ECRC Land Pte Ltd v Ho Wing On Christopher and Others
[2003] SGHC 298

Case Number : Suit 1210/2001

Decision Date : 27 November 2003

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Stephen Soh (Arthur Loke Bernard Rada and Lee) for plaintiff; Francis Xavier and Lai Yew Fei (Rajah and Tann) for defendants

Parties : ECRC Land Pte Ltd — Ho Wing On Christopher; Shum Sze Keong; Lee Yen Kee Ruby; Law Kwok Fai Paul; E-Zone (Plaza) Pte Ltd; The Grande Group Limited; East Coast Works Pte Ltd; Hong Kong Aberdeen Seafood Restaurant Pte Ltd; Nakamichi Pte Ltd; Cafe Al Fresco Pte Ltd

Companies – Directors – Duties – Whether transactions entered into with various third parties had valid commercial justification

Insolvency Law – Avoidance of transactions – Unfair preferences – Whether payment of operating charges by joint venture company amounted to unfair preference – Sections 99, 100 Bankruptcy Act (Cap 20, 2000 Rev Ed)

1 The plaintiff is in liquidation, having been ordered to be wound up in 1999. In this action, the plaintiff's claims against the defendants were based on fraud, breaches of fiduciary duty, constructive trust and conspiracy. They comprised the following heads of claim:

(a) alleged wrongful drawdown or use of the plaintiff's banking facilities for interior renovation and/or fitting out works of others;

(b) alleged wrongful charges borne by the plaintiff for miscellaneous expenses including interest expenses, consultancy fees, operating/administrative expenses; and

(c) alleged wrongful transactions relating to the plaintiff's business operations and/or tenancies.

The plaintiff's evidence was adduced mainly through the liquidator.

2 The action concerned the East Coast Recreation Centre located at 1000 East Coast Parkway, Singapore. It involved a joint venture agreement entered into in April 1995 (with the formal agreement signed on 15 June 1995) between George Wuu Khek Chiang, SAFE Enterprises Pte Ltd ('SAFE') and Grande Leisure Management Pte Ltd ('GLM').

3 George Wuu was the managing director and controlling shareholder of East Coast Recreation Centre Pte Ltd ('ECRC'), the company which used to hold the state lease over the land at 1000 East Coast Parkway. SAFE was part of the Singapore Technologies group of companies. GLM and the fifth to tenth defendants were part of the Grande group of companies.

4 The first to fourth defendants were variously directors of the plaintiff and the fifth to tenth defendants at the material times. The legally trained third defendant was also the plaintiff's and the fifth to tenth defendants' company secretary. The first defendant was the one ultimately in control where the defendants were concerned. The third and the fourth defendants, although not appointed directors of the plaintiff, were alleged to be liable as *de facto* or as shadow directors of the plaintiff.

5 The plaintiff was incorporated in late 1994 as the vehicle for the intended joint venture with GLM and SAFE owning 51% of its shares and George Wuu holding the remaining 49%. The purpose of the joint venture was to acquire the land in issue and the East Coast Recreation Centre built on it

from ECRC and to redevelop it into a world-class, high-tech, family-oriented amusement theme park ('ATP'). The ATP was to be the first to be constructed in Asia outside Japan and the centre was to undergo redevelopment akin to the USA's Disney Land.

6 GLM and SAFE had initially wanted to hold a 51% stake in the plaintiff through the fifth defendant which was equally owned by them. A sale and purchase agreement to effect this was thus signed between George Wuu and the fifth defendant in March 1995. However the Land Office disapproved of this joint venture structure in April 1995. The share structure in the plaintiff was eventually changed to GLM holding 25.5%, SAFE holding 25.5% and George Wuu holding 49%. This arrangement was effected by two sale and purchase agreements both dated 15 June 1995 between George Wuu and GLM and between George Wuu and SAFE in respect of the shares in the plaintiff. The earlier sale and purchase agreement was thus superseded by the latter two. By a shareholders' agreement also dated 15 June 1995, the joint venture parties agreed that all decisions of the shareholders would be made by a simple majority in votes.

7 The result was that George Wuu remained the largest single shareholder in the plaintiff. The management of the plaintiff vested in GLM and SAFE. Each joint venture party was represented by two nominated directors. George Wuu and his brother were directors. GLM was represented by the first and the second defendants.

8 GLM and SAFE paid George Wuu S$5 million for the 51% stake in the plaintiff. The plaintiff also settled ECRC's outstanding bank overdraft of about S$3 million with OCBC Bank. The plaintiff was to pay ECRC an annual consultancy fee of S$500,000 for the next 15 years regardless of the profitability of the plaintiff. Prior to the joint venture, ECRC had losses of some S$796,000 in 1993 and S$303,000 in 1994. ECRC was the creditor which eventually filed the petition to wind up the plaintiff.

9 A 15-year lease for the land was granted by the authorities but the rent was increased by 5.6 times.

10 When the plaintiff took over the management of the centre in April 1995, the clear understanding of the joint venture parties was that the centre would be redeveloped into the said ATP with at least two large virtual reality rides, an amusement arcade and various food and beverage outlets. The plaintiff would carry out the redevelopment with financing from OCBC Bank. Some of the existing tenants whose business was incompatible with the ATP would have to leave. Others would have to relocate within the centre. The initial target date for the commencement of operations for the ATP was December 1995. As a result of the many difficulties encountered along the way, the opening date was postponed to October 1996.

11 The day-to-day management of the plaintiff was left to the Grande group. SAFE was only involved in the finance and accounting functions. In August 1995, SAFE and Grande agreed to appoint a financial controller to take over the finance and accounting functions. Grande and SAFE would provide the plaintiff with staffing and financial resources for running the centre and charge those expenses to the plaintiff. Grande would also provide the plaintiff with administrative, legal, corporate secretarial and other infrastructural support and charge those expenses to the plaintiff. The fifth defendant would be a tenant at the centre and operate the ATP.

12 From April 1995 onwards, the plaintiff began to implement the plans for the intended ATP. On 4 July 1995, the fifth defendant entered into an agreement with Sega Enterprises Ltd of Japan ('Sega") contracting to buy up to four large virtual reality attractions from Sega for the ATP.

13 The centre comprised essentially three large buildings and a sheltered area without walls. The parallel blocks A and B were two storeys high while block C, perpendicular to the other two, had a double volume ground floor for most of its area. Up to May or June 1995, the plans were to situate the ATP in block C. However, the existing tenant, Regent Bowl, extended its lease in May 1995

agreeing to the automatic incorporation of the 5.6 times increase in rent.

14 The plaintiff then made alternative plans to house the ATP in block B. This would involve raising the floor slab of the second storey to increase the height of the ground floor and raising the roof of the second storey correspondingly. However, the seafood restaurant (Jumbo Garden) occupying the second storey also agreed to stay on at the premises at the increased rent and signed part of the agreement on 22 July 1995. The plans had to be changed again.

15 From September 1995 onwards, the plans were to build a new block D which would be linked to the second storey of block A. In April 1996, the authorities disapproved of such plans. An appeal was lodged and other options were explored. In July 1996, the authorities informed the plaintiff the 22 metre height clearance was not approved for the new block which had to be of the same height as the existing ones. The plaintiff then sought to make modifications to the attractions to fit the decreased height but that proved impossible. The attractions could not be housed in block B because the authorities in all probability would not approve the increased height needed for that purpose.

16 The plaintiff considered housing the ATP on the first and second floors of block A (excluding that portion of the ground floor occupied by McDonald's restaurant) and building a giant staircase as the main entrance from the ground floor. However, McDonald's objected to the staircase as it would affect the frontage of its restaurant.

17 The plans then switched to having the ATP on the ground floor of block B through to the squash courts at block C. This alternative would involve a scaled down version of the ATP with only two major rides. An application was made in July 1996 to convert the squash courts to house one of the attractions. In October 1996, the authorities did not approve the conversion of the squash courts.

18 From late 1996 to early 1997, the plaintiff tried its best to work with Sega's engineers to modify the large attractions so that they could be housed at the ground floor of block B. Eventually, that plan was abandoned as it was not feasible due to the ceiling height of the ground floor.

19 After exhausting all available options, the plaintiff had no choice but to run the centre as a family entertainment centre that included an amusement arcade and Q-Zar laser games at the ground floor of block B.

20 The plaintiff relied heavily on funds from the joint venture parties. George Wuu made it clear from the outset he was not going to provide funds for the plaintiff. By late 1995, SAFE stated it had no wish to fund the plaintiff's operations. It was therefore up to Grande to provide the funds and Grande made substantial contributions periodically. By the middle of 1998, the plaintiff owed some S$4 million to the Grande group. When the plaintiff was ordered to be wound up in March 1999, the level of indebtedness did not change much.

21 In the second half of 1997, the plaintiff marketed the centre extensively in an effort to turn the centre's financial situation around. Potential tenants began to show interest in the centre. However, these efforts could not save the plaintiff as it was unable to keep up with its payment obligations to OCBC Bank, which then terminated the facilities granted to the plaintiff. In January 1999, the Court of Appeal ruled against the plaintiff in its attempts in another action to recover S$1.5 million from ECRC. In February 1999, the plaintiff was ordered to pay more than S$2 million and costs to ECRC. Soon thereafter, the plaintiff went into liquidation.

22 It was alleged that the first to fourth defendants completely lost sight of the fact that the plaintiff was a separate legal entity and that the Grande group treated the plaintiff as if it were one of its subsidiaries. The plaintiff alleged that the first to fourth defendants evicted existing tenants who had been paying rent faithfully and entered into questionable tenancy arrangements with the

seventh to tenth defendants. It was also alleged that the plaintiff was made to pay for renovations and upgrading works for these tenants' benefit. The plaintiff also complained that various payments were charged to its account. The gist of the plaintiff's complaints was that the transactions entered into with the seventh to tenth defendants had no valid commercial justification whatsoever.

23 The other joint venture partners were made aware of the transactions complained of. SAFE and George Wuu attended all board and shareholders' meetings. They also received the reports and the accounts. George Wuu maintained an office at the centre and was updated by the second defendant, who met him frequently on site, of the developments. He knew that the first to fourth defendants were directors in the other defendants and that the companies were related to the Grande group.

24 The centre was already 15 years old in 1995 and large portions of it were in disrepair. There was leaking caused by severely corroded roof gutters. The second storey of block A had an uneven floor level because a ballet studio used to occupy part of it. There was spalling concrete. The public toilets had to be upgraded too. To achieve the status intended for the centre as a show case ATP, redevelopment and renovation works obviously had to be undertaken. The evidence showed that there were plans to do upgrading works from the early stages of the joint venture. There was a directors' resolution in October 1995 approving a S$11 million construction loan facility from OCBC Bank. The loan was stated to be for retrofitting the existing buildings and the construction of a new building. The infrastructure works undertaken involved the roofing and the ceiling works, the provision of adequate electrical supply for the attractions, airconditioning and plumbing.

25 When the seventh defendant agreed to commence operations of its amusement arcade on the second floor of block A in December 1995, there were only three main tenants left at the centre. It agreed to do so at the plaintiff's request as the centre was undergoing major redevelopment and renovation works and there was a need to inject life into the centre so that it would not be forgotten by the public. Once the public's interest in the centre waned, it would be much more difficult to revive it. The plaintiff had to keep the centre breathing and not let it lapse into a coma of oblivion.

26 As the seventh defendant depended heavily on walk-in customers and human traffic at the centre was adversely affected, it was to be expected that the seventh defendant would need some incentive to start its operations. It was never its intention to run a stand-alone amusement arcade without the ATP. Moreover, access to the second floor of block A was far from adequate. Therefore, although tenants were usually expected to pay for their own fitting out works, the plaintiff as landlord made a contribution of about S$1 million towards the seventh defendant's fitting out works and gave it a preferential rental rate. It also accorded the seventh defendant a longer period of three months for fitting out works and a longer period of rent rebate.

27 In late 1996, the seventh defendant had to think seriously of moving its operations out of the centre altogether as it became apparent that the original ATP conceptualised might not come to pass. The link between the second floor of block A and the new block D was not going to materialise despite the architects' advice to the plaintiff that the chances of rejection of the plans for block D were remote. By June 1996, the major attractions from Sega had arrived and it was concerned about product obsolescence. Sega was not willing to continue waiting and had issued an ultimatum for the purchase order for the large attractions to be issued. The plaintiff had to assist the seventh defendant in storing the Sega attraction on site as its plans for the ATP had been delayed. The plaintiff and the seventh defendant therefore agreed that the latter shift its operations to the ground floor of block B which was then unoccupied while the plaintiff explored other options to implement the ATP after July 1996. In this way, the plaintiff would benefit from having an anchor tenant to attract the crowds and in turn attract better tenants to the site. For this reason, the plaintiff agreed to undertake the upgrading and renovation works for the ground floor of block B as well. Block B was in serious need of repair in any event. Similarly, the plaintiff allowed the seventh defendant to terminate

its tenancy agreement for block A without penalty.

28 It was the same situation that led to the eighth defendant operating a seafood restaurant on the second level of block B. After Jumbo Garden left because it was not able to meet the vastly increased rental payments, there was no serious offer for those premises and practically the entire block B was unoccupied. Potential tenants were interested to take up space at the centre only after the ATP was in operation. The first defendant had to resort to persuading the famous floating restaurant in Hong Kong to open a restaurant in the vacated premises but was unsuccessful. The Hong Kong restaurant was prepared nonetheless to send its chefs and managers to assist if a restaurant was set up at the centre. The eighth defendant was also accorded a period of rental rebate. Although the rent charged was only a fraction of that payable by Jumbo Garden after the 5.6 times increase, it was a realistic one as a similar rent for the premises was offered by an established seafood restaurant operator (Palm Beach) which lost interest in the centre subsequently.

29 It was argued by the plaintiff that the terms of the tenancy agreements between the plaintiff and the seventh and the eighth defendants suggested that renovation costs would be borne by the tenants. However, the bulk of the works undertaken by the plaintiff was infrastructural in nature. The tenancy agreements were also signed well after the respective works had been completed and paid for. It was the evidence of the legal department of the Grande group that it overlooked the arrangements in those cases by mistakenly using standard form tenancy agreements. The tenancy agreement with the seventh defendant was signed only in October 1996 although it had been occupying the premises since January 1996 because Grande's legal department was chasing both parties to formalise the agreement..

30 It was also contended that some invoices for the works on the second floor of block A were addressed to the seventh defendant and should not therefore have been paid by the plaintiff. The evidence showed that many of the invoices or quotations for the works were in fact made out to wrong parties. This was caused in part by the different calling cards handed out to the contractors by various persons from the Grande group involved in the works. Some of the payments were made by the seventh defendant on the plaintiff's behalf as the latter was experiencing cash flow problems. These problems were caused by the dispute between ECRC and the plaintiff which resulted in the plaintiff not being able to execute a legal mortgage for OCBC Bank in order to drawdown on the construction loan. Once the funds became available, the plaintiff reimbursed the seventh defendant and paid for the remaining works. The situation was the same in the case of the eighth defendant paying for some of the works first.

31 Such arrangements were not unique to companies related to the Grande group. In May 1997, the plaintiff also contemplated undertaking S$1 million worth of works to try to attract Europa Holdings to take up a tenancy in block A. Unfortunately, the application for a change of use to discotheque/karaoke lounge and a wine bar/food shop was not approved by the authorities.

32 Similar indulgences regarding rent, rent-free period and rent rebate was granted to the ninth and ten defendants for operating at the centre for the reason that the plaintiff wanted to keep the centre alive. The ninth defendant was occupying the unwalled premises vacated by a previous tenant which could not keep up with its rent payments and went into liquidation subsequently. The understanding with the ninth defendant was that it would be required to vacate the premises should a better-paying tenant be found. In the latter half of 1998, the plaintiff's marketing efforts paid off and a better-paying tenant (Four Amigos) was found. Pursuant to the said understanding, the ninth defendant was given short notice to vacate the premises and it did so.

33 The tenth defendant occupied a small take-out counter at the ground level of block B. The plaintiff hoped that by having a food counter there to draw in beach-goers, the amusement arcade would benefit. An outdoor seating area was constructed next to the take-out counter but it was used

by members of the public and customers of McDonald's as well. It was not for the exclusive use of the tenth defendant. Like the case of the ninth defendant, the arrangement was that the tenth defendant would vacate at short notice should an alternative tenant offering a higher rent be found. When a better-paying tenant was found, the tenth defendant did vacate the counter at short notice. The plaintiff purchased its inventory without depreciation because the new tenant wanted the use of it. Subsequent to this tenant, the plaintiff was able to rent out the furnished counter at an even higher rent.

34 Some tenants were asked to leave the centre because their activities (such as operating a massage parlour) were incongruent with the original intention to have a family-oriented ATP. Others like the Pondok Gurame restaurant and Jumbo Garden had to leave because of arrears in rent. Some tenants chose to leave because they were not willing to accept the corresponding 5.6 times increase in rent. The existing tenants were not made to leave for ulterior motives such as the seventh defendant needing space to store the Sega attractions.

35 The plaintiff's other claims concerned alleged wrongful charges which it was made to bear. These charges included the fifth defendant's consultancy fee, the sixth defendant's operational staff charges and legal, administrative and secretarial charges, the interest charges, the foreign exchange entries in the plaintiff's accounts and payments to third parties.

36 Like the consultancy fee due to ECRC, the consultancy fee due to the fifth defendant was provided for in the shareholders' agreement.

37 As stated earlier, the understanding among the joint venture parties was that Grande and SAFE would provide the necessary finance, accounting and operational services and support for the plaintiff which had nothing more than a centre manager and some workers in charge of the general upkeep of the centre. Grande and SAFE agreed between themselves that the plaintiff would be charged for all the services and support rendered by them. The two partners also agreed between themselves that interest would be charged on loans extended to the plaintiff.

38 From as early as March 1995, one of Grande's employees was seconded to the plaintiff for clerical and secretarial support. George Wuu signed a letter in April 1995 informing ECRC's former company secretary that the sixth defendant would take over all corporate secretarial matters from the company secretary. George Wuu was informed by June 1995 that where there were areas of duplication, some staff costs would be apportioned to the plaintiff so as to minimise the costs to both entities. The plaintiff agreed that the existing staff employed by ECRC was not capable of transforming the centre into an ATP. The plaintiff was not disputing that it should bear the charges for such services and support. Instead, it took the stand that such charges must be reasonable in amount.

39 The plaintiff's audited accounts for the financial years ending on 31 December 1995 and 31 December 1996 referred expressly to the fifth defendant's consultancy fee as a provision, the allocation of office operating expenses and salaries, the interest charges on loans from related parties and the fact that the loans from the sixth defendant were unsecured, denominated in US Dollar and that interest was payable at US Dollar prime rate plus 1%. These accounts were approved by a majority of the shareholders.

40 The seconded staff looked after the redevelopment of the centre and attended to the day-to-day matters as well. The sixth defendant paid the salaries of the seconded staff until September 1995 after which the plaintiff paid the salaries of the said staff directly. The sixth defendant claimed reimbursement for these salaries for the period between January and September 1995. The method of computation used was to charge the plaintiff 50% of the actual total salaries of these seconded staff although they were practically working for the plaintiff full time during the period in question.

41 In addition to the above, the sixth defendant also provided legal, administrative and corporate secretarial support and services to the plaintiff. There were various legal matters to take care of such as loan documentation, lease documentation, recovery of rent arrears and liaising with the authorities. In addition, the plaintiff was involved in many legal actions. There was work done for directors' and shareholders' meetings. The sixth defendant also had to provide administrative support for the payroll and staff matters. The proportion of all such costs attributed to the plaintiff was 33.33% between January 1995 and May 1998, 20% between June 1998 and December 1998 and 12.5% for January 1999. This was decided by the first defendant.

42 The seconded staff also worked from the sixth defendant's premises and used its facilities for various meetings relating to the redevelopment of the centre. The plaintiff's share of the annualised office operating expenses was about 20% for 1995 and about 22.2% for 1996. Its share was S$14,400 per month from July 1998 andS$9,000 per month for January 1999. The computation included depreciation of the furniture and renovations.

43 In my view, the approach taken by the defendants was a reasonable one and I accepted the computation of the various cost items. However, as the joint venture parties were still at the stage of negotiations between January and March 1995, with Grande effectively taking charge of the centre only in April 1995, I did not think the fifth and sixth defendants were entitled to charge anything to the plaintiff for the first three months of 1995.

44 Interest charges were also levied by the sixth to eighth defendants. The plaintiff had no real working capital and was dependent on Grande and SAFE for financial assistance. Grande normally granted such unsecured advances to its wholly owned subsidiaries only. The group made an exception for the plaintiff because of the importance it attached to the ATP project. The advances made by Grande to the plaintiff were denominated in US Dollar as it was the principal currency used by the Grande group in its borrowing and lending of funds. Foreign exchange losses and gains were taken into account. The loans and payments in question all related to the plaintiff's necessary expenses. The interest incurred was the cost of funds obtained by the group and no profit was made by it. The interest charges were therefore justifiable in the circumstances.

45 One of the last two items of contention concerned the fees of one Kota Yamaguchi, an employee of Sega, who was experienced in planning and developing ATPs in Japan. He advised in the layout planning, the technical issues, the machine mix and the marketing plans. These had everything to do with the centre. I agreed that it was therefore reasonable that the plaintiff was made to bear half his fees while the Grande group took up the other half.

46 The other item related to the fees paid to a firm (Fleishman-Hillard) engaged by the plaintiff to arrange the press conference held on 4 July 1995. The said press conference was held to promote the centre and to generate awareness and public interest in the planned ATP with the hope of attracting good tenants to the centre. It did result in an increased number of enquiries about the centre. It was not held for the primary purpose of highlighting the collaboration plans of the Grande group, SAFE and Sega, contrary to the suggestion of the plaintiff. The fees paid to the said firm were therefore correctly charged to the plaintiff.

47 It was further averred by the plaintiff that the payments made to the sixth defendant in respect of the administrative, legal and secretarial charges and operating expenses from 28 March 1997 onwards (two years before the date of presentation of the winding up petition) amounted to unfair preferences within the meaning of section 99 Bankruptcy Act read with section 100 of the same Act, made applicable in winding up proceedings by section 329 (1) Companies Act and the Companies (Application of Bankruptcy Act Provisions) Regulations. A transaction would amount to an unfair preference if:

(a) the debtor does/suffers anything to be done which has the effect of putting the creditor into a position which will be better than the position he would have been in if that thing had not been done;

(b) the debtor was influenced by a desire to produce in relation to that creditor the said effect of the preference, which shall be presumed, until the contrary is shown, if the preference was given to an associate; and

(c) the debtor was insolvent or became insolvent as a result of the unfair preference.

48 The evidence indicated that the sixth defendant was treated like all other creditors of the plaintiff and efforts were made to ensure that all debts were paid when they became due. The plaintiff was neither insolvent at the material time nor did it become insolvent as a result of the impugned payments. It was able to pay debts as and when they fell due. Without the said services and support, the plaintiff would cease to function altogether. It was influenced by proper commercial considerations and not by any desire to improve the sixth defendant's position in the event of its insolvency and therefore could not be accused of making an unfair preference (see *Re Fairways Magazines Ltd; Fairbairn v Hartigan* [1993] BCLC 643). Further, the disputed payments were part of a consistent practice and conduct between the plaintiff and the sixth defendant. An established practice of payments would indicate that there was no desire to put the creditor at an advantage (see *Re Libra Industries Pte Ltd (in compulsory liquidation)* [2000] 1 SLR 84). Accordingly, the allegation of unfair preference failed.

49 The Court should be slow to interfere with commercial decisions taken by directors (see *Intraco v Multi-Pak Singapore* [1995] 1 SLR 313). It should not, with the advantage of hindsight, substitute its own decisions in place of those made by directors in the honest and reasonable belief that they were for the best interests of the company, even if those decisions turned out subsequently to be money-losing ones.

50 On the facts presented in this action, I saw no dishonesty or unreasonable actions on the part of the first to the fourth defendants (leaving aside the question whether the third and fourth defendants could be liable as *de facto* or as shadow directors as alleged). I disagreed with the plaintiff's contention that 'Grande, and, in particular, the first to fourth defendants, took deliberate and concerted steps, throughout the 4 year joint venture period in question, to blatantly misuse and/or misapply the plaintiff's funds and assets for their own benefit'. Similarly, there was no unjust enrichment, conversion or conspiracy in respect of the other defendants.

51 The plaintiff's action was therefore dismissed save for the claim hereinafter mentioned. Pursuant to my finding that the fifth and sixth defendants were not entitled to charge anything to the plaintiff before1 April 1995 (see paragraph 43 above), I ordered the sixth defendant to repay to the plaintiff the operating expenses charged to the plaintiff between 1 January 1995 and 31 March 1995, which the parties have since calculated as amounting to S$182,752.02. This sum would be set off against the costs payable by the plaintiff to the defendants. As the defendants had not succeeded completely, I ordered the plaintiff to pay all the defendants 80% of the costs of these proceedings, such costs to be taxed or agreed between the parties. I also directed that there be only one set of costs in respect of all the defendants.

Plaintiff's claim dismissed except against fifth and sixth defendants
for the period between 1 January 1995 and 31 March 1995.

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