

Tee Yok Kiat and another v Pang Min Seng and another
[2012] SGHC 85

Case Number : Suit No 589 of 2009
Decision Date : 20 April 2012
Tribunal/Court : High Court
Coram : Steven Chong J
Counsel Name(s) : Adrian Tan and Ong Pei Ching (Drew & Napier LLC) for the plaintiffs (for the first tranche and for closing submissions); The plaintiffs were in person for the second tranche; The first defendant in person; Uthayasurian s/o Sidambaram, M S Rajendran and Ramesh s/o Varathappan (Surian & Partners) for the second defendant.
Parties : Tee Yok Kiat and another — Pang Min Seng and another

Trusts – Resulting Trusts

Trusts – Express Trusts

Contract – Breach

Contract – Discharge

Contract – Contractual Terms

[LawNet Editorial Note: Civil Appeal No 52 of 2012 and Summons No 4377 of 2012 were allowed by the Court of Appeal on 26 September 2012. See [\[2013\] SGCA 9.](#)]

20 April 2012

Judgment reserved.

Steven Chong J:

Introduction

1 This action concerns a businesswoman, her renovation contractor and a fortune-teller. What brought these three individuals together? According to the businesswoman, it was a conspiracy by the fortune teller and the renovation contractor to cheat her of money, with the assistance of “black magic”, [\[note: 1\]](#) but according to the renovation contractor, it was a “love” affair that he had with the businesswoman. What motivated the businesswoman to commence these proceedings particularly since this action concerns events that took place some years ago in 2005/2006? On the businesswoman’s own evidence, the impetus for commencing this action has its roots in a conversation that she had with the fortune-teller’s former husband in 2009. According to the businesswoman, it was this conversation that broke her from the “black magic” spell. [\[note: 2\]](#) The fortune-teller’s former husband claimed to have told the businesswoman that he suspected his wife of having an affair with the contractor. Although his evidence was contested, this revelation might well explain her motivation in bringing this action. Though a litigant’s motivation for instituting an action may not be strictly relevant, I thought it would be useful to place some context on why this action was brought so many years after the fact.

2 The action involves two distinct sets of claims. The first set, which I shall refer to as the "Trust and Blackmail Claims", arises from various payments made by the first plaintiff, Ms Tee Yok Kiat (who is also known as Sarah) ("Sarah"), to the first defendant, Mr Pang Min Seng (who is also known as Andy) ("Andy"). In essence, Sarah alleges that Andy was to hold some money ("the Trust Money") on trust for the purpose of investing in land and property in China. Alternatively, Sarah alleges that Andy held the Trust Money on a resulting trust. Sarah claims that Andy breached the trust by failing to use the Trust Money for investment. Andy admits that he received the Trust Money. He claims, however, that Sarah had given him the Trust Money as a gift because they were having an intimate relationship. Sarah is also claiming another sum of money ("the Blackmail Money") from Andy which she says was paid after Andy harassed and intimidated her. The claim for the Trust Money is also brought against the second defendant, Ms Poh Saipin (who is also known as Tik) ("Tik"), who according to the plaintiffs is a fortune-teller, for conspiracy by unlawful means, dishonest assistance, knowing receipt and unjust enrichment.

3 The second set of claims, which I shall refer to as the "Contract Claims", arises from an unrelated transaction between both plaintiffs and Tik. The plaintiffs allege that they were induced into entering into an agreement with Tik to invest in her business to sell the "POLICE" brand of apparel as a result of Tik's false representations. They also claim that Tik breached various clauses of the agreement.

4 I should mention that Andy conducted the entire trial in person. The plaintiffs were also unrepresented for most of the trial having only been represented on the first day of the trial which was abruptly adjourned due to some health issues affecting Tik's lead counsel. At the close of the case, I suggested to the plaintiffs as well as Andy that they should consider engaging counsel to assist in the preparation of the closing submissions given the multiplicity of issues which have to be addressed in light of the substantial documents and transcripts of the trial.

Background

The parties

5 Sarah is a financial consultant and a real estate agent. [\[note: 3\]](#) The second plaintiff, Ms Tee Yok Lee (who is also known as Ivy) ("Ivy"), is Sarah's elder sister. [\[note: 4\]](#) She is a housewife and her role in this action is limited to the Contract Claims.

6 Andy was previously a partner in a business known as "Bumi Megah Timber Wood" ("Bumi Megah"), together with his sister, Ms Pang Mei Huei ("Ms Pang"). [\[note: 5\]](#) He resigned from Bumi Megah in 2005. [\[note: 6\]](#) Andy's role in this action is limited to the Trust and Blackmail Claims.

7 Tik, a Thai national, describes herself as a "businesswoman involved in selling religious statues and ornaments" through a sole proprietorship known as Pratunam Trading ("Pratunam"). [\[note: 7\]](#) She claims that she also "read[s] cards and tell[s] fortune" for her friends "out of goodwill and for free". [\[note: 8\]](#) However, occasionally, the persons for whom she reads cards give her "red packets" as "token[s] of appreciation". [\[note: 9\]](#) The action against Tik is for the Trust Money as well as the Contract Claims.

The claims

The Trust and Blackmail Claims

8 Sarah claims that the Trust Money comprises the following payments: [\[note: 10\]](#)

| Date of the payment | Amount |
|-------------------------------|-----------|
| On or around 4 May 2005 | \$83,700 |
| On or around 16 May 2005 | \$45,000 |
| On or around 1 June 2005 | \$210,000 |
| On or around 2 June 2005 | \$230,000 |
| On or around 2 September 2005 | \$40,000 |
| Total | \$608,700 |

9 Sarah's explanation of the circumstances and the purposes for which the Trust Money was paid is as follows:

(a) Sarah claims that Tik told her after reading her cards that her husband was probably having an affair with a female colleague. [\[note: 11\]](#) On Tik's advice, she decided to conceal her money so that her husband would not have a share in the event of a divorce. [\[note: 12\]](#) She further claims that Tik advised her to deposit her money with Andy [\[note: 13\]](#) and to ensure that there was no paper trail to trace them. [\[note: 14\]](#) According to Sarah, the Trust Money represented her "savings and earnings from conservative investments in property". [\[note: 15\]](#)

(b) Sarah paid the first tranche of the Trust Money (\$83,700) to Andy after he told her of an opportunity to purchase a shop near the Shenyang China Bus and Railway Terminal in China ("the Shenyang Shop"). [\[note: 16\]](#) Sarah also claims that she consulted Tik on the opportunity. [\[note: 17\]](#) Sarah alleges that \$80,000 from the first tranche was part of a 30% deposit for the Shenyang Shop (the remainder was to be financed by a loan [\[note: 18\]](#)). The balance was for administrative, currency exchange commission and legal fees. [\[note: 19\]](#)

(c) The second tranche of the Trust Money comprised a sum of \$40,000 as the balance of the 30% deposit for the Shenyang Shop and \$5,000 for Andy's travel expenses. [\[note: 20\]](#)

(d) The remaining tranches were for the balance of the payment due for the Shenyang Shop, renovation and business expenses for the Shenyang Shop and payment for a parcel of land near an airport ("the Airport Land"). [\[note: 21\]](#) Sarah claims that Andy had told her on 29 May 2005 that her application for a loan for the balance of 70% of the purchase price of the Shenyang Shop was unsuccessful and that she had to pay the remainder in cash if she wanted to avoid the forfeiture of the 30% deposit. Andy also told her that he required \$140,000 to renovate the Shenyang Shop and commence business, and that the Airport Land was available for purchase at \$120,000. [\[note: 22\]](#) He explained that the Airport Land could be used to rear livestock and poultry for the Shenyang Shop. [\[note: 23\]](#) Sarah also claims to have consulted Tik on the payments of these three tranches of the Trust Money. [\[note: 24\]](#)

10 I should mention that Sarah also deposed in her affidavit of evidence-in-chief ("AEIC") that she

had paid a further \$100,000 to Andy on trust on or around 1 June 2005. [\[note: 25\]](#) She explained that she did not claim for this amount because she lost the passbook evidencing her withdrawal of this sum. [\[note: 26\]](#) I will say no more about this payment since it was not pleaded.

11 In summary, *vis-à-vis* the Trust Money, Sarah has pursued the following causes of action against Andy and against both defendants collectively in her closing submissions:

- (a) In breach of an *express* trust over the Trust Money and/or his fiduciary duty, Andy did not apply the Trust Money towards the purchase of the Airport Land and the Shenyang Shop in China. [\[note: 27\]](#)
- (b) In breach of an *express* trust over the Trust Money, Andy used the Trust Money for the benefit of one Conway Corporation ("Conway"). [\[note: 28\]](#)
- (c) Andy holds the Trust Money on *resulting* trust for Sarah. [\[note: 29\]](#)
- (d) Both defendants conspired with predominant intention to injure Sarah by inducing her to pay Andy the Trust Money to buy the Airport Land and the Shenyang Shop in China. [\[note: 30\]](#)
- (e) Both defendants are constructive trustees of the Trust Money for the benefit of Sarah on two grounds: (i) due to their knowing participation in a fraudulent and dishonest design against Sarah; [\[note: 31\]](#) and (ii) by retaining the benefit of the Trust Money. [\[note: 32\]](#)
- (f) Andy has been unjustly enriched from his receipt of the Trust Money because he failed to apply the Trust Money towards the purchase of the Airport Land and the Shenyang Shop in China. [\[note: 33\]](#)
- (g) Both defendants were unjustly enriched because they used the Trust Money for the benefit of Conway. [\[note: 34\]](#)

12 Turning now to the Blackmail Money, Sarah claims that on or around October 2008, Andy asked her for \$100,000 to start a new business. [\[note: 35\]](#) Despite telling Andy that she did not have any money to give him [\[note: 36\]](#), Andy persisted in sending Sarah Short Message Service ("SMS") messages to harass her for money. [\[note: 37\]](#) Subsequently, Andy started to blackmail Sarah by threatening to tell her husband that she was having an affair with him and that she had given the Trust Money to him. [\[note: 38\]](#) Sarah also claims that Andy threatened to harass her children, her parents-in-law and her sister. [\[note: 39\]](#) Sarah claims that, as a result of Andy's blackmail and threats, she gave Andy the sum of \$50,000, *ie*, the Blackmail Money, on or around 23 January 2009. [\[note: 40\]](#) She also claims that she had consulted Tik before making this payment. Tik allegedly encouraged Sarah to help Andy start his business so that he could return the Trust Money to her. [\[note: 41\]](#)

13 Apropos the Blackmail Money, Sarah claims that Andy is liable in the tort of harassment and intimidation for his conduct which resulted in Sarah's payment of the Blackmail Money. [\[note: 42\]](#)

The Contract Claims

14 The Contract Claims arise out of an agreement entered between the plaintiffs and Tik on or

around 28 April 2006 for the plaintiffs to invest in Tik's business ("the Agreement"). [\[note: 43\]](#) The Agreement contemplated that the plaintiffs would pay a sum of \$79,000 to Tik as consideration for a 50% share of her business in relation to apparel under the trade and brand name "POLICE" (clause (a) of the Agreement [\[note: 44\]](#)). A further \$1,000 was to be paid as an "administrative charge". [\[note: 45\]](#) The Agreement structured the investment in the following manner:

(a) Tik and the plaintiffs were to incorporate a company under the name and style of "Sarah N Co Pte Ltd" or such other name as approved by the relevant authorities (clause (b) of the Agreement). The parties subsequently incorporated a company by the name of "Sarah Design Pte Ltd" ("Sarah Design") in compliance with this clause. [\[note: 46\]](#)

(b) Tik or her nominee was to hold 50% of the equity in Sarah Design and the plaintiffs were to hold the remaining equity (clause (c) of the Agreement).

The Agreement also imposed various other obligations on Tik. The material terms are as follows:

...

f. [Tik] shall transfer, assign and give to the company all her rights and benefits which she has acquired in relation to the trade and brand name "POLICE" with effect from 1st of June 2006.

...

h. [Tik] shall also transfer and assign absolutely to the company all the franchise agreements which are in existence on the 1st of June 2006. [Tik] upon the execution of this agreement shall not enter into any further franchise agreements and shall refer all franchisees to the company to enter into such agreements. [Tik] shall ensure that the existing Franchisees [*sic*] enter into a fresh agreement with the company.

...

j. [Tik] shall transfer all the assets of the business relating to the "POLICE" brand by the 1st of June 2006, save all monies due and payable, as well as debts due to [Tik] which have accrued prior to the 1st of June 2006. [Tik] shall be solely responsible for all liabilities of the business relating to the POLICE which have been accrued and is payable prior to the 1st of June 2006.

k. [Tik] hereby covenants to take all steps to ensure that the manufacturer continues to [*sic*] supply of the apparel and ensure that the sole and exclusive distribution agreement will be renewed upon the expiry. [Tik] shall extend her sole and exclusive distribution with the manufacturer upon the expiry of the same or if so permitted by the manufacturer shall allow the company to enter into the agreement.

...

15 The plaintiffs claim that Tik breached the following obligations under the Agreement:

(a) In breach of clause (f) of the Agreement, Tik did not transfer, assign and give to Sarah Design all her rights and benefits which she had acquired in relation to the trade and brand name

"POLICE". [\[note: 47\]](#)

(b) In breach of clause (h) of the Agreement, Tik did not ensure that existing franchisees entered into fresh agreements with Sarah Design. [\[note: 48\]](#)

(c) In breach of clause (j) of the Agreement, Tik did not transfer all the assets of the business relating to the "POLICE" brand as well as debts due to her which accrued before 1 June 2006, by 1 June 2006, or at all. [\[note: 49\]](#)

(d) In breach of clause (k) of the Agreement, Tik did not take steps to ensure that the manufacturer of the "POLICE" brand of apparel continued to supply the apparel. [\[note: 50\]](#)

(e) Tik breached an implied term of the Agreement that the apparel supplied by her would be fit for the Singapore market by acquiring "POLICE" brand t-shirts which were of a single size and which did not fit average-sized adults. [\[note: 51\]](#)

16 In addition, the plaintiffs claim that Tik made the following fraudulent representations to induce the plaintiffs to enter into the Agreement: [\[note: 52\]](#)

(a) That the existing four outlets selling the "POLICE" brand of apparel were doing well and would not close down in the foreseeable future.

(b) That Tik would purchase the plaintiffs' share in Sarah Design at a minimum sum of \$80,000 if the plaintiffs did not wish to continue the business of selling the "POLICE" brand of apparel.

17 I should mention that the plaintiffs had sought leave after the conclusion of the trial to expressly plead that obtaining the right to transfer the "POLICE" franchise rights was a condition precedent of the Agreement. [\[note: 53\]](#) The plaintiffs subsequently withdrew their application. [\[note: 54\]](#)

The defence

The Trust and Blackmail Claims

18 Andy's defence to the Trust and Blackmail Claims may be stated concisely. He alleges that Sarah paid him the Trust Money and the Blackmail Money as a *gift* because they were in an intimate relationship. [\[note: 55\]](#) He submits that his "entire defence will stand or fall" on the court's findings as regards the alleged intimate relationship with Sarah. [\[note: 56\]](#)

19 Tik's defence is that Sarah did not tell her about the Trust Money. [\[note: 57\]](#) She also did not encourage Sarah to pay those monies to Andy. [\[note: 58\]](#) She claims that she did not receive any part of the monies. [\[note: 59\]](#) She further denies Sarah's claim in conspiracy [\[note: 60\]](#) and her claims arising from Tik's alleged involvement in Conway. [\[note: 61\]](#) In relation to the Blackmail Money, Tik denies knowledge of the alleged blackmail and threats. [\[note: 62\]](#) She denies that Sarah had consulted her about Andy's alleged blackmail and threats. [\[note: 63\]](#)

The Contract Claims

20 Tik's defence to the claim that she breached various clauses of the Agreement is as follows:

- (a) She did not breach clause (f) of the Agreement because the onus was on Sarah Design to arrange for the necessary assignments and transfers. [\[note: 64\]](#)
- (b) She did not breach clause (h) of the Agreement because the onus was on Sarah Design to prepare fresh agreements to be executed with the franchisees. [\[note: 65\]](#)
- (c) She did not breach clause (j) of the Agreement because Sarah Design had taken over the "POLICE" brand apparel and was trading with them. She asserts that Sarah Design was supposed to appoint an auditor to audit Tik's business but this was not done. She further claims that she was saddled with the debts of her business which were to be taken over by Sarah Design. She was ready, willing and able to transfer the assets of the business but Sarah Design did not take any steps to do so. [\[note: 66\]](#)
- (d) She did not breach clause (k) of the Agreement because the manufacturer was continuing its supply. Sarah Design did not place any orders with the manufacturer. Tik claims that she had informed the manufacturer of the "change in entity" and the manufacturer was agreeable to continue the supply. [\[note: 67\]](#)
- (e) She did not breach an implied term that the apparel supplied would be fit for the Singapore market because the apparel came in various sizes. Tik denies that she refused the plaintiffs' request for various sizes and asserts that such requests were not even made in the first place. [\[note: 68\]](#)

21 As for the claims in misrepresentation, Tik denies having represented that the existing four outlets were doing well and would not close down. She claims that she told the plaintiffs that the franchisees might terminate their agreements. Tik also claims that she would not have allowed a takeover of her business if the franchisees were doing well. She claims that the plaintiffs were aware of the situation and were confident of turning around the business. [\[note: 69\]](#) Tik further denies that she represented that she would purchase the plaintiffs' equity if they did not wish to continue with the business. Tik points out that if such a representation was made, the plaintiffs would have requested for the sum of \$80,000 much earlier because they had stopped the "POLICE" business in 2007. No requests were made until the commencement of this action. [\[note: 70\]](#)

22 In addition, Tik denies that the plaintiffs entered into the Agreement by relying on the representations. She asserts that the plaintiffs conducted their own due diligence. [\[note: 71\]](#) She also denies that the representations are untrue [\[note: 72\]](#) or that they were fraudulently made [\[note: 73\]](#).

23 Tik also asserts that Sarah Design did not fulfil its obligations and take steps to fulfil the conditions of the Agreement. If there were any grievances, Sarah Design should have commenced action to enforce its rights. [\[note: 74\]](#) Since Sarah Design has since been struck off from the Registry of Companies, Tik argues that the plaintiffs are trying to recover their losses from Tik even though the losses resulted from Sarah Design's failure in the business. [\[note: 75\]](#)

The issues

24 In relation to the Trust and Blackmail Claims, a threshold factual issue is whether Sarah paid

Andy the Trust Money and the Blackmail Money as gifts. If the Trust Money and Blackmail Money were paid to Andy as gifts, then all the Trust and Blackmail Claims would fail.

25 If the Trust Money and the Blackmail Money were not paid as gifts, the following issues would arise for consideration:

(a) Can a trust over monies for the purpose of property investment arise if the property sought to be purchased has not been identified by the beneficiary (*ie*, Sarah) with any degree of certainty?

(b) If the Trust Money was held on an express trust, the following subsidiary issues would arise:

(i) Did Andy breach the trust?

(ii) Is Andy liable for the Trust Money in unjust enrichment?

(iii) Is Tik liable for knowing receipt and/or dishonest assistance in respect of Andy's breach of trust?

(iv) Are the defendants liable in conspiracy?

(v) Are the defendants liable as constructive trustees?

(c) If the Trust Money was *not* held on an express trust, it would be necessary to consider whether there is nevertheless a presumption that the Trust Money was held on a resulting trust by Andy for the benefit of Sarah.

(d) If it is shown that the Trust Money was used for the benefit of Conway Corporation, does it mean that Tik has been unjustly enriched from the receipt of the Trust Money?

(e) Was the Blackmail Money paid to Andy as a result of his threats and/or harassment? If so, is Andy liable to Sarah in the tort of harassment, intimidation and/or for unjust enrichment?

26 The issues arising in connection with the Agreement are as follows:

(a) Did Tik breach clauses (f), (h), (j) and (k) of the Agreement?

(b) Was it an implied term of the Agreement that the "POLICE" brand of apparel supplied by Tik were to be fit for the Singapore market? If so, was Tik in breach of this implied term?

(c) If so, were these breaches repudiatory and were they accepted by the plaintiffs by agreeing to strike off Sarah Design from the Registry of Companies in 2008?

(d) If so, are the plaintiffs entitled to the return of \$80,000 or alternatively damages for breach of contract?

(e) Did Tik fraudulently represent to the plaintiffs that: (i) the existing four outlets selling the "POLICE" brand of apparel were doing well and would not close down in the near future; and/or (ii) Tik would purchase the plaintiffs' share in Sarah Design if the plaintiffs did not wish to continue the "POLICE" business at any time?

The Trust and Blackmail Claims

The Trust Money

A comment on the alternative claims of an express trust and a resulting trust

27 As noted above, Sarah has relied on *both* an express trust and a resulting trust (see [\[11\]](#) above). It is well established that a resulting trust can arise in two situations. In the first situation, a resulting trust will arise if a person voluntarily pays money to or purchases property for another person. The recipient will be presumed to hold the money or property on a resulting trust for the payer or purchaser. The second situation arises upon the failure of an express trust to fully exhaust the beneficial interest in the property. It would be useful to refer to Lord Browne-Wilkinson's exposition of the two types of resulting trusts in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 ("Westdeutsche") at 708 (cited by the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("Lau Siew Kim") at [34]):

Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a *presumption*, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer: see *Underhill and Hayton, Law of Trusts and Trustees*, pp. 317 et seq.; *Vandervell v. Inland Revenue Commissioners* [1967] 2 A.C. 291, 312 et seq.; *In re Vandervell's Trusts (No. 2)* [1974] Ch. 269, 288 et seq. (B) Where A transfers property to B *on express trusts*, but the trusts declared do not exhaust the whole beneficial interest: *ibid.* and *Quistclose Investments Ltd. v. Rolls Razor Ltd (In Liquidation)* [1970] A.C. 567. Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention. Megarry J. in *In re Vandervell's Trusts (No. 2)* suggests that a resulting trust of type (B) does not depend on intention but operates automatically. I am not convinced that this is right. If the settlor has expressly, or by necessary implication, abandoned any beneficial interest in the trust property, there is in my view no resulting trust: the undisposed-of equitable interest vests in the Crown as *bona vacantia*: see *In re West Sussex Constabulary's Widows, Children and Benevolent (1930) Fund Trusts* [1971] Ch. 1.

[emphasis in original]

28 The plaintiffs' statement of claim does not clearly explain which type of resulting trust is alleged to have arisen in the present case. These are the relevant paragraphs of the plaintiffs' pleadings: [\[note: 76\]](#)

Trust Money held on Resulting Trust

24. Further and in the alternative, in failing to apply the Trust Money towards the purchase of land and property in China on behalf of and for the benefit of [Sarah], [Andy] holds the Trust Money on resulting trust for [Sarah].

PARTICULARS

- (a) [Sarah] repeats paragraphs 5 to 11 above.
- (b) The Trust Money was given by [Sarah] to [Andy] for the purposes of purchasing land and property in China.
- (c) [Andy] did not buy land and property in China, or at all.
- (d) [Sarah] did not intend benefit [*sic*] [Andy].
- (e) [Andy] did not return the Trust Money to [Sarah].

[emphasis in original]

Sarah is alleging that the resulting trust arose out of Andy's failure to apply the Trust Money towards the purchase of land and property in China. It appears, therefore, that Sarah was seeking to rely on the second category of resulting trusts according to the categorisation in *Westdeutsche*. In particular, it appears that Sarah is relying on a "*Quistclose* trust" (*ie*, the trust which was found to have arisen in *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567). On one view, at least, a *Quistclose* trust may be rationalised as a resulting trust arising from a failure to exhaust the transferor's beneficial interest because, in a *Quistclose* trust situation, money is paid to the transferee for a specific purpose (see *Twinsectra Ltd v Yardley and others* [2002] 2 AC 164 at [100] (*per* Lord Millett, dissenting on other grounds)):

100 As Sherlock Holmes reminded Dr Watson, when you have eliminated the impossible, whatever remains, however improbable, must be the truth. I would reject all the alternative analyses, which I find unconvincing for the reasons I have endeavoured to explain, and hold the *Quistclose* trust to be an *entirely orthodox example of the kind of default trust known as a resulting trust. The lender pays the money to the borrower by way of loan, but he does not part with the entire beneficial interest in the money, and in so far as he does not it is held on a resulting trust for the lender from the outset.* Contrary to the opinion of the Court of Appeal, it is the borrower who has a very limited use of the money, being obliged to apply it for the stated purpose or return it. He has no beneficial interest in the money, which remains throughout in the lender subject only to the borrower's power or duty to apply the money in accordance with the lender's instructions. *When the purpose fails, the money is returnable to the lender, not under some new trust in his favour which only comes into being on the failure of the purpose, but because the resulting trust in his favour is no longer subject to any power on the part of the borrower to make use of the money.* Whether the borrower is obliged to apply the money for the stated purpose or merely at liberty to do so, and whether the lender can countermand the borrower's mandate while it is still capable of being carried out, must depend on the circumstances of the particular case. [emphasis added]

It should be noted that a *Quistclose* trust does not only arise in a situation where money was paid as a *loan* for a specific purpose (see the decision of the High Court in *Singapore Tourism Board v Children's Media Ltd and others* [2008] 3 SLR(R) 981 at [157]).

29 However, in Sarah's opening statement, reference was made to case law on the first category of resulting trusts, *viz*, the resulting trust that is presumed to arise due to, *inter alia*, a voluntary payment. [\[note: 77\]](#) The plaintiffs' closing submissions also refer to the first category. [\[note: 78\]](#) I am willing to accept that the first category of resulting trusts need not be specifically pleaded because it

is a rebuttable presumption of law that arises due to certain circumstances (see *Lau Siew Kim* at [46]). The underlying circumstances giving rise to the presumption of resulting trust must of course be pleaded because they are material facts. Having said that, I entertained some doubt as to whether it is open to parties to rely on an express trust as a primary case and a presumption of a resulting trust in the alternative. The basis of the presumption of a resulting trust is the “common-sense presumption that, outside of certain relationships, an owner of property never intends to make a gift...” (see *Lau Siew Kim* at [36]). In contrast, an express trust is premised on an *actual* intention to convey property on trust (see *Snell’s Equity* (John McGhee QC gen ed) (Sweet & Maxwell, 32nd Ed, 2010) at paras 21-019 to 21-020):

(a) *Express trust*. An express trust is created by the ***actual intention*** of the person in whom the property is vested, as where A declares himself a trustee of Whiteacre for B, or conveys it to C on trust for B. The intention may be apparent from the express use of the words “trust” in the relevant instrument or gathered by inference from A’s words or conduct.

(b) *Resulting trust*. A resulting trust arises by operation of law, though in response to a ***legal presumption about the intentions of the person who transfers the property*** which becomes subject to the trust. If A transfers property to B when it is unclear whether A intends B to have the beneficial interest in it, then B may hold the property on resulting trust for A. The trust arises by operation of law to give effect to a presumption that A did not intend B to take the property beneficially.

...

[emphasis in original in italics; emphasis added in bold italics; footnotes omitted]

The two types of trusts are therefore seemingly inconsistent: one is based on an *express* intention and the other is based on a *presumed* intention.

30 I called for further submissions on this issue. [\[note: 79\]](#) All the parties referred me to the decision of the High Court in *Lin Chao-Feng v Chuang Hsin-Yi* [2010] 4 SLR 427 (“*Lin Chao-Feng*”) and submitted that it is indeed possible for a resulting trust to arise even if an express trust is being mounted as the primary claim. [\[note: 80\]](#) In *Lin Chao-Feng*, the plaintiff claimed that shares held in the name of the defendant were held on an *express* trust for him. Although this was not specifically pleaded in his statement of claim, the plaintiff also sought to argue that the shares were held on a resulting trust. The High Court held that the plaintiff was entitled to put forward an alternative case of a resulting trust (see *Lin Chao-Feng* at [15]):

15 Having considered paras 4 and 5 of the statement of claim, *I have come to the conclusion that the plaintiff is entitled to put forward an express trust and, in the alternative, a resulting trust*. It is a basic principle of pleading that facts not law have to be pleaded and once the material facts have been averred, the legal consequences of the same can be developed in submissions. This means that in order for the plaintiff to argue that there was a resulting trust he must plead the necessary factual ingredients on which a legal submission of resulting trust can be made.

[emphasis added]

It does not appear from the report of the decision that it was argued that the alternative case of a resulting trust could not be maintained because it was logically inconsistent with the primary case of an express trust. The holding at [15] of *Lin Chao-Feng* was simply in the context of an argument that

the alternative case of a resulting trust was not expressly pleaded.

31 There is also an English case in which an express trust was put forth as the primary case theory, with an alternative case theory premised on resulting trust analysis. In *Close Invoice Finance Ltd v Abaowa* [2010] EWHC 1920 ("*Close Invoice Finance*"), an intervener sought a declaration that she was the true beneficial owner of property held in her daughter's name. She had two bases for her declaratory claim. She primarily asserted that her daughter held the property on an express trust for her due to a declaration of trust. Alternatively, she claimed that a resulting trust arose because of her provision of funds to pay for the deposit for the purchase of the property and her contributions to various expenses, including mortgage payments. The court found that the claim for an express trust failed on the evidence as well as non-compliance with s 53(1)(b) of the Law of Property Act 1925 (c 20) (UK) (see *Close Invoice Finance* at [87]). However, on the alternative claim, the court found that the intervener was the beneficiary of a resulting trust in the amount of the deposit that she paid for the property (see *Close Invoice Finance* at [116]). Again, no argument seems to have been made that a resulting trust could not be sustained as an alternative claim where the primary case is one of express trust. However, it would also appear that the alternative bases mounted in *Close Invoice Finance* did not involve taking inconsistent *factual* positions.

32 In my view, a resulting trust could not be mounted as an alternative case where the primary case of an express trust entails an inconsistent factual position. I find support for this view in a recent authority on the possibility of maintaining alternative and inconsistent causes of action. The Court of Appeal in *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 ("*Ng Chee Weng*") considered the extent to which parties may plead alternative and *inconsistent* claims in the context of an application for leave to amend a statement of claim. The case involved a dispute over dividends paid on shares held by the respondent. The appellant claimed that the respondent held those shares on trust for him. The procedural history of the appeal was somewhat complicated. For present purposes, however, it is sufficient to note that the appellant had initially only claimed for the dividends paid on those shares. He later sought to amend his statement of claim to mount a primary case that a sum of \$4.5m was due to him on the basis of a settlement agreement that the parties had concluded. He then sought to claim the dividends as an *alternative* cause of action if the court found that there was no settlement agreement (see *Ng Chee Weng* at [9]). The respondent argued that the amendment was not permissible because, *inter alia*, the two causes of action were inconsistent. The court noted that the Rules of Court (Cap 322, R 5, 2006 Rev Ed) do not expressly consider whether inconsistent alternatives may be pleaded (see *Ng Chee Weng* at [31]). After considering the position at common law, the court concluded that our law permits the pleading of alternative rights provided that the alternatives do not go against common sense or justice (see *Ng Chee Weng* at [35]–[36]). An illustration of a situation where inconsistent causes of action would offend common sense is "when the pleader has *actual knowledge* of which alternative is true" (see *Ng Chee Weng* at [37] [emphasis added]). A further prerequisite to pleading alternatives is that the facts for the alternative claims must not be mixed up and must be separately stated (see *Ng Chee Weng* at [39]). The following observation is particularly apt:

35 The above principles were endorsed and qualified by our High Court in *Chong Poh Siew v Chong Poh Heng* [1994] 3 SLR(R) 188 ("*Chong Poh Siew*"), where MPH Rubin J held (at [61] and [62]) that:

... Given the conflicting nature of the interests, I am of the opinion that this alternative plea is simply not available to the plaintiff. It is settled law that a plaintiff may rely on several different rights alternatively though they may be inconsistent (*per* Brett LJ in *Philipps v Philipps* (1878) 4 QBD 127 at 134). ...

Though the plaintiff is technically the legal owner of the disputed share by virtue of the deed of assignment, having regard to his underlying stance denying the existence of the trust on which the court has reached a finding unfavourable to him, *it will not, in my opinion, commune with common sense and justice* to order the release of the proceeds of the disputed share to him. ...

[emphasis added]

36 The suggestion in *Chong Poh Siew* that, while a party has the right to plead inconsistent rights in the alternative, the alternatives cannot offend common sense and justice represents the law in Singapore. Indeed, in *Brailsford v Tobie* (1888) 10 ALT 194 ("*Brailsford*"), it was held that an exception to the general rule is that alternative statements of fact are not permitted if one statement or the other must, to the knowledge of the pleader, be false.

37 This exception highlights the tension the law faces in deciding whether or not to permit parties to plead inconsistent causes of action in the alternative. While the pleader should be free to plead inconsistent causes of action in the alternative, the inconsistency cannot - particularly in relation to the facts pleaded - offend common sense. One obvious example of an inconsistency that will offend common sense is when the pleader has actual knowledge of which alternative is true, as was the case in *Brailsford*.

...

39 Applying the above principles to the facts of the present appeal, we are of the view that the approach taken in *Chong Poh Siew* is sound and that the Appellant is not precluded from pleading the inconsistent causes of action in the *alternative*, as long as the facts are not mixed up and are stated separately in order to demonstrate on what facts each alternative relief is based.

On the facts, the court found that it was permissible for the appellant to plead the alternative causes of action. The facts underlying each claim were separately pleaded (see *Ng Chee Weng* at [40]).

33 Applying the principles in *Ng Chee Weng* to the present case, I find that the alternative bases pleaded by Sarah as regards the Trust Money do not offend common sense because in either event, Sarah is essentially relying on the same factual matrix that the Trust Money was paid to Andy for the purpose of investing in the Shenyang Shop and the Airport Land insofar as the resulting trust that Sarah is pursuing is a *Quistclose* trust. As for the *presumption* of a resulting trust, although the factual basis for the presumption (*viz*, the payment of the Trust Money to Andy without any consideration in return) is different from the basis for the express trust claim, the factual bases are not inconsistent. In one sense it is correct that Sarah is relying on *actual* knowledge of the reason why she paid the Trust Money in support of her express trust claim which may appear to be inconsistent with the alternative presumption of a resulting trust claim which relies on a *presumed* intention that Andy was not to benefit from the Trust Money. However, these alternative claims do not entail inconsistent factual positions.

34 In any case, my view is not strictly essential to the resolution of the present case. The threshold factual issue as to the reason why Sarah paid Andy the Trust Money is relevant to and determinative of both the express trust and resulting trust claims. If the Trust Money was paid as a gift, it would follow that Sarah could not have paid the Trust Money on an express trust and, by the same token, any presumption of a resulting trust would have been rebutted. This issue would only be material if there was insufficient evidence for me to make a finding on a balance of probabilities as to

whether the Trust Money was paid as a gift. In that situation, the burden of proof would be crucial. However, as will be seen below, there is sufficient evidence for me to make a finding as to the purpose for which the Trust Money was paid.

35 I turn now to consider Sarah's primary case that the Trust Money was paid to Andy on express trust.

Was the Trust Money paid to Andy on express trust?

36 Andy accepts that he did receive the Trust Money from Sarah but claims that it was a gift to him on account of their intimate relationship. It is significant to bear in mind that the only competing case theory put forward by Sarah was that the Trust Money was paid to Andy on express trust for the purchase of the Shenyang Shop and the Airport land. There is no alternative factual case that the Trust Money was loaned to Andy. The starting point is to examine the evidence adduced by Sarah in support of the express trust. Typically one would expect some objective evidence to support such a claim but none was adduced by Sarah. This is all the more surprising given that Sarah is a financial consultant and a real estate agent.

37 First, Sarah has no documentary evidence whatsoever to support her claim that the Trust Money was paid for the purpose of purchasing properties in China. I note that Sarah has explained that the reason why she did not have any documentation to support the purchase of the properties was because Tik had advised her to avoid documentation so that: (a) her money would be safe with Andy; and (b) her husband would not be able to trace the money without documentation. [\[note: 81\]](#) I do not accept her explanation. It does not make sense for Sarah to allege that she did not want any documentation to trace her approximately \$600,000 investment for the Shenyang Shop and the Airport Land because of her concerns about her husband's fidelity and yet she was quite prepared to sign the Agreement in respect of the "POLICE" brand of apparel for a significantly smaller investment of \$80,000.

38 Second, even if I were to accept Sarah's explanations for the lack of documentation, there was no reason why she could not have *orally* obtained basic particulars of the properties such as, for example, the address of the properties and their land area. There was no reason for Sarah to have been content with a general description of the properties as "a shop near the Shenyang China Bus and Railway Terminal" and "a piece of land near the airport". [\[note: 82\]](#)

39 Third, the general and somewhat *vague* descriptions of the properties only emerged at a late stage in these proceedings:

(a) Sarah filed her original statement of claim on 10 July 2009. It originally pleaded that the Blackmail Money (*ie*, \$50,000) was part of the Trust Money used to purchase land in China. [\[note: 83\]](#) Furthermore, Sarah did not provide particulars of the land that was alleged to have been purchased for her in China. She simply claimed that the Trust Money and the Blackmail Money was given "to purchase land and property in China". [\[note: 84\]](#)

(b) On 26 October 2009, Sarah obtained leave of the court to amend the writ and the statement of claim. The amendment to the writ was to include the second plaintiff as a party to the action. [\[note: 85\]](#) The amendments to the statement of claim were to include the Contract Claims. [\[note: 86\]](#) Significantly, Sarah did not use this opportunity to include particulars on the property that was allegedly purchased with the Trust Money. The Blackmail Money continued to

be reflected as part of the Trust Money. [\[note: 87\]](#)

(c) Almost a year later, on 27 September 2010, the plaintiffs obtained leave of the court to amend the statement of claim for the second time. It was only on this occasion that the plaintiffs pleaded that the Trust Money was used to purchase the Shenyang Shop and the Airport Land (see [\[9\]](#) above). [\[note: 88\]](#) The plaintiffs also removed the Blackmail Money from the definition of the Trust Money [\[note: 89\]](#) and made separate claims in respect of the Blackmail Money. [\[note: 90\]](#)

40 If Sarah’s claim that the Trust Money was meant for the purchase of the Shenyang Shop and Airport Land was true, there was no reason for her not to have pleaded it at the outset. It took her more than a year from the filing of her original statement of claim to include those *vague* particulars which, if true, must have been known to her from the very beginning of the proceedings.

41 Accordingly, I find that Sarah has failed to prove her primary case based on express trust as there is simply no evidence to establish the alleged purpose of the payment. As the alternative *Quistclose* trust claim is premised on the same factual basis, *ie*, that the Trust Money was given for the purpose of investing in the Shenyang Shop and the Airport Land, it must follow that that resulting trust likewise fails. I turn now to consider the evidence relating to Andy’s case that the Trust Money was given to him as a gift. This inquiry is relevant as regards Sarah’s claim based on the *presumption* of a resulting trust.

Was the Trust Money a gift to Andy?

42 Having considered all the evidence, I find on a balance of probabilities that Sarah paid the Trust Money to Andy as a gift. I elaborate below.

(1) SMS messages that Sarah sent to Andy

43 Andy was able to reproduce some SMS messages sent by Sarah to him in late 2008 and early 2009 which suggested that he was in an intimate relationship with Sarah. The SMS messages are tabulated below with abbreviations and typographical errors intact: [\[note: 91\]](#)

| Date | Message |
|------------------|--|
| 14 October 2008 | Pls do not say I love u to me again. <i>Just find any man who will give me 700k w no strings attach n I will say I love u.</i> Do not make me angry. <i>When I asked u to mortgage the property to loan me the \$, u refused. So don't I love u again w me.</i> |
| 22 November 2008 | I also don't understand u. <i>Becos of u I owe bank \$500k. Must pay bank 7k each month. My 150k saving also go 2 u. My hubby 100k also. Every month I hv to earn 7k else bank will call me non stop n u can still say all those things. Who will help me now. Just becos I keep quiet, u think I m ok. I cry in my heart everyday. U just wait for \$ to fall fr sky. I wish I can do that.</i> |
| 24 November 2008 | <i>Sorry dear. Really do not hv spare \$. Insurance n housing down n m not sure if I can pay up the mortgage for next month. U really hv to find other people. I cannot borrow \$ fr my sisters as they all think I m rich. Nobody would guess I m so broke.</i> |
| 17 January 2009 | Can meet u at orchard road Liat tower burger king at 12 today. |

| | |
|-----------------|--|
| 19 January 2009 | Is it only a air ticket. Will check w my friend how much a air ticket cost n will pay for the air ticket. The rest is up to u. |
| | <i>I never said I love n I never love u n don't need yr love. Pls erase my number n I hv nothing to do w u. U don't hv to pay me the 700k. Just my bad luck. Good bye forever.</i> |
| | Sori. I can only pay for air ticket. M thinking 2 to 3k. since hv to pay 7k mortgage every month. If u can't accept, do what yr heart wants. God will know the truth I do not hv 100k of my own other than those in CPF. <i>U can hate me. No diff. Love me also harm me. May as well hate me.</i> |
| 20 January 2009 | Will not reply yr sms anymore. I cannot give u something I don't hv. My CPF has 100K. Penang is right. Cash I can help you 2 to 3k. <i>Sori if I owe in the previous life, will pay in my next life.</i> Will not blame u if u go penang. If he so true he will know we can't withdraw CPF \$. |
| 21 January 2009 | This morning went to waterloo guang yin temple. <i>Told goddess I do not hv \$ to give u if god willing, help me strike 4D n will give u all \$ I strike.</i> Bought me tel no 0848 \$100. I seldom buy 4D. Came out 0448 n 0948. Now u can go ask penang to help u find someone else to help u. I believe in waterloo guan yin. She knows best. Gd bye. |
| 22 January 2009 | U hv really become so low class. What u going to say when they ask u how u going to pay tee yok kiat. <i>U r going to say I owe u in previous life.</i> SO this life u don't work n go around asking n cheating people \$. Pls wake up n start working n stop being a useless person. |
| | I lost so much \$ n each day I work hard. I ask no one to pity me. Not even my family. They wonder why I so rich n yet work so hard. Yet u can be lazy for the last 3 years. Now can come blackmail me. This is blackmail in case yr English so poor. Pls think thr this whole night n ask yourself whether u doing the right thing. Tomorrow go waterloo quan yin n ask goddess if u doing the right thing. |
| | My my. U really worst than a paria dog. |
| 23 January 2009 | Andy. Can we meet at 11.30am today. R u staying at woodland.I meet u at civic plaza. Tq |
| | Ok. We meet at 10.30am? |
| | Meet first. Will u b able to be there at 10.30 or you prefer 11am. |
| | Will help u. Meet u at 11am? |
| | M on the way. 11.10am. |
| | <i>Will pass in 50K on 1 condition. U r out of my life completely forever...</i> No sms etc. Unless just to say u hv deposited \$ to my ac if u want to. |
| | Now will go bank n tell me where u r n will pass u the \$. |

[emphasis added]

44 From the above SMS messages (particularly those which have been italicised), it is clear that the relationship between Sarah and Andy was more than an owner/contractor relationship. The use of a term of endearment "*Sorry dear*" [emphasis added] is not consistent with Sarah's account of the nature of her relationship. The words "*[j]ust find any man who will give me 700k w no strings attach n I will say I love u*", "*I never said I love n I never love u n don't need yr love*", "*U can hate me. No diff. Love me also harm me. May as well hate me*" and "*Sori if I owe in the previous life, will pay in my next life*" [emphasis added] suggest that Sarah and Andy were having a disagreement over the latter's request for money which led to Sarah saying that she never loved Andy. From her response, it can be inferred that Andy was reminding Sarah of her previous expressions of love. In another SMS message of 23 January 2009, Sarah finally agreed to give Andy \$50,000 (which is the subject matter of the Blackmail Money claim) "*on 1 condition. U r out of my life completely forever*" [emphasis added]. This is in itself a clear acknowledgment that Andy was at one time in Sarah's life. The tone of the exchange does not strike me as consistent with a disagreement between a contractor and a client or even a disagreement between trusted friends but it is more consistent with Sarah and Andy having shared a prior relationship of some intimacy.

45 There were calls and SMS messages from both the first and second defendants intervening between these messages. [\[note: 92\]](#) Andy deleted the messages that he had sent Sarah. Sarah sought to recover the deleted SMS messages which Andy had sent Sarah. Andy claimed that he had deleted them because he felt "pain in [his] heart" when he looked at the messages. [\[note: 93\]](#) There were also some SMS messages from Sarah which were not disclosed. [\[note: 94\]](#) An attempt was made to recover the deleted SMS messages from Andy's mobile phone. On 7 July 2011, an expert retained by the plaintiffs was not able to retrieve the deleted SMS messages because the screen of Andy's mobile phone was defective. The expert was able to download the *existing* data on the mobile phone (without the deleted data) onto a "portable flash drive". [\[note: 95\]](#) Andy retained the portable flash drive and refused to allow Sarah to keep a copy of this data. Andy was then asked to repair the screen of his mobile phone. Sarah agreed to pay for the costs of the repair after Andy had requested her to do so. On 11 July 2011, Andy informed Sarah that he had lost his mobile phone and had made a police report. [\[note: 96\]](#) Sarah then requested for a copy of the police report as well as a copy of the portable flash drive. Andy did not respond but during the hearing, Andy informed the court that he had lost the portable flash drive. [\[note: 97\]](#) Sarah invited the court to draw an adverse inference that the deleted messages were sent by Andy "to blackmail her for more money" and that the "relationship between them was not one of lovers but rather one of blackmailer and victim". [\[note: 98\]](#)

46 Although it would be useful to examine the deleted SMS messages, the language adopted by Sarah in her SMS messages is, in my view, more consistent with the existence of a prior intimate relationship rather than that of a blackmailer and victim. Further, I do not see how the deleted messages would have changed the context or interpretation of the messages that I have referred to above (see [\[43\]](#)–[\[44\]](#) above). In any event, "the portable flash drive" did not contain the deleted messages (see [\[45\]](#) above).

47 In fact, one of the messages went further to suggest that the Trust Money was a gift:

Pls do not say I love u to me again. *Just find any man who will give me 700k w no strings attach n I will say I love u. Do not make me angry. When I asked u to mortgage the property to loan me the \$, u refused. So don't I love u again w me.* [emphasis added]

In this message, Sarah in effect was telling Andy that she had given him the sum of \$700,000 with "no strings attached" and was referring to a previous occasion when she had requested Andy to

mortgage some property. There was some dispute as to the identity of the property referred to in this message. According to Andy, Sarah was referring to some property that he had purchased in Russia. [\[note: 99\]](#) According to Sarah, the property she was referring to was the Shenyang Shop. [\[note: 100\]](#) What is significant is that *on Sarah's version*, she had asked for the Shenyang Shop to be mortgaged and for the proceeds of the mortgage to be *loaned* to her. If indeed the Trust Money was paid to Andy on trust, she would not have asked for the proceeds of the mortgage of the property purchased with that money to be *loaned* to her. She would have been fully entitled to simply demand that Andy pay her the entire sale proceeds. It would also be incongruous for Sarah to request Andy to mortgage property to loan money to her if their relationship was not intimate or at least close. Of course there is the all-important question as to why Sarah would hand over a substantial sum in excess of \$600,000 to Andy, a contractor who she had recently met, to invest in properties in China without any documentary evidence. According to Sarah, she was under the "black magic" spell of Tik. [\[note: 101\]](#) I find her explanation to be a contrived afterthought in a hopeless attempt to distract from the truth that she was engaged in an intimate relationship with Andy. There is also no suggestion by Sarah that Tik received any of the Trust Money. This becomes clearer when other objective evidence is examined below.

(2) The Bangkok Trip and the Malacca Trip

48 Andy claimed to have had sexual intercourse with Sarah during a trip to Bangkok, Thailand ("the Bangkok Trip") and Malacca, Malaysia ("the Malacca Trip") in March and April 2005, respectively. [\[note: 102\]](#)

49 In relation to the Bangkok Trip, Sarah referred to inconsistencies in the affidavits filed by Andy in interlocutory proceedings. In an affidavit dated 6 November 2009, Andy had deposed that he had stayed overnight with Sarah on 10 March 2005 during the Bangkok Trip. [\[note: 103\]](#) Sarah's husband then deposed in an affidavit that Sarah was with him on the two nights of the Bangkok Trip. [\[note: 104\]](#) This led Andy to state in a further affidavit dated 7 December 2009 that he recalled that Sarah did not stay with him overnight on 10 March 2005. [\[note: 105\]](#) Sarah also pointed out that Andy was unable to recall the name of the five-star hotel in which Andy alleged that they had checked into together and that Andy did not attempt to retrieve documentary evidence to support the fact that they had checked into such a hotel even though Andy had done so for another hotel. [\[note: 106\]](#) Sarah further referred to her husband's evidence on the times at which he saw Sarah during the Bangkok Trip which contradicted Andy's version (in an interlocutory affidavit) on the time when Sarah left him during the two nights of the Bangkok Trip. [\[note: 107\]](#) Sarah also denied Andy's allegation that she had paid for Andy's hotel room during the Bangkok Trip. [\[note: 108\]](#)

50 In my view, the undisputed evidence about what transpired during the Bangkok Trip also suggests that Sarah and Andy had a much closer relationship than what one would ordinarily expect of a contractor and his client. Sarah does not dispute having travelled to Bangkok with Andy. [\[note: 109\]](#) Although this was disputed by Andy [\[note: 110\]](#), she claims that Andy booked her air ticket to Bangkok on her behalf. [\[note: 111\]](#) It was not disputed that Sarah informed Andy that she was going to Bangkok to check on her husband, although I should add that Andy's purpose for going to Bangkok was disputed. [\[note: 112\]](#) There is also no dispute that Sarah used her American International Assurance corporate credit card to book Andy's hotel room at Arnoma Hotel in Bangkok. [\[note: 113\]](#) Why would Sarah have agreed to book the hotel room with her credit card for her contractor and run the risk that he might run up a huge bill? These undisputed facts in relation to the Bangkok Trip are

simply not consistent with a relationship of a contractor and a client. When viewed with the other objective evidence, in particular the evidence of the Malacca Trip and the above SMS messages, these undisputed facts appear more consistent with the parties having an intimate relationship.

51 I turn now to consider the differing accounts of the Malacca Trip. Sarah initially denied having made the Malacca Trip or having ever stayed at Hotel Grand Continental Melaka in Malacca ("Hotel Grand Continental") in an affidavit she deposed to in support of her application for summary judgment. [\[note: 114\]](#) She exhibited a copy of all the endorsements on her passport for the period between 11 February 2003 and 11 February 2008 and relied on an absence of any stamp on her passport to demonstrate that she did not make the Malacca Trip. [\[note: 115\]](#) This was, however, misleading because Sarah is a Malaysian national and therefore her passport would not show any stamps for her visits to Malaysia in any event. She later admitted that she made the Malacca Trip, albeit that she made the trip alone. [\[note: 116\]](#) She explained that she realised that she had made the Malacca Trip after she made checks following Andy's production of a hotel invoice with her name as the guest. [\[note: 117\]](#)

52 Andy's evidence on the Malacca Trip was that Sarah had driven to the Genting Highlands casino resort to collect some casino brochures so that she could tell her husband that she had lost the money at the casino if her husband were to ask about the money which she had decided to give to Andy. [\[note: 118\]](#) Andy was able to produce an invoice [\[note: 119\]](#) which, on its face, stated that two persons had checked into a hotel room at Hotel Grand Continental ("the Malacca Hotel Room Invoice"). He also produced a hotel receipt for dinner at Hotel Grand Continental ("the Dinner Invoice") during the trip. The Dinner Invoice [\[note: 120\]](#), again on its face, stated that two persons had dinner. These invoices were exhibited in an interlocutory affidavit that Andy had filed on 6 November 2009 in response to the plaintiffs' application for summary judgment. [\[note: 121\]](#)

53 Sarah testified that her husband would not have believed that she lost money through gambling because Sarah's father had lost his fortune to gambling, which caused Sarah to have an aversion to gambling. [\[note: 122\]](#) Sarah also referred to her evidence that she was physically incapable of driving to Genting Highlands and then to Malacca because the trip "would have been far too taxing for her". [\[note: 123\]](#) In this regard, Sarah referred to an inconsistency in Andy's account of the person who drove during the Malacca Trip. Andy's evidence in his AEIC was that the person who drove the car was Sarah. [\[note: 124\]](#) However, in his opening statement, Andy took the position that he took turns with Sarah to drive during the Malacca Trip. [\[note: 125\]](#)

54 I accept Andy's version of what transpired during the Malacca Trip. Andy's version was corroborated by objective evidence, viz, the Malacca Hotel Room Invoice and the Dinner Invoice. I am not satisfied with Sarah's explanation for the invoices. Despite having advance notice of these invoices since late 2009, in her AEIC, which was affirmed on 24 May 2011, Sarah did not provide any explanation for these invoices. It was only in her supplementary AEIC, which was affirmed on 8 July 2011, that Sarah deposed that she had obtained confirmation from one Ms Audrey Lim from Hotel Grand Continental that she had checked into the hotel room by herself. [\[note: 126\]](#) Sarah referred to a letter from Ms Audrey Lim [\[note: 127\]](#), which she claimed demonstrated that she was at the hotel alone. [\[note: 128\]](#) According to Sarah, this letter was admissible under s 32(b) of the Evidence Act (Cap 97, 1997 Rev Ed) notwithstanding that the manager was not called as a witness. [\[note: 129\]](#) Her solicitors attempted to ask Ms Audrey Lim to testify as a witness at this trial which was originally scheduled from 11 to 20 July 2011. [\[note: 130\]](#) Ms Audrey Lim responded that she was unable to do so

due to a "business trip assignment". [\[note: 131\]](#)

55 I am not satisfied that Ms Audrey Lim's attendance could not be procured without an unreasonable amount of delay or expense. As alluded to above (see [\[4\]](#)), after sitting for a day, the first tranche of the trial was vacated due to an unforeseen health problem involving Tik's lead counsel. Sarah did not produce any documentary evidence of her attempts to contact Ms Audrey Lim to attend the resumed trial of this matter. She merely told the court that she had called Ms Audrey Lim who had told her that she had left Hotel Grand Continental. [\[note: 132\]](#) In any case, even if the letter was admissible, it was of little use because it was inherently ambiguous. The letter, so far as material, states as follows:

...

This is to certify that [Sarah] have [*sic*] made a booking with us in Hotel Grand Continental Melaka on the 17/04/2005.

This guest have [*sic*] made a booking of 1 Superior Single room (*1 person check-in only*), inclusive of breakfast for 1 pax at the rate of RM 115.00nett.

...

[emphasis added]

It was not clear to me if the words "1 person check-in only" was a statement that only one person had actually checked-into the room or, alternatively, that Sarah had made a booking for a room in which only one person was entitled to check-in. This difference in potential meaning is material because, as mentioned at [\[52\]](#), Andy has also produced an invoice from Hotel Grand Continental, *viz*, the Malacca Hotel Room Invoice, which stated that two persons had checked-into the hotel room. Ms Audrey Lim's letter did not also attempt to explain why the Malacca Hotel Room Invoice stated that two persons had checked-into the hotel room. Since Ms Audrey Lim's letter did not unequivocally state that Sarah checked-into the hotel room by herself and did not explain the Malacca Hotel Room Invoice, I would not have placed much weight on her letter even if it was admissible.

56 Turning to the Dinner Invoice, Sarah did not provide any explanation for this invoice in her AEIC despite having had notice of the invoice since 6 November 2009 (see [\[52\]](#) above). It was only in her responses to questions during cross-examination by Tik's counsel that Sarah came up with an explanation that she had dinner with a Malay gentleman to discuss the development of some land in Pengerang, Malaysia for a driving range. [\[note: 133\]](#) I do not accept her belated explanation because no satisfactory reason was offered to explain her failure to depose to this alleged dinner with the Malay gentleman in her AEIC. Her only explanation for the delay was that, even at the time of her testimony in court, she was not sure who she was dining with: [\[note: 134\]](#)

COURT: But, Ms Tee, Mr Pang is relying on the invoice [*ie*, the Dinner Invoice] to prove that you were with him, having dinner at the hotel [*ie*, Hotel Grand Continental]. It is clear from that invoice that two persons attended the dinner. Why didn't you state earlier that the person you had dinner with was not Mr Pang but somebody else, *ie* a Malay gentleman or whatever, and you were discussing something else? Why did you wait for today to give that explanation?

A: Your Honour, I think even today for this particular one, I am not sure.

57 In fact, her response shows that she was not even sure if she had dinner with the Malay gentleman and hence was not in a position to contradict Andy's evidence that she had dinner with him. In my view, this explanation was concocted by Sarah when she was cornered with clear objective evidence that she was not alone for the Malacca Trip as she had claimed. The inference is that Sarah was with Andy for the Malacca Trip. How else would Andy have come into possession of the Malacca Hotel Room Invoice and the Dinner Invoice? According to Sarah, she claimed that Andy must have removed the Malacca Hotel Room Invoice and the Dinner Invoice from her car when she gave him a lift. [\[note: 135\]](#) This was yet another fallacious explanation by Sarah. This inference is further supported by her initial denial of the Malacca Trip altogether and her misleading reliance on the absence of entry stamps in her passport (see [\[51\]](#) above).

58 Finally there is undisputed evidence that on the morning of 16 April 2005, the first day of the Malacca Trip, Sarah sent Andy two SMS messages at 6.42am and at 7.36am respectively. The parties disputed the reason for the messages. According to Andy, the message at 6.42am was a wake-up call from Sarah [\[note: 136\]](#) while the message at 7.36am was to inform him that she was waiting to pick up Andy. [\[note: 137\]](#) Sarah, however, claims that the messages were to inform him that she was leaving for Malaysia and for him to keep an eye on her husband. [\[note: 138\]](#) Sending SMS messages at such an early hour even if for the purpose of asking Andy to check on her husband is entirely inconsistent with an owner/contractor relationship. On balance, I find that the SMS messages sent by Sarah on the morning of 16 April 2005 were for the purpose of arranging the pick up for the Malacca Trip. This further corroborates Andy's evidence that he was with Sarah for the Malacca Trip.

(3) Evidence suggesting that Sarah did not pay for some renovations

59 Andy testified that he started an intimate relationship with Sarah after she retained him to conduct works or renovations for her at an apartment at Balestier Road ("the Balestier Road Apartment") and at her apartment at Dairy Farm Estate. [\[note: 139\]](#) As evidence of their intimacy, Andy claimed that he did not charge Sarah for the works or renovations at the Balestier Road Apartment and for another apartment at the Castle Green Condominium which belonged to Sarah's client ("the Castle Green Apartment"). [\[note: 140\]](#) Andy was able to produce a torn cheque ("the Torn Cheque") issued by Sarah as evidence that he did not collect any payment for his work on the Balestier Road Apartment. [\[note: 141\]](#)

60 Sarah offered a different account for the Torn Cheque. She claimed that she paid Andy in cash for the renovations at the Balestier Apartment at his request because he wanted to pay his workers who were going back to Malaysia for the Chinese New Year holidays. [\[note: 142\]](#) She claimed that Andy tore the Torn Cheque in her presence after she handed him the cash payment. [\[note: 143\]](#)

61 As for the Castle Green Apartment, Sarah was able to produce an invoice apparently issued by Bumi Megah which she claimed was evidence that she had paid for the renovations. [\[note: 144\]](#) Andy's explanation for this invoice was that he had given Sarah blank Bumi Megah invoices for her to render invoices to her own client even though Sarah did not actually pay Andy for it. [\[note: 145\]](#) It cannot be gainsaid that Andy did provide the blank invoices to Sarah since Sarah admitted that the handwriting on the invoice was indeed hers. [\[note: 146\]](#) She claims that it was given to her in blank because Andy's written English was poor. [\[note: 147\]](#) However, it is clear from the evidence that Andy could write simple English as he had written out a cheque for Sarah. [\[note: 148\]](#) Such an arrangement is again not

consistent with an owner/contractor relationship. It has to be much more. In this regard, Andy also called his sister (*ie*, Ms Pang) as a witness who testified that it was Andy who paid for the renovations at the Castle Green Apartment because Ms Pang had to account for the renovations to her husband (apparently, her husband owned Bumi Megah, although Andy was also a partner in the business for some time). [\[note: 149\]](#)

62 Sarah further argued that Andy lied when he claimed in court that the invoice was forged, in support of which he produced *another* invoice with the words "supply main door castle" written on it to attempt to show that Sarah had doctored the invoice that she produced. [\[note: 150\]](#) It later turned out that Andy's version of the invoice was not the version that was exhibited in an interlocutory affidavit. [\[note: 151\]](#) Andy then admitted that the additional words on his version of the invoice were added *by himself* during a discussion with his previous solicitor in November 2009. [\[note: 152\]](#) Sarah submitted that Andy's explanation was incredible and suggested that he was either untruthful or had a bad memory. [\[note: 153\]](#)

63 In my view, the Torn Cheque was objective evidence in support of Andy's claim that he did not charge Sarah for the Balestier Road Apartment renovations. Sarah's explanation for the Torn Cheque was not credible. It does not make sense for Sarah to have taken the effort to arrange for cash for Andy's needs if he was just a contractor to her. As Andy had submitted, if Andy needed cash, he could have queued up at a bank to cash the cheque. [\[note: 154\]](#) Furthermore, as Andy also submitted, there was no documentary evidence to support the cash payment. No receipt for the payment was produced. I would also observe that if Andy was just a contractor to Sarah, she would have taken back the cheque for cancellation.

(4) The evidence of non-party witnesses

64 Sarah did not challenge the evidence of non-party witnesses, *viz*, Ms Pang and Mr Peter Poh ("Mr Poh"), Tik's former husband, on the nature of Sarah's relationship with Andy. Ms Pang had testified that she was aware that Sarah and her brother, Andy, were having an affair. [\[note: 155\]](#) This aspect of Ms Pang's evidence was never challenged. Similarly, in his answers to questions by Sarah during cross-examination, Mr Poh referred to Andy as Sarah's "boyfriend". [\[note: 156\]](#) Mr Poh went further to suggest that Sarah had "given" Andy \$800,000 [\[note: 157\]](#) and that he (*ie*, Mr Poh) felt that this was a "high price for the [*ie*, Andy's] love" [\[note: 158\]](#). Sarah did not also challenge this evidence.

65 As the plaintiffs have submitted in their reply submissions [\[note: 159\]](#), I accept that the rule in *Browne v Dunn* (1893) 6 R 67 is not a "rigid or technical rule" (see *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 [\[note: 160\]](#) ("*Hong Leong*") at [42]). A litigant is not required to put every aspect of his case to the witness. Only matters that are critical to his case have to be put (see *Hong Leong* at [42]). A litigant also need not put his case if the witness had clear notice that the issue is disputed (see *Kwee Seng Chio Peter v Biogenics Sdn Bhd* [2003] 2 SLR(R) 482 at [21]). Turning to the facts of this case, the nature of Sarah's relationship with Andy is a critical matter that is decisive of a major part of her case (*ie*, her claims for the Trust Money). Hence, Sarah's version of her relationship ought to have been put to Ms Pang and Mr Poh. On the other hand, it was clear from the plaintiffs' pleadings that Andy's allegation of an intimate relationship was disputed. I consider this to be sufficient notice to the defendants and their witnesses. In the circumstances, I do not attach much weight to Sarah's failure to challenge Ms Pang's and Mr Poh's evidence on the nature of the relationship.

66 However, even though I accept that the unchallenged evidence of Ms Pang and Mr Poh was not *per se* fatal to Sarah's case, it still leaves me to consider the weight of their evidence. Admittedly, Ms Pang was not entirely disinterested given her familial ties to Andy. However, Mr Poh was Tik's *former* husband. Ms Pang gave unchallenged evidence that Sarah went to visit her to persuade Andy to return to Singapore so that she could assist him financially. [\[note: 161\]](#) There is no suggestion and, in any case, there is no basis to suggest, that the non-party witnesses were in cahoots with either the first and/or second defendants. I accept their testimony which I find to be entirely consistent with the objective evidence that Sarah and Andy were indeed engaged in an intimate relationship.

(5) Andy's knowledge of Sarah's breast implant

67 In the course of cross-examining Sarah, Andy stated that he was the first person to mention in 2009 that Sarah had a breast implant. [\[note: 162\]](#) I asked him to refer me to documentary evidence to support his assertion that he was the first person to raise this fact. [\[note: 163\]](#) Andy subsequently referred me to an affidavit that he deposed to on 6 November 2009 in response to Sarah's application for summary judgment. In that affidavit, Andy deposed as follows at para 18: [\[note: 164\]](#)

When I was in China, [Sarah] intimated to me that she had had a breast implant and I did notice the enlargement upon meeting her when I returned from China.

Significantly, in her affidavit in reply to this affidavit, Sarah stated as follows: [\[note: 165\]](#)

At paragraphs 14 to 19 of [Andy's] Affidavit, [Andy] sets out various facts about me to show that he was having an affair with me. Knowing these facts about me did not show that I was having an affair with him. We were friends and talked on occasions. Indeed, it was our friendship which made me trust [Andy] enough to hand over the Trust Money to him for him to invest on my behalf. [emphasis added]

In this paragraph of her affidavit, which referred, *inter alia*, to para 18 of Andy's affidavit of 6 November 2009, Sarah was suggesting that *she did inform Andy* of the fact that she had a breast implant because he was her friend. In my view, such a disclosure of her breast implant is simply inconsistent with a relationship that one would ordinarily expect of a contractor and his client or even platonic friends who "talked on occasions".

68 For completeness, I should say that Sarah suggested a different explanation during cross-examination as regards Andy's knowledge of her breast implant. Sarah seemed to suggest during cross-examination that Andy knew of this fact through Tik: [\[note: 166\]](#)

Q: Then do you know why I came to know about it [*ie*, the breast implant]?

A: Your Honour, I don't know how he get [*sic*] to know it because Tik knew about it.

I can only say that this explanation was completely different from the explanation that Sarah offered in her affidavit in reply to Andy's affidavit of 6 November 2009 (see [\[67\]](#) above).

(6) Conclusion

69 In preferring Andy's evidence, I accept that there are some inconsistencies in his account of his relationship with Sarah: (a) the first time that he had sexual intercourse with Sarah; (b) the details of his contact with Sarah during the Bangkok Trip; and (c) the identity of the person who drove the car

during the Malacca Trip. I am, however, willing to accept that these inconsistencies were due to the imperfections of human memory and the passage of time. They do not, in any event, alter the body of objective evidence that the relationship between Andy and Sarah was anything but platonic.

70 In this regard, I note the cautionary observation by the Court of Appeal in *Ng Chee Chuan v Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased)* [2009] 2 SLR(R) 918 on the dangers of making findings of fact on the basis of the credibility of witnesses, particularly in relation to events which occurred some years ago (at [16]–[17]):

16 While it is no doubt necessary to ascertain the credibility of witnesses in most cases where the oral evidence of the parties conflict, *it is not always appropriate to rely primarily on credibility (determined on the basis of inconsistent testimony) as a basis for drawing factual inferences, especially where the events in question have taken place many years ago and there are undisputed objective facts. Imperfect memories and uncertain recollections should not necessarily be treated as impinging on the credibility of a witness. These are but afflictions which the passage of time will, in varying degrees, bring to bear on all individuals.*

17 *In this case, the question of the credibility of witnesses should have played a smaller role in the overall assessment as to where the truth lay given the presence of contemporaneous documents and undisputed facts.* The trial judge, in our view, should have drawn inferences from these pieces of objective evidence instead of reaching conclusions influenced heavily by what was believed to be the credibility of the parties. ... *In a case such as this, deciding which version of the events is more probable should be based on the objective facts.*

[emphasis added]

71 Given the passage of time, it would, in my view, have been actually somewhat unusual for Andy to have distinctly recalled fine details of what happened in his relationship in 2005. In the final analysis, I place more weight on the objective evidence, particularly the SMS messages and the Bangkok and Malacca Trips from which a reasonable inference could be drawn that Sarah and Andy were engaged in an intimate relationship.

72 For all the above reasons, I find on a balance of probabilities that the Trust Money was given to Andy as a gift because of his relationship with Sarah.

The relevance of Conway

73 In view of my conclusion that the Trust Money was a gift, it is not necessary for me to address the multitude of further issues that would have arisen had I held that the Trust Money was paid on trust. Nevertheless, I should make some observations on one aspect of Sarah's claim, viz, her allegations in relation to Conway, in the light of the emphasis that she has placed on the defendants' involvement in Conway.

74 In her pleadings, Sarah claimed that the defendants breached the trust over the Trust Money by using it for the benefit of Conway. [\[note: 167\]](#) She also claims that by misapplying the Trust Money for the benefit of Conway, Tik has either knowingly assisted in the breach of trust and/or knowingly received monies in breach of trust. [\[note: 168\]](#) Conway also features in Sarah's claims in resulting trust [\[note: 169\]](#), conspiracy [\[note: 170\]](#) and restitution [\[note: 171\]](#).

75 In the first place, Sarah has not even come close to establishing on the evidence how the

Trust Money, which was paid in 2005, had any relation to Conway, which was only incorporated on 23 February 2009. [\[note: 172\]](#) Furthermore, I do not see what value Conway adds to Sarah's claim for breach of trust and in her claim in resulting trust. If she was able to establish that the Trust Money was held on either an express trust or a resulting trust, Andy's failure to account for the Trust Money would have, without more, entitled her to the Trust Money.

The Blackmail Money

76 I also find on a balance of probabilities that the Blackmail Money was paid as a gift.

77 Sarah's evidence was that on or around 15 January 2009, Andy demanded to see Sarah's husband. [\[note: 173\]](#) According to her, he also threatened to tell Sarah's husband that she was having an affair with him and that she had given him the Trust Money. [\[note: 174\]](#) On Tik's advice [\[note: 175\]](#), Sarah met Andy on or around 17 January 2009 to discuss his demands. [\[note: 176\]](#) In response to Andy's request for money, Sarah said that she did not have money to give him. [\[note: 177\]](#) Sarah claimed that from around 19 January to 22 January 2009, Andy sent her SMS messages to harass her for money. [\[note: 178\]](#) He also told her that he was watching her and monitoring her movements. [\[note: 179\]](#) Tik apparently advised Sarah not to make a police report about Andy's blackmail. [\[note: 180\]](#) According to Sarah, Andy then threatened to harass her children, her parents-in-law and her sister. [\[note: 181\]](#) Apparently, he told her that he would see them on 25 January 2009, which was the eve of Chinese New Year. [\[note: 182\]](#) Sarah then consulted Tik about Andy's threats and received some advice from her. [\[note: 183\]](#) Sarah claimed that Andy's threats caused her to live in constant fear with perpetual worry for the safety of her children. [\[note: 184\]](#) On or around 23 January 2009, she paid Andy the Blackmail Money to stop him from threatening and harassing her and her family. [\[note: 185\]](#) Sarah also referred to some of the SMS messages reproduced above (see [\[43\]](#) above) to support her evidence that she was intimidated and harassed into paying the Blackmail Money. [\[note: 186\]](#)

78 The objective evidence does not support Sarah's claim that she was threatened and harassed into paying the Blackmail Money. The disclosed SMS messages around the time of the alleged threats and harassment are as follows (see [\[43\]](#) above for the full list of the disclosed SMS messages):

| Date | Message |
|-----------------|---|
| 17 January 2009 | Can meet u at orchard road Liat tower burger king at 12 today. |
| 19 January 2009 | Is it only a air ticket. Will check w my friend how much a air ticket cost n <i>will pay for the air ticket. The rest is up to u.</i> |
| | I never said I love n I never love u n don't need yr love. Pls erase my number n I hv nothing to do w u. U don't hv to pay me the 700k. Just my bad luck. Good bye forever. |
| | Sori. I can only pay for air ticket. M thinking 2 to 3k. since hv to pay 7k mortgage every month. If u can't accept, do what yr heart wants. God will know the truth I do not hv 100k of my own other than those in CPF. U can hate me. No diff. Love me also harm me. May as well hate me. |
| | |

| | |
|-----------------|---|
| 20 January 2009 | Will not reply yr sms anymore. I cannot give u something I don't hv. My CPF has 100K. Penang is right. Cash I can help you 2 to 3k. Sori if I owe in the previous life, will pay in my next life. Will not blame u if u go penang. If he so true he will know we can't withdraw CPF \$. |
| 21 January 2009 | This morning went to waterloo guang yin temple. Told goddess I do not hv \$ to give u if god willing, help me strike 4D n will give u all \$ I strike. Bought me tel no 0848 \$100. I seldom buy 4D. Came out 0448 n 0948. Now u can go ask penang to help u find someone else to help u. I believe in waterloo guan yin. She knows best. Gd bye. |
| 22 January 2009 | U hv really <i>become so low class</i> . What u going to say when they ask u how u going to pay tee yok kiat. U r going to say I owe u in previous life. SO this life u don't work n go around asking n cheating people \$. Pls wake up n start working n stop being a useless person. |
| | I lost so much \$ n each day I work hard. I ask no one to pity me. Not even my family. They wonder why I so rich n yet work so hard. Yet u can be <i>lazy</i> for the last 3 years. Now can come blackmail me. This is blackmail in case yr <i>English so poor</i> . Pls think thr this whole night n ask yourself whether u doing the right thing. Tomorrow go waterloo quan yin n ask goddess if u doing the right thing. |
| | My my. U really worst than a <i>paria dog</i> . |
| 23 January 2009 | Andy. Can we meet at 11.30am today. R u staying at woodland.I meet u at civic plaza. Tq |
| | Ok. We meet at 10.30am? |
| | Meet first. Will u b able to be there at 10.30 or you prefer 11am. |
| | <i>Will help u. Meet u at 11am?</i> |
| | M on the way. 11.10am. |
| | <i>Will pass in 50K on 1 condition. U r out of my life completely forever... No sms etc. Unless just to say u hv deposited \$ to my ac if u want to.</i> |
| | Now will go bank n tell me where u r n will pass u the \$. |

[emphasis added]

79 The SMS messages are indicative that Andy was using his past relationship to pester Sarah for financial assistance. The only SMS message that is suggestive that Sarah may have received some form of "threat" from Andy was the following SMS message sent by Sarah:

I lost so much \$ n each day I work hard. I ask no one to pity me. Not even my family. They wonder why I so rich n yet work so hard. Yet u can be lazy for the last 3 years. *Now can come blackmail me. This is blackmail in case yr English so poor*. Pls think thr this whole night n ask yourself whether u doing the right thing. Tomorrow go waterloo quan yin n ask goddess if u doing the right thing. [emphasis added]

Although Sarah appeared to be telling Andy that he was in fact "blackmailing" her, the tone of her

response in the above message (and in the messages before and after the above message) did not indicate to me that she was in any way threatened. She described him as "lazy", a "paria dog", "low class" and criticised his "poor" English [emphasis added]. She agreed to pay for the cost of an air ticket and nothing more. This is hardly language one would use in response to a "blackmailer". Sarah appeared to be annoyed with Andy's repeated requests for money. There is no factual basis for me to make a finding that Andy had threatened Sarah to extract money from her. Neither do I think that I should draw an adverse inference against Andy due to the circumstances under which he allegedly lost his mobile phone and the portable flash drive (see [\[45\]](#) above). In my view, it is possible to infer from the SMS messages that Sarah eventually agreed albeit reluctantly to assist Andy. This is borne out in her SMS message of 23 January 2009 when she agreed to give him the \$50,000 on condition that "*U r out of my life completely forever*" [emphasis added] as well her further SMS message on the day when Sarah paid Andy the Blackmail Money [\[note: 187\]](#) :

Will help u. Meet u at 11 am.

At best, the language of the SMS messages might be suggestive of some form of *emotional blackmail*.

80 There is also other evidence to suggest that the threat was not the reason for Sarah's payment of the Blackmail Money. Sarah filed a police report on 9 April 2009 ("the Police Report"). This was filed almost three months after the alleged extortion. The Police Report mentions that Sarah and her family were threatened: [\[note: 188\]](#)

On January 22 2009 I received a sms from [Andy] that he needs S\$100000/- from me. [Andy] had done contract jobs at my house in year 2005. During that time he had introduced me to a fortune teller namely [Tik]. [Tik] then informed me that my husband is having affair [*sic*]. After hearing that I lost trust in my husband.

During then I sold one shop belonging to both my husband and me and I gave the amount of \$600000 I got from the sale to [Andy] as I did not want my husband to know where I keep the money. [Andy] informed me that he will invest the money in China to buy a restaurant and land on behalf of me. However, later he informed me that he got cheated of the money and he will try to repay me back. But until now he has not repaid back.

Due to the previous incidents with him I refused to give the S\$100000/- but *he threatened me to watch out and he further tell me that he will come to my house and cause trouble in my family*. As I did not know what to do, I seek advise from [Tik] who told me to give S\$50000/- to [Andy] to pacify him first. Listening to that advise I gave him the money but [Andy] continued to ask me for the remaining S\$50000/-. I got suspicious of both [Andy] and [Tik] and decided to do my personal investigations and I managed to find out that both [Andy] and [Tik] are conspiring together to get money from me. As such I am lodging this report for police [*sic*] to look into the matter.

[emphasis added]

However, on 14 July 2010, Sarah filed another report with the Commercial Affairs Division ("CAD") which stated as follows ("the CAD Report"): [\[note: 189\]](#)

In furtherance to the police report that I lodged against the two defendants [*ie*, the Police Report], I have fresh evidence from my civil litigation with them vide Suit No. 589 of 2009/E. to suggest that the two defendants had all along planned and cheated me of my funds.

Through my own checking I found out that they had started a Cabaret Nightclub business in the name of Conway Corporation Pte Ltd located at 30 Maxwell Road, Singapore 069114, with a start-up capital of S\$50,000/-, which I believed [sic] is from my monies taken from me by [Andy] on 23 Jan 2009. *I gave him this money in cash as he claimed that he needs it to jump start his business so that he could pay me what he owed me amounting more than S\$600,000/-.* However, after three months of business the nightclub business was terminated. [Tik] claimed that the club was supported by financial contribution from well wishes from Terence Desmond Conway and Mark Chin who each contributed S\$100,000/-. In addition one Raymond Lim contributed S\$100,000/- for renovation. This Raymond Lim is the brother in law of [Andy].

I suspect that they do not have the intention to run the business long term as they knew for a fact that the liquor licence would not be approved. [Andy] only applied for the liquor licence [on] 16 Apr 2009, after they had operated for two weeks. This is evidence [sic] in their company's bank account statement which indicated credit card transaction incurred from 7 Apr 2009. In fact they continued to operate till 30 Apr 2009. I also noticed from the statement of account that there were many cash cheque withdrawals made from the account until finally there's no [sic] much cash and the business closed down in May 2009.

I hope the authority will investigate the matter.

[emphasis added]

Although the CAD Report referred to the Police Report which mentions that threats were made, it clearly states that the reason why Sarah paid the Blackmail Money was to help Andy in his business so that he would eventually be able to pay her back the Trust Money. The threats that she had earlier complained of were not mentioned as the reason for her payment of the Blackmail Money.

81 For completeness, I should mention that Sarah was cross-examined by Tik's counsel on the differences in the two reports. Sarah's explanation was that the CAD drafted the CAD Report for her and she agreed that it was correct because Tik had told her that if she gave Andy the Blackmail Money, it would help him to "jump start" his business and repay Sarah the Trust Money. [\[note: 190\]](#) Sarah told the CAD that the CAD Report did not mention that she was harassed and threatened. [\[note: 191\]](#) The CAD informed her that the beginning of the CAD Report already referred to the earlier Police Report. [\[note: 192\]](#) While it is true that the CAD Report referred to the Police Report, the CAD Report explicitly stated that the reason why the Blackmail Money was paid was that she wanted to help Andy in his business so that he could repay her the Trust Money.

82 I should also say that the fact that the statement of claim initially pleaded that the Blackmail Money was a part of the Trust Money undermined her case on the Blackmail Money. As noted above, it was only after *more than a year* after the action had commenced that Sarah finally removed the Blackmail Money from the definition of the Trust Money (see [39(c)] above). If the Blackmail Money had indeed been truly paid as a result of Andy's threats and harassment, it would have been obvious from the very outset that the Blackmail Money could not be claimed as part of the Trust Money.

83 For the reasons stated above, I find that Sarah gave the Blackmail Money as a gift to assist him financially.

Conclusion

84 The claims against Andy for the Trust Money fail.

85 In the light of my finding that the Trust Money was paid as a gift to Andy, the claims against Tik for the Trust Money must likewise fail. Sarah's claims against Tik for conspiracy, dishonest assistance, knowing receipt and in constructive trust are all premised on Sarah having paid the Trust Money to Andy on either express or resulting trust.

86 Similarly, the claims for the Blackmail Money fail in view of my finding that the money was also paid as a gift.

The Contract Claims

Did Tik breach clauses (f), (h), (j) and (k) of the Agreement?

87 I find that Tik breached clause (f) of the Agreement. Clause (f) imposed an obligation on Tik to transfer all her rights and benefits acquired in relation to the trade and brand name "POLICE" with effect from 1 June 2006. Tik admitted during her re-examination that she did not comply with her obligation under that clause to transfer her rights in relation to the brand name "POLICE". [\[note: 193\]](#) Her defence was that neither Mr Poh nor Sarah had asked her to execute any agreements to implement such a transfer. In her AEIC, Tik maintained that Sarah Design was to arrange for all the documentation in relation to the terms of the Agreement. [\[note: 194\]](#) She said that she was ready, willing and able to execute any necessary agreements. [\[note: 195\]](#) However, neither Mr Poh nor Sarah asked her to execute any documents. [\[note: 196\]](#) Tik's assertion that she was willing to execute the necessary agreements was not an excuse for her breach because on a plain reading of clause (f), the onus was on her to transfer her rights and benefits.

88 In relation to clause (h) of the Agreement Tik testified that *the Company* (ie, Sarah Design) was to enter into fresh franchise agreements but this was not done "for reasons best known to [Sarah Design] and its directors". [\[note: 197\]](#) When she asked Mr Poh about this, she was informed that Sarah Design and its directors were negotiating with the franchisees for extensions. [\[note: 198\]](#) During the hearing, there was some confusion as to whether Tik had any *existing* franchisees at the time when the Agreement was executed *in the first place*:

(a) In her answers to questions by Sarah during cross-examination, Tik explained that she had existing franchisees who were selling old stock. [\[note: 199\]](#)

(b) However, Tik's answer to a request by the plaintiffs for further and better particulars suggests that Tik did not have *any existing franchisees* at the time when the Agreement was entered into. In her defence, Tik averred that she had told Sarah that "her franchisees were not doing well and that there [was] a chance that the franchisees might give up the franchises". [\[note: 200\]](#) The plaintiffs served a request for further and better particulars in respect of this averment. They asked for, *inter alia*, the names of the franchisees referred to in the averment and the periods for which the franchisees were in operation. [\[note: 201\]](#) Tik responded that she had four franchisees, viz, BODYWEAR@E_ACE, SANEON BODYWEAR, K K GARMENTS TRADING and JSQUARE. [\[note: 202\]](#) In relation to the periods for which they were in operation, Tik responded as follows: [\[note: 203\]](#)

The franchisees were in operation from sometime in April 2005. K K GARMENTS TRADING ceased operations sometime in August 2005, SANEON BODYWEAR ceased operations sometime in October 2005 and JSQUARE ceased operations sometime in Jan 2006.

BODYWEAR@E_ACE is still in operation till the [sic] July 2005.

(c) In the course of re-examining Tik, Tik's counsel suggested that although the existing franchisees had ceased operations by the time the Agreement was executed, the *franchise agreements* were still in existence at that time. [note: 204] I then invited Tik to produce the franchise agreements. [note: 205] On the following day, Tik was only able to produce a standard blank franchise agreement. [note: 206] Tik explained that the actual franchise agreements were not in her possession and that she believed that her former husband, Mr Poh, had the agreements. [note: 207] However, on the next day, Tik's counsel informed me that Tik managed to locate the existing franchise agreements. [note: 208] The franchise agreements were then introduced through Mr Poh. [note: 209]

(d) However, the franchise agreements which were produced were all dated between 18 and 22 April 2005 and were valid for a period of one year. [note: 210] Hence, by the time the Agreement was executed on 28 April 2006, *all the franchise agreements had expired*.

89 I should mention that one of Tik's witnesses, Chew Hue Hin ("Chew"), stated in his AEIC that he took up a franchise from Tik. [note: 211] The franchise, which was operated through a partnership known as "Casablanca Trading Singapore LLP" ("Casablanca") [note: 212] was not mentioned in Tik's answers to the plaintiffs' request for further and better particulars (see [88(b)] above). Chew's AEIC also suggested that this franchise was still in operation in 2006 and that Casablanca's business only closed down at the *end of 2006*. [note: 213] However, in cross-examination, Chew clarified that he withdrew from his partnership in Casablanca sometime in 2005. [note: 214] Thereafter, his partner continued to operate the business. [note: 215] The franchise agreement in respect of Casablanca was not disclosed.

90 I find that clause (h) was not breached. The first sentence of the clause required Tik to transfer and assign all the franchise agreements which were "*in existence on the 1st of June 2006*" [emphasis added]. The last sentence of the clause required Tik to ensure that the existing franchisees entered into fresh agreements with Sarah Design. The first and last sentences of clause (h) are linked. Tik's obligation to ensure that the existing franchisees enter into fresh agreements is consequential on her obligation to transfer franchise agreements that are in existence on 1 June 2006. To the extent that there were no longer any franchise agreements in existence on that date, there would, *ipso facto*, be no *existing* franchisees for the purpose of the obligation imposed by the last sentence of clause (h) on Tik to ensure that those franchisees entered into fresh agreements with Sarah Design. It follows from this interpretation that clause (h) was not breached. Tik's franchisees had ceased operations by the time the Agreement was entered into (see [88(b)]). More importantly, the franchise agreements themselves had also expired by that time (see [88(d)] above). As for Casablanca's franchise, Chew's testimony during cross-examination was that he had left the partnership sometime in 2005. Therefore, he was not in a position to give evidence as to whether the franchise was still in operation at the time the Agreement was entered into. The actual franchise agreement was also not put into evidence. Hence, there is no evidence that Casablanca's franchise agreement was subsisting at the relevant time. I accept Tik's submission [note: 216] that if there were no *existing* franchisees as of the date of Agreement, it necessarily follows that Tik could not have been in breach of her obligation to *transfer* any existing franchise *agreements* as there was nothing to transfer. Consequently, Tik could not also have been in breach of her obligation to ensure that the existing franchisees entered into new agreements because there were simply no such existing

franchisees as on 1 June 2006.

91 I find that clause (j) of the Agreement was not breached. Apart from the plaintiffs' bare allegation, there is no evidence that Tik did not transfer any assets or the debts due to her. To the extent that the allegation is that the assets that were not transferred were Tik's rights under the franchise agreements, my finding that there were no existing franchise agreements applies here (see [\[90\]](#) above).

92 For a similar reason, I find that clause (k) of the Agreement was not breached. There is no evidence before me that Tik failed to take steps to ensure that the manufacturer continued to supply apparel. In fact, there is evidence that Tik had renewed her master franchise agreement. This was not a bare assertion. She produced a document which stated, on its face, that her master franchise agreement was extended to 31 December 2009. [\[note: 217\]](#) I agree with Tik's submission that there is no evidence that the plaintiffs had placed any order for new apparel. [\[note: 218\]](#)

Was it an implied term of the Agreement that the "POLICE" brand of apparel supplied by Tik was to be fit for the Singapore market?

93 The law on implied terms is well established. Terms may be implied into a particular contract because of the particular facts and circumstances (*ie*, terms implied in fact) or they may be implied in all contracts of a particular class as a matter of law (*ie*, terms implied in law). The Court of Appeal recently described the law on terms implied in fact in the following manner (*Chua Choon Cheng and others v Allgreen Properties Ltd and another appeal* [2009] 3 SLR(R) 724 at [63]):

63 It is settled law that "a court will *not lightly* imply a term into a contract" [emphasis original]: *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769 at [107]. The rule of thumb is that the more detailed or complex a contract is, the less likely it is that the court will imply a term into that contract. ***The touchstone for implying a term into a contract is always "necessity and not merely reasonableness"*** : *Hiap Hong & Co Pte Ltd v Hong Huat Development Co (Pte) Ltd* [2001] 1 SLR(R) 458 at [19]. The learned authors of *Chitty on Contracts*, vol 1 (Beale gen ed) (Sweet & Maxwell, 30th Ed, 2008) ("*Chitty on Contracts*") at para 13-004 note that both the officious bystander and business efficacy test "[depended] on the presumed *common intention* of the parties", which has to be objectively ascertained. In *Forefront Medical Technology (Pte) Ltd v Modern-Pak Pte Ltd* [2006] 1 SLR(R) 927 ("*Forefront*") at [36], Andrew Phang Boon Leong J (as he then was), after a detailed analysis of the historical origins of these tests, concluded that the two tests are but different facets of the same coin; "the 'officious bystander' test is the *practical mode by which* the 'business efficacy' test is implemented" [emphasis in original]. We agree.

[emphasis in original in italics; emphasis added in bold italics]

94 I should also mention that it is well established that a term cannot be implied into a contract if it is inconsistent with an express term of the contract (see the decision of Court of Appeal in *Ng Giap Hon v Westcomb Securities Pte Ltd and others* [2009] 3 SLR(R) 518 at [31]).

95 It is not necessary for me to describe the law on implied terms in law because the plaintiffs' case is that the relevant term should be implied in fact. [\[note: 219\]](#)

96 I should clarify the precise term that the plaintiffs seek to imply into the Agreement. The plaintiffs have pleaded that the implied term is that the "apparels supplied by the 2nd defendant were

fit for the Singapore market" [emphasis added]. [\[note: 220\]](#) This implied term presupposes that Tik was obliged to supply apparels.

97 I find that this implied term is inconsistent with the Agreement. The Agreement does not require Tik to supply the "POLICE" brand of apparel. Tik was *entitled* to do so under clause (i) of the Agreement. However, the Agreement did not impose an obligation on her to supply the apparel. As the preamble to the Agreement states, the purpose of the Agreement was for the plaintiffs to acquire a stake in Tik's "business in relation to the 'POLICE' [brand] of apparels". The manner in which the Agreement implemented this purpose was for the parties to set up a company (see clause (b) of the Agreement). Tik would then transfer *all* her rights and benefits in relation to the trade and brand name "POLICE" to this company (see clause (f) of the Agreement). Each of the parties to the Agreement would then hold a certain proportion of the equity in the company (see clauses (c) and (d) of the Agreement). Hence, what the Agreement contemplates is for a complete transfer of Tik's business to a new company. Although not expressly provided for in the Agreement, the new company would then have to obtain its supply of apparel directly from the manufacturer because the Agreement required Tik to transfer all her rights in relation to the trade and brand name "POLICE" to the new company. As stated earlier in this paragraph, there is a non-obligatory provision for Tik to purchase apparel for the benefit of Sarah Design. In addition, the Agreement also imposes a covenant on Tik to ensure that the manufacturer continues the supply of the apparel (see clause (k)). Given this structure, it would be inconsistent to imply a term that imposes an obligation on Tik to *supply* apparel and, further, that those apparel would be fit for the Singapore market.

98 Further, the plaintiffs' case on implied terms is premised on their allegation that Tik's stock only carried one size. The evidence on this score is to the contrary. During the trial, Tik produced samples of "POLICE" apparel in different sizes. [\[note: 221\]](#) Apart from a bare denial, the plaintiffs did not satisfactorily controvert this. Ivy claimed that when Peter Poh showed her Tik's stock of apparel, she was only shown samples of a single size. [\[note: 222\]](#) When Peter Poh was cross-examined on this, he claimed to have shown Ivy apparel of different sizes: [\[note: 223\]](#)

Q: Tee Yok Lee [ie, Ivy] claimed that you only showed her free size, female size, and you asked her why they are all so small. Do you recall you told her, "This is a free size T-shirt"?

A: No, not---all POLICE, before you take over, you must know the product. Everything we make very clear. The box of the POLICE, there is a female model, it's a female girl, size. We have the man, we have the man size and we have, er, er, another so-called a slightly bigger, a big size. We call it "big size". Even the big size in Australia, they are not---not---not, er, fixed to wear too. *We have three sizes*. I never told you only free size. We have three sizes. They indicate in the box.

Q: Mr Poh, do you recall that if you want to order bigger sized T-shirt, we need to place an order of 10,000 pieces?

A: We keep, yah---yah. We did told you. You said Australia, if you want to make a order size, can we make bigger? This size cannot. We call to the Thailand too. We consult the Thailand side, "Hey, Australia, the *ang moh* is too big sized. Your size, big size, cannot go through." Say we can, er, we can order, er, make-to-measure, do a bigger so-called XXL or what. They can do because they are the main production side. They have the factory, they can just---we only---bigger size, we pay more slightly. The price is---cost price is different already. We slightly pay more, you see.

Q: Did you tell Tee, Ms Tee Yok Lee [*ie*, Ivy], that we have to order 10,000 pieces if she wants another size because the machine has to make bigger sizes?

A: Yes, yes. I do---do that. This was given from them, you see. This is what the---the Thailand side feedback to me, I will have to feedback to you all.

[emphasis added]

I find that Tik actually had apparel of different sizes. This finding is supported by the above responses. The plaintiffs' complaint was that they wanted further *custom-made* apparel of a different, larger size for the *Australian* market. This complaint had no merit whatsoever because the Agreement was only concerned with Tik's "POLICE" business in Singapore.

Were the breaches of the Agreement repudiatory and were they accepted by the plaintiffs?

99 The Court of Appeal in *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*") considered the law on termination of contracts in considerable detail. There are two broad categories of situations in which a party may terminate a contract. The first category concerns contracts which expressly provide that an innocent party may terminate the contract if certain events occur (*RDC Concrete* at [91] (the Court of Appeal termed this category as "Situation 1")). This category is not applicable in the present case. The second category involves contracts which do *not* explicitly provide for the events that would entitle the innocent party to terminate the contract (*RDC Concrete* at [92]). In this category of contracts, a right to terminate the contract may arise in three situations (the Court of Appeal labelled these situations as "Situation 2", "Situation 3(a)" and "Situation 3(b)"). Situation 2 involves a party *renouncing* the contract (*RDC Concrete* at [93]). Situation 3(a) arises if the parties' intention was "to designate the term [that was breached] as one that is so important that any breach, regardless of the actual consequences of such a breach, would entitle the innocent party to terminate the contract" (*RDC Concrete* at [97] [emphasis in original omitted]). Such a term is usually called a "condition" (*RDC Concrete* at [97]). Finally, Situation 3(b) arises where the consequence of the breach is such that it deprives the innocent party of "substantially the whole benefit which it was intended that he should obtain from the contract" (*RDC Concrete* at [99] citing *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26 at 70).

100 When faced with a repudiatory breach, an innocent party has a choice. He can either treat the contract as subsisting (*ie*, he can "affirm" the contract) or he can "accept" the repudiation and bring the contract to an end (see *Chitty on Contracts* (Sweet & Maxwell, 30th Ed, 2008) vol 1 ("*Chitty on Contracts*") at para 24-002). As the editors of *Chitty on Contracts* explain, an express communication of the fact of acceptance of the repudiation is not the only mode of acceptance (see *Chitty on Contracts* at para 24-013):

Acceptance by repudiation. Where there is an anticipatory breach, or breach of an executory contract, and the innocent party wishes to treat himself as discharged, he must "accept the repudiation". An act of acceptance of a repudiation requires no particular form. It is usually done by communicating the decision to terminate to the party in default, although it may be sufficient to lead evidence of an:

"Unequivocal overt act which is inconsistent with the subsistence of the contract ... without any concurrent manifestation of intent directed to the other party."

... Acceptance of a repudiation must be clear and unequivocal and mere inactivity or

acquiescence will generally not be regarded as acceptance for this purpose. But there may be circumstances in which a continuing failure to perform will be sufficiently unequivocal to constitute acceptance of a repudiation. It all depends on "the particular contractual relationship and the particular circumstances of the case". ...

...

[emphasis in original; footnotes omitted]

101 A final point should be noted before I turn to the facts. An innocent party is entitled to rely on a ground for terminating the contract even if it did not rely on that ground at the time of termination (see the decision of the Court of Appeal in *Alliance Concrete Singapore Pte Ltd v Comfort Resources Pte Ltd* [2009] 4 SLR(R) 602 ("*Alliance Concrete*") at [63]). However, this entitlement does not apply if the party in breach could have remedied the situation if it had been given the opportunity to do so (see *Alliance Concrete* at [67]).

102 I have found that only clause (f) of the Agreement was breached. In my view, the nature of clause (f) was such that its breach fell within both Situation 3(a) and Situation 3(b) of *RDC Concrete*. Clause (f) was such a crucial term that the parties must have contemplated that any breach of it would entitle the innocent party to termination. As mentioned above, the very purpose of the Agreement was for the plaintiffs to participate in Tik's "POLICE" business. In order to allow such participation, the Agreement contemplated that Tik had to transfer that business to a new company. Given the importance of this term, I find that the breach of it entitled the plaintiffs to terminate the Agreement. I also find, in the alternative, that Tik's failure to comply with clause (f) was such as to deprive the plaintiffs of substantially the whole benefit of the Agreement. In other words, Situation 3(b) is applicable as well.

103 I accept that the decision to strike off Sarah Design was an unequivocal overt act that was inconsistent with the existence of the Agreement. Sarah produced an undated resolution by Sarah Design's board of directors (which included the plaintiffs) to strike off Sarah Design: [\[note: 224\]](#)

Resolved that company has not commenced business since date of incorporation, the directors have obtained written consent of all shareholders to strike the name of the company off the register.

Sarah Design was the entity through which the plaintiffs were to participate in the "POLICE" business. By striking off Sarah Design, the plaintiffs had objectively demonstrated that they did not wish to continue with the Agreement.

104 However, Tik's breach of clause (f) was not raised as the reason for terminating the Agreement at the time of the purported termination in striking off Sarah Design. According to Tik, she was told by the plaintiffs that the reason for their decision to strike off Sarah Design was that the plaintiffs had no time to continue the business. [\[note: 225\]](#) She claimed to have also been told that the second plaintiff was of the view that there was no money to buy "POLICE" brand apparel of a suitable size for the Australian market. [\[note: 226\]](#) According to Sarah, the reason for her decision to terminate the Agreement was that two months after entering into the Agreement, the second plaintiff formed the view that she could not cope with operating Sarah Design's business. [\[note: 227\]](#) Hence, the plaintiffs decided to ask Tik to find someone to buy them out. [\[note: 228\]](#) Apparently, Tik gave various excuses for not finding a buyer and so, after two years had passed, the plaintiffs decided to strike off Sarah Design. [\[note: 229\]](#) Ivy gave a different reason for the termination of the Agreement. According to her,

the reason for her decision to terminate the Agreement was that the stock that Tik was meant to transfer to Sarah Design was "not worth [\$]80,000". [\[note: 230\]](#) What is clear is that on *both* Tik's version and the plaintiffs' versions, Tik's breach of clause (f) was *not* the reason for terminating the Agreement.

105 The question that I then have to consider is whether the plaintiffs are entitled to rely on the breach of clause (f) even though that breach was not the reason for the purported termination. The answer turns on whether Tik could have fulfilled her obligation under clause (f) if she was given an opportunity to do so (see [\[101\]](#) above).

106 I find on a balance of probabilities that Tik could have fulfilled her obligation under clause (f) if she was asked to do so. Tik's evidence in her AEIC was that she had obtained the approval of the manufacturer of the "POLICE" brand of apparel for the assignment of her sole distribution rights to Sarah Design. [\[note: 231\]](#) She asserted that the manufacturer agreed to this request and asked for the necessary documents to be prepared and sent to it. [\[note: 232\]](#) She claimed that the relevant documents were never prepared by Sarah Design. [\[note: 233\]](#) As I noted above (see [\[87\]](#)), Tik's evidence was based on an erroneous understanding of the Agreement because the Agreement placed the onus on *her* to transfer her rights. However, her evidence, which she maintained in response to questions by the court [\[note: 234\]](#) and in her response to a question by her counsel during re-examination, [\[note: 235\]](#) shows that she was ready, willing and able to take the necessary steps to comply with her obligation under clause (f). I accept her evidence that she could have fulfilled her obligation if she was told by the plaintiffs that the Agreement was being terminated due to her failure to comply with that obligation.

107 Given my finding that Tik could have fulfilled her obligation under clause (f) of the Agreement if she was given the opportunity to do so, the plaintiffs cannot rely on the breach of clause (f) to justify their decision to terminate the Agreement. Hence, even though the breach of clause (f) was repudiatory in nature, the plaintiffs were not entitled to terminate the Agreement.

Are the plaintiffs entitled to damages for the breaches of contract?

108 In principle, the plaintiffs are entitled to damages to compensate them for losses *caused* by the breach of clause (f) of the Agreement.

109 I appreciate that the plaintiffs have pleaded for damages to be assessed. However, causation is an element that is relevant to the issue of liability (see the decision of the Court of Appeal in *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd and another* [2005] 1 SLR(R) 661 at [143]–[147]). Quite apart from the quantum of the loss suffered, I find that the plaintiffs have not sustained any losses that were *caused* by the breach of clause (f). As alluded to above, the plaintiffs wanted to back out of the Agreement at a relatively early stage (see [\[104\]](#) above). According to Sarah, two months after entering into the Agreement, Ivy formed the view that she could not cope with operating Sarah Design's business. [\[note: 236\]](#) Hence, the plaintiffs decided to ask Tik to find someone to buy them out. [\[note: 237\]](#) Ivy's evidence on the reason why she wanted to terminate the Agreement was that the stock that Sarah Design was meant to take over was not worth the amount of the plaintiffs' investment. [\[note: 238\]](#) The inference to be drawn from the plaintiffs' own evidence is that they were not concerned with Tik's breach of clause (f). They took an independent decision to exit the Agreement.

Did Tik make fraudulent representations to the plaintiffs?

110 The Court of Appeal in *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 (“*Wishing Star*”) described the law on fraudulent misrepresentations in the following terms:

16 The classic formulation of the tort of fraudulent misrepresentation or deceit is to be found in the judgment of Lord Herschell in the leading House of Lords decision of *Derry v Peek* (1889) 14 App Cas 337, where the learned law lord observed as follows (at 374):

First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement [from] being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.

17 The principles enunciated in *Derry v Peek* have, in fact, been adopted in the local context (see, for example, the Singapore High Court decisions of *Chop Ban Kheng v Chop Siang Huah and Latham & Co* (1925) 2 MC 69 at 71 (affirmed on appeal (*id* at 75-80), although the appeal did not involve the issue of fraud), *Baker v Asia Motor Co Ltd* [1962] MLJ 425 at 426, *Malayan Miners Co (M) Ltd v Lian Hock & Co* [1965-1967] SLR(R) 307 at [7] and [22], and *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co* [2007] 1 SLR(R) 196 at [38]; see also the decision of this court in *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 at [13]).

111 The elements of an action in fraudulent misrepresentation were concisely restated by the Court of Appeal in *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 (“*Panatron*”) at [14]:

14 The essentials of this tort have been set out by Lord Maugham in *Bradford Building Society v Borders* [1941] 2 All ER 205. Basically there are the following essential elements. First, there must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

112 To recapitulate, both plaintiffs gave evidence that Tik had made the following representations to induce them to enter into the Agreement and to pay her the sum of \$80,000: [\[note: 239\]](#)

(a) The existing four franchisees selling “POLICE” brand apparel were doing well and would not close down in the near future.

(b) Tik would purchase the plaintiffs’ 50% share of the equity of Sarah Design at a minimum sum of \$80,000 if they did not wish to continue the “POLICE” business at any time.

113 In relation to the first representation, as noted above, it emerged in the course of Tik’s cross-examination that there were actually no existing franchisees selling “POLICE” brand apparel (see [\[88\]](#)

above). However, Tik did not deny discussing the status of the "existing" franchisees. In her AEIC, Tik stated that she had told Sarah that her "POLICE" business was "not doing well" and that "chances [were] that the franchisees might be giving up". [\[note: 240\]](#)

114 I find that Tik made the first representation to the plaintiffs for the following reasons.

115 First, the presence of clause (h) in the Agreement shows that Tik must have informed the plaintiffs that the franchisees were doing well. If Tik's franchisees were not doing well and if chances were that the franchisees might "give up", there would have been little purpose in including clause (h) in the Agreement to impose an obligation on Tik to transfer the franchise agreements to Sarah Design at a *future date* (ie, 1 June 2006).

116 Second, it simply makes no commercial sense for the plaintiffs to have wanted to participate in Tik's "POLICE" business if the existing franchisees were doing badly as alleged by Tik. Unless there was something extraordinary about the "POLICE" business, it defies logic that the plaintiffs would willingly enter into a loss-making venture [\[note: 241\]](#). I am not satisfied with Tik's explanations as to why the plaintiffs would have wanted to invest in the "POLICE" business even though she had told them that the franchisees might be "giving up". Her initial explanation was that Sarah liked the "POLICE" brand. Further, Ivy had never worked and wanted to do business. The second part of this explanation is not convincing. Even if Ivy wanted to try her hand at business, it does not make sense that she would have wanted to start out in a loss-making venture. When questioned further, Tik resorted to saying that Sarah wanted to participate in the "POLICE" business because she had a lot of rich friends to whom she could sell franchises. While this explanation was more plausible, it was an entirely different explanation from her earlier response. I should add that Tik had yet another explanation in her AEIC for the reason why Sarah persisted in wanting to participate in the "POLICE" business notwithstanding Tik's caution that the business was not doing well. Apparently, Sarah said that "she was a good saleswoman and she would be able to turn the business around", that she "wanted to bring the product to Australia and start a franchise chain in Australia" and that "her sister, [Ivy] would also be a partner in the business and both of them could turn the business around". [\[note: 242\]](#)

117 Third, the very structure of Tik's business was to supply "POLICE" brand apparel to franchisees. In cross-examination, Ivy testified that she understood the structure of the "POLICE" business to be based on the sale of apparel to franchisees:

Q: And are you also telling us that until today, you're not aware that the company was supposed to take over the brand, POLICE?

A: Yah. 50%, is it? We have to take over 50%, is it? It's a franchise company. We---we---I---I only, mm, understand that is a franchisee company. We have to find people to come and, like---I only know that it's a franchisee---franchise company. *We have to find, er, shop to come and---sell to the shop only.* Because I understand the agreement that we are a franchise company only.

[emphasis added]

Mr Poh also testified that the business model was to sell "POLICE" brand apparel through franchisees:

Q: Mr Poh, do you recall this business is about buying franchisee and not opening up a shop? The whole idea of this contract---

A: Mm-hm.

Q: ---do you agree, Mr Poh---

A: Yes.

....

Court: All right. I don't think you have understood the question. *If---the plaintiffs wish to develop this business for the POLICE brand apparel in Singapore, Ms Tee's question to you is that the---that---that the principal reason, the main reason why they were interested in acquiring 50%---*

Witness: Mm-hm.

Court: *---is because they were interested in continuing to supply these T-shirts to the franchisees---*

Witness: Yes.

Court: *---because that is the main source of the business.*

Witness: *Right---right. Yes.*

Q: So it is not opening a shop and selling T-shirt---

A: No, no. No, mm.

[emphasis added]

Since the structure of the business was to sell apparel to franchisees, it would not have made sense for the plaintiffs to have wanted to enter into the Agreement if they were told it was likely that the then existing franchisees might give up. Furthermore, Sarah Design was to take over Tik's existing stock of "POLICE" brand apparel. There is no reason why the plaintiffs would have wanted to take over the stock if there was no ready market for it in the form of healthy existing franchisees.

118 For the same reason, I find that the first representation must have induced the plaintiffs to enter into the Agreement. The presence of four then existing franchisees that were doing well must have had a bearing on the plaintiffs' decision to enter into the Agreement. As mentioned in the preceding paragraph, the very structure of the business depended on the sale of apparel to franchisees.

119 I also find that the representation was made fraudulently because Tik must have known that the first representation was untrue. Her own responses to a request for further and better particulars state that the franchisees had ceased operations before the Agreement was executed (see [88(b)] above). If they had ceased operations, Tik must have known that it was false to say that they were doing well.

120 In summary, I find that the plaintiffs have made out a case against Tik for fraudulent misrepresentation in relation to the first representation. The elements of the tort, as set out in *Panatron* (see [\[111\]](#) above), are satisfied:

- (a) The first representation was indeed made to the plaintiffs (see [\[114\]](#)–[\[117\]](#) above).
- (b) The representation must have been made with the intention that the plaintiffs should act

upon it. There would have been no reason for Tik to have otherwise made the representation.

(c) The representation induced the plaintiffs into entering into the Agreement (see [\[118\]](#) above).

(d) The plaintiffs have suffered at least some damage as a consequence of their reliance on the representation. They paid the sum of \$80,000.

(e) The representation was made fraudulently (see [\[119\]](#) above).

121 Consequently, the plaintiffs are entitled to rescission of the Agreement (see, for example, the decision of the High Court in *Chee Jok Heng Stephanie v Chang Yue Shoon* [2010] 3 SLR 1131 at [18]). They are also entitled to damages. As for amount of damages, the plaintiffs are entitled to be compensated for all losses flowing directly as a result of the plaintiffs' entry into the Agreement regardless of whether the loss was foreseeable (see *Wishing Star* at [21]). As the plaintiffs have pleaded for damages to be assessed, they are entitled to interlocutory judgment for damages to be assessed.

122 As for the second representation, I find that the plaintiffs have not proven on a balance of probabilities that the representation was made in the first place. Apart from their bare assertions, they have not been able to produce any other evidence to support the fact that this representation was made. Since this crucial element of the claim has not been proven, the plaintiffs' claim in fraudulent misrepresentation for the second representation must fail.

Conclusion

123 Sarah's Trust and Blackmail Claims against the first and second defendants fail in their entirety.

124 In relation to the Contract Claims, the plaintiffs are entitled to interlocutory judgment for damages to be assessed with the question of interest to be reserved to the Registrar. They are also entitled to rescission of the Agreement.

125 As a litigant in person, Andy is entitled to a claim against Sarah for compensatory costs under O 59 r 18A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), for the time spent for action, as well as other reasonable expenses (see *Aldabe Fermin v Standard Chartered Bank* [2010] 3 SLR 722 at [130]). The time spent for the Trust Claim was significantly more than the time for the Contract Claims. Given that the plaintiffs only succeeded in one aspect of their Contract Claims and Sarah failed in the Trust Claim against Tik, I shall order Sarah to pay 50% of the costs of the action to Tik to be taxed if not agreed. No further order as to costs in relation to Ivy.

[\[note: 1\]](#) Notes of Evidence ("NE") Day 1 at p 135, lines 2–14.

[\[note: 2\]](#) NE Day 1 at p 138, lines 11–19.

[\[note: 3\]](#) Statement of Claim (Amendment No 2) at [1].

[\[note: 4\]](#) Statement of Claim (Amendment No 2) at [2].

[\[note: 5\]](#) First defendant's affidavit of evidence-in-chief ("AEIC") at [4].

[\[note: 6\]](#) First defendant's AEIC at [5].

[\[note: 7\]](#) Second defendant's AEIC at [3].

[\[note: 8\]](#) Second defendant's AEIC at [4].

[\[note: 9\]](#) Second defendant's AEIC at [4].

[\[note: 10\]](#) Statement of Claim (Amendment No 2) at [8].

[\[note: 11\]](#) First plaintiff's AEIC at [19(b)].

[\[note: 12\]](#) First plaintiff's AEIC at [42(b)].

[\[note: 13\]](#) First plaintiff's AEIC at [63(d)].

[\[note: 14\]](#) NE Day 1 at p 127, lines 9–10.

[\[note: 15\]](#) First plaintiff's AEIC at [85].

[\[note: 16\]](#) First plaintiff's AEIC at [66].

[\[note: 17\]](#) First plaintiff's AEIC at [67].

[\[note: 18\]](#) First plaintiff's AEIC at [72].

[\[note: 19\]](#) First plaintiff's AEIC at [73].

[\[note: 20\]](#) First plaintiff's AEIC at [75].

[\[note: 21\]](#) First plaintiff's AEIC at [82].

[\[note: 22\]](#) First plaintiff's AEIC at [77].

[\[note: 23\]](#) First plaintiff's AEIC at [77].

[\[note: 24\]](#) First plaintiff's AEIC at [80]–[81].

[\[note: 25\]](#) First plaintiff's AEIC at [83(d)].

[\[note: 26\]](#) First plaintiff's AEIC at [83(d)].

[\[note: 27\]](#) Plaintiffs' closing submissions at [18].

[\[note: 28\]](#) *Ibid.*

[\[note: 29\]](#) Plaintiffs' closing submissions at [19(a)].

[\[note: 30\]](#) Plaintiffs' closing submissions at [19(b)].

[\[note: 31\]](#) Plaintiffs' closing submissions at [19(c)].

[\[note: 32\]](#) Plaintiff's closing submissions at [19(d)].

[\[note: 33\]](#) Plaintiffs' closing submissions at [19(f)].

[\[note: 34\]](#) Plaintiffs' closing submissions at [19(g)].

[\[note: 35\]](#) Statement of Claim (Amendment No 2) at [12]; First plaintiff's AEIC at [161].

[\[note: 36\]](#) Statement of Claim (Amendment No 2) at [13]; First plaintiff's AEIC at [163].

[\[note: 37\]](#) Statement of Claim (Amendment No 2) at [14]; First plaintiff's AEIC at [164].

[\[note: 38\]](#) Statement of Claim (Amendment No 2) at [15]; First plaintiff's AEIC at [166].

[\[note: 39\]](#) Statement of Claim (Amendment No 2) at [16(i)]; First plaintiff's AEIC at [172].

[\[note: 40\]](#) Statement of Claim (Amendment No 2) at [16(o)]; First plaintiff's AEIC at [178].

[\[note: 41\]](#) Statement of Claim (Amendment No 2) at [16(l)]; First plaintiff's AEIC at [176].

[\[note: 42\]](#) Plaintiffs' closing submissions at [180]–[194].

[\[note: 43\]](#) Statement of Claim (Amendment No 2) at [43].

[\[note: 44\]](#) Agreed Bundle of Documents ("AB") Vol 3 at pp 999–1002.

[\[note: 45\]](#) Statement of Claim (Amendment No 2) at [47].

[\[note: 46\]](#) First plaintiff's AEIC at [126].

[\[note: 47\]](#) Plaintiffs' closing submissions at [360] and Statement of Claim (Amendment No 2) at [48(a)].

[\[note: 48\]](#) Plaintiffs' closing submissions at [361] and Statement of Claim (Amendment No 2) at [48(b)].

[\[note: 49\]](#) Plaintiffs' closing submissions at [362] and Statement of Claim (Amendment No 2) at [48(c)].

[\[note: 50\]](#) Plaintiffs' closing submissions at [363] and Statement of Claim (Amendment No 2) at [48(d)].

[\[note: 51\]](#) Plaintiffs' closing submissions at [408]–[412] and Statement of Claim (Amendment No 2) at [48(e)].

[\[note: 52\]](#) Plaintiffs' closing submissions at [413]–[430] and Statement of Claim (Amendment No 2) at [53].

[\[note: 53\]](#) Plaintiffs' closing submissions at [358].

[\[note: 54\]](#) See letter from Drew & Napier LLC dated 24 November 2011.

[\[note: 55\]](#) First defendant's Defence (Amendment No 1) at [8].

[\[note: 56\]](#) First defendant's closing submissions at [77].

[\[note: 57\]](#) Second defendant's closing submissions at [27]; Second defendant's Defence (Amendment No 2) at [6].

[\[note: 58\]](#) Second defendant's closing submissions at [27] and Second defendant's Defence (Amendment No 2) at [11].

[\[note: 59\]](#) Second defendant's closing submissions at [27]

[\[note: 60\]](#) Second defendant's closing submissions at [28].

[\[note: 61\]](#) Second defendant's closing submissions at [29]–[30].

[\[note: 62\]](#) Second defendant's Defence (Amendment No 2) at [10].

[\[note: 63\]](#) Second defendant's Defence (Amendment No 2) at [10].

[\[note: 64\]](#) Second defendant's Defence (Amendment No 2) at [35].

[\[note: 65\]](#) Second defendant's Defence (Amendment No 2) at [36].

[\[note: 66\]](#) Second defendant's Defence (Amendment No 2) at [37].

[\[note: 67\]](#) Second defendant's Defence (Amendment No 2) at [38].

[\[note: 68\]](#) Second defendant's Defence (Amendment No 2) at [39].

[\[note: 69\]](#) Second defendant's Defence (Amendment No 2) at [40].

[\[note: 70\]](#) Second defendant's Defence (Amendment No 2) at [41].

[\[note: 71\]](#) Second defendant's Defence (Amendment No 2) at [42].

[\[note: 72\]](#) Second defendant's Defence (Amendment No 2) at [43].

[\[note: 73\]](#) Second defendant's Defence (Amendment No 2) at [44].

[\[note: 74\]](#) Second defendant's Defence (Amendment No 2) at [45].

[\[note: 75\]](#) Second defendant's Defence (Amendment No 2) at [45].

[\[note: 76\]](#) Statement of Claim (Amendment No 2) at [24].

[\[note: 77\]](#) Plaintiffs' opening statement at [17]–[18].

[\[note: 78\]](#) Plaintiffs' closing submissions at [79].

[\[note: 79\]](#) Letter from Supreme Court Registry to the parties dated 22 November 2011 at [5].

[\[note: 80\]](#) Plaintiffs' further submissions at [45]–[55], first defendant's further submissions at [10]–[12] and second defendant's further submissions at [9]–[12].

[\[note: 81\]](#) First plaintiff's AEIC at [68(e)]–[68(f)].

[\[note: 82\]](#) Statement of Claim (Amendment No 2) at [9].

[\[note: 83\]](#) Statement of Claim at [7].

[\[note: 84\]](#) Statement of Claim at [7].

[\[note: 85\]](#) Writ of Summons (Amendment No 1).

[\[note: 86\]](#) Statement of Claim (Amendment No 1) at [23]–[35].

[\[note: 87\]](#) Statement of Claim (Amendment No 1) at [8].

[\[note: 88\]](#) Statement of Claim (Amendment No 2) at [9].

[\[note: 89\]](#) Statement of Claim (Amendment No 2) at [8].

[\[note: 90\]](#) Statement of Claim (Amendment No 2) at [12]–[16] and [38]–[40].

[\[note: 91\]](#) Tabulated in first plaintiff's AEIC at [179].

[\[note: 92\]](#) *Ibid.*

[\[note: 93\]](#) NE Day 6 at pp 15–16.

[\[note: 94\]](#) Plaintiffs' closing submissions at [161].

[\[note: 95\]](#) Plaintiffs' closing submissions at [162].

[\[note: 96\]](#) Plaintiffs' closing submissions at [163].

[\[note: 97\]](#) Plaintiffs' closing submissions at [165].

[\[note: 98\]](#) Plaintiffs' closing submissions at [166].

[\[note: 99\]](#) NE Day 6 at p 30, lines 7–18.

[\[note: 100\]](#) NE Day 6 at p 32, line 25 and p 41, lines 25–27.

[\[note: 101\]](#) NE Day 1 at p 135, lines 2–14

[\[note: 102\]](#) First defendant's AEIC at [9]–[10].

[\[note: 103\]](#) Plaintiffs' closing submissions at [101].

[\[note: 104\]](#) Plaintiffs' closing submissions at [103].

[\[note: 105\]](#) Plaintiffs' closing submissions at [103].

[\[note: 106\]](#) Plaintiffs' closing submissions at [105].

[\[note: 107\]](#) Plaintiffs' closing submissions at [111]–[112].

[\[note: 108\]](#) Plaintiffs' closing submissions at [113]–[114].

[\[note: 109\]](#) First plaintiff's AEIC at [32].

[\[note: 110\]](#) NE Day 2 at p 23, line 25.

[\[note: 111\]](#) NE Day 2 at p 22, line 21.

[\[note: 112\]](#) First plaintiff's AEIC at [32] and first defendant's AEIC at [9].

[\[note: 113\]](#) First plaintiff's AEIC at [33] and first defendant's AEIC at [9] read with NE Day 5 at p 61, lines 9–18.

[\[note: 114\]](#) First plaintiff's affidavit dated 18 December 2009 at [10].

[\[note: 115\]](#) *Ibid* and exhibit TYK-4 thereto.

[\[note: 116\]](#) NE Day 1 at p 56, line 20.

[\[note: 117\]](#) NE Day 1 at p 63, lines 12–16.

[\[note: 118\]](#) Plaintiffs' closing submissions at [118].

[\[note: 119\]](#) First defendant's AEIC at p 17.

[\[note: 120\]](#) First defendant's AEIC at p 20.

[\[note: 121\]](#) First defendant's affidavit dated 6 November 2009 at pp 17 and 20.

[\[note: 122\]](#) Plaintiffs' closing submissions at [119].

[\[note: 123\]](#) Plaintiffs' closing submissions at [120].

[\[note: 124\]](#) First defendant's AEIC at [10].

[\[note: 125\]](#) Plaintiffs' closing submissions at [121].

[\[note: 126\]](#) First plaintiff's supplementary AEIC at [3].

[\[note: 127\]](#) AB Vol 6 at p 2128.

[\[note: 128\]](#) Plaintiffs' closing submissions at [123].

[\[note: 129\]](#) Plaintiffs' closing submissions at [124]–[135].

[\[note: 130\]](#) First plaintiff's supplementary AEIC at p 12.

[\[note: 131\]](#) First plaintiff's supplementary AEIC at p 15.

[\[note: 132\]](#) NE Day 3 at p 7, line 32.

[\[note: 133\]](#) NE Day 1 at pp 68–70.

[\[note: 134\]](#) NE Day 1 at p 74, lines 15–25.

[\[note: 135\]](#) NE Day 1 at p 77, lines 15–21.

[\[note: 136\]](#) NE Day 3 at pp 3, lines 20–21.

[\[note: 137\]](#) NE Day 3 at p 5, lines 12–13.

[\[note: 138\]](#) NE Day 3 at p 3, lines 8–12.

[\[note: 139\]](#) First defendant's AEIC at [6].

[\[note: 140\]](#) First defendant's closing submissions at [89]–[90].

[\[note: 141\]](#) First defendant's closing submissions at [89].

[\[note: 142\]](#) Plaintiffs' closing submissions at [92].

[\[note: 143\]](#) *Ibid.*

[\[note: 144\]](#) First plaintiff's AEIC at [90].

[\[note: 145\]](#) First defendant's closing submissions at [90].

[\[note: 146\]](#) NE Day 2 at p 6, line 26.

[\[note: 147\]](#) NE Day 2 at p 6, line 28.

[\[note: 148\]](#) NE Day 2 at pp 14–15.

[\[note: 149\]](#) NE Day 5 at pp 45–46.

[\[note: 150\]](#) Plaintiffs' closing submissions at [96].

[\[note: 151\]](#) Plaintiffs' closing submissions at [97].

[\[note: 152\]](#) Plaintiffs' closing submissions at [98].

[\[note: 153\]](#) Plaintiffs' closing submissions at [99].

[\[note: 154\]](#) First defendant's closing submissions at [89].

[\[note: 155\]](#) NE Day 5 at p 29, lines 23–26.

[\[note: 156\]](#) NE Day 9 at pp 60, lines 8–9; 63, line 8; and 65, lines 17–18.

[\[note: 157\]](#) NE Day 9 at pp 67, line 19 and 68, lines 25–26; also see NE Day 9 at p 63, line 4.

[\[note: 158\]](#) NE Day 9 at p 67, line 22.

[\[note: 159\]](#) Plaintiffs' further submissions at [2]–[20].

[\[note: 160\]](#) Plaintiffs' Bundle of Authorities ("PBOA") at Tab 106.

[\[note: 161\]](#) Ms Pang's AEIC at [4].

[\[note: 162\]](#) NE Day 3 at p 10, lines 2–3.

[\[note: 163\]](#) NE Day 3 at p 23, lines 22–27.

[\[note: 164\]](#) First defendant's affidavit dated 6 November 2009 at [18].

[\[note: 165\]](#) First plaintiff's affidavit dated 23 November 2009 at [15].

[\[note: 166\]](#) NE Day 3 at p 10, lines 17–18.

[\[note: 167\]](#) Statement of Claim (Amendment No 2) at [18].

[\[note: 168\]](#) Statement of Claim (Amendment No 2) at [22].

[\[note: 169\]](#) Statement of Claim (Amendment No 2) at [25].

[\[note: 170\]](#) Statement of Claim (Amendment No 2) at [27(d)].

[\[note: 171\]](#) Statement of Claim (Amendment No 2) at [34].

[\[note: 172\]](#) AB Vol 6 at p 2020.

[\[note: 173\]](#) First plaintiff's AEIC at [166] and plaintiffs' closing submissions at [181].

[\[note: 174\]](#) First plaintiff's AEIC at [166] and plaintiffs' closing submissions at [181].

[\[note: 175\]](#) First plaintiff's AEIC at [168] and plaintiffs' closing submissions at [181].

[\[note: 176\]](#) First plaintiff's AEIC at [169] and plaintiffs' closing submissions at [181].

[\[note: 177\]](#) First plaintiff's AEIC at [169] and plaintiffs' closing submissions at [181].

[\[note: 178\]](#) First plaintiff's AEIC at [170] and plaintiffs' closing submissions at [181].

[\[note: 179\]](#) First plaintiff's AEIC at [170] and plaintiffs' closing submissions at [181].

[\[note: 180\]](#) First plaintiff's AEIC at [171] and plaintiffs' closing submissions at [181].

[\[note: 181\]](#) First plaintiff's AEIC at [172] and plaintiffs' closing submissions at [181].

[\[note: 182\]](#) First plaintiff's AEIC at [172] and plaintiffs' closing submissions at [181].

[\[note: 183\]](#) First plaintiff's AEIC at [175]–[176] and plaintiffs' closing submissions at [181].

[\[note: 184\]](#) First plaintiff's AEIC at [177].

[\[note: 185\]](#) First plaintiff's AEIC at [178].

[\[note: 186\]](#) First plaintiff's AEIC at [173].

[\[note: 187\]](#) First plaintiff's AEIC at [178].

[\[note: 188\]](#) AB Vol 6 at p 2024.

[\[note: 189\]](#) AB Vol 6 at p 2065.

[\[note: 190\]](#) NE Day 1 at pp 111, lines 15–25 and 112, lines 1–4.

[\[note: 191\]](#) NE Day 1 at p 112, line 9.

[\[note: 192\]](#) NE Day 1 at p 112, lines 11–18.

[\[note: 193\]](#) NE Day 7 at p 114, lines 8–9.

[\[note: 194\]](#) Second defendant's AEIC at [\[22\]](#).

[\[note: 195\]](#) *Ibid.*

[\[note: 196\]](#) *Ibid.*

[\[note: 197\]](#) Second defendant's AEIC at [\[25\]](#).

[\[note: 198\]](#) *Ibid.*

[\[note: 199\]](#) NE Day 7 at p 34, lines 27–32

[\[note: 200\]](#) Second defendant's amended defence at [18] (also see second defendant's re-amended defence at [\[28\]](#)).

[\[note: 201\]](#) Second defendant's answers to Further and Better Particulars dated 2 June 2010 at p 4.

[\[note: 202\]](#) Second defendant's answers to Further and Better Particulars dated 2 June 2010 at pp 4–5 (Setting Down Bundle at Tab 23).

[\[note: 203\]](#) *Ibid.*

[\[note: 204\]](#) NE Day 7 at p 119, lines 6–9.

[\[note: 205\]](#) NE Day 7 at p 119, lines 10–11.

[\[note: 206\]](#) NE Day 8 at pp 1, lines 11–12, and 5, line 29.

[\[note: 207\]](#) NE Day 8 at p 6, lines 1–3.

[\[note: 208\]](#) NE Day 9 at p 1, lines 5–8.

[\[note: 209\]](#) NE Day 9 at pp 7–8.

[\[note: 210\]](#) NE Day 9 at p 50, lines 18–32.

[\[note: 211\]](#) Chew Hue Hin’s AEIC at [6].

[\[note: 212\]](#) *Ibid.*

[\[note: 213\]](#) Chew Hue Hin’s AEIC at [7]–[8].

[\[note: 214\]](#) NE Day 8 at pp 20, lines 5–6, and 23, lines 9–10.

[\[note: 215\]](#) NE Day 8 at p 20, lines 5–6.

[\[note: 216\]](#) Second defendant’s closing submissions at [175].

[\[note: 217\]](#) See Exhibit PSP-3 to Tik’s AEIC.

[\[note: 218\]](#) Second defendant’s closing submissions at [123] and [177].

[\[note: 219\]](#) Plaintiffs’ closing submissions at [404].

[\[note: 220\]](#) Statement of Claim (Amendment No 2) at [45].

[\[note: 221\]](#) NE Day 7 at pp 130–131.

[\[note: 222\]](#) NE Day 7 at p 132, lines 21–22.

[\[note: 223\]](#) NE Day 9 at p 37, lines 9–32.

[\[note: 224\]](#) AB Vol 5 at p 1818.

[\[note: 225\]](#) NE Day 7 at p 128, line 25.

[\[note: 226\]](#) NE Day 7 at p 128, lines 29–32.

[\[note: 227\]](#) NE Day 4 at p 57, lines 14–15.

[\[note: 228\]](#) NE Day 4 at p 56, lines 7–11.

[\[note: 229\]](#) NE Day 4 at p 56, lines 18–22.

[\[note: 230\]](#) NE Day 4 at p 90, lines 1–4.

[\[note: 231\]](#) Second defendant’s AEIC at [22].

[\[note: 232\]](#) *Ibid.*

[\[note: 233\]](#) *Ibid.*

[\[note: 234\]](#) NE Day 7 at p 128, lines 14–21.

[\[note: 235\]](#) NE Day 7 at p 128, lines 12–17.

[\[note: 236\]](#) NE Day 4 at p 57, lines 14–15.

[\[note: 237\]](#) NE Day 4 at p 56, lines 7–11.

[\[note: 238\]](#) NE Day 4 at p 90, lines 1–4.

[\[note: 239\]](#) First plaintiff's AEIC at [119] and second plaintiff's AEIC at [17].

[\[note: 240\]](#) Second defendant's AEIC at [17].

[\[note: 241\]](#) NE Day 7 at pp 5–7.

[\[note: 242\]](#) Second defendant's AEIC at [\[17\]](#).

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