

Main-Line Corporate Holdings Ltd v United Overseas Bank Ltd and Another  
[2009] SGHC 212

**Case Number** : Suit 806/2004, RA 225/2009, 228/2009  
**Decision Date** : 23 September 2009  
**Tribunal/Court** : High Court  
**Coram** : Lee Seiu Kin J  
**Counsel Name(s)** : Wong Siew Hong (Infinitus Law Corporation) for the plaintiff; Ang Wee Tiong and Jasmine Foong (Tan Kok Quan Partnership) for the first defendant; Koh Chia Ling and Arthur Yap (ATMD Bird & Bird LLP) for the second defendant  
**Parties** : Main-Line Corporate Holdings Ltd — United Overseas Bank Ltd; First Currency Choice Pte Ltd

*Civil Procedure – Interim payments*

23 September 2009

**Lee Seiu Kin J:**

1 The plaintiff, a company incorporated in Ireland, is the registered proprietor in Singapore of patent no 86037 (W/O 01/04846) entitled “Dynamic Currency Conversion for Card Payment Systems” (“the Patent”). The first defendant is a bank incorporated in Singapore. The second defendant is a company that provided a system, called the FCC System, that generated a certain amount of income for the first defendant.

2 The plaintiff’s claim against the defendants is for damages arising from infringement of the Patent by the first defendant in relation to the operation of the FCC System. The trial was heard by Tay Yong Kwang J (“Tay J”) who, in his judgment of 21 December 2006, found that the Patent was infringed by the defendants. In respect of the first defendant, Tay J ordered an inquiry by the Registrar on damages or an account of profits by reason of the infringement, with the plaintiff required to make its election before the inquiry. As against the first defendant, the plaintiff elected for an account of profits and against the second defendant, the plaintiff elected for damages. The present matter pertains to the plaintiff’s claim against the first defendant for an account of profits.

3 On 14 May 2009, the plaintiff filed summons no 2556 of 2009 (“the Summons”) which prayed for the following:

Pursuant to Order 29 Rules 10, 11 and 12 of the Rules of Court, the 1<sup>st</sup> Defendant do pay the Plaintiff the sum of **S\$3,135,236.40** or such sum as the Court shall deem just by way of an interim payment to the account of the 1<sup>st</sup> Defendant’s profits in respect of the Plaintiff’s claim against the 1<sup>st</sup> Defendant for infringement of the Plaintiff’s Singapore Patent No 86037 (W/O 01/04846). [emphasis in original]

4 The ground for the Summons was set out in para 5 of the affidavit of Declan Gerard Barry (“Declan”) filed 14 May 2009, which stated as follows:

In February 2008, during the process of pre-election discovery, the 1<sup>st</sup> Defendant's Gan Ai Im had filed an Affidavit wherein she had confirmed at **Exhibit "GAI-1"** that the 1<sup>st</sup> Defendant had received the sum of **S\$3,135,236.40** from the 2<sup>nd</sup> Defendant as "commissions". In the Plaintiff's view, that sum represents the minimum that the 1<sup>st</sup> Defendant would be liable after final assessment. [emphasis in original]

5 On 4 June 2009, the assistant registrar ("AR") heard the Summons and, pursuant to O 29 r 12 of the Rules of Court (Cap 322, R5, 2006 Rev Ed), ordered the first defendant to pay into court the sum of \$1,962,424.30 by 18 June 2009 as interim payment to the account of first defendant's profits in respect of the plaintiff's claims against the first defendant. The first defendant appealed in registrar's appeal no 228 of 2009 and prayed for the Summons to be dismissed. The plaintiff appealed against that order in registrar's appeal no 225 of 2009 and prayed for an order requiring the first defendant to pay the full sum of \$3,135,236.40. After hearing counsel for the parties on 13 July 2009, I allowed the first defendant's appeal and set aside the AR's order for interim payment. I also dismissed the plaintiff's appeal. The plaintiff has since lodged an appeal against my decision and I now give my grounds of decision.

6 The ground for the Summons is found in Declan's affidavit filed on 14 May 2009 at para 5. He referred to the affidavit of Gan Ai Im ("Gan"), which was filed on 6 March 2008, in particular to Exhibit "GAI-1" ("the Exhibit") therein. The Exhibit is referred to in para 10 of Gan's affidavit in which she deposed as follows:

Following the aforesaid hearing, on 9 January 2008, UOB provided the Plaintiff with a schedule of commissions (the "Schedule") received from the 2<sup>nd</sup> Defendant ... for the period from May 2002 to December 2007. A copy of the Schedule is annexed hereto and marked **"GAI-1"**. [emphasis in original]

The first defendant did not dispute that it had received the sum of \$3,135,236.40 from the second defendant as commission. However the first defendant pointed out that in an account of the profit, it was necessary to consider the cost incurred by the first defendant in respect of the transaction that resulted in the receipt of this commission.

7 The AR was persuaded by this argument. However the plaintiff pointed out that Cheang Kok Chew ("Cheang"), the first defendant's vice president, in his affidavit filed on 2 June 2009, had, at para 20, exhibited a table marked "CKC-1" and had stated at para 21 that:

It can be seen from "CKC-1" that the estimated profits earned by UOB from the operation of the FCC System during the period of May 2002 to December 2007 is S\$1,962,424.30.

8 The AR was also persuaded by this submission and ordered that this sum be paid into court. Counsel for first defendant contended that this statement was misinterpreted. Firstly, it was important to bear in mind the context in which it was made. Gan had filed the affidavit of 6 March 2008 in response to Gerard Joseph Barry's affidavit filed on 29 January 2008 in support of the plaintiff's application in summons no 5347 of 2007 for pre-election discovery of documents. Gan's exact words in paras 25 and 26 of her affidavit were as follows:

25. ... the revenue earned by UOB through the operation of the FCC System, ie the commissions paid by [the second defendant] to UOB, was only a small portion of the overall revenue earned from UOB's credit card business in Singapore. UOB does not have a specific amount or breakdown of the costs associated with the operation of the FCC System. However, in order to provide a fair basis for the Plaintiff to make its election, annexed hereto and marked "GAI-4" is a computation of the net profits that were generated from the operation of the FCC System from May 2002 to December 2007.

26. As shown in "GAI-4", the revenue earned by UOB from the operation of the FCC System from May 2002 to December 2007 was the amount of commissions received by UOB from FCC for that period. UOB's expense/income ratios for the financial years from 2002 to 2006, as published in UOB's annual reports are then applied to derive the net profits earned by UOB from the operation of the FCC System from May 2002 to December 2007 ...

[emphasis in original]

9 It should be noted that the intention in providing those figures was to give the plaintiff adequate information to make an election as to an account for profits or damages. I did not see Gan conceding that the total cost to UOB was the sum of \$1,999,285.28 described in GAI-4 as the "net profit". Indeed she made it clear as to the manner in which she computed the "net profit", that it was a rough estimate based on the expense/income ratio of the entire operations of UOB.

10 As for Cheang's affidavit of 2 June 2009, it was made in response to Declan's affidavit of 14 May 2009 made in support of this application for interim payment. Cheang reiterated Gan's admission that UOB had received total commission of \$3,135,236.40 from the second defendant. However he said at para 18 that:

To run the FCC system in tandem with UOB's overall system, UOB incurred costs and expenses such as operating and infrastructure costs. However, as explained by Ms Gan in her affidavit filed on 6 March 2008, UOB did not have a specific amount or breakdown of the costs associated with the FCC system.

11 Cheang went on to explain the purpose of Gan's affidavit and at para 20 he gave a revised table to the one exhibited in GAI-4, updated with the expense/income ratio from the recently released 2007 annual report, as well as making certain corrections in the earlier exhibit. It is in this context that the statement in para 21 of Cheang's affidavit must be seen. Indeed Cheang continued further at para 22 as follows:

... the issues of what are the relevant costs and expenses, and the amounts thereof which should be deducted from the gross revenue in order to compute the profits for which UOB is liable to account, will be fully canvassed at the hearing ...

12 In making this application the plaintiff must satisfy the court that there is an amount below which the assessment of profit will not go. However the first defendant is entitled to provide evidence of all costs related to the establishment and operation of the FCC System that may legitimately be deducted from the total commission that it had received to arrive at the profit that it is liable to account to the plaintiff. This is quite different from the raw estimate given by Gan and Cheang in their affidavits, which was derived from expense/income ratios of the UOB accounts for the years 2002 to 2007. I therefore allowed the first defendant's appeal and dismissed the plaintiff's appeal.

Copyright © Government of Singapore.