IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 177

Suit 1998/1997

Between

Ricwil (Singapore) Pte Ltd

… Plaintiff

And

Chew Kong Huat
Aw Mui Kee
Sintalow Hardware Pte Ltd
Thermosel Engineering Pte Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Ricwil (Singapore) Pte Ltd v Chew Kong Huat and Others

[1999] SGHC 177

Suit 1998/1997
Lim Teong Qwee JC
30 June 1999

JUDGMENT:

GROUNDS OF JUDGMENT

1. These proceedings have been brought by the plaintiff against Mr Chew the first defendant and his wife Ms Aw the second defendant as its directors at the material time and against the third defendant ("Sintalow") and the fourth defendant ("Thermosel") of which Mr Chew and Ms Aw were and still are the only directors. On 18 January 1999 I gave judgment for the plaintiff and intimated that I would see counsel in Chambers to settle the terms of the judgment.

2. On 18 February 1999 I settled the terms of the judgment. These are the material paragraphs of the judgment:

> "1. The 1st, 2nd and 3rd defendants do pay the plaintiffs the following sum in damages:-
>
> 1.1 $30,482.74 for the 1st and 2nd defendants' breach of duty to act in the interest of the plaintiffs in causing the plaintiffs to pay the 3rd defendants commissions for letters of credit.

2. The 2nd defendant do pay the plaintiffs the following sums in damages for failing to use reasonable diligence in the discharge of her duties as a director of the plaintiffs:-

2.1 $3,982.00 for the 2nd defendant double invoicing the plaintiffs and overpaying the 3rd defendants for the 3rd defendants' delivery order no 46999; 2.2 $33,812.75 for the 2nd defendant double invoicing the plaintiffs and overpaying the 3rd defendants for the 3rd defendants' invoice no 35256; 2.3 $2,908.63 for the 2nd defendant invoicing the plaintiffs and overpaying the 3rd defendants for the 3rd defendants' invoice dated 29 August 1994 for 100 metric tonnes of galvanised steel sheet; and 2.4 $572.00 for 2nd defendant invoicing the plaintiffs and making payment to the 3rd defendants for the 1st defendant's travel expenses in respect of the 3rd defendants' invoice dated 24 January 1995.

3. The 3rd defendants do pay the plaintiffs the sums set out in paragraphs 2.1 to 2.4 above.

4. The 2nd defendant do pay the plaintiffs the following sum in damages for failing to use reasonable diligence in the discharge of her duties as a director of the plaintiffs:-

4.1 $55,149.08 being payment made by the 2nd defendant on behalf of the 4th defendants using the plaintiffs' monies.

5. The 4th defendants do pay the plaintiffs the sum set out in paragraph 4.1 above.

6. The 1st defendant do pay the plaintiffs damages to be assessed for the plaintiffs being deprived of the ownership of a duct fabricating machine system, such damages being limited to the value of the machine as at the date of the breach, namely 29 December 1995.

7. At the election of the plaintiffs:-

(a) The 1st defendant do pay the plaintiffs damages to be assessed in causing the plaintiffs the loss of the contracts to supply Nippon steel pipes to Kwang Wah Engineering Pte for the Suntec City, Woodlands Seagate and UIC projects, or (b) In the alternative to sub-paragraph (a) hereof, an account of the profits made by the 3rd defendants in respect of the contracts for the supply of Nippon steel pipes to Kwang Wah Engineering Pte Ltd for the Suntec City, Woodlands Seagate, and UIC projects.

8. The 3rd defendants do make discovery of all documents relevant to its contracts for the supply of Nippon steel pipes to Kwang Wah Engineering Pte Ltd for the Suntec City, Woodlands Seagate and UIC projects within 4 weeks from the date of this

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> order and the plaintiffs to make the election within 4 weeks of the said discovery.
>
> 9. The 1st and 2nd defendants do pay the plaintiffs damages to be assessed for causing the plaintiffs' contracts for the manufacture of ducts to be cancelled and transferred to the 4th defendants.
>
> 10. An account of the net profits before tax made by the 4th defendants in respect of the 4th defendants' use of the plaintiffs' duct fabrication machine system, raw materials, and labour for the fabrication of ducts and such profits be paid to the plaintiffs.
>
> 11. The plaintiffs do recover against the 1st and 3rd defendants damages to be assessed for the tort of conspiracy which will be assessed after the date of election under paragraph 8 hereof."

It was later brought to my attention that counsel had omitted to address the court on interest and I directed that a date be fixed for this purpose but this has not been done yet.

3. The events complained of took place between 1992 and 1996. The issued capital of the plaintiff ("Ricwil") then was $60,002 divided into 60,002 shares of $1 each fully paid. Mr Chew held 20,000 of those shares. Ms Aw did not hold any shares. The remaining shares were held by four other persons. All six of them ie Mr Chew, Ms Aw and the four other shareholders were also the directors of Ricwil. Mr Chew was the managing director until 15 April 1996 when he resigned but he has remained as a director. Ms Aw resigned as a director on 12 June 1996. She was the director responsible for Ricwil's accounts from 1993 until her resignation.

4. When Mr Chew was the managing director of Ricwil he was also the managing director of Sintalow. He was responsible for its day to day management. The only other director was Ms Aw and she was as in the case of Ricwil the director responsible for the accounts of Sintalow. Mr Chew and Ms Aw each held 250,000 shares of $1 each of the 500,000 issued shares in its

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capital. None of the shareholders of Ricwil other than Mr Chew had an interest in the capital of Sintalow.

5. When Mr Chew was the managing director of Ricwil he was also the managing director of Thermosel and he was also responsible for its day to day management. Ms Aw was also a director and as in the case of Ricwil and Sintalow she was also the director responsible for its accounts. Thermosel's capital was only $2 and there were only two shares issued held one each by Mr Chew and Ms Aw.

6. Ricwil, Sintalow and Thermosel occupied the same premises at 8 Fan Yoong Rd. According to the directors' report for the year ended 31 December 1995 the principal activities of Ricwil consisted of the installation of insulated water pipes for air-conditioning systems and the sales of related products. Clearly it could also undertake the business of fabricating insulated as well as non-insulated ducts for air-conditioning systems and other businesses. Sintalow and Thermosel could also undertake the same business. Mr Chew managed all three companies and Ms Aw was the director responsible for the accounts of all three companies.

7. Mr Ding Yew Kum has "since national service days" as he said in his affidavit known Mr Chew and has had dealings with Sintalow particularly when he was working for YHE Corp Pte Ltd. He said that he saw Mr Chew after he left that company and in June 1995 he started working for Ricwil. Under cross-examination he said:

> "When I joined company given impression joining group in which [Mr Chew] had interest. My understanding group includes [Sintalow], [Ricwil] and [Thermosel]. I took salary initially and signed vouchers of [Ricwil]. Until if I recall some time end of year 1995. After that given vouchers of [Thermosel]

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> for salary. To me not much relevance. Knew within group [Mr Chew] had interest in."

8. I think Mr Chew and Ms Aw managed Ricwil, Sintalow and Thermosel as though they were all companies in a group and anyone dealing with them and the staff of any one of those companies would not have been concerned to know which of the companies he was dealing with. Sintalow and Thermosel had the same shareholders holding shares in the same proportion but Ricwil was different and was not a member of any group with Sintalow or Thermosel in any sense at all.

9. Paragraph 10 of the statement of claim states:

> "[Mr Chew] and [Ms Aw] have failed to act honestly and/or in the best interest of [Ricwil] and to use reasonable diligence (at all material times) in the discharge of their duties as directors of [Ricwil]."

Some 25 paragraphs of particulars are given. It is not disputed that a director owes a fiduciary duty to act in the interests of the company. Section 157(1) of the Companies Act provides that a director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office and it is also not disputed that this provision applies to Mr Chew and Ms Aw as directors of Ricwil.

10. Paragraph 11 states:

> "Further and/or in the alternative, [Ricwil] aver that, between 1992 and June 1996, each of the defendants unlawfully conspired to injure [Ricwil] by depriving [it of] monies rightly due to it by unlawful means, namely by:-
>
> (1) In the case of [Mr Chew] and [Ms Aw], acting in breach of their respective fiduciary duties as is pleaded in paragraph 10 hereof. (2) In the case of [Sintalow] and [Thermosel], participating in the breach of [Mr Chew's] and [Ms Aw's]

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> fiduciary duties owed to [Ricwil] as is pleaded in paragraph 10 hereof."

Letter of credit facilities

11. Paragraph (18) of the particulars under para 10 of the statement of claim states:

> "[Mr Chew] and [Ms Aw], acting on behalf of [Sintalow], imposed a 10% commission for providing letter of credit facilities from [Sintalow] to [Ricwil] .... The said commission was intended by [Mr Chew] and [Ms Aw] to profit themselves directly, and/or indirectly through [Sintalow], and not [Ricwil]. Alternatively, the act of both [Mr Chew] and [Ms Aw] caused loss to [Ricwil]."

Paragraph 7(a) of the defence of Mr Chew and Ms Aw states:

> "The defendants say that the commission was authorized and [Ricwil] were aware at all material times of the commission charges .... Further or in the alternative, such facilities could not be procured by [Ricwil] on their own account. The said facilities were thereby procured by [Mr Chew] for the benefit of [Ricwil's] business out of necessity, business efficacy and in good faith."

Paragraph 5(g) of Sintalow's defence states:

> "[Ricwil] have expressly or impliedly or by a course of conduct, agreed to pay commissions to [Sintalow] and have always accepted the said payments without complaint."

12. Mr Wong Syn Loy one of the other directors of Ricwil said in his affidavit:

> "The first time that I or any other member of Ricwil's Board (excluding [Mr Chew] or [Ms Aw]) knew about these commissions was when we received a copy of a report from Judy Kuan in April 1997."

Ms Kuan is a certified public accountant who was retained to conduct a review of matters affecting Ricwil with special reference to the roles of Mr Chew and Ms Aw and their interest in certain transactions between Ricwil and other

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parties. In her report dated 7 April 1997 she said it was observed that a "10% service charge for use of the LC" was imposed by Sintalow and another party.

13. Mr Chew said in his affidavit:

> "This practice [of charging for the use of LC facilities] has been sanctioned at all board meetings at which accounts were presented, taking into account such commissions."

There was no record in the minutes of any meeting of directors making any mention of Ricwil using the letter of credit facilities of Sintalow or paying any commission or any other charges to Sintalow for the use of such facilities. The final accounts of Ricwil made no mention of any commission or any other charges paid for letter of credit facilities to Sintalow or to anyone else. There was a reference to "L/C opening others" for 1993 and 1994 in the statement of operating expenses for the year ended 31 December 1994 but the amounts bear no resemblance to the amounts charged by Sintalow. Mr Chew himself did not know what this item was for and said it could be part of the charges paid to Sintalow or the bank. No accounts or statements whether presented to Ricwil's directors or shareholders making any reference to such commission or charges were produced. Mr Chew admitted under cross-examination that he did not apply to Ricwil's bankers for letter of credit facilities. He knew that Ricwil had money on its account with its bankers. There was nothing in the financial statements of Ricwil to suggest that such facilities could not have been granted to it.

14. I find that Ricwil has not authorised the payment of any commission for the use of Sintalow's letter of credit facilities or agreed to pay any such commission to Sintalow. Mr Chew did not apply for such facilities from Ricwil's bankers. He could have. He failed to do so. He used Sintalow's facilities and charged a

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commission which was not disclosed to the other directors other than Ms Aw. I find that both Mr Chew and Ms Aw have failed to act in the interest of Ricwil.

Ricwil's contracts transferred to Thermosel

15. Paragraph (19) of the particulars under para 10 of the statement of claim states:

> "In September 1995, [Mr Chew] and [Ms Aw] caused contracts for goods to be supplied by [Ricwil] to be cancelled and transferred to [Thermosel]. The loss of the contracts to [Ricwil] was intended by [Mr Chew] and [Ms Aw] to profit themselves directly, and/or through it [Thermosel], and not [Ricwil]."

Particulars of eight contracts for sale of goods are given. The separate defences of Mr Chew and Ms Aw and of Thermosel contain only bare denials. Mr Khoo stated from the bar that these defendants' case was that the contracts were all Thermosel's contracts and although the forms for the delivery orders used were those of Ricwil the goods delivered were Thermosel's goods and did not originate from Ricwil.

16. Mr Chee Yoh Chuang is a certified public accountant. He was instructed by Ricwil to perform a special review of the accounting and other records of Ricwil for the period 1 January 1995 to 30 August 1996. In his report dated 24 March 1997 he said:

> "We further note that there were goods delivered to customers in September 1995. The delivery orders were subsequently cancelled and 'transferred to Thermosel'."

17. Mr Ding said in his affidavit:

> "I managed to secure orders for ducts by about September 1995 on behalf of Ricwil. Some of these orders are those with Speed-Air Air-Conditioning Engineering Pte Ltd (hereinafter referred to as 'Speed-Air'). I recall Speed-Air was a client that [Mr Chew]

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> had asked me to approach. I approached them and managed to obtain orders from them. These orders are set out in the delivery orders identified in the schedule in this paragraph. The work for these orders was done using Ricwil's workers and their materials."

The schedule identified all the eight contracts.

18. Mr Ding was shown copies of eight delivery orders in relation to the contracts. He said:

> "There are certain handwriting on these orders. The phrase 'Transfer to Thermosel' appearing in these delivery orders is mine. I wrote this on [Ms Aw's] instructions. [Ms Aw] told me to cancel all these delivery orders that were issued by Ricwil because she wanted me to reissue the delivery orders for these works in the name of Thermosel."

Seven of the delivery orders were dated between 4 September 1995 and 18 September 1995. The eighth delivery order was undated but from the serial number it appears to have been issued between 5 September 1995 and 12 September 1995.

19. Mr Chew said in his affidavit that it was Mr Ding who transacted the business. The buyer in each case was Speed-Air Air-Conditioning Engineering Pte Ltd ("Speed-Air"). He said that Thermosel had no stationery of its own and used Ricwil's delivery orders.

20. Mr Chu Sau Ben a director of Speed-Air said in his affidavit that it was Mr Ding who gave quotations to his company. He produced copies of the quotations which appear to be on Thermosel's stationery. Without any assistance from counsel and relevant evidence it is not possible to relate the quotations to the goods described in the delivery orders. Copies of the delivery orders were also produced. They were in each case in Ricwil's forms. They appear to be copies made from documents similar to those shown to Mr Ding.

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21. Mr Chu also said in his affidavit that he noticed that the delivery orders were in Ricwil's forms. He said he asked Mr Ding about this and Mr Ding told him "Thermosel was just being set up, and had no letterheads to use". This was denied by Mr Ding. Mr Chu produced copies of five quotations. Four were dated between 28 August 1995 and 31 August 1995 and one was dated 5 September 1995. As noted above all of them appeared to be on Thermosel's stationery.

22. Mr Ding was employed by Ricwil in June 1995. Under cross-examination he said he used the title of general manager of Thermosel from the day he was told that "[Thermosel] approved by Registrar of Companies".

23. Thermosel was formerly known by another name. On 16 August 1995 the change of name was approved and on 30 August 1995 its registered address was changed to 8 Fan Yoong Rd. There is no evidence as to when Mr Ding might have been informed of either of these changes or of any "approval" by the Registrar of Companies or what the "approval" was. A copy of Ricwil's voucher for salary shows that Mr Ding's salary for August 1995 was paid by Ricwil and an employment letter dated 16 September 1995 on Thermosel's notepaper was signed by him for Thermosel.

24. On 15 January 1996 there was a meeting of the directors of Ricwil. The minutes were signed by the chairman as a correct record. Paragraph 1 of item 3 of the minutes states:

> "Mr Chew was queried on his interest in other companies. As mentioned in the resolution circulated for the other directors' consent of their involvement in the other companies, he maintained there were only 3, namely Sintalow Hardware Pte Ltd, Sintalow Hardware (M) Sdn Bhd and Sinpro Rubber Industries Pte Ltd."

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I think this is a reference to the directors' disclosure of interests made at a meeting of directors under s 156 of the Companies Act.

25. Paragraph 2 states:

> "Thereat, Mr C S Tan furnished to the Board another company owned by Mr Chew and Mdm Aw - Thermosel Engineering Pte Ltd incorporated in 1991. Mr Chew thereupon contended that as the company was dormant, he did not see the need to inform. However as the company has just began to trade now, he has the intention to invite Ricwil to invest in his company."

Under cross-examination Mr Chew said:

> "Q: AB Vol 5-153. Item 3. Para 2. Sentences 1 and 2. Not accurate? (Note: AB Vol 5-152 to 155 contain the minutes of the meeting.) A: Accurate. Q: You did not tell Board D4 was dormant? A: At that time not dormant. Q: (Question repeated). A: Agree told Board D4 was dormant. Q: Agree what you told Board was untrue? A: Don't agree. (Witness warned.) I did tell Board D4 was dormant company but not Thermosel Engineering what was changed in August 1995. I mean name changed from Thermosel AFA Bellows to Thermosel Engineering. Q: AB Vol 5-153. Item 3. Para 2. Sentence 3. 'just began to trade now'? A: Began since August 1995. . . . Q: AB Vol 5-153. Item 3. Para 3. Accurate? A: Not correct. . . . Q: Sentence 4. Accurate? A: Yes. Accurate."
>
> Sentence 4 of para 3 states:
>
> "It was also revealed that the machinery was used in Thermosel's operations but the expenses incurred related to that - even the executive's pay was borne by Ricwil Singapore."

26. The quotations were statements of prices. They were not offers leading any of the contracts evidenced by the eight delivery orders. If Thermosel was dormant in January 1996 when the board meeting of Ricwil was held as Mr Chew informed the board then it could not have begun to trade in August 1995 as he also claimed. In August and September 1995 Thermosel had no employees of its own although it took on Mr Ding from Ricwil in September 1995. It had

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no inventory. It had no money. The business with Speed-Air was business of the kind that Ricwil could undertake.

27. Ricwil's forms of delivery order were used in each case but not because Thermosel had no stationery of its own. It had its own stationery for the purpose of the quotations. I see no reason why it did not have delivery order forms. I see no reason why Ricwil's forms were not overstamped with Thermosel's name if they were to have been for Thermosel's use. I think Ricwil's forms were used because the fabrication work was done by Ricwil. The materials used came from Ricwil. The goods were drawn from Ricwil's inventory. The business with Speed-Air was undertaken by Ricwil.

28. I find that all the contracts particularised in para (19) of the particulars under para 10 of the statement of claim were contracts made by Ricwil with its customer Speed-Air. I find that after these contracts had been performed by delivery of the goods sold Mr Chew and Ms Aw caused them to be cancelled and transferred to Thermosel by issuing Thermosel's delivery orders in place of Ricwil's. I find that Mr Chew and Ms Aw have failed to act in the interest of Ricwil.

Double invoicing, over-invoicing and payment of unauthorised travel expenses

29. It is not disputed that there were two instances of Ricwil being invoiced by Sintalow twice for the same goods and services. Ms Aw said in her affidavit that on or about 30 October 1993 she authorised the issue of two invoices for the same goods. She did that as a director of Sintalow. On 26 January 1994 and again on 28 March 1994 she as a director of Sintalow authorised the issue of invoices for the same goods and services. She said that these were clerical errors.

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30. The amounts involved were nearly $4,000 in one case and nearly $34,000 in the other. They were not insignificant. They concerned charges made by Sintalow for payment by Ricwil. Payment was to be made by a company of which she was the director responsible for the accounts to a company in which she had an interest as holder of half of its issued capital. I think this was an occasion for the exercise of such care as should have been appropriate in the circumstances. If such care or indeed any care at all had been exercised such an error should not have arisen and if it had then the preparation of the year end accounts in the case of both the companies would have revealed it. The year end in respect of one instance of double invoicing was 31 December 1993 and in the other 31 December 1994. Ms Aw only alleged that these were clerical errors in a letter dated 27 February 1997 in response to Ricwil's letter of 5 February 1997 to its auditors.

31. There was an overpayment for goods which arose out of over- invoicing by Sintalow. Such an error ought not to have arisen in the circumstances. The invoice was for 100 metric tons of galvanised steel sheets. The quantity was larger than that disclosed in the supporting documents. Payment was approved by Ms Aw.

32. There was an occasion when Ms Aw authorised the payment by Ricwil of a sum of less than $600 as a travel expense. Reimbursement was claimed by Mr Chew and Ms Aw authorised payment. No details of the expense were known for any consideration to be given as to whether Ricwil should bear this expense. Even at the date of the trial Mr Chew could not say what the expense was for and in what way it concerned Ricwil.

33. Between August 1995 and March 1996 Ms Aw as the director responsible for Ricwil's accounts caused Ricwil to pay sums totalling $55,149.08 for the

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account of Thermosel. Debit notes were issued but no attempt was made to call for payment. Thermosel had an issued capital of only two shares of $1 each held one each by Ms Aw and Mr Chew. It had no money. Ricwil had money and Ms Aw knew it. She used it. She did nothing about recovering it.

34. I have found that Ms Aw (and Mr Chew) failed to act in the interest of Ricwil in causing it to pay Sintalow a commission for using Sintalow's letter of credit facilities and in causing Ricwil's contracts to be cancelled and transferred to Thermosel. Having regard to those circumstances and the circumstances I have referred to I find that Ms Aw has failed to use reasonable diligence in the discharge of the duties of her office as a director of Ricwil in breach of s 157(1) of the Companies Act.

Duct fabricating machine

35. By an agreement in writing dated 12 June 1995 Kailay (S) Pte Ltd ("Kailay") agreed to sell to Ricwil one lot of duct fabricating machine and certain items of machinery and equipment identified in a list (together "duct fabricating machine") for the price of $325,000. In the agreement Kailay is described as Kailay (S) Ltd but nothing turns on this as the agreement and the sale evidenced by it are agreed. The agreement was signed by Mr Chew for Ricwil.

36. Kailay was then indebted to Ricwil in an amount well in excess of the price of the duct fabricating machine and cl 5 provides that the price is to be paid by a set-off and "shall be deemed effective on signing of this agreement". As soon as the agreement was signed the price was treated as having been paid and Kailay's indebtedness to Ricwil was reduced by a like amount. The duct fabricating machine was delivered in June 1995. In accordance with cl 10 of the agreement Kailay was allowed to use the duct fabricating machine for three

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months from 20 June 1995 and as Mr Ding said it was used by both Kailay and Ricwil.

37. On 25 June 1996 DBS Finance wrote to Ricwil. The first two paras of the letter stated:

> "The undersigned visited the above premises on 19 June 1996 with the purpose of repossessing our machines which were hired to our hirer, M/s Kailay Engineering (S) Pte Ltd (Kailay).
>
> Your [Mr Chew] and another representative, [Mr Ding], who attended to the undersigned advised that you were not aware that the hire purchase agreement which was supposed to be effected has not been executed."

It is not disputed that the reference to "our machines" was a reference to the duct fabricating machine. The letter was sent to 8 Fan Yoong Rd and was marked for the attention of Mr Chew and the same day he sent a copy to Ricwil for the attention of Mr Wong. Ricwil had moved out of 8 Fan Yoong Rd by then. Mr Chew demanded an explanation and "an account, in writing, as to [Mr Wong's] intended next course of action within the next 24 hours". Mr Wong did not respond. DBS Finance repossessed the duct fabricating machine the same day and subsequently resold it to Thermosel in July 1996 for about $60,000.

38. The particulars under para 10 of the statement of claim state:

> "(3) The machine was bought by Kailay under hire purchase agreements Nos 001-3-19321-Z and 001-3-18529-B with DBS Finance. Pursuant to the agreement with [Ricwil], Kailay was to ensure that the machine was to be free of all encumbrances although a sum of S$70,268.42 was still due to DBS Finance.
>
> (4) On or about 13 December 1995, [Mr Chew] represented to Kailay that the outstanding sum of S$70,268.42 (representing the monies outstanding to DBS Finance on the hire purchase of the machine) will be paid by [Sintalow]. In return, Kailay agreed to provide [Sintalow] with goods and equipment valued at S$100,000.00. [Sintalow] issued a credit note to Kailay for the remaining $29,731.58 to offset amounts Kailay owed

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> [Sintalow]. At all times, [Mr Chew] concealed this transaction between Kailay and [Sintalow] from [Ricwil].
>
> (5) [Mr Chew] in a letter dated 29 December 1995 to DBS Finance undertook on the behalf of [Ricwil] to pay outstanding sums under the hire purchase agreement due to DBS Finance … from Kailay.
>
> (5A) By reason of the matters pleaded in paragraphs 10(4) and 10(5) of the Statement of Claim, [Sintalow] obtained the benefit of S$100,000.00 of goods and equipment from Kailay but did not make any payment to DBS Finance. [Ricwil] [was] deprived of the ownership of the machine."

39. In their defence Mr Chew and Ms Aw allege that:

> "(e) In or about October 1995, [Mr Chew] was informed by Kailay that the machine was indeed encumbered under hire-purchase with DBS Finance and that Kailay's title to the machine was in doubt. Complaints and claims were directed to Kailay accordingly.
>
> (f) On or about 29 November 1995, [Sintalow] accepted certain equipment and materials in kind at a value of $16,763.00 from Kailay. In consideration of the same, [Sintalow] paid $16,763.00 on behalf of Kailay that was owing from Kailay to DBS Finance for September 1995.
>
> (g) Despite the payment above, the final outstanding debt owed to DBS Finance of $70,268.42 as at December 1995 was not paid by Kailay. In order to alleviate the problem, it was intended that [Sintalow] enter into another agreement with Kailay on or about 13 December 1995, to have [Sintalow] given payment in kind of various construction items worth $100,000.00 whereupon [Sintalow] would offset the amount of $29,731.58 from monies owed by Kailay to [Sintalow], and the balance monies used to pay the outstanding balance owed to DBS Finance. The said intended agreement of 13 December 1995 did not eventuate, or alternatively, was terminated. On account of further negotiations involving Kailay, [Ricwil] and [Sintalow], it was ultimately agreed between the said parties that construction items worth $70,268.42 would be paid in kind by Kailay to [Ricwil], who would discharge the said outstanding monies due from Kailay to DBS Finance, whilst [Sintalow] would be paid in kind construction items worth $29,731.58 that would be offset against monies owed by Kailay to [Sintalow].
>
> (h) The latter agreement in the preceding paragraph was made back-to-back with the agreement contained in a letter of 29

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> December 1995 from [Ricwil] to DBS Finance, whereby the amount of $70,268.42 was to be provided to DBS Finance to free the machines from all encumbrances, and where the monies were to be provided by [Ricwil] from the said latter agreement in the preceding sub-paragraph.
>
> (i) Kailay defaulted in performance of the agreement contained in the letter of 13 December 1995. The agreement was thereby rescinded."

40. Mr Chew was the managing director of Ricwil until his resignation on 15 April 1996. It was he who represented the company in its dealings with Kailay and its associated company Kailay Engineering Co (S) Pte Ltd ("Kailay Engineering"). In his affidavit Mr Chew said:

> "The [agreement contained in the letter of 13 December 1995] was not followed through. It was terminated by Sintalow and accepted by Kailay. Shortly after the 13.12.95 agreement was reached, I noticed that Kailay had in its possession a fairly large lot of material at the Suntec City site, that would be of use to Ricwil. These comprised mostly pre-insulated pipes, bare pipes and steel bars. It occurred to me that it would be of benefit to Ricwil to acquire this. One way to do so, would be to modify the agreement with Kailay.
>
> Further discussions took place between Mr M S Chai and I concerning altering the arrangement to paying off the DBS Finance balance. Mr M S Chai and I finally reached agreement in another form."

The agreement of 13 December 1995 was in a letter from Kailay to Sintalow. It reads:

> "Sintalow Hardware Pte Ltd
>
> No 8 Fan Yoong Road
>
> Jurong Town
>
> Singapore 2262
>
> Attention: Mr Johnny Chew
>
> Managing Director
>
> Dear Sir
>
> SUNTEC CITY PROJECT

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> SALES OF PIPEWORK & FITTINGS IN STORE
>
> As discussed, we hereby confirm the sales of the attached list of items to you all for the lump sum of S$100,000.00.
>
> The above-stated amount, which deemed to be paid by Sintalow to Kailay, has been agreed to settle as follows:-
>
> 1) Portion of the proceed from the sales stated herein (ie S$70,268.42) shall be used to settle the final outstanding payment of S$70,268.42 of both DBS Finance's Hire-Purchase No 001-3-18529-B-00 and 001-3-19321-Z-00, which Kailay owes to DBS Finance. Effectively, Sintalow shall effect payment directly to DBS Finance. 2) Balance of the proceed from the sales (ie S$29,731.58) shall be used to settle part of the outstanding payment that is still due to you. Please issue us a credit note of said amount for our record purpose. Yours faithfully Confirmed and accepted by Signed M S CHAI Signed Project Manager Mr Johnny Chew For and on behalf of Managing Director Kailay (S) Pte Ltd Sintalow Hardware Pte Ltd"

41. Mr Chew when cross-examined as to the materials bought for $100,000 under the agreement of 13 December 1995 said:

> "Q: 13/12/95. When you signed AB Vol 5-83. You considered you should get items for plaintiff?
>
> (Note: AB Vol 5-83 is the agreement of 13 December 1995.)
>
> A: No.
>
> Q: Why not?
>
> A: Because these are pipes and fittings which wouldn't be useful to plaintiff.
>
> Q: All items not useful to plaintiff?
>
> A: Part. Part can be useful to plaintiff.
>
> Q: You considered useful part to plaintiff?
>
> A: No.
>
> Q: You did not check with anybody from plaintiff if they wanted any of these items?
>
> A: Agree.
>
> Q: Items useful to plaintiff. Total cost at least $70,000?

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> A: Items not useful: 1-11, 13-17, 19, 23-26, 35-72, 74-81, 84-131. Could be useful items: 12, 18, 20-22, 27-34, 73, 82-83.
>
> Q: AB Vol 5-86. Item 73. Cost 0?
>
> A: Yes.
>
> Q: Worth?
>
> A: No knowledge of pumps.
>
> Q: Items 82/83?
>
> A: No knowledge.
>
> Q: AB Vol 5-85. Item 18. Cost 0. Value?
>
> A: May cost about $500.
>
> Q: December 1995. Kailay still owed money to plaintiff?
>
> A: Yes.
>
> Q: You thought plaintiff could have paid $70,000 to DBS Finance and obtained all the useful items? Had money to pay?
>
> A: Don't know.
>
> Q: You checked with anybody from plaintiff?
>
> A: No."

42. Mr Chai Meng Shep said in his affidavit:

> "I am informed by Ricwil's solicitors that [Mr Chew] claims that the agreement dated 13 December 1995 was not carried out or was terminated by Sintalow. He claims that he on behalf of the Sintalow informed me orally of the termination just before Christmas 1995. This is untrue. Sintalow did not inform me orally or at all that the agreement was terminated. In fact, all the items stated in the list were collected by Sintalow from the Suntec City Project site .... In fact, the items stated in the list were collected even before I wrote the 13 December 1995 letter. I can confirm that I was personally present at 8 Fan Yoong Road to verify these items."

His evidence is that when he wrote the 13 December 1995 letter all the materials bought were already at 8 Fan Yoong Rd. They were no longer at the Suntec City site.

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43. Mr Chew did not think the materials were of any use to Ricwil except that a part of them could be useful. Ms Aw would have known if Ricwil had the money to pay DBS Finance. He did not ask her. She had used Ricwil's money to pay Thermosel's debts. Both of them had allowed Ricwil to pay a commission of 10% to Sintalow for using its letter of credit facilities. Mr Chew was the managing director of Ricwil. I think he knew that Ricwil could have bought the materials and had the means to pay DBS Finance.

44. I think Mr Chew bought the materials for Sintalow because it was a good buy. The book value was in excess of $260,000. I accept Mr Chai's evidence that the materials were delivered. They were as Mr Chai said collected even before he wrote the letter dated 13 December 1995. There was nothing left for Kailay to do. All that was left was for Sintalow to pay DBS Finance. Sintalow had to find the money to pay DBS Finance.

45. Kailay did not default in the performance of the agreement of 13 December 1995 as alleged in the defence of Mr Chew and Ms Aw. The agreement was not thereby rescinded. On Mr Chew's own evidence it was Sintalow that defaulted. Again on his own evidence the agreement was altered as regards the arrangement for paying off DBS Finance but the alteration was not merely to do with any arrangement for paying off DBS Finance. His evidence is that an "agreement in another form" was reached and this was reached after he had noticed that "Kailay had in its possession a fairly large lot of material at the Suntec City site, that would be of use to Ricwil". It cannot be. All the materials had been delivered to 8 Fan Yoong Rd even before Mr Chai signed the 13 December 1995 letter.

46. I think some time after 13 December 1995 Mr Chew decided that he would make Ricwil buy some of the materials from Kailay instead of Sintalow even

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though the transaction had been completed except for payment by Sintalow to DBS Finance. Sintalow could then buy the materials from Ricwil later should it desire to do so. It would be Ricwil which would have to pay DBS Finance immediately and not Sintalow. I think what Mr Chew called the "agreement in another form" is best regarded as a "re-arrangement" and it was he who brought about the "re-arrangement" alleged.

47. Whether it was Sintalow which bought the materials or Ricwil which did so in respect of some of the materials under the "re-arrangement" alleged DBS Finance had to be paid about $70,000 for the sale of the duct fabricating machine to Ricwil to be completed. If it was Sintalow which had to pay DBS Finance then Mr Chew as the director who put the deals through on behalf of both Ricwil and Sintalow should as a director of Ricwil have taken action to see that payment was made by or on Sintalow's behalf. If it was Ricwil which had to pay DBS Finance then again as the director who put the deals through he should have seen to it that payment was made. He must have known that if payment was not made then DBS Finance was bound to repossess the duct fabricating machine. If payment could not be made because either Sintalow or Ricwil had no money then Mr Chew should have made a full disclosure of the circumstances to the board for action to be taken.

48. The documentation evidencing the "re-arrangement" consists of:

(a) Letter from Kailay Engineering to DBS Finance.

(b) Letter from Kailay Engineering to Ricwil.

(c) Letter from Kailay to Ricwil confirmed by Mr Chew as managing director of Ricwil.

(d) Letter dated 29 December 1995 to DBS Finance written by Mr Chew as managing director of Ricwil.

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The first three letters were undated and appear to have been signed by Mr Chai "on and behalf of" Kailay Engineering in the letter to DBS Finance and "for and behalf of" Kailay Engineering and Kailay in the letters to Ricwil. Kailay Engineering's undated letter to DBS Finance advised that it was pleased to transfer to Ricwil all machineries under two hire purchase agreements and that $70,268.42 would be paid by Ricwil. The two hire purchase agreements appear to be the same as those referred to in the agreement of 13 December 1995 between Kailay and Sintalow although the identification number of one of these has been rendered as 001-3-18529-8 instead of 001-3-18529-B. This is clearly a mistake and I think they both referred to the same agreement. There were no other hire purchase or other agreements with DBS Finance and $70,268.42 was the same amount owing to DBS Finance as stated in the 13 December 1995 agreement. "All machineries" is clearly a reference to the duct fabricating machine sold to Ricwil under the 12 June 1995 agreement. Kailay Engineering's undated letter to Ricwil stated that Kailay Engineering agreed to sell the "duct fabrication machinery" and associated items to Ricwil and referred to the two hire purchase agreements. The machinery and items were together the duct fabricating machine comprised in the 12 June 1995 agreement. The undated letter went on to say that the lump sum price was $70,268.42 and that Ricwil would "effect payment directly to DBS Finance immediately".

49. The two undated letters from Kailay Engineering would evidence a sale to Ricwil of the duct fabricating machine covered by the two hire purchase agreements. It would be a sale of the duct fabricating machine already sold by Kailay to Ricwil under the 12 June 1995 agreement. The price under the 12 June 1995 agreement was $325,000 which was already paid by a set-off against part of the amount owing by Kailay to Ricwil and there was nothing more to pay. Under the sale evidenced by the two undated letters of Kailay Engineering the

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same machine was agreed to be sold to Ricwil for $70,268.42 and this had to be paid to DBS Finance immediately. Ricwil was put in a disadvantageous position while Sintalow which had under the 13 December 1995 agreement bought the materials taken from the Suntec City Project site for $100,000 of which $70,268.42 was to be paid to DBS Finance benefitted by being relieved of this obligation.

50. Kailay's undated letter to Ricwil stated that in consideration of Ricwil taking over the "surplus materials" described in an attached list Ricwil would pay $70,268.42 to DBS Finance. Clearly this is inconsistent with the agreement evidenced by Kailay Engineering's two undated letters. That was a sale of the duct fabricating machine to Ricwil for $70,268.42 to be paid to DBS Finance. The agreement evidenced by Kailay's undated letter which was confirmed by Mr Chew was a sale of the "surplus materials" for $70,268.42 also to be paid to DBS Finance under the same two hire purchase agreements.

51. The "surplus materials" consisted of four items. Three were marked "(Storage at No 8 Fan Yoong Rd by Kailay)". Item 3 was for:

> "One lot of pre-insulated piping and bare pipes, iron bar at Suntec City, Basement One
>
> Quantity : One lot"

This appears to be part of the materials bought by Sintalow under the 13 December 1995 agreement and taken from the Suntec City Project site. The description of all the other items matched the equivalent number of those in the list of materials bought by Sintalow. The "surplus materials" had a total value shown in the list of materials bought by Sintalow of not much more than a quarter of the total value of all the materials in the list bought by Sintalow. Under the 13 December 1995 agreement Sintalow was to pay the same amount

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of $70,268.42 to DBS Finance and in addition would allow the difference between that and $100,000 to be set-off against part of what Kailay owed Sintalow. Under the "re-arrangement" Sintalow would retain all the materials sold under the 13 December 1995 less about one-quarter in value and some pipes and iron bars and would be relieved of paying DBS Finance. Ricwil in turn would acquire the "surplus materials" for cash to be paid to DBS Finance. The 12 June 1995 agreement for sale of the duct fabricating machine to Ricwil remained unaffected.

52. Ricwil's letter of 29 December 1995 to DBS Finance stated that it had bought the duct fabricating machine covered by the two hire purchase agreements and had taken possession. It went on to say that as agreed with Kailay Ricwil undertook to continue to repay the outstanding sums owing under the two hire purchase agreements. It sought DBS Finance's agreement of the arrangement and asked for the documentation required. This is not consistent with either of the two agreements evidenced by the letters. In both cases what was agreed was immediate payment by Ricwil. There was no question of any continuation "to repay" any outstanding sums or any documentation.

53. I think there was no agreement of any kind between Kailay or Kailay Engineering and Ricwil after the 13 December 1995 agreement between Kailay and Sintalow. Mr Chai is from Taiwan. He resigned and left Kailay or Kailay Engineering on 15 December 1995 and both those companies had no money to pay its debts to Ricwil and Sintalow and had ceased to carry on business. Mr Chai had sold the duct fabricating machine and all the materials. There was nothing left for him to do. I think he did sign the two undated letters of Kailay Engineering and the undated letter of Kailay but I think they were given to him to sign after 13 December 1995 and he did so without any understanding as to

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their contents or the purpose. The agreements that these letters evidenced were shams and were of no effect whatsoever.

54. I have referred to the meeting of the directors of Ricwil on 15 January 1996. Item 1 of the minutes of the meeting contained this record:

> "The Managing Director, [Mr Chew], briefed the Board on the circumstances of the acquisition of [the duct fabricating machine] .... He added that getting the machinery at $325,000 was a bargain ....
>
> However he added that there was still an outstanding leasing commitment at $70,000 which must be settled by Ricwil Singapore.
>
> ....
>
> Further upon Mr C S Tan's query, Mr Chew confirmed that the ownership of the machinery lies with Kailay (S)'s Associate Co. However, he assured the Board that documentary requirements to transfer the ownership has been done.
>
> Upon review of the agreement signed for the purchase of the machinery and the documents arranged by Mr Chew so required to transfer the ownership from the subsidiary, the Board defers its decision on the machinery issue until further legal opinion of the documents can be ascertained."

Mr Wong said in his affidavit that Ricwil did not seek any legal opinion because at about that time Ricwil had several other issues to deal with.

55. Mr Wong also said in his affidavit that Mr Chew showed the directors the 12 June 1995 agreement for the sale of the duct fabricating machine to Ricwil for $325,000. It was put to him under cross-examination that at the meeting Mr Chew produced the two undated letters from Kailay Engineering to DBS Finance and to Ricwil and the undated letter from Kailay to Ricwil. Mr Wong admitted that Mr Chew produced the undated letter from Kailay Engineering to DBS Finance but not the others although he had seen the undated letter from Kailay Engineering to Ricwil. Mr Chew said that he produced Kailay

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Engineering's undated letter to DBS Finance and Kailay's undated letter to Ricwil. He did not say that he produced Kailay Engineering's undated letter to Ricwil.

56. I find that at the directors' meeting Mr Chew produced the 12 June 1995 agreement between Kailay and Ricwil and also Kailay Engineering's undated letter to DBS Finance and Kailay's undated letter to Ricwil. I find also that Mr Wong saw Kailay Engineering's undated letter to Ricwil before the meeting. Mr Chew also said in examination in chief that at the meeting he produced the 13 December 1995 agreement between Kailay and Sintalow. Counsel for Ricwil did not object to this which was not put to Mr Wong. He did not cross-examine Mr Chew on this or apply for Mr Wong to be recalled and I find that at the meeting Mr Chew also produced the 13 December 1995 agreement.

57. Mr Wong said in his affidavit:

> "… this further payment of $70,000 was being objected to by the Board. In fact, during the morning session of this meeting, Jeffrey Low of Ricwil (M) Sdn Bhd specifically asked Johnny to resolve the question of the outstanding amount with DBS Finance."

Looking at the 12 June 1995 agreement under which Ricwil bought the duct fabricating machine for $325,000, the 13 December 1995 agreement under which Sintalow bought a quantity of materials and as part of the price would pay DBS Finance and being told that under new arrangements Ricwil and not Sintalow had to pay DBS Finance the directors were very likely to have objected to the payment. I think they did object and Mr Jeffrey Low did ask Mr Chew to resolve the question of the outstanding payment with DBS Finance and I find accordingly. Mr Low was a director of Ricwil and the chairman at the meeting.

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58. Mr Chew did not make a full disclosure of the circumstances surrounding the undated letters. The agreements evidenced by them were shams as I have found. Ricwil did not have to pay DBS Finance. If they were not shams then they were inconsistent with each other and could not have been valid all at the same time. An explanation was called for. None was given. No arrangements were made at any time after the directors' meeting or at all for DBS Finance to be paid and if any such arrangements were made they were not carried out. Mr Chew allowed his interests in Sintalow to influence his actions as a director of Ricwil. He failed to act in the interest of Ricwil and Ricwil was deprived of the ownership of the machine.

Kwang Wah Engineering Pte Ltd

59. On 20 October 1995 Ricwil wrote to Kwang Wah Engineering Pte Ltd ("Kwang Wah Engineering"):

> "Re: SUNTEC CITY P.5 PRE-INSULATION PIPES
>
> We refer to your request in regards to our quotation ref: RSJ/153/95.
>
> We are only prepared to grant you further 22.5% subjected that we supply you the Nippon steel pipes.
>
> In case of others pipe supply, we could not allowed any discount under our quotation ref: RSJ/153/95.
>
> This condition will be applied for UIC Woodland Seagate projects.
>
> Your attention is appreciated."

The letter was sent by Mr Chew and on 31 October 1995 it was confirmed by Kwang Wah Engineering. The signed confirmation was indorsed on the letter.

60. Ricwil supplied the pipes for the Suntec City project and the further discount of 22.5% was given. Kwang Wah Engineering executed the works under the

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UIC Suntec City project for which the discount was given by Ricwil for the pipes supplied. It also executed the Woodlands Seagate project and for that project it was supplied "Nippon" steel pipes. The supplier was not Ricwil. It was Sintalow.

61. In para (12) of the particulars under para 10 of the statement of claim it is alleged that:

> "Further and in the alternative, [Ricwil] lost the benefit of the value of the contracts amounting to S$386,711.60 to supply Kwang Wah with Nippon steel pipes as a result of [Mr Chew] diverting the said contract to [Sintalow] .... Alternatively, the act of [Mr Chew] caused loss to [Ricwil]."

The defence of Mr Chew and Ms Aw states:

> "The discount sought initially by Kwang Wah of 30% was part of an overall incentive package Kwang Wah offered that would give [Ricwil] the chance to seek to make supplies of materials and/or services to other projects known as the 'Seagate at Woodlands' and 'UIC' Projects .... At the conclusion of negotiations, a discount of 22.5% was granted to Kwang Wah for insulation work done by [Ricwil] and the 'UIC' Project was secured by [Ricwil]. It is denied that any contracts were diverted as alleged."

No reference was made to the supply of "Nippon" steel pipes for the Woodlands Seagate project. Sintalow's defence is:

> "Any contracts made between Kwang Wah and [Sintalow] were made validly without any wrong-doing as regards [Ricwil]."

62. When Mr Khoo opened the defence I asked him what the defence was and in particular what allegations of fact were denied and what not denied. Counsel said that the agreement to grant a discount was admitted but the condition (as regards supply of "Nippon" steel pipes by Ricwil) applied only to the Suntec City project and not the Woodlands Seagate project. This is a departure from the case pleaded and it makes little sense apart from contradicting the express

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terms of the 20 October 1995 letter. He said further and better particulars would be filed. The further and better particulars filed on 28 August 1998 (as counsel informed the court) represented yet another departure from the pleaded case. It is now alleged that on or about 20 October 1995 Mr Chew made an offer on behalf of Ricwil to grant a 22.5% discount to Kwang Wah Engineering if:

> "(i) [Kwang Wah Engineering] agreed to purchase Nippon pipes in connection with the Suntec City project; and
>
> (ii) if [Kwang Wah Engineering] was to be supplied pre-insulated pipes by [Ricwil] for the Seagate at Woodlands and UIC projects."

but that:

> "[Kwang Wah Engineering] refused, in negotiations, prior to 31 October 1995, to accept the part of the offer of 20 October 1995 that [Ricwil] supply steel pipes to [Kwang Wah Engineering] for the Suntec City project."

It admits that "Nippon" steel pipes were supplied by Sintalow for the Suntec City project as well as the Woodlands Seagate project and UIC projects and not Ricwil but alleges that:

> "The discount of 22.5% was not offered or granted in connection with the agreement of 31 October 1995, on any condition that [Ricwil] were to supply steel pipes to [Kwang Wah Engineering] for the Woodlands Seagate and UIC projects."

The new case flies in the face of the letter from Ricwil dated 20 October 1995 and Kwang Wah Engineering's confirmation dated 31 October 1995. No application was made for leave to amend the defence and I accordingly disregard the further and better particulars in so far as they represent the case of Mr Chew and Ms Aw.

63. Mr Chew admitted the letter of 20 October 1995. He said in his affidavit that the letter of 20 October 1995 related to supply of pre-insulated pipes for the

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Suntec City project and that this was secured for Ricwil but that the "Nippon" steel pipes were bare (not pre-insulated) pipes which Kwang Wah Engineering did not purchase from Ricwil but from Sintalow with which it had a long business relationship. Ricwil did not supply pre-insulated pipes for the Woodlands Seagate project. The "Nippon" pipes supplied by Sintalow were delivered to a competitor for pre-insulation. Mr Wong Ah Pak a director of Kwang Wah Engineering substantially corroborated this evidence.

64. Under cross-examination Mr Chew again admitted the letter of 20 October 1995 and agreed that the discount would be given if Ricwil supplied steel pipes to Kwang Wah Engineering and that the discount was for pipes to be supplied for the Suntec City project. His case appears to be that if Kwang Wah Engineering chose to buy "Nippon" steel pipes for the Woodlands Seagate project from Sintalow and Sintalow which was in the business of supplying "Nippon" steel pipes sold the steel pipes then he as the director representing Sintalow in the sale was not in breach of his duty to Ricwil to act in its interest. He was not in breach of s 157(1) of the Companies Act.

65. I am unable to agree. As a director of Ricwil it was his duty to require that the condition be fulfilled. If Kwang Wah Engineering chose not to fulfil the condition then the discount should be withdrawn. If as in this case Kwang Wah Engineering was prepared to buy from Sintalow then it was Mr Chew’s duty to secure that Ricwil received the benefit arising under the sale of "Nippon" steel pipes or that the burden of the further discount of 22.5% be passed on to and borne by Sintalow. The further discount was in a real sense the price paid by Ricwil for securing the supply of "Nippon" steel pipes to Kwang Wah Engineering. In my judgment Mr Chew was not only in breach of his duty to act in the interest of Ricwil but he was also in breach of s 157(1) of the Companies Act to act honestly in the discharge of his duties as a director of Ricwil. He had

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appropriated to Sintalow, a company all of whose issued shares were held beneficially by him and his wife, a business opportunity paid for by a discount given by him as a director of Ricwil. The discount was given by Ricwil. The pipes were supplied by Sintalow.

Conspiracy

66. In *Quah Kay Tee v Ong & Co Pte Ltd* [1997] 1 SLR 390 Lai Kew Chai J (delivering the grounds of judgment of the Court of Appeal) said at para 45:

> "A conspiracy by unlawful means is constituted when two or more persons combine to commit an unlawful act with the intention of injuring or damaging the plaintiff, and the act is carried out and the intention achieved."

Ricwil's case is that in regard to Kwang Wah Engineering there was a combination between Mr Chew and Sintalow.

67. I have found that Mr Chew was in breach of s 157(1) of the Companies Act. Ricwil paid a price to get a contract to supply "Nippon" steel pipes and Sintalow took the benefit of the contract and supplied the pipes. Mr Chew was the directing mind behind Sintalow. He took the decision for Sintalow to supply the pipes. That was an unlawful act. It was unlawful for him as a director of Ricwil. It was unlawful for him and for Sintalow as it was a fraud on Ricwil. Injury or damage to Ricwil was a necessary and inevitable consequence of the act which benefitted Mr Chew and Sintalow. It must have been their intention to cause that injury or damage to Ricwil and I find accordingly. "Nippon" steel pipes were supplied by Sintalow and injury or damage was thereby caused to Ricwil. In my judgment Mr Chew and Sintalow have conspired to do an unlawful act with the intention of injuring or damaging Ricwil. The act was carried out and the intention was achieved.

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68. In the result I gave judgment for Ricwil in the form of judgment that has been settled.

Dated this 30th day of June 1999.

LIM TEONG QWEE

JUDICIAL COMMISSIONER

Lim Teong Qwee JC

Devinder K Rai and Christopher Goh (Harry Elias Partnership) for the plaintiff
Randolph Khoo, Joseph Kan, Brenda Lim and Lim Su-Lynn (Drew & Napier) for the defendants

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