

Long Well Group Ltd and others v Commerzbank AG and others
[2018] SGHC 57

Case Number : Suit No 28 of 2012
Decision Date : 16 March 2018
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Tee Jim SC, Christopher James De Souza, Amanda Lim Jia Yan, Basil Lee and Gayathri Sivasurian (Lee & Lee) for the plaintiffs; Andre Yeap SC, Lai Yew Fei and Khelvin Xu Cunhan (Rajah & Tann Singapore LLP) for the defendants.
Parties : Long Well Group Limited — PT Citrabumi Sacna — Private Energy Pte Ltd — First Power International Limited — Commerzbank Aktiengesellschaft — Commerz Asset Management Asia Pacific Pte Ltd — Commerzbank Asset Management Asia Ltd — Commerz Asia Best SPC

Contract – Misrepresentation – Rescission

Contract – Breach

Restitution – Unjust enrichment

Equity – Fiduciary relationships – Duties

[LawNet Editorial Note: The third defendant's appeal in Civil Appeal No 65 of 2018 and the plaintiffs' appeal in Civil Appeal No 67 of 2018 were dismissed by the Court of Appeal on 1 February 2019 with no written grounds of decision rendered. The Court of Appeal agreed with the decision and reasoning of the Judge below. However, although the total amount of damages (viz, US\$18.018m) awarded by the Judge below against the third defendant for the breach of contract was correct, having regard to the plaintiffs' statement of claim, the Court of Appeal awarded the first plaintiff US\$9.375m and the second plaintiff US\$8.643m (instead of the award of the total amount of US\$18.018m by the Judge below to all the plaintiffs).]

16 March 2018

Judgment reserved.

Choo Han Teck J:

1 The first defendant ("Commerzbank") is a bank incorporated in Germany and a foreign company registered in Singapore. It is the sole shareholder of the second defendant ("2nd defendant"). The 2nd defendant is in turn the sole shareholder of the third defendant ("CAMA"). CAMA is the sole shareholder and investment manager of the fourth defendant ("CAB"). CAB is a segregated portfolio company incorporated in the Cayman Islands. As a segregated portfolio company, CAB can create segregated portfolios. One of CAB's segregated portfolios is a sub-fund known as "Commerz Asia Emerald" ("CAE"). As CAB's investment manager, CAMA was responsible for managing the segregated portfolios of CAB.

2 The four plaintiffs are investment companies incorporated in various countries including Singapore, Indonesia and the British Virgin Islands ("BVI"). According to the plaintiffs, an Indonesian investor, Raymond Pribadi ("Raymond"), acted as agent for all four plaintiffs at all material times.

Background facts

3 In early 2005, two Indonesian investors, Rahmad Pribadi ("Rahmad") and Soenarjanto Indratono ("Indratono") had an opportunity to bid for oil and gas concessions in Libya ("the Venture"). However, in order to bid for the concessions, the bidding company must have technical expertise. Rahmad and Indratono therefore approached PT Pertamina (Persero) ("Pertamina"), a state-owned Indonesian company which had the requisite technical expertise for exploring and developing the oil and gas concessions.

4 At the same time, Rahmad and Indratono also approached Pascal Crepin ("Crepin") and Cheong Kum Hong ("Kum Hong") in order to secure funding for the Venture. At that time, Crepin was the managing director of CAMA and Kum Hong was an employee of CAMA. Crepin and Kum Hong were also directors of CAB. Whether Crepin and Kum Hong were also representatives of Commerzbank or whether they held themselves out as such is in dispute. During the meeting between Indratono, Rahmad, Crepin and Kum Hong in April or May 2005, Crepin and Cheong informed Rahmad and Indratono that Commerzbank's internal corporate policy prohibited it from committing any funds towards bidding for projects and Rahmad and Indratono would therefore need to find investors to put in money to win the bid. At the same time, Crepin and Cheong are said to have made the following representations ("the First Set of Representations"):

- (a) Commerzbank and/or CAMA would provide and/or raise the funds needed for the Venture after the bids were successful;
- (b) Commerzbank was a major and reputable German bank and one of the few banks in the world that could perform banking activities in Libya, despite the embargo against Libya;
- (c) Commerzbank had the financial resources and capability to raise and/or provide the funding required for the Venture;
- (d) CAMA was a fully-owned subsidiary of Commerzbank and the vehicle through which Commerzbank operated various business and investment activities;
- (e) CAMA had the full backing of Commerzbank in all its business and investment activities;
- (f) CAMA would structure the business and financing model for the Venture, which would involve setting up a corporate vehicle which would be used to channel the funding for the Venture; and
- (g) The corporate vehicle to be set up would be named "Commerz Asia Emerald".

5 Since Commerzbank and/or CAMA would not provide funding to Rahmad and Indratono for the bid, the two investors, Rahmad and Indratono approached Raymond to discuss funding possibilities. Rahmad and Indratono purportedly repeated the First Set of Representations to Raymond. Raymond agreed to meet with Crepin and Cheong to discuss the possible participation of the 2nd plaintiff ("PT CBS") in the venture. At the meeting, Crepin and Cheong informed Raymond that the investors would have to provide the initial funding to make the bids for the concessions but allegedly represented that ("the Second Set of Representations")

- (a) Commerzbank and/or CAMA would provide and/or raise the funds needed for the Venture after the bids were successful;

(b) Commerzbank was a major and reputable German bank and one of the few banks in the world that could perform banking activities in Libya, despite the embargo against Libya;

(c) Commerzbank had the financial resources and capability to raise and/or provide the funding required for the Venture; and

(d) Commerz Asia Emerald was an incorporated company and a wholly owned subsidiary of CAMA, which was in turn a wholly owned subsidiary of Commerzbank.

6 The plaintiffs claim that, in reliance on the Second Set of Representations, Raymond agreed to arrange for PT CBS to invest in the venture. PT CBS thus paid a sum of US\$500,000 to CAMA as funding towards the bid. About this time, the parties also agreed to engage a consultant firm, Med Energy Co Ltd ("Med Energy") to obtain pre-qualification approvals for the purposes of bidding for the concessions. A service agreement was entered into between Med Energy and CAE SPC ("the Service Agreement"). CAE SPC is said to stand for CAE Segregated Portfolio Company. It is disputed whether or not CAE SPC was represented by Crepin and Kum Hong to be an independent company. In any case, the Service Agreement provided, *inter alia*, first, that Med Energy would be paid a sum of US\$500,000 by a certain date to obtain pre-qualification approvals for the bids and second, that Med Energy would be paid a sum of US\$12m as a success fee should CAE's bid be successful. The sum of US\$500,000 provided by PT CBS was used to fulfil the first part of the Service Agreement.

7 Relying on the Second Set of Representations, PT CBS issued a standby letter of credit for the sum of US\$7,905,000 for the purposes of the bids. According to the plaintiffs, it was understood that payment of US\$500,000 as well as the letter of credit were made on the basis that the 1st plaintiff ("Long Well") and/or PT CBS would be shareholder(s) in CAE and would have a say as to who could invest in the Venture should the bid be successful.

8 Pertamina and CAE then set up a joint venture company to bid for the concessions. The joint venture company, Pertamina E&P Libya ("PEPL"), was incorporated with Pertamina holding 55% shares and CAE holding 45% shares. In October 2005, PEPL was informed that its bid was successful.

9 After PEPL's successful bid, Raymond met Cheong to discuss the structure of the investment. The plaintiffs claim that Cheong advised Raymond that the Venture should be owned by Commerzbank, CAMA and/or CAB but in view of the initial funding by the plaintiffs, Raymond's companies including Long Well, would be given "Class A" shares in CAE at a preferential price whereas subsequent investors sourced by Commerzbank and CAMA would only be given "Class B" and "Class C" shares.

10 The plaintiffs claim that Cheong also made the following representations ("the Third Set of Representations):

(a) Commerzbank already had existing clients who were eager to join and invest in the Venture;

(b) The financial model and structure for the investment in the Venture was via the issuance of shareholdings in CAE; and

(c) Cheong was setting up a shareholding structure (in which the shares in CAE are divided into the three different classes) in order to obtain the necessary funding from investors.

11 This was in contrast to what Raymond thought the structure would be. According to him, it was

assumed that the plaintiffs would enjoy full control and ownership of CAE since PT CBS provided the initial funding for the bids. After learning about the proposed ownership structure of the fund, the plaintiffs did not want to provide any further funds for the Venture until the plaintiffs or any of them had full control and ownership of CAE, and therefore ownership of CAE's 45% shareholding in PEPL. The plaintiffs thus began exploring the purchase of the ownership of CAE. At the same time, it seemed that CAE had difficulties meeting its payment obligations to Med Energy under the Service Agreement. All these culminated in a Memorandum of Understanding for the Transfer of Ownership of Commerz Asia Emerald SPC ("the Transfer Agreement") between Long Well, PT CBS and CAMA.

12 The Transfer Agreement, entered into on 3 February 2006, provided, *inter alia*, that

- (a) CAMA had full legal rights to transfer the ownership of CAE and this was to comprise all its rights and obligations of CAE;
- (b) Long Well and PT CBS were to have full ownership of CAE by purchasing 85% and 15% of the participating shares of CAE respectively;
- (c) Long Well and PT CBS were to pay US\$500,000 to CAMA and/or CAB on the date of transfer of ownership of CAE (which was not to be later than 31 March 2006); and
- (d) Long Well and PT CBS were to pay the sum of US\$12m to CAMA and/or CAB after 30 business days of the date of the transfer of ownership of CAE. This was said to comprise the full consultancy fee to CAMA.

On the same day, 3 February 2006, Long Well and PT CBS subscribed for shares in CAE by way of signing two share subscription agreements ("Share Subscription Agreements"). These were entered into to effect the transfer of ownership of CAE by way of transferring the participating shares in CAE to Long Well and PT CBS. The agreements provided, *inter alia*, that Long Well and PT CBS were to pay the sums of US\$9,375,000 and US\$5,643,000 respectively to purchase participating shares in CAE at the nominal value of US\$375 per share.

13 Pursuant to the Transfer Agreement and the Share Subscription Agreements, Long Well paid US\$9,375,000 to CAB and PT CBS made a payment of US\$5,643,000 to CAB. This amounted to US\$15,018,000 ("the Share Subscription Sum"). This amount was subsequently transferred to the National Oil Corporation of Libya ("NOC") to fulfil the signature bonus payable by PEPL as part of winning the bids. PT CBS also made the following payments, totalling US\$3m, pursuant to clause 2.4 of the Transfer Agreement ("the Transfer Agreement Miscellaneous Sums"):

- (a) US\$500,000 on CAMA and/or CAB's behalf to a firm known as TCT-International Service Co at the request of Med Energy;
- (b) US\$1.5m to Med Energy, being the sum CAE owed Med Energy;
- (c) US\$500,000 to Asia Med Corporation Ltd on behalf of CAMA and/or CAB; and
- (d) US\$500,000 to Med Energy in late 2006.

14 A third share subscription agreement was entered into by the 3rd plaintiff ("Private Energy") on 13 June 2006 in order for the participation shares subscribed for by PT CBS to be transferred to Private Energy.

15 Having won the bids, CAE and Pertamina entered into a Joint Operating Agreement ("the JOA"). Under the JOA, CAE was obliged to provide the funding required for the exploration and development of the oil and gas concessions. In July 2006, Pertamina and CAE entered into negotiations for Pertamina to sell to CAE a 30% share in PEPL for the sum of US\$16.5m. This was to enable CAE to increase its shareholding in PEPL. In particular, the plaintiffs were said to be interested to acquire a majority stake in PEPL so as to acquire a direct stake in the profits gained from the Venture. The plaintiffs claim that the 4th plaintiff ("First Power") made a down payment of US\$1.5m for the purchase of Pertamina's 30% share in PEPL ("PEPL Share Purchase Sum") but that this sum was used to partially discharge CAE's payment obligations under the JOA to fund the operations of PEPL. In January and September 2007, Private Energy and First Power provided further funding amounting to US\$250,000 and US\$1,404,983 to enable PEPL to meet its payment obligations to the NOC ("the PEPL Advance Payments"). Private Energy and First Power also covered travel and ancillary expenses incurred as part of the Venture ("the Travel and Ancillary Expenses").

16 In December 2010, Raymond was informed by the defendants' representative that the PEPL shares owned by CAE had been transferred to Pertamina pursuant to an arbitration award. Although it is unclear to me what led to this, it is undisputed that there were arbitration proceedings between Pertamina and CAB which resulted in Pertamina being granted an award compelling CAB and CAE to transfer CAE's 45% shareholdings in PEPL to Pertamina. The plaintiffs report that the arbitration tribunal found CAB to have breached its payment obligations under the JOA. In any case, as a result of the arbitration proceedings, CAE lost its 45% shareholding in PEPL, which the plaintiffs claim were CAE's only assets.

The parties' position

17 The plaintiffs made various claims against the defendants. First, they claim that they suffered losses as a result of the defendants' misrepresentations made through Crepin and Kum Hong. In their closing submissions, counsel for the plaintiffs focus on the Second Set of Representations and aver that they were false in that the defendants did not intend to finance the Venture, as evidenced by the fact that they did not think they were obliged to provide or raise any funds needed for the Venture after the bid was successful. The plaintiffs claim that they would not have paid the various sums of monies if not for the Second Set of Representations made by Crepin and Kum Hong. The defendants' case is founded mainly on its assertion that CAE was unlike the usual segregated portfolios managed by CAMA in that the investors were given powers to control the fund. It was set up specifically for the investors on their instructions. On this basis, the defendants claim that the investors were in full control of the fund and were fully responsible for ensuring that the fund could meet its obligations under the various agreements that the fund entered into with Pertamina in relation to the Venture. As such, the defendants claim that Crepin and Kum Hong would not have made the alleged representations. In any case, the defendants contend that even if there were such representations, the plaintiffs were not the recipients of the representations and were not induced by the representations to make any of the payments outlined above.

18 Second, the plaintiffs claim for breach of the Transfer Agreement and/or the three Share Subscription Agreements by CAMA and/or CAB. The plaintiffs allege that the participating shares in CAE were never transferred to Long Well, PT CBS or Private Energy. As such, the plaintiffs never received ownership of CAE despite paying the Share Subscription Sum. As a result, the plaintiffs claim that there has been a total failure of consideration. The defendants claim simply that there was no breach of contract as ownership of CAE was transferred to Long Well and PT CBS and/or Private Energy.

19 Third, following from the above, the plaintiffs also pleaded, further or in the alternative, that

Commerz bank, CAMA, and/or CAB have been unjustly enriched by the plaintiffs' payment of the various sums since they provided no consideration in exchange under the Transfer Agreement and the three Share Subscription Agreements. The defendants deny any failure of consideration as the participating shares in CAE had been transferred to Long Well and PT CBS. Consequently, none of the defendants were enriched, the alleged enrichment was in any case not at the expense of the plaintiffs and the defendants are entitled to rely on the change of position defence.

20 Fourth, in the further alternative, the plaintiffs claim that CAMA was the investment manager for CAE and CAB and therefore owed fiduciary duties to Long Well, PT CBS and Private Energy to structure, manage and monitor the investments in CAE. The plaintiffs claim that they reposed trust and confidence in CAMA but CAMA failed to ensure, *inter alia*, the transfer of participating shares in CAE to Long Well, PT CBS and Private Energy under the Transfer Agreement and the three Share Subscription Agreements and also failed to ensure that CAB's obligations under the JOA were met. This led to loss and damage to the plaintiffs. The defendants contend that no fiduciary duties were owed to the plaintiffs. In any case, the defendants had transferred the participating shares in CAE to the plaintiffs and did not prefer the interests of any party over those of the plaintiffs. The defendants claim that the plaintiffs did not identify the alleged loss suffered.

21 Fifth, on similar arguments, the plaintiffs allege that CAMA and/or CAB were negligent. Again, the defendants claim that the participating shares in CAE were transferred to the plaintiffs, the defendants owed no duty of care to the plaintiffs to raise funds and there was no mismanagement on the part of the defendants. In any case, the defendants claim that the plaintiffs did not identify the alleged loss suffered and are contractually barred from claiming loss of the sums which they chose to risk.

22 The defendants counterclaim for an indemnity from Long Well, PT CBS and Private Energy for any loss that they may suffer in respect of the plaintiffs' claims in this action. The defendants contend that Long Well, PT CBS and Private Energy agreed, under the Share Subscription Agreements, to indemnify and hold CAMA and/or CAB harmless from any loss incurred in connection with any misrepresentation made by Long Well, PT CBS or Private Energy.

My decision

Misrepresentation

23 I address first the plaintiffs' claim in misrepresentation. In order to succeed, the plaintiffs must first show that the Second Set of Representations, which they appear to be relying on, was made by Kum Hong and/or Crepin to the plaintiffs. Chief amongst the representations made is that Commerzbank and CAMA would provide and/or raise the funds needed for the Venture after the bids were successful. According to the plaintiffs, this constituted a misrepresentation because the defendants did not intend to raise funds for the Venture and therefore made the representation despite having no intention of executing it.

24 Counsel for the plaintiffs argue that the representation must have been made because the duties and responsibilities of CAMA and CAB, as investment managers, typically included looking for investors to invest in the segregated portfolios, such as CAE. The plaintiff adduced evidence of CAMA and CAB attempting to raise funds. The counsel also argued that Crepin and Cheong had absolute discretion to accept or reject subscriptions and enjoyed full powers to manage the funds, as set out in the terms and conditions of the Offer Document for CAE. But a distinction must be drawn between power and responsibility. Although the investment manager of CAE could have raised funds for the Venture, the question to be answered is whether it represented that it would. The act of CAMA and

CAB attempting to raise funds could indeed support the plaintiffs' contention that they promised to do so, but CAMA and CAB could equally have done so because they hoped for the success of the Venture and not because they represented they would and were therefore obliged to do so. The defendants exhibited extensive email correspondence which showed that the plaintiffs did not, at any time, request that the defendants make good their alleged representation. Indeed, when CAE faced difficulties in meeting its funding obligations under the joint venture with Pertamina, Rahmad, Indratono and Raymond did not seem to expect the defendants to provide the necessary funding, as gleaned from their correspondence, both internally amongst themselves and externally with the defendants.

25 Although it appears odd to me that the defendants bore no funding responsibilities whatsoever, I accept that ultimately the burden of proving that the representation was made falls on the plaintiffs and they have been unable to show any evidence, documentary or otherwise, indicating that they were told that the defendants would, and therefore expected the defendants to provide and/or raise fund the Venture after the bid had been won.

Breach of contract

26 The claim in breach of contract turns on a finding of fact as to whether the ownership in CAE was indeed transferred to Long Well, PT CBS and Private Energy, as CAMA and/or CAB were obliged to under Transfer Agreement and the three Share Subscription Agreements. If it is found that the participating shares were indeed transferred to the three plaintiffs, then the plaintiffs' claim in breach of contract and unjust enrichment would fail.

27 The Offer Document for participating shares in CAE makes it clear that "a [s]hareholder's interest [in CAE] will be evidenced by an entry in the register of Shareholders, as maintained by the Administrator [(Dexia Fund Services Cayman Ltd ("Dexia"))]" . This register would show, quite simply and directly, whether the participating shares that the plaintiffs subscribed for were indeed transferred to them, pursuant to the Transfer Agreement and the Share Subscription Agreements. It is odd that none of the parties have adduced this register.

28 The defendants contend that the plaintiffs did not seek discovery of this register and that the register is in any case irrelevant given Dexia's confirmation of subscription. This confirmation of subscription that the defendants refer to is a simple document, allegedly sent by Dexia to Rahmad and Indratono, acknowledging that Long Well and PT CBS had subscribed for participating shares in CAE. The document stated unequivocally that it was:

...an acknowledgment of [Long Well and PT CBS'] subscription[s] in [CAE]. The subscription will not be confirmed until your cheque had [sic] cleared (for CPF applications), SRS Operator (for SRS applications). In the event that cleared fund [sic] are not received, [Long Well and PT CBS'] application for units in the above fund shall be deemed to be cancelled. [emphasis added]

Dexia's confirmation of subscription of shares was therefore a mere acknowledgment that Long Well and PT CBS had applied for the participating shares. It does not support the defendants' case that the participating shares had indeed been transferred to Long Well and PT CBS. The defendants' submission that the register is irrelevant given Dexia's confirmation of subscription is thus unpersuasive.

29 The evidential burden did not lie on the plaintiffs to seek discovery of the register specifically. As the fund manager, and the party asserting that the participating shares in the fund were indeed transferred to the plaintiffs, the defendants bore the evidential burden of adducing the register to

support their assertion. The defendants were also clearly in the position to do so given that Commerzbank's proposal to Rahmad and Indratono regarding the cessation of CAMA's operations in Singapore anticipated Commerzbank providing "copies of articles (including register of members [*sic*] and register of directors) of CAE (SPC)".

30 In addition to the conspicuous non-appearance of the register, I find no evidence that the ownership of CAE had been transferred to the plaintiffs by the stipulated date in the Transfer Agreement (31 March 2006). For example, on 4 April 2006, the plaintiffs' representative expressly stated to Kum Hong that "CAE ownership is not transferred yet and not a single reasonable step has been taken".

31 The defendants tried to explain that there were two understandings of CAMA's obligation to "transfer the ownership" of CAE to the plaintiffs under the agreements. According to Kum Hong, under the Transfer Agreement and Share Subscription Agreements, CAMA and/or CAB's obligation was to transfer participating shares of CAE to Long Well, PT CBS and/or Private Energy. However, sometime after these agreements were entered into, Raymond explored the possibility of having the ownership of CAE transferred to a BVI corporation that was set up, namely CAE Ltd. Kum Hong explained that the email correspondence from representatives of the plaintiffs demanding the transfer of the participating shares and ownership were made because they wanted ownership of CAE to be transferred to CAE Ltd. In other words, Kum Hong claimed that the participating shares were already transferred to Long Well, PT CBS and/or Private Energy, pursuant to the agreements, but that the plaintiffs were now making a different request for the shares to be transferred to CAE Ltd. This cannot have been the case. On the totality of the evidence before me, it was clear that the plaintiffs were still requesting for the transfer of participating shares to them and not CAE Ltd. Although there were indeed discussions on the possible transfer of participating shares to CAE Ltd, in line with Raymond's request, this was a separate request from the plaintiffs. I do not think that the plaintiffs' reference to a failure to transfer ownership in CAE referred to the transfer of shares to CAE Ltd. For example, in April 2006, after the deadline for CAMA to transfer the shares under the agreements, Rahmad was still telling Kum Hong that the plaintiffs' representative, Celal Metin was urging Kum Hong to "take a real step in transferring CAE to Longwell". Thus, Kum Hong's version of events was not supported by the evidence presented before me.

32 In addition, I find no evidence that the ownership of CAE had been transferred to the plaintiffs by the stipulated date in the Transfer Agreement (31 March 2006). Even as late as in September 2007, there were email requests by the investors to representatives of the defendants for meetings to discuss the transfer of CAE ownership. There were also discussions within Commerzbank in relation to CAMA's resignation as fund manager (as a result of the cessation of its operations in Singapore), following which the "investors will then take control of CAE" in September 2007.

33 Given that Long Well and PT CBS had paid the Share Subscription Sum of US\$15.018m, I find CAMA to be in breach of the Transfer Agreement and the Share Subscription Agreements since CAMA was obliged to effect the transfer of the participating shares in CAE to Long Well, PT CBS and/or Private Energy but has failed to prove that this was done. In reliance on CAMA performing its obligation to transfer the participating shares, Long Well and PT CBS had made the payment of the Share Purchase sum of US\$15.018m and the Transfer Agreement Miscellaneous Sums totalling US\$3m. Having thus found that CAMA failed to transfer the participating shares, I allow the plaintiffs' claim for US\$18.018m against CAMA. However, I decline to hold Commerzbank and CAB, jointly liable for the said sum. It is undisputed that CAMA is a Singapore incorporated company and must be treated as a separate legal entity from Commerzbank and CAB, even if they fall within the same group of companies. In any case, the single economic entity concept that the plaintiffs appeared to rely on in their pleadings is not recognised under Singapore law.

34 The other sums claimed for, such as the PEPL Share Purchase Sum and PEPL Advance Payments have not been shown to be losses incurred by the plaintiffs as a result of CAMA and CAB's failure to transfer the ownership of CAE to the plaintiffs.

Other claims by the plaintiffs

35 The plaintiffs have not shown the defendants to have been unjustly enriched nor proven that the defendants were negligent or in breach of their fiduciary duties vis-à-vis the plaintiffs.

The defendants' counterclaim

36 The defendants contend that the 1st to 3rd plaintiffs represented that they would fund the Venture. Counsel for the defendants submitted that this constituted a misrepresentation because the 1st to 3rd plaintiffs did not honestly believe that they would fund the Venture at the time they made the statement, as "the [p]laintiffs' position is that they had never agreed to fund the [Venture]". I do not accept this argument. To succeed, the defendants must prove that the plaintiffs did not hold the honest belief that they would fund the Venture at the time the representation was made. Merely relying on the plaintiffs' position at trial does not discharge this burden. Further, there is evidence which suggests, albeit not conclusively, that the plaintiffs did honestly believe that they would fund the Venture. In this regard, I am of the view Raymond had appeared to me, the most forthright of all the witnesses in this trial. As noted above, at [24], when CAE faced difficulties in meeting its funding obligations under the joint venture with Pertamina, Rahmad, Indratono and Raymond did not seem to expect the defendants to provide the necessary funding. I also note that the plaintiffs did in fact make payments towards the Venture (see [14]). The defendants were thus unable to show that the plaintiffs made any misrepresentations to them and their counterclaim therefore fails.

Conclusion

37 In sum, I allow the plaintiffs' claim for breach of contract and find CAMA liable to pay to the plaintiffs the sum of US\$18.018m and interest on this sum at 5.33% per annum pursuant to s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed).

38 Costs to follow the event and be taxed if not agreed.