Chun Cheng Fishery Enterprise Pte Ltd *v* Chuang Hern Hsiung
[2010] SGHC 298

Case Number : Suit No 763 of 2005 (NA47 of 2009)

Decision Date : 12 October 2010

Tribunal/Court : High Court

Coram : Then Ling AR

Counsel Name(s) : Tan Cheng Han, S.C. and Lim Kim Hong (Kim & Co) for the plaintiff; Lok Vi Ming, S.C. and Yong Shuk Lin Vanessa (Rodyk & Davidson LLP) for the first and second defendants.

Parties : Chun Cheng Fishery Enterprise Pte Ltd — Chuang Hern Hsiung

Damages – breach of fiduciary duties – conspiracy to injure

12 October 2010 Judgment reserved.

Then Ling AR:

The Parties

1 The plaintiff, Chun Cheng Fishery Enterprise Pte Ltd, is and was at all material times a company incorporated in Singapore, in the business of importing and exporting marine products and other frozen seafood, as well as processing, curing and preserving marine products and frozen seafood. The plaintiff also has a wholly-owned subsidiary incorporated in the United States called Chun Cheng USA **("CCUSA"**).

2 The plaintiff's board of directors comprises Lin Chao Feng ("**LCF**"), who is the chairman and his wife, Tan Guan Ngo ("**TGN**"), who is the managing director.

3 The first defendant, Chuang Hern Hsiung ("**CHH**"), was employed as the Group President and Chief Executive Officer of the plaintiff while the second defendant was the Vice-President of Development of the plaintiff. The second defendant, Chuang Hsin-Yi ("**CHY**"), is CHH's eldest son. Both the defendants were directors of CCUSA. They were summarily dismissed from CCFE on 21 October 2005.

The claim

4 On 21 October 2005, the plaintiff commenced an action against the defendants for, *inter alia*, damages for the defendants' breaches of contractual and fiduciary duties, damages for conspiracy and damages for unlawful interference in the plaintiff's business and/or contracts.

The trial for the issue of liability

5 The trial for the issue of liability was heard from 29 March to 18 April 2007. On 17 January 2008, the trial judge granted, *inter alia*, (1) interlocutory judgment for the plaintiff for damages for the defendants' breach of contractual and fiduciary duties, conspiracy to injure and unlawful interference in the plaintiff's business; and (2) such damages shall be assessed by the Registrar. The trial judge further held, in his Grounds of Decision ("**the GD**") dated 18 August 2008, that the interest

in respect of the professional fees of Chio Lim & Associates be for the period July 2005 to December 2006 at 5.33% per annum from the date of the writ until payment, interest on the remaining damages to accrue from date of judgment at the same rate.

The appeal

6 Dissatisfied with the trial judge's decision, the defendants appealed to the Court of Appeal by way of CA16/2008 and CA17/2008. Both appeals were dismissed with costs. However, the Court of Appeal directed that the damages payable to the plaintiff be confined to the acts of the defendants from 1 May 2005.

7 The parties subsequently appeared before me for the assessment of damages.

The plaintiff's claim

8 On the first day of the assessment, counsel for the plaintiff, Mr Tan Cheng Han, S.C. ("**Mr Tan**") informed the court that the parties had agreed to partial settlement of the plaintiff's claim, specifically, S/No. 1 – 14, 17, 22 and 23, at the global sum of S$143,000.

9 Accordingly, the only aspects of the plaintiff's claim left for the court to determine at the assessment of damages hearing and the amounts sought by the plaintiff for each claim are as follows:

(a)	Professional fees of TecBiz Frisman Pte Ltd	S$62,710.30
(b)	Professional fees of Fourwin Co. Ltd	S$496,530.46
(c)	Professional fees of Chio Lim & Associates	S$311,153.43
(d)	Loss of revenue/ profit arising from the suspension/ reduction of credit facilities	S$2.102 million
(e)	Loss from overstocking mahi mahi	S$513,000

10 The parties also agreed that the sum of S$23,797.89 being disbursements for Fourwin is to be prorated based on what I award for item (b) above.

(a) Professional fees of TecBiz Frisman Pte Ltd

11 The plaintiff is seeking the total sum of S$62,710.30 for TecBiz's professional fees spread over five invoices for computer forensic services, and surveillances services conducted on CHH between 27 July 2005 and 3 August 2005. The plaintiff submits that the trial judge relied on the updates and reports of TecBiz in establishing the defendants' liability for their breaches and that the defendants are therefore liable to pay the plaintiff the stipulated sum.

12 In reply, the defendants contend that TecBiz's professional fees form part of the plaintiff's litigation expenses for which the proper recourse for compensation is in the application for an award of legal costs and disbursements. The defendants added that the plaintiff has already been compensated for the legal costs and disbursements they have incurred in respect of the trial and ought not to be allowed to claim for TecBiz's fees at the assessment of damages hearing. According to the defendants, if the plaintiff's solicitors failed to include TecBiz's professional fees when taxing the plaintiff's bill of costs, the plaintiff cannot now try to claim these expenses by asserting that they flow from the defendants' acts.

13 The issue of whether the expenses incurred by the plaintiff to investigate the defendants' transgression were claimable was considered in *John While Springs (S) Pte Ltd and another v Goh Sai Chuah Justin and Others* [2004] SGHC 76 ("*John While Springs*"). Like the present case, *John While Springs* concerned an application for the assessment of damages for the defendants' breach of fiduciary duties. The plaintiffs in that case sought to claim the amount spent in hiring a company to investigate the defendants' misdeeds. The defendants raised a preliminary objection that the plaintiffs were estopped from claiming the expenses as the plaintiffs did not claim them as disbursements during taxation. Assistant Registrar Joyce Low referred to *British Motor Trade Association v Salvadori and Others* [1949] 1 Ch 556, and held (at [10]) that "[c]osts incurred by [the] plaintiffs in investigating [the] defendants have previously been awarded to [the] plaintiffs as damages … Such expenses result from the defendants' breach of fiduciary duties and accordingly, if proven, they are claimable as damages".

14 It is undisputed that the work done by TecBiz uncovered the evidence of the defendants' breaches. Accordingly, the plaintiff is entitled to S$62,710.30 for TecBiz's professional fees.

(b) Professional fees of Fourwin Co. Ltd

15 In May 2005, LCF engaged the services of a financial and management consultant company in Taiwan, Fourwin Co. Ltd ("**Fourwin**") to analyse the plaintiff's financial status.

16 The plaintiff is claiming S$496,530.46 for Fourwin's fees for the period May 2005 to March 2007.

17 The defendants submit that Fourwin's fees and disbursements are unmeritorious for the following main reasons:

(a) Fourwin and its consultants, Christine Lin Shu Hui ("**Christine**") and Stan Lee ("**Stan**"), lacked the expertise and/or qualifications to advise and/or assist the plaintiff in restoring the plaintiff's business relationship with its bankers.

(b) The scope of the work allegedly carried out by Fourwin and its consultants remains very much a mystery and Fourwin's fees are unverifiable. Even Christine was unable to explain fundamental aspects of many of the alleged payment documents.

(c) There is little or no evidence to substantiate work allegedly done by Fourwin and its consultants.

(d) The few documents that have been furnished strongly suggest that the scope of Fourwin's engagement is unrelated to the acts of the defendants.

Whether it was reasonable for the plaintiffs to engage Fourwin

18 I am satisfied that it was reasonable for LCF to engage Fourwin, a Taiwanese company, to analyse the plaintiff's financial status. LCF was aware that the defendants had an Insider team within the plaintiff and needed someone he could trust to discuss the financial matters of the plaintiff and to assist him. It was also not unreasonable for LCF to engage a Taiwanese company. Both LCF and D1 are Taiwanese. Three of the eight bankers of the plaintiff are Taiwan banks and LCF was until that time still spending half his time in Taiwan.

19 That said, I note that Fourwin's website offers handwriting analysis services and goes on at

length on the benefits of handwriting analysis. However, what is lacking is any reference to Fourwin's ability to provide business consultancy services and/or restructuring. What is more puzzling is that Stan has absolutely no experience in banking and corporate restructuring – a fact that was admitted by Christine during her cross-examination (see NE of 23 July 2010 at p. 17, lines 12-28 and NE of 23 July 2010 at p. 19, line 23- p. 20, line 21). Christine, on the other hand, was previously the Senior Manager of Corporate Recovery, Financial Advisory Services of KPMG for three years from November 1999 to September 2002. Given that Christine and Stan's experiences are in stark contrast to one another, it is incomprehensible for both Christine and Stan to have the same billing rate. Accordingly, I am not satisfied that any professional fee ought to be paid in relation to Stan's services. Stan was not called as one of the plaintiff's witnesses. He has no expertise in financial matters and I do not see how he could have provided any assistance to the plaintiff, given that Fourwin was engaged to advice the plaintiff regarding the finance and restructuring of the plaintiff.

20 Fourwin's billing system could have been a lot neater. In my view, there were certain items in the invoices that were unreasonable and ought not to be claimed. First, Fourwin was charging the daily overseas fees, even though the meeting with the plaintiff was held within Taiwan:

> Q: Base on what you say, shouldn't the dates of 23-25 July under Item E, should it be taken off?
>
> A: I'm working for CCFE, and working according to the agreement.
>
> Q: Since this was within a meeting within Taiwan, that will not form part of the daily overseas fees to be paid, isn't it?
>
> A: If you have some opinion on this point, then we just respect your views.
>
> [Cross-examination of Christine. NE of 23 July 2010 at p. 8 lines 25-31]

21 Second, based on the third item of the Consultancy Charges Table at page 125 of Christine's AEIC, at Debit Note No. FW050901 dated 8 September 2005, Christine is claiming for consultancy charges from 16 August 2005 to 16 September 2005. She is also claiming an overseas allowance for the same period. However, if we look at paragraph 47 (b)(i) of Christine's AEIC, which sets out Christine's flight schedule, we will note that Christine left Singapore for Taiwan on 23 August 2005 and returned to Singapore on 30 August 2005. In other words, Christine was not in Singapore between 24 August and 29 August 2005, yet she continued to charge consultancy fees and overseas allowance.

22 Third, based on the fourth item of the Consultancy Charges Table at page 125 of Christine's AEIC, at Debit Note no. FW051001 dated 26 October 2005, Christine is claiming for work done her and Stan from 18 August 2005 to 30 September 2005. This period straddles two agreements: (1) the Revised Agreement which was effective for the period commencing 1 July 2005 and ending 17 September 2005 stipulating an overseas daily allowance of NY 4,800 per day per staff; and (2) the Second Revised Agreement, which was effective for the period commencing 18 September 2005 and ending 1 October 2005 stipulating an overseas daily allowance of NT 5,000 per day per staff. However, as can be seen from the Consultancy Charges Table, the higher rate of NT 5,000 in the

Second Revised Agreement was used to calculate the total overseas allowance for that entire period.

23 Nonetheless, I am satisfied that the plaintiff is entitled to recover some of the money spent on Fourwin's fees and will allow the plaintiff to recover 20% of the amount claimed (*i.e.* S$496,530.46) in the light of the above inconsistencies and Stan's lack of any financial experience and expertise. Accordingly, the plaintiff is entitled to $S99,306.09 for Fourwin's professional fees and S$4,759.57 for Fourwin's disbursements.

(c) Professional fees of Chio Lim & Associates

24 The defendants had spread damaging rumours about the plaintiff to the plaintiff's eight bankers. As a result, the plaintiff's credit facilities with the eight bankers were substantially reduced. A joint bankers' conference was held on 19 July 2005 and the bankers requested for the appointment of a Special Accountant to look into the plaintiff's books so that an independent report would help to ascertain the actual financial position of the plaintiff (see GD at [21]). Pursuant to the plaintiff's banker's request, Mr Chee Yoh Chuang ("**Mr Chee**") of Chio Lim & Associates was appointed the Special Accountant on 22 July 2006. Mr Chee's duties as an independent accountant ended in February 2007.

25 The plaintiff is claiming the sum of $311,153.43, for the professional fees of Mr Chee for the period July 2005 to December 2006. To this end, the defendants argue that Mr Chee's length of appointment was excessive. According to the defendants, the moratorium period ended in November 2005 and credit facilities as well as normal relations with the remaining banks resumed in December 2005. The defendants' expert, Mr Tam Chee Chong ("**Mr Tam**"), opined that the work performed by Mr Chee subsequent to the moratorium period after normalization of banking relations should not be claimed against the defendants. As such, the plaintiff is only entitled to claim for Mr Chee's professional fees from July to November 2005.

26 I can deal with this head of claim relatively quickly. At [93] of the GD, the trial judge expressly stated that the plaintiff is entitled to interest in respect of the professional fees of Chio Lim & Associates for the period *July 2005 to December 2006* at 5.33% per annum from the date of the writ until payment. In other words, the plaintiff is entitled to the professional fees of Chio Lim & Associates for the period *July 2005 to December 2006*. Accordingly, the plaintiff is entitled to the sum of S$295,003.43 (after reducing $16,150 comprising of the work done in relation to the litigation and finalization of Mr Chee's AEIC).

(d) Loss of revenue/ profit arising from the suspension/ reduction of credit facilities

27 Prior to 6 July 2005, the plaintiff had credit facilities from eight banks amount to US$12.05 million.

	Bank	**Credit Facilities prior to 6 July 2005 (US$)**	**Credit Facilities after November 2005 (US$)**
1	Bank of Taiwan, Singapore Branch ("**BOT**")	2.5 million	0
2	Chang Hwa Bank, Singapore Branch ("**CHB**")	600,000	0
3	Chiao Tung Bank, Singapore Branch ("**CTB**")	1 million	0
4	Citibank N.A., Singapore Branch ("**CB**")	1 million	0

5	DBS Bank Ltd ("**DBS**")	2.5 million	2.5 million
6	Standard Chartered Bank ("**SOB**")	1.5 million	1.5 million
7	UFJ Bank Limited ("**UFJ**")	1.25 million	1.25 million
8	United Overseas Bank Limited ("**UOB**")	1.7 million	1.7 million
	TOTAL:	**12.05 million**	**6.95 million**

The credit facilities were guaranteed by LCF and TGN.

28 Between 6 July 2005 and 16 July 2005, the plaintiff's credit facilities were substantially reduced to US$8.8 million as a result of various damaging rumours concerning LCF and the company, which was spread by the defendants.

29 CTB informed the plaintiff by way of a letter dated 6 July 2005 that they were suspending the plaintiff's account with immediate effect.

30 On 11 July 2005, BOT informed the plaintiff that it was suspending the plaintiff's facilities with immediate effect. BOT subsequently reduced the plaintiff's facilities to US$750,000 in its letter dated 13 July 2005.

31 On 21 July 2005, CB issued a letter to the plaintiff informing them that the undrawn portion of their facilities was cancelled with immediate effect.

32 A banker's conference was held on 19 July 2005 to dispel the rumours and Mr Chee was subsequently appointed as a Special Accountant on 22 July 2005 to monitor and report on the financial position of the plaintiff.

33 In the meantime, all eight banks suspended their credit facilities with the plaintiff. In order to avoid the business of the plaintiff coming to a complete halt if the banks were to continue reducing their loans, the plaintiff requested a moratorium from the banks to allow the plaintiff to put forward a plan to reduce and restructure the loans in an orderly manner.

34 Whilst the banks were agreeable to a moratorium till November 2005, in the meantime, the plaintiff was requested to maintain the *pari passu* rule among the banks, to be monitored by Mr Chee.

35 From July to November 2005 (*i.e*. the moratorium period), the plaintiff was unable to conduct its business with the eight bankers in the usual manner. Instead, the plaintiff had to pay a dollar in order drawn down a dollar of the facilities, yet trying to ensure the loans (trust receipts) were not overdue.

Termination of Credit Facilities

36 By 18 November 2005, BOT, CTB, CHB and CB had terminated their credit facilities granted to the plaintiff. It is undisputed that BOT and CTB terminated the facilities because of the prejudicial rumours against the plaintiff. What is in dispute is whether CHB and CB terminated their facilities for the exact same reason.

37 According to the plaintiff, Mr Tam ought to have conceded that just as BOT and CTB decided to terminate the facilities in November 2005 because of the defendants' acts, it was logical to

conclude that CHB and CB must have done so on the same basis. In reply, the defendants submit that unlike BOT and CTB (where their July letters made reference to the acts of the defendants), neither CB's letter dated 21 July 2005 nor CB's termination letters in November 2005 make any reference to the acts of the defendants. This lack of reference coupled with the fact that the circumstances in November 2005 were completely different from those in July 2005 and the banks were likely to have considered other factors in November 2005, show that it is far from being conclusive that CHB's and CB's exits were due to the defendants' acts.

38 I am satisfied that CHB and CB terminated the credit facilities granted to the plaintiff due to the defendants' acts. First, it is not unusual for banks not to state their reasons for the cancellation of the facility to a customer. To this end, the following exchanges between (1) Counsel for the defendants, Mr Lok Vi Ming, S.C. ("**Mr Lok**") and Mr Chee; and (2) Mr Tan and Mr Tam are instructive:

> Q: From your experience, would banks give/state the reasons for the cancellation of the facility to a customer?
>
> A: Not that I know of. If at all, it will be very very rare.
>
> …
>
> Q: In your 25 odd years of experience, have you come across a situation where a bank had given a reason/reasons for terminating a loan facility?
>
> A: Your Honour, banks do not normally put in writing. They may convey that or say it on the side the reason but not in writing. There are instances where to borrow may be in breach of certain term of the loan and then the bank will normally cite that as a reason for termination. That is common.
>
> [Re-examination of Mr Chee. NE dated 21 July 2010 at p.27, lines 17 - 24]
>
> Q: Typically, when banks cancel credit facilities they don't usually give reasons unless the cancellation is due to a breach of a term of the facility itself. Wouldn't that be correct?
>
> A: That is a common general position. Again, depends on the specific breach you are referring to.
>
> [Cross-examination of Mr Tam, NE dated 29 July 2010 at p.6, line 16-20]

39 Second, cancelling the credit line in July 2011 was a strong indication that CB was no longer interested in maintaining their relationship with the plaintiff. Moreover, I note that towards the later part of the moratorium, BOT, CHB and CTB did not participate in any of the meetings with Mr Chee and the plaintiffs. The four banks were simply not interested in continuing their relationship with the plaintiffs – a decision they had made when they cancelled/reduced the credit facility in July 2005.

Q: It seems to me that if that [i.e. the change of key personnel] was a concern of the banks, a lingering concern of the banks, that would be something the plaintiff themselves together with the management and the consultants had to address the banks on and to convince the banks that they were up to it.

A: I agree.

Q: And that if the plaintiff failed to convince the banks, then they only have themselves to blame for failing to do so.

A: Your Honour, it is a fair statement but the banks who had already decided to leave in July, they had already made up their mind.

Q: Perhaps more accurate to say that if the banks ad decide to leave in July then it would be difficult to change their minds.

A: Yes.

Q: I emphasize the word "if" because you did not know whether the banks had decided to leave by July.

A: Yes in a sense but from the indication of the bank and for them to cancel the line, it is already a strong indication that the bank wants to cease the relationship.

[Cross-examination of Mr Chee, NE dated 20 July 2010 at p.13, line 15-31; p. 14, line 1-9]

Q: You mentioned several briefings you had with the banks, did all the banks attend the briefings?

A: At the first few meetings, all banks were present. Towards the later part of the moratorium, the Taiwanese Banks (3 of them) did not come, although invitation was extended to them.

[Re-examination of Mr Chee, NE dated 21 July 2010 at p. 28, line 9-13]

Accordingly, I find that the termination of BOT, CHB, CTB and CB should be taken into consideration in assessing the loss.

Quantification period

40 Mr Chee's quantification period was from October 2005 to December 2006. When asked during

cross-examination by Mr Lok as to how he arrived at the cut-off date of December 2006, Mr Chee replied that by the end of 2006, the plaintiff changed its business model after its discussions with a Japanese customer.

41 In contrast, Mr Tam was of the view that the quantification period for the loss of business opportunities suffered by the plaintiff as a result of the reduced credit facilities should be for a maximum period of 3 months commencing 1 December 2005 (i.e. December 2005 to February 2006). This was because, during the moratorium period of five months, LCF and TGN with the assistance of Mr Chee would have had sufficient time to normalise the plaintiff's banking relationships with the existing banks and dispel any damaging rumours that were circulating amongst the bankers as well as reinstate the confidence of the bankers in the plaintiff.

42 I agree with Mr Lok that there was no satisfactory reason why the quantification period ought to extend to December 2006. Mr Chee's justification that December 2006 was chosen because by then the plaintiff had changed its business model does not carry water. This is because as early as 26 October 2005, a presentation on the plaintiff's restructuring exercise (to shift the market focus to Japan and Korea) was conducted to the banks and there was no reason for the plaintiff to sit on the restructuring plan for over 14 months.

43 It is reasonable for the plaintiff to have found its own two feet, albeit with the assistance of the special accountant, by February 2006 (*i.e*. 6 months from the dismissal of the defendants). In my view, 6 months was more than enough time for the plaintiff to normalise its relationship with the banks, to convince the banks that it had a good business model headed by a good team of competent individuals and to increase its credit facilities.

44 With the exit of the four banks, the total amount of credit facilities to the plaintiff was reduced from US$12.05 million to US$6.95 million (a decrease of US$5.1 million). However, since the plaintiff still had significant outstanding trust receipts in excess of US$6.95 million due to the moratorium in the month of July to September 2005, the quantification period I adopt is from October 2005 to February 2006.

Loss of business opportunities

45 According to the defendants, the plaintiff did not suffer a reduction of revenue since there was no written evidence of loss of business opportunities or holding back of purchases during the moratorium period. However, I note that the plaintiff conducts its business informally. When the plaintiff makes purchases, LCF will talk to the owners of the shipping vessels over the telephone as to the type and quantum of fish the plaintiff wishes to purchase. However, since the plaintiff was not able to commit financially to make the purchases, the plaintiff was unable to commit to the fishing vessel owners.

46 Whilst I am satisfied that the plaintiff held back purchases due to its inability to commit to its suppliers, I note that there was no written evidence before me with regards to the quantity and type of the fish that the plaintiff would have purchase. Accordingly, I have to rely on the historical data to determine the loss.

My decision

47 I note that the plaintiff had initially claimed for S$2.754 million. However, this figure was later revised to S$2.102 million in the plaintiff's closing submissions (see [84] of the plaintiff's closing submissions).

48 At the outset, the plaintiff's revised computation and Mr Tam's computation are largely similar – save for the quantification period, the inclusion of CB and CHB's termination of credit facilities, gross profit margin ("**GPM**"), incremental staff costs and whether tax should be deducted from the amount of damages.

49 In Mr Tam's computation, Mr Tam took into account Mr Chee's projected monthly sales for October 2005 to June 2006 (paragraph 4.40 of Mr Tam's report) and reached the conclusion that since the FY05 annual projected sales was lower than the plaintiff's FY05 actual revenue, the plaintiff did not appear to have lost any revenue nor business as a result of the suspension and subsequent termination of selected credit facilities in FY05. As such, the quantification period for loss of additional net profits allegedly suffered by the plaintiff due to suspension/termination of credit facilities would be for January and February 2006. To this end, it is clear from Mr Chee's evidence that the projections by Mr Chee during the moratorium period were based on the *reduced* credit facilities. Accordingly, I do not agree with Mr Tam that the quantification period for loss of additional net profits due to the suspension/termination of credit facilities would be for January and February 2006.

50 In relation to the incremental staff costs, I am satisfied that there is no need to deduct the incremental staff costs from the loss of revenue/profit. To this end, I note that in 2003 and 2004, the plaintiff's staff costs went down despite the increase in revenue. Accordingly, an increase in revenue does not necessarily equate to the incremental staff costs.

51 Lastly, in relation to the GPM, Mr Chee applied 15.5% whereas Mr Tam applied 11.2%. However, I note that during cross-examination Mr Tam confirmed that there was no real difference between his and Mr Tam's computed GPM:

> Q: I know there is a dispute between you and Mr Chee as to what is the gross profit margin to take into consideration …
>
> A: Perhaps I should clarify that I do not have any disagreement between Mr Chee and myself in using the GPM. I believe if I recollect correctly, that is merely a question of classification where there is one item included in the GPM calculation that I had used and that Mr Chee did not use but he subsequently used it below GPM calculation, on a nett nett basis. I don't think we have a difference in view, it is just where we classify.
>
> …
>
> Q: So you are not disputing Mr Chee's 15.5% except that Mr Chee took into account carriage outwards at a different place?
>
> A: That is my understanding.
>
> [Cross-examination of Mr Tam, NE dated 29 July 2010 at p.27, line 23-32; p. 28, line 1-15]

52 With that in mind, I agree with the plaintiff's revised computation save that the quantification period is from October 2005 to February 2006.

53 Loss of revenue/profit arising from the suspension/reduction of credit facilities (October 2005 to February 2006):

	Oct – Nov 2005 **US$'000**	**Dec 2005** **US$'000**	**Jan – Feb 2006** **US$'000**
Termination of credit facilities: – BOT – CTB – Citibank – CHB	 2,500 1,000 1,000 600	 2,500 1,000 1,000 600	 2,500 1,000 1,000 600
Total reduction in facilities	**5,100**	**5,100**	**5,100**
Historical usage of facilities	74.2% 3,748	74.2% 3,748	74.2% 3,748
Offset fixed deposits released	-	(626)	(826)
Effective reduction in facilities	**3,748**	**3,158**	**2,958**
Turnover of trust receipts in 1 year	3.54	3.54	3.54
Additional purchases in 1 year	13,396	11,180	10,472
No. of months for loss of profit period	2 Oct & Nov 2005	1 Dec 2005	2 Jan & Feb 2006
Additional purchases in period	**2,233**	**932**	**2,094**
GPM	15.5%	15.5%	15.5%
Additional sales in period	2,642	1,103	2,478
Additional gross profit in period	**410**	**171**	**384**
Less: Variable operating expenses (6.76%)	(179)	(75)	(168)
Net Profit before tax	**231**	**96**	**216**
FY2006 tax expense (at 10%)	(23.1)	(9.6)	(21.6)
Net profit after tax	**207.9**	**86.4**	**194.4**
Convert to S$	(X 1.6947) **S$352,320**	(X 1.6752) **S$144,730**	(X 1.6280) **S$316.480**

54 According, the loss of revenue/profit arising from the suspension/reduction in credit facilities for

the period October 2005 to February 2006 is S$813,530.

(e) Loss from overstocking mahi mahi

55 The plaintiff is claiming S$513,000 as the loss suffered due to the deliberate failure of the defendants to sell the overstocked mahi mahi in CCUSA from 1 May 2005 despite clear instructions from LCF to do so even if it was at a loss.

56 In reply, the defendants contend, *inter alia*, that (1) LCF's instructions were to sell the mahi mahi without incurring any losses; (2) the overstocking of mahi mahi in CCUSA is to be excluded from the assessment of damages as the overstock resulted from purchases of mahi mahi made prior to 1 May 2005; (3) it was unreasonable to expect the defendants to sell the mahi mahi stock in days or within a month; (4) the period of assessment should end on 11 July 2005 when the defendants were dismissed; and (5) the defendants made the effort to sell the mahi mahi stock.

57 It must be emphasized that the Court of Appeal *did not* overturn the trial judge's finding of fact – that the defendants' failure to heed to LCF's instructions resulted in the overstocking of mahi mahi and that LCF was prepared to sell the mahi mahi *even at a loss*. To this end, [69] of the GD is instructive:

> The second defendant [CHY] admitted that Lin [LCF] had expressed concern about the build-up and had asked the marketing team to sell down the stock. Joe Murphy [CCUSA's National Sales Manager in the United States] corroborated the evidence of Lin that he was prepared to sell *even at a loss* before prices dropped any further. The second defendant, however, alleged that Lin's instructions were to sell even with no profit but without any loss. Lin denied this. *I prefer the evidence of Lin not only because it was corroborated, but because it made better commercial sense and was more credible*. Under those circumstances, I found that with respect to overstocking the second defendant together with the first defendant [CHH] breached their duty to act *bona fide* in the best interests of the company.
>
> [Emphasis added.]

The Court of Appeal, however, ordered that the inquiry of damages to be assessed shall be confined to the acts of the defendants from 1 May 2005 onwards. Put simply, the defendants caused the overstocking of mahi mahi by not listening to the LCF's instructions (a finding of fact that was not overturned by the Court of Appeal), but the assessment of damages is limited to the defendants' conduct from 1 May 2005. The defendants were instructed to sell the stock of mahi mahi in November 2004, but they are only liable for their failure to sell the mahi mahi from 1 May 2005.

58 With that in mind, I shall now deal with the parties' experts' opinions. The key differences in the experts' assumptions used in the computation of the losses can be summarized below:

Assumptions in computation	**Mr Chee**	**Mr Tam**
Quantum of overstock	415,155 pounds	213,610 pounds
Quantification period	Jun 2005 – Aug 2006	1 May 2005 – 11 July 2005
Losses due to change in market price	May 2005 vs. time of sale	1 May 2005 – 11 July 2005
Losses due to selling below market price	Actual sales vs. market value	N.A.

Quantum of overstock

59 Unlike Mr Chee who assessed the loss based on the *entire* stock of mahi mahi (*i.e*. 415,155 pounds), Mr Tam set aside 200,000 pounds as a buffer, and treated the remaining quantity of mahi mahi (*i.e*. 213,610 pounds) held as at 1 May 2005 over and above the normalized level as overstock. Mr Tam also did not include the additional 1,850 pounds of mahi mahi stock which the plaintiff received in May 2005 as part of the overstock for the purposes of his quantification.

60 I note that Mr Tam set aside 200,000 pounds as a buffer as he did not know the monthly stock balance and stock movement of mahi mahi held by the plaintiff for the period from January 2004 to August 2006 (see para 7.22 of Mr Tam's report). I also note that the plaintiff's business is not one where it is contractually bound to regularly supply its customers with mahi mahi. Accordingly, there is no need for the plaintiff to have a buffer and the loss from the overstocking of mahi mahi should be based on the entire stock of mahi mahi held by the plaintiff as at 1 May 2005 (*i.e*. 415,155 pounds).

Quantification period

61 Mr Tam's quantification period is from 1 May 2005 to 11 July 2005. According to Mr Tam, the defendants no longer had control over the excess stocks after they were terminated on 11 July 2005 (see para 7.15 of Mr Tam's report).

62 With respect, the defendants committed serious breaches and it is absurd for them to be able to rely on their termination which arose out of their egregious breaches to argue that they should only be liable for losses incurred up till 11 July 2005. Ramifications of the defendants' breaches would have a long term effect, which will obviously extent beyond their termination date of 11 July 2005.

63 The question then arises: what is a reasonable time to expect the plaintiff to sell the mahi mahi from 11 July 2005? The plaintiff took a total of 14 months to sell the mahi mahi, from July 2005 to August 2006. However, I note that the plaintiff's own expert was of the view that five to six months would be a reasonable timeframe to sell the mahi mahi. In this regard, the following exchange between Mr Lok and Mr Chee is apposite:

> Q: So, your answer to my question is that they [*i.e*. the defendants] should have sold much earlier and by much earlier what do you mean?
>
> A: Can't expect the stock to [be] sold within 1 month but it could be spread over a few months. 5-6 months.
>
> …
>
> Q: Taking that answer, wouldn't 14 months for the company to sell the stock be an unreasonable period to sell them?
>
> A: Yes. It appears longer than it should.

…

Q: If as you said earlier this morning, the reasonable time period to clear the stock will be 5-6 months, then surely the defendants ought not to be held accountable at least until Nov – Dec 2005.

A: I would tend to agree.

…

Q: Fair that the defendants ought not to be held responsible for decisions taken to sell after they were terminated?

A: Yes and no. If the stock was sold before the defendants left the company in July 2005, there will not be further stock to be sold.

[Cross-examination of Mr Chee. NE of 21 July 2010 at p. 3, lines 1 – 26]

Accordingly, it is reasonable to expect the plaintiff to have sold the entire stock of mahi mahi by December 2005.

64 All in all, I would have agreed with Mr Tam's calculation of the loss attributable to the defendants overstocking of the mahi mahi. However, in my view, Mr Tam ought not to have used July 2005 (the date the defendants were terminated from the plaintiff) as the cut-off date. Accordingly, instead of applying the mahi mahi unit price by Urner Barry Publications, Inc. ("**UB**") for the month of July 2005 (as adopted by Mr Tam), I applied the unit price by UB for the month of *December* 2005.

Product	**Quantity in Lbs**	**May 2005**	**Dec 2005**	**Decline in market price from May'05 to Dec'05**	**Incremental Loss due to decline in market price (US$)**
Fillet 3-4 Ibs	24,400	2.244	1.75	0.494	12,053.6
Fillet 4-5 lbs	30,550	2.244	1.75	0.494	15,091.7
Fillet 5-6 lbs	68,750	2.444	2.00	0.444	30,525
Fillet 6 lbs & above	95,300	2.594	2.15	0.444	42,313.2
Fillet 1-3 lbs	27,700	nav	nav	0.461	12,769.7
Fetch	132,300	nav	nav	0.461	60,990.3
Portion	32,810	nav	nav	0.461	15,125.41
Loin	1,800	nav	nav	0.461	829.8
Total					**189,698.71**

Accordingly, loss from overstocking of mahi mahi is US$190,547.20 (189,698.71/ 413,610 X 415,460). Applying the exchange rate of 1.6693, the amount in Singapore dollars is S$318,080.44.

(f) Loss caused as a result of the need to sell stock at a loss to raise cash

65 Lastly, in the plaintiff's closing submission, the plaintiff is seeking to introduce what is effectively a new head of claim – actual losses of $1.493 million as a result of the need to sell stock at a loss to raise cash. Needless to say, the defendants strenuously object to the additional head of claim in their reply submissions.

66 I agree with the defendants that the alleged loss of S$1.493 million was never raised or hinted at in any of the AEICs. Prior to the filing of the plaintiff's closing submissions, the plaintiff had only one basis and one head of claim for the loss of profits (*i.e*. the loss of profit arising from the suspension/reduction of credit facilities amounting to S$2.754 million (which was subsequently revised to S$2.102 million) as quantified by Mr Chee). This was the position taken by the plaintiff during the assessment of damages hearing. Accordingly, I will not allow this claim.

Conclusion

67 In summary, I will award the plaintiff the following:

(a)	Professional fees of TecBiz Frisman Pte Ltd	S$62,710.30
(b)	Professional fees of Fourwin Co. Ltd	S$99,306.09 Disbursements at S$4,759.57
(c)	Professional fees of Chio Lim & Associates	S$295,003.43
(d)	Loss of revenue/ profit arising from the suspension/ reduction of credit facilities	S$813,530
(e)	Loss from overstocking mahi mahi	S$318,080.44

68 I will hear the parties on the issue of costs and interests.