Citrus World Inc v Neotrade Marketing Pte Ltd
[2000] SGHC 283

Case Number : Suit 427/2000/X

Decision Date : 30 December 2000

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Chan Hian Young and Masayu Norashikin (Allen & Gledhill) for the plaintiffs; Rajaram Ramiah and Nandakumar Renganathan (Wee, Ramayah & Partners) for the defendants

Parties : Citrus World Inc — Neotrade Marketing Pte Ltd

JUDGMENT:

Cur Ad Vult

1. In this case, the plaintiffs sought to recover from the defendants, the former distributor of their products in Singapore, sums due for goods supplied to the latter and for other incidental expenses. The defendants did not deny that they have not paid for the goods in question but contended that they owed the plaintiffs nothing because they had a valid set-off and counterclaim in relation to the plaintiffs wrongful termination of the distributorship agreement.

A. BACKGROUND

2. The plaintiffs, a company incorporated in the United States as an agricultural co-operative corporation, are manufacturers and distributors of citrus fruit juices and drinks. Among their brands of fruit juices are "Floridas Natural" and "Floridas Natural Growers Pride". The defendants, a company incorporated in Singapore, are in the cereals, sugar, oil, sauces, food beverage and dairy products business.

3. In the beginning, the business relationship between the plaintiffs and the defendants was mainly handled by Ms Leslie Powell, the manager of the plaintiffs international sales department, and Mr Melvin Neo, the defendants' general manager. Although the plaintiffs did not sell their products in Singapore through any other company, the business dealings between the plaintiffs and defendants were initially based on a rather loose arrangement. No written agreement was entered into by the parties and the plaintiffs contended that they accepted the defendants orders for their products on an ad hoc basis. However, the defendants took the view that they were the exclusive Singapore distributors of the plaintiffs products from the time they placed their first orders with the plaintiffs in 1997.

4. Whatever may have been the nature of the plaintiffs relationship with the defendants in the past, their relationship with effect from 15 October 1998 was based on a letter of appointment (hereinafter referred to as the "distributorship agreement") of that date. Under the terms of this distributorship agreement, the plaintiffs appointed the defendants as the Singapore distributors of a specified range of their products for a period of one year.

5. In due course, there was a measure of disagreement between Mr Neo and Mr Vernon Khoo, the defendants chairman and chief executive officer. As a result, Mr Neo resigned as the defendants general manager. On 31 August 1999, Mr Neo informed Ms Powell that he had left the defendant company with immediate effect. Ms Powell, who obviously had a lot of confidence in Mr Neos handling of the marketing of the plaintiffs products, was rather concerned with this development, and especially so after learning that Mr Khoo had no immediate plans for hiring a replacement for Mr Neo. Instead, Mr Khoo planned to become

directly involved with the management of the fruit and juice business.

6. The plaintiffs were perturbed that the resignation of Mr Neo came at a time when their American rival, Tropicana, was trying to enter the Singapore market. To them, it was crucial for an experienced and competent person to oversee their business when a heavyweight competitor was challenging them for the Singapore market. They were not comforted by Mr Neos assurance that the defendants team was capable of handling the distributorship of their products. Their response was to appoint Mr Neo as their consultant for an initial period of 90 days. He was supposed to work closely with the defendants, who had no choice but to accept the situation. It was not surprising that the lack of cordiality between Mr Neo and Mr Khoo did not provide the right environment for a smooth working relationship between the plaintiffs and the defendants.

7. Shortly thereafter, the defendants appointed a Mr Louis Neo to manage the marketing of the plaintiffs products. He had little experience in the business and did not impress the plaintiffs. As time passed, Mr Khoo became more involved with the defendants business with the plaintiffs. By then, the plaintiffs and the defendants had serious differences with respect to, among other things, marketing strategy. On 17 September 1999, Mr Khoo proposed three alternatives to resolve the existing problems. The third alternative was worded as follows:

> *Alternative 3*
>
> If we cannot find an amicable solution, I do not wish to continue as your distributor. We will cease any imports of Floridas Natural with immediate effect.

8. The plaintiffs were rather concerned by Mr Khoos "threat" to cease to act as their distributors. Ms Powell thought that Mr Khoos response to slight disagreements was "very emotional". In the meantime, the marketing budget for the period September 1999 to August 2000 was not agreed upon.

9. Mr Khoo was astute enough to realise that the differences between the plaintiffs and the defendants had to be swiftly resolved because the distributorship agreement of 15 October 1998 was about to expire. On 4 October 1999, he went to Orlando for a meeting with Ms Powell to resolve their differences. According to Ms Powell, the clear understanding was that unless and until a solution was found to the problems she saw in the defendants handling of the marketing of the plaintiffs products, the question of a renewal of the distributorship agreement, which was due to lapse on 14 October 1999, did not arise. However, Mr Khoo asserted that he left Florida with Ms Powells assurance that the plaintiffs did not intend to change distributors and that the distributorship agreement of 15 October 1998 had been extended.

10. After the one-year period of distributorship envisaged by the distributorship agreement of 15 October 1998 expired, the defendants continued to order goods from the plaintiffs. The orders were accepted by the plaintiffs and the goods shipped to Singapore. The defendants appointed a Ms Rita Ng to manage the defendants distributorship of the plaintiffs products. The plaintiffs were unhappy with the appointment as Ms Ngs previous experience was in the frozen chicken business. The plaintiffs contended that their reservations were not unfounded as subsequent events proved that Ms Ng was inexperienced in the retail fruit juice business.

11. In the meantime, the defendants continued to press the plaintiffs for a renewal in writing of the distributorship arrangement of 15 October 1998. However, the plaintiffs did not provide the defendants with such a written document.

12. The plaintiffs said that they were concerned that they would be left in the lurch if the defendants ceased to act as their distributors. According to Ms Powell, one of the plaintiffs contingency plans was to own a shell company which could take over the distributorship of their products. On 3 December 1999, the plaintiffs purchased a shell company, Formentar Pte Ltd. The plaintiffs consultant, Mr Neo, was appointed a director of this company.

13. On 13 December 1999, Ms Powell informed Mr Khoo that the plaintiffs were considering other options for the marketing of their products in Singapore. On the same day, Mr Khoo cancelled an order for the defendants products for the next six months and said that the plaintiffs decision to consider another distributor to replace the defendants contravened the agreement that the defendants would be the plaintiffs sole distributor in Singapore.

14. On 17 December 1999, Ms Powell informed Mr Khoo that the plaintiffs had decided not to renew their distributorship agreement with the defendants. The plaintiffs newly purchased shell company, which was renamed Fresh and Natural Food Pte Ltd, became the new distributors of the plaintiffs products.

15. On 11 January 2000, the plaintiffs informed the defendants that the outstanding amount due on their invoices for goods sold to the defendants amounted to $205,092.60. To date, the defendants have not paid this sum as they contended that they had a right of set-off with respect to, *inter alia,* damages due to them for the plaintiffs wrongful termination of the distributorship arrangement.

B. WHETHER THE PLAINTIFFS WERE ENTITLED TO APPOINT A NEW DISTRIBUTOR

16. The main issue in this case is whether or not the plaintiffs were entitled to appoint a new distributor in December 1999. This depends on whether or not the distributorship agreement of 15 October 1998 had been extended and if so, for how long. In the absence of such an extension, the defendants would have no basis for refusing to pay the plaintiffs the sums due for goods purchased from them.

17. It ought to be noted that in their pleadings, the defendants also contended that the plaintiffs had extended the duration of the distributorship agreement by three years with effect from March 1999, when the defendants took a three-year lease on a kiosk in Orchard Road for the purpose of selling the plaintiffs products. The defendants asserted that unless they had the assurance that the distributorship arrangement had been renewed for three years, they would not have committed themselves to a three-year lease on the kiosk. During the course of the trial, the defendants wisely abandoned this claim and decided to adopt the stand that the plaintiffs had extended the distributorship agreement of 15 October 1998 by one year after its expiry.

18. Clause 4 of the letter of appointment of 14 October 1998, under which the plaintiffs appointed the defendants as their Singapore distributors states as follows:

> Unless sooner terminated as stated below, the term of this commitment shall be for a period of one year commencing on the date of this letter. However, it may be renewed thereafter by Citrus World on a year to year basis.

19. The plaintiffs denied that they extended the distributorship agreement when it expired in October 1999. However, the defendants contended that the plaintiffs had orally and by their conduct or course of dealings renewed the distributorship agreement by at least one year. In support of their contention, the defendants alleged as follows:

> (a) the plaintiffs gave written confirmation to them that they had no intention "to make any changes" in their "current" arrangement in a letter dated 31 August 1999.
>
> (b) In the first week of October 1999, Ms Powell told Mr Khoo in Orlando, Florida, that the duration of the distribution agreement had been extended.

(c) The plaintiffs continued to accept orders and supply their products to the defendants after 15 October 1999.

(d) Between October and December 1999, the defendants, with the consent and approval of the plaintiffs, entered into and performed various marketing and promotional activities for the purposes of promoting the plaintiffs products.

Each of the defendants assertions will be dealt with.

The assurance in the plaintiffs letter of 31 August 1999

20. The defendants first ground for claiming that the distribution agreement had been renewed rests on the wording of a letter from Ms Powell to Mr Khoo on 31 August 1999, which was before the expiry date of the distribution agreement. That letter, which was written on the day Mr Neo resigned from the defendant company, was in the following terms:

> You are aware that the current situation is that our strongest competitor is entering the market. This situation provides for us to be in both a defensive and counter-attack position in the market.
>
> In view of Melvin Neos resignation from Neo Trade, we felt in [the plaintiffs] best interest to retain him as a consultant for the Singapore market. Melvin was instrumental in the success of the brand, and it is particularly important at this time that we have someone managing the trade with proven experience.
>
> This action is not intended to imply that we have plans to make any changes in our current arrangement with Neo Trade. The intention is to insure that our business is managed by an experienced individual with established business arrangements with the trade in Singapore. In addition, this appointment is not intended to cause any interference within your operation between Melvin Neo and your staff.
>
> (emphasis added)

21. The defendants had no basis whatsoever to read the above letter as an extension of the distribution agreement. The letter was primarily intended to inform the defendants that they were appointing Mr Neo as their consultant on 31 August 1999 and the assurances to the defendants, which were made before the expiry of the distribution agreement, should be read in the proper context. In para 65 of her affidavit of evidence-in-chief, Ms Powell explained the position convincingly as follows:

> I also wish to say that at no time did I verbally assure Khoo that we had no intentions of changing distributors. The only time such a thing was mentioned was in the letter dated 31 August 1999 informing the Defendants of Neos appointment as our consultant: This action is not intended to imply that we have plans to make any changes in our current arrangement with Neotrade. At the time the letter was written, the distributorship agreement had not expired and the Plaintiffs had no plans to make any changes in the arrangements then. What I did discuss with Khoo many times was the lack of competent management personnel employed by the Defendants.

The alleged oral renewal in Orlando

22. The defendants next asserted that Mr Khoo was assured by Ms Powell during his trip to Orlando, Florida, in the first week of October 1999 that the distributorship agreement had been extended.

23. Ms Powell denied having extended the distributorship agreement when she met Mr Khoo in Orlando. In para 39 of her affidavit of evidence-in-chief, she said:

> On 4 October 1999, Vernon Khoo and I had a meeting in Orlando, USA as arranged. The purpose of this meeting was to discuss an amicable working arrangement suitable for both parties. The clear understanding was that unless and until a solution was found there is no question of renewing the Distributorship Agreement. Any new agreement will have to be documented in a formal agreement to be signed by the parties. I certainly did not confirm that the Distributorship Agreement was extended. During the meeting, I reiterated the Plaintiffs dissatisfaction with Louis Neos appointment as Melvin Neos replacement. I emphasized to Vernon Khoo that the Defendants had to have experienced and professional people in place to manage the business and to establish good relationships with the retailers. Furthermore, the distribution strategy had to be maintained so that stock levels and expiry dates were managed properly.

24. When cross-examined, Ms Powell stood her ground. She said as follows:

> At the meeting in Florida in October 1999, we discussed what I required in order for the distributorship to continue. I gave no assurances that the distributorship agreement would continue or that he would remain as the distributor.

25. It is rather telling that when referring to his meeting in Orlando with Ms Powell in his e-mail to her dated 11 October 1999, Mr Khoo made no reference to the alleged extension of the distribution agreement. Indeed, his letter confirmed in part what Ms Powell said was discussed by her and Mr Khoo when they met in Orlando. The relevant portions of the letter are as follows:

> Further to our meeting in Orlando, this is to confirm the following:
>
> - I will be addressing the issue of a sound management replacement for Melvin in Neotrade.
>
> - I will be employing a marketing executive to handle full time our marketing need for the company.
>
> - I will be forwarding to you a fresh advertising and marketing plan for the next 12 months. I have a meeting with the Ad agency this week to work on the plan.
>
> - Upon receipt of your samples, I will be negotiating with Tricon to supply Floridas Natural to KFC, Pizza Hut and Taco Bell.
>
> Did I miss anything?? Its always possible when you get pass 40.

26. In the above-mentioned letter, Mr Khoo certainly missed something very important if the distributorship agreement had indeed been extended by Ms Powell during their discussions in Orlando. The absence of this issue in Mr Khoos letter of 11 October 1999 reinforces Ms Powells evidence that she did not agree to extend the distributorship agreement when she met Mr Khoo in Orlando in early October 1999.

27. In paras 54 and 55 of his affidavit of evidence-in-chief, Mr Khoo also made no reference whatsoever to an extension of the distributorship agreement for a period of one year when he discussed his trip to Orlando in December 1999. He merely said as follows:

> 54. In order to address my concern and to express the Defendants commitment to the Plaintiffs, I took a trip to the United States of America. I went to see the representatives of the Plaintiffs in Orlando Florida, USA sometime between 3rd and 7th October 1999.
>
> 55. At the meetings I had with Leslie Powell, I was again given assurances that the Defendants would continue to remain the distributors for the products in Singapore.

28. When cross-examined, Mr Khoo testified that the word "assurances" in para 55 of the affidavit of evidence-in-chief referred to the fact that the contract had been extended by one year. His evidence is as follows:

> Q. See para 55 of your affidavit. Did Ms Leslie Powell say that the agreement was extended?
>
> A. She did.
>
> Q. But you did not say that.
>
> A. By "assurances", she confirmed she would renew.

One would have thought that if the agreement had really been extended, nothing would have been easier than to state this clearly in the affidavit of evidence-in-chief.

29. It is worth noting that although Mr Khoo was quick to assert that he had been assured that the distribution agreement had been renewed, he did not know for how long it had been renewed. When cross-examined, his answers were as follows:

> Q. Extended for how long?
>
> A. She did not mention for how long. She said that the letter of appointment would be renewed.

30. The letters which Mr Khoo wrote to Ms Powell on numerous occasions after 14 October 1999 also did not reveal that he had secured an extension of the distributorship agreement. On 1 November 1999, Mr Khoo wrote the following letter to Ms Powell:

> The existing distributorship appointment letter was dated October 15, 1998 and was valid for one year, As we have both invested a vast amount of resources to make Floridas Natural successful in Singapore, I think it would be in the best interest of all parties if we formalise an agreement which will provide confidence to both CWI and Neotrade to further develop the Brand in Singapore.

> The agreement will stipulate clearly, our role and your objectives for us in this market. I suggest an agreement for a period of 3 years renewable provided we commit to a realistic sales volumes, not less than what we are doing now and with a reasonable projected growth for the next 3 years..

31. In the above letter, Mr Khoo accepted in no uncertain terms that the existing distributorship agreement was valid for only one year. As such, it had expired. In his proposal for a new formal agreement, Mr Khoo wanted one which will stipulate clearly the defendants role and the plaintiffs marketing objectives. Finally, he suggested a period of three years as the duration for the new distributorship arrangement. All these show that nothing had been finalised and that the parties respective positions were still being discussed. What is glaring is that in his letter, Mr Khoo made no reference whatsoever to the alleged one-year extension of the distributorship agreement. Neither did he say that the proposed three-year distributorship relationship was to replace that established by the allegedly extended distributorship agreement of 15 October 1998.

32. Reference may also be made to Mr Khoos letter of 3 December 1999 to Ms Powell. In this letter, he wrote as follows:

> Could you kindly send us a renewal for the appointment letter which expired in October. With all the rumours going around that Melvin intends to take the agency away from Neotrade, I will be truly grateful if you could formalise your verbal assurance that you have no intentions of changing distributors as discussed many times. *The original letter of appointment has expired in October*.
>
> (emphasis added)

Again, the alleged extension of the distributorship agreement was not mentioned. Instead, Ms Powell was reminded that the original letter of appointment had expired.

33. Finally, in his letter of 7 December 1999 to Ms Powell, Mr Khoo again did not claim that the distributorship agreement had been extended by one year. In his letter, he merely stated:

> Im truly worried that you have not replied to my mails regarding the expired letter of appointment and a clear position of our status as your distributor. I know that you have verbally assured me many times that you have no intention of appointing a new distributor.
>
> However, your representative Melvin has approached and some other parties, offering them to become the distributor of Florida Natural.

34. In his affidavit of evidence-in-chief and in all the letters referred to above, all that Mr Khoo asserted is that there had been verbal assurances that the plaintiffs had no intention of changing distributors. He also pointed out that Ms Powell did not deny in her replies that she had assured him that the plaintiffs had no intentions of changing distributors. Ms Powell pointed out that in her dealings with Mr Khoo, what was uppermost in her mind was to have the defendants get their act together as she had no confidence in the team which took over from Mr Neo. In any case, there is a world of difference between being told by the plaintiffs that they had no intention of changing distributors and being told by the plaintiffs that the distributorship agreement of 15 October 1998 had been extended by one year.

35. After weighing the evidence, I do not accept that the defendants were given assurances that the distribution agreement would be extended by one year.

Fulfilling of orders and marketing of the plaintiffs products after 14 October 1999

36. The plaintiffs said that after the expiry of the distributorship agreement of 15 October 1998, they dealt with the defendants on the basis of "buy and sell" and they reserved their options as to what they would do with respect to the marketing of their products in the Singapore market. In para 41 of her affidavit of evidence-in-chief, Ms Powell explained:

> [T]he Plaintiffs did not renew the Distributorship Agreement when it ended on 15 October 1999. Although ideally the Plaintiffs would like to continue with the same distributor if possible, the Plaintiffs wanted time to assess the Defendants. In the meantime, the Defendants placed orders and the Plaintiffs processed the orders per se the loose arrangement prior to the Distributorship Agreement. There was no obligation on the part of the Defendants to place orders, and either side could terminate the arrangement at any point.

37. However, the defendants asserted that the fact that the parties continued to import the plaintiffs products and to perform marketing and promotional activities on the plaintiffs behalf after 14 October 1999 showed that the distributorship agreement had been renewed beyond that date. They relied on the following statement of Blackburn J in *Smith v Hughes* (1871) LR 6 QB 597, 607:

> If, whatever a mans real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other partys terms.

38. The defendants also relied on the following statement by Lord Diplock in *Paul Wilson & Co A/S* v *Partenreederei Hannah Blumenthal* [1983] 1 AC 854, 915:

> [I]f A (the offeror) makes a communication to B (the offeree) whether in writing, orally or by conduct, which, in the circumstances at the time the communication was received, (1) B, if he were a reasonable man, would understand as stating As intention to act or refrain from acting in some specified manner if B will promise on his part to act or refrain from acting in some manner also specified in the offer, and (2) B does in fact understand As communication to mean this, and in his turn, makes to A a communication conveying his willingness so to act or refrain from acting which mutatis mutandis satisfies the same two conditions as respect A, the consensus ad idem essential to the formation of a contract in English law is complete.

39. The situations referred to by Blackburn J in *Smith* v *Hughes* and by Diplock J in *Paul Wilson & Co A/S* v *Partenreederei Hannah Blumenthal* are completely different from that in the present case, where both the plaintiffs and the defendants knew that the distributorship agreement was no longer in force and the defendants were desperately trying to get it renewed as they were not satisfied with their rather vague business arrangements with the plaintiffs following the expiry of the distributorship agreement.

40. When cross-examined, Ms Powell pointed out that there could have not have been an extension of the distributorship agreement because both parties were still negotiating the terms of any future distributorship arrangement. Her evidence is as follows:

> Q. During all this time, up to 7 December 1999, you never indicated to the defendants that your dealings with them was on an ad hoc basis of buy and sell?
>
> A. The e-mails prove that we were continuing to negotiate the terms of the arrangement. Nothing had been agreed upon. I was giving Vernon time to perform before we made up our mind.
>
> Q. Now, 15 October 1999 has come and gone. There was no communication from you to Neotrade of the change?
>
> A. We were continuing to negotiate and had not agreed upon an extension of the agreement, the duration of the extension and sales volumes.

I accept that Ms Powell described the situation after 14 October 1999 correctly. It is inconceivable that she would have renewed the distribution agreement when there were so many unresolved differences between the plaintiffs and the defendants.

41. The defendants then argued that if the position after 14 October 1999 reverted to that which existed before the distribution agreement was entered into on 15 October 1998, it ought to be noted that they were the exclusive distributors of the plaintiffs products during the period 1997 to 15 October 1998. This argument is flawed. Although the defendants believed that they were exclusive distributors for the plaintiffs prior to the date of the distribution agreement, a closer look at the actual position and at the terms of the distribution agreement will show that this was not the case. The plaintiffs stated in the distribution agreement as follows:

> First, I must advise that it is Citrus Worlds general policy not to name any of its distributors as being "exclusive". However, in some areas, we have agreed, with certain conditions, not to appoint any other distributors in the area for a limited period of time and we are willing to make such a commitment to you upon the following terms: .
>
> > 4. [T]he term of this commitment shall be for a period of one year commencing on the date of this letter.
>
> (emphasis added)

42. It is evident from the terms of the above letter that the plaintiffs agreed to appoint the defendants as their distributors with effect from 15 October 1998 and that they did not accept that the defendants were their exclusive distributors before that date.

43. I now turn to the defendants contention that the fact that they carried out advertising and promotional activities on behalf of the plaintiffs showed that the distribution agreement must have been renewed. Before the distribution agreement was entered into on 15 October 1998, the defendants also carried out advertising and promotional activities on the plaintiffs behalf and they were given a marketing budget. All these were on an ad hoc basis. It follows that the fact that the defendants carried out advertising and promotional activities after 14 October 1999 does not prove that the plaintiffs had, by their conduct, agreed to extend the distributorship agreement by one year. Neither can the fact that the defendants were asked to submit a marketing plan that spanned the remaining period of the distributorship agreement, as well as several months thereafter, be accepted as proof that the distributorship agreement had been extended. The plaintiffs were merely trying to see if the defendants were able to put forward an acceptable plan. As it turned out, they did not approve the marketing plan and there was no approved marketing budget for the relevant period. When cross-examined, Ms Powell said:

Q. You had in mind that this distributorship agreement would go beyond October 1999?

A. Could be but on a new set of terms.

Q. The reason why you asked Vernon Khoo for a marketing plan was to assure him that the agreement would go beyond October 1999?

A. I cannot say that it was to give him that assurance.

Q. What was the reason for not approving the marketing plan?

A. Because of the change in management in Neotrade since 31 August 1999. I thought it prudent to have a new plan because Melvin Neo had left Neotrade.

C. CONCLUSION

44. The defendants laid much emphasis on the fact that they had built up the market for the plaintiffs products and that they had expected a long-term relationship with the plaintiffs. If this was not the case, they would not have invested so much money in promoting the plaintiffs products. They also pointed out that they had performed well in marketing and distributing the plaintiffs products and there was no justification for the plaintiffs to be unhappy with their performance.

45. Whatever expectations the defendants may have had in the past about their long-term relationship with the plaintiffs, it is common ground that under the distributorship agreement of 14 October 1998, the defendants were appointed as distributors for only one year. As such, unless that agreement had been renewed, the plaintiffs were entitled to appoint a new distributor in place of the defendants. Whether or not the plaintiffs had been fair to the defendants and whether or not the plaintiffs judgment on the ability of the defendants to perform their contractual obligations as distributor was flawed is not relevant to the plaintiffs right to appoint a new distributor for their products in December 1999.

46. It is startling that when trying to establish that the distribution agreement had been extended, the defendants were not altogether sure about the period for which the distributorship agreement had been allegedly extended. At first, they contended that it had been extended by three years until 4 March 2002 (see para 47 of Mr Khoos affidavit of evidence-in-chief). Admittedly, the defendants finally abandoned their claim that the contract had been renewed until 4 March 2002 but this does not change the fact that if the distributorship arrangement had already been extended in March 1999 until March 2002 as alleged by Mr Khoo, there was no reason for him to settle for a one-year extension until 14 March 2002 when he met Ms Powell in Florida in October 1999. He should have insisted on his rights that the distributorship arrangement had at that time, almost 2 years to run. Again, although the defendants finally settled for an extension of one year, it is pertinent to note that in paragraph 9 of their Amended Defence and Counterclaim, they made the allegation that the distributorship agreement had been extended for at least one year with effect from 15 October 1999, thus suggesting that it may have been extended for a longer period of time. Finally, in para 36 of his affidavit, Mr Khoo gave the impression that the plaintiffs had agreed that the distributorship agreement of 15 October 1998 was to be extended automatically so long as the defendants met the sales target and the terminating events specified in the agreement did not occur. This view of the plaintiffs obligations is of course not supported by the express terms of the written contract and it was not seriously canvassed by the defendants. The various positions adopted by the defendants with respect to the renewal of the distributorship agreement certainly did not help their case, and especially so when it is for them to prove that the distributorship agreement had been extended by the plaintiffs.

47. After reviewing the evidence and after having had the opportunity to assess the witnesses, I accept that the distributorship agreement of 15 October 1998 had not been orally extended by Ms Powell and that the course of dealings between the plaintiffs and the defendants did not evidence any extension of the said distributorship agreement. The plaintiffs were thus entitled to appoint a new distributor on 17 December 1999, and by doing so, were not in breach of contract.

48. The plaintiffs claim for $205,092.60 for products supplied to the defendants is upheld. They are entitled to interest at the rate of 6% as from the date of the writ. For the record, it ought to be noted that it is unnecessary for the plaintiffs other claims or the defendants counterclaim to be considered because the parties agreed during the course of the trial on the terms for settling their respective remaining claims in the event that the plaintiffs claim that they were entitled to appoint a new Singapore distributor for their products in December 1999 is upheld.

49. The plaintiffs are entitled to costs.

Tan Lee Meng

Judge