IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 368

Suit 1712/1994

Between

Twin Enterprises Pte Ltd

… *Plaintiff*

And

Peter Lim Heng Wah

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Twin Enterprises Pte Ltd v Peter Lim Heng Wah

[1998] SGHC 368

Suit 1712/1994
Warren Khoo L H J
09 November 1998

1 **Judgment :**

2 1. This is an action to recover the balance of a trading account between the parties. The plaintiffs are a company effectively owned by Mr Fung. Mr Fung had known the defendant Mr Lim for many years. In the late 1980's, the Vietnam market was starting to open up. The defendant, who began to spend much time in Vietnam, collaborated with various Singapore companies in the import and export of goods into and out of Vietnam. He acquired much knowledge and experience of doing business there. Mr Fung did not have much of such knowledge and experience. But he had money, or at least good credit rating in Singapore. The two gentlemen decided to team up. In early 1990, they entered into discussions. They arrived at an arrangement by which the defendant would source goods in Vietnam and send them to the plaintiffs for sale in Singapore and Hong Kong. Rattan was the main commodity envisaged at the beginning, but later on other things like shipping containers and rubber were also included. Mr Fung, on the other hand, would send goods for which there was a demand in Vietnam. In the event, these included beer and second-hand motor cycles.

3 2. The purchases in Vietnam were funded by money sent by Mr Fung or by the proceeds of the sale of goods Mr Fung sent to the defendant. The parties agreed to share equally the profit made on the goods sent to and from Vietnam. Mr Fung was entrusted with the keeping of the accounts.

4 3. The trading arrangement started in February 1990. Money was handed or remitted to the defendant. Goods were sent to him, including large shipments of beer. The defendant in turn sent rattan and other things to or to the account of the plaintiffs. The relationship, however, did not last very long. It appears that Mr Fung ceased to send any money or goods after August 1991. By October 1991, he had decided to team up with someone else, without telling the defendant. The arrangement with the defendant had all but gone. Mr Fung refers generally to difficulty with the proceeds of the large beer shipments sent to the defendant and large unsettled balances in the account as the reason for his allowing the arrangement to come to an end.

5 4. I said that Mr Fung was entrusted with the keeping of accounts. But neither he nor his secretary Nelly Tan were trained book-keepers. They did not use a proper set of account books, nor did they follow any usual accounting procedures. They had, instead, three hard-cover exercise-type of books in which cash advances and the prices and incidental costs of goods shipments were jotted down, shipment by shipment.

6 5. The original books have been produced. The pages have a haphazard and amateurish look about them. They must be an accountant’s nightmare. Entries were made, some were blanked out or crossed out and corrected. Some pages of one book have been torn out. Mr Fung says they were "daily workings" of the company, "not official records". However, there might still be method in

Version No 1: 29 Oct 2026 (23:45 hrs)

the madness. Defence counsel, who presumably had seen the books, did not make much of a point of it.

7 6. The plaintiffs' claim is based on a set of statements sent to the defendant in August 1992. These statements are, basically, in two parts. First, an account of the cash remittances and goods sent to the defendant, as well as goods sent from the defendant (the "remittances and purchases account"), and, secondly, an account of the profit made on goods sent to and from the defendant (profit and loss account). The remittances and purchases account shows a total balance of $686,023.97 in the plaintiffs' favour. There is another statement showing a sum of $62,926.80 in favour of the plaintiffs on account of shipments of sanitary ware. In favour of the defendant is his half share of profit, his share being shown as $120,910.22. The plaintiffs' claim is, in sum, the net balance between the two sets of credits.

8 7. Mr Fung says that the figures in all these statements were extracted from the books I referred to earlier. According to him, the accounting was done, broadly, as follows. The defendant was credited with the cost of the goods sent by the defendant. He was debited with the value of the goods as well as the money sent to him in Vietnam. In respect of these goods, if the defendant confirmed that he had a buyer who had agreed to buy them at a certain price, the defendant would be debited with the price. If there was no confirmed buyer, the defendant would be debited with the price payable by the plaintiffs. The values of these goods and the monies sent to the defendant were shown as "Remittances" in the accounts. In respect of the rattan and other goods sent by the defendant to the plaintiffs, the defendant would tell him over the phone how much they cost. Mr Fung would take his word for it, and credit him with the amount. The amounts credited to the defendant for all the shipments are reflected as "Purchases" in the accounts. I shall refer to this in greater detail

Version No 1: 29 Oct 2026 (23:45 hrs)

later. The profit and loss accounts reflect, basically, the difference between the cost of the goods and the sale price to third parties.

9 Previous renderings of accounts

10 8. Both Mr Fung and Nelly Tan say that in the course of the trading arrangement the defendant made regular visits to Singapore. He would visit the plaintiffs' offices. He had the opportunity to look at the account books. Nelly Tan also says that sets of accounts were given to him every few months. The point they seek to make is that the defendant well knew all along the contents of the accounts and had not raised any objections. I tend to discount this evidence. The state of the "account books" as described above was such that I do not see how any account in any meaningful sense could have been given to the defendant. However, it seems that some time in 1991, we do not know exactly when, the defendant was provided with partial accounts of remittances and purchases. There is also a set of profit and loss statements dated 15 October 1991 which he admits to having received. No one is sure when this was given to the defendant. Although dated 15 October 1991, this set of statements, strangely, includes some entries dated later.

11 9. Both Mr Fung and Nelly Tan say that copies of credit notes were given to the defendant on his visits, or faxed to him. It is hard to attach much value to the evidence. If this was done, I think it was probably done haphazardly. I do not think there was anything like a system or a procedure.

12 The plaintiffs' claim : account stated

13 10. At the trial, the plaintiffs were given leave to amend their statement of claim to add a plea of account stated. However, this was not seriously

Version No 1: 29 Oct 2026 (23:45 hrs)

pursued, and rightly so. There was no regular rendering of accounts, and there was no acceptance by the defendant of any accounts, by word or conduct.

14 Defences : Illegality

15 11. The defendant pleaded in his defence that the plaintiffs knew that, in pursuance of the agreement for the trading arrangement, the defendant would, and did, carry on business in Vietnam without a licence and would use bribery in doing business there. He also pleaded that, to the knowledge of the plaintiffs, he would, and did, make payments in U.S. currency directly to the local suppliers of the goods; and that, to the knowledge of the plaintiffs, the defendant would not, and did not, pay taxes in Vietnam. However, in his affidavit of evidence in chief, the defendant mentions only two matters - trading without a licence and bribery. He says that Mr Fung was aware that he often had to buy rattan from private suppliers (as opposed to state corporations), as he could get a better price from them; that all exports of goods had to be done through state corporations; that in order to export the goods purchased from private suppliers, he would have to make arrangements with the state corporations for the latter to provide documents to show that the goods originated from them. He would have to pay the state corporations a commission for the documentation. He also says that he had explained to Mr Fung that he would be trading without a valid licence and that he would have to bribe his contacts and officials in Vietnam in order to arrange for the shipment of the goods purchased.

16 12. In cross-examination, the defendant volunteered instances where he had to pay bribes. He refers to bribes paid to employees of state corporations in addition to the 1% commission charged by the corporations themselves for the arrangement. He refers to bribes paid to bank officials for allowing him to take out US dollars from banks. Bribes had to be paid to Cambodian officials in

Version No 1: 29 Oct 2026 (23:45 hrs)

connection with the sourcing of rubber. There was another instance when Vietnamese officials suspected that a beer shipment was the subject of smuggling. Bribes had to be paid so he did not have to go to prison.

17 13. Mr Fung's evidence is that he knew that the defendant would be trading without a licence, and that trading without a licence would be illegal. He also knew about the practice of paying bribes, and that bribes would have to be paid. However, Mr Fung says that he told the defendant from the beginning that he had no wish to be involved in any illegal trading or smuggling. The defendant told him that with his experience of doing business in Vietnam he would know how to handle the transactions without doing anything illegal, and he would not get the plaintiffs into trouble with the law in Vietnam.

18 Licence and use of state corporations

19 14. Two lawyers from Vietnam gave evidence - one for the plaintiffs, one for the defendants. Both agree that a foreigner needed to have a licence to trade in Vietnam, although the plaintiffs' witness says that, at the time, the law was not very clear as to the details. As for the commission arrangement with the state corporations, the lawyer called by the plaintiffs says that this was perfectly in order. The defendants' witness, however, says that only a foreigner who was licenced could use a state corporation in this way. The position of the defendant himself concerning the arrangement with the state corporations is rather fuzzy. Although he seems to draw a distinction between the commission paid to the corporations themselves and the bribes paid to the corporations' employees, his counsel in cross-examination of Mr Fung appears to have lumped the two together.

Version No 1: 29 Oct 2026 (23:45 hrs)

20 15. Apart from any question of paying bribes to secure the arrangement, it seems to me that it has not been shown that the arrangement itself was illegal. On the defendant's own evidence, it seems that what it involved was for the state corporations, in exchange for a commission, to treat the goods as originating from them. Invoices would be issued, presumably showing the state corporation as the seller. Except for the transaction involving letters of credit, this arrangement was consistently followed, apparently openly, over an extensive period, involving many shipments through the country's main port. As the saying goes, the proof of the pudding is in the eating. If the arrangement was illegal, it seems surprising that there is no evidence that the defendant ever came to grief over any of these shipments. The fact that two practicing lawyers should give opposite views as to the legality of such an arrangement probably also shows that the law on this subject was none too clear. Mr Fung says that the defendant told him that he knew how to handle the transactions without doing anything illegal. It is just possible that the commission arrangement with the state corporations was what the defendant had in mind. On the evidence, I do not think that the defendant has established that the commission arrangement with the state corporations contravened the law.

21 Bribes

22 16. Bribing officials, of course, is wrong. It is wrong in this country, and it is wrong, at least in theory, in the countries around us. If the defendant's evidence is anything to go by, it seems to be rampant in the country concerned.

23 17. This case, however, is not about whether it is right or not for a businessman trading in these countries to pay bribes to get business done. It is whether, assuming that such payments are made, what is the effect on the contractual relationship between him and his joint venture partners. Does the

Version No 1: 29 Oct 2026 (23:45 hrs)

act, per se, nullify any contractual obligations between him and his partners so that, for instance, when the parties fall apart, they would not have to account to each other for monies that passed during the life of the contract?

24 18. Counsel for the defendant refers to the leading case of **Regazzoni v. K.C. Sethia** [1958] A C 301 for the proposition that the court will not enforce a contract if its performance "involves" doing an act in a foreign and friendly state which violates the law of that state. This proposition is derived from the first part of the headnote to the report on that case. But the use of the word "involves" adds a touch of uncertainty to the statement. Lord Sommervell saw the difficulty in the use of this word and devoted part of his speech to it. Although the word "involves" was used in discussion in some of the speeches in that case, it is quite clear that the real basis for holding that the contract was unenforceable was that it *required* the commission of an illegal act under the law of India, or that it could not be carried out without violation of that law. This was made quite clear particularly in Lord Reid's speech.

25 19. The contract in the instant case has as its main object the carrying on of trade in innocuous goods like rattan, motor-cycles and beer. The import and export of these goods were not prohibited by the law of Vietnam. They were merely regulated. They were probably even encouraged. This distinguishes the contract from the contract in the **Regazzoni** case, which was to export goods to South Africa against the law of India prohibiting such export,. or the contract in **Foster v. Driscoll** [1929] 1 KB 470, which was for the export of whisky to a country which prohibited its import.

26 20. The payments of bribes, if they did take place, were merely incidental to the performance of the main object of the contract to carry on trade in a legal way. They were not made in order to facilitate some illegal trade, e.g.

Version No 1: 29 Oct 2026 (23:45 hrs)

in narcotics or white slavery. They were necessary only because there were ill-disciplined officers about. I do not think that, in these circumstances, it can be said that such payments have the effect of tainting the contract at all or to such an extent so as to deprive the plaintiffs the right to hold the defendant to account for monies passed under it. Nor do I think that Mr Fung's prior knowledge that such payments would be made has such an effect. So I would dismiss this part of the defence.

27 The defences : other general points

28 21. The defendant seeks to cast doubt on the bona fides of the plaintiffs in relation to these accounts. He says that until he got the August 1992 accounts, all he had was the October 1991 profit and loss account showing that he had $141,941.59 in his favour; it was only when he got the August 1992 accounts that he found out that he was in fact supposed to owe the plaintiffs more than half a million dollars. This, he says, caught him by surprise.

29 22. I think this point is not a very good one. As I said earlier, before the August 1992 accounts, the defendant had not only received the profit and loss account dated 15 October 1991; on his own evidence, he had also received partial accounts of the purchases and remittances. These already showed a substantial amount due to the plaintiffs. There was no reason for him to think that the profit and loss account was the only account between him and the plaintiffs.

30 23. The second general point made by the defendant is that there must have been purchases which had taken place and which have not been reflected in the plaintiff's accounts. The defendant has done a tabulation of the remittances (including value of goods sent) to the defendant against the value

Version No 1: 29 Oct 2026 (23:45 hrs)

of the purchases and other transactions credited to the defendant's account. The tabulation (exh PL-17 to defendant's 11 Oct 1997 affidavit) shows that, particularly after 1 July 1990, the balances shot up to amounts over $600,000, and on occasions even exceeded $1m. Since Mr Fung himself says that he tried to control the finances by tailoring his remittances and the value of goods sent to the defendant to the value of goods the defendant sent out of Vietnam, the defendant argues that the differences between the two at any time should not be so great. The fact that these differences reached such proportions must be due to purchases not having been taken into account and expenses not credited. Mr Fung's explanation for these large differences is that he never really worked on a transaction by transaction basis. Although at the beginning he tried to keep the balances within bounds, as time went on, he began to trust the defendant more and more because of the defendant's good performance. The difference began to grow in July and August 1990 when large shipments of beer were sent to the defendant. However, soon thereafter the defendant sent about $494,000 worth of rubber, and this restored the balance to within limits. However, the defendant kept on asking for more money. Mr Fung says he found himself in a position where if he did not send money, the defendant might stop sending goods, the trading relationship might stop and he would not get his money back. So he responded to the defendant's requests for more money. But the value of goods sent by the defendant never caught up with the remittances and the value of the goods he sent to the defendant. Hence these large balances. And it was precisely because of this that he decided to terminate the relationship in October 1991.

31 24. The defendant has not been able to point to one single instance of a transaction which has not been accounted for. He says that he is handicapped in that he was carrying on the trade illegally as he had no licence to do so. So he did not keep any record.

Version No 1: 29 Oct 2026 (23:45 hrs)

32 25. It seems to me that this is a rather facile explanation. He has admitted to keeping at least some invoices issued by the suppliers or by the state corporations for the rattan purchases. So he had at least some memory triggers as to any purchases which might have been omitted. I also find it difficult to believe that he could not have kept some record of the transactions he entered into. We have the position where accounts began to be sent to him as long ago as in 1991 but he has simply not been able to point to any transaction that has been omitted. Against this, there is the evidence of Mr Fung that the transactions were entered in his books as and when they took place. Although the account books used were not everything they might have been, it does not necessarily mean that they are any the less reliable for that.

33 Invoices

34 26. Another point that the defendant makes is that he has not been credited with the full amount of the shipments that he had sent to the plaintiffs. He says that the plaintiffs have not produced all the documents to show the true cost of the goods. In particular, there should be the Vietnamese suppliers' invoices for the rattan purchases. The defendant says that if all these invoices were produced, they would show that he has been short-credited.

35 27. Mr Fung's answer is that except for the transactions done by means of letters of credit, the standing arrangement between the parties right from the beginning was that the defendant would simply tell him over the phone how much the goods cost. Mr Fung would take his word for it and credit him with the amount. I tend to accept Mr Fung's evidence. The defendant's own evidence is that he would buy the rattan from private suppliers as he could get it at a better price than that charged by the state corporations. He had to pay a commission to the state corporations to treat these goods as originating from them. He also

Version No 1: 29 Oct 2026 (23:45 hrs)

had to pay bribes here and there to smoothen the process of getting the goods shipped. There would no doubt also be other incidental expenses incurred in getting the supplies as well as the expenses of running the business. It would have been unwieldy for the defendant to have to account for all these expenses. So I think Mr Fung is quite right. The two of them must have opted for a simple way. The defendant, taking the responsibility for all these expenses, would simply tell Mr Fung how much he wished to charge for the goods, and Mr Fung would credit him accordingly. Mr Fung was mainly concerned with the bottom-line, i.e. whether the transactions would be profitable. In this scheme of things, the suppliers' invoices were quite irrelevant. They would in all probability have shown figures less than what the defendant has been credited with. The same goes for invoices issued by the state corporations.

36 28. Imports from Vietnam to Singapore, however, were liable to payment of a cess of % to Intraco. Mr Fung says that, for this purpose, the defendant would fax a blank invoice from some Vietnamese corporation. Mr Fung would arrange to have the details filled up, but, in respect of the price, he would deduct a small margin from the price the defendant had quoted him, say, $50 out of $1,000. Intraco would accept such invoices, and charge the cess accordingly. The plaintiffs at the trial were able to get an officer from Intraco to produce Intraco's file relating to these shipments, and it has not been suggested that anything in the file is not consistent with what Mr Fung says.

37 29. For the transactions done by means of letters of credit, Mr Fung says that, because of the Singapore issuing bank's insistence, an invoice had to be produced. The defendant would arrange to procure such an invoice. In these cases, Mr Fung would credit the defendant with the invoice amount. However, there were only very few transactions done by letters of credit. Most of the transactions were accounted for, as between the plaintiff and defendant, by the

Version No 1: 29 Oct 2026 (23:45 hrs)

amount which the defendant gave Mr Fung over the phone. As I have indicated, in respect of these purchases, there is not much in the defendant's point that the plaintiffs have not produced the invoices. I accept Mr Fung's evidence that the defendant did not send him invoices. The defendant admits to keeping at least some of these invoices himself.

38 The credit notes

39 30. In support of the amounts credited to the defendant for the purchases, the plaintiffs produced copies of what they call credit notes. There are numerous such documents. They are not addressed to the defendant. They include at the top of the name and address of parties in Vietnam. In defence counsel's closing submission, he questions why the credit notes should take this form, rather than just the usual form of a note issued to the defendant. I am not in a position to entertain this submission as Mr Fung and Nelly Tan were not asked on this point. I am sure they would have been able to give an answer if they had been asked. The answer could well have been a simple one.

40 31. Counsel for the defendant in his closing submission also questions whether the credit notes were contemporaneous documents. The basis for this suggestion is the defendant's evidence that he did not receive supporting documents until after the plaintiffs sent him the final accounts in August 1992. I am prepared to allow that the credit notes might not have been prepared at the conclusion of each transaction. But that does not, without more, lead to the conclusion that they are not correct. The information in the credit notes may have been extracted from other contemporaneous documents, such as invoices to third parties. Again, this point could have been explored in evidence.

41 Currency of account

Version No 1: 29 Oct 2026 (23:45 hrs)

42 32. The accounts have been rendered in Singapore dollars. The defendant says that they should be in US currency, as he used that in the trades in Vietnam. Mr Fung has always converted any U S dollar transactions into Singapore dollars, and has always kept the account between the parties in this way. The defendant says that he did not know this. However, there is evidence in the form of payment vouchers signed by him to show that when money was handed to him in U S dollars, the Singapore currency equivalent was shown on the voucher. Although the accounts were rendered to him in 1991 and 1992, he did not raise the question until 1997, when he amended his defence to include this plea. I would be slow to accept his evidence that when he received the accounts he had asked Mr Fung to rework them in U S dollars. So, on the whole, I would reject his contention on this currency question.

43 Expenses

44 33. The last point raised about the accounts is that they fail to include certain expenses incurred by the defendant in connection with the business. These expenses total some US$162,000. They are referred to in para 96 of the defendant's affidavit. I accept Mr Fung's evidence that the agreement between the parties was that the plaintiffs were to bear the general expenses of running their business in Singapore while the defendant was to bear such expenses in Vietnam. The implication is that the defendant would factor the expenses of running the business in Vietnam into the amount he asked Mr Fung to credit him on the shipments. Such an arrangement had the virtue of simplicity, as I have mentioned in another context earlier. However, in the rather fluid environment in which the trading was to be done, I think there was room in the arrangement for expenses incurred on extraordinary occurrences, and those not originally contemplated, to be allowed to be deducted. On this basis, I think that some items in the defendant's list may, subject to further inquiry, be allowed.

Version No 1: 29 Oct 2026 (23:45 hrs)

These are : (1) payments made to Goh Chee Kian; (2) payments to Sao-Serey Mony in connection with the aborted deal on generators; (3) rattan alleged to have been paid for by the defendant and lost; (4) cash advance to Shortie Lim and Fung; (5) storage charges and illicit payments in respect of 16 containers of beer. In this connection, I would also include the bad debts claimed by the defendant in respect of the beer and motor-bike proceeds, again, subject to inquiry.

45 Sanitary ware

46 34. As indicated above, there is included in the plaintiffs' accounts an item for sanitary ware shipped by the plaintiffs to Au Phu. The defendant gave evidence on this, but Mr Fung did not. So, this item should be further inquired into.

47 Housing loan

48 35. Also included is an item of $40,000 alleged to be a loan made to the defendant for the purchase of his house in Singapore. Although he resisted it at first, it was indicated at the trial that he was not pressing the point. I would take it that the item stands.

49 Conclusion

50 36. I have in the course of this judgment often referred to my accepting Mr Fung's evidence. Indeed, on disputed points, I think there is everything to be said for accepting his evidence rather than the defendant's. The defendant was not a very impressive witness. His memory was not very good. He was altogether not very helpful.

Version No 1: 29 Oct 2026 (23:45 hrs)

51 37. It seems to me that he was rather nonchalant about settling the account with the plaintiffs. Mr Fung says that if he had had any queries or had any claims (e.g. for bad debts owed by Vietnamese purchasers), he could have raised them, and, as a reasonable and fair-minded businessman, Mr Fung would have been more than glad to resolve them. However, he just kept quiet, as if hoping that the account would go away.

52 38. However, on the state of the proceedings before me, as I have rejected the claim on account stated, it would be appropriate to order inquiries and taking of accounts. These should encompass the items in the accounts which are disputed by the defendant, as set out in annexures in the plaintiff counsel's opening statement, but exclude items and matters in respect of which I have made findings. They should also include the items set out above under "Expenses". I order accordingly..

53 39. The costs of the main proceedings in this suit should abide the result of the inquiries and account-taking proceedings. This issue, as well as interest, is reserved for consideration by the registrar conducting those proceedings.

54 Dated this 9th day of November, 1998.

55 Warren L H Khoo

56 Judge

Warren Khoo L H J

Version No 1: 29 Oct 2026 (23:45 hrs)

Sylvia Lim, Sarbjit Singh for the plaintiffs
Chan Hian Young, David Goh for the defendant

Version No 1: 29 Oct 2026 (23:45 hrs)