

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 14

Suit No 310 of 2018

Between

Sumifru Singapore Pte Ltd

... Plaintiff

And

- (1) Felix Santos Ishizuka
- (2) Multiport Maritime
Corporation
- (3) Multiport Maritime Pte Ltd

... Defendants

JUDGMENT

Equity — Fiduciary relationships — When arising — Employees
Equity — Remedies — Account — Fiduciary interposing company in
contracts between employer and shipping companies
Damages — Assessment — Account of profits

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Sumifru Singapore Pte Ltd
v
Felix Santos Ishizuka and others

[2022] SGHC 14

General Division of the High Court — Suit No 310 of 2018

Vincent Hoong J

24, 25 September 2019, 9–11, 23–24, 29 March, 12, 15, 19–20, 22–23, 27,
29–30 April, 24 September 2021

24 January 2022

Judgment reserved.

Vincent Hoong J:

Introduction

1 These proceedings concern claims brought by Sumifru Singapore Pte Ltd (“Sumifru”) against their former employee Felix Santos Ishizuka (“Felix”) (the first defendant) and two companies which are owned and controlled by Felix, for having breached the duties he owed to Sumifru while under its employ.

2 Having carefully considered the evidence and the parties’ submissions, I find the defendants to be liable and dismiss the second defendant’s counterclaim. I set out the reasons for my decision below.

Facts

The parties

3 Sumifru is a company incorporated in Singapore in 2006, and is in the business of sourcing, producing, shipping, marketing and distributing various fresh fruits.¹ The primary product Sumifru markets is that of bananas, which are produced on plantations which operates as part of a larger group of companies (the “Sumifru Group”).² At all material times, Paul Edmund S Cuyegkeng (“Paul”) was the Chief Executive Officer (“CEO”) and Chairman of the board of directors of Sumifru.

4 The first defendant, Felix, joined Sumifru in 2010 as an executive handling matters concerning the shipment of Sumifru’s cargo from the Philippines to other markets in Asia.³ When his employment with Sumifru was renewed in 2012, he was given the title of “Shipping Director”. It is not disputed that he was not a member of Sumifru’s board of directors.⁴ It is also not disputed that despite Felix’s title, any major decisions concerning shipping had to be approved by Paul.⁵ At the material time, Felix was also a nominee shareholder, director, CEO and president of Davao Multiport Shipping Corporation (“Multiport Davao”), which was established in 2010 to provide ship-chandling

¹ Affidavit of Evidence in Chief (“AEIC”) of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 4; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 4.

² AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 5 to 7; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at paras 5 to 7.

³ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 43; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at paras 18 to 20.

⁴ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 52; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 25.

⁵ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 53; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 23.

services for ships calling at AJMR Port in Davao, Philippines which was operated by the Sumifru Group and dedicated to cargo shipped by Sumifru.⁶ Multiport Davao was an affiliate company of Sumifru set up under nominee shareholders and directors, but was not owned by Sumifru or part of the Sumifru Group.⁷ At all material times, Felix was the CEO and President of Multiport Davao, as Sumifru's nominee shareholder and director.⁸

5 The second defendant is Multiport Maritime Corporation ("Multiport BVI"), a company incorporated in the British Virgin Islands in 2012, by Felix to run his shipping and trading business.⁹ Multiport BVI is owned and controlled by Felix.¹⁰

6 The third defendant is Multiport Maritime Pte Ltd ("Multiport SG"), a company incorporated in Singapore in 2014, in the business of ship bunkering and ship brokering.¹¹ Felix is the sole shareholder and one of two directors of Multiport SG.¹²

⁶ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at paras 23 to 25; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 13; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at paras 23 to 26.

⁷ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 24.

⁸ AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 13; AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 24.

⁹ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 62; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 23.

¹⁰ Defendant's Closing Submissions ("DCS") at para 9.

¹¹ AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 49.

¹² AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 11; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at GSH-7, p 151.

Background to the dispute

7 Sometime in January 2018, Sumifru was asked about two vessels that it had purportedly time chartered for 12 months. As the charters were uncharacteristic of Sumifru’s business and not part of its plans, this triggered off an internal investigation within Sumifru, which uncovered the commercial relationships between Felix and the second and third defendants.¹³

8 Felix was subsequently suspended by Sumifru sometime in March 2018.¹⁴ On 18 April 2018, at Felix’s request, a meeting was set up between Felix, Paul, as well as other representatives from Sumifru and various lawyers (the “April 2018 Meeting”).¹⁵

9 Consequent to the investigations detailed above, Sumifru uncovered the following alleged actions of the defendants, which form the substance of its claims in these proceedings:

- (a) Time charters with various shipowners (the “Unauthorised Time Charters”);
- (b) Rebates from Unifrutti Traders Ltd (“Unifrutti”) paid to Multiport BVI (the “Unifrutti Rebates”);
- (c) Offers from Laysun Services Co Limited (“Laysun”) (the “Undisclosed Laysun Offer”);

¹³ AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at paras 44, 49 and 50; AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 67.

¹⁴ AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 52; AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 69, pp 109 to 112.

¹⁵ AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 54; AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 70.

- (d) Commissions paid by Itochu to Multiport BVI for the purchase of bunkers for ships chartered by Sumifru (the “Secret Bunker Commissions”).

The Unauthorised Time Charters

10 Between 2015 and 2018, Multiport BVI entered into contracts with various shipowners to time charter various vessels for durations ranging from one month to one year.¹⁶ Multiport BVI would then charter out space on board these ships to Sumifru, profiting from the difference between the time charter costs and the costs charged to Sumifru.¹⁷

11 Some of the above time charters were secured with Felix having represented to the shipowners that Sumifru was guaranteeing the performance of the contracts, or that Sumifru was the charterer.¹⁸ Although, it was not disputed that apart from the costs associated with the cancellation of the time charters for the vessels “Santa Lucia” and “Santa Maria” (the “Cancelled Charters”),¹⁹ none of the other time charters entered into by Multiport BVI had caused Sumifru to make any direct payments to the shipowners.²⁰

¹⁶ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at Tab PEC-12, p 122 and 124; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at GSH-13, p 196 and 198; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 86.

¹⁷ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 86; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 67.

¹⁸ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 91; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 72.

¹⁹ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 91(d); AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 72(d).

²⁰ AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 92.

The Unifrutti Rebates

12 Bananas are typically transported in the refrigerated cargo hold of special vessels known as “reefer vessels”.²¹ As part of the process of procuring shipping capacity, Sumifru would enter into contracts of carriage with various shipowners, ship operators, and other fruit traders.²² In order to optimise usage of the reefer vessels which had been time chartered, fruit traders would offer to sub-charter excess transport capacity to other fruit suppliers.²³

13 Unifrutti was a fruit supplier with an established presence in the Middle East, and together with its affiliate company Laysun, would offer to sub-charter excess capacity to Sumifru, as the latter did not have an established presence in the Middle East.²⁴

14 Sometime in 2017, Felix informed Paul that Laysun was offering to charge Sumifru a rate of US\$3.10 per box to ship its produce to the Middle East.²⁵ Sumifru understood that to be the best rate obtainable at that time and was not aware that Unifrutti was prepared to charge Sumifru at a lower rate of US\$2.65 per box. Sumifru thus agreed to the rate of US\$ 3.10 per box given the

²¹ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 26; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 27.

²² AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 27; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 29.

²³ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 29; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 30.

²⁴ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at paras 30; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 31.

²⁵ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 73; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 58; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 186.

prevailing market conditions.²⁶ As part of the arrangement, Multiport Davao then entered into a contract with Laysun to transport Sumifru's produce at the rate of US\$3.10 per box, and for a "rebate" of US\$0.45 per box to be paid by Laysun to Multiport Davao (the "Rebate Agreement").²⁷

15 Pursuant to the shipments carried out under the Rebate Agreement, invoices were issued by Laysun to Multiport Davao, which in turn issued invoices to Sumifru. It is undisputed that the rebates were eventually paid to Multiport BVI instead of Multiport Davao,²⁸ and Sumifru did not receive any of the rebates.

The Undisclosed Laysun Offer

16 Sometime in 2018, Laysun made an offer to transport Sumifru's bananas from the Philippines to the Middle East at a rate of US\$2.40 per box *vis-à-vis* Felix.²⁹ Sumifru claims that it was not informed of these offers,³⁰ and it is not disputed that Sumifru eventually continued shipping its produce with Multiport BVI at a rate of US\$2.80 per box.³¹

²⁶ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 75; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 58.

²⁷ AEIC of Felix Santos Ishizuka, dated 19 August 2019, at Tab 36, pp 856 to 857.

²⁸ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 78; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 63; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 197.

²⁹ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 101; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 77; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 124.

³⁰ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 102; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 78.

³¹ AEIC of Paul Edmund S Cuyegkeng, dated 28 August 2019, at para 102; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at para 78; AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 125.

Secret Bunker Commissions

17 On 20 March 2014, Multiport BVI entered into an agreement with Sumifru and Itochu Enex Co Ltd (“Itochu”), for Itochu to pay Multiport BVI commissions for the purchase of bunkers for ships chartered by Sumifru.³²

The parties’ cases

Sumifru’s claims

Fiduciary duties

18 Sumifru’s primary case is that Felix owed fiduciary obligations to it.³³ In this regard, Sumifru submits that as its shipping director, Felix was obliged to perform his responsibilities of sourcing for and negotiating the shipping arrangements in its best interests.³⁴ Furthermore, Sumifru relied on Felix to do so as he was Sumifru’s primary channel of communication with the various shipowners, operated with little supervision in this role, and was recruited for his shipping expertise.³⁵ In Sumifru’s words, Felix was effectively the “ruler in his own domain”.³⁶ Accordingly, Felix had a duty to avoid a conflict of interest as well as a duty not to make secret profits through the use of his position and that he was placed in a position of trust, both of which were hallmarks of a fiduciary relationship.³⁷ These fiduciary duties were also consonant with his contract of employment with Sumifru.³⁸

³² AEIC of Toshiyuki Shimano, dated 13 August 2019, at para 46 and p 343.

³³ Plaintiff’s Closing Submissions (“PCS”) at paras 9 and 18.

³⁴ PCS at para 24.

³⁵ PCS at paras 25 and 26.

³⁶ PCS at para 26.

³⁷ PCS at paras 28 and 29.

³⁸ PCS at para 30.

The Unauthorised Time Charters

19 Sumifru submits that Felix had persuaded the various shipowners to contract with Multiport BVI on his representation that Multiport BVI was Sumifru’s ship chartering arm.³⁹

20 In this regard, Felix had issued guarantees to several shipowners, purportedly on behalf of Sumifru, guaranteeing the performance of Multiport BVI. These guarantees were neither agreed to nor known to exist by Sumifru,⁴⁰ and would have likely played an important role in getting the shipowners to enter into charters with Multiport BVI.⁴¹

21 Sumifru submits that as it was actually liable for and bore the risk in respect of almost all of the Unauthorised Time Charters, there were in fact no voyage or spot charters that existed between Multiport BVI or Sumifru,⁴² and the purpose of these “sham” transactions were simply to enable Multiport BVI to profit at Sumifru’s expense.⁴³ The profits from these transactions amounted to US\$4,111,832.31 in 2016, US\$4,705,113.63 in 2017, and US\$468,526.09 in 2018.⁴⁴

22 By charging Sumifru freight costs higher than the costs of obtaining the Unauthorised Time Charters *vis-à-vis* Multiport BVI (which Felix owned and controlled) and by putting Sumifru at risk of virtually all the Unauthorised Time

³⁹ PCS at para 34.

⁴⁰ PCS at para 58.

⁴¹ PCS at para 57.

⁴² PCS at para 59 and 60.

⁴³ PCS at para 61.

⁴⁴ PCS at para 64.

Charters, Felix had acted in breach of his fiduciary duties to Sumifru,⁴⁵ for which he could not provide any commercially-sensible or reasonable explanation.⁴⁶ Equally, his actions was also in breach of his contractual obligations to serve Sumifru faithfully, diligently, and to the best interests of the latter.⁴⁷ In the alternative, Sumifru argues that Felix's actions in representing to Sumifru that the purported charters offered by Multiport BVI to Sumifru were false and amounted to fraudulent misrepresentations on the part of Felix.⁴⁸

23 Consequent to the above, Sumifru submits that Multiport BVI is liable for Felix's breaches of fiduciary duties in dishonest assistance, knowing receipt, and conspiracy by unlawful means.⁴⁹ Multiport SG is also jointly and severally liable together with Felix and Multiport BVI for dishonestly assisting Multiport BVI pay for various invoices issued by various bunker suppliers for the supply of bunkers for the ships chartered under the Unauthorised Time Charters.⁵⁰ Alternatively, Multiport SG is also liable in unlawful means conspiracy for having carried out acts together with Felix and Multiport BVI to injure Sumifru.⁵¹

24 Accordingly, Sumifru seeks an account of profits from Felix as a fiduciary and Multiport BVI and Multiport SG as dishonest assistants.⁵² In addition, Sumifru seeks damages of US\$1,313,833.46 incurred for the

⁴⁵ PCS at para 67.

⁴⁶ PCS at para 69.

⁴⁷ PCS at paras 70 to 71.

⁴⁸ PCS at paras 75 to 77.

⁴⁹ PCS at para 83.

⁵⁰ PCS at para 99, 121 to 124.

⁵¹ PCS at paras 125 to 126.

⁵² PCS at para 129 to 132, 137.

Cancelled Charters,⁵³ and US\$37,477.50 in relation to the vessel “Ivory Dawn”.⁵⁴

The Undisclosed Laysun Offer

25 Sumifru submits that by concealing Laysun’s offers to ship Sumifru’s products at US\$2.40 per box, Felix has acted in breach of his fiduciary duties and his contractual obligations, as he wanted Sumifru to continue paying Multiport BVI’s higher freight charges.⁵⁵ Consequently, Sumifru has suffered a loss of US\$576,931, being the difference between the price of the alleged charters levied by Multiport BVI and the rate that Laysun would have offered had Felix taken up genuine efforts to follow up with Laysun.⁵⁶

The Unifrutti Rebates

26 In respect of the rebates paid by Laysun to Multiport BVI, Sumifru submits that Felix and Multiport BVI are jointly and severally liable on the basis of Felix’s breaches of fiduciary duties and fraudulent misrepresentation.⁵⁷

⁵³ PCS at para 141.

⁵⁴ Statement of Claim (Amendment No. 1) at para 29(e).

⁵⁵ PCS at para 142.

⁵⁶ PCS at paras 147 to 148.

⁵⁷ PCS at para 149.

The Secret Bunker Commissions

27 Sumifru takes the position that the commissions were not authorised,⁵⁸ or known to it,⁵⁹ and that the sum of US\$113,819.83 which was paid to Multiport BVI should be accountable to it.⁶⁰

Counterclaim

28 In respect of the defendants' counterclaim (which I elaborate at [43] below), Sumifru submits that the invoices claims were pursuant to charterparties concluded directly between Sumifru and the shipowner, such that Multiport BVI is not entitled to enforce performance of these charterparties.⁶¹

29 In total Sumifru seeks the following sums from the defendants:⁶²

Description	Sum claimed
Unauthorised Time Charters	US\$9,285,472.03
Cancelled Charterparties	US\$1,313,833.46
The Unifrutti Rebates	US\$723,784.05
Concealment of the Laysun Offer	US\$576,931
Secret Bunker Commissions	US\$113,819.83
Total	US\$12,013,840.37

⁵⁸ AEIC of Toshiyuki Shimano, dated 13 August 2019, at para 47.

⁵⁹ PCS at para 181.

⁶⁰ PCS at para 180.

⁶¹ PCS at para 188 to 190.

⁶² PCS at para 195.

The defendants' case*Fiduciary duties*

30 The defendants submit that Felix was not a fiduciary of Sumifru and did not owe any fiduciary duties to Sumifru.⁶³ In this regard, the defendants point to the fact that Felix was not authorised to enter into contracts on behalf of Sumifru, and he had to obtain Paul's approval for many of his decisions.⁶⁴ Further, Paul's failure to verify Felix's recommendations on shipping arrangements does not in and of itself impart authority to Felix to execute agreements on behalf of Sumifru.⁶⁵ Seen in light of the close cooperation between Felix and Paul, whenever Felix made any commercial decisions for Sumifru, these were made in consultation and with the approval of Paul.⁶⁶

31 The defendants also submit that pursuant to a set of agreements signed between Kyokuyo Shipping Co Ltd ("Kyokuyo"), Sumifru, and Multiport BVI between 2011 to 2012 for the chartering of several vessels (the "Kyokuyo Agreements"), Paul (and accordingly Sumifru) would have been aware of Multiport BVI from its inception, that Felix represented Multiport BVI (as he had signed on behalf of Multiport BVI), and that Paul (and accordingly Sumifru) would be agreeable to Multiport BVI transacting as Sumifru's agent.⁶⁷ To this extent, the evidence of the parties' respective handwriting expert witnesses at trial agreed that Paul had signed the Kyokuyo Agreements.⁶⁸

⁶³ Defendants' Closing Submissions ("DCS") at para 82.

⁶⁴ DCS at paras 85 to 89.

⁶⁵ DCS at para 90.

⁶⁶ DCS at paras 95 to 96.

⁶⁷ DCS at paras 40 to 42, 97.

⁶⁸ DCS at paras 43 to 46.

The Unifrutti Rebates

32 The defendants argue that the rebates given by Unifrutti to Multiport Davao, was a commercially viable strategy that Felix was entitled to employ.⁶⁹ The transfer of the rebates to Multiport BVI was to address cashflow issues at the latter, which if left unaddressed would impact the shipment of Sumifru's fruits to the Middle East.⁷⁰ A total of US\$499,995 was transferred to Multiport BVI, with the outstanding sum of US\$227,789.05 remaining unpaid.⁷¹

33 In this regard, the defendants submit that it is Multiport Davao rather than Sumifru which is entitled to the rebates, and that Sumifru's claim must fail at law.⁷² To allow Sumifru to claim these amounts from Multiport BVI, would offend the principle of privity of contract.⁷³

The Unauthorised Time Charters

34 The defendants' primary argument in relation to this claim is that the time charters were authorised.⁷⁴ In the alternative, the defendants submit that by interposing Multiport BVI between Sumifru and the shipowners, Felix was acting in Sumifru's interests, as this ensured Sumifru would always have vessels available to ships its fruits to the Middle East.⁷⁵ In contrast, when Sumifru did not charter its own vessels, its shipments were subject to the availability of shipping capacity when co-loading with Laysun, which also shipped the fruits

⁶⁹ DCS at para 113.

⁷⁰ DCS at para 115.

⁷¹ DCS at para 116.

⁷² DCS at para 117.

⁷³ DCS at para 124.

⁷⁴ DCS at para 158.

⁷⁵ DCS at paras 210 to 211.

of its affiliate (*ie*, Unifrutti),⁷⁶ which took longer,⁷⁷ and was qualitatively “inferior”.⁷⁸ Additionally, this arrangement reduced the potential risks of Sumifru entering into long term charters.⁷⁹ Overall, the defendants submit that the entire structure enabled Multiport BVI to offer a superior service compared to the co-loading of fruits which Sumifru usually adopted,⁸⁰ and gave Sumifru a competitive advantage over other fruit suppliers.⁸¹

35 In the alternative, the defendants submit that should Felix be found to have breached his fiduciary duties, he should be afforded a liberal equitable allowance, as he had offered favourable rates to Sumifru and enabled Sumifru to earn an income from shipping co-loaded goods.⁸²

36 In relation to Sumifru’s claim of fraudulent misrepresentation, the defendants argue that Felix did not make the alleged representations to Sumifru such as to induce Sumifru to pay Multiport BVI for the charters, as Sumifru was prepared to pay for the shipping of its fruits to the Middle East.⁸³ In any event, the defendants submit that the alleged representations were true as Multiport BVI did provide the charters and shipping services to Sumifru to ship its fruits to the Middle East.⁸⁴

⁷⁶ DCS at paras 212 to 215.

⁷⁷ DCS at paras 216 to 219.

⁷⁸ DCS at para 220.

⁷⁹ DCS at para 224.

⁸⁰ DCS at para 231.

⁸¹ DCS at para 234.

⁸² DCS at paras 239 to 243.

⁸³ DCS at paras 159 and 162.

⁸⁴ DCS at paras 186 to 188.

The Undisclosed Laysun Offer

37 The defendants submit that Felix could not have concealed the offers from Laysun to Sumifru, as there were no confirmed or concrete co-loading offers from Laysun in 2018.⁸⁵

Multiport SG

38 The defendants submit that Sumifru's claims against Multiport SG for dishonest assistance and conspiracy should be dismissed as they were premised on a series of invoices wrongly issued to Multiport SG, when it should have been issued to Multiport BVI.⁸⁶

Sumifru's claims for 2018

39 The defendants submit that Sumifru's claim for the charters in 2018 should not be allowed as four of the six claimed charters were not paid for.⁸⁷

Cancelled Charters

40 The defendants submit that Sumifru should not be allowed to claim for the cancellation of the charter in relation to the Santa Maria as this charter was in fact affirmed before being subsequently cancelled by Sumifru.⁸⁸ Additionally, as the charter contracts were signed between Multiport BVI and the shipowners, by cancelling the charters, Sumifru had broken the chain of causation between Felix's breach of fiduciary duties and the loss.⁸⁹

⁸⁵ DCS at paras 199 to 202.

⁸⁶ DCS at paras 47 to 72.

⁸⁷ DCS at para 249.

⁸⁸ DCS at paras 257 to 262.

⁸⁹ DCS at para 264.

41 Further, in relation to the sums claimed in respect of the cancellation of the charter for Santa Lucia, the defendants point to several discrepancies in the documentation, and state that the cancellation only amounted to US\$218,945.24.⁹⁰

The Secret Bunker Commissions

42 The defendants' primary contention in relation to Sumifru's claim for Secret Bunker Commissions is that Paul was aware of the arrangement.⁹¹

Counterclaim

43 Multiport BVI counterclaims against Sumifru for the four invoices which were issued pursuant to purported charters it had agreed to with Sumifru from February 2018 to May 2018.⁹² These amount to US\$3,425,354.98 (or alternatively US\$3,432,091.29).⁹³

Issues to be determined

44 The issues to be determined in this matter are:

- (a) Does Felix owe fiduciary duties to Sumifru, and if so, was there a breach of such fiduciary duties owed to Sumifru?
- (b) Are Multiport BVI and Multiport SG accountable to Sumifru?
- (c) Is Sumifru liable to the Multiport BVI for the charters in 2018?

⁹⁰ DCS at paras 265 and 268.

⁹¹ DCS at para 282.

⁹² DCS at para 289; Defendants' Core Bundle of Documents at pp 266 to 270.

⁹³ Defence (Amendment No. 1) at para 73(1).

- (d) What is the measure of profits accountable by the defendants to Sumifru?

Issue (a): Does Felix owe fiduciary duties to Sumifru, and if so, was there a breach of such fiduciary duties owed to Sumifru?

Did Felix owe fiduciary duties to Sumifru?

45 To recapitulate, the core of Sumifru’s claims against the defendants, and in particular Felix, was that Felix had breached the fiduciary duties he owed to Sumifru.

46 As stated by Philip Pillai J in *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 (“*Deutsche Bank AG*”) at [105] to [106], a fiduciary relationship traditionally arises in law in three situations: by contract; by the established categories of relationships (eg, trustee and beneficiary, partner and other partners, principal and agent, director and company, solicitor and client); or, in particular circumstances beyond these established categories, a court will only find a fiduciary relationship to have arisen where the circumstances are sufficiently exceptional, in view of the onerous liabilities the fiduciary may owe in the event of a breach of his fiduciary duties (see *Deutsche Bank Ag* at [111]).

47 In the context of employee-employer relationships, the duties that the employee owes his employer is primarily a matter of contract, and the imposition of *additional* fiduciary obligations on the employee is “the exception rather than the norm” (see *Clearlab SG Pte Ltd v Ting Chong Chai* [2015] 1 SLR 163 (“*Clearlab*”) at [272]). Accordingly, in order to determine if an employee does in fact owe fiduciary obligations to his employer, the first port of call will be the employment contract, with care taken to delineate between the contractual obligations and the fiduciary obligations the employee owes to

the employer (see *Clearlab* at [273] to [274]). In this regard, Lee Sieu Kin J in *Clearlab* at [275] (citing *Susilawati v American Express Bank Ltd* [2009] 2 SLR(R) 737 at [41]), laid out three general indicia to guide the court in deciding whether the imposition of a fiduciary obligations would be appropriate (the “*Clearlab* factors”):

- (a) whether the fiduciary has scope for the exercise of some discretion or power;
- (b) whether the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary’s legal or practical interests; and
- (c) whether the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

As such, the foundation for the fiduciary obligation (even where such obligations arise from contract) is ultimately *relational*. In this regard, it bears emphasis that the mere fact of an *employment relationship* is in itself *insufficient* to support the existence of a fiduciary relationship.

48 As observed by Valerie Thean J in *New Ping Ping Pauline v Eng’s Noodles House Pte Ltd and others* [2021] 4 SLR 1317 (“*New Ping Ping Pauline*”) at [65], this would also mean that employees who are subject to a high degree of supervision and review would typically not be regarded as fiduciaries, and that the employee’s portfolio of responsibilities would be crucial in determining if fiduciary duties were in fact owed to his/her employer.

49 Turning first to Felix’s employment contract with Sumifru, Felix’s Employment Agreement dated 15 October 2012 (“2012 Employment Agreement”) states at clause 2:⁹⁴

... Executive agrees to serve the Company faithfully, diligently and to the best of his ability and in the best interest of the company. ...

In performing his duties, Executive shall be subject to the direction and control of the President and Managing Director.

For completeness, clause 1 of the 2012 Employment Agreement, in turn, defines Sumifru as the “Company” and Felix as the “Executive”.

50 Apart from the clause above, and the title of “Shipping Director” Felix was given in clause 2 of the 2012 Employment Agreement, little is provided in the contract as to the exact role that Felix was contractually obligated to perform as the employee of Sumifru. While the Employment Agreement dated 15 October 2010 (“2010 Employment Agreement”), does give details as to the Felix’s job scope, these details were omitted in the 2012 Employment Agreement. Accordingly, pursuant to clause 9 of the 2012 Employment Agreement which states that the 2012 Employment Agreement “supersedes any and all prior understandings and agreements, whether written or oral, between the parties”, I do not accord any weight to the description set out in 2010 Employment Agreement. Insofar as the 2012 Employment Agreement does not preclude the imposition of fiduciary duties on Felix, I turn next to consider the factual circumstances of Felix’s employment.

51 As I had observed at paragraph [4] above, the parties are *ad idem* as to the fact that while Felix was appointed as a Shipping Director, he was not in

⁹⁴ Plaintiff’s Core Bundle of Documents at p 15.

fact on Sumifru’s board, nor was he given any authority to make major decisions in relation to Sumifru’s business. While this would *prima facie* militate against imposing fiduciary obligations on Felix, a closer examination of the facts must be made through the lens of the *Clearlab* factors.

52 Turning to the first factor, which is whether the purported fiduciary had scope to exercise some discretion or power, it is clear from the evidence of Felix that notwithstanding the stated internal position on his authority as Shipping Director, Felix was in fact able to function in his role of sourcing for shipping arrangements with significant discretion:⁹⁵

Q: Yes. When there is a number of vessels that are available, you would have to make a recommendation to Sumifru to choose one vessel over another?

A: No, what -- what -- we don't do that way. We will pick whatever is the best position and we will negotiate. Once everything is negotiated, I ask Paul's approval. It is the best we can -- we can have so far for his approval. Not every course of negotiation is -- is being discussed.

Q: Right. You will tell Paul that this is the best vessel available; that's what you said, correct?

A: I will normally tell Paul this is the best vessel so far, this is their rate, close to our desired date and so on.

53 Further, while Felix states that Paul was at liberty to cross-check the shipping quotations that Felix submitted for approval on the market,⁹⁶ he candidly concedes that Paul was not in fact expected to check, and depended on Felix to source for shipping arrangements which were in Sumifru’s best interests:⁹⁷

⁹⁵ Notes of Evidence (“NE”), 19 April 2021, p 86, lines 6 to 19.

⁹⁶ NE, 19 April 2021, p 92, lines 15 to 17.

⁹⁷ NE, 19 April 2021, p 92, line 21 to p 93, line 11.

Q. The question is this: it's not whether [Paul] is able to check or to verify what your recommendation is to him. The question is, is he expected to do so? Every time when you make a recommendation, is he expected to go and check it himself, because you are his shipping director?

A: Yes, your Honour. If the question is if he's expected to check, I think no.

Q: Thank you, your Honour. Thank you. Mr Ishizuka, Sumifru, of course, depended on you to source for shipping arrangements in his best interests. Do you agree?

A: Sumifru?

Q: Depended on you to source for shipping arrangements in his best interests. Do you agree?

A: Yes.

54 Accordingly, I am of the view that Felix was able to unilaterally exercise the discretion and power inherent in his role as the Shipping Director of Sumifru to the extent that it affected Sumifru's legal and practical interests, and that Sumifru was particularly vulnerable to Felix's exercise of that discretion and power. I therefore find that there was a fiduciary relationship between Felix and Sumifru. At this juncture, I pause to emphasise that this only means that Felix owes specific fiduciary duties in the particular circumstances where Felix had acted against the interests of Sumifru, and cannot encompass the entire gamut of fiduciary duties Sumifru has argued that Felix owes to Sumifru.⁹⁸ Therefore, in order to succeed, Sumifru has to show that Felix was under specific fiduciary duties that arose on the particular facts, which required Felix to act solely in Sumifru's interests (see *Clearlab* at [278] to [279]).

⁹⁸ PCS at para 29.

55 The allegations against Felix for breach of fiduciary duties are as follows:

- (a) that Felix had breached a fiduciary duty to act in the best interests of Sumifru, by interposing Multiport BVI as an intermediary between Sumifru and the various shipowners, resulting in substantial profits being made by Multiport BVI;⁹⁹
- (b) that Felix had breached a fiduciary duty to diverting the rebates given by Unifrutti to Multiport BVI;¹⁰⁰
- (c) that Felix had breached a fiduciary duty by arranging for Secret Bunker Commissions to be given to Multiport BVI;¹⁰¹ and
- (d) that Felix had breached a fiduciary duty to inform Sumifru of Laysun's offer to carry Sumifru's goods at a preferable rate.¹⁰²

56 As I have found above, Felix was uniquely placed to source for and provide shipping contracts for Sumifru's shipments, and Sumifru was entirely reliant on his recommendations as to which shipowner to charter a ship from or which fruit supplier to co-load with. Felix therefore owed a fiduciary obligation to Sumifru to act in its best interests. This was breached when Felix took advantage of his position to interpose Multiport BVI (a company he owned and controlled) as an intermediary between Sumifru and the shipowners in respect of the Unauthorised Time Charters. Similarly, by diverting the Unifrutti Rebates

⁹⁹ PCS at para 68.

¹⁰⁰ PCS at para 174.

¹⁰¹ PCS at para 182.

¹⁰² PCS at para 146.

and Secret Bunker Commissions to Multiport BVI, Felix had also breached his fiduciary obligation to act in Sumifru's best interests.

57 However, in respect of Felix's alleged breach of fiduciary duty to inform Sumifru of the Laysun Offer, I am unable to find that Felix's obligation to act in the best interests of Sumifru would extend to requiring him to pursue a shipping offer that was for all intents and purposes, tentative. By Sumifru's own evidence at trial, the email sent by Laysun to Felix on 24 February 2018 did not indicate any particular rate offered to Sumifru and was in effect a request for more information from Felix before a rate could be confirmed.¹⁰³ In fact, this email was sent barely more than a month before Felix was suspended (on 27 March 2018), and it cannot be said that Felix was even afforded an adequate chance to pursue this potential opportunity.

Sumifru's alleged consent

58 It is trite that a person under a fiduciary obligation may be released from liability by agreement or consent from the beneficiary (see *Lim Suat Hua v Singapore Health Partners Pte Ltd* [2012] 2 SLR 805 at [93]; *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 at [51]; *Higgins, Danial Patrick v Mulacek, Philippe Emanuel and others and another suit* [2016] 5 SLR 848 at [93]).

59 In this regard, the defendants argue that as Paul had signed the Kyokuyo agreements, he was taken to have known that Felix was behind Multiport BVI and had consented to Multiport BVI being involved in the shipping arrangements of Sumifru.¹⁰⁴

¹⁰³ AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at p 249.

¹⁰⁴ DCS at paras 39 to 46, 97 to 103.

60 I am unable to accept this proposition for three reasons. First, the Kyokuyo Agreements which the defendants heavily rely upon, were unrelated to the transactions involved in these proceedings and were signed between 2011 to 2012, which was at least two years earlier. Second, two of three of the agreements comprising Kyokuyo Agreements were signed in 2011, before Multiport BVI even came into existence. Third, and most importantly, in the April 2018 Meeting, which took place just as these proceedings were being commenced, while Felix was still under Sumifru's employment (albeit suspended)¹⁰⁵ and parties were still seeking to reach an amicable settlement,¹⁰⁶ Felix states unequivocally that he did not tell Paul that he had set up and was in control of Multiport BVI as Sumifru would likely have considered this a conflict of interest.¹⁰⁷

Issue (b): Are Multiport BVI and Multiport SG accountable to Sumifru?

Multiport BVI's liability

Dishonest Assistance

61 As stated by the Court of Appeal in *George Raymond Zage III v Ho Chi Kwong* [2010] 2 SLR 589 ("Zage") at [20], the elements of dishonest assistance are:

- (a) the existence of a trust or fiduciary duty;
- (b) a breach of that trust or fiduciary duty;
- (c) assistance rendered by the third party towards the breach; and

¹⁰⁵ Plaintiff's Core Bundle of Documents at p 40.

¹⁰⁶ Plaintiff's Core Bundle of Documents at pp 21 and 41.

¹⁰⁷ Plaintiff's Core Bundle of Documents at p 29.

(d) a finding that the assistance rendered by the third party was dishonest.

62 As I have found at [52] to [56] above, Felix owed a fiduciary obligation to Sumifru which was breached, and I now turn to consider whether Multiport BVI had rendered assistance towards the breach, and if that assistance was dishonest.

63 On the facts, I find that Multiport BVI's assistance was essential to Felix's breach of the fiduciary obligations he had owed to Sumifru. Even if I accept that the contracts entered into with Multiport BVI were commercially sensible, without Multiport BVI there would have been no ships available under the Unauthorised Time Charters for Felix to charter out space to Sumifru for the transport of its fruits, the rebates from Unifrutti would have flowed directly to Multiport Davao, and there may not have been commissions for the bunkers sold by Itochu. Further, Multiport BVI's freight invoices to Sumifru clothed the transactions in relation to the Unauthorised Time Charters with such a convincing veneer of legitimacy, that the breaches committed by Felix were left undiscovered for close to four years before Sumifru found out.

64 In relation to the element of dishonesty, as stated in *Zage* at [22], the standard to be applied is an objective inquiry into whether the assistor had "such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them."

65 As Multiport BVI is a company which has no mind or body of its own, it can only act through natural persons, and in order to determine if Felix's acts and thoughts can be treated as Multiport BVI's own, recourse must be had to

the rules of attribution as set out by the Court of Appeal in *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 at [47]–[50] (citing *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500). These rules of attribution are:

- (a) the company’s “primary rules of attribution” found in the company’s constitution or in company law, and which vest certain powers in bodies such as the board of directors or the shareholders acting as a whole;
- (b) general rules of attribution, comprising the principles of agency premised on actual or ostensible authority, and vicarious liability in tort; and
- (c) special rules of attribution fashioned by the court in situations where a rule of law, either expressly or by implication, excludes the attribution on the basis of the general principles of agency or vicarious liability.

66 In this regard, it is trite that under the primary rule of attribution a company would necessarily be attributed with the state of mind of the person(s) who is/are its directing mind and will under its constitution (*MKC Associates Co Ltd and another v Kabushiki Kaisha Honjin and others (Neo Lay Hiang Pamela and another, third parties; Honjin Singapore Pte Ltd and others, fourth parties)* [2017] SGHC 317 at [287]; *Zhou Weidong v Liew Kai Lung and others* [2018] 3 SLR 1236 at [61]; *Bilta (UK) Ltd (in liquidation) and others v Nazir and others (No 2)* [2015] 2 WLR 1168 at [67])). Accordingly, as Multiport

BVI's sole director and shareholder,¹⁰⁸ Felix's knowledge is attributable to Multiport BVI.

67 As such, Felix's knowledge meant that Multiport BVI knew that any assistance rendered to Felix in breach of his fiduciary obligations to Sumifru, would have been a breach of the standards of honest conduct as viewed by ordinary honest people. Accordingly, I find that Multiport BVI had dishonestly assisted with Felix's breach of fiduciary obligations to Sumifru in respect of the Unauthorised Time Charters, the Unifrutti Rebates and the Secret Bunker Commissions, and is liable jointly and severally for the same.

Knowing Receipt

68 The elements of knowing receipt as stated by the Court of Appeal in *Zage* at [23] are (see also at *Bi Xiaoqiong (in her personal capacity and as trustee of the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust) v China Medical Technologies, Inc (in liquidation) and another* [2019] 2 SLR 595 [132] ("*Bi Xiaoqiong*")):

- (a) a disposal of the plaintiff's assets in breach of fiduciary duty;
- (b) the defendant's beneficial receipt of assets which are traceable as representing the assets of the plaintiff; and
- (c) the defendant's knowledge that the assets are traceable to the breach of fiduciary duty.

69 In the present case, Sumifru takes the position that the disposal of property was in the form of funds that were paid by Sumifru and was

¹⁰⁸ NE, 20 April 2021, p 115, line 25 to p 116, line 4.

beneficially received by Multiport BVI.¹⁰⁹ In my view, there are several difficulties with this argument. First, short of stating that funds paid out by Sumifru were subject to a constructive trust, it cannot be said that these funds were the “assets” of Sumifru. Second, the payment of the funds was to Multiport BVI, and it cannot be said that the receipt of the funds such as to give rise to a constructive trust, was also the act of disposal. Third, and most importantly, Sumifru did not plead that any constructive trust had arisen over the payment of these funds. Accordingly, while I have taken the view that Felix’s actions were in breach of his fiduciary obligations to Sumifru, I am unable to see how any disposal of Sumifru’s assets had taken place.

Unlawful Means Conspiracy

70 In order to establish a claim on conspiracy by unlawful means must establish the following (*EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 (“*EFT Holdings*”) at [112]):

- (a) there was a combination of two or more persons to do certain acts;
- (b) the alleged conspirators intended to cause damage or injury to the plaintiff by those acts;
- (c) the acts were unlawful;
- (d) the acts were performed in furtherance of the agreement; and
- (e) the plaintiff suffered loss as a result of the conspiracy.

¹⁰⁹ PCS at para 90.

71 Sumifru’s case in the present proceedings is that Multiport BVI had combined with Felix and Multiport SG, to interpose Multiport BVI into the chartering arrangements between Sumifru and the various shipowners, in order to charge Sumifru freight costs which were higher than the costs of operating the Unauthorised Time Charters.¹¹⁰

72 As stated in *EFT Holdings* at [99] to [101]:

99 What is clear is that it is not sufficient for the claimant to show that it was reasonably foreseeable that the claimant would or might suffer damage as a result of the defendant’s act. Lord Phillips of Worth Matravers MR who delivered the judgment on behalf of the Court of Appeal in *Hello!* emphasised that “there is an important conceptual and factual difference between a tort, like negligence or breach of duty, which requires merely that the loss or damage should be reasonably foreseeable and a tort, which requires actual knowledge (or subjective recklessness) as to the consequences” such as the tort of unlawful means conspiracy (*Hello!* at [160]).

100 We agree. The law has insisted on the element of “intention” for economic torts in recognition of “the need to keep liability within acceptable bounds” (*Carty* at p 302), particularly in the light of the effect that these torts have on competition and the boundaries of acceptable conduct in the marketplace (see also *The Law of Torts in Singapore* at para 15.004). The law recognises that intentionally damaging other persons, by unlawful means is not to be countenanced. In contrast, in the tort of negligence, liability is imposed for a failure to meet an objective standard of reasonable conduct, no matter the state of mind of the actor (*The Law of Torts in Australia* at p 15).

101 A claimant in an action for unlawful means conspiracy would have to show that the unlawful means and the conspiracy were targeted or directed at the claimant. It is not sufficient that harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant’s conduct. Injury to the claimant must have been intended as a means to an end or as an end in itself. ... **It is simply insufficient in seeking to meet the element of intention to**

¹¹⁰ PCS at para 95.

show merely that there was knowledge to found an awareness of the likelihood of particular consequences.

[emphasis in italics in original; emphasis added in bold]

73 In the present case, Sumifru submits that because Multiport BVI's profits were "a simple reflection of the costs that Sumifru would never have incurred", it meant that the acts were intended to injure Sumifru.¹¹¹ In my view, although I accept that Sumifru's loss is a necessary corollary of Multiport BVI's gain, this is plainly insufficient to show that Multiport BVI, Felix and Multiport SG had combined with the intention of causing damage or injury to Sumifru. Accordingly, I do not find that Multiport BVI or Multiport SG can be held liable for conspiracy by unlawful means.

Multiport SG's liability

Dishonest Assistance

74 Applying the same elements of dishonest assistance as stated at paragraph [61] above, I now turn to consider whether Multiport SG had rendered assistance towards the breach, and if that assistance was dishonest.

75 On the facts, I find that on a balance of probabilities, the invoices from Global Energy Overseas Pte Ltd ("GE") issued to Multiport SG (the "GE Invoices"),¹¹² clearly indicate that Multiport SG had assisted in Felix's breaches of fiduciary duty. As to the defendants' contentions that these invoices were erroneously issued,¹¹³ I find difficulty in accepting these arguments. First, with reference to the email exchange between Alexander Jr Fernandez Villadores

¹¹¹ PCS at para 96.

¹¹² 1st Affidavit of Angela Goh Sien Hwee, dated 26 March 2018, pp 389 to 392; D5.

¹¹³ DCS at para 48.

(the Operations Director of Multiport BVI) and Global Energy Overseas Pte Ltd, requesting the latter to revise the GE invoices, this email exchange only took place after present proceedings were commenced, and after Felix was suspended by Sumifru.¹¹⁴ In addition, not only did GE refuse to revise the invoices, but the defendants also made no attempt to call any representatives from GE to testify in these proceedings. Second, the proof of payments the defendants had adduced in Exhibit “D5” to show that Multiport BVI had made the payments to GE instead of Multiport SG, were not complete. Some of the “Proof(s) of Payment” were missing, and others merely consisted of banking alerts from Overseas-Chinese Banking Corporation, Ltd (“OCBC”) where the account numbers were partially redacted.¹¹⁵ Despite the fact that D5 was only adduced at the end of the trial, for which the defendants had three years to prepare, the defendants chose not to call any representatives from either United Overseas Bank Limited (whom GE’s remittance account was with) or OCBC as witnesses to verify any of the payments.

76 I turn next to the issue of dishonesty. Felix has stated unequivocally that he is Multiport SG’s sole shareholder and the director in charge.¹¹⁶ For the same reasons at paragraph [66] above, I find that Felix’s knowledge was attributable to Multiport SG, and that Multiport SG knew that any assistance rendered to Felix in breach of his fiduciary obligations to Sumifru, would have been a breach of the standards of honest conduct as viewed by ordinary honest people.

¹¹⁴ NE, 29 April 2021, p 13, line 23 to p 14, line 1.

¹¹⁵ D5 at pp 3, 8, 11, 14, and 17.

¹¹⁶ NE, 29 April 2021, p 6, lines 3 to 8.

77 Accordingly, I find that Multiport SG had dishonestly assisted Felix’s breach of fiduciary obligations to Sumifru in respect of the Unauthorised Time Charters and is accordingly liable jointly and severally for the same.

Knowing Receipt and Conspiracy

78 Following my findings above at paragraphs [69] and [73], the plaintiff’s claims against Multiport SG in knowing receipt and conspiracy would necessarily also fail.

Issue (c): Is Sumifru liable to the Multiport BVI for the charters in 2018?

79 I will now deal with Multiport BVI’s counterclaim, which seeks to claim the sum of US\$3,425,354.98 from Sumifru for unpaid invoices in relation to four voyages which were used to transport fruit on board the vessels “Santa Lucia” and “Santa Maria”.¹¹⁷ Multiport BVI’s basis for these claims is essentially one that is based on contract, or in the alternative unjust enrichment.¹¹⁸ At this juncture, I observe that Multiport BVI has submitted a claim for an alternate sum of US\$3,432,091.29 in its pleadings.¹¹⁹ However, it did not provide any basis for the difference of US\$6,736.31 in its closing submissions.

80 In relation to Multiport BVI’s claim premised on contract, I agree with Sumifru that this claim must fail for the simple reason that the charter contracts for both the “Santa Lucia” and “Santa Maria” were between Seatrade Group NV

¹¹⁷ Defendants’ Core Bundle of Documents Vol 1, at pp 266 to 270.

¹¹⁸ Defence (Amendment No. 1) at paras 50 to 52, 73; DCS at paras 289 to 293.

¹¹⁹ Defence (Amendment No. 1) at para 73(1).

(“Seatrade”) as the shipowner, and Sumifru as the charterer.¹²⁰ In the case of the “Santa Maria”, I note that while the original document was for the charter of the “Santa Catharina”, this was for the charter of “Santa Maria” from January 2018 onwards.¹²¹

81 In relation to the claim in unjust enrichment, I first preface my findings that Multiport BVI has only made the barest of indication that this could be the premise of its claim,¹²² and has not provided any proper submissions on this issue. Notwithstanding, for completeness, I find that Multiport BVI has not provided any evidence at all that Sumifru has benefited or been enriched by the four voyages. In fact, the contract which I have found existed between Seatrade and Sumifru for the charter of the two vessels, meant that Sumifru was directly liable to pay the shipowners for the use of the ships, and Multiport BVI has not provided any evidence that it had made any payment to Seatrade or that Sumifru had failed to make payment and that Seatrade had looked to Multiport BVI for performance.

82 Accordingly, I dismiss Multiport BVI’s counterclaim in its entirety.

Issue (d): What is the measure of profits accountable by the defendants to Sumifru?

Equitable Allowance

83 I will first address Felix’s arguments that he be granted an equitable allowance for his effort and skill in interposing Multiport BVI between Sumifru and the various shipowners.

¹²⁰ Agreed Bundle of Documents, at pp 370 to 374.

¹²¹ Agreed Bundle of Documents, at p 370.

¹²² DCS at para 293; Defence (Amendment No. 1) at para 51.

84 As stated by the Court of Appeal in *Mona Computer Systems (S) Pte Ltd v Singaravelu Murugan* [2014] 1 SLR 847 (“*Mona Computer*”) at [23], “the power to grant an allowance to a fiduciary in breach should be exercised sparingly in order not to encourage fiduciaries to act in breach of their duties”. In this regard, the good faith in doing what he did on the part of the person who had breached his fiduciary obligations is a “hugely relevant consideration in the exercise of the court’s discretion to grant an allowance” (*Mona Computer* at [26]). On the facts of *Mona Computer*, the court held that in a situation where the defendant had reaped profits by deliberately placing himself in a position of conflict, an equitable allowance would not be available to him (see *Mona Computer* at [27]).

85 In the present case, it is for Felix to show that he was honest and had acted in good faith, such as to render it inequitable to order an account of the entire profits (see *Mona Computer* at [28]; *UVH and another v UVJ and others* [2020] 3 SLR 1329 at [45]). There was no such evidence. As I have found above at paragraph [60], Felix had stated that he had concealed the fact that he had set up and was in control of Multiport BVI, as he knew that Sumifru would likely have considered this a conflict of interest. In my view, Felix had deliberately placed himself in a position of conflict of interest, and there are no grounds for this court to sanction his conduct by awarding him an equitable allowance, much less a “liberal” one.¹²³

¹²³ DCS at para 245.

The Unauthorised Time Charters*2015 to 2016*

86 To recapitulate, Sumifru’s pleaded case was that it had overpaid for the shipping of its fruits due to the marked-up invoiced provided by Multiport BVI to it,¹²⁴ and that it was claiming for the difference between what it had paid Multiport BVI and what it would have paid the shipowners directly had it known of the time charters that were in place.¹²⁵ However, in tabulating the amounts that it seeks from the defendants, Sumifru includes costs for bunkers which it claims were paid by it (“additional bunker claims”), and excludes the “Address Commission” which is a “discount” afforded by the shipowners to charterers. In relation to the additional bunker claims, I note that Toshiyuki Shimano (Sumifru’s Administrative Director), quite candidly admitted on the stand that these amounts were estimates and not premised on any actual documentary evidence.¹²⁶ As for the “Address Commission”, to the extent that Felix claims that this is an additional discount that is applied to the charter hire charged,¹²⁷ this was not challenged by Sumifru when Felix was cross-examined. Thus, I accept that there is no basis for Sumifru to exclude the “Address Commission” in the amount of US\$87,430.30, in calculating its claim against the defendants.¹²⁸

87 In my view, the defendants have provided cogent evidence as to the differences between the time charter costs paid by Multiport BVI to the various

¹²⁴ Statement of Claim (Amendment No. 1) at para 22.

¹²⁵ Statement of Claim (Amendment No. 1) at para 29(a).

¹²⁶ NE, 23 April 2021, p 32, lines 17 to 21; p 36, lines 11 to 14.

¹²⁷ AEIC of Felix Santos Ishizuka, dated 19 August 2019, at paras 102 to 104.

¹²⁸ Plaintiff’s Core Bundle of Documents at p 55; Statement of Claim (Amendment No. 1) at para 29(c)(i).

shipowners and the amounts charged to Sumifru.¹²⁹ Accordingly, in respect of the charters in 2015 and 2016, I allow the claim of US\$3,874,291.09. The computation for this amount is set out at Annex 1.

2017

88 Similarly, for the charters in 2017, I find that the Defendant have provided cogent evidence as to the differences between the time charter costs paid by Multiport BVI to the various shipowners and the amounts charged to Sumifru.¹³⁰ For the same reasons given above at paragraph [86], I do not find any basis to exclude the “Address Commission” in the amount of US\$143,986.19 in Sumifru’s calculations.¹³¹ However, I am unable to agree that the “Bunker Adjustment Fee” which Multiport BVI had charged Sumifru should be discounted merely because Sumifru may have passed on some of these costs to its receivers. Accordingly, in respect of the charters in 2017, I allow the claim of US\$4,298,616.79. The computation for this amount is set out at Annex 2.

2018

89 For the shipments which were performed in 2018, there were two vessels involved, which was the “Santa Maria” and the “Santa Lucia”.¹³² The “Santa Maria” was hired for the sum of US\$1,189,917.32 for the period of 22 January 2018 to 22 April 2018.¹³³ Sumifru paid Multiport BVI the sum of

¹²⁹ AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 108, pp 175 to 354.

¹³⁰ AEIC of Felix Santos Ishizuka, dated 19 August 2019, at para 112, pp 355 to 709.

¹³¹ Plaintiff’s Core Bundle of Documents at p 66; Statement of Claim (Amendment No. 1) at para 29(c)(i).

¹³² Statement of Claim (Amendment No. 1) at Annex C.

¹³³ Plaintiff’s Bundle of Documents Vol 10, at p 2390.

US\$650,394.46 for a voyage taken on 24 January 2018,¹³⁴ and the rest of the invoices issued by Multiport BVI to Sumifru were not paid.

90 The “Santa Lucia” was hired for the sum of US\$983,516.14 for the period 2 January 2019 to 30 April 2018.¹³⁵ Sumifru paid Multiport BVI the sum of US\$588,431.87 for a voyage taken on 7 January 2018,¹³⁶ and the rest of the invoices issued by Multiport BVI to Sumifru were not paid.

91 In respect of the voyages taken in 2018, it appears from Sumifru’s closing submissions that it has made two different claims. The first is for the sum of US\$468,526.09 (see paragraph [21] above)¹³⁷ for which it makes reference to Annex B of its closing submissions,¹³⁸ which do not provide any breakdown and merely indicates that the voyages in respect of Santa Lucia and Santa Maria are the alleged bases for its claims.¹³⁹ The second is for the sum of US\$576,931, which Sumifru claims is the difference between what Multiport BVI had invoiced Sumifru for, and what Laysun would have charged had Felix negotiated properly pursuant to the Laysun Offer.

92 I reject this claim for three reasons. First, I do not see how Sumifru can claim both sums which are essentially premised on the same voyages involving the Santa Lucia and Santa Maria in 2018.¹⁴⁰ In this regard, I find Sumifru’s closing submissions unsatisfactory in failing the detail the basis for the sum of

¹³⁴ Plaintiff’s Bundle of Documents Vol 10, at pp 2345 to 2348.

¹³⁵ Plaintiff’s Bundle of Documents Vol 10, at p 2389.

¹³⁶ Plaintiff’s Bundle of Documents Vol 10, at p 2296.

¹³⁷ PCS at para 64.

¹³⁸ PCS at para 64(c).

¹³⁹ PCS at p 171.

¹⁴⁰ PCS at p 171; PCS at para 148.

US\$468,526.09, and attempting to make what is, for all intents and purposes, a double claim. Besides, in Sumifru's calculations, it appears to have only adopted the sum of US\$576,931 for the shipments undertaken in 2018.¹⁴¹ Second, it is not disputed by Sumifru that it did not pay Multiport BVI for four of the six invoices issued by Multiport BVI in 2018, these invoices being the subject of Multiport BVI's counterclaim. Under such circumstances, I do not see how Sumifru can claim to have suffered a loss for amounts it did not actually pay out.¹⁴² Third, even if I only consider the two invoices Sumifru had actually paid for, as I had found above at paragraph [57], the fiduciary obligations which Felix owed to Sumifru did not extend to him pursuing what was at best a rather cursory offer. Accordingly, I do not find any basis to award Sumifru the difference in what it hypothetically would have paid Laysun and what it may have ended up paying Multiport BVI if it had not discovered Felix's wrongdoings.

Cancellation of charters for Santa Lucia and Santa Maria.

93 While the charter for the "Santa Maria" was cancelled on 2 May 2018 by Sumifru for the fee of US\$1,000,000,¹⁴³ it appears that in the immediate aftermath of Sumifru having discovered Felix's breaches of fiduciary duties, Sumifru had chosen to affirm the charter of "Santa Maria" on the terms of the "original agreement".¹⁴⁴ Having chosen to affirm the charter at first instance, I agree with the defendants that Sumifru had failed to prove the but-for causation required in respect of claims for breach of fiduciary duties (see *Aljunied-*

¹⁴¹ Plaintiff's Core Bundle of Documents at p 75.

¹⁴² PCS at para 148.

¹⁴³ Plaintiff's Bundle of Documents Vol 10, at p 2424.

¹⁴⁴ AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at p 222; NE, 23 March 2021, p 79, lines 12 to 24.

Hougang Town Council and another v Lim Swee Lian Sylvia and others and another suit [2019] SGHC 241 at [602]).

94 In relation to the cancellation of the charter for “Santa Lucia”, Sumifru points to the email sent by Alex van Drimmelen of Seatrade to Sumifru on 6 April 2018 as evidence that Sumifru had agreed to pay Seatrade to terminate the charter on payment of US\$313,833.46 (the “6 April Email”).¹⁴⁵ Further, Sumifru adduces invoices and documentation that purport to evidence that the payments were in fact made to Seatrade.¹⁴⁶ However, in my view, apart from the oral evidence of Paul, Sumifru provided no documentary evidence to support its assertions, nor has Sumifru seen fit to call a representative from Seatrade to attest to what it has stated in these proceedings. While I accept that the 6 April Email states that Sumifru was terminating a charter, most likely in relation to the “Santa Lucia” which was to be redelivered to anchorage on 30 April 2018, the 6 April Email does not state if Sumifru was required to pay any amounts upon cancellation. Further, the invoices submitted by Sumifru indicating the payment of the sum of US\$263,121.04¹⁴⁷ and US\$166,609.47,¹⁴⁸ are not even specific to the “Santa Lucia”, and do not even add up to the sum of US\$313,833.46 claimed. As such, I am unable to find that Sumifru has proven, on a balance of probabilities, that it did in fact make the said payments to Seatrade for the cancellation of the “Santa Lucia”. I therefore dismiss this claim against the defendants.

¹⁴⁵ AEIC of Toshiyuki Shimano, dated 13 August 2019, at para 51; PCS at paras 140 to 141.

¹⁴⁶ AEIC of Toshiyuki Shimano, dated 13 August 2019, at para 51(c), pp 319 to 329.

¹⁴⁷ AEIC of Toshiyuki Shimano, dated 13 August 2019, at pp 319 to 320.

¹⁴⁸ AEIC of Toshiyuki Shimano, dated 13 August 2019, at pp 321 to 322.

Charter in relation to the “Ivory Dawn”

95 In Sumifru’s statement of claim, it claims the sum of US\$37,447.50 relating to the vessel “Ivory Dawn” which was allegedly in relation to a demand made by Cool Carriers in or about April 2018.¹⁴⁹ However, it appears to me that this claim has been abandoned altogether as there are no submissions on the matter by Sumifru. I therefore make no ruling on this claim.

Total sum for the Unauthorised Time Charters

96 In summary, in respect of the Unauthorised Time Charters, I allow the claim of US\$8,172,907.88 (US\$3,874,291.09 + US\$4,298,616.79 at [87] and [88] above) against the defendants in joint and several liability.

Unifrutti Rebates

97 In respect of the rebates paid by Unifrutti to Multiport BVI, Sumifru claims the amount of US\$723,784.05, as loss and damages for the extra amounts it would not have paid to ship its fruits with Unifrutti, had it known of the rebates.¹⁵⁰ The parties do not dispute that the rebate sum to be paid by Unifrutti was US\$723,784.05, as evidenced in a debit note issued by Multiport BVI to Laysun (a subsidiary of Unifrutti).¹⁵¹

98 Notwithstanding the fact that only US\$499,956 was eventually paid out to Multiport BVI,¹⁵² I am of the view that but for Felix’s breach of the fiduciary

¹⁴⁹ Statement of Claim (Amendment No. 1) at para 29(e).

¹⁵⁰ Statement of Claims (Amendment No. 1) at para 21; PCS at para 172.

¹⁵¹ AEIC of Felix Santos Ishizuka, dated 19 August 2019, at p 863.

¹⁵² DCS at para 146; AEIC of Angela Goh Sien Hwee, dated 13 August 2019, at pp 191 to 192.

obligations he owed to Sumifru, Sumifru would not have paid out the extra amounts in respect of the cost for shipping its fruits with Unifrutti. Accordingly, I find Felix and Multiport BVI jointly and severally liable to Sumifru for the sum of US\$723,784.05.

Secret Bunker Commissions

99 In respect of the Secret Bunker Commissions that Multiport BVI had received as a result of the transaction between Itochu and Sumifru, Sumifru seeks the amount of US\$113,819.83 to be accounted from Felix and Multiport BVI.¹⁵³ As the defendants do not dispute the amount,¹⁵⁴ I allow the claim of US\$113,819.83 against Felix and Multiport BVI in joint and several liability.

Post-judgment Mareva injunction

100 At this juncture, I note that Sumifru in its submissions, seeks a continuation of an existing Mareva injunction against the defendants as a post-judgment Mareva injunction for a period of 60 days, to allow it time to make the necessary applications seeking consequential orders.¹⁵⁵ In *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2021] 1 SLR 1298, the Court of Appeal held at [21], that in deciding whether to grant a post-judgment Mareva injunction, the court must be satisfied that:

- (a) there is a real risk of the debtor dissipating his assets with the intention of depriving the creditor of satisfaction of the judgment debt;
- (b) the injunction must act as an aid to execution; and

¹⁵³ PCS at para 186.

¹⁵⁴ DCS at para 281; NE, 29 April 2021, p 31, lines 1 to 10.

¹⁵⁵ Plaintiff's Reply Submissions (dated 24 September 2021) at paras 71 to 73.

- (c) it must be in the interests of justice to grant the injunction.

101 Given the concerns with the conduct of the defendants as observed in *Sumifru Singapore Pte Ltd v Felix Santos Ishizuka and others* [2020] 4 SLR 904, I accept that there may be a real risk of the defendants dissipating their assets. Accordingly, I order that the Mareva injunction of 26 Mar 2018, as varied by this court on 16 January 2020, should remain in place until further order.

Conclusion

102 I summarise my findings on liability as follows:

- (a) Felix owed fiduciary obligations to Sumifru to act in its best interests and had acted in breach of those obligations.
- (b) Multiport BVI and Multiport SG had dishonestly assisted Felix in the breach of his duties to Sumifru in respect of the Unauthorised Time Charters.
- (c) Multiport BVI had dishonestly assisted Felix in breach of his duties to Sumifru in respect of the Unifrutti Rebates and the Secret Bunker Commissions.
- (d) Multiport BVI has no claims against Sumifru for the charters in 2018.

103 In terms of the remedies and reliefs, I grant judgment as follows:

- (a) That Felix, Multiport BVI and Multiport SG are, jointly and severally, liable to Sumifru in the sum of US\$8,172,907.88, being the

difference between the amount paid by Multiport BVI to the various shipowners and the amount paid by Sumifru to Multiport BVI.

(b) That Felix and Multiport BVI are, jointly and severally, liable to Sumifru in the sum of US\$723,784.05, being the amount that Sumifru had paid in excess of the actual cost of shipping its fruits with Unifrutti.

(c) That Felix and Multiport BVI are, jointly and severally, liable to Sumifru plaintiff in the sum of US\$113,819.83, being the amount that Multiport BVI had received in respect of the Secret Bunker Commissions paid out as a result of the agreement between Itochu and Sumifru.

104 Interest on the above sums at 5.33% *per annum* under s 12 of the Civil Law Act 1909 (2020 Rev Ed) will run from 26 March 2018, the date on which the plaintiff issued the writ in this action, to the date of this judgment.

105 In addition, I dismiss Sumifru’s claim of US\$1,313,833.46 for losses arising from the cancellation of the charters for “Santa Lucia” and “Santa Maria”, as well as its claim for US\$576,931 which it claimed it would hypothetically have saved had Felix negotiated charters with Laysun in 2018.

106 Multiport BVI’s counterclaim is dismissed in its entirety.

107 Sumifru is to apply for any consequential orders within 14 days from the date of this judgment. I will hear parties on the issue of costs at a later date if such costs are not agreed. Parties are to file their submissions on costs, limited to ten pages each, within 14 days from the date of this judgment.

Vincent Hoong
Judge of the High Court

Dedi Affandi bin Ahmad, Kwek Choon Lin Winston, Li Kun Hang
and Dharini Ravi (Rajah & Tann Singapore LLP) for the Plaintiff;
Khoo Ching Shin Shem, Teo Hee Sheng Christian and Yong Zhixin
Esther (Focus Law Asia LLC) for the Defendants.

Annex 1: Time Charter cost differences for 2015 to 2016

S/N	Vessel	Voyage No.	Time Charter Costs (USD)	Voyage Charter Costs (USD)
1	Wellington Star	615	457,235.85	702,986.29
2	Wild Cosmos	815	535,309.98	762,164.60
3	Prince of Waves	116	441,798.05	740,000
4	Wild Peony	216	535,455.63	845,000
5	Water Phoenix	316	419,375.85	720,000
6	Frio Las Palmas	416	307,796.89	625,332
7	Polarlight	916	745,258.62	1,184,800
8	Prince of Tides	516	1,086,092.74	1,561,708.32
9	Prince of Tides	816		
10	Wild Cosmos	716	1,935,904.30	3,196,437.80
11	Wild Cosmos	1016		
12	Wild Cosmos	117		
		Total:	6,464,137.92	10,338,429.01
	Difference between the Time Charter Costs and the Voyage Charter Costs: US\$3,874,291.09			

Annex 2: Time Charter cost differences for 2017

S/N	Vessel	Voyage No.	Time Charter Costs (USD)	Voyage Charter Costs (USD)
1	Baltic Pride	617	1,120,795.17	1,578,731.54
2	Baltic Pride	817		
3	Baltic Prime	317	1,879,158.94	2,496,283.26
4	Baltic Prime	517		
5	Baltic Prime	717		
6	Frio Athens	917	540,873.47	762,222.04
7	Santa Catharina	1117	2,475,040.50	3,263,146.05
8	Santa Catharina	1417		
9	Santa Catharina	1717		
10	Santa Catharina	2017		
11	Santa Lucia	1217	2,151,076.09	2,794,866.51
12	Santa Lucia	1517		
13	Santa Lucia	1817		
14	Swedish Reefer	417	698,361.30	910,270.06
15	Triton Reefer	1017	2,264,172.17	3,613,484.97

16	Triton Reefer	1317		
17	Triton Reefer	1617		
18	Triton Reefer	1917		
		Total:	11,120,387.64	15,419,004.43
	Difference between the Time Charter Costs and the Voyage Charter Costs: US\$4,298,616.79			