

Mentormorphosis Pty Ltd and others v Phua Raymond and another  
[2010] SGHC 188

**Case Number** : Suit No 459 of 2008  
**Decision Date** : 02 July 2010  
**Tribunal/Court** : High Court  
**Coram** : Woo Bih Li J  
**Counsel Name(s)** : Adrian Tan, Wendall Wong and Sophine Chin (Drew & Napier LLC) for the plaintiffs; Gan Theng Chong, Jiang Ke-Yue and Amelia Ang (Lee & Lee) for the first defendant; James Leslie Ponniah (Wong & Lim) and Eddie Lee (C P Lee & Co) for the second defendant.  
**Parties** : Mentormorphosis Pty Ltd and others — Phua Raymond and another

*Tort – Deceit*

2 July 2010

Judgment reserved.

**Woo Bih Li J:**

**Introduction**

1 In this suit, the plaintiffs are claiming that the first defendant made certain false representations to them, thereby inducing them to enter into franchise agreements with a company that was eventually wound up. The plaintiffs claim that the first defendant is personally liable to them for those representations. The first defendant had also at various times served as the managing director of the second defendant, and for this and other reasons the plaintiffs further claim that the second defendant is also liable for the representations made by the first defendant.

**Parties and Issues**

2 The first plaintiff, Mentormorphosis Pty Ltd ("MPL") is a company incorporated in Australia. The second plaintiff, DNV Image Pte Ltd ("DNV") is a company incorporated in Singapore. The third plaintiff, PT Patria Nusantara Perkasa ("PT PNP") is a company incorporated in Indonesia. The fourth plaintiff, Ms Dian Patriani ("Dian") is PT PNP's director.

3 The first defendant is Mr Raymond Phua ("RP"). RP is the managing director of the second defendant, Da Vinci Holdings Pte Ltd ("DVH"). DVH is the holding company of the Da Vinci Group, a well-known and established business group in Singapore and Southeast Asia.

4 The plaintiffs had at various times in 2004 and 2005 entered into a number of franchise agreements with Tradewind Group Pte Ltd ("Tradewind") for the sale of ladies' footwear. RP was at all material times the sole shareholder and a director of Tradewind. Tradewind was wound up on 1 December 2006.

**The claim**

5 The plaintiffs pleaded that they had entered into the franchise agreements as a result of representations made by RP: [\[note: 1\]](#)

11. The Plaintiffs were induced to enter into the Franchise Agreements in reliance of two sets of representations made by the 1st Defendant. The first set of representations was made before the Plaintiffs agreed to enter into the Franchise Agreements ("the Initial Representations"). The second set of representations was made after the Plaintiffs had agreed to enter into the Franchise Agreements and after the 1st Defendant had produced drafts of the Franchise Agreements to the Plaintiffs ("the Further Representations"). The Initial Representations and the Further Representations are jointly referred to as the Representations.

**Particulars of the Initial Representations**

- (i) The 1st Defendant represented to the Plaintiffs and/or their business associates and/or representatives, orally and in writing, that he was the Managing Director of the 2nd Defendant and was authorised to act on behalf of the 2nd Defendant:
  - (a) the 1st Defendant gave the 3rd and 4th Plaintiffs and/or their business associates and/or representatives namecards which identified him as the Managing Director of the 2nd Defendant;
  - (b) the 1st Defendant permitted his public relations consultant to introduce him to the Plaintiffs as the Managing Director of the 2nd Defendant;
  - (c) the 1st Defendant corresponded with the Plaintiffs using the 2nd Defendant's email account at rayphua@davinciasia.com";
  - (d) the 1st Defendant signed off as "Managing Director" and/or "Chairman and CEO" of the 2nd Defendant in his correspondence with the Plaintiffs;
  - (e) the 1st Defendant showed the Plaintiffs newspaper articles which identified him as the representative of the 2nd Defendants; and
  - (f) the 1st Defendant represented to the Plaintiffs, orally, that he was the son of the individual who had a controlling interest in the 2nd Defendant.
- (ii) The 1st Defendant represented to the Plaintiffs, orally, that the 2nd Defendant was (and still is) a big company with a lot of resources and retail outlets all over the world;
- (iii) The 1st Defendant represented to the Plaintiffs, orally, that he was interested in the shoe industry and had plans for the 2nd Defendant to set up retail shoe outlets all over the world;
- (iv) The 1st Defendant represented to the Plaintiffs, orally, that the 2nd Defendant had a team of international designers who would survey the market, design the products and thereafter, he would send the designs to Guangzhou, China, where the products would be manufactured;
- (v) The 1st Defendant represented to the 4th Plaintiff, orally, that the Defendants knew the Indonesia market well;
- (vi) The 1st Defendant represented to the Plaintiffs, orally, that he was authorised to enter into negotiations with the Plaintiffs on behalf of, and as an agent of the 2nd Defendant

to discuss possible franchise ventures between the Plaintiffs and the 2nd Defendant and

- (vii) The 1st Defendant represented to the Plaintiffs, orally, that he and the 2nd Defendant already had a successful franchise framework and that the Plaintiffs only needed to follow the said franchise framework to succeed as franchisees of the 2nd Defendants.

12. ...

13. A few days before the Plaintiffs were to sign their respective Franchise Agreements, the 1st Defendant produced copies of the respective Franchise Agreements. The Plaintiffs asked the 1st Defendants [*sic*] why the Franchise Agreements were with Tradewind, rather than with the 2nd Defendant. In response, the 1st Defendant made the Further Representations orally to the Plaintiffs:-

**Particulars of the Further Representations**

- (i) The 1st Defendant represented to the Plaintiffs that the 2nd Defendant regarded Tradewind to be one entity with the 2nd Defendant, to the extent that the 2nd Defendant was in effect the alter ego of Tradewind. Further, the 1st Defendant represented to the Plaintiffs that Tradewind was entering into the Franchise Agreements on behalf of the 2nd Defendant as the principal of Tradewind;
- (ii) The 1st Defendant represented to the Plaintiffs that Tradewind was the vehicle to drive the 2nd Defendant's franchise business.
- (iii) The 1st Defendant represented to the Plaintiffs that the 2nd Defendant was fully apprised of the fact that the Plaintiffs were entering into the Franchise Agreements with Tradewind;
- (iv) The 1st Defendant represented to the Plaintiffs that the Franchise Agreements were signed with Tradewind rather than with the 2nd Defendant only because of tax and/or trademark reasons;
- (v) The 1st Defendant represented to the Plaintiffs that the 2nd Defendant would provide know-how and support to enable the Plaintiffs to develop the brand name "Walking Culture" (formerly known as "DA VINCI Walking Culture"). The term "know-how and support" means the provision of products by Tradewind to the Plaintiffs where such products were of the same quality and standard as those sold by the 1st Defendant under the "DA VINCI" brand, and the provision of financial, operational, personnel and logistical support by Tradewind to the Plaintiffs to enable the Plaintiffs to develop the brand name "Walking Culture"; and
- (vi) The 1st Defendant represented to the Plaintiffs that the 2nd Defendant had the resources and experience to ensure that Tradewind carried out its obligations under the Franchise Agreements.

6      The plaintiffs also pleaded that a collateral contract was formed between them and DVH: [\[note: 21\]](#)

15. Further and in the alternative, the Plaintiffs and the 2nd Defendant concluded a collateral contract ("the Collateral Contract"). The terms of the Collateral Contract are as follows:

(i) Tradewind was at all material times the agent of the 2nd Defendant.

(ii) The 2nd Defendant is a party to the Franchise Agreement in place of Tradewind.

7 The plaintiffs also relied on fraud. Para 16 of the Statement of Claim (Amendment No 2) states:

16. Further and in the alternative, the Representations were made by the 1st Defendant either for himself or on behalf of the 2nd Defendant fraudulently.

Particulars of Fraudulent Misrepresentation

(i) The 1st Defendant made the Representations to the Plaintiffs knowing that Tradewind would not be able to carry out its obligations under the Franchise Agreements.

(ii) The 1st Defendant made the Representations to the Plaintiffs knowing that the 2nd Defendant and Tradewind would not and did not provide the know-how and support to the Plaintiffs.

8 The plaintiffs also relied on s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed).

### ***The defence***

9 The defence primarily denied or did not admit that the alleged representations ("the Representations") were made, and further denied any reliance thereon by the plaintiffs. RP and DVH also alleged that RP was designated as the managing director of DVH in or about 2003 when preparations were being made for a public listing of DVH and that it was in or around April 2006 that RP was in fact appointed as DVH's managing director.

10 The defendants also denied any collateral contract with the plaintiffs and denied that the Representations were made fraudulently.

11 The defendants also relied on certain similar provisions which were contained in each franchise agreement to exclude liability for any of the Representations that might have been made. For easy reference, I set out below the provisions from the franchise agreement with DNV:

#### **29. ENTIRE AGREEMENT**

29.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements in connection with the subject matter hereof. No director, employee or agent of the Franchisor is authorised to make any representation or warranty not contained in this Agreement and the Franchisee acknowledge that they have not relied on any such oral or written representations. No variation or waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorised director or employee of the Franchisor and the Franchisee.

#### **30. ACKNOWLEDGEMENTS BY FRANCHISEE**

30.1 The Franchisee acknowledge that in giving advice to the Franchisee, assisting the Franchisee to establish the Business, recommending equipment and the location and suitability of the Outlet, the Franchisor has based its recommendations on experience actually obtained in practice but that the Franchisor does not give any guarantee or warranty with regard to such

matters or generally in connection with the sales volume profitability or any other aspect of the Business. The Franchisee acknowledge that they have been advised by the Franchisor to discuss their intention to enter into this Agreement with other franchisees of the Franchisor and to seek other appropriate independent advice, and that the decision to enter into this Agreement has been taken solely on the basis of the personal judgment and experience of the Franchisee having taken such independent advice. Accordingly, the Franchisee acknowledge that no representation, warranty, inducement or promise express or implied had been made by the Franchisor or relied upon by the Franchisee in entering into this Agreement save such as may have been notified by the Franchisee to the Franchisor in writing and are annexed to and incorporated in this Agreement.

12 RP also asserted that DNV had elected not to pursue the present action against him because (1) DNV had pursued an action against Tradewind in DC Suit No 1768/2006T for damages for breach of contract and/or (2) DNV had filed a proof of debt against Tradewind on 25 January 2007.

### **The legal bases of the plaintiffs' claims against RP**

13 I first briefly review the legal bases of the plaintiffs' claims against RP, and RP's defences thereto.

#### ***Deceit***

14 The plaintiffs' principal cause of action lies in the tort of deceit or fraud. The elements of the tort were restated by the Court of Appeal in *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 ("*Panatron*") at [14], following *Bradford Building Society v Borders* [1941] 2 All ER 205:

First, there must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

15 With regard to the requirement that the plaintiff must have acted upon the false statement, the Court of Appeal held at [23] that:

The misrepresentations need not be the sole inducement to [the plaintiffs], so long as they had played a real and substantial part and operated in their minds, no matter how strong or how many were the other matters which played their part in inducing them to act ... If inducements in this sense are proved and the other essential elements of the tort are also made out, as is the case here, then liability will follow.

The rationale for such an approach is well explained by Cranworth LJ in *Reynell v Sprye* (1852) 42 ER 710 at 728-729, 1 De GM & G 660 at 708:

It is impossible so to analyze the operations of the human mind as to be able to say how far any particular representation may have led to the formation of any particular resolution, or the adoption of any particular line of conduct. No one can do this with certainty, even as to himself, still less as to another. Where certain statements have been made, all in their nature capable, more or less, of leading the party to whom they are addressed, to adopt a particular line of conduct, it is impossible to say of any one such representation so made that, even if it had not

been made, the same resolution would have been taken, or the same conduct followed.

Cranworth LJ was speaking in the context of a fraud perpetrated by one party to the contract on his counterparty, but *Panatron*, where a managing director of a company was held liable for making fraudulent misrepresentations to others to induce them to invest in the company, makes clear that the position is the same when a party to a contract has entered into that contract as a result of a fraud by a stranger to the contract.

16 *Panatron* also makes clear (at [24]) that it does not lie for the fraudster to say that his victim could have discovered the fraud had he been more careful:

All that is required is reliance in the sense that the victims were induced by the representations. Once this is proved, it is no defence that they acted incautiously and failed to take those steps to verify the truth of the representations which a prudent man would have taken: *The Directors, etc, of the Central Railway Company of Venezuela v Joseph Kisch* (1867) LR 2 HL 99.

Or, as Brennan J pithily put it in *Gould v Vaggelas* (1985) 157 CLR 215 at 252. "A knave does not escape liability because he is dealing with a fool."

17 With regard to the standard of proof required, the Court of Appeal held in *Tang Yoke Kheng (trading as Niklex Supply Co v Lek Benedict* [2005] 3 SLR(R) 263 at [14] that, when fraud is alleged in a civil action:

the civil standard of proving on a balance of probabilities must apply because there is no known "third standard" although such cases are usually known as "fraud in a civil case" as if alluding to a third standard of proof. However, because of the severity and potentially serious implications attaching to a fraud, even in a civil trial, judges are not normally satisfied by that little bit more evidence such as to tilt the "balance". They normally require more. That *more* is commonly described as "a burden that is higher than on a balance of probabilities, but lower than proof beyond reasonable doubt"...

### ***Misrepresentation and piercing the corporate veil***

18 The plaintiffs also relied on s 2(1) of the Misrepresentation Act, which provides as follows:

#### **Damages for misrepresentation.**

2. —(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

19 As can be seen, s 2(1) only applies between parties to a contract. RP is not a party to the franchise agreements between the plaintiffs and Tradewind but the plaintiffs argued that the corporate veil of Tradewind should be pierced so as to render RP liable for the Representations even if the Representations were not made fraudulently. It is not necessary for me to deal with this argument because I conclude, as elaborated below, that RP had made some fraudulent misrepresentations to induce the plaintiffs to enter into the franchise agreements and they did rely on the same. It was not

argued that RP could avoid personal liability if I were to find that he had acted fraudulently.

### ***Entire agreement clauses***

20 The defendants had sought to rely on the entire agreement clauses in the franchise agreements between the plaintiffs and Tradewind. The Court of Appeal has observed that “whether or not an entire agreement clause can purport to exclude a claim in misrepresentation remains a matter of some controversy”: *Lee Chee Wei v Tan Hor Peow Victor* [2007] 3 SLR(R) 537 at [28]. For present purposes it is sufficient for me to confine myself to the following two propositions.

21 First, since neither RP nor DVH is a party to the franchise agreements between the plaintiffs and Tradewind, they cannot rely on the terms of those agreements. Second, and in any event, a person cannot contractually exclude liability for his own fraud: *S Pearson & Son Ltd v Dublin Corporation* [1907] AC 351 at 353 *per* Lord Loreburn LC, at 356 *per* the Earl of Halsbury, and at 362 *per* Lord James of Hereford.

### ***Election***

22 As mentioned, RP also pleaded that DNV had elected to sue Tradewind. This was not addressed in any detail in his closing submissions, and I do not think that there is a doctrine which precludes DNV from suing RP and DVH just because they proceeded against Tradewind first or filed a proof of debt against Tradewind.

23 Given my analysis above, the plaintiffs’ claims against RP would stand or fall depending solely on whether deceit is made out. By contrast, a successful claim against RP is a necessary but insufficient element of the plaintiffs’ claim against DVH.

### **The factual issues: overview**

24 I turn now to the evidence. As the parties led a considerable amount of evidence, it is helpful to set out the ambit of the factual inquiry before going into details.

### ***The relevant events***

25 The evidence can be grouped as follows:

- (a) The background of RP and his efforts to set up a shoe business of his own, up to 2004, when the dealings leading up to the instant suit began.
- (b) RP’s dealings with Wong Peck Lin of FT Consulting, which advised him on franchising, amongst other things. The contact between RP and FT Consulting began in May 2004 and ended in September 2005.
- (c) RP’s dealings with PT PNP, the third plaintiff, and its director and owner, Dian Patriani, the fourth plaintiff. RP first met Dian in mid 2003. On 12 June 2004 PT PNP entered into a franchise agreement with Tradewind under which it was given the exclusive right and licence to establish and operate retail outlets for the sale of Walking Culture footwear (“the Business”), in Jakarta, Indonesia. Further, on or about 25 March 2005, Dian entered into a master franchise agreement for Indonesia with Tradewind as the Franchisor, PT PNP as the

Master Franchisee and herself as the Principal, in relation to the operation of the Business in Indonesia. The master franchise agreement was backdated to 12 June 2004.

- (d) RP's dealings with Evelyn Chung and Neo Chee Chen of DNV, the second plaintiff. RP first met them in September 2004, and on 20 October 2004 DNV entered into two franchise agreements with Tradewind under which DNV was given the exclusive right and licence to establish and operate the Business at two outlets in Singapore, one at People's Park Complex ("People's Park") and the other at Millenia Walk.
- (e) RP's dealings with Wendy Yong of MPL, the first plaintiff. RP first met Wendy in October 2004, and on 18 February 2005, MPL entered into a franchise agreement with Tradewind under which it was given the exclusive right and licence to establish and operate the Business in the state of Victoria, Australia.

### ***The witnesses***

26 The plaintiffs had called the following persons as witnesses:

- (a) Dian Patriani ("Dian"), the fourth plaintiff.
- (b) Evelyn Chung ("Evelyn"), Neo's wife who helped him set up and run DNV, the second plaintiff.
- (c) Jong Yian Fui ("Fui"), an employee of DVH and later Tradewind who worked with RP at the Bugis outlet of Walking Culture. Fui was subpoenaed by the plaintiffs.
- (d) Neo Chee Chen ("Neo"), a director and shareholder of DNV, the second plaintiff.
- (e) Tan Thiam Chye ("Tan"), the managing director of Tan Kok Thye Pte Ltd, the landlord of a unit at People's Park Complex which was leased to DNV. Tan was subpoenaed by the plaintiffs.
- (f) Wendy Yong ("Wendy"), the director of MPL, the first plaintiff.
- (g) Wong Peck Lin ("Peck Lin"), a former employee and director of FT Consulting, which advised RP on the franchising of Walking Culture. Peck Lin was subpoenaed by the plaintiffs.

27 The defendants had proposed to call:

- (a) Danny Phoa ("Danny") (no relation of Raymond or Tony Phua), a manager of Ad Wright Design



Consultants, who advised the Da Vinci group on its advertising efforts and who helped RP set up the Walking Culture website.

(b) Lim Meng Choo aka Veron Lim, the office head of DVH

(c) Raymond Phua ("RP"), the first defendant.

(d) Tony Phua ("Tony"), RP's father and the founder and chairman of the Da Vinci group

In the end, however, only RP took the stand. DVH associated itself with his evidence. After RP completed his evidence, his counsel informed me that Danny Phoa could not be contacted. At the same time, counsel for DVH made a submission of no case to answer, and withdrew Tony and Veron Lim as its witnesses.

### ***Preliminary points***

28 I would also make a few preliminary points about the factual issues.

29 As regards the first allegation of fraudulent misrepresentation, *ie*, that RP had made the Representations knowing that Tradewind would not be able to carry out its obligations under the franchise agreements, I would say at the outset that I do not believe that RP was running his shoe business, including the franchise arrangements made through Tradewind, as a sham for the purpose of making off with the plaintiffs' and other franchisees' monies. It is clear from the documentary evidence relating to RP's dealings with his staff and his franchisees that RP was genuinely trying to run his shoe business as a legitimate business. It is also clear that RP had very great – though ultimately unfulfilled – ambitions for his shoe business. The fact that the plaintiffs have grievances with the way things turned out does not detract from these points. Consequently, it will not be necessary for me to deal with the numerous difficulties alleged by the plaintiffs in the running of their franchises, save to provide context.

30 I should also observe that all the pleaded representations are oral and were alleged to have been made between 2003 and 2005, *ie*, more than five years ago. Some were said to be made when no other witnesses were around. That said, the gist of the plaintiffs' allegations, as evinced by their pleadings, is clear. Their central and consistent claim is that RP at various times and in various ways represented to them that his shoe business was backed by the Da Vinci group to induce them to enter into the franchise agreements with Tradewind, and in reliance on such representations and the undisputed strength of the Da Vinci group they entered into franchise agreements with Tradewind. This central claim, which is essentially the second fraudulent misrepresentation alleged by the plaintiffs (see [\[7\]](#) above), is not affected by what I said in the preceding two paragraphs.

31 In this regard, it is not in dispute that the Da Vinci group was at no time prepared to support and did not in fact support Tradewind and its business in any substantial way, and that RP knew this at all times. I should say here that Tony did allow RP to use some Da Vinci manpower, warehouse facilities, and office space. However, this was said to be on a personal basis and in any case was very far from the support that the plaintiffs said they were led to expect, in terms of the design, production and quality control of the shoes; the logistical support to the overseas franchisees; the

knowledge of the respective markets; and generally the overall running of each franchise.

32 Separately, it is also not in dispute that Dian, Evelyn, Neo, and Wendy represent PT PNP, DNV and MPL respectively. Thus, if Dian is defrauded, so too is PT PNP and so on. I note that DNV and MPL were incorporated very late in the day, *ie*, close to the time when the relevant contracts were signed. (The incorporation date of PT PNP is not in evidence.) This means that at least some of the representations which RP was said to have made would have been made before DNV and MPL even came into existence. However, it was not disputed that the representations made to the relevant natural persons would operate also on the relevant companies.

33 The factual inquiry is therefore confined to whether RP fraudulently represented that his shoe business had the backing of the Da Vinci group in order to induce the plaintiffs to enter into the franchise agreements with Tradewind, and whether the plaintiffs relied on such representations in entering into the various franchise agreements with Tradewind.

34 With regard to assessing the evidence, it should be reiterated that all the representations pleaded by the plaintiffs are said to have been made orally (see [\[5\]](#) above). The factual inquiry therefore turns to a large degree on the credibility of each side's witnesses. In this regard, it should be mentioned that the witnesses called include persons, such as Peck Lin, who have no direct interest in the present dispute. Generally speaking, the evidence of these disinterested third parties about RP's dealings with them will, if accepted, have significant value in corroborating or refuting the evidence of the interested parties. While some of the evidence do not relate directly to dealings between the parties, they are still relevant if by themselves or in connection with other facts they make the versions of events advanced by each side highly probable or improbable: s 11(b), Evidence Act (Cap 97, 1997 Rev Ed).

35 It should also be pointed out that a considerable amount of the evidence led related to events happening *after* the respective contracts with Tradewind had been made. Such evidence, by itself, cannot *directly* prove whether RP had made the alleged representations and whether the plaintiffs relied on them. However, depending of course on the particular circumstances, such evidence may be *indirect* proof of what happened before the respective contracts with Tradewind were made.

### **Background of RP and his shoe business**

36 I begin with an overview of RP, his relationship with the Da Vinci group, and his shoe business.

#### **Generally**

37 As at August 2009, RP was 39 years old and married with two children. He is the son of Tony and Doris Phua. He graduated with a degree in marketing management from Toledo University, Ohio, in 1991. After graduation, he worked for various companies before he joined his father's business in 1995 and worked for him in Da Vinci Collection Pte Ltd ("Da Vinci Collection"), which carried on business as importers, exporters, distributors and dealers in market furniture, fitting, lightings and furnishing accessories with one retail store in Bukit Timah. When RP joined Da Vinci Collection in 1995, he had no official title and was assigned to perform various duties, including warehousing and sales. RP married in 1996 and his wife joined him in Da Vinci Collection and assisted him in his duties. On 1 February 1998, RP and his wife were respectively appointed Marketing Director and Sales Director of Da Vinci Collection.

38 RP said in his affidavit of evidence-in-chief ("AEIC") and at the beginning of his cross-examination that he and his wife left the Da Vinci group in March 2003 after a dispute with his father,

Tony. According to RP, he had been orally appointed the managing director of DVH by that time. [\[note: 3\]](#) RP said that, after March 2003, he did not hold any executive roles in the Da Vinci group until he rejoined the company in April 2006, but qualified that by saying that "if there was any help that [he] thought would be useful for [his father] or -- [he] would still help [his father] out." [\[note: 4\]](#) He also said that, after leaving the group, he and his wife ceased to draw a salary from the Da Vinci group. [\[note: 5\]](#)

39 After (allegedly) leaving the Da Vinci group, RP dabbled for a while in the business of importing and exporting furniture, using Tradewind as a vehicle. [\[note: 6\]](#) He then met one Brandon Toh ("Brandon"), who was selling shoes under the brand name "MAC". [\[note: 7\]](#) RP was taken with Brandon's concept of using the shoe boxes as part of the store design, instead of putting them in a storeroom. He bought into Brandon's company, MAC Lifestyle Pte Ltd (which was incorporated on 14 February 2003 [\[note: 8\]](#)), and eventually took it over in the middle of 2003 after a dispute with Brandon. Sometime in late 2003 or early 2004, RP received a letter from Wong & Leow, the solicitors of L'Oreal Paris, stating that the use of the "MAC" logo infringed the intellectual property rights of L'Oreal Paris. RP said he was shocked when he received the letter, because Brandon had assured him that the necessary checks were done. It turned out that Brandon had only registered the name with the Registry of Companies. RP said that he then discussed the matter with his father's business partner in Guangzhou, China, one Raymond Wong ("Raymond"). Raymond suggested that RP use the name "Walking Culture" instead.

40 RP said that he then decided, as a stop-gap measure, to use the name "Da Vinci Walking Culture" for his company and his brand. He said he chose the name as "the safest name at that point in time." [\[note: 9\]](#) He said he intended to speak to his father, Tony, later to explain the situation to him and it was only an interim measure until he settled on a new trade name. [\[note: 10\]](#) Consequently, RP changed the name of MAC Lifestyle Pte Ltd to Da Vinci Walking Culture Pte Ltd. He also used the Da Vinci name on his shoes.

41 According to RP, Tony then discovered that RP had used the Da Vinci name for his shoe business. Tony objected as he did not want the public to confuse RP's business with the Da Vinci group's businesses. Consequently, Da Vinci Walking Culture Pte Ltd was renamed Walking Culture International Pte Ltd ("WCIPL") on 6 August 2004. The shoes were also rebranded.

42 RP's shoe business also involved Tradewind. Tradewind was registered on 9 April 2003 as Tradewind Venture Pte Ltd and took its current name, Tradewind Group Pte Ltd, on 15 April 2003. [\[note: 11\]](#) Tradewind originally owned some of the trade marks relating to RP's shoe business; these were eventually transferred to WCIPL. [\[note: 12\]](#) Tradewind was the entity which entered into the franchise agreements with the plaintiffs, and RP confirmed that WCIPL allowed Tradewind to use its trade marks for Tradewind's franchising purposes. [\[note: 13\]](#) WCIPL was the entity which operated the Harbourfront and Bugis outlets which were run by RP himself (as opposed to the franchisees). [\[note: 14\]](#) RP disagreed with Mr Tan's suggestion that Tradewind was set up "as a fall guy, a company that could fail without jeopardising [the] Walking Culture trade marks". [\[note: 15\]](#)

43 RP was interested in expanding his business through franchising. To this end, RP engaged FT Consulting to advise him on franchising, and through franchising his shoe business expanded rapidly..

44 Eventually, however RP's shoe business failed. Tradewind was wound up on 1 December 2006,

less than four years after it was registered. WCIPL closed its outlets at Bugis and Harbourfront, and the company itself was sold to one Steve Chiu, for what RP described as a nominal fee. [\[note: 16\]](#) The timing of the sale to Steve Chiu is unclear. In cross-examination, RP was asked why Tradewind failed. He replied, "... I believe I expanded too quickly. I believe it was because I expanded too quickly without stabilising areas that needed to be stabilised first." [\[note: 17\]](#) These areas included store management, staff strength, and quality control.

### ***RP's relationship with the Da Vinci group from 2003 to 2006***

45 This is a convenient point to examine RP's actual relationship with the group during the lifetime of his shoe business, viz 2003 to 2006. This is a highly relevant fact which would determine whether RP was creating a false or misleading impression in his various acts, such as handing out Da Vinci name cards and signing off as the managing director of DVH. This, in turn, is significant in assessing whether RP had created the false impression that the Da Vinci group and his shoe business were somehow linked. In this regard, I must say that the defendants' pleadings and RP's evidence as to his relationship with the Da Vinci group was altogether unsatisfactory, to put it mildly. I propose to refer extensively to the same in the following paragraphs to illustrate how unhelpful they were.

46 As mentioned above, RP and DVH alleged in their pleadings that RP was (only) designated as managing director of DVH in 2003 when preparations were being made for a public listing of DVH. It was (only) in or around 2006 that RP was in fact appointed as DVH's managing director.

47 RP elaborated on this position in his AEIC, which was, significantly, made on behalf of both himself and DVH. In para 1, RP said he was previously working as a manager for DVH's group of companies. He left their employment on 31 March 2003 and rejoined as their managing director on 1 April 2006. In para 8, he said he was appointed a director to the boards of DVH and its subsidiaries on 1 November 2002, but he did not and was not required to carry out any duty as a director. In paras 22, 24-27 and 29, he gave more background. He said he worked for his father in Da Vinci Collection after graduation in 1991. He married in 1996 and his wife joined him in Da Vinci Collection to assist him. On 1 February 1998, he and his wife were appointed as marketing director and sales director respectively of Da Vinci Collection. He and his wife left the company in March after a major argument with his father. In para 113(e), he said that the only time between 2003 and 2006 he had identified himself as the managing director of DVH was in an email he sent to Dian on 19 June 2004. He alleged he did so as he was designated as such when DVH was making preparations for a public listing.

48 In his AEIC, RP also exhibited two Form IR8A returns to the Inland Revenue Authority of Singapore. [\[note: 18\]](#) The first was filed in 2003 and stated that he ceased his appointment as manager on 31 March 2003. The second was filed in 2006 and stated that his appointment as manager director commenced on 1 April 2006.

49 However, in the agreed bundles, there were numerous instances of RP signing off his email and letters with references to the Da Vinci group. [\[note: 19\]](#) In some cases, it was clear that RP was signing off as the managing director of DVH or some company in the Da Vinci group. An example is his email to Dian of 19 June 2004 from his email address "rayphua@davinciasia.com", where he signed off as: [\[note: 20\]](#)

Raymond Phua

Managing Director

Da Vinci Holdings

Da Vinci Collection Da Vinci Presentation Da Vinci Kitchen Culture Da Vinci Jewellery Walking Culture

In some cases, it was clear that RP signed off as managing director of both WCIPL and DVH (or some company in the Da Vinci group). An example was his email to Wendy and Peck Lin of 26 January 2005 from his email rayphua@walkingculture.com, where he signed off as (I reproduce the line separators as well as the actual words): [\[note: 21\]](#)

Raymond Phua

Managing Director

Walking Culture International Pte Ltd

3 Tai Seng Drive Da Vinci Building Singapore 535216

T: (65) 63388496 D: (65) 63388621 HP: (65) 96309223

Email: rayphua@walkingculture.com

Website: <http://www.walkingculture.com>

Da Vinci Holdings Pte Ltd

Email: rayphua@davinciasia.com

Website: <http://davinciasia.com>, <http://www.davincieurope.it>

50 According to other witnesses, including third parties such as Peck Lin and Tan, there were also various instances when RP linked himself to the Da Vinci group by handing out Da Vinci name cards. RP confirmed giving out Da Vinci name cards to Peck Lin, to Indonesian landlords he met with Dian and to Tan whom he met with Evelyn and Neo.

51 At the beginning of his cross-examination, RP said he left the Da Vinci group between March 2003 and April 2006 and did not hold any executive role, subject to the caveat that he helped his father out if he thought such help would be useful. [\[note: 22\]](#) This was confirmed at one point. [\[note: 23\]](#)

52 When questioned as to why he signed off as “managing director of Da Vinci Holdings” in an email date 19 June 2004 to Dian, RP confirmed that he was in fact the managing director of DVH at that time. [\[note: 24\]](#)

53 There were also some articles at the material time referring to RP as the managing or marketing director of DVH. When I asked him for clarification about an article dated 28 October 2004 in the TODAY newspaper, which said that RP was the managing director of DVH, RP equivocated. [\[note: 25\]](#)

COURT:

So if you were no longer with Da Vinci, how is it that this article can say that you are the managing director of Da Vinci?

A: Your Honour, there has been many interviews. A lot of these interviews, they do not show you the drafts before they send out to the newspapers, in a lot of these interviews.

When I spoke to – when I speak to reporters they ask me questions. I would have talked about the fact that I had left the business. My history – I think one of the most important things I would have talked to them about is my history, my experiences, and – your Honour, go ahead.

COURT: But if you clarified with them, “I used to be ...”, are you saying the reporters got it wrong?

A: Actually, your Honour, if you look at – I don’t know whether you recall in the first tranche, there were reports of me starting the business with \$1 million, then there were reports of me starting the business with \$180,000. It is a very big difference in the amount of money.

The truth is it is \$180,000. I started the business with \$180,000. I don’t know how \$1 million came about.

COURT: Just now you were about to say that you have a position in the company. Do you remember, when Mr Tan –

A: I was still – yes, correct.

COURT: What were you about to say?

A: I was still holding a position in the company, even though I left the company.

Your Honour, I – it – let me try to explain that my – it’s a family business, and throughout the time I was away doing this – my own business, if the company needed help, I would help. Whether it’s if the company was looking for new occasions, or whether, for example, if there was a new opening I would be there.

COURT: Please help me.

A: Yes.

COURT: What is this position that you still hold in the company, even though you left the company?

A: Throughout the time after I left my business, this has been a very sore point with me and my father. We never spoke about why I left the business. At the times when we speak to each other, it’s about this new business I’m doing.

It was a very – it was a huge argument, and an argument that made both me and my wife leave, so I never explored the conversation. I’ve never asked him – sometimes I make – I’ve asked him what happened right after I left.

So yes, I had left the business, but – I don’t quite know how to explain that, your Honour. I mean, it is a bit complicated.

COURT: Do you remember my question?

A: Yes, your Honour.

COURT: What is it?

A: So am I still holding a position in the company.

COURT: My question is not "are you?", because you have told me you are. So please assist me. My question is: what is that position that you say you are still holding?

A: I would have had no role in the company after I had left the business, no executive role in the company.

COURT: What is your answer to the question?

A: Am I still holding a position? No, I wouldn't be holding a position.

COURT: Then why did you tell me – just now, so you are confusing me. I am trying to get this clarified so Mr Tan can move on with his questions.

A: I understand, your Honour.

COURT: You are the one who said you still hold a position in the company. After I asked you some more questions, you say "actually I have no position in the company", so which is it?

A: Your Honour, actually I was still a director in the company, in Da Vinci Holdings, so – in fact, my brothers are also directors of the company, even though they are not related to the business.

COURT: I find it very confusing for a person to say "I have no role in the company, but I'm still a director in the company". So are you saying you are a director in name?

A: No, a director in shares.

COURT: Please, Mr Phua, directors and shareholders are different.

A: Yes.

COURT: Please make up your mind.

A: So I was a shareholder of the company, your Honour. But your Honour...

COURT: Were you still a director of the company, "yes" or "no", at this time?

A: No, your Honour.

A while later RP maintained this position, *ie*, that he was no longer a director of DVH. [\[note: 26\]](#)

54 When questioned on why he handed out DVH name cards stating he was its marketing director to Indonesian landlords he met with Dian, RP confirmed that he had ceased to be the marketing director of DVH. [\[note: 27\]](#) He answered somewhat differently when I again asked for clarification the next day: [\[note: 28\]](#)

Q: Were you holding an executive position in Da Vinci Jewellery at this time when you met the landlord for PIM2?

A: I'm not sure what is – I mean –

Q: Were you the managing director at that time?

A: I was never fired from my role. I never resigned. It's a Chinese business. It's –

Q: All right, all right, Mr Phua.

COURT: This is not all right.

A: It's a Chinese business.

COURT: Let us get the facts clear, please, Mr Phua, otherwise you keep on going back and forth.

A: Yes, your Honour.

COURT: Whether it is a Chinese business, whether it's a business going for IPO, let us get the facts clear, please.

Either you were working for the Da Vinci Group or you were not. That is a simple point which you have not established clearly to me.

A: Your –

COURT: Yesterday or the day before you said you left the group. All right. When you leave the group, that is a simple statement. It is not a question of "Well, I leave the group but it is still a Chinese business and I am still with the group".

You decide. It is your evidence. You say you left the group?

A: Yes, your Honour.

COURT: Now, when counsel is pressing you, you are saying "Well, you know, this, and that". You have to decide, you know, Mr Phua, otherwise this trial gets longer and longer and more and more difficult for everyone concerned. Either you left the group or you didn't. Nobody is focussed on technically and I do physically any work with them or did I get any pay with them.

A: Okay.

COURT: I don't want to go into these kinds of details for the time being. I just want to get one simple fact clear in my mind, and I hope you also get it clear in your mind. Otherwise, the impression that you may be giving is that you change your evidence as and when you like. I'm sure you don't want to give that impression.

A: No, no. Your Honour, I did not officially resign –



COURT: I already told you, don't talk about "officially resign" and this and that. Either you are with the group or you are no longer with the group, whether or not there is paperwork to support it or not. You take a position.

A: Okay, my position is that I had still – I still have strings attached to the company, but I'm not, at that time, working with the company. I don't know if that makes any sense, your Honour.

I –

COURT: People can have attachments, people can have friendships, people can still support a company, but they do not say, "I work for the company"; is that right?

A: I am the only person – the son, that works for the company at that point in time so my dad did not ask me to go, in his mind – I believe in his mind, I'm still his son – I'm still his MD, and I did not send in my – it – I don't know whether this is – this is right to say, call it a leave or sabbatical. It's –

COURT: Why do you talk about your dad's mind, Mr Phua? We are talking about your mind, please.

A: I still –

COURT: You decide, you know.

A: I still considered myself the managing director.

COURT: Wait, wait. Now you are talking about being on leave or sabbatical. That is not the same as what you told me. What you told me previously is very clear. "I quarrelled with my father".

A: Yes.

COURT: "I left the group." If you say, "I take a leave of absence", this is different. That is why we are spending so much time on whether you should still be holding name cards or not.

A: Your Honour, I still considered myself then the managing director of the company.

COURT: Now your position is that you did not leave the group?

A: No, I've always considered myself with the company, even though I'm not working physically at that point in time for a few years.

COURT: I don't understand your evidence, but if that's the evidence you want to give, so be it. We will move on.

MR TAN: Mr Phua, you are now telling his Honour that you were still the managing director of Da Vinci Holdings in 2004.

A: Yes,

MR TAN: Were you also the – but wait a minute, you just told the court that you told Dian Patriani that you had left the Da Vinci Group.

A: Yes, we had a fight.

55 RP also confirmed that he was the managing director of DVH when he accompanied Evelyn and Neo to meet a prospective landlord for their franchise. [\[note: 29\]](#) This was by way of explaining why he gave a DVH card stating him to be a marketing director. (The other details of that meeting are disputed: see [124-128] below.)

56 At various points, RP said that various persons knew he left the group or were told of the same by him. He said he explained to Peck Lin why he left the group. [\[note: 30\]](#) He said that, when he spoke to reporters, he would have talked about the fact that he had left the business. [\[note: 31\]](#) He said that he told one Louis Chambi ("Chambi"), a potential franchisee, that he left Da Vinci. [\[note: 32\]](#) He said that Dian knew about why he left the business of Da Vinci. [\[note: 33\]](#) He said he told Dian he left Da Vinci. [\[note: 34\]](#) He said Wendy knew he had left Da Vinci. [\[note: 35\]](#) He said all four of the plaintiffs knew that he had left the Da Vinci group, and that he had explained this to them "in larger detail". [\[note: 36\]](#)

57 At the end of re-examination, RP was still unable to decide on his evidence. [\[note: 37\]](#) He said that, in 2004, he was appointed the managing director for Da Vinci Jewellery. He said that, between 2003 and 2006, he was not told by his father that he was no longer the managing director for DVH and Da Vinci collection. He said that, between 2004 and 2006, he was not told by his father that he was no longer the managing director of Da Vinci Jewellery. He said that, to the best of his knowledge, his father did not tell anyone that he was removed as managing director of these companies during this period. He said that he did nothing important for the Da Vinci group between 2003 to 2006; he only performed some errands. He said that he basically stopped going for work but retained his appointments. He said, of the impressions he gave about his relationship with the Da Vinci group, "I did not run away from the business. I took time to concentrate on my new business and it was not because I wanted to not be associated with it. It's definitely not the case. Like I said, I've been with Da Vinci since I was 25 years old." [\[note: 38\]](#) In response to my request for clarification just before I released him, he said: [\[note: 39\]](#)

I stopped working. I did not perform my usual roles that I would have performed whilst I was in the company. Your Honour, that we – it's a Chinese style of business. It – I'm appointed in a very ad hoc manner. I was – I was – I mean, a lot of these appointments are appointed, you know – not in a group of people, as my dad was just saying, you know, "make you the MD", We don't have a huge board meeting like I think most companies may have.

It is a bit different from how I run my own business or how I would run my own business, but this is how my dad had run his own business. I'm a second generation from a patriarch and I just cannot explain how he sees it. But I know that when I did not go in, the position has always been there for me, nothing was removed from my office. I was free to go in and out as I had pleased. I was pleased. He still asked me to do things for him. Initially, not a lot, but subsequently more.

I never questioned him, so am I still in the company? No I mean it was something that was – that I left was not necessary to ask him. I mean my dad would not – would never – how you say – terminate me.

58 Effectively, RP had taken three positions as regards his relationship with the Da Vinci group

between 2003 to 2006. First, he said he was only the marketing director of Da Vinci Collection up to March 2003. He was not the managing director of DVH but only the managing director designate. He had told the plaintiffs that he had left the Da Vinci group in 2003. Second, RP said he considered himself a managing director of DVH at the material time. There were also the references to this position in newspaper articles, and references to the Da Vinci group in his email and correspondence signatures. Finally, RP took a position in between, *ie*, that he retained his appointments but only did minimal work.

59 RP should have been well aware of his position in the Da Vinci group. Certainly, his vacillating evidence, on a material point on which he should well be able to respond simply and directly, seriously dented his credibility as a witness. It is noteworthy that counsel for RP did not refer to RP's evidence on this point in any detail in submission, and instead preferred to focus on attacking the plaintiffs' case.

60 In fact, it seems that there is no benign way to view RP's evidence. If he really continued to hold executive roles in the Da Vinci group between 2003 and 2006, then his allegations that he had informed various persons that he had left the group would be entirely incongruous. If he had made a clean break, then his various acts linking himself to the group would create a false impression. If he continued to hold appointments but only (as he put it) ran some errands, other problems arise. It would still be incongruous for him to say that he left the group, especially given his own evidence in re-examination that he did not see it that way (see [\[57\]](#) above). His various acts linking himself to the Da Vinci group would still be misleading, since they would convey the impression that he was still with the group but not the fact that he was far from being involved in any significant way. In this regard, it is unbelievable that RP ever conveyed to anyone his (allegedly) nuanced position in the group, which he was able to articulate only after six days of cross-examination. At the very least, RP's evidence strongly suggests that he was not as scrupulous in distancing himself and his shoe business from the Da Vinci group as he claimed to be.

61 Further, the way RP sought to justify his various acts which suggested an ongoing relationship between him and Da Vinci from 2003 to 2006 is highly significant. As said, these acts included the handing out of Da Vinci name cards and email signatures as the managing director of DVH. If, hypothetically, RP had admitted that those acts were honest or careless mistakes (either by him or third parties, *eg*, reporters), the significance of those acts might well have been arguable (though even then the sheer number of incidents would require quite some explanation). The fact that RP chose to justify those acts by an explanation which he could not defend consistently, *ie*, that he was in fact the managing director of DVH – strongly suggests that he knew that there was something wrong with those acts if indeed he was not the managing director of DVH.

62 With that, I turn now to view RP's dealings with various persons in this suit, as seen from their perspective.

### ***RP's dealings with Wong Peck Lin and FT Consulting (May 2004 to September 2005)***

63 Peck Lin graduated with a Bachelor of Laws (Honours) from the National University of Singapore in 1994 and is an advocate and solicitor of the Supreme Court of Singapore. She was employed by FT Consulting, RP's franchising consultant, between 1999 and 2008, first as a junior consultant and eventually became a director. As mentioned, she was subpoenaed to give evidence on behalf of the plaintiffs.

64 In her statement, Peck Lin said that she and a colleague, John Ong, first met RP on or about 25 May 2004 in the Da Vinci building at 3 Tai Seng Drive. This was more than a year after RP said he

left the group in March 2003 (according to his AEIC). Peck Lin said that she and John Ong knew of DVH as being a retailer of luxury furniture, and were given to understand that Da Vinci wanted to engage consultants to advise on franchising. At that meeting, RP talked about his background and experience at Da Vinci, the Da Vinci businesses and its expansion plans, and about the Walking Culture concept and business. Peck Lin and John Ong, for their part, gave a presentation on FT Consulting's franchise development.

65 For his part, RP said that he had told FT Consulting about his past experience with the Da Vinci group and that he had left the group. However, in cross-examination, he vacillated several times as to whether he had said the latter at the first meeting. [\[note: 40\]](#) His version was also not put to Peck Lin. I should also point out that any allegation by RP that he had left the group would be at odds with his final position that he retained his appointments (see [\[57\]](#) above). In any event, RP accepted that he had handed FT Consulting a name card with the Da Vinci name on it. [\[note: 41\]](#)

66 Peck Lin said that after the meeting, Raymond gave her and John Ong a tour of the Da Vinci building. During the tour, Peck Lin and John Ong saw a roomful of designers. RP said that Da Vinci's in-house designers would be designing new shoe designs for Walking Culture. This left a distinct impression on Peck Lin's mind, as she remembered thinking "how versatile these designers are, that they can design jewellery, watches and even shoes! All of which are quite different products". [\[note: 42\]](#)

67 Counsel for RP suggested to Peck Lin that RP did not take her on a tour of the Da Vinci building, and that Da Vinci's designers were all for furniture and were in any case based in Indonesia. [\[note: 43\]](#) Peck Lin disagreed.

68 Peck Lin said that, based on the information gathered at the 25 May 2004 meeting, she and John Ong prepared a franchise consultancy proposal, which was forwarded to RP with a cover letter dated 26 May 2004. The cover letter was addressed to "Mr Raymond Phua, Da Vinci Holdings Pte Ltd" and began with the statement: [\[note: 44\]](#)

Thanks for inviting us over to your office yesterday and for explaining at length about Da Vinci and Walking Culture.

When he received FT Consulting's letter, RP did not correct them or query them as to why the letter was addressed to him as being from DVH. RP accepted the terms of the FT Consulting proposal by signing the Assignment Instructions dated 1 June 2004 on behalf of Tradewind.

69 Peck Lin did not produce for the trial the proposal said to have been sent on 26 May 2004. However, a version dated 1 June 2004 was produced. This was sent as an enclosure to Tradewind's 3 June 2004 application to Spring Singapore for government grant funding for the franchise project. The 1 June 2004 proposal was entitled "Walking Culture (by Da Vinci)". Its preamble read in full as follows: [\[note: 45\]](#)

#### 1. Preamble

Da Vinci Holdings is synonymous with the retail of high-end European classical furniture. Since 1994, when the first stores were opened in Singapore and Indonesia, the company has done extremely well in marketing its luxurious brand-name furniture. Today, Da Vinci boasts of 19 (as of 1st September 2002) mega stores, spread in Singapore, Malaysia, Indonesia, Brunei and China,

with an estimated retail space of more than 360,000 square feet and 600 staff strength. Most of these premises are fully owned by the company as real estate. The company is particularly strong in China with 7 mega stores in prime cities – Shanghai, Beijing, Guangzhou and Shenzhen. Da Vinci is known as the top home concept retailer in China.

Over the years, the company has built up formidable strengths and capabilities in these areas:

- **Design** – The company has 50 designers in its in house team who are constantly creating new products for the stores;
- **Branding** – The company is a master at branding its stores and products to differentiate itself from its competitors. This in turn yields the company much higher profit margins than the industry norm;
- **Retail Network** – The company has a far reaching retail and distribution network already in place in the various countries: prime store space, landlords, manufacturers, warehouses, logistics network, etc.;
- **Asset Base** – The company has a very strong asset base of buildings and warehouses in various countries which it can leverage on for other retail businesses;
- **Retail goodwill** – The Da Vinci name is regarded by many in the industry as a retail success story.

With the above, the company has therefore recently diversified into the shoe retail business with a pilot store known as “**Walking Culture**” in Bugis Village. In its 9 months of operations, the store has experienced good sales and healthy profits. The shoes are value-for-money, with an upper-middle-class image and designs but with very affordable price tags, which surprise and delight customers. It is one of the unique selling propositions for the store.

Going forward, the company has aggressive plans to open more stores in Singapore, Indonesia, Malaysia, Australia and thereafter further afield in Dubai, Canada, USA, South Africa and France. To date, the company has already received 3 franchise inquiries for 3 different territories.

The company sees franchising as a key strategy in its expansion plan and to this end, intends to engage a consultant to assist in this regard.

I pause here to observe that a plain reading of the preamble gives the impression that DVH itself was branching out into the shoe retail business. At the end of the proposal, RP declared that: [\[note: 46\]](#)

the facts stated in this application and the accompanying information are true and correct to the best of my knowledge and that I have not withheld/distorted any material facts. I understand that if I obtain the grant by false or misleading statements, I may be prosecuted under the Penal Code...

Spring Singapore approved the Spring Singapore application on 17 June 2004 and funded 50% of the project cost. The claim for the grant was successfully made around September 2004 with no amendments to the proposal which was submitted.

70 According to RP, he did realise that the preamble to the proposal was incorrect in that DVH was not connected with his shoe business. He told Peck Lin about the mistake but she said that that was

the way to pitch the proposal to obtain the grant. He went along with her advice. Peck Lin however denied that he had told her about the alleged mistake. To support his allegation that he was not trying to connect Walking Culture with the Da Vinci group, RP said that he had given an interview for a Spring Singapore magazine called Productivity Digest. The issue of 20 November 2004 [\[note: 47\]](#) carried an article on the interview and made no suggestion that Walking Culture was connected with the Da Vinci group. There was also an article in the April 2005 edition of a publication called Men's Folio. [\[note: 48\]](#) This article mentioned that Walking Culture was a completely separate business entity from the Da Vinci group but also referred to his position as managing director of DVH.

71 Peck Lin also exhibited email in May 2004 between RP and Chambi, a potential franchisee in South Africa. The email showed that Chambi thought that he was dealing with the Da Vinci group. For his part, RP said that in May 2004, his franchise concept was not fully formed yet and Chambi might have gotten the impression of a connection with the Da Vinci group because he saw the Bugis outlet with the name Da Vinci Walking Culture at the time, *ie*, around May 2004. He said that he did tell Chambi that he had left the Da Vinci group. [\[note: 49\]](#)

72 Peck Lin also said that, sometime in September 2004, she helped RP to prepare a Walking Culture PowerPoint presentation for the Global Franchise Exhibition ("GFE") held in Singapore. The presentation she prepared focused only on Walking Culture. However, sometime later after the exhibition (she did not know when), RP added more slides to and generally amended the franchise marketing presentation. After RP's amendments, the presentation began with a slide entitled "The Group", followed by some slides entitled "The Companies" and showing pictures of Da Vinci branches worldwide. The first of these slides carried the following description:

The Da Vinci Group holds its position as one of Asia's top group of companies. Its core business is in the retail business of furniture. Since 2003, it has expanded to other lifestyle retail businesses of table-top arts, timepieces and jewellery. It also has a property arm.

The slides relating to Walking Culture followed the slides relating to the Da Vinci group. All the slides, including those referring to the Da Vinci group, bore the Walking Culture logo, name, and a motto "it's all about u" at the bottom.

73 According to RP, his addition to Peck Lin's slides was to show his past experience with the Da Vinci group. Also, he would orally tell his audience that Walking Culture was separate from the Da Vinci group before he used the slides. If the slides were to be used by others, he would first tell them that the reference to the Da Vinci group therein was only to explain his past experience with the group. [\[note: 50\]](#) He denied associating Walking Culture with the Da Vinci group.

74 Peck Lin also testified that, in the course of her dealings with RP on various occasions, she heard him say to potential franchisees that Walking Culture could use or leverage on Da Vinci's design capabilities, business network and infrastructure (logistics, delivery, warehousing, quality control, price tagging, packing, all of which were very labour-intensive). The fact that Walking Culture had access to this big business network/infrastructure was a key selling point of the Walking Culture franchise. This, coupled with the fact that RP himself was the son of Tony Phua, gave the impression that there was a close connection between Walking Culture and Da Vinci. RP also frequently mentioned his personal vast experience in retail and marketing during his years working in Da Vinci. Peck Lin also gave some evidence about RP's dealings with Neo and Evelyn, which I will refer to in further detail later on.

75 Peck Lin said in her statement that she felt at one point that RP was growing Walking Culture

too fast by signing too many franchisees at one time. She referred to an email from herself to RP dated 11 October 2004, in response to a request by RP to follow up on one Louis Chambi, a potential franchisee from South Africa. In that email, Peck Lin wrote: [\[note: 51\]](#)

Hi Raymond,

Much as it is in FT's interest to collect more franchise fees from more franchisees as soon as possible, I must in good conscience advise taking this in a more paced manner.

For now, I would say the priority for you is to help the Sing franchisees get up and running smoothly (5 stores is no mean feat in the next few months) and also to solve the Jakarta case. I am concerned that your back-end cannot keep up with the franchises you are selling. The most important paramount thing is to make sure that the franchisees already sold get off to a good start.

I don't want you to get indigestion from swallowing up too many franchises at once. The best is to have "batch development", where you acquire a group of franchisees, consolidate and settle them and then move on to acquire the next group of franchisees. Unless you have a huge back-up team who can take over the franchisees and do all the necessary once you recruit them – then that's different. But you don't have that now, and I feel you should pace it out a bit.

I know how passionate and focussed you are on growing the franchise, but at the same time it should be balanced with the long-term health of the brand, which can only be achieved through adequate investment in supporting and ensuring that existing franchisees are given all the help they can possibly need.

OK, this is rambling but I think you know what my advice is. That being the case, I think we should send friendly emails to Louis to encourage him to continue his ground research and to re-assure him that we are interested (and keep in touch through the next few months), but his timing of early next year is actually quite nicely timed to come in when the Sing franchisees are more settled. I wouldn't change the standing offer at this point of time.

Peck Lin

To this, RP simply replied, on 13 October 2004: [\[note: 52\]](#)

Hi Peck Lin,

Please send an email to Mr Chambi to keep his interest going.

Thanks.

Peck Lin was not cross-examined on such email.

76 I pause here to evaluate Peck Lin's evidence against RP's. Judging from RP's curt reply to Peck Lin's counsel of caution in her email of 11 October 2004, RP was not a person who would let Peck Lin dictate or even influence his commercial strategy, even after knowing Peck Lin for some five months at that point. This seems corroborated by RP's reflection during re-examination that, on hindsight, he expanded too fast (see [\[44\]](#) above). I therefore find it unbelievable that RP would have permitted Peck Lin to link DVH and Walking Culture so closely in the Spring Singapore application, which was made early on in their relationship, if he firmly did not want to create such a false impression. At the



very least, RP must have acquiesced in creating such a false impression.

77 I would go further and say that I disbelieve RP's explanation that Peck Lin advised him to create such a false impression. On 1 June 2004, the date of the draft proposal quoted at [\[69\]](#) above, Peck Lin had known RP for barely a week. Without any concrete evidence, I find it incredulous that Peck Lin would be advising RP to give what was clearly a false impression in a formal application to a government department so soon after meeting him. It bears mention here that the false impression given in the Spring Singapore application could not, by any stretch, be attributed to careless language or suchlike. It seems, therefore, that RP must have told Peck Lin that Walking Culture was closely linked to DVH, and in fact DVH was venturing into the shoe business through Walking Culture. Peck Lin, in turn, quite naturally seized upon this as a selling point in preparing the application to Spring Singapore.

78 I should also observe here that RP's dealings with Peck Lin leading up to the Spring Singapore application occurred about the same time when Dian signed the franchise agreement on behalf of PT PNP.

79 As for Peck Lin's PowerPoint slides which were supplemented by RP, I do not accept RP's evidence that the amendments were made to highlight RP's experience with the Da Vinci group. The slides referring to the Da Vinci group said nothing about RP. Further, there seems to be no innocent explanation why RP would choose to insert references to the Da Vinci group in a presentation about Walking Culture, if indeed they were unconnected. It is true that the timing of RP's amendment of Peck Lin's slides is not clear and it cannot therefore be said to be used on and relied upon by specific persons on specific occasions. Nevertheless, RP's additions to the presentation, whenever it took place, supported the plaintiffs contention that he was using the Da Vinci group to sell Walking Culture.

80 Seen in light of the above analysis, some weight must also be given to Peck Lin's evidence that RP had represented to potential franchisees that Walking Culture could leverage on Da Vinci's capabilities.

### **RP's dealings with Dian Patriani and PT PNP (mid-2003 onwards)**

81 Dian is a director and owner of PT PNP, a cottage-type industry that produces handbags by hand from her house in Jogjakarta.

#### ***First meeting***

82 Dian first met RP in the middle of 2003, when RP visited Dian's factory. According to Dian, RP introduced himself as the managing director of Da Vinci [\[note: 53\]](#) and handed her two Da Vinci name cards. RP told her that he was the eldest son of the owner of Da Vinci, and that Da Vinci had a new shoe business. [\[note: 54\]](#) He told her that Da Vinci had outlets all over the world and was very big in Indonesia, and that eight out of ten people in Indonesia would know of Da Vinci. She said he showed her a presentation on his laptop; the presentation was on Da Vinci and showed pictures of bags and shoes. She saw the Da Vinci logo. [\[note: 55\]](#) She said RP said that he was looking for someone to produce shoes for Da Vinci Walking Culture. She told him she did not make bags or shoes resembling those she had been shown but he encouraged her to learn.

83 RP said that when he first met Dian at Jogjakarta, it was to buy handbags from her. He said he would not have introduced himself as being from the Da Vinci group as he was hoping to get a



discount from her; to say he was from a big group would have jeopardised his chance of getting a lower price from her. He said he gave Dian a Tradewind name card. He did not hand Dian any name card with the Da Vinci name or logo thereon. Although he had left the Da Vinci group, he had retained some of its name cards to hand only to landlords to whom he was introduced if he thought his father might be interested in a property. [\[note: 56\]](#) He said that he did not bring a laptop to Jogjakarta when he first met Dian. [\[note: 57\]](#)

84 I should note here that RP's explanation that he would not have raised the Da Vinci name because he wanted a discount does not cohere very well with some of his later evidence. I shall refer to this at the appropriate point.

### ***Visit to Singapore***

85 A few months after RP visited her factory, Dian came to Singapore. She took the opportunity to contact RP. According to Dian, RP drove her past the Da Vinci showroom in Tanglin. She said he brought her to his outlet at Bugis which was a Da Vinci Walking Culture outlet. He gave her a Da Vinci Jewellery name card which described him as managing director. He told her that Da Vinci was a large successful retail company in Indonesia. She said he broached the subject again of her supplying him with shoes and offered to introduce her to suppliers of materials in China. He said that he had factories in various countries and one in China. He also brought her past the Da Vinci building at No 3, Tai Seng Drive when she was in Singapore.

86 RP said that when Dian first paid a visit to his retail outlet at Bugis, that shop had a MAC signage and not Da Vinci Walking Culture. He denied bringing her past the Da Vinci showroom at Tanglin or the Da Vinci Building at Tai Seng Drive. He said that it was only in her subsequent visits that his Bugis shop would have the Da Vinci Walking Culture signage; by then, she would not have thought that his shoe business was linked to the Da Vinci group as he had already told her through various conversations about his quarrel with his father and his background and his having left the Da Vinci group to start his own shoe business. However, while he frequently alluded to such conversations, he did not actually go into detail on them. RP further said that Dian knew that he started off with the MAC brand and why he changed it to Da Vinci Walking culture and then to Walking Culture. He said he told her after her first visit to the Bugis outlet. [\[note: 58\]](#)

### ***Visit to China***

87 In 2004, Dian went to China with RP. He took her to a Da Vinci building in Guangzhou. She was introduced to one Amy whose name card had the Da Vinci name and logo. She also obtained name cards of Chinese suppliers. RP also made a presentation to her about Da Vinci and gave her a brochure on jewellery which was yet to be launched. After the visit, Dian informed RP that it would be too expensive for her to obtain materials from China. RP then suggested that she could be his local partner of shoes in Indonesia.

88 On the way back from China to Singapore, Dian said that she asked RP why he was not opening a Da Vinci Walking Culture store in Indonesia himself. She said that RP replied that the shoes should not be marketed together with other Da Vinci products. She said that he represented the importance of linking the Da Vinci brand name with the business he wanted her to do. She said she told him that she had not lived in Jakarta before and had no experience in retail business but he said that there was no need for such experience and he knew the Indonesian market well.

89 RP said that he brought Dian to China to see how products were made and the quality as he

was considering the possibility of a franchise or whether she could make the products for his Da Vinci Walking Culture brand. He said that they met at the Da Vinci Building in Guangzhou as that building was near the hotel where she stayed and they had to pick Amy up. He agreed that she was introduced to Amy but said Amy was only helping to co-ordinate his trips and some purchase requirements. He disputed that he gave Dian a Da Vinci Jewellery brochure. He could not recall giving her a Da Vinci Jewellery name card.

90 Dian said that, after the trip to China, RP contacted her and said that he wanted to have a franchise venture with her. The next time when Dian was in Singapore, RP passed her a franchise analysis and introduced her to one June Lim, a property agent from DTZ. June could help Dian find a good location in Jakarta for a proposed shoe outlet. She said that, when she expressed her lack of retail experience again, RP told her not to worry and reminded her of Da Vinci's presence in Indonesia.

### ***Letter of Intent***

91 Dian said that, after she returned to Indonesia, RP called her to say that there were many interested parties in the Indonesian franchise. She said that he encouraged her to take up the franchise and said that as she was his friend, he would keep the franchise for her.

92 RP then sent a letter of intent to Dian around 29 May 2004. After she received it, she placed a deposit of \$5,000 with him on 1 June 2004 to proceed with the franchise arrangement. She noticed the name of "Tradewind" in the letter of intent and asked RP about it as she had only heard of Walking Culture and Da Vinci up till then. RP told her not to worry and said that Tradewind was just a company for the franchise.

### ***Jakarta visit; signing of franchise agreement; visiting landlords***

93 Around 10 June 2004, RP came to Jakarta. Dian paid a second deposit of \$10,000 for the franchise on 11 June 2004. RP took her on a tour of the Da Vinci building in Jakarta. RP also spoke to his property agent in DTZ Indonesia, one Vivi Ganto and asked Ganto to help look for a suitable location for the retail outlet. Whenever RP and Dian met landlords, RP would introduce himself as the managing director of DVH.

94 Dian was scheduled to meet with a landlord of a mall called Pondok Indah Mall 2 ("PIM2") on 13 June 2004. The day before, she met RP and Peck Lin at a hotel (at night around 11pm). RP told her that she was to sign a franchise agreement. She said she was surprised as she was not told she was to sign it that night although she received a draft thereof a few days earlier. She said she was tired. She asked RP why the franchise agreement was with Tradewind. RP told her that she was really dealing with him and Da Vinci. There was nothing to worry about as Da Vinci was a big company. She said that RP said that if she did not sign the franchise agreement, he could not take her to PIM2. He needed to be sure that she was serious about the intended arrangement. She then signed the agreement which named PT PNP as the area franchisee. She paid RP a further \$29,100. She said she also asked why the brand was changed from Da Vinci Walking Culture to Walking Culture. He said that it was to target a younger crowd and also because the Da Vinci name might give the impression that the shoes were costly [\[note: 59\]](#). He also told her not to worry as people would know that Walking Culture was under Da Vinci. [\[note: 60\]](#)

95 On 13 June 2004, RP and Dian went to PIM2 which was still under construction. Dian said RP told her that PIM2 was going to be a high class mall and that without the backing of Da Vinci, he would have been unsuccessful in procuring a shop unit there. She said that at the meeting with a representative of the landlord of PIM2, RP gave a name card which had the name Da Vinci. The

meeting dealt with matters concerning Da Vinci Walking Culture and Da Vinci Jewellery.

96 The PIM2 mall would only be opened in mid 2005. Pursuant to the franchise agreement, the first retail outlet was to be opened by November 2004. Dian said she suggested that this deadline be pushed back but RP did not agree. RP suggested that she open another shop. She said she was reluctant to open two shops but RP assured her of Da Vinci's success in Indonesia and that the PIM2 outlet would be subsidised by the first outlet. She agreed. With DTZ's help, they found a unit at Artha Garding Mall ("AGM"), a middle class mall. She entered into a rental agreement with AGM.

97 RP said that, when meeting the representative of the PIM2 landlord, he gave a Da Vinci business card to the representative. It was for Da Vinci Jewellery. There was already an agreement for a Da Vinci Jewellery store at PIM2. He said he had not yet met the representative he met with Dian and that was why he handed his name card to him. In his mind, he was still helping his father out and he saw nothing wrong with handing over a Da Vinci card. It stated his position as managing director of Da Vinci Jewellery. He denied he had made a presentation for Da Vinci Jewellery as the landlords of PIM1 and PIM2 already knew about Da Vinci Jewellery. He agreed that the opening of PIM2 would be too late for the franchise business. Eventually, a housing agent from DTZ recommended a unit at AGM. RP said that he had preferred another location at a more popular mall, ie, Taman Anggrek but Dian could not be found when that unit was available. As for the AGM unit, he said he had reservations about it but he had no choice but to approve it as Dian was already renovating the unit. [\[note: 61\]](#)

98 RP said that Dian agreed to be a franchisee of the shoe business not because of the Da Vinci name but because he had a nice concept which used the shoe boxes as part of the store design.

### ***Operation of the outlets; signing of master franchise agreement***

99 Dian and three of her staff went to Singapore for a training session held at the Bugis outlet. She said they would however meet first at an office or warehouse at the Da Vinci building at Tai Seng. She said that, at the training session, RP would again speak about the success of Da Vinci. Dian also paid \$100,000 for the purchase of shoe stock. RP said he did not start the training session by meeting them at Da Vinci building.

100 After some initial reluctance on the part of RP, Dian was allowed to inspect shoes stored at Da Vinci warehouse. [\[note: 62\]](#)

101 The outlet at AGM was opened on 23 November 2004. Dian said that she encountered problems right from the first shipment of shoes. Some of the problems were as follows:

- (a) some shoes were not in Walking Culture boxes;
- (b) some sandals had a different brand name called "Shijixing";
- (c) some shoes were of poor quality. The material was peeling, the lace and heels of some were loose, decorations on some had dropped and others had glue over them and some were dirty and scratched; and

(d) some shoes did not match.

PT PNP was also supposed to use a Point of Sale ("POS") system but it encountered problems with the system.

102 RP accepted that in the first shipment of goods to PT PNP, there were shoes containing the label Da Vinci Walking Culture and Walking Culture. He remembered Dian asked him about the change. He said that she already knew about the reason from earlier conversations. He told her it would look better. Walking Culture was the brand to be used for the franchise. He had explained the change from MAC to Da Vinci Walking Culture and then to Walking Culture. He did not confine his response to saying he wanted to target a younger crowd. She knew he was no longer with the Da Vinci group.

103 Dian said RP assured her that the next batch of shoes would be of better quality. He told her that the Singapore outlets were doing well and a Melbourne outlet had also opened. He encouraged her to get a master franchise for Indonesia. She said he told her that, with the master franchise, she would engage sub-franchisees and earn sub-franchise fees. RP also made a PowerPoint presentation. The presentation included references to the Da Vinci group. [\[note: 63\]](#) The name of Da Vinci could be found together with the name and logo of Walking Culture on some slides. The presentation was initially made by RP to Dian on his laptop before a fair in Surabaya. Then on 25 March 2005, at that fair, the presentation was flashed onto a big screen from time to time by Dian and/or her staff for public consumption. After the Surabaya fair, the presentation was repeated in Singapore by RP at his retail outlet at Harbourfront. [\[note: 64\]](#)

104 I pause here to refer to the presentation. The presentation was substantially similar to the one RP amended from Peck Lin's original (see [\[72\]](#) above). It began with a slide entitled "The Group". The second slide stated:

**Da Vinci Group is:**

- Top 50 Companies in Singapore
- Top 100 Investor Grade Companies in Singapore by Moodys Investors Service
- Most Promising Brand Award
- Most Distinguished Brand Award
- Best Brand Award

The third slide stated:

**Our Presence in Asia**

The Da Vinci Group holds its position as one of Asia's top group of companies. Its core business is in the retail business of furniture. Since 2003, it has expanded to other lifestyle retail businesses of table-top arts, timepieces and jewelry [*sic*] and fashion. It also has a property arm.

The third through sixth slides showed pictures of Da Vinci branches in Singapore, Indonesia, China, Hong Kong, Taiwan, Malaysia and Brunei. Thereafter, the slides focussed on Walking Culture. All the slides were marked at the bottom right with Walking Culture's logo, name and motto.

105 The commercial terms of the master franchise agreement were negotiated by one Budi Untung, a lawyer and notary public, on Dian's behalf. Eventually she signed the same with Tradewind on or about 25 March 2005 but this was backdated to 12 June 2004 (the same date as the franchise agreement with PT PNP).

106 In the meantime, PT PNP entered into a rental agreement for the PIM2 outlet in June or July 2004. Thereafter, another rental agreement was entered into for an outlet in Jogjakarta and a factory outlet in Solo, Indonesia.

107 Unfortunately, Dian and PT PNP continued to encounter difficulties with the shoes supplied and the POS system.

108 Because of these problems, Dian wanted to close one of the shops in Jakarta. Subsequently, she learned that Steve Chui had taken over WCIPL. However, he could not help much. Dian eventually decided to close both outlets in Jakarta and had a clearance sale of shoes at the Jogjakarta outlet.

109 Dian said she found out about RP's fraud in September 2008, three months after this action was commenced.

### **Correspondence**

110 Dian referred to an email from RP using his Da Vinci email address dated 19 June 2004 to her. [\[note: 65\]](#) In this email, he had signed off as managing director of DVH. Below that were the names of other Da Vinci companies and Walking Culture. Thereafter, there was other subsequent email from RP sometimes using his email address at Walking Culture. He would sign off as managing director or chairman and chief executive officer of WCIPL. However, below that, the name of DVH was also set out. [\[note: 66\]](#) Formal correspondence would be sent to RP at WCIPL. [\[note: 67\]](#)

111 RP accepted that in his email of 19 June 2004, he had signed off as the managing director of DVH. He said this was before the Walking Culture business was completely set up. That was the way he used to sign off in the past. He added the name Walking Culture to a row of companies with the Da Vinci name only to show the companies that he was associated with [\[note: 68\]](#) and not to suggest that Walking Culture was part of the Da Vinci group. Email on issues indicated that it came from him as Chairman and CEO of WCIPL although DVH's name was also stated therein. [\[note: 69\]](#) RP said that was his template but Dian would know the background he had explained to her. He said that just because the names of two companies appeared at the end of the same email did not mean that they were related.

112 He also said that by putting the names of three companies (Tradewind Group Pte Ltd, Tradewind Lifestyle Pte Ltd, WCIPL) on a letterhead, it did not necessarily mean they were part of the same group. [\[note: 70\]](#) He admitted that he told Dian he was the managing director of DVH in one of their conversations. [\[note: 71\]](#)

### **RP's dealings with Evelyn and Neo of DNV (September 2004 onwards)**

113 DNV is a company incorporated in Singapore to operate the Walking Culture franchise for two outlets in Singapore. Its directors and shareholders are Neo and Chung Sze Yiing ("Shavon") but Neo's wife, Evelyn was also actively involved in the business. Shavon is Evelyn's niece.

114 Evelyn was the principal witness for DNV. Evelyn said that she was a financial services

consultant and/or life insurance agent for the past 11 years (by the time of the trial) and in sales for the last 20 years or so. She had been taught law subjects like contract and tort as part of her training. [\[note: 72\]](#) A search on Evelyn showed that she had also been holding the position of managing director or director or manager in various companies and was a shareholder in various companies. This was contrary to her earlier evidence (on 16 September 2009) that she was not a director or shareholder of any company.

115 Neo has his own businesses (through various companies) in electronics for over 20 years (by the time of the trial).

### **GFE**

116 Evelyn said that on or about 17 September 2004, she visited the GFE at Suntec Convention Centre with Shavon. They came across the Walking Culture booth and obtained a publicity folder which contained among other things a brochure about Walking Culture franchising opportunities. The brochure itself did not make any reference to the Da Vinci group. (It did, however, refer to the Walking Culture website, the 2007 version of which made extensive references to the Da Vinci group: see [\[187\]](#) below.)

### **30 September 2004 meeting**

117 Evelyn was interested to find out more and eventually a meeting was arranged for 30 September 2004. On that day, Neo and Evelyn went to the office of FT Consulting at The Globe, 100 Cecil Street, #12-01. Peck Lin, her colleague Su-Anne and RP were there. According to Evelyn, RP handed her his name card which stated that he was the managing director of Walking Culture.

118 Evelyn said RP made a presentation which lasted over two hours. RP said a number of things during the presentation. He said he was the managing director of DVH and spoke of his past experience there. He spoke about the global success of the Da Vinci group. He said Walking Culture was part of Da Vinci's shoe business. He said he operated the Walking Culture business out of his office and warehouse at the Da Vinci building at Tai Seng. He said Walking Culture was distributed in Milan, Madrid, Paris, London, New York, Singapore, Kuala Lumpur, Jarkarta, Melbourne, Taiwan, Hong Kong, China, the United States, Canada, etc. He said Da Vinci had a lot of designers from all over the world to design shoes for Walking Culture. The shoes would be manufactured in Walking Culture factories in China. He said he was assisted by a dedicated team and many staff. His years of retail experience with Da Vinci would help him bring Walking Culture to a very high level in the fastest time possible. He said he had plans to list Walking Culture in three years' time. He preferred franchisees like Evelyn and Neo who had no retail experience. He would take care of all warehousing, logistics and price tagging of the stock as Da Vinci had all the logistical support; the franchisees need only be concerned with in-store operations. He said that, based on his experience and the support he had from Da Vinci, he could train everybody who would take the franchise, even someone with zero experience. He agreed with Evelyn and Neo it would be better to open two outlets rather than one. At the end of the presentation, Evelyn and Neo decided to go ahead with the franchise and RP told them Peck Lin would prepare the franchise agreements and call them for another meeting.

119 Evelyn had made notes of the 30 September 2004 meeting. [\[note: 73\]](#) The notes did not contain the information which Evelyn claimed RP had given about Da Vinci except for a reference to Da Vinci having won three awards. She said that this was because her notes were focussed on going forward as a franchisee after they had established that Da Vinci was running the business. [\[note: 74\]](#)

120 According to Peck Lin's statement, RP said at the meeting, which was attended by Evelyn and other potential franchisees, that all the warehousing, logistics and price tagging of the stock would be done by the franchisor at the Da Vinci building/warehouse. She heard him tell them that he could buy back slow-moving or dead stock at a certain price. She also heard him tell them that Tradewind as the franchisor would be managing some of the biggest headaches in the shoe retail business for them as part of the franchise deal, leaving them free to concentrate on in-store selling and customer service. However, in cross-examination, Peck Lin could not recall whether RP had specifically said Tradewind was the franchisor.

121 RP's version was rather different. He denied that he told Evelyn and Neo on 30 September 2004 that Da Vinci had designers all over the world nor did he say it had factories in China. He denied saying that as persons without retail experience they were perfect. He denied saying he would assist on the entire set up and operations and would guide them through the whole operation. He denied saying Da Vinci would provide logistical support.

122 RP said that he made a presentation to persons interested in the franchise at the office of FT Consultancy after the GFE. This presentation was attended by about ten interested parties (including, perhaps, Evelyn and Neo). This was before he met them separately on or about 30 September 2004. He talked about Da Vinci, his background and his retail experience. He did not in any way, suggest that the Walking Culture business was associated with the Da Vinci group. He did not say that Walking Culture was distributed all over the world nor did he say that it was distributed in Milan, Madrid, Paris, London and New York although he accepted that these cities were stated on the reverse of his Walking Culture name card. He accepted that Walking Culture shoes were not sold in these cities. However, he said that these cities were named not to give a false impression but as a form of marketing. [\[note: 75\]](#) He said in cross-examination that a PowerPoint presentation was made to the interested franchisees [\[note: 76\]](#) but it was not clear which version was shown.

123 Neo, in his AEIC, simply confirmed Evelyn's version of the 30 September 2004 meeting. However, in cross-examination, he conceded that RP did not expressly say that the shoe business was a Da Vinci business, and explained that that was the inference he drew from the fact that RP was the managing director of Da Vinci, and also through the conversation with RP. [\[note: 77\]](#)

### ***The People's Park outlet***

124 After the 30 September 2004 meeting, Evelyn and RP had several telephone discussions on the outlets' location. Eventually, RP, Evelyn, Neo and Shavon viewed an outlet at #01-57 at People's Park on 8 October 2004. The landlord was Tan Kok Thye Pte Ltd, whose managing director was Tan. Tan was present at the meeting, as was a property agent.

125 Evelyn said RP liked the location and suggested that she and Neo put in an offer as soon as possible. In cross-examination, Evelyn added she was excited by the crowd at People's Park and went to walk around; [\[note: 78\]](#) she did not therefore participate in the negotiations but believed they were done by RP. [\[note: 79\]](#) Evelyn also said that the rent was negotiated to \$7,000 a month, down from the \$8,000 a month quoted by Tan when she first met him two days ago, on 6 October 2004. [\[note: 80\]](#) Neo and her then placed a deposit. Evelyn also said that she told Tan that Da Vinci was rolling out a franchise and she was doing the business. [\[note: 81\]](#)

126 Tan was subpoenaed by DNV to give evidence. He said that Evelyn had told him that they were starting up a shoe franchise with Da Vinci. He said she was interested in renting the unit but had to



check with the franchisor if the unit was suitable. He said that, when he met Evelyn, Neo and RP, RP gave him two name cards – one described RP as the marketing director of DVH; another described RP as the managing director of Walking Culture. He said that the property agent introduced RP as being from Da Vinci. He confirmed that Evelyn did not participate in the negotiations. [\[note: 82\]](#) RP told him that RP was from Da Vinci and that his father was the owner of Da Vinci. RP told him that Da Vinci was branching out to shoes and Walking Culture was the new business. He said RP claimed the strong support of his father. He said RP told him about the Da Vinci Walking Culture store at Bugis, that it was doing very well and that it was able to afford the high rent there. He said he felt that RP was trying to impress him by telling him about Da Vinci. [\[note: 83\]](#) RP wanted to have the next Da Vinci Walking Culture outlet at the People's Park unit. RP negotiated for a lower rent for the franchisee. [\[note: 84\]](#) Tan was keen to have Da Vinci franchisees as his tenants and agreed to reduce the rent for his unit. He said franchisees related to big companies tended to honour their agreements, [\[note: 85\]](#) and he was willing to lower his price to receive prompt payment. He rejected a suggestion to him that it was against common sense for RP to speak about the high rent he could afford to pay when negotiating. He explained that RP was trying to impress him that the business was viable provided the rental was right. [\[note: 86\]](#) He said that he signed a letter of intent with Evelyn and Neo after the negotiations and received a cheque on the spot. [\[note: 87\]](#)

127 RP's version of events was rather different. He agreed that he gave two name cards to Tan, but clarified that he was actually the managing director and not the marketing director of DVH. [\[note: 88\]](#) He accepted that he told Tan that he was from Da Vinci and his father was the owner of Da Vinci. He said that this was in the context of Da Vinci possibly being interested in retail outlets as well. [\[note: 89\]](#) He denied telling Tan that Da Vinci was branching out to shoes or that Walking Culture was the new business or that he had the strong support of his father. He denied telling Tan about the Da Vinci Walking Culture store at Bugis because the name had already been changed to Walking Culture by then. He denied saying that he was interested in having the next Da Vinci Walking Culture outlet at People's Park. He denied negotiating the rent with Tan or telling him that he could pay high rent at Bugis. He said that it did not make sense to claim this if he was trying to reduce the rent. He said he would not negotiate rent for franchisees. He said that he thought that the unit's area (400 sq ft) was too small and the rent was too high. He said he told Evelyn and Neo about his reservations but Evelyn told him that they had already signed up with the landlord. [\[note: 90\]](#)

128 I cannot see any reason why Tan would lie. Further, while Tan was recollecting events occurring more than five years ago, it seems to me that as a landlord he should be quite clear in his mind why he gave a reduction in the rent he wanted.

### ***The Millenia Walk outlet***

129 Soon after, on 10 October 2004, Evelyn received an email from a property agent Richard Quek who had been recommended by RP. That email forwarded an email dated 8 October 2004 from Soo Weiping, a senior leasing executive with Pontiac Marina Private Limited ("PMPL"), the landlord of Millenia Walk. Soo Weiping said that she understood from one Samantha, a director of PMPL, that 'Da Vinci is keen to re-explore the possibility of having their "Walking Culture" concept in Millenia Walk'. [\[note: 91\]](#)

130 On 11 October 2004, Evelyn went with RP and Richard Quek to view a unit at Millenia Walk. They ended up looking at a larger unit there. RP helped to negotiate a lower rent for the unit. Evelyn said that had it not been for RP's representations about Walking Culture's association with Da Vinci,



they would not have been able to rent the unit.

131 With regard to Weiping Soo's email of 8 October 2004, RP said that he clarified this misunderstanding later. RP said that at a meeting with the property agent, Richard Quek, Samantha, Soo Weiping, Evelyn and Neo, he said that Walking Culture was not the business of Da Vinci as he did not want Da Vinci to be liable for the business. [\[note: 92\]](#) RP said that Samantha had initially wrongly connected Da Vinci with Walking Culture because RP had previously dealt with her regarding a location for a Da Vinci furniture store, and she therefore connected RP with Da Vinci. [\[note: 93\]](#)

132 RP did not call Richard Quek, Soo Weiping or Samantha to be his witness. He said that Richard Quek did not want to get involved and he could not contact Soo Weiping who had left PMPL. He spoke to Samantha, who vaguely remembered his version, but did not want to get involved in litigation. [\[note: 94\]](#) The alleged clarification by RP to Richard Quek, Samantha and Soo Weiping, in the presence of Evelyn and Neo, was also not raised with either Evelyn or Neo while they were being cross-examined.

133 In the circumstances, it is difficult to escape the conclusion that RP must have said or done something to give Samantha the impression that Walking Culture was a Da Vinci business, and that he did not, contrary to his allegation, clarify this wrong impression later on.

### ***Franchise Agreements***

134 On 13 October 2004, Neo and Shavon incorporated DNV with a paid up capital of \$200,000. On 19 October 2004, Evelyn, Neo and Shavon met RP and Peck Lin at Peck Lin's office to discuss the franchise agreements. On or about 20 October 2004, DNV executed two franchise agreements with Tradewind, one for the store at PPC and the other for the store at Millenia Walk.

135 According to Evelyn, during the meeting on 19 October 2004, Neo asked RP why the franchise agreements were being signed under Tradewind's name instead of Walking Culture or Da Vinci. She said RP replied that WCIPL was the company holding the brand and Tradewind was just the vehicle used for the franchise business. She was made to understand that the whole business was owned by Da Vinci. She said she asked RP what assurance or guarantee she and Neo would get from the franchisor, and in reply RP told them that Walking Culture had the full backing of Da Vinci. In cross-examination, she explained that the guarantee question came up because RP had earlier asked for payment by way of a bank draft. She added that RP had laughed and said that Da Vinci was so big and "What's the worry?" [\[note: 95\]](#) She said felt assured by what RP was telling them.

136 The representations which Evelyn alluded to were not contained in any of her handwritten notes for the 19 October 2004 meeting. The notes contained information on operational matters. [\[note: 96\]](#) When this was pointed out to her during cross-examination, she said that, "I would deal with Raymond, as in Raymond is Da Vinci itself, because he said that he would assure us that all these things will be delivered and, after all, Da Vinci is so big and Da Vinci is backing the entire business." [\[note: 97\]](#)

137 Neo also confirmed this aspect of Evelyn's evidence. In cross-examination he said, of RP: 'He only told us about this brand, Da Vinci... So on the 19th itself when we suddenly see the word "Tradewind", we had to ask him to clarify. He told us that Tradewind was only a vehicle for this business. The owner was still Da Vinci.' [\[note: 98\]](#)

138 During cross-examination, RP said that Neo had asked why the agreement was under Tradewind's name and not Walking Culture. He said he explained that Walking Culture was the brand and Tradewind was the franchisor that had the right to use the brand. [\[note: 99\]](#) He denied saying that Tradewind was merely a vehicle and the whole business was owned by Da Vinci or that Walking Culture had the full backing from Da Vinci or any connection with Da Vinci. He did not remember a question being raised about the kind of assurance or guarantee the Singapore franchisee would get. [\[note: 100\]](#) He said that if it was a Da Vinci franchise, it would not cost \$5,000 only. He also said Da Vinci would not need a franchisee. [\[note: 101\]](#)

139 There was some question whether Neo knew about Tradewind before 19 October 2004. The agreed bundles contained a copy of a letter of intent, signed by Neo and dated 15 October 2004, to enter into a franchise agreement with Tradewind. [\[note: 102\]](#) This letter was said to be signed at the official opening of the Harbourfront outlet. Neo said at trial that he was told to sign a blank document at the opening for the benefit of the press and felt angry and cheated when he subsequently saw the letter of intent in the course of the present proceedings. [\[note: 103\]](#) It also turned out that the copy of the letter was RP's document and the plaintiffs' solicitors had agreed to put it in the agreed bundle subject to the production of the original. [\[note: 104\]](#) The timing of the discovery and inspection was also not made clear to me. Neither was it raised in RP's evidence in chief that Neo knew about Tradewind before 19 October 2004. RP said that Neo would have signed two (and not one) letters of intent, one for each store. These two letters were mentioned only when he gave oral evidence. Prior to that, only one was referred to. In these circumstances I do not think that either party can make anything much out of the letter of intent.

### **Fui**

140 Fui was subpoenaed to give evidence for DNV. Fui said that he had been working for Da Vinci Collection and then Tradewind. When he worked for Da Vinci Collection, he would wear a light blue Da Vinci T-shirt but thereafter, he wore a black T-shirt with a Walking Culture logo. [\[note: 105\]](#) He would receive shoes from Malaysia and also did deliveries to DNV in trucks with a Da Vinci Presentation logo. [\[note: 106\]](#) He would also collect defective shoes from Evelyn and bring them back to the Da Vinci warehouse in Tai Seng and repair them. Fui said that he would also help out in the sale of shoes at the Bugis outlet. He said that when the shoes were using the Da Vinci Walking Culture label, RP had told him once to say that the business was part of the Da Vinci group. [\[note: 107\]](#) Yet, he also said that when he mentioned the Da Vinci group to customers, what he meant was that the shoes were distributed in many cities, and not that the business was part of the Da Vinci group. [\[note: 108\]](#) When re-examined, he said Walking Culture was RP's business, not Da Vinci's. At the same time, in reply to a question on the relationship between RP and Da Vinci, he said, "I didn't go and understand all this."

141 According to RP, the repairs were done at the Bugis outlet and not at the Da Vinci warehouse in Tai Seng. [\[note: 109\]](#) He accepted that the shoes were stored in the Da Vinci warehouse, and that they were delivered to the People's Park and Millenia Walk outlets in Da Vinci trucks. [\[note: 110\]](#)

142 I would say that Fui's evidence is inconclusive. Fui seems to be an employee who was not too concerned or certain about his employer's affairs.

### **Other incidents**

143 There were other incidents and events, which I will review briefly.

144 RP had training sessions for Neo and Evelyn and another local franchisee on 28 and 29 October 2004, in a meeting room in the Da Vinci building. According to Evelyn, there were many pictures hanging on the walls, and RP informed them that the pictures were of Da Vinci buildings in various countries. She also said that, in the midst of the training, a man with a pony tail walked in with some visitors, and RP explained that that was his father, Tony Phua, who was showing the visitors the pictures hanging on the walls.

145 Evelyn said that the first delivery of shoes for the Millenia Walk outlet contained some shoes with the Da Vinci label with Da Vinci boxes. When she asked RP why some of the shoes were using the Da Vinci label and others the Walking Culture label, he said that Walking Culture was the younger version of Da Vinci.

146 Like Dian, Evelyn also had complaints about the shoes which were supplied to DNV.

147 In email exchanges, RP would sign off as Chairman and CEO of WCIPL but the name of DVH appeared beneath the name and details of WCIPL. However, Evelyn accepted that formal documents like tax invoices, statements of account, purchase orders and sales orders would be issued by or to Tradewind and there was no mention of any of the Da Vinci companies therein. Letters would be on the letterhead of the Tradewind group or Walking Culture without mention of Da Vinci except for the occasional one where DVH was mentioned after WCIPL at the sign off. [\[note: 111\]](#) Also, in Evelyn's many written complaints to RP, Evelyn did not mention the representations which DNV was relying on in the action.

148 Evelyn and Neo said they found out about RP's fraud in September 2008, after this action was commenced.

### **RP's dealings with Wendy of MPL (October 2004 onwards)**

149 Wendy is a director of and the witness for MPL. Her highest level of education is secondary four. She is a qualified accountant and is a member of the Association for Chartered and Certified Accountants. She completed some law modules as part of her curriculum including contract and corporate legal structures. She was a director and shareholder of various companies in Singapore before migrating to Australia.

### ***Initial meeting***

150 Wendy first met RP at the opening ceremony of the Walking Culture boutique at Harbourfront on 15 October 2004. She attended the ceremony because she wanted to meet RP. She learned that he was the managing director of DVH and wanted to interest him in a project to develop an automated goods and services tax ("GST") card for overseas visitors who were shopping in Singapore. According to Wendy, RP introduced himself as the managing director of Da Vinci and said that he was the person behind the creation of Da Vinci Jewellery.

151 Wendy returned to the Harbourfront outlet because a pair of shoes she bought at the opening did not fit well. The staff could not offer an acceptable solution. Wendy asked to speak to the boss. While the call was being made, Wendy noticed that there was a big signboard listing out cities where Walking Culture had a presence. She noticed that Melbourne, Australia was listed. This caught her attention as her eldest son was studying in Melbourne and her family was considering living in Melbourne too. RP then came on the telephone. When he learned about Wendy's problem, he told her that she could replace the pair she had bought. She asked him where the Melbourne outlet was and he said that the franchise for that city had not been sealed yet. He was thinking of withdrawing the

franchise offer to a potential franchisee and asked her if she was interested in it. She said that she did not have any retail experience. He said that she did not need any and everything would be arranged for the franchisee. Wendy said that she would like to know more and a meeting was arranged for 19 October 2004 at Harry's The Pub at Harbourfront.

152 RP said that at the opening of the Harbourfront outlet when he met Wendy, he did not mention Da Vinci at all. [\[note: 112\]](#)

### ***Meeting of 19 October 2004***

153 Wendy met RP again on 19 October 2004, together with her husband, Rodney Soh, and her colleague, Tan Swee Lin, who left after making a presentation on the GST project. RP came alone.

154 According to Wendy, RP said a number of things at the 19 October 2004 meeting. She said he claimed he was part of the Da Vinci success. He said that, just like Da Vinci Jewellery, Walking Culture was his brainchild. This gave Wendy the impression that he was opening another Da Vinci business. He said that Walking Culture had factories in China. She said that RP assured her and Rodney that he would be the person driving Walking Culture and he would personally see through its development. She said that, in response to her question on how he would divide his time between managing Da Vinci and starting a new Da Vinci venture, RP said he had the 100% endorsement from the board of the Da Vinci group. She said that RP told her and Rodney that it was Walking Culture's plan to list on the New York Stock Exchange within the two years. She said that RP said that Walking Culture was very big and had offices all over the world, that the Da Vinci design team would design the shoes, and that Da Vinci's administrative and logistical infrastructure would support Walking Culture's manufacturing needs. Finally, she said that RP told her and Rodney that he preferred to appoint franchisees with absolutely no knowledge of the business, because then he would be able to control the way the business should be run and managed.

155 According to RP, he talked about his experience with Da Vinci. He denied saying that Da Vinci was branching out into the shoe business just as it did with Da Vinci Jewellery. He denied saying that Da Vinci Jewellery was his brainchild. [\[note: 113\]](#) He denied saying that Walking Culture had factories in China. He denied saying that he had 100 per cent endorsement of the Da Vinci board of directors to start Walking Culture. He denied saying that he planned a listing on the New York Stock Exchange or that Walking Culture was very big. He did not say the Da Vinci design team would design the shoes. He said Wendy knew he had left Da Vinci and that Walking Culture was a small outfit. [\[note: 114\]](#) He said Wendy was interested in the concept of the shop which used the shoe boxes as part of the store design.

### ***Meeting of 30 October 2008; finalisation of terms***

156 Wendy and Rodney met RP and Peck Lin on 30 October 2008. Peck Lin explained how the franchise system worked. Wendy and Rodney were told that Peck Lin would prepare the franchise agreement and send them a draft of the main commercial terms.

157 After the 30 October 2004 meeting, Wendy went to the Bugis outlet. She noticed that the shoes there were carrying the Da Vinci Walking Culture label whereas the ones she had bought at Harbourfront were just called Walking Culture. She met one Justin whom RP had said was his partner with a 10% stake in the business. Upon her inquiry, Justin explained that the brand was changed from Da Vinci Walking Culture to Walking Culture for two reasons:

(a) to make the name more sassy as Da Vinci Walking Culture was too long; and

(b) to make it neater.

158 Wendy said that she asked Justin if it was just a change of name and Justin replied that Da Vinci Walking Culture was started by the Da Vinci group. It was only a change of brand name.

159 Wendy said that she called RP about this who said that Da Vinci Walking Culture was the original brand and Walking Culture was the updated brand. She felt assured by his explanation that Walking Culture continued to be part of Da Vinci.

### ***Finalisation of main commercial terms***

160 The main commercial terms were finalised in November. Three drafts of the main commercial terms were forwarded by Peck Lin to Wendy. The first draft was on 1 November 2004, the second on 6 November 2004, and the third on 16 November 2004. The first draft contained the following term:

#### **Moratorium Period**

Mr Raymond Phua covenants to remain the majority owner and managing director of *Tradewind Group Pte Ltd*, the Franchisor entity, for a period of 3 years from the date of the Franchise Agreement for Victoria.

[Emphasis added]

In between the three drafts Wendy expressed some concerns which Peck Lin sought to address. Her email of 11 November 2004 stated that she had consulted a lawyer and a business consultant. [\[note: 115\]](#) She elaborated in oral evidence that the lawyer was a friend of hers and the business consultant was one Albert Kong, the editor of Asia Franchise. [\[note: 116\]](#) She also claimed to have done due diligence. [\[note: 117\]](#)

161 There was also a moratorium clause in the draft which stipulated that RP (not Da Vinci) was to be the majority owner of Tradewind for three years. However, Wendy said that she did not notice this clause until later. Neither did she notice that Tradewind was to be the franchisor. The initial drafts had referred to WC IPL, and not Tradewind, as the other party to the intended franchise. [\[note: 118\]](#)

### ***The November meeting***

162 About a week after 16 November 2004, Wendy and Rodney met RP, Peck Lin and an assistant of RP.

163 According to Wendy, she asked RP about a number of things. She said she asked RP about the production of the shoes. She said RP replied that Walking Culture had already bought over three factories in China, which would give them control over the type and quality of the shoes that were being manufactured. She said she asked to meet RP's team, and in response RP laughed and said his team was all over the world. She said RP explained that Walking Culture was leveraging on the strength of Da Vinci's international design team.

164 Wendy also said that she and Rodney asked RP to included a moratorium in the franchise agreement, noting in this regard that the main commercial terms had already provided for a three-year moratorium period during which time Phua could not leave the Walking Culture business. She annexed an undated draft, clause 5.2 of which provided for the moratorium. [\[note: 119\]](#) Clause 5.2 referred to the "Franchisor entity" instead of Tradewind. In cross-examination, Wendy confirmed that the moratorium clause was discussed during this meeting. [\[note: 120\]](#)

165 Wendy further said that some other commercial terms were discussed and RP also mentioned that Spring Singapore had supported the venture. She said that RP referred to the November 2004 issue of Productivity Digest which described him as a rising star. The relevant article made no reference to Da Vinci. She also said that RP mentioned that WCIPL had registered the trademark "Walking Culture" in Australia. Her husband made a search in Australia after a letter of intent was signed and learned that this information was true. [\[note: 121\]](#)

166 Wendy said that she felt assured by RP at the end of the meeting, and said that basically RP told her and Rodney that while the infrastructure support at Walking Culture was still being developed, he had Da Vinci behind him to back him up on any financial and operational needs. She said she decided to proceed with taking up the Walking Culture franchise for Melbourne. [\[note: 122\]](#)

167 RP denied saying at the meeting on or about 23 November 2005 at Intercontinental Hotel that his team was all over the world or that Da Vinci was very big worldwide or that it had many teams of staff to look after fashion trends and needs. He also said he remembered meeting Wendy and Rodney at American Club and saying that he left Da Vinci. [\[note: 123\]](#) He could not recall the date of this meeting.

### ***Letter of Intent***

168 On 25 November 2004, Peck Lin sent Wendy a draft letter of intent. The draft letter was a little over a page long and was expressed to be between Tradewind and Wendy. Wendy said that the fact that Tradewind was the counterparty was not drawn to her attention, and that she was not aware of Tradewind's existence at that point.

169 On 9 December 2004, Wendy went to Peck Lin's office to sign the finalised letter of intent, which incorporated the main commercial terms. RP was also present. Wendy said she was surprised to notice that the finalised letter was written on Tradewind's letterhead, and that she had not heard of Tradewind before. When asked about Tradewind, she said that RP explained that, as Da Vinci's core business was in furniture and not fashion, a separate legal identity and entity was needed to establish the franchise model and to take the Walking Culture brand to an international level. She said she was made to understand that Tradewind is a company or entity owned by Da Vinci and set up by Da Vinci as a vehicle for the franchise. She said that she understood the franchise business was still ultimately Da Vinci's. She then signed the letter of intent.

170 On 10 December 2004, Rodney and Wendy went to Melbourne to study the shoe industry there. On 23 December 2004, they incorporated MPL.

171 I pause here to comment on Wendy's evidence that she did not know about the existence or involvement of Tradewind until the finalised letter of intent was presented to her on 9 December 2004. On her own evidence-in-chief, the moratorium clause, which expressly referred to Tradewind, was present in the first draft of the main commercial terms, which she received on 1 November 2004. It remained unchanged throughout all three drafts of the main commercial terms, which by her own

evidence she scrutinised closely. She had also been concerned about Raymond's involvement since the 19 October 2004 meeting. Further, she expressly referred to the moratorium clause in the November meeting when she asked RP for a similar clause in the actual franchise agreement. In these circumstances, I cannot believe that Wendy did not know about the existence or involvement of Tradewind before 9 November 2004.

### ***Finalising the master franchise agreement***

172 In January and February 2005, Wendy worked with Peck Lin and RP to finalise the terms of the master franchise agreement. Wendy signed the master franchise agreement on 4 February 2005. There were some amendments and the agreement was eventually dated 18 February 2005.

173 In finalising the terms, Wendy was advised by a lawyer, Mr Mansur Husain from Jacob Mansur & Pillai. [\[note: 124\]](#) Mr Mansur was not the same lawyer who had advised her on the letter of intent. One of the various comments made by Mr Mansur was in respect of a no representation/reliance clause. Mr Mansur explained to Wendy that this clause was an attempt by Walking Culture to absolve themselves of any liability for promises or advice given. [\[note: 125\]](#) Wendy also emailed Peck Lin on 26 January 2005 [\[note: 126\]](#) to say that, if the terms of the franchise agreement were unacceptable, she was prepared to walk away and that she exercised independent judgment.

174 According to Wendy, she asked RP why the franchise agreement would be signed with Tradewind and not with Da Vinci or Walking Culture. She said that RP and Peck Lin explained to her that Tradewind was a company created to manage the franchise business only; and that they need not be concerned as it did not matter how the companies were set up.

175 Clause 20.1.11 of the draft agreement allowed Tradewind to terminate the franchise agreement if any change occurred in the management, ownership or control of DNV. Wendy said she asked RP if MPL had the same right of termination if the management of Walking Culture changed. She said she was told that as long as the system operated normally and successfully, she need not concern herself about who managed the company.

176 Clause 20.2.1 of the draft agreement provided a right of Tradewind to terminate the agreement if DNV became insolvent. Wendy said that, when she asked RP what would happen if Walking Culture went bust, RP laughed and said: "Da Vinci Group is so big, do you think we will go bust?"

177 Wendy said that she was comforted by this assurance and the fact that RP had the authority and access to mobilize support, financial or otherwise, from Da Vinci. She said that, every time she raised concerns about the business, RP would assure her that they were buying into a successful model that will reduce start-up risks. She said that RP was in a hurry for them to sign the franchise agreement. In cross-examination, she said that, although she knew the franchise agreement was one-sided, she entered into it because she trusted the name "Da Vinci". [\[note: 127\]](#)

178 As things turned out, the moratorium clause in the draft agreement was not included in the final agreement. According to Wendy, RP had wanted a similar moratorium from her, but for ten years instead of three. Eventually, both of them agreed not to have a moratorium clause for either of them. [\[note: 128\]](#)

179 There was an email from Wendy to Peck Lin dated 25 January 2005. In that email, Wendy had asked what protection they would have if Walking Culture was wound up. Wendy said that this email was probably sent after the oral assurance from RP that Da Vinci would not go bust. [\[note: 129\]](#) It was



sent because her husband had raised the subject with her. Peck Lin replied that if Tradewind were to go bust, their interest was not to terminate the franchise but to hope that a purchaser of the franchisor's business would quickly take over and ensure continuity. [\[note: 130\]](#) Wendy said that she did not respond to Peck Lin's email to mention RP's oral assurances because she saw the risk of Tradewind going bust as very low as she believed that Tradewind was part of Walking Culture which was part of the Da Vinci group. [\[note: 131\]](#)

180 RP was not challenged with this part of Wendy's evidence during his cross-examination.

181 I pause here to say that I do not believe that Wendy was assured by the alleged representation by RP that Da Vinci would not go bust. If she had been assured she would not have sent the email dated 25 January 2005 to Peck Lin to ask about the protection she and Rodney would have if Walking Culture was wound up.

### ***Searching for an outlet; the Powerpoint presentation***

182 After signing the master franchise agreement, Wendy and Rodney then proceeded to search for suitable locations for an outlet in Melbourne. RP provided them with a Powerpoint presentation which they could use when approaching potential landlords. [\[note: 132\]](#) The presentation was identical to the one said to be made by RP to Dian (see [\[104\]](#) above).

183 According to Wendy, the presentation was used to impress and win confidence from the target audience which included potential landlords, sub-franchisees, bankers and others. She said that RP used the presentation to introduce Walking Culture to two malls; he did not use the presentation for two other malls because the agents of those malls already knew that he was the managing director of Da Vinci. She said that, during the visits to the malls, RP introduced himself as the managing director of Walking Culture. She said that RP explained that Da Vinci was the holding company of Walking Culture, that Da Vinci was a very successful company with a high net worth and that Walking Culture was one of the businesses it was handling.

184 Eventually, the shopping mall "Collins two3four" offered Wendy and Rodney a space. Wendy said that the mall was owned by a Singapore company through a nominee company. [\[note: 133\]](#) She said she was informed by an employee of the Mall's managing agent, Knight Frank, that they were offered a space because the owners of the Mall had relied on Da Vinci's reputation and financial strength in Singapore. She said that, under Australian practice, the owners of malls would ask for personal guarantees from tenants that did not have a good track record. She said that the owners of the mall did not ask for one because Walking Culture was part of Da Vinci.

185 RP disputed that the presentation was to suggest a relationship between the Da Vinci group and Walking Culture. He said "the whole point is to be able to at least let them [*ie* potential landlords] know who the founder is of this business, and to try and get a better space or negotiate a better rental with the landlord." [\[note: 134\]](#) But there was no reference in the presentation to RP himself, and RP did not further explain how potential landlords were able to know about him through the presentation. When asked if the franchisees would be confused by the reference to RP, since by that time they should (according to RP) have known that he had no more dealings with the Da Vinci group. RP replied that Wendy did not make any mention of this issue when he sent her the presentation, and that the references to the Da Vinci group were references to his experiences. [\[note: 135\]](#) In re-examination, he said that, on hindsight, the presentation should not have been provided to Wendy to present alone to prospective landlords. [\[note: 136\]](#)



186 I observe that RP's evidence here contrasts with his evidence in relation to RP's first meeting with Dian, where he said he could not have mentioned Da Vinci's name because he wanted a discount from her. Such conflicting explanations of his commercial *modus operandi* do not help RP's credibility at all. I must say that it is more probable than not that RP did draw a link between Da Vinci and Walking Culture to impress the Australian landlords or their agents whom he dealt with in the presence of Wendy and Rodney, and also to impress Wendy.

### ***The Walking Culture website***

187 In oral evidence, Wendy also said that before she signed the franchise agreement, she had gone to the website of Walking Culture, at [www.walkingculture.com](http://www.walkingculture.com). She noticed a statement there indicating that "Walking Culture was part subsidiary of one of Asia's biggest retail group, Da Vinci group". However, she did not print a copy then and the copy she printed was dated 6 July 2007. [\[note: 137\]](#) Also, neither her pleadings on the representations or her AEIC mentioned her reliance on the website. In fact none of the plaintiffs deposed to relying on the website in their evidence-in-chief. It is nevertheless pertinent to refer to the following description on the index page of the website:

Walking Culture is part subsidiary of one of Asia's biggest retail group – Da Vinci Group which has business interests as property developers, lifestyle home furniture and furnishings, fashion timepieces and jewelry [*sic*], and designer tabletop arts. As a group, we have been awarded as Top 100 Investor Grade Companies in Singapore by Moodys Investor Services, Top 50 Companies in Singapore, with accolades of other prestigious awards like Most Promising Brand, Most Distinguished Brand, and the Best Brand award. We have our headquarters in Singapore, with subsidiaries in San Francisco, USA, and Guangzhou, China. Strong supported and known as the Rising Star and Promising Enterprise by the local government bodies, Walking Culture is a member of the Franchising Seminars department. Further to that, Walking Culture has recently been awarded by European Franchising magazine as 2005's Top 100 Quality International Franchises.

There was no proof of the precise date of this description. However, some assistance can be derived from the statement "© Copyright 2004 Walking Culture International" at the end of the index page, and from the reference in the quotation above that "Walking Culture has *recently* been awarded by European Franchising magazine as 2005's Top 100 Quality International Franchises" [*emphasis added*]. It seems fair to say that the description was made between 2004 and 2006.

188 The website was designed by Ad Wright. Ad Wright had been working with Da Vinci since 2005. [\[note: 138\]](#) RP acknowledged that, besides the reference to Walking Culture being a part subsidiary of the Da Vinci group, the other information in the part of the website quoted above was accurate. [\[note: 139\]](#) He further said that the initial version of the website, which was done pursuant to discussions between him and Danny Phoa of Ad Wright, did not have anything like the reference to Da Vinci. [\[note: 140\]](#) However, RP was unable to explain how the connection to Da Vinci came to be mentioned in the website without his or Danny Phoa's knowledge and no one from Ad Wright gave evidence for him. Danny Phoa was supposed to be called but was withdrawn after RP finished his evidence.

189 In the circumstances, it is difficult to escape the conclusion that RP must have been the source, either directly or indirectly, for the contents of the website quoted above.

### ***Subsequent correspondence***

190 Like Dian and Evelyn, Wendy also had complaints about the shoes which were supplied to MPL. RP accepted that in some of his email responses to Wendy's subsequent complaints about the shoes, he had signed off as managing director of DVH. [\[note: 141\]](#) He said that by then, he had returned to Da Vinci and he did tell Wendy of this fact. [\[note: 142\]](#)

191 Wendy wrote an email to RP on 5 October 2005, expressing her frustrations with how the franchise was being run. At the end of the email, Wendy said, "Before I end, Raymond, I would like to reiterate what I said 11 months ago when I took up the franchise – I believe in YOU not your products." [\[note: 143\]](#)

192 Wendy said she found out about the fraud in June 2006. In her correspondence with RP in or around that period, and in fact generally, nothing was said about RP's alleged representations and how he breached them.

### **Breakdown of relationship**

193 I come finally to the allegations which were made in respect of how RP ran the Walking Culture shoe business. It is not necessary for me to go into great detail on these allegations save for the following general points. All the plaintiffs made complaints, some of which were similar. They said that the quality of shoes delivered to them was very poor, and in some cases the shipments were late. They said that RP gave them little assistance in setting up and running up the franchise; in fact, his enthusiasm visibly cooled after the plaintiffs signed their respective contracts with Tradewind. They also said that RP gave each of them the impression that the problems they experienced were unique and the rest of the franchisees were doing well. I have said that the shoe business was not run by RP as a sham, but I would observe that, judging from the tone of the extended correspondence that the franchisees had with RP when the franchisees were still running their outlets, they had legitimate reasons to be aggrieved with RP and the way the business was being run from his end. RP himself admitted in cross-examination that quality control was an issue. [\[note: 144\]](#) It was also not in dispute that Tradewind was in breach of its contracts with the plaintiffs, although the defendants did not accept every breach alleged by the plaintiffs.

194 Ultimately, as I have mentioned, the Walking Culture business failed, around four years after it began. WCIPL was, as mentioned, sold to Steve Chiu for a nominal fee at an unknown date. Its Bugis and Harbourfront outlets were closed. The People's Park outlet was closed on 9 November 2005. The Millenia Walk outlet was closed on 5 February 2006. The outlets in PIM2 and AGM, as well as a Jogjarkata outlet which Dian later opened, were closed sometime in late 2006 or early 2007. The Melbourne outlet was closed on 27 March 2007. The fate of the other franchisees not in this action is not in evidence. I observe from the correspondence that the relevant complaints to RP began a considerable period of time of at least a few months before the respective outlets closed.

195 According to Wendy, she went back to Singapore in May 2006 to look for some of the local franchisees. She managed to contact Evelyn and through her, to contact Dian. They met on 11 May 2006 with Peck Lin to exchange notes. Wendy found out that the others were having problems too.

### **Findings**

196 Having reviewed the evidence, I now make my findings.

197 I would make two preliminary points on the evidence, which are applicable to both the plaintiffs and the defendants. First, it can be seen, from my observations in the course of reviewing the

evidence, that the versions of events presented by both sides were not entirely congruent with the documentary evidence and the evidence from third parties. This is not unexpected, given that the events concerned had occurred several years ago. Second, a court should be slow to believe self-serving recollections of past events when these recollections are not positively corroborated by contemporaneous or independent sources. Put in another way, the presence of self-interest and the absence of corroboration would generally undermine the weight to be given to a witness's evidence.

198 The plaintiffs' case was certainly not free from difficulty. Their recollections of events occurring around five years ago by the time of the trial seem rather too detailed and precise. There was no documentary evidence of the alleged representations. Dian, Evelyn and Wendy could not explain why they did not look for RP at the Da Vinci building in Tai Seng when problems surfaced. I have said that I cannot believe Wendy's evidence that she knew of Tradewind only when the finalised letter of intent was presented to her, and that she relied on an alleged oral assurance by RP on the financial strength of the Da Vinci group. Wendy also said that she depended on RP (as opposed to Da Vinci); and her evidence generally showed that she exercised her own judgment in entering into the franchise. At the end of the day, all the plaintiffs knew, by the time they signed their respective contracts, that the counterparty was Tradewind, a separate legal entity, and not RP, DVH or any member of the Da Vinci group. Certainly, if the trial had been fought purely as a contest of credibility between the interested witnesses, I would have hesitated to say that the plaintiffs had made out their case.

199 But this was not the case. There was a considerable amount of contemporaneous and/or independent evidence. There was the Spring Singapore application which referred to DVH and said it was expanding into the shoe business. I have found that RP must be responsible for this. There were the references to the Da Vinci group in the PowerPoint presentation which RP amended from Peck Lin's original. There was the similar presentation which he showed in Indonesia and gave to Wendy to show in Australia. There was the evidence of Tan the landlord, who said RP was trying to impress him with references to Da Vinci and how it was entering the shoe business. I have said I believed Tan's evidence. There was Soo Weiping's email linking Da Vinci to Walking Culture. There was Walking Culture's website saying that Walking Culture was a part subsidiary of the Da Vinci group. I have found that RP must be responsible in some way for this. There were also RP's email signatures referring to DVH or to himself as managing director of DVH. There were also RP's own admissions of acts linking himself to Da Vinci, such as giving out name cards, while doing Walking Culture's business, such as negotiating with landlords. Not all of this is directly relevant to RP's dealings with each plaintiff, but taken together they indicate very strongly that RP was indeed linking Walking Culture to Da Vinci in order to advance his shoe business.

200 Against all this, RP's evidence was singularly unimpressive. He could not even make up his mind on his involvement in Da Vinci during the lifetime of his shoe business. His final version that he retained his managing directorship without performing substantive roles is difficult to square with his other evidence that the plaintiffs were aware, or were told by him, that he had left Da Vinci. Unlike the plaintiffs, his answers kept conflicting with the independent witnesses, *ie*, Peck Lin and Tan.

201 In the circumstances, I find that RP had represented to the plaintiffs before they entered into their respective contracts with Tradewind that the Walking Culture shoe business was linked to and had the backing of the Da Vinci group. Given that there was no dispute that RP knew at all material times that Da Vinci was not linked to and was not backing Walking Culture, these false representations must have been made knowingly. It is not possible to state precisely when and how these representations were made, but I am convinced that they must have been made, and made at some point before the plaintiffs entered into their respective contracts with Tradewind. I would go further and say that, judging from his interactions with third parties such as Peck Lin and Tan, RP must have pitched the representations strongly to induce the plaintiffs to enter into their respective

contracts with Tradewind.

202 The question, then, is whether the plaintiffs had relied on such fraudulent representations in entering into the franchise agreements with Tradewind. Here, it should be recalled that the representations need not be the sole inducement. The plaintiffs' case is again not without difficulty, but in the final result I conclude that each and every one of them had relied on RP's fraudulent representations. There was no convincing "moment of revelation" when they found out about RP's fraud and reacted to it, but given that the plaintiffs' relationship with and confidence in RP had steadily eroded over a number of months, I do not think it very material that they could not convincingly point to a distinct time or incident when they realised that they had been deceived. The plaintiffs also had some general understanding of the concept of the company's separate legal personality, and in the case of Dian and Wendy had received some legal advice. But I do not think that has any bearing on whether they believed, as a matter of fact, that the Da Vinci group would back up the Walking Culture business. Here I would note that even Peck Lin, a lawyer who worked closely with RP, also came away with the impression that the Da Vinci group was involved with the Walking Culture business. In the final analysis, I think the reliance question can be answered very simply. If RP had, as I found, falsely represented to the plaintiffs that the Da Vinci group, with its undisputed strength, was backing the Walking Culture business, it would be extremely difficult for RP to say that the plaintiffs did not rely on this in any way when entering into the contracts with Tradewind.

203 I therefore find that all four plaintiffs had entered into their respective franchise agreements with Tradewind in consequence of a fraud by RP.

### **The plaintiffs' claim against DVH**

204 Besides the collateral contract point, the legal basis of the plaintiffs' claim against DVH is not clearly stated. They amended their statement of claim to remove vicarious liability as a basis of their claim, but at the same time pleaded that DVH was liable because RP made his representations as an employee of DVH. They also pleaded that DVH knowingly permitted RP to make the representations he did, and further that DVH knowingly permitted RP to make use of its name and its logistical resources in running Tradewind. This seems to suggest a case of acquiescence amounting to actual authorisation or ratification by DVH of RP's acts. However, their closing submissions focussed on ostensible or apparent authority, while on the facts they continued to argue that DVH knew what RP was doing. In the circumstances, I propose to address both actual and apparent authority.

205 Before I do so, I would make certain observations about DVH's stance in these proceedings, which in my view is both curious and unsatisfactory. In para 6 of its Defence (Amendment No 2), DVH had pleaded, not unexpectedly, that it had no knowledge of the representations made by RP and in any event that he was not authorised to make them. It also pleaded that RP was its managing director designate in or about 2003, and that he was appointed as managing director in or around April 2006. However, during the trial, DVH associated itself with RP's evidence, a stance which is not entirely congruent with its pleadings which sought to dissociate DVH from RP. Further, after RP completed his evidence by taking the position that he held the appointment of managing director between 2003 and 2006, DVH made a submission of no case to answer. After hearing parties I ruled that this was impermissible, since DVH had already begun its evidence by stating through RP that he was giving evidence on behalf of both defendants. The effect (and in all likelihood the purpose) of DVH's submission was to withdraw Tony and Veron Lim as witnesses at the last minute. This permits me to draw an adverse inference if necessary: see illustration (g) to s 116 of the Evidence Act.

### ***Actual authority***

206 I think that the plaintiffs cannot make out a case of actual authority (or ratification). The low level logistical support provided by DVH to the Walking Culture business, such as the use of offices, warehouses and transport, is insufficient by itself to support a finding that DVH knowingly permitted RP to represent that it was fully backing Walking Culture when in fact it was not prepared to do so. The support is probably explicable on the basis of the father-son relationship between Tony and RP. Further, even taking into account DVH's withdrawal of its proposed witnesses at the last minute, I am unable to say that DVH knowingly permitted RP to make the representations he did. This would be tantamount to saying that DVH is complicit in RP's fraud, and I can see no reason why DVH would want to be complicit in such a fraud, especially given the relatively small size of the Walking Culture business. In this regard, the position of DVH can be contrasted to that of RP, who by his own admission was driven by to expand the Walking Culture business.

### ***Apparent authority***

207 I turn to the plaintiffs' case of apparent authority. As a preliminary point, DVH argued that, in establishing apparent authority, the plaintiffs cannot rely on any representation of authority coming from RP himself. As a general proposition, this is correct – to establish apparent authority, the appearance or representation of authority must come from the alleged principal and not the alleged agent. The plaintiffs cannot say that RP is apparently authorised by DVH on the basis of RP's words alone if there is nothing emanating from DVH to back this up. However, it is equally clear that a principal can make a representation of authority by its act of putting the agent in a relevant position of authority, in which case the agent will be taken to have the authority usual to that position. On the facts, I find that, by associating itself with RP's evidence and then refusing to call its witnesses after RP completed his evidence, DVH must be taken to have affirmed RP's final position in re-examination that he held the appointment of managing director of DVH at all material times. In any event, based on the evidence referred to above (at [47-57]), I would also have found that RP was in fact the managing director of DVH. Consequently, RP would have the apparent authority usual to a managing director.

208 The question then becomes: is it within the usual authority of a managing director to represent, as RP did, that his company was backing a new business? If so, was it reasonable for the plaintiffs to rely on such representations? With regard to the second question, it should be emphasised that the requirement of reasonable reliance is necessary to establish apparent authority but not fraud, and consequently it is possible for the plaintiffs to succeed in fraud against RP but fail in apparent authority against DVH.

209 With regard to the first question, I think the answer is "yes". As a general proposition, the apparent authority of the managing director, as the highest ranking executive officer in a company, must be very wide. It would include the authority to do all things necessary or reasonably incidental to the management of the company's business: see, eg, Tan Cheng Han SC, *Walter Woon on Company Law*, 3rd Ed (Singapore: Sweet & Maxwell, 2009) at para 3.14. On the facts, DVH points out that RP's representations related to a new business, viz the Walking Culture business, and therefore could not be said to be part of his apparent authority as a managing director. This argument is not without force, but on the facts I would reject it. The Da Vinci group is a conglomerate which has at various times expanded into different businesses as diverse as furniture, jewellery and kitchenware. Against this backdrop, which was known to all the relevant parties, I think DVH's managing director, ie, RP must be taken to have the apparent authority to represent that DVH was backing a new business.

210 The second question is more difficult but ultimately I think the answer must also be "yes". On the facts, I think the plaintiffs were not acting unreasonably in failing to confirm RP's representations

with Tony or the board of DVH. RP was a sufficiently high ranking officer for them to take him at his word, especially since he was the son of the chairman, Tony, in a family-centred business. Separately, I do not think that, on the facts, the plaintiffs were acting unreasonably in relying on a mere representation from RP, as opposed to some legally binding promise from DVH, in deciding to contract with Tradewind. Put in another way, I do not think it is commercially realistic for a court to take the general position that parties can only rely on what is actually contracted for. On the facts, the venture was admittedly a significant one for the plaintiffs and that militates against the reasonableness of their reliance on a mere representation. Against that, however, there is the fact that representations came from RP, the son of the patriarch in a family business who was himself holding a key position in the business. This is fortified by the apparently free access that RP had to the Da Vinci premises when he met Wendy, Dian, Evelyn and Neo. In the circumstances, I think the plaintiffs quite reasonably treated RP's personal involvement as the best guarantee of Da Vinci's involvement.

211 I therefore find that RP had the apparent authority to represent to the plaintiffs that DVH was backing the Walking Culture business, and that it was reasonable in all the circumstances for the plaintiffs to rely on his apparent authority.

### ***Collateral contract***

212 The collateral contract argument can be disposed of quite shortly. The evidence is clear that the plaintiffs knew that they were dealing with Tradewind, and in fact Dian, Evelyn and Wendy had asked RP why this was so. In the end it was clear to them that it was Tradewind they were contracting with. It would be inconsistent with these facts to imply a collateral contract between each of the plaintiffs and DVH.

### **Conclusion**

213 For all these reasons, I grant judgment in favour of the plaintiffs against both RP and DVH, with damages to be assessed by the Registrar, who will also decide on interest. The costs of the assessment are also to be determined by the Registrar.

214 RP and DVH are jointly and severally liable for all the plaintiffs' costs in this action up to the date of my judgment, to be agreed or taxed.

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[\[note: 1\]](#) Statement of Claim (Amendment No 2), paras 11 and 13

[\[note: 2\]](#) Statement of Claim (Amendment No 2), para 15

[\[note: 3\]](#) Notes of Evidence ("NE") 29/3/2010 pp 108-109

[\[note: 4\]](#) NE 29/3/2010 p 51-52

[\[note: 5\]](#) NE 29/3/2010 p 52

[\[note: 6\]](#) NE 29/3/2010 p 57

[\[note: 7\]](#) NE 29/3/2010 pp 57-58

[\[note: 8\]](#) Agreed Bundle ("AB") Vol III p 744

[\[note: 9\]](#) NE 29/3/2010 p 66

[\[note: 10\]](#) NE 29/3/2010 p 69

[\[note: 11\]](#) AB vol III p 750

[\[note: 12\]](#) NE 29/3/2010 pp 85-86

[\[note: 13\]](#) NE 29/3/2010 p 101

[\[note: 14\]](#) NE 29/3/2010 p 102

[\[note: 15\]](#) NE 29/3/2010 pp 103-104

[\[note: 16\]](#) NE 29/3/2010 pp 104-105

[\[note: 17\]](#) NE 30/3/2010 p 92

[\[note: 18\]](#) RP's AEIC pp 63-64

[\[note: 19\]](#) See AB Vol I (part A) pp 25, 26, 27, 33, 37, 41, 42, 45, 50, 53, 54, 55, 58-59, 60-61, 62, 67, 69, 70, 72, 73, 74, 76, 77, 78, 82, 85, 100, 103, 112, 125-126 ; AB Vol I(part B) pp 223, 226, 229, 230, 237, 243, 284, 287, 310, 333, 336, 339, 342, 346, 347-8, 355, 357, 367, 369, 390E, 400, 402, 413, 419; AB Vol II pp 439, 441, 448, 461, 471, 472, 473, 475, 476, 477, 479, 480, 483, 484, 492, 493, 495, 499, 505, 508, 510, 519, 530, 531, 533, 534, 535, 537, 540, 543, 546, 548, 550, 554, 561, 562, 564, 566, 568, 570, 572, 575, 577, 583, 584, 586, 587, 591, 593, 597, 604, 606, 611, 620, 621, 624, 628.

[\[note: 20\]](#) AB Vol I (part B) p 390E

[\[note: 21\]](#) AB Vol I (part A) p 25

[\[note: 22\]](#) NE 29/3/2010 pp 51-52

[\[note: 23\]](#) NE 30/3/2010 pp 31, 34-36

[\[note: 24\]](#) NE 29/3/2010 pp 41-46

[\[note: 25\]](#) NE 30/3/2010 pp 27-31

[\[note: 26\]](#) NE 30/3/2010 pp 44-45

[\[note: 27\]](#) NE 31/3/2010 pp 36-37

[\[note: 28\]](#) NE 1/4/2010 pp 13-16

[\[note: 29\]](#) NE 1/4/2010 pp 93-94

[\[note: 30\]](#) NE 29/3/2010 pp 110, 116, 117, 118

[\[note: 31\]](#) NE 30/3/2010 p 28

[\[note: 32\]](#) NE 30/3/2010 p 65

[\[note: 33\]](#) NE 31/3/2010 p 56

[\[note: 34\]](#) NE 31/3/2010 pp 109-111; NE 1/4/2010 pp 6-7

[\[note: 35\]](#) NE 5/4/2010 p 68

[\[note: 36\]](#) NE 5/4/2010 pp 78-79

[\[note: 37\]](#) See generally, NE 6/4/2010 pp 86-97

[\[note: 38\]](#) NE 6/4/2010 p 94

[\[note: 39\]](#) NE 6/4/2010 p 97

[\[note: 40\]](#) NE 29/3/2010 pp 110, 116, 117, 118

[\[note: 41\]](#) NE 29/3/2010 p 114

[\[note: 42\]](#) Statement of Wong Peck Lin, para 9

[\[note: 43\]](#) NE 26/3/2010 p 29

[\[note: 44\]](#) Statement of Wong Peck Lin, p 19

[\[note: 45\]](#) Statement of Wong Peck Lin, p 53

[\[note: 46\]](#) Statement of Wong Peck Lin, p 46

[\[note: 47\]](#) AB Vol VI pp 1901-1903

[\[note: 48\]](#) AB Vol VII p 2083

[\[note: 49\]](#) NE 30/3/2010 p 65

[\[note: 50\]](#) NE 30/3/2010 p 19



[\[note: 51\]](#) Statement of Wong Peck Lin, p 174

[\[note: 52\]](#) Statement of Wong Peck Lin, p 173

[\[note: 53\]](#) NE 15/9/09, pp 18,21

[\[note: 54\]](#) NE 8/9/09 pp 18 and 29

[\[note: 55\]](#) NE 8/9/09 p 14

[\[note: 56\]](#) NE 31/3/2010 pp 28-34

[\[note: 57\]](#) NE 31/3/2010 pp 41 & 64

[\[note: 58\]](#) NE 1/4/2010 p 7

[\[note: 59\]](#) NE 15/9/09 pp 42-43

[\[note: 60\]](#) NE 8/9/09 pp 114 &116, NE 15/9/09 p 43

[\[note: 61\]](#) NE 1/4/2010, p 27

[\[note: 62\]](#) NE 1/4/2010 p 29

[\[note: 63\]](#) AB Vol III, pp 869-914

[\[note: 64\]](#) NE 15/9/09, pp 78-89

[\[note: 65\]](#) AB Vol I (part B), p 390E and AB Vol II, p 439

[\[note: 66\]](#) See example AB Vol II pp 480, 495

[\[note: 67\]](#) See AB Vol II p 446

[\[note: 68\]](#) NE 29/3/2010 pp 40-41

[\[note: 69\]](#) AB Vol II, pp 495, 544, 546

[\[note: 70\]](#) AB Vol V, p 1659

[\[note: 71\]](#) But see NE 31/3/2010 p 21

[\[note: 72\]](#) NE 23/9/2009 pp 109-110

[\[note: 73\]](#) AB Vol VII, pp 1948-1952

[\[note: 74\]](#) NE 16/9/09 p 91, NE 22/9/09 p 20

[\[note: 75\]](#) NE 1/4/2010 pp 81-83

[\[note: 76\]](#) NE 1/4/2010 pp 73-74

[\[note: 77\]](#) NE 22/3/2010 p 33

[\[note: 78\]](#) NE 22/9/2009 p 35

[\[note: 79\]](#) NE 22/9/2009 p 35

[\[note: 80\]](#) NE 22/9/2009 p 35

[\[note: 81\]](#) NE 22/9/2009 p 32

[\[note: 82\]](#) NE 16/9/2009 p 24

[\[note: 83\]](#) NE 16/9/2009 pp 28, 40

[\[note: 84\]](#) NE 16/9/2009 p 44

[\[note: 85\]](#) NE 16/9/2009 pp 30-33

[\[note: 86\]](#) NE 16/9/2009 p 48

[\[note: 87\]](#) NE 16/9/2009 p 44

[\[note: 88\]](#) NE 1/4/2010 p 94

[\[note: 89\]](#) NE 1/4/2010, p 94

[\[note: 90\]](#) NE 1/4/2010, p 102

[\[note: 91\]](#) AB Vol VII, p 2150

[\[note: 92\]](#) NE 1/4/2010 p 108

[\[note: 93\]](#) NE 1/4/2010 pp 107-108

[\[note: 94\]](#) NE 1/4/2010 pp 110-111

[\[note: 95\]](#) NE 22/9/2009 p 99

[\[note: 96\]](#) AB vol IV 1953-1958

[\[note: 97\]](#) NE 22/9/2009 p 104

[\[note: 98\]](#) NE 19/3/2010 at p 103

[\[note: 99\]](#) NE 1/4/2010 p 126

[\[note: 100\]](#) NE 1/4/2010 p 129

[\[note: 101\]](#) NE 1/4/2010 pp 130-131

[\[note: 102\]](#) AB Vol I(part B) pp 269-270

[\[note: 103\]](#) NE 19/3/2010 pp 96-102

[\[note: 104\]](#) NE 22/3/2010 pp 1-2

[\[note: 105\]](#) NE 9/9/09, pp 21-22, 46-47

[\[note: 106\]](#) NE 9/9/09, p 29

[\[note: 107\]](#) See Fui's statement at [11] and NE 9/9/09, pp 42 and 43

[\[note: 108\]](#) NE 9/9/09, pp 43-46

[\[note: 109\]](#) NE 5/4/2010 pp 19-20

[\[note: 110\]](#) NE 5/4/2010 pp 17-19

[\[note: 111\]](#) See AB Vol VII, pp 2109, 2130

[\[note: 112\]](#) NE 5/4/2010 p 58

[\[note: 113\]](#) NE 5/4/2010 p 64

[\[note: 114\]](#) NE 5/4/2010 p 68

[\[note: 115\]](#) I(A) AB 1

[\[note: 116\]](#) NE 23/3/2010 pp 91-93

[\[note: 117\]](#) I(A) AB 1; NE 23/3/10 p 93

[\[note: 118\]](#) NE 24/3/2010, pp 21-24; 25/3/2010 pp 61-63

[\[note: 119\]](#) Wendy's AEIC p 118

[\[note: 120\]](#) NE 23/3/210 pp 77-78

[\[note: 121\]](#) NE 23/3/2010, pp 95-97

[\[note: 122\]](#) Wendy's AEIC para 60

[\[note: 123\]](#) NE 5/4/2010 pp 77-78

[\[note: 124\]](#) NE 23/3/2010 p 104

[\[note: 125\]](#) AB Vol VI pp 1938-1939

[\[note: 126\]](#) AB Vol II p 470

[\[note: 127\]](#) NE 23/3/2010 pp 137-139

[\[note: 128\]](#) NE 24/3/2010 p 6

[\[note: 129\]](#) NE 24/3/2010 p 29

[\[note: 130\]](#) AB Vol I, pp 21-22

[\[note: 131\]](#) NE 24/3/2010, pp 26-42

[\[note: 132\]](#) NE 5/4/2010 pp 79, 81

[\[note: 133\]](#) Wendy's AEIC para 89

[\[note: 134\]](#) NE 5/4/2010 p 82

[\[note: 135\]](#) NE 5/4/2010 pp 85-86

[\[note: 136\]](#) NE 6/4/2010 p 72

[\[note: 137\]](#) NE 23/3/2010, pp 22-23

[\[note: 138\]](#) NE 5/4/2010 p 88

[\[note: 139\]](#) NE 5/4/2010 p 90

[\[note: 140\]](#) NE 5/4/2010 pp 90-92

[\[note: 141\]](#) AB Vol I(part A) pp 223, 229, 237

[\[note: 142\]](#) NE 6/4/2010 pp 18-19

[\[note: 143\]](#) AB Vol I(part A) p 60; see also pp 201-202

[\[note: 144\]](#) NE 29/3/2010 p 104

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