The Best Source Restaurant Pte Ltd v Wan Chai Capital Holdings Pte Ltd [2009] SGHC 266

Case Number : Suit 562/2008

Decision Date : 25 November 2009

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Malathi Das (Joyce A Tan & Partners) for the plaintiff; Loy Wee Sun (Loy & Company) for the defendant

Parties : The Best Source Restaurant Pte Ltd — Wan Chai Capital Holdings Pte Ltd

Contract

25 November 2009 Judgment reserved

Lai Siu Chiu J:

Introduction

1 This claim was brought by a franchisee The Best Source Restaurant Pte Ltd ("the plaintiff") against a franchisor Wan Chai Capital Holdings Pte Ltd ("the defendant") for breach of an agreement dated 30 December 2006 ("the franchise agreement") made between the parties and which allowed the plaintiff to operate an outlet under the defendant's franchise of restaurants.

2 The plaintiff's primary complaint was that the defendant had failed to provide the requisite details necessary for the operation of its franchised outlet, in particular, recipes for many of the food items on the menu. In addition, the plaintiff claimed for conversion of its chattels by alleging that the defendant had taken over the plaintiff's outlet without giving the plaintiff sufficient time to remove its equipment and other chattels therein. The defendant denied the plaintiff's claims, alleged the plaintiff was the party that unlawfully terminated the franchise agreement and counterclaimed, *inter alia*, for royalty fees, advertising and promotion fees, payment for goods it had supplied as well as liquidated damages.

Background

3 Under the terms of the franchise agreement, the plaintiff was granted the right to operate an outlet ("the outlet") under the defendant's franchise of restaurants which specialises in Hong Kong street fare. In early February 2007, a month or so after the franchise agreement had been concluded, the plaintiff commenced operations at the outlet which was located at Lot 1 Shoppers' Mall, #B1-10/11 in Choa Chu Kang Central ("the premises"). The premises were leased from the landlord Capitaland by Wan Chai (WS) Tea Room Private Limited ("Wan Chai Tea Room") and sublet to the plaintiff. Lim Hong Heng ("Lim"), the defendant's director and shareholder, was also a director and the sole shareholder of Wan Chai Tea Room.

4 After a year or so of operations, the plaintiff informed the defendant in a letter dated 4 January 2008 that it was ceasing operations at the outlet. By the same letter, the plaintiff accused the defendant of committing repudiatory breach of the franchise agreement and indicated that it had accepted such repudiation. On or about 14 January 2008, after he had received the letter, Lim gained entry into the outlet with the help of a locksmith. The defendant notified the plaintiff of this fact on the following day and informed the plaintiff that it had up to 12pm of the following day to remove its equipment and other chattels ("the plaintiff's chattels") from the outlet failing which the defendant

would "deal with them as [it] deem[s] fit." The plaintiff was unable to remove its chattels in time and the defendant thus took over the outlet lock, stock and barrel, including the plaintiff's chattels.

The pleadings

5 The plaintiff's claim against the defendant for breach of contract set out the following breaches in its statement of claim:

Initial obligations

a. Failure to supply a full detailed menu nor set out actual ingredients to be used for the preparation on beverages or food (Clause 4.1.2)

b. Failure to provide any updates to the Manual (Clause 4.2)

c. Failure to adequately assist our clients to establish and operate the Franchise Business particularly in advice with regard to the front view of the shop and renovations or other work necessary for the conversion of the [outlet] (Clause 4.1.4)

Continuing obligations

d. Failure to provide free of charge reasonable continuing assistance and advice for efficient running of the Franchise Business

e. Failure to provide additional support in respect of substantial or continual operational matters, business or customer service matters (Clause 5.2)

f. Failure to advise on matters relating to advertising (Clause 5.4)

g. Failure to adequately advertise or promote on a national level (Clause 11.1.1)

h. Failure to meet with the Plaintiffs on an annual basis to discuss the Defendants' plans for advertising and promotion (on a national level) in the forthcoming year (Clause 11.1.2)

i. Failure to provide any approved advertising materials to enable the Plaintiffs to advertise and promote the business locally (Clause 11.2.2)

j. Failure to advise the Plaintiffs in relation to staffing levels (Clause 5.5)

k. Failure to take any steps to enable the Plaintiffs to enjoy the benefits of bulk purchases (Clause 8.2.15)

l. Failure to adequately review and conduct any quality control of food and drink (Clause 8.2.18)

m. Failure to advise the Plaintiffs on the use of licensed software. (Clause 8.3.14; 9.7).

The plaintiff also sought damages for the defendant's conversion of the plaintiff's chattels.

6 At the trial, the plaintiff whittled down its many claims to focus on the following items:

(a) The failure of the defendant to provide a full and detailed manual;

(b) The failure of the defendant to provide updates to the manual;

(c) The failure of the defendant to promote the outlet; and

(d) The defendant's conversion of the plaintiff's chattel.

7 The defendant denied the plaintiff's claims and counterclaimed, *inter alia*, $17,808.10 in royalty fees, $8,879.05 in advertising and promotion fees, payment of $51,012.75 for the supply of goods and services and $392,000 in liquidated damages.

8 I turn now to consider the parties' respective claim and counterclaim.

The decision

Whether the defendant had failed to provide a full and detailed manual

9 Under cll 4.1.2 and 4.2 of the franchise agreement, the defendant was to provide the plaintiff with a "Manual" and to inform the latter of updates and changes to the said document. Clauses 4.1.2 and 4.2 read as follows:

4.1 The [defendant] shall: …

4.1.2 provide the [plaintiff] with the Manual

4.2 … The term "the Manual" includes all updates and other changes made to it by the [defendant] from time to time.

The term "Manual" is defined in cl 1.1.10 as follows:

'the Manual' means the [defendant's] operating manual, which contains full details of the System and the operation of the Business;

10 The relevant terms referred to in the above clause are defined as follows:

1.1.3 'the Business' means the restaurant business operated using the Concept;

1.1.4 'the Concept' means the concept of providing casual dining in the style of Hong Kong café in the manner carefully developed by the [defendant] using the System and the Marks;

1.1.15 'the System' means the methods of operating a restaurant in the style of Hong Kong café developed by the [defendant] using the Know-how, as set out in the Manual or otherwise communicated to [plaintiff];

11 The plaintiff's primary complaint was that the defendant had breached cll 4.1.2 and 4.2 of the

franchise agreement by failing to provide recipes of the food items which were to be served at its outlet. The plaintiff argued that the defendant owed the plaintiff an obligation to provide the latter with the full details of how to run its outlet and that this included providing the plaintiff with the relevant recipes which argument I accept. The term "Manual" is defined (in cl 1.1.10 quoted above at [9]) as containing the *full details* of the System and the operation of the Business. Considering the fact that the franchise was concerned with the food and beverage business, it was beyond question that the full details of the System and operation of the Business would have to include recipes.

12 On the manner in which such details had to be conveyed, however, I agree with the defendant that such information did not have to be conveyed *exclusively* through the Manual. The term "System" as defined in cl 1.1.15 (quoted above at [10]) made it clear that the details of the operation of the Business could be communicated through means other than the provision of the Manual. Further, under cl 4.1 of the franchise agreement the defendant had to provide the plaintiff's staff with "Initial Training" for a period of two weeks.

13 The terms "Initial Training" were defined in cl 1.1.8 as follows:

> [T]raining in the correct operation of the System and the Concept comprising an initial induction course in the appropriate management techniques and training in the operation of the Business as detailed in the Manual.

14 The above clause along with the definition of "System" made it clear the defendant could provide details of the System and the operation of the Business through the Manual or other means (such as through the Initial Training). It was not in dispute that the Manual provided to the plaintiff contained no recipes. The defendant thus sought to argue that recipes had been handed to the plaintiff's staff (a chef and two managers) who had attended the Initial Training. All that Lim could point to in support of this contention, however, were several pages of recipes handwritten in Chinese. These recipes were for a handful of dishes and several sauces and marinates.

15 Cross-examined on this point, the defendant's chief chef, Chiang Wai Yin, could not point to any other written recipes which had been handed to the plaintiff's staff. While the defendant's noodle chef, Cai Chunxiang, claimed to be in possession of other recipes, he admitted that he had not handed these recipes to the plaintiff's staff. He had merely instructed the plaintiff's staff who had attended the Initial Training to make notes as they were being taught how to cook certain dishes. In my view, even if it was true that the handwritten recipes referred to by Lim had been handed to the plaintiff's staff, such recipes along with the oral instructions given by Cai Chunxiang were woefully inadequate when compared with variety of food and drink stated in the menu.

16 The defendant, perhaps recognising the inadequacy of the recipes provided and the oral instructions given, contended that even if it had failed to provide adequate recipes at the Initial Training stage, the plaintiff should have sent its staff for more training to learn how to prepare the other food items for which recipes were not provided; the plaintiff's failure to do so was the direct cause of any loss suffered by the plaintiff. In support of its contention, the defendant referred to cl 8.2.10 of the franchise agreement which provides that the plaintiff was to ensure that its staff was adequately trained.

17 In my view, the defendant's argument was untenable. It is clear from cl 4.1.2 read with cll 1.1.10 and 1.1.15 (quoted above at [9] and [10]), that the onus rests on the defendant as franchisor to provide the plaintiff with the *full details* of the System and the operation of the Business. After all, as the plaintiff's counsel rightly pointed out, the very nature of the franchise agreement was to ensure that in return for the franchisee's capital investment the franchisor would impart the

necessary know-how and business model of the franchise. In this context, the onus was certainly not on the franchisee to take steps to obtain such information. Hence, by failing to provide sufficient recipes, the defendant had failed to provide the full details of the System and the operation of the Business. The defendant had thus breached cl 4.1.2 read with cll 1.1.10 and 1.1.15.

18 On the issue of whether the plaintiff was entitled to terminate the franchise agreement pursuant to the defendant's breach of contract, it will be necessary to consider whether the defendant's obligation to provide the full details of the System and the operation of the Business was a condition of the franchise agreement. If it was, the defendant's breach would entitle the plaintiff to terminate (see *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* [2007] 4 SLR 413 ("*RDC Concrete*") at [97]).

19 In determining whether a particular term is a condition, it will be necessary to ascertain the objective intention of the contracting parties themselves by construing the actual contract itself (including the contractual term concerned) in the light of the surrounding circumstances as a whole (see *Man Financial (S) Pte Ltd v Wong Bark Chuan David* ("*Man Financial*") [2008] 1 SLR 663 at [161]).

20 The plaintiff's director, Lim Teh Poh ("LTP"), testified that the very reason why the plaintiff had entered into the franchise agreement with the defendant was because it understood that:

> [T]he [defendant] would provide it with detailed information from start to end and necessary documentation would be given step-by-step setting out the necessary information to guide the [plaintiff] in operating the franchise. The reason why the [plaintiff] purchased the franchise [was] because it was interested in the business model and expected to be supplied the necessary guidance and implementation details to ensure the success of the franchise.

This aspect of LTP's evidence was not challenged in cross-examination. In fact, Lim accepted during cross-examination that it was important to the business relationship of the parties for the defendant to *equip the plaintiff with the requisite know-how* to provide customers with food of excellent quality at competitive prices and with good service. It was thus the common intention of the parties to regard the obligation on the part of the defendant to provide full details of the System and the operation of the Business as an important one.

21 Consequently, I find that in failing to provide adequate recipes, the defendant had breached a condition of the franchise agreement. The plaintiff was thus entitled to terminate the agreement.

22 In the result, the plaintiff is entitled to interlocutory judgment for the defendant's breach of contract with damages to be assessed. The defendant had counterclaimed for liquidated damages alleging that the plaintiff had unlawfully terminated the franchise agreement. In the light of my finding that the plaintiff's termination of the franchise agreement was lawful, I dismiss the defendant's counterclaim for liquidated damages.

Whether the defendant had failed to provide the requisite updates

23 The plaintiff had also sought to argue that the defendant was in breach of cl 4.2 (quoted above at [9]) by failing to provide updates to the Manual. In particular, the plaintiff accused the defendant of developing several food items and failing to inform the former of this resulting in the plaintiff's customers complaining that the plaintiff's outlet was not serving the same food items as that at the other outlets. Having found in [21] that it was the defendant who was in repudiatory breach of the

franchise agreement, this issue of whether the defendant was also in breach of cl 4.2 is largely academic. Nonetheless for completeness, I shall address this point.

24 Lim had explained that the food items referred to by the plaintiff were merely items sold on a trial basis and that only if these items were well-received would they be incorporated into the regular menu whereupon the plaintiff would be informed. I accept this explanation. Under cl 22, the defendant was entitled to vary the operations of the franchise outlets based upon:

> the peculiarities of any franchise outlet's customer base, location, density of population, business potential, population of the locality, existing business practices or any other condition the [defendant] deems to be of importance to successful operation of the franchise outlet.

The same clause expressly stipulates that any variation on these bases need not be disclosed to the plaintiff. It seems to me that the conducting of trials of food items was a matter of sufficient importance to the successful operation of the franchise within the meaning of cl 22. The defendant was thus entitled under express contractual provisions to withhold information on such items *until* after the trial and even then, only if it was decided that the food items were to be incorporated into the regular menu did the defendant have to disclose information on such items. I therefore reject the plaintiff's argument that the defendant was also in breach of cl 4.2.

25 I turn now to consider the plaintiff's claim that the defendant had breached the franchise agreement by failing to adequately advertise/publicise the outlet.

Whether the defendant had failed to promote the outlet

26 Under cl 9.1.3 of the franchise agreement, the plaintiff was to pay the defendant an "Advertising and Promotion Fee" which was defined in cl 1.1.2 as:

> [A] monthly contribution to advertising and promotion in a sum equivalent to 2% of the monthly gross turnover of the Franchise Business (exclusive of GST paid by customers), plus GST on it if the [defendant] is GST registered.

27 On the use of the Advertising and Promotion Fee, cl 11.1.1 provided that:

> The [defendant] shall apply the advertising and promotion fees received from all franchisees to such advertising and promotional activities as the [franchisor] in its sole discretion thinks necessary to promote the Business.

In addition, cl 5.4 provides that "the [defendant] shall advise the [plaintiff] in relation to advertising and public relations."

28 It is arguable that the use of the words "sole discretion" in cl 11.1.1, suggests that the defendant could use the Advertising and Promotion Fee in any way it deemed fit even if it meant excluding the outlet in advertisements and promotions. It seemed to me, however, that those words referred only to the *manner* in which the advertisements and promotions were to be carried out. On the question of *scope*, the advertisements and promotions had to include the outlet. This is clear from the reference to the promotion of the "Business" which is defined sufficiently broadly in cl 1.1.3 (at [10]) to include *all* the franchise outlets operating under the Concept (as defined in cl 1.1.4 at [10]), including the plaintiff's. Indeed, Lim also accepted that it was reasonable for the plaintiff to expect

some recurrent form of advertising and promotion of all the franchise outlets, including the plaintiff's.

29 The plaintiff argued that the defendant had excluded the mention of the outlet in most of its advertisements. The plaintiff's counsel referred to a series of documents tendered in evidence by the defendant which included advertisements taken out by the defendant, extracts of food review columns from newspapers and invoices for television commercials and promotional items. She argued that of these many documents, there were only four advertisements which referred to the outlet. On the strength of this contention, she argued that the defendant had breached cl 11.1.1.

30 The plaintiff's counsel's argument was curious. Most of the documents referred to were really invoices for television commercials and from these documents alone, it was impossible to tell if the commercials excluded the outlet. Of the print advertisements tendered in evidence, reference was made to "Lot 1" which was short form for "Lot 1 Shoppers' Mall", the shopping mall in which the outlet was located. The only documents in which no reference was made to the outlet were the food review columns and two invoices for promotional items. With regard to the food review columns, it was not within the defendant's control as to what ought or ought not to be included in the column for its contents were within the food critics' sole control. The defendant thus could not be held responsible for the exclusion of the outlet from mention in the food review columns.

31 As for the invoices for promotional items such as Chinese New Year "red packets" and stickers, these items referred only to "Wan Chai/IMM." However, these invoices were dated 12 January 2008 and 20 January 2008 respectively which meant that the promotional items were commissioned only after the plaintiff had terminated the franchise agreement on 4 January 2008. The invoices therefore were not evidence of the exclusion by the defendant of the outlet in its promotions. Consequently, on the totality of the evidence, I find that the defendant had not breached cl 11.1.1.

32 I turn now to consider the plaintiff's claim of conversion.

Whether the defendant had converted the plaintiff's chattel

33 After the plaintiff gave notice by its letter dated 4 January 2008 of its acceptance of the defendant's repudiatory breach of the franchise agreement, it made arrangements for an inventory list of its chattels to be prepared before the handover of the premises to the defendant. The inspection and inventory stock-taking was to be carried out by Surf Marine Surveyors and Adjusters (Pte) Ltd ("Surf Marine Surveyors") on 11 January 2008, a few days after the plaintiff had ceased operations at the outlet. On the day of the inspection, LTP met representatives from Surf Marine Surveyors at the outlet. While in the process of taking photographs of the plaintiff's chattels, they were interrupted and told to leave by the security and management staff of Lot 1 Shopper's Mall. After locking up the premises, LTP and the representatives from Surf Marine Surveyors left.

34 It was revealed during the trial that the defendant had sent the management of Lot 1 Shoppers' Mall a letter dated 10 January 2008 stating the following:

> As we spoke this morning, NEA officer Mrs Ong of Clementi office requires letter from landlord to conform that current operator [the plaintiff] has vacated the premises at #B1-10/11 and [the defendant] will be the operator taking over the premises without changing the current layout.
>
> We are working in double time to get the business going and seek your help and understanding. We apologize for the situation and promise to get the shop open for business as soon as conditions allow.

This explained why the security and management staff of Lot 1 Shoppers' Mall had asked the plaintiff to leave the premises.

35 Shortly thereafter, on 13 January 2008, Lim sent an email to the plaintiff's director, Eddie Khoo, expressing concern at the closure of the outlet for more than a week. He sought arrangements to be made for the handing over of the outlet. Subsequently, however, unbeknownst to the plaintiff, Lim gained entry into the outlet on 14 January 2008 with the help of a locksmith. The defendant informed the plaintiff on the following day through a letter dated 15 January 2008 which stated that:

> As there are equipment, furniture and utensils in the premises that belong to [the plaintiff], [the defendant] hereby [gives the plaintiff] **NOTICE** that if such items are not removed form [*sic*, from] the premises by **12 noon 16 January 2008**, [the defendant] will deal with them as they deem fit. As [the defendant is] rushing to re-open the premises to avoid the dire consequences of the Landlord exercising its right of re-entry and making a claim against [the defendant] for breach of the Agreement to Let/Tenancy Agreement, the dateline [*sic*, deadline] of 12 noon 16 January 2008 is firm.
>
> [emphasis original]

36 Needless to say, with only one day's notice, the plaintiff was unable to remove its chattels from the premises in time. Eventually, the defendant took over the outlet as well as the plaintiff's chattels. The incident was the basis of the plaintiff's claim in conversion.

37 Generally, an act of conversion occurs when there is unauthorised dealing with the claimant's chattel so as to question or deny his title to it (see *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] SGCA 42 at [45]). In the present case, it is not contested that if the plaintiff had the right of possession to its chattels, it would have made out its claim in conversion.

38 The defendant, however, argued that the plaintiff had abandoned its chattels with the result that its claim in conversion must fail. As to the status of the defence of abandonment in Singapore law, neither counsel was particularly helpful. Although the defendant relied on this defence, its counsel cited no authorities to support the defence in his submissions.

39 The plaintiff's counsel on the other hand, referred to the High Court decision in *Vestwin Trading Pte Ltd and another v Obegi Melissa and others* [2006] 3 SLR 573 as support for the proposition that there exists no defence of abandonment to a claim in conversion. That High Court decision was however overruled on appeal (see *Obegi Melissa and others v Vestwin Trading Pte Ltd and another* [2008] 2 SLR 540). The trial judge had granted summary judgment in favour of the plaintiff who had brought a claim in conversion. The Court of Appeal) observed at [41]-[42] that:

> To elaborate, the law on abandonment has not been settled in Singapore. There is no legislation, case law or authoritative academic view on title to or possession of items which have been disposed of as rubbish. In particular, there is no recent English jurisprudence on this area of the law, and comparative common law decisions provide little by way of consensus or guidance. The positions vary across different jurisdictions, with the courts in Australia, Canada and the US generally recognising, but applying differently, the concept of "divesting abandonment" – *ie*, the abandonment of both ownership as well as possession.
>
> Rubbish disposal – the paradigmatic example of "divesting abandonment" – is a necessary and common occurrence in daily life. It is usually regarded as a mundane matter and is taken for granted until a case like the present suit arises. The disposal of rubbish may also raise … the issue of protecting the privacy of individuals and business entities. This is a matter of considerable public importance and should not be decided summarily.

40 Thus, the status of the defence of abandonment in Singapore remains undecided. It is, however, unnecessary for present purposes to determine the validity of such a defence. This is a clear case where the plaintiff could not be said to have abandoned its chattels. In my view, even if the defence of abandonment exists, the defendant's invocation of such a defence must fail *in limine*. Contrary to the defendant's assertion, the plaintiff could not be said, by any stretch of the imagination, to have abandoned its chattels. The defendant took the position that the plaintiff in taking inventory of its chattel had intended to "dump the movables in the possession of the [defendant] regardless of whether the [defendant] liked it" so as to extract an agreement from the defendant to pay for the chattels.

41 Apart from the fact that the defendant's assertion did not seem to be borne out by the evidence, even if it was true, it would establish the point that the plaintiff had not abandoned the chattels on an *a fortiori* basis. Far from abandoning its movables, the plaintiff retained an interest in them since its purpose in leaving the chattels with the defendant was so as to extract payment for them.

42 In any event, I found the defendant's version of the events to be far removed from the truth. In my view, the truth of the matter was that the defendant had not given the plaintiff a reasonable amount of time to remove its chattels. One day's notice was simply insufficient.

43 Consequently, I find that the defendant had converted the plaintiff's chattels and the plaintiff is entitled to its claim for damages to be assessed.

Whether the defendant was entitled to the royalty fees, the advertising and promotion fees and payment for the products and services supplied

44 The defendant had counterclaimed $17,808.10 in unpaid royalty fees and $8,879.05 in unpaid advertising and promotion fees for the period from 1 October 2007 to 16 January 2008 (taking the view that this was the date on which the defendant had lawfully terminated the franchise agreement). In the light of my finding that the franchise agreement had been lawfully terminated by the plaintiff on 4 January 2008, the defendant is only entitled to such fees up to that date.

45 The plaintiff had argued that in the light of the defendant's breaches of contract, it did not have to make payment of these fees. I am unable to accept this argument. The plaintiff's remedy for the defendant's breach of contract was an award of damages (which I had granted in [22] above). As long as the plaintiff had not yet terminated the franchise agreement, it had to perform its obligations

and this meant that the plaintiff had to pay the defendant the unpaid royalty fees and advertising and promotion fees which had accrued up to 4 January 2008.

46 As for payment for goods the defendant had supplied the plaintiff, the plaintiff had acknowledged receipt of the goods but argued that the parties had not agreed to the price of the same beforehand and it had not received any invoices for the goods. On the question of invoices, the defendant tendered in evidence invoices which it claimed had been handed to the plaintiff. These invoices, however, were not initialled by any of the plaintiff's staff. Further, there was evidence that the plaintiff had made payment of $12,000 to the defendant on 18 May 2007 even though the total amount due according to the invoices was only $8,320. This suggested that the plaintiff was genuinely unaware of the prices of the goods. Lim had tried to explain the plaintiff's excess payment of the sum of $3,680 as an advance payment for future supplies. This however was only a bare assertion for there was no other evidence to support his claim. On balance, I believe the plaintiff's explanation that it had not received the defendant's invoices and that it was unaware of the price of the goods supplied.

47 My finding does not absolve the plaintiff from all liability to pay for the goods. The plaintiff's voluntary payment of $12,000 to the defendant suggested that the plaintiff knew that it had to pay for the goods. As for the price to be paid, while the parties may not have agreed on an *exact figure*, in the light of the fact that this was a franchise arrangement, the parties must have had the understanding that the defendant would supply the goods to the plaintiff at the same price as that at which it was charging the other franchisees. It was thus not entirely accurate for the plaintiff to contend that there was no agreement *whatsoever* with regard to the price of the goods.

48 Consequently, the plaintiff must pay the price of the goods subject to proof from the defendant of what it was charging other franchisees (such as the franchise operating the outlet at Junction 8 Bishan Shopping Centre) for the same goods at the material time.

Conclusion

49 I therefore award the plaintiff interlocutory judgment for the defendant's breach of contract and for its conversion of the plaintiff's chattels. Damages will be assessed by the Registrar with the costs of such assessment reserved to the Registrar.

50 As for the defendant's counterclaim, the plaintiff is only liable to pay its claim for royalties, advertising and promotion fees that had accrued as at 4 January 2008 together with the outstanding amount for goods supplied by the defendant. The sums payable for such supplies are to be determined by the Registrar conducting the assessment and are to be set off against the damages payable to the plaintiff when quantified.

51 Costs of the plaintiff's claim and of the defendant's unsuccessful counterclaim for liquidated damages are awarded to the plaintiff while the defendant shall have its costs for the liquidated sums in [50] taxed on the District Court scale.