

Tipper Corp Pte Ltd v JTC Corporation
[2007] SGHC 67

Case Number : Suit 781/2005
Decision Date : 14 May 2007
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Jeyabalen (Jeyabalen & Partners) for the plaintiff; Siraj Omar and Teoh Sze Min (Tan Kok Quan Partnership) for the defendant
Parties : Tipper Corp Pte Ltd — JTC Corporation

14 May 2007

Judgment reserved.

Tan Lee Meng J:

1 The plaintiff, Tipper Corp Pte Ltd ("TCPL"), who obtained a licence from the defendant, JTC Corporation ("JTC"), for the use of a plot of land with a water front of around 129 metres in Tuas Basin Close, known as "Pte Lot A1857200" ("the licensed land"), sued the latter for damages amounting to US\$4.8m for negligent misrepresentation and breach of the terms of the licence agreement. JTC, which denied the allegation of negligent misrepresentation, filed a counterclaim with respect to unpaid licence and water front fees and TCPL's encroachment on property adjoining the licensed land.

[A] Background

2 TCPL was incorporated on 20 September 2002. Its managing director, Mr Lok Siew Fai @ Loke Siew Fai ("Mr Loke"), is the inventor of a multi-tasking seamless maritime transport system, known as the "Tipper Barge", which has been registered as a patent in Singapore, the United States, Hong Kong, Australia and a number of other countries. According to Mr Loke, the Tipper Barge "is a barge with an innovative design which incorporates tilt-table containers to carry, transport and load minerals, container cargo and reclamation fill materials (e.g. seabed and riverbed sediments, land-based spoils) over land and water as well as in between vessels in one fully automated process". The container is pivotally mounted on the deck so that the cargo can be discharged from the barge by tilting the container on the pivotal axis.

3 TCPL was set up primarily to exploit the commercial potential of the Tipper Barge. Its intended core business was shipbuilding and in particular, the design, research, construction and marketing of maritime equipment systems, including the Tipper Barge and its variants.

4 TCPL required a place to operate a shipyard and construct the Tipper Barges. On 15 June 2004, JTC offered to grant TCPL a licence to use the licensed land at Tuas Basin Close "for the sole purpose of constructing Tipper Barges and their variants".

5 TCPL accepted JTC's offer on 21 June 2004. The licence was for a term of three years as from 29 June 2004. TCPL was required to pay JTC a monthly licence fee of \$15,267.42 plus GST and a monthly water front fee of \$5,591.52 plus GST.

6 JTC agreed to waive the licence and water front fees for the period 29 June 2004 to 28 September 2004. As such, the said licence and water front fees became payable as from 29 September 2004 onwards. According to JTC, the waiver was to enable TCPL to carry out preliminary works such as building the access road to the land. However, TCPL claimed that the licence and water front fees had been waived for three months because JTC had represented that the vessels in the water front in the vicinity of the licensed land would be removed within three months.

7 Soon after the contract was made, most of the vessels left the water front but a derelict vessel, the *Jensen-I*, remained moored in the vicinity. TCPL took steps to determine who owned the *Jensen-I* and to have the vessel removed from the water front. The *Jensen-I* was finally towed away on 9 February 2005 and TCPL tried but failed to persuade JTC to extend the waiver of the licence and water front fees until February 2005.

8 TCPL did not pay the licence and water front fees due to JTC despite several reminders to do so. In the meantime, JTC accused TCPL of sub-letting the licensed land to unauthorised sub-tenants and of encroaching on land adjoining the licensed land. On 19 May 2005, JTC wrote to TCPL to cease all sub-letting of the licensed land and encroachment of the adjoining land. TCPL complained to Mr Abdullah Tarmugi, the Member of Parliament for East Coast GRC (Siglap), who wrote to JTC on 1 July 2005 to look into TCPL's appeal for a waiver of license fees and its claim that it was not sub-letting the licensed land to anyone. On 7 July 2005, JTC informed TCPL that it was prepared to explore the possibility of an instalment plan for payment of the license fees but it could not agree to a waiver of the said fees. In its letter, JTC reiterated that it had found several unauthorized sub-tenants on site and requested TCPL to stop its sub-letting activities by 21 July 2005. On 15 July 2005, JTC invited TCPL to submit an instalment plan by 29 July 2005 for the settlement of the outstanding license fees.

9 On 21 September 2005, JTC terminated the licence agreement on the grounds of encroachment of the adjoining land and sub-letting of the licensed land. The relevant part of the termination letter is as follows:

2 [Y]ou were also notified in [Mr Terence Ng's e-mail of 12 August 2005] that you were required to cease the encroachment and reinstate the land. As at today, we regret to note that you have not done so....

4 ... [I]t is a breach of your covenants of the Licence by allowing [three companies not registered as Resident Contractors with Ministry of Manpower] to be on the land licenced to you. Our inspection on 12 September 2005 shows that the said companies were still occupying the land. In addition, as stated in our letter dated 06 September 2005, you have also allowed another party to occupy the land without our approval which is a breach of the covenant of the Licence not to grant a licence or share the possession or occupation of the land or any part thereof.

5 In accordance with clause 2 of the Licence, we hereby serve you one month's notice with effect from the date of this letter to terminate the Licence. Pursuant to clause 1(28) of the Licence, you are to reinstate the land before vacating the same.

10 TCPL did not comply with the notice to vacate the licensed land within the specified period. Instead, it appealed to Professor S Jayakumar, Member of Parliament for East Coast GRC, to request JTC to allow it to stay on the licensed land for another nine months in order to fulfil its contractual obligations to Keppel FELS although it did not have a contract with Keppel FELS and it was then building a component of an oil rig for another company that had a contract with Keppel FELS. Such

construction work was not allowed as the land had been licensed to TCPL for the sole purpose of building Tipper barges and variants of these barges. On 7 October 2005, Professor Jayakumar wrote to JTC's Chief Executive Officer to look into Mr Loke's rather serious allegations, which suggested impropriety on the part of certain officers, as well as victimisation and the favouring of TCPL's rivals and competitors.

11 JTC did not change its mind on the termination of the licence agreement. On 19 October 2005, it wrote to TCPL to reiterate that the latter had committed very serious breaches of the terms of the license agreement, including a failure to pay the licence fees, encroaching of adjoining land and allowing third parties to occupy the licensed land.

12 TCPL did not comply with the eviction notice. Instead, it applied for an interim injunction to prevent JTC from terminating the licence agreement but its application was dismissed. TCPL finally vacated the land on 15 March 2006 without paying the licence and water front fees owed to JTC.

[B] TCPL'S claim against JTC

13 TCPL pleaded, inter alia, that JTC was in breach for failing to procure approvals from various government authorities, failing to provide it with quiet enjoyment of the use of the licensed land and failing to provide it with land that was fit for its intended use. It also contended that the license agreement had been invalidly terminated by JTC. However, during the trial, TCPL's counsel, Mr Jeyabalen, informed the court on 27 February 2007 as follows:

The plaintiffs have reviewed their position and I'm applying to pursue the claim only on the basis of negligent misrepresentation and I'm therefore applying to your Honour for leave to abandon the other causes of action.

14 In his closing submissions, Mr Jeyabalen reiterated that his client's case is that it "suffered financial ruin as a consequence of [JTC's] negligent misrepresentation". In view of TCPL's decision to rest its claim against JTC solely on negligent misrepresentation and to abandon its other causes of action, only the issue of negligent misrepresentation will be considered.

15 TCPL contended that when it was considering whether or not to accept JTC's offer of a licence in June 2004, JTC's Deputy Manager in the Marketing Department, Mr Terence Ng Hui Kiat ("Mr Ng"), orally represented to Mr Loke that all vessels in the waterway fronting the licensed land will be removed within three months ("the representation"). It contended that as the *Jensen-I* was not removed until February 2005, it was entitled to damages for negligent misrepresentation. TCPL relied on s 2(1) of the Misrepresentation Act (Cap 390, 1994 Rev Ed), which provides as follows:

Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true.

16 In *Howard Marine and Dredging Co Ltd v A Ogden & Sons (Excavations) Ltd* [1978] QB 574 at 596, Bridge LJ said that in the course of negotiations leading to a contract, the English Misrepresentation Act, which corresponds to the Singapore Misrepresentation Act, "imposes an absolute obligation not to state facts which the representor cannot prove he had reasonable ground

to believe”.

17 In cases such as the present, it is necessary to determine at the outset whether there had been any representation of *fact*. *Anson’s Law of Contract* (28th Ed, 2002) explained at p 237 as follows:

An operative misrepresentation consists in a false statement of existing or past fact (or possibly of law) made by one party (the “misrepresenter”) before or at the time of making the contract, which is addressed to the other party (the “misrepresentee”) and which induces the other party to enter into the contract.

18 It cannot be overlooked that in the present case, the alleged representation that JTC will clear the waters in the vicinity of the land of ships within three months is a statement of intention and not a statement of existing or past fact. Admittedly, in *Edgington v Fitzmaurice* (1885) 29 Ch D 459, Bowen LJ said that the state of a man’s mind is as much a fact as the state of his digestion and if it can be ascertained, it is as much a fact as anything else. In similar vein, in *Wales v Wardham* [1977] 1 All ER 125, Tudor Evans J said at p 136 that a “statement of intention is not a representation of existing fact unless the person making it does not honestly hold the intention he is expressing, in which case there is misrepresentation of fact in relation to the state of that person’s mind”. In *Tan Chin Seng and Ors v Raffles Town Club Pte Ltd (No 2)* [2003] 3 SLR 307, Chao Hick Tin JA, who delivered the judgment of the Court of Appeal, noted at [14] that while it is difficult to prove what was the state of a person’s mind at any particular point in time, that is a matter of proof and should not be confused with the substantive principles of law.

19 In the present case, TCPL did not assert that JTC had no intention of keeping its word when the alleged representation was made and it adduced no evidence in relation to this issue. It follows that as Mr Ng’s alleged representation in relation to the clearing of the vessels from the water front was not a statement of fact but a promise to do something in the future, there was no mis-statement of *fact* in respect of which a claim for negligent misrepresentation may be made by TCPL. On this ground alone, TCPL’s claim for damages for negligent misrepresentation can be dismissed.

20 Another reason why TCPL’s claim for negligent misrepresentation did not get off the ground is that it was not established that the alleged representation had been made by Mr Ng or any authorized officer of JTC. In para 32 of his affidavit of evidence-in-chief (“AEIC”), Mr Loke stated as follows:

32 Mr Ng assured me that JTC would effect the removal of all the vessels from the water front within the next three months, and that I should leave it to JTC to sort out this issue. Mr Ng promised that, within three months, JTC would inform all the owners of the vessels and all the vessels would be removed from the water front....

21 As has been mentioned, TCPL also claimed that the waiver of rental for the first three months was to enable JTC to fulfil its alleged promise to clear the water front of all the vessels then lying there but JTC contended that the waiver was to enable TCPL to carry out preliminary work, including the construction of connecting roads.

22 Mr Ng vehemently denied that he made the alleged representation. In para 34 of his AEIC, he stated as follows:

Mr Loke did ask me if JTC could remove the Vessels from the waterway. I told him that the Vessels did not belong to JTC and JTC did not have any jurisdiction over the waterway. I told him that the proper authority was the MPA. However, as a gesture of goodwill and as part of JTC’s customer service practices, I agreed that JTC would try and assist in the removal of the Vessels.

23 The evidence clearly shows that JTC's version of events is true. To begin with, if JTC had indeed represented that it would remove all the vessels lying in the water front within three months before the contract was made, TCPL would not have failed to rely on this representation when it sought a further waiver of the licence and water front fees following the delayed removal of the *Jensen-I*. However, the allegation of negligent misrepresentation surfaced only *after* JTC had terminated TCPL's licence to use the licensed land. This was conceded by Mr Loke during cross-examination.

24 TCPL's letter of 28 September 2004 to JTC's Assistant Manager (Lease Management), Mr Ang Chao Pak, provided an ideal opportunity for the company to raise the issue of the alleged representation. The relevant parts of this letter, in which TCPL sought an extension of time to pay the Banker's Guarantee for the licence and water front fees, are as follows:

2. With respect to ... the Banker's Guarantee for the deposit ... we appeal to your good office to re-schedule the date of payment from 29 September 2004 to a later date or upon the removal of the derelict vessel in question. Our grounds are as follows:

(i) The core business of [TCPL] is shipbuilding

(ii) It is indeed demoralising to note that the water front is encumbered physically by a derelict vessel and a concrete solution is yet to be decided. While the authorities dither over their decision-making, we, the party, affected directly by circumstances beyond our control, have already and continue to incur losses even before our business operations have taken off.

(iii) The vessel's presence at the water front ... has seriously encumbered our business operations. [O]ur clients are also unwilling to discuss serious business proposals with us as with the derelict vessel's presence at the water way there is no launching path for new build vessels.

(iv) These two scenarios have frightened off many of our clients and this has resulted in our losing many a business deal. Our clients have expressed that they will only begin serious business negotiations with us upon the removal of the derelict vessel from the water front.

(v) We have invested a substantial amount of our resources in developing the said land and have paid JTC an initial payment of \$70,798.66. With no inkling of a solution in sight, our losses continue to snowball as our plans are disrupted indefinitely and in the meantime, the upkeep of the said land continues.

(vi) As an entrepreneurial start-up with limited resources, our cash flow must be managed prudently.... Furthermore, ... the vessel's continued presence at the water front is dealing a big blow to our newly start-up company's image and goodwill, of which such losses are immeasurable.

(vii) With the present stalemate in coming up with a solution to deal with the blockage caused by the derelict vessel, [TCPL's] further development may be affected as the patience of our bankers and industry players is wearing thin and their support and enthusiasm waning.

We seek your indulgence and compassion in this matter.

25 When this letter of 28 September 2004 was written, the *Jensen-I* was still in the water front. Although the alleged representation would have been the strongest ground for a waiver of licence and water front fees until that vessel was removed, nothing was mentioned about the alleged representation. When cross-examined, Mr Loke conceded that in this letter, he was pleading for JTC's indulgence and compassion, after which he rambled on aimlessly as follows:

Being a businessman, you see, when dealing with JTC, a statutory board, who is the landlord of all industrial land, you see, we feel that the JTC should not cast any doubts, you know, in the undertaking especially in drafting agreements and so on. It should not cast any doubts in the agreement, it should assist us and clarify whatever doubts that is in the agreement. In my case, JTC make it so murky, they have a lease agreement, they give a lease agreement and with several annexes ..., which when you read together, it all contradicts each other ...

26 On 6 October 2004, JTC's Mr Ang responded to TCPL's letter of 28 September 2004 as follows:

There is no relation between the banker's guarantee and the removal of the derelict vessel. *Whilst we have, out of goodwill, rendered all necessary assistance to you to expedite the removal of the vessels, you need to fulfil your contractual obligations to us.*

[emphasis added]

27 Although Mr Loke claimed to have written to JTC to contradict Mr Ang's assertion that JTC had merely acted "out of goodwill" to expedite the removal of vessels from the water front, he could not produce any evidence of such a letter. This was not surprising as he had also testified that "*not once*" before TCPL was asked to leave the licensed land did the company assert that JTC had represented that it would remove the vessels from the water front.

28 Another letter from TCPL to JTC dated 15 July 2005 also merits consideration. By then, JTC had decided not to waive the licence and water front fees for the period 29 September 2004 to 9 February 2005. In this letter, TCPL stated as follows:

4. Unfortunately there is no happy ending to the story for our company *will now have to pay ground rent and water frontage usage for the past 6 months* for a site that is apparently deemed encumbered The issue of whether the said encumbrance has consequential effects in causing our company additional business losses and/or damages ... is conveniently brushed aside in the relentless pursuit of the ground rent and water frontage charges which we, being the tenant of the said site, now have to bear. In short, we have become the living victim of the circumstance while the wrongdoer was allowed to go scot-free....

6 In other words, had JTC ... been more mindful earlier on and sunk its teeth against the abandoned vessel instead of using it against our company, ... the vessel could have disappeared long ago as our efforts have shown....

11. *We sincerely appeal to your good office to consider our appeal for waiver of ground rent and water frontage charges during the said 6 months when the site was encumbered by the abandoned vessel which we believe is an accepted practice in real estate.*

[emphasis added]

29 Apart from there bring no reference in the letter of 15 July 2005 to the alleged representation, TCPL conceded that it will "now have to pay ground rent and water frontage" for the past six months. When questioned by JTC's counsel, Mr Siraj Omar, on this letter, Mr Loke was inconsistent. Initially, he accepted that he had to pay the licence and water front fees as he said as follows:

Q: It says here quite clearly that your company, Tipper Corp, will have to pay ground rent and water frontage usage for the past 6 months for a site that is apparently deemed encumbered, correct?

A: Yes.

30 Subsequently, he changed his stand and claimed to be unsure of the position. The relevant part of the proceedings is as follows:

Q: [Y]ou accept that you had to pay the fees. It's just that you felt it was unfair, correct? ...

A: I haven't established my standing yet.

Q: Mr Loke, let's not play games. This is what you wrote in your letter to JTC, correct? ... And you say in Court that you accept, you have to pay, you just think it is unfair, is that correct?

A: It's unfair and also at the same time, it's a protest....

Q: And is it unfair because you have to pay the rent even though the vessel was there, correct?

A: I'm not sure at that time because I'm dealing with JTC.

31 How Mr Loke could claim that he had not "established his standing yet" by 15 July 2005, which was more than a year after the alleged representation had been made and several months after the *Jensen-I* had finally been removed from the water front, cannot be fathomed. What is clear is that the fact that the alleged representation was not mentioned at all in this letter of 15 July 2005 cannot but be unhelpful to TCPL's case.

32 The alleged representation by JTC was also not recorded in TCPL's own minutes of a number of meetings with JTC on the issue of a waiver of the licence and water front fees.

33 For a start, the minutes of a meeting on 9 September 2004, which were recorded by Mr Loke, did not refer to the alleged representation even though the continued presence of the *Jensen-I* was recorded as "the main problem" at this meeting.

34 Another meeting that Mr Loke and his daughter, Ms Lu Lineng, a director of TCPL, had with JTC's Senior Officer in the Land and Standard Factory Department, Mr Ernest Tay, on 28 June 2005 should also be noted. In paras 17 and 19 of her AEIC, Ms Lu stated as follows:

17 At the meeting, we discussed several issues, namely the "*Jensen-I*", the waiver of the rental and the alleged subletting by Tipper. We explained to Mr Tay that the presence of the "*Jensen-I*" had an adverse and detrimental effect on Tipper's business, resulting in the termination of business deals and loss of business amounting to approximately US\$20 million....

19 The meeting was ultimately unproductive and did not manage to resolve the outstanding issues between Tipper and JTC.

35 Ms Lu contended that she recorded the minutes of the meeting of 28 June 2005 accurately. In so far as the question of rental was concerned, all that she recorded of her company's position was as follows:

(s) In a follow-up of our appeal for a rental waiver in our letter dated 15 March 2005, we then requested for a six-month rental waiver from 9 Feb 2005 and a three-month half rental payment from August 2005 ...

(t) We also explained that from September 2004 till 9 Feb 2005, the issue of a rental waiver should not apply as we could not use the land due to the vessel's encumbrance and thus should be rent-free. As such, the rental waiver should begin from 9 February 2005 onwards and not before that.

36 JTC's counsel, Mr Siraj Omar, rightly pointed out that had the alleged representation been made by Mr Ng, either Ms Lu or Mr Loke would have raised this issue at the meeting of 28 June 2005 when the question of waiver of rental was discussed.

TCPL's active role in clearing the Jensen-I from the water front

37 Although it alleged that JTC had the obligation to clear the vessels from the water front within three months, TCPL took active steps from the very start to have the derelict vessel removed from the water front. Soon after accepting JTC's offer of a licence, it wrote to the Port Authority of Singapore on 23 July 2004 as follows:

There is a boat/hull moored at the water frontage at Northern Tuas Basin under our jurisdiction. The aforesaid boat does not bear any identification mark or name.

We shall be most grateful if your good office could furnish us with information relating to this boat, if any.

38 On 27 August 2004, TCPL placed an advertisement in *The Straits Times*, calling on parties having an interest in the derelict vessel to come forward with proof of ownership. On 16 October 2004, TCPL filed a police report, complaining that the vessel might be moved to avoid paying charges, strangely termed by it as "demurrage", and that the vessel might dump waste into the water. Finally, when the derelict vessel had not been removed by December 2004, TCPL instituted an admiralty action (ADM 272 of 2004) against the owners of the *Jensen-I*.

39 After the owners of the *Jensen-I* had been identified, TCPL made claims against them. On 15 September 2004, Mr Loke wrote to M/s Edwin Tay & Partners, the shipowners' solicitors, to demand the payment of S\$196,216, which included loss of revenue from mooring charges for boats and barges from 29 June 2004 to 29 August 2004 even though its licence agreement allowed it to use the licensed land solely for the construction of Tipper barges and their variants. TCPL also claimed the amount that could have been earned from rental of the licensed land for two months at S\$4 per square foot as from 29 June 2004 even though it was not required to pay any licence and water front fees to JTC during this period and had no authority to sub-let the licensed land. With each passing month, TCPL increased its demands on the shipowners and by 9 December 2004, its claim for the same heads of damage had increased dramatically to S\$415,540.

40 When re-examined by his own counsel as to why TCPL had taken on the responsibility of writing to MPA and placing an advertisement in *The Straits Times* to locate the owners of the *Jensen-I*, Mr Loke conceded that it *could* be his responsibility to clear the *Jensen-I* from the water front:

Q: Why did you take on this responsibility when it is JTC's own?

A: It was because I have spent quite a bit of money ... And besides, I have a number of MOUs to fulfil. I don't know what to do. *But JTC told me it was my responsibility.* I have to fight for survival. *Therefore I wrote these letters believing that it was my responsibility to remove the vessel...*

Q: And what is your answer again?

A: *JTC told me that the responsibility of removing the vessel was on me. I was taken to believe their words. ... Initially, it was their responsibility. They said that they will do it within 3 months. Subsequently, after removing most of the vessels,... he told me that it was my responsibility to remove this Jensen-I. What they did earlier was out of goodwill. Therefore, I have no choice to trust JTC that ...*

Q: Are you the ---

A: *It could be my responsibility to remove that vessel.*

[emphasis added]

41 Realising that Mr Loke's concession that it could be his responsibility to remove the *Jensen-I* did not help his case, TCPL's counsel, Mr Jeyabalan, reminded Mr Loke during re-examination that his company's position was that it was JTC's duty to remove the vessels from the water front. However, he did not continue with this line of re-examination after JTC's counsel, Mr Siraj Omar, objected to it.

42 Finally, I turn to the credibility of the witnesses. Mr Loke, TCPL's sole witness, did not convince me that the alleged representation had been made. His evidence was confusing and often had nothing to do with his case, which was based solely on negligent misrepresentation. Instead of focusing on his case, he went so far as to accuse JTC of setting a trap for him and of fraud. In contrast, Mr Ng and all the other witnesses from the JTC stated their positions clearly and without any hesitation whatsoever. I had no doubt that Mr Ng and the other witnesses from JTC were telling the truth.

Conclusion on TCPL's claim for damages for negligent misrepresentation

43 As TCPL failed to prove that the alleged representation had been made by JTC or that if made, it was a false statement of *fact*, its claim against JTC for damages for negligent misrepresentation is dismissed.

JTC's counterclaim

44 JTC's counterclaim will next be considered. In his closing submissions, JTC's counsel pointed out that the counterclaim relates to the recovery of the overdue licence and water front fees and damages for TCPL's wrongful encroachment onto approximately 7,680 square metres of land adjoining the licensed land (the "adjoining land").

Recovery of the licence and water front fees

45 JTC's claim for overdue licence and water front fees is for the period 29 December 2004 until 15 March 2006. TCPL admitted that it did not pay the licence and water front fees for this period. As I have found that there was no negligent misrepresentation and that JTC was entitled to terminate the licence agreement, TCPL is obliged to pay the licence and water front fees for the period 29 December 2004 until 15 March 2006. JTC is also entitled to interest on the overdue sums at the contractual rate of 8.5% per annum.

Damages for encroachment of the adjoining land

46 As for encroachment of the adjoining land, TCPL admitted that it occupied the adjoining land. As has been mentioned earlier on, one of the grounds relied on by JTC for terminating the licence agreement was the said encroachment. TCPL's initial position at the trial was that it had done no

wrong because it had JTC's permission to occupy the adjoining land. However, this stand was inconsistent with the position that had been taken by TCPL's former solicitors, M/s Drew & Napier, which was that TCPL had encroached on the adjoining land but it claimed "a set-off as pleaded in the statement of claim which is greater in sum than the counterclaim". When cross-examined, Mr Loke endorsed the position outlined by his former solicitors. In view of Mr Loke's concession that TCPL had encroached on the adjoining land and the fact that there is nothing for TCPL to set-off against JTC's counterclaim, the only issue left is the determination of the damages for the wrongful encroachment.

47 Mr Loke testified during cross-examination that TCPL started to encroach on the adjoining land three months after he occupied the licensed land in June 2004. JTC claimed damages for the encroachment at the rate of \$17 per square metre per annum, which is the same rate as that charged for the licensed land. As the adjoining land is approximately 7,680 square metres, TCPL ought to pay JTC \$10,880 per month for the encroachment. I thus hold that JTC is entitled to damages at this monthly rate with effect from the beginning of the encroachment, which is three months from the date TCPL occupied the licensed land, until 15 March 2006.

Costs

48 JTC is entitled to costs with respect to the action and the counterclaim.

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