IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 94

Suit No 1273 of 2018

Between

Smoothlink Worldwide Services Pte Ltd

… *Plaintiff*

And

Regional Marine & Engineering Services Pte Ltd

… *Defendant*

Suit No 421 of 2019

Between

Smoothlink Worldwide Services Pte Ltd

… *Plaintiff*

And

Regional Marine & Engineering Services Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Commercial Transactions] — [Sale of goods] — [Breach of contract]
[Contract] — [Contractual terms] — [Implied terms]
[Contract] — [Misrepresentation] — [Inducement]
[Debt and Recovery] — [Counterclaim]

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v
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Chua Lee Ming J
9, 10, 15–17 January; 29 January 2020

11 May 2020

Chua Lee Ming J:

Introduction

1 In each of the two consolidated suits, the plaintiff, Smoothlink Worldwide Services Pte Ltd, sued the defendant, Regional Marine & Engineering Services Pte Ltd, for $100,000, being the balance purchase price under a contract for the sale of a drilling rig by the plaintiff to the defendant. Suit No 1273 of 2018 ("S1273") concerned a drilling rig called the "*Vasu Prem*" whilst Suit No 421 of 2019 ("S421") concerned a drilling rig called the "*Virat Prem*".

2 The defendant pleaded misrepresentation and, alternatively, breach of contract by the plaintiff and counterclaimed for damages of $3,739,260 and $2,941,260 in S1273 and S421 respectively. The defendant also sought the

return of $280,000 which the defendant claimed to have paid to a third party on behalf of the plaintiff.

3 I found for the plaintiff and entered judgment for the plaintiff in each suit in the sum of $100,000 with interest at 5.33% from the date of each writ to judgment. I dismissed the defendant's counterclaims. I also ordered the defendant to pay the plaintiff costs fixed at $75,000 plus disbursements to be decided by me, if not agreed. The defendant has appealed against my decision.

Background

4 On 1 February 2018, the plaintiff entered into separate agreements with the liquidators of Mercator Okoro FPU Pte Ltd (in creditors' voluntary liquidation) and Mercator Okwok FPU Pte Ltd (in creditors' voluntary liquidation) (collectively, "Mercator") for the purchase of the *Vasu Prem* and the *Virat Prem* at the price of $1.1m each ("the Mercator Agreements").[1] Both rigs were sold on an "as is where is basis". The plaintiff paid 10% of the purchase price for each rig; per the Mercator Agreements, the balance of $990,000 per rig was to be paid within seven banking days after Mercator tendered Notices of Readiness.

5 The plaintiff's and the defendant's representatives met each other on several occasions. The plaintiff's director, Mr Mohamed Eunos bin Ahmad ("Eunos"), the plaintiff's associate, Mr Mohamed bin Haji Ismail ("Samad"), and the defendant's director, Mr Chang Hong Ang ("Ronnie"), met on 2 February 2018 to discuss the use of the defendant's wharf to scrap the rigs.[2] In addition to being a director of the plaintiff, Eunos owned the plaintiff together with his wife.[3]

6 Another meeting was held on either 6 or 7 February 2018 during which Samad gave a presentation to the defendant ("the Presentation Meeting"). It was common ground that this meeting was to discuss a possible collaboration for the plaintiff to use the defendant's facilities to recycle the two rigs, although the plaintiff did not state the date of this meeting in its pleadings.[4]

7 There was some uncertainty as to the date of the Presentation Meeting. The defendant's case as pleaded was that the presentation took place on 6 February 2018. However, some of the evidence referred to 7 February 2018. In any event, I did not think that the actual date mattered. What was relevant was what was said at this meeting.

8 On 8 February 2018, Eunos borrowed $280,000 ("the Loan") from one Mr Thangarajoo s/o Innasmuthu ("Rajoo"). It was not disputed that of this amount, $220,000 was used to make payment of the 10% of the purchase price for both rigs to Mercator. Eunos and Rajoo signed a Debt Acknowledgement Form dated 8 February 2018.[5] In his Affidavit of Evidence-in-Chief ("AEIC"), Rajoo said that he gave the loan at Ronnie's request.[6] Ronnie stated in his AEIC that the defendant had "made an arrangement" for Rajoo to provide the loan.[7]

9 On 9 February 2018, the plaintiff and the defendant signed a letter under which they agreed to share the total profits for works on the *Vasu Prem* and the *Virat Prem* equally ("the 9 February Agreement").[8] The 9 February Agreement did not set out any other terms.

10 On 12 February 2018, the plaintiff's and the defendant's representatives met at McDonald's at Beauty World, Singapore ("the McDonald's Meeting"). According to the defendant, the plaintiff called for the meeting because he could

not complete the purchase of the two rigs from Mercator and wanted the defendant to take over the purchase. Eunos disputed this at first[9] but eventually agreed that the purpose of the meeting was to discuss the defendant taking over the purchase of the two rigs from Mercator by waiving the Loan and paying the plaintiff $250,000.[10]

11 On 23 February 2018, the plaintiff entered into separate agreements with the defendant to sell the two rigs to the defendant at the price of $1.1m each ("the *Vasu Prem* Agreement" or "the *Virat Prem* Agreement"; collectively, "the Agreements").[11] The Agreements provided that the defendant bought the rigs on an "as in basis". However, it was clear that this was a typographical error and that it was meant to be "as is basis".[12]

12 Pursuant to each of the Agreements:

(a) The defendant paid the plaintiff a "first deposit" of $27,500 per rig.

(b) The defendant was required to pay the plaintiff a "second deposit" of $100,000 per rig within 24 hours from the time the defendant towed the rig to its premises.

(c) The defendant paid Mercator the balance sum of $990,000 per rig.

13 The following also took place on the same day (*ie*, 23 February 2018):

(a) The plaintiff, the defendant and Mercator entered into a Deed of Novation under which the plaintiff was released from the Mercator Agreements and the defendant agreed to be bound by the Mercator

Agreements in place of the plaintiff.[13] Under cl 3 of the Deed of Novation, the sum of $110,000 that had already been paid by the plaintiff under each of the Mercator Agreements was deemed to have been paid by the defendant.

(b) Eunos and Rajoo signed a Release Agreement under which Rajoo released and discharged Eunos from the Loan.[14] Clause 2 of the Release Agreement provided that it was to be executed "upon execution" of the Agreements and the Deed of Novation.

14 By a letter dated 27 February 2018, the defendant conveyed to the plaintiff that the defendant had been informed by its surveyor that the total weight of the two rigs was "far below" 22,000 metric tons ("MT"), and that it was conducting "some survey on the 2 rigs to ascertain the tonnage".[15]

15 Pursuant to an agreement dated 26 March 2018, the defendant sold the two rigs to PT Vasbit Prima Niaga ("PT Vasbit") for a total sum of $2,750,000 ("the Vasbit Agreement").[16]

16 The plaintiff commenced S1273 and S421 in the State Courts on 25 May 2018 and 8 October 2018 respectively. As the defendant's counterclaims exceeded the jurisdiction of the State Courts, both cases were subsequently transferred to the High Court and consolidated.

Plaintiff's claims

17 It was not disputed that, pursuant to each of the Agreements, the defendant's liability to pay the plaintiff the sum of $100,000 had fallen due. The Agreements described the sum of $100,000 as a "deposit". The defendant (in

my view, correctly) made no issue of this. It was clear from the Agreements and the Deed of Novation that that the sum of $100,000 payable under each of the Agreements was not a deposit but a payment that was due to the plaintiff upon the defendant having towed the rigs to its premises.

18 The question was whether the defendant could make good its counterclaims and set off such sums as were sufficient to extinguish the plaintiff's claims.

Defendant's counterclaims for misrepresentation

19 The defendant pleaded that the plaintiff had made the following representations during the Presentation Meeting:[17]

(a) The *Vasu Prem*'s tonnage was about 13,600MT and the *Virat Prem*'s tonnage was about 11,700MT.

(b) The total tonnage of the two rigs was around 24,000MT.

(c) The minimum tonnage of the two rigs would be no less than 22,000MT.

20 The defendant also pleaded that the plaintiff had made the representations in (a) and (c) above during the McDonald's Meeting.[18] The defendant pleaded that the above representations were not true and that tonnage of each of the two rigs was only 4,697MT.[19] The plaintiff denied this[20] and adopted the position that it did not know what the actual weights were.

21 The plaintiff did not dispute that at the Presentation Meeting, its representative, Samad, gave a presentation to the defendant's representatives,

during which he wrote on a whiteboard "11,700 TON" in connection with the *Virat Prem,* "13,600 TON" in connection with the *Vasu Prem* and "± 24K TON". A photo of what was written on the whiteboard ("the Whiteboard Photo") confirmed this.[21]

22 The figure "22,000MT" was not written on the whiteboard. However, Ronnie testified that Eunos and Samad had also assured the defendant that the tonnage of the two rigs would not be less than 22,000MT.[22] Samad gave evidence for the defendant and his evidence supported Ronnie's. Eunos' evidence was that Samad had started with an estimated total weight of 22,000MT for the two rigs and subsequently told the defendant that 10,000MT "should be the minimum" and that anything more would be a "bonus".[23]

23 I rejected Eunos' evidence that Samad had told the defendant that the two rigs had a minimum weight of 10,000MT. This was not the plaintiff's pleaded case. In its defences to the counterclaims, the plaintiff had merely pleaded that it estimated the weight of the two rigs to be about 22,000MT.[24]

24 I accepted the defendant's evidence that Samad had represented 22,000MT as the minimum weight of the two rigs. Samad had given the presentation as the plaintiff's representative and he confirmed that he had made such a representation. Further, Samad had already stated the weight of the *Vasu Prem* as 13,600MT and that of the *Virat Prem* as 11,700MT, as evidenced by the writings on the whiteboard. Together, these two weights totalled 25,300MT. It did not make sense that he would have referred to 22,000MT as the estimated total weight. In my view, it was more likely that he had referred to 22,000MT as the minimum weight of the two rigs. In its closing submissions, the plaintiff

appeared to have tacitly accepted that Samad had represented 22,000MT as the minimum total weight.[25]

25 Mr Mohamad Rizwan bin Samsudin ("Rizwan"), a Senior Marine Surveyor, gave evidence for the defendant. Eunos confirmed that the plaintiff initially wanted to hire Rizwan to carry out a survey of the rigs to ascertain their weights, but eventually did not do so.[26] Rizwan had asked Eunos for information about the rigs during his discussions with Eunos, and he received the information from Mercator's broker on 30 January 2018.[27] Rizwan testified that based on the information supplied by Mercator's broker, the two rigs weighed about 22,000 kips (*ie*, kilopounds), which, after conversion, was just below 10,000MT.[28] In the absence of evidence to the contrary from the plaintiff, I agreed with the defendant that the representations as to the weight of the rigs, whether individually or together, were false.

26 The key issue was whether the defendant was induced to enter into the Agreements by the plaintiff's representations. I agreed with the plaintiff that the defendant was not so induced.

27 First, the Agreements provided that the defendant bought the rigs on an "as is" basis. As stated earlier, the Agreements referred to an "as in" basis but clearly this was a typographical error. It was not alleged by the defendant that it had not understood the clause to mean "as is". In any event, the Agreements were drafted and the "as is" clause was inserted by the defendant's lawyers.[29] Any doubt in this regard would have been resolved against the defendant, in line with the *contra proferentem* rule.

28 The plaintiff submitted that the "as is" clause meant that the defendant had agreed to take the rigs in their then existing condition, including their weights. The defendant disagreed and submitted that the "as is" clause referred to the condition of the rigs, excluding their weights.

29 I agreed with the plaintiff. In my view, the defendant's submission was illogical. The condition of the rigs naturally included the addition or removal of any equipment or parts of the rigs. In turn, the addition or removal of any equipment or parts of the rigs would obviously affect the weights of the rigs. The existing condition of the rigs therefore had to also include the weights of the rigs.

30 In my view, Ronnie understood that the "as is" clause meant that the defendant could not complain about the weights of the rigs. The Vasbit Agreement stated the weights of the rigs but also provided that PT Vasbit accepted the rigs on an "as is where is basis". The weights of the rigs stated in the Vasbit Agreement (6,206.72MT and 8,759.98MT) were very different from the weights as stated by the defendant in these proceedings (4,852MT and 4,697MT). Ronnie admitted that the weights as stated in the Vasbit Agreement were "maybe" wrong.[30] His explanations for stating the wrong weights in the Vasbit Agreement vacillated. He first explained that the weights did not matter because PT Vasbit had checked the weights.[31] When asked why PT Vasbit would pay more than it had to, Ronnie claimed that the sale to PT Vasbit was at a lower price.[32] When further asked to explain the lower price, Ronnie then claimed that the sale to PT Vasbit was on a lump sum basis and not based on weight.[33] I did not accept Ronnie's explanations; he changed his explanation each time he could not answer a question about his previous explanation. In my view, it was more likely that Ronnie did not bother about the weights being

stated wrongly in the Vasbit Agreement because he knew that PT Vasbit could not subsequently complain about them due to the "as is" clause.

31 Second, the Agreements were silent as to the weight of the rigs. The defendant's case was that the weight of the rigs was material and important. As already mentioned, the Agreements were drafted by the defendant's lawyers. Ronnie confirmed that the "as is" clause was inserted in the Agreements on his instructions. He explained that the omission of any reference to the weight of the rigs in the Agreements was simply an oversight. I did not accept Ronnie's explanation. I found it most unlikely that he would have simply forgotten to include the weight of the rigs in the Agreements when, according to him, the weight was important. This was all the more so when he had given express instructions to include the "as is" clause in the Agreements. Ronnie also asserted that he did not include the weight of the rigs in the Agreements as he had trusted Eunos. His explanation, while convenient, was unconvincing. He had little reason to trust Eunos, whom he had first met only in February 2018.[34] Furthermore, it beggared belief that Ronnie did not extend the Loan of $280,000 to Eunos directly owing to his lack of familiarity with Eunos,[35] yet trusted Eunos to the extent of omitting the weights of the rigs (which he had agreed to pay $2.2m in total for) in the Agreements.

32 In my judgment, the defendant had not been induced to enter into the Agreements by the plaintiff's representations. The defendant knew it was agreeing to take the rigs as they were, including whatever their actual weights were. Further, if the fact that the rigs had a minimum total weight of 22,000MT was as important as the defendant claimed, Ronnie would surely have instructed the defendant's lawyers to include that as an express term. His claim that it was a mere oversight rang hollow.

33 The above findings were sufficient to dispose of the defendant's counterclaim for misrepresentation. However, I would add that in any event, the defendant had not proved its loss. The defendant pleaded that the actual weight of each of the two rigs was 4,697MT (see [20] above). This was likely an error because the defendant also pleaded that the actual total weight of the two rigs was around 9,550MT.[36] In his AEIC, Ronnie stated the actual weights of the *Vasu Prem* and the *Virat Prem* as 4,852MT and 4,697MT respectively.[37] These two weights came up to a total of 9,549MT. Ronnie had also stated the weight of the *Virat Prem* as 4,497MT[38] and the *Vasu Prem* as 5,852MT[39] but those appeared be typographical errors.

34 However, there was insufficient evidence before me as to what the actual weight of each rig was. Although the defendant had stated in its letter to the plaintiff dated 27 February 2018 that it was conducting "some survey on the 2 rigs to ascertain the tonnage",[40] it did not in fact commission any such survey. Ronnie claimed that the defendant's counterclaim was based on what Rizwan had told him. However, Rizwan testified that the defendant did not engage him although he did inform .[41] Rajoo and Ronnie of the total weight of the two rigs based on his calculations from the documents he had seen.[42] Rizwan could not recall precisely but believed that he told Rajoo and Ronnie that the total weight of the two rigs was "11,000-something". He also confirmed that the weights of the rigs as stated in the Vasbit Agreement were not given by him.[43]

35 The defendant's claim for damages was based on the difference between the weight of each of the rigs as represented by the plaintiff and the actual weights as alleged by the defendant. However, the defendant clearly had not discharged its burden to prove the actual weights of the rigs. The defendant also relied on a market recycle value of $420/MT for a rig of the make of the *Vasu*

Prem and the *Virat Prem* in quantifying its claim for damages,[44] but did not adduce evidence in support of such a quantification.

Defendant's counterclaims for breach of contract

36 The defendant pleaded an implied condition in each of the Agreements that the goods would correspond with their description, pursuant to s 13(1) of the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("SGA").[45] The defendant pleaded that the relevant descriptions of the rigs were the weights of each rig as represented by the plaintiff.

37 Section 13(1) of the SGA provides that "[w]here there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description". Whether there is a sale by description is a question of construction of the words used to define the goods sold and the circumstances of the sale: *Darwish M K F Al Gobaishi v House of Hung Pte Ltd* [1995] 1 SLR(R) 623 at [82]. The description relied upon must therefore form part of the contract. In the present case, the Agreements did not state the weights of the rigs. The defendant did not plead how the representations formed part of the Agreements. The defendant's pleaded case could not possibly succeed.

38 The defendant submitted that a term should be implied in each of the Agreements that the weight of the two rigs should be no less than 22,000MT.[46] This submission was not open to the defendant because it was never pleaded.

39 In any event, in my view, there was no reason to imply such a term. It could not be said that the plaintiff and defendant had not contemplated the issue of the weights of the rigs (whether individually or together) and so left a gap in the Agreements: see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another*

and another appeal [2013] 4 SLR 193 ("*Sembcorp Marine*") at [94]–[95]. The Agreements expressly provided that the purchase of the rigs was on an "as is" basis. As discussed earlier, this meant taking the rigs in their existing conditions, including their weights. The weights of the rigs had therefore been contemplated. Further, such a term could not be implied because it would contradict an express term of the Agreements (*ie*, the "as is" clause): see *Sembcorp Marine* at [98].

40 I therefore dismissed the defendant's counterclaims for breach of contract. I would only add that in any event, for reasons stated earlier, the defendant did not prove its loss.

Defendant's counterclaim in respect of the Loan

41 As pleaded, the defendant's counterclaim was for the return of the $280,000 that was paid by the defendant to a third party on behalf of the *plaintiff*.[47] The relief prayed for also referred to the $280,000 as monies paid by the defendant to the third party on the *plaintiff's* behalf. There were several problems with this counterclaim.

42 First, the defendant's pleadings did not support this counterclaim. The defendant pleaded that, as part of the agreement between the parties, the defendant repaid the loan from the third party to the *plaintiff's director*.[48]

43 Second, Rajoo had signed the Release Agreement that released Eunos from the Loan. The defendant did not adduce any evidence that it had paid $280,000 to Rajoo on behalf of Eunos.

44 Third, the evidence showed that the release of the Loan was simply one of the terms of the agreement for the defendant to purchase the rigs from the plaintiff. The Release Agreement was signed on the same day as the Agreements and the Deed of Novation, and expressly provided that it would be signed only after the Agreements and the Deed of Novation had been signed. The Release Agreement was also described as being supplemental to the Agreements. In other words, the release of the Loan was part of the price paid by the defendant for the purchase of the rigs.

45 It was not surprising that the release of the Loan formed part of the price paid by the defendant to the plaintiff. The plaintiff had paid Mercator the sum of $220,000, being 10% of the purchase price of the two rigs under the Mercator Agreements. Pursuant to the Deed of Novation, this payment of $220,000 was deemed to have been made by the defendant. Logically, the defendant would have had to repay the plaintiff this sum of $220,000. The release of the Loan was a convenient way of repaying the plaintiff this sum.

46 The Loan was for $280,000. Eunos claimed that the Loan included interest amounting to $60,000. Rajoo and Ronnie both denied this and claimed that Eunos had said he needed the additional $60,000 to pay legal fees and other expenses. It was not necessary for me to decide whether the Loan included an interest component. What was critical was that the Release Agreement clearly released Eunos from the whole of the Loan.

47 In my view, although each of the Agreements described the purchase price of each rig as $1.1m, the combined effect of the Agreements, the Deed of Novation and the Release Agreement was that the defendant had agreed to pay a total amount of $2,515,000 for the two rigs, comprising the following:

(a) $1,980,000 (*ie*, $990,000 x 2) which the defendant had to pay Mercator pursuant to the Deed of Novation;

(b) $280,000 pursuant to the Release Agreement;

(c) $55,000 (*ie*, $27,500 x 2) that the defendant had already paid to the plaintiff pursuant to the Agreements; and

(d) $200,000 (*ie*, $100,000 x 2) that the defendant had to pay to the plaintiff pursuant to cl 2 of each of the Agreements.

48 Fourth, even assuming that the defendant did repay the Loan on behalf of the plaintiff's director (Eunos), there was no basis upon which the plaintiff could be said to be liable to the defendant. There was nothing pleaded in the defendant's counterclaim as to the basis upon which the plaintiff was alleged to be liable to the defendant in respect of a loan taken by its director in his personal capacity.

49 In my view, there was no basis at all for this counterclaim and I dismissed it accordingly.

Conclusion

50 For the reasons set out above, I entered judgment for the plaintiff in each suit in the sum of $100,000 with interest at 5.33% from the date of each writ to judgment, and dismissed the defendant's counterclaims. I ordered the defendant to pay the plaintiff costs fixed at $75,000 plus disbursements to be decided by me, if not agreed.

Chua Lee Ming
Judge

Yasmeen Jamil Marican (Eversheds Harry Elias LLP) for the plaintiff;
Navinder Singh and Yik Xin Ying (KSCGP Juris LLP) for the defendant.

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1 Defendant's Bundle of Documents, at pp 8–23 ("DB 8–23").
2 Notes of Evidence ("NE"), 9 January 2020, at 48:16–49:9; Ronnie's Affidavit of Evidence-in-Chief ("AEIC"), at para 9.
3 Agreed Bundle, at pp 594–597 ("AB 594–597"); NE, 9 January 2020, at 13:12–14:17.
4 Defence & Counterclaim ("D&CC") in S1273 and S421, at para 4.2; Reply & Defence to Counterclaim ("Reply") in S1273, at para 5b; Reply in S421, at para 8b.
5 Eunos' Affidavit of Evidence-in-Chief ("AEIC"), exh MEBA-1E, at p 33.
6 Rajoo's AEIC, at para 9.
7 Ronnie's AEIC, at para 18.
8 DB 24.
9 NE, 9 January 2020, at 70:6–13.
10 NE, 9 January 2020, at 86:3–87:22.
11 AB 1–4.
12 Eunos' AEIC, at para 19.
13 AB 5–7.
14 AB 8–9.
15 AB 10.
16 DB 25–32.
17 D&CC in S1273 and S421, at para 4.4.

[18] D&CC in S1273 and S421, at para 4.8.
[19] D&CC in S1273 and S421, at para 8.1.
[20] Reply in S1273, at para 9; Reply in S421, at para 12.
[21] DB 33–34.
[22] NE, 16 January 2020, at 17:7–10.
[23] Eunos' AEIC, at para 30b.
[24] Reply in S1273, at para 5d; Reply in S421, at 8f.
[25] Plaintiff's Skeletal Closing Submissions, at paras 14 and 17.
[26] NE, 9 January 2020, at 36:10–23.
[27] Plaintiff's Bundle of Documents, at p 19.
[28] Rizwan's AEIC, at para 6.
[29] NE, 16 January 2020, at 29:12–21; Eunos' AEIC, at para 43.
[30] NE, 16 January 2020, at 52:16–53:21.
[31] NE, 16 January 2020, at 53:22–24.
[32] NE, 16 January 2020, at 53:28–31.
[33] NE, 16 January 2020, at 53:32–54:22.
[34] NE, 16 January 2020, at 6:17–32.
[35] NE, 16 January 2020, at 18:28–19:5 and 19:21–27.
[36] D&CC in S1273 and S421, at para 8.2.
[37] Ronnie's AEIC, at paras 36 and 38.
[38] Ronnie's AEIC, at para 36.
[39] Ronnie's AEIC, at para 38.
[40] AB 10.
[41] NE, 17 January 2020, at 61:3–7.
[42] NE, 17 January 2020, at 61:3–7, 62:23–63:1 and 63:10–64:10.
[43] NE, 17 January 2020, at 64:11–27.
[44] D&CC in S1273 and S421, at para 9.1.
[45] D&CC in S1273 and S421, at para 11.
[46] Defendant's Skeletal Closing Submissions, at para 59.
[47] D&CC in S1273 and S421, at para 19.
[48] D&CC in S1273 and S421, at para 5.