Chew Ai Hua, Sandra *v* Woo Kah Wai and another (Chesney Real Estate Pte Ltd, third party) [2013] SGHC 120

Case Number : Suit No 448 of 2011/Q

Decision Date : 28 June 2013

Tribunal/Court : High Court

Coram : Lionel Yee JC

Counsel Name(s) : Christopher Anand Daniel (instructed) and Lim Cheng Hock Lawrence (Matthew Chiong Partnership) for the Plaintiff; Edmund Jerome Kronenburg and Zhuang Baoling Alicia (Braddell Brothers LLP) for the Defendants; Denis Tan (Toh Tan LLP) for the Third Party.

Parties : Chew Ai Hua, Sandra — Woo Kah Wai and another (Chesney Real Estate Pte Ltd, third party)

Contract – Formation

Contract – Contractual terms

Equity – Remedies – Specific performance

Land – Sale of land

Civil Procedure – Rules of Court

28 June 2013 Judgment reserved.

Lionel Yee JC:

Background Facts

1 The Defendants, a married couple, were the joint owners of the property known as No. 8 Minbu Road, #13-03, Montebleu, Singapore 308162 ("the Property"), a unit in a condominium which was under construction at the relevant time. In January 2010, the Defendants decided to sell the Property and engaged the services of the Third Party, a real estate agency, to assist in the sale. Around 9 February 2010, the Plaintiff, who was looking to purchase residential property, was informed by her estate agent, one Adrian Thoo Jern Kang ("Adrian"), that the Property was on sale. She made an offer, through Adrian, to buy the Property at a price of $920,000. Adrian conveyed this offer to a director of the Third Party, one Cindy Lim ("Cindy"), who in turn conveyed it to the Defendants. The Defendants informed Cindy that they were agreeable to the price offered and this was in turn conveyed by Cindy to Adrian.

2 Adrian proceeded to prepare a document described as an "Offer to Purchase" ("the Offer"). It was signed by the Plaintiff and dated 10 February 2010 and its relevant terms are as follows:

1. Option Period: 3 days

2. Completion Period: 12 weeks

3. The sale of the above real estate is subject to signing the Option to Purchase.

4. Within three(3) Days (i.e. by 4p.m. 13th February 2010), the Owner of the above property must either accept or reject this offer failing which this offer shall lapse. If rejected, the option money tendered herewith will be refunded to us within the time stipulated above without any interest thereon and thereafter neither party shall have any claim against each other. If accepted, the Owner shall deliver to the undersigned the Option duly signed by the Owner within the stipulated time above.

...

Enclosed herewith [cheque] for the amount of S$9,200/- ... made payable to WOO KAH WAI (The Owner) ... being Option money for the purchase of the above property.

3 The Offer was subsequently handed over by Adrian to Cindy's Personal Assistant, one Masila binte Kamis ("Masila"), together with a cheque of $9,200 made payable to the First Defendant which was the option money for the purchase of the Property. Although Adrian thought he had submitted the Offer to the Third Party on 10 February 2010, both he and Masila acknowledged during cross-examination that this took place on 11 February 2010. [note: 1]

4 Masila proceeded to prepare an Option to Purchase ("the Option"), the material terms of which were as follows:

IN CONSIDERATION OF the sum of Singapore Dollars Nine Thousand Two Hundred only (S $9,200.00) paid by the Purchaser this day as option money ("the Option money") (the receipt whereof the Vendor hereby acknowledges), I the Vendor HEREBY GRANT you the Option to purchase the Property.

This Option may be accepted by the Purchaser signing at the portion of this Option To Purchase marked "ACCEPTANCE COPY" and delivering this Option To Purchase duly signed together with five percent (5%) of the sale price ("the Deposit") less the Option money as deposit to TAN & PARTNERS ("the Vendor's Solicitors") who are authorized to receive the same *on or before the 13th February 2010, 4.00 p.m.*, and which shall be held by the Vendor's Solicitors as stakeholders pending completion of the sale and purchase herein.

This Option shall expire on the above date and shall be null and void if not accepted in the manner aforesaid, in which event the Option money shall be forfeited by the Vendor absolutely and thereafter and neither party shall have any claims against the other and each party shall pay its own costs in respect of this contract. ...

[emphasis added]

5 When the Option was ready, the Defendants were informed and the First Defendant went to the Third Party's office sometime after 5.00 pm on 11 February 2010 to sign the Option. [note: 2] He also collected the cheque of $9,200 from Masila and deposited it into his bank account that same evening.

6 Adrian, however, did not collect the signed Option from the Third Party's office until around 6.00 pm the following evening (Friday 12 February 2010). Adrian claimed that this was because he was only informed by Masila that the Option was ready for collection that afternoon. [note: 3] In

contrast, Masila testified in her affidavit of evidence-in-chief that she told Adrian on the morning of 12 February to collect the Option. [note: 4] However, under cross-examination, she clarified that she had telephoned Adrian on the afternoon of the previous day (11 February) to inform him that the sellers were going to the Third Party's office to sign the Option later that day, [note: 5] and he could collect the signed Option the following morning. [note: 6] She said that she was then told by Adrian that he could only collect the signed Option the following afternoon. [note: 7]

7 When Adrian arrived at the Third Party's office and saw the Option in the evening of 12 February 2010, he noticed that it was to expire at 4.00 pm the next day, which was a Saturday and also the eve of the Chinese New Year. When he pointed this out to Masila, she arranged for him to speak with Cindy. According to Adrian, when he told Masila that the option period should have been three working days, Masila admitted to him that the deadline specified was not in accordance with that set out in the Offer. In addition, Adrian also said that Cindy had informed him that they would have the Option amended accordingly. [note: 8] Masila denied that Adrian had made any mention of "three working days" or that she had made the alleged admission. [note: 9] Cindy claimed that it was Adrian instead who admitted that he had made a mistake in specifying three days as the option period and requested that it be changed to the industry norm of two weeks. She said that she then asked Adrian to leave the Option with Masila so that she could speak with the Defendants on the proposed amendment. [note: 10] On both accounts, the Option remained in the possession of the Third Party that evening.

8 Cindy telephoned the Second Defendant later that evening with regard to amending the Option to extend the option period beyond 4.00 pm the next day. Cindy claimed that the Second Defendant was agreeable to amending the option period to 14 days [note: 11], but had also said that she would have to speak with her husband, the First Defendant. [note: 12] The Second Defendant denied conveying to Cindy any agreement on her part to the extension of time. [note: 13] She claimed that all she told Cindy was that she and her husband needed to consider the request. [note: 14]

9 A number of telephone conversations took place between Cindy and the Second Defendant and between Adrian and Cindy at around noon the next day, 13 February 2010 (Chinese New Year's Eve). Three conflicting accounts of the conversations were given by the Plaintiff, the Defendants and the Third Party.

10 As regards the Plaintiff's version, Adrian testified that Cindy informed him that while the Option would be handed to him unamended, the Defendants had nonetheless agreed that it could be exercised within three working days from the date it was delivered to him. [note: 15] Adrian believed that an extended deadline of Friday, 19 February 2010 was also referred to in the conversation. [note: 16]

11 The Defendants' version was that they informed Cindy that morning that they were not going to amend the Option. However, they offered to return the option money to the Plaintiff as a gesture of goodwill. [note: 17] Cindy subsequently called the Second Defendant to tell her that the Plaintiff did not want the cheque returned but they would instead try to beat the 4.00 pm deadline that day. [note: 18]

12 The Third Party's version hinged on Cindy's account of her telephone conversations with the Second Defendant and with Adrian. She claimed that there was only one telephone call between

herself and the Second Defendant that day and the Second Defendant had informed her that the Defendants were not going to amend the Option. Cindy then asked the Second Defendant if she had banked in the cheque. According to her, the Second Defendant had thought aloud about making out a cheque to return the option money. Cindy was, however, not told to make this offer to the Defendants. The Defendants told her that they would instead deal with the issue of the option money themselves. [note: 19] When she spoke with Adrian subsequently, she made no mention of the offer to return the option money. [note: 20] She said that when she told Adrian that the Option would not be amended, Adrian merely acknowledged this and said that the matter would be left to the lawyers to handle. [note: 21]

13 Arrangements were then made for Masila to hand over the unamended Option to Adrian. According to Adrian, he collected the Option at around 3.00 pm that afternoon. [note: 22] According to Masila, it was not until after 5.22 pm that day, *ie* after the 4.00 pm deadline had expired, that she handed Adrian the Option at a pre-arranged bus stop in Toa Payoh. [note: 23]

14 Adrian then contacted the Plaintiff and handed her the Option sometime after 6.00 pm that evening. The next three days were not working days as Chinese New Year fell on Sunday, 14 February 2010, and the next two days were public holidays.

15 The Plaintiff and Adrian testified that they attended a meeting at the offices of the Plaintiff's solicitors on the morning of 17 February 2010, the first working day after that long weekend. [note: 24] Adrian said that he informed the Plaintiff's solicitor *inter alia* that Cindy had told him that the Defendants would extend the deadline for the exercise of the Option to 19 February 2010, which was three working days from 13 February 2010. [note: 25] The Plaintiff testified that Adrian had spoken about a typographical error in the Option but was unable to recall in detail what Adrian conveyed to her solicitor. [note: 26]

16 The Plaintiff's solicitors attempted to exercise the Option later that day but found the Defendants' solicitors' office closed. Another attempt was made to exercise the Option the following day, 18 February 2010, but it was rejected by the Defendants' solicitors on the grounds that the deadline stated in the Option for its exercise had expired.

The Plaintiff's Claim

17 The Plaintiff's first argument was that, on or about 10 February 2010, she had offered to purchase and the Defendants had agreed to sell the Property at the price of $920,000. [note: 27] This agreement was said to be evidenced by, contained in or inferred from the Offer. [note: 28] She asserted that it was an express term of the contract that the Option would be open for acceptance for three days. Alternatively, it was an implied term that the Option would be open for acceptance for three *working* days. The Plaintiff averred that the Defendants had clearly intended to renege on this agreement to sell the Property by rejecting the attempted exercise of the Option, and had therefore breached and/or repudiated the contract. The Plaintiff's second and alternative argument was that there was an agreement for the Defendants to provide an Option open for acceptance for a period of three working days with a valid mode of exercise and the Defendants were in breach for failing to do so. Accordingly, the Plaintiff prayed for specific performance of the sale of the Property, the issuance of an option capable of being exercised within three working days or damages to be assessed.

18 As an alternative claim, the Plaintiff asserted that the Third Party had, on the Defendants' behalf, represented that the Option would be open for exercise for three working days from 13

February 2010. The Defendants denied that such a representation had been made. They claimed that if such a representation had indeed been made, the Third Party would have been in breach of the duties it owed to them as their agent. It was for this reason that the Defendants joined the Third Party to this action.

My Decision

The contract

19 The opening paragraph of the Offer, *viz*, "We, the undersigned hereby *offer to purchase* the abovementioned real estate ... subject to the following terms and conditions" suggests *prima facie* that it was intended to be a legally binding offer. Although it only identified the First Defendant as the owner and vendor and the Second Defendant was not referred to as a co-owner, both Defendants acknowledged that all relevant actions subsequently taken by the First Defendant in this matter were done with the consent of the Second Defendant and on behalf of both the First and Second Defendants. [note: 29] Moreover, information as to the identity of the vendor for inclusion in the Offer was, in all likelihood, obtained by Adrian from either Cindy or Masila of the Third Party as the agent for the Defendants. Masila also noted that neither of the Defendants drew her attention to the exclusion of the Second Defendant's name in the documents relating to the transaction. [note: 30] Further, I note that it was the Second Defendant and not the First Defendant who first contacted Cindy regarding the Defendants' intention to sell the Property and with whom Cindy continued to deal. [note: 31] In the circumstances, the Offer could be regarded as one which was made to the First Defendant in his personal capacity and as an agent of the Second Defendant as an undisclosed principal at that point.

20 The offer from the Plaintiff was, as set out in clause (4) of the Offer (see [2] above), capable of either acceptance or rejection. In either case, certain obligations then followed, *viz*, if it was accepted, an option would have to be issued by the deadline of 13 February 2010 at 4.00 pm and if it was rejected, the option money would have had to be returned by the same deadline.

21 Did the Defendants accept this offer? Clause (4) of the Offer suggests that the act of acceptance was intended to be something preceding the issue of the option and that the two were not synonymous. However, neither the clause nor the rest of the document specifically set out how acceptance was to be effected. I am nevertheless of the view that the Defendants accepted the offer by their conduct in banking in the cheque they received from the Plaintiff for the option money and in retaining the option money beyond the stipulated deadline in the Offer of 13 February 2010 at 4.00 pm.

22 In *Joseph Mathew and another v Singh Chiranjeev and another* [2010] 1 SLR 338 ("*Joseph Mathew*"), the appellants, who were the owners of an apartment, had sent emails to their property agent indicating that they were "taking a decision to sell" the apartment at the price offered by the respondent and instructing their agent to deposit the cheque of 1% of the purchase price submitted by the respondent as option money into the first appellant's bank account. The Court of Appeal upheld (at [21]) the High Court's finding that a contract to grant an option for the sale of the apartment was binding upon the parties when "(at the latest) the 1% cheque had been deposited into the first appellant's bank account simply because the requirements for the formation of a valid contract (offer and acceptance and consideration) would have been fulfilled at this particular point in time".

23 In the present case, although no emails were sent or other communications made by the

Defendants expressly accepting the Plaintiff's offer as such, they did convey to Cindy that they were agreeable to proceeding with the necessary documentation for the sale at the offer price [note: 32], pursuant to which the Option was prepared by the Third Party. On 11 February 2010, the First Defendant, on behalf of both Defendants, signed the Option and collected the cheque constituting the option money and acknowledged that he had done so with the intention of following through with the sale. [note: 33] He then paid it into his bank account and retained the money beyond the deadline stated in the Offer for rejection of the Offer and the return of the money. The money was, in fact, still in his account as at the date of the trial. [note: 34] The conduct of the Defendants amounted, in my view, to an acceptance of the Plaintiff's offer and a contract to for the sale of the Property accordingly came into being.

24 Is this analysis affected by the fact that clause (3) of the Offer subjected the "sale of the above real estate" to "signing the Option to Purchase"? The Defendants argued that clause (3) is a "subject to contract" clause, and that no contract for the sale and purchase of the Property would arise until the Option was exercised. [note: 35] While that is undoubtedly true, it is separate from the Defendants' obligation to grant an option to the Plaintiff. The Defendants made the additional point that the fact that clause (3) makes reference to the Option undercuts the assertion that there could have been an agreement for the granting of an option. [note: 36]

25 In my view, clause (3) does not affect the contract for the granting of an option being constituted by the Defendants' acceptance of the Offer. This clause was not, on its terms, a "subject to contract" clause. More importantly, it has to be read consistently with clause (4), which clearly provided for the acceptance or rejection of the Plaintiff's offer independent of the signing of any option *per se* (see [21] above). While the clause subjected the transfer of property rights to the eventual execution of an option, it is entirely consistent that the Defendants were obliged to issue an option by a stipulated deadline and conforming with a certain limited set of requirements set out in the Offer, one of which was the period for the exercise of the option. The signing of the Option was, as in the case of *Joseph Mathew*, "merely a necessary part of the process of giving effect to a binding agreement (to grant an option) that had already been entered into" by the parties (at [19]).

26 The Defendants also claimed that there was no consideration referable to the Offer as such. [note: 37] They argued that the option money paid by the Plaintiff was for the grant of the Option to purchase the Property. I do not think that there was a real controversy in this regard. In the analysis set out above, the contract was one in which the option money was paid in consideration for the issuance of an Option, but it was to be an Option compliant with the terms stipulated in the Offer.

27 I note that since an option to purchase creates in favour of the option holder an equitable interest in the land, the contract in question would have been one "for the sale or other disposition of immovable property, or any interest in such property" and would accordingly have to comply with section 6(*d*) of the Civil Law Act (Cap 43, 1999 Rev Ed) in order to be enforceable against a defendant (see *Joseph Mathew* at [23]). This *might* have been relevant in the present case because the Second Defendant's name was not reflected in either the Offer or the Option. However, it is well established that s 6(*d*) must be expressly pleaded to be deployed in legal proceedings (see *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258 at [63] and [64]). Since this was not done in the present case and the Defendants' counsel conceded that s 6(*d*) was not being relied on, [note: 38] the issue of the sufficiency of written memoranda relating to the contract for the sale of the Property did not arise.

28 What then were the terms of this contract? As noted at [20] above, clause (4) of the Offer

required the Defendants to deliver to the Plaintiff "the Option duly signed by the Owner" by 13 February 2010 at 4.00 pm. In addition, clause (1) provided for an option period of three days. The Defendants asserted that the Option complied with this requirement. They argued that "3 days" referred to three calendar days and not three working days. They also argued that the day on which the First Defendant signed the Option on his and the Second Defendant's behalf (11 February 2010) was to be counted as the first of those three days. The third day was accordingly Saturday, 13 February 2010.

29 I accept that the reference to "3 days" for the option period in clause (1) of the Offer should be interpreted as referring to three calendar days. This is because clause (4) stipulated an identical period of "3 days" for the return of the cheque or the issue of the Option and it is clear from the date of the Offer (10 February 2010) and the date and time specified in that clause by which those actions were to be carried out (Saturday 13 February 2010, at 4.00 pm) that this referred to three calendar and not three working days. It is unlikely that the parties intended that two identical formulations would be used in a single document to describe two different concepts.

30 However, I am unable to agree with the Defendants' or the Third Party's contention that the three-day period started from the time the Option was signed by the vendors without any regard to when the Option was collected or made available for collection by the would-be purchaser. [note: 39] Their interpretation would lead to the absurd result that a vendor could sign an option to purchase with a stipulated option period without handing it over to the purchaser until the very last day, giving the purchaser no time to take the necessary steps to exercise the option. It bears noting that "[t]he sphere of options is ... 'a cold hard world'. An option must always be exercised in strict compliance with the requirements set out for its exercise": see Kevin Gray & Susan Francis Gray, *Elements of Land Law* (Oxford University Press, 5th Ed, 2009) ("Gray & Gray") at para 8.1.75. It would be neither consistent nor logical if the strictures that governed the conclusion of the option period did not apply to its commencement. In the absence of clear evidence that the parties had intended otherwise, the option period should, in my view, have commenced from the time the option to purchase was delivered to the would-be purchaser, or, at the very earliest, when it was made available for collection by the would-be purchaser or his agent and the purchaser or agent was informed of this fact.

31 I note that clause (4) of the Offer required the seller to "*deliver to the undersigned* [meaning the purchaser] the Option duly signed by the owner within stipulated time above". This supports the view that it was the delivery of the Option to the Plaintiff or her agent which triggered the commencement of the option period. In the course of the testimony given by the Third Party's witnesses, I formed the impression that there might be some real estate agents who did not fully appreciate that this was how option periods should be calculated and it may well be that the proper interpretation needs to be given appropriate dissemination in the industry.

32 Further, I am unable to accept the Defendants' argument that the option period included the whole of the day on which it became open for exercise. When a person is given three days to do something, the ordinary meaning is that the period runs *from* the start date. The start date accordingly would not count as one of the three days. This is consistent with the manner in which the period of three days for the return of the cheque or the issue of the Option to Purchase was to be calculated under clause (4) of the Offer (see [29] above). It is possible that the prevailing practice in the real estate industry is otherwise but, as the only evidence before me was of the Third Party's practices and not of a general industry practice, the interpretation of this matter has to be based on the ordinary meaning of the words used. [note: 40] I note that the Plaintiff's counsel also took the somewhat surprising position in his closing submissions that the day on which an option

became open for exercise would constitute the first day of the option period so long as some office hours, however few, remained. Given that no basis was advanced for this position and that it would disadvantage those whose option periods commenced late in the afternoon, I am of the view that this contention cannot be correct.

33 As noted above at [6], Adrian and Masila gave conflicting evidence over why it was not until the evening of 12 February 2012, more than twenty-four hours after the Option was signed, that Adrian turned up at the Third Party's office to collect it. Be that as it may, the Option was not available for collection until 12 February 2012 on either account. It therefore followed that the signed Option had, pursuant to clause (1) of the Offer, to provide for a deadline of 15 February 2010 at the earliest. The Option which Masila prepared and the First Defendant signed on behalf of both Defendants on 11 February 2010 therefore did not comply with clause (1). However, I express no view as to whether the Third Party was liable to the Defendants for this because this issue was not before the court. In any event, the Defendants were themselves of the view that the deadline specified in the Option complied with clause (1) of the Offer. [note: 41] It is also not necessary for me to make any findings as to whether, given that 15 February 2010 was a public holiday, there was an implied term that the expiry of the option period would be on the first working day after that (17 February 2010). This is because the Option would not comply with clause (1) regardless of whether the deadline should have been 15 or 17 February 2010.

34 The Defendants argued that even if they had failed to issue the Option with the correct option period, this breach was waived by the Plaintiff when she attempted to exercise the Option on 17 and 18 February 2010 and thereafter pressed the Defendants for performance. [note: 42] I am unable to conclude that there was such a waiver. In attempting to exercise the Option, the Plaintiff was merely acting consistently with her position that the option period remained open past 13 February 2010, contrary to what was stipulated on the face of the Option. If the Plaintiff had indeed waived the Defendants' breach, she would have acted on the basis that the option period concluded at 4.00 pm on 13 February 2010 and would not have attempted to exercise the Option beyond that point.

Was the contract varied?

35 While Adrian did go to the Third Party's office to collect the Option in the late afternoon of 12 February 2010, he did not in fact collect the document. The document was instead retained by the Third Party for the purposes of getting or trying to get the Defendants to amend the deadline set out in the Option. Although Adrian claimed that Masila admitted that the deadline specified was not in accordance with that set out in the Offer (see [7] above), it is quite clear from his account that the Third Party did not represent that the deadline had been extended at this point, but merely that amendments would be made to that effect. The amendments would have had to be made to the Option by the Defendants, and as it was Adrian who first raised the issue of the short deadline and no communication on this specific issue took place between Masila or Cindy and the Defendants while he was at the Third Party's office, he could not reasonably have formed the view that the Defendants had agreed, through the Third Party, to extend time.

36 Further, although there were conflicting accounts of the telephone conversation later that evening between Cindy and the Second Defendant over whether the Second Defendant had agreed in principle to amend the option period, this is not material because even on Cindy's account the Second Defendant had said that she would have to speak with her husband. There could not therefore have been any oral agreement to vary the deadline by the Defendants in that conversation.

37 As for the events of 13 February 2010, it must first be determined whether a representation had been made by Cindy to Adrian in their telephone conversation that the option period would be

extended by three working days from 13 February 2010. This in turn depends on whether Adrian or Cindy's version of events is more credible. Having heard both witnesses, I find Adrian's testimony in general and his account of the events of 13 February 2010 to be significantly less reliable and less plausible than Cindy's.

38 First, Adrian's version of the conversation was that he did not ask Cindy why the Option would not be amended when she conveyed this to him. This was surprising because that was the very purpose for which the document had been retained overnight instead of being collected by him the day before. [note: 43] He also did not attempt to place on record the oral representation Cindy allegedly made to him about the extension of the option period. [note: 44] This would have involved no more than sending Cindy an SMS or email confirming the extension. He was therefore relying on nothing more than an oral statement made by someone whom he conceded he had never seen before, had not known until this transaction arose, and had not met until the start of the trial. [note: 45] He claimed that he trusted Cindy because the option money had not been returned to the Plaintiff at that time. [note: 46] But even greater caution must have been called for in those circumstances, since the Plaintiff had parted with the option money which could be forfeited if the Option was not exercised on time. Even if Adrian were indeed content to rely on a mere oral statement, he would in all likelihood have contacted the Plaintiff immediately to explain that the Option had not been amended and to either reassure her that the Defendants had nevertheless communicated their willingness to extend the option period or to seek her instructions on how to proceed given the circumstances. On his own evidence, this was not done. [note: 47]

39 Second, he claimed that he had informed the Plaintiff's solicitors of the oral extension of time when he accompanied the Plaintiff to their offices on 17 February 2010. [note: 48] If he had done so, it would in all likelihood have been articulated in the letters which were sent by the Plaintiff's solicitors to the Defendants' solicitors in the days following the rejection of the Plaintiff's attempt to exercise the Option on 18 February 2010. [note: 49] However, this was not the case. Similarly, one would have expected that when Adrian was informed by the Plaintiff of the rejection, [note: 50] he would have called Masila or Cindy to protest and to remind them of the representation Cindy had allegedly made to him earlier. Again, this was not done. Cindy and Masila confirmed at trial that Adrian had not contacted them after 13 February 2010. [note: 51]

40 Third, when he was asked why he had specified a short option period of three days, Adrian explained that it was because he was planning to travel overseas shortly and wanted to be around to ensure that everything, including the exercise of the Option, went smoothly. [note: 52] But that could have been achieved even with a longer option period specified. The Plaintiff did not have to wait till the very end of a longer option period to exercise the option. In any event, Adrian was not even aware that the solicitors intended to exercise the option on 17 February 2010 until some time after the event, indicating that he was not involved in those matters. [note: 53]

41 Fourth, when he was asked to explain the purpose of two telephone calls made by him to Masila after 5.00 pm on 13 February 2010, he said they were made to thank Masila for handing him the Option at around 3.00 pm that day. [note: 54] Masila's version, on the other hand, was that these two telephone calls were made by him to inform her that he was arriving and had arrived respectively at the agreed meeting point for her to hand over the Option to him. [note: 55] I do not find Adrian's account convincing. He would presumably have thanked Masila on receiving the Option. There seems to be little reason to call her twice for the sole purpose of doing so again two hours later. It should be

noted that although the Third Party initially pleaded that the Option was handed over at around 3.00 pm, Masila candidly admitted that she came to the view that it was in fact handed over after the two telephone calls from Adrian at 5.03 pm and 5.22 pm upon seeing the telephone records. In addition, this point was conceded by the Plaintiff's counsel in closing submissions. [note: 56]

42 Fifth, Adrian's credibility was damaged by the fact that his evidence on when the alleged representation was made was inconsistent. During cross-examination by the Defendants' counsel, Adrian first stated that he had not been told whether the Defendants would be changing the option deadline in his telephone conversation with Cindy at 11.37 am on 13 February 2010. [note: 57] He also confirmed that words to the effect that it was "too late in the day to amend the Option" had not been conveyed to him in the evening of 12 February 2010. [note: 58] Adrian was then referred to an affidavit filed by the Plaintiff earlier in these proceedings where the following was stated:

> I have checked with [Adrian] and he verified that when he noted and protested to the representative from the Defendants' agents that the date on the Option to Purchase was not in accordance with the terms agreed between the parties, *the Defendants' agent represented to my agent that, in view of the fact that it was too late in the day to amend the Option to Purchase, the Option to Purchase shall be opened for exercise for a period of 3 working days*. ... At the trial of this action, I shall be calling the said representatives from both parties' agents to give a true account of what transpired between them on *12 February 2010*.
>
> [emphasis added]

43 In response, Adrian agreed that the Plaintiff's account was the more correct version. [note: 59] Adrian did not explain why he was at first unable to recollect such a statement having been made by the Third Party when it was he who must have provided this information to the Plaintiff at the time her affidavit was filed. Nor did he explain how he was able to agree with the extract from the Plaintiff's affidavit with any certainty. Adrian changed his position yet another time when cross-examined by the Third Party's counsel. He once again took the position that no such representation was made on 12 February 2010 and that none had been made by Cindy in the telephone conversation at 11.37 am on 13 February 2010 either, but the representation was made during a subsequent telephone conversation at 11.55 am. [note: 60] It bears mention that whether and when a representation was made was the primary factual controversy in the present case. Despite this, the Plaintiff's key witness was unable to give a consistent account and in giving evidence only succeeded in undermining his own credibility.

44 In contrast, there is reason to doubt that the Third Party would have made such a representation to Adrian. The Third Party's counsel rightly pointed out that there was nothing for the Third Party to gain by acting contrary to the Defendants' instructions. Indeed, to do so would be to risk legal proceedings and reputational harm. Although Cindy and Masila were unable to recollect the events in question with clarity, it must be borne in mind that it was only in September 2011, more than a year and a half later, that they became aware of the dispute. They had heard nothing from either the Plaintiff or the Defendants prior to that. Further, it was only in May 2012 that the Third Party Notice was filed and the Third Party became aware that it was personally involved in these proceedings. It is therefore not surprising that Cindy and Masila should have difficulty recalling events which took place two years prior relating to matters which, as far as they were concerned, were done and dusted. They stand in a different position from Adrian, from whom the allegations regarding the representations emanated and of whom more consistency is to be expected.

45 The Plaintiff has placed some weight on the fact that a co-brokerage agreement was given to

Adrian together with the Option. She reasoned that there would have been no need to do so had there been no extension of the option period since the transaction would already have fallen through. [note: 61] However, the co-brokerage agreement clearly stated that Adrian's employer would be entitled to half the fee that the Third Party would be paid in the event the transaction was aborted for any reason. [note: 62] The handing over of the co-brokerage agreement is therefore of little evidential value.

46 I therefore find that the Plaintiff was unable to prove, on a balance of probabilities, that the Third Party had represented to her or her agent that the option period would be extended beyond the stated date and time of 13 February 2010 at 4.00 pm. It therefore also follows that the Third Party is not liable to the Defendants for the making of such representations.

47 I turn next to the telephone conversation or conversations between Cindy and the Second Defendant at around noon on 13 February 2010. If the Second Defendant's version is accepted, *ie* that Cindy had informed her that the Plaintiff did not want the option money returned but would instead try to exercise the Option by the deadline of 4.00 pm that day, it could mean that Adrian had, on behalf of the Plaintiff, conveyed to Cindy as the agent of the Defendants that the Plaintiff was prepared to accept the Option with a deadline which did not conform with clause (1) of the Offer. In other words, either (a) the parties had orally agreed to a variation of the terms of the contract between them with respect to the option period or (b) if a contract had yet to arise by then, the Plaintiff's offer had been orally varied and then subsequently accepted by the Defendants when they retained the option money beyond 4.00 pm that day.

48 However, having considered the evidence, I am unable to find, on a balance of probabilities, that such a statement was made by the Plaintiff or Adrian. The Second Defendant's account was evidence of what she alleged Cindy told her. A further inference would have to be drawn that that was what Cindy had in turn been told by Adrian that day, given that the Second Defendant was not privy to the telephone conversations taking place between the two real estate agents. I note that although Cindy and Adrian gave very different accounts of what transpired between them at around noon that day, in neither version was there any reference to a discussion between them on either the return of the option money or the Plaintiff or Adrian deciding to try to beat the deadline. The conduct of Adrian in (a) collecting the Option at around 3.00 pm or (as was more likely the case) after 5.00 pm, (b) communicating thereafter with the Plaintiff at close to 6.00 pm that day and (c) handing over the Option to the Plaintiff after that, was also not consistent with the actions of someone who was trying to beat a 4.00 pm deadline. What transpired between Cindy and the Second Defendant with regard to this matter may well have been a misrepresentation by Cindy or simply a miscommunication between the two sides, but this was not a matter which I need to adjudicate upon.

49 Be that as it may, why was Adrian apparently so nonchalant on 13 February 2010? It might be that Adrian took the view that the Offer, and not the Option, bound the parties and that, on the terms of the Offer, there was still time for the Option to be exercised. It is, however, more probable that Adrian simply did not recognise the urgency or importance of the matter. Adrian said that he only became a real estate agent in 2009 and agreed that he was inexperienced at the time. [note: 63] However, his conduct is not at issue in the present case and no more need be said.

50 In summary, as at 4.00 pm on 13 February 2010:

(a) there was a contract for the granting of an option to purchase the Property between the parties formed by the Plaintiff's Offer and the Defendants' acceptance of that offer by their conduct;

(b) under the terms of the contract, the Defendants had to deliver an option to purchase to the Plaintiff or her agent by 4.00 pm on 13 February 2010;

(c) that option to purchase had to have a deadline of at least three days from the time of its delivery to the Plaintiff or her agent, or, at the earliest, from the time it was available for collection by the Plaintiff's agent;

(d) regardless of whether time commenced from delivery of the option or from the time it was made available for collection by the Plaintiff's agent, the Option which the Defendants first issued with a deadline of 4.00 pm on 13 February 2010 as of 12 February 2010 and which remained unchanged thereafter did not comply with that requirement. Whether Masila delivered the unamended Option to Adrian before or (as was more likely) after 4.00 pm on 13 February 2010 is immaterial. If she had delivered it before 4.00 pm that day, the Option ought to have provided for its expiration three days later and it did not. If she had delivered it after 4.00 pm, it simply meant that the Defendants had not delivered any option to the Plaintiff by the deadline stipulated in the Offer and containing terms complying with the Offer.

51 The Defendants are accordingly in breach of their contractual obligations to the Plaintiff to deliver an option to purchase which complied with clause (1) of the Offer.

Inequitable conduct

52 For completeness, the Plaintiff's argument that the court cannot condone attempts by defendant vendors to resile from their agreement to sell a property will be briefly considered. The Plaintiff raised the cases of *Tai Joon Lan v Yun Ai Chin and another* [1993] 2 SLR(R) 596 ("*Tai Joon Lan*") and *Goh Lye Chin Raymond v Poon Soon Chin and another* [2010] 4 SLR 1025 ("*Goh Lye Chin Raymond*") in support of this proposition.

53 In *Tai Joon Lan*, the vendor provided the purchasers with an option that did not specify who her solicitors were but said that she would do so within a day or two. The next day, the vendor's husband said that he did not wish to and could not sell the property and attempted to return the option money. The Court of Appeal held that the vendor had intentionally and deliberately omitted to provide the name of her solicitors in breach of her obligation to do so. But for this breach, a contract for the sale and purchase of the property would have arisen. Accordingly, the Court of Appeal held that she could not be allowed to take advantage of her own breach and held that the purchaser's attempts to exercise the option were valid.

54 In *Goh Lye Chin Raymond*, the vendors issued an option that did not specify an expiry date. An attempt by the option-holder's nominee to exercise the option proved abortive. When a second attempt was made, the vendors took the position that the option had expired. However, they were willing to negotiate a higher price. Pillai J held that the vendors' conduct evinced an intention to resile from the agreement in order to hold out for a higher price and that such conduct constituted circumstances similar to those contemplated in *Tai Joon Lan* which merited the treatment of the attempted exercise of the option to be valid.

55 In my view, the present case should be distinguished from these two cases. *Tai Joon Lan* and *Goh Lye Chin Raymond* were cases in which the vendors attempted to obstruct what would otherwise have been a valid exercise of an option. While the Defendants issued an Option that did not comply with the terms of the Offer, this could not have been an intentional attempt to resile from their agreement as they had no part in drafting the document. Their subsequent unwillingness to extend the option period was simply an attempt to maintain what they assumed, albeit incorrectly, were their

legal obligations.

Remedies

56 As regards remedies for the Defendants' breach of contract, the Plaintiff sought *inter alia* specific performance of the sale of the Property or the issuance of an option capable of being exercised within three working days. [note: 64] However, the Property was sold by the Defendants to a third party in the middle of 2010. The Defendants did not inform the third party purchaser of the dispute over the property and, since it appeared that a caveat was never lodged by the Plaintiff, that third party would have been unaware that there was such a dispute. [note: 65] Even if it was open to the court to compel the Defendants to sell the Property or to issue a new option to the Plaintiff, it is well established, and it was not disputed by the Plaintiff, [note: 66] that the sale of the Property to an innocent third party made specific performance an inappropriate remedy: see Tan Sook Yee, Tang Hang Wu and Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) ("Tan Sook Yee") at pp 434 and Gray & Gray at para 8.1.53.

57 Moreover, the writ of summons in this case was only filed on 24 June 2011, more than 16 months after the events described above took place. In *Tay Joo Sing v Ku Yu Sang* [1994] 1 SLR(R) 765 ("*Tay Joo Sing*"), the purchaser sought legal redress 25 months after a dispute relating to the sale and purchase of a property arose. The Court of Appeal took judicial notice of the volatile nature of the property market in Singapore as well as the rise in property prices over the duration of the 25-month delay. It observed that the vendor had suffered prejudice as he had been lulled into believing that the purchaser had abandoned the contract and he now faced the prospect of having to hand over a property worth considerably more than the contract price (at [27]). The Court of Appeal approved of the observation that "equity will consider the delay as amounting to acquiescence in the abandonment of the contract and that the parties are thereby left to their remedies at law". Specific performance was therefore found to be inappropriate (at [34]). Although not as long as that in *Tay Joo Sing*, the delay by the Plaintiff in the present case was nevertheless lengthy. I am therefore of the view that specific performance, even if it was available, should not be granted for the same reasons. It is after all an equitable remedy that is being sought, and it is trite that equity aids the vigilant and not the indolent.

58 I therefore turn to the remedy of damages. The Plaintiff has pleaded that the Defendants' breach of the agreement to grant her an option with the agreed parameters has caused her loss and damage. [note: 67] The general rule is that damages are to be assessed as at the date of the breach, and the general measure of damages for the breach of a *contract for the sale of land* is the difference between the market value of the property at the date of completion and the contract price: *Lie Kie Siang v Han Ngum Juan Marcus* [1991] 2 SLR(R) 511 at [36]. However, because there was only an agreement to grant an option in the present case, and not a concluded sale and purchase agreement, the Plaintiff would had to prove that she could have and would have proceeded to exercise the option and complete the purchase but for the breach. In this case, there was no evidence that the Plaintiff was not in a position to exercise an option that had been issued to her with a date for acceptance which complied with the Offer. While the Plaintiff did not attempt to exercise the Option until 17 February 2010, it does not follow that she would have done the same had a compliant option capable of being exercised been issued to her. The Plaintiff and Adrian's actions must be understood in the light of the fact that they had been presented with an Option less than 24 hours before the stated deadline and finally received the Option close to or even after the deadline. I note that the Plaintiff tendered correspondence with her bankers indicating that she had been offered financing for the purchase of the Property by 12 February 2010 at 12.29 pm and that all that remained was for her bankers to issue a formal letter of offer to her. [note: 68] There would therefore

have been no practical obstacle to exercising the Option had it been in conformity with the terms of the Offer.

59 While the difference in the market value of the property is generally to be calculated as at the date of completion, the court has the power to fix such other date as may be appropriate in the circumstances: *Johnson v Agnew* [1980] AC 367 at 400, approved by the Court of Appeal in *Tay Joo Sing* at [36]. The Defendants took the position that damages should be assessed as at the intended date of completion or 18 February 2010 (the date on which the Defendants rejected the Plaintiff's attempted exercise of the Option) if liability were proved. [note: 69] In contrast, the Plaintiff contended that damages should be assessed as at the date of the trial or when judgment was given, "given the Defendants' cavalier attitude towards the omission to disclose the subsequent sale of the Property". [note: 70] However, the cases on which the Plaintiff relied, *Min Hong Auto Supply Pte Ltd v Loh Chun Seng and another* [1993] 1 SLR(R) 642 ("*Min Hong Auto Supply*") and *Ho Kian Siang and another v Ong Cheng Hoo and others* [2000] 2 SLR(R) 480 ("*Ho Kian Siang*"), indicated that a departure from the general rule was only appropriate where the innocent party acted with reasonable dispatch and maintained a consistent stand in attempting to continue the contract by promptly applying to court for specific performance (*Min Hong Auto Supply* at [83], [84] and [90] and *Ho Kian Siang* at [36]). Given the Plaintiff's delay in commencing the present action, a departure from the general rule is not appropriate.

60 As an aside, I note that a question might arise as to whether damages should be assessed as at 13 February 2010, which is when the Defendants breached their contractual obligations. However, I am of the view that damages should be assessed as at what would have been the date of completion. A similar approach was taken in *Tay Joo Sing*, a case where a vendor purported to rescind an option after the purchaser had given him a cheque for $5,000 in exchange for it. An option is, from a purchaser's perspective, an irrevocable offer: see Hoffman J's oft-cited observation in *Spiro v Glencrown Properties Ltd and another* [1991] 1 Ch 537. It follows that the holder of an option would generally be entitled to the same contractual remedies whether the vendor reneged on an agreement for an option, refused to accept the valid exercise of an option, or refused to proceed with a concluded sale and purchase agreement, save where issues of causation arise. Given that the Offer stipulated a completion period of 12 weeks and my finding above that the deadline for the exercise of the option should have been 15 February at the earliest (at [33]), the completion date would have been on or around 10 May 2010.

61 What then should the quantum of damages be? In her affidavit of evidence-in-chief, Cindy stated that she found out that the Property was subsequently sold on 21 July 2010 at the price of $1,050,000. [note: 71] The Second Defendant testified at trial that the Property was sold for close to $1,050,000, [note: 72] and it could be gathered from the report on transactions relating to similar units submitted by the Defendants that the exact price was $1,049,907. [note: 73] Both Defendants also stated that the transaction was at arm's length with a *bona fide* purchaser. [note: 74] In addition, they asserted that properties comparable to the Property were selling in the region of $1,000,000 at around the time the Offer was issued. [note: 75] While the market value of the Property on or about 10 May 2010 could be deduced from these figures, I am reluctant to do so. First, it is not clear how reliable the Defendants' evidence of the market value of the Property at the time of the Offer is. Secondly, I am unable to rule out the possibility that property prices were rapidly changing at the time. If this was the case, any such deduction would necessarily be only a rough estimate.

62 The issue of whether an order for damages to be separately assessed could be granted therefore arises. No application to bifurcate the trial of liability and damages pursuant to O 33 r 2 of

the Rules of Court (Cap 322, R 5, 2006 Rev Ed) had been made and, as mentioned, no direct evidence of the market value of the Property at the date of completion was adduced. The Defendants argued that the Plaintiff should be awarded only nominal damages if liability were proved. Counsel were directed to provide further submissions on the matter and the Court of Appeal's decision in *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 ("*Lee Chee Wei*") provides authoritative guidance. Having considered the matter, I am of the view that an order for damages to be separately assessed can and should be granted despite the failure by the Plaintiff to apply for bifurcation, although the scope of such a separate assessment will be a limited one.

63 In *Lee Chee Wei*, the plaintiff claimed specific performance of an agreement for the sale and purchase of his shares in a company, with an alternative claim for damages in lieu of specific performance. Specific performance was found to be impractical, but the plaintiff had failed to adduce evidence on the quantum of damages. The trial judge declined to make an order for damages to be assessed and awarded only nominal damages because the words "to be assessed" were not pleaded and no application had been made to effect an amendment. The Court of Appeal disagreed, holding that the prayer for "damages in lieu of specific performance" had amply satisfied the requirement of fair warning (at [62]). In the present case, the Plaintiff had claimed "further or in the alternative, damages to be assessed, in lieu of and/or in addition to specific performance of the Contract, [the Option], and/or [the Offer]". [note: 76] Given the clarity of this prayer, I am of the view that the Defendants will not be prejudiced by an order for damages to be assessed.

64 The Court of Appeal also observed that any of the parties in *Lee Chee Wei* could have applied prior to trial for a bifurcation of the hearing on liability and damages and that such an order would readily have been granted (at [64]). The question of damages in that case was "somewhat controversial", required expert evidence and incorporated potentially complex issues. Consequently, substantial costs and time would have been saved if liability issues were resolved first since a negative finding would have rendered otiose any need to adduce evidence on damages. The Court of Appeal implied that this supported an order for damages to be assessed.

65 The Plaintiff submitted that bifurcation would similarly have been granted had an application been made in the present case. [note: 77] In contrast, the Defendants submitted that bifurcation would not have been appropriate since the only evidence that the Plaintiff required to prove her loss was the market value of the Property at various times and such evidence was not complex and did not require expert evidence. [note: 78]

66 The Defendants also argued that ordering an assessment of damages would unfairly give the Plaintiff a second opportunity to prove her loss, since she had already adduced some evidence on this issue but had neglected to adduce evidence on the value of the Property. [note: 79] Further, even if she did not know that the Property had already been sold, it would have been clear that this was so from 20 December 2012, the date on which she received Cindy's affidavit of evidence-in-chief. [note: 80] The Plaintiff should therefore have either applied for a bifurcation or adduced the necessary evidence at this point.

67 I am not persuaded by the Plaintiff's assertion that bifurcation would have been granted had an application been made in the present case. While further evidence of loss would not have been necessary had the Plaintiff succeeded in her primary claim for specific performance, such evidence would have been necessary had she failed as she did in this case. Given that the evidence of the market value of the Property at the relevant time was not difficult to obtain, such evidence ought to have been adduced at the trial to avoid the further effort and expense involved in a subsequent

assessment of damages.

68 Be that as it may, it is important, in my view, not to lose sight of the fact that the Defendants were in breach of contract and the Plaintiff would, in the ordinary course of events, be entitled to substantial and not nominal damages. It was clear from the judgment in *Lee Chee Wei* generally, and in particular at [63] and [82], that the Court of Appeal was concerned with promoting the objective of achieving substantive justice. While procedural rules are undoubtedly necessary and are in fact aimed at furthering this salutary goal, "the Court ought not to be so far bound and tied by rules ... as to be compelled to do what will cause injustice in the particular case" (*In the Matter of an Arbitration between Coles and Ravenshear* [1907] 1 KB 1 at 4).

69 To award the Plaintiff only nominal damages would undoubtedly be an injustice, particularly when one considers that it was primarily specific performance that was being sought (in this regard, see *Lee Chee Wei* at [65]). The prejudice caused to the Defendants is largely in the form of duplicated and/or unnecessary effort and expense. This is readily compensated by costs. Any potential unfairness occasioned by giving the Plaintiff another opportunity to provide evidence of her loss would be addressed by narrowly circumscribing the assessment of damages to that of ascertaining the market price of the Property as at the completion date (which would have been on or around 10 May 2010), whereupon the damages which the Plaintiff would be entitled to would simply be the difference between that value and the $920,000 the Plaintiff offered. Accordingly, I order that such an assessment of damages be undertaken. In addition, the option money of $9,200 is to be repaid by the Defendants to the Plaintiff.

70 The usual measure of damages also includes interest from the date of completion until judgment: *Suleman v Shahsavari and others* [1988] 1 WLR 1181 at 1183B, referred to in *Min Hong Auto Supply* at [83]. This accords with the principle that the basis of an award of interest is the defendant having kept the plaintiff out of his money and having had the use of it himself: *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] 3 SLR(R) 601 at [46]. However, in view of the Plaintiff's delay referred to above at [57], a more appropriate date from which interest should be paid is the date of commencement of the action. Therefore, I order that pre-judgment interest on the loss determined at the assessment of damages and the $9,200 option money be paid to the Plaintiff by the Defendants at the rate of 5.33% per annum beginning 24 June 2011, the date on which the writ of summons was filed, and concluding when damages are assessed.

71 Turning to consequential losses, the Plaintiff asked for compensation in respect of the following:

(a) rental paid for the property at 985 Bukit Timah Road from 11 May 2010 to 13 November 2010 amounting to $13,800.00;

(b) rental paid for the property at 78 Dalvey Road from 10 December 2010 to 31 January 2011 amounting to $3,689.00;

(c) forfeiture of deposits for 78 Dalvey Road amounting to $2,300.00;

(d) agent's commission for the lease of 78 Dalvey Road amounting to $800.00;

(e) moving costs amounting to $500.00; and

(f) renovation and furniture costs amounting to $2,057.30.

72 These relate to the Plaintiff's cost of alternative accommodation and associated transaction

costs. The Plaintiff argued that these would not have been incurred had the transaction been completed. She would have stayed at the Property and would not have had to pay rent. The problem with this argument lay in the fact that accommodation has a price whether or not a direct payment has to be made to a landlord. Had the transaction been completed and the Plaintiff fully paid for the Property in cash, this would be foregoing the income on the sizable amount of capital embodied by the Property. Had the Plaintiff instead taken a loan, this would have been the interest levied by the lender as well as the forgone income on that part of the principal sum which has been repaid. In other words, the Plaintiff would have had to bear the cost or opportunity cost of capital had the transaction been completed, and she needed to prove losses over and above this for this head of claim to succeed. Therefore, the Plaintiff's claim for consequential losses is dismissed.

Conclusion

73 In summary, the following orders are made:

(a) damages are to be paid by the Defendants to the Plaintiff, the quantum of which is the difference between the market value of the Property as at the intended date of completion (on or around 10 May 2010) and the original purchase price of $920,000;

(b) an assessment of damages is to be held for the purpose of determining the market value of the Property as at the intended date of completion;

(c) the option money of $9,200 is to be repaid by the Defendants to the Plaintiff;

(d) pre-judgment interest of 5.33% per annum is to be paid by the Defendants to the Plaintiff on (a) and (c) beginning 24 June 2011 and concluding on the date of the completion of the assessment of damages.

74 The parties are to agree on costs within seven days, failing which I will hear the parties on costs.

[note: 1] NE 19 Feb p 47 lines 3-8, NE 28 Feb p 3 lines 28-30.

[note: 2] NE 22 Feb p 152, line 31.

[note: 3] PW1 AEIC para 10.

[note: 4] TPW2 AEIC para 13.

[note: 5] NE 27 Feb p 112, lines 12-15, NE 28 Feb p 27 lines 11-12.

[note: 6] NE 27 Feb p 113, lines 12-15, 30.

[note: 7] NE 27 Feb p 113, lines 30-32.

[note: 8] NE 19 Feb p 24 lines 6-8.

[note: 9] NE 28 Feb p 31 lines 1-4.

[note: 10] NE 27 Feb p 14 lines 5-18.

[note: 11] TPW1 AEIC para 17; NE 27 Feb p 9, lines 19-22, p 10 lines 6-11.

[note: 12] TPW1 AEIC para 17; NE 27 Feb p 10 lines 9 -14, p 93 line 8.

[note: 13] NE 25 Feb p 77 lines 8-10, NE 25 Feb p 125 lines 20-23.

[note: 14] NE 25 Feb p 78, lines 19-25, p 79, lines 19-26.

[note: 15] PW1 AEIC para 16; NE 19 Feb p 10, lines 18-21.

[note: 16] NE 19 Feb p 12, lines 18-21.

[note: 17] NE 25 Feb p 86 line 6, line 32 – p 87 line 1.

[note: 18] NE 25 Feb p 143 lines 6-10.

[note: 19] NE 27 Feb p 26 line 6- p 27 line 20.

[note: 20] NE 27 Feb p 28 lines 2-7, 16-18.

[note: 21] NE 27 Feb p 28 line 22 – p 29 line 23.

[note: 22] PW1 AEIC para 18.

[note: 23] NE 27 Feb p 125 lines 27-28.

[note: 24] NE 19 Feb p 29 lines 28-30, NE 21 Feb p 65 lines 28-29.

[note: 25] NE 19 Feb p 32 lines 8-20.

[note: 26] NE 21 Feb p 66 line 16 – p 72 line 4.

[note: 27] Statement of Claim (Amendment No. 2), p 1.

[note: 28] *Ibid.*

[note: 29] NE 22 Feb p 130 lines 16-21, NE 25 Feb p 1 lines 26-29, NE 25 Feb p 66 lines 12-17, NE 25 Feb p 70 lines 16-28.

[note: 30] TPW2 AEIC para 11.

[note: 31] TPW1 AEIC para 7 and 10.

[note: 32] DW1 AEIC para 8.

[note: 33] NE 25 Feb p 22 lines 5-11.

[note: 34] NE 22 Feb p 169 lines 4-5.

[note: 35] Defendants' Closing Submissions p 13.

[note: 36] NE 5 Apr, p 20 lines 10-22.

[note: 37] Defendants' Closing Submissions p 25.

[note: 38] NE 5 Apr p 142 lines 4-17.

[note: 39] NE 22 Feb p 153 lines 9-13, NE 27 Feb p 73 lines 23-24.

[note: 40] NE 27 Feb p 83 lines 21-25, NE 28 Feb p 6 line 3 – p 7 line 8, p 41, lines 2-11, p 42 lines 2-17.

[note: 41] NE 22 Feb p 154 lines 8-15.

[note: 42] Defendants' Closing Submissions p 40.

[note: 43] NE 19 Feb p 78 line 20 - p 80 line 5.

[note: 44] NE 19 Feb p 15 line 24.

[note: 45] NE 19 Feb p 37 line 30, NE 21 Feb p 8 line 5.

[note: 46] NE 19 Feb p 79 line 17.

[note: 47] NE 19 Feb p 15 line 27; p 16 line 20; p 17 line 8-13.

[note: 48] NE 19 Feb p 30 line 12, NE 21 Feb p 12 line 8.

[note: 49] AB65 and AB69.

[note: 50] NE 19 Feb p 84 line 5

[note: 51] NE 27 Feb p 32 line 6; p 127 line 3.

[note: 52] NE 19 Feb p 55 line 11, p 57 lines 2, 25-27.

[note: 53] NE 21 Feb p 13 lines 2-32.

[note: 54] NE 19 Feb p 89 line 28, p 90 line 28.

[note: 55] NE 27 Feb p 126 lines 1-8.

[note: 56] Plaintiff's Closing Submissions at p 5.

[note: 57] NE 19 Feb p 10 line 9.

[note: 58] NE 19 Feb p 22 line 15-p 23 line 5.

[note: 59] NE 19 Feb p 23 line 8-p 25 line 31.

[note: 60] NE 19 Feb p 75 line 23-p 77 lines 13, 27.

[note: 61] Plaintiff's Closing Submissions at p 80.

[note: 62] Agreed Bundle of Documents at p 19.

[note: 63] NE 19 Feb p 37 lines 1-5, 20-23.

[note: 64] Statement of Claim (Amendment No. 2), p 10.

[note: 65] NE 22 Feb p 132 line 8, NE 25 Feb p 66 lines 28-31, NE 25 Feb p 100 lines 10-25.

[note: 66] Plaintiff's Closing Submissions at p 121.

[note: 67] Statement of Claim (Amendment No. 2), p 10.

[note: 68] Plaintiff's Exhibit No. 1; NE 22 Feb p 25 line 22-p27 line 13.

[note: 69] Defendants' Closing Submissions at p 85 and 86.

[note: 70] Plaintiff's Closing Submissions at p 122.

[note: 71] TPW1 AEIC para 24.

[note: 72] NE 25 Feb p 100 line 11.

[note: 73] DW1 AEIC, exhibit WKW-3.

[note: 74] NE 22 Feb p 132 line 8, NE 25 Feb p 66 lines 28-31, NE 25 Feb p 100 lines 10-25.

[note: 75] DW1 AEIC paras 17 and 22.

[note: 76] Statement of Claim (Amendment No. 2), p 11.

[note: 77] Plaintiff's Supplementary Submissions at para 23.

[note: 78] The 1st and 2nd Defendants' Reply Submissions to the Plaintiff's Supplementary Submissions at para 44.

[note: 79] The 1st and 2nd Defendants' Reply Submissions to the Plaintiff's Supplementary Submissions at paras 6 and 41- 43.

[note: 80] The 1st and 2nd Defendants' Reply Submissions to the Plaintiff's Supplementary Submissions at para 39.