Panatron Pte Ltd v Lee Cheow Lee and Others
[2000] SGHC 209

Case Number : Suit 2061/1997

Decision Date : 11 October 2000

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Anand s/o K Thiagarajan/Ramesh Appoo [Anand T & Co] for the plaintiffs; Gan Kam Yuin/Boey Swee Siang [Bih Li & Lee] for the defendants

Parties : Panatron Pte Ltd — Lee Cheow Lee; Chemind Construction Products Pte Ltd; Yin Chin Wah Peter; Eral Dettrick

JUDGMENT:

Cur Adv Vult

By a Deed ("the Licence Agreement") of 22 September 1995 Chemtour, a sole-proprietorship registered in Queensland, Australia, granted an exclusive licence to the plaintiffs ("Panatron") to use their technology for manufacturing and selling within prescribed territories their products which are waterproofing membranes and protective coatings. Panatron's mind and management at all material times was Phua Mong Seng ("Phua'). Eral Dettrick ("Dettrick"), an Australian, and his wife beneficially owned Chemtour through a company. Panatron purchased the equipment and renovated the factory to manufacture the paints and coatings.

2 By January 1996 they started production. Two of the necessary chemicals were supplied by Nuplex Industries Ltd ("Nuplex"), a company incorporated in New Zealand. Dettrick had recommended Nuplex as the suppliers to Panatron. The Licence Agreement was terminated by Chemtour on 23 August 1997. Nuplex ceased their supply of the chemical resins and demanded the return of their buffer stock of resins.

3 Following the terminations, two actions arose in the High Court. Panatron allege that Dettrick, and two former investors/employees of Panatron conspired to injure them by destroying their coating business which they wanted to pass on to Dettrick's company in Singapore. Panatron further allege breaches of contracts and fiduciary duties against them. That action spawned two counterclaims by the two investors who after their investment had taken up employment in Panatron, the first by Lee Cheow Lee ("Lee") and the second by Yin Chin Wah ("Yin"). They claim rescission of the investment agreements with Panatron and damages against both Panatron and Phua personally for fraudulent misrepresentations. Lee and Yin also seeks to lift the corporate veil of Panatron and hold Phua personally responsible for all their claims against Panatron, which include a claim for unpaid salaries and return of their investments.

4 In this action, which was commenced on 6 December 1997, Panatron claim damages and exemplary damages which they allegedly suffered by reason of the conspiracy on the part of the first defendant Lee, the 3rd defendant Yin and the 4th defendant Dettrick with intent to injure them. Dettrick is alleged to have incorporated on 11 September 1997 the second defendants, Chemind Construction Products Pte Ltd ("Chemind Singapore") in Singapore to deprive Panatron of their market share in coating products. The defendants in this action deny any conspiracy.

5 Lee counterclaims the sum of $189,000.00, being the sum paid by him to Panatron to invest in shares in Panatron, because he says there has been a total failure of consideration and/or fraudulent misrepresentation. Lee also claims against Panatron the sum of $17,780.46 payable under his contract of employment with them. Panatron dispute these claims too.

6 Yin counterclaims the sum of $300,000.00, being the sum paid by him to Panatron to invest in shares in Panatron, because he also says there has been a total failure of consideration and/or misrepresentation. Yin further claims the sum of $34,840.00 as moneys payable under his contract of employment. Panatron dispute these claims.

7 Both Lee and Yin joined Phua as the second defendants in their respective counterclaims and they assert that Phua is personally liable to indemnify them for their moneys invested under the share subscription agreements because of his fraudulent misrepresentations or on the basis that the veil of incorporation should be lifted thereby making him personally liable.

8 I turn to the other action. By Suit No. 1971 of 1998, which was first commenced in the Subordinate Court on 28 November 1997 and later transferred to the High Court, Nuplex claim that in August 1996 they had delivered to Panatron one month's supply of two resins, namely 48x200 kg drums of chemicals code-named PANVL and 144x200 kg drums of chemicals code-named CHEMTEX, under an arrangement which was loosely described as "consignment". In my view, Nuplex had placed those goods under quasi-bailment in the possession of Panatron who could use it, although they had not paid for it, as standby stock so that their production of the waterproofing coatings would not be interrupted pending the arrival at Panatron's factory of the spot purchases from New Zealand after shipment by Nuplex. Panatron, however, had to return the same quantity of both resins to Nuplex or pay for them or any shortfall upon the termination of the agreement for the quasi-bailment of the buffer stock of resins. The entire buffer stock was invoiced at US$49,364.00 and this price was not disputed. Following the termination of the Licence Agreement by Chemtour, Nuplex declined to supply any more resins to Panatron. Nuplex demanded the re-delivery of the buffer stock on quasi-bailment. Panatron had in fact used 6 drums of PANVL costing US$1,632 and 42 drums of CHEMTEX costing $10,836. The remaining buffer stock consisted of 42 drums PANVL and 101 drums of CHEMTEX. As the remaining buffer stock had deteriorated, Nuplex is claiming US$49,364.00 and interest against Panatron.

9 In response, Panatron allege that Nuplex had agreed to supply the chemical resins in perpetuity for as long as they wanted. This claim on the face of it appears extraordinary, if not extravagant, and therefore required both clear and unambiguous terms in the contract and qualitatively more convincing evidence. In addition, so far as the buffer stock on quasi-bailment is concerned, Panatron claim that the agreement could only be terminated if both parties mutually agreed. They assert the further contention that even if Panatron's usage of the buffer stock of resins were to fall below a point where the placement of the buffer stock scheme in place could no longer be justified this was not a circumstance under which the buffer stock arrangement could be mutually terminated. By paragraph 11 of Panatron's Re-Amended Defence and Amended Counterclaim in Suit No. 1971 of 1998 Panatron advance the serious allegation that Nuplex had colluded with Dettrick to cause loss and damage to Panatron by terminating two agreements for both the sale and purchase of the two chemical resins and for the provision of the buffer stock to the detriment of Panatron. This allegation puts Dettrick at the very heart of the alleged conspiracy. Much therefore hangs on his evidence and the evidence against him when considered in the light of all the evidence, especially the contemporaneous documentary evidence..

10 Suit No. 1971 of 1998 and this action were tried before me one after the other pursuant to directions given on 18 December 1998. As the two actions were not ordered to be consolidated, the question whether evidence adduced in one action could be admitted as evidence in the other arose. This court raised this issue at the beginning of the proceedings. It was eventually agreed by all parties to both sets of proceedings that the evidence led in one action could be used for the purposes of adjudicating the other. This judgment will only consider and deal with the issues in this action. There will be a separate judgment for the other suit, although incorporation by reference in the other judgment to this judgment is, for the sake of convenience, unavoidable.

The parties

11 As a number of parties and personalities had participated in the transactions in question, I should briefly describe them. Panatron were incorporated in April 1994 and its initial business activity was the supply of Ball Technic system which has to do with the heat exchanger tube cleaning process in the air conditioning industry. The manufacturers were an Israeli company. Panatron handle this business through its subsidiary BTE Asia Pte Ltd ("BTE"). Its other subsidiary is Chemind Pte Ltd ("Chemind"). Phua is the founder of the Panatron group of companies. He is the President of Panatron, Chairman of Chemind and Managing Director of BTE.

12 Phua holds a postgraduate degree from the Royal Military College of Science. He worked in the Ministry of Defence for 8

years. He left public service to work for a subsidiary of the Singapore Technologies Group. He left that employment and ventured into his own business. He started Panatron.

13 The parties against whom Phua has made allegations of collusion are as follows. Phua alleges that the 4th defendant, Dettrick, was at the heart of the collusion. Dettrick had withdrawn the licence and choked off the supply of two essential resins from Nuplex, New Zealand. He is and was running the business activities of Chemtour and Chemind, Australia. He is the Managing Director of Summerfield Pty Ltd of Queensland, Australia, which trade under the style of Chemind Construction Products ("Chemind, Australia"). Chemtour, which is also a registered business in Australia, whose registered proprietor is Summerfield Pty Ltd, owns the licensing and intellectual property rights to the products which are manufactured and marketed under the Chemind name. In 1995 Chemtour granted a licence to Panatron to manufacture, market and distribute Chemtour's products. The second defendants, Chemind Singapore, are a company incorporated on 10 September 1997 in Singapore by Dettrick and his wife. It was incorporated after the termination of the Licence Agreement. Its issued capital was 3 shares of $1,000 each.

14 Lee, a certified public accountant, worked as a consultant with a company called Enterprise Promotion Centre Pte Ltd. That job involved helping clients in their business and, in particular, in the restructuring of their businesses. At the time he gave evidence, he was working as a business consultant to a number of clients, including Chemind Singapore. He is related to Phua by marriage: Phua's sister is the wife of Lee's brother. On the evening of 30 January 1997, having met up with Phua more frequently during the previous 6 months, he signed Panatron's offer of employment as Panatron's Financial Controller. In addition, they entered into a share subscription agreement. Lee agreed to subscribe 10% or 200,000 shares of Panatron at $1 par value with 35% premium for a total price of $270,000.00

15 On 31 May 1995 Yin accepted Panatron's employment as Vice-President, International Marketing. He also agreed to subscribe to 300,000 shares in Panatron's capital at $1 per share, with a premium of 25% on the share price. Yin and Phua had known each other sometime back. They both worked for a subsidiary of the Singapore Technologies Group. Yin was his subordinate for 18 months. He had a good impression of Phua at the time they were colleagues. Later, Yin left and worked for Shell Asia Pacific Pte Ltd in Singapore which distributed, amongst other things, Chemtour's product in the region in 1989 to 1995. In those dealings, Yin and Dettrick became friends. After Yin joined Panatron, he introduced Dettrick to Phua.

16 Nuplex, a company incorporated in New Zealand, have been manufacturing and supplying chemical resins. Amongst them were chemical resins known as Viscopal 140 and Texicryl 13031 which were code-named PANVL and CHEMTEX at the request of Panatron and which they supplied to Panatron following the recommendation of Dettrick. Their former Export Manager, Anthony William Legget ("Legget"), who dealt with Panatron at all material times, gave evidence on behalf of Nuplex.

The undisputable facts

17 In April 1995 Yin met up with Phua and renewed their friendship. He was looking for a change in career and Phua told him of his business activities, particularly the Ball Technic system. The system would improve the heat exchanger tube cleaning process in the air conditioning industry. Eventually, Yin agreed to join Phua and was initially employed as the General Manager of Panatron's subsidiary which would handle the Ball Technic product. As stated, he also agreed to invest in Panatron.

18 Sometime in May 1995 Yin told Phua about Dettrick who was in the business of manufacturing and marketing waterproofing paints and coatings. He thought that there would be a good market for the paints and coatings in view of the good performance of the products which had been in the market since 1989 or 1990. He told Phua that those paints and coatings had special qualities suitable for use in tropical and constantly wet environments. He also told Phua that Dettrick had been interested to licence the manufacture of such paints and coatings to Shell but Shell declined. Phua was interested and the introduction was made. This was followed by their visit to Dettrick's factory in Sydney, Australia. They were shown the plant and equipment used in the manufacture. The QC processes were explained to them. The investment cost for purchasing the machinery and equipment was low.

19 Eventually, the Licence Agreement was entered into on 22 September 1995 between Chemtour and Panatron. The Recital referred to 3 matters. First, it stated that Chemtour had researched, formulated specific processes (thereafter called "the Technology") to manufacture certain waterproofing membranes, protective coatings, compounds and the like (thereafter called "the Products"). Secondly, it recited the fact that Panatron wished to conduct the business of manufacturing and marketing certain waterproof membranes, protective coatings, compounds and the like. The third Recital affirmed the wishes of Chemtour to appoint Panatron to manufacture the Products and the fact that they had agreed to supply the Technology for that purpose for a consideration of a Royalty Payment (thereafter called "the Royalty") **in perpetuity**. Under the Licence Agreement, Chemtour granted to Panatron an exclusive licence and consent to use the Technology and sell the Products in South East Asia, among others, but excluding Australia and New Zealand.

20 By clause 4 of the Licence Agreement, Panatron agreed to pay the Royalty at prescribed rates. Panatron further agreed to "remit the Royalty to the Licensor (i.e. Chemtour) promptly at the end of each three monthly period in the method as required by the Licensor (i.e. Chemtour)".

21 In spite of the wishes of Chemtour to grant the licence to manufacture and sell the products in perpetuity as stated in the third recital, there is provision in the operative part of the Licence Agreement for its termination in certain circumstances. **Clause 11 provides that "either party may terminate this Deed upon twenty eight (28) days written notice to the other specifying any failure or breach of the terms contained (therein) provided however that if the party to whom the notice is given remedies the breach or failure specified (not being a breach or failure of a repetitive nature) within fourteen (14) days after delivery of the notice to terminate then such notice shall be of no effect."** The Licence Agreement did not provide for the supply of chemicals by Dettrick, Chemtour or Chemind, Australia.

22 Earlier and in anticipation, Phua incorporated Chemind on 11 August 1995. Phua and Yin were appointed directors. Yin was also appointed General Manager of Chemind. In the same month, Phua incorporated BTE Asia Pacific Pte Ltd ("BTE"). BTE was intended to be a joint venture vehicle for Phua, Yin and the Israeli manufacturers to market the Ball Technic system in Singapore. Phua designated Chemind as the corporate vehicle to manufacture the Chemtour products, whilst Panatron retained the tasks of marketing them.

23 Prior to the signing of the Licence Agreement, Panatron had purchased from Chemind, Australia and Chemtour some finished coatings and paints for marketing in Singapore and the Asia-Pacific region.

24 After the Licence Agreement, Chemtour provided Panatron the formulations for 6 products. The formulations for the products FLEXICOTE, BLOCKFLEX and PRIMER were provided around early January 1996. Their manufacture did not require the chemical which Chemtour (i.e. Dettrick) had code-named FL47T, in respect of which Chemtour and Chemind, Australia claim is their invention and over which they assert associated proprietary rights. Its formulation was not given to Panatron. The formulations for TUFFCOTE, NEWFLEX and NEWFLEX R-100 were provided around March 1996. The latter two products require the chemical FL47T. The resins, PANVL and CHEMTEX, were supplied by Nuplex. All materials, except FL47T, could be substituted with other generic equivalents if the results were acceptable to Chemtour. Panatron started production in mid January 1996. Yin was in charge of the manufacturing and marketing operations.

25 As agreed, Yin paid Panatron $300,000.00 for shares in Panatron. But the shares were never issued.

26 In May/June 1996 discussions were held between Phua and Lee for Lee to invest in Panatron. On 30 January 1997 Panatron employed Lee as Senior Vice President (Corporate Affairs) at the basic salary of $8,000.00 per month. On the same day, Lee agreed to subscribe 10% or 200,000 shares of Panatron at $1 par value per share with 35% premium for a total price of $270,000.00. By 20 June 1997 Lee had paid $189,000.00. By the agreement dated 30 January 1997 Lee agreed as follows: (a) that he will not engage or assist any third parties "in business activities which are competing with Panatron's its subsidiary and/or associate companies" business activities; and (b) he will not "in any way for his own account, or the account of any third party, nor disclose to any third party, any confidential information revealed to him by Panatron". In respect of (b) Lee agreed that the "obligation shall remain intact at all times, as well as after termination of (the) Agreement for any reason."

27 Panatron's payments of the royalties fell into arrears repeatedly. By a fax of 19 August 1996 Dettrick referred to five unpaid invoices and required payment of A$28,074.20 for the chemicals and A$4,000.00 being the outstanding Royalty. He faxed Yin. The outstanding invoices and royalties due on 30 June 1996 were not paid. Dettrick took a more serious view of the matter and wrote to Panatron for the attention of Phua. He sent a copy of his earlier fax and pointed out that he was disappointed that not only were they providing the tools for the development of a significant business for Panatron they were being "expected" to help carry the costs. He was characteristically direct when he continued: "Sorry, but that was not part of our agreement." He asked for immediate payment of the outstanding invoices in the sum of A$46,440.80 by "return T/T or bank draft", the payment of the royalties of $4,000.00 "with all future Royalty payments being made by the agreed due date." Dettrick also required the establishment of sight L/C for the shipment of Primer V and FL47T.

28 Panatron replied the same day, claiming that there was a cash flow problem. There was in fact no such problem. Phua in the meantime was attempting to procure more investments by other parties. At least 3 parties had expressed interest, and they had in fact paid for their subscription of shares in advance, only to call off their investments later. In one case, the investment was aborted when the due diligence exercise encountered difficulties. The accounts had a number of items for which explanations were called for but no satisfactory explanations were given.

29 Dettrick sent a fax again on 25 November 1996. He called for an urgent L/C for a consignment of FL47T, payment of royalties for the Third Quarter and payment of 4 invoices totalling A$24,488.80. He wanted an "Urgent Reply". Yin replied apologetically, indicating that the matters were being attended to. Dettrick sent a reply and complained to Yin that their friendship was being abused as commercial commitments were not honoured.

30 On 20 December 1996 Dettrick had to send another reminder to Panatron for payment of A$12,461.40 within the next 7 days. On 7 March 1997 Dettrick faxed Panatron to pay the Royalty for the 4th quarter of 1996. Dettrick's patience was wearing thin and he again faxed Phua on 1 April 1997. The royalties for the last quarter of the previous year and the first quarter of the current year were not paid. He wanted Phua's personal involvement. Phua replied on 4 April. He mentioned that sales had been slack due to seasonal cycle and rain and Panatron's resources were stretched, seeing that they had paid S$120,000 to Chemtour in Jan/February 1997. Phua also asked for 60 to 90 days credit terms for purchases of FL47T, Tuffcote FR and Clearcote. Dettrick replied and stated that they were unable to act as a financial institution for Panatron, although they had supported Panatron over the previous 15 months. That support involved extending credit for 6 months. He then pressed for payment of the 2 royalties for 4Q96 and 1Q97.

31 Apart from the arrears in the payments for chemicals and royalties, Panatron faced escalating problems relating to the accounts for year ended 1996 and the issue of shares. The accounts were at first not available to Lee. Phua told him that the accounts were with Panatron's part-time bookkeeper, Ong. Lee found out from Panatron's Company Secretary Lee Kee Liang that the authorised capital of Panatron was only $300,000.00 and the issued capital was $200,000.00.

32 On 5 June 1997 Lee showed Yin the financial statements of Panatron, Chemind and BTE for the year ended 1996. All 3 companies were shown to have incurred losses of about $900,000. It transpired that Phua wanted Panatron to pick up losses of his investments of 2 companies in the PRC and a company in Vietnam. He claimed that the investments were agreed to by the then Board of Directors before the admission of Yin and Lee to the Panatron group. Whether that was so was not a matter before me. What was undisputed was that Chemind had sales up to $2 million in 1996. Chemind's gross margin was about 45% and the gross profits before expenses would have totalled $900,000.00. There should have been some significant profit, after deducting the expenses.

33 I return to the Licence Agreement and the payment of royalties. They continued to fall into arrears. On 22 July 1997 Chemtour faxed Panatron for the attention of Phua about the "Breach of Agreement DEED Royalty Payments". It referred to their previous fax of 15 July. It noted with great disappointment that payments had not been received. The operative part stated: "As a consequence of this and the previous repeated breaches in remitting Royalty Payments, we hereby give notice as provided by the Agreement DEED and Clause 11 "Termination" thereof, of our intent to move to Termination of the Agreement Deed forthwith." Panatron received this notice.

34 On 30 July 1997 Panatron's Board met to discuss the problem. Phua informed those present that Panatron had no money. In fact, Panatron had available banking facilities up to $200,000.00 which was secured by Panatron's cash deposit of $200,000.00. It has to be noted that from the evidence Phua was the only person in Panatron who were at all material times aware of the cash flow and liquidity of the company. No one else, including Lee during his term of his short period of employment as Financial Controller. Phua was asked to write to Dettrick which he did on 30 July 1997. He apologised and stated that sales had "not been good since Dec 96" and that the few big HDB projects which they had secured would only start in August 1997. He said he had given instructions to his Financial Controller to place the Royalty payment in first priority once there was money and he asked for a grace period up to the end of August 1997.

35 Chemtour on 2 August 1997 faxed Panatron and replied that having reviewed "your request and in the light of continued previous non-compliance with terms of Clause 4 'Royalty Payment' they had to advise that no variation of any terms and conditions of the Licence Agreement would be permitted". It ended thus: "Our request and intent as expressed by our communication of July 22 remain in full."

36 On 11 August 1997 solicitors for Chemtour wrote to Panatron. It referred to Chemtour's notice of 22 July giving notice of intention to terminate the Licence Agreement. It further stated that Clause 11 of the Licence Agreement permitted Panatron a period of 14 days from delivery of the notice to remedy the breach, i.e. pay the royalties. On their clients' instructions, the solicitors gave notice that "the Deed will be terminated on the expiration of the 28 day period which our clients' calculation is on August 23." Termination would have been averted if Panatron had only paid the royalties at any time before 23 August 1997.

37 On 18 August 1997 Phua on Panatron's letterhead wrote a private and confidential letter to Dettrick. He referred to Panatron's investment, the potential of the coating business and put forward the following proposals for Dettrick's consideration: (1) payment of outstanding royalties immediately and the establishment of a revolving LC of $20,000 to pay for future royalties against the invoice; (2) Peter would be in charge of the coating business; and (3) Panatron were discussing with a potential investor, IRE Corporation Pte Ltd, Panatron's biggest customer in Singapore, who had agreed in principle to inject funds to the coating business. Dettrick and his solicitors did not give any reply to this fax of Panatron.

38 In the end, on 23 August 1997 the Licence Agreement was terminated.

The factual disputes

39 I will set out material parts of the evidence of Phua. In view of his serious allegations, they have to be set out in some detail. According to Phua, in April 1995 Yin proposed that Panatron could venture into the business of high performance waterproofing paints/coatings. He knew Dettrick as a friend who had the "know how" and the raw materials which were essential for the manufacture of the coatings. Yin told him that the venture with Dettrick would be a profitable proposition. The purchase of the equipment, machinery and the training of personnel for manufacture and marketing would cost Panatron about $1 million. It would take 3 to 6 months for manufacture to begin.

40 In May/June 1995 Yin and Dettrick met with Phua and directors of Panatron. Phua claims that Dettrick agreed to supply the chemicals on a long-term basis to Panatron in view of the large investment. He further alleges that the chemicals, which Dettrick agreed to supply, were unique. Their composition was known only to Dettrick. Dettrick had indicated that Panatron had to manufacture at least an average of 20,000 litres for the first 2 years or not to fall below 2,000 litres per month average after the 2 year period in order to justify the investment and for him, Dettrick, to make a profit. Following the meeting, Panatron incorporated Chemind and appointed Yin as a director and General Manager of the company. Phua alleges that Panatron had invested $1.66 million in equipment and machinery and start up investments.

41 The particulars of the investments, which were significantly and curiously not supported by any accounting records, were also not duly audited or confirmed by auditors according to generally accepted accounting principles. As can be seen, items c and d are estimates. All four items, including the others mentioned by Phua, were not firm and accurate figures. If the accounts

were properly kept, accurate figures would have been available. But they were not produced at any time.

a. Machineries and laboratory equipment	$164,000.00
b. Factory renovation	$ 26,000.00
c. Initial start up (from Jun 95 to March 96) inclusive of incorporation fees, factory rental, staff salary, travelling and training and office administration	$231,000.00
d. Estimated Marketing Cost (from Sep 95 to Sep 97)	$480,000.00

42 The Licence Agreement of 22 September 1995 was entered into. Phua claims that Yin was responsible for the investments by Panatron, in addition to his duties in the business of BTE. He also stressed that after Lee's employment with Panatron, Lee signed the purchase orders as financial controller. However, Phua claims that it was he who developed the plan to promote the coating business. He approached some main contractors who were very active in HDB projects, which involved new building, repair and redecoration and renovating) and Panatron worked closely with HDB and HDB's estate management agents who were Esmaco Pte Ltd and E M Services Pte Ltd.

43 Phua says he carried out an intensive and highly effective marketing program. Panatron offered competitive prices, good after sales service including warranties of longer periods of validity than most competitors. The product Flexicote was approved by the HDB for gable end (sidewalls) application to prevent and contain wind driven rain penetration. Blockflex was used mainly in private projects for waterproof paint for the entire exterior of blocks of flats. New Flex R100 was used for re-roofing in Singapore. Newflex, on the other hand, was sold to provide waterproof coating for planter boxes, swimming pools, water tanks etc in Thailand, Vietnam and in Singapore. As for the other two products, Tuffcote and Primer, they were usually bought by customers who used them in tandem with the use of the other products from Panatron.

44 Phua claims that in the first year of production in 1996 Panatron achieved about $2m worth of sales. Phua claims that Yin had played a "vital role" in Panatron and in the course of business had acquired first hand knowledge of Panatron's business activities and was part of the decision making process. He says Yin was a recipient of the Panatron's "confidential information and/or trade secrets": Though general categories of information was listed, such as "delivery schedule", "offer terms", there were no more specific particulars of the so-called information and trade secrets.

45 I now turn to Phua's case against Dettrick who, at all material times, was Chemtour. He claims that Dettrick did assure him and Yin that he would supply the necessary chemicals to Panatron "on a long term basis" and that Panatron could therefore proceed to invest as indicated. He claims that Dettrick had agreed to "supply chemicals, product specifications, manufacturing process, testing, research and development, application process, technical support and after sales services as part of the technology transfer to" Panatron in return for the Royalty based on the production quantity of all products on a quarterly basis: see para 119 of his Affidavit evidence in chief.. In the following paragraph Phua further claims that Dettrick also agreed to supply Panatron the chemicals which Panatron were unable to procure. At the initial stages of Panatron's production, Dettrick did supply all the chemicals except a chemical under the code-name FL47T.

46 He asserts that FL47T was crucial to Panatron because without it they could not manufacture the products known as NewFlex and NewFlex R100. Further, he says that, without the supply of PANVL and CHEMTEX from Nuplex, Panatron could not produce any of the 6 products.

47 After Dettrick had introduced Nuplex to Panatron, the two parties began doing business in August/September 1995. Phua asserts in para 125 of his affidavit evidence that "Dettrick and Nuplex represented to him and another director, who was not

called, that Nuplex shall supply PANVL and CHEMTEX on a long term basis" to Panatron. The chemicals were, according to him, vital resins, unique in nature and substance for the manufacture of the coatings and they could not be obtained from any other supplier in the world. Nuplex started the supply of both PANVL and CHEMTEX in December 1995 and until the last paid invoice dated 6 August 1997 the total amount paid to Nuplex was $991,115.30. In September 1997 Nuplex terminated their supply and cited as their reason the fact that Dettrick's Chemtour had terminated the licence agreement. Phua alleges that Nuplex had "wrongfully and/or recklessly terminated supply of the chemicals by unreasonably relying on the alleged termination of the Licence Agreement by the 4th defendant (i.e. Dettrick)". In his evidence, both on affidavit and in court, Phua continues to allege that Dettrick had "pressurise or influenced Nuplex to wrongfully and/or recklessly terminate the supply of chemicals". His allegations turn more serious and he makes the frontal allegation that "Nuplex (had) in the premises colluded with ("Dettrick") and ("Yin") to cause irreparable damage and/or total loss of investment" by cutting off the supply of the chemicals.

48 Phua claims that Panatron had not breached any of their contractual obligations to Chemtour. Panatron had manufactured more than 200,000 litres of the products within 2 years of the commencement of the Licence Agreement and had complied with clause 10 thereof. They had paid Chemtour and NLD Enterprise as Dettrick had directed about $54,000 and Phua says that the average number of days between the due date for payment of the Royalty and the date of actual payment was about 63 days. This was the course of dealings and the pattern of payment, which were accepted, and Dettrick was precluded from raising any objection about the late payments.

49 According to Phua Dettrick suddenly on 22 July 1997 served written notice of termination of the Licence Agreement. Panatron's directors were taken by surprise and at a meeting decided to make payment by the end of August 1997. Phua claims that at the meeting Yin informed the meeting that he would speak to Dettrick and resolve the matter. Yin had also said that "it would be alright for ("Panatron") to make payment on the invoice at the end of August 1997". Yin assured the directors that he would resolve the matter with Dettrick. Phua alleges that in doing so Yin had misled Panatron's directors into the belief that it would be acceptable to make payment at the end of August 1997. Phua says that in fact Yin was "assisting ('Dettrick') to issue the notice of termination" to Panatron to take effect before the end of August 1997, as part of the conspiracy plot.

50 By way of substantiation, Phua refers to the fact that Lee and Yin had resigned from Panatron on 20 August 1997 and 22 August 1997 respectively. Lee left the employment immediately whilst Yin served out his notice and he left Panatron on 22 September 1997. Yin resigned his directorship in Chemind in February 1998. He further alleges that they had both resigned fully aware of the effective date of the notice of termination "so as to carry on with their other plans with" Dettrick. Yin was very often in telephonic communication with Dettrick during the critical period. On the other hand Phua tried to rectify the situation. He wrote to Dettrick on 18 August 1997 suggesting a payment schedule and the establishment of a revolving letter of credit up to $20,000.00 for the payment of future Royalty, seeing that the average quarterly Royalty was about $16,000.00. Dettrick insisted on payment in accordance with his notice of termination and declined Phua's offer of the revolving letter of credit because, as Phua alleges, Dettrick had the "ulterior motive of acquiring ('Panatron's') business for himself".

51 In good faith Phua flew to Brisbane, Australia on 1 September 1997 for the purpose of seeing Dettrick personally and tendering a banker's draft for A$10,000.00. Whilst in Australia, Phua was informed by Klement Koh, his fellow director, that Dettrick was at that time in Singapore and was meeting Lee & Yin and that Lee had made arrangements for Dettrick to meet Jaeger Koh of Ace Seal Pte Ltd and Teo Cheng Kwee of IRE Corporation Pte Ltd. Both Ace Seal Pte Ltd and IRE Corporation Pte Ltd were customers of Panatron.

52 As further evidence of the conspiracy, Phua refers to the proposal, which Lee made to Panatron's board on 28 August 1997. Lee attended the meeting at the invitation of the Board, having resigned from the company on 20 August 1997. His employment was for a very brief period, that is from 2 May 1997 to 20 August 1997. Lee had advised that the only way to resolve the question of the termination of the Licence Agreement, which Dettrick was then insisting to have taken effect on 23 August 1997, was to separate Chemind from Panatron in terms of control and at the shareholders' level and by making Yin a majority shareholder of Chemind. After leaving Panatron Lee resumed his practice as a business consultant and one of his clients was Dettrick in respect of his coating business in Singapore. Phua stresses that Lee's proposal for the corporate re-structure was similar to the one which was subsequently proposed by Dettrick. "on or about 5 September 1997": see para 151 of his AEIC and Dettrick's letter of 9 September 1997 to Yin. Since Lee did not know Dettrick prior to Lee's departure from Panatron, Phua infers

that Yin must have introduced Lee to Dettrick and using his knowledge as a professional and as an insider all three embarked on "their first stage of acquiring ('Panatron's') business and to injure them".

53 In relation to the role of Yin, Phua says that he remained behind in Panatron until the last possible moment for the purpose of gathering all necessary information to pass on to Lee and Dettrick for the benefit of Dettrick's company, Chemind Singapore. Phua points by way of an example to the decision of Yin permitting Nuplex to collect the balance of the consignment stock held by Panatron. He notes that this decision was against the interest of Panatron which had a lot of orders to fulfil and which was in the midst of attempting to salvage the deadlock with Dettrick. Phua also emphasises that it was only after this indication from Yin that Nuplex gave notice to terminate their supply of the chemicals to Panatron.

54 On 9 September 1997, while he was still in the employ of Panatron, Yin wrote to Dettrick giving the names of Panatron's customers whose orders were yet to be fulfilled. Phua disputes the explanations given by Yin. He says Yin also informed Lee of the names and particulars of the other customers of Panatron for him to follow up and to supplant Panatron. In contrast, when asked by Panatron's board to assist the company in resolving the termination of the Licence Agreement with Dettrick, Yin misrepresented to them that he was no longer on speaking terms with Dettrick. In fact, Phua asserts, Yin was in frequent communication with Dettrick. Phua and his other directors found Yin's conduct inexplicable unless there was some hidden reason. Yin was the one who initiated the coating business and he knew how much Panatron had invested in the project. Phua says Yin did hardly anything to salvage the situation; indeed in a letter of 18 September 1997 Yin still expressed gratitude to Dettrick in spite of the latter's termination of the Licence Agreement.

55 Phua offers the reason why Yin had decided to conspire with the others to injure Panatron. It was to do with the agreement of Ivan Koo Thim Peng, a former colleague of Yin in Shell Company, who agreed in early 1997 to subscribe for 200,000 shares of a dollar each with a premium of 35%. Ivan Koo agreed to pay $100,000.00 on 15 April 1997, $50,000.00 on 15 July 1997 and $50,000.00 on 15 April 1998. The premium of $70,000 was to be payable out of the dividends eventually declared or upon the request of the board of directors. In early July 1997 Yin asked for the refund of $100,000.00 for Ivan Koo who had changed his mind about the investment as he was promoted by Shell. Phua and his board of directors declined to do so, despite repeated requests and pressure from Yin. Phua says that Yin became noticeably hostile towards him after this incident.

56 Yin's hostility took a turn for the worse. He and Tay Chok Chuan, a director of Chemind representing the interest of another investor, reported to the Commercial Affairs Department ('CAD') against Phua over the accounts of Chemind. The complaint was based on a letter written by the accountants, K B Lee & Company, which called into question several aspects of the accounts of Chemind for which Phua was responsible. CAD conducted investigations but had not preferred any charges against Phua. Not content with his first report, Yin then lodged a second report to the CAD against Phua in respect of the accounts and affairs of BTE Asia Pacific Pte Ltd, a subsidiary of Panatron.

57 Phua alleges that Lee and Yin had disclosed confidential information of Panatron to Dettrick in breach of their duties as fiduciaries to serve the interest of Panatron honestly and not to have placed themselves in a position where their interests were in conflict with those of Panatron. The confidential information related to the shareholding and corporate structure of the Panatron Group, distribution network, product pricing, marketing strategy, joint tendering process and customer services and warranties to them. Lee, for instance, dealt with Solely Construction Ltd, a copy of Panatron, as evidenced by a letter of 6 October 1997 from that company to Lee.

58 According to Phua, Yin knew that Dettrick was coming to Singapore to incorporate Chemind Singapore at the time Phua was in Australia trying to meet up with Dettrick. Yet Yin failed to inform him. Phua points to Dettrick's handwritten notes written on the letter of 18 August 1997 which Phua had written to him informing Yin that he (Dettrick) would be flying into Singapore on 31 August 1997 ETA 7pm and ETD 4 September 1997. Dettrick in his handwritten notes also asked Yin to comment on Phua's letter before he (Dettrick) replied to Phua. Dettrick's notes included references to the shareholdings in and investments of Panatron, the appointment of a firm of solicitors to incorporate Chemind Singapore with 4 directors, namely Dettrick, his wife J R Dettrick, Lee and Yin. These notes made by Dettrick on the letter written by Phua to him were sent to Panatron by Dettrick's Australian solicitors who in their covering letter denied that Dettrick had wrongfully terminated the Licence Agreement. Obviously, this is a important piece of documentary evidence linking Dettrick and Yin. Unless there was a cogent and credible explanation it would

constitute very strong evidence of their collusion and, certainly Yin's breaches of his duties of fidelity as a fiduciary of Panatron. I will revert with Dettrick's and Yin's responses and my evaluations later in this judgment.

59 On 11 September 1997 Chemind Singapore was incorporated. Dettrick and his wife were shareholders. Chemind Singapore supplied the products to some of Panatron's customers directly and Chemind Singapore was used by Dettrick as the manufacturer of the products to provide joint warranties as that previously provided by Panatron.

60 As evidence proving acts of Dettrick, Lee and Yin done in furtherance of their conspiracy, Phua further points to the fact that Dettrick, Lee and Yin had intended to be the authorised signatories of the bank account of Chemind Singapore in Chung Khiaw Bank Ltd, Singapore. On or about 1 October 1997 they had signed as authorised signatories in the bank's non-personal account application form. Phua also refers to a transaction involving Shell Philippines who inadvertently sent them the fax dated 14 April 1998.

61 Phua points to the fact that names of the products were first used by Panatron in Singapore. He says Dettrick or Chemtour, contrary to the representations in the Licence Agreement, did not have any intellectual property rights over the products, logo and design. He makes the point that when Dettrick was pressed about the particulars of the registration of his IP rights in respect of the compound FL47T Dettrick's reply was that it was a novel invention and that its formulation was a trade and industrial secret.

62 In addition to his allegations against Lee's participation in the conspiracy, Phua alleges that Lee had sighted and 'intentionally' kept away from him Dettrick's invoice of 3 July 1997 to delay payment by Panatron "thereby allowing (Dettrick) to terminate the Licence Agreement". It has to be noted, however, that Phua's secretary, Helen, had requested from Dettrick copies of the invoices on 15 July 1997. Two days later, Panatron received copies of the 2 invoices and Dettrick's letter pressing for payment of A$10,000 as the Royalty due. No payment was made and in the light of the correspondence between Dettrick and Panatron, it was quite clear to everyone in Panatron, including Phua, that Dettrick was coming to the end of his tethers. It was patently clear that any further delays in payment of royalties would be met with a very firm response from Dettrick. From the documentary evidence examined and the cross examinations of the witnesses, in particular Phua, Yin and Lee, it was clear that Lee & Yin were not in the chain of approvals for any payment of invoices and that Phua was the final authority making the decision to pay or not, having regard to the cash flow and the order of priorities of payments. Phua and Phua alone decided to pay.

63 I turn briefly to Lee's evidence in response. For the short period he was in the employ of Panatron, he did not exercise the usual functions of a financial controller. Phua was in fact and in truth in charge of all financial matters; he did not plan the company's financial cash flow. He was not allowed to handle the payroll as Phua said it was confidential. Nor did he handle any transaction with the bankers. He did not have the authority to sign any cheque. He signed invoices and purchase orders for the company. The signing of the purchase orders was purely administrative and not a matter for his sole decision. His signing of the Purchase Order, however, was preceded by a Purchase Order Requisition Form, either approved by Phua or duly completed.

64 Lee's evidence touching on the invoices for the royalties in July 1997 at AB372/373 is to this effect. He said in evidence that he saw AB373 on 3 July 1997 because he initialled it on that day. However, he denied seeing AB 372 as well on that day. He denied suppressing the two invoices until 15 July 1997. There was no apparent or sensible reason for Lee to have initialled only one invoice if the conspiracy was also launched against Panatron. There is also the fact that Yin had on 7 July seen both invoices and initialled them. Yin had also requested for Phua's action in respect of Dettrick's reminder for payment dated 10 July 1997. Dettrick too had responded immediately to Helen's request for copies of the invoices. Such would not have been the action of conspirators who wanted to set up Panatron as the defaulting party.

65 What told against Phua was the fact that Panatron did not make payment between 15 July 1997 and 22 July 1997 when Dettrick gave notice of termination. Further, Panatron could have paid anytime before 23 August 1997 on which the termination became effective. Phua attempted to explain that the entire management was involved in the HVAC exhibition but that exhibition, without question, was running only between 22 and 25 July 1997.

66 Yin denied in evidence that he had misled Panatron at a meeting on 30 July 1997 as alleged. Lee and Yin said that when they received the notice of termination they were very concerned and tried to get in touch with Phua. But Phua's secretary said that Phua would be available only on 30 July 1997. In his cross-examination on 10 March 2000 Phua volunteered that all present at the meeting, including Yin, appeared to be very upset with the notice of termination. That description did not sit well with the assertion that Yin had assured them that he would resolve the notice of termination with Dettrick and that payment by the end of August 1997 would be acceptable. In his affidavit evidence in chief (para 148) Phua claimed that there were sufficient bank facilities for payment; yet in cross-examination he put forward the divergent version that payment depended on cash flow. The accurate position was that Panatron had the banking line to have paid the Royalty of A$10,000.00.

67 Yet during the 30 July 1997 meeting, Phua told the meeting, according to Lee & Yin, that Panatron had no money to pay the Royalty. This was confirmed by the letter which Phua wrote to Dettrick and in which Phua stated that the company could only pay by the end of the August 1997. It conveyed the statement that the company was encountering cash flow problems. That version was at variance with the picture that Phua was trying to portray to the court during his evidence. Further, it is significant to note that Phua's letter to Dettrick did not mention anything whatsoever about Yin's assurance that payment by the end of August 1997 would be acceptable. That point should have been made if Yin was such a friend of influence with Dettrick; its omission suggests that it was never mentioned by Yin at all. Even more significant is what Phua wrote to Dettrick in his letter of 30 August 1997. He pointed out to Dettrick that both Dettrick and himself (i.e. Phua) had "moral responsibilities to Peter (i.e. Yin) who have hitherto invested so much money and effort onto this coating business since 1995". Phua would not have written in these terms and tenor if Yin had given the assurances as alleged.

68 Although Phua referred in his affidavit evidence to Yin's assurances that he would resolve the notice of termination with Dettrick and that it would be acceptable to pay by the end of August 1997 as the principal reason why he did not pay the Royalty, he gave two other reasons in the course of his cross examination on 13 March 2000. He mentioned, firstly, the financial crunch, meaning the lack of funds and the tight cash flows encountered. Secondly, Panatron was not sure whether paying the Royalty would result in the continuation of the licence or not. In fact, Phua said in evidence that the most important reason why he did not pay was that Panatron did not know if payment would secure continuation of the licence or not. If that had been at the forefront of his mind, one must ask the obvious question why he did not ask this most important question of Dettrick in his several letters. Phua said on reading Dettrick's notice of termination, he formed the view that the notice was not remediable by Panatron. Dettrick maintained throughout his evidence that he was asking for payment and that if payment was not made, he would then move to termination. In fact, Yin at the meeting had suggested that some of their salaries be used to pay the royalties. In addition, Yin had recently on 21 July 1997 paid another sum of $4,000.00 for his shares. Phua could have raised the sum of A$10,000.00. Inexplicably, he did nothing. Inevitably, the licence was terminated.

69 With regard to the formation of Chemind Singapore and the operation of the bank account in Chung Khiaw Bank Ltd, Yin explained that he initially agreed to help Dettrick. He felt bad that Panatron had let him down. But he later changed his mind and decided not to have anything to do with Dettrick or Chemind Singapore. He did not exercise his authority and did not sign any cheque. After the termination of the Licence Agreement, he assisted the customers of Panatron to secure supplies from Dettrick with the concurrence and at the request of Phua who wanted to ensure that there would be no claims against Panatron. In those cases he had acted in the interest of Panatron. As for the Shell, Philippines enquiry, it turned out to be a mistake on the part of Shell, Philippines. Lee testified that two weeks after that fax to Yin, Chemind Singapore had indeed received an enquiry from Shell Philippines. The truth of the matter was that Yin did not work for Chemind Singapore at all. He had started his own business, which had nothing to do with coatings. His particulars were not challenged in cross-examination by Panatron. Dettrick had caused Chemind Singapore, the second defendants, who have entered into a new licence agreement with Chemson Polymers Pte Ltd, another party in Singapore, under which he had agreed to transfer his technology to manufacture and sell some Chemtour products and the higher Royalty payable is A$0.10 to A$0.15 per litre. Dettrick therefore did not acquire any coating business for himself or his group of companies, contrary to the assertions of Panatron and Phua.

70 I come now to the heart of the defence against the allegation of conspiracy. Dettrick is the central figure. On advice from his Australian solicitors Chemtour duly and properly terminated the Licence Agreement. Phua failed to abide by his contract. He had given ample notice beginning with his letter of 1 April 1997, AB 272, when he made it quite plain that he was insisting on strict compliance with the licence, especially on the payment of Royalty to him and Neil. He instructed his solicitors to

incorporate Chemind Singapore on 13 August 1997. He had acted quickly to protect his business interest in the region.

71 As from 23 August 1997 Panatron no longer had a licence or any other business association with Dettrick. Any business done by Chemind Singapore after their incorporation on 11 September 1997 could not therefore be in competition with Panatron. Without a common and identical mutuality of interests it would be unintelligible to talk in terms of any conflict of interest. Dettrick explained that Chemind Singapore sold products to some of Panatron's former customers as part of the fall-out in the wake of the termination so that customers could fulfil their contracts and the goodwill of and surrounding his products could be maintained on the basis of 'business as usual'.

72 With regard to the retainer of Lee as consultant to Chemind Singapore, Dettrick said that this took place after he had left Panatron. Lee also earns his living by acting as consultant for other businesses. A former employee is generally free to work for a competitor subject to any obligations in contract or in equity. In this case, Lee had agreed to the two clauses in the agreement recited earlier.

73 I turn now to the handwritten notes which Dettrick had written to Yin on or about 19 August 1997 which Phua relies heavily. Those notes of Dettrick, according to Phua, reveal the conspiracy plan to take over the coating business and injure Panatron: see paras 178, 181 and 182 of Phua's affidavit evidence in chief. Dettrick gave his explanations in cross-examination on 23 March 2000. Dettrick told me that he was tired of listening to the same excuses from Phua for the non-payments and he therefore sought Yin's input to Phua's letter.

74 Dettrick told me that the only note he faxed to Yin was about his planned trip to Singapore**,** which had been planned much earlier, **and** the underlining and annotations in the text of the letter, but **not** the writing at the bottom of both pages. I have read and examined the original copy of the 2-page letter of 18 August 1997 written on Panatron's stationery by Phua to Dettrick. His note to Yin was written in black, probably by a ball pen. The information about the investments in Panatron was written in blue, probably by a ball pen with blue ink.

75 On the top right, Dettrick wrote in black ink the following notes:

> "To Peter Yin: 19/8
> Peter,
> I'd appreciate your
> Comments on the letter, before
> Responding.
> I've booked flights to
> Singapore ETA 7.00PM (plus minus)
> August 31 ETYD 9.00 PM
> September 4. Stay Rasa Sentosa
> Sgd: Eral Dettrick"

On the first page, he wrote "Whose $s?" against the phrase "jointly invested more than one million dollars".

76 On the second page of the letter, he underlined the words "coating business" with an asterisk and a question mark. He underlined the word "IRE". That was the state of the copy of the letter which he faxed it to Yin for his responses.

77 Dettrick then narrated the telephonic communication he had with Yin. That took placed, he believed, on the day following his fax to Yin; therefore they talked on 20 August 1997. As to whose dollars they were, Yin told him that the investors in Panatron, which was blanked out, were Yin, Lee, and others as stated who had each put in $200,000 to $300,000. He asked Yin who Lee was. Yin explained that Lee had been the company's Financial Controller. He was a C.P.A., a Business Consultant and that he was resigning. Next they talked about the issues involving the company's warranties to customers and Dettrick noted it was an 'interesting conundrum'.

78 Another matter, which they then discussed, was an interesting and new proposition Phua had put forward. This related to the 'coating business'. Phua said he was re-organising the coating business and was putting Yin in charge of Chemind. Dettrick told me that Yin mentioned that some of the investors (namely Andrew Lim, Klement Koh and Koh Kai Kee) might be able to take over the equipment and treat it as repayment of their loans, as noted on page 2. Dettrick explained that he could not vouchsafe its accuracy. That was his impression.

79 Then Dettrick came to the final, and what to him was the most important revelation which came across in talking to Yin. This related to the item under "IRE". The relevant paragraph referred to a joint venture between Panatron and IRE. Dettrick asked Yin who IRE were. Yin told him that IRE was 51% owned by Nippon Paint. This information raised alarm bells within him; he knew Nippon Paint was a competitor and was fearful of the risk of a transfer of his technology without his permission. He did not let out his feelings or concern to Yin. He later noted the remarks "they could transfer technology!" and "technology transfer without ED permission /consent". Dettrick quickly concluded the conversation and immediately consulted his Australian solicitors. He faxed them a copy of the 2-page letter.

80 Dettrick went on to explain that the notes at the bottom of both pages were only his own thoughts alone. He did not tell Yin about them nor discussed them with him. He considered appointing Yin and Lee as directors to Chemind Singapore. But he did not talk to them about it. Both Yin and Lee confirmed this in cross-examination. As the records show, neither Yin nor Lee became a director of Chemind Singapore.

81 Lee told the court that he took the initiative and rang Dettrick on 29 August 1997 in the hope of persuading him to give the licence to Chemind. This followed his meeting with the Panatron board the previous day during which he had proposed an exchange of shares of Panatron and shares in Chemind. In this way Lee hoped to salvage his investment. Phua insisted on keeping control over the finances of Chemind. The stalemate was not resolved at the Board meeting of Panatron on 8 September 1997 to which Lee was invited to attend. At that meeting, Lee openly informed all present that Dettrick retained him as his Consultant. In December, 1997 Panatron commenced this suit against Lee, Chemind Singapore, Yin and Dettrick.

The Law of Civil Conspiracy

82 The tort of conspiracy which is raised or on which Panatron are focusing in this action is the conspiracy to injure. It is alleged that the predominant purpose of the combination was to inflict harm to Panatron. Unlike the other type of the tort of conspiracy where there is an agreement to use unlawful means, the conspiracy to injure Panatron that is alleged here does not include any allegation by Panatron that the combination employed acts or means which were in themselves unlawful. The two types of civil conspiracy are noted in *Quah Kay Tee v Ong & Co Pte Ltd* [1997] 1 SLR 390. I should observe that sometimes it is not altogether clear that Panatron are relying solely on the conspiracy to injure as their sole cause of action. For example, in para 1.1 of its submission, it claims that Lee, Yin and Dettrick conspired "with intent to injure" Panatron. Then in the following para 1.2 it says "further, in so conspiring, (Lee, Yin and Dettrick) individually committed a number of breaches they each owed to (Panatron)". Although it has not been clear enough if Panatron are alleging that there was an agreement to use unlawful means, this ambiguity is immaterial in view of my adverse findings against Panatron and Phua which I will set out later in this judgment. On either one of the two types of civil conspiracy, Panatron fail in their claims on the evidence.

83 The authorities point to the mischief against which this tort is targeted. The combination is wrongful if it is proved that its "object is deliberate damage without any …just cause," per Lord Wright in *Crofter Hand Woven Harris Tweed Co. v. Veitch and Another* [1942] A.C. 435 at 469. In that well-known case, the respondents in combination with each other and mill owners who spun yard into tweed cloth instructed dockers to refuse to handle yarn imported from another place. The dockers, without any breach of contract, acted in accordance with those instructions. The House of Lords laid down two propositions of law. First, it was held that a combination of two or more persons wilfully to injure a man in his trade is unlawful and, if it results in damage, to him, is actionable. Before I repeat the second proposition of law, the relevant assumed fact in that case was that the respondents had combined for the purpose of forcing producers to come to an agreement regarding the selling price of tweed and the exclusive use of island-spun yarn. It was further assumed that the means adopted would "necessarily inflicted injury"

on the appellants. So the context was industrial action taken in a Scottish context, involving the sensitive matter of the pricing of tweed. The second rule of law, laid down on and some would say confined to the facts of that case, is that if the real purpose of the combination is, not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to a plaintiff ensues.

84 The other noteworthy point, as submitted by counsel for the Panatron, is to focus on and give due eight to the acts done in combination and causing damage. This is not to say that we can overlook the principle that as a matter of law some agreement to combine must be proved to exist. In *Midland Bank Trust Co Ltd v Green* [1979] 2 All ER 192. Oliver J (as he then was) stated: "The concept of a civil conspiracy to injure…is a concept which is concerned not with agreements (though no doubt some agreement express or implied lies at the root of any conspiracy) but with acts done in combination or concert and causing damage. Throughout the authorities it is on the combined or concerted action that the emphasis is laid." In *Seagate Technology Pte Ltd & Anor v Goh Han Kim* [1995] 1 SLR17, 23 it was reiterated by the Court of Appeal that "(t)he essence of conspiracy is an agreement, and the question is whether the appellants had proved that there was in existence an agreement or at least some arrangement between" the two alleged conspirators.

85 The final point of some interest is the observation of the House of Lords in *Lonrho Ltd v. Shell Petroleum Co. Ltd* (No. 2) [1982] A.C. 173 at 188 and 189 that this specie of civil conspiracy to injure is "a highly anomalous cause of action" but "too well established to be discarded however anomalous it may seem today". As pointed out by Lord Diplock, and repeated in *Lonhro plc v Fayed* [1992] 1 AC 448 at 463, and *Lonrho plc v. Fayed (No. 5)* [1993] 1 WLR 1489, 1492-1493, it is quite odd to have a situation where what a person does alone is not unlawful but it becomes actionable if he acts in concert with another. It is especially so in view of the fact that in this modern age, conglomerates are certainly more powerful and potent than the combination of a small group of people. Should our jurisprudence entertain this 'anomalous' cause of action? There are other pragmatic reasons for its discontinuance. It will obviate wasteful litigation, which tend to be highly contentious, prolonged and lend themselves to an investigation of a host of circumstantial evidence. That is because combines usually are hatched in secrecy and a plaintiff has to resort to indirect evidence and in the process of drawing conclusions from a set of circumstances there could arise fevered imaginations coloured by the inevitable emotions. Further, our law of tort already recognises other economic torts of intimidation, unlawful interference and indirect procurement of breach of, or interference with, contract which are sufficient to provide the necessary remedies. It should also be noted that competition is encouraged in trade, services and many economic activities. On the other hand, the Court of Appeal in *Quah Kay Tee's case* proceeded on the basis that the two types of civil conspiracy is part of our common law. However, there is in this case no root and branch submission that our common law should not entertain this cause of action. As no re-examination of this question has been urged and undertaken, I therefore proceed on the basis that this type of civil conspiracy as a separate cause of action is available in our law of civil wrongs.

86 Accordingly, Panatron have to prove (1) the agreement; (2) the unlawful purpose; (3) the intention to injure; and (4) damage.

My findings of fact

87 As recited earlier, the Licence Agreement in terms of clause 11 may be terminated on notice and in the absence of any remedial action within the prescribed period. The construction that there was an agreement to provide the Technology in perpetuity is unsustainable. Although that is referred to in the recital, it is negated by the express terms of clause 11. On the evidence which I have recited, I am satisfied that Phua had failed to pay the Royalty and had deliberately failed to do so. Panatron had the financial ability to do so but it failed to remit the Royalty of A$10,000.00 due and payable. I accept Dettrick's evidence that the Licence Agreement would not have been terminated if Phua had caused Panatron to pay the Royalty at any time before the notice of termination took effect. It is not true that Lee had concealed one of the invoices. He was not in charge of the financial affairs of Panatron. Phua was. Lee had limited access to the financial and accounting records of Panatron and the group. No payment could be made without Phua's approval who maintained an iron grip on the finances of Panatron. Phua and not Lee withheld the payment of the Royalty. Lee's evidence is worthy of belief.

88 Lee found his work and the duties not only more and more unsatisfactory but he also found that the financial affairs of Panatron were conducted in ways that could compromise his professional obligations as a certified public accountant. Although he had committed himself by his investments, he was compelled to extricate himself as quickly as possible from a rapidly deteriorating situation where the accounts of Panatron were not kept according to law. So he inevitably resigned and left the employment of Panatron.

89 His engagement as a consultant by Dettrick after the Licence Agreement was duly terminated and the role he played in trying to find a solution to the problems faced by Panatron following the termination of the Licence Agreement are entirely unobjectionable in law. He had left the employ and directorship of Panatron and was free to pursue his profession and earn a living. He was not in a position of conflict. He was indeed subject to the clause requiring him "not to use…any confidential information revealed to him by Panatron." But there is no evidence of any breach of this covenant; there is no evidence of any confidential information passed on to Dettrick. What he knew of Panatron was in the public domain and known to Dettrick who was at one stage talking with Phua of a joint venture before the Licence Agreement was signed. Except for general allegations by Phua, Lee's services to Dettrick were rendered as a Consultant to Chemind Singapore which was engaged in a similar agreement to transfer Dettrick's technology. He did not use any confidential information to assist Dettrick or Chemind Singapore.

90 Yin did not give any assurance to Panatron, its Board or Phua that he would resolve the termination of the Licence Agreement with Dettrick nor did he say or represent that Panatron could pay the outstanding Royalty by the end of August 1997. I believe his evidence and reject those of Phua. Phua's own letters referred to above and his own conduct were wholly inconsistent with Yin having given any such assurance or having made such a representation. It was a fact that Yin resigned as a director of Panatron on 22 September 1997 but remained a director of Chemind until February 1998. There was nothing sinister about it. Yin had no business arrangement with Dettrick at all.

91 Yin worked very hard to ensure that Chemind performed well in the market. It was Phua who decided, and he alone decided, not to pay Dettrick the Royalty. It is true that Yin remained as a director of Chemind until February 1998. There is not an iota of evidence to suggest that he had done anything or failed to do any of his duties to further the alleged conspiracy. He too was compelled to leave the employ of Panatron and I accept the reasons he has given in evidence.

92 Dettrick was also driven to terminate the Licence Agreement because of Phua's dilatory payments and Phua's failure to pay the outstanding Royalty notwithstanding his notice to move to termination under the Licence Agreement.. He did not enter into any agreement, combination or any arrangement with either Lee or Yin to terminate the Licence Agreement under the pretences and orchestration as alleged by Phua. He terminated it because of Panatron's default in paying the Royalty despite the firm and clear written notice to pay. All the actions he took were the consequential steps he had to take following the termination of the Licence Agreement to protect his legitimate business interest and the goodwill of his products. They were not taken pursuant to any conspiracy at all.

93 Phua relies heavily on the notes written by Dettrick on Panatron's stationery which he had written to Dettrick on 19 August 1997. Dettrick's note to Yin was completely innocuous. I accept his evidence that he did not send his written notes at the bottom of both pages to Yin. He noted them for his own benefit and to protect his business interest as termination of the Licence Agreement seemed quite inevitable. I further accept the alarm he felt when he was told that IRE Corporation Pte Ltd, a subsidiary of Nippon Paints, was the party with whom Phua had agreed in principle to participate in a joint venture in respect of the same line of business. His incorporation of his own company, Chemind Singapore, was the consequential corporate step he had to take to protect his business interest in Singapore and the region. It was natural for Dettrick to fall back on Yin, who has been a long-standing and trustworthy friend. He also engaged Lee as a Consultant because he had the professional expertise to offer.

Breaches of contract and fiduciary duties

94 Phua also alleges that both Lee and Yin had committed breaches of their employment contracts and had also breached their fiduciary duties, having assisted and colluded with Dettrick as alleged, enticed customers away from Panatron and divulged and used confidential information and trade secrets of Panatron for the benefit of Dettrick and Chemind Singapore. Panatron's case against Lee and Yin will now have to be considered, either separately or together whenever convenient to do so. .

95 Lee, as noted earlier, had agreed "not to engage or assist any third parties in business activities which are competing with Panatron's, its subsidiary and/or associate companies' business activities." It will be noted that the clause is unlimited both as to time and as to space and I agree with counsel for Lee that it is unreasonable: see Chitty on Contracts, 28th ed., vol. 1, para 17-111. In any case, Lee did not help Dettrick or Chemind Singapore in the business of selling the coating products. Chemind Singapore was incorporated after the termination of the Licence Agreement of Panatron which was never in the business of sub-licensing the coatings technology to manufacturers. Lee could not conceivably be engaging or assisting Chemind Singapore to "compete" with Panatron in a business which Panatron never had. Panatron's association in any form with Dettrick's Chemtour ended before Chemind Singapore was incorporated under the laws of Singapore.

96 Panatron further allege that Lee and Yin used and divulged confidential information or trade secrets of Panatron. The alleged confidential information and/or trade secrets are set out in Schedule 1 to the Amended Statement of Claim. They are the names of customers, shareholdings of the group, unique marketing strategy (covering positioning and promotion strategies relating to product features, product pricing, distribution network and contract tendering process jointly with independent contractors), product names and business transactions covering matters from customer enquiries to payment period and product warranty. Items 7 to 20 of the Customers List could be ignored because Phua agreed that Panatron never sold products directly to the Town Councils or the managing agents. Yin explained in evidence that after the termination of the Licence Agreement, Phua, he, Andrew Lim, the General Manager and Klement Koh, the Plant Manager, concluded that out of the finished products available at that period of time Panatron could not fulfil any medium or large future orders. In fact, Phua was fully aware of the need to lessen the disruptions of supplies to customers of Chemind and Panatron. He himself wrote to Dettrick on 20 August 1997 to assist Panatron fulfilling their orders by Dettrick supplying FL47T. Dettrick declined but offered to supply directly to customers of Chemind and Panatron. Yin told the court that he and Klement Koh took all the steps with the intention of saving the business in the event that the licence was reinstated.

97 Phua alleges that on or about 8 September 1997 Yin had revealed the names of 6 customers to Dettrick. It should be noted that of the 6 names, Phua had himself given the names of 3 of them to Dettrick in his letter of 20 August 1997, namely Chin Leong Corp., Solely Construction Pte Ltd and Ace Seal Pte Ltd/IRE Corporation: see AB 507. Klement Koh with the concurrence of Phua revealed to Dettrick Panatron's customers Ace Seal Pte Ltd: see AB 555. In the course of the evidence it became obvious that Yin, Klement Koh and Phua had all acted in the interest of Panatron and their customers to minimise any disruption of supplies committed to those customers by arranging with Dettrick to supply directly. All 3 were hoping for a reinstatement of the Licence Agreement.

98 The rest of the alleged confidential information were in substance nothing confidential or of any proprietary content. For example, I refer to the issue of HDB's decision to move from bitumen and polyurethane-based products to water based products. Phua claims that Panatron had spent much effort and time to "convince" HDB to switch to their products, which are water based. However, Panatron's own independent witness, Kua Soon Chong, who worked for a subsidiary of HDB which managed the Town Council HDB flats and projects, said that the switch to water based products was the result of the study by HDB and SISIR. SISIR drew up the performance specifications. In this instance, Panatron did not contribute to the switch to the Chemtour products.

99 In my judgment, Lee and Yin were not in breach of any term, expressed or implied, in their contracts of employment and did not breach any of their fiduciary duties which they owed to Panatron..

Counterclaims of Lee & Yin

100 Both Lee and Yin counterclaim against Panatron and Phua for damages for fraudulent misrepresentations made by Phua when inducing them to invest in Panatron. They also seek to lift the corporate veil and allege that Phua was in fact and in law the same as Panatron and Chemind and BTE, which are rather strong allegations and which for reasons I will set out later are not convincing. They also assert against Panatron restitutionary damages for total failure of consideration as it was common ground that no shares in Panatron were ever issued to them.

101 I turn to the claim for damages for fraudulent misrepresentation. The elements constituting a misrepresentation in the law of civil wrong requires it to be a statement of fact; this is the element with which this case is concerned in respect of all the allegations. There is no allegation which is a statement of opinion as such. The question in both counterclaims, in respect of every allegation that a misrepresentation has been made by Phua, is a question of fact. In other words, I have to decide if Phua had in fact and in truth told Lee and Yin the misrepresentations of facts as they had respectively alleged. I need highlight, however, Lee's allegation that Phua had told him that he (Lee) "would fulfil important tasks in (Panatron) including acting as (Panatron's) financial controller and helping to re-organise (Panatron's) finances and structure." Here, Phua is said to have expressed his intentions with regard to the future role of Lee in the Panatron group and the question for my determination whether he honestly held those intentions at the time he uttered them: see *Edgington v Fitzmaurice* (1885) 29 Ch 459. There, the directors issued a prospectus falsely stating that the money to be raised would be used in the ordinary course of business for business investments and expansion. The truth was that they intended them to be used to pay off pressing liabilities. Bowen LJ said at p 483: "A mere suggestion of possible purposes to which a portion of the money might be applied would not have formed a basis for an action of deceit. There must be a misstatement of an existing fact; but the state of a man's mind is as much a fact as the state of his digestion. It is true that it is very difficult to prove what the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else. A misrepresentation as to the state of a man's mind is, therefore, a misstatement of fact."

102 Lee and Yin must allege and prove that they relied on the misrepresentations of Phua, as Phua had intended, and that as a result they had agreed to invest in Panatron and the group. As they allege that Phua had made fraudulent misrepresentations, and are suing for damages for deceit, they further have to allege and prove that Phua knew what he represented to be false or was reckless, without caring as to whether it was true or not. They must also prove that they suffered damages as a result of the misrepresentations: see *Derry v Peek* (1889) 14 App Cas 337 at 379.

103 I will recite briefly Lee's evidence on this part of his claim against both Panatron and Phua. In the initial stages, Phua advised Lee to invest as soon as possible because the shares would be worth a lot more in the future. Phua showed him a copy of Panatron's Budget for 1996. It showed that Panatron was budgeting a net profit of $187,825.00 for 1996. On 3 June 1996 Phua again approached Lee and showed him a copy of the document known as "Chemind Financial Status" dated 3 June 1996. It related to Chemind. It projected an operating profit of $153,744.00. They met again on 16 October 1996. Phua showed him another document entitled "Chemind Financial Status" dated 16 October 1996. According to this document Chemind was making impressive profits of $395,940.00 on a shareholder's fund of $600,000.00 or a net return of 66% which was very high on any view. Phua informed Lee of Chemind's coating business and the Licence Agreement.

104 On 9 November 1996 Lee informed Phua that a company known as Yong Nam Engineering Pte Ltd ("Yong Nam") was interested to invest in Chemind. Phua showed Lee a document entitled "Chemind Financial Status" dated 9 November 1996. It indicated a 69.9% return on investment. It was on this occasion that he met Yin for the first time.

105 Lee said in evidence that on 20 January 1997 Phua met him and persuaded him to join the Panatron group. Phua presented to him a printout entitled "Chemind Financial Status" dated 20 January 1997. It stated that Chemind had made profits of $543,649.00 but on a lower shareholders' funds of $250,000.00. Phua, when questioned, told Lee that the difference between the previous figure and the new figure was due to his mistaken inclusion of $350,000.00 which was in fact part of the paid-up capital of Panatron. Phua also stated that one Ivan Koo had already subscribed for 200,000 shares at $1 each and was joining Panatron to handle regional marketing. Lee said later he discovered that Ivan Koo had not invested but had done so three months later.

106 Lee and Phua met again on 30 January 1997 at Phua's office. Phua assured him that he was not making a mistake and urged him to trust him. Phua showed him a document, telling him that it was an amended copy of the previous "Chemind Financial

Status" dated 20 January 1997. The amended copy showed that Chemind had made the significant profit of $558,460.00, showing a return on investments of $223.38% in a year. Lee was so impressed by this that he signed the Offer of Employment that evening.

107 Lee said that in the course of the negotiations Phua had told him that other directors and shareholders might object to his buying in the group at a lower premium of 35% if he did not take up Phua's offer immediately. Phua also represented to Lee that with his entry Panatron would have 2 million shares, with among other parties 500,000 shares for Phua and 200,000 shares for Ivan Koo. Lee told the court that after taking up his employment and having paid his investment instalments he discovered that it was not true that directors and shareholders might object if he did not take up the offer, that Phua had invested $500,000.00 and that Ivan Koo had invested $200,000.00.

108 It will be recalled that Lee started his employment with Panatron on 2 May 1997. Phua instructed him to handle the queries of Liap Huat Construction Pte Ltd ("Liap Huat"), a shareholder of Chemind, who were asking questions about Chemind's accounts. Lee wanted the accounts for 1996 and the current books of accounts for 1997. Phua told him the 1996 accounts were with the auditors and the 1997 account books were with Panatron's part time bookkeeper, Ong Boon Leong ("Ong"). As for the bank statements, cheque books and cheque stubs, Phua said that they had to be kept by him as they contained private information such as the salaries of individual employees, which he could not disclosed. Phua proposed that he would be responsible for the past accounts and that Lee would be responsible for the accounts from 1 May 1997. Phua said he would hand to Lee the reconciled statements.

109 Around end of May 1997, Lee after some difficulties managed to get hold of Panatron's financial statements for the year ended 31 March 1996 and the current books of accounts for 1997. He got them from Ong. The accounting records showed that Panatron incurred a loss of $800,000.00 and that Chemind had incurred a loss of $195,000.00. He double-checked the figures and ascertained them to be correct. On 5 June 1997 he informed Yin of the true financial state of affairs.

110 On the evening of 5 June 1997 Phua convened a meeting of the shareholders and investors of the Panatron group. Yin, an investor Gay Chee Cheong and Ivan Koo attended. Phua had earlier instructed Lee to come up with a future strategy for the group. At the meeting, Phua reported that the sales of Chemind were profitable. But Phua told those present that Panatron had to pay off the debts owed to a company known as Sinnet Resources Pte Ltd which was controlled by Phua. He also informed the meeting that Panatron, as agreed by previous directors, were to buy over his shares in 2 companies which had invested in China and which had incurred losses. The two companies were Kang Yi Investment Pte Ltd and Sze Chiang Pte Ltd. All told, Panatron had to pay $390,000.00. The shareholders and investors remonstrated with Phua but to no avail. He insisted that Panatron had to pay. In closing discussions on the matters, he said: "history is history and facts are facts". The other shareholders and investors were indeed faced with a fait accompli. Lee went on to examine what strategy might be adopted to salvage the situation.

111 Lee reported to the meeting the losses which he had discovered the group had incurred. He and the other investors had committed themselves and had substantially performed their part of their agreement to invest in Panatron and the group. He presented his thoughts in a series of slide presentations under the rubric "Recommending a Strategy-Ideas for Today and Tomorrow." He described how Panatron got into its financial mess, its strengths and weaknesses. Then he proceeded, more importantly, to consider the alternative strategies. There were essentially three available options. The first option was to continue with the then strategy of direct production and sales for both BTE and the Chemtour products. Secondly, they could repackage Chemind and sell as a franchise. Thirdly, they could try for a joint venture for Chemind and BTE. The third option was pursued by Phua with IRE Corporation. However, no details were available.

112 Phua denied having made any of these representations. He put it out that Lee in fact was the party who was very keen to invest and join the management of Panatron. According to the subscription agreement, Lee was to have paid $200,000 out of the sum of $270,000 by 1 May 1997, just before he took up employment with Panatron. In the ordinary way, even if he found out the true state of affairs, he would have committed himself substantially. Phua claims that he was not looking for any investor. But the fact was Panatron had lost about $900,000 by the end of 1996 and was in great need for fresh funds. In my judgment, Phua did make all the representations to Lee as Lee alleges. He knew, rather deceitfully, that they were all false. There is one

misrepresentation of fact over which I have some reservations. I am not prepared to say that he was dishonest when he told Lee that Lee would play an important role in Panatron and that he would be its financial controller. What could possibly have passed through his mind was the eternal hope that Lee could come in, clean up the mess that Panatron was in and start afresh as from 1 May 1997. But he was being too optimistic. Since it is not deceitful to be overly optimistic, I am not prepared to find that he was dishonest when he made the representation about Lee's future role.

113 Yin's evidence on this part of his case was as follows. He resumed contact with Phua in April 1995. Phua showed him a document entitled "Panatron Pte Ltd" dated 10 January 1995 (AB2-9) together with another document entitled "Return of Investment Analysis" dated 12 January 1995 (AB10). Phua told him that Panatron and their companies were profitable. As is not disputed before me, the group was making losses. In respect of the Ball Technic system, Phua represented to him that Panatron had 120 customers with orders for more than 400 systems. Yin later learnt that this was not true. In fact, as at mid August 1995 the total number of units sold were only 2. According to the manufacturing and marketing plans set out, especially in sections D and E in AB 4 & 5, Phua needed to increase the capital of Panatron by fourfold.

114 Phua had also Yin that Panatron had bought over 60% of the shares in Sinnet Resources Pte Ltd.

115 Yin further says that Phua told him another deception: that he had invested $400,000 in Panatron in view of its potential. He says that acting on the faith and truth of Phua's representations and induced by them, in May 1995, he agreed to enter into the employ of Panatron and he also agreed to subscribe for 300,000 shares at $1 per share with 25% premium for the total price of $375,000.00. It was only during a Board meeting of Panatron on 28 August 1998 that Yin discovered that Phua had paid $270,000 to Panatron.

116 Phua of course denied having made any of the representations to Yin. He said he was looking for an institutional investor. As for the customers' list, he claimed that they were "serious contacts". AB2 and AB3 drew a distinction between potential customers, projected orders and actual customers. Phua was being disingenuous and dishonest in this part of his cross examination. As for the shares in Sinnet, he claimed that payment was made and Panatron had taken over the management. No documentary evidence of any kind was produced, when supporting accounting documents must be easily available for production if in fact they existed. Eventually, Phua said that Panatron paid for the Sinnet shares in December 1996.

117 Considering the evidence as a whole, I am satisfied that Phua did make the fraudulent misrepresentations to Yin as Yin alleges, intending them to be acted upon and Yin did act on those deceitful misrepresentations and invested in Panatron.

Lifting the veil and restitutionary damages

118 Lee and Yin both claim that Phua should be equated with Panatron on the ground that the corporate veil should be lifted. On the evidence, Phua and the Panatron group did have separate commercial existence. Admittedly, Phua made all the major decisions but the Board was in place and many other operational decisions were made by the Board and other members of the staff such as Yin and Lee. There is insufficient evidence to justify any piercing of the corporate veil. The concept of the separate legal personality of the company as set out in *Salomon v Salomon & Co Ltd* [1897] AC 22 should be upheld except in very limited circumstances. No such circumstances have been proved in this case.

119 As for the claim for restitutionary damages, this cause of action is not sustainable. It was common ground that the agreements made between Phua on behalf of Panatron on the one hand and Lee and Yin on the other consisted both of the subscription agreements and the employment contracts. The consideration for both types of agreement is as inseparable just as the two types of agreement were inextricably linked. Panatron would not have entered into one without the other in relation to both Lee and Yin. Both Lee and Yin were employed by Panatron. Accordingly, there was no total failure of consideration.

Conclusions

120 In the premises, Panatron's claims against the defendants are all dismissed with costs. There will be judgment with costs for Lee and Yin against both Panatron and Phua personally for damages for fraudulent misrepresentations which they intended them to act and which in fact induced them to subscribe for the shares in Panatron. The damages will be sums they paid respectively under their subscription agreement together with interest thereon calculated at 6% p.a. from the date of their counterclaims. Naturally, both Yin and Lee will not be allowed any double claim. They are also awarded with costs their claims against Panatron under their employment contracts with interest thereon at 6% p.a. from the date of their counterclaims. The parties are directed to appear before me to assist the court in settling the terms of the orders of court to give effect to this judgment.

Lai Kew Chai

Judge