
HIGHER RIGHTS OF AUDIENCE ASSESSMENT

IN RESPECT OF CIVIL PROCEEDINGS

THE PRACTICAL ASSESSMENT

TRIAL BUNDLE FOR INTERIM APPLICATION AND MINI-TRIAL

Witness Statement of Terry Rui

1. My name is Terence Rui. I reside with my wife at Golden Villa, the Peak, Hong Kong. I am the Managing Director and principal shareholder of Golden Earth Trading (Pvt) Ltd, a Hong Kong registered company. I hold 80% of the issued shares. My wife, Pamela, holds the balance of 20% and is a director of the company. The principal business of Golden Earth is the buying and selling of commodity-based companies.
2. I hold a degree in business management from the University of Sydney, Australia, and for several years after graduation I worked in Australia. It was during this time that I began the business of acquiring small commodity-based businesses in Australia and New Zealand, improving their profitability and then selling them at a profit.
3. I returned to live permanently in Hong Kong in 2005 but continued to travel extensively in Australia and New Zealand for business purposes.
4. In February 2013, I learned that a small business manufacturing spa products (skin lotions, soaps, oils and the like) was for sale in the Pilbara Region of Western Australia. The business was run by a husband and wife, Ted and Marlene Griffiths, and was situated in the small village of Doona Creek. I did not normally deal in this type of business but several friends recommended the products, especially the products containing the oil of the Waga Waga tree. The oil had a very attractive and very unusual aroma which was long-lasting. I realised that, with the exponential growth of spas in South East Asia, the sale of the products offered a real opportunity for profit.
5. On 18 February 2013, I drove into Doona Creek to meet with Ted and Marlene Griffiths in order to discuss the purchase of the business from them. I realized immediately that the business had strong growth potential and entered into an agreement that day to purchase the business from them for the Australian equivalent of HK\$35 million. Because it is of relevance to these proceedings, I should site the principal clause of the handwritten agreement that was drawn up and signed on 18 February 2013. The clause reads:

The buyer, a company to be registered in Western Australia but to be a wholly-owned subsidiary of Golden Earth Trading (Pvt) Ltd. hereby purchases for a cash sum of HK\$35 million the complete partnership business known as Outback Oils, the complete business consisting of, first, the full term remaining of the Waga Tree harvesting licence (17 years), second, the confidential recipe for all the products currently manufactured by the business and, third, the factory premises, all manufacturing equipment of whatsoever nature and wherever situated at all stock in trade.
6. Immediately after I had purchased the business, I flew to Perth where I instructed my solicitors to incorporate a company that would hold the business. That

company was Outback Spa (Pty) Ltd, a wholly-owned subsidiary of Golden Earth Trading.

7. At the same time, I instructed my solicitors to incorporate a second company, that company being Outback Harvesting (Pty) Ltd., also a wholly-owned subsidiary of Golden Earth Trading.
8. Upon the incorporation of both companies, I arranged for the transfer from Outback Spa to Outback Harvesting for consideration of the exclusive 25-year harvesting licence obtained from the Kimberly Indigenous Advancement Council. At the time of transfer, the licence still had 17 years to run.
9. A contract was then entered into between the two companies in terms of which Outback Harvesting agreed to supply all of the oil harvested by it to Outback Spa, the manner of pricing being set out in a schedule. The agreement was subject to notice given by either party to the other of three months.
10. Why did I wish to secure the exclusive licence in this way? I realized immediately that the real potential of the business lay in the ability to obtain the oil of the Waga Waga tree; it was that oil which marked out the spa products. More than that, I realized that the oil had such a distinctive and pleasing scent that, with proper promotion, it could have a global market. It was for that reason that I wished it to be held separately from the business itself. It was a distinct product and could, if necessary, be sold independently.
11. After I had acquired the business, now called Outback Spa, I improved the manufacturing equipment, installed a laboratory and briefed a firm of top Sydney designers to come up with fresh packaging. At the same time, I commenced a campaign in Thailand, Malaysia, Singapore, the Philippines, Hong Kong and China to promote the spa products. As a result of that campaign, I was able to enter into supply agreements with more than 50 exclusive spas.
12. I should add that over the following 24 months I was also able to introduce new products containing the oil.
13. In or about late 2015, I decided to sell the business. It had been expanded and was doing very well. However, there were economic difficulties being experienced in Asia and I thought it prudent to take my profit. I therefore advertised the business for sale in Australia for a sum in Australian dollars equivalent to HK\$50 million.
14. I did receive a number of inquiries but, because of the difficult economic times, none of the potential buyers was able to offer the sum that I required, that is, a figure very close to HK\$50 million.

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15. I was not concerned that I had not found a buyer as I was looking to market the oil secured under the exclusive harvesting licence and in this regard I had been in contact with a number of international companies.
16. As it turned out, however, in late January I was informed that there had been an accident at the factory in Doona Creek in which one of the employees had been seriously injured. Apparently, some of the new manufacturing equipment that I had purchased had malfunctioned. I therefore flew to Australia with my manager, Edgar Wu, arriving by aircraft at Doona Creek on the afternoon of 1 February 2016.
17. It took a couple of hours to sort out matters concerning the accident. I was aware that Dan Brown, my harvesting manager and an employee of Outback Harvesting was in the village and I went to the pub in order to say hello.
18. I should mention that Dan Brown was employed as the harvesting manager at the time when I purchased the business from Ted and Marlene Griffiths and he remained employed but, as I have said, by Outback Harvesting. Indeed, his employment agreement (which I produce into evidence) was with Outback Harvesting. The same form of agreement was entered into with the deputy harvesting manager, Harry Fry, and indeed with all other members of the harvesting team.
19. During my ownership of the business, I had visited Doona Creek on a number of occasions and had struck up a good relationship with Dan Brown and Harry Fry. We would often drink together and play darts.
20. When I saw Dan Brown that afternoon I was very surprised when he told me that he had been able to put together a team of investors, 12 persons in all, and that they wished to purchase the business from me. There was no quibble about the purchase price. It was agreed that a full \$50 million would be paid, half within seven days of the agreement being reached and the balance within seven days of due diligence being successfully completed.
21. I must be frank and say that initially I did not treat Dan Brown's offer seriously. We were drinking in the pub and even, if I remember correctly, we had a couple of drinking races together with Harry Fry. However, it became apparent to me that the Dan Brown was very serious. He told me that he had a number of fellow countrymen in Perth who had done well in the mining business and had investment money to spare.
22. We reached a verbal agreement that afternoon. Regrettably, however, it was getting late in the day and I had traveled to Doona Creek with Mr Wu in a light aircraft. Storm clouds were gathering and I knew that we had to leave without delay. In addition to which, to be honest, I was feeling lightheaded from the drinking. I therefore told Dan Brown that, when I reached Perth, I would confirm the terms of the agreement by way of email. He agreed to this.

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23. I remember that Dan Brown was very excited at the prospect of the agreement and insisted that a photograph be taken showing the two of us shaking hands under the factory sign.
24. During our discussions in the pub, I do remember Dan Brown reminiscing about Ted and Marlene Griffiths and my purchase of the business from them. However, I deny that Dan Brown insisted that the terms of his agreement with me would be the same as the terms of agreement that I reached with Ted and Marlene Griffiths. The fact is that I had always been careful not to mislead any potential buyers, including Dan Brown, of the fact that they would be purchasing the complete business of Outback Spa (Pty) Ltd only. I do recall during our afternoon conversation, while we were laughing and drinking, that I made this clear to Dan Brown and to Harry Fry who was taking part in the conversation. I remember telling Dan Brown that the harvesting licence was, of course, as he knew, in the name of a separate company, Outback Harvesting, but that Outback Harvesting would of course enter into a supply agreement with his company, Brown Snake Acquisitions on equitable terms, that is, exactly the same terms that existed between Outback Spa and Outback Harvesting referred to earlier in this statement.
25. I am aware that Harry Fry will no doubt give evidence on behalf of Dan Brown to say that I agreed during our conversation that the terms of the agreement would specify that the harvesting license would be transferred. As I have said, I have a clear recollection of the conversation and I was very careful to make the true position known. I would add that Harry Fry is a very old friend of Dan Brown. They spend almost 10 months a year in the Bush together and Harry Fry often talks of Dan Brown as his brother. I have no doubt that Harry Fry will say anything that Dan Brown wishes him to say.
26. As to events after I returned to Perth, on 2 February 2016 I sent Dan Brown the following email –

Dan,

I am at Perth Airport getting ready to fly back to Hong Kong. I am delighted that we were able to reach agreement yesterday. I'm sending this email to confirm the terms of that agreement –

- a) It is agreed that your investors syndicate incorporated under the name of Brown Snake Acquisitions has agreed to purchase all the issued shares in Outback Spa for a sum of HK\$50 million. This sum is to be paid in the following manner, that is, by a deposit of HK\$25 million to be paid within seven days [i.e. by the close of business on 8 February] with the balance of HK\$25 million to be paid within seven days of completion of due diligence.*
- b) In purchasing the shares, you are purchasing the complete business of Outback Spa including the factory premises, all manufacturing machinery, all stock in trade and*

the benefit of all supply agreements in place throughout Australia and South East Asia.

- c) You have until 1 March 2016 to complete due diligence. My accountants and lawyers will assist you with whatever information you need. Within seven days of the completion of due diligence the balance of the purchase price will be due and payable.*
- d) Should there be any dispute as to the terms and conditions of this agreement, it shall be governed by the laws of Hong Kong.*
- e) As to the place of payment, I will send you full details of my bank account in Hong Kong within the next three days.*

27. It will be seen that no mention is made in the agreement of the transfer of the harvesting license. It will also be seen that I have made particular mention that what is being purchased is 'the complete business of Outback Spa'. No mention is made of Outback Harvesting.

28. There were a number of emails that followed my original email of 2 February. I can do no better than set out the content of these emails in date order as follows –

Dan Brown's reply on 2 February 2016:

Sorry about poor English. All okay with Hong Kong law. Friends tell me Hong Kong courts okay. All okay with payment too and process of checking everything. My big concern is simple, you know it – you remember Ted and Marlene agreement -, it is that we are buying 'complete business' A to Z.

My email to Dan Brown on 3 February 2016:

I am back in Hong Kong. As far as I am concerned, our agreement is clear. In purchasing all the issued shares in Outback Spa, you are purchasing its complete business, that is, the business of Outback Spa.

Dan Brown's reply to my email of 3 February 2016:

Okay. Pleased no misunderstanding – the complete business.

Dan Brown's email to me on 20 February 2016:

Happy to confirm that our accountants have been through your financial books. They say no problem. So the deal is done, okay? We will be paying the balance of HK\$25 million within the next few days.

I have been in touch with the Kimberly Council to process the transfer of the harvesting rights. I attach a copy of the license transfer form. Please sign an email back as soon as possible. Good doing business with you.

My email to Dan Brown on 26 February 2016:

The harvesting rights were never part of our agreement. You must know that. I never agreed to give you the harvesting rights. The harvesting rights are held by another company, Outback Harvesting (Pty) Ltd. If you had carried out proper due diligence you would have discovered this to be the case. I told you that both my accountants and lawyers ready to assist you. You have always been employed by Outback Harvesting, that is because it owns the harvesting rights, just look at your monthly pay cheques.

Dan Brown's reply on 26 February 2016:

When we discuss this matter in the pub, Harry Fry was there as my witness. He confirms that the harvesting rights were always central to the agreement. The due diligence related to the finances, I never thought for a moment that we would have to dig around among your many companies to try and discover who owned what. Unless you agree within 24 hours to transfer the harvesting license then we will be suing you.

29. I wish to emphasize that in the emails I made it clear that my accountants and my lawyers would assist Dan Brown in fulfilling due diligence. I am able to confirm that I sent to Dan Brown full contact details of my Perth and Hong Kong accountants and lawyers. If any check had been made with my lawyers as to the harvesting licence, my lawyers would have made it plain that the licence was held in the name not of Outback Spa but of Outback Harvesting. It was always a matter for Dan Brown, and those working with him, to make such inquiries as they wished.
30. I agree that there is mention in the emails of my agreement with Ted and Marlene but it is not put into context. I am astounded that, if Dan Brown was so insistent on the terms of the contract concerning the harvesting right being the same as my contract with Ted and Marlene that he did not say more about it instead of merely making some passing reference which I was unable properly to understand.
31. I confirm that I instructed my Hong Kong solicitors to institute action and they did so on my behalf, the plaintiff being Golden Earth Trading (Pvt) Ltd. and the defendant being Brown Snake Acquisitions (Pty) Ltd. In that action I have sought payment of the balance of the purchase price on the basis of a declaration that the terms of the agreement did not include a transfer of the harvesting license.
32. I am told that action has been instituted against Golden Earth Trading (Pvt) Ltd. in Western Australia. I do not consider Western Australia to be the appropriate forum. I would mention that Golden Earth Trading is a Hong Kong incorporated company and that I instituted action ahead of Dan Brown and his co-investors.

Witness Statement of Edgar Wu

1. My name is Edgar Wu. I have been employed for the past seven years by Golden Earth Trading (Pvt) Limited in the role of manager. I am still so employed.
2. I am able to confirm that on 1 February 2016, I flew with Mr. Terry Rui into the township of Doona Creek in order to inspect the damage caused at the factory premises of Outback Spa. I am further able to confirm that, after the inspection, Mr Rui met with a couple of employees of Outback Harvesting who he clearly knew very well. I did not join them as I had papers to complete in respect of the inspection but it appeared to me that it was a purely social gathering. There was a lot of drinking and laughing. I would be surprised that any of the three people, that is, Dan Brown, Harry Fry and my employer, would have had any clear recollection of what was said during the afternoon. However, when we took off to fly back to Perth I do remember Mr Rui saying to me that he “may” have reached an agreement to sell Outback Spa.

Witness Statement of Dan Brown

1. My full names are Daniel Bronski but I am known as Dan Brown. I am one of 12 shareholders, each of us being a director of Brown Snake Acquisitions (Pty) Limited ('Brown Snake'), a limited liability company incorporated in the State of Western Australia on 20 January 2016. I am duly authorized by a resolution of the Board of Directors of Brown Snake to represent the company in this matter.

My personal history

2. I came to Australia 30 years ago from Bulgaria and have lived in Australia since that time. When I first arrived, my English language skills were rudimentary. Although I have learnt to speak English reasonably fluently, I still struggle with written English, more especially as I have always worked outdoors and have never had the need to read and write English with any real efficiency as **would have been the case if I had** worked in an office.
3. When I first arrived in Australia, I worked as a farm manager in the State of Western Australia until in 2008 I was recruited by Ted and Marlene Griffiths who at the time ran a business called Outback Oils. Ted and Marlene manufactured a line of spa products, skin lotions, soaps and the like. Ted and Marlene had always lived in the bush. Ted was a naturopath and knew a great deal about the healing properties of plants that could be found in the bush. Initially, Outback Oils manufactured products with medicinal qualities. However, shortly before I was recruited, they had begun to produce products containing the oil of a tree called the 'Waga Waga' tree. The oil has a wonderful, long-lasting smell and the products containing the oil became very popular, so much so that Ted and Marlene began to concentrate solely on spa products containing the oil.
4. The Waga Waga tree is only found in the Kimberley Region of Western Australia, almost exclusively on land that is entrusted to the management of the Kimberley Indigenous Advancement Council ('the Kimberley Council'). Ted and Marlene negotiated an exclusive 25-year licence to harvest oil from the Waga Waga trees, paying a deposit of AU\$50,000 together with a royalty that was calculated according to the quantity of pure oil obtained from harvesting the trees.
5. Ted and Marlene needed a team to harvest the oil and I was recruited to manage that team. In the result I would spend up to 10 months a year in the bush searching out the trees, harvesting and undertaking the necessary re-planting to ensure long-term supply. My deputy in the team was a man called Harry Fry, an aboriginal from the area. Harry and I became very close friends.

Sale of the business by Ted and Marlene

6. In early 2013, Ted Griffiths informed me that he was thinking of selling the business. He and his wife had health problems and was thinking of retiring, although staying in the area. I very much wanted to purchase the business as I

could see its potential. However, before I could put together a team of investors, Ted informed me that he had sold the business to a businessman from Hong Kong by the name of Terry Rui. He told me that Terry Rui had visited him at the factory premises in Doona Creek in the Pilbara and that they had signed a hand-written deal that same afternoon. Ted, in fact, gave me a copy of the agreement as it contains provisions saying that Terry Rui would continue to employ me and my team to harvest oil. The principal clause of that agreement read:

The buyer, a company to be registered in Western Australia but to be a wholly-owned subsidiary of Golden Earth Trading (Pvt) Ltd. hereby purchases for a cash sum of HK\$35 million the complete partnership business known as Outback Oils, the complete business consisting of, first, the full term remaining of the Waga Tree harvesting licence (17 years), second, the confidential recipe for all the products currently manufactured by the business and, third, the factory premises, all manufacturing equipment of whatsoever nature and wherever situated at all stock in trade.

7. After the purchase, the business was re-named Outback Spa.
8. I continued to work for Terry Rui and had a number of dealings with him. Once every six months or so he would fly in, always in a rush, attend to business at the Doona Creek factory and then fly out again. Terry Rui liked to drink and to boast about his business exploits. On one night, he took Harry Fry and myself to the local pub for dinner. I got pretty drunk and fell asleep but Harry told me the next morning that Terry Rui had said that he had been able to buy Outback Oils for a song, the real value of the business lying in the exclusive licence to harvest the Waga Waga tree oil. Harry remembered him saying that nobody but an idiot would buy the business without full control of the licence.
9. I was aware of the fact that my monthly pay cheque came from a company called Outback Harvesting. But it didn't mean anything to me. I knew that Terry Rui utilised dozens of companies.

The Brown Snake purchase

10. In November 2015, Ted Griffiths telephoned me to say that he had heard that Terry Rui had put the business up for sale. He said Terry Rui was asking for HK\$50 million. Ted told me that he had seen an advert in the local agency and he posted me one of the brochures which read that "the complete business" was for sale. The description was exactly the same description that had been used in the agreement entered into with Ted and Marlene and I automatically assumed that what was being sold was exactly what had been sold by Ted and Marlene to Terry Rui.
11. This time around, I was able to contact 12 people with capital who wished to invest in the business. We agreed to form a company, Brown Snake, each of us to be a director of that company and each of us to have an equal shareholding in it. I was authorized to represent the company in negotiating the purchase of the business on the basis that I was Terry Rui's employee.

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12. While I was in Perth, discussing matters with my co-investors, I received a telephone call from Harry Fry. Harry told me that a French man, apparently the representative of an international cosmetics company called Clarons, had come all the way to Doona Creek to learn more about the oil that we harvested. Harry said that he had shown the man around and even taken him deep into the bush. He said that the man had appeared to be very excited by the potential of the oil. Harry had been left all necessary contact details. This news, of course, was an added incentive to purchase the business from Terry Rui.
13. As it turned out, on 1 February 2016, Terry Rui flew into Doona Creek again. There had been an accident in the factory and he came with one of his managers, a man from Hong Kong.
14. However, that afternoon, before he flew out again, Harry Fry and myself were able to speak to Terry Rui privately in the bar of the local pub.
15. I said that I had been able to put together a team of investors, 12 of us in all, and that we were willing to purchase the business for the sum that was being asked, HK\$50 million. I said that a deposit of HK\$25 million could be paid within seven days with the balance of HK\$25 million being paid within seven days of completion of due diligence. Terry Rui said that he was willing to sell and made a fuss about the fact that it was being passed over to a long-term employee.
16. During our conversation, which was witnessed by Harry Fry, I said to Terry Rui that, after he had purchased the business from Ted and Marlene Griffiths, I had been given a copy of the agreement. I said that, just as his agents' brochures had advertised, I was only prepared to purchase the business if it constituted the 'complete business'. He asked me what I meant by that. I told him that it would be the complete business as per Ted and Marlene's agreement; namely, first, the full term remaining of the harvesting licence, second, the confidential recipe for all the products currently manufactured by the business and, third, the factory premises, all manufacturing equipment and all stock in trade. Plus it was agreed that we would take over all the supply agreements that Terry Rui had secured in Australia and South East Asia. Terry Rui answered almost immediately that, yes, the HK\$50 million would cover all of those things. Harry Fry remembers him saying: "That's what I advertised and that's what you'll get."
17. I wanted to sit down immediately and draw up a hand-written agreement, just as Terry Rui had done with Ted and Marlene. But Terry Rui, as usual, was in a rush. His aircraft was waiting on the dirt strip and he said he had to go.
18. As far as I was concerned, although nothing had been written down, we had a verbal agreement then and there. In fact, in order to mark it, we walked across to the factory building and under the sign of 'Outback Spa' Harry Fry took a photograph of myself and Terry Rui shaking hands. Harry Fry is able to produce that photograph into evidence.

19. There was no reason for me to be in that photograph unless we had reached an agreement, certainly not a photograph in which we are shaking hands. Equally, I would never have entered into an agreement to purchase the complete business of Outback Spa unless it contained the harvesting rights. I have been the man in charge of doing the harvesting, I have known from the beginning about its central importance. In addition, I had been told by Harry Fry of the visit of the French representative of Clarons.

20. The following morning, on 2 February 2016, I received the following email from Terry Rui –

Dan,

I am at Perth Airport getting ready to fly back to Hong Kong. I am delighted that we were able to reach agreement yesterday. I'm sending this email to confirm the terms of that agreement –

- f) It is agreed that your investors syndicate incorporated under the name of Brown Snake Acquisitions has agreed to purchase all the issued shares in Outback Spa for a sum of HK\$50 million. This sum is to be paid in the following manner, that is, by a deposit of HK\$25 million to be paid within seven days [i.e. by the close of business on 8 February] with the balance of HK\$25 million to be paid within seven days of completion of due diligence.*
- g) In purchasing the shares, you are purchasing the complete business of Outback Spa including the factory premises, all manufacturing machinery, all stock in trade and the benefit of all supply agreements in place throughout Australia and South East Asia.*
- h) You have until 1 March 2016 to complete due diligence. My accountants and lawyers will assist you with whatever information you need. Within seven days of the completion of due diligence the balance of the purchase price will be due and payable.*
- i) Should there be any dispute as to the terms and conditions of this agreement, it shall be governed by the laws of Hong Kong.*
- j) As to the place of payment, I will send you full details of my bank account in Hong Kong within the next three days.*

21. When I received the email, unfortunately Ted and Marlene were away on holiday. I therefore had to struggle with the written English on my own. I replied as follows, my email going out that same afternoon –

Sorry about poor English. All okay with Hong Kong law. Friends tell me Hong Kong courts okay. All okay with payment too and process of checking everything. My big concern is simple, you know it – you remember Ted and Marlene agreement -, it is that we are buying 'complete business' A to Z.

22. On 3 February 2016, the following email was received from Terry Rui –

Dan, hi,

I am back in Hong Kong. As far as I am concerned, our agreement is clear. In purchasing all the issued shares in Outback Spa, you are purchasing its complete business, that is, the business of Outback Spa.

23. I replied the same afternoon –

Okay. Pleased no misunderstanding – the complete business.

24. On 4 February 2016, I arranged for the transfer of the HK\$25 million to Terry Rui's bank account in Hong Kong. Receipt was confirmed. Our Perth accountants then worked with their Hong Kong agents to complete due diligence. Myself and the fellow investors were told that there was no problem with the finances and a satisfactory schedule of all the manufacturing machinery and stock in trade was prepared.

25. That being the case, on 20 February 2016 I sent the following email to Terry Rui –

Happy to confirm that our accountants have been through your financial books. They say no problem. So the deal is done, okay? We will be paying the balance of HK\$25 million within the next few days.

I have been in touch with the Kimberly Council to process the transfer of the harvesting rights. I attach a copy of the license transfer form. Please sign an email back as soon as possible. Good doing business with you.

26. On 26 February 2016, the following email was received from Terry Rui –

The harvesting rights were never part of our agreement. You must know that. I never agreed to give you the harvesting rights. The harvesting rights are held by another company, Outback Harvesting (Pty) Ltd. If you had carried out proper due diligence you would have discovered this to be the case. I told you that both my accountants and lawyers ready to assist you. You have always been employed by Outback Harvesting, that is because it owns the harvesting rights, just look at your monthly pay cheques.

27. When I received the email, I was shocked. Terry Rui had never said anything to the effect that he had transferred the harvesting rights to some other company. It was always agreed, verbally agreed and clearly implied in the emails, that the sale of the complete business included the harvesting rights.

28. As for the fact that my pay cheques were signed on behalf of some company called Outback Harvesting, I never thought anything of it. I assumed it was just

part of Terry Rui's pyramid of companies put in place perhaps for tax purposes. In any event what was the difference? He had agreed to transfer the harvesting rights as part of the agreement.

29. I was very angry and sent the following reply by email the same day –

When we discuss this matter in the pub, Harry Fry was there as my witness. He confirms that the harvesting rights were always central to the agreement. The due diligence related to the finances, I never thought for a moment that we would have to dig around among your many companies to try and discover who owned what. Unless you agree within 24 hours to transfer the harvesting license then we will be suing you.

30. I did not receive a reply.

31. I had to discuss matters with my investors and this took several days. During that time, I received a telephone call from France, from a Mr Henri Blanc of Clarons, who said that Clarons was very interested in fostering a business relationship. Mr Blanc spoke about taking a very large percentage of our annual harvest of oil.

32. In light of this, it was agreed that we must proceed to seek to enforce the agreement that was reached, namely the purchase of the complete business which included the full term remaining of the harvesting licence.

33. On the basis that Australia was the natural forum for the resolution of the matter, Brown Snake's Perth solicitors issued proceedings out of the Supreme Court of Western Australia, doing so on 6 April 2016. I understand that, in terms of the statement of claim, Brown Snake has sought a declaration as to the true terms of the agreement, namely, that it includes the sale by Golden Earth Trading of the harvesting rights, and on that basis has tendered payment of the balance of HK\$25 million.

34. I learnt several days later that Terry Rui had issued his own proceedings in Hong Kong on 4 April 2016, two days earlier, the Plaintiff in the Hong Kong proceedings being Golden Earth Trading (Pvt) Ltd and the defendant being Brown Snake. In those proceedings, in seeking payment of the balance of the purchase price, Terry Rui has sought a declaration that the terms of the agreement do not include a transfer of the harvesting licence.

35. On the basis that Western Australia is the most appropriate forum, instructions have been given to make an application to the Court of First Instance in Hong Kong seeking a stay of proceedings on the basis of *forum non conveniens*.

Witness Statement of Harry Fry

1. My name is Harry Fry. I am an elder of the Juni people of the Pilbara, our totem being a wombat. I have lived all my life in the Pilbara. It is my people's ancestral country.
2. I have worked with Dan Brown as his deputy harvesting the oil of the Waga Waga tree since 2008. We have become as close as brothers. I know him to be an honest, no-nonsense man. His handshake is as good as a signature.
3. When I first started harvesting with Dan, we worked for Ted and Marlene Griffiths who ran a partnership business called Outback Oils. In 2013 that business was sold to Terry Rui who had a company called Outback Spa. We then worked for Outback Spa. Nobody said we worked for some other company. We got a pay cheque every month from Outback Harvesting (Pty) Ltd but nobody thought anything of that. Whenever we had vehicle repairs to pay for, the cheques were in the name of some company called Pilbara Finances. But that didn't mean the vehicles belonged to that company. They were Outback Spa vehicles.
4. After the business went to Terry Rui, we would see him once in a while. I remember that Terry liked to drink. One night in the pub – the Old Khaki – Terry was boasting (as usual) about his exploits and told me that he had got the business 'for a song' off Ted and Marlene. By that I took it to mean he had got the business real cheap. Terry then went on to say that the real value of the business lay in the harvesting rights, without those rights it was nothing. I remember him saying that nobody but an idiot would buy the business without the harvesting rights. He said something about that's why he had taken steps to protect the harvesting rights – 'lock them away', was what he said. Dan had fallen asleep when this talk took place but I told him about it the next morning.
5. In around November 2015, Dan told me that Terry Rui was thinking of selling the Outback Spa business. He asked if I wanted to be part of his investment syndicate but I am not interested in such things: just so long as I can keep my job. But I knew that Dan got a bunch of investors together.
6. When Dan was down in Perth organizing matters with his investors, we had a visit at Doona Creek from a French gentleman. He told me he worked for a big French company called Clarons. He said Clarons was very interested in the oil that we harvested, that he had heard good things about it. So I showed him around, took him out into the bush, let him have a sample of the oil and the like. When the man left he seemed very happy. He said he would be in contact and left his business card which I can produce into evidence. His name, I remember, was Henri Blanc. I of course telephoned Dan to give him the news and got pretty excited.
7. On 1 February 2016, when Dan and I were in Doona Creek, Terry Rui flew in. There had been an accident in the factory. A bit of machinery had broken and injured one of the ladies working there, mangled her hand pretty bad. So Terry

had come to look into it. I remember he flew in with a manager of his, a man from Hong Kong called Wu.

8. That afternoon I was with Dan in the pub when Dan proposed to Terry Rui that he and his syndicate people buy the business. Dan didn't bargain over the purchase price which surprised me. But he made it clear that he wanted the same terms as Ted and Marlene had given Terry when they sold him the business. Dan said that he had been given a copy of that agreement by Ted. Dan said that he wanted to buy the 'complete business' of Outback Spa and I heard him then spell out what that meant. He said it had to include the remaining time left on the harvesting licence – that was most important -, all the cooking directions for the products, the factory premises, machinery and stuff and stock in trade. Plus he wanted the supply agreements to the expensive beauty places around the world. Terry Rui seemed happy; no problems. I remember he said: 'That's what I advertised and that's what you'll get.'
9. I remember that Dan then said, okay, let's write something up. But Terry's aircraft was on the strip waiting. So instead I took a photograph of Dan and Terry shaking hands under the Outback Spa sign on the factory wall. I took it with my mobile telephone and attach a true copy.
10. When Terry got in his plane and flew out with his manager, we had a big celebration. All of Doona Creek got drunk. Everybody was very happy that the business was being made 'local' again. That night, I had no doubt in my mind whatsoever that Terry had agreed to transfer the harvesting rights as part and parcel of the agreement: in fact, the most important part. After the visit of Henri Blanc we both knew how important those rights were.
11. On 15 February 2016, I was in a car accident and badly hurt. I got my hips smashed up and now I can't walk. But it has not affected my memory.
12. I have been told that I may have to go to Hong Kong to give evidence in this matter. There is no way I can go. For the Juni people, once injured like me, there is only one way to get better long-term. That is to stay in the ancestral country, stay with the spirits. If I leave the land then I am dead, no doubt. I can go down to the coast for a day or so; that's just an extension of our land. But to leave Australia, no – that's impossible for me.