

Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd and another  
[2010] SGHC 170

**Case Number** : Suit No 779 of 2006  
**Decision Date** : 08 June 2010  
**Tribunal/Court** : High Court  
**Coram** : Quentin Loh J  
**Counsel Name(s)** : Randolph Khoo, Johnson Loo and Chew Ching Li (Drew & Napier LLC) for the plaintiff (by original action) and the first, second and third defendants (by counterclaim); Molly Lim SC, Philip Ling and Hwa Hoong Luan (Wong Tan & Molly Lim LLC) for the first and second defendants (by original action) and the plaintiff (by counterclaim).  
**Parties** : Lim Leong Huat — Chip Hup Hup Kee Construction Pte Ltd and another

*Tort*

*Restitution*

8 June 2010

Judgment reserved.

**Quentin Loh J:**

**Introduction**

1 "A falling out of thieves" is an apt description of this case. For 6 weeks I heard the evidence unfold: of non-existent employees (euphemistically called "Proxies") comprising real persons complete with identity card numbers and Central Provident Fund ("CPF") accounts, of utilising these falsified local employees to mislead the Ministry of Manpower ("MOM") into allotting higher foreign worker entitlements, of levying "commissions" on foreign workers from China, of fictitious invoices to build up a track record of "profit" for possible listing, of withdrawals of large sums of money from another euphemistically styled "Salary Accruals" account which enabled the directors not only to withdraw large sums of money as reimbursement of non-existent "expenses" but also to evade tax, of fictitious payments to non-existent subcontractors, of questionable loans (some of which were in the hundreds of thousands) to the company, and also of other loans which were made on one day and withdrawn or repaid on the next. And it is now my unenviable task to decide who, between the two protagonists, I am to believe.

2 The protagonists are Mr Lim Leong Huat, ("Lim"), who is the Plaintiff and Mr Neo Kok Eng, ("Neo"), who is the 2<sup>nd</sup> Defendant in this suit. The 1<sup>st</sup> Defendant is Chip Hup Hup Kee Construction Pte Ltd, ("CHKC"), a company owned by Neo. Lim is suing CHKC for the recovery of loans made to it over a period from 2003 to 2006, as well as cost of funds ("COF") compensation for expenses Lim incurred in obtaining the funds to loan to CHKC. Lim also claims against CHKC and Neo for conspiring to injure him by depriving him of payment of the monies Lim had advanced to CHKC. In response, CHKC has brought a very large counterclaim against Lim, his wife, Mdm Tan Siew Lim, ("Mdm Tan") and AZ Associates Pte Ltd, ("AZ"), a construction company owned by Lim which was closely associated with CHKC. In its counterclaim, CHKC has accused Lim of misappropriating its cheques, wrongfully manipulating its accounts, overpaying salaries without authority, and unlawfully retaining profits from certain construction projects. CHKC has also added Mdm Tan and AZ to the counterclaim

because some of the monies it alleges Lim misappropriated or unlawfully retained were being held by them.

### **The background facts**

3 The following facts, from [3]–[5], are not really in contention. Neo is about 51 years of age and was educated up to Secondary Four in the Chinese stream. His father started the family business in timber in the 1950s. Neo, (the second youngest son), and his three brothers helped their father in the timber business. In 1982, the family company, Chip Hup Timber Pte Ltd (“CH Timber”) was incorporated to take over the business. In October 1983, Neo and his brother Neo Kok Ching (“Ching”) incorporated Chip Hup Hup Kee Trading Pte Ltd, which was subsequently renamed CHKC, to venture into the construction business. In July 1989, Neo and two of his brothers incorporated Chip Hup Holding Pte Ltd (“CHH”). By then, Neo’s father had retired, leaving the family business to his 4 sons. In July 1989, Neo also incorporated Chippel Overseas Supplies Pte Ltd (“COS”) to trade in building materials. A few years after Neo’s father passed away in January 1993, two of his brothers left the family business and transferred their interests to Neo. According to Neo, his brother Ching also wanted to leave and concentrate on his own business, but since Neo needed at least 2 shareholders and directors, Ching stayed on for the time being.

4 Lim comes from Malaysia, is about 46 years of age and holds a Masters of Science in Construction Technology. Lim has always worked in the construction industry. After he graduated, he worked for about 1 year in Kuala Lumpur. He then came down to Singapore and worked for a few months in Uni Consultants before joining Heng Mah Construction Ltd (“Heng Mah”). In the 4 years that he was at Heng Mah, Lim did well. He first joined them as a site engineer. He said he was very serious about his work and totally committed to it. Within 9 months of joining, his boss noticed this and promoted him to project manager and about a year later he was promoted to general manager of Heng Mah. Heng Mah at that time was one of about 30 G8 contractors in Singapore, *i.e.* they could tender for building projects of unlimited value. Heng Mah also held a G7 rating for civil engineering projects, *i.e.* they could tender up to \$50 million for civil engineering projects. Heng Mah did project work as a main contractor, whereas CHKC mostly did work as a subcontractor of the main contractor.

5 Neo said he met Lim around 1994. Prior to Lim joining CHKC, Neo was doing smaller scale civil engineering projects, mainly building roads, culverts and drainage works. Neo had plans to go into construction on a larger scale. As he said, he managed to secure a project for a lecture hall for the National Technological University around August 1994 and later a project from the Housing Development Board for 608 units. Neo needed someone to manage such projects. Although this was not seriously in contention, insofar as it is, I find that Neo sought Lim out in or around August 1994 having heard of his good work at Heng Mah. Neo promised Lim at least equal or better terms of employment than Lim then had at Heng Mah. Lim was given a Letter of Appointment as General Manager of CHKC in November 1994 with a salary of \$7,000 a month which would be reviewed annually. As Lim received a bonus of \$200,000 from Heng Mah for the years 1991–1993, Neo also gave Lim the same bonus at CHKC as well as an E-class Mercedes car (Lim opted for a second hand Mercedes car). Neo gave Lim a free hand to and Lim built up a team in CHKC recruiting some of his ex-colleagues at Heng Mah.

6 Before me, Neo downplayed Lim’s role in CHKC, saying he was a mere employee whom he could easily replace. However, it is obvious, and I so find, that Lim was good at his job. In 1994, CHKC’s revenue was only \$6.6 million and it made a loss of about \$730,000. In 1995, the revenue had almost doubled to \$12.7 million and it made a profit of \$728,000. In 1996, the revenue shot up more than fourfold to \$59.1 million and CHKC made a profit of \$1.85 million. In 1995, the revenue was \$59.5 million and the profit was \$1.12 million. I find that it was due to Lim’s ability that CHKC managed to

take on its many projects and increase its revenues so dramatically. In time to come, Lim was given the title Projects Director and then Executive Director although he was never formally appointed a director of CHKC. Lim did not hold any shares in CHKC.

7 The secret to CHKC's ability to carry out its work and churn out its revenue was its ability to source cheap but skilled labour from China. (AZ, which was owned and managed by Lim and did work in connection with CHKC, similarly relied on Chinese workers). At the height of their project activity, there were about 1,500 workers from China on CHKC and AZ's records and over 1,000 workers from 1999 to most of 2002. [\[note: 1\]](#) Neo claims that at the peak of construction activity around 1999, CHKC and AZ had 1,800 foreign workers. [\[note: 2\]](#) Neo had a contact called Wu Xue Feng ("Wu") who worked in a company in China called the Beijing Residential Development Company ("BRDC"). Wu was Neo's source for skilled Chinese labour. In 1995, BRDC set up Zhu-Zhong Construction Singapore Pte Ltd, ("ZZC") with Wu as its director. These Chinese workers had their own supervisors and foremen who were also fellow Chinese nationals. I find that Neo and Wu worked closely together in deploying these skilled workers from China, who came at a comparatively low price, for CHKC's projects. I also find, having heard all the evidence, that Neo kept tight and close personal control over this Chinese labour element of the business and Lim was not involved to any appreciable degree in this aspect of the business. Neo dealt directly with Wu, without consulting Lim, and later with Wu's deputy here, Zhang Guilin ("Zhang"). I accept Zhang's evidence on this score. Lim's involvement was mainly on the operational or projects side where it was more a question of labour requirements for the projects. It is not disputed that there were regular Monday meetings at CHKC throughout the relevant periods chaired by Neo with Lim representing the operational side and projects and representatives from ZZC representing the Chinese labour element.

8 It will be noticed that although the revenue of CHKC shot up dramatically after Lim came on board, its profits continued to remain at very low levels. Strangely, in the year 2000, when there was a \$6 million drop in revenue, the profits went up to their highest level and similarly for 2001, although the revenue dropped a further \$7 million, the profits did not correspondingly drop: [\[note: 3\]](#)

Year	Revenue	Profit/(Loss)
1994	\$6,600,000	(\$730,000)
1995	\$12,700,000	\$728,000
1996	\$59,100,000	1,850,000
1997	\$59,500,000	\$1,120,000
1998	\$78,800,000	\$1,070,000
1999	\$51,800,000	\$1,900,000
2000	\$45,547,000	\$3,231,000
2001	\$38,300,000	\$2,110,000
2002	\$36,853,000	\$472,000
2003	\$42,900,000	\$446,000
2004	\$57,586,000	\$284,000
2005	\$46,200,000	\$166,000

2006	\$13,200,000	(\$20,600,000)
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Three things should be noted, and I so find, from this pattern of revenue and profit/loss:

- (a) The reason for the low profits in spite of the large jumps in revenue is that Neo and Lim started to implement various nefarious schemes enabling them to siphon out large sums of money from CHKC. Hence the profits were always at an artificially low level.
- (b) There is also a reason for the spike in profits in 2000 and 2001. There was an idea to carry out a listing. There was accordingly a reorganisation of the 'Chip Hup' companies in July 1998. CHH became the holding company, CHKC, CH Timber, COS and Chippel Construction Pte Ltd ("CCPL") became its wholly owned subsidiaries; (CCPL was owned by Neo and incorporated after Lim joined CHKC). There was also a need to establish a track record of profitability to qualify for listing, hence not only the spike in profits, but as I will deal with later, fictitious invoices were also generated to raise the apparent level of profits.
- (c) The reason for the huge loss of \$20 million in 2006 was due to CHKC's accounts having to be corrected after many of Neo's and Lim's nefarious schemes had come out of the shadows and into the light (see [123] below).

Lim and Neo's cosy relationship of about 12 years came to an end in late October 2006 when they had a big quarrel. Differing versions were given by Neo and Lim. Lim claimed that from 2003 to 2006, CHKC was facing cash flow problems due to the downturn in the construction industry and that he had been lending large sums of money to CHKC to tide it over. When Lim discussed repayment of these loans, Neo kept procrastinating and finally refused to make repayment and this led to a heated quarrel in the last week of October 2006. Neo claimed that unbeknown to him, Lim had been misappropriating Neo's and CHKC's money causing it to have cash flow problems and Lim got greedy and started to press Neo in 2005 to sell CHKC's property at 270 Jalan Besar, Singapore, which Neo was reluctant to do because of its redevelopment potential. Neo became suspicious when Lim suggested in August 2006 that the property be sold to his brother-in-law and Lim agreed to absorb the \$1 million difference between Neo's selling price of \$13.5 million and his brother-in-law's buying price of \$12.5 million. When Neo's reluctance to sell stretched into October 2006, and Neo's selling price had moved up to \$17 million, Lim put the proverbial straw on Neo's back by pressing for repayment of his loans at the end of October 2006. What is clear was that they fell out over money. This led to Lim's suspension and then dismissal at the end of November 2006. Lim sued CHKC on 21 November 2006 for the return of the balance of his loans amounting to \$7,205,000. Neo was later added as the 2<sup>nd</sup> Defendant. As noted above, CHKC responded with a massive initial counterclaim, amounting to some \$55 million, against Lim. Mdm Tan and AZ were also brought in as parties to the counterclaim. There then ensued a period of trench warfare where interlocutory proceedings were taken out and bitterly fought at every stage. There were related proceedings launched in 2007 and 2008, including a criminal prosecution (see [19] below) and Suit No 241 of 2007, a related action, which was fixed for hearing before me to follow upon the trial of this action. Some of the numerous hard-fought interlocutory applications ended up in the Court of Appeal. Finally, the Court of Appeal told the parties to stop their interlocutory skirmishes, noting, I am told by counsel, that there have been strange goings-on in CHKC, both sides appear to have "been naughty" and have something to answer for, and ordered the parties to proceed with the trial.

9 Before I go further, both counsel for Lim (Mr Khoo) and Neo (Ms Lim) had said, more than once, that at the end of the day, it is a question for the court to decide whom to believe. On many of the

important issues that have to be decided, the alleged agreements or discussions or decisions only took place between Lim and Neo and no one else was present. Lim and Neo's versions are often poles apart. For example:

(a) Lim said Neo came up with and implemented the "Proxies" system and "Salary Accruals" accounts in CHKC (see [109]–[111] below) even before Lim joined CHKC in 1994. Neo on the other hand maintained that the "Proxies" system was created by Lim and that Neo never knew of the "Salary Accruals" account or ledger until after he sacked Lim;

(b) It is common ground that AZ was set up in 1997 and was owned by Lim. Neo said Lim advised him to set up another entity so that if anything happened in CHKC, *i.e.* be it regulatory issues or too many accidents involving workmen, there would be another company, not connected to Neo, with a track record of construction work with its own 'foreign' employees, who could take over CHKC's project; Neo said that he agreed to the setting up of AZ and to the assigning of some projects to AZ provided CHKC would be put in the same position as if there had been no such assignment, since they were only 'notional assignments' for a specific purpose and AZ would not profit from the projects. Lim on the other hand said that around 1997 he wanted to leave CHKC to set up his own construction company, however, Neo asked him not to do so and, *inter alia*, offered to let him set up AZ and to assign some of CHKC's projects to it so that Lim could carry out 'work' in AZ and continue to work in CHKC; Lim alleged that 11 projects were thus assigned to AZ;

(c) Neo alleged that his personal cheques totalling \$5,404,241.06 and CHKC's cheques totalling \$2,080,000 were misappropriated by Lim; Lim denied this, and alleged that they were given to him to settle fictitious invoices issued by CHKC to AZ for works purportedly done by CHKC for AZ when no such works were in fact done; Lim alleged that these fictitious invoices were issued by CHKC to inflate its profits, and therefore CHH's profits, to enable the latter to be listed.

Insofar as the other witnesses were concerned, they were mainly corroborative. None of them were present when the important schemes and issues, including the foregoing, were discussed or decided upon by Neo and Lim.

## **The Witnesses**

10 On Lim's side, in addition to his giving evidence, 27 other witnesses were lined up to give evidence. On Neo's side, there was Neo himself and 19 other witnesses. Some of these witnesses were subpoenaed as they refused to give an affidavit. I am indebted to both counsel who very sensibly assessed which witnesses were really necessary and which were not, thereby eliminating from each side a large number of witnesses whose evidence would have been peripheral. For those who had filed AEICs but were not cross-examined, their statements were admitted in accordance with the agreement made between the solicitors. By very sensible and co-operative discussions, assessment and time-management decisions, counsel managed to finish the mass of evidence in 6 weeks of hearing. I am also indebted to counsel who assisted me greatly in understanding the evidence by drawing up numerous charts collating and containing the key information, including the contentions, and the source documents. They were also very useful during cross-examination. I should also mention I asked counsel about an issue that often arises during trials of this nature, where the documents are voluminous and evidence ranges over a wide area – the treatment of evidence in the bundles admitted without formal proof but without necessarily agreeing to their contents but which are not touched upon by either side. Counsel agreed with me that if documents are in the agreed bundles, *i.e.* they are admitted without formal proof, but the contents are not necessarily agreed to and subject to challenge or comment, and if neither side cross-examines on the

contents of that document or challenges the same in submissions or comments thereon, then if I found it relevant, I was entitled to consider and take the contents of that document into account, decide what weight to place on the same and to draw my own conclusions, bearing in mind however that it had not been tested in cross-examination or otherwise been the subject of some debate.

11 As noted, on many of the crucial issues, there were only two people involved in discussion or decision making, Neo and Lim. Consequently, many of the witnesses were peripheral or corroborative rather than crucial. The witnesses of some note on Lim's side were:

- (a) Mr Aw Eng Hai, an expert witness, who gave evidence from an accounting perspective on some of the contentions and claims by Lim;
- (b) Zhang, who gave evidence by video link from China, Zhang headed ZCC after Wu left Singapore, and regularly attended the Monday meetings of CHKC;
- (c) Mdm Tan, Lim's wife;
- (d) Ms Jean Khoo Kiat Hoon, ("Jean"), the Contracts Manager of CHKC;
- (e) Mr Yeow Chern Lean ("Yeow"), a project manager recruited by Lim from his former employer, Heng Mah;
- (f) Dr Wong Wei Kiang and Mr Poh Geok Seng, brothers-in-law of Lim from Malaysia who gave evidence of loans to Lim to assist in CHKC's cash flow problems; and
- (g) SGT Ong Chun Ben, a witness by subpoena whose evidence related to some pages from a manual cashbook of CHKC ("the Manual Cashbook") which was used in a criminal prosecution.

Unusually, Ms Lee Gek Kwee, a handwriting expert, gave evidence for both Neo and Lim on different documents. Needless to say, I accept her evidence. She gave her evidence professionally and was quite candid as to what she could say and what she could not.

12 As for Neo, besides himself, his other witnesses of some note included:

- (a) Ms Juliet Siah Jui Gek ("Juliet"), a witness by subpoena, who worked in the accounts department of CHKC, but who had affirmed an affidavit for Neo previously and who had testified in District Arrest Case No 15743 of 2008 ("DAC 15743/08"), a criminal prosecution against Lim's brother, Lim Lian Choon, ("LLC");
- (b) Ms Aileen Khoo Choon Yean ("Aileen", also mistakenly referred to or spelt as "Ailreen" by some witnesses and in some of the documents), who worked and was one of the key

personnel in the accounts department of CHKC;

- (c) Ms Yap Siew Chin, who was employed by CHKC as a Quantity Surveyor cum Purchaser and working in the Contracts Department of CHKC;
- (d) Ms Wendy Loh, who was involved in administration and accounts;
- (e) Mr Tan Chia Kong, the Managing Director of COS;
- (f) Mr Lim Kok Khuang ("KK Lim"), an accountant and sole proprietor of K K Lim & Co, an accounting firm who was at one time the auditor of CHH, CCPL, CHKC, COS and CH Timber;
- (g) Ms Eileen Lim Beng Gee, a witness by subpoena; and
- (h) Ms Lee Hwee Dee, who was engaged by Neo's legal team to assist in the documentation for the trial. Her evidence related to discovery of copies of certain pages of CHKC's Manual Cashbook and transmission of these documents to Lim's solicitors.

13 Unless it is necessary, I will not refer to the evidence of all of these witnesses and their AEICs or cross-examination in this judgement. But I have borne the evidence of these other witnesses in mind, mainly for corroborative value. Unfortunately, in cases like the present, with the mass of evidence, including volumes of ledgers, accounts, vouchers, etc., going into too much detail will cause this judgment, which is largely on facts, to be unnecessarily long.

### **My findings on facts generally**

14 Both Lim and Neo were cross-examined for approximately 9 days each. In general, except for specific issues which I shall refer to under those separate issues, having heard the witnesses and considered the evidence, where there is a conflict of evidence as between Lim and Neo, I generally prefer and accept that of Lim's over Neo's.

15 Neo's case is that after he hired Lim, he left the entire running of CHKC to Lim. He even left the running of the accounts department to Lim. He did not know what was really going in CHKC, what was happening on the ground and he only retained the big picture. Neo said he was busy with his other businesses. He trusted Lim completely. Whatever he was asked to sign cheques or documents, so long as Lim approved it or signed on the voucher, he would just sign without asking questions. He would not check. He treated Lim like his younger brother. Neo said he and his wife even bought Lim his favourite durians and brought it to his house. Such was the level of his trust in and bond with Lim. After their big quarrel in October 2006, Neo then said he was surprised that "a mere salaried employee" could have amassed sums in excess of \$7 million to "lend" to CHKC and after he dismissed Lim, he formed an investigation team to look into the accounts and affairs of CHKC and was shocked to find Lim had misappropriated monies well in excess of \$40 million.

16 Under cross-examination Neo was often combative and evasive, resorting to his main theme – i.e. that he trusted Lim and left the entire running of CHKC to Lim, he did not know what was going on – instead of answering the question. Even on straightforward questions he would feign a misunderstanding, give an irrelevant answer or revert to this main theme until I intervened and repeated the question; it was only then that Neo would answer or attempt to answer the question. Neo would also anticipate counsel's questions. I found Neo not forthright in his answers. Neo was often caught out by inconsistencies in his evidence before me and his earlier evidence given to a number of judges, both in the Subordinate and High Courts, as well as in the numerous affidavits he had affirmed in these and other related proceedings. When he was caught out, he would twist and turn, telling one untruth after another, without compunction and without remembering what his original answer was or what he said in an earlier affidavit or evidence he had given earlier in other related proceedings. Neo could change his evidence at a drop of a hat. When he was cornered in cross-examination, especially on a similar or related subject, surprising admissions emerge, e.g. during his cross-examination, after repeatedly and strenuously denying any profit sharing arrangement with Lim, this occurred: [\[note: 4\]](#)

Q. ... Your company Chip Hup Hup Kee was not doing well at all as a construction company when you started out with your small drainage work, was it?

A. Before Mr Lim came into the picture I was also in the construction line.

Q. Correct, but you said that you didn't think you could actually manage the company in its construction business, and therefore you wanted to bring him into the company; isn't that true?

A. Yes.

Q. So Mr Lim says to you, in fact his value to you was so great, *you were prepared to share profits with him* and to allow him to run the company alongside Chip Hup Hup Kee because you were concerned about Mr Lim Leong Huat no longer remaining in your company, agree?

A. Okay. When I did not know what kind of a person he was, *I agreed*.

(emphasis added)

Before me Neo insisted Lim told him not to override the accounting system Lim had put in place and Neo faithfully followed Lim's instructions. [\[note: 5\]](#) Yet in a related case, DAC 15743/08 (which involved a criminal charge against LLC arising from police reports filed against him by CHKC), Neo gave the following evidence: [\[note: 6\]](#)

Q. ... Based on what you have just told us, regarding the groceries and all that, did you, as the big boss of Chip Hup Hup Kee give instructions to your staff, like [Aileen] Khoo, to override any existing company procedure? ...

A. Yes.

When confronted with this contradictory evidence, Neo first disagreed it was contradictory. Then he claimed: "I gave the wrong answer" and later said he "misunderstood." In fact at the top of the transcript page referred to above, the learned District Judge in DAC 15743/08 had said to Neo: "[Counsel] is asking X and you are answering Y. I am writing down the answers, it does not look very



good for you. Do you understand?" An example of Neo's refusal to answer simple questions can be seen in this exchange: [\[note: 7\]](#)

- Q. Are you saying that you could also be denied access to accounts? This is a different thing. Was your access to accounts actually inhibited, blocked in any fashion?
- A. Actually, I never looked at the accounts.
- COURT: Mr Neo, please listen to the question. Can you translate the question to him again?  
(Question retranslated)
- A. No one obstructed me from looking at the accounts. But I never looked at the accounts either.
- COURT: That's different. The question was: were you denied or blocked or inhibited access to the accounts? That was the question.
- A: No, I was not obstructed.

I set out this exchange also because it was not just a question of semantics. Neo's case and Aileen's evidence in support was that Lim had a stranglehold on the accounts department and any information there. Lim's instructions to the accounts staff was that if Neo queried anything about the accounts, the accounts staff were not to answer Neo without checking with Lim first. Yet there was evidence to show that Neo could give instructions to, and get information or documents directly from the accounts department. Before me, Juliet admitted that there were times when Neo made grocery reimbursement claims and although he did not submit bills amounting to the sum he drew out, the accounts department would make payment. [\[note: 8\]](#)

17 Lim on the other hand was more forthright. When it came to difficult questions, he would answer them. When faced with something he had said earlier which was untrue, he would accept the same and apologise. At times his answers were convoluted and difficult to accept, but he did not become as combative and evasive as Neo often did. Having said that, Lim is no angel either, he knew full well that he and Neo were up to their necks in various schemes in CHKC which were clearly wrong and illegal, but his only saving grace was that he apologised each time it came up without being too evasive or telling blatant lies.

18 I also weighed what Neo or Lim told me against whatever reliable documentary, objective or contemporaneous evidence there is as well as the evidence as a whole. Given the history of this dispute, it is not surprising that I did not accept the evidence of either Neo or Lim wholesale. Because of reasons I shall come to, neither can I accept the evidence of the witnesses of each side without carefully considering not only what they are saying, but to ask whether their evidence is consistent, truthful, reliable and whether they display or have any motive for coming forward and taking sides. It would be naïve to think that in a den of thieves, those lower down the pecking order, and who see what was going on, would not succumb to temptation to dip their hands in the till as well nor can I ignore the probability that loyal lieutenants were rewarded with a share of the bounty.

19 This bruising war between Neo and Lim has a longer history than most actions today. Since Lim's summary dismissal in November 2006, there have been numerous related suits and actions, including a criminal prosecution against LLC referred to above at [16]. There are already a number of judgments rendered in these related actions as well as the numerous applications in this action. It is clear to me, and I so find, having heard and considered the evidence, that Neo first tried to get

witnesses to testify against Lim, and if they refused or decided to give evidence for Lim, he went after them if it was at all possible, with a vengeance. This can be seen when Neo first approached Yeow on 1 February 2007 to testify on his side against Lim; Yeow taped their conversation and the transcript clearly shows this:

You said you did not take the money. You did not take the money, Right, I know you did not take it. You do not have the guts to take the money, You are just the scapegoat. I can let you speak, I can let you, I can help you, I can do not pursue this. I have the magnanimity. ... You stand on my side, you can testify against him, I will forget about it. Otherwise when this goes on, you must explain things. Be it to the court, or anyone.

The following are some of the related proceedings initiated by Neo:

(a) Neo sued Yeow in Suit No 136 of 2007 (and related Suit No 137 of 2007) for damages for conversion in relation to 3 cheques, moneys had and received and ancillary reliefs; although judgment was entered against Yeow at first instance, on appeal, the Court of Appeal agreed that the wrong party was suing as Plaintiff and the judgment was set aside; a subsequent action by CHKC against Yeow in Suit No 4717 of 2009 and Originating Summons No 804 of 2009 was dismissed by Andrew Ang J on 17 March 2010 as being time-barred;

(b) Neo caused CHKC to lodge a police report against LLC, who also worked in CHKC. LLC was charged in DAC 15743/08 and after a trial, (the transcript of which was referred to in the present action to show up Neo and his witnesses' false testimony), LLC was acquitted;

(c) Neo caused CHKC to sue Jean in Suit No 142 of 2007; Jean gave evidence on behalf of Lim in this action; this action is yet to be heard;

(d) Neo caused CHKC to sue LLC in Suit No 165 of 2007 for misappropriation of 7 cash cheques, an account for CHKC's plant and machinery entrusted to him, an account for monies received for the disposal of CHKC's plant and machinery, failure to account for the sale of scrap material and failure to exercise reasonable care and diligence in the maintenance of CHKC's warehouse; this action was dismissed with costs by Kan Ting Chiu J on 5 February 2010;

(e) Neo lodged a police report in February 2007, alleging misappropriation of CHKC and his money. Lim was investigated for criminal breaches of trust as a director; on 28 October 2008, the police wrote to Lim stating: "...in consultation with the Attorney-General's Chambers, the police have decided not to take action against [him]". [\[note: 9\]](#)

Neo also caused Mdm Tan to be sued personally in the counterclaim. Where available, the notes of evidence in some of these proceedings and the affidavits of the numerous interlocutory proceedings were used in cross-examination of Neo and Lim and I found some of these references helpful in assessing the probity of the witnesses in this action. As noted above, Neo's evidence in this action was very adversely affected by what he had said or deposed to in these earlier proceedings, earlier affidavits and interlocutory applications. I shall refer to them in more detail below.

20 For the reasons set out in this judgment, I reject Neo's evidence that he left everything to Lim, did not know what was happening in CHKC and only found out a lot of alleged wrong-doing after he summarily dismissed Lim and formed a 'task force' to piece together what was going on in CHKC and AZ. All these three aspects are completely untrue. The following findings and facts can be conveniently made here.

(a) His claim that he did not know about the Salary Accruals after drawing millions of dollars out of that account defies belief, and I find that he not only knew about the Salary Accruals, he together with Lim were instrumental in setting it up.

(b) Throughout this period, from the time he recruited Lim, through the growth of the company, right up to the time he summarily dismissed Lim, Neo was *the only one* with the authority to sign cheques in CHKC. Despite claiming that he was so busy with his other businesses, he *never* allowed anyone else to sign cheques.

(c) When asked the inevitable question, if he trusted Lim so much, left Lim in total control of and to run CHKC, including total control of the accounts department, so much so that he had to ask Lim if he wanted to draw out any money, and if he was so busy with his other businesses, why did he not allow Lim to be a cheque signatory? His rather pathetic response was: "I would... if he requested. ...since he didn't make the request I would take it that it is not necessary." (see [61] below). The look Neo had on his face when forced to give that rather feeble excuse said it all, he had been hoisted on his own petard.

(d) It has been noted that around the end of October 2006, Neo and Lim had a big quarrel. Just before this, Neo said in his AEIC that Lim produced a print-out showing a cash flow deficit of \$483,000 for CHKC. [\[note: 10\]](#) Neo's evidence was that he looked at it and pointed out an entry for payment of \$36,143.51 to a company called Khoon Engineering and protested that the print-out was wrong because CHKC had made payment to Khoon Engineering two days earlier. To remember a payment of only \$36,143.51, out of a whole list of 25 items, when it was made and to which entity is, by any measure, quite remarkable for a man who says he did not know what was going on and that he signed cheques blindly. More than that, when Neo went on in an almost uncontrolled outburst in recounting their big quarrel, he unwittingly showed he knew a lot of details in relation to the cash flow and operations – Neo could say that an entity called Welltech had a joint venture with CHKC and that project was subcontracted to another company called Qing Dao; and that Khoon Engineering was a subcontractor for that project and there had been a payment of some \$360,000 to \$370,000, and therefore the payment to Khoon Engineering should come out of that payment that was in relation to Qing Dao and should not affect CHKC's cash flow. [\[note: 11\]](#)

(e) I find that Neo was an experienced and savvy businessman. He had previous experience in the family and other businesses well before 1994. I find that he was careful with money and hence no one else was allowed to sign cheques in CHKC. I find that someone like Neo did not sign cash cheques or cheques with large sums and no payee inserted without him knowing what they were for.

(f) Similarly, Neo said that he trusted Lim so much, yet he considered Lim 'a mere employee' whom he could replace quite easily. Neo cannot have his cake and eat it. Lim was either very capable or he was not and easily replaceable. If he was the latter, then I find it hard to understand why Neo would trust Lim so much and leave the running of CHKC and its accounts completely to Lim. The objective evidence shows that Lim was a very capable person when it came to construction work and running construction projects. There is clear enough evidence that Lim's successor, hired by Neo, was nowhere as capable and I find that on the evidence:

(i) CHKC's subcontract with Chip Eng Seng Contractors (1988) Pte Ltd on the large Duxton Plain project was terminated by an agreement dated 19 February 2009; the recital states: "Whereas [CHKC] is unable to continue to fulfil its obligations under the

abovementioned Sub-Contract Agreement. Henceforth [CHKC] requests to withdraw from the above Sub-Contract Agreement"; and

(ii) CHKC's subcontract (CHKC Quotation dated 7 August 2007, Letter of Acceptance dated 3 September 2007) with Ssangyong Engineering and Construction Co Ltd for the Marina Bay Sands Integrated Resort project was terminated as a result of CHKC's inability to perform and poor quality work: see the affidavit of Kim Jong Min dated 3 June 2008 in Suit 379 of 2008 where Ssangyong Engineering and Construction Co Ltd sued CHKC.

21 In the course of his evidence, Neo said he found it shocking that a "mere employee" could find so much money to lend CHKC. Before me, Neo claimed that Lim was easily replaceable, did not help CHKC become profitable because Lim had no connections, did not bring in the business and played a small part in the growth of CHKC. Neo said it was the Chinese workers who earned the money for CHKC. These claims, like his claim of not knowing what was going on in CHKC, were nothing but an act for the purposes of this action. Neo forgot what he told Lai Siu Chiu J in Suit No 136 of 2007 on 11 March 2009. The transcript there reads:

MR KRONENBURG: Who is Lim to you, that you would trust him so deeply?

A. Because he could manage the company well and he could bring a lot of business for the company, and there was always an increase in the annual turnover and even an increase in management staff every year and he helped to make a lot of profit for the company; that is why I trusted every word that he said.

I have found that Lim enabled CHKC to dramatically increase its revenues once he came on board. The figures at [8] above speak for themselves. Would Lim continue to work for Neo if his only remuneration was some \$7,000 a month, \$200,000 bonus a year and some expenses and perks, like provision of a car? It is obvious that Lim's only reward for his good work was money. Lim was never offered any and did not hold a single share in CHKC or Neo's related companies. Even when Neo was thinking of re-structuring his companies for a listing, no question of giving Lim a share in the companies arose.

22 At this juncture, I set out one of the main schemes of manipulation that was carried out in CHKC. To mislead the MOM on the number of CHKC's local employees, CHKC made up a large list of apparent local employees which were euphemistically called "Proxies" in CHKC. They were not real employees. They never came to CHKC's office and did not do any work whatsoever for CHKC. These Proxies were relatives or close friends of Neo, Lim and some of their employees. There was even a form generated in CHKC to set out the relevant details of these Proxies and this included their proper names, NRIC numbers, addresses and who 'introduced' them to the Proxy list. CHKC faithfully paid the employer's and employees' portion of the CPF contributions of these Proxies every month to the CPF. But they were not otherwise paid any salary. The Proxies went along because they had extra contributions to their CPF accounts for free. This inflated employee list enabled CHKC to obtain a higher quota of foreign workers from MOM. The "notional salaries" which would have been paid, had these Proxies been real employees, less the CPF contributions were then credited into a Salary Accruals account or ledger. Neo, and later, Lim, drew out millions of dollars from this Salary Accruals account on the basis that they had personally paid these 'employees' their salaries and were seeking reimbursement from CHKC.

23 I find that CHKC was able to leverage off this cheaper Chinese labour thereby making large

profits from their project work and enabled Neo and Lim, through diverse ways and means, to siphon off a significant portion of these profits through, *inter alia*, the Salary Accruals and other “expenses” without having to account for these sums as profits and therefore evade tax. There is sufficient evidence, and I so find, that Neo contributed a large number of names for this “Proxy” list. His own witness, Juliet, said clearly, not once but twice, that Neo contributed a large number of the Proxies.

[\[note: 12\]](#) It is quite incredible for Neo to claim he did not know that this was going on. Anyone, even with only a modicum of arithmetical ability, will know that such large profits in the Salary Accruals available for distribution and the low profits each year in the accounts just do not add up. Neo says it was Lim who dreamt up this scheme and Lim says it was Neo because when he joined CHKC it was already in place. I will deal more with the “Proxies” and Salary Accruals systems below at [\[121\]](#)–[\[128\]](#).

24 I also make the following findings. About 3 years or so after Lim joined CHKC, in or around 1996 or 1997, Lim wanted to leave and set up his own business. It will be recalled from [\[8\]](#) above, that CHKC’s revenue leapt from \$6.6 million in 1994 to \$59.5 million in 1997 and to \$78.8 million in 1998; (it is noteworthy that in Neo’s Opening Statement, he recounted that between 1997 to 2006, CHKC was engaged in about 60 construction projects with a total contract value of \$543 million). I accept that to entice Lim to stay, Neo offered Lim a profit sharing deal as Lim has alleged. Neo also allowed Lim to set up AZ as Lim’s own vehicle to work on some projects and allowed Lim to draw out money from CHKC, like Neo was, through various channels. I reject Neo’s version that he allowed AZ to be set up provided it routed all its profits back to CHKC as if no assignment had taken place. Between the two of them, CHKC was the cash cow generating huge sums of money which were available tax free. It would be totally in keeping with Neo’s character to ensure Lim also had a share of the spoils, not only to keep him working for Neo, but also because neither could have a hold or tell on the other as they were both in the same boat as far as the authorities were concerned. I therefore find that Lim had the means to lend money to CHKC when it required money. When Mdm Tan was under cross-examination I asked her to show me her CDP Statements. She did so and I was satisfied she had the means to make loans to CHKC.

25 I also find that around 2003, CHKC started facing cash flow and financial difficulties. This coincided with a downturn in the construction industry. Lim put forward an accounting expert, Mr Aw Eng Hai, whose evidence was, in the event, not pivotal. But Mr Aw produced a chart which convincingly showed that from about May 2003 onwards, the amount of CHKC’s cheques which had not been presented for payment, increased dramatically. [\[note: 13\]](#) CHKC had a system of issuing cheques but not releasing them to payees until there were sufficient funds to honour those cheques. This increase in cheques not presented shows it was taking longer for these cheques to be paid. Mr Aw’s evidence was largely unshaken by cross examination. In fact Neo accepted this was a valid indication of a cash flow problem in an earlier affidavit. [\[note: 14\]](#) CHKC’s own witnesses, Wendy Loh Chen Yi, Aileen, and one Raymond Lee, also testified that CHKC did not pay any more substantial bonuses from 2002 to 2003 and they instead received red packets of a few hundred dollars. I now turn to deal with the individual claims and counterclaims.

## **The Claims and Counterclaims**

### ***Lim’s claim***

26 Lim claims the following against CHKC: [\[note: 15\]](#)

- (a) \$7,205,000 being the total sum lent by Lim to CHKC over the period 2003–2006 to alleviate CHKC’s cash flow problems; and

(b) Various monthly sums allegedly agreed between Lim and Neo (on behalf of CHKC) as COF compensation to Lim in consideration of Lim procuring funds to lend to CHKC.

27 Lim has an alternative claim for \$6,405,000 in respect of dishonoured cheques issued by CHKC to secure his advances to it. Lim also claims, as against CHKC and Neo, damages for conspiring to injure and defraud him by inducing CHKC to breach its obligations to (i) repay the sum of \$7,205,000 to Lim and (ii) pay Lim the COF compensation.

### ***CHKC's counterclaim***

#### *Counterclaim against Lim*

28 CHKC originally counterclaimed the sum of \$55,074,700.88. As the action ran its course through interlocutories and discovery, the counterclaims were eventually reduced to \$40,065,271.25. These counterclaims against Lim comprise the following: [\[note: 16\]](#)

(a) \$6,084,741.06 being the monetary value of Neo's cheques which Neo had handed over to Lim as loans made to CHKC, but which Lim had wrongfully deposited into his, Mdm Tan's or AZ's bank accounts or cashed out;

(b) \$2,080,000 being the monetary value of CHKC's cheques which were intended as part repayment of Neo's loans to CHKC, but which were instead misappropriated by Lim and deposited into his or AZ's bank accounts or cashed out;

(c) \$2,300,416 comprising the sums of (i) \$1,552,880 (being the value of cheques made out to specified third parties) and (ii) \$747,536 (being the value of cash cheques), all of which were purportedly made as payments to fictitious third party subcontractors, but were in fact misappropriated by Lim;

(d) \$6,110,863.24 comprising the sums of (i) \$5,161,671.65 which Lim had misappropriated from CHKC through the creation of false book entries in CHKC's accounts; and (ii) \$949,191.59 being a debt due and owing by AZ to CHKC which Lim had caused to be wrongly reflected in CHKC's accounts as settled by AZ when it was not in fact settled;

(e) \$2,822,230.03 [\[note: 17\]](#) (this amount was revised from CHKC's original counterclaim of \$2,922,510.03) being the total amount of wrongful overpayment of salaries to Lim, Mdm Tan and Yeow; and

(f) \$20,667,020.92 (or such other sums found due) being the monetary value of losses and damages caused to CHKC as a result of Lim's and/or AZ's unlawful retention of the profits due on 11 of CHKC's building construction projects ("the 11 Projects") which had been assigned by CHKC to AZ.

#### *Counterclaim against Mdm Tan*

29 CHKC counterclaims the following against Mdm Tan: [\[note: 18\]](#)

(a) \$2,015,500 being the monetary value of Neo's cheques credited into Mdm Tan's bank account; and

(b) \$1,584,960 [\[note: 19\]](#) (this amount was revised from CHKC's original counterclaim of \$1,685,240) being the total amount of wrongful overpayment of salaries to Mdm Tan.

The claim of \$2,015,500 forms part of CHKC's claim of \$6,084,741.06 against Lim described in [28(a)] above, while the claim of \$1,584,960 forms part of CHKC's claim of \$2,822,230.03 against Lim described in [28(e)] above. The total value of CHKC's counterclaim against Mdm Tan is \$3,600,460.

#### *Counterclaim against AZ*

30 CHKC counterclaims the following against AZ: [\[note: 20\]](#)

(a) \$1,240,000 being the monetary value of Neo's cheques which were either credited into AZ's bank account or recorded as loans from AZ to CHKC;

(b) \$900,000 being the monetary value of CHKC's cheques which were intended as part repayment of Neo's loans to CHKC, but were instead credited into AZ's bank account;

(c) \$949,191.59 being the value of monies due and owing from AZ to CHKC but which had been falsely recorded as settled; and

(d) \$20,667,020.92 (or such other sums found due) being the monetary value of profits wrongfully retained by AZ from CHKC in relation to the 11 Projects.

The claim of \$1,240,000 forms part of CHKC's claim of \$6,084,741.06 against Lim described in [28(a)] above, while the claim of \$900,000 forms part of CHKC's claim of \$2,922,510.03 against Lim described in [28(b)] above. The claim of \$949,191.59 forms part of CHKC's claim of \$6,110,863.24 against Lim described in [28(d)] above. Finally, the claim of \$20,667,020.92 is the same claim CHKC has brought against Lim described in [28(f)] above. The total value of CHKC's counterclaim against AZ is \$23,756,212.51.

31 Having listed the various claims and counterclaims, I now proceed to review the evidence and set out my findings on each claim.

#### **Lim's claim for \$7,205,000**

32 Lim's case is that CHKC was experiencing financial difficulties starting from 2002 due to the general downturn in the construction industry. Thus, from about July 2003 to September 2006, at Neo's request, Lim advanced various interest free loans ranging from \$25,000 to \$500,000 to CHKC. These loans were made mostly through cheques although a cash sum of \$100,000 was provided in one instance. For each loan made to CHKC, Neo (on behalf of CHKC) would personally sign a cheque for the corresponding amount and give it to Lim to hold as security for repayment.

33 By September 2006, the total value of Lim's loans to CHKC amounted to \$7,635,000, of which \$430,000 was subsequently repaid, leaving a balance of \$7,205,000. When Lim subsequently demanded the return of all outstanding monies during their big quarrel in October 2006, Neo refused. Lim was subsequently suspended from employment by CHKC on 9 November 2006. On 15 November 2006, Lim presented some of the cheques CHKC had given him as security for payment, but all the cheques were dishonoured.

34 CHKC did not dispute that Lim had lent the sum of \$7,205,000 to it. CHKC accepted that \$7,635,000 had been credited to its account by Lim and CHKC made repayment of \$430,000. But



CHKC argued that it was entitled to treat the \$7,205,000 as part restitution of monies which Lim had misappropriated from it. [\[note: 21\]](#) Further, CHKC's case is that if Lim had not misappropriated the sums set out at [28] above, there would have been no cash flow problems and CHKC would not have had to borrow any money from Lim. CHKC's defence against Lim's claim for \$7,205,000 is therefore dependent solely on its counterclaim against Lim. In the event that CHKC does not succeed in proving Lim misappropriated those sums of money set out in its counterclaim, it would be liable to repay the \$7,205,000 to Lim as CHKC admits the existence of the debt.

## **Lim's claim for COF compensation**

### ***Lim's case***

35 Lim's case is that by 30 September 2004, he had advanced about \$5.93m in loans to CHKC, of which \$3.75m was outstanding. At a meeting between Lim and Neo on 30 September 2004, Neo informed Lim that CHKC would be unable to repay the outstanding loans for the immediate future. Lim and Neo (on behalf of CHKC) then orally agreed that Lim should be compensated for the cost of procuring the funds to loan to CHKC. Under the terms of this oral agreement, CHKC would pay to Lim the sum of \$16,800 per month starting from 1 October 2004.

36 The figure of \$16,800 per month was arrived at through the following method: [\[note: 22\]](#)

(a) The average sum advanced by Lim to CHKC in the form of loans for the period August 2003 – September 2004 was computed to be \$4.84m, being the average of \$5.93m and \$3.75m.

(b) Lim and Neo then estimated the value of individual loans made to CHKC within this 14-month period and calculated the monthly COF compensation for that individual loan based on the corresponding estimated interest rates for that period. This is illustrated in the following table:

<b>Duration</b>	<b>Estimated Loan</b>	<b>Estimated Interest Rate</b>	<b>Monthly COF</b>
Aug 03 – Sep 04	\$1,000,000	5.75%	\$4,791.67
Oct 03 – Sep 04	\$200,000	2%	\$333.33
Dec 03 – Sep 04	\$2,000,000	3%	\$5,000
Mar 04 – Sep 04	\$500,000	3%	\$1,250
Jun 04 – Sep 04	\$500,000	5.75%	\$2,395
Aug 04 – Sep 04	\$640,000	5.75%	\$3,066.67
<b>Total</b>	<b>\$4,840,000</b>		<b>\$16,837.50</b>

(c) The figure of \$16,837.50 was then rounded down to \$16,800 "for convenience". [\[note: 23\]](#)

37 There were three subsequent revisions to the COF compensation as follows: [\[note: 24\]](#)

(a) From October 2004 to May 2005, Lim advanced additional sums of \$2,100,000 to CHKC. Lim and Neo (on behalf of CHKC) agreed to increase the monthly COF compensation to \$4,800 on top of the \$16,800 agreed on earlier.



(b) From July 2005 to August 2005, Lim advanced a further sum of \$1,185,000 to CHKC. Lim and Neo (on behalf of CHKC) agreed to increase the monthly COF compensation to \$4,375 on top of the sums of \$16,800 and \$4,800 agreed on earlier.

(c) From August 2005 to October 2005, Lim advanced a further sum of \$1,165,000 to CHKC. Lim and Neo (on behalf of CHKC) agreed to increase the monthly COF compensation to \$6,751 on top of the sums of \$16,800, \$4,800 and \$4,375 agreed on earlier.

38 Finally, Lim and Neo (on behalf of CHKC) also agreed subsequently that for the months of November 2005 and January – June 2006, Lim would receive additional COF compensation as follows:

Month	COF
Nov 2005	\$20,000
Jan 2006	\$40,000
Feb 2006	\$30,000
Mar – Jun 2006	\$20,000 per month

These sums were on top of the monthly sums of \$16,800, \$4,800, \$4,375 and \$6,751 agreed on earlier but each sum was only payable for that particular month.

39 The monthly sums of \$16,800, \$4,800, \$4,375 and \$6,751 were paid to Lim through regularly issued cash cheques. The one-off payments from November 2005 to June 2006 described in [38] above were also made to Lim through cash cheques of \$10,000 each. All these payments were not recorded in CHKC's accounts as payments to Lim, but were instead disguised through the issuance of payment vouchers as payments to entirely fictitious subcontractors named "Khor Ah Teck", "Liu Bi Yu", "Shi Chun Bing" and "Peng Chao". Lim's explanation was that CHKC's accounts did not reflect the existence of the loans made by Lim to CHKC, because the cheques issued by CHKC as security for the loans were already treated in CHKC's accounts as being already paid to Lim. [\[note: 25\]](#)

40 Lim alleged that CHKC suddenly ceased paying the monthly COF compensation from September 2006. Lim therefore claims the sums of \$16,800, \$4,800, \$4,375 and \$6,751 per month from October 2006 until CHKC repays the principal loan of \$7,205,000. [\[note: 26\]](#)

### **CHKC's case**

41 CHKC's position on this issue was one of bare denial. It denied that any oral agreement ever existed between Lim and Neo for CHKC to pay COF compensation. In fact, CHKC is also counterclaiming against Lim for the sum of \$747,536 being the value of cash payments made to fictitious subcontractors, but were allegedly misappropriated by Lim. CHKC's case is that Lim is belatedly raising the COF compensation claim as a fabricated defence against CHKC's counterclaim of \$747,536 for payments made to fictitious subcontractors. This counterclaim of \$747,536 forms part of CHKC's counterclaim of \$2,300,416 against Lim as described in [28(c)] above.

### **My findings**

42 Having considered the evidence, I find that Lim has not proved an oral agreement between him

and CHKC for the latter to pay COF compensation as alleged and pleaded by Lim. My reasons are as follows. First, I find Lim's entire story behind the computation of the initial COF compensation sum of \$16,800 to be unnecessarily convoluted. Lim had stated during cross-examination that he had obtained the funds to lend to CHKC from various sources e.g. relatives, Mdm Tan, and bank overdrafts. Lim thus estimated the interest rate for his COF compensation based on his source of funds. [\[note: 27\]](#) For example, he would arrive at 2% for loans from relatives, 3% for loans from Mdm Tan (based on her bank mortgage), and 5.75% for the overdraft facilities. However, Lim also admitted during cross-examination that all these monies had been mixed up in his bank account. [\[note: 28\]](#) All his loans to CHKC were made in the form of cheques drawn on his bank account. In these circumstances, I find it very artificial for Lim to estimate the loans he made for various periods from August 2003 to September 2004 and assign an interest rate to each period. It is noteworthy that one of Lim's brothers-in-law, Mr Poh Geok Seng, who lent Lim \$400,000 for one or two months said he did not charge any interest.

43 Secondly, there were inconsistencies in Lim's own evidence. Based on the table of estimated loans provided at [36(b)] above, Lim had allegedly lent the sum of \$1m to CHKC by August 2003 at a rate of 5.75%. However, Lim's own AEIC shows that the total value of cheques he had drawn in CHKC's favour at the end of August 2003 was \$430,000, of which \$130,000 had been repaid by mid-August. [\[note: 29\]](#) When Lim was pressed on this point during cross-examination, his answer was that the figure of \$1m was an estimate, [\[note: 30\]](#) which I find to be quite circular and evasive. Lim further testified in cross-examination that the table of estimated loans had been typed out by Aileen, [\[note: 31\]](#) but this point was never disclosed in his AEIC, nor was it put to Aileen when she was cross-examined.

44 Finally, Lim had only given details for computing the initial COF compensation of \$16,800. When CHKC's counsel asked him during cross-examination as to how he arrived at the additional monthly sums of \$4,800, \$4,375 and \$6,751, Lim could only say that he and Neo arrived at those sums by basing each additional loan he made on an estimated flat rate of about 5.75%. [\[note: 32\]](#) However, I note that when Lim lent CHKC \$1,185,000 from July 2005 to August 2005, the additional COF compensation was calculated to be \$4,375. Yet, when he subsequently lent CHKC \$1,165,000 from August 2005 to October 2005, for a substantially similar amount of money, the additional COF compensation was calculated to be \$6,751. Lim explained in cross-examination that the additional monthly sums took into consideration monies which CHKC had already repaid to him, but he was unable to recall how much he was repaid. [\[note: 33\]](#) I find it very odd that Lim could give so many details on calculating the initial COF compensation of \$16,800 but not have any figures when it came to computing the other monthly sums. I also find it odd that Lim arrived at the figure of \$16,800 by rounding down from \$16,837.50 "for convenience", and yet he did not round down the additional COF sums of \$4,375 and \$6,751 when they were agreed on.

45 Taking all the above factors into account, it is my view that the scheme for computing the various COF sums was contrived and designed, with the benefit of hindsight, to match the sums of \$16,800, \$4,800, \$4,375 and \$6,751 being paid by CHKC to the fictitious subcontractors on a regular basis. Reviewing Lim's formula to calculate the sum of \$16,800, for example, gave me a strong feeling that this figure of \$16,800 was first arrived at, and that someone had worked backwards to construct a formula which would bring in the other sums he had lent to CHKC from August 2003 – September 2004. This would explain why Lim's method of computation was so artificial and convoluted. I therefore do not accept that Lim has discharged his burden of proof in proving that there was an oral agreement as alleged by him in his pleadings for CHKC to pay COF compensation until his loans to CHKC were repaid. However, like some of the issues in this trial, I had to deal with half-truths told by

each side. I find that there were some interest payments made to Lim for some of the funds he raised, especially from third parties. CHKC did pay Lim various sums as “interest” on his loans; it is just that Lim has not proved, on a balance of probabilities, the amounts he is claiming. I accept the evidence of Lim’s brother-in-law, Dr Wong Wei Kiang, who came across as a witness of truth and who came through cross-examination unscathed, that when his initial interest-free loan turned into a longer term loan, Lim agreed to pay him interest at the same rate that Standard Chartered Bank would have given Dr Wong *i.e.* 2% per annum. However Dr Wong’s loan was a modest \$200,000. He was paid interest of \$4,000 per annum from around the third quarter of 2003. He has not received any interest from 2007 to date and his principal has also not been repaid to date. CHKC’s Manual Cashbook also disclosed that there were 5 entries amounting to \$23,150 in 2005 in 2005, in Aileen’s handwriting, as follows: [\[note: 34\]](#)

Date	Cheque No	Description	Amount
30 Jun 2005	482980	Cash LLH – [Int]	\$4,800
11 Aug 2005	942117	Cash Interest – LLH	\$4,375
26 Aug 2005	942261	Cash LLH – [Interest]	\$4,800
28 Sep 2005	942476	Cash – Bank Int	\$4,800
28 Sep 2005	942477	Cash – Bank Int	\$4,375

This contradicts Aileen’s evidence in chief at [84(g)] and is one of many instances of inconsistencies, (especially as it was in her own handwriting), which led me to reject Aileen’s evidence as being totally unreliable. For the avoidance of doubt, I also find that Neo did sign those repetitive cheques, like the \$16,800, knowingly, see eg, the Manual Cashbook, 3 EAB 11 at p.8572, where there is a similar entry carrying the description: “Cash Lim Leong Huat ... \$16,800”. Neo, as already noted above, is not someone who signs cheques without knowing what they are for. I accept and find that there were some interest payments made to Lim by CHKC, and that it was agreed to by Neo, but Lim has not proved what these sums were. Lim’s legal team only identified the 5 payments of \$4,800 and \$4,375 from June to September 2005 set out in “PWB-49” with Mr Khoo saying “... we have identified at least five examples of that.” Given the thoroughness of the legal teams, I doubt if there are others. I have not found any other similar entries in 3 EAB 11 (the Manual Cashbook) These payments were therefore not as regular and over as long a period as Lim has alleged. And the burden of proof is on him.

46 Accordingly, this does not mean that CHKC’s counterclaim of \$747,536 against Lim for the return of monies already paid to him (but recorded as payments to fictitious subcontractors) is automatically made out. I will deal with this issue along with the rest of CHKC’s counterclaims in more detail below.

### **CHKC’s counterclaim for misappropriated cheques**

#### ***CHKC’s case***

47 CHKC’s case is that from 1999 – 2003, Lim had represented to Neo that CHKC was facing cash flow problems. Neo was thus induced to make loans totalling \$6,084,741.06 to CHKC by handing Lim signed cheques from his personal account, with the name of the payee left blank. [\[note: 35\]](#) Instead of depositing Neo’s cheques into CHKC’s account, Lim misappropriated them in the following manner:

- (a) Neo's Citibank cheque No 943909 for the sum of \$300,000 was deposited into Mdm Tan's bank account;
- (b) Neo's UOB cheque No 112437 for the sum of \$380,000 was deposited into AZ's bank account; and
- (c) The balance of Neo's cheques totalling \$5,404,741.06 were deposited variously into Lim's, Mdm Tan's or AZ's bank accounts or cashed out.

48 CHKC also alleged that between January 2000 and May 2005, Lim had caused it to issue six cheques totalling \$2,080,000 which were meant to repay Neo's loans to CHKC. Instead of paying those cheques to Neo, Lim had caused them to be deposited into his or AZ's bank accounts, or cashed out. [\[note: 36\]](#)

### ***Lim's, Mdm Tan's and AZ's case***

49 Lim denied misappropriating any of Neo's or CHKC's cheques, and contended that the cheques were dealt with in the following manner:

- (a) Neo's Citibank cheque No 943909 for the sum of \$300,000 was deposited into Mdm Tan's bank account as repayment for a loan of \$300,000 made by Mdm Tan to CHKC; [\[note: 37\]](#)
- (b) Neo's UOB cheque No 112437 for the sum of \$380,000 was deposited into AZ's bank account as repayment for a loan of \$380,000 made by AZ to CCPL; [\[note: 38\]](#) and
- (c) The balance of Neo's cheques totalling \$5,404,741.06, along with CHKC's cheques totalling \$2,080,000, were used to pay off fictitious invoices issued by CHKC and CCPL for purported work that was not done by either company ("the Fictitious Invoices Scheme"). [\[note: 39\]](#)

### ***Neo's Citibank cheque for \$300,000***

50 Lim and Mdm Tan stated in their AEICs that the latter had originally made a loan of \$300,000 to CHKC by way of OUB cheque No 263904 dated 29 January 2002. In exchange, CHKC through Neo issued its UOB cheque No 341396 for the same amount as security for repayment. However, Neo subsequently changed his mind about using CHKC's UOB cheque for repayment and instead issued his personal cheque, being Citibank cheque No 943909 for repayment of Mdm Tan's loan. Lim then instructed Jean to cancel CHKC's UOB cheque but through a misunderstanding, CHKC's UOB cheque was instead banked into Mdm Tan's account on 8 February 2002. To rectify the error, Lim issued OUB cheque No 263928 from Mdm Tan's account on the same day to repay CHKC for the mistaken overpayment. [\[note: 40\]](#) The final result was that the net balance between CHKC and Lim/Mdm Tan was zero.

### ***Neo's UOB cheque for \$380,000***

51 Lim asserted that AZ had made a loan of \$380,000 to CCPL and that Neo had given his UOB cheque No 112437 to Lim in the knowledge that it was being used to repay the loan owed by CCPL.

### ***Fictitious Invoices Scheme***

52 According to Lim, Neo had plans to list CHKC's holding company, CHH, on the Main Board of the

Singapore Exchange ("SGX") sometime between 1998 and 2002. To meet SGX's listing requirement of a track record of cumulative consolidated pre-tax profits over three years of operations, Neo needed to have a track record of profits and planned to inflate the pre-tax profits of CHKC and CCPL to \$7.5 million. Accordingly, Neo hatched the Fictitious Invoices Scheme for CHKC and CCPL to generate artificial revenue by issuing fictitious invoices to AZ and various third parties. These invoices would be indirectly paid for by Neo and CHKC.

53 Pursuant to this arrangement, CHKC and CCPL issued fictitious invoices totalling \$7,490,878.35, which were paid in the following manner:

- (a) \$4,396,977.30 was paid by AZ to CHKC and CCPL in the form of cheques;
- (b) \$2,544,367.80 was set off against progress payments made by CHKC to AZ in respect of work done by AZ for CHKC; and
- (c) \$549,533.25 was paid by Lim to CHKC and CCPL in the form of cash.

54 In order to conceal the real source of the funds for the Fictitious Invoices Scheme, Neo's and CHKC's cheques were credited into Lim's, Mdm Tan's and AZ's bank accounts, or cashed out. These monies were eventually used to reimburse Lim and AZ for the payments they made to settle the fictitious invoices. Since the Fictitious Invoices Scheme was designed to evade detection, individual cheques issued by Neo/CHKC were not intended to match any particular invoice. As a result, the total value of invoices issued (\$7,490,878.35) was \$6,137.29 more than the total value of Neo's and CHKC's cheques (\$7,484,741.06) used to reimburse Lim and AZ.

### ***My findings***

#### *Neo's Citibank cheque for \$300,000*

55 Lim/Mdm Tan transferred \$600,000 from Mdm Tan's account to CHKC by two OUB cheques of \$300,000 each. In return, CHKC's UOB cheque for \$300,000 was deposited into Mdm Tan's account. The issue therefore is whether the balance of \$300,000 owing to Mdm Tan had been repaid by CHKC separately. CHKC sought to rely on an extract from an account named 'ACA 25' in its general ledger [\[note: 41\]](#) as evidence that the \$300,000 owing to Mdm Tan was recorded as a loan owing to Lim, which was repaid separately by CHKC. Thus, CHKC argued that Neo's Citibank cheque was misappropriated by Lim and deposited into Mdm Tan's account instead of being used to pay off the \$300,000 owing by CHKC.

56 The problem with CHKC's evidence is that this extract from ACA 25 which it relied on only appears to be a statement of accounts between Lim and CHKC. It does not show, on balance, that the \$300,000 owing to Mdm Tan was in fact paid to Lim. As Lim disputed that he was ever paid this amount, CHKC should have adduced some evidence of payment like receipts or bank records. Since CHKC did not adduce further evidence on this point, I am unable to find that the balance of \$300,000 owing to Mdm Tan was paid off by CHKC to Lim. Consequently, I accept Lim's evidence that Neo's Citibank cheque was used to repay the \$300,000 owing to Mdm Tan instead of being misappropriated by Lim. Therefore, CHKC's counterclaim for the \$300,000 fails.

#### *Neo's UOB cheque for \$380,000*

57 I have no trouble finding from the evidence that Neo knew, and intended his UOB cheque for \$380,000 to be a repayment of AZ's loan to CCPL. Neo admitted during cross-examination that he had

signed his UOB cheque for \$380,000 after Lim had filled in AZ's name as the payee. [\[note: 42\]](#) Neo also admitted, from his own AEIC, that he would pay attention to the name of the payee written on his cheques and even question Lim why "Cash" was written instead of CHKC's name in some instances. [\[note: 43\]](#) Therefore, Neo must have known and I so find that the cheque was meant to pay AZ instead of CHKC. In my judgment, CHKC's counterclaim for the \$380,000 therefore fails.

### *Fictitious Invoices Scheme*

58 I now deal with the bulk of CHKC's counterclaim for misappropriated cheques. The crux of the dispute between the parties in this area essentially turns on Lim's word against Neo's. Neo denied any knowledge of the Fictitious Invoices Scheme and accused Lim of starting the scheme to reduce AZ's taxable income, while Lim maintained that Neo was the mastermind behind the scheme. In the midst of all this finger-pointing, I would note that it is not necessary for either party to establish who exactly came up with the Fictitious Invoices Scheme. What is clear to me, and I so find, is that both Neo and Lim were up to their necks in this convoluted scheme and that what matters more is that Neo was well aware that his and CHKC's cheques were being used to further such a scheme. I would also note that CHKC did not challenge Lim's evidence that the \$7,490,878.35 worth of fictitious invoices issued were all paid off to CHKC and CCPL.

59 Having heard the evidence, I find that the idea to list was Neo's however the Fictitious Invoices Scheme was something that was hatched by both Neo and Lim in furtherance of Neo's idea to list his company. I have no doubt that Neo was indeed aware of the Fictitious Invoices Scheme when he was signing his and CHKC's cheques. If Neo really intended to make loans to CHKC, he would simply have filled in CHKC's name as the payee on his cheques instead of signing them in blank. The converse would also have applied when Neo, as CHKC's sole signatory, was signing CHKC's cheques as repayment for his loans. It was unbelievable that Neo would have signed off on so many of his and CHKC's cheques without verifying where the money was being paid. Furthermore, the directors' loan account in CHKC's audited accounts shows that Neo actually made substantial loans to CHKC *after* and not before 2003. [\[note: 44\]](#) As Neo had signed off on all of CHKC's accounts, it must have been clear to him that any loans he purportedly made from 1999 – 2003 were not being paid to CHKC. Lastly, Lim produced an extract from an account named 'ACA 11' in CHKC's general ledger [\[note: 45\]](#) which showed that Neo had actually drawn a total of \$6,440,438.48 from CHKC between 1 June 1999 and 31 May 2003, compared to \$2,345,000 which he put into CHKC during the same period. Obviously, Neo must have realised that CHKC had no cash flow problems prior to 2003 if he was able to draw so much money out of the company.

60 Despite this clear evidence, Neo continued to maintain during the trial that he trusted Lim completely and simply signed everything Lim put in front of him, be it cheques or audited accounts. As stated earlier, I do not believe this story of Neo's at all. Although he tried to portray himself as a gullible boss who was easily misled by Lim, I find him to be a very street-wise and shrewd businessman who did not trust people blindly. Neo himself admitted during cross-examination that he was careful with his personal cheques: [\[note: 46\]](#)

Q. Mr Neo, these are your personal cheques at page 526 and 535, your personal money, correct?

A. Yes.

Q. So you are certainly going to be concerned about your own money and status of your funds, correct?

A. Yes.

...

Q. Since this is your personal account, it doesn't matter. The point is this: You would certainly be careful about your personal account, wouldn't you?

A. Yes.

Q. If that is the case, you would know whether or not your account can actually honour the cheques issued from them, do you agree?

A. Yes.

Since Neo was careful enough to ensure that he had the funds available to honour his cheques, and having heard his evidence, I find that he would also be careful about where his funds were going. Further Mr Khoo produced an analysis, [\[note: 47\]](#) which was not denied by Neo, to show that only 7.29% of the CHKC cheques were cash cheques. I find that Neo was careful about signing cash cheques or cheques without a payee and such cheques were for special purposes. Mr Khoo also produced another analysis which showed a comparison between the Director's loan balances in the Audited Accounts for FY 1999 – FY 2006 and the amount of Neo's cheques allegedly misappropriated. [\[note: 48\]](#) For example, FY 2000, the audited accounts showed Neo's director's loan balance at \$21,843 but the amount of cheques 'misappropriated' was \$400,000. Again for FY 2001, the director's loan balance was \$50,591 but the amount of cheques 'misappropriated' was \$1,370,000 and the respective figures for FY 2002 and FY 2003 were \$2,596 compared to \$2,757,700 and \$0 compared to \$1,157,041.06. It is clear to me beyond doubt that Neo *knew* his alleged "loans" to CHKC were *not* going into CHKC. Neo is not the kind of person who would keep quiet for so many years if Lim was indeed 'misappropriating' his money.

61 The fact that Neo was the sole signatory for CHKC's cheques is also a very important indicator that Neo was careful with CHKC's finances. It is impossible to think he had designated himself as CHKC's sole signatory only to rubber-stamp every single cheque his subordinates brought to him. As noted before, when Neo was cross-examined on why he did not make Lim a signatory to CHKC's accounts if he trusted Lim so much, Neo gave the most incredible answer: [\[note: 49\]](#)

Q. You blindly trusted all your general managers, and you had so little time, and you had so many cheques to sign, why didn't you make them sole signatories in their own right?

A. For my subsidiary Peter Tan did make the request and he was made a subsidiary [sic], but Lim Leong Huat never made the request.

...

Q. For Lim Leong Huat, knowing the number of cheques you had to get signed all the time, did it not occur to you to just tell him, "I trust you so much. You are practically running the show. Here, just be the signatory and free me of this burden". Why didn't it occur to you?

A. I would give the approval if he requested. Well, since he didn't make the request I would take it that it is not necessary.



Q. You have a mind of your own, Mr Neo?

A. I don't have that much views. It is just that he never made the request.

I have no doubt that Neo was blatantly lying on this score. He made himself the sole signatory for CHKC's cheques because he did not trust anyone else completely enough to give away that mandate. I do not believe that he was signing his and CHKC's cheques for four years without knowing where the monies were going.

62 Neo also gave conflicting evidence regarding the restructuring of the Chip Hup group of companies and the intended listing of CHH. He first stated in his AEIC that he decided to restructure the Chip Hup group in 1998 at Lim's suggestion. [\[note: 50\]](#) However, he then went on to state that the main purpose of the restructuring was to enable him to take over the shares of CH Timber from his late father's estate. [\[note: 51\]](#) I find it hard to reconcile these two positions because it is unlikely that Lim would have suggested the idea of restructuring for a purpose which had absolutely nothing to do with him. It seemed more likely to me that Neo was trying to downplay the fact that listing was one of his main motives for restructuring the Chip Hup group.

63 Neo continued this strategy of downplaying his ambition to list CHH during trial. He said that he had only considered listing CHH in 2000. [\[note: 52\]](#) However, this is contradicted by his statutory declaration following the restructuring of the Chip Hup group in 1998, which indicates that one of the reasons behind the restructuring was to "[b]etter reflect the performance track record of these [*sic*] group of companies with the view that a public offer of any of these companies' shares may be made." [\[note: 53\]](#) Neo's evidence is also contradicted by the testimony of his own witness, KK Lim, who was the former auditor for the Chip Hup group of companies. KK Lim stated in his AEIC that Neo had actually discussed the possibility of listing with him in 1999, in contrast to Neo's evidence that listing was only considered in 2000. [\[note: 54\]](#) Neo further tried to say it was Lim who was actively pursuing plans for an initial public offering. When Lim's counsel asked Neo why this allegation was never included in any of his previous affidavits, Neo amazingly replied that he had not mentioned it to his lawyers. [\[note: 55\]](#) That was clearly another lie.

64 In my view, Neo certainly gave a lot more thought to the idea of listing CHH than he would have this Court believe. As noted above, Lim did not own any shares in any of the companies nor was there any hint that Lim would be given shares in due course. Neo, not Lim, was the ultimate owner of the Chip Hup group of companies. He was the one who stood to gain the most from a successful listing of CHH's shares. I find it very unlikely that he would have simply waited until 2000 before making inquiries about listing when that was already one of the purposes for restructuring the Chip Hup group in 1998. I find that Neo's involvement definitely went beyond just making inquiries with financial advisors. Neo was actively pursuing his goal of a listing until he found he did not have the support of the banks to do so.

65 Neo had deliberately concealed his knowledge that his cheques were not being used as loans to CHKC, and had also downplayed his involvement in plans to list CHH. The inference to be drawn from such behaviour was that Neo was indeed aware of the Fictitious Invoices Scheme and was trying to hide such awareness. Taking all the above factors into consideration, I accept Lim's evidence that Neo's and CHKC's cheques totalling \$7,484,741.06 were used to fund this scheme with Neo's knowledge instead of being misappropriated as CHKC alleges. Since Neo is a director and ultimate owner of CHKC, I had no trouble in imputing his knowledge to CHKC.



66 I did not accept CHKC's contention that Lim alone had started the Fictitious Invoices Scheme behind Neo's back to reduce AZ's taxable income. First, it would have been impossible for Lim to pull off such a scheme without Neo finding out his cheques were being misappropriated. Secondly, CHKC's story does not explain why invoices totalling \$549,533.25 were issued to various third parties. These invoices were all settled in cash by Lim and the third parties they were issued to (including one entirely fictitious person named Aw Leong Hock) had no knowledge of the existence of such invoices. Lim clearly had no reason to miss out on the alleged tax savings from these invoices. On the whole, Lim's version of events is more consistent with the underlying facts that the fictitious invoices were only issued between 1998 and 2002 (when plans to list were still in place), and that the total value of the invoices very closely matched the value of Neo's and CHKC's cheques.

67 For the foregoing reasons, I find that both Neo and CHKC had knowingly issued cheques to fund the Fictitious Invoices Scheme in pursuance of plans to list CHH. These monies have all been diverted back to CHKC or CCPL and were not misappropriated by Lim or unlawfully retained by Mdm Tan or AZ. Accordingly, I dismiss CHKC's counterclaim against Lim for \$5,404,741.06 and \$2,080,000. CHKC's counterclaims against Mdm Tan and AZ on this issue must similarly fail.

### **CHKC's counterclaim for payments to fictitious subcontractors**

#### ***CHKC's case***

68 CHKC's case is that during his employment with it, Lim had caused CHKC to issue cheques totalling \$2,300,416 purportedly as payments to third party subcontractors by the names of Lim Kim Kow, Tan Yong Moi and Tan Chuan Aik for work done on CHKC's projects. [\[note: 56\]](#) These payments were supported by interim payment sheets. CHKC subsequently discovered that the subcontractors in question were either non-existent or did not work on CHKC's projects as appeared, and that the interim payment sheets were sham documents prepared by Jean and approved by Lim. CHKC counterclaims against Lim for misappropriating its cheques, which comprised of the sums of \$1,552,880 (in the form of cheques made out to these fictitious subcontractors) and \$747,536 (in the form of cash cheques).

#### ***Lim's case***

69 Lim's original defence was that the monies in question were indeed paid to third party subcontractors for works done on CHKC's various projects. Lim even went so far as to provide a Schedule D (which Lim subsequently had to delete from his pleadings), listing out the various subcontractors involved, the names of the projects they were working on, and the dates of the individual payments. On 22 October 2007, CHKC successfully obtained summary judgment against Lim in Registrar's Appeal No 159 of 2007 ("RA 159/2007") for the sum of \$347,030 (forming part of its \$2,300,416 counterclaim) by producing cheque images showing that \$347,030 worth of cheques had been credited to Lim's account. Lim had chosen not to file an affidavit in support of his original defence at the hearing for summary judgment even though this meant that CHKC was likely to succeed, as it did before the Registrar, on its application for summary judgment against Lim.

70 Lim subsequently applied to amend his pleadings on 14 December 2007 to introduce a completely new defence, which is the position he currently takes. Lim stated that the \$1,552,880 worth of cheques made out to fictitious subcontractors were used for the following purposes, with Neo's knowledge and approval: [\[note: 57\]](#)

- (a) \$349,670 was used to pay supplemental bonuses to some of CHKC's staff;

- (b) \$200,000 was used to pay bonuses to the China management staff of CHKC's foreign workers;
- (c) \$56,160 was given out as red packets to the contractors, supervisors and staff at CHKC's construction sites during Chinese New Year;
- (d) \$143,300 was used to provide entertainment allowances and incentive payments to the supervisors and contractors involved in CHKC's projects; and
- (e) \$803,750 was taken by Neo himself.

Lim also stated that the \$747,536 in cash cheques paid to him was COF compensation agreed between him and CHKC. For my reasons given earlier, I do not believe Lim's evidence on COF compensation.

#### *Supplemental bonuses*

71 Lim's evidence [\[note: 58\]](#) is that at the end of every year, just before the Chinese New Year period, CHKC would pay bonuses to its employees. The individual bonus for each employee would be recommended by Lim and agreed to by Neo. However, in order to minimise feelings of jealousy among the staff, Lim and Neo decided it was necessary to prevent CHKC's accounts staff from leaking information on how much bonus each employee got relative to the others. Hence, CHKC's bonuses were divided into two components. The first component was an "official" bonus and was recorded in CHKC's books. All of CHKC's employees would get more or less the same amount of official bonus. The second component was a "hidden" supplemental bonus which varied from employee to employee, depending on performance.

72 Once the total amount of bonus for a particular year had been confirmed, CHKC would issue cheques to its employees containing the "official" bonus and record these payments proper. At the same time, CHKC would also issue cheques containing the "hidden" supplemental bonus and record these as payments to fictitious subcontractors. All these cheques for the "official" and "hidden" bonuses would be taken by Lim and deposited into his personal account. Lim would then issue a single cheque to each employee that combined both the "official" and "hidden" components.

73 Through this system, employees who had performed well for that year would be rewarded by receiving a greater amount of bonus than what was recorded in CHKC's books. Conversely, employees who performed poorly would actually receive a lesser bonus than what was recorded. For example, if CHKC issued a cheque to a particular employee for two and a half months' bonus and recorded it in its books, Lim might actually give that employee his personal cheque for two months' bonus. The balance of half a month's bonus would be used to pay the "hidden" components of the more deserving employees. As the cheques used to pay CHKC's employees all came from Lim's personal account, Lim would be the only person who knew exactly how much bonus each employee was getting in total.

74 Lim stated in his pleadings that \$349,670 was used to pay supplemental bonuses for the years 1997, 1998 and 2005. [\[note: 59\]](#) However, he later states in his AEIC that only \$345,995 was used to pay supplemental bonuses. [\[note: 60\]](#) He also stated that of the remaining sum, \$1,675 and \$1,000 were given out as red packets during the 1998 and 2006 Chinese New Year respectively. These amounts were given out in addition to the \$56,160 worth of Chinese New Year red packets as mentioned in [70(c)] above. This left a balance of \$1,000 which was unaccounted for.

#### *Bonuses for China management staff*

75 Lim stated that \$200,000 of the payments to fictitious subcontractors was used by Neo to pay bonuses to the management staff of CHKC's Chinese foreign workers for the year 1997.

#### *Chinese New Year red packets*

76 Lim stated that it was a common practice in the construction industry to distribute token monies to CHKC's contractors, supervisors and workers in the form of red packets during Chinese New Year. His evidence is that a total of \$56,160 was distributed in the form of red packets for the years 1999 and 2000.

#### *Entertainment allowances and incentive payments*

77 Lim stated that it was an industry practice for construction companies to give treats to the supervisors and contractors involved in their projects in the form of meals, karaoke sessions, or incentive payments. This was done in order to "encourage" the supervisors and contractors to reduce supervision and control over CHKC's operations, and to "procure favours". [\[note: 61\]](#) Lim's evidence was that \$143,300 was spent on these treats. Although he did not indicate the time period over which the money was spent, the cheques allegedly used for such expenses were dated over a period from July 1997 to September 1999.

#### *Monies taken by Neo*

78 Finally, Lim stated that Neo himself took four cheques totalling \$803,750 for his own purposes. Lim stated in his AEIC that Neo had issued instructions for certain amounts to be "expensed out", [\[note: 62\]](#) with the necessary paperwork being carried out by Lim, Aileen or Jean. Lim did not know how these monies were spent or used.

#### ***Lim's radical change of defence***

79 Lim had explained in his prior affidavits that he had originally raised a completely false defence in relation to the fictitious subcontractors issue because he was worried about the potential criminal repercussions on himself and third parties if the true nature of the disguised payments came to light. While such conduct was deplorable, it is perhaps a slight redemption on Lim's part that he did not carry his deception all the way. When CHKC brought summary judgment proceedings against him for \$347,030 in RA 159/2007 heard by Woo Bih Li J, Lim, despite being given the opportunity to do so, chose not to give evidence rather than affirm a false affidavit. This resulted in final judgment being entered against him. This is the difference between Lim and Neo. Neo had no qualms in affirming a false affidavit or giving false evidence before the courts and procuring his witnesses, (*viz*, Aileen and Juliet) to do likewise.

80 Lim subsequently decided to come clean with the whole story when he realised that the Inland Revenue Authority of Singapore ("IRAS") had raided CHKC's premises and was investigating into its financial affairs and it would only be a matter of time before the truth was revealed. He applied to amend his pleadings in which he admitted that his original defence was a sham. Woo J's judgment against Lim was then set aside by agreement of the parties in Civil Appeal No 142 of 2007 ("CA 142/2007"), but CHKC was allowed to retain the sum of \$347,030 until the conclusion of this present action.

81 CHKC submitted that Lim's new defence is equally a sham because the reason given by Lim for

not including his new defence earlier (that he wanted to protect third parties) was untenable. [\[note: 63\]](#) First, the raid by IRAS was in August 2007 whereas Lim only applied to amend his defence in December 2007. Second, Lim claimed in his new defence that Neo had taken \$803,750 for himself and \$200,000 to pay bonuses to CHKC's China management staff, yet there was certainly no reason for Lim to protect Neo from the start. Third, Lim's amendment to include his COF claim against CHKC affected only him and not other third parties whom he allegedly wanted to protect.

82 I did not think that it was appropriate to draw any negative inferences against Lim even before looking at the merits of his new defence. Lim applied to amend his pleadings four months after the IRAS raid, which was not too long a period of time. He obviously had to consider carefully the implications of admitting to the Court that his original defence was a complete lie and I accept his reasons for hesitating before making his amendments. I agree with CHKC that Lim had no reason to protect Neo or forgo his claim for COF compensation from the outset, but the fact remains that the monies taken by Neo or given to Lim by way of COF compensation were all disguised as payments to fictitious subcontractors. If Lim disclosed even part of this scheme from the start, it would be inevitable and a matter of time before all the other nefarious schemes and practices in CHKC would come to light. Lim had to either deny the whole fictitious subcontractors scheme or admit everything, and he has chosen the latter. While I certainly did not accept Lim's new defence at face value simply because he now says that this is the real truth, I did not immediately consider it a sham either. I proceeded to test Lim's new defence against the evidence before me.

### ***My findings***

#### *Payments to China management staff and monies taken by Neo*

83 I will first set out my findings on the payment of \$200,000 to CHKC's China management staff and the \$803,750 allegedly taken by Neo. The only evidence CHKC has adduced in this suit to show that Lim had misappropriated these sums are copies of payment vouchers and its internal accounts showing that cheques totalling \$200,000 and \$803,750 had been issued. Crucially, and significantly, the cheque images for these sums were not produced. Although Neo stated in his AEIC that the cheques made out to fictitious subcontractors "were invariably handed over to Lim and/or Jean", [\[note: 64\]](#) he later admitted in cross-examination that he had no way of knowing whether the sums of \$200,000 and \$803,750 were actually taken by Lim: [\[note: 65\]](#)

Q. Let's look at the \$1,003,750 then. If you turn to your affidavit of evidence-in-chief at page 73,... You make a general statement there in paragraph 172: "All these purported payments to subcontractors were approved by Lim and when the cheques were encashed by the staff of [Hup Kee] they were invariably handed over to Lim ... or Jean ..." *You personally do not know whether you are in a position to say that all of those cheques were actually handed over to Mr Lim or to Jean; isn't that true?*

A. That's right.

[emphasis added]

84 On the contrary, Lim produced two payment vouchers during trial showing that Neo himself had approved cash payments of \$168,670 and \$200,000 to one Lim Kim Kow (who was one of the fictitious subcontractors) on 17 January 1998. [\[note: 66\]](#) The sum of \$168,670 formed part of the \$349,670 allegedly used to pay supplemental bonuses, while the sum of \$200,000 was allegedly used to pay bonuses to CHKC's China management staff. These are not small sums and the presence of

these vouchers contradicts Neo's own evidence in his AEIC that all payments to fictitious subcontractors were approved by Lim. When confronted with this evidence in cross-examination, Neo was suddenly able to recall that on that occasion, which was more than 10 years ago, Lim was out of the office at the time and he had called Neo asking him to approve the payment vouchers as the cheques were needed urgently. [\[note: 67\]](#) I did not believe him. Neo had never mentioned this fact in any of his previous affidavits. His own AEIC stated unequivocally that "[a]ll these purported payments to subcontractors were approved by Lim".

85 Neo later tried to claim that he had no independent authority to approve payment vouchers for CHKC on his own. I find this to be another lie. Neo had already admitted that the accounts department would only process payment if a payment voucher had been approved by either Lim or Neo. Despite this, Neo stubbornly maintained that he, as the "big boss" of CHKC, had to take instructions from his underling Lim before approving payments to third parties: [\[note: 68\]](#)

Q. Isn't it true that your evidence recently given was that the accounts department will process payment if either you or Mr Lim were to sign a payment voucher? Isn't that true?

A. Yes.

Q. Isn't it also true that you have independent authority in the sense that you could actual [*sic*] sign the payment voucher first, and then later tell Mr Lim what you have done?

A. No, I disagree, because he is in charge of the accounts department, and he did indicate that whenever we want to pay out to parties, he must be informed first, otherwise he could have -- he may have promised other parties, but then we wouldn't have enough funds to process the payments and he would have lost the trust of the other parties.

Q. But you are the overall boss, Mr Neo. Surely you are in a position to also dictate to him what are your spending priorities, don't you agree?

A. I may have the authority to sign cheques, but I have to take instructions from him.

86 Not only is Neo's evidence inherently incredible, it is also completely at odds with the fact that Neo was the sole cheque signatory for CHKC. As I have mentioned above at [60] and [61], I do not believe that Neo blindly signed cheques brought to him. I find that Neo kept control over the process of approving payments to third parties instead of blindly subordinating himself to Lim. This is also consistent with Jean's evidence in her AEIC, which I accept, that Neo had the final word on deciding the amount to bid for tenders and quotations in the course of CHKC's operations. [\[note: 69\]](#)

87 Having regard to the above evidence, I find that CHKC's counterclaim in respect of the sums of \$200,000 and \$803,750 has not been made out, mainly because CHKC has failed to discharge their burden of proof and to provide the cheque images for these sums and because the rest of its evidence on this score is tenuous at best. Furthermore, I do not believe Neo's evidence that he had signed the two payment vouchers to "Lim Kim Kow" on 17 January 1998 on Lim's instructions. It is much more likely that Neo had approved the payments on his own accord, and that Neo knowingly participated in the practice of recording certain expenses as payments to fictitious subcontractors. This, and other factors like Neo's plans for listing, are important in determining whether CHKC's counterclaims for the remaining sums are made out.

*Supplemental bonuses*

88 I had some difficulty accepting Lim's story on the whole supplemental bonuses system for CHKC's employees. In the first place, the idea of Lim taking employees' cheques, banking it into his own account, and issuing personal cheques with the amounts altered was extremely questionable. Lim also admitted 'writing' some of the employees' names on their payment vouchers thus giving the appearance that they signed the same upon receipt of payment. The fact that Lim had complete control over the supplemental bonuses system left a lot of potential for abuse. Secondly, I was doubtful that this system actually worked in achieving its *raison d'être* – minimising information leaks on how much bonus each staff member got relative to the others. The mere fact that each employee's actual bonus was kept off the books would not prevent employees from sharing information with each other. The entire system seemed too convoluted, not to mention illegal, to exist just for the purpose of preventing CHKC's accounts staff from disseminating information about employees' bonuses.

89 Finally, Lim's own evidence shows that only \$345,995 of the \$349,670 taken by him was used to pay supplemental bonuses. I disbelieved his story that \$2,675 was used to pay Chinese New Year red packets for 1998 and 2006. It can be seen from Lim's own pleadings that a single cheque was issued to pay the supplemental bonuses of all the employees in a particular year, while another cheque would be issued separately to pay Chinese New Year red packets. Lim's story that part of the \$349,670 used to pay supplemental bonuses was used to pay red packets was clearly an afterthought. Lim has also failed to account for the remaining balance of \$1,000.

90 Having said all this, I think there is sufficient evidence for me to find in favour of Lim on this issue. Despite the highly dubious nature of his story, Lim's testimony on the existence of the supplemental bonuses system was consistent throughout cross-examination. His answers to counsel's questions were straightforward and candid. He also admitted readily that he knew it was illegal and wrong for CHKC to declare a certain amount of bonus payable to a staff member and pay him/her less than what was recorded. [\[note: 70\]](#) (Such an admission however is not relevant for the purpose of resolving the present issue.) Lim's evidence was also corroborated by affidavit and documentary evidence showing that bonus payments had been made to several ex-employees of CHKC through Lim's personal cheques. While I still have doubts about Lim's real reasons for disguising supplementary bonuses as payments to fictitious subcontractors, I accept his evidence that the \$345,995 he allegedly misappropriated was used to pay CHKC's employees and was not pocketed by him. If I had to make a finding, I would find that this form of re-distribution allowed Lim to more generously reward those employees who were more capable, more useful to him and to CHKC and even to 'buy' their loyalty.

91 The question remains whether CHKC (through Neo) had authorised Lim to pay supplemental bonuses in such a surreptitious manner. On balance I find that the answer to that question is 'yes'. Neo stated in his AEIC that he had left it to Lim to decide on how the bonuses were to be paid and that Lim would only inform him of the number of months of bonuses to declare. [\[note: 71\]](#) However, Neo himself had approved a payment voucher to a fictitious subcontractor for \$168,670 which was used to pay supplemental bonuses for 1997. As I have mentioned above at [87], I found that Neo willingly participated in the fictitious subcontractors scheme. These factors, taken together, show that Lim was permitted to use CHKC's funds to pay supplemental bonuses under the guise of payments to fictitious subcontractors.

92 Since Lim only paid \$345,995 in supplemental bonuses, there remained a shortfall of \$3,675 from the \$349,670 originally taken by him. Lim is thus liable to account to CHKC for this shortfall because I do not believe his story that part of the balance was used to pay Chinese New Year red packets. I therefore allow part of CHKC's counterclaim for the sum of \$3,675. CHKC's counterclaim for the other



\$345,995 must fail.

*Red packets, entertainment allowances and incentive payments*

93 I now deal with the sums of \$56,160 (for Chinese New Year red packets) and \$143,300 (for entertainment allowances and incentive payments). Lim called several of CHKC's ex-employees as witnesses during the trial. These witnesses all testified that it was CHKC's practice during Chinese New Year to distribute red packets to various staff at its project sites (such as construction workers, supervisors, and engineers). [\[note: 72\]](#) Some of the witnesses also stated that they would bring the project supervision staff of employers and main contractors for meals and karaoke sessions on behalf of CHKC and would be reimbursed for such expenses. [\[note: 73\]](#) I accept their evidence. They had no reason to lie and it is not an unknown practice in the building industry.

94 However, the testimony of these various witnesses does not show by itself that the monies used to pay for such expenses came from the sums allegedly misappropriated by Lim. In this regard, CHKC produced two payment vouchers at trial evidencing the payment of red packets to staff at CHKC's project sites. [\[note: 74\]](#) CHKC's case therefore is that payments in the form of red packets were already recorded legitimately in its books. There was no need for Lim to disguise such payments because they were already booked as expenses.

95 Lim's response in cross-examination was that red packet payments involving smaller sums were recorded on the books. Payments involving larger sums were disguised as payments to fictitious subcontractors. Lim explained that he had been investigated by the Corrupt Practices Investigation Bureau in 1995 over alleged bribes to the staff of another company because he had given red packets to those staff. Lim stated that after the incident, Neo had given instructions not to record such payments on the books to avoid further investigation. For the same reason, entertainment allowances and incentive payments were also disguised as payments to fictitious subcontractors. [\[note: 75\]](#)

96 I accept Lim's explanation on the above matters. The two payment vouchers for red packet payments produced by CHKC only reflected amounts of \$1,200 and \$2,000. In contrast, the disguised red packet payments involved substantially higher sums of money – \$44,600 and \$11,560 for 1999 and 2000 respectively. It is very conceivable that these larger amounts were used for, to borrow Lim's phrase, "inducement payments" in the form of red packets to the supervisors and contractors at CHKC's construction sites. Lim and Neo would certainly wish to keep these payments off the books, even if they were tax-deductible either way. Given my earlier findings that Neo was knowingly participating in the Fictitious Invoices Scheme and making payments to fictitious subcontractors, the likelihood of him being ignorant of these under-the-table gifts to CHKC's contractors and supervisors was very low. For this reason, I do not believe Neo's evidence that he did not authorise or instruct Lim to make such "inducement payments". CHKC's counterclaim for \$56,160 must accordingly fail.

97 For the same reason, I also accept Lim's evidence that CHKC's other expenses for entertainment and incentive payments were incurred with Neo's knowledge and approval and had to be similarly concealed in CHKC's accounts. The sums involved here were even more substantial than the red packet monies – \$143,300 from 1997 to 1999. Quite notably, CHKC has not produced any documentary proof that these entertainment expenses and incentive payments were otherwise recorded legitimately in its accounts. The only possible inference to be drawn is that the money for entertainment and incentive payments came from the fictitious subcontractor account. Since the \$143,300 was not misappropriated by Lim, CHKC's counterclaim for this sum must fail.

*CHKC's claim for \$747,536*

98 Finally, I deal with CHKC's counterclaim for \$747,536 being the value of cash cheques which Lim had allegedly misappropriated. As I mentioned earlier, I do not believe Lim's defence that there was an oral agreement between him and Neo (on behalf of CHKC) to pay COF compensation as alleged and pleaded by Lim but there was some evidence of interest payments to Lim in the Manual Cashbook, which I accept. However, this does not mean that CHKC's claim is automatically made out. Since CHKC is alleging that \$747,536 worth of cash cheques were *misappropriated* by Lim, it has to show on the evidence that these cheques were taken by Lim without Neo's (and therefore CHKC's) knowledge or consent. Although these are civil proceedings, a party who alleges misappropriation, which is a criminal offence, ought to put forward sufficiently cogent evidence on the self-evident principle that in proportion as the allegation is grave so ought the proof be clear.

99 On the evidence, I find that Neo was aware, in signing the \$747,536 worth of cheques, that the monies therein were intended for Lim even though they were recorded as payments to fictitious subcontractors in CHKC's books. Three factors stand out in particular. First, all the cheques involved here were cash cheques, which were a rarity in CHKC – I have already referred to an analysis produced by Mr Khoo showing that only 7.29% of cheques issued by CHKC from 2000 to 2006 were cash cheques. This analysis was not challenged by Neo. These cash cheques would mostly be used for fixed purposes, such as payments to CHKC's China management team, petty cash claims submitted by Aileen, return loans to Lim, grocery claims by Neo's wife, and so on. Neo also agreed with Lim's counsel during trial that cash cheques were generally not a safe form of payment, especially in large amounts: [\[note: 76\]](#)

Q. Do you not agree that if you just drew up a cash cheque for \$200,000 and left it lying around, someone could just come along and cash out the money? Do you agree?

A. I will only issue cash cheques when Lim Leong Huat came to me.

Q. So in other words, in generally [*sic*] issuing of cash cheques alone would not be a very safe way to arrange for payments out unless you are satisfied that there are adequate safeguards, right?

A. That's right. I would only do it when requested by Lim Leong Huat.

100 Given the rarity of cash cheques, their relative risk and the fact that they were used for certain fixed purposes, I am quite certain that Neo must have satisfied himself as to the purpose of an intended payment when he was signing a cash cheque. Neo, unsurprisingly, continued to insist in cross-examination that he would just sign any cheque if Lim requested him to do so.

101 Secondly, the cash cheques comprising the sum of \$747,536 were all paid in a recurring pattern, in the same amounts, and to the same parties. CHKC's records show that the payment vouchers accompanying these cash cheques reflected payments to the following fictitious subcontractors from 2004 to 2006:

(a) Khor Ah Teck – \$16,800

(b) Liu Bi Yu – \$4,800



(c) Shi Chun Bing – \$4,375 and \$10,000

(d) Peng Chao - \$6,751

The payments to these individuals were made month after month, all in the form of cash cheques. Each fictitious subcontractor consistently “received” the same fixed amount in each cash cheque.

102 Since the cash cheques were paid in a recurring pattern, it is impossible to believe Neo would not have noticed these sums or know where these monies were going. When Lim’s counsel pointed this out in cross-examination, Neo replied that he had asked Lim about the payments once and was told that the monies were needed for a special project involving safety work which CHKC’s Chinese workers were unable to carry out. [\[note: 77\]](#) I do not believe him. This explanation was clearly a very important fact because it would show how Lim managed to trick Neo into signing so many cash cheques in a recurring pattern, yet Neo had never mentioned this fact in any of his previous affidavits.

103 Finally, Neo and Aileen both lied in their evidence. Lim’s counsel pointed out to Neo in cross-examination that “Liu Bi Yu” was actually the name of a foreman from CHKC’s China management team and whom Neo himself had approved bonus payments for the year 1999. When it was put to Neo that he must have realised Liu Bi Yu was not a real subcontractor, Neo gave another incredible answer: [\[note: 78\]](#)

Q. So, as far as the evidence shows, you have been signing management vouchers for the Chinese team -- they work closer to you, as you conceded this morning -- you have, clearly in your company vouchers, a clear indication of this gentleman Liu Bi Yu working for Chip Hup Hup Kee. You can’t seriously expect anyone to believe you when you say you thought these persons were subcontractors, Mr Neo.

A. No I can’t read English, but now that you show me the name -- I can’t read English but if you show me the Chinese characters, of course I will recognise it.

...

Q. Are you trying to tell the honourable court that you can’t read anything at all in English? It is a damning indictment of even our school system, that a secondary level student can’t read English.

A. It is not that I can’t read English, but if you just point out Liu Bi Yu to me, I can’t recognise the character. For example, let’s say Su Ji. I call him Su Ji. If you expect me to spell it in English, I can’t spell.

I find it unbelievable that Neo could claim to read English and yet not know how to recognise Chinese names when they were written in Romanised “hanyu pinyin”.

104 Neo and Aileen had also stated in their AEICs that after Lim had obtained leave to amend his pleadings to include his COF claim in August 2008, they subsequently discovered 15 more payment vouchers with corresponding cheques for the amounts of \$16,800, \$4,800, \$4,375, \$6,751 and \$10,000 in Lim’s former office. [\[note: 79\]](#) Aileen was then instructed to cancel these cheques.

Unfortunately for Neo and Aileen, CHKC's Manual Cashbook (where the entries were handwritten, by and large sequentially according to dates), showed that nine of the 15 cheques had already been cancelled about 2 years earlier in October 2006. [\[note: 80\]](#) Furthermore, CHKC had moved its premises from Bukit Timah Shopping Centre to Henderson Industrial Park by April 2008, some 1 year 5 months after Lim's dismissal from CHKC in November 2006. Neo and Aileen were lying in their AEICs. They were caught out because they were eventually forced to produce unredacted copies of the Manual Cashbook but their AEICs had already been affirmed. Because of their lies, I drew the inference that Neo and Aileen were trying to mask their knowledge of these payments through cash cheques. On the whole, I am satisfied that Neo was fully aware that he was making recurring payments of \$16,800, \$4,800, \$4,375 and \$6,751 to Lim (and sporadic payments of \$10,000) disguised as payments to fictitious subcontractors. As mentioned above at [45], it is clear that at least some of these payments were interest payments to compensate Lim for CHKC's use of his funds (although I disbelieved Lim's story that CHKC agreed to pay him monthly COF compensation until his loans were repaid). While it is not known if there was any other reason behind these recurring payments, I am quite certain that he had not misappropriated these payments. CHKC's counterclaim for \$747,536 therefore fails.

### *Summary*

105 In summary, I dismiss all of CHKC's counterclaims totalling \$2,300,416 (as payments to fictitious subcontractors), with the exception of \$3,675 which Lim is liable to account to CHKC for. Furthermore, since CHKC continues to hold the sum of \$347,030 which was obtained in the summary judgment proceedings against Lim that were later set aside, CHKC should accordingly return the \$347,030 to Lim.

### **CHKC's counterclaim for false entries and misappropriation**

#### ***CHKC's case***

106 CHKC's original counterclaim against Lim stated that over a period from 2001 to 2006, Lim had caused it to record in its accounts a sum of \$5,110,533.65 owing to him under an account entry called "Salary Accruals". At the time, CHKC claimed that this \$5,110,533.65 was actually a sum due to Neo for having personally paid the salaries of CHKC's workers in cash, on behalf of CHKC. CHKC thus prayed for an order to rectify its accounts to reflect the true position.

107 However, just as Lim had radically changed his defence on the fictitious subcontractors issue, CHKC similarly changed its counterclaim here. On 26 November 2008, CHKC amended its pleadings to allege that Lim had fraudulently caused to be recorded in its accounts a sum of \$5,161,671.65 owing to him, mostly comprising of monies in the Salary Accruals account. These Salary Accruals represented the wages of entirely fictitious workers which Lim had purported to pay on behalf of CHKC, but did not actually do so. In short, Lim had generated false book debts to his credit in CHKC's accounts. CHKC further alleges that Lim drew this sum of \$5,161,671.65 out purportedly as repayment to him for the false book debts. Thus, CHKC abandoned its earlier story of Neo single-handedly paying off the salaries of its workers, and now claims against Lim for misappropriating its funds through the creation of false accounting entries. [\[note: 81\]](#)

108 CHKC also now counterclaims an additional sum of \$949,151.59 against Lim. According to CHKC, this sum was originally recorded in CHKC's accounts as a debt owing by AZ to CHKC. However, Lim had caused this debt to be reflected as settled by AZ by falsely setting it off against monies owing by CHKC to Neo. This resulted in Neo's credit balance with CHKC being reduced by \$949,151.59, while the corresponding debt owed by AZ to CHKC was extinguished. CHKC now counterclaims against Lim

and AZ for the \$949,151.59 which remains owing by AZ. [\[note: 82\]](#) Along with the \$5,161,671.65 in false book entries misappropriated by Lim, CHKC's total counterclaim on this issue is for \$6,110,863.24.

### **Lim's case**

109 Lim's defence on this issue has been consistent throughout the proceedings. He stated that for a long time, Neo had implemented the system of Proxies in CHKC, see [22] above, and CHKC would pay only the CPF employer and employee components of their wages for official records. [\[note: 83\]](#)

110 As noted above at [22], the entire purpose of keeping these Proxies on CHKC's payroll was to artificially inflate the number of local workers to obtain a higher number of foreign workers as MOM would only allow a company to employ foreign workers based on a strict ratio to its local workers. According to Lim, Neo realised that having foreign workers, especially workers from China, was very profitable. Not only were Chinese workers regarded in the industry as being more productive, but they were also quite literally a source of Neo's wealth [\[note: 84\]](#) in more ways than one. Lim alleged that Neo collected monthly "commissions" from each Chinese worker without accounting to CHKC for these sums of money and Neo and his wife presented inflated reimbursement claims to CHKC for the purchase of groceries for the Chinese workers. It would be convenient for me to make two findings at this juncture.

(a) *Foreign worker commissions* – It was customary for foreign workers to pay a commission of about \$2,000–\$3,000 each to Singaporean employers. These commissions were used to defray expenses connected to their hiring and employment, such as air-tickets, insurance, medical coverage, training course, etc. Lim alleges that instead of paying these commissions to CHKC, Neo simply pocketed them. The total amount from such foreign worker commissions, from 1999 to 2006, was estimated to be about \$10–\$20 million. I do not have to make a finding for the purposes of these proceedings, whether Neo did indeed pocket such large sums of money, 'squeezed' out as commissions from these workers. However I accept Zhang's evidence, which was unshaken on this point, that commissions were indeed collected from the Chinese workers and paid over to CHKC. No such payments were noted in the accounts of CHKC. I find that Neo did levy such a commission on the Chinese workers and did keep the money for himself. This is one of the main reasons why Neo kept such close and tight control over the Chinese workers and as noted above, I accept Zhang's evidence that the Chinese teams leaders like Wu and Zhang himself reported to Neo, not Lim. Mr Khoo produced a table drawn from the Manual Cashbook, "PWB-52", (which was not seriously in dispute), showing consistent loans of between \$3,000 to \$30,000 from CHKC to Wu from June 2002 to June 2004 totalling \$194,312.28. There were also other entries in the Manual Cashbook, e.g., on 15 May 2001: "Cash – Su Ji (Adv. Wages)" \$20,000, again on 22 May 2001: "Cash – Su Ji (Adv. Wages)" \$20,000, on 6 August 2001: "Cash – Su Ji (Adv. Wages)" \$30,000, on 18 August 2001: "Cash – Su Ji (Advance Wages)" \$20,000, two entries on 3 October 2001: "Cash – Su Ji Adv. Wages" for \$300,000 and \$200,000, There was no pattern to these payments, e.g., on 28 March 2003 there was a similarly described entry for \$66,667.00 and again on 31 March 2003 for \$270,000. Mr Khoo cross-examined Neo and submitted that Neo kept dealings with the Chinese workers to himself and Wu or their finance person, Su Ji, and later to Zhang because he had an ulterior motive in making money off them. This was also pleaded. I accept that submission. The evidence certainly showed a lot of unexplained cash passing from the Chinese workers to Neo and/or CHKC and payments from Neo to Wu and Su Ji. I also accept Zhang's evidence on this point and reject the suggestion put up by Neo that these were monies collected to indemnify CHKC for repatriation costs and were returned to the workers upon their return to China. I find that this was so and find that Neo kept

this money for himself. Knowing what schemes Neo was capable of hatching and implementing in CHKC, it is clear to me, and I so find, that Neo was skimming off money from his Chinese workforce with the connivance and assistance of its leaders like Wu and Su Ji, just as Neo and Lim did with their nefarious schemes in CHKC.

( b ) *Inflated grocery expenses* – Lim also alleged that Neo had submitted inflated claims to CHKC for grocery expenses purportedly incurred by him and his wife for CHKC’s foreign workers. Neo allegedly overcharged CHKC to the amount of about \$4.6–\$11.6 million from 1999 to 2006. Again it is not necessary for me to make a finding on how much Neo did over charge on the groceries for his own benefit or whether he did so to the amounts alleged by Lim. Juliet herself admitted that Neo has drawn out more in reimbursement for purchasing groceries for the Chinese workers than the receipts he submitted. A quick trawl through the Manual Cashbook [\[note: 85\]](#) for the first 6 months of 2003 shows entries of reimbursement to Mrs Neo, often described as: “Cash – Mrs Neo (Dec 02)”, for sums like \$146,245 (28 January 2003), \$142,429.50 (28 February 2003), \$126,625.50 (28 March 2003), two entries on 28 May 2003 for the months of April and May 2003 for \$106,483.50 and \$99,324 and \$99,032.50 (28 July 2003 for June 2003). In 2004, the claims were slightly lower ranging from \$83,000 to \$94,000 but in the earlier years like 2001, there was an entry on 13 September 2001 for \$179,104.50. These are not insignificant sums. I find that Neo did make such inflated claims for groceries and this formed another source of his tax-free “revenue” stream from CHKC.

111 Besides allowing Neo to maintain a high ratio of foreign workers in CHKC, the presence of Proxies also enabled Neo to draw monies out of CHKC through the Salary Accruals Account, which was exactly what CHKC is now accusing Lim of doing. By pretending to have personally paid the non-CPF wages of these Proxies’ salaries, Neo would credit himself for these “wages” paid by him in CHKC’s books. He could then draw monies out of CHKC’s Salary Accruals Account as “reimbursement” of the “wages” paid by him. As these Salary Accruals would be regarded as expenses in CHKC’s accounts, they also had the effect of reducing CHKC’s tax liability and Neo obtained money without having to declare it as income for his own personal income tax. Lim alleged that Neo drew out about \$10m in Salary Accruals from 1997 to 2003. [\[note: 86\]](#) As a result of these numerous unlawful practices involving CHKC’s foreign workers, Neo, his wife, and CHH have been made defendants in Suit 241 of 2007, a minority oppression case which was tried before me after this action.

112 Lim readily admitted his knowledge and involvement in the Proxies system. He stated that when he first joined CHKC in 1994, the Proxies system was already in place. Neo subsequently asked Lim to provide the names of some people he knew to become Proxies, which he did. Lim maintains that the bulk of the Proxies were provided by Neo, through his large network of friends. Neo also got other employees of CHKC to contribute to the pool of Proxies.

113 I now come to another main dispute between both parties on this issue. Lim stated that sometime around 1996, he had a discussion with Neo during which Neo agreed that Lim would be entitled to share in CHKC’s profits of up to 40%. This was done in order to encourage Lim to continue working for CHKC. As noted before, Lim had begun harbouring thoughts of setting up on his own. As a result, Neo began to award pay increases, allowances and bonuses to Lim from 1997 onwards. Also as I have found, Lim was allowed to incorporate and run his own company, AZ, in tandem with his running of CHKC. Finally, from 2001, Neo also instructed CHKC’s accounts staff to record Salary Accruals in CHKC’s accounts as owing to Lim as well. Lim alleged that profits from Salary Accruals were divided between him and Neo in the following manner: [\[note: 87\]](#)

Year	Neo	Lim
1997	\$2,002,208.50	N.A.
1998	\$3,759,260.80	N.A.
1999	\$1,464,191.56	N.A.
2000	\$1,506,640.54	N.A.
2001	\$1,207,681	\$332,988.26
2002	\$949,195	\$412,740
2003	\$785,142	\$514,188
2004	(\$1,187,062.86)	\$2,756,903.86
2005	N.A.	\$1,075,561.55
2006	N.A.	\$1,059,474.57
<b>Total</b>	<b>\$10,487,256.54</b>	<b>\$6,151,856.24</b>

114 Lim explained that he arrived at the above figures based on a typed statement handed to him by Aileen shortly before he left CHKC, detailing the amounts Neo had allegedly awarded to him as profit-sharing through the Salary Accruals account. Aileen also made reference to this typed statement in her AEIC. She acknowledged that she had originally prepared the typed statement containing the above figures for Lim. However, in the course of preparing CHKC's defence and counterclaim, she discovered some errors in the typed statement. This is why Lim's figure of \$6,151,856.24 was different from CHKC's counterclaim of \$5,161,671.65. The differences are further illustrated in the following table: [\[note: 88\]](#)

Year	CHKC's version	Lim's version	Difference
2001	\$332,988.26	\$332,988.26	–
2002	\$412,740	\$412,740	–
2003	\$514,188	\$514,188	–
2004	\$1,569,841.00	\$1,569,841.00 \$237,871.27 \$949,191.59	– \$237,871.27 \$949,191.59
2005	\$1,075,561.55	\$1,075,561.55	–
2006	\$1,018,481.57	\$1,059,474.57	\$40,993
<b>Subtotal</b>	<b>\$4,923,800.38</b>	<b>\$6,151,856.24</b>	<b>\$1,228,055.86</b>
2004 false entry	\$237,871.27	–	(\$237,871.27)
<b>Total</b>	<b>\$5,161,671.65</b>	<b>\$6,151,856.24</b>	<b>\$990,184.59</b>

115 Aileen gave the following explanation for the above table:

(a) The sum of \$237,871.27 recorded in 2004 is not associated with the Salary Accruals account. It actually represents a false re-classification entry made by Lim in CHKC's accounts crediting this amount in his favour.

(b) Similarly, the sum of \$949,191.59 recorded in 2004 does not come from Salary Accruals. It is another false re-classification by Lim described in [108] above.

(c) The sum of \$40,993 recorded in 2006 was originally thought to be part of the Salary Accruals accounts but was actually not. Therefore, CHKC's counterclaim against Lim has been reduced by this amount.

### ***Summary of the parties' positions***

116 Basically, CHKC is counterclaiming \$5,161,671.65 against Lim comprising \$4,923,800.38 which Lim had allegedly recorded as Salary Accruals and misappropriated, and \$237,871.27 based on a false re-classification entry which was unrelated to the Salary Accruals account. In addition, CHKC claims \$949,151.59 against Lim and AZ based on another false re-classification entry which Lim had allegedly caused to be entered in CHKC's accounts. The total amount claimed is \$6,110,863.24. It is CHKC's position in this trial that the Proxies system was started by Lim. It is also CHKC's position that Lim created the Salary Accruals account and other false accounting entries without Neo's knowledge in order to siphon money out of CHKC.

117 On Lim's part, he alleged that Neo was the one who started and operated the Proxies system and Salary Accruals account and that Neo gave him a 40% profit-sharing stake in the Salary Accruals account. He stated that the \$6,110,863.24 claimed by CHKC in this trial all comprises of Salary Accruals, which is contrary to CHKC's position that the sums of \$237,871.27 and \$949,151.59 are based on false accounting entries totally unrelated to Salary Accruals. Lim stated that he is entitled to a total of \$6,151,856.24 in Salary Accruals pursuant to the profit-sharing arrangement between him and Neo. This sum of \$6,151,856.24 comprises the sum of \$6,110,863.24 claimed by CHKC in this trial and the \$40,993 taken out by CHKC. I should note from the outset that Lim is not making a claim for any Salary Accruals allegedly due to him in the present action. His current position is simply to defend himself against CHKC's counterclaim of \$6,110,863.24 which Lim said forms part of the Salary Accruals he is rightfully entitled to. Lim instead has reserved his right to bring a claim for recovery of monies allegedly due to him on the taking of a proper account of the sums and amounts that should correctly be reflected in CHKC's accounts as owing to him (and vice-versa) in separate proceedings.

[\[note: 89\]](#)

### ***My findings***

#### ***Misappropriation of \$5,161,671.65 through false entries***

118 CHKC has accused Lim of misappropriating monies totalling \$5,161,671.65 which he had allegedly caused to be recorded as false accounting entries. As noted above, CHKC's onus of proof in this allegation is not merely on a balance of probabilities. Hence, it is not enough in this case to show that Lim had created false entries in CHKC's accounts; CHKC must also show some evidence that these monies were drawn out by Lim. In this regard, CHKC has only produced three cheques for the sums of \$255,597.26, \$1,078,743.86 and \$516,062.11. [\[note: 90\]](#) The total amount from these cheques is \$1,850,403.23. Although CHKC alleges that Lim drew out a total of \$5,161,671.65 in false entries, the only other evidence it has to substantiate its claim comes from its accounting records showing that Lim had drawn out these monies mixed with loans he had made to CHKC. [\[note: 91\]](#) I do

not think these accounting records by themselves can prove that the payments were actually made. Hence, the very most CHKC can claim against Lim in these proceedings is \$1,850,403.23.

119 Lim submitted that the three cheques totalling \$1,850,403.23 do not prove that he had drawn money out through the Salary Accruals account. This is because the payment vouchers for these three cheques indicated that the payments were made to Lim for the purpose of repaying loans made by him. I did not accept this submission. Since the Salary Accruals would already be recorded in CHKC's accounts as amounts owing to Lim for "paying" CHKC's Proxies, it would not be totally inconsistent to characterise these payments as repayment of Lim's loans. On the contrary, it would help to disguise the fact that money was being drawn out of CHKC in a manner designed to evade tax.

120 More importantly, the exact amounts in these cheques are highly inconsistent with them being in the nature of repayment of loans which Lim had made directly to CHKC. The three cheques were for the amounts of \$255,597.26, \$1,078,743.86 and \$516,062.11, which are in odd numbers, as distinct from round numbers, down to the cent. Lim's own AEIC on the other hand shows that the loans he made directly to CHKC were in rounded amounts such as \$50,000 or \$200,000. [\[note: 92\]](#) If the three cheques were issued to Lim purely for repayment of loans made directly by him, they should not have any odd sums reflected in them. Furthermore, I find it very difficult to believe that Lim would not have drawn a single cent from the Salary Accruals accounts all this while from 2001, especially when he alleged that he had an agreement with Neo to share up to 40% of CHKC's profits. On the evidence before me, I find that Lim drew \$1,850,403.23 out of CHKC through Salary Accruals. The issue now is whether it was Lim who was operating the Salary Accruals account for his own benefit, or whether it was Neo who had given Lim a 40% stake in the Salary Accruals.

121 Neo stated in his AEIC that shortly after Lim had joined CHKC, he had asked Neo to recruit Proxies to maintain CHKC's high ratio of foreign workers. Neo accordingly did so. However, Neo claimed that although he knew of the Proxies system, he was unaware that Lim had created the Salary Accruals accounts as a means of misappropriating CHKC's funds. Neo maintained that it was Lim who was in charge of the Proxies system and the Salary Accruals account. [\[note: 93\]](#) Lim on the other hand stated that Neo was the one running this Proxies scheme and had included Lim's name in the Salary Accruals accounts as a way of sharing profits with Lim. [\[note: 94\]](#) As with all the other issues in this case, this question essentially boils down to whom I believe. Having regard to the evidence, I believe Lim's story over Neo's. I took the following factors into account in arriving at this decision.

122 First, Neo was more closely linked to the Proxies than Lim. Neo admits from his own AEIC that he had supplied a substantial amount of Proxies. [\[note: 95\]](#) Juliet also admitted on the stand that CHKC had a procedure of using recommendation forms to process the names of new Proxies, and that Neo's name appeared very frequently as a recommender of Proxies. [\[note: 96\]](#) It was very telling that CHKC had failed to disclose these recommendation forms during discovery. This suggests to me, and I so find, that CHKC was trying to cover up the fact that Neo's name appeared frequently on the recommendation forms. Neo and Juliet also admitted in cross-examination that the CHKC staff member principally administering the Proxies system was Neo's secretary, one Katherine Ng May Kuan. [\[note: 97\]](#) Neo also admitted that he was more closely associated with CHKC's China management team than Lim, which suggests that it was Neo who was making the decisions on how many more Chinese foreign workers to bring into CHKC. The evidence of Zhang on this score, whose evidence I accept, is consistent with Neo dealing with the China workers and not Lim. [\[note: 98\]](#) All these little pieces of evidence indicated that the person mainly running the Proxies system was Neo, not Lim. Lim also assisted Neo in this scheme, maintaining the Salary Accruals and also providing some names for



Proxies. In time to come, Lim also shared in the Salary Accruals.

123 Secondly, Neo himself benefited from the Salary Accruals. He admitted in his own AEIC and in cross-examination that he had drawn \$10,487,256.54 in Salary Accruals. Neo's explanation was that whenever he wanted to draw money from CHKC, he would inform Lim and Lim would just make the necessary arrangements without explaining to Neo how these withdrawals were recorded. I do not believe him. CHKC's accounts show that the \$10,487,256.54 in Salary Accruals was recorded between 1997 and 2003. Lim, on the other hand, only obtained Salary Accruals between 2001 and 2006. If what Neo says is true, viz. that Lim created the Salary Accruals accounts to withdraw money without Neo's knowledge, it made little sense for Lim to credit Salary Accruals to Neo from 1997 and only help himself to a slice of the pie from 2001 onwards. Lim's version of events is more consistent with the underlying facts. It was more likely than not that Neo, with Lim's active and willing collaboration, implemented the Salary Accruals system and Neo later included Lim from 2001 as a means of profit sharing. Because the proverbial cat had been let out of the bag, these huge withdrawals, wrongfully treated as expenses, had to be put right and this was one of the main causes for the \$20 million deficit in CHKC's 2006 accounts.

124 Thirdly, Neo admitted that he had held Lim in very high regard prior to their falling out. Although Neo came to trial with the strategy of downplaying Lim's importance to CHKC, I did not think Neo could maintain such a position while claiming at the same time that he placed "absolute trust and confidence in him". [\[note: 99\]](#) The objective evidence does in fact show that Lim played a huge role in CHKC's fortunes. I have already dealt with this above. CHKC's business began to flounder after Lim's departure in 2006. Again as noted above, CHKC was unable to fulfil its sub-contract obligations to the main contractor in the Pinnacle project and had to exit the contract prematurely signing an exit agreement acknowledging its inability to perform. CHKC was also ejected from a project involving the Marina Bay Sands Integrated Resort due to numerous complaints from its main contractor. Lim's replacement, one Ler Hock Eng, had left CHKC by the time of this trial.

125 When pressed in cross-examination, Neo admitted that he had regarded Lim very highly and even treated him like a brother: [\[note: 100\]](#)

- Q. I'm trying to know from you whether you agree with me it is quite inappropriate to term Mr Lim as just a mere employee? He was much more than that, wasn't he?
- A. Before all these things happened, during the initial period when he was with Chip Hup, yes, he made a lot of contributions to the company.
- Q. That means during the time when he was with Chip Hup Hup Kee, in your eyes Lim Leong Huat was not just a mere 9 to 5 minor employee, right? He was somebody very important in your organisation, isn't that true?
- A. That's right. He would report to me in respect of all matters.
- Q. In fact, your relationship with him was so close, you even regarded him as being practically on par with you?
- A. Yes, yes. Then, yes.
- Q. So that's why, yesterday, you said you treated him as a brother, correct?
- A. Yes.



126 Neo also admitted that he was prepared to share profits with Lim (see [16] above):

Q. So Mr Lim says to you, in fact his value to you was so great, you were prepared to share profits with him and to allow him to run [AZ] alongside Chip Hup Hup Kee because you were concerned about Mr Lim Leong Huat no longer remaining in your company, agree?

A. Okay. When I did not know what kind of a person he was, I agreed.

127 Finally, I find it unbelievable that Neo could have been oblivious as he claims to the system of Salary Accruals all these years. CHKC's own witnesses, Aileen and Juliet, alleged that Lim would instruct them regularly on crediting Salary Accruals to his and Neo's name. Aileen and Juliet also acknowledged at trial that they had been aware of the Proxies system. Therefore, they certainly must have known that the non-CPF components of these Proxies' salaries were not being paid. Why then, were they content to credit Salary Accruals to Lim's account regularly on his instructions without blowing the whistle? I certainly do not see any incentive for them to assist Lim in committing a fraud on CHKC. The most likely explanation is, and I so find, that Neo himself was not only aware of but in fact set up and managed the Salary Accruals with Lim's able assistance from the very start.

128 Taking all these factors into consideration, I make the following findings. First, I find that Neo was mainly in control of the Proxies system and the Salary Accruals account from the beginning, despite his many denials. Secondly and consequently, I find that Neo was knowingly drawing Salary Accruals from CHKC for his own benefit. Thirdly, I find that Neo had willingly included Lim from 2001 in the Salary Accruals account as a means of profit-sharing with Lim, of which \$1,850,403.23 has been shown to be drawn out by Lim. Fourthly, it follows, and I so find, that it was Neo and not Lim who was giving directions to CHKC's accounts staff on how to deal with these various false entries in CHKC's accounts. Since the false entries were initiated or caused by Neo, CHKC's counterclaim for \$5,161,671.65 must fail.

129 As I shall deal with in greater detail below (see [182]–[186]), one of the most serious aspects of this case which is against Neo is his repeated and blatant lying in his affidavits and in his blatantly untrue evidence, given more than once, before other courts on oath, that the salaries of these Proxies were real and that he had actually paid them and was therefore entitled to reimbursement from CHKC. He had procured Aileen and Juliet to perpetrate the same lies also on affidavits and in oral testimony before other courts. They lied and misled or attempted to mislead other judges in the Subordinate and High Courts.

130 I must take pains to emphasise that I have not made a finding on the exact amount of Salary Accruals which were supposed to be credited to Lim's name. In my view there is insufficient evidence before me to make such a finding and it is not necessary for the resolution of this issue in any case. As I have mentioned above at [117], Lim has not made a claim for any outstanding Salary Accruals allegedly due to him in the present action and has reserved his right to make such a claim against the relevant parties in separate proceedings. Thus, it is not necessary for me to decide on Lim's entitlement to the balance of the Salary Accruals in his credit. I would just opine that if Lim brings an action to recover this balance, he has to deal with the hurdle of the obvious illegality of the Salary Accruals system (in allowing Lim to draw out tax-free income from CHKC). I would also add that my findings in this case do not preclude CHKC from contending in separate proceedings that the \$6,151,856.24 Lim alleges he is entitled to, has already been paid. CHKC has merely failed to discharge the burden of proof on them that Lim drew out and misappropriated monies other than the \$1,850,403.23 from Salary Accruals. If Lim chooses to claim the balance of Salary Accruals, the burden of proof would be on him to show that he has not been paid. Beyond this, I say no more.

### *False re-classification of \$949,191.59*

131 In the light of my finding above that Neo was the one who caused CHKC's accounts department to record false entries in its accounts, it follows that Lim is not responsible for causing the debt of \$949,151.59 owing by AZ to CHKC to be reflected as settled when in fact it has not. CHKC's counterclaim against Lim for the \$949,151.59 must accordingly fail. That being said, Lim did not dispute that AZ owes this debt to CHKC. He even acknowledged in cross-examination that if there was no reason for setting-off such a debt, this sum should by right be returned to CHKC. [\[note: 101\]](#) Since no reason has been put forward, I allow CHKC's counterclaim against AZ for the sum of \$949,151.59.

### **CHKC's claim for wrongful overpayment of salaries**

#### ***CHKC's case***

#### *Overpayment of salaries by CHKC*

132 CHKC's case is that from around 1998 to 2006, Lim, acting without authorisation, had caused CHKC to overpay salaries to him and Mdm Tan. The details of such overpayment are as follows:

(a) Lim's authorised salary since he joined CHKC in 1994 was \$7,000 a month. For the years 2000 to 2006, Lim had been paying himself monthly salaries ranging from \$8,000 to \$22,500. The total unauthorised salary drawn out by Lim during this period was \$380,500.

(b) From 1998 to 2000, Lim had caused CHKC to pay a full monthly salary to Mdm Tan ranging from \$3,700 to \$22,500 even though she did not do any actual work for the company. The total salary drawn out by Mdm Tan during this period was \$369,460.

133 CHKC had originally claimed in its pleadings the sum of \$469,740 against Mdm Tan in respect of overpayment of salaries by CHKC from 1996 to 2000. [\[note: 102\]](#) Mdm Tan's original defence was that she was a Proxy in CHKC. However, unlike other Proxies in CHKC, Mdm Tan actually drew a full salary instead of being paid only the CPF component of her salary. Mdm Tan claimed to be entitled to this full salary as she had provided consideration to CHKC in being a Proxy. When CHKC brought summary judgment proceedings against Mdm Tan in RA 159/2007, Woo J granted final judgment for the sum of \$426,700. As for the balance of \$43,040, which was the CPF component of her salary during this period, Woo J held (see *Lim Leong Huat* at [28]) that Mdm Tan had an arguable case on whether CHKC was entitled to recover this amount if it was knowingly paid to her to achieve an illegal purpose (being the maintenance of the Proxies system to deceive MOM and IRAS). As with the final judgment for the sum of \$347,030 against Lim (see [80] above), Woo J's judgment against Mdm Tan for \$426,700 was set aside by agreement of the parties in CA 142/2007, but CHKC was allowed to retain the said sum until the conclusion of this action.

134 Mdm Tan subsequently amended her defence to state that she had only been a Proxy in CHKC from 1996 to 1998. During that period, she was only paid the CPF component of her salary. From 1998 to 2000, she was no longer a Proxy in CHKC but was nevertheless paid a full salary pursuant to an oral agreement between Lim and Neo (on behalf of CHKC). According to Mdm Tan, Lim and Neo had agreed that a portion of Lim's monthly salary in CHKC was to be paid to her directly by way of gift. Hence, although Mdm Tan did not do any work for CHKC, she claimed to be entitled to this salary anyway.

135 Mdm Tan also disputed the quantum of salary CHKC alleged was drawn out by her. She stated in her AEIC that her total salary from 1998 to 2000 was only \$369,460 (consisting of \$351,800 in non-CPF salary and \$17,660 as employer's CPF contributions). The CPF component paid to her for being a Proxy from 1996 to 1998 was \$8,760. Hence, she claimed that the total salary drawn out by her from 1996 to 2000 was \$378,220 instead of \$469,740 as CHKC alleged. [\[note: 103\]](#)

136 CHKC accepts the figures given by Mdm Tan. [\[note: 104\]](#) It has now chosen to claim against her only in respect of her salary between 1998 and 2000. In light of Woo J's judgment in RA 159/2007, CHKC does not seek to recover the sum of \$8,760 paid to Mdm Tan as CPF from 1996 to 1998 when she was a Proxy in CHKC. Therefore, CHKC has revised its claim against Mdm Tan to \$369,460. [\[note: 105\]](#)

#### *Salaries paid by AZ but charged to CHKC*

137 CHKC further contended that from 1998 to 2006, Lim, Mdm Tan and Yeow all drew salaries from AZ which AZ had wrongfully charged to CHKC. The details of such salaries are as follows:

- (a) From 1998 to 2005, Lim had drawn a salary ranging from \$4,000 to \$10,000 from AZ which amounted to a total of \$641,600.
- (b) From 2000 to 2006, Mdm Tan had drawn a salary ranging from \$17,500 to \$22,500 from AZ which amounted to a total of \$1,215,500.
- (c) From 1998 to 2006, when Yeow was in the employ of CHKC, Yeow was also simultaneously employed by AZ. During this period, Lim, without the knowledge and consent of CHKC, approved the payment of two sets of salaries for Yeow under both companies from 2001 to 2006. The portion of Yeow's salary paid by AZ, amounting to \$215,170.03, was subsequently wrongfully charged to CHKC.

#### *Total amount claimed for overpayment*

138 Adding all these sums together, CHKC's total counterclaim against Lim on this issue amounts to \$2,822,230.03. CHKC also counterclaims \$1,584,960 against Mdm Tan consisting of the \$369,460 paid by CHKC and \$1,215,500 paid by AZ but wrongfully charged to CHKC. Quite surprisingly, CHKC has not made any claim against AZ here.

#### ***Lim's and Mdm Tan's case***

##### *Overpayment of salaries by CHKC*

139 Lim's defence in respect of the overpayment by CHKC of \$380,500 is that his pay raises were all approved by Neo and authorised by CHKC. As for the overpayment of \$369,460 to Mdm Tan, I have already set out her position above at [134].

##### *Salaries paid by AZ but charged to CHKC*

140 Lim denied that the salaries paid by AZ to him, Mdm Tan and Yeow were charged to CHKC. He stated in his AEIC that CHKC and AZ had a standing arrangement such that each month, CHKC would advance a sum equivalent to the net salaries of AZ's employees on AZ's payroll. This was because CHKC had a GIRO payment facility whilst AZ did not have one. CHKC would subsequently issue

invoices to AZ for the sums advanced by GIRO. These invoices were either paid directly by AZ or set off against progress payments due to AZ by CHKC in respect of work done on the 11 Projects. [\[note: 106\]](#)

## ***My findings***

### *Overpayment of salaries by CHKC*

141 Having considered the evidence, I have no hesitation in finding that the payments of \$380,500 and \$369,460 to Lim and Mdm Tan respectively were made with Neo's approval. I find that the "salary" paid to Mdm Tan was another avenue of rewarding Lim. The most pertinent piece of evidence by far on this issue is a series of bank reports showing the names of various CHKC employees and their corresponding monthly salaries. These reports were made monthly for the purposes of authorising the payment of CHKC's employees' salaries by GIRO and Neo personally signed every page of these monthly reports. Obviously, Neo must have known and approved of Lim's and Mdm Tan's salaries if he could sign these reports every month without asking any questions. When Neo was shown the bank reports in cross-examination, he claimed to have just signed without noticing the individual entries showing how much salary was paid to a particular employee. [\[note: 107\]](#) Once again, I find him to be disingenuous. Mdm Tan's name was the only entry on some of the pages of these bank reports, which Neo had signed. It is totally unbelievable that Neo would continue to sign these bank reports, month after month, and yet fail to notice that Lim and Mdm Tan were being paid salaries which according to him they were not supposed to receive.

142 Lim also produced a copy of a table detailing the gross monthly salaries and recommended bonuses of CHKC staff for the year 1998. [\[note: 108\]](#) Lim's evidence was that he would show tables such as this to Neo and the two would discuss how much bonus to award to the rest of CHKC's employees. Neo admitted seeing such tables in cross-examination but claimed that he was only interested in the total figure: [\[note: 109\]](#)

- A. Yes. At the end of the year he [Lim] would come to me with his proposal of how much salary to pay, but I would not ask him the details as to how many months' bonus each staff would get. He merely told me a total. I was interested in only the total. I wasn't interested in the individual amounts that were paid to staff.

(Simultaneous speakers – unclear)

- Q. But what about your own amount?

- A. I will tell him how much I wanted and I would get the money from him.

- Q. And you would look at a table to see your own amounts in there, wouldn't you?

- A. No, I would not.

- Q. Now, there's actually a copy of such a table, if you turn to 1EAB(C) 918. You will see there, as clear as can be, in table 1EAB(C) 918. If you are to cast your eyes down you will see yourself listed in line 5. It doesn't take any effort to see your own salary, and in the way the numbers are presented, it doesn't take any effort for you to detect the fact, just three rows up is Lim Leong Huat drawing \$17,000. And within four rows down, you will find his wife's name there.

Are you seriously trying to tell the court, a man comes to you with recommendations, you would be interested in your own pay, you don't even see numbers like \$17,000? This is the only 5-digit figure on that page, sticking out, apart from yours?

A. That's right. I merely signed. I did not look at the details.

Neo was blatantly trying to deny the obvious. I do not for a moment believe that he would instruct Lim on how much money he wanted and yet not see for himself how much money Lim was being paid by CHKC. His attempt to give this obviously untrue answer only shows that he knew of Lim's and Mdm Tan's salaries and was trying to hide his knowledge of it.

143 Finally, CHKC's own extract of gross monthly salaries drawn by Lim showed that he was paid a monthly salary of \$10,000 in 1996, \$20,000 in 1997, \$17,000 in 1998 and \$20,000 in 1999. [\[note: 110\]](#) Yet CHKC has inexplicably only decided to claim overpayment of salary above \$7,000 a month from November 2000 onwards. Neo was unable to give any coherent explanation when this fact was pointed out to him in cross-examination.

144 I must confess that I find Lim's and Mdm Tan's defence very strange. It seemed very puzzling for Lim to arrange for CHKC to pay Mdm Tan a portion of his salary as a gift when he could have simply given her that sum each month directly since they were husband and wife. This is another example of Lim's convoluted and circuitous manner of doing things which I initially found unsettling during the trial. Furthermore, Mdm Tan had also tendered a letter of resignation from CHKC dated 1 September 2000. If she had been paid monthly salaries as a gift from Lim, why was there a need for her to resign from the company? These little oddities raised doubts in my mind about whether Lim was being entirely truthful with his side of the story. Nevertheless, on the totality of the evidence, it seems patently clear that Neo was fully aware of Lim's and Mdm Tan's monthly salaries all this while and this was in all probability another scheme of Lim's to reduce his tax exposure or profile. Consequently, with my finding that Neo approved these salaries, CHKC's counterclaim for overpayment of salaries must fail. Furthermore, since CHKC has retained the sum of \$426,700 awarded by Woo J against Mdm Tan in RA 159/2007, this sum has to be returned to her.

#### *Salaries paid by AZ but charged to CHKC*

145 Both parties have accepted that CHKC had rendered invoices to AZ for the monthly sums it advanced to AZ by way of GIRO to pay AZ's employees. The parties have also accepted that most of these invoices were settled by way of set-off against progress payments due to AZ by CHKC in respect of work done on the 11 Projects. Therefore, the issue is whether AZ was entitled to set off such amounts. This depends on my findings in respect of CHKC's counterclaim on the 11 Projects issue (see below at [155]–[168]). The parties agreed that if I find that AZ was not beneficially entitled to the progress claims from the 11 Projects, CHKC's invoices would remain unpaid since AZ would have no right to set them off against the progress payments. Lim and AZ would accordingly be liable to account to CHKC for these salaries. Conversely, if I find that AZ is entitled to the progress claims under the 11 Projects, the setting-off of CHKC's invoices would be valid and CHKC's counterclaim on this issue must then be dismissed.

### **CHKC's counterclaim in respect of the 11 Projects**

#### ***CHKC's case***

146 I finally deal with CHKC's counterclaim in respect of the 11 Projects, which is the last and by far the largest counterclaim in these proceedings. Similar to its counterclaim against Lim in respect of

the false entries and misappropriations, CHKC has also produced widely differing versions of its story at different times. CHKC's original story, when its counterclaim was first filed in 2007, was that sometime in 1997, when its business was rapidly growing, Lim had advised Neo that it was necessary for CHKC to hire additional foreign workers to expand its business as CHKC was engaged primarily in structural steel works which were labour-intensive projects. For this purpose, Lim advised Neo to allow him to incorporate AZ so that it could obtain a licence from the Building and Construction Authority ("BCA") allowing it to hire foreign workers for CHKC's benefit. Neo agreed and CHKC provided a sum of \$1m for Lim to incorporate AZ in August 1997.

147 Lim also advised Neo that it was necessary for AZ to be engaged in a minimum value of projects in order to maintain its licence with BCA. For that reason, Lim proposed that CHKC could notionally assign a certain number of projects to AZ for the sole purpose of meeting this minimum requirement. Neo and Lim came to an oral agreement that these projects were ultimately for CHKC's benefit. Thus, the 11 Projects came to be assigned from CHKC to AZ. When CHKC first brought this counterclaim in 2007, it alleged that the terms of the oral agreement between Lim and Neo were that AZ would account for *all gross revenues* received in respect of the 11 Projects. CHKC also claimed then that it did all the work and bore all the costs of the 11 Projects. As a result, CHKC's original counterclaim in respect of the 11 Projects alone amounted to \$41,959,353.82.

148 However, in November 2008, CHKC applied to amend its pleadings to make drastic changes to its story. First, Neo introduced a new reason for the setting-up of AZ: First, as their order book grew, Lim advised Neo not to have all his eggs in one basket and advised Neo to set up another company. Hence CCPL was incorporated in February 1997. Secondly, at a later point in time, Lim warned Neo that if CHKC were to run into any 'compliance' problems with the authorities, CHKC and its related companies like CCPL might all be suspended from operations, preventing them from completing their projects. Thus, Neo stated in his new story that Lim had recommended AZ to be structured such that it was not related to CHKC or to Neo. That way, AZ would be able to step into CHKC's shoes and fulfil its obligations if CHKC's operations were suspended or shut down. Lim agreed, in the present proceedings, that this was one of the reasons why AZ was originally set up. AZ was therefore incorporated 7 months later in September 1997.

149 More importantly, CHKC now alleged that instead of being entitled to the gross revenues of AZ under the 11 Projects, it was now claiming the *net profits* received by AZ. This also meant that CHKC had completely abandoned its earlier allegation that it did all the work and incurred all the costs on the 11 Projects. CHKC's counterclaim on this issue, after deducting expenses AZ incurred on its own and prior reimbursements from AZ to CHKC, has thus been reduced by slightly more than half to \$20,667,020.92. I should add that this sum does not include the salaries paid by AZ to Lim, Mdm Tan and Yeow which CHKC alleged AZ had no right to set off against progress payments made by CHKC to AZ on the 11 Projects.

#### *Unauthorised expenses of \$185,149.87*

150 Finally, CHKC has included a claim of \$185,149.87 against AZ which has been computed into its counterclaim of \$20,667,020.92. According to CHKC, the \$185,149.87 represents unauthorised expenses incurred by AZ and paid by CHKC along with other progress payments and legitimate expenses which AZ billed CHKC for in relation to the 11 Projects. This sum consists of two parts: (a) \$130,695 which was used to purchase four personal insurance policies for Lim; and (b) \$54,454.87 which was spent on Lim's house at 54 Wilkinson Road. I have isolated this sum of \$185,149.87 from the rest of CHKC's counterclaim for \$20,667,020.92 because even if I find that AZ was entitled to retain all profits from the 11 Projects, CHKC can still recover the \$185,149.87 if it shows that this expense was wrongfully charged to it by AZ.

## ***Lim's and AZ's case***

151 Lim and AZ do not dispute the existence of the oral agreement between him and Neo in 1997 that the 11 Projects would be assigned to AZ. However, Lim contended that neither he nor AZ is liable to account to CHKC for the net profits of the 11 Projects. His story is as follows. Sometime in or around 1997, after working for CHKC for about three years, Lim had thoughts of leaving and starting his own construction company. I have accepted this and I have found that at that point of time, Neo was keen for Lim to continue working for CHKC because Lim had been very successful in growing CHKC's business. Neo therefore agreed with Lim that he could incorporate his own company and run it while concurrently working for CHKC. Under the terms of the agreement, AZ would not be a direct competitor to CHKC. At the same time, as mentioned above at [148], AZ would provide backup to CHKC and take over its projects in the event that CHKC's operations were suspended or shut down.

152 Lim also stated that as part of the agreement with Neo, CHKC would assign the 11 Projects to AZ for its benefit. AZ would do the actual work and bear its own costs on the 11 Projects, and would be entitled to any corresponding profits. In return, AZ would pay a notional management fee of around 2%–6% of the project revenue to CHKC. Lim stated that this arrangement was implemented in practice in the following manner. CHKC would usually be the subcontractor engaged by the respective main contractors on the 11 Projects. Thus, while AZ did the actual work, it was CHKC who received the progress payments for these projects in the first instance. CHKC would then deduct its share of the management fees from these progress payments. Furthermore, since CHKC and AZ worked closely together and often shared resources, CHKC would also deduct any expenses and costs it incurred for the project on AZ's behalf. After setting off any remaining mutual debts between CHKC and AZ in relation to the 11 Projects, AZ would then be entitled to the balance of the progress payments. Lim stated that this arrangement was varied for two of the 11 Projects:

(a) CHKC was the developer and not the contractor for a project named "Parbury", which involved the demolition and erection of a few houses. For this project, AZ received all progress payments without having to pay a management fee to CHKC because CHKC had already taken its profits from the sale of the houses since it was the overall developer.

(b) AZ was CHKC's subcontractor for a project named "Prefab Technology Center" ("PTC") which involved the fabrication of pre-cast components for use in Housing & Development Board projects. Lim states that AZ billed and received progress payments from CHKC based on fixed and agreed rates for this project.

As the 11 Projects were assigned to AZ for its benefit, Lim claimed that neither he nor AZ needs to account to CHKC for the profits from these projects.

### ***Unauthorised expenses of \$185,149.87***

153 Lim and AZ denied CHKC's allegation that the sum of \$185,149.87 was wrongfully charged to it by AZ. Lim said that of the four insurance policies CHKC alleged he bought, he only owns one – AIA Policy No L52497807. This insurance policy was obtained for him by Neo around 1997 through a person named Tan Lay Cheng ("TLC"), whom Lim alleged was Neo's mistress. Lim stated that Neo agreed for CHKC to pay the premiums on his insurance policy. This was in fact done prior to 2001. From 2001 onwards, it was AZ who paid the premiums on Lim's insurance policy and these expenses were charged to CHKC along with the progress claims for the 11 Projects. Lim said that all this was done with Neo's knowledge and approval since he wanted to help TLC in her insurance business.

154 As for the expenses charged to CHKC in respect of Lim's house at 54 Wilkinson Road, Lim

stated that Neo had authorised these expense claims to be made by AZ to CHKC. Neo later caused adjustments to be made to CHKC's accounts to reflect corresponding reductions of the amounts reflected as owing from CHKC to Lim. Hence, Lim said that CHKC did not bear these expenses.

### ***My findings***

155 Despite the massive amount at stake in relation to this part of CHKC's counterclaim, there is only one issue here and a simple one at that. As with almost all the other claims and counterclaims flung by both sides at each other, the question turns on whether I believe Lim or Neo. Having reviewed the evidence, I accept Lim's version of the terms of the oral agreement over Neo's. My reasons are as follows.

156 The most striking factor that led me to find in Lim's favour is the fact that prior to the dispute between Lim and Neo, CHKC had never once attempted to make AZ account for the profits under the 11 Projects. AZ started working on the first of the 11 Projects since December 1997. For nearly nine years until the argument between Lim and Neo in 2006, Neo had not even asked Lim what happened to the profits from the 11 Projects, much less demanded an account. Even when CHKC was experiencing cash flow problems, Neo had never asked Lim about the 11 Projects. It was not as if Neo was blissfully unaware that AZ was retaining profits from the 11 Projects all this time. On the contrary, Neo obviously knew of this fact as can be seen from the transcript of the very telling conversation Neo had with Yeow on 1 February 2007 which was secretly recorded by Yeow: [\[note: 111\]](#)

I [Neo] have been very nice to all of you, it is just that I am not minding the business. I let him do the controlling. *For more than 10 years, I have even seen his AZ took my tens of millions of dollars*, all of which was not declared from taxation. ... He took tens of millions of dollars from me, do you know that? ... My PTC [referring to the PTC project] lost over \$3 million, all of which went to him. This is called losing.

[emphasis added]

As noted previously, this conversation took place when Neo was trying to persuade Yeow to give evidence on his behalf against Lim. The transcript is revealing and rings true because it also showed the veiled threats Neo made to Yeow if Yeow chose to give evidence on behalf of Lim. Yeow's evidence, which I accept, was that Neo promised him a monetary inducement as well if he stayed and helped Neo against Lim and Neo would forget about the sums of money given to him by Lim which Neo claimed had been misappropriated from CHKC. Neo made good his threat by commencing Suit No136 of 2007 (and a related Suit No137 of 2007) against Yeow when Yeow chose not to give evidence for Neo.

157 Since Neo had clearly been aware that AZ was keeping the profits from the 11 Projects, why did it never occur to him to seek an account from Lim? Neo came up with another lie when asked this question in cross-examination: [\[note: 112\]](#)

Q. Mr Neo, it would be very natural for you to have come hunting for the profits, but your story is erected on an unbelievable foundation. For eight years you have financial problems and you never thought it fit to chase down the profit, because the truth is that in August 1997 you agreed that Mr Lim could have AZ and its profits; isn't that the truth?

A. No, I don't agree. No, no fool -- that person would be a fool if he agreed to let him take



everything.

Q. Mr Neo, you are not a fool.

A. What he told me was that I have to sign AZ's cheque when the payment was for AZ, because the money will eventually come back to me, so very naturally I agreed that this was the correct way to do so. So I make no checks on this. I didn't expect that the money did not come back.

Neo's answer flatly contradicted what he said in his recorded conversation with Yeow, viz, he, Neo, had watched AZ take his millions for so many years, yet he continued to maintain at trial that he did not check on AZ because he thought the money was coming back to CHKC. Neo was, once again, obviously not telling the truth.

158 As Lim's counsel put it, Neo was definitely not a fool. Neo and CHKC tried to argue in these proceedings that it would be ludicrous for CHKC to assign the 11 Projects beneficially to AZ in return for notional management fees totalling \$1,525,888.94, which was a bare fraction of the \$20,667,020.92 AZ received in profits. However, Neo failed to acknowledge Lim's continued contributions to CHKC from the time AZ was set up. He stated in his own AEIC that from 1997 to 2006, CHKC was engaged in about 60 construction projects with a total contract value of \$543m. [\[note: 113\]](#) In comparison, in the same period, 1997 to 2006, AZ's 11 contracts had a total contract value of \$38 million. Looking at the big picture, it is clear that Neo and CHKC gained immensely from Lim's continued presence from 1997. I do not think that Lim, who had no equity stake in CHKC's business, would have stayed on in CHKC out of mere love and affection for Neo. It is more likely that Neo, being the savvy businessman he is, had done his calculations well. The 11 Projects were as much an incentive for Lim to stay on and work for CHKC as his other bonuses, salary increments, and his sharing in the Salary Accruals. When all was said and done, the 11 Projects made up a fraction of the benefits Neo derived from CHKC's continued success, which was due largely to Lim's industry.

159 Another strong reason why I believe Lim's story over Neo's is that Neo had offered no good explanation for the radical change in his story. When CHKC first brought its counterclaim in 2007, Neo had claimed that CHKC had done all the work and incurred all the costs on the 11 Projects and that it was entitled to the gross revenues from these projects. Neo even affirmed several affidavits to this effect. When CHKC subsequently applied to amend its pleadings to the current version, Woo Bih Li J required it to file an affidavit explaining why it was drastically changing its position. Neo's affidavit, filed on 10 February 2009, claimed that at the time, CHKC did not understand how the costs of the 11 Projects and the inter billings between both parties were booked. I do not believe this explanation at all. CHKC's original claim could not have been a simple mistake on its part because it already had an entire litigation team consisting of lawyers, accounting experts and its own employees from the start. I do not for a moment believe that from 2007, when CHKC filed its original counterclaim until late 2008 when it applied to amend its pleadings, it did not know how to compute the exact amount of profits it was claiming from AZ in respect of the 11 Projects.

160 Neo was similarly unable to explain CHKC's drastic change in position during cross-examination. On the contrary, he even admitted that when he filed his affidavit of 10 February 2009, he was still trying to avoid giving such an explanation: [\[note: 114\]](#)

Q. Could you kindly turn to ... your affidavit which you were compelled to file on 10 February 2009. If you turn to page 5, you will find that what is being stated there is that you were forced to explain certain deletions in a defence and counterclaim. ... you admit there that Chip Hup Hup Kee had deleted this assertion that:

"All the works on the 11 Projects were carried out by [Hup Kee] and all costs in relation thereto were borne by [Chip Hup Hup Kee]."

A. Yes.

Q. If you turn to page 32, the same affidavit, you will find that there are your justifications to try to explain away why you tried to use that sort of phraseology. And your claim essentially is that you weren't sure what was going on. ... Now, Mr Lim says to you that again you were trying your level best not to give explanations for these amendments; do you agree or disagree? Do you agree?

A. At that time we did not know how AZ managed -- we were the passive party, not the active party. Whatever they gave me, then we went to check.

COURT: That wasn't the question, Mr Neo. Do you agree or disagree with counsel's suggestion that you were still trying to avoid giving reasons for the deletions in your amendments?

A. Yes.

161 Neo also conceded that he did not intend to admit that CHKC's amendments to its defence in 2008 amounted to a change in its position until he was forced to do so by Woo J in 2009: [\[note: 115\]](#)

Q. In fact, you were not intending to actually admit that you had to make a shift in position in your pleadings and claims relating to the 11 projects until you were forced to do so by Justice Woo Bih Li, isn't that true, in 2009?

A. Yes.

162 I find that the real reason why CHKC had to drastically amend its pleadings from a claim for revenue to a claim for profit is this. CHKC and Neo knew from the start that Lim was entitled to the profits from the 11 Projects. Nevertheless, CHKC filed a massive counterclaim including a \$41,959,353.82 claim for revenue from the 11 Projects as part of its strategy to intimidate Lim, even though Neo knew such a claim was baseless. However, Neo subsequently realised that such a claim was untenable because its allegation that AZ did no work and incurred no costs on the 11 Projects flew in the face of overwhelming evidence on Lim's and AZ's part. Thus, CHKC revised its claim to a claim for profit, making it harder for Lim and AZ to disprove. This also explains why Neo and CHKC have failed to provide a coherent reason for their amendments – they cannot afford to admit that they filed a claim from the start in the knowledge that it was not a genuine claim.

163 I find that CHKC has also failed to prove its allegation that it had lent the sum of \$1m to Lim to incorporate AZ in 1997. CHKC relies on an entry in its general ledger showing that \$1m had been lent to Lim in 1997, [\[note: 116\]](#) but AZ's own general ledger shows that it was originally incorporated with a paid-up capital of \$200,000. [\[note: 117\]](#) CHKC also did not adduce any further evidence showing that the \$1m loan it allegedly provided to Lim was in fact used to incorporate AZ. On the whole, I find on a balance of probabilities that Lim capitalised AZ using his own funds. This fact lends credence to Lim's

position that AZ was an independent company with its own projects instead of existing for the purpose of making profits for CHKC. Further, if Neo's ostensible reason for incorporating AZ was true, it did not quite sit well with AZ being set up only 7 months after Neo incorporated CCPL.

164 Finally, Lim has produced several extracts from CHKC's general ledger showing the various payments it received from its various employers or main contractors for nine of the 11 Projects. Lim has juxtaposed these sums against the progress payments made by CHKC to AZ for these nine projects. A comparison of the figures strongly corroborates Lim's case that CHKC in fact retained a notional management fee of between 2%–6% for these projects. (As mentioned above at [152], there were no management fees charged for the Parbury project while the fees for the PTC project were calculated separately.)

<b>Project Name</b>	<b>Payment received by CHKC</b>	<b>Progress payment from CHKC to AZ</b>	<b>Difference</b>
Jurong West N6C17	\$5,069,792	\$4,969,572.16	2%
Jurong West N2C7	\$6,767,856.64	\$6,583,984.93	3%
Jurong West N9C14	\$10,482,818.53	\$10,273,162.16	2%
Punggol East C28	\$7,250,000	\$7,026,655	3%
Geylang RC17	\$2,535,714.29	\$2,408,837.19	5%
Ang Mo Kio Condominium	\$4,749,000	\$4,484,443.08	6%
Sengkang N3C9 & 10	\$8,024,875	\$7,756,709.70	3%
Quintet	\$4,765,000	\$4,623,738.28	3%
Kallang Whampoa RC24 (MCSP)	\$396,752.39	\$388,817.41	2%

Lim's figures, which were also included in his AEIC, [\[note: 118\]](#) were not challenged by CHKC at trial. CHKC has only submitted that it made no commercial sense for it to assign the 11 Projects to AZ in return for these management fees which only totalled \$1,525,888.94. I have already dealt with this submission at [158] above.

165 It remains for me to deal with some points raised by CHKC's counsel. First, CHKC alleged that Neo's signatures on the Quintet and Punggol East C28 subcontracts for the assignment of these projects to AZ were forged. CHKC submitted that these forgeries show that Lim had caused CHKC to assign the 11 Projects to AZ without Neo's knowledge and approval. Leaving aside the question of whether CHKC has proved its allegations of forgery, I do not see how CHKC's contention was strictly relevant to the issue. Neo's own position, as set out in his AEIC, is that he and Lim had agreed for CHKC to assign some of its projects to AZ, and that Lim would determine which projects were to be assigned. The dispute between the parties is whether Neo and Lim had agreed for AZ to account for the profits on the projects that were assigned to it by CHKC. As such, I do not see how this submission can assist CHKC in the face of all the other evidence.

166 Next, CHKC submitted that Lim and Neo treated AZ as if it were part of CHKC:

- (a) AZ obtained its Chinese foreign workers from CHKC and these workers were managed by

CHKC's China management team. Lim also admitted in cross-examination that when the China team reported to Neo on the progress of projects at the weekly Monday morning meetings, they made no distinction between CHKC's and AZ's projects.

(b) CHKC bore all the costs of bringing in and training foreign workers which were engaged by AZ on the 11 Projects. The levies on these foreign workers were also all paid by CHKC. CHKC also owned all the machinery and equipment used by AZ to carry out work under the 11 Projects without charging AZ for their use.

(c) CHKC and AZ shared office premises. CHKC paid for all outgoings including rental and utilities expenses without charging AZ. CHKC's office staff would also perform support functions for AZ (such as accounting and administrative work) without AZ being charged for such work.

CHKC thus submitted that having regard to the ways CHKC and AZ were run, it made no commercial sense for CHKC to assign the 11 Projects to AZ purely for AZ's own benefit when many of the other dealings between the two companies were not arm's length transactions. This arrangement only made sense if AZ was not an independent company and had to account to CHKC for profits on the 11 Projects.

167 I cannot agree with this submission. While the above factors evince a very close relationship between CHKC and AZ, they do not necessarily show that AZ existed solely to carry out CHKC's work and plough the profits from the 11 Projects back into CHKC. Since Lim and Neo had an extremely good working relationship back then, and Neo was keen to keep Lim working for him at CHKC it would not be surprising for CHKC and AZ to share many of their resources. This did not mean that CHKC was sponsoring all of AZ's operations – AZ still paid CHKC for labour costs and reimbursed it for expenses incurred on AZ's behalf on the 11 Projects. As for other expenses such as the salaries of the China management team and the office staff which were fully borne by CHKC, I agree with Lim that AZ's share of these expenses was paid through the management fees CHKC retained from the 11 Projects. Ultimately, despite their close working relationship, I find that Neo and CHKC were fully aware that AZ was meant to be an independent company, not a *de facto* subsidiary of CHKC.

168 On the totality of the evidence, I therefore agree with Lim and find that the 11 Projects were beneficially assigned by CHKC to AZ. AZ is thus not liable to account to CHKC in respect of its profits of \$20,667,020.92. It also follows that AZ was entitled to set off the sums CHKC advanced to it to pay Lim, Mdm Tan and Yeow against the progress payments made to it by CHKC. Consequently, CHKC's counterclaim for overpayment of salaries by AZ (see [145] above) is also dismissed.

#### *Unauthorised expenses of \$185,149.87*

169 Finally, I set out my findings on the \$185,149.87 which CHKC said AZ wrongfully charged to it. In respect of the four insurance policies totalling \$130,695, Lim clarified during cross-examination that he still owns one policy and that the other three have since been cashed out by him, [\[note: 119\]](#) and it was not really disputed that all these policies were purchased by Lim at inception. Although it is not clear in his AEIC whether Lim had purchased all four policies from the same person (TLC), I am quite certain he had because the policies are numbered consecutively: L52497807, L52497808, L52497809 and L52497810. The issue then is whether Neo had approved charging the premium of these policies to CHKC. On a balance of probabilities, I find that he did. Lim's evidence on the circumstances surrounding his purchase of the insurance policies from TLC, and on Neo's motives for helping her, (Lim alleged she was Neo's mistress), were not challenged in cross-examination. On the other hand, CHKC only has a bare denial by Neo that the expenses on the insurance policies were charged to CHKC without his knowledge. CHKC did not call TLC to give evidence to or otherwise rebut Lim's case. On

balance, I find the evidence here weighs more heavily in Lim's favour. Therefore, Lim and AZ are not liable to account to CHKC for the expenses on these policies because they were authorised by Neo.

170 As for the expenses of \$54,454.87 incurred on Lim's house at 54 Wilkinson Road, CHKC has accepted that a sum of \$29,251.39 has been set off against its running account with Lim, [\[note: 120\]](#) so that it has in effect not been charged this amount. This leaves a sum of \$25,203.48 which Lim has failed to account for. I therefore allow CHKC's counterclaim against Lim on this issue for \$25,203.48. The rest of CHKC's counterclaim fails.

### **The strength of each party's case**

171 I have arrived at all my above findings after much difficulty chiefly because I had to decide between the often diametrically opposed versions put forward by Lim and Neo, both of whom were equally and culpably steeped in the unlawful and unsavoury practices going on in CHKC and AZ. The evidence, especially the ledgers, accounts and supporting documents, were not easy to follow. I daresay they were designed to confuse and prevent easy unravelling or tracing and the incomplete discovery completed, as Mr Khoo rightly characterised it, their hall of smoke and mirrors. Lim and Neo's manner of running the companies clearly show that neither of them is fit to sit as a director in any public listed company. They devised and participated in one nefarious scheme after another to siphon profits out of CHKC while attempting to cheat or mislead a number of authorities including MOM, IRAS and, if their plans had worked out, SGX and the investing public. When they fell out, neither could tell the whole or any part of the story without implicating himself. They have, to different degrees, brought their dishonesty with them into court. Neo however is by far the more culpable, having made false allegations at the start of the action, affirming false affidavits, giving false evidence in related proceedings, misleading other judges and then by fabricating lies at this trial.

172 As I have mentioned at the start of this judgment, when the objective evidence was unclear and I only had Lim's word against Neo's, I generally preferred Lim's evidence. I now set out four reasons, generally, why I felt that Lim had the stronger case on the whole.

### ***Credibility of key witnesses at trial***

173 I felt that Lim's key witnesses, Jean and Yeow, were generally more credible than CHKC's witnesses. This is not to say that I believed them to be completely impartial – Jean and Yeow had also been sued by CHKC in related proceedings and they would appear to have an incentive to give evidence that favoured Lim's side of the story. They were understandably a little defensive. However, just as I found that Neo first tried to get Yeow to give evidence on his side and then sued Yeow when he chose not to, I accept Jean's evidence and find that Neo also tried to get Jean to give evidence against Lim and when she refused, he sued her. [\[note: 121\]](#) Jean answered questions without hesitation and in a straightforward manner. I also accept her evidence that Neo knew of and authorised the 'interest' payments (that I have referred to above at [45] and [104]) to Lim, that Aileen prepared some of these cheques, that some of the cheques were pre-prepared before she wrote out the fictitious support documents and that the entries noted in "PWB-49" and the Manual Cashbook bears this out. I also accept Jean's evidence that Neo knew exactly what was going on in CHKC and that he discussed matters relating to contracts with her and gave her instructions directly. It also appears that Jean stopped short of filing a false affidavit even though she was facing a summary judgement application. [\[note: 122\]](#) On the whole, I found both these witnesses were candid and straightforward in cross-examination. They did not appear uncertain and neither were they evasive or try to evade questions from counsel.

174 What struck me about Lim's evidence as a whole was that he always did things in a complicated and a round about, almost surreptitious, fashion. There was nothing simple or straightforward about how he went about doing things in CHKC. Although he was not caught lying outright at trial, my consistent impression was that on some points he would come up with the most convoluted process as to why he did something. For that reason, I found his story on his claim for COF compensation as pleaded to be made up. But yet there was some kernel of truth in some of his allegations, *e.g.*, there were undeniable multiple payments to him in 2005 of \$4,800 and \$4,375 captured in the Manual Cashbook clearly showing interest payments to Lim. His explanations on the other issues, such as the fictitious invoices, were more straightforward. I was more inclined to believe his testimony in relation to those issues. On the whole, his evidence was far more reliable than Neo's.

175 I find Neo to be blatantly lying and not above fabricating evidence before the court, as can be seen from his affidavits and cross-examination. There are many passages that bear this out but to recite them here would be to lengthen this judgment unnecessarily. Throughout the proceedings, Neo had attempted to portray himself as a simple, uneducated man who was cheated of his hard-earned money by an ungrateful underling. However, as I have shown above at [16], his demeanour in court convinced me otherwise. He was alert and sharp, and several times was shrewd enough to even backtrack on his evidence when he realised that Lim's counsel was leading him towards making a damaging admission. Neo's manner in cross-examination was also very guarded. When counsel put certain facts to him, he would simply disagree without volunteering an explanation. While Lim was forthcoming in elaborating upon his answers to CHKC's counsel, Neo seemed to be adopting a strategy of "catch me if you can". He would take the most unbelievable positions in response to counsel's questions as long as the objective evidence did not contradict him outright. Throughout the trial, he kept sticking to the same mantra: that he blindly trusted Lim and left Lim in control of everything. This led to Neo giving answers which I found were blatantly untrue, to the point of being ridiculous: [\[note: 123\]](#)

- Q. ... As a principal, wouldn't you agree as a prudent businessman -- and I take it you are a prudent businessman, Mr Neo?
- A. I am a businessman who wants to make money.
- COURT: No, the question was: Are you a prudent businessman?
- A. What would you mean by "prudent"?
- MR KHOO: You are a careful person, aren't you, Mr Neo?
- A. No, I am very careless.

176 The other key witnesses of CHKC, Aileen and Juliet, fared little better on the stand than Neo. Aileen was evasive and combative in cross-examination and, like Neo, continued to disagree with counsel even after the falsehoods and inconsistencies in her evidence were exposed. Aileen gave untrue evidence before other judges and knowingly affirmed untrue affidavits to support Neo. Her facial expressions and manner of giving evidence showed unexplained hostility towards Lim. She would often glower, turn her body and roll her eyes in anger when she answered the questions, but I noticed she seldom looked at Mr Khoo even though he was cross-examining her and never looked me in the eye unless I intervened to ask a question. Even then her eye contact was extremely brief because she almost never gave an answer while looking me in the eye. Aileen only looked at the interpreter or looked down or to some inanimate object as she gave her answers. She was prepared to resort to, and I so find, dishonest tactics such as forging two bank-in slips [\[note: 124\]](#) which CHKC



then alleged to be forged by Lim to misrepresent to Neo that he had advanced about \$1.5m into CHKC in 2003. Lim engaged a handwriting expert, Ms Lee Gek Kwee, whose evidence I accept, and who testified that the handwriting on the bank-in slips was actually Aileen's and not Lim's. I find that Aileen was not above dishonesty in other ways. In addition to her salary, she paid herself an 'additional salary' every month from \$1,500 (from September to December 2003), to \$2,000 (from January to August 2004), to \$2,400 (from September 2004 to February 2005) and to \$4,400 (in March and April 2005) before lowering it back to \$2,000 (from August 2005 to October 2006). She made no additional claims in some months (July 2005, October 2005, December 2005 and January 2006). I find that she helped herself to a total of \$77,400 over the period of September 2003 to October 2006).

[\[note: 125\]](#) It is not without significance that she stopped doing so from October 2006, the month Lim and Neo had their big quarrel. Her only lame answer, which I totally reject, was that Lim authorised her to do this, yet she admitted she did not declare these sums as salary to IRAS and did not pay tax on these additional sums. She also put forward her sister as a 'Proxy' and then surreptitiously paid her sister an 'actual salary' of \$750 per month when she was in charge of the payroll. As I said, with all these withdrawals being made by Lim and Neo, Aileen decided she too could do likewise with these relatively small payments which Neo and Lim would not notice. But the lengths to which she would go to for Neo went beyond someone who had been caught with her hand in the till and was being coerced to 'co-operate'. When she was caught out, Aileen too could twist and turn when cornered. This occurred when Aileen gave evidence that shortly after the big quarrel between Lim and Neo in October 2006, Lim had given her a stack of 24 repayment cheques to cancel. Aileen's story would evolve as each lie was exposed in cross-examination; it went from:

- (a) she cancelled the cheques, [\[note: 126\]](#) to
- (b) she handed the cheques to Juliet to cancel (when it was discovered, from the Manual Cashbook that had been recently discovered with un-redacted pages, that 16 of those cheques had been already cancelled in September 2006, the month before the big quarrel), [\[note: 127\]](#) to
- (c) both of them *i.e* Aileen and Juliet cancelled the cheques because she stamped the word "cancelled" on each of those cheques but Juliet did the Manual Cashbook entries. [\[note: 128\]](#)

Her ready lie that Juliet back-posted the 16 cancelled cheques in the last week of October 2006 into September 2006 because the September account was not 'closed' was again exposed when the 17<sup>th</sup> cancelled cheque was posted as cancelled in October 2006, not September 2006 along with the other 16 cheques, in the Manual Cashbook. Also, her account of what happened immediately after the big quarrel between Lim and Neo was, like Neo's account in his AEIC of the same incident and his oral testimony, very different when tested in cross-examination. I find Aileen to be a completely unreliable witness.

177 Juliet was a less combative and evasive witness but she gave very non-committal answers. She smiled at times inappropriately and seemed to treat the proceedings lightly. She would confirm whatever others were saying but when she was pressed in cross-examination, she would simply say that she was not sure or that she did not know. At times she would have long pauses before she answered. For example, when Lim's counsel asked her why she had knowingly sworn a false affidavit in prior proceedings relating to the Salary Accruals issue, she was unable to give an answer: [\[note: 129\]](#)

- Q. So by the time you swore this affidavit you already knew that that statement in paragraph 11 was untrue, correct?

- A. Yes.
- Q. We come back to that point and I have given an indication there will be a break very shortly, can you give us your final answer: why did you go ahead and sign the affidavit knowing it was false?
- A. I really can't answer you.
- COURT: Ms Siah, you might be smiling, but I don't think it is a very funny thing to swear a false affidavit.
- MR KHOO: Were you under pressure or were you trying to help Khoo Choon Yean [Aileen]?
- A. No.
- Q. Then what made you swear the false affidavit?
- A. I really don't know.

Juliet was not as intelligent or as quick thinking as Aileen. I find that without thinking things out clearly, she affirmed the false affidavit and gave false evidence for Neo but wisely chose not to do so further and had to be subpoenaed to appear before me at the trial.

178 I find that the credibility of Lim's key witnesses was on the whole far more honest and trustworthy than CHKC's witnesses.

### ***Internal consistency of each side's case***

179 Save for his pleaded COF claim, Lim's case theory was simple enough. He had performed well and grew CHKC's business tremendously during his time there, and was allowed to join Neo in siphoning off CHKC's profits under the nose of the tax authorities. He was also allowed to incorporate and run AZ and even had the benefit of the 11 Projects. Until their big quarrel and fallout in 2006, Lim and Neo were very close and both of them were fully engaged in running all the unlawful practices in CHKC. I find that Neo also gave Lim a share of the spoils for a very important reason - Neo wanted to make sure Lim would not have a hold over him. Lim could not spill the beans because Lim was equally guilty of doing the same thing and sharing the illegal spoils.

180 Neo's case theory on the other hand, was rife with inconsistencies. Neo claimed to have reposed complete faith and trust in Lim and thus allowed him to have a free rein over CHKC's operations without being aware of Lim's acts of misappropriation. Yet in the same breath, he claims that Lim's authorised salary, since he joined CHKC, remained at a paltry \$7,000 a month, despite Lim managing to earn CHKC \$543m in revenue during his time there. Neo's detailed evidence also contradicts his stand that he was completely unaware of the state of CHKC's accounts and finances. Neo was repeatedly caught out on his lies and contradictory evidence. Another can be added here. Neo's account of their big quarrel at or around the end of October 2006 in his AEIC was changed completely during cross-examination. In the end he had to agree with Mr Khoo that what was set out in his AEIC could be completely disregarded. Neo's inconsistencies and contradictions, both at the micro and macro level, led me to seriously doubt the veracity and reliability of much of his evidence.

### ***Misleading the court in prior proceedings***

181 It is clear that both Lim and CHKC had made false allegations in court; Lim in relation to the fictitious subcontractors issue and CHKC in relation to the Salary Accruals and 11 Projects issues.



However, to Lim's credit, he was a lot quicker to come clean on his deception than CHKC. As I noted above at [79], Lim chose not to swear false affidavits despite being given an opportunity to do so in CHKC's summary judgment proceedings against him in RA 159/2007 and even though it would result in judgment being entered against him. During cross-examination, Jean also claimed that when she faced a summary judgement application against her in Suit No142 of 2007, she chose not to affirm a false affidavit. Since this was not explored further and is the subject matter of another action, I say no more.

182 On the other hand, Neo and his witnesses were prepared to lie all the way on oath. Neo claims he and his investigation team 'discovered', *inter alia*, the Proxies and Salary Accruals Scheme soon after Lim was dismissed in November 2006. Yet, when CHKC first brought its counterclaim against Lim, in January 2007, Neo had taken the false position that there were no Proxies in CHKC and that Neo had personally paid off the salaries of its workers (see [106] above). Neo explained in his AEIC that he had tried to deny the existence of the Proxies at the time because he was worried about the potential implications on CHKC's workers and its ongoing construction projects if the truth came to light. [\[note: 130\]](#) He also stated that however by February 2007, he felt that there were too many irregularities uncovered and thus he proceeded to lodge a police report explaining the whole truth. This led to a raid on CHKC's offices by IRAS in August 2007.

183 Despite Neo's purported decision to reveal everything, CHKC only applied to amend its pleadings on the Salary Accruals issue *in September 2008*. Even after Neo filed his police report on 26 February 2007, he and Aileen proceeded to file affidavits on 28 February 2007 maintaining their earlier falsehoods on the absence of Proxies. It bears noting that Neo's police report itself did not mention anything about Proxies or Salary Accruals. In fact, the first time Neo admitted to the existence of Proxies in CHKC was in an affidavit he had filed on 30 March 2007 which only indirectly conceded that CHKC had Proxies.

184 Needless to say, Neo's extended indolence in coming clean with the truth demanded an explanation. When Lim's counsel asked Neo why he took so long to amend his pleadings to reflect the true state of affairs, Neo replied that he was too busy: [\[note: 131\]](#)

Q. You say in your evidence-in-chief in paragraph 270 that there are four implications you are worried about if word should come out that you have proxies in Chip Hup Hup Kee, true?

A. Yes.

Q. So, since this impact will occur already, by your own admission that there are proxies in Chip Hup Hup Kee, what was stopping you from apologising to the court, admitting that you had lied in your earlier affidavits about receiving the cash portion of the proxies' wages? What was holding you back?

A. There were so many suits ongoing at that time, for example, suit 779, suit 136. I was very busy at that time, and whenever [Lim's solicitors] asked for something, they wanted it that day. So we had many discussions and maybe I could have neglected to report on this matter.

...

Q. *You were too busy to be honest, all right?*

A. Yes.

[emphasis added]

185 I did not believe Neo's cavalier excuse that he was too busy. To my mind, the real reason why Neo held off amending CHKC's pleadings was because it wanted to succeed in its ongoing interlocutory battles with Lim. When CHKC brought summary judgment proceedings against Lim and Mdm Tan in RA 159/2007, one of the defences raised by them was that CHKC had Proxies on its payroll to deceive MOM. Obviously, CHKC would fail in its application for summary judgment if it admitted then and there that Proxies existed. Thus, even though Neo had purportedly made the decision to come clean by February 2007, CHKC deliberately remained silent and did not disclose the Proxies system in RA 159/2007 before Woo Bih Li J. Neo admitted to this when pressed in cross-examination: [\[note: 132\]](#)

Q. ... Justice Woo was misled by you because you say you were too busy to be honest, and rendered a judgment to this effect, where he was only able to say, "Mr Lim and Mdm Tan were saying things and unable to confirm that what they were saying was true."

You knew in your heart of hearts if you were to come forward and admit to Justice Woo that you were, in fact, lying throughout the whole order 14 proceedings, you would be forced to admit the proceedings before her Honour Dorcas Quek, from whom the appeal to Justice Woo went, was actually completely misguided by your failures to be honest.

A. I agree. I was covering up the truth. Even my lawyers, they were unaware. I agreed with that.

186 From the evidence above, it seems clear to me that Neo had never truly intended to come clean with the real story on CHKC's Proxies and Salary Accruals. I believe the only reason why CHKC eventually applied to amend its pleadings in September 2008 was because it was forced to. Neo had appeared as a witness in DAC 15743/08, which involved a criminal charge against Lim's brother, LLC. During cross-examination in that trial, Neo was forced to admit that he knew about the Proxies system in CHKC. As such, I find that the reason CHKC had to amend its pleadings was because it realised it could no longer maintain its rapidly crumbling position that there were no Proxies in the company.

187 CHKC had also misled the courts by claiming at first (see [149] above) that it had done all the work and incurred all costs on the 11 Projects. Like their position on the Salary Accruals issue, CHKC only amended their story on the 11 Projects very late in the day. Neo admitted at trial that one of the reasons CHKC had maintained their original story for so long was because Lim had outstanding an application to strike out CHKC's counterclaim on the 11 Projects.

188 It was clear that CHKC was so desperate to win its legal battles at all costs that it was willing to put forward false evidence to the Courts and follow through with its deception all the way. It was only forced to change its positions on the Salary Accruals and 11 Projects when they became untenable in the face of the objective evidence. Because CHKC's key witnesses had shamelessly misled the courts in prior proceedings, I formed a very low opinion of their credibility. Their performance in cross-examination only affirmed my views.

### ***Misfeasance in discovery***

189 Finally, Neo and CHKC have repeatedly sought to withhold relevant documents from Lim and AZ during discovery. For example, when Lim sought discovery of various invoices and final statements of account between CHKC and its main contractors in relation to the 11 Projects, CHKC opposed

discovery on the ground that it had many documents amounting to several cartons, which subsequently became only three cartons of documents. After Lim obtained a court order requiring CHKC to produce these invoices and statements of final accounts, CHKC amazingly said that it had made a mistake and now realised that the three cartons of documents were actually documents between CHKC and AZ, not the main contractors. Lim eventually managed to obtain the relevant documents very close to the trial and they proved to be very crucial indeed, as they provided strong evidence that CHKC had been charging AZ a 2%–6% notional management fee on the 11 Projects (see [164] above).

190 CHKC's strategy in suppressing discovery of documents was such that Lim had to go to court and obtain four "unless" orders against CHKC throughout the history of these proceedings in order to compel their discovery. Even at trial, CHKC's own witnesses confirmed the existence of documents which it never provided to Lim in discovery. These include the payment vouchers many of which were not produced despite there being evidence that the cheques invariably had payment vouchers attached to them. Another example was CHKC's Proxy recommendation forms which would have showed that Neo contributed, as his own witness Juliet confirmed, the most number of Proxies. The fact that many relevant documents were still missing at trial convinced me, and I find, that CHKC had failed to give full discovery and had a pattern of hiding documents. Even during trial, and often during cross-examination, documents would turn up which had not been given in discovery. Sometimes only some documents were put to witnesses when there were obviously more documents, still not discovered, and there were even whole files being produced. For example there was an attempt during Juliet's re-examination to produce a whole file to help explain away the evidence of Ms Lee Gek Kwee, the handwriting expert, who testified that the handwriting on two bank pay-in slips, alleged by Neo to have been forged by Lim to misappropriate his cheques, was in fact Aileen's. The documents in this file would, it is alleged, show how someone did a 'cut and paste' job for these bank pay-in slips causing Aileen's handwriting to be on those pay-in slips. I disallowed that attempt to introduce new evidence during re-examination, on the second-last day of a 6 week trial on an issue, viz, whose handwriting was on the two 'forged' pay-in bank slips, that had been in contention for some time. I accept Ms Lim and her legal team had no hand in this, but it was her clients who decided to try and spring this 'ambush' in a manner that would leave Lim or Ms Lee Gek Kwee unable to respond.

191 Another egregious example of suppressing very cogent evidence was CHKC's strenuous efforts in resisting production of their Manual Cashbook from January 1999 to November 2006. CHKC produced severely redacted pages restricting it to bank reconciliation statements pasted onto pages of the Manual Cashbook at the end of each month, but with none of the daily entries. CHKC fought this all the way to the Court of Appeal. Neo swore an affidavit claiming it contained "sensitive financial information" [\[note: 133\]](#) and discovery would cause irreparable damage to CHKC. CHKC was nonetheless ordered to give discovery of the Manual Cashbook. They eventually complied but the handwritten pages from June to November 2006 were not produced. Instead typed pages were produced. The explanation given was that starting from June 2006, (FY 2007), CHKC no longer maintained a handwritten Manual Cashbook. [\[note: 134\]](#) In fact this trial opened rather dramatically with an application to strike out the defence and counterclaim because CHKC had failed to produce the Manual Cashbook entries from June to November 2006 despite an order to do so by the Court of Appeal. Mr Khoo said that despite the foregoing explanation, CHKC could not be believed because when the police were prosecuting LLC after June 2007, CHKC provided the police with some handwritten pages from the Manual Cashbook's entries in November 2006. I disallowed the application as the trial was about to start but told Mr Khoo he could cross-examine the witnesses and make submissions on the non-production of the relevant pages for the crucial June to November 2006 period.

192 Before me, Neo had to admit that discovery of the unredacted pages, (other than the June to November 2006 period), did not result in catastrophe for CHKC nor did it cause CHKC irreparable damage or prejudice: [\[note: 135\]](#)

Q: You made that sworn statement. In what way has Chip Hup Hup Kee been destroyed ever since these cashbooks have appeared?

A. Well, Hup Kee is still sustaining [loss] at this moment. I cannot allow it to be destroyed by him. And I want to tell your Honour in Court today what Lim Leong Huat had been doing to the company for the past 10-over years.

Q. That is not answering my question, Mr Neo.

COURT: Just answer the question please, Mr Neo.

Q. Is Hup Kee being destroyed?

COURT: You swore this statement on 26 August 2009 for a stay, and you said it would cause irreparable damage to Chip Hup Hup Kee. You have since disclosed those documents by order of the court. So counsel's question is: in what way has this caused irreparable damage to you company now?

A. No, your Honour.

COURT: It has not suffered irreparable damages, it has not been destroyed?

A. That's right your Honour.

193 As noted above, CHKC kept a Manual Cashbook where chronological entries were made for all payments that were made or received by it. By and large, entries were made in a chronological sequence by date. There were some out-of-sequence entries, but they were out by, at most, a few days, and they were not so frequent or of such a nature that would render the record unreliable. On the contrary, I found these entries the most reliable piece of objective evidence in the accounts because they were contemporaneous entries, captured all payments in and out of CHKC and had the entries in handwriting in, largely, chronological date sequence. It was possible to ascertain who made the entries and any meddling with the entries would also be obvious.

194 Mr Khoo submitted, and I accept his submission that CHKC was afraid that the entries in the Manual Cashbook would show the truth and expose the lies told by Neo, CHKC and Aileen. Of all people, Aileen would have known she was giving false evidence because she was in the Accounts Department of CHKC, knew what was in the Manual Cashbook and in fact made some of the entries herself. This is what the Manual Cashbook exposed:

(a) Neo claimed that on the day of their big quarrel, he was shocked to find that CHKC owed Lim, a 'mere employee', so much money. The big quarrel took place at or around the end October 2006. The Manual Cashbook shows, and I so find, that Neo had signed 24 cheques totalling \$4.74 million in replacement for the stale CHKC repayment cheques held by Lim. All 24 cheques were signed by Neo on the 15 July 2006, about 3½ months before their big quarrel. He surely could not have forgotten those 24 cheques totalling \$4.74 million in that time.

(b) Again Neo claimed that Lim presented him a list of 80 cheques amounting to \$10.495 million on the day of their big quarrel at the end of October 2006 and Lim subsequently cancelled 24

cheques leaving a balance of \$7.205 million. This was again a lie. The Manual Cashbook entries showed that CHKC had cancelled 16 of those repayment cheques in September 2006, one month before their big quarrel.

- (c) Neo and Aileen also lied in alleging that when Aileen checked Lim's office after August 2008, she found 15 of the Cost of Funds cheques. The Manual Cashbook showed that 9 of those 15 cheques had already been cancelled in October 2006. Further after Lim was dismissed in November 2006, CHKC moved office from Bukit Timah Plaza to Henderson, so Lim never had an office at the Henderson location. [\[note: 136\]](#)
- (d) I have noted above Neo's evidence that he was shocked at the amount of Lim's loans to CHKC. Under cross-examination, Neo claimed Lim was a 'mere employee' and in effect a nobody. When Neo rhetorically postulated how Lim could raise such large sums of money for the loans to CHKC, he was then confronted with a cheque for \$1 million made out to Lim that he signed. [\[note: 137\]](#) Neo's reply was first, if Lim asked him to sign a cheque, he would just sign it, secondly when it was put to him that CHKC must have accepted it owed money to Lim because of such cheque payments, Neo said: "But based on the accounts then, it did not show that this sum of money was owing to Mr Lim Leong Huat." [\[note: 138\]](#) The next day, Neo was confronted with a compilation of the \$7.025 loan that appeared in the Manual Cashbook. [\[note: 139\]](#) There were clear handwritten entries in relation to the loan of \$7.025 million. The Manual Cashbook had entries like: "LLH-Return loan" on 7 November 2005 of \$150,000 or "LLH-Loan" on 15 July 2006 of \$150,000 or "Cash-return loan (LLH) on 19 May 2006 of \$100,000.

195 The problem which gave rise to the striking out application at the start of the trial arose because Neo claimed he was unable to produce those pages of the Manual Cashbook for the crucial months leading to Lim's dismissal, June to November 2006. Neo conveniently claimed that after the start of the new financial year, 1 June 2007, CHKC switched to the 'Computerised Cashbook'. In his earlier affidavit, [\[note: 140\]](#) Neo stated that:

From the financial year 2007 onwards (that is starting from June 2006), the manual cash book were all typewritten instead and CHHKC no longer maintained a handwritten manual cash book from June 2006.

Yet, when the Police decided to charge LLC after May 2007, CHKC was able to produce some pages with handwritten entries from November 2006 of the Manual Cashbook for the purposes of the prosecution. Ten days later, on 25 September 2009, Aileen swore an affidavit explaining that CHKC ran the 2 systems in parallel, *i.e.* the Manual Cashbook and the Computerised Cashbook, which they called the 'Excel cashbook'. [\[note: 141\]](#) Hence when the prosecution needed the evidence, CHKC could let the Police have the relevant pages of the Manual Cashbook. When Neo and CHKC's backs were to the wall in this action as a result of the Court of Appeal's order to produce the unredacted Manual Cashbook, they then claimed that the Manual Cashbook had been lost. They had searched all over for it but to no avail, or so they say. I have little doubt that they are again not telling the truth. The Manual Cashbook had entries that were extremely inconvenient and contradictory to some of their relevant evidence.

196 Lastly I must mention two more discrepancies. Aileen explained [\[note: 142\]](#) that when Sergeant Ong asked her for copies for the month of November 2006, she photocopied the entries and gave it to Sergeant Ong, stating that she does not remember how many pages there were, but the transcripts

for the criminal proceedings against LLC (DAC 15743/2008) refer to six pages of the Manual Cashbook entries in November 2006. It is clear from the transcript of LLC's trial that the prosecution produced and relied upon six pages of the Manual Cashbook. It is noteworthy that CHKC did not give the prosecution the whole Manual Cashbook but photocopied the relevant pages for the police. But when CHKC were forced to produce those pages, an extra seventh page mysteriously turned up. CHKC's explanation was that as they did not have the Manual Cashbook, they contacted Sergeant Ong who gave them copies of the Manual Cashbook that he had managed to find, the rest having been destroyed a few months after LLC's acquittal, and that is what CHKC gave Lim's solicitors. The implication was that Sergeant Ong must have had seven pages. Sergeant Ong could not remember how many pages he had, as he gave the whole clutch of papers to Neo and Aileen. The transcript clearly refers to only 6 pages, the Police wrote a letter to Lim's solicitors on 18 July 2008 which forwarded six pages of the Manual Cashbook which was then used at the trial and before me this was what Sergeant Ong said when asked about the extra page by Mr Khoo: [\[note: 143\]](#)

Q. But, as far as you are concerned, would it be fair to say that all the documents of all the extracts of the cashbook taken by you were in the trial? You were not hiding anything right?

A. Yes, your Honour.

Aileen disingenuously said: [\[note: 144\]](#)

Unfortunately, when I tried to look for the Handwritten Cashbook, I could not find it. I do not know what had happened to it or if anyone had taken it ... *I did not explain fully to [Wong Tan & Molly Lim LLC] nor Neo the fact that we had run parallel for a few months from June 2006 and that we had maintained 2 sets of cashbook ... I did not think that this is an important information and I had honestly told [Wong Tan & Molly Lim LLC] that we no longer maintained the handwritten version of the cashbook from June 2006.*

[emphasis added]

In the end nothing much turned on whether there were in fact six or seven pages, except for being one of the planks of Lim's allegation that Neo was hiding documents. I have little doubt that CHKC are hiding the Manual Cashbook. Here is a final example that occurred at the end of Aileen's evidence. Mr Khoo asked Aileen how the pages of the 'Excel Cashbook' were kept. Aileen's clear evidence was that they were printed out for each month and kept in a file and at the end of year they would bind them into a book. For example, Aileen identified an Excel printout page [\[note: 145\]](#) for July 2006 which would be kept loose in a file. When Mr Khoo asked for confirmation that these printouts were kept in a file and not pasted onto pages of the Manual Cashbook, Aileen's reaction was immediate and very telling, she stalled in her answer to gain time and started desperately flipping through the pages at the end of the Excel printout pages and bank reconciliation statements for June to November 2006 to double check their appearance. Mr Khoo then asked her why the September 2006 bank reconciliation statement [\[note: 146\]](#) seemed to be pasted onto a page of a book, just like the bank reconciliation statements made earlier, before CHKC switched to the Excel Cashbook:

Q. Look at page 8675, you can see, like the previous bank reconciliation statements, obviously this document was stuck on to something. Isn't that so? Isn't it clear to you that page 8675 is actually stuck on to some book?

A. I should think so. Probably at the time of making the photocopy, there was some markings or some other things on the document.

Q. Ms Khoo, you can see very clearly –

A. I am not too sure about this.

Q. --that this is not a marking and if you compare that, for example, with page 8636, you will find a similar sort of lined backing.

It was clear that the bank reconciliation statement for September 2006, 4 months after CHKC claimed they switched to the Excel Cashbook, was pasted onto a page with printed lines, just as in the earlier period when there was only the Manual Cashbook. What was telling is that the earlier pages before [\[note: 147\]](#) and the pages after that [\[note: 148\]](#) all appear as printed out pages, not pasted onto anything – why should this one page appear, out of the blue, otherwise? Unfortunately for CHKC, someone had been very careless in the photocopying and bundling of the Manual Cashbook extracts. I find that CHKC and Neo were hiding relevant documents and this included the important Manual Cashbook and the handwritten entries from June to November 2006.

### **Conspiracy to injure**

197 Having found in favour of Lim in respect of his claim for recovery of \$7,205,000 in loans to CHKC, it remains to consider whether CHKC and Neo are liable in the alternative for conspiring to injure Lim by preventing him from collecting on his loans. In *Nagase Singapore Pte Ltd v Ching Hai Huat* [2008] 1 SLR(R) 80 (“*Nagase*”), Judith Prakash J laid down (at [23]) the following elements to found a claim in the tort of conspiracy:

- (a) a combination of two or more persons and an agreement between and amongst them to do certain acts;
- (b) if the conspiracy involves lawful acts, then the predominant purpose of the conspirators must be to cause damage or injury to the plaintiff but if the conspiracy involves unlawful means, then such predominant intention is not required;
- (c) the acts must actually be performed in furtherance of the agreement; and
- (d) damage must be suffered by the plaintiff.

198 Some purists may argue that a company “cannot act in its own person for it has no person” (*Ferguson v Wilson* (1866) LR 2 Ch App 77 at 89). CHKC must, by necessity, act by its directors, managers or other agents, and therefore, CHKC and Neo cannot be guilty of conspiring to injure Lim. However this issue was decided by Andrew Ang J in this action when Neo was added as a 2<sup>nd</sup> Defendant: see *Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd* [2009] 2 SLR(R) 318. The learned judge, after comprehensively reviewing the authorities, ruled that where the company was a victim of the alleged conspiracy of directors and sued its directors for breach of duty, the company did not become a co-conspirator with the directors, just because the directors were the conspirators – otherwise a company’s errant directors would escape liability. However where a company and its directors, (or, I would add, a director), were in an established arrangement which benefited the company and/or its directors to the detriment of third parties, there was no reason why the assets of the company and/or that of its controlling director, should not be liable to answer for conspiracy. In *Nagase*, Prakash J held that as a matter of law, there can be a conspiracy between a company and its controlling director to damage a third party by unlawful means even where the director is the company’s moving spirit. I respectfully agree with both these judgments.



199 On the facts, it is quite clear that CHKC and Neo had combined to cause CHKC to bring a huge counterclaim against Lim. Having heard the evidence, it is also clear that CHKC's counterclaim was almost entirely based on lies and false evidence. The reason for Neo's and CHKC's actions, and so I find, is that Neo felt deeply insulted by Lim's initial act of filing suit against CHKC. Neo was the big boss or "towkay" of CHKC, and for a former underling like Lim to bring CHKC to court amounted to a huge loss of face for Neo. Neo thus induced CHKC to respond by raising a massive (but ultimately false) counterclaim in order to intimidate him and force him to back off. This is evident from the transcript of Neo's recorded conversation with Yeow on 1 February 2007 in which Neo said:

He [Lim] wants to topple me, ah, Yeow, do you know that? But I will not be toppled, I cannot be toppled. My NKE to topple just like that, I will not be toppled by him, ah he will be toppled by me. I am giving him the show-hand now. Let us see who will topple...

200 Despite knowing that Lim's claim was genuine, Neo and CHKC conspired to prevent him from making what would have been a relatively simple debt-recovery claim by dragging him into a protracted legal battle lasting over three years. I thus find that the predominant intention of Neo and CHKC in causing the latter to bring its counterclaim was to injure Lim. It is also clear that Lim has suffered damage from Neo's and CHKC's actions as he has been deprived of monies which were rightfully due to him from the very start. CHKC and Neo are therefore liable to Lim in the tort of conspiracy for the damage he has suffered (*i.e.* the sum of \$7,205,000 and any resulting interest). This would mean that, if for whatever reason CHKC is unable to satisfy Lim's claim for recovery of his loans, Lim has an avenue of recourse against Neo personally.

201 It may also be argued that CHKC here is 'innocent' in that Neo and Lim, although not a director in name, but clearly an officer of the company, implemented schemes like the 'Proxies' and Salary Accruals Account to siphon money out of the company and causing the company to evade tax. However, this was not a case where money was withdrawn from the Salary Accruals account by Lim and immediately lent the same sums of money back to CHKC as loans. The evidence shows, and I so find, that sums of money were withdrawn by Lim, but they went into his accounts where they were mixed with other monies and the loans were made at different times and in differing amounts. Further, I have found that all these withdrawals from the Salary Accruals and other accounts were made with the connivance and consent of Neo. The 'innocent' company element does not come into play in this situation where Lim is seeking repayment of his loans from CHKC and from Neo.

## **Illegality**

202 Having found that Lim and Neo were involved in a whole host of illegal activities in CHKC, it remains for me to consider whether any of the parties are barred by the doctrine of illegality from making out their various claims and counterclaims. On this issue I reluctantly think the answer must be 'no'.

203 As Woo Bih Li J said in *Chee Jok Heng Stephanie v Chang Yue Shoon* [2010] SGHC 153 at [35], the general principle of illegality, epitomised in the Latin maxim *ex turpi causa non oritur actio*, is based on a public policy that prevents a court from assisting a litigant whose cause of action is based or tainted by illegality. However it is settled law that it only precludes a party from asserting a claim if he has to rely on the illegality in question. In *Tinsley v Milligan* [1994] 1 AC 340, the plaintiff and the defendant had pooled their funds together to buy a house. However, the house was registered only in the plaintiff's name in order to allow both parties to make false benefit claims on the Department of Social Security. The plaintiff subsequently claimed sole possession and ownership of the house and the defendant counterclaimed for a declaration that the house was held by the plaintiff on trust for the parties in equal shares. The House of Lords upheld the defendant's counterclaim. As the



defendant was basing her claim to a half-share in the house on a resulting trust, there was no need for her to rely on her illegality and she could thus succeed in her claim.

204 Although *Tinsley v Milligan* concerned a case where a party was asserting proprietary rights, the principle that a plaintiff could succeed in a cause of action if he did not have to rely on his illegality has found general application: see e.g. *American Home Assurance Co v Hong Lam Marine Pte Ltd* [1999] 2 SLR(R) 992; *Siow Soon Kim v Lim Eng Beng* [2004] SGCA 4; *Koon Seng Construction Pte Ltd v Chenab Contractor Pte Ltd* [2008] 1 SLR(R) 375. In the present case, Lim's claim is for monies which he had extended as legitimate loans to CHKC from his own sources and accounts. Although it is possible that some of those monies had been obtained through the Salary Accrual accounts and were thus tainted with illegality (i.e. evasion of income tax), Lim does not have to rely on the illegal conduct in question to seek recovery of his loans. Similarly for those of CHKC's counterclaims which are made out, CHKC does not have to found its claim on any illegality.

205 The only comfort I take is that counsel have informed me that IRAS and MOM intend to but have withheld taking further action pending the outcome of this action.

## Conclusion

206 For the foregoing reasons, I allow Lim's claim against Neo and CHHKC for the amount of \$7,205,000. In the event there is no necessity to decide on Lim's alternative claim for dishonoured cheques. Lim's claim for COF compensation is dismissed. I also order that CHKC pays back the sums of \$347,030 and \$426,700 to Lim and Mdm Tan respectively. CHKC's counterclaim is allowed in part for the following amounts:

(a) \$3,675 and \$25,203.48 against Lim; and

(b) \$949,151.59 against AZ.

CHKC's counterclaim in respect of the remaining amounts is dismissed.

207 I will hear both parties on interest and costs.

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[\[note: 1\]](#) WB15.

[\[note: 2\]](#) AEIC of Neo Kok Eng at para 47.

[\[note: 3\]](#) PWB53.

[\[note: 4\]](#) Notes of Evidence (11 November 2009) at p 86.

[\[note: 5\]](#) Notes of Evidence (6 November 2009) at p 43.

[\[note: 6\]](#) Bundle of Related Proceedings (Tab G).

[\[note: 7\]](#) Notes of Evidence (6 November 2009) at p 44.

[\[note: 8\]](#) Notes of Evidence (2 November 2009) at pp 110-111, 117-119

[\[note: 9\]](#) AB at p 3302.

[\[note: 10\]](#) AEIC of Neo Kok Eng at para 90.

[\[note: 11\]](#) Notes of Evidence (3 November 2009) at pp 135-136.

[\[note: 12\]](#) See Notes of Evidence (3 November 2009) pp. 6 and 7

[\[note: 13\]](#) PWB17.

[\[note: 14\]](#) Affidavit of Neo Kok Eng dated 21 July 2009 at para 18.

[\[note: 15\]](#) Statement of Claim (Amendment No 2) at para 21.

[\[note: 16\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at para 83.

[\[note: 17\]](#) Defendants' Closing Submissions at paras 14.15, 21.1.

[\[note: 18\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at para 83.

[\[note: 19\]](#) Defendants' Closing Submissions at paras 14.15, 21.1.

[\[note: 20\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at para 83.

[\[note: 21\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at para 6.

[\[note: 22\]](#) Statement of Claim (Amendment No 2) at para 11.

[\[note: 23\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at para 240.

[\[note: 24\]](#) Statement of Claim (Amendment No 2) at para 12.

[\[note: 25\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at para 249.

[\[note: 26\]](#) Statement of Claim (Amendment No 2) at para 21.

[\[note: 27\]](#) Notes of Evidence (19 October 2009) at pp 93-94.

[\[note: 28\]](#) Notes of Evidence (20 October 2009) at p 1.

[\[note: 29\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at paras 233-234.

[\[note: 30\]](#) Notes of Evidence (20 October 2009) at pp 9-10.

[\[note: 31\]](#) Notes of Evidence (20 October 2009) at pp 12–13.

[\[note: 32\]](#) Notes of Evidence (20 October 2009) at pp 21–23.

[\[note: 33\]](#) Notes of Evidence (20 October 2009) at p 21.

[\[note: 34\]](#) PWB 49 and 3 EAB 11 at pp 8573, 8583, 8586, 8592 and 8593.

[\[note: 35\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at para 10; Defendants' Closing Submissions at para 8.1.

[\[note: 36\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at paras 13–14.

[\[note: 37\]](#) Reply and Defence to Counterclaim (Amendment No 4) at paras 21–22.

[\[note: 38\]](#) Reply and Defence to Counterclaim (Amendment No 4) at paras 23–24.

[\[note: 39\]](#) Reply and Defence to Counterclaim (Amendment No 4) at paras 14–18.

[\[note: 40\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at paras 91–93; AEIC of Tan Siew Lim at para 25.

[\[note: 41\]](#) 3EAB(3) at p 2101.

[\[note: 42\]](#) Notes of Evidence (9 November 2009) at pp 112–113.

[\[note: 43\]](#) AEIC of Neo Kok Eng at para 69.

[\[note: 44\]](#) PWB34.

[\[note: 45\]](#) PWB30.

[\[note: 46\]](#) Notes of Evidence (9 November 2009) at p 48.

[\[note: 47\]](#) PWB32.

[\[note: 48\]](#) PWB28.

[\[note: 49\]](#) Notes of Evidence (10 November 2009) at pp 33–34.

[\[note: 50\]](#) AEIC of Neo Kok Eng at para 151.

[\[note: 51\]](#) AEIC of Neo Kok Eng at para 152.

[\[note: 52\]](#) Notes of Evidence (9 November 2009) at p 62.

[\[note: 53\]](#) 1EAB(A) at p 24.

[\[note: 54\]](#) AEIC of Lim Kok Khuang at para 10.

[\[note: 55\]](#) Notes of Evidence (9 November 2009) at pp 66–67.

[\[note: 56\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at para 15 and Schedule 2.

[\[note: 57\]](#) Reply and Defence to Counterclaim (Amendment No 4) at para 26.

[\[note: 58\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at paras 199–201.

[\[note: 59\]](#) Reply and Defence to Counterclaim (Amendment No 4) at para 26.

[\[note: 60\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at para 197.

[\[note: 61\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at para 218.

[\[note: 62\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at para 224.

[\[note: 63\]](#) Defendants’ Closing Submissions at para 13.8.

[\[note: 64\]](#) AEIC of Neo Kok Eng at para 172.

[\[note: 65\]](#) Notes of Evidence (10 November 2009) at p 4.

[\[note: 66\]](#) 1EAB(B) at p 618.

[\[note: 67\]](#) Notes of Evidence (10 November 2009) at pp 8–9.

[\[note: 68\]](#) Notes of Evidence (10 November 2009) at pp 11–12.

[\[note: 69\]](#) AEIC of Khoo Kiat Hoon at para 11.

[\[note: 70\]](#) Notes of Evidence (20 October 2009) at pp 67–68.

[\[note: 71\]](#) AEIC of Neo Kok Eng at para 209.

[\[note: 72\]](#) Notes of Evidence (28 October 2009) at pp 90–91; AEIC of Toh Chee Boon at para 9; AEIC of Wong Kok Shun at para 9.

[\[note: 73\]](#) AEIC of Toh Chee Boon at para 10; AEIC of Chan Wai Hong Melvin at para 7.

[\[note: 74\]](#) 1 CBD(C) at pp 1005–1006.

[\[note: 75\]](#) Notes of Evidence (20 October 2009) at pp 81–82.

[\[note: 76\]](#) Notes of Evidence (10 November 2009) at p 72.

[\[note: 77\]](#) Notes of Evidence (10 November 2009) at p 91.

[\[note: 78\]](#) Notes of Evidence (10 November 2009) at pp 98–99.

[\[note: 79\]](#) AEIC of Neo Kok Eng at para 246; AEIC of Khoo Choon Yean at para 54.

[\[note: 80\]](#) 3EAB(11) at p 8679.

[\[note: 81\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at paras 16–23.

[\[note: 82\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at para 57.

[\[note: 83\]](#) Reply and Defence to Counterclaim (Amendment No 4) at para 31.

[\[note: 84\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at paras 142–149.

[\[note: 85\]](#) 3EAB 11.

[\[note: 86\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at para 150.

[\[note: 87\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at para 135.

[\[note: 88\]](#) AEIC of Khoo Choon Yean at para 95.

[\[note: 89\]](#) Reply and Defence to Counterclaim (Amendment No 4) at para 36C.

[\[note: 90\]](#) 1EAB(C) at pp 1024–1029.

[\[note: 91\]](#) 1EAB(A) at pp 266–275.

[\[note: 92\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at Annex A.

[\[note: 93\]](#) AEIC of Neo Kok Eng at paras 250–256.

[\[note: 94\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at paras 102–104.

[\[note: 95\]](#) AEIC of Neo Kok Eng at para 255.

[\[note: 96\]](#) Notes of Evidence (3 November 2009) at pp 5–6.

[\[note: 97\]](#) Notes of Evidence (3 November 2009) at pp 3–4; Notes of Evidence (11 November 2009) at p 66.

[\[note: 98\]](#) AEIC of Zhang Guilin at paras 8, 10.

[\[note: 99\]](#) AEIC of Neo Kok Eng at para 46.

[\[note: 100\]](#) Notes of Evidence (11 November 2009) at p 111.

[\[note: 101\]](#) Notes of Evidence (21 October 2009) at pp 61–62.

[\[note: 102\]](#) Defence and Counterclaim of the 1<sup>st</sup> Defendant (Amendment No 3) at para 62.

[\[note: 103\]](#) AEIC of Tan Siew Lim at para 33.

[\[note: 104\]](#) Defendants' Closing Submissions at para 14.9.

[\[note: 105\]](#) Defendants' Closing Submissions at para 14.15.

[\[note: 106\]](#) 1<sup>st</sup> AEIC of Lim Leong Huat at para 183.

[\[note: 107\]](#) Notes of Evidence (11 November 2009) at p 123.

[\[note: 108\]](#) 1EAB(C) at p 918.

[\[note: 109\]](#) Notes of Evidence (12 November 2009) at pp 16–17.

[\[note: 110\]](#) WB13.

[\[note: 111\]](#) Bundle of Related Proceedings (Tab D) at p 626.

[\[note: 112\]](#) Notes of Evidence (12 November 2009) at pp 90–91.

[\[note: 113\]](#) AEIC of Neo Kok Eng at para 52.

[\[note: 114\]](#) Notes of Evidence (12 November 2009) at pp 65–67.

[\[note: 115\]](#) Notes of Evidence (12 November 2009) at p 65.

[\[note: 116\]](#) 1EAB(A) at p 262.

[\[note: 117\]](#) PWB38.

[\[note: 118\]](#) 2<sup>nd</sup> AEIC of Lim Leong Huat at para 42.

[\[note: 119\]](#) Notes of Evidence (22 October 2009) at pp 80–82.

[\[note: 120\]](#) Defendants' Closing Submissions at para 16.23.

[\[note: 121\]](#) Notes of Evidence (30 October 2009) at pp 55–56.

[\[note: 122\]](#) Notes of Evidence (30 October 2009) at pp 37–38.

[\[note: 123\]](#) Notes of Evidence (10 November 2009) at p 65.

[\[note: 124\]](#) 1EAB(A) at pp 114, 116.

[\[note: 125\]](#) PWB47.

[\[note: 126\]](#) AEIC of Khoo Choon Yean at para 20.

[\[note: 127\]](#) Notes of Evidence (16 November 2009) at p 74.

[\[note: 128\]](#) Notes of Evidence (16 November 2009) at p 87.

[\[note: 129\]](#) Notes of Evidence (2 November 2009) at p 107.

[\[note: 130\]](#) AEIC of Neo Kok Eng at para 270.

[\[note: 131\]](#) Notes of Evidence (11 November 2009) at p 34.

[\[note: 132\]](#) Notes of Evidence (11 November 2009) at p 38.

[\[note: 133\]](#) 32<sup>nd</sup> Affidavit of Neo Kok Eng, (22 July 2009) at para 37.

[\[note: 134\]](#) 44<sup>th</sup> Affidavit of Neo Kok Eng (15 September 2009).

[\[note: 135\]](#) Notes of Evidence (5 November 2009) at p 20.

[\[note: 136\]](#) Notes of Evidence (18 November 2009) at pp 45–48.

[\[note: 137\]](#) 1EAB(C) at p 1027.

[\[note: 138\]](#) Notes of Evidence (4 November 2009) at p 116.

[\[note: 139\]](#) PWB27.

[\[note: 140\]](#) 44<sup>th</sup> Affidavit of Neo Kok Eng (15 September 2009) at para 10.

[\[note: 141\]](#) 12<sup>th</sup> Affidavit of Khoo Choon Yean.

[\[note: 142\]](#) 12<sup>th</sup> Affidavit of Khoo Choon Yean (25 September 2009) at para 13.

[\[note: 143\]](#) Notes of Evidence (2 November 2009) at p 32.

[\[note: 144\]](#) 12<sup>th</sup> Affidavit of Khoo Choon Yean at paras 16–17.

[\[note: 145\]](#) 3EAB 11 at p 8661.

[\[note: 146\]](#) 3EAB 11 at p 8675.

[\[note: 147\]](#) 3 EAB 11 at pp 8204, 8257 and 8636.

[\[note: 148\]](#) 3 EAB 11 at pp 8676–8687.

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