

Twin Enterprises Pte Ltd v Lim Heng Wah Peter  
[2000] SGHC 279

**Case Number** : Suit 1712/1994 (Taking of Accounts 7/1999)  
**Decision Date** : 23 December 2000  
**Tribunal/Court** : High Court  
**Coram** : Phang Hsiao Chung AR  
**Counsel Name(s)** : —  
**Parties** : —

**Between**

**TWIN ENTERPRISES PTE LTD**

**... Plaintiffs**

**And**

**PETER LIK HENG WAH**

**... Defendant**

**Citation:** Suit No 1712 of 1994; Taking of Accounts No 7 of 1999

**Jurisdiction:** Singapore

**Date:** 2000:12:23

2000:10:17;2000:05:30;2000:03:14-2000:03:13

**Court:** High Court

**Coram:** Phang Hsiao Chung, Assistant Registrar

**Counsel:**

**Anil Murkoth Changaroath (*Lim & Lim*) for the plaintiffs**

**Tan Siah Yong (*Piah Tan & Partners*) for the defendant**

## **Judgment**

### **GROUND OF DECISION**

1 This is an account and inquiry taken pursuant to a written judgment of the High Court dated 9 November 1998. The trial judge, Warren L H Khoo J, ordered inquiries and taking of accounts encompassing, among other things, "the items in the accounts which are disputed by the defendant, as set out in the annexures in the plaintiff counsel's opening statement" but excluding "items and matters in respect of which [he had] made findings".

2 The "annexures in the plaintiff counsel's opening statement" referred to in Khoo J's written judgment is a 29 page summary of the plaintiffs' claim comprising 195 items. For convenience, I shall refer to this as "the Summary". Items 1 to 24 and 26 to 44 of the Summary describe the money and goods remitted by the plaintiffs to the defendant in Vietnam. Item 25 of the Summary refers to a \$40,000 housing loan that the trial judge found to be payable by the defendant to the plaintiffs. Items 45 to 115 of the Summary describe the goods purchased by the defendant in Vietnam and sent to the plaintiffs. Items 116 to 195 of the Summary are items in the profit and loss account for the trading arrangement between the plaintiffs and the defendant.

3 The taking of accounts began on 13 March 2000 with the examination of the plaintiffs' principal witness, Mr Fung Ah Wah. This proved to be a tedious exercise, as it was obvious that the aging process and the passage of time had taken their toll on Mr Fung's memory. Mr Fung could do no more than recite passages from his affidavit of evidence in chief affirmed on 15 June 1999 but filed only on 23 September 1999, after being guided to those passages by his counsel. Mr Fung's affidavit filed on 23 September 1999 ("Fung's third affidavit") substantially regurgitated the contents of his affidavits of evidence in chief filed on 22 October 1997 ("Fung's first affidavit") and 7 November 1997 ("Fung's second affidavit") for the trial. On 14 March 2000, the parties agreed that the taking of accounts should continue without any further oral evidence being led and without any cross-examination of the 2 principal witnesses, namely, Mr Fung and the defendant. Instead, the parties would rely on materials that were already before the court, such as the affidavits that had been filed for the trial, the affidavits that had been filed for the taking of accounts, and the notes of evidence pertaining to the trial. Thereafter, the plaintiffs tendered written submissions on 31 March 2000 and 7 April 2000 while the defendant tendered written submissions on 3 April 2000 and 11 April 2000.

4 On 30 May 2000, I gave certain directions for the further conduct of the taking of accounts and delivered grounds of decision containing certain findings to facilitate compliance with those directions. Those grounds of decision dealt with all issues except items 116 to 195 of the Summary and the state of the final account between the parties. I did not deal with those issues because my findings would necessitate a recomputation of the profit and loss account, and I required submissions on how my findings would affect items 116 to 195 of the Summary. I also wanted the parties to explain clearly and in greater detail their contentions in respect of items 116 to 195 of the Summary. I therefore gave directions for the plaintiffs to redraw the profit and loss account in accordance with my findings, and for the defendant to file an affidavit that exhaustively dealt with what he alleged to be discrepancies in the redrawn profit and loss account. I also allowed the plaintiffs to file an affidavit to respond to the defendant's allegations.

5 The taking of accounts resumed on 17 October 2000. These grounds of decision deal with the remaining issues (i.e. items 116 to 195 of the Summary and the state of the final account between the parties), and are to be read in conjunction with my grounds of decision dated 30 May 2000.

6 It is crucial to understand the manner in which the accounts were maintained by the plaintiffs before one proceeds to consider the submissions made by the parties on the specific items in the Summary. In this regard, the following passages from Khoo J's written judgment are instructive:

1. This is an action to recover the balance of a trading account between the parties. The plaintiffs are a company effectively owned by Mr Fung ... [Mr Fung and the defendant] arrived at an arrangement by which the defendant would source goods in Vietnam and send them to the plaintiffs for sale in Singapore and Hong Kong ... Mr Fung, on the other hand, would send goods for which there was a demand in Vietnam. ...

2. The purchases in Vietnam were funded by money sent by Mr Fung or by the proceeds of the sale of goods Mr Fung sent to the defendant. The parties agreed to share equally the profit made on the goods sent to and from Vietnam. ...

6. The plaintiffs' claim is based on a set of statements sent to the defendant in August 1992. The statements are basically in two parts. First, an account of the cash remittances and goods sent to the defendant, as well as goods sent from the defendant (the "remittances and purchases account"), and, secondly, an account of the profit made on goods sent to and from the defendant (profit and loss account). ...

7. Mr Fung says that the figures in all these statements were extracted from the [account books]. According to him, the accounting was done, broadly, as follows. The defendant was credited with the cost of the goods sent by the defendant. He was debited with the value of the goods as well as the money sent to him in Vietnam. In respect of these goods, if the defendant confirmed that he had a buyer

who had agreed to buy them at a certain price, the defendant would be debited with the price. If there was no confirmed buyer, the defendant would be debited with the price payable by the plaintiffs. The values of these goods and the monies sent to the defendant were shown as "Remittances" in the accounts. In respect of the rattan and other goods sent by the defendant to the plaintiffs, the defendant would tell him over the phone how much they cost. Mr Fung would take his word for it, and credit him with the amount. The amounts credited to the defendant for all the shipments are reflected as "Purchases" in the accounts. ... The profit and loss accounts reflect, basically, the difference between the cost of the goods and the sale price to third parties. ...

23. The second general point made by the defendant is that there must have been purchases which had taken place and which have not been reflected in the plaintiff's accounts. ...

24. The defendant has not been able to point to one single instance of a transaction which has not been accounted for. He says that he is handicapped in that he was carrying on the trade illegally as he had no licence to do so. So he did not keep any record.

25. It seems to me that this is a rather facile explanation. He has admitted to keeping at least some invoices ... for the rattan purchases. So he had at least some memory triggers as to any purchases which might have been omitted. I also find it difficult to believe that he could not have kept some record of the transactions he entered into. We have the position where accounts began to be sent to him as long ago as in 1991 but he has simply not been able to point to any transaction that has been omitted. Against this, there is the evidence of Mr Fung that the transactions were entered in his books as and when they took place. Although the account books used were not everything they might have been, it does not necessarily mean that they are any the less reliable for that.

26. Another point that the defendant makes is that he has not been credited with the full amount of the shipments that he had sent to the plaintiffs. ...

27. Mr Fung's answer is that except for the transactions done by means of letters of credit, the standing arrangement between the parties right from the beginning was that the defendant would simply tell him over the phone how much the goods cost. Mr Fung would take his word for it and credit him with the amount. I tend to accept Mr Fung's evidence. ... [The defendant] had to pay a commission to the state corporations to treat these goods as originating from them. He also had to pay bribes here and there to smoothen the process of getting the goods shipped. There would no doubt also be other incidental expenses incurred in getting the supplies as well as the expenses of running the business. It would have been unwieldy for the defendant to have to account for all these expenses. So I think Mr Fung is quite right. ... The defendant, taking the responsibility for all these expenses, would simply tell Mr Fung how much he wished to charge for the goods, and Mr Fung would credit him accordingly. ...

33. ... I accept Mr Fung's evidence that the agreement between the parties was that the plaintiffs were to bear the general expenses of running their business in Singapore while the defendant was to bear such expenses in Vietnam. The

implication is that the defendant would factor the expenses of running the business in Vietnam into the amount he asked Mr Fung to credit him on the shipments. ... However, in the rather fluid environment in which the trading was to be done, I think there was room in the arrangement for expenses incurred on extraordinary occurrences, and those not originally contemplated, to be allowed to be deducted. ...

7 The following points need to be emphasized:

(1) Khoo J found that the purchases made by the defendant in Vietnam were funded by money sent by the plaintiffs to the defendant or by the proceeds of sale of goods sent by the plaintiffs to the defendant. (See paragraph 2 of Khoo J's written judgment.) The defendant did not provide any funds for those purchases.

(2) The account of "remittances" maintained by the plaintiffs showed how funds were sent by the plaintiffs to the defendant to finance the trading arrangement between the parties. These "remittances" could be in the form of cash or goods. When the plaintiffs sent goods to the defendant, the quantum of the "remittance" to be debited to the defendant (and credited to the plaintiffs) would be the "value of the goods" as ascertained in the following manner:

(a) Normally, the amount debited to the defendant (and credited to the plaintiffs) as the "value of the goods" would be the amount that the defendant received as proceeds of sale of the goods. If this amount exceeded the total costs incurred by the plaintiffs in procuring and shipping the goods, the difference would be reflected in the profit and loss account as a profit. Conversely, if this amount was less than the total costs of procuring and shipping the goods, the difference would be reflected in the profit and loss account as a loss.

(b) If there was no confirmed buyer for the goods, the amount debited to the defendant (and credited to the plaintiffs) as the "value of the goods" would be the actual price payable by the plaintiffs for the goods. If there was no sale, there could be no profit or loss; it therefore followed that the transaction should be reflected in the profit and loss account as a transaction that did not make any profit or loss.

(See paragraphs 6 and 7 of Khoo J's written judgment.)

(3) The account of "purchases" maintained by the plaintiffs showed the actual amounts that the defendant charged the plaintiffs for the goods shipped by the defendant to the plaintiffs. The amounts charged by the defendant took into account the amounts that the defendant had to pay in respect of commissions and bribes as well as "other incidental expenses incurred in getting the supplies" and the "expenses of running the business" in Vietnam. Khoo J rejected the defendant's allegation that that he had not been credited with the full amount of the shipments that he had sent to the plaintiffs. (See paragraphs 26, 27 and 33 of Khoo J's written

judgment.) Khoo J also rejected the defendant's allegation that "there must have been purchases which had taken place and which have not been reflected in the plaintiff's account". Khoo J stressed that the defendant "has not been able to point to one single instance of a transaction which has not been accounted for" and found it "difficult to believe that [the defendant] could not have kept some record of the transactions he entered into". (See paragraphs 23 to 25 of Khoo J's written judgment.) For the reasons stated at paragraph 6 of my grounds of decision dated 30 May 2000, I found that the defendant had been credited in full for all "purchases" made by him.

(4) Khoo J decided that although "the plaintiffs were to bear the general expenses of running their business in Singapore while the defendant was to bear such expenses in Vietnam", both parties were entitled to deduct "expenses incurred on extraordinary occurrences, and those not originally contemplated". (See paragraph 33 of Khoo J's written judgment.)

### **Heineken Beer (Items 181 to 184 of the Summary)**

8 After my grounds of decision were delivered on 30 May 2000, the defendant appealed against my findings in Registrar's Appeal No. 600217 of 2000. He directed his appeal at paragraph 15 of my grounds of decision, which dealt with items 15, 16 and 29 of the Summary. As regards item 15, I found that the plaintiffs purchased 12,000 cartons of beer at \$189,600 (or \$15.80 per carton). As regards item 16, I found that the plaintiffs purchased 22,500 cartons of beer at \$355,500 (or \$15.80 per carton). As regards item 29, I found that the plaintiffs purchased 20,000 cartons of beer at \$310,000 (or \$15.50 per carton). I had then decided that for these 3 items, the plaintiffs should be credited with the cost of the 54,500 cartons of beer, i.e. \$855,100, and that these transactions should be reflected in the profit and loss account as transactions that did not make any profits or losses.

9 On 21 September 2000, M P H Rubin J allowed the appeal and ordered that a sum of \$177,000 be credited to the defendant in the taking of the accounts. Rubin J decided as follows:

Inasmuch as the invoice from Thai-Pore Enterprise Pte Ltd dated 27 August 1990 reflects a figure of \$177,000 payable to the Chief Engineer, Mekong Express and that this document admittedly was produced and was in the possession of the plaintiff, credit ought to be given to the defendant for the said sum of \$177,000. In my view, the non-cross-examination of the defendant on this matter does not assist the plaintiff much. The plaintiffs are known to be dealing with Thai-Pore all along. They could have done much to clarify this issue had they wanted to, very much earlier. The issue in relation to this sum was raised at the hearing below but unfortunately had not been dealt with. In the premises, the appeal by the defendant is allowed only to the extent that a sum of \$177,000 be credited to the defendant in the taking of the accounts.

10 As regards the proper accounting treatment of this order, it appears from Rubin J's grounds of decision dated 29 November 2000 that what he intended was for the entry of \$855,100 to the plaintiffs' credit in the "remittances" account to be reduced by the sum of \$177,000 to \$678,100. (See paragraphs 17 and 31 of Rubin J's grounds of decision.)

11 During the appeal, the defendant claimed that he should only be charged \$133,000 (instead of \$310,000) for the 20,000 cartons of beer enumerated at item 29 of the Summary. He referred to the invoice dated 27 August 1990 from Thai-Pore Enterprise Pte Ltd ("Thai-Pore"), which the plaintiffs had exhibited to support the contention that the 20,000 cartons of beer cost \$310,000. The invoice stated the price of the 20,000 cartons of beer to be \$310,000. However, Thai-Pore deducted the sum of \$177,000 from the price on account of "PAYMENT TO BE MADE IN PHNOM PENH TO CHIEF ENGINEER OF MEKONG EXPRESS, MR TAN" and charged the plaintiffs only the balance sum of \$133,000. The defendant claimed that he had arranged for a Cambodian called Yuri to pay this sum of \$177,000 from

the proceeds of sale of the beer.

12 However, the defendant presented a slightly different picture in his affidavit filed on 11 October 1997, which he relied on for the taking of accounts. The defendant claimed as follows at paragraph 52 of that affidavit:

I did enter into transactions to sell beer sent to me by the Plaintiffs. I remember the beer transactions quite well because I remember telling Fung that there was a poor market for such goods in Vietnam. We could only make a very small margin if any at all. Fung insisted that we should try to sell the beer and simply shipped the beer to me. I had no choice but to accept the goods he sent to me in Vietnam, so I did my best to sell all of it. ... There were a total of 54,500 cartons of beer in the 26 containers. I sold 38,500 cartons to a Cambodian by the name of Yuri (or sometimes spelt You Ri). I sold the other 16,000 cartons to another Cambodian. I have no documents for the sale to the second Cambodian so I cannot remember the actual selling price or whether I was able to collect all the money due. As for the sale of beer to Yuri, Yuri wrote the accounts himself in Cambodian and I got the accounts translated into Chinese so that I could read them also. ... I remember that Yuri paid a total of US\$132,447 in cash to me. On Fung's instructions, I then asked Yuri to pay US\$163,927 directly to a rubber supplier in part-payment of rubber we have bought from the supplier. This is the rubber transaction in the "Purchase" portion of Statement of Account 1 dated 10.9.90 (by Mekong Express). However, Yuri never paid up the balance of US\$30,876. I have never been able to collect this money. This is a case of a "bad debt" and these were the risks when doing business in Vietnam.

13 The rubber transaction referred to by the defendant was the rubber transaction at item 67 of the Summary, for which a sum of \$494,272.50 (or US\$279,250 at an exchange rate of US\$1 = S\$1.77) was credited to the defendant. Both Khoo J and I found that the defendant had been given full credit for this transaction. The defendant also exhibited what he alleged to be an English translation of the accounts prepared by Yuri. According to this document:

- (1) Yuri purchased from the defendant a shipment of 18,500 cases of Heineken Beer at a total of US\$157,250 (or US\$8.50 per case);
- (2) Yuri purchased from the defendant a shipment of 20,000 cases of Heineken Beer at a total of US\$170,000 (or US\$8.50 per case);
- (3) Yuri paid the defendant a total of US\$133,135 in cash;
- (4) Yuri paid a sum of US\$163,927 for rubber; and
- (5) After taking into account various other transactions between Yuri and the defendant, Yuri owed the defendant a balance of US\$30,876.

14 The thrust of the defendant's evidence as contained in his affidavit filed on 11 October 1997 was that the defendant had sold 38,500 cartons of beer to Yuri at a price of US\$327,250 and was unable to account for the proceeds of sale of the remaining 16,000 cartons of beer. The defendant further claimed that the total value that he received from Yuri for the 38,500 cartons of beer was only US\$296,374, of which US\$132,447 was paid in cash and US\$163,927 was paid to the rubber supplier. The defendant alleged that he was "never ... able" to collect the balance of US\$30,876, but he did not give a reason why this was so. The defendant did not allege in any of his four affidavits referred to during the taking of accounts (the defendant's affidavits filed on 11 October 1997 and 12 May 1998, and two affidavits filed on 23 February 2000) that the 20,000 cartons of beer under item 29 of the Summary were worth only \$133,000 (instead of \$310,000). The argument that the defendant should not be charged the \$177,000 allegedly paid to the rubber supplier first surfaced in his counsel's written submissions filed on

3 April 2000.

15 As the defendant did not deny receiving and selling the 54,500 cartons of beer, the burden was on him to account for the proceeds of sale of these goods. Even if the defendant's allegations were accepted at face value, he would only have accounted for part of the proceeds of sale for 38,500 cartons of beer. It was not enough for the defendant to claim that he could not remember the actual selling price or whether he was able to collect all the money due. Nor was it sufficient for the defendant to simply say that he was unable to collect the sum of US\$30,876 from Yuri without explaining what efforts he made to collect the debt. The defendant failed to account at all for the proceeds of sale of the remaining 16,000 cartons of beer, which might well have been sold at a tidy profit. In his affidavits, the defendant did not distinguish between the cartons of beer referred to in items 15, 16 and 29 of the Summary, so it was impossible to tell whether the proceeds of sale that were unaccounted for related to item 15, item 16 or item 29 of the Summary. All things considered, the defendant failed to satisfy me on the evidence that he had in fact sold the 54,500 cartons of beer at a global loss. The plaintiffs also failed to prove that the defendant had sold the beer at a profit. It was for this reason that I had earlier directed that in so far as the "remittance" for beer was concerned, the plaintiffs should be credited with the cost of the beer, i.e. \$855,100, and that the beer transactions be reflected in the profit and loss account as transactions that did not make any profit or loss.

16 In so deciding I had noted the defendant's submission that the \$177,000 referred to in the Thai-Pore invoice was paid to the chief engineer of the Mekong Express by or on behalf of the defendant. However, when I wrote my grounds of decision dated 30 May 2000, I did not think it was necessary for me to comment on this allegation. Even if the defendant had utilised part of the proceeds from the sale of the beer to pay the chief engineer of the Mekong Express, this did not diminish the value of the goods received by the defendant from the plaintiffs. The sole function of the account of "remittances" was to show the value of the goods and cash sent by the plaintiffs to the defendant for use in their joint venture. The account of "remittances" was not designed to show how the proceeds of sale were utilised. The utilisation of funds received by the defendant for the purpose of purchases would be reflected in the account of "purchases". The plaintiffs had, under item 67 of the Summary, already given the defendant full credit for all sums paid by the defendant for the Mekong Express rubber. The only way in which the account of "remittances" could, for a specific item, reflect an amount that was less than the cost of the goods represented by that item was if the goods were sold at a loss by the defendant. Only then would the value received by the defendant in respect of the goods be less than the cost of the goods.

17 Putting the defendant's case in relation to the Thai-Pore invoice at its highest, it simply meant that a total of US\$163,927 from the proceeds of sale of the beer was utilised in part-payment of the price of US\$279,250 paid for the Mekong Express Rubber. There was no evidence that the defendant paid for the beer out of his own pocket. Khoo J found (at paragraph 2 of his written judgment) that all of the defendant's purchases were funded by the plaintiffs. There was also no evidence that the 20,000 cartons of beer in item 29 of the Summary were acquired at a more than 50% discount of \$177,000. The Thai-Pore invoice merely indicated a set-off between the plaintiffs and Thai-Pore with respect to a payment of \$177,000 to be made on behalf of Thai-Pore. The total cost of the beer to the plaintiffs would still be \$310,000, even if \$177,000 of the price was settled by means of a set-off. Thus, in my opinion, even if the sum of \$177,000 reflected in the Thai-Pore invoice was in fact paid to the chief engineer of the Mekong Express from the proceeds of sale of the beer by the defendant to Yuri, as a matter of accounting, this would not have resulted in the "remittances" to be credited to the plaintiffs in respect of items 15, 16 and 29 of the Summary being reduced by the sum of \$177,000 to \$678,100. The defendant received goods worth a total of \$855,100.

18 Be that as it may, if the "remittances" to be credited to the plaintiffs in respect of the beer are to be reduced by a sum of \$177,000, I would have to treat the value of the goods received by the defendant as having been reduced to \$678,100 from their actual cost of \$855,100. If the value of the goods received by the defendant is less than the cost of the goods to the plaintiffs, it follows that the transaction was effected at a loss. Accordingly, if the plaintiffs are to be credited with the sum of only \$678,100 in respect of items, 15, 16 and 29 of the Summary, the corresponding beer transactions at items 182, 183 and 184 of the Summary should now be reflected in the profit and loss account as transactions that made a total loss of \$177,000.

19 Item 181 of the Summary pertains to a separate sale of 29,250 cartons of beer for which the plaintiffs claim to have made a profit of \$15,824.80. The defendant did not dispute item 181 of the Summary in his affidavit filed on 20 September 2000. I therefore accept that the plaintiffs made a profit of \$15,824.80 on this transaction.

20 In the circumstances, I find that the beer transactions resulted in a total loss of \$161,175.20, calculated from the difference between the profit of \$15,824.80 for item 181 of the Summary and the total loss of \$177,000 for items 182 to 184 of the Summary.

## **Rattan (Items 116 to 159 of the Summary)**

21 On 30 May 2000, I ordered the defendant to file an affidavit that exhaustively listed the specific discrepancies which the defendant alleged were present in the profit and loss account and to provide full particulars of the discrepancies with supporting documentary evidence, if any. The defendant filed an affidavit on 20 September 2000 to comply with this order. I shall therefore confine myself to dealing with the objections raised in this affidavit.

22 Item 116 - Song Tien I. The defendant's complaint was that the plaintiffs were not entitled to give discounts of US\$750.55 for dampness and US\$825.27 for undersized goods in their invoice to the purchasers of the rattan ostensibly because these goods were "specially graded and selected by Chew Moon Tong". As Chew Moon Tong was not called as a witness at and did not file any affidavit for the taking of the accounts, there was no evidence to support the defendant's bare allegations concerning the quality of the goods. Further, there was no evidence to suggest that the discounts were not given bona fide in the ordinary course of business. Accordingly, I accept that the plaintiffs made a loss of \$6,425.30 as stated at item 116 of the Summary.

23 Item 117 - Song Tien I. The defendant complained that the plaintiffs imported 34.56 metric tons but sold only 33.94 metric tons of rattan, and he wanted the plaintiffs to account for the difference. The plaintiffs' credit note evidencing the importation of the rattan and the plaintiffs' invoice evidencing the sale of the rattan show that the plaintiffs received and sold only 33.94 metric tons of rattan. The weight of 34.56 metric tons appears on the Singapore customs declaration form while the weight of 34.65 metric tons appears on the marine premium note. The plaintiffs' Mr Fung Ah Wah explained at paragraph 8.1 of his affidavit filed on 11 October 2000 that the rattan was still moist when purchased, but had dried up and lost weight while being transported to Singapore. He added that the weight at which the goods were sold in Singapore had to be agreed to by the buyers before they made payment. There was no evidence that the plaintiffs split up the cargo for sale to different buyers. There was also no evidence to contradict the plaintiffs' explanation. I accept that the cargo sold was the same cargo that the plaintiffs received, and that the reduced weight was one agreed to with the buyer in the ordinary course of business. Accordingly, I accept that the plaintiffs made a profit of \$1,165.00 as stated at item 117 of the Summary.

24 Item 118 - Song Tien II. The defendant complained that the plaintiffs imported 26.303 metric tons but sold only 25.760 metric tons of rattan, and he wanted the plaintiffs to account for the difference. The plaintiffs' credit note evidencing the importation of the rattan and the plaintiffs' invoice evidencing the sale of the rattan show that the plaintiffs received and sold only 25.760 metric tons of rattan. The weight of 26.303 metric tons appears on two payment vouchers, the bill of lading and the Singapore customs declaration form while the weight of 28.940 metric tons appears on the marine premium note. The plaintiffs' Mr Fung Ah Wah explained at paragraph 8.1 of his affidavit filed on 11 October 2000 that the rattan was still moist when purchased, but had dried up and lost weight while being transported to Singapore. He added that the weight at which the goods were sold in Singapore had to be agreed to by the buyers before they made payment. There was no evidence that the plaintiffs split up the cargo for sale to different buyers. There was also no evidence to contradict the plaintiffs' explanation. I accept that the cargo sold was the same cargo that the plaintiffs received, and that the reduced weight was one agreed to with the buyer in the ordinary course of business. Accordingly, I accept that the plaintiffs made a profit of \$150.55 as stated at item 118 of the Summary.

25 Item 119 - Song Tien II. The defendant did not dispute item 119 of the Summary in his affidavit filed on 20 September 2000. Accordingly, I accept that the plaintiffs made a loss of \$1,268.02 as stated at item 119 of the Summary.

26 Item 120 - Song Tien I. The defendant complained that the plaintiffs imported 34.055 metric tons but sold only 31.378 metric tons of rattan, and he wanted the plaintiffs to account for the difference. The plaintiffs' credit note evidencing the importation of the rattan and the plaintiffs' invoice evidencing the sale of the rattan show that the plaintiffs received and sold 31.578 metric tons of rattan. Although the bill of lading states the gross weight of the goods to be 34.055 metric tons, and this weight is also reflected in a notice of arrival and a payment voucher, the weight stated in the Singapore customs declaration form is 32 metric tons while the weight of 31.140 metric tons appears on the marine premium note. The plaintiffs' Mr Fung Ah Wah explained at paragraph 8.1 of his affidavit filed on 11 October 2000 that the rattan was still moist when purchased, but had dried up and lost weight while being transported to Singapore. He added that the weight at which the goods were sold in Singapore had to be agreed to by the buyers before they made payment. There was no evidence that the plaintiffs split up the cargo for sale to different buyers. There was also no evidence to contradict the plaintiffs' explanation. I accept that the cargo sold was the same cargo that the plaintiffs received, and that the reduced weight was one agreed to with the buyer in the ordinary course of business. Accordingly, I accept that the plaintiffs made a loss of \$572.47 as stated at item 120 of the Summary.



27 Item 121 - Victory Vigour. The defendant's first complaint was that 171 metric tons of rattan were shipped, but the plaintiffs only sold 169.52 metric tons of rattan, and he wanted the plaintiffs to account for the difference. The plaintiffs' credit note evidencing the acquisition of the rattan and the plaintiffs' invoice evidencing the sale of the rattan show that the plaintiffs received and sold rattan having a total net weight of only 169.520 metric tons. The plaintiffs were never asked to explain why the title for both the credit note and the invoice referred to "171 M.TONS - VIETNAM RATTAN SHIPMENT PER SS. "VIGOUR VICTORY" FROM HCM TO HONGKONG". There was no evidence that the net weight of the cargo received in Hong Kong was 171 metric tons, apart from the defendant's bare allegation. There was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

28 The defendant's second complaint was that the goods were sold "F.O.B." or free on board, so the plaintiffs were not entitled to make deductions for freight or crane charges. As the plaintiffs did not provide any explanation for these charges even though they were given the opportunity to, I accept that the disputed crane charge of US\$3,756.65 referred to in credit note TW/8/90 dated 31 May 1990 and the disputed freight charge of US\$10,227.75 referred to in invoice 085/90 dated 31 May 1990 should not be reflected in the accounts. According to invoice 085/90, the 169.520 metric tons of rattan were sold at US\$106,751.91. According to credit note TW/8/90, the 169.520 metric tons of rattan were purchased at US\$93,556.56. Accordingly, the profit made on this transaction should be the difference of US\$13,195.35 or S\$24,279.44 at the exchange rate of US\$1 = S\$1.8400 stated on the invoice.

29 I do not understand the defendant's complaint that there was "no price stated for the sale by the Plaintiffs". The plaintiffs' invoice 085/90 clearly stated that the goods were sold at US\$10,227.75. As regards the "double entry" submission, as Khoo J specifically found (at paragraph 27 of his written judgment) that the plaintiffs credited the defendant with the full amount that the defendant charged for the goods, and as I had on 30 May 2000 found that the defendant had been credited in full for all "purchases" made by him on the plaintiffs' behalf, there was no basis for making a corresponding accounting double entry alteration to the "purchases" account.

30 Item 122 - An Tek. The defendant's first complaint was that 163.56 metric tons of rattan were shipped, but the plaintiffs only sold 145.4355 metric tons of rattan, and he wanted the plaintiffs to account for the difference. The plaintiffs' credit note evidencing the acquisition of the rattan and the plaintiffs' invoice evidencing the sale of the rattan show that the plaintiffs received and sold rattan having a total weight of only 145.4385 metric tons. The plaintiffs were never asked to explain why the title for both the credit note and the invoice referred to "163.560 M.TONS - VIETNAM RATTAN SHIPT PER SS. "AN TEK" FROM HCM. TO HONGKONG". There was no evidence that the actual weight of the cargo received in Hong Kong was 163.560 metric tons, apart from the defendant's bare allegation. There was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

31 The defendant's second complaint was that the goods were sold "F.O.B." or free on board, so the plaintiffs were not entitled to make deductions for freight or crane charges. As the plaintiffs did not provide any explanation for these charges even though they were given the opportunity to, I accept that the disputed crane charge of US\$2,480.13 referred to in credit note TW/12/90 dated 4 July 1990 and the disputed freight charge of US\$12,377.62 referred to in invoice 090/90 dated 4 July 1990 should not be reflected in the accounts. According to invoice 090/90, the 145.4385 metric tons of rattan were sold at US\$90,890.62. According to credit note TW/12/90, the 145.4385 metric tons of rattan were purchased at US\$76,346.77. Accordingly, the profit made on this transaction should be the difference of US\$14,543.85 or S\$26,753.41 at the exchange rate of US\$1 = S\$1.8395 stated on the invoice.

32 As regards the "double entry" submission, as Khoo J specifically found (at paragraph 27 of his written judgment) that the plaintiffs credited the defendant with the full amount that the defendant charged for the goods, and as I had on 30 May 2000 found that the defendant had been credited in full for all "purchases" made by him on the plaintiffs' behalf, there was no basis for making a corresponding accounting double entry alteration to the "purchases" account.

33 Item 123 - Louisa. The defendant's first complaint was that 92.722 metric tons of rattan were shipped, but the plaintiffs only sold 78.400 metric tons of rattan, and he wanted the plaintiffs to account for the difference. The plaintiffs' credit note evidencing the acquisition of the rattan and the plaintiffs' invoice evidencing the sale of the rattan show that the plaintiffs received and sold rattan having a total weight of only 78.400 metric tons. The plaintiffs were never asked to explain why the title for both the credit note and the invoice referred to "92.722

M.TONS - VIETNAM RATTAN SHIPT. PER SS. "LOUISA" FROM HCM TO HONGKONG". There was no evidence that the actual weight of the cargo received in Hong Kong was 92.772 metric tons, apart from the defendant's bare allegation. There was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

34 The defendant's second complaint was that the goods were sold "F.O.B." or free on board, so the plaintiffs were not entitled to make deductions for freight or crane charges. As the plaintiffs did not provide any explanation for these charges even though they were given the opportunity to, I accept that the disputed crane charge of US\$802.16 referred to in credit note TW/15/90 dated 23 July 1990 and the disputed freight charge of US\$5,547.16 referred to in invoice 101/90 dated 23 July 1990 should not be reflected in the accounts. According to invoice 101/90, the 78.400 metric tons of rattan were sold at US\$46,581.08. According to credit note TW/15/90, the 78.400 metric tons of rattan were purchased at US\$38,741.08. Accordingly, the profit made on this transaction should be the difference of US\$7,840 or S\$14,112 at the exchange rate of US\$1 = S\$1.8000 stated on the invoice.

35 As regards the "double entry" submission, as Khoo J specifically found (at paragraph 27 of his written judgment) that the plaintiffs credited the defendant with the full amount that the defendant charged for the goods, and as I had on 30 May 2000 found that the defendant had been credited in full for all "purchases" made by him on the plaintiffs' behalf, there was no basis for making a corresponding accounting double entry alteration to the "purchases" account.

36 Item 124 - Song Tien I. The defendant complained that the plaintiffs did not explain the "shortfall" of 2.14 metric tons referred to in credit note TW/13/90 dated 15 August 1990 (and, I should add, invoice 099/90 dated 20 July 1990) or the 25% deduction for "bad quality". However, there was no evidence to suggest that the plaintiffs were responsible for the shortfall or that these discounts were not given bona fide in the ordinary course of business. As regards the defendant's comment that the invoice pre-dated the arrival of the vessel, I fail to see how anything turns on the date of the invoice. Accordingly, I accept that the plaintiffs made a loss of \$1,617.23 as stated at item 124 of the Summary.

37 Item 125 - Bunga Bindang. The defendant complained that the plaintiffs did not explain the "loss in weight" of 0.914 metric tons referred to in credit note TW/17/90 and invoice 109/90. However, there was no evidence to suggest that the plaintiffs were responsible for the loss in weight or that the discount was not given bona fide in the ordinary course of business. Accordingly, I accept that the plaintiffs made a profit of \$5,779.37 as stated in item 125 of the Summary.

38 Item 126 - Kah Hang. The defendant's complaint was that the buyers were responsible for freight, so the plaintiffs were not entitled to make a deduction of US\$1,606.64 on account of "freight paid on our behalf" in invoice 106/90. As the plaintiffs did not provide any explanation for this deduction and the other transactions set out in that invoice, even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. According to invoice 106/90, the 36.209 metric tons of rattan were sold at US\$30,777.65. According to credit note TW/16/90, the 36.209 metric tons of rattan were purchased at US\$27,156.75. Accordingly, the profit made on this transaction should be the difference of US\$3,620.90 or S\$6,408.99 at the exchange rate of US\$1 = S\$1.7700 stated on the invoice.

39 Item 127 - Saigon Gate; Item 128 - Mimosa. The defendant did not dispute items 127 and 128 of the Summary in his affidavit filed on 20 September 2000. Accordingly, I accept that the plaintiffs made profits of \$1,912.72 and \$2,252.87 as stated at items 127 and 128 respectively of the Summary.

40 Item 129 - Saigon Gate. The defendant submitted that the plaintiffs should "account for the loss weight" in invoice 127/90 of "27.081 - 25.030" or 2.051 metric tons. The plaintiffs' credit note TW/22/90 evidencing the acquisition of the rattan and the plaintiffs' invoice 127/90 evidencing the sale of the rattan show that the plaintiffs received and sold rattan having a total weight of only 25.030 metric tons. The plaintiffs were never asked to explain why the title for both the credit note and the invoice referred to "27.081M.TONS". There was no evidence that the actual weight of the cargo received in Singapore was 27.081 metric tons, apart from the defendant's bare allegation. The plaintiffs' Mr Fung Ah Wäh explained at paragraph 8.1 of his affidavit filed on 11 October 2000 that the rattan was still moist when purchased, but had dried up and lost weight while being transported to Singapore. He added that the weight at which the goods were sold in Singapore had to be agreed to by the buyers before they made payment. There was also no evidence to contradict the plaintiffs' explanation. I accept that the weight at which the cargo was sold was one agreed to with the buyer in the ordinary course of business. Accordingly, I accept

that the plaintiffs made a profit of \$9,107.69 as stated at item 129 of the Summary.

41 Item 130 - Ex Stock. The defendant complained about deductions for freight that were made by the plaintiffs. As the plaintiffs did not provide any explanation for these deductions, even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$3,249.50 and US\$875 referred to in invoice 131/90 (amounting to a total of US\$4,124.50 or S\$7,300.36 at the exchange rate of US\$1 = S\$1.7700 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$19,422.23 (total of S\$12,121.87 + S\$7,300.36).

42 Item 131 - Saigon Gate. The defendant's complaint was that the plaintiffs were not entitled to give a discount of S\$6,118.38 for bad quality ostensibly because the goods were graded and selected by Goh Chee Kian. As Goh Chee Kian was not called as a witness at and did not file any affidavit for the taking of the accounts, there was no evidence to support the defendant's bare allegations concerning the quality of the goods. Further, there was no evidence to suggest that the discount was not given bona fide in the ordinary course of business. Accordingly, I accept that the plaintiffs made a profit of \$5,599.05 as stated at item 131 of the Summary.

43 Item 132 - Mimosa; Item 133 - Saigon Gate; Item 134 - Saigon Gate. The defendant did not dispute items 132, 133 or 134 of the Summary in his affidavit filed on 20 September 2000. Accordingly, I accept that the plaintiffs made profits of \$1,233.45, \$4,785.07 and \$1,757.51 as stated at items 132, 133 and 134 respectively of the Summary.

44 Item 135 - Nha Trang. The defendant's first complaint was that the plaintiffs "claim a loss weight of 11.6MT without explanation". However, there was no evidence to suggest that the plaintiffs were responsible for the loss in weight or that the discount was not given bona fide in the ordinary course of business. Nor was there any evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped.

45 The defendant made two other complaints. First, he alleged that "freight is to be paid by the buyer and there is no reason to deduct this from the price of rattan sold". Second, he queried a deduction of US\$1,200 which was made without any explanation whatsoever. As the plaintiffs did not provide any explanation for these deductions even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. According to invoice 148/90, the rattan was sold at US\$36,012. According to credit note TW/31/90, the same rattan was purchased at US\$21,836. Accordingly, the profit made on this transaction should be the difference of US\$14,176 or S\$24,732.87 at the exchange rate of US\$1 = S\$1.7447 stated on the invoice.

46 Item 136 - Ingenuity; Item 137 - Bunga Bindang. The defendant did not dispute items 136 or 137 of the Summary in his affidavit filed on 20 September 2000. Accordingly, I accept that the plaintiffs made profits of \$4,704.70 and \$5,983.09 as stated at items 136 and 137 respectively of the Summary.

47 Item 138 - Louisa. The defendant complained that "freight was to be paid by the buyer", and "there is therefore no reason to deduct freight from the price". As the plaintiffs did not provide any explanation for this deduction even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. According to invoice 163/91, the rattan was sold at US\$21,600. According to credit note TW/37/91, the same rattan was purchased at US\$16,550. Accordingly, the profit made on this transaction should be the difference of US\$5,050 or S\$8,837.50 at the exchange rate of US\$1 = S\$1.7500 stated on the invoice.

48 Item 139 - Singagold. The defendant's complained about "loss weight of 5.175 MT" in relation to credit note TW/38/91 and invoice 165/91, and about "loss weight of 2.67 MT" in relation to credit note TW/40/01 and invoice 166/91. However, there was no evidence to suggest that the plaintiffs were responsible for the loss in weight or that the discount was not given bona fide in the ordinary course of business. Nor was there any evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped.

49 The defendant also complained that freight of US\$5,546.88 reflected on invoice 165/91 and US\$3,060 reflected on invoice 166/91 were to be paid by the buyer, and not the plaintiffs. As the plaintiffs did not provide any explanation for these deductions even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$5,546.88 referred to in invoice 165/91 (or S\$9,888.42 at the exchange rate of US\$1 = S\$1.7827 stated on the invoice) and US\$3,060 referred to in invoice 166/91 (or S\$5,455.06 at the exchange rate of US\$1 = S\$1.7827 stated on the invoice) should be added to the profit computed by the plaintiffs.

Accordingly, the profit made on this transaction should be S\$31,063.42 (total of S\$15,719.94 + S\$9,888.42 + S\$5,455.06).

50 Item 140 - Hai Win. The defendant's first complaint was that there was a claim for loss of weight of 11 metric tons in credit note TW 41/91 and invoice 171/91. However, there was no evidence to suggest that the plaintiffs were responsible for the loss in weight or that the discount was not given bona fide in the ordinary course of business. Nor was there any evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped.

51 The defendant's second complaint was that freight of US\$6,300 reflected on invoice 170/91 and freight of US\$3,074.40 reflected on invoice 171/91 were to be paid by the buyer and not the plaintiffs. As the plaintiffs did not provide any explanation for these deductions even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$6,300 referred to in invoice 170/91 (or S\$11,155.41 at the exchange rate of US\$1 = S\$1.7707 stated on the invoice) and US\$3,074.40 referred to in invoice 171/91 (or S\$5,443.84 at the exchange rate of US\$1 = S\$1.7707 stated on the invoice) should be added to the profit computed by the plaintiffs.

52 The defendant's third complaint was that the plaintiffs made an unexplained deduction of US\$1,200 in invoice 170/91. As the plaintiffs did not provide any explanation for this deduction even though they were given the opportunity to, the deduction of US\$1,200 referred to in invoice 170/91 (or S\$2,124.84 at the exchange rate of US\$1 = S\$1.7707 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$35,681.28 (total of \$16,957.19 + \$11,155.41 + \$5,443.84 + \$2,124.84).

53 Item 141 - Bunga Bindang. The defendant complained that the plaintiffs were not entitled to give a discount of \$12,380.98 on account of "claim on quality" in credit note TW/45/91 and invoice 174/91, ostensibly because Goh Chee Kian was stationed in Vietnam to ensure quality. As Goh Chee Kian was not called as a witness at and did not file any affidavit for the taking of the accounts, there was no evidence to support the defendant's bare allegations concerning the quality of the goods. Further, there was no evidence to suggest that the discount was not given bona fide in the ordinary course of business. Accordingly, I accept that the plaintiffs made a profit of \$15,281.66 as stated at item 141 of the Summary.

54 Item 142 - Louisa. The defendant's first complaint was that 96.607 metric tons of rattan were shipped but only 96.083 metric tons of rattan were sold. He wanted the plaintiffs to account for the difference of 0.524 metric tons. There was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

55 The defendant's second complaint was that the trucking and unloading charges of US\$646.12 and freight charges of US\$6,569.27 reflected on invoice 167/91 were unjustified because they were payable by the buyer and not the plaintiffs. As the plaintiffs did not provide any explanation for these deductions even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$646.12 (or S\$1,150.09 at the exchange rate of US\$1 = S\$1.7800 stated on the invoice) and US\$6,569.27 (or S\$11,693.30 at the exchange rate of US\$1 = S\$1.7800 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$26,842.59 (total of S\$13,999.20 + S\$1,150.09 + S\$11,693.30).

56 Item 143 - Song Thu. The defendant's first complaint states: "For Credit Note No. TW/46/91 we were to have purchased 50MT (see page 444) and the Bill of Lading (page 451) however the tonnage stated is only 48 MT. There is a shortfall of 2 tons which the Plaintiffs have to account for the shortfall and its price and profit." This allegation was not only garbled but also misconceived as the corresponding invoice 173/91 clearly showed that the plaintiffs sold 50 metric tons of rattan at US\$24,500. There was therefore no "shortfall" that the plaintiffs failed to account for.

57 The defendant's second complaint states: "Again for Credit Note No. TW/46/9-A (page 445) we were to have purchased 35.50 MT (see Bill of Lading on page 453) but only 31.79 MT was acknowledged by the Plaintiffs. The Plaintiffs must therefore account for the shortfall of 2.29MT and its price and profit." The plaintiffs' credit note TW/46/9-A evidencing the acquisition of the rattan and the plaintiffs' invoice 173/91-A evidencing the sale of the rattan show that the plaintiffs received and sold rattan having a total weight of only 31.79 metric tons. There was no evidence that the plaintiffs had split up that particular cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any

apparent discrepancy in weight was irrelevant.

58 The defendant's third complaint was that the plaintiffs had wrongfully deducted freight charges of US\$3,000 from the sum payable by the buyer under invoice 172/91 and US\$3,000 from the sum payable by the buyer under invoice 173/91, when freight was payable by the buyers. As the plaintiffs did not provide any explanation for these deductions even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$3,000 (or S\$5,340 at the exchange rate of US\$1 = S\$1.7800 stated on invoice 172/91) and US\$3,000 (or S\$5,340 at the exchange rate of US\$1 = S\$1.7800 stated on invoice 173/91) should be added to the profit computed by the plaintiffs.

59 The defendant's fourth complaint was that the plaintiffs had wrongfully deducted a sum of US\$1,589.50 for "expenses" from the sum payable by the buyer under invoice 173/91-A. As the plaintiffs did not provide any explanation for this deduction even though they were given the opportunity to, the deduction of US\$1,589.50 (or S\$2,781.62 at the exchange rate of US\$1 = S\$1.7500 stated on invoice 173/91-A) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$31,779.76 (total of S\$18,318.14 + S\$5,340 + S\$5,340 + S\$2,781.62).

60 Item 144 - Silver Dragon. The defendant's first complaint pertained to a "loss of weight of 0.69 MT" reflected in both credit note TW/47/91 and the corresponding invoice 175/91. There was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

61 The defendant's second complaint was that the plaintiffs had wrongfully deducted a sum of US\$2,645.20 for freight from the sum payable by the buyer under invoice 175/91. The defendant claimed that freight was payable by the buyer as the cargo was sold on an "f.o.b. basis" with freight collect. As the plaintiffs did not provide any explanation for this deduction even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deduction of US\$2,645.20 (or S\$4,682 at the exchange rate of US\$1 = S\$1.7700 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$9,185.61 (total of S\$4,503.61 + S\$4,682).

62 Item 145 - Bunga Bindang. The defendant complained that the weight of the cargo stated in the bill of lading was 28.77 metric tons whereas the weight of the cargo according to the corresponding credit notes and invoices was only 27.3 metric tons, and he wanted the plaintiffs to account for the difference. The plaintiffs' Mr Fung Ah Wah explained at paragraph 8.1 of his affidavit filed on 11 October 2000 that the rattan was still moist when purchased, but had dried up and lost weight while being transported to Singapore. He added that the weight at which the goods were sold in Singapore had to be agreed to by the buyers before they made payment. There was no evidence that the plaintiffs split up the cargo for sale to different buyers. There was also no evidence to contradict the plaintiffs' explanation. I accept that the cargo sold was the same cargo that the plaintiffs received, and that the reduced weight was one agreed to with the buyer in the ordinary course of business. Accordingly, I accept that the plaintiffs made a profit of \$1,969.03 as stated at item 145 of the Summary.

63 Item 146 - Louisa. The defendant's first complaint pertained to a "shortfall of 17.936 MT" reflected in both credit note TW/51/91 and the corresponding invoice 179/91. There was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

64 The defendant's second complaint was that the plaintiffs had wrongfully deducted a sum of US\$4,561.44 for freight from the sum payable by the purchaser under invoice 179/91. The defendant claimed that freight was payable by the purchaser. As the plaintiffs did not provide any explanation for this deduction even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deduction of US\$4,561.44 (or S\$8,072.84 at the exchange rate of US\$1 = S\$1.7698 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$12,578.24 (total of S\$4,505.40 + S\$8,072.84).

65 Item 147 - Thien An. The defendant complained about "loss in weight of 7.04 MT" and a "consequent reduction in price of US\$859.14" in invoice 184/91. The defendant also complained about the deduction of US\$8,217.30 for freight as, according to him, freight was payable by the purchaser. There was no evidence to suggest that the plaintiffs were responsible for the loss in weight or that the weight

discount was not given bona fide in the ordinary course of business. Nor was there any evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. However, as the plaintiffs did not provide any explanation for the US\$859.14 deduction or the deduction on account of freight, even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$859.14 and US\$8,217.30 (or S\$1,524.11 and S\$14,577.49 respectively at the exchange rate of US\$1 = S\$1.7740 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$44,087.62 (total of S\$27,986.02 + S\$1,524.11 + S\$14,577.49).

66 Item 148 - Hoi Long. The defendant's first complaint was that the plaintiffs sold only 41.27 metric tons of rattan although 50 metric tons were shipped, and he wanted the plaintiffs to account for a shortfall of 8.73 metric tons. However, there was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

67 The defendant's second complaint was that the plaintiffs had wrongfully deducted a sum of US\$690 for freight from the sum payable by the purchaser under invoice 185/91. The defendant claimed that freight was payable by the purchaser. As the plaintiffs did not provide any explanation for this deduction even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deduction of US\$690 (or S\$1,224.06 at the exchange rate of US\$1 = S\$1.7740 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$1,863.65 (total of S\$639.59 + S\$1,224.06).

68 Item 149 - Bunga Bindang. The defendant did not dispute item 149 of the Summary in his affidavit filed on 20 September 2000. Accordingly, I accept that the plaintiffs made a profit of \$5,402.99 as stated at item 149 of the Summary.

69 Item 150 - Stella I. The defendant complained that the plaintiffs had wrongfully deducted a sum of US\$753.45 on account of a cross-claim by the purchaser from the sum payable by the purchaser under invoice 183/91. The defendant also contended that the plaintiffs were not entitled to deduct a sum of US\$3,033.03 on account of freight, because freight was payable by the buyer. As the plaintiffs did not provide any explanation for these deductions even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$753.45 and US\$3,033.03 (or S\$1,341.14 and S\$5,398.79 respectively at the exchange rate of US\$1 = S\$1.7800 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$19,438.98 (total of S\$12,699.05 + S\$1,341.14 + S\$5,398.79).

70 Item 151 - Thien An II. The defendant's first complaint was that the plaintiffs sold only 40.307 metric tons of rattan although 45.168 metric tons were shipped, and he wanted the plaintiffs to account for a shortfall of 4.861 metric tons. However, there was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

71 The defendant's second complaint was that the plaintiffs had wrongfully deducted a sum of US\$2,935.92 for freight from the sum payable by the purchaser under invoice 190/91. The defendant claimed that freight was payable by the purchaser. As the plaintiffs did not provide any explanation for this deduction even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deduction of US\$2,935.92 (or S\$5,208.32 at the exchange rate of US\$1 = S\$1.7740 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$6,663.82 (total of S\$1,455.50 + S\$5,208.32).

72 Item 152 - Hai Win. The defendant's first complaint was that the plaintiffs sold only 77.084 metric tons of rattan although 92.397 metric tons were shipped, and he wanted the plaintiffs to account for a shortfall of 15.313 metric tons. However, there was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

73 The defendant made two other complaints. First, he complained that the plaintiffs had wrongfully deducted a sum of US\$10,385.35 on account of a cross-claim by the purchaser from the sum payable by the purchaser under invoice 193/91. Second, the defendant contended that the plaintiffs were not entitled to deduct a sum of US\$6,283 on account of freight, because freight was payable by the buyer. As the plaintiffs did not provide any explanation for these deductions even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$10,385.35 and US\$6,283 (or S\$18,434.00 and S\$11,152.32 respectively

at the exchange rate of US\$1 = S\$1.7750 stated on the invoice) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$36,801.04 (total of S\$7,214.72 + S\$18,434.00 + S\$11,152.32).

74 Item 153 - Izvesta; Item 154 - Bunga Bindang. The defendant did not dispute items 153 and 154 of the Summary in his affidavit filed on 20 September 2000. Accordingly, I accept that the plaintiffs made profits of \$2,871.24 and \$4,084.53 as stated at items 153 and 154 respectively of the Summary.

75 Item 155 - Quy Nhon 2. The defendant's first complaint was that the rattan sold by the plaintiffs under invoice 199/91 was less than what was shipped, and he wanted the plaintiffs to account for the difference. However, there was no evidence that the plaintiffs had split up the cargo for sale to different buyers or that the invoice pertained to only part of the cargo that was shipped. If the entire cargo was sold in the ordinary course of business at the price stated in the invoice, any apparent discrepancy in weight was irrelevant.

76 The defendant also made the following complaints. First, the plaintiffs were not entitled to deduct freight charges of US\$3,923.05 under invoice 198/91 and US\$4,374.40 under invoice 199/91, because freight was payable by the buyer. Second, the plaintiffs made an unjustified deduction of US\$1,080 in invoice 199/91. Third, the plaintiffs had, in invoice 199/91, deducted freight charges for shipping cargo from Hong Kong to China amounting to US\$356.23. As the plaintiffs did not provide any explanation for these deductions even though they were given the opportunity to, I reject the plaintiff's computation of profit in relation to this item. The deductions of US\$3,923.05, US\$4,374.40, US\$1,080 and US\$356.23 (or S\$6,920.26, S\$7,716.44, S\$1,905.12 and S\$628.39 respectively at the exchange rate of US\$1 = S\$1.7640 stated on invoice 198/91 and calculated from the S\$ to US\$ ratio of the bottomline in invoice 199/91) should be added to the profit computed by the plaintiffs. Accordingly, the profit made on this transaction should be S\$16,458.04 (S\$6,920.26 + S\$7,716.44 + S\$1,905.12 + S\$628.39 - S\$712.17).

77 The defendant also referred to invoice 199/91 and alleged that "the Plaintiffs have not accounted for the sale in China". However, the contents of invoice 199/91 do not go so far as to suggest that there was a separate transaction in China distinct from the sale referred to invoice 199/91.

78 Item 156 - Nhatrang 6. The defendant raised various objections to the two main documents in support of the plaintiffs' computation for item 156, namely credit note TW/65/91 (which is wrongly labelled as an invoice) and invoice 201/91. As the plaintiffs did not address any of these objections even though they were given the opportunity to, I reject the plaintiff's computation of loss in relation to this item. In so far as invoice 201/91 is concerned, I do not think the plaintiffs are entitled to make any deduction on account of freight amounting to US\$8,132.34, since the plaintiffs have not disputed the defendant's allegation that the freight charges should be payable by the purchaser. Nor should there be any deduction on account of "claim on loss in weight" amounting to US\$38,781.40. No loss in weight is disclosed in the invoice and no explanation has been given for this claim. As regards credit note TW/65/91, I agree that no deduction should be made from the cost of the goods on account of "charges claimed by Alan". No explanation has been given as to what who Alan is or what these charges pertain to. According to invoice 201/91, the goods were sold at US\$100,160.57, disregarding the deductions for freight and "claim on loss in weight". According to credit note TW/65/91, the total cost of the goods was US\$74,060.10, disregarding the "charges claimed by Alan". The marine premium note exhibited shows that the plaintiffs paid insurance premium of \$320 for this shipment. I therefore find that the profit made on this transaction is US\$26,100.47 or S\$42,804.77 (using the exchange rate of US\$1 = S\$1.6400 stated on the invoice) less the sum of S\$320, i.e. S\$42,484.77 (S\$42,804.77 - S\$320).

79 Item 157 - Song Chang 505. The defendant's complaint is that there are no supporting documents at all to justify the plaintiff's assertion that this transaction resulted in a loss of \$10,696.05. As the plaintiffs did not provide any evidence that the transaction did in fact result in a loss, and the defendant did not provide any evidence to show that the transaction resulted in a profit, I find that this is a transaction which did not make any profit or loss. Accordingly, the transaction should be reflected as having made a profit/loss of \$0.

80 Item 158 - Song Chang 505; Item 159 - Laolong Quan. The defendant did not dispute items 158 and 159 of the Summary in his affidavit filed on 20 September 2000. Accordingly, I accept that the plaintiffs made profits of \$397.66 and \$2,579.40 as stated at items 158 and 159 respectively of the Summary.

81 In summary, I find that the rattan transactions resulted in a total profit of \$506,609.82.

### **Honda Motor Bikes (Items 160 to 162)**

82 According to the Summary, the transactions pertaining to Honda motor bikes at items 160, 161 and 162 made profits of \$6,216.87, \$10,632.45 and \$5,296.25 respectively. In the light of paragraphs 8 and 11 of my grounds of decision dated 30 May 2000, where I directed that the remittances credited to the plaintiffs should be reduced by the sums of \$22,423.88 and \$7,855.26 respectively, the profit made on these transactions should correspondingly be reduced by these amounts.

83 The defendant disputed 3 items of expenses in relation to the Honda motor bike transactions, namely, commission payments amounting to \$3,206.25 (in respect of item 160), \$958 (in respect of item 161) and \$2,232 (in respect of item 162). The defendant objected on the ground that these expenses were included "without stating the purpose of these payment and without any evidence of any such payments". I agree that the alleged commission payments of \$958 and \$2,232 should be excluded from the computation as there are no payment vouchers or other supporting documents to explain why and to whom these payments were made. However, the payment of \$3,206.25 was supported by a payment voucher exhibited at page 63 of Fung Ah Wah's affidavit filed on 22 October 1997 and also at page 74 of Fung Ah Wah's affidavit filed on 23 September 1999.

84 In the circumstances, I find that the Honda motor bike transactions resulted in a total loss of \$4,943.57, calculated as follows:

$$\$6,216.87 + \$10,632.45 + \$958 + \$5,296.25 + \$2,232 - \$22,423.88 - \$7,855.26$$

### **Containers (Items 163 to 171 of the Summary)**

85 At paragraph 44 of Fung's second affidavit and paragraph 85 of Fung's third affidavit, Mr Fung states:

As regards ... Containers, there are usually no supporting documents as the sales in Singapore were usually by cash. The exceptions are the transaction of 13 containers on 28/8/90, 6 containers on 22/10/90 and 12 containers on 15/8/91, where the buyer paid us by draft. ...

86 The 3 transactions referred to in this passage are items 169, 170 and 171 of the Summary. The documents evidencing the sale at item 169 are found at pages 73 and 74 of Fung's second affidavit, and duplicated at pages 678 and 679 of Fung's third affidavit. The documents evidencing the sale at item 170 are found at pages 75 and 76 of Fung's second affidavit, and duplicated at pages 680 and 681 of Fung's third affidavit. The documents evidencing the sale at item 171 are found at pages 77 and 78 of Fung's second affidavit, and duplicated at pages 682 and 683 of Fung's third affidavit. Apart from these documents, the only other document relied on to support the plaintiffs' computations of profits at items 163 to 171 are some handwritten notes found at pages 582 to 584 of Fung's first affidavit, and duplicated at pages 592 to 594 of Fung's third affidavit.

87 The expenses incurred by the plaintiffs in acquiring the total of 81 containers listed at items 163, 164, 165, 167, 168, 169, 170 and 171 of the Summary as reflected in the handwritten notes found at pages 582 to 584 of Fung's first affidavit, and duplicated at pages 592 to 594 of Fung's third affidavit, are matched by the "purchases" credited to the defendant at items 45, 52, 55, 61, 63, 65, 69 and 89 respectively of the Summary. The expenses incurred by the plaintiffs in acquiring the 18 containers listed at item 166 of the Summary as reflected in the handwritten note found at page 582 of Fung's first affidavit, and duplicated at page 592 of Fung's third affidavit, are matched by the "purchases" credited to the defendant at items 57 and 58 of the Summary. There is nothing to contradict Mr Fung's evidence that there were no supporting documents evidencing the sale of the containers listed at items 163 to 168 of the Summary, so the sales figures reflected in the handwritten notes found at pages 582 and 583 of Fung's first affidavit, and duplicated at pages 592 and 593 of Fung's third affidavit, are the best evidence of the price at which those containers were sold. I have verified, from my examination of the available documents, that the profits set out at items 163 to 171 of the Summary have been correctly calculated. Accordingly, I find that the profits earned from the container transactions at items 163, 164, 165, 166, 167, 168, 169, 170 and 171 of the Summary are \$15,146.60, \$16,288.50, \$4,640, \$13,782.35, \$4,785, \$4,645, \$6,051, \$3,225 and \$3,000 respectively. The total of these profits is \$71,563.45.

88 The defendant alleged that the number of "containers that are actually brought in with the cargoes" exceeded the 99 containers disclosed by the plaintiffs, and he wanted the plaintiffs to account for them. However, apart from the defendant's bare allegations which were



disputed by the plaintiffs, there was no evidence whatsoever that the containers used to transport the goods acquired by the defendant for the plaintiffs were in fact sold separately from the goods transported in the containers. All the containers acquired by the defendant for sale by the plaintiffs were accounted for in the "purchases" account (at items 45, 52, 55, 57, 58, 61, 63, 65, 69 and 89 of the Summary) and the profit and loss account (at items 163 to 171 of the Summary). In the circumstances, I find that the container transactions made a total profit of \$71,563.45.

#### **Miscellaneous Commodities (Items 172 to 175 of the Summary)**

89 Item 172 - Coffee. At paragraph 46 of Fung's second affidavit and paragraph 87 of Fung's third affidavit, Mr Fung stated that the supporting documents for the coffee transaction were collectively marked "FAW-12". FAW-12 comprise pages 79 to 100 of Fung's second affidavit, duplicated at pages 684 to 705 respectively of Fung's third affidavit. My conclusions on the coffee transaction are summarised in the following table:

<b>Sales</b>	
Invoice 069/90 dated 17 April 1990 (Fung's second affidavit page 81)  with corresponding request for letter of credit negotiation (Fung's second affidavit page 82)	US\$82,000  (S\$152,807.00)  (using exchange rate of  US\$1 = S\$1.8635 used for invoice 070/90)
Invoice 070/90 dated 14 April 1990 (Fung's second affidavit page 83)  with corresponding bank advice for S\$49,569.10 (Fung's second affidavit page 84)	US\$26,600  (S\$49,569.10)
Total Sales	S\$202,376.10
<b>Expenses</b>	
Freight (Fung's second affidavit page 86)	S\$6,759.00

<p>Payment to shipmaster</p> <p>(According to Fung's second affidavit pages 90 and 91, the amount paid was S\$1,395.00. However, as the plaintiffs' summary of the coffee transaction exhibited at page 585 of Fung's first affidavit reflects a lower amount of only S\$845.00, the discrepancy should be resolved in the defendant's favour and the lower quantum should be used.)</p>	S\$845.00
<p>Payment to Intraco Limited for cess duty</p> <p>(According to Fung's second affidavit pages 92 to 93, the amount paid was S\$1,307.29. However, as the plaintiffs' summary of the coffee transaction exhibited at page 585 of Fung's first affidavit reflects a lower amount of only S\$1,038.00, the discrepancy should be resolved in the defendant's favour and the lower quantum should be used.)</p>	S\$1,038.00
<p>Payment for changing status of 7 containers from FCL to LCL and for store rent</p> <p>(Fung's second affidavit page 94)</p>	S\$532.00
<p>Transport and trucking</p> <p>(This item is not proved, as the alleged supporting documents exhibited at Fung's second affidavit pages 95 and 96 pertain not to containers containing coffee but containers containing rattan.)</p>	S\$0.00
<p>Marine insurance premium</p> <p>(Although the marine premium note at page 97 of Fung's second affidavit states the premium to be S\$439.00, there is an endorsement for the marine premium note at page 99 of Fung's second affidavit that alters the premium payable to S\$110.00.)</p>	S\$110.00
<p>Additional store rent</p> <p>(This item is not proved as there are no supporting documents when there should be.)</p>	S\$0.00

Purchase price and incidental charges  (According to the seller's invoice 09/NS/90 at Fung's second affidavit page 79 and the corresponding bank collection notice at Fung's second affidavit page 80, the coffee was purchased at US\$108,000 or S\$203,256, using the exchange rate of US\$1 = S\$1.8820 found on the bank collection notice. The bank collection notice also provides for payment of "cable/postage/stamp duty" of S\$5.00. However, the plaintiffs' summary of the coffee transaction exhibited at page 585 of Fung's first affidavit reflects two payments of S\$154,324.00 and S\$50,152.77 for the coffee, and a further payment of S\$683.26 for "open L/C charges", making a total of S\$205,160.03. As the discrepancy should be resolved in the defendant's favour, the lower quantum should be used.)	US\$108,000  (S\$203,256.00)  plus S\$5.00
Total Expenses	S\$212,545
<b>Loss</b> (Total Expenses - Total Sales)	S\$10,168.90

90 I therefore find that the coffee transaction made a loss of S\$10,168.90. In so deciding, I have rejected the plaintiffs' contention that a further sum of S\$1,316.00 should be deducted on account of my decision in relation to item 8 of the Summary. Although the alleged "refund pertaining to overpriced coffee" was reflected in the plaintiffs' summary of the coffee transaction at page 585 of Fung's first affidavit, it is clear that this figure was not taken into account when the plaintiffs computed their loss for this transaction at S\$14,173.94. Also, having regard to the manner in which I have computed the plaintiffs' loss for the coffee transaction, there is no basis for making a further deduction of S\$1,316. I have similarly rejected the defendant's contention that the profit should be increased by S\$1,316. It was the plaintiffs' case that the refund of S\$1,316 was collected by the defendant from the supplier of the coffee. As the defendant denied collecting the sum of S\$1,316, it followed that:

- (1) the plaintiffs did not receive the sum of S\$1,316;
- (2) there was no corresponding reduction in the purchase price; and
- (3) there could be no corresponding increase in the profit from the coffee transaction.

91 Item 173 - Pepper. At paragraph 47 of Fung's second affidavit and paragraph 88 of Fung's third affidavit, Mr Fung stated that the supporting documents for the pepper transaction were collectively marked "FAW-13". FAW-13 comprises pages 101 to 107 of Fung's second affidavit, duplicated at pages 706 to 712 respectively of Fung's third affidavit. My conclusions on the pepper transaction are summarised in the following table:

<b>Sales</b>	

<p>Invoice 078/90 dated 25 May 1990</p> <p>(Fung's first affidavit page 589)</p> <p>with corresponding cheque deposit slips for S\$27,825 and S\$2,389.05 (of which \$330 was for a different transaction, according to an indorsement on the cheque deposit slip)</p> <p>(Fung's second affidavit pages 101 and 102)</p>	<p>US\$16,110</p> <p>(S\$29,884.05)</p> <p>(using exchange rate of</p> <p>US\$1 = S\$1.8550 as stated on the invoice)</p>
Total Sales	S\$29,884.05
<b>Expenses</b>	
<p>Payment to Intraco Limited for cess duty</p> <p>(According to Fung's second affidavit page 104, the amount paid was S\$402.34. However, as the plaintiffs' summary of the pepper transaction exhibited at page 587 of Fung's first affidavit reflects a lower amount of only S\$134.00, the discrepancy should be resolved in the defendant's favour and the lower quantum should be used.)</p>	S\$134.00
<p>Permit</p> <p>(This item is not proved as there are no supporting documents when there should be.)</p>	S\$0.00
<p>Freight</p> <p>(According to Fung's second affidavit page 79, the freight payable for the pepper was S\$741.80. However, the plaintiffs' summary of the pepper transaction exhibited at page 587 of Fung's first affidavit states that the freight paid was S\$837. As the discrepancy should be resolved in the defendant's favour, the lower quantum should be used.)</p>	S\$741.80
<p>Marine insurance premium</p> <p>(Fung's second affidavit page 106)</p>	S\$47.00

Purchase price (as per seller's invoice and plaintiffs' credit note TW/10/90 dated 7 May 1990)  (Fung's first affidavit pages 588 and 590)	US\$14,688  (S\$27,172.80)
Permit  (This item is not proved as there are no supporting documents when there should be.)	S\$0.00
Total Expenses	S\$28,095.60
<b>Profit</b> (Total Sales - Total Expenses)	S\$1,788.45

92 I therefore find that the pepper transaction made a profit of S\$1,788.45.

93 Item 174 - Groundnuts. At paragraph 48 of Fung's second affidavit and paragraph 89 of Fung's third affidavit, Mr Fung stated that the supporting documents for the pepper transaction were collectively marked "FAW-14". FAW-14 comprises pages 108 to 116 of Fung's second affidavit, duplicated at pages 713 to 721 respectively of Fung's third affidavit. My conclusions on the groundnut transaction are summarised in the following table:

<b>Sales</b>	
Invoice 153/91 dated 31 January 1991  (Fung's second affidavit page 111)  with corresponding request for letter of credit negotiation  (Fung's second affidavit page 113)	US\$116,000  (S\$201,840.00)  (using exchange rate of US\$1 = S\$1.7400 as stated on bank debit advice at Fung's second affidavit page 114)
Total Sales	S\$201,840.00
<b>Expenses</b>	

Purchase price (as per seller's invoice, collection notice and bank debit advice dated 24 January 1991)  (Fung's second affidavit pages 108, 100 and 114)	US\$108,000  (S\$187,920.00)  (using exchange rate of US\$1 = S\$1.7400 stated on bank debit advice)
Bank charges for letter of credit (as per bank debit advice dated 24 January 1991)  (Fung's second affidavit page 114)	S\$592.80
Marine insurance premium  (Fung's second affidavit page 115)	S\$311.00
Payment to Intraco Limited  (This item is not proved as there are no supporting documents when there should be.)	S\$0.00
Total Expenses	S\$188,823.80
<b>Profit</b> (Total Sales - Total Expenses)	S\$13,016.20

94 I therefore find that the groundnut transaction made a profit of S\$13,016.20.

95 Item 175 - Cashew Nuts. At paragraph 49 of Fung's second affidavit and paragraph 90 of Fung's third affidavit, Mr Fung stated that the relevant documents for the cashew nut transaction were collectively marked "FAW-15". FAW-15 comprises pages 117 to 127 of Fung's second affidavit, duplicated at pages 722 to 732 respectively of Fung's third affidavit. My conclusions on the cashew nut transaction are summarised in the following table:

Sales	

<p>Invoice 202/91 dated 12 August 1991</p> <p>(Fung's second affidavit page 118)</p> <p>(The bank credit advice dated 23 August 1991 Fung's second affidavit page 117 shows the S\$ equivalent to be S\$279,242.69 at exchange rate of US\$1 = S\$1.722500. However, the plaintiffs' summary of the cashew nut transaction exhibited at page 596 of Fung's first affidavit states that the S\$ equivalent of US\$162,114.77 was S\$279,647.98. As the discrepancy should be resolved in the defendant's favour, the higher quantum should be used.)</p>	<p>US\$162,114.77</p> <p>(S\$279,647.98)</p>
Total Sales	S\$279,647.98
<b>Expenses</b>	
<p>Purchase price</p> <p>(The bank debit advice dated 10 July 1991 at Fung's second affidavit page 122 shows that the plaintiffs were debited with US\$156,000 or S\$274,950.00 (using the exchange rate of US\$1 = S\$1.762500 as stated on bank debit advice). However, the plaintiffs' summary of the cashew nut transaction exhibited at page 596 of Fung's first affidavit states that the price paid was US\$152,318.40 or S\$262,759.24 at an exchange rate of US\$1 = S\$1.7250. As the discrepancy should be resolved in the defendant's favour, the lower quantum should be used.)</p>	<p>US\$152,318.40</p> <p>(S\$262,759.24)</p>
<p>Bank charges for letter of credit (as per bank debit advice dated 10 July 1991)</p> <p>(Fung's second affidavit page 122)</p>	S\$810.37
<p>Freight</p> <p>(Fung's second affidavit page 121)</p>	S\$8,333.20
<p>Payment to Intraco Limited</p> <p>(Fung's second affidavit page 123)</p>	S\$1,351.25

Expenses paid by Intan Holdings Pte Ltd (Fung's second affidavit pages 124 and 125)	S\$2,086.33
Trucking charges (Fung's second affidavit pages 126 and 127)	S\$2,007.00
Import permit, insurance, amendment charges and handling charges  (These items are not proved as there are no supporting documents when there should be.)	S\$0.00
Total Expenses	S\$277,347.39
<b>Profit</b> (Total Sales - Total Expenses)	S\$2,300.59

96 I therefore find that the cashew nut transaction made a profit of S\$2,300.59.

97 In the circumstances, I find that the four miscellaneous commodities transactions together yielded a profit of S\$6,936.34.

#### **Rubber (Items 176 to 180 of the Summary)**

98 Item 176 - Saigon Gate. The defendant's only complaint was that there was "no evidence of import tax". If by this the defendant is referring to the payment of \$1,388.59 to Intraco Limited for cess duty, then this objection is unfounded, as there is no evidence that cess duty is not payable simply because the goods are re-exported to a Malaysian party. Indeed, Mr Fung states at paragraph 11.6 of his affidavit filed on 11 October 2000 that "Intraco Cess had to be paid for goods brought into Singapore even if it is then re-exported". However, there was an entry for \$40 marked "Imp" in the summary for the Saigon Gate rubber transaction found at page 597 of Fung's first affidavit. There were no supporting documents for this entry. If the defendant was referring to this entry when he complained that there was "no evidence of import tax", then I agree that this entry should be disregarded in computing the profit for this transaction. I therefore find that the loss on item 176 of the Summary should only be S\$4,144 instead of S\$4,184.

99 Item 177 - Mekong Express. The defendant's complaint was that while the plaintiffs had produced documents relating to the expenses for the Mekong Express rubber transaction, there was "no evidence of the price paid nor the price for which the rubber was sold". In so far as the cost of this shipment of rubber was concerned, there was ample evidence adduced at the trial to show that the rubber was acquired through the defendant at a price of US\$279,250 (or S\$494,272.50 at an exchange rate of US\$1 = S\$1.77). The defendant was in fact credited with the sum of S\$494,272.50 in the "purchases" account at item 67 of the Summary. However, the plaintiffs did not produce any documentary evidence pertaining to the sale of the Mekong Express rubber. Item 177 of the Summary discloses no less than 5 separate sales of the Mekong Express rubber. One would have expected the plaintiffs to issue invoices in respect of these transactions. However, none of these invoices were disclosed to the court. The plaintiffs have also failed to provide any confirmation under oath or affirmation of the sale price for each separate transaction in which the plaintiffs sold the Mekong Express rubber. The plaintiffs did no more than exhibit a summary of the Mekong Express transactions at page 598 of Fung's first affidavit and page 608 of Fung's third affidavit. In the circumstances, the plaintiffs have failed to satisfy me that they did in fact make a loss of \$10,250.53 on the Mekong Express transactions. The defendant has also failed to satisfy me that the plaintiffs made a profit on the Mekong Express transactions. I therefore direct that the transactions dealt



with under item 177 of the Summary should be reflected as transactions that did not make a profit or loss.

100 Item 178 - Bunga Bindang. The defendant's only complaint was that there was "no evidence of import tax". If by this the defendant is referring to the payment of \$442.36 to Intraco Limited for cess duty, then this objection is unfounded, as there is no evidence that cess duty is not payable simply because the goods are re-exported to a Malaysian party. Indeed, Mr Fung states at paragraph 11.6 of his affidavit filed on 11 October 2000 that "Intraco Cess had to be paid for goods brought into Singapore even if it is then re-exported". However, there was an entry for \$40 marked "Import Permit" in the summary for the Saigon Gate rubber transaction found at page 599 of Fung's first affidavit. There were no supporting documents for this entry. If the defendant was referring to this entry when he complained that there was "no evidence of import tax", then I agree that this entry should be disregarded in computing the profit for this transaction. I therefore find that the loss on item 176 of the Summary should only be S\$20,986.41 instead of S\$21,026.41.

101 Item 179 - La Femme; Item 180 - Kinyru. The defendant did not dispute items 179 and 180 of the Summary in his affidavit filed on 20 September 2000. Accordingly, I accept that the plaintiffs made profits of \$13,660.56 and \$24,341.64 as stated at items 179 and 180 respectively of the Summary.

102 In the circumstances, I find that the five rubber transactions together yielded a profit of S\$12,871.79.

### **Expenses (Items 185 to 195)**

103 At paragraph 28 of the defendant's affidavit filed on 20 September 2000, the defendant admitted to all the expenses except items 192, 193 and 194 of the Summary. The undisputed expenses at items 185 to 191 and 195 of the Summary amount to a total of \$12,431.42.

104 Item 192 - Haw Par claim judgment sum; Item 193 - Haw Par claim judgment costs. The evidence pertaining to the Haw Par Trading Pte Ltd ("Haw Par") claim and judgment costs is set out at paragraph 55 of Fung's second affidavit, paragraph 96 of Fung's third affidavit and exhibit FAW-26 in both affidavits. The defendant's complaint that these two items of the Summary were expenses incurred in the course of a business transaction falling within the scope of the parties' joint venture, and the plaintiffs had failed to account for the profits earned from that transaction. The defendant submitted that these expenses should be deducted from the profits earned from this transaction, and that the balance should be accounted for by the plaintiffs in the profit and loss account. I agree with this submission. The plaintiffs cannot, in the same breath, claim to be entitled to recover the expenses incurred for a particular business transaction without also accounting for any profit made from that transaction.

105 The transaction concerned pertained to a sale of timber. The plaintiffs bought 8,000 cubic metres of timber from Vietnamese sellers at US\$97 per cubic metre (see Fung's second affidavit pages 198 to 199 and 206) and sold to Haw Par:

- (1) 2,500 cubic metres of the timber, plus/minus 10% at buyer's option, at US\$103 per cubic metre (see Fung's second affidavit pages 200 to 202 and 208);  
and
- (2) 5,500 cubic metres of the timber, plus/minus 10% at buyer's option, at US\$105 per cubic metre (see Fung's second affidavit pages 203 to 205 and 208).

The plaintiffs' bank debited the plaintiffs' account with the sum of S\$1,397,188 (US\$776,000 converted to S\$ at an exchange rate of US\$1 = S\$1.800500) for the purchase price and \$3,964.26 for bank charges (see Fung's second affidavit page 210). Haw Par in turn arranged for an irrevocable letter of credit for US\$835,000 to be opened in the plaintiffs' favour for the transaction (see Fung's second affidavit pages 211 to 215).=

106 The Vietnamese sellers unfortunately failed to meet the shipping deadlines. In the meantime, Haw Par had arranged with Mitsubishi Corporation for a vessel to proceed to Ho Chi Minh port in Vietnam to load the first shipment of timber. When the cargo was not delivered on time, the charterer diverted the vessel to pick up other cargo first. Mitsubishi Corporation made a claim against Haw Par, who in turn made a claim against the plaintiffs. Haw Par sued the plaintiffs in the High Court in Suit No. 860 of 1991 for breach of contract, and by consent, judgment was entered for the sum which Haw Par had to pay Mitsubishi Corporation and costs. The total principal and accrued interest

which the plaintiffs paid Haw Par amounted to US\$40,578.52 (which the plaintiffs converted to S\$70,160.26 at an exchange rate of US\$1 = S\$1.7290) while the costs paid amounted to S\$700.

107 There was no evidence whether the timber sale transaction was ultimately proceeded with or aborted. Mr Fung's affidavits were conspicuously silent on this matter. Although the defendant expressly suggested in his affidavit filed on 20 September 2000 that the plaintiffs should only be entitled to claim the expenses referred to in items 192 and 193 of the Summary if the plaintiffs also accounted for the profits from the timber transaction, Mr Fung failed to address this point in his affidavit in reply filed on 11 October 2000. There is some basis for believing that the timber sale transaction was subsequently proceeded with - in particular, the letter from the Vietnamese seller at Fund's second affidavit page 221 contains an assurance that the seller would "DELIVER ... THE FULL QUANTITY CONTRACTED".

108 If the timber transaction was subsequently proceeded with without any hitches, the plaintiffs would have made a profit of S\$31,404.98, calculated as follows:

<b>Sales</b>	
2,500 cubic metres at US\$103 per cubic metre	US\$257,500
5,500 cubic metres at US\$105 per cubic metre	US\$577,500
Total Sales	US\$835,000 (S\$1,503,417.50)
<b>Expenses</b>	
Purchase price (8,000 cubic metres at US\$97 per cubic metre) (US\$776,000 converted to S\$1,397,188 at an exchange rate of US\$1 = S\$1.800500 in bank debit advice)	US\$776,000 (S\$1,397,188.00)
Bank charges for letter of credit (as per bank debit advice)	S\$3,964.26
Haw Par claim judgment sum	S\$70,160.26
Haw Par claim judgment costs (Fung's second affidavit page 123)	S\$700.00

Total Expenses	S\$1,472,012.52
<b>Profit</b> (Total Sales - Total Expenses)	S\$31,404.98

109 As the plaintiffs have failed to provide evidence whether the timber transaction was proceeded with or aborted and have failed to render a full account in respect of the timber transaction, the plaintiffs should not be allowed to claim the expenses set out at items 192 and 193 of the Summary without first satisfying the court that no sales income was earned from the timber transaction from which the whole or part of the expenses claimed at items 192 and 193 of the Summary could be paid.

110 Item 194 - Legal fees. The evidence pertaining to the claim in respect of legal fees is set out at paragraph 57 of Fung's second affidavit, paragraph 98 of Fung's third affidavit and exhibit FAW-28 in both affidavits. The legal fees were incurred in respect of the plaintiffs' claim against Thai-Pore Enterprises Pte Ltd ("Thai-Pore") pertaining to the recovery of loans and other forms of financial assistance extended by the plaintiffs to Thai-Pore. The defendant submitted that these legal expenses were not attributable to the joint venture between the parties, and so should not be reflected in the profit and loss account. I agree fully with the defendant's submission, which is borne out by a careful perusal of the documents exhibited in support of this claim. Accordingly, item 194 of the Summary is disallowed.

#### **Other Outstanding Issues**

111 Item 20 - Transfer overpayment. There was a dispute between the parties as regards how my decision on item 20 of the Summary would affect the profit and loss account. The short answer is that it does not affect the profit and loss account at all. At paragraph 18 of my grounds of decision dated 30 May 2000, I explained that even if what the plaintiffs alleged was true, there was no overpayment to the defendant, because there was no evidence that the goods shipped were of a smaller quantity than the goods paid for by the plaintiffs. On the plaintiffs' own case, what had happened was that the cost of freight exceeded the price differential between the value of the goods and the amount that the plaintiffs paid for the goods, thus resulting in an overall loss. I went on further to decide that the plaintiffs failed to prove that there was an overpayment because:

- (1) there was no documentary evidence to support the plaintiffs' allegation that they had paid \$19,999.15 for freight; and
- (2) excluding freight, the plaintiffs expended a total of only \$405,990.12 (inclusive of the \$10,000 cash handed to the defendant) but received goods valued at \$417,467.01.

In the circumstances, I fail to see how my decision on item 20 of the Summary can have any effect on the profit and loss account.

112 Extraordinary expense in respect of rattan alleged to have been paid for by the defendant and lost. There was also a dispute between the parties as regards how my decision on the rattan alleged to have been paid for by the defendant and loss would affect the profit and loss account. The sum of US\$26,000 had initially been expended by the defendant to acquire rattan for resale under the joint venture. If the goods had not been "confiscated", the US\$26,000 payment would have been reflected under the "purchases" account, the proceeds from and expenses incurred for the sale of the rattan would have been reflected in a trading account, and any profit or loss from the trading account would have been transferred to the profit and loss account. The "confiscation" of the rattan would result in a total write-off of proceeds from this transaction. There should therefore be a corresponding entry in the profit and loss account to reflect the total loss of US\$26,000 incurred as a result of this transaction. At the present exchange rate of US\$1 = S\$1.7255, this amounts to approximately S\$44,863.

#### **Conclusion**

113 Having regard to the decision in Registrar's Appeal No. 600217 of 2000, and disregarding items 192 and 193 of the Summary, the profit and loss account may be summarised as follows:

Items	Amount (S\$)
1 Rattan (Items 116 to 159 of the Summary)	506,609.82
2 Honda Motor Bikes (Items 160 to 162 of the Summary)	(4,943.54)
3 Containers (Items 163 to 171 of the Summary)	71,563.45
4 Miscellaneous Commodities (Items 172 to 175 of the Summary)	6,936.34
5 Rubber (Items 176 to 180 of the Summary)	12,871.79
6 Heineken Beer (Items 181 to 184 of the Summary)	(161,175.20)
7 Expenses (Items 185 to 191 and 194 to 195 of the Summary)	(12,431.42)
8 Extraordinary Expense (Rattan)	(44,863.00)
Profit	374,568.24
Defendant's half share of profit	187,284.12

114 At paragraph 30 of my grounds of decision dated 30 May 2000, I held that the defendant was entitled to be reimbursed a total of US\$39,470 in respect of extraordinary expenses. At the present exchange rate of US\$1 = S\$1.7255, this amounts to approximately S\$68,105.49.

115 Having regard to the decision in Registrar's Appeal No. 600217 of 2000, and disregarding items 192 and 193 of the Summary, the

state of the accounts between the parties may be summarised as follows:

(1)	Remittances made to the defendant	\$ 2,958,160.35
(2)	Less: Purchases made by the defendant	(\$ 2,911,350.19)
(3)	Less: Reimbursement of the defendant's extraordinary expenses	(\$ 68,105.49)
(4)	Add: The plaintiffs' claim in respect of the sanitary ware transaction	\$ 62,926.80
(5)	Add: Housing loan	\$ 40,000.00
(6)	Less: The defendant's half share of the profit	<u>(\$ 187,284.12)</u>
		<u>(\$ 105,652.65)</u>

116 There is presently a balance due from the plaintiffs to the defendant amounting to \$105,652.65. The defendant is therefore entitled to an order that the plaintiffs pay him the sum of \$105,652.65.

117 The plaintiffs have filed an appeal against the decision in Registrar's Appeal No. 600217 of 2000. The outcome of that appeal will significantly affect the state of the final account between the parties. I therefore give the parties liberty to apply to vary my order in the event that the decision in Registrar's Appeal No. 600217 of 2000 is varied. The parties should also have liberty to apply to vary my order within the next 21 days if they detect arithmetic errors in any of the numerous calculations that I have made to arrive at this final account.

118 In summary, I make the following orders:

- (1) The plaintiffs shall pay the defendant the sum of \$105,652.65 with interest at 6% per annum from the date of the counterclaim to the date of this order;
- (2) There be liberty to apply to vary this order in the event that the order in Registrar's Appeal No. 600217 of 2000 is varied;
- (3) The determination of the issue whether the plaintiffs are entitled to claim the expenses set out at items 192 and 193 of the Summary shall be deferred until after the plaintiffs have filed an affidavit that renders a true and complete account (with all relevant supporting documents) of the timber transaction described at paragraph 55 and exhibit FAW-26 of Fung Ah Wäh's affidavit of evidence in chief filed on 7 November 1997;
- (4) In the event that the plaintiffs fail to file such an affidavit within 21 days of this order, the plaintiffs' claims under items 192 and 193 of the Summary shall be disallowed;
- (5) The parties shall have liberty to apply to vary this order within 14 days from the date the plaintiffs file such an affidavit; and
- (6) The parties shall have liberty to apply to vary this order within 21 days if any party detects arithmetic errors in any of the calculations made to arrive at this final account.

Sgd:

PHANG HSIAO CHUNG  
ASSISTANT REGISTRAR

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