Ang Tin Gee v Pang Teck Guan
[2011] SGHC 259

Case Number : Suit No 697 of 2010

Decision Date : 02 December 2011

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Lai Kwok Seng (Lai Mun Onn & Co) for the plaintiff; Leslie Yeo Choon Hsien (Sterling Law Corporation) for the defendant.

Parties : Ang Tin Gee v Pang Teck Guan

Partnership

2 December 2011 Judgment reserved.

Belinda Ang Saw Ean J:

INTRODUCTION

1 This is a partnership action brought by the plaintiff in respect of alleged breaches by the defendant in discharging his duties as a business partner from 1996 to 2006. The plaintiff is Ang Tin Gee (also known as Julie Ang). The defendant is Pang Teck Guan (also known as Andy Pang).

2 The plaintiff's various complaints were primarily about: (a) the conduct of the defendant as the working partner who controlled and managed the day-to-day affairs of the business carried on in the registered name and style of Japco TC International Enterprise ("Japco"), and (b) the office consumables business carried on through the entity known as Office Consumables Supplies ("OCS"), a sole proprietorship registered in the defendant's name. By seeking to determine the true scope of the partnership businesses in this action, the plaintiff is in effect asserting that the full scope of the businesses as controlled and managed by the defendant as her partner had been concealed from her. In other words, a breach of fiduciary duty by the defendant had occurred. As such, the defendant is liable to, *inter alia*, account for actual profits derived from the businesses undertaken respectively by Japco and OCS. This relief will entail, *inter alia*, an account of the benefits and/or gains which the defendant derived from the use of Japco's resources, funds and bank facilities to finance the business operations of OCS, including payment of OCS's operating expenses.

3 The defendant disputes the plaintiff's claims. The defences raised and relied upon by the defendant were primarily (a) to deny the partnership *inter se*, or (b) to maintain that OCS was his separate business and was never part of Japco's business.

4 The question that lies at the heart of the present case is the defendant's duty to account for, *inter alia*, Japco's moneys and OCS's sales receipts and his obligation to give a proper, complete and accurate account of all his dealings and acts in respect of Japco's moneys and OCS's sales receipts. The burden is on the defendant to show that at the relevant times, (a) there was no loss to Japco arising from the use of Japco's moneys for OCS's operating expenses, and (b) the profits of OCS had been earned wholly or partly by means other than the use of Japco's resources, moneys and banking facilities.

BACKGROUND OF THE DISPUTE

The parties

5 The plaintiff and her husband, Tan Chor Koon ("Chor Koon"), were introduced to the defendant by his then fiancée (now wife), Dorothy Lee Soon Min ("Dorothy"). At the material time, the plaintiff was working in Siemens and Dorothy was with a travel agency. The plaintiff came to know Dorothy through the business dealings of their respective employers, and they soon became friends. At some point in the relationship, Dorothy introduced the defendant to the plaintiff and Chor Koon. She and Dorothy had in fact discussed the possibility of setting up a travel business together with the plaintiff investing the funds and Dorothy running the business, but this did not materialise, and Dorothy therefore introduced the plaintiff to the defendant instead to further explore the plaintiff's interest in going into business.

6 According to the plaintiff, the defendant and Dorothy represented to her that the defendant had considerable experience in the import and export trading business of consumer electrical appliances. Indeed, the defendant gave evidence that he had worked for United Overseas Bank ("UOB") for about four to five years as a front desk clerk and had picked up some knowledge and know-how of trade operations and international trade finance. He also gave evidence that he had worked for about two years as a junior executive in a trading company which traded in electrical goods. [note: 1] On the defendant's part, he saw the plaintiff as having funds to invest in a business. He himself had only been working for six to seven years then and did not have any funds to start a business. [note: 2]

The parties' business relationship

7 Pursuant to their discussions, the defendant prepared and handed to the plaintiff a three-page business proposal about going into a partnership business trading in consumer electrical appliances overseas. Later, the defendant submitted an amended three-page business proposal and a further three pages, making it a six-page document. There was some dispute over the sequence of the documentation provided to the plaintiff. Nothing turns of this. Eventually, the parties signed a six-page document on 3 August 1996 (the "Partnership Agreement"). [note: 3]

8 The parties strenuously dispute the terms of the partnership. The plaintiff takes the position that the partnership was entered into on the basis that they would be equal partners. As such, the parties were to contribute equally to the capital and on an equal basis share the profits and bear all losses sustained by the partnership. To the plaintiff, the parties entered into an oral partnership agreement on or about 20 July 1996 (*ie*, before the parties signed the Partnership Agreement) on the basis that they would be equal partners. The date 20 July 1996 is significant in that it was the same day the parties applied to register the partnership business. The partnership was registered on 25 July 1996 under the trade name and style of Japco TG International Enterprise. The name "Japco" is a combination and play on the parties' names. The letter "J" is for "Julie". The second letter "a" is for "Andy". The first two letters "Ja" are the initials of "Julia Ang". The second and third letters "ap" are the initials of "Andy Pang". Finally, the letters "TG" are the initials of the parties' Chinese names, "Tin Gee" and "Teck Guan". According to the plaintiff, there were several discussions after the Partnership Agreement was signed on 3 August 1996, and the discussions culminated in the plaintiff accepting the defendant's proposal that his salary be revised to $3,362 with the defendant taking a profit share of 50%.

9 In contrast, the defendant challenges the existence of a partnership *inter se*. The defendant

denies the oral agreement on or about 20 July 1996 [note: 4] and maintains that the Partnership Agreement constitutes the entire agreement between the parties. [note: 5] He also denies any supervening oral agreement as described. As I will explain below at [49–66], I find these factual disputes immaterial in any case since they do not affect the construction of the Partnership Agreement and the real issues to be resolved.

Japco's bank facilities

10 About a week after the signing the Partnership Agreement, the parties received a letter of offer dated 10 August 1996 from UOB for the sum of $950,000 for Japco.

11 The parties signed in acceptance of UOB's offer on 13 August 1996. The banking facilities were and are secured by (1) an open mortgage over the plaintiff's property at 44 Sunrise Terrace Sunrise Villa, Singapore and (2) fresh joint and several guarantees by the plaintiff and defendant in favour of UOB for $950,000 ("the Guarantee").

12 Under this Letter of Offer, UOB granted not only trade facilities but also two overdraft facilities: (a) Account No 101-365-513-3 with an overdraft facility of $100,000 ("UOB Account No 1"); and (b) Account No 101-365-514-1 with an overdraft facility of $200,000 ("UOB Account No 2"). These two accounts will be collectively referred to as "the UOB accounts"). In May 1998, the limit of the banking facilities was revised by UOB. For present purpose, I need only mention UOB Account No 2 where the available overdraft facility was increased from $200,000 to $250,000.

Japco's business in consumer electrical goods and the Seychelles Debt

13 From both parties' versions of the story, the plaintiff had a full time job and that her role in the partnership was to fund the business whereas the defendant would run it. To the plaintiff, the defendant had something to bring to the partnership: he would contribute his "expertise" and "experience" to the partnership. From his business proposal, the plaintiff was given the impression that he had the necessary customer base and supplier base and was thus confident to put down on paper his estimate of a sales turnover of $250,000 for September to December 1996, and of $1 million for 1997. During cross-examination of the defendant, it transpired that the defendant's experience and knowledge was limited. He had no supplier base and no customer base for consumer electrical appliances. His estimates of the sales turnover were completely without bases and hence the figures were misleading in a grossly exaggerated way. It was not surprising that Japco's business in consumer electrical appliances was not successful at the best of times.

14 Japco carried on its business in consumer electrical appliances from about September 1996 to about September 2000 when OCS started operations.

15 Sometime in September 1997, Japco's business faced a major setback in the form of a customer, YL Electrics/Home Electronics from the Seychelles ("YL Electronics"), defaulting in payment in the sum of $146,462.95 (the "Seychelles Debt"). According to the defendant, Stephen Pillay ("Stephen") from YL Electronics was an existing customer at the time and there had been previous successful transactions with him. However, in this particular transaction, Stephen wanted to order more goods but on credit. As the value of the goods was high, the defendant sought the plaintiff's consent and she then sent Chor Koon to have a meeting with the defendant and Stephen in Singapore. In addition to the meeting, the defendant also travelled to Seychelles with Chor Koon to inspect Stephen's assembly plant and wholesale centre. Unfortunately, YL Electronics eventually defaulted in payment of one of the two shipments made, and the total sum defaulted on was $146,462.95.

16 According to the plaintiff, she only found out when the defendant informed her about the default sometime in late 1997. The plaintiff expressed her concern that this was a big sum of money, and the defendant assured her that he would pursue YL Electronics for the repayment of the debt. When his efforts failed, Japco took legal action against YL Electronics in Seychelles.

17 The plaintiff, the defendant and Dorothy went to the Seychelles to attend court with regard to the Seychelles Debt, eventually obtaining judgment in the sum of $146,462.95. The plaintiff alleges that she has since then not seen the judgment sum despite chasing the defendant about it. However, she had no reason at that point in time to suspect that the defendant was not being honest with her.

18 The parties' positions are consistent insofar as they both see the Seychelles Debt as a source of Japco's financial woes. According to the plaintiff, she enquired at regular intervals about the financial health of Japco and on a few occasions asked for Japco's financial statement. The defendant always assured her that Japco's business was doing well and that the total loss came only from the Seychelles Debt, and that he would chase YL Electronics for the judgment debt. [note: 6] According to the defendant, the Seychelles Debt was the turning point of the business in consumer electrical appliances. Following that experience, the plaintiff was not willing to sell on credit terms to overseas customers. It became clear to the defendant that Japco's business in consumer electrical appliances which involved trading overseas was not sustainable and that was why he made the proposal in [20] below to switch to trading in office consumables for the domestic market.

19 The defendant also claims that due to the setback in business caused by the Seychelles Debt, he did not receive his full salary since January 1999 despite having to work even harder, and furthermore he was not paid the agreed AWS, share of profits and his unutilised leave. These are the sources of the first head of his counterclaim set out at [45] below.

Office Consumable Supplies

20 Sometime in late 1999 or early 2000, the defendant verbally proposed to the plaintiff that Japco should go into the sale of office consumable products in the domestic market. The plaintiff agreed.

21 According to the plaintiff, OCS was formed in March 2000 pursuant to the defendant's representations to her that, in order to gain an advantage in the domestic market for office consumable products, it was necessary to form a new entity to be Japco's "selling arm" *ie*, Japco would buy the office consumable products and the new entity would sell them ("the business model"). It is unclear from the plaintiff's evidence what the rationale for the proposed business model was. However, one purpose of interposing the new entity was to ensure that the identity of the suppliers to Japco would not be apparent to customers and competitors. Furthermore, the interposing of the new entity in the retail side of the business was to be an "internal arrangement" between Japco and the new entity.

22 The plaintiff asserts that she and the defendant agreed that the new entity (*ie*, OCS) (see above at [21]) would be effectively "owned" by Japco as Japco would fund all OCS's start-up costs and operating expenses, and that OCS would be registered in Dorothy's name as sole proprietor to avoid giving the impression to customers and competitors that Japco and OCS were operating under the same management. Japco would procure, purchase and pay for goods supplied to OCS at cost price, and OCS would then transfer back to Japco its entire revenue from the sale of goods supplied by Japco.

23 On the other hand, the defendant claims that there is "absolutely no basis" [note: 7] for the

plaintiff to claim any legal interest in OCS. According to the defendant, he built the OCS business completely by himself and, even though OCS could have bypassed Japco completely in its business, he had chosen in his goodwill to help Japco receive a steady income through OCS, in order to clear Japco's overdrafts in its two UOB accounts after the Seychelles Debt. Not only did he help Japco through OCS out of his goodwill, he had even overpaid the sum of $130,080.19 to Japco – this is the second head of the defendant's counterclaim as specified below at [45]. The defendant further alleges – somewhat inconsistently to my mind – that the only reason why the plaintiff did not include her name as a partner of OCS was simply because she wished to avoid liability. [note: 8] The defendant has also taken the position that he was free to set up OCS as his own since he was a mere employee of Japco.

24 The provenance of OCS is one of the main disputes between the parties. According to the plaintiff, it was only after she decided in April 2006 to close Japco that the plaintiff made an ACRA search on OCS on 7 June 2006, and it was then that she found out that OCS was not registered in the name of the defendant's wife but in the defendant's own name as sole proprietor.

Japco's business in office consumable products

25 OCS was registered on 3 March 2000 and commenced operations in September 2000, and it was the significant buyer of office consumables from Japco [note: 9]. The defendant saw himself as the "OMO" (acronym for one-man operator) of Japco. [note: 10] Furthermore, the defendant who was paid by Japco ran the whole show – that is to say, the office consumables businesses of both Japco and OCS. There is no dispute that at all times, OCS operated from the same premises as Japco, wherever those premises happened to be at the moment as Japco moved premises a few times.

26 Japco's overdrafts in the two UOB accounts were the source of funds to finance the business operations of Japco and OCS. This is consistent with the plaintiff's position that their agreement was that Japco would fund the start-up costs and the operating expenses of OCS. The defendant did not refute this allegation. Interestingly, the defendant admitted in cross-examination that Japco had funded OCS's start-up costs and operating expenses, and Japco paid the suppliers upfront. However, he denied that the Japco's purchases were passed to OCS to sell at cost price. He maintained that OCS would buy from Japco with a mark up. [note: 11]

27 Finally, it is common ground that Japco's Balance Sheet and Profit & Loss Statement for each financial year were prepared by the defendant and that he would give them to the plaintiff for her tax returns.

28 The plaintiff's real objection, as I see it, is to the manner in which the defendant ran OCS contrary to their arrangement that OCS was to be part of the partnership business. If this were true, there is no doubt that the plaintiff would be entitled to an account of the defendant's profits from OCS as a breach of his fiduciary duty to the plaintiff. In his defence, the defendant asserts that OCS was an independent business. I deal with this at [69]-[82] below. How the defendant's admission that Japco funded OCS's start-up costs and operating expenses affects his defence will also be discussed later.

End of the business relationship

29 As expected, the plaintiff and the defendant have diametrically opposing accounts of how the business relationship broke down.

The plaintiff's version

The plaintiff's version

30 As stated, the defendant controlled and managed the day-to-day affairs of Japco. The defendant said in his Closing Submissions that after OCS was incorporated, the plaintiff and Chor Koon, ceased to be actively involved in the business of Japco. [note: 12] The plaintiff gave evidence that she had difficulty in assessing Japco's true financial status due to the high volume of transactions and purchases, invoices and other business related documents, so she had to rely on the defendant to update her on the business. According to the plaintiff, she made numerous requests through the years for the defendant to disclose and render accounts of the business operations of Japco and OCS, but the defendant had failed to do so.

31 The plaintiff remained concerned that despite the defendant's promises that Japco's overdrafts in the two UOB accounts would be reduced from OCS's sales revenues, the defendant was still unable to reduce the overdrafts. She continued to ask the defendant about Japco's and OCS's financial situation and he kept representing, as above at [18] that Japco's total loss was only about $150,000 (*ie*, the bulk of it came from the Seychelles Debt).

32 Sometime in early March 2006, *ie*, about six years after the registration of OCS, she finally indicated to the defendant that she want to close Japco, and asked the defendant for a full list of debtors, stocks, assets and creditors, on the basis that they were going to end the business relationship.

33 The defendant therefore prepared a business spreadsheet as at 30 March 2006 for the plaintiff's information ("the 30 March 2006 Statement"). [note: 13] The plaintiff was shocked to see from the 30 March 2006 Statement that the cumulative losses incurred by Japco stood at $241,425.57 and not about $150,000 as the defendant had always represented (see [31] above). She demanded an explanation and a full and complete account of the alleged loss, which she avers that the defendant has to date not provided. She also asked for a plan to recover the alleged loss of $241,425.57.

34 The defendant then proposed an expansion plan. The plan was to move Japco and OCS into a prime location at Chinatown and employ more sales staff while keeping the existing office premises as a warehouse. The plaintiff exhibited the defendant's expansion plan in her Affidavit of Evidence-in-Chief, and the exhibit itself was not disputed by the defendant. [note: 14] The defendant estimated that the expansion would require about $80,000 and asked the plaintiff to inject that sum so that the expansion would increase sales turnover with higher profit margins to help recover the loss of $241,425.57.

35 Being suspicious, the plaintiff decided to check Japco's account with the Inland Revenue Authority of Singapore ("IRAS") and discovered that the defendant had different accounts of what he had submitted to IRAS and what he had submitted to her. Based on figures declared by the defendant to IRAS in Form P, the total loss incurred by Japco from Year of Assessment ("YA") 1997 to YA 2007 was $209,551.00. However, a comparison of Profit and Loss Statements and Balance Sheets submitted to IRAS and in the 30 March 2006 Statement were different in the line items for YA 1997, 1998, 2002 and 2003. [note: 15] The plaintiff also exhibited these figures in her Affidavit of Evidence-in-Chief.

36 On or about 7 April 2006, the plaintiff decided enough was enough and told the defendant that she wanted to discontinue the businesses of Japco and OCS. The defendant told her that he would therefore dissolve the partnership business within three months, and that he would reduce the overdraft in UOB Account No 1 to zero within the next three months from the sales receipts of OCS,

and thereafter reduce the overdraft in UOB Account No 2.

37 As late as July 2006, the plaintiff still did not see progress in dissolving Japco and OCS. She had two other meetings with the defendant with regards to dissolving the businesses, on or about 25 June 2006 and 2 September 2006. A summary prepared by the defendant of these discussions was produced in evidence. [note: 16] This summary factors OCS into the plan to dissolve Japco, specifically, that the dissolution plan included the transfer of an account balance of $12,600.10 per the 30 March 2006 Statement from OCS to Japco. The plaintiff relies, *inter alia*, upon this in her submissions that the defendant himself clearly acknowledged that OCS was part of Japco.

38 Despite factoring OCS into the plan to dissolve Japco, the defendant did not dissolve OCS together with Japco but merely changed its address.

39 On 8 April 2006, Dorothy registered a sole proprietorship firm called D'Imaging Solutions & Services ("DSS"). The plaintiff alleged that the defendant and Dorothy set up DSS in respond to Japco's exit from the business with OCS as the buying arm for office consumable goods and DSS as the selling arm.

The defendant's version

40 According to the defendant, although the purchases by OCS "kept Japco afloat", by the first quarter of 2006 he had expressed his intention to leave Japco because there were frequent matrimonial disputes between the plaintiff and Chor Koon. He explained that since Chor Koon was also involved in the running of the partnership business, their disputes made it very difficult for him to continue with the business. It was in this context that he shared with the plaintiff his expansion plan for OCS referred to by the plaintiff at [34] above. His intention was to continue trading with Japco even after he left Japco.

41 According to the defendant, their relationship only broke down because of a break-in. On 30 March 2006, the plaintiff called him and informed him that Chor Koon was furious and wanted her to produce a set of the partnership accounts. Since she sounded desperate, he "agreed to help her as best [he] could". That was how he prepared the 30 March 2006 Statement and he therefore alleges that it was "a very rough estimate and…not based on the full set of documents and accounts". [note: 17] He even claimed that it was on the plaintiff's instructions that he should state the overdraft in UOB Account No 2 as $250,000 when it was not. [note: 18] Eventually, "things came to a head" when the plaintiff and Chor Koon broke into Japco's premises on 7 April 2006 and seized all the business documents between that date and 9 April 2006. The defendant attributed the breakdown of the business and the relationship to the plaintiff's "break-in" on 7 April 2006, even going so far as to say that this suit "might not have commenced if not for the break-in." [note: 19] He discovered later that documents taken pertained not only to Japco but to OCS as well.

42 The defendant next met the plaintiff on the morning of 9 April 2006, where he informed the plaintiff that he would have to lodge a police report if she did not restore the office to its original condition or if he was not able to gain access to the office. Less than thirty minutes later, the plaintiff called again and requested for another meeting. By then he had already returned home and informed her that it was not necessary to meet again. But the plaintiff breached the security of his apartment and came up to his unit where she screamed and banged on his door, leading to his making a police report (the "9 April Police Report") and the arrival of the police.

43 On 10 April 2006 upon returning to the office at about 10am, he found that it had been

ransacked and he therefore made a second police report (the "10 April Police Report"). According to the defendant, had there been no break-in, the business relationship with the plaintiff would have continued.

COMMENCEMENT OF THIS ACTION

44 The plaintiff commenced this action against the defendant on 23 March 2008. Although not precisely spelled out, it was evident from the plaintiff's arguments and remedies prayed for that the causes of action were negligence and breach of fiduciary duty. She is claiming:

> A declaration that the defendant has acted negligently and/or breached his duties to the plaintiff;
>
> (b) An account of the benefits and/or profits derived or made by the defendant by reasons of the defendant's breach of duties;
>
> (c) An order for payment, from the defendant to the plaintiff, of all sums found due upon the taking of such an account;
>
> (d) An order that the defendant indemnifies the plaintiff for all sums contributed by the plaintiff to Japco;
>
> (e) An order that the defendant indemnifies the plaintiff for all sums which the plaintiff may be liable to pay UOB in connection with either of their two accounts;
>
> (f) Further or in the alternative to prayers (b), (d) and (e), damages to be assessed;
>
> (g) Interest pursuant to s 24(3) of the Partnership Act (Cap 391) or alternatively interest under s 12 of the Civil Law Act (Cap 43);
>
> (h) Costs; and
>
> (i) Such other or further relief as this Honourable Court deems fit.

45 The defendant has filed a counterclaim for:

> The sum of $142,932 consisting of unpaid salary, AWS, 25% share of profits and pay in lieu of unutilised leave;
>
> (b) The sum of $130,080.19 which OCS had allegedly overpaid to Japco.

46 At the trial, the plaintiff was represented by Mr Lai Kwok Seng ("Mr Lai"). The defendant was represented by Mr Leslie Yeo ("Mr Yeo"). The plaintiff and Chor Koon both testified at the trial. The defendant called his wife, Dorothy, as his witness and they both testified in court.

DISCUSSION AND DECISION

47 The plaintiff's claims are, of course, premised on the existence of a partnership between the parties, and in particular that OCS and Japco were partnership businesses. The defendant makes various arguments in denial of the plaintiff's claims: he denies that there was a partnership *inter se* in the first place; in the alternative he denies that OCS and Japco were partnership businesses. It is therefore logical for me to first consider whether there was any partnership *inter se* and, if so, what

the terms of this partnership were, and in particular if OCS was part of the same partnership business. In the event that I find the defendant's claims to be spurious, I will deal with the relief the plaintiff seeks in this action under two main heads: first, for an account; and second, for an indemnity in respect of any sums the plaintiff is liable to pay UOB in respect of the two UOB accounts (see above at [12]). I will then deal with the defendant's counterclaim. Finally, for the sake of completeness, I will deal with the remaining arguments raised by the parties, in particular to explain my dismissal of the plaintiff's claim in negligence.

48 At this juncture, it is worth noting that the evidence to test the veracity of the defence that OCS's business was independent of Japco's business overlaps with the evidence going to the issue of the defendant's fiduciary duty of good faith, so some repetition of the evidence in discussions here and below is unavoidable.

(1) The Partnership

(a) Was there a partnership inter se; and if so, in what shares?

49 At first blush, the defendant's denial that there was a partnership at all seems hardly tenable given the background facts: the idea of the plaintiff and the defendant teaming up, the choice of the business name "Japco TC", and the formality of registration of the business name were all for the sole purpose of going into business together. However, the defendant claimed in his pleadings that he was an employee of Japco and that he would be paid a salary and commission. The implication of this plea is clear. As an employee, he would not be liable for capital contributions, bank borrowings and the losses of Japco. In his latest amendments to the Defence, the defendant deleted the word "commission" and replaced it with the word "profit-sharing". However, he continued nevertheless to aver in the pleadings that he was an employee of Japco. [note: 20] According to the defendant, in the Partnership Agreement, his basic salary was $2,801 per month but this was subsequently revised to $3,362 and a share of 25% of Japco's profits. No details of this revision were documented or adduced in oral testimony.

50 At this stage, I should mention that this plea – that the defendant was an employee of Japco - is not borne out anywhere in his written and oral testimonies. The pleaded case is not supported by the defendant's Affidavit of Evidence-in-Chief. Not only was there no mention in the Affidavit of Evidence-in-Chief that he was an employee of Japco, his written testimony plainly recognised the existence of a partnership *inter se* between the parties: the written testimony was replete with the use of the word "partnership", a term the defendant had frequently used to identify Japco and his role as the "working partner" [note: 21]. To illustrate, the defendant described Japco as the "partnership business" [note: 22], and as the "working partner", he was asked by the plaintiff to prepare the accounts of the "partnership" [note: 23]. The defendant identified the UOB Accounts as the "2 main Singapore Dollar partnership accounts" [note: 24], and the UOB bank statements were the "bank statements of the partnership" [note: 25]. Moreover, Japco's accounts were referred to as the "partnership accounts" [note: 26]. He accepted the documents pertaining to Japco as the "documents pertaining to the partnership" [note: 27] or "partnership documents" [note: 28], and he referred to Japco's office as the "partnership premises" [note: 29] or "partnership office" [note: 30].

51 In direct contradiction to the pleaded case, the defendant's counsel, Mr Yeo, maintains in Closing Submissions that the defendant was a "salaried partner" [note: 31]. This submission was inspired by the defendant's unfounded claim made during cross-examination on 16 March 2011: [note:

321

A: ...we are saying that internally, you know, I'm just a salaried partner, you know.

...

Q: ...You're an equal partner from day one, what salary partner are you talking about?

...

A: Can you repeat the question again?

Q: ... you are telling this court you are a salary partner

A: No, I am saying that I am receiving the salary and I am the other partner. Because I am drawing the salary, you know, and I am also a partner.

Q: Now, we all know, Mr Pang, you're working for Japco?

A:Yes.

Q: Yes, right, and you're paid a salary?

A: Yes.

Q: And you're paid an AWS and so on?

A: Yes.

Q: But that doesn't, mean that you are not a partner, an equal partner of Japco. Do you understand the difference or not?

A: Yes

Q: OK. Good. So then is it your evidence then that you are, just to confirm with this court you are the precedent partner and executive partner of Japco?

A: Yes.

52 In the premises and based on the overall evidence before me, the partnership *inter se* between the plaintiff and the defendant is indisputable, and I find that the plaintiff and the defendant were partners of Japco.

53 Given this finding, the next issue is the defendant's percentage share in the partnership. This is fiercely disputed between the parties. The plaintiff's position is that she and the defendant were equal partners under the Partnership Agreement or by subsequent agreement, and were therefore to contribute equally to the capital and to share equally the partnership's profits and losses. The defendant disagrees that his interest in the partnership was equal. In particular, the defendant relies on clause 3.0 of the Partnership Agreement, which reads:

Monthly Basic Salary to be commenced at S$2,801.00 from date of agreement signed.

1 month AWS at the end of the year based on Basic Salary with Profit Sharing of 10% after Net P&L.

Profit Sharing ceiling at 25%, thereafter subject to further discussion.

54 Notably, the defendant's position on his percentage share in the partnership was inconsistent. In his Closing Submissions, Mr Yeo accepts that the Partnership Agreement spelled out a profit-sharing arrangement between the defendant and the plaintiff. However, he submits that the defendant's share of the profits was only 10% with a cap at 25%, and that there was never any discussion between the parties on a percentage increase from 10% to 25%. From this profit-sharing arrangement, Mr Yeo in further submissions (*vide* his Reply of 3 May 2011) maintain that the defendant was a salaried partner. Furthermore, Mr Yeo highlights that the Partnership Agreement did not provide as to when and how this increase in percentage from 10% to 25% would occur. It also did not provide that the defendant would eventually be entitled to 50% share of the profits, noting that it was indefinitely left as a matter to be further discussed between the parties. Having made these submissions, and in apparent contradiction, Mr Yeo, without explaining the basis, filed a Counterclaim to recover as due and unpaid the defendant's 25% profit share of Japco's profits for the period 1996 to 2006. Mr Yeo then argues that the Partnership Agreement did not provide in percentage terms the share of the losses and the contribution of the capital which the defendant was to bear. Therefore, in developing his argument, Mr Yeo claims that the losses and the contribution of the capital were to be borne by the plaintiff. His fallback argument in the alternative is that the losses and capital contributions were to be calculated in the proportion of the defendant's 10% profit. By his fallback argument, the defendant is inexplicably reverting to a smaller percentage thereby contradicting the higher percentage claim of 25% in the Counterclaim.

55 Insofar as the defendant claims that he was only a salaried partner and therefore not liable for the finances and losses of the business, I have already rejected this at [50]-[52] above. I therefore will consider if any of his other positions, denying that he had an equal share in the partnership, are borne out by the evidence.

56 As a preliminary point, I agree with the defendant and reject the plaintiff's argument that there was an oral supervening agreement after the Partnership Agreement was signed. I also agree with the defendant that the Guarantee furnished to UOB does not by itself necessarily establish that the partnership was in fact equal. Whether the partnership was one of equal shares must therefore be based on the terms of the Partnership Agreement and the parties' course of dealing, to which I now turn. In construing the Partnership Agreement, the background facts as set out in [49] above are relevant. This will assist the court in determining objectively the intention of the contracting parties as expressed in the document. The court gives regard to the commercial purpose of the Partnership Agreement and the circumstances in which the agreement was made (see *Ang Tin Yong v Ang Boon Chye and Another* [2011] SGCA 60 ("*Ang Ting Yong*") at [11])

57 Clause 2.1 under "Terms and Conditions" in the Partnership Agreement explicitly provides:

Capital to be maintained at S$250,000 in 3 years time for *equal partnership purpose* [emphasis added]. [note: 33]

58 In my view, clause 2.1 is concerned with the capital contribution and the capital account of each partner. A distinction between the capital of a partnership and its assets was observed in *Reed (H.M. Inspector of Taxes) v Young* [1984] Tax Cases 196 at 215 as follows:

The capital of a partnership is the aggregate of the contributions made by the partners, either in

cash or in kind, for the purpose of commencing or carrying on the partnership business and intended to be risked by them therein. Each contribution must be of a fixed amount. If it is in cash, it speaks for itself. If it is in kind, it must be valued at a stated amount. *It is important to distinguish between the capital of a partnership, a fixed sum, on the one hand and its assets, which may vary from day to day and include everything belonging to the firm having any money value, on the other* (see generally Lindley on the Law of Partnership, 14th ed (1979) p 442).

[emphasis added]

59 *Reed v Young* went to the House of Lords and the sentence highlighted in emphasis above was expressly approved by Lord Oliver with whose speech the other Lordships agreed (see [1986] 1 WLR 649 at 654). The reference to "Lindley on Partnership" should now be to *Lindley & Banks on Partnership* (19th Ed (2010) ("*Lindley*") at 573.

60 With this distinction in mind, I return to clause 2.1 which provides that the capital is $250,000 and by agreement it is fixed at $250,000 for "equal partnership purpose". In other words, the capital of this partnership is the aggregate of each partner's contribution of $125,000. Furthermore, by agreement, the capital of $250,000 is frozen at this figure for three years. The three-year time frame is evidently intended to accommodate the fact that the defendant would require more time to contribute his share of the capital of the partnership (see further below at [63]). It is common ground that in 1996, the defendant could not contribute towards the start-up costs (*ie*, the costs of acquiring the partnership assets). There is no dispute that the plaintiff solely contributed the initial capital of $39,041.88, and this initial sum is usually reflected in the plaintiff's capital account of the partnership. In reality, this three-year time frame was not adhered to. The defendant never contributed to his share of the capital whereas the plaintiff made four more capital contributions into Japco consisting of:

(a) $30,000 on or about 26 September 2000;

(b) $20,000 on or about 31 October 2000;

(c) $15,000 on or about 30 January 2001; and

(d) $20,000 on or about 6 July 2005.

61 I digress for a moment to comment on clause 2. In this clause, the word "Capital" was improperly used to describe the partnership's bank overdrafts. The individual partners did not borrow money on their own account to fund their capital contributions and to bring it into the partnership *qua* capital. In this case, bank overdrafts represented the working capital of the partnership. In particular, UOB granted not only trade finance facilities but overdraft facilities in the two UOB accounts. In May 1998, the limit of the banking facilities was revised by UOB. For present purpose, I need only mention UOB Account No 2 where the available overdraft facility was increased from $200,000 to $250,000.

62 As mentioned at [53] above, the defendant relies on clause 3.0 of the Partnership Agreement as evidence of an unequal partnership. I reject this argument. Clause 3.0 must be read subject to the explicit provision in clause 2.1 above that the capital of $250,000 was for "*equal partnership purpose*" [emphasis added]. In the Partnership Agreement, the defendant agreed to provide his services on a full time basis at a total remuneration package that comprised of three components: salary, AWS and net profits of between 10-15%. It is quite clear from reference to "net profits" that if the partnership business did not make money, there would be no net profits available to pay the third component of the remuneration package. In other words, the third component is contingent on the performance of

the business. Arguably, if the business made money, the defendant is entitled contractually to payment of the third component of the remuneration package even though, for instance, the partnership decides not to distribute the trading profits for business or management reasons.

63 The plaintiff's evidence is that the 25%-40% differential (depending on the share of profits agreed upon at the time) represented the defendant's cash contribution to Japco's capital so that within three years he would, at least, be able to 'catch up' with the plaintiff's initial capital injection. What the plaintiff is really saying is that the intention was to capitalise the defendant's share of declared profits amounting to 25-40% of net profits. This intention is in harmony with clause 2.1, which as I have held, is quite plain in providing that the partnership was to be equal. In contrast, the defendant's interpretation - that it was up to him to use the profit share he received under clause 3.0 to contribute towards his share of the capital - is inconsistent with clause 2.1.

64 Significantly, the defendant's written declaration of his interest in the partnership reinforces the terms of the Partnership Agreement in evincing that the partnership was an equal one. In his submissions of Form P to IRAS for the tax returns of 1996 to 2007 (*ie*, the lifespan of Japco), *the defendant consistently reported under Section B on "Partnership Allocation" that the basis for the distribution of profit and loss is 50:50*. [note: 34] In my view, Section B is effectively the defendant's signed declaration of the parties' equal interest in the partnership. Again, this signed declaration is consistent with my reading of an equal partnership in clause 2.1 of the Partnership Agreement.

65 Lastly, this pattern of reporting to IRAS is buttressed by internal correspondence between the parties themselves. In an email dated 1 April 1999, where the defendant provides the plaintiff information for her "tax return purposes", the defendant reports to the plaintiff that the Partnership Allocation has been declared in Form P to IRAS as 50:50. [note: 35] The suggestion is that the p*arties respectively filed their own personal tax returns on the basis that their shares in Japco were 50:50*. This position is supported by letters from IRAS to the plaintiff [note: 36] where her taxes from Year of Assessment 1997 to Year of Assessment 2006 were consistently based on 50% share in Japco's profits.

66 Therefore, there is compelling evidence of an express agreement in the form of the Partnership Agreement, repeatedly underscored by written declarations of equal partnership in Form P, that the plaintiff and the defendant were equal partners in Japco. I therefore find that the partners were equal partners and as such were to share equally in the profits and losses in the partnership business (see s 24(1) of Partnership Act (Cap 391, Rev Ed 1994).

67 The only remaining question is whether it makes a difference that Japco made losses from the outset, so that the defendant could never capitalise his share of the profits (see [63] above). I do not think so. It is crucial to characterise the arrangement accurately: it is not that the defendant was entitled to only 10% of the profits for the first three years and the plaintiff entitled to 90%, but that he was always entitled to 50% of the profits (as against the plaintiff's 50%) with the qualification that 40% of the net profits was to be capitalised as his cash contribution. Therefore, the fact that the defendant never made any capital contributions as per the premise of the Partnership Agreement, does not detract from the partnership being an equal one. However, it *does* affect the division of capital between the partners on a *final settlement of accounts*. *Lindley's* commentary on s 24(1) is apposite and I gratefully adopt it (at para 17-07):

> If it be proved that the partners contributed the capital of the partnership in unequal shares it is presumed that, in the absence of an agreement to the contrary, *on a final settlement of accounts*, the capital of the business remaining after the payment of outside debts and liabilities,

and of what is due to each partner for advances, will, subject to all proper deductions, be divided amongst the partners in the proportions in which they contributed it and not equally. [emphasis added]

68 In other words, in the final settlement of accounts between the partners the defendant's nil contribution to the capital of the partnership and the plaintiff's capital contribution of $124,041.86 would be taken into consideration.

(b) Was OCS part of the partnership business?

69 Having found that there was a partnership between the plaintiff and defendant and that it was one of equal shares, I now turn to the issue of whether OCS and Japco were partnership businesses. As I see it, the manner in which the defendant ran OCS and his failure to share the profits of OCS with the plaintiff was contrary to their arrangement that OCS and Japco were partnership businesses. If this were true, there is no doubt that the plaintiff would be entitled to an account of the defendant's profits from OCS as a result of the breach of his fiduciary duty to the plaintiff. The defendant disagrees with the plaintiff's assertions. His defence that OCS was a separate business was founded on the defendant's sole proprietorship, but this fact alone is clearly not conclusive of the issue. Neither is Mr Yeo's point that if OCS was partnership business, the plaintiff would have to but in fact had never filed any Form P in respect of OCS's business – whilst relevant, this argument must be weighed against the totality of the evidence. In my judgment, this defence is disingenuous. It is an attempt to blur the reality of the situation that for close to six years the office consumer business conducted in OCS was a component of the partnership business with Japco providing the funding. The unassailable fact evidence that the defendant made used of Japco's resources, funds and bank overdrafts for the business of OCS without repaying those operating expenses through OCS's sales receipts which were retained by the defendant. The upshot of this defence, if true, is that the defendant had wrongfully misappropriated Japco's moneys and that he would be liable to the partnership for the moneys taken. Again, even if this defence is sustainable, the only reasonable interpretation that one can put on the overall evidence is that the defendant had not been completely open with the plaintiff in the management and control of the business activities of both entities, and that the defendant's conduct in his dealings with the plaintiff was calculated to put the plaintiff off the scent that OCS's business operations was entirely funded for free by Japco. It therefore stands to reason that on any view of the defence the defendant would have to, *inter alia*, disgorge the profits of OCS that had been earned wholly or partly by the use of Japco's funds and banking facilities.

70 I find that there is unassailable evidence that the office consumables business conducted in OCS was a component of the partnership business with Japco providing the funding for the following reasons: first, Japco completely, funded OCS's start-up costs and operations; second, the manner in which capital was injected into OCS and in which its purchases and stocks were financed; third, the state of documentation between the parties. I now turn to expand on each of these points respectively. During the course of analysis, I will also highlight certain aspects of the defendant's testimony under cross-examination to illustrate the veracity of his evidence, his credibility and reliability as a witness.

71 On the first point, the defendant conceded that Japco completely funded OCS's start-up costs and *all* its operations, from rental expenses, season parking, utilities bills, telephone and fax expenses, OCS's business brochures and calendars and name cards, to even the smallest expense such as the supply of distilled water in OCS's office. [note: 37] Despite this admission, there were times when the defendant tried to change his testimony. I will highlight just two occasions.

72 The first occasion related to the question of whether OCS paid Japco (who, as main tenant of the premises, paid the full rent to the landlord and then collected the rent in turn from sub-tenants other than OCS) for the use of its office premises. The defendant's testimony under cross-examination once again proved himself completely lacking in credibility as a witness. He started out insisting that OCS paid Japco rental. [note: 38] When questioned where the evidence was that OCS had paid Japco the sums he alleged, he asserted a verbal agreement as to some sort of very loose system of payment which is why the sums he alleged did not correspond with the amounts in certain cheques. [note: 39] Finally, he had to concede that OCS had not paid any rental to Japco at all. [note: 40] In re-examination, the defendant tried to change this testimony, and his counsel was cautioned by the court that question in re-examination designed to traverse the defendant's earlier evidence would not be wise unless the defendant was able to show convincingly that the earlier admissions were a mistake.

73 The second occasion related to his evidence that Japco and OCS shared the telephone and fax lines, and that these telephone and fax numbers were reflected in both his and Dorothy's name cards, OCS's corporate calendars, as well as fax messages from OCS to its customers. In answer to Mr Lai's questions that Japco and OCS were partnership businesses, the defendant ran into difficulties:

> Q: I put it to you therefore people looking at [the name cards] will mean [*sic*] that OCS and Japco, same company?
>
> A: I disagree.
>
> Q: Okay. Because if OCS is a separate and distinct company, I put it to you that any ordinary businessman would want to have their own telephone number and to have their own fax?
>
> A: No because we are sharing the office, you know, that's why that we will use, you know, Japco's line, you know, just to reduce the cost. [note: 41]
>
> …
>
> Q: So you will give your calendar to all OCS customers asking them to call OCS on Japco's lines?
>
> A: Yes because we are sharing the office. [note: 42]
>
> …
>
> Q: … So any ordinary person ringing up this line or using this fax would say, "Hello this is Japco, or is this OCS?" What would your answer be? Let's say you pick up the call, Mr Pang, what would you be saying, Japco or OCS?
>
> A: OCS
>
> Q: Why not Japco?
>
> A: No, because it's meant for customer to call in.
>
> Q: How do you know a particular customer will call you, that you say OCS and not Japco?

A: Because, you know, 64554756 is the hotline, you know, normally customer will just call this particular line.

Q: So?

A: So it's OCS customer.

Q: So you will not be, "Hello this is Japco's office, I'm Mr [Andy] Pang from Japco?" Or Dorothy would say, "Hello, I'm Dorothy Lee from Japco?" You said, "I'm from OCS?"

A: No because Japco we are dealing with supplier, normally that, you know, we are giving them, you know, handphone, normally they would just call the handphone.

Court: No, Mr Pang, please, counsel's question is very specific. How do you know if the caller is for Japco or for OCS?

A: I would not know unless, you know, the caller identify that, you know, they are looking for who from which company. [note: 43]

74 The second point demonstrating that OCS and Japco were partnership businesses relates to the plaintiff's intermittent capital contributions to Japco in order to finance the office consumables operations. According to the plaintiff, the defendant and his wife asked her to inject more capital as Japco's two overdraft accounts had reached or were reaching their credit limits. It was also pointed out by the plaintiff, whose evidence was corroborated by documentary evidence, that Japco's business with its suppliers was conducted on a cash basis as well as on short credit terms of 30 days whereas the payment term between Japco and OCS was longer (see further below at [75]). This mismatch in trading terms meant that extra capital was required by Japco to continue to buy office consumable products so that OCS could sell more to increase the sales turnover. The defendant conceded under cross-examination that Japco financed OCS's purchases from Japco (which is separate from OCS's operating expenses): [note: 44]

Court: … that's why counsel's question is really essentially this: it would appear that Japco have to pay the suppliers first using its own funds, right? The invoice between Japco and OCS, it's a longer payment term, the credit is longer.

A: Yes, I agree, Your Honour.

Court: So at least for 30 days, right?

A: Yes

Court: It's Japco's money right?

A: Yes.

75 I should clarify the reference to the invoice between Japco and OCS in the court's question. The defendant had produced some invoices from Japco to OCS that were purportedly issued in 2006, namely on 31 January 2006, 28 February 2006, 31 March 2006, and 28 April 2006. [note: 45] Finally, there were several invoices dated 8 September 2006. [note: 46] I will refer to these collectively as "the 2006 invoices". In these invoices, the payment term was 60 days. Mr Yeo agrees that for those

years OCS was behind in the payment of the purchases from Japco, Japco had financed OCS. However, he goes on to contend that Japco did not ultimately finance OCS because OCS eventually not only paid but in fact *overpaid* Japco, and this is one of the defendant's heads of counterclaim. As the basis of this head of the counterclaim, the defendant adduced a table showing the figures allegedly representing OCS's purchases from Japco and the amount paid by OCS to Japco over the period of six years from 2000 to 2006 (hereinafter the "Defendant's Table") [note: 47]. I will explain below at [132]-[136] why I reject this head of the counterclaim, but for present purposes, the point is that Japco financed OCS's purchases of supplies from Japco out of its own pocket first and then awaited repayment from OCS.

76 Adding to this picture is the fact that the system of repayment by which OCS repaid Japco for its purchases of supplies was an informal one. The only invoices the defendant produced were the 2006 invoices. As for the period between 2000 to 2006, the defendant's evidence in re-examination was that Japco did *not* invoice OCS during that period. The context of the re-examination is important. It must be remembered that it stemmed from the defendant's evidence that there were no invoices from 2000 to 2006 which then led to Mr Yeo questioning the defendant on how he had derived the figures in the Defendant's Table (see above at [75]). I will be commenting on the reliability of the Defendant's Table further below when I deal with the defendant's counterclaim, but for present purposes, even if the 2006 invoices were genuine, they were inadequate to prove the amount of OCS's purchases from Japco on a transaction-by-transaction basis [note: 48]. The point is that OCS's alleged repayments of purchases to Japco were *not on an invoice-by-invoice basis but rather by lump sum rounded figures* [note: 49]. The reliability of the rounded figures in the Defendant's Table is unsatisfactory, as borne out by the defendant's evidence in re-examination: [note: 50]

> Q: Just answer my question, do you have the invoices from Japco to OCS for these years, 2000 to 2006?
>
> A: No
>
> ...
>
> Q: ...I asked you where are the invoices you said there are no invoices?
>
> A: Yes.
>
> Q: So my next question to you was, where did you get these figures from? What is your answer, continuing from there.
>
> A: It is from the GST return.
>
> Q: And this GST return...whose GST returns are these?
>
> A: OCS, OCS GST returns.
>
> Q: OCS GST returns, right? So when you say OCS GST returns, what are you talking about? You have the GST amount, what is the GST for?
>
> A: The GST, that means that purchases made from the supplier for ...in this case it is from Japco.

...

Q: ...You say it is taken from GST returns, right?

A: GST returns, that's right.

Q: Filed by OCS, right?

A: Right

77 Thus far, the defendant's evidence is that the figures representing the purchases from Japco were taken from the GST returns which OCS submitted to the revenue because no invoices were issued by Japco. The following answers from the defendant not only contradicted his earlier testimony, it also did not make sense at all. Why would the defendant bother to work backwards using the GST returns if invoices were really and readily available? This is what he said in answer to Mr Yeo's questions: [note: 51]

Q: My question to you is: where do you get this amount from?

A: ...it is from the purchases, that means when Japco bill to OCS, you know, these are the figures that we take into consideration.

Q: Yes.

A: Okay, so we will add up the figures and we will submit the F5 to GST. We submit to GST.

Q: What is the document you are talking about?

A: Purchases from the supplier.

Q: What is the document? The document, you know?

A: Invoices.

Q: Whose invoices?

A: Japco bill to OCS.

Q: So the GST in Japco's invoices, is it?

A: Yes.

Q: So from that GST in Japco's invoices which you are now telling us, how do you get this figure?

A: That is the total of four quarters.

Q: No. How do you get this figure, 53271, for example, you prepared F5 by looking at the Japco invoices, so you only had the GST, right? So how do you get this?

A: This is that total figures from all the invoices. These figures, okay, when we report to Inland

Revenue, so that will be our total figures. This is the total figures, total purchase, that OCS buy from Japco.

Q: I know, Mr Pang, but you are at GST, right, we are now looking at the GST figure, right?

A: Okay.

Q: So from the GST figure you are telling us that you got it from the GS[T] ..but how do you arrive then at this figure?

A: It is a sum, right, from the purchases.

78 It is obvious that the defendant is an unreliable witness. I am satisfied that no invoices were issued as he originally testified. If there were invoices, he would have produced them for the trial. As stated, the 2006 invoices were not explained and they have little or no evidential weight save for the fact that the payment term of 60 days between Japco and OCS was certainly longer than what Japco's supplier gave to it or what OCS gave to the end buyers, namely 30 days. At the end of all questions on invoicing between Japco and OCS for the latter's purchases, the evidence showed that internally there was no proper system of invoicing between Japco and OCS, and this absence of invoicing internally is a further sign that the defendant had managed the office consumables business of both entities as partnership businesses. There was no reason why Japco would fund OCS's purchases of supplies from Japco out of its own pocket first, and then rely only upon an informal system of payment without documentation as to which particular purchases were being set-off with each lump sum payment, if Japco and OCS were not partnership businesses.

79 In addition to the two main points above (*ie*, the arrangements by which Japco purchased supplies and sold them on to OCS and the fact that Japco funded OCS in every single aspect of its operations), there is plenty of other evidence that shows that Japco and OCS operated as partnership businesses. This evidence includes the fact that the defendant was paid by Japco and he claims to supervise OCS's business; Dorothy appears to double as the purchasing officer for Japco despite officially being only an employee of OCS, as evidenced by tax invoices from Japco's suppliers [note: 52]; the plaintiff was named in correspondence with third parties as OCS's credit controller officer [note: 53]; and OCS collected rental from sub-tenants using OCS invoices stamped and signed by Dorothy, when rental was due to Japco as the main tenant of the premises (see above at [72]). The Minutes of Meetings also show Japco and OCS as partnership businesses. From the Minutes of Meetings held on 26 January 2005 and 28 February 2005, 12 April 2005, 27 August 2005 and 21 November 2005, the plaintiff was updated on matters pertaining to the staff strength, recruitment of marketing executives to boost sales and profitability, and the performance of the sales executives. One point to note is that Japco had no need for sales staff as it primarily sold to OCS, and the defendant was the "OMO" of Japco. It stands to reason that the defendant would not have had discussions with the plaintiff on this particular topic of staff strength unless she had an interest in OCS's business. There was no challenge to these Minutes compiled by the plaintiff. [note: 54] I suppose there is no reason to do so since the Minutes of Meeting of 21 November 2005 recorded by Dorothy also covered discussions on the sales people and their performance. [note: 55]

80 The plaintiff continued to be lulled into believing that OCS and Japco were partnership businesses and evidence of this is from the defendant's expansion plan referred by the plaintiff at [34] above. I am not persuaded by the defendant's testimony that the expansion plan was for OCS and that he was sharing his vision for his company with the plaintiff. It is clear from the documents disclosed in court that the defendant managed the affairs of both businesses *(ie*, Japco's and OCS's)

as components of the partnership business. For example, the document in the plaintiff's bundle of documents (at vol 1, p154)("the document in PB vol 1, p154") prepared by the defendant portrayed the combined performance of both entities in the office consumables. The defendant admitted that the figure of $50,149.53 in the document in PB vol 1, p 154 was the combined 2005 net profit of both entities. The defendant's incomprehensible and gibberish explanation for presenting the combined net profits in the document in PB vol 1, p 154 was nothing more than an egregious attempt at hiding his lie [note: 56] :

Q: Now, I want you to look at the last column there on page 154, you put there net profit 2005, you look at the bottom there it says 50,149.53.

...

A: Yes

Q: Now, you compare that with what I have told you earlier in 1 PB31 and 2PB327, it is exactly the same sum, to the very cent. So my question is for the net profit 2005, 50,149, this is the combined profit of OCS and Japco, yes or no?

A: Yes.

Q: Right. So you're treating OCS as part of Japco. Japco owns OCS?

A: No, this is a draft copy that you now I put up, you know, it's for draft purpose.

Q: I don't understand what draft purpose. This is your document prepared by...

A: This is not a certified copy, you know, this is a copy that you know I put up, you know, just for reference purpose.

Q: No, Mr Pang, you put up as an expansion plan?

A: No, this is a proposed plan, you know, it doesn't mean that, you know, it actually happened.

Court: Who are you putting this expansion plan to?

A: No this expansion plan is meant for OCS.

Mr Lai: But why do you include Japco's profit in OCS?

A: No, like I say it's a draft copy that, you know, I prepare, you know, and then I just put it in because it's not even...

Court: Mr Pang, I would like to remind you that you are under oath. You expect me to believe what you have just said? You did it for fun?

A: No, the expansion plan is for OCS.

Court: Right. But why are you including information that is exclusive to Japco in you expansion plan?

...

A: Because, you know, I include the particulars, you know, it's just that, you know, when we...I eventually, you know, shifted out from this address that, you know, I will still continue to buy from Japco. That means if I have to expand to the town location, any of the town location, okay, OCS will actually move out from Japco registered office and I will continue to do business with Japco. That is my intention, Your Honour.

Mr Lai: That is not the answer to her Honour's question as well. Neither is that answer to my question. I'll just repeat one more time. If there's no answer then I'll move on. You are wasting a lot of the court's time and that will have a bearing on costs. All right. Now, I'll ask you one more time. Why did you include Japco's profits in you expansion plan?

...

A: You know, as what I have explained earlier on.

Q: I put it to you, Mr Pang, that you included Japco's net profit into the net profit [of OCS] for your expansion plan is because Japco owns OCS?

A: I disagree.

81 Finally, I should comment on the evidence relied upon in support of the defendant's allegation that the plaintiff consented to the setting up of OCS as his company. He referred me to OCS's application for a micro loan of $50,000 in September 2002 and that the plaintiff stood as guarantor for that loan. The defendant attributes this to the plaintiff being "supportive" of OCS as his initiative [note: 57], which is in my view hardly a convincing explanation. Moreover, not only is there no evidence that the plaintiff actually acted as guarantor as the application for a micro loan was not signed by the plaintiff, it is also not known if the micro loan was indeed granted because there is no evidence of any interest payment in any of OCS's Profit and Loss Statements except for the financial year 2006 after the relationship broke down.

82 In light of compelling evidence, I find that the business of OCS was not a separate and independent business as the defendant claims and wants this court to believe. Its business was clearly an integral part of the partnership's business just like Japco's. What is also clear is that the profits of OCS derived from the business of office consumables were received by the defendant without properly and accurately accounting for them to the plaintiff. [note: 58]

(2) Liability to account

(a) Based on breach of fiduciary duty

83 It is trite law that a partnership is a relationship that gives rise to fiduciary duties. *Lindley* at 16-01 states that a duty of good faith is a fundamental obligation of partners. As Bacon V-C put it in *Helmore v Smith* (1886) 35 Ch D 436 at 444:

> If fiduciary relation means anything I cannot conceive a stronger case of fiduciary relation than that which exists been partners. The mutual confidence is the life blood of the concern. It is because they trust one another that they are partners in the first instance; it is because they continue to trust each other that the business goes on.

84 The duty of good faith encompasses the core obligation of loyalty. A number of aspects of this

core obligation of loyalty is (a) the duty not to place himself in a position where his interest would or may conflict with duties owed to his partner ("the non-conflict duty"); and (b) the duty not to make a profit from his position ("the not to profit duty"). In the case of partners, the fiduciary duty is further spelt out in the Partnership Act. Sections 28 to 30 of the Partnership Act read as follows:

> **Duty of partners to render accounts, etc**
>
> 28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.
>
> **Accountability of partners for private profits**
>
> 29. (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection.
>
> ...
>
> **Duty of partner not to compete with firm**
>
> 30. If a partner, without the consent of the other partner, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

85 Recently, the Court of Appeal in *Ang Tin Yong* at [14] stated:

> The duty to disclose and render accounts of partnership transactions arises out of the fiduciary relationship which exists between partners (see Yeo Hwee Ying, *Partnership Law in Singapore* (LexisNexis, 2000) at 174). This right is reflected in s 28 of the Partnership Act (Cap 391, Rev Ed 1994). Partners can institute an action against other partners to obtain an account of transactions concerning the partnership. Also, in *Lindley & Banks on Partnership* (Sweet & Maxwell, 17th Ed, 1995) at para 23-27, Lord Lindley wrote: [t]he right of every partner to have an account from his co-partners of their dealings and transaction is too obvious to require comment." Therefore an order for an account of partnership transactions is a relief sought between *partners*.
>
> [emphasis in original]

86 From the passage quoted above, it is necessary to bear in mind the distinction between two situations where an account is sought: in a subsisting partnership, a partner is entitled to an account at any time as of right; where an account is sought after the dissolution of a partnership, however, the action as was the case here is based on a breach of fiduciary duty. The present case falls in the latter situation where the claimant seeks relief in equity such as an account of secret profits or equitable compensation. The plaintiff's case is that the defendant had conducted himself as he did for his own benefit and she is suing him for breach of fiduciary duty, and she seeks an account of the benefits and gains which the defendant had received.

87 There is nothing in this particular Partnership Agreement which either exclude the ordinary consequences of a fiduciary relationship between partners, or the implication of the obligations that are normally concomitant of such a fiduciary relationship. Neither could informed consent on the part of the plaintiff be raised – indeed, the defendant was right not to suggest this defence, because the

element of informed consent would have been entirely inconsistent with the defence he was running.

88 In the circumstances of this case, the defendant owed fiduciary duty to the plaintiff in the running of Japco. Given my finding above that the business of OCS was the partnership's business, these fiduciary duties extended to the running of OCS. I now turn to examine in more detail how and where the duty of good faith was breached by the defendant both in relation to Japco in general as well as OCS in particular.

(b) Defendant's breaches of his fiduciary duties

89 In my judgment, the defendant has not discharged the burden which is on him to show that at the relevant times, (a) there was no loss to Japco arising from OCS's failure to reimburse the operating expenses of OCS paid by Japco, and (b) the profits of OCS had been earned wholly or partly by means other than the use of Japco's funds and banking facilities.

90 It must be noted that regardless of whether OCS was partnership business or the defendant's own business, there should rightly have been an inter-company account to record payments by Japco for OCS's operating expenses. From this inter-company account, the defendant would be able to keep track of the amount owing to Japco for OCS's operating expenses. Put another way, there should be recognition and accounting for OCS's operating expenses that were paid for by Japco and remained unpaid. Ordinarily if there was recognition and accounting as described, the Balance Sheet would reflect the amount that was owed by OCS. However, in this case the Balance Sheets for the relevant financial years did not reflect the amount that was owed by OCS seeing that OCS did not repay or reimburse Japco. Equally, OCS's Profit and Loss Statements for the relevant periods showed expenses that were funded by Japco and the absence of any balance owing to Japco in OCS's Balance Sheets cast doubt on the reliability and accuracy of the financial statements presented by the defendant. In the circumstances, Japco is out of pocket for OCS's operating expenses and the defendant took OCS's profits without sharing the benefit of the business with the plaintiff. In short, the defendant had conducted himself as he did for his own benefit and gain contrary to his fiduciary duty of good faith. Therefore, the defendant should account for the benefits and gains he received. This would be for the period 2000 to 2006.

(i) Absence of proper and full accounts

91 In this section of the judgment, I set out how the evidence shows that there are serious discrepancies in Japco's accounts, thereby pointing to the defendant's failure to disclose and give proper and full accounts to the plaintiff, which constitutes a breach of his fiduciary duty of good faith.

92 At all material times, Japco's accounts and tax returns were prepared by the defendant. For the purposes of filing Form P of Japco and the plaintiff's personal income tax, the practice was that the defendant prepared and submitted to the IRAS the Profit and Loss Statement and Balance Sheet of Japco. The defendant did not give any impression, and I accept that the plaintiff would not have known that the partnership's accounts – Profit and Loss Statements and Balance Sheets from 2000 to 2006 – were not an accurate reflection of the true state of affairs of the partnership's businesses. The defendant's argument that the plaintiff had approved them and never raised issues with the Profit and Loss Statements previously is immaterial and inappropriate.

93 I refer to a related line entry for sales in Japco's Profit and Loss Statements. Again the sales figures are different when compared to other documents disclosed. The defendant produced the Defendant's Table (see above at [75]) to show that over a period of six years, OCS had bought and

paid to Japco a significant amount of money for office consumable products. Produced below is an extract of purchases and payments from the Defendant's Table:

Payment as at 31/12/2000	$42,000	Purchases as at 31/12/2000	$53,271	Rental as at 31/12/00	$3,600
Payment as at 31/12/2001	$471,600	Purchases as at 31/12/2001	$461,743.31	Rental as at 31/12/01	$4,890
Payment as at 31/12/2002	$667,100	Purchases as at 31/12/2002	$705,467.60	Rental as at 31/12/02	$5,562
Payment as at 31/12/2003	$954,500	Purchases as at 31/12/2003	$987,391.60	Rental as at 31/12/03	$6,864
Payment as at 31/12/2004	$1,223,000	Purchases as at 31/12/2004	$1,162,479.35	Rental as at 31/12/04	$6,930
Payment as at 31/12/2005	$1,230,250	Purchases as at 31/12/2005	$1,198,205.35	Rental as at 31/12/05	$6,930
Payment as at 31/12/2006	$583,168	Purchases as at 31/12/2006	$470,135.60	Rental as at 31/12/06	$2,310
Payment as at 31/12/2007	$34,242				
TOTAL	$5,205,860		$5,038,693.81		$37,086
Overpayment	$130,080.19				

94 To test the veracity of the information in the Defendant's Table above, it is necessary to compile the sales and purchases of Japco and OCS respectively based on their Profit & Loss Statements for the period 2000 to 2006. This compilation is in Schedule 1 of this judgment. It must be pointed out that as OCS commenced operations in September 2000, the comparable sales of Japco to OCS are assumed to be the same as OCS's purchases for the year 2000. As for 2006, OCS's purchases were stated in the Defendant's Table as up to 31 December 2006. However, OCS's 2006 Statement of Revenue & Expenses [note: 59] is up to 7 April 2006 when the relationship had notionally ended.

95 I now compare Japco's sales in the Profit & Loss Statements as set out in Schedule 1 with the Defendant's Table. OCS's purchases (in the Defendant's Table) in total should equal to Japco's total sales but they are not. [note: 60] The difference between Japco's total sales and OCS's total purchases from Japco for the period September 2000 to 7 April 2006 is $166,045.26 ($5,204,739.07 minus $5,038,693.81). In addition, OCS's total purchases based on its Profit & Loss Statements for the period September 2000 to 2005 [note: 61] and Statement of Revenue & Expenses from 1 January 2006 to 7 April 2006 [note: 62] as set out in Schedule 1 do not equal to the above purchases in the Defendant's Table and the difference is $197,479.48 ($4,841,214.33 minus $5,038,693.81).

96 Again there are differences elsewhere when comparing Japco's sales figures as shown in the Profit & Loss Statements with OCS's purchases in the Profit & Loss Statements for the same corresponding periods (see generally Schedule 1). In total, the difference is $363,524.74

($5,204,739.07 minus $4,841,214.33). The discrepancies here are also not explained and they can only point to the defendant's failure to disclose and give proper and full accounts to the plaintiff, and I so hold. Accordingly, the defendant's breach of fiduciary duty of good faith is made out.

97 The defendant relies on the Defendant's Table to show that OCS had paid to Japco a total of $5,205,860 made up of OCS's purchases amounting to $5,038,693.81 and rental amounting to $37,086 with the balance of $130,080.19 being overpayment by the defendant. I have already noted that the rental payment had not been proven at the trial (see [72] above). This therefore brings the total payment down to $5,168,774. In cross-examination of the defendant, Mr Lai was able to demonstrate through a sample of payments in 2006 that some of these cheques had nothing to do with payment of OCS's purchases from Japco. Furthermore, with the discrepancies highlighted above, it is not possible to reconcile OCS's purchases from Japco and what the defendant claimed to have paid in the Defendant's Table. This problem is compounded by the absence of sales invoices from Japco to OCS, as explained above at [75]-[78], so that lump sum payments in round figures cannot be matched to specific purchases.

(ii) Expenses and profits of OCS

98 Having found in the previous section that the defendant breached the fiduciary duty of good faith in relation to Japco in general, I now turn to the evidence that he breached his fiduciary duties in relation to OCS specifically.

99 To set the scene for discussion, it is helpful to begin with some material background facts. First, the plaintiff explained that she remained concerned that despite the defendant's promises that Japco's overdrafts in the two UOB Accounts would be reduced from OCS's sales revenues, the defendant was still unable to reduce the overdrafts and despite her further capital injections into Japco. Second, at subsequent meetings between the parties, the plaintiff repeated her concerns that the overdrafts were still not reduced and that some Minutes of Meetings recorded the defendant's response to the plaintiff's concerns. Dorothy's record of the Minutes of Meeting held on 21 November 2005 between the plaintiff and the defendant stated [note: 63]:

> Usual meeting and asking "when can recover back Acct 2 outstanding amt to their friend <$120k>/ As mentioned, it takes time & depend how fast the current New sale ppl can generate figure etc..! Not overnite matter coz outside biz getting bad to worst...
>
> ..advise progress & sales thru report of Abby & YF! slow BUT need more time to gauge * need 2 invest ard $11K or 6 mths to monitor the performance!
>
> "Clonning" of another sale ppl is needed in order to boost up sales figures!
>
> [*sic*]

100 The 31 March 2005 Minutes of Minutes, also recorded by Dorothy, was on the expansion plan. It stated: [note: 64]

> >Going details about sales operation/staff etc...how to Reduce OD!
>
> >Very positive about the future "Expansion Plan" in view of our past 3 years track record that biz making money despite the outside slump market!!Julie adv to execute the plan asap since this is the only justify way to see the biz running & as well cover the OD issue asap! No MORE Rushing by asking HOW?? When?? Coz proper biz need justify time frame to make it Instead of

OVERNITE...

[*sic*]

101 As stated earlier at [75], Mr Yeo for the defendant argues that Japco did not finance OCS. To repeat, his reasoning is as follows: for those years that OCS was behind in the payments, he agrees that Japco financed OCS; however, at the end of the day, OCS had overpaid Japco (based on the Defendant's Table) and as such Japco did not finance OCS. I make two comments here. Mr Yeo's submissions do not address the defendant's admission that Japco paid for the start-up costs and operating expenses of OCS (see above at [71]). Second, Mr Yeo's submissions, at best, are directed at OCS's purchases. I have already commented on the unreliability of the Defendant's Table on the amount of purchases and the amount of payments.

102 As revealed by the evidence, the defendant had not been completely open with the plaintiff. In any case, for there to be a breach of duty of good faith, it is not necessary to establish that the defendant acted in a clandestine manner in order to obtain a benefit or profit for himself at the expense of the partnership. The liability arises from the mere fact of a profit having in the circumstances been made, as was in the present case. The High Court of Australia in *Chan v Zacharia* (1984) 154 CLR 178 at 198 stated:

> In terms of the personal liability to account, the principle of equity is that a person who is under a fiduciary obligation must account to the person to whom the obligation is owed for any benefit or gain (i) which has been obtained or received in circumstances where a conflict or significant possibility of conflict existed between his fiduciary duty and his personal interest in the pursuit or possible receipt of such a benefit or gain or (ii) which is obtained or received by use or by reason of his fiduciary position or of opportunity or knowledge resulting from it. Any such benefit or gain is held by the fiduciary as constructive trustee.

103 In the course of the trial, the defendant was directed to advise the amount of profits which he had received from OCS. The defendant produced at the trial OCS's Profit and Loss Statements in a bundle marked "4DB". It is important to note that other than for OCS's payment of purchases (the exact quantum is not proven), the start-up costs and yearly operating expenses of OCS were paid by Japco and *not* by OCS. [note: 65] Yet, OCS disclosed in the Profit & Loss Statements for the period 2000 to 2006 operating expenses incurred by the business such as salaries, CPF, rental and other miscellaneous expenses that amounted to a sum of $394,012.74 (see Schedule 2 of this Judgment). To this end, as between the plaintiff and the defendant, it is reasonable to conclude, since the expenses were not paid by OCS, the entity's profits were in reality, the gross profits which he took for himself. I pause here to comment on the gross profit for the period 1 January 2006 to 7 April 2006 which showed a gross loss of $12,616 (see Schedule 2 of this Judgment). This is odd for it would mean that OCS deliberately sold to third parties at a loss. Based on OCS's documents, the sum of $398,324.09 was the total gross profits unaccounted to the plaintiff. It follows that the breach of fiduciary duty against the defendant is made out.

104 Apart from operating expenses, I noted from Japco's Profit and Loss Statements for the same period that Japco carried a substantial amount of stocks in its books when the only customer was OCS. By comparison, OCS sold to third parties but carried minimal stocks in its books, when logically it should hold more stocks for the volume of business it was doing. What this tells the court is that OCS benefitted from Japco's financing and shouldering of the holding costs for maintaining OCS's stock requirements.

105 OCS's Profit and Loss Statements included a line entry for rentals. By this entry, the defendant

gave the impression that OCS had paid rental and other operating expenses in its Profit and Loss Statements for 2000 to 2006 (see Schedule 2 of this Judgment) without recognition and accounting that the expenses had been paid for by Japco, the intention is probably to reduce OCS's taxable profit.

106 The defendant also admitted that profits of OCS went into his pocket. [note: 66] Since the defendant operated the business of OCS on credit terms, obtained supplies on favourable credit terms from Japco, and used some of the receipts from sales to pay on an irregular basis for supplies from Japco, it is a reasonable inference in the absence of reliable countervailing evidence that profits attributable to OCS were from the unutilised sales receipts (see [103] above). It seems to me that the defendant held the OCS's sales receipts as constructive trustee for Japco. As stated, the defendant's duty to account was not dependent on fraud or bad faith, but merely on whether a profit had been made.

107 A related point is the date of dissolution of the partnership. Mr Yeo refutes the plaintiff's claim that the partnership was dissolved on 7 April 2006. He claims that the plaintiff has not shown that the partnership was dissolved in the manner prescribed by the Partnership Act. Mr Yeo appears to be suggesting an alternative date, namely 2 September 2006 when the parties met to talk about Japco's stock which Mr Yeo said were transferred to OCS on 14 September 2006 as the date of dissolution. On any view, the outcome is the same in that the duty of good faith continues between partners of a dissolved partnership until such time as its affairs are finally wound up and settled (see *Lindley* at p 557, para 16-06).

108 It is envisaged by s 32 that a partnership can be dissolved by agreement. It can also be dissolved under s 32(1)(c) by a partner giving notice of his intention to dissolve the partnership. In the event, by virtue of s 32(2), the partnership is dissolved as from the date notice was communicated to the partnership. According to the plaintiff, she informed the defendant of her decision to close Japco on 7 April 2006. As far as I can tell, the defendant has admitted in cross-examination that Japco stopped doing business on 7 April 2006. [note: 67] During cross-examination, Dorothy confirmed that she was aware of the decision to close Japco on 7 April 2006: [note: 68]

> Q: But the fact is you know for a fact at 7 April 2006 there was this intention to close down Japco?
>
> A: Obviously, I'm aware.

109 The defendant does not deny preparing the plaintiff's Statement of Revenue & Expenses for the period 1 January 2006 to 7 April 2006. [note: 69] Thereafter, the parties met in September 2006 purportedly to start the process to wind up the affairs of Japco including terminating the OCS's bank account and the partnership gave up the tenancy of the premises in October 2006. In addition, the parties made monthly contributions of $1,000 each towards the overdraft interest of UOB Account No 2. The monthly contributions started from 15 September 2006 and it continued for several months. In the case of the defendant, he paid a total of $8,000 whereas the plaintiff paid $9,000.

110 Precisely what the profits after 7 April 2006 are should be the subject of further account by the defendant trading as OCS until end of 31 December 2006. This is because the defendant's duty of good faith continues after dissolution of partnership until the completion of the winding up of the affairs of the partnership. The Defendant's Table suggests that winding up of the affairs of the partnership was not completed and settled until the defendant's alleged payment as at 23 March 2007 to Japco. But I am prepared to accept that winding up was completed by 31 December 2006 save for

the payments in 2007.

111 I pause here to comment on the plaintiff's claim for an account in respect of DSS (see above at [39]) on the basis that it was set up to step into Japco's shoes. I find that there is insufficient evidence to find that an account should be taken of DSS as an asset of Japco. Although the plaintiff's Closing Submissions [note: 70] conclude that true and proper accounts must be rendered for OCS and DSS, this is a conflation of DSS with OCS without any support based on evidence adduced at trial – the plaintiff's arguments preceding this conclusion relate *only* to OCS. The plaintiff has not adduced any evidence to support her assertion that DSS took away the clients and goodwill of Japco and OCS. Indeed, the plaintiff conceded under cross-examination that her position that DSS took away the clients and goodwill of Japco and OCS is just her "belief". [note: 71] I accordingly find that, unlike with OCS, there is no evidence that DSS is partnership property in respect of which the defendant is liable to account to the plaintiff.

(c) Limitation

112 Having found that the plaintiff is entitled to an account in respect of the profits of OCS, it is necessary to consider whether the relief *soug*ht is time barred. The defendant has pleaded time bar in his Defence relying on s 6(1) and s 6(2) of the Limitation Act (Cap 163, Rev Ed 1996) ("Limitation Act"). Mr Yeo repeats s 6(1) and s 6(2) but does not develop the defence in his submissions.

113 Be that as it may, it appears that the plaintiff is entitled to an account only in respect of OCS's business from 26 March 2002 because of s 6(2) of the Limitation Act which provides that:

> An action for an account shall not *be b*rought in respect of any matter which arose more than 6 years before the commencement of the action.

114 In *Ang Toon Teck v Ang Poon Sin* [1998] SGHC 67, the High Court held that the plaintiff's claim for an account for moneys received in 1982 was time barred because the action was commenced only in 1995. In reaching this conclusion, the High Court specifically rejected the plaintiff's argument that the limitation period ran only from the point when the beneficiaries demanded that the defendant render them accounts, not from the point when the liability to account arose. The High Court cited *Preston & Newsom's Limitation of Actions* (3rd ed) at p 56:

> The cause of action for an account arises *when the defendant has assets of the plaintiff in his hands in respect of which he is liable to account*. Normally, he is so liable, if at all, at the moment he receives them; but there may be circumstances in which the express agreement between them is that he is only to be accountable at some later date or where the court can infer such an arrangement [emphasis added].

115 The Plaintiff took out the Writ of Summons on 25 March 2008 in the Subordinate Courts, the short title of which was DC Suit No 941/2008/K. By Order of Court dated 9 September 2010, the DC Suit was transferred to the High Court. Although OCS was registered on 3 March 2000, it started operations in September 2000 which precedes the cut-off point of 25 March 2002. Therefore, the limitation period for an action for account in respect of OCS began running at 26 March 2002, not later when the Plaintiff began demanding accounts.

116 As for the exceptions of the Limitation Act, none would apply here. In particular s 29 would not apply because the plaintiff's action is not "based upon the fraud of the defendant or his agent" or "the right of action is concealed by fraud" or "for relief from the consequences of a mistake".

117 Furthermore, s 22(1)(a) and(b) do not assist the plaintiff. There is no express trust here. Neither does there seem to be constructive trust of the kind that falls within s 22(1). The plaintiff's cause of action against the defendant is on his own personal liability for breach of fiduciary duty as a partner. This is therefore not a constructive trust in the proprietary sense of the word but rather a personal liability to account *as if* he were a trustee (see *Halsbury's Laws of Singapore*, vol 9(2) (Lexis Nexis, Singapore 2003) at para 110.571). In other words, this case involves a "class 2" trust within Millett LJ's classification in *Paragon Finance v DB Thakeral & Co* [1999] 1 AER 400, which Millett LJ doubted fell within the scope of England's equivalent of s 22, (see also *Gwembe Valley Development Co Ltd and Another v Thomas Koshy & Others* [2004] 1 BCLC 131 and *Halton International Inc v Guernroy Ltd* [2006] EWCA Civ 801 per Carnwath LJ). A limitation defence to a claim might be available by analogy with common law claims such as breach of contract as may be the case with breach of fiduciary duty.

118 In the circumstances, the plaintiff is entitled to an account of the profits from OCS within six years prior to the commencement of proceedings. In other words, from 26 March 2002 and not since OCS commenced business in September 2000.

(3) Indemnity against liability to UOB

119 As explained at [12] above, UOB Account No 1 and UOB Account No 2 are secured by a mortgage on the plaintiff's home and by the Guarantee from the plaintiff and the defendant. The plaintiff, of course, is concerned that UOB may pursue solely her in respect of the overdrafts in the two UOB accounts, on the basis of her mortgage and Guarantee. She therefore prays for an order that the defendant indemnify her for all sums which she may be liable to pay UOB.

120 It is not the plaintiff's case that the bank has demanded payment of the overdrafts and/or had only sued and obtained judgment against her, and that the plaintiff has satisfied the judgment. It seems to me premature to pray for an indemnity order which incidentally cannot be for all sums which the plaintiff may be liable to pay UOB. If anything, the plaintiff has not made out any basis in law for the defendant to indemnify her against her entire liability to UOB. Speaking hypothetically, in the event UOB chooses to only sue the plaintiff, she is entitled to claim against the defendant for a half-share of any liability to UOB under the Guarantee. This is either in her capacity as co-surety under the Guarantee or as a partner under the Partnership Agreement. As I have established above, the Partnership Agreement provides for the plaintiff and defendant to be equal partners – they therefore share the Japco's losses equally. According to *Lindley* (in relation to s 24(1) of England's Partnership Act 1890 on which s 24(1) of our Partnership Act is based) at 20-04:

> "[W]here there is no agreement to the contrary, it is clear that if execution for a partnership debt contracted by all the partners…is levied on any one partner, who is compelled to pay the whole debt, he is entitled to contribution from his co-partners."

In conclusion, the plaintiff is, in principle, entitled both as co-surety as well as partner to a contribution from the Defendant of a half-share of any liability owed to UOB.

(4) The Counterclaim

(a) The first head: $142,932 in unpaid salaries etc

121 The defendant's first head of counterclaim is the sum of $142,932 consisting of:

(a) $28,344 of unpaid salary for 1999;

(b) $22,344 of unpaid salary for 2000;

(c) $33,620 being one month's AWS from 1996 to 2006;

(d) $14,005 being 110 days of unutilised annual leave from 1996 to 2006;

(e) $26,689 being 25% of the profits due from 1996 to 2006; and

(f) $17,930.66 being unpaid salary from May 2006 to 10 October 2006.

122 The defendant was compelled to drop claim (e) under cross-examination when confronted with the fact that Japco has always been making losses, so a claim for 25% of its profits was absurd. I therefore do not purport to deal with claim (e). I dismiss the rest of this counterclaim in its entirety, for the following reasons.

Claims (a) and (b): Back pay

123 The defendant makes these claims on the basis that his monthly salary was agreed to be $3,362 but he was paid less than that in 1999 and 2000: $28,344 in claim (a) and $22,344 in claim (b) therefore represent the total difference between what he should have been paid in that particular year (*ie*, $3,362 x 12) and what he was actually paid in 1999 and 2000 respectively.

124 The plaintiff does not dispute that the defendant's monthly salary was initially agreed to be $3,362. However, she avers that, when the defendant proposed that they change Japco's line of business from consumer electrical goods to office consumables as a result of the Seychelles Debt *ie*, around the period of 1999-2000 (see above at [20]), he offered to accept a reduced salary as a start because of the losses from the Seychelles Debt. [note: 72] Indeed, the defendant did not dispute under cross-examination that the objective evidence shows that his salary fell below $3,362 a month for many years, not just in 1999 and 2000. [note: 73] Rather, he claimed that he had a verbal agreement with the plaintiff that whatever salary fell short of $3,362 a month would be compensated for in future ("Verbal Agreement for Back Pay").

125 Leaving aside the fact that the defendant's claims are in the first place time barred under s 6(1) of the Limitation Act, his evidence on the alleged Verbal Agreement for Back Pay (which was pleaded not in the Counterclaim but in the Rejoinder) was utterly unconvincing. When asked the very basic question of when this Verbal Agreement for Back Pay was entered into, he first replied 1999 [note: 74] and then changed his testimony to 26 June 2006 [note: 75]. Furthermore, when asked why, if there were indeed this Verbal Agreement for Back Pay, he only claimed back pay for 1999 and 2000 when he was paid below $3,362 a month in many other years as well, his answers were utterly unconvincing:

> Court: You were not getting 3362, you were getting less, so what discrepancy are you talking about?
>
> A: That's why I only put –
>
> Court: You could claim the difference?
>
> A: That's why I only put 1999 and 2000 and I need time to go and figure out what are the figures for the following years. Where it could be, you know, I've slipped out of the mind that,

you know, all of the figures [*sic*].

…

Q: So my question to you is: why didn't you make a claim for the difference?

A: It could be that, you know, I've slipped off my mind. [*sic*].

Q: You are under oath, Mr Pang.

A: I know. But sometimes, memory, that, you know, if I cannot recall –

Q: Mr Pang, there is no memory. It is staring you in the face.

A: Yes, I'm aware that there are discrepancies. [note: 76]

126 Furthermore, the defendant accepted that there was no record of any accrual of back salary in Japco's accounts. [note: 77] The defendant therefore failed to make out a case for this component of his first counterclaim.

Claim (c): AWS

127 As with claims (a) and (b), the defendant admitted that his claim for AWS was never documented in any of the annual financial statements or even any minutes of meeting from 1996 to 2006. [note: 78] I find it highly unlikely that, had he been owed this not insignificant sum, that he would never have documented it or at least raised it with the plaintiff in any meetings. Once again, he alleged that AWS payment was "verbally agreed", but could not satisfactorily explain this. His credibility with regard to this claim was further damaged when, confronted under cross-examination with the fact that he had only worked for a quarter of 1996 and had actually been paid pro-rated AWS for that year, he first gave the feeble reply that "it could be an error in the figures" and then had to drop his claim for a full year's of AWS in 1996. [note: 79] He was also forced on similar grounds to drop his claim for AWS for the whole year of 2006. [note: 80]

128 Leaving aside the evidential difficulties, the defendant's AWS claims for 1997 to 2001 are in the first place time barred under s 6(1) of the Limitation Act.

Claim (d): 110 days of unutilised leave

129 The defendant's evidence with regard to this claim was particularly non-existent. If anything, time bar would also apply to this claim. Under cross-examination, he conceded *inter alia* that (i) there was no provision or agreement for accumulated leave in the Partnership Agreement; (ii) there was no provision or agreement for payment of money in lieu of any unutilised leave in the Partnership Agreement; (iii) indeed, there was no evidence at all before the Court as to any agreement for payment of money in lieu of leave; and (iv) there were no leave records to support his alleged 110 days of unutilised leave. [note: 81]

Claim (f): Unpaid salary from May 2006 to 10 October 2006

130 I completely failed to see the basis for this claim given that Japco was dissolved on 7 April 2006. Furthermore, in the last meeting on 2 September 2006 to wind up Japco's affairs, the defendant

wrote in the minutes [note: 82] that he agreed not to be paid his salary for May to September 2006. Even if there was some basis for him to claim salaries after April 2006, he did not explain his entitlement to do so.

Conclusion

131 For the above reasons, I dismiss the defendant's first counterclaim. I also note that, in his testimony under cross-examination, the defendant frequently had resort to alleged oral agreements whenever confronted with documentary evidence that undermined his case with regard to the respective components of this counterclaim – aside from the fact that he never pleaded these oral agreements (save for the claim for back salary in the Rejoinder) and frequently could not even provide the dates on which these agreements were entered into. I note that these oral agreements are clearly inconsistent with his express position that the Partnership Agreement contains the entire agreement between the parties (see above at [9]).

(b) The second head: $130,080.19 in alleged overpayments from OCS to Japco

132 As stated above at [75], the Defendant's Table documented these alleged overpayments from OCS to Japco between 1996 and 2006. I have already commented on the discrepancies in the figures presented in the Defendant's Table. Significantly, these claims for overpayment were never reflected anywhere, for example, in (i) the 30 March 2006 Statement; or (ii) subsequent meetings held to discuss Japco's winding up of its business. [note: 83]

133 More crucially, as established above at [76]-[78], there are no invoices pertaining to OCS's purchases from Japco, so the purchase figures in the Defendant's Table are completely without support. When asked in re-examination how he arrived at these figures, the defendant's explanation was incomprehensible, even to his own counsel. [note: 84]

134 The defendant therefore had no evidence at all that he or OCS had made overpayments for goods bought from Japco. Indeed, as held above at [76]-[78] in relation to the plaintiff's action for an account, it is not even clear whether OCS paid Japco for all the goods Japco purchased on its behalf.

135 Even more egregiously, it was demonstrated at several points during cross-examination that several cheques referred to by the defendant as evidence of OCS's overpayment to Japco were *not even OCS cheques but cheques from third parties.* [note: 85]

136 I therefore dismiss this counterclaim as well.

(5) Other Matters

137 For completeness, I now deal with the remaining arguments raised by the parties.

(a) Defendant's negligence and the Seychelles Debt

138 I do not consider the claim against the defendant in negligence tenable for the following reasons.

139 The plaintiff characterises the defendant's alleged negligence on two levels. First, on the specific level, with regard to the trade losses suffered by Japco in relation to the Seychelles Debt ("the specific claim"). [note: 86] Second, and more problematically, the plaintiff also argues more

generally that the defendant is liable for all losses suffered by the plaintiff or Japco "as a result of [the defendant's] negligence and/or failure to discharge his duties, responsibilities and obligations" ("the general claim"). [note: 87] The general claim is based on the submission that the defendant was negligent from the outset in even making the three-page partnership proposal to the plaintiff (see above at [7]) *ie*, the proposal had contained certain representations with regard to the intended customer base, supplier base and sales turnover which, as it turned out, the defendant had no basis to make. [note: 88]

140 The scope of the general claim is problematic. The negligence alleged by the plaintiff here is that the defendant had no basis to make the claims he did in his business proposal to the plaintiff. [note: 89] It is unclear which losses the plaintiff pinpoints as flowing from the negligent act so characterised. If the plaintiff is saying that the very basis on which the parties entered into the partnership constitutes a negligent act by the defendant, the implication seems to be that the defendant is liable for all Japco's losses from the outset. However, the plaintiff is clearly not making this claim as she accepts, in principle, her liability for half of Japco's losses. I therefore find that the general claim is too expansive and cannot stand – the negligence must be traced to specific proven losses before a partner can be liable for the entire loss or for me to order any other relief in respect of it.

141 If anything, the specific claim is the Seychelles Debt which is in essence a business loss. This alleged breach is of a non-fiduciary nature and as such usually sounds in damages. Furthermore, the Seychelles Debt is a business loss that is typically borne by all the partners even where responsibility for this loss or liability can be attributed primarily to a particular partner as long as the partner has acted bona fide with a view to the benefit of the firm (*Lindley* at 20-08; *Halsbury's Laws of Singapore* vol 15, (Lexis Nexis, Singapore, 2006 Reissue) at [180.090] citing *Cragg v Ford* (1842) 1 Y & C Ch Cas 280; Yeo Hwee Ying, *Partnership Law in Singapore* (LexisNexis, 2000)("Yeo Hwee Ying") at p 184). I am not persuaded that the plaintiff has established that the business loss was a result of the defendant's fraud, culpable negligence or wilful default (*Ong Keng Huat v Hong Kong United Co Ltd* (1961) 27 MLJ 36 cited in Yeo Hwee Ying at p 193; *Lindley* at 20-08). In other words, the sales to Stephen Pillai were not shown to be motivated by a collateral and improper purpose. There is no evidence prior to the inception of OCS that the defendant was hiding anything from the plaintiff in relation to the unsatisfied Seychelles judgment. The plaintiff has not adduced evidence to show that the defendant's representations that Japco's loss was a result of the Seychelles Debt were false. Even if it were true that the Seychelles Debt were incurred due to some negligence on the defendant's part, this is not a basis for an action to account. An account of profits is available only for breaches of a fiduciary nature.

(b) Factual disputes: break-ins etc

142 There are factual disputes over events that transpired after the plaintiff indicated she wanted to dissolve the partnership (see above at [30]-[39]). As described above at [40]-[43], the defendant's account of events revolved around two alleged break-ins into Japco's premises by the plaintiff and Chor Koon on 7 April and 10 April 2006 respectively. The defendant made a police report in respect of them (the 10 April Police Report above at [43]), as well as the 9 April Police Report alleging that the plaintiff and her maid had trespassed into his premises and harassed him.

143 Unsurprisingly, the plaintiff disputed the defendant's version of events. In particular, in addition to her claims set out at [44] above, the plaintiff in her Closing Submissions urged this Court to "take judicial notice" that the defendant was guilty of the criminal conduct of making two false police reports, or alternatively to direct the plaintiff to make reports to the police so that the appropriate

action can be taken against the defendant. The plaintiff relied *inter alia* on the fact that, during cross-examination, when asked to produce the 9 April Police Report and the 10 April Police Report respectively, the defendant alleged that he did not know where they were. [note: 90] The plaintiff submitted that the defendant did not want to produce the police reports because they would prove to be false insofar as he had alleged that he did not know the plaintiff and that she was a trespasser and was harassing him. [note: 91]

144 Given that finding the defendant guilty of making a false police report requires a criminal standard of proof, it is clearly not appropriate for me to make such findings in this action. Neither is it appropriate or necessary for me to direct the plaintiff to make police reports in respect of the defendant's two allegedly false police reports – the plaintiff can do this on her own should she be advised by her lawyers to do so.

145 Nevertheless, I find the defendant's version of events highly incredible. In particular, I set out my findings on the alleged break-ins of 7 and 10 April 2006 because the defendant relied on these break-ins as an explanation for his complete lack of documentary evidence with regard to various facts he was alleging – the defendant alleged that the plaintiff had during the break-ins removed all the partnership documents. I reject the defendant's allegations for various reasons. First, I find it strange that the defendant could not (or did not want to) produce the 10 April Police Report when requested to during cross-examination (see [143] above). Second, the plaintiff maintained under cross-examination – and convincingly in my view – that she did not need to break into the premises, given that she was also a tenant and co-owner of Japco and had the keys to the premises. [note: 92] The defendant had no reply to this. Third, the defendant admitted under cross-examination that he did not take any photographs or make an inventory of the documents that were allegedly seized or removed by the plaintiff during the alleged break-in. [note: 93] He also conceded during cross-examination that he did nothing to retrieve the documents besides "talk[ing]" to the plaintiff. [note: 94] I find it quite simply incredible that he would have acted in this manner had the plaintiff truly broken into the premises and seized all the partnership documents, as he alleges. Fourth, it is not disputed that the plaintiff and the defendant had a meeting at Japco's premises between 10.30am to 12pm on 10 April 2006, during which no mention was made of the alleged break-in which, according to the defendant, he had discovered at about 10am that morning and made a police report. [note: 95] I find it unbelievable that, had the defendant truly discovered such a drastic break-in and seizure of documents, that he would have not mentioned a word of it to the plaintiff at a meeting that took place a mere half an hour later.

146 I therefore reject the defendant's account of the alleged break-ins on 7 and 10 April 2006 insofar as he relies on it as an excuse for his failure to produce any documentary evidence to support various aspects of his case. However, as clarified above, it is not appropriate in this civil action to make findings that the defendant is guilty of criminal conduct or for me to direct the plaintiff to make a police report against the defendant.

147 The plaintiff also urged me to make a finding of the defendant's criminal conduct with regard to one other matter. The plaintiff alleges that on the morning of 8 April 2006 *ie*, one day after the plaintiff had indicated that she wanted to dissolve the partnership, the defendant withdrew $50,000 in cash from Japco's account. [note: 96] He returned the same on 10 April 2006. Significantly, the defendant does not deny withdrawing this sum. Instead, his explanation for this is that he was supposed to be on a business trip to Hong Kong and China to purchase goods and this sum went towards his travel expenses, and also that the office had been broken into. [note: 97]

148 I agree with the plaintiff that such an explanation was incredible. I fail to see why the defendant would need the sum of $50,000 by way of travel expenses for a trip to Hong Kong and China. However, for the same reasons as [144] above, I declined to make a finding that the defendant was guilty of a misappropriation of $50,000 or to direct the plaintiff to make a police report to the Commercial Affairs Department for further investigation.

149 Nevertheless, needless to say, the sheer incredulity of the defendant's account of events with regard to all the events above greatly diminished his credibility even with regard to the main issues in this action. Above all, his testimony in the witness box was more critical.

CONCLUSION

150 For the above reasons,

(1) I find in favour of the plaintiff and make the following orders:

a) A declaration that the plaintiff and defendant were equal partners of Japco;

b) An order that the defendant renders an account to the plaintiff of OCS's operating expenses from 26 March 2002 to 31 December 2006 that were paid by Japco but not repaid or reimbursed by OCS;

c) An order for payment by the defendant to Japco of all moneys found to have paid by Jacpo for OCS's operating expenses on the taking of such account ordered in para (b) hereof;

d) An order that the defendant renders an account to the plaintiff of OCS's gross profits from 26 March 2002 to 31 December 2006;

e) An order that the defendant renders an account to the plaintiff of OCS's net profits from 26 March 2002 to 31 December 2006 on the taking of such account ordered in paras (b) & (d) hereof;

f) An order for payment by the defendant to Japco of all net profits of OCS on the taking of such account ordered in para (e) hereof;

g) That to give effect to the dissolution of the partnership there be a final accounting between the plaintiff and defendant as partners of Japco on the assets and liabilities of the partnership including what is due between the partners, and in doing so to take into account the plaintiff's capital contribution;

h) Costs in relation to the taking of accounts and the issue of interest are to be reserved to the Registrar taking the accounts; and

i) There shall be liberty to apply.

(2) I further declare that the plaintiff is entitled to a contribution from the defendant of a half share in any sum she may be liable to pay UOB in respect of UOB Account No 1 and UOB Account No 2.

(3) The defendant's counterclaim is dismissed.

(4) The defendant is to pay the plaintiff costs of the action and counterclaim to be taxed if not agreed.

[LawNet Admin Note: Schedules 1 and 2 are viewable only to Lawnet subscribers via the PDF in the Case View Tools.]

[note: 1] Transcript 16 March 2011 at p18

[note: 2] Defendant's AEIC at [3]-[4]

[note: 3] Marked as Exhibit D2

[note: 4] Defendant's Closing Submissions at [7]

[note: 5] Defendant's Closing Submissions at [64]

[note: 6] Plaintiff's AEIC at [43]-[44]

[note: 7] Defendant's Closing Submissions at [37]

[note: 8] Defendant's Closing Submissions at [38]

[note: 9] Transcript 22 March 2011 at 70

[note: 10] Transcript 17 March 2011 at 132

[note: 11] Transcript 16 March 2011 at 93

[note: 12] Defendant's Closing Submissions at [33]

[note: 13] 1PB29-30

[note: 14] Plaintiff's AEIC at Exhibit "ATG 18"

[note: 15] Plaintiff's AEIC at Exhibit "ATG 19"

[note: 16] Plaintiff's AEIC at Exhibit "ATG 21"

[note: 17] Defendant's AEIC at [19]

[note: 18] Defendant's AEIC at [20]

[note: 19] Defendant's Closing Submissions at [36].

[note: 20] Defence No 2 at [9] & [15]

[note: 21] Defendant's AEIC at [27]

[note: 22] Defendant's AEIC at [18]

[note: 23] Defendant's AEIC at [27]

[note: 24] Defendant's AEIC at [9]

[note: 25] Defendant's AEIC at [17]

[note: 26] Defendant's AEIC at [19]

[note: 27] Defendant's AEIC at [22]

[note: 28] Defendant's AEIC at [30] & [35]

[note: 29] Defendant's AEIC at [24]

[note: 30] Defendant's AEIC at [30]

[note: 31] Defendant's Closing Submissions at [15]

[note: 32] Transcript 16 March 2011 at pp 55-57

[note: 33] 1PB 6.

[note: 34] 1PB 60-143

[note: 35] 1PB 26

[note: 36] Plaintiff's AEIC at Exhibit "ATG-5"

[note: 37] Transcript 16 March 2011 pp 107-110.

[note: 38] Transcript 16 March 2011 at pp 109-112

[note: 39] Transcript 16 March 2011 at pp 113-116

[note: 40] Transcript 16 March 2011 at p 119 at line 19

[note: 41] Transcript 16 March 2011 at pp 122-123

[note: 42] Transcript 16 March 2011 at p 124

[note: 43] Transcript 16 March 2011 at pp 125-126

[note: 44] Transcript 16 March 2011 at p 103

[note: 45] 3DB pp 727-819, 823-824

[note: 46] 3DB pp 820-822, 825-830

[note: 47] Table available at 1DB 182

[note: 48] Transcript 22 March 2011 at pp 67-69

[note: 49] 2PB 331 to 335; Transcript 21 March 2011 pp 87-89.

[note: 50] Transcript 22 March 2011 at pp 67-69

[note: 51] Transcript 22 March 2011 at pp 70-71

[note: 52] 3DB 627-726

[note: 53] 2PB 416-417

[note: 54] 1PB 159,161 and162

[note: 55] 1PB 157-158

[note: 56] Transcript 17 March 2011 at pp26-28

[note: 57] Defendant's AEIC at [15]

[note: 58] Transcript 16 March 2011 at p14

[note: 59] 2PB 365

[note: 60] 1PB 84,90,102,111,119,128 & 138

[note: 61] 2PB 356, 1DB 35, 4DB 990, 992, 994,996 & 998

[note: 62] 2PB 365

[note: 63] 1PB 157

[note: 64] 1PB 158

[note: 65] Transcript 16 March 2011 at pp102-132; Transcript 17 March 2011 at pp127, 134

[note: 66] Transcript 16 March 2011 at p14

[note: 67] Transcript 17 March 2011 at pp48-49

[note: 68] Transcript 22 March 2011 at p90

[note: 69] 1PB 138

[note: 70] Plaintiff's Closing Submissions at [49.6] and [49.8]

[note: 71] Transcript 14 March 2011) at p 4 at lines 14 and 21.

[note: 72] 2nd Supplementary Bundle of Pleadings at p56

[note: 73] Transcript 17 March 2011 at pp 141-142

[note: 74] Transcript 17 March 2011 at p142

[note: 75] Transcript 17 March 2011 at pp 153-154

[note: 76] Transcript 21 March 2011 at pp 14-16

[note: 77] Transcript 17 March 2011 at pp144-145

[note: 78] Transcript 21 March 2011 at p 21

[note: 79] Transcript 21 March 2011 at p 19

[note: 80] Transcript 21 March 2011 at p 20

[note: 81] Transcript 17 March 2011 at pp 56-66

[note: 82] 1DB 28-31

[note: 83] 1PB 32, 1PB163 and 165, 1PB 166 and 1DB 30.

[note: 84] Transcript 22 March 2011 pp 71-72

[note: 85] Transcript 21 March 2011 at pp 90-117.

[note: 86] Plaintiff's Closing Submissions at [40]

[note: 87] Plaintiff's Closing Submissions at [34]

[note: 88] Plaintiff's Closing Submissions at [30]-[31]

[note: 89] Plaintiff's Closing Submissions at [30]-[33].

[note: 90] Transcript 22 March 2011 at pp 40-41

[note: 91] Plaintiff's Closing Submissions at [84]

[note: 92] Transcript 8 March 2011 at p 81

[note: 93] Transcript 22 March 2011 at pp 40-42

[note: 94] Transcript 22 March 2011 at pp 19-20

[note: 95] 1PB 32

[note: 96] Plaintiff's Closing Submissions at [72] and 1PB 207

[note: 97] Transcript 17 March 2011 pp 49-52; Transcript 22 March 2011 at pp 39-40

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Schedule 1

	2000	2001	2002	2003	2004	2005	2006	Total
Sales of Japco (from 1PB)	53,271.29[a]	593,701.00	718,247.85	1,015,365.68	1,194,104.00	1,188,935.25	441,114.00[c]	5,204,739.07
Purchases of OCS(from 4DB)	53,271.29[a]	450,629.34[b]	705,467.62	949,415.78	1,102,588.00	1,140,567.30	439,275.00[d]	4,841,214.33
Difference	-	143,071.66	12,780.23	65,949.90	91,516.00	48,367.95	1,839.00	363,524.74

Notes

(a) As OCS commenced operations in Sept 2000, Japco sales to OCS for the comparable period are assumed to be the same. See 2PB 356.
(b) 1DB 35
(c) 1PB 138
(d) 2PB 365 – for period 1 Jan 2006 to 7 Apr 2006

Schedule 2

		2000		2001		2002		2003		2004		2005		2006	Total
OCS P & L account		(a)		(b)		(e)		(e)		(e)		(e)		(d)	
Sales		61,261.98		466,920.00		757,577.33		1,053,851.51		1,212,848.00		1,254,625.30		426,659.00	
Cost of Sales		53,271.29		450,629.34		700,317.62		954,380.28		1,102,698.00		1,134,847.50		439,275.00	
Gross Profit		7,990.69		16,290.66		57,259.71		99,471.23		110,150.00		119,777.80		(12,616.00)	
Expenses paid by Japco															
Salaries / Wages	10,000.00		24,000.00		35,500.00		41,675.00		72,912.75		74,330.30		16,622.00		
CPF			1,600.00				5,417.75								
Telecommunication	1,460.80		1,373.42		1,540.37		1,330.90		3,321.45		2,059.40		896.00		
Utilities	249.95		600.00		612.85		1,418.69		1,542.83		1,098.52		402.00		
Transport claims	2,500.00		3,312.00		6,624.00		6,720.00		8,019.49		1,565.20		3,500.00		
Entertainment					123.60		532.78		673.44		397.85				
Stationeries	479.15		985.00				2,230.70		842.48		1,114.71		90.00		
Refreshment									1,165.40		304.29		87.00		
Advertisement									822.14		701.81				
Medical									85.00						
Business	55.00								280.00		156.00				
Reg/Gebiz Annual fee							10,719.60		3,852.43		20.00		20.00		
Motor Vehicle					1,506.79										
Misc.	4,000.00		3,000.00		4,220.90		10,000.00		3,000.00		3,000.00		7,341.00		
Office Rental															
Insurance															
Bank interest															
		18,744.90		34,870.42		50,128.51		80,045.42		96,517.41		84,748.08		28,958.00	
		(10,754.21)		(18,579.76)		7,131.20		19,425.81		13,632.59		35,029.72		(41,574.00)	
Depreciation		350.00		700.00		450.00		1,700.00		4,250.00		5,000.00			
Net (Loss)/Profit		(11,104.21)		(19,279.76)		6,681.20		17,725.81		9,382.59		30,029.72		(41,574.00)	
Expenses used by OCS but paid by Japco		18,744.90		34,870.42		50,128.51		80,045.42		96,517.41		84,748.08		28,958.00	394,012.74
OCS Gross Profit unaccounted to Partnership		7,990.69		16,290.66		57,259.71		99,471.23		110,150.00		119,777.80		(12,616.00)	398,324.09

Notes
(a) As OCS commenced operations in Sept 2000, Japco sales to OCS for the comparable period are assumed to be the same. See 2PB356.
(b) 1DB 35
(c) 1PB 138
(d) 2PB 365 – for period 1 Jan 2006 to 7 Apr 2006
(e) 4DB 990, 992, 994 and 996