Helukabel Singapore Pte Ltd v Ng Tuck Chuan
[2008] SGHC 233

Case Number : Suit 123/2008

Decision Date : 12 December 2008

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Kenneth Koh (Unilegal LLC) for the plaintiff; Alvin Chang (M & A Law Corporation) for the defendant

Parties : Helukabel Singapore Pte Ltd — Ng Tuck Chuan

Employment Law

12 December 2008 Judgment reserved.

Woo Bih Li J:

Background

1 The defendant Ng Tuck Chuan, also known as Jason ("Jason"), was a director and the managing director of the plaintiff, a company incorporated in Singapore known as Helukabel Singapore Pte Ltd ("HS") from 7 November 2000 to 13 August 2007. HS is a supplier of various types of cables. It obtains its supply from its parent company in Germany known as Helukabel GmbH ("H GmbH").

2 Jason was dismissed by two other directors of HS, Bernd J Goetze ("Goetze") and Helmut Luksch ("Luksch") from all positions in HS on 13 August 2007.

3 HS relied on a number of breaches by Jason of his duty of fidelity and fiduciary duty to justify the dismissal and also claimed various sums of money from Jason. In turn, Jason counterclaimed for his salary for the 13 days of August 2007 and three months' pay in lieu of a reasonable period of notice of termination on the basis that he had been wrongfully dismissed.

4 The witnesses for HS were Luksch, Teh Choon Hock ("Teh") who joined HS on 1 October 2007 and became its managing director a few days later and Ng Poh Foong, also known as Cynthia ("Cynthia"), an accounts and administrative executive of HS who joined HS on 23 September 2005. Jason was the only witness for himself. Much of the evidence for HS was based on documentary evidence with some coming from Cynthia's personal knowledge. A former general manager, Julie Lau Meow Hoon ("Julie") whose evidence would have been helpful was not called to give evidence. Neither did Cynthia's predecessor, Cecilia Ng ("Cecilia") give evidence. Cecilia is Cynthia's sister. No reason was given for the omission to call Julie or Cecilia. On the other hand, Jason's evidence consisted primarily of bare or brief allegations. This was the unsatisfactory state of evidence before me. I will now set out the various allegations against Jason. References to the agreed bundle will begin with the prefix "AB" and then the page number.

A. <u>Involvement with IMI Kabel Pte Ltd ("IMI")</u>

5 IMI was incorporated in Singapore on 1 November 2006. It is a wholly-owned subsidiary of All Grand Enterprises Ltd ("All Grand"), a company incorporated in the British Virgin Islands. All Grand is in turn 70% owned by Karin Technology BVI Limited which is a wholly owned subsidiary of Karin Technology Holdings Limited ("Karin Holdings"), a company apparently incorporated in Hong Kong and listed on the main board of the Singapore Exchange (see AB 24).

6 HS sold cables to IMI who in turn sold such cables to others. Although Jason referred to IMI as a customer of HS, it was not really disputed that IMI was a competitor of HS as well.

7 Jason's involvement with IMI was mentioned in email exchanges with various persons in the Karin group. For example, one was an email dated 12 July 2007 from a Yap Thian Soon ("Yap") to Cynthia which enclosed a document stating that Jason held a 25% stake in IMI. However, Cynthia was not in a position to verify this information and Yap was not called as a witness.

8 Another example was an email dated 31 July 2007 from one Kim to Yap seeking Jason's signature to confirm an advance from Karin Technology BVI Limited to All Grand of HK$2,722,627.

9 A third email dated 2 August 2007 was from Jason himself to one Stephen Chong of Karin Holdings about a visit to Hong Kong and Shenzhen. Reference was made therein to "the lawyer draft" but Jason said he could not recall what that was about.

10 There was also a payment voucher dated 28 June 2007 on IMI's letterhead approved by Jason to authorise payment to HS of $21,840 for a cable cutting and coiling machine. Jason also admitted in his defence at [4] that he was a co-signatory of IMI's OCBC bank account No 517-XXXXXX-XXX but he alleged that his status as a co-signatory of IMI did not affect his duties or obligations to HS.

11 Jason denied owning any shares in IMI or in any of the Karin companies. He also denied being a director.

12 Jason's explanation for his involvement with IMI was found in [23] of his affidavit of evidence-in-chief ("AEIC"). He said the initial directors of IMI were two Chinese nationals and Yap. Yap was new to the cable business and not familiar to representatives of Karin Holdings. Due to Jason's close relationship with directors of Karin Holdings, they asked him to help set up IMI's operations in Singapore including looking for suitable premises for IMI and the opening of a bank account (with OCBC) for IMI. Eventually, he was removed as a signatory of IMI's bank account.

13 I found Jason's explanation to be unconvincing. He was obviously more involved than he cared to admit. While the full details of his involvement were not disclosed and it remained unclear whether he was a director or shareholder of IMI, or any of the Karin companies, I was satisfied that he was involved in the operations of IMI and was in breach of his duty of fidelity and fiduciary duty to HS. This reason alone was sufficient to justify his dismissal although there was no claim by HS for damages for these breaches.

B. <u>Transactions not at arm's length</u>

14 There were two sets of transactions under this heading.

15 The first set of transactions involved the sale of cables to IMI at discounted or low prices which allowed IMI to re-sell the same to third parties like EIE Industrial Products Sdn Bhd ("EIE") and Transtel Engineering Pte Ltd ("Transtel") at higher prices. The table of such transactions is as follows:

Date	Invoice No	IMI paid to HS	IMI resold to	IMI's resale price
22.03.07	20620	$119,656.40	EIE	$125,942.44

19.04.07	20745	$ 14,600.00	Transtel	$ 18,000.00
28.05.07	20868	$113,382.50	Transtel	$163,394.00
01.06.07	20884	$ 45,922.92	Transtel	$ 48,790.00
		$293,561.82		$356,126.44

16 Jasons's response was that HS did not sell cables to IMI at discounted prices. He was not personally aware of the HS invoices involved, *ie*, Nos 20620, 20745, 20868, 20884 as they were handled by his sales staff. The invoices were issued to "CASH". It was Cynthia who later wrote 'IMI Kabel" thereon in the course of investigations by HS.

17 It turned out that Jason had himself signed two of HS's invoices, *ie*, Nos 20620 and 20868. His son, Jerome (who was then working in HS) had signed No 20745. Jason did not dispute that he must have been aware of what Jerome had done. There were also corresponding invoices from IMI to its customers which showed the higher prices which IMI was charging to its customers. In the circumstances, I was of the view that Jason should be liable for the difference between the IMI invoices and the first three HS invoices, *ie*, Nos 20620, 20743 and 20868 (which he or Jerome had signed) amounting to a total difference of $59,697.54.

18 The second set of transactions concerned a sale of cables which was to be sold to Transtel. However, Jason authorised the sale of the cables to Karin Electronic Supplies Co Ltd ("Karin Electronic") first for 132,123.08 euros as evidenced by a tax invoice no 20108 from HS dated 17 November 2006. He then caused HS to purchase the same cables from Karin Electronic for 182,123.08 euros, that is, a mark-up of 50,000 euros as evidenced by an invoice dated 27 November 2006 from Karin Electronic.

19 Jason did not dispute that he was responsible for these transactions. His explanation was that at the relevant time, *ie*, between November 2006 to January 2007, HS had a severe cash-flow problem. He then decided to sell the cables to Karin Electronic first with a 5% profit to obtain cash from Karin Electronic to meet payment to staff and suppliers. However, when the bank statements of HS for the relevant months were produced, these statements showed that there were credit balances for each of the three months averaging between about $181,000 to $354,000. Jason's response was that such balances were inadequate because HS's turnover was $10 million a year. However, his reason for causing HS to pay Karin Electronic 50,000 euros more to buy back the same cables met with other difficulties.

20 First, there was no evidence that HS had received the 132,123.08 euros, or its Singapore dollar equivalent, promptly from Karin Electronic in November or December 2006.

21 Secondly, the invoice from HS to Karin Electronic did not require cash payment to be made immediately. Instead, the HS invoice to Karin Electronic allowed it to pay within 30 days and likewise, the invoice from Karin Electronic to HS allowed HS to pay within 30 days.

22 Thirdly, there was no reason for HS to pay such an exorbitant difference for Karin Electronic's invoice which had the same credit terms as HS's and which was only ten days apart.

23 It is clear to me that Jason's explanation was false. Therefore, he should be liable for the difference of 50,000 euros which was treated as equivalent to $105,000.

C. Purchase and payment of stock for IMI

24 HS alleged that Jason had ordered cables which were stamped with the words "IMI Kabel" for IMI but he had not acted in the best interest of HS when he did so because such cables could only be sold to IMI or at a discount to others. In any event, as HS withdrew its claim for damages for the remaining unsold cables, no damages are payable by Jason under this heading.

D. Diversion of business inquiries to a Karin entity or to IMI

25 HS complained that Jason had received business inquiries from CIMC-Tianda Airport Support Ltd ("CIMC-Tianda") and various third parties which he wrongfully referred to a Karin entity or to IMI.

26 In his defence at [8], Jason said that he was unaware of any business inquiry from CIMC-Tianda or from other third parties. He also denied improperly directing the inquiries to a Karin entity or IMI.

27 There was an email dated 19 July 2007 evidencing the business inquiry from CIMC Tianda and asking for the telephone contact of HS's agent in China. Jason forwarded this inquiry to Stephen Chong of a company referred to as Karin Technology. His reason for doing so was that HS did not have a branch office in China then and Karin Technology had been appointed HS's distributor of cables in China. Yet, there was no documentary evidence that this Karin Technology had been appointed as an agent for HS in China. Moreover, Jason accepted that H GmbH had a branch office in Shenzhen. Furthermore, Jason's purported ignorance of the business inquiry from CIMC-Tianda reflected poorly on his credibility. I was of the view that he was wrongly directing a business enquiry to Karin Technology.

28 As for the business enquiries from other third parties, Jason's reason was that HS did not supply the items which were the subject of the inquiries and it was not worth HS's while to try and source for the items and so he passed on the inquiries to IMI. It is not necessary for me to make a finding on these other inquiries as HS was not claiming damages (or secret profits) for them but only to establish that there was sufficient reason to dismiss Jason. For the reasons set out above and other reasons below, I was of the view that there was sufficient reason to dismiss Jason.

E. Monies had and received

29 There were several items under this heading. The first was a sum of $15,906.98 which was supposed to be a 5% sales rebate to a customer, Electplus Industry Sdn Bhd ("Electplus") for surpassing a minimum turnover of $300,000. However, HS's cheque No 302471 for $15,906.98 was made out in the personal name of an officer or director of Electplus, one Tam Kiew Hua ("Tam") purportedly at the request of the customer and credited into Tam's account with OCBC on 31 December 2002. Thereafter, some months later, Tam issued a cheque dated 18 July 2003 for the same sum in favour of Jason under his name Ng Tuck Chuan. Although there was no direct evidence that this cheque was in fact credited into Jason's account, I found Jason's "explanation" telling. He did not actually deny receiving the cheque or the money as such. All he said in his AEIC was that "I honestly do not recall receiving this cheque, nor the reasons for this payment, as it had been more than 5½ to 6 years ago. However, I only wish to point out that this payment was made, if at all, to me some seven months later…". If Jason had really wanted to check whether he had received the funds, he could have asked for the relevant bank statements from his bank. True, HS could also have asked for a copy of his relevant bank statement but that would assume that Jason would disclose all his bank accounts.

30 On balance, I am satisfied that he had received the funds. He had made a secret profit at the expense of HS and has to repay the $15,906.98 to HS.

31 The next sum under this heading was an amount of $38,190. According to Cynthia, she had witnessed Julie handing cash of $38,190 on or about 7 March 2006 to Jason in Jason's office and telling Jason that such cash belonged to HS. Cynthia said she had written the transaction on a piece of paper but that piece of paper was no longer available.

32 Jason denied that he had received the cash. In [38] and [39] of his AEIC, he said that he had dismissed Julie for non-performance as a general manager in mid-2007 and he believed she harboured a grudge against him. At trial, he accepted that he did not dismiss Julie. She had resigned. He also withdrew his allegation that she harboured a grudge against him. More importantly, Jason's AEIC had assumed that it was Julie who was going to testify against him on this sum. He had not reckoned that Cynthia was going to be the witness testifying against him. He had no explanation why Cynthia would make a false accusation of such a nature against him.

33 It seemed to me that Cynthia was more candid than Jason. I accept her testimony on this item. Jason has to pay HS $38,190 which he had received.

34 The third sum under this heading was $4,047.15 comprising two sums of $2,047.15 and $2,000.

35 Cynthia relied on a statement (dated 19 September 2005) prepared by Cecilia ("AB 122") which showed that Jason and others were holding money belonging to HS. In that statement, Jason was supposed to be holding $2,047.15 received from a customer Union Steel Pte Ltd ("Union Steel"). This was "supported" by an HS invoice No 2002/11/01 dated 5 November 2002 (AB 123) which was supposed to be for the sale of scrap cables to Union Steel at $2,047.15. There was a sentence in the invoice stating that the cheque was to be made payable to "MR NG TUCK CHUAN". This suggested that Union Steel was to issue payment to Jason for the scrap cables.

36 However, HS's invoice was prepared by Cecilia and signed by Julie, neither of whom gave evidence. AB 122 was the statement prepared by Cecilia and, as mentioned, she did not give evidence. There was a payment voucher which appeared to be on Union Steel's letterhead stating that payment of $2,047.15 was to be made to Mr Ng Tuck Chuan and handwritten words "Rec'd 11/11/02" thereon. However, those words were written by Cecilia, not Jason.

37 Unlike the case for the $15,906.98 where there was at least evidence of a cheque issued by Tam in favour of Ng Tuck Chuan, no such evidence was available before me for the $2,047.15. Accordingly, it is not safe for me to hold Jason liable for the $2,047.15.

38 AB 122 also showed that Jason had received cash of $2,000 from another customer Wee Tiong Wah. At AB 128, there was a statement of account referring to cables scrapped from 22 to 24 September 2003. The cash received was $8,741.04. After deducting $6,741.04 for HS's invoice No 14890 dated 24 September 2003, $2,000 cash was supposed to be handed to Jason. However, as mentioned earlier, Cecilia did not give evidence on AB 122. Also, no one who had personal knowledge of the document at AB 128 gave evidence for HS. For example, if the invoice No 14890 was for $6,741.04 only, why was a larger sum of $8,741.04 being paid? Perhaps that invoice was deliberately under-declaring the price of the cables scrapped but this was speculative as no one gave evidence for HS on this or on the allegation that Jason had received the $2,000. Cynthia was trying to draw inferences from documents which she had no personal knowledge of and such documents are not enough to hold Jason liable for the $2,000.

F. Unauthorised or fictitious claims

39 This heading also comprised several smaller amounts. The first was for $3,180 which was paid as a travelling allowance to Jason. The payment voucher dated 8 October 2002 was signed by Julie and this sum also appeared in the table at AB 122 as being one of the sums received by Jason. Jason alleged that such a payment was for authorised business expenses or legitimate business transactions.

40 According to Cynthia, HS did not have a policy of granting travelling allowance to its employees but Cynthia only joined HS on 23 September 2005. In the light of this evidence and the absence of evidence from Julie and from Cecilia (who prepared AB 122), there is insufficient evidence to hold Jason liable for the $3,180.

41 The second amount under this heading was $1,500 which was reflected in AB 122 as cash received from "Scrap Fund" to be used to exchange new notes for Chinese New Year. Jason's response for this sum was the same as for the $3,180.

42 Again, as Cynthia was not the one who prepared AB 122, there is insufficient evidence to hold Jason liable for the $1,500.

43 The third amount comprised three sums of $18,000 each totalling $54,000.

44 According to AB 122, two payments of $18,000 each, allegedly for payment of advertising and promotion expenses incurred by EIE were received by Jason. In this instance, there were also two letters dated 15 August 2003 and 1 June 2004 (AB 130 and 133 respectively) signed by Jason and addressed to EIE stating that HS would pay EIE $18,000 at the beginning and at the end of 2004 respectively for advertising and promotional activities for the Helukabel brand in Malaysia. From HS's bank statements, Cynthia managed to trace the cheques for payment of each of these sums to be cash cheques of $18,000 each.

45 For the third sum of $18,000, Jason had again signed a letter dated 14 November 2006 to EIE stating that HS would pay $18,000 at the end of 2006 for EIE's advertising and promotional activities for the Helukabel brand in Malaysia. This letter was counter-signed by one C M Lee of EIE and a similar signature (of C M Lee) appeared as the recipient of the payment on a payment voucher PV 4211 (at AB 137). However, the payment was also made by a cash cheque and on this occasion, Cynthia did have some personal knowledge of the transaction. She said that Jason had instructed her to prepare the payment voucher and issue the cash cheque for the $18,000, telling her that he (Jason) was maintaining an emergency fund in case HS had insufficient cash to pay staff salaries.

46 Cynthia stressed that no invoice was received from EIE for this payment of $18,000 or the earlier two payments of $18,000 each. She also stressed that she did not see any evidence of any advertising or promotional material from EIE at all.

47 On the other hand, Jason insisted that all three sums were legitimate expenses for advertising and promotion in Malaysia even though he did not produce any such material.

48 In such circumstances, I am persuaded on a balance of probabilities that Jason had taken each of the three sums of $18,000 and they were not paid to EIE. He is to pay the total of $54,000 back to HS.

G. Unauthorised salary increase ($14,456) and advance ($18,000)

49 Jason's salary was $8,386 per month. He alleged that he had met Luksch on or about 17 April 2007 at a trade fair in Hanover, Germany and Luksch had agreed to increase his salary to $12,000 a month from April 2007. The difference was $3,614 a month and Jason had received the new salary for four months between April to July 2007, both months inclusive, making a total difference of $14,456.

50 Luksch denied he had agreed to any increase. In the pleadings, he said that any such increase had to be approved by the directors (presumably of HS) but in cross-examination, he said he meant it had to be approved by certain personnel in H GmbH which was not done.

51 Luksch said that he was surprised and annoyed to see Jason at the trade fair as he was unaware that Jason would be taking time to attend the fair. Luksch was busy with clients then. He recalled Jason mentioning that he wanted an increase in salary but Luksch said he did not agree. Neither did he agree to Jason taking an advance of $18,000 on his salary.

52 Jason's other point was that Luksch had told him that since he (Jason) was the managing director, he could decide on his own salary increase and advance.

53 There was no other evidence whether by letter, fax or email about the salary increase or advance although the advance was mentioned in a balance sheet item (AB 300) but Luksch was not cross-examined on this item. In any event, Jason accepted that he had to repay the $18,000 advance whether the advance had been earlier authorised by Luksch or not.

54 As for the increase in salary, notwithstanding some minor discrepancy in Luksch's evidence, as mentioned above at [50], I found him to be more credible than Jason. He was visibly annoyed when he described Jason's surprise presence at the trade fair and the fact that Jason had mentioned about a salary increase then.

55 I find that Luksch did not agree to any salary increase. Neither was Jason authorised to increase his own salary. So, Jason has to return $14,456 (in addition to the $18,000 advance). I digress to mention that at AB 142, there is a table of Jason's salary and bonus from April 2002 to July 2007. This table included a mid-year bonus in 2007 and employer's CPF contribution which would have increased the claim against Jason from $14,456 to $18,287. However, as the bonus and employer's CPF contributions for the relevant months were not pleaded or raised with Jason, HS's counsel did not pursue the difference and was content to recover $14,456 (and the $18,000 advance) under this heading.

H. Unauthorised payments to Jerome Ng

56 Jerome is Jason's son. There are two items claimed by HS under this heading.

57 The first item is an increase of Jerome's salary from $2,415 to $4,000 per month from 1 July 2006 to 31 July 2007. The increase is $1,585 x 13 months = $20,605. Including the employer's CPF contribution on the increase, the figure would be $22,796. The second item is a $5,000 bonus or commission paid to Jerome on or about 24 July 2007 which HS said Jerome was not entitled to.

58 Jason explained that the previous general manager Julie had left in mid 2006 (although [39] of Jason's AEIC appeared to have referred to the wrong date of mid-2007 as Julie's departure date). Julie's salary was $5,500 per month. However, instead of employing a replacement, Jason promoted Jerome (who had joined HS on 1 November 2004) to the post of assistant general manager at a monthly salary of $4,000 per month and monthly transport allowance of $800. Jerome's responsibility

as assistant general manager was sales and administration, management and operation. According to Jason, Jerome had taken on additional duties and responsibilities and he had saved HS money instead of employing a replacement for Julie. Jason had decided to assign Jerome additional responsibilities in view of his educational (degree) qualifications and his prior sales which was in excess of $3 million.

59 Luksch appeared unaware that Jerome had joined HS on 1 November 2004. Some time ago, he had asked Jason whether his son would be interested in working for HS and he was then told that Jerome was studying and was not interested in joining HS. Neither was Luksch aware of Jerome's promotion. He doubted that Jerome had taken over Julie's financial role as Jerome was lacking in such experience.

60 More significantly, Jason was vague as to what exactly Jerome did in addition to his duties before his promotion. Jerome himself did not give evidence and no one else gave evidence on Jerome's increased responsibilities.

61 In the circumstances, I am of the view that the increase in Jerome's salary (and CPF) is not justifiable. Jason had taken advantage of the situation to benefit his son at the expense of HS and Jason is to pay $22,796 to HS for this item.

62 As for the $5,000 bonus to Jerome, HS's main complaint was that Jerome was being paid a bonus when he was leaving to join IMI. On the other hand, Jason said that the bonus was because Jerome had met his sales target of over $1 million in 2007. Based on a commission of 1%, Jerome should have received $10,000 but as he left in July 2007, he was given a pro-rated bonus of $5,000.

63 There was nothing in Jerome's original letter of appointment dated 1 November 2004 which referred explicitly to details of commission or bonus although there was a general reference to sales turnover target and incentive. However, there were payment vouchers showing that Jerome had received bonuses of various amounts like $4,000 and $6,000 for 2006. A payment voucher dated 15 June 2007 showed that he had received a bonus of $4,000 for 2007. This was in addition to the $5,000 bonus that he received the next month in July 2007 when he was leaving HS.

64 Jason was not cross-examined as to how Jerome's sales and bonus were calculated. As I mentioned, HS's focus was on Jerome's departure for IMI but that was irrelevant. Either Jerome had earned the bonus or he had not. While Jason was not credible on many aspects, I am not able to conclude that the bonus of $5,000 to Jerome is a wrongful payment. Therefore, Jason is not liable to HS for this sum.

I. Employment of Mohamad Nasrulhaq Bin Mustafa ("Mohamad")

65 Jason had employed Mohamad for HS as an information technology co-ordinator from 20 November 2006 until Mohamad's last day with HS on 31 May 2007. Mohamad's pay during this period, including CPF and Skills Development Levy, was $10,096.26.

66 HS claimed Mohamad was in fact doing work for IMI and not HS which had sub-contracted and outsourced its need for information technology to a third party.

67 It was not disputed that HS had outsourced its need for such technology to a third party but Jason maintained that Mohamad was employed to support HS not IMI.

68 On the other hand, Cynthia said that as an accounts and administrative executive, she was aware of Mohamad's scope of work in HS. She maintained that he did not do any work for HS.

Instead, he was collating a product catalogue for IMI. This was obvious from the material on his desk and the use of a high resolution scanner and printer which HS had no need for. The product catalogue for IMI was not exhibited with Cynthia's AEIC but neither was she challenged to produce it. I find Cynthia to be a reliable witness and I accept her evidence. In the circumstances, Jason is liable to HS for $10,096.26 for deliberately putting Mohamad on HS's payroll when he was not doing work for HS.

J. Unauthorised travel expenses

69 HS was claiming from Jason $862 being the cost of a return airticket from Singapore to Wuhan for one Ms Tu Qing ("Tu Qing") between 14 June 2007 to 24 June 2007 and 4,500.90 Renminbi ("RMB") being expenses incurred by Jason and Tu Qing at Ramada Plaza Tian Lu Hotel at Wuhan between 21 and 24 June 2007 on the basis that Tu Qing was not an employee or business associate of HS and the hotel expenses were unconnected with the business of HS.

70 If indeed the hotel expenses were entirely unconnected with the business of HS, one wonders why HS was not also claiming for the cost of Jason's return air ticket from Singapore to Wuhan but that is another matter.

71 The main focus of this claim was on Tu Qing.

72 In [14] of his defence and [60] of his AEIC, Jason said that Tu Qing was a customer and/or business associate of HS without identifying which company or organisation she was working for or the position she held. Furthermore, Jason's counsel could only ask during cross-examination of Teh if it was possible that Tu Qing was an employee of one of the customers in HS's customer summary list from AB 175 to 182. I found such a question telling as surely Jason would have known whether Tu Qing was an employee of any of the customers in that list and if so, his counsel would have immediately pointed out the name of the relevant customer and identified Tu Qing's designation. It was only after I stressed that parties should not be playing games that Jason's counsel then suggested the next day that Tu Qing was a business associate of HS because she was working for Wuhan Iron and Steel Corporation ("WISCO") and WISCO was a customer of one of the Karin companies. HS had sold cables to a Karin company and Karin in turn sold cables to WISCO. HS had to provide technical assistance to WISCO as the end-user. This "revelation" was quite surprising as the impression that Jason had been giving before was that Tu Qing was an employee of a direct customer or business associate of HS. That was reinforced by the question which his counsel asked of Teh the day before.

73 It was also submitted that HS had not paid for the airfare and hotel expenses claimed as there was no evidence of payment by HS but that was not the crux of Jason's defence. His defence suggested that he had accepted that HS had paid for the same but that the expenses were legitimate.

74 It is clear to me that Tu Qing was not a customer or business associate of HS. She was a female companion of Jason and he had no business charging her airfare to HS. As for the hotel expenses, HS did not bother to obtain an English translation thereof. The bill showed one item specifically against Tu Qing's name for 1,940.90 RMB.

75 In the circumstances, Jason is liable to pay HS $862 and 1,940.90 RMB. Using an exchange rate of, say, 100 RMB = $22, 1,940.90 RMB is about $427.

K Traffic fine paid by HS

76 This is no longer in issue as Jason has reimbursed HS for payment of a traffic fine.

L Failure by Jason to devote time to work of HS

77 This was a general allegation based on the earlier allegations against Jason. The general allegation was made to support the right to dismiss Jason. No claim for damages was made against Jason under this heading.

Counterclaim by Jason

78 Jason is entitled to be paid $5,032.26 being pro-rata payment for his 13 days of service in August 2007 until he was dismissed on that day.

79 I dismiss his counterclaim for three months' pay in lieu of notice as I found that HS was justified in dismissing him.

Summary

80 In summary, Jason is to pay HS the following:

A.	Involvement with IMI	(no monetary claim by HS)
B.	Transactions not at arm's length (i) Sale of cables to IMI at discounted prices (see [15] to [17]). (ii) Sale to and buy back of cables to a Karin entity – 50,000 euros (see [18] to [23].	 $ 59,697.54 $105,000.00
C.	Purchase and payment of stock for IMI.	(no monetary claim by HS)
D.	Diversion of business inquiries to others.	(no monetary claim by HS)
E.	Monies had and received (i) Cheque from Tam (see [29] to [30]). (ii) Money handed by Julie to Jason in the presence of Cynthia (see [31] to [33]). (iii) Alleged money received from Union Steel (see [37]). (iv) Alleged money received from Wee Tiong Wah (see [38]).	 $ 15,906.98 $ 38,190.00 (Dismissed) (Dismissed)

F.	Unauthorised or fictitious claims (i) Travel allowance (see [40]). (ii) Scrap fund (see [42]). (iii) Purported payments for advertising and promotion (see [44] to [48]).	 (Dismissed) (Dismissed) $ 54,000.00
G.	Unauthorised salary increase and advance (i) Salary (see [49] to [55]). (ii) Advancement (see [55]).	 $ 14,456.00 $ 18,000.00
H.	Unauthorised payments to Jerome Ng (i) Increase in salary etc (see [57] to [61]). (ii) Bonus of $5,000 (see [62] to [64]).	 $ 22,796.00 (Dismissed)
I.	Employment of Mohamad (see [65] to [68]).	$ 10,096.26
J.	Unauthorised travel expenses (i) Tu Qing (see [69]). (ii) Expense in hotel for Tu Qing – 1,940.90 RMB, say, $427.00	 $ 862.00 $ 427.00
K.	Traffic fine	(Settled)
L.	Failure to devote time to HS' work	(no monetary claim by HS)
	Total :	**$339,431.78**

81 In the circumstances, I grant judgment in favour of HS against Jason for $339,431.78 with interest thereon at the rate of 5.33% per annum from the date of the Writ to full payment.

82 As for Jason's counterclaim, I grant judgment in his favour against HS for $5,032.26 with interest thereon at the rate of 5.33% per annum from the date of the Writ to full payment.

83 Jason is to set-off whatever HS is to pay to Jason against what Jason is to pay to HS and Jason is to pay the balance to HS (with interest at the rate and period stated above).

84 I will hear parties on costs.

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