Teo Chin Kiang Willie v MAE Engineering Ltd
[2006] SGHC 113

Case Number : Suit 6/2005

Decision Date : 29 June 2006

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Lee Hwee Khiam Anthony and Pua Lee Siang (Bih Li & Lee) for the plaintiff; Chandra Mohan and Julian Soong (Rajah & Tann) for the defendant

Parties : Teo Chin Kiang Willie — MAE Engineering Ltd

Employment Law – Contract of service – Termination with notice – Plaintiff agreeing to observe notice period – Defendant accepting notice of resignation – Whether plaintiff illegally terminating contract of service

Employment Law – Duties – Non-performance of duties – Responsibility for non-core business being given only to plaintiff later – No proper account of losses – Whether plaintiff liable for losses occurring before and after responsibility for non-core business assumed

29 June 2006 *Judgment reserved.*

Kan Ting Chiu J:

1 This action was contested over the defendant's counterclaim.

2 The plaintiff, Willie Teo Chin Kiang, had sued the defendant, MAE Engineering Ltd, for $247,880.98 due under a service agreement between him and the defendant. The defendant made an offer to admit a sum of $243,341.98. After the plaintiff accepted the offer, the action proceeded in relation to the defendant's counterclaim.

The defendant's counterclaim

3 The counterclaim came under four heads:

a) unlawful termination of service agreement;

b) breach of service agreement;

c) breach of director's duties; and

d) negligence.

Unlawful termination of service agreement *[note: 1]*

4 The defendant claimed that the plaintiff unlawfully terminated a service agreement dated 28 September 2001 under which he was appointed as the executive chairman of the defendant.

5 The defendant claimed that as a result of the unlawful termination and the consequential interruption and disruption to the defendant's non-core businesses of which the plaintiff was in charge, the defendant had to appoint BSM Consulting Pte Ltd ("BSM") to take over and manage the

businesses. The defendant claimed from the plaintiff $172,000 paid to BSM and disbursements incurred by BSM, which are to be quantified, as well as damages for the disruption or interruption of the defendant's operations.

6 The defendant also claimed that it had to appoint another company, namely, Ernst & Young ("E&Y"), to prepare a report on the divestment of the defendant's non-core businesses and to review and report on the non-core businesses. For this purpose, the defendant had paid a fee of $114,000 to E&Y and it sought to recover it from the plaintiff together with disbursements to be quantified.

Breach of service agreement *[note: 2]*

7 The defendant made claims against the plaintiff for failing to carry out his duties under the service agreement while it was in force.

8 The defendant alleged that the plaintiff was assigned, under the service agreement, the responsibility and authority to set up, develop and manage the defendant's non-core businesses and to divest the non-core businesses. Specifically, it was alleged that the plaintiff was responsible for the 664 dinosaur exhibits and a piece of equipment known as a Motion Master which the defendant owned as at 31 March 2003 and were used in exhibitions, and he was to keep a proper record of or account for them. The defendant alleged that the plaintiff had failed to carry out these duties.

9 The defendant claimed that the plaintiff by a report dated 20 July 2004 submitted an inventory listing a total of 392 dinosaur exhibits and the Motion Master located in Singapore, Malaysia and China, reflecting a loss of 270 dinosaur exhibits.

10 The defendant further pleaded that when it conducted a stock count of the dinosaur exhibits in Singapore and Malaysia, it was not able to locate 22 dinosaur exhibits previously listed to be in Singapore and 78 dinosaur exhibits previously listed to be in Malaysia, and because it was unable to do a stock count on the dinosaur exhibits and the Motion Master in China as the plaintiff had failed to disclose their whereabouts, it regarded them as lost.

Breach of director's duties *[note: 3]*

11 The defendant claimed that the plaintiff had a duty as a director to keep a proper record of and to account for the dinosaur exhibits owned by the defendant, and he had failed in his duty.

Negligence *[note: 4]*

12 The defendant alleged that the plaintiff owed to the defendant as employee and director, a duty of skill, care and diligence in the discharge of his responsibilities and he had failed to properly manage and account for the dinosaur exhibits. Although negligence was pleaded, no particulars of negligence were given.

The defendant's claims

13 The defendant claimed from the plaintiff the price of the lost dinosaur exhibits and the Motion Master or damages to be assessed.

14 The defendant is effectively seeking three forms of redress. First, it wants to recover from him the expenses incurred in appointing BSM and E&Y to complete the tasks the plaintiff did not complete when he resigned. Second, it seeks damages for the disruption or interruption of the defendant's

operations following the plaintiff's resignation. Third, it wants the plaintiff to pay damages for the dinosaur exhibits it claimed were lost when he had responsibility over them.[note: 5]

15 The counterclaim originally referred to the plaintiff's "sole authority" and "sole responsibility" to manage and operate the non-core businesses. It was explained that:

> It is the Defendant's pleaded case that as between the Executive Board members, the Plaintiff had been delegated the specific task of managing the Non-Core Business. The word 'sole' is used to refer to the fact that the Plaintiff was the only executive member of the Board that had been tasked with this responsibility over the Non-Core Subsidiaries.
>
> Having sole responsibility and authority over the Non-Core Subsidiaries does not mean that the Plaintiff had to do all the work himself. He can delegate, but he remains responsible to the Board and to the Company in respect of matters that have been delegated to him.[note: 6]

Subsequently, the defendant amended the counterclaim by removing the word "sole" from these allegations.

16 It is noteworthy that the defendant's case against the plaintiff was for the plaintiff's alleged failure in discharging the specific duty assigned to him to manage the non-core businesses rather than the general responsibilities that he had as a director or an employee of the defendant.

Background

17 The plaintiff considered himself the founder of the defendant.[note: 7] The defendant was incorporated as a private company, MAE Engineering (Pte) Ltd, in November 1974 with the plaintiff as a director. When it was listed as a public company by its current name in March 2000, he was designated as its executive chairman.

18 While the defendant's main business was in mechanical and electrical engineering services, it was also engaged in oceanariums and aquariums, prawn and fish farming, and renting and holding exhibitions of dinosaur models (collectively referred to as "the non-core businesses") through its subsidiary companies. There were several non-core businesses, but for the purpose of this action, the relevant non-core business is the defendant's "edutainment" business that included the acquisition of dinosaur models used in and rented out for exhibitions. (The defendant and the subsidiary companies are referred to collectively as "the MAE Group").

19 After the listing, the defendant encountered financial difficulties. In 2002, the defendant entered into arrangements with another company engaged in the mechanical and engineering services industry, Bintai Kinden Corporation Berhad ("Bintai"), to strategise their operations. Ong Puay Koon ("Ong"), the key person behind Bintai, described the arrangement as a merger whereby Bintai took the dominant role, and in the words of the plaintiff, "Ong Puay Koon effectively took over the leadership role and overall responsibility for the direction of the MAE Group."[note: 8]

20 The minutes of meeting of the directors of the defendant of 20 June 2002 recorded that the plaintiff was appointed chairman of the MAE Group, with Ong as deputy chairman and chief executive officer and Tan Hee Chai as executive vice chairman. The three of them formed the company's executive committee, and it was recorded that:

> Mr Ong shall have overall responsibility for the direction of the MAE group, Mr Teo [the plaintiff] shall be *responsible for the technical and engineering matters* and Mr Tan Hee Chai shall have

responsibility for the corporate, finance and administrative functions. [emphasis added]

21 The meeting approved an organisation chart which put different persons in charge of finance, administration and purchasing, corporate, mechanical and electrical engineering operations, contracts and claims, but no person was named to be in charge of the MAE subsidiary companies. The plaintiff's involvement in the technical and engineering activities of the defendant was recorded in the minutes of the executive committee of 29 July 2002 that "[the plaintiff] has offered to continue to oversee existing MAE Contracts, namely the Arts Centre, Fullerton Hotel and Capital Tower, until such time that all the claims and Variation Orders are resolved".[note: 9]

22 The defendant's financial condition did not improve after the merger, and it had to make a rights issue to raise funds. The minutes of the meeting of the company's board of directors of 20 December 2002, recorded that Ong informed the meeting that the underwriters for the share issue wanted the defendant to focus on its core business and divest its non-core businesses, and the board agreed to do that.

23 Apparently, no improvement was achieved and the defendant had to take further action to address its financial problems. The minutes of its directors' meeting of 28 August 2003 recorded that the plaintiff stepped down as chairman, while remaining as executive director. A decision was made to dispose of the company's non-core businesses. A re-organisation of duties and responsibilities was made whereby the plaintiff was to be "*responsible for the existing subsidiary companies in the non-core businesses which the Company will be divesting*. He will also be responsible for the divestment of these non-core businesses"[note: 10] [emphasis added], while Yeo Weng Chew, President and Executive Director of the defendant, was responsible for the overall operations of the MAE group.

The plaintiff's resignation

24 On 23 July 2004, the plaintiff sent to the defendant a letter in the following terms:

> **Notice of Resignation**
>
> **Termination of Service Agreement dated 28 September 2001**
>
> This letter serves to notify that I wish to resign from MAE Engineering Ltd with immediate effect from the date hereof.
>
> This notice is served without prejudice to my rights under the said Service Agreement.

25 On the same day, the defendant, through its company secretary replied by e-mail to the plaintiff at 2.51pm:

> We have today received, from the Company at its Board of Directors' meeting, a copy of your notice of resignation and termination of service agreement (the "Notice").
>
> As instructed by the Board of Directors, we write to seek clarification from you that you are also resigning as a Director of the Company. We would appreciate if you could confirm by return email to us urgently.
>
> We wish to draw your attention to clause 12 of the service agreement that 6 months' notice in writing has to be given to the Company to terminate your service agreement.

26 However, even before receiving the plaintiff's clarification, the defendant made an

announcement to the Singapore Exchange at 2.55pm that:

> Mr Willie Teo Chin Kiang, an executive director, has notified the Company today that he wishes to terminate his service agreement and to resign from the Company with immediate effect.
>
> The Board of Director [*sic*] has accepted his notice of resignation and termination of service agreement at the 23 July 2004 board meeting.

27 At 3.41pm, the plaintiff's wife replied by e-mail on his behalf to the defendant that:

> The resignation as Director is immediate.
>
> But Mr Teo will observe the notice period required under Clause 12.3 of the Service Agreement.

thereby making clear that he was continuing to serve under the service agreement.

28 The plaintiff made the same point again to the defendant on 27 July 2004 to state:

> I refer to my letter of resignation dated 23 July 2004 (the "Letter"), the email of 23 July 2004 from Ms Chew Bee Leng of Rodyk & Davidson and the reply to her of the same date (By Ms Jeanne Chew on my behalf).
>
> For the sake of good order, this letter serves to clarify my intent to resign as a director of MAE Engineering Ltd from the date of the Letter.
>
> I also further wish to clarify that by the Letter, I will commence serving the notice period as is required of me under Clause 12.3 of the Service Agreement dated 28 September 2001 entered between the Company and I.
>
> In the meantime, all rights under the said Service Agreement are reserved.

29 The defendant took time to respond and, on 20 August 2004, its solicitors wrote to the plaintiff:

> 1. We act for MAE Engineering Ltd (the "Company") and refer to your letters dated 23 July 2004 and 6 August 2004, respectively, to the Company.
>
> 2. By the terms of your letter dated 23 July 2004 to the Company, you have notified the Company of your resignation and termination of your service agreement dated 28 September 2001 ("Service Agreement") with immediate effect, which resignation and termination was accepted by the Board of the Company on and with effect from 23 July 2004.
>
> 3. Clause 12.3 of the Service Agreement requires you to give the Company 6 months' written notice of your termination ("Notice Period"). In breach of the said Clause you had notified the Company that your resignation was with immediate effect. Since the Notice Period is for the benefit of the Company, the Company is entitled to waive such requirement. We are instructed that *the Company has accepted your termination of the Service Agreement with effect from 23 July 2004*, as set out in the Company's announcement of 23 July 2004 and in line with your express intention as stated in your Notice.
>
> [emphasis added]

30 The letter raised more issues than it settled. Firstly, as the defendant was apparently uncertain about the scope of the notice of resignation, and had sought clarification, and was informed that it did not extend to the service agreement, there was no basis for it to assert that "you have notified the Company of your resignation and termination of your service agreement" after it received the clarification.

31 Secondly, as the notice was accepted by the company, the defendant cannot complain of a breach. The solicitors' letter referred to cl 12.3 of the service agreement. Clause 12.3 must be read with cl 12.1.1. The two provisions read:

> 12.1.1 Subject only to Clause 12.2 and 12.3, this agreement shall not be otherwise terminated *unless by the mutual agreement of the parties in writing*.
>
> 12.3 The Executive may terminate this Agreement by giving the Company 6 months' notice in writing and in such an event, there shall not be any claim by the Company whatsoever against the Executive in respect of or arising from such a termination.
>
> [emphasis added]

Since the defendant took the position that it had accepted the notice on 23 July 2004, it must also accept the corollary that the service agreement was terminated pursuant to cl 12.1.1 by mutual agreement in writing.

32 Thirdly, even if the notice of 23 July 2004 was a notice under the service agreement (which it was not), and was in breach of cl 12.3, the defendant's solicitors' letter made it clear that the six-month notice of resignation was waived.

33 The plaintiff responded through his solicitors on 31 August 2004 that:

> Our client categorically rejects your clients' allegations that he breached the Service Agreement. Our client gave the requisite 6 months' notice to terminate the Service Agreement in accordance with the terms of the Service Agreement. He is therefore not in breach of the Service Agreement.
>
> However, since your clients are prepared to accept termination of the Service Agreement with effect from 23 July 2004, our client also agree and accept the Service Agreement as having been terminated effective from that date pursuant to Clause 12.1.1 of the Service Agreement. Accordingly, with effect from 23 July 2004, our client ceased to be an employee of your clients.

confirming and endorsing the termination-by-agreement position.

34 The correspondence set out above shows that it was in fact the defendant who terminated the service agreement with the plaintiff's acquiescence. The defendant failed to make out its case against the plaintiff for illegal termination of the service agreement, and was therefore not entitled to any redress for consequential expenses incurred or damages for any interruption of its operations.

The handover

35 The plaintiff was responsible for the non-core businesses for less than a year, from 28 August 2003 to 23 July 2004.

36 On 12 August 2004 there was a handover meeting between the plaintiff with representatives of

the defendant, BSM and E&Y. The plaintiff deposed that he handed over to the defendant:

> … all the drawings, correspondence, documents and other papers, properties and assets belonging to the Defendant and its subsidiaries that were then in my possession, including 26 boxes containing files with contents that were systematically tabulated. All relevant information pertaining to the businesses and operations of the Defendant's subsidiaries were contained in the files that were handed over.[note: 11]

The plaintiff's responsibilities

37 Clause 3.2(1) of the service agreement provided that:

> The Executive shall during his appointment under this Agreement:
>
> (i) undertake such duties and exercise such powers in relation to the Company and its businesses as the Board shall from time to time properly assign to or vest in him in his capacity as Executive Chairman of the Company;

38 The plaintiff was assigned specific responsibilities. On the onset of the merger in June 2002, the plaintiff and Ong were given different duties – Ong to have overall responsibility for the direction of the MAE Group, and the plaintiff was given responsibility for technical and engineering matters (see [20] hereof). Ong alleged that there was an unrecorded understanding between them that he was to run the defendant's mechanical and engineering business and the plaintiff was to run its non-core businesses. Under challenge, he was unable to explain why an understanding of such importance was not recorded in the minutes, which showed instead that the plaintiff was to be responsible for technical and engineering matters. All that Ong could say was that the understanding was not recorded through "negligence", an explanation I cannot accept.

39 Prior to 28 August 2003, the plaintiff was not given any specific responsibility over the non-core businesses. There was no basis for the defendant to claim against him for any dinosaur exhibits that had been lost before that date. The plaintiff's responsibilities were changed on 28 August 2003. He was given the responsibility over the non-core businesses (see [23] hereof).

40 After he was given the responsibility over the non-core businesses on 28 August 2003, the plaintiff was answerable to the defendant for any loss of the dinosaur exhibits or the Motion Master that resulted from his failure to act honestly, reasonably and diligently in the discharge of his duties.

The loss of dinosaur exhibits

41 The dinosaur exhibits were acquired in 2001.[note: 12] They were made up of dinosaur creatures, the Motion Master, moulds and accessories. The defendant had some records on them. The defendant relied on a fixed assets list submitted to its auditors at the financial year ending 31 March 2003 which showed that the defendant owned 665 dinosaur exhibits (including the Motion Master), and the fact that there was no record that any of them had been sold.

42 It was established during the hearing that the list was made for accounting purposes without any physical check or verification of the items. In other words, the list showed how many dinosaur exhibits there could have been, not how many there actually were.

43 Following from that, there was no evidence as to how many dinosaur exhibits there were on 28 August 2003 when the plaintiff took charge of the non-core businesses including the dinosaur

exhibits. As they were acquired in 2001 and were dispersed in America, China, Taiwan and Malaysia, it cannot be assumed that all the dinosaur exhibits were present and accounted for, and that none had been lost or damaged in the interim period.

44 The defendant relied on a report submitted by the plaintiff on 20 July 2004 which showed that the defendant owned 393 dinosaur exhibits and concluded that there was a shortfall of 272 dinosaur exhibits and it held the plaintiff responsible for it.

45 After the plaintiff resigned, the defendant instructed BSM to conduct another count of the dinosaur exhibits in Singapore and Malaysia. The plaintiff was invited to take part in the exercise, but he did not take up the offer.

46 This count which was carried out from October 2004 to January 2005 showed that there were 118 dinosaur exhibits in Singapore and 77 dinosaur exhibits in Malaysia, reflecting a shortfall of 22 dinosaur exhibits for Singapore and 11 dinosaur exhibits in Malaysia for the 20 July 2004 figures. As BSM was unable to gain access to the dinosaur exhibits in China, the defendant treated the 87 dinosaur exhibits (including the Motion Master) as missing. The total shortfall was computed by the defendant as 459 dinosaur exhibits, which form the subject matter of the counterclaim on the lost dinosaur exhibits.

The inventory of 20 July 2004

47 This inventory was prepared by E&Y, but there was no evidence how the count was actually done. The defendant had indicated prior to the hearing that it would call a representative of E&Y by the name of Low Yen Mei as a witness, but no one from E&Y gave evidence of the count during the hearing.

48 This was unfortunate, as the methodology employed in counting the dinosaur exhibits can have a significant effect on the results, as will be seen when another count undertaken by BSM came under scrutiny (see [51]–[53] below).

49 As the evidence stands, the 31 March 2003 count was a "paper count", and we do not know how the figures in the inventory of 20 July 2004 were obtained.

50 In these circumstances, there is no reliable evidence on which the loss of the dinosaur exhibits between the two dates can be arrived at.

The post-handover counts

51 These counts were undertaken by BSM in Singapore on 15 October 2004 and 10 December 2004 and in Johor on 14 January 2005.

52 Koh Cher Chow ("Koh"), Principal Consultant of BSM, gave evidence of the counts. Under cross-examination, Koh explained that the mould count was recorded as zero because he did not know how to count the pieces of moulds that were not assembled. It transpired that subsequently some of the pieces were assembled, but the zero mould count was not revised. Koh eventually had to concede that the count undertaken may not be accurate,[note: 13] (and was therefore unreliable).

53 These questions over the accuracy of the pre-handover and post-handover counts raised serious doubts over the alleged loss of dinosaur exhibits between the two counts.

The dinosaur exhibits in China

54 These dinosaur exhibits were not counted, but were classified by the defendant as lost.

55 There was no dispute that some dinosaur exhibits and the Motion Master had been exhibited and used in China. The defendant was not personally involved in the deployment or storage of the dinosaur exhibits there.

56 The person actively involved was Jared Chew Boon Hee ("Chew"). Chew was a shareholder and director of Technology MAE Sdn Bhd ("TMAE"), one of the defendant's subsidiary companies. The plaintiff was a director of several of the defendant's subsidiary companies but he was not a director of TMAE.

57 Chew was in charge of the dinosaur exhibits when they were moving in and out of China and he also made arrangements for their security and storage. In the course of his work, he engaged a Chinese national, Yang Wei ("Yang"), and his company, Beijing Mu Dan Feng Co, to assist in obtaining security and storage services and also to recover some dinosaur exhibits for the defendant.

58 The defendant argued that the plaintiff had failed in his responsibilities as he had not accounted for the dinosaur exhibits in China and he did not produce any information on the whereabouts of the dinosaur exhibits or agreements relating to their storage, and he did not inform the defendant of the unpaid storage charges until after this action was commenced.

59 On his part, the plaintiff called Chew and Yang as his witnesses in the proceedings. They both asserted that the dinosaur exhibits were in storage in warehouses in China and that the warehouse-keepers will not release them before the storage charges are paid.

60 Yang had come to Singapore even before the hearing. He came in January 2005 to seek a resolution of the storage charges and other payments due to his company. He and Chew went to the offices of BSM for that purpose, but there was no settlement because no venue for a meeting could be agreed upon.

61 Is the plaintiff responsible and liable for the state of affairs? He was put in charge of the non-core businesses including the dinosaur exhibits with a view to divesting them, but the management of the dinosaur exhibits was apparently left to Chew. It was unclear who had responsibility over Chew's actions; was it the board of directors of the defendant, the board of directors of TMAE, or the plaintiff?

62 The plaintiff had deposed that:

> At the material time, the businesses and affairs of the Defendant's subsidiary companies in the non-core business were run and managed by their respective officers … and not by me …[note: 14]
>
> …
>
> I deny that I was charged with *sole* responsibility and authority to develop and manage these companies. The day-to-day business and affairs of the Defendant's subsidiary companies were run and managed by their respective officers …[note: 15]
>
> [emphasis in original]

and

> Due to a lack of funds from the Defendant following the [Board's] decision to stop or restrict funding, all the non-core subsidiaries had by September 2003 ceased all business operations and were no longer carrying on any business for me to oversee. Several staff, including key officers who managed the day-to-day business and affairs, had also resigned. Salaries and other expenses owing to them were not paid by the Defendant or the MAE Group.[note: 16]

63 There was no dispute over the first two statements. The defendant was able to establish that the statement that the non-core businesses had ceased operations by September 2003 was incorrect as dinosaur exhibitions were held in 2004, but there was no contradiction that the non-core businesses were facing problems with funding and staffing.

64 It may be argued that even if the problems were not of his making, the plaintiff should have attended to them in order that the dinosaur exhibits could be disposed of. But questions remain; firstly, whether the plaintiff could have secured the release of those dinosaur exhibits without sufficient funding and personnel, and secondly, whether the dinosaur exhibits alleged to be lost were in fact lost, before or during the time the plaintiff had responsibility over the non-core businesses.

65 The defendant had not persuaded me that the plaintiff had personal responsibility or liability for the storage of the dinosaur exhibits under the resolution of 28 August 2003. Further to that, the defendant had also not shown to my satisfaction that the dinosaur exhibits in China were lost. It is not its case that the dinosaur exhibits should not have been placed in storage or that there should be no payment for their storage, or that the plaintiff was in a position to pay the storage charges. I find that the defendant was not justified in treating all those dinosaur exhibits as lost, when Yang was prepared to produce them if the storage charges were paid.

Review and conclusion

66 Ong confirmed that when he arranged for Bintai to participate in the operations of the defendant, the primary attraction was the latter's mechanical and electrical engineering services business. When the merged operations ran into difficulties, the decision was made to divest the non-core businesses and focus on the core mechanical and electrical services business. The defendant placed the plaintiff in charge of divesting the non-core businesses.

67 The dinosaur exhibits business was not disposed off, but no complaint was made against the plaintiff for not getting buyers for it. Instead, the defendant seizes on the alleged shortfall in the dinosaur exhibits and makes its claim against him for the loss of the dinosaur exhibits.

68 Although the plaintiff was put in charge of the operations and divestment of the non-core businesses, he should not, for the reasons discussed, be personally liable for the problems that were encountered.

69 In the course of the hearing, I suggested that the parties should get together to resolve those problems, but unfortunately they were not able to do that.

70 In the result, the matters have to be dealt with according to the legal issues raised. On that basis, I order that judgment be entered in favour of the plaintiff for the sum of $243,341.98, and that the defendant's counterclaim be dismissed.

[note: 1] Re-amended Defence and Counterclaim paras 15-23

[note: 2] Re-Amended Defence and Counterclaim paras 31-46

[note: 3] Re-Amended Defence and Counterclaim paras 47-52

[note: 4] Re-Amended Defence and Counterclaim paras 53-55

[note: 5] Re-Amended Defence and Counterclaim paras (1)-(8)

[note: 6] Defendant's Closing Submissions para 17

[note: 7] Plaintiff's Opening Statement para 26

[note: 8] Affidavit of evidence-in-chief of the plaintiff para 38

[note: 9] 2AB 428

[note: 10] 3AB 798

[note: 11] Affidavit of evidence-in-chief of the plaintiff, para 24

[note: 12] Defendant's Closing Submissions para 140

[note: 13] Notes of Evidence (28/7/05) at p 59

[note: 14] Affidavit of evidence-in-chief of the plaintiff para 41

[note: 15] Affidavit of evidence-in-chief of the plaintiff para 47(b)

[note: 16] Affidavit of evidence-in-chief of the plaintiff para 48