TCL Industries (Malaysia) Sdn Bhd v ICC Chemical Corp
[2007] SGHC 211

Case Number : Suit 24/2005, RA 137/2007

Decision Date : 05 December 2007

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Simon Jones and Seeni Syed Ahamed Kabeer (Grays LLC) for the plaintiff; Peter Gabriel and Kelvin Tan (Gabriel Law Corporation) for the defendant

Parties : TCL Industries (Malaysia) Sdn Bhd — ICC Chemical Corp

Civil Procedure

5 December 2007

Belinda Ang Saw Ean J:

1 This was an appeal by the plaintiff, TCL Industries (Malaysia) Sdn Bhd, against that part of the order of the Assistant Registrar made on 21 May 2007 directing the plaintiff to give discovery of twelve categories of documents. At the conclusion of the hearing, I allowed the appeal and ordered the defendant, ICC Chemical Corporation, to pay the costs of the appeal and below fixed at $3,500 together with reasonable disbursements. The defendant has since filed a notice of appeal to the Court of Appeal.

2 The brief history of this case is that the plaintiff contracted to purchase from the defendant 3000 mt of benzene at a price of US$387 per mt. The benzene was for the manufacture by the plaintiff of maleic anhydride, a raw material for paints, unsaturated polyester resins and certain food products. The terms of the contract provided that the defendant was to deliver the benzene before the second half of August 2003. The defendant, however, only delivered 2000 mt of benzene on or about 11 September 2003, leaving a shortfall of 1000 mt. Sometime in October 2003, the plaintiff notified the defendant that its plant had to be closed for 8 days as a result of the latter's breach. It also demanded delivery of the balance 1000 mt of benzene. Following this, there were negotiations between the parties, with the defendant asking for a revision in the price of the balance quantity since the price of benzene had increased substantially from August 2003. Notwithstanding the plaintiff's refusal to comply with the defendant's request, the plaintiff was led to believe and did so believe that the defendant would deliver the balance quantity. This state of affairs continued until on or about 24 May 2004 when the defendant announced that it was not going to deliver the balance 1000 mt. Soon after, the plaintiff brought this action claiming damages for breach of contract.

3 After a six-day trial, interlocutory judgment with damages to be assessed by the Registrar was entered in the plaintiff's favour on 30 May 2006. The defendant was held liable for (i) the late delivery of the August shipment, which resulted in a shutdown of the plaintiff's plant from 3 September 2003 until 11 September 2003, and (ii) the non-delivery of the balance 1000 mt of benzene. As regards the late shipment the trial judge rejected the defendant's submission that the plaintiff failed to mitigate its losses. The plaintiff's witness had given a reasonable explanation as to why the plaintiff could not keep surplus stock of the product due to storage constraints. The unchallenged evidence submitted by the plaintiff also demonstrated a difficulty in obtaining an alternative supply of benzene to produce maleic anhydride. The defendant appealed against the trial judge's decision on the following issues: (i) the causal link between the late delivery and the shutdown of the plant, (ii) the plaintiff's

reasonable efforts towards mitigation of their losses and, (iii) the non-applicability of the *force majeure* clause. The appellate court dismissed the defendant's appeal on 8 November 2006.

4 The defendant justified the application for specific discovery under O 24 r 5 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) on grounds of relevance. In the supporting affidavit of Paul Falick ("Falick"), the defendant's general counsel, it was said that the plaintiff's list of documents filed on 29 March 2007 was wholly inadequate and, hence, a further list was required. Prior to the application made by way of Summons entered no 1891 of 2007 and dated 30 April 2007 ("the Summons"), the defendant had on 13 March 2007 asked for further discovery of the documents described in the Schedule to the Summons. Except for some areas, the Assistant Registrar refused the application. Specifically, the Assistant Registrar ordered limited discovery of 12 categories of documents. For expediency, an extract of the order of 21 May 2007 for limited discovery of the 12 categories of documents is found in the annexure to this Grounds of Decision.

5 Similarly, it is useful to reproduce below Falick's affidavit which sets out in a table the 12 categories of documents described in the Schedule and the reasons for their relevance. The 12 categories of documents listed in the Schedule are items 1(c), 4, 5, 9, 11, 12, 13, 14(b), 17, 18, 19, and 21.

S/N	Description	Reason
1	Specific details of the 4 components of the "Wasted Fixed" Costs: … (c) details of the interest expenses incurred for 2003 and broken down into each month. Also to provide documents to show when such interest was incurred and the purpose of the same.	To establish the actual amount of costs incurred during the shutdown period, and to determine whether any such costs were proximately caused by the breach (which is a different issue from whether the breach caused the shutdown).
4	Production reports for the months of September 2003 to December 2003 (daily and monthly).	To establish the production quantities of maleic anhydride and the usage of benzene for the production.
5	Daily readings of the utilities consumption (gas, power and water) for the months of August 2003 and September 2003.	To establish if there was any increase in utilities consumption for the period of the shutdown, and if so, the amount of such increase.
9	Daily inventory log sheets for the month of September 2003 to December 2003.	To establish the inventory status

11	All documents referring to, relating to, or showing the utility costs incurred on a daily basis (broken down by gas, power and water) for the period 1 July 2003 through 31 May 2004.	To establish if there was an increased usage of utilities, and if so, the amount of such increase.
12	All documents showing the identity and capacity of all storage tanks at the TCL facility for storing benzene and for storing maleic anhydride for the period 1 July 2003 through 31 May 2004, and the quantity stored in each tank during that period.	To establish whether maleic anhydride was stocked up to sell to customers, thereby lessening the impact of the plant shutdown and late delivery.
13	All documents referring to, relating to or showing the amount of maleic anhydride stored at TCL's facility on 2 September 2003 when the plant shut down and the dates of shipment of the said material from the TCL facility.	To establish whether maleic anhydride was stocked up to sell to customers thereby lessening the impact of the plant shutdown and late delivery.
14	Regarding the Supplemental affidavit of evidence-in-chief of Mr Rama Raju dated 21 September 2005, … (b) Documents showing interest expenses incurred during the year 2003, and the documents showing when such interest was first incurred and the purpose of the same.	To determine whether the interest damages claimed were attributable to the plant shutdown period and, if so, the amount of such interest.
17	Copies of all customer orders (and executed contracts) for maleic anhydride during the period 1 January 2003 through 31 May 2004.	To find out if there were in fact instances of orders the plaintiff could not fulfil due to non-delivery or late delivery.
18	Copies of all customer orders for maleic anhydride sold which were open as of 2 September 2003, the date of the plant shutdown.	To find out if there were in fact instances of orders the plaintiff could not fulfil due to non-delivery or late delivery.

19	All documents showing whether these customer orders were filled (late or otherwise) or cancelled, and the dates and details of same. If any cancellations, copies of all correspondence with customers or customers' representatives.	To find out if there were in fact instances of orders the plaintiff could not fulfil due to non-delivery or late delivery.
21	All documents related to the profit margin for the production of maleic anhydride for the period 1 January 2003 to 31 May 2004, including general ledger records relating to the same.	To establish the actual price paid by the plaintiff for the benzene and establish the losses/profits, if any, made by the plaintiff during the period for which damages are claimed.

6 In the affidavit deposed by Amirtham Mohan ("Mohan"), the Singapore representative of the plaintiff, Mohan explained the plaintiff's objections to the application. The first objection is that most of the documents requested by the defendant had already been provided in discovery. The plaintiff filed a supplemental list of documents (for assessment of damages) on 29 March 2007 and more than 2,570 documents had been disclosed. That supplemental list also included, where relevant, the documents requested by the defendant on 13 March 2007. Those documents could, as Mohan deposed, either support the plaintiff's calculations for wasted costs due to the plant closure or damage its case. Furthermore, prior to 29 March 2007, the plaintiff had given discovery in two previous lists filed on 21 July 2005 and 19 September 2005. For purposes of the assessment of damages, counsel for the plaintiff, Mr Simon Jones, had informed the defendant's lawyers in a letter dated 27 March 2007 that documents disclosed in previous lists would also be relied upon in future affidavits filed for the assessment of damages. In that connection, Mohan accused the defendant of seeking further discovery without first studying the documents already disclosed. Second, the documents sought were neither relevant nor necessary for the determination of the quantum of damages since the plaintiff had elected to claim for wasted costs in the sum of US$88,366 as opposed to claiming losses arising from the late delivery of 2000 mt of benzene, namely loss of profits. The claim of US$88,366.00 represents the wasted costs incurred in respect of salaries and wages, administrative expenses, interest expenses, depreciation and utilities. Third, the documents sought pertain to matters already been decided by the trial judge and those matter were either not appealed against or were dismissed on appeal.[note: 1]Consequently, the matters are *res judicata* and cannot be raised at the assessment of damages.

7 In criticising the application as nothing more than tactics to stymie the progress of the assessment of damages, the plaintiff pointed to the exceedingly wide scope of the application. In short, the application should be approached with circumspection as the defendant merely brought the present application for specific discovery to add to the escalating time and costs in the present proceedings. Elaborating, Mohan recounted what he had described as tactics adopted over the past two years to "maximise the [plaintiff's] inconvenience and legal expense in this action". According to Mohan, before the trial ended, the defendant filed a Complaint in the US District Court of Southern New York seeking a declaration that any judgment of the Singapore court was unenforceable in the USA. The application was dismissed by the New York District Court on 6 March 2006. Thereafter, the defendant appealed to the US Court of Appeal, 2nd Circuit. The appeal was heard on 29 September 2006. It was subsequently dismissed. The defendant's petition for a rehearing was also dismissed. In Singapore, the defendant appealed against the trial judge's decision and the Court of Appeal affirmed the decision on 8 November 2006. Mohan accused the defendant of engaging in unmeritorious

extended litigation aimed at protracting the dispute to the detriment of the plaintiff who did not have the same financial deep pockets of the defendants. He asked therefore for the appeal to be allowed.

8 I begin with the eight categories of documents listed in the Schedule which can easily be disposed of. First, as regards (i) items 1(c) and 14(b) (on the purpose for which interest was incurred); (ii) items 5 and 11 (on utilities, namely readings and costs respectively); and (iii) item 9 (on daily inventory log sheets from 14 September 2003 to 31 December 2003), Mr Jones submitted that the documents ordered to be discovered were already disclosed. Mr Jones took me through the documents to demonstrate his point. It is quite unnecessary to go into this aspect of the plaintiff's submissions in any length since counsel for the defendant, Mr Gabriel Peter, did not or was unable in any meaningful way to contradict Mr Jones on this point. Second, Mr Jones submitted that discovery of documents post shutdown was unfounded. Having elected to claim for expenses rendered futile by the defendant's late delivery of 2000 mt of benzene as opposed to a claim for loss of profits, discovery of documents under item 4 (production reports from 14 September 2003 to 31 December 2003), items 5 and 11(utilities namely readings for gas and water consumption from 13 – 30 September 2003; readings for power consumption for the months of August 2003 and September 2003), and item 9 (daily inventory log sheet from 14 September 2003 to 31 December 2003) of the Schedule for the period post shutdown was really quite unnecessary and carried the matter no further at all. In effect, the defendant was asking for further discovery on a matter which was not in question between them. It is worth mentioning that the trial judge found that "the defendant caused and is liable for the shutdown of the plaintiff's plant for the period 3-11 September 2003."[note: 2] As the entire plant was at a standstill, it was alleged that all finance costs were necessarily incurred. The general ledger disclosed gave a breakdown of the interest expense on a monthly basis and the reason for the interest charge.[note: 3] By the same token, with the plant shutdown other fixed costs that were wasted are being claimed. In my judgment, it is for the plaintiff to satisfy the court at assessment of damages that the various components of fixed costs such as salaries and wages, administrative expenses, interest expense, utilities and depreciation are properly claimable as wasted costs in relation to the plant shutdown. As for items 12 and 13, Mr Jones argued that the documents ordered to be discovered were irrelevant given the measure of damages for non-delivery of the 1000 mt of benzene. Mr Peter had no answer and found himself agreeing with Mr Jones on the issue of relevance for those two categories of documents. Notably, Mr Peter's request for further arguments sent on 2 July 2007 was confined to only items 17, 18, 19 and 21 of the Schedule. This is a point which merits observation for it reinforces the matters recounted here as to the scope of the arguments and the position taken by counsel at the hearing. In the circumstances, there was no basis for further discovery. I therefore allowed the appeal in respect of items 1(c), 4, 5, 9, 11, 12, 13 and 14(b) of the Schedule on the grounds that they were on the one hand already disclosed or on the other irrelevant, or both.

9 Rather similar considerations apply to the next categories of documents under items 17, 18, 19 and 21 of the Schedule. I did not think they were appropriate categories in which to require disclosure. The crux of the Assistant Registrar's decision is contained at p 25 of the Notes of Arguments, which essentially underpins her decision to allow the defendant's application for specific discovery. She wrote:

> From what parties have submitted before me, it seems to me that Plaintiff and Defendant have very different conceptions as to how the damages being claimed should be calculated. For the "wasted fixed costs" claim arising from late delivery of benzene, Plaintiff appears to take the view that the only relevant consideration is the actual fixed costs incurred during the period of plant shutdown; whereas Defendant takes the broader view that the overall trend in production and fixed costs for the whole of 2003 should be looked at. Similarly, for the claim for general damages arising from the non-delivery of benzene, the Plaintiff takes the view that the only thing that is

> relevant is the difference between the contract price and market price of benzene; whereas Defendant's stance is that the court should also look at whether the increased price which Plaintiff paid for alternative supplies of benzene was passed on to the Plaintiff's customers. I am of the view that which of these methods of calculating damages is the appropriate one is a matter to be decided by the court hearing the [assessment of damages], with the benefit of evidence from both parties' experts. At this point in time, Defendant is entitled to those documents which would support the case it seeks to make based on its proposed method of ascertaining the damages payable to Plaintiff.

10 The Assistant Registrar agreed with the defendant that the documents listed under items 17 to 19 of the Schedule were relevant to ascertain how much benzene the plaintiff had to buy at market price so as to meet its customers' orders. She thus ordered discovery of these documents for the period from 1 July 2003 to 31 May 2004 with consequential orders to protect confidentiality of the plaintiff's clientele base. As for item 21, this related to the disclosure of documents pertaining to the plaintiff's profit margins from 1 July 2003 to 31 May 2004. In agreeing with the defendant, the Assistant Registrar said that item 21 documents were relevant to the claim of non-delivery of benzene in that if the plaintiff had passed on the price hike to its customers that should proportionately reduce the amount recoverable as damages. She thus ordered that discovery of documents showing profit margin from 1 July 2003 to 31 May 2004 (subject to consequential orders in respect of confidentiality of the plaintiff's customers). Mr Jones rejected the reasoning criticising the defendant for misunderstanding its case.

11 Plainly, the quantum of damages is for the plaintiff to prove. However, the defendant, for the purposes of this application, has to justify the need for specific discovery. In this case, the plaintiff has elected to claim wasted costs incurred after the contract was entered into. It is settled law that the plaintiff has the right of election in respect of the measure of damages (*ie.* between "wasted costs/expenditure" and loss of profits). The legal position is sufficiently summarised in *C.C.C Films (London) Ltd v Impact Quadrant Films Ltd* [1985] QB 16:

> The plaintiff claiming damages for breach of contract had an unfettered choice whether to claim loss of profits or wasted expenditure; that although a plaintiff might be motivated to elect the latter claim where he believed that he would have suffered little or no loss of profit or where he was unable to prove what his loss of profit would have been, he was not required to adduce to establish any of those matters before electing to make his claim on that basis; and that accordingly, neither the plaintiffs' failure to establish by evidence that they would have suffered *no loss of profit* or that their *loss or profit would have been small nor their inability to prove what their loss or profit* would have been, precluded them from claiming wasted expenditure *as an alternative to loss of profits.*
>
> [Emphasis added]

12 In *Anglia Television Ltd v Reed* [1972] 1 QB 60, a decision which was adopted in *Van Der Horst Engineering Pte Ltd v Rotol Singapore Ltd* [2006] 2 SLR 599, the English court observed:

> The plaintiff having elected to claim their wasted expenditure instead of their loss of profits, were not limited to the expenditure incurred *after the contract* but could claim the expenditure incurred *before the contract* if it was reasonably in the contemplation of the parties as likely to be wasted if the contract were broken.
>
> [Emphasis added]

13 A useful starting point is to look at the reason stated in the Summons and Falick's affidavit for discovery of the documents described in items 17 to 19. It was to enable the defendant to "find out if there were in fact instances of orders the plaintiff could not fulfil due to non-delivery or late delivery." In so far as the late delivery claim is concerned, I was of the view that there was no basis for further discovery of documents listed under items 17 to 19 and 21. The trial judge found that the demand for maleic anhydride was in excess of production in August 2003 and the plant shutdown was due to the late delivery. Mr Jones also pointed out that the plaintiff stopped taking some orders during this period.[note: 4] In any case, at the hearing on 25 June 2007, Mr Peter's arguments on items 17 to19 and 21 were entirely made in the context of the non-delivery claim.

14 I now consider the relevance of items 17 to 19 and 21 of the Schedule for the non-delivery claim.

15 Mr Jones maintained that the plaintiff's loss for non-delivery was to be measured by the difference between the contract price and the market price as at the date of the breach ("the price differential measure"). The most obvious manifestation of this general rule is to be found in s 51(3) of the Sale of Goods Act (Cap 393, 1999 Rev Ed) in the case of a refusal or failure by a seller to deliver goods to a buyer where there is an available market. Essentially, where there is an available market for whatever has been lost, this measure of damages is *prima facie* applicable. In this case, the plaintiff argued that the appropriate date to apply to measure the price differential should be 24 May 2004. The rationale for the price differential measure is explained by Toulson J in *Dampskibsselskabet "Norden" A/S v Andre & Cie SA* [2003] 1 Lloyd's Rep 287 at para 42 in the following language:

> The rationale is that in such a situation that measure represents the loss which may fairly and reasonably be considered as arising naturally, i.e. according to the usual course of things, from the breach of contract (*Hadley v Baxendale*, (1854) 9 Exch. 341 at p.354). It is fair and reasonable because it reflects the wrong for which the guilty party has been responsible and the resulting financial disadvantage to the innocent party at the time of the breach. The guilty party has been responsible for depriving the innocent party of the benefit of performance under the original contract (and the innocent party is simultaneously released from his own unperformed obligations). The availability of a substitute market enables a market valuation to be made of what the innocent party has lost, and a line thereby to be drawn under the transaction. Whether the innocent party thereafter in fact enters into a substitute contract is a separate matter. He has, in effect, a second choice whether to enter the market - similar to the choice which first existed at the time of the original contract, but at the new prevailing rate instead of the contract rate (the difference being the basis of the normal measure of damages). The *option* to stay out of the market arises from the breach, but it does not follow that there is a causal nexus between the breach and a *decision* by the innocent party to stay out of the market, so as to make the guilty party responsible for that decision and its consequences. The guilty party is not liable to the innocent party for the effect of market changes occurring after the innocent party has had a free choice whether to re-enter the market, nor is the innocent party required to give credit to the guilty party for any subsequent market movement in favour of the innocent party.
>
> [Emphasis in original text]

16 An aspect of this rationale as Toulson J explained at 293 is that damages for breach of contract (such as a contract for sale) are normally assessed as at the date of the breach ("the breach date rule"). Generally, the date of breach is a way of defining the market price. In this case, the trial judge rightly left the date of the breach of contract to the court conducting the assessment. The plaintiff said the date of the breach for assessing damages should be 24 May 2004. It was not seriously disputed that the court can depart from the breach date rule where it judges it necessary or just to

do so in order to give effect to the compensatory principle. This is again a matter for the court conducting the assessment of damages. There may well be circumstances in which the defendant is justified in seeking to persuade the court hearing the assessment of damages that the measure of damages should be assessed as at a different date. However, where specific discovery is sought as was the case here, it is necessary for the defendant to at least draw out the facts of this case which would make it unjust to apply the normal price differential measure. That was not done. Furthermore, Mr Peter referred to a "floating breach date" without stipulating an alternative date which is more appropriate in the circumstances for assessing damages. It seems to me that it ought to be properly raised in Falick's affidavit. The omissions lend weight to the arguments of "fishing" which the rather extensive request for discovery in respect of items 17 to 19 and 21 seemed to suggest.

17 On the facts as Mr Jones pointed out, the plaintiff went out to the market to replace the contractual quantity that was not delivered and the purchases have been disclosed. Unless the breach date rule is displaced at assessment of damages, and bearing in mind the observations of Toulson J reproduced in [15] above, the sales of maleic anhydride to its customers to determine the profit margin of the plaintiff is irrelevant as it is outside to the equation for assessing the normal measure of damages (*ie* the price differential measure). The price differential represents the loss resulting in the ordinary course of events from the defendant's breach of contract. In addition and as stated, the defendant must, at least, point to some factual basis as justification for departing from the normal measure of damages. Before me, the defendant had not advanced any convincing arguments, apart from a bald assertion in its application for further arguments made on 2 July 2007 that the requested documents form a reasonable train of inquiry bound towards the resolution of the relevant issue of the quantum of loss. In my view, to allow further discovery based on Falick's affidavit is tantamount to allowing a line of investigation without proper foundation to get out of hand. The Court of Appeal in *Tan Chin Seng & Others v Raffles Town Club Pte Ltd* [2002] 3 SLR 345 made some pertinent observations at [35] with a view to properly circumscribing the "train of inquiry" formulation applicable under O 24 r 5:

> While the principle on "train of inquiry" is incorporated in r 5, it is nevertheless necessary for the *applicant party* to show in what way the requested document may lead to a relevant document … The plaintiffs here did not attempt to show any such linkage other than *stating baldly that there could be a train of inquiry.* It was clear that the plaintiffs just wanted the specified documents (as ordered by the assistant registrar) and not that the discovery of those documents (which we ruled to be irrelevant) might lead to relevant documents … *In modern litigation, discovery must be kept under proper control.*
>
> [Emphasis added]

On the facts before me, I was of the view that the defendant did not satisfy the twin pillars of relevance and sufficient necessity (for the fair disposal of the matter) central to a successful discovery application.

Conclusion

18 For all the reasons stated above, I allowed the appeal with costs here and below fixed at $3,500 together with reasonable disbursements to the plaintiff.

Suit

No. 24 of 2005 (SUM No 1891 of 2007)

Extract of the 21 May order relating to 12 categories of documents

Schedule 1

Orders-in-Term with limitations made by Asst Registrar Tan Wen Shan on Monday 21 May 2007 in respect of the following items:-

1. Item 1(c) - O.I.T. prayers 2 to 4 but limited to documents showing the purpose for which interest was incurred.

2. Item 4 - O.I.T. prayers 2 to 4 but limited to the production reports for the period from 14 September 2003 to 31 December 2003.

3. Item 5 - O.I.T. prayers 2 to 4 but limited to:

(a) daily readings for gas and water consumption for the period from 13-30 September 2003 (Plaintiff has already disclosed the daily readings for the period from 1 July 2003 to 12 September 2003) and

(b) daily readings for power consumption for the months of August and September 2003.

4. Item 9 - O.I.T. prayers 2 to 4 but limited to the daily inventory log sheets for the period from 14 September 2003 to 31 December 2003.

5. Item 11 - O.I.T. prayers 2 to 4 but limited to documents showing the daily utility costs for the months of July to December 2003. Should Plaintiff take the position that it does not have documents showing the daily utilities *costs* but only has documents showing the daily utilities *readings*, Plaintiff to state so on Affidavit and to then provide the documents showing the daily utilities readings for the period from July to December 2003.

6. Item 12 - In lieu of the documents sought by Defendant, O.I.T. of prayers 2 to 4 limited to documents showing the amount of benzene which Plaintiff had in store, whether at or outside Plaintiff's plant, for the period from 14 September 2003 to 31 May 2004.

7. Item 13 - O.I.T. prayers 2 to 4 but limited to documents showing the amount of MA which Plaintiff had in store, whether at its plant or elsewhere, for the period from 14 September 2003 to 31 May 2004.

8. Items 17, 18 and 19 - O.I.T. prayers 2 to 4 but limited to documents for the period from 1 July 2003 to 31 May 2004, and with liberty for Plaintiff to blank out the names of its customers and other confidential details relating to the identity of its customers when providing discovery. Also where

Item 19 is concerned, discovery of Plaintiff's correspondence with its customers re cancelled orders not allowed.

9. Item 21 - O.I.T. prayers 2 to 4 but limited to documents showing the profit margin for the period from 1 July 2003 to 31 May 2004. Again, liberty for Plaintiff to blank out customers' names and other confidential details relating to the identity of its customers on these documents.

[note: 1] Mohan's affidavit dated 15 May 2007 para 66

[note: 2] [2006] SGHC 88 at para 87

[note: 3] Plaintiff's submissions dated 25 June 2007 para 26

[note: 4] Plaintiff's submissions dated 25 June 2007 para 85