Merrill Lynch Pierce, Fenner & Smith Inc *v* Prem Ranchand Harjani and another [2010] SGHC 249

Case Number : Suit No 773 of 2008

Decision Date : 26 August 2010

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Hri Kumar SC, Wong Wilson and Low James (Drew & Napier LLC) for the plaintiff; Tan Denis and George John (Toh Tan LLP) for the first defendant; N Sreenivasan and Choo Collin (Straits Law Practice LLC) for the second defendant.

Parties : Merrill Lynch Pierce, Fenner & Smith Inc — Prem Ranchand Harjani and another

Tort

Contract

26 August 2010 Judgment reserved.

Andrew Ang J:

Introduction

1 The plaintiff is a company incorporated in the United States of America which set up a Corporate Investor Account (Delaware Account) numbered 1EY-07021 ("the Account") for the second defendant pursuant to an application by the latter for the same. As the plaintiff does not have a place of business in Singapore, the Account was serviced on its behalf by private wealth managers in the Singapore branch of Merrill Lynch International Bank Limited (Merchant Bank) ("MLIB"), an affiliated company under the Merrill Lynch Group.

2 The first defendant, Prem Ranchand Harjani, wholly owns the second defendant, Renaissance Capital Management Investment Pte Ltd, and had sole authority to give instructions in respect of the Account on behalf of the second defendant. The first defendant wanted to acquire a substantial number of shares in an Indonesian company, PT Triwira Insanlestari ("PTTI") listed on the Jakarta Stock Exchange, on behalf of the second defendant and therefore contacted the plaintiff. On 23 June 2008, the first defendant instructed the plaintiff to purchase approximately 120 million shares in PTTI ("the PTTI Shares") on behalf of the second defendant. There were no moneys in the Account with the plaintiff to pay for such purchase. According to the market rules, the PTTI Shares had to be paid for three days after the purchase, *ie*, 26 June 2008 ("the Settlement Date"). The plaintiff's case against the first defendant was that by a series of false representations, the first defendant induced the plaintiff to purchase the PTTI Shares on the second defendant's behalf in the belief that the plaintiff would be put in funds before the Settlement Date.

3 The first defendant assured the plaintiff's representatives that the funds would be transferred into the Account to pay for the PTTI Shares before the Settlement Date, but no moneys came in by that date. The purchase price was debited against the Account which fell into deficit. The first defendant thereafter made several further false statements in response to the plaintiff's requests for payment of the outstanding amounts.

4 On account of the defendants' failure to pay for the PTTI Shares, on 2 July 2008, the plaintiff informed the first defendant of its intention to liquidate the PTTI Shares. The shares, however, proved difficult to sell and the plaintiff only managed to completely liquidate the shares sometime in November 2009, leaving US$9,437,687.18 outstanding ("the Outstanding Sum") as at 1 January 2010, after taking into account part payment.

5 The plaintiff commenced an action against both defendants. Against the second defendant, the plaintiff is seeking recovery of the Outstanding Sum in contract. The plaintiff is also claiming against the first defendant damages for the tort of deceit and against both defendants for conspiracy by unlawful means.

6 At the close of the plaintiff's case, the defendants elected to submit that they had no case to answer. The parties asked to be given time to tender written submissions, but the second defendant eventually decided against tendering any. I therefore have only the written submissions of the plaintiff and the first defendant.

7 It is undisputed that there was an agreement between the plaintiff and the second defendant whereby the plaintiff agreed to purchase the PTTI Shares on the second defendant's instructions. In the second defendant's defence and counterclaim filed on 29 September 2009, the second defendant admitted that:

(a) on 23 June 2009, the first defendant placed the order for the PTTI Shares with the plaintiff on the second defendant's behalf;

(b) the plaintiff purchased the PTTI Shares; and

(c) the plaintiff has not received full payment for the PTTI Shares.

In the circumstances, the second defendant's failure to make full payment for the PTTI Shares is undisputed.

8 In this regard, it is the unchallenged evidence of Jeremy Roy ("JR"), a client service associate, and Christopher Majeski ("CM"), the Head of Compliance at MLIB that on or around the Settlement Date, the plaintiff instructed its custodian bank, the Hong Kong and Shanghai Banking Corporation (Jakarta), to pay for the PTTI Shares on its behalf to settle the trade involving the PTTI Shares. The undisputed evidence is that the purchase price for the PTTI Shares is IDR132,587,475,000. As the Account was a USD account, the purchase price was converted to USD, and the amount of US$14,318,301.84 was payable by the second defendant.

9 On or around 9 and 10 July 2008, the defendants made part payment of US$2m for the PTTI Shares. The liquidation of the PTTI shares by the plaintiff was eventually completed on or around 18 November 2009 (*ie*, after more than a year) for only US$2,225,106.98. As of 1 January 2010, the Outstanding Sum was US$9,437,687.18. In the circumstances, the second defendant is plainly in breach of its obligation to pay the Outstanding Sum and is liable to the plaintiff for the same.

10 Indeed, ultimately, to argue that the second defendant is not liable to pay for the PTTI Shares would be tantamount to saying that the second defendant is able to instruct the plaintiff to purchase the PTTI Shares and then claim that it does not have to pay for the same. This defies logic and is completely absurd. In fact, the second defendant itself clearly recognises this.

11 At the close of the trial, the second defendant's solicitors indicated that the second defendant

would not be putting in submissions if it had no sensible submissions to put in. By a letter dated 3 May 2010 from the second defendant's solicitors, the second defendant informed that it would not be making any submissions. The obvious conclusion is that the second defendant knows the plaintiff has made out a case against it and the second defendant can say nothing in response.

The claim against the second defendant

12 In any event, the second defendant has admitted its liability for the purchase price. The second defendant had previously applied for a stay of proceedings ("the Stay Application") in the present action in favour of arbitration. The stay was denied by the assistant registrar. On appeal, Lee Seiu Kin J agreed with the assistant registrar and affirmed the decision (*Merrill Lynch Pierce, Fenner & Smith Inc v Prem Ramchand Harjani* [2009] 4 SLR(R) 16 ("the Stay GD"). Lee J's decision was subsequently affirmed by the Court of Appeal. In the Stay GD, Lee J held that the first defendant and the second defendant had admitted, numerous times, that the second defendant was liable to the plaintiff for the purchase of the PTTI Shares in the amount of the purchase price. It is trite law that the doctrine of issue estoppel obviates the need to re-litigate issues that have already been decided in interlocutory applications: *Alliance Management SA v Pendleton Lane P* [2008] 4 SLR(R) 1 at [21]–[24].

13 In any event, based on the evidence before me, I am satisfied that there was sufficient evidence that the second defendant had admitted its debt. The following, in particular, are worthy of mention:

(a) Prior to the placing of the order for the PTTI Shares, at around 11.40am on 23 June 2008 ("the 11.40 Conversation"), the first defendant, on behalf of the second defendant, stated that he would pay for the PTTI Shares;

(b) After the order for the PTTI Shares was placed, at around 12.30pm on 23 June 2008 ("the 12.30 Conversation"), the first defendant stated that he was aware of the price of the PTTI Shares and he would be transferring the requisite funds to the Account. Further similar assurances were given later that day, at 1.59pm and 6.07pm;

(c) At around 11.07am on 24 June 2008, the first defendant informed the plaintiff that he would be remitting "14 million something" that day;

(d) At or around 25 June 2008, the first defendant faxed a copy of a remittance form to the plaintiff to prove that he had already arranged for funds to pay for the PTTI Shares;

(e) After 25 June 2008, the first defendant continued to acknowledge the second defendant's liability and promised that the second defendant would pay for the PTTI Shares through various e-mails and telephone calls. Notably, on 3 July 2008 – during a conference call with representatives of the plaintiff, Nikhil Advani ("Advani"), Christopher Yeo ("Yeo") and Amit Gupta ("Gupta") – the first defendant confirmed that he would transfer US$14m into the Account to settle the payment. During this conversation, Advani carefully summarised the sequence of events leading to the purchase of the PTTI Shares and what happened thereafter. The first defendant agreed with the summary which made it clear that he had promised to transfer funds to pay for the PTTI Shares; and

(f) On 9 and 10 July 2008, the second defendant made part payment of US$50,000 and US$1.95m respectively for the PTTI Shares.

14 As stated in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [38], admissions and acknowledgments of an outstanding debt are sufficient to make out a *prima facie* case against a defendant, which will result in summary judgment being granted unless the defendant raises a positive case. The above is sufficient evidence of the admission and acknowledgment of the debt owed by the second defendant to the plaintiff. The part payment of the purchase price is further evidence of the admission and acknowledgment of the outstanding debt. On the totality of the evidence before me, therefore, I am satisfied that the plaintiff has established a *prima facie* case that the purchase price (less the part payment) is owed to the plaintiff by the second defendant. I therefore grant the plaintiff judgment against the second defendant.

The claim against the first defendant for the tort of deceit

15 The development of the law relating to the tort of deceit was succinctly summarised by LP Thean JA, delivering the judgment of the Court of Appeal, in *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 ("*Panatron*") at [13]:

> ... Since the case of Pasley v Freeman (1789) 3 TR 51, it has been settled that a person can be held liable in tort to another, if he knowingly or recklessly makes a false statement to that other with the intent that it would be acted upon, and that other does act upon it and suffers damage. This came to be known as the tort of deceit. In Derry v *Peek (1889) 14 App Cas 337 the tort was* further developed. It was held that in an action of deceit the plaintiff must prove actual fraud. This fraud is proved only when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

The essential elements of the tort were set out by Lord Maugham in Bradford Building Society v Borders [1941] 2 All ER 205 and followed by the Court of Appeal in *Panatron* at [14]. The elements are:

(a) There must be a representation of fact made by words or conduct;

(b) The representation must be made with the intention that it should be acted on by the plaintiff;

(c) It must be proved that the plaintiff had acted upon the false statement;

(d) It must be proved that the plaintiff suffered damage by so doing; and

(e) The representation must be made with knowledge that it is false; it must be wilfully false or at least made in the absence of any genuine belief that it is true.

I shall now examine these elements.

A representation of fact made by words or conduct

16 It is not disputed that the first defendant instructed JR to purchase the PTTI Shares at around 12.19pm on 23 June 2008. As stated above at [13], the first defendant made numerous representations to the plaintiff on 23 June 2008 that he would transfer funds to pay for the PTTI Shares.

17 The following key representations are worth highlighting. Prior to the order being placed, during the 11.40 Conversation, the first defendant represented to that he would transfer funds for the

purchase of the PTTI Shares the next day. The relevant portion of the conversation is set out below:

[First defendant]: I want to buy 150 million worth of shares.

...

JR: Ok, and then, and then ... when will you transfer the funds ah?

[First defendant]: From tomorrow. I am coming to Singapore.

It is JR's evidence that he understood the first defendant to be informing him that he would transfer funds to pay for the PTTI Shares on 24 June 2008; he maintained this position under cross-examination.

18 The first defendant furthermore confirmed his representations in subsequent conversations. During the 12.30 Conversation, the first defendant represented to JR that he would transfer funds into the Account the next day to pay for, *inter alia*, the PTTI Shares. The relevant parts of the conversation are set out below:

[JR]: I just wanted to check with you ah. Hundred and twenty million shares of this one right of PT Triwira right?

[First defendant]: It's about twelve million dollars.

(JR]: It's about fourteen million USD you know.

[First defendant]: Ya, ya, ya, ya.

[JR]: Ya you are aware ah?

[First defendant]: Ya of course.

[JR]: Okay okay I just wanted... okay so how are you going to transfer the funds?

[First defendant]: Tomorrow 17 million dollars. I want to buy all 17 million dollars.

[JR]: Okay, okay.

[First defendant]: So today you put that one later we put some more. Tomorrow I'll send you all the money and structured product.

19 Later that day, at around 1.59pm ("the 1.59 Conversation"), the first defendant represented to Rajesh Wilson ("RW"), the relationship manager, that he would be transferring more than US$14.25m into the Account the next day and the day after (24 and 25 June 2008) to pay for the PTTI Shares. The relevant portions of the conversation are set out below:

[RW]: ... Errrmm ... [JR] has given me the thing and it has gone up to our management of the trade that you are goanna be doing for 14 point odd million dollars ya.

[First defendant]: Ya, ya, ya, ya. Already done?

[RW]: No not yet. We placed the order and you'll be sending the funds tomorrow correct?

[First defendant]: Tomorrow and the day after tomorrow.

[RW]: Okay.

[First defendant]: Ya, I'll send the funds.

...

[RW]: Okay fair enough. See you. You are goanna be transferring cash 14 point... Ermmm sorry, 14.25 plus 750 thousand for the trade...

[1st Defendant]: 750 will go in today I think. Tomorrow you will receive the funds.

20 It is therefore beyond dispute that prior to the placing of the order and after the order had been placed, the first defendant represented by his words that he would transfer funds to make payment for the PTTI Shares.

21 Counsel for the first defendant attempted to suggest that the above statements made by the first defendant were merely statements of intention and not actionable without more since a misrepresentation had to be one of fact. However, a statement of intention is also a representation as to the existence of the intention and that is a statement of present fact. It is often difficult to prove the state of mind of the maker of a statement. However, in some situations, as in this case, such proof is satisfied by showing that, by reason of the surrounding circumstances, the maker of the statement had no basis upon which he could have had that intention.

The representation must be made with knowledge that it is false

22 This particular element was elaborated on by the House of Lords in *Derry v Peek* (1889) 14 AC 337 at 374 (cited with approval by the Court of Appeal in *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [16]):

> ... First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement [from] being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.

23 Therefore, aside from actual knowledge, making a representation without belief in its truth will satisfy the knowledge element here, as will making a representation recklessly, without caring if it is true or false. Furthermore, the motive of the person making the representation is irrelevant; the representation need not be made with an intention to cheat or injure the person to whom the statement was made.

24 The question therefore as far as this element is concerned, is this: Did the first defendant make

a false representation either: (a) knowingly; (b) without belief in its truth; or (c) recklessly, without caring as to whether it is true or false? If any of the above applies, then this element of the tort of deceit is satisfied.

25 At the close of the plaintiff's case, I found there to be overwhelming evidence that the first defendant made more than one false representation with knowledge that it was false. The evidence which led me to this finding is as follows:

(a) the first defendant knew that the second defendant had no funds available to pay for the PTTI Shares and admitted on oath that this was so. In the affidavit filed on 25 November 2008 in support of the Stay Application, the first defendant states that:

> ... at the point in time when the order was placed with [JR] for the purchase of the 120 million PTTI shares, the 2nd Defendant did not have the funds in hand to pay for the purchase. ...

The first defendant went on to state that he could have paid for the purchase with a certain credit facility from the plaintiff, but the first defendant provided no evidence that the plaintiff agreed to the use of the facility and the plaintiff's uncontroverted evidence is that there was no such facility;

(b) the first defendant pretended that moneys were coming in on false and dishonest grounds. The first defendant pretended that moneys were going to come from a US$17m investment he had with a company called "Pioneer Capital LLC" ("Pioneer Capital"). The plaintiff provided unchallenged evidence that Pioneer Capital is a sham, however. Furthermore, the first defendant provided no documents relating to the investment or the defendants' relationship with Pioneer Capital;

(c) the first defendant fabricated documents to create the impression that moneys were coming in. At around 12.27pm on 25 June 2008, the first defendant faxed to the plaintiff a remittance form ("the Remittance Form") as evidence that a sum of US$14,863,200 was in the process of being transferred from Pioneer Capital to the second defendant before the Settlement Date. The plaintiff provided, however, uncontroverted evidence that the Remittance Form was a sham document. Crucially, no funds were ever transferred pursuant to the Remittance Form. The first defendant admitted that the Remittance Form was a sham document: in para 109 of the affidavit ("the Mareva Affidavit") in support of the Mareva application (which the plaintiff filed on 20 October 2008), the first defendant "admit[s] the falsehood of the remittance advice from Pioneer";

(d) the first defendant procured an imposter to pose as a bank officer to give false reassurances to the plaintiff. On 1 July 2008, the first defendant arranged for a conference call between the plaintiff's representatives and a certain Antonio, a banker from Standard Chartered Bank, to discuss the status of the funds for the purchase of PTTI Shares. During the conversation, Antonio stated, *inter alia*, that the funds had been transferred. The plaintiff, however, provided uncontroverted evidence that it made enquiries with Standard Chartered Bank and discovered that there was no such banker working there. The first defendant admitted that Antonio was not who he appeared to be in para 109 of the Mareva Affidavit (the first defendant admits the "dubious existence of Antonio");

(e) the first defendant came up with excuses to avoid paying the amount owed by the second defendant. After numerous assurances subsequent to the placing of the order, the defendants

raised a new objection to making payment for the PTTI Shares. By way of their solicitors' letter dated 5 August 2008, the defendants alleged that the purchase of the PTTI Shares was made using a credit facility provided by the plaintiff; and that there was no reason for the plaintiff to demand the settlement of the trade by 26 June 2008. However, that ran counter to the first defendant's representations that payment would be made. The plaintiff provided clear and uncontroverted evidence that no approval for any such credit facility was granted and that it was never used or drawn down for the purposes of purchasing the PTTI Shares. Furthermore, the 11.40 Conversation is evidence that the objection based on the credit facility was without basis. During the 11.40 Conversation, the first defendant represented to JR that he would transfer the necessary funds into the Account to purchase the PTTI Shares; this was prior to the placing of the order; and

(f) the first defendant submitted false documents to the plaintiff prior to purchasing the PTTI Shares. In order to process the application for the credit facility, Gupta of the plaintiff asked the first defendant for the second defendant's financial statements. The first defendant furnished the plaintiff with the second defendant's Profit and Loss Accounts for the months ended October 2007 to December 2007. The Profit and Loss Accounts, however, were false. They showed that the second defendant had, as of December 2007, total assets worth about $200m. This was markedly different from the audited financial statements for the year ended 31 December 2007, attached to the second defendant's Annual Return filed on 28 August 2008 (which were never furnished to the plaintiff) which indicated that as at 31 December 2007, the second defendant had total assets worth only about $3.8m.

26 I found the above to be credible and unchallenged evidence that the first defendant made the representations with the full knowledge that they were false.

The representations were made with the intention that they should be relied on by the plaintiff

27 As stated in *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co* [2007] 1 SLR(R) 196 at [53], the issue of reliance is closely tied to the issue of how material the representations are:

> ... it is relevant to consider the state of mind of the representor as the plaintiff must establish an intent to induce. The representor is presumed to have so intended once materiality is proved. The evidential burden then shifts to the representor to displace the prima facie case. It follows that materiality and inducement are closely related. Conversely, if the subject matter of the misrepresentation was immaterial to the business at hand, the court will normally find that the defendant had no intention to induce in the absence of evidence otherwise.

Therefore, if the representations are material, the court will presume that the representor intended that the plaintiff rely on the representation. The evidential burden then shifts to the representor to displace the *prima facie* case. As to what constitutes a material misrepresentation, a material misrepresentation is one that no reasonable person would consider unimportant: *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 at [119].

28 Here, the representations by the first defendant that the defendants would pay the funds in time for the Settlement Date is certainly material; no reasonable person would consider them unimportant. As such, *prima facie*, the first defendant intended that the plaintiff rely on the representation. The first defendant has failed to displace the *prima facie* case, and therefore this element is satisfied.

The plaintiff relied on the representation

29 The plaintiff's unchallenged evidence is that had the first defendant not made the representations, the plaintiff would either not have placed the order or would have taken steps to stop the order from being filled. JR provided evidence that:

(a) If the first defendant had not represented during the 11.40 Conversation that he would effect payment for the PTTI Shares by 24 June 2008, he would not have placed the order as there were insufficient funds in the Account to cover the purchase price of the PTTI Shares;

(b) After placing the order, if the first defendant had not represented, in the 12.30 Conversation, that he would pay for the PTTI Shares by 24 June 2008 and had instead said that he would not be able to pay for the PTTI Shares before the Settlement Date, JR would have pulled back the order; and

(c) In any event, between 12.59pm and 3.18pm, while the order was being filled, the plaintiff could have withdrawn any unfilled portion of the order if it was aware that the first defendant would not pay for the PTTI Shares by the Settlement Date.

Therefore, on the evidence before me, I was satisfied that the plaintiff had relied on the representations.

30 The first defendant argued that the pre-approval for the purchase of the shares was made by RW on 20 June 2008 without the first defendant having said anything to RW. This, the first defendant argued, was clear evidence that JR had merely carried out the instructions and approval already made by RW on 23 June 2008. JR did not independently decide to proceed with the purchase based on the innocuous responses by the first defendant.

31 This contention is untenable. The evidence did not support the first defendant's contention. Even if the pre-approval was made without any representations on the part of the first defendant, representations were made to JR during the 11.40am Conversation prior to the purchase of the PTTI Shares, which he relied on for the purchase.

32 The plaintiff further adduced evidence that before JR's and RW's superiors, namely, Yeo and Advani, approved the order, they had made express enquiries as to whether the first defendant and/or the second defendant had promised to transfer the money. This is clear from, *inter alia*:

(a) JR's evidence that Yeo and Advani expressly instructed him to make the 12.30 Conversation and obtain the confirmation on a recorded line from the first defendant and he would pay before the Settlement Date;

(b) the telephone conversation among JR, RW and Yeo at 12.43pm on 23 June 2008 ("the 12.43 Conversation") to confirm that the first defendant had agreed to transfer money to pay for the shares;

(c) Advani's e-mail at 12.47pm requesting RW's confirmation in writing that the first defendant will pay for the PTTI Shares; and

(d) RW obtaining the first defendant's confirmation during the 1.59 Conversation that the first defendant would pay for the PTTI Shares on 24 June 2008 and his subsequent report to Advani that the first defendant's confirmation had been voice-logged.

33 It is therefore clear that the plaintiff's employees were aware of the risks involved in placing the order and were anxious to have on record the first defendant's confirmation that he would pay for the PTTI Shares before the Settlement Date. Unlike the plaintiff who proved reliance through the evidence, the defendants did not offer any evidence to challenge the plaintiff's version of events.

34 The defendants also contended that the plaintiff's representatives were careless in their haste to obtain business from the first defendant and did not go through the necessary internal approvals prior to placing the order. This was a red herring. The law is clear that even if a plaintiff acted incautiously or failed to take steps to verify the truth of the representations that a prudent man would take, that is no defence to a claim in fraudulent misrepresentation: *Panatron* ([12] *supra*) at [24]. As such, it is irrelevant whether the representatives did the necessary due diligence that would have been prudent of them to do or not. With regard to the internal approval, JR's actions were ratified, and such ratification was given with the full knowledge by the superiors that the funds for the purchase were not in the account yet but would come in before the Settlement Date. If anything, JR's eagerness to bypass the internal approvals and place the order is perhaps further indication of the materiality of the representations made by the first defendant and JR's reliance upon the same.

The plaintiff suffered damage in relying on the representation

35 In reliance on the representations, the plaintiff placed the order for the purchase of the PTTI Shares on behalf of the second defendant. After the order was placed, as a result of the defendants' failure to transfer funds to pay for the PTTI Shares by the Settlement Date, the plaintiff had to pay the full purchase price of the PTTI Shares, amounting to US$14,318,301.84. This evidence was unchallenged. Also undisputed was the plaintiff's evidence that as of 1 January 2010, after all the PTTI Shares were sold and after part payment, the outstanding amount owed by the second defendant to the plaintiff was US$9,437,687.18. Therefore, the evidence clearly establishes that the plaintiff suffered damage by relying on the representation. This element is accordingly satisfied.

36 After examining all the elements of the tort of deceit, I found that all the elements were satisfied and that the plaintiff has established that the first defendant committed the tort of deceit against the plaintiff. I therefore grant the plaintiff judgment against the first defendant.

37 In view of the foregoing, it will not be necessary to go into the plaintiff claim against the defendants for conspiracy by unlawful means.

The second defendant's counterclaim

38 The second defendant had also brought a counterclaim against the plaintiff alleging, *inter alia*, that the plaintiff's steps to liquidate the PTTI Shares caused a loss of confidence in the PTTI Shares. However, as the defendants elected to submit that they had no case to answer, this counterclaim was not supported by evidence and thus could not stand. I therefore dismiss the second defendant's counterclaim.

Damages

39 Having found both the defendants liable on the respective claims against them (other than for conspiracy) to the counterclaim, it is now necessary to consider the quantum of damages.

40 Since the plaintiff has established that the purchase price was owed by the second defendant to the plaintiff upon the purchase of the PTTI Shares, and the outstanding amount is the Outstanding Sum (after taking into account the part payment of US$2m and the funds received from the disposal

of the PTTI Shares), the plaintiff is entitled to damages from the second defendant in the amount of the Outstanding Sum, which equals US$9,437,687.18. However, as the second defendant still has PT Colorpak shares in the Account, which the Plaintiff is in the process of disposing of, the aforementioned damages shall be reduced by any funds received by the Plaintiff from the disposal of the PT Colorpak shares.

41 As the plaintiff has lost the use of the moneys from the Settlement Date, the plaintiff is entitled to interest as well. Section 12(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) grants the court wide discretion to grant interest for any period from the date when the cause of action arose to the date of judgment. Here, the cause of action against the second defendant and the cause of action against the first defendant for the tort of deceit on 26 June 2008. I therefore additionally award the plaintiff interest at the rate of 5.33% per annum on the purchase price (not merely the Outstanding Sum) of US$14,318,301.84 or (as the case may be) the balance thereof outstanding from time to time from 26 of June 2008.

42 Since the plaintiff has established that the first defendant committed the tort of deceit against the plaintiff, the first defendant is liable for the losses that resulted from the tort. The losses are exactly the same as described above at [39]. I therefore award the plaintiff damages to be paid by the first defendant in the amount of the Outstanding Sum, which equals US$9,437,687.18. However, as per [36] above, the damages shall be reduced by any amounts received by the plaintiff due to the disposal of the PT Colorpak shares. Additionally, the plaintiff may not recover damages under this head of damages, for which the plaintiff has already received payment under the head of damages in [40] above.

43 The plaintiff is also entitled to interest from the first defendant for the loss of use of the moneys. This is as per [41] above. However, any interest due arising from this head of damages shall be reduced by any interest received due under the head of damages in [41] above.

44 I will hear the parties on costs.