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LAM SOON EDIBLE OILS SDN BHD

v.

KOH HUAI KIAN & ORS

High Court Malaya, Johor Bahru  
Teo Say Eng J  
[Suit No: 22NCVC-28-02/2014]  
1 November 2017

**Case(s) referred to:**

*Seah Siang Mong v. Ong Ban Chai & Anor [1996] 2 MLRH 103 (refd)*

**Counsel:**

*For the plaintiff: K Shanti Mogan (Jimmy Liew with her); M/s Shearn Delamore & Co*

*For the 1st defendant: Tan Hee Soon (Wong Kai Fen with him); M/s Tan Hee Soon, Wong & Partners*

*For the 2nd defendant: Nurhidayu Ngatderi (Saidah Fasihah Che Yussoff with her); M/s The Law Chambers of Hidayu & Saidah*

*For the 3rd defendant: GK Sritharan; M/s GK Sritharan & Co*

*For the 4th defendant: Meneka; M/s Meneka Kanasmorthy & Associates*

*For the 5th defendant: Loh Wei Cher; M/s Allen Loh & Co*

*[Dismissed the plaintiffs claim.]*

**JUDGMENT**

**Teo Say Eng J:**

**[1] Plaintiff's Case**

[1.1] Lam Soon Edible Oil (LSEO) is claiming, *inter alia*, the sum of RM14,071,571.66 (for 4,509.82 Metric Tons of oil loss) from the Defendants. This sum is derived from the expert forensic certification discussed below. LSEO's original claim was for the sum of RM32,888,467.87 (for 10,526MT of oil loss) from the Defendants jointly and severally.

[1.2] The Defendants acted fraudulently and conspired with each other and with third parties to steal oil from LSEO and to conceal the discovery of the theft of oil and the oil loss. Additionally, the conduct of the Defendants is in breach of their contractual and tortious obligations to LSEO.

[1.3] Further, LSEO is claiming against KN Lim (5th Defendant) for the sum of RM172,446.96 being the refund of the retirement gratuity that he was paid when he requested for early retirement on medical grounds.

[1.4] LSEO's position is that the fraudulent scheme resulting in the oil loss in the factory took place in the following fashion.



[1.5] The 4509.82 Metric Tons of oil was taken out of LSEO's factory in Pasir Gudang without detection and unrecorded in the books of LSEO This was done using Yuen Soon Transport's tankers (YST's tankers) to transport the oil out of the factory. This is apparent from the fact that all tankers that were given 'preferred' status were YST's tankers.

Preferred arrangement with Yuen Soon Transport:

(a) Between 1 January 2010 and 31 December 2012, YST's tankers were permitted to enter the factory for QC inspection and to exit without issuing the requisite Weigh Bridge Ticket (WBT) for 2399 times [Core Bundle B1 TAB 5].

(b) Between 1 January 2010 and 31 December 2012, YST's tankers were permitted to enter and remain in the factory for 192 times and exited without WBTs being issued [Core Bundle B1 TAB6].

(c) In the same duration, YST's tankers were permitted to park overnight in the factory for 881 times [Core Bundle B1 TAB 7].

[Bundle A pp 110-113 paras 6.1 - 6.17].

(d) The facts establish YST's tankers were given this preferred status:

i. In 82% of the cases that the tankers entered the factory without WBTs issued (ostensibly for QC checking), the tankers were YST's tankers;

ii. In 96.4% of the cases that the tankers entered the factory without WBTs for parking, the tankers were YST's tankers;

iii. In 99% of the cases that tankers entered the factory and remained overnight, the tankers were YST's tankers.

(e) None of the tankers except YST's was accorded the minimum 4 trips arrangement by Eddie (1st Defendant). Between 1 January 2009 to 31 December 2012, Eddie caused unauthorized payments to be made to YST in the sum of RM534,792.00 on account of 4,255 "trips" which were neither undertaken nor earned by YST [Core Bundle B1 TAB 4].

(f) When Eddie received a complaint relating to the theft of oil from the factory involving a YST's driver (an email was received on this on 19 August 2009 [J98 p 2709; Core Bundle B1 TAB 3], Eddie did not investigate, but instead, continued to use YST as his preferred tanker

[1.6] The LSEO's customer that was involved in facilitating the theft of oil was Soon Leong Enterprise (SLE). This customer was treated differently by the Logistics Department in general and Eddie in particular.



**Special Treatment For SLE**

(a) All SLE deliveries were handled by YST. All SLE deliveries involved by passing of the manual WBT system.

(b) All SLE deliveries transported by YST's tankers were recorded as involving 9MT to 10MT of oil, even though such tankers in fact have capacity 2-3 times of such volume.

(c) All SLE deliveries were carried out once a week, and always with Ain (2nd Defendant) and Govin (3rd Defendant) in attendance. No other customer was assigned to particular WB clerks/Production supervisors in that manner. There were no SLE deliveries when Ain and/or Govin were on leave. [Bundle A p 108 para 5.8.2.].

(d) SLE deliveries were sent to SLE's own shop lot or to Federation Oil's shop lot. Both these shop lots did not have WB facilities. In respect of the deliveries, the only document to establish the quantity delivered was the LSEO's WBT which was amended 100% of the time. Yet, neither SLE nor YST raised issue about the amended WBTs.

[1.7] To transport the stolen oil out of YST's factory using YST's tankers, there had to be circumvention of the controls put in place of LSEO, namely, the automated WBT system. Eddie was in charge of this. He directed his subordinate and his WB clerk, Ain, to bypass the automated WBT system, when deliveries were made to SLE.

[1.8] Ain amended 85 WBTs for the deliveries of RBD Palm Oil and Palm Olein to SLE to enable Yuen Soon Transport's tankers to take out full tanks of oil under the SLE deliveries whilst manually recording the quantities of oil taken out in each of those transactions [Core Bundle B1 TAB 1]. Ain also changed the time in some of the WBTs to conceal the actual time spent by YST's tankers in LSEO's factory [Bundle A pp 1121-112L para 7.1.7.9].

[1.9] LSEO had systems in place to ensure any theft of oil would be discovered during the month-end stock-take. The month-end stock-take would be keyed into the MOVEX after each month's stock-take. Stock Variance Reports (SVRs) would then be generated and it would show any variances between the system quantity of oil and what was physically in the factory at the month-end stock-take.

[1.10] This stock-take was under the purview of the Production Department, with Govin as the Production Supervisor responsible for the month-end stock-take and the entries of the inventory into MOVEX, Turiyat (4th Defendant) was Govin's direct superior and was tasked to verify and confirm the SVRs that Govin generated from MOVEX.

[1.11] Govin performed false location transfers in MOVEX by transferring the



oil in MOVEX from a particular tank to other tanks to conceal the oil that had been stolen from the factory. He did that after entering the month-end stock-take figures into MOVEX and backdating the entries to dates well before the month-end stock-take to give the appearance that oil that had been stolen was still present in the system. However this alone was insufficient to conceal the oil that had been stolen from the factory.

[1.12] Govin also instructed the general works of LSEO that were in the team that Turiyat Oversaw, to tie the tank indicators at a level higher than the level of oil physically in the tanks, to overstate the quantity of oil physically in the tank farm. He instructed this to be done the night before each month-end stock-take to ensure that these fraudulently increased quantities of oil were reflected in the month-end stock take.

[1.13] By doing the above, Govin was able to reduce the very large variances between the system quantity of oil and the physical oil that would otherwise be apparent in the SVRs [Bundle A pp 112L-1120 paras 8.1-8.7].

[1.14] The SVRs had to be submitted to the Accounts Department every month after the month-end stock take. The physical quantity of oil appearing in the SVRs would be accepted by the Accounts Department as the opening stock balance for the following month once the SVRs had been signed off by the Production Department.

[1.15] Turiyat signed off on every one of the SVRs, falsely representing to Lam Soon Edible Oil that the stock quantities as reflected in the SVRs were in fact the quantities of oil physically present in the factory, when he well knew this was not the case.

[1.16] Turiyat was told that Govin had been tying the tank indicators prior to stock checks, but did not escalate this matter to management. It was deliberate omission by Turiyat to prevent the discovery of the fraud that the 5 Defendants were perpetrating on LSEO This deliberate and fraudulent concealment enabled the theft of oil to carry on undetected [Bundle A pp 112P-112R paras 9.1-9.5].

[1.17] LSEO had in place further checks and balances to test the system processes and to detect fraudulent activities in the factory. The Standard Operation Procedures (SOPs), the Audit Report 2009 and/or the Follow-Up Audit Report 2009 recommendations, were some of these checks and balances.

[1.18] The amended WBTs, missing WBTs, failure to have draft SVRs printed out for review and overnight parking were some of the concerns raised by the internal audit. Both Eddie and KN Lim (5th Defendant), Eddie's direct superior, downplayed the internal audit's concerns. Eddie gave internal audit the assurance that he would oversee the generation of automated WBTs and asked the internal audit not to block the WBT amend function.

[1.19] This was part of Eddie's plan to ensure the systems that he and his team



of conspirators (Ain, Govin, Turiyat and KN Lim) and successfully bypassed thus far, were not blocked. This was done successfully by them. KN Lim deliberately did not take any step to tighten up the weaknesses highlighted by the internal audit. Eddie ensured the amend function of the WBT system was not blocked so that he could direct Ain to generate the manual WBTs for SLE. The 85 amended WBTs Ain did for SLE were generated after the Follow-Up Audit Report 2009.

[1.20] Turiyat continued to sign all the SVRs and ensured that no draft SVRs were provided to his superior Peter Rajagopal or the Accounts Department. Any one of the draft SVRs would have disclosed the huge variances that Govin was concealing.

[1.21] KN Lim facilitated the fraud by simply not enforcing the SOPs, the Audit Report 2009 and/or the Follow-Up Report 2009 recommendations which were crucial to reveal the fraud.

[1.22] Under KN Lim's watch, all of the above took place. As a result KN Lim concealing the same from LSEO and requesting an early release on grounds of ill health to LSEO, LSEO agreed to pay KN Lim the sum of RM172,446.96 as early retirement gratuity.

[1.23] Moreover by assigning and/or allowing Govin to attend to all SLE deliveries and also to record stock-take, both Eddie and KN Lim completely failed to enforce separation of duties and observe a simple check and balance thereby enabling the fraud to go undetected.

[1.24] Eddie committed LSEO to the minimum 4 trips arrangement with YST without approval and without economic justification.

[1.25] Ain, Eddie, Govin, Turiyat and KN Lim each played a role in concealing the theft/loss of oil in the factory. Without each of them playing their role, the theft/loss of oil would not have been concealed from LSEO for years. Each of them played an integral part in the checks and balances in place to safeguard against theft/loss of oil.

## [2] Defence

### [2.1] Eddie (1st Defendant)

Eddie's defence in relation to the 85 amended WBTs:

- (a) He explained the SOPs to all his staffs in the Logistics Department, including Ain;
- (b) He denied having knowledge of the 85 amended WBTs and took the position that he never instructed and/or permitted Ain to amend the same;
- (c) The time and weight in the WB system cannot be amended;



(d) He explained the Audit Report recommendations to all staffs in the Logistics Department.

[Bundle a pp 154 and 156-157, paras 5, 12 and 13].

YST's tankers being allowed to enter into the factory for QC inspection and exit without WBT is not wrong under the law [Bundle A p 154 para 6].

With regard to YST's tankers entering and remaining in the factory and exit without WBT; those tankers that carry incoming oil are not required by the SOP to be issued with WBT; those tankers do not deliver oil out of the factory [Bundle A pp 154-155 para 7].

With regard to overnight parking by YST's tankers: Eddie did not approve the overnight parking; the overnight parking was requested by the Production Department, and such, approval was given by the Production Department, not Eddie [Bundle A p 155 para 9].

With regard to missing WBTs: Eddie always did "random checking" and was overworked [Bundle A p 156 para 10].

With regard to the failure to act on the tipoff: Eddie took the necessary actions to prevent the driver from entering the factory and informed KN Lim, KT Ng and Captain Abdullah of the same on 19 August 2009 [Bundle a p 158 para 19]. With regard to his failure to ban YST the necessary action has been taken against YST's driver who was involved in the theft of oil and YST was warned not to engage contractors (that is, drivers) to deal with LSEO [Bundle A p 158 para 20].

With regard to unauthorized payments to YST: the same was authorized during Lam Soon Edible Oil management meetings and not Eddie [Bundle a p 159 para 23, 25]. With regard to minimum 4 trips arrangement with Yuen Soon Transport: the same was approved in a management meeting [Bundle A p 159 para 24].

## **[2.2] Ain (2nd Defendant)**

Ain's defence is premised on denying any SOPs being explained to her or that compliance of the same was required during her tenure of service in LSEO [Bundle A p 163 para 6]. Ain's position is that SLE deliveries took place as usual even when she was on leave [Bundle A p 164 para 9(b)].

Ain's position is that she was taught and shown by Harman to amend the WBTs for SLE deliveries (Bundle A p 165 para 11(a), (e)). Ain's position is that the 1st weight, 2nd weight, time and WBT number cannot be amended in the WB system [Bundle a p 165 para 11(c)].

Ain also took the position that this is a serious allegation and LS EO had failed to make a police report to investigate the matter [Bundle A p 163 para





15(b)].

### [2.3] Govin (3rd Defendant)

Govin's defence is that there are other staff involved in the monitoring and recording of the stock level of the Products [Bundle A p 173 para 12]. Govin alleged that Abdul Rahman Bin Asif held the position of Assistant Coordinator, had access to MOVEX, and suddenly resigned in June/July 2012 [Bundle A p 174 para 13].

Govin alleged that Peter Rajagopal forced him to confess to the HR Manager (Captain Abdullah) by threatening to make a police report and using their influence to cause Govin to be imprisoned by the police [Bundle A p 175 paras 14- 16].

### [2.4] Turiyat (4th Defendant)

The gist of Turiyat's defence is:

(a) Whilst there were SOPs for WBTs for tankers which leave the factory and recommendations outlined in the Audit Report 2009, whether the same was complied with or not was not within Turiyat's knowledge [Bundle A p 184 para 11-12].

(b) The variance in the stocks of oil could not be discovered with reasonable efforts. Turiyat was only shown with the daily stock reports which were prepared by Govin and which did not reveal any loss or variance. Turiyat's role was merely to rubberstamp and sign on the reports prepared by Govin. Govin was responsible for recording the data (stock levels). Turiyat was not involved in stocktaking. The Production Manager had to have a final look at the reports and the Accounts Department was responsible to check the balance of the physical stocks [Bundle A p 185-186, 188-189 and 190 paras 14, 21 and 24].

(c) The parties who are mainly responsible to ensure that the quality of the products during the transition from the old system to the new MOVEX system are Govin and others, not Turiyat. After the transition, the parties using MOVEX were Govin and his assistants, not Turiyat [Bundle A p 195-196 para 30(i)-(x)].

(d) LSEO's action is time-barred pursuant to s 6 of the Limitation Act 1953 because the first time the variance or difference in stock or loss of stock happened was 6 years before the commencement of this suit. The MOVEX system was used sometime in 2003 and the first time the variance occurred cannot be identified [Bundle A p 199 para 35].

### [2.5] KN Lim (5th Defendant)

(a) LSEO conducts monthly stock-takes and the same was verified by



LSEO's internal audit. During the tenure of KN Lim as General Manager of LSEO, LSEO's Accounts Department, Operations Manager, and internal and external auditors did not raise the issue of accuracy of stock levels and loss of oil [Bundle A p 204 para 15].

(b) LSEO's loss of 10,526 Metric Tons oil may be due to the dysfunctional tank indicators, wrong LSEO's transactions, 'back-to-back' system in oil purchase and/or the loss of paper records which cannot be concluded as loss of physical oil [Bundle A p 205 para 15].

(c) The conduct of Eddie and Ain has no relevance to KN Lim; Eddie's wrongdoings were not instructed by KN Lim [Bundle A pp 206-207 para 20(a)-(b)].

(d) Govin had confessed to his wrongdoings and exposed that Turiyat was involved. Govin's wrongdoings were not instructed by KN Lim nor was it within KN Lim's knowledge. The Production Manager and Operation Manager were Govin's superiors and were required to check and verify the monthly stock report. The Accounts Department was responsible to ensure the tank indicators were in working conditions and in ensuring no tampering of the tank indicators during monthly stock take [Bundle A pp 207-208, 211-212 paras 20 (c)-(d), 24(b), (f)].

(e) Turiyat's conduct has no relevance to KN Lim nor was KN Lim involved in any of the allegations against Turiyat [Bundle A pp 207-208 para 20(e)].

(f) KN Lim was a General Manager and it was difficult for him to go through every detail. Department managers are entrusted with the responsibility to ensure all policies and SOPs are complied with by each department. KN Lim always emphasized and reminded each Head of Department to report to him; each Head of Department signed and understood the contents and purpose of the policies and SOPs [Bundle A p 209 para 22(a)-(b)].

(g) The 85 amended WBTs were created because of the lack of facility to ensure that the loading for SLE purchases accurately reflects the monies paid by SLE to LSEO [Bundle A p 212 para 5(b)].

(h) The purpose of the WB is to record the amount of oil taken out of the factory. The amendment to the time in WBTs has no relevance to loss of oil. Accuracy of weight is important; the importance placed on accuracy of time is strange [Bundle A p 214 para 26(c)].

(i) SOP A5 only prohibits tankers from entering the factory before and after the operating hours; SOP A5 does not prohibit tankers from entering during operating hours or remaining overnight in the factory. The operating hours of the factory is in fact 24 hours; the operating hour stated in SOP A5 is strange. Overnight parking may be due to the





delay in unloading oil, issues with the quality of oil, the specific requirement of the tanker to ensure the quality of oil does not change or the tanker being used to store oil due to insufficient oil stores in the factory [Bundle A pp 214-215 para 28 (b)-(d)].

(j) With regard to the issue of tipoff, KN Lim sent an email dated 19 August 2009 to KT Ng and other relevant parties to prohibit the entry of the relevant driver [Bundle a p 215 para 29].

### **Trial**

**[3]** The Plaintiff has called 24 witnesses to prove its case against all the Defendants. Whereas the 1st Defendant has called 3 witnesses including himself, the 2nd Defendant 1 witness (2nd Defendant herself) the 3rd Defendant 1 witness (3rd Defendant himself), the 4th Defendant 1 witness (4th Defendant himself) and the 5th Defendant 1 witness (5th Defendant himself) to establish their respective defences. However it is to be noted that the 4th Defendant has also put up a counterclaim against the Plaintiff.

### **[4] Written Submissions**

1. Executive Summary - HPS
2. Plaintiffs Written Submission - HP
3. Plaintiff's Submission In Reply - HPR
4. Plaintiff's 2nd Submission In Reply - HPR(2)
5. 1st Defendant's Written Submission - HD1
6. 1st Defendant's Written Submission In Reply - HDIR
7. 1st Defendant's Written Submission In Reply (No 2) - HDIR(2)
10. 2nd Defendant's Executive Summary of Submission - HDS2
11. 2nd Defendant's Written Submission - HD2
12. 2nd Defendant's Written Submission In Reply - HD2R
13. 2nd Defendant's Written Submission In Reply - HD2R(2)
14. 3rd Defendant's Written Submission - HD3
15. Summary of 4th Defendant's Case - HD4S
16. 4th Defendant's Written Submission - HD4
17. 4th Defendant's Reply to Plaintiff's Submission - HD4R



18. 4th Defendant's Reply to Plaintiff's Submission In Reply - HD4R(2)
19. 5th Defendant's Written Submission - HD5
20. 5th Defendant's Submission In Reply - HD5R
21. 5th Defendant's Submission In Reply (No 2) - HD5R(2)

#### **[5] Facts established during the trial**

##### **[5.1] Estimation of oil loss**

###### **[5.1.1] Plaintiff's Submission**

SP23 Prabhat Kumar was engaged by LSEO to estimate the quantum of oil loss at its factory.

Upon the discovery of the oil loss, LSEO carried out a 100% stock-take on 21 August 2013 to ascertain the actual oil in the factory [Exhibit P74 para 5.1.7, Core Bundle B1 TAB 10].

In estimating the quantum of oil loss, SP23 based his findings from data entries dating back to 2004. To ascertain the quantum of oil which LSEO should have in the factory. SP23 used the purchase, sale and consumption figures to work out the closing stock figures year after year as reflected in Exhibit P86; Core Bundle B1 TAB11 [for annotated references, see Exhibit P86A (*Annexures* 1-21); Core Bundle B1 TAB 12] reach a closing stock figure as at 20 January 2013 [Exhibit P74 para 5.1.8 and Tables 13-15; Core Bundle B1 TAB 10].

The closing stock figure as at 20 January 2013 was then compared with the actual oil in the factory as per the 100% stock-take on 21 January 2013. SP23 did not use the inventory figures in the MOVEX to compare with the actual oil in the factory as there was evidence that those figures were compromised by manipulation [Exhibit P74 para 5.1.1.1; Core Bundle B1 TAB 10].

In ascertaining the quantum of loss, SP23 took into account:

- (i) The process loss in margarine and oil packing department [Exhibit P74 para 5.1.4.1; Core Bundle B1 TAB 10];
- (ii) The over filling/packing in margarine and oil packing department [Exhibit P74 para 5.1.4.2; Core Bundle TAB 10];
- (iii) The process loss in refinery department [Exhibit P74 para 5.1.4.3; Core Bundle B1 TAB 10].

To determine the percentage of the above process loss, SP23 worked out an



average percentage from the period 2004 to 2006 [Exhibit P74 para 5.1.5; Core Bundle B1 TAB 10], the details of which are in Exhibit P74 Tables 5-8; Core Bundle TAB 10.

SP23's calculation took into account the production and consumption of Dirty Mixed Oil which is (a) oil/fat downgraded or mixed with other oil and impurities during the production process and (b) oil which goes into drain due to leakage or wastage during production [Exhibit P74 para 5.1.6; Core Bundle B1 TAB 10].

SP23 calculated the loss Palm Oil and Olein 56 as at 21 January 2013 at 4,509.82MT [Exhibit P74 para 5.1.8 and Table 4], which comes up to the value of RM14,071,571.66 [Exhibit P74 Table 20; Core Bundle B1 TAB 10].

### [5.1.2] Defendant's Contention

The defences put up by Defendants has been summarized by the Plaintiff as follows:-

- i) Eddie alleges that the oil loss was due to a long period of wrong entries of daily stock-take and oil spillage (paragraph 40-44 of submission).
- ii) Ain alleges (pp 18-21, 39-41 of Submission) that:
  - a) PW23 (Prabhat) did not verify any document from 2004 to 2009, and was informed that there were gaps between the physical inventory and MOVEX, but did not call witnesses to confirm the truth.
  - b) The method of calculating the volume of oil was changed after 2013 from outer diameter to inner diameter, but PW23 refused to accept the new figure, which possibly showed no loss or lower loss.
  - c) PW23's quantification of consumption and process loss on estimation [Exhibit P74 para 5.1.1.1] renders calculation for stock opening and closing for 2010 to 2013 inaccurate
  - d) SP23 confirmed that the actual process loss is higher than MOVEX's standard process loss.
- iii) Turiyat alleges (p 22-32 of submission) that:
  - a) PW23 did not confirm the figures in MOVEX on 1 January 2004.
  - b) PW23 confirmed that the actual process loss is higher than MOVEX's standard process loss.



- c) PW23 did not investigate whether MOVEX was manipulated.
  - d) PW23 obtained the figures from Lam Soon Edible Oil's records, not independently.
  - e) PW23 was told the possible ways in which losses could have occurred.
  - f) PW23 was given 2 sets of figures for the 100% stock-take on 21 January 2013.
  - g) PW23 did not look at the accounting records.
  - h) PW23 only mentioned the 1st to 4th Defendants in his report.
- iv) KN Lim alleges that:
- a) PW23 parrots Lam Soon Edible Oil's allegation that the usage of a big capacity tanker to collect small quantity of oil was a collusion/conspiracy (paragraph 8 of Submission);
  - b) The loss was a paper loss rather than a physical loss (paragraph 11 of Submission):
    - i. PW23 did not check for date entry error;
    - ii. PW23 did not verify any production document from 2004 to 2009;
    - iii. Differences between purchase /consumption and stock level were contributed to by date entry errors.

**[5.1.3] Plaintiff's Reply to the Defendant's challenge to PW23's methods of calculation:**

The Plaintiff submits that the Plaintiff's estimation of oil loss was premised upon the Forensic Report (Exhibit P74 prepared by PW23 which was not effectively challenged by the Defendants. PW23 has sufficiently addressed all the allegations raised which may be summarized as follows:-

- (i) PW23 used the production figures and not the inventory figures in the MOVEX system:

More importantly, for the quantification of loss, PW23 did not use the inventory figures in MOVEX. This is because the month-end stock-take figures were manipulated as Govin



confessed to [Exhibit P74 para 5.1.1.1; Core Bundle B1 TAB 101. PW23 therefore used the purchase, sale and consumption figures to determine the quantity of oil that ought to have been in the factory had it not been for the theft of oil/the removal of oil from the factory unrecorded.

As such, the alleged wrong entries of inventory during the month-end stock-take did not affect PW23's quantification of oil loss.

What PW23 did was this: he took the opening stock figures in 2004 as his starting point. He then worked out the closing stock figure year after year until January 2013. He did this by taking into account all purchases made and oil received by Lam Soon Edible Oil and taking away from that all consumption of oil by Lam Soon Edible Oil through production of oil products, oil packing, bulk oil sales, soap, oil issued to branches and oil returned to suppliers. See Table 5, 13 and 14 of Exhibit P74. This data was data of transactions recorded into MOVEX on a daily basis operationally.

Exhibit P74 contains the details of PW23's date verification. In essence, in order to ascertain the loss of oil, PW23 confirmed the figure of opening stock of various types of oil, purchases, dispatch, consumption for manufacturing of margarine and other fat blend products including the packing of cooking oil. This process involved the review and examination of the following [P74 para 5.1]:

- (a) Opening stock of various types of oil
- (b) Purchased of oil
- (c) Sales of oil in bulk
- (d) Production and consumption of Dirty Mixed Oil and other fat for soap manufacturing
- (e) Determination of percentage of loss during manufacturing, packaging and refining.

PW23 took into account overfilling which occurred because the quantity being filled into bottles for example, was more than accounted for, by reason of the oil packing machine's calibration.

PW23 took into account oil that leaked or was wasted during production, which was channeled to Dirty Mixed Oil.

By this method he derived the actual loss of palm oil and olein



56 of 4,509.82MT.

PW23's estimation of loss has taken into account spillages.

(ii) 2004 - 2009 Documents:

It was alleged PW23 did not verify any physical production document from 2004 to 2009.

The date for 2004 to 2009 as derived from MOVEX was not data that could be manipulated. It was transaction based data, not stock inventories. As such, if there was human error in feeding in the transaction based data, it would surface in another module.

PW23 considered the data for 2004 to 2009. PW23 explained in P74 para 3.1.1 as follows:

"Primarily my review was confined to the period beginning 2010 to January 2013, but as mentioned wherever I considered necessary, I have also considered data since 2004 to 2009. Datas were provided either by the internal auditors or by the person authorized by the management of Lam Soon Edible Oil."

Lam Soon Edible Oil carried out physical stock count before the migration from FoxPro to MOVEX.

Eddie agreed that he in fact took part in the physical stock count before the migration.

(iii) No Data Entry Error

KN Lim alleges that the loss was paper loss instead of physical loss because PW23 did not check for data entry error This allegation is not substantiated.

KN Lim alleges that the difference between purchase/consumption and stock level was contributed by data entry error This is misconceived. KN Lim did not substantiate his allegation, nor did he provide any basis for his belief.

In fact, PW23 explained [Exhibit P74 p 14 para 5.1.3.9] (in respect of 2010 to 2012) that purchase made by Lam Soon Edible Oil had no correlation with the levels of consumption, resulting in significant increase in the stock levels.

(iv) Tank Measurement Formula:





It was alleged that SP17 changed his formula in calculating the volume of oil in the 100% stock-take in 2013. What he did was this. He took into account the thickness of the tank in his tank measurement, which reduced the diameter of the tank. This causes a reduction in the volume of oil in the tank as compared to the previous formula.

PW23 did not totally miss out the new figures. He has in fact considered the difference and discounted it as being too insignificant. More importantly, he decided to give the Defendants the benefit of the doubt by maintaining his figures, as the new figures show less oil in the tank, that is, more oil loss.

(v) Process Loss:

It was suggested that the loss was possibly because the actual process loss was higher than the standard process loss. This is misconceived. PW23 has taken into account this issue in his analysis.

PW23 explained in P74 para 5.1.1.1 that consumption of oil during processing did not reflect the actual figure but was either standard or estimated figure. Hence, PW23 adjusted the figure of consumption and actual loss during the production and processing since the beginning to derive a reliable closing stock figure that should have been as on 21 January 2013.

PW23 worked backwards to calculate the process loss of all the departments in 2004 to 2006 which provided the weighted average percentage of process loss for the 3 years [Exhibit P74 para 5.1.5]. This was used as a parameter because no major change in product line, techniques of production and formula was noticed in the subsequent years between 2007 till January 2013.

PW23 used these percentages to work out the oil loss, by deducting the process loss from his calculation [see P74 Table 13-14].

(vi) PW23 obtained figures from records not own investigation:

It was alleged that in carrying out his analysis, PW23 merely took Lam Soon Edible Oil's figures and did not do his own investigation. This is misconceived. At the introduction of P74, PW23 explained:

(a) PW23's engagement was to cover from January



2010 to January 2013. However, the period selected was not sufficient to derive a trend to be used as a parameter to determine the actual process loss which was not captured by the system, and hence, PW23 reviewed and analyzed the figure since 2004.

(b) PW23's objective was to ascertain the accuracy of the documents generated on a day to day basis as part of SOP. Based on the documents available and data analyzed, he was required to quantify the amount of the alleged manipulation.

(c) PW23 used the following methodology:

i. Developed a working understanding about the structure and flow of the operation, internal control in place and its effectiveness *vis-a-vis* the finding of the internal inquiries.

ii. During the review, PW23 examined the exiting records maintained, various phases of production, purchase and revenue cycle and then identified the personnel involved in these phases to make the findings more realistic.

iii. PW23 also sought assistance of person in charge to draw the necessary flow chart for a better understanding of the operation.

iv. PW23 also analysed the procedure being followed by various departments to ascertain whether the records were being maintained based on actual consumption or on the basis of estimation or standard. PW23 then studied some of the production related documents to understand the recording method in MOVEX.

v. PW23 sought the assistance of various officers involved in production, supervision and verification of the transactions and generation of source documents which was necessary to confirm and ascertain the accuracy.

vi. PW23 conducted information seeking interviews with certain officers and personnel to understand, in depth, the issues involved and the cycle of any particular event which warranted explanation.



PW23 confirmed that the production figures, which he used to ascertain the oil loss, were tested and are reliable.

#### **[5.1.4] Rulings Of The Court**

Having heard the submissions of the parties and having perused the evidence of PW23 and his forensic report Exhibit 74, I find that the forensic report Exhibit 74 could be relied upon for the estimation of oil loss for the Plaintiff's factory which comes up to 4509.82 metric tons which is equivalent to RM14,071.66 for the following reasons:

- (i) Exhibit 74 is a forensic report prepared by PW23 as an expert report which was not rebutted by another expert report by the Defendants.
- (ii) The only challenge to Exhibit P74 was PW23's methods of calculation of oil loss which have been sufficiently addressed by PW23 during the trial. I agree with the explanations given by PW23 in rebutting the said allegations raised by the Defendants. More importantly I accept the methodology used by PW23 in his calculation of the oil loss by the Plaintiff's factory.
- (iii) It is to be noted that PW23's main task was to estimate the quantum of oil loss of the Plaintiff's factory and not on the cause of oil loss.

All considered, I find that the Plaintiff has proven that there was an estimation of oil loss of 4509.82 metric tons which is equivalent to RM14,071.66 in the Plaintiff's factory in Pasir Gudang.

#### **[5.2] Estimate Of Oil Loss Due To Theft**

**[5.2.1]** From the evidence adduced, it can be safely inferred that the loss of oil of 4509.82 metric tons from the Plaintiff's factory was probably due to theft of oil committed in the Plaintiff's factory. However, there is no direct evidence how the theft was committed, how the oil was taken out of the LSEO's factory and who were involved in the alleged theft.

**[5.2.2]** The Plaintiff alleges that all the 5 Defendants acted fraudulently and conspired with each other and third parties to steal oil from the Plaintiff's factory in Pasir Gudang and to conceal the discovery of the theft of oil. The Court has to examine the evidence adduced to see if such allegations have been proven on the balance of probabilities.

**[5.3]** In the period of 2010 to 2012 there were:

- (a) 85 WBTs created by way of ADD functions for SLE deliveries by YST's tankers;
- (b) 2399 instances of YST's tankers entering the factory for QC inspection without WBTs.



(c) 185 instances of YST's tankers parking in the factory without WBTs.

(d) 881 instances of YST's tankers parking in the factory (*albeit* with WBTs).

**[5.4] Evidence In Respect Of 85 WBTs For SLE Deliveries By YST's Tankers Were Manually Created By Using ADD Function**

**[5.4.1] As Against The 2nd Defendant**

It has been established that the 2nd Defendant admitted that she had created the 85 WBTs by using the ADD function for all the SLE deliveries manually without using the automated WB system. She also admitted that by using the ADD function she could also key in any weight into the WB system.

It has also been established vide the testimony of the 1st Defendant that the ADD function can only be used when there was a black out in the factory when the WB system was not functioning. The 1st Defendant also told the Court that the ADD function cannot be used in circumstances where a customer was purchasing oil by cash payment.

He further told the Court that on 12 June 2009, he had explained the SOP to all his staff in the Logistic Department before he passed the SOP to them for signing. The 5th Defendant, the General Manager also told the Court that the amended 85 WBTs was a breach of the FOP.

Hence, it is clear from the evidence adduced that Ain's conduct (the 2nd Defendant) in creating 85 WB tickets manually by using the ADD function without using the automated weighbridge was a breach of the FOP. Hence the 2nd Defendant did not follow the instructions given by the Plaintiff. A breach is still a breach even though the 2nd Defendant was under the impression that this was a normal practice as far as SLE deliveries were concerned.

**[5.4.2] Evidence As Against The 1st Defendant**

It has been established that in 2009, the internal audit of the Plaintiff recommended all amendments to WBTs should be blocked to prevent WBTs from being tampered with intentionally. The 1st Defendant's response to the internal audit's recommendation was not to block the amendments and to give the Plaintiff the assurance that all the amendments would be monitored and reviewed by him and the amendments would be attached to the old WBTs.

The 1st Defendant admits that the only way to ensure that WBT was not bypassed is to take 10 minutes a day to flip 18 to 29 WBTs to ensure that it does not carry the word 'ADD' or 'Amend' at the top of the WBT. However he said he did not do so.

The 1st Defendant testified that on the average, there were 1000-1500 WBTs



generated a month. Due to large volume of WBTs and his heavy workload, he did random checking of WBTs about 6 to 10 times a year. But he had explained the SOP to all his staff including the 2nd Defendant before he passed the SOP to them to sign.

#### **[5.4.3] Plaintiff's Submission**

The Plaintiff submits that the 1st Defendant's random checking of WBTs 6 to 10 times a year due to his heavy workload was inexcusable and his explanation of the FOP to his staff is not a sufficient step to ensure that the WB system was not bypassed as this was confirmed by his General Manager the 5th Defendant that the 1st Defendant's method of implementing the SOP by explaining the contents of the SOP to his staff was inadequate.

The Plaintiff further submits that the 1st Defendant was dishonest and had acted fraudulently by giving false assurance and a false sense of security to the internal audit to ensure that the WB system which was being bypassed could continue to be bypassed. The Plaintiff submits that the 1st Defendant had directed the 2nd Defendant to bypass the automated WB system when deliveries were made to SLE. Both the 1st Defendant and the 2nd Defendant were working together to siphon out oil and to conceal the oil taken out unrecorded.

#### **[5.4.4] Evaluation Of Evidence And The Rulings Of The Court**

Having examined the evidence adduced, I find that the 1st Defendant was negligent in failing to monitor his staff that is, the 2nd Defendant to comply with the FOP. He had not taken adequate steps to ensure that the WB system was not bypassed.

However there is no evidence that the 1st Defendant had directed the 2nd Defendant to bypass the automated WB system when deliveries were made to SLE.

There is also no basis for the Plaintiff to submit that there was a scheme whereby the 1st Defendant and the 2nd Defendant worked together to create the 85 WBTs manually with the fraudulent intention to conceal the theft of oil for the following reasons:

- (i) There is no evidence to prove that the issuance of the 85 manual WBTs by the 2nd Defendant was to conceal the theft of oil in the factory. First, it is not proven that the 2nd Defendant was involved in or knew about any theft of oil in the factory. Secondly, there is no evidence that she had benefited in any way in so doing. Last but not least, neither was there any evidence that she was directed to do so by the 1st Defendant or any third party.

But the 2nd Defendant had explained to the Court that she adopted the manual WBT for SLE's deliveries because that was the practice for all SLE's deliveries when she joined the Plaintiffs company in 2010.



Such a practice was supported by the testimony of PW12 another weighbridge clerk who testified that she had followed her teacher Puan Haliza on how to generate WBT for SLE's deliveries. Such a practice of issuing amended WBT was said to have existed way back in 2009 where the Audit Report of 2009 recommended that all amendments to WBT should be blocked to prevent WBTs from being tampered with intentionally. Hence in the absence of any proof that the 2nd Defendant had issued the 85 manual WBTs with the fraudulent intention to conceal the theft of oil, I accepted the 2nd Defendant's explanation why she issued the amended WBTs for all SLE's deliveries as her explanation was supported by PW5 the General manager of the Plaintiff that the 85 amended WBT's were created because of the lack of facility to ensure that the loading for SLE purchases accurately reflects the monies paid by the SLE to LSEO. Last but not least, I find that it is improbable that the 2nd Defendant had deliberately created the amended WBTs to conceal the theft of oil when she sent copies of all the 85 amended WBTs to the Account Department, Production Department and the security Department. If there were any irregularities about the amended WBTs, any of said Departments would have queried the amended WBTs.

However, no complaints were made against the said 85 amended WBTs until the discovery of the loss of oil in the Plaintiff's factory.

All considered, I find that the Plaintiff had failed to prove that the 2nd Defendant created the 85 amended WBTs with the fraudulent intention to conceal the theft of oil in the Plaintiff's factory let alone that she had worked together with the 1st Defendant to do the same. There is also no evidence that the 1st Defendant had directed the 2nd Defendant to adopt the manual system for the fraudulent purpose to conceal the theft of oil in the Plaintiff's factory.

**[5.5] 2399 Instances Of Yuen Soon Transport's Tankers Entering Factory For QC Inspection Without WBTs; 185 Instances Of Parking Without WBTs And 881 Instances Of Yuen Soon Transport's Tankers Parking Overnight In The Factory *Albeit* With WBTs**

#### **[5.5.1] Evidence Against The 2nd Defendant**

(i) The 2nd Defendant admitted that she allowed YST's tankers to come into the factory for QC inspection without issuing WBT. She also allowed YST's tankers 185 occasions to park in the factory without WBTs and YST's tankers for overnight parking for whatever reasons. She explained that she allowed such parking because that was the practice of the factory when she joined in 2010. There were 87 instances where other clerks in the WB Department allowed YST's tankers to enter for QC checks and to park overnight without WBTs. She said she was not aware that what she did was in breach of the FOP until she testified in Court.





**[5.5.2] 1st Defendant's Testimony**

The 1st Defendant's position is this: For vehicles entering for QC inspection, the 1st Defendant did not permit such entry because such vehicles need to be weighed. He had explained the SOP which prohibits this to the 2nd Defendant and passed her a copy and the 2nd Defendant signed and acknowledged receipt of it. As regards overnight parking, as a general rule, overnight parking was not allowed. But he said there was a collective agreement between him, the 5th Defendant, Peter Rajagopal and CP Chong to allow lorries to park overnight only for collection of soft oil. However there could be other reasons that overnight parking was allowed and it was permitted on a case to case basis.

**[5.5.3] The 5th Defendant's Testimony**

The 5th Defendant told the Court that for vehicles entering for QC inspection, it is the 1st Defendant's responsibility to ensure that WBT was not bypassed. He told the Court that he continued the practice which was put in place with the previous management and maintained the *status quo* of allowing overnight parking. He explained that overnight parking may be due to the delay in unloading oil, issues with the quality of oil, the specific requirement of the tanker to ensure that quality of oil does not change or the tanker being used to store oil due to insufficient oil stores in the factory. But there was a blanket agreement to allow overnight parking for collection of soft oil. However, overnight parking for other types of oil was allowed on a case to case basis.

**[5.5.4] Rulings Of The Court**

Having heard the evidence adduced, I am of the considered view that overnight parking at the Plaintiff's factory are governed by the following rules/practice:

- (i) According to the FOPA5, vehicles are not allowed to enter the factory before and after the operation hours for delivery or receiving bulk oils.
- (ii) Vehicles entering for QC inspection cannot bypass the WB system.
- (iii) However there was a blanket agreement which allows vehicles to enter and park overnight for collection of soft oil only.
- (iv) As regards other types of oil, overnight parking was permitted on a case to case basis meaning that permission must be obtained from the management.

Based on the facts established, I find that what the 2nd Defendant did was in breach of the FOP for two reasons: one is, as a low level clerk, she was in no position to give permission for overnight parking and two, no approval was obtained from the management for what she did. I also find that she was negligent for what she did since she was given a copy of the FOP by the 1st



Defendant.

Although the 2nd Defendant admitted that she was the one who allowed all YST's tankers without WBTs to park overnight in the factory, it is still the duty of the Security Department to ascertain with whose permission such lorries were allowed to park overnight in the factory because what the 2nd Defendant did was in clear breach of the FOP. It is not sufficient for Captain Abdullah (PW22) to say generally that he did bring to the attention of the 1st Defendant about the overnight parking of YST's tankers. No evidence was adduced whether the 1st Defendant had given permission for all YST's tankers to park overnight. I find that the Security Department had failed to discharge its duty in ascertaining with whose permission such lorries without WBTs were allowed to park overnight in the factory.

However, I find that the 2nd Defendant's conduct in allowing all YST's tankers to enter for QC inspection without WBTs and the overnight parking was carried out without any fraudulent intention for the following reasons:

- (i) The 2nd Defendant believed that what she did was supposedly the practice of the Plaintiff company as there were at least 87 instances when other clerks of the WB Department had allowed YST's tankers to enter for QC inspection and to park overnight without WBTs. She just followed what the senior said was the company's practice.
- (ii) There is no proof that the 2nd Defendant was involved or knew about the alleged theft and acted in collaboration or had conspired with the 1st Defendant or any third party in facilitating the alleged theft.
- (iii) There is no proof that she had benefited in any way by her misconduct.

However, I find that the 1st Defendant was negligent in not properly monitoring and supervising the works of the 2nd Defendant which had allowed all YST's tankers to park overnight without WBTs. He should be held responsible for the misconduct of the 2nd Defendant.

I find that the 1st Defendant's omission was just pure negligence of his duty in not supervising his staff over such matter but I do not think that he had any fraudulent intention to facilitate the theft of oil in the factory for the following reasons:-

- (i) There is no proof that the 1st Defendant had directed the 2nd Defendant to allow all YST's tankers without WBTs to park overnight in the Plaintiff's factory.
- (ii) There is also no proof that he gave permission to allow YST's tankers without WBTs to park overnight in the factory. In fact the Plaintiff could have easily proved with whose permission such lorries were allowed to park overnight in the factory by calling the security



guards to testify in Court which they have failed to do so.

(iii) Even if it is proven that the 1st Defendant had instructed the 2nd Defendant to allow or had given permission for YST's tankers without WBT to park overnight in the factory, no evidence had been adduced that any of such YST's tankers which had parked overnight without WBTs was caught carrying oil exiting the factory. Even if a lorry was allowed to park overnight without WBTs for whatever purpose at the Plaintiff's factory, it is still the duty of the security guards to check and stop such vehicle from exiting if it was found to have carried oil belonging to the Plaintiff. Since none of YST's tankers were caught carrying the Plaintiff's oil while exiting the factory, no theft was proven. Hence the 1st Defendant's and the 2nd Defendant's negligence cannot be said to have facilitated the theft of oil in the Plaintiff's factory.

#### **[5.6] Pre-Printed WBTs And Missing And Deleted WBTs**

I have taken note that WBT cannot be deleted from the system. However, I accepted the 2nd Defendant's explanation in deleting the cancelled WBT from the system in the absence of any proof of any element of fraud. For the above reasons, I find that the Plaintiff's assumption of fraud was without basis.

#### **[5.7] Tying Of Indicators, Location Transfers And Providing False Samples**

**[5.7.1]** The Plaintiff has adduced sufficient evidence to prove that the 3rd Defendant had manipulated the physical quantity and system quantities in MOVEX by performing fictitious location transfers, tying the tank indicators and providing false samples. The Plaintiff has proven the 3rd Defendant's misconduct based on the following evidence:

(i) Govin's confession dated 15 January 2013.

He confessed to performing fictitious location transfer, tying of the tank indicators and providing false samples.

(ii) The 3rd Defendant's Domestic Inquiry held on 31 January 2013. Govin pleaded guilty to manipulating stock figures via location transfers in MOVEX, tying of tank indicators (with intention to show presence of oil (and taking samples from one tank source and labeling it as other tank source, which tanks were empty).

(iii) He apologized for the 3 types of misconduct and asked for a lighter punishment.

(iv) In Govin's interview with David Grant (Consultant of PWC) held on 19 April 2013, Govin said he and Turiyat discussed tying of tank indicators and had started tying the tank indicators since 2007 (Q&A 1-2). He started manipulating the physical and system quantities in MOVEX since 2007 by performing factitious location transfers (Q&A



5, 10) and manipulated lab samples since 2012 (Q&A 18). See J98 pp 2896-2899; Core Bundle B2 TAB 53.

(v) PW1 (Shreechandra Mahara) testified that for 2 years (from 2010 until Govin resigned), Govin had instructed him to tie the tank indicators according to the desired levels as written on a piece of paper [for example J96 pp 2417-2419 (Exhibit P3); Core Bundle B2 TAB 54]. The tying of indicators started after 8.00 pm because this is the time when the people at the factory had gone home. After the recording of the tank readings of the indicators were taken the next day, he would untie the indicators [PWS1 Q&A 6-15; Core Bundle B5 TAB 122].

(vi) PW2 (Juman Miya Hazam) testified that Govin had instructed Bihari who in turn instructed PW2 to tie the tank indicators. He testified that the general workers, including PW2, would tie the tank indicators according to the desired levels indicated on Govin's handwritten instructions [PWS2 Q&A 5-10; Core Bundle B5 TAB 123].

(vii) PW9 (Rahim Bin Arbain) testified that he had seen Nepalese workers (such as PWS1 and PWS2) tie the tank indicators. Govin would give instructions to Bihari to tie the indicators according to his handwritten notes and Bihari in turn would instruct the general workers. The tying of indicators is generally done the night before the stock count date. The indicators would be untied after the monthly stock count [PWS9 Q&A 10-16; Core Bundle B2 TAB 55].

(viii) A handwritten note by Govin setting out the tank numbers and the levels at which the indicators have to be tied as described by PW1 and PW2 was produced [J97 pp 2417-2419; Core Bundle B2 TAB 54]. See NOE dated 21 April 2015 p 13 line 11-18; Core Bundle A p 151; NOE dated 22 April 2015 p 5 line 3-14; Core Bundle A p 152.

**[5.7.2]** The only defence put up by the 3rd Defendant was that he was compelled to confess by Rajagopal and Captain Abdullah by threatening him with lodging a police report which might result in him being imprisoned and the confession was fabricated. Having considered his defence carefully, I find that it is without merits for the following reasons:

(i) His confession on the tying of indicators was supported by other witnesses that is, PW1, PW2 and PW9 and his own handwritten notes setting out the tank numbers and the levels at which the indicators have to be tied as described by PW1 and PW2.

(ii) There is also ample evidence to show that the 3rd Defendant had resorted to fictitious location transfers in the MOVEX to neutralize the large variances between the physical quantities of oil and the system quantity of oil in the draft SVR.

(iii) Had the 3rd Defendant been coerced to make the confession or



the confession was a fabrication, he should have challenged it (i) when his service was terminated or (ii) during the domestic inquiry or (iii) when he was interviewed by David Grant on 19 April 2013 or (iv) at any time before the filing of the suit.

Nevertheless, the 3rd Defendant did not at any time until the suit was filed in Court challenge the said confession. Hence, I ruled that the confession was admissible.

It is clear from the evidence given by the 3rd Defendant vide his confession, Domestic Inquiry notes and David Grant's interview that his manipulation was to balance the physical quantities of oil with the system quantities in the MOVEX system (see his confession). After balancing the stock, he will then try to find out the root cause. But he said in his confession that he had no intention to steal the oil or to cheat the Plaintiff. He said during the Domestic Inquiry that he did not know who had actually taken the oil from the factory. He also said he alone was involved in the manipulation of the stock by fictitious location transfers and no one had instructed him to do so. However, he did discuss and obtain the consent of the 4th Defendant about the manipulation work.

The 4th Defendant in his confession has also implicated the 3rd Defendant for changing the oil quantity in the monthly report in the MOVEX system. He maintained what he said in his confession in his interview with David Grant.

For the above reasons, the Plaintiff has proven the 3rd Defendant's 3 misconducts namely:

- (i) Manipulating of stock figure via location transfer in the MOVEX system.
- (ii) Tying of oil level indicator of storage tanks with intention to show presence of oil.
- (iii) Providing the false sample of oil.

#### **[5.7.3] What Then Was The 3rd Defendant's Intention To Do The Aforesaid Wrongdoing?**

It has been established that Govin has done the fictitious location transfers, the tying of the indicator to show higher level of oil in the tank and providing the wrong samples. The 3rd Defendant said that his intention was to balance the differences in stock between the physical quantities in the factory and the figures in the MOVEX system. He had no intention to cheat the company. However, the Plaintiff submits that his intention was to conceal the theft of oil.

#### **[5.7.4] Ruling Of The Court**

I find that the Plaintiff's submission that the 3rd Defendant's deliberate acts was to conceal the loss of oil due to theft in the factory is without basis for the



following reasons:-

First, there is no proof that the 3rd Defendant knew about the alleged theft of oil in the Plaintiff's factory.

Secondly, there is also no evidence that he was Instructed by any of the Defendants or a third party to conceal the theft of oil.

Thirdly, the Plaintiff has failed to prove that the 3rd Defendant had any link to any of the Defendants who were alleged to be involved in the alleged theft of oil.

Lastly, no evidence has been established in what way the 3rd Defendant had benefitted financially by committing the above acts. There was also no money trail recovered from the 3rd Defendant.

Based on the evidence adduced in totality, I would only conclude that there is strong suspicion that the 3rd Defendant's misconducts were carried out for a fraudulent purpose with respect, the theft of oil could be one of the fraudulent purposes with respect, the theft of oil could be one of the fraudulent purposes. However, the 3rd Defendant did explain that he had no intention to cheat the Plaintiff. He did all this was to balance the differences in the stock between the physical quantities in the Plaintiff's factory and the figures in the MOVEX system. The burden is on the prosecution to prove what the fraudulent purpose was.

It is no fair for the prosecution to ask the Court to draw a reasonable inference by relying solely on the 3 isolated misconducts of the 3rd Defendant without any corroborative evidence.

For the above reasons, I rule that the Plaintiff has failed to prove that the 3rd Defendant's misconducts were carried out to conceal the alleged theft of oil.

#### **[5.8] Whether Turiyat Was Culpable To Govin's Misconducts**

##### **[5.8.1] Evidence Established:**

(i) Evidence has been adduced through the 3rd Defendant that he did discuss his manipulation works with the 4th Defendant and had obtained his consent in so doing. The 3rd Defendant also said there was verbal instruction from the 4th Defendant to manipulate the MOVEX figure.

(ii) The 4th Defendant's confession

The 4th Defendant in his own confession dated 15 January 2013 said that he was aware that in 2006 and 2007 there was oil loss of about 100 metric tons for PMO and 100 metric tons for Olein. Since he was not conversant with the MOVEX system, he left it to the 3rd Defendant to sort it out.





He also said Govin did not inform him about the tying of indicators. But he heard from the workers talking about the 3rd Defendant tying the indicators. But he did not inform his superiors regarding the tying of indicators that he heard from the workers. He said the rumours about the tying of indicators by Govin was confirmed to be not true subsequently when the 2nd dipping was done by the auditor and the 3rd Defendant showed that difference in quantity of oil is not obvious when compared with the monthly dipping carried out by the 3rd Defendant and the Account Department.

(iii) The 4th Defendant was asked by Peter Rajagopal to check variances in all the oil tanks at the end of the year 2012. The 4th Defendant then delegated the task to Govin (the 3rd Defendant).

However, the 4th Defendant signed off every single final SVRs for a period from January 2008 to November 2012 without checking the draft SVRs. Note: the 3rd Defendant and the 4th Defendant's signatures on 47 final SVRs from January 2008 to November 2012 can be seen on J73-91 (Annexure 2).

(iv) The 4th Defendant has implicated the 3rd Defendant for changing the oil quantity in the monthly report in the MOVEX system in his confession and maintained what he said in his confession.

The Plaintiff submits that the 4th Defendant was lack of *bona fide* when he said in Court that he falsely accused the 3rd Defendant for changing the oil quantity in the monthly report in the MOVEX system in his confession letter because he wanted his salary and gratuity.

The Plaintiff submits that Turiyat is clearly not a credible witness and his testimony in Court that he was not complicit in the fraud should not be accepted. He signed 47 final SVRs fraudulently endorsing the concealment of 4,509.82 metric tons to 10,526 metric tons of oil. He suppressed information about Govin tying indicators to show a higher level of oil than there was in the factory. He was aware that Govin was "sorting" out the variances in the system quantity and actual physical of stock, but concealed the same from LSEO.

#### [5.8.2] Ruling Of The Court

From the evidence adduced, I find that what the 4th Defendant said in his confession is true. His defence that he wrote his confession letter by fear or hope of gratuity or reward after lapse of 5 years cannot be accepted as he still maintained what he said in the confession letter during the Domestic Inquiry and his interview with David Grant. However, I find that there is no suppression of information about Govin tying indicators to show a higher level of oil than there was in the factory because I accepted his explanation in para 3 of his confession letter [CBC 5 p 2413].



However, I find that he was negligent and was in breach of his duty to verify the final SVRs without checking the draft SVRs before submitting them to the Account Department.

His failure to do the verification himself was not a fraudulent concealment for the theft of oil in the absence of any corroborative evidence, for instance, there is no proof that he knew that the loss of oil in the factory was due to the theft, he had in any way benefited by the alleged theft of oil, or he had any link with the other Defendants in the alleged conspiracy to steal oil from the Plaintiff's factory.

### **[5.9] Evidence Established Against The 5th Defendant As General Manager**

#### **[5.9.1] Plaintiff's Submission**

At the material times, KN Lim was the General Manager of Lam Soon Edible Oil. The fraudulent scheme could not have worked without KN Lim's active participation.

As a General Manager, KN Lim was in charge of the overall operations of the factory. He oversaw Productions and Operations including Logistics. As a General Manager, he had to ensure that all SOPs were properly carried out and implemented, and that the safeguards that were put in place within the factory to prevent theft, including the WB system, were implemented.

KN Lim did not take any step in relation to SOPs and safeguards that would block the fraudulent scheme. This is not because he was in generally reckless. The omissions were deliberate. On matters not affecting the fraudulent scheme, KN Lim was seen as unusually diligent.

KN Lim facilitated the fraud by deliberately not enforcing the relevant SOPs and safeguards. KN Lim did not follow up on the printing out of the draft SVRs or the amend function of the WB (as required by audit) and thereby facilitating the following:

- i) Production's fraudulent location transfer and tying of tank indicators.
- ii) Logistics' unauthorized amendment to 85 WBTs.
- iii) Logistics allowing tankers going in and out of the factory for QC inspections and parking without WBTs and tankers parking in the factory compound overnight.
- iv) KN Lim did not exercise any supervision on the Logistics, thereby allowing the unauthorized amendment to 85 WBTs over the period of 2 years.

During cross examination by the 1st Defendant's counsel, KN Lim was very quick to excuse Ain's and Eddie's conduct, on matters he had no personal



knowledge of.

KN Lim then blamed the accounts for being too stringent and difficult.

KN Lim's cavalier disregard for the recommendations of Internal Audit, at critical points in the system, which if carried out would have given rise to timely detection of the fraud and theft, is no coincidence. Instead, they point squarely to his complicity in the conspiracy:

(i) [J105 p 1646; Core Bundle B5 TAB 96], audit highlighted the issue of tankers parking in the factory overnight. KN Lim admitted he never analysed the risks and merely followed the 'practice' [NOE dated 29 August 2017 p 84 line 35 to p 85 line 17; Core Bundle A p 204-205].

(ii) [J105 p 1647; Core Bundle B5 TAB 97], audit highlighted the issue of WBTs not running in sequence and unable to sight missing WBTs. KN Lim admitted he did not take any step to ensure Eddie was checking the WBTs correctly, and relied on 'trust' [NOE dated 29 August 2017 p 94 line 21-33; Core Bundle a p 206].

(iii) [J105 p 1648; Core Bundle B5 TAB 98], audit highlighted the issue of movement of oil during stock-take day. KN Lim admitted he did not give any instruction during stock-take day with respect to movement of oil [NOE dated 29 August 2017 p 95 line 10-18; Core Bundle A p 207].

(iv) [J105 p 1648 5(b); Core Bundle B5 TAB 98], audit highlighted the issue of missing security seals. KN Lim admitted he was only made aware of the issue during the audit. He admitted that he did not even know if there were checks and balances in place with respect to security seals, and personally had not given instruction.

(v) [J105 p 1648 5(e); Core Bundle B5 TAB 98], audit highlighted the issue with the draft SVRs. KN Lim admitted he did not issue any instruction to production. He did not even know that only Govin looks at the draft SVRs [NPE dated 29 August 2017 p 104 line 19 to p 105 line 9; Core Bundle A p 224-225], and did not put any checks and balances regarding this issue [NOE dated 29 August 2017 p 107 line 4-20; Core Bundle A p 226].

(vi) [J105 p 1648 5(f); Core Bundle B5 TAB 98], audit highlighted the issue with the CCTVs. KN Lim admitted he was not even aware that they were out of order [NOE dated 29 August 2017 p 109 line 31 to p 110 line 5; Core Bundle a p age 227].

(vii) [J105 p 1648 5(h); Core Bundle B5 TAB 99], audit highlighted the issue with the WBT system controls. KN Lim admitted he was not aware of these issues until they was being raised in the audit.

(viii) [J105 p 1648 5(h); Core Bundle B5 TAB 98], audit highlighted



the issue with the WBT system controls. KN Lim stated he was not aware of these issues until they were being raised in the audit. In relation to WBTs, Eddie said there was no lack of control, KN Lim stated that he did not know what Eddie checked [NOE dated 29 August 2017 p 114 line 18 to p 117 line 22; Core Bundle A p 229-232] and did not even know about the ADD function. KN Lim stated that his oversight on Eddie's answers is, again based on 'trust' [NOE dated 29 August 2017 p 117 line 33 to p 118 line 30; Core Bundle A p 232-233].

(ix) [J105 p 1665; Core Bundle B5 TAB 100], audit proposed to block all amendments to WBT to prevent abuse [NOE dated 29 August 2017 p 123 line 26 to p 124 line 1; Core Bundle A p 234-235]. Eddie disagreed. Instead, he volunteered the responsibility to personally monitor and review amendments. KN Lim admitted he did not take any step to ensure Eddie implemented his proposal [NOE dated 29 August 2017 p 126 line 1 to p 128 line 4; Core Bundle A p 237-239].

(x) [J105 p 1650(j); Core Bundle B5 TAB 101], audit highlighted that not all lorries are being weighed [NOE dated 29 August 2017 p 128 line 21-28; Core Bundle A p 239], and KN Lim felt it was perfectly in order for a lorry to bypass the WB if it is for general cargo. [NOE dated 29 August 2017 p 133 line 20-25; Core Bundle a p 240].

(xi) [J105 p 1674; Core Bundle B5 TAB 102], audit recommended that overall stock take reconciliation be carried out by production, stock take variances to be compiled, investigated and explained, and adjustments and reconciliation report to be approved by General Manager to Head of Department.

a) KN Lim admitted he did not issue any instructions for implementation of these recommendations [NOE dated 29 August 2017 p 134 line 24 to p 136 line 2; Core Bundle A p 241-243].

b) KN Lim agreed that if he had insisted that Turiyat gets the draft SVRs from Govin on any one month, the discrepancy could have been discovered much earlier [NOE dated 29 August 2017 p 136 to p 137 line 16; Core Bundle A p 243-244].

The following are further examples of KN Lim's deliberate omissions of the obvious, to facilitate the fraudulent scheme:

i) KN Lim accepted that it was against SOP for tankers to enter or leave the factory without WBTs. Yet, between 2010 and 2012, Yuen Soon Transport tankers entered the factory for QC inspection and parking 2399 + 185 times without WBTs. Eventually, KN Lim admitted he did not take any step to ensure that all tankers are issued WBTs.



ii) KN Lim claims that he was not aware that there was a variance between the physical quantity and system quantity of oil, even though Turiyat detected this since 2006. KN Lim claims that he was not aware that the figures in the daily stock take were far different from the figures in the monthly stock-take.

iii) KN Lim admitted he never called for the SVRs. In re-examination, he continued to maintain that there was no need or point for him to review the draft SVRs. Instead, he insisted that his review of the MO variance report was sufficient. His testimony flies in the face of the following.

a) The Internal Audit 2009 recommendations as set out above and which he, as General Manager, represented to Lam Soon Edible Oil's management that he would comply with.

b) The fact that a cursory review of the draft versus final SVRs would have shown up Govin's fictitious location transfers, whether or not they are completely accurate "because of transaction has not been transacted" as he claimed.

c) That as General Manager, he should have ensured that "transaction has been transacted" in a timely fashion in any event, to ensure efficacy of comparison between the draft and final SVRs, rather than blithely throwing the whole process out of the window and blatantly ignoring the Internal Audit Recommendations that he had undertaken to implement.

d) The fact that the MO variance report fulfils an entirely different function (loss through lack of efficiency) from the SVR (loss through theft and other causes).

e) KN Lim claims that he was not aware that the Nepalese workers were tying indicators before every month-end stock-take to conceal the volume of oil in the tanks, even though this took place since 2006.

f) KN Lim claims that he was not aware that Govin performed false location transfers to deflate the system quantity and to inflate the physical quantity of oil to conceal oil loss.

g) KN Lim claims that he was not aware that Govin provided false samples to the QC during stock-take.

Even when he was notified that a driver was going to steal in the company [J98 pp 2708-27091, KN Lim just forwarded the email to Eddie and Captain Abdullah, asking them to ban the driver. As a General Manager, he should have at the very least verified the email and directed investigations to be



carried out on the company for whom the driver was working.

His dogged obtuseness and "hands-off" attitude is no accident, but part of a deeper scheme to protect and shield his fellow conspirators.

Under KN Lim's watch, all the above were overlooked, deliberately in facilitating the fraudulent scheme.

The above demonstrates fraudulent concealment and gross negligence on the part of KN Lim in carrying out his duties as the General Manager

KN Lim is liable to Lam Soon Edible Oil's claim, and is certainly not entitled to the retirement gratuity paid to him. KN Lim represented that owing to his ill health, he had to opt for an early retirement, but subsequently admitted that he had sought employment elsewhere.

#### **[5.9.2] 5th Defendant's Defence**

He as the General Manager has delegated his work to the various Heads of Department. The 2nd Defendant was reporting to her Heads of Department that is, the 1st Defendant whereas the 3<sup>rd</sup> Defendant and the 4th Defendant were reporting to Peter Rajagopal, the head of Production. He did not have direct contact with the 2nd Defendant, the 3rd Defendant and the 4th Defendant. All the Heads of Departments are expert in their respective fields. The 5th Defendant further states that all proposals suggested by the Heads of Departments were discussed and reviewed by the internal audit team.

He also told the Court that he has never failed to ask about the progress of work during the meetings with the Heads of Departments. This would include the implementation of the audit concern and the SOPs. He further states that if no reports or complaints on any irregularities were brought to his attention, no steps could be taken by him. He would rely and trust each Head of Department on the assurance given in the discharge of their respective duties.

On the issue of the refund of the gratuity, the 5th Defendant alleges that in his letter dated 19 April 2012 (refer Jilid 98 p 2714) to the Plaintiff on his request for an early retirement, there was no mention that he was not fit to work. The content of his letter which is self-explanatory clearly spells out his request for an early retirement was primarily because he was unable to strike a balance between his work and his health and more often than not health was his priority. And as a responsible employee he felt that it is more appropriate that he retired for the benefit of both the Plaintiff and himself. The content of the 5th Defendant's letter is very clear that the 5th Defendant has never presented to the Plaintiff that he was unable to work due to ill health. Therefore for the Plaintiff to claim that the 5th Defendant has misrepresented his intention for early retirement is totally unfounded and completely baseless and malicious.

The Plaintiff has informed the 5th Defendant of their acceptance of his request via their letter dated 18 June 2012 (please refer to Jilid 98 p 2715), which is two (2) months after the 5th Defendant's letter dated 19 April 2012 and thus





the Plaintiff has more than reasonable time to review and validate the merit of the 5th Defendant's request. To make claim that the 5th Defendant has misrepresented his request after D5 has retired over a year is certainly malicious and acted in bad faith.

The retirement gratuity is part of the contractual remuneration upon attaining the retirement age of 55 years old. It has implied that the Plaintiff has agreed with the contractual remuneration. In fact, the Plaintiffs Managing Director has confirmed that the retirement gratuity forms part of the employee compensation and benefit (please refer to PW13 Nota Keterangan dated 30 November 2015 p 31). Therefore the action by the Plaintiff to claim back the contractual remuneration (retirement gratuity) which the Plaintiff has agreed and paid on its own accord and goodwill on the basis of the 5th Defendant's negligence of duty is evident that the Plaintiff has acted in bad faith and against the principle of the Employment Act and it is also obvious that the Plaintiff is abusing the Court process to violate the Act.

The Plaintiff alleges that the 5th Defendant has sought re-employment despite requesting for retirement was a ploy and a concealment of the alleged fraud was a complete wild allegation. The 5th Defendant has testified during his examination that he had never had any re-employment after his retirement. However, he was instead sought by his current employer as their Operation Adviser where he played a consultant role and was given flexi hour and to work at his own pace and this is comparatively many times less taxing and stressful as opposed to his role with the Plaintiff where he had heavy responsibility to look after two factories and 10 Heads of Departments working under him.

### **[5.9.3] Ruling Of The Court**

Having perused the evidence adduced against the 5th Defendant during the trial, I find that all the allegations of misconducts and breaches of duties are actually committed by the staff under the supervision of the 1st Defendant and Peter Rajagopal. The only persons who are answerable to him are the 1st Defendant and Peter Rajagopal. The 5th Defendant cannot be personally supervising the works of the staff of all the Departments under his watch. To allege that the 5th Defendant facilitated the fraudulent conducts of his staff placed under their respective Heads of Department by deliberately not enforcing the relevant SOPs or safeguards which were put in place to prevent the theft of oil in the factory in the absence of any proof of fraud on his part is too far fetch. In this case I find that the 5th Defendant was not in breach of his duty to properly supervise the 2nd Defendant who was placed under the 1st Defendant to ensure that WB system was not bypassed. If such misconducts were not reported by the 1st Defendant to him, he could not be held responsible for such misconducts as he was given no opportunity to take any remedial steps. However there was no evidence tendered by the Plaintiff to show that the 5th Defendant had conspired with the 1st Defendant, the 2nd Defendant, the 3rd Defendant or the 4th Defendant to steal oil from the Plaintiffs factory.





There was no evidence of communication or contact on how to carry out the alleged theft between the 5th Defendant and the other Defendants.

However, it has been established that the 5th Defendant as the General Manager was not aware of many of the misconducts committed by the low level staff that is, the 2nd Defendant, the 3rd Defendant and the 4th Defendant which were allegedly not reported to him by the Head of Departments. However I find that there were some obvious omissions on the part of the 5th Defendant in not properly supervising his subordinates, that is, the Heads of Department under his watch in the discharge of their respective duties.

I also find that he was the General Manager who had a "hands off" attitude in respect of the work assigned to each Head of Department and was not diligent enough in monitoring the works of his Heads of Department. In short, the 5th Defendant is not an effective and efficient General Manager of the Plaintiff. On the whole I find that the Plaintiff failed to prove any fraudulent concealment and gross negligence on the part of the 5th Defendant as the General Manager.

#### **[6] Issues For Determination**

**Whether The Shortfall Of The Plaintiff's Oil In Its Pasir Gudang Factory, If Any, Was Caused By The Defendants' Fraud And Or Collusion, Conspiracy, Negligence And Or Breach Of Duty And If So, What Are The Damages Recoverable By The Plaintiff Against The Defendants**

[6.1] The Plaintiff is claiming *inter alia*, the sum of RM14,071,571.66 for 4509.82 metric tons being oil loss due to theft from the Defendants. The Plaintiff's position is that: The Defendants acted fraudulently and conspired with each other and with third parties to steal oil from LSEO and to conceal the discovery of the theft of oil and the oil loss. This was done using Yuen Soon Transport's tankers to transport the oil out of the factory without detention and unrecorded. Additionally, the conduct of the Defendants is in breach of their contractual and tortious obligations to LSEO

[6.2] In order to prove conspiracy, there must be an agreement plus the overt acts which have been alleged to have been done by each of the alleged conspirators in pursuance of the conspiracy and lastly the injury and damage occasioned to the Plaintiff thereby: *Seah Siang Mong v. Ong Ban Chai & Anor* [1996] 2 MLRH 103.

[6.3] Having carefully considered the evidence adduced and the facts established at the conclusion of the trial, I have come to the following findings of facts:

#### **[6.3.1] No Direct Proof Of Theft Of Oil**

There is no direct proof of theft of oil from the Plaintiffs factory by any of the Defendants.



It is not disputed that none of the Yuen Soon Transport's tankers which had entered into and exited from the Plaintiff's factory had been caught by the Plaintiff for stealing oil or transporting oil more than what had been purchased. The evidence of PW13 confirmed that the Plaintiff does not have any direct evidence of theft of oil against YST but the evidence of theft was by way of inference.

**[6.3.2] No Proof That Wrongdoings Of The 1st Defendant And The 2nd Defendant Had Facilitated The Alleged Theft Of Oil**

The Plaintiff has successfully proven:

- (i) The 2nd Defendant was negligent and was in breach of the FOP by amending the 85 WBTs and allowing YST's tankers to enter the factory for QC inspection and overnight parking without WBTs without the approval of the management.
- (ii) The 1st Defendant as the Head of Logistic Department was also negligent and in breach of his duty for failing to supervise the 2nd Defendant, his subordinate in complying with the FOPs.

There is no proof that in what ways the 85 amended WBTs have facilitated the theft of oil as the Plaintiff failed to tender any evidence to prove the exact quantity of oil carried by the said 85 lorries with the amended WBTs or the 85 lorries had carried oil more than what Soon Leong Enterprise (SLE) had purchased.

There is also no proof that the 1st Defendant and the 2nd Defendant knew that all the Yuen Soon Transport's tankers which came in for QC inspection and for overnight parking were for the purpose of stealing oil.

Similarly, the Plaintiff has also offered no evidence that any oil had been carried out of the Plaintiff's factory by the YST's tankers which came in for QC inspection or for overnight parking with the permission of the 1st Defendant.

I find that the misconducts of the 1st and the 2nd Defendants are pure negligence and breaches of duty without any fraudulent intent.

**[6.3.3] No Proof That Misconducts Of The 3rd Defendant And The 4th Defendant Were Done To Conceal The Loss Of Oil Due To Theft**

The Plaintiff has proven that the 3rd Defendant had fraudulently tied the indicators, carried out the fictitious location transfers and provided the wrong samples of oil to conceal the loss of oil. But there is no evidence that the 3rd Defendant had done so to conceal the loss of oil due to theft. First, there is no proof that the 3rd Defendant knew about the alleged theft of oil committed by anyone in the factory. His fraudulent conduct as explained by the 3rd Defendant was to ensure that the balance of oil between the physical stock in the factory and the quantity in the MOVEX system.



Hence, I do not find that his wrongdoings were carried out to conceal the theft of oil in the factory let alone to conspire with the other Defendants to facilitate the theft of oil from the Plaintiffs factory. Likewise, the 4th Defendant's negligence and breach of duty in submitting the final SVRs without checking with the draft SVRs were done without fraudulent intent as there was no proof that he knew about the alleged theft and he had done the act with any financial benefit.

On the whole, I find that the misconducts of the 1st Defendant, the 2nd Defendant, the 3rd Defendant and the 4th Defendant are all isolated acts which are not proven to have facilitated or concealed the theft of oil.

**[6.3.4] No Proof Of Any Scheme Or Plan Between The Defendants To Steal Oil From The Plaintiffs Factory**

It is not disputed that the 5th Defendant was the General Manager of the Plaintiff's factory in Pasir Gudang and all the Heads of Departments including the 1st Defendant and Peter Rajagopal were placed under his supervision. Whereas the 1st Defendant was the head of Logistic Department where the 2nd Defendant a WB clerk was under the direct supervision of the 1st Defendant.

The 3rd Defendant was Production Supervisor and the 4th Defendant, the Production Planner was the 3rd Defendant's superior and both the 3rd Defendant and the 4th Defendant were in the Production Department whose head was Peter Rajagopal.

It has been established in evidence that there were communications between the 1st Defendant and the 2nd Defendant, the 2nd Defendant and the 3rd Defendant, and the 3rd Defendant and the 4th Defendant and the communications were confined to their job scope.

It is not disputed that the 1st Defendant barely knew the 3rd Defendant and the 4th Defendant who are working in the Production Department. But the 1st Defendant never contacted the 3rd Defendant or the 4th Defendant. The 5th Defendant as General Manager only contacted the Heads of Departments, for example, the 1st Defendant but not the 2nd Defendant, the 3rd Defendant and the 4th Defendant. Apart from the aforesaid communications between the parties pertaining to their respective job scope, the Plaintiff failed to prove that the Defendants had contacted each other in pursuant to any plan or scheme to steal oil from the Plaintiffs factory. It is to be noted that the Plaintiff had seized all the hand phones and computers from the Defendants. The Plaintiff would have tendered any evidence of contact between the Defendants pertaining to the scheme to steal oil if they had acquired such evidence from their respective hand phones and computers. However, nothing of that sort was tendered by the Plaintiff against the Defendants during the trial.

It is also not disputed that none of the YST's tankers were caught stealing oil from the Plaintiffs factory.



For the above reasons, I find that the Plaintiff has failed to prove that there was any conspiracy between the Defendants to steal oil from the Plaintiff's factory vide YST's tankers. Hence, I find that the Plaintiff has failed to prove on the balance of probabilities that the 1st Defendant to the 5th Defendant had conspired to steal oil from the Plaintiff's factory by using YST's tankers.

I also find that the Plaintiff has failed to prove that the negligence, breaches of duty on the part of the 1st Defendant to the 4th Defendant have caused the loss of oil due to theft or have facilitated the alleged theft of oil.

**[6.4] Whether LSEO Is Entitled To Claim Against The 5th Defendant For The Refund Of The Retirement Gratuity In The Sum Of RM 172,446.96**

Since the Plaintiff has failed to prove its claim for loss of oil due to theft against the 1st Defendant to the 5th Defendant, I rule that the 5th Defendant was not liable to refund the Retirement Gratuity of RM172,446.96 to the Plaintiff.

**[6.5] Whether The 4th Defendant Was Entitled To His Gratuity As Pleaded In His Counterclaim**

Even though the Plaintiff has failed to prove its claim against the 4th Defendant, they have proved some misconducts on the part of the 4th Defendant. Whether the 4th Defendant was entitled to his gratuity which would depend on many other factors as stated in his terms of employment. It is for the management to decide on the 4th Defendant's entitlement for gratuity because it was not solely dependent on the outcome of this case. For the above reasons I rule that the 4th Defendant has not proved his counterclaim against the Plaintiff. I therefore dismiss the counterclaim.

**[6.6] Whether The 1st Defendant Was Liable To The Plaintiff For The Sum Of RM534,792.00 Paid To Yuen Soon Transport**

**[6.6.1] Plaintiff's Submission**

Eddie was the Chairman of the Cost Saving Department Group. He was to source the best rates for tankers.

Eddie approved Yuen Soon Transport's invoices from 2009 to 2012 [J66-73] for payment. He signed on all the invoices, after having verified against the 'agreed rates'.

Eddie said he signed Yuen Soon Transport's quotations after getting his superior's verbal approval. Eddie said there had always been a practice of minimum charges of 4 trips per day for Yuen Soon Transport, at an agreed MT.

Evidence shows that there was no such agreement to pay Yuen Soon Transport's rates as per its invoices.



(i) LSEO has in its record a minimum trip agreement in 1998 for within Pasir Gudang at J66 pp 16-18 [Core Bundle B1 TAB 36], of 4 trips per day at 14 MT per trip at RM3.20 per MT.

(ii) In 2002, the parties agreed to a minimum trip agreement for within Pasir Gudang of 4 trips per day at 14MT, 17MT and 18MT per trip at RM3.50 per MT [J102 p 855 [Core Bundle B1 TAB 37].

(iii) In 2006, Eddie agreed to YST's rates of RM3.0 for MS tanker and RM5.50 for SS tanker No minimum 4 trips was agreed [J1-2 p 856 [Core Bundle B1 TAB 38].

(iv) In June 2008, YST proposed to increase 35% of the rate [J102 p 857; Core Bundle B1 TAB 39], but Eddie did not approve [NOE dated 30.5.2017 p 7 line 24 to p 8 line 12; Core Bundle A pp 138-139]. In July 2008, Eddie agreed to YST's rates of RM4.62 for MS tanker and RM6.52 for SS tanker Also, no minimum 4 trips was agreed [J102 p 858; Core Bundle B1 TAB 40].

(v) There are 2 similar quotations at J66 pp 19-20; [Core Bundle B1 TAB 20], Bundle C1 p 289 [Core Bundle B4 TAB 77], purportedly YST's rates with effect from 1 June 2011. The quotations were not signed, and no minimum 4 trips was proposed. Eddie confirmed he did not pay the minimum trips based on these quotations, stating that minimum charges was already in practice [NOE dated 21 May 2017 p 117 line 11 to p 119 line 15] [Core Bundle A pp 140-142].

Eddie said the rate had been revised from time to time, but he could not produce any document which he relied on to approve the minimum 4 trips. In fact, there could not have been such an agreement, because the parties had already done away the minimum trips in 2006 [J102 p 856; Core Bundle B1 TAB 38], when they agreed to the rates of RM3.90 for MS tanker and RM5.50 for SS tanker The subsequent quotations made no mention of any minimum trips [J102 p 857 and 858; Core Bundle B1 TAN 39-40, J66 pp 19-20; Core Bundle B1 TAB 20].

Eddie called SD2 from Yuen Soon Transport, but SD2 did not know anything about the minimum trip agreements. SD2 said he just "followed his father's time style" [NOE dated 8 June 2017 p 39 line 34 to p 40 line 19; Core Bundle A pp 143-144; NOE dated 8 June 2017 p 44 line 1 to p 45 line 6; Core Bundle A pp 145-146]. Eddie approved YST's invoices without any basis. In fact, the documents show that the parties had done away with free trips agreement in 2006. Eddie caused LSEO to pay RM5,347.92 to Yuen Soon Transport for 4255 trips not made, when there was no contractual obligation for LSEO to do so.

Even KN Lim, whom Eddie allegedly sought approvals from, confirmed that he was never involved in free trip negotiations and never approved any quotation/revision, and did not have personal knowledge of this arrangement [NOE dated 29 August 2017 p 190 line 6 to p 191 line 6; Core Bundle A pp



216-217].

If this is not fraud/collusion, Eddie was, at the very least, grossly negligent in verifying and approving YST's charges.

#### **[6.6.2] Defendant's Reply**

The payment of free trips have been made to Yuen Soon Transport over a long period of time. The invoices for payment from YST are found in C1 at pp 1-286. The Plaintiff never questioned the payments of free trips before.

Please see the 1st Defendant's Witness Statement at question 69 and 70.

The costs of the free trips have been built into the costs of oils sales and the Plaintiff cannot claim that they have suffered a loss (SP18 evidence at p 41 of his notes of evidence). Please see email of the 1st Defendant at Bundle C1 pp 330-333.

The 5th Defendant gave evidence in Court that there was an agreement signed between Mr Siew and YST for these free trips (p 28 of notes of evidence). He said that when he joined the Plaintiff, the minimums trips were already there. It is nothing new and it is something from the past (pp 29-30 of his notes of evidence). It has been there all the while.

SP18, Chang Mong Soon, Finance Manager, did agree that Logistic Department only verified the payment voucher (p 30 NOE) and approved by the General Manager (Lim Kai Nam) (p 31 NOE) and this payment was confirmed by SP18 since 1990's and the cheque was issued and approved by the Account Department. SP18 also agreed that all YST's payment need management's approval and Logistic Department only had a right to suggest the amount of payment but they do not have authority to decide (p 4 NOE).

During the cross-examination, SP18 did agree that all the payments to Yuen Soon Transport were absolutely proper (p 42 (NOE)).

During the cross examination by the 5th Defendant, SP18 agreed that before the payment was issued to YST, three persons had checked and prepared the payment voucher, that is, KN Lim, Executive Director and SP18 himself (p 43 NOE).

In respect of the account or the report, all accepted and counter signed by the Heads of Department and so far there was no problem and the Account Department was satisfied with all the explanations by Heads of Department (p 48 NOE).

#### **[6.6.3] Ruling Of The Court**

It is not disputed that the minimum 4 trips had already formed part of the agreement between YST and the Plaintiff since the start of the business with the Plaintiff as reflected in the agreement signed on 1 February 1999.



The minimum 4 trips has not been expressly terminated by any subsequent agreement.

It is to be noted that the payments of free trips have been made to YST for a long period of time and all the payments had been approved by the Plaintiff without any question.

The Plaintiff should now be estopped from claiming that the payments to YST for the sum of RM534,792.00 were unauthorized.

I agree that for all YST's payments, the 1st Defendant only had a right to suggest the amount of payment but he still needed the management's approval for such payments.

If any of the alleged payments for the minimum 4 trips was unauthorized, the management could always disallow the payment.

For the above reasons, I find that Plaintiff has failed to prove that the sum of RM534,792.00 paid to YST were unauthorized payments and the Plaintiff is not entitled to claim such payments from the 1st Defendant.

### **Decision**

[7] On the whole the Plaintiff has failed to prove its claim against the Defendants on the balance of probabilities. I dismissed the Plaintiffs claim against the 1st Defendant to the 5th Defendant. The 4th Defendant also failed to prove his counterclaim against the Plaintiff. I dismissed the 4th Defendant's counterclaim against the Plaintiff. I order the Plaintiff to pay cost of RM30,000.00 to the 1st Defendant, the 2nd Defendant, the 3rd Defendant and the 5th Defendant and cost of RM20,000.00 to the 4th Defendant.

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