The Portal WW.Legal.com. Pte Ltd v Horizon.iTech Pte Ltd
[2003] SGHC 11

Case Number : Suit 1455/2001

Decision Date : 30 January 2003

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Chong Boon Leong and Ngooi Shih Loong (Rajah & Tann) for the plaintiffs; Alan Koh Khong Khai and Vincent Lim Miang (KT Lim & Co) for the defendants

Parties : The Portal WW.Legal.com. Pte Ltd — Horizon.iTech Pte Ltd

1. The Portal WWLegal.Com. Pte Ltd (the plaintiffs) are a local company incorporated in year 2000 by three (3) enterprising members of Singapore's legal fraternity being the then three (3) partners of the firm of Ong, Tay & Partners (the law firm) namely, Lim Seng Siew (Lim), Ong Ying Ping and Susan Tay (collectively referred to as the partners). Horizon.iTech Pte Ltd (the defendants) are a subsidiary of a public company called Horizon.Com (Horizon). The plaintiffs were incorporated specifically for the purpose of establishing an e-commerce portal such that qualified lawyers can provide and their clients can seek, online legal advice/services. They received in-principle endorsement from the Law Society for their project on or about 14 April 2000.

2. According to the defendants, the partners visited the defendants' Toa Payoh office in early 2000 and informed the defendants' sales representative Michale Lim (Michale) of their proposed project. Michale introduced the partners to his director/boss Faisal Alsagoff (Alsagoff). The discussion between the partners and Alsagoff resulted in the signing of a (handwritten) memorandum dated 19 March 2000 (the Memorandum) between the partners, Alsagoff and Michale wherein the defendants agreed to develop the portal for the plaintiffs, subject to contract. Certain fundamental terms were set out in the Memorandum. The most important item however namely pricing, was not finalised (although a ballpark figure of $300,000 was discussed) and hence was not stated in the document.

3. The plaintiffs on the other hand claimed they were first introduced to the defendants in April 2000 and that the Memorandum was actually signed on 19 May 2000. Lim (who is also a director of the plaintiffs) said that with his co-directors, he met Horizon's/the defendants' representatives (Francis Yeo and Michale), made a (Power Point) presentation of the plaintiffs' vision of the portal and showed the partners' preliminary financial projections to Horizon, hoping that the company would invest in the project. However, Francis Yeo subsequently informed the partners that Horizon would not invest in the project but offered the defendants' services to help the plaintiffs to design and develop the portal. Francis Yeo apparently added that the defendants did a lot of work for town councils of Housing & Development Board estates and offered to link the plaintiffs' portal with the town councils and residents, thereby giving the plaintiffs access to the whole of Singapore. One of the plaintiffs' later grievances was, that the defendants made no efforts to link the portal to town councils, Singapore Power or any other high-profile public bodies.

4. At the request of the plaintiffs, the defendants signed a non-disclosure agreement dated 15 May 2000 (the Non-Disclosure Agreement). The Memorandum was followed by a Proposal for an Electronic Commerce Hub for the plaintiffs dated 22 May 2000 (the Proposal) prepared by the defendants. In May, the plaintiffs also met representatives from PEX.COM Pte Ltd (PEX), a subcontractor of (and later subsidiary) of the defendants. Lim was told that PEX specialised in developing portals. On or about 26 May 2000, PEX delivered a prototype of the portal to the plaintiffs for demonstration

purposes. The prototype showed a lawyer taking instructions from a client for a claim, the client giving instructions to a law firm, then making payment online for preliminary advice, the lawyer giving preliminary advice and, the client instructing the lawyer to pursue his claim. In June 2000, PEX prepared a project plan for the plaintiffs. Thenceforth, the plaintiffs dealt with PEX on technical requirements and with the defendants on terms, conditions and pricing.

5. Subsequently, the defendants presented a Portal Functionality Acceptance Test to the plaintiffs who accepted by signing it, on 17 July 2000. On 2 August 2000, the plaintiffs introduced the defendants' staff to technicians from Connect! Pte Ltd (Connect) which company was responsible for designing the user interface of the portal for the plaintiffs. The defendants had earlier informed the plaintiffs that they did not have the expertise in homepage designing; this was disputed by the plaintiffs. The introduction to Connect was followed by a Portal User Acceptance Test (phase 2B) prepared by the defendants dated 7 August 2000 and acknowledged by Lim on the same day.

6. After several more meetings, the plaintiffs, the defendants and the partners finally signed an Internet Portal Services and Licence Agreement on 24 August 2000 (the Agreement) which inter alia, contained the following recitals and terms:-

(i) the plaintiffs desired to provide internet application services to: (a) enable lawyers to provide legal advice/services to consumers and (b) to enable the lawyers to transmit documents electronically to relevant government authorities and track the progress of such documents;

(ii) the defendants would provide portal licensing, configuration, hosting and other services to the plaintiffs as well as license the defendants' Horizon software, supply the Hardware and Third Party Software to enable the plaintiffs to provide the services in (i);

(iii) the partners would guarantee payment by the plaintiffs up to 50% of the total charges or $200,000, whichever is the lesser;

(iv) in the event of inconsistency between the terms of the Memorandum and the Agreement, the terms in the Memorandum would prevail;

(v) the terms of the Non-Disclosure Agreement would continue to bind the parties notwithstanding the execution of the Agreement.

(vi) the defendants would provide a three (3) months warranty period from the date of the launch of the portal.

The Agreement specifically excluded homepage design from the defendants' scope of works.

7. The defendants agreed under cl 2.5 of the Agreement, to deliver the portal by 18 September 2000 (or such later date confirmed in writing by the plaintiffs); if not, they would have to pay the plaintiffs liquidated damages (based on the projected revenue of the portal) calculated on a daily basis. Under the Schedule to the Agreement, the defendants agreed to host three (3) servers for the plaintiffs, at a monthly charge of $8,000/- (plus GST).

8. On their part, the plaintiffs were obliged under the Agreement to inter alia: (i) provide the defendants with materials/data for use during pilot implementation; (ii) to assign a named person or

his alternate to be the key project manager to co-ordinate any staff scheduling/resource requirements or technical support and (iii) to pay the charges due to the defendants. Such charges pertained to the hardware ($35,000/-), configuration and licensing of the portal ($300,000/-), hosting of the portal for an initial one (1) year and, an annual software maintenance fee ($45,000/-).

9. On 1 September 2000, Phase 3 of the portal was configured by the defendants and received by the plaintiffs. On 11 September 2000, the parties agreed at a meeting that the date of the public launch would be postponed to 21 September 2000. On 12 September 2000, the defendants' Functionality Acceptance Test for Phase 2A was signed off by the plaintiffs, but subject to further testing of changes which Lim had requested. Similarly, on 15 September 2000, the defendants' User Acceptance Tests for Phases 2B and 3 were signed off by the plaintiffs, subject to further testing of and, changes requested. The defendants effected the changes requested on the following day and on 18 September 2000, Lim approved Phase 3 of the portal by e-mail.

10. On 21 September 2000, the portal was publicly launched at the Singapore Academy of Law. The plaintiffs gave a Power Point demonstration of the functions of the portal which consisted of:-

a. online payment using credit card;

b. a client matching system whereby a client was matched with a law firm that was prepared to handle his case;

c. work-flow development for particular areas of law.

The portal received its first membership application on 4 October 2000 followed by an actual transaction on or about 6 November 2000.

11. The defendants made minor changes to Phase 3 on 10 October 2000 of the portal at the plaintiffs' request. By an e-mail dated 25 October 2000, Lim expressed satisfaction with the third party e-mail module provided by the defendants. Following the expiry of the 90 days warranty, the defendants claimed they handed back to the plaintiffs all materials on 8 January 2001; the plaintiffs disputed this fact. Lim alleged the plaintiffs signed off conditionally, subject to the defendants' delivery of various documentation and completion of the project.

12. The plaintiffs' main source of revenue was to come from the administrative fee they charged users of the portal. I should also mention that between May and July 2000, 95 law firms signed up to test and eventually, to use the portal to conduct their cases. After the launch and up to March 2001, 47 law firms registered as users. Lim deposed in his affidavit that this number far exceeded the projections of the plaintiffs set out in Schedule E of the Agreement. Having looked at the said Schedule, I must confess I cannot co-relate the figure of 47 to the plaintiffs' projections for the first three (3) years of the portal's operations. The plaintiffs had based the portal's anticipated revenue on the number (3,285) of lawyers practising at the Singapore Bar, generating a projected $1 billion in annual revenue. As at the trial dates (according to Lim), 115 out of about 700 law firms or approximately 16.4%, had signed up to use the portal.

13. In his written testimony (para 15) Lim had further projected that transactions worth $13.6m

would be going through the portal from its launch until August 2001, based on his best/conservative estimate that 1% of the total annual revenue of lawyers would be channelled through the portal. The plaintiffs would charge an administrative fee of 5% of the value of the transactions going through the portal. Consequently, the portal's revenue would be 5% of $13.6m or $680,000/-. The plaintiffs further projected another $386,000/- in revenue from consulting services, hardware and software sales, based on an average of $150/- per month per law firm signing up as users. Another $143,000/- revenue would come from, subscriptions to the case management system by law firms and advertising and service fees charged to service providers. Lim deposed that the plaintiffs were unable to sustain the headstart of $70,000/- worth of contracts they secured by January 2001 because, the portal was not completed to fully track the progress of cases.

14. After the launch of the portal, the parties entered into a Service Level Agreement dated 10 January 2001 (the Service Agreement) under which the defendants inter alia, agreed to host the plaintiffs' servers in two(2) separate racks, to assign one IP address for each of the plaintiffs' servers to a maximum of four (4) IP addresses at $40 per address and, to provide security service to the plaintiffs' servers.

15. On 21 February 2001, the defendants received a Change Request Form from the plaintiffs requesting variation work to the payment loop. The defendants duly complied with the request and the variation work was configured and received by the plaintiffs on 24 May 2001. The User Acceptance Test for the variation work was signed off by the plaintiffs on 11 June 2001. It was minuted at a meeting on 18 September 2001, that all problems encountered by the plaintiffs as a result of additional variation works had been resolved.

16. However, the plaintiffs did not share the defendants' optimistic view that the portal was fully operational. According to Lim, the defendants failed to deliver the portal with the functions stipulated under the Agreement. He alleged that at the launch of the portal on 21 September 2000, it could do little beyond enabling a client to engage a lawyer, obtain preliminary advice for $80 (paid by credit card) and obtain a quotation for further action. Even then, the process was not problem-free. There were design flaws which made it confusing for users to understand:-

(a) what the site can do for them;

(b) how to use it;

(c) where they can find the necessary information;

(d) who can help them and

(e) when they can get a definite response

resulting in reluctance on the part of lawyers and their clients, to use the portal. There were also problems related to work flow charts, the user interface, the e-commerce aspects and wrong configuration of the e-mail server.

17. A major complaint of the plaintiffs according to Lim, was the chatroom facility of the portal. He alleged that the chatroom designed by the defendants was not a private chatroom to which only invited persons could chat and, it did not have facilities to remove users who used bad or defamatory

language. Consequently, the plaintiffs ceased promoting the use of the chatroom.

18. Another complaint of the plaintiffs related to the forum provided by the defendants which failed to provide any important administrative safeguard features (removal of inappropriate messages, banning of errant users by means of user identity or via their IP addresses). Lim alleged that the defendants refused to or could not provide the plaintiffs with documentation on the forum. Consequently, the plaintiffs were obliged to redesign the forum from scratch.

19. A third complaint of the plaintiffs related to the e-mail server. Lim alleged that the product (Dmail) procured by the defendants from a New Zealand company (Netwinsite) contained 'bugs' (which 'cure' was available from the makers) and the defendants failed to configure the software properly so as to stop 'spamming' (unauthorised users/organisations making indiscriminate use of other persons' e-mail servers to send e-mail). This resulted in disruption to legitimate users of the portal. The server could not verify legitimate users and the defendants' solution of requiring the plaintiffs to reboot the server every few months was unsatisfactory. Lim testified (N/E 21) that he subsequently rectified the Dmail software to exclude spamming.

20. Yet another complaint of the plaintiffs was the lack of proper hosting facilities, in breach of the Service Agreement. Lim alleged that the defendants failed to host one (1) of the plaintiffs' four (4) servers and, failed to provide any firewall protection for any of the servers.

21. Finally, the plaintiffs alleged that the defendants failed to provide training to the plaintiffs' staff (5).

The claim

22. In January 2002, the plaintiffs commenced these proceedings alleging that the defendants had committed breaches of various terms in the Agreement, particularly those enumerated in paras 14 to 19 above, as well as of the Service Agreement. Their claim for damages for the defendants' breaches included the sum of $104,860 they had paid to Connect to develop the user interface.

23. The defendants not only disputed the plaintiffs' pleaded allegations but went further to file a counterclaim against the latter. In the defence, the defendants averred that:-

a. the portal was ready to be made accessible to the public on or about 18 September 2000 and was in fact made accessible, on 21 September 2000;

b. the defendants provided staff training to the plaintiffs on an on-going basis. The defendants were ready, willing and able to provide formal training to the plaintiffs' staff but the plaintiffs failed to select/identify the staff to undergo such training;

c. manuals and documentation were given to the plaintiffs on or about 8 January and on or about 7 March, 2001, to assist them in maintaining and operating the portal;

d. the defendants properly co-ordinated the project;

e. the Agreement stated that the defendants were not obliged to provide the user interface;

f. the forum/bulletin board had an administrator who had the ability to delete old, unwanted or undesirable messages posted by users;

g. the software for the forum/bulletin board and chatroom provided under the Agreement was not part of the Horizon software specially developed for the portal, but was basic off-the-shelf software which did not have deletion or removal facilities respectively.

h. the defendants were unaware of the alleged periodical 'freezing' of the e-mail server. The software for the e-mail was not part of the Horizon software specially developed for the portal but a basic off-the-shelf software which did not have facilities to prevent spamming. The alleged 'bugs' in the software were rectified. The defendants were only obliged to host three (3) not four (4) servers and the firewall security related to only one (1) server;

i. the claim for liquidated damages was denied and the method of its calculation disputed.

Whatever the shortcomings, the defendants pointed out that the forum/bulletin board, chatroom and e-mail server were accepted by the plaintiffs in or about September 2000.

The counterclaim

24. As for their counterclaim, the defendants contended that the plaintiffs had failed to pay the configuration/licensing fee ($300,000/- not including GST) save for $49,531.25. As full payment was not made, the plaintiffs were obliged to pay the defendants $12,875/- per month for 24 months, pursuant to cll 4.2 and 4.8 of the Agreement. Consequently, the sum of $117,843.75 was owed to the defendants (as at 21 June 2002). Apart from six (6) payments, the plaintiffs had also failed to pay the hosting charges of $8,240/- (inclusive of GST) per month. Consequently, the sum of $82,400/- (excluding interest at 1% above the prime rate charged by DBS Bank) was due and owing to the defendants (as at 21 June 2002).

25. The defendants alleged that the plaintiffs also owed Transaction Charges at 3% of the gross value of transactions per month, pursuant to cl 4 of the Agreement. For reversed, cancelled or terminated transactions, the plaintiffs were obliged to pay the defendants $0.10 per transaction. These charges were also counter-claimed by the defendants.

26. It would not be necessary to refer to either the plaintiffs' Reply & Defence to the Counterclaim or, to the defendants' Rejoinder as, both parties maintained their respective stands. I would only mention that in the Rejoinder, the defendants pleaded they had substantially performed the Agreement.

The evidence

(i) the plaintiffs' case

27. Lim (PW1) turned out to be the plaintiffs' only witness. Tan Kim Chuan (Tan) the project's manager from PEX, was supposed to testify for the plaintiffs and had filed his affidavit of evidence-in-chief for that purpose. However, on the first morning of the trial, the court was informed that the defendants and PEX had signed a settlement agreement dated 1 June 2002; the terms thereof bound

Tan to secrecy in respect of events leading up to the signing, these included the duties and work performed by PEX for the defendants, including the portal. Consequently, by way of a letter from his solicitors which was tendered to court, Tan declined to testify voluntarily; the plaintiffs chose not to subpoena him to testify. I refused their counsel's application (repeated in his closing submissions) to draw an adverse inference against the defendants for not calling Tan to testify, there being no proprietary right to him as a witness, such as to compel the defendants to subpoena/call him to the stand. There was nothing to stop the plaintiffs from calling Tan as their own witness. Indeed, they should have subpoenaed him as, Tan would have provided useful input on his discussions with Lim vis a vis the plaintiffs' site requirements and on the chatroom issue discussed below.

28. Before Lim took the stand, the plaintiffs' counsel presented to the court the same Power Point version of the portal as that shown to the defendants in April 2000; I shall advert to that later. Meanwhile, I will focus on Lim's cross-examination touching on the plaintiffs' complaints, since the material parts of his evidence-in-chief have been set out in earlier paragraphs.

(a) the user interface

29. Counsel drew Lim's attention to the payment vouchers the plaintiffs issued to Connect which Lim exhibited in his affidavit (exhibit LSS-11) commencing *from* 31 July 2000. The vouchers were to be contrasted with e-mail exchanged between the parties (exhibit LSS-10) expressing dissatisfaction with the system, *after* Connect's appointment. As Connect was appointed by the plaintiffs before 31 July 2000, it could not be said their engagement was due to the plaintiffs' dissatisfaction with the defendants' services. Indeed, at a project meeting on 2 August 2000 (see minutes at AB334), Lim himself had personally introduced staff (3) from Connect to the defendants as those who would take charge of the user interface and content development for the plaintiffs. Lim sought to explain that the defendants began designing the interface *before* 31 July 2000 but declined to continue on the basis it was not their responsibility, *after* the plaintiffs raised problems they had encountered with the defendants' design. He interpreted the defendants' obligations of developing the portal to include design of the interface, notwithstanding that the user interface was specifically excluded from PEX's scope of work under the project plan (see cl 2.2). In any case, links from one page to another of the interface were still under the defendants' control; they would have to effect changes to the links/pages.

30. Although Lim conceded he could refer to only an e-mail dated 28 September 2000 to support his allegation, he maintained he had complained to the defendants as detailed in his affidavit (para 25).

(b) lack of administrative facilities in forum/bulletin board

31. Although he acknowledged that some forums may not have facilities to ban undesirable users, Lim nonetheless maintained that such features are standard.

(c) the chatroom

32. Lim had deposed that the defendants used a Microsoft program to design the plaintiffs' chatroom. He complained that in addition to the chatroom's lack of administrative facilities (which he again asserted are standard features), the defendants refused or could not provide the plaintiffs with,

documentation. Lim agreed that the missing features (inability to shut out/remove uninvited persons or abusers of the system) were not included in the Memorandum or in PEX's project plan. However, he said he had delivered his site requirements to Tan before the signing of the Memorandum (see exhibit LSS-6) and specified therein *chatroom: private* which he interpreted to mean *only* invited persons could participate in chatroom discussions. He disagreed with the defendants' interpretation that it meant several private discussions could be carried on simultaneously, with participants being admitted, based on user identification (ID) and password.

(d) no proper hosting facilities

33. The defendants' obligation to host the plaintiffs' servers was set out in Schedule 2 (at AB79) of the Agreement, which gave a breakdown of the various items comprised in the defendants' fee of $8,000. Counsel for the defendants pointed out to Lim that contrary to his assertions, the defendants were not bound to host four (4) but only three (3) servers.

34. Lim however claimed that between 2 August 2000 and 10 January 2001, the plaintiffs had requested the defendants to host a 4th server and he had 'assumed' that the defendants had agreed to do so, without additional charge. His further complaint relating to the 4th server was that it was not properly secured, being placed on a table top. Counsel countered that the server was so placed by the plaintiffs' technical officer Jonathan Wright (Wright); he has since left the plaintiffs' services. Lim agreed the plaintiffs suffered no loss in any event.

(e) no firewall protection for servers

35. Lim disagreed with counsel that it was not possible to place all four (4) servers behind a firewall, as otherwise there would be no access to the website. Lim said he had received an e-mail from the defendants on 25 September 2000 saying the servers were outside the firewall, not that it was not possible to provide the protection. Whilst the plaintiffs' data server was within a firewall the remaining three (3) servers were not, even though the plaintiffs had paid for such services under cl 5(a) of the Service Agreement (see AB180), which formed part of the agreed package. Notwithstanding the lack of firewall protection however, Lim admitted that the plaintiffs' security on the other three (3) servers had not been compromised nor had they suffered any consequential loss.

(f) failing to make the portal accessible to the public by 18 September 2000

36. Although his attention was drawn to the fact that his partner (Ong Ying Ping) had told the defendants at a meeting on 2 August 2000 that the launch would be postponed to 21/22 September 2000, Lim insisted that it did not alter the defendants' contractual obligations; the portal's *launch* date had nothing to do with its *delivery* date and, the latter must precede the former. Counsel for the defendants drew Lim's attention to cl 2.1.5 of the Agreement under which Horizon was obliged to provide:-

> the configuration of the Portal in conjunction with WWLegal's project team to enable the Portal to be made accessible to the public by 18 September 2000 or such later date to be confirmed by WWLegal in writing

pointing out there was no mention of *delivery* of the Portal. Questioned by the court on what he

understood by *delivery,* Lim's (N/E 43) explanation was not an answer at all -- he merely reiterated that what was made accessible to the public by the defendants on 21 September 2000 was not what the plaintiffs had contracted for. Pressed further, he opined that what was *delivered* by the defendants was not of the contracted product *or* what the plaintiffs wanted.

37. Cross-examined why in that case he signed the defendants' User Acceptance Test on 12 September (for phases 2A/2B), Lim said they were 'qualified' acceptances. He disagreed that the changes he had requested (*after* he qualified the plaintiffs' acceptances) were carried out on 16 September 2000. Closer examination of the defendants' various test case forms (see AB5-38) however revealed that Lim/the plaintiffs had signed *okay* on most of the forms. Lim could not explain why where *changes needed* were the notations he made, the same were not specified or, he did not make a record if indeed the subsequent changes made by the defendants were unsatisfactory.

38. In the course of his cross-examination, Lim shifted his stance -- whereas he had earlier claimed that the portal made accessible to the public was *not* what the plaintiffs contracted for, he subsequently seemed to suggest that the portal delivered by the defendants had features missing -- citing the payment loop to allow price negotiation between solicitor and client as an example. He denied this feature was not included in the original scope of the project and relied on its absence to support the plaintiffs' allegation that, the defendants lacked proper co-ordination and management in their development of the portal.

39. Reference was made by counsel for the defendants to a Change Request Form submitted by Lim to the defendants on 18 October 2000 which contained the following item:

> 6 Follow Through Payment
>
> Pex has already designed this via the quotation system. Modify to allow lawyer to specify amt to be paid for matter, client informed of this via system & client can make payment. Allow this to be used by lawyer to client so long as matter not concluded.

Lim admitted that the defendants had amended the payment loop without charge, pursuant to a Change Request Form he submitted on 21 February 2000; this was followed by a live User Acceptance Test.

(g) no link-up with town councils and government departments

40. Lim admitted that even three (3) months after the portal was made accessible, the plaintiffs were not ready to do the integration and without the plaintiffs' co-operation, the defendants could not do the link-up. Apparently, there was talk by the plaintiffs of integrating the portal with a third party system called Solicitec system. Lim agreed that for that reason, the integration was postponed indefinitely.

(h) failure to train the plaintiffs' staff

41. Cross-examined, Lim conceded that the defendants were ready and willing to provide training but the plaintiffs did not inform the defendants of the staff who were selected for such training. Yet, he

disagreed with counsel that the plaintiffs' allegation in this regard was baseless.

(i) discounts

42. Lim alleged that because Connect not the defendants, developed the customised user interface, he had informed Francis Yeo and Michale that the plaintiffs were entitled to a 'discount' for having to pay Connect $104,860/-. He referred to his fax of 19 December 2000 to the defendants' Edward Leong wherein he claimed that the latter had 'agreed' to provide 3 months' free web-hosting service *quid pro quo*. I should add that Lim in the fax requested the defendants to withdraw their invoice dated 1 November 2000 (for $16,000/-) for hosting charges. However, this was denied by Edward Leong in his fax reply dated 22 December 2000; Edward Leong stated he had indicated discussions for a discount should be done 'offline', after the Agreement was signed but, the plaintiffs did not pursue the matter thereafter. He suggested that the plaintiffs liaise with the defendants' Freddie Bay in that regard.

43. In earlier paragraphs (12-13), I had set out the plaintiffs' projections of the potential revenue the portal would earn. In that regard Lim disagreed with counsel that the portal's failure to earn the revenue he had anticipated was due to factors *other than* its alleged unsatisfactory performance (such as the fear of comprising solicitor-client confidentiality). Although Lim disagreed with counsel's suggestion, I myself am of the view that it cannot be disputed that the plaintiffs' anticipated earnings for three (3) years (on which they based their claim for damages) are wholly theoretical; there are no similar portals by which those profit figures can be compared against, to verify that the projected revenue is realistic and achievable. Indeed, Lim agreed with counsel for the defendants (N/E 63) that with the collapse (in 1999-2000) of the e-Commerce industry, many start-up e-Commerce companies did not come close to their projected revenue figures. I shall return to this observation later in my findings.

The defendants' case

44. The defendants called three (3) witnesses for their case; one was Michale, the second was Noah Tay Chin Seng and the last was Jonathan Chin.

45. Michale (DW1) has no technical expertise in computer software. He was the accounts manager of the defendants (until December 2000) whose responsibility was to bring in business. Michale's immediate superior was his department head Francis Yeo. During cross-examination, it was revealed that Michale was the de-facto project manager for the project (for a couple of weeks) until the defendants appointed Jonathan Chin (Chin) who was the project manager of the defendants from July 2000 to January 2001, when he left to assume the vice-presidency of a related company of the defendants. The defendants' second witness Noah Tay Chin Seng (Tay) has been their project director since 1 November 2000. By the time Tay joined the defendants, Chin's duties were about to be taken over by Gan Kim Leng, who worked under Tay. As with Lim's evidence, the testimony of the defendants' witnesses will be considered under the various heads of complaint of the plaintiffs.

(a) the user interface

46. Michale testified he understood both the concept and the plaintiffs' requirements (from their

Power Point presentation) for the portal. He was instrumental in introducing PEX to the plaintiffs and he prepared the Proposal of 22 May 2000. Whilst the plaintiffs wanted an elaborate custom-made user interface, the defendants had informed them that the defendants did not have the expertise to develop the same. If the plaintiffs insisted, the defendants had indicated they would outsource the homepage design, and this would result in a higher price for the portal. The plaintiffs thereupon indicated they would find their own designer, which eventually led to Connect's appointment. Consequently, the plaintiffs knew as at the signing of the Agreement, that PEX/the defendants would not be designing the custom-made user interface for them. Hence, item 2.2 in Appendix B (relating to PEX's scope of works) stated:-

> The scope of the work however, does not include the following:
>
> • *Home Page Contents and Graphic Design*
>
> The scope does not include the contents of the website and the design of the homepage of ww.legal.com.
>
> The portal has a standard but configurable user interface for its commerce engine. Pex shall configure the style-sheet i.e. the colour and theme of the portal to suit ww.legal.com's theme.
>
> Pex shall work with the ww.legal.com's home page designer and content provider for integration with the portal.

(b) the portal's launch

47. When the portal was launched on 21 September 2000, it did not mean that the portal would be 'bug-free'. Michale referred to the Memorandum which contained the following rider:-

> Horizon does not warrant their software will be bug-free but a service level agreement will be given to ww.legal.com Pte Ltd.

He said the standard software which the defendants used was configured to suit the plaintiffs' legal requirements, based on input from Lim, as the defendants did not have the domain knowledge.

48. As an aside, Michale disagreed with Lim's claim that the Memorandum was signed much later than 19 March 2000. If indeed it was signed in May 2000, he wondered why all four (4) signatories made the same mistake with the date. As at 21 September 2000 when the portal was delivered/launched, Michale said he received no complaints from the plaintiffs nor did they raise the subject of liquidated damages for late delivery.

(c) lack of administrative facilities in forum/bulletin board and chatroom

49. Michale pointed out that the three (3) items came under the heading *VALUE ADDED SERVICES SERVER* under Schedule 1 of the Agreement. He understood that to mean that the plaintiffs were not entitled to the special features they demanded/expected. In any case, the software for the items was sourced by him from third parties, which meant the defendants could not make any changes

thereon. Michale testified that in any case, those who wished to participate in the chatroom have to be first registered. Chin added that the forum/bulletin board did have a facility which enabled a system administrator to locate and assess information in the database and remove unwanted postings. However, the agreed standard software provided under the Agreement could not organise messages posted on the bulletin board into categories or groups, nor was it stipulated that it should do so. He opined that there was no reason why private chatrooms could not be created although the defendants were not contractually obliged to provide the same.

(d) hosting of 4th server

50. From the outset, the defendants agreed to host three (3) of the four (4) servers, at $8,000/- per month plus GST, for the first year, as per Schedule 2 of the Agreement. The defendants never agreed to host the plaintiffs' Dell server (which the plaintiffs purchased), for their Solicitec system, which was not integrated with, the three (3) servers supplied by the defendants but, was a stand-alone system. Indeed, when the 4th server was delivered by the vendor *after* the three (3) servers had gone into the defendants' data centre, Michale told Chin to contact Wright to send the plaintiffs' staff to receive it, which Wright did. Indeed, Wright took delivery personally.

51. During cross-examination, counsel for the plaintiffs painstakingly took Michale through the Power Point presentation which the plaintiffs had shown to the defendants, as to what the plaintiffs required the portal to be able to do. With respect, the Power Point presentation would be the plaintiffs' vision of what they hoped to achieve by the portal, reality may be somewhat or considerably, less. Certainly, the presentation cannot form part of the defendants' contractual obligations as counsel sought to argue in the plaintiffs' final submissions. Counsel also pounced on the fact that Michale had acted temporarily as a project manager for the portal, notwithstanding his lack of technical expertise. I accept Michale's explanation that during his short stint as a project manager, there were no discussions on technical details; this factor does not help to advance the plaintiffs' case. One significant fact which did emerge from Michale's testimony was that the defendants, as a matter of good faith, took the risk and produced a prototype of the portal on 26 May 2000, even before the Agreement was signed by the plaintiffs. Consequently, their counsel's closing submission (para 117) stating that the plaintiffs did not view any demonstration of what the portal would look like or could do, is clearly erroneous.

52. On the one hand, Michale insisted that the defendants' obligation was only to provide a basic user interface. Counsel for the plaintiffs on the other hand, asserted that his clients' specific requirements for the same were not met. Consequently he argued, the plaintiffs should not be charged $300,000/- which included the cost of an user interface. In re-examination, Michale revealed that the user interface which the plaintiffs ultimately sourced/obtained from Connect was vastly different from the basic engine which the defendants offered to provide.

(e) the payment loop

53. Tay (who came into the picture during the 90 days warranty period after the portal was launched) said the portal when launched had an existing payment work flow which could conduct payment transactions. Indeed, he himself subscribed to the portal in October 2000 and was able to navigate it to obtain information. Tay was not cross-examined on this statement, either on the extent to which he could navigate the portal and whether he encountered any difficulties (as the plaintiffs

alleged) or at all. Tay testified that in February 2001, the plaintiffs commissioned a different payment work flow, which the defendants configured (by 4 May 2001) *without additional charge*, as discussed and agreed at a meeting on 21 January 2001 – the defendants agreed to do the work *in lieu of* work under phase 5 of the project namely, integration with government departments. Tay indicated that not only were the defendants not obliged to carry out work under phase 5 but, the plaintiffs should compensate them for cancelling that phase. He pointed out that Lim and another representative of the plaintiffs (Visvanathan) subsequently approved/accepted the changes made. Thereafter, what needed to be done was to integrate the portal with the Solicitec case management system, which responsibility was the plaintiffs'. To-date however, the plaintiffs had not notified the defendants that the Solicitec system was ready for integration with the portal. Chin reinforced his argument by referring to e-mail exchanged between himself and the plaintiffs (Lim), before and after the portal's launch.

54. In re-examination, Tay clarified that integration with the Solicitec system would have required 32 man days at $500-$1,500/- per man day or a total cost of $16,000-$48,000/- He added that if integration work had proceeded, the defendants would have charged for the same as a variation item since, work for the revised payment loop was not invoiced. Tay denied that the portal could not track the progress of cases; it could do so provided users updated their cases on-line. However, if the problem was due to the fact that the Solicitec system was not integrated with the portal, it was not the defendants' fault.

(f) bugs in the system

55. 'Bugs' were only discovered in June 2001, after the work flow changes had been effected and, the plaintiffs were conducting Live User Acceptance Tests. The defendants attended to and cured the 'bugs' by September 2001. Indeed, the defendants received an e-mail from Visvanathan on 6 September 2001 acknowledging that the 'bugs' had been attended to, without further complaints.

(g) no firewall protection for the servers

56. Although he acknowledged that the defendants had an obligation to secure the plaintiffs' servers, Tay pointed out that having a firewall for the servers was not as critical as for the database server, which the defendants did provide. In any case, it was not the general practice to put a web server behind a firewall as, it is only for reading purposes, unlike a database server, which is also accessible for writing purposes. Further, at no time (before these proceedings were commenced) did the plaintiffs make a specific request that the defendants place their 4th server in the defendants' data centre. Tay recalled that the 4th server was placed on the table for convenient access by Wright whereas the other three (3) servers were placed in the rack; he did not receive any request from Wright to place the 4th server (which was connected to other three [3] servers) in the rack.

(h) training of the plaintiffs' staff

57. Tay reiterated that the defendants were willing and able to provide formal training to the plaintiffs' staff; to-date the plaintiffs had failed to inform the defendants of the identities of the staff who had been selected for such training. Consequently, the defendants could not make the necessary arrangements.

(i) manuals and documentation; management & co-ordination

58. Tay asserted that manuals and documentation were handed to the plaintiffs on or about 8 January and 7 March, 2001 and, duly acknowledged. With those documents, an information systems manager would have been able to maintain and operate the portal. As far as Tay was aware, the defendants did not receive any calls for assistance from the plaintiffs to maintain or operate the portal. Similarly, on the plaintiffs' other complaint that the defendants lacked co-ordination and management for the project, Tay deposed he received no such complaints from the plaintiffs. He noted that the plaintiffs' allegation (in the Further and Better Particulars they rendered of the Statement of Claim) that:

(i) the defendants failed to inform them of the cause of problems, and

(ii) to provide solutions for unresolved problems

was not only vague but he wondered why the plaintiffs needed to know the *cause* of any problem (as opposed to the solution), which is highly technical. On the plaintiffs' other complaint of frequent changes in the defendants' contact persons, Tay pointed out that when he was appointed (in November 2000), the portal was already launched and he took charge of the 90 days warranty period. Effectively, the defendants were only doing maintenance work; the change of project managers from Gan Kim Leng to Torres Arifin Oey (in April 2001) did not affect the portal's performance/maintenance. Chin deposed that (after taking over from Tan) he personally received e-mail praising his work, from Ong Ying Ping and Susan Tay before and after, the launch of the portal, which would appear to contradict the plaintiffs' allegation of lack of management. He himself handed over the project to Gan Kim Leng on 21 December 2000, *after* the warranty period had expired.

(j) freezing of the e-mail

59. Tay was not aware of any periodical 'freezing' of the e-mail server. If indeed there was this problem, it could be due to a software 'bug', the presence of which did not constitute a breach of the Agreement. Personally, he was not informed of any non-notification of requests for legal services after he took charge.

(k) claim for damages

60. Tay also criticised the plaintiffs' claim for damages; he noted that they calculated liquidated damages without factoring in expenses. The plaintiffs had further commissioned for work which was unnecessary and excessive, examples being (i) a provision for administering viewing, adding, modifying and deleting information in various sections of the portal and (ii) provision for password protection (when it was already provided by the PEX system). He criticised the variation items claimed by plaintiffs as inflated and unreasonable.

61. I shall not refer to Chin's cross-examination as nothing significant turned thereon which had not already been elicited in the cross-examination of the defendants' other witnesses. The common thread that emerged from the testimony of all three (3) witnesses was, that the defendants had performed or substantially performed their obligations under the Agreement, the plaintiffs' allegations were unfounded and, their claims were unsubstantiated. Chin pointed out that if any of the

defendants' deliverables for the portal were not agreed to by the plaintiffs, then the plaintiffs should have rejected them, which they did not. In fact, the plaintiffs signified acceptance by signing the User Acceptance Tests forms (albeit sometimes with qualifications upon which the defendants followed up). In practice, each time a User Acceptance Test was conducted, the plaintiffs had five (5) days within which to raise their objections; they failed to do so. Chin said tests to evaluate the system cannot be open-ended, there had to be finality and a deadline for completion of the project, as he had emphasised to Wright, when they met on 11 September 2000 (see minutes at AB349).

62. None of the defendants' witnesses were cross-examined on Lim's allegation that the defendants had agreed to give 'discounts', nor on the issue of integration with the Solicitec system or linking up with town councils.

The issue

63. The main issue for determination is, did the defendants perform or substantially perform the Agreement as they contended or, did they fail to deliver the portal the plaintiffs contracted for, as the latter alleged? A secondary issue for consideration is whether the defendants discharged their obligations under the Service Agreement.

The findings

64. Although he was called as a witness of fact, Lim's supplementary affidavit of evidence (which I admitted as part of the evidence before the court over the strenuous objections of defendants' counsel) expressed his opinions freely, giving the distinct impression that he considered himself somewhat of an expert on websites, despite his lack of previous experience of portal developments. Indeed, Lim's supplementary affidavit did not address the affidavit evidence of Tan, even though that purportedly was the basis upon which counsel for the plaintiffs applied for its admission. I myself do not equate Lim's 13 years' experience at the Singapore Bar and membership, of the Law Society's information technology and electronic filing system sub-committees, with the necessary expertise and authority to speak as an expert. No properly qualified expert witness as such was called by the plaintiffs. Indeed, the plaintiffs made no efforts even to call their technical man (Wright) to testify or, to explain his absence, apart from Lim's cryptic statement that he was no longer with the plaintiffs since December 2000 and they could not locate him. Consequently, under the rule espoused in *Browne v Dunn (1893) 6 R 67*, the unchallenged testimony of the defendants' witnesses, that Wright was responsible for placing the 4th server on the table instead of in the rack with the defendants' three (3) servers, stands.

65. Based on Lim's testimony under cross-examination, it is clear that a number of other complaints of the plaintiffs were also not made out, in addition to the defendants' alleged failure to secure the 4th server.

(i) discounts

66. Apart from a bald assertion that he had asked the defendants for a 'discount' upon which Edward Leong did not commit the defendants, Lim produced no evidence to substantiate his allegation. Indeed, I can safely assume that this claim has been abandoned as it was not even addressed in the

closing submissions of the plaintiffs along with some other claims, which I shall deal with below.

(ii) payment loop

67. It is not disputed that the defendants did provide a payment loop for the portal but, it was not the payment loop which the plaintiffs said they desired, namely to be able to accept further payments from clients after the initial payment of $80/- for basic advice. It is also common ground that *after* the portal was launched and *after* the 90 days warranty period had expired, the plaintiffs requested and the defendants provided, a revised payment loop. What was the contractual obligation of the defendants in this regard? For that, I turn to look at the Agreement.

68. The relevant provisions are contained in the following clauses:

> **7 Variations and Further Work**
>
> 7.1 Any variations or further work to be undertaken by Horizon pursuant to any subsequent commission shall be jointly agreed between the parties and shall be set out in a written proposal describing:
>
> 7.1.1 the nature of such work;
>
> 7.1.2 the time schedules pursuant to which such work will be undertaken and completed;
>
> 7.1.3 the time and other resources which Horizon will devote to such work;
>
> 7.1.4 the amount and/or method of calculation of the fees of Horizon for such work.
>
> 7.2. Further work shall be carried out on a time and materials basis and will be charged at S$1,200.00 per man day plus out of pocket expenses.

Clearly, the plaintiffs were aware that work for the revised payment loop they requested (by way of a Change Request Form dated 21 February 2001) was chargeable as a variation, notwithstanding that the defendants agreed not to invoice them, in substitution for phase 5 work. Consequently, it does not lie in their mouths to now contend that the defendants did not provide them with the contracted payment loop; they wanted features *added* to what the defendants had already installed in the system. This is apparent from the original work flow chart appearing at AB308A, as compared with the amendments Lim requested at AB308B.

69. At this juncture, I need to digress and address some of the closing submissions tendered by the plaintiffs. Their counsel had referred to cl 1.9 of the Agreement which defined the 'portal' as

> *the world wide web portal to be developed by Horizon in accordance with the legal specifications set out in Pex project plan and WW.Legal's site requirements attached at Appendix B*

but he pointed out that appendix B was not attached to the Agreement. However he argued, the defendants (Tan in particular) well knew from discussions with Lim, of the plaintiffs' site requirements. He then referred to exhibit **LSS-6** in Lim's affidavit and submitted that those site requirements are not exhaustive – it made no mention of *any* requirement for an initial payment of $80/- being made through the portal, even though the defendants did not dispute the requirement and indeed provided for it. The plaintiffs' argument however runs counter to cl 20.1 of the Agreement which states:

> **20. Entire Agreement**
>
> This Agreement constitute the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior understandings with respect thereto.

The plaintiffs cannot import into the document what was discussed or orally agreed either before or after the Agreement, except where it was admitted by the defendants or, it appeared from documents produced in court which documents *do not contradict the terms* in the Agreement, bearing in mind s 94(b) of the Evidence Act Cap 97. Consequently, I reject the plaintiffs' submission that what the plaintiffs required is reflected in the initial Power Point Presentation they made to the defendants, on which I have already commented (para 51). Accordingly, this complaint is without merit.

(iii) the user interface

70. It bears remembering that Connect, not the defendants, provided the customised homepage *and* the defendants had made it clear from the outset (which the plaintiffs could not dispute) that they had no expertise in developing custom-made user interface. Moreover, the design of the user interface was specifically excluded from PEX's scope of works under cl 2.2 (para 46 *supra*) of the project plan. The dates of the plaintiffs' payment vouchers to Connect (to which counsel for the defendants drew Lim's attention) reinforces my finding that this complaint is attributable to Connect's works, not the defendants'. In the absence of cogent evidence to link the alleged deficiencies of the user interface to the defendants' scope of works, the plaintiffs have failed to prove this complaint.

(iv) failing to launch the portal on 18 September 2000

71. In the light of the minutes of the meeting dated 2 August 2000 wherein his own partner (Ong Ying Ping) told the defendants the public launch would be postponed to 21/22 September 2000, Lim can hardly complain that the launch was delayed to 21 September 2000. In this regard, I totally reject Lim's less than convincing explanation that there is a fine distinction (which he himself could not make out) between *delivery* and *launch* dates.

(v) no training for the plaintiffs' staff

72. In his testimony, Lim conceded that the plaintiffs did not furnish the defendants with particulars of the staff selected for training, even though the defendants were willing and able to carry out the task; this claim is consequently dismissed.

(vi) no link up with town councils and government departments

73. Like the preceding complaint, this allegation was admitted by Lim to be due to the fault of the plaintiffs, not the defendants. It was the plaintiffs themselves who were not ready to do the link-up due to the need to integrate with the third party's Solicitec system, in which the defendants were not involved. As the complaint was not addressed in the plaintiffs' final submissions, I assume it has been abandoned.

(vii) lack of administrative details in forum and bulletin board.

74. Apart from his oral testimony, Lim did not produce one iota of evidence to support his contention that the forum and bulletin board should have as 'standard' features, the ability to ban/block out undesirable users/mail. He could only point to one e-mail he had sent to the defendants dated 28 September 2000, which was a week *after* the portal had been launched containing the following items:

> 5. Hub admin -- when can it be ready for use?
>
> 7. Admin for chatroom & discussion board -- we need this to erase/kick out the wrong type of comments etc - this should not require a RFC - understood as needed.

which hardly suffices as evidence. Lim had also admitted (N/E19-20) that he did not specify what requirements or specifications these items should have. Even so, in his written testimony, Chin had deposed that the forum/bulletin board had a facility which enabled a system administrator to locate and remove unwanted postings. I find that the plaintiffs have not discharged their burden of proof on a balance of probabilities for this complaint.

(viii) the chatroom

75. As for the similar complaint on the chatroom, Lim had referred to the plaintiffs' site requirements in his exhibit **LSS-6** which stated *chatroom: private* to reinforce his argument that only invited persons could be participants. The defendants on the other hand (through Chin) countered by arguing that they were not contractually obliged to provide private chatrooms – the forum, bulletin board and chatroom were value added features incorporated not in the defendants' but in standard third party's, software. Nevertheless, private chatrooms could be created. However, I note that in his e-mail dated 30 June 2000 to Lim on work flow and other matters, Tan had referred to a private chatroom (see AB367) for the portal. Consequently, the defendants knew and accepted, that the plaintiffs required a privacy feature for the portal's chatroom but, failed to deliver what was specified. It is no answer to the plaintiffs' complaint to say that private chatrooms can be created, when it was not done. In this regard, I reject the defendants' closing submission that the plaintiffs' complaint has no relation to the chatroom in the aforesaid e-mail of Tan; I can see no difference.

(ix) manuals and documentation; management and co-ordination

76. No evidence was adduced to support the plaintiffs' allegation of the defendants' lack of management and co-ordination, apart from the incident of the revised payment loop, which I had dealt with earlier. Indeed, the voluminous exchanges of e-mails between the parties and the minutes

of meetings produced in court (by the plaintiffs), suggests the opposite. The same comment applies to the alleged lack of manuals and documentation. These allegations are therefore unsubstantiated.

(x) hosting of the plaintiffs' 4th server

77. This allegation is unsustainable in the light of the defendants' testimony that they were not obliged to host the plaintiffs' Dell server which they neither provided nor installed. As I informed Lim in the course of his cross-examination (N/E33), he was also not in a position to contradict the defendants' evidence that Wright placed that 'unsecured' server on the table (instead of in the rack) for his own convenience, in the absence of Wright as a witness.

(xi) lack of firewall protection for the servers

78. I note that the defendants did not deny or challenge this allegation. What Tay contended was, firewall protection was more critical for the database server which the defendants did provide. Unfortunately, that explanation is no answer or defence to the plaintiffs' allegation. The defendants were contractually obliged but failed, to provide firewall protection for the servers (3) they provided to the plaintiffs but not for the plaintiffs' 4th server. The fact that the defendants agreed to host the 4th server gratis, does not extend their contractual obligation to provide firewall protection to that server.

(xii) periodic freezing of the e-mail

79. It was the defendants' case (Tay's testimony) that they were unaware of this problem. Certainly, there were no documents/correspondence emanating from the plaintiffs/Lim to substantiate this complaint, before or after the public launch. The defendants admitted that 'bugs' are not uncommon in software but their presence did not constitute a breach of their obligation under the Agreement; only rectification (if called for) was required. I accept the defendants' contention, bearing in mind cl 4 of the Memorandum (para 47 *supra*) which specifically excluded any warranty that the defendants' software would be bug-free. Moreover, under recital 4 of the Agreement, in the event of inconsistency between the two documents, the terms of the Memorandum would prevail. Indeed, it would be absurd and untenable for the IT industry if the presence of 'bugs' in software can be said to render computer systems/software defective.

The decision

80. As is often the case with the best laid plans of mice and men, the plaintiffs did not reckon with unforeseen circumstances that may and did render, the portal being less than the resounding success they had anticipated. Lim himself recognised (N/E 63) that the portal's projected revenue may not materialise, for reasons totally unrelated to any default on the part of the defendants. Although he rejected counsel's suggestion (N/E 64), I cannot ignore the fact that one possible reason for the portal's poor showing may be due to law firms having misgivings about putting privileged communication with their clients online, regardless of whatever safeguards that may have been provided by the plaintiffs to preserve solicitor-client confidentiality. There is a further possibility that law firms which initially registered as users, may discontinue using the portal, in favour of more conventional communication with their clients, after the initial contact on-line. I also take judicial notice of two other (2) factors:

(i) the larger law firms in Singapore (as far as I am aware) show no enthusiasm to offer their services online, presumably because they do not see a need to generate business in that manner;

(ii) as reflected in their resistance to navigating the EFS system for court hearings, there is an inherent reluctance or inability by senior/older members of the Bar to use e-Commerce for their practice

which may well have affected the success of the portal. Although Lim claimed that 115 law firms registered with the plaintiffs, he did not provide information on the subscribers; the court was none the wiser on the profiles and sizes of the law firms which used the portal. It would have been helpful if a representative from a user law firm had given the court an objective appraisal of the functioning of the portal. In this regard, I do not accept Lim's testimony as being at all objective. I prefer the testimony of the defendants' witnesses as being more consistent with the documents presented in court. Unlike Lim, they did not change their positions midstream.

81. The overwhelming impression that emerged from the evidence adduced in court is, that the plaintiffs were looking for and came up with, excuses to avoid meeting their payment obligations to the defendants, when their directors/shareholders realised that the portal was not going to be a profitable enterprise I cannot overlook the fact that the plaintiffs signed various User Acceptance Tests which confirmed (under the Agreement) that the different phases (save for phase 5) of work for the portal carried out by the defendants had been completed and accepted. It would make nonsense of those tests if the plaintiffs are now allowed to renege on their acceptances by saying that the portal was not completed to their satisfaction or, had certain features missing therefrom, according to the shift in stance adopted by Lim in the course of his cross-examination. Once the portal was launched and the 'bugs' attended to by them during the 90 days warranty period, the defendants had discharged their obligations under the Agreement; they are entitled to be paid.

82. However, the defendants breached the Agreement in failing to provide a private chatroom and, breached the Service Agreement in not installing firewall protection for their three (3) servers, notwithstanding that the plaintiffs suffered no resultant loss. I therefore order the defendants to rectify both shortcomings within 90 days of the date of this judgment; otherwise there has to be an appropriate deduction in the sums which I award to the defendants below. I hereby give the parties liberty to apply, in the event there is any difficulty or problems encountered in implementing my directions.

Conclusion

83. The plaintiffs' claim for liquidated damages (which sums are highly inflated) for the various breaches alleged against the defendants is accordingly dismissed with costs. There shall be judgment for the defendants on their counterclaim as follows:

(i) judgement in the balance sum of $117,843.75 for licensing/configuration charges;

(ii) judgement in the sum of $82,400/- for hosting charges as at 21 June 2002 with further charges (if applicable) at $8,000/- per month (excluding GST at 3% up to 31 December 2002 and at 4% commencing from 1 January 2003) with effect from July 2001;

(iii) judgement for transaction charges at 0.3% of the gross value of transactions concluded on the portal and at 0.1% for terminated transactions;

(iv) contractual interest at 1% above the prime lending rate charged by DBS on each instalment of $12,875/- due and outstanding, pursuant to cll 4.2 and 4.8 of the Agreement, and

(v) costs on a standard basis.

In relation to items (iii) and (iv) above, I also give the parties liberty to apply once the defendants have quantified the sums.