

Tong Guan Food Products Pte Ltd and Others v Teo Cheow Ngoh and Another
[2004] SGHC 261

Case Number : Suit 492/2003
Decision Date : 19 November 2004
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Loy Wee Sun (Loy and Co) for plaintiffs; First defendant in person; Andy Lem and Teoh Tsu Yang (Teoh and Co) for second defendant
Parties : Tong Guan Food Products Pte Ltd; Tong Garden Holdings Sdn Bhd; Tong Garden Food Products Sdn Bhd; Tong Garden Snack Food Sdn Bhd — Teo Cheow Ngoh; Equity Harvest Sdn Bhd

Companies – Directors – Duties – Whether defendant in breach of director's duty to company.

Courts and Jurisdiction – Plaintiff commenced and discontinued previous suit against defendant for same reliefs as in present action – Whether plaintiff's present action an abuse of process of court.

Trusts – Defendant used plaintiff company's money to pay for subscription of portion of defendant's shares in a company and a factory – Whether defendant held those shares in trust for plaintiff.

19 November 2004

Judgment reserved.

Woo Bih Li J:

Introduction

1 As there are various companies and persons involved, I will adopt the following definitions:

First plaintiff (Tong Guan Food Products Pte Ltd)	- Tong Guan
Second plaintiff (Tong Garden Holdings Sdn Bhd)	- TG Holdings (M)
Third plaintiff (Tong Garden Food Products Sdn Bhd)	- TG Food Products (M)
Fourth plaintiff (Tong Garden Snack Food Sdn Bhd)	- TG Snack Food (M)
First defendant (Mdm Teo Cheow Ngoh)	- Mdm Teo
Second defendant (Equity Harvest Sdn Bhd)	- EH
Seng Guan Food Products Pte Ltd	- SG

2 Tong Guan is an investment holding company incorporated in Singapore. TG Holdings (M), TG Food Products (M) and TG Snack Food (M) are subsidiary companies of Tong Guan. The four plaintiffs are in the business of manufacturing and selling snack food, such as peanuts and crackers, under the trade names "Tong Garden" and "NOI". I will refer to the companies owned by them as "the Tong Garden group" of companies.

3 The founder of the Tong Garden group of companies was the late Ong Tong Guan. His

children are:

- (a) Ong Leong Chuan ("Leong Chuan")
- (b) Ong Boon Chuan ("Boon Chuan")
- (c) Ong Siew Hwa
- (d) Ong Heng Chuan ("Heng Chuan")
- (e) Ong Teck Chuan ("Teck Chuan")
- (f) Ong Siew Kuan
- (g) Ong Siew Chin
- (h) Ong Siew Ann ("Siew Ann")
- (i) Ong Eng Chuan
- (j) Ong Siew Lay

4 Leong Chuan is the eldest son. He was in charge of the Tong Garden group until July 1999 when he was removed as managing director of various companies in the group. At the same time, Leong Chuan's wife, Mdm Teo, was removed from all her positions in the group.

5 Currently, the two directors of the holding company Tong Guan are Boon Chuan and Siew Ann who hold 40% and 6.67% of the capital of Tong Guan. The other shareholders of Tong Guan are Leong Chuan, holding 18.67%; Heng Chuan, holding 17.33%; and Teck Chuan, holding 17.33%. However, Boon Chuan and Siew Ann were neither shareholders nor directors of Tong Guan or any of its subsidiaries between 1984 and 1999 although Boon Chuan was a director before 1982. The members and directors of Tong Guan between 1984 and 1999 were:

- (a) Chai Ah Chee
- (b) Leong Chuan
- (c) Heng Chuan
- (d) Teck Chuan

6 EH is a company incorporated in Malaysia. It has an issued share capital of RM200,000 shares divided into 200,000 shares of RM1 each. Mdm Teo is the registered holder of 199,998 shares in EH. Mdm Teo also controls SG which is a company incorporated in Singapore.

7 Mr Loy Wee Sun, counsel for the four plaintiffs, said in his opening statement and at the beginning of the trial that there are four targets:

- (a) The first target is a claim for profits of EH in buying products from TG Food Products (M) and selling them onwards to TG Snack Food (M) at a higher price.
- (b) The second target is a claim for what Mdm Teo had earned from EH. This was described

by the plaintiffs as her secret earnings.

(c) The third target is the shares which Mdm Teo held in EH.

(d) The fourth target is EH's factory at No 9 Jalan Canggih Taman Perindustrian Cemerlang, 81800 Ulu Tiram Johor. This property was also known as Lot 89914 and I will refer to it as "Lot 89914". A semi-detached factory stands at Lot 89914. In or about 1993, a coldroom was constructed on it. The cost of the coldroom installation was apparently paid by TG Food Products (M). Lot 89914 was let out to TG Food Products (M) at a rent of RM6,000 a month. The tenancy is the subject of proceedings in Malaysia between EH and TG Food Products (M).

8 It appears that after Boon Chuan gained control of Tong Guan, he decided to investigate the past transactions of the Tong Garden group, although there is no suggestion that the past transactions have any bearing on the price he paid for his shares. I also add that there have been various actions concerning the Tong Garden group and the present action is but one of them. The present action has been pursued although Boon Chuan was not able to locate all the accounting records of the Tong Garden group.

The first target

9 The claim for the first target involved allegations that Mdm Teo owed fiduciary duties to the Tong Garden group and had breached them. It was also alleged that Mdm Teo and EH had conspired to injure the plaintiffs. However, in the course of the trial, the claim for EH's profits was withdrawn.

The second target

10 The claim for Mdm Teo's secret earnings from EH has turned out to be a claim for her fees which she obtained *qua* director of EH. This claim is not clearly pleaded in the Amended Statement of Claim. Paragraphs 6 and 7 thereof plead that Mdm Teo was an employee, director and fiduciary of the Tong Garden group and set out her various duties. Paragraphs 7 and 8 plead that Mdm Teo breached her duties in that she, together with Leong Chuan, had caused TG Food Products (M) to sell its products to EH and TG Snack Food (M) to purchase the same from EH at a higher price. However, as I have said, that claim was withdrawn during the trial. Paragraph 10 pleads that Mdm Teo breached her duties in that she, together with Leong Chuan, used money of the plaintiffs to capitalise EH. However, if any money of the plaintiffs had been used to capitalise EH, that would be the subject of the third target and not the second. Paragraph 11 of the Amended Statement of Claim alleges that "As a result", Mdm Teo holds all her shares in EH for the plaintiffs. The said para 11 then goes on to assert that "Further, she is liable to account to the Plaintiffs for all salaries, ... director's fee, ... received by her by virtue of her shareholding, office and appointment in EH".

11 It seems to me that if Mdm Teo had used any of the plaintiffs' money to acquire shares in EH, that may lead to the conclusion that she holds some or all of the shares in trust for the relevant plaintiff. However, that does not *per se* mean that the relevant plaintiff is entitled to the salary or fee she earned *qua* director.

12 In pursuing this target, part of the plaintiffs' closing submissions was on the argument that Mdm Teo owed fiduciary duties to Tong Guan. The submissions then went on to assert in paras 24 and 27 as follows:

24. We submit that [Mdm Teo], in using EH to trade with the 2 mentioned Tong Garden companies, was in breach of her fiduciary duties because she has put herself in a position

whereby her personal interest was in conflict with Tong Guan's interest. It would be in her personal interest to see that EH make substantial profit, and this is done at the expense of the 2 mentioned Tong Garden companies and the ultimate victim is Tong Guan, the mother company.

27. EH was engaged in 1 business activity only, that of buying from and selling to the 2 mentioned Tong Garden companies. EH's stream of income came entirely from trading with the 2 mentioned Tong Garden companies. [Mdm Teo] received director's fees of RM83,900.00 from EH. Clearly, she earned her director's fees in EH at the expense of Tong Guan.

13 However, as the claim for EH's profits was withdrawn, the plaintiffs did not establish any breach of duty on the part of Mdm Teo, even if she owed a duty, in respect of the purchases and onward sales by EH. Hence, I do not see how the purchases and onward sales by EH can be used to reach out for Mdm Teo's fees. I therefore dismiss the claim for such fees. I should also mention that there was no evidence to suggest that Leong Chuan and the other directors of the plaintiffs were unaware of Mdm Teo's position in EH. In my view, it was inappropriate to refer to her fees as secret earnings.

The third and fourth targets

14 Although the Amended Statement of Claim alleges that Mdm Teo had used the plaintiffs' money to pay for the subscription of all her shares in EH and claims that Mdm Teo holds all her shares in EH in trust for the plaintiffs, this claim is reduced in the plaintiffs' closing submissions to one for a portion of the shares. Furthermore, the portion is to be held in trust not for all the plaintiffs but for TG Snack Food (M), ie the fourth plaintiff.

15 Likewise, although the Amended Statement of Claim alleges that Mdm Teo had used the plaintiffs' money to pay for the purchase of Lot 89914 and claims that EH holds Lot 89914 in trust for the plaintiffs, this claim is reduced in the plaintiffs' closing submissions to a share in Lot 89914 which share is to be held in trust not for all the plaintiffs but for TG Snack Food (M).

16 As the assertions for TG Snack Food (M) regarding Lot 89914 and Mdm Teo's shares in EH overlap, I will deal with both claims together.

17 The undisputed evidence of Boon Chuan, who was the main witness for TG Snack Food (M), was that the particulars of progress payments made to the developer of Lot 89914 were as follows:

Progress Payment	Percentage (Amount)	Receipt No. (Date)	Cheque No.	Cheque of:
1	10% (RM52,000)	0343 (13/03/91)	CKB 020326	
2	5% (RM26,000)	0462 (06/05/91)	CKB 116958	
3	10% (RM52,000)	0806 (15/08/91)	CKB 608769	TG Snack Food (M)

4	5% (RM26,000)	0806 (15/08/91)	CKB 608769	TG Snack Food (M)
5	10% (RM52,000)	0877 (06/09/91)	CKB 608775	TG Snack Food (M)
6	5% (RM26,000)	0918 (23/09/91)	CKB 020231 CKB 213958	
7	10% (RM52,000)	1143 (12/11/91)	CKB 213967	
8	10% (RM52,000)	1301 (13/01/92)	CKB 608783	TG Snack Food (M)
9	5% (RM26,000)	1586 (07/05/92)	CKB 120702	
10	5% (RM26,000)	1586 (07/05/92)	CKB 120702	
11	5% (RM26,000)	1650 (27/05/92)	CKB 213993	
12	5% (RM26,000)	1674 (03/06/92)	CKB 213997	
13	5% (RM26,000)	1674 (03/06/92)	CKB 213997	
14	7.5% (RM39,000)	1674 (03/06/92)	CKB 213997	
15	2.5% (RM13,000)	30066 (17/06/92)	CKB 213998	

18 Boon Chuan's point was that out of the 15 progress payments, four were made with money from TG Snack Food (M), *ie* the third, fourth, fifth and eighth progress payments. The four payments amounted to 35% of the purchase price for Lot 89914. Boon Chuan was able to establish this fact because the cheque numbers on the receipts issued by the developer for these four payments were reflected in the bank statements of TG Snack Food (M). As indicated in the table above, the same cheque was used to make the third and fourth progress payments.

19 Boon Chuan further said that there were leads that the first and second progress payments were also paid with money from TG Snack Food (M). However, in closing submissions, this claim was confined to the second progress payment only. If the claim in respect of the second progress payment is made out as well, this will mean that another 5% of the purchase price for Lot 89914

came from TG Snack Food (M), making a total of 40%.

20 Mdm Teo did not dispute that the third, fourth, fifth and eighth progress payments were made by cheques of TG Snack Food (M). She, however, disputed that the second progress payment was made with money from TG Snack Food (M).

21 Mr Loy submitted that the money for the second progress payment came from TG Snack Food (M) because a payment voucher of TG Snack Food (M) no 11939 dated 6 May 1991^[1] showed that TG Snack Food (M) had issued a cheque for RM30,000. The cheque number was 053987 and TG Snack Food (M)'s bank statement^[2] showed a corresponding withdrawal of RM30,000 by a cheque of the same number on the same day, *ie* 6 May 1991.

22 The developer's receipt for the second progress payment was also dated 6 May 1991 although the receipt was for a sum of RM26,000 and not RM30,000 and the cheque number on the developer's receipt was not the same number as 053987. Accordingly, Mr Loy submitted that the cheque number 053987 from TG Snack Food (M) for RM30,000 must have been presented into EH's bank account to meet a payment of RM26,000 made by EH or on its behalf for the second progress payment the same day. I accepted this submission.

23 As for the claim by TG Snack Food (M) for a certain number of Mdm Teo's shares, Mr Loy submitted that Mdm Teo had a credit balance in her account with EH arising from the progress payments made on behalf of EH for Lot 89914. Her credit balance was then utilised to subscribe for her 199,998 shares of RM1 in EH. Mr Loy placed reliance on EH's closing submissions (and more specifically para 15 thereof). EH had submitted that the evidence shows that Mdm Teo and EH treated the payments for Lot 89914 as a debt due to Mdm Teo and this debt was used to pay for Mdm Teo's shares in EH.

24 Mr Loy then submitted that TG Snack Food (M) was electing to claim 15% instead of 40% of Lot 89914. This would account for only RM78,000 leaving the remaining 25% amounting to RM130,000. TG Snack Food (M) was electing to continue its tracing of the RM130,000 to Mdm Teo's shares in EH. Mr Loy then went on to elaborate that as Mdm Teo had a fund or balance of RM305,151 with EH, which was contributed to jointly by TG Snack Food (M) and SG, he would use a rateable approach to determine the number of shares that Mdm Teo holds in trust for TG Snack Food (M), that is,

$$\frac{130,000}{305,151} \times 200,000 = 85,204 \text{ shares}$$

25 Accordingly, TG Snack Food (M) is claiming that Mdm Teo holds 85,204 shares in EH in trust for it. It seems to me that there was a slight miscalculation by Mr Loy as Mdm Teo does not hold all 200,000 shares in EH and apparently she was holding one share first before another 199,997 shares were issued to her. I also have some doubts as to whether TG Snack Food (M) can or should be allowed to split its tracing claim in the manner suggested by Mr Loy. However, these additional details may be academic.

26 I am of the view that it is one thing to show that money for progress payments for Lot 89914 came from TG Snack Food (M). The nature of the transactions as between TG Snack Food (M) on the one hand and EH or Leong Chuan on the other hand for these payments is crucial. For example, if the moneys for the second progress payment as well as for the third, fourth, fifth and eighth progress payments were loans made by TG Snack Food (M) to EH or Leong Chuan, then there is no question of seeking to trace the moneys and consequently the claim for a certain share of Lot 89914 and a certain number of Mdm Teo's shares in EH will fail.

27 Mr Loy did not disagree that if the moneys for the progress payments in question constituted loans by TG Snack Food (M), then the tracing claim fails. However, he argued that they were not loans. Paragraph 48 of the plaintiffs' closing submissions had one argument on a specific point and four general arguments. The general arguments were:

(a) Leong Chuan did not come forth to say that the moneys he took were loans from TG Snack Food (M) to him. Mdm Teo was asked why Leong Chuan was not coming forth to give evidence. She could only offer the pathetic excuse that her family members feared that he would become emotional if he were to come to court to give evidence. Mr Loy urged the court to draw an adverse inference in connection with Leong Chuan's reluctance to go into the witness box.

(b) Mdm Teo did not assert in her affidavit of evidence-in-chief ("AEIC") or even at trial that the moneys taken were borrowings and loans.

(c) There is no record of resolutions or minutes that approved the giving of such loans to Leong Chuan.

(d) Whilst Leong Chuan may have, during his term as managing director, managed the Tong Garden group as if it were his personal piggy bank, his free hand in taking money and recording in whatever manner it suited him (such as "loans") did not legitimise his unauthorised withdrawals.

28 As for the first general argument, I do draw an adverse inference from the defendants' omission to call Leong Chuan to give evidence. On the other hand, I noted that TG Snack Food (M) also did not adduce evidence from any of the other directors at the material time. No explanation was given for this omission. Furthermore, while Leong Chuan may well have been in control, there was no suggestion that the other directors were kept completely in the dark. Also, there is other evidence before me which I cannot ignore and I shall elaborate on such evidence below.

29 As for the second general argument, it may well be that Mdm Teo did not specifically assert in her AEIC or at trial that the various sums of money from TG Snack Food (M) were loans. However, she did say that the moneys were eventually returned to TG Snack Food (M).^[3] As Mr Loy himself submitted,^[4] if the moneys from TG Snack Food (M) were to pay a loan by Leong Chuan to Tong Guan, which Mdm Teo had also alleged, there would be no question of having to return the moneys to TG Snack Food (M). I will elaborate later on the details of her evidence about the return of moneys.

30 As for the third general argument, the absence of a record of resolutions or minutes that approved the giving of loans to Leong Chuan, or to EH, does not necessarily mean that they were not loans. As Boon Chuan himself said, Leong Chuan ran the company as he liked. While Boon Chuan was of the view that this made the Tong Garden group of companies unique, I am of the view that this is not so. Furthermore, many family companies are run in a manner which unfortunately pays scant regard to proper accounting and legal matters. However, that does not necessarily give rise to a tracing claim.

31 The fourth general argument made little sense to me. The allegation that Leong Chuan was running the Tong Garden group as if it were his personal piggy bank must be seen in the context that this was not a situation where he took money without any accounting records whatsoever. The evidence shows that payment vouchers were prepared and signed. The allegation that Leong Chuan recorded each transaction as it suited him is irrelevant unless the substance of the records, such as the payment vouchers, are shown to be false.

32 I now deal with the other evidence before me.

33 The second progress payment was for RM26,000. I have found that this payment was made possible by an injection of RM30,000 the same day, *ie* 6 May 1991 into EH by TG Snack Food (M). The payment voucher from TG Snack Food (M) states the particulars of the payment as "loan to Mr Ong a/c – Lot 89914". Mr Loy's argument on a specific point was in relation to this evidence. He submitted that the words "loan to" had been written over some words which had been blanked out. Having said that, he did not say what weight I should give to this piece of evidence. Presumably he wanted me to give no weight to it.

34 By holding up the original document to the light, I was able to barely make out the words which had been blanked out. They were "Other Debtor". As it turned out, the blanking out of these words and the insertion of "loan to" was an innocent exercise. In any event, the words "Mr Ong a/c" are the original words written on the payment voucher. It is clear to me that this payment was one which would be debited from Leong Chuan's account with TG Snack Food (M) then. In effect, it was a loan to him.

35 The third and fourth progress payments for a total of RM78,000 were made by TG Snack Food (M)'s cheque no 608769.^[5] There was no payment voucher available in evidence.

36 The fifth progress payment for RM52,000 was made by TG Snack Food (M)'s cheque no 608775.^[6] There was also no payment voucher available in evidence.

37 The eighth progress payment of RM25,000 was made by TG Snack Food (M)'s cheque no 608783 which was for RM104,000. The cheque butt^[7] had the word "loan" and the numerals "89914" and "89917" written on it. More significantly, the particulars on TG Snack Food (M)'s payment voucher^[8] showed that the payment of RM52,000 was made on behalf of "Lot 89917 (Johnny Ong)" and another RM52,000 for "Lot 89914 (Mr Ong)". Johnny Ong is Heng Chuan. His company, Pacific Spectrum Sdn Bhd ("Spectrum"), had bought Lot 89917 which was behind Lot 89914. I am of the view that although the word "loan" is not specifically stated in this payment voucher, the two payments (of RM52,000 each) were debited to Heng Chuan's and Leong Chuan's accounts respectively with TG Snack Food (M).

38 However, that is not all. There is other evidence which may shed light on the nature of the progress payments, especially on the third, fourth and fifth progress payments for which no payment vouchers have been adduced in evidence.

39 For example, in the Agreed Bundle,^[9] there are two payment vouchers of TG Snack Food (M). They are each for RM15,000. Voucher no 21352 shows that the payment was for "PTD 89914". Voucher no 21354 shows that the payment was for "Tem Advance 89914". The dates of the vouchers are 24 June 1992 and 27 June 1992 respectively. In cross-examination of Mdm Teo, Mr Loy had suggested that these vouchers demonstrated that moneys from TG Snack Food (M) had been used to finance the 12th to 15th progress payments because the receipts from the developer for such payments were dated between 3 to 17 June 1992, *ie* before the dates on the payment vouchers. Although Mr Loy did not pursue the suggestion that TG Snack Food (M) had financed the 12th to 15th progress payments in closing submissions, voucher no 21354 shows that there was a payment by TG Snack Food (M) in respect of Lot 89914 and this too was a loan in view of the words "Tem Advance".

40 There is a debit note no 1037 dated 6 January 1993 from TG Food Products (M) to EH^[10] to debit \$200 from EH's account for payment made on its behalf for a garbage bin. Again, this suggests that the \$200 was a loan to EH. If EH had insufficient credit balance with TG Food Products (M), the amount would be an outstanding debt from EH. If EH had a sufficient credit balance, the amount

would be debited from its account.

41 These inter-company transactions were not unusual. I have already mentioned a piece of evidence demonstrating payment by TG Snack Food (M) on behalf of Spectrum. There is another example by way of a payment voucher no 10802[11] showing payments made by TG Snack Food (M) for the purchase of other lots in the same area purchased by a company (or companies) in the Tong Garden group.

42 Furthermore, the flow of money was not a one-way street only. There were payments made into the account of TG Snack Food (M) as well. On this point, Mdm Teo said that the amounts used for the third, fourth, fifth and eighth progress payments had been repaid by three payments of:

- (a) RM52,000 on 29 January 1992
- (b) RM100,000 on 13 March 1992 and
- (c) RM85,680 on 17 March 1992.

43 Although Mr Loy was correct that there was no evidence as to the actual identity of the source for the sum of RM52,000 credited into TG Snack Food (M)'s bank account, the point is that money was also coming into TG Snack Food (M) probably as a repayment of money which had been used for a progress payment as RM52,000 is 5% of the price for Lot 89914.

44 As for the sum of RM100,000, Mr Loy accepted that this sum was paid by SG to TG Snack Food (M). However, he sought to suggest that it was a repayment of a loan made exactly one year earlier by TG Snack Food (M) to Tong Guan. However, the particulars of the relevant voucher dated 13 March 1991[12] suggest that although Tong Guan was the payee, the payment was made on behalf of TG Snack Food (M), Leong Chuan and TG Food Products (M). In any event, the payment of RM100,000 by SG on 13 March 1992 was yet another illustration of inter-company transactions and this was not confined to companies in the Tong Garden group.

45 As for the sum of RM85,680, Boon Chuan had accepted that the money came from EH. It was therefore too late for Mr Loy to argue otherwise in closing submissions.

46 Furthermore, in cross-examination, Boon Chuan made a telling point. He said:[13]

Q 1st Defendant's AEIC para 62(b). Your evidence yesterday was that Seng Guan Food Products Pte Ltd did not have dealings with 4th Plaintiff in 1992?

A Yes.

Q Therefore you agree that there would be no reason for Seng Guan to make payment to 4th Plaintiff?

A Disagree. Ong Leong Chuan can take money from one of the Plaintiffs and lend it to Seng Guan and pay to another Plaintiff company. In the accounts, there are a lot of figures floating between companies.

47 Lastly, there is some sort of statement of account in the Agreed Bundle[14] dated 11 August 1998, ie some six or seven years after progress payments were made by TG Snack Food (M) for Lot 89914. This statement states EH's intention to set off RM1.5m owing by EH to TG Snack Food (M)

against RM1.5m owing by TG Food Products (M) to EH. It was signed by Mdm Teo. TG Food Products (M) signified its agreement to the set-off through the signature of Leong Chuan as its chairman and managing director. TG Snack Food (M) signified its agreement to the set-off through the signature of one Ms Wang Liau Tean, its director. Although Mr Loy suggested that this exercise was undertaken because Leong Chuan knew he was going to lose control of the Tong Garden group, I am of the view that this suggestion is irrelevant. Leong Chuan is entitled to tidy up the affairs of EH. There was no suggestion that the set-off was based on false figures. Presumably, after the set-off, TG Food Products (M) will owe TG Snack Food (M) RM1.5m which is a matter between these two companies.

48 I am of the view that there were numerous related transactions which included transactions between TG Snack Food (M) on the one hand and EH or Leong Chuan on the other hand. Advances or loans and repayments were being made to and fro. These included the second, third, fourth, fifth and eighth progress payments for Lot 89914. If there is still an outstanding balance in favour of TG Snack Food (M) against EH or Leong Chuan, that will be a claim for a debt but not a tracing claim.

49 In the circumstances, I dismiss the tracing claims of TG Snack Food (M).

50 As regards a point taken by Mr Andy Lem, counsel for EH, that the plaintiffs' claims are an abuse of process of court because Tong Guan had commenced and discontinued Suit No 609 of 2000 ("Suit 609") against Mdm Teo for substantially the same reliefs as in the present action, this point is a non-starter. It is the right of a plaintiff to commence a fresh action unless the discontinuance is done on terms which prohibit the commencement of a fresh action. Therefore, while the fact of and circumstances leading to the discontinuance may be used to attack the plaintiff's credibility, it is not an abuse of process to file a fresh action unless the same is prohibited. There was no suggestion that Suit 609 was discontinued on terms that prohibited a fresh action.

51 I will hear the parties on the costs of the present action.

Plaintiffs' claims dismissed.

[1]AB 653

[2]Exhibit P8

[3]See, for example, para 62 of Mdm Teo's AEIC

[4]In para 63(c) of the plaintiffs' closing submissions

[5]AB 650

[6]AB 651

[7]AB 652

[8]AB 654

[9]At AB 657

[10]In Exhibit 2D4

[\[11\]](#)AB 653

[\[12\]](#)AB 680

[\[13\]](#)At NE 77

[\[14\]](#)At AB 707

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