**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR**

**IN THE FEDERAL TERRITORY OF KUALA LUMPUR**

**(COMMERCIAL DECISION)**

**ADMIRALTY IN PERSONAM NO. WA-27NCC-50-07/2019**

**BETWEEN**

1. **COSCO SHIPPING HEAVY INDUSTRY (DALIAN) CO., LTD [Previously known as COSCO (DALIAN) SHIPYARD CO., LTD] (PRC Company Registration No.: 91210200604867131X)**
2. **DALIAN DEVELOPER DRILLING CO., LIMITED (Hong Kong Company Registration No.: 2250480)**

**... PLAINTIFFS**

**AND**

**OSTA FLEET SDN. BHD. (Malaysia Company Registration No: 796168-T)**

**… DEFENDANT**

**JUDGMENT**

[1] In the annals of ship registration law, few cases have presented as intriguing a puzzle as this dispute over the vessel “Dalian Developer”. It is a tale that unfolds not on the



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high seas, but in the bureaucratic corridors of maritime registries and corporate boardrooms. At its heart lies a ship of remarkable capabilities, but more than that, it is a story about the intricacies of vessel ownership and the sometimes murky waters of registration procedures.

[2] As I sift through the voluminous evidence before me, I am struck by the complexity of the case. On one side stands a giant of Chinese shipbuilding. On the other, a Malaysian company with aspirations in the offshore industry. Between them is a vessel, registered in Malaysia but claimed by a Chinese entity, embodying a dispute that hinges on the minutiae of administrative processes and documentary requirements.

[3] The central question seems deceptively simple: Who is the rightful owner of the “Dalian Developer”? But to answer this, we must navigate through a labyrinth of builder's certificates, registration forms, and statutory declarations. We must scrutinise the very mechanics of how a ship comes to be registered under a nation's flag, and what that registration truly signifies.

[4] Our task, then, is to chart a course through these bureaucratic waters towards a just and reasoned conclusion. For the implications of this case extend beyond the fate of a single vessel, touching on the fundamental integrity of ship registration systems and the reliance placed



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upon them by maritime authorities and commercial entities alike.

## BACKGROUND FACTS

[5] In early 2014, Mr. Azman Bin Abu Bakar ("***Azman***"), the CEO of AAB Ocean Group of companies, engaged in discussions with the 1st Plaintiff, Cosco (Dalian) Shipyard Co. Ltd, regarding working together to market an offshore drilling unit known as "Dalian Developer" ("***the Vessel***") to Petroliam Nasional Berhad ("***Petronas***") in Malaysia, specifically to secure charter contracts. The Vessel was then under construction at the 1st Plaintiff's shipyard in Dalian, China.

[6] The Vessel was provisionally registered with the Port of Registry in Kota Kinabalu, Malaysia ("***Malaysia Ship Registry***") on 3.7.2014, and then permanently registered on 4.11.2014, under the Defendant, Osta Fleet Sdn. Bhd. The registered owner was thus the Defendant. The Plaintiffs contend that the permanent registration was done without their knowledge. Upon completion of construction, the 1st Plaintiff as the Builder issued a Builder's Certificate dated 30.6.2015 ("***2015 Builder's Certificate***") transferring ownership of the Vessel to the 2nd Plaintiff, Dalian Developer Drilling Co., Limited.

[7] On 19.12.2015, the 1st Plaintiff entered into a Commercial and Technical Services Agreement ("***CTSA***") with CH



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Pavilion Sdn. Bhd. ("***CH Pavilion***"), a special purpose company created by Azman. The purpose was to commercially and technically upgrade the Vessel into a Floating, Production, Drilling, Storage and Offloading (FDPSO) unit based on Technip S.A Paris design, and use it to tender for Petronas contracts in Malaysian waters.

[8] On 23.12.2015, the parties entered into a supplementary Rider Agreement ("***the Rider Agreement***") that set out the shareholding and divestment arrangements regarding the Petronas licensed company to be acquired by CH Pavilion to facilitate getting contracts from Petronas.

[9] On 31.11.2018 the Defendant submitted a tender to Petronas Carigali Sdn. Bhd. ("***Petronas Carigali***") for the Limbayung Deepwater Development Project ("***the Limbayung Project***"), an advanced offshore development project in Sabah, Malaysia with the Defendant expecting substantial profits from the tender with a value of a USD1.861 billion. Over the next few years, no firm charter contract was awarded by Petronas for the Vessel through the efforts of CH Pavilion, the Defendant or otherwise. The tender submission process was still underway.

[10] On 28.6.2019, the 1st and 2nd Plaintiffs sent a letter demanding the Defendant to de-register the Vessel within 48 hours to unwind their venture, since the objective of securing Petronas contracts could not be achieved even after a long period, but the Defendant did not comply.



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[11] On 12.7.2019, alleging that the permanent registration in 2014 was fraudulent and done without their knowledge, the 1st and 2nd Plaintiffs commenced this legal action against the Defendant for unlawful conversion of property and claimed damages. The Plaintiff sought a declaration of beneficial ownership of the Vessel, an order for the Defendant to de-register the Vessel from the Malaysia Ship Registry, damages for the Defendant's failure to comply, and related reliefs.

[12] Through a Third Party Discovery application against the Sabah Director of Marine, Kota Kinabalu Ship Registry, on 20.9.2019 the Marine Department furnished a copy of the Builder's Certificate dated 17.2.2014 ("***2014 Builder's Certificate***") to the order and on account of Guard Offshore (BVI) Ltd ("***Guard Offshore (BVI)***") submitted by the Defendant used to effect the permanent registration.

[13] The Defendant in its Defence and Counterclaim filed on 9.8.20219 (later amended) denied liability and asserted that it had proper contractual rights and obligations per the CTSA and Rider Agreement regarding facilitating the provisional and permanent registration of the Vessel in Malaysia, for meeting local pre-qualifications and bidding requirements. Moreover, expenses of USD2 million were incurred by the Defendant and paid by the 1st Plaintiff for the registration process.



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[14] The Defendant counterclaimed for losses from breach of contract by the Plaintiffs in unilaterally terminating the agreements while the Limbayung Project tender negotiation with Petronas Carigali was still underway as the Defendant was expecting substantial profits from the tender with a value of a USD1.861 billion.

[15] On 28.11.2019, the Plaintiffs obtained an interim injunction restraining the Defendant from dealing with or disposing of the Vessel or its sale proceeds, and from altering its registration details until the full trial or further court order ("***the Interim Injunction***").

## THE PLAINTIFFS' CLAIM

[16] The Plaintiffs mainly claim for the following:

a) A declaration that the 1st Plaintiff or alternatively the 2nd Plaintiff is the beneficial owner of the Vessel.

b) A declaration that the Defendant is holding the vessel on trust for the 1st Plaintiff or alternatively the 2nd Plaintiff.

c) An order that the Defendant de-register or cancel the permanent registration of the vessel from the Port of Registry at Kota Kinabalu, Malaysia.



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d) Damages arising from the refusal of the Defendant to de-register or cancel the permanent registration of the vessel from 10.7.2019 until the de-registration or cancellation takes place.

## THE DEFENDANT'S COUNTERCLAIM

[17] In the Defendant's Counterclaim, the Defendant claims mainly for the following:

a) Damages for breach of contract by the Plaintiffs in prematurely terminating the CTSA and the supplementary Rider Agreement, while the tender negotiation for the Limbayung Project from Petronas was underway.

b) Losses suffered from failure to mobilise the Vessel from China to Malaysia, resulting in loss of business opportunity and anticipated income from Petronas projects. The Defendant claims one year's costs of the failed Vessel mobilisation.

c) Recovery of shareholders' capital and management expenses incurred by the Defendant towards promotion of the Vessel and the Petronas tender, including engineering, design, equipment costs amounting to over USD2 million paid by the 1st Plaintiff.



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d) Loss of opportunity to win the USD1.861 billion Petronas tender for the Limbayung Project and hence loss of profits, due to the Plaintiffs removing the Defendant from the tender process.

## THE PLAINTIFFS' CASE

[18] In summary, the Plaintiffs' case is that the permanent registration of the Vessel in the name of the Defendant with the Malaysia Ship Registry was done fraudulently without their authorisation and consent.

[19] The Plaintiffs contend that neither the 1st Plaintiff as the builder nor the 2nd Plaintiff as the intended beneficial owner, had issued any Builder's Certificate or Bill of Sale transferring ownership rights to the Defendant. Hence the permanent registration of the Vessel by the Defendant, despite the earlier provisional registration is unlawful.

[20] The Vessel was provisionally and then permanently registered in the name of the Defendant with the Malaysia Ship Registry, but with the common understanding that there was no intention to transfer beneficial ownership from the 2nd Plaintiff to the Defendant. This was solely to facilitate securing Petronas contracts.

[21] The Plaintiffs assert that the Defendant's provisional registration as the Vessel's owner was merely a formality to facilitate business dealings with Petronas, not a genuine



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transfer of ownership. They argue that a trust relationship exists, where the Defendant holds the Vessel's legal title as a nominee or constructive trustee, while the Plaintiffs retain beneficial ownership. This is the basis for their demand for the Defendant to deregister the Vessel and acknowledge the Plaintiffs' true ownership rights.

[22] They further assert that the purpose of the initial agreements and venture between parties was only to secure a charter contract from Petronas for utilising the Vessel, by temporarily registering it in Malaysia. Since this objective could not be met even after several years, the Plaintiffs were justified in seeking to unwind the arrangement by de-registering the Vessel.

[23] However, the Defendant failed to comply with the demand notice to cancel the permanent registration. Therefore, the Plaintiffs allege that the Defendant's continued holding onto the Vessel's registration amounts to misappropriation and conversion of the 2nd Plaintiff's property.

[24] The Plaintiffs further contend that the Vessel's permanent registration is invalid due to multiple procedural and legal flaws. These include a purportedly forged Builder's Certificate, failure to meet statutory requirements under the Merchant Shipping Ordinance 1952 ("***MSO***"), lack of proper documentation and authorisation, and the submission of a copy rather than the original Builder's Certificate. These



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issues, they argue, render the registration both wrongful and defective under maritime law.

[25] Based on the above, the Plaintiffs seek court orders and declarations establishing that they are the rightful owners, and directing the Defendant to de-register the Vessel besides claiming damages for conversion losses suffered.

## THE DEFENDANT'S CASE

[26] In summary, the Defendant's case is that the permanent registration of the Vessel in its name with the Malaysia Ship Registry was lawfully done as per contractual agreements between the parties.

[27] The Defendant claims that the registration of the Vessel in its name was done with the full knowledge and participation of the 1st Plaintiff, including surveys and certifications carried out at the 1st Plaintiff's shipyard.

[28] The Defendant contends that the CTSA signed in December 2015 had expressly provided for and agreed upon provisional registration first in July 2014 followed by permanent registration in November 2014 of the Vessel with Malaysian authorities to meet local tender and operational requirements. The Defendant asserts that it paid USD2 million to CH Pavilion for engineering services and registration of the Vessel, as agreed in the CTSA.



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[29] As such, the Defendant fulfilled its contractual obligations for which it was remunerated USD2 million by the 1st Plaintiff towards registration costs. Hence the matter of registering the Vessel for an envisioned operating lease with Petronas was settled five years ago.

[30] The Defendant refutes the Plaintiffs' allegation that the Builder's Certificate is forged and assert that a "Lv Xiaodong" from the 1st Plaintiff company, genuinely signed the document during the Vessel's survey and measurement process in April 2014. The Defendant contends that the certificate was part of a legitimate and transparent registration process.

[31] The Defendant contends that all steps taken in registering the vessel were in full compliance with the MSO and other relevant laws. They maintain that the registration process involved multiple parties, including Malaysian authorities and classification societies, all of which followed proper procedures.

[32] Therefore, the Plaintiffs are now barred and estopped from requiring de-registration at this late stage. More so when detailed negotiations are underway over an active USD1.861 billion pending the Limbayung Project tender with Petronas involving the Vessel.

[33] The Defendant asserts it continues to remain the legitimately registered owner, and that the Plaintiffs are in



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breach of contract leading to losses and damages suffered. Consequently, the Defendant pleads dismissal of Plaintiffs' suit and counterclaims for breach losses.

**WITNESSES**

[34] The Plaintiffs called seven witnesses as follows:

a) PW1 is Hu Guangcheng, the Chief of the Commercial Department of the 1st Plaintiff. His evidence was on the background facts leading to the dispute over ownership and registration of the Vessel, particularly on the broader commercial dealings with Azman regarding marketing, sale and registration of the Vessel in Malaysia, including negotiations and execution of key agreements. His witness statement is marked as "WS-PW1."

b) PW2 is Gao Yongqiang, the Director and General Manager of the 1st Plaintiff at the material time. His evidence is on his involvement in executing the agreements regarding transfer of ownership and sale of the Vessel from the 1st Plaintiff to the 2nd Plaintiff, as well as the CTSA and Rider Agreement with CH Pavilion. His witness statement is marked as "WS-PW2."

c) PW3 is Lyu Xiaodong, the Marketing and Senior Commercial Project Manager of the Commercial



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Department of the 1st Plaintiff. His evidence was also on the background facts leading to the dispute over ownership and registration of the Vessel, particularly on his direct involvement in commercial negotiations with Azman and preparatory work regarding the potential sale of the Vessel. His witness statement is marked as “WS-PW3.”

d) PW4 is Jamilah Binti Ismail, a Commissioner for Oaths. Her evidence is on her attestation of the 2014 Builders’ Certificate for the Vessel by putting her commissioner stamp on the photocopy. Her witness statement is marked as “WS-PW5.”

e) PW5 is Norjipin bin Saidi, the Director (Pengarah) of Marine Department Sabah and Registrar of Ships. His evidence is on the registration process and documents relating to the provisional and permanent registration of the Vessel with the Malaysia Ship Registry including the process, requirements and documents involved in the provisional and permanent registration of the Vessel, based on the registration files and checklists used by the Marine Department Sabah. He also gave his views and explanations, as the current Director of Marine Department Sabah and Registrar of Ships, on whether the registration was in compliance with legal provisions in the MSO and proper procedures. He was a subpoaenaed witness.



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f) PW6 is Tay Eue Kam, the Forensic Document Examiner at PHA Handwriting Analysis Sdn. Bhd, the Plaintiffs' expert witness. Her evidence is on the forensic examination of the 2014 Builder's Certificate to determine if the signature of one "Lv Xiaodong" is genuine or forged. Her witness statements are marked as "WS-PW6" and "WS-PW6B."

g) PW7 is Pang Chan Kok William, the Senior Forensic Handwriting and Questioned Document Examiner at PHA Handwriting Analysis Sdn. Bhd. and Forensic Handwriting and Questioned Document Examiner at HFDE Services Pte. Ltd. Singapore, the Plaintiffs' expert witness. His evidence is on the forensic examination of the 2014 Builder's Certificate to determine if the signature of one "Lv Xiaodong" is genuine or forged. His witness statement is marked as "WS-PW7."

[35] The Defendant called seven witnesses as follows:

a) DW1 is Siti Nur Musliha Bt Mohamad Noor, a Document Examiner in service of the Government of Malaysia at Jabatan Kimia Malaysia (Department of Chemistry Malaysia). Her testimony focuses on examining documents to determine if the signature on the 2014 Builder's Certificate matches specimen signatures of Lyu Xiaodong from other documents. She was called as a subpoenaed witness.



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b) DW2 is Mohamad Yusof Bin Shahid, former Petronas Country Chairman, Sudan, former Head of Engineering Petronas Carigali and former member of Petronas tender technical committee. His evidence is on the Defendant's chances and eligibility to be awarded the Limbayung Project by Petronas and the potential losses suffered by the Defendant due to the Plaintiffs' claims over the Vessel. His witness statement is marked as "WS-DW2."

c) DW3 is Azman Bin Abu Bakar, Chief Executive Officer and Managing Director of the Defendant. His evidence is on the background and relationship between the Plaintiffs and the Defendant concerning the Vessel and the Defendant's preparation and bidding for oil and gas projects in Malaysia using the Vessel, the losses suffered by the Defendant due to the Plaintiffs' legal actions, and the allegation by the Plaintiffs that the 2014 Builder's Certificate is a forgery. His witness statement is marked as "WS-DW3."

d) DW4 is Ir. Jaslani Ahmad Sha"arani, Managing Director of Aquastruction Sdn Bhd ("***Aquastruction***"). His evidence is on the role and importance of the Vessel in the bidding process undertaken by Aquastruction together with the Defendant in their bid for the Limbayung Project and the costs incurred by Aquastruction for the bid



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preparation work. His witness statement is marked as “WS-DW4.”

e) DW5 is Tuan Haji Rosnan Fathlal, the former Director of Marine Sabah Region and former Registrar of Ship Kota Kinabalu, Malaysia. His evidence is on the inspection and registration process undertaken for the Vessel to be registered as a Malaysian ship in Kota Kinabalu, including reliance on the 2014 Builder’s Certificate showing the Defendant as owner for the registration of the Vessel. His witness statement is marked as “WS-DW5.”

f) DW6 is Tan Sri Datuk Seri Panglima Haji Datu Khalil Bin Datu Jamalul, Chairman of Sabah Deepwater Alliance. His evidence is on the setting up of the Sabah Deepwater Alliance jointly with the Defendant and others to participate in the bidding for the Limbayung Project and the expectation to use the Vessel for the project. His witness statement is marked as “WS-DW6.”

g) DW7 is Chai Siaw Fah, Director of the Defendant. His evidence is on his assistance to DW3 Azman in getting the Vessel registered as a Malaysian ship to be used for bidding the Limbayung Project, including his financial support for the bidding preparation work



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undertaken primarily by Azman. His witness statement is marked as “WS-DW7.”

## ISSUES

[36] After considering the facts of the case, the defences relied on by parties and all submissions, the court frames the following issues for deliberation which this court considers pivotal to the resolution of the main action:

a) Whether the registration of the Vessel as a Malaysian vessel was procured fraudulently considering the following:

i) Whether the 2014 Builder’s Certificate used by the Defendant for the registration of the Vessel is a forged document based on the forensic evidence provided by PW6, Ms. Tay Eu Kam;

ii) Whether the forensic evidence presented by PW6 regarding the alleged forgery of the 2014 Builder’s Certificate should be given significant weight in view of the absence of original documents;

iii) Whether the Plaintiffs’ reliance on a private handwriting expert, PW6, instead of engaging a government agency like Jabatan Kimia



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Malaysia, should impact the credibility and admissibility of her evidence;

iv) Whether the discrepancy in the spelling of PW3 Lyu Xiaodong's name on the disputed 2014 Builder's Certificate dated 17.2.2014 ("L-V Xiaodong" instead of "L-Y-U Xiaodong") constitutes evidence of forgery;

v) Whether the permanent registration of the Vessel was obtained with the full awareness and active participation of the 1st Plaintiff;

vi) Whether the Plaintiffs should be estopped from denying their active participation in the Vessel's permanent registration;

vii) Whether the Plaintiffs' delay in filing a police report regarding the alleged forgery of the 2014 Builder's Certificate should be taken as an adverse inference against their allegations;

viii) Whether the Defendant's assertion that DW3's visit to PW4's office on 18.3.2013 for the stamping of a document supports the legitimacy of the 2014 Builder's Certificate; and



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b) Whether the permanent registration of the Vessel in the name of the Defendant is null and void in light of the non-compliance with provisions of the MSO considering the following:

i) Whether there was proper authentication of the 2014 Builder's Certificate purportedly signed by Lyu Xiaodong by a Commissioner for Oaths;

ii) Whether the 2014 Builder's Certificate used for the Vessel's registration complies with the requirements of the MSO, given that it transfers title to a non-Malaysian company, Guard Offshore (BVI), which contravenes Section 11 of the MSO;

iii) Whether the registration process was defective due to the lack of a properly attested statutory declaration, failure to retain an original Builder's Certificate, and other breaches of Sections 16(2), 21, and 23 of the MSO;

iv) Whether the Defendant has credibly established the existence and use of a second Builder's Certificate for the registration of the Vessel as testified by DW5;



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v) Whether the Plaintiffs' decision not to include the Marine Department and the Government of Malaysia as parties to the action constitutes prejudice against the Defendant;

c) Whether the Defendant's registration of the Vessel under the Malaysian flag, based on the CTSA and Rider Agreement, confers ownership rights to the Defendant.

d) Whether the sale of the Vessel from the 1st Plaintiff to the 2nd Plaintiff was a legitimate or sham transaction.

[37] The issues for deliberation which this court considers pivotal to the resolution of the counterclaim are:

a) Whether the Defendant is entitled to claim losses and damages arising from the alleged wrongful termination of the CTSA and Rider Agreement by the Plaintiffs.

b) Whether the 1st Plaintiff's decision not to mobilise the Vessel to Malaysia constitutes a breach of the collaborative agreement.

c) Whether the Defendant is entitled to damages for losses allegedly incurred due to the imposition of the Interim Injunction.



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[38] In the ensuing part of this judgment, this court will structure its deliberations around the issues above.

## ANALYSIS AND FINDINGS OF THE COURT

### PLAINTIFFS' CLAIM

### 2014 Builder's Certificate Not Valid

[39] The Plaintiffs' case is that the 2014 Builder's Certificate purportedly signed by Lyu Xiaodong (PW3), the Plaintiffs' General Manager, in favour of Guard Offshore BVI, used by the Defendant for the registration of the Vessel is a forged document as Lyu Xiaodong did not sign the 2014 Builder's Certificate, rendering the registration of the Vessel as a Malaysian Vessel to be wrongful and defective.

[40] The Defendant submitted that the 2014 Builder's Certificate used to register the Vessel was genuine and not forged was validly used for the registration of the Vessel. They argue that the Plaintiffs have failed to conclusively prove their allegation of forgery. The Defendant points to several factors to support their position: firstly, they highlight the limitations in the Plaintiffs' expert witness (PW6) testimony, noting that her analysis was conducted without access to original documents, rendering her findings inconclusive. Secondly, they emphasise the testimony of DW5, the former Registrar of the Marine Department, who stated that a valid Builder's Certificate was submitted for registration. The



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Defendant also argues that the Plaintiffs' delay in reporting the alleged forgery undermines the credibility of their claim. Furthermore, they contend that the registration process was conducted with the full knowledge and participation of the Plaintiffs, and that the Plaintiffs should be estopped from denying the validity of the registration. Lastly, the Defendant invokes the presumption of regularity for official acts, arguing that the registration should be presumed valid as it was carried out by government officials in their official capacity.

***PW6's examination of the 2014 Builder's Certificate***

[41] PW6, Ms. Tay Eu Kam, a Forensic Document Examiner, gave expert evidence on her examination of the 2014 Builder's Certificate purportedly signed by Lyu Xiaodong but shown to be signed by "LV XIAODONG". This was done in comparison with ten specimen documents containing Lyu Xiaodong's signature which include a credit card from Bank of China; a Builder's Certificate and several Purchase Orders from the Defendant; a Purchase Variation Order Request Form from Wartsila Norway AS; and a specific page from an Affidavit in Support pertaining to a document examination and inspection application affirmed by Lyu Xiaodong.

[42] The Plaintiffs highlighted several key points from PW6's evidence:



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a) The signature purported to be that of Lyu Xiaodong (PW3) was not genuine, but rather an inkjet-printed toner image.

b) The signature and stamp of the Commissioner for Oaths, Hajjah Jamilah Ismail (PW4), were also inkjet-printed toner images, not original signatures or wet ink stamps.

c) PW6's comparison of multiple documents, including the 2014 Builder's Certificate, showed that the signatures and Commissioner for Oaths stamps were identical in design, size, spacing, and alignment across different documents, indicating they likely originated from a common source.

d) PW6 demonstrated, using Exhibits P1, P2, and P3 (overlays or comparisons of the signatures and stamps from different documents), the near impossibility of achieving such identical positioning of stamps and signatures across multiple documents through natural means.

e) PW6 concluded that these similarities could only have been achieved through artificial means, specifically a cut-and-paste method.

[43] The Plaintiffs argued that this forensic evidence conclusively proves the 2014 Builder's Certificate is a



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forged document, rendering the registration of the Vessel as a Malaysian Vessel wrongful and defective. They emphasised that PW6's analysis was comprehensive, involving comparison with ten specimen documents containing genuine signatures of Lyu Xiaodong, and that her findings were consistent and convincing throughout her testimony and re-examination.

[44] After careful consideration of the evidence presented before the court, it is clear that the 2014 Builder's Certificate used by the Defendant for the registration of the Vessel is not an authentic document. The court gives significant weight to the forensic analysis carried out by PW6, Ms. Tay Eu Kam, in this matter.

[45] PW6's examination involved comparing the disputed 2014 Builder's Certificate with ten specimen documents containing Lyu Xiaodong's signature, including a credit card, other Builder's Certificates, Purchase Orders, and an affidavit. Notably, PW6's findings established that the signature purported to be of Lyu Xiaodong was not genuinely his, but rather an inkjet-printed toner image. This point alone casts serious doubt over the authenticity of the entire document.

[46] Furthermore, PW6's evidence that the signature of PW4, Commissioner for Oaths Hajjah Jamilah Ismail, was also an inkjet-printed toner image is accepted by the court, thus corroborating the irregularities present in the document.



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PW6 noted that the commissioner's stamp impression was also a toner image (inkjet printed) and not a wet inked stamped impression as would be expected on an original document.

[47] The court finds particularly damning PW6's analysis of a series of documents, including the 2014 Builder's Certificate. She demonstrated, using Exhibits P1, P2, and P3, that the signatures and the Commissioner for Oaths' stamps across these documents were not only identical in design, size, spacing, and alignment but also likely originated from a common source. These exhibits involved overlays and comparisons of the signatures and stamps from different documents, visually demonstrating their similarities.

[48] During re-examination, PW6 stood firm on her initial findings, elaborating that the evidence - such as the duplicate signature from another source and the use of an inkjet-printed stamp instead of a conventional wet ink stamp - unambiguously indicates that the 2014 Builder's Certificate is a forged document. She explained that the end product of the signature and stamp in the Builder's Certificate resulted from a cut-and-paste mechanism where the same image was cut from another document and pasted on the Builder's Certificate to look like an original.

[49] One of the most compelling aspects of PW6's testimony was her presentation on the statistical improbability of such



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identical positioning of stamps and signatures across multiple documents. She clinically demonstrated, using visual aids and detailed analysis, that the likelihood of this occurring naturally was “almost impossible.” PW6 stated that even two stamps being identical would be very difficult to achieve naturally, and three stamps being identical would be “almost impossible to achieve.”

[50] In light of this exhaustive forensic scrutiny and the compelling conclusions reached by PW6, the court accepts the Plaintiffs’ contention that the 2014 Builder’s Certificate used by the Defendant for the registration of the Vessel is indeed a forged document. The court finds that the forensic evidence overwhelmingly supports the conclusion that the document was artificially created through a cut-and-paste method, rather than being an authentic, originally signed document.

***Quality of PW6 evidence***

[51] The Defendant’s main argument is that the evidence presented by PW6 regarding the disputed 2014 Builder’s Certificate should not be heavily relied upon by the court as it is neither conclusive nor complete. This claim is primarily based on the absence of original documents for comparison during the analysis, the fact that other expert testimony, including that of DW1, Siti Nur Musliha Bt Mohamad Noor, a Document Examiner in service of Government of Malaysia at Jabatan Kimia Malaysia, contradicts PW6’s findings, and



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the confirmation of PW4 (the Commisioner for Oaths) that the signature and stamp on the disputed 2014 Builder's Certificate are genuinely hers.

[52] The Defendant has argued the necessity of original documents to affirm the validity of handwriting analysis. While it is true that original documents carry significant weight in certain situations that require microscopic scrutiny of handwriting features, such is not the case here. The focus of this case rests on the statistical improbability of identical positioning of stamps and signatures across multiple documents. To this end, the court finds that the methodology employed by PW6, specifically an overlaying technique and a determination of whether the signature was ink-printed or hand written, is well-suited to the particularities of this alleged forgery.

[53] While the Defendant has cited the opinion of the learned author Harcharan Singh in his article Examination of Handwriting and Signatures [1995] 3 MLJ i, that stress the importance of original documents in handwriting analysis, this authority is not directly applicable here. This deals with cases where the details of handwriting, including pressure points and nuances, were central to the issue at hand. However, in the present case, the allegation centres around an artificial duplication through a cut-and-paste method, which is a form of forgery that can be effectively demonstrated even in the absence of original documents.



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[54] Further, while PW4 attested that the signature and stamp on the disputed 2014 Builder's Certificate belong to her, this does not rule out the possibility of a cut-and-paste forgery. The court notes that PW4's testimony about stamping a document for the Defendant's director on 18.3.2013 at a cost of RM4.00 is inconsistent with the date on the disputed 2014 Builder's Certificate (17.2.2014), which further raises questions about the authenticity of the document.

[55] DW1, the Defendant's expert witness, also conceded that the absence of an original document imposed limitations on her analysis, thereby indirectly lending support to the alternative methodology applied by PW6. DW1 testified that she could not make conclusive findings on the Commissioner for Oath's signature and stamp due to the poor quality of the stamp and the inexistence of original documents.

[56] Additionally, the Defendant has mentioned the involvement of DW1 from a government agency, Jabatan Kimia Malaysia, in its submissions. This court finds that the credibility of an expert's opinion is not solely dependent on her affiliation with a government agency. Rather, it hinges on the methodological soundness and relevance of her analysis in relation to the issues under examination. This will be dealt with more comprehensively below.

[57] Contrary to the Defendant's assertions that PW6's findings are neither complete nor conclusive due to her limited



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access to original documents, this court finds that her evidence is both valid and reliable for the determination of this case. Her findings align with the specific allegations of forgery presented and have been substantiated through a methodology that this court finds both suitable and sufficient under the circumstances.

[58] Therefore, this court holds that the forensic report by PW6 should be given due weightage and rejects the Defendant's submissions questioning the conclusiveness and completeness of PW6's evidence. The totality of evidence, including the inconsistencies in the Defendant's case and the limitations acknowledged by their own expert, further strengthens the court's confidence in PW6's findings.

***No Jabatan Kimia Expert***

[59] The Defendant submits that given the significant involvement of a government agency, namely the Marine Department, in issuing the registration certificate of the Vessel to the Defendant, it is pertinent to highlight the Plaintiffs' oversight in not verifying the handwriting of the disputed 2014 Builder's Certificate with another governmental agency, Jabatan Kimia Malaysia. Instead, the Plaintiffs chose to rely on a private expert witness. Contrastingly, the Defendant took the prudent step of engaging an expert from Jabatan Kimia Malaysia to review and comment on the findings of the Plaintiffs' expert witness.



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[60] The Plaintiffs' reliance on a handwriting expert not affiliated with a government agency, specifically Jabatan Kimia Malaysia, should not be held against them. The argument is not tenable under the prevailing legal framework and the general principles governing the admissibility and weight of expert evidence.

[61] Firstly, there is no legal requirement in the jurisdiction of Malaysia that mandates expert evidence to be exclusively sourced from government agencies. Section 45 of the Evidence Act 1950 explicitly enumerates the categories of experts whose opinions may be considered by the court. It provides:

> *"45. Expert Opinion*
>
> *(1) When the court has to form an opinion upon a point of foreign law, or of science or art, or as to the identity or genuineness of handwriting or finger impressions, the opinions of persons specially skilled in that foreign law, science, or art, or in questions as to the identity or genuineness of handwriting or finger impressions, are relevant facts.*
>
> *(2) Such persons are called experts."*

[62] This includes experts in foreign law, science, art, and specifically, experts in the identity or genuineness of handwriting or finger impressions. Importantly, the statute does not prescribe any institutional affiliation as a prerequisite for qualification as an expert.



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[63] Moreover, the Plaintiffs have demonstrated the bona fides of their chosen handwriting expert, PW6. By virtue of her specialised training, qualifications, and substantial professional experience, which includes but is not limited to site examinations, report writing, and court testimonials, PW6 possesses knowledge that is both specialised and relevant. Her qualifications are well within the ambit of what Section 45 of the Evidence Act 1950 envisages for the role of an expert witness. This court is satisfied that PW6 has the appropriate expertise, and therefore, her evidence cannot be discounted merely because she is not affiliated with a government agency.

[64] The court notes that PW6 has been working in the field of document analysis since 2013. Her experience includes site examinations, preparation of materials for examination, report writing, preparation of exhibits for court testimonials, and attending court sessions as an expert witness. She has prepared and submitted numerous expert reports which were used as evidence in court. These qualifications and experience demonstrate that PW6 is well-equipped and capable of providing expert testimony on the relevant issues in this case.

[65] Furthermore, the court recognises that PW6's analysis was thorough and detailed. She examined the disputed 2014 Builder's Certificate in comparison with ten specimen documents containing Lyu Xiaodong's signature, which included a credit card, other Builder's Certificates, Purchase



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Orders, and an affidavit. This comprehensive approach adds credibility to her findings.

[66] As to the Defendant's invocation of an expert witness from Jabatan Kimia Malaysia, it does not derogate from the admissibility or credibility of a qualified expert from outside a government agency. The court is not compelled to favour one expert's testimony over another purely based on their affiliation with a governmental body. In fact, the credibility of an expert's opinion depends on the methodological soundness and relevance of their analysis in relation to the issues under examination, rather than their institutional affiliation.

[67] It is worth noting that the Defendant's expert, DW1 from Jabatan Kimia Malaysia, conceded that the absence of original documents imposed limitations on her analysis. This admission indirectly lends support to the alternative methodology applied by PW6, who was able to draw conclusions based on the available evidence despite the lack of original documents.

[68] Moreover, PW6's findings align with the specific allegations of forgery presented by the Plaintiffs. Her analysis of the statistical improbability of identical positioning of stamps and signatures across multiple documents, and her conclusion that these similarities could only have been achieved through artificial means (specifically a cut-and-paste method), directly address the core issues of this case.



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[69] Therefore, the Defendant's argument that the court should consider the Plaintiffs' failure to rely on a government agency for handwriting verification lacks legal basis and is incongruous with the principles governing expert testimony. The Plaintiffs have sufficiently demonstrated the reliability and expertise of PW6, in accordance with Section 45 of the Evidence Act 1950. The court finds that PW6's evidence is both valid and reliable for the determination of this case, and her findings have been substantiated through a methodology that this court finds both suitable and sufficient under the circumstances. Therefore, this court finds no merit in the Defendant's submission on this point and holds that the forensic report by PW6 should be given due weightage in this case.

***Spelling of Lyu Xiaodong***

[70] The Plaintiffs submit that the disputed Builder's Certificate dated 17.2.2014 contains a forged signature of PW3 Lyu Xiaodong, the 1st Plaintiff's General Manager. In his affidavit, PW3 stated that his surname had been misspelt in the disputed Builder's Certificate as "L-V Xiaodong" instead of "L-Y-U Xiaodong", which he claims is evidence of forgery. The Plaintiffs argue that this discrepancy in spelling demonstrates that the person who created the disputed Builder's Certificate was unfamiliar with the correct spelling of PW3's name, further supporting their allegation of forgery.



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[71] The Defendant contends that this argument is inconsistent with the evidence presented. They point out that in multiple specimen documents used in the forensic report prepared by the Plaintiffs' expert witness, PW6, PW3 actually signed his name as "L-V Xiaodong" and not "L-Y-U Xiaodong". The Defendant argues that this inconsistency undermines the credibility of PW3's testimony and weakens the Plaintiffs' claim of forgery based on the spelling discrepancy.

[72] Upon careful consideration of the evidence and arguments presented, the court finds in favour of the Plaintiffs on this issue. While the inconsistency pointed out by the Defendant is noted, it does not definitively disprove the Plaintiffs' claim of forgery. The court observes that individuals may have different ways of signing their names in various contexts, especially when a different writing system is used in China. The presence of "L-V" signatures in some documents does not necessarily negate PW3's testimony about his preferred or official spelling.

[73] Moreover, the spelling discrepancy should be considered in conjunction with other evidence of alleged forgery, including the expert testimony of PW6, who concluded that the signature on the disputed 2014 Builder's Certificate was not genuine. The court finds that the totality of evidence, including but not limited to the spelling issue, supports the Plaintiffs' contention that the disputed 2014 Builder's Certificate is likely to be forged. However, the court also notes that this finding is just one element in the broader



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context of determining the validity of the Vessel's registration and ownership.

***Signing of 2014 Builder's Certificate by Lyu Xiaodong during the Defendant's visits***

[74] The Defendant, in demonstrating that the permanent registration of the Vessel was obtained by using a genuine Builder's Certificate, contended that the 2014 Builder's Certificate was signed by Lyu Xiaodong where he was present throughout the trial runs that took place in April 2014 during the survey and measurement and registration process of the Vessel that took place at the 1st Plaintiff's shipyard in 2014 which involved numerous meetings. It was contended that the process of registration involved the active participation and full awareness of the 1st Plaintiff in that were multiple compulsory documentation, including the 2014 Builder's Certificate.

[75] The Plaintiffs submit that the Defendant's claims regarding the authenticity of the 2014 Builder's Certificate and the 1st Plaintiff's active participation in the registration process are unfounded. They argue that facilitating an inspection or survey of a vessel at a shipyard is a standard industry practice and does not imply an intention to transfer ownership. The Plaintiffs point to the Preliminary Report dated 30.4.2014 from the Marine Department as crucial evidence, emphasising that it confirms no Builder's Certificate was issued by the 1st Plaintiff to the Defendant



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or Guard Offshore (BVI). They assert that the meetings and inspections were merely preparatory steps for a potential sale, not a completed transaction. The Plaintiffs maintain that they never took any actions that would legally bind them to transfer the beneficial ownership of the Vessel to the Defendant. Furthermore, they contend that entering into agreements like the Global Non-Disclosure Agreement dated 2.11.2015 ("***the GNDA***") or CTSA does not constitute a transfer of ownership, especially without the requisite Builder's Certificate. The Plaintiffs argue that these agreements were procedural steps towards a possible future agreement, not evidence of an existing, enforceable accord regarding ownership. Overall, the Plaintiffs maintain that the Defendant's submissions lack substantiation and that there is no credible evidence of the 1st Plaintiff's active participation in or consent to the registration process as claimed by the Defendant.

[76] Upon a review of the evidence and submissions tendered before this court, the court is not persuaded by the Defendant's contentions.

[77] It is well-established within the maritime industry that facilitating an inspection or survey of a vessel at a shipyard does not, in and of itself, manifest an intention to transfer beneficial ownership. The visit facilitated by the 1st Plaintiff for the Defendant and the personnel from the Malaysia Flag Administration on 24.4.2014, clearly falls within this customary ambit. As the Plaintiffs have submitted, it is usual



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for potential buyers to request viewing, inspection, and survey of vessels at the 1st Plaintiff's premises before making a decision to purchase.

[78] The testimony and documentary evidence, notably the Preliminary Report from the Marine Department, unequivocally affirm that no Builder's Certificate was issued by the 1st Plaintiff to the Defendant or Guard Offshore (BVI). This was a report dated 30.4.2014 detailing the sight inspection and marking of the Vessel, assessing its condition and compliance for registration, for the purpose of ensuring the ship met the necessary standards and requirements for Malaysian registration. Paragraph 11(iii) of the Preliminary Report explicitly states that the Marine Department requires the Builder's Certificate from the said shipyard which is to include the name of the Defendant and shall be submitted to the registrar office. The court places significant weight on the absence of this critical document, which is a sine qua non for any genuine transfer of ownership.

[79] Furthermore, the court gives due credence to the Plaintiffs' assertion that the series of meetings and inspections were preparatory steps leading to a potential sale and not a consummated transaction. The Plaintiffs have categorically denied any acts that would legally bind them to transfer the beneficial ownership of the Vessel to the Defendant, thereby effectively dispelling any notion of implied consent. The court accepts the Plaintiffs' explanation that these were



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merely part of the preparatory steps to facilitate a potential sale of the Vessel and that the survey and inspection was necessary to flag the Vessel under Malaysian flag so that Azman / the Defendant can market the Vessel to obtain Petronas charter contract.

[80] Turning to the agreements and negotiations cited by the Defendant, it is crucial to recognise that entering into the GNDA or CTSA does not suffice to effectuate a transfer of ownership, especially in the absence of the requisite Builder's Certificate.

[81] At this juncture, it would be apt to describe briefly the GNDA, CTSA and Rider Agreement. These are explained as follows:

a) The GNDA is between the Defendant and the 1st Plaintiff, created to protect confidential information exchanged for the development of the FDPSO Dalian Developer (the Vessel) project. This project involves the design and delivery of a Floating, Drilling, Production, Storage, and Off-Loading vessel. The agreement restricts the use of confidential information to the project, sets guidelines for its handling, and outlines consequences for breaches while clarifying that it does not establish a partnership or joint venture.



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b) The CTSA is between the 1st Plaintiff and CH Pavilion for the development of the Vessel. The agreement outlines the responsibilities of CH Pavilion to provide conceptual and design services to prepare the vessel for a time charter contract with Petronas or its contractors, specifically for deepwater oil and gas projects. The agreement also includes deliverables such as design packages, flag registration, and Petronas licensing, with a total contract price of USD2,000,000, and sets a two-month timeline for completion.

c) The Rider Agreement is between the 1st Plaintiff and CH Pavilion which supplements the original CTSA by addressing ownership interests in the PETRONAS licensed company and detailing the financial distribution in the event of divestment.

[82] The court interprets the entering into these agreements as procedural steps toward a possible future agreement and not as evidence of an existing, enforceable accord regarding ownership. As the Plaintiffs have pointed out, the CTSA and the Rider Agreement do not provide for the sale or charter of the Vessel and/or agreement of the 1st Plaintiff to commit the Vessel to sale or charter to the Defendant.

[83] The court also notes the Plaintiffs' submission that they were not aware of the permanent registration of the Vessel until 18.2.2015 when Azman forwarded the Certificate of



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Malaysian Registry (Permanent Registration) and the Domestic Shipping License to PW1 Hu Guangcheng. This timeline contradicts the Defendant's claim of active participation by the 1st Plaintiff in the registration process.

[84] Moreover, the court considers the Plaintiffs' argument that as a shipbuilder with dealings with many ship registries throughout the world, the usual practice is that permanent registration of a Vessel can only be given once a Builder's Certificate was issued to the party claiming permanent registration. The fact that the 1st Plaintiff issued a Builder's Certificate to the 2nd Plaintiff on 30.6.2015 further supports the Plaintiffs' position that they were not aware of any purported Builder's Certificate in Malaysia.

[85] Based on the evidence presented, the Defendant's submissions lack substantiation.

***Awareness and active participation***

[86] The Defendant submits that the 1st Plaintiff, being a part of a state-owned company specialising in shipyard and vessels, was well-aware and actively involved in the provisional and permanent registration of the Vessel in Malaysia. Citing evidence, including correspondences and transactions, the Defendant contends that the Plaintiffs' claims of ignorance are a mere facade and tactical manoeuvre. Accordingly, the Defendant submits the



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Plaintiffs should be estopped from denying their active participation in the Vessel's registration.

[87] The Defendant contends that the 1st Plaintiff's purported ignorance should be estopped, leaning heavily on the principle of "ignorantia juris non excusat" and citing case law like *Derek Victor Cawton & Another v Fatimah bt. Mohd Hashim* [2015] MLJU 2315. It is essential to note, however, that ignorance of the law is distinct from ignorance of facts. While the law presupposes that everyone knows the law, it does not make the same assumption for facts. In this case, the 1st Plaintiff asserts not ignorance of law, but ignorance of the particular fact that the Vessel was permanently registered.

[88] Moreover, the doctrine of estoppel, referenced through cases such as *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331, necessitates that one party has relied on the actions or statements of the other to his detriment. The Defendant has failed to demonstrate how it relied on the Plaintiffs' supposed acknowledgment or how it led to an unjust outcome for the Defendant.

[89] Notably, while the Defendant argues that the 1st Plaintiff should have known better due to their specialised role in shipyard and vessels, the procedures for permanent registration traditionally require the issuance of a Builder's Certificate. In this case, the 2014 Builder's Certificate was



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not executed by the 1st Plaintiff. How then, did the Defendant manage to register the Vessel permanently without it? This leaves an unexplained gap in the Defendant's argument and gives credence to the Plaintiffs' claim that they were not involved in the permanent registration of the Vessel.

[90] Furthermore, the Defendant emphasises correspondences that took place mainly during the period of provisional registration. It is not contested that the 1st Plaintiff was aware of the provisional registration; what is at issue is the permanent registration. The purported email dated 18.2.2015 informing the 1st Plaintiff of the permanent registration does not negate the Plaintiffs' argument. Being informed after the fact does not constitute "active participation" or "full awareness" before or during the event.

[91] The Defendant also relies on the GNDA and other meetings as evidence of active participation. However, these documents and meetings, even if admitted, do not specifically address the matter of permanent registration of the Vessel. Thus, they cannot be construed as evidence of active participation in the permanent registration process.

[92] The payment of USD2,000,000 by the 1st Plaintiff to the Defendant, as mentioned by the Defendant, could be interpreted in various ways and does not conclusively establish acknowledgment or agreement to the permanent registration of the Vessel. It may well have been payment



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for other deliverable items, given the overall value and complexity of the project and agreements.

[93] In summary, the Defendant's assertion that the Plaintiffs should be estopped from denying their active participation in the registration process lacks sufficient factual and legal support. The Plaintiffs have raised credible issues regarding their lack of awareness and participation in the permanent registration of the Vessel, and these issues have not been adequately countered by the Defendant. Therefore, the Plaintiffs should not be estopped from asserting their position that they were not actively involved in the permanent registration of the Vessel.

***Police report***

[94] The Plaintiffs submit that their delay in filing a police report regarding the alleged forgery of the 2014 Builder's Certificate does not undermine the credibility of their claims. They argue that they lodged the necessary police report at the first given opportunity when their representative came to Malaysia. The Plaintiffs explain that when they were initially informed of the permanent registration of the Vessel, Azman assured Hu Guancheng that a charter contract for the Vessel would be granted by Petronas in due course and the sale transaction of the Vessel would proceed very soon. Based on this assurance, although concerned about the permanent registration, the Plaintiffs believed that the sale would proceed and that the permanent registration would be



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towards assisting that process. The Plaintiffs contend that they took action to lodge a police report once they realised there was no chance of the sale proceeding and that no charter contract would be granted by Petronas. They argue that their actions were reasonable given the commercial context and their belief in an imminent resolution of the situation.

[95] The Defendant contends that the Plaintiffs' delay in filing a police report regarding the alleged forgery of the Vessel's registration casts doubt on the sincerity of their claims. Drawing from legal precedents, the Defendant highlights that making allegations of forgery is serious, and immediate action is typically expected if the claims are genuine.

[96] The Defendant contends that the Plaintiffs' delay in lodging a police report regarding the alleged forgery of the 2014 Builder's Certificate should be taken as an adverse inference against the Plaintiffs' allegations. The Defendant relies on the judgments in *Kulai Edible Oils Refinery Sdn Bhd & Anor v Lim Tian Huat & Ors* [2011] 8 MLJ 331 and *CS Petroleums (M) Sdn Bhd v Public Bank Berhad* [2011] 1 LNS 1349 to bolster this argument.

[97] However, these cases are distinguishable from the circumstances of the present case on several grounds. First, the Plaintiffs have offered a reasonable explanation for the delay in lodging the police report. They lodged the report at the earliest opportunity when their representative



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came down to Malaysia. This delay was not one borne out of capriciousness but of logistical necessity. Second, the Plaintiffs' conduct must be contextualised by the assurances given by DW3 concerning the likely success of the charter contract for the Vessel by Petronas and the anticipated sale of the Vessel to the Defendant. In light of these assurances, the Plaintiffs understandably focused on resolving the matter amicably and commercially, believing that the sale of the Vessel would render the dispute over the permanent registration moot. This shows not a lack of confidence in the allegations, but a strategic decision informed by prevailing circumstances at the time.

[98] Third, the Defendant's argument that it lodged its police report before the Plaintiffs has limited probative value, given that it was lodged in reaction to pressure from the Plaintiffs' legal department and a subsequent Letter of Demand. The sequence of the lodging of police reports by both parties does not automatically cast aspersions on the Plaintiffs' allegations, especially since the Plaintiffs' report led the Defendant to lodge another report to protect its interests.

[99] Lastly, the matter before this court does not merely concern the alleged forgery of the 2014 Builder's Certificate but involves a complex interplay of expectations, legal rights, and commercial relations between the parties. The court is constrained to exercise caution in drawing adverse inferences solely from the timing of a police report,



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especially when the Plaintiffs had reasonable grounds for their actions.

[100] Furthermore, it is important to note that the Plaintiffs took other actions to address the issue before filing a police report. They sent a letter to the Defendant on 28.6.2019 demanding that the Defendant de-register the Vessel. This demonstrates that the Plaintiffs were actively pursuing the matter through legal channels, even if they had not yet filed a police report.

[101] The court also considers that the Plaintiffs, as a state-owned company dealing with a vessel valued at approximately USD650 million, would naturally be cautious in their approach to such a serious allegation. Their initial attempt to resolve the matter commercially, before escalating to legal action and a police report, is consistent with prudent business practice in high-value disputes.

[102] Therefore, after considering the totality of the circumstances, this court finds that the failure of the Plaintiffs to immediately lodge a police report upon becoming aware of the existence of the disputed 2014 Builder's Certificate should not result in an adverse inference against them. The Plaintiffs have offered satisfactory explanations for their conduct, which are consistent with the complex commercial context of this case and their reasonable belief in an imminent resolution based on the assurances they received. The delay in filing a police



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report does not, in this instance, undermine the credibility of the Plaintiffs' allegations regarding the forgery of the 2014 Builder's Certificate.

***DW3 visited PW4's office on 18.3.2013 for the stamping of a document***

[103] The Defendant asserted that PW4 (the Commisioner for Oaths), acknowledged that the DW3 (Azman) visited her office on 18.3.2013 for the stamping of a document costing RM4.00. The Defendant's submission seeks to establish that the visit by DW3 to PW4's office implicates the legitimacy of the 2014 Builder's Certificate dated 17.2.2014. A detailed scrutiny of the timeline, however, raises substantial questions.

[104] The Plaintiffs aptly point out that the timing of DW3's visit to PW4's office does not align with the date on the 2014 Builder's Certificate dated 17.2.2014. It is submitted by the Plaintiffs that it is logically incongruous for the 2014 Builder's Certificate to have been the document attested to by PW4 on 18.3.2013. Such an incongruity substantively bolsters the Plaintiffs' claim that the 2014 Builder's Certificate was forged, and the signature and stamp from PW4 were possibly transferred onto the 2014 Builder's Certificate a year later.

[105] Moreover, while PW4 did admit that RM4.00 is generally the cost for documents categorised as statutory declarations,



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she also clarified during cross-examination that documents not officially categorised could be tagged under broader categories like statutory declarations, affidavits, or hibah. This clarification, however, does not dispel the Plaintiffs' contention concerning the anachronistic dates between DW3's visit on 18.3.2013 and the 2014 Builder's Certificate supposedly dated 17.2.2014.

[106] As for the Defendant's claim that the normal practice accepted by the Marine Department would render this non-issue, it is worth noting that customary practice cannot validate an implausible timeline. Whether it is common practice for the Commissioner for Oaths to merely compare documents does not obviate the need for a coherent timeline. Thus, the Defendant's argument fails to address the core issue raised by the Plaintiffs concerning the timing and potential forgery of the 2014 Builder's Certificate.

[107] Finally, the Defendant's assertion that the authenticity of the stamp on the disputed 2014 Builder's Certificate should not be a disputed fact is contradicted by the inconsistencies highlighted. The anachronistic timing greatly undermines the credibility of the 2014 Builder's Certificate, thereby elevating the issue of the stamp's authenticity to a point of legitimate dispute.

[108] In light of these considerations, the court finds that the arguments put forth by the Defendant regarding the visit to



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PW4's office do not detract from the issue of forgery of the 2014 Builder's Certificate.

**Merchant Shipping Ordinance ("MSO") Non-compliance**

***Evidentiary finding***

[109] The Plaintiffs' case is based on several provisions of the MSO that they argue the Defendant did not comply with during the Vessel's registration. They point to Section 11(1)(b) of the MSO, which mandates that a Malaysian Vessel must be owned by a Malaysian corporation. Another key provision, Section 21(a), necessitates the production of a builder's certificate, signed by the ship's builder, at the time of registration. Furthermore, the application for registering a vessel, as per Section 16(2) of the MSO, needs to be supported by a statutory declaration with various particulars about the ship and its ownership. The Plaintiffs contend that the Defendant's registration application lacked such a declaration. They also reference the "Deklarasi Hak Milik dan Kerakyatan", which, in their view, does not fulfill the requirements of a statutory declaration under Section 16(2). The authority of agents in applications, as detailed in Section 16(1)(b), is another point of contention. The Plaintiffs question the validity of the company seal on the Authority and, by extension, the authority of DW3 to apply for the Vessel's registration. Lastly, the Plaintiffs challenge the authenticity and adequacy of the 2014 Builder's Certificate retained by Kota



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Kinabalu Ship Registry under Section 23 of the MSO. The heart of their argument is that the Defendant's non-compliance with these provisions makes the Vessel's registration wrongful.

[110] Upon careful examination of the facts and the legal framework provided by the MSO, this court finds in favour of the Plaintiffs on the matter of the invalid and wrongful registration of the Vessel as a Malaysian Vessel. I shall proceed by elucidating various facets of the case that have led the court to this determination.

***Breach of MSO***

[111] The Plaintiffs submit that the 2014 Builder's Certificate used for the registration of the Vessel is defective and does not comply with the requirements of the MSO. They argue that the certificate does not transfer title to the Defendant but to Guard Offshore (BVI), a non-Malaysian company, which contravenes Section 11 of the MSO. The Plaintiffs further contend that the registration process failed to meet the statutory requirements under Sections 16(2), 21, and 23 of the MSO, including the lack of a properly attested statutory declaration and the failure to retain an original Builder's Certificate.

[112] The Defendant, on the other hand, maintains that the registration of the Vessel was carried out in accordance with the MSO and with the full knowledge and participation of the



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Plaintiffs. They argue that the Builder's Certificate was valid and that the registration process involved multiple compulsory documentation exchanges with the 1st Plaintiff. The Defendant also contends that their application for registration was properly made through an authorised agent and that the Marine Department accepted and approved the registration based on the documents provided.

[113] Upon careful deliberation of the presented facts and arguments in relation to the 2014 Builder's Certificate and the procedural mandates under the MSO, the court has arrived at certain determinative conclusions.

[114] Firstly, it is clear from the presented evidence that the 2014 Builder's Certificate delineates a transfer of the Vessel's title and ownership not to the Defendant, Osta Fleet Sdn Bhd, but to Guard Offshore (BVI). This distinction is paramount. The Defendant, despite being merely named as an entity with interest in Guard Offshore, cannot be deemed the transferee, especially given the precise requirements of the MSO.

[115] Moreover, the legal framework enshrined in Section 11 of the MSO is unambiguous in its stipulation that vessel may only be registered as a Malaysian ship if it is wholly owned by Malaysian citizens, corporations incorporated in Malaysia, Sovereign Rulers of the States of Malaysia, the Federal or State Governments, or other persons as determined by the Minister. It reads:



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> *"(1) Subject to subsection (1B), a ship shall not be deemed to be a Malaysian ship unless it is owned wholly by persons of the following descriptions, namely:*
>
> *(a) Malaysian citizens; or*
>
> *(b) corporations which satisfy the following requirements:*
>
> *(i) the corporation is incorporated in Malaysia;*
>
> *(ii) the principal office of the corporation is in Malaysia;*
>
> *(iii) the management of the corporation is carried out mainly in Malaysia;*
>
> *(iv) the majority, or if the percentage is determined by the Minister under subsection (1A) then the percentage so determined, of the shareholding, including the voting share, of the corporation is held by Malaysian citizens free from any trust or obligation in favour of non-Malaysians; and*
>
> *(v) the majority, or if the percentage is determined by the Minister under subsection (1A) then the percentage so determined, of the directors of the corporation are Malaysian citizens."*

[116] The evidence elucidates that the 2014 Builder's Certificate, by naming Guard Offshore (BVI), a British Virgin Islands entity, as the transferee, contravenes this provision, rendering it defective for the purposes of registration. This point was conceded by DW5, the former Registrar of Ships, during cross-examination.

[117] Additionally, Section 16(2) of the MSO mandates that the registration application for a Malaysian vessel be bolstered by a statutory declaration. It reads:



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*"16. Application for the registration of Malaysian ship*

*……*

*(2) The application shall be made in the prescribed form and shall be supported by a statutory declaration containing the following particulars:*

*(a) the name of the ship and its existing tonnages (if known);*

*(b) a statement of the date when and the place where the ship was built, or if the date and place of building are not known, a statement that the declarant does not know the date and place of the building of the ship;*

*(c) a statement as to the owner of the ship and the citizenship of such owner, and if the ship is owned by more than one person, the number of shares each is entitled to;*

*(d) a statement of the name of the master of the ship and his citizenship;*

*(e) a statement that no other person (other than those declared) is entitled as owner to any legal or beneficial interest in the ship or any share thereof;*

*(f) except where the operator and the owner of the ship are the same person, the name and citizenship of the operator of the ship;*

*(g) a declaration that the particulars stated in the form are true to the best of his knowledge and belief; and*

*(h) such other particulars as may be prescribed."*

[118] The so-called Deklarasi Hak Milik dan Kerakyatan, signed by DW3, while produced as a statutory declaration, was not duly attested, thus falling short of the requirements of Section 16(2) of the MSO. The court notes that the Commissioner for Oaths, PW4, merely compared



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documents rather than witnessing an actual signature, as evidenced by the notation “ORIGINALS HAVE BEEN SIGHTED AND CONTENTS VERIFIED TO BE IDENTICAL COPIES” on her stamp.

[119] Furthermore, the Defendant’s application under Section 16(1)(b) of the MSO, made purportedly by DW3 as the Defendant’s agent, raises concerns. Section 16(1)(b) of the MSO reads:

> *“(1) An application for the registry of a ship shall be made -*
>
> *….*
>
> *(b) in the case of corporations, by their agent, and the authority of the agent shall be testified by writing under the common seal of that corporation.”*

[120] The Defendant’s Articles of Association, specifically Article 96, sets out the procedures to affix the company seal on any instrument. It reads:

> *“96. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.”*

[121] The Appointment dated 18.9.2013, which was supposed to evidence DW3’s authority as the Defendant’s agent, was not validated in line with these procedures. This oversight



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renders the Appointment, and by extension the agency it purported to establish, void and of no effect.

[122] Section 21 of the MSO mandates the owner of a ship to produce the Builder's Certificate upon registration. It reads:

> *"On being registered as a Malaysian ship, the owner of the ship shall, in addition to the declaration of ownership, produce the following evidence:*
>
> *(a) a builder's certificate signed by the builder of the ship, containing a true account of the proper denomination and of the tonnage of the ship, the time when and the place where she was built, and of the name of the person (if any) on whose account the ship was built; and if there has been any sale, the bill of sale under which the ship or a share therein has become vested in the applicant, and such other particulars as may be descriptive of the identity of the ship;*
>
> *(b) the instrument of sale, under which the ship or share therein has become vested in the applicant for registry if the declarant does not have the builder's certificate."*

[123] The legislative intent behind Section 23 of the MSO further requires retention of the original Builder's Certificate. It reads:

> *"23. Documents to be retained by registrar*
>
> *The registrar shall on registering the ship retain in his possession the following -*
>
> *(a) the Surveyor's certificate;*
>
> *(b) the builder's certificate;*
>
> *(c) any bill of sale by which the ship was previously sold;*



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*(d) a copy of the condemnation certificate (if any); and*

*(e) any declaration of ownership."*

[124] However, in the present matter, only a mere copy of the Builder's Certificate was submitted and retained by the Kota Kinabalu Ship Registry, indicating a palpable breach of Section 21. This fact was confirmed during the discovery proceedings against the Sabah Director of Marine, Kota Kinabalu Ship Registry.

[125] Upon a collective examination of the breaches of Sections 11, 16(2), 21, and 23 of the MSO, it is manifestly evident that the Defendant failed to produce satisfactory evidence of its ownership and entitlement to register as the owner of the Vessel. Such non-compliance with the critical provisions of the MSO undermines the validity of the Vessel's registration in the name of the Defendant.

[126] The court is not persuaded by the Defendant's argument that the registration was carried out with the full knowledge and participation of the Plaintiffs. The evidence presented, including the testimony of the Plaintiffs' witnesses and the inconsistencies in the Defendant's case, does not support this contention. The fact that the Plaintiffs issued a Builder's Certificate to the 2nd Plaintiff on 30.6.2015 further indicates that they were unaware of any purported Builder's Certificate in Malaysia.



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[127] In light of the aforementioned discrepancies and legal infractions, this court concludes that the registration of the Vessel in the name of the Defendant as owner is wrongful and not in consonance with the requirements of the MSO. The cumulative effect of these breaches renders the registration of the Vessel as a Malaysian vessel void. The court therefore finds in favour of the Plaintiffs' claim that the registration of the Vessel in the Defendant's name has been fraudulently obtained.

***DW5's evidence***

[128] The Defendant also relies heavily on the testimony of DW5, the former Director of the Marine Department of Kota Kinabalu to contend that the registration was done properly and in accordance with the law. The Defendant argues that DW5's evidence should be given significant weight under the presumption of regularity and the best evidence rule, as he was directly involved in the registration process.

[129] However, the court finds that DW5's evidence revealed notable discrepancies in the narrative presented by the Defendant. DW5 surprisingly testified to the existence of a second Builder's Certificate ("***Second Builder's Certificate***") that purportedly validated the registration of the Vessel as a Malaysian vessel. He appears to refer to a Builder's Certificate which is not the 2014 Builder's Certificate relied on by the Defendant. This claim was not



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made at any point prior to his testimony, raising serious doubts about its credibility.

[130] The authenticity and existence of this secondary document are questionable at best. The entirety of the Marine Department's registration file, as brought into evidence by PW5 in response to a subpoena, does not feature any Builder's Certificate other than the 2014 Builder's Certificate dated 17.2.2014. This omission casts significant doubt over the legitimacy of DW5's claims regarding a secondary certificate.

[131] It is noteworthy that the allegation of a second Builder's Certificate was not stated in the evidence of DW3 Azman nor at any point from the time the case was filed back in 2019 until DW5's appearance as a witness for the Defendant. The fact that there was a second Builder's Certificate was not pleaded nor referred to in any document or the evidence of any other witness, including the Marine Department's Norjipin bin Saidi (PW5), who was subpoenaed and produced the Marine Department file.

[132] It is also pertinent to note that DW5's testimony about a Second Builder's Certificate used for registration is not corroborated by any documentary evidence in the Marine Department file, which contains only the disputed 2014 Builder's Certificate dated 17.2.2014. This lack of corroboration further undermines the credibility of DW5's claim about a second Builder's Certificate.



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[133] The inconsistencies in DW5's testimony are further highlighted by his own Witness Statement. In Question 24 of his Witness Statement, DW5 identified the 2014 Builder's Certificate (dated 17.2.2014) as the document he relied on for the registration of the Vessel. This contradicts his later testimony about a Second Builder's Certificate. When questioned about this omission, DW5 did not provide a satisfactory explanation, merely stating that “no question was asked” about the Second Builder's Certificate when his Witness Statement was prepared.

[134] The court finds DW5's testimony about the Second Builder's Certificate to be implausible, given the lack of supporting evidence and the fact that this claim was not made at any point prior to his testimony. It appears that DW5 may have concocted this story about the Second Builder's Certificate during the trial itself to escape his obligations and to avoid being accountable for wrongfully registering the Vessel as a Malaysian vessel.

[135] The Defendant argues that, under Section 114(e) of the Evidence Act 1950, the existence of this Second Builder's Certificate should be presumed to be true, especially since the Plaintiffs' counsel did not cross-examine DW5 on this point. However, this argument is flawed. The presumption should not operate to the detriment of the Plaintiffs when the very existence of this Second Builder's Certificate has not been credibly established in the first place. In the interest of justice, the Plaintiffs should not be penalised for



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not cross-examining on a point that emerged in such dubious circumstances, especially when the Defendant had ample opportunity to clarify this issue but did not.

[136] The Second Builder's Certificate being improbable, the only Builder's Certificate left for the Defendant to rely on is the disputed 2014 Builder's Certificate. During cross-examination, DW5 affirmed that in respect of the 2014 Builder's Certificate, the statutory requirements for the registration of the Vessel, as stipulated in Sections 21(a), 16(2), and 11 of the MSO, were not fulfilled. The 2014 Builder's Certificate mentions Guard Offshore (BVI), a non-Malaysian corporation, as the entity for whom the Vessel was built. This directly contravenes the provisions of the MSO, which mandates that a Malaysian flag vessel must be registered by a Malaysian corporation.

[137] DW5's testimony revealed several critical points:

a) He admitted that the 2014 Builder's Certificate naming Guard Offshore (BVI) could not entitle the Vessel to be registered in the name of the Defendant.

b) He confirmed that the Builder's Certificate was defective for the purposes of registration of a Malaysian Vessel as the party named as entitled to the Vessel was not a Malaysian Corporation, in breach of Section 11 of the MSO.



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c) He acknowledged that the application for registration was not supported by a statement of ownership made by statutory declaration, as required by Section 16(2) of the MSO.

[138] The central argument of the Plaintiffs hinges on the stipulation that if the registration was based solely on the 2014 Builder's Certificate, such registration would undeniably be invalid. DW5 conceded to this point, thus lending further weight to the Plaintiffs' claim.

[139] To conclude, the evidence overwhelmingly supports the Plaintiffs' contention that the registration of the Vessel, based on the 2014 Builder's Certificate was both invalid and wrongful. Given the absence of any other credible Builder's Certificate, and considering the legal framework provided by the MSO, this court rules in favour of the Plaintiffs regarding the invalidity of the Vessel's registration as a Malaysian vessel.

[140] The above fortifies the court’s finding that the 2014 Builder's Certificate used for the registration of the Vessel is non-compliant with the MSO. It fails to comply with the requirements of the MSO on multiple grounds:

a) It does not transfer title to a Malaysian corporation as required by Section 11 of the MSO.



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b) It does not fulfill the requirements of Section 21(a) of the MSO regarding the proper denomination of the ship and the account for which it was built.

c) The application for registration was not supported by a statutory declaration as required by Section 16(2) of the MSO.

[141] These failures, individually and collectively, render the registration of the Vessel as a Malaysian vessel void. The court therefore concludes that the registration of the Vessel in the Defendant's name has been fraudulently obtained by the Defendant.

***Attestation of Lyu Xiaodong's signature***

[142] The Defendant contends that the 2014 Builder's Certificate was purportedly signed by Lyu Xiaodong. As per the customary procedures of the Marine Department, any signature on such a certificate is expected to be authenticated by a Commissioner for Oaths or a Notary Public. The gravamen of the issue lies in the fact that the signature of Lyu Xiaodong on the certificate was not duly attested in person by the Commissioner for Oaths, PW4. The stamp she placed, bearing the notation "ORIGINALS HAVE BEEN SIGHTED AND CONTENTS VERIFIED TO BE IDENTICAL COPIES", merely suggests that the Commissioner juxtaposed the document in question with



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another “original” document. Importantly, this did not entail the verification of Lyu Xiaodong’s signature or identity.

[143] PW4’s testimony during her cross-examination corroborates this interpretation. She reiterated that her role, in this instance, was restricted to verifying the congruence between the original document and its copy. She unequivocally stated that she did not authenticate Lyu Xiaodong’s signature or personally witness him sign the document. Furthermore, she indicated that her stamping was merely a procedural task, based on the instructions given to her.

[144] Intriguingly, PW4’s assertion of having recorded the Identification Card (IC) number of the individual who brought her the document adds another layer of complexity. The IC number she documented is evidently that of a Malaysian national, not a Chinese national like Lyu Xiaodong. This discrepancy is particularly significant as it contradicts the Defendant’s claim that Lyu Xiaodong personally appeared before PW4 for the attestation of the Builder’s Certificate.

[145] Given the evidence, the Plaintiffs convincingly argue that Lyu Xiaodong never personally appeared before PW4. The recorded Malaysian IC number, coupled with Lyu Xiaodong’s denial of any visit to Malaysia during the period in question (further corroborated by his passport which lacks any entry or exit stamp for Malaysia during the



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relevant timeframe), undermines the credibility of the 2014 Builder's Certificate.

[146] Furthermore, the absence of an authenticated signature, as stipulated by Section 21(a) of the MSO, vitiates the 2014 Builder's Certificate as an original document for registration purposes. Section 21(a) of the MSO clearly requires a builder's certificate signed by the builder of the ship, containing specific details about the ship and its construction. The lack of proper authentication of Lyu Xiaodong's signature fails to meet this statutory requirement.

[147] As earlier found by the court, the testimony of PW6 and PW4, along with the forensic evidence, indicates that the 2014 Builder's Certificate was likely forged through a cut-and-paste method, with discrepancies in the timeline and attestation process further supporting the Plaintiffs' claim of forgery.

[148] In conclusion, based on the aforementioned discrepancies and the clear lacunae in due procedural compliance, this court finds that the 2014 Builder's Certificate, as presented, lacks the essential authentication required by law, rendering it untenable for the registration of the Vessel. The evidence overwhelmingly suggests that the document was not properly attested, and there are strong indications of manipulation and forgery. The court therefore concludes that the 2014 Builder's Certificate cannot be considered a



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valid document for the purposes of registering the Vessel under Malaysian flag, and its use in the registration process further supports the Plaintiffs' claim that the registration was fraudulently obtained.

***Plaintiffs' omission to include the Marine Department / Government of Malaysia as parties***

[149] The Defendant argues that the failure to include the Marine Department and the Government of Malaysia as parties to the action amounts to prejudice. They contend that given the significant involvement of the Marine Department in the registration process, these parties should have been included in the proceedings. The Defendant submits that this omission should lead to an adverse inference against the Plaintiffs and is prejudicial to the Defendant's case.

[150] The Plaintiffs on the other hand submit that their decision not to include the Marine Department and the Government of Malaysia as parties to the action is justified and does not amount to prejudice against the Defendant. They argue that their claim is specifically directed at the Defendant, seeking an order for the Defendant to de-register or cancel the permanent registration of the Vessel. The Plaintiffs contend that they have obtained the necessary evidence through third-party discovery and have made it clear throughout the proceedings that they do not intend to include other parties as defendants.



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[151] The Defendant's contention that the Plaintiffs' failure to include the Marine Department and the Government of Malaysia as parties to the action amounts to prejudice is rejected. To begin, it is paramount to underscore the specificity of the Plaintiffs' claim, which is directed solely at the Defendant and seeks, among other things, an order for the Defendant to de-register or cancel the permanent registration of the Vessel from the Port of Registry at Kota Kinabalu.

[152] The Plaintiffs have successfully initiated third-party discovery against the Sabah Director of Marine, Kota Kinabalu Ship Registry, thereby obtaining the Builder's Certificate that was crucial for their case. Throughout this process, the Plaintiffs made it clear that their action was exclusively against the Defendant and that they had no intention to include other parties as defendants in the matter. The Plaintiffs' actions evince a purposeful and strategic approach that should not be misconstrued as negligence or oversight.

[153] As to the Defendant's argument that the Marine Department's involvement in the registration process should necessitate its inclusion as a party, it is submitted that this is not an absolute requirement. The legal principle of privity of contract and the scope of claims laid out in the Plaintiffs' pleadings both offer clarity on this issue. The claim for de-registering or canceling the permanent registration of the Vessel does not, as a matter of law, necessitate the



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involvement of these additional parties for the claim to be valid and adequately determined.

[154] Regarding the issue of vicarious liability and the notion that the Marine Department's absence from the proceedings amounts to a fatal flaw, one must acknowledge that the Plaintiffs have, in fact, procured the relevant evidence from the Marine Department through third-party discovery. The law does not compel the naming of every party tangentially involved in a case. The Plaintiffs have done their due diligence in procuring essential documents and even stated clearly that their action does not intend to extend beyond the Defendant.

[155] It is worth noting that the Plaintiffs' approach aligns with the principle of judicial economy. By focusing their claim on the Defendant, who they assert wrongfully holds the registration of the Vessel, the Plaintiffs have streamlined the proceedings and avoided unnecessary complexity. This approach does not preclude the court from making a fair and just decision based on the evidence presented, including that obtained through third-party discovery.

[156] Furthermore, the court considers that the Plaintiffs' claim primarily concerns the validity of the registration based on the documents submitted by the Defendant, rather than the actions of the Marine Department itself. The focus is on whether the Defendant fraudulently obtained the registration, not on whether the Marine Department was



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negligent in its duties. As such, the inclusion of the Marine Department as a party is not essential to the determination of the core issues in this case.

[157] Lastly, it is worth addressing the Defendant's submission that the absence of the Marine Department and the Government of Malaysia as parties should lead to an adverse inference against the Plaintiffs. The law reserves adverse inferences for situations where a party unreasonably fails to put material evidence before the court, which is not the situation in the case at hand. The Plaintiffs have, through third-party discovery, obtained and presented the relevant documents from the Marine Department. This demonstrates their commitment to providing the court with all necessary evidence, regardless of whether the Marine Department is a party to the proceedings.

[158] Therefore, given the specificities of the Plaintiffs' claims and the scope of their legal action, it is submitted that their failure to include additional parties does not amount to prejudice towards the Defendant. The Plaintiffs have acted within their rights to frame their case as they see fit, and have provided the court with the necessary evidence to make a determination. Hence, this court finds no reason to consider the Plaintiffs' focused approach as an omission prejudicial to the Defendant, and as such, the argument is untenable in affecting a fair and just decision in favour of the Plaintiffs.



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## Other issues

### *Entitlement under the contractual arrangements to register the Vessel*

[159] The Defendant asserts that based on the CTSA and Rider Agreement ("***the Agreements***") between the parties, it was contractually obligated to register the Vessel provisionally and permanently under the Malaysian flag. Evidence of this obligation is shown through specific clauses in the CTSA, and upon fulfilling this duty, the Defendant received a payment of USD2,000,000.00 from the Plaintiffs. Given this, the Defendant posits that it rightfully registered the Vessel in Malaysia, making it the legitimate owner.

[160] The Plaintiffs maintain that the Agreements do not confer any right of ownership of the Vessel to the Defendant, nor do they mandate the Plaintiffs to reserve the Vessel for the Defendant to charter to Petronas. They argue that the Defendant is not even a party to these Agreements, which were instead entered into between CH Pavilion and the 1st Plaintiff. The Plaintiffs contend that the Agreements merely outline certain deliverables, including the registration of the Vessel, but do not equate this procedural act with a transfer of ownership rights.

[161] I do not find the Defendant's arguments persuasive.



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[162] While the Defendant claims to have met its obligations under the CTSA and the Rider Agreement, such as registering the Vessel in Malaysia, the matter at hand is not merely one of fulfilling procedural obligations. It is instead one concerning rights to ownership and claims to registration, issues that the Agreements do not, upon examination, explicitly address in favour of the Defendant.

[163] The Defendant's contention that it was contractually bound to register the Vessel with the Malaysian Flag and did so, thereby becoming the rightful owner of the Vessel, rests on a misunderstanding of the contractual arrangements. Clause 5.0 of the CTSA does indeed specify "deliverables," including registering the Vessel in Malaysia. It provides as follows:

> *"5.0 DELIVERABLES*
>
> *The following shall be the deliverables for SP (Service Provider) to VB (Vessel Builder) with regard to the above objectives as listed hereunder:*
>
> *5.A. Engineering & Design:*
> *1. Design Basis*
> *2. Equipment Specification & Details*
> *3. Vessel Layout*
> *4. Lifting Isometric*
> *Above as the "Basic Design Package"*
>
> *5.B. Malaysia Flag, Registry & MASA Membership:*
> *1. Malaysian Flag & Registry (Provisional)*
> *2. Malaysian Flag & Registry (Permanent)*
> *3. Malaysian MMSI approval and certification (5 years)*
> *4. Approved Member of Malaysian Shipowner Association (MASA)*
> *Above as the "Certificates Package".*
>
> *5.C. Petronas License:*



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*5.C.1. PETROLIAM NASIONAL BERHAD (Petronas) - Business license (Yearly Renewal).”*

[164] However, fulfilling this requirement does not automatically translate into ownership rights over the Vessel for the Defendant. The Defendant confuses the procedural act of registering the Vessel with substantive ownership rights, which are distinct issues under law. The act of registration serves administrative and regulatory functions and is not synonymous with a transfer of title or ownership.

[165] Crucially, the Defendant is not even a party to the CTSA or the Rider Agreement, a fact substantiated by the testimony of DW3 Azman, the CEO and MD of the Defendant during cross-examination. The Agreements were between CH Pavilion and the 1st Plaintiff, thereby precluding the Defendant from claiming any contractual rights arising out of the Agreements. The Defendant’s reliance on the Agreements is, therefore, misplaced.

[166] This point was further clarified during the cross-examination of DW3, where he admitted that there are no clauses within the CTSA and the Rider Agreement which state that the Plaintiffs are obligated to reserve the Vessel or to give an option to the Defendant to use the Vessel. This admission significantly undermines the Defendant’s claim of contractual entitlement to the Vessel.



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[167] Moreover, the Agreements are not pertinent to the issues under trial, namely, the title to the Vessel and the Defendant's insistence that it is entitled to be registered as the Owner of the Vessel at the Malaysian Registry. The Agreements do not specify conditions for transferring title or ownership of the Vessel to the Defendant or any obligation on the Plaintiffs to reserve the Vessel for chartering by the Defendant to Petronas. As such, the Defendant's assertion that it became the rightful owner of the Vessel by registering it in Malaysia is not supported by the contractual documents in question.

[168] It is important to note that the payment of USD2,000,000.00 by the Plaintiffs to the Defendant, as mentioned in Clause 8.0 of the CTSA, was for the delivery of specific deliverables, including the registration of the Vessel. It provides:

> *"8.0 PAYMENT TERMS*
>
> *The full amount of USD 2,000,000.00 (United States Dollar Two Million) only shall be paid in full without any deduction or discount via Telegraphic Transfer (TT) into CH Pavilion Sdn. Bhd. account within 21 working days upon receipt of the official invoice and accompanied by the completed Conceptual and Design Basis inclusive of the "Basic Design Package" and "Certificates Package" for the said FDPSO.*
>
> *For clarity, the said working days shall be based on five (5) banking days per week, excluding gazetted public holidays in the People's Republic of China."*



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[169] This payment does not equate to a transfer of ownership rights. It is a common practice in commercial arrangements for one party to compensate another for services rendered without transferring ownership of the subject matter.

[170] Lastly, concerning the claim that the Plaintiffs had doubts over the status of the Vessel, this argument is inconsequential to the central issue of title and ownership. Even if the Plaintiffs had doubts, they did not manifest into any actions that would alter or invalidate the contractual agreements in place. The Plaintiffs' actions throughout, including the issuance of the 2015 Builder's Certificate, consistently demonstrate their understanding that they retained ownership of the Vessel.

[171] In sum, the Defendant's contentions regarding its entitlement to register and thereby own the Vessel do not find support in the contractual arrangements or the legal principles governing such matters. The Agreements, when properly interpreted, do not confer ownership rights to the Defendant, nor do they obligate the Plaintiffs to transfer such rights. The registration of the Vessel, while a contractual deliverable, does not equate to a transfer of ownership. Therefore, the court finds that the Defendant's claim of rightful ownership based on these Agreements is unfounded.



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***Sham sale***

[172] The Defendant argues that the transaction of the Vessel between the 1st and 2nd Plaintiffs was a sham transaction. It points to evidence such as the close relationship between the two Plaintiffs, both having the same Director, and the Vessel remaining at the 1st Plaintiff's shipyard, even after the alleged sale. The Defendant contends that despite official documents suggesting the 2nd Plaintiff's ownership, the 1st Plaintiff continued to operate as if it retained ownership, indicating the transaction's inauthenticity.

[173] The Plaintiffs strongly refute the Defendant's assertion that the sale of the Vessel from the 1st Plaintiff to the 2nd Plaintiff was a sham transaction. They argue that the sale was a legitimate commercial transaction, evidenced by the Builder's Certificate dated 30.6.2015 issued by the 1st Plaintiff to the 2nd Plaintiff. The Plaintiffs contend that the close relationship between the two companies does not invalidate the transaction, as it is common practice in the shipping industry for parent companies to sell vessels to their subsidiaries. They further argue that the lack of physical delivery of the Vessel is not indicative of a sham transaction, as legal transfer of ownership can occur without physical relocation, especially when the parties are closely related entities.

[174] The Defendant cites a decision of this court, *Dan-Bunkering (Singapore) Pte Ltd v The Owners of The Ship or Vessel*



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*"Pdz Mewah" (IMO No.: 9064009) of Port Klang & Anor* [2020] MLJU 1574, among others, to highlight elements that could potentially render a sale transaction as a sham. However, it is crucial to understand that these are merely illustrative criteria and not exhaustive or definitive. In the case cited by the Defendant, the court clearly stated that a close relationship between parties alone would not be sufficient to determine a transaction as a sham; other factors must be present to substantiate this claim. While it is true that the Director of the 1st Plaintiff was also the General Manager of the 2nd Plaintiff at the time the transaction took place, this relationship does not automatically invalidate the transaction.

[175] The Defendant points to the lack of physical delivery of the Vessel, suggesting that this omission casts the sale as fictitious. However, it should be noted that "delivery" in the context of a commercial transaction need not always be physical. The Protocol of Delivery and Acceptance serves as evidence that a legal transfer of ownership did occur, even if the Vessel remained at the 1st Plaintiff's shipyard. This is a common practice in the shipping industry, especially when the parties involved are closely related, or one is a wholly-owned subsidiary of the other.

[176] On the point regarding the purported 2014 Builder's Certificate in favour of the Defendant, the 1st Plaintiff's issuance of the 2015 Builder's Certificate to the 2nd Plaintiff clearly indicates the 1st Plaintiff's intention to effect a legal



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transfer of ownership. Moreover, the 1st Plaintiff has explicitly stated that it was unaware of any other Builder's Certificate issued in Malaysia, which undermines the Defendant's argument that the transaction was a sham intended to cover tracks.

[177] The Defendant also alleges that the 1st Plaintiff failed to inform the 2nd Plaintiff about the Vessel's status of being registered in Malaysia under the Defendant's name. However, if the 1st Plaintiff had genuine doubts about the status of the registration in Malaysia, as evidenced in the proceedings, then this omission cannot be seen as a deliberate act to mislead or deceive, nor can it be classified as a material breach warranting the invalidation of the transaction.

[178] As for the claim that the Defendant failed to raise capital to acquire the Vessel, it should be understood that, from a commercial perspective, the 1st Plaintiff could not be reasonably expected to wait indefinitely for a charter contract to be awarded, especially when existing Memorandums of Understanding had already expired. Thus, the 1st Plaintiff acted within its rights to proceed with the sale to the 2nd Plaintiff.

[179] It is important to note that the Plaintiffs have provided a clear timeline of events leading up to the sale of the Vessel to the 2nd Plaintiff. They explain that until June 2015, no charter contract was awarded to the Vessel. Consequently,



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the 1st Plaintiff issued the Builder's Certificate dated 30.6.2015 to the 2nd Plaintiff and sold the Vessel to them. This decision was communicated to PW3 Azman via email on 24.6.2015, informing him that the 1st Plaintiff would deliver the Vessel to the buyer, a Hong Kong company (the 2nd Plaintiff).

[180] Furthermore, the Plaintiffs argue that the issuance of the 2015 Builder's Certificate to the 2nd Plaintiff demonstrates that the 1st Plaintiff was not aware of any purported Builder's Certificate in Malaysia. This fact strongly supports the Plaintiffs' position that the sale to the 2nd Plaintiff was genuine and not a sham transaction designed to cover up any prior agreements or registrations.

[181] The court also considers the commercial context of the transaction. As a shipbuilder, the 1st Plaintiff's primary business is to sell vessels, not to operate them. The sale of the Vessel to its subsidiary, the 2nd Plaintiff, aligns with this business model and does not inherently suggest any fraudulent intent or sham transaction.

[182] In conclusion, the sale of the Vessel from the 1st Plaintiff to the 2nd Plaintiff does not meet the threshold to be considered a sham transaction under the criteria laid out in the legal precedents cited by the Defendant. The close relationship between the parties, the lack of physical delivery, and the continued presence of the Vessel at the 1st Plaintiff's shipyard are all explicable within the context of



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a legitimate parent-subsidiary transaction in the shipping industry. The issuance of the 2015 Builder's Certificate and the clear communication of the sale provide strong evidence of a genuine transaction. Therefore, the sale should be considered valid and binding, and the 2nd Plaintiff should be recognised as the beneficial owner of the Vessel.

**COUNTERCLAIM**

[183] In the Defendant's counterclaim, it contends that the Plaintiffs, by their actions in 2018 and 2019, have breached these agreements, particularly the CTSA and the Rider Agreement. The Defendant challenges the Plaintiffs' grounds for termination based on the permanent registration of the Vessel, asserting it contradicts Clause 10.0 of the CTSA. It provides:

> *"10.0 TERMINATION FOR DEFAULT OR INSOLVENCY*
>
> *If:*
> *1. SP (Service Provider) suspends or ceases to carry on all or a substantial part of its business; or*
> *2. SP becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings, or makes an assignment for the benefit of a third party; or*
> *3. VB (Vessel Builder) fails to comply with the agreed payment terms and/or the vessel is sold to any 3rd party."*

[184] The Defendant also highlights its efforts towards the Limbayung Project with Petronas Carigali in 2018 and cite various clauses that it believes supports its stance. The



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Defendant further claims that it and CH Pavilion had been on the verge of securing the Limbayung Project award approximated at RM1.861 billion. It attributes significant losses to the Plaintiffs' alleged wrongful termination and other actions. In detailing its losses, it mentions failed vessel mobilisation efforts, direct and indirect shareholder capital and management advances, and various costs related to equipment, engineering, and overhead. It emphasises the substantial investments made based on the agreements and the missed opportunities due to the Plaintiffs' actions. The Defendant is thus seeking damages for the breach of contract, general damages, interest, costs, and any other suitable relief deemed fit by the court.

[185] After considering the evidence and submissions of parties, the court finds that the Defendant has failed to prove its counterclaim on a balance of probabilities.

**Loss and damage from wrongful termination**

[186] The Defendant claims that it has suffered loss and damage as a result of what it alleges to be the wrongful termination of the CTSA and Rider Agreement by the Plaintiffs. The Defendant claims to have sustained considerable losses, citing both the immobilisation of the Vessel from China to Malaysia and the subsequent prohibition imposed by the Interim Injunction ordered on an ex parte basis on 5.8.2019 and later after the inter partes hearing on 28.11.2019. Furthermore, it argues that these losses are exacerbated by



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the financial and human resources expended in preparation for the Limbayung Project, which it contends was undertaken with the Plaintiffs' full awareness and without complaint.

[187] The Plaintiffs strongly refute the Defendant's claims for loss and damage. They argue that the Defendant was not a party to the CTSA or Rider Agreement, and therefore has no standing to claim any losses arising from their termination. The Plaintiffs contend that the agreements were between CH Pavilion and the 1st Plaintiff, not the Defendant. Furthermore, they assert that the agreements do not contain any legally enforceable obligations regarding the Limbayung Project or any other specific contracts. The Plaintiffs maintain that any expenses incurred by the Defendant in pursuit of the Limbayung Project were unilateral actions not based on any contractual commitment from the Plaintiffs.

[188] Upon close examination of the detailed arguments and evidence laid before this court, it becomes evident that the Defendant's claims for loss and damage lack legal merit. Starting with the contractual framework, neither the CTSA nor the Rider Agreement included the Defendant as a party. This fact was confirmed during cross-examination of DW3, who is associated with CH Pavilion. DW3's testimony clearly indicated that the Defendant had no enforceable rights or obligations under these agreements, thereby



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undercutting any claim that the Defendant could assert for losses due to their termination.

[189] Turning to the Limbayung Project, the Defendant emphasises the expenses incurred - hiring engineers, preparing evaluations, and the like - as well as the potential value of the project estimated at USD2,000,000,000.00. However, these expenditures were undertaken unilaterally. PW1 Hu Guancheng, representing the 1st Plaintiff, specifically testified that no negotiations or discussions regarding commercial terms for the Limbayung Project had ever taken place between the Plaintiffs and the Defendant. This glaring absence of communication and formal agreement makes any losses incurred by the Defendant in pursuit of the Limbayung Project speculative and not attributable to any action or inaction by the Plaintiffs.

[190] The Defendant's claim of approximately USD500,000,000 in losses, as detailed in Attachment AA of DW3's witness statement, thus appears to be unsupported by enforceable contractual commitments. The cited losses relate primarily to preparation works for the Limbayung Project, which, as stated, were not carried out in partnership with or under any obligation to the Plaintiffs.

[191] The Plaintiffs' counsel astutely distinguished between "objectives" mentioned in contracts and "legally enforceable obligations." The "objectives" provisions in the CTSA are as follows:



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a) CTSA (Clause 3.0 - Objectives):

*"3.0 OBJECTIVES*

*The Parties has a common objective to involved in the commercial and technically develop the Vessel for FDPSO application to the Time Charter (TC) contract with PETRONAS and/or it's Production Sharing Contractors (PSC) and/or it's Production Arrangement Contractors (PAC), (Hereinafter referred to as "PETRONAS") operating in the Sabah deepwater oil and gas exploration blocks. The future TC is also envisaged to include Malaysia and Brunei commercial arrangement deepwater blocks named as CA-1 and CA-2.*

*The VB wish to engage SP for the contract to develop a conceptual and design basis of the mentioned FDPSO to PETRONAS and VB shall compensate the SP for such cost including SP's effort in promoting the Vessel to PETRONAS on the said FDPSO project."*

b) Rider Agreement (Clause 2.0 - Objectives):

*"2.0 OBJECTIVES*

*Further to the signed COMMERCIAL & TECHNICAL SERVICE AGREEMENT No. OSF/CSD-2015/1888 between VB and SP, both parties further agree hereunder for:*

*1. SP to hold Twenty Five (25) % (Percent) interest for VB and acting as nominee with the best interest of the foregoing concern of the acquired Petronas Licensed company.*

*and,*

*2. In the case of Petronas Licensed company divestment, shares sales related to the COMMERCIAL & TECHNICAL SERVICE AGREEMENT No.2015/1888*



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*clause 17.0 - SPECIAL CONDITION and irrespective to VB interest held by SP in the Petronas Licensed company, Seventy Five Percent (75%) of the divestment or sales proceed shall be payable to VB and if any, less applicable taxes in Malaysia.*

*and,*

*3. This rider agreement shall be applicable throughout the tenure of the acquired Petronas license company by SP for the purpose of TC and contracting of FDPSO Dalian Developer IMO No.9413145 with Petronas and/or Petronas's Production Sharing Company (PSC) and/or Petronas's Production Arrangement Company (PAC)."*

[192] Despite the CTSA and Rider Agreement articulating the objective of securing a charter with Petronas, they did not morph into legally binding commitments absent explicit stipulations. DW3 Azman himself, upon rigorous questioning, could not identify any such enforceable clauses.

[193] It is important to note that the Plaintiffs have consistently maintained that they were not aware of the specific steps Azman or his companies took to obtain the Petronas charter contract. PW1 testified that the Plaintiffs were not informed about the Limbayung Project, nor were any commercial terms proposed or agreed upon between the Plaintiffs and Defendant. This lack of communication and agreement further undermines the Defendant's claim for losses.



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[194] Therefore, this court finds that the Defendant has failed to substantiate its claims for loss and damage due to the wrongful termination of the CTSA and Rider Agreement by the Plaintiffs. The Defendant was not a party to these agreements and cannot claim rights or obligations under them. The expenses incurred for the Limbayung Project were unilateral actions by the Defendant without any contractual commitment from the Plaintiffs. The lack of communication and agreement on commercial terms further undermines the Defendant's claims. Consequently, the Defendant's claim for compensation for the alleged losses cannot be allowed.

**Failure to moblise vessel**

[195] The Defendant asserts that the 1st Plaintiff's failure to mobilise the Vessel to Malaysia constitutes a breach of the collaborative agreement, thereby invoking Section 40 of the Contracts Act 1950 which pertains to the impossibility of performance. Section 40 provides:

> *"Effect of refusal of party to perform promise wholly*
>
> *40. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."*

[196] However, this argument fails to take into account several key points presented by the Plaintiffs, which reveal a



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nuanced and context-specific understanding of the obligations under the CTSA.

[197] To begin, the Plaintiffs have persuasively argued that mobilising the Vessel to Malaysia would only be commercially viable if a firm chartering contract had been awarded by Petronas. The CTSA, which governs the parties' relationship, does not impose a categorical obligation on the 1st Plaintiff to mobilise the Vessel to Malaysia. Rather, the CTSA obliges the 1st Plaintiff to take reasonable and commercially viable steps to facilitate the procurement of a charter contract. It does not compel them to undertake a risky and financially burdensome operation in the absence of a confirmed charter contract, especially considering the substantial costs and risks involved in such an operation, including certification, crewing, bunkering, and anchorage fees.

[198] The Plaintiffs have provided a detailed breakdown of the costs and risks associated with mobilisation:

a) The 1st Plaintiff would need to engage a classification society to certify that the Vessel is in a fit condition to sail from China to Malaysia.

b) They would need to hire crew, pay for bunkers and provisions for the journey.



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c) Upon arrival in Malaysia, the Vessel would incur anchorage fees while waiting for a contract to be awarded, with no assurance of how long this wait might be.

d) There are inherent risks in making the sea journey from China to Malaysia, and the Vessel would then be in Malaysian waters for an indefinite period.

[199] Second, the Plaintiffs aptly highlight the absence of an indemnity agreement that would cover the costs incurred from mobilising the Vessel. In this context, it is unreasonable to expect the Plaintiffs to bear the considerable expense and risks associated with mobilising a high-value asset like the Vessel without a firm charter contract or an indemnity agreement. The Vessel, valued at approximately USD650 million, represents a significant investment, and any decision to move it must be based on sound commercial principles.

[200] Third, the Defendant's claim that it had obtained a Petronas license, which was communicated to the 1st Plaintiff, does not, in and of itself, provide a commercial or contractual basis for mobilising the Vessel. A license from Petronas is not equivalent to a firm chartering contract, which remains the prerequisite for mobilisation as per the CTSA and commercial viability considerations. Thus, the 1st Plaintiff's concerns about the unavailability of projects if the Vessel were to be mobilised are not without basis.



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[201] The Plaintiffs have also pointed out that under the CTSA, there is no contractual obligation for the 1st Plaintiff to mobilise the Vessel to Malaysia. The agreement only expects the 1st Plaintiff to take reasonable and commercially viable steps to facilitate the procurement of a charter contract from Petronas. This interpretation is consistent with standard commercial practices in the shipping industry, where the movement of high-value assets is typically contingent on confirmed contracts.

[202] Lastly, the Defendant's allegation that the 1st Plaintiff's failure to mobilise resulted in substantial losses does not adequately address the potential losses that the Plaintiffs would incur if they had mobilised the Vessel without a firm charter contract. In a commercial venture such as this, both parties must bear their respective business risks, and the absence of a confirmed charter contract places the onus of that risk squarely on the party pushing for mobilisation.

[203] The court also considers the Plaintiffs' argument that as a state-owned company dealing with a vessel valued at approximately USD650 million, they would naturally be cautious in their approach to such a significant decision. Their reluctance to mobilise the Vessel without a firm contract is consistent with prudent business practice in high-value maritime operations.

[204] Furthermore, the Plaintiffs have argued that if they had mobilised the Vessel to Malaysia and it did not secure a



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charter contract immediately, there was no agreement in place regarding who would bear the continuing costs of keeping the Vessel in Malaysia. This uncertainty further justifies their decision not to mobilise without a firm contract in place.

[205] In light of these considerations, the court finds that the 1st Plaintiff's decision not to mobilise the Vessel to Malaysia was reasonable and in keeping with the terms of the CTSA. The 1st Plaintiff's actions demonstrate a prudent approach to managing a high-value asset in the absence of a confirmed charter contract. Consequently, their actions do not amount to a breach of the collaborative agreement, and Section 40 of the Contracts Act 1950 is inapplicable in this context. The court recognises that the decision not to mobilise was based on sound commercial principles and was within the scope of the 1st Plaintiff's discretion under the CTSA. Therefore, the Defendant's contentions concerning the failure to mobilise the Vessel are without merit.

**Damages from injunction**

[206] The Defendant counterclaimed for damages purportedly incurred due to the imposition of the Interim Injunction. The Interim Injunction restrains the Defendant and its affiliates from any dealings or changes concerning the Vessel, making any alterations in the ship register book at the Marine Department or Ship Registry at Kota Kinabalu, and



S/N i0iQTJVLUucOgFn3x26g
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from handling or altering the net proceeds from the sale of the Vessel, with these constraints in place until any judgment against the Defendant is satisfied.

[207] The Defendant contends that it has suffered substantial losses due to the imposition of the Interim Injunction. They claim that the injunction has prevented them from utilising the Vessel for potential projects, particularly the Limbayung Project. The Defendant argues that these losses, which they estimate at around USD850,000,000.00 (subject to the value of Brent oil price), should be compensated based on the Plaintiffs' undertaking in paragraph 36 of the Affidavit of Support affirmed by Lyu Xiaodong.

[208] The Plaintiffs, on the other hand, submit that the Defendant should not be entitled to claim damages arising from the Interim Injunction. They argue that the injunction was necessary and properly obtained to prevent the Defendant from dealing with the Vessel, which is central to the present action. The Plaintiffs contend that as they have succeeded in their claim, there is no basis for considering the injunction as wrongfully imposed. They further argue that any losses incurred by the Defendant cannot be attributed to a rightfully obtained injunction.

[209] The core of the argument posited by the Defendant revolves around the premise that the Interim Injunction was wrongfully imposed. This premise is subject to scrutiny in



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light of the court's prior determination that the Plaintiffs have proved their claim and are entitled to the reliefs prayed for.

[210] Firstly, the Plaintiffs were granted the Interim Injunction to prevent the Defendant from engaging in any dealings concerning the Vessel, which was central to the original action. The court has already concluded that the Plaintiffs are successful in this action, thereby precluding any presumption of wrongfulness. The essentiality of the Vessel to the present action provided sufficient grounds for securing the Interim Injunction and, consequently, undermines the basis for the Defendant's claim of wrongful imposition.

[211] Secondly, paragraph 36 of the Affidavit of Support, affirmed by Lyu Xiaodong, acknowledges the Plaintiffs' undertaking to be liable for damages should this court subsequently opine that such damages are merited. However, such liability arises only if the court holds that the Defendant has suffered losses "by reason of the orders to be made herein which the Plaintiffs ought to pay." Given the court's determination that the Plaintiffs have established their claim, it logically follows that there is no wrongful act on the part of the Plaintiffs that would trigger the invoked liability under paragraph 36 of the Affidavit.

[212] Moreover, it must be noted that the Defendant's entitlement to damages is dependent on its ability to establish not merely the existence of losses but that such losses were



S/N i0iQTJVLUucOgFn3x26g
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incurred as a direct result of the Interim Injunction. Given the court's ruling in favour of the Plaintiffs, any losses incurred by the Defendant could not logically be attributed to an injunction that has been deemed rightful.

[213] The court also considers that the Interim Injunction was obtained through proper legal channels. The Plaintiffs applied for and were granted the injunction on an ex parte basis on 5.8.2019, which was later continued after an inter partes hearing on 28.11.2019. This procedural regularity further supports the legitimacy of the injunction.

[214] Furthermore, the court notes that the Defendant's claim of losses, particularly regarding the Limbayung Project, is speculative. As previously established, there was no firm contract or agreement in place for this project, and the commercial terms were never discussed with or agreed upon by the Plaintiffs. Therefore, attributing these potential losses to the Interim Injunction is tenuous at best.

[215] The court also considers the nature of the injunction itself. The purpose of the Interim Injunction was to maintain the status quo pending the resolution of the dispute. It did not deprive the Defendant of any established rights but rather prevented any actions that could potentially prejudice the Plaintiffs' claim. This is a standard and accepted use of injunctive relief in commercial disputes.



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[216] In summary, the Defendant's counterclaim for damages due to the Interim Injunction lacks merit in light of the court's prior determinations. The Interim Injunction was appropriately issued given the circumstances, negating the foundation of the Defendant's counterclaim. The Plaintiffs' success in their main claim validates the necessity and propriety of the injunction. Furthermore, the Defendant has failed to establish that any losses it may have incurred were directly attributable to the injunction rather than to the underlying dispute or other business factors. Therefore, the court finds that the Defendant is not entitled to any damages arising from the imposition of the Interim Injunction.

**CONCLUSION**

[217] Premised on the above, the court finds on a balance of probabilities that:

a) The registration of the Vessel as a Malaysian vessel was procured fraudulently in that the 1st Plaintiff never issued the 2014 Builder's Certificate and that the signature of "LV XIAODONG" is forged; and

b) The registration of the Vessel as a Malaysian Vessel is null and void as it purports to transfer title to Guard Offshore (BVI), a British Virgin Islands company, in violation of Section 11(1)(b) of the MSO, and fails to comply with Section 21(a) by not producing an



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original Builder's Certificate and Section 16(2) by not having Azman's signature in the registration application attested through a statutory declaration.

[218] The Plaintiffs' claim is allowed and the Defendant's counterclaim is dismissed. The court orders as follows:

a) The Second Plaintiff is declared as the beneficial owner of the Vessel, "DALIAN DEVELOPER" (IMO No. 9413145);

b) The Defendant is declared as holding the Vessel on trust for the Second Plaintiff;

c) The Defendant is ordered to de-register or cancel the permanent registration of the Vessel from the Port of Registry at Kota Kinabalu;

d) Damages arising from the refusal of the Defendant to de-register or cancel the permanent registration of the Vessel from the Port of Registry at Kota Kinabalu from 10.7.2019 to such date when the said de-registration or cancellation has taken place to be assessed;

e) Interest at a rate of 5% per annum on the awarded damages, accruing from the date of the court's formal determination of said damages until the date of full and final settlement;



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f) The Defendant's counterclaim is dismissed; and

g) Costs in the sum of RM250,000.00 to be paid by the Defendant to the Plaintiffs and the payment of disbursements that will be discussed and agreed upon by the parties.

**6 September 2024**

**ATAN MUSTAFFA YUSSOF AHMAD**

Judge

Kuala Lumpur High Court

(Commercial Division)

***Counsel:***

***For the Plaintiffs:*** *Oon Thian Seng with Lionel Noel*
*(Messrs T S Oon & Partners)*

***For the Defendant:*** *Datuk Nor Hisham Hj Muhammad with*
*Aiman Hafiz PDK*
*(Messrs Ram Reza & Muhammad)*



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