

Walton International Group (Singapore) Pte Ltd and others v Yau Kwok Seng Winston and  
another  
[2011] SGHC 144

**Case Number** : Suit No 333 of 2008  
**Decision Date** : 03 June 2011  
**Tribunal/Court** : High Court  
**Coram** : Tan Lee Meng J  
**Counsel Name(s)** : Indranee Rajah SC, Daniel Soo, Alex Toh and Angeline Tan (Drew & Napier LLC) for the plaintiffs; Tan Chee Meng SC, Melanie Ho, Chen Xinping, Megan Tay and Clement Tan (WongPartnership LLP) for the first defendant; Looi Teck Kheong (Edmond Pereira & Partners) for the second defendant.  
**Parties** : Walton International Group (Singapore) Pte Ltd and others — Yau Kwok Seng Winston and another

*Contract*

*Tort*

3 June 2011

Judgment reserved.

**Tan Lee Meng J:**

**Introduction**

1 This case concerns a very bitter dispute between employers and two of their former key employees, one in Singapore and the other in Malaysia. According to the plaintiffs, this is a story of the defendants' pride, revenge, greed and conspiracy. The defendants readily agreed that there was a conspiracy, but to them the conspirators were the plaintiffs themselves and some of their senior employees who sought to use them as scapegoats for the low morale of the plaintiffs' staff and poor sales in Malaysia caused by mismanagement. The dispute spawned numerous causes of action, including solicitation of staff, unlawful interference with trade, spreading of malicious falsehoods, defamation and breach of the duty of confidence.

2 A secret tape recording that revealed no secrets, statutory declarations allegedly sworn before a Commissioner for Oaths who was not present, astounding admissions by the plaintiffs' top management and unexpected withdrawals of very serious allegations made in affidavits peppered a long trial that lasted more than 13 weeks. There were 55 witnesses, 16 volumes of affidavits of evidence-in-chief ("AEICs") and 9,772 pages of documents in the Agreed Bundles. The evidence could not have been more contrasting. Whether a lunch that was crucial to the plaintiffs' case on solicitation was a jolly and enjoyable occasion to celebrate a birthday or a secret tense gathering with threats made to harm the attendees was the subject of intense debate. Whether or not there was a birthday cake and a "happy birthday" song at the said lunch was also disputed. This led one counsel to accuse the other side's witness of hallucinating at the lunch.

3 The 1<sup>st</sup> to 4<sup>th</sup> plaintiffs are companies within the Walton group. The 1<sup>st</sup> plaintiff, Walton International Group (Singapore) Pte Ltd ("Walton Singapore"), and the 2<sup>nd</sup> plaintiff, Walton International Group (M) Sdn Bhd ("Walton Malaysia"), market Walton's landbanking products in

Singapore and Malaysia respectively. The 3<sup>rd</sup> plaintiff, Walton International Group (USA) Inc, markets Walton's landbanking products in the USA. The 4<sup>th</sup> plaintiff, Walton International Group Inc, a Canadian company ("Walton Canada"), serves as the headquarters of the Walton group. The 5<sup>th</sup> plaintiff, Mr William Kevin Doherty ("Mr Doherty"), is the President and Chief Executive Officer of the Walton group.

4 The 1<sup>st</sup> defendant, Mr Winston Yau Kwok Seng ("Mr Yau"), Walton Singapore's former Executive Vice-President, Asia, was responsible for the operations of the Walton group in Asia before he resigned on 17 January 2008. He was paid around US\$5 million per annum.

5 The 2<sup>nd</sup> defendant, Mr James Iseli ("Mr Iseli"), was Walton Malaysia's Vice-President, Sales before he left that company on 5 May 2008.

## **Background**

6 The plaintiffs are in the business of landbanking. Their business involves the purchase of large tracts of strategically located agricultural or undeveloped land near or within the city limits of various North American cities in anticipation of their future development. The plaintiffs' clients may purchase direct undivided interests in the land and become tenants in common of the entire tract of land with other purchasers. They may also purchase securities in the form of shares in companies or limited partnerships formed to purchase and hold the land. When urban development encroaches upon the said properties, the properties are sold, usually to a developer, and clients who have invested in the said properties receive a return on their investments.

7 The plaintiffs' sales and marketing operations in Asia are carried out principally from offices in Singapore, Malaysia and Hong Kong. Walton Singapore was incorporated in 1998 and it was formerly the headquarters for Asian operations. However, since 2008, each of the Walton subsidiaries in Asia has had its own Managing Director and administrative infrastructure.

8 The plaintiffs recruit individuals with the requisite skills to build up and retain a clientele interested in their landbanking products. Their staff are provided with education and training with respect to the detailed characteristics and advantages of Walton's products as investments. The plaintiffs' ability to successfully market Walton's products is thus largely dependent on the services and loyalty of their sales staff.

9 Mr Yau, a former real estate agent, joined Walton Singapore as a junior landbanking consultant in May 1996. He rose quickly from the ranks. By 1998, he had become the Regional Sales Manager.

10 In 2001, Mr Yau collaborated with a real estate company, Multimatch Properties Pte Ltd ("Multimatch"), which was helmed by his friend, Mr Dirk Foo. Multimatch, which was paid a fee for selling Walton's products, became the primary source of Walton Singapore's sales revenue. Mr Yau managed to persuade Mr Dirk Foo to wind up Multimatch and bring his experienced sales team, including Mr Iseli and Ms Sharon Loh Pui Pui ("Ms Loh"), to Walton Singapore.

11 According to Mr Doherty, Mr Dirk Foo revolutionised the organisation of the Walton Singapore's sales department by implementing a four-tiered structure with Division Managers at the top, followed by Group Managers, Team Managers and Consultants. While Consultants were paid a commission on their sales, Team Managers earned commissions on the sales of all the Consultants in their teams. Group Managers had an overriding commission on the sales made by all the Team Managers and Consultants in their group. Finally, Division Managers were entitled to a commission on their own sales

and an override on commissions earned by all the members of their teams. At the material time, Walton Singapore had 5 Division Managers, 10 Group Managers, 100 Team Managers and between 300 to 400 Consultants.

12 In August 2002, Mr Yau was appointed a director of Walton Singapore. He was also put in charge of Walton Hong Kong. When Walton Malaysia was incorporated in 2002, he was appointed its director, a post he retained until 2006.

13 In 2003, Mr Yau became the Senior Vice-President of Asia-Pacific and Mr Dirk Foo was appointed the Vice-President, Sales.

14 Apart from being the President of Operations in Walton Asia, Mr Yau was appointed a member of Walton Canada's executive management team. In his AEIC, Mr Yau explained (at paras 31 – 33) his various roles:

31 As the EVP of Walton Asia, my scope of duties included laying the foundation for the Walton entities in Asia, networking and building up the Asian clientele and introducing the concept of landbanking, which was new and foreign to the Asian market at the material time.

32 As the President of Operations in Walton Asia, I was also in charge of the operations of the Walton companies including the management of the Managers and sales staff in Walton Asia. However, for each of the regional offices, they would have their own key personnel to run the respective offices as separate entities.

33 As a member of the Executive Management team of Walton Canada, I was part of the team responsible for formulating and implementing the worldwide business and marketing plans and strategies of the Walton Group. I am the only representative from the Asia Pacific region on the Executive Management team.

15 According to Mr Yau, he and his right-hand man, Mr Dirk Foo, who became the Executive Vice-President of Sales of Walton Asia in 2006, developed the plaintiffs' Asian network and clientele over the years. He pointed out that from a nominal turnover in 1996, Walton Asia's turnover reached CAD\$200m in January 2008. He added that sales in Asia accounted for more than 50% of the worldwide sales revenue of the Walton group.

16 In 2005, a Corporate Sales Division was set up in Walton Singapore and Walton Malaysia to cater for "corporate" sales. According to Mr Doherty, one of the best ways to increase sales was to obtain referrals from independent financial advisory companies ("IFAs"). [\[note: 1\]](#) IFAs would introduce Walton's products as a potential investment to their own clients and refer interested clients to Walton Singapore or Walton Malaysia. Such corporate sales through IFAs gave the plaintiffs' staff access to a larger pool of investors. Furthermore, manpower costs were reduced as much fewer staff would be required to sell Walton's products through IFAs.

17 The sale of Walton's products through IFAs proved to be quite successful in Hong Kong but the strength of Walton Hong Kong's retail sales staff was significantly pared down. As such, the thought of having more corporate sales through IFAs made some retail sales staff in Singapore and Malaysia uneasy about their future. Mr Doherty alleged that Mr Yau did not describe the benefits of the IFA channels to the retail staff and that was why this new channel of sales was seen as a threat to them. On the other hand, Mr Yau pointed out that the corporate and retail sales teams were after the pie.

18 Apparently, the disquiet in the retail sales divisions in Singapore and Malaysia about increasing the profile of corporate sales may have been partly fuelled by the plaintiffs' own policies. In February 2007, a new commission structure for corporate sales favoured corporate sales to such an extent that retail sales staff became unhappy. It did not help that at a company retreat at Scottsdale, Arizona (the "Scottsdale retreat") from 30 April to 4 May 2007, a key expatriate in the Singapore office, Mr Glen Pickard ("Mr Pickard"), who was in charge of corporate sales, stated:

We have too many agents in Singapore and Malaysia and there is a need to cut down the numbers to increase the commitment and calibre of people.

....

Plan: Take the *Canadian model* to Asia.

[emphasis added]

19 The Canadian model involved corporate sales and required substantially less manpower than the retail sales model in Singapore and Malaysia. According to Mr Yau, Walton Canada had only around 40 personnel at the material time whereas Walton Singapore's retail sales force had more than 400 sales staff during the corresponding period.

20 Both Mr Yau and Mr Dirk Foo urged the plaintiffs to take steps to boost the morale of the retail sales staff. However, in 2007, Mr Dirk Foo, who was previously in charge of both retail and corporate sales, saw his corporate sales portfolio taken away from him. Mr Yau was unhappy with what he perceived to be a demotion of his right-hand man.

21 Mr Doherty, who became disenchanted with Mr Dirk Foo's performance, told Mr Yau in November 2007 that he would fly to Singapore to personally sack Mr Dirk Foo if the latter did not leave. Mr Dirk Foo agreed to resign in December 2007 and Mr Doherty praised him for his contributions to the company when his resignation was announced at "Walton Vision", an event in Singapore on 18 January 2008.

22 Mr Yau was rather shaken by the departure of Mr Dirk Foo, whom some regarded as the "champion" of retail sales. He claimed that the ousting of Mr Dirk Foo reinforced his belief that Mr Doherty intended to corporatise the Asian operations and implement the Canadian model of corporate sales. On 15 January 2008, he tendered his resignation and his employment ceased on 17 January 2008.

23 Before leaving, Mr Yau sent the following farewell e-mail to his staff to exhort them to do their best for the company:

I am no longer with Walton starting today, the reason is I need rest time. Working for the [past] 12 years in the Company, and to be fair to me and my family, I need to spend some time with them ....

Look!!!! I don't want things to stop, because of me. *I want you guys to give the best to Walton, and nothing will stop you.*

*Guys, this is the only Company will help you to reach your Goals.* Unless you want to be the 2<sup>nd</sup> class person in this world.

*There won't be any changes, biz will be better if you guys stay focus.*

*Please !!! I want to see Asia hit the target every month, and be the number ONE in Walton.*

Please take note, if you have any problem interim of Biz or personal issue, you can call me anytime and I will be there for you.

*As I said before, I want Asia to be number One, if not I will come after you personally.*

Do take care.

[emphasis added]

24 Mr Doherty testified that Mr Yau's e-mail was "awesome" [\[note: 21\]](#) and that the e-mail did not appear to have been drafted by someone bent on destroying the plaintiffs.

25 Despite Mr Yau's advice to reassure the retail sales staff, Mr Doherty focussed his attention on corporate sales at "Walton Vision" on 18 January 2008, at which the audience was primarily retail sales staff. It was announced that the retail and corporate departments of Walton Singapore would be merged and that Ms Loh had been promoted to Vice-President Sales in Walton Singapore.

26 In February 2008, the retail and corporate sales departments of Walton Malaysia were merged. Mr Iseli was promoted to Vice-President, Sales of Walton Malaysia. According to him, after the merger, retail sales staff were told to bring in IFAs as clients and this indicated a shift to corporate sales.

27 The plaintiffs asserted that Mr Yau, who was paid more than US\$5m per annum, regretted his decision to leave his job and that the latter planned to return to the Walton group. Mr Doherty, who was obviously not minded to have Mr Yau back, informed the latter on 23 January 2008 that if he returned to the company, he would not be offered his old post or any senior executive position. The plaintiffs were convinced that this snub caused Mr Yau to lose face and the latter plotted to harm the plaintiffs by taking over the retail sales staff of Walton Singapore and Walton Malaysia to show Mr Doherty that he was indispensable. Mr Yau denied this allegation.

28 Some two weeks after his resignation, Mr Yau met Walton Singapore's five top Division Managers (the "Walton Singapore DMs") at a lunch on 27 January 2008 and at a dinner on 29 January 2008. According to nearly all the attendees at the lunch, they gathered on 27 January 2008 to celebrate Mr Yau's birthday. Apparently, Mr Yau paid for the lunch and there was a follow-up dinner two days later. At these meals, Mr Yau encouraged the DMs to work hard for Walton Singapore but the other things that were allegedly said by him at the lunch and dinner formed the basis of the plaintiffs' claim that he solicited the Walton Singapore DMs to leave Walton Singapore and join him in a new business venture. It was not disputed that none of these DMs left to work with Mr Yau.

29 In May 2008, five of Walton Singapore's finance staff resigned for personal reasons. None of them were employed by Mr Yau. All the same, Walton Singapore claimed that Mr Yau had solicited them to resign. To Mr Yau, this claim was absolutely ludicrous.

30 In the meantime, Walton Malaysia's bosses claimed that they suspected that Mr Iseli, who had just been promoted to the position of Vice-President Sales in February 2008, and some of his associates were conspiring with Mr Yau to undermine the company's interests. On 3 April 2008, Walton Malaysia's then Managing Director, Mr Krishnan Murali ("Mr Murali"), e-mailed Walton Asia's

Chief Operating Officer, Mr Kent Britton ("Mr Britton"), stating that his staff had been solicited by Mr Iseli to leave the company. The plaintiffs hastily assembled a high-level team (the "Interborder team") in early April 2008 to find out what was going on in Walton Malaysia.

31 The Interborder team interviewed many of the persons named in Mr Murali's e-mail, including Mr Iseli, and concluded that there was nothing untoward in Walton Malaysia. Mr Murali was demoted.

32 In early May 2008, Mr Abdul Razak Ghani ("Mr Razak"), who was Mr Iseli's boss, made up his mind that the latter had to go even though, by his own admission, he had no concrete evidence that the latter had acted against the company's interest. Mr Iseli was offered a rather generous severance package but with strings attached. He would be paid his full remuneration for 9 months and half his remuneration for the following 9 months provided he agreed to assist the plaintiffs in their suit against Mr Yau. It was made clear to Mr Iseli that he would be sacked *and sued* if he did not accept the package. Mr Iseli, who believed that Mr Yau had not acted against the plaintiffs' interests, stated that he could not testify against Mr Yau. On 5 May 2008, Mr Iseli's employment was terminated. According to the plaintiffs, he resigned but Mr Iseli said that he did not do so. On the very next day, Walton Malaysia commenced proceedings against him in Malaysia.

33 On 13 May 2008, the plaintiffs commenced the present proceedings against Mr Yau in Singapore. On the same day, the plaintiffs applied for an interim order ("the injunction application") to restrain Mr Yau from, *inter alia*, soliciting its employees, unlawfully interfering with their trade, disclosing confidential information and defaming them. On 16 May 2008, Mr Yau gave an undertaking not to solicit the plaintiffs' staff and on 29 May 2008, Mr Iseli gave a similar undertaking in Kuala Lumpur.

34 On 20 October 2008, the plaintiffs' injunction application was heard by Choo Han Teck J ("Choo J"). By then the application to restrain the solicitation of its staff was irrelevant because the period of restraint under Mr Yau's contract had expired. After hearing the parties on the other aspects of their injunction application, Choo J dismissed the plaintiffs' application on 3 November 2008.

35 In due course, the claims against Mr Iseli in the Malaysian courts were incorporated into the Singapore proceedings.

36 Walton Singapore and Walton Malaysia proceeded to sack or suspend many of their staff. According to the plaintiffs, the staff had been sacked because they were disloyal or had performed poorly. However, Mr Yau and Mr Iseli asserted that they had been sacked for refusing to lie that they had been solicited to leave the plaintiffs. What is clear is that many staff who had refused to file affidavits on behalf of the plaintiffs or who had filed affidavits in favour of the defendants were sacked. On the other hand, many staff who had initially said that there had been nothing untoward in their interaction with Mr Yau and Mr Iseli but had subsequently changed their minds and claimed that they had been solicited to leave the plaintiffs retained their jobs or had their suspension from work removed. Furthermore, *all* the Walton Singapore DMs who contradicted or retracted much of what they had stated in their AEICs in support of the plaintiffs' case during the trial have since left the company for reasons which were not disclosed to the court.

### **Summary of the Plaintiffs' Claims against the Defendants**

37 The plaintiffs' case is that Mr Yau resigned when Mr Doherty laid the blame on him for causing the Walton group to lose money and that he regretted his decision shortly thereafter. It was alleged that Mr Yau wanted to set up a competing business and pull retail sales staff away from Walton Singapore and Walton Malaysia in order to cripple these companies so that he could negotiate with

Mr Doherty from a position of strength. The plaintiffs asserted that Mr Yau spread false malicious rumours to scare their retail sales staff into joining him and that he enlisted the help of Mr Iseli and Ms Loh for this purpose. According to the plaintiffs, Mr Yau and Mr Iseli were cunning and clever and their solicitation was indirect in the form of suggestions, inferences and implications. It was averred that while they failed in Singapore, they succeeded in Malaysia, if only because Walton Malaysia's profits dipped massively in 2008 while Walton Singapore's profits soared in that year.

38 In their opening statement, the plaintiffs summarised their claims against Mr Yau as follows:

- (a) breach of the non-solicitation clause in clause 1(b) of his employment agreement, read together with the Walton Employee Handbook;
- (b) breach of confidence and misuse of confidential information;
- (c) procuring Mr Iseli's breach of Walton Malaysia's employment contract with Mr Iseli;
- (d) malicious falsehood;
- (e) defamation of the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs;
- (f) defamation of Mr Doherty; and
- (g) unlawful interference with the Walton group's trade or business.

39 As for the claims against Mr Iseli, these were summarised in the plaintiffs' opening statement as follows:

- (a) breach of his employment contract with Walton Malaysia, specifically Clause 5 and his duty of fidelity;
- (b) breach of his fiduciary duty to Walton Malaysia;
- (c) breach of his duty of confidence in tort and/or under his employment contract;
- (d) defamation of Walton Malaysia by publishing statements that Walton Malaysia was embarking on a corporate sales strategy and would cease retail sales in Asia;
- (e) unlawful interference with Walton Malaysia's trade or business; and
- (f) defamation of Mr Doherty.

40 As for the plaintiffs' claim against Mr Yau and Mr Iseli jointly, this relates to a conspiracy to injure by using unlawful means or lawful means with a predominant intention to injure them.

### **The Key Witnesses**

41 Among the plaintiffs' key witnesses were the following:

- (i) Mr Doherty, the President and Chief Executive Officer of the Walton group.

- (ii) Mr Dave Baukol ("Mr Baukol"), the Executive Vice-President, Operations of Interborder Holdings Ltd ("Interborder"), the parent holding company of the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs in this action and the President of Walton Asia since 1 January 2010.
- (iii) Mr Britton, the Chief Operating Officer of Walton Asia.
- (iv) Mr Terry Knight ("Mr Knight"), the General Counsel for Asia at the material time.
- (v) Mr Gerald Thomas Foo Tiang Boo ("Mr Foo"), the Managing Director of Walton Singapore at the material time and the Chairman of Walton Asia since 1 January 2010.
- (vi) Four of the five Walton Singapore DMs at the lunch and dinner, namely Mr Ann Hock Kee ("DM Ann"), Mr Yao Shih Lien ("DM Yao"), Ms Jovi Ong ("DM Ong") and Ms Lusi Lim ("Ms Lusi"). Ms Lusi has since been promoted and is now the Chief Operating Officer of Walton Singapore.
- (vii) Mr Razak, the Managing Director of Walton Malaysia at the material time and its Chief Operating Officer since 1 January 2010.
- (viii) Mr Murali, the former Managing Director of Walton Malaysia.
- (ix) Ms Linnet Tan Su Lyn ("Ms Linnet Tan"), a Division Manager of Walton Malaysia.
- (x) Mr Liew Jer Wei ("Mr Liew"), a Division Manager of Walton Malaysia; and
- (xi) Mr Alfredo Hernandez ("Mr Hernandez"), a Team Manager of Walton Malaysia and the plaintiffs' key witness in the defamation claim against the defendants.

42 Among the witnesses who testified for Mr Yau and Mr Iseli were the following:

- (i) Ms Loh, Walton Singapore's former Vice-President, Sales. Although Walton alleged that she conspired with Mr Yau and Mr Iseli, she was not a defendant in the present action. She was summarily dismissed on 29 May 2008.
- (ii) Ms Helen Chong Kwai Leng ("ex-DM Chong"), a former Division Manager of Walton Singapore.



(iii) Mr Jeff Medina ("Mr Medina"), a former Group Manager of Walton Malaysia, who was sacked on 20 June 2008.

(iv) Mr Khoo Boo Yeang ("Mr Khoo"), who was formerly with Walton Malaysia;

(v) Mr Hans Solibun ("Mr Solibun"), a former Group Manager of Walton Malaysia, who was sacked on 20 June 2008.

(vi) Mr Steve Huggins ("Mr Huggins"), the President of Trillion Steel Inc ("TSI"), a rival landbanking company.

43 Three expert witnesses testified on the damage allegedly suffered by the plaintiffs. Mr Tam Chee Chong ("Mr Tam"), the Executive Director of Deloitte & Touche Financial Advisory Services Pte Ltd ("Deloitte"), was the plaintiffs' expert witness while the defendants' expert witnesses were Mr Roger Tay Puay Cheng ("Mr Tay"), the Executive Director of KPMG Advisory Services Pte Ltd, and Dr Chan Siew Pang ("Dr Chan"), a senior lecturer at La Trobe University in Australia.

### **The Alleged Solicitation in Singapore**

44 The plaintiffs claimed that almost immediately after his resignation, Mr Yau, with the assistance of Mr Iseli, met staff of Walton Singapore and Walton Malaysia, either individually or in groups, to solicit them to join a rival business which he had intended to set up. They pointed out that this was in breach of the defendants' employment contracts, which contained a non-solicitation clause. In Mr Yau's case, the non-solicitation period was 9 months after leaving the company. In Mr Iseli's contract, the non-solicitation period was one year.

45 In *Hellmann Insurance Brokers v Peterson* [2003] NSWSC 242, Campbell J considered the meaning of "solicitation" in the context of a clause prohibiting the solicitation of clients in the following helpful terms (at [11] – [12]):

11 The meaning of 'solicitation' is elucidated by a decision of Wood CJ at CL in *R v Laws* [2000] NSWSC 880 (2000) 50 NSWLR 96, at 98. His Honour, at [8] recorded the remarks of Spigelman CJ and Hidden J in *R v Azzopardi*, 1 October 1998, unreported, which in turn approved remarks of Stout CJ in *Sweeney v Astle* [1923] NZLR 1198 at 1202 which I quote:

The word 'solicit' is a common English word and it means in a simplified form, 'to ask'. In various English dictionaries this simple meaning is given, but other simple words are also used to explain other meanings it possesses, such as 'to call for', 'to make a request', 'to petition', 'to entreat', 'to persuade', 'to prefer a request'.

12 Whether an employee is soliciting a former client is not something which depends upon whether it is the employee who telephones or arranges to meet the former client, or the other way around. Rather, whether solicitation occurs depends upon the substance of what passes between them once they are in contact with each other. There is solicitation of a client by a former employee if the former employee in substance conveys the message that the former employee is willing to deal with the client and, by whatever means, encourages the client to do so.

46 Campbell J's view, which is relevant to the issue of non-solicitation of staff, was endorsed by Belinda Ang J in *Tan Wee Fong and others v Denieru Tatsu F & B Holdings (S) Pte Ltd* [2010] 2 SLR 298.

47 The plaintiffs' case against the defendants on solicitation in Singapore relates to:

- (i) a lunch at Lei Garden Restaurant on 27 January 2008;
- (ii) a dinner at Tung Lok Seafood Restaurant on 29 January 2008; and
- (iii) the resignation of five finance staff in early May 2008.

48 The plaintiffs' counsel, Ms Indranee Rajah SC ("Ms Rajah"), tried her best to build up a case on solicitation against the defendants. However, her determined effort was completely undermined by many of the plaintiffs' witnesses, including those who occupied top management positions, who eroded the foundation of their case on solicitation in Singapore.

### ***Resignation of the five finance staff***

49 The plaintiffs' allegation that Mr Yau solicited five of Walton Singapore's finance staff to resign in May 2008 ("the resignations") will be considered first, if only to show how the plaintiffs' own witnesses undermined Ms Rajah's efforts and demolished their case without any assistance from the defendants. This allegation was pleaded in the Statement of Claim (at para 51):

In early May 2008, five members of [Walton Singapore's] finance department resigned on the same day. *This cannot be coincidence.*

[emphasis added]

The five staff who resigned were Ms Grace Lim, Ms Liu Zhirui, Ms Tan Li Ching, Ms Loh Yee Koon and Ms Gian Swee Ying.

50 Mr Foo, Walton Singapore's Managing Director at the material time, demolished his company's case on the solicitation of the five staff by testifying that the resignations had nothing to do with solicitation by Mr Yau. The relevant part of his damning evidence was testified as follows: [\[note: 3\]](#)

Q These five girls [who] worked under your finance manager, *report to you, Mr Foo?*

A Yes.

Q *Is it your case that these five were solicited by Mr Yau?*

A *No, I do not know that they were solicited.*

....

Q [W]ould you agree with me that their decision to leave Walton Singapore *was unconnected*

*with any solicitation by Mr Yau?*

A Yes.

[emphasis added]

51 The five staff testified that they resigned for personal reasons. Ms Grace Lim said that she was unhappy that her department had not been as well treated as other departments. Ms Liu Zhirui stated that she resigned to pursue a full-time accounting degree. Ms Tan Li Ching testified that she resigned because she had not been promoted. Ms Loh Yee Koon revealed that she resigned in order to babysit her nephews. Finally, Ms Gian Swee Ying made it clear that she left Walton Singapore because of stress.

52 The evidence of the five staff was not challenged during cross-examination. In fact, three of them were cross-examined for only two minutes while cross-examination of the remaining two staff took not more than 12 minutes each. None of them was asked whether their resignations had anything to do with Mr Yau's alleged solicitation.

53 Why Walton Singapore instructed its solicitors that the resignations evidenced Mr Yau's solicitation of its staff when its then Managing Director knew all along that this was untrue cannot be fathomed and this reflected very badly on the plaintiffs. I thus dismiss the plaintiffs' allegation that Mr Yau had solicited the five finance staff to leave the company.

### ***The lunch and dinner***

54 The plaintiffs alleged that at a lunch at Lei Garden Restaurant on 27 January 2008 ("the lunch") and at a dinner at Tung Lok Seafood Restaurant on 29 January 2008 ("the dinner"), Mr Yau, with the assistance of Mr Iseli and Ms Loh, attempted to solicit Walton Singapore's five DMs to join a new marketing company that he intended to set up.

55 The five DMs who were present at the lunch and dinner were ex-DM Chong, DM Yao, DM Ann, DM Ong and Ms Lusi. Ex-DM Chong was sacked on 23 December 2008 for filing an AEIC in support of Mr Yau. As for the other four DMs, Ms Lusi climbed the corporate ladder rather quickly after the lunch and dinner and is now Walton Singapore's Chief Operating Officer. She was thus the boss of DM Yao, DM Ann and DM Ong when they testified at the trial. However, to their credit, DM Yao, DM Ann and DM Ong did not allow this fact to affect their testimony and they boldly contradicted Ms Lusi on numerous occasions on quite a number of important issues.

56 Although the plaintiffs portrayed the lunch as having been organised by Ms Loh to enable Mr Yau to solicit the DMs, it appeared that the lunch, which was intended to celebrate Mr Yau's birthday, had been a rather jolly affair. DM Ong described the lunch as a "ha ha hee hee" event [\[note: 41\]](#) and DM Yao agreed that it was a "happy" occasion. [\[note: 51\]](#) There was ample evidence that there was a birthday cake and a "happy birthday" song for Mr Yau.

57 During the lunch, Mr Yau, who was asked about his reasons for resigning, stated his reasons and encouraged the DMs to work hard for Walton Singapore. Ms Loh testified [\[note: 61\]](#) as follows:

*[Mr Yau] wasn't trying to solicit, he wasn't trying to market landbanking, whatever...*

*[It]s a farewell, it's a birthday lunch, ... and everybody [was] just asking, "Eh, why are you leaving?"*

He said, "Oh yeah, this is my reason.... I have resigned and let's move on ...." *And he even [told] to us to work hard [for] Walton and everything .... That's the reason why that all the other regions ... the sales just drop, but it's only Singapore that has maintained.*

[emphasis added]

58 Ex-DM Chong also referred to Mr Yau's encouragement. She stated in her AEIC (at para 15):

[Mr Yau] was truly concerned about us and I remember him telling us words to the effect, "just continue to do what you are doing, don't be affected by my departure. Don't worry, *you are all doing well, just continue and meet your sales targets. Take good care of your team and make sure they get their sales ... income. Don't embarrass me.*" Such words of encouragement were typical from [Mr Yau], who was always spurring us ... to do well for the Walton Group.

[emphasis added]

59 Two of the plaintiffs' witnesses also testified that Mr Yau encouraged them to work hard for Walton Singapore. DM Yao said that Mr Yau's message to them was "[w]hatever happened, ... we should always not jeopardise the sales in Walton". [\[note: 7\]](#) In his AEIC, he stated (at para 77):

At both the lunch meeting at Lei Garden and during [the] dinner at Tung Lok Seafood, [Mr Yau] *had emphasized that we should continue to drive our sales activities. We should not jeopardize the business of the Walton Group.* There were 2 reasons for this:

- a. First, he was concerned about our and our sales staff's income; and
- b. Second, he did not want to see Walton, which he had painstakingly built up and was dear to him, deteriorate after his departure.

[emphasis added]

60 DM Ong testified that Mr Yau told them that "Walton was really his baby, and he wanted to see its success continue after his departure". [\[note: 8\]](#)

61 The plaintiffs' CEO, Mr Doherty, agreed that a person would not have encouraged Walton Singapore's DMs to work hard if he had intended to solicit them. [\[note: 9\]](#) The following answer [\[note: 10\]](#) that he gave during cross-examination was rather telling:

Q [If] you had been told that [Mr Yau] was encouraging them to work hard for the company before [Walton sued [Mr Yau] on the 6<sup>th</sup> of May 2008] you might have taken a different view as to whether there were in fact acts of solicitation [at the lunch and dinner meetings] by ... [Mr Yau], agree? ....

A Er, I – I --- well, I ---I --- to that question, I'll answer yes.

62 In the face of the emphatic denial by Ms Loh and ex-DM Chong that Mr Yau had solicited the DMs at the lunch and dinner, the plaintiffs might initially have been pleased that four of the DMs at the lunch, namely DM Ann, DM Yao, DM Ong and Ms Lusi had suggested a contrary position in their AEICs. However, when cross-examined, DM Ann, DM Yao and DM Ong did not support the company's

case on solicitation and they contradicted much of what Ms Lusi's evidence on solicitation at the lunch and dinner.

63 For a start, although DM Ann had stated in his AEIC (at para 57) that Mr Yau "invited us to be part of this new business", he testified that the latter had merely made vague and casual remarks about the future and had nothing specific to offer them. [\[note: 11\]](#)

64 DM Ong, who had suggested in her AEIC (at paras 51- 52) that Mr Yau had wanted to know if the DMs were going to join him, clarified during cross-examination that the latter had *not* asked her to leave Walton Singapore to join him. [\[note: 12\]](#) As for her statement in her AEIC that she had sent Mr Yau a text message that she was not thinking of leaving Walton Singapore, she agreed that this was not her response to the latter's invitation to join his new business. She testified [\[note: 13\]](#) as follows:

Q [I]'m told that the SMS was really a "Thank you ... Mr Yau for buying us the lunch. We wish you all the best, but I am happy at Walton".

A Yes.

Q *It wasn't as if [Mr Yau] was asking you to join, and that you had to reply to him to say "No, I don't want to join you"?*

A Yes.

[emphasis added]

65 When re-examined, DM Ong said that she had told Mr Yau that she was happy "regardless of the invitation" but when asked to elaborate, she made the following vague statement:

Regardless of the offer to, you know, *possibly* join the new marketing company. *And even at that point in time, there was nothing concrete at all, right.*

[emphasis added]

66 In my view, the above statement by DM Ong during re-examination did not undermine her clear evidence during cross-examination that she had not been solicited by Mr Yau to leave Walton Singapore.

67 As for DM Yao, he had claimed in his AEIC (at para 75):

After dinner, I called Yau on the telephone and told him that there were not enough details for me to make a decision. I said that I was unable to commit to join him in his new venture until I had more information to make a proper decision.

However, when cross-examined, DM Yao agreed that Mr Yau did not ask anyone to leave Walton Singapore during the lunch. [\[note: 14\]](#) Furthermore, when he was referred to DM Ann's testimony, DM Yao reiterated that Mr Yau did not solicit at the lunch [\[note: 15\]](#) and testified as follows:

Q Reading Ann Hock Kee's account of what happened at the lunch at Lei Garden, he did not say anything about [Mr Yau] trying to solicit or invite Walton or any of you to join him; do you

agree?

A Agree.

Q Then I went on to ask you, after I read to you this paragraph; *would you agree that during the lunch [Mr Yau] did not attempt to solicit? Your answer was "Yes". Is that correct?*

A *That's correct.*

[emphasis added]

68 DM Yao also clarified [\[note: 16\]](#) the position regarding his phone call to Mr Yau after the dinner as follows:

Q [M]y instructions are that you did call [Mr Yau] after dinner to thank him for the dinner which he paid for.

A Yes.

....

Q Certainly, you had no intention at that point in time to join [Mr Yau] *because there were no plans which he presented to you that were worth joining?*

A Yes.

[emphasis added]

69 In their closing submissions, the plaintiffs contended that their witnesses had testified that they had not been solicited because they understood "solicitation" in the context of an express offer. I believe that if their DMs had thought that they had been impliedly solicited, they would have said so. After all, the cross-examination of their DMs was not limited to express offers and they were asked about "attempts to solicit" [\[note: 17\]](#) as well.

#### *Ms Lusi's evidence*

70 As the plaintiffs' case on solicitation at the lunch and dinner was not supported by four of the five DMs who were present at these functions, their case hinged primarily on the evidence of Ms Lusi, who was quite determined to paint a sinister picture of the lunch. Unlike the others who attended the lunch, she said that she could not remember that there had been a birthday cake and a "happy birthday" song for Mr Yau, whose counsel, Mr Tan Chee Meng SC ("Mr Tan"), suggested that she must have been hallucinating at the lunch, a remark she understandably resented.

71 Unlike other DMs, who thought that the lunch was a rather jolly occasion, Ms Lusi said that it was a "tense" and "secret" lunch. Her evidence was contradicted by her subordinates. DM Ong testified that no one told her to keep the lunch a secret [\[note: 18\]](#) and that it was a "very light-hearted" event, at which they even took photographs. [\[note: 19\]](#) She added that there was nothing "sinister" about the dinner. [\[note: 20\]](#) DM Yao also testified that there was nothing secretive about the occasion, [\[note: 21\]](#) and added that the lunch agenda was "totally honourable". [\[note: 22\]](#) He also testified that there was "no special agenda" for the dinner. [\[note: 23\]](#)

72 Ms Lusi made numerous allegations with respect to what transpired at the lunch and dinner. The first [\[note: 24\]](#) was that Mr Yau had asked the DMs “who’s in, who’s out” as he wanted to know who was going to leave Walton Singapore to join his new company. Mr Yau did ask “who’s in, who’s out” but, apparently, this was in the context of a joke. Ex-DM Chong explained in her AEIC (at para 24):

I knew [Mr Yau] always had an interest in the entertainment industry and that he knew the people at Fly Entertainment. I *jokingly asked* if I could invest in this new business idea of his so that I can *go into early retirement*. He said “of course” in jest to humour me. The banter continued and I remember teasing him that if my “investment” pulled through, he as my former boss, would then have to “work for me”.... He said “Can, no problem, *so who’s in who’s out*”. *It was an ongoing joke between us .... I remember everyone having a good laugh over this.*

[emphasis added]

73 Ms Loh corroborated ex-DM Chong’s explanation of the context in which the remark “who’s in, who’s out” was made by Mr Yau. The plaintiffs’ witness, DM Yao, also corroborated ex-DM Chong’s version of events as he testified [\[note: 25\]](#) as follows:

Q .... I just want to know the context in which this “Who’s in, who’s out” was made. *It was more of a challenge, a joke amongst all of you, and after that all of you started laughing over what Helen Chong said. She wanted to be [Mr Yau’s] boss?*

A Yes, fair.

[emphasis added]

74 It is pertinent to note that DM Yao described Mr Yau’s “who’s in, who’s out” remark as a joke on a number of other occasions during cross-examination. [\[note: 26\]](#)

75 Although DM Ong could not remember much about the incident, she recalled the joke that ex-DM Chong had made about investing in Mr Yau’s company. [\[note: 27\]](#)

76 I find that Mr Yau’s “who’s in, who’s out” remark was made in the context of a joke and that this remark did not advance the plaintiffs’ case on solicitation in any way.

77 Ms Lusi’s next allegation was that Mr Yau had said that he wanted the Walton Singapore’s retail sales staff to join him so that Mr Doherty will be forced to ask him for help and negotiate an agreement with him. She stated in her AEIC (at para 90):

[DM] Jovi Ong, asked [Mr Yau] why he was so confident that Bill would be willing to negotiate with him. [Mr Yau’s] reply was that the sales staff were the instant sales makers. Without the sales staff, Walton Singapore would have problems with cash flow within 2 to 3 months. [Mr Doherty] would have to agree with [Mr Yau’s] demands to sell Walton Products through him.

78 In her AEIC (at paras 55-57), DM Ong appeared to have corroborated Ms Lusi’s allegation that Mr Yau stated that he wanted to recruit Walton Singapore’s sales staff to force Mr Doherty to ask for his help. However, she quickly withdrew these paragraphs from her AEIC when she was cross-examined [\[note: 28\]](#) and testified that she could not remember whether she or anyone else had asked

Mr Yau about Mr Doherty's willingness to negotiate with Mr Yau. [\[note: 29\]](#) More astonishingly, she added that it was quite possible that no one had asked Mr Yau this question and that this matter could have been the subject of a private discussion between the Walton DMs themselves. [\[note: 30\]](#) How then did such a serious allegation against Mr Yau creep into DM Ong's AEIC? DM Ong said that she had been told that Ms Lusi remembered the events narrated in her (DM Ong's) AEIC. It was rather disturbing that her AEIC had been tailored to fit Ms Lusi's accusation against Mr Yau. Although DM Ong had not been forced to sign her AEIC, she testified that she had "of course" been "a little concerned" that if she refused to file an affidavit for the plaintiffs, her employment contract might be terminated. [\[note: 31\]](#) I find that the allegation that Mr Yau had said that he wanted all the Walton Singapore sales staff to join him so that he could negotiate with Mr Doherty was not proven.

79 Ms Lusi next alleged that Mr Yau threatened the DMs that he would harm their families if they revealed his plans. However, Ms Loh said that this allegation was nonsensical because given the close professional and social relationship that Mr Yau had with them, he would not have threatened them or made any such offensive remark. [\[note: 32\]](#)

80 The plaintiffs' own witnesses contradicted Ms Lusi's allegation that Mr Yau had threatened them. DM Yao testified that Mr Yau did not make such a threat [\[note: 33\]](#) while DM Ong testified that she could not recall an incident like this. [\[note: 34\]](#) When re-examined, DM Yao explained [\[note: 35\]](#) what Mr Yau had meant by keeping things "confidential" in a manner which was totally inconsistent with Ms Lusi's evidence:

And to keep ... what was said during the meeting confidential, in a way it's also ... to say, "*Well, I haven't had anything that is so solid and all that, so let's not start going out there and announce to the world what I have been doing, or what I intend to do*".

[emphasis added]

81 I thus dismiss the allegation that Mr Yau had threatened to harm the families of the DMs at the lunch or dinner.

#### *Mr Britton's evidence on Ms Lusi's allegations*

82 Mr Britton's evidence on Ms Lusi's allegations (the "allegations") against Mr Yau also undermined the plaintiffs' case on solicitation. When cross-examined, Mr Britton claimed that Ms Lusi had told him in April 2008 that at a secret lunch meeting, Mr Yau had said that:

- (i) he wanted the sales staff at Walton Singapore to join him and that if all the sales staff did so, Mr Doherty would be forced to ask him for help;
- (ii) the administrative staff at Walton Singapore would soon leave;
- (iii) he would soon be setting up a company to deal with landbanking; and
- (iv) if any of the DMs revealed his plans or the details of that meeting, he would "come after [them] and [their] families".

83 Remarkably, none of these very serious allegations by Ms Lusi were mentioned in Mr Britton's AEIC. Apart from this, there were far too many other flaws in Mr Britton's evidence. To begin with, he claimed that he must have informed the plaintiffs' solicitors about the allegations as early as April



2008. If this is true, it is inexplicable that the allegations, which featured so prominently in the plaintiffs' case on solicitation, were not pleaded when legal proceedings were commenced against Mr Yau in the following month in May 2008. In fact, the allegations did not surface until the Statement of Claim was amended more than 6 months later! Mr Yau's counsel, Mr Tan, submitted that the allegations appeared in the pleadings so late in the day because the plaintiffs needed time to fabricate their evidence.

84 When questioned about the delayed appearance of the allegations in the plaintiffs' pleadings, Mr Britton replied most unconvincingly as follows: [\[note: 36\]](#)

Q [I]f Lusi had told you all that information, why is all this not pleaded?

A *I'm not sure why they're not pleaded...*

Q If such information was indeed in your possession, we would have expected them to have been pleaded as acts of solicitation ... in your statement of claim against [Mr Yau], because that was filed on 13 May; do you agree?

What is so difficult about my question that you have to think so long?

A *I would expect it to have been pleaded.*

[emphasis added]

Mr Britton finally admitted [\[note: 37\]](#) that he might not have informed his solicitors about the allegations in April 2008. This raises another question as to why he did not do so as these allegations were crucial to the plaintiffs' case on solicitation in Singapore.

85 Mr Britton's credibility was further dented by his claim in his AEIC and during cross-examination [\[note: 38\]](#) that he had informed Mr Doherty, Mr Knight, Mr Baukol and Mr Foo about the allegations. Mr Doherty testified [\[note: 39\]](#) that he could not recall whether he had been told about Mr Yau's solicitation at the said lunch and dinner while Mr Baukol testified that he did not know about Ms Lusi's conversation with Mr Britton about the allegations. [\[note: 40\]](#) As for Mr Knight, Mr Britton subsequently conceded that he might not have informed the former about the allegations. Finally, Mr Foo testified that Mr Britton did not tell him about the allegations and added that none of his DMs had brought up the matter of solicitation with him in a way "where they could adduce evidence" of this.

86 It is also noteworthy that the allegations were not mentioned in the plaintiffs' pleadings in the Malaysian proceedings and in Mr Britton's AEIC filed for those proceedings on 28 May 2008. When asked why he did not inform the Malaysian court about the allegations, Mr Britton was at a total loss and said that he could not give an explanation. [\[note: 41\]](#)

87 Yet another inconsistency about the allegations is that Mr Knight stated in his AEIC (at para 14) that Ms Lusi's allegations in April 2008 were "general" in nature. However, when cross-examined, he agreed that if Ms Lusi had indeed spoken to Mr Britton in April 2008, she had outlined very clear instances of solicitation. [\[note: 42\]](#) Furthermore, Mr Knight claimed that when the action was commenced, Ms Lusi told Mr Britton that she was not comfortable about filing an AEIC in support of the plaintiffs' case. However, she testified that she had been prepared to file an affidavit all along but no one had asked her to do so until much later. Mr Tan suggested that Ms Lusi's version is closer to the truth as the plaintiffs' former solicitors, Baker & McKenzie ("B & M"), had issued a bill for time

spent on preparing an affidavit by one "Luci" in May 2008, long before she filed her AEIC for the present proceedings. He suggested that Ms Lusi's original AEIC was not filed as it was not "meaty" enough to nail Mr Yau. Ms Lusi, who pointed out that she is not "Luci", conceded that there was no one called "Luci" in Walton Singapore. [\[note: 43\]](#) Obviously, B & M must have mis-spelt her name in its bill but Ms Lusi denied having met any lawyer from that law firm at the material time.

88 Finally, if Ms Lusi had really told Mr Britton about a forthcoming walkout by administrative staff, this did not materialise. The company tried to blame Mr Yau for the resignations of five of their finance staff but as has been mentioned, their boss, Mr Foo, conceded that Mr Yau had nothing to do with their resignations. Besides, this was hardly the walk-out Mr Britton had in mind. Only Ms Lusi continued to doggedly insist without any basis whatsoever that Mr Yau had a hand in the said resignations despite having been told of Mr Foo's evidence, a stand which eroded her credibility.

89 After considering all the circumstances, I do not believe that Ms Lusi had spoken to Mr Britton in April 2008 about the allegations against Mr Yau regarding the alleged solicitation of Walton Singapore's DMs at the lunch and dinner. The non-existent conversation undermined the plaintiffs' case on solicitation in Singapore.

*Mr Yau had no concrete plans in January 2008*

90 When considering whether or not Mr Yau had solicited Walton Singapore's DMs at the lunch and dinner, it cannot be overlooked that he had just left the company and had no concrete plans to offer the Walton DMs. Mr Baukol testified [\[note: 44\]](#) that he was informed by DM Ong, DM Yao and DM Ang about Mr Yau's lack of concrete plans during investigations in June 2008 and that at the lunch and dinner, Mr Yau had merely mentioned his interest in acquiring Fly Entertainment, a comparatively small local artiste management company that represented Asian actors and actresses in the local and regional entertainment scene. This is a business far removed from landbanking. If Mr Yau had wanted to recruit staff for Fly Entertainment, he would not be looking at the plaintiffs' employees, who had no expertise in artiste management.

91 In their closing submissions, the plaintiffs claimed that Mr Yau intended to involve their DMs not in Fly Entertainment but in other aspects of his plans. They asserted that his plan was to use a company, Capital Alliance (Group) ("CAG"), which was owned by his friend, Mr Richard Lim Cheong Boon ("Mr Lim"), to market the landbanking products of the plaintiffs' rival, TSI. They added that Mr Yau had intended to use CAG as his own business vehicle after his short restraint period expired. Whatever may have been Mr Yau's subsequent plans, we are here concerned with whether or not he had solicited the DMs in January 2008 at the lunch and dinner. There was no evidence that Mr Yau had any plans regarding landbanking in January 2008. Even Ms Lusi agreed in her AEIC (at para 42) that Mr Yau "did not reveal much information about his new marketing company" and that he had been "quite vague" about his plans. When cross-examined, DM Ann stated [\[note: 45\]](#):

[A]ll I recall was that [Mr Yau] mentioned about going to other businesses like marketing opportunities and then he kind of *casually* said that if people are looking for opportunities *in the future, can always look for him*. So that was what I recall.

.... Nothing specific was mentioned. To me, the whole mention was *very vague*. *No specifics as in exactly what it is going into, things like that*. Yeah.

[emphasis added]

92 It is also worth noting that Walton Singapore's then Managing Director, Mr Foo, testified that he had not heard that Mr Yau was entering the landbanking business at the material time. [\[note: 46\]](#) When cross-examined about Mr Yau's proposed business venture, he stated [\[note: 47\]](#) as follows:

Q Do you know what kind of business [Mr Yau] was setting up?

A I had *heard something about the coal mining business*, mainly that. The coal mining.

Q *That's all?*

A Yes.

[emphasis added]

93 Despite testifying that he had only heard that Mr Yau was in the coal mining business, Mr Foo claimed in his AEIC filed on 23 July 2008 that Mr Yau had announced at the dinner that he (Mr Yau) would be "starting a company essentially selling similar to those offered by the Walton group". When cross-examined on why he could make such an assertion when he claimed to have heard nothing about Mr Yau being in the landbanking business, Mr Foo replied unconvincingly as follows [\[note: 48\]](#):

Q Can you please tell us why you filed an affidavit to say that [Mr Yau] had informed the division managers at the dinner about setting up a business selling landbanking products?

A That is what I heard.

Q But *you just agreed with me that if you had [heard that Mr Yau was in the landbanking business], you would have remembered... 10 minutes ago I asked you what kind of business [Mr Yau] was setting up. You could only give me coal and Hawaii properties.*

A *I am telling the truth.*

[emphasis added]

94 When questioned further, Mr Foo's replies made it obvious that he had no basis for saying that Mr Yau was starting a landbanking business. His replies [\[note: 49\]](#) were as follows:

Q [H]ow did ... landbanking product come in ... your September injunction affidavit?

A Okay. It was never meant for [Mr Yau] to say "I have a landbanking product, you guys help me to market it".... Probably... to say "doing Fly Entertainment, I'm also doing other things.... *I can also have opportunities to market landbanking products, some other companies*" in that context....

Q [B]ecause some *others spoke about landbanking* and then you concluded it may well be possible when he spoke about marketing, he could be talking about landbanking?

A That --- *that's a possibility, too.*

[emphasis added]

95 The plaintiffs' case on Mr Yau's alleged solicitation of their staff is also incredible because Mr Britton testified that Ms Lusi told him that Mr Yau "was concerned for everybody and as a result of that he wanted to create an opportunity to save everybody". [\[note: 50\]](#) One Ms Norzita binti Alpi, a Senior Team Manager of Walton Malaysia, also made a similar allegation about Mr Yau's desire to save all of Walton Malaysia's retail sales staff but she abandoned this allegation during cross-examination and admitted that she had fabricated this evidence to advance the plaintiffs' case.

96 Mr Baukol conceded that it would be very "challenging" for Mr Yau to be able to guarantee the DMs their existing remuneration at Walton Singapore. [\[note: 51\]](#) There was no evidence that Mr Yau had jobs to offer to the hundreds of retail sales staff in Walton Singapore and Walton Malaysia. Mr Baukol clutched at straws by suggesting that people could join Mr Yau out of loyalty. Mr Yau's counsel, Mr Tan, submitted that it was preposterous to think that his client could solicit the highly paid DMs with nothing more than friendship. As Ms Loh aptly put it, only Walton Singapore could pay her more than a million dollars every year and there was no reason for her to bite the hand that fed her.

97 As Mr Yau lacked concrete plans in January 2008 and did not say that he was going into the landbanking business at the lunch and dinner, the plaintiffs ought to have realised that their case on solicitation at the lunch and dinner, whether express or implied, did not rest on solid ground.

### ***Conclusion on solicitation in Singapore***

98 The plaintiffs' case on solicitation in Singapore rested on the alleged walkout by the five finance staff in May 2008 and on what had been allegedly said by Mr Yau at the lunch and dinner in January 2008. Bearing in mind that the period of non-solicitation of staff and non-competition was rather short, I had no doubt that Mr Yau might have had some long-term plans that were at a rudimentary stage. However, it was quite clear to me that he had nothing to do with the resignation of the five finance staff and that he did not solicit the DMs at the lunch and dinner in January 2008 because he then had no concrete business plans to offer them.

99 If Mr Yau had intended to solicit the DMs at the lunch or dinner, it was strange that the plaintiffs furnished no evidence of any follow-up action by him to ensure the success of his solicitation. The plaintiffs conveniently asserted that Mr Yau's efforts at soliciting the Singapore staff failed because of their remedial action but the lack of proof of any follow-up action by Mr Yau after January 2008 other than the ridiculously absurd claim that he orchestrated the resignation of the five finance staff undermined their case.

100 Ultimately, the plaintiffs' case on solicitation in Singapore could not succeed when four out of five of their top Singapore DMs saw a birthday cake for Mr Yau at the lunch when their main witness, Ms Lusi, did not, heard things said at the lunch and dinner that Ms Lusi did not, and did not hear much of what Ms Lusi alone claimed to have heard at the lunch and dinner. Interestingly, DM Ong and DM Yao testified that they were concerned that if they did not support the company's case against Mr Yau, their future in Walton Singapore might be affected. For unexplained reasons, the three Walton DMs who had contradicted the extravagant claims of their boss, Ms Lusi, left Walton Singapore before the trial was completed. When cross-examined, Mr Foo claimed that he did not know why DM Yao, DM Ong and DM Ann had left the company even though he must have been concerned that three of his top DMs were leaving the company and would have looked into the matter. The court was thus left in the dark as to why Walton Singapore's top DMs had to resign before the completion of the trial.

101 I dismiss the plaintiffs' claim that Mr Yau solicited the DMs to leave Walton Singapore at the lunch and dinner or that he had a hand in the resignations of the five finance staff. It follows that the allegation that Mr Iseli was involved in the solicitation of Walton Singapore's DMs must also be dismissed.

### **Alleged Solicitation in Malaysia**

102 The plaintiffs' complaints about solicitation by the defendants in Malaysia centred around events that occurred *before* Mr Iseli was sacked on 5 May 2008. Their case was severely undermined when Walton Malaysia's Chief Operating Officer and former Managing Director, Mr Razak, who was in the thick of investigations into Mr Iseli's conduct, shockingly conceded during cross-examination that he had no "concrete" evidence of any wrongdoing by Mr Iseli or Mr Yau when Mr Iseli was sacked on 5 May 2008. [\[note: 52\]](#) The relevant part of the proceedings [\[note: 53\]](#) is as follows:

Q Mr Razak, you agreed with me ... that as of 2 May [2008] you did not have any concrete evidence against [Mr Iseli].

A Correct....

Q [Mr Iseli] was terminated on 5 May. Between 2 and 5 May, would I be correct to say that you did not collate any further evidence against [Mr Iseli] during this period? ....

A No, there wasn't any.

Q *The position of no concrete evidence against [Mr Iseli] remains until 5 May.*

A *Remain, correct.*

[emphasis added]

103 When re-examined, Mr Razak explained what he meant by "concrete evidence" [\[note: 54\]](#) as follows:

[N]o concrete evidence because there's no written letter of offer by him to anyone to say we can use to show that he's soliciting business or to hire people or to go to the other side. It was all verbal, *it was implied, so there's no concrete, in that sense.*

[emphasis added]

104 As the court is only concerned with the civil standard of proof, notions of "concreteness" of evidence may be misleading. However, when cross-examined, Mr Razak also did not deny that he had "no evidence" at all against Mr Iseli on 5 May 2008. [\[note: 55\]](#) Furthermore, he testified that when he decided to sack Iseli on 2 May 2008, the *only "clear" offer* of solicitation was an *implied* offer made by the defendants to Ms Linnet Tan. [\[note: 56\]](#) The relevant part of the proceedings is as follows:

Q The question I put to you is: *before 2 May*, certainly there was *no evidence* that there was solicitation or offers made by [Mr Iseli] or [Mr Yau], to your knowledge?

A The only one that was *clear offer* was to [Ms Linnet Tan], but that was *done privately, not in the TSI presentation.*

[emphasis added]

105 As Mr Razak testified that there were no express offers and the *only* clear implied offer by the defendants to his staff was that made to Ms Linnet Tan, it follows that all other alleged instances of solicitation were *not* “clear” instances of implied offers. In view of this, why the plaintiffs summoned so many of their Malaysian staff to testify on these unclear instances of implied solicitation cannot be readily understood. Regretfully, many of them undermined the work of the plaintiffs’ counsel, Ms Rajah, because their story-lines wilted during cross-examination.

106 The plaintiffs’ most senior legal staff in Singapore, Mr Knight, was absolutely flabbergasted by Mr Razak’s evidence. When cross-examined on Mr Razak’s testimony on the evidence against Mr Yau and Mr Iseli that the plaintiffs had in their hands on 5 May 2008, his candid reply was “Boy, I wish I didn’t know Razak if I have to answer that. I don’t know.” [\[note: 57\]](#)

107 In regard to solicitation in Malaysia before Mr Iseli was sacked, the plaintiffs focussed on the following three events:

- (i) A presentation on 28 April 2008 by TSI, a rival landbanking company set up by a former Walton employee, Mr Huggins (“the TSI presentation”);
- (ii) A meeting at a Coffee Bean café on 17 April 2008 between Ms Linnet Tan and Mr Iseli, at which Mr Yau was not present; and
- (iii) A lunch that Ms Linnet Tan had with Mr Yau at the Concorde Hotel on 20 April 2008, after which there was a viewing of office premises.

### ***The TSI presentation***

108 According to the defendants, the idea of a presentation by TSI was mooted at a lunch on 28 March 2008 when Mr Yau, who was having a lunch in Kuala Lumpur with Mr Huggins, invited Mr Iseli to join them. Mr Iseli explained that he had already arranged a lunch with a number of Walton Malaysia’s staff and they all conveniently joined Mr Yau for a free meal. The Walton Malaysia retail sales staff were interested in TSI’s products and asked a number of questions. Mr Huggins, who was then on vacation with his wife and daughter, offered to do a presentation on his company for them in the following month. Understandably, the plaintiffs’ counsel, Ms Rajah, submitted that there was more than meets the eye but the fact remains that there was no reference to this lunch in the pleadings. This was not surprising as the plaintiffs’ witnesses did not assert that there was any solicitation at the lunch with Mr Huggins. Indeed, Walton Malaysia’s witness, Ms Shirley Wong, testified that nothing happened during the lunch that was worth remembering and that was why she did not mention the lunch with Mr Huggins in her AEIC. [\[note: 58\]](#)

109 Walton Malaysia’s employees often attended product presentations by rival companies to acquaint themselves with the competition. Why then was there so much fuss over the TSI presentation? Mr Razak admitted that at the material time, he was concerned that so many of his staff attended the presentation because his job would be on the line if many of them decided to leave Walton Malaysia. He testified [\[note: 59\]](#) as follows:

Q *Therefore, you have to take whatever steps possible to stamp any exodus or movement out, of managers, you had to do that also in the light of the unhappiness then existing which you already knew; agree?*

A *Yeah.*

[emphasis added]

110 It was rather telling that Mr Razak revealed that none of his staff had mentioned in their initial statements to the company that they had been solicited at the TSI presentation to leave Walton Malaysia. [\[note: 60\]](#) It was Walton Malaysia's top brass who had suggested to them that they should state in their *subsequent* statements to the company that they had an "impression" that they had been solicited at the said presentation. [\[note: 61\]](#) Mr Razak unabashedly accepted that it was possible that the inclusion of a paragraph about the impression of solicitation at the TSI presentation in the subsequent statements of his staff was intended to "create a motive for [Mr Yau]". [\[note: 62\]](#)

111 What was disturbing was that after many of Walton Malaysia's employees had been persuaded to say in their subsequent statements that they had an "impression" that they had been impliedly solicited at the TSI presentation, Mr Razak took these unsworn statements to a Commissioner for Oaths who was not present when these statements were signed but was nonetheless prepared to say that he (the Commissioner) witnessed the signing of the statements. [\[note: 63\]](#) Mr Razak conceded that the surreptitious conversion of the employees' subsequent statements to statutory declarations had serious implications for the staff when he testified [\[note: 64\]](#) as follows:

Q Once they signed their statement, Mr Razak, *they couldn't take a different position because you have then a [statutory declaration] with their name on it, agree?*

A I suppose.

[emphasis added]

112 None of the plaintiffs' witnesses could satisfactorily explain why they had an "impression" that they had been *impliedly* solicited at the TSI presentation. In fact, many of them stated that both Mr Yau and Mr Iseli had told them at the said presentation that it was not a recruitment exercise. Mr Iseli explained that as there were so many Walton Malaysia retail sales staff at the presentation, it was best to make it clear that recruitment of staff for TSI was not on the agenda. It is important to note that nothing was stated at the presentation about what TSI paid its staff, career prospects in TSI or when TSI intended to enter the Malaysian market. Most importantly, there was no evidence whatsoever of any follow-up action by TSI to find out whether anyone from Walton Malaysia was interested in joining that company.

113 Most of the plaintiffs' witnesses who testified on the TSI presentation were unconvincing witnesses who gave me the distinct impression that they merely wanted to toe their company's line and leave the witness box as soon as possible. For instance, Ms Norzita, who admitted that she had been concerned that anyone perceived as not cooperating with Walton Malaysia could be sacked, [\[note: 65\]](#) agreed that the TSI presentation was not different from other product presentations that she had previously attended. She admitted that she had attended the TSI presentation because she wanted to learn more about TSI's landbanking products and added that she had the *same* "feeling" of being solicited when she attended previous product presentations by the plaintiffs' competitors. Surely, such evidence could not advance the plaintiffs' case. More injurious to her credibility was her



damning admission that she had fabricated evidence that Mr Yau had told her that he had wanted to set up a company to take them all in just in case they were thrown out by Walton Malaysia. [\[note: 66\]](#) I do not believe that she had been impliedly solicited.

114 Ms Geethadevi Shanmugam ("Ms Geethadevi"), Walton Malaysia's Group Manager, who also claimed to have been "impliedly" solicited, testified that her fear of Walton Malaysia's corporatisation could have induced her to leave Walton. However, she readily admitted that going to a new company, such as TSI, of which she knew nothing about, was even more terrifying than Walton's alleged corporatisation. She was not a credible witness and I do not believe that she had been impliedly solicited.

115 Walton Malaysia's Group Manager, Mr Nicholas Ong ("Mr Ong"), who claimed that he had been impliedly solicited on two occasions, was another unreliable witness. The first occasion concerned a meeting at the Crowne Plaza Hotel in February 2008 and the second occasion was at the TSI presentation. Mr Ong admitted that he might have tailored his evidence by claiming that he had the impression that he was being solicited at an earlier meeting at the Crowne Plaza Hotel in February 2008. He testified [\[note: 67\]](#) as follows:

Q [W]hat you tried to do in your affidavit is to *move the impression of solicitation from 28 April forward to February 2008, the Crowne Plaza event.*

A *Maybe, yes.*

[emphasis added]

116 As for the TSI presentation, Mr Ong finally admitted that he could not have had the impression that he was being recruited at the TSI presentation and that his earlier evidence that the said presentation was a recruitment exercise was false. [\[note: 68\]](#) When re-examined by Ms Rajah as to why he had admitted to making a false statement on solicitation, Mr Ong's answer, which is as follows, could not but damage his credibility [\[note: 69\]](#):

Put it this way, I never expected so much questioning coming into this court, so under that kind of duress and pressure, I'd just like to get it over and done with as soon as possible.

One might well ask whether Mr Ong had also agreed to say whatever his bosses at Walton wanted to hear when he was questioned so as to "get it over and done with as soon as possible".

117 Mr Yau's counsel, Mr Tan, rightly pointed out that if his client had intended to solicit Walton Malaysia's retail sales staff to join TSI, he would also have arranged a TSI presentation in Singapore, where his client had much more influence as he was based in Singapore. It was not disputed that there was no TSI presentation in Singapore.

118 After taking all the circumstances into account, I find that the plaintiffs' allegation that their Malaysian staff had been impliedly solicited at the TSI product presentation was not proven.

### ***Implied solicitation of Ms Linnet Tan***

119 The alleged solicitation of Ms Linnet Tan was one of the main planks of the plaintiffs' case on solicitation in Malaysia. Surprisingly, this was also an implied solicitation and all that Ms Linnet Tan could say was that she "*felt*" that the defendants were soliciting her to move with her retail sales



team to their new business venture.

120 Ms Linnet Tan was one of the staff interviewed by the Interborder investigation team in early April 2008. She gave no indication then that there was anything untoward at Walton Malaysia. However, Mr Foo, who was a member of the Interborder team, claimed that Ms Linnet Tan had told him that Mr Iseli had approached various sales staff and conducted "meetings, here, there and everywhere". [\[note: 701\]](#) However, he could not tell the court anything about what he had heard from Ms Linnet Tan. As such, his evidence on solicitation in Malaysia cannot be taken seriously.

121 Much emphasis was placed by the plaintiffs on an e-mail that Ms Linnet Tan sent to Mr Razak on 29 April 2008. It was as follows:

An event has occurred which I'd like you to be informed about. On the 20<sup>th</sup> of April I attended a lunch at Concorde Hotel with [Mr Iseli] and [Mr Yau], on [Mr Iseli's] invitation the week before [Mr Iseli] voiced that there's some urgent and important info that I should be aware of as a DM in Walton and that [Mr Yau] has asked to speak to me personally, I was also informed that he has already met 9 other DMs and GMs recently.

After the exchange of pleasantries, [Mr Yau] proceeded to inform me of the reasons he and [Dirk Foo] left Walton, mainly that this company will be a full-fledged marketing setup, carrying multiple products, and the landbanking component has already signed with TSI in Toronto.

Just for the LB component, [Mr Yau] drew up a commission structure of:

DM	13%
GM	11.5%
TM	10%
Cons	7%

But as an existing DM, should I move my division over (*this is implicit*), I will have an added benefit of annual profit sharing of another 1%. Plus a voice at management levels to influence the direction, training, strategy, and events for the entire company, with the future of partnership and shareholding.

After lunch, they invited me to view one of their potential office spaces which I discovered (with acute irritation) that my own GM [Mr Solibun] has been actively sourcing for them. This was in the MNI building next to Concorde. From recent snippets of info *I now believe* that their plan is to go with renting a functional business centre to hasten the process to start in mid-May, with the official office a later consideration.

I spoke to [Mr Iseli] after that meeting, stating with crystal clarity that what he does with his life and his people is his own business. But under no circumstances is he to approach ANYONE with my division ...

I have now acknowledged that it's not a situation that will get itself solved quietly by natural selection .....

I leave it in your capable hands.

[emphasis added]

122 Mr Yau contradicted Ms Linnet Tan's version of events. He explained that she had been asking Mr Iseli about the reasons for his resignation and as he was going to be in Kuala Lumpur on 20 April 2008, Mr Iseli suggested that she should have lunch with him to discuss the reasons for his resignation. In his AEIC, Mr Yau explained that when Ms Linnet Tan asked him whether he was going into landbanking, he said that he had rejected offers of a job with two Canadian landbanking companies but she continued to ask about the commission structure of these other companies. He added (at para 158):

I thought that she was interested in joining these companies as she wanted so many details about them. She specifically asked whether their commission package at the Division Manager level was higher than that offered by the Walton Group. I thought Linnet Tan was merely interested in gauging the market rates for salaries offered by other competitor firms. I did not see anything wrong with that. She then continued to ask about the package offered to me and the remuneration offers made by these companies should I choose to join them. As such, I jokingly said that if these other companies really wanted me to join them, then they must give me a higher figure. At that time, I had no information on this as my intention was not to pursue the landbanking business. I plucked a random figure of 1% out of the air during my conversation with Linnet Tan. This conversation must be seen in the context of a casual lunch. There were no figure given, no portfolio or products on landbanking discussed for Linnet Tan to misconstrue the conversation as a solicitation attempt.

123 Ms Linnet Tan's version of the discussions at the lunch on 20 April 2008 had far too many flaws. Mr Yau's counsel, Mr Tan, rightly pointed out that if his client had planned to solicit staff from Singapore and Malaysia by offering them an improved commission structure, it was strange that Ms Linnet Tan was the only one who had been informed about the commission structure. Although Mr Yau was much closer to Walton Singapore's retail sales staff, none of plaintiffs' Singapore witnesses had mentioned a commission structure of the type allegedly revealed to Ms Linnet Tan. Mr Tan added that Mr Yau would not have singled her out as the only one to talk to about TSI's commission structure as he would not have known whether she was on his side, and especially so since she claimed that she had made her pro-Walton stand quite evident to others from the very start. Furthermore, if Mr Yau had furnished her with details of TSI's commission structure, she would not have had to try so hard in her subsequent e-mails to him after the lunch on 20 April 2008, which will be discussed below, to get more details on the very topics that had allegedly already been discussed in great detail at the said lunch. Mr Iseli, who was present at the lunch, stated in his AEIC (at para 131) that the conversation at the lunch was clearly about Mr Yau's own employment opportunities and that he could not recall an offer having been made by Mr Yau to Ms Linnet Tan.

124 Another point worth noting was that Mr Baukol claimed that when he had dinner with Ms Linnet Tan on 22 May 2008, the latter told him about the contents of her e-mail to Mr Razak. If Mr Baukol knew then that Mr Yau was setting up a rival landbanking company, a question arises as to why the plaintiffs did not rush to the courts to enforce the non-competition clause in his employment contract. After all, the plaintiffs moved swiftly to obtain an injunction against Mr Yau with respect to solicitation of its staff and Mr Baukol agreed that setting up a landbanking company was, from the plaintiffs' point of view, a more serious matter than general solicitation of its staff. [\[note: 71\]](#) The fact that no steps were taken to obtain an injunction against the setting up of Mr Yau's alleged competing business could only mean that even the plaintiffs themselves did not take Ms Linnet Tan's allegation that Mr Yau was setting up a rival landbanking business very seriously.

125 The plaintiffs also claimed that Ms Linnet Tan was impliedly solicited during an exchange of e-

mails with Mr Yau. On 22 April 2008, she e-mailed Mr Yau as follows:

It was really great to see you again after all this time. You mentioned you had some further info on your new company and products, would love to have it.

126 On the same day, Mr Yau replied to her as follows:

I can't give you anything at this moment in Black and White, which I like to keep PNC. I can show it to you, my next visit in KL, and you are welcome to join the rest of the guys for my next meeting, if you want to.

The reason for me not to give it out to anyone hard copy or through email in detail information, is because I want to safeguard the future for the people who are willing to join the company.

I hope you understand my situation at now, is not about myself. It's all about people.

Can I have your cell phone number? So that we can keep in touch.

127 When cross-examined, Walton Malaysia's Mr Razak admitted [\[note: 72\]](#) that no express offer had been made to Ms Linnet Tan in the said emails. What was quite troubling was that she did not disclose to the court another e-mail that she had sent to Mr Yau on 23 April 2008 until after she had given her testimony and returned to Kuala Lumpur. In this important e-mail to Mr Yau, she stated as follows:

I was hoping for more info on the landbanks region and projects only, *to study the investment. You know how I like to pick apart the details of everything.*

[emphasis added]

128 The undisclosed e-mail throws a different light on the exchange of e-mails between Ms Linnet Tan and Mr Yau. She had given the court the impression that it was Mr Yau who wanted to give her details of his new company. However, the truth is that she had pestered Mr Yau for more information about landbanking in order "to study the investment" and to "pick apart the details of everything". By not disclosing her e-mail of 23 April 2008, Ms Linnet Tan avoided being cross-examined on it when she was in the witness box. Admittedly, the plaintiffs' counsel, Ms Rajah, offered to recall Ms Linnet Tan as a witness but Mr Tan declined the invitation and preferred to submit on her failure to disclose the relevant e-mail. Admittedly, Mr Yau did say in one of his e-mails to Ms Linnet Tan that he could not give her too many details as he had to protect the interest of those who were joining him and his answers to Ms Rajah's rather probing questions on this statement were not altogether satisfactory. However, the fact remains that there was insufficient proof that Mr Yau had impliedly solicited Ms Linnet Tan to join his new business.

129 As for Ms Linnet Tan's claim that she was disappointed that Mr Solibun, a Group Manager within her sales team, had been solicited to leave Walton Malaysia, this must also have been an *implied* solicitation. Mr Solibun stated in his AEIC (at para 28) as follows:

I do not understand how Linnet Tan can claim that it was clear that I had decided to join [Mr Yau's] new company. *There was no new company for me to join.* [Mr Yau] had also never asked us to join any new company. In fact, as far as I was aware, [Mr Yau] had not even decided whether he was going to set up a new business, and what this business was to be used for, except that it may be a marketing company.

[emphasis added]

130 I find Mr Solibun a more credible witness than Ms Linnet Tan and accept his evidence.

131 In her eagerness to tarnish Mr Yau, Ms Linnet Tan also alleged that she had been invited to see the office that was intended to house the rival company that Mr Yau had intended to set up. However, her recollection of events was so faulty that she even got the building that they went to view wrong. Mr Yau explained that the property viewed on that day was not intended for a landbanking company but for another business that he was minded to be involved in. I find that in the light of Ms Linnet Tan's other unreliable evidence, I cannot, on the basis of her uncorroborated evidence, hold that Mr Yau had intended to find an office for a landbanking business.

132 Ms Linnet Tan's former boss, Mr Murali, claimed that it was possible that she had e-mailed Mr Razak on 29 April 2008 and spoken ill of Mr Iseli because she "could see a clear way to getting promoted or taking control of the sales force" [\[note: 73\]](#) if Mr Iseli and senior members of his team were removed from the company. He added derisively that she was "the sort of person who would do this". [\[note: 74\]](#) I agree with Ms Rajah that Ms Linnet Tan's evidence should be evaluated without considering the allegations of bribery or financial gain. Even so, while the evidence of Mr Yau had flaws which were pointed out quite effectively by Ms Rajah, I nonetheless prefer his overall evidence and that of Mr Iseli over the testimony of Ms Linnet Tan and Mr Razak. As such, I find that the plaintiffs did not prove that Ms Linnet Tan had been impliedly solicited to leave Walton Malaysia by the defendants.

### ***Whether Mr Hernandez was solicited***

133 The plaintiffs' assertion that Walton Malaysia's Team Manager, Mr Hernandez, was solicited by Mr Iseli to leave Walton Malaysia at a meeting in the latter's house in Kota Kinabalu on 26 April 2008 was contradicted by Mr Hernandez's e-mail to Mr Razak on 28 April 2008. In the said e-mail, Mr Hernandez categorically stated that no offers had been made to him at the said meeting to join the new venture although "the options were open".

134 When cross-examined Mr Hernandez conceded [\[note: 75\]](#) that the allegation that he had been solicited was inconsistent with his e-mail to Mr Razak. He testified as follows:

Q [F]irst, you are saying no offers were made by [Mr Iseli] and his group; agree? ....

A Yes.

Q .... Mr Hernandez, how does [the allegation that you were solicited] gel with your [statement in your e-mail to Razak] that "no offers were made to us"?

A I cannot deny from the way I've written here.

Q *[C]annot deny because they are completely opposite, agree?*

A Yes.

[emphasis added]

135 Mr Hernandez's e-mail of 28 April 2008 to Mr Razak must be viewed in the context of his state

of mind at the material time. He testified [\[note: 76\]](#) as follows:

Q You were afraid that if the company saw you as being close to [Mr Iseli], you may end up being sacked or suspended? ....

A I will say yes.

Q Therefore, you had to ensure that whatever you write does not implicate you but would *help the company in its case against [Mr Iseli] and/or [Mr Yau]*?

A Yes.

[emphasis added]

136 After the meeting on 26 April 2008 at Mr Iseli's house, Mr Hernandez attempted to obtain evidence of the former's solicitation by secretly taping a subsequent conversation with Mr Iseli. However, the transcript of the taped conversation revealed that Mr Iseli had stated as follows:

What I am doing, *I am not here to recruit you*. No way I am not going to do that. *I don't recruit*.

[emphasis added]

137 I thus find that the plaintiffs had not proven that Mr Hernandez had been solicited to leave Walton Malaysia at Mr Iseli's house on 26 April 2008.

### ***Whether Mr Liew Jer Wei was solicited***

138 Walton Malaysia's witness, Mr Liew, claimed to have been "directly" solicited when he had coffee with Mr Iseli at the Lodge Restaurant in Kuala Lumpur on 17 April 2008 (the "Lodge meeting"). However, when cross-examined, he testified [\[note: 77\]](#) that Mr Iseli had told him at the Lodge meeting that "there's nothing on the table, yet". [\[note: 78\]](#) This led to the following exchange [\[note: 79\]](#) between Mr Yau's counsel, Mr Tan, and Mr Liew before the latter finally conceded that Mr Iseli had not made him an offer of employment:

Q Mr Liew, if there was nothing on the table, how could they solicit you?

A *That's how I feel...*

Q You can't reject an offer that's non-existent. There's nothing on the table. He can't offer you anything because there was nothing on the table.

A Fair enough.

Q *[T]here was no offer to reject in the first place; do you agree?*

A Yes.

[emphasis added]

139 When referring to the Lodge meeting in his AEIC, Mr Liew omitted important information that would have cast a different light on the meeting. First, he did not refer to an e-mail that he had sent

to Mr Razak shortly after the Lodge meeting, in which he stated that Mr Iseli had told him that he was not being poached or asked to "go over". When asked why he did not reveal this in his AEIC, Mr Liew said that he had forgotten to do so. [\[note: 80\]](#)

140 Secondly, Mr Liew did not mention that a sales representative from YTL Tours had interrupted the meeting to discuss a proposed incentive trip to Hanoi that was being planned by Mr Iseli. When cross-examined, he admitted that in April 2008, as well during as the previous months, Mr Iseli had tried to raise the morale of Walton Malaysia's retail sales staff and had continued to encourage the company's Team Managers to improve their performance. [\[note: 81\]](#)

141 Thirdly, Mr Liew did not disclose that during the Lodge meeting, Mr Iseli had also been checking on the commission structure of rival companies and had talked to Mr Razak on the phone about this matter. Mr Yau's counsel, Mr Tan, rightly pointed out that if Mr Iseli had really wanted to solicit Walton Malaysia's retail sales staff to leave the company, he would not have fought so hard to increase their commission as this would have made it harder for him to persuade them to leave the company.

142 I find that Mr Liew's evidence that he had been solicited by Mr Iseli to leave Walton Malaysia most unreliable. As such, he failed to advance Walton Malaysia's case on solicitation.

#### ***Whether Ms Shanta Krishnan was solicited***

143 Ms Shanta Krishnan ("Ms Shanta"), the sister of the then Managing Director, Mr Murali, also claimed to have been solicited by one Mr Robin on Mr Iseli's behalf to leave Walton Malaysia. Like other witnesses from Walton Malaysia, she said that that it was only her own "impression" that she was being solicited because nothing had been openly said about joining Mr Iseli.

144 Ms Shanta's allegation that she had been impliedly solicited to leave Walton Malaysia cannot be believed. She readily agreed that it was "logical" that if Mr Iseli had wanted to plot against the company, she would have been the last person to be approached as everything disclosed to her would get back to her brother, Mr Murali. [\[note: 82\]](#) Hence, Mr Yau's counsel, Mr Tan, submitted that Ms Shanta's impression of being solicited by Mr Iseli through Mr Robin was "totally skewed".

145 Ms Shanta's evidence was unpersuasive. She was so keen to advance the company's case that a sub-section in her AEIC had a heading "Robin's role in Iseli's and Yau's plans". When cross-examined on why she had such a misleading heading when nothing in that sub-section had anything to do with Mr Yau, she said that it was a mistake and that at no point in time did she and Robin talk about Mr Yau. [\[note: 83\]](#) I find that Ms Shanta's claim that she had been solicited to leave Walton Malaysia was not proven.

#### ***Whether Ms Jenme Hoh was solicited***

146 As for the alleged solicitation of Ms Jenme Hoh ("Ms Hoh"), Walton Malaysia's Team Manager, Mr Murali stated in his e-mail to Mr Britton on 3 April 2008 that Ms Hoh had told him that she had been approached at a company seminar on 29 March 2008 by Mr Iseli, who told her about a new company that had made offers to Walton Malaysia's DMs regarding a better product and better commissions. Mr Murali's sister, Ms Shanta, stated in her AEIC (at para 50) that Ms Hoh had also told her that Mr Iseli had mentioned that another company had a "better product and better commission".

147 Ms Hoh's version of her encounter with Mr Iseli at the seminar was quite different from the

version in Mr Murali's e-mail. In her AEIC Ms Hoh had merely stated (at paras 12 and 13) that Mr Iseli had asked her at the seminar whether she had "heard about a new company in town" and that she told him that she was hungry and could not think of anything other than food. She added (at para 14) that after this, she was "never approached or spoken to by Iseli again". When cross-examined, Ms Shanta agreed that Ms Hoh's version of her encounter was different. The evidence of Mr Murali and Ms Shanta on the solicitation of Ms Hoh was unconvincing and I find that it was not proven that Ms Hoh had been solicited by Mr Iseli at the seminar in question.

### ***Whether Mr Patrick Ng was solicited***

148 There were other retail sales staff from Walton Malaysia who testified but I had the distinct impression that many of them were far too concerned as to how their bosses might view their testimony in court. I need only mention one more witness, Mr Patrick Ng Chee Weng ("Mr Ng"), a Group Manager who had been suspended from his duties because he was perceived to be close to Mr Iseli. Mr Ng was a combative witness who had to be reminded not to use impolite language in court. He stated in his AEIC that sometime in early 2008, a number of persons, including Mr Medina and Mr Solibun, gathered at Mr Iseli's apartment and discussed plans about starting a new marketing company to sell among other things, landbanking products. It is one thing to discuss the setting up of a new company and another to actually do so. Furthermore, Mr Ng did not reveal this "juicy" information to the Interborder investigation team when he was interviewed in early April 2008. It was only after his suspension had been lifted that he had a lot to say about Mr Iseli, including what the latter had told him and others *before* and after the Interborder team was assembled.

149 Mr Ng also claimed in his AEIC at para 16 that Mr Iseli had asked him to join the new company to be set up and to become one of its directors and shareholders. He added that he told Mr Iseli that he needed to know more about the new company and the products it intended to sell but Mr Iseli was unable to provide the requisite information in writing. If Mr Ng's evidence is to be believed, Mr Iseli had clearly made him an *express* offer to join the new company and become one its directors and shareholders. However, Mr Razak testified that that the only *clear* instance of solicitation was the *implied* solicitation of Ms Linnet Tan.

150 Mr Yau's counsel, Mr Tan, suggested that Mr Ng had lied to keep his job. Mr Razak admitted that the fact that Mr Ng had agreed to file an AEIC in support of the plaintiffs' case was a relevant factor when considering whether the suspension of the latter from his duties should be lifted. Mr Razak testified [\[note: 84\]](#) as follows:

Q [Pat Ng, who was suspended] gave a statement and he was reinstated?

A We can't find anything *concrete* for him, so ...

Q But you didn't find anything concrete against [Mr Iseli] .... *The only difference was that Patrick agreed to give an affidavit for Walton. That was the distinction, was it not, Mr Razak?*

A *That was one of the difference.*

Q That was the *main difference*.

A *One of the difference, yeah.*

[emphasis added]

151 I cannot, merely on Mr Ng's words, find that the defendants had solicited Walton Malaysia's staff to leave that company to join them.

***Whether a massive walk-out had been planned***

152 As has been mentioned, Walton Malaysia's former Managing Director, Mr Murali, tried to alert the company about Mr Iseli's alleged solicitation of its staff in his e-mail to Mr Britton on 3 April 2008. Part of his e-mail referred to a planned massive walk-out as a result of the defendants' solicitation efforts.

153 Mr Murali's information regarding the proposed walk-out was plain hearsay. He said that Mr Liew informed him that one Ms Sammi Lee ("Ms Lee"), a team manager at Walton Malaysia, had found out from another team manager, Ms Clara Tan ("Ms Tan"), that there would soon be a walkout from Walton. Neither Ms Tan nor Ms Lee were called to testify on the alleged walk-out. Furthermore, while Mr Murali said that he had been told that the walkout from Walton Malaysia had been scheduled for 15 April 2008, Mr Liew testified that he did not give Mr Murali any date for the walk-out while Ms Hoh was unable to recall any date for the walkout. As such, the question of the proposed walk-out, which did not materialise, need not be further considered.

***Alleged solicitation in Malaysia after 5 May 2008***

154 As for whether there was any solicitation of Walton Malaysia's staff *after* 5 May 2008, Mr Razak testified that the *only* instance of solicitation after 5 May 2008 that he could recall was the so-called "Penang incident". [\[note: 85\]](#)

155 After Mr Iseli left Walton Malaysia on 5 May 2008, the company sent Mr Medina to Penang on 13 and 14 May 2008 to brief its Penang staff on the departure of Mr Iseli and the suspension of four of Walton Malaysia's senior retail sales staff. The briefing took place at the Penang Club ("the Club"). What irked the plaintiffs was that Mr Iseli, an associate member of the Club, was also at the Club at the same time. According to Mr Razak, Mr Michael Ooi ("Mr Ooi"), his Penang team manager, reported that before the Walton Malaysia staff left for their meeting in another part of the Club, Mr Iseli was seen seated with two other persons, namely Ms Sue How and Mr Khoo Boo Yeang ("Mr Khoo"), a few tables away from Mr Medina's table.

156 Surprisingly, Mr Ooi was not called by the plaintiffs as a witness to testify on the Penang incident. It was not disputed that Mr Iseli did not attend Mr Medina's meeting and none of the plaintiffs' witnesses testified about solicitation at the Club. When cross-examined by Mr Tan as to how he could, in these circumstances, conclude that Mr Iseli had solicited his staff at the Club, Mr Razak tied himself in knots [\[note: 86\]](#) before concluding that the fact that Mr Iseli was at the Club at the same time as his staff must mean that there was solicitation of his staff:

Q Did you know if Khoo Boo Yeang and [Mr Iseli] and Sue were talking about Walton products, or maybe Boston product?

A I don't know, I wasn't there.

Q Or gold?

A I don't know. I wasn't there....

Q So, Mr Razak, by the mere fact of them being seen together, you then jumped to the



conclusion that [Iseli] was soliciting Khoo Boo Yeang? *Is that the best evidence you can give us? ...*

A .... I suppose, yeah, because --- the fact that [Iseli] was already there, he was soliciting our guys.

[emphasis added]

157 Mr Khoo testified that Mr Razak had asked him to sign an affidavit accusing Mr Iseli of soliciting at the Club but he refused to do so. When cross-examined, he stated [\[note: 87\]](#) \_:

Basically, after the [meeting at the Penang Club], Razak called me .... He believed that [Mr Iseli] went to Penang to solicit support from all the Penang Walton consultants. So I told him no because he didn't meet them, he was not at the meeting, but he insisted that the company is suing [Mr Iseli], and he wants me to help the company to prepare an affidavit to say that [Mr Iseli] went to Penang to solicit consultants. So I said that is not true, and I cannot write that type of statement....

*So [Mr Razak] says, "well, ... you help me, I look after you, you come and sign the affidavit". So I say, "if you insist on asking me to say something which is not true, you can keep your business"....*

[emphasis added]

158 Mr Khoo claimed that he paid a price for refusing to lie on behalf of the plaintiffs. He said that after he refused to accuse Mr Iseli of soliciting at the Club, Mr Razak stated in a letter to him on 20 June 2008 that his resignation had been accepted. He added that as he had not resigned from Walton Malaysia, his contract had been terminated because he had refused to file an affidavit against Mr Iseli. Walton Malaysia insisted that Mr Khoo had resigned but the latter's alleged letter of resignation was not shown to the court.

159 I reject the plaintiffs' claim that the Penang incident proved that Mr Iseli had solicited Walton Malaysia's staff to leave that company with Mr Medina's help. There was thus no evidence of any solicitation in Malaysia after 5 May 2008 by Mr Iseli or Mr Yau.

### ***Conclusion on solicitation in Malaysia***

160 For the many reasons stated, I dismiss the plaintiffs' allegation that the defendants had solicited their staff to leave Walton Malaysia.

### **Whether Mr Doherty was defamed**

161 Mr Doherty's allegation that the defendants defamed him was pleaded in the Statement of Claim at paras 84 – 85 as follows:

[84] [O]n or about 26 April 2008, [Mr Iseli] spoke and published the following words or words to the same effect, to one of the 2<sup>nd</sup> Plaintiffs' Team Managers, which were defamatory of [Mr Doherty].

[Mr Yau] had refused an offer of US\$5,000,000 from [Mr Doherty] to silence him about the aforesaid corporate strategy and to obtain his agreement to not solicit the Plaintiff's sales

force for a period of two (2) years (the "Defamatory Words...").

[85] The Defamatory Words concerning [Mr Doherty] were spoken by [Mr Yau] to [Mr Iseli] and repeated by [Mr Iseli] to [Mr Hernandez]. In the alternative (in the event that [Mr Yau] did not say the Defamatory Words to [Mr Iseli]) the Defamatory Words concerning [Mr Doherty], were spoken by [Mr Iseli] to [Mr Hernandez].

162 The alleged defamatory remark, if made, understandably incensed Mr Doherty so much that on 6 May 2008, he stated in an e-mail to his staff as follows:

Another false statement concerning [Mr Yau] is that I allegedly offered him money so that he would not disclose this alleged corporate strategy. When [Mr Yau] retired, Walton paid him exactly the amount that was due to him under his employment contract. He received no additional compensation, and was not offered a severance package. I challenge anyone to produce evidence to the contrary.....

163 Mr Yau, who made it clear that Mr Doherty had not offered him any money to "silence" him or to extend his non-solicitation period to two years, denied having defamed the latter while Mr Iseli denied having told Mr Hernandez that Mr Yau had been offered such a bribe.

164 Mr Hernandez, Mr Doherty's key witness, was an unreliable witness. He demolished Mr Doherty's case when he finally admitted that he could have been mistaken about what Mr Iseli had said about the US\$5 million payment to Mr Yau. His initial position, as outlined in para 32 of his AEIC filed on 17 April 2009, was as follows:

Iseli said that when [Mr Yau] resigned, Bill Doherty had offered him a sum of USD 5 million to keep him silent on this strategy and to prevent from soliciting the sales force for a period of two years. [Mr Yau] had refused this offer. Iseli said that [Mr Yau] was right not to take it.

165 Mr Hernandez said that the defamatory words were uttered by Mr Iseli at the latter's house in Kota Kinabalu on 26 April 2008. However, Mr Iseli stated in para 140 of his AEIC as follows:

I did not at any time tell [Mr Hernandez] that [Mr Yau] had refused an offer of US\$5 million from Bill Doherty to silence him about the issue of "corporatisation" or to obtain his agreement not to solicit the sales force of the Walton Group. At the relevant time, "corporatisation" was an open secret, and there was no reason for me even to suspect that the Walton Group would consider it necessary to offer [Mr Yau] such a significant bribe to keep quiet about it. *I may have mentioned the figure of US\$5 million in the context of the package [Mr Yau] would have been earning a year while at Walton* and the possible reasons why a person would walk away from a job paying so much. *It is quite obvious that [Mr Hernandez] has misconstrued what I have said.*

[emphasis added]

166 Mr Solibun, who was present when Mr Iseli spoke to Mr Hernandez on 26 April 2008, corroborated Mr Iseli's evidence. He stated in his AEIC (at para 39):

The figure of US\$5 million was mentioned by [Mr Iseli] when he wondered why [Mr Yau] would resign from Walton and walk away from an estimated US\$5 million a year salary. [Mr Iseli] never said that [Mr Yau] had been offered US\$5 million by Walton. These statements have been taken out of context, and I believe that [Mr Hernandez] has deliberately misunderstood what [Mr Iseli] said that day.

167 After the meeting in Mr Iseli's house on 26 April 2008, Mr Hernandez secretly taped a conversation with Mr Iseli at a subsequent meeting in order to obtain incriminating evidence against the latter on the package allegedly offered to Mr Yau. [\[note: 88\]](#) However, nothing in the transcript of the taped conversation concerned the alleged bribe. Most damaging to Mr Doherty's case on defamation was the fact that Mr Hernandez agreed with Mr Yau's counsel, Mr Tan, that he could have misunderstood what Mr Iseli had said about the US\$5 million payment to Mr Yau. His testimony was as follows: [\[note: 89\]](#)

Q When [Mr Iseli] told that [Mr Yau], who was paid US\$5 million a year, resigned because he disagreed with the corporatisation strategy, *you could have misunderstood it to mean that Bill Doherty offered [Mr Yau] a \$5 million package to keep quiet. Was that possible?*

A *It is. It is.*

[emphasis added]

168 For the reasons stated, Mr Doherty's claim against the defendants for defaming him is dismissed.

### **The 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs' Claim for Malicious Falsehood**

169 In *Ratcliffe v Evans* (1892) 2 QB 524, the English Court of Appeal held that the tort of malicious falsehood was applicable to falsehoods calculated to cause actual damage to a business. The essential ingredients of this tort, which is intended to protect a plaintiff from economic harm caused by a defendant's falsehood, were elucidated in *Kaye v Robertson* [1991] FSR 62 at 67 by Glidewell LJ, who said that it must be shown "that the defendant has published about the [plaintiff] words which are false, that they were published maliciously and that special damage has followed as the direct and natural result of their publication".

170 The plaintiffs' case on malicious falsehood was rather confusing. Mr Doherty testified that it concerned what the defendants said about the plaintiffs' corporate strategy. He explained [\[note: 90\]](#) what the plaintiffs' case on malicious falsehood entailed:

In ... the simplest terms, ... it is that we were going *to cease* retail operations and we would --- and there would be a redundancy in our staff and therefore *people were going to lose jobs within 24 months*. Furthermore, what [Mr Yau] was providing was an opportunity for them to go and work with him.

[emphasis added]

171 Mr Yau emphatically denied that he had told anyone that the retail division would be closed down within twelve to twenty-four months. He explained in his AEIC at para 97:

At no time did I tell anyone, in Walton or otherwise, that the entire retail staff of Walton Singapore and Walton Malaysia would be removed within the next 12 to 24 months. If indeed I made such a statement, I have no doubt that there would have been mass resignations by now. In fact I sent an email to the key personnel in Sales to encourage them so that they would not be demoralised by my departure.

172 When cross-examined, Mr Doherty conceded that his own witnesses understood that

corporatisation would impact on retail sales and not that it would result in the cessation of retail sales. [\[note: 91\]](#) Although DM Yao claimed in his AEIC (at para 73) that Mr Yau had said that management had “already made up their minds to *remove* the retail sales force,” he testified that this statement was inaccurate and the impression given was that Walton Singapore intended to *focus* on corporate sales. [\[note: 92\]](#)

173 On 8 October 2009, the plaintiffs’ counsel, Ms Rajah, clarified [\[note: 93\]](#) the plaintiffs’ case as follows:

So it is our pleaded case that a large majority would be made redundant and there is a subtle difference between that and total shutdown. I thought I should clarify that.

174 In the rest of this judgment, references to the “corporatisation” strategy or plans must be read in the context of Ms Rajah’s explanation.

175 The plaintiffs claimed that there was no plan to corporatise their operations in Singapore and Malaysia and that their consistent business strategy between 2005 to 2008 was:

- (a) to continue growing retail sales as their primary channel of distribution;
- (b) to build corporate sales as an additional channel of distribution;
- (c) to allow the retail sales staff to conduct sales through both channels from 2008; and
- (d) to increase the size and quality of the sales force, by recruiting more sales staff and setting minimum targets.

176 The plaintiffs contended that Mr Yau made the allegation about their corporate strategy in Singapore at the lunch and dinner meetings and in Kuala Lumpur at a “lo hei” lunch and Red Box karaoke session on 20 February 2008, a lunch with Ms Linnet Tan on 20 April 2009 and in his conversations with DM Ong and Mr Chua Kheng Hian on 28 April 2008. As for Mr Iseli, it was alleged that he made the allegations about corporatisation at a meeting at the Crowne Riverside Kuching on 22 February 2008 or 30 March 2008, a Paradisso lunch on 7 April 2008, a Boardroom meeting on 7 April 2008, coffee sessions with Mr Liew and Ms Linnet Tan on 17 April 2008, another coffee session with Ms Heather Kong on 19 April 2008, a gathering at Kota Kinabalu on 26 April 2008, a meeting with Ms Geethadevi and her managers on 28 April 2008, and a drinks session with Mr Hernandez on 4 May 2008.

177 The defendants’ defence was two-fold. First, they contended that corporatisation was a fact. Secondly, even if there was no plan to corporatise their sales operations, the retail sales staff in both countries could see for themselves the focus on corporatisation in Singapore and Malaysia and thus have concerns about their future. In explaining, as he was entitled to do, why he resigned, Mr Yau admitted having said that he had been unhappy with the corporate strategy.

178 Mr Baukol accepted that it was reasonable for the DMs to ask Mr Yau about his future plans

and for the latter to “express views on what his plans [were] although they may not be concrete”.  
[\[note: 94\]](#) I do not, for one moment, think that Mr Yau had only said complimentary things about the plaintiffs whenever he met the latter’s staff and that he may well have been hatching incomplete plans for his future, which could spell competition for the plaintiffs after the expiry of the restrictions in his employment contract. However, the issue here is whether or not he was guilty of having spread malicious rumours at the material time which caused the loss allegedly suffered primarily by Walton Malaysia.

*The plaintiffs’ own senior staff used corporatisation as a threat*

179 While the plaintiffs complained that the defendants made their retail sales staff fearful and anxious about the future by talking about the corporatisation strategy, this was precisely what the top echelon of Walton Malaysia’s management had been doing all along to ensure that the retail sales staff worked harder to avoid being sidelined by corporate sales.

180 Witnesses of both parties to the action testified that Walton Malaysia’s boss, Mr Razak, took advantage of the fear of corporatisation to threaten his retail sales staff to work harder. In his AEIC, Mr Medina, a former Walton Malaysia staff, stated (at para 24):

*Another cause for further concern was the statements Razak repeatedly made about Walton Malaysia going corporate. One such occasion was at the General Sales Meeting that took place near the end of 2007, where Razak had highlighted to us that retail sales were below expectations and he announced that unless our sales improved, we would end up like Hong Kong, which was “going corporate”. This aggravated fears. By this time, it was a known fact that the Hong Kong office had reduced its retail sales team of approximately 150-200 people to less than 50 people.*

[emphasis added]

181 Despite her staunch pro-Walton stand, Mr Razak’s subordinate, Ms Linnet Tan, corroborated Mr Medina’s evidence when she testified [\[note: 95\]](#) as follows:

Q [M]r Razak had used corporate sales as a threat to your retail sales people that if they did not improve, they would end up like what happened in Hong Kong.... Razak did that.

A Razak talks a lot, and *this one is quite accurate of what he said, yes.*

[emphasis added]

182 Apparently, Ms Linnet Tan herself had also used corporatisation as a scare tactic. Mr Solibun stated in his AEIC at para 11:

Subsequently, Linnet Tan, my Division Manager, began telling members of her division ... at several points over a period of two years that Walton Malaysia was “going corporate” and that we would need to “buck up” our performance or else we were going to be removed because it was more expensive to operate retail sales than corporate sales....

We all began worrying about the threat that this new “corporate” direction posed to our livelihoods ...

183 Mr Solibun’s assertion was corroborated by Mr Christopher Xavier Dorairaj (“Mr Dorairaj”), a

former team manager of Walton Malaysia. He stated in his AEIC at paras 10 and 12:

10 The issue of corporatisation had come up as early as end 2005 or early 2006, when my Division Manager, Linnet Tan, in her "motivational" speeches to her team at division meetings, would tell us *that Walton Malaysia was moving towards corporate and that we would need to "buck up" on our performance or we would be sidelined...*

12 On numerous occasions throughout 2006 and 2007, Linnet Tan would repeat this point about Walton Malaysia going corporate and use this fact to remind us that the retail sales team must pull their weight and hit their targets. *[Mr Razak], then the Vice-President Sales of Walton Malaysia, had also mentioned this at several of the General Sales Meetings. .... I cannot remember his exact words but he did state something to the effect that "unless the sales improved, we would end up like Hong Kong, which was "going corporate".*

[emphasis added]

184 Admittedly, the plaintiffs contended that Mr Dorairaj's employment with Walton Malaysia had been terminated because of his poor performance and it is possible that he may be unhappy about this. However, his evidence that both Mr Razak and Ms Linnet Tan had been frightening their staff with the spectre of corporatisation was not effectively challenged when he was cross-examined.

185 Mr Doherty admitted that if the management of Walton Malaysia had told the retail sales staff that the company was "going corporate", the retail staff would have cause for concern. [\[note: 96\]](#) It is totally inappropriate for the plaintiffs, whose top brass, including Mr Razak, were threatening their staff with corporatisation to complain that the defendants were causing them harm by spreading rumours of corporatisation.

#### *Rumours about corporatisation before the defendants' departure*

186 There were other flaws in the plaintiffs' case on malicious falsehood. The plaintiffs' assertion that rumours of corporatisation became alive only after Mr Yau resigned in January 2008 was not supported by their own witnesses. DM Yao testified that the focus on corporatisation was "nothing new" and that "right from 2006, there's always been talk of this" by Walton Singapore's staff. Both DM Ong [\[note: 97\]](#) and DM Ann [\[note: 98\]](#) stated in their AEICs that the retail sales staff teams were concerned that the corporate sales division would "cannibalise" the retail sales division. When re-examined, DM Ong said [\[note: 99\]](#) that Mr Yau did not raise "something new" when he talked about the plaintiffs' corporate strategy as there had been "nagging thoughts about the possibility of the company heading in this direction". Even Ms Lusi agreed that there had been rumours of corporatisation for 2 years before Mr Yau resigned. She did not suggest that the rumours about corporatisation had been started by Mr Yau. [\[note: 100\]](#)

187 Walton Malaysia's retail staff also had fears about the company's corporate strategy. Its former Managing Director, Mr Murali, testified [\[note: 101\]](#) that apart from his staff, even he had concerns about the effect of corporatisation on retail sales long before the defendants resigned in 2008. The relevant part of the proceedings is as follows:

Q [Y]our sister [Ms Shanta] said in her affidavit that around 2005/2006, there [were] already concerns that ... corporatisation ... would take over retail sales. Were you aware of that?

A Yes, I was.

Q So did Linnet Tan. She said the same thing in her affidavit. Were you aware of that?

A [I]'ll say yes, *there were people who were concerned about it, and at some point so was I.*

[emphasis added]

188 Other Walton Malaysia witnesses who testified about their concerns about corporatisation included Mr Eddie Chen, who stated in his AEIC at paras 11 and 15-16:

11 Since the time of inception of the corporate sales division there have always been concerns amongst the retail sales staff that the long term plan was for the corporate sales division to replace the retail sales division.

15 The retail sales staff in the division that I was part of at Walton Malaysia were *already concerned* about the rumours that the retail sales division would be replaced by the corporate sales division. After Iseli left, their concerns became more pronounced. The concerns with respect of Iseli's departure from Walton Malaysia affected not only the division I was in but the other divisions of Walton Malaysia as well.

16 As a result, the *morale and momentum of the retail sales division dropped.*

[emphasis added]

189 It follows that the allegation that the rumours of corporatisation became alive only after the defendants left their respective companies was unsubstantiated.

*Mr Doherty had assured the plaintiffs' retail staff that their jobs were safe*

190 While unaware that his own senior staff in Malaysia had been threatening the retail staff with the consequences of corporatisation, Mr Doherty e-mailed his staff on 6 May 2008 as follows:

[I] have been advised that false statements are being spread about Walton and me personally. I would like to address the false statements in this open letter to everyone....

The first rumour I want to address concerns restructuring at Walton, and Walton's alleged strategy to shut down the Asian retail operations and focus only on corporate sales. Apparently, the rumour is that retail sales people will lose their jobs over the next 24 months. This is absolutely untrue. The Asian operations generated sales of \$213 million last year, which were greater than our Canadian sales of \$200 million. These results were brilliant and I told you how proud I was of your efforts. I said on video and I meant it. Walton would never shut down its most successful sales operation in the world. *I want to let you know in no uncertain terms that Walton remains committed to retail sales in Asia; Walton is not winding up retail sales and, as a result, your jobs are not in jeopardy....*

As I have told you many times, we are one family and we have a bright future together....

I look forward to continuing to work with you as we build our bright and profitable future together.

[emphasis added]

Mr Doherty's assurance should have assuaged fears and clarified the plaintiffs' position on corporatisation in Singapore and Malaysia once and for all. It would be a rather sorry state of affairs for the plaintiffs if their staff believed outsiders rather than their own CEO, who had promised his staff a bright and profitable future and had stated in no uncertain terms that he did not intend to get rid of the retail sales division.

191 What cannot be overlooked is that although the same malicious rumours were allegedly spread in Singapore, where Mr Yau resides and had much greater influence, the sales of Walton Singapore soared in 2008 while the sales of Walton Malaysia dipped drastically in that year. Of course, the plaintiffs credited themselves by saying that they managed to contain the damage in Singapore but not in Malaysia, but this is a self-serving assertion that was not proven.

*Why the retail sales staff had concerns about corporatisation*

192 Why did the retail sales staff of Walton Singapore and Walton Malaysia have such marked concerns about the impact of corporate sales on their future after the corporate sales division was set up in 2005? The defendants believed that the company was placing increasing emphasis on the corporate sales department's sales through IFAs as from 2007 and that the inevitable consequence of this would be that corporate sales would adversely affect retail sales and lead to a reduction of retail sales staff. Mr Iseli told the plaintiffs' management that if it was his own company, he too would focus on corporate sales. He also informed Mr Baukol that the company seemed to be heading in the direction of corporatisation because of the discrepancy in commissions payable to corporate and retail staff. No action was taken against him for making these remarks and the plaintiffs finally addressed the discrepancy in the commissions payable to retail sales staff shortly before Mr Iseli was asked to leave. Oddly, the plaintiffs now accused him of misleading Mr Baukol by saying that people felt that the company was on the road to corporatisation because of the said discrepancy in commissions.

193 According to the defendants, the influx of several expatriate staff from the plaintiffs' headquarters in Canada helped to fuel rumours about the future direction of the company because the expertise of these people was in securitised products and corporate sales. This gave the impression that changes were afoot for the Singapore office to bring it in line with the Canadian office. The expatriate staff from Canada included Mr Britton, who was made Chief Operating Officer of Walton Asia in 2006, Mr Rex McNally, who took charge of Customer Services in Walton Singapore in 2006, Mr Pickard, who joined the corporate sales division of Walton Singapore in 2007, Mr Sean Maharaj, who became Executive Vice President of Finance in 2007, and Mr Knight, who was appointed Executive Vice President, Legal, Walton Asia, in early 2008. It did not help that one of these expatriates, Mr Pickard, who presented the Singapore report at the Scottsdale retreat, stated that there were too many agents in Singapore and Malaysia and that there was a need to "cut their numbers" to increase the commitment and calibre of people.

194 After the Scottsdale retreat, the portfolio of corporate sales, which had been under the purview of Mr Dirk Foo, who was regarded by some as a champion of retail sales, was taken away from him and the position of Vice-President, Corporate Sales, was created. Mr Starvis, the man who had taken charge of the corporate division in Hong Kong, was appointed to this post.

195 At the Scottsdale retreat, Mr Razak warned that "retail and corporate may be taking to the same potential corporate clients in competing for business" and recommended that a "well defined market for each department will best correct this situation". In due course, problems arose between the staff of the corporate sales department and retail sales department. The poaching of retail sales by the corporate sales department was also resented. In his AEIC, Mr Medina explained (at paras 15-17):



Among the retail sales people, there is an honour system. We do not poach one another's customers.... However, with the new Corporate Department, this code of honour was not followed.... In addition, the company condoned such behaviour... The clear preference for corporate sales was undeniable and caused great unhappiness amongst the retail staff. Although the concern was brought up to the management, specifically [Mr Razak], ... in or about 2005-2006, nothing was done about it.

196 The perception that the corporate sales department was favoured gained momentum when a new commission structure which favoured those involved in corporate sales was introduced in November 2006. Corporate sales staff were entitled to a commission of 10% while those in retail sales were paid only 4%, with an additional 2% if sale targets were met. This disparity was exacerbated in February 2007 when the commission on retail sales was henceforth to be computed on 90% of the sales volume whereas the commission for corporate sales continued to be based on 100% of the sales volume. The result was that better discounts could be offered by those in corporate sales and this gave them an edge over those in retail sales. Although the plaintiffs explained that the change in retail commissions was to take their overheads into account, some retail sales staff felt that the corporate sales department was favoured.

197 Both Mr Yau and Mr Dirk Foo realised that the fear of retail sales staff about corporatisation had to be allayed. On 28 May 2007, some three weeks after the Scottsdale retreat, Mr Dirk Foo e-mailed Mr Yau as follows:

I know that morale is a little down throughout the retail department and it is starting to show in our production.

Some of the feedback I am getting and this is also from senior managers is that Management seems disinterested in their work and they feel unimportant. *Some even feel that we are actually going to replace Retail???*

This is stupid but I am willing to give them the benefit of doubt. I intend to correct this and everything else that might stand in the way of retail hitting their goal.

[emphasis added]

198 On 8 June 2007, Mr Yau e-mailed Mr Doherty to urge the latter to boost the morale of retail sales staff:

For tomorrow message to the team, is to tell them [that retail sales] very important to the Company is our baby.

I already told them the good [news] about Dirk is 100% focus in this department....

If you can say something great about [the retail sales] team, this will really help.

199 The trimming of retail staff was discussed at a meeting that Mr Yau had with Mr Doherty, Mr Baukol, Mr Knight and Mr Dirk Foo on 11 June 2007. The following is a noteworthy part of the minutes of the said meeting, at which Mr Yau expressed his concern about the morale of retail staff:

*Confidentially, some points were discussed in terms of cutting down the number of sales personnel.* [Mr Yau] feels that we should not affect the morale of the Direct Sales Division in Asia at this time. He further expressed that Corporate Sales Division should be hiring external

consultants at this moment.

[emphasis added]

The said paragraph in the minutes was marked with the following note: "For information only (some sensitive issues not mentioned here)". There was no doubt that plans for culling the retail staff were discussed and the fact that sensitive issues were not reflected in the minutes although they were debated is rather telling.

200 Instead of dealing effectively with the lowered morale of retail sales staff, Mr Doherty ensured that Mr Dirk Foo resigned in December 2007. In January 2008, Mr Yau resigned.

201 According to the defendants, the resentment against corporatisation was further fuelled in January 2008 when Mr Doherty expounded the virtues of corporate sales to an audience of predominantly retail sales people at "Walton Vision" events in Singapore, Kuala Lumpur and Kuching without mentioning anything about retail sales.

202 On 5 May 2008, Mr Iseli left Walton Malaysia. Subsequently, 4 DMs from Walton Malaysia were suspended in May/June 2008 while two others were suspended in June and then sacked. In Singapore, Ms Loh, the Vice-President, Sales, was sacked on 29 May 2008. A former Walton Singapore staff, Mr Gary Tan, who had worked for Walton in Hong Kong and seen the corporatisation of the Hong Kong office, was sceptical about Mr Doherty's assurances. He stated in his AEIC (at para 15):

Given the resignations of [Mr Yau] and Dirk Foo, there had been increased speculation amongst us about the corporatisation of Walton Singapore. This was because it did not make sense for Walton Singapore to let both these bosses who built up the retail sales go unless Walton Singapore was reducing its reliance on retail sales and refocusing on corporate sales.

203 When Mr Gary Tan filed an affidavit in support of Mr Yau on 3 July 2008 to "state the facts from [his] perspective", he was promptly booted out of the company by Mr Doherty, who accused him of breaching the mutual trust and confidence between him and Walton by filing an affidavit for Mr Yau. In the company's termination letter dated 23 July 2008, Gary was accused of a "flagrant breach" of the relationship of trust and fidelity by filing an affidavit against the company. It has never been the law that there is a breach of mutual trust and confidence merely because an employee has decided to say what he believes to be the truth in an AEIC.

204 Mr Yau asserted in his AEIC at para 136 that given that Mr Gary Tan, ex-DM Chong and Ms Loh, who had all filed affidavits on his behalf, had their employment contracts with Walton Singapore terminated, the message from the plaintiffs was that anyone who dared to speak the truth in support of his case would have their livelihood threatened. The plaintiffs' own witness, DM Ong, testified that the sacking of Mr Gary Tan possibly added to her apprehension as to what was going on in Walton Singapore. [\[note: 102\]](#)

205 In mid-2008, Walton Malaysia's former Managing Director, Mr Murali, who had been demoted, left the company. Apart from this, some 300 retail sales staff in Walton Malaysia had their contracts terminated. Mr Doherty admitted that he did not know how many of them had been sacked because of the malicious rumours allegedly spread by the defendants and how many of them were just plainly incompetent. [\[note: 103\]](#) The evidence was that only 6 of the sacked staff joined Mr Iseli's new company, but they had a right to work anywhere after Walton Malaysia had asked them to leave. As for the balance of the 300 staff who did not join either Mr Iseli or Mr Yau, only half of them were replaced. Mr Iseli contended with some force that if there had been no plans to reduce the number of

retail sales staff, more of such staff would have been recruited to bring the retail sales division to its former strength. The fact that this was not done was, in his view, another indication of the move towards corporate sales. According to the defendants, only a mere 38% of the retail sales team from January 2008 were still employed as at July 2010. To them, this contradicts the plaintiffs' professed business strategy of increasing the size and quality of their staff and shows the trend for the retail sales department. The plaintiffs retorted that most of those booted out had not been productive sales persons and the reduction in numbers had no effect on productivity. This appeared to support what Mr Yau had warned of, namely that only those who worked hard in retail sales and produced results would have secure jobs.

206 Finally, the fact that the plaintiffs instituted legal proceedings against the defendants and other former retail sales staff in Singapore and Malaysia unnerved some staff. All these events further lowered morale and fuelled for some the spectre of corporatisation.

207 Walton Malaysia's Ms Linnet Tan also testified that the resignation or sacking of top retail staff like Mr Yau, Mr Dirk Foo, Mr Iseli and Ms Loh could have led some of Walton Malaysia's staff to feel that retail sales had "lost its lustre". The following part of her cross-examination [\[note: 104\]](#) merits attention:

Q .... Whilst you may not think that Walton is going corporate, there is good reason for the people on the ground to feel that it's going corporate. Fair enough?

A Fair, yeah. ...

Q ... [T]here are so many other external happenings that others can draw their own conclusion that Walton may be going corporate; agree?

A Agree.

208 Mr Doherty complained that Mr Yau was incapable of explaining to the retail staff the benefits of corporate sales. He overlooked the fact that his other senior management staff were not able to explain what was going on in the company to the retail staff after the departure of Mr Yau. Mr Razak was honest enough to admit that the situation could have been more properly handled and that some of the company's actions which were unconnected with Mr Yau or Mr Iseli had made his retail sales staff insecure. When cross-examined, he stated [\[note: 105\]](#) as follows:

Q Looking at the events starting from 2006, the resignations, the sacking, the terminations, the legal suits, and looking at what was happening in Hong Kong, *you didn't need anyone to spread any rumours for the downliners to feel insecure; am I correct?*

A *You can say that.*

[emphasis added]

209 I do not have to determine whether or not Walton Singapore and Walton Malaysia were actually heading in the direction of corporate sales at the expense of the retail sales staff. What was clear was that the plaintiffs' own policies regarding the corporate and retail sales divisions had demoralised their retail sales staff and made them fear that the company would focus on corporate sales, and especially so when Walton Malaysia's own senior executives had themselves raised the spectre of corporatisation to keep their staff in check.

210 In any case, even if the defendants had spread rumours, it was not established that these were malicious rumours. Unlike a claim for defamation, a plaintiff who asserts that the defendant has spread malicious rumours must prove malice. This key ingredient of the tort refers to a dominant improper motive and the onus is on the plaintiffs to prove malice. While Bowen LJ pointed out in *Edgington v Fitzmaurice* (1885) 29 Ch D 459 at 483 that the state of a man's mind is as much a fact as the state of his digestion, he added that it is very difficult to prove what the state of a man's mind at a particular time is. Furthermore, it is clear that the fact that a person continues to assert his belief after he has been informed that it is without foundation is, without more, not evidence of malice. In *Greers Ltd v Pearman and Corder Ltd* (1922) 39 RFC 406, Scrutton LJ explained at p 417:

Honest belief in an unfounded claim is not malice; but the nature of the unfounded claim may be evidence that there was not an honest belief in it. It may be so unfounded that the particular fact that it is put forward may be evidence that it is not honestly believed.

211 The defendants contended that they believed that the company was "going corporate". On 7 April 2008, when Mr Iseli was interviewed by the Interborder team, he was honest enough to tell the investigators that if he was asked, he would say that the company was "going corporate". He added that he would say that if it was his business, he could see himself pushing the corporate side. Significantly, despite having heard from Mr Iseli that he would be saying, if asked, that the company was headed the corporate way, the Interborder team concluded that there nothing "untoward" in Walton Malaysia and no action was taken against Mr Iseli. When cross-examined about why action had not been taken against Mr Iseli at that time for "spreading" the rumour that the company was "going corporate", Mr Doherty had no real answer as he stated as follows: [\[note: 106\]](#)

Q What steps did ...[Walton Malaysia] take from ... 7<sup>th</sup> of April to 6<sup>th</sup> May against [Mr Iseli] when he told you that he will go and tell anyone who asks that Walton was pushing the corporate side? ....

A Mr Iseli? We ... took no steps against Mr Iseli because *at that time, we felt that there is no reason to*. He was the vice-president of sales. *He had this interview and we felt if we dealt with these issues, we can move on.*

[emphasis added]

212 Admittedly, the plaintiffs claimed that Mr Yau wanted to stage a comeback to Walton Singapore and the event which motivated his intention to injure was a note written by Mr Doherty to him on 23 January 2008 to inform him that to assist him in determining his future options, he ought to know that he would not be offered a senior executive position or the position he resigned from should he wish to return to Walton Singapore. This, they contended, crystallised his intention to hurt the plaintiffs. It cannot be overlooked that the allegation that Mr Doherty's letter of 23 January crystallised Mr Yau's intention to harm the plaintiffs was not pleaded.

213 Mr Yau insisted that this letter had no effect on him. In fact, after receiving Mr Doherty's note of 23 January 2008, Mr Yau, who understood that he was not to return to Walton, cordially replied to the former on 25 January 2008 as follows:

Yes, I got it yesterday noon and *I clearly understand your message in the letter*. I hope everything is doing well in Walton and in the future too, and I'm very sure it will be in good hand under your care.

You got to trust me, I'm not trying to be funny or play punk. Is not easy to choose this direction

and make a decision, is painful to leave the 12 years baby ... which I been taken care for so long. But this is the only way to send a "wake up" call to each and everyone in the Company, is also time for them to carry the baby to another level if they do the right things....

*Billy, there is nothing personal between you and I. I hope we are still best Friend forever and maintain contact. Do give me a call anytime. "I said anytime" me and my family will always stand by you and your Family.*

Million Thanks.

[emphasis added]

214 Furthermore, Mr Doherty, who had considered Mr Yau's farewell e-mail to the staff to encourage them to work hard as "awesome", testified as follows [\[note: 1071\]](#) with respect to the latter's response on 25 January 2008 to his letter of 23 January 2008:

Q *[Y]ou look at his response to you when you told him that you no longer had a position in Walton, that is his email of 25<sup>th</sup> of January 2008 and you look at how he encouraged the subordinates who were still with Walton, this is totally inconsistent with somebody who is out to make life difficult for Walton. Agree?*

A *Agreed.*

Q It is totally inconsistent with somebody who wants to solicit from Walton. Agree?

A *Agreed.*

[emphasis added]

215 While Mr Yau lost an annual income of more than US\$5million by resigning, he knew this when he resigned. In my view, while there were many possibilities about Mr Yau's intentions that could interest a novelist, there was inadequate proof of malice on his part. As for Mr Iseli, the allegation that he had acted with malice was backed by even weaker evidence and need not be considered further.

216 Finally, yet another reason for dismissing the plaintiffs' claim regarding malicious falsehood is that there was no proof of a causal connection between the alleged rumours and the plaintiffs' losses. Mr Doherty admitted that in so far as Walton Malaysia was concerned, he did not know how many staff left because of the alleged rumours and how many were asked to leave because of poor performance. The lack of proof of loss will be discussed later on when the experts' views on the computation of the plaintiffs' alleged losses are considered.

### ***1<sup>st</sup> to 4<sup>th</sup> plaintiffs' defamation claim***

217 I now turn to the claim by the 1<sup>st</sup> to 4<sup>th</sup> plaintiffs that they had been defamed by the defendants. The 1<sup>st</sup> to 4<sup>th</sup> plaintiffs alleged in their Statement of Claim at para 78 that Mr Yau defamed them because he had said words to the effect that:

- (i) [Walton's] business strategy and corporate direction of the Plaintiffs was to cease conducting retail sales operations in Asia, resulting in the redundancy of sales staff in Asia

within two (2) years; and

- (ii) that [he] had refused an offer of US\$5,000,000 from [Mr Doherty] to silence him about the aforesaid corporate strategy and to obtain his agreement not to solicit [Walton's] sales force for a period of two (2) years.

218 The plaintiffs pleaded in their Statement of Claim at para 72 that in their natural and ordinary meaning the alleged defamatory words meant and/or were understood to mean that:-

- (i) as a result of the Walton Group's Alleged Corporatization Business Strategy, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs did not intend to continue employing the respective divisional managers in the near future;
- (ii) the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were bad employers and that the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs as a group were uncaring of their staff or sales force;
- (iii) the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs as a group were not open and honest with the sales employees and consultants of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs whose job it was to promote and sell Walton Products;
- (i) the Walton Group as an organisation condoned poor treatment by its entities of their staff;
- (v) the Walton Group was led by a dishonest person; and/or
- (vi) the retail business of the Walton Group in Asia, including the business of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, was a failing concern and/or that it was not economically viable and therefore the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' staff had to be made redundant.

219 The plaintiffs alleged that Mr Yau was motivated by malice in making and publishing the words.

220 In essence, the first aspect of the 1<sup>st</sup> to 4<sup>th</sup> plaintiffs' claim for defamation, which concerns their business strategy, is a rehash of their claim for malicious falsehood and has the same foundation as that other claim. As such, it need not be considered any further.

221 As for the second aspect of the claim for defamation, which is that Mr Yau had said that he had refused an offer of US\$5 million from Mr Doherty to silence him about the corporatisation strategy and to obtain his agreement not to solicit Walton's sales force for 2 years, it also need not be considered any further as I have already found in the context of Mr Doherty's claim for defamation that it was not proven that Mr Yau had said that he had refused the said offer or that Mr Iseli had said that Mr Yau had refused such an offer.

### **Unlawful Interference with Trade or Business**

222 The plaintiffs also claimed that the defendants had unlawfully interfered with their trade or business. This is a claim in tort for economic loss caused by intentional acts. In *OBG Ltd and another v Allan and others* [2008] 1 AC 1 at 19 ("*OBG Ltd*"), Lord Hoffman explained the genesis of such a tort:

The tort of causing loss by unlawful means has a different history. It starts with cases like *Garret v Taylor* (1620) Cro Jac 567, in which the defendant was held liable because he drove away

customers of Headington Quarry by threatening them with mayhem and vexatious suits. Likewise, in *Tarleton v M'Gawley* (1794) Peake 270 Lord Kenyon held the master of the *Othello*, anchored off the coast of West Africa, liable in tort for depriving a rival British ship of trade by the expedient of using his cannon to drive away a canoe which was approaching from the shore. In such cases, there is no other wrong for which the defendant is liable as accessory. Although the immediate cause of the loss is the decision of the potential customer or trader to submit to the threat and not buy stones or sell palm oil, he thereby commits no wrong. The defendant's liability is primary, for intentionally causing the plaintiff loss by unlawfully interfering with the liberty of others.

223 The plaintiffs claimed that the defendants interfered with their trade and business by soliciting the sales teams of Walton Singapore and Walton Malaysia. Furthermore, it was alleged that Mr Yau procured Mr Iseli's breach of contract.

224 In regard to solicitation, the plaintiffs pleaded in the Statement of Claim at para 97:

[Mr Yau's] unlawful interference disrupted the Plaintiffs' business, destabilized their workforce and led to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' employees breaching their contracts, leaving the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs with no choice but to terminate their employment contracts.

225 As the plaintiffs' allegation of solicitation by the defendants was not proven, the assertion of unlawfully interference with their trade or business by soliciting their staff need not be further considered. In any case, the defendants cannot be held responsible for the paranoia of the plaintiffs, which led to their termination of the contracts of many of their retail sales staff. Mr Doherty admitted that all of his employees who filed affidavits on the defendants' behalf had been sued or sacked. [\[note: 108\]](#) When pressed, Walton Singapore's then Managing Director, Mr Foo admitted that ex-DM Chong, one of the five DMs at the lunch and dinner meetings, was sacked because she had filed an affidavit on Mr Yau's behalf.

226 Mr Doherty conceded there could have been a climate of fear in his Singapore and Malaysian companies. [\[note: 109\]](#) In regard to the climate of fear in the Singapore office, DM Ong testified [\[note: 110\]](#):

Q You were concerned about how you might be viewed by the Walton management if you did not agree to file an affidavit?

A Yes....

Q Were you concerned that if you did not file an affidavit and you were viewed unfavourably, that you may jeopardise your [salary of \$50,000 per month]?

A Yes, maybe yes.

Q That would be because of what you saw happening around you, with people being terminated and sacked?

A Yes.

227 As for the sacking in Singapore and Malaysia of persons perceived to be disloyal to the plaintiffs, including Ms Loh, ex-DM Chong, Mr Medina, Mr Solibun, Ms Sue How and Ms Colleen Jee, I

believe that these persons would not have left their respective companies in the Walton group if they had not been sacked for allegedly plotting to cross over to the defendants' alleged new company. It may be recalled that Walton Malaysia sacked Mr Medina because of, among other things, the "Penang incident" and the latter's failure to inform Mr Razak that Mr Iseli was at the Penang Club's cafe. How a company could sack someone for such reasons cannot be readily understood but Mr Razak was content to testify [\[note: 111\]](#) as follows:

Q [J]eff Medina was suspended on account of not telling you that [Mr Iseli] was four tables away.

A *Well, I don't know how many tables, .... It doesn't matter how many table, yeah. I would have done the same...*

Q [Y]ou said ... because [Jeff Medina] did not tell you that [Mr Iseli] was four tables away was serious enough to warrant sacking; right?

A Right.

[emphasis added]

228 I thus find that it was not proven that the defendants were responsible for the termination of the employment contracts of those whom Walton Malaysia regarded as disloyal staff.

#### ***Whether Mr Yau procured Mr Iseli's breach of contract***

229 The plaintiffs' allegation that Mr Yau unlawfully interfered with their trade by procuring Mr Iseli's breach of contract was put in para 86 of their Opening Statement as follows:

[I]t is [Walton's] case that Iseli has acted in breach of his employment contract by soliciting, or attempting to solicit the Managers and Consultants of Walton Malaysia to join [Mr Yau's] new business. Iseli's acts were done at [Mr Yau's] behest. [Mr Yau] knew and intended that Iseli would act in breach of Iseli's contractual and fiduciary duties. [Mr Yau] therefore procured Iseli's breach of Iseli's employment contract with Walton Malaysia.

230 In *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407, the Court of Appeal stressed that an action for unlawful interference with trade is different in substance from and should not be confused with a claim for inducement of a breach of contract. The court stated (at [15] – 17]) as follows:

15 [T]he elements required to satisfy both causes of action are separate and distinct. In other words, they are two substantively different torts and should be treated as such....

16 The law relating to most of the economic torts is clear. To knowingly procure or induce a third party to break his contract to the damage of the other contracting party without reasonable justification or excuse forms the basis of the tort of inducing a breach of contract.

17 An act of inducement *per se* is not by itself actionable. The plaintiff must satisfy a two-fold requirement in order to found a sustainable cause of action: first, he must show that the procurer acted with the requisite knowledge of the existence of the contract (although knowledge of the precise terms is not necessary); and second, that the procurer intended to interfere with its performance. Intention in this case is to be determined objectively. It is not sufficient that the



resulting breach of contract was a mere natural consequence of the defendant's conduct....

231 Liability for inducing breach of contract was established in *Lumley v Gye* (1853) 2 E & B 216, where the court relied on the general principle that to procure another person to commit a wrong is to incur liability as an accessory to the contracting party's liability. However, as was reiterated by Lord Hoffman in *OBG Ltd* at [19], liability depends upon the contracting party having committed an actionable wrong. After all, in *Lumley v Gye*, Wightman J stressed at p 238 that Ms Wagner had unlawfully broken her contract and that the defendant had procured the breach. In the present case, Mr Iseli had not breached his contract of employment. Walton Malaysia's boss, Mr Razak, testified that his company had no evidence against Mr Iseli when he was sacked on 5 May 2008. This was not surprising as Mr Iseli had just been promoted and appointed Walton Malaysia's Vice-President Sales in February 2008.

232 Although Walton Malaysia contended that Mr Iseli had breached his employment contract and wanted him to resign, it offered him a generous financial package worth around RM2 million to leave provided he was prepared to testify against Mr Yau. Mr Iseli refused the offer as he did not believe that Mr Yau had committed the wrongful acts alleged by the plaintiffs. His counsel, Mr Looi Teck Kheong ("Mr Looi"), rightly pointed out that it is absurd that the plaintiffs should sue his client for refusing to accept a compensation package which was highly favourable to him. [\[note: 112\]](#) I agree.

233 When cross-examined, Mr Razak admitted that the fact that Walton Malaysia had to offer Mr Iseli a generous financial package to resign must mean that it did not have evidence to sack him. He disclosed Walton Malaysia's real agenda when he testified [\[note: 113\]](#) as follows:

Q So the irresistible conclusion, Mr Razak, must be that as of 5 May, you had *no evidence* against [Mr Iseli] but *you wanted to pay him so that he would be with the company in their action against [Mr Yau]*.

A *There was a solution on the table to resolve the matter, yeah.*

[emphasis added]

234 Mr Baukol admitted he could not explain why Mr Iseli had been offered a rather generous package to resign. He also could not give a satisfactory answer as to why Mr Iseli had been sacked. His unsatisfactory evidence [\[note: 114\]](#) was as follows:

Q [M]r Iseli was promoted in February 2008, so when this [letter of termination] refers to "breaches" in the "last few months", what kind of breaches would Walton International be referring to?

A Certainly, non-solicitation as an acting vice-president of sales.

Q What else?

A Breach of duty or fiduciary duty.

Q More specifically, what were those breaches?

A *To handle oneself in a professional expected behaviour as an employee, I suppose.*

Q A general type of breach?

A *I do not know if it's general or specific.*

[emphasis added]

235 I believe Mr Iseli's evidence that he would not have left Walton Malaysia if his contract had not been abruptly terminated by the company. He had reached a very comfortable position in the company and was entitled to overriding commissions on both corporate and retail sales. Praises had been heaped on him by Mr Doherty in January 2008 and he had been promoted in February 2008. From February 2008 until he was sacked on 5 May 2008, he had tried to convince Walton Malaysia's bosses to improve the commission of the retail staff and had planned incentive trips for the retail sales staff. When cross-examined, Mr Knight agreed that pushing for an increase in the commission of Walton Malaysia's retail sales staff would run against the grain of someone whose intention was to solicit them to leave the company. [\[note: 115\]](#) Mr Yau stated that Mr Iseli had his own mind and had criticised management even when he was a part of the management of Walton's business in Asia. He added that it was ridiculous for anyone to believe that Mr Iseli would forsake his annual income of RM2 million when he had no concrete plans to offer to the latter. When asked why Mr Iseli would give up his lucrative job, Mr Baukol replied that a person might do that out of loyalty to a friend. There was no evidence that Mr Iseli would give up his extremely high salary out of loyalty to Mr Yau.

236 At the material time, Mr Iseli had also been planning a holiday trip for his retail staff to boost morale. He was a generous boss who utilised his own money to pay for a previous incentive trip to Hanoi. Walton Malaysia's Group Manager, Mr Liew, testified [\[note: 116\]](#) as follows:

Q Was [Mr Iseli] also trying his best to raise the morale of the staff at that point in time?

A *As usual*, yes.

Q *When you say "as usual", that would be what [Mr Iseli] would have been doing in April and even the months before that?*

A Yes.

...

Q Between the incentive trip ... on the weekend of 13 January to the time you had conversation with [Mr Iseli at the Lodge meeting] on 17 April, would I be correct to say that [Mr Iseli] continued to encourage the team managers to try and improve on their performance?

A Yes.

[emphasis added]

237 When Mr Iseli met Walton Malaysia retail staff, he heard their grievances and it is quite likely that he voiced his own grievances as well. From such meetings emerged a "wish list" that was presented to the management on 8 April 2008. That wish list solved one outstanding grouse of the retail staff, namely the commissions payable to them.

238 I have already found that Mr Iseli did not solicit the plaintiffs' staff and had not unlawfully interfered with the plaintiffs' trade and I now find that he was not in breach of his employment contract when he was sacked. As such, the question of procuring his breach of contract did not

arise.

## **Breach of Confidence and Misuse of Confidential Information**

239 In regard to breach of confidence, the plaintiffs alleged that while Mr Yau discussed with Mr Foo the latter's forthcoming promotion to the post of Managing Director of Walton Singapore, he revealed to the latter information regarding Walton Singapore's restructuring plans. Mr Yau, who had been tasked to discuss with Mr Foo the latter's promotion to such a senior post, should not be faulted for mentioning the company's forthcoming restructuring plans to the incoming Managing Director. Although Mr Foo had suggested in his AEIC that Mr Yau had revealed confidential information to him, the thrust of his testimony was that he was surprised that he had not been kept in the loop about the restructuring plans. He testified as follows: [\[note: 117\]](#)

Q You said [in your AEIC] :

"I found it surprising that Yau was sharing all this information with me, as it appeared to be confidential information".

...

Why do you find it surprising, Mr Foo, when the purpose of Mr Yau's meeting with you was to tell you of the new structure and to let you know where you stood under the new structure?

A I – it was surprising to me because this was *the first time I had heard about it and I was actually quite surprised that I was not even privy to discussions, as I was chief [administrative] officer ....*

Q So why are you suggesting that [Mr Yau] was in breach of releasing confidential information, when that would have been necessary for him to convey the executive decision to you to tell you where you stood under the new structure?

...

A *I'm not sure, your Honour.*

[emphasis added]

240 If all the circumstances are taken into account, there was no doubt that the plaintiffs' complaint that Mr Yau had breached his employment contract by revealing the restructuring plans to Mr Foo lacked substance and must be dismissed.

241 As for the allegation of misuse of confidential information, the plaintiffs asserted that Mr Yau's contract imposed a duty on him not to use or disclose any confidential information to any third party. They pleaded that he was intimately familiar with the details of Walton's business "at the highest level" and that his possession of extremely valuable and sensitive information about their plans, competitive strategies and clients gave him a significant advantage when handling the competing business that he had intended to set up. They further pleaded that in attempting to solicit the sales teams of Walton Singapore and Walton Malaysia to join him, Mr Yau intended to gain access to their clients' identities and financial positions for the purpose of his new business. The plaintiffs claimed that Mr Yau did not succeed in using the confidential information because they commenced proceedings against him. The problem with the plaintiffs' case was that it was not proven that Mr Yau

had solicited their staff to join his new company. Furthermore, none of the retail sales staff who left Walton Singapore or Walton Malaysia, including senior staff such as Ms Loh and ex-DM Chong, joined Mr Yau's business and there was no evidence that he had attempted to use any of the plaintiffs' confidential information. As such, the issue of breach of confidence or misuse of confidential information by Mr Yau need not be further considered.

242 For completeness, it may also be noted that the plaintiffs also complained that Mr Yau was in breach when he tried to discourage Mr Foo from accepting the proposed promotion but their witnesses furnished far too many versions of this incident to merit any serious consideration of the allegation.

243 In the case of Mr Iseli, there was no serious attempt to show that he misused confidential information or that there was a breach of confidence. As such, these issues need not be considered in relation to him.

### **The Alleged Conspiracy**

244 In view of my findings, the plaintiffs' allegation of conspiracy on the part of the defendants really has no leg to stand on. Even so, it will be referred to briefly. The plaintiffs' case was summed up at para 1093 of their closing submissions as follows:

Yau and Iseli acted in concert to propagate the Corporatisation Allegations. There was clearly an agreement between them to propagate the Corporatisation Allegations and solicit the Plaintiffs' employees as can be seen from the lunches, dinners and meetings through which Iseli arranged for Yau to meet the Plaintiffs' employees, and to give Yau access to them. Both of them propagated the Corporatisation Allegations and solicited the Plaintiffs' sales staff pursuant to such agreement.

245 What constitutes a conspiracy was explained in *Seagate Technology Pte Ltd and another v Goh Han Kim* [1994] 3 SLR(R) 836 by the Court of Appeal (at [15]) as follows:

The essence of conspiracy is an agreement, and the question is whether the appellants had proved that there was in existence an agreement or at least some arrangement ... and a high degree of proof is required.

246 Admittedly, it is often difficult to prove the existence of a conspiracy and one must be mindful of the following words of Chao Hick Tin JA in *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 (at [19]) that it is not often that the victim of a conspiracy has direct evidence to prove the allegation and that proof of conspiracy is normally inferred from other objective facts. He approved of the following passage from *R v Siracusa* (1990) 90 Cr App R 340 at 349:

[T]he origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made, or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt acts.

247 Although the plaintiffs contended that the defendants had conspired against them by lawful and unlawful means, they did not even begin to prove the existence of any agreement between Mr Yau and Mr Iseli to harm them.

248 The plaintiffs hired four private investigation firms in Singapore and Malaysia. In Singapore, the

plaintiffs hired two private investigation companies, Sterling Response Pte Ltd and Goldeneye Investigation and Security Services. In Malaysia, Walton Malaysia engaged two private investigation companies, namely Armoured Protection & Investigation Services Sdn Bhd and Commercial Intelligence Services Sdn Bhd. According to Mr Britton, the investigators had been called in "to find out if there was collusion going on, to find out if there was a plan to steal our people away". [\[note: 118\]](#) All of them found no evidence of a conspiracy. Mr Britton admitted that there was nothing in the reports furnished by all these investigators to support the allegations against the defendants or else the evidence would have been presented to the court. [\[note: 119\]](#)

249 Mr Yau's counsel, Mr Tan, submitted that as conspiracy was an issue that formed the crux of the plaintiffs' case, the fact that the defendants had not been asked probing questions about the alleged conspiracy was fatal to the allegation of conspiracy. In fact, in relation to the lunch and dinner in Singapore, which was the foundation of the plaintiffs' allegation of solicitation of their Singapore DMs, Walton Singapore's then Managing Director, Mr Foo, conceded that there was no evidence of a conspiracy as he testified that in the course of the investigations prior to the sacking of Ms Loh, there was no evidence to suggest that the lunch and dinner had been organised pursuant to an agreement between Mr Yau and Mr Iseli. Furthermore, Mr Doherty agreed that in the AEICs of his witnesses, DM Yao and DM Ong, the only reference to Mr Iseli in relation to the lunch and dinner was that he was present and neither of these two DMs had alleged that Mr Yau and Mr Iseli were involved in a conspiracy. [\[note: 120\]](#)

250 In view of the aforesaid and my earlier findings in relation to solicitation as well as other allegations by the plaintiffs, I dismiss the allegation of conspiracy on the part of Mr Yau and Mr Iseli.

### **No proof of loss caused by the Defendants**

251 As I have found that the plaintiffs did not prove their case against the defendants, the question of computation of damages does not arise. Even so, it may be pointed out that had the plaintiffs succeeded in their claim, they had not proven their loss.

252 As the trial was not bifurcated, it was imperative that the plaintiffs prove their alleged losses at the trial. The plaintiffs claimed the following as damages:

- (a) Between US\$10.4 million to US\$15.3 million for loss of profits from lost retail sales allegedly suffered by Walton Malaysia; and
- (b) US\$4.01 million for costs and expenses allegedly incurred to deal with the alleged unlawful acts of the defendants and Ms Loh.

253 Many aspects of the plaintiffs' claim for damages and for expenses allegedly incurred to deal with the defendants' wrongful acts cannot be taken too seriously. For instance, the plaintiffs claimed the costs incurred by private investigators hired by them although nothing had been uncovered to show that the defendants had conspired to undermine the plaintiffs' interest.

254 The main part of the plaintiffs' claim for damages is in relation to the loss allegedly caused to Walton Malaysia by the defendants in 2008. The plaintiffs' expert, Mr Tam from Deloitte, computed Walton Malaysia's losses on the following specified assumptions:

- (i) there is a correlation between the sales performance of Walton Singapore and Walton Malaysia;
- (ii) the performance of these two companies must be the same in 2008;
- (iii) there was no significant reduction in Walton Malaysia's retail staff strength; and
- (iv) there were no other factors contributing to Walton Malaysia's poor performance in 2008.

All these assumptions were fundamentally flawed.

***Alleged correlation between performance of the two companies***

255 According to the Deloitte report, there was a correlation between the performance of Walton Malaysia and Walton Singapore for 3 years, between 2005 and 2007. It noted that retail sales in Singapore continued to record positive growth in 2008 and the revenues increased by 33.2% to US\$104.9 million. However, retail sales in Malaysia declined significantly by 38.6% to only US\$36.4 million. Based on the assumptions in the Deloitte report, Walton Malaysia claimed to have suffered losses amounting to US\$10.4 million to US\$15.3 million and also sought damages for loss of time, costs and expenses incurred to counter the alleged machinations of the defendants there and in Singapore.

256 The defendants' two expert witnesses, Mr Tay from KPMG and Dr Chan from La Trobe University, did not see why an assumption should be made that Walton Malaysia's performance in 2008 must match that of Walton Singapore. Mr Tay said that any attempt to quantify Walton Malaysia's alleged loss in 2008 purely or largely on the basis of the sales of Walton Singapore and Walton Malaysia from January 2005 to December 2007 was necessarily speculative. He stated in his report at para 6.1.1:

[I] do not believe that the method adopted in [Deloitte's report] established a loss as alleged by the Plaintiffs or that the method used ... is useful for quantification of any such loss for the following main reasons:

- . The completeness, existence and accuracy of the data provided by the Plaintiffs are open to question.
- . The basis of the Purported Correlation is questionable as Walton Malaysia's and Walton Singapore's businesses do not appear to align during the 2005 to 2008 period.
- . There is insufficient evidence to conclude that a causal relationship exists for the Purported Correlation and therefore no reason to conclude that they should have correlated in 2008.
- . It appears from the ING "Investor Dashboard" Reports that investor sentiment in Malaysia during the second and third quarters of 2008 was broadly negative and appeared to be moving towards meeting personal expenditure, keeping cash and deposits and making investments locally rather than abroad.
- . The reduction by 12% in the average number of sales consultants during the period from 2007 to 2008 in Walton Malaysia as opposed to an increase of 4% in Walton Singapore during the same period.

257 Dr Chan said that it was naive to suggest that the magnitude of correlation between the sales

figures of Walton Singapore and Walton Malaysia had been maintained throughout the entire period chosen by Deloitte. He also lambasted the biased selection by Deloitte of the years of alleged correlation. Furthermore, he said that a model with relevant predictors may not necessarily correspond to a "correct model", such that cause and effect may be established. He testified as follows:

Now I think it's over simplistic to base a judgment on the Singapore sales. We should look at other factors which are relevant to this analysis. We should look at the economic social conditions in Malaysia before we can make a good judgment, otherwise my impression from [the Deloitte report] is that the conclusion is very hasty, a lot of details were not provided, and it's ... a very simple tool and in this case, I don't think it's sufficient to provide the evidence to suggest that ... the drop in Malaysian sales was caused by the factors that were discussed in the report....

258 As has been mentioned, although the plaintiffs accused Mr Yau of undermining both Walton Singapore and Walton Malaysia in 2008, Walton Singapore made record profits in that year while Walton Malaysia did not match Walton Singapore's sterling performance. If Mr Yau had wanted to sabotage the plaintiffs, it is more likely than not that his efforts would be more successful in Singapore than in Malaysia. That his influence is greater in Singapore was conceded by Mr Doherty, who, when questioned about the effect of Mr Yau's resignation, stated as follows: [\[note: 121\]](#)

Q Did you think that the resignation of [Mr Yau], Walton's number one person in Asia would have an impact on the people working under him?

A *Specifically in Singapore, yes.*

Q *Malaysia?*

A *Maybe.*

Q Why maybe because he was not so close with Malaysia?

A *From my perspective, ... I definitely felt that there would be an impact on Singapore. No, I'm not so certain that [Mr Yau's] impact in Malaysia was as significant ....*

Q *And that was because his influence over the Singapore team whom he works with closely would be far greater?*

A *Yes, he resides here, he's Singaporean.*

[emphasis added]

259 Despite Mr Doherty's downplaying of Mr Yau's influence in Malaysia, the plaintiffs wanted to hold him responsible for the poor performance of Walton Malaysia in 2008. This does not make sense.

### ***The significant reduction in Walton Malaysia's sales consultants***

260 The second false assumption in the Deloitte report was that there was "no significant reduction" in the number of sales consultants in 2008. Mr Tam was not informed that in that year, Walton Malaysia sacked 300 of its retail sales staff and replaced only half of them. Furthermore, key staff, namely Mr Murali and Mr Iseli, left the company. A number of other senior sales people were

suspended or sacked for alleged disloyalty to the plaintiffs in their battle with the defendants.

261 Walton Malaysia's Mr Razak testified that one of the main reasons for his company's fall in productivity was that the retail sales division had lost a large number of its leaders. He was honest enough to accept that the company's own actions could have adversely affected Walton Malaysia's revenue as he testified [\[note: 122\]](#) as follows:

Q [W]ith so many things happening over a period of a year, there were a lot of things done independent of [Mr Iseli] and [Mr Yau], right?

A Right.

Q So you *cannot be sure what impact these independent actions that were taken by the company had on the morale and revenue* of Walton Malaysia; am I correct?

A *Correct.*

[emphasis added]

262 Mr Murali testified that his resignation from Walton Malaysia as well as the resignations of Mr Yau and Mr Dirk Foo adversely affected the company's revenue in 2008, possibly in a "significant" way. [\[note: 123\]](#) When cross-examined Mr Baukol also conceded [\[note: 124\]](#) that the sacking of Mr Iseli and other Malaysian DMs would have resulted in a drop in the profits of Walton Malaysia.

263 Mr Doherty admitted that he did not know whether his company was suggesting that the termination of the 300 sales staff of Walton Malaysia was due to the defendants' wrongdoing. He testified [\[note: 125\]](#) is as follows:

Q [A]re the plaintiffs suggesting that the termination of these 300 managers was the result of malicious rumours spread by [Mr Yau] and/or [Mr Iseli]?

A *I don't know, your Honour....*

Q So how does one tell whether the loss in revenue for Malaysia was the result of these rumours.

A *Well ... I would first and foremost, deflect to our expert – expert testimony.* But first and foremost, I just look at the significant drop in revenues on a year-to-year basis. In my simple world, that's what I look at, your Honour.

Q Mr Doherty, the world is not that simple especially when you come and claim US\$15 million from my clients. Mr Razak says that you had to terminate 300 managers and representatives since April 2008. *Can you tell me how many of these were terminated independent of rumours or malicious falsehood by Mr Yau?*

A *I have no idea, your Honour.*

[emphasis added]

264 Mr Tam agreed that the reduction in the retail sales staff was a factor that should be taken into account when considering the drop in Walton Malaysia's profits. If Mr Doherty did not know how



many of the 300 sales staff who been sacked had nothing to do with the defendants, and no one else shed any light on this matter, the plaintiffs have themselves to blame for undermining the integrity of the conclusions in the Deloitte report.

***Other factors that affected Walton Malaysia's performance in 2008***

265 Apart from the significant reduction in the number of retail sales staff in 2008, there were other factors that could have adversely affected Walton Malaysia's revenue in that year. In this regard, the following concessions by Mr Doherty [\[note: 126\]](#) are very telling:

Q How many of [Walton's staff] were terminated because the company had to restructure because of the sub-prime crisis?

A *I don't know...*

Q How many of them had to leave because of the problems that arose from Lehman?

A *.... I don't know, your Honour.*

Q In other words, you wouldn't know how many had to leave on account of what you say were the malicious rumours.

A *I don't know how many had to leave because of the malicious rumours...*

[emphasis added]

266 Mr Britton also accepted that other factors could have caused a decline in Walton Malaysia's revenue in 2008 as he testified: [\[note: 127\]](#)

Q Would the sales also be affected by adverse political climate in Malaysia? ... Where there is a leadership tussle within a ruling party or between a ruling party and an opposition party ...; do you agree?

A *It's possible.*

Q Do you also agree that the financial meltdown may have different impact on different countries?

A Your Honour, *it's possible.*

Q Would the fact that Walton Malaysia has been the subject of investigation by Bank Negara be also something that would affect your sales?

A *It's possible that that can affect sales...*

Q Would [the investigation] also affect the morale of your sales staff?

A *It's possible that can affect morale.*

[emphasis added]

267 The plaintiffs asserted that the defendants did not prove a link between the “other” factors and their alleged loss. However, it is for the plaintiffs to prove their loss. Mr Tam agreed that he should have been told about the other independent factors that could have affected the morale and productivity of Walton Malaysia’s staff in 2008. [\[note: 128\]](#) He also accepted that if there were other causes for the drop in that company’s profits, he could not determine the contribution of the defendants’ alleged wrongful acts to the drop in profits. He testified as follows: [\[note: 129\]](#)

Q Now that I have highlighted to you various other factors that could possibly affect the revenue in Malaysia, do you accept that it would not be appropriate to attribute the entire drop in revenue in Malaysia to what you had been told as the rumours being spread by [Mr Iseli] and [Mr Yau]?

A Yeah, I agree .... depending on the various factors and how important and what is the impact. I agree that it may not necessarily be 100 per cent to [Mr Yau] and [Mr Iseli].

Q It may not be 100 per cent, *but it’s also impossible to attribute any percentage, which you agreed with over lunch?*

A .... *Whether one can attribute, it’s a judgment call, but I’m not in a position to attribute.*

[emphasis added]

### **Conclusion on computation of damages**

268 I find that in the light of the views of the defendants’ expert witnesses and the fact that Deloitte had been furnished with inadequate and misleading information on Walton Malaysia’s performance in 2008, the Deloitte report cannot be relied on to determine the cause of Walton Malaysia’s poor performance in that year.

### **Overall Conclusion and Costs**

269 As the plaintiffs failed to prove their case against the defendants, their claims are dismissed with costs.

270 Before concluding, I would like to thank Ms Rajah, Mr Tan and Mr Looi, as well as their legal teams, for the assistance rendered to the court throughout the long trial and for their very comprehensive and helpful closing submissions.

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[\[note: 1\]](#) AEIC of Mr William Kevin Doherty, para 25.

[\[note: 2\]](#) Certified Transcript (“CT”), 28 July 2009, p 85.

[\[note: 3\]](#) CT, 20 October 2009, pp 39-40 and pp 45-46.

[\[note: 4\]](#) CT, 22 October 2009, p 54.

[\[note: 5\]](#) CT, 21 October 2009, p 29.

[\[note: 6\]](#) CT, 1 July 2010, p 104.

[\[note: 7\]](#) CT, 21 October 2009, p 69.

[\[note: 8\]](#) CT, 22 October 2009, p 50.

[\[note: 9\]](#) CT, 29 July 2009, p 15.

[\[note: 10\]](#) CT, 29 July 2009, p 21.

[\[note: 11\]](#) CT, 20 October 2009, p 107.

[\[note: 12\]](#) CT, 22 October 2009, p 35.

[\[note: 13\]](#) CT, 22 October 2009, p 53.

[\[note: 14\]](#) CT, 21 October 2009, p 37.

[\[note: 15\]](#) CT, 21 October 2009, p 36.

[\[note: 16\]](#) CT, 21 October 2009, pp 71-72.

[\[note: 17\]](#) CT, 21 October 2009, p 36.

[\[note: 18\]](#) CT, 21 October 2009, pp 27-28.

[\[note: 19\]](#) CT, 22 October 2009, p 27.

[\[note: 20\]](#) CT, 22 October 2009, p 55.

[\[note: 21\]](#) CT, 21 October 2009, p 28.

[\[note: 22\]](#) *Ibid.*

[\[note: 23\]](#) CT, 21 October 2009, p 38.

[\[note: 24\]](#) AEIC (at para 38).

[\[note: 25\]](#) CT, 21 October 2009, pp 24-25.

[\[note: 26\]](#) CT, 21 October 2009, pp 32 and 38.

[\[note: 27\]](#) CT, 22 October 2009, pp 58-59.

[\[note: 28\]](#) CT, 22 October 2009, pp 48-49.

[\[note: 29\]](#) CT, 22 October 2009, p 44.

[\[note: 30\]](#) CT, 22 October 2009, p 48.

[\[note: 31\]](#) CT, 22 October 2009, p 18.

[\[note: 32\]](#) AEIC of Ms Sharon Loh Pui-Pui (at para 50).

[\[note: 33\]](#) CT, 21 October 2009, p 83.

[\[note: 34\]](#) CT, 22 October 2009, p 53.

[\[note: 35\]](#) CT, 21 October 2009, p 92.

[\[note: 36\]](#) CT, 15 October 2009, pp 61-63.

[\[note: 37\]](#) CT, 15 October 2009, p 65.

[\[note: 38\]](#) CT, 15 October 2009, p 56

[\[note: 39\]](#) CT, 29 July 2009, p 19.

[\[note: 40\]](#) CT, 5 October 2009, p 8.

[\[note: 41\]](#) CT, 15 October 2009, p 63.

[\[note: 42\]](#) CT, 22 April 2010, p 34.

[\[note: 43\]](#) CT, 31 March 2010, p 33.

[\[note: 44\]](#) CT, 6 October 2009, p 28.

[\[note: 45\]](#) CT, 20 October 2009, p 107.

[\[note: 46\]](#) CT, 19 October 2009, pp 44-46.

[\[note: 47\]](#) CT, 19 October 2009, p 43.

[\[note: 48\]](#) CT, 19 October 2009, p 46.

[\[note: 49\]](#) CT, 21 October 2009, pp 55-56.

[\[note: 50\]](#) CT, 15 October 2009, p 95.

[\[note: 51\]](#) CT, 6 October 2009, p 36.

[\[note: 52\]](#) CT, 20 April 2010, p 2.

[\[note: 53\]](#) CT, 20 April 2010, p 1.

[\[note: 54\]](#) CT, 21 April 2010, p 36.

[\[note: 55\]](#) CT, 19 April 2010, p 102.

[\[note: 56\]](#) CT, 19 April 2010, pp 85-86.

[\[note: 57\]](#) CT, 22 April 2010, p 33.

[\[note: 58\]](#) CT, 19 April 2010, p 7.

[\[note: 59\]](#) CT, 20 April 2010, p 21.

[\[note: 60\]](#) CT, 19 April 2010, p 91.

[\[note: 61\]](#) CT, 19 April 2010, p 94.

[\[note: 62\]](#) CT, 20 April 2010, pp 11-12.

[\[note: 63\]](#) CT, 19 April 2010, p 96.

[\[note: 64\]](#) CT, 19 April 2010, p 97.

[\[note: 65\]](#) CT, 12 April 2010, p 122.

[\[note: 66\]](#) CT, 12 April 2010, p 112.

[\[note: 67\]](#) CT, 15 April 2010, p 76.

[\[note: 68\]](#) CT, 15 April 2010, p 75.

[\[note: 69\]](#) CT, 15 April 2010, p 110.

[\[note: 70\]](#) CT, 20 October 2009, p 18.

[\[note: 71\]](#) CT, 5 October 2009, p 51.

[\[note: 72\]](#) CT, 19 April 2010, p 86.

[\[note: 73\]](#) CT, 5 April 2010, p112.

[\[note: 74\]](#) CT, 5 April 2010, p 113.

[\[note: 75\]](#) CT, 13 April 2010, pp 58 and 61.

[\[note: 76\]](#) CT, 13 April 2010, p 53.

[\[note: 77\]](#) CT, 7 April 2010, p 104.

[\[note: 78\]](#) CT, 7 April 2010, p 55.

[\[note: 79\]](#) CT, 7 April 2010, pp 66-67.

[\[note: 80\]](#) CT, 7 April 2010, p 87.

[\[note: 81\]](#) CT, 7 April 2010, p 96 –97.

[\[note: 82\]](#) 5 April 2010, p 41.

[\[note: 83\]](#) 5 April 2010, pp 36-37.

[\[note: 84\]](#) CT, 19 April 2010, p 111.

[\[note: 85\]](#) CT, 20 April 2010, pp 30-31.

[\[note: 86\]](#) CT, 20 April 2010, pp 43-44.

[\[note: 87\]](#) CT, 6 July 2010, p 7.

[\[note: 88\]](#) CT, 13 April 2010, p 29.

[\[note: 89\]](#) CT, 13 April 2010, pp 89-90.

[\[note: 90\]](#) CT, 29 July 2009, p 37.

[\[note: 91\]](#) CT, 28 July 2009.

[\[note: 92\]](#) CT, 21 October 2009, p 97.

[\[note: 93\]](#) CT, 8 October 2009, p 78.

[\[note: 94\]](#) CT, 6 October 2009, pp 36–37.

[\[note: 95\]](#) CT, 8 April 2010, p 80.

[\[note: 96\]](#) CT, 30 July 2009, p 6.

[\[note: 97\]](#) AEIC of DM Ong, paras 19-21.

[\[note: 98\]](#) AEIC of DM Ann, paras 23-25.

[\[note: 99\]](#) CT, 22 October 2009, p 64.

[\[note: 100\]](#) CT, 30 March 2010, p 57.

[\[note: 101\]](#) CT, 5 April 2010, p 44.

[\[note: 102\]](#) CT, 22 October 2009, p 18.

[\[note: 103\]](#) CT, 28 July 2009, pp 21-22.

[\[note: 104\]](#) CT, 8 April 2010, p 88.

[\[note: 105\]](#) CT, 19 April 2010, p 114.

[\[note: 106\]](#) CT, 29 July 2009, p 28.

[\[note: 107\]](#) CT, 29 July 2009, p 16.

[\[note: 108\]](#) CT, 29 July 2009, pp 61-62.

[\[note: 109\]](#) CT, 29 July 2009, pp 63-64.

[\[note: 110\]](#) CT, 22 October 2009, p 20.

[\[note: 111\]](#) CT, 20 April 2010, pp 49-52.

[\[note: 112\]](#) CT, 27 July 2009, p 34.

[\[note: 113\]](#) CT, 19 April 2010, p 102.

[\[note: 114\]](#) CT, 6 October 2009, pp 66-67.

[\[note: 115\]](#) CT, 22 April 2010, p 18.

[\[note: 116\]](#) CT, 7 April 2010, p 96 -98.

[\[note: 117\]](#) CT, 20 October 2009, pp 76-77.

[\[note: 118\]](#) CT, 12 October 2009, p 14.

[\[note: 119\]](#) CT, 12 October 2009, p 17.

[\[note: 120\]](#) CT, 30 July 2009, p 73.

[\[note: 121\]](#) CT, 28 July 2009, pp 23-24.

[\[note: 122\]](#) CT, 19 April 2010, p 115.

[\[note: 123\]](#) CT, 5 April 2010, pp 92-93.

[\[note: 124\]](#) CT, 9 October 2009, p 20.

[\[note: 125\]](#) CT, 28 July 2009, pp 20-21.

[\[note: 126\]](#) CT, 28 July 2009, pp 21-22.

[\[note: 127\]](#) CT, 13 October 2009, pp 63-64.

[\[note: 128\]](#) CT, 23 April 2010, pp 92-93.

[\[note: 129\]](#) CT, 23 April 2010, pp 86-87.

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