Privy Council Appeal No. 38 of 1984

Eng Joo Lee Private Limited *Appellants*

v.

Kian Chiang Granite Quarry Company (Pte) Limited *Respondents*

FROM

THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH JUNE 1986

Present at the Hearing:

LORD KEITH OF KINKEL
LORD TEMPLEMAN
LORD GRIFFITHS
LORD ACKNER
LORD OLIVER OF AYLMERTON

*[Delivered by **Lord Ackner**]*

The appellants at all material times carried on the business of quarry operators at a granite quarry in Pulau Ubin Singapore. The respondents held a lease of this quarry from the President of the Republic of Singapore for a term of ten years from 1st September 1969. By a written agreement dated 2nd May 1975 ("the 1975 agreement") the respondents granted the appellants a licence to extract granite from the quarry from 1st May 1975 until the expiration of the lease. By clause 7 of the agreement it was provided that if the Commissioner of Lands offered a further lease to the respondents then the appellants "shall be given priority to continue with the existing arrangement as stated in this agreement except that the royalty to be paid to the First Party [the respondents] shall be adjusted according to the then prevailing market price".

Towards the end of 1978 and early in 1979 negotiations took place between the parties for the 1975 agreement to be renewed. On 10th July 1979 a crucial meeting was held between the parties at the
[33] Hong Leong Building, Raffles Quay, Singapore which

was the headquarters of the respondents' parent company. It was the appellants' case that at that meeting an oral agreement was concluded to the effect that the appellants' licence would be renewed for a period of five years from 1st September 1979, subject only to the respondents' obtaining the renewal of their statutory quarry licence. The terms of this new agreement were substantially to be the same as the terms of the 1975 agreement and were set out in a letter to the respondents dated 12th July 1979 which purported to confirm what was agreed at the meeting.

The respondents denied that any agreement was concluded at the meeting on 10th July 1979 and maintained that at all times negotiations between the parties were subject to the respondents being granted a new lease of the quarry.

On 8th November 1979 the respondents commenced this action claiming possession of the quarry, payment of arrears of licence fees of $101,459 48 and specific performance of the provision in the 1975 agreement which provided, on the termination of the agreement, for the sale by the appellants to them of the machinery installed by the appellants in the quarry. The appellants counterclaimed for specific performance of the alleged oral agreement for the renewal of the 1975 agreement and, while admitting the arrears, claimed to set off damages for breach of the alleged renewal agreement. Thus the primary questions for decision were issues of fact, namely, whether at the meeting held on 10th July 1979 an oral agreement was concluded for the renewal of the 1975 agreement and, if so, whether the agreement was conditional upon the grant to the respondents by the Commissioner of Lands of a new lease of the quarry.

Not long after the commencement of the proceedings, the Commissioner of Lands refused to grant to the respondents a renewal of the lease, but granted only a monthly licence which precluded the renewal of the 1975 agreement.

On 19th March 1982 Sinnathuray J. held that no contract was concluded at the meeting of 10th July and further that at that meeting it was a condition of any agreement for a new licence that the respondents were themselves granted a new lease. He accordingly gave the respondents judgment for possession. In the light of those findings of fact the learned judge did not deal with a number of issues of law, and mixed law and fact which did not therefore arise. He did however have to deal with the issue of the illegality of the 1975 agreement. This had initially been asserted by the appellants' solicitors on their clients' behalf early in 1978, in answer to a claim for arrears of $285,744. This contention was adopted as an alternative plea in the

respondents' re-amended statement of claim. This plea, as an alternative, was also relied upon by the appellants, since it was common ground that if the 1975 agreement was illegal, the respondents could have no claim under the agreement for arrears of licence fees or to purchase the quarry machinery. The judge concluded that the 1975 agreement was unlawful and he accordingly held that the respondents claim to purchase the machinery pursuant to clause 19 of the 1975 agreement was unenforceable. Nevertheless he gave judgment for the respondents for the arrears claimed. This was an oversight on his behalf, an error which persisted in the Court of Appeal.

The appellants appealed to the Court of Appeal which appeal was dismissed on 3rd April 1984. In their judgment the Court of Appeal stated *inter alia*:-

> "... despite the thoroughness with which he [Mr. Cox Q.C., Counsel for the appellants] drew our attention to all the factors tending to support a finding that an oral contract was in fact concluded at the meeting of 10th July 1979 [he] was unable to convince us that the trial judge's finding was wrong and to reverse that finding. This was a case where there was a straight conflict of primary fact between witnesses where credibility is crucial and the judge's estimate of the witnesses formed a substantial part of his reasons for his judgment. The relevant surrounding circumstances and documentary evidence were, in our opinion, not so overwhelming or overpowering to convince us that the decision was wrong and in the light of the authorities we found it unnecessary to review the evidence of the witnesses as to what transpired at that crucial meeting."

The Court of Appeal quoted from the speech of Lord Edmund-Davies in *Whitehouse v Jordon* [1981] 1 All E.R. 267, at page 276 where he said:-

> "It has long been settled law that when the decision of a trial judge is based substantially on his assessment of the quality and credibility of witnesses, an appellate court must, in order to reverse, not merely entertain doubts whether the decision below is right, but be convinced that it is wrong ... And that is so irrespective of whether or not the trial judge made any observation with regard to credibility."

A further quotation was also made from the speech of Lord Bridge at page 286 where he said:-

> "My Lords, I recognise that this is a question of pure fact and that in the realm of fact, as the authorities repeatedly emphasise, the advantages

which the judge derives from seeing and hearing the witnesses must always be respected by an appellate court."

Reference was also made to the well known speech of Lord Sumner in *The Hontestroom* [1927] A.C. 37 at pages 47 and 48.

The Court of Appeal also affirmed the learned judge's decision that the 1975 agreement was unlawful and against this decision there is no cross-appeal.

Relevant events prior to the July 1979 meeting

Their Lordships have already referred to the contention raised by the appellants' then solicitors, in answer to the claim for arrears, that the 1975 agreement was illegal. This contention was based upon the Sand and Quarries Act (Cap. 282), the relevant provisions of which were as follows:-

"4(1) No person shall, on or after the date of the coming into operation of this Act, use or manage any land for the purposes of a sand or granite quarry without a licence from the Licensing Officer authorising him so to do.

...

5(6) No such licence shall be transferable without the consent of the Licensing Officer."

The appellants held no such licence, the licence being granted solely to the respondents. It was the intention of the parties to the 1975 agreement that the appellants should not, and indeed could not, obtain a licence from the Licensing Officer but should "shelter" behind the licence of the respondents. Hence the alleged unlawfulness of the agreement.

This contention was persisted in even to the extent of the appellants' then solicitors stating that they were instructed to make an application to the Court for the appropriate declaration. This attitude was treated by the respondents' solicitors as a wrongful repudiation of the agreement and on 21st January they gave the appellants twenty-four hours notice to vacate the premises. Apparently, although this is not recorded in the correspondence, the appellants' solicitors then withdrew their contention and the appellants began to pay off the arrears.

On 15th December 1978 Mr. Lim, the managing director of the appellants, wrote to the manager of the respondents pointing out that their agreement was due to expire on 31st August 1979 and offered terms for renewal. The payments which he offered to make under a renewed agreement were less than those pay-

able under the 1975 agreement. When giving his evidence, he explained that from 1975 to 1979 the appellants suffered a loss due to the depreciation of their machines over the previous five years. However they anticipated that future depreciation would be at a reduced rate. In the penultimate paragraph of this letter it is stated "The above terms are offered subject to the granting of the Lease to you by the Commissioner of Lands and other Competent Authorities". This proviso was to be expected - see the terms of clause 7 referred to earlier and the words which were used closely followed those to be found in clause 5 of the 1975 agreement. As will appear hereafter, they are of considerable relevance to one of the main issues in the dispute.

The appellants' offer contained in their letter of 15th December was rejected by the respondents on 14th February 1979. However the respondents returned to the charge on 11th May 1979, when in purported pursuance of clause 7 they put forward terms which involved a small increase in the amount payable under the 1975 agreement. This letter, in its penultimate paragraph, contained the same proviso expressed in virtually the same words as that stipulated by the appellants in their letter of 15th December referred to above. Despite a reminder written on 17th May, Mr. Lim did not reply. The next event of importance was the meeting of 10th July, which was the subject matter of oral evidence before the trial judge, and to which their Lordships will refer subsequently under a separate heading.

Relevant events subsequent to the 10th July 1979 meeting

Two days after the meeting, that is on 12th July 1979, Mr. Lim dictated to his wife a letter addressed to the respondents which he duly signed. The letter was the sheet-anchor of the appellants' case and it is appropriate to set out its terms in full. It reads as follows:-

> "We refer to the discussion held among Messrs. Kwak Hong Lye, Chng Gim Huat, Chua Pong Seah, Yeoh Sze Hong and the writer during the meeting on 10th July 1979 in the office of M/s. Hong Leong Co. Ltd. in respect of extension of the Agreement.
>
> We are now writing to confirm our acceptance of your offer as proposed by Mr. Chng Gim Huat during the said meeting, to extend the Agreement dated 2.5.75 for a further period of five years from 1.9.79. However, we wish to place on record the verbal agreement among the members present at the abovesaid meeting that the Agreement dated 2.5.75 shall be extended subject to the following amendments:-

(1) Pursuant to Clause No. 7 of the Agreement, the monthly tribute payable shall remain at the current rate without change.

(2) Deletion of Clause No. 16 of the Agreement.

However, it is noted that the extension of the Agreement herein mentioned shall be subject to your obtaining the renewal of the Quarry Licence from the Commissioner of Lands and other Competent Authority."

That letter was collected by Mr. Yeoh, the respondents' manager who was responsible for the day-to-day management of the respondents. On the letter there was typed opposite Mr. Kim's signature "I hereby acknowledge receipt of this confirmation letter" and Mr. Yeoh after reading the letter signed underneath these words on behalf of the respondents.

It will be readily observed, firstly that the terms which the letter purported to confirm involved no change in the rate payable by the appellants. The only alteration to the agreement related to the deletion of clause 16 (which concerned the use by the appellants, on payment, of part of the respondents' office accommodation). Secondly the final paragraph, while using by now the time-honoured expression "the Commissioner of Lands and other Competent Authority", referred, not to the renewal of the Lease, but to the renewal of the Quarry Licence.

A month passed without any reaction by the respondents to the letter of 12th July being communicated to the appellants. On 16th August the respondents' solicitors, to whom the letter of 12th July had been handed, wrote to the appellants in these terms:-

"Subject to Contract we are instructed by our clients to forward you the draft Lease which is enclosed herein for your perusal. Kindly acknowledge receipt.

Our clients say that unless the terms of the Lease are finalised by the 22nd instant they are not prepared to proceed with the negotiation for an extension of this Lease. As such please arrange for the Lease to be signed on or before the 22nd instant otherwise our clients shall grant the Lease to other interested parties."

Reference should be made to the following clauses of the draft which was sent with the letter:-

Clause 6

"This Agreement shall take effect from 1st September 1979 and the duration of this Agreement is dependent on the lease granted by the Commissioner of Lands to the First Party [the respondents] in Clause 10."

Clause 10

"The First Party's lease from the Commissioner of Lands expires on the 31.8.79 but has applied for a new lease for 5 years which may be given by the Commissioner of Lands. ..."

Clause 16

"The Second Party [the appellants] shall agree and undertake to supply the First Party for the entire duration of this Agreement 5000 cubic yards of $\frac{3}{4}$" granite chips to be delivered to site or sites as directed by the First Party for every month. ... The price shall be fixed at $14.75¢ per cubic yard delivered to sites as directed abovementioned. ..."

At this time, very considerable building development was contemplated in Singapore. The appellants (very probably the respondents too) anticipated that the price for granite would soon rise considerably, as in fact it did. With this in mind, clause 16 of the draft lease was viewed by the appellants as being most unattractive. They accordingly replied on 20th August drawing attention to the meeting held on 10th July 1979, alleged that at that meeting it was agreed that the existing agreement would be extended for a further five years, and enclosed a copy of the letter of 12th July which had been handed to Mr. Yeoh. To this letter the respondents' solicitors replied on 28th August 1979 stating that unless the agreement was signed on or before 30th August, their clients would withdraw their offer and claim possession of the quarries together with their machines and fittings.

The other "interested parties" referred to in the final sentence of the respondents' solicitors' letter of 16th August quoted above comprised, or at least included, a company called Island and Concrete, whose business was selling concrete made from 3/4" granite. At or about the end of August, when the correspondence referred to above was taking place, Mr. Yeoh was contemplating entering into an agreement with this company, should the appellants fail to accept the terms of the draft lease.

On 30th August 1979 a "without prejudice" letter was written by Mr. Dodwell on behalf of the

Commissioner of Lands stating that the Land Office was prepared to recommend the extension of the lease granted to the respondents for a further period of five years. He set out the proposed terms and special conditions and requested that the respondents should signify their acceptance within two weeks by depositing with the Lands Office the sum of $49,140. In his penultimate paragraph he stated that his communication did not constitute an offer to extend the lease, as the President's approval had yet to be sought. With his letter he sent a draft lease and this, unlike the respondents' previous lease, contained a covenant not to assign, demise sub-let or mortgage the land in whole or in part. On the same day the appellants' solicitors wrote to the respondents' solicitors, referring to their letter of 20th January 1978 and while mentioning again the illegality point referred to above, claimed that the 1975 agreement had been extended for a further period of five years and did not therefore expire on 31st August 1979. They referred again to the letter of 12th July, rejected the draft agreement sent with the respondents' solicitors' letter of 16th August and gave notice of a claim for damages if the respondents persisted in their attitude. On 3rd September 1979 the respondents' solicitors replied stating *inter alia* that at no time did the respondents agree to an extension of the agreement on the terms alleged. The letter concluded thus:-

> "What your clients have done so far has been to initiate negotiations to renew the agreement and our clients were non-committal until the draft agreement was sent to them on the 16th August 1979.
>
> Kindly note that our clients will be taking over possession of the quarry immediately and legal proceedings will be taken to evict them if they continue to trespass thereon."

Correspondence continued to pass between the solicitors during the next month. The respondents apparently changed their solicitors and on 24th October their new solicitors wrote to the appellants' solicitors drawing attention to the fact that under the terms of an agreement for a lease between the respondents and the President, the respondents were precluded from assigning, demising, sub-letting or mortgaging the quarry either in whole or in part. They stated that in the circumstances the agreement for the extension, upon which the appellants were relying, was merely academic, since even if the respondents wished to extend the agreement, they were prohibited from so doing.

On 8th November 1979 the respondents delivered their statement of claim in which they sought a

declaration that the 1975 agreement terminated on 31st August 1979, an injunction restraining the appellants from remaining or continuing in possession or control etc. of the quarry, an order for specific performance of clause 19 of the 1975 agreement concerning the sale to them of machinery and damages for trespass. The learned pleader in paragraph 3 of that statement of claim referred specifically to clause 7 of the 1975 agreement and alleged that pursuant to that provision negotiations had taken place for an extension of the 1975 agreement, subject to renewal of the lease by the Commissioner of Lands, and that it was an implied term of the 1975 agreement, or alternatively it was a condition precedent to any liability on the part of the respondents to extend the 1975 agreement, that any extension of the Lease by the President should not contain any prohibition or other covenant against assigning, demising or sub-letting the quarry. In paragraph 4 of that statement of claim the letter of 30th August 1979 from Mr. Dodwell referred to above was quoted, as later was the respondents' solicitors' letter of 24th October 1979.

Shortly before the close of pleadings, Mr. Dodwell on behalf of the Commissioner of Lands wrote a further letter to the respondents on 3rd December 1980 stating that it had now been decided not to renew the five-year lease, but that the Land Office was prepared to allow the respondents to continue granite quarry operations on the land until such time as the land was required by the Government. It was therefore proposed to issue a temporary occupation licence on a month-to-month basis from 1st September 1975 subject to terms and conditions which he particularised. One of those conditions (referred to as "the printed conditions") provided that the licence should not be transferred or assigned in any manner whatsoever, without the written consent of the Collector of Land Revenue. This led to the respondents re-amending the statement of claim so as to allege that the negotiations for the extension of their Lease had proved abortive.

The meeting of 10th July 1979

It was common ground that the burden of proof of the existence of this agreement lay upon the appellants. Accordingly Mr. Cox opened the case and called his evidence. This consisted of Mr. Lim and his wife Mrs. Lim. In addition a Mr. Goh, the appellants' marketing manager, was called to prove that he did not attend the meeting. The trial judge was satisfied that Mr. Goh did attend the meeting and no criticism is made of this finding. It is however some, albeit a small indication of the unreliability of Mr. Lim's memory.

The trial judge found Mr. Lim to be an unsatisfactory witness. His justification for reaching this conclusion has not been criticised by Mr. Cox. His judgment was in these terms:-

> "From the evidence-in-chief of Mr. Lim, it is to be inferred that it was a short meeting. He said that after the discussion on the fluctuation of prices of granite between him and Mr. Chng, there was a brief conversation between Mr. Chng and Mr. Kwek, there was a nod from Mr. Kwek, and then Mr. Chng announced that the 1975 Agreement would be extended for a further period of five years with the exclusion of one clause in the Agreement. But when I consider the evidence of Mr. Lim in cross-examination, I find that it was a fairly long meeting at which many topics were discussed. The examination of the whole of his evidence supports the submission of Mr. Lightman that there are many unsatisfactory features in the evidence of Mr. Lim, like his inability to recall when he ought to, changes in his evidence after adjournments, outstanding contradictions and there are other disturbing elements in his evidence. One example will suffice. There is the crucial matter of whether the renewal of the lease by the Commissioner of Lands was mentioned at the meeting. As regards it, it is on record in the opening address of Mr. Cox that there was no discussion of the lease at the meeting. At one point in the evidence of Mr. Lim there is his negative answer. On another occasion he said it was mentioned at the beginning of the meeting. Yet on another occasion, he said it was at the end of the meeting. Finally, there are his responses that he was told of the renewal before the meeting."

Sinnathuray J. then went on to consider a finding of considerable importance which he had to make, namely whether there was any mention at the meeting of the grant of a <u>lease</u> by the Commissioner of Lands. He said:-

> "It is the plaintiffs' case that Mr. Lim was told at the meeting that any agreement on the terms for the renewal of the 1975 Agreement was conditional to the Commissioner of Lands giving a new lease to the plaintiffs. Mr. Lim's case however is that at that meeting he was clearly told that the lease had been renewed. I find as a fact that the plaintiffs' case is the true account. The matter is put beyond doubt in the letter of Mr. Lim written two days after the meeting, on 12th of July 1979. I am not concerned here with the body of the letter in which I find Mr. Lim sets out <u>his understanding</u> (underling for emphasis) of the discussions had at the meeting. In the context of the matter I

am dealing with, it is the statement of Mr. Lim in the last sentence of his letter that is crucial. It corroborates the oral evidence given for the plaintiffs and refutes the defendants' version of the discussions had at the meeting. The last sentence of Mr. Lim's letter reads as follows:

> 'However, it is noted that the extension of the Agreement herein mentioned shall be subject to your obtaining the renewal of the Quarry Licence from the Commissioner of Lands and other Competent Authority.'

On the phrase 'Quarry Licence' in the above sentence, there is the evidence of the wife of Mr. Lim that she had typed the letter, that the letter was dictated to her in Mandarin by her husband, and that the words 'Quarry Licence' were spoken by him to her in English. I need not dwell on her evidence. It is clear from a reading of her evidence that, as was submitted by Mr. Lightman, she was a dutiful wife who gave evidence to serve the interests of her husband.

Mrs. Lim was called to buttress the evidence of Mr. Lim that at the meeting of 10th of July 1979 there was a discussion not on the grant of a lease by the Commissioner of Lands but on the issue of a licence for the quarry by the Public Works Department, and that is why Mr. Lim had referred in his letter to the 'Quarry Licence'. I do not want to go into the topic relating to the issue of licence by the Public Works Department canvassed at the hearing. Mr. Lightman has dealt with it fully and I accept his submissions thereon. As for the phrase 'Quarry Licence' in the letter, I am satisfied that by making reference to the Commissioner of Lands Mr. Lim, as he had done in his letter of 15th of December 1978, was referring to the 'quarry lease' because the interest of the Commissioner of Lands is in the lease and not in the issue of licence by the Public Works Department. I am also satisfied that Mr. Lim knew very well that the issue of licence by the Public Works Department has got nothing to do with the Commissioner of Lands."

Although Mr. Cox, in his most able and painstaking address, sought to persuade their Lordships that the learned judge reached the wrong conclusion, this was a finding of fact which was not only clearly open to the trial judge on the evidence, but which was strongly supported by the contemporary documents and the probabilities. Their Lordships have already commented upon the documents which existed prior to the letter of 12th July 1979 in which the formula

"subject to the renewal of the Lease by the Commissioner of Lands and other Competent Authority" is to be found. It was improbable that the parties would have entered into an unconditional contract. If they had done so, then in all probability it would have been recorded at the conclusion of the meeting. Negotiations had proceeded in pursuance of clause 7 of the 1975 agreement which gave the appellants a priority right to a renewal, but conditional upon the offer of a new lease by the Government. At the date of the meeting the respondents had not then even received notification that a recommendation would be made that they should be granted a new lease.

The trial judge not only found Mr. Lim an unsatisfactory witness, but in view of his finding as to the true meaning of the proviso in the letter of 12th July 1979, he must have concluded that Mr. Lim had been untruthful on a matter of crucial importance.

In addition to Mr. Yeoh, the manager of the respondents, Mr. Chng, a director who *de facto* was the managing director of the respondents and a Mr. Kwek, the chairman of the respondents, gave evidence. The trial judge gave his assessment of these witnesses in the following terms:-

> "In contrast to the evidence given by Mr. Lim, the evidence for the plaintiffs [the respondents] of what took place at the meeting is more complete and vivid. One gets a clear picture of that business meeting, of the negotiations that took place between Mr. Lim and Mr. Chng consequent upon the failure of the parties to agree to a renewal of the 1975 Agreement through the exchange of letters. Put shortly, the evidence for the plaintiffs [the respondents] is that the parties did not come to any agreement at the meeting because they could not agree on the terms for the renewal of it. It is common ground that the meeting ended with Mr. Lim being told to go back and write a letter."

The essence of the appellants' criticisms of the trial judge is that he was prepared to place any reliance at all upon the evidence of the respondents' witnesses. The contention of Mr. Cox, which he pursued both eloquently and vigorously, was that he had totally discredited these witnesses. Their Lordships will deal in detail with this submission, but were it to be acceptable, the rejection of the respondents' witnesses would not *ipso facto* reconstitute Mr. Lim as a reliable and truthful witness. The most Mr. Cox could in such circumstances hope to achieve would be a new trial.

Island Concrete Limited

During the twenty-nine days which this trial took, much time was devoted to the nature of the agreement which the respondents had entered into with Island Concrete, after they had failed to come to terms with the appellants. It was the appellants' case that the respondents repudiated the oral agreement made on 10th July 1979 in order to enter into a more advantageous arrangement with Island Concrete who, like the respondents, were also under the control of the Hong Leong Group. The respondents accepted that they had approached Island Concrete after their negotiations with the appellants to renew the 1975 agreement had broken down, but they maintained that they only entered into a sub-contract with Island Concrete for the latter to operate the quarry on their behalf. To support this claim there was produced, an agreement dated 15th October 1979, made between the respondents and Island Concrete which purported to be such a sub-contract. Mr. Cox satisfied the trial judge not only that the date of the agreement was inaccurate in that it had been substantially backdated but, far more important, it did not represent the true relationship between the parties. The sub-contract was a fictitious agreement, the validity of which the respondents had sought to support by false documents. These documents were brought into existence in order to satisfy the court that the trading between the respondents and Island Concrete was in accordance with the sub-contract.

The trial judge was satisfied that the alleged sub-contract and its supporting documents did not represent the true relationship between the respondents and Island Concrete He stated:-

> "On a review of the whole of the evidence on this subject, the conclusion I come to is that the arrangement the plaintiffs [the respondents] have with Island Concrete is similar in nature to the terms in the 1975 Agreement the plaintiffs [the respondents] had with the defendants [the appellants]. The plaintiffs have given Island Concrete a licence coupled with an interest in the land in Pulau Ubin to use and manage the land for the purposes of a granite quarry. Like the 1975 Agreement, the arrangement the plaintiffs have with Island Concrete is illegal under the Act. It is also in breach of the Temporary Occupation Licence given to the plaintiffs by the Commissioner of Lands."

Clearly one of the reasons for the fictitious agreement was to conceal the fact that the respondents were operating in breach of the Temporary Occupation Licence. Moreover, insofar as they were raising the plea of illegality as an answer to the

appellants' claim that the 1975 agreement had been renewed, it was clearly in their interest to conceal that they had entered into a similar agreement with Island Concrete. Mr. Lightman submitted to the trial judge that the truth as to the relationship between the respondents and Island Concrete was only relevant to the appellants' plea in paragraph 8 of the re-amended defence, viz. that by granting Island Concrete the licence, the respondents were precluded or estopped from relying upon the absence of Government approval as a ground for avoiding their obligation under the agreement made on 10th July 1979. He submitted that it had no relevance to the credibility of his witnesses. The judge rightly rejected this submission. The dishonest behaviour of the respondents, after the failure of the parties to come to terms, was clearly relevant to the issue of the reliability of their testimony as to what had occurred at the all important meeting of 10th July 1979. However, it was entirely a matter for the trial judge, who had the benefit of hearing the evidence of the respondents' witnesses, an advantage denied to their Lordships and to the Court of Appeal, to decide to what extent, if at all, their evidence with regard to the meeting of 10th July 1979 was in the circumstances acceptable. It was for him to decide whether, having regard to the subsequent dishonesty, their credibility was totally destroyed or whether they could still be relied upon to tell the truth with regard to what had happened at that meeting. He concluded that their testimony as to what had occurred at the meeting of 10th July 1979 was creditworthy. Their Lordships can see no valid basis for contending that, in reaching this conclusion, he did not give proper weight to the important findings which he had made with regard to the true relationship between the respondents and Island Concrete, the fictitious nature of the alleged sub-contract and the falsity of the connected documents.

For the reasons given their Lordships dismiss this appeal with costs, save that the provision in the judgment of Sinnathuray J. for the payment by the appellants of the arrears will be deleted.