Info Manufacturing Pte Ltd and others *v* Mil-Com Aerospace Pte Ltd and another [2010] SGHC 100

Case Number : Suit No 39 of 2008

Decision Date : 30 March 2010

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Anthony Leonard Netto (C H Chan & Co) for the plaintiffs; Akbar Hussein Mansur Husain and Ramesha Pillai (Jacob Mansur & Pillai) for the defendants.

Parties : Info Manufacturing Pte Ltd and others — Mil-Com Aerospace Pte Ltd and another

Contract

30 March 2010 Judgment Reserved.

Judith Prakash J:

1 There are three plaintiffs in this action. The first plaintiff is Info Manufacturing Pte Ltd ("IFM"), a company incorporated in Singapore whose main shareholders and directors are the second plaintiff, Tan Chor Ping also known as Francis Tan ("Mr Tan" or "Francis Tan"), and the third plaintiff, Mdm Lye Soek Ghin also known as Mei Lye ("Mrs Tan" or "Mei Tan"). The second and third plaintiffs are also husband and wife.

2 The first defendant, Mil-Com Aerospace Pte Ltd ("Mil-Com"), is a company that was set up by the late Dr Diana Young and her husband Mr Eugene Lim Eu Jin. Dr Young was the chairman and CEO of Mil-Com until her death on 20 September 2004. The second defendant, Mil-Com Manufacturing Pte Ltd ("MCM"), is a subsidiary of Mil-Com established in 1997. In February 2003, it changed its name and its objects to enable it to take over IFM's business. At that stage, its directors and shareholders were Dr Young and her husband.

3 This action arises out of the takeover of IFM's business and, as pleaded by the plaintiffs, is a claim for damages for breach of contract and fraudulent and/or negligent misrepresentation.

Background

4 Before 1999, IFM was in the business of providing engineering services. Thereafter, its business expanded into precision engineering for the aerospace industry. For this purpose, IFM invested approximately $2m in the purchase of heavy machinery. Some of these machines were bought outright but the bigger machines were bought on hire-purchase from Hong Leong Finance Ltd ("Hong Leong") and International Factors (S) Pte Ltd ("International Factors") and together referred to as "the hire companies". These hire-purchase liabilities were secured by personal guarantees given by Mr and Mrs Tan. They also gave personal guarantees to support overdraft facilities granted to IFM by Development Bank of Singapore Ltd ("DBS").

5 IFM carried out its business from premises at Blk 164 Kallang Way which had been rented out by the Jurong Town Corporation ("JTC") to a partnership formed by Mr and Mrs Tan under the name of Info Mark Trading.

6 According to Francis Tan, IFM's business was badly hit by the downturn in the aerospace industry after the tragic events of 11 September 2001. By mid 2002, IFM was having difficulty meeting its financial commitments.

7 In July 2002, Francis Tan approached the Economic Development Board for help. He was referred to Dr Young. A series of meetings followed between Francis Tan and Dr Young during which they explored the possible ways in which Mil-Com could provide assistance to IFM.

8 On 7 August 2002, Michael Leung Yau Chee, a senior employee of Mil-Com, and also the managing director of an associated company named SME Techventure Pte Ltd ("SME Techventure") sent Francis Tan an e-mail ("the August 2002 e-mail") making a proposal in relation to the matters discussed by him and Dr Young. The contents of the August 2002 e-mail are significant and I will therefore set it out in full:

> **From**: Michael Leung
>
> **To**: francistan@pacific.net.sg
>
> **Cc**: Diana
>
> **Sent**: Wednesday, August 07, 2002 5:07PM
>
> **Subject**: Info Manufacturing
>
> Dear Francis,
>
> as spoken with you and Michael just now on the business model for aircraft component manufacturing, our prelim proposal is as follows:
>
> (i) A Newco will be formed between Mil-com, Info Manufacturing and SME Techventure. Mil-Com and SME Techventure group will hold majority shares in the Newco. The name of the Newco will be called Mil-com Manufacturing Pte Ltd.
>
> (ii) Newco will operate out of Changi North Mil-com premises.
>
> (iii) Info Manufacturing will transfer entire operating team to Changi North to manage and operate Newco.
>
> (iv) All existing jobs and customers will be transferred to Newco
>
> (v) Newco will lease machinery from Info for production and the machinery will be transferred to Changi North as well.
>
> (vi) Milcom and SMETV will invest $250,000 into Mil-com Manufacturing Pte Ltd for the majority stake
>
> (vii) Milcom could invite other strategic partner to joint [*sic*] in this venture.
>
> This is just a prelim understanding, we would still need to discuss the details once thess [*sic*] have been agreed. Diana, do you have any further comments which we might have missed out.
>
> b.r

Michael

9 Before anything came of this proposal, the plaintiffs were served with legal letters of demand. DBS recalled the overdraft facility extended to IFM and demanded that Mr and Mrs Tan, as guarantors, pay it the amount of $103,578.07 failing which bankruptcy action would follow. Statutory demands were served on them on 10 September 2002. Francis Tan then went to meet Dr Young again to discuss the position with her.

10 On 7 November 2002, Mil-Com issued a letter ("the November 2002 letter") to IFM. The November 2002 letter was signed by Dr Young and is also an important part of the evidence. It reads as follows:

Dear Mr Tan

Ref: **Restructuring plan for the Company**

We have completed a due diligence on Info Manufacturing Pte Ltd (the "Company") and assess its business viability and potential. To keep the Company as a going concern we would recommend a restructuring and 'intensive care' programme immediately.

Mil-Com Aerospace Pte Ltd, a leading aerospace company in Asia, is keen to assist the Company in its business restructuring through the following activities:

1. Infusion of new product and services to enhance its existing aerospace manufacturing business.;

2. Provide financing to the Company through a convertible loan stock of up to five hundred thousand (S$500,000) for the Company to implement its new business line. The convertible loan shall be converted into share capital at an appropriate time;

3. Initiate a capital injection plan at the appropriate time as the accumulated losses of the Company have already wiped out its entire paid-up capital;

4. Provide management, marketing and financial guidance and assistance to the Company to improve its overall position and long term sustainability.

Mil-Com will implement the above restructuring programmes contingent upon the following conditions being met:

1. The Company shall convene an AGM or EGM for the purposes of approving the above mentioned restructuring programmes.

2. Surrender the ownership right of 10,000 ordinary shares of S$1 each from Mr Eng Wee Chong to Mr Tan Chor Ping.

3. Obtain written consent from its financial creditors, which include but not limited to DBS Bank, Hong Leong Singapore Finance, International Factors (Singapore) Ltd and Jurong Town Corporation of their commitment for stay of actions for at least a period of one year while the Company is undergoing restructuring. A proposal to assist the Company in discharging its outstanding liabilities with each creditor will be developed after the Company has obtained such

written consent from its creditors.

4. An agreement governing the terms and conditions of this restructuring being signed between Mil-Com and the Company.

We trust that the above programmes will be appropriate and adequate in facilitating the business turnaround of the Company and we look forward to your acceptance of this offer.

11 With the November 2002 letter in hand, IFM managed to persuade International Factors which was also pressing it for payment to grant it an extension of time. DBS, however, refused and proceeded to initiate bankruptcy proceedings against Mr and Mrs Tan in December 2002. The bankruptcy petitions were fixed for hearing on 30 January 2003. Francis Tan sought Dr Young's assistance again.

12 In January 2003, a crucial meeting took place between Francis Tan and Dr Young. What exactly transpired at this meeting was one of the central controversies of the case. The parties came to an agreement but the exact nature of the agreement reached is hotly disputed. Each party has its own version and the problem has been compounded by the fact that nothing was put in writing and by Dr Young's subsequent death.

13 On 31 January 2003, notices were sent out to customers of IFM. They were told that MCM would "assume the management responsibilities" of IFM and would provide "management and technical expertise to further strengthen [IFM's] capability in providing good services to its customers". In the meantime, Mr Leung had asked IFM for a valuation of IFM's machines, for its auditor to submit its audited accounts for year ending 2002 and for IFM to change its bank signatories to include Dr Young and Mr Eugene Lim as counter-signatories for all cheques and payment orders.

14 On 1 February 2003, MCM employed Francis Tan as its sales manager with a monthly salary of $5,000. At the same time, Mei Tan was employed as MCM's accounts manager and given a monthly salary of $2,000. MCM also occupied IFM's premises at Kallang Way and used IFM's machines to carry on its business which, in effect, was IFM's business carried on in MCM's name. MCM began invoicing IFM's customers for services rendered and goods sold.

15 All this time DBS was insisting that the plaintiffs pay off their outstanding liability fixed at $102,000 (inclusive of interest). On 5 February 2003, it demanded that payment be made by 24 February 2003. Mr Tan spoke with Dr Young and she agreed to make a loan to assist the plaintiffs in settling that liability. On 18 February 2003, Mr Leung suggested that Mr Tan ask DBS to allow payment to be made in three equal instalments on a monthly basis starting 24 February 2003. DBS accepted this proposal and Mil-Com thereafter issued three cheques, each in the sum of $34,000, to enable IFM to meet this commitment. The terms on which Mil-Com's loan was made were set out in an agreement dated 24 February 2003 between Mil-Com, IFM and Mr & Mrs Tan as guarantors. It was a term of this agreement that the same would form part of the "overall Corporate Restructuring Agreement between Mil-Com and [IFM] which the Parties have signed". It should be noted that no overall corporate restructuring agreement had been signed at that date and no such agreement was signed thereafter.

16 Despite the terms of the agreement of 24 February 2003, the defendants maintained that, eventually, the settlement of the DBS indebtedness was financed by the sale of seven machines by IFM to MCM at a price of $130,000. Of the sale proceeds, $102,000 was paid to DBS while the balance was paid to the plaintiffs.

17 In September 2003, MCM moved out of the Kallang Way premises and into Mil-Com's offices in Changi North Street 1. The machines were also relocated and MCM continued to carry on IFM's business from its new location. In March 2004, a company called Mil-Com Precision Design Manufacturing Pte Ltd ("Mil-Com Precision") purchased from International Factors the machines that had hitherto been under hire-purchase to IFM. In April 2004, the same company bought over from Hong Leong the two machines that had previously been hire-purchased to IFM. Thereafter, IFM no longer owned any machines.

18 In September 2004, Dr Young died. Eugene Lim became the CEO and President of Mil-Com. On 1 November 2004, MCM terminated Mr Tan's employment but continued to employ Mei Tan.

19 On 3 June 2005, the plaintiffs issued a letter of demand against the defendants. Shortly thereafter, Mei Tan's employment was terminated. The letter of demand was fairly long and set out the history of the relationship between the plaintiffs and the defendants. It also set out the terms of the agreement that the plaintiffs said existed between them and the defendants as follows:

> 12. After several meetings, the following terms were agreed upon between Dr Young and Leung on behalf of [Mil-Com], and [Mr Tan] on behalf of [IFM] and [Mr and Mrs Tan], which is evidenced in part by a letter dated 7 November 2002 from [Mil-Com] to [Mr Tan] and [IFM], in part by oral agreement and in part by the conduct of the parties to the Agreement.
>
> 13. The terms of the Agreement were that [Mil-Com] would:-
>
> (i) provide financing to [IFM] through a convertible loan stock of $500,000.00 in [IFM] which would subsequently be converted into share capital;
>
> (ii) pending the release of the said sum of $500,000.00, [Mil-Com] would,
>
> (a) provide the necessary funds for [IFM] to settle its outstanding account with DBS of approximately $100,000.00;
>
> (b) provide the necessary funds for [IFM] to settle the outstanding arrears to International Factors and Hong Leong and pay the monthly installments on the hire purchase of the machinery to [IFM] by International Factors and Hong Leong;
>
> (c) provide the necessary funds for [IFM] to settle the arrears of rental due to JTC and to pay the monthly rental to JTC on the lease of [IFM's] premises;
>
> (d) ensure that [Mr and Mrs Tan] would not be made liable on personal guarantees given by each of them to Hong Leong, International Factors and JTC by providing the funds mentioned in Paragraph 13(a), (b) and (c) above;
>
> (iii) take over the management of [IFM] and provide marketing and financial guidance and assistance to [IFM] to improve [IFM's] position and long term sustainability;
>
> (iv) effect a capital injection plan for [IFM];
>
> (v) infuse new products and services to [IFM] to enhance its aerospace manufacturing business;
>
> (hereinafter referred to in this letter as "The Agreement").

20 Paragraph 15 of the letter accused Mil-Com of never intending to carry out its commitments to the plaintiffs and asserted that it was only interested in taking over IFM's assets and customers without any regard for what would happen to the plaintiffs.

21 The complaints made by the plaintiffs were contained in paras 17 to 21 of the letter and read as follows:

> 17. Further in breach of the Agreement, [Mil-Com] failed to do the following:
>
> (a) invest $500,000.00 in the form of a convertible loan stock in [IFM] or at all;
>
> (b) provide funds for [IFM] to settle the outstanding arrears and to pay the monthly installments under the hire purchase agreements with Hong Leong and International Factors save for the aforesaid one installment;
>
> (c) provide funds for [IFM] to pay the outstanding arrears and to pay the monthly rental to JTC save for the August 2003 rental;
>
> (d) infuse new product and services to [IFM] to enhance its existing aerospace manufacturing business;
>
> (e) effect any capital injection plan for [IFM]; and
>
> (f) carry out any acts to strengthen [IFM's] capabilities and ensure [IFM's] financial viability.
>
> 18. In fact, [Mil-Com's] acts as particularised in Paragraph 16 (i) to (ix) above, were calculated to strip [IFM] of its resources in violent breach of the express terms and spirit of the Agreement.
>
> 19. On 1 November 2004, [Mil-Com] even terminated [Mr Tan] of his appointment as Director of Sales and Marketing of MCM, and thereby evinced a clear intention not to fulfill their obligations under the Agreement.
>
> 20. It is patently clear that by their acts, [Mil-Com] as Managers assuming the responsibilities of [IFM], had not acted in the best interest of [IFM] and [Mr and Mrs Tan] but had placed themselves in a position of direct conflict with the interests of [IFM] and [Mr and Mrs Tan] and have unjustly enriched themselves at the expense of our clients.
>
> 21. [Mil-Com's] conduct towards [IFM], and [Mr and Mrs Tan] have been wholly unconscionable. One and a half years after [Mil-Com] took over the management of [IFM], [IFM] has been reduced to a shell and is no longer a financially viable company while both [Mr and Mrs Tan] are liable on the personal guarantees they had given to [IFM's] creditors.

22 The letter ended by demanding that Mil-Com admit liability and pay to the plaintiffs the loss and damage suffered by IFM and the loss suffered by the Tans from the diminished value of IFM and from their continuing liability as guarantors of IFM's creditors. It threatened that proceedings would be started if no reasonable offer was made within seven days. The defendants did not accept liability but the plaintiffs took no further action at that stage. This suit was not commenced until January 2008.

23 When the allegations in the letter of demand are compared with those enumerated in the statement of claim it will be noted that there are material and significant differences in the

allegations. The most substantial of these differences is that whereas the letter alleged a promise to inject funds into IFM, in the statement of claim, the assertion was that funds were to be put into MCM.

The pleadings

The plaintiffs' pleadings

24 The writ was filed on 21 January 2008. It was endorsed with a statement of claim that was amended several times. At the start of the trial, the plaintiffs were proceeding on the basis of Statement of Claim (Amendment No 3) as supplemented by further and better particulars dated 12 September 2008.

25 In the opening paragraphs of the statement of claim, the plaintiffs recited the nature of their business and identified the ten machines (defined as "the Machines") which they had purchased for the purpose of expanding into the aerospace industry. They also gave details of their financing arrangements. They then pleaded that Mr Tan had informed the defendants that IFM required an investor to provide financial assistance for the purposes of:

(a) repaying DBS $100,000;

(b) settling the outstanding arrears and monthly instalments due in respect of the Machines;

(c) paying the outstanding arrears and monthly rental to JTC.

26 In para 11, the plaintiffs averred that by an agreement (this was defined as the "Main Agreement") which was made partly in writing, partly orally and partly by conduct:

(a) the plaintiffs agreed with Mil-Com that they would transfer all the business of IFM together with the Machines and other equipment to MCM in consideration of Mil-Com injecting a sum of $500,000 into MCM for the purpose of settling the outstanding debts of the plaintiffs and providing working capital; and

(b) pursuant to the Main Agreement, the defendants would transfer 10% of the share capital of MCM to the Tans.

27 In para 12, the plaintiffs pleaded that Mil-Com had represented to them and, in consideration of the transfer of IFM's business, had assured/warranted that the sum of $500,000 would be injected into MCM and that:

(a) the said sum would be used to pay the outstanding debts owing by the plaintiffs to Hong Leong, International Factors and JTC;

(b) the balance together with the profits made by MCM from IFM's clients would be used to service the monthly instalments to Hong Leong, International Factors and JTC; and

(c) the said sum would be sufficient to exonerate the Tans from their guarantees.

28 The plaintiffs further pleaded (para 13) that the representation and assurance/warranty were to be inferred from:

(a) the August 2002 e-mail;

(b) a statement by Dr Young in October 2002 that Mil-Com was keen to invest $500,000 into IFM's business to take the business to the next level;

(c) a statement by Dr Young that the sum of $500,000 would be used to pay outstanding debts due to the plaintiffs' creditors; and

(d) the November 2002 letter.

In para 14, the plaintiffs stated that Mil-Com kept chasing the plaintiffs to accept the terms of the November 2002 letter.

29 By para 15, the plaintiffs pleaded that after finalising the Main Agreement, the parties had agreed to a supplementary agreement for the discharge of the DBS indebtedness. In para 16, the plaintiffs said that they accepted the terms of the Main Agreement and supplementary agreement and thereafter:

(a) transferred the business and Machines of IFM to MCM;

(b) passed a resolution on 11 January 2003 to the effect that all cheques drawn on their account with DBS should be counter-signed by either Dr Young or Eugene Lim;

(c) signed the supplementary agreement on 24 February 2003;

(d) engaged valuers to prepare a valuation report on all the Machines; and

(e) prepared and delivered to the defendants a list of all IFM's debtors, creditors, customers and contracts and an inventory of all stock and machinery owned or on hire-purchase by IFM.

30 Paragraph 17 contained an averment that the above actions were done in reliance on the truth of the representations and/or warranties given by the defendants and by para 18 the plaintiffs averred that each of the representations were untrue and that the defendants had breached the contract because:

(a) Mil-Com had never intended to inject and had never injected the sum of $500,000 into MCM;

(b) after MCM took over the business of IFM, the defendants never paid the outstanding liabilities due to Hong Leong, International Factors and JTC and did not pay the on-going liabilities of the transferred business; and

(c) after increasing the liabilities, the defendants made Hong Leong and International Factors surreptitiously enter into forced sale agreements to sell IFM's Machines on hire-purchase to another wholly owned subsidiary of Mil-Com [*ie* Mil-Com Precision].

31 Paragraph 19 of the statement of claim was an averment that the representations were made fraudulently or recklessly. Alternatively, by para 20, the plaintiffs relied on s 2 of the Misrepresentation Act (Cap 390). As a further alternative, in para 23, the plaintiffs averred that in breach of contract, the defendants had failed to do various matters and had also failed to transfer ten percent of the shares in MCM to the Tans. An alternative prayer for unjust enrichment was set out in paras 25 to 28.

32 The plaintiffs filed further and better particulars on 12 September 2008. They made, *inter alia*, the following material averments therein:

(a) that there was an additional term of the agreement with the defendants that the Tans would be paid ten percent of the annual profits of MCM as dividends; and

(b) that they understood that MCM was a newly incorporated company set up as a vehicle to facilitate the Main Agreement and that it was going to inherit all assets and liabilities of IFM and receive $500,000 from Mil-Com.

33 Paragraph 33(f) of the further and better particulars also contained the precise words alleged to have been used by Dr Young in making the warranty and representation relied on by the plaintiffs. This particular stated:

> The late Dr Diana specifically assured the 2nd Plaintiff that once the business and equipment of the 1st Plaintiff is transferred to the 2nd Defendant; the 2nd Defendant will use the capital of $500,000 injected by the 1st Defendant into the 2nd Defendant to pay the arrears as stated under the guarantees given in Answer 37 below; and the monthly instalments would be paid by the 2nd Defendant to the 1st Plaintiff so that the 1st Plaintiff can pay International Factors, Hong Leong and JTC the monthly instalments.
>
> When the 2nd Plaintiff asked the question "what if the 2nd Defendant does not pay; you know my wife and me are guarantors.", the late Dr Diana assured the 2nd Plaintiff that all the monthly instalments would be paid and to ensure the same the 1st Plaintiff should invoice the 2nd Defendant every month for the monthly instalments. The 1st Plaintiff kept invoicing the 2nd Defendant every month for about two (2) years but the 2nd Defendant never acknowledged receipt.

The defence

34 The material averments of the defence are as follows. First, it was asserted (para 8) that IFM was financially insolvent in June 2002 as it could not pay amounts due to JTC, International Factors, Hong Leong, DBS and the CPF Board. The Tans were also facing demands on guarantees that they had signed. This was the background against which Mr Tan approached Dr Young for assistance in July/August 2002. The August 2002 e-mail was sent based on an initial proposal for Mil-Com and SME Techventure to invest jointly in IFM. This proposal was never carried out and had lapsed. The August 2002 e-mail could not be reasonably construed to impose a legal obligation on Mil-Com to invest in IFM or to inject $500,000 into MCM.

35 In para 10, the defendants averred that Mil-Com was never keen to invest in IFM because of its poor financial situation but the Tans requested financial and management assistance from Mil-Com. For this purpose, it was averred (para 11) that the Tans offered the machines to the defendants as security and gave their personal guarantees as further security. Further (para 12), the Tans offered the defendants the customers and existing contracts of IFM and insisted that they themselves continued to be employed. The defendants agreed (para 13) to manage the business of IFM and to render financial assistance so long as the plaintiffs were able to persuade their creditors to withhold legal proceedings. To assist the plaintiffs in this effort, Mil-Com issued the November 2002 letter for the plaintiffs to show their creditors.

36 In para 15, it was stated that on 3 January 2003, DBS gave the Tans an ultimatum and JTC was also pressing for payment. In the light of the pressing claims, IFM agreed with the defendants in late January 2003 as follows (para 16):

(a) MCM would start managing and take over the business of IFM with effect from 1 February 2003;

(b) MCM would be entitled to deal directly with IFM's customers and to use the Machines;

(c) all income must be used to pay the running cost of the operations. Invoices were to be issued in the name of MCM and the Tans would be given five percent of the nett profit after tax;

(d) Mr and Mrs Tan would be employed as sales director and accounts executive respectively;

(e) the defendants would extend loans and advances to IFM in such amounts as they deemed fit; and

(f) Mr and Mrs Tan would give Mil-Com an option to purchase all their shares in IFM for a nominal sum of $1. The Tans would also allow MCM to deal directly with IFM's customers.

37 Pursuant to the agreement made, MCM took over management of IFM's business on 1 February 2003 (para 17). Further, the defendants agreed to lend $102,000 to IFM to settle the debt to DBS and the Tans guaranteed repayment of the defendants' loan (para 18). Notwithstanding the efforts made, IFM could not hold back the creditors' actions against the plaintiffs and therefore agreed to sell MCM seven of the Machines for $130,000. This amount was paid to settle DBS's claim and other debts of IFM. As of February 2003, MCM was the legal owner of seven machines (paras 19 and 20).

38 In para 22, it was pleaded that MCM's business did not flourish. Mil-Com gave financial support by way of a capital injection of $500,000 and this was made because of the financial needs of MCM and not pursuant to any agreement made with the plaintiffs. By October 2003, International Factors and Hong Leong were pressing for payment of instalments due to them and the defendants were invited to purchase the machines subject to the hire-purchase agreements with these companies. Paragraphs 24 – 27 of the defence contained the defendants' pleading that on 12 November 2003, Mil-Com offered to buy one machine from International Factors for $300,000 and another from Hong Leong for $73,000 and that these offers were accepted in March 2004. The machines were bought in the name of its subsidiary, Mil-Com Precision. Mil-Com stated that the sales were done in an open and transparent manner befitting two parties dealing on an arm's length basis.

39 In para 28, the defendants explained that MCM had terminated the employment of Mr Tan in November 2004 because of his incompetence as a sales director and in para 29, they averred that MCM terminated the employment of Mei Tan in May 2005 because she was in a position of conflict of interest.

40 In various paragraphs of the defence, the defendants denied that the Main Agreement contained the terms asserted by the plaintiffs in the statement of claim or the additional terms contained in the further and better particulars. They also denied that either the August 2002 e-mail or the November 2002 letter created any legal obligation. As far as the November 2002 letter was concerned, the plaintiffs were not able to satisfy the conditions precedent in the same and in any event, the terms and conditions of the letter were abrogated by subsequent events/ agreements. The defendants further denied that they had made any of the representations set out in the statement of claim or that they had made any representation in order to induce the plaintiffs to enter

into any agreement with the defendants.

Amendments during trial

41 In the course of the trial, the plaintiffs made two (2) further applications to amend the statement of claim. Most of these amendments related to quantum. I allowed the applications in part. Statement of claim (amendment no 5) was filed on 9 April 2009. In a new paragraph, numbered 23A, the plaintiffs gave further particulars of breach and claimed special damages against the defendants which they quantified as follows:

(a)	Monthly instalments payable to International Factors from February 2003 to March 2004 (14 months)	S$327,006.92
(b)	Monthly instalments payable to Hong Leong from February 2003 to April 2004 (15 months)	S$94,935.43
(c)	For the rental payable to JTC from February 2003 to September 2003 except for the August 2003 rental which the second Defendant had paid (7 months)	S$50,004.92
	Total	S$471,947.27

42 In statement of claim (amendment no 3), the plaintiffs had asked for various reliefs including orders that the defendants be ordered to transfer ten percent of the second defendant's shares to the second and third plaintiffs and that the defendants pay the plaintiffs damages for breach of contract. In the alternative, the plaintiffs wanted declarations that they were entitled to rescind the main agreement and the supplementary agreement. In statement of claim (amendment no 5), the reliefs claimed were simplified to general damages to be assessed and special damages in the sum of $471,947.27. Attached to the pleading were three schedules setting out the details of the specific amounts claimed.

The issues

43 In their closing submissions, the plaintiffs stated that the terms of the contract between the parties were as contained in paras 11, 12, 13, 14, 15, and 16 of the statement of claim. This means that the plaintiffs are contending that the contractual terms were that:

(a) The plaintiffs would transfer all business of IFM to MCM together with its machinery and equipment;

(b) Mil-Com would inject $500,000 into MCM;

(c) The defendants would transfer 10 percent of the shares in MCM to the Tans;

(d) MCM would use the $500,000 to pay the outstanding debts of the plaintiffs owing to Hong Leong, International Factors and JTC and the balance, together with the profits made by MCM from IFM's clients, would be used to service the monthly instalments due to these three creditors;

(e) The sum of $500,000 would be sufficient to release the Tans from their guarantees;

(f) The plaintiffs agreed to pledge all their unencumbered machines to MCM for a loan not exceeding $130,000 of which $102,000 would be paid to DBS and the other $28,000 would be treated as a friendly loan.

44 The defendants, in their final submissions, denied that the terms of the contract were as alleged by the plaintiffs or that they were in breach of the same. As was clear from their amended defence, their stand was that the terms of the contract between the parties were as set out in [36] above.

45 The main issues before me are, therefore, what the contractual terms were and once these terms are established which of them, if any, were breached by the defendants. As there was no document which encapsulated all the agreed contractual terms, I have to examine the evidence carefully to determine what it was that the parties actually agreed to.

The Evidence

The evidence of the plaintiffs

46 There were only two witnesses for the plaintiff: Francis Tan and Mei Tan. Mr Tan was the more substantial witness as it was he who took a leading role in IFM and negotiated with Dr Young.

47 In his affidavit, he gave an account of his introduction to Dr Young. The first meeting was followed by further discussions. Mr Leung was present at some of these. After the meeting on 7 August 2002, Mr Leung sent out the August 2002 email confirming Mil-Com's intention to invest in IFM. However, a few weeks later, Dr Young told Mr Tan that she wanted to take over IFM and inject $500,000 into it to take IFM to the next level. In this regard, Mr Tan said that he was relying on the November 2002 letter which was essential for his case.

48 In return, Dr Young offered to give Mr Tan a ten percent stake in the new company that was to be formed to takeover IFM (i.e. MCM). Dr Young assured Mr Tan that the capital injection would be sufficient to clear outstanding arrears with International Factors, Hong Leong, JTC and DBS and the balance of about $200,000 would be used for working capital. Further, the Tans would be freed from guarantees they had given for IFM. She also said that all of IFM's staff would remain and Mr Tan would be employed as Sales & Marketing Director of MCM at a monthly salary of $5,000 and Mei Tan would be employed as an administrator at a monthly salary of $2,000.

49 Some time in January 2003, Dr Young and Mr Tan met and discussed the terms of the Main Agreement. Dr Young proposed that the DBS debt be settled as per the terms of the supplemental agreement in exchange for IFM transferring all the unencumbered machines to MCM. She also proposed to transfer all IFM's business to MCM. Mr Tan expressed his concern because this was a shift back to the August 2002 email and he reminded Dr Young that the liabilities were under IFM's name with him and his wife as personal guarantors. At that stage, Dr Young assured Mr Tan that there was no reason to be concerned and MCM would pay all arrears in monthly instalments. She specifically assured him that once the business and the equipment of IFM had been transferred to MCM, MCM would use the injected capital of $500,000 to pay the arrears.

50 Mr Tan asked Dr Young what about the monthly instalments that he and Mei Tan had guaranteed. The exact words uttered by Dr Young in reply to his question were "there is no need to worry about the monthly instalments or the guarantees, we will make sure all are paid and you will get 10% of the shares in MCM".

51 Dr Young then told Mr Tan to "get Info Manufacturing to invoice MCM every month for the instalments and we will use the capital injection of $500,000.00 and the monthly profits made by [MCM] to pay the instalments owing by the Plaintiffs to H.L, IF and JTC". Mr Tan agreed and in reliance upon this, the Tans passed a resolution on 11 January 2003 to make Dr Young and her husband signatories to IFM's account with DBS. This gave Dr Young full control over all monies that came into IFM.

52 In the meantime, DBS was pressing IFM to make full payment of the amount due. When it was clear that DBS would not accept any reduced amount, Dr Young agreed to extend a loan of $102,000 to help IFM pay DBS. On 18 February 2003 Mr Leung urged the plaintiffs to persuade DBS to accept the amount due of $102,000 by way of three equal monthly instalments starting on 24 February 2003. For this purpose, Mil-Com issued 3 cheques of $34,000 each to IFM to pay DBS. Apart from settling the DBS indebtedness, the defendants paid only one instalment to each of International Factors and JTC amounting to $21,742.71 and $5410.29 respectively. No payment was made to Hong Leong. From February 2003 onwards, the defendants only paid the salaries of the IFM workers. They did not pay for the use of the machines even though they serviced IFM's clients and received fees for the same.

53 After agreeing to pay DBS, Dr Young insisted that IFM pledge its fully paid machines to MCM. This led to the agreement of 24 February 2003. Although the agreement was dated 24 February 2003, Mr Tan said that it was signed on 21 August 2003. He had also carried out a valuation of the machinery pledged for the loan of $130,000 and the same had been valued at $218,000.

54 In the meantime, on 31 January 2003 Mil-Com had sent out letters to IFM's major customers stating that MCM would assume the management responsibility of IFM from 1 February 2003. From then onwards, MCM invoiced all IFM's clients. At the same time, the Tans were employed by MCM in the agreed positions.

55 Mr Tan also stated that on 21 February 2003 Dr Young instructed IFM to pass a resolution stating that it would enter into a financial transaction with MCM to obtain funds from MCM to discharge its existing indebtedness to DBS and in consideration thereof it would sell its unencumbered machines to MCM.

56 On 14 July 2003, JTC sent IFM a demand letter in respect of outstanding arrears of rental. Mr Tan told Dr Young that JTC wanted to seize the machines because the defendants had not paid the arrears or the ongoing rental after they took over IFM's business. Dr Young became worried and gave instructions for the machines to be transferred from the Kallang Way premises to Changi North where Mil-Com was located. On 22 September 2003, the entire staff, machinery and office documents of IFM were relocated to Mil-Com's premises.

57 Without informing him, on 13 November 2003 and 15 March 2004, Mil-Com wrote letters to International Factors asking if it could purchase the machines then on hire purchase. After the transaction was completed, International Factors demanded that the balance ($426,562.67) due under the hire purchase agreement be paid by the plaintiffs. On 6 April 2004, Hong Leong sold the machine that it had hired to IFM to Mil-Com Precision. This was done without the knowledge of the Tans. Thereafter, Hong Leong claimed the balance of $209,614.86 from the Tans. As for JTC, rental continued to run until the machines were removed and the premises vacated.

58 Mr Tan asserted that it took time for him and Mrs Tan to realise that they had been cheated. Dr Young kept promising that payment would be made. Mrs Tan chased for payment and, in her email of 23 April 2004, Dr Young said that she had instructed Mr Leung to pay rental due to JTC for August and September 2003. However, rental for August and September 2003 was never in fact paid. As a

result, Mr Tan started tape-recording some conversations. In his affidavit, Mr Tan set out certain portions of the transcripts of such recorded conversations as evidence of admissions made by the defendants, in particular, an admission by Mr Lim that Dr Young had told him to pay the plaintiffs $70,000.

59 Under cross-examination, Mr Tan admitted that he had had 20 years experience in business and that he was familiar with agreements and the need to document any agreement. He admitted too that he had had the services of financial and legal advisors and agreed that he would be robust in defending himself if he felt that his rights had been infringed. He steadfastly denied that IFM was insolvent in 2001 even though in September 2004, he had written to all his creditors that as of 2001, IFM had collapsed under a mountain of debts. He explained that in fact IFM had not collapsed but would have collapsed if the creditors had taken action against it which they did not do at that time. He further admitted that in 2001, IFM could not afford to pay its creditors fully but asserted that he could have done so if he had sold off the unencumbered machines. He had to admit, however, that in June 2002, he could not afford to pay the sum of $118,903.83 which DBS was then claiming against him.

60 Mr Tan was questioned about the two documents that he relied on to show the terms of the Main Agreement. He agreed that the August 2002 email was not the first agreement between himself and the defendants. He said it was the first offer made and it was not something that he had agreed to. Subsequently, he agreed that his statement in his affidavit that the August 2002 email confirmed the defendants' intention to invest in IFM was incorrect because the proposal was to put the money into a new company. He also agreed that as of 7 August 2002 there was no agreement between the plaintiffs and Mil-Com.

61 After 7 August 2002, Dr Young had come to see him and presented him with a new proposal. That was the proposal that was contained in the November 2002 letter. Mr Tan agreed that the purpose of the November 2002 letter was for him to show it to the plaintiffs' creditors to persuade them to give the plaintiffs time to reorganise IFM and then pay off their debts. He further agreed that he had shown the November 2002 letter to the plaintiffs' creditors in order to buy time. He conceded that there was nothing in the letter to show that the defendants had agreed to pay off the plaintiffs' outstanding liabilities. He also agreed that there was no mention of a transfer of a 10% shareholding in the November 2002 letter. Further, it did not state that either Mil-Com or MCM was supposed to exonerate the Tans from their personal guarantees and liabilities. He agreed that one of the conditions which Mil-Com had put in the November 2002 letter, which had to be fulfilled before Mil-Com would implement the restructuring programme, was that the plaintiffs were to obtain written consent from their creditors that there would be a stay of action for at least one year. Mr Tan confirmed that he had not been able to obtain such a written consent from all the plaintiffs' creditors. He confirmed further that he knew at the time that the November 2002 letter came in that there was no agreement at that stage.

62 He was asked why he had not insisted on a written agreement to reflect the terms agreed on at his meeting with Dr Young in January 2003. His response was that he was relying on the November 2002 letter. He subsequently agreed that the November 2002 letter could not be the Main Agreement that he made with the defendants. Later in his testimony, Mr Tan said that he did not ask for a written agreement because he "trusted" Dr Young. This was rather odd testimony as he had earlier stated that when Dr Young made the January proposal for the transfer of IFM's machinery to MCM, he had had his doubts about the viability of the proposal.

63 When he was asked to explain why he had not written to Dr Young confirming the points discussed at their meeting, his reply was rather incoherent. He said:

Witness: Okay, I- - I never write is because I thought that the 7th of November letter, she's going to pump half a million to Info Manufacturing, so she based on that is that she changed - - she changed her - - her decision. Instead of pumping into Info Manufacturing, she want it to be in the Mil-Com - - Mil-Com – Manufacturing.

Court: Yes, so the 7th November letter said $500,000 to the 1st plaintiff.

Witness: Yes, your Honour.

Court: But the conversation was $500,000 to the 2nd defendant.

Witness: Yes, your Honour.

Court: So didn't you write to her and say, "We confirm now it's not going to be 500 to the 1st plaintiff, it's going to be 500 to the 2nd defendant and the 2nd defendant will use this to pay off all the liabilities".

…

Witness: No, I---I didn't write to her, your Honour.

Court: Why didn't you write to her?

Witness: Yah, because by---by that time, you know, there are so many creditors after me, so---so I take her words.

It was pointed out to Mr Tan that the only similarity between Paragraph 30 of his affidavit which set out Dr Young's January 2003 offer and the contents of the November 2002 letter was in relation to the amount of $500,000. He then agreed that after the meeting of January 2003, the November 2002 letter was not a crucial document anymore.

64 Mr Tan went on to say that the Main Agreement was more in line with the August 2002 email. He agreed, however, that the August 2002 email did not make reference to many of the terms in the Main Agreement as set out in the statement of claim. He also stated that when Dr Young made the offer to him in January 2003 he did not have regard to the terms of the August 2002 email "because that was over already". Mr Tan said he had told Dr Young that the offer was not good for him and Mrs Tan because what the defendants wanted was for the plaintiffs to transfer the machines and business to the defendants. They were going to take the assets and leave the liabilities to the plaintiffs. He repeated his assertion that when he had brought this concern up to Dr Young, her response was that he should not worry because the half a million dollars would be enough for the plaintiffs to pay the creditors and to have $200,000 for running capital.

65 During cross-examination, counsel drew to Mr Tan's attention an e-mail dated 18 February 2003 from Mr Leung. This e-mail was headed "Outstanding banking facilities with DBS Bank" and it read *inter alia* as follows:

> … As Mil-Com is only going to provide you a short term assistance in terms of finances and management expertise to help [IFM] tie [*sic*] over its present predicament, we advise you to plan your finances prudently, and in a carefully balanced manner.
>
> …

We need to bring this issue upfront, openly to your creditors as recently, while we were being involved in some of your meetings with your creditors, we understand that they are all very curious to know how [IFM] will settle with DBS. We have also agreed that in the course of assisting [IFM], the following three principles have to be applied:

1. The finances should be used for turning around the company and shall be used for generating income, and not for fulfilling all outstanding financial obligations of [IFM].

2. [IFM] should convince its creditors to also assist a helping hand [*sic*] to help the company during this difficult period. Creditors should also chip in to help the company while we are coming in as a 3rd Party to give [IFM] a further boost.

3. All creditors should be ranked on a *pari passu* basis.

…

66 Mr Tan was asked whether he agreed that the contents of the February 2003 letter were very different from his alleged agreement with Dr Young in January 2003. Mr Tan disagreed and said it was no different because with half a million dollars coming in obviously he would not ask Mil-Com to use it to pay all his creditors. It was then put to him that the statement in the letter, that finances should be used for turning around the company and generating income and not for fulfilling the outstanding financial obligations of IFM, was a direct contradiction of the alleged agreement with Dr Young. Mr Tan disagreed again. Subsequently he said that the letter was not totally different from the Main Agreement. When he was asked how the letter was consistent with the Main Agreement, Mr Tan replied:

> Witness: Well, this agreement is that, you know, when the money come in, of course, they have to pay DBS to --- in order that Info would not go bankrupt or go wind up. This is what from this letter, you know, because they said that the finances that they come in, of course the rest it is for running capitals. …

67 The witness obviously found it difficult to reconcile the assertion he had made that the $500,000 to be injected would be used to settle outstanding liabilities with the language of the February 2003 letter which indicated that assistance to pay off outstanding liabilities would be limited and funds should be devoted as far as possible to generating new business. Mr Tan was asked why he had not raised objections to the contents of the letter since they did not reflect the Main Agreement and his reply was that he did not do so because he thought half a million dollars would be coming in once the defendants started running the business.

68 Mr Tan stated that the purpose of the Main Agreement was to enable IFM to continue as a going concern. I asked him how the company was to achieve that if its machines and business were transferred to MCM. His reply was that Dr Young had agreed that once the transfer took place, in order to enable IFM to pay the monthly instalments due to International Factors, JTC and Hong Leong, IFM should bill MCM for the use of the machines. So the agreement was that MCM would pay IFM and IFM would then use the funds to pay its creditors. He agreed therefore that these bills were to be paid from the income generated by the business after the takeover by MCM.

69 In relation to IFM's obligations to the JTC, Mr Tan testified that Mr Leung had helped him negotiate with the JTC to try and obtain an agreement for instalment payments in relation to the

outstanding arrears. He was asked why such negotiations had taken place when he could have told Mil-Com that it was responsible to pay all these arrears since Dr Young had agreed that the defendants would take over IFM's liabilities. His response was that Mr Leung had helped in the negotiations because he recognised MCM's liability and wanted to obtain a longer time frame to settle the same. Further, the machines were located at IFM's premises rented from the JTC and if JTC wanted to enforce recovery, it could seize the machines. Therefore, in order to keep the business from being interrupted, the defendants had to negotiate with JTC on his behalf.

70 Mr Tan accepted that by April or May 2003, negotiations with JTC had broken down. He also agreed that he was aware as early as April 2003 that MCM intended to move out of the Kallang Way premises. He was asked why then he had not written to the defendants in April and enquired what they intended to do about the arrears due to JTC. His somewhat incomprehensible response was that he did not write because all the while he thought that Mil-Com was going to pay but until May 2003 it had not paid even one instalment. So he asked rhetorically what it was that he could have done.

71 Mr Tan asserted that he stopped trusting Dr Young in March 2003 when the defendants failed to pay the rent due to JTC. Notwithstanding this distrust, he admitted that he had not raised the issue of payment of JTC's arrears until April 2004. At that stage, he had sent Dr Young the draft of a letter to be written to the JTC. However, in that letter, he had not mentioned that she had agreed that the defendants would pay all the arrears due. He explained that at that time, he had been at the defendants' mercy and he felt that if he talked to her and she said that she was not going to pay there was nothing he could do. If Dr Young "pulled the plug" the whole deal would be over and he and his wife would be bankrupt.

72 Mr Tan agreed that Dr Young had recommended in December 2003 that IFM should be wound up because she thought that there was no hope of salvaging it. When asked why he did not remind Dr Young of her agreement to pay IFM's liabilities, he went on a long diatribe about all the things that had happened, but did not give an explanation for his omission. Some time later he said that he had not written because at the time he had too much debt and too many things to take care of. It was pointed out to him that on 12 December 2003, he had been able to write and protest verbally to Richard Yuen about the manner in which his leave application had been handled. His response was that it was a different matter dealing with a colleague like Richard Yuen. If he had raised anything with Dr Young, she would have cut him off.

73 Mr Tan agreed that the first time he had raised objections to the defendants' conduct was in his letter to them of 24 November 2004. He acknowledged that, in this letter, he had not referred to the proposed investment of $500,000 by Mil-Com in MCM or the transfer of ten percent of the share capital to himself and his wife. It was suggested to him that he had not mentioned these important points of agreement because no such agreement had existed. His response seemed to be that he wanted the defendants to know that they had taken away his business and his customers and had terminated his employment. Mr Tan was, however, rather confused and I am not sure that he appreciated or answered the question. The exchange that took place at this time shows the flavour of his evidence:

> Q: Now I am suggesting to you, Mr Tan, again, that the first time that you replied in written form, you failed to mention these important points of agreement because there was no such agreement between you and Dr Diana Young. You had an opportunity here to mention it.

A: Yes, as I said, the 7th November letter was not an agreement, because the agreement was Dr Diana on the earlier of January 2003, she promised me that she will pay, pump in half a million and pay all the --- all the arrears and that letter was not an agreement. That's why I never put this in and this was drafted ---

…

Court: The letter might not have been an agreement but you are now saying that in January, there was an agreement, January 2003, yes?

Witness: Oral agreement.

…

Court: So the question is why did you not mention the oral agreement in your letter in November 2004?

Witness: Yah, this is because I want them to know is that you know, they --- they have take all my business away, my customer away and they terminate me. That that is the point that, you know, it is also breach of my agreement, the agreement.

Mr Tan subsequently confirmed that he had seen a lawyer who had helped him draft the letter.

74 In relation to the machines on hire-purchase, Mr Tan had said in his affidavit that these were sold off without his knowledge or consent. His attention was drawn to an e-mail dated 25 October 2003 in which Dr Young had told Mr Leung and Mei Tan that Hong Leong had received Mil-Com's letter of offer to purchase the machine from Hong Leong. In the same e-mail, Dr Young stated that she knew that the Tans were going through an emotional state due to the impending repossession of the machine and that she would personally see to the solution and she wanted them to entrust the problem to her to help it be resolved in the best possible manner. Mr Tan agreed that as of October 2003, he knew that an offer to purchase had been made. He was asked why he had not objected to this and his response was that he did not complain because the defendants had the right to offer to purchase the machines from the hire companies. The machines were not his because the plaintiff was in arrears of many instalments. He then asserted that whilst he knew about the offers, he did not know whether or not the machines were actually purchased. That was the point that he did not know whether the hire-purchase companies had sold the machines. In this connection, he also agreed that he had never asked Michael Leung what had been the hirer companies' response to the defendants' offers to buy the machines.

75 Mr Tan was questioned about his meeting with Eugene Lim on 27 October 2004. Mr Tan had taped this conversation. He stated that the purpose of the meeting was to tell Mr Lim that he had many creditors chasing him and that he and his wife needed money otherwise they would definitely be made bankrupt. He told Mr Lim that the defendants should pay whatever was due for the rental and the machines at the time when they took over IFM's business and he would then walk away. Unfortunately, Mr Lim only offered him $70,000. At the meeting he did not mention the agreement he had with Dr Young because she had already died. He thought that since she had not honoured her promises previously, there was no point mentioning them to her husband. He agreed that he had not mentioned either the $500,000 investment or the transfer of the ten percent shareholding. He also stated that he had given a tabulation prepared by Mei Tan to Mr Lim at the meeting. This tabulation showed the amounts due from the defendants for rental and hire-purchase of the machines. This tabulation was not mentioned in Mr Tan's affidavit.

76 One issue that took up some time during cross-examination related to the plaintiffs' disclosure in early March 2009 of certain invoices which they said IFM had rendered to MCM from March 2003 to July 2004. These invoices covered the amounts which the plaintiffs said had to be paid to them each month by the defendants for the use of the machines and the premises. There were five invoices issued each month: four were issued for lease of machinery and the fifth one was issued for factory rental. According to Mr Tan, these invoices were prepared by Mei Tan each month as they fell due. He would sign the invoices and they would then be tendered to MCM at the end of each month. When shown the documents, Mr Tan agreed that the invoices from March 2003 up to July 2004 were in running order. He was also shown invoices that had been generated for the lease of machinery for the period between April 2004 and July 2004. Mr Tan agreed that he did not sign these invoices because the machines had already been sold. He could not, however, explain why Mei Tan had continued to produce the invoices when he had instructed her to cease billing MCM in respect of these machines.

77 The next witness was Mei Tan. In her affidavit, she confirmed that she had read her husband's affidavit of evidence-in-chief and agreed with its contents except that she had not been present at the meeting between her husband and Mr Lim. Mrs Tan confirmed that she was aware of the August 2002 e-mail and the November 2002 letter. She and her husband had relied on the latter when they decided to go along with Dr Young's plans. Mrs Tan confirmed that she had not been present during the meeting between Dr Young and her husband in January 2003 when the Main Agreement was reached.

78 Most of Mei Tan's affidavit related to her calculations to support the plaintiffs' claim. She produced a table showing how much she calculated MCM had made from IFM's clients after the salaries and CPF payments of its workers had been deducted. The table also showed the monthly instalments payable to the hire companies between February 2003 and March/April 2004 that the defendants had failed to pay and eight months' rental payable to JTC.

79 In para 18 of her affidavit, Mei Tan said that the damages suffered by IFM, Mr Tan and herself were one and the same. She said that the indebtedness of the plaintiffs that was current as of the date of her affidavit (3 February 2009) was as follows:

(a) composition amount of $40,000 owing to International Factors which was being paid by monthly instalments of $200;

(b) $209,614.86 owing to Hong Leong which was being paid by monthly instalments of $500 from each of the three guarantors; and

(c) $117,116.83 owing to JTC for rental being paid by monthly instalments of $300.

80 Under cross-examination, Mei Tan agreed that by January 2002, IFM's financial situation was bad. She confirmed that she was not present at any meeting between her husband and Dr Young during the period from July 2002 to December 2002. Nor had she been at the January 2003 meeting. Accordingly, she had no personal knowledge of the agreements made with Dr Young and relied entirely on what her husband had told her.

81 In relation to her table showing MCM's expenses, she confirmed that she had only disclosed what MCM had paid for workers' salaries and CPF contributions. There was no indication of other costs which MCM had borne including payment to suppliers, payment for stocks and utility expenses. Her explanation was that apart from the salaries, the other expenses were handled at a different level and she was not aware of the costs. She agreed that, therefore, she could not say whether MCM had, from February 2003 to November 2004, been making money or losing it.

82 In relation to the invoices, Mei Tan confirmed that she had prepared them on their respective dates. She had continued to generate invoices for the months from April 2004 up to July 2004 in the hope that her husband would instruct her that she could bill MCM for that period. She had done this despite knowing that the machines had been sold. She also confirmed that these invoices had not been handed to IFM's auditors and had not been reflected as part of the income earned by IFM. Mei Tan confirmed that her affidavit had been filed on 4 February 2009. She was asked why she had not included the invoices and a statement as to how they had been drawn up in the affidavit. Her response was "Maybe it is my mistake".

83 On the fourth day of the trial, the plaintiffs made an application to adduce additional documents. These were a tabulation by Mei Tan as to how she had derived the figures in the invoices, a recent statement of account from JTC, recent statements of account from Hong Leong, and original invoices sent by International Factors. I permitted the plaintiffs to adduce the tabulation but disallowed production of the other additional documents. The plaintiffs were then given leave to recall Mrs Tan to testify on the tabulation.

84 When Mrs Tan came on to the stand again, she confirmed that she had prepared the tabulation and said that she had done so in order to work out the monthly instalments due and also the interest that the plaintiffs had incurred. She was then cross-examined on the same. Her evidence was that she had used the tabulation to produce the 79 invoices which IFM had rendered to MCM. She agreed that each invoice was prepared on the last day of the month and then given to her husband for signature. She was shown an invoice dated 28 February 2003 and she confirmed that this invoice indicated the amount owing as at that date. The witness was then referred to the tabulation and it was pointed out to her that in respect of this invoice, the tabulation showed the monthly instalment as being $18,670 and then there were a number of figures for interest including figures for the period from 4 February 2003 to 26 February 2003 and from 27 September 2003 to 29 October 2003. Inclusive of interest, the total amount came up to $19,716.96 which was reflected in the invoice dated 28 February 2003. She was asked to explain to the court how it was that she had been able to calculate interest up to 29 October 2003 in an invoice which was dated 28 February 2003. In answering this question, Mrs Tan admitted that the invoice was actually prepared after 29 October 2003. It was then put to her that when she gave evidence earlier that the invoice had been prepared at the end of the month, she had not been telling the truth. Mrs Tan denied this. She stated that every month she kept a record in her computer, and this was the principal plus the interest. Then when her husband told her that they should bill MCM in October 2003, this was how she worked out the figure. I asked whether Mr Tan had told her to bill the February charges in October 2003 and her reply was that he had told her to bill the interest in October 2003. She then admitted again that the invoice was prepared in October 2003. Mrs Tan was asked whether she had prepared all the invoices in October 2003 and her reply was not all, only the invoices for the period from February 2003 to October 2003.

85 She was shown another item in her tabulation in respect of an invoice dated 24 February 2003 for a monthly instalment of $3,171.82 and interest payable of $3,468. She confirmed that this sum of interest was calculated up to 24 April 2004. Mei Tan said that this invoice was prepared in April 2004 and her explanation was:

> Because you see, uh, when I bill them, they don't acknowledge so I just add on every month then I re --- so-called bill another time but using the same number invoice.

Mei Tan then admitted that she was saying that she kept sending MCM invoices every month but these invoices bore the same numbers as the previous ones. Upon further questioning, the witness admitted that the schedule of invoices reflected in the statement of claim (amendment no 4) was

wrong. She was also unable to explain why she did not hand the tabulation to the plaintiffs' counsel in the course of preparation for the trial although the tabulation had been prepared either in October 2003 or April 2004. The best explanation she could make was that she thought that that tabulation was not important.

86 After hearing Mrs Tan's evidence on the invoices and the tabulation, I was left with the clear impression that these documents were afterthoughts, that they had not been prepared contemporaneously with the dates that they bore and, certainly they had not been submitted to the defendants on those material dates. It appeared to me that the documents had been produced to help the plaintiffs bolster their case and to substantiate their assertion that Dr Young had asked them to invoice the defendants on a monthly basis.

The evidence of the defendants

87 There were three witnesses for the defendants: Mr Eugene Lim Eu Jin, Mr Han Tat Fong and Mr Leung Yau Chee Michael.

88 Mr Lim had no direct involvement in the transactions between the parties. In his affidavit, Mr Lim gave the history of the defendants. He had been the chief operating officer in charge of Mil-Com's operations before Dr Young's death. Mr Lim could not recall when and where he first met the Tans. He did recall that Dr Young had told him that she was trying to assist the Tans because IFM was in financial difficulty. Some time in December 2002, Dr Young stated that it was not possible to save IFM because its liabilities were too high and its creditors were not willing to give them time to solve the problems. Dr Young asked him whether the defendants should invest in IFM and Mr Lim's response was that it was pointless to invest in a company which could not be saved. In January 2003, Dr Young told him that DBS had instituted bankruptcy proceedings against the Tans and that she had agreed that MCM would run IFM's business. Her idea was for MCM to give a share of the profits to the Tans to settle IFM's previous debts. Mr Lim asked Dr Young whether MCM was paying IFM for taking over its business and her response was there was no takeover of the business as such. IFM would cease doing business with its customers and MCM would execute the existing and future contracts of those customers. MCM would employ the Tans to assist it in running the business.

89 At the end of January 2003, Mr Lim learnt that MCM had completed its arrangements with the plaintiffs. MCM would take over and run IFM's business from 1 February 2003 from IFM's Kallang Way premises. All of IFM's former employees would be employed by MCM. Since Mr Lim was then in charge of Mil-Com's operations, he sat in for the first few management meetings with the Tans. Thereafter, he left the operations to the various managers of MCM and relied on the reports given to him by MCM's managers to assess MCM's progress.

90 Mr Lim said he was aware of problems in running MCM in the light of on-going tension between Mr Tan and MCM's own managers. It became apparent that the "new" business was not doing well and that revenue generated could not meet the running costs. IFM's creditors were impatient and wanted immediate repayment of their debts.

91 Some time in September/October 2003, Dr Young told Mr Lim that she was no longer prepared to allow the then current state of affairs with MCM to continue. The business needed constant financial support from Mil-Com. She stated that she wanted to purchase IFM's remaining machines to help the Tans and would try to cut costs for MCM. She also informed him that she would move MCM's operations to Mil-Com's premises in Changi North Street 1.

92 Thereafter the relationship between MCM, Mr Tan and Dr Young continued to deteriorate. There

was a management meeting in April 2004 which Mr Lim attended. During the meeting, Dr Young expressed her unhappiness with Mr Tan and told him that he must help himself. She reminded Mr Tan that she had helped him by giving him a job and told him that Mil-Com was not supposed to pay his debts.

93 In October 2004, after Dr Young's death, Mr Tan went to see Mr Lim. He told Mr Lim that Dr Young had agreed to settle his debts as a guarantor of IFM's liabilities. He also stated that she had agreed to pay him some money for the take over of IFM's business. Mr Lim was surprised and responded that he did not know what Mr Tan was talking about. He said he would honour Dr Young's agreement if there was a written document evidencing the agreement. He was unaware that Mr Tan was tape-recording the meeting and asserted that he had not, in any way, admitted to the plaintiffs' claims in any part of his conversation with Mr Tan. In this respect, he referred to the transcripts of the conversation and averred that he did not see any admission whatsoever in the transcripts.

94 When Mr Lim became the CEO of Mil-Com after Dr Young's death, he reviewed the viability of the group of companies. He found that MCM was not profitable. On 1 November 2004, Mr Tan's employment was terminated because as sales director, he had failed to generate enough sales for MCM.

95 In court, counsel for the defendants showed Mr Lim the set of invoices that the plaintiffs said IFM had rendered to MCM and asked him whether he had ever seen these documents before. His reply was that he had not and that no one in his accounts department at MCM had referred the invoices to him.

96 When it came to cross-examination, Mr Lim frequently asserted that he had no knowledge of a particular matter only to have to withdraw that assertion when it was pointed out to him that he had dealt with it in his affidavit. It seemed to me that Mr Lim was concerned to portray himself as being ignorant of what had been discussed even though he had made many assertions in his affidavit.

97 In cross-examination, Mr Lim said that the first time he met the Tans was at Mil-Com's office. He was asked whether that had been in 2002 or 2003 and his reply was that he really could not remember the actual year. He was then referred to his affidavit where he had made a remark relating to the period between his first meeting with the Tans and December 2002. This was the first example of Mr Lim's poor memory of matters he had referred to in his affidavit. He then explained that he had first met the Tans when Dr Young introduced them to him in the course of a meeting she was having. Thereafter Dr Young had told him about IFM's business and discussed whether it would be a good idea to invest in or assist IFM. He was asked whether Dr Young had told him her plans and his response was:

> A You see, for myself actually I am only with operations in the office, so whatever Diana does on business, she makes her own decision, but of course she did let me know of certain aspects and then decision is left to her.

It was pointed out to him that in his affidavit he had stated that some time between the first meeting and December 2002, Dr Young had said that it was not possible to save IFM because of its liabilities and its creditors' attitudes. In court, however, he had said that she had discussed with him whether Mil-Com should invest in or assist IFM. He was asked which version was the truth. Mr Lim's reply was that yes, they did discuss whether it was worth assisting IFM in view of its debts and his view had been that it was pointless going in but he had left the decision to her.

98 Mr Lim was referred to the statement that some time in early January 2003 Dr Young told him

that she had agreed to render financial and management assistance to the plaintiffs and was asked whether he had enquired why his wife had changed her mind. Mr Lim's response was that once Dr Young had decided on something he would not ask about it. It had not occurred to him to ask her why she had decided to change her mind and help what she considered to be a hopeless company. This was a rather disingenuous reply and I find it difficult to accept it as the truth.

99 Mr Lim was asked whether Dr Young had discussed with him the terms of the agreement between herself and Mr Tan. His response was no, she had never discussed it at all. All she had said was that Mr Tan and the team would be absorbed onto Mil-Com's payroll. It was pointed out to him that in his affidavit he had agreed that Dr Young had told him that MCM would take over IFM's business, clients and machinery. He was then asked whether he had enquired who was going to pay IFM's liabilities and Mr Lim's response was he had not asked Dr Young that question because that would have been going into details. This was another remarkable statement.

100 Mr Lim was shown the transcript of the tape-recording of the conversation between himself and Mr Tan. At page 73 of the transcript, the following appeared:

> Man 2: I only…I only can mention that Diana did tell me the business [inaudible] 70 thousand [inaudible] give to you, you know.
>
> Man 1: No, 70 thousand is that, let's say …
>
> Man 2: I know.
>
> Man 1: No, all those creator, all those creator, all those creator [inaudible] 10%
>
> Man 2: [inaudible] Whether you want to keep, play [sounds like] or what [inaudible]
>
> Man 1: No, Eugene, you see, the 70 thousand is because if all those creator agree 10% because I owe outside 700 thousand, if let's say all those creator agree 10%, that means 70 thousand.

Mr Lim was asked how he had come up with the figure of 70,000 and his response was that he thought that the figure had come from Mr Tan and his stand had been that if Dr Young had agreed with Mr Tan on a certain amount, he would give that amount provided that there was some documentary proof of the agreement. When asked whether Dr Young had told him to give Mr Tan $70,000, his response was "I really can't remember". Whilst Mr Lim was clearly trying to avoid the consequences of his admission during his conversation with Mr Tan, it appeared to me that he was aware from his discussions with Dr Young that some amount of money was to be paid by the defendants to the plaintiffs though the basis of this liability was not clearly explained.

101 At a later point, Mr Lim explained that he did not take the trouble to find out the details of the arrangements between the plaintiffs and the defendants because the Mil-Com group comprised about 20 companies and he was dealing with payments and other operational matters relating to all these companies. He had simply attended the first few management meetings of MCM and had left the vice-presidents to run the operations thereafter.

102 Mr Lim was present at an MCM meeting that took place on 8 May 2003. He was shown the minutes of that meeting which stated:

> Item 3.3 "JTC Outstanding Rental Arrears".

M. Leung mentioned that JTC has agreed to waive all interest charges incurred, F. Tan to rectify this issue.

M. Leung instructed F. Lim to issue 14 post-dated cheques wef Jun 03.

Eugene suggested to check with JTC if any rebate offer for the current rental.

Mr Lim admitted making this suggestion about checking on rental rebates and he was then asked whose obligation it was to pay the rental for those premises. His reply was that he was not sure. He was asked where the 14 post-dated cheques were going to come from and he agreed that they would be issued by his department. It was put to him that he knew that it was the defendants' obligation to pay the outstanding rental to JTC for the Kallang Way premises. He disagreed and when asked why he had not said in the meeting that the defendants should not pay, his response was:

> A Well, this is actually brought in by Michael saying that we have to pay, but the details and yes, to pay, I will always check back with Dr Diana Young before I issue the cheque out, your Honour.

He subsequently asserted that he was not sure who was supposed to pay JTC and that was a matter that was in the agreement between Dr Young and IFM.

103 Mr Lim was asked various questions about when he had seen certain relevant documents relating to the case. His attention was drawn to the November 2002 letter and his first response was that he had not read that letter before coming to court. Subsequently, he was shown that in para 35 of his affidavit he had referred to the November 2002 letter and had even exhibited it. He then said that what he had meant was that he had not seen the November 2002 letter at the time when the dealings between the plaintiffs and the defendants started. I reminded him that I had asked him whether he had seen the letter when preparing for the trial and his response had been no. The witness then acknowledged that he had made a mistake and that he had seen the November 2002 letter in the lawyers' office a few months before the trial started.

104 Mr Lim was asked to explain why he had terminated Mr Tan's employment. He reiterated that after he had taken over the business, he had looked into all the operations and had found out that MCM was draining the group's finances so he had to trim it. Also, he decided to terminate Mr Tan because of his performance. He asserted that the defendants had spent quite a bit of money on MCM and the revenue was insufficient to run the company's operations. The witness was asked to show where the losses were reflected in the accounts of MCM. He stated that these accounts showed that the accumulated losses which had been $47,026 in 2002 had increased to $276,046 in 2003. On questioning he agreed that the income for MCM in 2003 had been $476,033 and its direct costs had been $271,173, leaving a gross profit of $204,860. Mr Lim was not able to explain what the direct costs consisted of and said that he took reports from Mr Han who was in charge of the financials. He was asked to explain his statement that MCM "was bleeding" in the light of the accounts and said that that bleeding was part of the reason for the termination and also "the non-performance of sales coming in". The witness was then asked to explain the administrative expenses of $134,706. He was not able to do so.

105 The witness was asked several times why he had not replied to Mr Tan's letter of 24 November 2004 making claims against the defendants and also to the lawyers' letter of demand in June 2005. His final response was that it was a mistake that he had not replied but there were so many allegations made after Dr Young's death about promises that she had made to various people and he had had so many things to handle so he always told them "you show me a black and white, I will honour them". It

was pointed out to him that he had not written to Francis Tan to say that and Mr Lim responded that during the taped conversation he had made this statement to Francis Tan.

106 Mr Michael Leung Yau Chee was employed by Mil-Com from April 2002 to October 2005 as its vice-president. In this position, he had worked very closely with Dr Young and had assisted Dr Young in her dealings with the plaintiffs.

107 According to Mr Leung's affidavit, in early August 2002, Dr Young instructed Mr Leung to conduct searches on IFM. She told him that Francis Tan wanted someone to invest in IFM. At that time, Dr Young had incorporated SME Techventure and she instructed Mr Leung, who was the managing director of SME Techventure, to see whether they could include SME Techventure as a party to a deal to be made with IFM. She was interested in IFM's business because it could complement Mil-Com's core business.

108 Shortly thereafter, Mr Leung met Mr Tan in the latter's office. Dr Young joined the meeting later. At this meeting, Mr Tan informed Mr Leung of IFM's background and financial difficulties. He insisted that IFM had good clients and had good investment potential. He needed an investor who was prepared to pump in $250,000 which would be enough to put IFM back on its feet. He emphasised time was of the essence. Dr Young informed Mr Tan that she needed time to consider his proposal and to find out more about IFM and its situation.

109 Subsequently Dr Young suggested to Mr Leung that Mil-Com and SME Techventure jointly invest in IFM. She drafted a structure and sent it to Mr Leung by e-mail with instructions to pass the same on to Francis Tan. This was the genesis of the August 2002 e-mail which Mr Leung sent to Mr Tan. The first Paragraph of the e-mail contained the structure suggested by Dr Young whereas the second Paragraph contained Mr Leung's own comments. The "NEWCO" referred to in the e-mail was a new company to be incorporated to be called "Mil-Com Manufacturing Pte Ltd".

110 IFM then provided information and documents to Mil-Com. Dr Young, Mr Leung and Mr Han discussed IFM's situation. They estimated that IFM's monthly running expenses amounted to about $76,000 and that it needed at least $400,000 in cash to prevent liquidation. Mr Leung told Dr Young that these figures did not support a possible investment by SME Techventure in IFM. This decision was made in late September or early October 2002. Mr Han was not willing to invest in IFM either as he considered that it was insolvent. Dr Young accepted the decision that SME Techventure should not invest in IFM.

111 In early November 2002, Dr Young informed Mr Leung that she had agreed to help Mr Tan by reassuring IFM's creditors that Mil-Com was interested in investing in IFM. She wanted to "buy" time for the plaintiffs so that they could settle their debts. Mr Leung drafted the November 2002 letter and Dr Young signed it after amending it. The intention of the letter was to try to gain time for the Tans to come to a settlement with their creditors. Dr Young also asked Mr Leung to assist the Tans to draft proposals to their creditors to defer payment of their debts.

112 Some time in December 2002, Dr Young asked Mr Leung to attend a meeting at the Raffles Town Club between herself, Mr Tan and a representative from DBS. By the time Mr Leung arrived, the discussion with DBS had ended and DBS had rejected Mr Tan's plea for indulgence. Francis Tan then pleaded with Dr Young to help him and she was moved by his pleas and told him that she would do her best to do so. Shortly thereafter, Dr Young told Mr Leung that she had agreed to help the Tans. She said that she would not help them by simply paying their debts.

113 In January 2002, in a discussion between Dr Young, Mr Han and Mr Leung, Dr Young told

Mr Han and Mr Leung that she had decided on the "structure" to assist the plaintiffs. She was emphatic that none of her money (be it from Mil-Com or herself) would be used to settle the existing liabilities of IFM. If any money from Mil-Com or herself was used to pay the existing liabilities of IFM, then the payment must be secured in some way for example by a charge over IFM's machines or a personal guarantee. Dr Young also decided to revive her plan to enter the manufacturing business to complement Mil-Com's core business. The new business would take over IFM's existing customers and rent IFM's machines for production. Dr Young also said that Mr and Mrs Tan would be employed by MCM. Dr Young reasoned that even if the Tans were made bankrupts, they would at least have the security of jobs with MCM.

114 Based on this discussion, Mr Leung believed that Dr Young reached an agreement with the plaintiffs and in para 33 of his affidavit, he set out the following terms which he believed to be the agreed terms:

(a) IFM would cease its business activities;

(b) Mil-Com (through the manufacturing company) would manage and take over IFM's existing contracts with its customers with effect from 1 February 2003. No fee would be paid to IFM;

(c) the new entity would use IFM's machines and premises to carry out the "new" business. IFM's employees would be employed by the new entity and it would deal directly with IFM's customers and render invoices to those customers;

(d) Mil-Com would bear all the running costs and the attendant risks related to the "new" business;

(e) Mr and Mrs Tan would be given a percentage of the nett profit after tax of the new business so that they could settle IFM's existing debts. However, all funds of the alternate entity and revenue from the "new business" would be used to pay the running costs first and not to settle IFM's existing debts;

(f) Mil-Com would extend such loans as it saw fit to the plaintiffs upon such conditions as it deemed fit and would extend an immediate short-term loan of $102,000 to the plaintiffs to settle the DBS debt;

(g) Mr and Mrs Tan were to grant Mil-Com an option to purchase all the issued and paid up capital of IFM for a nominal value of $1, open for acceptance for one year.

115 Mr Leung did not know when the above agreement was reached. He was not present at the meeting. However, he believed that it was reached before 28 January 2003. This was the date when Mr Tan instructed his lawyers to write to DBS' lawyers informing DBS that Mr and Mrs Tan would be paying $102,000 to DBS by 24 February 2003. Dr Young had committed Mil-Com to pay DBS the $102,000 owing to DBS and wanted this payment secured by the sale of some of IFM's machines to MCM. Mr Leung stated that several events took place at the end of January 2003/early February 2003 and therefore the paperwork could not keep up with the events. As such, several documents were drafted after the events and signed by the parties after the date of the events.

116 On Dr Young's instructions and with input from Mr Han, Mr Leung also prepared two letters. In the first letter, Mr Tan/IFM offered to sell the issued and paid up capital of IFM to MCM at a price of $1 on 31 January 2003. MCM was to accept this offer on 1 February 2003 but the takeover (if any) would be at the discretion of MCM. Mr Leung could not remember if the letters were signed.

117 Mr Leung also referred to his e-mail of 18 February 2003 to Mr Tan (quoted at [65] above) and reiterated that this document set out the principles governing the allocation of funds for IFM and the "new" business. On 20 February 2003, Mil-Com told DBS that it was extending a loan of $102,000 to IFM to settle the DBS debt. As security for this commitment, IFM and the Tans signed a loan and guarantee agreement with Mil-Com. However, Dr Young felt that there were too many agreements linking Mr Tan and Mil-Com and therefore told Mr Tan that it would be better that IFM sell the unencumbered machines to MCM for $130,000. Mr Tan agreed to this and a sale and purchase agreement was also drawn up and signed. It was dated 25 February 2003 although it was signed some time in March 2003.

118 Subsequently, it became apparent that the new business was not doing well. The revenue generated could not meet the running costs. IFM's creditors were impatient and wanted immediate payment of their debts. MCM's management also found it difficult to work with Mr Tan. All these caused Dr Young to have serious doubts about the viability of the business. In September or October 2003, she informed Mr Leung that she was not prepared to allow the then current state of affairs with MCM to continue. The business needed constant financial support from Mil-Com. Since MCM was already committed to the business, MCM had to fend for itself free of the attendant liabilities created by the existing IFM debts. She instructed Mr Leung to initiate negotiations with the hire companies to purchase the machines then under hire-purchase from them. She also decided that it would be cheaper to move MCM's operations into Mil-Com's premises.

119 Mr Leung also gave evidence about the purchase of the machines. In respect of Hong Leong, Mil-Com had made an offer in October 2003 to purchase the machines for $70,000. In March 2004, Hong Leong agreed to sell them for $73,000. Negotiations with International Factors took place between November and February 2004 and were concluded by the former accepting Mil-Com's offer to purchase the machines at $300,000 plus a further $15,000 for GST.

120 When he started his testimony in court, Mr Leung stated he could not recall the invoices issued by IFM to MCM.

121 Under cross-examination, Mr Leung was asked about para 19 of his affidavit where he had stated that soon after the first meeting between himself, Dr Young and Mr Tan, Mr Tan was pressing Dr Young for an answer. He was asked how he knew about this and, from his replies, it soon became clear that he had been speculating. He then conceded that he had no personal knowledge of Mr Tan pressing Dr Young. It was simply an assumption he had made. As for the August 2002 e-mail, Mr Leung maintained that it was a discussion proposal not an offer. He stated that at the time Dr Young had been interested in assisting IFM in the way specified in the e-mail but, when pressed, he confirmed that in August 2002, she had had an intention of taking over IFM's business. At that time, Dr Young had been the chairman of SME Techventure and she was looking at the interests of both SME Techventure and Mil-Com so that was why SME Techventure had been considered as a possible vehicle to help IFM. At that time the thinking was that SME Techventure would invest in IFM but Mr Leung stated that his view had been that no such investment should be made.

122 Relating to the quantum of possible investment, Mr Leung said that the original figure of $250,000 was suggested by Mr Tan. As a businesswoman, Dr Young knew what was sufficient and she came up with a figure that was more realistic, the sum of $500,000. At the time when she mentioned that figure (*ie* in November 2002), Mr Leung believed that Dr Young had the intention of investing $500,000 in IFM's business. The witness did not know whether in the event Mil-Com had actually injected $500,000 into MCM.

123 Mr Leung was referred to a letter dated 5 December 2002 which he had written to Mr Tan in

which he said:

> As I will be out of town from 6th December to 15th December, 2002, we are unable to complete the final details of our restructuring proposal for [IFM]. Upon my return on 16 December, I shall work on it and complete the proposal, which shall also include a repayment proposal for your creditors. This proposal will be furnish [*sic*] to you no later than 21 December, 2002. Thank you and have a nice day!

Under cross-examination, he explained that the letter had been sent to tell Mr Tan that the proposal would be worked on after his return to Singapore. He denied, however, that there had been an agreement in December 2002 that the defendants would take over IFM's business. The letter was sent, not because there was an agreement, but because this was a proposal. He insisted the letter did not constitute an agreement. When asked who had requested the proposal, his reply was that the proposal was actually the same as the restructuring plan contained in the November 2002 letter and it was a proposal from the defendants to assist IFM in making repayment proposals to its creditors. The $500,000 that was going to go into the company was intended as working capital for the company and was not to be used to repay existing creditors.

124 The witness, after some prevarication, admitted that he was aware that the November 2002 letter had been sent by Mr Tan to various creditors of IFM. He was asked why, if the $500,000 was not to be used to pay existing creditors, such an impression was being given to them. His reply was that the November 2002 letter showed that the basic intention was to injection $500,000 to implement a business turnaround programme for IFM and to use the money to run the business of the company. Mr Leung admitted that he had been aware that International Factors, having received a copy of the November 2002 letter, had agreed to give IFM indulgence because of it.

125 The witness was then referred to an e-mail that he had written on 9 July 2003 after MCM had taken over IFM's business. He had said:

> As for [International Factors], since our storeyline [*sic*] to them is that you only get $15,000 per month for the rental of the machines …

The question posed was as to how the storyline had changed to a rental from the original impression given to International Factors in November 2002 that $500,000 was going to be invested into IFM. The witness's answer was that the original proposal was for Mil-Com to provide financing to IFM and guidance to help turn the company around. But in February 2003, MCM was formed and thereafter the situation was different from the original proposal. He could not remember, however, how International Factors had been informed of the change though he asserted that at some point, International Factors had been informed that Mil-Com was paying a rental for the use of the machines. It should be noted at this stage that, on 5 June 2003, Mr Tan had written to International Factors to inform it that IFM had arrived at a sub-contract with MCM whereby the latter paid IFM a monthly amount as rental charges for the use of IFM's machinery and manpower. Mr Leung subsequently confirmed that he had drafted this letter for Mr Tan. Also, at an earlier stage (29 May 2003), Mr Leung had made it clear in an e-mail that information disclosed to International Factors had to be carefully managed.

126 In his 28 May 2003 e-mail to Mr Tan, Mr Leung had said:

> Attached a reply which I suggest you should send to [International Factors] regarding the payment of arrears, following our last Wed meeting with them. You have to request them again to stretch the payment over a longer time, and meanwhile, pay the current month rental at current rate for May, and request them to propose a revised pay plan from June onwards. …

This e-mail was drawn to his attention and he was asked whether there was an agreement that MCM would pay International Factors the monthly instalments for the use of the machines. His reply was that there was no such agreement. The question was pressed as to why then he had been suggesting in his e-mail that the payment be made. Mr Leung's response was:

> There was no written agreement on that. It was a --- at that time I believe Mil-Com was prepared to help Info Manufacturing by giving out some sort of a, er, a loan.

127 Mr Leung was next referred to the letter of 5 June 2003 which he had drafted for Mr Tan which stated that MCM paid IFM a monthly amount as rental for the use of IFM's machines and asked whether that statement was a lie. His reply was that it was not a lie. It was the intention at that time that MCM would pay IFM a monthly amount for the use of the machines. When asked again whether there was an agreement that MCM was supposed to pay IFM a monthly amount as rental, his reply was that as far as he recalled, there was no written agreement on that and when pressed further whether there was an agreement, whether written or oral, his response was that there was no such agreement. It was put to him that the letter was incorrect in stating that there was a sub-contracting arrangement between MCM and IFM and his response was:

Witness:	Mil-Com --- erm, now I recall that Mil-Com is --- er, Info is supposed to be subcontractor for Mil-Com Manufacturing. So it is correct to say that Mil-Com would pay monthly rent, erm, to use Info's machineries and manpower.
Court:	That was agreed?
Witness:	There was agreement, but not a written agreement.
Court:	Yes.
Q:	So you're talking about from 1st February onwards, there was an agreement after MCM took over, that they'll pay rental for the use of the machines?
A:	Yes.
Q:	What about the arrears? Was there an agreement that MCM will pay arrears as well?
A:	No.

128 He was then referred to another portion of the same letter from IFM to International Factors which stated that IFM had the understanding that the rental income could be assigned directly from MCM to International Factors to provide additional comfort to International Factors. Mr Leung confirmed that that was true and that Mil-Com was prepared to assign the rental and that he had discussed this with Dr Young. Subsequently, Mr Leung reaffirmed his position that the amount which MCM paid IFM was to pay for the current costs of running the machines and not the arrears of rental owed by IFM. He confirmed therefore that as from 1 February 2003, MCM had agreed that it would pay the rental of the machines for the use of the machines.

129 As regards the Kallang Way premises, Mr Leung said that MCM was willing to pay the running costs of the business including rental of premises. He could not recall whether MCM had ever made any payment for the use of the machines or the Kallang Way premises but he agreed that it should have done so as a running cost.

130 It was also pointed out to the witness by counsel that para 43 of his affidavit was not correct. In the affidavit, he had stated that in an e-mail dated 18 February 2003, he had told Mr Tan that IFM

should try to convince its creditors to assist IFM as much as they could and it was up to IFM, Francis Tan and Mei Tan to help themselves and they should not rely on MCM. The witness agreed that in fact this statement had not appeared in the e-mail. He then insisted that nevertheless that was the spirit of the help given by the defendants *ie* that the financial help that Mil-Com would provide would run the business and then with more customers and more revenue, the Tans would be able to settle their creditors themselves. He stated that the Tans would get more from the nett profits of MCM after tax. He agreed that they would have to wait at least a year to see what profits were generated and when asked what they were supposed to tell their creditors in the meantime, the witness replied that Dr Young's intention was to have IFM negotiate with its creditors to stay action for as long as possible. He also said that he believed that the percentage of the nett profits that the Tans were to get was ten percent.

131 Mr Han Tat Fong was Mil-Com's financial consultant cum company secretary from 1999 to 2005. Mr Han said that he attended some though not all of the meetings between Dr Young and the Tans. Dr Young told him of her discussions with the Tans and that Mr Tan wanted an investor to invest $250,000 in IFM. Based on the financial information given, Mr Han said that he had advised Dr Young against taking over IFM as he considered the attendant risks to be too high.

132 By October 2002, statutory demands were issued against the Tans and the winding up notice was issued against IFM. It was noted that IFM had debts of $975,000 against receivables of about $288,000. Dr Young, Mr Leung and Mr Han considered that without a moratorium from its creditors, IFM was doomed. Mr Han gave an account similar to that of Mr Leung of the events that took place between November 2002 and February 2003. He then confirmed that Mil-Com paid a total sum of $102,000 to settle IFM's debts to DBS and disbursed another sum of $28,000 to pay other creditors.

133 As Mil-Com's financial consultant, Mr Han confirmed that MCM's business operations had suffered loss as the revenue generated was insufficient to cover its operating costs. If not for the financial support given by Mil-Com, MCM would not have been able to meet its liabilities. The audited reports of MCM for the year ending 31 December 2003 and 2004 showed that as at 31 December 2003, Mil-Com had an issued and paid-up capital of 500,002 ordinary shares of $1 each. The accounts also showed that during 2003, MCM had issued 500,000 ordinary shares of $1 each at par and the consideration for the same was satisfied by way of conversion of shareholders' loans to the company. Mr Han also stated that he had never laid eyes on the invoices issued by IFM to MCM.

Analysis and decision

134 As can be seen above, there were difficulties in the evidence produced by both parties. The plaintiffs' case did not quite jibe with the contemporaneous documents and it underwent several shifts in the course of proceedings. Also, Mr Tan was not able to support coherently many of the assertions that he had made. On the other hand, the defendants' contemporaneous conduct was not quite consistent with the case that they sought to put forward. Also, some significant admissions were made during oral evidence.

135 The first question to be decided is what the agreed terms were. In the discussion that follows, where I refer to the Main Agreement, I should be understood as referring to the contract which the plaintiffs maintained was made *ie* a contract that contained the terms set out in [43] above. The Main Agreement was a joint oral agreement between the three plaintiffs on the one part and the two defendants on the second. It had six terms. When these six terms are compared with the contractual terms that the defendants accepted in para 16 of the defence (cited at [36] above), it can be seen that the only common ground was that the parties had agreed that MCM was to take over IFM's business.

136 According to the plaintiffs, the first term of the Main Agreement was that they would transfer all business of IFM to MCM together with the former's machinery and equipment. The first part of this term is, as stated above, common to both parties. As regards the second part of the term, what it meant was that MCM was to have full use of IFM's machines and equipment and not that the machines and equipment were to belong to MCM. This is shown by the fact that the unencumbered machines were later pledged and then sold to MCM to pay off the $130,000 loan. Although the defendants did not expressly accept the second part of the first term as being part of the contractual arrangement, they certainly acted as if it was part of the arrangement since the machines were used for MCM's business. Further, nowhere in the evidence did any of the defendants' witnesses deny this term. I therefore accept it as part of the contract.

137 The second term of the Main Agreement was that Mil-Com would inject $500,000 into MCM. The plaintiffs argued that this term originated in the proposal in the August 2002 e-mail that the defendants would invest $250,000 in the new company that was to take over IFM's business. Further, in the November 2002 letter, Mil-Com promised to provide financing to IFM of up to $500,000 through convertible loan stock. Whilst the November 2002 letter was not implemented because it was conditional on IFM being able to obtain a stay of action by its creditors which it was not able to do, it is possible that when Mr Tan was desperate, and Dr Young was desirous of helping him, she went back to her original idea of putting the money into a separate company *ie* MCM rather than IFM. From the evidence, she was aware that there was insufficient money to run IFM's business and therefore if it was to be taken over, the entity doing so would need funds. I think it was likely that the understanding between Mr Tan and Dr Young in January 2003 was that MCM would be capitalised to the extent of $500,000. As Mr Leung testified, Dr Young as a businesswoman was aware that the original figure of $250,000 was inadequate and it was she who came up with the $500,000 figure.

138 It is worth noting that if the second term was part of the contract, it was adhered to. The evidence of Mr Han, substantiated by MCM's accounts, was that shareholders' loans of $500,000 had been made to MCM and that such shareholders' loans had been subsequently converted to share capital. In July 2003, 500,000 shares of $1 each in MCM were issued to Mil-Com. This evidence on the payment in of the $500,000 was not challenged by the plaintiffs. The plaintiffs' argument on breach of contract and misrepresentation therefore has no substance in relation to the second term.

139 The third term was that the defendants would transfer ten percent of the shares in MCM to the Tans. The plaintiffs' evidence on this term was contradictory and weak. First, the allegation that the Main Agreement contained such a term was relatively late. It was not mentioned in Mr Tan's letter of complaint to the defendants sent on 24 November 2004 nor in the plaintiffs' letter of demand of 3 June 2005. The first version of the statement of claim did not contain it either. It was only after the defendants asserted that the second and third plaintiffs were to be given a profit share in MCM that in statement of claim (amendment no 3) the plaintiffs raised the claim for ten percent of the shareholding of MCM. Somewhat inconsistently, in their further and better particulars, they said they were entitled to ten percent of the profits. When it came to testimony in court, Mr Tan kept switching between ten percent in shares and ten percent in profits as if the two items were one and the same thing. The evidence did not substantiate the plaintiffs' allegation and I therefore find that there was no contractual agreement that the Tans would receive ten percent of the shares of MCM.

140 The fourth term was the most contentious one. It was that the $500,000 in capital would be used: (a) to pay the outstanding debts of the plaintiffs owing to Hong Leong, International Factors and JTC and (b) the balance, together with MCM's profits would be used to service the monthly instalments due to these three creditors. This term went hand-in-hand with the fifth one which was more of a representation and that was that the sum of $500,000 would be sufficient to release the Tans from their guarantees. As far as the fifth term is concerned, I do not accept it as part of the

contract or as a representation. I cannot believe that Dr Young would have made a representation to Mr Tan that $500,000 would be sufficient to pay off all his debts. The person with first-hand knowledge of how much the plaintiffs owed was Mr Tan. It was not for Dr Young to assure him that any particular figure would be sufficient to settle such indebtedness. She did not have any better knowledge than Mr Tan himself and, probably, her state of knowledge as to the plaintiffs' indebtedness was significantly less than his. Mr Tan did not come across in the witness box as a person who would always tell the complete truth, especially about the financial affairs of IFM. For example, he was extremely reluctant to admit that in 2002, the company was insolvent. In any case, even if Dr Young had said such a thing, the plaintiffs could not have relied on it as they had better knowledge of their financial situation than she did.

141 The biggest fight in the case was over the fourth term *ie* what promise, if any, was made in relation to the use of the $500,000 capital injection. There was nothing in writing before January 2003 that indicated that this money was to be used to pay off the plaintiffs' existing debts. Although the November 2002 letter was sent out expressly for the purpose of being shown to the plaintiffs' creditors so that they would be receptive to requests to give the plaintiffs time to pay, the letter did not go so far as to state that the $500,000 which would be injected into IFM would be used to settle these outstanding debts. Instead, it said two things. First, that the money was to help IFM implement its new business line and second, that if IFM was able to obtain a year's stay of action from its main creditors "[a] proposal to assist [IFM] in discharging its outstanding liabilities with each creditor will be developed". This written evidence that Dr Young was not prepared to commit her funds to repayment of existing indebtedness without any *quid pro quo* from IFM's creditors was supported by the oral evidence of the defendants' witnesses. They were quite clear that while Dr Young was interested in developing a new line of business, she did not want to spend the defendants' money to pay off old debts. At one point in Mr Leung's evidence he appeared to admit the plaintiffs' claim because, when he was asked several questions about the intention of the defendants in paying $500,000 into MCM, whilst he said at first that the intention behind the payment was to use it to run the business of IFM, he subsequently said that a certain portion of it might be used for paying creditors. That one statement, however, was not sufficient, in my view, to establish the plaintiffs' case when their own evidence and conduct was inconsistent with the claim that they had made.

142 Further, the fact that the money was put into MCM, a "clean" company which had no direct legal responsibility to the plaintiffs' creditors for the amounts owing was significant. It was an indication that Dr Young did not want to place her money at risk by putting it directly into IFM. If she had done so and thereafter IFM were to be wound up, the new money was at risk of being used to pay the existing debts and thereby wiped out.

143 Dr Young's attitude was also apparent almost immediately after the transfer of the business to MCM. It manifested itself in relation to the action that DBS was taking against the Tans. She did not procure a gratuitous payment of the DBS debts by MCM. Instead, she ensured that the unencumbered machines were available to the defendants either by way of pledge or sale to support the loan of $130,000 that was given to the plaintiffs. Mr Tan signed all the documentation relating to the loan/sale. He did not protest at that time that Dr Young had promised to pay off these debts from the $500,000 capital injection and that therefore the machines should not be pledged or sold. His actions were not consistent with his later assertions.

144 Further, Mr Tan's silence was significant in the light of his later evidence that he had stopped trusting Dr Young in March 2003. Yet, thereafter he did nothing to assert his rights in relation to the ostensible fourth term of the Main Agreement. He had numerous opportunities to highlight the fourth term but did not do so. The first was in relation to the DBS indebtedness as mentioned above. In that connection, Mr Leung had written to him on 18 February 2003 stating the principles that the

defendants were applying in relation to the assistance being given to the plaintiffs and had said expressly that finances were to be used for turning IFM around and not for "fulfilling all outstanding financial obligations" of IFM. Mr Tan did not reply to that e-mail to assert that such statement was completely contrary to Dr Young's alleged promise. Some ten months later, when Fuji Xerox made a claim against IFM, Mr Tan again omitted to insist that this debt should be paid by the defendants. There was also a meeting with Spring Singapore in 2003 at which Dr Young said that she had not bought over IFM and made a recommendation that IFM be wound up. Mr Tan who was present at that meeting did not contradict these statements or inform Dr Young thereafter that there would be no need for IFM to be wound up if she kept the promises she had allegedly made to him.

145 Even after the parties had clearly fallen out, Mr Tan did not immediately make any assertions based on this alleged promise. When he sent his letter of 24 November 2004, no mention was made either of the capital injection of $500,000 or of the fact that this money was supposed to be applied towards outstanding debts. There was an assertion that the defendants had failed to pay all debts due and owing by IFM but this assertion was not linked to any promise relating to an intended injection of capital. It was only in his lawyers' letter of 3 June 2005 that he mentioned the intended financing of $500,000 and alleged that, pending the receipt of such funds, Mil-Com had agreed to provide funds for IFM to settle the DBS debt and the outstanding arrears to its hire-purchase creditors and JTC.

146 On the evidence and on a balance of probabilities, I find that the defendants did not promise that the capital injection into MCM or any funds of MCM would be used to pay the outstanding indebtedness of the plaintiffs prior to MCM's take over of IFM's business. I do not accept as true the plaintiffs' assertion that Dr Young specifically assured Mr Tan that once IFM's business had been transferred to MCM, MCM would pay off the existing debts.

147 This finding, however, does not complete the discussion on the alleged fourth term. The other part of the fourth term was that MCM would use the $500,000 and the funds generated by the business to pay the current rentals due to the hire companies and the JTC. The plaintiffs were able to marshal quite a bit of evidence in support of this part of the fourth term. There was correspondence between Mr Leung and Mr Tan which indicated that International Factors was being told, with the defendants' consent, that IFM was being paid a rental for the machines by MCM. Then in respect of the JTC premises, in August 2003, Mr Leung arranged for payment of the June 2003 rental to JTC. Mr Tan was informed that since the cheque in payment had to come from the plaintiffs, he should advise one Francis Lim of the defendants of the exact amount due so that the latter could procure the issue of the cheque. Whilst some of the correspondence is ambiguous and capable of being interpreted in various ways, Mr Leung admitted in court that there was an agreement between the parties that MCM would pay IFM a monthly amount as rental charges. Mr Lim also admitted that there was discussion about issuing 14 post-dated cheques to pay the JTC rental. I have referred to this evidence above.

148 The defendants' stand that although MCM was responsible for the running costs of the business after it took over the same from IFM, such responsibility did not cover the hire charges and rental due to the hire companies and JTC was not believable. Mr Leung sought to maintain that running costs only meant staff costs and costs of providing services and obtaining goods for the business. Mr Han's evidence on this point was rather equivocal. While agreeing that rental for premises was part of the running costs of a business, he said that this did not apply to hire-purchase payments. However, no business can function if it does not pay its hire-purchase creditors and its landlord. The machines leased from International Factors and Hong Leong were expensive machines and an integral part of IFM's production process. The business could not be run if these machines were repossessed. Whilst the defendants may not have wanted to pay the arrears, Mr Tan would

have believed that they would pay the charges accruing after the takeover so as to help convince the creditors that they should not repossess the machines and that they should give time for the new business to get on its feet in which event it would be able to pay the arrears. I think that it is more probable than not that Dr Young gave Mr Tan to understand that the costs that I have referred to in this Paragraph would be paid by MCM either from the income of the business or from the capital injection. The second part of the fourth term was, I find, a part of the contract between the parties.

149 MCM did not pay those costs except on two occasions and accordingly, it was in breach of contract. Dr Young in dealing with the plaintiffs represented both defendants and therefore Mil-Com was also in breach when MCM did not pay the running costs. Whilst the defendants may have been in breach of contract, this does not mean that Dr Young made any fraudulent or reckless misrepresentation to the plaintiffs when she indicated that the running costs would be paid. The allegation that the defendants' failure to pay such costs was in itself evidence of such misrepresentation is a bare allegation that is not supported by the evidence. Once again, the plaintiffs' own failure to protest at the material time tells against them. It would have been obvious to them very soon after the takeover that these payments were not being made as the invoices for the amounts due were regularly sent to IFM by JTC and the hire companies. Yet, they did not make any protest about misrepresentation.

150 I should repeat at this juncture that I do not accept that the plaintiffs prepared invoices monthly in respect of the said costs which they presented to the defendants for settlement. The invoices and the tabulation were afterthoughts which were prepared much later to bolster the plaintiffs' case and their assertion that Dr Young had specifically asked them to issue invoices. In any event, there was no need to pay rental directly to IFM as the obligation to pay the running costs could have been settled by the defendants making payment direct to the hire companies and the JTC.

151 As for the final term of the Main Agreement, I do not think anything turns on this since if the agreement was that the machines would be pledged in return for a loan, the loan was in fact given and the plaintiffs were enabled to pay off the DBS indebtedness. There was no suggestion that the plaintiffs had, or would have, been able to repay the loan in any manner other than by selling the unencumbered machines for $130,000. The plaintiffs signed the documentation in respect of the sale and no claim of duress was pleaded.

152 I further find that apart from the terms above, the contract between the parties contained the terms pleaded by the defendants except that the Tans would be given ten percent of the nett profits of MCM after tax, rather than five percent thereof as pleaded in the defence. This finding is in accordance with the evidence of Mr Leung.

153 In their closing submissions, the plaintiffs concentrated on their claim for breach of contract and misrepresentation. Although the statement of claim included paragraphs alleging that the plaintiffs had an action for unjust enrichment, this alleged cause of action was not dealt with in the closing submissions. Accordingly, I do not need to consider the same.

154 In relation to the alleged breach of contract and misrepresentation claim, the plaintiffs put in a claim for both special damages and general damages. The special damages were set out in statement of claim (amendment no 5) reproduced in [41] above. An earlier claim for an account of profits was dropped in the last version of the statement of claim.

155 The evidence given by Mrs Tan was that as far as International Factors was concerned, the debt owing to them had been capped at $40,000 after intervention by Spring Singapore. That being the case, the plaintiffs cannot recover more than $40,000 as special damages in respect of the

International Factors' rental. As regards the Hong Leong and JTC claims, the total amount outstanding and being paid by the Tans in instalments exceed the sums stated in [41 (b) and (c)] above and therefore there is no reason not to allow full recovery of those sums.

156 I have found only one breach of contract by the defendants and that is in relation to the payment of the amounts that accrued due from the three creditors during the period when MCM was running the business and using IFM's machines and premises. The consequence of that breach of contract was that the plaintiffs remained liable for those sums to the various creditors when these debts should have been paid off by MCM either directly of by way of payment to IFM. These sums were claimed as special damages and have been accepted by me to the extent stated above. There were no general damages arising out of the breach of that term of the contract. The plaintiffs' claim for general damages related more to their allegation that the defendants were to pay off their pre-existing debts. Since I have found no such obligation to have been imposed on or undertaken by the defendants, there is in my view no basis for any award of general damages.

Conclusion

157 In the event there will be judgment for the plaintiffs for the sum of $184,940.35 and interest thereon at the court rate from the date of the writ. I shall hear the parties on costs. The plaintiffs have recovered less than $250,000 and there is therefore a question as to whether costs should be awarded on the District Court scale.

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