George Raymond Zage III and Another v Rasif David and Others
[2008] SGHC 244

Case Number : Suit 375/2006

Decision Date : 30 December 2008

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Harry Elias SC, Melanie Ho, Chang Man Phing and Agnes Chan (Harry Elias Partnership) for the plaintiffs; Hri Kumar Nair SC, Gary Low and Wilson Wong (Drew & Napier LLC) for the fourth and fifth defendants; Sixth defendant in person

Parties : George Raymond Zage III; Kaori Kathleen Zage — Rasif David; Rohaya binte Mohamed Yassin; Moothy s/o Appudurai; Ho Chi Kwong; Jewels Defred Pte Ltd; Lim Soon Kiang; Ingenious Ideas International INC

Trusts – Accessory liability – Dishonest assistance – Acts amounting to assistance – Recipient liability – Knowing receipt – Retailer of precious stones conduit for money laundering – Buying precious stones for money laundering – Using overseas bank account for money laundering – Whether test for dishonest assistance was an objective one – Whether retailer had duty to check background or financial status of customer to prevent money laundering – Whether transfer of money should have aroused suspicion

30 December 2008 Judgment reserved

Woo Bih Li J:

1 The first and second plaintiffs George Raymond Zage III and Kaori Kathleen Zage ("the Plaintiffs") are husband and wife. They are citizens of the United States of America and Singapore permanent residents.

2 On or about 25 February 2006, the Plaintiffs were granted an option to purchase 35 Belmont Road ("the Property") at a price of $11.4 million. On or about 8 March 2006, they engaged the law firm of David Rasif & Partners ("the Law Firm") to act for them in the purchase. The Plaintiffs exercised the option on or about 10 March 2006. Completion of the sale and purchase of the Property was to take place no later than 2 June 2006. The Plaintiffs were initially represented by one David Tan of the Law Firm but from about 8 May 2006, David Rasif ("DR") himself (who is the first defendant) said that David Tan was taking sabbatical from the Law Firm and henceforth, DR would be handling the transaction.

3 On or about 24 May 2006, the Plaintiffs issued a cheque in favour of the Law Firm for $10,658,240 ("the Plaintiffs' Money"). The Plaintiffs' Money was to be used to complete the sale, that is, to pay the balance of 90% of the purchase price, property tax, stamp fees, legal costs and disbursements and interest, if incurred. Any balance was to be refunded to the Plaintiffs.

4 DR is a Singapore citizen and was at all material times practising as an advocate and solicitor in the Law Firm. He was a partner of the Law Firm until about 1 April 2006 and thereafter, was its sole proprietor.

5 According to the Statement of Claim (Amendment No 2), it transpired that between 31 May 2006 and 2 June 2006 ("the Relevant Period"), DR had on various occasions wrongfully withdrawn sums of money totalling $11,327,408 ("the Clients' Money Withdrawn") from the Law Firm's client's account, which account was supposed to hold money of various clients of the Law Firm. He had

misappropriated the same and had absconded from Singapore.

6 The Plaintiffs commenced the present action on 15 June 2006 against seven defendants. The trial before me concerned the Plaintiffs' claims against the fourth and fifth defendants and the sixth defendant only.

7 The fourth and fifth defendants are Ho Chi Kwong ("Ho") and Jewels DeFred Pte Ltd ("DeFred") respectively. Ho is a Singapore permanent resident and a director and shareholder of DeFred, a company incorporated in Singapore, which is engaged in the retail trade of precious stones and jewellery.

8 During the Relevant Period, DeFred had received two sums of money totalling $2,088,000 from DR for the purchase of precious stones and jewellery. It was not disputed that the $2,088,000 was part of the Clients' Money Withdrawn. The Plaintiffs assumed that the entire $2,088,000 was part of the Plaintiffs' Money although the Plaintiffs' Money was about 94.09% of the Clients' Money Withdrawn.

9 The sixth defendant is Lim Soon Kiang ("D6"). He is a Singapore citizen. He had received US$620,000 from DR being part of the Clients' Money Withdrawn. The Plaintiffs also proceeded on the basis that the entire US$620,000 was part of the Plaintiffs' Money.

10 The Plaintiffs' claim against DeFred was that it had knowingly received the $2,088,000 and/or dishonestly assisted DR to misappropriate this sum such as to render DeFred liable as constructive trustee to the Plaintiffs for this sum. As Ho is the directing mind of DeFred, the Plaintiffs urged the court to lift the corporate veil and render Ho personally liable as well to the Plaintiffs. Mr Harry Elias, SC was the lead counsel for the Plaintiffs and Mr Hri Kumar, SC was the lead counsel for DeFred and Ho.

11 The Plaintiffs' claim against D6 was also for knowing receipt and/or dishonest assistance in respect of US$620,000. D6 represented himself initially at the beginning of the trial but subsequently decided not to turn up as I shall elaborate later.

12 I will deal first with the claim against DeFred and Ho and then with the claim against D6. However, before I elaborate on the rest of the circumstances leading to the respective claims, I will deal briefly with the law.

The Law

13 In *Barnes v Addy* (1874) LR 9 Ch App 244, Lord Selborne LC said (at 251-2):

> Those who create a trust clothe the trustee with a legal power and control over the trust property, imposing on him a corresponding responsibility. That responsibility may no doubt be extended in equity to others who are not properly trustees, if they are found either making themselves trustees de son tort, or actually participating in any fraudulent conduct of the trustee to the injury of the cestui que trust. But, on the other hand, strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions, perhaps of which a Court of Equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees.

14 Mr Elias and Mr Kumar accepted, as I do, that the elements of knowing receipt and dishonest

assistance were as set out by the Court of Appeal in *Caltong (Australia) Pty Ltd v Tong Tien See Construction Pte Ltd* [2002] 3 SLR 241 ("*Caltong*"). In that case, Chao Hick Tin JA said at [31] and [33]:

> 31 To be liable for knowing receipt which would render the recipient a constructive trustee, three elements must be proved, and in the words of Lord Hoffmann in *El Ajou v Dollar Land Holdings* [1994] 2 All ER 685 at 700; [1994] 1 BCLC 464 at 478:
>
> > the plaintiff must show, first, a disposal of his assets in breach of fiduciary duty; secondly, the beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and, thirdly, knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty.
>
> 32 …
>
> 33 The elements which must be proved to establish dishonest assistance are (see *Royal Brunei Airlines v Tan Kok Ming Philip* [1995] 2 AC 378; [1995] 3 All ER 97):
>
> > (1) that there has been a disposal of his assets in breach of trust or fiduciary duty;
> >
> > (2) in which the defendant has assisted or which she/he has procured;
> >
> > (3) the defendant has acted dishonestly;
> >
> > (4) resulting loss to the claimant.

15 There may be some overlapping between these two causes of action and hence, a person may in some circumstances be liable for both knowing receipt and dishonest assistance.

16 What then is the kind of knowledge that may render a person liable for knowing receipt?

17 There was a five-fold categorisation of knowledge by Peter Gibson J in *Baden and others v Societe Generale pour Favoriser le Developpement du Commerce et de L'Industrie en France SA* [1993] 1 WLR 509 but, generally, this categorisation has not been favoured in subsequent decisions.

18 In *BCCI (Overseas) Ltd v Akindele (CA)* [2001] Ch 437*("BCCI v Akindele")*, Nourse LJ favoured a single test, *ie*, whether the recipient's state of knowledge was such as to make it unconscionable for him to retain the benefit of the receipt.

19 In *Rajabali Jumabhoy v Ameerali R Jumabhoy* [1998] 2 SLR ("*Rajabali Jumabhoy*"), the Court of Appeal said at [107] to [108]:

> 107 … There is no clear definition of a constructive trust. The learned authors of *Snell's Equity* (29th Ed) define a constructive trust at p 192 as follow:
>
> > The constructive trust imposed by law is not capable of precise definition and is continually developing. For the present it is sufficient to say that a constructive trust is a trust which is imposed by equity in order to satisfy the demands of justice and good conscience.
>
> In *Carl Zeiss Stiftung v Herbert Smith & Co & Anor (No 2)* [1969] 2 Ch 276 ("*CZS No 2*"), at p 300, Edmund Davies LJ said:

> … English law provides no clear and all-embracing definition of a constructive trust. Its boundaries have been left perhaps deliberately vague, so as not to restrict the court by technicalities in deciding what the justice of a particular case may demand.

However, his Lordship identified 'want of 'probity' as a useful touchstone in considering the circumstances giving rise to a constructive trust. He said at p 301:

> The concept of 'want of probity' appears to provide a useful touchstone in considering circumstances said to give rise to constructive trusts, and I have not found it misleading when applying it to the many authorities cited to this court It is because of such a concept that evidence as to 'good faith', 'knowledge' and 'notice' plays so important a part in the reported decisions. It is true that not every situation where probity is lacking gives rise to a constructive trust. Nevertheless, the authorities appear to show that nothing short of it will do. Not even gross negligence will suffice.

> 108 Where a person acquires a trust property, whether gratuitously or for valuable consideration, in breach of trust on the part of the trustee, and has knowledge of the breach of trust whether actual, constructive or imputed, then he would be liable as a constructive trustee to account to the beneficiaries under the trust. Such a constructive trust is based on 'knowing receipt' ie knowledge of the recipient that the property received is trust property and is in breach of trust. Such knowledge is absolutely essential to found a constructive trust based on knowing receipt.

20 At [119], the Court of Appeal in *Rajabali Jumabhoy* concluded that the conscience of one of the defendants was not so affected as to give rise to the imposition of a constructive trust.

21 More recently, in *Comboni Vincenzo and another v Shankar's Emporium (Pte) Ltd* [2007] 2 SLR 1020, Kan Ting Chiu J referred to *Rajabadi Jumabhoy* and in *Re Montagu's Settlement Trusts* [1987] Ch 264 and *BCCI v Akindele* and concluded that conscience/probity is the proper test for a constructive trust. With respect, I agree that that is the proper guide. Indeed, neither Mr Elias nor Mr Kumar really suggested otherwise although each sought to place different emphasis from the judgments in the various cases. I would, however, add the caveat from *CZS No 2* that not every situation where probity is lacking necessarily gives rise to a constructive trust (see [19] above).

22 I turn now to a different aspect in the context of dishonest assistance. Mr Kumar suggested that it was not clear whether, in Singapore, the test for dishonest assistance was objective or was a combined test of "an objective standard leavened by a subjective element based upon the characteristics and knowledge of the defendant". On the other hand, Mr Elias submitted that dishonesty was simply a question of considering what would offend the normally accepted standards of honest conduct.

23 In *Caltong*, the Court of Appeal referred to the four elements set out in *Royal Brunei Airlines v Tan Kok Ming Philip* [1995] 2 AC 378 ("*Royal Brunei Airlines*") to establish dishonest assistance, see [14] above. However, *Caltong* did not refer to the oft-cited passages from Lord Nicholls of Birkenhead in *Royal Brunei Airlines* elaborating on dishonesty. Lord Nicholls said at 105 to 107:

> *Dishonesty*

> Before considering this issue further it will be helpful to define the terms being used by looking more closely at what dishonesty means in this context. Whatever may be the position in some criminal or other contexts (see, for instance, *R v Ghosh* [1982] 2 All ER 689, [1982] QB 1053), in the context of the accessory liability principle acting dishonestly, or with a lack of probity, which

is synonymous, means simply not acting as an honest person would in the circumstances. This is an *objective* standard. At first sight this may seem surprising. Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety.

However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is *not subjective*. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour.

In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property. Unless there is a very good and compelling reason, an honest person does not participate in a transaction if he knows it involves a misapplication of trust assets to the detriment of the beneficiaries. Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless. However, in the situations now under consideration the position is not always so straightforward. This can best be illustrated by considering one particular area: the taking of risks.

…

The only answer to these questions lies in keeping in mind that honesty is an *objective* standard. The individual is expected to attain the standard which would be observed by an honest person placed in those circumstances. It is impossible to be more specific. Knox J captured the flavour of this, in a case with a commercial setting, when he referred to a person who is 'guilty of commercially unacceptable conduct in the particular context involved': see *Cowan de Groot Properties Ltd v Eagle Trust plc* [1992] 4 All ER 700 at 761. Acting in reckless disregard of others' rights or possible rights can be a tell-tale sign of dishonesty. An honest person would have regard to the circumstances known to him, including the nature and importance of the proposed transaction, the nature and importance of his role, the ordinary course of business, the degree of doubt, the practicability of the trustee or the third party proceeding otherwise and the seriousness of the adverse consequences to the beneficiaries. The circumstances will dictate which one or more of the possible courses should be taken by an honest person. He might, for instance, flatly decline to become involved. He might ask further questions. He might seek advice, or insist on further advice being obtained. He might advise the trustee of the risks but then proceed with his role in the transaction. He might do many things. Ultimately, in most cases, an honest person should have little difficulty in knowing whether a proposed transaction, or his participation in it, would offend the normally accepted standards of honest conduct.

Likewise, when called upon to decide whether a person was acting honestly, a court will look at all the circumstances known to the third party at the time. The court will also have regard to personal attributes of the third party such as his experience and intelligence, and the reason why he acted as he did.

[emphasis added]

24 As can be seen, Lord Nicholls stressed twice the objective standard and also reiterated that the standard of what constitutes honest conduct is not subjective. Therefore, his reference to the "personal attributes of the third party such as his experience and intelligence and the reason why he acted as he did" was not intended to refer to a subjective standard. In other words, while such attributes (which could be described as subjective elements as Lord Millett did in *Twinsectra Ltd v Yardley and others* [2002] 2 All ER 377) ("*Twinsectra*") would be taken into account, the third party (who would usually be the defendant when litigation ensues) would not escape liability "simply because he sees nothing wrong in [his] behaviour". To reiterate from Lord Nicholls, "Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual".

25 I now come to the House of Lords decision in *Twinsectra*. After considering *Royal Brunei Airlines*, the majority of the House of Lords adopted an approach which appeared different although supposedly following *Royal Brunei Airlines*. In Held (2), it is stated:

> (2) (Lord Millett dissenting) For the purposes of accessory liability for breach of trust, a defendant would not be held to be dishonest unless it was established that his conduct had been dishonest by the ordinary standards of reasonable and honest people and that he himself had realised that by those standards his conduct was dishonest. Thus, in equity, a person could not escape a finding of dishonesty because he set his own standards of honesty and did not regard as dishonest what he knew would offend the normally-accepted standards of honest conduct. It would, however, be less than just for the law to permit a finding that a defendant had been dishonest in assisting a breach of trust where he had known of the facts which created the trust and its breach, but had not been aware that what he was doing would be regarded by honest men as being dishonest. It followed in the instant case that a finding of accessory liability could only be made against L if, applying the combined objective and subjective test, it was established on the evidence that he had been dishonest. Although the judge had not stated the test that he had applied to determine dishonesty, it was probable that he had applied the correct combined test, not a purely subjective test. Since it was only in exceptional circumstances that an appellate court should reverse a finding by a trial judge on a question of fact (particularly on the state of mind of a party)…, it had not been right for the Court of Appeal to come to a different conclusion from the judge … Accordingly, the appeal would be allowed (see [5]—[8], [20], [22]—[24], [27], [32]—[36], [38], [42], [43], [49]—[51] below); *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 3 All ER 97 explained and followed.

26 In *Malaysian International Trading Corp Sdn Bhd v Interamerica Asia Pte Ltd & Ors* [2002] 4 SLR 537, the High Court referred to the concept of dishonest assistance as set out in *Royal Brunei Airlines* but adopted the combined tests in *Twinsectra* of an objective standard "leavened by a subjective element based upon the characteristics and knowledge of the defendant". This meant that for a person to be liable as an accessory to a breach of trust, he must also have been aware that he was acting dishonestly by the ordinary standards of reasonable and honest people.

27 However, in *Bansal Hermant Govindprasad and another v Central Bank of India* [2003] 2 SLR 33 ("*Bansal*"), the Court of Appeal said (at [30]) that the decision in *Royal Brunei Airlines* clarified that in determining accessory liability, the pre-requisite of dishonesty was to be judged objectively. A passage from Lord Nicholls' judgment which I cited above was also cited with approval by the Court of Appeal (at [34] in *Bansal*), referring to p 74 and 75 of the report of *Royal Brunei Airlines* in the Weekly Law Reports.

28 Finally, I come to the Privy Council decision in *Barlow Clowes International Ltd (in liquidation)*

and others v Eurotrust International Ltd and others [2006] 1 All ER 377 ("*Barlow Clowes*"). In that case, the Privy Council explained *Twinsectra* as being no different from the principles stated in *Royal Brunei Airlines* and stressed that the standard of dishonesty is objective and it was not necessary to establish liability for a defendant to think or believe that he was acting dishonestly. Thus, Lord Hoffmann said:

> [10] The judge stated the law in terms largely derived from the advice of the Board given by Lord Nicholls of Birkenhead in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 3 All ER 97, [1995] 2 AC 378. In summary, she said that liability for dishonest assistance requires a dishonest state of mind on the part of the person who assists in a breach of trust. Such a state of mind may consist in knowledge that the transaction is one in which he cannot honestly participate (for example, a misappropriation of other people's money), or it may consist in suspicion combined with a conscious decision not to make inquiries which might result in knowledge: see Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd [2001] UKHL 1, [2001] 1 All ER 743, [2003] 1 AC 469. Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct statement of the law and their Lordships agree.
>
> [11] …
>
> [12] …
>
> [13] Lord Neill of Bladen QC, who appeared for Mr Henwood, submitted to their Lordships that such a state of mind was not dishonest unless Mr Henwood was aware that it would by ordinary standards be regarded as dishonest. Only in such a case could he be said to be *consciously* dishonest. But the judge made no finding about Mr Henwood's opinions about normal standards of honesty. The only finding was that by normal standards he had been dishonest but that his own standard was different.
>
> [14] In submitting that an inquiry into the defendant's views about standards of honesty is required, Lord Neill relied upon a statement by Lord Hutton in *Twinsectra Ltd v Yardly* [2002] UKHL 12, [2002] 2 All ER 377, [2002] 2 AC 164, with which the majority of their Lordships agreed:
>
> > '[35] There is, in my opinion, a further consideration which supports the view that for liability as an accessory to arise the defendant must himself appreciate that what he was doing was dishonest by the standards of honest and reasonable men. A finding by a judge that a defendant has been dishonest is a grave finding, and it is particularly grave against a professional man, such as a solicitor. Notwithstanding that the issue arises in equity law and not in a criminal context, I think that it would be less than just for the law to permit a finding that a defendant had been "dishonest" in assisting in a breach of trust where he knew of the facts which created the trust and its breach but had not been aware that what he was doing would be regarded by honest men as being dishonest.
> >
> > [36] … I consider that the courts should continue to apply that test and that your Lordships should state that dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct.'

[15] Their Lordships accept that there is an element of ambiguity in these remarks which may have encouraged a belief, expressed in some academic writing, that the *Twinsectra* case had departed from the law as previously understood and invited inquiry not merely into the defendant's mental state about the nature of the transaction in which he was participating but also into his views about generally acceptable standards of honesty. But they do not consider that this is what Lord Hutton meant. The reference to 'what he knows would offend normally accepted standards of honest conduct' meant only that his knowledge of the transaction had to be such as to render his participation contrary to normally acceptable standards of honest conduct. It did not require that he should have had reflections about what those normally acceptable standards were.

[16] Similarly in the speech of Lord Hoffmann, the statement (at [20]) that a dishonest state of mind meant 'consciousness that one is transgressing ordinary standards of honest behaviour' was in their Lordships' view intended to require consciousness of those elements of the transaction which make participation transgress ordinary standards of honest behaviour. It did not also require him to have thought about what those standards were.

[17] …

[18] Their Lordships therefore reject Lord Neill's submission that the judge failed to apply the principles of liability for dishonest assistance which had been laid down in the *Twinsectra* case. In their opinion they were no different from the principles stated in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 3 All ER 97, [1995] 2 AC 378 which were correctly summarised by the judge.

29 Mr Kumar submitted that *Barlow Clowes* has todate not been approved in Singapore. However, I note that *Barlow Clowes* adopted the principles of dishonesty stated in *Royal Brunei Airlines* which had in turn been endorsed by the Court of Appeal in *Bansal*.

30 In my view, the test is an objective one and while the personal attributes and experience of a defendant should be considered, it matters not whether he himself thought that what he was doing would ordinarily be considered as dishonest. I should mention that Mr Elias also relied on three other cases involving the liability of a beneficiary or payee of a cheque payment. I will elaborate on those cases later.

DR's purchases from DeFred

31 Mr Elias submitted that the conduct of staff from DeFred in respect of DR's purchases demonstrated a lack of probity and constituted dishonesty within the definition thereof in *Royal Brunei Airlines*. I will now elaborate on what transpired.

30 May 2006 (Tuesday)

32 On 30 May 2006 at about 6 or 7pm, DR and another man walked into DeFred's showroom at the lobby of the Hyatt Hotel at Scotts Road.

33 Lynn Lim Mui Ling ("Lynn") who was a sales executive of DeFred since April 2005 recognised DR who had previously represented her hairstylist Sherman in a legal case and had approached Lynn to be a witness in that case. Sherman was also the hairstylist of Lynn's colleague Chng Ching Gek ("Maeco") who had also met DR when he handled Sherman's case.

34 Maeco and Lynn greeted DR. Lynn asked him if he was David Rasif and reminded him that she

had met him when he was acting for Sherman. That caused DR to say that he remembered Lynn.

35 DR informed Lynn he was interested in investing in diamonds above two carats. Lynn then introduced DR to Tan Hian, Thomas ("Thomas"), DeFred's sales assistant manager.

36 Neither Lynn nor Thomas was introduced to the other man who accompanied DR. They only recalled that DR had said that the other man was his friend and a diamond expert.

37 After DR was introduced to Thomas, it was Thomas who mainly attended to him with assistance from Lynn and Maeco. DR said he was buying diamonds for investment and repeated that he wanted something more than two carats, of a high colour grade of D, E or F and preferably of a brilliant cut. DR did not specifically mention the kind of clarity he wanted in the diamonds. He also wanted the diamonds to come with certification from the Gemological Institute of America ("GIA"). According to Thomas, GIA is the world's leading authority on diamond grading and gem identification.

38 To Thomas, DR appeared to be quite knowledgeable about diamonds. According to [22] of Thomas' affidavit of evidence-in-chief ("AEIC"), Thomas took a few choice pieces of diamonds from the showroom safe to show DR. He also showed DR certificates of loose diamonds (see [23] of his AEIC). In oral testimony, it transpired that Thomas did not show any loose diamonds but jewellery with diamonds that day (as well as other jewellery) and the certificates he had referred to were copies. According to Thomas, it was normal procedure to show customers copies of certificates as DeFred did not keep many large stones in the showroom. If a customer was interested in a stone, then it would be sourced from the supplier. Thomas also said that large expensive diamonds were often sold based on an examination of the certificates alone. If a customer agreed to buy the same, payment would be requested so that DeFred would then pay the supplier. Should the diamond not match the description in the certificate (when it was delivered to the customer), the purchase price would be refunded. Therefore, the fact that DR was prepared to examine the copies of the certificates he was shown was not unusual to Thomas.

39 DR showed great interest during Thomas' presentation. He was relaxed. At one point, he was even singing and dancing along to the music being played in the showroom. As Thomas went to retrieve various items to show DR, and/or certificates, Lynn engaged in small talk with him. DR told her that he has three daughters all studying in the Convent of the Holy Infant Jesus in Toa Payoh where they lived and that DR used to own a pub. DR also said that apart from looking for diamonds, precious stones and jewellery for investment purposes, he was also looking for jewellery for his wife.

40 Thomas described DR as very friendly and enthusiastic, jovial and easy to talk to. Lynn was very impressed with DR. She thought that he was a capable and successful lawyer who owned his own law firm and was a loving husband and doting father. Lynn found DR to be easy to talk to and witty. Maeco found him charming and witty.

41 DR kept asking Thomas to show him more diamonds and jewellery. DR would discuss some pieces with his friend quietly.

42 At about 8pm, when the shop was about to close, DR said he was still interested in looking at more diamonds and jewellery. Thomas said that with more time, he could source for better quality pieces and would even do a presentation to DR at his office or home. DR was happy with the suggestion and said he would call the next day.

43 Ho had not met DR or his friend on 30 May 2006 but Thomas briefed him about DR's interest in looking for good quality stones. They looked through their suppliers' stock listings and made calls to

suppliers to source for more diamonds and jewellery.

31 May 2006 (Wednesday)

44 By 31 May 2006, DeFred had compiled seven or eight certificates of choice diamonds which had been faxed by overseas suppliers. They were for high grade diamonds, the largest being 10.89 carats and the second largest 10.7 carats. Thomas also chose two stones – a ruby and a yellow diamond and a duplicate certificate for a sapphire which a supplier already had in stock in Singapore.

45 Later that morning, DR called Thomas and requested him to make another presentation at the Law Firm at 43 Carpenter Street at 2.30pm. Thomas agreed and asked Lynn to join him.

46 When Thomas and Lynn arrived at the office of the Law Firm, they were impressed. The office occupied an entire floor of the building. They were led into a large conference room and later DR's own room which had an attached guest room with a sofa set. Thomas noticed a lot of files and thought that DR had a flourishing business.

47 Thomas recalled that he made the presentation in DR's room. DR was not interested in the ruby (which was heat-treated) but expressed interest in the yellow diamond and the sapphire (of which Thomas had a certificate only). DR was also interested in the 10.89 and 10.7 carat diamonds (of which Thomas also only had certificates). DR bargained on prices and repeatedly said he would not buy if he did not get a good price. At one point, DR also took out a copy of a Rapaport diamond report to demonstrate that he was a serious buyer with in-depth knowledge. Such a report is available only on subscription and, according to Thomas, is the primary source of diamond price information. Usually only serious buyers or major retailers of diamonds would have access to such reports. DeFred itself obtained copies of such reports from its suppliers.

48 Eventually, DR selected 12 items of diamonds and jewellery and made photocopies of the certificates of diamonds he was interested in. Some of the items he selected had been shown to him the day before at the showroom.

49 I set out below a table prepared by Thomas showing the diamonds and jewellery which DR selected that day (on 31 May 2006) as well as on the next day (1 June 2006) and the basis of selection, for example, whether based on an examination of the item itself or certificate or both.

S/N	Item	Date seen/ location	Date selected/ location	Basis of selection	Date delivered/ location
1	Fancy Yellow Diamond 10.89 ct (Item 22: 3AB 881 to 885)	31 May 2006 during presentation at DR's office	31 May 2006 at DR's office	Certificate (copy)	2 June 2006 at Trellis Tower
2	Fancy Yellow Diamond 10.70 ct (Item 23: 3AB 886 to 890)	31 May 2006 during presentation at DR's office	31 May 2006 at DR's office	Certificate (copy)	2 June 2006 at Trellis Tower

3	Fancy Yellow Diamond 3.63 ct (Item 24: 3AB 891 to 896)	31 May 2006 during presentation at DR's office	31 May 2006 at DR's office	Certificate and physical stock	2 June 2006 at Trellis Tower
4	Round Brilliant Diamond 5.05 ct (Item 25: 3AB 897 to 901)	31 May 2006 during presentation at DR's office	31 May 2006 at DR's office	Certificate (copy)	2 June 2006 at Trellis Tower
5	Round Brilliant Diamond 3.50 ct (Item 26: 3AB 902 to 906)	31 May 2006 during presentation at DR's office	31 May 2006 at DR's office	Certificate (copy)	2 June 2006 at Trellis Tower
6	Round Brilliant Diamond 2.12 ct (Item 27: 3AB 907 to 911)	31 May 2006 during presentation at DR's office	31 May 2006 at DR's office	Certificate (copy)	2 June 2006 at Trellis Tower
7	Blue Sapphire 16.26 ct (Item 3: 3AB 678 to 682)	30 May 2006 at DeFred's showroom 31 May 2006 during presentation at DR's office	31 May 2006 at DR's office	Certificate (copy)	1 June 2006 at Mandarin Hotel coffee lounge
8	Fancy Yellow Diamond Ring 5.17 ct (Item 1: 3AB 643 to 661)	30 May 2006 at DeFred's showroom	31 May 2006 at DR's office	Certificate and physical stock	1 June 2006 at Mandarin Hotel coffee lounge
9	Oval Diamond Ring 5.02 ct (Item 2: 3AB 662 to 667)	30 May 2006 at DeFred's showroom	31 May 2006 at DR's office	Certificate and physical stock	1 June 2006 at Mandarin Hotel coffee lounge
10	Diamond & Emerald Ring (EDR7214) (Item 5: 3AB 689 to 693)	30 May 2006 at DeFred's showroom	31 May 2006 at DR's office	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
11	Diamond Earrings (DE206/036) (Item 6: 3AB 694 to 724)	30 May 2006 at DeFred's showroom	31 May 2006 at DR's office	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge

12	Pearl Earrings (SSPDE205/001) (Item 7: 3AB 725 to 732)	30 May 2006 at DeFred's showroom	31 May 2006 at DR's office	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
13	Blue Sapphire 25.16 ct (Item 4: 3AB 683 to 688)	1 June 2006 at Mandarin Hotel coffee lounge	1 June 2006 at Mandarin Hotel coffee lounge	Physical stock and certificate	1 June 2006 at Mandarin Hotel coffee lounge
14	Diamond Ring (DR206/019) (Item 8: 3AB 733 to 748)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
15	Diamond Pendant (DP205/068) (Item 9: 3AB 749 to 757)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
16	Diamond Earrings (DE204/075) (Item 10: 3AB 758 to 771)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
17	Diamond Earrings (DE204/100) (Item 11: 3AB 772 to 786)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
18	Diamond Earrings (DE206/042) (Item 12: 3AB 787 to 800)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
19	Diamond Earrings (DE206/043) (Item 13: 3AB 801 to 816)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
20	Diamond Ruby & Pink Sapphire Ring (RDR203/001) (Item 14: 3AB 817 to 820)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge

21	Diamond Sapphire Ring (FDR206/037) (Item 15: 3AB 821 to 831)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
22	Diamond Earrings (DE205/064) (Item 16: 3AB 832 to 849)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	2 Certificates and Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
23	Diamond Earrings (DE8300) (Item 17: 3AB 850 to 854)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
24	Diamond Bracelet (DBG204/007) (Item 18: 3AB 855 to 862)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
25	Pearl Diamond Earrings (SSPDE205/009) (Item 19: 3AB 863 to 871)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
26	Pearl Diamond Earrings (BSSPE9572) (Item 20: 3AB 872 to 873)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge
27	Pearl Diamond Brooch SSPDB0205/005 (Item 21: 3AB 874 to 880)	1 June 2006 at DeFred's showroom	1 June 2006 at DeFred's showroom	Physical stock	1 June 2006 at Mandarin Hotel coffee lounge

50 Thomas offered to sell the 12 items (*ie*, items 1 to 12 in the table) for a package price of $1,618,000, saying that that was the lowest price.

51 Thomas and DR discussed how payment could be effected. Thomas said the funds could be transferred electronically to DeFred's bank account and he provided DR with the particulars thereof. In the meantime, DR asked when the items could be delivered to him as he was leaving with his family for a three-week holiday in Bangkok. DR therefore wanted the items to be delivered to him on 2 June 2006 between 2 to 4pm. Thomas informed him that the items would be released upon receipt of payment and DR said he would transfer the funds in the morning of 1 June 2006, *ie*, the next day.

52 During the presentation on 31 May 2006, DR also continued to make small talk with Lynn. He told her how he had made a $2 million profit from the purchase and sale of a penthouse in Costa Rhu and that he had a two-bedroom apartment at the same development. Apart from investing in

diamonds and precious stones, he also said he invested in gold and showed Lynn a certificate of his gold bullion investment.

53 Thomas briefly informed Ho of what had transpired during the second presentation (on 31 May 2006) when Thomas returned to the office.

1 June 2006 (Thursday)

54 On 1 June 2006, DR contacted Thomas while Thomas was on his way to his office at about 10am. DR told Thomas that he had transferred $1,818,000 to DeFred's account. This was $200,000 more than the $1,618,000 discussed the day before as DR said he wanted to come down to the showroom in the afternoon to select some jewellery pieces as gifts.

55 Thomas informed Ho accordingly and Ho went to the branch where DeFred's account was maintained to inquire if the funds had been credited. The bank manager informed Ho that the funds had not been received yet but would monitor the account and keep Ho informed.

56 In the meantime, when Thomas reached his office, he instructed Lynn to select jewellery pieces for DR's consideration that would amount to at least $200,000 since DR was prepared to spend an additional $200,000.

57 At about 12.30pm, DR arrived at the showroom. He asked Thomas whether DeFred had received the funds and held up a telegraphic transfer slip ("the TT slip") and said words to suggest that the funds had already been transferred earlier that day. However, DR did not hand the TT slip to Thomas or Lynn. In any event, Thomas informed DR that he had not received confirmation from Ho that the funds had been received and he would call DR as soon as such confirmation was received.

58 In the meantime, DR continued to select other items and eventually chose another 14 pieces (which are set out in the table mentioned above). Again, there was negotiation on the prices and eventually, Thomas and DR agreed to $1,780,350 for all the 26 items selected, *ie*, the 12 selected on 31 May 2006 at DR's office (although some had been seen the day before in the showroom on 30 May 2006) and the 14 selected on 1 June 2006 (during DR's second visit to the showroom). This meant that DR was entitled to a refund of $37,650 if the $1,818,000 transfer from him was confirmed.

59 DR then asked if delivery of some of the items he had selected could be made the same night. Thomas agreed provided there was confirmation that the $1,818,000 was received. No time for delivery was arranged since that confirmation had not yet been received then. DR told Thomas to call him when the funds had been credited into DeFred's account.

60 After DR left, Thomas was busy taking delivery of some stones from suppliers and checking and packing some items to be delivered that night, in anticipation that there would be confirmation that the funds had been received. Thomas asked Maeco to prepare a delivery order dated 1 June 2006 ("the 1st DO") for the items that would be delivered that night. Thomas also asked Maeco to include a pearl necklace JDP67 worth about $40,000 as he was hoping to persuade DR to purchase the same so that there would be no need to refund DR the $37,650.

61 In the meantime, Ho had managed to source a blue sapphire from a supplier. He considered it to be a rare stone because of its vivid blue colour and it was an untreated stone. Ho then instructed Thomas to ask DR if he would be interested in buying the blue sapphire. Ho suggested the price to be at least $270,000 as the supplier had indicated that the price (to DeFred) would be about $210,000.

62 At about 2.30pm of 1 June 2006, Ho informed Thomas that the expected funds from DR had been credited into DeFred's account (as Ho had received the confirmation from the bank manager). Thomas then informed DR accordingly and that he could make delivery of the items which were available for delivery.

63 Thomas also told DR about the vivid blue sapphire which was of 25.16 carats. Thomas suggested a price of $290,000 as a buffer to allow for some bargaining by DR. DR asked him how he was to pay for it if he was interested in it and Thomas suggested that DR could issue a cash cheque if DR wanted to take delivery of the blue sapphire before leaving for his trip to Bangkok. Thomas suggested a cash cheque as he believed it could be encashed almost immediately. DR then arranged to meet Thomas at a coffee lounge on the second floor of the Mandarin Hotel at Orchard Road at about 7.30pm.

Night of 1 June 2006 (Thursday)

64 Thomas arrived at the designated venue with Lynn and Maeco at about 7.45pm. They had brought 20 of the 26 items purchased and the vivid blue sapphire and the pearl necklace JDP67.

65 DR did not want the pearl necklace JDP67. This item was therefore deleted from the 1st DO as it had been included therein. Some minor corrections were also made to the 1st DO.

66 Thomas also showed DR the vivid blue sapphire. DR asked if it was a good investment and Thomas said it was because of its vivid blue colour and it was an untreated sapphire. DR said he trusted Thomas but wanted a lower price. They finally agreed at $270,000 for the blue sapphire. Again, Thomas told DR that if he wanted to take delivery of the vivid blue sapphire that night, he could make payment by way of a cash cheque. Thomas said he was comfortable in making such a suggestion because six of the 26 items earlier purchased by DR had not yet been delivered to DR and they were worth more than the price of the vivid blue sapphire.

67 DR then issued a cash cheque for $270,000 ("the Cash Cheque") and handed it to Thomas. Thomas said he did not notice anything unusual about the Cash Cheque and kept it in a pocket of his jacket. However, neither Lynn nor Maeco saw what was written on the Cash Cheque.

68 After DR checked the 20 items and the blue sapphire, he signed on the last page of the 1st DO to acknowledge receipt of the items. He then asked when he could receive the remaining six items. Thomas said they would be delivered by 3pm the next day.

69 Thomas returned to his office at about 9pm. Ho had already left for the day and the Cash Cheque was kept in the showroom safe.

2 June 2006 (Friday)

70 Thomas had informed Ho about the Cash Cheque. On 2 June 2006, Ho arranged for Thomas to hand the Cash Cheque to him as he drove through the driveway of Hyatt Hotel and he (Ho) then brought it to the relevant bank ("Maybank") and encashed it.

71 At about 3pm that day, Thomas called DR to inform him that the remaining six items were ready for delivery. DR requested that Thomas meet him at his residence at Trellis Towers, Toa Payoh, to deliver the same.

72 At about 4pm, Thomas and Lynn arrived at Trellis Towers. They saw DR at the driveway with

the boot of his car opened. DR said he was waiting for his sister-in-law to come down. DR suggested that they hand over the remaining items then and Thomas suggested that this be done inside the car. DR agreed. He and Thomas got into the rear seat while Lynn got into the front passenger seat. The six remaining items were delivered by Thomas to DR and DR signed a list of these six items ("the 2nd DO") to acknowledge receipt of the same. Cash of $37,650 was also returned to him there. DR was also given two tax invoices no 83080 and 83081 for the 26 items and for the vivid blue sapphire respectively. A pair of diamond cufflinks was also handed to DR as a gift for his patronage. DR continued to be friendly and said that he would visit the showroom again when he returned from Bangkok. Lynn and Thomas then left. They did not see DR again.

Submissions for the Plaintiffs

73 Mr Elias submitted that the entire circumstances surrounding the sale, purchase and delivery of the items to DR and the documentation or, the lack thereof, demonstrated that DeFred staff had wilfully and recklessly failed to make inquiries as honest and reasonable persons would have. He also submitted that DR was prepared to spend large sums of money indiscriminately and hastily and DeFred's staff had knowingly and willingly assisted DR in his breach of trust in misusing part of the Plaintiffs' Money.

74 Mr Elias also submitted that Ho should be personally liable as he was and is the directing mind and will of DeFred and because of the role he played in the entire transaction. I will deal with the question of Ho's personal liability later.

75 I will now summarise the litany of allegations against DeFred as found in the very lengthy submissions of Mr Elias.

The personal attributes of DR

76 Mr Elias stressed that DR was a first time walk-in customer of DeFred who was barely known to DeFred's staff. Yet, over four days, DR bought items totalling $2.088 million and the two payments of $1,818,000 and $270,000 were actually made on the one and same day, *ie*, 1 June 2006.

77 He submitted that the facts that a "total stranger" would buy so much in just a few days, especially for DeFred whose annual turnover for the past ten years was in the region of $3 million to $4 million ought to have raised questions in the minds of DeFred's staff.

78 DR's earlier attitude was not the usual behaviour of a reasonable and serious customer. Instead, he was singing and dancing on the first day, *ie*, 30 May 2006.

79 Furthermore, DR was only one of the partners (before he became a sole proprietor) in a small law firm. He was not particularly well known as a lawyer and the case in which he represented Sherman was only an assault case and did not have the stature and reputation of a customer who would walk in and spend about $2 million.

80 The office of the Law Firm was in fact a modest one located in a small building in Carpenter Street. According to the second plaintiff, it was an unimpressive office. DR had also informed Thomas and Lynn that he was staying in a condominium in Toa Payoh which was not a prime residential area and DR's car was an inexpensive Japanese make instead of an expensive luxury car of a European make.

81 DeFred's staff ought to have known that DR was not in the same league as some of their other

customers like the royalty they claimed to have served.

DR's lack of experience in loose stones and jewellery

82 Mr Elias emphasized that because DR did not explicitly mention the kind of clarity he wanted for his intended investment in diamonds, this was an obvious indicator of his inexperience and DeFred's staff must have realised this from the outset. DR also did not examine the items he was shown with a loupe.

83 Secondly, there was no evidence that DR had shopped around other wholesalers and retailers before making such large purchases. On this point, Mr Elias relied on the evidence of Itzhak Davidov ("Davidov"), the Plaintiffs' expert, who said that one would be more likely to get a better discount from a wholesaler rather than a retailer.

84 Thirdly, Mr Elias suggested that it was "most unusual and commercially illogical" for an experienced investor to make such large purchases from a retailer located in an expensive shopping district in Singapore. Yet, Davidov also said that at times, customers come to an expensive area to see more jewellery and more diamonds and it was not necessary for the price to be very high (NE 28 June 2007 p 93 to 94).

85 Fourthly, Mr Elias submitted that DR's reference to a Rapaport report should have shown that DR was an inexperienced investor rather than the other way round. A Rapaport report is issued on a weekly basis, has different editions for round white diamonds but is not applicable for coloured diamonds. When DR flashed the Rapaport report on 31 May 2006, neither Thomas nor Lynn took the trouble to check whether it was the latest edition on the one for round white diamonds which DR was interested in. Furthermore, a Rapaport report would be applicable to only three out of the total of 27 items purchased. More importantly, there are important comments in a standard Rapaport report stating that the price list in such a report represents high cash asking prices. The list does not give the last price for any diamond in a particular category but it does give the first price from which many in the trade begin negotiations. It is not uncommon for interdealer transactions to trade in the 20 percent to 35 percent discount range. The discounts vary greatly and are influenced by various factors such as the stone's quality, market, liquidity and the terms of sale. In Davidov's evidence, a wholesaler will always get a discount on Rapaport.

86 Yet, DR paid prices for three white round diamonds higher than that listed in the Rapaport report relevant at the material time:

(a) a 5.05 carat round brilliant diamond – Rapaport + 20%;

(b) a 3.5 carat round brilliant diamond – Rapaport + 15%;

(c) a 2.12 carat round brilliant diamond – Rapaport + 10%.

87 Mr Elias stressed that the fact that DR was prepared to pay more than Rapaport must have demonstrated to Thomas that DR was not the experienced investor he portrayed himself to be and Thomas was taking advantage of the situation to help DR convert money into loose stones or jewellery in the shortest time possible.

88 Fifthly, DR had deviated from his initial intention to invest in round brilliant diamonds by also selecting sapphires and set jewellery (see the table prepared by Thomas).Only three of the 27 items purchased were in conformity with his initial specifications and these three amounted to $540,000

only, about 25% of the total purchase price of more than $2 million. According to the evidence of Davidov, it would raise a big question mark to him if a customer was looking for large diamonds and ended up seeing other stones and jewellery.

89 Sixthly, the presentation at the office of the Law Firm was really a paper presentation based on certificates as only two stones, a 3.63 carat yellow diamond and a ruby were brought along. It was submitted that Thomas did not bring along other items which DR had expressed interest in in the showroom the day before because Thomas had already gauged, seen and understood that DR's motive was to buy quickly with minimum evaluation of the items.

90 Seventhly, the fact that Thomas had brought two more items, *ie*, the vivid blue sapphire and the pearl necklace JDP67 on the night of 1 June 2006 to show DR, which DR had not seen before, illustrated that Thomas was trying to sell anything to DR because he knew that DR was not the investor he claimed to be.

Manner of selection by DR

91 Mr Elias submitted that Davidov's evidence was that experienced retail purchasers would purchase solely on certificates only if the stone was less than three carats. Furthermore, the certificates should be internationally recognised.

92 Yet, DR had bought a cornflower blue sapphire of 16.26 carats and a fancy yellow diamond ring of 5.17 carats (items 7 and 8 of the table) which were not supported by certificates which are internationally recognised.

93 A certificate of the cornflower blue sapphire (AB 678) was first shown to DR on 30 May 2006 at the showroom. However, it was a certificate issued by GRS GemResearch Swisslab ("GRS"). Davidov's evidence was that for precious stones (other than diamonds), the most internationally acceptable certificate was one issued by Gubelin, not GRS. He had never even heard of GRS and his inquiries with retailers in the trade revealed likewise.

94 As for the fancy yellow diamond ring, the physical ring was examined on 30 May 2006 at the showroom. It was supported by a certificate issued by Nan Yang Gemological Institute ("NYGI") which was a local certificate only. Davidov also criticised the NYGI certificate as it referred to the weight of the diamond as "Approx. 5.17 cts". To him, an international certificate would not give an approximate weight even though the diamond was already mounted on the ring. The NYGI certificate was therefore not particularly valuable to Davidov.

95 Accordingly, Mr Elias submitted that because DR was prepared to accept certificates from GRS and NYGI, Thomas must have known that DR was in a hurry to spend large amounts of money indiscriminately and Thomas should have queried DR's behaviour.

96 Mr Elias also submitted that a serious investor would not buy loose stones by looking only at certificates and, in the present case, some of the certificates presented to DR (before he agreed to buy) were not originals. Yet, he bought many stones based on copies of certificates alone. Furthermore, DR had agreed on 31 May 2006 to buy five items (see items 8 to 12 of the Table) based on his memory alone as he had seen them the day before and not again on 31 May 2006.

97 Mr Elias submitted that the manner in which DR went about in the showroom to select items on 1 June 2006 was haphazard and random.

Venues of delivery – out of the norm

98 Mr Elias criticised the venues of the deliveries. The first venue was in full public view in a coffee lounge at the Mandarin Hotel. There was no security to safeguard the delivery of approximately $1 million worth of items.

99 Secondly, the lighting at the coffee lounge was far from ideal for a proper examination of the items because of its dim lighting.

100 As for the delivery at the second venue, which was the backseat of DR's car in the driveway at Trellis Towers, Mr Elias criticised the evolving evidence of DeFred's staff because, initially, they had suggested that the second venue was DR's home or outside his home, then at a carpark and then inside DR's car at the driveway. He submitted that the shift in such evidence was an attempt to cover up the deficiencies in the second delivery. He submitted that neither the driveway nor the backseat of DR's car was a conducive place to examine six loose diamonds worth almost $1 million or a safe place for delivery to be effected.

101 Accordingly, Mr Elias submitted that DeFred's staff knew that DR was not interested in examining the items at the Mandarin lounge or in his car at all and that in fact there was no proper examination by DR of the items delivered at either venue.

102 Indeed, he stressed that when DR was initially prepared to receive the second delivery while standing by the boot of his car, alarm bells should have been blaring and DeFred should have put an immediate end to the surreptitious transactions.

Inadequate and improper documentation – tax invoices, delivery orders, no receipts

103 Mr Elias submitted that there was a lack of proper documentation. There was some inconsistency in that certificate numbers were stated for some but not for all of the items in the 1st DO, for example, not for the pair of diamond earrings at AB 57.

104 The 1st DO had numerous typographical errors and cancellations.

105 In the tax invoice no 83080, only nine items were individually listed while seventeen others were simply described as "17 pcs Jewellery".

106 The price of each item, whether for the nine or the 17 items, was not listed out individually. Without such individual prices, DR would not be able to recall how much he had paid for each. Yet, DeFred prepared such an invoice because they knew that DR was prepared to spend large amounts of money indiscriminately and it would not matter to him that he would receive incomplete and inaccurate documentation.

107 Another submission from Mr Elias was that DeFred did not issue a receipt for the payments received from DR. The DOs and the tax invoices were not receipts. He submitted that Thomas could effect the sale without proper sales documentation because Thomas knew that DR did not care how much he was paying.

Payment/no set-off/cash refund

108 Mr Elias submitted that it was most unusual for a purchaser to transfer an additional $200,000 over the agreed price especially when there was no prior indication from DR that he wanted to

purchase more items. Furthermore, DR could have paid for additional items after he had selected them. He submitted that as DR was eager to pay an additional $200,000 before he had viewed additional items, this was a tell-tale sign that must have sounded alarm bells. It must have been obvious to DeFred that DR was on a mission to exchange cash for loose stones/jewellery in double-quick time.

109 He also submitted that when DR issued the Cash Cheque for $270000 for the vivid blue sapphire, there was actually a refund of $37,650 due to DR. It would have been a simple matter for DR to issue a cheque for the net sum of $232,350, yet, neither he nor Thomas discussed this. This was another illustration of unusual conduct on DR's part as he was not eager to ask for payment due to him.

Urgency

110 Mr Elias stressed that the entire transaction was completed over a short space of four days.

111 Secondly, DR obviously wanted to complete his purchases quickly as he was prepared to transfer the additional $200,000 to meet any future purchases. He was not even prepared to wait till he had selected the additional items to be purchased before making the additional payment.

112 Thirdly, DR was even prepared to come down during lunch time on a normal working day on 1 June 2006 to select the additional items in what Mr Elias described as a random and haphazard selection when he could have waited till the evening or ask for another presentation the next day at his office.

113 Although Mr Elias accepted that perhaps there was some urgency because DR had said that he was going to fly to Bangkok, he pointed out that Thomas himself denied there was any urgency during cross-examination even though his AEIC suggested that he acknowledged there was urgency on DR's part.

114 Mr Elias also submitted that DeFred was eager to sell and complete the sales quickly. Their hasty contact of suppliers to source for more items for DR was a clear indication that they knew of DR's desire to spend large sums of money indiscriminately and quickly.

115 He also stressed that the loose stones like the two sapphires and five diamonds were sold to DR even before DeFred's suppliers had finalised the costs thereof to DeFred although oral indications of the cost prices had been given to Ho before. Such was the eagerness with which DeFred wanted to assist DR to convert the money into as many loose stones or jewellery in the shortest time possible.

Motivation of DeFred in closing their eyes to the tell-tale signs

116 Mr Elias submitted that there were various reasons why DeFred had closed their eyes to tell-tale signs. First, DeFred had been making losses for the six years from 1999 to 2004. Even in their best years in 1994 to 1996, each year's profit ranged from $261,100 to $384,594. The profit of $310,675.77 as computed by Ho, from the transaction with DR was on par with an entire year's profit even in the good years. Therefore, although DeFred saw the tell-tale signs, they chose to assist DR in converting cash into loose stones and jewellery in view of their loss-making business.

117 Secondly, Thomas, Lynn and Maeco would be earning commissions and hence would be eager, even over-zealous, to make and complete sales to DR. They closed a blind eye to assist DR in his conversion exercise.

118 Thirdly, a number of items sold to DR were grossly overpriced. I have already mentioned the three loose diamonds (see [86] above).

119 Davidov had estimated the cost of the cornflower blue sapphire to DeFred to be $40,000 and not $185,000 as alleged by DeFred and the cost of the vivid blue sapphire to be $80,000 and not $157,500 as alleged by DeFred. Even if these items had been supported by Gubelin certificates, Davidov would double the costs which would still make the alleged cost price of the cornflower blue sapphire to DeFred excessive. Ultimately, DR had paid much too high prices to DeFred.

120 DeFred had also sold old stock of a pair of diamond earrings and of a diamond and emerald ring (items 23 and 10 respectively of the table) and of a 3.63 carat fancy yellow diamond (item 3 of the table) at grossly inflated prices to DR.

121 He also submitted that the prices in the price tags of other items had substantial margins of between two to three times the cost price whereas Davidov's evidence was that a reasonable mark-up would be between 30% to 50% from the cost price.

122 DeFred knew that DR was on a path to spend large sums of money indiscriminately and as soon as possible and they chose to co-operate with DR by inflating their own prices to assist DR to convert the cash quickly.

123 Mr Elias also disagreed with the evidence for DeFred that diamond prices were on a rising trend at the time when DR's purchases were made and he submitted that the jewellery pieces had less investment value than loose stones. Again, it was submitted that Thomas knew he could sell DR anything without regard to its investment value because DR was on a spending spree.

Client's accounts

124 I will now elaborate on the evidence in respect of the TT slip and the Cash Cheque and Mr Elias' submissions thereon.

125 As mentioned, it was not disputed that in the morning of 1 June 2006, DR came into the showroom holding the TT slip. There were many details on the TT slip such as the name of the beneficiary, its account number and bank and the amount of $1,818,000.

126 A current account number (presumably of the Law Firm's client's account) was stamped on the TT slip. So was the name of the Law Firm and its address and telephone and fax numbers.

127 There was a smaller stamp on the TT slip referring to "DAVID RASIF & PARTNERS – CLIENT'S ACCOUNTS". Thomas said he could see that the TT slip was a blue slip but nothing else. Lynn said she could see the numbers "1,818" on the TT slip as she was standing closer to DR (about a metre away). DR had pointed to the figure (on the TT slip) and said it was a nice number. Mr Elias submitted that, contrary to their denials, both Thomas and Lynn in fact saw the stamp with the name of the Law Firm (with its address and other particulars) as well as the smaller stamp with the words referring to the Law Firm's client's accounts. I will come back to this point later.

128 As for the Cash Cheque, the name of the Law Firm was printed on it. In addition, there was a stamp "DAVID RASIF & PARTNERS – CLIENT'S ACCOUNTS" on that cheque in slightly larger letters than the printed name of the Law Firm.

129 According to Thomas, he had only checked the sum $270,000 as written in figures on the Cash

Cheque but not the same sum in words. He did not ensure that the sum in words matched the sum in figures. He had also checked that it was a cash cheque and noticed the date of the cheque which was 2 June 2006 even though the cheque was signed and handed to him on 1 June 2006 at the Mandarin lounge. He did not read the printed name of the Law Firm or the stamped reference to the Law Firm's client's accounts. However, even if he had noticed the reference to the Law Firm's client's accounts on the cheque, he would still have thought it was DR's account.

130 Ho, who had collected the Cash Cheque from Thomas the next day to encash it, said that he looked at the cheque only when he was at the counter of Maybank to encash it. He saw the date on the cheque and the sum in figures but not in words. Like Thomas, he did not see the printed name of the Law Firm or the stamped reference to the Law Firm's client's accounts.

131 Ho elaborated that, in any event, he would not have been able to read "RASIF" or "CLIENT'S" or "ACCOUNTS" although he understood what "Accounts" meant if he was told what the word said. He also initially claimed that he did not know what "client" in English meant but he knew what "customer" meant. However, in response to my questions, he accepted that before this action was filed, he understood the meaning of the English words "customer" and "client".

132 As for Lynn, she said that at the material time, she did not understand what the term "client's accounts" meant although Maeco said the words meant an account owned by the customer. However, as mentioned above, neither Lynn nor Maeco saw what was written on the Cash Cheque which was handed by DR to Thomas.

133 Mr Elias submitted that Thomas and Ho were not telling the truth because they knew the significance of the reference to the printed name of the Law Firm and to the stamped reference to the Law Firm's client's accounts. Each must have read these words and understood what the term "client's accounts" meant because each must have understood what a "client" and an "account" meant individually. Hence, they must have understood what the two words combined together meant.

134 Thomas was fluent in English and although Ho said his standard of English was poor, Mr Elias submitted that Ho had an adequate command of English. In fact, Ho had attended a gem trade laboratory course in New York for six months although he claimed that he did not understand most of the course. He claimed that he gave up after six months because he was not able to catch up with his studies there.

135 Mr Elias also submitted that Ho had engaged other law firms for other transactions before and must have been familiar with the term "client's accounts" as he had paid money to be held on his behalf by his lawyers. Indeed, he had engaged in real property transactions in Singapore, Malaysia and Hong Kong before but Ho said he did not pay attention to what the receipts from the lawyers stated. Ho also accepted that when he gave money to his lawyers for purchase of a property, the money belonged to him and not to the lawyers who could not use that money to go and buy jewellery, cars or anything else but must hold it only for his transactions.

136 Accordingly, Mr Elias submitted that DeFred (and Ho) knew that DR was using clients' monies in breach of trust to pay for the items he was purchasing. Despite this, they actively co-operated and assisted DR.

137 Mr Elias' submissions went further. He submitted (at [441] of his closing submissions) that the mere fact that money was coming from a law firm's account, let alone a law firm's client's account, to buy personal items for DR himself or gifts from him should have aroused suspicion.

Credibility

138 On the general issue of credibility, Mr Elias submitted that Ho had given several versions as to how he had eventually agreed with one Eric of A. A. Rachminov (the supplier of the loose diamonds sold to DR) on the price of five loose diamonds and how DeFred had paid for them. Likewise, there were different versions as to who Ho had sourced the cornflower blue sapphire from and how he made payment for it. There was also different evidence from Ho and Thomas as to how they eventually came to find a copy of a certificate for this sapphire.

139 Mr Elias also submitted that initially before the trial, there was hardly any suggestion that DR had examined the items during the first delivery on 1 June 2006 but, in cross-examination, Thomas suggested a more detailed presentation and also examination of the sapphires during the first delivery. A similar criticism was made of Thomas' evidence for the second delivery on 2 June 2006.

140 There was also an inconsistency in Ho's evidence as to whether and how he had examined certain loose diamonds which evidence was not mentioned in Ho's affidavit in respect of the Plaintiffs' application for a Mareva injunction against DeFred and/or Ho.

141 Mr Elias submitted also that DeFred's initial allegation was that DR was looking to buy items for investment but this had changed to include the selection of items for gifts.

The court's findings

142 In this section, I will include references to submissions for either side.

143 As Mr Kumar submitted, much of what Mr Elias relied on as constituting suspicious circumstances which ought to have raised red flags to DeFred was not pleaded (although raised during the trial). Although it is true that only material facts and not evidence need be pleaded, many material facts were not pleaded. Also, it was one thing to plead a fact, for example, that the first delivery took place at the Mandarin lounge. However, the Plaintiffs would also have to plead why that ought to have raised a red flag. On the other hand, much of what Mr Kumar was raising in his submissions on the state of the Plaintiffs' pleadings, was not raised during the trial. For completeness, I will address Mr Elias' submissions as though the reasons for suspicion were all pleaded.

144 First, it is useful to bear in mind that it is always easier to criticize with the benefit of hind-sight and to focus only from a view favourable to one side to bolster that side's position.

145 Mr Elias reiterated many times how there were many warning signs to DeFred but Mr Kumar in turn submitted in [85] to [94] of his closing submissions how the first plaintiff himself did not suspect any dishonesty on DR's part despite many warning signs in respect of the delay in completion of the purchase of the Property. It is unnecessary for me to set out the warning signs which could or should have led the Plaintiffs to suspect some dishonesty on DR's part since Mr Kumar was not relying on contributory negligence on the part of the Plaintiffs but I am of the view that the point was well-made that it is easier to suggest, with the benefit of hindsight, a plethora of warning signs when something has in fact gone wrong eventually. I do not accept Mr Elias' submissions that DeFred should have done more research on DR or, in any event, realised that he was not the well-known lawyer they said they believed him to be.

146 From Lynn's and Maeco's point of view, they knew DR as a lawyer from a previous case when he had acted for Sherman. I am satisfied that they and Thomas looked upon lawyers as trustworthy persons, notwithstanding previous reports of incidents of lawyers' misconduct with clients' money. I

am also satisfied that an honest retailer would regard a lawyer as a trustworthy person. Furthermore, all three staff had a favourable impression of DR. When he appeared in the showroom on 30 May 2006, he was behaving in a charming and relaxed manner, obviously to win the confidence of DeFred's staff (see [39 and [40]). I think it is unfair for Mr Elias to suggest that DR was behaving like a clown. As DR was attempting to win the confidence of DeFred's staff, he was also telling stories about himself on that day (and also on 31 May 2006 again).

147 I accept that when Thomas and Lynn went to the office of the Law Firm on 31 May 2006, they were further impressed. They already knew that DR was not an employee and had his own law firm. The Law Firm was using his own name. They saw that his office occupied the entire floor of the building with the other features I have already mentioned, see [46] above. The fact that he said he was staying in Toa Payoh only meant he was not in the same league as the royalty which DeFred also serviced but that was no reason for them to be suspicious of him. Also, Thomas and Lynn saw DR's less expensive Japanese car only on 2 June 2006 when DR had already made and paid for substantial purchases. The car was not sufficient reason for them to become suspicious of him.

148 Although there is concern generally about money-laundering, Mr Kumar submitted that, at present, it is only the financial institutions, and not retailers, who are subject to anti-money laundering and counter terrorism financing legislation. Customers of such institutions know and expect to be questioned about their background and financial status. Not so for retailers.

149 In [121] to [123] of Mr Kumar's closing submissions, he added and I quote:

> 121. In support of the application for a Mareva Injuction [*sic*] against the Defendants, the Plaintiffs filed various affidavits. In the 1st Plaintiff's affidavit filed on 7 July 2006, the Plaintiffs exhibited an article entitled "*Don't Let Money Launderers Hang You Out to Dry* ("**Article**") – see **Plaintiffs' Bundle of Documents Vol I page 225 to 228**, which referred to the USA PATRIOT ACT's Anti-Money Laundering Regulations issued on 3 June 2005. It is clear from the Article that the USA PATRIOT ACT, for the first time, introduced anti-money laundering rules in the US for those in the jewellery trade. Where jewellers are concerned, the Article states:
>
> > *"Reasonable steps… **This is not a banking industry or other money handling industries**. All we ask is that people do the necessary due diligence that reduces risk…*
> >
> > *These steps include **knowing your suppliers and customers, and insuring that they have verifiable physical addresses, active bank accounts** and valid business licenses (for dealers)."*
> >
> > [emphasis in original]
>
> 122 These rules do not apply to Singapore or the Defendants. However, we draw the Court's attention to the Article which illustrated a typical money laundering situation which jewellers should be wary of:
>
> > *"You're busy writing up a watch repair take-in when a well-dressed stranger enters your store.*
> >
> > *Your eyes follow him as he paces along the counters, obviously looking for something. All of your sales associates are busy with other customers, so you wind up the take-in a little quickly to tend to the newcomer.*

He mentions in a soft-spoken voice that he wants a special anniversary gift for his wife: a 4-ct diamond. You try to conceal the gasp while you tell him that you could have a lovely stone by tomorrow or the next day.

"Perhaps a 5 carat," he replies. Another gasp.

Two days later the man returns and selects the 5-carater for $112,000 without bargaining, then excuses himself to make payment arrangements with his bank. A half hour later, he returns. Could he have the diamond now if he brought cash?

Cash? You ask yourself. Who carries that much cash? Your counterfeit detector passes every bill, the man gives his name and an out-of-state address for the receipt, tucks the little purple box holding the diamond into his suit-coat pocket, shakes your hand and departs. You then excuse yourself to make a trip to the bank.

Two months later, you're sitting in a stark white room beside your lawyers. Some folks from the Treasury Department have just informed you that your "customer" had been running a money laundering operation and they want to know whether or not your were an accomplice."

123 The above illustrates how far removed the present case is on the issue of suspicious circumstances. There is a vast difference between Rasif's purchase of the Diamonds/Jewellery and the scenario painted in the Article.

Example given in Article	**Present Case**
Unknown purchaser	Well-known Singapore lawyer
Payment in Cash	Payment via TT
No bargaining	Bargained strenuously
Out-of-State Address	Known office and home address within Singapore

150 It seems to me that so long as payment is made before delivery, most honest retailers would not bother to check on the background or standing of their customer even for very large purchases. To do so might incur expense and/or delay the completion of the transaction. More importantly, it might well cause offense if the potential customer came to learn of such an inquiry. There would be even less reason to do so if there are bona fide reasons to believe the customer to be trustworthy and I accept that DeFred's staff did have such reasons.

151 As for the Plaintiffs, it was their evidence that they were introduced to the Law Firm by a housing agent. True, the Law Firm had then acted for them in two or three real property transactions before the transaction in question, but the point is that they used the Law Firm initially without doing any research on it or DR even though the second plaintiff thought that the Law Firm was a modest law firm located in an unimpressive office in a small building in Carpenter Street. True, the Plaintiffs thought that it was the practice in real property transactions to hand over the balance of the purchase price to their lawyers but it appeared that it never once crossed their minds whether they should do their own research on the Law Firm or DR even though they were going to buy a number of

properties. Unlike the Plaintiffs, DeFred was not parting with money or goods until payment was received first. Yet, it was suggested that DeFred should have done more than what the Plaintiffs themselves did (or did not do).

152 I accept the evidence of DeFred's staff that not only did they think that DR was a well-known lawyer but that he had some knowledge as an investor of diamonds. The fact that he did not specifically mention the kind of clarity he was looking for is but one small piece of evidence. It was not as though DeFred's staff believed that he did not know about the clarity of diamonds. DR had played his role well and had convinced them that he was a genuine investor. As for whether DR had initially used a loupe on 30 May 2006, this was not material to me. DR had never claimed to be an expert. Also, as the saying goes, "There are investors and there are investors". I also do not expect DeFred's staff to wonder or try to find out whether DR had been shopping around with wholesalers or other retailers. That was an unrealistic suggestion. DeFred's staff would only be too happy for any prospective customer to walk-in and look around their showroom instead of wondering why he was coming to a shop in a prime shopping district. I am of the view that it was unfair to suggest that it would be suspicious for a person to shop in an expensive area. There are many reasons why people do so, for example, they may feel that they can better trust the reputation of a shop in such an area or there will be items of a wider range and/or higher quality.

153 It is neither here nor there that DR was being shown items other than diamonds although he had initially mentioned investment in diamonds. If he was not rejecting such attempts, why should the staff not try to sell him whatever they could?

154 I am of the view that by the time DR (and his friend) walked out of the showroom on 30 May 2006, he had already won the confidence of DeFred's staff.

155 This impression was reinforced when Thomas and Lynn went to the office of the Law Firm the next day. I need not repeat their impression of the office itself but DR's reference to a Rapaport report was clearly part of his ploy to build up his image as that of a genuine and savvy customer. True, they did not ask to see if he was referring to a current edition but I do not expect them to do so. That might have been offensive to their prospect.

156 As for the submission that DR was prepared to pay prices above Rapaport levels or to accept certificates issued by GRS or NYGI, it is my view that DR chose to do so because he felt it was worthwhile to do so and not because he was spending money indiscriminately. Interestingly, in Davidov's report, he did not mention over-payment by DR as one of the main factors for suspicion. Neither did he mention in his report or oral evidence the fact that DR had paid prices above Rapaport for three loose diamonds as a reason for suspicion. That was a submission by Mr Elias. Also, even Mr Elias did not query why DeFred itself was paying Rapaport prices for some diamonds (before charging DR prices above Rapaport) when, apparently, Rapaport prices were indicative of asking prices only.

157 In oral evidence, Davidov focused more on what he perceived to be the high prices of the two sapphires. Yet much of his evidence was based on his view that a Gubelin certificate was the best and he had never heard of GRS. Yet, he admitted that he had not done an internet search of GRS which Mr Kumar produced and which seemed to indicate GRS to be an institution of some repute. Mr Kumar also referred to a catalogue by Sotheby's for Hong Kong dated 10 April 2007 which contained some items for auction which were certified by GRS. So GRS was not as unknown as Davidov was saying.

158 Furthermore, as Mr Kumar submitted, Davidov's view on the prices of the sapphires, because of

the value of the certification, was not valid because in his report, he said he had assumed that the information in the certificates was true without mentioning the value of the certification. I reiterate that in Davidov's report, he did not suggest over-payment by DR as one of the main factors for suspicion.

159 As for Davidov's evidence that a bona fide investor would not agree to buy large stones (3 carats and above) based on certificates alone, that was not the evidence of DeFred or their expert Lim Geok Khoon ("Lim"). Furthermore, no reason was given to use three carats as the dividing line.

160 It is also important to bear in mind the experience and philosophy of DeFred's staff as compared with someone like Davidov. Someone like Thomas was used to dealing with high profile customers and even members of royalty who would spend large amounts of money during a single visit. It was not unusual for his customers to purchase expensive diamonds based on certificates alone although the customers would usually eventually examine the diamonds when delivered.

161 Thomas' experience was largely corroborated by the evidence of Lim. Lim had joined Je Taime Jewellery Pte Ltd in 1994 or 1995. In 1998, he joined DeFred briefly as a sales executive and left within a year to join Mondial Rare Jewels Pte Ltd ("Mondial"). Eight years later, when Mondial was acquired by The Hour Glass Limited ("Hour Glass"), he joined Hour Glass. Lim had made presentations at customers' homes, offices or in hotels. Once, he even made a presentation at a shipyard. Where customers were tourists, he would make presentations in hotels and a sale could be made on the spot with payment by cash. Lim would also make presentations of stones with certificates or just based on certificates.

162 In any event, contrary to the picture which Mr Elias was painting, DR did not accept anything and everything which was presented to him. For example, he did not accept anything that was shown to him at the showroom on 30 May 2006 although he did express interest in some items. He did not accept the ruby which was shown to him on 31 May 2006. He did not accept everything that was shown to him at the showroom in the late morning of 1 June 2006 or the pearl necklace JDP67 shown to him at the Mandarin lounge. I do not accept that DR's selection was haphazard or random in the sense that he was as indiscriminate as Mr Elias was suggesting. Furthermore, it was not as though he was accepting whatever price that was quoted to him. He was bargaining with Thomas.

163 The fact that DR had paid $200,000 more in his first payment was explained by DR that he wanted to buy more items. It seems to me that this overpayment put DeFred's staff even more at ease and they must have welcomed the idea that DR was intending to buy more. The fact that DR came to the showroom during lunch time (on 1 June 2006) is neither here nor there.

164 Obviously, DeFred knew that DR was keen to make purchases but that is different from saying that they knew or might to have known that he was in a rush to convert money into loose stones or jewellery. Even if someone like Thomas or Ho had suspected that perhaps DR was not as savvy an investor as he was trying to portray, that is a far cry from saying that they knew or ought to have known that (a) he was spending money indiscriminately and (b) worse still, that he was spending his ill-gotten gains. I find that in the minds of the DeFred staff and Ho, DR was still considered a successful and respectable lawyer. If he was keen to spend what they believed to be his own money, they were more than happy to help him to do so. But there is nothing dishonest or unconscionable about that so as to sustain a cause of action.

165 True, there were inconsistencies in the evidence for DeFred and Ho as to how some loose stones or jewellery were sourced and the cost thereof to DeFred but, in my view, such inconsistencies were immaterial. At most, the inconsistencies might hint at some sharp practice by DeFred on DR but did

not support the Plaintiffs' claims against DeFred.

166 The evidence about how unsafe it was to deliver items at the Mandarin lounge or in the back seat of DR's car or the lack of suitable lighting to make a proper examination did not carry much more weight for the Plaintiffs. DR had already paid the money. It was for him to decide where he wanted to take delivery. Even the second delivery was not intended to be at the back seat of DR's car but at his home. It was just that Thomas and Lynn happened to meet DR at his car when they arrived at Trellis Towers. I also do not think the evolving evidence, as Mr Elias put it, on the venue of the second delivery was material because it did not help DeFred to say eventually that, actually, the second delivery was in the rear seat of DR's car, as opposed to DR's home.

167 I accept that the Mandarin lounge and the rear seat of a car are not safe places to make such deliveries or appropriate places for a careful examination of precious stones or jewellery. DR and DeFred were taking a risk from the security point of view. However, it was not unusual for Thomas to make deliveries at venues outside the showroom where security was compromised and not all DeFred's customers examined the items upon delivery. For example, Thomas mentioned an occasion when he delivered the items purchased by a customer to her when she drove up the driveway of Hyatt Hotel. As for Lim, he would be flexible as "the customer is king". He had made deliveries at a poolside, golf course and on one occasion, late at night at the gate of a customer's residence.

168 It is true that there was no discussion of the deduction of $37,500 in the Mandarin lounge but it was not as though Thomas had remembered to raise the subject and DR insisted on issuing the Cash Cheque for the full $270,000. Furthermore, as Mr Kumar submitted, the fact that there was still a refund due to DR contradicted Mr Elias' submission that DR was making purchases indiscriminately. The poor documentation, including the absence of any receipt for DR's payments, demonstrated poor administration on the part of DeFred but not knowledge or suspicion that DR was spending money indiscriminately and that he did not care about any documentation. If DeFred's staff knew or suspected that, they would not have bothered to prepare any documentation at all and would have waited for DR to ask for the same. Lim also said that when he sold items based on a package price, he would not give a breakdown of individual prices per item.

169 Lim made the significant observation in [3.42] of his report: "In any event, it is the job of jewellery retailers to sell and persuade customers to buy diamonds, whether for investment or for pleasure. We do not question or speculate on their investment strategies and/or judgment".

170 Davidov is a director of Derocks Trading Pte Ltd ("Derocks"). Derocks is a wholesaler of diamonds although it also engages in retail trade which he referred to as private sales. Its office is on the 19th floor of International Plaza, not a venue which encourages walk-in customers like DeFred's showroom in the lobby of Hyatt Hotel. Usually Derocks will not deal with walk-in customers but with those whom they already know and those who are recommended by those they already know. Usually, appointments with customers will be made. In view of Davidov's different experience and philosophy, it was not entirely surprising that he found many odd aspects of the transaction between DeFred and DR, especially with the benefit of hindsight.

171 Davidov said that if he was faced with a first time unknown customer who wanted to make purchases amounting to $2 million, he would find out more about the customer, for example, his occupation, his background, who he was buying for, why, whether he had made investment purchases before and his knowledge of jewellery etc. However, DR was not entirely unknown. As I mentioned, he was regarded as a successful and reputable lawyer by DeFred's staff. In my view, this was a significant point which Davidov had disregarded. In any event, as I have already said, I do not think an honest retailer would have tried to find out more about his potential customer.

172 Davidov also found the delivery venues of the Mandarin lounge and the driveway to be unusual. For example, the lighting in the lounge was not suitable and there was no proper equipment to examine stones and match them with certificates and there was no assistance of a gemologist. There was also the security issue for both venues.

173 Davidov was of the view that a suggested venue for delivery like the Mandarin lounge would have made him suspicious. This, together with the totality of earlier circumstances, especially the fact that DR was willing to buy without first having seen the loose stones (NE 29 June 2007 p 41-42, p 50 and 51) were his reasons for saying that he might then have cancelled the entire transaction without further inquiry even though DR had already sent the payment of $1,818,000 earlier in the day. I find such evidence unduly critical. It is surprising that he might have cancelled the entire transaction without even attempting to suggest a better venue.

174 In his report, Davidov also criticised invoice no 83080 (which covered all except one item sold) because that invoice did not list the individual prices for each item sold.

175 I accept that it would be preferable to have individual prices allocated for each item sold even though Thomas and DR eventually agreed to a package price. This would make it easier for both DeFred and DR to identify the value of any individual item should a dispute over that item arise in the future. It would also assist DR as an investor to know immediately what he in fact paid for each item after the package price was concluded.

176 However, in cross-examination, Davidov did not attack DeFred's omission to put a value to each item sold in invoice no 83080. What he criticised instead was DR's failure to object to the omission. Yet, as Mr Kumar submitted, if DeFred's staff did not think they had to put a value to each item, why should DR's failure to object put them on notice?

177 Interestingly, in Davidov's report, he also did not present a list of estimated reasonable retail prices for individual items. His report included lists of DeFred's alleged cost price, estimated industry cost price and DeFred's selling price for individual items but not of the estimated reasonable retail prices individually.

178 As mentioned above, I come now to three other cases which Mr Elias also relied on. Mr Kumar referred to them as "the Agency Cheque Cases". I will adopt the same description for convenience.

179 In *John and others v Dodwell and Company Limited* [1918] AC 563 ("*John's* case"), the respondents ("*Dodwell*") were carrying on business as import and export merchants at various places through branch offices, including Colombo. The appellants were partners in the firm of E. John & Co ("E. John") carrying on business as share and produce brokers in Colombo. One Williams, was the manager of Dodwell's Colombo branch. He held a power of attorney which enabled him to draw cheques on the bank account of Dodwell. While Dodwell had an account with E. John mainly for the purchase and sale of produce, Williams had his own personal account with E. John for the purchase and sale of shares. In the course of Williams' personal dealings with E. John, he made payments of various sums of money using cheques drawn under his power of attorney as Dodwell's account although the payments were not for the transactions of Dodwell.

180 Viscount Haldane, delivering the judgment of the Privy Council said at p 568 and 569:

> At the trial before the District Judge of Colombo it was found that the appellants were neither in fact dealing with Williams as the respondents' agent nor believed themselves to be so. The District Judge held, however, equally clearly, that the appellants were not personally aware that

they had received among the items paid over to them for the purchase-money of the shares which they bought for Williams, as his brokers, cheques fraudulently drawn on the respondents' funds, and that they took the cheques honestly, without noticing the names of the drawers, and without thinking of them as in a different position from the other cheques received in the course of their transactions with him. But it is obvious that the appellants' clerks who brought the cheques to the partners for indorsement must have seen that the name of the drawers was that of the respondents. However little the clerks may have known of Williams' real transactions, and however innocently the cheques were brought and indorsed, the knowledge of the names on the part of the clerks was the knowledge of the appellants. …With Williams the appellants, like other brokers, had had many transactions, and none of them had resulted in any difficulty. What he was doing might have been loose practice, and not in the ordinary course of business. But it was not uncommon for employers to allow considerable latitude as regards drawing cheques to their confidential agents. However, it is none the less clear that, innocent of fraud as the appellants were found to be, they, by the action of their clerks, took an unmistakable and grave risk in the transactions in question. On the face of these Williams was, without showing authority to do so, drawing cheques for his own purposes on the respondents' funds at their bankers. If it turned out that the respondents had not allowed him to do so, and would not ratify his action, the notice which the appellants had got through the agency of their clerks of what was prima facie a breach of duty on his part would deprive them of all title to hold the cheques as against the respondents, if the latter should challenge the transaction. For when an agent is entrusted by his principal with property to be applied for the purposes of the latter, and to be accounted for on that footing, he is, by virtue of doctrines which apply under the law of Ceylon, as they do under the law of this and other countries, in a fiduciary position, and any third person taking from the agent a transfer of the property with knowledge of a breach of duty committed by him in making the transfer holds what has been transferred to him under a transmitted fiduciary obligation to account for it to the principal. That there is no privity of contract between him and the principal does not make any difference, for the title does not rest on contract. The property belongs to the latter in the contemplation of Courts which administer equity, whether in the form in which the Court of Chancery in this country applied it to trusts, or in the form which later developments of the Roman law have recognized.

181 The second case was *Reckitt v Barnett, Pembroke and Slater Limited* [1929] AC 176 ("*Reckitt*'s case"). In that case, the appellant Reckitt gave a power of attorney to a solicitor who succeeded to the title of Lord Terrington ("LT") to manage Reckitt's affairs while Reckitt was in France. LT sought to use the power of attorney to draw cheques on Reckitt's bank account but the bank was of the view that the power of attorney did not allow him to do so. LT then obtained a letter dated 17 August 1915 signed by Reckitt which stated that the power of attorney granted was to cover the drawing of cheques without restriction. The respondents ("BPS Ltd") were a firm of motor car dealers from whom LT had bought a car previously and with whom LT had an account for garage and supplies for that car. They had no dealing with Reckitt. Subsequently, LT bought another car from BPS Ltd on hire-purchase terms. About a month later, LT drew and issued a cheque drawn on Reckitt's account in favour of BPS Ltd for a sum which was mostly meant to pay the first monthly instalment of hire and partly to pay for his running account. The cheque was signed "Sir Harold J. Reckitt, Bart., by Terrington his Attorney". The word "Terrington" was written in ink by LT while the rest of the signature was affixed by a rubber stamp.

182 Eventually, Reckitt discovered LT's fraud and commenced action against BPS Ltd to recover the proceeds from that cheque. Reckitt succeeded at first instance, but a majority of the Court of Appeal reversed that decision. His appeal to the House of Lords was successful. The House of Lords were of the view that *John's* case was applicable.

183 At p 181, Lord Hailsham L.C. said that BPS Ltd appeared not to have noticed the rubber stamp impress and had treated the cheque as if drawn by LT as his own account. He also said at p 181 to 182:

> … It is common ground also that the fact that the respondents made no inquiries as to Lord Terrington's authority and that they overlooked the form of the signature makes no difference in their position; they had on the cheque plain notice that they were receiving the appellant's money, and they can be in no better position than if they had then asked to see and had been shown the authority under which Lord Terrington was acting. … It is a simple case of receipt by the respondents of the appellant's money with the knowledge that it was the appellant's money in payment of Lord Terrington's debt. In order to succeed the respondents must show that Lord Terrington had in fact authority to use the appellant's money in payment of his, Lord Terrington's, private debts.

184 At p 184, Viscount Dunedin was of the view that BPS Ltd had actually seen that the cheque was drawn on Reckitt's account. However, at p 185, he thought that if there was no indication on the face of the cheque that the cheque was signed by an attorney, the payment would have been good.

185 Viscount Sumner seemed to think, at p 186, that it was unnecessary for BPS Ltd to have actually noticed that the cheque was supposed to be drawn for Reckitt. It was sufficient if there was such an indication for those who chose to read the cheque.

186 At p 191, Lord Carson appeared to have been of the view that it was sufficient to hold BPS Ltd liable if the form of the cheque gave them notice that the money was not the money of LT.

187 At p 193, Lord Warrington of Clyffe was of the view that BPS Ltd clearly had notice "by the cheque itself" that the cheque was drawn on Reckitt's account. It is not clear whether this meant they had actual notice or not but he also said that BPS Ltd could not be heard to rely on their own carelessness (*ie*, that they did not observe the form of the signature).

188 So it seems that *Reckitt*'s case is authority for the proposition that a payee cannot retain the payment if on the face of the cheque itself, it is clear that the cheque was drawn on the beneficial owner's account and it is also clear to the payee that the payment is not for a purpose of the beneficial owner.

189 In the third case, *Nelson & Others v Larholt* [1948] 1 K.B. 339 ("*Nelson*'s case"), an executor, Potts drew eight cheques in favour of a turf accountant, David Larholt. The cheques were signed "G. A. Potts executor of "Wm. Burns decd". Subsequently, action was brought by another executor and three beneficiaries to recover the money. Both Potts and Larholt gave evidence stating that the cheques were not given for bets. They said the cheques were cashed by Larholt when Potts brought them to him outside of office hours. Potts claimed not to remember what he had done with the money he received from Larholt who had handed the cheques to his bank for collection.

190 Denning J was of the view that the payee ought to be liable to repay the money to the rightful owner if he knew or is taken to have known of the want of authority of the drawer. If the circumstances were such as to put a reasonable man on inquiry and none was made, then the payee is taken to have notice of the want of authority. Denning J was of the view that that was the result of *Reckitt's* case. Denning J also noted that Potts could have drawn cash from the bank during office hours and any reasonable man ought to have been put on inquiry. Indeed, Larholt did ask Potts about it and Potts said that it was in connection with the trust that he wanted money. On one occasion, Potts said he was going to Scotland on estate business. Denning J was of the view that

no reasonable man would have been satisfied with those answers. Potts could still have gotten money from the bank earlier the same day or the next morning. When the first cheque was encashed in the manner described and the other seven more likewise, the inference was irresistible that Larholt knew or ought to have known that Potts had no authority to do what he was doing.

191 On the other hand, Mr Kumar drew my attention to *Feuer Leather Corporation v Frank Johnston & Sons Ltd* [1981] QBD ("*Feuer's* case"). In that case, Neill J sought to confine the decision in *Reckitt*'s case and in *Nelson's* case to their facts. Neill J was of the view that the issue in *Reckitt's* case was not whether the defendants had noticed that the cheque was that of the plaintiff's but whether the authority of the fraudster extended to drawing such a case. As for *Nelson's* case, Neill J said:

> I have referred to the judgment in Nelson v Larholt [1948] 1 KB 377, [1947] 2 All ER 751, at some length because as in every case it is necessary to look at the words used by the judge in the context of the facts then before the court. Denning, J. said in the course of his judgment that he was quite satisfied that the defendant had notice of the want of authority of Potts to cash the cheques. There was plainly ample material on which the learned judge could reach that conclusion.

192 Neill J also said:

> Looking at the matter with the benefit of hindsight one can see that there were warning signals which could mean not only that the M company was getting into financial difficulties but that M might be trading recklessly or improperly. I am satisfied by the evidence of Mr. Johnston and Mr. Durrant, however, that the Defendant acted in good faith in their dealings at this time with M, and that the Defendants had no actual knowledge of any breach of trust or any breach of duty. The Defendants were not amateur detectives. They were merchants trading in an important market and they were dealing with another merchant of apparent standing who might well be going through a difficult period.

193 Although the facts in *Feuer's* case were quite different from those before me, I find the observations of Neill J helpful.

194 Mr Kumar submitted that in the Agency Cheque Cases, the name of the beneficial owner of the account appeared on the cheques whereas that was not the situation in the case before me. I also note that the name of the Law Firm appeared twice on the TT slip and on the Cash Cheque, once on its own and the other with reference to the Law Firm's client's accounts, see [127] and [128] again.

195 Mr Kumar also submitted that the modern law of knowledge for knowing receipt requires more than the Agency Cheque Cases suggest.

196 It seems to me that *John's* case and *Reckitt's* case appear to impose strict liability on a recipient of a cheque. It matters not if neither the payee nor its staff in fact realise the significance of certain words on a cheque. They should so realise and will be liable to refund the money. In *Nelson's* case, the court considered the particular circumstances of the case before finding the defendant liable.

197 I have elaborated earlier in my judgment on the law in respect of dishonest assistance and knowing receipt. Neither imposes strict liability. In the case of dishonest assistance, there must be dishonesty as discussed above. In the case of knowing receipt, there must be a lack of probity or some unconscionability to render a defendant liable. I am of the view that that is still the applicable law to the present case.

198 The crux of the Plaintiffs' case was that DeFred's staff must have known, for the various reasons set out in Mr Elias' submissions, that DR was out to spend money indiscriminately in his haste to convert (his ill-gotten) money into loose stones or jewellery. However, in my view, this is precisely the point where the Plaintiffs' case falters. Mr Elias was effectively suggesting that DeFred's staff knew or suspected that DR was both a fool and a knave but while I agree that DR was a knave, I find that he was no fool. Importantly, I find that DeFred's staff did not have sufficient reason to and did not suspect that he was a fool and, even if they did, they did not have sufficient reason to suspect that he was a knave, except arguably for the reference to the Law Firm's client's accounts in the TT slip and in the Cash Cheque.

199 As regards the TT slip, it is common ground that DR was holding a copy in his hand. He did not hand it over to any of DeFred's staff. Mr Elias' criticism was that they should have asked to look at it. I do not agree. That might have been offensive to DR. Also, as Thomas stressed, he was more concerned with whether DeFred's bank had confirmed the receipt of the money than the TT slip itself. Did any of the staff actually see the reference to "DAVID RASIF & PARTNERS – CLIENT'S ACCOUNTS" in the TT slip?

200 As I have mentioned, there were many details in the TT slip and the words "DAVID RASIF & PARTNERS" with the Law Firm's address and other details were larger than the words "DAVID RASIF & PARTNERS – CLIENT'S ACCOUNTS". The evidence of Thomas and Lynn was that they did not see either the name of the Law Firm or the reference to the Law Firm's client's accounts, although Lynn said she saw "1,818".

201 While I do not accept every piece of evidence from Thomas or Lynn in this case, I accept that they did not see or notice the words referring to the Law Firm's client's accounts. As I mentioned, the TT slip was not even handed over to them. Accordingly, the Plaintiffs' case in reliance on the TT slip was weaker than in reliance on the Cash Cheque.

202 As for the Cash Cheque, Mr Kumar submitted that the Plaintiffs' pleadings refer specifically to Ho's knowledge of the reference therein to the Law Firm's client's accounts but not to Thomas'. It seems to me that Mr Kumar is correct on this point but, for completeness, I will proceed to deal with the observation and knowledge of Thomas and of Ho.

203 I do not accept Thomas' or Ho's evidence that each had only looked at the sum in figures but not in words. It would only be natural to look at both to ensure that they matched. If they did not match and the discrepancy was discovered later, Thomas would have had to revert to DR and delay this part of the transaction and I do not think Thomas or Ho would have wanted any hiccup. In my view, each avoided saying that he saw the sum in words because the next two lines with the words "DAVID RASIF & PARTNERS" and then "DAVID RASIF & PARTNERS – CLIENT'S ACCOUNTS" were below the sum in words. Had Thomas or Ho seen the sum in words (which I conclude that each did), it would be more likely than not that he also saw the two lines below. How much attention each actually paid to those two lines and whether each knew what they meant are different matters.

204 I also do not accept that Ho's command of the English language was as poor as he made it out to be.

205 For example, there was an article in the Straits Times issue of 25 November 1994 on his jewellery business (AB 327). The last paragraph of the article states:

> Mr Ho looks fondly at his jewellery set-up and says in his Hongkong-accented English: "You know, I don't want to go bigger. It'll be hard to control then."

206 Secondly, he accepted that some of the customers he deals with do not speak Mandarin or Cantonese, but English. He also speaks to international suppliers in English.

207 Thirdly, he had gone to New York to take up a design course on jewellery for six months. He would not have even contemplated the idea of attending such a course if his command of the English language was poor.

208 Fourthly, I do not accept his evidence that he would not have been able to read the word "client" or "account" and that he would know what each means only when each is mentioned orally to him. He was a man of considerable business and international experience, even having his own construction company and buying real property in more than one jurisdiction. I am of the view that he would have been able to read and understand each of these words if he had paid attention to them.

209 There is one other point I should mention. In oral evidence, Thomas said that he deliberately did not pay attention to the sum in words. He said that he did not pay attention because DeFred still had six loose diamonds and the Cash Cheque was drawn and signed in his presence. He did not want to give the impression that he did not trust the customer (NE 22 January 2008, p 54 to 55, 23 January 2008, p 71 to 73). I do not take his reference to deliberately not looking as an indication of his wilfully closing his eyes to the truth.

210 In my view, Thomas and Ho were paying attention to the payee and the sum in words and figures and the date on the cheque when each was looking at the Cash Cheque. However, each did not pay particular attention to those two lines referring to the Law Firm or the Law Firm's client's accounts although each saw the two lines. DR was regarded as a successful and reputable lawyer who had already paid more than $1.8 million. He was making another large purchase with a cheque, Thomas had seen DR issuing the cheque. Moreover, DR's name was part of the name of the Law Firm mentioned explicitly in the first and in the second line although the second line mentioned the Law Firm's client's accounts as well. As neither paid any particular attention to the two lines, I do not consider DeFred to have acted dishonestly or unconscionably.

211 Even if either or both of them had paid some attention to the words referring to the Law Firm's client's accounts in the Cash Cheque, it is one thing to suggest that even someone like Maeco said she knew that a client's account refers to an account owned by a client but she was not asked what she would have understood by the entire line "DAVID RASIF & PARTNERS – CLIENT'S ACCOUNTS" as found in the Cash Cheque. It is also not helpful to refer to concepts of trust generally.

212 What does a reference to "DAVID RASIF & PARTNERS – CLIENT'S ACCOUNTS" mean to an honest retailer even if one were to assume that that retailer has read and paid some attention to those words? Ought he to know or suspect that a lawyer cannot use the money in a client's account even to pay himself when he has already rendered a bill or an invoice for services rendered and intimated that payment will be made from the client's account? Is an honest retailer supposed to know or suspect that the lawyer cannot use the money to make payment for goods purchased for himself even after rendering a bill or intimation and, instead, the lawyer is to first make payment to his law firm's office account and then withdraw money from his law firm's office account to make payment for such goods. Even then, Mr Elias suggested that suspicion should be aroused if money was drawn from a law firm's office account to pay for personal purchases of a lawyer (see [137]).While I think that it would be preferable for lawyers not to use the office account for personal expenses, so as to avoid confusion and disputes, I believe that it is the case that some lawyers do in fact do so instead of first drawing from office account to pay into their personal accounts and then drawing on their personal accounts to pay personal expenses. In any event, I do not think that an honest retailer would know or suspect that it is inappropriate for a lawyer to draw on his firm's client's account and pay for goods

purchased for himself. I also do not think that even with Ho's previous experience in engaging other lawyers to act for him that he would have known or suspected.

213 I am of the view that looking at the circumstances in totality, including the TT slip and the Cash Cheque, they fall short of establishing the Plaintiffs' case against DeFred and, *a fortiori*, against Ho. Accordingly, I dismiss the Plaintiffs' claims against DeFred and Ho. I will hear the parties on costs and any consequential order if they are unable to resolve the same.

214 I would like to add that even if I were to find DeFred liable, I would not have rendered Ho personally liable even though he admitted, and I accept, that it is really he who controls DeFred. Mr Elias submitted that Ho was involved in numerous aspects of the transaction:

(i) sourcing for the loose stones;

(ii) negotiating with the suppliers on the cost price of the loose stones;

(iii) taking delivery of the loose stones from the suppliers;

(iv) pricing of the loose stones to be quoted to DR;

(v) verification of the $1,818,000 transferred by DR to DeFred's bank account;

(vi) personal encashment of the Cash Cheque for $270,000;

(vii) making transfers from DeFred's bank account and withdrawing cash to make payment to the suppliers;

(viii) using his personal stock of jewellery to sell to DR (diamond sapphire ring FDR 206/037 – item 21 of the table provided by Thomas); and

(ix) giving cash of $37,650 to Thomas to make the cash refund to DR.x

215 In my view, Ho had a limited role in the totality of the circumstances. He did not even meet DR or talk to DR. It was not as though he was deliberately avoiding DR and orchestrating the entire transaction behind the scenes through Thomas. I would not have seen any reason to lift the corporate veil to render Ho liable personally.

Claim against Lim Soon Kiang ("D6")

216 As mentioned above, D6 is the sixth defendant in this action. The Plaintiffs' claim against D6 is also for knowing receipt and/or dishonest assistance in respect of US$620,000 (or S$985,300). Actually, S$985,180 was the equivalent of US$620,000 but the commission and cable charges came up to another S$120.00 making a total of S$985,300. This sum was part of the Clients' Money Withdrawn and the Plaintiffs again assumed that the S$985,300 came entirely from the Plaintiffs' Money.

217 Most of the facts which the Plaintiffs relied on came from interviews with D6 himself. He had attended voluntarily before the then lawyers of the Plaintiffs on 19 June 2006 and 4 July 2006 to be interviewed by those lawyers. The first plaintiff had also listened in on the interview on 19 June 2006, via telephone, with D6's consent. On 4 July 2006, D6 was accompanied by his lawyer, Alain Jones. D6 had also filed an AEIC and an opening statement. He attended the trial initially but excused himself for the duration of that part of the trial which involved the Plaintiffs' claim against DeFred and Ho.

218 However, when the trial came to that part of the claim against D6, D6 did not present himself in court. After I was satisfied that the Plaintiffs' lawyers had made reasonable efforts to contact him, the trial of the claim against him proceeded in his absence. I would add that D6 did cross-examine some witnesses for the Plaintiffs as the Plaintiffs presented their claims against DeFred and Ho and against D6 at the same trial but D6 did not challenge most of the Plaintiffs' evidence against him. On the other hand, as D6 did not subsequently attend court after the close of the evidence for the Plaintiffs and for DeFred and Ho, he was not available for cross-examination by the Plaintiffs. As he was not available for cross-examination, Mr Elias submitted and I accept that I should not admit D6's AEIC. The facts I set out below are from the first plaintiff's recollection of what D6 had said in the first interview.

219 On or about 28 May 2006, D6 was travelling to Ho Chi Minh City ("HCM") in Vietnam to meet his girlfriend, one Tran Thi Tuyet Nhung ("Tran"), a Vietnamese citizen. DR knew he was travelling there and called D6 while he was in HCM. DR requested D6 to open a bank account in HCM. DR explained that he was receiving a sum of money from London in respect of work done there and DR did not want to receive the money in Singapore to avoid income tax. D6 agreed to DR's request as DR agreed to extend an interest free loan of $100,000 to repay an interest-bearing loan which D6 had recently taken. D6 agreed and opened an account in his own name with Sacombank in HCM. D6 returned to Singapore on 29 May 2006 and handed DR a photocopy of the account card showing the details of the bank account he had opened.

220 D6 was told that a sum of about US$400,000 would be transferred to that account. DR also told D6 to withdraw this sum in cash and carry the cash to Bangkok on the weekend of 3 June 2006.

221 D6 flew to HCM on 1 June 2006. He discovered that a sum of US$620,000 instead had been deposited into the account. He claimed he did not ask about the source of the sum and the bank did not tell him. Based on evidence from the remitting bank, it was undisputed that the US$620,000 came from the Law Firm's client's account (in Singapore).

222 US$600,000 was withdrawn by D6 in US$100 bills. However, Tran dissuaded him from flying to Bangkok with the cash saying this was against the applicable laws in Vietnam.

223 D6 then communicated with DR via telephone calls or SMS messages. Two alternatives were discussed to bring the cash to DR. Each involved the use of third parties to carry the cash by air or by road to Bangkok but each would involve the payment of 10% as commission to the third parties.

224 D6 apparently paid US$30,000 as upfront commission to four individuals in Vietnam to bring the cash over to Bangkok. He did not know who they were but one or more than one were friends of Tran. D6 decided not to go ahead with the plan as he would be parting with the cash to persons he did not know.

225 Eventually DR arranged for D6 to go to Sofitel Hotel in HCM on 4 June 2006 and instructed D6 to hand the cash to one Nick or Nicholas Leong ("Nick"). D6 was to hand over the cash to this person without question. On or about 4 June 2006, a person identifying himself as Nicholas Leong showed up at D6's hotel room. He showed D6 an SMS message on his mobile phone with D6's full name on it. He received US$500,000 in cash, counted it and then left.

226 DR instructed D6 to close the account with Sacombank and transfer the remaining money via telegraphic transfer to DR in Singapore. However, D6 instead withdrew the balance which was US$18,650 and closed the account. Together with the US$70,000 (from the US$600,000 which he

had initially withdrawn), D6 had a total of US$88,650 in cash which he handed to Tran before returning to Singapore.

227 Since the commencement of investigations, D6 instructed Tran who transferred US$51,000 on 22 June 2006 to an account specified by the Plaintiffs' then solicitors. Since then, two more sums totalling US$7,998 have also been transferred by Tran to a bank account specified by the Plaintiffs' then solicitors. The total sum transferred by Tran is therefore US$58,998.

228 Mr Elias submitted that as the sums transferred by Tran are subject to a disposal inquiry, I should grant judgment against D6 for the full sum of $985,180 (or US$620,000) with a qualification that any sum received by the Plaintiffs from the disposal inquiry be deducted from the judgment sum.

229 It seems to me that D6 was duped by DR whom he trusted but the circumstances of the claim against Lim were very different from those against DeFred and Ho.

230 While I do not accept all the submissions against D6, I accept that any honest person would have realized that he was being asked to engage in a suspicious transaction which might well be illegal and unless he received satisfactory answers, he should not have been so compliant with DR's instructions.

231 True, in this case, it was not unrealistic for D6 to believe that the money belonged to DR when DR initially contacted him to ask him to open an account in HCM. However, the amount actually received was substantially more than the US$400,000 which DR initially mentioned. While I do not expect D6 to check with any source other than DR as to whether the funds in fact belonged to DR, D6 did not even check with DR.

232 In any event, DR's instructions to bring most of the money over in cash to Bangkok would have aroused the suspicion of an honest person. If there was no illegality involved, why should not the money be transferred by telegraphic transfer from the account in Sacombank to an account of DR in Bangkok? Indeed, why wasn't the money transferred direct to an account in Bangkok in the first place instead of being transferred to an account with a bank in HCM first? These questions were not asked by D6.

233 Tran knew it was illegal to bring a large sum of cash out of Vietnam. The fact that a high commission of 10% was being discussed to bring such a large sum of cash out of HCM added to the taint of the transaction. Yet, D6 was content to comply with DR's plan without reasonable questions. Eventually, he just handed over US$500,000 in cash to Nick with the specific instruction that he was not to ask questions which he also complied with.

234 I am of the view that D6 deliberately closed his eyes. There was certainly unconscionable conduct and a lack of probity on his part which assisted DR to dispose most of the US$620,000. It was no excuse to say that DR was going to lend him money interest-free to pay another loan which was incurring interest.

235 As in the claims against DeFred and Ho, it is not clear that the sum transferred to the account with Sacombank belonged entirely to the Plaintiffs, as opposed to other clients. However, at the very least, a large portion of it would belong to the Plaintiffs. Also, there is a disposal inquiry for the US$58,998 transferred by Tran to Singapore.

236 In the absence of more evidence, I grant judgment in favour of the Plaintiffs against D6 for US$583,358, being 94.09% (see [8]) of US$620,000. The judgment sum is to be reduced by any sum

granted to the Plaintiffs (from the money transferred by Tran) in or after the conclusion of the disposal inquiry.

237 D6 is also to pay costs of the action (against him) on a standard basis to be agreed or taxed. Mr Elias did not ask for interest in [113] of his closing submissions.