Somerset Investments Pte Ltd (formerly known as Liang Court Pte Ltd) v Far East Technology International Ltd (formerly known as Far East Holdings International Ltd) [2004] SGHC 96

Case Number : Suit 1411/2002

Decision Date : 10 May 2004

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Paul Wong and Jonathan Seng (Rodyk and Davidson) for plaintiff; Chia Foon Yeow (Tan Peng Chin LLC) for defendant

Parties : Somerset Investments Pte Ltd (formerly known as Liang Court Pte Ltd) — Far East Technology International Ltd (formerly known as Far East Holdings International Ltd)

Contract – Collateral contracts – Whether collateral contract existing – Whether breach of collateral contract avoided liability under guarantee

Contract – Consideration – Guarantee given pursuant to contract – Certificate of demand deemed conclusive – Whether manifest errors in certificate rendered demand under guarantee void

Landlord and Tenant – Distress for rent – Writ of distress – Whether execution therof terminated tenancy

10 May 2004

Tay Yong Kwang J:

1 The plaintiff is the landlord of the shopping complex known as Liang Court located along River Valley Road. The defendant is an investment company listed on the Stock Exchange of Hong Kong. The defendant's wholly-owned subsidiary, RFC Far East Limited, acquired a franchise for the Rainforest Café (a theme restaurant) in various countries in Asia from Rainforest Inc in Minnesota, USA.

2 The plaintiff claimed the sum of $2,616,810 or such sum as may be found due from the defendant under a guarantee dated 15 April 1999. The guarantee arose out of a tenancy granted by the plaintiff to RFC Far East Café Pte Ltd ("the tenant"), a Singapore company wholly owned by the franchise holder, RFC Far East Limited, for the setting up of the Rainforest Café here. The tenancy agreement dated 15 April 1999 provided for a tenancy term of six years. The tenant was to pay a fixed basic monthly rent of $65,318.25 and a turnover rent component equivalent to 4% of the tenant's gross sales. Alternatively, the rent was to be 9% of the tenant's gross sales, whichever was higher. The tenant placed a deposit amounting to three months' rent with the plaintiff.

3 The tenancy comprised premises on the ground level of Liang Court with a staircase leading up to much larger premises on the second level. Part of the tenanted premises was carved out from the premises of the then anchor tenant, Daimaru Departmental Store ("Daimaru"). In line with the concept of the theme restaurant – "A wild place to shop and eat" – the ground level was used as a reception area and retail section while the second level housed the restaurant. The retail section sold merchandise carrying the Rainforest Café theme. Customers intending to dine at the restaurant had to pass by the retail section. The premises were elaborately fitted out as a rainforest with robotic animals. As the restaurant was situated in a corner of Liang Court, the plaintiff agreed to create greater visibility for the restaurant by allowing the tenant to have fittings extending beyond the tenanted premises. The tenant therefore built an overhanging giant mushroom as part of its roof

structure and had an artificial pond with a robotic crocodile and an area for live birds in the plaintiff's lobby.

4 The extensive fitting-out works for the theme restaurant were projected to cost some $6m to $7m. As the restaurant was expected to help pull in the crowds, thereby benefiting the shopping complex, the plaintiff agreed to be "partners" in the setting up of the restaurant by contributing towards its fitting-out costs. To this end, cl 2.7A.1 of the tenancy agreement provided as follows:

> [T]he works to be undertaken by the Landlord [the plaintiff] in respect of the Demised Premises shall only be as set out in paragraph (I) in the Third Schedule (the "Landlord's Works"). The Landlord shall contribute the sum of up to Singapore Dollars Three Million and Two Hundred Thousand (S$3,200,000) (the "Landlord's Contribution") towards the Landlord's Works and Tenants Works for the Demised Premises (collectively called "the Works"). Out of the Landlord's contribution, the sum of Singapore Dollars Two Hundred Fifty Thousand (S$250,000.00) shall be used by the Landlord to carry out the Landlord's Works. The balance sum of up to Singapore Dollars Two Million Nine Hundred Fifty Thousand (S$2,950,000) shall be for the Tenant's fitting out works as set out in paragraph (II) in the Third Schedule (the "Tenant's Works") and shall be paid to the Tenant upon the written certification of the duly authorised Quantity Surveyor ("the QS") in charge of the Works towards 55% only of every progress claims until the balance sum of the Landlord's Contribution is fully drawn down.

5 The plaintiff's contribution was therefore in two parts. One was to be a fixed sum of $250,000 for the Landlord's Works while the balance was to be a sum of up to $2,950,000 for the Tenant's Works. The plaintiff intended to recoup its financial outlay in the restaurant from the turnover rent to be collected.

6 In consideration of this financial commitment by the plaintiff, the defendant provided the plaintiff a guarantee to secure its contribution in the event of a breach of the tenancy agreement by the tenant. Clause 1 of the guarantee was in the following terms:

> In consideration of the grant by LIANG COURT PTE LTD (hereinafter called "the Landlord") to RFC FAR EAST CAFÉ PTE LTD (hereinafter called "the Tenant") of a tenancy of 177, River Valley Road, #01-40A and #02-48 Liang Court Singapore 179030 (hereinafter called "the Premises") pursuant to the Tenancy Agreement dated 15th April 1999 made between the Landlord of the one part and the Tenant of the other part (hereinafter called "the Agreement") and in further consideration of the Landlord agreeing to contribute the sum of up to Singapore Dollars Three Million and Two Hundred Thousand only (S$3,200,000.00) towards the Works, as defined and in the manner set out in the Agreement (the "Landlord's Contribution"), we FAR EAST HOLDINGS INTERNATIONAL LTD (hereinafter called "the Guarantor") hereby irrevocably and unconditionally covenant to pay to the Landlord on demand in writing made by the Landlord, the sum equivalent to the actual amount disbursed by the Landlord from the Landlord's Contribution towards the Works (as defined in the Agreement) under clause 2.7A.1 of the Agreement less the aggregate of the Turnover Rent as defined in clause 2.1.1 of the Agreement (ie 4% of the Tenant's Gross Sales) as may have been paid by the Tenant to the Landlord prior to the expiry or sooner determination of the Term (as defined in the Agreement), whichever is earlier, plus interest thereon at 8% per annum calculated on a monthly rests basis from the date of the first release of the Landlord's Contribution or any part thereof until the date of payment by the Guarantor to the Landlord under this Guarantee, and all reasonable legal and other costs, charges and expenses of whatever nature which the Landlord may incur in enforcing or seeking to enforce payment of all or any part of the monies hereby guaranteed until full payment is received after as well as before judgment has been obtained thereof, provided always that no such demand in writing as aforesaid

shall be made by the Landlord unless:

(a) the Tenant is in breach of the Agreement; or

(b) the tenancy is terminated prior to the expiry of the Term …

7 Clause 10 of the guarantee provided:

> A certificate by the Landlord as to any sum payable to it under this Guarantee and any other certificate, determination, notification or opinion of the Landlord, provided for in this Guarantee, shall be (in the absence of any manifest error or fraud) final and conclusive of the matters so certified and be binding upon the Guarantor.

8 The guarantee also stipulated a three-month period within which a demand must be made. Clause 13 provided:

> The Guarantee shall not be revocable and shall remain effective from the date hereof and shall continue until three (3) months after the expiry of the Term (as defined in the Agreement) or until three (3) months after the sooner determination for any reason whatsoever of the tenancy before the expiry of the Term (as defined in the Agreement), whichever shall be the earlier date (hereinafter called "the validity period"). Where no written demand has been made by the Landlord under this Guarantee during the validity period, after the validity period, the Guarantor's liability hereunder shall automatically cease notwithstanding that this Guarantee is not returned to the Guarantor for cancellation.

9 The theme restaurant opened its doors for business in April 2000. However, it could not meet its financial obligations to the plaintiff and began defaulting in the payment of rent. Some two years later, on 27 June 2002, when the arrears in rent amounted to more than $300,000, the plaintiff executed a writ of distress over the restaurant and the retail area. The plaintiff also executed another such writ on unit #02-50A which was used by the tenant as its office under a separate tenancy agreement. Most of the merchandise in the retail section was distrained and kept in a storeroom within the tenanted premises. However, the restaurant was allowed to continue its business in spite of the execution of the writ of distress. Some tables, chairs and equipment bore stickers with the Sheriff's official stamp to indicate the seizure.

10 On 31 July 2002, a bailiff from the Supreme Court carried out the lotting process in preparation for an auction sale of the distrained goods. The tenanted premises were then locked up and the restaurant ceased its business that day.

11 On 8 August 2002, an auction sale was conducted and the tenant's goods seized earlier were sold. That day, the plaintiff re-entered and took possession of the tenanted premises.

12 On 10 September 2002, the plaintiff issued a letter of demand to the defendant enclosing a certificate pursuant to the guarantee indicating a sum of $2,958,862.92 as the landlord's contribution less the aggregate turnover rent. The letter of demand also claimed interest and other expenses.

13 On 25 October 2002, the plaintiff sent another letter of demand to the defendant stating that the earlier one dated 10 September 2002 was superseded. The certificate under the guarantee claimed a different amount of $2,616,810 as the landlord's contribution.

14 The defendant did not comply with the demand and, in November 2002, this action was

commenced.

15 In its re-amended statement of claim, the plaintiff averred that it would adduce evidence to show that the amount due and owing under the guarantee was actually $2,838,821.81 and not the amount claimed under the 25 October 2002 letter of demand. The change in the amount claimed was occasioned essentially by the inclusion of $250,000 for the landlord's works and increases in the amount of arrears of rent and in the turnover rent.

16 The defendant resisted the claim on the following grounds:

(a) There was a collateral agreement under which the plaintiff agreed to re-develop, refurbish or carry out all necessary measures to ensure that there would be substantial and reputable tenants in Liang Court to attract constant and sufficient visitors to all shops in the shopping complex, including the Rainforest Café. In addition, the plaintiff also agreed to co-operate and work jointly with the defendant for at least the duration of the tenancy to ensure that both parties could recoup their initial investments in the Rainforest Café. Since the plaintiff did not comply with its obligations under the collateral agreement, there was a total failure of consideration for that agreement and the defendant was entitled to treat the guarantee as void.

(b) It was a condition precedent of the defendant's liability under the guarantee that the plaintiff's landlord's contribution would be or be close to $3,200,000. According to the plaintiff's particulars, only a sum of $2,475,447.63 was paid for the progress claims and an amount of $250,000 was expended as the landlord's contribution. The aggregate of these two amounts ($2,725,447.63) fell short of or was not close to $3,200,000.

(c) It was contrary to the terms of the guarantee for the plaintiff to include in the sum claimed the amount of $189,260 invoiced by a contractor, Ban Chuan View Construction and Engineering Pte Ltd ("Ban Chuan View"), and allegedly paid by the plaintiff on behalf of the tenant. The plaintiff was also not allowed to set off $249,007.77 as the alleged outstanding rent and interest thereon against the landlord's contribution. The defendant denied having agreed with the plaintiff that these two amounts were to be added to the scope of liability under the guarantee.

(d) There were manifest errors in the plaintiff's computation such that the certificate of 25 October 2002 was not final and conclusive on the amount owing by the defendant. An amount of $41,600, which the plaintiff had agreed to absorb as part of the costs of Ban Chuan View, was not taken into account. The turnover rent paid should be $311,588.32 instead of $271,004.47.

(e) In breach of cl 13 of the guarantee, the plaintiff failed to make a valid or correct demand within three months of the termination of the tenancy agreement which was on 27 June 2002, the date of the execution of the writ of distress.

17 The plaintiff denied that there was a collateral contract as alleged entered into in consideration of the defendant issuing the guarantee. It also denied the alleged condition precedent. It averred that the rental arrears were rightfully set off against the landlord's contribution and that the defendant had agreed in writing to include the payment on the Ban Chuan View invoice as part of the plaintiff's contribution to the tenant's works. The plaintiff said the 25 October 2002 letter of demand was for a sum lower than the actual amount owing under the guarantee and was a valid demand. It added that the tenant remained in possession and control of the entire tenanted premises despite the execution of the writ of distress and that the tenancy agreement was terminated only on 8 August 2002 and not 27 June 2002. The letter of demand was therefore within the three-month

validity period.

The decision of the court

18 Assuming the alleged collateral agreement existed, it was difficult to see why non-fulfilment of any or all of its terms should render the guarantee void. No provision for such a draconian result was shown in evidence. The defendant's remedy for any breach of its terms would be damages and not avoidance of the guarantee.

19 In the many discussions and negotiations between the parties' representatives leading to the tenancy agreement and the guarantee, the only document relied on for the contention that a collateral agreement existed was a presentation paper dated 27 March 1998 in which the plaintiff stated its plans to upgrade Liang Court and to bring in new tenants. That paper was no more than a marketing tool and was not intended to contain contractual undertakings. At most, the statements therein would amount to representations made by the plaintiff.

20 The representations as to the plans to upgrade the shopping complex and to bring in new tenants were not false. The plaintiff did do upgrading works in November 2000. The defendant would have liked the plaintiff to do even more, such as those undertaken at Plaza Singapura, but upgrading is surely a matter of degree. It could even be argued that extensive upgrading works might actually discourage visitors because of the attendant dirt and dust and necessary closure of many portions of the shopping complex while such works are being carried out. That would definitely affect the business of a restaurant adversely.

21 The plaintiff also brought in new retail outlets such as Starbucks, McDonalds, SAFE Superstore, Bossini, B.U.M. Equipment and Charles & Keith. Admittedly, they did not occupy significantly large premises to qualify them as anchor or mini-anchor tenants but they definitely were neither insignificant nor unsubstantial tenants. The defendant alleged, however, that the plaintiff promised that Dive Restaurant, another theme restaurant emanating from the USA, would also be a tenant in Liang Court. Dennis Chiu, a director of both the defendant and the tenant, testified that it was because of such a representation that he travelled to Los Angeles to see that theme restaurant for himself.

22 I accepted the plaintiff's evidence that any talk about Dive Restaurant related to that restaurant being a possible alternative theme restaurant to Rainforest Café. The plaintiff could not have promised that Dive Restaurant would be a tenant as well. If it did, surely questions would have been asked by the defendant about when that restaurant would be coming in, where it would be located in Liang Court and how much space it would be taking up. This is because while Dive Restaurant might add to the atmosphere of theme restaurants there, it would obviously be a competitor to Rainforest Café as well. The fact that the defendant led no evidence on such details showed that no such promise was made by the plaintiff.

23 Dennis Chiu could have decided to visit Dive Restaurant in Los Angeles for many reasons not related to any such alleged promise. The defendant and the tenant did not raise the issue of the absence of Dive Restaurant for the period of more than two years that the Rainforest Café was operating in Liang Court. What was even more telling was that no protest was made about breaches of the collateral agreement even after the letter of demand was sent in October 2002. The defendant's Hong Kong solicitors raised a number of grounds for denying liability under the guarantee but breach of the alleged collateral agreement was not one of them.

24 While increasing human traffic would be of concern to any landlord of a shopping complex and

the plaintiff had its plans for such, it was the defendant which in July 1998 sought to persuade the plaintiff that it would be worth its while to contribute $3m towards the fitting-out works for the Rainforest Café because the theme restaurant had great potential in attracting human traffic to Liang Court for the parties' mutual benefit. It was not a case of a potential tenant wishing to go into the shopping complex only if there would be increased human traffic. The potential tenant was marketing itself to the landlord as the crowd-puller.

25 Some feeble protest was also raised by the defendant in evidence about Daimaru, the then anchor tenant, down-sizing its premises. The defendant claimed it was not told about this. However, it was patently clear that Rainforest Café would be occupying part of the premises of Daimaru which the departmental store would be giving up for the theme restaurant.

26 The other collateral promise alleged was that of co-operating to ensure that both parties could recoup their investments. The plaintiff mooted the idea of a "partnership" with the tenant to create a situation beneficial to both landlord and tenant. It was never meant to be a partnership in the strict legal sense and the defendant did not allege such. The defendant claimed that this entailed the landlord being forgiving towards tenants who were unable to pay their rent on time, as was the plaintiff's apparent attitude towards the other tenants in Liang Court.

27 The guarantee was clear in its terms that a demand could be made if there was a breach of the tenancy agreement. While the plaintiff would be happy to co-operate with the defendant and the tenant, it would surely be unreasonable to expect the landlord to keep forgiving the tenant's failure to meet its financial obligations especially when, as was the case here, the arrears exceeded the amount of the deposit held by the landlord. That would not be co-operation – it would be unilateral sacrifice. It was not as if the plaintiff was deliberately seeking to destroy the theme restaurant. It would have been extremely pleased to see it become a huge success as the high turnover rent would then help it recoup its financial outlay quickly.

28 It was remarkable that the collateral agreement, important as it was to the defendant and the tenant, was never recorded in writing. On the evidence, I saw no collateral agreement as alleged and certainly no breach even if there was such an agreement.

29 The arguments on the alleged condition precedent may be disposed of quite simply by referring to the unambiguous language of the guarantee. The words "up to" before the stipulated amount of $3.2m, in their ordinary and natural meaning, set the maximum contribution that the plaintiff was to make to the fitting-out works. The final amount contributed by the plaintiff could well be less than but close to $3.2m but the words did not mean "exactly" or "close to". There was the possibility of a cost-overrun or of over-budgeting but the plaintiff was not to be asked to contribute anything above $3.2m. Similarly, under the terms of the guarantee, the plaintiff could only recoup the actual amount contributed less whatever turnover rent it received from the tenant. At any rate, even if the plaintiff's actual contribution was only $2.725m out of $3.2m, that would be 85% of the maximum and it seems to me that 85% is pretty "close to" 100%.

30 The plaintiff's final computation of the amount owing by the defendant was $2,837,821.81 derived in the following manner. The landlord's contribution to the tenant's works comprised $2,475,447.63 (payment of the progress claim), $189,260 (payment to Ban Chuan View) and $250,886.97 (rental arrears agreed to be set off) and $249,000 (landlord's works). From the sum of these four amounts, the plaintiff deducted $55,768.32 (payment from the tenant) and $271,004.47 (turnover rent received). The discrepancies in the amount claimed by the plaintiff were due to the fact that the documents had to be retrieved from the warehouse and the figures were updated as more documents were studied. There was also some initial confusion that the amount guaranteed was

$3.2m and not the actual amount contributed by the plaintiff.

31 The summary of claims made by the tenant and the payments made by the plaintiff[1] showed that the tenant agreed that the payment to Ban Chuan View and the rental arrears were to be deducted from the landlord's contribution. The tenant had claimed a total of $2,938,435 and was paid only $2,475,447, leaving a balance of almost $463,000. The tenant agreed to a set-off of the two items so that the plaintiff did not need to pay the tenant and then ask for the return of almost the same sum. The Ban Chuan View invoice was for work done to create a void in the premises. That work was part of the landlord's as well as the tenant's works as defined in the Third Schedule of the tenancy agreement. Ban Chuan View carried out structural works for the plaintiff and the tenant under separate contracts. Accordingly, it was agreed that the plaintiff would "absorb" $41,600 of the $189,260 as the landlord's works while the rest would go towards the tenant's works. Ultimately, the payment was made for the fitting-out works for the theme restaurant. Similarly, the set-off of the rental arrears was against the claims made by the tenant already. Therefore, it could not be said that these two amounts were not part of the works contemplated in the tenancy agreement or that the said agreement had been varied.

32 The defendant argued, however, that any agreement on the set-off between the plaintiff and the tenant did not bind the defendant. This could not be correct because the payments were actually for the works contemplated in the tenancy agreement and were not extraneous expenses added on to increase the defendant's financial exposure. The defendant was the ultimate parent company of the tenant. Dennis Chiu was a director of both the defendant and the tenant. As he said in court, it was not possible for him to separate his corporate personalities when dealing with the tenancy matters in issue. The defendant was the guarantor for the tenant. It could not be seriously argued that the defendant was not aware of what the tenant was doing.

33 The defendant was not able to produce credible evidence to challenge the plaintiff's computation of the turnover rent paid. The payment vouchers produced by Dennis Chiu, purportedly for turnover rent paid after October 2001, did not show that they were payments for turnover rent. Dennis Chiu had no personal knowledge of such payments.

34 The defendant further contended that a demand made under the guarantee had to be precise in its amount before it could be valid. If it was not precise, the defendant argued, it would never know what its actual liability was.

35 Here, the certificate enclosed with the letter of demand of 25 October 2002 could not be final and conclusive as to the amount of the debt due as it was shown to be manifestly erroneous by the plaintiff, the issuer of the certificate. A demand to a guarantor is generally valid if it makes clear to him that the creditor requires payment of a sum which is actually due: Phillips and O'Donovan, *The Modern Contract of Guarantee* (2nd Ed, 1992) at 421. It is not essential to the validity of a notice calling up a debt that it correctly states the amount of the debt: see Walton J in *Bank of Baroda v Panessar* [1987] Ch 335 at 346–347, following the High Court of Australia in *Bunbury Foods Pty Ltd v National Bank of Australasia Ltd* (1984) 51 ALR 609 on this point. The High Court of Australia held that a notice demanding payment of loan moneys which did not specify the amount then owing by the debtor company was valid. Similarly, Walton J in the *Bank of Baroda* case held that a demand for "all moneys due to us" was valid where a creditor was entitled by the terms of his security to demand repayment of all moneys thereby secured.

36 I agree with these cases. In my view, the letter of demand of 25 October 2002 was a valid demand under the guarantee although it was erroneous as to the amount owing. There could be no prejudice to the defendant in any event as the amount stated was less than the actual amount

owing. The call on the guarantee within the stipulated period attached liability while the certificate merely stated the quantum payable or the extent of the liability. The formula for determining the extent of the liability was provided in the guarantee and the defendant, as the ultimate parent company of the tenant and both companies having at least one common director, had the means of determining the precise amount itself. Even if the amount owing was found to be less than the amount claimed in the letter of demand, that should not be an impediment to a court giving judgment for the smaller amount and making an appropriate order as to costs of the action. I found here that the defendant was liable for at least the smaller amount of $2,616,810 claimed in the letter of demand of 25 October 2002. I was also satisfied that the actual amount owing to the plaintiff was the larger amount claimed in its revised computation in court.

37 Distress is premised on an affirmation of the landlord-tenant relationship: Gray, *Elements of Land Law* (2nd Ed, 1993) at 841. It is an affirmation that the tenancy continues to subsist and it follows that execution of a writ of distress does not determine a tenancy. This statement is subject to what I have to say below. In this case, the bailiff testified that the tenant's officials were told by him that they could continue to operate the restaurant so long as the seized goods were not removed from the tenanted premises and that if the rental arrears were paid up, the seizure would be lifted. However, the defendant contended that the tenant could not continue with its business as the merchandise in the retail section had been seized and was locked up in the storeroom. It argued that since the retail section at the entrance could not operate, it gave the impression to potential customers that the restaurant on the upper level was closed.

38 There was nothing to prevent the tenant from placing notices and staff at the entrance to inform potential patrons that the restaurant was still open. Indeed, part of the concept of the Rainforest Café was that patrons be given a passport and be called to enter the restaurant when their turn arrived. For this purpose, there would have to be staff manning the entrance at all times anyway. They could also easily inform patrons that the retail section was temporarily closed. Dennis Chiu, in response to the court's question, estimated that the retail section accounted for some 20% to 25% of Rainforest Café's income. Even if this was correct, the restaurant was still clearly the mainstay of the business. The retail section was an added attraction but it was not crucial to Rainforest Café's operations. That was evident even from the name. The space at the retail section was still available for use by the tenant. In law and in fact, therefore, the writ of distress did not terminate the tenancy.

39 However, by 31 July 2002, when lotting of the goods seized was done and the locks were changed, it would be highly unrealistic to say that the tenancy continued despite the writ of distress. The tenant could not run its business any more – indeed, it was not permitted to do so at the premises in question. It was, for all practical purposes, thrown out of the tenanted premises while its goods were seized and locked up inside. I therefore held that the tenancy was terminated on 31 July 2002.

40 The demand made on 25 October 2002 was therefore within the three-month validity period provided in the guarantee. As the only validly-claimed amount within that period was the lesser amount of $2,616,810, I limited judgment for the plaintiff to that amount. I also awarded the plaintiff contractual interest at 8% per annum with monthly rests on the amounts disbursed from the respective dates of disbursement.

41 On 23 October 2003, the plaintiff made an offer to settle at $2.3m without interest to be paid by the defendant within 14 days together with indemnity costs. As I was of the view that cl 1 of the guarantee did not provide clearly for indemnity costs, the judgment was therefore more favourable to the plaintiff than the offer to settle in terms of the amount awarded but was less favourable to the

plaintiff in terms of the basis of costs as the general rule is to award costs on the standard basis: O 59 r 27 of the Rules of Court (Cap 322, R 5, 1997 Rev Ed). Originally, I intended to deduct a certain portion of costs on the matters that the plaintiff was not successful in. However, in view of the offer to settle, I made no such deduction and awarded costs to the plaintiff at 100% on the standard basis.

Plaintiff's claim allowed with costs.

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[1]At 2 AB 537.