

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 109

Suit No 286 of 2020

Between

- (1) Nalli Kuppuswami Chetti and
Nalli Ramanathan trading as
Nalli Chinnasami Chetty
- (2) Nalli Chinnasami Chetty Pte
Ltd

... Plaintiffs

And

- (1) Nalli Pte Ltd
- (2) Dasarathan Madhavan
- (3) Alluri Mahalakshmi Madhavan

... Defendants

JUDGMENT

[Contract — Contractual terms — Express terms — Interpretation of deeds of settlement]

[Limitation of Actions — Particular causes of action — Contract — When cause of action accrued]

[Equity — Defences — Laches]

[Equity — Defences — Acquiescence]

[Abuse of Process — Collateral purpose]

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**Nalli Kuppuswami Chetti and Nalli Ramanathan (trading as
Nalli Chinnasami Chetty) and another**

v

Nalli Pte Ltd and others

[2022] SGHC 109

General Division of the High Court — Suit No 286 of 2020

Andre Maniam J

23–26, 30 November, 1–3, 10 December 2021, 21 February 2022

17 May 2022

Judgment reserved.

Andre Maniam J:

Introduction

1 This is a case about sarees (also spelt “saris”) – draped women’s garments from the Indian subcontinent. One might say, this is a case about “Nalli” sarees.

2 But what are “Nalli” sarees? Those made by Nalli Chinnasami Chetty (“NCC”, the first plaintiff) and sold in Singapore by Nalli Chinnasami Chetty Pte Ltd (“NCCPL”, the second plaintiff) at NCCPL’s shop at 16 Buffalo Road? Or those made by Nalli Pte Ltd (“NPL”, the first defendant) and sold at its shops at 2C Buffalo Road and 10 Buffalo Road?

3 Of the three businesses (NCC, NCCPL and NPL), the first to come into existence was NCC – founded by Nalli Chinnasami Chetty (“Mr Nalli”) in

1928.¹ NCC’s flagship shop has operated from the same premises in Tamil Nadu since 1935.

4 The two partners of NCC are now Mr Nalli’s grandson, Nalli Kuppuswami Chetty (“NKC”), and NKC’s son, Nalli Ramanathan (“NR”).² NKC and NR are descendants of Nalli Narayanaswamy Chetty (“Mr Nara”, Mr Nalli’s son by his first wife).³

5 NKC and NR are also directors and shareholders of NCCPL, which was incorporated in 1992.⁴

6 NPL was incorporated in 1990.⁵ Its directors and shareholders are Dasarathan Madhavan (“Mr Madhavan”, the second defendant) and Alluri Mahalakshmi Madhavan (“Mrs Madhavan”, the third defendant). Mrs Madhavan is Mr Nalli’s grand-daughter: the daughter of Nalli Duraiswami (“ND”, Mr Nalli’s son by his second wife).⁶

7 This is the second suit in Singapore involving these businesses. The first suit, High Court Suit No 1580 of 1992 (“Suit 1580”) was settled by way of two

¹ Affidavit of Evidence-in-Chief of Nalli Ramanathan (“NR’s AEIC”) at para 9 (Bundle of Affidavits of Evidence-in-Chief (“BAEIC”) at page 7).

² Affidavit of Evidence-in-Chief of Nalli Kuppuswami Chetti (“NKC’s AEIC”) at para 1 (BAEIC at page 76).

³ NKC’s AEIC at para 16 (BAEIC at page 80); Agreed Bundle of Documents (Volume 2) (“ABOD2”) at page 92.

⁴ NR’s AEIC at para 4 (BAEIC at page 5); Agreed Bundle of Documents (Volume 1) (“ABOD1”) at pages 549 – 552.

⁵ 1ABOD at pages 545 – 548.

⁶ Affidavit of Evidence-in-Chief of Alluri Mahalakshmi Madhavan (“Mrs Madhavan’s AEIC”) at para 5 (BAEIC at page 111); 2ABOD at page 92.

deeds of settlement dated 28 February 1997: the first deed (“DS1”)⁷ between NPL and NCC; and the second deed (“DS2”)⁸ between NPL and NCCPL (then named Chinnasami Chetty Pte Ltd). DS1 and DS2 (collectively, the “Deeds of Settlement”) contained various terms governing the respective businesses’ uses of “Nalli” in Singapore.

8 Could NPL, NCCPL, and NCC use “Nalli” in their businesses in Singapore, as they have done? Or have they run afoul of the Deeds of Settlement in some way?

9 The plaintiffs assert that NPL has breached the Deeds of Settlement by using “Nalli” in the manner that it has.⁹ The plaintiffs also claim for passing off,¹⁰ service or trade mark infringement,¹¹ and malicious or injurious falsehood.¹²

10 The defendants deny the plaintiffs’ claims. In particular, NPL denies having breached the Deeds of Settlement;¹³ it also says that it has various defences: limitation, acquiescence and/or laches, and that the suit is an abuse of process.¹⁴ The defendants counterclaim for alleged breaches of the Deeds of

⁷ ABOD1 at pages 413 – 418.

⁸ ABOD1 at pages 419 – 424.

⁹ Statement of Claim (Amendment No 3) (“SOC”) at paras 11 – 25 (Revised Bundle of Pleadings (“RBP”) at pages 8 – 14.

¹⁰ SOC at paras 28 – 35 (RBP at pages 17 – 21).

¹¹ SOC at paras 36 – 43 (RBP at pages 21 – 26).

¹² SOC at paras 26 – 27 (RBP at pages 14 – 17).

¹³ Defence and Counterclaim (Amendment No 1) (“DCC”) at paras 12 – 25 (RBP at pages 72 – 86).

¹⁴ DCC at para 22 (RBP at pages 84 – 86).

Settlement by the plaintiffs,¹⁵ and also for malicious falsehood,¹⁶ libel and/or slander,¹⁷ and groundless threats of trade mark infringement.¹⁸

11 This judgment deals with the plaintiffs’ claim that NPL breached the Deeds of Settlement. I will address the plaintiffs’ other claims, and the defendants’ counterclaims, separately.

Background

12 The two Deeds of Settlement lie at the heart of this dispute. I will first briefly recount the history of the businesses and Suit 1580, that led to the Deeds of Settlement.

History of the businesses

13 Mr Nalli set up NCC in 1928, and he gave it to his son, Mr Nara, in 1948.¹⁹ In the same year, Mr Nalli gave another business, Nalli Chinnaswami Chetty & Sons, to another son, Nalli Rangaswami Chetty (“Mr Ranga”).²⁰ Both Mr Nara and Mr Ranga were Mr Nalli’s sons from his first wife.²¹ Thereafter, Mr Nalli started another business, Nalli Chinnasami Chetty & Company.²²

¹⁵ DCC at paras 43 – 54 (RBP at pages 109 – 112).

¹⁶ DCC at paras 55 – 60 (RBP at pages 112 – 117).

¹⁷ DCC at paras 61 – 63 (RBP at pages 117 – 118).

¹⁸ DCC at paras 64 – 70 (RBP at pages 118 – 119).


¹⁹ ABOD1 at pages 393 – 401.

²⁰ ABOD1 at pages 402 – 412.

²¹ ABOD 2 at page 92.

²² Affidavit of Evidence-in-Chief of Nalli Kupposwami Chetti (“NKC’s AEIC”) at para 20 (BAEIC at page 81); Affidavit of Evidence-in-Chief of Dasarathan Madhavan (Mr Madhavan’s AEIC) at para 19 (BAEIC at page 229); Mrs Madhavan’s AEIC at para 19 (BAEIC at page 118).

Mr Nalli did not give any of these businesses (or any other businesses) to his children from his second wife, such as his son ND (Mrs Madhavan’s father).

14 NCC uses the stylised “Nalli” mark: .


15 In Singapore, NCC has three trade mark registrations for the stylised “Nalli” mark:

(a) Trade Mark No T1104869A,²³ registered in April 2011 in Class 35 for “[r]etail services relating to saris and clothing” and “retailing of saris and clothing via the Internet”;

(b) Trade Mark No T9802255Z,²⁴ registered in March 1998 in Class 24 for “sarees”; and

(c) Trade Mark No T9802256H,²⁵ registered in March 1998 in Class 25 for “articles of clothing”.

16 These marks were registered pursuant to the Deeds of Settlement.²⁶

17 The plaintiffs have suggested various dates from when they say NCC started using the  mark:²⁷

(a) from NCC’s inception in 1928;

²³ ABOD1 at pages 449 – 450.

²⁴ ABOD1 at pages 437 – 438.

²⁵ ABOD1 at pages 440 – 442.

²⁶ ABOD1 at page 415 (clause 1 of DS1) and 421 (clause 6 of DS2).

²⁷ Plaintiffs’ Written Closing Submissions (“PCS”) at paras 26 – 44.

- (b) from 1935 per the User Details particulars of NCC's trade mark registrations in India;²⁸
- (c) from 1948 when the NCC business (and with it, the mark) was given by Mr Nalli to Mr Nara;²⁹
- (d) from 1951, from which time the mark was on the façade of NCC's flagship shop in Tamil Nadu;³⁰
- (e) from the 1960s as shown in a photograph of saree boxes (Exhibit P1); or
- (f) from 1987 (when Indian Trade mark Application No 472754 was made in class 24).³¹

18 I accept NKC's evidence that the stylised *Nalli* mark was used by NCC at least since 1951 on the façade of NCC's flagship shop.³² NCC started using that mark for some decades before NPL was incorporated in 1990, and it is not necessary for me to determine exactly when NCC's use of the mark started.

19 In or around 1980, the business Nalli's Silks Sari Centre was set up in Mumbai, and it is currently being managed by ND's son, Mr Sambbasivam

²⁸ ABOD1 at pages 453 and 455.

²⁹ ABOD 1 at pages 411 and 412.

³⁰ ABOD1 at page 180.

³¹ ABOD1 at page 453.

³² Notes of Evidence ("NE"), 25 November 2021, page 30, lines 16 – 29.

(Mrs Madhavan’s brother).³³ In 1993, Mr Sambbasivam registered in Indian Trade Mark Application No 606409 the composite mark shown in Figure 1 below.³⁴



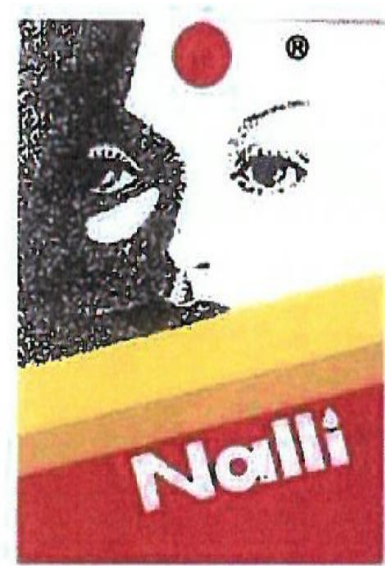


Figure 2: NPL's WFM

21 NPL has various trade mark registrations for its WFM:

(a) Trade Mark No T9802254A³⁶ in Class 24 (registered in 1998) and Class 14 (registered in 2006);

(b) Trade Mark No T1111207A³⁷ in Classes 35, 40 and 42 (registered in 2011).

22 NPL was incorporated in Singapore in 1990; it was initially named “Nalli’s Pte Ltd”, and it too used the WFM with “Nalli’s” rather than “Nalli”.³⁸ In 1991, NPL changed its name from “Nalli’s Pte Ltd” to “Nalli Pte Ltd”.³⁹ Its shop was then at 27 Campbell Lane. With the name change, the WFM used by

³⁶ ABOD2 at pages 97 – 102.

³⁷ ABOD2 at pages 103 – 108.

³⁸ ABOD3 at page 311.

³⁹ Mrs Madhavan’s AEIC at para 11 (BAEIC at page 225).

NPL became its present one, incorporating “Nalli” (not “Nalli’s”), with the “i” in the form of a candle (see [20] above).

23 In July 1992, NCCPL was incorporated, with premises at 50 Buffalo Road. That prompted NPL to commence Suit 1580 the very next month (August 1992), and it obtained an interim injunction restraining NCCPL from passing off its business and/or goods as the business and/or goods of NPL, in particular, by the use of the names “Nalli” or “Nalli Chinnasami”.⁴⁰

24 On NCCPL’s application to discharge the injunction, the injunction was varied to permit NCCPL to continue doing business in Singapore under the name “Chinnasami Chetty Pte Ltd”. It could also say that it was the sole agent or distributor of Nalli Chinnasami Chetty of Panagal Park, Madras.⁴¹ NCCPL thus changed its name temporarily to Chinnasami Chetty Pte Ltd.⁴²

25 NPL alleges that there was an oral agreement between ND and NKC such that whichever member of the Nalli family first started business in a new territory outside India would have the exclusive right to use the name “Nalli” within that territory.⁴³ NKC denies the existence of any such oral agreement.⁴⁴

26 I do not find it necessary to determine whether the alleged oral agreement existed. The parties settled Suit 1580 by entering into the Deeds of Settlement, and what is now material is the effect of those deeds.

⁴⁰ ABOD1 at pages 93 – 96.

⁴¹ ABOD1 at pages 366 – 368.

⁴² NR’s AEIC at para 32 (BAEIC at page 16).

⁴³ Defendants’ Written Closing Submissions (“DCS”) at para 22.

⁴⁴ PCS at para 59.

The Deeds of Settlement

The first deed of settlement (DS1)

27 DS1⁴⁵ is between NPL (as “the 1st Party”) and NCC (as “the 2nd Party”). The deed recites that NPL had applied to register the word “NALLI” as a trade mark under application number 4224/92, NCC had applied to register the stylised “Nalli” mark under application number 5721/92, and the Registry of Trade Marks had objected to both applications.


28 The deed then states that in consideration of NPL amending its trade mark application and NCC consenting to NPL’s trade mark application, the parties agree on the following terms:

1. The 2nd Party [NCC] shall use and register the word mark “Nalli” in Singapore in the stylised form only which shall be in the form as shown in Schedule A of this Deed

[ie, ].

2. The 1st Party [NPL] shall apply to the Registry of Trade Marks (RTM) to amend their application number 4224/92 in respect of the “Nalli” word mark to include the device of a woman’s head. The 1st Party’s mark after the incorporation of the said device shall be in the form as shown in Schedule B of



this Deed. [ie, ]. The 1st Party shall register and use the mark “Nalli” on their products and packaging (including carrier bags), in Singapore only in the form shown in Schedule B.

3. The 2nd Party shall unreservedly and unconditionally consent to the 1st Party’s amendment and registration of their trade mark application as mentioned in Clause 2 of this Deed. Likewise, the 1st Party, shall, if required by the RTM,

⁴⁵ ABOD1 at pages 413 – 418.

unreservedly and unconditionally consent to the 2nd party's registration of the mark "Nalli" as shown in Schedule A and in their trade mark application number 5721/92 pending at the RTM.

4. In the event that the 1st Party's application to amend their trade mark pursuant to Clause 2 of this Deed is rejected or disallowed by the RTM, the 1st Party and 2nd Party shall unreservedly and unconditionally withdraw their respective trade mark applications and file fresh applications. In the event that the fresh applications are rejected, both parties shall file further fresh applications simultaneously after a sufficient period of concurrent usage by the parties has elapsed. The trade marks in the said fresh applications shall assume the respective forms as shown in Schedule A and B of this Deed and the 1st and 2nd Party shall submit whatever consents required by the RTM to facilitate the registration of each party's new trade mark application.

5. The parties shall bear their own costs of the proceedings, of this settlement and any other matter before the RTM arising out of this settlement.

The second deed of settlement (DS2)

29 DS2⁴⁶ is between NPL (as "the 1st Party") and NCCPL (as "the 2nd Party"). The deed recites that NPL had commenced Suit 1580 against NCCPL, and the parties wished to compromise the suit.

30 The deed then states that in consideration of NPL discontinuing the Suit, and NCCPL agreeing to compromise it, the parties agreed on the following terms:

1. Both the 1st Party [NPL] and the 2nd Party [NCCPL] shall be entitled to use the name "Nalli" as their trade mark and trade/business name in Singapore.

⁴⁶ ABOD1 at pages 419 – 424.

2. The 2nd Party [NCCPL] shall not represent themselves as the sole and only “Nalli” in Singapore.

3. The 2nd Party shall identify and advertise themselves as “Nalli Chinnasami Chetty”, and not merely as “Nalli” in Singapore.

4. The 2nd Party, subject to the approval of the Singapore Registrar of Companies, are allowed to change their business name back to Nalli Chinnasami Chetty Pte Ltd which was their original name at incorporation and the commencement of the proceedings.

5. The 2nd Party are entitled to represent themselves as the only branch/office presence in Singapore of Nalli Chinnasami Chetty of Panagal Park, Madras.

6. The 2nd Party shall use in Singapore the word mark NALLI in the stylised form only which shall be the form as shown in Schedule A of this Deed, the said trade mark being proposed to be registered in Singapore by Nalli Kuppuswami Chetty, Nalli K. Ramanathan and Nalli Viswanath trading as Nalli Chinnasami Chetty of 9 Nageswara Rao Road, T. Nagar, Madras 600017, Tamil Nadu, India.

7. The 1st Party shall use the mark “NALLI” on their products and packaging (including carrier bags) in Singapore



only in the form shown in Schedule B [ie,].

8. The parties shall bear their own costs of the proceedings.

Trade marks with the word “Nalli”

31 Clause 2 of DS1 says that NPL shall amend its trade mark registration of “NALLI” as a word mark to the WFM, and that it “shall” register and use the

mark “NALLI” on its products and packaging in Singapore “only” in the form of the WFM. Clause 7 of DS2 likewise says that NPL “shall” use the mark “NALLI” on its products and packaging in Singapore “only” in the form of the WFM.

32 NPL argues that in these clauses (and also in clause 1 of DS1 and clause 6 of DS2, which pertain to NCC), “shall” means “may”, in that NPL was not obliged to register and use the word “Nalli” in their business name or mark.⁴⁷ If, for example, NPL chose to use a non-Nalli business name (*eg*, if it renamed itself “Madhavan Pte Ltd”), it would not thereby breach the Deeds of Settlement. NPL would likewise not breach the Deeds of Settlement if it chose to use a non-Nalli mark, like “Madhavan”. NPL would also not breach the Deeds of Settlement if it decided to cease business and not use any business name or mark at all.

33 It is true that NPL would not breach the Deeds of Settlement if it chose to use a non-Nalli business name or mark, or no business name or mark at all. But NPL extrapolates from that, that it could therefore use Nalli in its business name or mark in any way it wished. In other words, the Deeds of Settlement did not restrict NPL at all in its use of “Nalli”. The argument goes: “shall” means “may”, so NPL *may* do what the Deeds of Settlement stipulate it *shall* do, and it *may* also use “Nalli” in any other manner it wishes, notwithstanding the mandatory language used in clause 2 of DS1 and clause 7 of DS2. This is incorrect.

⁴⁷ DCS at paras 83 – 89; NE, 21 February 2022 (Oral Submissions), page 101, line 30 – page 104, line 24.

34 The Deeds of Settlement resolved the Suit, and more broadly the dispute between the parties as to the use of “Nalli” in their business names or marks. It would completely undermine the Deeds of Settlement to construe them to mean that the parties *may* use “Nalli” in the manner provided for in the Deeds of Settlement (even though the Deeds of Settlement say they “shall” do so); and that they *may* also use “Nalli” in any other manner they wish.

35 Taken to the extreme, the flaw in the argument is obvious. It would mean that:

- (a) both NPL and NCC could register and use “NALLI” as a word mark;
- (b) NPL could register and use the WFM, and NCC could also do so; and
- (c) NCC could register and use the stylised “Nalli” mark, and NPL could also do so.

36 It is clear from the terms of the Deeds of Settlement that the three propositions above are all wrong. Instead, a proper interpretation of the terms of the Deeds of Settlement is as follows:

- (a) *Neither* NPL *nor* NCC could register and use “NALLI” as a word mark – that was the subject of NPL’s pending application number 4224/92, and NPL had agreed to either amend the “NALLI” word mark to the WFM in its application (clause 2 of DS1) or to withdraw and refile its application as an application for the WFM (clause 4 of DS1). As for NCC and NCCPL, NCC “shall” register “Nalli” *only* in the form of the stylised “Nalli” mark (clause 1 of DS1),

and likewise, NCCPL “shall” use “Nalli” *only* as a mark in that form (clause 6 of DS2).

(b) Accordingly, NPL could register and use the WFM, but NCC could *not* also do so – instead NCC “shall” register “Nalli” *only* in the form of the stylised “Nalli” mark, and NCCPL “shall” use “Nalli” as a mark *only* in that form.

(c) Likewise, NCC could register and use the stylised “Nalli” mark, but NPL could *not* also do so – instead NPL “shall” register “Nalli” *only* as the WFM.

37 Indeed, NPL itself recognises that “[i]t defeats logic if both parties use the word “Nalli” in the same form as their trade mark and only “Nalli” as their trade names in Singapore.”⁴⁸ I agree with NPL that the Deeds of Settlement should not be interpreted in that manner.

38 The Deeds of Settlement were about the parties’ use of “Nalli”. The parties agreed to co-exist in Singapore on the terms of the Deeds of Settlement, which prescribed how they could each use “Nalli” in their marks. Insofar as the parties abided by the Deeds of Settlement, they would not be in breach of contract; they would also not be liable for trade mark infringement or passing off, even if the marks which they had agreed they could respectively use were confusingly similar to each other. However, if they breached the Deeds of Settlement, the deeds would afford them no protection against claims for trade mark infringement, or passing off.

⁴⁸ DCS at para 84(a).

39 Clause 2 of DS1 contains the following stipulation: “... The 1st Party [NPL] shall register and use the mark “Nalli” on their products and packaging (including carrier bags), in Singapore only in the form shown in Schedule B [*ie*,



].” That is substantially repeated in clause 7 of DS2: “The 1st Party shall use the mark “NALLI” on their products and packaging (including carrier bags)



in Singapore only in the form shown in Schedule B [*ie*,].”

40 NPL contends that even if “shall” were not interpreted as “may”, the above clauses only obliged NPL to use the WFM as its trade mark on its products and packaging (including carrier bags), leaving it free to use any “Nalli” mark in other contexts.⁴⁹ I disagree. As stated above, I find that the Deeds of Settlement prescribed how the parties could use “Nalli” in their respective marks and names. Moreover, NPL itself recognises that the Deeds of Settlement should not be interpreted such that the parties could use identical trade marks, or identical trade names.⁵⁰ Clause 1 of DS1 expressly allowed NCC

to register and use the mark *Nalli* in all contexts. Clause 2 of DS1 and clause 7 of DS2 contain express stipulations as to the mark that NPL was obliged to



use on its products and packaging (including carrier bags) (*ie*,). That does not mean that NPL could use any “Nalli” mark in other contexts.

⁴⁹ DCS at para 83(b).

⁵⁰ DCS at para 84(a).

Specifically, NPL could not use a “Nalli” mark that was identical to, or confusingly similar to, NCC’s mark (*ie, Nalli*). Nor could NPL call itself just “Nalli”, rather than “Nalli Pte Ltd”.

Trade or business names with the word “Nalli”

41 In relation to the parties’ trade or business names, clause 1 of DS2 provides that “the 1st Party [NPL] and the 2nd Party [NCCPL] shall be entitled to use the name “Nalli” as their trade mark and trade/business name in Singapore”. I agree with NPL’s submission that this does not mean that both NPL and NCCPL could use the same “Nalli” mark, and the same trade/business name of just “Nalli”.⁵¹ However, NPL further argues that it could call itself just “Nalli”, but NCCPL could not, due to clauses in DS2.⁵²

42 DS2 indeed has stipulations specific to NCCPL:

- (a) Clause 2 of DS2 states that NCCPL shall not represent themselves as the sole and only “Nalli” in Singapore;
- (b) Clause 3 of DS2 states that NCCPL shall identify and advertise themselves as “Nalli Chinnasami Chetty” and not merely “Nalli”;
- (c) Clause 4 of DS2 states that NCCPL could change its name back to “Nalli Chinnasami Chetty Pte Ltd” (from just “Chinnasami Chetty Pte Ltd”); and

⁵¹ DCS at para 84(a).

⁵² DCS at para 84(b).

(d) Clause 5 of DS2 states that NCCPL could represent that it was the only branch/office presence in Singapore of NCC of Panagal Park, Madras.

43 There are no equivalent stipulations in relation to NPL. However, I do not accept NPL’s contention that it could thus call itself simply “Nalli”.

44 The stipulations in relation to NCCPL must be understood against the backdrop of NCC and NCCPL emerging from the settlement as the parties who could register and use the stylised “Nalli” mark: *Nalli*.

45 That mark comprised just one word, the coveted “Nalli”, whereas NPL (which had previously applied to register “NALLI” as a word mark) had agreed to limit its “Nalli” trade mark to the WFM incorporating the word “Nalli”:



46 Thus, although NCCPL could use the stylised “Nalli” mark, it could not identify and advertise itself as merely “Nalli” – instead, it should use “Nalli Chinnasami Chetty” (clause 3 of DS2); and it should not represent that it was the sole and only “Nalli” in Singapore (clause 2 of DS2).

47 In relation to NPL, there is no clause equivalent to clause 2 of DS2 which provides that NCCPL shall not represent that it was the sole and only “Nalli” in Singapore. But that does not mean that NPL could represent that it was the sole and only “Nalli” in Singapore – that would run counter to the parties’ agreement that:

- (a) NCC and NCCPL could use the stylised “Nalli” mark (clause 7 of DS2); and
- (b) NCC, NCCPL, and NPL could all use “Nalli” in their trade/business names (clause 1 of DS2).

48 As NCC and NCCPL would be using the stylised “Nalli” mark (*ie*, *Nalli*), it would not make sense for the parties to agree that NPL could identify and advertise itself as merely “Nalli”. The Deeds of Settlement do not say that NPL could do that. Allowing NPL to identify and advertise itself as merely “Nalli” would also run counter to NPL’s obligation to give up its pending application for “NALLI” as a word mark, and to limit its “Nalli” trade mark to the WFM (clause 2 of DS1).

49 There had been a controversy about NCCPL’s business name – an injunction had resulted in it temporarily changing its name to “Chinnasamy Chetty Pte Ltd” (see [23] and [24] above), and so the settlement allowed NCCPL to restore its name to “Nalli Chinnasamy Chetty Pte Ltd” (clause 4 of DS2). But there was no controversy about NPL’s name: NPL had already been using the name “Nalli Pte Ltd”, and there was no need for that to be expressly addressed in the Deeds of Settlement. NPL could continue using “Nalli Pte Ltd”, with “Nalli” being part of that name, but it could not identify and advertise itself as merely “Nalli”.

50 I thus find that it would be a breach of the Deeds of Settlement if NPL identified and advertised itself as merely “Nalli”, or indeed if it represented itself as the sole and only “Nalli” in Singapore, notwithstanding that there were no specific clauses pertaining to NPL equivalent to clauses 2 and 3 of DS2

(which applied to NCCPL). As explained above, this follows as a matter of interpreting the terms of the Deeds of Settlement.

The plaintiffs’ claim for breach of the Deeds of Settlement by NPL

51 The plaintiffs say that NPL breached the Deeds of Settlement by:

- (a) using the word “Nalli” as its business name instead of “Nalli Pte Ltd” by giving prominence to the word “Nalli” and significantly reducing the emphasis on the words “Pte Ltd” on its signage at NPL’s shop located at 2C Buffalo Road (the “NPL 2C Shop”);⁵³
- (b) using the words “Nalli” and “Nalli Singapore” both as a trade mark and a business name on its marketing collaterals, including its carrier bag, saree box, and price card;⁵⁴ and
- (c) displaying the words “Original Nalli Products” on its display case at the NPL 2C Shop, with the word “Nalli” being given prominence.⁵⁵

NPL’s signage

52 The signage of the NPL 2C Shop, from the day it opened, is shown in these photographs from Annex A of the Statement of Claim (Amendment No 3) (the “SOC”) (Figure 3 below):⁵⁶

⁵³ SOC at para 23(i) (RBP at page 12); PCS at paras 123 – 138.

⁵⁴ SOC at paras 23(ii) and 23(iii) (RBP at pages 12 – 13); PCS at paras 139 – 179.

⁵⁵ SOC at paras 23(iv) (RBP at page 13); PCS at paras 180 – 189.

⁵⁶ SOC Annex A (RBP at page 31); ABOD3 at page 123.



Figure 3: NPL’s signage at the NPL 2C Shop

53 The horizontal signage does not merely bear the name “Nalli”; it bears NPL’s full name, “Nalli Pte Ltd”. Notably, “Nalli” is larger and more prominent, and is printed in white, which contrasts with the red background. The words “Pte Ltd”, however, are much smaller (less than half the height of the “a” in “Nalli”); and they are coloured such that they blend in with the red background. What one sees is essentially “Nalli”. The vertical signage too has

“Pte Ltd” in smaller font (horizontally) at the bottom of the sign, but as with the horizontal signage, it is “Nalli” that one perceives.

54 Under cross-examination, Mrs Madhavan agreed that what would be seen by someone looking at the signage is simply “Nalli”; she specifically agreed that from the photographs, “Pte Ltd” on the vertical sign could not be seen.⁵⁷

55 Given how indistinct the words “Pte Ltd” are on the signage at the NPL 2C Shop, I find that NPL has represented itself as just “Nalli”, in breach of the Deeds of Settlement (as interpreted above at [40] and [50]). This is subject to any available defences, which I discuss later at [78]–[96].

56 The plaintiffs suggest that the signage in its final form (shown above at [52]) was a reaction to the letter of demand, with “Pte Ltd” and the WFM belatedly added to “Nalli”.⁵⁸

57 I do not need to determine what signage was put up prior to the plaintiffs’ letter of demand, or whether NPL would have persisted with that, if not for the letter of demand. What is material is that the signage in its current form has been in use since the NPL 2C Shop was opened, and that is a breach by NPL of the Deeds of Settlement.

58 A comparison of the signages at the NPL 2C Shop with the signage used at NPL’s shop located at 10 Buffalo Street (the “NPL 10 Shop”) (shown in Figures 4 and 5 below) fortifies my conclusion:

⁵⁷ NE, 1 December 2021, page 89, line 18 – page 90, line 23.

⁵⁸ PCS at paras 125.

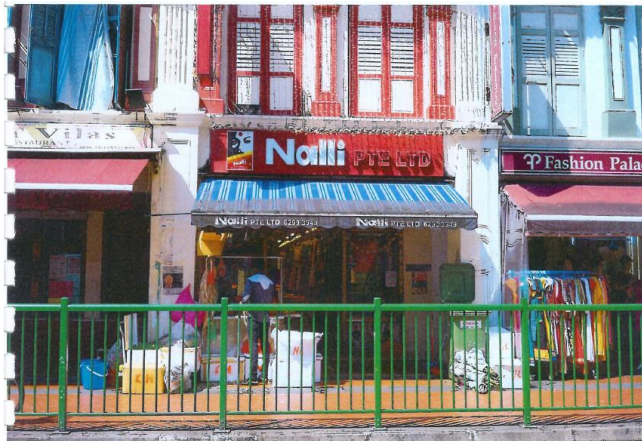


Figure 4: Signage at the
NPL 10 Shop⁵⁹



Figure 5: Signage at the
NPL 10 Shop⁶⁰

59 The red-on-red colour scheme of “Pte Ltd” is not ideal (why not have “Pte Ltd” in white like “Nalli”?), but even so an observer would see “Nalli Pte Ltd”, rather than simply “Nalli”. In contrast, the words “Pte Ltd” are practically indiscernible in the signage of the NPL 2C Shop (see [52] above).

60 The focus of this suit has been on NPL’s 2C Shop, but I would encourage the defendants to consider re-doing the signage of the NPL 10 Shop such that it more clearly reflects “Nalli Pte Ltd” – after all, that is NPL’s name.

NPL’s carrier bags

61 The carrier bag which NPL uses and which the plaintiffs complain about, is shown in this photograph from Annex B of the SOC⁶¹ (Figure 6 below):


⁵⁹ ABOD3 at page 178.

⁶⁰ ABOD3 at page 179.


⁶¹ SOC Annex B (RBP at page 32).



Figure 6: NPL’s carrier bag

62 The WFM on NPL’s carrier bag is fringed, on the two vertical sides, with  (*ie*, “Nalli” with a candle motif as the “i”).



63 Above the WFM,  appears twice (*ie*, “Nalli Singapore”, with a candle motif as the “i” of “Nalli”).

64 This is a breach of the Deeds of Settlement: it contravenes clause 7 of DS2 (see [30] above), and more broadly NPL should have confined itself to using the WFM and “Nalli Pte Ltd”, and not “Nalli” or “Nalli Singapore”. Again, this is subject to any available defences, which I discuss later at [78]–[96].

65 Indeed, some of the carrier bags NPL used simply bore the WFM and “Nalli Pte Ltd” – those were unobjectionable (see, for instance, NPL Carrier Bags B, E, F, G, and H as shown in Mr Madhavan’s Affidavit of Evidence-in-

Chief)⁶². NPL Carrier Bags C and D, however, crossed the line by using



on the fringes of the WFM.⁶³

NPL's boxes

66 The boxes used by NPL which the plaintiffs complain about, is shown in this photograph from Annex B of the SOC (Figure 7 below):⁶⁴

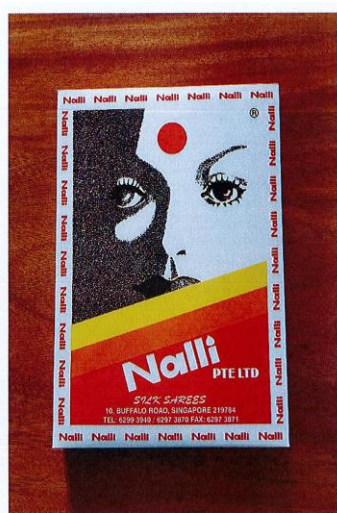



Figure 7: NPL's box

67 Similar to NPL's carrier bags, the WFM is fringed, along its perimeter, with  (ie, "Nalli" with a candle motif as the "i").

⁶² Mr Madhavan's AEIC at para 67.20 (BAEIC at pages 274 – 277); ABOD3 at pages 131 and 141.

⁶³ Mr Madhavan's AEIC at para 67.20 (BAEIC at pages 274 – 275); ABOD3 at pages 128 – 130 and 138.

⁶⁴ SOC Annex B (RBP at page 32).

68 The plaintiffs obtained the NPL box from a purchase made from NPL in March 2020.⁶⁵ The plaintiffs also put into evidence photographs of boxes purchased from NPL in June 2020⁶⁶ and September 2020⁶⁷.

69 Additionally, there is wording in Tamil on the side of the boxes, meaning “Nalli Singapore”, as shown in Figure 8 below:⁶⁸



Figure 8: Side view of NPL's box

⁶⁵ ABOD3 at page 132.

⁶⁶ Plaintiffs' Bundle of Documents ("PBOD") at page 41. See also Mr Madhavan's AEIC at para 67.20 (BAEIC at page 279) and ABOD3 at pages 164 – 166.

⁶⁷ ABOD3 at page 141.

⁶⁸ ABOD3 at page 165; Mr Madhavan's AEIC at para 67.20 (BAEIC at page 276); Mrs Madhavan's AEIC at para 68.20 (BAEIC at page 165 – 166).

70 As with the carrier bags, this use of “Nalli” and “Nalli Singapore” (in Tamil) is a breach of the Deeds of Settlement (subject to any available defences, which I will discuss later at [78]–[96]).

NPL’s price cards

71 The plaintiffs complain that the price cards used by NPL displayed “Nalli” other than as part of “Nalli Pte Ltd” or the WFM.⁶⁹ Price Card D is shown in the following photograph from Annex C of the SOC⁷⁰ (Figure 9 below):



Figure 9: NPL’s Price Card D

⁶⁹ PCS at para 166.

⁷⁰ SOC Annex C (RBP at page 33); ABOD3 at page 133.

72 Price Card D bears the address of the NPL 2C Shop and the NPL 10 Shop, with the words “ORIGINAL NALLI Products” forming a border on all four edges of Price Card D. It also has the statement: “Buy **ORIGINAL NALLI** Products at 2C and 10 Buffalo Road” (emphasis in original).

73 The defendants say that Price Card D was in use from around 2020 onwards, and Price Card C, which bears only the address of the NPL 10 Shop, was used earlier – from 2017 onwards.⁷¹ Price Card C appears in Figure 10 below:



Figure 10: NPL’s Price Card C

74 Unlike Price card D, Price Card C did not have the words “ORIGINAL NALLI Products” forming a border around its four edges. However, Price

⁷¹ Mr Madhavan’s AEIC at para 67.25 (BAEIC at page 283); Mrs Madhavan’s AEIC at para 68.24 (BAEIC at pages 170 and 171).

Card C contained the phrase “Buy **ORIGINAL NALLI** Products Only at 10 Buffalo Road” (emphasis in original).

75 I find that NPL breached the Deeds of Settlement by using the phrases “Buy **ORIGINAL NALLI** Products Only At 10 Buffalo Road” (on Price Card C) and “Buy **ORIGINAL NALLI** Products At 2C & 10 Buffalo Road” (on Price Card D), as well as by using the words “ORIGINAL NALLI Products” along the border of Price Card D. Again, this is subject to any available defences, which I will discuss later at [78]–[96].

NPL’s display case

76 The display case which the plaintiffs complain of is located at the entrance to the NPL 2C Shop, as shown in this photograph from Annex D of the SOC⁷² (Figure 11 below):



Figure 11: NPL’s display case

⁷² SOC Annex D (RBP at page 34); ABOD3 at page 134.

77 As with the price cards, I find NPL’s use of the phrase “Original Nalli Products” to be a breach of the Deeds of Settlement (again, subject to any available defences, which I will discuss later at [78]–[96]).

NPL’s defences

Limitation

78 NPL relies on the six-year limitation period under s 6(1) of the Limitation Act (Cap 163, 1996 Rev Ed) (the “Limitation Act”).⁷³ It asserts that if the conduct complained of started more than six years prior to the suit, it has a complete defence of limitation – even if that conduct continued into the period within six years before the suit, and to date. In particular, NPL says:

(a) NPL had used signages that gave prominence to the word “Nalli” over the words “Pte Ltd” at its shop located at 27 Campbell Lane from around October 1991, and alternatively, on its old signages at the NPL 10 Shop since September 1999;

(b) NPL had started using  and  on its carrier bags since 2010;

(c) NPL had started using  on its boxes since 2010; and

(d) NPL has used “Nalli Singapore” (in Tamil) on its boxes from the early 1990s.⁷⁴

⁷³ DCS at paras 90 – 96.

⁷⁴ DCS at para 45, Mrs Madhavan’s AEIC at para 68.20 (BAEIC at page 165).

79 At the outset, I note that the defence of limitation would not assist NPL in relation to the NPL signage (for the NPL 2C Shop), which was only in use since 2020 when the shop was opened.⁷⁵ Neither would it be applicable to the defendants’ use of “**ORIGINAL NALLI** Products” in NPL’s price cards, or the use of “Original Nalli Products” in NPL’s display case. All of these matters occurred within six years prior to the commencement of the plaintiffs’ suit, and the plaintiffs’ claims in relation to these matters had therefore been brought within the six-year limitation period in s 6(1) of the Limitation Act.

80 NPL submits that because it had given prominence to the word “Nalli” over the words “Pte Ltd” in various signages in the periods more than six years prior to this suit, the plaintiffs cannot sue for the same or similar conduct occurring within six years of the suit. In particular, NPL points to:

- (a) its old signage at its former shop located at 27 Campbell Lane (shown in Figure 12 below);
- (b) its old signage at the NPL 10 Shop (shown in Figure 13 below);⁷⁶ and
- (c) its current signage at the NPL 10 Shop in use from around 2010 (shown in Figures 4 and 5 above at [58]).

⁷⁵ Mrs Madhavan’s AEIC at paras 61 and 62 (BAEIC at pages 147 – 149).

⁷⁶ Mrs Madhavan’s AEIC at para 68.7 (BAEIC at page 155).



Figure 12: Signage at NPL's shop at 27 Campbell Lane in operation from 9 October 1991 to around 2004



Figure 13: Signage at NPL's 10 Shop in use from 12 September 1999 to around 2010

81 I do not accept this – these earlier signages are quite different from the current signage at the NPL 2C Shop which I have found to be in breach of the Deeds of Settlement (at [55] above). As I explained above at [59], the question is not whether “Nalli” is printed more prominently or in bigger font than the words “Pte Ltd”, but whether an observer looking at the signage would perceive “Nalli Pte Ltd” or simply “Nalli”. An observer looking at the signages in Figures 4, 5, 12 and 13 would see “Nalli Pte Ltd”, but the same cannot be said of the current signage (see [52] above) whereby an observer would only see “Nalli”.

82 Moreover, even if NPL's recent signage were regarded as a continuation of its earlier conduct, the plaintiffs can still sue for a continuing breach, so long as they do not seek relief for conduct which occurred more than six years prior to the suit. The plaintiffs have dutifully done so: para 41 of the SOC states that the plaintiffs are *not* claiming damages or an account of profits for the period prior to six years before the start of the action (on 30 March 2020).⁷⁷

⁷⁷ SOC at para 41 (RBP at page 26).

83 In relation to the bags and boxes, Mr Madhavan acknowledged in cross-examination that he did not have any evidence that NPL had been using



since 2010.⁷⁸ I am not satisfied that this started more than six years before the suit. Accordingly, there is no limitation issue here.

84 I am satisfied that “Nalli Singapore” (in Tamil) was used on NPL’s boxes from the early 1990s,⁷⁹ but even so the plaintiffs can sue for the continued use of that into the period within six years of the suit.

85 NPL cites *IPP Financial Advisers Pte Ltd v Saimee bin Jumaat and another appeal* [2020] 2 SLR 272 (“*IPP*”), contending that any breaches by NPL of the Deeds of Settlement in the present case are in the same vein as the breach in *IPP*, ie, a breach occurring more than six years ago, resulting in *continuing damage* (rather than a breach or continuing breach *within* six years of the suit).⁸⁰ I disagree. *IPP* involved a claim for negligent misrepresentation, where the Court of Appeal found that the appellants’ breach of duty occurred at the time of the negligent misrepresentations, and that there was neither any pleading nor suggestion of another fresh breach causing loss thereafter: at [49] and [54]. In those circumstances, the court noted that while the *damage* caused by the appellant’s earlier breach of duty might have been continuing, that was distinct from a continuing *breach* of the appellants’ duty of care. Here, NPL’s breaches of the Deeds of Settlement are continuing breaches: NPL continues to use “Nalli” in ways that breach the Deeds of Settlement. The plaintiffs can sue

⁷⁸ NE, 2 December 2021, page 129, line 28 – page 134, line 8 (see specifically page 130, lines 7 – 8).

⁷⁹ DCS at paras 44 – 45.

⁸⁰ DCS at para 94.

for those continuing breaches, seeking relief only for the period within six years of the suit.

Laches or acquiescence

86 NPL submits that the plaintiffs should be denied relief on the ground of laches and acquiescence. In particular, it contends that the plaintiffs had actual and/or constructive knowledge of NPL’s marketing collateral (*ie*, NPL’s carrier bags, boxes and price cards), but had taken an inordinately long time before commencing this suit. NPL thus argues that the plaintiffs’ conduct amounts to an estoppel, waiver or abandonment of their rights in respect of the matters complained of.⁸¹

87 NPL cites *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 (“*eSys*”) in support of its contention that the defence of laches is available. However, in *eSys* at [37]–[38], the Court of Appeal adopted the reasoning in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 (“*Cytec Industries*”) that the defence of laches (an equitable doctrine) does not apply to parties who seek common law relief in relation to common law rights. This was subject to a caveat mentioned at [41]–[42] of *eSys*, as follows. In *MCST Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 (“*De Beers*”), the Court of Appeal was willing to apply the doctrine of laches to a common law claim in restitution, even though no equitable relief was sought. The issue is whether the doctrine of laches can supply the equivalent of a limitation period, if claims in restitution were not subject to a limitation period under the Limitation Act. The Court of Appeal in *eSys* left open: (a) whether (and if so when) the doctrine of laches is applicable

⁸¹ DCS at paras 97 – 101.

to a common law claim, and (b) whether a restitutionary action is subject to a limitation period under the Limitation Act. That did not, however, stand in the way of the Court of Appeal finding (at [38] and [42]) that the doctrine of laches did not apply to the claim in *eSys*, which was founded on contract and fell within the ambit of s 6 of the Limitation Act.

88 The Court of Appeal has since considered the point further. In *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 (“*Esben Finance*”), the Court of Appeal observed at [121]: “[W]here a statutory limitation period applicable to a claim under the Limitation Act had *not yet expired* ... it would not be appropriate for the court to curtail that limitation period by barring the claim under the doctrine of laches. However, [the Court of Appeal in *eSys*] left open the question of whether the equitable doctrine of laches could be applicable to a common law claim of a kind for which *no* limitation period applied.” The Court of Appeal in *Esben Finance* went on to hold at [124] that the doctrine of laches did not apply to common law claims in restitution – the court explained that notwithstanding the potential injustice of there being no time constraint for claims in restitution, it was ultimately for Parliament to determine the specific length of the limitation period for certain types of claims, and the court should not extend equitable doctrines such as laches to common law claims even if they do not fall neatly within the ambit of the Limitation Act (at [122]–[123]).

89 The doctrine of laches is thus not an available defence to NPL. The plaintiffs’ claim for breach of the Deeds of Settlement is a claim for breach of contract, subject to a limitation period under the Limitation Act, and laches cannot be raised as a defence to curtail that limitation period.

90 In any event, the evidence does not support a finding of laches on the part of the plaintiffs. There has not been a substantial lapse of time before the plaintiffs took action after learning of the matters they complain of. Further, the plaintiffs have not conducted themselves in a manner equivalent to a waiver, nor have they put NPL in a position in which it would be unreasonable to place NPL if the plaintiffs were to assert a remedy afterwards (see *eSys* at [37] affirming *Cytec Industries* at [46]). On the whole, it would not be practically unjust to give the plaintiffs a remedy for what the defendants have done. To the contrary, it would be unjust to deprive the plaintiffs of a remedy for NPL's breaches of the Deeds of Settlement.

91 Relatedly, the defendants contend that the plaintiffs have acquiesced in NPL's conduct, by failing to complain about such conduct earlier despite having actual or *constructive* knowledge of it.⁸² The Court of Appeal stated in *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [188]:




The essence of acquiescence is that a plaintiff who knows about the conduct which it complains of and yet does nothing to object to or prevent such conduct may be taken to have made a representation to the defendant that it does not object to that conduct, which representation may found an estoppel, a waiver or an abandonment of rights ...

92 The defendants seek to extend that to a situation whereby a plaintiff *does not know*, but *ought to have known* about a defendant's conduct. I reject that, as did the Court of Appeal in *Ho Yew Kong* at [189]–[190]. In particular, the Court of Appeal affirmed the English Court of Appeal decision of *Re Tobian Properties Ltd* [2013] 2 BCLC 567 which involved a minority oppression action on the basis of excessive directors' remuneration. There, the English Court of

⁸² DCS at para 100 – 101.

Appeal rejected the proposition that minority shareholders would be disentitled from seeking relief for oppression simply because they had not reviewed the company's accounts and would have discovered the excessive remuneration had they done so. Notably, the court was wary of imposing a requirement of diligence which "lacked basis, whether in statute, principle or authority".

93 The defendants rely on a poster shown in a photograph – Exhibit D3 (taken in April 2010 when NKC visited the NPL 10 Shop), and also in another photograph – Exhibit D5 (taken in 2013 or 2014 when Tamil actor Vivek visited the NPL 10 Shop).

94 The poster had  printed along the border. I do not, however, accept that simply because NKC visited the NPL 10 Shop, he would have appreciated (or should have appreciated) that NPL was using "Nalli" in breach of the Deeds of Settlement. Moreover, Mr Madhavan admitted during cross-examination that there was no evidence that NCCPL or NCC were aware of the "side use" of  on NPL's carrier bags or boxes (*ie*, the use of  along the borders of the carrier bags and boxes).⁸³ The plaintiffs only knew of the matters complained of shortly before the suit, and they then sued very promptly thereafter.

Abuse of process

95 NPL argues that the commencement of this suit by the plaintiffs was an abuse of process because:

⁸³ NE, 2 December 2021, page 132, lines 10 – 23.

(a) the suit is an extension of a family dispute into the court room, initiated because the plaintiffs felt commercially threatened;⁸⁴ and

(b) the plaintiffs' complaints about the breaches of the Deeds of Settlement are minor and frivolous, and serve no purpose but an ulterior one.⁸⁵

96 There has been no abuse of process by the plaintiffs:

(a) Whether or not this may be seen as a family dispute, many family disputes unfortunately do make their way to court – where the parties' legal rights are determined. Likewise, it is not useful to ask if the defendants' conduct was viewed by the plaintiffs as a commercial threat: if that conduct was wrongful, the plaintiffs were entitled to sue.

(b) The plaintiffs' complaints are not minor or frivolous, and in any event the claim for breach of the Deeds of Settlement is a claim for breach of contract – and that may be pursued even if only nominal damages are eventually recovered. In the present case, the trial has been bifurcated such that only liability is now being determined, with the assessment of damages (or an account of profits) deferred to a later stage. At this stage, all the plaintiffs need to prove in relation to the Deeds of Settlement, is *breach* – and the plaintiffs have proved that.

Conclusion

97 I find that NPL has breached the Deeds of Settlement. Specifically, NPL has used “Nalli” (other than as part of the WFM or its name “Nalli Pte Ltd”) in

⁸⁴ DCS at para 105.

⁸⁵ DCS at para 106.

the signage of the NPL 2C Shop, its carrier bags and boxes, its price cards, and the display case located at the NPL 2C Shop, in breach of the Deeds of Settlement.

98 I thus grant the plaintiffs judgment against NPL on their claim for breaches of the Deeds of Settlement. The plaintiffs are entitled to an injunction to restrain NPL from continuing with the offending conduct, as well as an account of profits or damages to be assessed (at a later stage). I will hear the parties further on the relief to be granted to the plaintiffs, and costs.

Andre Maniam
Judge of the High Court

G Radakrishnan (Grays LLC) and Suriya Prakash Uthayasurian
(Phoenix Law Corporation) for the plaintiffs;
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defendants.
