Sutjiawang Johanis alias Tjia Eng Liong v Tjia Eng Soei
[2002] SGHC 94

Case Number : Suit 600025/2000

Decision Date : 30 April 2002

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Lee Mun Hooi and Ng Chon Hsing (Lee Mun Hooi & Co) for the plaintiff; Francis Xavier and Jessie Tan (Rajah & Tann) for the defendant

Parties : Sutjiawang Johanis alias Tjia Eng Liong — Tjia Eng Soei

Judgment

GROUNDS OF DECISION

Overview and pleadings

1 The plaintiff and the defendant are brothers. Both of them are now in their seventies, the defendant being the younger of the two. Both of them are, as their names would suggest, Indonesians of Chinese extraction and come from a trading family. The defendant migrated to Singapore in the early seventies. He now lives in Singapore with his wife and many children. He has been a big player in the Singapore stock market, at least until 1998. The plaintiff is still based in Indonesia although he is a frequent visitor to Singapore.

2 The action before me involves a claim of over 20 million Singapore dollars. The plaintiff says that the defendant owes this amount on account of monies lent by him to the defendant and monies due to him in respect of a huge number of public listed shares bought on his behalf as well as foreign currency transactions carried out in his name by the defendant, all from monies belonging to the plaintiff. The plaintiff's pleaded claim comprises: (a) a sum of S$1,317,158.22 being the outstanding balance of monies lent or advanced by him to the defendant; (b) a sum of S$13,738,138.69 being the value of several blocks of listed shares that belonged to the plaintiff; (c) a sum of S$4,069,000 being the proceeds of the sale of 2,145,100 listed Apollo shares sold by the defendant to which the plaintiff was beneficially entitled; and (d) for a further sum, this time, of US$750,000 due from the defendant arising from foreign currency sale and purchase carried out by the defendant in the plaintiff's name. It must be remarked at this stage that the plaintiff almost entirely relies on the record books and entries kept by the defendant to support his claims. I will touch on this later when I deal with the evidence presented by the parties at the trial.

3 The defendant in his defence denies the entire claim of his older brother. He says that although he had bought and sold shares in the name of the plaintiff, they were not for the benefit of the plaintiff. He says that although the plaintiff did from time to time remit various sums of money to him, those remittances were in fact the fruits of the defendant's investment in an Indonesian Bank known as P.T. Bank Pelita ('Bank Pelita') for which purpose the defendant forwarded a sum of Hong Kong $100,000 to the plaintiff sometime in or about 1964. The defendant claims that the said investment was by agreement between themselves, held in the name of the plaintiff and the latter held the stake and the fruits of the investment in trust for the defendant. He denies that he owes any monies to the plaintiff and counterclaims against the plaintiff for an account in respect of the defendant's alleged investment and other consequential declarations and relief.

4 In the reply filed by the plaintiff, he avers that the sum of HK$100,000 forwarded to him by the

defendant was in fact a gift from his mother and was not meant for any investment as claimed by the defendant.

5 The plaintiff's evidence insofar as is material is as follows. He is a permanent resident of Singapore. He has three brothers and four sisters. Among the sons, he is the oldest, followed by the defendant, and two others, namely, Tjia Siong Kok alias Tjia Eng Tek ('Eng Tek') and Ade Sutjiawa alias Tjia Tian Su ('Tian Su'). The family was living in a small town known as Tagulandang in Sulawesi, Indonesia where his father had a small business dealing in copra and nutmegs. When he was about 17, his father passed away and as a result he was forced to stop his education and assist his mother in the family business. At that point in time, the defendant was still in primary school in Indonesia.

6 After the defendant had completed his primary education, he also started assisting in the family business. The business was generally controlled by their mother. The other brothers also assisted in the family business after they had completed their secondary education. The family business expanded from their hometown to other towns in Sulawesi. The defendant too helped out in the family business and occasionally travelled to Surabaya to look for business opportunities.

7 Sometime in 1957, the plaintiff left his hometown to strike out on his own. In the event, he set up his own trading business primarily in the import and export of canned food, milk products and liquor (particularly specialising in Johnny Walker whiskey). He became very successful and at one stage and had a virtual monopoly of the Johnny Walker whiskey trade in Jakarta. After he left his home town, he no longer participated in nor did he continue to have any share in the family business. Equally, the businesses which he had started and was operating away from home, were entirely his own, without any family participation in them.

8 He said that there had never been any family arrangement, as is being alleged by the defendant, whereby the defendant would from time to time remit monies to members of the family for the purposes of investing those sums and holding them in trust for him. As regards the defendant's claim concerning the HK$100,000, the plaintiff said that this sum was a gift to him from his mother and was never intended for any investment on behalf of the defendant.

9 The plaintiff kept in constant contact with the defendant who was residing in Singapore. Amongst all the siblings, the plaintiff was close to the defendant and had a healthy respect for the defendant's business acumen. From about 1977, as the plaintiff's business was thriving, upon the encouragement of the defendant, he started remitting monies to Singapore for the purposes of investing in the stock market. All the share transactions effected on his behalf by the defendant, as well as monies received and paid out, either on behalf of the plaintiff or members of his family, were duly recorded in account books kept and maintained by the defendant's wife, The Ge Nio. These book entries were regularly shown to the plaintiff whenever he happened to be visiting and staying at the residence of the defendant at 255 Jervois Road, Singapore. The plaintiff's youngest son, Dermawan Sutjiawang ('Dermawan') too visited Singapore many times to verify the accounts maintained by the defendant's wife and was allowed access to them without any protests either from the defendant or his wife. As time went by, his investments became substantial. Since the plaintiff was not a frequent traveller those days, he even gave a power of attorney to the defendant sometime in October 1980, empowering the defendant to act on his behalf in all matters including the buying and selling of shares. He even authorised the defendant to be a signatory to his bank account (No. 23-30-954) with the ABN-AMRO Bank.

10 The defendant also on several occasions borrowed substantial sums of monies from the plaintiff for himself as well as for the defendant's eldest son Tjia Beng Thong whom the defendant said had financial problems and needed help. Particulars of the outstanding loans, according to him had been

detailed in para 3 of the statement of claim. The amount outstanding under this head is S$1,317,158.22.

11 As respects the shares purchased on the plaintiff's behalf, the plaintiff realised to his dismay that on or about 4 September 1998, all his shares, save for two counters had been sold and disposed of without his authority. He estimates their value to be in the region of S$13,000,000 or thereabouts. In para 5 of the statement of claim the amount is quantified as S$13,738,138.69.

12 The plaintiff asserted that the defendant is to pay him a further sum of S$4,069,000 as being the amount drawn out by the defendant from the plaintiff's ABN-AMRO bank account, where the sale proceeds of a block of 2,145,100 Apollo shares were earlier credited. The plaintiff claimed that he is the rightful owner of the said Apollo shares.

13 The plaintiff added that the defendant is also indebted to him in the sum of US$750,000. This is the nett balance from a sum of US$1,000,000 taken from his account by the defendant for trading in US Dollar currency, as could be seen from the books maintained for the plaintiff's benefit by the defendant's wife. In respect of all these accounting matters, the plaintiff places reliance on the books kept by the defendant's wife. He produced a number of account books which were in the handwriting of the defendant's wife as well as members of the defendant's immediate family.

14 The plaintiff's youngest son Dermawan, in his evidence confirmed that he had on several occasions gone over to the defendant's residence to inspect the accounting records kept by his aunt, the defendant's wife, in relation to his father's shareholdings. He said that those records were readily made available to him by his aunt and at no stage was there any statement or indication either from the defendant or his wife that the shareholding or payments recorded in the books belonged to the defendant or that the shares recorded in those books were held in trust for the defendant.

15 Dermawan invited the attention of the court to a number of entries in the books kept by the defendant's wife, particularly in relation to: (1) periodical Central Provident Fund payments for Dermawan's maid's levy; (2) periodical payments for premiums in respect of insurance policies taken out for himself, his daughter, his sisters, his brother Tony and his father; (3) periodical payments of maintenance fees payable to the management corporation in respect of an apartment at #02-02 Killiney Apartment which belonged to his side of the family; (4) periodical payments of property tax for the said Killiney Apartment; (5) various payments for his father's personal use and expenses; and (6) other payments made for and on behalf of his father. He also highlighted an incident when the defendant's wife corrected the book entries when Dermawan pointed out to her certain substantial errors in relation to some loans given by his father to the defendant. In this regard, para 19 of his affidavit of evidence-in-chief requires reproduction. It reads:

> 19. On one occasion when I inspected "DS-3" [DB-99] I had noticed that there were erroneous entries recorded on 7 November 1997.
>
> > (1) My aunty had recorded that under my father's account, he had "received" under credits the sum of $153,000.00, $676,000.00, $170,000.00 and $179,000.00.
> >
> > (2) Subsequently, my aunty recorded debits for the similar sums as though these sums had been paid to my father.
> >
> > (3) In actual fact, these sums were loans extended to the Defendant at the latter's request.

> (4) My father requested me to issue these loans to the Defendant. Copies of the cheques are annexed hereto and marked as "DS-4".
>
> (5) These loans were subsequently repaid by the Defendant with interest to me. Annexed hereto and marked as "DS-5" are copies of OCBC Bank deposit slips evidencing this repayment.
>
> (6) When I noticed these erroneous "double" entries in "DS-3", I brought the same to the attention of my aunty and the Defendant that these entries had to be deleted of which my aunty did accordingly.
>
> (7) Again, I would like to stress that if "DS-3" were not records kept for the benefit of my father, my aunty or the Defendant could have objected to my request for it to be deleted. My aunty and the Defendant willingly acceded to my request for it to be deleted.

16 Eng Tek, the younger brother of both the plaintiff and the defendant testified on behalf of the plaintiff. In essence, his evidence was that the plaintiff left home sometime in 1957 to venture on his own and in the event became successful. He further denied the defendant's allegation that there was an arrangement amongst the family members that the defendant would from time to time remit monies to invest and hold it in trust for the defendant. He also invited the court's attention to a family arrangement made sometime in May 1974 among the members of the family before their mother, the matriarch of the family, passed away. He added that the family arrangement had the express consent of their mother and that in the arrangement, the plaintiff was not provided with anything because he had left the family business as early as 1957.

17 Tian Su, another younger brother of the contestants in this action confirmed the evidence of Eng Tek. In short, Tian Su denied that there was any investment or trust arrangement between the defendant and any members of the family.

18 Before I deal with evidence adduced by and on behalf of the defendant, it should be remarked once again, that the plaintiff's evidence by and large revolved around a vast number of entries found in the books kept by the defendant's wife.

Defendant's evidence

19 Insofar as is material, the defendant's evidence can be summarised as follows. He is in his seventies and was born to a family of eight children. He was the fourth, born two years after the plaintiff who was born in 1927. He married his wife, The Ge Nio in 1951 and has seven children. He comes from a fairly well-to-do family living in a small Indonesian island known as Tagulandang. The Second World War changed everything when the occupying Japanese seized all their properties. He was 16 then. In order to ensure his family's survival, he gave up schooling, hired a small car-boat and started plying the nearby islands selling and buying pigs, rice and other provisions. As their family business had been out of operation for some time, his trading was the only source of income for the whole family.

20 In 1948, after the war ended, he and his mother restarted the family's provision shop. The volume of trading was very low. The plaintiff and the other siblings helped their mother in running the shop whilst the defendant continued plying the nearby islands. The plaintiff did not help him in that endeavour. The family in fact relied on the defendant for material support since the yield from the provision shop was barely sufficient to meet the family needs. As a result of the defendant's trading activities, the family finances improved. By about 1950, he had earned enough to send three of his siblings to school, all through his own efforts.

21 Sometime around 1948, as his business became prosperous, he joined hands with one of his friends, Petrus Budiman ('Petrus') in the latter's business outfit, Sin Eng Hong Trading ('SEH Trading') in Manado. Since his equity in the company was large, he requested the plaintiff to help him out in the company's business, which the plaintiff did. In the years 1956 and 1957, the defendant encountered some serious difficulties. His creditors appeared at his shop at Manado and grabbed literally everything from the shop, thinking that the defendant was going bankrupt and would not be able to meet his obligations to them. To his dismay, the plaintiff also took that opportunity to withdraw monies owing to the defendant from SEH Trading without informing the defendant and left for Jakarta. All the same, the plaintiff did not prosper, his ventures floundered, he was rendered penniless by about 1960 and eventually became an assistant in a street stall vending canned food in Jakarta run by the defendant's brother-in-law, Phui Hock Leng.

22 After learning the plaintiff's plight, their mother became concerned and intimated to the defendant that she wanted to visit the plaintiff in Jakarta. At this time, the defendant was spending most of his time in Surabaya on business. Just before his mother's departure he handed her a cheque for a sum of Indonesian Rupiah 100,000, a princely sum at that time, to be given to the plaintiff. With that money, the plaintiff purchased a small shop in Jakarta and started trading in canned food and alcohol on his own. The defendant whose business was thriving by then regularly visited Surabaya and Jakarta and met the plaintiff often. From about 1962 and until 1966, he had given the plaintiff large sums of monies totalling Indonesian Rupiah 30 million, about 27 million for payment towards the defendant's obligations and the balance for the plaintiff's own business. The defendant was anxious to help his older brother as he did not want to see him and his family facing any financial difficulties.

23 In or about 1955, he requested Eng Tek to assist in the defendant's business in Manado and since about 1958, whatever assets and properties acquired by him through his own efforts in Indonesia were all registered in the name of Eng Tek and Tian Su. He did so as he was at that stage still a Chinese National whilst his brothers were Indonesian Nationals. Another reason was that he wanted to demonstrate clearly to his mother and his siblings that he intended to treat all his assets as family assets which would be utilised by him to take care of all the family members. He strongly believed in the Chinese doctrine: 'Tong Xin He Li Quan', meaning: 'all united in one heart', so much so, he even used each word in the phrase to name his five sons.

24 In or about 1964, the plaintiff asked the defendant whether he would be interested in investing in Bank Pelita which was being set up in Jakarta, by the plaintiff's close friend and neighbour, one Oei Tiong Ham. The defendant agreed to make an investment of HK$100,000 in return for a 10% stake in the bank. Consequently, he arranged to remit the said amount to Oei Tiong Ham for the purposes of investing in the said bank. The plaintiff agreed then that the shares the defendant was entitled to as a result of his investment would be registered in the name of the plaintiff and that the latter would hold them in trust for the defendant. The reason was at that time the plaintiff was stationed in Jakarta whilst the defendant was based in Makassar. The plaintiff at that point in time, although financially stable and did not require the defendant's help, was nevertheless not in a position to invest in the bank himself.

25 The defendant's investment in the bank also entitled him to a 7% stake in a company known as P.T. Pelita Cengkareng ('Pelita Cengkareng'). This entitlement was also registered in the name of the plaintiff for the benefit of the defendant. In reality and in fact, all the dividends and sums earned from the investments in Bank Pelita and Pelita Cengareng belonged to the defendant and to no one else. From 1964 to about 1969, profits arising from the investment from the bank were not distributed. Instead, they were ploughed back into the bank for its expansion. Dividends however, were declared and paid out by the bank since 1969.

26 In 1965, Indonesia was in a state of political crisis. The government shut down all the existing Chinese schools. The defendant, therefore, decided to leave Indonesia and consequently in 1970 he and his wife applied for permanent resident status in Singapore for themselves and their children. By about 1971, his family settled down permanently in Singapore.

27 In 1974, he had a fall out with Eng Tek who tried to usurp all the defendant's assets. Timely intervention from their mother salvaged the situation and Eng Tek took about four years to return some of the defendant's assets.

28 Sometime in 1975, the defendant requested the plaintiff to send him a portion of the monies which formed part of the profits from his investment in the bank. However, the plaintiff only began to remit part of the monies sometime from 1977 onwards. The defendant's wife kept a record of the sums so remitted by the plaintiff from 1977 onwards from Indonesia. From such monies, the defendant freely helped the plaintiff and his family members by paying for the various expenses incurred by them. These expenses were also recorded by his wife in the books maintained by her. The defendant's intention at all times was to take care of the plaintiff and his family. The defendant reiterated that the entries in the balance column of the records kept by his wife represented the monies that belonged to him.

29 The defendant also referred to the court a power of attorney executed by the plaintiff on 21 October 1980. The power of attorney gave wide-ranging powers to the defendant, including powers to buy and sell shares, to execute documents, to commence proceedings in the plaintiff's name and in general to manage the affairs of the plaintiff. That was not all. The plaintiff, at the request of the defendant, executed a will naming the defendant as the sole executor and sole beneficiary of all the monies deposited with all the banks in Singapore.

30 The defendant asserted that the plaintiff's claim against him is wrongful. His specific comments in regard to the plaintiff's various heads of claims can be recapitulated as follows.

31 As regards the plaintiff's claim for a sum of S$1,317,158.22 arising from a total loan of S$2,016,804.40 (para 3 of the statement of claim), this sum was never loaned to him by the plaintiff. On the contrary, these sums relate to an agreement between the plaintiff of the one part and the defendant's son, Tjia Beng Thong ('Beng Thong') together with the latter's wife of the other part. It had nothing to do with the defendant.

32 As regards the plaintiff's claim for S$13,738,138.69 (para 5 of the statement of claim), it would be better if paras 82 to 86 of the defendant's affidavit of evidence are reproduced in order to understand what he purports to say in defence. They read as follows:

> 82. This is set out at paragraph 5 of the Statement of Claim and the shares involved are listed in Annexure I.
>
> 83. In the first place, the documents will clearly show that all the shares listed

at Annexure I, save for 50,000 shares in Magnum Corporation Berhad ("the Magnum Shares") and 130,000 shares in Singapore Finance ("the Singapore Finance Shares"), have been sold. True copies of the documents that I have been able to collate evidencing this are now produced and shown to me collectively marked "TES-3".

84. The Magnum Shares were transferred to the Plaintiff's direct account with Kay Hian Private Limited on 11 December 1998. True copies of documents evidencing this are now produced and shown to me marked "TES-4".

85. The Singapore Finance Shares remain unsold to this date.

86. The shares which were sold, as referred to at paragraph 83 above were in fact duly noted in the informal record books maintained by my wife. The monies utilized to purchase such shares belonged to me.

33 As regards the plaintiff's claim for S$4,069,000 being the proceeds of a block of Apollo shares (para 5 of the statement of claim), the defendant's response is that these shares were purchased by him using his own monies.

34 As regards the plaintiff's claim for US$750,000 (para 11 of the statement of claim), the defendant's response is that at no time did the plaintiff provide him with any funds to trade in US currency.

35 In his supplemental affidavit of evidence-in-chief, the defendant said that it was ludicrous for the plaintiff to say that their mother gave the plaintiff a gift of HK$100,000 for their mother was then living in Makassar and was not in a position to give his such an amount as a gift.

36 Expanding on the plaintiff's claim for the repayment of loans, the defendant said that in early 1998 he was not aware that his son Beng Thong and the latter's wife Amelia Lanny Muslim ('Amelia') had ever approached the plaintiff for any financial help nor did he know that they had taken a loan of S$500,000 from the plaintiff in May 1997. He was aware however, that the plaintiff was very fond of them. Only later he became aware that the plaintiff had agreed to help his son and daughter-in-law financially and agreed to take over the entire obligations of his son's ABN account. He confirmed that he had signed four separate cheques for the sums of S$220,000, S$173,000, S$200,000 and S$190,000 from his personal account in favour of his son's account with the ABN account. Commenting on the ABN account 23-30-954, characterised by the defendant as "the disputed account", opened in the name of the plaintiff, the defendant claimed that the said account was opened at his request and that the plaintiff for his part had executed certain documents allowing him to freely pledge shares traded through the disputed account. He added that the said account was opened in the name of the plaintiff pursuant to the advice of ABN bank in order for him to obtain an additional credit line of S$5 million.

37 Touching upon the books kept by his wife, the defendant said that he was aware that his wife maintained some informal record books of the monies remitted by the plaintiff and sums paid out by him for the expenditures incurred by the plaintiff's family. He added that although the assets recorded in the said books belonged to him entirely, he was happy and content to spend his money to meet the expenditures incurred by the plaintiff and members of his family. He said: "To my mind, as the plaintiff had dutifully remitted the fruits of my investment in Bank Pelita to me, I had earmarked such sums for use by me to help the plaintiff and his family. I took it upon myself to do so as I loved my brother and his family dearly. This is especially so after the split from my other brothers, Eng Tek and Tian Su".

38 As to why the defendant would want to help the plaintiff who was equally in clover and one who could well afford to lend substantial sums of monies, even to the defendant's son and daughter-in-law, there was little explanation from the defendant. The salient aspects that emerged in his cross-examination will be referred to, if need be, later in this judgment.

39 The defendant's wife The Ge Nio who kept the so-called informal record books testified on behalf of the defendant. After outlining some peripheral family circumstances, she simply declared that paras 21 to 92 of her husband's affidavit of evidence-in-chief were true and accurate. In her supplemental affidavit of evidence-in-chief filed on 6 July 2000, she denied Dermawan's claim that she had briefed him on a number of occasions and shown him the books kept by her. She said that the said books were maintained by her out of her own volition and not on the plaintiff's behalf. She asserted that the monies recorded in the books belonged to her husband. She claimed that the said record books were not kept under lock and key and were left lying in the family living room at the upper storey. She further claimed that on occasions when the plaintiff and Dermawan happened to be visiting the defendant's family home, she had noticed both of them would pick up her record books and glancing through them. She said that she was entirely unaware of the fact that Dermawan had in fact been maintaining his own records by copying her record books without her knowledge. As far as she was concerned, there was no truth in Dermawan's claim that she showed the same account books and rectified errors upon being pointed out by him. She claimed that after commencement of the proceedings, she had attempted to check and reconfirm the accuracy of some entries in the books and in the process discovered a few errors in the book entries. She listed them.

40 Beng Thong, the defendant's son who also prominently featured in this trial, swore a brief seven-paragraph affidavit of evidence-in-chief. In the said affidavit he said very little about the material facts except to say that his wife Amelia knew all the relevant details. As far as he was concerned, his uncle, the plaintiff agreed to help him and his wife financially. He said that the plaintiff was willing to help him and his wife by taking over his shares, deposits and entire account with the ABN Bank and treat the earlier loan of S$500,000 taken by him and his wife from the plaintiff, as having been fully repaid.

41 Amelia, was another witness for the defence. Her evidence was to the following effect. According to her, the plaintiff had always treated her and her husband well and had been generous towards them. He often lent them monies in times of need. In 1991, her husband, maintained an account with the ABN bank through which both Amelia and her husband traded in shares. Whatever shares which were bought through the said account were pledged to the said bank as security. All the trades were done through Deutsche Morgan Grenfell ('DMG') sharebrokers. Generally, Amelia instructed one Ms Doris Ang of DMG or one of her assistants for the sale and purchase of the shares. In or about May 1997, Amelia and her husband were in need of a loan of S$500,000 to pay for certain share warrants. The plaintiff was approached and he readily gave them the loan required on the understanding that some interest would be payable to him. Her father-in-law, the defendant, was not aware of this loan.

42 In January 1998, the regional economic crisis caused the value of their shares to plummet, causing them to drown in debt overnight. She was under tremendous stress and did not know what to do. At the end of January 1998, one Mr Ang Bock Cheng ('Mr Ang'), the finance manager of ABN bank informed them that the bank was making a margin call on her husband's account since the value of shares held by the bank as security was no longer adequate to sustain the outstanding facilities. Mr Ang also warned them that the bank would have to force-sell their shares.

43 Amelia once again approached the plaintiff for help. She told him of their plight. The plaintiff agreed to help and came to their rescue immediately. Amelia claimed: "The plaintiff knew that the then selling price of the shares were extremely depressed, and believed that the prices would rise up

again subsequently". She did not however mention on what basis she came to the foregoing conclusion.

44 At this point in time, the value of the shares held by her and her husband had dropped by about 60% of their original value and was worth only about S$1.8 million. Despite the dismal state of affairs, the plaintiff, nonetheless, agreed to take over their entire shareholdings together with all their attendant liabilities. Amelia averred: "The plaintiff was convinced that the prices of shares would eventually rise. In such an event, he would benefit from the profits arising from the increased share value". She claimed that sometime at the end of January 1998, she and her husband informed Mr Ang that the plaintiff had agreed to take over the entire state of account belonging to her husband. The bank duly agreed to the new arrangement. She also informed Ms Doris Ang of DMG of the change and advised her to take instructions from the plaintiff in future. Consequently, according to Amelia, ABN bank dealt directly with the plaintiff in relation to her husband's account, whilst she and her husband effectively dropped out of the picture. In this regard, she produced a document written by her bearing a date mark, 14/5/98, claiming however, that it was written before that date. It must also be observed at this juncture that neither Mr Ang nor Ms Doris Ang was called by the defence to confirm what Amelia said in court, although she was challenged on her averments.

45 She claimed that she was aware that in the course of February to September 1998, the plaintiff sold part of the shares and the proceeds therefrom were taken by ABN bank to satisfy the outstanding account. By July 1998, the plaintiff had settled all the outstanding sums to the bank. From then on, according to Amelia, whenever the plaintiff sold the shares and the account was credited with the proceeds, the plaintiff would ask her to issue a cheque for the same account from the account to pay him.

46 She said that the plaintiff sold a large part of the shares at a loss. Later sometime in June 1998, the plaintiff requested that Amelia pay him the interest on the original loan of S$500,000. Dermawan calculated the interest amount to be S$40,000. She made it known to the plaintiff that she could pay the interest only in instalments and subsequently in August 1999, she paid the plaintiff a sum of S$10,000 by way of an Overseas Chinese Banking Corporation ('OCBC') cheque.

47 She claimed that the defendant found out about the said loan of S$500,000 only in the course of January/February 1998.

48 One of the most significant aspects of her evidence was that after having declared in para 47 of her affidavit filed on 20 June 2000 that she was not aware of the payments of S$220,000, S$173,000, S$200,000, S$190,000, S$130,000 and S$603,804.40 towards her husband's ABN bank account (referred to in para 3 of the plaintiff's statement of claim) she made an about-turn at the trial and retracted the said averment.

49 Tjia Mui Kui ('Mui Kui'), a daughter of the defendant whose handwriting appeared in very many places in the so-called informal books maintained by her mother was another witness for the defence. The relevant part of her evidence can be recapitulated as follows.

50 Her father had utmost love and respect for the plaintiff, so much so he took it upon himself to care for and look after not only the plaintiff but also the children of the plaintiff. According to Mui Kui, her parents took the time and trouble to take care of the plaintiff and members of his family by paying their expenses in Singapore. In this, her mother The Ge Nio made sure that the plaintiff's maid, gardener and the maintenance charges in respect of the plaintiff's home in Singapore were all taken care of. What more, even the premium payments payable for the plaintiff's and his children's insurance policies were also met by her parents. Mui Kui said that she was aware that her mother kept an

informal record of payments made to meet the needs of the plaintiff and his family. She did not interfere with her mother's practice of keeping records. However, sometimes her mother would request Mui Kui to help her to fill in the records, which Mui Kui did dutifully, albeit, rarely.

51 She said that she was quite aware that her father had borrowed monies from the plaintiff on several occasions and these were all recorded by her separately. According to her all the loans taken by her father had all since been repaid. She added that these records were kept for her own reference as she was in charge of the administrative aspects of her father's finances. Mui Kui declared that in or about January 1998, she became aware that the plaintiff had agreed to take over the shares and deposits belonging to her brother, Beng Thong. According to her, sometime in August 1998, upon being informed by the plaintiff that he wished to transfer some of the shares of her brother from his ABN bank to her brother's account with the Overseas Union Bank ('OUB'), she drafted a letter to Mr Ang to effect the transfer and requested her sister-in-law, Amelia to sign it. In this regard, a handwritten note allegedly written by her dated 27 August 1998 addressed to Mr Ang was produced.

52 Mui Kui further asserted that although the plaintiff had taken over the liabilities of her brother in respect of the ABN bank account, it was her father who made a number of payments amounting to S$783,000 to the bank on behalf of the plaintiff in the course of February to April 1998. Further according to her, Mr Ang called sometime in June 1998 to say that payment was due on Beng Thong's account. Mui Kui informed the plaintiff of the demand and later as instructed by the plaintiff, she assisted him in issuing a cheque for a sum of S$130,000 to the bank. Later, sometime in August 1998, Mr Ang called again to inform (sic) that a further payment was due on Beng Thong's account. Mui Kui again dutifully conveyed this demand to the plaintiff and in the event assisted the plaintiff in issuing a cheque for the sum of S$603,804.40 towards payment to the ABN bank in accordance with the plaintiff's instructions.

53 Mui Kui also averred that on or about 22 December 1998, Dermawan wrote to the defendant requesting that a sum of S$249,738.57 be paid to him as being the balance of the proceeds of the sale of some shares done by the plaintiff and reflected in the OUB account. Mui Kui declared that the said OUB account was in the name of her brother, Beng Thong, but her father was an authorised signatory. She claimed that from January 1999 to August 1999, instalment payments towards the said sum of S$249,738.57 were made by her father. Mui Kui declared that she was certain that the plaintiff had been fully paid for all the monies owing from her father to the plaintiff.

54 Mui Kui also came up with a supplemental affidavit of evidence-in-chief filed on 6 July 2000. In this affidavit, she said that she kept a separate record of all personal loans taken by her father from the plaintiff and they had since all been fully repaid. She said that one record book, a brown hardcover book relating to the ABN account No. 23-30-954, which she called "the disputed account", standing in the name of the plaintiff, was maintained by her. She claimed it was only on rare occasions when she was too busy that she would request either her mother or sister-in-law Amelia to help her in making in the entries. She said that she kept this record for the purpose of keeping track of the father's funds and the funds in the disputed account belonged to her father. She further averred that the entire block of 2,145,000 Apollo shares was purchased from funds belonging to her father.

55 Another witness for the defence was Petrus, a 73-year-old acquaintance of the parties in this action. He said that he came from the same island where the plaintiff and the defendant were born and bred during their early days. Most of his averments in his affidavit of evidence-in-chief was hearsay and speculative. The drift of his evidence was that the defendant was the smart one amongst the brothers and he was the one who worked hard for his family and thrived. In para 24 of his affidavit he had declared: "In about 1956, the plaintiff left for Surabaya and Jakarta. Prior to his

departure, he took all the funds belonging to the defendant in SEH Trading as at that point in time". However, during his oral testimony, he disowned and retracted the words: "belonging to the Defendant." He clarified that he did not know whose monies the plaintiff had taken at that time. He added further that it was the defendant who gave authority to the plaintiff to settle his accounts with SEH Trading.

56 Before I deal with the issues, arguments and conclusion, it would be useful to reproduce the agreed facts submitted to the court. It reads as follows:

AGREED FACTS

1. The Plaintiff and the Defendant are siblings. The Plaintiff is the 3rd child (born in 1927) whilst the Defendant is the 4th child (born in 1929). There are a total of 8 siblings (including the parties) comprising 4 brothers and 4 sisters.

2. Both the Plaintiff and the Defendant originate from a small Indonesian town called Tagulandang in Sulawesi.

3. The parties' father, Tjia Hoei Teng, passed away in about 1945.

4. The Defendant is a businessman.

5. Of all his siblings, the Plaintiff trusted and socialized with the Defendant the most.

6. Amongst the siblings, the Defendant was the most sophisticated and has a strong business acumen.

7. The Defendant came to reside in Singapore with his family sometime in the early 1970's. The Defendant's mother, Hauw Pie Nio also lived in Singapore with the Defendant.

8. The Plaintiff remitted various sums of money during diverse periods from Jakarta to the Defendant and they were recorded in Books A/B/C.

9. The following books were maintained by the Defendant's wife, The Ge Nio:-

9.1 Book A for the period 2 July 1977 to 31 December 1984; DB1-31

9.2 Book B for the period 1 January 1985 to 17 December 1994; DB32-87

9.3 Book C for the period 1 January 1995 to 14 September 1998; DB88-106

9.4 Book E titled "Share-Johanis Sutjiawang"; and DB136-162

9.5 Book F

10. Book D (Exhibit D6) is a record of the transactions pertaining to ABN-AMRO Bank account no. 23.30.954 in the name of the Plaintiff. The entries in this book were made by DW2, DW3 and DW4.

11. Exhibit D22 is a record of the transactions pertaining to ABN-AMRO Bank a/c no. 22.37.229 in the name of the Defendant. The entries in this book were made by DW2 and DW3.

12. The following payments were made by way of cheques issued by the Plaintiff made payable to Tjia Beng Thong:-

12.1 $500,000.00 – cheque dated 26 May 1997;	PB179 PB181
12.2 $130,000.00 – cheque dated 5 June 1998; and	PB183
12.3 $603,804.40 – cheque dated 6 August 1998.	

13. The following payments were made by way of cheques issued by the Defendant made payable to Tjia Beng Thong:-

13.1 $220,000.00 – cheque dated 6 February 1998;	DB231 DB232
13.2 $173,000.00 – cheque dated 11 February 1998;	
13.3 $200,000.00 – cheque dated 13 February 1998; and	DB231
13.4 $190,000.00 – cheque dated 8 April 1998.	DB231

14. The following payments were made by way of cheques issued by Amelia Lanny and made out to Dermawan as payment to the Plaintiff:-

14.1 $43,937.94 – by way of cheque dated 16 September 1998;	DB296 DB296
14.2 $44,070.07 – by way of cheque dated 17 September 1998;	
14.3 $272.899.71 – by way of cheque dated 24 September 1998;	DB296
14.4 $1,411.38 – by way of cheque dated 20 November 1998; and	DB296

14.5 $766.00 – by way of cheque dated 28 September 1998.

15. The Defendant sold a block of 2,145,100 Apollo shares in December 1997. The selling price was $2.20 per share with the total consideration being $4,719,220.00.

16. A sum of $4,069,000.00 was withdrawn by the Defendant from account [ABN-AMRO] no. 23.30.954 [which is in the name of Plaintiff] in about December 1997. [the words in square brackets are added]

17. The Plaintiff paid a sum of $147,730.00 to the Defendant by way of POSB cheque no. 751508 dated 25 November 1998 for the quantity of 187,000 Apollo shares. P6

57 One particular detail which warrants mention at this stage concerns the tabulation done by counsel on the credit and debit entries from the books and records kept by the defendant's wife. Although both counsel did not, by and large, during the course of the trial take issue in respect of the entries or for that matter on the balance recorded at the end of each page in those books, yet there was no agreed statement coming from them as to the sums remitted by the plaintiff to the defendant and sums expended by the defendant for the plaintiff. The figures finally submitted by counsel varied significantly. This was largely due to the selective as well as the deliberately different paths taken by counsel vis-a-vis the book entries. The only concordant feature which surfaced in their computation was that the plaintiff did indeed remit to the defendant substantial sums of monies from about 1977 to 1998 and during the same period, the defendant did also disburse sums admittedly for and on behalf of the plaintiff as well as for the latter's family. I must also mention at this stage that late in these proceedings and even then only during submission stage, was there an attempt by the defence to raise some issues in relation to some of the entries in their own books. Counsel for the defendant no doubt, on instructions, endeavoured to highlight some of the alleged erroneous entries in the books and listed them in his tabulation. Having made the comments, it is necessary at this stage to refer to the summaries provided by counsel in their respective tabulations.

58 The summary prepared and presented to the court by plaintiff's counsel and appearing at page 1 of the plaintiff's tabulation (exh P-15) reads as follows:

BOOKS A-C: 1977 TO 1998

Summary

S/No	Item	Amount (S$)
1	Remittances	5,416,454.23
2	Other/miscellaneous credit entries	3,576,884.99

3	Dividends	2,178,425.43
4	Less : Expenses on behalf of PW1	(4,199,579.52)
	TOTAL	**S$6,972,185.13**

NB: The Defendant's tabulation of dividends is accepted save that:

(1) the dividend in S/No. 542 should read as $556.78 instead of $536.78; and

(2) the total according to the Plaintiff's addition/calculation is $2,178,425.43 instead of $2,149,400.43

59 The summary produced by the defendant's counsel appearing at page 47 of the defence tabulation (exh D-15) is reproduced below:

Summary of entries in record books

S/No.	Date	Amount (S$)
Credit Entries		
1.	1977 – 1984	2,884,662.00
2.	1985 – 1994	1,003,548.48
3.	1995 – 1998	100,000.00
	Total	3,988,210.48
Debit entries		
1.	1977 – 1984	1,073,852.80
2.	1985 – 1994	3,054,983.45
3.	1995 – 1998	1,125,883.19
	Total	5,254,719.44

60 In the end, both counsel submitted to the court an agreed list of issues to be decided by the court. The said list, insofar as is material, reads as follows:

AMENDED
AGREED LIST OF
ISSUES

The following issues arise for the determination of this Court:-

1 Whether the sum of HK$100,000.00 admittedly remitted to the Plaintiff by the Defendant in 1964, belonged to the Defendant or whether it was a gift from the parties' mother to the Plaintiff?

2 Whether the monies remitted by the Plaintiff to the Defendant at divers periods as reflected in Books A/B/C, were the fruits of the Defendant's alleged investment in P.T. Bank Pelita?

3 Whether the Defendant is entitled to an account of and payment of the fruits of the P.T. Bank Pelita investment, as claimed under paragraph 19 of the Counter-Claim.

The US$750,000.00 Claim (paragraphs 9, 10 and 11 of the Amended Statement of Claim)

4 To whom does the sum of US$750,000.00 claimed under paragraph 9 of the Amended Statement of Claim and as reflected in Books A/B/C, belong?

The Claim for the loan of $1,317,158.22 (paragraphs 3 and 4 of the Amended Statement of Claim)

5 Were the sums claimed by the Plaintiff under paragraphs 3 and 4 of the Amended Statement of Claim comprising the following 2 categories of payments, loaned by the Plaintiff to the Defendant?

5.1 *Cheques issued by the Plaintiff to Tjia Beng Thong*

Date	*Amount*
26.05.97	*S$500,000.00*
15.06.98	*S$130,000.00*
06.08.98	*S$603,804.40*

5.2 *Cheques issued by the Defendant to Tjia Beng Thong*

Date	Amount
06.02.98	S$220,000.00
11.02.98	S$173,000.00
13.02.98	S$200,000.00
08.04.98	S$190,000.00

6 In relation to the sums claimed under paragraphs 3 and 4 of the Amended Statement of Claim, was there an arrangement entered into between the Plaintiff on the one part and Tjia Beng Thong/Amelia Lanny on the other part that the former would take over the state of the account of the latter with ABN-AMRO Bank?

The Claim for $4,069.000.00 being part of the proceeds of sale of the Apollo Shares (paragraph 5 of the Amended Statement of Claim)

7 To whom does the block of Apollo shares that were sold on 10 December 1997 belong?

8 For whose benefit was the entry in Book D at DB 129, being the record of a withdrawal of the sum of $4,069,000 in December 1997, made?

The Claim for S$13,738,138.69 (paragraphs 5 and 8 of the Amended Statement of Claim)

9 Whether the Plaintiff is entitled to claim either the return of the shares or the value of the shares as set out at paragraphs 5 and 8 of the Amended Statement of Claim, which the Plaintiff claims amounts to $13,738,138.69?

Contentions and conclusions

61 Lengthy arguments were presented to the court by both counsel. Insofar as the defendant's arguments are concerned, they are simply this: The defendant does not owe the plaintiff even a single cent; all remittances which originated from the plaintiff since about 1977 were the fruits of the investment made by the defendant in Bank Pelita; the books kept by the defendant's wife were no more than her own informal records and were done without any instruction or clearance from the defendant; the defendant could not speak for the entries in the books except for the fact that all monies recorded as received from the plaintiff were that of the defendant; the share transactions recorded there were also for the benefit of the defendant although the transactions were carried out in the plaintiff's name; the plaintiff was aware of this or ought to have known this for he had expressly authorised the defendant to carry out such transactions in the plaintiff's name and for which purpose the plaintiff in fact did even give the defendant a power of attorney; in relation to the ABN bank account it was opened at the request of the defendant, in the name of the plaintiff merely for the purpose of getting an additional Singapore five million dollar facility; and above all the defendant even made a will bequeathing all his monies deposited in the Singapore banks to the defendant exclusively.

62 Dealing particularly with the loan claim of the plaintiff, the defence contentions are that the defendant was entirely in the dark about these alleged loans until the commencement of the legal action herein; the defendant does not owe the plaintiff anything and the transaction between his son Beng Thong and the plaintiff does not concern the defendant; the defendant did not know anything about the loan to his son until sometime in January/February 1998; and at any rate, the plaintiff had subsequently agreed to take over the entire liabilities of Beng Thong in consideration of all the shareholdings which Beng Thong was entitled to, on the assumption that the value of shares was bound to rise in due course.

63 As regards the foreign exchange transaction claim as well as the Apollo shares claim, here again the defence contention was that these were nothing to do with the plaintiff; all these transactions were done by using the defendant's own funds and the plaintiff did not advance even a single cent for these transactions. The defence contention as regards the plaintiff's claim for S$13,738,138.69 is also in the realm of denial and negativity. In this connection, the defendant's position as outlined by his counsel in his opening statement bears reproduction. He said at paras 26 to 29 and 42 to 43:

> (a) The Defendant's wife, The Ge Nio, kept an informal record of all such monies remitted to the Defendant by the Plaintiff (para 26).
>
> (b) The records spanning the period from 1977 and 1998 are made in three hard cover books discovered by the Defendant (para 27).

(c) The record books contain a record of the shares that were bought and sold with the funds remitted from Indonesia. Payments made by the Defendant of various expenses through the years incurred by the plaintiff and his family members are also recorded (para 28).

(d) The court will note that the balance in the record books, as at sometime in the latter half of 1998 (after all the shares with the exception of two counters, elaborated at paragraph 7 of the Amended Defence and Counter-Claim have been disposed off) is a notional credit sum of $3.570,989.18. As set out above, such monies belong to the Defendant. (para 29)

(e) With the exception of 50,000 Magnum Corporation shares and 130,000 Singapore Finance shares, the remaining shares set out at Annexure - 1 to the Statement of Claim were sold in about September 1998 by the defendant (para 42).

(f) These sale transactions were noted in the record books maintained by the Defendant's wife (para 43).

64 When asked by the court (at page 998 of the NE), why should there be a notional credit in favour of the plaintiff at all, if all the monies recorded in the books were to belong to the defendant exclusively, counsel for the defendant replied that the defendant had earmarked these sums to take care of the plaintiff and the plaintiff's family and as such the defendant's wife kept a record to help the plaintiff and the latter's family. Counsel for the defendant elaborated (at page 1019 of the NE) that 'the defendant managed this fund such that he carried out transactions with these sums to make it grow so that the defendant would be better able to help the plaintiff and his family.' Counsel added that the defendant was happy on a day-to-day basis to help the plaintiff and his family irrespective of the fact that those monies belonged to him.

65 Before dealing with each issue raised by counsel, it is necessary for the court to evaluate the evidence adduced by the contending parties and to assess whether the parties have indeed satisfied the court of the requisite burden of proof demanded of them, ever bearing in mind the twin principles contained in sections 103(1) and 105 of the Evidence Act (Cap 97).

66 Section 103(1) of the Evidence Act provides: "Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist". Section 105 of the Act reads: The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person".

67 Nevertheless, in ***Sime Darby and Company Ltd v Official Assignee*** (1939) Vol 1 MC 116, the Privy Council in an appeal from Singapore had held, "that when all the circumstances have been ascertained, discussion on the point of onus is immaterial. It only becomes important if the circumstances are so ambiguous that a satisfactory conclusion is impossible without resort to it". Similarly, in ***Robins v National Trust Co Ltd*** [1927] AC 515 at 520, Lord Dunedin said:

> … Now in conducting any inquiry, the determining tribunal, be it judge or jury, will often find that the *onus* is sometimes on the side of one contending party, sometimes on the side of the other, or, as it is often expressed, that in certain circumstances the *onus* shifts. But *onus* as determining factor of the whole case can only arise if the tribunal finds the evidence *pro* and *con* so evenly balanced

> that it can come to no such conclusion. Then the *onus* will determine the matter. But if the tribunal, after hearing and weighing the evidence, comes to a determinate conclusion, the *onus* has nothing to do with it, and need not be further considered.

68 At this point, it is perhaps appropriate to make a preliminary comment as to the manner in which the plaintiff and the defendant testified in this proceedings. In my opinion, the plaintiff was bereft of guile, steady in his manner and inflexion and forthright in his answers. Although counsel for the defendant invited the court to find him an unreliable witness, there was insufficient material to warrant the conclusion invited. I cannot say the same for the defendant. He was, in my evaluation, often ambivalent and extremely deflective in his answers. Let me now deal with the preliminary issues that arise in this case.

The preliminary issues (issues 1, 2 and 3):

1 Whether the sum of HK100,000.00 admittedly remitted to the Plaintiff by the Defendant in 1964, belonged to the Defendant or whether it was a gift from the parties' mother to the Plaintiff?

2 Whether the monies remitted by the Plaintiff to the Defendant at divers periods as reflected in Books A/B/C, were the fruits of the Defendant's alleged investment in P.T. Bank Pelita?

3 Whether the Defendant is entitled to an account of and payment of the fruits of the P.T. Bank Pelita investment, as claimed under paragraph 19 of the Counter-Claim.

69 Shorn of excess, the foregoing three preliminary issues can be encapsulated thus: Quaere: Do all the sums of monies remitted by the plaintiff, as far back as 1977 (see DB-1) and the consequent employment of those sums of monies in shares as well as other investments made by the defendant, as reflected in the books maintained by the defendant's wife, belong to the defendant, as a result of his alleged investment in Bank Pelita, in 1964? Or conversely, do the remitted sums and the stated investments belong to the plaintiff absolutely? The defendant maintains that the entire proceeds belong to him whilst the plaintiff pours scorn on the defendant's claim and contends to the contrary. There springs the twin central questions to be answered by the court: Who is telling the truth? Or whose account is more probable?

70 In evaluating the evidence of the respective parties, plaintiff's counsel drew the Court's attention to the import and significance of the nature, purport and the apparent effect of the vast number of entries in the books kept by the defendant's wife. An observation might well be pertinent at this juncture. Although Mui Kui, the defendant's daughter declared that she only occasionally assisted her mother in the bookkeeping, Mui Kui's handwriting appears in many places in the books. Moving on, the said books, despite its amateurish appearance, in fact present an extremely vivid picture evincing that the books were doubtless, kept for the benefit and record of the plaintiff rather than for the benefit of the defendant. In my determination, the books were not a leisurely and gratuitous, housewifely notation concerning the defendant's entitlements.

71 The books produced to the court commence from July 1977 with an opening credit entry of $25,000 in favour of Lian (the daughter of the plaintiff) and a second credit entry of $100,000 in favour of the plaintiff. Almost immediately in relation to these credits, there appear two debit entries in respect of Lian and the plaintiff. If the receipts were indeed the alleged return of the investment made by the defendant in Bank Pelita, why should there be a return of the said two sums almost

immediately to the plaintiff and his daughter? Ploughing through the books, one could find myriad entries which strongly suggest that the receipts recorded in those books could not have been the defendant's entitlements. In this connection, some of the items which require highlighting are: (a) November 1979: payment to the Accountant-General, Singapore of a sum of $250,000 in connection with the plaintiff's permanent residence application (see DB-6); (b) 20 December 1979: payment of a sum of $34,200 to one Jose Liem in relation to the purchase of a house at Sunset Grove, Singapore for the plaintiff (see DB-6); (c) the entries at DB-6 which add up to $602,311.72 (comprising $250,000.00, $34,200.00, $130,000.00, $142,425.10, $33,716.62 and $11,970.00) representing payments made out on behalf of the plaintiff in respect of non-trade transactions which according to the defendant's wife, were nothing more than voluntary payments made by the defendant for the benefit of the plaintiff.

72 Further entries, to name a few, which equally give lie to the defendant's claim include: (a) receipt of a sum of $1,280,000 from the sale of the plaintiff's Sunset Grove property (see DB-73); and (b) receipt of $3,67313.75 from Asia Assurance in connection with the plaintiff's insurance policy (see DB-83). Perusing the entire accounting records, it was clear that the defendant's version that the sums reflected in the books belonged to him sounded hollow not only in relation to the few entries I have highlighted but also in respect of other entries.

73 There is yet one further entry which requires highlighting. This entry appears at DB-82 in relation to a sum of $8,000. The entry shows that the defendant returned the said sum to the plaintiff reportedly on account of a loan he had taken from the plaintiff for a casino outing. The question which demands an answer is that if all the monies in Books A, B and C were that of the defendant, why should his wife record it in the manner as she had done at DB-82. The defendant endeavoured to explain it by saying that it should not have been recorded there (see pages 1473 and 1640 of the NE). However, apart from the expression of a feigned surprise, there was nothing else of substance forthcoming from the defendant and his assembly of witnesses.

74 The defendant's stand that the plaintiff started sending monies to him from the defendant's investment in Bank Pelita, seems to unravel from some of his unwitting admissions during cross-examination. He said (at pages 1127 and 1128 of the NE):

> A Well, I don't know, I never made a calculation.
>
> Q OK. Now, Mr Tjia, let me ask you another question. When the Plaintiff give (sic) you the impression that these are his money, did you correct him? You say anything to him?
>
> A No, I did not.
>
> Q Why not? Why not you tell --- why you did not tell him that this, his impression is wrong? If this is indeed not his money---if this is indeed not his money, why don't you correct him?
>
> > His Honour: Mr Lee, did you put your question first? Is it not being interpreted?
> >
> > Mr Lee: Oh, OK. I just trying to be clearer, your Honour. Never mind.
> >
> > His Honour: But then, the interpreter will find it difficult to

follow you.

Mr Lee: My apologies, your Honour.

A In 1974, I fell out with my brothers, and so we split and go our separate ways. Then I was tight in finances, so I ask Plaintiff to start remitting monies from the bank, the investment in the bank from 1975 onwards. But he only started remitting monies to me from 77 onwards. However, in 1977, I was financially stable, and I didn't mention to him to tell him to remit this in--- money from the bank.

His Honour: "I did not" or "I did"?

Witness: I did not.

His Honour: Yes.

Q I did not--- sorry?

A I did not ask him to remit these monies from the investment in the bank to me. I did not mention. I then encouraged him to come over to Singapore to make investment. I then can---I then could take care of them because in Indonesia---

His Honour: "I then---"?

Witness: Could take care of them, because it was often politically unstable in Indonesia.

A I then helped him to make arrangements to invest in Singapore and he finally got his P.R. He then started---Starting in 1977, he only remitted about $100.000. But if you want to make an investment here, you need at least $250,000. So from 1980 onwards, he started to remit more and more. That's all.

Q And this remittance are made by the Plaintiff for his own investment, am I right?

A Well, he only utilised part of the money for investment.

His Honour: "Well---"?

Witness: He only used part of the money for investment and then the rest I'll help him to take care of the money. The rest of the money, I will help him to buy shares, house, necessities, to pay his creditors, and so on.

75 The defendant's explanation as to why his wife kept the records as she did in books A, B and C is equally unhelpful to him. What he said in further cross examination (at page 1130 of the NE) reads as follows:

Mr Lee: Last question, your Honour, I think it's time.

Q Then do you know why your wife records this in book A, B and C?

A I don't know but I believe it was because my elder brother, he wanted to know whether we have taken good care of the money he sent over. I believe my brother wanted to know whether we have taken good care of the money he had sent over.

76 The stand of the defendant was that books A, B and C were informal records kept by the defendant's wife; the plaintiff had absolutely no interest in regard to the entries made in them; and that the said books were never inspected by the plaintiff in any formal manner except perhaps on occasions the plaintiff had glanced through them whilst they were lying in the defendant's house unguarded. This claim by the defendant appears to go entirely contrary to what the plaintiff disclosed in his cross-examination. He said in evidence (at page 1117 to 1119 of the NE):

Page 1117 of the NE:

Q Are you saying that this 2,145,100 Apollo shares were also recorded in these booklets A, B and C?

A No.

Q If it is not recorded---

His Honour: Let him give an answer.

Mr Lee: I thought he's given.

A From the booklet A, B and C, there were only records to show a buying of 800,000 Apollo shares, but there were no record to show the buying of 2,145,100 shares.

Q *So, Mr Tjia, am I correct this 2,145,100 Apollo shares were never recorded in these books A, B and C?*

A *Because Johanis did not agree to have them put in those booklets.*

Q *Ah, can we have this recorded. So Johanis did not want this to be put in this booklet, you mean, A, B and C?*

A *That's correct. He only agreed to the amount of 800,000.* [Emphasis added]

Page 1118 of the NE:

Q If it is your money to purchase these 2,145,100 Apollo shares, can you tell the Court how does Johanis can tell you where to record these shares?

A Because he wanted to buy only up to 800,000 shares and not more than that.

Q Mr Tjia, let me ask you again this question. If you are the one who paid 2,145,100 Apollo shares, why do you allow Johanis to tell you where to record the shares?

A *Because he was---he has always regarded the A, B, C books as his*

transactions. So he can only afford to buy up to only 800,000.

His Honour: A, B, C books are---?

Mr Lee: His transaction, regarded as his transaction.

His Honour: I'm getting it from the interpreter. Can you just repeat that?

Witness: Because he has always regarded these A, B, C books as his transactions, and he cannot afford to buy anything more than 800,000.

His Honour: Did he at any time tell you that these A, B, C books are his transactions?

Witness: We had never discussed on this issue before, but he did discuss with my wife.

His Honour: And are you saying that he told your wife so?

Witness: He only discussed with my wife that he wanted to buy only up to 800,000 shares.

Q And then?

His Honour: Just let me finish, please. I'm getting his answer. No, no, my question is that your reply, he has regarded A, B, C books are his transactions. I asked you did he at any time tell you that these three books, A, B, C, are his books, your answer was "we never discussed". But did he tell anyone else that these A, B, C books are his accounts and his transactions?

Witness: *He had never discussed with me that those three books were his transactions, but he often discussed with my wife, in the sense that he checked the accounts, verified with my wife*

[Emphasis added].

77 If the said books had nothing whatsoever to do with the plaintiff's entitlements, why then the insistence by the plaintiff to record in those books the plaintiff's share purchases. Worse still, such an insistence by the plaintiff was not said to have been countered by any protests either from the defendant or his bookkeeper. Why? The compelling inference is that the defendant and his wife were not relating to the court the true purport of these books. The twisting and turning by them lend little support to the defendant's pleaded defence.

78 It was suggested by the defendant that whatever purchases, advances and expenditures, some in fact very substantial, which he incurred and made on behalf of the plaintiff, were owing to his love, care and affection for his elder brother and his desire to help the members of the plaintiff's family. I found this explanation totally disingenuous. In my opinion, there was hardly any need for the

defendant to disburse and incur such lavish expenses on behalf of the plaintiff and members of his family when it is evident that the plaintiff is awash with money to the extent that he can even lend substantial sums of monies to the defendant's son Beng Thong and his wife Amelia. In my determination, the plaintiff has amply proven to the court that the monies he remitted from Indonesia were his and that they did not have any relation to the alleged investment by the defendant in Bank Pelita. On the other hand the defendant did not in my view, on balance, establish that the remittances made by the plaintiff over the years belonged to the defendant.

79 I must also add here that the defendant's attempt to bolster his evidence through Petrus failed miserably when Petrus started retracting some of his material averments in his affidavit of evidence-in-chief. Having affirmed in his affidavit (at page 5080, lines 12 to 17 of the NE) that in or about 1956, the plaintiff left for Surabaya and Jakarta and prior to his departure, he took all the funds belonging to the defendant in SEH Trading, he made a complete about turn in cross-examination and said that the plaintiff only settled the accounts and that it was not true that he had taken away all the defendant's funds (page 5096 of the NE). He further added during re-examination (page 5103 of the NE) that he did not know to whom the monies belonged as it was a matter between the two brothers.

80 In relation to the preliminary issues to be determined, defendant's counsel urged the court to disbelieve the evidence of the plaintiff on the basis that he was found to be prevaricating in the witness box and that his evidence was riddled with inconsistencies. In this regard, counsel also invited my attention to a somewhat confused answer given by the plaintiff in relation to Book C suggesting that it was not maintained for his benefit. However, upon a close examination of Book C, I am disposed to accept the plaintiff's counsel's explanation that the reply was an unwitting error by the plaintiff due to his age. In my determination, Book C was just a continuation of Book B. This was clear from a comparison of the final balance in Book B, with the opening balance in Book C. I must add presently that there is however a clerical error in relation to the said entries. Book B ends with a balance of $85,487.95 whereas Book C opens with the balance of $85,478.95, obviously an erroneous transposition of the figures 87 and 78 before the cents column.

81 In relation to the payment of HK$100,000 in 1964, the plaintiff did admit that he received the said sum from the defendant in 1964 but according to him, it was a gift from his mother. In my finding, the version narrated by the plaintiff appeared to have a measure of cogency and a ring of authenticity. In my view, the plaintiff's account was more probable than that of the defendant for it is extremely improbable that the defendant having invested the said sum in 1964 would have requested the return of the fruits of his investments almost 13 years later. The various answers given by the defendant in relation to this aspect do not in my view support his claim. In fact, the defendant's original defence gives a slightly different background to the said payments to the plaintiff. Having considered all the evidence and the arguments presented, I hold that the preliminary issues 1, 2 and 3 framed by counsel ought to be answered in favour of the plaintiff. In my determination, probabilities favour the conclusion that the sum of HK$100,000 remitted to the plaintiff in 1964 by the defendant was a gift or payment by his mother to him; the remittances by the plaintiff as reflected in Books A, B and C belonged to the plaintiff; they were not the fruits of the defendant's investment in Bank Pelita and consequently the defendant is not entitled to any account as claimed by him under para 19 of his counterclaim.

The issue in relation to US$750,000 (Issue 4):

4 To whom does the sum of US$750,000.00 claimed under paragraph 9 of the Amended Statement of Claim and as reflected in Books A/B/C, belong?

82 This issue again plays around the account books kept by the defendant's wife. Several entries therein relate to buying and selling of US currency admittedly done by the plaintiff. From the entries that appear in the books kept by the defendant's wife at DB-101, DB-102 and DB-104, one could find several buy and sell orders for US currency – six buy orders and five sell orders. These are listed in annexure II in the plaintiff's statement of claim, albeit, with some clerical errors in relation to a few dates. It was clear that the bought amount exceeded the sold amount by US$750,000. The defendant's pleaded defence in respect of this is decidedly bare. Paragraph 10 of the Amended Defence merely states: "Save it is admitted that the Defendant carried out the transactions set out in annexure II to the Statement of Claim, paragraphs 9 to 11 of the Statement of Claim are denied". The submission by defendant's counsel in relation to this issue as appears at para 28 of his written submission is as follows:

> 28. In the further alternative, even if it is assumed for a moment (for the sake of argument) that the funds remitted by the Plaintiff to the Defendant do not represent the fruits of the PT Bank Pelita investment, the Plaintiff's claim to the US$750,000.00 would still fail as:-
>
> > 28.1 the Plaintiff cannot show that the entire records represented by Books A/B/C are for his benefit. Indeed it is clear from paragraph 5 above that only a part of the remittances recorded in Books A/B/C emanate from the Plaintiff,
> >
> > 28.2 over the years (from 1977 to 1998) it is clear that the Plaintiff has received a greater sum from the Defendant as compared to the remittance made by him during this period;
> >
> > 28.3 it also cannot be said that the US$750,000.00 in question was purchased utilising the remittances of the Plaintiff to the Defendant, as there are numerous significant errors found in Books A/B/C. Some of the errors that have been pointed out at the trial as well as some of the errors obvious on the face of Books A/B/C are compiled at**"Annex-3";**
> >
> > 28.4 the Plaintiff failed to call any accountant or similar expert in the matter to clarify the entries in Books A/B/C.
> >
> > 28.5 Furthermore, the bulk of the funds recorded in Books A/B/C represent the profits of the numerous share, foreign exchange and gold transactions effected and realised by the Defendant, including dividends. It is therefore not possible to distinguish the monies remitted by the Plaintiff from such profits.

83 Although the books kept by the defendant's wife do not seem to possess much of a professional outlook, they seem to contain every little in and out and capture the essence in the form of debits and credits, sales and purchases and receipts and outgoings. As regards the US currency transactions the records show the amounts of currency purchased and sold. An examination of those entries immediately confirms that there was a shortfall of US$750,000 as submitted by plaintiff's counsel. The defence is simply a bare denial. Having reviewed the facts and arguments presented in

relation to this issue, I am satisfied that the plaintiff on balance, has established his claim whilst the defendant has singularly failed to discharge even the evidential burden required of him. In the premises, having regard to my earlier finding on the preliminary issues, I rule that the plaintiff is entitled to claim the said US$750,000 from the defendant.

The issue in relation to the loan of $1,317,158.22 (Issues 5 and 6):

5 Were the sums claimed by the Plaintiff under paragraphs 3 and 4 of the Amended Statement of Claim comprising the following 2 categories of payments, loaned by the Plaintiff to the Defendant?

5.1 Cheques issued by the Plaintiff to Tjia Beng Thong

Date Amount

26.05.97 S$500,000.00

15.06.98 S$130,000.00

06.08.98 S$603,804.40

5.2 Cheques issued by the Defendant to Tjia Beng Thong

Date Amount

06.02.98 S$220,000.00

11.02.98 S$173,000.00

13.02.98 S$200,000.00

08.04.98 S$190,000.00

6 In relation to the sums claimed under paragraphs 3 and 4 of the Amended Statement of Claim, was there an arrangement entered into between the Plaintiff on the one part and Tjia Beng Thong/Amelia Lanny on the other part that the former would take over the state of the account of the latter with ABN-AMRO Bank?

84 In dealing with this rather involved issue, it is useful to reproduce paras 52 to 64 of the plaintiff's counsel's submission. The said segment reads as follows:

> **VII. The outstanding balance of S$1,317,158.22 lent to the Defendant**
>
> 52. Paragraph 28-35 of PW1's 1st Affidavit of Evidence-In-Chief and paragraph 19-23 of PW2's Affidavit of Evidence-in-Chief set out this head of PW1's claim.
>
> 53. There were several occasions on which the DW1 had approached the PW1 to borrow money some of which were substantial sums. DW1 had told PW1 that he needed to borrow money to help his eldest son Tjia Beng Thong (PW5) who was experiencing financial problems.

54. DW1 had borrowed the following sums from PW1:

S/No	Date	Amount (S$)
1	26/05/97	500,000.00
2	06/02/98	220,000.00
3	11/02/98	173,000.00
4	13/02/98	200,000.00
5	08/04/98	190,000.00
6	15/06/98	130,000.00
7	06/08/98	603,804.40
	TOTAL	**2,016,804.40**

55. The loans of $500,000.00, $130,000.00 and 603,840.40 are reflected in cheques. The rest of loan sums are found in DB231-232.

56. Subsequently part-payments were made reducing the outstanding balance owing by DW1 to PW1, to $1,317,158.22.

57. Despite repeated demands, DW1 has refused, failed or neglected to repay PW1 the sum of $1,317,158.22.

58. DW1 in paragraph 4 of his Amended Defence & Counterclaim concedes that these sums were advanced by the PW1 to DW5. There is no dispute therefore that these sums were in fact issued and in fact paid by PW1 to DW5. When pressed as to how he knew that these sums were given to DW5, DW1 became evasive and eventually asked the cross-examiner to ask his lawyer.

59. DW1 was not able to answer why in his defence he said that all sums advanced by PW1 to DW5 and then in his cross-examination, he said that the 4 sums were issued by him to DW5.

60. Further, the butts of the cheques issued by DW1 to DW5 had PW1's name inscribed on it.

61. In any event, if PW1 wanted to borrow the 4 sums from DW1 to lend to DW5, why didn't DW1 set it off from the sums he had borrowed from PW1?. It is inconceivable that DW1 would not have set-off the said sums if indeed they were borrowed from him by PW1.

62. Further, PW1 through his son PW2 had requested that the monies lent to DW1 so that DW1 could help his son, be returned. This is consistent with the fact that these sums of monies were lent to DW1.

63. DW1 was clearly aware of DW5's financial problems.

64. Although DW2 claims that the 4 sums of $220,000 (DB 899, 689 & 231), $173,000 (DB 900, 691 & 232), $200,000 (DB 901, 695 & 231) and $190,000 (DB 907, 712 & 231) were paid by DW1 via cheques issued, she could not explain why these 4 sums were recorded in DB101 as debits against PW1's account. The fact that to this day, these 4 sums were never "repaid" by PW1 to DW1 and neither did DW1 ake a claim for or set-off the same, would clearly suggest that these 4 sums belonged to PW1.

85 The defendant in para 4 of his Amended Defence and Counterclaim simply denies this claim, stating that the sums claimed were advanced by the plaintiff to his son Beng Thong. Insofar as is material, the synopsis of the defence submission on this issue reads as follows:

23. Moving on to Issue 4 (sic) 5

"Issue 4:- (sic) 5

Were the sums claimed by the Plaintiff under paragraphs 3 and 4 of the Amended Statement of Claim comprising of the following 2 categories of payment, loaned by the Plaintiff to the Defendant?

Cheques issued by the Plaintiff to Tjia Beng Thong:-

Date	Amount
26.05.97	S$500,000.00
15.06.98	S$130,000.00
06.08.98	S$603,804.40

Cheques issued by the Defendant to Tjia Beng Thong

Date	Amount
06.02.98	S$220,000.00
11.02.98	S$173,000.00
13.02.98	S$200,000.00
08.04.98	S$190,000.00 "

24. The Defendant submits that the sums claimed by the Plaintiff at paragraphs

3 and 4 of the Amended Statement of Claim were **not** loaned by the Plaintiff to the Defendant.

25. The Plaintiff has wholly failed to establish his case on this. The Plaintiff testified that he had no knowledge of paragraphs 31-33 of his Affidavit of Evidence-In-Chief which sets out this claim. More importantly, the Plaintiff confirmed that **he did not speak to the Defendant at all** on the alleged loans. Indeed, his evidence was that he only came to know of these payments **after** taking legal action.

[The detailed submissions on this are set out at paragraphs 32-43, DCS.]

Issue 5:- (sic) 6

In relation to the sums claimed under paragraphs 3 and 4 of the Amended Statement of Claim, was there an arrangement entered into between the Plaintiff on the one part and Tjia Beng Thong/Amelia Lanny on the other part that the former would take over the state of the account of the latter with ABN-AMRO Bank?"

26. Further, the Defendant submits that the evidence clearly shows that the sums claimed under paragraphs 3 and 4 of the Amended Statement of Claim relate to an arrangement entered into between the Plaintiff on the one hand and Tjia Beng Thong (DW5)/Amelia Lanny (DW4) on the other hand.

[The full submissions on this are found at paragraphs 39-49 and 102-108, DCS]

27. The following points are highlighted:-

> 27.1 The Plaintiff testified that in early 1998, when Tjia Beng Thong and his wife approached him for financial help, he had agreed to help by taking over the latter's shares in ABN-Amro Bank;
>
> 27.2 Dermawan's (PW2) handwritten note at DB 283 clearly shows that all amounts owed by Beng Thong and his wife have been repaid in full to the Plaintiff.
>
> 27.3 M/s Drew & Napier (the Plaintiff's former solicitors) sent a letter of demand dated 6/11/99 **to Tjia Beng Thong** for part of this loan; and
>
> 27.4 The undisputed fact that in about August 1999, Amelia Lanny paid a sum of $10,000 to Dermawan representing **interest** for part of the loan taken by Tjia Beng Thong and herself.

86 The figures are not disputed. Although, in my evaluation, the evidence of Beng Thong and his wife Amelia was replete with hesitancy and prevarication, one feature which did not escape my attention was the fact that the plaintiff himself was unsure of this transaction. The plaintiff, when cross-examined on the contents of paragraphs 31 and 33 of his affidavit which dealt with this head of this

claim, could only say that he did not know anything about the contents of these paragraphs and that questions on them should be addressed to his son Dermawan (see pages 322 to 326 of the NE). Another significant feature relates to the demand letter sent on behalf of the plaintiff by his previous solicitors, Drew & Napier dated 6 November 1999 (see DB-392) addressed to Beng Thong claiming a sum of $603,804.40. In fact the said demand appeared to supersede a demand for the same sum by the same solicitors made on 30 September 1999 (see DB-413) addressed to the defendant. The plaintiff's position seemed to have altered only after the present solicitors for the plaintiff, Lee Mun Hooi & Co took over the conduct of the plaintiff's case and in the process revised the demand to $2,016,804.40, which included the earlier figure of 603,804.40 (see DB-415).

87 In this connection, my attention was also invited to an interest payment of $10,000 to the plaintiff, as claimed by Amelia (see DB-297 and page 4845 of the NE). This was confirmed by Dermawan (see page 778). In addition, the agreed facts submitted by counsel also show that there were five cheque payments (vide DB-296) from Amelia from 16 September to 28 September 1998 amounting to $363,085.10 to Dermawan as payment to the plaintiff. Having regard to the manner in which the plaintiff had dealt with Beng Thong and his wife Amelia and having regard to his apparent instructions to his previous solicitors, probabilities favour the conclusion that the plaintiff extended the loans on his own accord to Beng Thong and his wife Amelia. In my view, the plaintiff has not on balance, established that the amount claimed were indeed loans made to the defendant. In the result, he will have to look up to Amelia and Beng Thong for relief.

The issue in relation to a claim of $4,069,000 (Issues 7 and 8):

7 To whom does the block of Apollo shares that were sold on 10 December 1997 belong?

8 ***For whose benefit was the entry in Book D at DB 129, being the record of a withdrawal of the sum of $4,069,000 in December 1997, made?***

88 This issue revolves around transactions reflected in the bank statements relating to ABN Bank Account No. 23-30-954 which stands in the name of the plaintiff. This account which was opened sometime in 1983 in the name of the plaintiff and at the request of the defendant has two authorised signatories, the plaintiff and the defendant, either one's signature will suffice. The plaintiff does not assert that he deposited any sum into the account. His claim is for a sum of $4,069,000 as being part of the proceeds from the sale of a block of 2,145,100 Apollo shares, by the defendant. It must be noted presently that the purchase of the said block of shares was not recorded in books A, B and C but in Book D (exh D-6). This book which was maintained by the defendant's daughter Mui Kui, bears on its front cover the heading: "JS – ABN, 23-30-954, Oct 1992". The letters 'JS' refer to the plaintiff Johanis Sutjiawang. The abbreviation 'ABN' refers to the ABN bank. The defendant's contention is that the reason for opening the account was to obtain additional facilities for the defendant and the purchase of the said shares was entirely from his finances and had nothing to do with the plaintiff. The defendant also seemed to place reliance on a power of attorney executed by the plaintiff, sometime in October 1980 (DB-163). However, this power was given almost three years before the said ABN account 23-30-954 was opened.

89 The plaintiff relies on the fact that the said shares were registered in his name and the monetary transactions were captured in his bank statements. The argument advanced on his behalf is somewhat lengthy for them to be entered upon here. Nevertheless, a particular segment calls for mention. Paragraphs 99 and 100 of plaintiff's counsel submission reads as follows:

> 99. Sixthly, in order to convince the Court that these 2,145,100 Apollo shares

belonged to him, DW-1 put forward an argument that PW1 did not put a single cent into PW1's ABN account no. 2330954 through which these Apollo shares were purchased. This contention is the reflection of DW1's persistent attempt to conceal the true ownership of these shares.

(1) DW1 said that PW1 did not put a single cent into ABN account no. 2330954. But under further cross-examination, DW1 admitted that PW1 had remitted money into his ABN personal account no. 2330954.

(2) It is DW1's evidence that all remittance from Jakarta, he had asked DW2 to place the monies remitted into PW1's ABN account no. 2330954.

(3) DW1 admitted that in all PW1's investments he had handled, they were all recorded in PW1's ABN personal account 2330954. In fact, it can be shown from Book D maintained by DW3 in respect of PW1's ABN personal account no. 2330954, that:

(a) certain shares transactions and other transactions recorded in Books A, B and C were also recorded in Book D;

(b) the proceeds from PW1's matured insurance policies belonging to PW1 were also recorded in Book D;

(c) various Chinese notations were made in Book D to show that the respective transactions were for PW1;

(d) ultimately, DW1 had to admit that he did not make any distinction as to whose monies it was in PW1's ABN personal account no. 2330954; (NE 1521, lines 21 to 24).

(e) in a final desperate attempt, DW-1 put forward a position that if the monies remitted from Jakarta belonged PW1, PW1 would direct that it be put into PW1's personal account without realising that the documents in DB 509-536 showed that PW1 and PW2 were able to remit substantial sums of monies into their personal accounts which refute DW1's contention that he rendered assistance to PW1 and his members of family as show in Books A,

> B and C, and there is no cause for DW1 having been aware that PW1 had substantial sums of monies (excluding the various sums of loans extended by PW1 to DW1), DW1 would be so charitable to earmark the monies in Books A, B and C at PW1's disposal.

100. Seventhly, despite admitting that if books preceding Book D were produced, parties would be able to ascertain whether the 2,145,100 Apollo shares were recorded, DW1's failed to produce these preceding books. This failure affects the credibility of DW1 and his claim in respect of the 2,145,100 Apollo shares. It must be borne in mind that:

> (1) DW1 and his family members were the ones who had keep meticulous records of their transactions – in fact, DW2 worked full-time in keeping the records;
>
> (2) DW1 and his family members were the ones in possession of these records;
>
> (3) DW1 and his family members had the ability to produce many of the supporting documents/correspondences/statements going back many years;
>
> (4) DW1 and his family members had ample time in the course of the trial to produce all the requisite documents which straddled over 4 months.

90 On this issue, the defendant's counsel's submission, insofar as is material, as appears at paragraphs 53 to 58 is as follows:

> 53. The Apollo Shares were bought with monies belonging to the Defendant and this is confirmed by the following considerations:-
>
> > 53.1 The purchase of the entire block of Apollo Shares were not recorded in Books A/B/C. It was only recorded in Book D. Only 800,000 Apollo shares was recorded in Books A/B/C. Therefore Books A/B/C only recorded the sale proceeds of 800,000 shares. It must be remembered that even putting the Plaintiff's case at its highest, the assertion made is that the monies recorded in Books A/B/C belong to the Plaintiff;
> >
> > 53.2 Put another way, the Plaintiffs' claim is that all the monies remitted by him to the Defendant were booked through Books A/B/C. As Books A/B/C only reflect a purchase of 800,000 Apollo shares, the Plaintiff can have no conceivable basis for claiming the balance 1,345,000 shares;

53.3 The Plaintiff himself admits that Book D is a record of the transactions of the Defendant's. Book D was not kept for and on behalf of the Plaintiff. Paragraph 48 of the Plaintiff's affidavit of evidence-in-chief filed on 22 June 2000 states:-

> "*Apart from the above 2 booklets, the 3rd booklet that was forwarded to my solicitors is not accounts maintained for and on my behalf*."
>
> It was also made clear by Mr Lee during the Plaintiff's cross-examination that Book D was maintained for and on behalf of the Defendant. Mr Lee clarified that he had ascertained this through both the Plaintiff and his son, Dermawan.
>
> The Plaintiff also admitted at several points during his cross-examination that the entries in Book D were transactions of the Defendant. The Plaintiff said this about Book D:-
>
> "*Witness: Yes, it's not mine, your Honour.*
>
> His Honour: "Book 'D' is not mine". (To witness) Why do you say "it is not mine"?
>
> Witness: Maybe it's the Defendant's daily records, your Honour.
>
> Q: And you would accept that this book is in fact, accounts maintained for and on behalf of the Defendant?
>
> A: Yes, your Honour."

This point is further elaborated at paragraph 45 below.

53.4 Further, the Plaintiff has tendered no evidence at all to suggest that the purchase money of the balance of the Apollo Shares (namely 1,345,000 shares) were purchased with monies belonging to the Plaintiff. In fact, it is clear that the Plaintiff only came to know about this remaining block of Apollo Shares only just before the proceedings were commenced when he sought and obtained the documents relating to the account in his name with ABN

Bank (in late 1999);

53.5 The only evidence that is relied upon by the Plaintiff is the fact that the shares were registered in his name. The evidence clearly shows that these shares were registered in the Plaintiff's name purely for convenience as they were bought with funds belonging to the Defendant in the ABN Account No. 23.30.954 maintained in the Plaintiff's name. This is why the Plaintiff is **not** making any claim in respect of the large number of other transactions recorded in Book D.

53.6 Prior to the commencement of the suit in January 2000, the Plaintiff was not even aware as to the quantity of Apollo shares that had been purchased nor their purchase price. Neither did the Plaintiff know of the details of the sale of the shares. That is why in Mr Lee's letter of demand dated 22/12/1999, the Plaintiff had claimed for "*the proceeds" of 4,719,220 Apollo shares amounting to S$4,609,000.00*". Furthermore the initial pleadings were also defective in this respect and were subsequently amended upon full discovery being provided by the Defendant. The Plaintiff only knew of the details of the transaction upon receipt of the bank documents sometime in late 1999 (ie. just one month before proceedings was filed), when he obtained the details from ABN-Bank; and

53.7 More importently, the Plaintiff admitted that he did not know whether the Defendant had **used the Defendant's own money** to purchase this block of Apollo shares. This is shown by the following exchange:-

> "*His Honour: Now, could you answer also the question, did (the Defendant) use his own monies to purchase these shares?*
>
> Witness: I don't know whether he used his own money, but the shares of Apollo is in the name of my account, your Honour.
>
> His Honour: "in the name of my ----?"
>
> Witness: In my name, your Honour. In my name, your Honour.
>
> His Honour: But did he say: "I don't know whether he used his monies or not"?

Witness: Yes, correct, your Honour.

His Honour: "I don't know whether he used his monies or not but the shares were bought in my name"?

Witness: Yes, your Honour, correct."

54. It is clear that Book D was maintained for and on behalf of the Defendant in respect of the Defendant's own transactions.

55. This is borne out by the following:-

55.1 Book D is a record of transactions of ABN Bank account no. 23.30.954 in the Plaintiff's name. The circumstances surrounding the opening and management of the account clearly show that this account is in fact operated for the Defendant's benefit:-

55.1.1 The reason for the opening of the account in the Plaintiff's name was to obtain additional facilities for the Defendant. The Plaintiff admitted that the account was opened in 1983 pursuant to a request **made by the Defendant**.

55.1.2 At the time the account was opened in 1983, the Plaintiff did not deposit any sum into this account;

55.1.3 Not a single cheque was issued by the Plaintiff for this account from 1983 right up to October 98. Indeed, the Plaintiff did not even hold the cheque book. The cheque book was kept by the Defendant;

55.1.4 All the bank statements were sent to the Defendant's home address;

55.1.5 The Plaintiff was totally unaware of the state of this account at all material times;

55.1.6 During his cross-examination, the Plaintiff admitted that account no. 23.30.954 was for the Defendant's benefit as follows:-

"Q: Now the

Court also had heard the evidence that there was an ABN Account opened in your name in 1983, and so that I don't get the number wrong, account number 23.30.954. I'm just reminding you that the Tjia Mui Kui maintains for you and it was stated that it was for your own account. All right? You look at DB108, if you go right down, there were many shares transactions done. And you can carry on until the last page of this book, DB135. Looking at this book, am I right to say, simultaneously, at the same period when you purchased shares or transacted shares that were recorded in these three books, ***you also conduct share transaction for yourself****.*

A One record is for the year 1977, another record is for the year 1992.

Q OK, limit to 1992 onwards,

could you agree with me, simultaneously from 1992, you conduct share transaction that were recorded in the books from 1992 and also recorded in your own accordingly?" (emphasis added)

And again, it was put to the Defendant that there was a distinction made between the share transactions recorded only in Book D and the share transactions which were also recorded in Books A/B/C:-

"Q Mr Tjia, I'm putting to you a distinction was made in order to show what were the shares belong to the Plaintiff."

- See also the exchange at NE 3581 – 3582.

55.5 The Plaintiff admits that Book D was never shown to him by the Defendant.

55.6 As the transactions in Book D were the Defendant's own transactions, it was the Defendant who paid for all bank interest charges and other bank charges.

56. It must be emphasized that there are many transactions recorded in Book D that are not included in Books A/B/C. The Plaintiff clearly does not lay any claim whatsoever to these, except for the Apollo shares. The basis for this exceptional

treatment of the Apollo share has to date not been clarified.

The real ownership of the Apollo shares in question are belied by the conduct of the parties as follows:-

> 57.1 In November 1998, a total of 251,000 Apollo shares remained in the records represented by Books A/B/C. This is shown by Book E which is a record of the shares transacted through Books A/B/C. It is not disputed that this book is an update of Book F.
>
> 57.2 It is also not in dispute that at this time, the Defendant held Apollo shares in excess of the amount shown in Book E. The rest of the Apollo shares were booked in Book D.
>
> 57.3 In about November 1998, the Defendant transferred a total quantity of 438,000 Apollo shares to the Plaintiff. Part of these (ie 251,000) shares was a gift from the Defendant to the Plaintiff. The Plaintiff paid a sum of $147,730.00 by way of POSB cheque No 751508 dated 25/11/98 for the quantity of 187,000 shares. Dermawan admitted that the 187,000 Apollo shares was bought by the Plaintiff from the Defendant.

This conduct of the Plaintiff clearly exposes the lie of the Plaintiff. If the remaining Apollo shares with the Plaintiff (other than those booked through Books A/B/C) in truth belonged to the Plaintiff, the Plaintiff would **not** have paid the Defendant for the 187,000 Apollo shares.

58. As set out at paragraph 13.2 – 13.5 above, the Plaintiff's conduct in the content of the letters of demand sent to the Defendant is also revealing. In these letters, which were obviously issued under legal advice, the Plaintiff made no claim whatsoever for this sum of $4,069,000.

91 In my determination, the fact that the said shares were registered in the name of the plaintiff and transactions thereto are recorded in the bank statements of a bank account opened in the name of the plaintiff is, prima facie evidence that the plaintiff is the legal owner of the shares under reference. "Prima facie evidence" in its usual sense is used to mean prima facie proof of an issue, the burden of proving which is upon the party giving that evidence. In the absence of further evidence from the other side, the prima facie proof becomes conclusive proof and the party giving it discharges his onus (per Stratford JA in ***R v Jacobson v Levy*** 1931 AD 466 at 478). If the defendant wishes the court to hold that the defendant is in fact the beneficial owner of those shares, it is incumbent on him to place before the court some palpable evidence in order for the court to arrive at a finding in support of him. In my view, this was decidedly not done.

92 There was an endeavour by the defendant to latch on to a power of attorney given to him by the plaintiff. In this regard, the attention of the court was drawn to three powers of attorney, dated 21 October 1980 (DB-163), 22 April 1986 (exh D-9) and 17 January 1994 (exh D-10) respectively. It is a well-known principle of law that a power of attorney is a formal instrument by which one person empowers another to represent him, or act in his stead for certain purposes. However, whilst the

powers referred to, by their terms purport to enable the defendant to deal with the shares and assets of the plaintiff, they do in no way, give any carte blanche to the defendant to appropriate or gobble up the shares and assets of the plaintiff. A donee of a power of attorney cannot use the power thereunder for any unauthorized and self-serving purpose (see: ***Imperial Bank of Canada v Begley*** [1936] 2 All ER 367; and ***Reckitt v Barnett***, ***Pembroke and Slater Ltd*** [1929] AC 176).

93 Then there was a reference by the defence to a will made by the plaintiff in August 1993, (DB-180). Fortunately for the plaintiff, he is still living. In regard to this will, I accepted the plaintiff's explanation that he was advised to make the will by the defendant purely for avoiding unnecessary complications in the case of the demise of the plaintiff and not for the purpose of giving everything away to the defendant in preference, even over his own children. It is perhaps important to observe at this stage that on many an occasion, I found the defendant, in the course of his testimony, to be noticeably glib, evasive, ambivalent and prevaricating. In this connection, I must presently refer to some of his answers during cross-examination.

94 First at page 1096 of the Notes of Evidence:

> Q Now, Mr Tjia, by asking for all these documents relating to the Plaintiff's account, [see exhibit P-5 – a letter written by Mui Kui to ABN on 3 July 1995 in relation also to Plaintiff's ABN account No. 23-30-954 (exh P-5)], am I right to say that you want to know what happens in the Plaintiff's account?
>
> A It's not possible. I'm not concerned only with one particular account, I'm concerned with all the accounts.
>
> Q Thank you. So you are also concerned with the Plaintiff's account, am I right?
>
> A No. Because this account is also my account. Because I have the power of attorney. Furthermore, he had never deposited one single dollar into that account.
>
> [Note: Words in square brackets are added.]

95 Having claimed that the plaintiff did not put even a single cent into the said account, the defendant seems to prevaricate once again at pages 1703 and 1704 of the Notes of Evidence, as follows:

> Q Mr Tjia, you have used the Plaintiff's ABN account 2330954 to effect payment to the Plaintiff or to his son, Dermawan?
>
> A If he had money, of course I would issue the cheque for him.
>
> Q So Plaintiff must have money in this ABN account, otherwise you could not effect payment to him, am I right?
>
> A Well, this regards the records here, when he remitted money into this---
>
> His Honour: When? Say it again.
>
> A When he remitted money into ABN account and claimed that these were his own money, so when he said that he needed the money, of course we would have to give him.

Q Following from your last answer, am I right therefore to say that Plaintiff have ever remit money into his ABN account?

His Honour: This particular account – 2330954?

Mr Lee: That's right, your Honour, 2330954.

A Yes.

Q If that is so, Mr Tjia, why at the last hearing you said not a single cent in this ABN account belongs to the Plaintiff?

A For instance, when he sent money from Indonesia, sometimes he would send it under my name, sometimes under his own name, Johanis. When he sent it in his own name, then he would say that those were his own money and soon after sending, he would take them out.

Q Therefore, Mr Tjia, am I right to say, at the last hearing when you said that the Plaintiff did not put a single cent in this ABN account of his, it's incorrect, am I right?

A You see, if he put in the money and left the money in the bank, then you can consider those were still his money. But soon after he put in the money, he took them away. So how can you consider those his money.

96 Then at page 1801 of the Notes of Evidence, in answer to a clarification sought by the court, the defendant made yet another contradiction as follows:

Q Mr Tjia, in those shares that were recorded in this ABN account---

His Honour: Let me ask him because you didn't follow through.

Mr Lee: Yes.

His Honour: You received certain remittances from Jakarta from the Plaintiff?

Witness: Yes.

His Honour: Did you use any sum so received to buy any Apollo shares?

Witness: I never distinguished whether those monies used in purchasing the Apollo shares were actually from the Jakarta remittances or whether they were from my own money.

Q So these 2,145,100 Apollo shares could be purchased from funds from the--- remitted from Jakarta or from yourself or mixed, am I right? Or mixed?

A I can't remember.

97 When asked why he had to register the said shares in the name of the plaintiff and not in his name or that of his immediate family members, the defendant replied nonchalantly that he could do as he wished and no one could control him in that regard. In this connection, it bears to reproduce the segment of his evidence as appears at page 1152 of the Notes of Evidence:

> His Honour: (ctd) The question was why did you choose to register these shares in the name of the Plaintiff rather than in the name of your children or in the name of the several companies in which you have interest?
>
> Witness: It was such a long time ago now, I cannot remember why.

Q Since these shares were using your own fund, why don't you register these shares in your own name – your own name?

A As I had said before, I have the freedom to register under any person's name. There is no one to control me, to tell me that I have to register in my name.

Q I put it to you, Mr Tjia, you registered these 2,145,100 Apollo shares in the name of the Plaintiff because you were using the account of the Plaintiff with ABN 23.30.954.

A Have you finished?

Q Yes, yes, do you agree?

A I don't understand your question.

Q Let me ask you, and I repeat again. Do you agree with me, Mr Tjia, that these 2,145,100 Apollo shares were registered in the name of the Plaintiff because you were using the Plaintiff's account with ABN bank under account number 23.30.954?

A It could be so.

98 Defence counsel in his submission relied on the provisions of s 112 of the Evidence Act which reads: "When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner." He argued that since the defendant was the person who was in possession of the block of Apollo shares the burden was on the plaintiff to prove that the defendant was not the owner of the shares. He relied in this regard on the case of ***Pan-Electric Industries Ltd (In Liquidation) v Sim Lim Finance Ltd & Ors*** [1993] 3 SLR 242.

99 The facts as well as the decision made in the ***Pan Electric*** case, as they appear in the headnotes, are as follows:

100 On two occasions in 1984 and 1985, the plaintiffs deposited a total of 6.3 million shares in a public listed company with the ninth defendants, a firm of stockbrokers. Subsequently, the ninth

defendants ('AAS') mortgaged or otherwise charged the 6.3 million shares to the first to eighth defendants, who are all financial institutions, to secure the ninth defendants' facilities from them. The plaintiffs later went into liquidation and the liquidators brought this originating summons against the defendants claiming that the 6.3 million shares were beneficially owned by the plaintiffs. The action proceeded as if brought by writ. By the end of the trial, all the defendants save the third and the sixth defendants had settled the plaintiffs' claims.

101 In dismissing the plaintiffs' claim, the court held that on the basis of the limited evidence before the court, the plaintiffs had failed to prove that they were beneficial owners of the 6.3 million shares held by AAS in 1984 and 1985. Accordingly, the action failed.

102 The ***Pan Electric*** case does not really assist the defendant for in the first instance the said case seemed to revolve around share-certificates of a public listed company with signed blank transfers attached to them. In the present case, not only were the shares under reference registered in the name of the plaintiff but the proceeds of the sale were also in fact credited to the bank account opened in his name. The power of attorney relied on by the defendant does not confer any right to the defendant to appropriate the proceeds to his benefit. The onus therefore was on the defendant to prove that he was the beneficial owner of the shares and not the other way around and in this, the defendant has wholly failed to discharge his onus.

103 In my evaluation, although the plaintiff could not come up with anything more than the bank documents and registration of shares in his name, inasmuch as the defendant has not placed before the court any credible evidence for it to infer that the said shares were owned by the defendant beneficially, the issue posed ought to be resolved in favour of the plaintiff. The answer to issues 7 and 8 therefore is that probabilities also favour the conclusion that the said block of Apollo shares belong to the plaintiff and that he is entitled to the sum of $4,069,000, as claimed by him.

The issue in relation to $13,738,138.69 (Issue 9):

Whether the plaintiff is entitled to claim wither the return of the shares or value of the shares as set out at paragraphs 5 and 8 of the Amended Statement of Claim, which amounts to $13,738,138.69.

104 The plaintiff's claim under this head is contained in paras 5 and 8 of the statement of claim. In sum, what the plaintiff said in relation to this was this. All the shares listed in books A, B and C and kept by the defendant's wife were his. He said that sometime during September 1998, the said shares were force-sold by the defendant's bankers. He objected to the sale of those shares but to no avail. As to when he raised those objections, his answers were not pointed. It would appear that it was either sometime after 31 July 1998 (page 462 of NE), or in November 1998 (page 465 of the NE) or around September 1998 (page 619 of the NE). He was emphatic however, that the shares listed in annexure 1 to the statement of claim were sold against his will and authority sometime around 4 September 1998. The defendant's defence, in short, is that all the shares listed in the said annexure 1 were beneficially owned by him. He added however that all the said shares save for (a) the block of 50,000 Magnum Corporation shares which were transferred to the plaintiff's direct account with a stockbroking company known as Kay Hian Private Limited on or about 11 December 1998; (b) the block of Apollo shares (subject matter of dispute under issues 7 and 8) and (c) a block of 130,000 Singapore Finance shares listed at item No. 5 of the said annexure that remains unsold, were sold and disposed of at various times in 1998.

105 In the defendant's opening statement, defence counsel had only the following to say as regards

this substantial claim by the plaintiff:

> With the exception of 50,000 Magnum Corporation Berhad and 130,000 Singapore Finance shares, the remaining shares set out at Annexure 1 to the Statement of Claim were sold in about September 1998.
>
> These sale transactions were noted in the record books maintained by the Defendant's wife.
>
> It now appears that the Plaintiff accept that the shares were in fact sold.
>
> It is also important to note at this stage that in October 1980, the Defendant (sic) had granted the Plaintiff (sic) a broad and extensive Power of Attorney. (DB-163 to 173).

106 No doubt, in the earlier segments of his opening statement, counsel for the defendant relied on the point that the monies used to purchase all the said shares were that of the defendant, arising from the defendant's investment in the said Bank Pelita.

107 There was extensive submission on this issue by defendant's counsel. However, the gravamen of his submission is captured in a synopsis provided by him and it reads:

> 32. The Plaintiff's claim under this head is misconceived. It is not even clear how the figure of $13,735,138.69 is arrived at.
>
> [See the submissions at paragraphs 60-74, DCS.]
>
> 33. The Plaintiff's claim for this sum of $13,738,138.69 is based on the following assertions:-
>
> > 33.1 that the Defendant had wrongfully pledged the shares to ABN-AMRO Bank ("the Bank"); and
> >
> > 33.2 that the Bank had force-sold the shares.
>
> 34. This case has now been completely abandoned by the Plaintiff.
>
> [See the submissions at paragraph 1 of the Addendum, DCS].
>
> 35. The Plaintiff has no conceivable basis in fact or at law for bringing a claim for the alleged **purchase value** of the shares against the Defendant. This is especially so as he now admits that the sale of the shares was **not wrongful**.
>
> [See the full submissions, at paragraphs 1-10 of the Supplemental Addendum, DCS.]
>
> 36. The issue that confronts the Court then is whether the Plaintiff is entitled in the alternative to the apparent account balance in Books A/B/C/ (as at July 1998).
>
> 37. It is humbly urged that no relief should be granted to the Plaintiff in terms for the account balance in Books A/B/C for the following compelling reasons:-

> 37.1 The Plaintiff's pleadings do not disclose any claim for the account balance. The Court is not in a position to provide relief based on an unpleaded case.
>
> [See paragraphs 3 of the Addendum and paragraphs 21 and 22 of the Supplement Addendum, DCS.]
>
> 37.2 The clear position taken throughout the proceedings by the Plaintiff was that he would pursue a separate claim for the proper account balance; and
>
> 37.3 As such, the Defendant did not lead certain evidence that he otherwise would have led. Such evidence would include the calling of expert accounting evidence. The accuracy of the entries in Books A/B/C would also need to then be examined exhaustively.
>
> [The detailed submissions on this alternative ground are set out at paragraphs 11-22 of the Supplemental Addendum, DCS.]

108 At all times, the major plank of the defence in this suit has been that the shares and other transactions recorded in the books maintained by the defendant's wife, from which the plaintiff has culled the shares listed in annexure 1 to his Statement of Claim, do not belong to the plaintiff at all and that they all belonged to the defendant. The leitmotiv of the defence was that the monies remitted by the plaintiff over the years, since about 1977 were the fruits of the defendant's investment in Bank Pelita. This argument and facts in relation thereto had already been dealt with by me under preliminary issues 1, 2 and 3 and had been answered in favour of the plaintiff. Having answered the preliminary issues, it now falls for me to address the other contentions raised by counsel for the defendant.

109 Counsel for the defendant contends that the plaintiff's claim for $13,738,138.69 is misconceived as it is not clear how the said figure was arrived at. I must hasten to add at this stage that neither the quantity nor the description nor the value of the shares detailed in the said annexure 1 was put in issue by the defence until the final stages of the hearing. All the same, in relation as to the value of the shares, the plaintiff''s counsel's submission is that the computation of the value of the shares was arrived at by taking the median of the purchase price of the said shares and the market price of the said shares at the commencement of the suit. In response to the late thrust by the defendant's counsel, the plaintiff's counsel submitted that if the court is not altogether satisfied with the valuation placed by the plaintiff's side, then the court could either order the return of the shares or order for a payment of the value of the shares at the date of the commencement of the action. In this regard, he invited the court's attention to the principles expounded by the Court of Appeal in ***Huang Han Chao v Leong Fook Meng & Anor*** [1991] SLR 286.

110 The facts in the case ***Huang Han Chao*** as appear in the headnotes of the report is as follows:

> This appeal concerned a dispute over the ownership of a piece of property (the Bukit Tunggal property). The appellant and second respondent were partners of two partnership firms. The Bukit Tunggal property was conveyed to the first respondent, who was the wife of the second respondent, in October 1967. When

the second respondent moved permanently to Singapore from Kuala Lumpur, he arranged for the Singapore office of one of his firms to rent the property from his wife for use as his residence and office for three years.

The partnership was later dissolved. In 1979, the appellant started this action by a writ of summons in which he claimed a declaration that the respondents held half of the beneficial interest in the property on trust for him and other consequential relief. The writ was later amended to a claim for a declaration that the property was entirely held on trust for him by the respondents. In his statement of claim, the appellant alleged that the Bukit Tunggal property was purchased for him by the second respondent on his instructions.

At the trial, the appellant maintained that the property was purchased on his instructions and with funds from his credit balance in the partnership account and there was no tenancy agreement. At the very end of the trial, however, as a fall back position, the appellant claimed that the property was partnership property. The claim was dismissed, and the appellant filed a petition of appeal which stated various grounds of appeal. All these grounds were abandoned on appeal and counsel elected to reply only on one ground, ie that the appellant was entitled to at least a half share of the property as he was a partner and the property was purchased mainly out of funds belonging to the partnership firm. The issue was whether the appellant was procedurally barred from raising that ground on appeal.

111 Dismissing the appeal, Yong Pung How CJ commented at pages 291 and 292 (*supra*) as follows:

… The procedural bar in this case arises in two ways. The first is the manner in which this case has been pleaded by the appellant. Order 6 r 2(1)(a) of the Rules of the Supreme Court 1970 requires that a writ be at least endorsed with a concise statement of the nature of the claim made or the relief or remedy required in the action it begins. Then O 18 r 15(1) provides that the statement of claim must state specifically the relief or remedy claimed. The Rules therefore require that a plaintiff specifies at least one of the reliefs he may wish to claim. Here, the appellant has specified in his amended writ, original and amended statement of claim, which have been drafted by different solicitors, that he claims a declaration that the *entire* property is held on trust for him. He has also claimed consequential relief but this stands or falls with the claim for the declaration. We are of the view that a plaintiff cannot ask for a claim that is inconsistent with the specific relief he has sought in his pleadings: see the decision of Fry J in *Cargill v Bower* (1878) 38 LT 779 which the English Court of Appeal has approved in *Belmont Finance Corp Ltd v Williams Furniture Ltd & Ors* [1979] Ch 250, and which the Court of Appeal of the Federation of Malaya applied in *Mokhtar v Arumugam* [1959] MLJ 232. Furthermore, the standard prayer for 'further or other relief' must be read with and limited by the facts alleged and the terms of the prayer for specific relief. It cannot be used to introduce relief inconsistent with that which was expressly asked for. In this action, it is plainly inconsistent for the appellant to seek a declaration that the property is partnership property when his pleadings expressly asserted that the entire property was purchased on his instructions and with his funds and that the property was accordingly his beneficially.

> It may have been possible for the appellant to have amended his pleadings at the trial to claim the property as partnership property but he did not seek to do so and it was too late in the day for him to do so at the hearing of the appeal. We are fortified in our view by the manner the appellant has gone about his claim in relation to this property. His original writ of summons claimed only that the property was partnership property. He then amended the writ to its present form. He made statements on oath, both before and at the trial, that the property belonged entirely to him. The case was conducted below wholly with the aim of proving the allegations in his amended statement of claim and claiming for the entire beneficial interest. It was only at the every end of the appellant's counsel's submissions at the end of the hearing that the appellant (through counsel) sought the declaration that the property was partnership property. Moreover, the original petition of appeal did not contain ground (g) or any similar ground. The ground was added only on amendment. We are conscious that the amendment was made with the leave of court but we observe that the only reason given to the judge hearing the motion for leave was that the appellant had instructed new solicitors. The grant of leave to amend the petition could not therefore be, and rightly was not, taken in support of any argument for leave to amend before this court.
>
> The second reason why this appeal must be dismissed is that the claim that the property is partnership property was, as stated before, never argued below, save as a final submission at the very end of the trial, nor was there any evidence presented with a view to showing that it was partnership property. It is true, as counsel for the appellant urged, that this court, by virtue of s 37(1) of the Supreme Court of Judicature Act (Cap 322) and O 57 r 3(1) of the Rules of the Supreme Court 1970, rehears a case and that it can hear a point not taken at the trial. The latter is, however, clearly a discretionary power. We are of the opinion that it should not be exercised in an appellant's favour where the appeal is based on a case which is totally inconsistent with and contradictory to the case argued in the court below. …

112 Having regard to all the facts presented, I am of the view, that the shares listed in the books kept by the defendant's wife did not belong to the defendant and that their beneficial owner was none other than the plaintiff. Having regard to all the evidence, I am also of the view, and conclude that it was extremely probable that the shares listed in annexure 1 to the plaintiff's Statement of Claim were either force-sold by the banks to meet the shortfall in the defendant's accounts or that the defendant himself liquidated the said shares in order to meet his then needs. In either event, the defendant seemed to have acted without any regard to the rights, interests and wishes of the plaintiff. In this regard, I have no reason to doubt the veracity of the plaintiff when he said that he raised his objections either to the sale or proposed sale of his shares. In my finding, the several claims by the defendant as well as his wife and children claiming that the defendant was only being kind and charitable to the plaintiff and his family members and that the remittances from Jakarta by the plaintiff were from the investment of the defendant, were nothing but a tissue of lies and concoction.

113 Having determined that the shares listed in annexure 1 to the statement of claim belong to the plaintiff absolutely, the next question to be answered is whether judgment should be entered for the plaintiff in the sum of S$13,738,138.69. In my opinion, the objection, albeit much belated, by defendant's counsel that the monetary value of the shares had not been adequately established, appears valid. His other objection that the books kept by his client's wife had a number of errors, however cannot be sustained because of its very late arrival. In any event, its significance is

miniscule in relation to the issues at hand. Having determined that it would be inappropriate to award to the plaintiff the sum claimed by him ie, $13,738,139.69, I am of the view that an order for the return of the shares listed in annexure 1 to the statement of claim or their value at the date of commencement of the writ would not be inconsistent with the relief sought by the plaintiff in his statement of claim and in this I am fortified by the views expressed in the case of ***Huang Han Chao*** (*supra*).

114 In the premises, the plaintiff shall be entitled to an order that the defendant do return to the plaintiff all the shares listed in annexure 1, in specie or pay to the plaintiff the average of the highs and lows of the respective share prices as published in the Business Times on the date of the filing of the writ herein. In my opinion, the relief I have decided to grant and thus grant is not inconsistent with the relief sought in the pleadings. Consequently, judgment shall be entered for the plaintiff in the following terms.

115 Judgment for the plaintiff for (a) a sum of US$750,000 as claimed under paras 9, 10 and 11 of the statement of claim; (b) a sum of $4,069,000 as claimed under para 5 of the statement of claim; (c) the delivery forthwith of the shares listed under annexure 1 to the statement of claim or that the defendant shall pay the plaintiff the average of the highs and lows of the respective share prices as at the date of this writ, ie, 10 January 2000 as published in the Business Times of 10 January 2000; (d) interests at the rate of 6% from the date of writ until judgment; and (e) the defendant's counterclaim be dismissed. On the question of costs, since the plaintiff has not succeeded in respect of one segment of his claim for $1,317,158.22 (vide paras 3 and 4 of the amended statement of claim), I allow the plaintiff only four-fifths of the costs.

Order accordingly.

Sgd:

MPH RUBIN
Judge