

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**COMMERCIAL COURT**

**B E T W E E N:**

**SONG MAO & OTHERS**

**Claimants**

**- and -**

**(1) TATE & LYLE INDUSTRIES LIMITED**

**(2) T & L SUGARS LIMITED**

**Defendants**

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**PARTICULARS OF CLAIM**

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**The Parties**

1. The Claimants (the "**Villagers**") are 200 villagers and former residents of the Chikhor, Chhouk and Trapaing Villages in the province of Koh Kong in Cambodia. At all material times the Villagers have been the owners and/or legally entitled to possession of 1,364 hectares of land (the "**Land**") located within the aforementioned villages/province of Cambodia. The Villagers' names, together with particulars of the areas of land which they own and to which they are legally entitled to possession, are set out in the Annex to these particulars and cross referenced to the maps also contained in the Annex.
2. The First Defendant ("**Tate & Lyle**") is a subsidiary of Tate & Lyle plc, a British based multi-national corporation who, at all material times, carried on business including, *inter alia*, the importation and refining of sugar within England & Wales. Tate & Lyle is a limited company registered in England (number 00699090) at 1 Kingsway, London, WC2B 6AT.
3. The Second Defendant, T & L Sugars Limited ("**T&L Sugars**") is a subsidiary of American Sugar Holdings Inc, the world's largest sugar refiner who at all material

times carried on business including, *inter alia*, the refining of sugar. T&L Sugars is a private limited company registered in England (number 07318607) at T & L Sugars Limited, Thames Refinery, Factory Road, Silvertown, London, E16 2EW. On or around 30 September 2010 Tate & Lyle sold its sugar refining business to T&L Sugars.

4. The Koh Kong Plantation Co. Ltd is a Cambodian company whose registered director is Ly Yong Phat, a Cambodian national and Senator of the Kingdom of Cambodia ("**Senator Ly**").
5. The Koh Kong Sugar Industry Co. Ltd is a company registered to Mr Chamroom Chinthammit.
6. Both the Koh Kong Planation Co. Ltd and the Koh Kong Sugar Industry Co. Ltd (together the "**Koh Kong Companies**") carry on business including, *inter alia*, the agro-production and processing of sugar cane in Koh Kong Province, Cambodia. The Koh Kong Companies, which share offices at 205, 207 and 209 Mao Tse Tong Blvd, Sangkat Tuol Svay Prey, Khan Chamcarmorn, Phnon Penh, operate as a single joint venture and are owned/controlled by the following three parties:
  - 6.1 Khon Kaen Sugar Industry Public Company Limited, a Thai company with offices at 503 K.S.L Tower 9<sup>th</sup> Floor, Sri Ayutthaya road, Ratchatewi District, Bangkok 10400, Thailand which owns 50%;
  - 6.2 Ve Wong Corporation, a Taiwanese company with offices at 5<sup>th</sup> Floor, No 79, Chungshan N. Road, Taipei City, Taiwan, Republic of China which owns 30%; and
  - 6.3 Senator Ly who owns 20%.

#### **Background to the Claim - Abuse of the Villagers and clearance of the Land**

7. Since at least 1996 to 19 May 2006 the Villagers owned and lived upon the Land, utilising it to maintain a traditional subsistence lifestyle. The Land was, and remains, the private property of the Villagers.
8. From around 19 May 2006, agents, including armed military police (the "**Land Clearance Agents**") acting on behalf of the Government of Cambodia (the "**Government**") and/or the Koh Kong Companies began, without prior warning, to

clear the Land for the purpose of granting Economic Land Concessions ("ELC") for the establishment of a plantation upon which sugar cane was to be grown.

9. Article 58 of the Cambodian Land Law 2001 (the "**Land Law**") states that, "*a [lawful ELC] can only be granted on lands that are part of the private property of the State of Cambodia,*" not the private property of individuals.

10. Article 59 of the Land Law states that land concessions shall, "*not be more than 10,000 hectares*" and that, "*the issuance of land concession titles on several places relating to surface areas that are greater than [10,000] hectares in favour of one specific person or several legal entities controlled by the same natural persons is prohibited*".

11. In August 2006 the Government, without any public consultation, purported to grant the Land by concession to the Koh Kong Companies. In order to circumvent Article 59 the Land was divided into two concessions, approved by council ministers on 20 March 2006, with one concession granted to each of the Koh Kong Companies who signed the contracts on 2 August 2006:

11.1 one concession of 9,400 acres was awarded to the Koh Kong Plantation Co Ltd; and

11.2 one concession of 9,700 hectares was awarded to the Koh Kong Sugar Industry Co Ltd.

12. The process by which the concessions were granted to the Koh Kong Companies was illegal as:

12.1 The Land was owned by the Villagers, not the state;

12.2 The concessions relate to an area of land which substantially exceeds 10,000 hectares; and

12.3 The Cambodian Government did not ensure that any of the conditions required by the following sub-decrees and laws on the granting of ELCs were met:

12.3.1 The Sub-Decree on Land Concessions;

12.3.2 The Sub-Decree on State Land Management;

12.3.3 The Circular of Instruction No. 05 on the Grant of Economic Land Concessions for Investment; and

12.3.4 The Law on Environmental Protection and Natural Resources Management.

13. Furthermore in clearing the Land the Villagers were subjected by the Land Clearance Agents to significant, sustained, and unconscionable abuses of their human rights (the "**Abuses**"). These Abuses included, *inter alia*:

13.1 Multiple instances of battery and criminal violence, resulting in significant injuries to seven of the Villagers, with at least two Villagers being shot and wounded;

13.2 Multiple instances of arson, theft and wrongful damage, resulting in:

13.2.1 The clearance by the Land Clearance Agents of fields (some planted with crops) from the Land;

13.2.2 The destruction of the Villagers' homes and possessions upon the Land; and

13.2.3 The destruction and/or theft at least 60 cows and buffalo belonging to the Villagers.

13.3 The eviction by force of various of the Villagers from the Land and the establishment of a continued presence of Land Clearance Agents who both extorted money from the Villagers and ensured that the Villagers could not return to the Land; and

13.4 The murder in 2007 of An In, a local land activist who had been taking pictures of the land clearances.

**The Abuses were well-documented**

14. The aforementioned Abuses amounted to violations of the International Covenant on Economic, Social and Cultural Rights. The fact that the Abuses were taking place was well documented and was well known and publicised both within Cambodia and internationally:

- 14.1 On 12 November 2006, representatives from the Koh Kong Companies met with representatives of the Villagers and agreed to cease clearing the Land pending final resolution of the dispute;
- 14.2 In February 2007 civil and criminal complaints were filed with the Koh Kong Provincial Court in Cambodia (the "**Cambodian Court**") on behalf of the Villagers. After over 5 years of delay, on 30 August 2012 the Cambodian Court referred the complaints to the Koh Kong Provincial Cadastral Survey Commission "to take action". To date no action has been taken;
- 14.3 Following a public appeal to the government made by 120 of the Villagers in Phnom Penh in March 2007 and pressure from USAID, the Ministry of the Interior within Cambodia assured the Villagers that Land Clearance Agents would cease to clear the Land;
- 14.4 Further public appeals (including a live radio-talk show) were held in February and March 2008; and
- 14.5 In August 2008 and March 2009, the Community Legal Education Centre ("**CLEC**") complained to the Koh Kong Companies about the illegality of its operations, providing evidence of the Villagers' ownership of the Land.
15. At the date of issue no or no adequate compensation or consideration has been received by the Villagers in respect of the aforementioned.
16. The Abuses were researched and summarised in a dossier dated 12 July 2010 (the "**Dossier**") compiled by CLEC's Public Interest Legal Advocacy Project.
17. In the premises, it is to be inferred that Tate & Lyle were aware of the aforementioned Abuses (or ought to have known of them given its position as a leading player in the sugar market) and, in any event, a copy of the Dossier, which is publicly available, was sent to Tate & Lyle by CLEC on or around 12 July 2010.

### **The Sugar**

18. From 2006 onwards the Koh Kong Companies utilised the Land lawfully owned by the Villagers for the cultivation of sugar cane (the "**Sugar Cane**"). The Sugar Cane was then processed in Cambodia into raw sugar at the Sre Ambel Mill, owned by the Koh Kong Sugar Industry Co Ltd.

19. Article 94 of the Land Law provides that, "*The owner of immoveable property is entitled to receive all types of fruits from such property*".
20. Article 95 of the Land Law provides that, "*The fruits resulting from cultivation of land belong to the owner of such land, provided he pays third parties for the cost of plowing and harrowing works, labor done by them and seeds*".
21. In the premises it is averred that at all times the Villagers have been the owners of and are entitled to possession of the Sugar Cane and that the Koh Kong Companies at all material times unlawfully held and dealt with both the Land and the Sugar Cane.
22. In cultivating the Sugar Cane the Koh Kong Companies worked with PAPL Consultants ("**PAPL**"), a consultancy firm conducting business within the global sugar industry whose website describes it as having "*considerable experience of working within Cambodia*". PAPL were also chosen by the Koh Kong Companies and Tate & Lyle to develop the sugar cane estates on the Land.
23. In or around 2009 the Koh Kong Companies unlawfully and without the authority or consent of the Villagers agreed to sell raw sugar derived from the Sugar Cane (the "**Raw Sugar**") to Tate & Lyle for five years at a price believed to be 19 cents per pound.
24. On or around 10 June 2010 Tate & Lyle, without the Villagers' consent, accepted delivery and took possession of, at its Thames refinery within the United Kingdom, the first consignment of approximately 10,000 tonnes of Raw Sugar.
25. When accepting and taking delivery of the Raw Sugar, Tate & Lyle knew that the Villagers were the owners of and legally entitled to possession of the Raw Sugar or ought to have known given its position as a leading player in the sugar market.

#### **Conversion by Tate & Lyle**

26. By reason of the aforesaid facts and matters, Tate & Lyle wrongfully deprived the Villagers of the ownership, use and possession of the Sugar Cane processed into the Raw Sugar and converted the same to its own use.
27. By reason of the conversion, the Villagers have suffered loss and damage.

### **Liability of T & L Sugars**

28. As already pleaded at paragraph 3 above, on or around 30 September 2010, Tate & Lyle sold its sugar refining business to T & L Sugars and novated its contracts with the Koh Kong Companies in favour of T & L Sugars.
29. To the extent that T & L Sugars has acquired Raw Sugar processed from the Sugar Cane pursuant to the said contracts it has wrongfully deprived the Villagers of the ownership, use and possession of the said Sugar Cane and has converted the same to its own use. By reason of the conversion, the Villagers have suffered loss and damage.
30. Prior to Disclosure and/or the availability of expert evidence, the best particulars the Claimants can provide is that each hectare of the Land would produce around 40 metric tonnes of Sugar Cane per annum. At US\$41.88 per metric tonne the value of the Sugar Cane which is capable of being produced on the Land each year is approximately US\$2,285,397.
31. Jones Day, solicitors for the Claimants, wrote to Tate & Lyle plc on 1 February 2012 indicating that they had been instructed to seek redress for the Villagers and requesting copies of (i) the contract or contracts between Tate & Lyle and the Koh Kong Companies, (ii) invoices evidencing the price Tate & Lyle paid for the Raw Sugar purchased pursuant to those contracts and (iii) the terms upon which Tate & Lyle novated or otherwise transferred those contracts to American Sugars Refining or any other party, person or entity and the dates of such transfer or transfers. Jones Day made the same request of T&L Sugars on 1 June 2012. The Defendants did not provide the documents requested and the Villagers are therefore unable to provide better particulars of their losses until such time as the documents are made available. The Claimants repeat their request for those documents herein.

### **Interest**

32. The Villagers are entitled to and claim interest at such rate and for such period as the Court deems just pursuant to s. 35A of the Senior Courts Act 1981.
33. The Villagers therefore claim against Tate & Lyle and T & L Sugars:
- 33.1 Damages for conversion;

33.2 Interest as aforesaid; and

33.3 Costs.

DERRICK DALE QC

NICOLE LANGLOIS

JAMES DUFFY

DANIEL EDMONDS

**Statement of Truth**

The Claimants believe that the facts stated in these Particulars of Claim are true. I am duly authorised by the Claimants to sign this statement.

Signed: 

Date: 28 MARCH 2013

Name: S B BROWN

Position or office held: Partner

Served this 28th day of March by Jones Day, 21 Tudor Street, London EC4Y 0DJ (Ref: SB/RM 309604.600001). Tel: 020 7039 5959 Fax: 020 7039 5999. Solicitors for the Claimants.



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