EFT Holdings, Inc and another *v* Marinteknik Shipbuilders (S) Pte Ltd and others [2012] SGHC 246

Case Number : Suit No 571 of 2010

Decision Date : 11 December 2012

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Hee Theng Fong, Nandakumar s/o Renganathan and Leong Fu Sheng Eugene (RHTLaw Taylor Wessing LLP) for the plaintiffs; Ajaib Haridass and Sivakumaran Murugaiah Balakrishnan (Haridass Ho & Partners) for the first and second defendants.

Parties : EFT Holdings, Inc and another — Marinteknik Shipbuilders (S) Pte Ltd and others

Conflict of Laws – Choice of Law – Tort

Tort – Conspiracy – Unlawful Means conspiracy

Res judicata – Issue estoppel

11 December 2012 Judgment reserved.

Belinda Ang Saw Ean J :

Introduction

1 On 30 June 2008, the first plaintiff, EFT Holdings Inc ("P1"), a publicly trading company incorporated in the USA, and Excalibur International Marine Corporation, ("EIMC"), a Taiwanese company, executed two documents, namely, a subscription agreement ("the Subscription Agreement") and a loan agreement ("the Loan Agreement"). Under the Subscription Agreement, P1 agreed to invest US$19.193 million by subscribing for 48.81% of the ordinary shares in EIMC. The second plaintiff, EFT Investment Co Ltd ("P2"), is a company incorporated in Taiwan to hold the new share allotments. For convenience and where relevant, P1 and P2 will be collectively referred to as "EFT".

2 EIMC held a licence to operate a ferry service across the Straits of Taiwan between Taiwan and China ("the cross-strait ferry"). On 17 June 2008, EIMC entered into a memorandum of agreement with a British Virgin Islands company, Ezone Capital Limited ("Ezone") to purchase a second-hand catamaran, known as "*Nixe 2*" (referred to hereafter as "the *OCEAN LALA*" as that was what the vessel was later renamed) for its cross-strait ferry business. EIMC paid the deposit for the purchase, but the bulk of the purchase price was from the loan provided by P1 pursuant to the Loan Agreement, which loan EIMC subsequently repaid in full with the money that it received from P1 for the new shares issued by EIMC pursuant to the Subscription Agreement. The acquisition of the new shares took place after P2 was incorporated and the new shares were registered in the name of P2.

3 EFT took over the management of EIMC in November 2008. It appears that EIMC's cross-strait ferry services started in June 2009. The inaugural ferry crossing apparently attracted much media publicity as it was reportedly the first cross-strait transportation in a climate of improving economic relations between China and Taiwan. Unfortunately, after one year of operations, the *OCEAN LALA*,

the vessel deployed for the cross-strait ferry service, sustained severe weather damage during one of the regular ferry crossings on 8 August 2010. The *OCEAN LALA* was taken out of service and was later declared a constructive total loss.

4 Against the backdrop outlined above, one finds this present action, Suit No 571 of 2010, commenced on 2 August 2010 ("the Singapore Action") and legal actions against other parties in Taiwan.

The Singapore Action

5 This action in Singapore is to claim, *inter alia*, damages or a refund of the US$19.193 million that was invested in EIMC. EFT's claim for unlawful means conspiracy relates to EIMC's financial statements for the financial year ended 31 December 2007 ("the 2007 Financial Statements"), which overstated EIMC's equity and assets. EFT's case is that it was injured by an unlawful combination of the four defendants in the Singapore Action. [note: 1] EFT alleges that through false documents created by the defendants, EIMC was able to increase its paid-up capital. The inflated paid-up capital misled EFT into investing in EIMC, believing that EIMC was a financially robust company with a paid-up capital of US$17 million. [note: 2]

6 The first defendant, Marinteknik Shipbuilders (S) Pte Ltd ("Marinteknik"), is a Singapore-incorporated company which is in the business of building and repairing ships, tankers and other ocean-going vessels. The second defendant, Lim Lan Eng Priscilla ("Priscilla") is a director of Marinteknik. For convenience, I shall refer to Marinteknik and Priscilla as "the Singapore defendants".

7 The third defendant, Hsiao Zhong-Xing, also known as Steve Hsiao ("Mr Hsiao" or "D3"), was at all material times, a director of EIMC. At all material times, the Singapore defendants dealt with Mr Hsiao (D3) as the chief executive officer of EIMC, and not, as EFT has alleged, as the general manager of EIMC. The fourth defendant, Lu Tso-Chun ("Mr Lu" or "D4"), entered into two contracts with Marinteknik to purchase two newbuild catamarans *(ie*, Hull 189 and Hull 190) in November 2005 ("the 2005 shipbuilding contracts"). Mr Lu became a shareholder of EIMC (holding 48,750,000 shares), but it was alleged that he never paid for his shares. Sometime in July 2007, the 2005 shipbuilding contacts were novated to EIMC pursuant to a tripartite agreement that was made between Marinteknik, EIMC (represented by Mr Hsiao (D3) and Mr Lu (D4) ("the Tripartite Agreement").

8 Mr Hsiao (D3) and Mr Lu (D4) did not enter an appearance to the Singapore Action, and default judgment was entered against them.

9 This action continues against the Singapore defendants, Marinteknik and Priscilla, for conspiracy to injure by unlawful means. At a pre-trial conference on 19 January 2012, by consent, an order for a split trial on the issues of liability and quantum was recorded by SAR Cornie Ng.

10 The Singapore defendants have rejected the conspiracy charge by denying any participation in any unlawful means conspiracy to injure EFT. The Singapore defendants have also denied any involvement in and responsibility for the misrepresentations made by EIMC and its directors, Mr Jen-Ho Chiao ("Mr Chiao") and Mr Hsiao to P1 and its representative, Mr Jack Jie Qin ("Mr Qin"), in June 2008. They put EFT to strict proof that the documents identified in [23] below were shown to Mr Qin in June 2008. The Singapore defendants' pleaded case is that the 2005 shipbuilding contracts, the Tripartite Agreement, the two Transfer Affidavits dated 24 April 2007, two Lloyd's Register Certificates (both dated 25 August 2006) and the two reports issued by Ritchie & Bisset (Far East) Pte Ltd (both dated 12 December 2006) were for Hulls 189 and 190, and they related to a completely different transaction from the 2008 transaction involving EFT's equity investment in EIMC for the

purchase of *OCEAN LALA*. The Singapore defendants explain that at all material times, EIMC had a licence to operate a cross-strait ferry service between China and Taiwan, and its interest in Hulls 189 and 190 was for its cross-strait ferry business. Due to EIMC's protracted and unsuccessful attempts to obtain bank financing to buy Hulls 189 and 190, the 2005 shipbuilding contracts were eventually rescinded in 2007. EFT came into the picture almost a year later and the equity investment in question was for the purchase of *OCEAN LALA*. The Singapore defendants' case is that there were no continuing representations in the subject documents for Hulls 189 and 190 which had become outdated and spent by the time of EFT's equity investment in October 2008.

11 Finally, the Singapore defendants contend that EFT is estopped on the basis of *res judicata* (specifically issue estoppel) from pursuing a claim arising from the Subscription Agreement as it involves the status of the shares issued to Mr Lu (D4), which matter has already been adjudicated by the Taichung District Court.

The Taiwanese proceedings

12 There were four Taiwanese proceedings resulting in four judgments.

13 P2 tried to get Mr Chiao and EIMC's auditor [note: 3], Ms Zhang Hui-Ying ("Ms Zhang") prosecuted but failed. EIMC then filed a criminal complaint in the Taiwan Shihlin District Criminal Court to appeal against the decision of the Prosecutor's Office not to prosecute Mr Chiao and Ms Zhang for capital forgery. The Taiwan Shihlin District Criminal Court rejected EIMC's application. It is common ground that the criminal ruling of the Taiwan Shihlin District Criminal Court may not be appealed.

14 The judgment of the Shihlin District Court dated 11 February 2011 is for the civil suit brought by P2 against Mr Chiao, Ms Zhang, Mr Hsiao (D3) and Mr Lu (D4). Like in the Singapore Action, Mr Hsiao and Mr Lu did not participate in the civil action. However, the 11 February 2011 judgment of the Shihlin District Court dismissed P2's claims against: (a) Mr Chiao for false paid-up capital; and (b) Ms Zhang for issuing false reports. Of relevance is the Shihlin District Court's holding that Mr Chiao did not know that Mr Lu had not made any capital contribution for his shares. As such, Mr Chiao did not have any intention to deceive P2 into investing in EIMC. The Shihlin District Court held that it was the previous chairman and board of EIMC who had authorised the share issue to Mr Lu. The Singapore defendants' expert witness, Mr Joseph Chang ("Mr Chang"), testified that the 11 February 2011 judgment was binding on Mr Chiao, Ms Zhang, Mr Hsiao and Mr Lu (and not simply Mr Chiao and Ms Zhang, as EFT averred). Mr Chang also confirmed the ruling that EFT was adamant on investing in EIMC, and EFT's adamance had nothing to do with the defendants in that case. [note: 4]

15 EFT claimed that this 11 February 2011 judgment was under appeal to the Taiwan High Court and that the Taiwan High Court had handed down its decision. Mr Chang was not aware that an appeal was lodged. [note: 5] Counsel for EFT, Mr Hee Teng Fong (Mr Hee), tried to introduce during Day 9 of the trial the judgment of the Taiwan High Court ordering a retrial in the Shihlin District Court – however no admissible evidence in support of the High Court's decision and the re-trial were introduced. The Taiwan High Court's decision and the transcripts of the re-trial were not disclosed nor translated into English. Counsel for the Singapore defendants, Mr Ajaib Haridass ("Mr Haridass) objected to EFT's non-compliance with Order 92 rule 1 of the Rules of Court, Cap 322. R5, 2006 Rev Ed) ("the ROC"), EFT's failure to give discovery and the late production of un-translated copies of the Taiwan High Court judgment and the transcripts of the re-trial. [note: 6]

16 The third judgment is that of the Taiwan High Court dismissing Mr Chiao's claim against EIMC for wrongful dismissal, which decision was upheld by the Taiwan High Court on 6 July 2011. [note: 7] The

High Court held that the shareholder resolutions by which Mr Chiao was dismissed were valid. It is common ground that the decision of the Taiwan High Court has been upheld by the Taiwan Supreme Court, and that the decision is final and binding in Taiwan as no further appeal from a decision of the Taiwan Supreme Court is possible. [note: 8] I should mention that for Mr Chiao's case against EIMC, the status of Mr Lu's subscription shares was a preliminary issue that had to be determined before deciding whether the shareholders' meeting which passed the resolutions dismissing Mr Chiao had been validly convened on the basis that the requisite quorum had been met. The Taiwan High Court held that as Mr Lu had not given consideration for his subscription shares, his shares were invalid and were to be ignored for the purposes of computing the number of shareholders present at the meeting. [note: 9]

17 Finally, there is the Taichung District Court judgment, in relation to Marinteknik's claim against EIMC for outstanding consultancy fees for services rendered. The significance of the ruling in this case is that the Taichung District Court held that Mr Lu's subscription of shares in EIMC was invalid under Taiwanese law because he did not pay for the shares. It is common ground that this judgment is non-binding. However, the Singapore defendants' expert witness, Mr Chang, opines that this judgment may nevertheless be enforced in Singapore. However, Mr Chang did not elaborate as to how this was possible when the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) ("REFJ Act") does not extend to Taiwan.

18 The significance of the two aforementioned rulings (at [16] and [17]) is that the Taiwanese courts essentially held that Mr Lu's subscription of shares was invalid under Taiwanese law. [note: 10] For present purposes, the holding that Mr Lu's shares are invalid binds existing shareholders like P2.

Circumstances leading to EFT's investment in EIMC in October 2008

Dramatis personae involved in the June 2008 meetings

19 It is convenient to begin by briefly looking at EFT's pleaded case to identify the individuals in Taiwan who met on 23 and 24 June 2008, and their participation in the events giving rise to P1's investment in EIMC. By this time, the 2005 shipbuilding contracts had been rescinded and Hulls 189 and 190 had been sold to a Hong Kong company, Giant Dragon Sea Transport Company Limited ("Giant Dragon") in January 2008. With these developments, EIMC bought the *OCEAN LALA* on 17 June 2008 (see [2] above).

20 In June 2008, Mr Chiao, a Taiwanese lawyer by training was the chairman and director of EIMC. Apparently, he was a former politician who had held the post of Minister of the Overseas Chinese Affairs Commission. He was also the former secretary-general and vice-chairman of the Straits Exchange Foundation in Taiwan. Mr Chiao was introduced to Mr Qin by the latter's friend. [note: 11] Mr Chiao made a business presentation on behalf of EIMC on 24 June 2008. Mr Chiao was not sued in the Singapore Action and did not testify at the trial in Singapore.

21 Mr Hsiao attended the meetings held on 23 and 24 June 2008 with Mr Chiao. As stated, Mr Hsiao is the third defendant in the Singapore Action. He did not testify at the trial in Singapore.

22 At the relevant time, Mr Qin was the chairman and chief executive officer of P1. He was on a visit to Taiwan on 20 June 2008. During his visit to Taiwan, he heard about EIMC's cross-strait ferry licence. He met Mr Chiao and Mr Hsiao for the first time on 23 June 2008. Mr Qin said that at the meeting, Mr Chiao and Mr Hsiao approached him to invest in EIMC. [note: 12] Mr Chiao, on behalf of EIMC, made a business presentation to him the following day (*ie*, on 24 June 2008). Mr Qin was EFT's

main witness of fact at the trial in Singapore.

EFT's evidence of the meetings in Taiwan

23 According to the evidence led by EFT, during a visit to Taiwan by Mr Qin, a few of Mr Chiao's acquaintances approached him in the evening of 23 June 2008 to get him to invest in EIMC, and they invited him to meet Mr Chiao. Mr Qin said that he attended a business presentation on 24 June 2008 ("the 24 June Presentation") at the law offices of Mr Chiao in Taiwan. (EFT had in Further and Better Particulars filed on 15 December 2011 pleaded that the 24 June Presentation was held in the offices of EIMC, [note: 13] but nothing turns on this discrepancy.) Mr Qin claimed that he was shown documents at the 24 June Presentation. The documents (collectively referred to as "the Presentation Documents") were as follows:

(a) Hull 189 Shipbuilding Contract dated 15 November 2005;

(b) Hull 190 Shipbuilding Contract dated 15 November 2005;

(c) An investment agreement dated 11 July 2006 ("the Investment Agreement")

(d) the Tripartite Agreement (undated);

(e) transfer affidavits in relation to Hulls 189 and 190 both dated 24 April 2007;

(f) Lloyd's Register Certificate Nos SNG 0401068 and SNG 0401070;

(g) two reports from Richie & Bisset (Far East) Pte Ltd) dated 12 December 2006 on the valuation of Hulls 189 and 190); and

(h) EIMC's audited financial statements for the financial years ended 31 December 2006 and 31 December 2007, certified on 31 March 2008 (collectively referred to as "the 2006/2007 Financial Statements").

24 For convenience, I have reproduced in full the text of the Investment Agreement, the Tripartite Agreement, the transfer affidavits both dated 24 April 2007 in relation to Hulls 189 and 190 ("the Transfer Affidavits"), the addenda (both dated 24 April 2007) to the Transfer Affidavits ("the Transfer Addenda"), the two memoranda of understanding (both dated 30 April 2008)("the April 2008 MOUs") and the addenda (both dated 30 April 2008) to the April MOUs ('the MOU Addenda"). They form annexures to this Judgment (*ie*, Annexures (A) to (J)).

[LawNet Admin Note: Annexures (A) to (J) are viewable only to LawNet subscribers via the PDF in the Case View Tools.]

25 Mr Hsiao and Mr Chiao were present at the 24 June Presentation. [note: 14] Mr Chiao pointed to the portion titled "Capital (Paid-in)" in the 2006/2007 Financial Statements shown to Mr Qin. Mr Qin claimed that he noted a liability of about NTD 1.3 billion indicated as "payable" in the 2006/2007 Financial Statements. Apparently, Mr Chiao told him that this was due to loans obtained by EIMC in 2007, and that the loans were used to finance the purchase of Hulls 189 and 190. In fact, Mr Qin claimed that Mr Chiao made the following oral representations:

(a) that the Hull 189 Shipbuilding Contract and the Hull 190 Shipbuilding Contract were signed by a well-known shipbuilding company from Singapore (presumably Marinteknik), which fortified Mr

Qin's belief that the documents shown to him were reliable;

(b) that EIMC had procured two vessels from Marinteknik, but those vessels had eventually been sold to another company in Hong Kong;

(c) that the proceeds of sale of the two vessels had been used to procure two other new vessels from Marinteknik, but it would take two to three years to build those vessels; and

(d) that Marinteknik's Priscilla had recommended that EIMC buy a four-year old vessel also built by Marinteknik (*ie*, the *OCEAN LALA*), which, at that time, was operating in Spain.

26 At the 24 June Presentation, Mr Qin was informed that the Presentation Documents (save for the Investment Agreement) had been prepared by Marinteknik and Priscilla.

27 On 30 June 2008, P1 and EIMC executed the Subscription Agreement and the Loan Agreement. Pending closing of the Subscription Agreement which was dependent on compliance with regulatory procedures and the incorporation of a Taiwanese entity to own the new shares, P1 granted a loan of US$19.193 million to EIMC on 23 July 2008 to pay for the balance of the purchase price of the *OCEAN LALA*.

28 After P2 was incorporated, P1 sent to P2, a sum of US$19.193 million, which was then transferred by P2 to EIMC on 22 October 2008. In return for the investment, P2 obtained newly-issued shares in EIMC, which gave P2 a 48.81% shareholding in EIMC. The loan of US$19.193 million was then repaid by EIMC to P1.

29 EFT's pleaded case is that P1 invested in EIMC through its subsidiary, P2, in October 2008. [note: 15] Thereafter, EFT took over the management of EIMC sometime in November 2008. However, Mr Qin was appointed a director of EIMC in July 2008.

30 The Subscription Agreement of 30 June 2008 was ratified by two special resolutions made by P1's board of directors; the final decision to proceed with the investment in EIMC was approved by P1's board of directors on 24 September 2008 after Mr Qin showed the board, EIMC's business plan in relation to the *OCEAN LALA*, and informed the board of the Presentation Documents described in [23] above. [note: 16]

31 Mr Qin said that some material documents were withheld from EFT. These were the Transfer Addenda (see [41] below)), the April 2008 MOUs and MOU Addenda (see [46]–[47] below), all of which came to light in 2010 after EFT filed for pre-action discovery in Singapore.

32 Based on the evidence recounted above, Mr Qin's complaint is that the oral misrepresentations made by Mr Chiao at the 24 June Presentation and in the Presentation Documents which carried false statements were, "part of a conspiracy amongst the Defendants to defraud potential fund providers". [note: 17] He alleges that the Transfer Addenda were intentionally withheld from him; and that the Presentation Documents were part of Priscilla's plan which was to "defraud fund providers like EFT, but at the same time she wanted [the Transfer Addenda] to protect herself from any liability or consequences that may arise from the [Transfer Affidavits]". [note: 18]

Circumstances in which the Presentation Documents signed by Marinteknik came about

33 As stated, on 15 November 2005, Marinteknik and Mr Lu (D4) entered into the 2005 shipbuilding

contracts for the construction and sale of two new catamarans designated Yard Hull No 189 (*ie*, Hull 189) and Yard Hull No. 190 (*ie*, Hull 190) respectively. The proper law of the 2005 shipbuilding contract was Singapore law. The purchase price was originally US$25 million for each newbuilding. However, the purchase price of each newbuilding was increased to US$27.5 million in two addenda, both dated 15 June 2006. The 2005 shipbuilding contracts and the addenda were signed by Priscilla in her capacity as a director of Marinteknik. Mr Lu (D4) was later sent invoices dated 23 June 2006, one for each newbuilding for the sum of US$27.5 million (a total of US$55 million).

11 July 2006 – 16 April 2007

34 As mentioned above, pursuant to the Investment Agreement dated 11 July 2006, Mr Lu would acquire 48,750,000 ordinary shares in EIMC (incorporated on 29 June 2006) and in return for the shares, Mr Lu was to "novate" the 2005 shipbuilding contracts to EIMC. The Investment Agreement was governed by Taiwanese law. Clause 2 of the Investment Agreement stated that, first, Mr Lu had paid US$15 million to Marinteknik for Hull 189 and Hull 190, and second, EIMC and Mr Lu agreed to enter into a "Tripartite Agreement" with Marinteknik under which EIMC would assume Mr Lu's remaining debt of US$40 million (which was payable to Marinteknik). Priscilla testified that she was not shown the Investment Agreement or a copy of it until a copy was produced by EFT during pre-action discovery. [note: 19]

35 The Tripartite Agreement was executed by: (a) Priscilla on behalf of Marinteknik; (b) Mr Lu; and (c) Mr Hsiao on behalf of EIMC. The Tripartite Agreement was undated. According to Priscilla's recollection, she signed the Tripartite Agreement during her visit to Taiwan between 11 and 15 July 2006. [note: 20] Clauses 1 and 2 of the Tripartite Agreement read:

> 1. After the tripartite agreement signed, the Memorandum of Understanding signed on 9th March 2006 will [*sic*] automatically become invalid. On 7th July 2006, [EIMC] has paid US$100,000 to [Marinteknik]. The Tripartite had agreed that this payment is a part of final balance money paid by [Mr Lu] to [Marinteknik]. However, [EIMC] will continue the liability of the original SHIPBUILDING CONTRACT HULL 189/190 signed by [Mr Lu] and [Marinteknik].
>
> 2. [Marinteknik] and [Mr Lu] and [EIMC] agree that at the time of the delivery of the vessel under the SHIPBUILDING CONTRACT HULL 189/190:
>
> (a) [EIMC] shall pay to [Marinteknik] the balance of contract price of US dollars Twenty Million (USD 20,000,000) in name of HULL 189 by irrevocable L/C way by end of July 2006.
>
> (b) [Marinteknik] shall deliver the vessel to [Mr Lu] within 8 weeks upon receiving the irrevocable L/C of Hull 189 from [EIMC].
>
> (c) [EIMC] shall pay to [Marinteknik] the balance of the contract price of US Dollars Nineteen Million and Nine Hundred Thousand (USD 19,900,000) in the name of HULL 190 by irrevocable L/C way by a mutual agreed date within 2006. The amount US $100,000 as clause 2. [M]entioned to be treated as the advance payments guarantees of Hull 190 to [Marinteknik].

36 It is undisputed that at the time the Tripartite Agreement was signed Mr Lu had not paid US$15 million to Marinteknik. In fact, there were letters exchanged between Priscilla and EIMC (addressed to Mr Hsiao) stating that as at 30 August 2006 [note: 21] and later 20 March 2007, the outstanding amount owed to EIMC of US$ 27.5 million per vessel remained unpaid.

37 Lloyd's Register certified the stage of completion of Hulls 189 and 190 to be 90% completed as at 25 August 2006. [note: 22] The construction of the two hulls were completed before 8 December 2006 as that was the date Ritchie & Bisset (Far East) Pte Ltd valued Hulls 189 and 190 at US$28 million each. [note: 23]

38 On 9 April 2007, a letter signed by Ms Gurdip Kaur (on behalf of Marinteknik) was sent to EIMC stating that the 2005 shipbuilding contracts had already been rescinded due to EIMC's failure to make payment of the US$27.5 million promised for Hull 189. [note: 24]

39 On 16 April 2007, Priscilla sent a letter to Mr Hsiao pursuant to a telephone conversation between them stating that Marinteknik would assist EIMC for the final time, and that the assistance was "only...documentary in regards to securing your financing and for no other purpose whatsoever". [note: 25]

24 April 2007 – 24 July 2007

40 On 24 April 2007, two documents entitled "affidavits" – *viz*, the Transfer Affidavits – were signed by Priscilla (on behalf of Marinteknik), Mr Hsiao (on behalf of EIMC) and Mr Lu. The Transfer Affidavits stated that Hull 189 and Hull 190 had been fully paid for, and Marinteknik purported to transfer 100% of the shares in the two hulls to Mr Lu. The Transfer Affidavits also stated that: (a) Mr Lu had paid the US$15 million to Marinteknik; (b) Mr Lu, through EIMC, had paid the balance of the purchase prices of Hulls 189 and 190 (a total of US$40 million) under the 2005 shipbuilding contracts; and (c) Marinteknik had transferred 100% of the shares in the two hulls to Mr Lu. Statements (a)-(c) were factually untrue.

41 Statements (a)-(c) in the Transfer Affidavits were qualified in the Transfer Addenda which were signed by Priscilla (on behalf of Marinteknik), Mr Hsiao (on behalf of EIMC) and finally Mr Lu. The Transfer Addenda concerned the payment of the US$15 million by Mr Lu and the addendum for Hull 189 stated:

> ...whereby the said deposit amount was reflected in the Affidavit for usage on documentation only to assist Excalibur International Marine Corporation, Taiwan in increasing their Paid-Up Capital. There was no physical payment of funds made whatsoever...
>
> Also the aforesaid transfer of shares and title of the said vessel and all other assigns were never effect [sic] physically.
>
> Supposedly by 24th July 2007, [Mr Lu] and [EIMC] are unable to fulfil the Shipbuilding Contract Hull 189 to pay the total contract price of USD 27,500,000 for the vessel to [Marinteknik], the Affidavit dated 24th April 2007 shall be treated null and void immediately.

The addendum for Hull 190 was, *mutatis mutandi*, in the same terms. The validity period of the Transfer Affidavits was for three months from 24 April 2007 to 24 July 2007.

42 On 5 July 2007, EIMC wrote to Marinteknik stating that EIMC's paid-up capital had been increased to US$15 million and that "our book [sic] recognise the paid-up capital to increase around US$25 million totally very soon." [note: 26] This letter was signed by Mr Hsiao, and the subject matter was Hulls 189 and 190. Mr Hsiao also wrote on the mode of payment stipulated in the 2005 shipbuilding contracts:

> We are working very hard with our Bankers to fulfil the issuance of the letters of credit which we expect to receive very soon.

43 On 7 July 2007, Marinteknik wrote to EIMC. The letter was signed by Priscilla. She thanked Mr Hsiao for some documentation from the Industrial Bank of Taiwan to show the progress of EIMC's loan application. She wrote: [note: 27]

> Your pleas for assistance are continuously noted and highlighted to our management. Should your financing with IBT [the Industrial Bank of Taiwan] be successful, we can in future consider signing newbuilding vessels with you.

44 On 13 July 2007, Priscilla co-signed with EIMC (represented by Mr Hsiao) and Mr Lu, a letter entitled "Letter of Undertaking" stating that Marinteknik agreed to assist EIMC to sell Hulls 189 and 190 at 75% of the purchase price originally paid by EIMC if EIMC were to default on the loan conditions between EIMC and its bankers within a year of delivery of the vessels to EIMC. [note: 28] Priscilla explained that this Letter of Undertaking was requested by Fuhwa Bank and Taishin Bank for their comfort. [note: 29] The full text of the Letter of Undertaking is found at Annexure (G).

[LawNet Admin Note: Annexure (G) is viewable only to LawNet subscribers via the PDF in the Case View Tools.]

15 January 2008

45 On 15 January 2008, Marinteknik contracted to sell Hulls 189 and 190 at US$30 million each to Giant Dragon. Through two Bills of Sale dated 1 August 2008 and 29 August 2008 respectively, Marinteknik transferred all of its shares in the Hulls 189 and 190 to Giant Dragon.

30 April 2008 - 9 June 2008

46 On 30 April 2008, Priscilla and Mr Hsiao signed the April 2008 MOUs which stated that the US$15 million deposit (which deposit was suggested to have been paid by Mr Lu to Marinteknik in the Tripartite Agreement) was to be transferred as down-payment for the purchase of two newbuildings to be constructed by Marinteknik (*ie*, Hulls 189A and 190A) and each newbuilding was priced at EURO 26 million.

47 The MOU Addenda (for Hull 189A and 190A respectively), both dated 30 April 2008, were also executed by Priscilla on behalf of Marinteknik. The addendum to the memorandum of understanding for Hull 189A stated that the buyer (Mr Lu) agreed that:

> ...[T]he payment of USD 7,500,000 as deposit for the subject vessel was never paid or transferred to Marinteknik...whereby the said deposit amount was reflected in the Affidavit for usage on documentation only to assist [EIMC] in increasing their Paid-up capital. There was no physical payment of funds made whatsoever. The said amount is still owing by [EIMC] for [Hulls 189A] in accordance *[sic]* with the Shipbuilding Contract to the builder of the vessel.
>
> Also any transfer of shares and title of the said vessel and all other assigns were never effected physically.
>
> Supposedly by 09th June 2008, [Mr Lu] and [EIMC] are unable to fulfil the SHIPBUILDING CONTRACT [for Hulls 189A] and pay the 1st Instalment of the contract price for the vessel, the

Memorandum of Understanding dated 30th April 2008 shall be treated as null and void immediately.

The addendum to the memorandum of understanding for Hull 190A was, *mutatis mutandi*, in the same terms. The validity period of the April 2008 MOUs was from 30 April 2008 to 9 June 2008.

48 The April 2008 MOUs were rescinded as of 9 June 2008. The rescission was due to non-payment. The non-payment was confirmed in two letters: on 20 May 2008, Priscilla wrote a letter to Mr Hsiao which stated that EIMC had not paid the amounts required; and on 9 June 2008, Priscilla's letter to Mr Hsiao stated that as the first instalment payment for Hulls 189A and 190A remained unpaid, the April 2008 MOUs were rescinded as of 9 June 2008.

Priscilla's evidence on Marinteknik's assistance to EIMC and on EFT

49 Priscilla was appointed a director of Marinteknik on 8 January 1993. Marinteknik has been a builder of aluminium vessels, including catamarans for over 25 years. It has a shipyard at Tuas. Marinteknik has an overseas market, and catamarans built by Marinteknik operate in countries like Italy, France, Spain, India, the Philippines and Hong Kong. [note: 30] As the director in charge of marketing, Priscilla was authorised to sign on behalf of Marinteknik the series of documents which are the subject matter of the Singapore Action (see [23] above). She testified that she had obtained no personal benefits whatsoever from the execution of the series of documents. Her motive was entirely commercial as the sale of Hulls 189 and 190 for EIMC's cross-strait ferry service was a way to promote "Marinteknik-built catamarans" in Taiwan and China. [note: 31] Priscilla testified that she had told Mr Hsiao "not to circulate [the Transfer Affidavits] because it's between Lu and the bank and Marinteknik". [note: 32]

50 Mr Hsiao (D3) was introduced to Priscilla by a Taiwanese ship broker, Bill Duan of Maxmart Shipping & Trading Co Ltd, Taiwan. She met Mr Lu (D4) in November 2005 when he, Mr Hsiao, Bill Duan and a few others visited Marinteknik's yard to discuss the purchase of Hulls 189 and 190. [note: 33]

51 During her visit to Taiwan from 11 to 15 July 2006, Priscilla was introduced to several bankers by Bill Duan and Mr Hsiao. She met bank officers from the Industrial Bank of Taiwan, Fuhwa Bank (Taiwan), and Taishin International Bank (Taiwan). The impression which she gathered from her discussions with the bank officers was that they were keen to finance EIMC's purchase of Hulls 189 and 190. Priscilla also introduced her contact in Woori Bank, Singapore Branch, (one William Kim Woong Ryeol) to Mr Hsiao. Woori Bank, Singapore Branch is in the business of syndicated loans, ship and aircraft lease finance. [note: 34] In 2007, EIMC was still trying to obtain bank financing for the purchase of Hulls 189 and 190. On 13 February 2007, Mr Hsiao forwarded EIMC's loan application to Industrial Bank of Taiwan to Priscilla [note: 35] in an attempt to assure her that he was still working on securing bank financing.

52 By August 2006, the construction of Hulls 189 and 190 was 90% complete. Yet, EIMC was unable to complete the purchase of these two hulls. Marinteknik cancelled the 2005 shipbuilding contracts twice for non-payment; once on 30 August 2006, and the second time on 9 April 2007. [note: 36] In between the two cancellations, Mr Hsiao persuaded Priscilla to give EIMC more time to pay for the two hulls, and said that he would produce documents to assure Priscilla that he was still working on securing bank financing. The communication on 13 February 2007 in relation to EIMC's loan application to the Industrial Bank of Taiwan (see [51]) above was one example.

53 Priscilla testified that between 9 April 2007 and 24 April 2007, she had conversations with some bank officers, and, on separate occasions, she was told that the banks would provide a letter of credit or telegraphic transfer for the purchase of Hulls 189 and 190 on the same day that EIMC tendered documentary evidence from Marinteknik that the purchase price had been paid. The bank officers did not specify the nature of the documentary evidence required from Marinteknik. [note: 37] During the same period, Mr Hsiao also contacted Priscilla to continue to persuade Marinteknik to give an "affidavit" to satisfy the banks that the purchase price had been paid so that the banks would disburse funds to EIMC by way of a refinancing of Hulls 189 and 190. [note: 38] Priscilla does not deny that the Transfer Affidavits were to assist EIMC "in increasing its paid-up capital and showing title of the vessels to EIMC although the deposit and the purchase price for Hulls 189 and 190 was not paid by Lu and EIMC to Marinteknik shipbuilders." [note: 39]

54 It was a Catch-22 situation for Mr Lu and EIMC. Without Marinteknik's cooperation, EIMC would not be able to obtain bank financing to buy Hulls 189 and 190. Priscilla agreed to assist because she expected to receive (as she was told by Mr Hsiao) on the same day, *ie* 24 April 2007, evidence that the purchase price would be remitted. [note: 40] She saw the paper transaction between Marinteknik, EIMC and Mr Lu as a private arrangement, which would not have the legal effect of transferring ownership of Hulls 189 and 190 to Mr Lu and/or EIMC. The Transfer Affidavits were not witnessed by a commissioner for oaths or notary public, and the Transfer Affidavits could not transfer legal title as this could only be done by a Bill of Sale. [note: 41] Moreover, as Hulls 189 and 190 were newbuildings, a Protocol of Delivery and Acceptance would have to be issued to transfer title to the buyer. Marinteknik would have to issue a Builder's Certificate specifying the particulars of Hulls 189 and 190 and confirming that the delivery of the vessels was free of all liens and encumbrances (see cl 6.02 of the 2005 shipbuilding contracts).

55 The Transfer Affidavits were rendered on 24 April 2007. When no evidence of remittance was received by the close of business on that day, Priscilla called Mr Hsiao and it was agreed that the Transfer Addenda be issued. [note: 42] By the Transfer Addenda, it was stipulated that the Singapore defendants' assistance was for a limited period of time *viz* three months. Despite the Singapore defendants' assistance, on the expiry of the deadline of 24 July 2007, EIMC did not obtain bank financing for the purchase of Hulls 189 and 190.

56 Eventually, Marinteknik sold Hulls 189 and 190 to Giant Dragon in January 2008.

57 The next series of documents signed by Marinteknik were the April 2008 MOUs. Again, Mr Hsiao turned to Priscilla for assistance. This time, Mr Hsiao told Priscilla that EIMC could lose its cross-strait ferry licence and needed to protect the licence by showing that it had a contract to buy Hulls 189A and 190A from Marinteknik. [note: 43] Mr Hsiao suggested that EIMC and Marinteknik sign two memoranda of understanding. This would enable EIMC to continue to negotiate with bankers. [note: 44] Priscilla agreed to assist and the April 2008 MOUs were signed. She also signed the MOU Addenda which stipulated that Marinteknik's assistance was for a limited period of time, *viz*, from 30 April 2008 to 9 June 2008.

58 With respect to EFT, Priscilla said that she had never heard of EFT before and had no knowledge of the existence of EFT and EFT's investment in EIMC until EFT took out pre-action discovery proceedings against the Singapore defendants in or around December 2009. [note: 45] Priscilla learnt more about EFT's investment in EIMC from the arbitration commenced by Ezone against EIMC on 16 June 2010 for the unpaid balance of the purchase price of "*OCEAN LALA*". [note: 46] She

found out at the London arbitration hearing, which she attended in July 2011, that EFT's equity investment in EIMC was made in connection with EIMC's purchase of the *OCEAN LALA.*

Conspiracy to injure by unlawful means: the law

59 Section B of the amended Statement of Claim is entitled "Tort of conspiracy". Whilst the plea is that the four defendants in the Singapore Action have conspired "with/without the predominant purpose of injuring the Plaintiffs by lawful/unlawful means and had in fact inflicted damages on the Plaintiffs" [note: 47], the cause of action that is being pursued in EFT's Closing Submissions is unlawful means conspiracy. EFT's executive summary in the Closing Submissions firmly characterised EFT's cause as action as follows:

> The Plaintiffs in the present suit are suing all four Defendants for conspiring to injure them through unlawful means of deceit and fraudulent misrepresentation.

60 EFT's pleaded case of dishonest assistance and knowing receipt was dropped at the trial.

61 It is now convenient to set out the elements of the tort of unlawful means conspiracy. The requirements of unlawful means conspiracy are stated in *Quay Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637, where Lai Kew Chai J (delivering the judgment of the court) said (at [45]):

> A conspiracy by unlawful means is constituted when *two or more persons combine* to commit *an unlawful act* with *the intention of injuring or damaging the plaintiff*, and *the act is carried out* and *the intention achieved*.
>
> [emphasis added]

62 This statement of the law was approved in *Chew Kong Huat v Ricwil (Singapore) Pte Ltd* [1999] 3 SLR(R) 1167 at [34] and more recently in *Beckkett Pte Ltd v Deutsche Bank AG* [2009] 3 SLR(R) 452 ("*Beckkett (CA)"*) at [120].

63 Conspiracy by unlawful means requires an agreement between or a combination of two or more persons to use unlawful means. It is not necessary that every overt act is done by every conspirator, but the overt act which is unlawful must be done pursuant to the conspiracy (see *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER (Comm) 271 ("*Kuwait Oil*") at [111]. In other words, there must be concerted action after the agreement. An agreement alone is not enough in civil conspiracy (see Paul McGrath, *Commercial Fraud in Civil Practice* (Oxford University Press, 1st Ed, 2008) at para 14.11 for the distinction between civil and criminal conspiracy).

64 In this area of the law, the unlawful means engaged in by the conspirators as a means of inflicting harm do not have to be independently actionable against any of the conspirators (see *Beckkett (CA)*) at [121] approving this statement of law in *Revenue and Customs Commissioners v Total Network SL* [2008] 1 AC 1174 ("*Total Network*"), per Lord Walker of Gestingthorpe at [94]).

65 Chan Sek Keong CJ in *Beckkett (CA)* (at [120]) said that in unlawful means conspiracy, the element of unlawfulness should, in the context of conspiracy, cover both criminal and tortious acts. In other words, criminal conduct can constitute unlawful means where the criminal conduct was not merely incidental, but was the instrument or method by which the conspirators intentionally inflicted harm on the plaintiff.

66 The phrase 'unlawful' means has two elements: the acts involved are 'unlawful' and the

'unlawful' acts were the means of inflicting harm on the plaintiff. As Lord Walker reminded at [96] of *Total Network*:

> What is important, to my mind, is that in the phrase "unlawful means" each word has an important part to play. It is not enough that there is an element of unlawfulness somewhere in the story

67 Absent the element of intention, the tort is not made out. The elements of knowledge (the state of mind of a defendant) and intention are closely connected in unlawful means conspiracy. Although the House of Lords in *OBG Ltd and another v Allan and others* [2008] 1 AC 1 ("*OBG*") were not concerned with unlawful means conspiracy, the views expressed in *OBG* on the mental requirements of the tort of causing loss by unlawful means are applicable to the tort of conspiracy (see *Meretz Investments NV v ACP Ltd and others* [2008] Ch 244 at [146] per Arden LJ.) In this context, what is required is actual intention or reckless indifference. Mere foreseeability of a consequence does not satisfy the requirement of intention (per Lord Hoffmann in *OBG* at [43]). A defendant's foresight that his or her unlawful conduct may or will probably damage the plaintiff is not enough because it is not equated with intention for this tort (per Lord Nicholls in *OBG* at [166]). The same applies to knowledge. Relevant knowledge is actual knowledge or reckless indifference. Reckless indifference in this context means "a conscious decision not to inquire into the existence of a fact" (per Lord Hoffmann in *OBG* at [41]). In a more colourful parlance, what is required is blind-eye or Nelsonian knowledge.

68 It is therefore insufficient that the conspirators' unlawful acts *coincidentally* harmed the plaintiff. Lord Walker in *Total Network* (at [93]) stated:

> [A]ll the statements of general principle in the classic cases seem to me to be consistent with the proposition that unlawful means, both in the intentional harm tort and in the tort of conspiracy, include crimes and torts (whether or not they include conduct lower on the scale of blameworthiness) provided that they are indeed the means by which harm is intentionally inflicted on the claimant (rather than being incidental to it).

69 Lord Nicholls in *OBG* dealing with the question of intention to harm, said (at [166]):

> Lesser states of mind do not suffice. A high degree of blameworthiness is called for because intention serves as the factor which justifies imposing liability on the defendant for loss caused by a wrong otherwise not actionable by the claimant against the defendant. The defendant's conduct in relation to the loss must be deliberate. In particular, the defendant's foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention for this purpose. The defendant must *intend* to injure *the claimant*. This intent must be a cause of the defendant's conduct, in the words of Cooke J in *Van Camp Chocolates Ltd v Auslebrooks Ltd* [1984] 1 NZLR 354, 360
>
> [emphasis in original]

70 In summary, what EFT has to prove are: (a) the nature of the agreement or combination; (b) the unlawful means alleged; (c) each of the unlawful acts relied on; (d) the fact that each act was carried out pursuant to the agreement or combination; and (e) the relevant state of mind of the alleged conspirator (see *De Krassel and Chu Vincent* [2010] 2 HKLRD 937 at [39]-[42]).

71 In the light of these principles, a number of points may be made.

(a) Standard of proof

(a) Standard of proof

72 The charge of unlawful means conspiracy made against Marinteknik and Priscilla is a serious allegation. The burden of proof is on EFT. Whilst the standard of proof is that of a balance of probabilities, cogent and compelling evidence commensurate with the seriousness of the allegation is required before the court concludes that the allegation is established on a balance of probabilities. The oft-quoted statement in the cases is that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on a balance of probabilities (per Lord Nicholls in *Re H (Minors)* [1996] AC 563 at 586-587); see also the burden of proof as discussed in *Hornal v Newberger Products Ltd* [1954] 1 QB 247 and endorsed by our courts in *Tang Yoke Kheng v Lek Benedict* [2005] 3 SLR(R) 263 and *Chua Kwee Chen and others (as Westlake Eating House) and another v Koh Choon Chin* [2006] 3 SLR(R) 469).

(b) Company and director

73 The Singapore defendants are a company (*viz*, Marinteknik) and its director (*viz*, Priscilla). Although the position taken in the Amended Statement of Claim is that the subject documents were signed by Priscilla as a director on behalf of Marinteknik, Priscilla is also sued personally. This is made clear in the Amended Reply, which states that Priscilla "is a party to the conspiracy in her personal capacity". [note: 48] It is clear from Lord Hoffmann's statement in *Standard Chartered Bank v Pakistan Shipping Corporation* [2003] 1 AC 959 at 968 that a fraudulent director cannot escape personal liability by relying on the representative capacity in which he uttered his falsehoods.

(c) The Ocean Frost [1985] 1 Lloyd's Rep 1

74 Mr Hee for EFT quotes from the judgment of Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyd's Law Reports 1 at 57 to underscore the court's approach to assessing the credibility of a witness, namely, by testing the evidence given in the witness box against not only the contemporaneous documents, but also other objective facts, the overall probabilities and the motives of those involved. This approach is not controversial where the witnesses give conflicting evidence, and in ascertaining the truth of each person's testimony, it is necessary to consider the objective facts, contemporaneous documents and the overall probabilities.

75 In this case, the occasion for conflicting evidence has been minimised because, interestingly, the two main witnesses of fact, Priscilla and Mr Qin, testified on events that occurred at two distinct periods of time: Priscilla was involved in the events *before* 23 and 24 June 2008, while Mr Qin was involved in the meetings on 23 and 24 June 2008 in Taiwan. Neither has personal knowledge of events involving the other. Priscilla has no personal knowledge of the June 2008 meetings in Taiwan and Mr Qin has no personal knowledge of events occurring *before* 23 June 2008. The short point is that their evidence would not and did not overlap. Moreover, the oral representations to Mr Qin are in any event not confined to representations made in or by the production of the Presentation Documents.

76 Above all, it is because there were in fact two distinct periods and two different transactions in this case that the court has to be watchful of the allegation of conspiracy and of what precisely is being alleged (see [90] below).

Conflict of laws

77 The double actionability rule with the flexible exception test requires the place of the tort to be determined (see *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*"). The common law test requires the court to look back at the series of

events constituting the tort and to ask where in substance the cause of action arose. In the present case, the substance of the tort test is to identify whether the tort was committed in substance in Taiwan or Singapore (see *Metall und Rohstoff AG v Donaldson Lufkin & Jenrette Inc* [1990] QB 391). Applying the factors outlined by Mance J in *Grupo Torras SA v Al-Sabah (No 5)* [1999] CLC 1469 at 1654) – namely, the identity, importance and location of the conspirators; the place(s) of any agreement or combination; the nature and place(s) of the concerted action; the nature and place(s) of any unlawful act or means; the plaintiff's location and the place(s) where he or it suffered loss – I find Taiwan to be the place of the tort. The 24 June Presentation was in Taiwan. Mr Chiao's oral misrepresentations were made in Taiwan. The Presentation Documents were allegedly shown to Mr Qin in Taiwan. The Subscription Agreement and the Loan Agreement were signed in Taiwan. EFT's investment was for shares in EIMC, a Taiwanese company, for the purpose of acquiring a capital asset for EIMC's cross-strait ferry business. The funds for the investment were remitted to P2, which gave the money to EIMC. P2 was a Taiwanese company and a wholly-owned subsidiary of P1. P2 was set up to hold the shares in EIMC, and the subject matter of the investment was very much Taiwan-centric.

78 The 2006/2007 Financial Statements were certified by auditors, practising in Taiwan, *viz*, We Win CPAs Co. EIMC's paid-up capital was increased in Taiwan. Furthermore, the Investment Agreement and the Tripartite Agreement were signed in Taiwan. In contrast, the Transfer Affidavits were signed in Singapore by (a) Marinteknik, a Singapore company; (b) Mr Hsiao for EIMC; and (c) Mr Lu. Both Mr Hsiao and Mr Lu are from Taiwan. On the other hand, the USA element in the case is Mr Qin and P1, and the investment is in US Dollars.

79 Since the series of events constituting the tort substantially took place in Taiwan, the double actionability rule requires EFT to show that the wrongs are actionable under Taiwan law and Singapore law. So far, I have touched on the law of the *lex fori* in [61]-[70] above.

80 EFT's pleadings averred to Taiwanese company law, but not the *lex loci delicti* of the tort. EFT called a Taiwanese lawyer to testify on the Singapore defendants' issue estoppel defence that was raised in the context of the judgments handed down in Taiwan (see [12]-[18] above). No conflict of laws issue was raised in the pleadings; the parties proceeded, incorrectly in my view, on the basis that the principles of law which apply in Taiwan are presumed to be identical to the law on unlawful means conspiracy in Singapore.

81 On 22 November 2012, the parties were invited to consider whether there were any conflict of laws issues in this case. In this regard, the Registrar's letter stated:

> It may be relevant for the parties to consider whether the plaintiffs were required to plead and prove Taiwanese law (as the *lex loci delicti*) in order for the wrong committed in Taiwan to be actionable in Singapore (as the *lex fori*).

The parties tendered written submissions on 29 November 2012.

82 Mr Haridass submitted on the applicability of the double actionability rule and EFT's failure to plead and prove that the alleged wrongdoings committed in Taiwan were actionable under Taiwanese law. Mr Hee held opposite views. Whilst the conspiracy was connected to Singapore and Taiwan, Mr Hee maintained that it was not clear-cut as to where "the tort can be said to have been committed." [note: 49] Eventually, Mr Hee settled on Singapore as the place of the tort. Mr Hee relied on the events *before* 23 June 2008 to argue that they were "the series of events constituting the tort" and, in substance, the cause of action arose in Singapore. He relied on the Transfer Affidavits and the April 2008 MOUs for the Singapore connection, and contended that without these false documents, Mr

Hsiao would not have been able to register and increase EIMC's paid-up capital. The Singapore defendants' assistance was rendered in Singapore, although Mr Hee conceded that the Subscription Agreement "was the final fruition of the Defendants' conspiracy". [note: 50] Mr Hee argued that the conspiracy was committed in Singapore and in this case, the *lex loci delicti* and the *lox fori* coincided. Hence, there was no need to plead and prove Taiwanese law.

83 Mr Hee's fallback position, if the court disagreed with him on his first argument, was that there was no need to plead and prove Taiwanese law. The alleged wrong was of such a character that it would have been actionable if committed in Singapore. A plaintiff like EFT, Mr Hee submitted, was not required to plead or prove Taiwanese law in order for the tort to be actionable. He relied on *Goh Chok Tong v Tang Liang Hong* [1997] 1 SLR(R) 811 SGHC 104 ("*GCT*") and passages from Dicey, Morris and Collins on The Conflict of Laws (14th ED) ("Dicey") at paras 35-145 in support of his proposition. *GCT* is a defamation case. Recently, Philip Pillai J in *Low Tuck Kwong v Sukamto Sia* [2012] SGHC 233 ("*Low Tuck Kwong*") applied the double actionability rule to a defamation case. GCT was not referred to in *Low Tuck Kwong.* In *Low Tuck Kwong*, Pillai J held as follows (at [15]-[17]):

> The place of commission of the tort of defamation was the place in which the defamatory statement was published. Thus, the Indonesian Publications and Indonesian Republications were alleged torts committed in Singapore. For the Singapore Republications, the plaintiff need only show that they were actionable under Singapore law. For the Indonesia Publications and Indonesian Republications, the double actionability rule required the plaintiff to show that they were actionable under both Singapore law and Indonesian law. If the plaintiff proved that the publications and republications were so actionable, the defendant must, to avoid liability, prove that he had a defence. For the Singapore Republications, the defendant must prove that he had a defence under Singapore law. However, for the Indonesian Publications and Indonesian Republications, it sufficed for the defendant to prove that he had a defence under either Indonesian law or Singapore law.

84 For present purposes, I will simply distinguish the choice of law rule for defamation cases from cases involving unlawful means conspiracy, and adopt the general principle that double actionability is required. The commentary at para 75.375 of *Halsbury's Laws of Singapore*, vol 6(2) (LexisNexis, 2009) explains:

> [T]he wrong must be actionable under the foreign law in the sense that civil liability must be shown in respect of the very same claim made in the forum. In default of proof of the law of the place of the tort, it will generally be assumed to be the same as the law of the forum.

85 With respect to the presumption that foreign law is the same as Singapore law, this presumption is a rule of convenience. Taiwan is a non precedent civil law jurisdiction, and as the Court of Appeal in *Rickshaw Investments* observed (at [43]), the court may take notice, as I have done in this case, that the laws of Taiwan are likely to be different:

86 Mr Hee's argument is that EFT's conspiracy case is based on the events that occurred *before* 23 June 2008. The Transfer Affidavits and Transfer Addenda were signed in Singapore, nothing else happened thereafter in Singapore. Under the law on unlawful means conspiracy, the existence of an agreement alone is not good enough. The conspiracy is committed only if the agreement is implemented (see [63] above). Applying this principle, for EFT to successfully sue for unlawful means conspiracy, Mr Hee will have to identify the unlawful acts carried out pursuant to the agreement in order to determine the place of the tort.

87 I agree with Mr Haridass that the exception to the double actionability rule does not apply in

this case.

88 Since it is EFT that is suing the Singapore defendants for a wrong committed in Taiwan, and, in my analysis, the alleged wrong relates to the events from 23 June 2008, evidence ought to have been led by EFT that there is civil liability in respect of the very same claim that is being made in Singapore (*ie*, the *lex fori*). This was not shown. EFT's action is dismissed for this reason.

89 Be that as it may, for completeness, I move on to discuss and decide the claim for unlawful means conspiracy under Singapore law.

Discussion on the alleged conspiracy

Overview

90 Two features in this case stand out: two distinct periods of time and two different transactions (see [76] above). In this regard, it is necessary to examine what precisely is being alleged against the Singapore defendants in the conspiracy charge to see whether each group of events, set in their proper context, are overt acts from which a concurrent or prior combination by the Singapore defendants with Mr Hsiao (D3) and/or Mr Lu (D4) can properly be inferred, and if so, whether the common objective was to deceive EFT. In addition, problems surfaced in this case because the principles of unlawful means conspiracy were supplanted by or mixed up with the tort of deceit principles. In the result, I find that the key ingredients of the tort of conspiracy by unlawful means were not made out.

91 EFT's pleaded case is that the four defendants or any two or more of them conspired to injure EFT by unlawful means. In its pleadings, EFT used the phrase "infringing acts" that "inflicted damage" on EFT. From the way EFT pleaded its case, the "infringing acts" (*ie*, the unlawful acts) that were to form the basis of the unlawful means conspiracy were also alleged to give rise to the tort of deceit or fraudulent misrepresentation. The forefront of EFT's pleadings concentrated on the fraudulent misrepresentations of the Singapore defendants. The thinking seemed to be that liability for unlawful means conspiracy would be made out by reason of the totality of the Singapore defendants' fraudulent misrepresentations contained in the Tripartite Agreement, the Transfer Affidavits and the Investment Agreement which were said to be directed at or intended for potential fund providers like banks, investors, and any person or entity that could provide EIMC with funds. EFT, being a provider of funds (an expression introduced in EFT's Closing Submissions whereas previously, in the Amended Statement of Claim, the averment was made to "potential investors"), would fall into this category. The essence of the fraudulent misrepresentation, so far as is relevant for this case, is the making of false and fraudulent statements that are known to be untrue, intending that the persons to whom the statements are made *(ie*, potential fund providers like EFT) will rely on them and be induced into investing in EIMC. I will elaborate further on EFT's contentions in due course. Suffice it to say at this point that satisfying the elements of the tort of deceit would certainly not be sufficient to establish a case on unlawful means conspiracy. Basically, the key elements of the two torts are different. As Lord Walker in *Total Network* put it at [95]-[96]], "It is not enough that there is an element of unlawfulness somewhere in the story".

92 The holding of Briggs J in *Bank of Tokyo-Mitsubishi UFJ Ltd and another v Baskan Gida Sanayi Ve Pazarlama AS and 13 others* [2010] Bus LR Digest at [847] is a useful guide on what is required in the analysis of the facts to draw out from the allegations pleaded the key ingredients of the tort of conspiracy by unlawful means. In that case, Briggs J held that the key elements of the tort of unlawful means conspiracy required an analysis of the extent to which the particular defendant shared a common objective with the primary fraudsters, and the extent to which the achievement of

that common objective was, to the particular defendant's knowledge, to be achieved by unlawful means intended to injure the plaintiff. As there must be an intention to cause harm by unlawful means, the particular defendant must know that the relevant conduct was unlawful. In other words, a defendant is not guilty of conspiracy unless he enters into an agreement with the object of effecting (personally or through another) the unlawful act rendering this agreement unlawful. Briggs J cited, in support of his holding passages from Nourse LJ's judgment in *Kuwait Oil* (at [111]):

> A further feature of the tort of conspiracy, which is also found in criminal conspiracies, is that, as the judge pointed out (at p 124), 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...Thus, it is not necessary for the conspirators all to join the conspiracy at the same time, but we agree with the judge that the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of.

93 At the trial, EFT vigorously pursued the false representations made in the Presentation Documents shown to Mr Qin at the 24 June Presentation. EFT attempted to prove two things: (a) that the Transfer Affidavits were intended to fraudulently increase EIMC's paid-up capital so that banks and investors like EFT would be misled into believing that EIMC was a financially robust company and would thereby be induced to invest in EIMC; and (b) that the Transfer Addenda were not actually shown at the meetings on 23 and 24 June 2008. It was said that the Transfer Addenda were deliberately withheld from EFT. By this argument, EFT's position is that the Transfer Addenda were meant to be read with the Transfer Affidavits, but they were withheld. It must follow from EFT's argument that if the Transfer Addenda were shown, the relevant statements would be contained in the totality of the documents *(ie*, the Transfer Affidavits accompanied by the Transfer Addenda, the Tripartite Agreement and the Investment Agreement) with the result that the Transfer Addenda would explain the Transfer Affidavits. That is to say, there would be no misstatements in the Transfer Affidavits as the true state of affairs would be updated by the Transfer Addenda.

94 The Singapore defendants put EFT to strict proof that the Presentation Documents, in particular the Tripartite Agreement and the Transfer Affidavits executed by Priscilla on behalf of Marinteknik, were shown to Mr Qin. Counsel for the Singapore defendants, Mr Haridass, argues that, firstly, EFT would not have made out its case of misrepresentation if the Tripartite Agreement and the Transfer Affidavits had not been shown to Mr Qin. Therefore, Mr Haridass aimed his cross-examination at discrediting Mr Qin's version of the evidence that he was shown, *inter alia*, the Tripartite Agreement and the Transfer Affidavits. In fact, Mr Qin was asked about this twice by Mr Haridass and on both occasions, Mr Qin answered that he was not shown the Transfer Affidavits. [note: 51] Mr Hee puts Mr Qin's replies down to a momentary lapse, but I find that excuse (proffered in EFT's Closing Submissions) implausible when the Transfer Affidavits constitute the backbone of EFT's case and Mr Qin forgets that they were ever shown to him.

95 Secondly, Mr Haridass argues that there was no intention to inflict harm and cause loss to EFT. The pleaded defence is that the Transfer Affidavits were to assist EIMC to obtain bank financing so as to purchase Hulls 189 and 190, and that it does not follow as a matter of law that the Singapore defendants' intention was to represent a false view of things to a potential investor like EFT who came into the picture almost a year later. Besides, the issue at trial does not resolve itself simply on the basis that EFT belonged to a class of persons who, in the contemplation of the Singapore defendants, would receive the fraudulent misstatements (if established) and be deceived by the misstatements. I will deal with this second argument in due course.

96 For completeness, I should mention some observations made by Mr Haridass. EFT invested in EIMC because Mr Qin saw tremendous business opportunities and benefits that EFT could derive from EIMC's commercially valuable cross-strait ferry licence. However, as an investment, it turned out to be a bad mistake by Mr Qin. There were no spectacular profits to speak of, only disappointing operational losses. Mr Qin sued everyone he could think of. P1's Annual Report for the fiscal year ended 31 March 2011 recorded numerous litigations. Note 17 - "Litigation" recorded that EIMC already owned the *OCEAN LALA before* EFT invested in EIMC. [note: 52] This piece of evidence is material to the question of EFT's alleged loss as the equity investment was the same as the balance of the purchase price of the *OCEAN LALA.* The purchase price of the *OCEAN LALA* was recorded as US$21,961,660 in the same Annual Report, and EFT's equity investment was US$19.193 million. EIMC became the registered owner of the *OCEAN LALA* at the end of 2008. The last payment of US$2,670,881 of the purchase price was withheld and was the subject of litigation between Ezone and EIMC. When Ezone sued EIMC on 18 August 2010 for the balance of the purchase price of the *OCEAN LALA*, EIMC defended the claim and counter sued Ezone on the basis that the *OCEAN LALA* was defective, unseaworthy and not fit for its intended purpose as a cross-strait ferry. [note: 53]

97 As stated earlier, there were other court cases in Taiwan that stemmed from EFT's investment in EIMC, and the Singapore Action is of the same genre.

98 It is important to stand back and put into context the information available to both Mr Hsiao and Mr Chiao, including EIMC, on 23 and 24 June 2008 and compare this information with the impression they were seeking to give to Mr Qin. This litigation is about a state of affairs in EIMC that existed in June 2008 and continued until the closing of the Subscription Agreement in October 2008. The state of affairs in EIMC that existed in June 2008 related to: (a) EIMC's paid-up capital of US$17 million; and (b) Mr Lu's status as the registered shareholder of 48,750,000 shares in EIMC, with his shares recorded as having been paid for.

99 The inquiry below will focus on the specific groups of events that are looked upon as the overt acts to justify an inference of participation by the Singapore defendants in an unlawful means conspiracy to injure EFT. The first group of overt events related to matters like the state of affairs, in part allegedly due to the concerted actions in 2007 of the Singapore defendants and Mr Hsiao (D3) and/or Mr Lu (D4) and the common design or common objective shared amongst the parties at that time. The next specific group of events was a year later, between June 2008 and October 2008. The nub of the issue in this case is whether the concerted actions in 2007, which resurfaced during the events of 2008, were from an agreement or a combination by the Singapore defendants with Mr Hsiao (D3) and/or Mr Lu (D4) to deceive EFT into investing in EIMC by misleading EFT into believing that EIMC was a financially robust company with a paid-up capital of US$17 million.

The witnesses

100 The primary evidence before the court is that of the principal witnesses, Mr Qin and Priscilla who attended the trial and were cross-examined, and the relevant documentation. The problem with the witness evidence in a case like this is that the parties engaged in a fair amount of ex post facto reasoning and arguments made with the benefit of hindsight were introduced as facts in evidence. The court also has to be vigilant of self-serving assertions.

101 The other witness of fact called by EFT is Mr Soon Jiann-Pyng (Mr Soon"), the group general counsel of P1. Mr Soon joined P1 in October 2008 and, as such, was not present at the two June 2008 meetings in Taiwan. However, as general counsel of P1, he seeks in his affidavit of evidence-in chief to primarily argue EFT's case based on his forensic, interpretation and assessment of the

documents. I did not find his evidence of much assistance.

102 The remaining witnesses were put forward as expert witnesses. They were the public accountants who testified on the value of the shares in EIMC in connection with EFT's alleged loss arising from the investment. Mr Abuthahir Abdul Gafoor was the expert witness for EFT and Mr N S Mani testified on behalf of the Singapore defendants.

103 The other expert witnesses were Taiwanese lawyers who were called by each party as expert witnesses on Taiwanese corporation law, and to explain the Taiwanese judgments in relation to the issue estoppel defence raised by the Singapore defendants (see [12]-[18] above).

104 I should, for completeness mention, that Mr Haridass chose not to engage EFT's expert witness, Mr Tsao Chih-Jen ("Mr Tsao"), on any substantive issues, choosing instead to focus on Mr Tsao's failure to provide his qualifications (to qualify as an expert witness under the ROC) and the fact that he is EFT's "representative lawyer" in Taiwan and, accordingly, has an "interest" in EFT's success in the instant suit. Essentially, Mr Haridass questioned his objectivity and independence.

105 As stated earlier, Mr Hsiao (D4) and Mr Lu (D4) did not enter an appearance to the Singapore Action. They also did not defend the Taiwanese proceedings brought by P2.

Nature of the agreement or combination and unlawful means

106 I now turn to the requirement of an agreement between or a combination of two or more persons. If this ingredient is not made out, the claim in unlawful means conspiracy fails.

107 EFT said that the four defendants in the Singapore Action were involved in the conspiracy. Before a court can determine whether a defendant is a party to an agreement between or a combination of two or more persons to carry out a common objective by unlawful means, it is necessary to identify what the agreement is said to be and what part the defendant played in achieving the common objective.

108 I start by examining (a) what common objective the Singapore defendants shared with Mr Hsiao (D3) and/or Mr Lu (D4) at the time of the acts complained of; and (b) what unlawful means were used to attain that common objective. Questions (a) and (b) have to be considered in the light of what precisely is being alleged against the Singapore defendants in the conspiracy charge.

Analysis

109 Mr Qin's complaint was that the oral misrepresentations made by Mr Chiao at the 24 June Presentation, together with the false statements in the Presentation Documents shown to him, were "part of a conspiracy amongst the Defendants to defraud potential fund providers". [note: 54] The common objective was to cheat potential fund investors like EFT. The deceit was perpetrated at the 24 June Presentation in circumstances where oral misrepresentations were made and where the Presentation Documents containing false statements were shown to Mr Qin. According to Mr Qin, the Singapore defendants were a party to the conspiracy as they agreed to and were responsible for creating the false documents like the Tripartite Agreement and the Transfer Affidavits.

110 The time at which the acts complained of were said to occur was identified as the 24 June Presentation, *ie*, 24 June 2008. Now, what were the concerted actions of the Singapore defendants and Mr Hsiao (D3) and/or Mr Lu (D4) and the common design shared amongst these people at that time?

111 The common objective is *not* obvious from the pleadings since the thrust of the averments was that the Singapore defendants were guilty of fraudulent misrepresentations in the Presentation Documents and the 2006/2007 Financial Statements, and that EFT relied on these documents to invest in EIMC. [note: 55] It seems to me that the approach of the pleadings to the Singapore defendants' involvement in producing false documents was more aligned and consistent with a case of the tort of deceit. To illustrate, EFT pleaded that the Singapore defendants created the Presentation Documents identified in [23] above for the purpose of enabling EIMC to inflate its paid-up capital, and that the Singapore defendants created the Presentation Documents knowing that they were false or with reckless disregard as to whether they were true or false. In relation to the four defendants' common design or common objective, the closest averment is in paragraph 7.13 of the Amended Statement of Claim, under the heading "Particulars of knowledge of misrepresentation". There, EFT pleaded that Marinteknik agreed to Mr Hsiao's request to execute the Transfer Affidavits on the basis that the purchase price of Hulls 189 and 190 had been fully paid "in order to assist [Mr Hsiao] and/or EIMC to negotiate with banks and/or potential investors for financing". [note: 56] There were other averments crafted in words often used in an action for deceit. One example is the averment that the defendants made the misrepresentation or allowed the misrepresentation [in the Investment Agreement and Tripartite Agreement] to be made either fraudulently, knowing that it was false and untrue, or recklessly not caring whether it was true or false. [note: 57] Another example relates to the Transfer Affidavits, where the plea is that the Singapore defendants created the Transfer Affidavits knowing or with reckless disregard that the Transfer Affidavits would be used to defraud potential investors into investing in EIMC. [note: 58]

112 I had to traverse various paragraphs of the Amended Statement of Claim and the Amended Reply to work out what the alleged agreement or combination was said to be and what part the Singapore defendants played in that agreement or combination. Pulling together various pieces of the averments, the alleged agreement or combination appears to draw from events that occurred before 23 June 2008. Mr Lu (D4) became a shareholder of EIMC in respect of 48,750,000 ordinary shares in or about July 2006 pursuant to the Investment Agreement dated 11 July 2006. [note: 59] As consideration for the shares, EIMC took over Mr Lu's interest in the 2005 shipbuilding contracts. However, the shares were to be paid by property injected into EIMC. By virtue of Article 274 of the Companies Act of Taiwan, [note: 60] Mr Lu (D4) had to transfer his title, rights and interests in Hulls 189 and 190 to EIMC. [note: 61] In this regard, Mr Hsiao (D3) asked Marinteknik to assist EIMC in increasing EIMC's paid-up capital by transferring the shares in Hulls 189 and 190 to Mr Lu on the basis that the vessels had been paid for in full. According to the pleadings, Marinteknik agreed to Mr Hsiao's request to sign the Transfer Affidavits "in order to assist [Mr Hsiao] and/or EIMC to negotiate with banks and/or potential investors for financing". [note: 62]

113 Again, according to the pleadings, Priscilla (on behalf of Marinteknik), Mr Hsiao (on behalf of EIMC) and Mr Lu executed the Transfer Affidavits on 24 April 2007 that confirmed that the purchase price of Hulls 189 and 190 had been fully paid, and that Marinteknik's title and interest in Hulls 189 and 190 had been transferred to Mr Lu. The Transfer Affidavits were false as: (a) Mr Lu and EIMC had not paid for Hulls 189 and 190; and (b) there was no transfer of Marinteknik's title, rights and interests in Hulls 189 and 190 to Mr Lu. [note: 63] Effectively, the object of the Transfer Affidavits was to enable shares to be registered in Mr Lu's name as paid-up shares.

114 In its Amended Reply, EFT pleaded that the Singapore defendants had participated in the conspiracy by creating and/or executing the 2005 shipbuilding contracts, the Tripartite Agreement and the Transfer Affidavits with the objective of overstating EIMC's equity and assets in the

2006/2007 Financial Statements for the purpose of defrauding potential investors into investing in EIMC, and EFT fell within the class of potential investors. [note: 64]

115 I now come to the Transfer Addenda. Was it also part of the agreement that the Transfer Addenda be withheld from EFT on 24 June 2008? EFT alleged that the existence of the Transfer Addenda was actively suppressed. As to the identity of the persons who withheld the Transfer Addenda, EFT provided in its Further and Better Particulars the following particulars: [note: 65]

> The persons who were involved in the creation and/or endorsement of the Addenda ... or had knowledge of it withheld the same from the Plaintiffs which to the best of the Plaintiffs' knowledge are: Jen-Ho Chiao and the 3rd Defendant, and/or the 1st, 2nd and 4th Defendants.

116 EFT gave Further and Better Particulars of the allegation that Mr Hsiao and Mr Chiao used the Transfer Affidavits and the 2006/2007 Financial Statements during the 24 June Presentation to portray EIMC as a financially robust company worth investing in. [note: 66] The particulars are as follows: [note: 67]

> At the presentation, Jen-Ho Chiao had asked Mr Jack Qin whether he was interested in investing in EIMC. Jen-Ho Chiao told Mr Jack Qin that EIMC had already paid EUR 1.6 million as deposit for the purchase of a vessel(s) for the purposes of the business. Jen-Ho Chiao told Mr Jack Qin that the capital invested by EFT would go towards purchasing a vessel(s) for the purposes of the business. Jen-Ho Chiao then showed Mr Jack Qin the Documents, Certificates, Survey Reports and EIMC's audited Financial Statements for the [financial] years ended 2006 and 2007, which reflected that EIMC's paid up capital had increased from NTD 1,000,000 in the [financial] year ended 2006 to NTD 566,662,500 in the [financial] year ended 2007. This meant that EIMC had a paid up capital of about USD 17 million. The Plaintiffs were also told that the documents were prepared by the 1st and 2nd Defendants, thereby creating the impression that the documents could be relied on.

117 EFT also stated that it was Mr Chiao who informed Mr Qin that the Presentation Documents (save for the Investment Agreement) were prepared by Marinteknik and Priscilla. [note: 68]

118 EFT alleged in its pleadings that it invested in EIMC because it thought that EIMC owned Hulls 189 and 190, relying on the 2005 shipbuilding contracts – however this allegation was dropped in Closing Submissions because in its Answer to Further & Better Particulars, EFT accepted that Mr Qin was told that the vessels had been sold. [note: 69]

119 EFT's disorganised pleadings aside, I now turn to analyse the facts in evidence in relation to questions (a)-(b) (see [108] above).

120 The alleged deceit practised on P1 at the 24 June Presentation was by EIMC, Mr Hsiao and Mr Chiao in Taiwan. Unless the Singapore defendants were co-conspirators with, at least Mr Hsiao (D3), the Singapore defendants could *not* be made liable in Singapore in an action for deceit based on what transpired at the meetings in June 2008.

121 The Singapore defendants' pleaded case on the June 2008 meetings is very clear. They denied any involvement in the June 2008 meetings and denied ever having had dealings with EFT. [note: 70] In fact, it is not disputed that the Singapore defendants were *not* at the meetings held on 23 and 24 June 2008, nor was it EFT's pleaded case, and there is no evidence at all, that the oral

representations and the production of the Presentation Documents to Mr Qin were made by Mr Chiao on behalf of EIMC and on behalf of the Singapore defendants and with the knowledge of the Singapore defendants. In the light of this undisputed set of material facts showing that the Singapore defendants had *no* involvement in the events of June 2008, it is difficult for EFT to show that the Singapore defendants were a party to an agreement or a combination with, at least, Mr Hsiao to injure EFT.

122 It is not disputed that Mr Hsiao (D3) was present at the meetings held on 23 and 24 June 2008. Mr Hsiao was aware of the Transfer Addenda in that he signed the Transfer Addenda on behalf of EIMC on 24 April 2007, but he kept quiet about the existence of the Transfer Addenda and it was that omission that led Mr Qin to allege that the Transfer Addenda were deliberately withheld from EFT. There is no evidence that the Singapore defendants deliberately withheld the Transfer Addenda from EFT. The fact that the Transfer Addenda were not actually shown to Mr Qin at the 24 June Presentation speaks of deceit and fraud on the part of Mr Hsiao and EIMC (represented by Mr Chiao), and *not* on the part of Marinteknik and Priscilla.

123 EFT's case is that it was injured by the unlawful acts of a combination of the four defendants in the Singapore Action. [note: 71]

124 Mr Hee's arguments assume that the June 2008 meetings with Mr Qin involved Priscilla. He argues that the Singapore defendants would know about an impending investor after Priscilla, as a director of Ezone, entered into a contract with EIMC for the sale and purchase of the *OCEAN LALA* on 17 June 2008. In support of his submissions, Mr Hee relies on Priscilla's willingness to sell the *OCEAN LALA* to EIMC after the expiry of the April 2008 MOUs on 9 June 2008 to make the claim that Priscilla must have known that Mr Hsiao and Mr Chiao were going to approach and meet investors such as EFT. This is a bald assertion. None of what is said can qualify as overt acts to properly infer the existence of an agreement between the Singapore defendants and Mr Hsiao (D3) and/or Mr Lu (D4) at the time of the acts complained of (*ie*, on 24 June 2008) to injure EFT by unlawful means.

125 If, for the sake of argument, the Singapore defendants knew, for instance, that the Presentation Documents were going to be shown by Mr Chiao in the presence of Mr Hsiao to Mr Qin at the 24 June Presentation and the Singapore defendants did not stop them, that is not sufficient to prove that the Singapore defendants were a party to a combination to mislead and cheat Mr Qin into getting EFT to invest in EIMC. More to the point, Mr Hee has not produced any authority for the proposition that a person (in the position of the Singapore defendants) who knows that unlawful acts are being committed and who does nothing to stop those acts is a party to a conspiracy to carry out those acts.

126 I find that there is no evidence of an agreement shared between the Singapore defendants and Mr Hsiao (D3) and/or Mr Lu (D4) to resurface and reuse the Presentation Documents, in particular, the Transfer Affidavits and the Tripartite Agreement, at the 24 June Presentation. At this point, I pause to repeat that for unlawful means conspiracy, the test is not whether the Transfer Affidavits were shown with reckless disregard that they would be used to defraud potential investors into investing in EIMC. A defendant is not guilty of conspiracy unless he enters into an agreement or a combination with two or more person with a common objective of effecting an unlawful act (in this case, the making of the false Transfer Affidavits was designed to enable EIMC to obtain bank finance for the purchase of Hulls 189 and 190) rendering this agreement or a combination unlawful. Notably, the element of "intention" in unlawful means conspiracy, which is closely linked with the particular defendant's knowledge, is required as it is intrinsic in the notion of an agreement to commit an unlawful purpose.

127 In order to put the Transfer Affidavits and the Transfer Addenda in their proper context, it is necessary to go back to when these documents are set in their historical context starting with the 2005 shipbuilding contracts and the difficulties EIMC and Mr Hsiao faced in obtaining bank financing to complete the purchase of Hulls 189 and 190. For now, it is important to bear in mind that the Transfer Affidavits were for a particular intended transaction, and that they were also for a particular period of time from 24 April 2007 to 24 July 2007. Notably the Tripartite Agreement and the Transfer Affidavits related to events *before* EFT came into the picture, and even before EIMC thought of buying a second hand catamaran. The Tripartite Agreement and the Transfer Affidavits were already outdated in June 2008, and they were for Hulls 189 and 190. It is undisputed that the first time Mr Qin heard of and met Mr Chiao and Mr Hsiao (D3) was on 23 June 2008.

128 A converse situation – a position taken by Mr Hee – is that the Presentation Documents were not spent. Related to this converse situation is the fundamental question whether the Singapore defendants' agreement to cooperate with and assist Mr Hsiao (D3) and Mr Lu (D4) between 24 April 2007 and 27 July 2007 continued into June 2008 through to October 2008 when Mr Qin came into the picture. I think the answer is in the negative since Priscilla had imposed a transactional time limit.

129 Returning to the background facts, the 2005 shipbuilding contracts were signed on 5 November 2005 and EIMC's attempts to secure bank financing for the newbuildings were frustratingly protracted. Priscilla was the director of Marinteknik who interacted with Mr Hsiao acting on behalf of EIMC.

130 It is clear that the Transfer Affidavits were created at the request of Mr Hsiao and Mr Lu in April 2007, and I find that the Transfer Affidavits enabled Mr Lu to be a registered shareholder of EIMC (holding 48,750,000 *paid-up* shares). In this way, the paid-up capital of EIMC was increased. The Transfer Addenda, in recording the purpose of the Transfer Affidavits, stated that the US$15 million deposit was "reflected ... only to assist [EIMC] in increasing their paid-up Capital" and that there was "no physical payment of funds made whatsoever". The 2007 Financial Statements showed that 243,750,000 ordinary shares were registered in Mr Lu's name on 26 April 2007 and 231,562,500 ordinary shares were registered in his name on 11 June 2007. There is Mr Hsiao's letter of 5 July 2007 (see [42] above) informing Priscilla of the increase in EIMC's paid-up capital.

131 EIMC's paid-up capital had increased to NTD 566,662,500 or US$17 million as at 31 December 2007, and EIMC had, as part of its assets, two vessels listed as "Transportation Equipment". However, Note 16 to the 2007 Financial Statements actually recorded that EIMC had not paid the balance purchase price of Hulls 189 and 190, and that Marinteknik had agreed to delay the delivery of Hulls 189 and 190. [note: 72]

132 I now come to EFT's contention that the Transfer Affidavits complemented the 2006/2007 Financial Statements. There is no force in this contention to support the 2006/2007 Financial Statements as material from which to infer that the Singapore defendants were a party in the conspiracy at the time the acts were complained of (*ie*, 24 June 2008). The Transfer Affidavits did not immediately reveal that EIMC's paid-up capital had increased – for that, Mr Qin would have had to go to the balance sheet and the audited financials. Bearing in mind that Mr Qin testified that he only glanced at these documents for 15 minutes (enough time, so he claims, to make an assessment based on the paid-up capital), for the misrepresentation to have been an operating cause of EFT's investment in EIMC, Mr Qin must have been relying on the 2006/2007 Financial Statements and *not* on the Transfer Affidavits, which would not have given him at a glance the information that he claims he based part of his decision on.

133 There is no denying that the contents of the Transfer Affidavits and the Transfer Addenda were clearly referable to the sale and purchase of Hulls 189 and 190 and the Transfer Addenda had an

expiry date, which was 24 July 2007. In other words, the representations there were for an intended transaction and for a specific period of time. This is unlike the situation where the representation continues until the intended transaction is completed or withdrawn. Spencer Bower, Turner and Handley on Actionable Misrepresentation (Butterworths, 4th Ed, 2000) at para 61 states:

> A representation having been made for the purpose of an intended transaction will normally be regarded as continuing until the transaction is entered into or completed, unless varied or withdrawn in the meantime. A representation which continues without being repeated is another example of a representation implied from conduct.

134 By 24 April 2007, Marinteknik had cancelled the 2005 shipbuilding contracts for non-payment. The Singapore defendants were in the market to sell Hulls 189 and 190. The Singapore defendants were still open to selling Hulls 189 and 190 to Mr Lu and EIMC, if EIMC, Mr Hsiao and Mr Lu could get bank financing. Priscilla said that as far as she was concerned, before the Transfer Affidavits were signed, she had telephone conversations with some Taiwanese bankers about a letter of credit to cover the payment of the purchase price for Hulls 189 and 190. She was not able to recall the name of the bank officers she spoke with, but the Industrial Bank of Taiwan was in the picture at the material time. Her impression then was that financing from the banks was forthcoming. Priscilla had even given a Letter of Undertaking dated 13 July 2007 (see [44] above) as the bankers wanted the Singapore defendants to assist in the sale of Hulls 189 and 190 should EIMC default on the "loan conditions" within a year of delivery of the vessels. [note: 73] The state of mind of the Singapore defendants from 24 April 2007 to 24 July 2007 was that EIMC was getting bank loans to finance the purchase of Hulls 189 and 190.

135 The contents of the Transfer Affidavits were plainly false and designed to mislead the banks that Mr Lu and EIMC had paid for Hulls 189 and 190. I do think that the auditors were completely misled in the light of Note 16 to the 2007 Financial Statements, where the auditors noted that: (a) EIMC had an outstanding liability to the shipbuilder (*ie*, Marinteknik) for two vessels; (b) EIMC had problem obtaining bank loans to pay off the balance of the purchase price; and (c) EIMC was in negotiations with the shipbuilder, who had in principle agreed to postpone payment for and delivery of the two vessels. [note: 74] Priscilla's testimony is consistent in so far as the Transfer Affidavits and the Transfer Addenda were referable to the sale and purchase of Hulls 189 and 190, and the Singapore defendants' assistance to EIMC was to obtain financing from Taiwanese banks and the assistance was for a limited time (*ie*, from 24 April 2007 to 24 July 2007). At that stage, Priscilla was *not* told that EIMC was seeking to raise finance by way of an equity placing with investors to buy Hulls 189 and 190. During this period of time (24 April 2007 to 24 July 2007), the Singapore defendants, EIMC, Mr Hsiao and Mr Lu would know that any loan to buy the two hulls would be from the Industrial Bank of Taiwan.

136 I accept Priscilla's oral testimony that there were communications in early July 2007 and the bank that was considering EIMC's loan application was the Industrial Bank of Taiwan. In a letter dated 5 July 2007, the Industrial Bank of Taiwan wrote to Marinteknik, and the letter was marked for the attention of Priscilla. Randy Hung, Assistant Vice-President of Corporate Banking wrote: [note: 75]

> Re Hulls 189 and 190 Letter of Credit Progression
>
> Pursuant to the agreement with Excalibur in the issuance of Hulls 189 and 190 Letters of Credit, we are progressing into the final stages of the conditions precedent to the issuance of the letters of credit.

> We expect both the letters of credit to be issued around one month from todate. For any further queries please contact Excalibur International Marine, Mr Steve Hsiao directly.

137 The intended transaction was not completed by 24 July 2007. After that, no further representation could arise from the use of the Transfer Affidavits. Even if, for the sake of argument, the conditions (law and fact) for a representation existed, there is still no evidence of a common objective shared between the Singapore defendants and Mr Hsiao (D3) and/or Mr Lu (D4) to surface or revive the Transfer Affidavits and the Tripartite Agreement at the 24 June Presentation to deceive EFT into investing in EIMC.

138 Therefore, as the Transfer Affidavits were signed on 24 April 2007, the Singapore defendants did not intend that Mr Lu (D4), Mr Hsiao (D3) and EIMC would pass them on to future potential investors (this was the expression used in EFT's Amended Statement of Claim rather than the expression "potential fund provider" introduced and used in EFT's Closing Submissions) providing equity to EIMC for the purchase of the *OCEAN LALA*. Between 24 April 2007 and 24 July 2007, the plan amongst EIMC, Mr Hsiao, Mr Lu and the Singapore defendants was to obtain money from the banks by deception to purchase Hulls 189 and 190. The making of the Transfer Affidavits and the provision of the Transfer Affidavits to show a false picture of Mr Lu's interests in Hulls 189 and 190 were acts designed to enable EIMC and Mr Hsiao to issue and register shares as paid-up in Mr Lu's name, and to obtain banking loan facilities by deception. It is clear from the Transfer Addenda to the Transfer Affidavits that the Transfer Affidavits were to be used purely for obtaining financing from the banks, rather than for any genuine commercial purpose between the Singapore defendants and EIMC, Mr Hsiao (D3) and Mr Lu (D4). This analysis of the Transfer Affidavits necessarily takes away the other acts relied upon (like the making of the 2005 shipbuilding contracts and the Tripartite Agreement) of any force as material from which the Singapore defendants' participation in a conspiracy could possibly be inferred on 24 June 2008.

139 EFT sought to implicate the Singapore defendants in the scheme to deceive EFT on 24 June 2008 from Priscilla's "commercial conduct", in particular, (a) Priscilla admitting during cross-examination that the outstanding down-payment for Hulls 189 and 190 could have been paid if EIMC had procured new investors or if existing shareholders had injected money into EIMC, [note: 76] (b) there was no correspondence between Mr Hsiao and Priscilla in 2008, which apparently demonstrated that at that time, EIMC was pursuing investors and not bank financing; (c) Priscilla admitting that the Transfer Addenda were prepared to "protect Marinteknik" to show that US$7.5 million (for each Hull) had not been paid; and (d) the April 2008 MOUs were created to aid EIMC in procuring financing, which demonstrated that the Singapore defendants persisted with the fraud and continued representing that EIMC's paid-up capital was US$17 million.

140 Mr Hee argues that the Singapore defendants did not care about the provenance of the funding because they wished to break into the China/Taiwan market for their catamarans. I find that if provenance of the financing was not at all material to the Singapore defendants, it was only for the period from 24 April 2007 to 24 July 2007 and the financing was for Hulls 189 and 190. The Singapore defendants' cooperation with EIMC, Mr Hsiao (D3) and Mr Lu (D4) ended on the expiry of the deadline on 24 July 2007.

141 I considered the April 2008 MOUs and Mr Hee's arguments that Priscilla's company, Ezone, contracted to sell the *OCEAN LALA* to EIMC even though , at the material time, Ezone had not yet secured a contract to buy the *OCEAN LALA* from her then Spanish owners. The short answer to Mr Hee's second point is this. I cannot see anything legally wrong with what Ezone did: that is, contract to sell the *OCEAN LALA* to EIMC *before* contracting to buy the vessel from her then Spanish owners. I need only refer to Chao Hick Tin JA's remark in *OMG Holdings Pte Ltd v POS Sdn Bhd* [2012] 4 SLR 231

(at [35]) that "[i]t is trite law that A may contract to sell B something that A does not presently have – if B has fulfilled his part of the bargain and A has not, the remedy available to B is for him to sue A for breach of contract." In fact, the Spanish owners of the *OCEAN LALA*, who did not know EIMC, were not prepared to sell the *OCEAN LALA* directly to EIMC, but were more comfortable in selling her to Ezone. [note: 77] Ezone and EIMC signed a memorandum of agreement on 17 June 2008 for the sale of *OCEAN LALA* at the price of EURO 16 million. EIMC paid a total of EURO 14 million by 30 July 2008. Thereafter, on 31 July 2008, Ezone contracted with the Spanish owners of the *OCEAN LALA* to purchase the vessel at EURO 12.95 million. *OCEAN LALA* was delivered to EIMC on 19 August 2008. [note: 78]

142 Priscilla's explanation is that after Hulls 189 and 190 were sold to Giant Dragon, Mr Hsiao (D3) again approached the Singapore defendants for assistance in April 2008. Mr Hsiao's story was that he needed the April 2008 MOUs to maintain the cross-strait ferry licence. Once again, Priscilla very foolishly believed him and issued the April 2008 MOUs. The addenda to the April 2008 MOUs (*ie*, the MOU Addenda) came with an expiry date of 9 June 2008. Crucially, Mr Qin who does not know and has never met Mr Chiao or Mr Hsiao before the April 2008 MOUs and the Addenda were signed, was not in the picture until Mr Qin visited Taiwan on 20 June 2008. Mr Qin heard about EIMC on 23 June 2008 and he was later introduced to Mr Chiao that same night after dinner. Furthermore, at this level, the extent of the knowledge necessary to be established against the Singapore defendants as co-conspirators is important where the primary fraudster, Mr Hsiao (D3), had asked for assistance in April 2008 *before* Mr Qin and EFT came into the picture, and some two months *before* Ezone's contract with EIMC for the sale of *OCEAN LALA*.

143 The deal to sell Hulls 189 and 190 to Mr Lu and EIMC had collapsed by 24 July 2007. EFT argues that the misrepresentations in the Transfer Affidavits and the Transfer Addenda were not spent as the Singapore defendants' fraud "continued" well into 2008, evidenced by the fact that the Singapore defendants produced the April 2008 MOUs perpetuating the falsehood about the deposit of US$15 million. Mr Hee's point is that there is no "validity period" for the Transfer Affidavits read with the Transfer Addenda (which introduced a time frame of 24 April 2007 to 24 July 2007) as they were created to "protect" the Singapore defendants. I disagree with Mr Hee's analysis of the evidence.

144 Mr Hee then suggests that the misrepresentations continued to linger because the position in EIMC's share register after 24 July 2007 remained the same. He complained that the Singapore defendants made no effort to tell Mr Hsiao or EIMC to correct the representations *viz.* that the paid-up capital during the period from July 2007 to October 2008 was false. Similarly, EFT argues that the Singapore defendants' failure to correct or ask for the "books" (*ie*, audited accounts which reflected that EIMC had a paid-up capital of US$17 million) to be corrected demonstrated that they were involved in the fraud well into 2008. Mr Hee relied on the following letter from Mr Hsiao to Priscilla (dated 5 July 2007) (see [42] above) as evidence that the "books" were not corrected:

> We have increased out [sic] paid up capital USD 15 million and our book [sic] recognise the paid up capital to increase around USD 25 million totally very soon.

145 Mr Lu remained a registered owner of 48,750,000 ordinary shares in EIMC despite not having paid for them. Both expert witnesses on Taiwanese law (*viz*, the Singapore defendants' expert witness, Mr Chang, and EFT's expert witness, Mr Tsao, agreed that Mr Lu's 48,750,000 shares were void *vis-à-vis* third parties. However, they also agreed that EIMC *could* choose to "recognize" or "validate" the 48,750,000 ordinary shares by asking Mr Lu to pay for them. Of course, since EIMC did not ask Mr Lu to pay for the shares and since Mr Lu never paid for the shares, Mr Lu's shares are void.

146 With respect to Mr Hee's contention that the Singapore defendants were obliged to unravel the error in EIMC's share register, Mr Hee tried to suggest that the Singapore defendants were under a duty to get EICM to rectify the paid-up capital of the company. He cross-examined Priscilla on whether she told Mr Hsiao to correct the position of EIMC's paid-up capital after the expiry date, *ie*, 24 July 2007. This line of cross-examination begs the question whether the Singapore defendants were under a duty to rectify this error in the share registry. Or was it sufficient that they simply executed the Transfer Addenda? The question is what more the Singapore defendants *could* have done: Priscilla *did* rectify the position of the parties with the creation of the Transfer Addenda, and this was sufficient. It is significant that EIMC was a party to Transfer Affidavits and the Transfer Addenda. Mr Hsiao signed both sets of documents on behalf of EIMC. The Singapore defendants were not obliged to insist that EIMC rectify its share register – they owed no such duty to either EFT or Mr Qin. In fact, the responsibility or obligation to rectify the share register lay with EIMC, and not the Singapore defendants.

147 Whilst EFT built its case on conspiracy, it seemed to be tacking on duties on the part of the Singapore defendants, like a duty to point out Note 16 to the 2007 Financial Statements and a duty to correct the 2007 Financial Statements. Mr Hee cites *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong (a firm)* [2007] 4 SLR(R) 460 ("*JSI Shipping*") (at [45]) for the proposition that any extraordinary detail in the 2006/2007 Financial Statements should have been brought to the attention of Mr Qin. This proposition is flawed. *JSI Shipping* has been mischaracterised. That case was about the standard of care which is expected of an auditor. An auditor has a duty to draw attention to a particular item because he has a duty to check all the supporting documents and verify the truth of the statement he is making about the financial health of a company. It is a completely different situation from this, where the documents had been executed for a specific purpose and a specific period of time, accompanied by explanatory addenda, and where the documents had been spent.

Conclusion

148 For the reasons stated, the existence of an agreement between the Singapore defendants and Mr Hsiao and/or Mr Lu at the time of the acts complained of (*ie*, 24 June 2008), has not been proven by EFT. The problem with EFT's case is that it was built on an illusion created with the benefit of hindsight and self-serving assertions.

Intention to injure EFT

149 Given my conclusion that EFT has not established that the Singapore defendants were a party to a common design to cheat EFT into investing in EIMC, it is not necessary to consider the intention to injure element. However, for completeness, I will comment on this element as well.

150 It is clear from *Kuwait Oil* (at [120]-[121]) that the court is able to make a finding that a defendant had the necessary intention to injure the plaintiff by drawing inferences to that effect from all the evidence before it. It is clear from Lord Nicholls' judgment in *OBG* (at [166]) that "a defendant's foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention for this purpose, The defendant must *intend* to injure *the* claimant". [emphasis in original]

151 It was in relation to the element of intention that EFT's allegation – *viz*, that the provenance of the funding included potential fund providers like EFT - was made. Mr Hee submits that the Transfer Affidavits were intended to fraudulently increase EIMC's paid-up capital so that investors like EFT and Taiwanese banks would be induced to finance EIMC's purchase of Hulls 189 and 190. The knowledge and, hence, the state of mind of Priscilla is important. Me Hee's argument rests on the assumption

that the Transfer Affidavits were intended to help EIMC obtain equity investment to purchase Hulls 189 and 190. The same matters, which I have covered in the section on the nature of the agreement or a combination, are relevant and equally apply here. Having concluded that the Singapore defendants were not a party to the alleged conspiracy to cheat EFT into investing in EIMC, the element of intention to injure EFT is not satisfied.

152 As an aside, the extension from a statement intended for a bank to a statement intended for a potential investor is not correct. Investors may in fact be "lending" to the company, but the considerations for a loan and those for an investment are quite different and the types of documents required for each purpose, while there may be some overlaps, would also not be identical. The pleadings are replete with the averment that the financing was for the purchase of Hulls 189 and 190.

153 There is no evidence that the Singapore defendants intended that a potential fund provider (an expression used in EFT's Closing Submissions) would have relied on the Presentation Documents, or that the Presentation Documents (all of which predated the June 2008 meetings in Taiwan) would be used to defraud potential fund providers appearing in June 2008 in connection with a different transaction. It is difficult to conclude on the evidence that the Singapore defendants intended that their representations in the Tripartite Agreement and the Transfer Affidavits should reach EFT in June 2008 through to October 2008 in order for EFT to act upon them. EFT's cause of action is *not* for deceit but for unlawful means conspiracy, and EFT has to show that the false statements were part of concerted acts made pursuant to an agreement or a combination between two or more persons whose intent was to deceive and cause loss to EFT.

Issue estoppel as a defence

154 For completeness, I should comment on the Singapore defendants' issue estoppel defence. The Singapore defendants'case on issue estoppel on this defence is confusing. The Singapore defendants pleaded that EFT was estopped on the basis of *res judicata* (specifically, issue estoppel) from pursuing a claim (*viz*, Mr Lu's involvement in the Subscription Agreement) as this matter has already been adjudicated by the Taichung District Court. However, in their Closing Submissions, the Singapore defendants appeared at points, to have dropped the issue estoppel argument, instead focusing on the Taiwanese judgments' evidential value - they claimed that the Taiwanese judgments (*ie*, that Mr Lu's shares were invalid) showed that EFT suffered no loss when it invested in EIMC. However, at other points, the Singapore defendants referred to the Taiwanese judgments as "*res judicata*" with reference to the Taiwanese Supreme Court's judgment and "judgment[s] in rem and binding [in Singapore]".

155 I have already referred to the four Taiwanese judgments in question (see [13]–[18] above). With regard to foreign judgments (as opposed to locally obtained judgments), as was the case here, the operation of the doctrines of *res judicata* and abuse of process is qualified. A prerequisite is that the foreign judgment must be recognized within the forum of Singapore for it to have any effect (see Barnett, Peter, *Res Judicata, Estoppel, and Foreign Judgments*, (Oxford University Press, 2001) at p 24). Further, even if a foreign judgment is *prima facie* recognized under the REFJ Act, it is possible that various common law defences may be established *eg*, the foreign judgment may have been procured by fraud, or in breach of natural or substantial justice; it may be inconsistent with a prior local judgment; or it may infringe the public policy of the local forum.

156 Notably, the issue that the Taiwanese judgments are recognized and enforceable in Singapore was not squarely addressed by either party. The Singapore defendants' expert witness, Mr Chang, tangentially addressed this issue when he confirmed that the Taichung District Court's judgment was not enforceable, but that the Singapore defendants could nevertheless seek provisional execution of

it in Taiwan. In any case, apart from this equivocal testimony from Mr Chang, there is no evidence that the Taiwanese judgments are recognized in Singapore. Accordingly, there is nothing much to the issue estoppel defence.

Result

157 For the reasons stated, the elements of unlawful means conspiracy have not been made out against Marinteknik and Priscilla. Accordingly, EFT's action against Marinteknik and Priscilla is dismissed with costs.

[note: 1] Amended Statement of Claim, para 7.19.

[note: 2] Amended Statement of Claim, para 7.18 -7.19 & 7.29.

[note: 3] Transcripts of Evidence dated 13.4.12, p 26.

[note: 4] Transcripts of Evidence dated 13.4.12, p 32.

[note: 5] Transcripts of Evidence dated 13.4.12, p 60.

[note: 6] Transcripts of Evidence dated 13.4.12, pp 61, 64-70.

[note: 7] Transcripts of Evidence dated 13.4.12, pp 19-20.

[note: 8] Transcripts of Evidence dated 13.4.12, pp 25-26.

[note: 9] Transcripts of Evidence dated 13.4.12, p 21.

[note: 10] Transcripts of Evidence dated 13.4.12, p 85 & 87.

[note: 11] EFT's F&BP filed on 20.10.11, para 4.2.

[note: 12] EFT's F&BP filed on 20.10.11,para 4.1.

[note: 13] EFT's F&BP filed on 15.12.11, para 4.4(a).

[note: 14] EFT's F&BP filed on 15.12.11, para 4.5(a).

[note: 15] Amended Statement of Claim, para 7.19.

[note: 16] Qin's AEIC paras 91-92.

[note: 17] Qin's AEIC para 94.

[note: 18] Qin's AEIC para 87.

[note: 19] Priscilla's AEIC, para 85.

[note: 20] Priscilla's AEIC, para 29

[note: 21] 1AB 257.

[note: 22] 1AB 255 and 256.

[note: 23] 1AB 317 and 350.

[note: 24] 2AB 482.

[note: 25] 2AB 483.

[note: 26] 2AB 520.

[note: 27] 2AB 521.

[note: 28] 2AB 524.

[note: 29] Transcripts of Evidence dated 11.4.12,, pp 61-62

[note: 30] Priscilla's AEIC, para 5.

[note: 31] Priscilla's AEIC, para 7.

[note: 32] Transcripts of Evidence dated 11.4.12, p18

[note: 33] Priscilla's AEIC, para 13.

[note: 34] Priscilla's AEIC paras 35-37 & p237.

[note: 35] Priscilla's AEIC para 42.

[note: 36] Priscilla's AEIC para 34 & 44-45.

[note: 37] Priscilla's AEIC, para 48.

[note: 38] Priscilla's AEIC, paras 46 & 49.

[note: 39] Priscilla's AEIC, para 51.

[note: 40] Priscilla's AEIC, para 54.

[note: 41] Priscilla's AEIC, para 54.

[note: 42] Priscilla's AEIC, paras 55-57.

[note: 43] Transcripts of Evidence dated 12.4.12, pp 35-37.

[note: 44] Priscilla's AEIC para 80.

[note: 45] Priscilla's AEIC paras 84 & 86.

[note: 46] Priscilla's AEIC para 92.

[note: 47] Amended Statement of Claim, para 7.

[note: 48] Amended Reply, para 14.1.

[note: 49] EFT's Further Submissions, para 10.

[note: 50] EFT's Further Submissions, para 17.

[note: 51] Transcripts of Evidence dated 4.4.12, pp 23-24

[note: 52] 6AB 2217

[note: 53] 6AB 2217

[note: 54] Qin's AEIC para 94

[note: 55] Amended Statement of Claim para 7.19

[note: 56] Amended Statement of Claim, para 7.13(ii).

[note: 57] Amended Statement of Claim, para 7.7.

[note: 58] Amended Statement of Claim, para 7.16.

[note: 59] Amended Statement of Claim, para 6.

[note: 60] Plaintiffs' F&BP filed on 20.10.11, para 2.1.

[note: 61] Amended Statement of Claim, para 7.8.

[note: 62] Amended Statement of Claim, para 7.13(ii)

[note: 63] Amended Statement of Claim, para 7.12

[note: 64] Amended Reply, paras 7.3 & 16.

[note: 65] Plaintiffs' F&BP filed on 15.12.11, para 6.1(a)

[note: 66] Amended Statement of Claim para 7.18

[note: 67] Plaintiffs' F&BP filed on 20.10.11, para 4.6

[note: 68] F&BP filed 20.10.11, para 4.9

[note: 69] F&BP filed 20.10.11, para 4.7

[note: 70] Amended Defence, para 23.

[note: 71] Amended Statement of Claim, para 7.19

[note: 72] 2AB 620

[note: 73] 2AB 525, and Transcripts of Evidence dated 11.4.12, pp 61-62.

[note: 74] 2AB 620-621.

[note: 75] 2AB 519

[note: 76] Transcripts of Evidence dated 10.4.12, pp 46-47

[note: 77] Priscilla's AEIC, para 70.

[note: 78] Priscilla's AEIC, paras 73-76.