

Kunal Gobind Lalchandani and Another v LU
[2006] SGHC 47

Case Number : Suit 915/2003
Decision Date : 22 March 2006
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Sugidha Nithi, Moiz H Sithawalla and Cheryl Guan (Tan Rajah & Cheah) for the plaintiffs; Edmund Jerome Kronenburg and Celina Chua (Tan Peng Chin LLC) for the defendant
Parties : Kunal Gobind Lalchandani; Govitex Enterprises Pte Ltd — LU

22 March 2006

Tay Yong Kwang J:

1 The defendant was a director of the second plaintiff. In this action, the second plaintiff claimed that the defendant had breached his fiduciary duties as director and trustee of the second plaintiff's assets by misappropriating its funds and destroying its financial records for the period 1997 to March 2001. The alleged misappropriation of funds fell into the following four categories:

- (a) misappropriation of a sum of \$1.6m to purchase two properties in Singapore for himself, namely a property at Hoot Kiam Road ("the Hoot Kiam property") and another at Upper Bukit Timah Road ("the Bukit Timah flat");
- (b) causing the second plaintiff to pay US\$1,090,015 to A Ltd, a sole proprietorship owned by the defendant, for goods that were never delivered to the second plaintiff;
- (c) causing the second plaintiff to pay for various expenses for himself, his daughter and for the second plaintiff's then employee ("Catty"), recording most of such expenses as the second plaintiff's expenses and only \$11,842.53 as a debt due from him to the second plaintiff; and
- (d) wrongfully assigning to himself the benefit of a debt amounting to \$120,000 owed by a company known as Shrisai Communications Pte Ltd ("Shrisai Communications") to the second plaintiff and collecting a sum of \$27,500 from Shrisai Communications.

2 The first plaintiff sought specific performance of a sale and purchase agreement dated 6 September 2002 made between him and the defendant in respect of the Hoot Kiam property as the defendant had refused to complete the sale of the said property to the first plaintiff.

3 The defendant claimed that the plaintiffs' allegations against him were complete fabrications. He counterclaimed against the first plaintiff for a declaration that he had abandoned the agreement of 6 September 2002 regarding the Hoot Kiam property. Alternatively, he asked for a declaration that this agreement be set aside and/or be held unenforceable against him because of duress and/or undue influence.

The plaintiffs' case

The evidence of the first plaintiff's father

4 Gobind Jivatram ("Gobind") was a director of the second plaintiff, which had an office at

#07-02 High Street Centre, North Bridge Road. He is the father of the first plaintiff. The second plaintiff was originally a partnership formed by Gobind and one Vishu. It had few transactions and its office in Singapore therefore had only one staff, an office girl. Gobind was based in Indonesia.

5 In January 1993, due to the growing business of the second plaintiff, it was decided that the partnership be converted into a company. The shareholders were Gobind and Lavina (Vishu's wife), with each holding 50% of the shares. They were also the only two directors in the second plaintiff. In August 1993, the shareholding was altered such that Gobind held 50% of the shares while one Murli held 47.5% and Vishu held 2.5%. Lavina was replaced by Vishu as a director and Murli was appointed the third director.

6 Vishu was not involved in the day-to-day operations of the second plaintiff, while Gobind and Murli were both based in Indonesia. The directors hence felt that they needed a trustworthy general manager to run the second plaintiff. Around that time, Gobind was introduced to the defendant in Jakarta by Y, the brother of Z, the defendant's wife. Y used to be employed by Gobind's company in Indonesia. Y's father was a very dear friend of Gobind and his father. The defendant was introduced as a chartered accountant from India who had extensive experience in accounting and finance and who was looking for a job in Jakarta. Because of the trust that Gobind had in Y's family, he decided to employ the defendant as the general manager of the second plaintiff.

7 In the latter part of 1993, the defendant moved to Singapore to take up his appointment in the second plaintiff. In addition to being the general manager of the second plaintiff, he was also to perform the task of the chief accountant for all the other companies related to the second plaintiff ("the Govitex group"). He proved to be very competent and Gobind began to trust him even more. The defendant was able to obtain banking facilities with various banks, thus allowing the second plaintiff to grow its business further. He handled all the financial matters, including the remittance of money from the second plaintiff and the invoicing of customers. He was also in charge of the staff here. Where transactions were with companies that were not within the Govitex group of companies or not connected to Gobind, Murli or Vishu, the defendant was required to seek authorisation from any of these three men.

8 In 1995, Vishu decided to step down as a director of the second plaintiff as he had many other businesses to attend to. The remaining directors then decided to appoint the defendant as a director. The defendant was also made the sole signatory for the second plaintiff's accounts for unlimited amounts.

9 In 1998, Murli decided to leave the second plaintiff. All his shares were transferred to Lavina. Vishu also transferred his shares to Lavina. Murli resigned as a director and Lavina was appointed in his place. The second plaintiff therefore had two equal shareholders in Gobind and Lavina and three directors, namely, Gobind, Lavina and the defendant. However, Lavina had no real involvement in the second plaintiff. The main business decisions were made by Gobind and Vishu, with the day-to-day operations left entirely to the defendant. Gobind and Vishu remained as guarantors for the second plaintiff's banking facilities.

10 As a result of the financial crisis in Indonesia in 1997/1998, the volume of business that the second plaintiff did with companies in the Govitex group dwindled. However, its business with customers or companies related to Vishu, such as La Pupa Trading Pte Ltd ("La Pupa"), the Vista group of companies ("the Vista group") and Panabiz Congo, began to grow.

11 By late 1999 and early 2000, the amounts due from La Pupa and the Vista group became quite substantial and Gobind became concerned as he was a guarantor for the second plaintiff's

banking facilities. Gobind then spoke to Vishu and informed him that he was not prepared to continue being a guarantor for the second plaintiff's huge debts to the banks which were incurred as a result of providing financing for Vishu's companies. Around 80% of the debts due to the second plaintiff were from Vishu's companies. Vishu agreed to help find buyers for Gobind's shareholding in the second plaintiff and have Gobind replaced as a guarantor. During that time, Gobind also instructed the defendant to reduce the amounts outstanding from Vishu's companies.

12 In mid-2001, Vishu informed Gobind that Dev Varyani ("Dev") and Anup Varyani ("Anup"), who ran the Vista group together with Vishu, were prepared to acquire his shareholding in the second plaintiff and substitute themselves as guarantors for the second plaintiff's facilities by the end of 2000. Dev and Anup were prepared to do this because they could then have the benefit of the second plaintiff's banking facilities.

13 Sometime later, the defendant informed Gobind that Dev and Anup would be providing him with the information required to effectuate this. On 17 January 2001, the defendant met Dev, Anup and Vishu to discuss these matters. An unsigned draft of the minutes of this meeting was faxed by the defendant to Gobind in Jakarta the next day. Gobind disputed the authenticity of a signed copy of what purported to be the minutes of that meeting because there was a reference there to the transfer of 50% of his shares to the other directors of the second plaintiff. Gobind stated that he never had any intention of transferring his shares to Lavina or the defendant. The purported signed minutes also mentioned A Ltd, an entity that Gobind heard about only in 2003 when his son, the first plaintiff, alerted him to it after going through the accounting records of the second plaintiff.

14 The defendant kept telling Gobind that he was still working on the question of reducing the second plaintiff's liabilities to its banks. He suggested to Gobind that one way of reducing the debts due from the Vista group and Panabiz Congo, which accounted for a sizeable portion of the second plaintiff's business by that time, was to make it possible for the said companies to obtain goods on favourable credit terms from another source. The defendant said that he was confident of obtaining banking facilities with his personal guarantee if he were permitted to set up his own business. Gobind felt that the proposal would help the second plaintiff achieve its aim of reducing its exposure to its banks. The defendant then requested Gobind to sign a letter stating that the second plaintiff had no objections to the defendant establishing his own business venture in Singapore despite being a director of the second plaintiff and that it recognised that some of the suppliers and customers of the second plaintiff and those of the defendant's business venture might be the same. A letter in these terms was signed by Gobind on behalf of the second plaintiff on 18 April 2001.

15 Shortly thereafter, the defendant informed Gobind that he had set up a company ("C Ltd"). A subsequent search would reveal that C Ltd was in fact incorporated on 26 March 2001, some weeks before the letter of 18 April 2001.

16 In November 2001, Gobind was in Singapore to attend the wedding of his niece. While he was staying at the Shangri-La Hotel, Z (the defendant's wife) telephoned him to request an urgent meeting as she had something to tell him about the second plaintiff's funds and her husband's purchase of a house. Gobind had known Z and her family for many years and had a warm relationship with her. Gobind agreed to meet her after asking her to bring whatever evidence she said she had. He was not very concerned about her allegations at that time because Z had complained to him before about her suspicions that the defendant was having an affair with one of his staff (Catty) and was misusing the second plaintiff's funds for his personal matters and about the defendant treating her and their daughter very badly. Gobind regarded her allegations as being probably merely the rantings of an unhappy wife.

17 The next day, Z went with her daughter to the said hotel to meet Gobind. While some family members took care of the daughter, Gobind and Z had a private conversation in the executive lounge of the hotel. There, she told Gobind that she believed that her husband was stealing money from the second plaintiff and had bought properties here and in India over the past few years as well as a membership in a country club here. She also alleged that he had bought expensive watches and jewellery. She claimed that she had overheard her husband telling someone that he bought the Bukit Timah flat, in which the family was residing, for about \$1.2m. She was suspicious as she did not know how he could afford to buy such a property. Further, while driving along Hoot Kiam Road one day, the defendant pointed out a house there and said it was his. She could not recall the house number but only knew that it was a new bungalow. She then handed to Gobind two receipts for the purchase of watches, a Club Cabana brochure and membership papers and a utility bill for the Bukit Timah flat. She wanted the original of the utility bill back as she was afraid that her husband would discover that it was missing. Gobind therefore made a copy of the said bill.

18 Taken aback by what he had been told by Z, Gobind called his son, the first plaintiff, who was living in Singapore, and asked him to meet them at the hotel. When the first plaintiff arrived, Gobind made Z repeat her story. Z pointed out that the utility bill was for March 2001, but at that time the defendant and his family had been living in a rented apartment in MacPherson Road until around October 2001 when they moved into the Bukit Timah flat. Z said she was very unhappy with the way the defendant had treated her and felt obliged to inform Gobind about her misgivings because of the trust he had placed in the defendant as a result of the close relationship between their families.

19 After that meeting, Gobind told the first plaintiff to investigate Z's allegations further. The next day, when the defendant drove Gobind from the office to the Shangri-La Hotel, Gobind asked him where he was residing and was told by the defendant that he had moved to Bukit Timah recently, renting an apartment for \$1,800 per month.

20 Sometime later, the first plaintiff, who was then working in Deutsche Bank in Singapore, informed Gobind that a search on the Bukit Timah flat by a law firm confirmed that it was owned by the defendant. The first plaintiff had driven along Hoot Kiam Road, which had only a few houses, and noting that there was only one bungalow that looked new, asked the law firm to do a search on that property as well. The search confirmed that the defendant was also the owner of the Hoot Kiam property. The searches also showed that the total price paid for both properties was more than \$3m, something the defendant could ill afford on his then salary of \$2,500 per month.

21 On 16 December 2001, Gobind returned to Singapore. In the morning of 18 December 2001, he went to the office unannounced in order to surprise the defendant. The two staff members, Catty and Malathi, were present but the defendant was still not in the office. The defendant arrived later and was surprised to see Gobind there because Gobind would always give advance notice of his return to Singapore. Gobind then asked the defendant to go into one of the two rooms in the office with him.

22 Inside that room, Gobind asked the defendant who owned the Bukit Timah flat, adding that he had already done a search on the flat. The defendant hung his head down and kept quiet. Gobind then told him that he knew all about his misdeeds and that he knew the defendant had a property in Hoot Kiam Road and several others in India. Gobind accused the defendant of swindling the second plaintiff's money and of being a thief. He told the defendant that he had asked people to conduct investigations and was arranging for auditors to fly in from India to check the second plaintiff's accounts. He also told the defendant that he had been caught and had better tell the truth or the matter would be brought to the attention of the authorities. The defendant was shocked and sat

silently through the entire tirade by Gobind.

23 When Gobind asked him about his silence after a few minutes, the defendant asked if he could go out and if they could discuss the matter elsewhere. He said he would tell Gobind everything when they were outside the office. Gobind agreed to let him go out if he signed some blank sheets of paper first. His intention was to keep the defendant afraid and make him co-operate. The defendant signed three blank sheets of the second plaintiff's letterhead and then left the office. Gobind never intended to use these signed sheets of paper. He only wanted to have them to ensure the defendant's co-operation. The three blank sheets were later kept by Gobind in his safe in Jakarta and it was only during the preparation of his affidavit of evidence-in-chief that he remembered to mention them to his solicitors.

24 About an hour or so after he had left the office, the defendant called Gobind and asked him to go downstairs to discuss the matter. Gobind went down to meet him. The defendant drove them to the Intercontinental Hotel in silence. He behaved very politely towards Gobind and appeared remorseful. At the hotel's car park, the defendant's car collided into another car.

25 In the lobby lounge of the hotel, the defendant admitted to Gobind that he had embezzled the second plaintiff's funds and used such funds to buy the Hoot Kiam property, the Bukit Timah flat, three properties in Bangalore in India and some insurance policies. He had also placed funds in an offshore account. He also admitted having taken another sum of money for his personal expenses and promised to give the details of all these things the next day. The defendant claimed he was not the only one involved and implicated the African managers, whom Gobind understood to be the brothers, Dev and Anup, who ran the Vista group and who always dealt with the defendant, and Harchand, a manager and director of Panabiz Congo. The defendant showed great remorse and kept asking Gobind for his forgiveness, promising to return everything he had taken if Gobind would not expose him.

26 The Vista group, together with Panabiz Congo and La Pupa, owed the second plaintiff some US\$9m at that time as a result of credit extended by the second plaintiff on goods sold to them. These were funded by banking facilities guaranteed personally by Gobind. Gobind was therefore concerned that if he exposed the defendant and it turned out to be true that the others named were involved in the defalcation, the debtor companies, which were based in Africa, might decide not to pay their debts, thereby causing him to be answerable to the banks on his guarantees. He was also concerned that since all the banking facilities were negotiated by the defendant, should he dismiss the defendant suddenly, the banks would make enquiries, find out about the defalcation by the second plaintiff's director and possibly terminate the banking facilities. Considering all these factors and thinking also of Z, Gobind decided to let the defendant continue working at the second plaintiff and not expose his misdeeds provided restitution was made and the outstanding debts from the debtor companies were reduced. Gobind took the precaution of informing the banks that he was replacing the defendant as the sole signatory for the second plaintiff's accounts and all other documentation. Alternatively, the defendant could sign on behalf of the second plaintiff as a co-signatory of Gobind. The second plaintiff's staff members were instructed to fax or send documents requiring Gobind's signature to Gobind in Indonesia.

27 On 20 December 2001, Gobind had another meeting with the defendant to discuss the details of the assets he had acquired with the second plaintiff's funds. The defendant showed Gobind a folded piece of paper with the second plaintiff's letterhead, on which he had written the assets that he had taken from the second plaintiff or that he had bought with misappropriated funds. These assets included cash, the Hoot Kiam property (stated to have been bought for \$1.8m), the Bukit Timah flat (stated to have been bought for \$1.25m) and properties and shares of companies in India. The defendant also explained to Gobind how he acquired the assets. He had apparently used

\$870,000 and \$700,000 of the second plaintiff's funds for the purchase of the Bukit Timah flat and the Hoot Kiam property respectively. The defendant claimed that the US\$100,000 which he had placed in an offshore account in someone else's name could not be recovered. He also said that some \$50,000 was used to pay the premiums on the insurance policies taken out by him and that he had manipulated a car loan account involving about \$50,000.

28 The defendant also told Gobind that Shrisai Communications owed the second plaintiff about \$90,000 and that he had already sued its owner, Bharat Kapoor, but to no avail. Gobind knew that Bharat Kapoor was the husband of Mulkeet Kaur who worked in the Silver Kris Lounge of Singapore Airlines at the Changi International Airport, someone he knew very well as he often met her when he travelled through the airport. The defendant had become acquainted with Mulkeet Kaur and her husband through Gobind. The defendant was not supposed to have any transactions with companies outside the Govitex group or those not owned by Vishu without Gobind's or Vishu's approval as they were the guarantors of the second plaintiff's banking facilities and wanted to be comfortable with the creditworthiness of companies that the second plaintiff dealt with. Shrisai Communications was not one of the companies in the Govitex group nor owned by Vishu and no approval had been sought by the defendant to trade with this company.

29 The defendant pleaded with Gobind not to terminate his employment or report him to the authorities. He indicated which of the assets in the handwritten note were recoverable and suggested that he sign an acknowledgement that he had taken a loan of \$1.6m from Gobind for the two Singapore properties. He would also transfer those two properties to Gobind. As for the properties in India, he would transfer them to Gobind whenever they travelled to India together or sell them and repay the second plaintiff. He did not want to admit his misdeeds in writing as that would jeopardise his career. He also did not want the loan to be in the second plaintiff's name as that would have to be recorded in the accounting books and could lead to queries.

30 Gobind agreed with the defendant's suggestions, thinking he should concentrate on reducing the second plaintiff's liability to its banks and on recovering the assets from the defendant first. The defendant therefore signed a note dated 22 December 2001 addressed to Gobind in the following terms:

Ref: Personal loans advanced to me

I hereby confirm and agree to transfer the following properties in my name to yourself or your nominee with bank liabilities as and when you require me to do so:

- 1) [The Bukit Timah flat] for a loan of S\$900,000 extended to me.
- 2) [The Hoot Kiam property] for a loan of S\$700,000 extended to me.

Thanking you

Yours faithfully

(signed)

[The defendant's name]

31 On Gobind's instructions, the defendant informed the second plaintiff's customers that the second plaintiff would not be entering, into any new transactions with them. Dev then contacted

Gobind as he was concerned about how the Vista group could continue in business without the second plaintiff's letters of credit. The question about Dev and Anup buying over Gobind's shares in the second plaintiff arose again. Dev and Anup indicated that they would travel to Singapore soon to discuss the matter in detail. The second plaintiff then wrote to inform its banks that Gobind would be retiring from the company and that new shareholders and guarantors would replace him. Gobind asserted that the defendant never suggested to him, nor was it ever contemplated by him, that he should sell his shares in the second plaintiff to the defendant.

32 Subsequently, the defendant and Gobind instructed a lawyer, Harjeet Singh, to prepare three agreements. The first was to acknowledge the loan of \$1.6m taken by the defendant from Gobind and its repayment by the transfer of the two Singapore properties to Gobind. The other two agreements were the sale and purchase agreements in respect of the same properties, with the purchase prices stated to be \$900,000 for the Bukit Timah flat and \$1.8m for the Hoot Kiam property. Gobind was to redeem the outstanding mortgages on the two properties. All three agreements were signed in the presence of Harjeet Singh on 27 December 2001.

33 Soon thereafter, Gobind went to meet Vishu in India. He told Vishu that he had uncovered some irregularities in the second plaintiff and that he was looking into the matter. He did not tell Vishu about the defendant's misappropriation and that the defendant had implicated Dev, Anup and Harchand for fear that Vishu would be upset and confront those named.

34 Subsequently, Harjeet Singh informed Gobind that the Controller of Residential Properties did not approve of his purchase of the Hoot Kiam property. It was then decided that Gobind's son, the first plaintiff, would apply for permanent resident status here and purchase the Hoot Kiam property in place of Gobind. Subsequently, in March 2002, the first plaintiff applied for permanent resident status and was granted that status a few weeks later.

35 In January 2002, Dev and Anup arrived in Singapore to discuss the buying over of Gobind's shares in the second plaintiff and the other business arrangements. They decided to do a reconciliation of the second plaintiff's accounts to see what was outstanding from the Vista group, Panabiz Congo and La Pupa. For this purpose, the financial controller of the Vista group, Ajay Nagendra Rao ("Ajay"), flew to Singapore. He was to work with the defendant to do the reconciliation but was not to conduct a full audit of the second plaintiff's accounts.

36 On 28 January 2002, Gobind met Dev and Anup at the second plaintiff's office to discuss the reconciliation exercise done by Ajay. The defendant was also present. It was expected that the large sums owing to the second plaintiff would not be settled until the middle of that year. In order to allow the Vista group's trading activities to continue, Dev and Anup decided they would use a previously dormant Singapore company, Vivastar Pte Ltd ("Vivastar"), to obtain fresh banking facilities. They would not buy over Gobind's shares but would place funds in Vivastar instead in order to obtain the banking facilities. The second plaintiff would wind down its business operations and its existing staff, the defendant and Catty, but not Malathi, would become employees of Vivastar with effect from 1 March 2002. The minutes of meeting, containing four numbered paragraphs, evidencing all these decisions, were prepared by the defendant and signed by Dev, Anup, Gobind and the defendant immediately after the meeting that day.

37 Gobind disputed a version of the minutes produced by the defendant in evidence which had the following additional unnumbered paragraph, which was also not in alignment with the preceding four paragraphs:

Gobind hereby confirms in full receipt of cash in India a/c [A Ltd] trd, Spore and his responsibility

for all his past instructions to [the defendant] on [A Ltd] documents to Govitex.

Gobind stated that they did not discuss any matter related to A Ltd and that he only heard about that entity for the first time in 2003 when the first plaintiff mentioned that name to him. This document was examined by the Centre for Forensic Science at the Health Sciences Authority ("HSA"), which opined that the additional paragraph quoted above was not typed in at the same time and probably not printed out using the same printer as the other lines. The HSA also opined that a letter dated 12 August 2000 purportedly from Gobind and a fax dated 17 January 2001 purportedly sent by Vishu, which would have indicated Gobind's and Vishu's knowledge of A Ltd, were not authentic documents.

38 In January or February 2002, Z pleaded with Gobind not to expose the defendant's wrongdoing since he had agreed to return the assets to the second plaintiff as she feared that her marriage would otherwise come to an end. She and her brother (Y) also pleaded with Gobind in a restaurant in Singapore not to complain to the authorities about the defendant's misdeeds. Z asked that she and the defendant be allowed to keep the Bukit Timah flat as that was their home. Gobind replied that he had no choice as the defendant had taken so much money from the second plaintiff. Z then asked that she be allowed to retain one of the properties in Bangalore, India, for her old age. Gobind relented and allowed her to keep one property that was registered in her name.

39 The defendant also approached Gobind to ask if he would agree to him borrowing money on the security of the Bukit Timah flat in order to reduce the loan on the Hoot Kiam property so that the net realisable value from the Hoot Kiam property was still \$1.3m. This would allow the defendant to keep the Bukit Timah flat as his home. Gobind agreed with the arrangement as there would be no difference in the amount to be recovered for the second plaintiff. He therefore removed the caveat on the Bukit Timah flat so that the defendant could re-finance that property and use the net proceeds to lower the bank loan on the Hoot Kiam property.

40 Around March 2002, the defendant told Gobind about his wish to buy Gobind's shares in the second plaintiff since Dev and Anup were no longer interested in those shares. Gobind told him that he would not consider the proposal until his guarantees to the banks and the fixed deposits securing the banking facilities were released. However, the defendant persisted in asking to buy over Gobind's shares and even suggested that the sale of the shares be conditional on the release of the guarantees and the fixed deposits. Gobind did not turn the defendant's request down outright as he needed the defendant to continue running the business. He therefore kept putting off the issue.

41 The defendant tried to entice Gobind into selling his shares by offering him a share of the future profits of the second plaintiff without the need for Gobind to be a guarantor for the second plaintiff. The defendant even signed and sent to Gobind an agreement for the sale of the shares and another for the sharing of future profits. He also signed and sent to Gobind a share transfer form and a board resolution, saying that the banks would not continue to extend the facilities unless Gobind signed all four documents. Gobind ignored all these since his intention was to wind down the second plaintiff's business.

42 Around that time, Vishu's daughter wrote to the banks to instruct them not to release any fixed deposits held by them in her and Gobind's joint names without her consent. This upset Gobind as Vishu had acted without consulting him first. He telephoned Vishu and they had a heated exchange of words. Gobind mentioned to Vishu that the defendant wanted to buy his (Gobind's) shares in the second plaintiff. Vishu then got upset as he felt that he should be entitled to buy the shares as he was Gobind's partner. Later, they agreed to ask Ajay to conduct another reconciliation exercise.

43 After the second reconciliation exercise was done, Dev and Gobind met on 15 April 2002 to review the outcome. The defendant was also present then but Catty had moved over to Vivastar. Gobind objected to an amount of \$10,000 to be paid for the two reconciliation exercises done by Ajay as he felt that they were done at Vishu's behest. By consent, the accounts were rectified accordingly. Thereafter, Dev and Gobind signed on the reconciliation accounts, accepting the adjusted figures contained therein. A document entitled "Sequence of events" was attached. This document was prepared before the meeting and it set out the proposed next steps in the event that Vishu decided to buy over Gobind's shares. Dev then informed Gobind that he would discuss the matter of the purchase of the shares with Vishu and would revert with an answer within a week or so. Gobind then left for Jakarta that night.

44 Gobind believed that it must have been clear to the defendant at that meeting that he had no intention of selling his shares to the defendant. He surmised that that must have motivated the defendant to call him two days later to say that he was resigning as a director of the second plaintiff. Gobind agreed to this request as the amounts owed by the Vista group were down to a very much more manageable level by then. Yet another two days later, the defendant called Gobind to state his desire to resign from the second plaintiff. Gobind agreed but told him to wait until he returned to Singapore so as to do a proper handing-over. However, the defendant, who was upset that Gobind was not selling his shares to him, told Gobind that he could not wait.

45 After that call, the defendant became uncontactable. Gobind then sent the first plaintiff to check on the second plaintiff's premises. The first plaintiff found the office closed with nobody running the business. The defendant had left a letter of resignation dated 15 April 2002, resigning as director of the second plaintiff with immediate effect and another dated 23 April 2002, resigning as an employee with one month's notice and stating that he was clearing his accumulated leave until the effective date of his resignation. After speaking to Dev, Gobind began to believe that Dev and Ajay were not in collusion with the defendant and therefore decided to tell Vishu what had been going on.

46 On 5 May 2002, Gobind met Vishu in the second plaintiff's office in Singapore and told him about the defendant's misappropriation. They also met Harjeet Singh two days later to look at the agreement signed on 27 December 2001. Gobind also instructed Harjeet Singh to re-lodge a caveat on the Bukit Timah flat.

47 Gobind then asked the first plaintiff, who was still working in Deutsche Bank, to take a day off from his work to help go through the second plaintiff's accounts and other documents. They discovered that there were no records for the period prior to April 2001 in the office. They also found out that some BNP Paribas cheques had been drawn in favour of the defendant, Catty and the Central Provident Fund ("CPF") Board after the board resolutions of 19 December 2001 cancelling the defendant's sole signatory status had been passed, and those cheques were not signed by Gobind. The cheque for \$39,840 payable to the defendant was not presented for payment but the two cheques made out to Catty and the one to the CPF Board were paid. Gobind checked with BNP Paribas on this and was told that the bank had sent the second plaintiff a letter at the end of 2001 saying that the said board resolution was incomplete and should be revised. However, Gobind had not seen such a letter. As the second plaintiff did not revert to the bank with a revised resolution, the change in signatories was not effected.

48 Vishu asked Ajay to return to Singapore as the defendant was still in contact with Ajay and Vishu and Gobind wanted Ajay to communicate with the defendant. They asked Ajay to inform the defendant to hand over the accounts and the password to the computer in the office. The defendant said he would return to the office provided Vishu and Gobind did not try to speak to him. Naturally, the two men refused the defendant's unreasonable demand. They then decided to write to the

defendant on 10 May 2002, accepting his resignation and asking him to return the accounts and all other properties of the second plaintiff. They also employed one Shanmugam s/o Palaniappa Chettiar to take over the running of the office.

49 Subsequently, the second plaintiff received a letter dated 17 May 2002 from the defendant claiming that he had no assets belonging to the second plaintiff apart from some unit trusts and shares which he was holding in his name on trust for the second plaintiff. He also claimed that all the financial records and books were in the office and stated further:

In this connection please note that extensive damage was caused to the office property, books and records as a result of a flooding incident in June 2001.

Finally, I wish to inform you that my resignation was prompted due to the following issues raised by me verbally time and again with you;

- 1) Transactions with Director related Company even when it is under bankruptcy.
- 2) Accounting for sales to Vista Group of Companies.
- 3) Drawings/other transactions of the Directors.

50 Realising that the defendant must be up to something as the reasons set out in his letter were phoney ones, Gobind decided to seek legal advice. He next received a letter dated 31 May 2002 from the defendant's solicitors withdrawing the defendant's offer in relation to the share transfer agreement (see [41] above). Gobind left it to his solicitors to respond.

51 In the meantime, Gobind was advised by his solicitors that the second plaintiff should pass board resolutions to ratify the 27 December 2001 sale and purchase agreements in respect of the Bukit Timah flat and the Hoot Kiam property. That was done on 15 June 2002.

52 In July 2002, the first plaintiff informed Gobind that the defendant had called him numerous times to beg for forgiveness, promising to return the two properties and all the other assets in question. The first plaintiff also said that the defendant was remorseful and had told him that he had disposed of the second plaintiff's accounts and records.

53 Gobind returned to Singapore and met the defendant and his wife in a restaurant in Serangoon Road. The defendant looked tired and dishevelled. He cried and apologised to Gobind. He then handed over various title deeds, which he told Gobind related to the properties in India, and share certificates of a company there (LN Polyesters). When Gobind asked him about the share certificate of another company (Ratna Cements), the defendant claimed that they were with one Gopi, his friend, and that he would give that friend's telephone number to Gobind. The defendant also asked Gobind how he would like the two properties in Singapore to be handed over. A few days later, Ratna Cements sent the share certificate to the second plaintiff.

54 Acting on their solicitors' advice, Gobind and the first plaintiff sought a power of attorney from the defendant in order to facilitate the transfer of the two Singapore properties. The donee was to be the sister of the first plaintiff. After the power of attorney had been prepared by their solicitors, Gobind and the first plaintiff went to collect it. They then went to Harjeet Singh's office where the defendant was already waiting. The defendant read through the power of attorney, which was irrevocable for six years, and then signed it, with Harjeet Singh as a witness.

55 Subsequently, on 6 September 2002, the first plaintiff entered into a sale and purchase agreement with the defendant for the Hoot Kiam property to be transferred to the first plaintiff. The purchase price was to be \$1.8m. The first plaintiff only needed to pay to the mortgagee bank a maximum of \$973,000 to redeem the mortgage, with any amount exceeding that limit to be borne by the defendant. A maximum amount of \$112,000 was to be paid by the first plaintiff to be refunded to the defendant's CPF account as the latter had utilised the funds in that account for the purchase of that property. The net proceeds of sale would be paid to the second plaintiff.

56 Sometime later, the first plaintiff found a buyer for the Bukit Timah flat who offered \$820,000 for it. Gobind and Vishu agreed to accept that offer although the price was a bit low. Just before completion of that sale, the first plaintiff said that there was a clause in the loan agreements for the two Singapore properties which provided that all proceeds of sale were to be paid to the mortgagee bank. Gobind and Vishu felt that this would make little difference as the loan on the Hoot Kiam property would be reduced thereby.

57 Shortly after the completion of the sale of the Bukit Timah flat, the first plaintiff told Gobind that the real estate agent marketing both properties had informed him that the defendant said that the Hoot Kiam property was not for sale. They tried to call the defendant but he appeared uncontactable. The next day, Harjeet Singh told the first plaintiff that the defendant had revoked the power of attorney. The defendant had apparently sent a letter to the first plaintiff's sister to effect the revocation.

58 On 24 April 2003, Gobind returned to Singapore and went with the first plaintiff to the defendant's home in Jalan Kechil to try and meet him. No one answered the door bell when they rang it. They left a voice message on the defendant's telephone that Gobind was trying to contact him and that if he did not hear from the defendant, he would commence legal proceedings. Gobind, who was in Singapore on transit from Jakarta to Japan, then proceeded on his flight to Japan.

59 On 2 May 2003, the plaintiffs' solicitors sent a letter to the defendant concerning his misappropriations, his agreements in December 2001 and his destruction of the second plaintiff's records and stating that the second plaintiff did not accept his purported revocation of the power of attorney. On 19 May 2003, the defendant replied, denying the allegations and stating that he was instructing his solicitors to remove the caveat on the Hoot Kiam property. Having been advised by their solicitors that the defendant could revoke the power of attorney, Gobind instructed the first plaintiff to proceed with legal action against the defendant. They decided that the first plaintiff would seek specific performance of the sale and purchase agreement in respect of the Hoot Kiam property only, as that would be a relatively simpler and cheaper way to recover for the second plaintiff the bulk of the misappropriated funds.

60 In the meantime, the first plaintiff discovered evidence of various instances of misappropriation by the defendant. Gobind then reported the matter to the Commercial Affairs Department ("CAD"). About a month later, the first plaintiff discovered transactions with A Ltd where there was no shipment of goods. This was also reported to the CAD.

61 A few months later, the CAD informed Gobind that the defendant had made accusations of duress against him and the first plaintiff and allegations of illegal transactions involving the second plaintiff. Gobind was interviewed by the CAD and was asked to put up a bond. That bond was later released and Gobind was no longer restricted in his travels. In the meantime, Gobind and the first plaintiff decided to await the outcome of the CAD investigations, hoping that the CAD would charge and secure a conviction against the defendant, making their task in the civil action that much easier. However, as the one-year period for proceeding with the civil action was approaching (after which

the suit would be deemed discontinued), they decided to proceed with the civil action. They were advised to include the second plaintiff as a party in the civil action and the necessary application was therefore made to court to effect this.

62 Gobind denied the defendant's allegations that the funds alleged to have been misappropriated by the defendant were expended by the defendant on Gobind's authorisation and/or were recorded as a loan due from the defendant to the second plaintiff. He maintained that the defendant was only entitled to a salary of some \$2,500 per month, his home rental allowance and the use of a car and its upkeep. Gobind and Vishu had used the second plaintiff's funds for paying various personal expenses for themselves and their families, but that was because they were the owners of the second plaintiff. Gobind also denied that he had signed various documents attributed to him by the defendant. He maintained that he did not know about A Ltd before the first plaintiff told him about it. The name sounded suspicious to him as "CV" was a prefix often used by businesses in Indonesia but the firm had a Singapore address. Further, "Trading" was rarely used in the names of Indonesian businesses. Gobind asserted that the defendant did not seek his approval to start A Ltd. He also denied that the second plaintiff had assigned to the defendant a debt of \$120,000 due from Shrisai Communications in consideration of the defendant holding the shares in the Indian companies on trust for the second plaintiff. There was no board resolution to that effect. Gobind also denied that the December 2001 agreements in respect of the two Singapore properties were entered into in consideration of Gobind transferring his shares in the second plaintiff to the defendant. He also denied the defendant's allegations that he had threatened Y.

The evidence of the first plaintiff

63 The first plaintiff graduated with a Bachelor of Business in Accountancy in 1998 and a Masters of Finance in 2000 from the Royal Melbourne Institute of Technology, Australia. He worked as an auditor in KPMG, Jakarta, from 1996 to 1997. From October 2000 to June 2001, he was a management trainee at the DBS Bank in Singapore. From July 2001 to July 2002, he was employed by Deutsche Bank, Singapore. He is now a director of his own company.

64 While looking into the second plaintiff's situation after the defendant had left, the first plaintiff realised that he could only access Catty's computer as the defendant's computer was protected by a password. After seeking the assistance of an engineer from a computer vendor, he managed to back up the accounting data in Catty's computer on disks and to gain access into the defendant's computer. However, when he opened the computer files later, he discovered that the data had been erased, leaving only the file names which indicated that they related to the accounts that were missing. The only accounts that he managed to retrieve were those for the period April 2001 to December 2001 which corresponded with the hard copies left in the second plaintiff's premises. He also retrieved a computer file relating to Shrisai Communications.

65 In the course of the next few weeks, the first plaintiff contacted the banks of the second plaintiff and obtained statements of accounts of all sums owing to the banks. He also determined the sums due from the second plaintiff's debtors and kept track of subsequent payments to and from the second plaintiff. Although his employers in Deutsche Bank allowed him to take long lunch breaks in order to attend to the second plaintiff's problems, he soon realised that he needed to devote a lot more time to settling the woes of the second plaintiff. He therefore resigned from the said bank in mid-July 2002.

66 In his investigations into the accounts and documents that were left in the second plaintiff's premises, the first plaintiff started to uncover evidence of payments to insurance companies and credit card companies made by the second plaintiff on behalf of the defendant. Through the second

plaintiff's solicitors, he asked Catty to assist in the investigations into the accounts. Catty wrote to the solicitors stating what her computer password was but indicating that she would not attend any meeting.

67 Around 19 July 2002, the defendant called the first plaintiff on his mobile phone. The defendant was sobbing and apologising for what he had done. He told the first plaintiff that he was calling from Bangalore in India and hoped that no legal proceedings would be commenced against him here. He said he would be returning to Singapore soon and would return the two properties and all the other assets which he had taken. The first plaintiff told the defendant that he needed the accounting records returned as the second plaintiff was required by law to keep its records for seven years and so that the accounts could be prepared. He also told the defendant that he had checked with the management committee of the office block in which the second plaintiff's office was located and had been informed that there was no flooding of the seventh floor as alleged in the defendant's letter of 17 May 2002 (see [49] above). It was merely a case of a pipe in the toilet on that level having burst and causing damage to the carpets in several units on that floor. The said management committee also furnished correspondence showing that the defendant had merely made a claim for replacing the carpet and telephone wiring and for the costs of some photocopy paper.

68 The defendant then informed the first plaintiff that he had ordered the disposal of all the second plaintiff's accounting books and records after he was confronted by Gobind in December 2001, saying that the first plaintiff could check with one Johnny Tan of Sin Chuan Seng Transport Company Pte Ltd as that was the person he had asked to destroy the books and records.

69 The first plaintiff then contacted Johnny Tan, who told him that he had destroyed cartons of the financial records of the second plaintiff a few months ago on the instructions of the defendant. The records ordered to be destroyed were for the period 1997 to March 2001. The second plaintiff's records were apparently warehoused in the premises of Sin Chuan Seng Transport Company Pte Ltd. Johnny Tan in his testimony said that he received a telephone call from the defendant in early 2002 instructing him to dispose of certain files belonging to the second plaintiff urgently that day. The defendant sounded quite anxious and told him that Catty would tell him which cartons of files were to be destroyed. Catty did call Johnny Tan that same day to give him the serial numbers of the said cartons. The relevant cartons were then dumped in the waste disposal facilities near his warehouse.

70 The defendant returned to Singapore and met up with the first plaintiff and Vishu. The defendant said again that he was sorry and would return all the assets taken by him from the second plaintiff. He then handed over the keys to the car which was registered in his name but which belonged to the second plaintiff and authorised its transfer to the first plaintiff. Subsequently, the defendant authorised the first plaintiff to sell another car which was also registered in the defendant's name. The net proceeds of sale were paid into the second plaintiff's account. The defendant also transferred to the first plaintiff various unit trusts and shares held by him on trust for the second plaintiff. These were sold over the next few months, with the sale proceeds again paid into the second plaintiff's account.

71 The first plaintiff denied the defendant's allegations that due to the inactivity in relation to the sale and purchase agreement between them for the Hoot Kiam property, they had mutually or impliedly agreed to abandon the agreement. He also denied the defendant's alternative claim that the agreement had been obtained under duress and/or undue influence. The Hoot Kiam property was tenanted at that time and vacant possession could only be obtained at the expiry of the tenancy (on 18 September 2003) although the completion date in the agreement was stipulated to be 12 weeks from 6 September 2002, *ie*, 29 November 2002. The defendant had provided the first plaintiff with a copy of the tenancy agreement and had handed over to him one set of keys for the Hoot Kiam

property which the first plaintiff is still holding to date. The first plaintiff therefore thought that he had up to 18 September 2003 to complete the transfer. The Singapore Land Authority had granted him approval to purchase the property on condition that vacant possession was obtained by him by 19 September 2003 anyway. In February 2003, the defendant also asked to be reimbursed for the property tax for 2002 which had been paid by him. He was duly reimbursed.

72 The defendant moved out of the Bukit Timah flat in September 2002 and handed the keys thereof to the first plaintiff, who arranged for it to be sold. As the defendant was in Singapore, he, and not the attorney appointed by him in the power of attorney, signed the contractual documents. The defendant also instructed Harjeet Singh to utilise the proceeds of sale to repay the bank loan on that property, to refund his CPF account and to repay the balance to the second plaintiff. However, the said balance was eventually used to pay the mortgagee bank for the loan taken out in respect of the Hoot Kiam property.

73 Soon after the sale of the Bukit Timah flat was completed, the defendant indicated through Harjeet Singh and others that he was not willing to transfer the Hoot Kiam property to the first plaintiff. The first plaintiff tried to contact the defendant to no avail. On 2 May 2003, the second plaintiff wrote to the defendant to state that it had every intention to ensure that the Hoot Kiam property was sold. On 17 June 2003, the defendant commenced legal proceedings (which were subsequently dismissed by the High Court) seeking a removal of the caveat lodged by Gobind against the Hoot Kiam property. The first plaintiff then instructed his solicitors to lodge a caveat in his name. The plaintiffs' solicitors also wrote to the defendant on 18 July 2003 to give him notice to complete the sale and purchase of the said property. The defendant's solicitors replied, alleging duress and abandonment of the agreement.

74 The first plaintiff denied that he and Gobind had threatened the defendant or his family in any way. He also denied having stalked the defendant. He was living in Dunman Road, near the defendant's new home in Jalan Kechil which was off Meyer Road. Moreover, the first plaintiff had a friend and relatives living in that area. Thus, if the defendant had seen him driving past, it was purely coincidental.

75 Through his investigations into the second plaintiff's accounts, the first plaintiff discovered that between 1999 and 2001, the defendant had caused the second plaintiff to pay for goods allegedly purchased by A Ltd from PT Palur Raya, an Indonesian company, and then sold to the second plaintiff. No goods were actually shipped. The fictitious transactions amounted to \$1,090,015. PT Palur Raya was a supplier of the Vista group. When the first plaintiff retrieved the transaction documents from the bank and checked with PT Palur Raya, he was told by way of a letter that no such goods had been shipped by PT Palur Raya. A witness from PT Palur Raya confirmed this in court. Moreover, the documents bore the old address of this Indonesian company. Dev also confirmed that the Vista group had not received the said goods.

76 The purported issuer of the bills of lading involved in the above transactions was PT Samudra Lines of Indonesia. On checking, the first plaintiff found no such company registered in Indonesia. The said company was also not listed in the telephone directory.

77 The first plaintiff also discovered that the defendant had been using the second plaintiff's funds to pay the premiums on insurance policies purchased for himself, his daughter and Catty. Such payments were not authorised by Gobind, contrary to the defendant's assertions. The defendant had also used the second plaintiff's funds to pay for his personal credit card expenses amounting to \$48,323.40 without any authorisation. Similarly, he had without authority used the second plaintiff's funds to pay for his personal expenses, such as air tickets for his daughter, his income tax and the

costs of a tour to Japan for Catty. As for the amount of \$30,702 withdrawn by the defendant for his personal use, the defendant claimed it was authorised as a commission owing to A Ltd for the period 1998 to 2001. However, this item was recorded in the general ledger as a purchase for "HIH Insurance", a company in Australia which was apparently in receivership.

The evidence of other witnesses for the plaintiffs

78 Harjeet Singh, who testified for the plaintiffs, stated that in all the meetings he had had with Gobind, the first plaintiff and the defendant, they were very cordial and friendly with one another, occasionally laughing and joking. The defendant appeared to him to be highly intelligent and aware of his rights, giving him instructions and playing an active role in the negotiations with Gobind and his son. The defendant was very vocal and would even refuse to sign an agreement if he did not agree with the terms therein. It therefore came as a total surprise to the lawyer when the defendant sent him an e-mail on 21 April 2003 alleging that he had been coerced into executing the power of attorney. The first plaintiff did not indicate to Harjeet Singh in any way that he was abandoning his rights under the agreement in respect of the Hoot Kiam property.

79 Gurnani Deepak ("Deepak"), who ran a business in the same building as the second plaintiff's office, was the chairman of the management corporation for that building. His office was next to the second plaintiff's premises on the seventh level of that building. He therefore got acquainted with the defendant and they became good friends. They also used to reside in the same condominium in MacPherson Road. Their families eventually also got acquainted with one another. The defendant's wife worked in India but would visit Singapore frequently. Their daughter came to live with the defendant here sometime in 1995 or 1996. She appeared to Deepak to be a very well-behaved and docile child while the defendant was a strict father.

80 In the mid-1990s, Deepak purchased some land in Bangalore, India. The defendant commented that it was a good place to retire in and persuaded Deepak to sell him one of the plots of land. Deepak agreed. The defendant paid for part of the purchase price with the second plaintiff's cheque, claiming that the amount would be deducted from his bonus account.

81 In 2003, the first plaintiff asked Deepak about a BNP Paribas cheque dated 4 July 2001 which was a cash cheque for \$30,702 drawn on the second plaintiff's account. Deepak's name, identity card number and signature were found on the back of that cheque, indicating that he had cashed it. Deepak explained that he would go for lunch occasionally with the defendant while the latter was still working for the second plaintiff. The defendant would drive and would sometimes request Deepak to cash cheques for him at the bank while he waited in his car by the roadside. Deepak would oblige and then hand the cash over to the defendant.

82 Deepak also confirmed that the incident of the burst pipe in 2001 merely resulted in damage to the carpets in the second plaintiff's office and did not result in any flooding. A computer's central processing unit, which was on the same floor, was not damaged by the water seepage. The management corporation eventually reimbursed the second plaintiff the costs of replacing the carpets.

83 Deepak also recalled an incident in 1999 when he found a parcel wrapped in brown paper in one of his cupboards. He found several pads of blank bills of lading inside with the name PT Samudra (or something like that) printed on them. He found out from the defendant later that he had left the parcel in Deepak's office as he did not have sufficient storage space. The defendant took the parcel back from Deepak later.

84 Y testified that he used to work for Gobind and that both families were on good terms. It was Y who introduced the defendant to work for Gobind. Y also had a short-lived business venture in 1997 with Gobind and the first plaintiff but their relationship remained good. Y denied the defendant's allegations that Gobind and the first plaintiff had demanded that he give evidence for them or they would kill the defendant. He also denied having told the defendant's wife that he had been asked by Gobind to sign a statement, failing which there would be dire consequences for him. He further denied that he had to move out of his house into a hotel in December 2003 because of suspicious-looking people using walkie-talkies in the vicinity of his house. Y also said that while he was in Singapore, the defendant and his wife did not tell him that they had been threatened by Gobind, the first plaintiff or some other persons.

The defendant's case

The evidence of the defendant

85 The defendant was hired by the second plaintiff in December 1993 as a general manager because of his experience in finance and his ability to liaise with banks to obtain financing for the second plaintiff's trading operations. He was a chartered accountant by profession. In November 1995, he was made a director and remained one until his resignation on 15 April 2002. However, his duties did not change. There were other staff members working with him in the second plaintiff's office before Malathi and Catty joined the second plaintiff. Catty was employed in May 1994.

86 It was the understanding among the directors that the second plaintiff would pay the premiums for their insurance policies and for those belonging to their nominated family members. The defendant claimed that the second plaintiff would pay for him on "two possible bases". The first was that the payment would be regarded as an advance which would be set off against moneys due to him from the second plaintiff, such as bonuses. The second basis was that the payment would be regarded as an employee benefit. The policies that he had taken out for himself and his daughter with various insurance companies here were paid for by the second plaintiff on this understanding and only after he had obtained Gobind's consent. The consent was given verbally by Gobind to the defendant in Indonesia or over the telephone. In some instances, Gobind would confirm his consent by fax. However, the defendant did not have records of such faxes.

87 The two insurance policies taken out for Catty were approved in 1995 and 1998 respectively because of Gobind's and/or Murlis suggestion that the second plaintiff should give benefits to its employees. Catty was considered a model employee because of her loyalty to the second plaintiff and her willingness to work beyond office hours. Gobind thought that insurance benefits as a reward were better than cash payments.

88 Sometime in January 1995, Gobind informed the defendant over the telephone that the company would pay the defendant's income tax for him so long as he remained in its employment. This benefit was treated as part of his remuneration package and remained so until the year ending 31 December 2001, for which the defendant knew that the company would not pay his income tax.

89 In 1997 or so, the defendant was instructed by Gobind to purchase a car (a Toyota Camry) to be registered in the defendant's name but which was to be used as a company car. This was because at that time, cars registered in the name of a company attracted higher taxes. Before that, the second plaintiff had also bought a Toyota Corolla in the defendant's name. The initial deposit for the Toyota Camry was paid by the second plaintiff but the defendant had to pay the instalments on a car loan taken out for that car. To reimburse the defendant for making these payments, Gobind told him that he could take out a Prudential Assurance insurance policy to be paid for by the second

plaintiff.

90 When the first plaintiff came to Singapore in October 2000, Gobind instructed the defendant to purchase a Volvo S80 for the company's use while the first plaintiff would use the Toyota Camry. The Volvo S80 was again registered in the name of the defendant and paid for in the same way as the Toyota Camry with the reimbursement to the defendant continuing to be made by way of the premiums for the said Prudential Assurance insurance policy. The second plaintiff paid the road tax and insurance premiums for both vehicles.

91 Around May 1998, Gobind asked the defendant to set up A Ltd in Singapore as a sole proprietorship. Gobind wanted to trade with an Indonesian company, PT Palur Raya, through A Ltd. Gobind and Vishu apparently had a stake in PT Palur Raya. Gobind told the defendant that PT Palur Raya was a "group company". Gobind would purchase goods from PT Palur Raya and pay it in rupiah. Upon receiving the documents for the goods, Gobind would send them to the defendant in Singapore. The defendant would submit the documents to A Ltd's bank here, the HSBC Bank, which would then send them to Indian Bank for payment which was to be deposited into A Ltd's account in HSBC Bank. Gobind wrote a letter in June 1998 to Indian Bank to explain the "normal business practice" of Indonesian companies routing export documents through Singapore after the currency crisis of 1997. Shortly after receiving the documents, the defendant would inform one Gopi of Ratna Cements in India to make available to Gobind funds corresponding to the approximate value of the goods stated in the documents. Gopi and Gobind were introduced to each other by the defendant in 1996. Gobind subsequently invested in Gopi's company. Gopi was asked to help Gobind make payments in India. Gopi would subsequently issue the defendant receipts to certify that he (Gopi) had been reimbursed for the payments made on Gobind's behalf in India. When reimbursement was delayed, Gopi would ask the defendant to sign promissory notes for those payments. Once reimbursement was done, the promissory notes would be sent to the defendant who would then destroy them.

92 In December 1999, while the defendant was in India, he signed an agreement drafted by Gopi stating that the payments in India were made on Gobind's and the defendant's instructions. A schedule recording all the payments made was annexed to the agreement. Similar agreements were signed in December 2000 and in July 2001 by Gopi in India who then couriered the agreements to the defendant in Singapore for his signature.

93 For doing all this, Gobind said that the second plaintiff would pay the defendant a commission of approximately \$20,000 a year ("the A Ltd trading commission"). Gobind also explained how the commission was to be computed but the defendant could no longer remember the method of computation. In any event, the defendant was not paid the commissions which he had declared in his tax forms as income earned but not received for the years of assessment 2000, 2001 and 2002 in the sums of \$17,501, \$17,188 and \$16,691 respectively.

94 In July 1999, Gobind gave his concurrence to the defendant over the telephone that the second plaintiff would pay the premiums on an insurance policy for the defendant's daughter. The defendant had asked Gobind to treat the payments as an advance of credit on the A Ltd trading commission.

95 In December 1998, the defendant joined the partnership called Shrisai Communications which dealt in the sale of mobile phones. This was done on the instructions of Gobind who had, at a wedding, introduced the defendant to Bharat Kapoor, the owner of Shrisai Communications, and his wife, Mulkeet Kaur. As they were Gobind's good friends, Gobind wanted the defendant to help out in the mobile phone business.

96 Shrisai Communications was discontinued as a partnership in March 1999 and replaced by Shrisai Communications Pte Ltd, which used to be known as Euro-Asia Paper Pte Ltd, a shelf company bought by the defendant in March 1995 on Gobind's instructions. In August 1999, the defendant resigned as a director of the company as he did not like Bharat Kapoor's style of running the business. He informed Gobind about his resignation.

97 In late 1999, Gobind agreed to extend credit facilities to Shrisai Communications on the basis that the latter reimburse the second plaintiff the amounts stated in the letters of credit together with the bank charges and interest. By 23 March 2000, the second plaintiff was owed \$120,000. The defendant informed Gobind that they had to take legal action but Gobind did not want the second plaintiff to be involved in any legal proceedings nor Vishu to find out about this debt. He therefore told the defendant to assign the debt to himself urgently as the second plaintiff's financial year would close on 31 March 2000. The debt would therefore not be in the accounts of the second plaintiff. Accordingly, the defendant instructed a firm of solicitors to draw up a deed of assignment assigning the debt owing by Shrisai Communications to himself. Gobind asked him to sign the said deed as he was not in Singapore. The defendant executed the deed on 1 April 2000.

98 In return, Gobind and the defendant agreed that the defendant transfer his ownership of various units of equity funds and shares worth some \$85,000 to the second plaintiff, which assets the defendant would then hold as trustee. Gobind agreed that the second plaintiff would compensate the defendant for any portion of the assigned debt that was not recoverable. On 1 April 2000, the defendant wrote a letter to the second plaintiff to set out this agreement and faxed a copy thereof to Gobind. He also authorised the second plaintiff to retain \$15,000 of his annual bonus for the financial year 2000 and prepared a cheque for \$20,000. The total consideration for the assignment of the debt would therefore add up to \$120,000. On Gobind's instructions, he also informed the second plaintiff's auditor that he was holding the said assets on trust for the second plaintiff so as to close the account relating to Shrisai Communications.

99 The defendant then instructed solicitors to commence action against Shrisai Communications and on 9 June 2000, District Court Suit No 990 of 2000 was filed in court. As Shrisai Communications offered to pay the debt by instalments, the said action was discontinued in July 2000. However, Shrisai Communications defaulted on the payments after paying only \$27,500. Accordingly, District Court Suit No 3600 of 2001 was commenced for the outstanding balance of \$92,500 and judgment was obtained. The judgment remained unsatisfied. In July or August 2002, Gobind told the defendant to sell some of the shares that he was holding on trust for the second plaintiff as a result of the assignment of debt. He did so and paid the proceeds amounting to \$10,000 into the second plaintiff's account. Gobind also asked him to transfer the units of equity funds to the first plaintiff. He complied.

100 In March 2000, Gobind told the defendant to take out a "key man" insurance policy which would pay the second plaintiff the sum insured in the event of the defendant's demise. The defendant was not comfortable with this. After further discussions over the next few months, Gobind agreed that the defendant take up the abovesaid Prudential Assurance policy (see [89] above) instead, which would be paid for by the second plaintiff because of the arrangements relating to the car loan payments mentioned earlier.

101 Initially, the second plaintiff provided the defendant with an American Express corporate credit card after he was made a director. The defendant cancelled it subsequently because of the high annual fees that he had to pay for it. In place of that credit card, Gobind agreed that the second plaintiff would pay the defendant's credit card bills first and the defendant would reimburse the second plaintiff later when asked to do so.

102 In 2001, the defendant informed Gobind that he had purchased the Bukit Timah flat and needed money to pay for the furnishing. He also needed money to do the same for the Hoot Kiam property. Gobind agreed to let him use the second plaintiff's funds to pay for his credit card bills for such furnishing on the basis that the funds were a loan from the company to be repaid at a future date. The defendant did not think this was unusual as Gobind's credit card expenses in 2000 and 2001 were also paid by the second plaintiff.

103 In May or June 2001, the defendant got Gobind's approval for the second plaintiff to purchase an air ticket for the defendant's daughter, who wanted to travel to India, through the second plaintiff's travel agents who gave a corporate discount on the second plaintiff's purchases. The understanding was that the defendant would reimburse the second plaintiff for the price of the air ticket when asked to do so. Gobind also gave his approval for a second purchase when the defendant's daughter needed to travel to India again in September 2001.

104 Around June 2001, Dev asked the defendant to make payment for his and one Maya Varyani's insurance policies from the second plaintiff's account. As Dev held a senior position in the Vista group, a major customer of the second plaintiff, the defendant agreed. Shortly after the defendant made the payments, Dev went to the second plaintiff's office to repay the money. The defendant received the money and telephoned Gobind the same day to inform him about the payment and the reimbursement. Gobind asked him to place the cash in the office safe. In December 2001, Gobind went to the office and asked Catty to open the safe as he did not have the keys and the combination numbers of the safe. Thereafter, Gobind removed all the cash that was inside the safe.

105 Gobind also agreed that the second plaintiff would pay for Catty's and her family's intended tour in Japan in late 2001. This was again due to Catty being a model employee of the second plaintiff. However, as Gobind was returning to Singapore around that time, she decided to postpone the trip. The money was paid to Catty but the tour was not booked.

106 The second plaintiff paid for the defendant's Medisave contributions on the basis that such payment was a personal loan. This was approved by Gobind as the defendant had set up A Ltd on his instructions and, being a sole proprietor, was required to pay for his own Medisave contributions. In fact, all loans by the second plaintiff to the defendant were made with Gobind's knowledge and consent and on the understanding that they would be repaid when demand was made.

107 In July 2001, the defendant decided to buy a property in Bangalore, India, as a gift for his wife. As he was supposed to receive the A Ltd trading commission for 1998 to 2001, the defendant telephoned Gobind and asked for \$30,702 as part payment of the said commission. Gobind agreed. When it was pointed out in court to the defendant that the payment voucher for this amount showed that it was paid to HIH Insurance, the defendant claimed that he did not know how the amount was recorded in the books after he informed the accountant about it. The defendant asserted that all other properties were purchased by him using his own funds together with bank loans and his CPF contributions.

108 In early 2001, Gobind and Vishu asked the defendant to set up C Ltd. He asked Gobind and Lavina to give him a letter confirming that they had no objections to the defendant setting up a competing business. In August 2001, acting on Gobind's instructions, the defendant opened US dollar and Singapore dollar accounts with DBS Bank. Shortly after that, he was informed by DBS Bank that C Ltd had received a remittance of US\$244,803.47 from an Indonesian bank. About a week later, another remittance of US\$245,757.88 was received in the account of C Ltd. The defendant tried to find out what these remittances were for but got conflicting answers from La Pupa and Gobind. The defendant suspected that Gobind had arranged fake shipments of goods from other parties to the

second plaintiff in order to receive financing from the second plaintiff's banks. Those other parties, upon receiving the money paid by the banks, would remit it to the second plaintiff through third parties such as C Ltd. The defendant also believed that Gobind made use of the fraudulent transactions to claim from the Indonesian government a tax rebate on the value added tax and the concessionary import duty.

109 In November 2001, the first plaintiff started getting involved in the second plaintiff's accounts although he was not its employee. The defendant had given the first plaintiff a set of office keys. The first plaintiff began to instruct Catty on the accounts and would bring a person with him to the office after office hours to help him look into the accounts.

110 Around that time, the defendant arranged to meet Gobind and Vishu at the then Westin Hotel. He told them about his doubts as to the legality of the transactions involving the second plaintiff, A Ltd, C Ltd and others, and that he was aware they were manipulating the banks for their personal benefit and that of their associates. Initially, both men denied any wrongdoing but subsequently, when shown a handwritten remittance instruction from one of the second plaintiff's suppliers to its bank to pay C Ltd, Gobind changed his tune and wanted to secure the defendant's silence. He told the defendant that he would give him a letter to absolve him. Gobind also asked the defendant not to make an issue of the matter as it was his niece's wedding and all his relatives were in Singapore. The letter dated 24 November 2001 (which was disputed by the plaintiffs) read:

As requested I confirm the following:-

- 1) All the transactions between [the second plaintiff], [A Ltd] La Pupa Trading are [the] full responsibility of myself and Vishu.
- 2) The accounts between myself, Vishu and [A Ltd] are fully settled and I acknowledge the receipt of funds in full in India.
- 3) I also hereby agree to exit [the second plaintiff] as director and shareholder and will inform the banks accordingly.

Considering our long relation, I sincerely request you not to raise the issues with outsiders and settle the problems internally.

111 Believing that Gobind was genuine in not wanting to implicate him, the defendant gave him the original A Ltd documents and bank files for verification. They were not returned to him. He told Gobind that he wanted to ensure that all bank transactions would henceforth be signed by Gobind or by both of them so that Gobind would be personally liable for the second plaintiff's transactions up to the date of the share transfer. He did not want Gobind to blame him for any of Gobind's misdeeds.

112 On 18 December 2001, Gobind went to the office in the defendant's absence and asked Catty to open the office safe. He then removed all the cash, the original letter dated 24 November 2001 given by him to the defendant, the correspondence on A Ltd and three blank pieces of paper bearing the second plaintiff's letterhead with the defendant's signature on each of them. The defendant was told about this that night by Catty.

113 When the defendant arrived in the office later that day, Gobind told him to continue liaising with the banks to provide financing for the Indonesian transactions. The defendant refused and both men argued with each other. Gobind then threatened to ruin the defendant's name by using the pre-signed letterheads. The defendant began to worry for the very first time as he felt that Gobind could

do serious damage to him using those pieces of pre-signed paper.

114 Gobind then told the defendant to send letters to the banks to change the signatories. The defendant told Gobind to do whatever he wanted as he did not care anymore.

115 The next day (19 December 2001), the defendant consulted his solicitors and was advised to make a report to the police about Gobind. However, he did not wish to do so immediately as he wanted to give Gobind a chance. He then informed Gobind that he needed to report the whole episode to the police. Immediately, Gobind became very civil towards him and adopted a "forgive and forget" attitude. He wanted the defendant to prepare new letters to the banks withdrawing or cancelling the letters that he had sent on 18 December 2001. Instead, the defendant prepared a new set of letters which were identical to the ones sent the day before except for the addition of a new paragraph to state that "for all transactions and documentation has to be referred to Mr Gobind". The defendant also told Gobind that he would meet the second plaintiff's bankers only after Gobind's confirmation that the second plaintiff would wind down all its operations and pay the banks in full and that Gobind would leave as a director and shareholder. Gobind agreed. The defendant then went to the banks with Gobind to inform them that the second plaintiff would be clearing all its debts very shortly.

116 Sometime around the last week of December 2001, Gobind told the defendant that he would be resigning as a director of the second plaintiff and would transfer his shares therein to him. Although the shares then had a book value of about \$2m, it was agreed that their purchase price would approximate the value of the second plaintiff's fixed deposits since there was uncertainty over the recoverability of some of the trade debts. They also discussed how the defendant would pay for the shares. The defendant then wrote out his assets several times. They agreed that the Bukit Timah flat and the Hoot Kiam property, with a combined value of about \$1.3m then, would be transferred by the defendant to Gobind in exchange for the shares. That led to the signing of the agreements of 27 December 2001.

117 On or about 21 December 2001, Gobind wrote to the second plaintiff's banks to state that he had decided to retire from the business, to propose two new guarantors from the Vista group in place of Gobind and to inform them that the transfer of shareholding was being finalised. The defendant wanted the shares as he believed it was a good opportunity for him to ensure that the second plaintiff would be run independently of Gobind and that the fictitious shipments would stop. Gobind also applied for an employment pass from the Singapore immigration authority, stating that he intended to spend more time here to look after the second plaintiff's operations. This was despite the fact that he was going to leave the second plaintiff. Gobind also stated correctly that he had been in charge of all of the second plaintiff's operations since 1993.

118 In January 2002, the defendant called Gopi (see [53] above) in India. He told Gopi about the impending transfer of 50% of the second plaintiff's shares to him and asked Gopi for a loan in order to continue with the business. Gopi said he would think about it.

119 Gobind lodged a caveat on the Hoot Kiam property but he was subsequently denied approval by the Land Dealings Approval Unit to purchase that property as he was not a citizen or a permanent resident of Singapore.

120 In February 2002, the defendant received a call very late at night from Vishu informing him that Gobind would continue as a director in the second plaintiff but would remain in the background and that the defendant should provide his own guarantee to the banks. The defendant refused. He said he might consider paying Gobind a share of profits from the second plaintiff but did not want

Gobind involved in the running of the business.

121 Shortly after the above call, the defendant told Gobind that he had refused Vishu's suggestion. A few days later, Gobind telephoned Andrew Chua of DBS Bank and the second plaintiff's other bankers to inform them that he had decided to transfer his shares to the defendant. Gobind and the defendant had an appointment with Andrew Chua to update him about the events, but due to a traffic jam near Pidemco Centre, they were delayed and missed Andrew Chua who had to leave for another appointment.

122 In January 2002, the second plaintiff's accounts were reviewed by Ajay because of Gobind's intended departure from the business. The defendant realised that Gobind intended to withdraw his personal, as well as the second plaintiff's, fixed deposits from the second plaintiff's banks. As the second plaintiff did not have substantial assets and as the defendant had based the purchase price of the shares on the understanding that the second plaintiff's fixed deposits would be left intact, he told Gobind that he could not transfer the two properties to him any more as the value of the shares would be too low. In any case, Gobind had failed to obtain approval to purchase the Hoot Kiam property. That led to Gobind removing the caveat on the Bukit Timah flat. In late February 2002, the defendant instructed his solicitors to draft a share transfer agreement to effect the transfer of Gobind's shares to him for a nominal value of \$10,000 as Gobind had decided to withdraw the second plaintiff's fixed deposits. That agreement was ready in early April 2002 and the defendant sent it to Gobind's office for his signature.

123 On 15 April 2002, the defendant went to the second plaintiff's office with Gobind. In the office, Gobind informed the defendant that he would execute the share transfer agreement the next day. Dev went to the office later that day and they all went to a nearby hotel for lunch. The defendant returned to the office after lunch but Gobind and Dev went back there only in the evening. Gobind and Dev then signed the settlement accounts prepared by Ajay. They also told the defendant that the share transfer agreement could only be signed sometime in July that year and that they were considering transferring only 10% of the shares to him.

124 The defendant could not accept this as he had no confidence that the second plaintiff's future transactions would be legal ones so long as Gobind continued to be involved in the business. He began to question Gobind and Dev about their intentions. Dev became offended and said he would withdraw his offer to the defendant concerning Vivastar. The defendant told Dev he did not care for his offer and would not even want to continue working in the second plaintiff.

125 Seeing no point in staying on, the defendant resigned as director that day. Controlling his frustration at Gobind's sudden change of intention, he drove Gobind to Gobind's brother-in-law's home and then sent Dev to Vishu's home.

126 The next day, the defendant went to meet Dev in Vivastar at Dev's request. Dev offered him another \$5,000 per month and 20% of Vivastar's net profits as his pay package if he would remain as a director of the second plaintiff, promising to sign the share transfer agreement in July 2002. The defendant refused the offer.

127 The defendant then sent an e-mail to his solicitors explaining why he had resigned as a director of the second plaintiff. He also sent the settlement accounts signed by Gobind and Dev to his solicitors and to Charanjit Singh ("Charanjit"), the second plaintiff's auditor. On 23 April 2002, he resigned as an employee of the second plaintiff.

128 Shortly after his resignation as a director on 15 April 2002, Gobind and the first plaintiff began

to exert pressure on the defendant and his family. Gobind called him and told him he "would see [his] end and make [him] commit suicide". There were also threatening calls made to his mobile phone and his residential telephone almost every day from various countries until July 2002. When the defendant did answer some of those calls, there would be silence at the other end or the caller would make threats to murder him. Vishu, Dev, Gobind and the first plaintiff would call him repeatedly either to threaten him or to persuade him to return to the second plaintiff. Someone even called Y in Indonesia to threaten him. The defendant's wife was also frightened by all the calls and would telephone her family in India constantly to make sure that they were safe.

129 Around that time, the defendant began to feel that he and his family were being followed wherever they went. When they were at shopping centres, the first plaintiff would be there, sometimes alone, sometimes with others, staring at them. Sometimes, the first plaintiff and his people would make gestures at the defendant or make comments among themselves. Whenever such things happened, the defendant and his family "would just walk away".

130 The incessant threatening telephone calls and the feeling of being followed around caused the defendant to fear for himself and for his family. He therefore moved out of his home to the Orchard Parade Hotel in May 2002 and stayed there for about two weeks. While staying in that hotel, he called Gopi but did not want to tell him about his falling out with Gobind. Upon Gopi's insistence, he eventually told him the whole story. Gopi became concerned and travelled to Singapore to meet him.

131 When Gopi arrived in mid-May 2002 or so, the defendant felt it was safe enough for him to return to the Bukit Timah flat. While the defendant was staying there, Gobind and the first plaintiff called him again, asking him to return to the second plaintiff on pain of having his family and himself hurt. When Gopi asked the defendant why they wanted him to rejoin the second plaintiff, the defendant explained that he refused to do so because of the bitter parting and that there were some things that he refused to do.

132 When Gopi returned to India around 19 May 2002, he invited the defendant to go with him. The defendant declined as his daughter was taking her school examinations. After that, Y came to Singapore to stay with the defendant and his family every now and then until mid-July 2002 when the defendant left with his family for India.

133 In May 2002, the defendant started looking for jobs through newspaper advertisements or employment agencies. He also engaged Drew and Napier LLC to commence legal action against Gobind for the removal of the caveat on the Hoot Kiam property.

134 In June and July 2002, Gobind and Vishu threatened the defendant's brothers-in-law abroad and told them that they had engaged a notorious gangster to finish the defendant off. When his brothers-in-law came here and told him about that, the defendant and his family were very depressed. His wife wanted to go to Hyderabad to pray for the family. The defendant did not want to go there as he knew that Gobind had gone there in June 2002 and could still be there. Instead, he went to Bangalore by himself to stay with Gopi and Gopi's friends in a hotel. Before the defendant left for India in mid-July 2002, the first plaintiff called Y and told him to inform the defendant to discharge his lawyers "as per the wishes of Gobind and [Vishu] and do whatever they instructed [him] to do".

135 In Bangalore, one of Gopi's friends brought the defendant to see a doctor as he was not feeling well, his health having suffered from the pressure exerted on him by Gobind and the first plaintiff. The doctor recommended two weeks of complete rest.

136 While staying in the hotel in Bangalore, the defendant received threats by telephone against

his family who was in Hyderabad. The first plaintiff also made several calls to threaten his life unless he returned to Singapore to sign various agreements. The defendant became seriously ill from the "tremendous emotional and psychological pressure" from Gobind and the first plaintiff and Gopi brought him to see a doctor again. After that, even Gopi began receiving threatening telephone calls. The defendant decided to call the first plaintiff to tell him to stop making threats against him and his family. The first plaintiff said they would stop if he discharged his lawyers and signed the documents that they wanted. Deciding that they would be safer in Singapore, the defendant asked his wife and his daughter to meet him in Bangalore and they then flew back here together.

137 Immediately upon his return, the first plaintiff demanded that he meet him and Vishu. Too stressed to protest, the defendant went to meet them at the Hyatt Hotel. They wanted the defendant to discharge Drew and Napier LLC, execute the sale and purchase agreement for the Hoot Kiam property and give a power of attorney to the first plaintiff's aunt. After all those months of continuous harassment, the defendant caved in and agreed to their demands. He discharged his lawyers the next day.

138 Desperate for an end to the harassment, he subsequently executed several documents in the presence of Harjeet Singh, the first plaintiff's lawyer. On 30 July 2002, he executed the power of attorney. He tried to hint to Harjeet Singh that his life was in peril by asking the lawyer what would happen to the power of attorney if he (the defendant) were to commit suicide. However, Harjeet Singh, contrary to the defendant's hope, did not ask him why he should want to commit suicide. The defendant could not try to make it more explicit as Gobind and the first plaintiff were present. On 6 September 2002, he signed a sale and purchase agreement with the first plaintiff for the sale of the Hoot Kiam property for \$1.8m. On 16 January 2003, he signed an option to purchase in favour of a buyer for the Bukit Timah flat. On 11 February 2003, he signed a warrant to act. On all those occasions, the defendant was not given access to legal advice.

139 However, the first plaintiff did not let up the pressure. Between July and September 2002, he approached the defendant's daughter after school on two occasions and told her that he would "see [her] family's end" or such similar words.

140 In August 2002, the first plaintiff brought a real estate agent to the Bukit Timah flat and demanded that the defendant vacate it and hand over a set of keys to him. The defendant refused. Numerous telephone calls followed thereafter repeating the same demands. For the safety of his family, the defendant and his family moved out of the Bukit Timah flat in September 2002. The sale of that flat was then completed in March the following year.

141 Around 20 April 2003, the defendant received a telephone call from his tenant at the Hoot Kiam property telling him that a real estate agent wanted to show the house to some prospective buyers. The defendant learnt that it was the first plaintiff, purporting to be the owner of the Hoot Kiam property, who had engaged the agent. The defendant told the agent that he was the rightful owner and that the said house was not for sale.

142 Immediately thereafter, threatening calls were received from Gobind, who also went to the defendant's home on two occasions on 24 and 25 April 2003 with the first plaintiff but were not let in by the defendant's wife.

143 The pressure on the defendant only abated in and around April 2003. After having had some time to think about his rights carefully, he sent an e-mail to Harjeet Singh on 21 April 2003 to inform the lawyer that he had executed the legal documents against his will. He also sought advice from another firm of solicitors, which then sent a letter to the first plaintiff to state that the defendant

was revoking the power of attorney. A deed of revocation dated 21 April 2003 was also sent to the first plaintiff.

144 A letter from the second plaintiff followed on 2 May 2003. On 19 May 2003, the defendant refuted the second plaintiff's allegations in its letter and stated that he would not hesitate to take legal action against anyone who attempted to misuse the revoked power of attorney. His letter ended as follows:

I tolerated all your threats, tremendous distress and losses so far. I have given a careful thought to this and decided to go all the way to settle the scores in court.

The defendant stated that the correspondence made it clear that he did not intend to continue with the sale and purchase agreements as they had been brought about by threats from the first plaintiff and/or Gobind. Further, the first plaintiff took no action to complete the purchase of the Hoot Kiam property until 18 July 2003, despite having obtained approval from the authorities to purchase it since August 2002, having been given a set of keys and having lodged a caveat against the said property. This caused the defendant to believe that the agreement had been abandoned. The defendant also alleged that the first plaintiff's inactivity showed that he knew that the documents had been signed by the defendant under duress and/or undue influence.

145 In December 2003, Y telephoned the defendant to inform him that Gobind had demanded that Y sign a statement indicating that he had not received any threatening calls from Gobind during his stay with the defendant's family in July 2002 or there would be dire consequences for Y and the defendant's wife. Y was very worried but said he would not sign the statement. Y was thinking of moving his family to India because he was worried about their safety.

146 In response to the plaintiffs' claims against him, the defendant denied having caused the second plaintiff's documents to be destroyed. He alleged that the flooding of the office premises in June 2001 caused some of the records to be destroyed or to become unreadable. In December 2003, the defendant reported to the CAD that he had reason to believe that the first plaintiff and Gobind were using the second plaintiff for fraudulent activities. On the advice of an officer of the CAD, he went to lodge a police report against the first plaintiff and Gobind regarding the threats that he had received from them in the past one year. In January 2004, he sent an e-mail to the Prime Minister of Singapore to expose the alleged fraud and to prompt quicker investigative action and prosecution. He also made a police report about the alleged fraud.

147 In January 2004, the defendant spotted the first plaintiff following him and his wife around again. Feeling very uneasy about this, he made another police report.

148 The defendant asserted that he had purchased both the Bukit Timah flat and the Hoot Kiam property using his own money, his savings in his CPF account as well as money borrowed from banks. He was paid between \$54,000 and \$163,000 annually for the period 1995 to 2001. After becoming a permanent resident here in 1997, he decided to purchase the Bukit Timah flat, costing \$1,255,800, as an investment. He became a citizen in 2000 and bought the Hoot Kiam property for \$1.8m. The bank loan taken out for this property was being serviced through the rental received from the tenants. He denied any misappropriation of the second plaintiff's funds. He had stocks in India as well as money received from his family under the Hindu Undivided Family financial system there.

The evidence of the defendant's wife and daughter

149 Z testified that she continued working and living in Hyderabad, India after the defendant

started working for the second plaintiff in Singapore in 1993. She would travel here several times a year, occasionally with their daughter, to visit the defendant. From 1995 to 1998, she was on long leave from her work and was therefore here with the defendant.

150 She claimed that after she returned to India to work, Gobind would visit her occasionally and tell her about his suspicions that the defendant and Catty were in a relationship. She began to believe Gobind. When she called her husband to ask him about Gobind's suspicions, the defendant, a rather short-tempered man, would brush her off and cut off the conversation. In October 2000, Gobind told her that he had sent the first plaintiff to work with the defendant and would report on his activities. In 2001, after Gobind told Z that her husband was going to leave her for Catty, she resigned from her job in India and came to Singapore.

151 During the wedding celebrations of Gobind's niece in November 2001, Gobind asked Z to go to the Shangri-La Hotel as he wanted to speak to her privately. The next day, she went to the said hotel to meet Gobind. There, Gobind told her that the defendant would be leaving her for a girl named Jenny who worked in a bank. He showed her momentarily two bills for two rings purchased by the defendant. Gobind told Z that the defendant was saying unpleasant things about her and her deceased father (who had died in 1976) and that he (Gobind) would take care of her as she was the daughter of his friend. After the first plaintiff joined them at the hotel lounge, Gobind even advised her to divorce her husband so that she could get half of his assets.

152 Upon hearing all this, Z felt "giddy" and confused. She wanted to leave. Gobind then asked her to inform him about the defendant's properties and income so that he could help her. As they had moved into the Bukit Timah flat only some ten days earlier, she could not recall the address and had to refer to a utilities bill which she kept in her purse so that she could tell taxi drivers where her residence was. The first plaintiff then made a photocopy of that bill. Gobind explained that it was better for them to have her address in order to contact her. Gobind asked her to meet him again the next day so that he could update her on the developments. He also told her not to inform the defendant about their conversation. She then left the hotel in a taxi.

153 The next day, Z went to meet Gobind again at the same hotel. He told her that the defendant had a property near Orchard Road but did not know its address. Z knew that he was referring to the Hoot Kiam property as her husband had brought her there before. She pretended not to know the address as she did not know whether to believe her husband or the defendant. She therefore gave him a vague description about the Hoot Kiam property being near the former grounds of Raffles Girls' School.

154 When Gobind called Z about a week later to ask her whether she had found out the exact address of the Hoot Kiam property, she again pretended not to know it as she was doubtful as to who was telling the truth. Gobind then shouted at her, calling her stupid and telling her that the defendant would kick her out of her home.

155 About a week later, Gobind telephoned Z again to say that he and the first plaintiff had discovered the address of the Hoot Kiam property but the defendant had changed the house number.

156 Sometime in December 2001, Z overheard the defendant speaking very loudly to Gobind on his mobile phone. After the conversation, the defendant looked very upset and told her that she had better leave with their daughter for India and "leave him alone to fight with Gobind". He refused to elaborate. Z refused to leave but agreed that their daughter should go to India.

157 A few days later, when Z was trying to purchase an air ticket for the daughter, Gobind called

her on her mobile phone, saying that the defendant had taken a lot of money from the office and that he would be reporting him to the police. He claimed that the defendant was with him. As Gobind sounded so convincing, Z begged him not to report her husband to the police. She even asked her daughter, who was with her, to beg Gobind not to send the defendant to prison. Gobind agreed. Z then left for the airport to send her daughter off.

158 When Z tried to ask the defendant later about what had happened earlier, he became uncommunicative and looked like he was under great stress. She telephoned her brother, Y, for moral support. The same day, Y travelled to Singapore and Z told him about Gobind's allegations. Y did not meet the defendant as he did not wish to embarrass him.

159 The two siblings then went to meet Gobind. Gobind told them he was gathering information from the defendant and showed them a piece of paper on which he claimed that the defendant had written some confession. There was a brief mention about the defendant's properties and shares. Gobind then told Z that he would continue to employ the defendant in the second plaintiff and ensure that he look after her well. He said that the defendant would not be arrogant again and ill-treat her. He would monitor the defendant constantly and rehabilitate him. Gobind also said that he would employ Z in his new company called Dhanraj Trading so that she and the defendant could make a comfortable living. Y and Z thanked Gobind. However, Z was sceptical about Gobind's words. She was worried that he would seek to destroy her husband and family.

160 Z did not speak to the defendant about this conversation that she and Y had with Gobind. She also did not have any further contact with Gobind.

161 In January 2002, the defendant told Z that he had given the Bukit Timah flat and the Hoot Kiam property to Gobind in exchange for shares in the second plaintiff, claiming that owning the shares was better than owning the two properties. Z was upset that her husband had traded their homes for shares.

162 In April 2002, the defendant told Z that Gobind had refused to transfer the shares in the second plaintiff to him. He was very upset and angry and told her that he had resigned from the second plaintiff. He also said that he had to take back his two properties because of this.

163 A few days later, the defendant told Z that Gobind had refused to return the properties and was threatening him. She asked for details but he did not elaborate, telling her she did not need to know about the matter.

164 After this, the defendant began to receive threatening calls from Gobind. On two occasions in two shopping centres, Z saw the first plaintiff staring at them. When she asked the defendant why the first plaintiff was doing that, he merely shrugged his shoulders, saying that he was aware that the first plaintiff was constantly watching them.

165 In May 2002, the defendant told Z that Gobind was continuing to threaten him and might even go to their home. They then decided to move to the Orchard Parade Hotel as the defendant said it was safer there. When Gopi arrived from India, he stayed in another room in the hotel. The defendant would be with Gopi during the day and would only return to the hotel room late at night to sleep. Their daughter was studying for her school examinations. Z therefore hardly spoke to her husband while they were staying in the hotel.

166 After about two weeks, they moved back to their home in the Bukit Timah flat. Gopi stayed with the family for a few days and then left for India. Z requested relatives and friends to stay at

their home as she felt safe when there were others around.

167 Between 12 and 21 July 2002, Z and the defendant were in India. The defendant was very weak. He looked like he was under tremendous pressure and stress. Gopi assured the defendant of his support and asked him to stay on in India, but the defendant said that he could not live peacefully as Gobind and the first plaintiff would always be after him. Z supported his decision to return to Singapore as she did not want his health to deteriorate further. She believed that whatever had happened, the defendant could make amends and they could start anew again.

168 In Singapore, Gobind and the first plaintiff telephoned the defendant many times, demanding that his family vacate the Bukit Timah flat so that it could be sold, despite Z's pleas that her daughter was preparing for her school examinations. After about a month of such harassment, they moved out of the Bukit Timah flat to their present rented flat at Eastern Mansions.

169 In April 2003, Gobind called Z at home, telling her that the defendant was "trying to act smart" and that he would "see [the defendant's] end". She informed the defendant about this and was warned by him that Gobind would be going to their home to threaten her and to take all kinds of false statements from her. Because of this, when Gobind went to their home, she refused to open the main door. After ringing the doorbell for ten to 15 minutes, Gobind left.

170 The next day, at about 11.00am, there was persistent banging and doorbell ringing at their main door. Z was too afraid to go to the main door.

171 In January 2004, the first plaintiff started following the defendant and Z around. The defendant advised Z to be careful.

172 The daughter of the defendant and Z, now 15 years old, testified that she had known Gobind from many years back as a family friend. She only met the first plaintiff in 2001 when the defendant brought her to the office of the second plaintiff in the mornings.

173 She recalled that in April and May 2002, the first plaintiff would often be seen when she went out with her parents. He would be alone or with some people and would stare in an unfriendly manner at her family or pass comments to the people he was with. The many times that he was sighted unsettled her. Her parents would also speak in hushed, worried tones about the first plaintiff and Gobind, showing that her parents were nervous and afraid of them. Her father, who used to be a jovial man who loved cracking jokes, grew increasingly quiet and withdrawn, often sitting by himself and staring into space. Her mother was crying frequently and quarrelling more often with her father.

174 The defendant's daughter claimed that between July and September 2002, the first plaintiff approached her on two occasions after her Hindi class. On the first occasion, he walked up to her as she was waiting for a taxi and told her that he would "see [her] family's end". He then walked away. She was very scared and told her father about the incident when she arrived home. On the second occasion, she was waiting at the bus stop when the first plaintiff walked up to her and told her words to the effect of "tell [the defendant] to be careful. Otherwise we will see the end of all of you". She was terrified and told the defendant immediately upon arriving home. Her father told her not to tell her mother about the two incidents so as not to worry her. He was very worried and anxious for her safety after those incidents and would try his best to pick her up after her Hindi class although he had returned the car to the second plaintiff. These two alleged incidents were dismissed by the first plaintiff in his testimony as complete lies.

175 According to his daughter, the defendant became his former self again around the end of

2003. Her mother also became “normal” again around that time.

The evidence of other witnesses for the defendant

176 The defendant also called Kaka Singh, a certified public accountant, as an expert witness. Kaka Singh testified that misuse of company funds by a director was a serious matter which should be brought to the attention of the company’s auditors as the earliest opportunity. The audit report in respect of the second plaintiff for 2002 dated 14 February 2003 did not reveal any disclosure relating to any misuse of company funds. Having considered the accounts and annual returns of the second plaintiff between 1996 and 2004, he concluded that they were not consistent with the second plaintiff’s allegations that it was aware, in late 2001, of the misuse of funds and that the auditors were told about such misuse. The audit reports suggested no fraud had been identified by the auditors. If the plaintiffs’ allegations were true, the audited accounts would not have been properly drawn up so as to show a true and fair view. In addition, there would have been suppression of information from the auditors, thereby preventing them from carrying out their functions properly, and there would have been breaches of the Companies Act (Cap 50, 1994 Rev Ed).

177 Charanjit Singh, the second plaintiff’s auditor from 1993 until the financial year ending 31 March 2003, testified that he had always audited the second plaintiff’s accounts based on the financial records provided to him by the directors, in particular the trial balances and the letters of representation. The directors (Gobind and Lavina), in their letters of representation dated 14 February 2003 and 1 November 2003, stated that there were no irregularities involving management or employees. Charanjit Singh said that he did not receive any information from the directors about any misuse or misappropriation of company funds.

178 Gopi testified about the payments which Gobind had asked him to make on his behalf in India between 1999 and 2001. As Gobind had invested (through the second plaintiff) 10m rupees in Ratna Cements, a company in which Gopi was a shareholder and managing director, Gopi was grateful to Gobind and would assist him in making payments in India. Gobind would periodically give Gopi instructions, through the defendant, regarding the details of the payments. Gobind would make payment in advance to Gopi or reimburse him subsequently in India or elsewhere. Gopi would usually ask his employee, Anil, or his friend, Prasad, to help him hand over the money to the recipients. Gopi did not know what the payments were for.

179 Around January 2002, the defendant told Gopi that Gobind had offered him his shares in the second plaintiff and that Gobind would leave the company. The defendant asked him whether he could lend him money to run the second plaintiff. Nothing more was heard about this matter until May 2002 when the defendant told Gopi that he had a falling out with Gobind. Gobind wanted compensation for the shares which were to be transferred to the defendant and, when the defendant said he did not have liquid assets to pay Gobind with, Gobind suggested that various properties be transferred to him. Gopi was told that Gobind later resiled from the agreement, leading to the defendant resigning from the second plaintiff. The defendant also told him that he was staying in a hotel with his family as they did not feel secure in their own home. On hearing this, Gopi became concerned and came to Singapore. After a few days here, he managed to persuade the defendant and his family to return to their home in the Bukit Timah flat.

180 While staying with the defendant, Gopi noticed that he received a number of telephone calls. He could tell from the defendant’s expression and tone that the calls were far from pleasant. He overheard the defendant once telling the caller that he would not return to work in the second plaintiff, regardless of whether he or other people would get hurt. Seeing how distressed and frightened the defendant was, Gopi suggested to him to travel to India with his family. The defendant

and his family therefore travelled to India in July 2002.

181 While in Bangalore, India, the defendant started getting calls on his mobile phone. The caller was threatening the defendant's wife and daughter who were in Hyderabad then. The defendant did not know who the caller was. When the caller telephoned again the next day, the defendant handed his mobile phone to Gopi, who listened without uttering a word. The caller asked whether he had considered what he said the day before and stated that it would be in his and his family's interest to return to Singapore and do whatever Gobind had told him to do. Gopi then asked the caller why he was so powerful in Hyderabad that he could threaten people in that way. The caller asked Gopi who he was and Gopi told him his name and that he also lived in Hyderabad. The caller then hung up.

182 Two days later, Gopi was surprised to receive a call from the same person on his own mobile phone as his phone number was not easily available and he was in fact using a new number that was less than two months old. The caller told Gopi not to get involved in other people's affairs and that he should advise the defendant to return to Singapore and do what he had been told. Anil later traced the call to a public pay-phone.

183 The defendant received several more calls on his mobile phone. Gopi and his companions took turns to answer the calls to tell the caller off. On 15 July 2002, the defendant became very unwell and was sent to a hospital. There, a doctor told the defendant that he had not been following his insulin regime properly and needed immediate medication. The defendant was told to rest in bed.

184 A few days later, the defendant told Gopi that he would call Gobind, the first plaintiff and Vishu. From what Gopi could hear during the call, the defendant was talking about the threats to him and his family, the "removal" of his lawyers and the signing of some papers. Gopi advised the defendant to stay with him until he had recovered fully but the defendant insisted on leaving for Singapore, saying he and his family might be safer here. His wife and daughter joined him in Bangalore the day before they left for Singapore.

185 Srivalli, a resident of Bangalore and a family friend of the defendant, said that he visited the defendant several times while the latter was there in July 2002. During one such visit, he happened to answer the defendant's mobile phone while the defendant was in bed. The caller, who spoke in English, identified himself as the first plaintiff and asked to speak to the defendant. When the defendant spoke to the caller, he appeared highly emotional and upset. After the call, the defendant told Srivalli that the first plaintiff was threatening him and his family. On two other occasions, Srivalli heard the defendant speaking in Telugu over the mobile phone to someone about his life and his family and appearing highly agitated and upset.

186 Prasad, a friend of Gopi for almost 30 years, assisted Gopi in making payments in India on behalf of Gobind. In November 1999, he told Gopi that he was coming to Singapore. Gopi then asked him to hand over to the defendant some promissory notes in respect of the payments he had made in India for Gobind since Gobind had already reimbursed him. Prasad did so.

187 In late November 1999, Prasad came to Singapore again and visited the defendant in the second plaintiff's office. The defendant, who appeared very depressed, told him that there were disputes in the second plaintiff and that he suspected that Gobind was "doing something dirty" behind his back.

188 Sunil Kumar, a bank officer in DBS Bank and then in Rabobank, had met Gobind and the defendant in the course of his work in the bank. He testified that the defendant asked him sometime before 2003 about how to verify the authenticity of a bill of lading. The defendant also told him that

he was buying over Gobind's shares in the second plaintiff.

189 Andrew Chua, the Managing Director (Enterprise Banking) in DBS Bank, testified that in or around 2002, Gobind telephoned him to say that he wanted to transfer his shares in the second plaintiff to the defendant and asked Andrew Chua whether he could meet both of them. Andrew Chua agreed to meet them a few days later. However, on the appointed day, Gobind and the defendant were delayed by a traffic jam and he could not wait for them as he had another engagement. He did not know what happened subsequently. However, in court, Andrew Chua was unable to recall with certainty who gave him the information that Gobind was transferring his shares to the defendant.

190 Catty, who was subpoenaed to testify for the defendant, had written a letter dated 16 September 2005 to the defendant's present solicitors stating that she did not wish to appear as a witness in these proceedings. She explained that it was because she did not wish to take the side of any of the parties. She testified that she joined the second plaintiff in 1994 after being interviewed by the defendant. Her starting salary was about \$1,500 per month. When she left the second plaintiff in March 2002, her salary was \$2,250 per month. She was given 14 days of annual leave initially, with one more day added for each year of service thereafter. Her terms of employment were set out in a letter which had been misplaced. She was also supposed to receive overtime pay and a bonus of three months' salary for each financial year. However, she only made a claim for such remuneration when she was leaving the second plaintiff's employ. She declared all her income to the tax authorities.

191 Catty's scope of duties in the second plaintiff included bookkeeping, typing of letters of credit and correspondence, customs declarations for import and export of goods and co-ordination of contractors appointed to unstuff goods from containers. Catty said she was a workaholic who worked long hours at the office. From October 2001, the first plaintiff turned up at the office quite frequently. She was told by Gobind to follow the first plaintiff's instructions. The first plaintiff came to look at the accounts as there was a lot of backlog because of the large number of shipments. Only she and the defendant had the password to the accounts software in the office. She would prepare the payment vouchers for either Gobind (when he was in Singapore) or the defendant to sign. She communicated with Gobind whenever he was abroad by fax and telephone.

192 There was a payment voucher dated 4 July 2001 for \$30,702 in which she did not insert the name of the payee as she did not know who it should be. She asked the defendant about this in 2001 but kept forgetting to insert the name of the payee. Gobind had asked the defendant to issue a cash cheque for this payment voucher. After she left the second plaintiff's employ, the first plaintiff went to Vivastar and told her she had forgotten to fill in one voucher. He showed her a letter signed by the defendant regarding payment addressed to "HIH Insurance Ltd" and told her to insert that name as the payee. She complied with his request.

193 Catty testified that A Ltd was considered a business which was personal to Gobind and Vishu. She created a general ledger for A Ltd from 1999. There were at least six transactions between the second plaintiff and A Ltd every year, and she spoke to Gobind concerning one or two of the transactions. Sometimes, she would ask the defendant to check with Gobind about the transactions, but the defendant would tell her that they related to some personal dividends of Gobind and Vishu and that she did not need to know further. To Catty, it was therefore impossible that Gobind or the first plaintiff did not know about A Ltd until 2003.

194 Catty's recollection about the flooding of the second plaintiff's office in June 2001 was that a pipe had burst in the toilet on that floor and smelly water had seeped into the office, affecting computer print-outs and ledgers. She had to use a fan to dry the soaked documents.

195 Catty co-ordinated with Johnny Tan of Sin Chuan Seng Transport Company Pte Ltd on the collection of the second plaintiff's files for storage in that company's warehouse once or twice a year. She denied that she had called Johnny Tan to dispose of the second plaintiff's documents.

196 Catty claimed that the benefits given to her while she was employed in the second plaintiff were all approved by Gobind. These included her two insurance policies paid for by the second plaintiff. The annual premium for the one taken up in 1998 was \$1,574 and the premium for the subsequent one was paid monthly by giro deductions of \$500.50 each. In respect of the second insurance policy, Gobind said she must remain with the second plaintiff for at least five years, failing which she had to reimburse the second plaintiff. She did not think that she was liable to reimburse the second plaintiff as she did not resign from its employ. Instead, she was given the option of leaving or transferring her employment to Vivastar. However, she was willing to pay back the second plaintiff if required to do so. Catty worked for Vivastar for only one or two months before leaving its employ. She wanted to take a break from work as her mother was unwell.

197 Catty, a divorcee since 1996, has a teenage son. Gobind once told her that Japan, which Gobind travelled to frequently, was very nice. She replied jokingly to him, "Can I go?" and he said, "Can, can" and told the defendant to make the arrangements. She planned to go to Japan in November 2001 with her son and therefore obtained a quotation from Chan Brothers, a tour agency. The second plaintiff then issued her a cash cheque for more than \$4,000 for the cost of the tour. However, as Gobind was coming to Singapore that month for his niece's wedding, she decided on her own accord to defer the tour and, in the end, did not go.

198 On 18 December 2001, Gobind suddenly appeared at the second plaintiff's office. He asked Catty to open the office safe and, when it was opened, he emptied its contents on a table. He then asked Catty and Malathi for their identity cards, saying that if he should discover anything wrong, he would report them to the police. Both female employees were shocked. He made a photocopy of the identity cards and returned them to Catty and Malathi. The contents of the safe included cash which was in Singapore and US currencies. The money came from Dev, who had asked for a cheque from the second plaintiff in exchange for the cash so that he could make some personal payments. Gobind instructed Catty to keep the cash in the safe as he might need the cash subsequently. He also did not want to lose out on the exchange rate by converting the US dollars to local currency. There were also some letterheads pre-signed by the defendant in case Gobind went to Indonesia and Catty needed them to make applications on the second plaintiff's behalf.

199 In the afternoon, when the defendant arrived at the office, he had a talk with Gobind in one of the rooms with the door closed. After some time, the defendant emerged from the room looking quite angry. He stepped out of the office and did not return that day. Gobind then searched the defendant's room. He subsequently left the office for one or two hours.

200 The next day, Gobind went to the office again. He appeared rather panicky when he realised that the defendant was not there. When the defendant arrived a little later, the two men talked in one of the rooms. Gobind then told Catty that it was nothing, that there had been a misunderstanding and that one needed to forgive and forget. Catty did not know what Gobind meant. The next day, the two men went to meet the second plaintiff's various bankers. Catty did not know why they did that.

201 Catty confirmed that Ajay was at the office of the second plaintiff in the first quarter of 2002 to do some settlement of accounts. Ajay was assisted by the first plaintiff and the defendant in this task. Catty had updated the accounts to only June 2001 at that time. Some of the entries made by her in the accounting software were changed by someone. The defendant did not know how to use the accounting software. Only Catty and the first plaintiff knew how to use it. During her time working

in the second plaintiff, there was no such thing as a clearing account although there was a freight clearing account. She could not understand why A Ltd was not mentioned in the accounts.

202 After Gobind left Singapore at the end of February 2002, Catty faxed or sent by courier to Gobind for his authorisation copies of cheques to be issued. These included things such as the defendant's and her bonus and overtime payments. Gobind approved the payments and told the defendant that since they were routine payments, the defendant could sign the cheques for them. For the defendant's bonus payment, she sent the cheque to Gobind for his signature. Her leave and overtime payments amounted to \$2,039.95 while her bonus was \$10,800. The defendant's income tax was always paid by the second plaintiff.

203 After Catty left the second plaintiff's employ, they remained in contact by mobile phone until July 2002. They then lost contact with each other until sometime in 2003 when the defendant called her to say that there was a job for her in another firm. Catty went to join the defendant as his colleague. In 2004, she left the employ of that firm.

The decision of the court

204 Having heard the many witnesses, it was plain to me that the plaintiffs' evidence was a lot more truthful than that adduced by the defendant, an intelligent man who was obviously quite adept at spinning yarns and providing interesting twists to the same basic facts. Unfortunately for Gobind, his sympathy for the defendant and his wife together with his anxiety in wanting to protect his own financial interests ensnared him and the plaintiffs in this web of multiple agreements and accusations.

205 I accepted that the first indication of the defendant's wrongdoing came from his wife. Z was concerned at first about the inexplicable wealth of the defendant, his betrayal of Gobind's trust and his possible infidelity towards her. After stirring the water and then observing everything around her beginning to be sucked in by the whirlpool she had unwittingly created, she must have realised the devastating consequences to her and her family's financial well-being if the plaintiffs succeeded in their claims. Her husband would probably not forgive her if she aided the plaintiffs in destroying him financially. Even if he did not leave her, there was every possibility that he might end up in prison for the defalcation. She would be left with no husband, no home and no financial means. Her evidence in court supporting the defendant was nothing more than a manifestation of her decision to sacrifice truth for her and her family's well-being. Z needed solace from Y, her brother, not because of any threats by Gobind or the first plaintiff, but because of the stress caused by their pursuit of the assets that her husband had misappropriated from the second plaintiff.

206 Gobind's evidence about the confrontation with the defendant on 18 December 2001 was corroborated by even Catty although she did not hear what was said between the two men. Catty confirmed that Gobind arrived early at the office unannounced, that the two men talked privately in one of the rooms in the office and that the defendant looked unhappy when he came out and then disappeared from the office. Gobind's actions in asking the staff for their identity cards and later searching the defendant's room pointed to the fact that he was on an investigative hunt, sparked off by Z's revelation during his niece's wedding here.

207 The defendant's handwritten note about his assets, although not a confession of any wrongdoing, was entirely consistent with Gobind's evidence about the confrontation. The defendant's different versions about this note testified to his untruthfulness. In his evidence, he stated that it was used for working out how he could pay Gobind for his shares in the second plaintiff. He then said that the note was a list of his assets which he had prepared, possibly in January 2002, and had given to the banks for obtaining loan facilities. It would be surprising that any bank would accept such an

informal document for this purpose in any event.

208 The events that followed the confrontation between Gobind and the defendant attested to the truth of Gobind's evidence. The board resolutions and the letters to the banks that followed the meeting between Gobind and the defendant showed that the defendant was being stripped of his authority as the sole signatory for the second plaintiff. The defendant also gave a note of 22 December 2001 to Gobind, purportedly to acknowledge "loans" amounting to \$1.6m and agreeing to transfer the Bukit Timah flat and the Hoot Kiam property when asked to do so.

209 The defendant then signed the three agreements with Gobind on 27 December 2001 in the presence of a solicitor. These again acknowledged the purported loans and the willingness on his part to transfer the said properties to Gobind. The defendant certainly did not allege duress where these agreements were concerned. According to him, the duress started only around April 2002 and lasted about a year. It could not be true that the two properties were being transferred to Gobind in exchange for his shares in the second plaintiff. The three agreements made no mention of any shares being transferred. Instead, they referred specifically to the settlement of the loan of \$1.6m.

210 Gobind's evidence that he intended to sell his shares in the second plaintiff to Dev and Anup was buttressed by the letters sent to the banks regarding Dev and Anup taking over as guarantors for the second plaintiff's facilities. The minutes of the meeting held on 28 January 2002, accepted by the defendant in court to be authentic, stated that the second plaintiff's staff, the defendant and Catty, would be transferred to Vivastar. It follows that the defendant could not be the prospective joint owner of the second plaintiff. It was clear that Ajay was looking into the second plaintiff's accounts in order to finalise the amounts outstanding from the Vista group and the value of Gobind's shares to be sold to Dev and Anup. The people who were told by the defendant that he was buying over Gobind's shares only heard it from the defendant. There was no other evidence to fortify the defendant's self-serving statements.

211 Other than the bank loans and his CPF funds, the defendant was unable to account for his previous wealth or how he could have accumulated so much money from his \$2,500-a-month salary to be able to afford the Bukit Timah flat and the Hoot Kiam property. On the other hand, the second plaintiff was also unable to prove from the accounting records that the defendant had misappropriated the \$1.6m. However, that was because the defendant had deviously ordered the destruction of the company's records after he realised he had been found out. So many years of accounting records in the office situated on the seventh level of the commercial building could not have been destroyed by water overflowing from a toilet the night before. It was not foul water but the defendant's foul play that led to the disappearance of the accounting records.

212 Where A Ltd was concerned, PT Palur Raya confirmed that it did not issue the invoices for the purported sale of goods to the second plaintiff. PT Palur Raya was also not part of Gobind's stable of businesses. The defendant's futile attempts to link Gobind with A Ltd through falsified or tampered documents merely fortified Gobind's evidence that he knew nothing about A Ltd until he was told about the purported transactions by the first plaintiff in 2003. Gobind did send money to India using the second plaintiff's funds. There was no reason why he needed to route money through A Ltd. The bank statements of A Ltd obtained by the second plaintiff showed that money from that account was paid to the defendant and his wife. Strangely, that account was closed on the same day that Gobind confronted the defendant about his misdeeds in the second plaintiff's office on 18 December 2001. After all, the defendant did leave the office after that confrontation for some time and had the opportunity to close the account. The defendant admitted that he closed the account and that he kept the amount that was in the account. All this showed that the defendant was trying to gather his ill-gotten assets and to cover up any incriminating evidence.

213 Unlike in the case of C Ltd (see [14]–[15] above), the defendant did not obtain from Gobind his confirmation that he had no objections to the defendant setting up A Ltd while in the second plaintiff's employ. The agreements that the defendant signed acknowledging payments in India were not signed by Gobind. Further, the revenue stamps on these agreements pre-dated the agreements by some seven years. The originals of these agreements were also not produced in evidence. I disbelieved the defendant's convoluted story about the commissions promised to him by Gobind for setting up A Ltd (see [91]–[93] above). They were imprecise and appeared far too generous considering his monthly salary of \$2,500 at that time. If he could file his tax returns for several years stating the precise figures for each year although he had not been paid (as he claimed), then surely he should know how the figures were computed. After all, he was supposed to be very numerate.

214 The cash cheque for \$30,702 was encashed by Deepak on the defendant's behalf and the money was handed over to the defendant. The defendant claimed that the money was advance payment for the A Ltd trading commission, and said that he had used it for his property purchases in India. However, the payment voucher in respect of this amount purported to indicate the payment was for insurance premium. Catty's evidence that the first plaintiff brought this payment voucher to her and asked her to state that it was for insurance premium (see [92] above) was not credible. For this self-professed workaholic, who kept forgetting to fill in the purpose for the payment voucher for such a large amount since July 2001, to recall with exactitude the events in early 2002 was stretching credibility a little too much. It was also strange that she could recall that she kept forgetting about this payment voucher when she was working in the second plaintiff. In my view, the payment voucher was quite clearly meant to camouflage the defendant's misappropriation of the second plaintiff's funds.

215 Catty's evidence that she decided to claim for overtime payments owed to her over the years only when she was about to leave the second plaintiff's employ defied belief. How would she know the number of extra hours that she had clocked over all that time? If she had been keeping record of her overtime meticulously, why did she do so without bothering to make a claim at the end of each month or at least each year? Despite her apparent reluctance to come to court to testify for one or the other party, she was obviously allied to the defendant who had been generous towards her, using the second plaintiff's funds. I disbelieved her evidence that Gobind was so generous that he would liberally confer insurance benefits on her and approve an expensive tour to Japan for her and her son almost on a whim. Catty was also not able to produce her income tax returns for 2001 and 2002 to show the alleged bonus payments purportedly paid to her for two financial years.

216 The defendant knew that Gobind had sought to curtail his sole signatory powers for the bank accounts. Nevertheless, he issued the three BNP Paribas cheques after the confrontation in December 2001, making further payments to Catty and to himself. If Gobind had been informed that the bank did not deem the second plaintiff's board resolution effective in changing the signatories, surely he would have rectified the documents very quickly. The strange manner in which expenses had been recorded in the available books, which even a chartered accountant and head of finance in the second plaintiff like the defendant could not explain, lent further support to the truth of the allegations that the defendant had been misappropriating company funds. He was unable to explain the clearing account and the transfer of entries therefrom to the car loan account. He could not produce the faxes that he said Gobind had sent to him to authorise the various items of expenditure pertaining to his insurance policies.

217 It was incredible that the assignment of the Shrisai Communications debt was signed by the defendant to himself (see [97] above), without any board resolution or other documentation. Despite the purported hurry to achieve the assignment before the end of the financial year ending 31 March 2000, it was dated 1 April 2000 and was recorded in the books for the new financial year. Clearly, the

defendant was blatantly abusing the trust and confidence that Gobind had in him to generate self-serving documents intended to enrich himself unjustly at the expense of his employers.

218 It was true that Gobind ought not to have signed the directors' representation in the accounts stating that nothing untoward had happened. If indeed he signed the representation without reading it, he was very careless, bearing in mind his discovery about the defalcation. It was more likely than not that he wanted to preserve the façade of "business as usual", in order not to alarm the banks and put his own financial position in peril. His stance, while hardly justifiable, was understandable in the circumstances. In any event, in the light of all the evidence, the accounts' apparent clean bill of health could not disprove the fact that defalcation had taken place. Similarly, Gobind's decision to keep his business partner in the second plaintiff in the dark about the misappropriation and to keep the defendant in the employ of the second plaintiff despite the discovery about his wrongdoing was perhaps selfish but it did not point to the absence of defalcation. After all, Gobind believed that he had clipped the wings of the defendant by imposing the requirement of another signatory for cheques and other important documents.

219 Johnny Tan spoke the truth about the defendant instructing him to destroy the second plaintiff's documents and about Catty providing the details of the documents which were to be destroyed. It was hardly coincidental that the destruction of documents was ordered soon after the confrontation in December 2001 between Gobind and the defendant. The defendant's feeble attempt at blaming the disappearance of the documents on the flooding incident only served to strengthen the assertion that he was lying to cover up for his deliberate destruction of the company records so that his misdeeds relating to the accounts could not be traced and proved.

220 There was no abandonment by the first plaintiff of the sale and purchase agreement of 6 September 2002 regarding the Hoot Kiam property. The said property was tenanted until September 2003 and the first plaintiff had a set of keys to it. It was not provided or contemplated in the agreement that time would be of the essence. Like the earlier agreement between Gobind and the defendant (*ie*, the agreement of 27 December 2001), the whole intention was restitution by the defendant of what he had taken surreptitiously from the second plaintiff. Without the defendant having made restitution by some other means, there was absolutely no reason why the first plaintiff would abandon the sale and purchase agreement. Further, in February 2003, the defendant asked for reimbursement of the property tax on the said property paid by him and that request was acceded to by the first plaintiff.

221 Any duress that the defendant allegedly suffered between April 2002 and April 2003 was caused by his realisation of his own wrongdoing. He vacillated between making full restitution to the plaintiffs and wanting to keep at least some of the spoils for himself. Gobind and the first plaintiff were indeed pressing the defendant to return the misappropriated assets as promised by him. However, they were merely seeking to exercise their legal rights and were not doing anything improper. A threat to enforce one's legal right does not amount to duress, at least where the threat is made *bona fide* and is not manifestly frivolous or vexatious (see *Lee Kuan Yew v Chee Soon Juan* [2003] 3 SLR 8). Any reluctance or reservation that the defendant had in signing the legal documents related to his unwillingness to give up his stolen assets and not to the impropriety or impairment in his consent. He was nevertheless willing to make restitution in the hope that Gobind would not report his misdeeds to the authorities. The stress and strain that he felt from the burden of guilt could not amount to duress in law.

222 I disbelieved the defendant's claims about the threats to his and his family's safety. Between May and July 2002, at least, he was represented by a very reputable firm of solicitors. He moved his family to a local hotel to hide from people he had stolen from and not from thugs spewing threats. It

was strange that he would allow his wife and his daughter to be in Hyderabad while he remained in Bangalore if he was concerned for their safety. Even if he was feeling unwell and could not travel to Hyderabad, surely he would have asked his family members to rejoin him much earlier instead of one day before returning to Singapore. He claimed that he returned to Singapore as he felt safer here. Yet, despite knowing many lawyers here, he continued to suffer Gobind and the first plaintiff and signed legal documents disposing of his property rights. Harjeet Singh, who handled the legal documentation, certainly had no hint of him being a cowed man. Even if the defendant did not dare to tell Harjeet Singh explicitly about the alleged threats in the presence of Gobind and the first plaintiff, what stopped him from making a telephone call to the lawyer later? The defendant gave no reason why he suddenly had an awakening of sorts from around May 2003 when he managed, as he claimed, to break free from the duress and intimidation. It was only at the end of 2004 that he made a police report and, as events have shown, he was quite capable of writing letters of complaint to all levels of authority. The totality of the evidence showed the defendant to be deviously clever and cunning but lacking sorely in credibility.

223 As stated earlier, it was entirely understandable why the defendant's wife had to turn against her erstwhile family friend, Gobind, and support her husband's incredible story. In the same vein, the defendant's daughter, an intelligent girl who was confident and at ease in court, in making the allegations about the threats by the first plaintiff on two occasions, was only being a filial child trying to buttress her father's story about people threatening him and his family. She was only 12 years old in 2002, the year of the alleged incidents. If she had been threatened in the way alleged, it was surprising that the defendant did not make a report to the police or at least to the school authorities. The story about the defendant not wishing to alarm Z and therefore telling his daughter not to tell her mother about the alleged first incident was nothing more than a vain attempt to explain why the mother did not go to accompany the daughter on the second occasion, thereby exposing her to the alleged second threat.

224 I accepted that Gobind wanted to obtain the three signed blank letterheads from the defendant at the confrontation in the office in December 2001 to make sure that the defendant would not renege on his word, but Gobind did not use or threaten to use the said letterheads. In any event, I found that the defendant had misappropriated the second plaintiff's funds and that he had confessed to Gobind that day. Further, the alleged duress thereafter centred on threats to life and limb and not on the possible damage that could have been inflicted by Gobind filling in whatever contents he deemed fit. It should also be noted that the defendant was astute enough to consult his solicitors about the said letterheads when he realised that they could be used to incriminate him. He was not a man living in fear for his and his family's safety. To the contrary, his evidence portrayed him as a self-assured man who was very much in control of his circumstances and who knew how to trim his strategies to suit the prevailing winds of fortune.

225 Pursuant to s 157 of the Companies Act, a director, which the defendant was, has to act honestly at all times and use reasonable diligence in the discharge of his duties. Misappropriation of company funds and wilful destruction of company records to extinguish incriminating evidence are the antithesis of this duty.

226 It was argued by the defendant that the contract in respect of the sale and purchase of the Hoot Kiam property was an illegal one and should not be enforced through an order for specific performance or by way of damages. This was because it was made following an agreement to cover up an alleged crime and to obtain redress for the alleged misappropriation by the defendant and would be caught by s 213 of the Penal Code (Cap 224, 1985 Rev Ed) which provides:

Whoever accepts, or agrees to accept, or attempts to obtain any gratification for himself or any

other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to 10 years, shall be punished with imprisonment for a term which may extend to 3 years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to 10 years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

"Offence" in the above section is defined in s 40(2) of the Penal Code as denoting a thing punishable under the Penal Code or under any law for the time being in force. The Penal Code provides for the offences of dishonest misappropriation of property (s 403), criminal breach of trust (s 406 and 408) and cheating (s 417), which were possible offences disclosed by the facts of this case.

227 Even if Gobind and the first plaintiff had agreed to accept restitution in consideration of not reporting the defendant to the authorities, it must be noted that attempting to obtain restitution is not an offence in itself. However, the person attempting to do so exposes himself to punishment under s 213 of the Penal Code if he agrees also to conceal an offence. Even if that person is convicted under the said penal provision, he can nonetheless proceed with his claim for restitution of his property or, if restitution has already been made, retain the said property. There is therefore no legal impediment to enforcing the agreement in respect of the Hoot Kiam property and the defence of illegality fails.

228 Bearing in mind the serious nature and implications of the plaintiffs' allegations of criminal conduct against the defendant, I was of the view that the plaintiffs had made out their case. I therefore gave judgment for the first plaintiff for specific performance of the agreement dated 6 September 2002, with completion of the sale and purchase to take place within eight weeks from the date of judgment. I also gave judgment for the second plaintiff for:

- (a) US\$1,090,015 in respect of the A Ltd claim;
- (b) \$214,562 in respect of the unauthorised payments and expenses;
- (c) \$27,500 in respect of the wrongful assignment of the debt from Shrisai Communications;
- (d) reimbursement of the costs, fees and charges incurred by the second plaintiff by reason of the defendant's destruction of the company records, comprising \$5,500 for the investigatory work of Rajah & Tann and \$67,000 for the cost of the first plaintiff's 12 months or so of investigatory work in the second plaintiff, based on his last drawn salary of \$5,000 per month with year-end bonus.

Both plaintiffs were awarded the costs of the action together with interest at 6% per annum on all amounts due, calculated from the date of issuance of the writ of summons until the date of payment. Consequent on the judgment, the second plaintiff withdrew its claim for an account of profits.

229 Upon a subsequent application taken out by the defendant, a stay of execution of this judgment was granted on terms.