

United Fiber System Limited v China National Machinery & Equipment Import & Export
Corporation
[2011] SGHC 25

Case Number : Originating Summons No 872 of 2010X
Decision Date : 28 January 2011
Tribunal/Court : High Court
Coram : Quentin Loh J
Counsel Name(s) : Andre Maniam SC, Jenny Tsin and Wendy Lin (WongPartnership LLP) for the plaintiff; Mohan Pillay, Toh Chen Han and Daniel Tay (MPillay Advocates & Solicitors) for the defendant.
Parties : United Fiber System Limited — China National Machinery & Equipment Import & Export Corporation

Contract

Companies

28 January 2011

Judgment reserved.

Quentin Loh J:

Introduction

1 In this action, the plaintiff ("UFS") is basically seeking to set aside a statutory demand for US\$19,742,682 made on it by the defendant ("CMEC") on 20 August 2010 in respect of a performance bond. UFS is seeking this relief on the ground that there was no debt immediately payable by it under the performance bond. It is also seeking certain ancillary reliefs.

Background

2 UFS is a public company listed on the Singapore stock exchange. It is the parent of an Indonesian company named PT Mangium Anugerah Lestari ("PT MAL").

3 In or around April 2007, CMEC completed delivery of a wood chip mill to PT MAL pursuant to a contract between them ("the EPC contract"). PT MAL's payment obligations to CMEC under the EPC contract were secured by a guarantee from UFS to CMEC ("the guarantee").

4 PT MAL defaulted in its payment obligations and UFS also defaulted in its obligation under the guarantee. CMEC agreed to reschedule PT MAL's debts in a deed of settlement dated 2 September 2008 ("the Deed of Settlement"). Under the Deed of Settlement:

- (a) PT MAL was obliged to pay US\$25,296,250 ("the Settlement Sum") to CMEC in monthly instalments pursuant to a Repayment Schedule ("the Repayment Schedule") found in the Deed of Settlement.

- (b) There was an acceleration clause providing for the Outstanding Balance, *ie*, the Settlement Sum less what has been paid, to fall due immediately if PT MAL defaulted in paying three instalments. Interest would accrue on the accelerated sum at 6% per annum, compounded monthly, starting from the date of acceleration.

5 PT MAL's payment obligations under the Deed of Settlement were secured by UFS's irrevocable and unconditional performance bond, also dated 2 September 2008 ("the Performance Bond"). Under the Performance Bond, UFS covenanted to pay on demand (a) US\$25,296,250 or the Outstanding Balance, as defined in the Deed of Settlement, and (b) a Depreciation Amount to compensate CMEC for any depreciation of the US dollar against the Renminbi, such amount to be calculated by a formula prescribed in the Performance Bond.

6 By 5 February 2009, PT MAL had failed to pay at least three instalments, thereby triggering the acceleration clause in the Deed of Settlement.

7 On 8 July 2009, CMEC demanded payment of US\$24,060,958.43 from UFS pursuant to the Performance Bond as the accelerated sum due under the Deed of Settlement. Between 8 July 2009 and 15 July 2010, UFS paid CMEC US\$926,107.

8 On 15 July 2010, CMEC issued a statutory demand under section 254(2)(a) of the Companies Act, (Cap 50, 2006 Rev Ed) ("the Companies Act"), against UFS for the sum of US\$22,980,625 ("the 15 July SD"). [\[note: 11\]](#) The parties subsequently entered into negotiations regarding the sum owed by UFS to CMEC. The relevant parties and interlocutors were:

(a) UFS's finance director, Pauline Lee ("Lee");

(b) UFS's acting chief executive officer, Deboo Hoshi Dorab ("Deboo");

(c) UFS's solicitors, WongPartnership LLP ("WongP");

(d) CMEC's assistant president, Li Jingkai ("Li");

(e) CMEC's Ji Xiao Gang ("Ji"), from its legal department;

(f) CMEC's Dong Jin;

(g) CMEC's solicitors, MPillay Advocates and Solicitors ("MPillay");

(h) Falcon Capital Holding Limited ("Falcon"), a "white knight" who was at the material time in negotiations with UFS and CMEC;

- (i) Sia Siew Kiang aka Willie Sia ("Sia"), a director of Falcon Capital Management Inc who represented Falcon in its negotiations;
- (j) Soh Sai Kiang Phillip ("Soh"), a director of the capital markets department of UOB Kay Hian Pte Ltd who was engaged by Falcon to advise it with regard to its intended investment in UFS; and
- (k) Falcon's solicitors KhattarWong ("KW"), who do not appear to have much involvement in the negotiations.

9 The parties were, to use a neutral term, in communication with each other up to 20 August 2010, when CMEC issued a second statutory demand to UFS for US\$19,742,682 ("the 20 August SD"). On 23 August 2010, CMEC filed the present originating summons. In essence, UFS is contending that two agreements had been formed in between 15 July 2010 and 20 August 2010, the net effect of which was that no debt was due and payable to CMEC when it issued the 20 August SD.

10 On 30 August 2010, counsel for UFS wrote to the Registrar and indicated that the parties have agreed that, pending the resolution of this originating summons, CMEC will not commence any winding up proceedings against UFS; and UFS will not enter into any transaction which has a material adverse effect on the net asset value or the net current asset value of the Plaintiff, save in the ordinary course of business.

Issues

11 At the 1st hearing of this action, which was brought by way of originating summons ("OS"), I informed counsel that there seemed to be a serious dispute of fact and the OS procedure was not suitable. Furthermore, I was being asked to make a final determination on facts, which although evidenced in written exchanges, nonetheless involved quite a few telephone calls and meetings at important points of time. However, counsel prevailed upon me to consider limited cross-examination. I therefore ordered that counsel agree on a list of issues for the purposes of cross-examination. The agreed issues are as follows:

- (1) What agreement (if any) was reached between UFS/Falcon and CMEC on 27/28 July 2010?
- (2) Specifically:
 - (i) What was the agreed deadline for payment of the US\$5m by UFS to CMEC? In particular, was the agreed deadline for UFS's payment (*ie*, 31 August 2010) as stated in the Falcon Undertaking?
 - (ii) Was there thus an agreement that CMEC would not issue a fresh SD to UFS until after 31 August 2010 (at least)?

- (iii) Did the payment of US\$5m represent payment by UFS of instalments due under Schedule 1 of the Deed of Settlement from August 2010 onwards, such that parties would revert to the Repayment Schedule with UFS next having to make payment only in January 2011 at the earliest?
- (3) What agreement (if any) was reached between UFS/Falcon and CMEC on 5/7 August 2010?
- (4) Specifically:
 - (i) Was there an agreement in relation to the restructuring of the future instalments under the Deed of Settlement?
 - (ii) Had the parties agreed on:
 - (a) the amount to be repaid (or the basis on which this would be ascertained);
 - (b) the repayment period;
 - (c) what Falcon would provide a bank guarantee for; and/or
 - (d) the rate and basis on which interest would be charged?
 - (iii) Had all the key terms of the proposed restructuring been agreed to, such that any remaining terms can be implied or were to be negotiated and agreed in good faith?
- (5) On what basis did Falcon/UFS agree to make available the US\$5m to CMEC (which was paid on 10 August 2010)?
- (6) Has CMEC acted contrary to what it had agreed to; and if so, what are the consequences thereof?

12 Counsel also agreed to proceed on the basis that, as of 27 July 2010, UFS owed US\$22,967,254.65 to CMEC. This was without prejudice to each side's right to contend elsewhere that the actual figure was different.

Facts

13 In order to present a fair picture of the communications which transpired between the parties, I first set out the relevant documents and each side's evidence in detail and chronologically, before going on to address the arguments presented by each side. Unless otherwise stated, the emphases in the documentary evidence which I set out are original.

15 July

14 As mentioned, CMEC issued the 15 July SD to UFS for US\$22,980,625. [\[note: 2\]](#)

16 July

15 Lee, on behalf of Deboo, sent Dong and Ji an email, which read in material part as follows: [\[note: 3\]](#)

First of all, please accept our sincere apologies for the delay in handling this matter. Please be assured that we would like to work with you quickly to resolve this matter.

We would like to offer you our DongShan property as part of the interest and principal repayment. We have emailed to you a copy of the valuation report and has [sic] attached the same here for your kind consideration. We hope this valuation is acceptable to you.

We also have a new investor coming in shortly and our goal is to work out a mutually acceptable repayment plan with you.

We would greatly appreciate if you could let us know the next step so that we could amicably resolve this matter at the earliest possible time.

16 Deboo also sent Dong and Ji a similarly-worded letter. [\[note: 4\]](#)

20 July

17 Ji replied to Lee with an email at 2.01pm, the material part of which read as follows: [\[note: 5\]](#)

If UFS could pay the installments [sic] **from Dec 2009 to Dec 2010** in accordance with Schedule 1 of Deed of Settlement dated 2 Sept 2008, then CMEC would consider whether or not to withdraw the SD.

18 According to Ji, Lee subsequently contacted him to say that UFS did not have the funds to meet this proposal. [\[note: 6\]](#)

19 Ji sent a further email at 6.10pm varying his position. The material part of that email read as follows: [\[note: 7\]](#)

CMEC will consider to withdraw the SD only after our receipt of the following two documents from UFS:

(1) Confirmation of outward remittance by your bank for the installments [sic] **from Dec 2009 to**

Jul 2010 in accordance with Schedule 1 of Deed of Settlement dated 2 Sept 2008.

- (2) Undertaking by UFS to make the payment of the installments [sic] **from Aug 2010 to Dec 2010 by 5 Aug 2010.**

21 July

20 Lee replied to Li with an email with a letter attached, making a counterproposal. [\[note: 8\]](#) The letter informed Li that Falcon was currently conducting due diligence on UFS with a view towards investing in it. It then went on to say: [\[note: 9\]](#)

As the Company is a publicly listed company on the Singapore Exchange Securities Trading Limited ("SGX-ST"), we are required to strictly follow SGX-ST rules and regulations, one of which is to immediately announce to the public the SD which we had received. Further to discussions with you, we understand from CMEC that it is not the intention of CMEC to enforce the statutory demand and cause a winding up of UFS.

On that basis, announcement relating to the SD has not been made pending discussions with CMEC for the withdrawal of the SD. However, our legal advisers have advised that the announcement on the SD needs to be made immediately if the SD is not withdrawn by tomorrow, given that a few days has passed since the service of the SD. By announcing the SD, we may face the following severe consequences:-

- (1) The investor Falcon may decide not to proceed with the transaction;
- (2) All loans, borrowings and guarantees provided by the various financial institutions to the Company, amounting to approximately US\$53 million, excluding CMEC debt, will be on demand immediately as the SD would have triggered a cross default under the institutions' standard financial covenants;
- (3) The developers who had granted constructions contracts to Poh Lian Construction Pte Ltd, may cancel such construction contracts and re-award them to other construction companies, making Poh Lian a worthless company;
- (4) The creditors of the Group may also start to petition to the Singapore Court for recovery of their debt; and
- (5) The Ministry of Forestry of Indonesia may immediately cancel both the licence of the forestry assets and concession rights granted to the UFS Group.

It then proposed: [\[note: 10\]](#)

Since we are so close to finalizing the transaction with Falcon, we implore you to allow us some more time to discuss and rework the repayment schedule with CMEC. We assure you that we are committed to resolve this matter with CMEC at the earliest.

In the meantime, we would like to propose the following on an immediate basis to show our commitment as we do not have the necessary funds to meet your requests on such short notice:

- (1) We have been able to raise 2 months interest payment of US\$207,500 and will telegraphic transfer them to you.

- (2) We would like to offer our Dong Shan Property ... to you as part of the repayment of February 2010 to July 2010 interest. The property has been appraised for about US\$5.3 million. Please kindly consider to accept this property as it will cover the interest and principal repayment up to 5 December 2010. We have forwarded a softcopy of the valuation report to CMEC. Again, we greatly appreciate if you could accept the property as part of the debt repayment.
- (3) As for the remaining debt, we would like to propose to discuss it with you and the investor collectively as under the terms of the transaction with Falcon, this needs to be discussed and reworked together with the investor.

23 July

21 UFS did not announce the 15 July SD as indicated in its 21 July letter. Instead, it suspended trading of its shares "pending for [sic] release of an announcement". [\[note: 11\]](#)

22 Under the SGX rules, the suspension of the shares had to be lifted by 28 July, which therefore represented, according to the evidence of Deboo and Soh, a critical point [\[note: 12\]](#) or deadline.

26 July

23 At 1.57pm, Ji emailed Deboo to reject UFS's proposal in its letter of 21 July and to restate the 15 July SD. [\[note: 13\]](#)

24 At 6.08pm, Lee emailed Ji. [\[note: 14\]](#) The material part of the email read as follows:

When we received your email of today, we were ready to send to you confirmation of our acceptance of your proposal of 20 July 2010 requested as follows:

- (1) confirmation of outward remittance advice by our bank for the installments [sic] of interest from Dec 2009 to July 2010 in accordance with Schedule 1 of Deed of Settlement dated 2 Sept 2008. In this regard, please kindly find attached the draft TT remittance to the bank for the interest instalment [sic] from December 2009 to July 2010; and
- (2) undertaking by UFS to make the payment of the installments [sic] of principal and interest from Aug 2010 to Dec 2010 by 5 Aug 2010. We would appreciate if you could consider extending the payment of installments [sic] from August 2010 to December 2010 to 31 August 2010, so that we could ensure that the funding is in place.

Kindly confirm that CMEC will withdraw the Statutory Demand of 15 July 2010 upon receipt of the above. We will process the TT remittance instructions to the bank immediately upon receipt of your confirmation.

25 Lee and Li then spoke on the telephone. Lee alleged that Li agreed with her statement that by paying CMEC US\$6m, UFS would be prepaying the instalments due under the Repayment Schedule up to December 2010. Li disagreed and said he clearly told Lee that there was no question of prepayment (which was a reference back to the Repayment Schedule) and that what was immediately due and owing was the entire debt and interest of some US\$24m. The US\$6m payment was to show good faith and was about one quarter of the amount due and owing.

27 July

26 At 12.46pm, Lee reported to Deboo, who in turn reported to UFS's board through an email, the material part of which read as follows: [\[note: 15\]](#)

We have just concluded a discussion with CMEC through Fonda Cheng and Pauline Lee. CMEC has demanded the following and immediately:

(1) Wire transfer of US\$1.0million by today. Raja has authorised this payment based on the seriousness of the situation but we would appreciate your approval immediately and we will follow up with the necessary resolutions.

(2) Undertaking by a third party for a balance of US\$5million by 5th August, 2010 to be executed at their Singapore offices of JMPillay, their law firm by this afternoon. Falcon is prepared to help with the undertaking. We are working through Wong Partnership with JMPillay.

Falcon will also fund the US\$5million. Attached is a termsheet that has been negotiated with them with no upfront costs but an interest of 10% and at short notice it appears fair compared to YA Global who is only prepared to lend us US\$3.6 million and has costs of US\$750K (including upfront 12% interest, 4% commission and loan extension fee of US\$250K) which will be deducted upfront resulting in a net amount of US\$2.85million. Both term sheets are attached for your information.

We will be following up with resolutions but I would appreciate your approval of the Falcon termsheet and the authorization of the wire transfer of US\$1million immediately to CMEC. Our goal is to get the SD withdrawn today.

27 At 4.43pm, Lee sent Ji, Deboo and others an email containing a remittance advice from United Overseas Bank for the transfer of US\$1m to CMEC's bank. [\[note: 16\]](#) The remittance advice indicated the transfer as being "PART PYT OF DEBT". [\[note: 17\]](#)

28 At 5.33pm, Ji sent Lee an email which enclosed a letter from Li to UFS. [\[note: 18\]](#) The letter read in material part as follows: [\[note: 19\]](#)

Refer to recent communication on the subject of our due payment.

Please be aware that USD 24,060,958 was due since July 2009 and 6% interest was imposed on this amount since then according to Deed of Settlement. The total due amount up to now is USD 24, 834,989.

Your immediate action on payment is expected. Negotiation on installments [sic] payment is based upon receipt of USD 6,000,000 by August.

Our Statutory Demand stands effective.

29 Between 5pm and 6pm, Deboo, WongP and MPillay also engaged in a conference call. After the call, at 7.55pm, WongP sent an email to MPillay, the material part of which read as follows: [\[note: 20\]](#)

We refer to our telephone discussions today during which [we] were informed that CMEC would be willing to withdraw the statutory demand provided:

- (1) UFS makes payment of USD6million before the end of August 2010;
- (2) An unconditional on-demand guarantee acceptable to CMEC is provided by a third party to guarantee payment of 1 above. CMEC wants a draft of the guarantee as well as the audited accounts of the guarantor for review.
- (3) A repayment proposal acceptable to CMEC is agreed for settlement of the remainder of the debt.

We appreciate if you could respond by return email to confirm that the matters set out above represent the position taken by CMEC...

30 At 9.26pm, WongP sent Li and others a draft of the undertaking proposed to be given by Falcon. [\[note: 21\]](#) The draft read in material part as follows:

- (1) We understand that CMEC has issued the Statutory Demand against UFS.
- (2) We further understand that CMEC is prepared to immediately withdraw the Statutory Demand if:
 - (a) UFS agrees to pay a sum of USD5,000,000 (the "**Repayment Amount**") to CMEC by 31 August 2010 in partial repayment of the amounts due to CMEC; and
 - (b) We undertake to pay the Repayment Amount should UFS fail to pay the same.
- (3) In consideration of CMEC withdrawing the Statutory Demand, we agree to pay to CMEC the Repayment Amount if UFS fails to pay the same by August 2010.

28 July

31 Throughout the early hours Soh, Li and WongP were in negotiations over the telephone. Deboo appears to have a limited involvement, but it seems to be common ground that he was not in a position to give evidence on the negotiations because parts of the negotiations were conducted in Chinese, which he did not understand, and also because he was engaged in preparing the stock exchange announcement made later in the day (see below). In his evidence, Soh insisted that he had no mandate from Falcon to make payment to CMEC before 31 August. Li, on the other hand, insisted that Soh was aware of UFS's commitment to pay the US\$5m within the week.

32 At 7.46am, Deboo sent an email to Li and others. [\[note: 22\]](#) The email read in material part as follows:

Hope you have received the USD1 million TTed yesterday to you. As discussed with you last night and this morning, we confirm that we will pay another USD5 million by next week and this will be supported by a signed Falcon undertaking which we will be sending to you within the next few minutes.

We also acknowledge that payments (both principal and interest) are due by us to you under the Deed of Settlement. As spoken, Falcon and ourselves will fly up to Beijing to see you this week (if convenient) to discuss repayment of the remaining amounts outstanding after the USD6 million.

It is our hope that you are able to withdraw the Statutory Demand.

33 At 8.04am, WongP sent an email to Li and others. [\[note: 23\]](#) The email enclosed the final agreed form of undertaking from Falcon ("the Falcon Undertaking"), which read in material part as follows (with the amendments from the draft of 27 July, 9.26pm (see [\[30\]](#) above), underlined): [\[note: 24\]](#)

- (1) We understand that CMEC has issued the Statutory Demand against UFS.
- (2) We further understand that CMEC is prepared to immediately withdraw the Statutory Demand if:
 - (a) UFS agrees to pay a sum of USD6,000,000 (the **"Repayment Amount"**) to CMEC by 31 August 2010 in partial repayment of the amounts due to CMEC; and
 - (b) We undertake to pay the Repayment Amount should UFS fail to pay the same.
- (3) In consideration of CMEC withdrawing the Statutory Demand, we hereby irrevocably undertake to pay to CMEC the Repayment Amount if UFS fails to pay the same by August 2010.
- (4) We shall pay the Repayment Amount to CMEC without proof, protest, inquiry or further conditions and, notwithstanding any objection by UFS or any other person regarding the validity or enforceability of the Statutory Demand or UFS's agreement to pay the Repayment Amount or any dispute between CMEC and UFS.

34 At 8.38am, Li sent an email to Deboo and others, stating: [\[note: 25\]](#)

Refer to recent communications, undertaking by Falcon Capital Global Holding Limited and letter/email of today from your side, we hereby withdraw the SD temporarily and hope conclusion of the repayment soon.

Li was called immediately to remove the word "temporarily" and did so in an email at 8.45am. [\[note: 26\]](#)

35 At 8.54am, UFS made a stock exchange announcement, which read in material part as follows: [\[note: 27\]](#)

1. Demand by China National Machinery & Equipment Import & Export Corporation ("CMEC")

- 1.1 The Board of Directors of United Fiber System Limited (the **"Company"**) wishes to announce that CMEC has made a demand for the repayment of a debt of US\$22,980,625 (the **"Debt"**) which was due and owing to CMEC under a Deed of Settlement entered into between the Company and CMEC on 2 September 2008 in connection with (i) the Contract for the Delivery of a Wood Chip Mill Turnkey Package (**"CMEC contract"**) dated 22 September 2003 (as amended) between CMEC and PT Mangium Anugerah Lestari (**"PT MAL"**), a subsidiary of the Company, and (ii) a Performance Bond dated 2 September 2008 granted by the Company in favour of CMEC to secure the performance of PT MAL under the CMEC Contract.
- 1.2 The Company has made a partial repayment of the Debt of US\$1,000,000 on 27 July 2010 and will actively engage with CMEC to negotiate a complete restructuring of the Debt on terms satisfactory to both CMEC and the Company.
- 1.3 The Board wishes to assure shareholders that it will use best endeavours to achieve a

favourable resolution of this matter with CMEC. The Company will make further announcements on this matter in the event that there are any material developments.

2. Term Sheet in relation to the Proposed Loan

2.1 The Board refers to the announcement by the Company of 18 May 2010 in relation to, *inter alia*, the proposed investment of S\$178,000,000 in cash by Falcon Capital Global Holding Limited (the "**Investor**") in the Company by way of subscription of [sic] procuring the subscription by its nominee, of shares in the Company. The Board also wishes to announce that the Company had on 27 July 2010 entered into a term sheet (the "**Term Sheet**") with the Investor in relation to the grant by the Investor of a US\$5,000,000 loan (the "**Proposed Loan**") to the Company for the purpose of funding partial repayment of the Debt.

2.2 The following is a summary of the principal terms of the Term Sheet:

...

(b) Availability Period

Subject to compliance with the conditions precedent set out in paragraph 2.2(c) below, the Proposed Loan shall be available for drawdown by the Company within one (1) week from the date of the Term Sheet.

(c) Conditions Precedent to Drawdown

The drawdown of the Proposed Loan shall be conditional upon, *inter alia*:

- (i) execution of an agreement by the Company, PT MAL and CMEC no later than 5 August 2010 to restructure, on terms satisfactory to the Investor and the Company, PT MAL's obligations to CMEC under the CMEC Contract;

....

36 At 10.23am, MPillay replied to WongP's email of 27 July, 7.55pm, stating that: [\[note: 28\]](#)

As spoken, the discussions yesterday took place on a strictly *without prejudice* basis, and therefore should not be referred to in open correspondence.

I therefore assume that your email below is to be regarded as a **without prejudice** communication. Do let me know as soon as possible if this is not correct.

37 At 2.31pm, WongP replied to MPillay via email, which read in material part as follows: [\[note: 29\]](#)

As you know, there had been developments to this matter since my initial email to you below, following which your client had confirmed to our client via email the withdrawal of the statutory demand dated 15 July 2010 issued by yourselves on behalf of CMEC ("the **Statutory Demand**"). In this regard, please find enclosed for your reference and record the emails which had been communicated overnight between us and your clients, the contents of which are self-explanatory.

We understand that discussions on the restructuring of the outstanding debt are being carried

out between our respective clients, and that arrangements have been made for our clients (together with representatives of the third party investor) to meet with CMEC next Monday in Beijing on this front.

...

Finally we confirm that discussions with you and/or CMEC regarding the withdrawal of the Statutory Demand had taken place on a without prejudice basis.

38 At 5.25pm, MPillay informed WongP via email that: [\[note: 30\]](#)

... we are instructed to inform UFS that CMEC hereby withdraws the SD. The SD is withdrawn strictly without prejudice to:

- a. any of CMEC's rights against UFS or any other party (including CMEC's rights under the PB and the Deed of Settlement); and
- b. CMEC's right to issue fresh statutory demands against UFS at any time, for any monies which remain due and owing from UFS at the material time.

2 – 3 August

39 Deboo, Soh and Sia went to Beijing to meet with Li. It appears that, during their meeting, Li demanded the payment of the US\$5m by 5 August. It is not alleged that any agreement was reached at this point. Indeed, Li, Sia and Soh, accepted in their evidence that there was no agreement reached at these meetings in Beijing.

4 August

40 Deboo reported to UFS's board via an email, the material part of which read as follows: [\[note: 31\]](#)

Met with CMEC and Falcon to resolve the repayment schedule post transaction for the past 2 days. Following is a summary of their demand.

- 1 CMEC claims we owe them US\$23,953,653 after the first US\$1million was paid to them last week. Our calculation indicates we only owe them US\$22,385,435. A reconciliation has been emailed to them yesterday.
- 2 They need to be paid US\$5 million by tomorrow as part of the SD withdrawal. If payment is not made by tomorrow they will slap another SD. Falcon has already agreed to make the payment per the announcement we have made last week. BOD resolution with the following agreements were sent [sic] to the UFS BOD for approval yesterday...

I would appreciate your approval immediately so Falcon can release the US\$5million to CMEC.

- 3 Willie Sia, Philip Soh and I met CMEC and their Financial Advisor on 2nd and 3rd August (yesterday). After much discussion they have demanded the following:

- (a) A conditional Banker's guarantee for the balance of US\$18million from Falcon prior to the completion of the transaction followed by a Banker's Guarantee post transaction. Falcon

is prepared to do this but they need approval of their Principals.

- (b) A security from UFS for an equivalent amount by pledging assets (MAL, HRB and PLC) in the interim for 4 to 5 months until the transaction is completed. Unfortunately, these assets are already pledged to other creditors. Told them it was not possible.
- (c) Then they asked for an individual shareholder to pledge their shares to CMEC as collateral until the transaction is completed. Told them it was not possible either.
- (d) CMEC then asked that we consider a Convertible Bond for this balance to be cancelled once the transaction is completed. Explained to them that it was possible but to put this process in place it will take 3 to 4 months with the necessary approvals etc. We are working with our FA and Wong Partnership to consider other security options in the interim.
- (e) Once before CMEC was also offered payments through the issuance of shares similar to the arrangement with YA Global. This was not a preferred option for Falcon as they would be diluted. Falcon has indicated they are willing to discuss this option. I am speaking with them this afternoon.

However it is critical the BOD approve the resolution so we can get CMEC paid tomorrow failing which they are liable to slap another SD. An initial email confirmation will be fine.

5 August

41 It appears that Soh and Li spoke over the telephone at some time before 8.41pm.

42 At 8.41pm, Soh sent an email to Li, Sia and another. [\[note: 32\]](#) The email was entitled "Proposal for the Repayment of UFS Debt to CMEC" and read as follows: [\[note: 33\]](#)

Mr Li,

Below is the discussion we had with you.

A. What was agreed:

1. Security from Singapore Bank

Bank Guarantee callable in the event of default from UFS on the revised repayment plan.

2. Repayment Plan

To start from Jan 2012 till Jan 2014

Quarterly basis. Principal plus interest

Interest rate of 8 percent per annum which include the interest payment of the whole year of 2011

3 Exchange Rate

To propose and agree on an exchange rate range. (please advise from CMEC)

4 Waiver of past defaults from CMEC towards UFS

B. What needs to be done

1. A Binding term sheet between UFS, CMEC and Falcon Capital.
2. US\$5 million will be given to CMEC once the binding term sheet is signed off.
3. Allow 2 weeks to finalise and work on the three party term sheet and the bank guarantee. CMEC will not take any action against UFS during these 2 weeks.
5. [sic] To have the lawyers to start the [sic] on the binding term sheet.

6 August

43 At 11.23am, Soh forwarded his email of 5 August, 8.41pm, to Ji, stating that: [\[note: 34\]](#)

Per my conversation with Mr Li, please let us have the name of your singapore [sic] lawyer for us to communicate on the term sheet.

44 At 3.36pm, MPillay sent Soh and WongP an email. [\[note: 35\]](#) The email was marked "Subject to contract". It read in material part as follows:

Clarification of CMEC's position

- 2 In order to make sure that CMEC's position is clearly understood, I am setting out below a list of the key heads of terms on which CMEC is prepared to deal with the repayment of UFS's debts.
 - a. UFS will pay the balance amounts owed to CMEC (with interest which has accrued, and further interest which continues to accrue) through quarterly payments over a repayment period beginning August 2010 and ending January 2014. The repayment period will comprise of two phases:
 - i. Phase 1 covers the period from the signing of the repayment agreement in August 2010 to December 2011. UFS will in Phase 1 make quarterly payments of interest only; and
 - ii. Phase 2 covers the period from January 2012 to January 2014. UFS will in Phase 2 make quarterly payments of both principal and interest.
 - b. All amounts due and owing from UFS to CMEC (including further interest) will be repaid in full by January 2014.
 - c. A new interest rate of 8% per annum, compounded quarterly, will apply to the entire outstanding balance with effect from the date of confirmation of these heads of terms.
 - d. UFS will hold CMEC harmless against the currency risk arising from possible appreciation of RMB against the USD. For these purposes:

- i. the RMB/USD central parity rate as of 5 August 2010 (i.e. RMB 6.7783/USD) will be used as the benchmark (Benchmark Rate);
 - ii. UFS will compensate CMEC for any foreign exchange loss suffered as a result of any appreciation of RMB against USD, using the Benchmark Rate as a reference point; and
 - iii. parties will agree on a formula for the compensation.
- e. UFS or Falcon will procure that an unconditional, on-demand, bank guarantee be issued by one of the Singapore banks (UOB, DBS or OCBC) in CMEC's favour to secure all UFS's repayment obligations under the new repayment arrangements. The guarantee will not however cover UFS's obligation to compensate CMEC for the appreciation of RMB against USD.
 - f. There will be no waiver or release by CMEC of UFS's prior breaches. However CMEC will hold its hands and not commence legal proceedings in respect of those prior breaches if there is full and timely compliance by UFS/Falcon of all their obligations under the above arrangements.

Going forward

3 In terms of follow up action going forward, CMEC requires:

- a. direct written confirmation by authorized representatives of both UFS and Falcon (e.g. duly authorised solicitors or directors of UFS/Falcon) of the heads of terms set out above by the end of today (Friday 6 August 2010);
- b. UFS/Falcon to furnish drafts of the repayment agreement / bank guarantee for CMEC's review and input by close of business on Tuesday 10 August;
- c. Legal opinions from the solicitors of UFS and Falcon confirming the legality, effectiveness and enforceability of the repayment agreement and bank guarantee by close of business on Thursday 12 August;
- d. The finalized agreement / bank guarantee to be duly executed and delivered by no later than Friday 13 August.

US\$5m due for payment by end of this week

- 4 As you may be aware, UFS has committed to pay CMEC a sum of US\$5m by the end of this week.
- 5 We have written to UFS's solicitors to make it clear that CMEC expects to receive the monies by this Sunday 8 August.
- 6 However we are instructed that CMEC will, as a gesture of goodwill, hold its hands until Tuesday 10 August for UFS to make the US\$5m payment if we receive written confirmation of the above heads of terms from UFS / Falcon by the end of today per paragraph 3(a) above.

7 For the avoidance of doubt, the above proposal is subject to contract, and CMEC reserves all its rights.

45 At 7.25pm, Soh emailed Li as follows (and copying Sia and Deboo): [\[note: 36\]](#)

Attached herewith is our draft term sheet and MOU for the repayment plan and the Bank Guarantee,

I also refer to your lawyer email to me regarding the following:

1. To show the format of the Bank Guarantee by End of Day 10 August 2010. This is not possible as we are only returning back to work on 10th Aug 2010. We will meet with the various bankers on Tuesday and Wed. We would like to seek your kind understanding on it.
2. To deliver the Bank Guarantee by End of Day 13 Aug 2010. We had mentioned we will need 2 weeks to get this done. If we can do it earlier we will definitely do it.

We are prepared to sign off the termsheet and MOU and we await your comments to these 2 documents, [sic]

46 It is pertinent to refer to some of the key terms of these drafts originating from UFS/Falcon and drafted with the benefit of legal advice from WongP. Clauses 1, 2 and 8 of the draft memorandum of understanding read as follows: [\[note: 37\]](#)

1. CMEC acknowledges and confirms that as at the date hereof, the aggregate outstanding debt owing to CMEC shall be the CMEC Debt (as defined under the Settlement Term Sheet defined below).
2. In consideration of CMEC agreeing to enter into a term sheet with UFS, substantially in the form set out in the Appendix attached ("**Settlement Term Sheet**"), the Guarantor hereby agrees to procure the issuance of a bankers' guarantee ("**Guarantee**") in favour of CMEC by a Singapore bank acceptable to CMEC.

...

8. The parties acknowledge that this MOU summarises the principal indicative terms and conditions for the issuance of the Guarantee and shall not be construed as, as [sic] attempt to define all of the terms and conditions of the described transaction. The parties hereby agree that each of them shall use their best endeavours to negotiate and enter into a definite agreement, on the terms contained herein

The draft memorandum also adopted the definition of "CMEC Debt" used in the draft term sheet. In this connection, the preamble to the draft term sheet read as follows: [\[note: 38\]](#)

*Term Sheet relating the proposed settlement (the "**Proposed Settlement**") of the debt of US\$22,385,434.70 (the "**CMEC Debt**") due and owing under a deed of settlement entered into between PT Mangium Anugerah Lestari ("**PT MAL**") and China National Machinery & Equipment Import & Export Corporation ("**CMEC**") dated 2 September 2008 and the performance bond dated 2 September 2008 granted by United Fiber System Limited ("**UFS**") in favour of CMEC in relation to the said deed.*

This Term Sheet is intended to serve only as a basis for discussion between the parties hereto and is not intended to be an exhaustive enunciation of the terms of the Proposed Settlement. The detailed terms of the Proposed Settlement shall be set out in the definitive Deed of Settlement.

"Settlement Sum" was defined in cl 2 as: [\[note: 39\]](#)

US\$17,385,434.70 payable by UFS to CMEC (comprising the principal amount due under the CMEC Debt as at the date of this Term Sheet less the Initial Payment [of US\$5m]).

47 At 7.39pm, Soh replied to MPillay, copying WongP, that: [\[note: 40\]](#)

I had forwarded our draft term sheet and the MOU on the Bank Guarantee to your client.

He will be forwarding to you.

48 At 10.12pm, Li emailed Soh as follows: [\[note: 41\]](#)

Your proposed draft is not acceptable. No commitment from CMEC before acceptance of BANK GUARANTEE.

As timing for the bank guarantee, we do not think it will take so long time.

We think following points should be incorporated in the agreements:

1. 5m usd have to be paid by coming Tuesday [*ie*, 10 August 2010]. It was already postponed compared with commitment from UFS.
2. Acceptance of BANK GUARANTEE shall be the pre-condition of waiving SD to UFS. For the purpose to obtain one week time for issuance of the BANK GUARANTEE, we can agree within one week will not issue SD.
3. agreement shall be as simple as possible. Actually it would be more suitable for us to await one week for obtaining to Bank guarantee and a simple MOU for this arrangement [*sic*].
4. agreement will be two agreements separately with FALCON and UFS or it will be a three parties' agreement, we will depend in the judgment of our lawyer.

Expect your new draft.

7 August

49 Soh and Li spoke over the telephone on 7 August 2010 but no agreement was reached.

50 At 9.41am, Soh emailed Li requesting CMEC to provide the bank guarantee format so that there will not be any dispute. [\[note: 42\]](#)

51 At 6.06pm, Soh emailed Li, Ji and Deboo as follows: [\[note: 43\]](#)

Refer to our conversation today. I would like to reiterate our understanding with you. And if I

missed out or misunderstood you, I apologise.

A. Our idea which is reflected in both the MOU and Term Sheet are as follows:

1. Callable Bank Guarantee for the amount US\$17,385,434.70 to be issued to CMEC. CMEC will now provide the Bank Guarantee format to be inserted into the Termsheet and MOU documents.
2. Repayment plan starts quarterly from Jan 2012 up till Jan 2014. Please refer to the repayment schedule attached.
3. In the event of default for the repayment plan, CMEC will call upon the Bank Guarantee.
4. Upon the signing of the term sheet and Acceptance of the Bank Guarantee, CMEC will waive all claims against UFS as the Bank Guarantee will cover the Amount of US\$17, 385,434.70.

B. Payment details

1. USD5 million will be released to CMEC once the term sheet is signed off. Falcon will need 3 days to get it done and they will try their best to do it as fast as possible.
2. Callable Bank Guarantee. We would like to be given up to 20 Aug 2010 to give the Bank Guarantee based on your format submitted by CMEC.

C. Reasons for why USD\$ [sic] 5 million release:

1. Both Falcon and UFS is very worried once the USD5 million is released, CMEC will order another Statutory Demand to UFS. To ensure there is no miscommunication, once term sheet is signed off, the USD\$ [sic] 5million will be released.

D. MOU and Termsheet

The MOU must be read with the termsheet together as it explains the mechanism of the bank guarantee and the obligations of the 3 parties involved.

E. Events of default

Once the MOU and termsheet signed and CMEC accepts the Bank guarantee, in the events of any default from Falcon not able to come into UFS and default in repayment, CMEC will call upon the Bank Guarantee to release the monied. [sic]

I hope I put everything down as per our discussion and we look forward to sign the termsheet and MOU quickly.

8 August

52 At 11.41pm, WongP replied to MPillay's email of 6 August, copying Deboo, Lee and others, as follows: [\[note: 44\]](#)

As you may know, several discussions had taken place over the course of this weekend between Mr Li Jingkai (on behalf of CMEC) and Mr Phillip Soh (on behalf of UFS and Falcon) in the interest of seeking an amicable resolution to the repayment of the UFS debt to CMEC.

In this regard, we would like to reiterate the approach which had been proposed to CMEC and the terms which UFS and Falcon are prepared to offer to CMEC (as communicated by Phillip Soh to Mr Li Jingkai in his email of 7 August sent at about 6.06 pm):

1. An MOU be executed for the issuance [of] a Bankers' Guarantee in favour of CMEC for the amount owed by UFS of US\$17,385,434.70. The draft MOU and the form of the Bankers' Guarantee (as provided by CMEC) are attached to this email.
2. Concurrently with the execution of the MOU for the Bankers' Guarantee, UFS shall enter into a Term Sheet with CMEC for the settlement and restructuring of the debt owing to CMEC. The latest draft Term Sheet proposed by UFS is attached. You will note that amendments have been made to accede to CMEC's request for exchange rate adjustment and compensation only in the event of RMB appreciation against the USD. The repayment plan to be annexed as Schedule 1 of the Term Sheet is also attached.
3. Once both the MOU and Term Sheet are executed, Falcon/UFS will arrange for the US\$5 million to be released to CMEC as soon as possible, but no later than 3 business days from the date that both the MOU and Term Sheet are signed.
4. Falcon will endeavour to procure the issuance of the Bankers' Guarantee within 1 week from the date that both the MOU and Term Sheet are signed (but no later than 20 August 2010 as requested by Philip in his email to Mr Li Jingkai).

Please let us know if the matters above are acceptable to your client. Both UFS and Falcon are keen to have this matter resolved in a manner satisfactory to all parties as quickly as possible – and do look forward to a prompt and favourable response from you and/or your client.

9 August

53 At 4.18pm, Deboo sent a report via email to UFS's board. [\[note: 45\]](#) The email read in material part as follows:

CMEC has insisted on UFS/Falcon making the US\$5million payment to them prior to signing the UFS termsheet for the balance and the Falcon MOU for the Banker's Guarantee and the repayment schedule.

Before CMEC slaps another SD, Falcon has agreed to make the payment to them. We have also executed the Loan Agreement approved by the the [sic] UFS BOD. Falcon has confirmed in a separate email that payment will be made tomorrow ...

54 At 5.40pm, MPillay sent WongP, Lee and Deboo an email. The email was entitled "RE: Tuesday 10 August final deadline for US\$5 million payment from UFS to CMEC" and read: [\[note: 46\]](#)

- 1 As you may be aware from our letter of 6 August, CMEC expected UFS to honour its promise to make payment of US\$5 million by 8 August, especially since the sum is only part of a much larger debt which is long overdue from UFS to CMEC.
- 2 CMEC was therefore surprised to note, from Mr Philip Soh's 6 August email and from your email below, that UFS is now seeking to make the US\$5 million payment contingent upon the execution of the MOU and Term Sheet. The position is clearly at odds with its representations to CMEC when seeking the withdrawal of the 15 July 2010 statutory demand.

- 3 CMEC has made it clear, and have instructed me to re-iterate, that the US\$5 million is to be paid to CMEC immediately. They will countenance no further delay in this, nor any suggestion that the payment is to be conditional on further negotiation or agreement.
- 4 If the US\$5 million payment is not made to CMEC by Tuesday 10 August 2010, our clients will be forced to conclude that UFS does not intend to honour its commitments. In that situation CMEC will have no further justification to engage with UFS in its further discussions and reserves its right to take the appropriate measures to protect its interests without further reference to you or your clients.
- 5 We will revert on UFS's proposed Term Sheet / MOU if CMEC receives the US\$5 million part payment by tomorrow.

55 At 11.36pm, WongP sent an email replying to MPillay (copying Deboo and Lee). In the email, WongP said: [\[note: 47\]](#)

I have been instructed to inform you that arrangements are being made to disburse the US\$5million to CMEC by end of business day tomorrow in part settlement of the outstanding debt owing by UFS to CMEC...

10 August

56 At 7.38pm, WongP sent a scanned copy of the remittance advice issued in respect of "the sum of US\$5,000,000 being partial repayment of the debt owing by UFS to CMEC". [\[note: 48\]](#)

12 August

57 At 5.41pm, UFS made the following stock exchange announcement: [\[note: 49\]](#)

The Board of Directors (the "**Board**") of United Fiber System Limited (the "**Company**") refers to the announcement by the Company of 28 July 2010 in relation to the loan agreement entered into between the Company and Falcon Capital Global Holding Limited (the "**Investor**") for the grant by the Investor of a US\$5,000,000 loan (the "**Loan**") to the Company.

The Board wishes to announce that the Investor had on 10 August 2010 disbursed the Loan amount to CMEC as partial settlement of the debt (the "**CMEC Debt**") owing by the Company to China National Machinery & Equipment Import & Export Corporation ("**CMEC**") under a deed of settlement dated 2 September 2008 entered into between PT Mangium Anugerah Lestari ("**PT MAL**"), a subsidiary of the Company, and CMEC (the "**Deed of Settlement**") in connection with the Contract for the Delivery of a Wood Chip Mill Turnkey Package dated 22 September 2003 (as amended), and a performance bond dated 2 September 2008 granted by the Company in favour of CMEC to secure the payment obligations of PT MAL under the Deed of Settlement.

The Company is currently working together with CMEC to agree on the settlement and complete restructuring of the outstanding amounts owed to CMEC under the CMEC Debt, and will make further announcements on this matter in the event that there are any material developments.

13 August

58 At 3.54pm, Li sent Deboo an email, stating that: [\[note: 50\]](#)

For the final settlement of the case, following two items need to be compensated by UFS also.

1. The legal and final [sic] advisor charges occurred from [sic] CMEC. (About USD 200,000)
2. The insurance premium charged by Sinasure. (two installments[sic]: USD 916,251.60 dated July 05, 2005; USD 137,836.88 dated Sept 24, 2007.)

Expect your confirmation.

59 At 6.00pm, MPillay emailed Soh and WongP (copying Ji and Li) as follows (the email was marked "Subject to Contract"): [\[note: 51\]](#)

1 My clients have reviewed the various drafts and have instructed me to revert to you with amended drafts setting out terms that CMEC are able to agree to. See the attached drafts of the:

- a. Repayment Term Sheet to be executed by CMEC and UFS;
- b. Schedule 1 of the Repayment Term Sheet (the Repayment Schedule as proposed by UFS);
- c. Security Term Sheet to be executed by CMEC and Falcon;
- d. Appendix 2 to the Security Term Sheet (form of bank guarantee).

2 You will note that a number of terms and conditions found in your original drafts have been deleted. My instructions are that the deleted provisions are basically unacceptable to CMEC, and should not therefore be re-introduced.

3 Going forward, I am instructed that CMEC requires that:

i. The solicitors of UFS (Wong Partnership) and Falcon (KhattarWong) discuss and finalize the term sheets with MPillay as soon as possible (preferably over the weekend).

ii. The Security Term Sheet and the Repayment Term Sheet must be executed by the authorized representatives of UFS/Falcon in Beijing as soon as possible, and in any event by next week.

iii. However before the execution of these term sheets, UFS will need to indemnify CMEC for a number of specific additional costs incurred by CMEC as a result of past breaches by UFS and PT MAL (insurance premiums, legal costs and costs of financial consultants amounting to approximately US\$1.25 million). Mr Li and Mr Deboo have already been in direct discussions on these cost items. CMEC requires that these costs be paid by UFS prior to the execution of the above term sheets.

iv. The duly issued bank Guarantee must be furnished to CMEC within 3 business days after the execution of the Repayment Term Sheet.

4 CMEC requires all the deadlines stipulated above to be adhered to strictly, and will accept no slippage.

5 Unless and until **all** the steps above are completed within the stipulated deadlines (including receipt by CMEC of the duly executed bank Guarantee by the deadline mentioned above), CMEC reserves all its rights against UFS and all other parties (including the right to issue a fresh SD against UFS at any time, for any debts still outstanding at the relevant time).

60 Pertinently, in the draft term sheet enclosed in MPillay's email, "CMEC Debt" was defined as: [\[note: 52\]](#)

An outstanding debt of US\$17,385,434.70 due and owing from UFS to CMEC under the deed of settlement entered into between PT MAL and CMEC dated 2 September 2008 and the performance bond dated 2 September 2008 granted by UFS in favour of CMEC in relation to the said deed.

61 The draft bank guarantee was for US\$22,099,030.91, [\[note: 53\]](#) ie, US\$17,385,434.70 with 8% interest per annum up till January 2014.

14 August

62 Deboo reported the contents of MPillay's email of 13 August to UFS's board via an email. His email basically reproduced MPillay's email. Of note is his response on MPillay's statement that UFS would need to indemnify CMEC for costs incurred by CMEC as a result of UFS's past breaches: [\[note: 54\]](#)

...

CMEC has reviewed the various drafts that we had submitted to them and have instructed [MPillay] to revert to [WongP] with amended drafts setting out terms that CMEC is able to agree to on the following agreements...

...

However there is a new twist, before the execution of these term sheets, UFS will need to indemnify CMEC for a number of specific additional costs incurred by CMEC as a result of past breaches by UFS and PT MAL (insurance premiums, legal costs and costs of financial consultants amounting to approximately US\$1.25 million). [MPillay] indicated Mr Li has been in direct discussions with me on these costs. I have not spoken to Mr Li ever about this and is a complete fabrication of facts. CMEC requires that these costs be paid by UFS prior to the execution of the above term sheets. Our last Deed of Settlement only requires legal costs to be paid. There is no obligation to pay any of their consultants or their insurance costs we will need to confirm this on Monday.

...

Unless and until all the steps above are completed within the stipulated deadlines ... CMEC reserves all its rights against UFS and all other parties (including the right to issue a fresh SD against UFS at any time, for any debts still outstanding at the relevant time).

I want to bring this to the BOD's attention immediately. We will [sic] developing our game plan with [WongP], KW and Falcon over the week end and follow up with MPillay on Monday...

16 August

16 August

63 UFS made a stock exchange announcement, the material part of which read as follows: [\[note: 55\]](#)

The Board wishes to announce that, in view of the ongoing discussions between the Company and China Machinery & Equipment Import & Export Corporation ("**CMEC**") to restructure the debt owing by the Company to CMEC (as disclosed in the announcement released by the Company on 12 August 2010), the Company, the Vendor and the Investor had on 13 August 2010 mutually agreed to extend the validity of the Term Sheet to 21 August 2010, or such later date as the parties may agree in writing.

17 August

64 At 3.55pm, WongP replied to MPillay's email of 13 August. The email read in material part as follows: [\[note: 56\]](#)

UFS has reviewed your proposed amendments to the Repayment Term Sheet to be executed by CMEC and UFS. We note that you have no comments to Schedule 1 of the Repayment Term Sheet (the Repayment Schedule as proposed by UFS).

We have been instructed to clarify and/or seek clarifications on, *inter alia*, the following:

1. as discussed, it is proposed that parties execute the definitive agreement instead of the term sheet. Accordingly, you will note that the Repayment Term Sheet has been converted into a definitive Repayment Deed;
2. in relation to the deleted "Waiver of Claims" provisions, we note that the deletion is inconsistent with the position under the existing Deed of Settlement dated 2 September 2008 and have reinstated the same accordingly. This means that UFS's position is that all claims under the EPC contract, the Guarantee, the existing Deed of Settlement and the Performance Bond should be waived subject to full repayment by UFS of the CMEC Debt in compliance with the terms of the Repayment Deed;
3. we note your clients' request for UFS to indemnify CMEC for a number of specific additional costs incurred by CMEC (insurance premiums, legal costs and costs of financial consultants amounting to approximately US\$1.25 million). We are instructed that Mr Deboo have never had any discussions with Mr Li on these costs items. However, UFS is prepared to cover reasonable and customary legal costs as stipulated in the earlier Deed of Settlement.

We understand that the Guarantor's counsel will be reverting separately to you on the Security Term Sheet and Form of BG.

65 WongP's email enclosed the draft repayment deed, in which the definition of "CMEC Debt" remained materially unchanged: [\[note: 57\]](#)

An outstanding debt of US\$17,385,434.70 due and owing from PT MAL or UFS under the Deed of Settlement and the Performance Bond respectively.

66 At 4.01pm, Falcon's solicitors replied to MPillay's email of 13 August. The email read in material part as follows: [\[note: 58\]](#)

1. In connection with WongP's email below, we attached for your review our proposed amendments to the bank guarantee and security term sheet.

2. As with the Repayment Deed, we proposed that the parties execute a definite security agreement, and as such the draft has been amended accordingly.

3. Also, we have reinstated the assignment clause as this is consistent with the position taken by the parties under the Deed of Settlement dated 2 September 2008, i.e., all claims under EPC Contract, Guarantee, Deed of Settlement and Performance Bond shall extinguished [sic] on compliance on [sic] the terms of the Deed of Settlement. Accordingly, the rights of CMEC thereunder should be assigned in full upon enforcement of the bank guarantee.

4. We noted that the draft bank guarantee furnished to us is unconditional. Our client's position is that the bank guarantee is only enforceable upon default by UFS of its obligations under the Repayment Deed. To address CMEC concerns, we agree to allow the guarantee to be enforced without any proof of default to be issued to the bank.

5. Finally, we have been instructed that pursuant to our client's discussion with Mr. Li, only the principal amount owing by UFS will be covered by the guarantee. We have thus amended the draft accordingly.

67 At 6.40pm, Deboo reported to UFS's board via an email. [\[note: 59\]](#) He began the email with the line:

For the past two days, Mr Toh, CMEC's lawyer from MPillay, [WongP], KW, Falcon and I have been discussing terms that would be acceptable to all parties and prevents CMEC to call the loan.

He then summarised the above two emails, before saying that:

CMEC will revert back by Thursday. Once they agree Falcon has made preparations for a BG to be submitted soon thereafter. Philip Soh is meeting with Mr Li tomorrow to review the BG and make sure we impress on CMEC that we understand the urgency of the situation.

18 August

68 At 12.51pm, MPillay replied to Falcon's solicitors' email of 17 August, 4.01pm. [\[note: 60\]](#) The email, which was copied to Soh, Lee, Li, Ji and WongP, read in material part as follows:

This is an interim reply confined to paragraph 5 of your email.

My instructions are that Mr Li has never agreed that the Guarantee will only cover the principal amount owed by UFS. CMEC requires that amount secured by the Guarantee is US\$22,099,030.91 which covers both the principal and interest under the repayment plan. This is one of CMEC's fundamental concerns. Falcon's agreement to procure an unconditional, on-demand, bank guarantee which covers both principal and interest has been, and will continue to be, the foundation of CMEC's participation in these negotiations.

19 August

69 At 4.34pm, MPillay sent an email to WongP and Falcon's solicitors (copying Ji, Li, Soh and Lee),

which read in material part as follows: [\[note: 61\]](#)

This is further to my email below [ie, MPillay's email of 17 August].

I have been instructed to ask for written confirmation by Falcon and UFS that they are, in-principle, prepared to procure a unconditional, on-demand, bank Guarantee for a guaranteed amount of US\$22,099,030.91, as security for UFS's obligation under the proposed Repayment Deed.

The receipt for such a Guarantee (in terms acceptable to CMEC) is of fundamental importance to CMEC, and is a foundation for CMEC's continued participation in these negotiations for the repayment of the CMEC Debt.

Please would you therefore let me have your respective clients' written confirmations (as described above) **by the end of today** . If CMEC does not receive the written confirmations by today, it will see no reason to participate further in the negotiations with UFS or Falcon, and will proceed to take the appropriate measures to exercise its rights without further reference to UFS or Falcon.

70 At 6.17pm, Falcon's solicitors replied as follows: [\[note: 62\]](#)

We have been instructed by our clients that they are not agreeable to procure the issuance of a banker's guarantee to guarantee the principal and interest of US\$22,099,030.91. Any further discussion on this matter must proceed on the basis that the guarantee will be limited only [to] the principal amount of US\$17,385,434.70.

71 At 7.15pm, MPillay emailed WongP and enclosed a letter, the material part of which reads as follows: [\[note: 63\]](#)

...

3. Falcon's solicitors have ... confirmed that their clients are not prepared to procure the issuance of the Guarantee required by CMEC.

4. We have not received your response thus far but will, unless we receive the above-mentioned written confirmation from you by today, assume that UFS takes the same position as Falcon, in which case CMEC will consider that the negotiations have broken down and proceed to take the appropriate measures to exercise its rights (including the issuance of a fresh statutory demand if it sees fit) without further reference to you or your clients.

72 There was some further correspondence but nothing substantial was discussed or agreed on.

20 August

73 At 12.55pm, Li emailed Deboo (copying Soh) as follows: [\[note: 64\]](#)

The SD will be sent to you today and the amount is USD 19,742,682, for which the calculation is attached.

74 MPillay, on behalf of CMEC, then issued a statutory demand to UFS for US\$19,742,682.00. [\[note:](#)

[65\]](#) A copy was emailed to WongP at 4.58pm. [\[note: 66\]](#)

22 August

75 UFS made a stock exchange announcement, the material part of which read as follows: [\[note: 67\]](#)

The Board wishes to announce that, as the Company and China Machinery & Equipment Import & Export Corporation ("**CMEC**") have not reached a resolution in relation to the restructuring of the debt owing by the Company to CMEC (as disclosed in the announcement released by the Company on 12 August 2010), the Company, the Vendor and the Investor agreed to extend the validity of the Term Sheet to allow more time for this matter to be resolved. In this regard, the Company, the Vendor and the Investor had on 20 August 2010 mutually agreed to further extend the termination date of the Term Sheet to 4 September 2010, or such later date as the parties may agree in writing.

23 August

76 UFS called a trading halt "pending for [sic] release of an announcement." [\[note: 68\]](#) It also filed the present originating summons – this was announced on the stock exchange 3 days later, on 26 August.

The parties' positions

77 With regard to question (1) of the agreed list of issues (see [\[11\]](#) above), UFS argued that an agreement had been reached on 27/28 July between UFS/Falcon and CMEC, wherein CMEC agreed to withdraw the 15 July SD on the conditions that (a) UFS made payment of the sum of US\$5m by 31 August; (b) such payment to be guaranteed by an undertaking issued by Falcon in favour CMEC; and (c) parties enter into discussions on restructuring the balance amount to be paid to CMEC.

78 With regard to question (2) (and the sub-questions) therein (see [\[11\]](#) above), UFS argued that the agreed deadline for UFS's payment of the US\$5m was 31 August as stated in the Falcon Undertaking, that this meant that CMEC was not entitled to issue a fresh SD until at least after 31 August, and that the US\$5m represented payment by UFS of the instalments under the Repayment Schedule from August 2010 onwards and at least through December 2010.

79 With regard to question (3) (see [\[11\]](#) above), UFS argued that on 5 August 2010, UFS, Falcon and CMEC had reached an agreement on the restructuring of the remaining amounts due under the Deed of Settlement (after payment of the US\$5m). The terms of the agreement were: (a) repayment of US\$17,385,434.70, to be made on a quarterly basis from January 2012 until January 2014; (b) UFS/Falcon to procure a bank guarantee for the sum of USD \$17,385,434.70, which can be called upon by CMEC in the event of default by UFS under the new repayment plan; and (c) interest rate of 8% per annum.

80 With regard to question (4) (see [\[11\]](#) above), UFS repeated its answers to question (3).

81 With regard to question (5) (see [\[11\]](#) above), UFS argued that the US\$5m was paid to CMEC on the basis of the agreement alleged by UFS in its answer to question (3).

82 With regard to question (6) (see [\[11\]](#) above), UFS argued that CMEC had acted contrary to

what was allegedly agreed by demanding on 13 August that the bank guarantee extend to interest and not just the principal, and that UFS should indemnify CMEC for its legal and other costs. It sought an injunction to restrain CMEC from bringing winding up proceedings on the basis of the 20 August SD, and damages to be assessed.

83 CMEC's position is essentially to deny that any binding agreement had been reached.

Analysis and findings

84 With regard to the deadline for the payment of the US\$5m, the documents of 27/28 July are admittedly inconsistent. On the one hand, Li's 27 July letter to UFS (see [\[28\]](#) above), WongP's email of 7.55pm on 27 July (see [\[29\]](#) above), and the Falcon Undertaking of 28 July (see [\[33\]](#) above) all refer to payment by 31 August 2010, or August 2010. On the other, there was Deboo's email of 7.46am on 28 July referring to payment by "next week" (see [\[32\]](#) above), although I note in this regard that the parties do agree that Deboo was not in the best position to give evidence on the negotiations between Li and Soh. There was also Li's emails of 8.38am and 8.45am which withdrew the 15 July SD on the basis of both Deboo's email and the Falcon Undertaking (see [\[34\]](#) above). The evidence of the telephone conversation between Soh, Li and Deboo was also conflicting, although I would say in this regard that, in the light of the fact that Falcon had agreed on 27 July with UFS to make available the US\$5m available for drawdown within a week (see UFS's stock exchange announcement of 28 July at [\[35\]](#) above), I find it difficult to accept Soh's evidence that he had no mandate to agree to Falcon making payment before 31 August.

85 In this respect I should say that on the whole I found the witnesses on both sides honest. Where their recollections differ, I prefer the evidence of CMEC's witnesses. Their evidence was more consistent with the contemporaneous communications that passed between the parties. UFS's witnesses were obviously under great pressure at that time and it is understandable that their recollection was coloured by what they had hoped to achieve, rather than being dishonest. Their recollection was of those parts of the conversations that supported their hopes. Even then, their evidence pointed more to an overly sanguine, but nonetheless misplaced, recollection of an "understanding" rather than any express "agreement" being reached.

86 This view is confirmed when one examines the evidence post-28 July 2010. The existence of such a grace period lasting until 31 August 2010 was not raised at all in the many instances after 28 July where CMEC insisted on being paid earlier. On 4 August, Deboo reported to his board that CMEC needed to be paid US\$5m "by tomorrow as part of the SD withdrawal" and emphasised that "it is critical that the BOD approve the resolution so we can get CMEC paid tomorrow failing which they are liable to slap another SD" (see [\[40\]](#) above). On 6 August (which was a Thursday), MPillay's email to Soh and WongP stated that "[a]s you may be aware, UFS has committed to pay CMEC a sum of US\$5m by the end of this week. ... However ... CMEC will, as a gesture of goodwill, hold its hands until Tuesday 10 August ..." (see [\[44\]](#) above). This was reported without protest by Deboo to UFS's board at 4.18pm on 9 August (see [\[53\]](#) above); indeed, Deboo also reported the efforts being made to comply with CMEC's demands "[b]efore CMEC slaps another SD". At 5.40pm on the same day, MPillay sent what can only be described as an ultimatum, stating that the payment of the US\$5m was to be made immediately and was not to be conditional on further negotiation or agreement (see [\[54\]](#) above). At 11.36pm, WongP simply replied, without any murmur of dissent, that arrangements had been made to disburse the US\$5m (see [\[55\]](#) above). The payment was disbursed the next day. CMEC clearly felt free to make demands for payment before 31 August, and that UFS, equally clearly, felt compelled by the exigencies of the situation to comply with those demands. This would be completely incongruous with the existence of a binding grace period lasting until 31 August. Similarly, UFS's willingness to comply with CMEC's demands show that it did not rely on any representation of a grace

period that CMEC may have made (and I do not think that any was made), and therefore there can be no estoppel.

87 I find it equally difficult to accept the argument that the US\$5m represented payments of instalments by UFS under the Repayment Schedule, such that there was no sum payable to CMEC until January 2011 at the earliest. Put simply, UFS, who was before the payment faced with a debt upwards of US\$20m, did not act as if it had received a temporary reprieve of at least three to four months. There was no stock exchange announcement to this effect. When reporting MPillay's email of 13 August to UFS's board (see [\[62\]](#) above), Deboo did not protest the strict deadlines – just over a week at the most – laid down by CMEC as well as CMEC's reservation of its right to issue a fresh statutory demand at any time. He only protested CMEC's insistence on being indemnified for its legal and other costs (see [\[62\]](#) above). On 17 August, WongP was still defining "CMEC Debt" as "[a]n outstanding debt of US\$17,385,437.70 due and owing from PT MAL or UFS under the Deed of Settlement and the Performance Bond respectively" in a draft repayment deed proposed to CMEC (see [\[65\]](#) above). When negotiations broke down on 19 and 20 August, resulting in the service of the 20 August SD, there was no sign of protest or indignation that a binding deferment of payment had been violated. Such behaviour must be seen as remarkably mild for a debtor who, if UFS is to be believed, had just paid several instalments in advance. Treating the US\$5m as a pre-payment of instalments under some reinstated schedule of instalment payments would also be inconsistent with the stock exchange announcements made by UFS. On 28 July, it announced that US\$22,980,625 "was due and owing to CMEC" and that it had "a partial repayment" of US\$1m (see [\[35\]](#) above). On 12 August, it further announced that the US\$5m was disbursed to CMEC "as partial settlement of the debt ... owing ... to [CMEC]" (see [\[57\]](#) above). There was nothing to say that the debt had ceased to be immediately due and owing. These announcements are proof that that UFS must have, throughout the whole process, been clear in its mind that the US\$5m was, as stated in the remittance advice (see [\[56\]](#) above), only "partial repayment of the debt owing by UFS to CMEC".

88 Counsel for UFS referred to two items of correspondence from Ji referring to payment of instalments from December 2009 to December 2010. The first is Ji's email of 2.01pm on 20 July to Lee, stating that "[i]f UFS could pay the installments [sic] from Dec 2009 to Dec 2010 in accordance with Schedule 1 of Deed of Settlement dated 2 Sept 2008, then CMEC would consider whether or not to withdraw the SD" (see [\[17\]](#) above). The second is Ji's email at 6.10pm on the same day, referring again to payment of "installments [sic] from Dec 2009 to Dec 2010", before "CMEC will consider to withdraw the SD" (see [\[19\]](#) above). The short answer to this is that it would be internally inconsistent for Ji to only "consider" withdrawing the 15 July SD if he had somehow acceded to UFS making instalment payments up to December 2010. I accept the view was that put forth by Ji, *ie*, the reference to instalments under the Deed of Settlement was simply a loose and convenient way for CMEC to state the amount it wished UFS to pay, as a sign of its good faith, before further negotiations on restructuring the debt could take place. Also, there is the evidence, already referred to, that UFS simply did not act as if it had secured a reprieve of at least three to four months in its conduct subsequent to paying the US\$5m.

89 It is also untenable that there was an agreement reached on 5 August. Even on its face, Soh's email of 5 August (see [\[42\]](#) above) cannot plausibly be read as a record of a binding agreement. Soh listed "[a] Binding term sheet between UFS, CMEC and Falcon Capital" as the first item under "What needs to be done". This indicated that the parties had not intended to create legal relations. In the same list, Soh referred to CMEC not taking any action against UFS during the two weeks for finalising the term sheet – why was this grace period necessary if an agreement had been reached? Also, Soh expressly recorded that an exchange rate range remained to be agreed – a perusal of the detailed mechanism [\[note: 69\]](#) in the Deed of Settlement to protect CMEC against the US dollar depreciating against the Renminbi would have made clear that this was an important point. There was also no

agreement on the form of the bank guarantee to be provided to CMEC. In these circumstances there can be no binding contract, even though the parties might have reached agreement on some points.

90 It is even more improbable that Soh's email of 7 August confirmed any prior agreement. The day before, MPillay had sent a "[s]ubject to contract" email proposing terms (see [\[44\]](#) above). Li had likewise rejected Soh's proposed term sheet (see [\[48\]](#) above). In these circumstances, it must have been abundantly clear that there was no consensus reached. As was indicated in the email of 7 August, Soh opened with an apology by to Li if he had misunderstood what Li said (see [\[51\]](#) above). He closed by expressing his hope that he got everything down correctly. Such tentativeness does not amount to convincing proof of a binding agreement.

91 The absence of an agreement is even clearer when one looks at the subsequent conduct of the parties. As late as 17 August, WongP was still proposing to MPillay that the repayment term sheet be "converted into a definitive Repayment Deed" (see [\[64\]](#) above). KW was likewise proposing on behalf of Falcon "that the parties execute a definite security agreement" and not merely a term sheet (see [\[66\]](#) above). Deboo, for his part, was still reporting to his board that, "[f]or the past two days, Mr Toh, CMEC's lawyer from MPillay, [WongP], KW, Falcon and I have been discussing terms that would be acceptable to all parties and prevents CMEC to call the loan", and stressed the need to "make sure we impress on CMEC that we understand the urgency of the situation" (see [\[67\]](#) above). There was no talk, as it is now argued, of CMEC breaching a prior agreement by demanding on 13 August that (a) the bank guarantee extend to interest and not just principal, and (b) that UFS should pay CMEC's legal and other costs.

92 Taking the evidence in the round, this is clearly a case where a creditor was negotiating sharply with a debtor who was completely at its mercy, and who was fully and painfully aware of this. It was clear to all parties involved that there would be no binding agreement regarding the restructuring and repayment of the debt between UFS and CMEC until the parties signed on the dotted line. Until that time, CMEC could and did drive a hard bargain, and forcing UFS to make substantial partial repayments of the debt due and owing to CMEC before CMEC would even contemplate negotiations. This uncompromising stance and the last minute introduction of additional payments, hitherto not raised (see Li's email of 13 August 2010 at [\[58\]](#) above), eventually caused the negotiations to break down. What CMEC hoped to gain by this I do not understand – the intervention of Falcon gave it a third party guarantee that it would otherwise not have had. But that is another commercial matter that does not concern the court. For present purposes it is clear that the negotiations gave rise to no agreement, no intention to create legal relation, no representation and no detrimental reliance. There can therefore be no collateral agreement or estoppel in relation to the debt due and owing by UFS to CMEC.

Answers to issues presented

93 I therefore answer the issues presented to me (see [\[11\]](#) above) as follows:

(1) There was no binding agreement reached on 27/28 July 2010 in relation to the debt due and owing by UFS to CMEC under the Performance Bond.

(2) (i) The original deadline for payment of the US\$5m was 5 August 2010; this was later extended to 10 August 2010; it was not 31 August 2010.

(ii) No.

- (iii) No. The US\$5m was part repayment of the debt owing by UFS to CMEC.
- (3) There was no binding agreement reached on 5 August 2010 and/or 7 August 2010 in relation to the debt due and owing by UFS to CMEC under the Performance Bond.
- (4) (i) No.
- (ii) No.
- (iii) No.
- (5) The US\$5m paid to CMEC represented partial repayment of the debt owing by UFS to CMEC under the Performance Bond. It did not defer the time for paying the remaining sum still owing.
- (6) No estoppel had arisen in relation to the debt owed by UFS to CMEC under the Performance Bond.

94 UFS is therefore not entitled to the reliefs it claimed on the basis of the alleged agreements and/or estoppels.

Validity of the 20 August SD

95 There were some arguments relating to the *bona fides* of CMEC in issuing the 20 August SD. I think these arguments are without any foundation or basis given CMEC's consistent stance in the negotiations that sums were owing to it under the Performance Bond and it would issue a statutory demand for them if the negotiations fail to produce an agreement. In any case, I do not think that considerations of *bona fides* are relevant to the validity of a SD after the court has adjudicated that a debt was indeed owing to the party issuing the SD. The starting point of these proceedings was an undisputed breach of the Repayment Schedule, a valid acceleration of the entire debt and interest and an enforceable obligation under a Performance Bond given by UFS to make good P T Mal's breaches of the Deed of Settlement. In this regard, there is no dispute that a debt would be due and owing by UFS to CMEC but for UFS's allegations of agreements, collateral or otherwise, and estoppels, which I have rejected. The only question, then, is the quantum of the debt, and on this the parties have reserved their positions. I think the question of quantum is something on which the parties can sensibly agree between themselves, but if they are unable to agree I can hear further arguments on quantum. For now, it suffices for me to say that the 20 August SD is valid to the extent of the debt owing by UFS to CMEC as of 20 August 2010.

Interim stay

96 UFS also sought a limited injunction of 21 days (or such further period as I deem fit) to restrain CMEC from commencing any winding up proceedings. I was told during oral submissions on 20 January 2011 that there is a new 'white knight' in the wings and it was "a matter of weeks" before UFS would get funds to pay off the debt.

97 In this regard, counsel for UFS referred to observations in *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 and *BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949. Those observations concerned the inappropriateness of presenting a winding up petition when there is a dispute as to the debt owed. I do not see how they assist UFS in this case, where CMEC has, quite properly, agreed not to take any action to wind up UFS pending my decision.

98 Counsel for UFS also pointed out that the presumption of insolvency under s 254(2)(a) of the Companies Act arises only if UFS does not comply with a statutory demand for three weeks. Three weeks means 21 clear days excluding the day of service: see *Re Lympne Investments Ltd* [1972] 1 WLR 523. I am of the view that a *bona fide* action brought to dispute the debt must have the effect of suspending the running of time for payment until the dispute is resolved – non-payment of a disputed debt cannot logically give rise to a presumption of insolvency. In this case, the application which was brought promptly after the issuance of the 20 August SD, and I would hold that the 21 days for payment would start to run from the date of my judgment. However, there is no evidence that CMEC would not wait for the presumption of insolvency to arise upon the expiry of the 21 days before taking any action to wind up UFS. In the circumstances, I see no reason to grant the injunction sought by UFS. Of course, if there are subsequent developments UFS is at liberty to apply to me to exercise the court's limited jurisdiction, as recognised by the Court of Appeal in *BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 at [20], to restrain a valid winding up petition.

99 I accordingly dismiss the application for the declarations sought in prayers 1 and 2 of the originating summons. I will hear the parties, at short notice, on costs or any other orders that may be required. Subject to what the parties may say at the hearing on costs I do not propose to make any orders on prayers 3 and 4 of the originating summons, which relate to the interim stay and damages respectively.

[\[note: 1\]](#) 1 PBD 241

[\[note: 2\]](#) 1 PBD 241

[\[note: 3\]](#) 1 PBD 245

[\[note: 4\]](#) 1 PBD 263

[\[note: 5\]](#) 1 PBD 264

[\[note: 6\]](#) NE 12/11/2010 p 81

[\[note: 7\]](#) 1 PBD 270

[\[note: 8\]](#) 1 PBD 273

[\[note: 9\]](#) 1 PBD 274-275

[\[note: 10\]](#) 1 PBD 275

[\[note: 11\]](#) 3 PBD 943

[\[note: 12\]](#) NE 10 Nov pp 19-20; NE 8 Nov pp 49-50

[\[note: 13\]](#) 1 PBD 277

[\[note: 14\]](#) 1 PBD 280

[\[note: 15\]](#) 1 PBD 288

[\[note: 16\]](#) 1 PBD 291

[\[note: 17\]](#) 1 PBD 292

[\[note: 18\]](#) 1 PBD 293

[\[note: 19\]](#) 1 PBD 295

[\[note: 20\]](#) 1 PBD 296

[\[note: 21\]](#) 1 PBD 299

[\[note: 22\]](#) 1 PBD 303

[\[note: 23\]](#) 1 PBD 305

[\[note: 24\]](#) 1 PBD 306

[\[note: 25\]](#) 1 PBD 311

[\[note: 26\]](#) 1 PBD 313

[\[note: 27\]](#) 1 PB 316-317

[\[note: 28\]](#) 1 PBD 320

[\[note: 29\]](#) 1 PBD 329

[\[note: 30\]](#) 1 PBD 332.

[\[note: 31\]](#) 1 PBD 334-335

[\[note: 32\]](#) 1 PBD 352

[\[note: 33\]](#) 1 PBD 352-353

[\[note: 34\]](#) 1 PBD 354

[\[note: 35\]](#) 1 PBD 359-360

[\[note: 36\]](#) 1 PBD 362

[\[note: 37\]](#) 1 PBD 365-366

[\[note: 38\]](#) 1 PBD 369

[\[note: 39\]](#) *Id*

[\[note: 40\]](#) 1 PBD 374

[\[note: 41\]](#) 1 PBD 376

[\[note: 42\]](#) 2 PBD 413

[\[note: 43\]](#) 2 PB 417-418

[\[note: 44\]](#) 2 PBD 437

[\[note: 45\]](#) 2 PBD 455

[\[note: 46\]](#) 2 PBD 456

[\[note: 47\]](#) 2 PBD 461

[\[note: 48\]](#) 2 PBD 465

[\[note: 49\]](#) 2 PBD 467

[\[note: 50\]](#) 2 PBD 484

[\[note: 51\]](#) 2 PBD 485

[\[note: 52\]](#) 2 PBD 500

[\[note: 53\]](#) 2 PBD 495

[\[note: 54\]](#) 2 PBD 511

[\[note: 55\]](#) 3 PBD 954

[\[note: 56\]](#) 2 PBD 529

[\[note: 57\]](#) 2 PBD 536

[\[note: 58\]](#) 2 PBD 560

[\[note: 59\]](#) 2 PBD 571

[\[note: 60\]](#) 2 PBD 573

[\[note: 61\]](#) 2 PBD 575

[\[note: 62\]](#) 2 PBD 578

[\[note: 63\]](#) 2 PBD 581-582

[\[note: 64\]](#) 2 PBD 588

[\[note: 65\]](#) 2 PBD 597

[\[note: 66\]](#) 2 PBD 596

[\[note: 67\]](#) 2 PBD 627

[\[note: 68\]](#) 3 PBD 956

[\[note: 69\]](#) 1 PBD 12-13

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