Tiananmen KTV (2013) Pte Ltd and others *v* Furama Pte Ltd
[2015] SGHC 83

Case Number	: Suit No 68 of 2015 (Summons No 512 of 2015)
Decision Date	: 27 March 2015
Tribunal/Court	: High Court
Coram	: Lee Seiu Kin J
Counsel Name(s)	: Low Chai Chong and Alvin Liong (Rodyk & Davidson LLP) for the plaintiff; Ang Cheng Hock SC and Tan Kai Liang (Allen & Gledhill LLP) for the defendant.
Parties	: Tiananmen KTV (2013) Pte Ltd and others — Furama Pte Ltd

Civil Procedure – Injunctions

Landlord and Tenant – Agreements for leases

Tort – Misrepresentation – Fraud and deceit

27 March 2015

Lee Seiu Kin J:

1 This was an application for an interim injunction to restrain the defendant, or their directors, employees or agents from:

(a) exercising any right of re-entry under the tenancy agreements between each of the plaintiffs and the defendant ("the Tenancy Agreements");

(b) exercising any right of reinstatement under the Tenancy Agreements;

(c) ceasing the supply of electricity to the plaintiffs' premises, and in the event that supply of electricity had already been ceased, to restore such supply with immediate effect;

(d) disrupting the lift services for the first three storeys of the Annex Block; and

(e) setting up scaffoldings or barriers to Units 01-01, 02-01, 03-01, or to any of the common areas in or around the Annex Block, and in the event that such scaffolding or barriers have already been set up, to take down such scaffolding or barriers with immediate effect.

2 On 3 February 2015, I dismissed the injunction application and I now give my grounds of decision.

Facts

Parties to the dispute

3 This dispute concerns premises situated at 407 Havelock Road Furama Riverfront Singapore Annex Block Singapore 169634 ("the Annex Block").

4 The defendant is the owner of the Furama Riverfront Hotel ("the Riverfront Hotel"). The Annex Block is one of the buildings of the Riverfront Hotel and houses five floors of commercial space. It was initially leased to Isetan (Singapore) Ltd which operated its eponymous departmental store there. Since the early 1980s, the Annex Block has been leased to various entertainment businesses.

5 The first plaintiff, second plaintiff and third plaintiff were the respective tenants of Units 01-01, 02-01 and 03-01 of the Annex Block ("the Premises"). On 9 September 2014, the plaintiffs and defendant entered into tenancy agreements for the lease tenure beginning 1 July 2014 and ending 31 January 2015.

Triggering events

6 The latest tenancy agreements between the parties were due to expire on 31 January 2015. In late 2014, the defendant rejected the plaintiffs' requests for lease renewal. Dissatisfied, the plaintiffs brought a suit against the defendant alleging that:

(a) The defendant's refusal to renew their leases was a breach of collateral contracts between the plaintiffs and the defendant.

(b) The defendant had made various fraudulent misrepresentations that the plaintiffs had relied on to their detriment.

7 At or about 12.45 am on 1 February 2015, the electricity supply to the Premises was terminated by the defendant. On the same day, various blockades were set up around the Annex Block and this included scaffolding pieces set up on parking lots. This led the plaintiffs to take out this interim injunction application.

Background to the dispute

8 In or around 2012, the first plaintiff was negotiating with the defendant for a renewal of its lease for Unit 01-01 which was due to expire on 31 December 2012. It is undisputed that the first plaintiff and the defendant met a few times in November and December 2012 to discuss the lease renewal. However, each party advanced a different version of events.

The first plaintiff's version of events

9 In 2012, the first plaintiff's business was doing badly because of, *inter alia*, competition from Marina Bay Sands and Resorts World Sentosa. [note: 1] In order to improve its business, the first plaintiff considered significant renovations with a view to increasing its attraction as an entertainment venue. These renovations were expected to cost a large sum and thus the first plaintiff wanted to obtain favourable terms for the lease renewal. [note: 2] To this end, the first plaintiff wrote to the defendant on 4 June 2012, seeking a lease renewal for three years, with an option to renew for three years thereafter, with rental increase capped at 10% during the option period. [note: 3] On top of this, the first plaintiff requested a four month rent-free renovation period. However, the parties were unable to agree on the lease renewal. [note: 4]

10 As of 11 December 2012, the parties were still unable to reach an agreement notwithstanding several meetings and telephone conversations between the parties. On or about 12 December 2012, the parties met again. During this meeting, the defendant's property manager Kwan Kok Hua ("Mr Kwan") represented to the third plaintiff's general manager Karjadi Tjugito ("Mr Karjadi") that:

(a) The defendant would be willing to renew the then existing lease (due to expire on 31 December 2012) for a period of 18 months. [note: 5]

(b) As long as the defendant did not re-develop the Premises into a hotel, it would continue to lease the Premises to the first plaintiff at the market rental given the long term landlord-tenant relationship between the parties. [note: 6]

(collectively known as "the Representations")

11 At the same meeting, the defendant's Mr Kwan further proposed that the respective leases for the Premises be streamlined as to their expiry dates and negotiated as a single package, particularly with regard to the issue of extension. [note: 7] Subsequently, the third plaintiff's Mr Karjadi relayed the Representations and proposal made by the defendant to the first, second and third plaintiffs. [note: 8]

12 On 13 December 2012, the first plaintiff requested for a one month rent free period for Unit 01-01. This was initially rejected by the defendant on 19 December 2012. However, the defendant eventually acceded to the first plaintiff's request for a one month rent-free period on 28 December 2012 and repeated the Representations to the first plaintiff. [note: 9]

13 The first to third plaintiffs and the defendant subsequently entered into separate lease agreements that ended 30 June 2014, [note: 10] and the first plaintiff undertook major renovations (that cost $3m) at its premises at Unit 01-01 between 15 March 2013 and 3 June 2013. [note: 11]

14 Subsequently, the parties entered into further agreements to renew the leases for the period of 1 July 2014 to 31 January 2014 ("the 9 September 2014 Lease Agreements). [note: 12]

The defendant's version of events

15 In late 2012, the defendant's board of directors already had plans to lease the Annex Block to new prospective tenants for office and retail use once the existing leases expired. [note: 13]

16 The defendant never made the Representations or the proposal to streamline the plaintiffs' leases during the meeting on 12 December 2012. [note: 14] After that meeting, the plaintiffs knew that there would be no further extension after the lease renewal for Unit 01-01. [note: 15] This was reflected in the letter of offer for the lease renewal for the period ending 30 June 2014 which expressly provided that "there will be no extension at the end of the lease term *i.e.*, 30 June 2014", and that there would be "no renewal option" after the lease's expiry after 18 months. [note: 16] The subsequent lease extensions reflected a similar position. [note: 17] This was in line with the defendant's intention to lease the Premises to new tenants.

17 Furthermore, the first plaintiff knew that it should not carry out too much renovation. Prior to the renovations, the defendant had advised the first plaintiff that it should not "over renovate" since there would be no further lease extensions after the expiry of the renewed 18 months' lease. This may be seen from the following emails:

(a) In an email dated 24 December 2012, the defendant expressed its "concern[s] on the risks of heavy investment over a short lease" and further stated that the first plaintiff was "fully aware

of the business risks" [note: 18].

(b) In an email dated 28 December 2012, the plaintiffs' Mr Karjadi expressed his appreciation for the defendant's "kind advice … [to not] over invest … given the short nature of the new lease". Mr Karjadi also stated that the first plaintiff "ha[d] decided to…relook at [their] refurbishing plan and try to reduce cost whenever possible" [note: 19].

My decision

18 The general principles governing the grant of an interim injunction are trite. According to the Court of Appeal in *Chuan Hong Petrol Station Pte Ltd v Shell Singapore (Pte) Ltd* [1992] 2 SLR(R) 1 ("*Chuan Hong*") (at [89]), the applicant for an interim injunction needs to show *first* that there is a serious question to be tried for a permanent injunction at the trial, and *second* that the balance of convenience favoured the grant of an interim injunction. Factors such as the conduct of the parties and whether damages were an adequate remedy are relevant to determine where the balance of convenience lies. The court should take whichever course appears to carry the lower risk of injustice (*Chuan Hong* at [88]).

19 I noted at the outset that the injunction the plaintiffs were seeking was mandatory in nature. Such injunctions are granted on substantially the same principles as prohibitory injunctions, *ie*, a serious question to be tried for a permanent injunction at trial and the balance of convenience. However, as I will elaborate below, there appears to be an added requirement of a "clear case" to justify the granting of an interim mandatory injunction.

20 In *Chuan Hong*, the Court of Appeal suggested that the distinction between mandatory and prohibitory injunctions lay in whether the status quo was disturbed (at [81]). According to Lord Diplock in *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130, the relevant status quo is not limited to the state of affairs before the issue of the writ; rather, where there have been changes to the state of affairs, the relevant status quo refers to the state of affairs before the last change (at 140).

21 In the present case, the status quo would be the state of affairs existing at the time of this hearing where, *inter alia*, the defendant exercised its right of repossession and had caused the electricity supplies to the Premises to be terminated and various blockades to be set up around the Annex Block in anticipation of refurbishment works for new tenants. Since the effect of the injunction sought was to disrupt the status quo *ie*, to compel the defendant to restore the Premises such that the plaintiffs could resume operations pending final determination of the action, the interim relief that the plaintiffs were seeking was effectively a mandatory injunction.

22 This classification is critical as a higher threshold must be met for the grant of a mandatory injunction (see *Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd and others* [1994] 3 SLR(R) 114 ("*Singapore Press Holdings*") at [26]). In *NCC International AB v Alliance Concrete Singapore Pte* Ltd [2008] 2 SLR(R) 565 ("*NCC International*"), the Court of Appeal stated, at [75], "that the courts will only grant an interim mandatory injunction in *clear cases* where special circumstances exist" (emphasis added). Furthermore, a "high assurance" or "clear case" standard is a strong factor which the court will take into consideration when granting a mandatory injunction (*Chuan Hong* at [89]). This high threshold is necessary since mandatory injunctions often have a more drastic effect, often granting the plaintiff the entire or a large part of his relief, and disrupts the status quo (Singapore Civil Procedure 2015 (G P Selvam ed-in-chief) (Sweet & Maxwell Asia, 2015)at para 29/1/24).

23 With the above principles in mind, I turn to the present application.

Whether there was a serious question to be tried

24 I was of the view that the plaintiffs did not have a real prospect of success for a permanent injunction at trial. This was hardly a "clear case" that justified granting the injunction sought.

Breach of collateral contracts

Evidence of the Representations

25 The plaintiffs' primary argument was that the defendant had breached collateral contracts between the parties by refusing to grant further lease extensions. In their view, the Representations formed the basis of the alleged collateral contracts for the defendant to continue leasing the Premises to the plaintiffs as long as the Annex Block was not redeveloped into a hotel. [note: 20] The plaintiffs submitted that there was a serious question to be tried since there was a dispute of fact as to whether the Representations were made.

26 The plaintiffs also contended that the first plaintiff's heavy investment in renovating the Premises lent credence to their claim that the defendant had made the Representations. In their view, the first plaintiff would only have invested so heavily in renovations if it had thought that it had a much longer lease.

27 Not unexpectedly, the defendant denied making the Representations. According to the defendant, the plaintiffs were never labouring under the impression that the Premises would be leased to them as long as the defendant had no intention to re-develop the Annex Block into a hotel. The defendant cited cl 17.4(b) and the First Schedule of the 9 September 2014 Lease Agreements to support its argument. Clause 17.4(b) was an entire agreement clause that excluded all prior collateral agreements and would negate the existence of the alleged collateral contracts since they were purportedly concluded back in 2012 [note: 21]. The First Schedule on the other hand stated that the lease term would have "no further extension whatsoever" and "NO option to renew and NO extension beyond 31 January whatsoever". This, the defendant contended, would have made it abundantly clear that the plaintiffs should not expect any further lease extensions.

28 The defendant further contended that the documentary evidence refuted the plaintiffs' claim that they had invested so heavily in renovations in reliance of the Representations. It cited a letter dated 28 December 2012 ("the Renovation Undertaking") written by the plaintiffs' Mr Karjadi that stated: [note: 22]

> We duly note and sincerely appreciate your kind advice to us against over-investment given the short nature of the new lease.
>
> Bearing your advice in mind, we have decided to re-look our refurbishing plan and try to reduce cost whenever possible. …

29 The plaintiffs' evidence of the existence of a collateral contract was based purely on oral evidence without any corroborating document. It is strange that the plaintiffs would have committed to large renovation expenses without anything in writing recording the representation or referring to it. In fact, the correspondence between the parties was consistent with the defendant's position. It was particularly telling when the plaintiffs, in their correspondence with the defendant, appeared resigned to the fact that further lease extensions would not be granted and had started sourcing for alternative premises. Furthermore, in their latest requests for lease extensions, the plaintiffs only

sought periodic extensions with a view to clearing liquor stocks and tiding over the Chinese New Year. Therefore the plaintiffs' position that there was a collateral contract is not based on cogent evidence.

30 The plaintiffs argued that their case was not impeded by the proviso in the lease agreements stating that there would be no further lease extensions, because the defendant had granted previous extensions despite such clear wordings in a previous letter of offer. I was not persuaded by this argument. It was clear from the emails exchanged between the parties that the short term extensions granted had been out of goodwill and on account of the long term tenancy relationship of the parties. The defendant could, but was not obliged, to grant those extensions to accommodate the plaintiffs' search for new premises.

31 I was also unable to accept the argument that the defendant must have made the Representations since the first plaintiff would only have invested so heavily in renovations if it believed that it was entitled to further lease extensions. The cost of the renovation works was at best a neutral factor since the plaintiffs were prepared to move out once the defendant decided to redevelop the Annex Block. Furthermore, it did not lie in the mouth of the first plaintiff to rely on the costly renovation works since the evidence showed that the defendant had expressly cautioned the first plaintiff against over investing in renovating the Premises (as evidenced by the Renovation Undertaking).

Requirement of writing under s 6(*d*) of the Civil Law Act

32 The defendant submitted that in any event, the alleged collateral contracts were rendered unenforceable by s 6(*d*) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("Civil Law Act") since they were not evidenced in writing. In response, the plaintiffs drew a distinction between a lease and an agreement for lease. In the plaintiffs' view, a lease would be caught by s 6(*d*) but an agreement for lease would not, since it was once removed from the lease. As the collateral contract in question constitutes an agreement for a lease, it would be necessary to consider the plaintiffs' proposition that such an agreement does not fall within the ambit of that statutory provision.

33 Section 6(d) of the Civil Law Act provides as follows:

> 6. No action shall be brought against —
>
> (*d*) any person upon any contract for the sale or other disposition of immovable property, or any interest in such property;
>
> unless the promise or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person lawfully authorised by him.

34 According to the learned editors of *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) ("*Tan Sook Yee*") at para 17.53:

> [T]he fine distinction between a grant of a lease and an agreement to grant a lease is one that must always be borne in mind. ***In respect of*** *agreements* ***to grant leases, there must be compliance with section 6(d) of the Civil Law Act*** , which provides that no action shall be brought in relation to a contract which is a disposition of any interest in an immovable property unless the agreement is in writing and signed by the party to be charged therewith. Therefore, a pre-requisite to any legal action premised on a contract for a lease is the satisfaction of s. 6(d) of the Civil Law Act. …

[emphasis in italics in original, emphasis in bold italics added]

35 The above analysis suggests that only agreements for leases, not leases, are governed by s 6(*d*) of the Civil Law Act. This is consonant with both the literal wording of s 6(*d*) and the historical background of the provision. On a plain reading, it is clear that agreements for leases, not leases, fall within s 6(*d*) of the Civil Law Act. A lease is dispositive, that is, it creates a leasehold interest in land (*Long v Tower Hamlets London Borough Council* [1998] Ch 197 at 210). An instrument is usually construed as a lease if it contains words of present demise or words that impart an immediate letting (*Hill & Redman's Law of Landlord and Tenant* (LexisNexis, 18th Ed) ("*Hill & Redman*") at para A 446). On the other hand, agreements for leases are legally enforceable promises, whereby the parties bind themselves, one to grant and the other to accept, a lease at a later date (see *Hill & Redman* at para A 444). An agreement for a lease therefore constitutes a contract for the future disposition of an interest in land and falls squarely within s 6(*d*), which applies to *contracts for* the "disposition of immovable property, or any interest in such property" instead of instruments that are dispositive.

36 Furthermore, upon closer analysis of the English Statute of Frauds 1676 ("the Statute of Frauds"), it is clear that s 6(*d*) of the Civil Law Act was intended to govern agreements for leases, not leases. The Statute of Frauds required both leases and agreements for leases to be in writing. However, different provisions applied to each instrument. Section 3 of the Statute of Frauds prohibited grants of leases except by writing whereas s 4 of the same rendered agreements for leases unenforceable unless they were evidenced by writing and signed by the person to be charged therewith. Since s 6 of the Civil Law Act is a re-enactment of s 4 of the Statute of Frauds, it is clear that agreements for leases, not leases, fall within the ambit of s 6.

37 It is also worth noting that the *raison d'être* of the Statute of Frauds was to "help protect people and their property against fraud and sharp practice by legislating that certain types of contracts could not be enforced unless there was written evidence of their existence and their terms" (see *SM Integrated Transware Pte Ltd v Schenker Singapore (Pte) Ltd* [2005] 2 SLR(R) 651 at [80]). This is equally important in the context of agreements for leases since these agreements create an equitable interest in land (*London and South Western Railway Company. v. Gomm* (1881-1882) 20 Ch.D. 562 at 581) and have been regarded to be almost as good as leases (*Tan Sook Yee* at para 17.48).

38 In light of the above, I was of the view that agreements for leases, to be enforceable, have to comply with the requirement of writing in s 6(*d*) of the Civil Law Act. On the present facts, the alleged collateral contracts were promises for future leases. These constituted agreements for leases falling within the ambit of s 6(*d*) of the Civil Law Act. Since these agreements were not evidenced in writing, they were unenforceable by operation of s 6(*d*).

Fraudulent misrepresentation

39 Finally, turning to the issue on fraudulent misrepresentation, I noted that this ground of claim proceeded in the alternative, *ie*, on the basis that the alleged collateral contracts between the parties did not exist. There was no other contract between the parties at the time of the hearing.

40 The plaintiffs claimed that they were entitled to the injunction sought since their case would likely succeed if the defendant were found to have made the Representations. [note: 23] The plaintiffs submitted that the said Representations would be false given that the defendant had evinced an intention not to continue leasing the Premises to the plaintiffs.

41 The defendant submitted that in any event, the plaintiffs had no real prospect of obtaining a

permanent injunction at trial because the plaintiffs were essentially seeking to specifically enforce the fraudulent misrepresentations that they claimed the defendant had made, and specific performance was not available as a remedy for the tort of fraudulent misrepresentation. The defendant relied on Halsbury Laws of Singapore vol 18 (Lexis Nexis, Reissue, 2009) which stated at para 240.422:

> Where a representor has, by way of fraudulent misrepresentation, induced a representee to alter his position,other than by entering into a contract or binding transactionwith the representor, the representee will be able to bring an action for damages at common law or for an account of profits in equity, *but he will not be entitled to any other form of relief*.
>
> [emphasis added]

42 Even if the plaintiffs succeed in proving the existence of a collateral contract, by virtue of s 6(*d*) of the Civil Law Act, such a contract is not enforceable. I do not see how the plaintiff would succeed in enforcing it on account of the representation being fraudulent. There is a distinction to be made between contractual and tortious remedies. In contract, the defendant had made a promise and broken it. Thus, the object of contractual damages is to place the plaintiff in as good a position, as far as money could do it, *as if the promise had been performed* (see *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 ("*Wishing Star*") at [28]). In cases where monetary damages are inadequate to place the plaintiff in that position, orders for specific performance may be appropriate.

43 On the other hand, the purpose of tortious remedies is to place the victim into the position in which he would have been, *if the tort had not been committed* (see *Wishing Star* at [28]). In the context of fraudulent misrepresentation, the law intervenes to restore the victim to the position prior to the fraudster's representation (*Vita Health Laboratories Pte Ltd and others v Pang Seng Meng [2004] 4 SLR(R) 162* at [91]). The nature of specific performance is incompatible with this goal. If granted for a claim of fraudulent misrepresentation, an order for specific performance would undo the wrong in a wholly different way. Instead of placing the victim in the position as if the misrepresentation had never been made, the order would place him in a position as if the misrepresentation was true. This would be tantamount to compelling the fraudster to make good his lie, not the losses flowing from his lie.

44 In my view therefore, the plaintiffs' reliance on this ground to support an injunction is misplaced.

Adequacy of damages

45 On the issue of whether damages would be an adequate remedy should the plaintiffs succeed at trial, the plaintiffs suggested, in their written submissions, that the damage to the plaintiffs' businesses would be irreparable since the plaintiffs were unable to secure alternative premises. [note: 24] They cited a few reasons for this. First, they said that the plaintiffs' 200 employees would be immediately rendered jobless and be forced to look for alternative jobs without any warning. Second, they asserted that suspending business temporarily would lead to the erosion of their customer base given that the nature of the entertainment business is dependent on the individuals' dealings with the customers. Third, it was said that the plaintiffs' prospective losses would outweigh the defendant's since the defendant would only suffer pecuniary losses that may be adequately compensated by damages if it were prevented from repossessing the Premises.

46 According to the plaintiffs, there was a greater risk of injustice to the plaintiffs than to the defendant. In their view, if the defendant were allowed to repossess the Premises and to refurbish

them for new tenants, the recent renovation works would be destroyed, causing them to suffer losses that would exceed the $3m spent by the first plaintiff in renovating Unit 01-01. [note: 25]

47 I did not think that the potential harms outlined by the plaintiffs were irremediable by damages. The loss of business, erosion of customer base and the reinstatement of the Premises could be quantified and the plaintiffs compensated by an appropriate award of damages should they succeed at the trial.

48 For completeness, I should also add that the plaintiffs appear to be in a poor financial position and their ability to compensate the defendant in the event that the injunction is granted and the defendant succeeds at trial is in doubt. According to its recent financial statements, the second plaintiff has incurred a total net loss for two out of the past three years of operations, with negative shareholders' equity of about $5m in all three years. [note: 26] Moreover, the plaintiffs have failed to make payment for rent for the month of January 2015 despite two written reminders. [note: 27]

49 I found that damages would be an adequate remedy should the plaintiffs succeed at the trial. On the other hand, due to the precarious financial position of the plaintiffs, there is the possibility that the defendant would not be able to recover any damages arising from the grant of the injunction. Hence, on balance, I found that the potential injustice to the defendant was slightly greater although damages would be an adequate remedy for both parties.

Conduct of parties

50 Lastly, the defendant submitted that the plaintiffs were dilatory in seeking the interim relief. The plaintiffs had long known of the defendant's intention to repossess the Premises after the expiry of the leases on 31 January 2015 since they had commenced the suit against the defendant on 21 January 2015. However, it was not until the electricity supplies were terminated and the scaffolding was put up that the plaintiffs brought this application.

51 Although a delay in taking proceedings would usually be a relevant factor (see for example *Shepherd Homes Ltd v Sandham* [1971] 1 Ch. 340 at 352), I was disinclined to place any reliance on this factor since there was only a slight delay in this case.

Conclusion

52 For the reasons above, I found that the balance of convenience did not favour the grant of the injunction sought. Thus, I dismissed the plaintiffs' application with costs to the defendant fixed at $7,000.

[note: 1] Affidavit of Karjadi Tjugito ("Karjadi's AEIC") at para 23.

[note: 2] Karjadi's AEIC at para 24.

[note: 3] Karjadi's AEIC at para 25.

[note: 4] Karjadi's AEIC at para 25.

[note: 5] Karjadi's AEIC at para 26(c)(i).

[note: 6] Karjadi's AEIC at para 26(c)(ii).

[note: 7] Karjadi's AEIC at para 26(d)(i).

[note: 8] Karjadi's AEIC at para 26(e).

[note: 9] Karjadi's AEIC at para 26(h).

[note: 10] Statement of Claim ("SOC") at paras 31, 34 and 35.

[note: 11] Particulars of SOC para 36 (a)-(b).

[note: 12] Karjadi's AEIC at para 34.

[note: 13] Affidavit of Mr Kwan Kok Hua ("Kwan's AEIC") at para 33.

[note: 14] Kwan's AEIC at para 16.

[note: 15] Kwan's AEIC at para 32.

[note: 16] Kwan's AEIC at para 39.

[note: 17] Kwan's AEIC at pp. 61, 90 and 118.

[note: 18] Kwang's AEIC at p 230.

[note: 19] Kwan's AEIC at p 124.

[note: 20] Plaintiffs' Skeletal Submissions ("PWS") at para 10.

[note: 21] Kwan's AEIC p 58.

[note: 22] Kwan's AEIC p 125.

[note: 23] PWS at para 13.

[note: 24] PWS at paras 28 to 34 .

[note: 25] PWS at para 38.

[note: 26] Kwan's AEIC at para 78.

[note: 27] Kwan's AEIC at para 78.