Chun Cheng Fishery Enterprise Pte Ltd v Chuang Hern Hsiung and Another (Lin Chao-Feng and Another, Third Parties)
[2008] SGHC 135

Case Number : Suit 763/2005

Decision Date : 18 August 2008

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Tan Cheng Han SC (Tan Cheng Han) and Lim Kim Hong (Kim & Co) for the plaintiff and third parties; Molly Lim SC and Philip Lim (Wong Tan & Molly Lim LLC) for the first defendant; Yong Kwet Leong (Yong & Partners) for the second defendant

Parties : Chun Cheng Fishery Enterprise Pte Ltd — Chuang Hern Hsiung; Chuang Hsin-Yi — Lin Chao-Feng; Tan Guan Ngo

Companies

Tort

18 August 2008

Andrew Ang J:

The parties

1 The plaintiff is a company incorporated in Singapore. It is in the business of importing and exporting marine products and other frozen seafood. The plaintiff is also in the business of processing, curing and preserving marine products and frozen seafood. The plaintiff has a wholly owned subsidiary, Chun Cheng USA Inc ("CCUSA"), incorporated in the United States of America which operates as the marketing arm of the plaintiff in the United States of America.

2 The plaintiff's board of directors comprises Lin Chao Feng ("Lin"), who is the chairman and his wife, Tan Guan Ngo ("Tan"), who is the managing director. Lin and Tan together hold about 83% of the shares in the plaintiff. At the material time, as the only two directors on the board, Lin and Tan were the guarantors of all of the plaintiff's credit facilities with the plaintiff's eight bankers. In addition to the plaintiff in Singapore, Lin and Tan also owned other companies in Taiwan and in the British Virgin Islands, such as Chun Success International Co Ltd ("CSI") and Asian Success International International Inc ("ASI").

3 Chuang Hern Hsiung ("the first defendant") was employed as the Group President/Chief Executive Officer of the plaintiff and its Taiwan counterpart, Terng Sheng International Co Ltd ("Terng Sheng"). Lin had wanted to appoint the first defendant as the managing director but he declined. He was also the President and director of CCUSA. As the plaintiff's CEO, the first defendant gradually took over effective control of the plaintiff. Lin allowed the first defendant practically free rein in the day to day running of the plaintiff from 1999 to 2004. The first defendant was summarily dismissed on 11 July 2005.

4 Chuang Hsin-Yi ("the second defendant") is the eldest son of the first defendant and worked at the plaintiff in the capacity of Vice-President of Development. The second defendant who was also a director of CCUSA held 10% shares in the plaintiff and was also a director of CCUSA. (How he came to

be the holder of the shares is in dispute between the parties in another matter with which we are not concerned. Suffice it to say that the account of the first defendant in this action is that the shares were intended as a reward to him for his services but were registered in the second defendant's name at the first defendant's request.) The second defendant was initially given one month's notice of termination on 11 July 2005. However, by a further letter dated 29 August 2005 and for reasons that will be stated later, the second defendant was informed through the plaintiff's solicitors that his termination of employment would be treated as a summary dismissal as well. The first and second defendants ("the Defendants"), as the only directors of CCUSA, were authorised signatories of the bank accounts of CCUSA until the time of their dismissal.

The claims

5 The plaintiff claimed damages against the defendants for the alleged breach of their duties (fiduciary, contractual and/or otherwise) owed to the plaintiff through various acts and/or omissions particularised below, including those which caused the plaintiff's bankers to suspend or reduce the credit facilities to the plaintiff thereby causing financial distress to the cash flow of the plaintiff. The plaintiff claimed that as a result of the shaken confidence amongst its bankers, the plaintiff had to incur costs of appointing a Special Accountant to allay the bankers' fears, apart from having to engage several other professionals to sort out the problems faced. Further, the plaintiff claimed damages for the defendants' conspiracy to injure the plaintiff and to cause loss to the plaintiff through unlawful or lawful means.

6 The defendants, maintaining that they had at all times acted in the plaintiff's best interests, denied that they breached any of their duties to the plaintiff. It is the defendants' case that their employment with the plaintiff was wrongfully terminated and they therefore made counterclaims against the plaintiff for wrongful termination.

7 The defendants further argued that the real conflict which led to this action was not between the defendants and the plaintiff, but between the defendants acting on the plaintiff's behalf and Lin and Tan acting in their personal interests or in the interests of their other companies. The defendants asserted that some of the acts they had done at the plaintiff were in order to protect the plaintiff from Lin and Tan, but not to harm the plaintiff, as alleged.

8 The defendants further argued that even if the plaintiff had suffered any loss or damage, such loss or damage was not caused by them but by Lin and Tan – that it was Lin and Tan who breached their fiduciary duties to the plaintiff by acting in conflict with and against the interests of the plaintiff. As such, the defendants brought third party proceedings against Lin and Tan, praying for an order requiring both Lin and Tan to indemnify them against any of the plaintiff's claims (should they be allowed) on the grounds, *inter alia*, that:

(a) the decisions taken by Chiao Tung Bank ("CTB") to suspend the plaintiff's credit facility, by Bank of Taiwan ("BOT") to reduce the plaintiff's credit facility and by United Overseas Bank ("UOB") to hold on to two bills which the plaintiff had submitted for payment and to cap the plaintiff's credit facility were because of Lin's failure, refusal and or neglect to settle his own personal debts owing to other banks in Taiwan;

(b) Lin and Tan caused the plaintiff tremendous financial distress by causing or procuring the plaintiff to enter into transactions with a company in Vietnam called "Hai Vuong" without the knowledge and/or against the advice and objections of the first defendant; and

(c) board and management decisions taken by Lin and Tan were the cause of the overstock in

CCUSA.

Events from October 2004

9 It is necessary to relate the key events that allegedly took place from October 2004. The plaintiff stated that from around October 2004 Lin sensed that the first defendant was deliberately refusing Lin, Tan and one Tan Lay Hoon ("Lay Hoon") (Tan's sister who was in charge of finance) access to information, financial reports and updates in relation to the plaintiff and had created an "insiders' team" within the plaintiff comprising the first and second defendants and employees in the plaintiff's marketing team, *viz*, Jasmine Khoo, Albert Leong, Lin Ming Chuan and Elbert Sim.

10 In November 2004, during a management meeting of the plaintiff, Lin had disapproved of the first defendant's sales target of 8,000 metric tonnes for the year 2005. At the same time, Lin had warned the defendants against the overstocking of "*mahi mahi*" (a type of fish) but, as events later showed, the second defendant did not heed Lin's instructions and that resulted in the overstocking and in the product not being sold.

11 Further, the plaintiff asserted that in early 2005, the second defendant also purchased large quantities of carbon monoxide-treated ("CO-treated") tuna loins for CCUSA when the market was for CO-treated tuna steaks. As a result, the stock of CCUSA increased three-fold in the first quarter of 2005 as compared to the same period in 2004. Lin was informed of the high receivables owing to the plaintiff by CCUSA by Low Mui Hong ("Low"), the Senior Manager of Finance/Accounts of the plaintiff. By around March or April 2005, because of the twin problems of overstocking and high receivables in CCUSA, Lin became concerned and consulted a financial and management consultant company in Taiwan, Fourwin Co Ltd ("Fourwin") to analyse the plaintiff's financial status.

12 In June 2005, Low managed to obtain an offer of a temporary line of credit in the amount of US$800,000 for the plaintiff from Standard Chartered Bank ("SCB"). However, when Low communicated this to the first defendant on or about 23 June 2005, the first defendant told Low not to accept the said facility. At about the same time, while most of the marketing team which reported to the first defendant was travelling, one of his staff from the said team who was on the premises refused to cooperate to sign the Confirmation of Purchases from various fishing vessels.

13 In addition, on 1 July 2005, the first defendant refused to sign acceptance of a Development Bank of Singapore ("DBS") offer of an increase in facilities of US$1.5m. Contrary to earlier arrangements, he also refused to allow his pre-signed remittance instruction forms (for payment to suppliers) to be used.

14 At all material times, the plaintiff had eight bankers which provided trust receipt facilities to the plaintiff totalling US$12m. They were:

(a) three Taiwanese banks, namely, BOT, CTB and Chung Hwa Bank ("CHB");

(b) UFJ Bank Ltd (Singapore branch), a Japanese bank; and

(c) four local banks, namely, UOB, SCB, DBS and Citibank Singapore Ltd.

The plaintiff secured those trust receipt facilities with fixed deposits and personal guarantees by both Lin and Tan.

15 Lin had incurred personal indebtedness to a bank in Taiwan arising from his guaranteeing a loan

by the latter to a company in Taiwan. The first defendant was the contact person vis-à-vis all the plaintiff's bankers in Singapore, particularly the Taiwanese banks. As such, to ensure continuation of the banking facilities for the plaintiff, he would update the bankers from time to time on the status of Lin's personal indebtedness in Taiwan. Lin's personal indebtedness in 2002 totalled US$5m, and by May 2005 the debts had been reduced to around US$70,000. By June 2005, Lin had fully settled the same except that the information available at the Joint Credit Centre (a credit bureau in Taiwan) was only updated on 19 July 2005.

16 In early July 2005, as was usual, the plaintiff submitted documents to various bankers for approval of funds pursuant to the said trust receipt facilities. Although it normally took about one to two days for those documents to be approved, the plaintiff had not received any approval even by 6 July 2005 when Low was informed by James Hsu from BOT that the plaintiff's credit facilities were to be suspended. Later that same day, the plaintiff also received a formal letter from CTB stating that their credit facilities were suspended because of Lin's debts in Taiwan. Low informed the first defendant of the suspension of the plaintiff's credit facilities by both BOT and CTB but noted that he showed no reaction at all.

17 In a meeting with UOB on 7 July 2005, attended by both the first defendant and Lay Hoon, the first defendant raised a number of his concerns regarding the plaintiff's operations with UOB. UOB informed the first defendant and Lay Hoon that the meeting was called by UOB because there were rumours in the market that the plaintiff was in financial trouble, was transferring assets and was selling its cargo and stocks. Despite that, the first defendant highlighted to UOB the problem of selling off stocks in Europe but the selling price US$3,800 per metric ton which the first defendant mentioned to UOB was far too low and would have meant that the plaintiff would suffer loss of US$2,000 per metric ton. This was different from that in his e-mail to Lin on 3 July 2005. The first defendant also told UOB about the plaintiff's transactions with Hai Vuong Co Ltd ("Hai Vuong"), a Vietnamese company which the first defendant did not approve of and of Lin's personal debts in Taiwan. In view of the issues raised by the first defendant, UOB quite understandably decided that they would hold on to the two bills that the plaintiff had sent in for payment.

18 After the said meeting with UOB, the first defendant left for Hong Kong without attempting to do anything about the suspension of credit facilities and bills by BOT, CTB and UOB. On 9 July 2005, Lin returned to Singapore to deal with the problem because of the first defendant's indifference to the situation.

19 On 11 July 2005, Lin discovered that the second defendant had caused US$800,000 received by CCUSA from the latter's customers to be paid to BOT in respect of trust receipts before payment to BOT was due. (At trial it emerged that the aggregate transferred was US$850,000.) This was a deviation from CCUSA's practice of paying the money to the plaintiff and was done without the knowledge of Lin or Tan who, meanwhile, were anxiously waiting for payment of outstanding receivables from CCUSA. In light of the above, both the defendants had their employment terminated. Following that, on 15 July 2005, Lin discovered that a further sum of about US$710,000 had been directly remitted to the plaintiff's account with BOT from Eurocell, Europe. This had been instructed by the Vice-President of Marketing of the plaintiff, Jasmine Khoo, who reported to the first defendant.

20 During the period 12 July 2005 to 18 July 2005, Lin engaged the services of Taiwanese consultants, Fourwin, and visited various bankers to clarify the true position regarding his personal indebtedness and to dispel rumours that had surfaced in the market about the plaintiff. From those visits, the plaintiff found that Lin had been accused of having unusual business dealings with one Mr Loy of Vietnam in the Hai Vuong transactions. According to Lin, a manager at Citibank had accused him in regard to business transactions with Mr Loy even before he could explain. BOT's manager,

Jason Wu, claimed that BOT decided to suspend the plaintiff's credit facilities only after it heard that CTB was doing so. All the other bankers also confirmed that they had heard various damaging rumours in the market pertaining to the plaintiff.

21 The plaintiff's credit facilities of US$12m with the eight bankers in Singapore had been substantially reduced to US$8.8m between 6 July 2005 and 16 July 2005 as a result of those rumours. Therefore the plaintiff held a joint bankers' conference on 19 July 2005 to dispel the rumours and to answer questions that the bankers had. At the conference, the bankers requested for the appointment of a Special Accountant to look into the plaintiff's books so that an independent report would help to ascertain the actual financial position of the plaintiff.

22 Chee Yoh Chuang ("Chee") of Chio Lim & Associates was appointed the Special Accountant on 22 July 2005. On 11 August 2005, Lin, Fourwin and Chee met up with CTB manager Chiang Sheng-Li ("Chiang"). Chiang told Lin that what the first defendant had informed him and the picture he painted in regard to the plaintiff was very different from what Lin explained.

23 The plaintiff was unable to conduct any normal business with the eight bankers during this period which lasted from July 2005 to December 2005 (which the plaintiff called the "moratorium period"). Instead, the plaintiff had to depend on a dollar-to-dollar use of facilities. This caused difficulties for the plaintiff and large amounts of professional costs were incurred during this period of time. The audited accounts of the plaintiff for the year ending 31 December 2005 showed a net financial loss before tax in the region of $2.7m. Chee attributed the loss to the impairment to CCUSA due to slow-moving and overstock of S$852,000, increase in professional fees of S$800,000 due to the moratorium period, provision of doubtful receivables of S$290,000, increase in interest in trust receipt facilities due to the moratorium period amounting to about $70,000 and the loss of business opportunities during the moratorium period.

24 Soon after being dismissed from the plaintiff's employ, the defendants incorporated a company of their own – Seaspire International Pte Ltd ("Seaspire") on 27 July 2005. Both the defendants are currently with Seaspire and they run a business that is almost identical to that of the plaintiff's. Former employees of the plaintiff who were part of the first defendant's insiders' team also resigned and joined Seaspire. The plaintiff also asserted that from August 2005 onwards, the National Sales Manager of CCUSA, Joe Murphy began receiving information and e-mails from CCUSA's customers that Seaspire had contacted them and made disparaging comments about CCUSA.

25 The defendant's principal responses to the plaintiff's allegations were as follows:

26 As to the allegations that the first defendant refused to accept the DBS offer of an increase in facilities, the first defendant argued that he had already given Lin a satisfactory explanation for his actions in an e-mail dated 3 July 2005. In that e-mail, the first defendant alleged that because he was kept in the dark for some weeks about some unusual transactions with Hai Vuong he decided that, as CEO of the plaintiff, it was his duty to protect the interests of the plaintiff, including all its shareholders, employees, suppliers, customers and especially the banks that put their trust in his running of the plaintiff. The first defendant went on to point out that he would have proceeded to sign the letter of offer if not for his loss of confidence in Lin, in view of the Hai Vuong transactions.

27 In any case, the first defendant explained that he did not breach any of his duties to the plaintiff by not signing the letter of offer because it was clear that the plaintiff could still have obtained the facility from DBS if it had wanted to, simply by requesting for an amended letter of offer and having Lay Hoon sign it instead of the first defendant. The first defendant also pointed out that the plaintiff's failure to obtain the additional facility did not cause it to suffer any cash flow problems.

Notably though, the suppliers were paid late.

28 The defendants denied having spread the alleged rumours or that they had caused CTB's suspension of facilities and/or BOT's requirement of prepayment. The defendants insisted that CTB's suspension was because of Lin's failure to settle his outstanding personal debts and that BOT had required the prepayments because of Lin's failure to settle his outstanding personal debts as stated in BOT's letter dated 15 July 2005.

29 The defendants pointed out that CTB made its own search at the Joint Credit Information Centre instead of relying on information provided by the plaintiff. It was Lin who always gave consent to CTB to go ahead with the search. BOT would check on the status of Lin's personal debts by asking Lin himself or the plaintiff to provide the necessary information. The first defendant explained that based on the last information given on the status to CTB and BOT, Lin still had outstanding debts and as such, the actions taken by CTB and BOT were not based on information provided by the first defendant, as alleged by the plaintiff.

30 The defendants submitted that Lin, as director of the plaintiff, owed a duty to the plaintiff to act in its best interests. They claimed that Lin was aware that his continued failure to settle the outstanding guaranteed debts were of concern to BOT and CTB. Therefore, the defendants asserted that if Lin had settled his outstanding guaranteed debts as he claimed, it was incumbent on him to inform BOT and CTB in order to avoid running the risk of the banks taking action on the plaintiff's account with them. As such, it was argued that even if BOT and CTB had wrongly required prepayment and wrongly suspended the plaintiff's account, such actions were due to Lin's failure to notify the banks of the settlement of his debts, as he had alleged. The defendants submitted that as such his failure amounted to a breach of his duties owed to the plaintiff.

31 With regard to the allegation made by the plaintiff that the defendants had established Seaspire in conflict with the plaintiff's interests, the defendants argued that the said allegation was baseless and wholly unmeritorious. This was so because they were removed from the plaintiff's employ on 11 July 2005 but only established Seaspire on 27 July 2005, by which time they no longer owed any duty to the plaintiff to act in its interest or to refrain from acting in a manner which would conflict with its interest.

32 In relation to the allegation that the defendants caused a sum of US$800,000 to be transferred from the plaintiff's subsidiary, CCUSA, to BOT without the knowledge and/or consent of the plaintiff's management in conflict with the Plaintiff's interests, the defendants did not dispute that such a payment was made or that Lin was only informed about it later. The defendants, however, claimed that such a transfer was not a breach of their duties owed to the plaintiff nor in conflict with the plaintiff's interests since it was a temporary measure that was done with the intention of reducing the plaintiff's outstanding loan. It was even said to have been done so that the credit facilities would be made available to the plaintiff again. (I should say straightaway that this last assertion was, to my mind, incredible and it was clearly contradicted by the evidence of BOT's James Hsu on the stand.)

33 In regard to the plaintiff's allegation that the defendants caused substantial overstock and receivables of CCUSA for the period of April 2005 to July 2005, against the plaintiff's interests, the defendants claimed that the overstock and receivables of CCUSA was never an issue because CCUSA was the marketing arm of the plaintiff. The defendants also submitted that the purchase of tuna was in line with the 2005 projection of an estimated sale of up to about US$6m for both CO-treated tuna steaks and loins, and about US$1.76m for *mahi mahi*. In any event, the defendants submitted that it was Joe Murphy, the face of CCUSA with over 35 years of experience in the US fish industry, who was responsible for planning and forecasting. It was also Joe Murphy who advised the plaintiff as to

the demands of the US market.

34 Lastly, the defendants also denied the allegation made by the plaintiff that they had obtained unauthorised access to the e-mail accounts of Lin, Tan and Lay Hoon as well as other key personnel and staff of the plaintiff and its group of companies in USA and Taiwan for the period of 2001 to 2005 without the knowledge or consent of the plaintiff's management. Additionally, the defendants also denied having made unauthorised modifications to their respective laptops after the termination of their employment on 11 July 2005 to ensure that the plaintiff would not be able to gain access to the e-mails for the material period of June 2005 to July 2005. The defendants explained that all they did was to install the operating system to their laptops in order to remove their personal data and that they were entitled to protect the privacy of their personal information.

Whether the defendants had committed the various acts/omissions as alleged by the plaintiff and if so, whether they constituted breaches of duty owed to the plaintiff

35 The first defendant was the Group President and CEO of the plaintiff, while the second defendant was the Vice-President of Development of the plaintiff. Both the defendants were also directors of CCUSA. By virtue of the capacity in which the defendants were employed in the plaintiff, they were duty bound to act in good faith and in the best interests of the plaintiff and not put their personal interests in conflict with those of the plaintiff.

36 It is trite law that the categories of fiduciaries are not closed. The defendants were fiduciaries because they were in positions of responsibility, the plaintiff company having reposed trust and confidence in them. Besides, the defendants also owed a duty of loyalty to the plaintiff by virtue of their contractual obligations as employees of the plaintiff. Again this is not disputed by the defendants.

37 While, at trial, the defendants did not dispute the fiduciary nature of the relationship between themselves and the plaintiff and/or the contractual duties that they owed the plaintiff (and this was evident at para 33 of their Opening Statement), they appeared earlier to have denied owing such duties to the plaintiff in their respective Defences.

38 After reviewing the evidence before me, I found that the defendants had in fact committed many of the acts and/or omissions alleged by the plaintiff. In regard to the first defendant, I found that he failed to take reasonable steps to clarify to the plaintiff's bankers the status of the personal debts of Lin despite the fact that all along he was the contact person vis-à-vis the plaintiff's bankers even with regard to the status of Lin's personal debts; he caused rumours to be passed to the plaintiff's bankers which shook the bankers' confidence in the plaintiff; he made misrepresentations to UOB about the plaintiff; and he restricted the cash flow of the plaintiff by refusing to sign or accept offers of credit from the bankers. Together with the second defendant, he also caused the overstocking of inventory in CCUSA and the diversion of funds to BOT.

39 It is clear that the first defendant was the contact person vis-à-vis the plaintiff's bankers and that as such he answered enquiries from the banks as to Lin's personal indebtedness in Taiwan. It was the first defendant who maintained the bankers' confidence in the plaintiff.

40 Lin had reduced his indebtedness in Taiwan from a sum in Taiwanese currency equivalent to more than US$5m to only about US$200,000. In May 2005, Lin further reduced his debts to a relatively small sum equivalent to approximately US$70,000. In a management meeting on 12 May 2005, Lin informed all present, including the first defendant, that only a small sum remained and that he would be settling his personal debts in two months' time. (As a matter of fact, in June 2005 Lin

repaid the remainder in full.)

41 The evidence showed that BOT approached the first defendant for an update of Lin's personal debts about the end of May 2005. The first defendant was then, of course, aware of Lin's intention to pay off the little that remained of Lin's personal debts as he had been informed at the 12 May 2005 management meeting of the plaintiff. Yet he chose not to allay BOT's concerns.

42 During the trial, the first defendant took the position that as of 12 May 2005 he had told Lin that he would no longer be the contact person vis-à-vis the plaintiff's bankers on the status of Lin's personal debts. What he could not deny was that there was no such defence in his pleading nor in his affidavit of evidence-in-chief. (In fact, when during her cross-examination of Lin, his counsel Ms Molly Lim was asked to clarify to the court what the first defendant's position was, she confirmed that the first defendant did not tell Lin that the latter was thenceforth to deal with the banks regarding his personal indebtedness. She clarified that he only mentally resolved not to deal any more on Lin's behalf.)

43 Regardless whether the first defendant had only mentally resolved not to deal any further on Lin's behalf or had actually communicated this to Lin, the change in position was clearly an afterthought. During cross-examination, the first defendant was asked to study the minutes of meeting with UOB dated 7 July 2005. He did not object to the following entry:

> [H]e [*ie*, the first defendant] understands that Mr Lin is settling the debt but it takes time. When asked how much he said he did not know and that he can't remember the figure.

This evidence cast doubt on the first defendant's claim that after 12 May 2005 he was no longer responsible for informing the plaintiff's bankers the status of Lin's personal debts. If so, why did he not tell William Chia of the UOB to enquire directly of Lin?

44 I was also not persuaded by the first defendant's claim that he could not recall making any misrepresentation to UOB concerning the problem of selling stocks in Europe or that he was unable to recall the selling price. The first defendant also submitted that even if there was any misrepresentation, it had no effect on UOB or the plaintiff's credit facility with UOB because UOB would have already made a decision to hold on to the two bills until further clarification, based on information received from other bankers. The evidence clearly showed that the first defendant's explanation did not comport with the minutes of the meeting taken by Lay Hoon. Here again, I found the first defendant's evidence to be unreliable.

45 It would appear that while on the face of it, as indicated in their respective letters, the reason for CTB's and BOT's actions was because of their concern over Lin's personal debts, CTB and BOT had so acted also *because* of prejudicial rumours against the plaintiff. And the crux of the plaintiff's case against the first defendant in this regard was that, directly or indirectly, he had caused those rumours to be spread in breach of his fiduciary duties to the plaintiff. I did not believe the first defendant's denial of the allegations.

46 In an e-mail dated 5 July 2005 from Jason Wu of BOT to the first defendant, Jason Wu stated:

> Due to the unexpected response from Chiao Tung Bank, kindly arrange the remittance from Europe to our bank ASAP.

The first defendant did not e-mail Jason Wu to ask what the latter meant but merely forwarded the e-mail to himself and to the second defendant. The plaintiff's counsel submitted that the first

defendant and Jason Wu must have been privy to some form of communication that was made to CTB to which they had expected a response. However, it would appear that they had not expected CTB to respond by deciding to suspend the plaintiff's facilities right away. (CTB's suspension was issued the next day, *ie*, 6 July 2005). Jason Wu's attempt to explain what he meant by "unexpected response" was "I never expect any response from Chiao Tung". But that did not appear credible because the first defendant never made any attempt to call Jason Wu to clarify. (The first defendant argued, under cross-examination, that he could speak to Jason Wu the next day but the fact is that he did not say that he did so and so no explanation was ever given to the court.) The failure and/or lack of curiosity on the part of the first defendant to find out what was meant led to a strong inference that the first defendant knew the background within which Jason Wu made his comment.

47 It is reasonable to infer that whatever was told to CTB regarding the plaintiff must have caused CTB sufficient cause for concern even if the swift decision to suspend facilities may not have been anticipated. CTB's act of suspension would be hard to explain otherwise. It never gave any warning. The result of its search on Lin's personal indebtedness could not have been so startling even if his settlement of the last US$70,000 in May 2005 may not have been reflected yet at the Joint Credit Information Centre. After all, Lin had been steadily reducing his indebtedness (see [40] above).

48 If not for two e-mails which the plaintiff's forensic experts were able to retrieve despite their deletion, it might be somewhat bewildering why the defendants behaved as they did. After all, they were apparently well-treated and the first defendant, in particular, was amply rewarded for his part in helping to build up the plaintiff's business earlier on. The e-mails are two MSN chats dated 30 May 2005 and 14 June 2005 which the first defendant had with his brother Jerry Chuang referred to therein as "JJ".

49 Crucially, the first defendant had accepted during cross-examination that what he had stated in his MSN conversation of 14 June 2005 ("the MSN conversation") with his brother was more or less accurate and that he had plans "to stop the loan from the banks, to set up his own company from scrape [*sic*] and had plans to meet with the company's various bankers to convey his concerns about the Plaintiff". Further, the first defendant accepted that, as indicated in that MSN conversation, one of his options was to put Lin in deep trouble so that he could negotiate to buy the plaintiff from him.

50 The MSN conversation also indicated the first defendant's intention to secure receivables to return to the banks and his belief that once he had informed his banker friends regarding his concern over the plaintiff, "things won't stop". The MSN conversation further revealed that key members (presumably of the plaintiff) had decided to leave with him. Faced with the incriminating evidence, the first defendant claimed that he had subsequently changed his mind as he knew of the conflict of interests and the consequences. He claimed that he therefore did not carry out the acts outlined in the MSN conversation. However, subsequent events showed otherwise.

51 One particular aspect deserves mention. The first defendant admitted telling the banks a number of things about the plaintiff and that how much he told each bank varied according to the relationship he had with the bank. Thus, to a bank like DBS, relatively little was said. Even so, Loi Kai Cheow ("Loi" – formerly a team manager of DBS) said that what the first defendant told DBS would be of concern to bankers.

52 The first defendant telephoned Loi for a meeting some time in late June or early July 2005. An account of the meeting between the first defendant and Loi taken from Lin's affidavit of evidence-in-chief (based on what Loi had informed Lin) was confirmed by Loi to be accurate. In this account, it was said that Loi was a little surprised by the request as usually his relationship managers would meet with officers from the plaintiff and the usual contact person from the plaintiff was Lay Hoon. Loi had

asked if he should involve his relationship managers but the first defendant said it was not necessary.

53 At the meeting the first defendant told Loi that he did not agree with some recent decisions that Lin had taken which included business transactions with a Vietnam company. The first defendant said that in view thereof he had refused to sign acceptance of DBS's offer of additional credit. The impression Loi had was that there was disagreement amongst the top management of the plaintiff. Under cross-examination by counsel for the first defendant, Loi was asked whether the management dispute would affect the bank's facilities. In reply, Loi said that the bank would be concerned because that could affect how the company would be run. However, he did not see the need to over-react and instructed his relationship manager to monitor how the matter developed.

54 As the first defendant himself admitted, he told more to the Taiwanese banks with whom he admitted to being close. That explains why Chiang of CTB told Lin that the picture painted by the latter in regard to the plaintiff was very different from what the first defendant had informed him. The first defendant also confirmed that Jason Wu of BOT was the second defendant's good friend. In fact, the relationship was such that Jason Wu appeared to have been more than professionally involved.

55 At risk of digression, I should briefly mention Jason Wu's role. The evidence suggested that the defendants, or one of them, had enlisted Jason Wu's assistance to cause BOT to have further concerns about Lin and the plaintiff. Despite having been instructed by his superiors to relay BOT's request to Lin to settle his personal debts, Jason Wu did not speak to Lin and, instead, reported that Lin was unable to do so. On this point, James Hsu of BOT in his oral evidence stated that Jason Wu reported back to him and Monica Chiu (the general manager of BOT's Singapore branch) that Lin would not be able to pay his debts in the short term. Jason Wu stated in his own evidence that he did not speak to Lin. There would have been no reason for Jason Wu to lie to his superiors unless he was collaborating with the defendants to put the plaintiff in a bad light vis-à-vis BOT. (It is also interesting to note that while the first defendant admitted to having told Monica Chiu and Jason Wu of his frustration working with the plaintiff, of Lin's purchase of a large quantity of fish and of the Hai Vuong transaction, Jason Wu denied that he was told this.)

56 As for the second defendant, the evidence is irrefutable that he caused an aggregate of US$850,000 to be transferred from CCUSA's account with China Trust Bank Ltd ("China Trust") into CCUSA's newly activated account with BOT's Los Angeles branch. This was a significant departure from the practice of CCUSA which was to pay such funds through China Trust to the plaintiff who, together with one other company, were the suppliers of goods to CCUSA. It was done on the first defendant's instructions but neither Lin nor Tan was aware. Neither did either of the defendants inform Low, the Senior Manager of Finance/Accounts. It was also done at a time when the plaintiff was in need of funds.

57 Under cross-examination, the second defendant was unable to offer a reason why he did not point out to Lay Hoon that there was a large sum of money in the BOT account despite an e-mail from her addressed to him stating that after the last remittance of funds from CCUSA on 5 June 2005, there had been no further payment and that the plaintiff needed a large amount of funds for a cargo that was due to arrive. On his part, the first defendant was also unable to give a response as to why he had not contacted Lin despite Lin asking where the money from CCUSA was and when it would be coming in. All that the first defendant could offer was that he was away in Europe. This was in no way a plausible reason in this day and age with ubiquitous mobile phones and the internet.

58 The evidence of Troy Yu, senior manager at CCUSA whose function included the collection of receivables and the remittance of such funds, was that when the second defendant instructed him to sign a cheque for US$650,000 in favour of BOT (Los Angeles), he questioned the second defendant

about this departure from practice and was told that it was easier to repay BOT (Singapore) through BOT (Los Angeles). CCUSA itself, did not owe any money to BOT (Singapore) and, but for the first defendant's game plan as disclosed in his telling MSN conversation (see [48] and [49]), it would have been inexplicable why the second defendant should have put aside money in BOT (Los Angeles) in anticipation of payment of the plaintiff's outstandings to BOT (Singapore) in respect of trust receipts which were not then due.

59 The second defendant had also offered Troy Yu the reason that payment of the money into the BOT (Los Angeles) account would build CCUSA's credibility with the latter with a view to CCUSA later seeking credit facilities from the bank and achieving financial independence. As Troy Yu pointed out, financial independence would take many years to achieve. On the other hand, the immediate effect of withholding the money from the plaintiff was to put the plaintiff under financial stress. Given that CCUSA was wholly-owned by the plaintiff and that CCUSA's purchases were financed by the plaintiff, the avowed objective of achieving financial independence was suspect to say the least.

60 A further US$200,000 was transferred to BOT (Los Angeles) by the second defendant when Troy Yu was on leave so that the latter only came to know of the transfer when China Trust sought his confirmation. The second defendant also instructed a customer of CCUSA without Troy Yu's knowledge, to make payment for supplies directly into CCUSA's BOT (Los Angeles) account. This was again a departure from standard practice and in spite of the customer having already undertaken to Troy Yu to pay the outstanding bills into the China Trust account. As noted above, this was done by the second defendant on the first defendant's instructions but they kept Lin and Tan as well as Low and Lay Hoon in the dark.

61 In the light of the second defendant's actions, it was not unreasonable for Troy Yu, in his affidavit of evidence-in-chief, to question the second defendant's true motive in bringing forward his visit to CCUSA just to be able to stand in for Troy Yu while the latter went on leave.

62 The second defendant also helped the first defendant to gain unauthorised access to the various e-mail accounts of Lin, Tan, Lay Hoon as well as other key personnel of the plaintiff for the period 2001 to 2005 without their knowledge or consent. After the termination of their employment, he also made or caused to be made unauthorised modifications to the laptops of the first defendant and himself on 21 and 26 July 2005 respectively so as to delete all their e-mails, including those for the period June and July 2005 when matters were coming to a head.

63 The first defendant confirmed that it was the second defendant's idea to reinstall the operating system on the computers so that the date would be deleted. The laptops of others in the insiders' team, *viz*, Jasmine Khoo, Albert Leong and Lin Ming Chuan, were similarly modified between 19 and 23 July 2005, shortly before they resigned. Fortunately for the plaintiff, the desktop of the first defendant was not tampered with, probably because he was summarily dismissed on 11 July 2005. Neither was Elbert Sim's desk-top. One particular e-mail from the second defendant to Elbert Sim dated 10 July 2005, just before the second defendant's employment was terminated, is revealing. In it the second defendant instructed Elbert Sim as follows:

> … Be alert on the email forward set up. You need to disable it as soon as you pass out the password. Also, delete all the emails I sent you in your PC. Time has come …

This was in reply to Elbert Sim's e-mail of the same day wherein Elbert Sim had informed the second defendant that Lin had asked him for the password.

64 When the second defendant was cross-examined on this he resorted to lying as to what he

instructed Elbert Sim to delete. He maintained that he only asked Elbert Sim to delete personal e-mails he had sent to Elbert. This stood in sharp contrast to his e-mail instructions "delete *all* the emails I sent you in your PC" [emphasis added].

65 The defendants were also responsible for the overstocking that resulted in the plaintiff's dire financial condition. The defendants were in overall charge of matters concerning CCUSA as they were the directors of CCUSA. The second defendant and an employee of the plaintiff, one Albert Leong, were the persons in charge of purchases of stock and inventory in CCUSA. The sales target for CCUSA for 2005 was set by the defendants. It appeared that a few targets were considered but the lowest was US$18m which was still much higher than the sales achieved for 2004. There was no valid reason to set an unrealistically high sales target and to overstock in such large quantities in blatant disregard of Lin's instructions not to do so.

66 When questioned about the increased sales targets, the second defendant alleged that it was Joe Murphy who had set the sales targets. This assertion was hard to believe because, given a choice, Joe Murphy would have had no reason to suggest an unrealistically high sales target; his bonus depended on his achieving the sales target. In fact, Joe Murphy testified that the second defendant instructed him to increase the targets and that he (Joe Murphy) was "very very concerned that we do not go overboard on *mahi mahi* because when it hit a certain price level, the market tends to crash". His fears were realised when CCUSA failed to meet the sales target. As a result he did not earn the performance-related portion of his remuneration package. In truth, the sales target was set by the defendants as directors of CCUSA and it fell upon Joe Murphy to draw up a forecast accordingly, even though he was of the view that it was not achievable.

67 It was the second defendant who brought in a huge inventory of *mahi mahi* from the spring of 2004 even though Lin had warned him that the demand for *mahi mahi* would fluctuate in view of competition from other markets, notably South America. The *mahi mahi* stock accumulated from May/June 2004 and even as late as June 2005 the stock was not sold. Despite Lin's warning at the management meeting of the plaintiff in November 2004 that the high stock of *mahi mahi* should be sold to cut losses, the second defendant clearly did not heed the warning.

68 It is evident from an e-mail dated 4 December 2004 from the second defendant to the first defendant, Albert Leong, Jasmine Low and others that Lin had warned of the need to take care of the *mahi mahi* overstock. From the words and tone of the said e-mail, it is clear that the second defendant paid scant regard to Lin's warning.

69 The second defendant admitted that Lin had expressed concern about the build-up and had asked the marketing team to sell down the stock. Joe Murphy corroborated the evidence of Lin that he was prepared to sell even at a loss before prices dropped any further. The second defendant, however, alleged that Lin's instructions were to sell even with no profit but without any loss. Lin denied this. I prefer the evidence of Lin not only because it was corroborated, but because it made better commercial sense and was more credible. Under those circumstances, I found that with respect to overstocking the second defendant together with the first defendant breached their duty to act *bona fide* in the best interests of the company.

70 The defendants argued that some of the acts and/or omissions of which the plaintiff complained were actually done in order to protect the plaintiff from Lin and Tan. However, the evidence before me strongly suggested that the defendants' actions were calculated to cause the plaintiff financial harm. As shown in the MSN conversation referred to in [48] and [49], the first defendant clearly recognised the gravity of the consequences.

71 Moreover, in his e-mail of 3 July 2005 (what I shall call the "high noon e-mail") to a lady friend, one Tian Yuan Yuan, the first defendant had stated:

> Very stressful due to the internal conflict is getting from worse to the worst. I will be confronting with many difficult challenges upon my return to Singapore tomorrow. The consequences would probably cause *huge damages to the company* and parties involved.
>
> Very critical time for me and my team in the company. Our jobs would extremely be put into unprecedented crisis. [emphasis added]

During cross-examination, the first defendant lamely sought to explain that what he was referring to in the high noon e-mail were the huge purchases by Lin and the Hai Voung transaction, both of which had taken place in early June 2005. I agree with the plaintiff's counsel that the huge purchases and the Hai Vuong transactions could not have been what the first defendant was referring to in that e-mail to Tian Yuan Yuan. The fact of the matter is that the suspension of facilities took place immediately after the first defendant's return from Europe and strongly suggests that the first defendant had indeed carried out his plan as outlined in the MSN conversation. Lin was indeed put under considerable pressure and, but for the soured relationship, it is not inconceivable that Lin might well have been persuaded to sell out to the defendants. Whether that was the intended consequence is not of great moment. The fact is that the defendants' actions did in fact cause serious harm to the plaintiff as the first defendant had anticipated.

72 It was disingenuous of the first defendant to use the Hai Vuong transaction as an excuse for his conduct. According to Lay Hoon, whose evidence I found credible, Lin had explained the reasons for his sale of fish to Hai Vuong during the plaintiff's board meeting on 9 June 2005 at which were present the second defendant, Jasmine Khoo and Albert Leong, *inter alia*. None of them raised any objections. Among the reasons given were the following:

> (a) Selling the goods to the European Union market would result in a loss of US$1,000 per metric ton;
>
> (b) Selling the goods to CCUSA would not be possible as the stock count for CCUSA was already high;
>
> (c) Selling to other suppliers who were willing to purchase the goods would result in a loss; whereas
>
> (d) Selling the goods to Hai Vuong, although not resulting in a profit, would not amount to a loss.

73 Lay Hoon also testified that that was also not the first time that the plaintiff dealt with Hai Vuong. In addition, ASI, which was owned by Lin and Tan, also had dealings with Hai Vuong. In the circumstances, to describe the Hai Vuong transaction as "unusual" was unjustified and would have caused undue concern to the bankers.

74 As to the huge purchase by Lin which the defendants complained of, the first defendant himself had told UOB that the plaintiff could not refuse to buy from the fishing vessels and yet, if it did, it could not sell. Nevertheless, he sought to wriggle out of this, choosing of course to blame Lin for having made the purchases. Incidentally, the first defendant's statement also served to justify the Hai Vuong transaction in which the plaintiff sold off the fish purchased to Hai Vuong at no loss.

75 By virtue of their positions in the plaintiff, the defendants were obliged to act honestly and in good faith in the discharge of their duties and to exercise reasonable care and skill in the exercise of their duties. They were clearly in positions of control within the plaintiff. As stated above, I found that the defendants breached their duties by committing the various acts and/or omissions as illustrated in the plaintiff's claims.

76 However, I do not find that there was a breach of duty by the defendants merely in the setting up of Seaspire. It may be inferred from Kan Ting Chiu J's judgment in *Universal Westech (S) Pte Ltd v Ng Thiam Kiat* [1997] 2 SLR 139 at 157, that where a director was an employee of the plaintiff company, it was not a breach to take *preparatory steps* to set up a competing business as long as the said director did not compete with the plaintiff company until after his resignation. This was in line with *Laughton v BAPP Industrial Supplies Ltd* [1986] ICR 634 where Peter Gibson J held that the appellants who were the respondent's employees had not acted in breach of their duties as employees merely by writing to their employer's suppliers asking them for their product lists, price lists and the terms on which their products could be supplied with a view to the appellants setting up their own business in the future. I would add a qualification, *viz*, that in making preparation to compete the employees ought not to use the employer's resources whether they be time, facilities or otherwise. When the defendants' employment was terminated, they had not yet set up Seaspire. Seaspire was incorporated on 27 July 2005 after the defendants' employment with the plaintiff ended on 11 July 2005. The preparatory steps taken by the defendants to set up Seaspire while they were still in the plaintiff's employ cannot be held against them, there being no evidence so far as this was concerned of their having used the plaintiff's time or resources.

Whether the defendants conspired to injure the plaintiff

77 It is trite law that there are two types of actionable conspiracy – conspiracy to injure by lawful means and conspiracy to injure by unlawful means. In both, there must be a conspiracy to injure the plaintiff but in the first case (in which the means employed would otherwise be lawful) the predominant intention of the conspiracy must be to injure the plaintiff whereas in the second case, although of course the defendants must intend to injure the plaintiff, such injury need not be the predominant purpose. In other words, for conspiracy by unlawful means, an intention to injure will suffice whether it be the predominant or a subsidiary intention (see *Quah Kay Tee v Ong & Co Pte Ltd* [1997] 1 SLR 390).

78 The plaintiff pleaded both types of conspiracy in the alternative. The defendants, however, contended that both claims in conspiracy had to be dismissed on the ground that the plaintiff had failed to prove the existence of an agreement or arrangement between the defendants to injure the plaintiff. In making this assertion, they relied upon the Court of Appeal's decision in *Seagate Technology Pte Ltd v Goh Han Kim* [1995] 1 SLR 17 at 23 ("*Seagate Technology*") where LP Thean JA held:

> The essence of conspiracy is an agreement, and the question is whether the appellants had proved that there was in existence an agreement or at least some arrangement between the respondent and Heng to defraud the first appellants; and a high degree of proof is required.

The defendants further argued that apart from the failure to prove that there was any agreement or arrangement between the defendants to injure the plaintiff, the plaintiff had also failed to prove that the defendants had committed any unlawful act or used unlawful means with the intention of injuring the plaintiff or (where the alleged conspiracy to injure was by lawful means) that the predominant purpose of the defendants was to injure the plaintiff.

79 On the defendants' first ground, it appears that the defendants may have misunderstood the decision in *Seagate Technology* ([73] *supra*) as requiring that there must be concrete or tangible proof that an agreement or arrangement existed. By its very nature, a conspiracy is conceived in secret; the common intention to injure may be forged expressly or tacitly. To require proof positive of such an agreement or arrangement would be to set an almost insurmountable obstacle to a successful claim in conspiracy in most cases. Fortunately, this is not what the law requires.

80 In *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER Comm 271 CA cited in *Beckkett Pte Ltd v Deutsche Bank AG* [2008] 2 SLR 189, Nourse LJ stated at 312:

> A further feature of the tort of conspiracy, which is also found in criminal conspiracies, is that, … it is not necessary to show that there is anything in the nature of an express agreement, whether formal or informal. It is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end. Although civil and criminal conspiracies have important differences, … the following passage from the judgment of the Court of Appeal Criminal Division delivered by O'Connor LJ in *R v Siracusa* (1990) 90 Cr App R 340 at 349 is of assistance in this context:
>
> > 'Secondly, the origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made, or when or where other conspirators were recruited. *The very existence of the agreement can only be inferred from overt acts*. Participation in a conspiracy is infinitely variable: it can be active or passive. If the majority shareholder and director of a company consents to the company being used for drug smuggling carried out in the company's name by a fellow director and minority shareholder, he is guilty of conspiracy. Consent, that is agreement or adherence to the agreement, can be inferred if it is proved that he knew what was going on and the intention to participate in the furtherance of the criminal purpose is also established by his failure to stop the unlawful activity.' [emphasis added]

81 I outlined earlier the various acts and omissions constituting breaches of duty owed by the defendants to the plaintiff. What the second defendant did was, in the main, at the instance or with the agreement of the first defendant. However, there was no direct evidence that what the first defendant did was pursuant to an agreement or arrangement with the second defendant. Nevertheless, the concatenation of events was such that it was highly improbable that their occurrence was purely coincidental, in the light of the surrounding circumstances.

82 In regard to the computer systems and confidential information, during the cross-examination of the second defendant he averred that it was the first defendant who had instructed him to forward all e-mails in the plaintiff to the first defendant. Although the second defendant attempted to portray himself as merely a dutiful subordinate in the company hierarchy carrying out the first defendant's orders, I was of the view, given the close confidence they shared, that the second defendant would have known the first defendant's reason for wanting this done. Where the removal of company data from the laptops was concerned, the first defendant accepted that it was the second defendant who had effected the reinstallation on the first defendant's laptop in order to remove the said data. Once again, it suggested that each defendant knew exactly the reasons for doing what they did.

83 The first defendant's conduct (described in paras 38 to 54) put the plaintiff in financial difficulties when, as a result, the plaintiff's bankers suspended or reduced their banking facilities to the plaintiff. The plaintiff's predicament was made worse by the overstocking and the second defendant's diversion of funds to BOT at a time when the company was hard pressed. As noted earlier, the second defendant's explanation for his actions was, in my view, disingenuous and the

ineluctable inference is that the explanation for the defendants' conduct is to be found in the MSN conversation. That the defendants were working hand in glove may also be seen from the following incidents:

(a) When Lin questioned the first defendant as to why he had refused to allow the pre-signed remittance forms to be used and as to his refusal to accept the offers of credit facilities, the first defendant replied to Lin only after consulting the second defendant on how to respond.

(b) The first defendant had received an e-mail from Jason Wu of BOT asking for an immediate remittance from Europe to BOT as soon as possible citing an "unexpected response" from CTB but the first defendant never made any attempt to ask Jason Wu why there was suddenly this requirement from BOT or what the "unexpected response" was. Instead, he found the time to forward the said e-mail to himself, the second defendant and one other person without explanation. This suggested that the first defendant knew that the second defendant would know exactly what the "unexpected response" referred to in Jason Wu's e-mail meant.

(c) The second defendant had also sent an e-mail dated 23 June 2005 indicating his travel plans for the period 23 June to 15 July 2005 in which he wondered "if the relationship with [the plaintiff] will last this long". Clearly, the defendants were expecting trouble ahead. The first defendant's MSN conversation and his high noon e-mail of 3 July 2005 to Tian Yuan Yuan (see [71] above) also referred to the worsening conflict. In fact, the defendants expected their employment to be terminated and had gone looking for office space for their new company. This again strongly suggested that the defendants were *ad idem*.

(d) Another e-mail dated 10 May 2005 from the first defendant to two of his team members, namely, Albert Leong and Jasmine Khoo and copied to the second defendant, stated: "As LCF [Lin] and TGN [Tan] have been around their major concern would be finding as much market information as possible from us. Our common objectives are to give only the selected or decorated info". Under cross-examination, the first defendant sought to play it down suggesting, *inter alia*, that his command of the English language was to blame and that it was merely "tongue-in-cheek". I did not believe his explanation.

(e) One other e-mail dated 3 June 2005 from the second defendant to the first defendant and Jasmine Khoo, and copied to Albert Leong, provided a very illuminating picture. Joe Murphy had sent an e-mail to the second defendant (copied to Albert Leong) reporting on progress he had made with a customer in the United States. This was forwarded within the hour to the first defendant and Jasmine Khoo with the message: "We are making progress on the steaking program … What a pity."

(f) Another set of e-mail correspondence between the second defendant and Albert Leong, all of which was copied to the first defendant, Jasmine Khoo and Lin Ming Chuan again, showed what was going on behind Lin and Tan's back. Albert Leong was dealing with a prospective customer, Kevin Clampitt of Chicago Prime Packers who was quite insistent on obtaining quotes from Albert Leong for tuna and swordfish into Chicago.

The second defendant who had been copied on the e-mail wrote to Albert Leong on 25 June 2005 (copied to the first defendant, Jasmine Khoo and Lin Ming Chuan):

> Tough isn't it? How confidence [*sic*] are you to handle this order outside of CCF [*ie*, plaintiff]? While you are visiting BSD in Bali please evaluate the feasibility for their plant and also II's [*sic*] facility's capacity so we can decide the next step …

Albert Leong's reply of 26 June 2005 included the following:

> Have had a discussion with HH [first defendant], JK [Jasmine Khoo] and MC [Lin Ming Chuan], it was agreed that we better bring the order to CCF [plaintiff] first.

The second defendant, Albert Leong and Jasmine Khoo tried to explain away the incriminating exchange by saying that what was meant was that the processing should be handled outside Singapore since CO-treated tuna could not be shipped out of Singapore. However, that could not have been what was meant because, if they were right, the response from Albert Leong saying "…we better bring the order to CCF [plaintiff] first" would not make any sense. This was yet another untruth.

(g) When one of the members on the defendants' team, Albert Leong, received an e-mail from Lin on 4 July 2005 asking for the purpose of his recent trip to Bali, instead of responding truthfully, Albert wrote to the defendants and two others on the team asking for advice as to how he should draft his reply to Lin. This was probably because Albert feared that Lin would find out that they had been scheming to take away business from the plaintiff. Albert should have been able to give Lin a ready answer but the fact that he consulted with the defendants showed that a division had been caused within the plaintiff. If Albert had been sourcing for business to be taken away from the plaintiff then it was clearly wrong for them to have been using the plaintiff's funds for such a trip – it only went to show that the defendants were hand in glove with the employees in the insiders' team. Additionally, Albert indicated that he was unable to comment when asked whether the second defendant had referred to Lin when he used "L" in a note that the second defendant had written, which said: "Be aware L may call Sam after seeing this".

(h) Similarly, an e-mail dated 4 July 2005 from Lin Ming Chuan to Jasmine Khoo (copied to the defendants and to Albert Leong) regarding his own trip to Bangkok read: "What is the purpose of this visit? Please help me to make up one." My observations in para (g) similarly apply here.

84 The defendants, Albert Leong and Jasmine Khoo had offered various explanations for contents of the e-mails but, as I have found, they were far from credible. Besides, what could not be disputed is:

(a) the existence of the insiders' team;

(b) the clear exclusion of other members of the plaintiff from the information they shared;

(c) the instructions from the defendants on what limited information to give to Lin and Tan; and

(d) the hidden agenda they shared.

85 Events after the termination of the defendants' employment lend further credence to the existence of the hidden agenda. These included:

(a) the speed with which they set up Seaspire International Pte Ltd barely 16 days after the termination on 11 July 2005;

(b) the approaches by Albert Leong to the plaintiff's customers; and

(c) the feedback from customers of CCUSA to Joe Murphy of approaches made by Albert

Leong.

86 As can be seen, when all of the above evidence was put together it was not difficult for me to conclude that the defendants knew exactly what was going on and exactly what they each had to do. There was enough for me to find that there was a covert arrangement to injure or cause damage to the plaintiff.

87 Having reviewed the conduct of the defendants, it seems almost an anti-climax to say that clearly there were breaches of fiduciary and contractual duties by both of them. Those breaches constituted unlawful means to injure the plaintiff. Even if there was a need to find a predominant intention to injure the plaintiff (which in this case is unnecessary given that unlawful means were employed) the facts recounted clearly will also support a finding that such an intention did exist. The requirement that loss and damage to the plaintiff resulted from the acts of the defendants was also clearly satisfied. In my view, the high standard of proof that was required before a finding of conspiracy is made was met. Consequently, I found both the defendants liable for conspiracy to injure the plaintiff.

88 The facts supporting the finding that the defendants conspired to cause injury to the plaintiff by unlawful means would also support a finding against the defendants of unlawful interference with the business of the plaintiff and I so found.

The defendants' counterclaim against the plaintiff for wrongful dismissal

89 In view of my finding the defendants liable under the tort of conspiracy to injure and for breach of duties owed to the plaintiff, it followed that the defendants' counter-claim against the plaintiff for wrongful dismissal had to fail.

The defendants' third party claims against Lin and Tan

90 Order 16 r 1 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) allows a defendant to bring a third party claim for contribution or indemnity for the plaintiff's claim against the defendant. The defendants brought such a claim alleging wrongdoing by Lin and Tan in three areas:

(a) First, it was alleged that the suspension of facilities by CTB, the decision of BOT to reduce its facilities as well as UOB's decision to hold on to two bills presented to it for payment and to up the UOB facility were all taken as a result of the repeated failure, refusal and/or neglect on the part of Lin to settle his personal debts in Taiwan. From what I have said earlier, it is clear that the blame should be laid at the first defendant's door.

(b) Secondly, it was alleged that the distress in the financial and cash flow position of the plaintiff was the result of the third parties causing the plaintiff to enter into the Hai Vuong transaction. The truth of the matter, as I have earlier stated, is that the defendants were the ones who by their own actions caused the plaintiff financial distress. The Hai Vuong transaction was merely a lame excuse for the defendants to act the way they did. Even if the defendants were unhappy about the Hai Vuong transaction (and I should say that from what I have seen of their e-mails, they did seem so), it did not justify the harm the defendants caused the plaintiff. Besides, as I have found, the Hai Vuong transaction was not unusual. (Incidentally, the goods sold to Hai Vuong were fully paid.) In truth, the defendants were pursuing a plan of their own in furtherance of their conspiracy to injure the plaintiff.

(c) Thirdly, the defendants blamed the third parties for approving the overstocking. As I also

said earlier, the blame for this falls squarely on the defendants who were the directors of CCUSA.

91 In the premises, I dismissed the defendants' claim against the third parties.

Conclusion

92 In conclusion, I found as follows:

(1) That the defendants had, through their various acts and/or omissions, breached their fiduciary and contractual duties to the plaintiff,

(2) The defendants were liable for conspiracy to injure the plaintiff and unlawful interference in the plaintiff's business.

(3) That the said breaches of duty and the conspiracy to injure as well as the unlawful interference in the plaintiff's business resulted in loss and damage suffered by the plaintiff especially during the moratorium period. As such, the plaintiff is entitled to damages for the loss and damage suffered, including the expenses incurred in securing the services of the Special Accountant.

(4) For the reasons stated above, I dismissed as baseless the claims brought by the defendants against the third parties Lin and Tan.

93 Accordingly, I granted interlocutory judgment for the plaintiff for damages for the first and second defendants' breach of contractual and fiduciary duties, conspiracy to injure and unlawful interference in the plaintiff's business but so that there shall be no duplication in the quantum of damages. Such damages shall be assessed by the Registrar. I also granted interest in respect of the professional fees of Chio Lim & Associates for the period July 2005 to December 2006 at 5.33% per annum from the date of the writ until payment, interest on the remaining damages to accrue from date of judgment at the same rate. Costs to be taxed unless agreed.

Copyright © Government of Singapore.