

HONG KONG / JUDGMENT

DART EXPRESS (S) PTE LTD v. SUPERSPEED TRANSPORTATION LTD

COURT

District Court

DECIDED

14 March 2007

CASE / FILE NUMBER

DCCJ614/2005

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bjbj DCCJ614/2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION CIVIL ACTION NO. 614 OF 2005

BETWEEN DART EXPRESS (S) PTE. LIMITED Plaintiff and SUPERSPEED TRANSPORTATION
LIMITED Defendant

Coram: H H Judge Marlene Ng in Chambers Date of Hearing: 28th February 2007 Date of Handing
Down Judgment: 14th March 2007

JUDGMENT

I. Plaintiff's claim The Plaintiff claimed against the Defendant for the sum of S\$75,595.80 (equivalent to HK\$360,591.97 at the exchange rate of S\$1.00 to HK\$4.47 quoted by The Hongkong and Shanghai Banking Corporation Limited on 4th February 2005) being outstanding charges for freight services rendered and charges incurred by the Plaintiff for the Defendant at the Defendant's request between 19th June and 30th November 2003. The relevant invoices (Invoices) are particularised in columns I-IV of items 49-74 of Annexure I annexed to this judgment (Annexure I). II. Defendant's pleaded defence The Defendant denied it ever requested the Plaintiff for freight services or received the Invoices. The Defendant discovered from the copy Invoices sighted after the commencement of the present proceedings that the air waybills forming the subject matter of the Invoices (ie column III of items 49-74 of Annexure I, Air Waybills) were issued by Sea Sky Pte Ltd of Singapore (Sea Sky Pte). The Defendant claimed Sea Sky Pte would also issue (and in fact issued) invoices to the Defendant for the Air Waybills. So the Defendant argued there was no express or implied contract between the Plaintiff and the

Defendant. Further, the Defendant claimed it had settled the invoices issued by Sea Sky Pte. If the Defendant had any liability under the Invoices (which was denied), it had fully discharged and satisfied such liability as follows : on the instructions of Sea Sky Pte, the Defendant remitted the following payments directly to the Plaintiff by telegraphic transfer : US\$31,361.97 (column VII of item 9 of Annexure II annexed to this judgment (Annexure II)) which payment was for the Air Waybills in items 49-57 of Annexure I and identified as payment reference in column Vii; US\$10,861.23 (column VII of item 10 of Annexure II) which payment was for the Air Waybills in items 58-63 of Annexure I and identified as payment reference in column Vii; US\$19,012.84 (column VII of item 11 of Annexure II) which payment was for the Air Waybills in items 65-73 of Annexure I and identified as payment reference in column Vii; on 11th December 2003, the Defendant settled the payment for the Air Waybill in item 64 of Annexure I identified as payment reference in column Vii by remittance to agent of [Sea Sky Pte] on its instructions ; on 19th March 2004, the Defendant settled the payment for the Air Waybill in item 74 of Annexure I identified as payment reference in column Vii by remittance to agent of [Sea Sky Pte] on its instructions . The Defendant claimed that it had by letter to the Plaintiff s Singaporean solicitors dated 26th July 2004 denied liability in respect of the Invoices. III. Summons : summary judgment application On 7th September 2006, the Plaintiff issued a summons for summary judgment against the Defendant. The Plaintiff filed the 1st and 2nd affirmations of Ho Kheon Foo (the Plaintiff s chief executive officer) in support and the Defendant filed the affirmation of Chan Po Yee (the Defendant s executive director) in opposition. IV. Summons : striking out application On 16th February 2007, the Defendant issued a summons to strike out the Plaintiff s Statement of Claim. In the course of his submissions at the hearing before me, Mr Butt, counsel for the Defendant, applied to withdraw such summons. Mr Wong, solicitor for the Plaintiff, had no objection. I therefore granted leave to the Defendant to withdraw the striking out summons and ordered the Defendant to pay the Plaintiff s costs of such summons (including all costs reserved, if any) to be taxed if not agreed. To assist the taxing master, I apportioned 1 hour of the hearing time before me for such summons. V. The law : summary judgment A plaintiff may invoke the procedure under Order 14 of the Rules of the District Court where there is no valid defence to his claim or otherwise a triable issue The underlying policy of the summary procedure is to prevent a defendant from delaying the plaintiff from obtaining judgment in case in which the defendant clearly has no defence to the plaintiff's claim: *Man Earn Ltd v. Wing Ting Fong* [1996] 1 H.K.C. 225. Order 14 proceedings for summary judgment when there is no defence to a claim are an important feature of the legal process. It enables plaintiffs in cases where there is no defence to obtain expeditious summary judgment to avoid unnecessary delay. When applied for, it is for the defendant to show that there is a triable issue or an arguable defence if he is to be allowed his day in court. To deny him his day in court, if he shows a triable issue or an arguable defence, is indeed a fearful injustice. On the other hand, if he has no defence and he obtains leave to defence, equally, there is injustice to the plaintiff. Per Mortimer J.A. in *Manciple Ltd. v. Chan On Man* [1995] 3 H.K.C. 459 at 466. The machinery of O.14 works on the basis that if the plaintiff's application is properly constituted, he is prima facie entitled to judgment unless the defendant shows cause to the contrary or the application is dismissed. (see *Hong Kong Civil Procedure 2007* Vol.1 para.14/4/1 at pp.174-175) In *Ng Shou Chun v Hung Chun San* [1994] 1 HKC 155, Godfrey J

noted it was not appropriate to embark on a mini-trial of the action on affidavit evidence. The court should ask itself the question whether what the defendant says is credible or believable. If so, he must have leave to defend; if not, the plaintiff is entitled to summary judgment. However, Hong Kong Civil Procedure 2007 Vol.1 para.14/4/9 at pp.177-179 went on to say [it] is trite law that the mere assertion in an affidavit of a given situation does not, ipso facto, provide leave to defend, since the defendant must satisfy the court that he has a fair or reasonable probability of showing a real or bona fide defence, i.e. that his evidence is reasonably capable of belief there are some cases in which the defendant's own case, although apparently it raises issues which, if found in his favour, would provide him with a defence, are so incredible or so contradicted by contemporaneous documents or circumstances that it becomes clear that his defence is a sham : per Mortimer J.A. in *Manciple Ltd. v. Chan On Man* [1995] 2 H.K.C. 459 at 466. VI. Defendant's evidence The Defendant claimed it was in the business of provision of transportation and freight services in Hong Kong. In 1993 a shareholder of the Defendant together with some other business partners set up Superspeed Transportation Limited in Shanghai (Shanghai STL) at the business address of Flat A, 24/F1, Aihe Mansion, 629 Ling Ling Road, Shanghai 20030, China (PRC Address). The Defendant and Shanghai STL (both bearing the same name) were related but separate legal entities. Whilst Shanghai STL concentrated on services emanating from Shanghai, the Defendant concentrated on work in Hong Kong. However, the Defendant would sometimes assist Shanghai STL in its business dealings, but mainly in respect of settlement of invoices. At the material time, Shanghai STL appointed one agent in Singapore, Sea Sky Freight Management Pte Limited [Sea Sky FMPL to arrange for airline spaces between Shanghai and Singapore . Sea Sky FMPL would then arrange with various commercial providers, including amongst others, the Plaintiff for booking of airline spaces . But in all such dealings, Sea Sky FMPL would handle all matters arising from such transactions with such commercial providers. The Defendant claimed that at any material time neither the Defendant nor Shanghai STL had any contractual relationship with the Plaintiff. Sea Sky FMPL would directly issue invoices to Shanghai STL. The Defendant disclosed the Air Waybills (which Chan Po Yee said were issued by Sea Sky FMPL but some were in fact signed by Sea Sky Pte as the carrier's agent) as well as the invoices issued by Sea Sky FMPL that were addressed to Superspeed Transportation Ltd (columns VII-IX of items 49-74 of Annexure I, Sea Sky Invoices). After receipt of the Sea Sky Invoices, Shanghai STL would arrange settlement through the Defendant or by the Defendant through Sea Sky in the manner requested by Sea Sky FMPL. Sometimes Sea Sky FMPL would instruct Shanghai STL to remit payments directly to the Plaintiff as evidenced by the correspondence and payment records exhibited to Chan Po Yee's affirmation (Payment Records). I pause here to say that the Defendant, despite its emphasis on the concept of separate legal entities, seemed to refer to Sea Sky FMPL and Sea Sky Pte interchangeably. For example, the Defendant's Amended Defence pleaded that Sea Sky Pte issued the Air Waybills and invoices whilst Chan Po Yee in his affirmation claimed Sea Sky FMPL issued such documents. Whilst such casual interchangeable references to Sea Sky Pte and Sea Sky FMPL might potentially add doubt to the Defendant's case, Mr Wong and Mr Butt were prepared to assume for present purpose that there was no material difference whether the Defendant referred to Sea Sky FMPL or Sea Sky Pte (1st Assumption). The Defendant claimed neither the Defendant nor Shanghai STL ever received the Invoices until

after the commencement of the present proceedings. Further, they had never received the Settled Invoices (see below) from the Plaintiff directly or otherwise. VII. Plaintiff's evidence The Plaintiff claimed that several years ago the Defendant appointed Sea Sky Pte to be its agent to deal with the Plaintiff. Since November 2002, the Defendant through Sea Sky Pte engaged the Plaintiff to provide freight services to the Defendant, and for such freight services the Plaintiff issued and sent its invoices to the Defendant at its representative office in Shanghai (ie the PRC Address). The Defendant duly settled such invoices issued by the Plaintiff from November 2002 to May 2003 (columns I-Vi of items 1-49 of Annexure I, Settled Invoices) by direct telegraphic transfer from the Defendant (not Sea Sky Pte or Shanghai STL, see columns I-IIIi of items 1-11 of Annexure II) except for 2 minor sums of S\$550.51 and S\$66.00 paid by Sea Sky Pte's cheques dated 25th March 2001 and 8th April 2003 respectively (columns I-IIIi of items 4-5 of Annexure II) (collectively, Remittances). The Defendant was well aware of such practice and never raised any demur over the Settled Invoices. The Plaintiff claimed that Chan Po Yee's affirmation was a blatant attempt to conceal or mislead the court about the contractual relationship between the Plaintiff and the Defendant by alleging that the Plaintiff dealt with Shanghai STL. The Defendant did not provide any particulars of Shanghai STL (eg its corporate structure or certificate of incorporation). At all material times, the Plaintiff was wholly unaware of the existence of Shanghai STL and only did business with the Defendant. The Plaintiff never issued any invoices to Sea Sky at all. The freight services under the Settled Invoices and Invoices were at all material times provided by the Plaintiff to the one and same customer (ie the Defendant). The Plaintiff denied the Invoices had been settled. All payments received by the Plaintiff (ie the Remittances) had been applied by the Plaintiff towards settlement of the Settled Invoices which did not form the subject matter of the present proceedings. Apart from the Remittances, the Plaintiff did not receive the payments alleged by the Defendant in columns VI-VII of items 9-13 of Annexure II. The Plaintiff claimed the Defendant was trying to confuse the court by alleging that the Remittances made for the Settled Invoices were for settlement of the Invoices. VIII. Summary judgment application In a nutshell, the Plaintiff adopted 2 lines of defence : There was no privity of contract between the Plaintiff and the Defendant, so the Plaintiff had no locus to sue the Defendant on the Invoices (1st Defence). Even if there were any liability by the Defendant under the Invoices (which was denied), such liability had been fully discharged by the Defendant through payment to [Sea Sky FMPL] 2nd Defence). Mr Butt in his written submissions further argued that Ho Kheon Foo's 2 affirmations did not verify the facts on which the Plaintiff's claim was based because the Invoices unilaterally issued by the Plaintiff and the Remittances made by the Defendant to the Plaintiff could not verify the Plaintiff's assertion that the Defendant was indebted to the Plaintiff for the sum claimed. IX. Verification of the Plaintiff's claim I will consider the argument in the above paragraph first since it can be disposed of shortly. I refer to Hong Kong Civil Procedure 2007 Vol.1 para.14/2/6 at p.173 which states as follows : The verification may be by reference to the facts stated in the statement of claim, thus: the defendants are justly and truly indebted to the plaintiffs in the sum of \$ for [state the nature of the debt, giving the date of bill, or cheque, or dates between which goods supplied, or as the case may be] and were so indebted at the commencement of this action. The affidavit need not set out all the particulars, nor verify the facts except by reference to the statement of claim , even when they have been added by

amendment Ho Kheon Foo in his 1st affirmation confirmed that (a) he had read the contents of the Plaintiff's Statement of Claim and the Defendant's Amended Defence, and (b) the contents of the Statement of Claim were true and correct. The Plaintiff's Statement of Claim set out the contractual relationship between the parties as well as a complete cause of action against the Defendant as follows : the Plaintiff rendered freight services; the Defendant received such freight services; the Plaintiff rendered such freight services to the Defendant at the latter's request; such freight services were rendered during the period between 19th June and 30th November 2003; the outstanding freight and other charges were S\$75,595.80 (as particularised in the Invoices); such outstanding freight and other charges were unpaid despite demand. It was for the Defendant to raise a triable issue or arguable defence. In my view, irrespective of Mr Butt's criticism of the weakness of the Invoices and Remittances for sustaining the Plaintiff's claim (see paragraph 65 below) that went to the issue of whether there was a credible/believable defence, it could not be said that the Plaintiff had not verified its claim. This argument by the Defendant is without merit. X. 1st Defence Mr Butt submitted that the Air Waybills and Sea Sky Invoices supported the Defendant's case that the contracting parties for the freight services were Shanghai STL and Sea Sky Pte. I now proceed to consider such argument.

- (a) Defendant or Shanghai STL The Defendant admitted in the Amended Defence that Sea Sky Pte (a) issued the Air Waybills which form the subject of the Invoices to the Defendant and (b) would issue and actually issued invoices to the Defendant. In short, the Defendant did not by its pleadings dispute its capacity as a contractual party for the relevant freight services. Copies of the Air Waybills and Sea Sky Invoices disclosed by the Defendant revealed that the notify party and addressee named therein was Superspeed Transportation Ltd of the PRC Address. Clearly, by reading the Defendant's pleadings in light of the copy Air Waybills and Sea Sky Invoices, it was apparent that on its own pleaded case the Defendant regarded Superspeed Transportation Ltd of the PRC Address as referable to the Defendant. There was no mention of Shanghai STL at all in the Amended Defence. However, Chan Po Yee in his affirmation adopted a wholly different stance. He claimed that the contracting party for freight services in relation to the Air Waybills was Shanghai STL. Such fundamental inconsistency, particularly when the Defendant put in issue the identities of the contracting parties as the crux of its defence, cried out for an explanation. Yet none was forthcoming from the Defendant. Mr Wong rightly pointed out that the Defendant's assertions to the effect that (a) Shanghai STL and the Defendant were related but separate legal entities and (b) the Defendant merely assisted Shanghai STL in the latter's business dealings but mainly in settlement of invoices were bare assertions without any documentary support. The Defendant also failed to condescend upon the particulars of such assertions. Other than Chan Po Yee's reference to a common shareholder, there was no evidence of how the Defendant and Shanghai STL were related. If the Defendant and Shanghai STL were related companies with close collaboration between them at least in relation to the settlement of invoices, there should have been no difficulty for the Defendant to provide or call upon Shanghai STL to provide by letter if not by affidavit particulars of (a) the corporate structure of Shanghai STL, (b) the corporate relationship between the 2 companies and/or (c)

Shanghai STL's role and capacity vis-à-vis the relevant freight services. None of this was forthcoming and there was not even evidence of any attempt by the Defendant to procure such information from Shanghai STL. Even on its own case, there was no explanation by the Defendant why it would (albeit related to Shanghai STL) settle the invoices incurred by Shanghai STL when Chan Po Yee was at pains to emphasise that Shanghai STL was a separate legal entity. Indeed, according to the documents disclosed by the Plaintiff in relation to the Remittances, all payments to the Plaintiff were direct telegraphic transfers from the Defendant except for 2 minor sums paid by Sea Sky Pte. As Mr Wong pointed out, such Remittances were not made over a short period but covered the whole of the year of 2003 (column I of items 1-11 of Annexure II), yet the Defendant did not offer any explanation. Further, although the Defendant disclosed its own payment vouchers for the remittances it made to the Plaintiff in columns VI-VII of items 9-13 of Annexure II, the Defendant never disclosed any vouchers, ledgers, journals, accounts or other documents to show it had debited Shanghai STL's account for such sums. As Mr Wong pointed out, there was not a single document that showed the payment arrangement between the Defendant and Shanghai STL or even an internal document of the Defendant to evidence the same. In light of the above, the disclosed Invoices, Air Waybills and Sea Sky Invoices could not aid the Defendant's case since there was nothing (apart from Chan Po Yee's bare assertions) to show that Superspeed Transportation Ltd of the PRC Address named therein was a separate legal entity and not a representative office of the Defendant. Further, the email messages from the Defendant to Sea Sky in the Payment Records disclosed by the Defendant referred to outstanding invoiced sums in relation to (a) Shanghai account and Hong Kong account or (b) Shanghai office and Hong Kong office rather than to outstanding sums due from 2 separate companies. Still further, Air Waybill no.618-54609063 for item 74 of Annexure I gave the name of the consignee as SUPERSPEED TRANSPORTATION LTD NANJING OFFICE. The above seemed to suggest Superspeed Transportation Ltd did have representative offices in the PRC. There was no explanation forthcoming from the Defendant on these matters. I also note that Mr Butt did not address the above matters in his submissions before me. Rather, he presented the Defendant's case on the basis that even if the Defendant and not Shanghai STL were the contracting party (2nd Assumption), the Plaintiff's summary judgment application must fail (see below). In my view, given Chan Po Yee's failure to condescend upon particulars in support of his aforesaid assertions and to offer any or any satisfactory explanation for the fundamental inconsistencies with the Defendant's own pleaded case, the assertion that the contracting party was Shanghai STL and not the Defendant was incredible and unbelievable. Mr Wong submitted the aforesaid analysis showed that Shanghai STL did not exist and Chan Po Yee's contrary contentions were put forward to delay the Plaintiff's application for summary judgment. In light of my conclusions above, there is no need for me to consider such argument.

- (b) Plaintiff or Sea Sky Pte Sea Sky Pte was named as shipper in the Air Waybills and signed at the space thereon for Signature of Shipper or the Agent to endorse the following printed certification : Shipper certifies that the particulars on the face hereof are correct and that

INSOFAR AS ANY PART OF THE CONSIGNMENT CONTAINS DANGEROUS GOODS, SUCH PART IS PROPERLY DESCRIBED BY NAME AND IS IN PROPER CONDITION FOR CARRIAGE BY AIR ACCORDING TO THE APPLICABLE DANGEROUS GOODS REGULATIONS. The Air Waybills on their face stated they were issued by the carrier (ie Singapore Airlines Ltd or Singapore Airlines Cargo Pte Ltd). The space for Issuing Carrier s Agent Name and City was imprinted with either the name of Sea Sky Pte or Sea Sky FMPL or was left blank. There was no dispute that the Air Waybills were marked FREIGHT PREPAID , so obviously the relevant freight charges had been prepaid to the carrier. The Plaintiff s case, as supported by Ho Kheon Foo s 2 affirmations and to some extent by Chan Po Yee s affirmation and the Air Waybills, was that (a) the Defendant appointed Sea Sky Pte as its agent to deal with the Plaintiff, (b) the Defendant through Sea Sky Pte engaged the Plaintiff to provide freight services, (c) Sea Sky FMPL arranged with various commercial providers (including the Plaintiff) for booking airline spaces, (d) the relevant freight charges were prepaid to the carrier, (e) the Plaintiff sent the Settled Invoices and the Invoices to Superspeed Transportation Ltd of the PRC Address for freight (which had been prepaid to the carrier) and other charges in respect of the freight services so provided to the Defendant, (f) the Defendant actually paid the Settled Invoices (which included freight charges for previous air shipments) issued by the Plaintiff to the Defendant for the period from November 2002 to May 2003 without demur. On the other hand, Mr Butt submitted the freight charges were payable to Sea Sky Pte (not the Plaintiff), which was the contracting party for the freight services under the Air Waybills. He argued that since the Plaintiff was not described in the Air Waybills as contracting party, so even putting its case to the highest, namely, the Air Waybills were agreements between the Defendant itself, not [Shanghai STL] on one hand and [Sea Sky Pte] on the other for freight service provided by the Plaintiff to the Defendant (which was not admitted) (my emphasis) (see paragraph 7 of Mr Butt s written submissions and the 2nd Assumption), the contract was still between the Defendant and Sea Sky Pte and the Plaintiff had no locus to sue on the Defendant s promise made to Sea Sky Pte. Mr Butt further submitted in paragraph 18 of his written submissions that [if] the Plaintiff had actually been working for Sea Sky Pte in conveying freight to Shanghai STL, the Plaintiff should simply have claimed against Sea Sky Pte instead (my emphasis). It is evident from Mr Butt s above submissions that the Defendant did not (at least on the basis of the 2nd Assumption) dispute that the Plaintiff actually rendered freight services in respect of the air shipment under the Air Waybills. It appeared that the purport of Mr Butt s argument was that even though the Plaintiff rendered freight services, the contract was still between the Defendant (on the basis of the 2nd Assumption) and Sea Sky Pte as principals so that the Defendant was unconcerned as to the arrangements between Sea Sky Pte and the Plaintiff. In short, his argument was that the Defendant (on the basis of the 2nd Assumption) dealt with Sea Sky Pte as principal contracting party. Mr Wong made 2 initial attacks against Mr Butt s submissions. First, Chan Po Yee was at pains to emphasise that the Defendant and Shanghai STL were 2 separate legal entities and the only commonality deposed by him was that they shared a common shareholder. Mr Wong queried Chan Po Yee s source of information as to the affairs of Shanghai STL and cast doubt on the veracity of the allegation

in relation to Shanghai STL's contractual relationship with Sea Sky Pte/Sea Sky FMPL. Mr Wong submitted that Chan Po Yee owed the court an explanation. Since none was forthcoming, Mr Wong argued that it undermined the credibility or believability of the 1st Defence. I have carefully reviewed Chan Po Yee's affirmation and agree that he did not state his source of information in respect of the contractual relationship between Shanghai STL and the provider of freight services under the Air Waybills. Chan Po Yee did not state that he held any position with Shanghai STL and he only reviewed the documents in the possession of the Defendant, which according to him was a separate legal entity from Shanghai STL. In the circumstances, Mr Wong's aforesaid argument was not without substance, particularly as I have found the suggestion that Shanghai STL was the contracting party incredible and/or unbelievable. Hong Kong Civil Procedure 2007 Vol.1 para.14/4/4 at p.176 states as follows : Matter of hearsay is admissible in the defendant's affidavit (Harrison v. Bottenheim (1878) 26 W.R. 362, CA) provided that the sources and grounds of information or belief are disclosed: see r.4(2) and Re Young Manufacturing Co. [1900] 2 Ch. 753, CA; and cf. O.41, r.5. Secondly, Mr Wong submitted that prior to the hearing before me the Defendant had not raised any factual contention or averred in its Amended Defence that the other contracting party was Sea Sky Pte and not the Plaintiff. It was true that the Defendant in the Amended Defence denied (a) there was any contract between the Plaintiff and the Defendant, (b) it ever requested the Plaintiff for freight services, or (c) it received the Invoices from the Plaintiff. It was also true that the Defendant averred in the Amended Defence that Sea Sky Pte issued the Air Waybills and Sea Sky Invoices. But Mr Wong pointed out there was no positive plea that Sea Sky Pte was the party that prepaid the freight charges for the Air Waybills and therefore had the locus to claim for reimbursement of such prepaid freight. Mr Wong said his submissions would be more readily understood when one saw how Chan Po Yee responded to Ho Kheon Foo's 1st affirmation. Ho Kheon Foo stated in his 1st affirmation as follows :

5. In relation to [the Defendant's pleaded defence], the Plaintiff states as follows:- Several years ago, the Defendant appointed Sea Sky to be its agent to deal with the Plaintiff. The Defendant engaged the Plaintiff (through Sea Sky) to provide freight service since November 2002. The Plaintiff had sent invoices to the Defendant for freight service provided by the Plaintiff and the Defendant had duly settled the invoices (the Settled Invoices) issued by the Plaintiff to the Defendant for the period from November 2002 to May 2003. The Defendant had never raised any dispute relating to the Settled Invoices The Defendant settled the Settled Invoices by remitting money to the Plaintiff. Chan Po Yee replied as follows in his affirmation :
4. At the material time, [Shanghai STL] appointed one agent in Singapore, [Sea Sky FMPL] (Sea Sky) to arrange for airline spaces between Shanghai and Singapore. Sea Sky would then arrange with various commercial providers, including amongst others, the Plaintiff for booking of airline spaces. In all such dealings, Sea Sky would handle all matters arising from such transactions with such commercial providers. The Defendant or [Shanghai STL] had never at any material time any contractual relationship with the Plaintiff. Sea Sky would issue invoices to [Shanghai STL] direct for payment of invoices in respect of such services. After receipt of the invoices, [Shanghai STL] would arrange for payment for settlement of the

same through the Defendant. In fact, all such invoices had been fully settled by the Defendant. 9. all the [Invoices] which form the subject of this action had been settled by the Defendant through Sea Sky. Mr Wong submitted that although Ho Kheon Foo's 1st affirmation made clear that it was the Defendant (through its agent Sea Sky Pte) that engaged the Plaintiff for freight services for which the Plaintiff issued the Settled Invoices and eventually the Invoices, Chan Po Yee in reply merely disclosed the Air Waybills but did not directly mention (a) the freight charges had been prepaid by Sea Sky Pte as shipper under the Air Waybills and/or (b) the Defendant/Shanghai STL was contractually obliged under the Air Waybills to reimburse such freight charges to Sea Sky Pte and not to the Plaintiff. Indeed, Chan Po Yee did not dispute Sea Sky FMPL's role/capacity as agent (see below). I am not prepared to dismiss Mr Butt's arguments simply on the basis that they were not explicitly averred in the Amended Defence and/or asserted in Chan Po Yee's affirmation. I prefer to consider whether there was a triable or arguable issue on the pleadings/evidence before me. Given my conclusion in relation to Shanghai STL in paragraph 33 above and Mr Butt's submission framed on the basis of the 2nd Assumption, I proceed to consider the Defendant's argument on the basis that the other contracting party was the Defendant. As explained above, there was no dispute that the freight charges for the air shipment under the Air Waybills had been prepaid to the carrier. In my view, the evidence before me (see below) plainly showed that the Plaintiff was the rightful party to claim for the freight and other charges from the Defendant. Although Mr Butt tried to suggest that Sea Sky Pte was the other principal contracting party, there was on the evidence before me actually no dispute that Sea Sky Pte/Sea Sky FMPL was an agent. Ho Kheon Foo in his 1st affirmation said Sea Sky Pte was the agent appointed by the Defendant. Likewise Chan Po Yee said Sea Sky FMPL was the agent appointed by Shanghai STL (which pursuant to the 2nd Assumption would be treated as the Defendant). The air shipment under the Air Waybills was from Singapore to Shanghai, so not unnaturally Sea Sky Pte in Singapore was named as shipper, but such fact did not diminish its role or capacity as agent of the Defendant. Further, no issue arose from the interchangeable references to Sea Sky Pte and Sea Sky FMPL (see paragraph 13 above and the 1st Assumption). On the same basis, there was no dispute that Sea Sky Pte or Sea Sky FMPL was appointed by the Defendant as agent particularly to deal with the Plaintiff. Ho Kheon Foo stated so in his 1st affirmation. Chan Po Yee in his affirmation went further by giving particulars, namely, Sea Sky FMPL as agent would arrange with the Plaintiff and other commercial providers for booking of airline spaces between Shanghai and Singapore. In my view, there was no doubt on the affirmation evidence and on the 1st and 2nd Assumptions that Sea Sky Pte or Sea Sky FMPL dealt with the Plaintiff in respect of airline spaces for the air shipment under the Air Waybills from Singapore to Shanghai as agent for the Defendant. Given such admissions as to the role/capacity of Sea Sky FMPL or Sea Sky Pte, whether they handled all matters arising from the transactions with the commercial providers (including the Plaintiff) was neither here nor there. So even on the Defendant's own case, the other contracting party was the Plaintiff and not the Defendant's (or even Shanghai STL

- s) own agent Sea Sky Pte or Sea Sky FMPL. Mr Butt submitted that the reference to agent in Chan Po Yee's affirmation should not be read in the legal sense and that Chan Po Yee used such word in a general sense. But even if the word agent was to be considered in a general sense, it is difficult to see what other sensible or logical interpretation could be given to such word in the context of Chan Po Yee's affirmation. The suggestion that the Defendant dealt with Sea Sky Pte (and not the Plaintiff) as principal flew in the face of the contents of Chan Po Yee's affirmation described above. Further, although Chan Po Yee's affirmation responded to Ho Kheon Foo's 1st affirmation, Chan Po Yee did not dispute Sea Sky Pte's or Sea Sky FMPL's role/status as agent. If the Defendant regarded Sea Sky FMPL or Sea Sky Pte as the other principal contracting party, there was no or no satisfactory explanation why Chan Po Yee would describe Sea Sky FMPL as agent and went further to give a description of the work of such agent, ie dealing with commercial providers (including the Plaintiff) in booking airline spaces. When faced with such counter-arguments, Mr Butt in the course of his submissions before me sought leave to file and serve further affirmation from Chan Po Yee to clarify what he meant in his affirmation. He later abandoned such application, but had he maintained such application I would have refused it in any event. I set out my reasons in paragraphs 72-76 below. In the circumstances, I disagree that the assertion to the effect that the Plaintiff was not the other contractual party raised a triable or arguable issue. Further, the evidence before me (see below) pointed to the fact that it was Plaintiff that prepaid the freight charges, which corroborated the conclusion that Sea Sky Pte or Sea Sky FMPL dealt with the Plaintiff in their capacity as agent. First, freight prepaid endorsed on the Air Waybills plainly meant freight charges had been prepaid to the carrier. There was no express statement on the face of the Air Waybills as to who prepaid the freight. Given the Defendant's admissions that Sea Sky FMPL acted as agent and that the Plaintiff was a commercial provider that facilitated booking of airline spaces, I disagree it was an irresistible inference that the freight must have been prepaid by the shipper Sea Sky Pte. Chan Po Yee did not expressly say so and the evidence discussed below suggested otherwise. Secondly, as explained above, there was no dispute that the Plaintiff provided freight services. Ho Kheon Foo said so in his affirmations and Chan Po Yee also admitted the Plaintiff facilitated the booking of airline spaces. Mr Butt did not suggest otherwise in his submissions (see paragraphs 39-40 above). Thirdly, the Plaintiff referred to the Settled Invoices and Remittances that established an unchallenged pattern of the Plaintiff billing the Defendant and the Defendant paying for the Plaintiff's freight services. Mr Wong asked the rhetorical question why payments were made to the Plaintiff for the Settled Invoices (which largely comprised freight charges) if the Plaintiff was not the party that prepaid the freight charges to the carrier. Had Sea Sky Pte or Sea Sky FMPL prepaid the freight charges to the carrier and therefore entitled to seek reimbursement, there was no explanation why (even on the Defendant's own case) Sea Sky Pte or Sea Sky FMPL would instruct the Defendant to directly remit payments to the Plaintiff and not to Sea Sky Pte or Sea Sky FMPL. Fourthly, even on the Defendant's own case, the Payment Records suggested that the Defendant intended its various remittances to be payment to the Plaintiff for the freight and other charges in respect of the air shipment under the Air Waybills. In respect of the

Payment Records for the sum of S\$15,398.02 (footnote 6 of Annexure II), the Defendant disclosed (a) a statement of account as at 31st October 2003 by Sea Sky FMPL to Superspeed Shanghai STL which referred to inter alia the Sea Sky Invoices at columns VII-IX of items 65-73 (ie payment reference in column Vii) of Annexure I and (b) email messages between the Defendant and Sea Sky whereby the Defendant confirmed it could only pay the sum of S\$16,057.98 for the Shanghai account up to 31st October 2003 less the sum of S\$627.09 for the Hong Kong account up to end of November 2003 (ie net total of S\$15,430.89), and Sea Sky asked the Defendant remit direct to [the Plaintiff] So even on the Defendant s own case, it made the aforesaid remittance directly to the Plaintiff for freight and other charges specifically for 9 of the Airway Bills. Why would the Defendant make such remittance if Sea Sky Pte or Sea Sky FMPL prepaid (and the Plaintiff did not prepay) the relevant freight charges? There was no explanation forthcoming. Likewise in respect of the Payment Records for the sum of S\$11,532.66 (footnote 5 of Annexure II), the Defendant disclosed a statement of account as at 31st August 2003 by Sea Sky Pte to Superspeed Shanghai STL which referred to inter alia the Sea Sky Invoices at columns VII-IX of items 58-64 (ie payment references and in column Vii) of Annexure I. So even on the Defendant s own case, it made the aforesaid remittance directly to the Plaintiff for freight and other charges specifically for 7 of the Airway Bills. Why would the Defendant make such remittance directly to the Plaintiff if Sea Sky Pte or Sea Sky FMPL prepaid (and the Plaintiff did not prepay) the relevant freight charges? There was no explanation forthcoming. Again, in respect of the Payment Records for the sum of S\$36,673.07 (footnote 4 of Annexure II), the Defendant disclosed (a) a statement of account as at 31st July 2003 by Sea Sky FMPL to Superspeed Shanghai STL which referred to inter alia the Sea Sky Invoices at columns VII-IX of items 49-57 (ie payment reference in column Vii) of Annexure I and (b) email messages between the Defendant and Sea Sky whereby the Defendant confirmed it could only pay the sums of S\$36,534.37 and S\$171.99 for the Shanghai account and Hong Kong account respectively (ie net total of S\$36,706.69), and Sea Sky asked the Defendant to remit directly to [the Plaintiff] So even on the Defendant s own case, it made the aforesaid remittance directly to the Plaintiff for freight and other charges specifically for 9 of the Airway Bills. Why would the Defendant make such remittance directly to the Plaintiff if Sea Sky Pte or Sea Sky FMPL prepaid (and the Plaintiff did not prepay) the relevant freight charges? There was no explanation forthcoming. Still further, in respect of the Payment Records for the sum of S\$23,474.86 (footnote 8 of Annexure II), the Defendant disclosed (a) a statement of account as at 31st December 2003 to Superspeed Shanghai STL which referred to inter alia the Sea Sky Invoice at columns VII-IX of item 74 (ie payment reference in column Vii) of Annexure I and (b) email messages between the Defendant and Sea Sky whereby the Defendant asked for confirmation of the bank account details of the Plaintiff for payment of the sum of S\$23,507.29, and Sea Sky asked the Defendant to credit directly to Sea Sky account (details as per below) and I will resolve it with [the Plaintiff] . So even on the Defendant s own case, it made the aforesaid remittance to Sea Sky FMPL on the understanding that Sea Sky FMPL would resolve the freight and other charges specifically for inter alia 1 of the Airway Bills with the Plaintiff. Why would the Defendant make the remittance on such basis if Sea Sky

Pte or Sea Sky FMPL prepaid (and the Plaintiff did not prepay) the relevant freight charges? There was no explanation forthcoming. Fifthly, Chan Po Yee in paragraph 9 of his affirmation stated that the Defendant had settled all the Invoices through Sea Sky FMPL (see paragraph 44 above). This was also reflected in paragraph 17 of Mr Butt's written submissions to the effect that the Defendant claimed it would sometimes assist Shanghai STL to arrange for payment for the Plaintiff (my emphasis). Had Sea Sky Pte or Sea Sky FMPL been the party who prepaid the freight charges to the carrier and the rightful party to claim for reimbursement from the Defendant, there would have been no reason for saying that the Invoices were settled through Sea Sky or the payment was for the Plaintiff. The Defendant's pleadings/evidence referred to above sat well with the contentions that Sea Sky FMPL or Sea Sky Pte was merely an agent and that the other contracting party was the Plaintiff and not Sea Sky Pte or Sea Sky FMPL. Mr Butt submitted that such view was only one possible inference, and it was also possible to infer that it was the shipper Sea Sky Pte that prepaid the freight under the Air Waybills. In the course of his submissions before me, Mr Butt sought leave to adduce further affirmation evidence on air carriage practice and the meaning of freight prepaid. Since such application if granted would obviously result in an adjournment of the hearing of the summary judgment application, Mr Butt informed the court that the Defendant was willing to bear costs thrown away by such adjournment. Mr Wong strongly opposed the Defendant's application for adjournment to adduce further evidence to oppose the summary judgment application. I refused such application at the hearing and reserved my reasons, which are set out in paragraphs 72-75 and 77-78 below. Upon my refusal to admit further evidence, Mr Butt continued to argue on the evidence presently before me that (a) the Invoices unilaterally issued by the Plaintiff could not substantiate any alleged agreement between the Plaintiff and the Defendant, (b) the Remittances from the Defendant to the Plaintiff merely showed there were remittances of money from the Defendant's account to the Plaintiff's account (which did not confer any right on the Plaintiff to claim against the Defendant) and no more, and (c) the absence of any reference to the Plaintiff in the Air Waybills suggested the contract was not with the Plaintiff but with Sea Sky Pte. I have no doubt that the contract of air shipment evidenced by the Air Waybills was with the carrier and the Air Waybills might arguably constitute documents of title in respect of the cargo that was shipped by air thereunder. But the issue between the parties here was not in relation to the air shipment or with title to or possession of the cargo. The Plaintiff's claim was for freight (which had been prepaid to the carrier) and other charges, and the evidence before me clearly showed that the contractual relationship vis-à-vis the freight and other charges was with the Plaintiff and not with the Defendant's (or even Shanghai STL).

- s) own agent Sea Sky Pte or Sea Sky FMPL. This was corroborated to some extent by Chan Po Yee's affirmation and the Payment Records analysed above, and also supported by the Invoices and Remittances. The Defendant did not offer any explanation in relation to the Payment Records, and gave no credible factual basis for inferring that it was Sea Sky Pte that was entitled to claim for the freight charges, particularly when Sea Sky asked for the freight

charges to be remitted to the Defendant directly. There was no evidence before me that, as Mr Butt suggested, the Plaintiff had been working for Sea Sky Pte as principal in conveying freight to Shanghai STL. The Plaintiff was not identified as the carrier on the Air Waybills and there was no evidence that the Plaintiff dealt with Sea Sky Pte as principal. Rather, Chan Po Yee's affirmation only said Sea Sky FMPL as agent dealt with the Plaintiff being a commercial provider that facilitated booking of airline spaces. But for the Defendant's acknowledgment as to the role and capacity of Sea Sky Pte or Sea Sky FMPL as agent in procuring freight services, the Payment Records which showed that the Defendant regarded the Plaintiff as the ultimate payee in respect of the freight charges, and the clear admission in the Amended Defence that the freight services were for the Defendant, the existence of the Sea Sky Invoices might have caused some pause. But in light of the aforesaid admissions, the third party (ie the Plaintiff) would not be concerned with the internal dealings between the principal (ie the Defendant) and its agent (ie Sea Sky FMPL or Sea Sky Pte). In light of the aforesaid analysis and of the Plaintiff's claim (which was not refuted) that it never issued any invoices to Sea Sky at all, I also reject Mr Butt's contention that Plaintiff should have looked to Sea Sky Pte for payment. Although the present proceedings were commenced some 2 years ago in February 2005, there was no evidence that the Defendant had made any attempt to clarify with Sea Sky Pte or Sea Sky FMPL whether there were such invoices from the Plaintiff to Sea Sky Pte or whether Sea Sky Pte actually prepaid the freight to the carrier under the Air Waybills. In such circumstances, I find there was no triable issue or arguable defence on the 1st Defence that ought to be left to trial. Hong Kong Civil Procedure 2007 Vol.1 para.14/4/3 at p.175 states that [a] desire to investigate alleged obscurities and a hope that something will turn up on the investigation cannot, separately or together, amount to a sufficient reason for refusing to enter judgment for the plaintiff. You do not get leave to defend by putting forward a case that is all surmise and Micawberism (per Megarry V.-C. in *Lady Anne Tennant v. Associated Newspapers Group Ltd* [1979] F.S.R. 298) .

- (c) Summary In light of the aforesaid analysis, I find the 1st Defence so riddled with inconsistencies and unsupported bare assertions (including the assertion that the Defendant had not received the Settled Invoices and Invoices) that it is incredible and/or unbelievable.
- XII. Refusal of leave to adduce further evidence In paragraphs 51 and 64 above, I referred to the Defendant's application for an adjournment of the hearing of the summary judgment application in order to adduce further affirmation evidence to clarify : the meaning of the word agent in Chan Po Yee's affirmation vis- -vis Sea Sky FMPL; and air carriage practice and the meaning of freight prepaid in the Air Waybills. My immediate observation was that these matters did not arise from the Plaintiff's case or Ho Kheon Foo's affirmation evidence at all. They arose from facts deposed and documents exhibited by Chan Po Yee in his affirmation. The application for adjournment to adduce further evidence came only in the course of Mr Butt's submissions at the hearing, ie after Mr Wong had made his primary submissions in support of the summary judgment application. Although Mr Wong would have an opportunity to reply to Mr Butt's submissions, it would be fair to say that Mr Wong framed his submissions on the evidence before the court and would have been surprised by any new

dimension to the defence arguments. I had no doubt that the Plaintiff would have been disadvantaged if it had to meet such new dimensions after Mr Wong had completed his primary submissions. In fact, on 9th February 2007 the Defendant applied by summons for leave to file a further affirmation for use at the hearing before me. No draft affirmation intended to be used at the hearing of the summary judgment application was annexed to the summons and no supporting affirmation was filed to explain the nature of the further evidence to be adduced. Master R Lai dismissed the Defendant's summons and there was no appeal from such decision. At the hearing before me, Mr Butt did not elaborate on what other meaning that could have been given to the word agent in Chan Po Yee's affirmation even in the general sense. It seemed to me the real question was, notwithstanding the lateness, whether there was any real prospect of a different interpretation when viewed in the context of the Defendant's pleadings, Chan Po Yee's affirmation evidence and the documents disclosed by him. I can say that for reasons explained above the answer is no. In any event, at such late stage, it would be grossly unjust to allow such last-minute evidence to be adduced. Inevitably it would have involved an adjournment of the summary judgment application. Such further evidence as suggested by Mr Butt (which arose from the Defendant's own affirmation evidence), if it had any substance, could have been adduced earlier in time when Chan Po Yee's affirmation was filed/served or the Defendant could have appealed against the learned Master's refusal to grant leave to file/serve further affirmation evidence. In the circumstances, had Mr Butt pursued the application to adduce further evidence in relation to the meaning of agent in Chan Po Yee's affirmation, I would have dismissed the application. During the course of the hearing before me, as a result of incremental development of his arguments, Mr Butt considered the existing evidence insufficient and sought leave to adduce further affirmation evidence as to air carriage practice and the meaning of freight prepaid. As a first observation, these matters were not pleaded in the Amended Defence and not alluded to in Chan Po Yee's affirmation. Indeed, Chan Po Yee merely exhibited the Air Waybills to his affirmation without giving any explanation in relation to such documents. Secondly, the alleged need for further clarification arose from documents adduced by the Defendant and not from the Plaintiff's evidence. The observations in the above paragraph as to whether such further evidence could have been adduced earlier also apply mutatis mutandis. Likewise, Mr Butt had not condescended to explain how the further evidence on air carriage practice and the meaning of freight prepaid generally would assist in reaching the interpretation he contended, namely, the shipper must have been the party who prepaid the freight. I also bear in mind that to allow further evidence on such contention would be to permit a distinct dimension to the defence to be raised. Since the application was made at a very late stage, the constraints of time and the high risk of disruption of the orderly conduct of the hearing for the summary judgment application by the court and of prejudice to the Plaintiff demanded strongly that leave to adduce such uncertain further evidence be refused. The court has a duty to hold the scales as it were between the need for proper adjudication of claims on the merits and good and effective case management for timely disposal of claims so that there will be no prejudicial delay or unwarranted loss of judicial time for the litigants in the existing proceedings as well

as for other court users. In assessing where justice lies in the present case, I find it unfair to let the Defendant an opportunity to renew the fight on a different dimension when it could have raised such matter earlier if there was any substance to it and when the essence of the new dimension was in fact unclear. To have allowed the application would have caused the Plaintiff to suffer injustice that could not have been compensated by costs. XII. 2nd Defence

The 2nd Defence was premised on the assumption that the Defendant was liable to the Plaintiff for the Invoices. It was suggested that the Invoices had been settled and liability thereunder had been discharged. Such argument did not feature in Mr Butt s written or oral submissions. But since it had been pleaded, I will deal with the same. In light of the Remittances and Payment Records, there was little dispute that the Defendant remitted and the Plaintiff received the sums in columns II of items 9-11 of Annexure II (subject to slight differences presumably arising from remittance charges see footnotes 4-6 of Annexure II). However, the Defendant did not give any explanation for the precise yet very different figures for the remittance sums pleaded in Amended Defence (column VII of items 9-11 of Annexure II). I find this added to the unbelievable nature of the Defendant s case. There was no dispute that the aforesaid 3 remittances were made by the Defendant directly to the Plaintiff. The Defendant claimed they were for payment of the Sea Sky Invoices in items 49-73 of Annexure II (see footnotes 4-6 of Annexure II). However, the Payment Records showed that such arrangement (ie the payment of the Sea Sky Invoices) was between the Defendant and Sea Sky only and not between the Defendant and the Plaintiff. The only evidence of communication between the Plaintiff and the Defendant in respect of such remittances were simply the remittances themselves. On the other hand, the Plaintiff clearly stated in Ho Kheon Foo s affirmations that such remittances had been appropriated for payment of the Settled Invoices (see columns I-Vi of items 36-49 of Annexure I and columns I-IIIi of items 9-11 of Annexure II). The question here was whether the Plaintiff could appropriate such remittances for payment of the Settled Invoices or whether it was bound by the internal communication between Sea Sky as agent and the Defendant as principal when there was no evidence that the Plaintiff knew of such understanding. The law is clear (see Chitty on Contracts 29th ed Vol.1 paras.21-059 21-060 at pp.1266-1267 as endorsed by the Court of Appeal in Murdoch Investments Inc v Yangtze Coaxial Cable Ltd CACV123/2000 (unreported, 27th June 2000)) : Where several separate debts are due from the debtor to the creditor, the debtor may, when making a payment, appropriate the money paid to a particular debt or debts, and if the creditor accepts the payment so appropriated, he must apply it in the manner directed by the debtor; if, however, the debtor makes no appropriation when making the payment, the creditor may do so. It is essential that an appropriation by the debtor should take the form of a communication, express or implied, to the creditor of the debtor's intention to appropriate the payment to a specified debt (or debts), so that the creditor may know that his rights of appropriation as creditor cannot arise. It is not essential that the debtor should expressly specify at the time of the payment, which debt or account he intended the payment to be applied to. His intention may be collected from other circumstances showing that he intended at the time of the payment to appropriate it to a specified debt or account. Since there was no evidence that the Defendant

or Sea Sky Pte/Sea Sky FMPL communicated any intention to appropriate the remittances to the freight and other charges in respect of the Air Waybills, the Plaintiff was entitled to appropriate them to the Settled Invoices or to outstanding freight and other charges under the air waybills in items 1-49 of Annexure I. There was no credible evidence that the liability under the Invoices had been settled. In respect of the payment referred to in columns VI-VII of item 12 of Annexure II, there was simply no evidence of the remittance of S\$5,415.30 on 11th December 2003 to Sea Sky Pte pleaded in the Amended Defence. Instead, there was a remittance of US\$3,828.80 by the Defendant to Integrity Shipping Line Co to assist Sea Sky (see footnote 7 of Annexure II) and the Defendant offered no explanation on the relevance of such remittance to the Invoices or even to the Sea Sky Invoices. This again illustrated the unreliability of the Defendant's assertions. As regards the payment referred to in columns VI-VII of item 13 of Annexure II, the Payment Records disclosed by the Defendant suggested that as between the Defendant and Sea Sky the remittance sum of S\$23,474.86 covered the Sea Sky Invoice for item 74 of Annexure I. Sea Sky claimed in its email of 18th March 2004 that it would resolve with the Plaintiff. But there was no evidence before me that Sea Sky did so. I cannot see how payment by the Defendant to its own agent (ie Sea Sky FMPL) could amount to a good and sufficient discharge vis-à-vis liability to a third party (ie the Plaintiff). Whether the Defendant had any cause of action against its agent Sea Sky Pte or Sea Sky FMPL in relation to the remittances that it made did not mean it gave rise to any triable or arguable defence to the Plaintiff's claim. Further, whilst there was clear mismatch between the payments averred in the Amended Defence and the payments revealed in the Payment Records disclosed by the Defendant, the Plaintiff's records of the Remittances and its schedule of Settled Invoices were well matched save for a minor discrepancy in relation to item 5 of Annexure II. Considering the entirety of the pleadings and affirmation evidence, I cannot accept the proposition that liability under the Invoices had been settled. I am not satisfied that the 2nd Defence raised any triable or arguable defence. XIII. Conclusion I therefore grant summary judgment in favour of the Plaintiff against the Defendant in the sum of S\$75,595.80 (equivalent to HK\$360,591.97 at the exchange rate of S\$1.00 to HK\$4.47) together with interest thereon at the rate of 10.934% pa from the date of the writ of summons to the date of judgment and thereafter at judgment rate until payment. There is no reason why costs should not follow event. I therefore grant a costs order nisi that the Defendant do pay the Plaintiff costs of the summary judgment application and of the action (including all costs reserved, if any) to be taxed if not agreed. (Marlene Ng) Representation: District Court Judge Mr C K Wong of Messrs Charles Yeung Clement Lam Liu & Yip for the Plaintiff Mr Alexander Butt instructed by Messrs Yeung & Chan for the Defendant Annexure I VIII Plaintiff's Invoice Date Plaintiff's Invoice No Air Waybill No Plaintiff's Invoice Amount (S\$) Plaintiff Deft Plaintiff's Invoices Monthly Sub-total Sea Sky Invoice Date Sea Sky Invoice No Sea Sky Invoice Amount (S\$) Payment Reference 4 30/11/02 11-2002-1502AE 618-47786826 1233.75 30/11/02 11-2002-1503AE 618-47786815 1010.10 30/11/02 11-2002-1504AE 618-47786804 3516.12 30/11/02 11-2002-1505AE 618-47786793 6914.37 12674.34 18/12/02 12-2002-0752AE 618-47786841 10476.50 18/12/02 12-2002-0754AE 618-48051916 8058.62 27/12/02 12-2002-1128AE 618-48051920 3875.50 27/12/02 12-2002-1129AE 618-47786852 9938.87 27/12/02

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20/9/03 09-2003-0711AE 618-53010812 225.15 16/9/03 300000658 225.15 30/9/03 09-2003-1334AE
618-53010845 4792.62 26/9/03 300000712 4834.84 30/9/03 09-2003-1335AE 618-53235814 1758.90
3/10/03 300000777 1758.90 30/9/03 09-2003-1336AE 618-53010834 2100.22 23/9/03 300000692
2100.22 30/9/03 09-2003-1337AE 618-53010823 703.00 16549.86 23/9/03 300000690 804.80
31/10/03 10-2003-1484AE 618-53235825 1281.00 7/10/03 300000789 1308.45 31/10/03
10-2003-1485AE 618-53235836 927.50 2208.50 10/10/03 300000809 980.50 30/11/03

11-2003-1560AE 618-54609063 9394.00 9394.00 19/11/03 300001054 9394.00 344382.07 344382.07 75822.93 Legend : In the schedule prepared by the Plaintiff being exhibit SH-5 of Ho Kheon Foo s 2nd affirmation, the date was stated to be 27/12/03. But the date shown on the relevant Settled Invoice being exhibit SH-2 of Ho Kheon Foo s 1st affirmation was 31/12/03. Copies of these invoices were not disclosed. The invoiced amount shown in the relevant Invoice being exhibit SH-1 of Ho Kheon Foo s 1st affirmation was S\$1531.90, but the Plaintiff claimed there was partial settlement, so the outstanding sum for this invoice pleaded in the Statement of Claim was S\$557.37. Cross-reference to columns IIIi and IIIii of Annexure II. In the schedule prepared by the Plaintiff being exhibit SH-5 of Ho Kheon Foo s 2nd affirmation, the amount was S\$2632.30. But the amount shown on the relevant Sea Sky Invoice being exhibit CPY-1 of Chan Po Yee s affirmation was S\$2824.60. Annexure II IIIi IIIii Date Received by the Plaintiff For account of the Defendant (S\$) Plaintiff Defendant For Account of Sea Sky (S\$) Total (S\$) Date of Payment by the Defendant Amount (S\$) as pleaded in the Amended Defence Payment Reference 11/1/03 1 12674.34 27240.93 39915.27 1/3/03 33461.79 20/3/03 39541.68 25/3/03 2 550.51 2 8/4/03 75.75 3 24/4/03 28211.45 11/6/03 47742.02 24/7/03 42984.98 9/9/03 36653.07 9/9/03 31361.97 4 8/10/03 11512.66 8/10/03 10861.23 5 9/12/03 15378.02 9/12/03 19012.84 6 11/12/03 5415.30 7 19/3/04 9394.00 8 268786.27 27240.93 39915.27 Legend : No remittance record was disclosed for this payment received by the Plaintiff. This was a cheque from Sea Sky Pte dated 26/3/03 payable to the Plaintiff. This was a cheque from Sea Sky Pte dated 8/4/03 payable to the Plaintiff. However, the amount on the face of the cheque was S\$66.00 and not S\$75.75. The remittance record showed that the sum remitted was S\$36367.07 (and not S\$31361.97), which was consistent with the Plaintiff s received sum of S\$36653.07. The Statement of Account as at 31/7/03 from Sea Sky FMPL addressed to Superspeed Transportation Ltd of the PRC Address referred to invoices in columns VII-IX of items 49-57 of Annexure I (identified as payment reference). The Defendant was instructed by Sea Sky to remit directly to the Plaintiff. The remittance record showed that the sum remitted was S\$11532.66 (and not S\$10861.23), which was consistent with the Plaintiff s received sum of S\$11512.66. The Statement of Account as at 31/8/03 from Sea Sky Pte addressed to Superspeed Transportation Ltd of the PRC Address referred to invoices in columns VII-IX of items 58-64 of Annexure I (identified as payment references and), which was different from the Defendant s averment in the Amended Defence that the payment for item 64 of Annexure I was settled by the Defendant s remittance to agent of Sea Sky Pte on its instructions on 11/12/03. See also footnote 7 herein. The remittance record showed that the sum remitted was S\$15398.02 (and not S\$19012.84), which was consistent with the Plaintiff s received sum of S\$15378.02. The Statement of Account as at 31/10/03 from Sea Sky FMPL addressed to Superspeed Transportation Ltd of the PRC Address referred to invoices in columns VII-IX of items 65-73 of Annexure I (identified as payment reference). The Defendant was instructed by Sea Sky to remit S\$15430.89 directly to the Plaintiff. The remittance record showed that the sum remitted was US\$3828.80 and not S\$5415.30 and that such remittance was made by the Defendant to Integrity Shipping Line Co to assist Sea Sky and not to the Plaintiff. The remittance record showed that the sum remitted was S\$23,474.86 and that such remittance was made by the Defendant to Sea Sky FMPL and not

to the Plaintiff. The Statement of Account as at 31/12/03 from Sea Sky addressed to Superspeed Transportation Ltd of the PRC Address referred to the invoice in columns VII-IX of item 74 of Annexure I (identified as payment reference). The Defendant was instructed by Sea Sky to credit directly to Sea Sky account and [Sea Sky] will resolve it with [the Plaintiff] PAGE - PAGE DCCJ614/2005/Judgment DCCJ614/2005/Judgment PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V yfyfY pYpCpCpYpYpY viVvFv4v"5 }z}z}z}z}vz}z}z}z Ffh" Ff@ FfX/ Ff0- Ff : Ffp> FfH< Ff8I Ff K FfPX Ff(V FfxZ Ff@e Ffhg FfXt Ff0r &`#\$ &`#\$!D%` !D% 3lD< WrSR"(<*MU WrSR <*MU %({< fNp: @\\Hc-oa- ws-656\\HP LaserJet 1200 Series PCL 6 Ne00: winspool HP LaserJet 1200 Series PCL 6 \\Hc-oa- ws-656\\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) \\Hc-oa- ws-656\\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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