal reversed the finding of the court below and held that the plaintiffs failed in their claim for lack of proof.

49. In *Chartered Electronic Industries*, this Court granted only nominal damages for the conversion of printer material kits because the kits were shown to be defective and there was no evidence as to the value of such defective kits. The court found the kits were so defective that they would not be of use to the plaintiffs in any event. The plaintiffs had also failed to show that they suffered any consequential loss as a result of the conversion.

50. In the third case, *The Peel River Land*, the plaintiffs there instructed their brokers to sell a certain stock but the brokers fraudulently deposited the certificate with a bank. The plaintiffs obtained an injunction against the bank restraining the latter from selling and transferring the stock. Eventually, the bank gave up their claim to the stock but declined to pay more than nominal damages. The Court of Appeal held that the plaintiffs were entitled to substantial damages, notwithstanding the injunction, on account of the fall in the value of the stock. In explaining the effect of the injunction order Cotton LJ said (at p. 692):-

> ".. all that order showed was, that the plaintiffs, as prudent people, desired that those who had no title to this stock should not do what they threatened and intended to do, sell and transfer it to a person who would have a legal title, and put the money into their own pockets".

Interest incurred

51. We now turn to the second issue: the claim for interest incurred by Astra. The basis for this claim is that, because of the detention, Astra took almost one extra year to sell the equipment and the claim is in respect of the interest it incurred on the loan due to the delay in effecting the sale: from 1 February 1998 to 19 February 1999. Details of the interest so incurred were furnished by Astra. This claim in interest is reckoned from 1 February 1998 because Astra recognised that a reasonable time is needed to conclude a deal even if there was no detention.

52. The arguments raised by the owners to resist the claims, which appear a little confusing, are as follows:-

> (i) In view of UT's financial difficulty and the damage caused to the equipment by DML during the period of the lease, UT would not have repurchased the equipment in February 1998.
>
> (ii) The delay in the repurchase was the result of protracted negotiations between Astra and UT. Why should the owners bear the consequence of this delay?
>
> (iii) Astra received their first instalment payment of US$1,000,000 from UT in November 1998.
>
> (iv) The owners could not have foreseen UT reneging on the repurchase agreement.

However, the owners conceded that they should pay the interest incurred for the period 1 February to 22 April 1998, the date on which the thirteen items of equipment were discharged.

53. In our opinion, none of these points are valid. The owners seem to have overlooked the fact that Astra's idea of shipping the equipment to Singapore was to get a better price for the equipment than that provided in the repurchase agreements. On this point the evidence is clear. There was also evidence which showed that there were interested parties both prior to and during the period of detention. There were interested buyers in Indonesia in December 1997. Many potential buyers came to view the equipment on the barge, but apart from viewing no one could have test-driven the equipment. Thus, their interest fizzled out.

54. By end 1997 and early 1998 it was clear that this region was at the threshold of an economic crisis. By April/May 1998, Indonesia was in turmoil. The owners claimed that they could not have foreseen the crisis. We do not think anyone in business then could have failed to appreciate that an economic crisis was looming. This was simply a lame excuse. The owners must have known the consequences of detaining the equipment or, could not care less of the consequences of their action. In the circumstances then, one could reasonably anticipate that with each passing day, it would be more difficult to dispose of the equipment. The owners must also have realised that the longer they held onto the equipment, the more they were creating grounds for UT to try to beat down the price.

55. We must point out that the financial difficulties of UT did not come to a head until February 1999. As mentioned before, they even made three instalment payments totalling US$1.2 million under the agreement to repurchase the equipment at US$2.9 million. All payments received from UT were credited into the loan account to reduce the outstanding. It was only in February 1999 that UT could

no longer pay up and asked for a further reduction in the price by way of a global settlement. If there was no detention of the equipment by the owners, having regard to the interest shown by other potential buyers then, the equipment would probably have been sold in early 1998 to a third party buyer, or repurchased by UT, at a price at least equal to if not better than the valuation given by Mr Rounce of $3,175,000. There was clearly a causal link between the interest incurred and the detention of the equipment.

Judgment

56. In the result, the owners' appeal is dismissed with costs. The security for costs, together with any accrued interest, shall be paid out to Astra's solicitors to account of costs.

Sgd:

L P THEAN
JUDGE OF APPEAL

Sgd:

CHAO HICK TIN
JUDGE OF APPEAL