

Orix Leasing Singapore Ltd v Koh Mui Hoe and Others
[2008] SGHC 211

Case Number : Suit 739/2006
Decision Date : 17 November 2008
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Prem Gurbani and Bernard Yee (Gurbani & Co) for the plaintiffs; Justin Phua Hoon Chong (Justin Phua Tan & Partners) for the first and second defendants; Chung Ping Shen (HA & Chung Partnership) for the third defendant
Parties : Orix Leasing Singapore Ltd — Koh Mui Hoe; Ink Trading Pte Ltd; Kenzone Logistics Pte Ltd; Kim Heng Mechanic

Tort – Conversion

17 November 2008

Judgment reserved.

Judith Prakash J:

Background

1 This is the first of two actions that the plaintiff, Orix Leasing Singapore Limited, commenced in this court to recover damages for conversion. The other is Suit 740 of 2006 ("suit 740").

2 The plaintiff carries on the business of providing leasing and hire purchase services and, in this connection, purchases heavy machines to lease out to its customers. Among these customers in 2005 was a company named Rav Graphic Pte Ltd ("RGPL") which had two directors and shareholders, Tan Kim Seng Crispian ("Crispian Tan") and Ms Tan Soi Ngoh. On 25 August 2005, RGPL entered into an agreement to take a printing machine on hire purchase from the plaintiff viz one Mitsubishi 4-Colour Sheetfed Offset Press (the "Mitsubishi 4C"). At that time RGPL already had hire purchase agreements with the plaintiff in respect of two other machines, namely a Heidelberg Four-Colour Press Machine (the "Heidelberg 4C") which is the subject matter of suit 740 and a Mitsubishi 5-Colour Sheetfed Offset Press (the "Mitsubishi 5C").

3 Sometime in September 2006, the plaintiff discovered that the Mitsubishi 4C, together with the two other machines, had been removed from RGPL's premises without the plaintiff's prior consent or knowledge. The plaintiff then engaged a private investigator to investigate the matter and to trace the whereabouts of the machines with a view to recovering all of them.

4 In the meantime, RGPL had defaulted in meeting its obligations under the three hire purchase agreements. The plaintiff therefore commenced Suit 645 of 2006/T against RGPL and its two directors seeking recovery against the company under the hire purchase agreements and against the two directors under the personal guarantees that the latter had provided in respect of RGPL's obligations. The plaintiff claimed approximately \$3.65 million in this suit. Judgment was obtained against the two directors on 7 November 2006. However, RGPL itself was put into liquidation before judgment was entered against it by the plaintiff. The plaintiff filed a proof of debt in RGPL's liquidation. The two directors were subsequently made bankrupt by other creditors and the plaintiff's judgment against them was not satisfied. The plaintiff had not recovered any amount in respect of the three machines when it started the present action.

5 The investigator reported to the plaintiff that the three machines had been unlawfully sold by RGPL and also obtained certain information regarding the transportation of the machines from RGPL's premises and the persons who had bought them. Despite further efforts being made, including commencing legal action in Malaysia, the plaintiff was unable to recover any of the machines.

6 This action was commenced on 8 November 2006 against four defendants. The original statement of claim alleged that sometime in March 2006, the first defendant Mr Koh Mui Hoe ("Mr Koh") acting on his own or as a director of the second defendant, Ink Trading Pte Ltd ("ITPL"), unlawfully caused the Mitsubishi 4C to be removed from RGPL's premises by arranging with the third defendant, Kenzone Logistics Pte Ltd, and/or the fourth defendant, Kim Heng Mechanic, to do so. It was further pleaded that the third defendant and/or the fourth defendant then proceeded to remove the machines from RGPL's premises and to deliver the same to persons unknown. In the premises, the plaintiff asserted, all four defendants had converted the Mitsubishi 4C to their own use.

7 By the time this suit came on for trial, the action against the fourth defendant had been discontinued. The claim against the third defendant was discontinued at an early stage of the trial and, thereafter, the trial proceeded only against Mr Koh and ITPL. Thus, when hereafter in this judgment I refer to "the defendants" collectively, I should be understood as referring only to the first and second defendants.

8 On the morning of the second day of the trial, the plaintiff applied for and obtained leave to amend its statement of claim to remove the allegation that Mr Koh and ITPL had made arrangements with the third and fourth defendants to remove the Mitsubishi 4C from RGPL's premises. Instead the plaintiff averred that Mr Koh and ITPL had caused the machine to be dismantled in RGPL's premises and sold to a Taiwanese buyer whose identity was unknown to the plaintiff.

9 This action was heard before me at the same time as I heard suit 740. The witnesses who appeared in this action also testified in suit 740 except for the witnesses for the fourth defendant in suit 740 as that party was not a party to this action. However, by an order of court made on 15 November 2007, the parties were given leave to use the evidence adduced in suit 740 for the present action and *vice versa*.

The issues

10 The defence filed by Mr Koh and ITPL was a total denial. They denied that they had anything to do with the removal of the Mitsubishi 4C from RGPL's premises.

11 In its closing submissions, the plaintiff submitted that the two principal issues before the court arising from the pleadings and the evidence were as follows:

(i) Whether, as a matter of fact, the Mitsubishi 4C was sold to a Malaysian buyer named Mr Mani, as alleged by Crispian Tan, or, as alleged by the plaintiff, to the defendants, alternatively, to a Taiwanese buyer through them.

(ii) If the machine was sold to Mr Koh or to a Taiwanese buyer through the defendants, whether, as a matter of law, Mr Koh's conduct, either by buying the Mitsubishi 4C directly from RGPL or acting as a middleman to facilitate the sale of the machine by RGPL to the Taiwanese buyer, amounted to conversion on the part of the defendants.

12 The defendants did not disagree with the formulation of the issues.

The evidence

For the plaintiff

13 There were five witnesses for the plaintiff but it is not necessary to summarise the evidence of all of them. The chief witness on the matters that had occurred at RGPL was Chua Soo Meng, a former employee of RGPL. Mr Chua testified that he was employed as a production supervisor by RGPL from 2003 to 2006. He stated that he was working for RGPL at the time the Mitsubishi 4C and the Heidelberg 4C were removed from RGPL's premises in March 2006 and August 2006 respectively.

14 Mr Chua was the person who gave the plaintiff's investigator information about the loss of the machines. When he was first asked to prepare an affidavit of evidence in chief in support of the plaintiff's case, he refused because he did not want the hassle of having to give evidence in court. Subsequently, after he was served with two subpoenas, one for this action and the other for suit 740, Mr Chua decided to affirm an affidavit since he had to give evidence in any case. His affidavit therefore covered matters at issue in both actions. For the purposes of the present judgment, I will summarise his evidence in relation to the Mitsubishi 4C and will only refer to his evidence in relation to the other machines where relevant.

15 Mr Chua stated that the Mitsubishi 4C was purchased by RGPL sometime in 2005. He recalled that the Mitsubishi 4C was sold to one "Jimmy Koh" (ie the first defendant) from ITPL and was dismantled in early March 2006. He remembered that on the day the machine was dismantled, four Malaysian Chinese men went to RGPL's premises to dismantle the machine. They started to dismantle the Mitsubishi 4C at about 7am. It should be noted here that, in court, Mr Chua corrected his statement that the Mitsubishi 4C had been sold to Mr Koh. He said that he was not sure whether Mr Koh was the purchaser or the middleman for the sale of the machine.

16 After the machine had been dismantled, about eight to ten local Chinese men loaded the components into two forty-foot containers. Mr Chua remembered that a crane had been used to lift the components into the containers but he could not remember who the crane belonged to. At that time, RGPL's premises were located in a building called Quek Industrial Building in Toh Guan Road East. After the first container was fully loaded, it was transported out of Quek Industrial Building at night by a prime mover which also brought the other container to the premises for loading. He recalled that the second container was also transported out of RGPL's premises at night. He was not aware of who the trailers or prime movers belonged to.

17 Mr Chua clearly remembered that Mr Koh was at RGPL's premises on both days to oversee the dismantling of the machines. Mr Koh was known to Mr Chua from past dealings that the two men had had. As far as Mr Chua knew, Mr Koh was in the business of buying and selling second-hand printing and printing-related machines. Mr Koh's Taiwanese buyer, whom Mr Chua was not formally introduced to, was also there on both days. According to the Taiwanese buyer, the machine was to be transported to Malaysia before being shipped to Taiwan.

18 Mr Chua wished to clarify that when he was interviewed by the private investigator, Henry Tay, he had told Mr Tay that the third defendant was involved in the dismantling of the machines. Mr Chua said that he had been mistaken in saying this. The third defendant, as far as he could recall, had been involved in the installation of the Mitsubishi 4C, not its dismantling.

19 Mr Chua also stated that the Mitsubishi 5C was dismantled in mid-May 2006. As far as Mr Chua was aware, it was sold to an Indian buyer through a man named S Mani from a company called Newtrend Machinery Services (M) Sdn Bhd.

For the defendants

20 Mr Koh filed an affidavit of evidence-in-chief in suit 740 in which he gave evidence for both actions. He stated that he was the managing director of ITPL which was a company in the business of trading in printing equipment and consumables. He first met Crispian Tan when the latter responded to advertising brochures that ITPL had sent out to printers in Singapore.

21 In February or March 2006, at Crispian Tan's request, Mr Koh attended at the latter's office on the ground floor of Quek Industrial Building for the purpose of viewing a cutting machine that RGPL wanted to dispose of. On his arrival, Crispian Tan introduced Mr Koh to Mr Chua. Mr Chua then took Mr Koh to see the machine which he then ascertained to be a Polar 137 EMC cutter. Subsequently Mr Koh told Crispian Tan over the phone that ITPL did not have any prospective buyers for a cutter of that size. Notwithstanding this, Mr Koh went on to notify some of his customers about the availability of the Polar 137 EMC cutter. As a result, in May 2006, Mr Koh received queries from his customers regarding the technical specifications of the machine. As ITPL did not possess this information, Mr Koh contacted Crispian Tan who told him that he could inspect the machine and gather the information himself.

22 In May 2006, Mr Koh went to RGPL's premises again to examine the Polar 137 EMC cutter and to take photographs of it. Thereafter, however, no offers were received from any of ITPL's customers and this matter did not proceed.

23 On 27 July 2006, Crispian Tan contacted Mr Koh to let him know that RGPL had a CTF (*ie* computer to film) Online image setting machine for sale. Mr Koh went immediately to RGPL's premises to view this CTF machine. Again Crispian Tan instructed Mr Chua to show the machine to Mr Koh. Mr Koh noticed that the CTF machine had been dismantled and shrink-wrapped. He took some photographs of it and left as he could not inspect it in its wrapping. Crispian Tan subsequently informed Mr Koh that the CTF machine would be sold for \$85,000 but Mr Koh thought this price was too steep.

24 Subsequently, one of ITPL's customers and Mr Koh went down to RGPL's premises on a few occasions to check on certain technical specifications of the CTF machine but in the end no sale eventuated because of the price demanded by RGPL.

25 The next contact was on 29 August 2006 when Mr Koh learnt from Crispian Tan that RGPL was selling its forklift (stacker), plate maker, plate processor, scanner and some light tables. That evening Mr Koh went down to RGPL's premises to inspect and photographed some of these machines. He then had some negotiations with Crispian Tan who wanted to sell all the machines to IPTL in one lot. Mr Koh was not sure however whether IPTL needed the plate maker and the plate processor. Two days later, on 31 August 2006, Mr Koh went down to RGPL's premises to inspect these machines again. He decided not to buy the plate maker and the plate processor and, after some negotiations, Crispian Tan agreed to sell the forklift and the scanner to IPTL at the price of \$2,000 on condition that payment would have to be made in cash and delivery taken by 1 September 2006.

26 On the morning of 1 September 2006 Mr Koh went to RGPL's premises and paid \$2,000 to Crispian Tan personally. There were a lot of workers moving machinery, furniture and office equipment. As Crispian Tan was so busy, Mr Koh did not ask him for an official receipt for the \$2,000 payment. He told Crispian Tan that he would come back in the evening to transport the two machines.

27 Mr Koh then engaged one Yeo Tian Poh, a lorry driver, to transport the machines that he had

bought. Mr Yeo and his lorry arrived at RGPL's premises at about 6pm. Unfortunately they were not able to take the machines that day because the forklift was busy moving other items and Crispian Tan asked him to come back the next day. On 2 September 2006, the forklift and the scanner together with a fibre tank and some light tables which Crispian Tan had given to IPTL on the spur of the moment were loaded onto Mr Yeo's lorry and taken to IPTL's premises.

28 The only mention that Mr Koh made in his affidavit of the matters involved in this action and suit 740 was in paragraph 32 where he stated that contrary to the plaintiff's allegations, neither IPTL nor he were in any way involved or responsible for the removal of the Heidelberg 4C or the Mitsubishi 4C.

Crispian Tan's evidence

29 Technically, Crispian Tan did not give evidence in this action. He was however called as a witness for the fourth defendant in suit 740 and his evidence there was available for consideration in this action as well.

30 Crispian Tan filed two affidavits of evidence-in-chief. In his first affidavit he first gave an apology to the third and fourth defendants in suit 740 for getting them involved in a legal action brought by the plaintiff. Most of his affidavit dealt with matters relevant to suit 740 rather than to this action. In paragraph 32, however, he stated that sometime in August 2006, he was approached by a male Malaysian of Indian descent who was also responsible for the sale of the Mitsubishi 4C which was the subject of this action. Crispian Tan said that he knew this male Indian only as "Mr Mani". He also said that just as Mr Mani had previously done, Mr Mani had gone to RGPL's office in Quek Industrial Building to inspect the Heidelberg 4C. That was all that Crispian Tan said about the matters in issue here.

31 Crispian Tan's second affidavit was basically a refutation of the evidence given by Mr Chua in the latter's own affidavit of evidence-in-chief. Most of Crispian Tan's second affidavit was argumentative rather than factual. Counsel for the plaintiff objected to it and I upheld his objection. Consequently, the second affidavit was not admitted.

The submissions and analysis

Was the machine sold to Mr Mani?

32 The plaintiff pointed out that during cross examination Crispian Tan had admitted that the Mitsubishi 4C belonged to the plaintiff. Therefore, the plaintiff submitted that it was entitled to sue for the conversion of that machine. Crispian Tan had also admitted that he had unlawfully sold the Mitsubishi 4C, allegedly for \$700,000, sometime in March 2006. He asserted, however, that the machine was sold to a Malaysian buyer by the name of Mr Mani and not to Mr Koh or IPTL or any purchaser introduced by them.

33 The plaintiff submitted that this was not true. In this connection, it cited the evidence of its credit control manager, Tay Chin Liang also known as Vincent Tay. Vincent Tay had testified that in order to ascertain whether the Mitsubishi 4C was sold to Mr Mani, he contacted Mr Mani on 6 November 2007, using the mobile phone number that was shown on Mr Mani's calling card which Mr Chua had given to the private investigator Henry Tay. During this telephone conversation, Mr Mani denied that he had bought the Mitsubishi 4C and said that he had only bought the Mitsubishi 5C.

34 On 7 November 2007, Vincent Tay called Mr Mani again, this time from the plaintiff's lawyer's

office. During the second telephone conversation, Mr Mani again said that he had only bought the Mitsubishi 5C. Mr Mani also told Vincent Tay that he had signed a contract with RGPL for the purchase of the Mitsubishi 5C but had given the contract to the police when he lodged the police report in Singapore regarding the purchase of the machine and that the plaintiff could get a copy of the contract from the police. Thereafter, Vincent Tay tried to get a copy of this contract from the police but the investigating officer refused to give it to him. Vincent Tay also testified that on 6 September 2006, when Crispian Tan had gone to the plaintiff's office to discuss the missing machines, he told the plaintiff's staff that he had sold all three of them to a Mr Yusoff of Kuala Lumpur. He did not mention Mr Mani at that time and only identified him as the buyer months later in his affidavit of evidence-in-chief.

35 The plaintiff submitted that the defendants appeared to accept Vincent Tay's evidence on his telephone conversation with Mr Mani as their counsel did not challenge any of the evidence. It further submitted that Mr Mani's statements to Vincent Tay were corroborated by Crispian Tan who had confirmed in court that there was a written contract for the sale of the Mitsubishi 5C to Mr Mani. Crispian Tan had not disclosed that contract and had asserted that no written contract was signed for either the Mitsubishi 4C or the Heidelberg 4C, even though both machines were also supposedly sold to Mr Mani because Mr Mani did not ask for any contracts to be signed for those two machines.

36 The plaintiff submitted that there would be no reason for Mr Mani to have insisted on signing the contract for the Mitsubishi 5C and not the Mitsubishi 4C or the Heidelberg 4C if he had bought all three machines. The only logical conclusion to be drawn from the fact that there was only one sale contract and that was in respect of the Mitsubishi 5C, was that Mr Mani only bought the Mitsubishi 5C. Such a conclusion would not only be consistent with what Mr Mani told Vincent Tay over the telephone, but also with Mr Chua's evidence.

37 The plaintiff further submitted that apart from being obviously implausible and inconsistent with Vincent Tay's and Mr Chua's evidence, Crispian Tan's allegation that the Mitsubishi 4C was sold to Mr Mani should also be rejected simply because Crispian Tan had confessed in court that he was a thief and a dishonest person because he had sold three machines belonging to the plaintiff. Further Crispian Tan's evidence regarding Mr Mani was not corroborated by Mr Mani himself. Crispian Tan had admitted that although he knew Mr Mani, he did not make any effort to arrange for Mr Mani to testify in this action. The plaintiff submitted that Crispian Tan did not want Mr Mani to attend court because Mr Mani would have exposed his lies.

38 Developing on the above line, the plaintiff also submitted that an adverse inference under s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) should also be drawn against the defendants for failing to call Mr Mani as a witness. Mr Mani was an extremely important witness for the defendants because if he confirmed he bought the Mitsubishi 4C, the defendants would be completely exonerated. I should say immediately that I cannot accept this submission regarding the adverse inference. Illustration (g) of s 116 states that the court may presume that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it. It can be seen therefore that before an adverse inference can be drawn regarding the non-production of a witness there would have to be evidence that that witness could have been produced by the party against whom the inference is to be drawn. There was no evidence in this case that the defendants had any control over Mr Mani so that they could be held responsible for not producing him. In fact the reverse was the case. The plaintiff's own evidence showed that Mr Mani is a Malaysian citizen resident in Malaysia and not amenable to the jurisdiction of this court. It also showed that Mr Mani was annoyed with Crispian Tan in that he had lodged a police report regarding the purchase of the Mitsubishi 5C. He was unlikely to want to assist Crispian Tan or those whom Crispian Tan was assisting.

39 In their closing submissions, the defendants reiterated that their position was that they were never involved in the sale of the Mitsubishi 4C and had no knowledge of how it was sold or disposed of. They, therefore, did not suggest that it was sold to Mr Mani whether in their defence, cross examination or evidence-in-chief. They contended that the plaintiff's submissions concerning whether the Mitsubishi 4C was sold to Mr Mani were not relevant to the issue at hand. They also disagreed that any adverse inference should be drawn against them for not calling Mr Mani as a witness since it was not their case that the machine was sold to Mr Mani.

40 Despite the position taken by the defendants, I do need to consider whether there was credible evidence that the Mitsubishi 4C was sold to Mr Mani as such evidence would have an impact on the plaintiff's ability to prove that it was the first and second defendants who were instrumental in the loss of that machine. Having considered the evidence and the submissions, I find that there was no credible evidence that the Mitsubishi 4C was sold to Mr Mani. The only person who made this assertion was Crispian Tan and it is difficult to believe his uncorroborated statement. Not only did Crispian Tan act dishonestly in this whole transaction, he also was not a forthright and truthful witness. Bearing in mind that he had already been found liable to the plaintiff under his guarantee, there was no reason for Crispian Tan not to tell the truth and assist the plaintiff in recovering its machines. He, however, did not give evidence in a forthright manner. Instead he was often vague and evasive. While admitting that he had stolen the machines from the plaintiff, he was not willing to lay his cards on the table and disclose exactly how he had done so and who had helped him apart from Mr Mani, a man who was conveniently out of the jurisdiction and the reach of the court. In the course of cross-examination, it was apparent to me on many occasions that Crispian Tan was not telling the truth. Though he resisted doing so, at times even he had to admit that he had not been truthful on certain points.

Were the defendants involved in the removal of the Mitsubishi 4C?

41 In making its case against the defendants, the plaintiff relied heavily on the evidence of Mr Chua. It repeated what Mr Chua had said in his affidavit and in cross examination and emphasised the following evidence given by Mr Chua:

- i. Sometime in March 2006, Crispian Tan told Mr Chua that some buyers would be taking the Mitsubishi 4C and asked him to attend to the handing over the machine. The next day Mr Koh accompanied by another man came to RGPL's premises and Crispian Tan instructed Mr Chua to hand over the Mitsubishi 4C to them.
- ii. The dismantling of the Mitsubishi 4C took two days and two nights and both Mr Koh and the other man were present at RGPL's premises on both days to supervise this operation, at times even giving instructions to the workers who were dismantling the machine.
- iii. During these two days, Mr Chua found out from his conversations with the other man that he was from Taiwan and that he had bought the Mitsubishi 4C with the intention of sending it to Taiwan.
- iv. After the dismantling had been completed, Mr Chua had personally handed over the machine and some spare parts which the Taiwanese buyer wanted to Mr Koh and the Taiwanese buyer who then transported the machine out of the premises.

42 The plaintiff further submitted that Mr Koh's denial of the truth of Mr Chua's evidence should not be accepted. Mr Koh had admitted meeting Crispian Tan in February or March 2006 but asserted that Crispian Tan had offered to sell him a second hand cutter only. Pointing out that Mr Koh had

admitted that he had been dealing in second hand printing machines since 2002 or 2003, and since Crispian Tan had already decided to sell the Mitsubishi 4C, the plaintiff submitted that it was impossible that Crispian Tan would have offered only to sell a relatively cheap machine like the cutter to Mr Koh and not the significantly more expensive Mitsubishi 4C as well.

43 Turning to the evidence of Mr Koh, the plaintiff noted that according to Mr Koh, when he went to inspect the cutter at RGPL's premises in February or March 2006, it was Mr Chua who showed him the cutter. During this inspection, Mr Chua had told him about technical problems that RGPL was facing with the two Mitsubishi machines. If that was in fact the case, the plaintiff submitted that it would have been uncharacteristic for Mr Chua to mention the Mitsubishi machines unless Mr Koh had asked specifically about them. The plaintiff added that Mr Koh would not have asked about the Mitsubishi machines unless he knew that one or both of the machines were for sale and that he was interested in buying either or both of them.

44 The plaintiff pointed out the following areas where it considered that Mr Koh had given untrue evidence:

i. Mr Koh had asserted that he decided not to buy the cutter after reviewing it as he did not have a ready buyer for it and the cutter was eventually sold by RGPL. This assertion was, however, completely contradicted by Mr Chua who testified that he had personally handed the cutter to Mr Koh.

ii. Mr Koh had asserted that he had only bought the scanner and the forklift for \$2,000. He admitted that there was no invoice or receipt to show he had paid that sum. He had also said that the fibre tank and light tables were a gift from Crispian Tan. The aforesaid evidence was inconsistent with Mr Chua's testimony which was that, apart from the forklift, scanner, fibre tank and light tables, Mr Koh also took the plate maker and the plate processor.

iii. Mr Koh refused to admit that he also took the plate maker and the plate processor and continued to maintain this position during the trial. At the trial, however, his own payment voucher showed he had taken the plate maker.

iv. In court, Mr Koh admitted he had created and signed the payment voucher dated 3 January 2007 to reimburse himself from ITPL in respect of the money he had paid for the transportation of various items from RGPL's premises. This voucher, the plaintiff submitted, clearly showed that one of the machines that had been transported for ITPL was the plate maker. The plaintiff contended that Mr Koh would not provide any credible explanation as to why he had denied taking the plate maker when his own voucher showed that he took it. The voucher corroborated Mr Chua's evidence that Mr Koh took the plate maker.

v. In relation to the CTF machine, Mr Koh had not mentioned in his affidavit that he had taken this machine. It was only at the trial that he had attempted to amend paragraph 27 of his affidavit to include the CTF machine as one of those he had removed. His reason for not mentioning this fact earlier was that he had listed only the machines he had paid for and he had not paid for the CTF machine since he had only taken it because Crispian Tan wanted him to safe keep the machine. The plaintiff submitted that this excuse was implausible. How could Mr Koh have "remembered" to state the cheaper items such as the scanner and the forklift but not the larger and more expensive CTF machine? The plaintiff submitted that Mr Koh intentionally omitted the CTF machine from his affidavit because he was hiding the machine for Crispian Tan. This would be consistent as well with the fact that the CTF machine was not included in the payment voucher. The plaintiff submitted that Mr Koh had amended his affidavit because of his fear that

his lie would be found out.

vi. A similar submission was made in respect of Mr Koh's attempts on the stand to amend the date on which he allegedly went to RGPL's premises to inspect the plate maker and plate-processor (from 31 August to 30 August) and the date on which he allegedly paid RGPL the \$2,000 (from 1 September 2006 to 31 August 2006). Mr Koh said that he was amending these dates because of the evidence that Mr Chua had given. The plaintiff's submission was that Mr Koh was forced to amend his evidence because he knew he could not have paid the \$2,000 to Crispian Tan at RGPL's premises in Quek Industrial Building on 1 September 2006 since nobody would have been there as RGPL had shut down its operations on 31 August 2006. In this connection the plaintiff reminded me of Crispian Tan's evidence that he had terminated the employment of RGPL's staff on 31 August 2006 and no one went to work thereafter.

45 The plaintiff also made much of what it considered to be Mr Koh's rather far-fetched evidence about why Mr Chua should have been, as he asserted, telling lies about him regarding the Mitsubishi machines. He said that Mr Chua was intentionally giving false evidence because Mr Chua bore him a grudge. This allegation was, the plaintiff submitted, completely baseless as Mr Chua could not have known that Mr Koh was unhappy with him as Mr Koh never expressed any displeasure to Mr Chua.

46 The defendants, on the other hand, submitted that I should accept the evidence of Mr Koh as being more truthful than that of Mr Chua.

47 In regard to Mr Koh's evidence, it was submitted that his testimony that he did not buy the cutter should be accepted. Neither Mr Koh nor ITPL was sued for the purchase of that machine and therefore there was no reason for Mr Koh to lie about the cutter. The discrepancies that the plaintiff had raised in Mr Koh's evidence were inconsequential disparities that were not central to the issue of the conversion of the Mitsubishi 4C.

48 In regard to the payment voucher dated 3 January 2007, the defendants pointed to Mr Koh's explanation as to why he had denied taking the plate maker when the voucher showed that he took it. Mr Koh maintained he did not take either the plate maker or plate processor as the same had been returned to the agent, Agfa. Since neither ITPL nor Mr Koh was being sued for conversion of these two items, there was no reason for Mr Koh to lie about them.

49 Mr Koh had voluntarily amended his affidavit to show he had taken the CTF machine. He was not attempting to hide it for Crispian Tan. The truth was that ITPL had subsequently purchased the CTF machine from its owners, Singapore Finance Ltd. Again there was no reason for him to lie. His amendments to the dates were made because he realised his mistake after hearing Mr Chua's evidence and he chose to amend his evidence despite knowing that the plaintiff would use this to attack his reliability.

50 The defendants further submitted that Mr Chua's evidence should be rejected as it was fraught with mistakes and conjecture. They pointed out the following discrepancies:

- i. Henry Tay, the investigator, had testified that during his initial interview with Mr Chua, the latter had stated that it was Mr Koh who had informed Mr Chua that the Mitsubishi 4C was going to be transported to Malaysia before being shipped to Taiwan. In his affidavit of evidence-in-chief, however, Mr Chua insisted that it was the Taiwanese buyer who said the machine would go to Malaysia before it went to Taiwan.
- ii. Mr Chua admitted in para 15 of his affidavit that he had been wrong during his interview

with Henry Tay to implicate the fourth defendant as being involved in the dismantling of the Mitsubishi 4C.

iii. Mr Chua had also told Henry Tay that a company called Chin Guan Crane had been used to remove the Heidelberg 4C. Henry Tay, however, had later ascertained that the cranes used had, in fact, belonged to Tat Seng Machine Movers Pte Ltd, the fourth defendants in suit 740.

iv. During cross-examination, Mr Chua had admitted that neither Crispian Tan nor Mr Koh nor the Taiwanese buyer had told him that Mr Koh was the middleman. Henry Tay's evidence had been, however, that when he had asked Mr Chua during the interview how he knew that Mr Koh was the middleman, his reply was "I spoke to Jimmy".

v. In para 10 of his affidavit, Mr Chua stated that the Mitsubishi 4C was sold to Mr Koh from ITPL and was dismantled in early March 2006. During examination in chief, however, Mr Chua retracted this and said he was not sure whether Mr Koh was the buyer.

vi. Mr Chua had also admitted he had made a mistake in telling Henry Tay that Mr Koh was the middleman for the sale of the Heidelberg 4C.

vii. Finally, Mr Chua had admitted during cross-examination that the Taiwanese buyer had not been introduced by the defendants in respect of the sale of the Mitsubishi 4C.

51 In their closing submissions, the defendants did not repeat Mr Koh's assertion that Mr Chua had a grudge against him as the basis for Mr Chua's alleged lies. Instead, they argued that Mr Chua's involvement in the handing over of the Mitsubishi 4C could also amount to a conversion of the same. As such, he must have been aware that the plaintiff could have taken legal action against him for the conversion of the machine. Mr Chua gave evidence falsely implicating various parties as being responsible for the conversion of the Mitsubishi 4C and the Heidelberg 4C machines because he would rather give evidence on behalf of the plaintiff than be sued by it if no other party was implicated.

52 There is no doubt that the only direct evidence against the defendants was that provided by Mr Chua. The defendants argued that it would be unsafe to rely on his evidence because it was uncorroborated. However, this in itself is not a reason to reject the evidence if it is consistent and coherent. It is also important to weigh Mr Chua's evidence in the context of the other evidence given by the defendants and the witnesses on whom they relied. On the whole, I find Mr Chua to be a more impressive witness than Mr Koh. There is no real reason to reject the basic truthfulness of his evidence although he did make mistakes which, on further consideration, he candidly admitted. Mr Chua did not come forward voluntarily to give evidence. He had to be subpoenaed and even in respect of his earlier revelations to Henry Tay, these were made in response to questions after Henry Tay had sought him out. He was not a volunteer who was eager to dish the dirt on other people. There was no evidence of any grudge that Mr Chua may have had against Mr Koh and it was significant that even the defendants' own lawyers dropped this suggestion in their closing submissions. As for the defendants' suggestion that Mr Chua was giving evidence only because the plaintiff had promised not to pursue any claim against him for his involvement in the matter, this was not put to Vincent Tay, the plaintiff's representative, when the latter was in the witness box. Mr Chua himself denied that such a promise had ever been made. In fact, he himself was confident that he had done no wrong whatsoever because he had merely been carrying out his employer's instructions. It should also be remembered that Crispian Tan's evidence was that Mr Chua would not have been aware of management and financial matters in the course of his employment. Mr Chua was therefore, most probably, ignorant that the sale of the machines was wrongful *vis-à-vis* the plaintiff. He would not have considered, therefore, that he could possibly be liable to the plaintiff for its loss.

53 As for the other criticisms that the defendants made of Mr Chua's evidence, these do not really affect its basic veracity. In regard to the defendants' denial that Mr Chua had said in his evidence that Crispian Tan had instructed him to hand over the Mitsubishi 4C to Mr Koh and the Taiwanese buyer, the defendants did not, perhaps, understand the full implications of Mr Chua's evidence. In court, when he was asked for the basis of his assertion that Mr Koh was the middleman for the sale of the Mitsubishi 4C, his answer was:

Okay. On March – early March 2006, Jimmy Koh, was as I said, came with a Taiwan[ese] buyer and Crispian instructed me, "This machine they are coming to collect. Please oversee to it."

The logical inference from the instruction that Crispian Tan gave Mr Chua was that he was to oversee the collection of the Mitsubishi 4C by Mr Koh and the Taiwanese buyer.

54 The defendants had queried why Mr Chua did not have any conversation with Mr Koh while the Mitsubishi 4C was being dismantled but only spoke to the Taiwanese buyer. This was a surprising query as the defendants did not ask Mr Chua during cross examination whether he had struck up any conversation with Mr Koh during this period. There was in any case no particular reason why Mr Chua should have spoken to Mr Koh as well as the Taiwanese buyer or instead of the Taiwanese buyer.

55 The defendants attempted, as I stated above, to discredit Mr Chua's credibility on the basis of an inconsistency between paragraph 31 of Henry Tay's affidavit and paragraph 14 of Mr Chua's own affidavit in relation to whether it was Mr Koh or the Taiwanese buyer who told Mr Chua that the Mitsubishi 4C was going to be transported to Malaysia before being shipped to Taiwan. As the plaintiff pointed out however, the apparent inconsistency was not put to Mr Chua during cross examination. Further, whether Mr Chua was wrong in his affidavit or wrong in his statement to Henry Tay about who had given him the information, the fact remained that he had consistently stated that he had been told that the machine was going to be transported to Malaysia before being shipped to Taiwan. The substance of his evidence as to what was going to happen to the machine therefore remained unchanged.

56 To discredit Mr Chua, the defendants had also relied on his mistake as regards the involvement of Kim Heng Mechanic in the removal of the Mitsubishi 4C and the conflict between Mr Chua's evidence and Henry Tay's evidence in relation to Chin Guan Crane's involvement. However, Mr Chua clarified in re-examination that he did not tell Henry Tay that Chin Guan Crane was involved in the removal of the Heidelberg 4C. As regards Kim Heng Mechanic, while there was no really acceptable explanation for the confusion, I think this was a minor lapse in Mr Chua's testimony which does not affect its essential truthfulness.

57 The defendants' assertion that Mr Chua's evidence could not be accepted because he had wrongly identified Mr Koh as the middleman for the Heidelberg 4C is not a weighty one. As the plaintiff submitted, the circumstances surrounding the removal of the Heidelberg 4C were very different from those that existed when the Mitsubishi 4C was removed. In the case of the Heidelberg 4C, RGPL's premises were in a state of confusion as various things were being moved out. Further, Mr Chua was not instructed to hand over the Heidelberg 4C to any particular person. It was not unreasonable for him to have inferred that, as with the Mitsubishi 4C, Mr Koh was also involved in the removal of the Heidelberg 4C since Mr Koh was present at RGPL's premises at the time that this latter machine was being taken away.

58 On the other hand, the discrepancies in Mr Koh's evidence were harder to explain away. Although Mr Koh asserted that he did not know Crispian Tan before February or March 2006, and thereafter only bought two machines worth \$2,000 from RGPL, he wanted the court to believe that

this was enough to make Crispian Tan give him the fibre tank and light tables for free and also trust him enough to ask him to keep the CTF machine (a large and expensive machine) safe for RGPL even though RGPL had new premises in Bendemeer Road to which that machine could have been transported. Mr Koh had initially lied about the CTF machine and the plate maker in that he had vehemently denied taking these machines. Eventually he admitted (after hearing Mr Chua's evidence) that he took the CTF machine though, as I said, he maintained it was taken for safe keeping. As for the plate maker, despite being shown his own document, the payment voucher, in which he recorded that the plate maker was one of the items removed from RGPL's premises, he persisted in his assertion that he did not take that machine.

59 It would be recalled that Mr Chua testified that he had handed over the cutter to Mr Koh. Mr Koh, however, asserted that he had decided not to buy the cutter. In this regard I accept Mr Chua's evidence. The defendants could have called Crispian Tan as a witness to confirm that the defendants had not purchased the cutter and that he had only offered to sell the cutter (rather than both the cutter and the Mitsubishi 4C which was a much larger and more expensive machine) to the defendants. They did not call him. In fact, although the defendants had the opportunity to do so when Crispian Tan took the stand in suit 740, they did not then put to him their case in relation to his dealings with Mr Koh. I also find it difficult to believe Mr Koh's assertions that when he first went to visit RGPL's premises in February or March 2006, he was not told about or shown the Mitsubishi 4C. It is clear from Crispian Tan's evidence that that was the time when he was trying to raise money by selling the Mitsubishi 4C. He would have wanted to show it to every possible buyer and there would be no reason for him to limit his dealings with Mr Koh to only the cutter which was a smaller machine and the sale of which, therefore, would have raised less money for RGPL.

60 There were also difficulties with Mr Koh's story of having gone to RGPL's premises at Quek Industrial Building on 1 and 2 September 2006 to pick up the minor items that he had purchased. After hearing Mr Chua's testimony about the termination of employment of RGPL's employees on 31 August 2006, Mr Koh changed certain dates in his affidavit. He then said that he had paid Crispian Tan on 31 August 2006 rather than 1 September 2006 because he knew he could not have met Crispian Tan at the Quek Industrial Building after 31 August 2006. He maintained however, that he and his lorry driver Mr Yeo went down to those premises on both 1 and 2 September 2006 to pick up the items in question and could not pick up the items on 1 September because the forklift truck was being used to move other items. This evidence is not credible because even though Crispian Tan testified that he had instructed Mr Chua to go back to Quek Industrial Building to assist the defendants on 1 September 2006, there would have been no reason for Mr Chua to do Crispian Tan this favour after Mr Chua's employment had been terminated. Further, even if Mr Chua had obliged Crispian Tan once, why ever would he have obliged him for the second time on 2 September 2006? In any case, since the other workers had been terminated on 31 August 2006, apart from Mr Chua and Mr Koh and the lorry driver Mr Yeo, there would have been no one at RGPL's premises on 1 September 2006 and therefore Mr Koh could very well have picked up the defendants' items that day itself and removed them without having to come back again the next day. The defendants called Mr Yeo to corroborate Mr Koh's evidence about the September dates but Mr Yeo was not a credible witness. He was unable to explain how he could remember those two dates and his evidence did not add to the credibility of Mr Koh's story.

61 Mr Koh also failed to provide any credible explanation to explain the obvious inconsistencies in his own payment voucher which showed that he had taken the plate maker (which he insisted he did not take) but did not include the CTF machine (which he admitted he took). His explanation that he had merely scribbled whatever machines he could think of in the voucher was a feeble excuse. He further failed to satisfactorily explain why he had omitted to state in his affidavit that he had taken the CTF machine. His explanation that he only remembered the items that he paid for was another

puerile excuse since he had mentioned the plate maker which was not a machine that he had paid for.

62 Mr Koh had voluntarily altered his evidence in two aspects. The first was in respect of his taking of the CTF machine and the second was in respect of the dates on which he allegedly inspected the plate maker and plate processor and paid Crispian Tan for the various items he purchased. Mr Koh admitted that he had altered his evidence after listening to Mr Chua's evidence. The fact that this was the cause of his changes showed that in some material aspects he had to accept the veracity of Mr Chua's testimony. Perhaps, too, he feared that his inaccurate assertions would be exposed during cross examination.

63 On the basis of the evidence and for the reasons given above, I find that the defendants were involved in the removal of the Mitsubishi 4C from RGPL's premises in March 2006 and in delivering it to a third party, the Taiwanese buyer, who was going to remove it from Singapore and deprive the plaintiff of its use. It is not clear that the defendants were the buyers of the Mitsubishi 4C but whether they bought it and then sub sold it to the Taiwanese buyer or simply acted as a middleman for the latter, they were active participants in the whole transaction involving this machine.

Liability for conversion

64 It was common ground at the trial that the plaintiff was the owner of the Mitsubishi 4C and thus had the necessary title to sue for the conversion of the machine.

65 The law on conversion was set out by the plaintiff in its closing submissions and the principles so stated were not disputed by the defendants. The essence of these principles (as derived from paragraphs 17-07 to 17-68 of *Clerk & Lindsell on Torts* (19th Ed)) is that a person who, without authority, takes possession of another's goods with the intention of dealing with them in a manner inconsistent with the rights of the true owner is, *prima facie*, guilty of conversion. The intention required is that the person who deals with the goods must want to negative the right of the true owner or assert a right which is inconsistent with the ownership of the true owner. The same text states that if a person takes an active part in delivering another's goods to a third party by sale or gift or otherwise in a manner which is adverse to the right of the true owner, then he will be a wrongdoer. The conduct must be deliberate, not accidental, and as long as it is a deliberate act which is inconsistent with the true owner's right, the wrongdoer will be liable for conversion even if his act was done in ignorance of such rights and without intending to challenge those rights. See *Motis Export Ltd v Dampskibsselskabet AF 1912 Aktieselskab* [1999] 1 Lloyd's Rep 837 and *Kuwait Airways Corp v Iraqi Airways Co* [2002] 2 WLR 1353.

66 The defendants submitted that the burden of proof lay with the plaintiff to show, on a balance of probabilities, that the defendants were liable for conversion. They cited two cases in which the court had found that this burden had not been discharged *viz Lam Teik Kai v Hallam Nominees Ltd* [1997] 1 MLJ 146 and *Watercraft Pte Ltd v Chong Chee Yan* [1996] SGHC 46. In this case, however, there was direct evidence from Mr Chua, which I have accepted, that the Taiwanese buyer bought the Mitsubishi 4C, the first defendant and the Taiwanese buyer oversaw the dismantling, and both of them caused the machine to be removed from RGPL's premises. Mr Chua also testified that he had handed some of the machines spare parts to Mr Koh and the Taiwanese buyer. The plaintiff has established its case on a balance of probabilities.

67 The more pertinent issue is whether I can hold both Mr Koh and IPTL liable for conversion or whether I can only hold one of them to be so liable and if so, which one. In regard to the basis for joint or several liability, the statement of claim was brief. Para 5 thereof simply stated that:

... sometime in March 2006, the 1st defendant acting on his own or as a director of the 2nd defendants unlawfully caused the machine to be removed from Rav Graphic's premises ...

There was no plea that Mr Koh and the second defendant were acting jointly or were co-conspirators. If Mr Koh was acting on his own behalf, then only he could be held liable for conversion and not IPTL. On the other hand, if Mr Koh was acting as a director of IPTL, then only IPTL could be held liable and not Mr Koh personally. The plaintiff made the submission that Mr Koh should be held liable personally even if he was acting on behalf of IPTL because the evidence was that he was the directing mind of IPTL. Whilst I accept that that was the evidence, I do not consider that proof that Mr Koh ran IPTL would in itself justify piercing the corporate veil and making Mr Koh liable for the actions of IPTL. The principle of independent corporate personality is well entrenched in our law and the acts of the corporation cannot be ascribed to its directors for the purpose of imposing civil law liability for damages on the latter simply by showing that they caused the corporation to take certain actions. More has to be done.

68 In the present case, it appears to me that all along Mr Koh was acting as the agent of IPTL in whatever he did in connection with not only the Mitsubishi 4C but also in relation to all his transactions with RGPL. It would be recalled that Mr Koh first met Crispian Tan after he had sent out IPTL's brochures to advertise IPTL's business of dealing in second-hand machines. Then, when it came to transporting the machines that he admitted buying from RGPL, Mr Koh first paid the transport charges out of his own pocket and later reclaimed them from IPTL. This showed that he had been acting for IPTL in the transactions. In any case, there was no evidence that Mr Koh himself ever carried out any dealing in second-hand machines on his own behalf rather than as director of IPTL. There would, in fact, be little reason for Mr Koh to do so since he had control of IPTL and had, presumably, procured the incorporation of that company for the purpose of trading in second-hand machines. Accordingly, I find that it is the second defendant IPTL that is liable for the conversion of the Mitsubishi 4C and that Mr Koh has no personal liability therefor.

69 As to quantum, the plaintiff's submission was that the proper measure of damages would be the market value of the Mitsubishi 4C at the time of conversion. In support, it cited the case of *Chartered Electronics Industries Pte Ltd v Comtech IT Pte Ltd* [1998] 3 SLR 502. This principle was not disputed by the defendants.

70 The evidence given by Mr Chua Liang Seng, the managing director of Heidelberg Asia Pte Ltd, was that the market value of the Mitsubishi 4C at the time of conversion was about \$850,000. Chua Liang Seng testified that he was in a position to provide an estimate of the value of the Mitsubishi 4C because his company, while dealing mainly in Heidelberg machines, also did a business in trade-ins of Mitsubishi machines. The defendants did not contest these figures. Nor did they introduce any evidence of their own as to the relevant value of the Mitsubishi 4C. In the statement of claim, the plaintiff had claimed damages of \$800,000 for the machine. Since this figure is supported by the evidence, I will award damages in that amount to the plaintiff.

Conclusion

71 Accordingly, there shall be judgment in favour of the plaintiff against the second defendant for the sum of \$800,000 with interest thereon at the court rate from the date of the writ and costs. Although I am not granting the plaintiff judgment against the first defendant, I am not making an order for costs in favour of the first defendant since his costs would, to all intents and purposes, have been practically identical with the costs incurred by the second defendant in defending the action and it would not be correct to make the plaintiff pay any part of the second defendant's costs.

