Samwoh Resources Pte Ltd v Lee Ah Poh
[2004] SGHC 83

Case Number : Suit 829/2002, NA 53/2003

Decision Date : 27 April 2004

Tribunal/Court : High Court

Coram : Amy Tung Chew Ming AR

Counsel Name(s) : Mr Ronald Choo (Rajah and Tann) for plaintiffs; Mr S. Thulasidas (Ling Das and Partners) for defendant

Parties : Samwoh Resources Pte Ltd — Lee Ah Poh

27 April 2004

Assistant Registrar Amy Tung:

Background facts

1 The plaintiff, Samwoh Resources Pte Ltd ("Samwoh") had entered into a pre-bid agreement with Ng Huat Foundations Pte Ltd ("NHF") to co-operate on a quarry project at Mandai. The defendant, Madam Lee Ah Poh ("Rosalind") was a director and majority shareholder of NHF, which was part of the Ng Huat group of companies. Samwoh alleged that Rosalind misrepresented to them that the Ng Huat group of companies had in their inventory, equipment which were suitable for the quarry project. The equipment in question had been acquired by the Ng Huat group of companies under hire purchase arrangements with Tokyo Leasing (Singapore) Pte Ltd ("TL").

2 As a result of Rosalind's representation that the equipment were in good working condition and could be mobilized immediately for the project, Samwoh purchased the equipment from TL for a total of $330,000 on 23 January 2002 without inspecting the equipment. Samwoh had intended for the equipment purchased to be their contribution to Gali Batu Resources Pte Ltd ("Gali Batu"), a joint venture company which was set up by the parties to handle the quarry project. When Samwoh wanted Gali Batu's accounts to be updated to record this contribution, they were informed that some of the equipment could not be accounted for. On 12 July 2002, Samwoh commenced this present action against Rosalind for, *inter alia*, damages caused by her fraudulent or negligent statements.

3 The trial judge found that there was fraudulent misrepresentation on the part of Rosalind, which resulted in losses to Samwoh. Damages were ordered to be assessed and the assessment hearing came before me.

Preliminary objection

4 At the assessment hearing, counsel for Samwoh raised a preliminary objection to the contents of Rosalind's affidavits, specifically to paragraph 5 of her 1st affidavit and paragraph 3 of her 2nd affidavit. In those paragraphs, Rosalind had alleged that Samwoh had sold all the equipment which they purchased from TL to Gali Batu and that Samwoh's cause of action must lie against Gali Batu. Counsel for Samwoh submitted that taken to its logical conclusion, such an assertion would mean that Samwoh had sued the wrong party and yet, the trial judge had already determined Rosalind's liability at the trial.

5 After hearing brief submissions from both parties, I accepted the arguments of counsel for Samwoh and hence disregarded the two paragraphs for the purposes of this assessment. I also

disregarded the invoice (dated 21 May 2002) referred to in these two paragraphs.

Measure of damages

6 It is trite law that the normal measure of damages applicable in the tort of deceit or fraudulent misrepresentation is an award which serves to put the plaintiff in a position he could have been in if the fraudulent misrepresentation had not been made to him.

7 While the parties did not and could not in any event disagree that this was the correct measure of damages to be applied in this instance, they differed, however, in their approaches in the quantification of the damages. This was because in the sale of equipment by TL to Samwoh for the sum of $330,000, there was no itemized list indicating how much was paid for each and every piece of equipment.

8 At this juncture, I should mention that during the course of the trial, it was revealed by Rosalind that some of the missing TL equipment could be found at another construction site. Between the end of the main trial and the start of this assessment hearing, some of the equipment were found at the Kim Chuan construction site. Counsel for Samwoh indicated that they were willing to allow Rosalind to deliver up the newly discovered equipment and mitigate the damage caused to Samwoh.

9 The approach of Samwoh was to obtain the market values of all the missing equipment as at January 2002, with a discount being given for the discovered equipment. Counsel for Samwoh stressed that Samwoh was not only entitled to the depreciation in value over the relevant period, but also to the difference in value due to the discovered equipment being in poorer condition than they were represented to have been. Samwoh called two expert witnesses, Mr Mario Roberto P Mendoza ("Mr Mario") and Mr Sixto De Las Alas ("Mr Sixto"), who were plant and machinery appraisers employed by Asian Appraisal Company Pte Ltd. Mr Mario inspected and valued the discovered equipment at the Kim Chuan site while Mr Sixto valued the equipment which were missing as at January 2002 without the benefit of a visual and physical inspection. The alternative approach suggested by counsel for Samwoh was to deduct the amount invoiced to Gali Batu for the accounted equipment and the value of the discovered equipment from the purchase price of $330,000.

10 Rosalind's approach, on the other hand, was to obtain the market values of all the equipment as at January 2002. She contended that Samwoh had bought the equipment from TL at a bargain basement price and hence was entitled to pro-rate the market values as against the price paid i.e $330,000. The basis of her contention was the valuation given by her expert witness, Mr Leng Kwang Chiang ("Mr Leng"), a professional valuer and appraiser with Dovebid (S) Pte Ltd. His evidence was that the fair market value of all the equipment bought from TL as at January 2002 was $484,500. Mr Leng had also inspected and valued the discovered equipment at the Kim Chuan site.

The equipment

11 It is important before moving onto the assessment proper to know which of the equipment were received by Samwoh in January 2002, were missing or discovered at the Kim Chuan site. Rosalind had produced a list of the equipment originally missing at pages 3 and 4 of her 1st affidavit, stating each of their present status. Counsel for Samwoh indicated that they would stand by that list.

Equipment received by Samwoh in January 2002

Mr Leng's valuation as at Jan 2002

1) Komatsu Hydraulic Excavator Model

PC 710-5 (S/N :10185) $225,000

2) Komatsu Dump Truck Model

HD 325-5 (S/N : 2339) $55,000

3) Komatsu DumpTruck Model

HD 325-5 (S/N :2193) $45,000

4) 3 Welding Machines

(S/N : KH 413541, KH 413524 and

KH 413543) $10,500 each

5) 1 Airman Generator Model

SDG 220S (S/N : 157-030090) $12,000

6) 1 Airman Generator Model

SDG 100S (S/N : 153-050727) $7,500

7) 1 Airman Generator Model

SDG 60S (S/N : 147-0171300) $3,500

8) 1 Airman Generator Model

SDG 45S (S/N : 133-081570) $4,000

9) 1 Airman Generator Model

SDG 60S (S/N : 147-071319) $5,500

12 The above is the list of equipment which I found had been received or taken to have been received by Samwoh in January 2002. I noted that counsel for Samwoh had included the two welding machines (S/N : KH 413524 and KH 413543) as missing equipment which could not be found at all in his written submissions. However, I did not regard these equipment as missing as the invoice annexed at pages 7 and 8 of Mr Elvin Koh's ("Mr Koh's") 2nd affidavit showed that the two welding machines were part of the package of equipment sold to Gali Batu for $154,000. Mr Koh had stated that this was "a copy of the invoice for equipment that was not missing".

13 Although the Airman Generator Model SDG 60S (S/N : 147-071319) was not part of the equipment on-sold to Gali Batu and was originally thought to be missing (this equipment was not included in the invoice of $154,000), both counsel confirmed at the hearing that this piece of equipment could be accounted for all along at the Mandai site.

14 Samwoh did not obtain any valuations with respect to these equipment listed here, other than the above-mentioned Airman Generator which was originally thought to be missing. Mr Sixto had valued this piece of equipment at $9,000 as at 15 January 2002.

Equipment missing and could not be accounted for

Des2cription	**Mr Leng's valuation (as at Jan 2002)**	**Mr Sixto's valuation (as at 15 Jan 2002)**	**Mr Sixto's valuation (as at 8 Apr 2003)**	**Duratec's valuation (as at 17 Apr 2003)**	**Tong Guan's valuation (as at 23 May 2003)**
Kobelco Excavator Model SK 200 (S/N : YN 7191)	$18,000	$27,500	$25,000	$25,000	$27,000
Kobelco Excavator Model SK 200 (S/N : YN 18195)	$30,000	$50,000	$40,000	$45,000	$50,000
Airman Generator Model SDG 150S (S/N : 1723A20052)	$9,000	$16,500	$16,000	$15,000	$14,500
Airman Generator Model SDG 60S (S/N : 147-0171299)	$5,500	$9,000	$8,000	$9,000	$9,300

15 Rosalind had exhibited in her 2nd affidavit two letters from Duratec Equipment Pte Ltd ("Duratec") and Tong Guan Plant (Pte) Ltd ("Tong Guan") respectively. The figures found in the last two columns were extracted from these two letters and were included for the sake of comparisons.

16 In the letter dated 17 April 2003, Duratec indicated that they were pleased to "give a valuation of the market prices of the machinery based on the year, make, model and information provided". They stated that the prices offered were prices that the equipment could fetch assuming that they were in acceptable working condition but qualified that these prices were subject to their testing and inspection. Tong Guan had, in their letter dated 23 May 2003, stated that their prices were offered based on "current market prevailing rate" and on the equipment being in "good running condition". I accepted these figures give by Duratec and Tong Guan as indicative of the fair market values of the equipment, assuming they were in good working conditions.

17 I noted that Rosalind had also prepared a schedule at page 8 of her 2nd affidavit comparing the valuations of the equipment provided by Samwoh's and her experts with those given by Duratec

and Tong Guan.

Equipment originally thought missing but found at the Kim Chuan site

Description	**Mr Leng's valuation (as at Jan 2002)** ***(as at June 2003)***	**Mr Mario's valuation (as at 15 July 2003)**	**Mr Sixto's valuation (as at 15 Jan 2002)**	**Mr Sixto's valuation (as at 8 Apr 2003)**	**Duratec's valuation (as at 17 Apr 2003)**	**Tong Guan's valuation (as at 23 May 2003)**
Kobelco Excavator Model SK 200 (S/N : YN 12739)	$12,000 *($8,000)*	$11,000	$33,000	$32,000	$30,000	$31,000
Airman Generator Model SDG 220S (S/N: 157-030089)	$12,000 *($10,000)*	$9,000	$24,500	$24,000	$22,000	$21,800
4 Airman Generators Model SDG 100S (S/Ns : - - 153-050724 - 153-050726 - 1533-A10127 - 1533-A10128	$7,500 each *($3,500 each)*	$5,300 each	$13,800 each	$13,000 each	$12,500 each	$12,300 (S/N beginning with 153)$12,500 (S/N beginning with 1533)

18 Apart from Mr Leng and Mr Mario who had physically inspected the equipment at the Kim Chuan site, the rest of the valuations were made without the benefit of a visual and physical inspection. They were what Mr Leng would refer to as "desktop" valuations.

19 "Desktop" valuations are done without physical inspection on the assumption that the equipment to be valued is in normal working conditions and has been maintained within industry standards. Counsel for Samwoh pointed out in his written submissions that Mr Leng had given his valuation of the discovered equipment as at January 2002 on the assumption that they were in the same condition as when they were found in June 2003 i.e in a poor condition. Mr Leng's report indicated that for his valuations with respect to the discovered equipment, the "effective date was 17 June 2003, retrospective as at January 2002".

20 When Mr Leng was asked during his cross-examination as to his opinion of the values of the discovered equipment in the middle of 2003, he revised his figures as at January 2002 to take into account further depreciation. His revised figures are those placed in brackets in italic form.

21 During the hearing, Mr Leng and Mr Mario, who had both inspected the equipment at the Kim Chuan site, differed on whether the discovered equipment were in use. Mr Mario gave the evidence that all the equipment were lying around at the Kim Chuan site in an abandoned state while Mr Leng stated that two of the equipment (the Airman Generators) which he inspected were actually installed and in use. In my view, such differences were immaterial in arriving at my conclusion that the discovered equipment were in a poor condition.

22 If one was to compare the figures of Mr Leng and Mr Mario (as at June and July 2003 respectively), one would notice that they were actually quite comparable. Mr Leng himself had confirmed during his cross-examination that the figures found in Mr Mario's report were more or less consistent with his opinion of the values of the discovered equipment on or about June 2003. The "desktop" valuations by Mr Sixto, Duratec and Tong Guan, on the other hand, were much higher than Mr Leng's valuations. Based on the values found in the table, it could not be denied that the equipment were in a much poorer condition due to them being left at the Kim Chuan site and that Mr Leng had, in fact, valued the discovered equipment based on their poor condition in June 2003.

The approach in this assessment

23 After considering the evidence and examining all the valuations, I came to the conclusion that Mr Leng's valuation at $484,500 could not be relied upon as accurate and representing the fair market value of all the equipment purchased from TL as at January 2002.

24 For equipment which were missing and could not be accounted for, I had already mentioned that the valuations given by Duratec and Tong Guan were indicative of their fair market values. A comparison of the figures in the table for this category of equipment would show that Mr Sixto's valuations were comparable to those provided by Duratec and Tong Guan while Mr Leng's valuations were unusually low. For example, Mr Sixto had given a valuation of $27,500 for the Kobelco Excavator Model SK 200 (S/N : YN 7191) as at 15 January 2002. Duratec's and Tong Guan's valuations were $25,000 and $27,000 respectively. Mr Leng had, however, valued this piece of equipment at a mere $18,000.

25 Turning to the equipment which were accounted for and received by Samwoh, Mr Leng's valuations for these equipment amounted to a total sum of $389,000. Even if one was to exclude the Airman Generator Model SDG 60 S (S/N : 147-071319) which could be accounted for all along at the Mandai site but not sold to Gali Batu, his valuation standing at $383,500 would still be more than twice the price at which Samwoh had sold the "non-missing" equipment to Gali Batu i.e $154,000.

26 Mr Koh had stated in his 2nd affidavit that Mr Leng appeared to have given an unusually high value for equipment that were not missing. He specifically challenged Mr Leng's valuation of the Komatsu Hydraulic Excavator Model PC 710-5 (S/N : 10185) ("PC 710-5") at $225,000, which alone accounted for 46% of the total value (as according to Mr Leng i.e $484,500) of all the equipment purchased by Samwoh from TL.

27 Mr Koh produced evidence that the PC 710-5 was eventually sold by the liquidators of Gali Batu for only $42,000. Counsel for Samwoh argued that even if one was to factor in depreciation and the possibility that the equipment was in a poor condition, the price of $42,000 was far less than the $225,000 attributed to it by Mr Leng.

28 At this juncture, I should mention that Rosalind exhibited an invoice dated 10 October 2001

at page 13 of her 2nd affidavit. Rosalind had tried to put across to the court that this invoice was a "serious document" and the figures in the invoice were market values. I was, however, not convinced as to its authenticity. Other than the PC 710-5, the rest of the equipment were given very high values, even much higher than Mr Leng's. Counsel for Samwoh stressed over and over again that this invoice was inflated for financing purposes. Although Rosalind disputed that the figures were inflated, she had acknowledged that the invoice was generated to obtain financing from Hong Leong Finance. I further noted that at the time this invoice was prepared i.e 10 October 2001, Samwoh and TL had not even entered into the sale and purchase agreement for the equipment. As such, I accepted that the invoice was not a genuine document and the figures in the invoice were inflated.

29 Even though Rosalind had initially insisted that the figures in the invoice were market values, she was unable to give a reasonable explanation subsequently when cross-examined on the fact that the $160,000 stated in the invoice for the PC 710-5 was, by far, a much lower figure than the $225,000 attributed to it by Mr Leng.

30 In the course of Mr Leng's testimony, he had pointed out that there could possibly be a mistake in the year of manufacture of the PC 710-5, which was stated as 1985. He stated that the mistake in the year of manufacture could possibly be the reason why the invoice figure was $160,000. It was subsequently confirmed by both parties that there had been no PC 710-5 models in the market in the year 1985 and the specific model in question (S/N : 10185) was manufactured in 1996. Be that as it may, I did not think that the mistake in the year of manufacture had any impact on the price of the PC 710-5 in the invoice. In any event, I had not accepted any of the figures in the invoice to be genuine and I placed very little weight on them.

31 As a result of this discovery that there was a mistake in the year of manufacture for the PC 710-5, counsel for Rosalind argued that the liquidators must have sold the equipment, thinking it was a 1985 model. It was additionally put to Mr Koh that the low price of $42,000 could be a "fire sale" price. In my view, the liquidators of Gali Batu were under a duty to take steps to obtain the best possible price for the equipment. Mr Koh had, in fact, confirmed during his cross-examination that the liquidators carried out a valuation of all equipment and called for a tender before selling the PC 710-5. It was unlikely that the people involved in the construction industry, who had to deal with construction equipment on a regular basis, would be unaware that the PC 710-5 only appeared in the market sometime in 1992 or 1993. In any event, the serial number of a piece of equipment is a unique number by which the equipment can be referred to and identified. It is illogical to assume that any valuations performed for any model of equipment would be based on the year of manufacture alone and not on its serial number, which is unique to it. In the circumstances, I found that the valuation given by Mr Leng at $225,000 was unusually high, as compared to the $42,000 realised by the liquidators for the equipment, even if one was to factor in depreciation over the period from January 2002 to the time the PC 710-5 was sold on 23 May 2003.

32 As for the equipment which was originally thought missing but subsequently found at the Kim Chuan site, I had already mentioned that Mr Leng had valued them as at January 2002 based on their poor condition in June 2003. The figures were therefore not reflective of the fair market value of equipment represented to be in good working condition which could be mobilized immediately for use.

33 Based on the forgoing reasons, I did not accept Mr Leng's valuation of all the equipment sold by TL to Samwoh at $484,500 as the fair market value as at January 2002. I had been additionally persuaded by the fact that Mr Leng was a personal friend of Rosalind, who had known her even before she was married and hence treated his evidence with some reservation.

34 Since I did not accept Mr Leng's valuation of $484,500 for all the equipment as at January 2002, Rosalind no longer had a basis for the approach of pro-rating the values provided by Mr Leng against the price paid by Samwoh at $330,000. She had not shown that Samwoh bought the equipment from TL at a bargain basement price. I therefore rejected her approach for the assessment

of damages in this case.

35 In my view, the most appropriate approach in assessing the quantum of damages in the circumstances of this case is to deduct the amount invoiced to Gali Batu for the accounted equipment from the purchase price of $330,000, while giving a discount for the value of the discovered equipment. A further discount must also be given for the value of the Airman Generator which was originally thought to be missing and therefore not included in the invoice issued to Gali Batu for non-missing equipment. This particular piece of equipment could be accounted for all along at the Mandai site and was valued by Mr Sixto at $9,000 (as at 15 January 2002) on a "desktop" basis. The measure of damages calculated using this approach would, in my opinion, most accurately reflect the true loss to Samwoh.

The total value of the discovered equipment

Description	**Mr Mario's Valuation(as at 15 July 2003)**
Kobelco Excavator Model SK 200 (S/N : YN 12739)	$11,000
Airman Generator Model SDG 220S (S/N: 157-030089)	$9,000
4 Airman Generators Model SDG 100S (S/Ns : - - 153-050724 - 153-050726 - 1533-A10127 - 1533-A10128	$5,300 each

Total = $41,200

Loss of use of the equipment

36 The equipment had been represented by Rosalind to be in good working conditions and that they could be mobilized immediately for use in the quarry project at Mandai. As some of the equipment turned out to be missing, Samwoh alleged that they had to rent additional equipment to replace the missing equipment for use in the project. They claimed for additional damages for loss of use of these missing equipment.

37 In this regard, they claimed for the rentals which they incurred for the following equipment : -

a) Caterpillar Excavator Model 330B ("Cat 330B")

b) 50KVA Diesel Generator

c) Deyo DLA-60 SPH

38 Samwoh had claimed for rental of the Cat 330B up till October 2003 (see Mr Koh's 2nd affidavit at page 4). However, as some of the equipment had been found in June 2003, counsel for Samwoh conceded that the period for which Samwoh could claim rental should not extend beyond June 2003.

39 Rosalind had a number of objections to Samwoh's claim for loss of use. I shall deal with these objections in turn.

40 The first objection was that Samwoh had invoiced themselves for the equipment rented. It was argued that "one cannot hire to yourself your own equipment" and that there was no loss suffered by Samwoh. It was put to Mr Koh that the reason why the equipment could be put to use in the quarry project at Mandai was because they must have been idle in the first place. I did not accept this contention. Having fraudulently misrepresented that the equipment could be mobilized *immediately for use* at the Mandai site, Rosalind must have known that if the equipment turned out to be missing, Samwoh would have to rent equipment from other companies or re-deploy some of their own equipment from other sites for use in the project. It did not lie in Rosalind's mouth to contend that the equipment used was Samwoh's own equipment and that consequently there was no loss to Samwoh.

41 The second objection was that the equipment rented were not the same types of equipment which went missing. In particular, Rosalind objected to the claim for the rental of the Cat 330B as its capacity was nearly one and a half times more than that of the Kobelco excavator. In my view, there was no necessity for Samwoh to rent exactly the same types of equipment before it could succeed in its claim for loss of use. It would have been unreasonable to assume that Samwoh would have been able to obtain exactly the same types of equipment. In any event, Mr Koh had given evidence during his testimony that the Cat 330B was rented to replace the three Kobelco excavators, which were missing.

42 The third objection was that Mr Koh had admitted that the Cat 330B was in fact used "to carry out [Samwoh's] own project at Mandai Quarry Gali Batu." The following portions of his testimony was relied upon by counsel for Rosalind :

D/C : I put it you that there is nothing here to show that the use of caterpillar results in you having to hire some other equipment from other places for us?

PW1 : Yes.

D/C : Would you agree with me also that Samwoh is the main contractor for the Mandai Project?

PW1: Yes.

D/C: And you are carrying out the project from 9 March 2002 to 21 October 2003?

PW1: Yes.

D/C: I put it to you that the caterpillar excavators and generators were used by the Plaintiffs to carry out their own project?

PW1: Yes to a certain extent.

43 It must be remembered that even though the quarry project at Mandai was the joint responsibility of Samwoh and NHF through Gali Batu, the intended joint venture vehicle, Samwoh had tendered for and was awarded the project in their own name, as NHF was not in a position to tender for the project without the requisite Building and Construction Authority grading. Samwoh was therefore solely responsible to MINDEF, who had called for the tender for the project. In addition, there was evidence that the relationship between Samwoh and Rosalind had deteriorated to such an extent that the former decided to take over the quarry project from Gali Batu. In the circumstances, Mr Koh's answer that the Cat 330B and generators were used by Samwoh to carry out their own project "to a certain extent" must be taken in its correct context.

44 The fourth objection was that there was evidence in the form of Samwoh's and Mr Koh's petition in Gali Batu's winding-up proceedings that the Cat 330B allegedly rented by Samwoh was, in fact, purchased by them for Gali Batu. Rosalind relied on page 18 of her 2nd affidavit, exhibiting a part of Samwoh's and Mr Koh's petition at paragraph 65 (on page 30) as follows :

"The following equipment/machines have been *ordered by the Petitioners for Gali Batu's use in the Project:*

Description	Costs
…..	
CAT 330B Excavator (delivered)	$120,000"

45 In my view, this did not show that Samwoh had intended all along to purchase the Cat 330B for use in the quarry project. The whole paragraph in the petition must be read in its context. If one was to turn to page 29 of the petition, one would realize that the reason why Samwoh and Mr Koh had to order the equipment listed in paragraph 65 was that : -

"…….. the Project *requires additional equipment to make up for the missing equipment/machines*, the faulty equipment/machines contributed by the Respondents, and also because the list of machines/equipment contributed by the Respondents were not sufficient for all the requirements of the Project anyway." (emphasis mine)

46 I was of the view that the Cat 330B had been ordered by Samwoh for use in the project because they wanted to make up for the missing equipment. Mr Koh had already testified that the Cat 330B was intended to replace the three Kobelco excavators, which were missing.

47 The last objection related to rental prices. Rosalind denied that the rental prices were based on prevailing market rates. She claimed that she had provided one entire Caterpillar Excavator Model 330 to Gali Batu at a price of $65,000. It was not put before the court whether the Cat 330B was similar to the model mentioned by Rosalind. I noted that the price of the Cat 330B as stated in the

winding-up petition was $120,000. Nevertheless, I had examined the invoices carefully and found that the same model of Cat 330B (S/N : 8 SR 00403) was rented throughout the entire period for which rental was claimed. The rental of the Cat 330B was $3,800 from 9 March 2002 to 25 June 2002 but increased to $4,500 from 26 June 2002 to 30 June 2003. In my view, there was no credible explanation for such an increase in the rental of the Cat 330B. The same model had been used throughout and one would have thought the value of the equipment would decrease with increase in usage. I further noted that the period for which rental was claimed at $4,500 commenced just slightly before Samwoh brought this action against Rosalind. I did not accept that there should be an increase in the rental rate and as such, I allowed the pre-action rental rate of $3,800 for the entire period instead.

48 As for the rest of the equipment rented, Rosalind had not produced any documentary evidence to show that the rental rates claimed were not market rates or were unreasonable. In the circumstances, I accepted the rental rates of those two equipment as claimed by Samwoh.

49 The award of damages for loss of use is thus as follows:-

Description	**Monthly Hire**	**Period of Hire**		**Rental**
Caterpillar Excavator Model 330B	$3,800	9 Mar 2002 to 23 Jun 2003	15 months 14 days	$58,773
50KVA Diesel Generator	$420	6 Apr 2002 to 31 Aug 2002	4 months 25 days	$2,030
	$460	17 Sep 2002 to 21 Nov 2002	2 months 4 days	$981
Deyo DLA-60 SPH	$450	1 Jan 2003 to 30 Jun 2003	6 months	$2,700

Total = $ 64,484

Conclusion

50 In conclusion, I assess the damages to Samwoh as follows :-

Purchase price paid by Samwoh to TL	$330,000	
Loss of use (cost of rental)	$ 64,484	
		$394,484
Less :		
Amount invoiced to Gali Bati for accounted equipment	$154,000	
Value of Airman Generator (S/N : 147-071319)	$ 9,000	
Value of discovered equipment	$ 41,200	
		$204,200
Total:		**$190,284**

51 I award interest on this sum at 6% p.a from the date of service of the writ of summons to the date of judgment. I shall now hear the parties on costs.

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