Simgood Pte Ltd *v* MLC Shipbuilding Sdn Bhd and others
[2015] SGHC 303

Case Number	: Suit No 39 of 2011
Decision Date	: 25 November 2015
Tribunal/Court	: High Court
Coram	: Vinodh Coomaraswamy J
Counsel Name(s)	: Winston Kwek, Avinash Pradhan, Max Lim (Rajah & Tann Singapore LLP) for the plaintiff; Troy Yeo (Chye Legal Practice) for the second, third, seventh and eighth defendants; The first, fourth, fifth, sixth and ninth defendants not participating.
Parties	: SIMGOOD PTE LTD — (1)MLC SHIPBUILDING SDN BHD — (2)MLC BARGING PTE LTD — (3)MLC MARITIME PTE LTD — (4)JIANGSU SOHO MARINE CO LTD — (5)NANTONG MLC TONGBAO SHIPBUILDING CO LTD — (6)NANTONG TONGBAO SHIPBUILDING CO LTD — (7)TAN HO SENG — (8)ENG CHOR WAH — (9)REDZUAN GOH BIN MOHAMMED KARIAN

Contract – Breach

Contract – Remedies – Specific performance

Tort – Conversion

Tort – Detinue

Companies – Incorporation of companies – Lifting corporate veil

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 165 of 2015 was dismissed by the Court of Appeal on 26 July 2016. See [2016] SGCA 46.]

25 November 2015

Vinodh Coomaraswamy J:

Introduction

1 This action is a dispute over a single vessel which the first defendant contracted to build and deliver to the plaintiff. I will refer to this vessel as "Vessel B". The principal substantive relief which the plaintiff claims in this action is the delivery of Vessel B, compensation for loss it has suffered due to the delay in delivering Vessel B and an indemnity against the cost of rectifying any defects which may be found in Vessel B upon delivery. Alternatively, if the plaintiff cannot obtain delivery of Vessel B, it seeks damages for the loss of Vessel B and for the loss of profits it could have earned with Vessel B.

2 As a quite separate claim arising from the same underlying facts, the plaintiff claims also that it is entitled to recover from both the fifth defendant and the sixth defendant the sums of US$4,399,980 and RMB14m as money paid to them during the construction of Vessel B but outside the terms of the shipbuilding contract for Vessel B ("the Extra-Contractual Payments"). [note: 1] The relief the plaintiff seeks for this claim is repayment of these sums, save to the extent that they are applied

towards the balance of the purchase price of Vessel B. [note: 2]

3 The plaintiff has brought its action against nine defendants and seeks a judgment on the merits, on differing grounds, against each defendant. All nine of the defendants have been served with the writ. However, only four defendants are participating in defending this action. They are the second, third, seventh and eighth defendants. Although the remaining five non-participating defendants are in default either of appearance or of defence, the plaintiff has not taken judgment in default against them. It presumably prefers to secure at trial a judgment on the merits against even the non-participating defendants.

4 The second and third defendants, in addition to defending the action, advance a counterclaim seeking a declaration that the plaintiff does not own and has no right to possession of Vessel B. [note: 3] Part of the defence of all four of the participating defendants is that the third defendant still owns Vessel B because the first defendant failed to pay for it. [note: 4] They say that they are, like the plaintiff, the victims of the ninth defendant's deception practised through the first defendant. As I have mentioned, both these defendants have elected not to enter an appearance in this action.

5 Having heard the plaintiff's claim on the merits, I have allowed the claim in part while dismissing the counterclaim entirely. I have ordered the first defendant to perform specifically its contractual obligation to deliver Vessel B to the plaintiff. I have also ordered the fifth defendant to deliver up Vessel B to the plaintiff and to pay damages in detinue. I have further held that the first defendant and the fifth defendant are jointly and severally liable to repay the plaintiff the sum of US$1.3m, being the Extra-Contractual Payments less the final instalment for Vessel B.

6 Being dissatisfied with my decision to dismiss the plaintiff's claims against the second, third, sixth, seventh and eighth defendants, the plaintiff has appealed to the Court of Appeal against that part of my decision. [note: 5] I now provide the grounds for that decision. I begin with a brief overview of the identity of the parties at the material time (from 2008 to 2010), followed by an account of the events which eventually led to this action. I then turn to the reasons for my decision.

The parties

7 The plaintiff is a company incorporated under the laws of Labuan, a special economic zone in Malaysia. It is in the business of providing offshore marine services to the oil industry. The plaintiff is part of a group of companies which I shall call the "Simgood Group". The ultimate holding company of the Simgood Group, and the plaintiff's sole shareholder, is Simgood Holdings Ltd ("Simgood Holdings"). The other companies in the Simgood Group which are relevant for the purposes of this action are Simgaz Pte Ltd ("Simgaz"), Kumpulan Liziz Sdn Bhd ("Liziz Malaysia") and PT Indoliziz ("Indoliziz"). [note: 6]

8 For ease of exposition, I begin my introduction of the defendants with the defendants who are individuals: the seventh, eighth and ninth defendants.

9 The seventh defendant ("Mr Tan") is married to the eighth defendant ("Mrs Tan"). I shall refer to Mr Tan and Mrs Tan collectively as "the Tans". The Tans are participating defendants. The ninth defendant ("Redzuan") is the ex-husband of the Tans' daughter, Tan Ker Chia. Redzuan has been served with the writ in this action but has not entered an appearance. He is a non-participating defendant.

10 The first defendant, which I shall refer to as "MLC Shipbuilding", is a Malaysian company. MLC

Shipbuilding is a non-participating defendant. At all material times, MLC Shipbuilding had three shareholders. Mr Tan held 30% of its shares, Redzuan held 69.2% of its shares and Tan Ker Chia held the remaining 0.8% of its shares. [note: 7] Redzuan was at all material times the managing director of MLC Shipbuilding. Tan Ker Chia and Mr Tan were directors of MLC Shipbuilding until May 2009. According to Mr Tan, even while he and Tan Ker Chia were directors, Redzuan had exclusive control of MLC Shipbuilding's business and management and was in charge of its day-to-day operations. Mr Tan says that to the best of his knowledge, MLC Shipbuilding is now "defunct and/or liquidated". [note: 8]

11 The second defendant, whom I shall refer to as "MLC Barging", is a company incorporated in Singapore. MLC Barging is a participating defendant. From August 2007 to February 2010, Redzuan was a director of MLC Barging. [note: 9] From August 2008 to July 2009, Redzuan held a 40% stake in MLC Barging. Despite all of that, he was not involved in its day-to-day management. [note: 10] As at August 2010, MLC Barging had only two shareholders. Mr Tan held 60% of its shares and Tan Ker Chia held 40% of its shares. [note: 11] Its present directors are the Tans and Tan Ker Chia. [note: 12]

12 The third defendant, which I shall refer to as "MLC Maritime", is also a company incorporated in Singapore and is also a participating defendant. The Tans are the only two directors [note: 13] and the only two shareholders of MLC Maritime. Mr Tan holds 60% of its shares and Mrs Tan holds 40% of its shares. [note: 14]

13 The fourth defendant, which I shall refer to as "Jiangsu", is a company incorporated in the People's Republic of China ("China"). Jiangsu is a non-participating defendant. The corporate information available on Jiangsu is scant. [note: 15] Its general business is described as the "import and export of ship, ship equipment and various goods and technologies on its own and as agent, domestic trading, industrial investment [*sic*]". [note: 16]

14 The sixth defendant, which I shall refer to as "Nantong Tongbao", is a company incorporated in China. Although Nantong Tongbao entered an appearance in this matter, it did not file a defence and did not participate in the trial. It is therefore a non-participating defendant. It has two shareholders, both of whom are Chinese nationals. Zhu Jian Hua holds 51% of its shares and Wang An Mei holds 49% of its shares. From the time it was incorporated in June 2006 until January 2008, Nantong Tongbao owned and operated the shipyard in Nantong, Jiangsu Province, China in which Vessel B was constructed. [note: 17]

15 The fifth defendant, which I shall refer to as "Nantong MLC", is a company incorporated in China. It was a joint venture entity incorporated in January 2008 to take over ownership and operation of the shipyard at which Vessel B was under construction. [note: 18] Nantong MLC had three shareholders upon incorporation. Nantong Tongbao held 56% of its shares, Mr Tan held 24% of its shares and Redzuan held 20% of its shares. [note: 19] It appears that pursuant to a resolution of Nantong MLC's shareholders dated 29 June 2008, Nantong Tongbao reduced its shareholding to 40% while Mr Tan and Redzuan increased their shareholding to 35% and 25% respectively. [note: 20] Zhu Jian Hua was Nantong Tongbao's corporate representative in Nantong MLC. [note: 21]

16 As I have mentioned, the Tans portray Redzuan as the villain of the piece for betraying the trust which they, like the plaintiff, reposed in him. The Tans maintain that their family and their companies – MLC Barging and MLC Maritime – are as much a victim of Redzuan as the plaintiff is. They accept that Redzuan perpetrated wrongdoing through his company, MLC Shipbuilding, including

cheating, forgery and fraud. But the Tans say that they and their companies were in no way complicit in that wrongdoing. [note: 22] Redzuan, they say, is now on the run to avoid legal liability for his wrongdoing. [note: 23] Indeed, their position is that Redzuan's betrayal has caused not just the Tans' business relationship with him to sour. Tan Ker Chia divorced Redzuan in 2010 [note: 24] and he now shows no interest even in maintaining contact with his own children. [note: 25]

17 I begin with the undisputed facts.

Undisputed facts

The Tans deal with Nantong Tongbao

18 In 2006, the Tans decided to build vessels at shipyards in China to take advantage of the lower costs there. [note: 26] Through MLC Barging, they had discussions with Jiangsu. Eventually, MLC Barging entered into two contracts with Jiangsu. One contract was dated 12 October 2006 and was for Jiangsu to build and deliver a vessel with hull number MLC 5281. [note: 27] The other contract was dated 23 January 2007 and was for Jiangsu to build and deliver a vessel with hull number MLC 5282. [note: 28]

19 The keels for these two vessels were laid in April 2007 [note: 29] and their hulls were assigned the numbers 5281 and 5282. I will refer to the vessel assigned hull number MLC 5281 in April 2007 as Vessel X and to the vessel assigned hull number MLC 5282 in April 2007 as Vessel A. I will not refer to these vessels by their hull numbers because, in July or August 2008, the Tans changed the number of Vessel A's hull to MLC 5284 and later re-assigned the number MLC 5282 to the hull of a different vessel.

20 The shipyard at which Vessel X and Vessel A were under construction was owned and operated by Nantong Tongbao. As a result of their dealings with Jiangsu, the Tans came to be acquainted with the principals behind Nantong Tongbao. [note: 30] The Tans and Nantong Tongbao's principals decided to go into a shipbuilding joint venture together. Nantong MLC was incorporated in 2008 as their joint venture vehicle. From 2008, it took over ownership and operation of the shipyard from Nantong Tongbao [note: 31] and thereby took over of the construction of Vessel X and Vessel A.

The loan facility

21 By a facility letter dated 8 May 2007, DBS Bank Ltd ("DBS") agreed to extend a loan facility of US$5.95m ("the DBS loan") to MLC Maritime. The DBS loan was to finance the purchase of a vessel with hull number 5282. [note: 32] At that time, May 2007, the number of Vessel A's hull was 5282.

22 The financing period for the DBS loan was three years. This three-year period excluded a construction period of up to 12 months commencing from the date of the shipbuilding contract. The shipbuilding contract for Vessel A was dated 23 January 2007. It should be noted, however, that that contract was between Jiangsu and MLC *Barging*, not MLC *Maritime* (see [18] above).

23 It was a term of the DBS loan that there would "be no change of flag, classification society, legal and/or beneficial ownership of the Vessel without the prior written approval of DBS Bank". [note: 33]

The Simgood Group enters the scene

24 In 2008, the Simgood Group was looking to expand its offshore marine services business. [note: 34] The Simgood Group had by then been for some time in the business of chartering third party vessels and then sub-chartering these vessels to oil companies in South East Asia. It came to learn that a major international oil company was looking to charter offshore support vessels, but wished to do so directly from the actual owners of the vessels.

25 To take advantage of this opportunity, the Simgood Group decided to commission and purchase offshore support vessels based on the oil companies' specifications and then, as owner, to charter these vessels directly to the oil companies. [note: 35] Thus, in the first quarter of 2008, the plaintiff's manager, Captain Liew Thin Poh ("Capt Liew"), began negotiating with the Tans for them to construct these vessels for the Simgood Group. [note: 36] Out of these negotiations, the Simgood Group commissioned a total of seven vessels under seven contracts. All seven of the contracts were entered into with MLC Shipbuilding and all except the last is dated 5 April 2008. The seven contracts are as follows:

(a) A contract with the plaintiff for a vessel with hull number MLC 5282 ("Contract 5282"). [note: 37]

(b) A contract with Indoliziz for a vessel with hull number MLC 5284 ("Contract 5284"). [note: 38]

(c) A contract with Liziz Malaysia for a vessel with hull number MLC 5285. [note: 39]

(d) A contract with Liziz Malaysia for a vessel with hull number MLC 5286. [note: 40]

(e) A contract with Liziz Malaysia for a vessel with hull number MLC 5288. [note: 41]

(f) A contract with Liziz Malaysia for a vessel with hull number MLC 12001. [note: 42]

(g) A contract dated 9 July 2009 with the plaintiff for a vessel with hull number MLC 7807 ("the 7807 Contract"). [note: 43]

26 Under each of these seven contracts, MLC Shipbuilding agreed to "build, equip, launch and complete at an appointed Chinese shipbuilder [Nantong MLC] … [and] sell and deliver" to the relevant Simgood Group entity a single vessel meeting the specifications set out in the contract on or before a specified delivery date. [note: 44] In exchange, the Simgood Group agreed to pay the price for each vessel by instalments. The total price of all seven vessels was US$92.89m at an average price of US$13.27m per vessel. The Simgood Group has paid a total of US$60.16m under these seven contracts. Despite having paid just under 65% of the total price, it is common ground that MLC Shipbuilding has delivered only one vessel to the Simgood Group: the vessel due under Contract 5284. MLC Shipbuilding has not delivered under any of the six remaining contracts. [note: 45]

27 The action before me concerns only Contract 5282.

Construction of the vessels

28 The Simgood Group in due course began to make the instalment payments due under Contract 5282. [note: 46] Over time, the plaintiff paid six instalments totalling US$5.95m. [note: 47] That left only the final instalment of US$2.05m unpaid. [note: 48] It is common ground that the final instalment under Contract 5282 is payable only when MLC Shipbuilding makes actual delivery of the vessel. [note: 49] The plaintiff has, therefore, performed all of its obligations under Contract 5282 thus far.

29 In April 2008, Steven Lau, a director of Simgood Holdings, visited for the first time the Nantong MLC shipyard where Vessel A was under construction. There, he met Mr Tan. [note: 50] He continued to make visits to the shipyard as the construction of Vessel A progressed. [note: 51]

30 In the meantime, MLC Maritime was drawing on the DBS loan. As at 16 June 2008, MLC Maritime had drawn a total of US$4,850,000 on the loan. [note: 52]

The Tans change the number of Vessel A's hull and re-assign it

31 In July or August 2008, the Tans changed the number of Vessel A's hull from MLC 5282 to MLC 5284. [note: 53] By that time, Vessel A was at an advanced stage of construction.

32 Later, in September 2008, the keels for a further two vessels were laid at the shipyard. I shall call these two vessels Vessel Y and Vessel B. The Tans re-assigned hull number MLC 5282 to the hull of Vessel B. [note: 54]

The Extra-Contractual Payments

33 From August to November 2008, the Simgood Group made the Extra-Contractual payments totalling US$4,399,980 and RMB14m to Nantong MLC. [note: 55] The participating defendants accept that the Simgood Group made these payments. There is a dispute, however, as to what these payments are referable to.

34 The Extra-Contractual payments are denominated in US dollars and in Chinese renminbi. The Chinese renminbi sums were remitted to Nantong MLC by Full Mount Investment Ltd ("Full Mount"), a substantial shareholder of Simgood Holdings. It made the Extra-Contractual Payments after Mr Tan had given Steven Lau the bank account details of Nantong MLC via email on 25 August 2008. [note: 56] The breakdown of the Chinese renminbi Extra-Contractual Payments is as follows: [note: 57]

(a) RMB 5m remitted on 25 August 2008.

(b) RMB 3m remitted on 26 August 2008.

(c) RMB 3m remitted on 28 August 2008.

(d) RMB 3m remitted on 19 September 2008.

The plaintiff remitted the Extra-Contractual Payment denominated in US dollars, amounting to US$4,399,980, to Nantong MLC in a single remittance on 19 November 2008. [note: 58]

Delivery of Vessel A and launch of Vessel B

35 Vessel A was completed in March 2009. The number of its hull was then MLC 5284. The purchaser under Contract 5284, Indoliziz, had by then assigned its rights under that contract to Simgaz. [note: 59] Simgaz had made payment by instalments of the full purchase price of US$8m for Vessel A to MLC Shipbuilding. [note: 60] Vessel A was therefore delivered under Contract 5284 to Simgaz upon completion. Contract 5284 was thus discharged by performance on both sides.

36 Construction of Vessel B continued until September 2009. The number of its hull was then MLC 5282. On 6 September 2009, Vessel B was named Simgood 15 and launched. Nantong Tongbao issued and delivered to the plaintiff a "Certificate for Launching" certifying this. [note: 61]

The Tans fall out with Zhu Jian Hua

37 Zhu Jian Hua, a shareholder of Nantong Tongbao and its representative in Nantong MLC, was the Chairman of the Board of Nantong MLC [note: 62] and in overall charge of managing its business. Mr Tan was in charge of its production and infrastructure development. [note: 63] According to Mr Tan, his relationship with Zhu Jian Hua was not very good because the latter had little experience in running a shipyard. The difficulties were compounded by the difference in culture and work ethic between the two men.

38 These business differences resulted in an acrimonious meeting on 26 April 2010 in China. According to Mr Tan, he refused Zhu Jian Hua's requests to sign certain class certificates for two vessels unrelated to these proceedings. As a result, both he and Tan Ker Chia were threatened. In cross-examination, Mr Tan said that Zhu Jian Hua had instigated a mob of 100 people to besiege him. [note: 64] Mr Tan had to call the mayor of a nearby town for help. The Chinese police were also called. According to Mr Tan, Zhu Jian Hua prevented him from leaving the meeting while he sent people to Mr Tan's residence in Nantong to remove his files and computers. [note: 65]

39 In May 2011, Mr Tan came across documents falsely showing that he and Redzuan had resigned as directors of Nantong MLC. He believes that Zhu Jian Hua forged these documents as part of his plan to oust Mr Tan from all involvement in Nantong MLC. [note: 66] Mr Tan commenced legal action in China against Nantong MLC to challenge his purported removal as a director and also to gain access to its financial records. [note: 67] He was successful in both actions. [note: 68] This further strained the relationship between himself and Zhu Jian Hua. According to Mr Tan, Zhu Jian Hua has since prevented MLC Barging and MLC Maritime from claiming Vessel B. [note: 69]

40 After all these incidents, Mr Tan did not return to the shipyard because he feared for his safety. [note: 70] Even though the Jiangsu High People's Court ordered that Mr Tan be allowed access to Nantong MLC's financial records, he claims that Nantong MLC failed to comply with that order. [note: 71]

41 Mr Tan's position is that he has no connection or involvement with Nantong MLC now, save as a disaffected shareholder, [note: 72] and that he certainly has no control over it. [note: 73] In particular, he disavows any responsibility for its acts after he was driven out on 26 April 2010. [note: 74]

Vessel B is not delivered

42 Article 7.1 of Contract 5282 obliged MLC Shipbuilding to deliver a vessel to the plaintiff within

13 months from either the date of the contract or from the date of payment of the first instalment, whichever was later. [note: 75] The date of Contract 5282 was 5 April 2008 and the plaintiff paid the first instalment on 7 May 2008. [note: 76] MLC Shipbuilding was therefore obliged to deliver a vessel to the plaintiff under Contract 5282 on or before 7 June 2009. It failed to do so.

43 On 7 October 2010, the plaintiff's solicitors sent a letter of demand to MLC Shipbuilding, MLC Barging, Jiangsu and Nantong Tongbao. [note: 77] The letter pointed out that the plaintiff had duly made payment under Contract 5282 towards the purchase of Vessel A, but that the defendants had sold Vessel A to a third party for profit and thereafter substituted Vessel B for it without the plaintiff's knowledge or consent. The plaintiff also put the defendants on notice that it had learned that the defendants were now attempting to sell Vessel B to a third party. The plaintiff informed the defendants that, without waiving any of its rights, it was prepared to accept Vessel B in place of Vessel A provided that Vessel B was actually delivered to the plaintiff in accordance with the agreed specifications and under a new contract.

44 On 12 October 2010, MLC Shipbuilding responded with a holding letter. [note: 78] It never followed up on this holding letter with a substantive response. [note: 79] MLC Barging responded on the same day, denying that it had any contract with the plaintiff to deliver a ship or that it owed any duty to the plaintiff to do so and informing the plaintiff that its recourse was against MLC Shipbuilding alone. [note: 80]

45 On 17 December 2010, through separate letters, both Nantong MLC and Nantong Tongbao confirmed and acknowledged that the "vessel bearing hull no. MLC 5282 (ex MLC 5284) and named as 'SIMGOOD 15' ... [was] built for and intended for" the plaintiff. [note: 81] The letters also stated that Nantong MLC and Nantong Tongbao would cause the Builder's Certificate and all Class Certificates for Vessel B to refer to the plaintiff.

The plaintiff commences action

46 The plaintiff commenced this action in January 2011. Initially, the plaintiff brought this action against only the corporate defendants, *ie* the first to sixth defendants. [note: 82]

47 In April 2011, Nantong Tongbao issued a notarised Builder Certificate for Vessel B directly to the plaintiff. [note: 83] But Vessel B was still not delivered to the plaintiff.

48 In June 2011, upon the plaintiff's application in this action, the court restrained the parties from removing, selling or disposing of Vessel B until further order. [note: 84]

49 In September 2011, the plaintiff added the Tans and Redzuan as defendants to this action. [note: 85]

The claim

50 The plaintiff's primary claim against MLC Shipbuilding is that it breached Contract 5282 by failing to deliver Vessel B to the plaintiff. [note: 86] The plaintiff therefore prays that MLC Shipbuilding be ordered under s 52 of the Sale of Goods Act (Cap 393, 1999 Rev Ed) to deliver Vessel B to the plaintiff. The plaintiff also seeks damages to be assessed for the loss it has suffered due to MLC Shipbuilding's delay in delivering Vessel B and an indemnity in respect of the costs of rectifying any

defects which may be found in Vessel B upon delivery.

51 The plaintiff also seeks to hold the other eight defendants liable to compensate the plaintiff for MLC Shipbuilding's failure to deliver Vessel B. To reach the other defendants – being entities with whom it has no contractual relationship – the plaintiff invites me to pierce the corporate veil. It avers that MLC Shipbuilding, MLC Barging, MLC Maritime and Nantong MLC ("the MLC Companies") are mere business vehicles for the Tans and Redzuan because they were treated as a functional whole, without any real demarcation of rights and obligations between each individual company. [note: 87] As a result, the plaintiff argues, they are all liable to compensate the plaintiff for MLC Shipbuilding's failure to deliver Vessel B.

52 In addition, the plaintiff claims damages against the various defendants for the following tortious acts:

(a) Against all defendants in the tort of conspiracy by unlawful means. It avers that the defendants wrongfully conspired to change the number of Vessel A's hull from MLC 5282 to MLC 5284. [note: 88]

(b) Against all defendants, save for MLC Shipbuilding, for wrongfully procuring MLC Shipbuilding's breach of Contract 5282. [note: 89]

(c) Against all defendants, save for MLC Shipbuilding, in the tort of conversion, for wrongfully changing the number of Vessel A's hull from MLC 5282 to 5284 and for the wrongful sale of Vessel A and/or Vessel B to a third party. [note: 90]

53 The plaintiff also advances a claim in detinue against all nine defendants. It avers that it has a sufficient interest in Vessel B to maintain a claim in detinue because the plaintiff has the right to possession of or a right to obtain delivery of Vessel B [note: 91] and that the defendants have wrongfully failed to deliver it up. The defendants ought therefore to be ordered to deliver up Vessel B to the plaintiff. [note: 92]

54 Further and in the alternative, the plaintiff seeks a remedial constructive trust over Vessel B in its favour. It claims that by virtue of the payments which it made under Contract 5282 and by virtue of certain representations by Mr Tan on which it relied, the defendants are acting unconscionably in refusing to deliver Vessel B to the plaintiff. [note: 93]

55 Also as an alternative claim, the plaintiff avers that the defendants have been unjustly enriched at the expense of the plaintiff. The plaintiff has paid the first to sixth instalments under Contract 5282. But it has suffered a total failure of consideration under that contract in that the defendants have failed entirely to perform their end of the bargain. Its case therefore is that it would be unjust for the defendants to retain those instalments. The plaintiff thus seeks restitution of the instalments paid to the defendants under Contract 5282. [note: 94]

56 Finally, the plaintiff seeks repayment of the Extra-Contractual Payments set out at [34] above, [note: 95] save only to the extent that these monies are applied towards the unpaid final instalment for Vessel B. [note: 96]

The defence and counterclaim

57 The participating defendants have presented a united defence. Their position is that MLC Shipbuilding's contractual relationship with the plaintiff is a matter purely between these two companies. The Tans assert that they cannot be liable for MLC Shipbuilding's defaults because it is a separate entity at law both from its shareholders and from the other MLC companies. [note: 97] Further, Redzuan alone ran MLC Shipbuilding and the Tans had no involvement in its day-to-day affairs.

58 The participating defendants also claim that neither the plaintiff nor MLC Shipbuilding is entitled to Vessel B. They accept that the plaintiff contracted with MLC Shipbuilding to construct and sell it a vessel under Contract 5282. But their case is that the plaintiff is merely the end buyer of Vessel B and that Contract 5282 is merely the final link in a contractual chain involving MLC Shipbuilding, MLC Barging, MLC Maritime, Jiangsu and Nantong Tongbao. [note: 98] It is their position that MLC Shipbuilding could not and cannot pass title to Vessel B to the plaintiff [note: 99] because that title never passed to MLC Shipbuilding under its contract with MLC Barging. That came about because MLC Shipbuilding failed to perform its contractual obligation to MLC Barging to make progress payments for Vessel B. That failure put MLC Shipbuilding in repudiatory breach of its contract with MLC Barging and brought that contract to an end. The plaintiff's very strong response to this aspect of the defence is that the contractual chain is nothing but a sham, constructed to defeat the plaintiff's claim.

59 The participating defendants deny any conspiracy by unlawful means. The Tans initially planned to build Vessels X and A for their own use. Subsequently, they decided to sell these two vessels because they were not being built to their expectations. [note: 100] When this happened, they changed the number of Vessel A's hull. The Tans plead that the plaintiff knew that they had changed the number of Vessel A's hull from MLC 5282 to MLC 5284 and that the plaintiff consented to this change. [note: 101] Somewhat inconsistently, the Tans also assert in their evidence that it was the plaintiff itself who asked for the number of Vessel A's hull to be changed.

60 As for the Extra-Contractual Payments, the participating defendants aver that these payments are personal loans by one Mr Choy Wang Kong ("Mr Choy"), a director of Simgood Holdings and the sole director of Full Mount, to Nantong MLC. Further, the defendants assert that a substantial amount of these Extra-Contractual Payments have been repaid and the remaining loan monies are to be applied as part of the purchase price of the vessel to be constructed under the 7807 Contract. [note: 102] In oral submissions, counsel for the plaintiff confirmed that US$3.1m of the Extra-Contractual Payments is to be treated as having been repaid. The participating defendants do not dispute this figure. [note: 103]

61 Finally, MLC Barging's and MLC Maritime's counterclaim seeks a declaration that the plaintiff does not own and has no right to possession of Vessel B. [note: 104]

The issues

62 From the foregoing, the issues which I have to determine in both the claim and counterclaim are:

(a) whether the contractual chain upon which the participating defendants rely to assert that the plaintiff has no right to Vessel B is genuine or a sham;

(b) whether the plaintiff consented to or asked for the number of Vessel A's hull to be changed;

(c) whether MLC Shipbuilding breached Contract 5282 and if so, what is the appropriate relief;

(d) whether the defendants are liable to the plaintiff in the tort of inducing a breach of contract, and if so which defendants;

(e) whether the defendants are liable to the plaintiff in the tort of conversion, and if so which defendants;

(f) whether the defendants are liable to the plaintiff in the tort of detinue, and if so which defendants;

(g) whether the defendants are liable to the plaintiff in the tort of conspiracy by unlawful means, and if so which defendants;

(h) whether the plaintiff is entitled to a remedial constructive trust over Vessel B;

(i) whether the plaintiff's claim against the defendants in unjust enrichment has been made out, and if so against which defendants;

(j) whether the defendants are obliged to repay the Extra-Contractual Payments, and if so which defendants; and

(k) whether the corporate veil between the defendants should be pierced, and if so, between which defendants.

The contractual chain

63 I shall deal first with the contractual chain issue. If the contractual chain asserted by the defendants is indeed genuine and not a sham, that finding is not only directly relevant to MLC Barging's and MLC Maritime's counterclaim but negates the plaintiff's claim for delivery of Vessel B on any ground.

64 In order to appreciate fully the participating defendants' defence, it is necessary to set out the contractual chain for both Vessel A and Vessel B because they are both relevant. Following the contractual chain is complicated, however, because the vessels are referred to in the contracts by their hull numbers. It will be remembered that in August or September 2008, the Tans changed the number of Vessel A's hull from 5282 to 5284 and re-assigned the number 5282 to Vessel B's hull.

65 Vessel A was built and delivered under the following contractual chain:

(a) By a shipbuilding contract dated 26 January 2007 ("Contract A1"), Jiangsu agreed to build, sell and deliver to MLC Maritime a vessel with hull number 5282. [note: 105]

(b) By Contract 5284 dated 5 April 2008, MLC Shipbuilding agreed to sell to Indoliziz a vessel with hull number 5284. [note: 106]

(c) By a shipbuilding contract dated 6 May 2008 ("Contract A2"), MLC Barging agreed to build and sell a vessel with hull number 5284 to MLC Shipbuilding.

(d) In or around September 2008 ("Contract A3"), Jiangsu and Nantong Tongbao agreed to

build, sell and deliver to MLC Maritime a vessel with hull number MLC 5284.

66 The Tans' case is that Contract A1 initially referred to Vessel A but, from September 2008, referred to Vessel B. That is why Contract A3 was necessary to replace Contract A1 as the top of Vessel A's contractual chain. That is also why Contract A3's date is out of sequence.

67 By the time delivery was due under the contracts in Vessel A's contractual chain, the number of Vessel A's hull was MLC 5284. [note: 107] Thus, in March 2009, Jiangsu delivered and passed title to Vessel A to MLC Maritime under Contract A3. MLC Barging delivered and passed title to Vessel A to MLC Shipbuilding under Contract A2. And MLC Shipbuilding delivered and passed title to Vessel A to Indoliziz's assignee, Simgaz under Contract 5284. Although there appears to be a missing link in the contractual chain for Vessel A since there is no contract under which MLC Maritime delivered and passed title to Vessel A to MLC Barging, no one now contends that title in Vessel A did not pass validly down the chain to Simgaz.

68 Vessel B was built and was to be delivered under the following contractual chain:

(a) By Contract 5282 dated 5 April 2008, MLC Shipbuilding agreed to sell to the plaintiff a vessel with hull number 5282.

(b) From the time Vessel B's hull was assigned the number MLC 5282 in September 2008, Contract A1 covered Vessel B and obliged Jiangsu to deliver Vessel B to MLC Maritime. [note: 108]

(c) By a shipbuilding contract entered into in August 2009 ("Contract B1"), MLC Barging agreed to build and sell a vessel with hull number 5282 to MLC Shipbuilding. [note: 109]

69 The participating defendants claim that MLC Maritime made payment for Vessel B to Jiangsu who paid these monies on to Nantong Tongbao. Once again, there appears to be a missing link in the contractual chain for Vessel B between MLC Maritime and MLC Barging. Once again, neither side takes any point on this missing link. Therefore, the participating defendants claim that it was necessary for MLC Barging to deliver and pass title to Vessel B to MLC Shipbuilding before the latter could deliver and pass title to the plaintiff. But MLC Shipbuilding did not pay MLC Barging for Vessel B under Contract B1. [note: 110] As such, it never acquired any title to Vessel B which it could pass on to the plaintiff. The necessary implication is that, on MLC Maritime's case, MLC Maritime continues to own Vessel B. [note: 111] It is on this basis that MLC Barging and MLC Maritime seek a declaration by counterclaim that the plaintiff has no right to possession, ownership or title in Vessel B.

The evidence of the contractual chain

70 The plaintiff submits the contractual chain is a sham created by the participating defendants to position themselves ahead of MLC Shipbuilding (as the plaintiff's vendor) in order to deny the plaintiff entitlement to Vessel B. The four main contracts in the chain that are in question are contracts A1, A2, A3 and B1. I will deal with the evidence of each contract in turn to see if they are genuine contracts or mere shams. Given that this case is about Vessel B only, the contractual chain relating to Vessel A does not go to the merits of the claim or the counterclaim. My findings on that contractual chain are, however, relevant to the credibility of the Tans.

Evidence of Contract A1

71 I find that Contract A1 is not a sham. The DBS loan facility letter at cl (2)(k)(i)(a) makes

specific reference to a shipbuilding contract dated 26 January 2007 executed between MLC Maritime and Jiangsu. [note: 112] This letter from DBS is dated 8 May 2007 and is close in time to the date of Contract A1. It is produced by a neutral party independent of any of the defendants. It raises a strong inference that Contract A1 is genuine.

72 The plaintiff relies on the fact that Contract A1 was not disclosed in discovery until only a week before trial to argue that it is a sham. In the absence of any allegation of forgery, I do not think the fact that it was disclosed late undermines the strength of the inference I can draw from the DBS loan facility letter about Contract A1.

73 I therefore find, on the balance of probabilities, that Contract A1 is genuine and is not a sham.

Evidence of Contract A2

74 Contract A2 is on its face a contract for the sale of a vessel between MLC Barging as seller and MLC Shipbuilding as buyer. Unlike Contract A1, there are no contemporaneous documents, whether originating from the defendants or from a third party, which corroborate Contract A2 as a genuine contract for the sale of a ship. MLC Shipbuilding and MLC Barging are two closely-related companies run by members of the same family. This is a factor that cuts both ways. I can accept that these two companies, because of their closeness, might have conducted their business with a degree of informality. It is therefore certainly possible that Contract A2 could have come into existence without any other surrounding communication. But it is also the case that if a sham contract is to be created, it can most easily be created where the counterparties are in such a close relationship.

75 The curious aspect of Contract A2 is that the language of the contract is more consistent with a shipbuilding contract than with a ship sale contract. [note: 113] Thus, Contract A2 makes references to the seller engaging a design consultant agreed by both parties (Art 1.4) and to the seller constructing the vessel in accordance with the specifications as approved by the Classification Society (Art 4.1). Again, I accept that it is possible that MLC Shipbuilding and MLC Barging documented their ship sale contract as a shipbuilding contract for innocent reasons. Indeed, a common theme in the defence of the participating defendants is that I should not hold it against them if their documentation is not in "tiptop" condition. Thus far I have been prepared to accede to this submission.

76 There is, however, a central difficulty in the evidence which I cannot permit the participating defendants to explain away as the result of poor documentation. The participating defendants' pleaded case is that at the time MLC Barging entered into Contract A2 with MLC Shipbuilding, it was a contract of sale for Vessel A. [note: 114] Appendix A of Contract A2 specifies the hull number of the vessel to which the contract applies as MLC 5284. [note: 115] So far, so good: this is consistent with the participating defendants' pleaded case that Contract A2 was for Vessel A, which bore hull number MLC 5284 upon completion.

77 But on 6 May 2008, the date on which Contract A2 was entered into, the number of Vessel A's hull was still MLC 5282. Vessel A's hull number changed *after* Contract A2's date, in July or August 2008. This discrepancy could be explained by the fact that when Contract A2 was entered into, both MLC Shipbuilding and MLC Barging knew that Vessel A's hull number was going to be changed in a few months' time. But the evidence does not bear this out. On Mrs Tan's own evidence, she was unsure in May 2008 whether she could change Vessel A's hull number. While she was aware of the possibility of a change – on her case, at the plaintiff's suggestion – when Contract A2 was executed, she stated that the change would be subject ultimately to the approval of Jiangsu. [note: 116] Therefore, when

MLC Barging and MLC Shipbuilding entered into Contract A2, she could not have been certain that the change would take place as it eventually did or that Contract A2 would cover Vessel A as it eventually did.

78 Mrs Tan confirmed this in cross examination when she said: [note: 117]

> A: On the 6th of May, [Redzuan] came to tell me that he has signed a contract but I cannot confirm that this switch is possible without going back to change the contract. I need to seek [Jiangsu] because [Jiangsu] is the one that is having a contract with the class society ABS. So although I signed it on the 6th of May, this conversation was about changing of hull number and all this thing but it was not---I can't confirm that it can be done although [Redzuan] tell me that he has this problem that he has signed a contract with the plaintiff for a 4 months delivery. But on my part, I say "I can enter a contract with you for 5284 but my delivery date is in July 2010", that means it's---it can be a new hull and I think in my ... AEIC, I did explain that. …"

79 The second part of Mrs Tan's answer is another reason why Contract A2 cannot have been entered into for Vessel A. The delivery date of the vessel under Appendix A of Contract A2 is "on or before end of July 2010". [note: 118] But at the time Contract A2 was entered into, Vessel A had been under construction for over a year. The plaintiff correctly points out that a delivery date more than two years away from the date of Contract A2 is inconsistent with that contract being for a vessel which had had its keel laid over a year earlier.

80 The fact that Mrs Tan could not be sure that the number of Vessel A's hull would be changed and the fact that the delivery date stipulated in Contract A2 is more consistent with a vessel whose keel had not yet been laid and whose construction had not yet commenced leads me to find that Contract A2 was not intended at the time of its execution to apply to Vessel A.

81 Mrs Tan then curiously took the position in cross-examination that it was not her pleaded case that Contract A2 applied to a vessel which had had its keel laid in April 2007 and which was under construction at the time Contract A2 was entered into. [note: 119] This was a clear *volte-face* from her pleadings which state unequivocally that Contract A2 was entered into for Vessel A, *ie*, a vessel which had had its keel laid in April 2007 and which was under construction at the time Contract A2 was entered into. [note: 120]

82 I find that Mrs Tan's shifts in evidence and the inconsistency between her evidence and her pleaded position cast serious doubt on her version of events. I thus find it likely that Contract A2 was created after this dispute arose in order to give the false impression that MLC Barging ranked ahead of the plaintiff as against MLC Shipbuilding in respect of Vessel A.

Evidence of Contract A3

83 It is the participating defendants who assert the existence of Contract A3. Section 106 of the Evidence Act (Cap 97, 1997 Rev Ed) therefore places the burden of proving that fact on them. In my view, the participating defendants have failed to establish on the balance of probabilities that Contract A3 exists. I say that for the following reasons.

84 First, the participating defendants' case is that MLC Maritime is a contracting party to Contract A3. I would therefore have expected the participating defendants to have been able to produce Contract A3 if it did truly exist and was genuine. If they could not produce either the original or a copy of Contract A3, I would have expected them to be able to produce at least some

contemporaneous evidence of negotiations or discussions from which the existence and terms of Contract A3 could be inferred. The participating defendants could do none of this. This failure weighs heavily against them and strongly suggests that no such contract exists. Indeed, Mrs Tan accepted in cross-examination that there was no Contract A3. [note: 121]

85 Second, the existence of Contract A3 is not supported by MLC Maritime's financial statements for the period in question. Those financial statements suggest that only one shipbuilding contract for one vessel existed at the material time.

86 I begin with the financial statement for the year ending 31 December 2007. That statement notes a loan under the heading "Non-Current Liability". The loan is tied to only one vessel. That is presumably Vessel A: the note refers to a vessel under construction and Vessel A was the only vessel under construction for MLC Maritime in December 2007. [note: 122] Note 5 and note 9 to this financial statement also refer to only one loan facility for only one vessel. The loan amount is US$5,950,000. This corresponds neatly with the DBS loan. The DBS loan facility letter refers to Contract A1 and was extended to MLC Maritime. These entries therefore clearly record Contract A1. This further supports the finding I have already made that Contract A1 is genuine.

87 Contract A3, if genuine, was entered into in or around September 2008. It is therefore not surprising that there is no entry matching Contract A3 in MLC Maritime's financial statement for the year ending 31 December 2007. But MLC Maritime's financial statement for the following year, the year ending 31 December 2008, also makes no reference to Contract A3. This statement continues to note a loan under "Non-Current Liability" which continues to relate to only one vessel. This note is carried forward from the preceding year's financial statement. I have found that it corresponds to the DBS loan facility and to Vessel A. [note: 123]

88 MLC Maritime's financial statement for the year ending 31 December 2009 [note: 124] also makes no reference to the existence of Contract A3.

89 If Contract A3 were indeed genuine, one would ordinarily expect MLC Maritime's financial statements to capture this, especially if those same statements capture Contract A1. The absence of any mention whatsoever of Contract A3 in the financial statements for the year ending 31 December 2008 and 31 December 2009 is therefore a material fact from which I infer that Contract A3 does not exist.

90 I do bear in mind that Contract A3 might not appear in MLC Maritime's financial statements simply because MLC Maritime took out no loan to finance its acquisition. But the participating defendants offer no explanation why MLC Maritime's financial statements do not capture Contract A3 when they do capture Contract A1. It is also the case that neither the original nor even a copy of Contract A3 was adduced in evidence. I do not find the Tans' oral testimony as to the existence of Contract A3 to be credible. Their oral evidence is not corroborated either directly or indirectly by any other evidence before me. The participating defendants have failed to prove on the balance of probabilities that Contract A3 exists.

91 My findings on the contractual chain relating to Vessel A do not go to the merits of the claim or of the counterclaim. Instead, they serve to undermine the credibility of the Tans' and of the participating defendants' defence.

92 I now turn to the contractual chain relating to Vessel B.

Evidence of Contract B1

Evidence of Contract B1

93 I start with Contract B1. This is said to be a shipbuilding contract by which MLC Barging agreed to build and sell a vessel with hull number 5282 to MLC Shipbuilding. But there is a material inconsistency in this contract itself. There are two versions of Contract B1 in evidence. One is undated. The other bears the date 16 April 2008. Mrs Tan's evidence is that Contract B1 was not signed on 16 April 2008 but was in fact signed on or about 6 August 2009 and left undated on its face. [note: 125] The participating defendants' pleaded position is also that Contract B1 was signed on or about 6 August 2009. [note: 126] Their case is that MLC Shipbuilding unilaterally and falsely inserted the date 16 April 2008 on Contract B1. This, Mrs Tan says, explains why she has two versions of Contract B1 exhibited to her affidavit of evidence in chief: one undated [note: 127] and one dated 16 April 2008. [note: 128]

94 Even if I were to accept Mrs Tan's unsupported oral assertion that this contract was entered into in August 2009 and unilaterally backdated by MLC Shipbuilding, it remains the fact that Contract B1 provides for delivery of the vessel in June 2009. That is a date two months before the contract was supposedly entered into. [note: 129] This makes no sense. Mrs Tan accepted, in cross-examination, that this is absurd. [note: 130]

95 Given this, I find that Contract B1 was not a genuine contract and was created after the fact to give the appearance that MLC Barging had rights over Vessel B. I make this finding even though Contract B3 is apparently referred to in a letter of demand dated 8 January 2010 sent by Ang & Partners on behalf of MLC Barging to MLC Shipbuilding. That letter demands payment of instalments under a contract of sale made in or about August 2009. [note: 131] To my mind, this letter of demand does not establish that Contract B1 is a genuine contract. All it establishes is that Contract B1 was in existence on 8 January 2010 and was given to MLC Barging's lawyers. It does not go so far to show that Contract B1 was indeed entered into on or about 6 August 2009. Much less does it show that Contract B3, whenever it was entered into, was intended to represent a genuine contract binding both parties.

Conclusion on the contractual chain

96 In conclusion, I find that only Contract A1 is genuine. I am wholly unable to find on the balance of probabilities that the other contracts are genuine. Those findings collapse the contractual chain through which MLC Barging and MLC Maritime assert rights in Vessel B. For this reason, MLC Barging's and MLC Maritime's counterclaim must fail. I have therefore dismissed it.

97 I also find that the participating defendants assert the existence of these contracts in order now to create the impression that these contracts vested in them rights which come ahead of any right the plaintiff may have through its contract with MLC Shipbuilding. On the evidence before me, the participating defendants have failed to prove that the contracts creating this impression are genuine.

The change of Vessel A's hull number

98 I now turn to consider whether the plaintiff consented to or asked the Tans to change the number of Vessel A's hull. This raises a larger factual question as to why the Tans changed the number of Vessel A's hull. I will deal with each question in turn.

Did the plaintiff ask for the change?

99 The participating defendants accept that the Tans changed the number of Vessel A's hull and re-assigned it to Vessel B's hull, but say that it was done only at the plaintiff's request. Their case is that they had no reason to change the number of Vessel A's hull from MLC 5282 to MLC 5284. [note: 132] It was only the plaintiff, they say, who had a clear reason to ask for the change.

100 To establish their case on this point, the participating defendants rely on a document entitled "Analysis of Total Payments to MLC Shipbuilding Sdn Bhd as at 31 December 2009" to show that the plaintiff obtained financing for MLC 5284 on 7 October 2008 from EON Bank. They also rely on documents from Maybank to show that the plaintiff obtained financing for MLC 5282 later, not until 21 January 2009, and that the funds were disbursed only on 18 June 2009. [note: 133] Vessel A, whose hull initially bore the number MLC 5282, was completed on 19 March 2009 (see [35] above), before the funds from Maybank were disbursed. Therefore, the participating defendants say, the plaintiff had a clear reason to ask for the hull number of Vessel A to be changed to MLC 5284: the change allowed the plaintiff to apply the funds obtained from EON Bank (earmarked for MLC 5284) towards Vessel A, given that they could not yet draw on the Maybank funds (earmarked for MLC 5282).

101 The participating defendants further assert that Steven Lau informed Redzuan sometime before May 2008 that he expected EON Bank to release the funds for the vessel with hull number MLC 5284 in October 2008. At that time, the keel for Vessel B had not yet been laid and the number of Vessel A's hull was still MLC 5282. As Steven Lau was keen for the loan to go through, he and Redzuan discussed a way for the loan to be disbursed and came up with the idea to change the number of Vessel A's hull to MLC 5284. They then suggested the idea to the Tans. Mr Tan even had to check with Steven Lau as to how he wanted the change of hull numbers to be done and to sort out the details of the change. [note: 134] While the Tans and Jiangsu were initially hesitant, they eventually agreed to the change since it would assist the plaintiff to secure financing.

102 The plaintiff denies that it ever asked the participating defendants to change the number of Vessel A's hull. Steven Lau filed a supplementary affidavit of evidence in chief rejecting categorically the allegation that he had had any conversation or discussion with Redzuan in relation to changing the hull numbers. [note: 135] This evidence was not challenged in cross-examination. Steven Lau also clarified that he was not involved in any of the plaintiff's financing or loan arrangements for the vessels including the arrangement with EON Bank, and therefore did not have the necessary knowledge to have discussed with Redzuan changing the number of Vessel A's hull for the reason now put forward by the participating defendants.

103 I prefer Steven Lau's evidence to that of the participating defendants. I find the participating defendants' assertion that the plaintiff requested the change of hull numbers to be nothing more than an afterthought. This assertion is not mentioned anywhere in the participating defendants' pleadings. It emerged for the first time only when the Tans filed their affidavits of evidence in chief a few days before trial. If it was indeed the plaintiff who asked the Tans to change the hull numbers, this is a point which, on any view, would have formed a central plank of the participating defendants' defence. Instead, their pleaded defence takes the position that the plaintiff consented to the change of hull numbers, not that the plaintiff asked for it. These two positions are inconsistent. If the plaintiff had indeed asked for the change in hull numbers, the question of their consent would not even arise. I therefore reject the participating defendants' evidence that the plaintiff asked for the change of hull numbers. I prefer the evidence of Steven Lau. I find, on the balance of probabilities, that the plaintiff never made any request to change the number of Vessel A's hull.

104 This conclusion is further strengthened by the plaintiff adducing evidence that the plaintiff's

financing from EON Bank was not specific to a vessel with hull number 5282. [note: 136] There was therefore no need or reason for the plaintiff to ask the Tans to change the number of Vessel A's hull in order to draw on the financing from EON Bank.

Did the plaintiff consent to the change?

105 I now turn to consider the participating defendants' alternative case that the plaintiff consented to the change of hull numbers. The participating defendants do not rely on express consent. Instead, they invite me to infer consent from the circumstances.

106 The participating defendants rely on two main grounds to invite me to infer that the plaintiff consented to the change of the number of Vessel A's hull. First, Steven Lau visited the shipyard in April 2008 and saw two vessels being constructed. Mr Tan then instructed his employee to send an email to Steven Lau on 10 July 2008. Attached to this email were photographs showing the progress of the two vessels being constructed. [note: 137] These vessels had hulls numbered 5281 and 5282. From this, they say, it should be inferred that the plaintiff knew that the number of Vessel A's hull had initially been 5282.

107 Thereafter, the plaintiff stationed their own representative, Vincent Lee, at Nantong MLC's shipyard in order to observe the construction of the vessels. Vincent Lee regularly updated the plaintiff and other members of the Simgood Group on the progress of the construction of Vessel A and Vessel B. [note: 138] The participating defendants rely specifically on an email sent on 11 March 2009 in which Vincent Lee states that official amendments had to be made to the "ABS binding certificates" because the certificates reflect hull number 5282 whereas the true hull number is 5284. [note: 139] Vincent Lee also signed the re-issued keel laying certificate for Vessel A, in which its hull number was changed from 5282 to 5284, and the keel-laying certificate for Vessel B, where the hull number was reflected as 5282. [note: 140] These two certificates are not dated. Given all this, the participating defendants argue that the plaintiff must be taken to have consented to the change in the number of Vessel A's hull.

108 The plaintiff's position is that Mr Tan told Steven Lau in February 2009 that there had been a "paperwork mess-up" and that he therefore needed to change the number of Vessel A's hull from 5282 to 5284. [note: 141] This was almost six months after the number of Vessel A's hull had in fact been changed. Steven Lau also testified that he had always thought of Vessel A by its name, Simgood 12, and not by the number of its hull. He did not know that the vessel had initially been constructed under a different hull number and he did not know of any change in the number of its hull. [note: 142] He does, however, acknowledge that Vincent Lee's emails and progress reports do refer to the number of Vessel B's hull as being 5282. In spite of this, he says, he was not aware that the number of Vessel A's hull was initially 5282.

109 I find Steven Lau's evidence to be credible. As a buyer, he would be more concerned with the progress of the construction of a particular vessel. As the end buyer, it would not be surprising for him to keep track of the vessels by their name and not by their hull numbers. Therefore, even though Vincent Lee sent him emails and progress reports on the vessels, it cannot be assumed that Steven Lau took notice of the fact that the Tans had changed the hull numbers. As for the email on 11 March 2009 which stated that amendments had to be made to certain certificates (see [107] above), this was sent after Steven Lau had been told by Mr Tan that there had been a "paperwork mess-up". In these circumstances, it is not surprising that Steven Lau should accept this explanation at face value.

110 As for the keel-laying certificates signed by Vincent Lee, it is clear that he lacked the authority, on his own, to authorise such a fundamental change on behalf of the plaintiff. This point was also acknowledged by Mrs Tan in cross-examination. [note: 143] No evidence that he ever sought approval for the changes was adduced.

111 I therefore find that the plaintiff became aware of the change in hull numbers only in February 2009, when Mr Tan told Steven Lau – falsely, as I will explain below – that there had been a "paperwork mess-up". Because Steven Lau was given inadvertence as an explanation, he did not then note or object to the change in the hull numbers. Given that Steven Lau was labouring under this false impression created by Mr Tan, I cannot draw any inference that the plaintiff consented, in the true sense of the word, to the change in the hull numbers when it found out about the change in February 2009.

The true motivation behind the change

112 I turn now to consider why the Tans changed the hull numbers. MLC Barging obtained the DBS loan facility from DBS Bank on 8 May 2007. The facility was tied to the construction of a vessel with hull number MLC 5282. Initially, this was Vessel A. By 16 June 2008, MLC Maritime had drawn a total of US$4.85m on the DBS loan facility to finance the construction of Vessel A. In August 2008, as Vessel A was nearing completion, Mrs Tan set out the options available to the participating defendants in an email to Redzuan. [note: 144] The first option was to repay DBS US$9.7m being the sums drawn for the construction of both Vessel A and Vessel X. The second option was to continue the financing from DBS. But the second option required changing the hull numbers of Vessel A and Vessel X. In Mrs Tan's own words: "If we choose this option, ... we have to swap the Hull No. MLC 5283 to MLC 5281 [Vessel X] & Hull No. MLC 5284 to MLC 5282 [Vessel A]". Redzuan replied a few hours later: "Option Two". That is why the Tans came to change the number of Vessel A's hull from MLC 5282 to 5284.

113 On 1 October 2008, after the number of Vessel A's hull had been changed to MLC 5284 and hull number MLC 5282 had been re-assigned to Vessel B, Mrs Tan sent another email to Redzuan in which she said: [note: 145]

> ...
>
> The Hull No. of these two vessels have been changed to MLC 5283 (from MLC 5281) & 5284 (from MLC 5282). Since MLC 5283 & 5284 belong to [MLC Shipbuilding], [MLC Shipbuilding] would have to assist in servicing these two loans.
>
> The problem is how to show in our books that [MLC Shipbuilding] is paying to MLC Carrier (Owner for MLC 5281) & MLC Maritime (owner for MLC 5282) as the hull no. now has been changed to MLC 5283 & 5284 and these two hull no belong to [MLC Shipbuilding].
>
> We cannot inform DBS of the changes in Hull No because the loan has been drawn down & all the security documents have been executed. In view of this, we are currently building two new hulls (MLC 5281 & 5282) for replacement. So far we have drawn down US$4,850,000 for each vessel. The loan for each vessel is US$5,950,000.00. …
>
> In my opinion is [MLC Shipbuilding] pay the whole monthly loan amount of USD178,528 to MLC Maritime and we will treat this as deposit for MLC 5282 since this vessel has been sold to Steven, [MLC Shipbuilding] would buy this vessel from MLC Maritime when it is ready for delivery. By then,

we will inform DBS bank that MLC 5282 vessel has been sold to [MLC Shipbuilding]. MLC Maritime would then loan MLC Carrier half of the amount to service the loan for MLC 5281.

114 I have reproduced this email at length because it shows very clearly the true intent of the participating defendants in changing the number of Vessel A's hull. The Tans did so as part of a calculated plan to postpone their companies' obligation to repay or refinance their debt to DBS. The DBS loan facility was tied to a vessel with hull number MLC 5282. Before the hull numbers were changed, that was Vessel A. Vessel A was nearing completion. With Vessel A's hull number now re-assigned to Vessel B, the DBS loan was now on its face tied to Vessel B, a vessel whose keel had not yet been laid. This allowed the participating defendants to deliver Vessel A to the Simgood group without having, at the same time, to repay DBS or refinance the DBS loan.

115 The change of hull numbers served only the interests of the participating defendants. The fact of the change was made known to the plaintiff well after the fact, and the purpose of the change was never made known to the plaintiff. Instead, the plaintiff was deliberately misled into believing that the change was needed to resolve the defendant's "paperwork mess-up". It is disingenuous for the participating defendants to turn around and claim, in those circumstances, that the plaintiff consented to the change. The participating defendants were fundamentally dishonest in their dealings with the plaintiff and, indeed, with DBS. It is somewhat surprising that the plaintiff did not mount an alternative case in fraud or deceit. [note: 146]

116 In cross-examination, Mrs Tan claimed that she had spoken to DBS and that they agreed to the Tans' changing the number of Vessel A's hull. [note: 147] This was another allegation that was found nowhere in the participating defendants' pleadings. As she admitted, it was also found nowhere in her affidavit of evidence in chief. It was wholly unsupported by any documentary evidence whatsoever.

117 I also find it hard to believe that DBS would have agreed to the change of hull numbers – as claimed by Mrs Tan – over the phone and without following up in writing. A hull number is fundamental to the identity of a vessel under construction. More importantly, the change prejudiced their security. Vessel A was nearly complete, and therefore of substantial value roughly commensurate with the amount advanced against it. On the other hand, Vessel B was at a very early stage of construction, and therefore worth far less, both in absolute terms and also relative to what DBS had advanced. Furthermore, Mrs Tan's failure to mention that DBS had agreed to the change in her affidavit of evidence in chief puts her claim to have spoken to DBS in serious doubt. I cannot find on the balance of probabilities that DBS was even informed of the change of hull numbers, let alone that DBS agreed to it.

118 Another point which emerges from the email reproduced above is the reason the participating defendants created the contractual chain. The plaintiff suggests that the contractual chain through which MLC Barging and MLC Maritime now claim an interest in Vessel B ahead of the plaintiff and which I have found to be spurious was created in an attempt wrongfully to appropriate Vessel B away from the plaintiff. While I have found the defendants to have been dishonest in changing the hull numbers, I do not think that their dishonesty rose to such a level that they intended from the very beginning to deprive the plaintiff of Vessel B. The chain of contracts was created to cover the participating defendants' tracks after the change of hull numbers and so as not to alert DBS. This is why Mrs Tan speaks of the problem of showing on their books that MLC Shipbuilding was now paying MLC Maritime after changing the hull numbers. After the change, the number of Vessel B's hull was 5282. The participating defendants now had to find a way to transfer this vessel back to MLC Shipbuilding. This also explains why they entered into a contract for the purported sale of Vessel B to MLC Shipbuilding.

119 Therefore, I do not accept the plaintiff's submission that the participating defendants created the contractual chain specifically in order to appropriate Vessel B to themselves, even though that is the purpose to which they now put the contractual chain in this action. This finding, however, does not change the fact that the contractual chain was a sham intended to give the impression that there were intervening contracts and rights in Vessel B when there were in fact none.

120 With these factual findings in mind, I now turn to address each specific cause of action pleaded by the plaintiff.

The claim for breach of Contract 5282

121 The plaintiff can sustain a claim for breach of contract only against MLC Shipbuilding. Contract 5282 is the only contract on which the plaintiff relies in this action. The only counterparty to that contract is MLC Shipbuilding.

122 Pursuant to Art 7.1 of Contract 5282 (see above at [42]), MLC Shipbuilding undertook a contractual obligation to deliver to the plaintiff a vessel matching the specifications set out in that contract by 7 June 2009. In exchange, the plaintiff undertook a contractual obligation to make payment for the vessel by instalments. The plaintiff has performed its end of the bargain but MLC Shipbuilding has delivered no vessel whatsoever to the plaintiff. It is true that the final instalment of US$2.05m has not yet been paid by the plaintiff. But since that instalment is due contractually only upon delivery (see [28] above), the time for the plaintiff to perform this obligation has not yet arrived. The plaintiff is not, therefore, itself in breach of contract. MLC Shipbuilding has offered no contractual justification for its failure to deliver a vessel to the plaintiff in accordance with Contract 5282. I therefore hold that MLC Shipbuilding is in breach of Contract 5282.

123 I now consider the appropriate relief for MLC Shipbuilding's breach of contract. Although the plaintiff's prayer for relief in respect of this claim is phrased as an order for delivery up of Vessel B against payment of the final instalment to MLC Shipbuilding, [note: 148] it is common ground that what the plaintiff seeks is an order that MLC Shipbuilding specifically perform its contractual obligation to deliver a vessel to the plaintiff by delivering Vessel B to the plaintiff.

Should the plaintiff be granted specific performance?

124 The plaintiff seeks an order that MLC Shipbuilding deliver Vessel B to the plaintiff under s 52(1) of the Sale of Goods Act. [note: 149] Section 52(1) provides:

> In any action for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the plaintiff's application, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

Preliminary point on governing law

125 I make a preliminary point about the governing law of Contract 5282. Art 13.2 of Contract 5282 provides that the contract "shall be governed by and construed in accordance with English law". [note: 150] Neither party has pleaded, proved or submitted on English law. Both parties have assumed instead that Singapore law governs Contract 5282. [note: 151] I have therefore proceeded on the basis – both as to the plaintiff's right as well as to its remedy – that English law is the same as

Singapore law (see *Goh Chok Tong v Tang Liang Hong* [1997] 1 SLR(R) 811 at [84]; *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [43]; *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [58] and [62]).

The relationship between s 52(1) and specific performance

126 Before s 52(1) of the Sale of Goods Act was enacted, specific performance of an obligation to deliver goods under a contract for the sale of goods was a remedy based purely in equity. The remedy now has a statutory basis in s 52(1). The principles of equity, however, remain relevant to the statutory remedy (see Michael Bridge, *Benjamin's Sale of Goods* (Sweet & Maxwell, 9th Ed, 2014) ("Benjamin's Sale of Goods") at para 17-097). The words "may, if it thinks fit" in s 52(1) show that the statutory remedy is no more available as of right as is the equitable remedy of specific performance (see also Benjamin's Sale of Goods at para 17-099).

127 The power to make an order under s 52(1), however, is enlivened only where the action is for the breach of a contract to deliver "specific or ascertained goods". Contract 5282 was not a contract to deliver specific goods. "Specific goods" is defined in s 61(1) of the Sale of Goods Act as "goods identified and agreed on at the time a contract of sale is made". This definition requires the parties to identify and agree upon the particular goods to be delivered under the contact at the time they enter into the contract. The language of s 61(1) implies that a contract is for the sale of specific goods only if the goods in question are in existence at the time of the contract, even if those goods may not yet be within the seller's ownership. I say that because it is difficult to see how the parties can "identify" goods which do not even exist. At the time the parties entered into Contract 5282, Vessel B's keel had not yet been laid nor was its hull in existence and in a position to be assigned a number. Contract 5282 is therefore not a contract for the delivery of specific goods with respect to Vessel B. I therefore consider whether it was a contract to deliver ascertained goods with respect to Vessel B.

128 "Ascertained goods" is not defined in the Sale of Goods Act. In *Thames Sack and Bag Co Ltd v Knowles & Cl Ltd* (1918) 88 LJKB 585, the court held that "'ascertained' means that the individuality of the goods must in some way be found out, and when it is, then the goods have been ascertained" (at 588). Contract 5282 can be a contract of the sale of "ascertained goods" within the meaning of s 52(1) with respect to Vessel B only if, at some point in time after the parties entered into Contract 5282, they unequivocally identified Vessel B as the individual vessel which MLC Shipbuilding was to deliver to the plaintiff under that contract. I find that the parties did so for two reasons.

129 First, the preamble of Contract 5282 makes clear that it is a contract to build a vessel and to deliver that same vessel once built. [note: 152] Contract 5282 stipulated that the vessel was to match the specifications provided in Art 1.2 of that contract. Article 1.2 further stipulated that the vessel to be built and delivered was to have the hull number MLC 5282. Vessel B was built according to these specifications and was assigned hull number MLC 5282 in September 2008 (see [32] above). It continued to bear that hull number until it was launched in September 2009 (see [36] above). It is to my mind immaterial that Vessel A had been assigned hull number MLC 5282 from April 2007 to July or August 2008 (see [31] above). The threshold question under s 52, insofar as it relates to ascertained goods, must be tested with regard to Vessel B. It was Vessel B whose hull bore the number MLC 5282 at the time it was launched. It was therefore Vessel B which satisfied the description in Contract 5282 at the moment that the obligation to deliver arose under Contract 5282.

130 Second, it was consistently represented to the plaintiff that Vessel B was the vessel to be delivered to the plaintiff under Contract 5282. When Vessel B's keel was laid in September 2008, a certificate was issued which identified the vessel by its hull number, MLC 5282, and which recognised

the Simgood Group as the purchaser of that vessel. [note: 153] It is true that the builder on the face of the certificate was Nantong Tongbao and not MLC Shipbuilding. To that extent, it could be argued that the certificate is an act of Nantong Tongbao and not one of MLC Shipbuilding. But it is not seriously disputed that MLC Shipbuilding represented to the plaintiff that Vessel B was being constructed for delivery under Contract 5282. In addition to this, a letter dated 17 December 2010 from Nantong MLC to the plaintiff, issued after Vessel B had been completed and launched, stated in no uncertain terms that the vessel bearing hull number MLC 5282 at that time and named Simgood 15 was built for and intended for the plaintiff. That vessel is none other than Vessel B.

131 In light of this overwhelming evidence, I find that Contract 5282 was a contract to deliver ascertained goods with respect to Vessel B. I therefore consider that the plaintiff has satisfied the threshold condition in s 52(1), enlivening my discretion to order specific performance of Contract 5282 under that section.

Specific performance of a contract for the sale of a ship

132 There is clear authority that specific performance is available for contracts that involve the sale of a ship. In *C N Marine Inc v Stena Line A/B and Regie Voor Maritiem Transport (The "Stena Nautica") (No 2)* [1982] 2 Lloyd's Rep 336 ("*The Stena Nautica (No 2)*"), Lord Denning MR explained as follows (at 347):

> … Specific performance can be made in the case of a ship: but in this case, on the findings of the Judge and in the situation as we know it, it seems to me that damages would be an adequate remedy. In those circumstances, as a matter of discretion, it seems to me that this is not a case for any order for specific performance. …

May LJ, agreeing with Lord Denning MR, said (at 348):

> … I entirely agree, that as a matter of law an order for specific performance can be made in respect of a ship. Per contra, it in no way follows that there should be an order for specific performance in respect of every contract for the sale of a ship.
>
> As I understand the law – and again I do not propose to refer to authorities in detail – the fundamental question on this issue of specific performance is ... are damages an adequate remedy? That, I think, may well give rise to difficulties in certain cases when one then asks the further question – what is meant by the word "adequate"? In *Evans Marshall & Co. Ltd. v. Bertola*, [1973] 1 Lloyd's Rep. 453; [1973] 1 W.L.R. 349 an alternative way of phrasing the question was suggested with which, with respect, I entirely agree and which I prefer, and that is this:
>
> > Is it just in all the circumstances for the plaintiff to be confined to his remedy in damages?
>
> That clearly indicates that the onus in cases such as this is upon the plaintiff to satisfy the Court that damages would not deal justly with his claim, would not be adequate, and that he should not therefore be confined to them.

133 In *Behnke v Bede Shipping Co Ltd* [1927] 1 KB 649, the plaintiff brought an action against the owners of a ship seeking a declaration that he had purchased the ship by contract from the defendants and seeking, among other relief, an order for specific performance of the contract. Wright J granted an order for specific performance because it was the only way that justice could be satisfied (at 662). He explained (at 660-661):

> It remains to consider what is the proper remedy. The plaintiff claims a decree of specific performance. This claim is strongly contested on behalf of the defendants. It is curious how little guidance there is on the question whether specific performance should be granted of a contract for the sale of a ship. Sect. 52 of the Sale of Goods Act gives the Court a discretion, if it think fit, in any action for breach of contract to deliver specific or ascertained goods, to direct that the contract shall be performed specifically. I think a ship is a specific chattel within the Act. …
>
> In the present case there is evidence that the [ship] was of peculiar and practically unique value to the plaintiff. She was a cheap vessel, being old, having been built in 1892, but her engines and boilers were practically new and such as to satisfy the German regulations, and hence the plaintiff could, as a German shipowner, have her at once put on the German register. A very experienced ship valuer has said that he knew of only one other comparable ship, but that may now have been sold. The plaintiff wants the ship for immediate use, and I do not think damages would be an adequate compensation. I think he is entitled to the ship and a decree of specific performance in order that justice may be done. …

134 In Gareth Jones and William Goodhart, *Specific Performance* (Butterworths, 2nd Ed, 1996) ("*Jones and Goodhart*"), the authors summarise the factors taken into account when deciding whether to order specific performance of a contract for the sale of a ship (at pp 152-153): (a) the peculiar and practically unique value of the ship to the plaintiff; (b) whether the plaintiff wants the ship for immediate use; (c) whether the plaintiff would be in great difficulty, if he did not get the ship, in establishing what the purchase price should be; (d) whether the plaintiff has made contingency plans involving the use of other vessels; and (e) whether the defendant would be able to satisfy any damages awarded.

135 With respect to the last of these factors, Benjamin's Sale of Goods takes the position that an order for specific performance is unlikely to be made when the seller becomes insolvent after he has received the price from the buyer but before he has delivered the goods because such an order would give the buyer priority over other creditors of the seller by taking the goods out of the seller's estate (at para 17-100). *Jones and Goodhart* takes a similar position even if the goods have been ascertained (though the property in them has not yet passed to the buyer). I also note that s 52 operates independently of property passing (*James Jones & Sons Limited v Earl of Tankerville* [1909] 2 Ch 440 at 445). It is not the plaintiff's case in this action that property in Vessel B, in the legal sense, ever passed to the plaintiff.

136 I have very little to go on by way of evidence as to MLC Shipbuilding's status and financial position. Although MLC Shipbuilding has been served with process in this action, it has not participated in these proceedings. I therefore have no evidence directly from MLC Shipbuilding itself. Mr Tan makes the bare assertion in his affidavit of evidence in chief that MLC Shipbuilding is "defunct and/or liquidated". But there is no evidence what type of liquidation that is: whether it is an insolvent creditors' liquidation or a solvent members' liquidation. The result is that I have no evidence of sufficient weight on this factor to be taken into consideration in the exercise of my discretion under s 52(1) of the Sale of Goods Act.

137 The remaining four factors identified in [133] above are a guide to assist the court in determining the main question, framed in accordance with May LJ's preferred formulation in *The Stena Nautica (No 2)*: is it just in all the circumstances for the plaintiff to be confined to his remedy in damages? It is this question to which I now turn.

138 To the plaintiff and for its purposes, Vessel B is unique. In *Blue Sky One Ltd and others v Mahan Air and another; PK Airfinance US Inc v Blue Sky Two Ltd and others* [2009] EWHC 3314

(Comm), it was recognised that even if ships or aircraft are not physically unique, they may be "commercially unique" because buying or obtaining substitutes by other means would be so difficult or so delayed that it would seriously interrupt a claimant's business (at [314]). Vessel B is commercially unique to the plaintiff because it was built according to the plaintiff's specifications based on the requirements and standards of the plaintiff's intended charterers, *ie*, the oil companies, so as to allow the plaintiff to take advantage of a business opportunity it had identified. The circumstances of this case also show that it would take a substantial period of time for the plaintiff to commission and take delivery of a substitute vessel of the same specifications. All of this points towards the exercise of my discretion to order MLC Shipbuilding to deliver Vessel B to the plaintiff under s 52(1) of the Sale of Goods Act.

139 Contract 5282 is, however, not just a contract to deliver a ship but also a contract to build a ship. In *Gyllenhammar & Partners International Ltd and others v Sour Brodogradevna Industrija* [1989] 2 Lloyd's Rep 403, Hirst J opined in the context of a shipbuilding contract (at 422):

> The final issue was as to the need for supervision, or, as the test has been framed more recently, whether the contract has a sufficient definition of what has to be done in order to comply with an order for specific performance. Here I need say no more than that the voluminous specification shows that this is a very complex contract requiring extensive co-operation between the parties on a number of matters, in particular modifications, optional variations, and, perhaps most important of all, matters of detail (some by no means unimportant) left undefined in the specification. In my judgment these factors, coupled with the consideration that the work would take place in a foreign yard outside the Court's jurisdiction, would tell strongly against an order for specific performance being in principle appropriate in the present case.

140 These considerations would equally have weighed heavily against an order for MLC Shipbuilding to deliver Vessel B to the plaintiff if it were still under construction. But Vessel B is in fact complete and afloat. An order under s 52(1) of the Sale of Goods Act would require MLC Shipbuilding to do no more than simply deliver Vessel B to the plaintiff. There is no question of having to supervise the construction of a vessel.

141 Weighing all the factors, it seems to me that it would not be just in all the circumstances for the plaintiff to be confined to its remedy in damages. I have therefore exercised my power under s 52(1) of the Sale of Goods Act and ordered that MLC Shipbuilding deliver Vessel B to the plaintiff, subject only to the plaintiff paying MLC Shipbuilding the final instalment of US$2.05m under Art 2.3 of Contract 5282.

The indemnity for defective construction

142 The plaintiff also seeks an indemnity in respect of the costs of rectifying any defects which may be found in Vessel B upon delivery. The plaintiff, however, has not put forward any evidence that Vessel B has any such defects or to demonstrate the basis on which it was claiming this indemnity. It did not point to any contractual right to an indemnity which has been triggered. There is simply no basis for me to award an indemnity for potential but unproven defects in the construction of Vessel B. I therefore dismiss this part of the plaintiff's claim.

The claim for inducing a breach of contract

143 The plaintiff argues that the remaining defendants have induced MLC Shipbuilding to breach its contract with the plaintiff. The tort of inducing a breach of contract is committed when a defendant, without reasonable justification or excuse, knowingly procures or induces a third party to break his

contract with the plaintiff, thereby causing loss to the plaintiff (*Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [16]). There must also be a sufficient causal connection between the defendant's acts and the third party's breach (*OBG Ltd and another v Allan and others* [2008] 1 AC 1 ("*OBG*") at [36]).

144 The plaintiff is not entirely consistent in asserting which of the other eight defendants it says are liable in this tort. Its pleaded position is that all of the eight other defendants are liable. But its submissions concentrate only on MLC Maritime and the Tans. I will nevertheless consider its pleaded position.

145 The main difficulty in the plaintiff's case for inducing breach of contract is the lack of a causal link between the acts of the defendants which are argued to be the tortious inducements and MLC Shipbuilding's breach. The plaintiff's case is that the acts of changing the hull numbers and of appropriating Vessel B away from the plaintiff through the contractual chain are inducements which caused MLC Shipbuilding to breach its contract with the plaintiff. I have already found that the contractual chain was not created by the participating defendants for the purpose of appropriating Vessel B away from the plaintiff, although that is the use to which they put it now. Even if I take the plaintiff's case at its highest by assuming that the contractual chain was created for that alleged purpose, I fail to see how this caused Vessel B not to be delivered to the plaintiff in breach of Contract 5282. There is no evidence to show that the chain of contracts prevented MLC Shipbuilding from delivering Vessel B. Similarly, there is no causal connection between the change of hull numbers and MLC Shipbuilding breaching Contract 5282. Without the necessary causal connection between any of the other eight defendants' alleged acts of inducement and MLC Shipbuilding's breach of Contract 5282, those defendants cannot be liable in the tort of inducing breach of contract.

146 There is yet another difficulty in the plaintiff's case. The case for inducing MLC Shipbuilding's breach of Contract 5282 as against Mr Tan and Redzuan is brought against them in their capacity as directors of MLC Shipbuilding. It is well established that a director is not liable to a third party for inducing or procuring the breach of contract by the company of which he is a director if: (i) he is acting *bona fide* in the discharge of his office as a director; and (ii) he is acting within the scope of his authority (*Said v Butt* [1920] 3 KB 497 at 506; *Chong Hon Kuan Ivan v Levy Maurice and others* [2004] 4 SLR(R) 801). The plaintiff has made no attempt to show that this rule does not operate to bar its claim against these two defendants.

147 For the above reasons, the plaintiff's claim for inducing breach of contract against the second to ninth defendants is dismissed.

The claim in conversion

148 The plaintiff pursues a claim in conversion against the second to ninth defendants. The conversion is said to have come about in two ways. First, by these eight defendants wrongfully changing the number of Vessel A's hull. Second, by these eight defendants wrongfully selling Vessel B to a third party. There was no evidence available at trial that Vessel B had been wrongfully sold to a third party. The plaintiff discovered after the trial (and indeed after judgment) that Vessel B may in fact have been sold (see [214] below). To the extent that that is in fact what has happened, I do not consider that this judgment raises any *res judicata*, creates any estoppel or precludes the plaintiff by the doctrine of abuse of process from pursuing a claim against any of the defendants in conversion arising from their involvement in an actual sale or disposal of Vessel B which is based on evidence which the plaintiff did not have available to it at this trial and which it could not have obtained by exercising reasonable diligence for this trial.

149 Therefore, the plaintiff's claim in conversion against the second to ninth defendants in this action rests only on the argument that changing the number of Vessel A's hull amounted to the defendants acting in a manner which was inconsistent with the plaintiff's rights to Vessel A.

150 Generally, an act of conversion occurs when there is an unauthorised dealing with the claimant's chattel as to question or deny his title to it (*Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 ("*Tat Seng Machine Movers*") at [45] citing *Clerk & Lindsell on Torts* (Anthony M Dugdale & Michael A Jones gen eds) (Sweet & Maxwell, 19th Ed, 2006) at para 17-06). A conversion is a single wrongful act. The cause of action accrues at the date of the conversion (*General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd* [1963] 1 WLR 644 ("*General and Finance Facilities*") at 648). In *The "Endurance 1" ex "Tokai Maru"* [2000] 2 SLR(R) 120, G P Selvam J described the tort of conversion as follows (at [30]):

> … The common law concept of conversion is too elusive to be expressed in words. This is because of the multifarious forms in which it may manifest itself. It is like a hydra with many heads. There can be conversion by taking, by wrongful detention, by wrongful delivery, by wrongful disposition or by wrongful interference. It may be based on possession, ownership or possessory title. …

151 To have the requisite standing to sue in conversion, a plaintiff must have had, at the time of the act of conversion, actual possession of the converted goods or a right to immediate possession of the converted goods founded on a proprietary right (*Tat Seng Machine Movers* at [49] citing *The Cherry* [2003] 1 SLR(R) 471 at [58]). The plaintiff has never had either actual possession of Vessel A or a right to immediate possession of Vessel A founded on a proprietary right.

152 It is also possible as a matter of law that a plaintiff who has a right to immediate possession of the converted goods founded on a contractual right rather than a proprietary right has standing to sue in conversion. In other words, the plaintiff can succeed in conversion only if it can establish that it had a contractual right to immediate possession of Vessel A at the time its hull number was changed and that that suffices for it to have standing to sue in conversion.

153 The case of *Jarvis v Williams* [1955] 1 WLR 71 ("*Jarvis*") is often cited as authority that a mere contractual right to possession is insufficient to found an action in conversion. In *Government of the Islamic Republic of Iran v The Barakat Galleries Ltd* [2009] QB 22 ("*Barakat Galleries*"), the English Court of Appeal held that *Jarvis* was not authority that a contractual right to immediate possession can *never* found a claim in conversion (at [26]). The court concluded by observing the following (at [30]):

> …Where the owner of goods who has an immediate right to possession of them, albeit that they are in the possession of a third party, by agreement transfers his title to a new owner, the new owner can bring a claim in conversion against the person in whose possession they are. Where the owner of goods with an immediate right to possession of them by contract transfers the latter right to another, so that he no longer has an immediate right to possession, but retains ownership, it would seem right in principle that the transferee should be entitled to sue in conversion. A fortiori if the contract provides that when the transferee enters into possession, ownership will be transferred to him. We consider that this accords with the weight of academic opinion and can be reconciled with the facts of *Jarvis v Williams*.

154 Although this part of the reasoning in *Barakat Galleries* was not strictly necessary for the court's decision, I agree with it in principle. I see no reason why a contractual right to immediate possession of goods should not suffice to confer on a party a right of action in conversion in respect

of those goods, especially where the contract operates to vest property in the goods in the transferee once it receives possession. This is the situation here. Article 7.4 of Contract 5282 makes clear that title to Vessel B vests in the plaintiff when it takes delivery of the vessel. [note: 154]

155 The only act of conversion on which the plaintiff can rely in this action is the Tans' act in changing the number of Vessel A's hull. To succeed, the plaintiff must establish that it had the necessary standing at the time of the alleged wrongful act. The number of Vessel A's hull was changed in July or August 2008. The question then is whether the plaintiff had a contractual right to immediate possession of Vessel A at that time. That question is a matter of construing Contract 5282.

156 Article 7.4 of Contract 5282 states that title to Vessel B will pass only on delivery of the vessel. According to Art 2.3(g), "delivery of the vessel" means the date on which the vessel has been completed and approved without condition by the Classification Society and the plaintiff's representative. Article 2.3 also sets out the time for payment of the seven instalments due from the plaintiff. The sixth instalment was due on 15 November 2008 and the final instalment was due only upon delivery of the vessel. From this, it appears to me that the right of the plaintiff to call for delivery and take possession of the vessel arises only when the vessel is completed and the plaintiff has performed all outstanding obligations. This means that the vessel has to be completed and all instalments, except the final instalment, have to be paid. If the vessel is not completed or any of the first six instalments are not paid, I do not think, as a matter of construction of Contract 5282, the plaintiff can be said to have a contractual right to call for delivery and thus a contractual right to immediate possession.

157 No doubt Art 7.3 places an obligation on the seller to deliver the vessel within a specified time. A breach of that obligation certainly allows the plaintiff to sue for damages. But a breach of this obligation does not in itself operate to confer on the plaintiff a right of immediate possession. That right vests in accordance with the contract only when the vessel is completed and the plaintiff has performed all of its outstanding obligations under the contract.

158 At the time the hull numbers were changed, the plaintiff had yet to pay the sixth instalment. Given that not all of its obligations up to the due date for delivery had been performed, I find that the plaintiff did not have a contractual right to immediate possession of Vessel A at the time its hull number was changed. Without such a right, the plaintiff's action in conversion cannot succeed against any defendant. It must be dismissed.

The claim in detinue

159 A claim in detinue lies at the suit of a person who has a right to immediate possession of goods against a person who is in possession of the goods and who, upon proper demand and without lawful excuse, fails or refuses to deliver them up (*Alicia Hosiery Ltd v Brown Shipley & Co Ltd and another* [1969] 2 WLR 1268 at 1277). Diplock LJ explained the differences between detinue and conversion in *General and Finance Facilities* (at 648–649):

> There are important distinctions between a cause of action in conversion and a cause of action in detinue. The former is a single wrongful act and the cause of action accrues at the date of the conversion; the latter is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue. It is important to keep this distinction clear, for confusion sometimes arises from the historical derivation of the action of conversion from detinue sur bailment and detinue sur trover; of which one result is that the same facts may constitute both detinue and conversion. Demand for delivery up of the chattel was an essential requirement of an action in

> detinue, and detinue lay only when at the time of the demand for delivery up of the chattel made by the person entitled to possession the defendant was either in actual possession of it or was estopped from denying that he was still in possession. …

160 A claim in detinue can be brought against only the party who is in actual possession of the goods at the time of demand. If the plaintiff can succeed in this cause of action against any of the defendants, therefore, it can only be against Nantong MLC. That is the only defendant who had control over Vessel B through its control of the shipyard in which Vessel B is located.

161 As explained in *General and Finance Facilities*, a proper demand is essential for an action in detinue. It is only when the defendant refuses to deliver up the goods in the face of a proper demand that it becomes wrongful for the defendant to retain the goods. It is a continuing wrong because the retention remains unlawful until the goods are delivered up.

162 It is a curious fact that the plaintiff demanded delivery up of Vessel B only from MLC Shipbuilding, MLC Barging, Jiangsu and Nantong Tongbao. [note: 155] It has never demanded delivery up of Vessel B from Nantong MLC. The question then arises whether the plaintiff's omission means that it has failed to establish an essential element of a claim in detinue.

163 A proper demand is crucial to ground an action in detinue because it puts the person in possession of the goods clearly on notice that he should no longer retain the goods but instead deliver them up to the person entitled to possession of them. In Tan Yock Lin, *Personal Property Law* (Academy Publishing, 2014) at para 09.017, two justifications are provided for this requirement. First, the requirement of a demand ensures fairness to the person in possession of the goods by giving him reasonable notice that he is to put the goods in a state of readiness for delivery. Second, the requirement of a demand fixes a clear and fair point in time at which the cause of action in detinue arises (see *Clayton v Le Roy* [1911] 2 KB 1031 at 1048).

164 The demand on Nantong Tongbao, in the circumstances of this case, served the essential purpose of putting the persons in actual possession of Vessel B on notice that the plaintiff was seeking possession of Vessel B. Mr Tan's evidence is that Zhu Jian Hua was an officer and the majority shareholder of Nantong Tongbao. He also represented Nantong Tongbao in Nantong MLC and was in overall charge of Nantong MLC. He would therefore have known that Vessel B was built for the plaintiff. When the plaintiff's letter of demand was served on Nantong Tongbao, Zhu Jian Hua would have known that the plaintiff was demanding delivery of Vessel B.

165 In these circumstances, I hold that a demand on Nantong Tongbao is a sufficient demand to found a claim in detinue against Nantong MLC. My conclusion is further strengthened by the fact that Nantong MLC issued a letter after the plaintiff's letter of demand to Nantong Tongbao on 17 December 2010, confirming that Vessel B was built and intended for the plaintiff. This, to my mind, shows that Nantong MLC knew that the plaintiff was demanding delivery up of Vessel B.

166 By the time the demand was made, the plaintiff had paid all but the last instalment under Contract 5282. Vessel B had also been completed and launched. I therefore find that, as a matter of construction of Contract 5282, the plaintiff had by then acquired a contractual right to immediate possession of Vessel B.

167 Despite receiving a proper demand from the plaintiff, Nantong MLC continued to detain Vessel B. Although it issued a letter confirming that Vessel B was built for the plaintiff, it did not attempt to facilitate the delivery of Vessel B to the plaintiff. Although it was not required to take positive steps to move Vessel B to the plaintiff, it could not sit by quietly and ignore the demand from the plaintiff.

It had at least to acknowledge the plaintiff's right to possession and permit the plaintiff to make arrangements at the shipyard to take possession of Vessel B. This it did not do, making the continued retention of Vessel B wrongful. Nantong MLC is thus liable to the plaintiff in detinue.

168 Judgment in a successful action in detinue may take a number of forms. One of those is a judgment for the return of the chattel or recovery of its value as assessed together with damages for wrongful retention (*General and Finance Facilities* at 650). For the same reasons that I have ordered MLC Shipbuilding to deliver Vessel B to the plaintiff under s 52(1) of the Sale of Goods Act, I am of the view that it is appropriate in all the circumstances of this case to order Nantong MLC to deliver up Vessel B to the plaintiff. Nantong MLC is also liable to pay the plaintiff damages to be assessed for its wrongful retention of Vessel B.

The claim in unlawful means conspiracy

169 As with its other claims, the plaintiff is also not clear which defendants it claims are liable to it in unlawful means conspiracy. Its pleaded position is that all nine defendants are so liable. [note: 156] I take that pleaded position at face value.

170 In order to succeed on this cause of action, the plaintiff must show that:

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the combination; and

(e) the plaintiff suffered loss as a result of the conspiracy (*EFT Holdings* at [112]; *Negase Singapore Pte Ltd v Ching Kai Huat and others* [2008] 1 SLR(R) 80 at [23]; *Tjong Very Sumito v Chan Sing En* [2012] SGHC 125 at [186]).

171 In *EFT Holdings*, the Court of Appeal surveyed the torts of both lawful and unlawful means conspiracy and explained that in the latter species of conspiracy: "*It is the combination, accompanied by the intention to injure by unlawful means that makes such conduct unlawful*" (emphasis in original) (at [96]). It is well-settled that the unlawful conduct for this species of conspiracy includes at least actionable civil wrongs: *EFT Holdings* at [91].

172 In this action, the plaintiff relies on two wrongs as the unlawful acts. The first is changing the number of Vessel A's hull in order to appropriate the vessel to a different contract. The second is appropriating Vessel B away from the plaintiff by setting up what I have found to be a sham contractual chain. Because the plaintiff does not argue that either of these acts are criminal, the difficulties which arise when determining the types of criminal conduct which suffice for unlawful means conspiracy do not arise in this case (see *EFT Holdings* at [92]).

173 I find that the plaintiff has failed to show that either of these two acts are unlawful.

174 In arguing that changing the number of Vessel A's hull to appropriate it away from Contract 5282 was unlawful, the plaintiff relies on the following passage from the decision of the House of Lords in *Stocznia Gdanska SA v Latvian Shipping Co Latreefer Inc and others* [1998] 1 Lloyd's Rep 609

("*Latreefer*") (at 616):

> … In truth, what the yard was doing was to appropriate to contracts 3 and 4 (and subsequently to contracts 5 and 6) sections which had been joined as part of the construction of a vessel being built under a different contract. There was nothing to stop them doing that, if the buyers agreed. In normal circumstances, it might well be possible to obtain such agreement; but in a case such as the present, there was no chance of it being obtained. Moreover, if the yard's argument is right, they were entitled to do this as of right in a case where the contracts in question were with different buyers. In such a case it would be most surprising if the yard could so proceed without first obtaining the consent of the second buyer.

175 The facts of *Latreefer* warrant closer attention. A shipyard contracted to build six ships for a buyer, each identified by a keel number. Under each contract, the shipyard undertook to "design, build, complete and deliver" the vessel to the buyer. Property in the vessel was not to pass until delivery. The price for each vessel was to be paid in four instalments. The first instalment of 5% was to be paid within seven banking days after receipt by the buyer of a bank guarantee furnished by the shipyard. The second instalment of 20% was to be paid within five banking days after the shipyard gave notice to the buyer that the keel of the vessel had been laid. A keel was considered laid when the first and second sections of the vessel's hull was joined on the berth where the vessel was being constructed. Under the contract, the shipyard was entitled to terminate the contract if the buyer defaulted on an instalment. If the shipyard terminated the contract, it could retain and apply the instalments already paid by the buyer to recover its loss and damage. The shipyard also had the full right and power either to complete or not to complete the vessel and to sell the vessel to a third party.

176 The buyer duly paid the first instalment for each of the six vessels. The keels were then laid for the first two vessels. This triggered the buyer's obligation to pay the second instalment for these two vessels. The buyer defaulted. The shipyard then renumbered the keels laid for the first two vessels to match those stipulated for the third and fourth vessels. It served keel-laying notices on the buyer. Again, the buyer defaulted. The shipyard then gave notice that it was terminating the third and fourth contracts. Exactly the same procedure was then adopted under the fifth and sixth vessels.

177 The court noted that "[t]he purpose of the yard in doing this was plainly to secure accrued rights to the second instalments for all four of these vessels, thereby putting itself in a stronger financial position than it would have been in if it only had a right to claim damages" (at 613). The shipyard commenced two actions to recover the unpaid second instalment in respect of all six vessels. The House of Lords held that, on the construction of the relevant contractual provisions, the shipyard had not validly triggered the buyer's obligation to pay the second instalments for the third to sixth vessels.

178 The passage from *Latreefer* quoted by the plaintiff above sets out the House of Lords' reasons for preferring the buyer's interpretation of the clause triggering the obligation to pay the second instalment over the shipyard's. The House of Lords continues as follows (at 616–617):

> Moreover, as I read the clause, the buyers' argument is supported by the clear intention that the required notice should be a notice of the fact that the keel has been laid, i.e. that the relevant sections of the vessel's hull have been joined. It cannot, in my opinion, have been intended that the yard should give, possibly months after the event, a generalized notice of the fact that the keel had been laid in the past instead of giving notice of the event of keel-laying and specifying the date on which that event occurred. Obviously, it would in normal circumstances be in the interests of the yard to give the notice as soon as possible after the keel was laid; but in the

present case we find the yard giving notices in respect of vessels 3 to 6 long after the keels which were the subject of the notices had in fact been laid.

…

It is, moreover, of significance that, when notices came to be given for vessels 3 to 6, the yard and the classification society still clung to the same form of wording, viz. that the keel has been laid, or the sections have been joined on the slipway, on a certain date. Thus, for example, in the case of vessel 4 we find the yard stating that the keel "has been laid today, 15 April 1994," and the classification society confirming that the bottom sections "have been joined on the slipway on the 15 April 1994." Notices and confirmation were given in similar terms for vessels 3, 5 and 6. These notices and confirmations were, on their face, incorrect. The true position was that the keels had been laid, i.e. the sections had been joined, some months previously, on the berths where vessels 1 and 2 were then being constructed under different contracts. However, a notice which conveyed that message would not, in my opinion, have been a notice which complied with the terms of cl. 5.02(b) in respect of vessels 3 and 4, or vessels 5 and 6.

The House of Lords held, therefore, that the shipyard was not entitled to the second instalments for the third to sixth vessels because the event required to trigger the obligation to pay the second instalments under the relevant contractual clause had not occurred. No notice of keel laying for the third to sixth vessels which complied with the terms of the shipbuilding contract had been given.

179 Once the decision of the House of Lords is properly understood, I cannot see how the passage quoted by the plaintiff assists it in showing that the defendants' act of changing the number of Vessel A's hull was an unlawful act. The House of Lords held only that a notice issued in respect of a keel which had been laid at some time in the past and which purports to state that the keel had been laid contemporaneously with the notice did not trigger a contractual right to receive an instalment which, on its true construction, was payable only upon a notice which accurately stated that a fresh keel had been laid contemporaneously with the notice. The House of Lords' decision does not turn on the fact that the keels were renumbered, much less does it suggest that it was a breach of contract or some other civil wrong to renumber a keel, or indeed a hull. I therefore do not accept the plaintiff's submission that changing the number of Vessel A's hull to appropriate it to Contract 5284 was unlawful. It follows that the plaintiff's claim in unlawful means conspiracy for this particular act cannot succeed against any defendant.

180 I turn now to the second unlawful act asserted by the plaintiff – the defendants' appropriation of Vessel B to themselves by setting up the contractual chain. I have already found that the contractual chain was not set up by the participating defendants for the purpose of appropriating Vessel B to themselves. This alone is sufficient reason to dismiss the plaintiff's claim in unlawful means conspiracy insofar as it relates to this alleged unlawful act.

181 Nevertheless, even if I assume that the plaintiff is right and the participating defendants set up the contractual chain to appropriate Vessel B to themselves, I still cannot conclude that this act was unlawful. The essence of the plaintiff's submission is that the participating defendants acted fraudulently in drawing up sham contracts to appropriate Vessel B to themselves. The plaintiff, however, has rather surprisingly not pleaded fraud. In light of this failure, I cannot make a finding that the participating defendants acted fraudulently. In the absence of a finding of fraud, I cannot see how the participating defendants can be said to have acted unlawfully in setting up the contractual chain.

182 While I agree that the conduct of the defendants may be characterised as reprehensible or

contrary to the standards of commercial morality, the plaintiff has not shown the act of changing the number of Vessel A's hull or of setting up the contractual chain to be unlawful acts. That is essential to establish the tort of conspiracy by unlawful means. For this reason, I dismiss the plaintiff's claim in unlawful means conspiracy.

The claim for a remedial constructive trust

183 The plaintiff claims that the court ought to impose, in the circumstances of the case, a remedial constructive trust over Vessel B. The plaintiff has made clear that it seeks to rely on this cause of action only if the other causes of action fail. Having found for the plaintiff on its contractual claim and in detinue, I need not address the plaintiff's alternative claim for a remedial constructive trust over Vessel B.

The claim in unjust enrichment

184 The plaintiff also pleads an alternative claim in unjust enrichment, seeking restitution of all monies paid to the defendants on the basis that there has been a total failure of consideration. In its pleadings, this is clearly an alternative claim. Having ordered MLC Shipbuilding to deliver Vessel B under Contract 5282 pursuant to s 52(1) of the Sale of Goods Act, there is no longer a basis to order restitution of the monies paid under that contract.

185 I therefore also need not consider this alternative claim brought by the plaintiff.

The claim for the Extra-Contractual Payments

186 I now turn to the characterisation of the Extra-Contractual Payments. The Extra-Contractual Payments amounted to US$4,399,980 and RMB14m. The plaintiff accepts that of these sums, it has been repaid US$3.1m. This leaves US$1,299,980 and RMB14m unpaid.

187 The plaintiff's case is that Mr Tan spoke to Steven Lau on 22 August 2008 telling him that he needed cash to complete the vessels and that without the plaintiff's help, work on the vessels would have to stop. According to Steven Lau, he and Mr Tan had an understanding that the monies advanced would be applied against the purchase price of the vessels. [note: 157] Steven Lau then asked for the bank details of Nantong MLC which Mr Tan duly provided by email. The Extra-Contractual Payments were then paid to Nantong MLC. As set out at [34] above, the Extra-Contractual Payments were disbursed in five tranches. Full Mount was the transferor of the four RMB payments. The plaintiff's position is that while these monies came from Full Mount, they are to be treated as coming from the plaintiff. [note: 158]

188 The participating defendants' pleaded position is that these monies were personal loans given by the director of Full Mount, Mr Choy; and that these monies were to be applied to the vessel constructed under the 7807 Contract.

189 In his affidavit of evidence in chief, however, Mr Tan takes the position that he spoke to Steven Lau seeking a loan to Nantong MLC which led to the Extra-Contractual Payments being disbursed. [note: 159] There is no mention in Mr Tan's affidavit of any personal loans from Mr Choy. Mr Tan's new position is that the plaintiff would be repaid by MLC Shipbuilding. [note: 160] This position is completely different from the participating defendant's pleaded position. In fact, two emails in late November, one from Mr Tan to Mrs Tan and the other from Mr Tan to Redzuan, clearly show that the understanding around the time the loans were disbursed was that Nantong MLC would not return the

monies but would set them off against a loan from Maybank. [note: 161] At the time the Extra-Contractual Payments were made and these emails were sent, Mr Tan was a director of both MLC Shipbuilding and Nantong MLC. There is no suggestion that he did not have the authority of Nantong MLC and MLC Shipbuilding to enter into these arrangements with the plaintiff.

190 In light of this new position of Mr Tan, which is somewhat consistent with the evidence of Steven Lau regarding the Extra-Contractual Payments, I find that the Extra-Contractual Payments were indeed loans to Nantong MLC. MLC Shipbuilding, however, undertook to repay the Extra-Contractual Payments. As a result, liability to repay these Extra-Contractual Payments fell on both MLC Shipbuilding and Nantong MLC, joint and severally. Given that Mr Tan does not now deny that the RMB14m, as the plaintiff asserts, is to be treated as coming from the plaintiff even though in fact the monies were paid by Full Mount, MLC Shipbuilding and Nantong MLC are joint and severally liable to the plaintiff for the whole of the Extra-Contractual Payments.

191 I also accept Steven Lau's evidence that there were no discussions that these sums were to be applied to the vessel built under the 7807 Contract. Although Mr Tan's pleaded position was that these discussions took place, no mention of this was made in his affidavit of evidence-in-chief. Since there was no agreement that the Extra-Contractual Payments were to be tied to a particular ship, I accept the plaintiff's submission that it is now entitled to apply the Extra-Contractual Payment in discharge of its obligation to pay the final instalment of US$2.05m under Contract 5282. [note: 162]

192 The resulting position is that the plaintiff is now entitled to set off its obligation to pay US$2.05m under Contract 5282 upon delivery of Vessel B against the sums of US$1,299,980 and RMB14m. The plaintiff estimates that the RMB 14m is equivalent to about US$2,058,823.53. [note: 163] The participating defendants do not dispute this. [note: 164] This leaves a sum of US$1,308,803.53 that MLC Shipbuilding and Nantong MLC have to repay the plaintiff. They are joint and severally liable for the whole of that sum.

Piercing the corporate veil

193 The plaintiff seeks to pierce the corporate veil between MLC Shipbuilding, MLC Barging, MLC Maritime, Nantong MLC ("the MLC companies"), the Tans and Redzuan. It seeks to lift the veil both vertically (between each MLC company and its shareholders) and horizontally (between each MLC company and each other MLC company). The plaintiff argues that each MLC company was merely a vehicle for the Tans and Redzuan, who were in turn the directing and controlling minds of the MLC companies collectively. I briefly survey the law relating to the piercing of the corporate veil before turning to deal with the plaintiff's submissions.

The law

194 In the present case, out of the four MLC companies, only MLC Barging and MLC Maritime are incorporated in Singapore. MLC Shipbuilding is a Malaysian company and Nantong MLC is a Chinese company. Both parties before me proceeded on the assumption that the applicable law to this question is Singapore law. It is not immediately apparent to me that that is the case (see *VTB Capital plc v Nutritek International Corpn and others* [2013] 2 AC 337 ("*VTB*") per Lord Neuberger of Abbotsbury PSC at [131]). Be that as it may, since neither party has pleaded or proven foreign law, and on the authority of *EFT Holdings* (cited at [125] above), I proceed on the basis that the content of the applicable law is the same as Singapore law.

195 The starting point in Singapore law is the fundamental principle that a company has separate

legal personality from its owners and controllers. A company maintains that separate legal personality even if it is one of a number of companies which form a group of companies through common or interlocking ownership or control (*Adams and others v Cape Industries Plc and another* [1990] 1 Ch 433 per Slade LJ at 532). The doctrine of separate legal personality is not to be displaced simply because the companies in question are organised as a single economic unit (*Public Prosecutor v Lew Syn Pau and another* [2006] 4 SLR(R) 210 at [212]). Nor will the doctrine be displaced simply because the owners of the company incorporated it for the very purpose of insulating themselves or other group companies from liability. That is the very purpose of the limited liability company. Thus, it has been long been established it is entirely legitimate for the ultimate economic owner of a number of ships to insulate himself from liability arising from ownership of those ships and to insulate each ship from liability arising from the other ships by holding each ship through a series of one-ship companies (*Manuchar Steel Hong Kong Ltd v Star Pacific Line Pte Ltd* [2014] 4 SLR 832 at [131]).

196 Exceptionally, however, the law will go behind the separate legal personality of a company. This is what is loosely called piercing the corporate veil. The difficulty has always been in defining these exceptional circumstances sufficiently narrowly so as not to undermine the fundamental principle of a company's separate legal personality but also sufficiently clearly so that the law is predictable.

197 In *VTB*, the UK Supreme Court noted that some cases appear to hold that the corporate veil may be pierced where it is found to be a "façade". Lord Neuberger identified the difficulties which this approach (at [124]):

> …Words such as "façade", and other expressions found in the cases, such as "the true facts", "sham", "mask", "cloak", "device", or "puppet" may be useful metaphors. However, such pejorative expressions are often dangerous, as they risk assisting moral indignation to triumph over legal principle, and, while they may enable the court to arrive at a result which seems fair in the case in question, they can also risk causing confusion and uncertainty in the law. The difficulty which Diplock LJ expressed in *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786, 802, as to the precise meaning of "sham" in connection with contracts, may be equally applicable to an expression such as "façade".

198 The UK Supreme Court has most recently and most authoritatively analysed the doctrine of piercing the corporate veil in *Prest v Petrodel Resources Ltd and others* [2013] 2 AC 415 ("*Prest*"). Lord Sumption JSC, delivering the leading judgment, held that the "principle that the court may be justified in piercing the corporate veil if a company's separate legal personality is being abused for the purpose of some relevant wrongdoing is well established in the authorities" (at [27]). He then discerned from his analysis of the cases two distinct principles which were at play at common law: (i) the concealment principle; and (ii) the evasion principle (at [28]):

> The difficulty is to identify what is a relevant wrongdoing. References to a "facade" or "sham" beg too many questions to provide a satisfactory answer. It seems to me that two distinct principles lie behind these protean terms, and that much confusion has been caused by failing to distinguish between them. They can conveniently be called the concealment principle and the evasion principle. The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases the court is not disregarding the "facade", but only looking behind it to discover the facts which the corporate structure is concealing. The evasion principle is different. It is that the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the

company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement. …

199 Lord Sumption JSC quite rightly pointed out that "the corporate veil may be pierced only to prevent the abuse of corporate legal personality", for example by evading the law or frustrating its enforcement. But he reiterated that "it is not an abuse to cause a legal liability to be incurred by the company in the first place" or "to rely on the fact (if it is a fact) that a liability is not the controller's because it is the company's". As Lord Sumption JSC said, "That is what incorporation is all about" (at [34]). He summed up as follows:

> 35 I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil. … I consider that if it is not necessary to pierce the corporate veil, it is not appropriate to do so, because on that footing, there is no public policy imperative which justifies that course. ... For all of those reasons, the principle has been recognised far more often than it has been applied. But the recognition of a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is, I believe, consistent with authority and long-standing principles of legal policy.

200 According to Lord Sumption JSC, only the evasion principle amounts in the strict sense to the court piercing the corporate veil. The court applies the evasion principle to prevent a person deliberately interposing a company under his control in order to evade or frustrate the enforcement of an existing legal obligation, liability or restriction. The concealment principle, on the other hand, does not amount to the court piercing the corporate veil in the strict sense. When a court applies the concealment principle, it merely looks behind the corporate veil to identify the true actors.

201 Although Lord Neuberger PSC endorsed and accepted Lord Sumption JSC's analysis (at [81]), the other members of the UK Supreme Court did not do so without qualification. Baroness Hale JSC (with whom Lord Wilson JSC agreed) queried whether it is indeed possible to classify all of the cases neatly into instances of applying either the concealment or the evasion principle (at [92]). Lord Mance JSC was concerned that it may be dangerous to foreclose all possible situations in which the corporate veil may be pierced apart from those grounded in the evasion principle (at [100]). Lord Clarke JSC agreed with Lord Mance JSC on this point and added that the distinction between concealment and evasion should not be adopted definitively unless and until the court had heard detailed submissions on it (at [103]). Lord Walker saw piercing the corporate veil not as a coherent doctrine at all but as a label to describe disparate cases which recognise an apparent exception to the doctrine of a company's separate legal personality with perhaps a small residual category in which the doctrine operates independently of other legal doctrines (at [106]).

202 It is not necessary for me to decide if Lord Sumption's approach in *Prest*, which attempts to limit the doctrine of piercing to cases falling within the evasion principle, should represent the law in Singapore. No arguments were canvassed before me on the authorities I have cited above. Instead, what the plaintiff seeks to do in this case is to show, on the evidence, that there is no distinction between the MLC companies in the way that they were run and controlled by the Tans and Redzuan.

Because of this, the plaintiff argues, the liabilities of each company should attach to other companies and to their controllers. It is in essence an argument based on Lord Sumption's concealment principle, where the court identifies the true actor on the facts.

203 The question then can be recast as to whether the evidence establishes that any or all of the MLC companies were interposed so as to conceal the identity of the real actors. While I note the difficulties with the façade metaphor pointed out by Lord Neuberger in *VTB*, that suffices as an impressionistic description of the underlying substance of the analytical question. With this in mind, I turn to the grounds raised by the plaintiff to pierce the corporate veil.

204 The plaintiff relies on three main grounds to submit that I should pierce the corporate veil: (a) there was a functional unity to the MLC companies; [note: 165] (b) the controllers abused the corporate form; and (c) the controllers drew no true distinction between these companies.

Functional unity

205 The plaintiff argues that there was functional unity between the MLC companies. It points to the fact that these companies were family owned and that at least two of the four family members (the Tans, Tan Ker Chia and Redzuan) were directors or shareholders of each MLC company. Moreover, Mr Tan was a director and shareholder of all of the MLC companies at the material time. The Tans alone control MLC Barging and MLC Maritime. Subsequently Mr Tan controlled the shipyard by gaining control of production at Nantong MLC. Redzuan controlled MLC Shipbuilding. The plaintiff points to various documents and emails showing that these companies were operated by the Tans collectively without any real distinction between them. The emails apparently show that the finances of the shipyard were controlled by the Tans. The plaintiff also claims that the MLC companies did not have an independent business existence and were used by the Tans as a means to manage risk.

206 Apart from the strained reading of some of the emails, the evidence relied on by the plaintiff does not show any reason to regard these companies as a façade. As Lord Sumption JSC observed in *Prest*, it is completely legitimate for business people to organise companies such that any liability incurred by the company rests only with the company and not with its owners. Further, the MLC companies were small companies with few directors. To expect clear demarcation between companies in emails sent by their owners or controllers would be unrealistic. I find that the evidence relied on by the plaintiff to show functional unity is insufficient to justify piercing the corporate veil.

Abuse of corporate form

207 The plaintiff claims that the appropriation of Vessel B to the contractual chain, which I have found to be a sham, is an abuse of the corporate form. Changing the number of Vessel A's hull, which allowed MLC Maritime to postpone its repayment obligations of the DBS loan, is also said to be another example of the abuse of the corporate form.

208 I do not accept the plaintiff's submissions that these are sufficient reasons to pierce the corporate veil. It does not follow automatically from my finding that the contractual chain is a sham that the corporate veils of the MLC companies should be pierced. That finding does not pertain to the way in which the companies were incorporated, managed or operated. The plaintiff does not suggest that the MLC companies were incorporated purely for the purpose of perpetrating the sham or to change the number of Vessel A's hull in order to postpone MLC Maritime's repayment obligation under the DBS loan facility.

209 I find that there has been no abuse of the corporate form.

No true distinction between the companies

210 The plaintiff also argues that the controllers of the corporate defendants drew no true distinction between them. In support of this, the plaintiff points to various facts. First, MLC Shipbuilding entered into Contract 5282 to build a ship for the plaintiff but the truth of the matter was that Nantong MLC was the entity doing the building. Second, Mr Tan and Redzuan made various representations to Capt Liew that they controlled and operated a shipyard in Nantong as part of a family business. [note: 166] Third, large sums of money flowed between MLC Shipbuilding and Nantong MLC. Fourth, Steven Lau was also given the impression, during his visits to Nantong MLC's shipyard, that the vessels built in that shipyard were for the Simgood group and that the plaintiff was the direct buyer of the vessels it had commissioned to be built even though the plaintiff's contract was with MLC Shipbuilding. Finally, even though the Extra-Contractual Payments were disbursed to Nantong MLC, MLC Shipbuilding undertook liability to repay these loans. All these facts, the plaintiff says, show that the Tans drew no true distinction between the companies and warrant the court now drawing no distinction between them in assessing liability to the plaintiff.

211 I cannot agree with the plaintiff. While the facts alluded to do show some measure of connectedness or closeness between the two companies, it cannot be said that there was no true distinction between the companies such that they were a mere façade. The people in charge of the companies were substantially the same at the material time. It is therefore inevitable that there would be some measure of inter-connectedness in the affairs of both companies. This cannot, in itself, mean that the companies were indeed a façade. In fact, the rest of the evidence negates any suggestion that there was no true distinction between these companies. These two companies had different shareholders, different bank accounts and entered into contracts in different capacities. The evidence does not show, therefore, that the controllers operated these companies without any true distinction.

212 In light of the foregoing, I decline to pierce the corporate veil of any of the MLC companies, whether in order to bring corporate liability home vertically to each company's controllers or horizontally to bring liability home to their related companies.

Vessel B has been sold

213 This matter proceeded from the outset right up until judgment on 27 July 2015 on the basis that Vessel B was sitting in a shipyard in Nantong awaiting the outcome of this case. That belief was encouraged by the fact that a freezing injunction had been in place in respect of Vessel B since June 2011 (see [48] above).

214 After I gave judgment, counsel for the plaintiff informed me that they had been informed by Jiangsu that Vessel B had been sold. Jiangsu provided no other details.

215 In light of this development, the plaintiff has asked that I order MLC Shipbuilding and Nantong MLC to pay damages in lieu of their obligation to deliver the vessel. I have granted the plaintiff those orders.

Conclusion

216 The result is that I have allowed only part of the plaintiff's claim and dismissed entirely the defendant's counterclaim.

217 I have therefore ordered the following:

(a) MLC Shipbuilding shall perform specifically its obligation to deliver Vessel B to the plaintiff under Contract 5282; alternatively it shall pay damages to the plaintiff for its failure to deliver Vessel B to the plaintiff in accordance with Contract 5282, such damages to be assessed.

(b) Nantong MLC shall deliver up Vessel B to the plaintiff; alternatively, plaintiff shall be entitled to recover its value from Nantong MLC, such value to be assessed.

(c) Nantong MLC shall, in addition, pay damages to the plaintiff in the tort of detinue for wrongful retention of Vessel B, such damages to be assessed.

(d) MLC Shipbuilding and Nantong MLC are jointly and severally liable to repay to the plaintiff the sum of US$1,308,803.53 (being the balance of the Extra-Contractual Payments after setting off the final instalment due under Contract 5282) together with simple interest thereon at the rate of 5.33% per annum from 20 January 2011 to 27 July 2015.

(e) All of the plaintiff's other claims are dismissed.

(f) MLC Barging's and MLC Maritime's counterclaim is also dismissed.

218 As for costs:

(a) I order that MLC Shipbuilding and Nantong MLC shall pay to the plaintiff its costs of and incidental to this action, such costs to be assessed on an indemnity basis.

(b) There shall be no order for costs in favour of the participating defendants. Although they have succeeded in their defence, my finding is that their defence was a dishonest one, based on sham contracts. I therefore exercise my discretion against awarding the participating defendants their costs.

(c) There shall also be no order for costs on the participating defendants' counterclaim. In my view, the issues which the plaintiff had to address in defending the participating defendants' counterclaim overlapped entirely with the issues which the plaintiff had to advance in order to make out its claim against MLC Shipbuilding and Nantong MLC. Further, I have ordered those costs on the indemnity basis. It is therefore my view that the plaintiff has been compensated fully for the costs of the participating defendants' counterclaim by my order for costs in its favour against MLC Shipbuilding and Nantong MLC.

[note: 1] Plaintiff's Statement of Claim (Amendment No 1) at para 30.

[note: 2] Plaintiff's Statement of Claim (Amendment No 1) at para 61(f).

[note: 3] Defence and Counterclaim of the 2nd and 3rd defendants (Amendment No 1) at para 52(A).

[note: 4] Defence and Counterclaim of the 2nd and 3rd defendants (Amendment No 1) at para 37.

[note: 5] Notice of Appeal filed on 26 August 2015.

[note: 6] AEIC of Liew Ah Kau ("LAK") at para 5.

[note: 7] LAK at page A57 – 60.

[note: 8] AEIC of Tan Ho Seng ("THS") at para 8 and 9.

[note: 9] LAK at page E3-4 and THS at para 6.

[note: 10] THS at para 6.

[note: 11] LAK at page A15.

[note: 12] LAK at page A15.

[note: 13] LAK at page A22 and THS at para 7.

[note: 14] LAK at page A22 and THS at para 7.

[note: 15] LAK at page A19-20 (translation found at page M6-7).

[note: 16] LAK at page A19 (translation found at page M6).

[note: 17] LAK at para 10 and see plaintiff's submissions at para 34.

[note: 18] THS at para 15.

[note: 19] Affidavit of Zhu Jian Hua at para 6 (exhibited at LAK page K5 and THS at page 105).

[note: 20] PBOD page 1364 to 1366.

[note: 21] THS at para 15.

[note: 22] THS at para 8 and AEIC of Eng Chor Wah ("ECW") at para 8.

[note: 23] THS at para 10 and ECW at para 10.

[note: 24] ECW at page 32 to 33.

[note: 25] THS at para 5.

[note: 26] THS at para 13.

[note: 27] ECW at page 111 to 128.

[note: 28] ECW at page 129 to 146.

[note: 29] THS at para 22.

[note: 30] THS at para 14.

[note: 31] Notes of Evidence ("NE") 29 April 2014 at page 24 line 23 to 27.

[note: 32] ECW at page 721, cl 1.

[note: 33] Clause 2(m)(a) of the loan facility at EWC page 725.

[note: 34] LAK at para 14.

[note: 35] LAK at para 15.

[note: 36] LAK at para 17.

[note: 37] LAK at page B2-21.

[note: 38] LAK at page B22-40.

[note: 39] LAK at page B48-70.

[note: 40] LAK at page B71-89.

[note: 41] LAK at page B90-108.

[note: 42] LAK at page B129-148.

[note: 43] LAK at page B109-128.

[note: 44] LAK at page B3 (preamble). See the preamble of other contracts which provide the same.

[note: 45] LAK at para 22-24.

[note: 46] AEIC of Yew Mun Khean ("YMK") at para 5 and 8.

[note: 47] YMK at para 5.

[note: 48] The purchase price was reduced to US$8,000,000 by a confirmation letter dated 8 April 2009 (LAK at para 33).

[note: 49] YMK at page 32.

[note: 50] AEIC of Steven Lau ("SL") at para 6 and 7.

[note: 51] SL at para 9.

[note: 52] ECW at page 739.

[note: 53] THS at para 27.

[note: 54] ECW at page 669.

[note: 55] SL at para 17.

[note: 56] SL at page 393.

[note: 57] SL at page 395 to 399.

[note: 58] SL at para 17(e) and page 399.

[note: 59] LAK at para 52.

[note: 60] LAK at para 49.

[note: 61] LAK at page G92.

[note: 62] LAK at page M2-3.

[note: 63] THS at para 16.

[note: 64] NE 23 May 2014 page 14 line 4 to 6.

[note: 65] THS at para 17 and NE 21 May 2014, page 32 to 33 at line 32 (on page 32) – 6 (on page 33), page 36 at line 17 to 22.

[note: 66] THS at para 17.

[note: 67] ECW at page 213 and 269.

[note: 68] ECW at page 217 and 277 to 278.

[note: 69] THS at para 17.

[note: 70] THS at para 18.

[note: 71] THS at para 19.

[note: 72] NE 21 May 2014 at page 9 line 17 to 18.

[note: 73] THS at para 19.

[note: 74] NE 22 May 2014, page 20 line 22.

[note: 75] YMK at para 6 and at page 33.

[note: 76] LAK at page B-11.

[note: 77] LAK para 37, at page G107-109.

[note: 78] LAK at page G-113.

[note: 79] Statement of Claim (Amendment No 1) para 49.

[note: 80] LAK at page G-119.

[note: 81] LAK at page G161-162.

[note: 82] Writ of Summons (Amendment No 1) at page 1.

[note: 83] LAK at page G191-193.

[note: 84] ORC2717/2011; see also ORC4704/2013.

[note: 85] Writ of Summons (Amendment No 1) at page 2.

[note: 86] Statement of Claim (Amendment No 1) at para 21 and 48.

[note: 87] Statement of Claim (Amendment No 1) at para 12.

[note: 88] Statement of Claim (Amendment No 1) at para 51.

[note: 89] Statement of Claim (Amendment No 1) at para 55.

[note: 90] Statement of Claim (Amendment No 1) at para 57.

[note: 91] Statement of Claim (Amendment No 1) at para 56(c).

[note: 92] Statement of Claim (Amendment No 1) at para 56.

[note: 93] Statement of Claim (Amendment No 1) at para 31, 32, 50 and 54.

[note: 94] Statement of Claim (Amendment No 1) at para 60.

[note: 95] Statement of Claim (Amendment No 1) at para 61(f).

[note: 96] Plaintiff's Statement of Claim (Amendment No 1) at para 61(f).

[note: 97] Defence and Counterclaim of 2nd and 3rd defendants at para 14 and Defence of the 7th and 8th defendants at para 14.

[note: 98] Defence and Counterclaim of 2nd and 3rd defendants at para 26 and 35 to 37 and Defence of the 7th and 8th defendants at para 26 and 35 to 37.

[note: 99] Defence and Counterclaim of the 2nd and 3rd defendants are para 39 and Defence of the 7th and 8th defendants at para 39.

[note: 100] Defence and Counterclaim of 2nd and 3rd defendants at para 29 and Defence of the 7th and 8th defendants at para 29.

[note: 101] Defence and Counterclaim of 2nd and 3rd defendants at para 30 and Defence of the 7th and 8th defendants at para 30.

[note: 102] Defence and Counterclaim of 2nd and 3rd defendants at para 23 and Defence of the 7th and 8th defendants at para 23.

[note: 103] NE 27 July 2015 at page 4 line 4 to 16.

[note: 104] Defence and Counterclaim of the 2nd and 3rd defendants at para 52(A).

[note: 105] Defence and Counterclaim (Amendment No 1) at para 33(a) and ECW at para 25.

[note: 106] Defence and Counterclaim (Amendment No 1) at para 33(b).

[note: 107] Defence and Counterclaim (Amendment No 1) at para 33(c) and ECW at para 20.

[note: 108] Defence and Counterclaim (Amendment No 1) at para 33(a) and ECW at para 25.

[note: 109] ECW at para 20.

[note: 110] Defence and Counterclaim (Amendment No 1) at para 38.

[note: 111] Defence and Counterclaim of the 2nd and 3rd defendants (Amendment No 1) at para 37.

[note: 112] ECW at page 723.

[note: 113] ECW at page 279.

[note: 114] Defence and Counterclaim of 2nd and 3rd defendants at para 33(c).

[note: 115] ECW at page 293.

[note: 116] ECW at para 26.

[note: 117] NE 24 April 2014 at page 111 line 26 onwards.

[note: 118] ECW at page 294.

[note: 119] NE 24 April 2014 at page 118 line 28 onwards.

[note: 120] Defence and Counterclaim of 2nd and 3rd defendants at para 33(c) and Defence of 7th and 8th defendants at para 33(c).

[note: 121] NE 25 April 2014 at page 41 line 3 to 12.

[note: 122] PBOD at page 2278.

[note: 123] PBOD at page 2296 to 2318.

[note: 124] PBOD at page 2322.

[note: 125] ECW at para 20(2).

[note: 126] Defence and Counterclaim of 2nd and 3rd defendants at para 36.

[note: 127] ECW at page 320.

[note: 128] ECW at page 337.

[note: 129] ECW at page 335 and 352.

[note: 130] NE 29 April 2014 at page 5 line 18 to 19.

[note: 131] ECW at page 705.

[note: 132] ECW at para 23.

[note: 133] ECW at page 685 to 689.

[note: 134] ECW at para 26.

[note: 135] Supplementary AEIC of Steven Lau (SL-2) at para 4.

[note: 136] Plaintiff's supplementary bundle of documents at page 2.

[note: 137] ECW at page 529.

[note: 138] ECW at exhibit ECW-15.

[note: 139] ECW at page 666.

[note: 140] ECW at page 668 and 669.

[note: 141] SL at para 11

[note: 142] SL-2 at para 6.

[note: 143] NE 29 April 2014 at page 68 line 2 to 11.

[note: 144] LAK at page G32.

[note: 145] LAK at page G36.

[note: 146] NE 17 March 2015 at page 6 line 26 onwards.

[note: 147] NE 29 April 2014 page 16 line 16 to page 17 line 2.

[note: 148] Prayer (c), Statement of Claim (Amendment No 1) re-dated 20 September 2012 at page 46.

[note: 149] Statement of claim (Amendment No 1) re-dated 20 September 2012 at para 31.

[note: 150] LAK at page B18.

[note: 151] Plaintiff's closing submissions at para 367.

[note: 152] LAK at page B3.

[note: 153] ECW at page 669.

[note: 154] LAK at B12.

[note: 155] Plaintiff's bundle of documents ("PBOD") at page 729 to 731.

[note: 156] Statement of Claim (Amendment No 1) at para 51 and 53.

[note: 157] SL at para 14.

[note: 158] SL at para 20.

[note: 159] THS at para 36(a).

[note: 160] THS at para 33(2).

[note: 161] PBOD at page 1570 and 1575.

[note: 162] Plaintiff's closing submissions at para 340.

[note: 163] Plaintiff's closing submissions at para 113.

[note: 164] NE 27 July 2014 page 4 line 16.

[note: 165] Statement of Claim (Amendment No 1) at para 12.

[note: 166] LAK at para 19.