

Tng Swee Seng v Lau Kim Swee
[2016] SGHC 128

Case Number : Suit No 904 of 2014
Decision Date : 04 July 2016
Tribunal/Court : High Court
Coram : Edmund Leow JC
Counsel Name(s) : Manickavasagam s/o Rm Karuppiah Pillai (M/s Manicka & Co, instructed) and Abdul Rahman bin Mohd Hanipah (M/s Abdul Rahman Law Corporation) for the plaintiff; Tan Siah Yong (ComLaw LLC) for the defendant
Parties : TNG SWEE SENG — LAU KIM SWEE

Contract – Consideration

4 July 2016

Edmund Leow JC:

Introduction

1 Suit 904 of 2014 (“**S 904/2014**”) arose out of the Plaintiff’s claim against the Defendant for a sum of \$655,900.07 owed to the Plaintiff pursuant to an oral agreement around 29 October 2009 to transfer shares. The Defendant counterclaimed against the Plaintiff for \$540,000 as money that the Plaintiff had received or wrongfully converted for his own use from the Defendant’s personal POSB account. The dispute was an entirely factual one.

2 I dismissed the Plaintiff’s claim and the Defendant’s counterclaim. Both parties have since filed notices of appeal against my decision, and I set out the reasons below.

Factual background

Parties

3 The Plaintiff is Tng Swee Seng, the previous director and shareholder of Comtrust Marine & Engineering Pte Ltd, now known as KS Marine Engineering Pte Ltd (“the company”). The company was in the business of supplying manpower for building of ships, tankers and other ocean-going vessels. The Plaintiff was a director of the company from 18 January 2002 to 28 October 2009, and a shareholder from 18 January 2002 to 29 October 2009. [\[note: 1\]](#) At the time of the share transfer, he was the sole shareholder. Before the company was incorporated, the Plaintiff had operated as a sole proprietor in the same business since the 1990s.

4 The Defendant is Lau Kim Swee, the current director and sole shareholder of the company. [\[note: 2\]](#) He became a director on 26 May 2008, and then the sole shareholder on 29 October 2009.

Undisputed matters

5 It was undisputed that after the Plaintiff transferred shares to the Defendant on 29 October 2009, there was no payment by the Defendant to the Plaintiff pursuant to this share transfer. The

Plaintiff continued to work at the company even after his resignation as director and the transfer of all shares to the Defendant. He was in charge of the accounts and administration of the company until early 2012. [\[note: 3\]](#)

6 The company had only one OCBC bank account from which it made all necessary payments for the running of the business. The signatory of the OCBC bank account was changed from the Plaintiff to the Defendant in December 2009. [\[note: 4\]](#) It was undisputed that the Plaintiff remained in charge of the company's accounts and taxes until 2012 – the Defendant admitted that he handed the company's accounts and cheques to the Plaintiff, [\[note: 5\]](#) and that the Plaintiff had all the cheque books of the company. [\[note: 6\]](#) The Defendant also admitted to entrusting pre-signed company cheques to the Plaintiff. [\[note: 7\]](#) The Plaintiff admitted that he submitted accounts of the company to the Income Revenue Authority of Singapore ("IRAS") by signing on the Defendant's behalf in 2010 and 2011. [\[note: 8\]](#)

7 It was also undisputed that the Plaintiff was in charge of the Defendant's personal accounts, as the Defendant admitted that he had entrusted the Plaintiff with his personal documents and cheques. [\[note: 9\]](#)

Issues in dispute

Agreement on share transfer

8 The main issue in dispute at trial was factual - whether the transfer of the Plaintiff's 120,000 shares in the company to the Defendant was only for a nominal consideration of \$1, or was a sale with conditions attached.

9 The Plaintiff claimed that he wished to sell the company when his health deteriorated. [\[note: 10\]](#) He claimed that there was an oral agreement with the Defendant that the Plaintiff would sell the 120,000 shares in the company to the Defendant at \$1.00 per share plus the entire balance in the company's OCBC account which stood at \$535,900.07 as of 29 Oct 2009 ("the oral agreement"). [\[note: 11\]](#) The Plaintiff appeared to take this sum of \$535,900.07 as representing everything he had invested in the company. The Defendant thus owed the Plaintiff a total sum of \$655,900.07 according to the Plaintiff's case. According to the Plaintiff, there was a shareholders' meeting on 29 October 2009 [\[note: 12\]](#) with the Plaintiff, the Defendant, and an auditor in attendance, during which the parties passed a resolution with the particulars stated as follows: [\[note: 13\]](#)

- (a) That the transfer of 120,000 shares of S\$1.00 each numbered from 000001 – 120000 from the Plaintiff, as transferor to the Defendant, the transferee at a consideration of S\$1.00 (subject to stamping) be approved;
- (b) That the old share certificates of 120,000 shares in the name of the Plaintiff be cancelled; and
- (c) That the directors of the Company be authorized and instructed to issue new share certificate to the Defendant for 120,000 shares and that the Common Seal of the Company be affixed to the new share certificate in accordance with the Company's Articles of Association.

10 The Plaintiff also claimed that he agreed to leave the \$535,900.07 in the company's bank

account for two to three months so that the Defendant could run the business and accumulate capital for his own use. [\[note: 14\]](#) Some time in February 2010, the Plaintiff requested for payment of the total sum of \$655,900.07 but the Defendant refused.

11 In my view, contrary to the Plaintiff's claim, there could not possibly have been a shareholders' meeting between the Plaintiff and the Defendant on 29 October 2009. Based on the share transfer form and the director's resolution documenting the transfer of the company's shares, it was clear that as at the date of transfer of the shares, the Plaintiff was the sole owner of the 120,000 shares of the company.

12 The Defendant denied the existence of the oral agreement and the shareholders' meeting. [\[note: 15\]](#) According to him, the transfer of all shares on 29 October 2009 was for a nominal sum of \$1.00, with no promise of further payments from the company's bank account. The Defendant denied that there was ever an auditor present when the parties signed the share transfer form – it was given to him to sign by the Plaintiff. [\[note: 16\]](#) The only agreement that the Defendant admitted existed between the parties was the one made in mid-May 2008: [\[note: 17\]](#) the Plaintiff would take out whatever he had invested in the company and leave sufficient funds in the company to enable the Defendant to continue running the business. Thereafter, the Plaintiff would transfer all his shares in the company to the Defendant. The Defendant argued that by virtue of the director's remuneration that the Plaintiff had paid himself in 2008 and 2009, the Plaintiff had taken out whatever that belonged to him in the company's OCBC account and whatever that was not taken by the time he left was to be left for the company. [\[note: 18\]](#) The Defendant appeared to be of the understanding that whatever sums that were left in excess of what was needed to sustain the company's cash flow was a bonus given to him as part of the profit sharing agreement that he claimed had been in place since he started working for the Plaintiff. [\[note: 19\]](#) In gist, the Defendant's argument was that the Plaintiff had been paid and was not entitled to further payments beyond 29 October 2009.

Consideration for 120,000 shares

13 The first part of the Plaintiff's claim relates to the consideration for the 120,000 shares - I am of the view that the Plaintiff's claim regarding the consideration should be dismissed.

14 By the Plaintiff's own words, the preparation of the paperwork was done in a very professional manner. [\[note: 20\]](#) However, the share transfer form contradicts the Plaintiff's claim outright, as it states that the transfer of 120,000 shares was for a total of \$1. [\[note: 21\]](#) The directors' resolution also states that the transfer is for a total of \$1. [\[note: 22\]](#) The Plaintiff had admitted that the two documents were prepared by the auditor based on his instructions. [\[note: 23\]](#) He was unable to explain what his exact instructions to the auditor were during cross-examination. The Plaintiff claimed that the share transfer and directors' resolution were signed with the auditor present. However, the auditor's signature did not appear under the witness signature section on the share transfer form.

15 Furthermore, the auditor who was purportedly present at the 29 October 2009 meeting was not called as a witness by the Plaintiff. It was not as if she could not be located – she had replied to the Defendant's letter regarding the transfer of shares in as late as January 2015. [\[note: 24\]](#) The Plaintiff's explanation appeared to be that he found no need to call the auditor as a witness; [\[note: 25\]](#) I found this explanation unconvincing – she would clearly be a material witness if she had been present when parties signed the form, and her evidence was crucial especially when the Plaintiff was unable to explain satisfactorily why the auditor had drafted the share transfer form in such a manner. I was

thus entitled to infer from the auditor's absence, under s 116(g) of the Evidence Act (Cap 97, 1997 Rev Ed), that the auditor's evidence would likely be unfavourable to the Plaintiff.

16 Thus, I find that the Plaintiff had failed to discharge his burden of proof regarding the share transfer consideration.

Claim on the OCBC balance as of 29 October 2009

17 The second part of the Plaintiff's claim relates to the balance in the company's OCBC account as of 29 October 2009. It is undisputed that the Plaintiff was entitled to a sum of money from the company's OCBC account before his exit. I agreed with the Plaintiff that it was unlikely that the Plaintiff would give the company away to the Defendant for no consideration whatsoever, when the company was a profitable going concern. The issue is whether the Plaintiff had already taken out the sum of money that he was entitled to as of 29 October 2009. In my view, it appeared that he had already done so by the time of his exit as a director and shareholder, would therefore not be entitled to further sums from the company.

18 Regarding the quantum that the Plaintiff was entitled to, I am of the view that parties did not agree on a specific number, despite the Plaintiff's attempt to show otherwise. This was admitted by the Defendant, who said that he was only expecting the Plaintiff to leave him money, but was uncertain as to the exact quantum. [\[note: 26\]](#) The Defendant argued that there could not have been an agreement on \$535,900.07 as the sum that the Plaintiff was entitled to because the Defendant was never shown financial figures of the company up to that point; [\[note: 27\]](#) he only became a signatory to the company's bank account in December 2009. Furthermore, the Plaintiff admitted on cross-examination that he only got the bank statement for October 2009 after the month of October 2009, which was also after the purported date of the oral agreement. [\[note: 28\]](#) Based on the parties' evidence, the only firm inference I could draw was that the agreement between them was for the Plaintiff to take out whatever sum that he saw fit, so long as he left enough for the company to operate.

19 The Plaintiff argued that he was entitled to the entire bank balance of the company as of 29 October 2009 because it could represent either whatever he had invested in the company, or the retained profits of the company. I find both positions untenable. The Plaintiff had failed to prove that the bank balance was what he had invested in the company, or the retained profits of the company. There was no proof at all of how much the Plaintiff had invested in the company. His references to the proceeds from a sale of a property worth approximately \$800,000 during cross-examination [\[note: 29\]](#) were not backed up by documentary evidence, and in any case contradicted the quantum that he was claiming for. I also accepted the Defendant's point that it would be misleading to only look at the company's bank balance as of a particular day. A figure in the bank account on a particular day is a meaningless figure without more information; there could be existing liabilities, assets, and receivables of the company that were not reflected on the bank balance. Tellingly, the company's declared income to the IRAS for the year 2009 was \$408,970, [\[note: 30\]](#) while its profit before income tax, as stated in the company's unaudited accounts for 2009, was \$284,493; [\[note: 31\]](#) both figures were much less than the sum claimed by the Plaintiff. A more accurate valuation of the company would be its net asset value at the material time, but this figure was not what was pleaded.

20 Looking at the accounts of the company and how much the Plaintiff had paid himself for director's salaries and bonuses in 2008 and 2009, I am convinced by the Defendant's argument that the Plaintiff had already taken out whatever was due to him by the time he transferred his shares to

the Defendant. In 2006 and 2007, the Plaintiff was paid a total of \$150,000 [\[note: 32\]](#) and \$230,000 [\[note: 33\]](#) respectively in remuneration by the company. In 2008 and 2009, when the Plaintiff evinced the intention to leave the company, the figures increased exponentially to \$657,260.00 [\[note: 34\]](#) and \$797,781.50 [\[note: 35\]](#) respectively. The director's remuneration was paid only to the Plaintiff despite the Defendant also being a director of the company since 2008; the Plaintiff admitted that the Defendant never received any director's fees while the Plaintiff still was running the company. [\[note: 36\]](#) This significant increase in the Plaintiff's remuneration was consistent with the Defendant's position that the parties reached the agreement for the Plaintiff to exit the company in 2008. The agreement set in place the Plaintiff's imminent exit, and explains the significant increase in the sums that he was taking out of the company. In addition to the director's remuneration, it appears from a few company cheques in 2008 and 2009, such as the one in 15 June 2009 worth \$540,000 drawn in favour of the Plaintiff, [\[note: 37\]](#) that the Plaintiff had taken additional sums from the company though it is unclear what they were used for. The Plaintiff effectively admitted during cross examination [\[note: 38\]](#) that he took so much money from the company in 2008 and 2009 because of his agreement with the Defendant in May 2008 after he evinced an intention to leave:

Q You paid yourself in 2009, 610,000 as director's fees and 187,782 as salary, you agree?

A Ah, yes.

Q Now witness, my instructions are that you paid yourself so much, we are not saying that you cannot pay yourself. We are saying that you paid yourself so much because in May of 2008, you had agreed to sell or to give your shares to the defendant promising to keep enough for him to run the business; what do you have to say to that? And that's the reason why you took out so much money, although you were---

A Yah, I did not promise him to give for free.

Q Stop, I am suggesting to you that you took out so much money, six, seven hundred thousand for 08, 09, right, after you had agreed for him to do so, telling him that you would leave enough money behind for him to operate the company.

A Ah, yes.

Q Right, otherwise you would not have taken so much money to put in your pocket.

A These are my profits.

21 Also, the Defendant pointed out that while the Plaintiff was in charge of the Defendant's personal account and the company's account even after the Plaintiff had transferred his shares and officially resigned from the company, he had never demanded from the Defendant any sums owed. [\[note: 39\]](#) The Plaintiff only demanded a sum of \$800,000 from the Defendant when he recovered from his March 2012 stroke in July/August 2012, [\[note: 40\]](#) which was much later than the period of a few months that the Plaintiff purportedly gave to the Defendant to accumulate capital in October 2009. There were no letters of demand or correspondences regarding the claimed sum before the present legal proceedings were commenced. It was hard for me to believe that the Plaintiff would continue to work for the Defendant for more than two years after his official exit from the company, if the oral agreement on the terms claimed by the Plaintiff existed, and the Defendant had refused to pay up by

February 2010, when the Plaintiff demanded payment. This affected the credibility of the Plaintiff's claim.

22 I was thus of the view that the Plaintiff had failed to discharge his burden of proof in establishing his claim as a whole.

Counterclaim for \$540,000

23 The Defendant claimed he was illiterate and therefore had a longstanding practice of leaving the management of his personal POSB account and taxes to the Plaintiff. [\[note: 41\]](#) The Defendant alleged that the Plaintiff falsely declared the Defendant's income for 2011 as \$720,000, [\[note: 42\]](#) and then proceeded to take money out from the Defendant's personal account periodically without his authorization. [\[note: 43\]](#) It was the Defendant's claim that this \$720,000 was deposited into his bank account in a few separate cheques, [\[note: 44\]](#) but as no statements from his POSB account were proffered, this claim could not be verified. The Defendant alleged that the Plaintiff had forged the Defendant's signatures without the Defendant's authorization on three personal cheques in 2010, 2011, and 2012, amounting to a total of \$540,000 in favour of the Plaintiff, which formed the basis of the counterclaim. [\[note: 45\]](#) The Defendant had reported this purported forgery to the police [\[note: 46\]](#) and the Plaintiff was subsequently charged with three counts of forgery of the aforesaid cheques. [\[note: 47\]](#)

24 In cross-examination, the Plaintiff did not dispute that he took the three cheques worth \$540,000. [\[note: 48\]](#) He admitted that he was the one who forged the Defendant's signature on the three personal cheques, but claimed that this was done with the Defendant's consent. [\[note: 49\]](#) The Plaintiff's defence was that the \$540,000 was withdrawn on the Defendant's consent, agreement, and instructions. In the Plaintiff's pleadings and affidavit of evidence in chief, it was only stated that the \$540,000 was used to settle the Defendant's debts on the Defendant's instructions, without further particulars of the said debt. [\[note: 50\]](#) However, during cross-examination, the Plaintiff suddenly claimed that those debts were owed to *him* – comprising the Defendant's income taxes that he had paid on the Defendant's behalf over the years and a personal loan from the Plaintiff to the Defendant. [\[note: 51\]](#)

25 There are thus two separate issues to be determined in respect of this counterclaim:

- (a) Whether the payments of the cheques to the Plaintiff were to settle the Defendant's debts owed to the Plaintiff ("the first issue"); and
- (b) Whether the withdrawals of \$540,000 via the three cheques were done without the Defendant's authorization and consent ("the second issue").

26 On the first issue, I am disinclined to believe the Plaintiff's defence that this \$540,000 represented debts owed to him. This was never pleaded in the Plaintiff's defence to the counterclaim, and there was no documentary proof. It appeared to be a mere afterthought. The Plaintiff was unable to produce any documentary evidence of a loan to the Defendant for his property, renovation, or for a car. [\[note: 52\]](#) In respect of the \$190,000 cheque dated 7 October 2010, the Plaintiff claimed that it was a repayment of his personal loan to the Defendant, but he was unable to give the exact figure of this personal loan. [\[note: 53\]](#) In respect of the \$300,000 cheque dated 25 March 2011, the Plaintiff claimed that this was for the down-payment of the Defendant's condominium as well as for

renovations. [\[note: 54\]](#) This directly contradicted his evidence at re-examination that the down-payment was given as a sign of appreciation and goodwill. [\[note: 55\]](#) The Plaintiff's vague explanations clearly could not withstand cross-examination. I am of the view that the Plaintiff's purported defence is a sham.

27 It is important to separate the second issue from the issue of the forgery of the cheques. Whether or not there was forgery by the Plaintiff is a matter that will not be decided in this case as parties have admitted that it is the subject of criminal investigations. The pertinent issue is whether the Plaintiff's withdrawal of the counterclaim sum by signing on the Defendant's personal POSB cheques was done with the Defendant's authorization and consent. While I do not believe that the payment of the three cheques to the Plaintiff was to settle debts owed to the Defendant, it does not necessary follow that the payment of the cheques to the Plaintiff was thus unauthorized.

28 Though I rejected the Plaintiff's defence, I could not accept the Defendant's allegations at face value either. Reviewing parties' evidence as a whole, I was of the view that there is insufficient evidence to support the Defendant's claim that the three cheques were forged without authorization from him.

29 The distinguishing feature and difficulty in this case is that there was a general authority given to the Plaintiff to manage the Defendant's account. The longstanding practice of the Plaintiff managing the Defendant's personal POSB account and declaring the Defendant's taxes struck me as a very unusual arrangement. This was done at the Defendant's request. Both parties also admitted to a longstanding practice of the Defendant giving the Plaintiff pre-signed cheques from both his personal POSB account as well as the company's OCBC account, in the course of running the business. [\[note: 56\]](#) The Plaintiff admitted to making payments on the Defendant's behalf using the POSB cheques whether pre-signed or forged. [\[note: 57\]](#) From this arrangement, the irresistible inference was that there was a general, broad-ranging authorization to the Plaintiff to manage the Defendant's personal finances relating to the POSB account. The unusual blanket authorization in favour of the Plaintiff to manage the Defendant's personal accounts showed prima facie consent to banking activities conducted by the Plaintiff on the Defendant's behalf.

30 From the surrounding circumstances of how the company was run after 29 October 2009, I was of the view that this blanket authorisation to transfer monies in and out of the Defendant's personal account and the company's account must have continued even after the Plaintiff was no longer an officer or employee of the company on paper.

31 The Defendant singled out these three cheques made payable to the Plaintiff and asserted that they ought to be returned to him. This alone, however, was insufficient in showing that the Plaintiff's actions were not within the blanket authorisation, especially given the unusual nature of the arrangement between both parties. Despite making reference to his personal POSB account statements in the submissions, [\[note: 58\]](#) the Defendant did not adduce these statements as evidence. His claim that the Plaintiff had transferred \$720,000 from the company to the Defendant's POSB account as director's fees, and then withdrew \$540,000 in the Plaintiff's own favour out of this *same* \$720,000 was unsupported by documentary evidence. In fact, in terms of the sequence of events, the Defendant's allegation seems unlikely as the declaration of income as \$720,000 was for the year 2011, while the withdrawal of \$540,000 was in three separate cheques across three years from 2010-2012. Furthermore, during cross-examination, the Defendant appeared unclear as to the balance in his POSB account at the material time, and admitted that he was not entirely sure that a sum of \$720,000 was deposited into his personal account from the company. [\[note: 59\]](#) At one point,

the Defendant even admitted that he was unsure how much exactly the Plaintiff had withdrawn from the POSB account: [\[note: 60\]](#)

Court: But this is your own, this is your own defence, so I think you should know the amount. It sounds like it is 720, because in little (i), you referred to the amount of 720, and then in little (ii), you say this amount was paid into the POSB account. So this amount must be 720; correct?

Witness: Because I handed him my account passbooks so that he could help me make repayments for the housing loans as well as the car loans. *I do not know how much exactly he had withdrawn from my bank account.*

[...]

Q And the plaintiff only took \$540,000, leaving a balance of \$180,000; right?

A I do not have the bank statements with me, it was with him.

[emphasis added]

32 This really begged the question - how did the Defendant prepare his counterclaim? I found it unconvincing that he would be unaware of how much he was being paid yearly and how much he had in his personal bank account, even if he delegated the management to someone else.

33 On the other hand, I acknowledge that the Plaintiff's responses during cross-examination appeared to suggest that the three cheques were not withdrawn with authorization: [\[note: 61\]](#)

Court: Since he is happy to give you pre-signed cheques ---

Witness: Ah.

Court: --- you can just ask him for some more.

Witness: Yah, that's why every time onwards, from that time onwards, he did not give any pre-signed cheques and then said he is not free, you see. [...]

Court: So what you're saying is that he refused to give you some more?

Witness: Ah, yes.

Court: Is that what you're saying?

Witness: Ah.

Court: So you have to forge his signature instead?

Witness: But, er, I told him, lah, then with his consent, he said, never mind, you just use it, lah, so --- I know it's wrong to sign on behalf of him, but I did ask him, with his consent also.

34 However, given the broad authorization over the Defendant's account in the first place, two questions have to be answered before one could conclude whether these three cheques were authorised:

(a) Firstly, why did the Defendant give broad authorization in the form of pre-signed cheques to the Plaintiff to take out money as he wished from the Defendant's account?

(b) Secondly, why did the Defendant stop giving those pre-signed cheques?

35 There was no satisfactory explanation given by either party to these questions. I do not accept that the Defendant did so simply because he was illiterate or that the Plaintiff did this as favour. This arrangement did not last for merely one or two weeks, but for two to three years. There must have been some informal arrangement that was not disclosed to the court. It also defied common sense that one would cede all control over a personal bank account merely because he was illiterate.

36 Thus, it was unclear what the limit of the Plaintiff's authority in managing the Defendant's personal POSB account up to March 2012 was. Many of their arrangements, whether regarding personal loans or the company, appeared highly informal in nature, such as the curious one in which the Plaintiff continued to run the affairs of the company for essentially no remuneration, even after he had divested himself of all legal interest.

37 I am of the view that isolating the three transactions out of the many that were done pursuant to a broad authorization to manage the Defendant's account, is insufficient in showing that the three cheques were unauthorised as they do not show a complete picture of the long running arrangements between the parties.

38 Unfortunately, the parties' testimonies failed to assist in clarifying the nature of their arrangements regarding the Defendant's personal accounts. As the evidence stood at the end of trial, I was unable to draw a firm conclusion in favour of the Defendant regarding the counterclaim.

Conclusion

39 For the reasons given above, I dismissed the Plaintiff's claim and the Defendant's counterclaim. Since neither party had proven their case, they are to bear their own costs.

[\[note: 1\]](#) Plaintiff's Statement of Claim (amended) ("SOC") para 1

[\[note: 2\]](#) Exhibit A of the Defendant's AEIC

[\[note: 3\]](#) NEs Day 1 Page 75 line 1

[\[note: 4\]](#) Paragraph 8(vi) of the Defence and Counterclaim (Amendment No. 1)

[\[note: 5\]](#) Paragraph 17 of Defence and Counterclaim (Amendment No. 1)

[\[note: 6\]](#) Paragraph 39 of Defendant's AEIC

[\[note: 7\]](#) Paragraph 62 of Defendant's AEIC

[\[note: 8\]](#) NEs Day 1 Page 98 line 28

[\[note: 9\]](#) Paragraph 18 of Defence and Counterclaim (Amendment No. 1)

[\[note: 10\]](#) Plaintiff's AEIC, para 13; BAPD 331

[\[note: 11\]](#) SOC para 4 and 5

[\[note: 12\]](#) SOC para 7

[\[note: 13\]](#) SOC para 7

[\[note: 14\]](#) NEs Day 1 Page 106 line 21

[\[note: 15\]](#) Defendant's AEIC paras 72-73

[\[note: 16\]](#) Day 1 Page 109 line 14-16

[\[note: 17\]](#) Day 2 Page 60 line 23

[\[note: 18\]](#) Day 1 Page 105 lines 10-15

[\[note: 19\]](#) Day 2 Page 92 line 24

[\[note: 20\]](#) Plaintiff's AEIC para 30; BAPD 334

[\[note: 21\]](#) BAPD 344

[\[note: 22\]](#) BAPD 343

[\[note: 23\]](#) NEs Day 1 Page 114 line 6

[\[note: 24\]](#) BAPD 322 and 323

[\[note: 25\]](#) NEs Day 1 p 111

[\[note: 26\]](#) NEs Day 2 pp 64, 66, 70

[\[note: 27\]](#) Defendant's AEIC, para 75 (a)

[\[note: 28\]](#) Day 1 Page 131 line 13

[\[note: 29\]](#) NEs Day 1 Page 85-86

[\[note: 30\]](#) Page 40 of Defendant's AEIC

[\[note: 31\]](#) Page 80 of DBOD

[\[note: 32\]](#) Defendant's DBD2 Page 20

[\[note: 33\]](#) Defendant's DBD2 Page 157

[\[note: 34\]](#) Defendant's Bundle of documents page 37

[\[note: 35\]](#) Defendant's Bundle of documents page 58

[\[note: 36\]](#) Day 1 Page 105 line 1

[\[note: 37\]](#) Page 41 of Defendant's DBD1 and Page 72 of Defendant's DBD2

[\[note: 38\]](#) Day 1 Page 105

[\[note: 39\]](#) NEs Day 2 Page 66 line 10

[\[note: 40\]](#) Defendant's AEIC para 41

[\[note: 41\]](#) Defendant's AEIC, para 15

[\[note: 42\]](#) Defendant's AEIC para 58; Exhibit D of Defendant's AEIC

[\[note: 43\]](#) Defendant's AEIC para 59

[\[note: 44\]](#) NEs Day 2 Page 75 line 9

[\[note: 45\]](#) Defendant's AEIC para 66

[\[note: 46\]](#) Defendant's AEIC para 67, Exhibit F of Defendant's AEIC

[\[note: 47\]](#) NEs Day 1 p 52

[\[note: 48\]](#) NEs Day 1 p 51

[\[note: 49\]](#) NEs Day 2 p 22

[\[note: 50\]](#) Plaintiff's AEIC para 35; BAPD 336

[\[note: 51\]](#) NEs Page 58 line 7

[\[note: 52\]](#) NEs Day 1 Page 70-72

[\[note: 53\]](#) NEs Day 2 Page 20 line 26

[\[note: 54\]](#) NEs Day 1 pp 68-69

[\[note: 55\]](#) NEs Day 2 Page 16 line 16 and line 22

[\[note: 56\]](#) NEs Day 2 Page 21 line 18; Defendant's AEIC Para 63

[\[note: 57\]](#) NEs Day 2 Page 22 line 17 and Page 24 line 3

[\[note: 58\]](#) Defendant's closing submissions, para 146-148

[\[note: 59\]](#) NEs Day 2 Page 74 line 22

[\[note: 60\]](#) NEs Day 2 pp 74-75

[\[note: 61\]](#) NEs Day 2 Page 22 line 3-19

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