SIC College of Business and Technology Pte Ltd *v* Yeo Poh Siah and others [2015] SGHC 133

Case Number	: Suit No 1045 of 2012
Decision Date	: 18 May 2015
Tribunal/Court	: High Court
Coram	: Edmund Leow JC
Counsel Name(s)	: Kannappan s/o Karuppan Chettiar for the plaintiff; Jordan Tan and Keith Han (Cavenagh Law LLP) for the defendants.
Parties	: SIC COLLEGE OF BUSINESS AND TECHNOLOGY PTE LTD (FORMERLY KNOWN AS SIC EDUCATION GROUP PTE LTD) — YEO POH SIAH — KHOO KHEE CHONG — CHUA PUAY CHOO ALVINNA — LINCOLN COLLEGIATE OF BUSINESS AND TECHNOLOGY PRIVATE LIMITED

Civil Procedure – costs

Evidence – hearsay

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 45 of 2015 was allowed by the Court of Appeal on 22 January 2016. See [2016] SGCA 5.]

18 May 2015

Edmund Leow JC:

Introduction

1 This case involved a claim and a counter-claim. The plaintiff's claim against the defendants ("the main claim") had been stayed until it furnished security for costs. At the close of the two-day trial solely on the counter-claim on 9-10 September 2014, I dismissed the main claim as the plaintiff had failed to provide the required security. I delivered my oral judgment on 2 February 2015. I found the plaintiff liable to the first defendant for $218,000 on the counter-claim. I also ordered the costs for the main claim and the counter-claim to be borne jointly and severally by the plaintiff, Mr Kannappan s/o Karuppan Chettiar ("Mr Chettiar") and his wife, Ms Cenobia Majella ("Ms Majella"), both of whom were the plaintiff's shareholders. [note: 1] As the plaintiff has appealed, I set out my grounds below.

Background

The main claim and counter-claim

2 The plaintiff was a company in the private education industry. At the material time, the first three defendants were its employees; the first defendant was also a director. The first three defendants were also directors of the fourth defendant, [note: 2] which was a company that had contracted to operate the plaintiff's business under licensing arrangements.

3 While the main claim was stayed and dismissed without being heard, a flavour of the allegations brought by the plaintiff provides helpful context. A significant aspect of the main claim was that the

first defendant had concealed his interest in the fourth defendant from the plaintiff, which he owed duties to. The plaintiff alleged that the first three defendants were parties to a scheme to enrich the fourth defendant at the plaintiff's expense. In particular, it alleged that the first defendant had made a series of unauthorised and fictitious payments from the plaintiff to the fourth defendant. The alleged instances of misappropriation – between 30 October 2009 and 21 October 2010 – were cloaked as outsourcing fees, consultancy fees and repayments of advances. [note: 3] The plaintiff contended, *inter alia*, that the first defendant had breached his fiduciary duties. The defendants responded in their defence that they were allowed to remove monies under the various licensing arrangements.

4 The defendants also launched a counter-claim, [note: 4] alleging that at all material times, the first defendant had been making advances to the plaintiff on a running account basis to supplement the cash flow of the plaintiff. By running account, the first defendant meant an "ongoing account" of deposits and withdrawals between himself and the plaintiff. [note: 5] The relevant period for this running account was between 30 October 2009 and 8 October 2010. This substantially overlapped with the time period of the alleged misappropriation in [3] above. The first defendant alleged a total of 18 transactions during this period, being 13 advances received by the plaintiff and five repayments from the plaintiff. As of 8 October 2010, there was allegedly an outstanding balance in favour of the first defendant for a sum of $244,844. [note: 6]

5 The plaintiff's pleaded defence to the counter-claim [note: 7] was that the plaintiff had no need and/or reason to receive any cash advances from the first defendant as it had its own finances to support itself. It also asserted that the first defendant had never made any advances to the plaintiff but instead, used the plaintiff's accounting books to create fictitious entries.

The plaintiff's failure to provide security for costs

6 The defendants filed Summons 3367 of 2014 for security for costs. On 12 August 2014, the assistant registrar ordered that the plaintiff furnish security for costs in favour of the defendants in the sum of $75,000 within 14 days, or by 26 August 2014. The main claim was to be stayed until the security was provided. There was no appeal against this order. At a pre-trial conference on 18 August 2014, I told the plaintiff, who was still represented by a lawyer then, that security must be provided by the 26 August 2014 deadline. The deadline came and went, but no security was provided. At a pre-trial conference on 2 September 2014, the plaintiff told the assistant registrar that he needed more time to raise the security and would raise the funds in due course. The defendants gave notice to the plaintiff that they would continue to seek judgment of the counter-claim and apply for the plaintiff's claim to be dismissed for failure to pay security. They also said that they would seek personal costs from Mr Chettiar and Ms Majella at trial. The trial started on 9 September 2014 after I acceded to the request of Mr Chettiar – who had a law degree and had taught law – to represent the plaintiff. However, he gave me no good reason to grant him until 30 September 2014 to furnish security for costs [note: 8]. I thus heard the parties on the counter-claim. At the end of the trial, I remained unconvinced of Mr Chettiar's ability to make good on the security even with more time. He had provided little more than mere assurances. I therefore dismissed the plaintiff's main claim on account of its default to furnish security for costs. [note: 9]

7 My decision to dismiss the main claim which had been stayed was not made lightly. The main claim and the counter-claim were clearly delineated in the pleadings and the affidavits, but the plaintiff's prospects in the counter-claim obviously depended in some degree on its ability to prove the facts-in-issue in the main claim. The power to dismiss an action for default in complying with an order

for security derives from the inherent jurisdiction of the court (Singapore Civil Procedure 2015 vol I (GP Selvam gen ed) (Sweet & Maxwell Asia, 2014) at para 23/3/37). I recognised the plaintiff's concern that the defendants' application for security for costs was made late in the pre-trial phase. However, the plaintiff was in clear disregard of the time limit prescribed by the court. I was also unconvinced that there was any reasonable prospect that the security would be paid. There were two circumstances in which courts have held that the inherent jurisdiction is exercisable: *Speed Up Holdings Limited v Gough & Co. (Handly) Ltd* [1986] FSR 330 at 334-335. In that case, the English High Court also suggested that a particular circumstance for consideration was whether the continued existence of the proceedings was "operating to the prejudice of the defendant". In this regard, I also gave some weight to the defendants' submissions that the proceedings should not continue to hang over their heads on the plaintiff's promises to make good on the security, which would mean vacating the trial.

Issues

8 As the plaintiff's claim had been dismissed, I was only concerned with whether the first defendant could discharge its legal burden in regard to the counter-claim (see above at [4]-[5]). A second issue was whether the costs of the main claim and the counter-claim should be borne jointly and severally by the plaintiff, Mr Chettiar and Ms Majella.

My decision on the counter-claim

9 The 18 transactions in the running account that allegedly showed a balance of $244,844 owing to the first defendant came from the plaintiff's own general ledger, under a section titled "Advancement from Ken Yeo" (as the first defendant is known). [note: 10] A two-page copy of the ledger was exhibited in support of the 18 transactions. The purported entries on the ledger are partially reproduced, with serial numbers added and the bank account number redacted:

No	Date	Description	Debit	Credit	Balance
		Balance B/F			0.00
1	01/04/2010	Advance from Ken		75,000.00	(75,000.00)
2	05/05/2010	Short term advancement from Ken Yeo		6,000.00	(81,000.00)
3	05/05/2010	SCB Current A/C 13-1-XXXXXX-7		2,844.00	(83,844.00)
4	13/05/2010	Repayment of advancement from Ken Yeo	6,000.00		(77,844.00)
5	18/05/2010	SCB Current A/C 13-1-XXXXXX-7		8,000.00	(85,844.00)

6	20/05/2010	SCB Current A/C 13-1-XXXXXX-7		12,000.00	(97,844.00)
7	04/06/2010	SCB Current A/C 13-1-XXXXXX-7		12,000.00	(109,844.00)
8	09/07/2010	SCB Current A/C 13-1-XXXXXX-7		17,500.00	(127,344.00)
9	09/07/2010	Advance from Ken		13,000.00	(140,344.00)
10	20/07/2010	Advance from Ken		5,000.00	(145,344.00)
11	20/07/2010	Advance from Ken		19,000.00	(164,344.00)
12	06/08/2010	Repayment of advancement from Ken	13,500.00		(150,844.00)
13	06/09/2010	Loan from Ken		30,000.00	(180,844.00)
14	08/09/2010	Advance from Ken		107,000.00	(287,844.00)
15	17/09/2010	Repayment for advancement to Ken	30,000.00		(257,844.00)
16	22/09/2010	Repayment of advancement from Ken	13,000.00		(244,844.00)
17	08/10/2010	Advance from Ken		3,000.00	(247,844.00)
18	08/10/2010	Repayment of advancement from Ken	3,000.00		(244,844.00)
			65,500.00	310,344.00	(244,844.00)

10 The first defendant explained how he came into possession of the ledger, which had been printed out from the plaintiff's accounting software in the plaintiff's office on 7 January 2011. [note: 11] The ledger was printed out in anticipation of disputes arising from the licensing arrangements to operate the plaintiff's business. [note: 12] The second defendant had kept the print-out and provided it to the first defendant for the purpose of filing his affidavit. [note: 13] The first defendant testified that the records were reliable as they had been printed out from the system. He claimed that he had

authorised the 18 transactions by signing on the plaintiff's vouchers, although he admitted that he did not have the vouchers as he had not photocopied them. [note: 14]

11 However, there were bank statements from the first defendant and fourth defendant – which the first defendant controlled – that corresponded with the dates of most of the advances to the plaintiff. The fourth defendant was known as Harbridge Holdings Pte Ltd and later on, as Lincoln Collegiate of Business & Technology Pte Ltd. The first defendant exhibited statements that reflected transfers from his bank account for the 13th and 14th transactions. [note: 15] In particular, the 13th transaction, for a sum of $30,000, was specifically stated to be a transfer to the plaintiff's bank account. The first defendant also exhibited statements that reflected cash withdrawals from the fourth defendant's bank account for the fifth, sixth, seventh, eighth, 11th and 17th transactions. [note: 16] Therefore, the bank statements of the first and fourth defendants indicated that eight of the 13 purported advances had occurred. In fact, one advance of $12,000 – the seventh transaction – on 4 June 2010 was further supported by the plaintiff's own bank statement, which reflected a deposit for the same amount on that date. [note: 17]

12 There were no bank statements to substantiate the second, third, ninth and tenth transactions. For the first transaction, the first defendant explained that that was not linked to a particular advance as it represented the balance that had been carried over from the previous accounting year ending March 2010. The first defendant submitted that the $75,000 was a consolidated figure recorded as at 1 April 2010. This was the date when the new accounting year began. [note: 18] While there were no bank statements to corroborate the first transaction, the defendants exhibited a copy of the plaintiff's audited financial statements for the year ending 31 March 2010. The auditor had given an unqualified opinion. [note: 19] On 10 September 2010, Mr Chettiar and Ms Majella had signed off on these statements in their capacity as directors of the plaintiff. [note: 20]

13 Further, I found that the advances were substantiated by the plaintiff's own witness, Mr Supramaniam s/o Nasaiah ("Mr Supramaniam"). He had reproduced the portion of the plaintiff's general ledger titled "Advancement from Ken Yeo" [note: 21] by typing out the entries that he had retrieved from the plaintiff's accounting software system. [note: 22] Mr Supramaniam's document substantiated the ledger provided by the first defendant, although his document reflected three additional transactions that had taken place before the start of the new accounting year on 1 April 2010:

Date	Description	Debit	Credit	Balance
	Balance B/F			-
30/10/2009	Advance from Ken	-	100,000.00	(100,000.00)
10/02/2010	Repayment of advancement from Ken	25,000.00	-	(75,000.00)
31/03/2010	Transfer of balance to Harbridge Holdings	75,000.00	-	-

14 I accepted the first defendant's submission that Mr Supramaniam's document not only

corroborated the first defendant's print-out of the plaintiff's ledger; it also provided additional supporting information to explain the consolidated figure of $75,000 owing to the first defendant as at 1 April 2010: the figure was the balance of the transactions on 30 October 2009 and 10 February 2010 (see [13] above). Further, the plaintiff's bank statements did reflect a cheque deposit of $100,000 on 30 October 2009 and a cash withdrawal of $25,000 on 10 February 2010. [note: 23]

The plaintiff's defence to the counter-claim

15 I find that the plaintiff failed to adduce any credible evidence to rebut the first defendant's counter-claim. The plaintiff raised a litany of arguments, but many departed from its pleadings on the counter-claim (see [5] above) and required me to make findings of facts-in-issue in the main claim.

16 For example, the plaintiff asserted an entitlement to set off a series of unauthorised payments against the first defendant's counter-claim. [note: 24] It alleged that these unauthorised payments, which included several of the 18 transactions, [note: 25] had been wrongfully made to the first and/or fourth defendant. [note: 26] It also contended that the first defendant owed the plaintiff $623,122.78 based on "reconciled 'running accounts'". [note: 27] But all these alleged instances of misappropriation – and any attendant breaches of good faith or director's duties – necessarily pertained to the main claim, which the plaintiff was not allowed to prove. As such, all these arguments could gain no traction.

17 Admittedly, the plaintiff was hamstrung to the extent that its case was that the 18 transactions in the ledger was just part of a larger scheme to defraud the plaintiff, [note: 28] [note: 29] but its inability to shed light on the purported bigger picture was a corollary of the failure to provide security for costs for the main claim.

18 I considered the plaintiff's main arguments insofar as they were relevant to defending the counter-claim. The plaintiff submitted that while the first defendant pleaded that he had been making advances to supplement the plaintiff's cash flow, his affidavit of evidence-in-chief stated that he had been making the advances from either his own bank account or through the fourth defendant. Therefore, the first defendant was not entitled to the advances that he made through the fourth defendant as "these were not pleaded". [note: 30] This argument was without merit. The first defendant's affidavit had maintained his pleaded position that he was the party who had made the advances, albeit he had made a number of the advances through the fourth defendant. To put it another way, the fourth defendant had made advances to the plaintiff on the first defendant's behalf.

19 The plaintiff also submitted that it had no need for the advances as it had sufficient finances to support itself. This was a pleaded position that it sought to cross-examine the first defendant on during the trial. [note: 31] However, the question of whether the plaintiff had sufficient finances did not necessarily mean that no advances had been made to the plaintiff to supplement its cash flow or under the licensing arrangements. In any case, it appeared that the plaintiff might have, at certain points in time, required advances to smoothen its cash flow. The plaintiff's balance in its bank account on 30 June 2010 was $93,819.11, while the balance on 31 December 2010 was $64,700.75. [note: 32] I agreed with the first defendant that the balance would have been "significantly lower" if not for the first defendant's advances, which by way of example, included a net advance of approximately $64,000 in September 2010. [note: 33]

20 The plaintiff also argued that the ledger should be excluded from consideration. It stated that the ledger was hearsay and provided by the second defendant, who did not give evidence at trial.

[note: 34] However, s 32(1)(*b*) of the Evidence Act (Cap 97, 1997 Rev Ed) ("the Act"), provides that statements that are made in the course of trade, business, profession or other occupation are admissible. Further, s 34 of the Act provides that entries in account books that are regularly kept in the course of business are relevant whenever they refer to a matter into which the court has to inquire, although these statements cannot lead to a finding of liability on their own. To me, the real issue was whether the ledger yielded unreliable information, unreliability being a danger of admitting hearsay evidence. If so, I might have relied on s 32(3) of the Act to exclude the ledger in the interests of justice. But I disagreed with the plaintiff that the ledger was completely unreliable. Among other things, the plaintiff had complained that the first defendant had only provided an "unsigned/unverified 2-page partial printout of an alleged 193-page general ledger" [note: 35]. However, the first defendant would only be expected to produce the pages that substantiated his counter-claim. The plaintiff could have produced the other pages if it had wanted to do so. Further, even if the first defendant was not the actual person who had made the entries, he was the supplier of the information on the transactions, which were substantiated by the bank statements that were produced.

21 The question of the first defendant's authority to make payments from the plaintiff implicated the main claim and was in any event, not pleaded for the counter-claim. As for the first defendant's authority to extend advances to the plaintiff, whether from his own bank account or through the fourth defendant, I accepted his submission that the advances were made under the auspices of the licensing arrangements under which the fourth defendant and SIC College Pte Ltd (another company controlled by the first defendant) were required to manage the plaintiff's business. [note: 36] The plaintiff had also submitted that the first defendant was not entitled to claim for the advances that had been made by the fourth defendant, [note: 37] but this did not further its defence. Leaving aside the lack of dispute over the control that the first defendant exercised over the fourth defendant, there was no dispute between the defendants that the first defendant was entitled to the repayment of the advances from the fourth defendants.

22 The plaintiff could, and should have done more for its pleaded case - that the 18 transactions were fictitious. For example, the plaintiff disputed the 14th transaction, which the first defendant had alleged was a transfer of $107,000 from his bank account to the plaintiff on 8 September 2010. [note: 38] The plaintiff contended that the first defendant had created "fictitious accounting trails" using the plaintiff's books and accounts, as "the sum was eventually deposited into the 1st Defendant's own personal bank account after being initially transferred to the 4th Defendant's account". Questions over whether any of the advances had actually entered the plaintiff's account could have been resolved had a complete set of the plaintiff's bank statements [note: 39] between January 2009 and December 2011 been produced. By the end of the trial, the plaintiff was still unable to produce most of its bank statements that were relevant to the transactions in the counter-claim. Yet it had been able to furnish bank statements from August 2009 to April 2010, June 2010 and from January 2011 to June 2011. At trial, Mr Supramaniam, who took over the plaintiff's accounts in 2011 and reviewed its transactions, [note: 40] confirmed that he was missing the bank statements for some of the months. [note: 41] He testified that he had asked Mr Chettiar for these statements in the beginning of 2014, and reminded him again in April 2014, but Mr Chettiar failed to get back to him. [note: 42] When cross-examined, Mr Chettiar gave various reasons, including an expectation for the police to provide the bank statements for free and the prohibitive cost of procuring the bank statements. These were manifestly inadequate responses and I was compelled to draw an adverse inference against the plaintiff. [note: 43]

23 In the circumstances, I decided to allow the counter-claim. However, I excluded four transactions – the second, third, ninth and tenth transactions – in the ledger as they appeared to be entirely uncorroborated (see [12] above). After deducting these transactions, I allowed the counter-claims in the sum of $218,000.

My decision on whether to order non-party costs

24 I had also ordered costs for the main claim and the counter-claim to be paid by the plaintiff, Mr Chettiar and Ms Majella jointly and severally, pursuant to O 59 r 2(2) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed). The plaintiff had asked for indemnity costs because of the blameworthiness of the defendants, but this was based on the unproven allegations in the main claim. [note: 44] There was no reason for me to deviate from the principle that costs should follow the event. The defendants, on the other hand, sought non-party costs on an indemnity basis from Mr Chettiar, Ms Majella and Stansfield College Pte Ltd ("Stansfield College"). Stansfield College was a company in which Mr Chettiar and Ms Majella were two of the three directors. The couple and three other family members owned the entire shareholdings of the company. [note: 45]

25 Both parties cited the case of *DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd and another appeal* [2010] 3 SLR 542 ("DB Trustees"). In that case, the Court of Appeal ordered the sole director of a company to bear the costs of two appeals, which were awarded on an indemnity basis, jointly and severally with the company. In doing so, the court established guidelines as to when non-party costs should be awarded.

26 The overarching rule is for non-party costs to be ordered only when it is just to do so. [note: 46] The concept of what is "just" was rightly recognised to admit a "myriad of possibly relevant considerations" (at [29]). However, the court isolated two particular factors that should almost invariably be present, although they are not indispensable. The first factor is the presence of a close connection between the non-party and the proceedings. One of the multifarious scenarios could be where the non-party "funds or controls the legal proceedings with the intention of ultimately deriving a benefit from them" (at [30]). [note: 47] The other factor is that the non-party must have caused the incurring of costs, [note: 48] the relevant question being whether the litigant would have incurred the costs even without the non-party's involvement. Clearly, the same facts can establish both factors.

27 On the facts, the Court of Appeal found that the sole director should be made liable for the costs of the appeals. It arrived at its findings based on three critical factors. First, she was solely responsible for the company's participation in the legal proceedings, which stemmed from her unreasonable stance. [note: 49] Second, she was the *alter ego* of the company. She was the only shareholder and director, and was essentially the "real and only beneficiary of any successful outcome of [the company's] litigation" (at [41]). [note: 50] Finally, the company appeared unable to satisfy the adverse cost orders made. [note: 51]

28 I considered the applicability of DB Trustees to the present facts. The plaintiff was unable to satisfy the adverse costs orders made. It had stopped offering private education services and was no longer generating income at the time of the trial. As I understood it, its ability to offer education services was dependent on approval from the Council of Private Education. [note: 52] It was also clear enough to me that Mr Chettiar and Ms Majella were funding or controlling the legal proceedings and would ultimately derive a benefit from the lawsuit. In terms of funding, it was undisputed that Mr

Chettiar and Ms Majella were using their income to fund the action. [note: 53] In Ms Majella's affidavit concerning the defendants' application for security for costs before the trial, she had stated that "my husband … and I own substantial shares in Stansfield College Pte Ltd through which we have been funding the Plaintiff's action and will undertake any orders if any". [note: 54] It was also abundantly clear that Mr Chettiar and Ms Majella were driving the legal proceedings. [note: 55] For the purpose of corporate self-representation at trial, Mr Chettiar was able to get himself onto the plaintiff's board. Ms Majella filed most of the affidavits. [note: 56] At the time of the trial, the only other director of the three-person board was Mr Chettiar's brother, who did not play an active role in the company. [note: 57] In the circumstances, I was satisfied that the factors in [26] above were satisfied in relation to Mr Chettiar and Ms Majella. I also noted that the defendants had given them prior warning, although this was not a strict requirement. [note: 58]

29 However, as non-party costs must be ordered only when it is just to do so, I considered if there were any factors that militated against the ordering of non-party costs against Mr Chettiar and Ms Majella. The plaintiff submitted that the company was commencing action against former key employees who had breached their fiduciary duties in 2012 but were uncooperative, resulting in the present suit. [note: 59] I was unable to take this into account as the plaintiff's main claim, which would have allowed him to prove these allegations, had been dismissed for want of security for costs.

30 I declined to make Stansfield College, which received a steady stream of income, liable for other-party costs to the plaintiff. It was not just to do so. Among other reasons, there were other shareholders who were uninvolved in the legal proceedings. Ms Majella had also clarified that Stansfield College was not directly funding the litigation. [note: 60] I also declined to order that the costs would be made on an indemnity basis. The main claim was dismissed without hearing due to a failure to provide security for costs, so it could not be said that the plaintiff had conducted the litigation in an extravagant, disproportionate or oppressive manner. Further, without hearing the main claim, there was no basis to accept the defendants' submissions that the main claim was based on a false premise. However, I revised my costs order after delivering the oral judgment when the defendants informed me that they had made an offer-to-settle on terms more favourable than my judgment. On 25 March 2015, I fixed the costs for the counter-claim at $30,000 and for the main claim at $20,000.

Conclusion

31 In conclusion, I allowed the counter-claim in the sum of $218,000 and ordered costs to be borne jointly and severally by the plaintiff, Mr Chettiar and Ms Majella.

[note: 1] Defendants' Bundle of Documents ("DBOD") at p298.

[note: 2] Bundle of AEICs Vol 2 at p138.

[note: 3] Statement of Claim (Amendment No 1) at [21]-[22].

[note: 4] Defence & Counterclaim (Amendment No 4) ("DCC") at [71]-[74].

[note: 5] NE Day 1 at p77.

[note: 6] Defendants' closing submissions ("DCS") at [8] and DCC at [72].

[note: 7] Reply and Defence to Counterclaim (Amendment No 1) ("RDCC") at [44]-[46].

[note: 8] NE Day 1 p11.

[note: 9] NE Day 2 p223.

[note: 10] DBOD Tab 1.

[note: 11] NE Day 1 p101-102.

[note: 12] NE Day 1 p104.

[note: 13] NE Day 1 p107.

[note: 14] NE Day 1 109-110.

[note: 15] Bundle of AEICs Vol 1 of 3 at pp40-41 and pp274-275.

[note: 16] Bundle of AEICs Vol 1 of 3 at pp40-41 and pp257-266.

[note: 17] DBOD at p86.

[note: 18] DCS at [8].

[note: 19] DBOD at p172.

[note: 20] DBOD at pp170-172.

[note: 21] Reply AEIC of Supramaniam s/o Nasaiah at [27] and Annex-2.

[note: 22] NE Day 2 p21.

[note: 23] DBOD at p65 and 76.

[note: 24] PCS at [14].

[note: 25] See, *eg*, PCS at [96].

[note: 26] Statement of Claim (Amendment No 1) at [21]-[22].

[note: 27] PCS at [12(e)] and [100].

[note: 28] See, *eg*, NE Day 1 at p55.

[note: 29] PCS at [11].

[note: 30] Plaintiff's closing submissions at [8]-[9].

[note: 31] See, *eg*, NE Day 1 202-204.

[note: 32] See DBOD at p88 and 90.

[note: 33] DCS at [19].

[note: 34] PCS at [20].

[note: 35] PCS at [18].

[note: 36] DCS at [25]-[26].

[note: 37] PCS at [85].

[note: 38] Bundle of AEICs Vol 1 of 3 at p42.

[note: 39] DBOD at p35.

[note: 40] NE Day 2 at p17.

[note: 41] NE Day 2 p31.

[note: 42] NE Day 2 p32.

[note: 43] See, eg, NE Day 2 at pp122-123.

[note: 44] See PCS at [143]-[163].

[note: 45] DBOD at Tab 32.

[note: 46] DB Trustees at [29].

[note: 47] DB Trustees at [30].

[note: 48] DB Trustees at [35].

[note: 49] DB Trustees at [38].

[note: 50] DB Trustees at [41].

[note: 51] DB Trustees at [42].

[note: 52] NE Day 2 p73.

[note: 53] See, *eg*, NE Day 2 at 80.

[note: 54] Affidavit of Cenobia Majella dated 1 August 2014 at [35].

[note: 55] NE Day 2 p73 and DCS [48]-[51].

[note: 56] NE Day 2 at p66.

[note: 57] See DBOD at Tab 31 and NE Day 2 at p65.

[note: 58] DB Trustees at [47].

[note: 59] PCS at [141].

[note: 60] NE Day 2 p80.

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