41/85

IN THE PRIVY COUNCIL No.32 of 1984

ON APPEAL

FROM THE COURT OF APPEAL IN THE REPUBLIC OF SINGAPORE

BETWEEN:

INTER EQUIPOS NAVALES, S.A. — Appellants (Plaintiffs)

- AND -

(1) LEW KAH CHOO
(2) LEW KAH HOOK
(3) LEW KAH HOO
(4) LEW LAY BENG (F)
(All trading under the name and style of Hock Cheong & Company) — Respondents (Defendants)

CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal from a Judgment of the Court of Appeal in the Republic of Singapore (Wee Chong Jin C.J. and Sinnathuray and Wahab Gows J.J.) allowing with costs an appeal by the Respondents from the Judgment of Kulaskarem J. in the High Court of the Republic of Singapore dated 28th June 1982, for reasons given by the Court of Appeal on 31st January 1984. Leave to appeal pursuant to section 3(1)(a) of the Judicial Committee Act (Cap.8) was granted on the 10th October 1983. Appeal lies as of right having regard to the amount in issue.

pp 118-119
pp 110-111
pp 120-135
pp 136

2. The Appellants are a company incorporated in the Republic of Spain who manufacture container fittings, container lashing equipment and other equipment used to stow and secure cargo on board ships, and in addition manufacture equipment used for the purpose of

p 27 Ll 39-45

p 67, L128-35 p.79, L1 18-26 p.67, L1 10-13

cargo handling. The Respondents are a firm trading in and from the Republic of Singapore who at the times material hereto were engaged in importing and manufacturing container fittings and container lashing and handling equipment. The Respondents are associated with a company incorporated in England, HCC Offshore Supplies (UK) Ltd., which engaged in the sale of wire ropes and fittings for ships and North Sea oil rigs.

pp 1-23

3. This appeal arises out of the trial of an action and counterclaim in respect of an agreement reached between the parties for the sale by the Respondents (or a company formed for the purposes of a joint venture between the parties) in Singapore and elsewhere of container fittings and lashing and handling equipment supplied by the Appellants. The broad question for decision is whether or not the Court of Appeal were correct to overrule the trial judge on an issue of fact on which he found in favour of the Appellants, namely whether the agreement was repudiated by the Respondents on the grounds alleged in paragraph 9(a) of the Appellants' Amended Defence to Counterclaim. p.17, L.6

4. The trial occupied a total of eleven days spread over a period of seven months: 11th and 12th November 1981, 10th, 11th and 12th February, 10th, 11th, 26th and 28th May and 28th June 1982. There was a considerable dispute as to the events which resulted in the agreement in question, and those which resulted in its termination. For this reason the summary of the factual and procedural background set out below is divided into three parts.

THE ORIGINAL AGREEMENT

p.27, L1 12-15 p.67, L1 18-27 p.67, L 18

5. It was common ground that the first business contact between the Appellants and the Respondents was made through HCC Offshore Supplies (UK) Ltd., the English company associated with the Respondents. In or about May 1977 the managing director of that company, Mr. Sonny Choo Swee Soon, contacted the Appellants in Spain with a view to determining whether or not his company would be able to

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represent the Appellants in selling container fittings and lashing equipment. The evidence given on behalf of the Respondents was that the English company entered into an arrangement with the Appellants whereby the latter agreed to pay the English company a commission of 8% on sales of the Appellants' goods obtained by or through that company. The only witness called by the Appellants to give evidence in this regard was Mr. Karl Friedrich Birger Merten, the President of the Appellants, who did not dispute that an 8% commission was given to the English company on certain transactions, although his evidence was that there was no "fixed arrangement" concerning such commission. It was common ground that after the initial contact made by Mr. Choo Swee Soon the Appellants began to supply the Respondents with container fittings and lashing and handling equipment which the Respondents paid for by means of letters of credit opened in the Appellants' favour.

p.67, L23
p.33, L12
p.33, L11-p.34, L20

6. Subsequently, in about July 1977 Mr. Merten, together with a naval architect named Mr. Cidon who was an employee of the Appellants, visited Singapore for the purpose of investigating the potential market for the Appellants' products. While in Singapore Mr. Merten visited the Respondents' factory at Jurong and met the first Respondent, Mr. Lew Kah Choo (also known as Michael Lew), the Respondents' managing partner. It was proposed that the Respondents should meet the Appellants in Madrid to discuss representing the Appellants in the sale of their container lashing products. Evidence was given on behalf of the Respondents that at the time of Mr. Merten's visit to Singapore the Respondents were, and previously had been, dealing in container equipment, buying container fittings and lashing equipment from suppliers in Japan and the U.K., and manufacturing container handling equipment in the form of "spreaders", which are rectangular steel frames used for lifting and handling containers. However Mr. Merten's evidence was that the Respondents did not know what a spreader was, and he denied that he had seen spreaders in various stages of construction at the Respondents'

p.27, LL15-18
p.67, LL25-27
p.79, L.14
p.27, L.22
p.34, L.45
p.35, LL3-5
p.67, LL36-41
p.67, L28
p.70, L24-p.71, L9
p.79, LL16-26
p.87, LL3-8
p.88, LL20-23
p.35, LL1-3
p.35, L.3
p.34, L.45-p.35, L.3

factory in Jurong when he visited the factory in July 1977.

p.28, L.3
p.35, L.4
p.36, L.10
p.67, L.40-
p.68, L.28
p.70, L.30
p.143, L.11

7. The next meeting between the parties took place in September 1977 in Madrid. The Appellants were represented by Mr. Merten and Mr. Vincent Hernandez and the Respondents were represented by Mr. Michael Lew, Mr. Swee and Mr. Roy Chua. The Respondents' case was that at this meeting it was orally agreed that the Respondents were appointed the Appellants' sole agents and distributors for the sale of their container fittings and lashing and handling equipment in Singapore, the Far East and Asean regions for a period of two years. The evidence on

p.63, L.34-
p.65, L.4
p.68, L.1
p.79 L.38-
p.80, L.29
p.91, L.17

behalf of the Respondents (given by Mr. Lew, Mr. Chua and Mr. Choo) was that they were to be paid a comission of 8% on (a) all sales from stock consigned to them by the Appellants, (b) all sales of the Appellants' equipment effected by the Appellants through the Respondents, and (c) all sales of such equipment in the Far East and Asean regions whether or not the same were the result of the Respondents' intervention. Moreover the parties

p.35, L.25
p.64, L.39
p.68, L.15
p.80, L.8
pp.143-144

discussed arrangements for Mr. Hernandez to be sent to Singapore as the Appellants' delegate for a period of two years commencing in January 1978 when Mr. Merten and Mr. Hernandez planned to meet with the Respondents in Singapore.

p.12, L.18-
p.13, L.19

8. The Appellants, by their Reply and Defence to Counterclaim dated 1st August 1979, at first denied that there was any such oral agreement between the parties, but

p.13, L.20

by paragraph 3 of their Re-amended Defence to Counterclaim dated 25th November 1981 (i.e. after Mr. Merten had given evidence in chief at the trial on 11th and 12th November 1981) the Appellants alleged that at the September 1977 meeting the Respondents were provisionally appointed distributors of the Appellants' equipment in Singapore, Malaysia and Hong Kong only.

p.15, L.1

Moreover the Appellants alleged (by paragraph 5 of their Re-amended Defence to Counterclaim) that at another meeting in Madrid in or about November 1977 the parties agreed upon the terms under which Mr. Hernandez would be sent to Singapore to work with the Respondents in establishing

their container equipment business, and that those terms were recorded in a written memorandum signed by the parties at the November 1977 meeting.

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9. In any case it was common ground that there was a further meeting between the parties on 15th January 1978 in Singapore when Mr. Hernandez was seconded to the Respondents for a period of two years to assist in the organisation and running of their newly-established container fittings and lashing equipment department. For the purpose of establishing this department, prior to the January 1978 meeting the Respondents hired Mr. Ong Geok Quee to act as the department manager and Mr. James Khoo to act as the department's sales and marketing supervisor. The terms which were agreed between the parties at the January 1978 meeting were recorded by Mr. Ong in the form of minutes which were initialled by Mr. Hernandez on behalf of the Appellants. Mr. Hernandez also initialled an amendment to the minutes dated 2nd February 1978. Mr. Merten's evidence, however, was to the effect that the minutes, which purported to record the confirmation of the Respondents' appointment as sole agent and distributor for the Appellants' products in Singapore, the Far East and South East Asia, were not an accurate reflection of what had been agreed. Mr. Merten did not accept that the Respondents became, at this or any other stage, the sole agents and distributors of the Appellants' container lashing products. However, following the January 1978 meeting the Respondents publicly announced their appointment as the Appellants' sole agents and distributors in Singapore, the Far East and South East Asia by means of advertisements placed in the Singapore press, a trade publication and a catalogue of the products offered for sale. (Shortly before the meeting Mr. Michael Lew and Mr. Khoo visited Malaysia for the purpose of investigating the potential market in that country for the Appellants' products, and Mr. Khoo also visted Hong Kong, Taiwan and Japan in order to carry out similar research in those countries.) Both courts below found that, at any rate by January 1978, the Respondents were the

p.29, L.13
p.61, L.12
p.72, L.21
p.80, L.30
p.72, L.13
p.152, L.14
p.155, L.19
p.156, L.7- p.159, L.35
p.160, L.7
p.29, LL.18-22
p.30, L.1
p.29, LL18-22
p.29, LL.30-35
p.30, LL.15-28
p.36, LL.10-13
p.41, L.5- p.42, L.20
p.47, L.24 p.48, L.28
p.30, LL.3-14
p.48, LL.29-37
p.82, LL.21-32
p.162, L.10 [AB 24A-30] [AB 89-96]
p.152, L.14
p.155, L.27
p.108, L.5
pp.126-127

Appellants' sole agents for the sale of their container fittings and lashing products in Singapore, the Far East and South East Asia in accordance with the terms of the minutes of the January 1978 meeting as subsequently amended.

p.156, L.9- p.160, L.17

THE JOINT VENTURE

10. The first reference to a proposal for the two parties to jointly establish and operate a new company is contained in a telex dated 15th December 1977 from the Respondents to the Appellants. Thereafter, from early March 1978 down to the memorandum executed on 18th May and amended on 19th May 1978, the development of the proposals for the constitution of the joint venture company may be traced in the documentary record comprising the telexes exchanged between the parties in March and April 1978. On 13th March 1978 the Appellants telexed the Respondents proposing inter alia that the new joint venture company should be named "Inter Lashing Systems Far East Ltd. (Pty)." On 15th April 1978 the Respondents' solicitors wrote to the Singapore Registrar of Companies inquiring whether the name "Inter Lashing Systems Far East Pte. Ltd." was available for registration, and on 25th April the Respondents' solicitors applied to reserve that name as the name of the intended joint venture company. The parties met on 18th May 1978 at the Respondents' offices in Kallang to discuss the terms of the joint venture, and afterwards a dinner was held at the Mandarin Hotel in Singapore to celebrate the conclusion of the agreement. The following morning Mr. Michael Lew and Mr. Swee left Singapore to visit Taiwan and Japan.

p.153, L.12
p.165, L.22
pp.206-211
pp.173 177-182, 186, 187, 188, 190, 196
p.173, L.18
p.201, L.9
pp.202, 205
p.43, L.30
p.68, L.33
p.81, L.24
p.68, L.31- p.69, L.12
p.81, L.35

11. The memorandum of the joint venture agreement reached on 18th May 1978 was prepared by Mr. Ong and signed by Mr. Merton on behalf of the Appellants and by Mr. Michael Lew on behalf of the Respondents. Paragraph J(1) of the memorandum provided as follows:

p.210, L.26
p.210, L.24
p.210, L.13

> "I. This New Company has the right to purchase or fabricate from any sources where necessary for the

sales of lashing systems and materials with solely INTER design and drawing."

By an amendment dated 19th May 1978 which was also signed by Mr. Merten paragraph J(1) was altered to read as follows: p.211, L.10

"1. This New Company has the right to purchase or fabricate from any sources where always the Price would be cheaper and with understanding that only original "INTER" design is being used and same material and quality standard is guaranteed."

The amendment also dealt in detail with the territorial extent of the joint venture's operation, listing ten Asian countries to which the agreement related. p.211, L.15

It was suggested by Mr. Merten in the course of cross-examination that the joint venture memorandum did not constitute a "final agreement", but this suggestion is belied by the comprehensive negotiations which preceded the memorandum and the circumstances which surrounded its execution. These may also be considered under the following heading. p.43, L.30-p.44, L.5

THE CLAIM OF UNAUTHORISED MANUFACTURING OF THE APPELLANTS' PRODUCTS

12. The essence of the Appellant's case was that the Respondents repudiated the agreement reached by the parties, both as respects the original terms on which the Respondents were to sell the Appellants' products and the joint venture agreement, by reason of their alleged unauthorised manufacture of copies of the Appellants' products. Mr. Merten gave evidence that when he came to Singapore in May 1978 for the purpose of concluding the joint venture agreement Mr. Hernandez showed him copies of two price quotations and a series of stock reports maintained by the Respondents which recorded that in March 1978 samples of some of the Appellants' products had been loaned to two foundries in Singapore for the purpose of obtaining production quotations. Mr. Merten's evidence was that these documents had been kept secret from Mr. p.30, L.5-p.31, L.26 p.31, L.40-p.32, L.42 pp.163, 171, 167-170, 194-195. p.30, L.15 p.40, L.15

Hernandez, and that on 19th May 1978, after the joint venture memorandum and the amendments thereto had been signed,

p.30, L.42- p.31, L.24 he and Mr. Hernandez visited the Respondents' factory at Jurong and found that the Respondents were manufacturing spreaders and a particular model of lashing bar (stock no. EAT-3) which were copies of the Appellants' products. The Appellants' main contention was that this discovery

p.36, L.12 confirmed suspicions Mr. Hernandez and Mr. Merten already had about the Respondents, and that as a result the Appellants terminated their agreement with the Respondents and immediately

p.44, LL.18-29 formed a new Singapore company, Inter Equipos Navales (Far East) Pte. Ltd., to market their products in place of the Respondents. Mr. Merten

p.44, LL.21-29 said (in the course of cross-examination on 10th February 1982) that it was necessary for the Appellants to form the new company as the Respondents were holding stocks of the Appellants' goods which they refused to return, and that accordingly he gave instructions to Mr. Hernandez to have the new company incorporated. He

p.45, LL.10-19 denied that <u>before</u> 20th May 1978 the Appellants had the intention of setting up a Singapore company without the participation of the Respondents, and

p.44, LL.21-26 stated that he gave instructions to have the new company formed <u>after</u> the visit to Jurong on 19th May. The directors and shareholders of the new

pp.219-221 company were Mr. Merten, Mr. Hernandez and Mr. James Khoo (the Respondents' sales and marketing supervisor).

13. Neither Mr. Hernandez nor Mr. Khoo was called to give evidence on

p.73, LL.21-33 behalf of the Appellants. Evidence was given on behalf of the Respondents

p.77, LL.11-29 that the two quotations prepared in March 1978 were obtained on the instructions

p.85, LL. 9-12 of Mr. Hernandez, and that they were obtained for the purpose of determining whether it would be less costly for the joint venture company to manufacture its products in Singapore than for the Appellants to manufacture them in Spain.

p.25, L.15 No order was placed with Jurong Alloys

(Pte.) Ltd. (one of the two foundries which quoted) as a result of these inquiries, and there was no evidence that the other foundry (Singapore Steel (Pte.) Ltd.) produced copies of any of the goods loaned to it. As regards the allegation that the quotations and stock records had been withheld from Mr. Hernandez (and were not seen by Mr. Merten until his visit to Singapore in May 1978), the Respondents put in evidence a copy of a memorandum dated 6th April 1978 and sent by Mr. Hernandez to Mr. Merten which enclosed copies of the quotations. A copy of the memorandum was found in the Respondents' files in their office at Kallang, and the evidence on behalf of the Respondents was that Mr. Hernandez, who worked at the Kallang office, had unrestricted access to the stock records which were kept there. Mr. Merten (who was recalled and cross-examined on the memorandum on 11th May 1982, the sixth day of the trial) said that he had not seen the document before, but he did not dispute its authenticity. Nor did Mr. Merten dispute the evidence given by Mr. Tan Kay Bin, the solicitor instructed in the formation of Inter Equipos Navales (Far East) Pte. Ltd., that he was originally instructed by Mr. Hernandez and Mr. Khoo on 16th March 1978, two months before the events which Mr. Merten said resulted in the formation of that company. Prior to 19th May 1978 Mr. Tan was also informed by Mr. Hernandez and Mr. Khoo that Mr. Merten would be one of the subscribers to the company's memorandum and articles of association. It was denied that the Respondents had secretly manufactured copies of the Appellants' products for sale otherwise than in pursuance of the agreement between the parties; in particular, Mr. Michael Lew denied that the Respondents had secretly manufactured copies of the two items that Mr. Merten claimed to have seen on his visit to the Respondents' factory at Jurong on 19th May.

p.234
p.59, L.5-p.60. L.17
p.78, L.36
p.59, LL.24-45
p.73, LL.16-20
p.55, L.8-p.56, L.22
p.55, L.23
p.57 L.9-p.58, L.23
p.58, LL.3-11
p.69, LL.23-25
p.80, L.35-p.81. L.23
p.86, L.33-p.87, L.21
p.87, L.37-p.88, L.32

14. In light of the evidence summarised above, it is important to examine the reasons which the Appellants gave in May 1978 for their decision not to proceed with the agreement. It was common ground that the Appellants first informed the Respondents of their intention to withdraw from the agreement at a meeting on 19th May which took place at the Singapore Hilton Hotel and was attended by Mr. Merten

p.31. L.20
p.43, L.21
p.44, L.15
p.74, L.19-p.75, L.19
p.81, L.35

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p.212 Mr. Hernandez, Mr. Ong and the second Respondent, Mr. Jimmy Lew. After the meeting, Mr. Hernandez wrote to the Respondents stating that he did not wish to participate in the joint venture and giving his reasons for concluding that "there is no possible success for the new company". The next day Mr. Merten

pp.213-214 wrote to the Respondents referring

p.213, L.19-p.214, L.13 to Mr. Hernandez's decision and stating that

> "Inter, facing this new situation, has been forced to decline participation in the joint venture as to the conditions negotiated with you previously in the past days ... We trust that you will understand that without having a man of our confidence in a joint venture where we are supposed to have 51 percent we cannot go on for the time being."

p.213, L.40 Mr. Merten's letter also suggested that the parties should meet again in mid-June 1978 "for new negotiations". Neither of the letters referred to Mr. Merten's and Mr. Hernandez's visit to the Respondents' factory at Jurong on 19th May.

15. On 28th June 1982 Kulaskarem J.

pp.107-108 gave judgment for the Appellants. Although the Judge observed that Mr. Merten's

p.107, L.22 evidence was "weak" on the question of "whether he saw his lawyer before or after his finding out of the breach of the defendants" and that Mr. Merten

p.108, L.17 "was not quite accurate" about the steps that were taken following the visit to

p.108, LL.11-13 Jurong on 19th May, he found that the Appellants were entitled to terminate the agreement forthwith on 19th May.

p.111-113 The Respondents appealed inter alia on the grounds that Kulaskarem J. erred in fact and law in (a) finding against the weight of the evidence that the Respondents had fabricated copies of the Appellants' goods and that Mr. Merten had terminated the agreement between the parties for that reason, (b) failing to consider the evidence given by Mr. Tan Kay Bin, and (c) disregarding "the many occasions when Merten ... was untruthful" when giving his evidence.

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16. The Court of Appeal identified three factors which entirely undermined the trial judge's findings: p.127-135

(1) the unchallenged evidence of Mr. Tan Kay Bin, in particular his evidence concerning his instructions to act on the formation of Inter Equipos Navales (Far East) Pte. Ltd., the company set up by Mr. Merten, Mr. Hernandez and Mr. Khoo; p.127, L.16-p.129, L.4 p.57, LL.11-30

(2) the evidence that the Appellants had authorised the Respondents to manufacture certain items of stock in order to fulfil orders for such goods, and that the Appellants had indicated their consent to the suggestion in the telex from the Respondents dated 14th March 1978 that the Respondents might manufacture spreaders in Singapore using the Appellants' spare parts provided agreement regarding the joint venture was reached; p.129, L.5-p.131, L.15 p.176, L.9 p.175, L.31

(3) the fact that Mr. Merten's letter dated 20th May 1978 was not consistent with his claim that it was the alleged discovery of unauthorised manufacture of spreaders and lashing bars which prompted the Appellants to withdraw from the joint venture and terminate the Respondents' right to sell the Appellants' goods. p.131, L.25-p.135, L.5 pp.213-214

In the Respondents' submission there are at least two or more such factors in the evidence:

(4) Mr. Merten was the only witness called by the Appellants who was in a position to say that unauthorised manufacture had taken place. Yet his evidence must be of doubtful value in view of the fact that he originally gave evidence that he did not see the price quotations prepared by the two foundries, Jurong Alloys and Singapore Steel, until they were shown to him by Mr. Hernandez in Singapore in May 1978, p.30, LL.16-29

when in fact they were sent to him in April 1978 by Mr. Hernandez under cover of the memorandum put in evidence by the Respondents as exhibit D7; and

p.55, L.8-p.56, L.11
p.234

(5) Mr. Merten did not, and was not able to, give any evidence contradicting the evidence of Miss Angela Tan and Mr. Ong that the stock records (which Mr. Merten alleged Mr. Hernandez had to "procure by a special way") were readily available to Mr. Hernandez, and that it was Mr. Hernandez who asked for price quotations from Jurong Alloys and Singapore Steel for the purpose of checking local production costs in connection with the joint venture.

pp.59-60
p.73, LL.16-20
p.51, L.14
pp.59-60
p.73, L.26

Moreover, if Mr. Merten did have suspicions that the Respondents were secretly copying goods supplied by the Appellants, it would not have been logical or sensible for him and Mr. Hernandez to wait until after the joint venture agreement was signed on 18th May 1978 to visit the Respondents' factory; and no reason was given by Mr. Merten for waiting until 19th May to make that visit.

17. In these circumstances, the Court of Appeal was entitled and indeed obliged to review the trial judge's findings of fact on the issue of repudiation on the part of the Respondents. The principles which govern an appellate court in reviewing such findings have been stated and applied by the Judicial Committee many times. Those principles were summarised by Lord Thankerton in the decision of the House of Lords in Watt v Thomas [1947] A.C. 484 at pp.487-488:

> "(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellant court which is disposed to come to a different conclusion on the printed evidence,

should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion. RECORD

(2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.

(3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

For a recent application of the foregoing principles by the Judicial Committee, see Kim Guan Sdn. Bhd. v Yong Nyee Sdn. Bhd. [1983] 2 M.L.J. 8, and see also Chow Yee Wah v Choo Ah Pat [1978] 2 M.L.J. 41. It is important to note that the instant case is not one in which the trial judge has clearly and unequivocally preferred the evidence of one witness (or set of witnesses) to that of another (a factor which, if present, could properly restrain an appellate court from disagreeing with the finding of a judge at first instance). Here the trial judge plainly had misgivings about Mr. Merten's evidence: see his remarks at p.107 of the Record. The Court of Appeal, having regard to the "documentary and other unchallenged evidence adduced" by the Respondents which contradicted the judge's findings, were entitled to consider that no advantage the trial judge enjoyed in being able to see and hear the witnesses himself could be sufficient to explain and justify his conclusion that Mr. Merten's evidence on the question of whether the Respondents had committed a repudiatory breach should be accepted, especially when the Judge had rejected, either explicitly or implicitly, much of Mr. Merten's account of the sequence of events.

18. Moreover the appellate judges in this

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case were entitled to draw, from the facts noted in paragraphs 12-14 and 16 above, inferences different from those apparently drawn by the trial judge. See 0.57, r.13(3) of the Singapore Rules of the Supreme Court (which corresponds to R.S.C. 0.59, r.13(3) of the English rules). The facts were very strongly in favour of the inference (correctly drawn by the Court of Appeal) that Mr. Merten was hunting for a pretext for withdrawing from the joint venture and the original agreement - especially in view of the terms of the letters of 19th and 20th May 1978, neither of which lays any emphasis on the alleged discovery at the Respondents' factory at Jurong on the day in question.

19. The Court of Appeal rightly drew attention to the fact that there was ample uncontradicted documentary evidence that on numerous occasions the Appellants conferred authority on the Respondents to manufacture items of stock in Singapore. The Respondents further submit that there was no acceptable evidence that such authority had been exceeded, or that the Respondents made duplicates of the Appellants' goods otherwise than for sale as the Appellants' agents, or pursuant to the joint venture. There was in the circumstances in evidence before the trial judge no conduct capable of being treated as a repudiatory breach on the part of the Respondents.

pp.149, 232 175, 176, 183, 185, 189, 197, 198

20. The Respondents therefore submit that this appeal ought to be dismissed and the judgment of the Court of Appeal affirmed for the following (among other).

R E A S O N S

(1) BECAUSE the Court of Appeal were entitled to and obliged to disagree with the conclusion of the trial judge that the evidence of the witness Merten ought to be accepted;

(2) BECAUSE the trial judge took no or no sufficient account, or failed

to draw the correct inference(s) from, the facts set out in the Court of Appeal's Judgment at pp.127-135 of the Record;

(3) BECAUSE the advantage enjoyed by the trial judge in being able to see and hear the witnesses himself could not in the circumstances explain and justify the conclusion he reached;

(4) BECAUSE the (unanimous) view of the Court of Appeal was right and the trial judge was wrong.

LEOLIN PRICE

ANDREW DE LA ROSA