Orix Capital Ltd v Symrise Holding Pte Ltd and Others (Docusearch Pte Ltd and Another, Third Parties)
[2008] SGHC 79

Case Number	: Suit 64/2006
Decision Date	: 28 May 2008
Tribunal/Court	: High Court
Coram	: Tan Lee Meng J
Counsel Name(s)	: Felicia Ng and Yeo Piah Chuan (Piah Tan & Partners) for the plaintiff; Ronnie Tan, Koh Sim Teck and Rajendran Kumaresan (Central Chambers Law Corporation) for the 1st and 2nd defendants; Ravinran Kumaran (Ravi Lim & Partners) for the 2nd third party
Parties	: Orix Capital Ltd — Symrise Holding Pte Ltd; Symrise Pte Ltd; Docusearch Pte Ltd — Docusearch Pte Ltd; Jai Singh

Commercial Transactions

28 May 2008 Judgment reserved.

Tan Lee Meng J:

1 This is a perplexing case where there is certainly much more than meets the eye. Here, a supplier of office equipment, who sold photocopiers to a well-known leasing company on five occasions over a period of two years, ostensibly for leasing to a respectable lessee, collected full payment from the leasing company for the photocopiers but did not deliver a single photocopier to the alleged lessee. Furthermore, the supplier paid all the monthly leasing fees due to the leasing company under all five "leases" until it faced financial problems. In view of this, the leasing company, which knew much more than it cared to admit about the situation, sued the alleged lessee in respect of obligations under the most recent of the five leases. The alleged lessee denied being a party to that leasing contract and claimed that it was a victim of fraud. It is thus not surprising that the Commercial Affairs Department is presently investigating the case.

Background

2 The plaintiffs, Orix Capital Limited ("Orix"), a leasing company, sued the first defendant, Symrise Holding Pte Limited ("Symrise"), for breaching an alleged agreement dated 1 March 2005 ("the March 2005 lease") for the leasing to the latter of 9 OKI colour photocopiers ("the 9 OKI photocopiers").

3 The second defendant, Symrise Pte Ltd ("SPL"), is Symrise's parent company.

4 The third defendant and first third party, Docusearch Pte Ltd ("Docusearch"), is a supplier of office equipment. It had a business relationship with Orix with respect to the financing of purchases of office equipment and it sold to Orix the 9 OKI photocopiers, which were allegedly leased by Orix to Docusearch under the March 2005 lease. Docusearch admitted that it did not deliver any of the 9 OKI photocopiers to Symrise and that it had paid all the leasing fees due to Orix under the March 2005 lease before it ceased to do so because of its financial problems.

5 The second third party, Mr Jai Singh ("Mr Singh"), is a key figure in these proceedings as Orix claimed that he signed the March 2005 lease on Symrise's behalf. However, he was not Symrise's

employee at the material time. He was formerly Symrise's Property and Facilities Manager but he was transferred to SPL on 31 March 2003. Mr Singh's employment with SPL was terminated in January 2006 following investigations by the company regarding his role in this intriguing saga involving Docusearch and Orix.

6 Symrise, which denied being a party to the March 2005 lease, contended that its name had been wrongfully used in a leasing scam perpetrated by the staff of Docusearch and Orix. It asserted that this was why not a single OKI photocopier had been delivered to it and why *all* the leasing fees due to Orix under the March 2005 lease had been paid by Docusearch, to whom Orix claimed to have paid a ridiculously inflated price of $917,794.50 for the 9 OKI photocopiers, or around $102,000 per photocopier, when Docusearch had been selling these photocopiers for only $18,000 each. Symrise alleged that Orix's claim against it emanates from a cesspool of lies and attempted concealment of wrongs perpetrated against it by the creation of a number of fictitious leases over the past few years.

Discontinuance of proceedings against Docusearch

7 As Docusearch is in liquidation, Symrise and SPL informed the court at the start of the trial that they had decided not to continue with their third party proceedings against Docusearch. Orix also did not proceed with its claim against Docusearch but it called four persons from Docusearch to give evidence. They were Docusearch's chief executive officer ("CEO"), Mr Samiulla Sharieff ("Mr Sharieff"), its director, Ms Shanice Tan Choon Mee ("Ms Tan"), its former general manager, Mr Danny Lee Kok Whye ("Mr Lee"), who was Orix's senior business development executive before he joined Docusearch, and its former sales manager, Mr Jones Arul ("Mr Arul").

Docusearch's role

8 Orix's claim against Symrise with respect to the March 2005 lease can only be meaningfully evaluated in the light of Docusearch's role in the creation of a surfeit of leases between Orix and Symrise.

9 Prior to 2005, Orix purchased a small number of photocopiers from Docusearch and leased them to Symrise. While there were a few genuine leases, a dark cloud hovered over the following four leases (the "four disputed leases") between Orix and Symrise that had been arranged by Docusearch:

(a) a lease in September 2003 for the leasing of 4 black and white photocopiers;

(b) a lease in October 2003 for the leasing of 3 black and white photocopiers;

(c) a lease in February 2004 for the leasing of 4 black and white photocopiers; and

(d) a lease in April 2004 for the leasing of 6 black and white photocopiers.

10 The four disputed leases were signed by Mr Singh, supposedly on Symrise's behalf even though he was no longer Symrise's employee. None of the signed documents relating to the four disputed leases were forwarded to Symrise.

11 Mr Singh claimed that he did not commit Symrise to the four disputed leases and that he had merely signed *blank* forms to put photocopiers on "standby" in case Symrise wanted to lease them. He alleged that the blank forms had been filled up and used by Docusearch for creating "leases" between Orix and Symrise.

12 Docusearch's CEO, Mr Sharieff, who insisted that the four disputed leases were genuine leases, retorted that there is no such thing as a "standby" lease. However, his former general manager, Mr Lee, mentioned a "standby" lease when he was answering questions regarding the March 2005 lease. He stated as follows:

> [A]fter we contacted [Orix] for financing, the documents came – no the documents didn't come. Because what happened was we had a *standby lease agreement* for cases whereby, let's say we want them, the customer, to sign first just in case they consider someone else so the agreement was filled up, submitted to the customer to sign.
>
> [emphasis added]

13 Leaving the issue of "standby" leases aside, if, as Mr Sharieff contended, the four disputed leases were genuine leases, Docusearch could not satisfactorily explain why, after having been paid in full by Orix for the photocopiers, it did not deliver any of the photocopiers to Symrise and why it paid *all* the monthly leasing fees due to Orix under these four disputed leases for up to two years.

14 As for why none of the photocopiers under the four disputed leases had been delivered to Symrise, Docusearch asserted that it was ready to deliver all the photocopiers in question to Symrise but the latter was unwilling to take delivery of them.

15 If, as Docusearch alleged, Symrise was unwilling to take delivery of the photocopiers allegedly leased from Orix under the first of the four disputed leases in September 2003, why would Symrise want to enter into another agreement with Orix for the leasing of additional photocopiers in October 2003, just one month after the first of the four disputed leases was allegedly entered into?

16 If Symrise also did not want to take delivery of the additional photocopiers allegedly leased from Orix under the second of the four disputed leases in October 2003, there were already two batches of photocopiers supposedly leased by Symrise that remained in Docusearch's warehouse. It thus did not make any sense for Symrise to enter into a third leasing contract with Orix for more photocopiers a few months later, in February 2004, only to say that it was not willing to take delivery of this third batch of photocopiers.

17 Finally, with Symrise not having taken delivery of three batches of photocopiers under the first three disputed leases, why would it, just two months after the creation of the third disputed lease, went to enter into a fourth disputed lease with Orix in April 2004 for the leasing of additional photocopiers that it could not take delivery of? Obviously, it is unbelievable that Symrise, which did not require additional photocopiers, would want to lease so many undelivered photocopiers from Orix under so many leases. Mr Thomas Stottmeister, Mr Singh's former supervisor at SPL, who was a very credible witness, testified that none of the photocopiers purchased by Orix from Docusearch for the four disputed leases were required by his company at the material time.

18 Apart from not being able to satisfactorily explain why the photocopiers under the four disputed leases had not been delivered, Docusearch could also not explain why it paid *all* the monthly leasing fees due under the four disputed leases until they were terminated in mid-2005. With respect to the first two of the disputed leases, which were created in September and October 2003, Docusearch had been paying all the monthly leasing fees to Orix for close to two years! This plainly suggests that Symrise was not the real lessee in the case of the four disputed leases.

19 Docusearch's reasons for paying *all* the monthly leasing fees due to Orix under the four disputed leases for up to two years cannot withstand serious scrutiny. Docusearch claimed that it paid Orix

because Symrise did not pay the leasing fees. Docusearch was not Symrise's guarantor and it did not exhibit a single letter to Symrise seeking recovery of the large amount allegedly paid on the latter's behalf to Orix.

20 Docusearch also asserted that it paid all the leasing fees for up to two years to Orix on Symrise's behalf because it wanted to have future business with Symrise. This was an even more fanciful reason for if the four disputed leases were genuine leases, Symrise had shown by its failure to make even a single payment of the monthly leasing fees to Orix that it was a bad and unreliable client. As such, it made no sense for Docusearch to continue to cover Symrise's financial commitments to Orix for up to two years in order to get more business from Symrise.

21 By 2005, Docusearch was not paying the leasing fees to Orix on time. Docusearch claimed that Symrise wanted to have the four disputed leases terminated before the end of the lease periods. Of course, Orix had to be compensated for its loss of leasing revenue if the four disputed leases were terminated prematurely. Orix wanted an incredible sum, namely $632,703.20, as compensation for the premature termination of the four disputed leases for the relatively small number of black and white photocopiers allegedly leased to Symrise.

22 If Symrise had been approached to pay $632,703.20 for the premature termination of the four disputed leases for photocopiers that it had not received and in respect of which Docusearch had been paying all the leasing fees, the problems regarding the four disputed leases would have been uncovered much earlier. However, Symrise was not consulted by Orix about the proposed compensation and the problem of the hefty compensation sum of $632,703.20 was conveniently resolved by the creation of a brand new "lease", namely the March 2005 lease, for the 9 OKI photocopiers.

23 It will be recalled that Docusearch sold the 9 OKI photocopiers to Orix for $917,794.50, which was a ridiculously inflated price as the photocopiers were then being sold by Docusearch for $18,000 each or around $162,000 for 9 OKI photocopiers. According to Docusearch, the compensation sum of $632,703.20 that was due to Orix was "rolled over" into the purchase price of the 9 OKI photocopiers. As the purchase price was inflated in this manner, this meant that the lessee under the March 2005 lease would have to pay a much higher monthly leasing fee for the said OKI photocopiers. Docusearch pointed out that if the "roll over" of $632,703.20 was taken into account, the "real" price for the 9 OKI photocopiers was only $285,091.30.

24 More will be said about this "roll over" arrangement later on. What needs to be noted now is that Orix insisted that there was no "roll over" and that the "real" price of the 9 OKI photocopiers was $917,794.50.

25 Whichever version of the "real" price of the 9 OKI photocopiers is correct, Docusearch benefited from the arrangement. With the March 2005 lease, it got rid of the troublesome four disputed leases, in respect of which it had not been paying the monthly leasing fees on time, and received a fresh injection of funds totalling $285,091.30 from Orix. This sum of $285,091.30 was $123,000 more than what the 9 OKI photocopiers would have cost Orix if it had purchased them from Docusearch at around $18,000 each.

26 As in the case of the four disputed leases, after receiving full payment from Orix, Docusearch did not deliver the 9 OKI photocopiers to Symrise. Docusearch's reason for the non-delivery was the familiar, but by now puerile, refrain that Symrise did not want to take delivery of them.

2 7 As with the four disputed leases, Docusearch also paid all the leasing fees received by Orix

under the March 2005 lease. What explanation did Docusearch have for paying all the amounts due under the March 2005 lease to Orix? Docusearch produced a letter dated 1 September 2005 from its CEO, Mr Sharieff, to Mr Singh, offering to pay all the leasing fees under the March 2005 lease for the first year of the lease. The letter was worded as follows:

> We hereby confirm that the above contract comes with One year (12 months) lease free from the commencement date of payment of 1st September 2005.
>
> After the period of One year of free lease and if [Symrise] does not require any of the OKI C 9800 MFP colour machines, Docusearch Pte Ltd will seek to settle the contract with [Orix] on [Symrise's] behalf.

28 Docusearch's former general manager, Mr Lee, who was quite involved with the March 2005 lease, testified that he had not seen Mr Sharieff's said letter and that he did not know that Docusearch had undertaken to pay the first year's leasing fees to Orix on Symrise's behalf. It is more likely than not that this letter was written much later than 1 September 2005 to justify the otherwise unexplainable payments by Docusearch for the leasing fees due to Orix under the March 2005 lease.

29 In the circumstances, one might well ask whether the 9 OKI photocopiers that were sold to Orix had really been acquired by Docusearch from OKI's Singapore distributors in the first place. Docusearch's director, Ms Tan, claimed that the photocopiers were still in the company's warehouse in November and December 2005 and that Docusearch had subsequently sold the 9 Orix-owned OKI photocopiers to other customers because Orix did not want them. Docusearch utilised the sale proceeds for its own business expenses even though the said sale proceeds should have been handed over to Orix. Although Ms Tan said that a number of the brand-new OKI photocopiers had been sold to government agencies for only $8,000 each, she could not identify the agencies or other buyers and could recall no other details regarding the sale of the Orix-owned OKI photocopiers to other persons. Despite being ordered by the court to produce documents evidencing the sale of the Orix-owned photocopiers to other parties, no documents were produced by Docusearch. There is thus a real doubt as to whether or not Docusearch had acquired the OKI photocopiers that it sold to Orix from OKI's Singapore distributors.

30 Reference must also be made to Docusearch's "double financing" arrangements, under which the same photocopiers were sold to two leasing companies to be leased to Symrise. These "double financing" deals concerned a number of Kyocera photocopiers which had already been sold to Orix so that they could be "leased" by Orix to Symrise. Docusearch sold these Orix-owned photocopiers to Hitachi Credit Singapore Pte Ltd ("Hitachi") and arranged for these machines to be "leased" by Hitachi to Symrise.

31 In short, Docusearch was paid twice, by Orix and Hitachi, for these Kyocera photocopiers, which were "leased" by Orix and Hitachi to Symrise. When cross-examined, Docusearch's director, Ms Tan, admitted that none of the Kyocera photocopiers in question were delivered to Symrise and that Docusearch paid *all* the monthly leasing fees *due to both Orix and Hitachi* under the "leases" for the same machines.

32 The leasing documents in relation to the "double financing" arrangements with Orix and Hitachi were not forwarded to Symrise, which was conveniently kept in the dark as none of the Kyocera photocopiers were delivered to it and all the monthly leasing fees were paid by Docusearch.

33 When the "double financing" arrangements were uncovered, Docusearch said that it had made a mistake and it paid the money due to Hitachi. The fact that Docusearch sorted out its problem with

Hitachi without involving Symrise in the settlement speaks volumes about the unwarranted use of Symrise's name in "leases".

34 That something was really amiss in Docusearch's deals involving Symrise was confirmed by its former general manager, Mr Lee, who testified that he left Docusearch in December 2005 because he felt very uneasy about Docusearch's double financing deals with Orix and Hitachi, the non-delivery of the 9 OKI photocopiers to Symrise, and Docusearch's failure to resolve the problem of the March 2005 lease with Orix after Symrise denied having been a party to the March 2005 lease. Mr Lee said that what Docusearch should have done was to repay to Orix the entire sum paid by the latter for the 9 OKI photocopiers. The relevant part of the cross-examination is as follows:

Q What did you do when you found out [that the OKI photocopiers had not been delivered]?

A I pursued [Docusearch's CEO Samiulla Sharieff and director Shanice Tan] for an answer. The other part was I pursued them to pay back [to Orix], because *if you do not complete the transaction*, *you must pay back*. That's not right. That is my stand.

[emphasis added]

35 When questioned by Mr Singh's counsel, Mr Ravinran Kumaran ("Mr Kumaran"), Mr Lee reiterated his position when he said as follows:

Q [Y]ou chased [Docusearch] to pay up, to return the money to Orix because you felt it was wrong?

A Yes.

36 What was also astonishing was that Docusearch's former sales manager, Mr Arul, gave the following evidence in relation to the March 2005 lease when cross-examined:

Q I put it to you that the … so-called March 2005 lease *is not an actual lease.*

A Yes….

Q And it is also not an actual lease because in fact and in truth there is no delivery of machines?

A Yes.

37 After examining the evidence and assessing the witnesses, I find that the four disputed leases and the March 2005 lease were not genuine leases and that Symrise did not know about these leases. The next question before the court is whether or not Orix can rely on Mr Singh's role in the saga in order to succeed in its claim against Symrise and SPL.

Orix's claim against Symrise

38 Orix alleged that Symrise breached the March 2005 lease by refusing to pay the leasing fees that Docusearch had hitherto been paying. In the alternative, Orix claimed that as it had been induced by an alleged representation by Mr Singh that Symrise had taken delivery of the OKI photocopiers before paying Docusearch for the OKI photocopiers, Symrise was liable to it for the remaining value of the March 2005 lease plus pre-action legal costs, which amounted to $1,135,135.40, or for the price of the 9 OKI photocopiers, which amounted to $917,794.50.

39 In the face of repeated assertions by Symrise and SPL that Orix's own staff knew the truth about Symrise's surfeit of leasing arrangements with Orix, the person who should have given evidence on Orix's behalf was its CEO, Mr Michael Choo ("Mr Choo"), who was quite involved with the March 2005 lease and the four disputed leases. Often enough, Orix's witnesses conceded that Mr Choo was the person who could give a proper answer to questions posed to them. However, Mr Choo was not called by Orix as its witness and Orix's main witness was its group general manager, Mr Goh Hock Leong ("Mr Goh"), who was not very familiar with the case. He was a loyal company officer, more able to explain standard company procedures than to shed sufficient light on why there were so many lapses in Orix's handling of the March 2005 lease and the four disputed leases.

40 Orix's claim against Symrise did not get off the ground because Mr Singh was not Symrise's employee when he signed the March 2005 lease on behalf of Symrise. As SPL's employee, he had no authority to contract on Symrise's behalf. Symrise and SPL, while related companies, are nonetheless separate companies. In *Peterson Farms Inc v C & M Farming Ltd* [2004] 1 Lloyd's Rep 603, Langley J stated at [62] that "in commercial terms the creation of a corporate structure is by definition designed to create separate legal entities for entirely legitimate purposes". Orix did not furnish any credible evidence as to why there should be any lifting of the corporate veil in relation to Symrise and SPL. It also did not furnish any evidence of an agency relationship between Symrise and SPL or that Symrise had adopted any of Mr Singh's actions with respect to the March 2005 lease.

41 Even if Mr Singh's employment by SPL is left aside, Orix's position was clearly affected by the fact that its senior employees either knew or could not have failed to realise that Symrise was not the real lessee under the March 2005 lease or the four disputed leases. At the very least, they should have asked Docusearch searching questions about a manifestly suspicious situation that was staring at them in the eye.

Orix knew that Docusearch did not deliver the machines under the four disputed leases and had been paying the monthly leasing fees

42 For a start, the knowledge of Orix's former senior business development manager, Mr Lee, *before* he left Orix to become Docusearch's general manager, must be noted. Mr Lee, who was described by Docusearch's former sales manager, Mr Arul, as Orix's "officer in charge" of Symrise's leases, knew that all the photocopiers that Orix had purchased in relation to the four disputed leases had not been delivered by Docusearch to Symrise. Furthermore, he knew that Docusearch, and not Symrise, had been paying to Orix *all* the monthly leasing fees due under these leases. When cross-examined, Docusearch's director, Ms Tan, testified as follows:

Q And [Orix's Mr Danny Lee] knew about [the non-installation of the photocopiers at Symrise]?

A [He] doesn't know like particular or particular, *but he knows why we are making payment on behalf, because this customer haven't installed yet….*

43 When re-examined by Orix's counsel, Ms Felicia Ng ("Ms Ng"), Ms Tan said as follows:

Q You also said that Orix knew that the copiers were not installed. What do you mean by Orix knew that the copiers were not installed?

A Because [Orix's Mr Danny Lee] has difficulty collecting payment from Symrise, so he also checked with us why this is the case. *So we told him the machines are not installed yet, so that could be the reason why the customers didn't pay*.

[emphasis added]

44 As for when Mr Lee knew about the non-delivery, Ms Tan said that this was "maybe from second, third order onwards". This aspect of Ms Tan's evidence was not effectively countered by Orix. A person as experienced as Mr Lee cannot but realise that something must be very wrong about the four disputed leases because the photocopiers in relation to *all* these disputed leases had not been delivered to the alleged client.

45 As for Docusearch's payment of all the monthly leasing fees under the four disputed leases, Mr Goh claimed that Orix did not know that Docusearch had been making these payments. However, Docusearch's director, Ms Tan, testified that Orix knew that Docusearch had been paying the monthly leasing fees.

46 When re-examined by Orix's counsel, Ms Ng, Ms Tan explained why she had said that Orix knew about Docusearch's payments. The relevant part of the proceedings is as follows:

Q You also said that Orix knew that Docusearch was making payment for Symrise for the four lease agreements….

A Yes, yes.

Q Why do you say that?

A *Because Orix representative, [Mr Danny Lee], is the one who comes to our office to collect the payment and ask for the payment…*

[emphasis added]

47 Docusearch's former sales manager, Mr Arul, corroborated Ms Tan's evidence that Mr Lee knew that Docusearch had been paying all the monthly leasing fees in question when he was employed by Orix. In fact, Mr Arul added that it was Mr Lee who had pressed Ms Tan to pay the outstanding leasing fees under the four disputed leases.

48 On a most charitable view, Orix must have had serious misgivings about the four disputed leases and should have been more cautious in its dealings with Docusearch with respect to the arrangement of future leases with Symrise.

The early termination of the four disputed leases

49 Although Orix's staff knew that something was really wrong about the four disputed leases, they proceeded to compute the compensation amount payable by Symrise for the early termination of these disputed leases.

50 The compensation sum of $632,703.20 for the early termination of the four disputed leases must have been approved by Orix's management. The person who approved the compensation sum at Orix must have realised that this was an unbelievably exorbitant compensation sum as the relatively few black and white photocopiers leased under the four disputed leases could have been purchased for a fraction of the compensation sum when they were brand new. This alone should have alerted Orix's management to the fact that something was really wrong with the four disputed leases.

51 Orix's offer regarding compensation for the early termination of the four disputed leases was

forwarded not to Symrise but to Docusearch. The offer was readily accepted by Docusearch's director, Ms Tan. In Orix's documents, which were intended for Symrise's attention, she stated as follows:

> I, Shanice Tan, the duly authorised signatory for ….(blank) …. hereby agree to the above computation for premature termination of the above-mentioned Lease Agreement.

52 When cross-examined, Docusearch's former general manager, Mr Lee, agreed that there are inherent dangers in a leasing company's failure to communicate with its lessee over the early redemption of leases. The relevant part of the proceedings is as follows:

Q [I]f my clients have not received the machines at all, and this redemption or so-called redemption of machines is allowed to go on, that means there is in existence a practice available for this kind of false transactions to go through. It must mean that …?

A Yes, it makes sense.

53 By shutting out its alleged lessee and by dealing exclusively with Docusearch on the compensation package, Orix allowed Docusearch to perpetuate the myth of the four disputed leases. It is totally unacceptable that with its prior knowledge of the suspicious circumstances surrounding the four disputed leases, Orix chose to liaise exclusively with Docusearch on the compensation payable for the early termination of the four disputed leases and keep Symrise completely in the dark. Orix should not have acted on Ms Tan's acceptance of its offer without finding out whether Symrise had agreed to the terms of the premature termination of the four disputed leases leases. All these lapses on Orix's part cannot but be unhelpful to its case against Symrise.

The highly inflated price of the 9 OKI photocopiers

54 The incredibly inflated price of $917,794.50 for the 9 OKI photocopiers is yet another unexplainable aspect of Orix's strange deals with Docusearch.

55 Even during the trial, Orix and Docusearch could not agree on what the $917,794.50 represented. Docusearch was adamant that the real purchase price of the 9 OKI photocopiers was $285,091.30 and that the price had been bumped up to $917,794.50 because the compensation amount of $632,703.20 payable to Orix for the termination of the four disputed leases had been included in the purchase price. Docusearch's director, Ms Tan, testified that Orix knew about the "roll over". However, Orix's Mr Goh had no doubt whatsoever that the sum of $632,703.20 due to Orix for the early termination of the four disputed leases had nothing to do with the purchase price of $917,794.50.

56 Actually, Orix's case regarding the purchase price of the 9 OKI photocopiers was quite inconsistent and very confusing. Its counsel, Ms Ng, stated her client's final position as follows:

Ms Ng [O]ur position is that we paid $917,000 for the nine copiers. That is our position, that we paid this amount for the copiers.

Ct And the [roll over has] nothing to do with this?

Ms Ng …. It's got nothing to do with [Orix].

57 A number of points ought to be made about the discrepancy between the positions adopted by

Orix and Docusearch with respect to the price of the 9 OKI photocopiers. First, it is absolutely unbelievable that Docusearch and Orix did not reach a clear understanding on something as fundamental as the price of the 9 OKI photocopiers. The totally different versions furnished by Orix and Docusearch as to whether the actual purchase price of the 9 OKI photocopiers was $917,794.50, as claimed by Orix, or only around $285,000, as claimed by Docusearch, and as to whether the $632,703.20 was a "roll over", as claimed by Docusearch, or a "set-off", as claimed by Orix, suggest that the March 2005 lease is a rather dubious transaction between Orix and Docusearch.

58 Secondly, if Orix is right about the purchase price, this means that it paid Docusearch $917,794.50 for 9 OKI photocopiers that could have been purchased for only $162,000. Orix's position is akin to that of a leasing company paying almost $1 million to a motor dealer for a car that is sold in the market for only $162,000.

59 Orix's former senior business development executive, Mr Lee, testified that alarm bells should ring if a quotation for goods is high. He accepted that if equipment is purchased by Orix for more than twice the usual price, there must be an investigation. However, alarm bells did not ring in the case of the 9 OKI photocopiers even though the price quoted to Orix was more than 5 ½ times the usual price.

60 Orix could not explain why its management approved the purchase of the 9 OKI photocopiers at such an exorbitant price. Orix's witnesses claimed that the company could not keep track of the prices of photocopiers. However, it does not take much to realise that 9 ordinary colour photocopiers would not, without more, cost $917,794.50. Orix's witnesses also clutched at straws by pointing out that the price could have included additional software packages offered by Docusearch to Symrise. However, no one at Orix enquired whether or not there were additional packages and Docusearch's witnesses confirmed that no such packages had been offered to Symrise under the March 2005 lease.

61 Orix's Mr Goh, who conceded that the lessee was obliged by the terms of the lease to insure the 9 OKI photocopiers and that no insurance had been effected, was very evasive when Mr Singh's counsel, Mr Kumaran, pointed out to him that no insurer would have insured the 9 OKI photocopiers for the phenomenal amount paid by Orix to Docusearch. The fact that he refused to answer rather simple questions posed to him is evident from the following part of the proceedings:

Q Can you insure [your car] for half a million dollars?

A The car belongs to the company….

Q [L]et's say if you owned the car – even your company, can they insure a car for half a million dollars?

A I do not know…. I am just a driver.

Q Mr Goh, … you are a graduate, you are an accountant, … you look at numbers every day and … will you not even concede to what is obvious?

A I have not purchased a car before….

Q [T]here is no way the defendants can insure these nine OKI photocopiers at $917,000. Do you agree with me?

A ….. [F]rom our [cost], it is 900 over thousand dollars.

62 Mr Kumaran contended that the fact that the 9 OKI photocopiers were not insured puts the legitimacy of the March 2005 lease in doubt. He also pointed out that if Orix had been careful, it would not have agreed to lease to Symrise photocopiers purchased for such a large sum as $917,794.50 because if the four disputed leases had been genuine leases, Symrise was a very unreliable client as it had not paid any of the monthly leasing fees for all the said four leases. After all, Orix's own staff had to go to Docusearch's office to collect Docusearch's payments for the monthly lease payments due to Orix. Mr Goh could not explain why Orix approved the March 2005 lease for expensive equipment costing $917,794.50 when Symrise was a "delinquent" client. The relevant part of the cross-examination is as follows:

Q This is the state of affairs of the defendants insofar as Orix's record is concerned. A delinquent account, right? Someone whose creditworthiness is in question here. [Symrise] should be treated with a barge pole, if I may say. They cannot pay these puny sums …. Yet Orix has gone out of its way to extend to them a lease transaction worth 917,000 over dollars. How do you explain that?

A Sir, it is your interpretation that they are unable to pay. I think the management … has approved ---

[emphasis added]

63 Evidently, Orix's willingness to purchase the 9 OKI photocopiers for the ludicrously high sum of $917,794.50 raised far too many unanswered questions as to Orix's own role in the March 2005 lease. This fact, when taken together with the many other lapses by the company's staff in their dealings with Docusearch, certainly did not suggest that Orix believed that the March 2005 lease was a genuine lease.

The backdating of the March 2005 lease

64 Another very suspicious aspect of Orix's own involvement in the creation of the March 2005 lease was that the said lease was backdated to 1 March 2005 although "negotiations" had allegedly been completed around August 2005. Docusearch admitted that it was not authorised to sell OKI photocopiers in March 2005 and that the OKI photocopiers in question arrived only in September 2005.

65 A number of points may be made about the backdating. First, Symrise was, as usual, kept in the dark as the backdating was done without its involvement. The following part of the cross-examination of Orix's Mr Goh, who conceded that the backdating affected the alleged lessee's rights, merits attention:

Q If all [these letters at pages 118, 119 and 120 concerning the backdating of the lease] … between you and Docusearch …. Was a copy … given to [Symrise]?

A *No, sir*….

Q … [I]s it not necessary to tell my clients about the backdating?

A *It did not occur to me….*

[emphasis added]

66 Secondly, it is remarkable that while Orix knew of the backdating, Docusearch's CEO,

Mr Sharieff, and its director, Ms Tan, testified that they had no knowledge of the backdating of the March 2005 lease. The relevant part of the cross-examination of Mr Sharieff is as follows:

Q [The March 2005 lease] was backdated to 1st March.

A I really cannot answer that question because I don't know.

Q You don't know it was backdated to 1st March?

A *I have heard that. I have also asked. I don't understand why.*

[emphasis added]

67 As for Ms Tan, who was in charge of the paper work for contracts entered into or arranged by Docusearch, the relevant part of the cross-examination is as follows:

Q Do you know why [the March 2005 lease] was backdated?

A No, no. As far as I'm concerned, I never … see this….

Q [I]n this case, is it not unusual that this agreement should be backdated?

A In this case, I'm *totally unaware that it's 1st March*.

[emphasis added]

68 The third point about the backdating concerns the conflicting reasons for the backdating. Orix's Mr Goh claimed that the March 2005 lease had to be backdated because Symrise had changed its name from Dragoco Asia Pte Ltd to Symrise Holding Pte Ltd on 2 March 2005 and Orix was informed by Docusearch in August 2005 that the newly named company did not have a company stamp. As Orix required the lessee company's stamp on the contract documents, the agreement had to be backdated to 1 March 2005, the day before the change of company name, so that the stamp bearing Symrise's former name could be used for stamping the lease documents. His evidence was corroborated by Docusearch's former general manager, Mr Lee, who said that that Docusearch's former sales manager, Mr Arul, who handled the transaction regarding the 9 OKI photocopiers, had told him that the proposed lessee's new company stamp had not been acquired.

69 Mr Arul completely undermined the evidence of Mr Goh and Mr Lee when he testified that the backdating of the March 2005 lease had absolutely nothing to do with the lack of a company stamp. He said that the real reason for the backdating of the March 2005 lease was that Docusearch had decided to offer OKI photocopiers to Symrise instead of an inferior type of photocopiers. This was clear from the following part of the cross-examination:

Q Were you the one that came up with the idea of backdating?

A Yes.

Q You did. *And it was solely for the reason of a change in the machines?*

A Yes.

[emphasis added]

70 Mr Lee finally conceded that there "was no need to backdate" the March 2005 lease and that it was not right to backdate it. In any case, Symrise asserted that Orix's evidence on the backdating of the March 2005 lease could not be taken seriously as it was inconceivable that it, a German-owned company, would operate in a well-organised place like Singapore under a new name from March to August 2005 without owning a company stamp.

71 As there was no real need to backdate the March 2005 lease and the reason advanced by Orix for the backdating was debunked by Mr Arul, the sales manager of Docusearch, whose CEO and director denied any knowledge of the backdating, why was the lease backdated? Symrise's counsel, Mr Ronnie Tan, suggested that as Docusearch and Orix had a running account for the four disputed leases, which became problematic for both parties after Docusearch had difficulty paying the monthly leasing fees, the date for the new lease had to be adjusted so that some embarrassing running accounts between Orix and Docusearch could be sorted out. Whatever the real reason, the lack of a proper answer by either Orix or Docusearch as to why the March 2005 lease was backdated and the failure of Orix to inform Symrise of the backdating raised embarrassing questions with respect to Orix's own role in the creation of the fictitious March 2005 lease.

Important lease documents were not forwarded by Orix to Symrise

72 Orix's handling of the documentation with respect to its alleged leases with Symrise left much to be desired. On far too many occasions, some of which have already been referred to, Orix liaised solely with Docusearch.

73 To begin with, Orix must be taken to task for failing to forward important lease documents relating to the four disputed leases and the March 2005 lease to Symrise and for retaining all copies of crucial leasing documents, including the lessee's copy, in its own files. Orix's administrative supervisor, Ms Lim Sor Hoon ("Ms Lim"), explained that while the original copy of each set of leasing documents was intended for Orix, the client was entitled to the "customer copy" of the set. However, Orix ignored its own procedures. The systematic denial of important documents to Symrise ensured that the latter was in no position to find out at an early stage that its name had been utilised for fictitious leases with Orix.

74 It will be recalled that even the important proposed compensation package for the early termination of the four disputed leases was forwarded by Orix to Docusearch. It was also evident that when monthly leasing fees were overdue, Orix dealt solely with Docusearch. In fact, even Orix's *final* reminder to Symrise dated 28 October 2005 for overdue payments under the March 2005 lease, *which was addressed to Symrise*, was forwarded to Docusearch and marked for the attention of Docusearch's then general manager, Mr Lee. When cross-examined, Orix's Mr Goh, accepted that Symrise would not know of the final reminder if it was addressed to Mr Lee. The relevant part of the proceedings is as follows:

Q [T]his letter addressed to "Danny Lee" … Is [Symrise] supposed to know?

A This particular one to Danny Lee? No, sir.

Q …. Of course not. [A]nd it is a final reminder that will affect my client's rights.

A Yes, sir.

75 With respect to the March 2005 lease, apart from not informing Symrise about the backdating of the said lease, Orix went so far as to retain in its own files the *customer's* copy of the important delivery receipt relied on as evidence of delivery of the 9 OKI photocopiers. Orix's Mr Goh could not explain why Orix never dealt with Symrise when it mattered most and why the said documents were never forwarded to Symrise.

76 Symrise thus had grounds for asserting that Orix's failure to send it the March 2005 lease agreement, the delivery receipt allegedly signed by Mr Singh, and the proposed compensation for the early termination of the four disputed leases showed that both Orix and Docusearch intended to keep it in the dark. As Orix's personnel chose to work solely with Docusearch with no regard whatsoever for Symrise's right to be informed when there is no proof that Docusearch was Symrise's agent, Orix must bear the consequences of its actions. Orix's endemic failure to forward important leasing documentation to Symrise showed that it knew enough to realise that Symrise was not the real lessee but it did not care so long as Docusearch continued to pay the monthly leasing fees.

Mr Singh's alleged representation

77 Orix contended that it relied on Mr Singh's alleged representation that the 9 OKI photocopiers had been delivered to Symrise (the "alleged representation") before it paid Docusearch $917,794.50 for the said photocopiers. This claim fails from the very start because I have found that Orix knew or ought to have known that the four disputed leases and the March 2005 lease were not genuine leases and I do not believe for one moment that Orix relied on any representation by Mr Singh before parting with its money to Docusearch for the 9 OKI photocopiers.

78 In any case, Orix's evidence on Mr Singh's alleged representation was quite pathetic. Initially, Orix pleaded that Mr Singh's alleged representation appeared in an undated delivery receipt signed by him, which contained no material particulars and was worded as follows:

> To ORIX CAPITAL LIMITED
>
> I/We hereby confirm that I/we have on _____[blank]____ taken delivery of the goods described in the Lease/Hire Purchase Agreement No _____ [blank] _____ , dated ___[blank] _____, and that the same are in good order and condition.
>
> SYMRISE ASIA PTE LTD
>
> (Signed)
>
> Jai Singh
>
> Property & Facilities Manager
>
> Name of Recipient : _____[blank] _____
>
> NRIC of Recipient : _____[blank] _____
>
> Date: [Blank]

79 Mr Singh testified that Docusearch had asked him to sign a number of *blank undated* delivery receipts that *contained no particulars whatsoever* as to the goods received by Symrise. Docusearch's former sales manager, Mr Arul, testified that it was his company's practice to have clients sign blank forms acknowledging the receipt of goods that had not been delivered to them. When cross-examined as to why he forwarded to Orix a blank form signed by Mr Singh as proof of delivery of the 9 OKI photocopiers, he hesitated for an inordinately long time before saying that he had no answer.

80 When cross-examined, Orix's Mr Goh, conceded that the undated delivery receipt in question contained no information other than Mr Singh's signature and Symrise's stamp. Clearly, Orix had no grounds for relying on such a blank document as proof that the 9 OKI photocopiers had been delivered to Symrise. What was most unsatisfactory was that after receiving the blank delivery receipt, Orix's own staff filled in the material particulars pertaining to the March 2005 lease, such as the lease contract number. During cross-examination, Orix's general manager, Mr Goh, justified his company's action by saying as follows:

> They sign blank, we put the agreement number printed on it, after which we call to confirm that they have received the goods based on this agreement.

81 Orix alleged that its sales co-ordinator, Ms Tham Seok Kuen ("Ms Tham"), telephoned Mr Singh on 31 August 2005 and that the latter confirmed that Symrise had received the 9 OKI photocopiers (the "telephone confirmation"). Orix's case thus shifted from reliance on a signed blank delivery receipt to a telephone confirmation. However, as was pointed out by Symrise's counsel during the trial, Orix's pleaded case related only to a written confirmation of receipt by Mr Singh. Despite this, Orix's counsel did not see it fit to amend the Statement of Claim during the trial.

82 After the trial and after the defendants had already submitted their written closing submissions, Orix's counsel applied to amend the Statement of Claim to plead that Orix had also relied on Mr Singh's telephone confirmation. Although the application to amend the pleadings was allowed, primarily because Symrise's counsel had cross-examined Orix's witnesses on the alleged telephone confirmation, this made no difference to the outcome as I have made it clear that I do not believe that Orix relied on any representation by Mr Singh before paying Docusearch for the 9 OKI photocopiers. In any case, it is worth noting that in so far as the four disputed leases are concerned, Orix also had in its possession blank delivery receipts containing similar hand-written words that one of its staff had telephoned Mr Singh and that he confirmed that the photocopiers had been delivered. As has been explained, Orix's key personnel knew that the photocopiers for the four disputed leases were never delivered to Symrise.

83 Mr Singh categorically denied that anyone from Orix telephoned him for an oral confirmation that the 9 OKI photocopiers had been delivered to Symrise. Orix asserted that there was no reason for Ms Tham to lie that she spoke to Mr Singh. That Orix's telephone confirmation system is not always reliable was evident as Orix's administrative supervisor, Ms Lim, had written on another delivery receipt for other goods leased under another leasing agreement that she had telephoned one Mr Cheng Whye from Symrise, who orally confirmed that the said goods had been delivered to Symrise. However, Symrise and SPL pointed out that they had not employed any person with the name "Cheng Whye". This was confirmed by Ms Pong Siew Inn, SPL's Vice President, Finance, whom I found to be a very credible witness. Who did Ms Lim speak to before scribbling her note on the delivery receipt that Mr Cheng Whye had confirmed the receipt of the goods in question? Orix offered no answer. When cross-examined about Mr Cheng Whye's purported telephone confirmation, Orix's Mr Goh said as follows:

Q …. It is an elusive Cheng Whye. So if you can get a name like Cheng Whye, you are basically looking for someone who is willing to put a mark there and to say that they called and the goods were received?

A Yes, sir.

84 Orix's assistant manager (financial services-administration), Ms Ang Sio Peng, accepted that there could be mistakes in the system of telephone confirmation. The relevant part of the cross-examination is as follows:

Q Do you accept that just going by a confirmation by a phone call may not be 100 percent acceptable or … accurate?

A Sorry, because we are just follows *[sic]* our guidelines in doing our works *[sic]*.

Q All I'm saying is that just *relying on the phone call may not be 100 per cent accurate* because you want to confirm is delivery of the goods, right?

A *Yes.*

[emphasis added]

85 In the context of the circumstances in this case, more could and should have been done by Orix to satisfy itself that the 9 OKI photocopiers had indeed been delivered to Symrise. Orix's Mr Goh admitted during cross-examination that it would have been more prudent to check the serial numbers on site to confirm the delivery of the photocopiers to the client. After all, the 9 OKI photocopiers cost Orix $917,794.50.

86 I find that Orix did not establish that it relied on the dubious delivery receipt signed by Mr Singh or that Mr Singh had orally confirmed on the telephone that the goods had been received. Orix also did not establish that Symrise is estopped by the blank delivery receipt from asserting that the 9 OKI photocopiers had not been delivered to it.

Orix took no steps to recover the OKI photocopiers from Docusearch

87 For the sake of completeness, it ought to be noted that Docusearch's director, Ms Tan, testified that the 9 OKI photocopiers were still in Docusearch's possession in November and December 2005. Although it knew that the said photocopiers had not been delivered to Symrise and that Docusearch claimed that they were still in its warehouse, Orix did not bother to claim the brand-new photocopiers, if they existed in the first place, from Docusearch.

88 More likely than not, Orix took no steps to take possession of the 9 OKI photocopiers to mitigate its loss because it was far more convenient for it to allege that Symrise was liable under the March 2005 lease than to take back the relatively inexpensive OKI photocopiers and explain why its management approved the purchase of these 9 relatively inexpensive colour photocopiers at the unbelievable price of $917,794.50.

Effect of non-delivery of subject matter of the lease on a leasing contract

89 Yet another ground for dismissing Orix's claim against Symrise is that the delivery of the 9 OKI photocopiers to Symrise is required to trigger the commencement date of the March 2005 lease.

Clause 24 of the said lease provides as follows:

> "Commencement date" means *the date [on] which the Goods are delivered* and determined by ORIX or the Supplier to be ready for use at the Lessee's location, and the Lessee agrees to execute a Certificate of Delivery and Acceptance as of such date.
>
> [emphasis added]

90 Symrise contended that as the 9 OKI photocopiers had not been delivered to it, the March 2005 lease had not commenced. Orix may have left the task of delivering the 9 OKI photocopiers to Docusearch but, as has been explained earlier on, more should have been done by Orix in the strange circumstances of this case to ensure that the photocopiers had indeed been delivered to Symrise.

91 A question arises as to whether Symrise was estopped from denying that the 9 OKI photocopiers had been delivered to it, in which case it cannot rely on clause 24 of the alleged lease. Admittedly, there may be situations where a lessee is estopped from denying that it acknowledged the receipt of equipment. Reference was made to *Swee Bee Trading Co Pte Ltd v Lanho Corporation (Pte) Ltd* [1982-1983] SLR 161 ("*Swee Bee Trading*") but that case is clearly distinguishable.

92 In *Swee Bee Trading,* where the hirers, Lanho, required financing to purchase 18 air compressors, the person who confirmed that Lanho had taken delivery of the air compressors from the suppliers was its managing director, Mr Daniel Lim ("Mr Lim"), who knew that this was not true as the equipment had been pledged to a bank by the sellers, a sole proprietorship owned by his father. After paying four monthly instalments, Lanho assigned the 18 air compressors to Siong Lee Heavy Equipment Pte Ltd ("Siong Lee"), which belonged to Mr Lim and his brother, and on this occasion, Mr Lim again misrepresented that the 18 air compressors were in Lanho's possession. In due course, Mr Lim disappeared, his father was made a bankrupt and Siong Lee was compulsorily wound up. In these circumstances, it was not surprising that the Court of Appeal held that Lanho could not assert that the air compressors had not been delivered to it.

93 The facts in *Swee Bee Trading* are miles apart from those in the present case, where the alleged lessee, Symrise, asserted that the March 2005 lease is a fictitious lease. In *Swee Bee Trading,* Lanho did not assert and could not have asserted that the agreement in question was a sham because the person described as the "villain" by the court was none other than its own managing director, Mr Lim, who knowing that the air compressors were in the bank's possession because his father had not paid for them, deliberately misrepresented to the financiers that the air compressors had been delivered to his company.

94 In a Malaysian case, *Hong Leong Leasing Sdn Bhd v Tan Kim Cheong* [1994] 1 MLJ 177, Visu Sinnadurai J, who rightly pointed out that whether estoppel arises in relation to the signing of a delivery receipt depends on the totality of the evidence, added as follows at 190:

> [I]t is not uncommon for hirers to be required to sign a delivery receipt and the blank hire purchase forms at the time when an order is made with a dealer. In fact, in many cases, like the present, the dealer demands the hirer to do so, for without the delivery receipt, the financier would not release the payment to the dealer. *As such a practice is also well known to the financiers (not only in Malaysia, but also in England), financiers should be more prudent in ensuring that the hirer has, in fact, received the goods. After all, it is the duty of the financier to deliver the goods as so specified in the hire purchase agreement.*
>
> [emphasis added]

95 I hold that Symrise is not estopped from asserting that the photocopiers had not been delivered to it. The non-delivery of the 9 OKI photocopiers meant that the lease had not commenced and the question of Symrise paying any leasing fees does not arise.

Conclusion regarding Orix's claim against Symrise

96 In the light of the evidence presented, my findings of fact include the following:

(i) The March 2005 lease and the earlier four disputed leases were not genuine leases;

(ii) Orix knew that all the photocopiers that it purchased from Docusearch for the purpose of the four disputed leases were not delivered to Symrise;

(iii) Before the four disputed leases were terminated, Orix knew that it was Docusearch that had been paying *all* the leasing fees under these leases for up to two years;

(iv) Orix should have but did not consult the alleged lessee, Symrise, about the early termination of the four disputed leases but it chose, despite knowing the suspicious circumstances about the four disputed leases, to deal exclusively with Docusearch with respect to the compensation for the early termination of these leases;

(v) Orix securely kept in its own files the March 2005 lease documentation and the "customer copy" of the dubious blank delivery receipt signed by Mr Singh. All these denied Symrise the opportunity to blow the whistle on the non-existent leases at an earlier date;

(vi) As the March 2005 lease allowed Docusearch to "roll over" the compensation due to Orix into the monthly leasing fees payable to Orix under the new lease or enabled Orix to set-off the compensation sum from the purchase price, the lie that Symrise was a lessee of non-existent photocopiers was perpetuated; and

(vii) Orix did not rely on any representation by Mr Singh that the 9 OKI photocopiers had been delivered to Symrise.

97 Orix was clearly the author of its own misfortune regarding the March 2005 lease. At the very least, its own staff and management were guilty of Nelsonian blindness in the face of deafening alarm bells that all was not right with the four disputed leases and that all the problems arising from the four disputed leases were being swept under the carpet of the fictitious March 2005 lease. As such, Orix's claim against Symrise is dismissed with costs.

Orix's claim against SPL

98 Orix added SPL as a defendant in this action after finding out that Mr Singh was not employed by Symrise but by SPL.

99 Why Orix sued SPL, which is not the alleged lessee of the 9 OKI photocopiers, cannot be readily understood. In its Statement of Claim at [12], Orix pleaded as follows:

> In the alternative, [Symrise] on or about 25 August 2005 represented to the Plaintiffs that [Symrise] had taken delivery of the Copiers. The representation was made by [Symrise], ***or by [SPL] as the agent of [Symrise]***, or by [Docusearch] as the agent of [Symrise], ***or by [Docusearch] as the agent of [SPL] who were in turn the agent of [Symrise]*** by signing the

Delivery Receipt in respect of the Copiers. The said representation was made with the intention that the Plaintiffs should sign and enter into the Lease Agreement and purchase the Copiers from the 3rd Defendants.

100 No credible evidence was tendered on how SPL had represented to Orix that Mr Singh was authorised to act on Symrise's behalf in relation to the 9 OKI photocopiers. Neither was any credible evidence tendered to show how Docusearch became SPL's agent for the transaction in question, which only concerned an alleged lease between Orix and Symrise. In any case, the reasons for dismissing Orix's claim against Symrise are such that Orix's claim against SPL has no leg to stand on.

101 For the reasons stated, Orix's claim against SPL is dismissed with costs.

Third party proceedings against Mr Singh

102 As Orix has failed in its claim against Symrise and SPL, the third party proceedings against Mr Singh need not be further considered.

103 No order on costs is made with respect to the third party proceedings.

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