Sun Qi (formerly trading as Power King International) and another *v* Syscon Pte Ltd [2013] SGHC 38

Case Number : Suit No 775 of 2009

Decision Date : 15 February 2013

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Khor Wee Siong (Khor Thiam Beng & Partners) for the plaintiffs; Ram Chandra Ramesh and Tng Kim Choon (M/s C Ramesh) for the defendant.

Parties : Sun Qi (formerly trading as Power King International) and another — Syscon Pte Ltd

Commercial Transactions – Sale of Goods – Right of Rejection

Contract – Misrepresentation Act

Contract – Discharge – Rescission

15 February 2013 Judgment reserved.

Quentin Loh J:

Introduction

1 This action arises out of two agreements ("the Agreements") between the plaintiffs and the defendant company, Syscon Pte Ltd ("Syscon"), for the sale and installation of three 30-ton overhead travelling cranes and two 20-ton overhead travelling cranes:

(a) an agreement on 9 September 2008 ("the first agreement") for the supply and installation of three 30-ton overhead gantry cranes at $271,780.00 (including goods and services tax ("GST")); and

(b) an agreement on 22 September 2008 ("the second agreement") for the supply and installation of two 20-ton overhead gantry cranes at $164,780.00 (including GST).

2 Full payment was not made after the cranes were delivered. The plaintiffs have brought this suit to recover the outstanding payment of $436,560.00 and commissioning costs of $2,400.00 under the Agreements. Syscon counterclaims for rescission of the Agreements, for breach of the implied condition of satisfactory quality and for the return of the $100,800.00 which it paid to the plaintiffs under the Agreements. Alternatively, Syscon claims damages for misrepresentation or damages to be assessed for breach of contract.

Factual background

The parties involved

3 The plaintiffs are a husband and wife who registered a partnership, Power King International ("Power King"), to supply China-made cranes to Singapore.

4 The second plaintiff, Wong Mai Jun, Eugene ("Mr Wong"), obtained a diploma in business administration from a private college, TMC, at the age of 17. As for his work experience, he testified that after his national service, he was employed by his father's printing firm as a trainee. He was a little vague about what he did there, testifying that he would "follow up with sales" and with "hands on", and that he did "designing, operating of computers … [and] changing of er, er, parts on the machines". [note: 1] He was also a part-time used car salesman for a period of time. He then decided on the business of selling cranes as his wife was the daughter of one of the directors or owners of Hubei Power King Crane Manufacture Co Ltd ("Power King China"), a company based in the People's Republic of China which manufactures cranes. When Mr Wong was questioned on his knowledge of Power King China's cranes, he claimed to have "learnt a lot", to have followed the installation team for on-site installation, and to have even done "hands-on servicing" and rectification of "electrical wiring diagram". [note: 2] He was vague as to what he had learned or what training he had received. He claimed that he learned about the cranes on two or three visits to Power King China, with each visit lasting one to two months, [note: 3] but later stated it was a "consolidated" period of three to four months. I therefore find that Mr Wong's knowledge of these cranes and their components is rudimentary at best.

5 Syscon is in the business of manufacturing precast concrete slabs and bomb shelters for use in the construction of Housing and Development Board ("HDB") prefabricated flats. At the material time, Syscon had just acquired a new factory and required permanent overhead travelling cranes to enable movement of the precast concrete slabs and bomb shelters from its factory floor onto trailers for loading and delivery to HDB worksites.

6 Mr Wong was introduced to Syscon by a friend from his teenage years, one Ho Shuwen, who was the son of Freddy Ho ("Mr Ho"), Syscon's majority shareholder and director.

The Agreements

7 Sometime in March 2008, Mr Wong and the first plaintiff's father met with Syscon's Mohamed Sultan ("Mr Sultan"), who had been tasked with obtaining and operating the cranes in Syscon's factory. A trial order was placed on 15 April 2008, pursuant to a quote given on 9 April 2008, for one 30-ton overhead travelling crane ("the first crane") with a girder span of 13,500 mm at the price of $85,000.00 (excluding GST). A load-test for the first crane was conducted on 5 August 2008 and a Ministry of Manpower ("MOM") Workplace Safety and Health Regulations Certificate of Test ("MOM certificate") was issued on the same date. By 6 August 2008, the first crane had been fully delivered, installed and commissioned on line 9 of the first floor of Syscon's new factory. The plaintiffs make no claim for the first crane, but Syscon seeks a rescission of this agreement also and seeks to have Power King dismantle and remove the first crane.

8 Syscon started using the first crane soon after installation and commissioning. There was one reported incident of breakdown on 18 October 2008. This was attended to by Power King's technicians and remedied on the same day. Power King's report dated 21 October 2008 [note: 4] stated that the breakdown was due to excessive use by Syscon's crane operators, which resulted in a high current surge to the motor and triggered the automatic overload safeguard to shut down the crane's operation. At the time, Syscon accepted Power King's report on the incident. [note: 5]

9 The first agreement was made on 9 September 2008 for two types of 30-ton overhead travelling cranes with a lifting height of 12 metres. One 30-ton overhead travelling crane with a girder span of 13,500 mm was ordered at the price of $86,000.00 (before GST), and two 30-ton overhead travelling cranes with girder spans of 13,000 mm were ordered at the price of $84,000.00 (before

GST) per unit. The total value of the first agreement was $254,000.00 (excluding GST).

10 The second agreement was made on 22 September 2008 for two types of 20-ton overhead travelling cranes. One 20-ton overhead travelling crane with a lifting height of 22 metres and a girder span of 13,500 mm was ordered at the price of $76,000.00 (before GST), and one 20-ton overhead travelling crane with a lifting height of 32 metres and a girder span of 13,000 mm was ordered at the price of $78,000.00 (before GST). The total value of the second agreement was $154,000.00 (excluding GST). Syscon initially claimed that the second agreement was only an agreement to sell and not a valid contract, but this claim was abandoned in the agreed statement of facts before this matter proceeded to trial.

11 Syscon claims that it was induced into entering into the Agreements by Mr Wong's representations, specifically, that the cranes were of the highest quality, met international and local standards and were fit for their purpose. [note: 6] Mr Wong, on the other hand, averred that the Agreements were made only as a result of Syscon's satisfaction with the high level of performance attained by the first crane. [note: 7] In any event, the plaintiffs submit that any representation as to the quality and standard of the cranes was a mere puff and not misrepresentation within the meaning of section 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("the Misrepresentation Act"). [note: 8]

12 The terms of both of the Agreements were, *inter alia*, as follows:

(a) warranty of 12 months from the date of commissioning;

(b) payment of 20% as a deposit upon confirmation of order, 60% upon arrival of the cranes and all component parts at Syscon's factory, 15% upon commissioning and obtaining a Professional Engineer ("PE") certificate and 5% one year after commissioning or obtaining the PE certificate, whichever was earlier;

(c) all cranes to be tested by Power King before shipment for compliance "with international standards";

(d) provision of one experienced engineer from Power King on site to supervise crane installation, load-testing and commissioning; and

(e) provision of four workers from Syscon for one month, and provision of dead-weights and necessary equipment for Power King to conduct its load-test.

13 The three 30-ton cranes were delivered and installed on 13 December 2008, 16 December 2008 and 13 January 2009 at lines 8, 10 and 11 on the first floor of Syscon's factory. MOM certificates for these three cranes were issued on 23 December 2008 (for the two cranes delivered and installed in December) and 14 January 2009 (for the crane delivered and installed on 13 January 2009), and thereafter, these three cranes were commissioned. The MOM load-test, conducted by one Cheng Shao Hing, revealed that each crane had a satisfactory travelling speed [note: 9] and had a stable structure, notwithstanding its slow speed [note: 10] and lack of a distinctive serial number of make on its structure. [note: 11] Syscon claimed, by a letter dated 27 March 2009, that it did not receive the MOM certificates.

14 The two 20-ton cranes were delivered in January 2009, but could not be installed and commissioned as the second floor of Syscon's factory had not been fully constructed and lacked rails

for installation and load-testing. On 23 April 2009, Mr Wong reminded Syscon by letter of the need to allow Power King to conduct the commissioning and load-test. [note: 12] Syscon's Ms Ang Soh Moi ("Ms Ang") only addressed the issue of commissioning the two 20-ton cranes on 28 April 2009, when she requested structural crane detail drawings with PE endorsement, the electrical circuit diagrams of the cranes, the manual books and spare parts in order to conduct the load-test and commission the cranes. [note: 13]

15 Under the terms of the first agreement (see [12(b)] above), 60% of the payment for the 30-ton cranes fell due on 13 December 2008, 16 December 2008 and 13 January 2009, when the cranes were delivered and installed, and 15% fell due on 23 December 2008 and 14 January 2009. A deposit of $50,800.00 had already been paid on 9 September 2008. This amounted to 20% of the purchase price of the cranes (excluding GST). As at 14 January 2009, there was an outstanding payment of $190,500.00 (excluding GST). A further $50,000.00 was paid by Syscon to Power King on 19 January 2009. The balance owing under the first agreement was $140,500.00 (excluding GST).

16 As the two 20-ton cranes under the second agreement had yet to be installed and commissioned, the amount due to Power King as at January 2009, including the 20% deposit at the time of the order, amounted to $123,200.00 (excluding GST). There were no further payments made under the second agreement. The total outstanding sum due to Power King under the Agreements as at January 2009 was $263,700.00 (excluding GST).

17 Problems with the cranes were alleged to have begun on 2 February 2009. These problems escalated over the next four to five months. The following table summarises the complaints made:

No.	Date	Site	Complaint
1	27 Feb	All	Remote controller not functioning properly. Problems with gear box-cum-motor of the long travel mechanism and the end limit switches.
2	18 Mar	Line 9	Breakdown due to burnt conductors. Upper limit switches of crane hoist damaged as a result.
3	24 Mar	Line 9	Rope-guide for steel wire broken.
4	4 Apr	Line 9	Breakage of the hook-pulley and steel wire.
5	13 Apr	Line 11	Breakdown of crane hoist due to malfunctioning hoist motor.
6	30 Apr	All	Clearance height was 40 mm less than what was agreed, forcing the technician to lower the hoist cradle by 100 mm to make the cranes accessible across the building.
7	18 May	Line 9	Long and cross travel brake coil jammed.
8	29 May	Line 8	Breakdown of long travel system.
9	6 June	Lines 8, 10, 11	Long travel motors-cum-gear box out of order.

18 Upon each breakdown, Syscon sent in a service request to Power King and followed up with a letter. These letters, dated 27 February 2009, 19 March 2009, 26 March 2009, 6 April 2009, 13 April 2009, 30 April 2009, 19 April 2009, 19 May 2009 and 29 May 2009, were all issued either on the day of, or several days after, the initial complaint. The tenor of these letters was similar; they alleged

that Mr Wong had "ignored [Syscon's] calls for service" [note: 14] and had refused to "come and repair the fault". [note: 15] In each case, Syscon conducted the repairs itself or through a third party, keeping Power King informed of the repairs and maintaining that Power King was obliged to reimburse it for the repair expenses incurred.

19 Power King refuted Syscon's allegation that it had any obligation of repair, and accused Syscon of using the breakdowns as a means of delaying payment due under the Agreements. [note: 16] On 14 March 2009, Mr Wong wrote: [note: 17]

> You have not responded to either of our letters. We have no alternative but to put on notice that you have refused to provide us with any proper particulars and details of the alleged complains or allow [*sic*] us to inspect the complaints you have made in respect of the cranes. We are therefore unable to verify these complaints you have made or offer you any assistance.

20 On 23 March 2009, Mr Sultan, one Mr Ming from Syscon, Mr Wong, and a Power King technician met at Syscon's premises. The minutes of this meeting were included in a letter faxed out on 24 March 2009 at 8.35am. Problems 1 and 2 (see [17] above) were discussed, and Mr Wong undertook to investigate Problem 2 and provide new hand-radio controllers for all four 30-ton cranes (*ie*, the first crane and the three 30-ton cranes supplied under the first agreement) as well as spare parts for the damaged equipment in respect of Problem 2. Further repairs were requested, but there was no mention of a demand for payment.

21 The discussed investigations, repairs and spare parts did not materialise. As the problems increased over the following months, Power King continued to refuse to carry out repairs, and instead alleged that the complaints made by Mr Sultan were "unfounded" and "clearly untrue". [note: 18]

22 After repeated demands for payment failed, [note: 19] Power King sent a formal letter of demand to Syscon on 25 May 2009 via its lawyers, Genesis Law Corporation ("Genesis Law"). As a result, Syscon instructed Christopher Bridges Law Practice ("Christopher Bridges") on 29 May 2009. On 23 June 2009, Genesis Law wrote to Christopher Bridges asking whether the latter was authorised to accept service of process on behalf of Syscon.

23 On 6 July 2009, Syscon gave notice via its lawyers to Power King that it was rejecting all the cranes supplied by Power King (including the first crane installed on 6 August 2008), and requested Power King to dismantle and remove all the cranes. Power King refused to dismantle the cranes until a joint inspection could be made evidencing the state of the cranes on the date of removal. This request was communicated via Power King's new lawyers, Khor Thiam Beng & Partners, on 14 July 2009. [note: 20] The joint inspection was carried out on 5 August 2009, and the findings in the ensuing report produced ("the joint inspection report") will be discussed later in this judgment.

24 This suit was filed on 9 September 2009.

Concessions before and at the start of the trial

25 Although Mr Wong started out by claiming that the cranes were not defective, he conceded in his second affidavit and at the start of the trial that the defects were a breach of the warranties of satisfactory quality and fitness for purpose on account of: (a) the cranes' defective electrical motors; (b) the cranes' electrical wiring and control systems; and (c) the metal used in the gears, axles, shafts and gear box assembly.

Issues

26 It is undisputed that the $263,700.00 owing under the Agreements is payable to the plaintiffs, and it is also undisputed that the cranes were defective. The question remaining is whether Syscon is entitled to withhold that payment, reject the cranes and rescind the Agreements. The following issues arise:

(a) Has Syscon lost the right of rejection?

(b) Can the cranes be repaired and, accordingly, can the plaintiffs claim a right of rectification?

(c) Is Syscon entitled to rescind the Agreements on the basis of misrepresentation?

The right of rejection and rescission

27 Given that the plaintiffs have conceded that the defects in the cranes were also breaches of the implied condition of satisfactory quality, section 14(2) of the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("the SOGA") would give rise to a right of rejection, subject to the defence of acceptance by use. The only question which remains for me is whether Syscon has lost its right of rejection by using the three 30-ton cranes under the first agreement for five months and the first crane for eleven months, and by keeping the two 20-ton cranes on its work site without installation or commissioning for seven months.

28 This is important as Syscon's claim for rescission will only succeed if its right of rejection still exists. As Wee Chong Jin CJ stated in *Eastern Supply Co v Kerr* [1973] SGCA 7 ("*Eastern Supply Co*"), "[o]nce a buyer is deemed to have accepted the goods, he loses his right to reject for breach of conditions but can only claim for damages".

29 The plaintiffs rely on section 35(4) of the SOGA, which reads:

(4) The buyer is also deemed to have accepted the goods when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

30 Two questions of mixed fact and law thus arise:

(a) Is the period of five months (*vis-à-vis* the cranes supplied under the Agreements) and about one year (*vis-à-vis* the *first crane) considered* "a r*easonable time"?*

(b) What conduct would qualify as an intimation to the seller of rejection, and did Syscon give such intimation?

Lapse of a reasonable time

31 Section 35(5) of the SOGA clarifies the meaning of "reasonable time":

(5) The questions that are material in determining for the purposes of subsection (4) whether a reasonable time has elapsed include whether the buyer has had a reasonable opportunity of examining the goods for the purpose mentioned in subsection (2).

This suggests that the notion of reasonable time includes, but is not limited to, considering whether

there has been a reasonable opportunity of examining the goods.

32 The fact that Syscon used the three 30-ton cranes under the first agreement for a continuous period of five months and the first crane for eleven months does not, *in itself*, mean that Syscon has lost the right of rejection. The length of time which constitutes "a reasonable time" may vary, depending on the type of product involved and whether the defect can be readily discoverable or the cause of the defect readily made known. A reasonable opportunity of examining the goods could include conducting trials in relation to finding out the cause of the problem with the goods, and would not prejudice good faith efforts between the parties to come to an amicable resolution even if that were to extend the time between the initial delivery of the goods and their eventual rejection by the buyer. The same reasoning would apply to the two 20-ton cranes; whether the right of rejection has been lost vis-à-vis the two 20-ton cranes will depend on whether there was a reasonable opportunity of examining these cranes before they were installed or commissioned.

33 In *Compact Metal Industries Ltd v PPG Industries (Singapore) Ltd* [2006] SGHC 242 ("*Compact Metal*"), the plaintiff claimed a right to reject a customised paint used in respect of the aluminium panels on its refurbished building after six months. Considerable difficulties arose in achieving an acceptably consistent finish with the paint that was initially supplied by the defendant in June 2004. There was some suggestion, also, that the paint interacted with the panel material and the resulting finish looked different. Between June 2004 and September 2004, various investigations were conducted in an effort to find the cause of and a solution to the problem. The parties agreed in September 2004 that they would experiment with a new paint. From September 2004 to December 2004, various trials were conducted, but the trials eventually failed in December 2004 and the plaintiff elected to reject the paint. Sundaresh Menon JC, as he then was, held that the plaintiff was entitled to reject the paint and treat the contract as discharged, notwithstanding that six months had passed since the paint was originally delivered. He had regard to the following considerations: (a) the problem became apparent only after the paint had been applied and possibly only after the aluminium panels had been hung on the site; (b) the cause of the problem was not immediately known because of the interplay between the panel material and the method of application; and (c) the project in question was a construction project where the material was to be supplied under one contract for use and installation under another, and the latter contract would have to be consulted, thus resulting in a further delay of time.

34 In *Super Continental Pte Ltd v Essential Engineering & Construction Pte Ltd* [2010] SGHC 365 ("*Super Continental*"), more than a year passed before the plaintiff purported to reject the goods, and this was allowed by Judith Prakash J. The contract in that case was an agreement to supply a system for producing ultra high temperature ("UHT") treated liquid products. The system consisted of two machines, one which was acceptable and one which was defective. The defects were experienced as constant problems throughout the relevant time period, which Prakash J found was from April 2006, when the UHT system was commissioned, to September 2007. This included numerous breakdowns and malfunctions requiring repairs, not unlike the present case. The problems with the defective machine could be isolated, however, and Prakash J was not satisfied that it affected the rest of the UHT system. Accordingly, she found that the entire UHT system could not be rejected, but the defective machine could be, notwithstanding that more than a year had passed since the problems were experienced. There was little elaboration of the reasons for this decision, but it was clear from the recounting of the facts that the problems had surfaced almost immediately and trials had been conducted to attempt to rectify the problems, but had failed repeatedly. Like in the present case, there were repeated complaints from the plaintiff to the defendant throughout that time period. The implication seems to be that these attempts to have the defendant rectify the UHT system was part of the reasonable opportunity to examine the goods. The plaintiff's behaviour was therefore not consistent with electing to affirm the contract simply because it had continued to use the defective

machine.

35 I do not find that *Eastern Supply Co*, which the plaintiffs raise in their defence, is of much assistance to the plaintiffs. *Eastern Supply Co* concerned defects in a second-hand car which became apparent after one day of use. Two weeks later, the car was declared not roadworthy. The purchaser then rejected the car. The seller of the car sued, and the Court of Appeal found that the reasonable opportunity for inspection of the car was at the point of delivery, after the car had been test-driven. Accordingly, the purchaser had lost his right of rejection by accepting the car and driving it for two weeks. I note, however, that this does not stand for the proposition which the plaintiffs claim, *viz*, that the right of rejection is lost when there is an opportunity to inspect the goods at the point of sale and the goods are accepted. Wee CJ opined (at [21]) that the purchaser "had the opportunity of having the car examined by an expert" when the defects first became apparent "during the course of the first few days". *Eastern Supply Co* leaves considerable scope for a different assessment of "a reasonable time" based on the specific facts of the case, the nature of the defect (including whether it is a latent defect or not) and the time taken for the defect to occur or manifest itself. *Super Continental* and *Compact Metal* thus build on and do not contradict the principles laid down in *Eastern Supply Co.*

36 In both *Compact Metal* and *Super Continental*, the court adopted a flexible fact-centric approach to assessing what a reasonable time for inspection and, thus, for rejection would be. The behaviour of the plaintiffs was relevant, as was the nature of the problem and the ease of discovering it or its cause. The plaintiffs in both cases were not precluded from attempting to discover the source of the problem and were not obliged to immediately reject the goods upon discovering that there was a potential defect. This makes sense, particularly in the context of machinery, where defects can be latent and may not manifest themselves until the machines have been used for some time, and where problems with function may be due to improper usage or a need for minor repairs or adjustments which do not impair the use and purpose for which the machines were purchased. It would all depend on the facts of each case. A reasonable opportunity of examining the goods in such a context should not be limited to an examination upon taking over the machinery, which may or may not reveal a potential problem, but should include the opportunity to: (a) test the machinery, perhaps through use; (b) conduct investigations and/or trials into the cause of any problem that arises; and (c) seek repairs or adjustments, if appropriate.

37 I now turn to the admitted defects and whether a reasonable time to reject the cranes has elapsed. As mentioned at [25] above, these defects are: (a) defective electrical motors; (b) defective electrical wiring and control systems; and (c) incorrect metal used in the gears, axles, shafts and gear box assembly.

The defects in the first crane and three 30-ton cranes

Defective electrical motors

38 The joint inspection report (see [23] above) showed that the voltage of the cross travel and hoist motor was 380V instead of the 400V to 440V which would have been required for it to comply with Singapore standards.

39 However, I note that the cranes were delivered without any instruction manual, test certificate or electrical wiring diagram; this would have meant that the mechanical and technical specifications, including the specification for the electrical motors, would have been absent. Even though the voltage could have been compared to the contractual specifications, it would have been difficult for Syscon, which did not have the technical specifications and instruction manuals, to carry out the

necessary checks and investigations into the causes of any problems which arose. When asked why Syscon continued to use the cranes even though they were problematic from the start, Ms Ang testified:

Q: So would you agree that by 20---sorry, by 27th March, when---sorry, 23rd march, you knew that the cranes were in a seriously bad condition?

A: Yes.

Q: It was seriously defective?

A: You carried on using them nevertheless?

A: We have not much choice.

Q: Okay. You say you have not much choice. Did you ask subcontractors or repairmen to come and look at these cranes?

A: Yes, but they are having a very hard time because there's no technical specs, no manual, nothing for them to look at. [note: 21]

40 I also note that Syscon is a manufacturer of precast concrete slabs and bomb shelters. It has no experience with crane manufacture, and thus depended on the plaintiffs to provide it with cranes which it could use. While Mr Sultan had been employed by Syscon as the crane operator and to acquire cranes, I find that it would be unreasonable for me to impute knowledge of the proper voltage to Syscon when it did not have the benefit of expertise in cranes or even a list of the technical specifications for the cranes.

41 I have noted that in *Eastern Supply Co*, there was an opportunity for the purchaser to have the goods examined by an expert. However, I make the following observations. First, the goods in *Eastern Supply Co* were not covered by a warranty and any attempt to seek the cause of or to rectify the problem would necessitate engaging a third-party expert. Secondly, the seller in *Eastern Supply Co* was merely the previous owner of the car who had not held himself out as being an expert on cars; it was thus not open to the plaintiff in *Eastern Supply Co* to seek the seller's assessment of the roadworthiness of the car. By contrast, the Agreements specified a warranty period of one year for the service and maintenance of the cranes, a point which Syscon continually pointed out in its letters requesting for service. [note: 22] Power King, the supplier of the cranes, had held itself out as an expert. It took charge of the installation and commissioning of the cranes, and also bore primary responsibility for ensuring that the proper MOM tests and load-tests were carried out. In a letter dated 17 April 2008, Power King had undertaken to carry out certain works to ensure compliance with international standards. [note: 23] I find that throughout his negotiations with Syscon, Mr Wong had presented Power King as being the relevant expert on this matter. Thus, when Syscon referred to Power King when the defects became apparent, this was not a failure on Syscon's part to have the goods examined by an expert and was thus not a loss of Syscon's right of rejection.

42 Like the plaintiffs in *Super Continental* and *Compact Metal*, Syscon immediately alerted Power King of potential defects as and when they arose. As observed above (at [18]), service requests in writing followed very closely on each actual breakdown. Ms Ang testified that Syscon had complained when it noticed that there was only one motor on the cross travel, but continued to use it because it was "assured by Mr Eugene Wong through my boss that this will be actually replaced with the two

speed hoist". [note: 24] I find that given Mr Wong's assurance that the cranes would be brought up to specification, it does not lie in his mouth now to complain that Syscon lost its right of rejection by failing to immediately reject the cranes once the defects were discovered.

43 I find that although Mr Wong held himself out as an expert, he knew very little about crane manufacture or function or, indeed, about any technical matters related to cranes. This became patently obvious during cross-examination. I have already noted Mr Wong's background and work experience as well as his vagueness about his experience and technical knowledge at [4] above. Mr Wong testified that his only knowledge of cranes came from three to four months of "study" [note: 25] at Power King China, where he joined the sales team. He claimed that he did installation and commissioning work with Power King China's sales team. He also admitted that the cranes which he helped to install and commission during his stint with Power King China were not of the same make, model or design as the cranes eventually sold to Syscon. [note: 26] He further testified that he was able to identify some components inside the crane motors, but would not be able to identify all the components. When pressed further, he said:

> Of course I---I---what---I---I can't---I can't fully---I can't fully understand every single part, single components in the motor itself. I'm not a---I'm not a certified---I'm not a certified, er, mechanics or even electrician to do that. I will not be able to identify every single thing. [note: 27]

44 I make the following findings of fact. Electrical motors are all housed within their own casing. Even if the casing is removed, a visual inspection of the coiling, which comprises the core of the motor, would not reveal its compatibility or otherwise with the voltage used in Singapore, especially in the case of a buyer like Syscon. A 380V motor will still run on 400V to 440V, but will malfunction or present defects only after a period of time. I therefore find that a reasonable opportunity for examination of the cranes' electrical motors would extend beyond the point of commissioning as the defects here would only become apparent upon use of the cranes for a period of time. Accordingly, the passage of five months to about a year did not cause Syscon to lose its right of rejection.

Defective electrical wiring and control systems

45 The cranes' electrical wiring and control systems were within the control panels and would not have been obvious unless the control panels were disassembled. Even then, e.g., the melting of parts of the insulation would only occur after use. This would clearly not be part of any reasonable inspection upon delivery. The joint inspection report revealed that the cranes' power and control panels were subject to "design inadequacies", [note: 28] *ie*, undersizing of cables and inadequate protection of circuits against overcurrent. Such design inadequacies would only reveal themselves upon use and in the event that there was an overcurrent; they were not inadequacies which Syscon or any other commercial party would reasonably be expected to find upon inspection. The nature of this particular defect, like the paint in *Compact Metal*, was only discoverable when the cranes had actually been put into operation and operated for some time. My observations at [39] to [43] above also apply in respect of the cranes' defective electrical wiring and control systems.

46 I also find that the nature of the aforesaid defect meant that it would also be difficult to get to the cause of the defect. This defect was, in fact, only discovered when issues with the motors came up. Syscon had attempted to investigate into the root cause of the problem, not unlike the plaintiffs in *Compact Metal* and *Super Continental*. When Mr Wong did not come to attend to the repairs, Syscon employed third-party repairmen, who told Syscon that a replacement of the motors, gears and electrical systems would "not be worthwhile." [note: 29] The investigations that would be required to see if the rest of the system could work and if the problem was rectifiable were part of Syscon's

reasonable opportunity to examine the cranes, and it cannot be said that Syscon thereby lost the right of rejection through such investigation.

Incorrect metal used in the gears, axles, shafts and gear box assembly

47 I find that a reasonable opportunity of examination was not available for the metal used in the gears, axles, shafts and gear box assembly. When problems and breakdowns started to occur, it was not apparent that the metal used in the gears, axles, shafts and gear box assembly was a potential cause. Ms Ang testified that repairmen engaged by Syscon pinpointed the problem as lying with the motors, gears and electrical system, but did not provide further information other than to say that it was not worthwhile to replace the parts. [note: 30]

48 The examination eventually conducted by the expert witness LJP Jayantha Manel ("Ms Manel") was a technical one which revealed problems with the tensile strength and hardness of the shafts. Ms Manel testified that there was a discrepancy between the hardness of the driver gear and that of the large gear, which warped the metal, [note: 31] and that there was improper fusing with no grain boundary. [note: 32] These were not matters which could reasonably be discovered upon a visual examination. It required expertise, which could not have been available to Syscon as a manufacturer of precast concrete slabs and bomb shelters. It is worth noting that Mr Wong, who was meant to be the expert on crane manufacture, did not even know about the mechanical defects in the gears, axles, shafts and gear box assembly until the report of Ms Manel was prepared for this trial. [note: 33] The only reasonable opportunity to discover this defect arose after the cranes were used over an extended period of time. This was precisely what was done.

49 The evidence presented was quite startling. After six months to one year of use, the gear teeth had all but worn off in many of the gears. There was also evidence of a broken shaft due to the use of defective metal. I find that the durability of the metal was a problem that developed and manifested itself over time. As it was a latent defect, it could not have been diagnosed or manifest from the start. A reasonable opportunity of examining the metal used in the gears, axles, shafts and gear box assembly would thus only arise much later and only after the cranes had been used for quite some time. It took between six months to about a year for the effects of this defect to be apparent in the first crane. It was clear to me from the joint inspection report (see [23] above) that the gears had been completely worn down after only a year of use. The nature of this defect meant that it was discoverable only after a much longer period of time and, thus, the right of rejection was *prima facie* not lost by the fact that Syscon did not immediately order an examination of the metal used in the gears, axles, shafts and gear box assembly when the first breakdown occurred.

50 In any event, the gears, shafts and axles were hidden in the gear box and would not have been available for inspection unless the gear boxes were opened and examined. As I have observed (at [45] above), a reasonable inspection of goods does not include the onerous task of opening the component parts and the gear box to examine its contents.

51 The cumulative effect of these defects requires mention. The structure of overhead travelling cranes such as the ones supplied under the Agreements is not overly complex. The steel girders, rails and travelling wheels comprise fairly simple and straightforward structures, although they do require PE certification to ensure their ability to withstand the static and dynamic loads imposed upon them. The crucial components are the motors, the gear assemblies, the wiring and controls; and, in the present case, all these crucial components of the cranes had severe defects which Mr Wong could not help but concede. The evidence thereof was overwhelming.

The two 20-ton cranes

The two 20-ton cranes

52 The two 20-ton cranes which were supplied under the second agreement were never installed or commissioned. Given that the contract was for the sale, installation and commissioning of the cranes, I find that a reasonable opportunity for inspection would only arise *after* the cranes were installed, commissioned and had begun to be used. The two 20-ton cranes suffered from the same defects as the three 30-ton cranes which were the subject matter of the first agreement. I find that the right of rejection for the two 20-ton cranes has not been lost.

Intimation of rejection

53 Syscon's service requests were the plaintiffs' only evidence that Syscon had not intimated to Power King that it was rejecting the cranes. However, the fact that Syscon continued to send service requests and request for repairs is not indicative of acceptance. Moreover it is significant that each crane carried a 12 month warranty. Section 35(6) of the SOGA reads:

> (6) The buyer is not by virtue of this section deemed to have accepted the goods merely because —
>
> (*a*) he asks for, or agrees to, their repair by or under an arrangement with the seller …

54 In *Super Continental*, the plaintiff continued to ask for service and repairs for more than one year. This did not preclude the trial judge from finding that there was no acceptance of the goods.

55 I find that when the problems in the present case started to surface, Syscon did not realise the true extent of the problems. I also find that the fact that Syscon withheld payment was a clear indication that it had not accepted the cranes. On 23 March 2009, Syscon held a meeting with Power King to discuss investigations into the long-term causes of the breakdown which occurred on 18 March 2009. Syscon also continually pressed for the technical and mechanical specifications and the instruction manuals. It ignored the calls for payment, and focused instead on the possibility of rectification. It was only when it became clear that rectification was not possible that Syscon rejected the cranes once and for all. I find that Syscon's behaviour was consistent with its not having accepted the cranes.

56 Syscon was even more unequivocal when it came to the two 20-ton cranes. Syscon claimed from the beginning that there was no real agreement for the sale of the two 20-ton cranes. It was only in the course of the trial that the parties agreed not to dispute this issue in order to allow the main issues to get a better airing. Within this constraint, I find that on balance, Syscon's refutation of the second agreement was a clear intimation of rejection and Syscon retains its right to reject the two 20-ton cranes under the second agreement.

57 In the final analysis, I find that Syscon has not lost its right of rejection, and is entitled to reject the cranes and claim rescission. Syscon is entitled to a return of the $100,800.00 paid to Power King for the cranes, and Power King is obliged to dismantle and remove the cranes from Syscon's factory site with immediate effect.

Whether the first crane and three 30-ton cranes can be repaired

58 Given my finding that Syscon has *not* lost its right of rejection and can rescind the Agreements, it is not strictly necessary for me to consider whether the first crane and three 30-ton cranes can be repaired. However, in the event this is taken up elsewhere and for completeness, I find that even if Syscon has lost its right of rejection, the first crane and three 30-ton cranes cannot be repaired and

the plaintiffs cannot claim a right of rectification. The burden is on the plaintiffs to show that these cranes can be rectified and the costs thereof, and they have failed to discharge this burden.

59 Er Dr Tan Yoke Lin ("Dr Tan") and Er Lee Keh Sai ("Er Lee") were heard on this issue. Dr Tan, Syscon's expert, is a failure analyst with a background in electrical engineering, but whose experience includes consulting and contracting work for the mechanical and electrical services in construction. Er Lee, the plaintiffs' expert, is an electrical engineer who runs his own practice.

60 In general, I found that Er Lee's practical experience was not entirely on all fours with the subject matter. As an electrical engineer, he could not give evidence on mechanical aspects of repair, such as torque and mechanical power. There were also many aspects which he did not check and many aspects of his proposed repairs were based on assumptions. For example, when asked whether he knew if the new motor would be compatible with the gear box coupled to the motor shaft, Er Lee testified:

> I couldn't---I wouldn't say that I know that as a matter of fact. But as I said---state previously, any manufacturer should have done this as a matter of good engineering practice. [note: 34]

Er Lee's opinions on repair thus included aspects of compatibility of parts which he had little or no expertise in, and for which he had to rely on assumptions as to manufacture and the manufacturer's reliability as to adopting good engineering practices. This was clearly something Power King had not done in the first place. Er Lee was asked to make a specific assessment on electrical wiring and motors, and his expertise was accordingly limited to this area. This became very clear when he was pressed on the issue:

> Q: Now, the recommendation you made here for the long travel and cross travel motor does not, in any way, show or satisfied [*sic*] the defendant that it would be compatible with the gear system. Am I right?
>
> A: Here, *I only select the---the motor*.
>
> Q: Right. Don't you think it's important for the motor to be compatible with the gear system---
>
> A: Should always, yes.
>
> Q: ---because one drives the other. Am I right?
>
> A: Yes.
>
> Q: So without undertaking of study of compatibility of the gear system and the motor, how certain are you that this new motor would not fit as it---as it has happened where the first set of cross and travel motor [*sic*] were installed?
>
> A: *I have not looked into the gearing problem*. *I would assume* that the original manufacturer must have done their calculation and select the gear that is compatible to achieve the travelling speed.
>
> Q: Mr Lee, we cannot rely on assumptions. If the defendant has to accept the replacement motor, the replacement motor has to be compatible to ensure that they do not suffer the same problem as had happened previously. Do you agree with me on that point?

…

A: In general, yes, I would agree, your Honour, that the---the selection of the motor should be compatible with the gearing, yah. *But my duty during this investigation work was to select the motor.* I have not looked into the detailed design of the gearing system whatsoever. And I *assume the manufacturer must have done their* [*sic*] *work*. [note: 35]

[emphasis added]

In this context, Er Lee's assurances that the electrical engineering work was compatible [note: 36] were not of much use. I note that an expert must provide *his own opinion within his area of expertise* on compatibility, instead of abrogating this responsibility to the "best practices" of the manufacturer, in order to fulfil his duty to assist the court: see O 40A r 2(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed).

61 By contrast, Dr Tan had some experience and understanding of the mechanical engineering issues involved, although he did not have expertise in assessing the compatibility of gears and motors, or the strength and hardness of the metal required for the driver gear and the large gear. Unlike Er Lee, Dr Tan was able to provide a description of the motor which would be used. [note: 37] Dr Tan was also able to explain the relationship between the mechanical power available at the shaft of the motor and his calculations for long and cross travel mechanisms, a point which Er Lee was not able to shed much light on. Er Lee had focused on the amount of power which would be required to design the load. As Dr Tan pointed out, this was not a valid calculation: [note: 38]

In fact, when we design, we don't design based on load because you do not know what is the load going to be, like the example that they gave that a car is travelling along a horizontal plane, you are using so much kilowatt. But then if you are going up the slope, it's er, using even more kilowatt. But when you buy a car, you don't know how many or what kind of road you're going to travel, so you---you have to base---design based on the maximum power.

…

… But you have to bear in mind that every time you start a motor, it will go through that dynamic stage and the torque that is imposed on the gear tooth can be even greater than the load torque, the rated load torque, yes.

The notion of design was within Dr Tan's expertise as design review falls within his consultancy practice. He was thus the more reliable expert.

62 Even though Dr Tan was also not an expert on the compatibility of the motor and gears and also testified that this was a matter for the manufacturer to source for, [note: 39] this did not help the plaintiffs as they are the ones who bear the burden of proving that the defects are rectifiable. The fact that neither expert was able to provide a feasible means of testing the compatibility of the motor and gears gave the plaintiffs the uphill task of proving that their proposed repairs would work. This was a task which, unfortunately, the plaintiffs did not perform.

63 The proceedings went into a second tranche as Er Lee was not prepared with estimated costs of repair and specific design calculations when the matter first came to trial on 25 August 2011. It was therefore necessary for me to order a supplementary report, with the parties' expert witnesses again appearing before me on 5 March 2012. The expectation was that Er Lee would have done some

recalculations and come up with a new list of parts with repair costs which would rectify the difficulties which he had conceded in the first tranche of cross-examination on 25 August 2011. I was not satisfied that these difficulties had been surmounted.

64 On the stand, Er Lee was repeatedly stymied by questions of how the suggestions in his supplementary report would supplement the deficiencies which had been pointed out and conceded during the first tranche. His answers were equivocal and uncertain:

> Q: Can you tell us what exactly is new as between page 228 [Er Lee's supplementary report] and page 9 [Er Lee's original report] in respect of the hoist motor in line eight?
>
> A: It *could be* the voltage. It *could be* the frequency. [note: 40]
>
> …
>
> Q: So tell us what exactly is new in term [*sic*] of the weight---with---voltage and speed?
>
> A: What is new *maybe* offhand is the---from the 60 hertz cycle op---cycle operation changed to 50 cycles per second operation---
>
> …
>
> Q: … in term [*sic*] of the hoist motor at line eight and the one you recommend at page 228, is there a material difference? No right?
>
> A: No, absolutely, in terms of physical size, in term of speed, function, it's---it's no difference but the motor itself is different. [note: 41]

Given that a second tranche had been ordered to provide further clarifications on and changes to Er Lee's initial and deficient report, I found it most unsatisfactory that Er Lee could not explain how the recommendations in his supplementary report were different or how they could solve the problems which arose through the original defects in the cranes.

65 Er Lee's recommendation also provided for a slower speed of the hoist motors (2.4 metres per minute instead of 3 metres per minute) and changed the two-motor system to a one-motor system. Er Lee conceded that this would fall short of what was provided for in the contract, [note: 42] but other than asserting that this was a "safer" system, [note: 43] Er Lee could not provide an explanation of how these modifications could still perform to specifications. In fact, Er Lee's calculations were incomplete in parts. When this was pointed out to him, Er Lee skirted the question with a general statement:

> Q: Now, would you agree with me whether this---whether we have one or two motor and whether it's safe for use would depend on how you calculate the horizontal load as stated in section 6.6.3.3 of "Singapore Standard 497:2002".
>
> A: Why, yes---it ha---it has outlined two---er, two methods---
>
> Q: Right.
>
> A: ---two approach.

Q: So no such calculation has been provided, am I right, to---to support your statement that it's safer to have one motor instead of two motor [*sic*]?

A: To the best of my professional judgment, one motor would always be safer, in my opinion. [note: 44]

Er Lee appeared to be presenting a proposed plan of a system which might run, but without consideration of durability or efficiency and without the full benefit of all calculations and the mechanical aspects of his proposed repairs. In light of these deficiencies, I am entirely unconvinced that the cranes can be repaired.

66 Even if I were convinced that Er Lee's repairs can work and that the plaintiffs accordingly have a right of rectification, the plaintiffs have failed to show the amount of money which would be required for rectification. Er Lee's supplementary report included the price of parts and testing and commissioning, but not the cost of consultation and design. The only labour costs calculated were for the dismantling, removal and reinstallation of the motors, but no labour costs were factored in for electrical re-wiring or installation of motor control panels, both of which were aspects of the proposed rectification. Replacement of the gears and other mechanical parts, along with the attendant costs, was also conspicuously absent from Er Lee's report, notwithstanding that the joint inspection report revealed that the gears were completely worn down and the report and testimony of Ms Manel revealed that the fracture resistance of the gears was below par. I am not able to accept such incomplete calculations of the cost of rectification.

67 I therefore prefer the evidence of Dr Tan over that of Er Lee. I find that the plaintiffs have failed to prove on a balance of probabilities that the defects in the first crane and three 30-ton cranes are rectifiable and have also failed to show what amount of money would be required to rectify these defects if they are indeed rectifiable. I therefore answer the second question set out at [26] above in the negative.

Misrepresentation

68 Syscon alleges that it is entitled to rescind the Agreements and recover the $100,800.00 it had paid as it had been induced to enter into the Agreements by the representations that the cranes manufactured by Power King China and imported by Power King achieved "the highest standards" [note: 45] and were "good quality and reliable cranes". [note: 46] These representations, Syscon further claims, represented a false and misleading view of the quality of the cranes supplied by Power King, inducing it to enter into the Agreements and thereby incur losses. If Syscon is successful in its claim, section 2(2) of the Misrepresentation Act would entitle it to rescind the Agreements or claim damages in lieu of rescission.

69 I note at the outset that it is unclear to me which statements Syscon relies on in its pleaded case, and the elements of misrepresentation were also not properly pleaded. During cross-examination and in its submissions, Syscon referred first to the letter dated 9 April 2008 which accompanied the quote for the first crane, then to a letter dated 17 April 2008, then to the brochure which was shown by Mr Wong to Mr Sultan and Mr Ho, and later to statements which Mr Wong might have made to Mr Ho.

70 To constitute a misrepresentation, the statement must be an unambiguous statement of existing fact or law. As such, "mere puffs", or vague statements of opinion, cannot be misrepresentations: see *Bisset v Wilkinson* [1927] AC 177, affirmed locally in *Bestland Development Pte Ltd v Thasin Development Pte Ltd* [1991] SGHC 27.

71 The relevant statements in the first letter, dated 9 April 2008, read:

> We have made various breakthrough [*sic*] and achievements to improve our products and have not stopped ourselves from achieving the highest standards to suit our customer's requirement [*sic*]. [note: 47]

72 The relevant statements in the letter of 17 April 2008 read:

> We wish to assure you that our products are of the highest quality and meet the necessary international standard. *As such* we shall undertake the following works to satisfy good self [*sic*]. [note: 48]
>
> [emphasis added]

This letter went on to detail measures such as engaging a local PE to endorse the crane structural drawings and conduct the load-tests, obtaining the MOM certificates, as well as providing for the option of rescission in the event that the cranes were not approved by the MOM.

73 Neither of these statements were unambiguous statements of fact. The letter dated 9 April 2008 contained generic statements about Power King and its business, but made no specific representations about the quality of the cranes themselves. The letter dated 9 April 2008 was attached with a quote containing exact specifications for the first crane. It was from this quote that Syscon would be able to get its information about the crane to be supplied, and not from the cover letter which accompanied the quote.

74 The letter dated 17 April 2008 contained statements referring to the quality and standard of the cranes. However, taken in its context, these statements were referable to the steps which Power King was going to take to ensure the compliance of its cranes with international standards, hence the addition of the words "[a]s such". This was not a blanket statement or guarantee of quality, but an assurance that the steps enumerated in the letter dated 17 April 2008 would be carried out. When cross-examined about this statement, Mr Wong confirmed:

> What I mean is, we will achieve the best---the best---we will do the best---best crane for you lah. And the other thing---the---the next one is to meet necessary international standard as what---what I mentioned earlier on, erm, I've checked with MOM all this, the standards, the requirement, er, to import into Singapore. That's the standards I'm referring to. [note: 49]

While I did not find Mr Wong a reliable witness on the whole, I did find that this particular statement made sense and was a natural reading of the letter dated 17 April 2008 when read in its entirety.

75 The brochure shown to Syscon at its first meeting with Power King contained the following statements:

> Reliable quality Assurance
>
> Power King persists in striving for survival with quality and promoting development through innovation. We adhere strictly to national standards in establishing quality management and building quality assurance model.
>
> Well equipped testing facilities strong in development

> Power King adheres to the principle of "Superior quality product governs the Life of the Enterprise" when competing in the domestic market. It insists on using national standards to organise production and promote the development of new products … [note: 50]

76 This was a brochure produced by the manufacturer, Power King China, based in Hubei, China, with no editing for customers in Singapore. References to quality assurance and compliance with "national standards" clearly referred to *Chinese* national standards, not Singapore or international ones. Taken together with the letter dated 17 April 2008, I find that the effect of the brochure would have been to alert Syscon to the fact that the cranes were subject to *Chinese* national controls and standards. This was perhaps why, when Syscon's Ms Ang drafted the Agreements, she included a term for all the cranes to be tested by Power King before shipment for compliance "with international standards" (see [12(c)] above).

77 Syscon was also unable to point to any particular statement made which could be an oral misrepresentation. More importantly, the conversations that took place were between Mr Wong, Mr Sultan and Mr Ho. Ms Ang, Syscon's only witness on this score, admitted that she did not know what had been said to Mr Ho, or even how many times he, Mr Sultan and Mr Wong had met. [note: 51] It is fatal to Syscon's case that neither Mr Sultan nor Mr Ho were called as witnesses to testify to any oral representations made at these meetings. Syscon has not discharged its burden of proof with evidence of an oral misrepresentation.

78 Even if I were to accept that some misrepresentation had been made (and I do note that the letter dated 17 April 2008 made reference to compliance with "international standards", which the cranes clearly did not comply with), I find that Syscon had not relied on it. Syscon has not led any evidence as to how the statements were understood and acted upon by it. It is again fatal to Syscon's case that the "controlling mind" [note: 52] of the company, Mr Ho, was not called as a witness. Syscon's only witness of fact, Ms Ang, could not have given evidence on this, as the essential terms had already been made by the time she entered the picture and she was simply tasked with drafting the Agreements. [note: 53]

79 More importantly, all of the written statements pertained to the first crane, which is not the subject of this suit. By the time the Agreements were entered into, on 9 and 22 September 2008 respectively, Syscon would have had at least one month (since 6 August 2008 when the first crane was installed) to test the first crane; any representation as to the first crane was spent by the time the Agreements were entered into and Syscon would have been relying on its assessment of the first crane's performance.

80 I find that Syscon's claim of misrepresentation under section 2 of the Misrepresentation Act must fail as it has not proved its case.

Conclusion

81 I find in favour of Syscon on its counterclaim and dismiss the plaintiffs' claim. Syscon is entitled to a return of the $100,800.00 paid to the plaintiffs, and the plaintiffs must remove the cranes from Syscon's factory site.

82 It remains for me to note that Syscon was very moderate in its counterclaim, perhaps because this was a "friendly deal" [note: 54] as a result of the friendship between Mr Ho's son and Mr Wong. Syscon could have, but did not ask for more extensive damages, including loss of profits for the

periods of breakdown, the time lost in sourcing for alternative cranes, the additional cost of equivalent cranes, if any, and the plaintiffs' refusal to dismantle and remove the cranes when Syscon first purported to reject the cranes on 6 July 2009.

83 I will hear the parties on interest and costs.

[note: 1] Notes of Evidence, 24 Aug 2011, p 8.

[note: 2] Notes of Evidence, 24 Aug 2011, p 9.

[note: 3] Notes of Evidence, 24 Aug 2011, p 8.

[note: 4] Defendant's bundle of documents, p9.

[note: 5] Defence and Counterclaim (Amendment No. 2), [6].

[note: 6] Defence and Counterclaim (Amendment No. 2), [4], [6].

[note: 7] Affidavit of Evidence-in-Chief of Wong Mai Jun, Eugene, [7].

[note: 8] Plaintiffs' Closing Reply Submissions, 9 April 2012, [21].

[note: 9] Bundle of affidavits (Vol 1), p 53.

[note: 10] Bundle of affidavits (Vol 1), p 54.

[note: 11] Bundle of affidavits (Vol 1), p 55.

[note: 12] Bundle of affidavits (Vol 1), p 76.

[note: 13] Defendant's bundle of documents, p 22.

[note: 14] Defendant's bundle of documents, p 10.

[note: 15] Defendant's bundle of documents, p 12.

[note: 16] Bundle of Affidavits (Vol 1), pp 61-62.

[note: 17] Bundle of Affidavits (Vol 1), p 64.

[note: 18] Bundle of Affidavits (Vol 1), p 72.

[note: 19] Bundle of Affidavits (Vol 1), pp 73 and 79.

[note: 20] Defendants' bundle of documents, p 35.

[note: 21] Notes of Evidence, 26 Aug 2011, p 49.

[note: 22] Defendants' bundle of documents, p 13.

[note: 23] Bundle of Affidavits (Vol 1), p 276.

[note: 24] Notes of Evidence, 26 Aug 2011, p 48.

[note: 25] Notes of Evidence, 24 Aug 2011, p 14.

[note: 26] Notes of Evidence, 24 Aug 2011, p 15.

[note: 27] Notes of Evidence, 24 Aug 2011, p 17.

[note: 28] 1st Affidavit of Dr Tan Yoke Lin, 4 Aug 2011, p 15.

[note: 29] Notes of Evidence, 26 August 2011, pp 52-53.

[note: 30] Ntoes of Evidence, 26 August 2011, pp 52-53.

[note: 31] Notes of Evidence, 26 Aug 2011, p 9.

[note: 32] Notes of Evidence, 26 Aug 2011, pp 11-12.

[note: 33] Notes of Evidence, 25 Aug 2011, p 22.

[note: 34] Notes of Evidence, 5 Mar 2012, p 19.

[note: 35] Notes of Evidence, 5 Mar 2012, p 44.

[note: 36] Notes of Evidence, 5 Mar 2012, p 46.

[note: 37] Notes of Evidence, 5 Mar 2012, p 88.

[note: 38] Notes of Evidence, 5 Mar 2012, p 78.

[note: 39] Notes of Evidence, 5 Mar 2012, p 91.

[note: 40] Notes of Evidence, 5 Mar 2012, p 28.

[note: 41] Notes of Evidence, 5 Mar 2012, p 30.

[note: 42] Notes of Evidence, 5 Mar 2012, p 42.

[note: 43] Notes of Evidence, 5 Mar 2012, p 48.

[note: 44] Notes of Evidence, 5 Mar 2012, p 51.

[note: 45] Defendant's closing submissions, 11 April 2012, [25].

[note: 46] Defendant's closing submissions, 11 April 2012, [27].

[note: 47] Bundle of Affidavits (Vol 1), p 28.

[note: 48] Bundle of Affidavits (Vol 1), p 276.

[note: 49] Notes of Evidence, 24 August 2011, p 32.

[note: 50] Bundle of Affidavits (Vol 2), pp 256-257

[note: 51] Notes of Evidence, 26 August 2011, pp 27-28, 35.

[note: 52] Notes of Evidence, 26 August 2011, p 27.

[note: 53] Notes of Evidence, 26 August 2011, p 37.

[note: 54] Notes of Evidence, 26 August 2011, p 48.