Nagase Singapore Pte Ltd v Ching Kai Huat and Others
[2007] SGHC 169

Case Number : Suit 751/2003

Decision Date : 03 October 2007

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Philip Lam (Lam & Co) for the plaintiff; Lim Kim Hong (Kim & Co) for the first and second defendants; Kannan Ramesh and Siraj Omar (Tan Kok Quan Partnership) for the third defendant; Jagjit Singh and Gurdip Singh (Gurdip & Gill) for the fourth defendant

Parties : Nagase Singapore Pte Ltd — Ching Kai Huat; David's Logistics Pte Ltd; Yip Kian Koon, Clement; Mary Ting Chi Fong

Tort – Conspiracy – Company and director as co-conspirators – Company overcharging customer – Director aware of overcharging – Director moving spirit of company – Whether company having separate mind so as to conspire with director

3 October 2007

Judith Prakash J:

Introduction

1 This judgment is a follow up to the decision [*Nagase Singapore Pte Ltd v Ching Kai Huat & ors* [2007] 3 SLR 265] ("the first judgment") that I delivered in this action on 4 May 2007. At the end of the first judgment, I directed the parties to furnish me with further submissions on three issues. This second judgment deals with those issues and therefore I will use the same abbreviations for the parties and the relevant witnesses that I employed in the first judgment. I will not repeat the facts herein except to the extent necessary to explain the submissions and my reasoning.

2 In the first judgment, I made the following findings that are material for the purposes of this judgment:

(a) that CY was in breach of his duty to the plaintiff in agreeing to the plaintiff being charged for storage charges on the basis of truncated weeks and also by reason of his failure to oversee MT's actions in relation to the setting up and operation of a proper system of verification of D Logistics' invoices;

(b) that MT was in breach of her duty to the plaintiff by reason of her failure to set up a proper system of verification of D Logistics' invoices and her further failure to properly supervise the system that was set up;

(c) that MT would be liable to compensate the plaintiff for all the overcharges relating to excess tonnage and packages only;

(d) that CY would be liable to compensate the plaintiff for the same type of overcharges as MT and would also be liable to compensate the plaintiff for the overcharges relating to the truncated weeks;

(e) that D Logistics would be liable to repay the plaintiff the moneys it had overcharged the latter;

(f) that MT and CY were not co-conspirators with D Logistics and DC to injure the plaintiff; and

(g) that DC must have known of the overcharging as it occurred and been privy to it.

3 I also stated that although the plaintiff had claimed the sum of $913,541.68 as being the amount overcharged by D Logistics, it had not particularised how each form of overcharging had contributed to the overall figure. Since I had found that only some of the claims of overcharging had been successful, I could not arrive at the quantum of loss that each of the defendants' actions had caused the plaintiff. I therefore needed to know the breakdown, to the extent that the evidence was already before the court.

4 The issues that remained unresolved at the end of the first judgment and that I asked for further submissions on were:

(a) the quantum of the damages payable by each of D Logistics, CY and MT;

(b) whether, legally, DC and D Logistics could on their own, irrespectively of any participation by MT and CY, be said in law to be liable in conspiracy to the plaintiff; and

(c) the appropriate costs orders that should be made in the light of my findings in the first judgment.

5 As a finding on the second issue may have an impact on the quantum and on costs, I will deal first with the conspiracy issue. Thereafter, I will consider the quantum of damages and, finally, deal with costs.

Conspiracy between D Logistics and DC

6 The plaintiff in its pleadings had primarily relied on a conspiracy by all the defendants to injure it by unlawful means. I found that MT and CY did not conspire with DC and D Logistics to do any of the things they were accused of. There was no doubt, however, that D Logistics had injured the plaintiff by intentionally overcharging it and my finding was that DC was responsible for this overcharging. The issue was whether DC and D Logistics could on their own, be said in law to be liable in conspiracy to the plaintiff, as I had found that DC was the alter ego of D Logistics and some authorities have expressed the view that a combination may not exist between a corporation and natural persons where the persons involved are the partners or directors of the corporation.

7 Before I set out the submissions made on behalf of DC and the plaintiff, it may be helpful to review how the plaintiff pleaded its case against DC. The relevant paragraphs of the statement of claim (amendment no. 6) (omitting particulars of allegations that are not relevant to the present issues) are the following:

29. Further or alternatively, on (or on about) or before (or before about) the dates set out in paragraph 30, below, all the Defendants (or any 2 or more together) wrongfully and with intent to injure the Plaintiffs and/or to cause loss to the Plaintiffs by unlawful means conspired and combined together to cause loss to the Plaintiffs and to conceal such loss from the Plaintiffs.

30. Pursuant to and in furtherance of the conspiracy pleaded in paragraph 29, above, all the defendants (or 1 or more of them) carried out the following unlawful acts and means by which the Plaintiffs were injured:-

…

(e)(i) From (or from about) August 2001 to (or to about) May 2003, the Second Defendants [D Logistics] (and the First Defendant [DC] procured the Second Defendants to) unlawfully interfered with the Plaintiffs' business and/or contracts and/or in breach of the First Agreement and, subsequently, in breach of the Second Agreement, wrongfully over-charged the Plaintiffs as pleaded hereinabove.

Looking at that pleading, therefore, the essential allegation was that all the defendants conspired to wrongfully interfere with the plaintiff's contracts and business and to wrongfully overcharge the plaintiff. If the references to CY and MT are removed from the pleading because of the findings I have made, then the plaintiff's pleaded case becomes an averment that DC and D Logistics conspired to wrongfully interfere with its business using unlawful means and, in pursuance of that conspiracy, DC procured that D Logistics wrongfully overcharged the plaintiff.

8 The plaintiff's further submission on this issue was that the fact that D Logistics was a company controlled by DC did not prevent a finding in law that D Logistics could be regarded as a separate individual from DC so as to permit a further finding that the two of them could, legally, combine and conspire to injure the plaintiff. The plaintiff relied on the case of *Chong Hon Kuan Ivan v Levy Maurice & Ors (No. 2)* [2004] 4 SLR 801 ("*Chong Hon Kuan* case"). There, the first, second and third defendants were directors of a company ("Publicis Singapore") which also employed the plaintiff ("Chong"). Chong made a claim against these three defendants for conspiracy to induce, and then inducing, Publicis Singapore to terminate Chong's employment. The action was unsuccessful. Applying the principle ("the Principle") established by *Said v Butt* [1920] 3 KB 497 and the cases that followed it, Woo J held that if a servant acting *bona fide* within the scope of his duty procured or caused the breach of a contract between his employer and a third party, he did not thereby become liable to an action in tort at the suit of the person whose contract had been broken.

9 Mr Lam, counsel for the plaintiff, submitted that this result had been reached in the *Chong Hon Kuan* case because the court regarded the case as one where the tortious act of the defendants had not been done by illegal means. Thus, Woo J had observed (at [46] of the judgment):

> The allegation of a sole or predominant intention to injure is a standard requirement in any allegation raising the tort of conspiracy to injure where the tortious act is not done by illegal means. It was my view that if such an allegation were sufficient to deprive a defendant director from the protection of the Principle [i.e. the principle established by *Said v Butt*], then the Principle would become emasculated.

Mr Lam submitted that in this case as far as DC and D Logistics were concerned, the tortious act was done by clearly illegal means *viz*, by deliberately overcharging the plaintiff amounts which D Logistics was not entitled to charge. Furthermore, this was not a case where the plaintiff merely alleged the "standard requirement" of a sole or predominant intention to injure without more. The plaintiff had also alleged and proved that it was DC who procured D Logistics to unlawfully interfere with the plaintiff's business and/or wrongfully overcharge it in breach of contract. In view of the findings in the first judgment that DC knew of the overcharging as it occurred, that he was privy to it and that D Logistics deliberately overcharged with DC's knowledge, it was submitted that DC ought not to be entitled to protection under the Principle. DC could not in the circumstances be said to have acted in

a *bona fide* manner within the scope of his authority. In these circumstances, it was fair and reasonable to impose liability on DC for conspiring with D Logistics to wrongfully overcharge the plaintiff. The Principle was meant to protect persons in authority within corporate entities who genuinely and honestly endeavoured to act in the company's best interests. Such protection would not apply to DC who wrongfully and dishonestly caused D Logistics to unlawfully overcharge the plaintiff thereby exposing D Logistics to liability. In my view there is much merit in this submission.

10 It would be noted that in *Chong Hon Kuan* the alleged conspiracy was amongst the three directors of Publicis Singapore. Publicis Singapore itself was not a party to the conspiracy. Therefore, the case did not discuss the issue of whether a single director and the company which he directed could legally be considered co-conspirators. It did, however, quote the following paragraph from the judgment of Starke J of the High Court of Australia in the case of *O'Brien v Dawson* (1942) 66 CLR 18 (at 32-33) which sets out the conceptual objection to treating a company and its directors as separate individuals for the purpose of conspiracy:

> … A company "cannot act in its own person for it has no person" (*Ferguson v Wilson*). So it must of necessity act by directors, managers or other agents. The company, if it were guilty of a breach of its contracts in this case, acted through its director the respondent Doyle, but it is neither "law nor sense" (*Lagunas Nitrate Co v Lagunas Syndicate*) to say that Doyle in the exercise of his functions as a director of the company combined with it to do any unlawful act or become a joint tortfeasor.

11 The Court of Appeal, however, has made a determination which implicitly rejects the validity of the conceptual objection. This determination was made in another case relied on by the plaintiff, that of *Chew Kong Huat v Ricwil (Singapore) Pte Ltd* [2000] 1 SLR 385 ("the *Ricwil* case"). In that case, the first appellant-defendant Mr Chew was a major shareholder and managing director of the respondent-plaintiff Ricwil. Mr Chew and his wife were directors of the third appellant-defendant Sintalow and another company Thermosel. These were their own companies and Mr Chew was the managing director of Sintalow. It was claimed that Mr Chew in breach of his fiduciary duties, at the expense of Ricwil, procured contracts for Sintalow to supply steel pipes to one of Ricwil's contracts and caused Ricwil to lose the benefit of such contracts. In the alternative, it was alleged that Mr Chew and Sintalow conspired to cause damage to Ricwil. This alternative claim was successful at first instance and Mr Chew and Sintalow appealed. It should be noted that *vis-à-vis* Mr Chew himself the plaintiff did not need to invoke the tort of conspiracy since he owed it fiduciary duties. The conspiracy claim was, however, essential to establishing a basis for recovery against Sintalow. In delivering the judgment of the Court of Appeal, LP Thean JA said (at [35]):

> We are of the opinion that the trial judge was correct in holding that Chew and Sintalow had committed the tort of conspiracy by unlawful means. The unlawful act was Mr Chew's breach of his fiduciary duty to Ricwil, and Mr Chew and Sintalow must have intended to injure or damage Ricwil, as Ricwil would obviously lose the benefit to supply the Nippon pipes, while shouldering the burden of giving the discount to Kwang Wah. The loss or damage to Ricwil was a necessary corollary of the profit accruing to Sintalow through the conspiracy. There was a direct nexus between these events. It might not have been the predominant intention of Mr Chew and Sintalow to damage Ricwil, but this is not a necessary element for the tort of conspiracy by unlawful means.

I will discuss this issue further after considering DC's submissions.

12 As a further arrow to its bow, the plaintiff submitted that DC had to be made personally liable for procuring that D Logistics wrongfully overcharged the plaintiff. It asserted that there was ample

authority for the proposition that a director who procured the commission of a wrong through a company would be liable for that wrong. The authorities cited in support were *Wah Tat Bank Ltd v Chan* [1975] AC 507, *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374, *TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR 534, *C Evans & Sons Ltd v Spritebrand Ltd* [1985] 1 WLR 317, *Mancetter Developments Ltd v Garmanson Ltd* [1986] 1 QB 1212. I have looked at those authorities and this additional point can be disposed of in short order. All the cases cited are authority for the point that where a director of a company orders an act by the company which amounts to the commission of a tort by that company he may, in certain circumstances, himself be liable for the same tort as a joint tortfeasor on the ground that he has procured or ordered the act to be done. The authorities therefore deal only with the commission of a tort; they do not deal with a deliberate breach of contract by a company and the directors' liability to the other contracting party for procuring such breach, whether by reason of conspiracy or otherwise. These cases therefore do not set out any basis which the plaintiff here can rely on to support its assertion that DC has personal liability for D Logistics' breach of contract. This part of the submission is also inapplicable because it does not arise out of the plaintiff's pleaded case.

13 Turning to the submissions made by Ms Lim Kim Hong on behalf of DC, her first point was that the plaintiff's pleadings did not include a cause of action against DC on the basis that he was the alter ego of D Logistics and as such the corporate veil should be lifted and he be made responsible for his company's deliberate breach of contract. Therefore, it was submitted, the alter ego argument could not be raised at this stage to make DC personally liable for procuring the overcharging of the plaintiff. It was asserted that an "alter ego" allegation could only be justified by establishing that D Logistics was incorporated as a sham or as an agent of DC and therefore that the corporate veil was artificial and had to be pierced to reveal the truth that DC and D Logistics were a single entity. In this case, no such allegations had been made and there was nothing in the cross-examination of DC or in the affidavits of the plaintiff's witnesses to suggest that the plaintiff regarded DC as the alter ego of D Logistics. I agree that to the extent that any of the plaintiff's arguments are based on a piercing of the corporate veil, they cannot succeed as there is nothing in the pleadings that allows the plaintiff to place responsibility on DC on the basis that he is the alter ego of D Logistics.

14 Moving to the issue of whether there could be conspiracy between DC and D Logistics, the submission made by Ms Lim relied on the principle that for a conspiracy to exist, there must be an agreement between at least two persons with separate minds and separate bodies. She argued that since on the facts it had been found that DC was the directing mind and will of D Logistics, in actuality the company D Logistics did not have a separate mind from DC's. Ms Lim accepted the well established principle that a company is a separate legal entity from its directors and shareholders and therefore recognised that theoretically it can be argued that the combination of a natural person and a company to form a conspiracy is possible. She submitted, however that the general rule of separate legal identity did not cover situations where the director concerned was the moving spirit and mind of his company. Those cases which had found a director liable in conspiracy with his companies could be distinguished from the present case in two ways: first, the conspiracy concerned involved additional parties apart from only the director and his company or, secondly, the director had a plan to use, and had used, his own company as an accessory and vehicle to commit fraud on the plaintiff.

15 Ms Lim distinguished the *Chong Hon Kuan* case on the basis that the alleged conspiracy there involved three defendants who were all directors of Publicis Singapore and therefore the facts of the case were very different from the present proceedings in which the issue is whether a combination consisting of only one director and his company can exist. She also argued that the principle established in the English case of *Belmont Finance Corporation v Williams Furniture Ltd (No. 2)* [1980] 1 All ER 393 ("the *Belmont* case") was not applicable here. Although the *Belmont* case had been interpreted by various texts as authority for the proposition that a director and his company can form

a combination for conspiracy, in that case, the claim for conspiracy had been made against a combination of two defendant companies and a shareholder of a third party. Thus, the *Belmont* case would not apply to the situation where the natural person was the moving spirit and alter ego of the company and in that situation, the requirement of two or more persons in agreement in order to form a conspiracy can never be satisfied. Coming to the *Ricwil* case, Ms Lim endeavoured to distinguish it on the following basis:

(a) here again, the plaintiff, Ricwil, did not just sue a director and his company; it had sued two directors namely Chew and his wife and two companies namely Sintalow and Thermosel and, accordingly, the requirement of a meeting of two minds was satisfied;

(b) the judgment did not discuss in detail the possibility of a conspiracy between a company and its director who was its moving spirit as there were more persons sued for conspiracy than only Mr Chew and Sintalow; and

(c) Mr Chew was a director of both Ricwil and the two defendant companies and was clearly in breach of fiduciary duties and he had the predominant intention of using, and had used, Sintalow, his own company as a vehicle to commit fraud on the joint-venture company.

16 The submission for DC was that there was no local authority apart from the *Ricwil* case to support the proposition that the mere combination of a director and his company was sufficient for conspiracy. The factual matrix of the present case was clearly distinguishable from the authorities cited. Moreover, since in the first judgment it had been found that DC was the moving spirit and alter ego of D Logistics, the appropriate cause of action was not the tort of conspiracy but rather a claim based on the position that the corporate veil should be pierced and DC made responsible for the wrong doing of D Logistics.

17 I agree that the plaintiff could have (and perhaps should have) brought its claim against DC on the basis that he was responsible for the wrongs of the company as its alter ego and that, as the plaintiff's claim was one for deliberate overcharging, it was akin to fraud and therefore justified the piercing of the corporate veil. As I have said above, this course is not open to the plaintiff now in view of its pleadings. The plaintiff has, however, pleaded a conspiracy arising from the combination of any two of the defendants and, from the authorities, it does appear that whilst it has been doubted that the company which is a mouth piece of its directors can be regarded as having a separate mind from them so that it can be regarded as co-conspirator with any one of the directors, the courts have, where the circumstances were appropriate, been willing to recognise that such a combination can exist.

18 Whilst the *Ricwil* case implicitly recognised the principle, the only case cited that has expressly held that an agreement causing injury to a person by unlawful means is an actionable conspiracy notwithstanding that the parties to the agreement might be a person and a limited liability company under his control, or two or more companies under the control of a single person, is *Taylor v Smyth* [1991] 1 IR 142, a decision of the Irish Court of Appeal. Ms Lim submitted that that decision was distinguishable and should be limited to its own facts.

19 The facts of *Taylor v Smyth* are somewhat involved. A very brief summary is that the plaintiff was the owner of a hotel and the first defendant, S, who was in possession of the hotel agreed to purchase the premises from the plaintiff in consideration, *inter alia*, of S procuring the plaintiff's release from his bank liability secured by a mortgage over the hotel. Before the completion of the transfer, K Ltd, a company controlled by S, acquired the mortgage and thereupon called in all the debts. S's agreement to purchase was rescinded by an agreement in writing and the plaintiff

subsequently sought rescission of the second agreement in High Court proceedings against S, K Ltd and the bank. The proceedings were settled by a comprehensive compromise ("the consent"). One of the terms of the consent was that the hotel would be purchased by S or his nominee (C Ltd). Subsequently, S and C Ltd purported to rescind the consent. In subsequent proceedings, the plaintiff claimed that C Ltd had dealt with K Ltd in a manner which it knew was inconsistent with the consent and was guilty of inducement of breach of contract and that S, K Ltd and C Ltd had wrongfully conspired to deprive the plaintiff of his title to the hotel by arranging for it to be sold from K Ltd (as the holder of the mortgage) to the third defendant (a company referred to as "Calla") in breach of the terms of the consent. In the High Court, it was held by Lardner J that K Ltd was in breach of its contractual obligations under the consent in exercising its power of sale as mortgagee and selling the hotel to Calla and that the plaintiff was entitled to judgment against S and K Ltd for damages for breach of contract and in tort in that S and K Ltd had combined together to effect an unlawful purpose to procure the breaches of the consent contract. S and K Ltd appealed to the Supreme Court and argued, *inter alia*, that apart from the banks, the several companies involved in the transaction were wholly controlled by S, and he could not, in law, so to speak, conspire with himself and therefore there could not be a conspiracy.

20 The judgment of the Supreme Court was delivered by McCarthy J ("the judge"). In rejecting the arguments of S and K Ltd on the combination point, the judge said:

> (a) **The legal fiction**. The principle defined in *Saloman v Saloman & Co* [1897] AC 22, which was a case of a "one man" company, has been qualified on many occasions but, as I understand it, remains the law - that a company legally incorporated does not cease to be an independent legal entity, separate and distinct from the individual members of the company, simply because it is wholly controlled by one individual. *But, it is said, Mr Smyth cannot conspire with himself, which is the reality of the allegation insofar as it is said that he conspired with Kape, with Calla, or with Calder all of which companies he controls*; reliance is placed upon a decision on trial made by Nield J in *Reg v McDonnell* [1966] 1 QB 233 where a criminal charge of conspiracy was brought against the defendant and it was contended that there could be no conspiracy because there were not two persons and two minds involved. Nield J, emphasised that it was not a company which was being proceeded against but an individual defendant and, of course, that it was a criminal trial. He concluded at p 246 that, whilst an indictment for a common law conspiracy to defraud would lie against a limited company, "the true position is that a company and a director cannot be convicted of conspiracy when the only human being who is said to have broken the law or intended to do so is the one director, and that is the situation in the present case." No authority was cited in support of extending this proposition to an action for civil conspiracy*. In principle, it would seem invidious, for example, that the assets of a limited company should not be liable to answer for conspiracy where its assets had been augmented as a result of the action alleged to constitute the conspiracy. Essentially, it would be permitting the company to lift its corporate veil as and when it suits.* The matter is not devoid of authority. In *Belmont Finance (No 1) v Williams Furniture* [1979] Ch 250, Williams Furniture owned City Industrial Finance which owned Belmont, whose majority directors were the seventh and eighth defendants. Four other defendants owned Maximum and wanted to purchase Belmont. They agreed to sell Maximum to Belmont for £500,000 and to purchase Belmont from City Industrial for £489,000. The Belmont directors resolved to implement this agreement and the transaction was completed. Belmont went into liquidation and its receiver sued alleging that the value of Maximum was only £60,000 but that the price of £500,000 for Maximum had been arrived at to enable those four defendants to purchase Belmont with money provided by Belmont, in contravention of the Companies Act. It was held that since Belmont was a victim of the alleged conspiracy and the essence of the agreement was to deprive it of a large part of its assets, the knowledge of its directors that the agreement was illegal was not to be imputed to Belmont merely because they

were directors of Belmont. Therefore, Belmont was not a party to the conspiracy. The trial judge had held that the claim in conspiracy failed in limine on the ground that one party to a conspiracy to do an unlawful act cannot sue a co-conspirator in relation to that act. In the course of his judgment, Buckley LJ said at p 260:-

> "I shall deal first with the conspiracy claim. The plaintiff company's argument is to the following effect: on the allegations in the statement of claim, the agreement was illegal, and they say that an agreement between two or more persons to effect any unlawful purpose, with knowledge of all the facts which are necessary ingredients of illegality, is a conspiracy; and we were referred to *Crofter Hand Woven Harris Tweed Co Ltd v Veitch* [1942] AC 435 and *Reg v Churchill (No 2)* [1967] 2 AC 224. The agreement was carried out, and damaged the plaintiff company.
>
> In the course of the argument in this court counsel for the first and second defendants conceded that the plaintiff company is entitled in this appeal to succeed on the conspiracy point, unless it is debarred from doing so on the ground that it was a party to the conspiracy, which was the ground that was relied on by the judge.
>
> The plaintiff company points out that the agreement was resolved on by a board of which the seventh and eighth defendants constituted the majority, and that they were the two directors who countersigned the plaintiff company's seal on the agreement, and that they are sued as two of the conspirators. It is conceded by Mr Miller for the plaintiff company that a company may be held to be a participant in a criminal conspiracy, and that the illegality attending a conspiracy cannot relieve the company on the ground that such an agreement may be ultra vires; but he says that to establish a conspiracy to which the plaintiff was a party, having as its object the doing of an illegal act, it must be shown that the company must be treated as knowing all the facts relevant to the illegality; he relies on *Reg v Churchill (No 2)* [1967] 2 AC 224.
>
> The plaintiff in its reply denies being a party to the conspiracy and, says Mr Miller, it would be for the defendants to allege the necessary knowledge on the part of the plaintiff company. But he further submits that even if the plaintiff company should be regarded as a party to the conspiracy, this would not debar it from relief; and he relies on *Oram v Hutt* [1914] 1 Ch 98."

The point now under consideration in this appeal did not expressly arise in *Belmont Finance (No 1) v Williams Furniture* [1979] Ch 250, but it must underlie the entire of the argument and judgment in it. The basis of that case was that the separate legal entity of the company may, in law, conspire with those directors who, in effect, control it. In *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705 Viscount Haldane LC said at p 713:-

> ". . . a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation."

That was in the context of the company seeking to take advantage of the limitation of liability under s 502 of the Merchant Shipping Act, 1894. It is much quoted with particular emphasis upon the subsequent words "his action must, unless a corporation is not to be liable at all, have been an action which was the action of the company itself within the meaning of s 502." But the

controlling director cannot, in law, be the only director, and all of the directors are responsible for what the company does. *Apart from authority, in principle I see no reason why the mere fact that one individual controls the company of limited liability, should give immunity from suit to both that company and that individual in the case of an established arrangement for the benefit of both company and individual to the detriment of others.* If such were the case, it would follow that a like arrangement to the advantage of two companies of limited liability, both controlled by the same individual would give an equal immunity from suit to both companies, and so on. I recognise the force of the reasoning by Nield J in *Reg v McDonnell* [1966] 1 QB 233; I express no view in regard to his conclusion save to point out the obvious - it was a criminal case.

(emphasis added)

21 I accept the principle enunciated in *Taylor v Smyth* and the basis on which it was arrived at including its analysis of the *Belmont* case. Whilst of course the factual matrix there was not identical to the one in this case, those differences do not detract from the fact that the court there considered exactly the question that is before me and came to the conclusion, after considering the arguments for and against the proposition, that it would be unsound in principle to find that a company could not conspire with its controlling director. In that case, as in this, the director concerned might have been the one who always gave the orders, but he was not the company's only officer. Here, as required by the law then in force, D Logistics had two directors who, theoretically at least, could contribute to its actions. Although our Court of Appeal did not enunciate the principle expressly, it held in the *Ricwil* case that although Mr Chew was the managing director of Sintalow, he and Sintalow could be found liable for conspiracy by unlawful means to injure or damage Ricwil. Whatever the pleadings in the case may have been and whoever else may initially have been allegedly involved in the conspirator, in the end the co-conspirators were found to be Sintalow, the company, and Mr Chew, the director.

22 Now that I have heard full submissions on the point, I am satisfied that in law, there can be a conspiracy between a company and its controlling director to damage a third party by unlawful means notwithstanding that the director may be the moving spirit of the company as I have found that DC was. As I stated in the first judgment, since I had found that DC was responsible for the overcharging undertaken by D Logistics, it was unattractive to have to hold that only D Logistics could be legally liable for that wrongful act. That was why I called for further submissions.

23 In order for the claim of conspiracy to succeed, the elements that have to be satisfied are the following:

(a) a combination of two or more persons and an agreement between and amongst them to do certain acts;

(b) if the conspiracy involves lawful acts, then the predominant purpose of the conspirators must be to cause damage or injury to the plaintiff but if the conspiracy involves unlawful means, then such predominant intention is not required;

(c) the acts must actually be performed in furtherance of the agreement; and

(d) damage must be suffered by the plaintiff.

In the present case, I am satisfied that *vis-à-vis* D Logistics and DC, the plaintiff has established that they conspired to injure it by unlawful means to wit, by deliberately overcharging the plaintiff in breach of contract and that they actually carried out the overcharging and, accordingly, caused

damage to the plaintiff. In his affidavit of evidence-in-chief, DC, in endeavouring to explain why he was not able to adduce evidence from his former employee who had prepared D Logistics' invoices, stated that as he was a "completely hands-on person", he was able to "fully explain" most of the matters that transpired between D Logistics and the plaintiff. Whatever D Logistics did therefore, it is apparent that it was with the knowledge and on the direction of DC. DC was a co-conspirator and must be as liable as D Logistics for the harm sustained by the plaintiff.

Quantum of damages

Overview of claim

24 I found D Logistics liable to the plaintiff for overcharging by inflating the tonnage volume of goods stored and also by overcharging for bags that weighed less than 25kg each. In view of my holding above, DC is also liable to the plaintiff for those same items.

25 The plaintiff's position in its further submissions is that D Logistics inflated its tonnage claim by S$772,579.28. This was derived from the difference between the tonnage stored with D Logistics according to the plaintiff's computer system (the NFS) and the tonnage billed in D Logistics' invoices which the plaintiff paid. Secondly, D Logistics inflated its per package claims by $83,617.57. This figure was derived from the difference between the number of packages stored with D Logistics according to the NFS and the number of packages billed in D Logistics' invoices which the plaintiff paid.

26 The plaintiff accepted that, as contended by Ms Lim in the course of trial, D Logistics had to be given credit where goods had been stored at its warehouse by reason of what were referred to "Direct Deliveries". The plaintiff contended D Logistics were entitled to a credit of $496.92 for the Direct Deliveries.

27 During the trial, Ms Lim had also referred to certain memoranda and suppliers' documents detailed in three lists, Lists A, B and C. In the further submissions, the plaintiff stated that it had reworked Lists A, B and C and determined that in respect of List A, D Logistics was entitled to credit of $873.46 and in respect of List B, it was entitled to a credit of $79.23. However, nothing was due in respect of List C. The plaintiff had also done a further search for suppliers' memoranda and documents and had found additional documents which it had detailed in a List D. Under List D, credit of $357.71 was due to D Logistics.

28 The plaintiff submitted that in total, D Logistics was liable to the plaintiff for $562,552.31 derived as follows:

(a)	Inflated tonnage claim	$772,579.28
(b)	Inflated package claim	$ 83,617.57
(c)	Less:	
	Certain Direct Deliveries	($ 496.92)
	List A	($ 873.46)

List B	($ 79.23)
List D	($ 357.71)
Amount paid by D Logistics	($100,000)
Amount of D Logistics' Counterclaim	($191,837.22)
Total	$562,552.31

29 This amount of $562,552.31 also formed part of the plaintiff's claim against CY and MT since I have held that both of them liable for negligently failing to prevent overcharging by D Logistics. There are additional, separate claims against CY. These amount to $109,334.23 in respect of the truncated week tonnage claim, $17,433.04 in respect of the truncated week package claim and $638.29 in respect of the truncated week inflated unit price for LNP cargo claim.

The plaintiff's submissions: (1) claim for $562,552.31

30 The plaintiff supported its quantification of the inflated tonnage claim at $772,579.28 by reference to what it called the Amended Nagase Table (the "Table") that was attached as Appendix A to the statement of claim (amendment no. 6). In addition, it referred to a document called the Extended Nagase Table (the "Extended Table') which it said was similar to the Table but contained some additional notations and columns (columns Z1 to Z8). The submissions went on to explain the Extended Table with reference to selected transactions (rather than to all the transactions set out therein which would have been a mammoth task) and to show how the figures and information therein had been derived from invoices issued by D Logistics, supporting documents supplied by D Logistics to substantiate the details in its invoices and entries in the NFS. Detailed explanations of all the columns in the tables were given. They also explained the working papers of Ms Cheng Chew Ling, the plaintiff's employee holding the position of System Manager who had worked out the amount by which D Logistics had overcharged the plaintiff from the documents available to her and who had testified in court with regard to her calculations. Reference was also made to a CD ROM prepared by the plaintiff (containing data from the NFS) from which information had been extracted for the purposes of the calculations.

31 As regards the credit of $496.92 given for Direct Deliveries, the plaintiff referred to Ms Cheng's evidence in relation to this. She explained that in the ordinary course of events, direct delivery transactions meant that goods were delivered from the plaintiff's suppliers directly to the plaintiff's customers and were never put into D Logistics' warehouse. On occasion, however, for special reasons, direct delivery goods would be moved into D Logistics' warehouse and subsequently moved out from there. In such situations, the plaintiff captured movement out of the warehouse using a "D" notation. Where goods were delivered to the warehouse, D Logistics was entitled to charge the plaintiff for the same and credit therefore had to be given to D Logistics for these charges. Ms Cheng stated that she had identified these chargeable direct deliveries with "D" notations up to and including 4 July 2002 and determined the amount of credit as being $496.92. She then set out a table giving particulars of these direct deliveries and the charges payable and went on to explain how and from which documents she had derived these figures.

32 Next, the plaintiff referred to lists of transactions prepared by DC and D Logistics and used as a basis for contending that D Logistics was entitled to credit for certain warehousing charges. It said that it had prepared responses to the lists showing what the actual amount due were and gave the details as follows:

(a) DC's and D Logistics' list found at pages 259 and 260 of D1&D2BD4 dealt with by Nagase's List (A) of Memos/Suppliers' Documents – ($873.46);

(b) DC's and D Logistics' list found at page 261 of D1&D2BD4 dealt with by Nagase's List (B) of Memos/Suppliers' Documents – ($79.23); and

(c) DC's and D Logistics' list found at page 227 of D1&D2BD4 dealt with by Nagase's List (C) of Direct Sales – ($0.00).

Nagase then pointed to selected transactions in the various lists and identified the supporting documents in the plaintiff's bundles from which the figures in relation to those transactions had been obtained. It explained why the supporting documents had been issued and how it had counterchecked D Logistics' claims and given or withheld credit. For example, in relation to the first transaction in Nagase's List (A), this related to document RN5168 dated 22 August 2001 in respect of 36 bags of 25kg each. D Logistics had claimed a credit of $13.05 for this transaction. The plaintiff had issued two credit notes in respect of this transaction. A sales credit note was issued to the customer on 1 November 2001 because the stock had been rejected by the customer and had been taken into D Logistics' warehouse on 22 August 2001. The NFS had recorded the goods as reaching the warehouse on 1 November 2001 and this discrepancy in the dates may have been because the plaintiff had had to get the supplier to confirm its complaint before giving credit for the rejection of the goods. Accordingly, after examining the documents, the plaintiff in its List (A) had given D Logistics credit of $28.71 in respect of the period between 22 August 2001 and 1 November 2001 when the goods were actually in the warehouse and accordingly, storage charges were payable to D Logistics for them. The plaintiff explained the first four transactions in List (A) and submitted that the way that credit had to be given for the other transactions in Lists (A) and (B) were similar. As regards List (C), it explained that all credits due in respect of the transactions in List (C) had already been allowed by the plaintiff either under the $496.92 adjustment due to Direct Deliveries or under Lists (A) and (B). Thus, no further credit was given under List (C).

33 As for List (D), this related to manual memoranda of stock movements which did not appear in D Logistics' daily stock movement and which D Logistics had not listed in its bundles. The transactions listed were only found by the plaintiff when it checked on what manual memoranda had been issued and when it found these documents, it realised that a credit of $357.71 had to be given.

The plaintiff's submissions – (2) truncated weeks

34 The plaintiff's position in its closing submissions was that the truncated week tonnage claim could be quantified at $109,334.23. This truncated week claim was shown in the columns Z3 and Z4 of the Extended Table. Column Z3 indicated the difference between the actual period of days and seven days. Column Z4 was the truncated week tonnage claim and it was derived on the basis of the formula (Q/100) x (S$2.90/7 days) x Z3 where Q is the total weight of all stock (stated in kg) warehoused by D Logistics according to the NFS and Z3 is the difference between the actual period of days and seven days. Thus, (4,436,401.81kg/1000) x (S$2.90/7 days) x 2 = S$3,675.88. As for the truncated week package claim, the plaintiff put the figure as being $17,433.04 using figures found in columns Z3 and Z5 of the Extended Table. Finally, the plaintiff stated that it had a claim for $638.29 for a truncated week involving the storage of LNP cargo.

Claim for $562,552.31 – DC and D Logistics' submissions

35 Ms Lim, on behalf of DC and D Logistics, repeated in her further submissions many of the points she had made earlier with regards to the plaintiff's quantification of its claim and added some fresh criticisms. She asserted that the Table was inaccurate by reason of the following alleged discrepancies:

(a) the Table contained categories of overcharging which should not have been included and which had been disallowed by the first judgment;

(b) the truncated week analysis by Ms Chew disclosed by the plaintiff in Plaintiff's Bundle of Documents volume 5 ("PBD5") had given a final figure of $280,320 as the aggregate amount by which the plaintiff had been overcharged whereas Mr Kan had claimed in his affidavit that the amount should be $217,074. In the Extended Table, the figure for truncated weeks went back to $280,320 but in the plaintiff's further submissions the amount claimed was $127,405.56. These figures were clearly different and could not be reconciled;

(c) the Extended Table had been furnished for the first time in the plaintiff's further submissions and there was nothing to show how the figures in columns Z1 to Z8 had been derived;

(d) for the sub-25 kg bag analysis, Ms Cheng had produced a figure of $16,746.72 in PBD5. In the further submissions this figure was subsumed in the inflated package claim of $83,617.57 but a look at the subsequent calculations indicated that the sum of $18,016.76 was being claimed as overcharging for sub-25kg bags. D Logistics itself had however, using tables obtained from the CD ROM that the plaintiff had furnished, worked out that the amount overcharged was only $2,608.52;

(e) the net over-billed tonnage for January 2002 given at page 20 of Ms Cheng's affidavit of evidence-in-chief was $88.50 but, in the Table, the 5 entries for that same month show a total over-billing of $793.40 and this is only one example of the discrepancies between the plaintiff's various calculations;

(f) the Table, the plaintiff's calculations and its working papers shown in PBD5 cannot be accepted at face value for the following reasons:

(i) they rely on computer printouts which have not been signed;

(ii) they refer to figures in documents like stock adjustments, stock packaging changes, stock processing, purchase returns and sales returns that were never used by D Logistics when drawing up its invoices for the plaintiff;

(iii) Ms Cheng did not know what formulae were used to calculate D Logistics' charges;

(iv) Ms Cheng's ability as a computer operator allowed her to have access to the NFS and manually manipulate it to serve the plaintiff's needs;

(v) the fact that there were numerous amendments to the amount allegedly overcharged even before the plaintiff started proceedings in June 2003 and these continued until the filing of the final amendment of the statement of claim in July 2006, after the trial had ended;

(vi) even after the trial began, various amendments were made to the claim amount and

these amendments did not arise out of Ms Chew's understanding of the billing system used by D Logistics but instead were a response to D Logistics' revelations of transactions that were not captured in the NFS including collection memos, direct deliveries, direct sales and supplies;

(vii) during the cross-examination of Ms Chew, it was shown that there were various sums for which credit ought to be given to D Logistics and this cross-examination resulted in further amendments in the plaintiff's tables;

(viii) the table relied on the NFS which included figures for items like stock adjustments, stock packaging changes, stock processing, purchase returns and sales returns which D Logistics were not privy to and had not seen for the purposes of the billing and the dates of these documents were not contemporaneous with the dates that the goods had entered or left D Logistics' warehouse and therefore it was very difficult to correlate these documents with the goods in the warehouse;

(ix) the computer printouts which formed the basis of the table did not show the actual dates on which the various goods entered or left the warehouse and this, as Ms Chew herself conceded during cross-examination, would mean that on that level, D Logistics' documents would be more accurate;

(x) during cross-examination, Ms Chew admitted that she had not seen the two tables calculating the overcharging that had been prepared by D Logistics itself and by Ms Tan Mui Theng and MT and this, it was submitted, was part of the reason that she had not had sufficient information to prepare accurate tables of overcharging.

(g) Ms Chew had conceded during cross-examination that if the plaintiff had the full set of D Logistics' documents, this would be used and would result in more accurate calculations but even after D Logistics provided the defendants' bundle of documents volume 5 (itself in two volumes) which contained the remaining daily stock movement documents and other documents required to complete the gaps in the plaintiff's bundle of documents, the plaintiff did not make any attempt to do a more accurate calculation of the overcharge.

36 Ms Lim submitted that despite the various discrepancies having been pointed out in court and in her first set of closing submissions, the plaintiff was still relying on the same table as its basis for the quantum of overcharging. The figures in the Table and the Extended Table were clearly figures obtained from the plaintiff's CD ROM and from the NFS and the CD ROM contained many discrepancies as detailed in her submissions. As the root of the calculation and quantum of overcharging rests on the accuracy of the figures in the CD ROM and NFS, in view of the discrepancies that D Logistics had pointed out, there was no conclusive evidence that the figures were accurate

Claim for $562,552.31 – MT's submissions

37 Mr Gill, counsel for MT, agreed in his closing submissions with Ms Lim that the plaintiff's quantification was subject to serious question. He submitted that the issue was whether the court could, with reasonable certainty, accept the reliability and accuracy of the raw data in the NFS as evidence of the amount of goods stored at D Logistics' warehouse during the period of overcharging so as to justify the use of such data as the basis for the calculation of the quantum of overcharging. Mr Gill contended that this issue had to be answered in the negative for the following reasons:

(a) Ms Chew was the main witness on the issue. She had been System Manager since 1999

and had been responsible for the operation and management of the plaintiff's computer system from 1991 onwards. The NFS was commissioned in 1998 and Ms Chew's primary focus was to reproduce the raw data from the NFS for the purpose of substantiating the plaintiff's case;

(b) although the NFS can be used to monitor the stock balance and stock levels, it is not an accounting tool for calculating storage charges per se as it does not take the billing formula into account and does not track all storage charges issued by D Logistics. In any case, the NFS is not 100% accurate in the compiling of data and there were discrepancies between the physical stock and the amount of stock reflected in the NFS;

(c) the inherent weakness of the NFS is that it did not contain all the data on all the various transactions that took place between the plaintiff and D Logistics and therefore could not be used to accurately calculate the amount of the overcharge;

(d) although the plaintiff had sought to prove the reliability and accuracy of the data in the NFS against the data in the invoices issued by D Logistics by matching the contents of the two, the plaintiff had not been able to prove that all transactions that had taken place had been factored into the overcharged amount; and

(e) the plaintiff's technical explanations as to the raw data and the matching of contents with the invoices did not address the issue of the doubtful reliability of the NFS in tracking all the transactions between the parties.

38 Mr Gill submitted that the plaintiff had not proven that the inflated charges amounted to $562,552.31 because:

(a) there were weaknesses in the NFS as pointed out in [37] above;

(b) Ms Chew was a computer person who was unfamiliar with the billing process and her evidence lacked objectivity;

(c) the plaintiff had changed its overall figure in respect of the overcharging no less than six times between 2003 and 2006;

(d) the plaintiff had not been able to categorise and divide each method of overcharging until the latest submissions;

(e) the NFS did not track manual transactions; and

(f) even the plaintiff admitted that there would be a variance between the data provided by D Logistics and that in the NFS and contended that it was the duty of MT and CY to ensure that this variance did not exceed ten percent.

CY's submissions on damages

39 Mr Siraj Omar, counsel for CY, submitted that CY should only be liable for nominal damages because:

(a) there was no agreement for a bifurcation of the trial into issues of liability and damages or any order of court made to that effect prior to the trial; and

(b) the plaintiff failed to adduce any evidence of damage and had therefore failed to discharge

its burden of proof in respect of the proper apportionment of damages to the various heads of claim.

As far as the first submission is concerned, I cannot accept it. There was no bifurcation of the trial. All the evidence, both on liability and on quantum, was presented at one hearing and parties' witnesses were cross-examined on the same. The fact that I called for further submissions on damages does not render the trial a bifurcated one as no further evidence has been (or should have been) adduced and it was clear from my order that I wanted submissions on the evidence that was already in court and was not asking for further evidence.

40 Moving to the second submission, Mr Siraj contended that the plaintiff had yet to discharge its burden of proof in identifying what part of the global sum claimed was attributable to CY and/or providing a rational apportionment of the damages between the defendants. The plaintiff's calculations, in his view, were undermined by the following difficulties:

(a) the plaintiff's calculation for truncated weeks was based on a concept which differs from its own complaint on the same;

(b) the plaintiff erroneously included a claim for amounts which fell within the sum of $129,867.15 paid out for the cheque ("the Last Cheque") made out to D Logistics on or about 14 May 2003;

(c) the plaintiff did not give credit for the amounts which D Logistics did not bill for in the first and last weeks of April 2003, which amounts D Logistics would have been entitled to charge the plaintiff;

(d) the plaintiff's figures did not take into account its own case that CY and/or MT were only expected to uncover a variance of ten percent and above, not less; and

(e) the total amount for the inflated tonnage and inflated packages should also be apportioned between the four defendants.

41 In regard to the first point on truncated weeks, Mr Siraj pointed out that the plaintiff's calculations for truncated weeks had been done by prorating the number of days in that week by the normal seven day week and thereafter multiplying that prorated value against the usual price which was rated on a per week basis. This method of calculation meant that for the week of 26 September 2001 to 2 October 2001 (which contained five days in September and two days in October), the plaintiff had multiplied the invoiced amounts for the week by 5/7. He submitted that this method of calculation was not acceptable. The plaintiff's complaints as regards the truncated weeks was that all invoices issued by D Logistics should have been for the full seven days, rather than for the truncated number of days found in some fourth weeks and whenever a calendar month spilled over into a fifth week.

42 In order to present a more accurate picture, Mr Siraj contended, the plaintiff should have prepared a table in which the alleged truncated week charges would have been eliminated by simulating the billing for the warehousing charges every seven days as was done for the month of August 2001, where D Logistics submitted an invoice for the period from 27 August 2001 to 1 September 2001. This was a task that was within the plaintiff's ability as it had the necessary resources and documents to track the daily movement of the goods. Yet, the plaintiff chose not to present its data as such. If the plaintiff had adopted a more accurate method of calculation, this would have necessarily resulted in changes to the rest of the figures, since the billing period for the

rest of the invoices would not start on the first day of each calendar month. Therefore, because of the plaintiff's failure to accurately calculate the truncated week overcharging, the remainder of the figures as contained in the Extended Table were inaccurate and the Extended Table must therefore be wholly rejected.

43 On the next point, it was pointed out that the payment advice issued by the plaintiff on 13 May 2003 indicated the D Logistics' invoices that the Last Cheque was intended to settle. Seven of these invoices (with amounts totalling $106,483.23) had been issued between 31 March 2003 and 30 April 2003. The contention was that the amounts reflected in these invoices were not attributable to CY because in [140] of the first judgment, I had stated that:

> The plaintiff did not respond to these contentions. In my view, if anyone other than the managing director Mr Kan, had the responsibility to stop the last cheque, it would have been Kunio Ishida, as the finance and administration director. I do not think it was CY or MT's responsibility to give instructions to the finance department to stop issuing cheques, and, if anything, it was Mr Kan who should have made sure that the finance department was kept informed of the order. In any case, the higher management had notice of the overcharging in early April and could very well have given instructions then or any time between then and 14 May 2003, that no further payment would be made to D Logistics until the issue was sorted out.

Mr Siraj argued that any overcharges reflected in these invoices must be deducted from the plaintiff's figures as contained in its further submissions since the plaintiff knew about the overcharging by then and yet did not take steps to ensure that no payment was made until the issue was sorted out. Additionally, the plaintiff's calculation for the truncated weeks' claim for LNP cargo as contained in para 20 of the plaintiff's further submission actually formed part of one of these seven invoices and accordingly should have been deleted from the plaintiff's claim. The plaintiff did not make either correction.

44 The next point was that since D Logistics did not bill the plaintiff for the warehousing of the plaintiff's goods in the first and second weeks of April 2003, the plaintiff should have given credit for the benefit it received from the invoices not being raised. It should have done this by deducting the amounts that it was, rightfully, liable to pay, from the amount of the overcharge as calculated. The plaintiff did not do this.

45 The plaintiff also failed to take into account its own case that CY and/or MT should have checked that the difference between the amount D Logistics billed and the amount actually been stored was less than ten percent. This case was reflected in paras 20 and 30(e)(ii) of the statement of claim and in para 21 of the affidavit of evidence-in-chief of Mr Kan. In the circumstances, the plaintiff's own case was that a variance of ten percent or less was acceptable. This must mean that the plaintiff would only be entitled to claim damages from CY and MT where the variance was more than ten percent. In its calculations, the plaintiff had not made this distinction.

My conclusion

46 The plaintiff had the burden of proving that its loss amounted to the figures put forward by it in the statement of claim and in the submissions. The plaintiff obviously faced considerable difficulty in calculating its loss as its figures went through various mutations (from a low of $817,000 to a high of $1,104,408.48 and ending at $912,890.61) from the time the overcharging was first discovered. The plaintiff was not able at the beginning of the trial to give me a breakdown of its claim under the various heads of overcharging that it was proceeding on and, even at the end of the trial, did not give me the breakdown in its closing submissions. As I have said, this led to the necessity for

additional submissions.

47 The criticisms that the defendants made of the figures that surfaced in the plaintiff's further closing submissions were, as can be seen from the summary above, both wide-ranging and very pertinent. The plaintiff's main witness on its quantification, Ms Cheng, had been subjected to detailed cross-examination during the course of the trial and had had to make many concessions which indicated that the plaintiff's calculations as put forward at that time were not entirely correct. When it came to the further submissions, it was clear that further concessions had been made and this cast the figures into doubt. Additionally, the defendants did not have the opportunity of cross-examining Ms Cheng on the new figures and demonstrating to me the extent to which these calculations could stand up to scrutiny. This point also applies to the Extended Table which was not in evidence during the trial. This makes it necessary for me to be very careful in accepting the new calculations.

48 Even looking at the further submissions themselves, the difficulty of accepting the new calculations at face value is apparent. One example of this is found in the paragraphs purporting to explain the fourth transaction on Nagase's List A. This transaction related to a credit of $44.59 claimed by D Logistics. The plaintiff calculated that D Logistics was only entitled to claim a credit of $7.16 in respect of this transaction. It explained that the transaction involved a one-to-one exchange of goods in which both consignments had the same number of packages and were of identical weight and that, originally, Ms Cheng had not given credit for such transactions. She took the stand that no charges were involved in such a transaction as the amount of goods in D Logistics' warehouse at any point in time would be the same and there would not be an increase in the goods stored since consignments which weighed the same and contained the same number of packages had been exchanged. Upon review, however, the plaintiff realised that this stand was incorrect in view of the billing formula mentioned in para 5 of MT's supplementary affidavit of evidence-in-chief. It realised that D Logistics was entitled to charge in respect of all goods coming into the warehouse in any particular week and deductions were to be made only in the following week, even though there was a one-to-one exchange of similar goods for the rejected goods. Accordingly, a credit of $7.16 (being $2.90 per week x 121 bags x 20.41kg/1000) was given in respect of this transaction.

49 The above explanation was deficient in that it did not explain exactly why the figure of $44.59 claimed by D Logistics was incorrect. Secondly, it was clear from the explanation that the reason for the original failure to give a credit that was due was that (and this was something that the defendants complained about) Ms Cheng was not aware of the billing formulae when she prepared the quantification of the plaintiff's claim. Thirdly, with all this coming out only in the further submissions, the defendants had no chance to test the accuracy of the Extended Table or judge the premises on which it had been drawn up. Also, only selected transactions contained in the Table and the Extended Table were explained and whilst the explanations may have been correct for those transactions, that did not mean that *prima facie* all the other transactions could be similarly substantiated.

50 There is much merit in the various defendants' criticisms of the plaintiff's calculations. The submissions made by CY as to the sudden change in the plaintiff's methodology in relation to the calculation of the overcharging in respect of the truncated weeks have particular force. Also telling are the various discrepancies in the documentation and calculations emphasised by Ms Lim and Mr Gill as well as the difficulty of relying on the NFS data alone and Ms Chew's computations in view of her lack of knowledge of the billing formulae and her reference to documents that were never used by D Logistics in billing and her ignorance of the calculations of overcharging made by D Logistics itself and also by Tan Mui Theng who was the person in the plaintiff charged with verifying the D Logistics' invoices and who was therefore much more *au fait* with the transactions as they took place and with the proper formulae to be applied. Whilst D Logistics was late in supplying a full set of its documents to the plaintiff, once the plaintiff had those, it could have used them to calculate the overcharging

but it did not do so. The foregoing are some, but not all, of the reasons that I cannot find, on the balance of probabilities, that the plaintiff has established that the amount by which it was overcharged by D Logistics was $562,552.31 or that the additional amounts that it paid D Logistics in respect of various types of cargo for the truncated weeks were as stated in [34] above.

51 There was a submission that if the plaintiff could not prove its figures, then the plaintiff would only be entitled to claim nominal damages. This, however, is not the case, at least *vis-à-vis* D Logistics and DC because D Logistics had admitted that the amount by which D Logistics had overcharged the plaintiff was $417,075.35. This figure was derived from all the documents in D Logistics' possession and according to Ms Lim, the marked difference in the computations of D Logistics and the plaintiff arose from the fact that they used different tonnage volumes and different numbers of cartons. D Logistics used a markedly lower tonnage volume and number of boxes than the plaintiff did.

52 D Logistics and DC are bound by their admission as to the amount overcharged. As far as they are concerned, they have to reimburse the plaintiff at least this amount less the $100,000 already paid by D Logistics to the plaintiff in part reimbursement in May 2003 and the amount of D Logistics' counterclaim of $191,837.22. The total amount due from them therefore is $125,238.13.

53 As for CY, since the amount of overcharging that arose by reason of the truncated week practice has not been established, he would only have to pay the plaintiff nominal damages in respect thereof.

54 The next question is whether CY and MT are also liable to the plaintiff for the balance amount of $125,238.13 payable by D Logistics and DC. One argument that both of them made was that the plaintiff was only entitled to claim damages in respect of those invoices where the variance was more than ten percent. I do not accept this argument. Whilst the plaintiff might have been willing to overlook a variation of ten percent or less, it would have considered the variation on an overall basis and not on an invoice by invoice basis. In any case, if CY and MT wanted to establish that there were some invoices that they should not be held responsible for because the variation was ten percent or less, they should have identified those invoices themselves and indicated how the variation was to be calculated and how it amounted to less than ten percent. They did not, either of them, condescend to such details. As regards CY's other argument that the overcharges contained in the invoices that were settled by the Last Cheque could not be attributed to him, again he would have had the onus of showing what those overcharges consisted of so that they could be deducted from the amount that D Logistics admitted to be due. He did not give me any specific figures. His argument was sufficient to put the plaintiff's calculation in some doubt but the argument alone is not enough to justify my reducing the amount of overcharging admitted by D Logistics. This same reasoning applies to CY's argument about the plaintiff giving credit for the benefit it received from the invoices for the first three weeks of April 2003 not having been raised.

55 For the foregoing reasons, I hold that MT and CY are liable to the plaintiff in damages in the sum of $125,238.13 in respect of the general overcharging by D Logistics and that CY is liable to the plaintiff in the nominal sum of $1,000 in damages for the truncated week method of charging.

Costs

56 The principles governing the issue of costs are those elucidated in the much cited authority of *Re Elgindata Ltd (No 2)* [1993] 1 All ER 232 and endorsed by the Court of Appeal in *Tullio v Maoro* [1994] 2 SLR 489. To paraphrase, these principles are:

(a) Costs are in the discretion of the court.

(b) Costs should follow the event except when it appears to the court that in the circumstances of the case some other order should be made.

(c) The general rule does not cease to apply simply because the successful party raised issues or made allegations that failed, but he can be deprived of his costs where he had caused a significant increase in the length of the proceedings.

(d) Where the successful party raised issues or made allegations improperly or unreasonably the court can deprive him of his costs and can also order him to pay the whole or part of the unsuccessful party's costs.

The plaintiff's submissions

57 The plaintiff submitted that costs should follow the event in this case and that there was no reason to deprive the plaintiff of all or any part of its costs or order it to bear any part of the defendants' costs because in the particular circumstances of this case and in the context of how the case developed:

(a) the plaintiff did not raise issues or make allegations improperly or unreasonably; and

(b) the plaintiff did not cause a significant increase in the length of the proceedings.

In this connection, the plaintiff noted that whether it had improperly or unreasonably raised issues or made allegations depended on the circumstances of the case and, on the authority of *Ho Kon Kim v Lim Gek Kim Betsy (No 2)* [2001] 4 SLR 603, the circumstances of the case would include the matters that led to the litigation.

58 The plaintiff accordingly submitted that I should, in deciding this issue, bear in mind, first, the following features of the background to the litigation:

(a) the plaintiff found out that:

(i) D Logistics had been substantially overcharging it for years;

(ii) MT had instructed Sarah Ng not to check the "out" transactions thereby conducing to the overcharging;

(iii) CY and MT had been allowing D Logistics to charge for truncated weeks (with MT instructing Sarah Ng to allow such charges); and

(iv) MT had significantly understated the extent of D Logistics' overcharging in the Final Report which she and CY had presented to higher management; and

(b) neither CY nor MT had informed higher management of the first quotation or the supplemental agreement.

59 Second, the plaintiff said, I should pay regard as to the manner in which the action developed to wit:

(a) it sued the defendants in the context of the background and in response both CY and MT chose to file bare denials as their defences, *i.e.* they chose not to raise any positive defences in their pleadings; and

(b) the defendants chose to start raising some, but by no means all, of their positive allegations in their affidavits of evidence-in-chief. Thus the defendants did not give a clear explanation as to how the first quotation evolved into the second quotation, what the supplemental agreement was about or how the second agreement was arrived at. It was only after the plaintiff had closed its case that the defendants, one by one, disclosed their respective versions of events with any significant degree of detail and it was only in cross-examination and re-examination that they finally raised all their positive allegations.

Thus, the plaintiff argued, the manner in which the defendants chose to present their defences induced a limited appreciation in the plaintiff of the defendants' ultimate position until the last possible moment.

60 This case, said the plaintiff, was one where there was conduct of the defendants prior to litigation which led the plaintiff reasonably to suppose that it had a cause of action against the defendants and thus induced it to commence the action. Further, the defendants' conduct during the trial in disclosing as little of their defence as possible for as long as possible and the differences between the defendants' respective positions merely served to cast more doubt on their bare pleadings and led the plaintiff reasonably to suppose that the defendants had no proper defence to the action and induced it to maintain the action.

61 The plaintiff submitted, with reference to the issues it had raised in relation to the acceptance of the second quotation rather than the first, that, when it did so, it did not have the benefit of the full accounts of their actions that were given by CY and MT during cross-examination and re-examination and which led to the findings in their favour in the first judgment. The plaintiff averred that not only did it not have the benefit of such evidence when it launched its suit, it still did not have this evidence at the close of pleadings or even when the defendants filed their affidavits. On the contrary, the differences between the accounts given by CY and DC in their affidavits and the denials in MT's affidavit merely served to highlight the absence of a reasonable explanation why DC would prepare the first quotation on D Logistics' behalf and yet, shortly thereafter, the second quotation which contained terms more favourable to D Logistics would be accepted by CY, and why the first quotation would be discovered by the plaintiff's higher management only after CY and MT had been fired. It was therefore clearly proper and reasonable for the plaintiff to raise issues in respect of the first quotation.

62 The plaintiff went on to argue that it would be unfair to require any plaintiff to continuously assess whether or not to abandon any issue throughout the entire proceedings right up to the last witness's re-examination or, even further, right up to the point where the parties' final submissions were exchanged, and then penalise him in costs for not abandoning an issue which was ultimately decided in his opponents' favour. Such a requirement would in effect emasculate the principle that the general rule of costs following the event did not cease to apply simply because the successful party raised issues or made allegations that had failed. In this connection, it cited the observation of Choo Han Teck JC (as he then was) in *Wyno Marine Pte Ltd v Lim Teck Cheng* [1998] SGHC 340 to the effect the principles governing the award of costs do not include any general principle that a party is entitled to costs on a pro-rata basis, that is to say he is entitled to costs only on the points on which he had succeeded.

63 The plaintiff further submitted that as regards the issues it raised relating to acceptance of the

second quotation, concealment of the supplemental agreement, acceptance of the third quotation, MT's responsibility for the truncated weeks, manpower and equipment, inflated unit price for warehousing and failure to inform higher management of discrepancies, in each case when the court found against the plaintiff on the issues, it did so on the basis that the plaintiff accepted one out of two or more conflicting versions of facts put forward. In each of these instances the plaintiff said, its version of facts and the inferences to be drawn therefrom were made clear from the beginning. On the other hand, in each of these instances, the respective defendants' versions of the facts and inferences to be drawn were unknown and unknowable until the individual defendants each took the stand and were cross-examined and re-examined. They chose to play their cards as close to their chests as possible and therefore the plaintiff was justified in raising all the issues that it did. In the absence of any explanation, what else was the plaintiff supposed to think in view of the limited background disclosed to it?

64 As regards the plaintiff's failure in relation to the conspiracy claim against CY and MT, it was submitted that I should adopt the following reasoning in *MCST No. 473 v De Beers Jewellery Pte Ltd* [2002] 2 SLR 1 at [57] (per Yong Pung How CJ):

> As the respondent was the successful party below, according to principle (2), prima facie, it should be awarded costs. As for principle (3), the starting point was that the respondent failed on one ground, *colore officii*. However, it should not be deprived of its costs. Firstly, the trial ended within the allotted time. Secondly, as the respondent relied on the same facts for proving mistake of law and for proving *colore officii*, and as the appellant relied on the same defences to both claims, it was unlikely that the respondent's pleading *colore officii* caused a significant increase in the cost of the proceedings.

65 The plaintiff submitted that, similarly, in this case it had relied on the same facts and evidence to prove the allegations of breach of duty and the allegations of conspiracy. Thus:

> (a) the scope of CY's and MT's contractual fiduciaries duties was relevant to the alleged breaches and the alleged conspiracy to breach them;
>
> (b) whether there was overcharging, its mode, how it came about and its quantum relevant to issues of liability and damages for both breach of contract and conspiracy; and
>
> (c) the testimony of the plaintiff's witnesses and cross-examination of the defendants' witnesses were relevant to both causes of action.

Thus, the plea of conspiracy did not cause a significant increase in the costs of the proceedings. Further, it was not at all improper or unreasonable for the plaintiff to raise allegations of conspiracy in view of the background leading up to the litigation. Additionally, the court found that CY and MT were not telling the truth in relation to several important parts of the evidence given by each of them. The plaintiff submitted that the untruths that they told did not appear to be capable of being the result of honest mistakes but were deliberate statements. Despite these deliberate untruths, the court found that CY and MT did not act in bad faith. The plaintiff could not have predicted that the court would not infer bad faith despite such findings and therefore it was not improper or unreasonable to raise the issue of conspiracy between the four defendants.

66 In any case, the fact remained that the plaintiff succeeded on the fundamental issue that D Logistics deliberately overcharged the plaintiff on DC's instructions and with his knowledge and that breaches of duty on the part of CY and MT permitted the overcharging to be effected. The bulk of the time taken by the trial was spent on establishing this and other key facts which the court found

in the plaintiff's favour.

The defendants' submissions on costs

67 Ms Lim submitted that even if the plaintiff succeeded in its claim of conspiracy in respect of a combination of D Logistics and DC alone, there should be no order for costs against these defendants on this issue. This was because the plaintiff did not succeed on establishing that there have been a conspiracy between her clients and MT and CY and most, if not all, of the time spent in the proceedings from July 2003 to the date of the further submissions, related to aspects of conspiracy amongst all four of the defendants and not simply in respect of DC and D Logistics alone.

68 As regards the overcharging, she submitted that if the court accepted the figures admitted by D Logistics, the plaintiff should bear D Logistics' full costs in the action because:

(a) D Logistics had admitted from the outset and even before commencement by the plaintiff that it owed the plaintiff a sum that was in the region of $400,000;

(b) this trial only took place because the plaintiff refused to accept D Logistics' figures and insisted on claiming a sum in excess of $1m;

(c) D Logistics had succeeded in its counterclaim against the plaintiff;

(d) the plaintiff was responsible for all the additional work that the defendants had to do in relation to the further submissions as the plaintiff had not provided full details and analysis of the various categories of its claim; and

(e) Ms Cheng's analysis of the documents to support the plaintiff's claim in respect of the bags that weighed less than 25kg was inaccurate.

69 For MT, Mr Gill submitted that costs should not follow the event because the plaintiff had made allegations or raised issues that were improper and unreasonable in relation to the causes of action of conspiracy, breach of fiduciary duty, breach of express term of confidentiality, breach of duty relating to the warehousing agreements and the other modes of overcharging on which it failed at trial. He submitted that the court should order the plaintiff to pay MT's costs in relation to these unsuccessful claims.

70 The plaintiff had succeeded in proving only that MT had breached her duty of care and fidelity by failing to set up a proper system of verification and to properly supervise it. It had failed in its other allegations regarding breach of duty on the part of MT. For example it had alleged that she had been in breach of duty in relation to the conclusion of the warehousing agreements with D Logistics but the court had found that there was no evidence at all that MT ever took part in negotiations for these agreements and, in any case, she had no power to contract with third parties on the plaintiff's behalf. These matters should have been known to the plaintiff prior to litigation and it was improper and unreasonable to allege these breaches of duties.

71 As regards the conspiracy allegation, MT had put the plaintiff to strict proof of the same and the court had found that there was a lack of evidence to sustain the plaintiff's allegations. The plaintiff had submitted that it had sued the defendants in the context of the background and had set out six matters that influenced it to commence the action. Mr Gill argued that that submission was not correct because there would have been other matters in the knowledge of the plaintiff that it would or could have considered before launching the action. One of these was the fact that MT had

not been told specifically of her duties in her position in the plaintiff and had not been given any document setting this out. Secondly, it also knew that MT was in charge of the backend support in the customer service department and was not involved in negotiation of warehouse contracts. Thirdly, she had to report to her superior, CY, who was the person in overall charge of the Division. Fourthly, the plaintiff had no evidence that MT had received kickbacks.

72 Mr Gill also responded to the allegation that the plaintiff had acted reasonably because MT's defence was a bare denial. He argued that in its statement of claim, the plaintiff had sought to impose on MT various duties in relation to her employment. MT did not know what the scope of her duties was and could not be blamed for putting the plaintiff to strict proof of the duties alleged. She did not really dispute the duty of fidelity or the duty to take care in the performance of her job. She had put the plaintiff to strict proof in relation to the issue of how the alleged breach of duty had taken place and who was to be blamed for the fiasco relating to the overcharging. Whilst it was apparent that overcharging had occurred and someone was to be blamed, the plaintiff still had to prove its various allegations and as such it was not surprising that the defences mainly contained bare denials.

73 In relation to the plaintiff's submission that it was the conduct of the defendants prior to litigation which led the plaintiff reasonably to suppose that it had a cause of action against the defendant and induced it to commence the action, Mr Gill replied as follows:

(a) the conduct the plaintiff referred to was not the only information available to it;

(b) the defences were filed after the action was commenced and by then, it was the plaintiff who had the legal and evidentiary burden of proving its allegations;

(c) if, as acknowledged, the plaintiff had only limited background then that in itself was an acknowledgement that the plaintiff had little evidence to suggest a conspiracy and was depending on the defendants to bolster its allegations; and

(d) prior to the litigation, there was no conduct by MT to induce the plaintiff to start the action and after the action was commenced, the fact that MT filed a bare defence and started raising positive allegations in her affidavit was not conduct that induced the plaintiff to maintain the action.

74 Mr Gill also argued that the plaintiff's contention that its cause of action in conspiracy did not cause a significant increase in the costs of the proceedings was not sustainable. Even though some of the facts relied on for conspiracy were similar to the facts relied on to prove MT's breach of duty, the plaintiff did not succeed in proving all the facts for the "unlawful means conspiracy" and "breach of duty" allegations. As such, in respect of those facts or allegations which the plaintiff had not proven, the court would be entitled to determine whether the same had been improperly or unreasonably raised.

75 In closing, Mr Gill contended that for all issues except those found against MT in relation to breach of duty, the plaintiff should bear MT's costs as those issues had been improperly and unreasonably raised. As far as the conspiracy claim was concerned, Mr Gill asked me to exercise my discretion to award costs to MT on the indemnity basis as there had not been a real basis for the plaintiff to allege conspiracy and there was no evidence to prove the allegation at trial. The plaintiff had been over zealous in its allegation considering that there is a heavy evidential burden whenever conspiracy is alleged. In this regard, Mr Gill relied on the case of *Mees Pierson NV v Bay Pacific (S) Pte Ltd* [2000] 4 SLR 393, where the High Court ordered the plaintiffs in the action to pay costs to the

third defendant there on an indemnity basis because the plaintiffs had been over zealous in making very serious allegations of fraud and forgery against the third defendant.

76 On behalf of CY, Mr Siraj's submission was that the plaintiff should pay part of CY's costs in the proceedings given that:

(a) the plaintiff had failed in a substantial number of its claims including its main claim based on conspiracy;

(b) the plaintiff withdrew its claim that super-sacks and cartons should have been charged on the basis of weight rather than on a per package basis only during the trial; and

(c) the further submissions would have been wholly unnecessary had the plaintiff heeded the court's directions to apportion the quantum sought in respect of the various heads of claim.

77 In response to the various submissions made by the plaintiff on the question of costs, Mr Siraj argued:

(a) the plaintiff's argument that there was no reason to deprive it of part of its costs or to order it to pay the defendants' costs was based on the assertion that it had had limited knowledge of the facts of the case and therefore was left in no alternative except to commence and pursue the action. This was an afterthought and was a mischievous submission in the light of the fact that the plaintiff had persisted with all of its heads of claim in its written submissions of September 2006 and its reply submissions filed in October 2006. The only logical explanation must be that the impetus for the plaintiff to commence and maintain the suit was that it wanted to raise each and every possible cause of action against the defendants regardless of whether the same was reasonable or supported by the evidence;

(b) there was no authority to support the plaintiff's submission that it would be unfair to require a plaintiff to continuously assess whether or not to abandon any issue throughout the proceedings and, to the contrary, the purpose of allowing any party to put forward an offer to settle at any point of the proceedings, must be to encourage parties to continuously assess their own cases at various points in time and to try to prevent incurring costs unnecessarily. The plaintiff's reason did not explain why it did not seek to save itself from unnecessary expenditure after it became aware of the additional facts during the trial by discontinuing or abandoning the unreasonable or improper claims; and

(c) at the trial Mr Kan had admitted that the plaintiff had no evidence of any conspiracy between DC, CY and MT and it was therefore clearly unreasonable for the plaintiff to make the allegations of conspiracy in the first place. Despite Mr Kan's confession, the plaintiff not only did not withdraw its claims in respect of conspiracy but cross-examined CY on it and, in its written submissions, focussed entirely on the same allegations. These submissions had failed entirely as in the first judgment it was noted that there was no evidence at all to sustain any claim of conspiracy between all four defendants and that the existence of accurate figures in the NFS would have rendered any conspiracy to overcharge highly vulnerable to detection, such that it would have been unlikely that CY and MT would have embarked on such a risky enterprise.

78 Mr Siraj also asked me to take into account the following undisputed facts in assessing costs. First, the plaintiff had made serious allegations of conspiracy against CY founded on allegations of fraud and dishonesty. The plaintiff had, second, pleaded a cause of action for a breach of fiduciary duty owed by CY and this claim was dismissed by the court. Third, even in respect of the plaintiff's

case on breach of duty, out of the numerous breaches alleged, the plaintiff only succeeded in two namely his agreement that the plaintiff be charged on the basis of truncated weeks and his failure to oversee MT's actions in relation to the setting up and operation of a proper system of verification.

79 In the alternative, it was submitted that CY was entitled to his costs of the proceedings up to 29 June 2005. Prior to this date, the plaintiff's claim had been one based on the alleged conspiracy between the defendants. The allegations of the breaches of duty in respect of which the plaintiff was successful were only added to the claim on 29 June 2005 when the Re-Re-Amended Statement of Claim was filed. Similarly any order awarding costs to the plaintiff should only take into account costs incurred after 29 June 2005 and not before.

My decision

80 As far as DC and D Logistics are concerned, with certain exclusions, I think that costs must follow the event and that they must bear the plaintiff's costs of the action. Whilst the plaintiff did not succeed in establishing a conspiracy between DC and D Logistics and the other two defendants, it did succeed in establishing the conspiracy between these two parties inter se and there is no basis to deprive it of the general costs of the action simply because it did not show them to have also conspired with CY and MT. Secondly, whilst D Logistics itself admitted liability for $417,075.35 from the beginning this was not the attitude taken by DC himself. In order to make DC liable, the plaintiff had no option but to sue both him and D Logistics. The admission of liability related only to overcharging and did not relate to conspiracy. Thus, I cannot take that admission as a basis for depriving the plaintiff of its costs. As I indicated in the first judgment, however, the further submissions were necessitated by the plaintiff's inadequate submissions at the end of the trial. There has to be a costs consequence in relation to this. As far as the first issue, that of conspiracy is concerned, I modify the costs order to the extent that the plaintiff shall not be entitled to recover the costs of its further submissions on the conspiracy issue from DC and D Logistics. As far as the second issue, that of quantum is concerned, since the plaintiff's inadequacy meant that DC and D Logistics had to prepare a new set of submissions on quantum and, in the event, the plaintiff was not successful in establishing its new quantum, I order the plaintiff to bear the costs that DC and D Logistics incurred in preparing its further submissions on quantum.

81 Moving to the position of MT and CY, the plaintiff shall be entitled to recover the costs incurred in relation to its case of breach of duty as from the time that cause of action was introduced. In this respect, no distinction is to be made between those allegations of breach of duty that succeeded and those allegations that failed as the cause of action succeeded. As stated, the general principle is that costs should follow the event and, as Choo JC indicated, there should not, generally, be a pro-rata award of costs. The situation in regard to the conspiracy claim is more complicated. The plaintiff spent a great deal of time on this claim but failed absolutely and, as CY and MT pointed out, my holding in this regard was that there was no evidence at all to justify a finding of conspiracy. Further, Mr Kan had admitted in the course of the trial that the plaintiff had no evidence of conspiracy. On the other hand, there was some excuse for the plaintiff continuing to maintain this cause of action after the defences were filed since the defendants pleaded only bare denials. In the case of MT, the bare denials were more excusable since she was not a party who negotiated with DC and had no powers to make contracts on behalf of the plaintiff. She was an administrator and really had no connections with DC that needed explaining. CY's position was more equivocal. There were matters which he needed to explain and he should have done so upfront in the defence itself. In my assessment of the facts, it was unreasonable for the plaintiff to have made the conspiracy allegation against MT simply because she was in charge of verifying the invoices but, initially at least, in the light of what it knew of the circumstances it was not unreasonable for it to have made that allegation against CY. It was, however, unreasonable to maintain that allegation right up to the end. Accordingly, the plaintiff shall

pay MT her costs of defending the conspiracy allegation and shall pay CY 50% of his costs of defending the conspiracy allegation. The plaintiff shall also pay CY's and MT's costs of preparing their further submissions on quantum.

Conclusion

82 For the reasons given above:

(a) D Logistics and DC shall pay the plaintiff damages in the sum of $125,238.13 and interest thereon from the date of the writ;

(b) CY shall pay the plaintiff damages in the sum of $125,238.13 and $1,000 and interest thereon from the date of the first judgment;

(c) MT shall pay the plaintiff damages in the sum of $125,238.13 and interest thereon from the date of the first judgment; and

(d) the costs orders shall be in accordance with my determination in [80] and [81] above.