Satinder Singh Garcha v Uthayasurian Sidambaram and Another [2009] SGHC 240

Case Number : Suit 307/2008

Decision Date : 23 October 2009

Tribunal/Court : High Court

Coram : Quentin Loh JC

Counsel Name(s) : Andre Maniam and Richway Ponnampalam (WongPartnership LLP) for the plaintiff; N Sreenivasan and Heng Wangxing (Straits Law Practice LLC) for the first defendant; Sim Yong Chan (Sim Yong Chan & Co) for the second defendant

Parties : Satinder Singh Garcha — Uthayasurian Sidambaram; Frank Kuhn Swi Hwa

Tort

23 October 2009 Judgment reserved.

Quentin Loh JC:

1 The Plaintiff is claiming the sum of $950,000, damages to be assessed, interest and costs against the 1st Defendant ("Surian"), his solicitor, for professional negligence and conspiracy to defraud.

2 The Plaintiff also laid a complaint against Surian to the Law Society of Singapore on 25 September 2006 for alleged breaches of professional conduct under the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act"). An Inquiry Committee found that a formal investigation ought to be initiated. A Disciplinary Committee was duly convened and 4 charges and 2 alternative charges were preferred against Surian pursuant to sections 83(2)(b) and 83(2)(h) of the Act. The Disciplinary Committee found Surian guilty on all charges and Surian was asked to show cause why he should not be dealt with under sections 83(2)(b) and 83(2)(h) of the Act. In a judgment dated 13 August 2009, a Court of Three Judges suspended Surian from practice for a period of one year, see *Law Society of Singapore v Uthayasurian Sidambaram* [2009] SGHC 184. As this action was still pending, the Court specifically emphasised at [87] that its findings in the show cause action "...should *not* be regarded as binding or determinative of issues that will be contested in the civil suit."

3 At the commencement of the hearing in this action, the Plaintiff applied for leave to discontinue his action against the 2nd Defendant, Frank Kuhn ("FK"). The Plaintiff and FK had reached an agreement for the Plaintiff to withdraw his claim against FK with no order as to costs and no claims against each other.[note: 1] Mr Sreenivasan, counsel for Surian, had no objections. I allowed the application and granted leave for the Plaintiff to withdraw his claim against FK with no order as to costs. Mr Sreenivasan then sought clarification whether the Plaintiff was still proceeding on his cause of action in conspiracy. After seeking instructions, Mr Maniam, counsel for the Plaintiff, confirmed that the Plaintiff was still maintaining his cause of action in conspiracy against Surian but clarified that the Plaintiff was withdrawing any allegation of conspiracy against FK.[note: 2]

4 This case arose from an apparent business venture, involving a property of over 117,000 square feet known as No. 7 Tanglin Hill, Singapore ("the Property"), which was owned by the Royal Government of Brunei ("RGB"). It appeared that the Property was initially on the market for an outright sale but this was withdrawn and turned into a project for a "joint development" by building a number of bungalows on this plot of land ("the Project").

5 The words "apparent" and "appeared" are used above because only two persons gave evidence in this action, the Plaintiff and Surian. Other important participants in this venture, like Louis Ang ("Ang"), Pengiran Haji Mohammad Yusuf bin Haji Abdul Rahim ("PSN"), a former Pengiran Setiawan Negara of the RGB, his son, Pengiran Atamaya Yusuf ("Atamaya"), FK, Chin Bay Ching ("Chin"), Lim Peng Lee and Lim Beng Huat ("Ang's driver") were not called to give evidence. The background and the full details of the "deal" surrounding the Property (if indeed there was one), remain murky and there are questions to which the answers may never be known.

The Plaintiff's Case

6 The Plaintiff had set up a software company in the USA and sold it for a very large sum of money in or around 2000. He came to Singapore in 2001 and got involved in developing high end real estate in Singapore, *viz*, good class bungalows, from late 2005 or early 2006. He describes himself as a private investor, a high net worth individual who develops real estate, invests in companies and does a lot of private equity all over the world[note: 3].

7 Sometime in February 2006, property agent Kelvin Tan ("Kelvin"), who had previously secured bungalows in good areas for the Plaintiff, informed him that the Property was available for sale. On or around the 24 February 2006, the Plaintiff made an offer for the property through Kelvin Tan and as requested, submitted his *curriculum vitae* at the same time (the Plaintiff denies that the signature on the letter was his[note: 4] but nothing turns on this as the fact that the Plaintiff made an offer through Kelvin is not disputed).

8 In or around March 2006, Kelvin introduced FK (the 2nd Defendant), to the Plaintiff. At this meeting FK discussed the sale of the Property, confirmed the Plaintiff's offer was still being considered and showed the Plaintiff properties owned by the Brunei royal family in the UK for recreational polo activities.

9 Surian's firm acknowledged the Plaintiff's offer on 23 March 2006, stating that they acted for Langston Key Investment Ltd ("Langston"), and that the Plaintiff's offer had been forwarded to the owner. On or around 10 April 2006, whilst the Plaintiff was in Spain, FK called to inform him that Surian's firm had rejected the offer as the owner was no longer considering an outright sale, however the owner was considering a joint development of the Property instead. To the Plaintiff this ended the matter as he was not interested in joint development.

10 On or about 13 May 2006, whilst the Plaintiff was at the Singapore General Hospital, FK called him and insisted on meeting him there. FK showed him a copy of a pre-contract agreement for the joint development of the Property, a power of attorney stating that Ang was the attorney for all matters concerning PSN and a photograph of Ang and PSN together. FK told the Plaintiff that PSN was the second most powerful man in Brunei after the Sultan and Ang was PSN's right hand man and his representative for all his property deals in Singapore. The deal for the joint development of the Property was to be brokered by PSN and that for all intents and purposes, PSN was the representative of the RGB. FK explained that the deal had "been done" with Chin but the RGB had found him "undesirable" as he had outstanding tax issues with the Singapore authorities. Hence, they needed a reliable replacement for Chin. All the Plaintiff had to do was to put in S$300,000 into the Project to replace Chin and buy him out of the Project. The Plaintiff said he was not interested and was certainly not going to put in any money before entering into any contract.

11 On 15 May 2006, FK asked to meet as he wanted to introduce Ang to the Plaintiff. They met at an architect's office at Keong Siak Road. FK arrived first and impressed upon the Plaintiff Ang's

importance and clout as the right hand man of PSN, who was in turn effectively a representative of the RGB. But FK did not tell the Plaintiff that Ang was an undischarged bankrupt. Ang arrived and spoke about the large number of properties owned by RGB and said there were a lot of investment opportunities with the RGB. Ang informed the Plaintiff that his profile fitted the kind of person RGB was looking for to enter into joint development deals with. He had been selected from about 15 to 20 others. But there was a tight timeline by which the deal had to be signed as PSN was scheduled to visit in the third week of May 2006; all details had to be tied up by then. The Plaintiff would have to pump in the money to build 6 good class bungalows, each would be sold for between S$12 to S$15 million and the proceeds would be split 60:40 in RGB's favour. The Plaintiff told FK and Ang that he was still not convinced and said he was not interested.

12 On or around 16 May 2006, the Plaintiff again met up, at FK's request, with FK and Ang at the Ritz Carlton. FK and Ang again attempted to convince the Plaintiff to enter into the Project. At this meeting the Plaintiff expressed his reservations about dealing with a foreign government and the difficulty of recourse against a foreign government in the event of a dispute. To this, Ang told the Plaintiff that the lawyer representing PSN/RGB would handle the documentation and provide for such issues. Ang also promised to introduce the Plaintiff to Surian so that Surian could reassure the Plaintiff on the legal aspects relating to the deal.

13 Between the 17 and 18 May 2006, the Plaintiff met with Atamaya on a couple of occasions and Atamaya confirmed everything that Ang had told the Plaintiff.

14 On 19 May 2006, whilst Ang was at the Plaintiff's house, Ang asked Surian to come over. Surian did so a couple of hours later. This was the first time the Plaintiff and Surian met each other. Surian explained the process to the Plaintiff as follows: (i) the Plaintiff would pay S$300,000 to remove Chin from the Project; (ii) the contract was a straight forward joint development agreement providing for a 60:40 split in profits, in favour of RGB; (iii) the Plaintiff would probably not need to find buyers for the bungalows as the RGB would probably buy them; (iv) alternatively, the parties could each take several bungalows, with Surian explaining that the corporate entity buying the bungalows had to be 100% owned by a Singaporean; (v) Surian proposed that the Plaintiff incorporate a company, with the Plaintiff as sole shareholder and to put the investment as paid up capital; (vi) Surian would insert a "sovereign clause" which would allow the Plaintiff to sue RGB in the event of a dispute; and (vii) Surian could arrange for a RGB representative from the RGB Embassy to sign administrative documents, such as the applications to URA for approvals (Surian said he had carried this out before in relation to other deals with RGB). The Plaintiff asked that (viii) the RGB execute a power of attorney in his favour so that the Plaintiff could sign documents and deal with the Property but Surian said RGB would never agree to this, and added that (ix) he had dealt with and acted for PSN and Ang before in relation to other deals, (x) PSN and Ang were credible and reliable parties and that Ang was PSN's local representative in relation to the Project at hand and (xi) assured the Plaintiff that RGB had been in negotiations with respect to the Property for several months and was keen to enter into the joint development venture.

15 The Plaintiff was told he had to put in about S$20 million for the joint development and an additional S$300,000 to S$400,000 for expenses. Of these sums, S$300,000 was to be paid to Chin to remove him from the Project. At the end of the meeting, the Plaintiff maintained he was still not interested but that he would confirm his answer that afternoon and then left for Kuala Lumpur. The Plaintiff says because he met and spoke with Surian, he was beginning to be swayed into entering the Project.

16 The Plaintiff says he would never have entered into the deal if Surian had told him that Ang was an undischarged bankrupt.

17 Whilst in Malaysia, Ang asked the Plaintiff whether he would be interested to meet PSN as PSN was due to arrive in Singapore on 25 May 2006. The Plaintiff agreed.

18 Upon his return from Kuala Lumpur, the Plaintiff met Ang and Surian on 22 May 2009 at the Marina Mandarin Hotel. Ang and Surian again attempted to address his concerns. Ang also told the Plaintiff there was no need for him to inject S$20 million as Ang had found Jurong Primewide Pte Ltd ("JP"), part of the JTC group, to bear the development cost and risk. The Plaintiff therefore need only invest S$1 million. From this sum, S$300,000 would be paid to Chin to buy out his interest. In response to the Plaintiff's query, Surian validated Ang's representations as true and asserted that he had nothing to worry about as he was dealing with a government with deep pockets. The Plaintiff's initial fears being allayed by these strong representations from Surian, he agreed to enter into the deal.

19 On 23 May 2006, the Plaintiff went to Surian's office with Ang and handed Surian two cheques of S$500,000 each and appointed Surian to act for him. The Plaintiff asked Surian whether there was any conflict of interest in acting for him as he was also acting for PSN, Atamaya, RGB, Ang and FK. Surian assured the Plaintiff that, since he (Surian) was already involved in the Project, it would be less complicated for him (Surian) to act for the Plaintiff, as opposed to finding a solicitor who was new to the Project. Not once did Surian mention any actual or potential conflict of interest in acting for the Plaintiff and all the other parties to the deal. There was also no discussion of fees. The Plaintiff told Surian he wanted control of the money and Surian told the Plaintiff that the S$1 million would be deposited with his firm and put into the Plaintiff's company as paid-up capital. It was also agreed that S$300,000 would be paid to Chin and a further small amount for minor disbursements, especially minor travel expenses in relation to PGN and Atamaya.

20 On 24 May 2006, Ang met the Plaintiff at his house and they discussed the mechanics of payment to Chin and the minor expenses, especially for PSN and Atamaya's coming trip to Singapore. Ang then suggested that the Plaintiff call Surian for advice on how to arrange for these payments to be made since the Plaintiff often travelled overseas. Surian advised the Plaintiff to execute a simple letter of authorisation as a temporary measure for Ang to handle these disbursements and Surian dictated a letter of authorisation which read:

> Surian, I authorise Louis Ang to disburse funds as he deems fit on my behalf.

The Plaintiff wrote it down on a piece of paper and faxed it to Surian. The first fax was not received by Surian and the Plaintiff re-faxed it to Surian.

21 Later in the day, Ang sent an SMS to the Plaintiff:

> I am currently discharging Chin at 300k n Langston at 250k at moment. Rest can wait till tmrw. Pls advise acceptance on your part.

The Plaintiff was taken aback as he had no prior notice of payment to Langston in prior discussions with Surian and Ang over disbursements to be made from the S$1 million. Nonetheless, the Plaintiff replied:

> Noted.

The Plaintiff called and queried Ang who vaguely replied that the payments were for some minor expenses that had been incurred and was "nuisance money" to keep Lim Peng Lee, the managing director of Langston, from disrupting the Project.

22 The Plaintiff did not know that Langston was a British Virgin Island company whose majority shareholder was Ang, an undischarged bankrupt. The Plaintiff did not know that further payments were made from the S$1 million deposited with Surian's firm. Another S$300,000 was paid to Ang's "driver" and Surian generated a bill for S$100,000 and made payment to his firm.

23 From 23 to 24 May 2006, the Plaintiff met with Ang, Surian and various other parties like the managing director of JP, one Bakhri and a representative from Bestway Pte Ltd ("BPL"), which was another potential party who would be responsible for the construction and costs of the bungalows on the Property. From 24 to 29 May 2006, first Atamaya and then PSN came to Singapore. The Plaintiff met them and Surian a number of times, mostly at the lobby of the Marina Mandarin Hotel where PSN was staying. During these meetings, Surian again emphasized the credibility and reliability of PSN, Atamaya, RGB, FK and Ang. Surian also represented on several occasions that he had dealt with these parties before. No mention was made during this period of the disbursements from the Plaintiff's S$1 million with Surian's firm.

24 On 29 May 2006, the Plaintiff met with Surian, PSN and Atamaya at the Marina Mandarin Hotel. The Plaintiff expected to sign papers formally documenting the Project but all that was signed were incorporation documents for a company with the Plaintiff as sole shareholder and PSN, Atamaya and the Plaintiff as directors.

25 Immediately after PSN and Atamaya's visit, the Plaintiff received several threatening and incoherent text messages and telephone calls from FK complaining that certain payments had not been made to him. FK was very unhappy with Ang. During this period, Ang also made a strange suggestion to the Plaintiff to send over his money to Brunei for "safekeeping". The Plaintiff consulted Surian and when Surian also concurred with these suggestions the Plaintiff began to suspect Surian's earnestness and honesty. With no formal contract yet signed with RGB, FK's communications and this odd suggestion, the Plaintiff's suspicions over the whole Project and the *bona fides* of the parties involved grew.

26 On 1 June 2006, the Plaintiff went to Surian's office and was shocked to find only S$50,000 was left of his S$1 million deposit. Upon questioning he found out that in addition to the S$300,000 paid to Chin's solicitors, S$250,000 had been paid to buy out Langston, S$300,000 had been paid to Ang's "driver" and S$100,000 had been paid to Surian's firm.

27 Later on that day, he arranged to meet Lim Peng Lee of Langston and Lim Peng Lee stated that neither he nor Langston had received any money from Ang, Ang's driver or anyone else. Lim Peng Lee also informed the Plaintiff that Surian also acted for Langston.

28 The Plaintiff then retained WongPartnership LLP. Searches were made and the Plaintiff found out for the first time that Ang was an undischarged bankrupt. The Plaintiff and his lawyers met Ang at Surian's office on 2 June 2006 to confront Ang. Ang quickly suggested they rescind the whole deal and the S$1 million would be returned. The S$1 million was never returned to the Plaintiff. Surian returned the S$100,000 he had paid out of his Client's Account for his fees to the Plaintiff. The Plaintiff lodged a complaint with the Commercial Affairs Department.

29 WongPartnership LLP wrote to the High Commission of Brunei Darussalam to confirm the respective parties' involvement with the RGB. The High Commission replied on 4 October 2006 stating that the parties referred to in WongPartnership LLP's letter had neither been appointed nor recognised as the official representatives of RGB in any transactions of the Property.

The 1st Defendant's Case

30 Surian denies he was part of a conspiracy to defraud the Plaintiff. There was no agreement or common intention to injure the Plaintiff. Surian, FK and Ang were operating separately in their own individual roles in the Project and in the main, dealt with the Plaintiff separately, for example, Surian never met the Plaintiff together with FK. FK took a back seat in the later stages and was not involved in the disbursement of the S$1 million deposited with Surian.

31 As for the alleged acts of professional negligence, Surian very properly accepted that a Court of 3 Judges has found that he was in breach of the professional conduct rules in placing himself in a position of conflict of interest with respect to his multiple clients in the same matter. He was not going to contend otherwise in these civil proceedings.

32 As for the breach of professional duty to his client, Surian points out that the Plaintiff was a seasoned businessman and was probably better acquainted with the risks of entering into any deal than Surian. Being the experienced businessman that he was, the Plaintiff had met others like FK, Ang and Atamaya on his own, even before he met and then retained Surian. He was well placed to form his own judgment on the persons involved and the deal before him. Further it was not within the scope of the retainer to advise on such commercial risks. Surian claims the Plaintiff knew Ang was an undischarged bankrupt and being the experienced businessman that he was, coupled with this knowledge, the Plaintiff well knew the risks of giving unfettered authority to Ang to disburse the Plaintiff's S$1 million. Surian denies that he dictated the words set out in [20] above for the Plaintiff to fax back to him. Surian says Ang told him on 24 May 2006 that the Plaintiff had faxed him certain instructions. He checked and found no facsimile from the Plaintiff. Surian then sent an SMS to the Plaintiff and asked him to re-send his facsimile. Surian later received the handwritten note referred to at [20]. He denied dictating the wording of this instruction to the Plaintiff and he denied at any time persuading the Plaintiff to give such authority to Ang.

33 Surian first met the Plaintiff on the morning of 19 May 2006, when Ang asked Surian to come over to the Plaintiff's house.[note: 5] The meeting was short, only some 10 or 15 minutes where Surian explained what he knew of the joint development in a quick factual summary and certainly not any sales pitch. The Plaintiff said he was not keen as he did not like the terms of the joint development. Surian said the choice was his and he never persuaded the Plaintiff or made any representations to induce him to enter into the deal. As far as he was concerned, Surian left the 19 May 2006 meeting with the Plaintiff's decision that he was not interested in the deal.

34 On the afternoon of 22 May 2006 Ang informed Surian that the Plaintiff had agreed to the joint development proposal on the condition that there were no competing interests and that a company had to be set up with PSN and Atamaya for the joint development. Ang told Surian that the Plaintiff would be paying S$1 million as earnest money to buy out the interest of Chin and Lim Peng Lee, that Ang and the Plaintiff would meet at Surian's office the next day, the Plaintiff would be retaining Surian to act for him and that the Plaintiff had agreed to pay Surian S$100,000 in relation to his fees for work done thus far. Atamaya and PSN had no objections to the company being formed and Atamaya would be in Singapore on 25 May 2006 and PSN on 27 May 2006. Surian called Atamaya and confirmed his arrival on 25 May 2006, confirmed the arrangements and that after the incorporation of the company, his father, PSN would be able to obtain the mandate and the Project would start in a couple of months.

35 In the afternoon of 23 May 2006, the Plaintiff and Ang came to Surian's office. The Plaintiff confirmed Surian was to incorporate a company with PSN, Atamaya and the Plaintiff as directors, he would be discharging all existing liabilities and he would be taking the Project clean. He gave Surian two cheques totalling S$1 million. Surian then asked Ang about his long overdue legal fees in front of

the Plaintiff, and the Plaintiff said he could deduct this from the monies he was depositing. Ang indicated the figure of S$100,000 for the legal fees and the Plaintiff agreed. The Plaintiff then signed the warrant to act. It was at this meeting that Ang joked about his being a bankrupt, in the presence of the Plaintiff, as otherwise the cheques could be made out in his favour. Surian came up with the company name, "Tanglin Hill Development Pte Ltd" and suggested that the Plaintiff be the sole shareholder since he was the one coming out with the funds and that PSN and Atamaya would be directors without shares. The Plaintiff agreed.

36 Surian felt at that time – wrongly, he now admits – that there was no conflict of interest, but instead a confluence of interest as all the parties were setting up a company to jointly develop the Property. Surian also admits that he did not at any time inform or tell the Plaintiff that Ang was an undischarged bankrupt and he did not do so because the Plaintiff knew that fact. Surian also added that Ang often joked, and made no secret about it, that he was a property developer who was made a bankrupt.

37 On 24 May 2006, Ang came to Surian's office with Ang's driver and personal friend and who had previously met Lim Peng Lee, Chin, FK and Atamaya. Surian was not sure at that time whether Ang's driver had met the Plaintiff. Ang then authorised Surian in writing to pay S$300,000 to Chin's lawyers, Messrs Derrick Wong & Partners. Ang also authorised Surian, in writing, to pay S$250,000 to Ang's driver by an uncrossed cheque and obtained his signature to the payment voucher. This second payment was to discharge Lim Peng Lee and Langston's interest in the deal. Ang said Lim Peng Lee was not in Singapore and had duly authorised Ang to collect this payment. Surian telephoned Lim Peng Lee who confirmed this. Ang told Surian that he had informed the Plaintiff of this disbursement. Hence Surian did not check with the Plaintiff since he had the written instruction sent earlier in the day.

38 Atamaya came to Surian's office on 25 May 2006 with Ang and Ang's driver. Atamaya told Surian that his father, PSN, was happy that Ang had managed to secure a suitable candidate for the joint development and that PSN was arriving in Singapore on Saturday morning, 27 May 2006. Surian then asked Ang, in Atamaya's presence about his outstanding fees and both Atamaya and Ang confirmed he could deduct his fees of S$100,000 from the Plaintiff's deposit with his firm. Surian obtained Ang's written instructions to do so. Again Surian felt he did not need to check with the Plaintiff because the Plaintiff had agreed to this at the 23 May 2006 meeting at his office and also because of his written authority with full discretion to Ang to disburse the funds.

39 PSN arrived in Singapore on 27 May 2006. The Plaintiff met PSN together with Atamaya; Ang and Surian joined them halfway through the meeting. The Plaintiff invited PSN for lunch at his home the next day. After PSN retired to his room, Surian asked the Plaintiff whether he had discussed the joint development project with PSN and the Plaintiff confirmed that he had. FK was not present at this meeting. The Plaintiff also invited Surian to his house for lunch the next day. Atamaya then started to discuss 48 Nassim Road, (another RGB property), with the Plaintiff. Surian was later instructed to prepare a draft agreement in relation to this property. Atamaya also showed the Plaintiff a folder consisting of all the properties owned by the Brunei Investment Agency. Ang was there throughout the meeting, no one queried Surian on the disbursements and Ang and the Plaintiff were laughing and joking with each other. At the lunch the next day, Sunday, 28 May 2006, other parties connected to the Project were there, the managing directors of JP and BPL and an architect, Wong Chiu Man. The Plaintiff invited PSN to be the chairman of the company to be incorporated. PSN accepted.

40 On 29 May 2006, Surian prepared all the incorporation papers and met PSN, Atamaya and Ang at the Marina Mandarin Hotel. The papers were duly signed. Atamaya said that PSN had an audience

with the Sultan on 3 June 2006 and PSN was confident of getting the mandate for the Project.

41 On 1 June 2006, the Plaintiff went to Surian's office and asked how much of the S$1 million was left. The Plaintiff did not raise any queries save for the second S$300,000 payment to Ang's driver. Surian said he did not know what it was for, that it was Ang who specifically authorised it and told Surian that the Plaintiff was aware of the purpose. The Plaintiff did not say anything to Surian other than that he would check with Ang and cancelled the written authority given to Ang on 24 May 2006.

42 On 2 June 2006, Ang informed Surian that the Plaintiff wanted a meeting at his office. As Surian had a hearing, the Plaintiff and Ang met first. Surian joined them later and it appeared that the meeting between the Plaintiff and Ang had been completed. Surian noticed that the Plaintiff had brought his own solicitors. They adjourned to Surian's meeting room and Ang told Surian that the Plaintiff was pulling out of the Project, that the Plaintiff would be paid his money back and a new partner found for the Project. Surian was confused and asked the Plaintiff what had transpired. The Plaintiff said that he had received aggressive emails from FK and he did not like being threatened, hence he wanted out from the Project. The Plaintiff told Surian he was discharging him as his solicitor and had appointed WongPartnership LLP to act for him. Surian met Atamaya who was still in Singapore. Atamaya was surprised and called PSN to inform him of the development and not secure the mandate as the Plaintiff had pulled out of the Project.

Findings of Fact

43 I preface these findings of fact first, by pointing out that I have to do the best I can given that only two witnesses, the Plaintiff and Surian, were called to give evidence. None of the other persons who played a significant part in this deal gave evidence, not even FK.

44 Secondly, I have some assistance from the Agreed Bundles and the documents in the 1st Defendant's Bundle for Cross-examination ("1 DBD"), which counsel agreed I could treat on the same basis as the agreed bundles. They were "agreed" in that formal proof was not required but the contents were not necessarily agreed. However an agreed bundle of this nature also means that the weight to be given to the contents of any document within the bundle, even if they are not touched upon in cross-examination or the opening or closing submissions, is entirely a matter for the court. A court must however exercise some caution in giving weight to such evidence because counsel, who must know the evidence best, did not think it relevant enough to refer to it in cross-examination or submissions and it remains untested. In the circumstances of this case, without any of the significant and key players as witnesses, some of these documents do shed light on what happened at the relevant time.

45 Having heard the parties and considered the evidence placed before me, I make the following findings of fact.

46 I find that the Plaintiff is an experienced businessman. He is also extremely intelligent, very sharp and very quick. This was very clear from the way he handled Mr Sreenivasan's questions, which were often at a fast pace and unrelenting. He was very decisive in his answers, he hardly ever paused to think before answering and he readily conceded, equally quickly, where he had made a mistake in his affidavit evidence or his recollection of events. In arriving at this view, I have taken into account the fact that he has faced Mr Sreenivasan's questions in an earlier round before the Disciplinary Committee hearing.

47 Surian, with respect, is nowhere as sharp or quick as the Plaintiff. Whilst I do not accept some parts of his evidence, on the whole I find that he is not cunning or devious nor particularly quick. He

was misled by the lure of large fees for a large "deal" and was gravely remiss in how he viewed his professional duties and obligations to his clients with diverse interests.

48 I also find that he had put himself into a hopeless situation of conflict in acting for so many counter parties in a deal of this nature where clearly the interests of each party required independent legal advice. I find that he acted for PSN, Atamaya, Chin and Langston Key Investments Pte Ltd ("LKIPL"), Lim Peng Lee and Langston, Ang and of course, the Plaintiff.

Did the Plaintiff know Ang was an undischarged bankrupt?

49 The first important issue of fact is whether the Plaintiff knew Ang was an undischarged bankrupt. I find that he did know. Besides observing the Plaintiff and Surian under cross-examination on this issue, my other reasons for this finding follow.

50 As both counsel agreed, the Plaintiff says he did not know and Surian says that he did, and it boils down to who I believe. Both maintained their versions before me. Surian's candid evidence is that he never told the Plaintiff at any time that Ang was an undischarged bankrupt. Like the Court of 3 Judges, I find this lapse inexplicable. I also find it astonishing because Surian's defence is that the Plaintiff knew because Ang was very open about his being a bankrupt. His defence and evidence amounted to this: because Ang was so open about his being a bankrupt, and joked about it in company, therefore the Plaintiff must have known this fact. Surian also claimed that on 23 May 2006, when the Plaintiff came to deposit his S$1 million, Ang openly joked, in the Plaintiff's presence, that if he was not a bankrupt the Plaintiff could give the money to him to disburse. Other than this incident, Surian does not claim hearing Ang say he was a bankrupt in the Plaintiff's presence and the Plaintiff hearing it. Having heard him under cross-examination on this point, he did appear to waver a little:

(i) Prior to the meeting at his office on 23 May 2006, Surian never raised with the Plaintiff that Ang was an undischarged bankrupt, he said: "Never did your Honour. There was no reason to."[note: 6]

(ii) Surian admits that if Ang did not say anything about his being a bankrupt, Surian would not have raised it: "I do not see a reason to. He was the agent, and there was no reason for me to talk about [Ang's] bankruptcy at that point in time"; [note: 7]

(iii) Leaving aside his AEIC, in an unguarded moment during cross-examination, Surian goes from saying Ang did joke about his bankrupt status in front of the Plaintiff to a slightly more tentative answer: "Your Honour, [Ang] was talking in a normal tone, and we were just sitting across the table. ***I presume*** *that he heard what he said*";[note: 8]

(iv) He admitted he did not at any time advise the Plaintiff the implications of Ang being a bankrupt: "...because he never ask me."[note: 9]

However, I take Surian's answer in sub-paragraph (iii) as an honest answer. He was not paying particular attention to whether the Plaintiff heard that joke. On balance, I would believe Surian's version over the Plaintiff's.

51 If Surian did not tell the Plaintiff that Ang was an undischarged bankrupt then is it likely that anyone else, *ie*, FK, PSN, Atamaya or even Ang himself, did? I bear in mind the great efforts made by FK and Ang to persuade the Plaintiff to go into the Project in a short period of time. Although the Property was first brought to the Plaintiff's attention around February or March 2006, it was a

different deal – an outright sale. From around early May 2006, it was Kelvin and FK talking to the Plaintiff. It was only on 15 May 2006 that the Plaintiff was introduced to Ang. On 19 May 2006 the Plaintiff met Surian. The monies were deposited on 23 May 2006 and disbursed by 24 and 26 May 2006. Given this tight timeline, would FK, Ang, Atamaya or PSN mention this fact? If they did know of it, and did not want to tell the Plaintiff this fact in case it dissuaded him from entering into the Project, then there would be an active and co-ordinated concealment on all their parts. But would they all really risk hiding this fact because a simple check would have revealed Ang's status as a bankrupt and if it arose this way, the Plaintiff would definitely have stayed out of the deal. Further, the Plaintiff met with these individuals separately, not always as one group. I therefore think FK, Ang, Atamaya and PSN would not have effected a pre-meditated and concerted suppression of such a fact. In any case, this is not the Plaintiff's pleaded case. In a strange way this would, in some oblique manner, explain why Surian never thought it was an issue for him to specifically bring up to the Plaintiff. On balance, I accept Surian's evidence that Ang was very open about his bankruptcy and I find that he did mention it in the various meetings with the relevant parties, including the Plaintiff.

52 The Plaintiff, on the other hand, was someone who was willing to shape his evidence, in not insignificant areas, to suit his case. He was willing to say to the CAD on 28 June 2006, *ie*, within a month of his 2 June 2006 meeting with Surian and changing solicitors to WongPartnership LLP, that it was Ang and FK who kept persuading him to enter into the deal. He was willing, in order to make his case against Surian stronger before me, to state that Surian kept persuading him to enter into the Project and kept giving him assurances through several meetings between 11 to 23 May 2006 only to have to retract it under cross-examination. I will touch on these later. However there is at least one, if not two, pieces of objective evidence that I find telling:

(a) There is an Attendance Note made by WongPartnership LLP,[note: 10] of the meeting at Surian's office on 2 June 2006 with the Plaintiff and Surian. The note shows no protest or indignation at concealing Ang's status as an undischarged bankrupt. If the Plaintiff had just discovered this 'alarming' fact by his new solicitor's search, and would have sought advice on it, I would have expected some accusations to be made, whether to Ang directly or to Surian. Yet the minutes show no such protest or indignation. On the contrary, the Plaintiff's new solicitor talks about resuscitating the deal, not once, but twice: "Why don't you do that Satinder? And start the deal afresh?" and later on: "…No need to write off the deal. We can just start again from Step 1, *ie*, the 1 million."[note: 11]

(b) Also when the Plaintiff met Lim Peng Lee on the afternoon of 1 June 2006, he never once said or even obliquely referred to Ang being a bankrupt, let alone his not knowing this fact.

I therefore find, on balance, that the Plaintiff knew Ang was an undischarged bankrupt. I find that Ang was open about this fact and in the many meetings the Plaintiff had with Ang, especially in the company of others, Ang would have mentioned this fact and being the sharp, intelligent and experienced businessman that he is, the Plaintiff would have picked this up, but for the reasons set out below, that did not stop him entering into this Project.

The 24 May 2006 letter of authority to disburse funds

53 This leads to the second important issue of fact: did Surian dictate the letter of authority on 24 May 2006 which gave Ang absolute authority "...to disburse funds as he deems fit ..." or did the Plaintiff write it out himself and/or at the instigation of Ang? This was strongly disputed with each party adamantly adhering to his version. The Plaintiff says that Ang discussed the problem of

disbursing the funds with the Plaintiff travelling so often. The Plaintiff then telephoned Surian for advice and Surian dictated the simple letter of authority to the Plaintiff. The Plaintiff wrote it down and faxed it to Surian. The fax did not get through at first but on the second attempt it did. Surian on the other hand says Ang telephoned him on 24 May 2006 and told him that the Plaintiff had faxed certain instructions to Surian. Surian checked but there was no such fax and he sent an SMS to the Plaintiff asking him to resend the instructions. Surian therefore maintains he did not advise the Plaintiff to give the authority to Ang nor did he dictate the terms of such authority.

54 At first blush, the use of the words "...as he deems fit..." points to legal phraseology used by lawyers when granting absolute authority and discretion. However given the Plaintiff's background, business acumen and experience, such a phrase that would not have been alien to him. There is also a telling contemporaneous piece of evidence which points to Surian's version being the true version. The terms of the SMS Surian sent the Plaintiff does not suggest at all that he was asking for something that he had just dictated to the Plaintiff:

> I understand from Louis that u have sent a fax 2 me with instructions. I have not received the same. Pls resend. Surian

I therefore find that this handwritten letter of authority[note: 12] was initiated and drafted by the Plaintiff or the Plaintiff and Ang but not by Surian. This was another instance where the Plaintiff was willing to tailor his version of events to suit his purpose. This is not that kind of fact which one can forget.

55 Surian claims he called the Plaintiff after he received the faxed letter of authority to confirm the same and Surian says the Plaintiff did so. But Surian admits he did not advise the Plaintiff on the dangers and consequences of letting an undischarged bankrupt disburse funds.[note: 13] I doubt very much whether Surian called the Plaintiff upon receiving the fax. Otherwise it makes it all the more inexplicable and astonishing why he did not say anything about giving an undischarged bankrupt such untrammelled authority. Surian was clearly in breach of his professional duty to the Plaintiff in not advising him of the consequences of giving such absolute authority to disburse monies to an undischarged bankrupt, (see the Court of 3 Judges, [2009] SGHC184 at [58] on the consequences of dealing with an undischarged bankrupt). This would be so even if the Plaintiff knew that Ang was an undischarged bankrupt because a client may know someone is an undischarged bankrupt but may not know the full consequences, like the fact that there is no recourse against a bankrupt if he misappropriated the money. Whether the client then heeds the advice is another thing. If the client chooses nonetheless to go ahead, then the lawyer is absolved from liability for untoward consequences flowing from ignoring that advice.

If the Plaintiff knew Ang was an undischarged bankrupt, would he still have participated in the Project?

56 The Plaintiff claims that if he knew Ang was an undisharged bankrupt he would *not* have entered into the venture at all. He points to his initial reluctance, right up to 19 May 2006. Having considered all the evidence, I find that the Plaintiff would still have entered into the venture, with the same structure as contemplated by the Plaintiff on 23 May 2006 for the reasons set out below, and the Plaintiff would still have given Ang the same absolute discretion to disburse the funds as Ang deemed fit.

57 This is prime property, introduced to the Plaintiff by Kelvin. Kelvin had successfully brought other good class bungalows to the Plaintiff in the past (see the DC proceedings, which refers to four

plots at Swettenham Road, which apparently belonged to the Royal Cambodian Government, and two plots at Nassim Road[note: 14]). It was Kelvin who introduced FK to the Plaintiff and it was FK who was also instrumental in persuading the Plaintiff to enter into this venture. It is clear that the Plaintiff was initially not interested in a joint development but what made him change his mind after that 19 May 2006 morning meeting at his house?

58 I find that there were two main factors. First, the mechanics of the deal changed when the Plaintiff was no longer required to put up S$20 million to fund the construction of the bungalows (see the Plaintiff's SMS: "However, I must admit it came as a surprise that an exit would only occur after spending approx 20 million equity. This makes the economics of the deal unworkable for me."). [note: 15] He was now only required to put in S$1 million as earnest or seed money to meet some 'expenses'. Commercially, the returns were very high. Secondly, and more importantly, it was an enticing opportunity to be introduced and enter into a business deal with one of the richest rulers in the world, the Sultan of Brunei, the Royal Family and RGB. He hoped to build a long-term relationship with such an illustrious, wealthy and famous ruler.

59 I find that the Plaintiff was very keen to develop a relationship with the Brunei Royal Family and RGB. There are snippets of evidence supporting this finding in the documents. For example, there is an email, dated 24 March 2006, sent by FK to Lim Peng Lee.[note: 16] It refers to Surian's letter dated 23 March 2006 to the Plaintiff[note: 17] (see also FK's email, also of 23 March 2006, asking for a reply to the Plaintiff's letter of offer dated 24 February 2006[note: 18]), stating that the Plaintiff's offer to purchase the Property had been forwarded "to the owners" that the owners will revert by early April 2006 and that Surian's clients thanked the Plaintiff for the offer and hoped to revert to him as soon as possible. FK reports to Lim Peng Lee that the letter was handed to the Plaintiff and the Plaintiff "...was rather pleased that there is this 'acknowledgement' … the thought was more important than the 'contents' of the letter." FK also enthusiastically referred to the portfolio of polo properties owned by RGB and that the Plaintiff, a recognised polo player, had in fact played at one of the properties and said that it was wrongly spelt; (there is also an email dated 24 March 2006, from Lim Peng Lee to FK,[note: 19] where Lim Peng Lee refers to PSN as his superior, his son, Atamaya and to FK having himself met Atamaya. The emails that follow in the first volume of the Agreed Bundle show FK and Lim Peng Lee also referring to other properties owned by RGB).

60 By 14 April 2006, Lim Peng Lee/Langston, Chin/LKIPL and FK were working on the joint development plan. RGB would provide the land (the Property), and Chin/LKIPL would subdivide the land, construct 6 to 7 good class bungalows that could be sold from S$10.5 to S$13 million for each bungalow. The profits would then be split between RGB and the parties participating in the Project. An earnest fee would be paid to Langston. Later Langston requested for a joint contribution of S$25,000 each for an Expense budget.[note: 20] From the documents in the two Agreed Bundles, the first time Ang's name appears is in an email of 20 April 2006,[note: 21] which was sent by FK to Chin and copied to Lim Peng Lee, Surian and Ang. It will be noted that Ang did not meet the Plaintiff until 15 May 2006.

61 The recitation of the above facts show that there were fairly intense negotiations going on between the parties, in which the Plaintiff was not involved until 15 May 2006. FK was very involved in these negotiations and it was FK who brought the deal to the Plaintiff when RGB apparently found Chin to be an unsuitable 'partner' for the joint development. Yet the Plaintiff ultimately choose to drop FK from this action, specifically withdrew any allegations of conspiracy to defraud against FK, and choose not to call FK to give evidence – a stark departure from his initial actions of alleging that FK was part of the conspiracy to defraud him, and making a report to the CAD of this fact. The emails

also show that Surian was involved in the legal aspects of the "deal" but not the commercial aspects which were negotiated between FK, Lim Peng Lee and Chin. Ang was the person in the background and was copied in on many emails after 20 April 2006.

62 It is not disputed that the Plaintiff first met Ang at the architect's office at Keong Siak Road on 15 May 2006. Two days before that, FK had shown the Plaintiff the pre-contract agreement, the power of attorney to Ang and the photograph of Ang and PSN. Nor was it really disputed that FK turned up first, emphasized Ang's importance as the representative and holder of a power of attorney from PSN, before Ang arrived. Thereafter FK and Ang were the ones who did the 'selling' of the Project to the Plaintiff, not Surian.

63 It is also not disputed that the first time the Plaintiff met Surian was at the Plaintiff's house on 19 May 2006. The Plaintiff conceded that he made a mistake in his affidavit evidence in saying that this first meeting with Surian took place on 11 May 2006. I accept Surian's evidence that the meeting was fairly short, it was certainly not a couple of hours as the Plaintiff alleged, as the evidence just did not fit his timing,[note: 22] and I also accept Surian's evidence that he did not do any "hard selling" of the Project or give any sales pitch. This is corroborated by the Plaintiff's own acknowledgement, in an SMS that was sent after this first meeting:

> First, I appreciate yourself and Surian coming over this morning **and being candid in your discussions**.
>
> [emphasis added]

Before me, the Plaintiff admitted more than once in cross-examination that Surian gave a balanced presentation on 19 May 2006 and that "[h]e wasn't pushing the deal".[note: 23] The Plaintiff again departed from his pleaded case and his AEIC on this important issue.

64 Yet in the short time between 19 May 2006 (when the Plaintiff said he was not interested in the deal) and 23 May 2006 (when the Plaintiff went to Surian's office to deposit the S$1 million), the Plaintiff changed his mind. It will be remembered that the Plaintiff flew up to Kuala Lumpur after the meeting with Ang and Surian on 19 May 2006, a Friday. He did not return until Sunday evening, 21 May 2006.

65 On Sunday evening, 21 May 2006, at 11.37 pm, (just 2 days before the Plaintiff deposited his S$1 million with Surian), FK sent the Plaintiff an email with a 4-page attachment.[note: 24] It outlines the deal which had changed from the pre-contract agreement previously shown to the Plaintiff. There was no longer a S$20 million investment by the Plaintiff. There is instead a S$300,000 earnest money payment and S$700,000 advance which will be repaid with interest. There is a credible company, JP, part of the JTC group, which will come up with the construction cost and bear the cost until payment is due from RGB. FK tells the Plaintiff in his email: "*Its both a Political and yet Commercial Deal. Hope you get the gist of it*."[note: 25] It goes on to state that Hong Leong plans to build 8 good class bungalows on an adjacent site and they intend to sell them for no less than S$15 million each. FK enthuses: "*You just tag along with them. You have a guaranteed buyer!!!!!!!!!*"[note: 26] "*The Chairman is PSN….your protector and guardian…..applies to RGB also*."[note: 27] It is therefore important to note that there was now only a payment of S$1 million required, that the potential for profits was very large and that someone else was going to bear the construction cost and was content to wait for payment. It was also clear there was no signed agreement yet and it all hinged on PSN delivering the "mandate" from RGB to go ahead with the venture. The bonus was a "political" deal

with RGB and the ruler of Brunei. By this time, the Plaintiff had met Atamaya and could make his own commercial assessment.

66 There are a number of SMSes, saved by the Plaintiff himself from his PDA or similar device and printed out in the Agreed Bundle.

(a) Ang sends an SMS to the Plaintiff. It appears to be after hosting a dinner for Atamaya (but before the first meeting with Surian on 19 May 2006): "*My explanation is just a simple one. Its t[he] different ways of doing biz arising fm different cultures. If u r not in complete comfort zone*, ***lets give this project a pass***..." (emphasis added).[note: 28] The important point to note is that the Plaintiff is given a clear opportunity to pass on the Project. But he did not. From the evidence, it was certainly not because Surian was persuading him to participate in the Project.

(b) There is an SMS from the Plaintiff to Ang: "*Even if this doesn't work out, I'm glad I spent time with Atamaya and yourself*. ***Maybe we can do something together in the future***. *Rgds...*" and to Ang's SMS query whether he would like to meet PSN who was coming: "***I'd be delighted to meet PSN based on everything you've told me. Also am interested in nassim***. *I'm back sun night"* (emphasis added).[note: 29] This appears to have been sent after the meeting with Surian on 19 May 2006 but sometime before 21 May 2006. It also shows the Plaintiff was interested in other properties of RGB, *viz*, 48 Nassim Road and there are references to this particular property in quite a number of the documents in the Agreed Bundles.

(c) Ang sends the following SMS to the Plaintiff: "*Congratulations to yr move today. U may not realize it but just* ***about to embark on a formal partnership with PSN leading to a bigger partner Brunei Govt***. *For t record u r actually t first individual I had penned such a drastic move at this level. Now we can proceed to put t plans to work. I start execution tmrw to clear t w y for PS arrival Fri. Tmrw we meet Jurong for u to register initial interest n get their in principle in writing."* and a few lines later, from the Plaintiff to Ang: "**Looking forward to a long lasting relationship...**" (emphasis added).[note: 30] From the contents, the last two text messages were probably sent on the day the Plaintiff deposited his S$1 million with Surian.

(d) An SMS from Ang to the Plaintiff, sent sometime around or after 24 May 2006, when Atamaya arrived for his Singapore visit, ahead of his father PSN: "*Maya came with superb news updates. Looks like sunny skies ahead n lets implement carefully."* and a few lines after that: "*Pls block 14 to 16th of July to travel to Brunei*. ***It will be formal Mr. & Mrs ie u n ur wife at t main palace on His Majesty event***." The Plaintiff replied: "*Noted"* (emphasis added).[note: 31]

(e) Another SMS from Ang to the Plaintiff, probably during PSN's visit, and before they arrive for dinner at the Plaintiff's house: "*I have super good news n being briefed by PSN now. We shld be leaving in a few mins*." and a few lines down: "*U will simply love whats happening. Cheers."* [note: 32]

67 There are also some interesting passages in a taped conversation between the Plaintiff and Lim Peng Lee which took place on 1 June 2006.[note: 33] These passages refer to spending seed money as a calculated risk; sometimes its yields nothing but sometimes it brings back good returns (there is a particular reference to a multi-billion-dollar payout for a $600,000 investment in seed money[note: 34]) and a graphic reference to sending out a fishing boat, it costs about $1 million to do so, sometimes it comes back with $3 million, sometimes if there are no fish, its only brings back $200,000 and other times there is no fish and the vessel has broken down, so one has to get used to it, (2.AB.277-

278).[note: 35] There is a reference to expenses of flying Bruneians in and out, putting them up in hotels for 3 to 4 days at a time, and Mr Lim Peng Lee says: "*...It will drive you nuts, right? … But by the time, six months down, that is right, you will find that you have a few hundred thousand dollars out of the pocket. You have not seen the thing yet, right. But they will cut –*" and the Plaintiff says: "***No at least you built a relationship with PS[N]? … or Brunei and maybe the Crown Prince or somebody***" (emphasis added).[note: 36] Whilst the Plaintiff was probably leading Lim Peng Lee on in the hope of getting something on tape, the parties also discuss other matters, *viz*., a "Beijing" deal which is unconnected with the Project. This transcript gives an idea of the type of deal the Plaintiff was getting into. However, I have not put undue weight on the taped conversation as very little reference was made to it during cross-examination except on one point.

68 A search showed that the Property was indeed owned by the RGB. The Plaintiff was also eyeing another RGB property, 48 Nassim Road. The Plaintiff had spent a lot of time, independent of Surian, with FK and Ang. FK had shown the Plaintiff, independent of Surian, the pre-contract agreement, the power of attorney in favour of Ang and the photograph of Ang and PSN on 13 May 2006. As noted, the Plaintiff had met Atamaya and later PSN himself; he could form his own commercial judgment of them and on the deal they were bringing to the table. He had hosted them to meals at his house. He could and did make his own checks on the internet. PSN was a former Prime Minister of Brunei. It is not disputed that the Plaintiff had met Lim Peng Lee at the Hilton Hotel, before their meeting on 1 June 2006. The potential return was very large and the construction risk was borne by a reputable third party. I therefore do not accept the Plaintiff's claim that he would not have entered into the deal if he had known Ang was an undischarged bankrupt. Ang was just a representative of PSN and Atamaya. The Plaintiff did not only deal with Ang, he dealt just as much with FK, which he now drops from the action and withdraws any allegations of conspiracy to defraud him. The key person to any such deal was still PSN and his son Atamaya.

69 I have already made reference to the Attendance Note made by WongPartnership LLP of the meeting on 2 June 2006.[note: 37] The 'discovery' that Ang was a bankrupt had just been made through WongPartnership LLP's searches. Yet the minutes show no protest or indignation. On the contrary, the Plaintiff's new solicitors talked about resuscitating the deal. If the Plaintiff was truly outraged at this concealment, he would have discussed the same with WongPartnership LLP. If so, it seems very strange that at a meeting the next day WongPartnership LLP can say: "No need to write off the deal. We can just start again from Step 1, i.e., the 1 million".[note: 38] This shows that first, the Plaintiff knew Ang was an undischarged bankrupt and secondly, that fact did not alter the complexion of the deal. If Ang's bankruptcy was indeed such a deal breaker, I would have expected this to have been raised with Surian on 2 June 2006. To date the Plaintiff has taken no action against Chin or Lim Peng Lee to recover the monies paid to them. Instead the Plaintiff sued Surian and FK and then dropped FK from the action and concentrated his efforts against Surian.

70 Considering all the evidence, I make the following important findings of fact. The Plaintiff:

(i) was, on his own evidence before the Disciplinary Committee, a private investor, a high net worth individual who developed real estate, invested in companies and did a lot of private equity all over the world;[note: 39]

(ii) had previous experience with Singapore lawyers – WongPartnership LLP acted for him in his previous real estate ventures – and/or foreign lawyers in his private equity and investments in companies around the world;

(iii) from using the services of one of the largest firms in Singapore with undoubted expertise in multiple areas of the law, especially in commercial law, chose to retain, again with no disrespect, Surian's very modest firm:

(a) the Plaintiff admits he was "a bit surprised that the Brunei government didn't use a big or well known firm";[note: 40] and

(b) he also agreed that he could have asked WongPartnership LLP, if he wanted to check anything, but he did not;[note: 41]

(iv) decided to participate in the Project because just as he had sized up the other players in the Project, he had the measure of Surian, Surian's experience and ability and decided he could make use of him, including the knowledge that if anything went wrong, there was a fall back, *ie*, professional indemnity;

(v) knew this was anything but a standard transaction; a more appropriate description might be "shady" because:

(a) he knew he brought no 'value add' to the Project, other than providing the funds for various 'disbursements';

(b) he was not putting up any money for the design and construction and taking the construction risk, someone else was doing so; and

(c) the RGB was certainly not the kind of entity that needed someone to put in S$1 million into a project that was expected to yield about S$70 million in gross sales and give that person 40% of the profits, if such a transaction was above board; the RGB was far more likely to enter into an agreement direct with a company like JTC and share profits with them for the work that they would do in design and construction of the good class bungalows; and

(d) to a loaded question: "Do you think it was sensitive because facilitation fees or under-table money was being paid to Atamaya?" like Oscar Wilde, he gave a telling answer: "No. They told me ***it was sensitive for another reason***."[note: 42]

There is no doubt in my mind that the Plaintiff was so keen to get close to someone like PSN that he threw caution to the winds, take a chance with his S$1 million (which was not by any means an enormous sum to him[note: 43]), and as a final fall back, he had Surian's professional indemnity. I therefore find that on the totality of evidence that the Plaintiff would still have entered into this contract despite Ang being an undischarged bankrupt. This golden opportunity to get close to PSN and get to know the RGB and the Royal Family, the possibility of future business opportunities with such an illustrious and incredibly wealthy entity, not just in Singapore but around the world, was simply too good to pass up.

Did the Plaintiff and Surian Meet on Monday 22 May 2006 when Surian Persuaded the Plaintiff to Participate in the Project?

71 Were there a number of meetings on Monday, 22 May 2006, after the Plaintiff returned on Sunday evening, 21 May 2006 from Kuala Lumpur, where Surian persuaded the Plaintiff to enter into the venture?

72 The Plaintiff stated there were a number of meetings over a number of days before the Plaintiff turned up at Surian's office to deposit his S$1 million on 23 May 2006. However, since the Plaintiff conceded that the first time he met Surian was on 19 May 2006 (and not 11 May 2006 as he claimed in his AEIC), then these alleged number of meetings had to be compressed into one day, 22 May 2006 (20 and 21 May being the weekend). The Plaintiff then claimed these meetings were held at the Marina Mandarin Hotel lobby. Surian came in and out of the meetings the Plaintiff was having there with Ang and FK as Surian had other meetings or matters that he had to attend to, hence his reference to multiple meetings.[note: 44] I find that to be more than just a gloss on facts to try and fit the contents of the mistaken affidavit into a new time frame. I therefore accept Surian's evidence that he did not meet with the Plaintiff on Monday 22 May 2006. I also accept the evidence of Surian and reject the evidence of the Plaintiff on Surian's role in persuading him to enter into the Project and find that Surian did not persuade the Plaintiff to enter into the venture or otherwise through any "sales talk" prior to the Plaintiff calling at Surian's office to deposit his cheques. All the encouragement or even enticement came from FK and Ang. This is again another telling change of evidence by the Plaintiff and departure from his pleaded case and his AEIC.

The Deal the Plaintiff Entered Into

73 I also find on the evidence that the 'deal' the Plaintiff knew he was getting into was as follows.

(a) Originally, the whole basis for the joint development deal was for PSN to obtain the mandate or In-principle Approval letter from RGB. RGB would then enter into a joint development agreement ("JDA"), with Langston/Lim Peng Lee. Langston/Lim Peng Lee had entered into a pre-contract agreement with Chin/LKIPL for the development, subject to a condition precedent of obtaining the mandate from RGB. Both parties would jointly negotiate the JDA with RGB and once that was signed, Chin/LKIPL would pay S$700,000 to Langston as an advance for Langston's fixed and agreed fee or share of Langston's profits. Chin/LKIPL would fund all the costs and expenses of the development of the property until successful completion. The profits would then be shared between RGB, LKIPL and Langston (special management fee) in the proportion 60:35:5. Chin paid S$300,000 even though there was no In-principle Approval letter from RGB and obviously, no JDA. This S$300,000 was later paid to Atamaya in exchange for a guarantee of repayment in the event the mandate did not materialise. There would also be other fees for agents like FK and Kelvin.

(b) Chin was then found to be an unsuitable 'joint developer' and had to be replaced. This is where the Plaintiff came in.

(c) By Monday, 22 May 2006, the deal had changed. This was the deal the Plaintiff knew he was getting into. There was to be a JDA with RGB and a Singapore company set up and wholly owned by the Plaintiff; the original development parties, Chin/LKIPL were to be bought out with Chin being repaid the S$300,000 he had paid Atamaya; Langston/Lim Peng Lee also had to be bought out, but the sum to do so is not clear; the Plaintiff had to put in S$1 million as earnest monies to pay Chin/LKIPL and Lim Peng Lee/Langston and to fund expenses like travel and accommodation; either JP or BPL would come in to design and bear the construction cost of the bungalows and were prepared to wait for payment.

74 At this stage, the Plaintiff knew there was no pow.er of attorney possible from RGB, nor could he register any caveat or charge against the Property. The Plaintiff accepted the idea that this deal had been in the oven for quite a few months, that the time window to put it into effect was short, that it required a change of joint development partner, that the earlier parties had to be bought out and replaced, and that PSN was to get the mandate from RGB upon returning to Brunei after his visit to Singapore from 25 to 29 May 2006. My findings, especially at [70] above should be repeated here. I find that the Plaintiff, on his own assessment, fully expected PSN to deliver on the mandate. The contract between the Plaintiff's company, and the constructor of the bungalows, be it JP or BPL, was to be entered into later. The Plaintiff also expected to fund the expenses of PSN and Atamaya's trips down to Singapore and for some visits to Brunei.

75 I find that the Plaintiff was expecting to pay off Lim Peng Lee/Langston because after the Plaintiff had deposited his S$1 million with Surian, and after the Plaintiff had faxed over his Letter of Authority granting Ang the discretion to disburse the S$1 million as he deemed fit, Ang sent an SMS to the Plaintiff on 24 May 2006:

> I am currently discharging Chin at 300k and ***Langston at 250k*** at moment. ***Rest can wait till tmrw***. Pls advise acceptance on yr part. [emphasis added]

The Plaintiff replied:

> Noted…

The Plaintiff never protested as to why an "additional S$250,000" was being paid. The Plaintiff's evidence in court was that he was not happy. He said his reply, "Noted," did not mean approval of the payment. I find that difficult to accept. The Plaintiff was quite capable of saying, in no uncertain terms, "no" or "do not pay out" if he had wanted to. The word "noted" itself is telling. It certainly does not mean: "I am not giving my approval" as the Plaintiff would have us believe. It is more than just acknowledging receipt of a message; it means the Plaintiff has made a note of that fact. The phrase: "Rest can wait till tmrw" is also not without its significance, *ie*, there were more payments to be made. To that the Plaintiff also did not protest or ask what those payments were for (see [70(v)] above).

76 There is also other evidence corroborating the fact that the Plaintiff was willing to buy out Lim Peng Lee/Langston. This is found in the transcript of the recording he made when he met Lim Peng Lee on 1 June 2006. The Plaintiff, in speaking to Lim Peng Lee said:[note: 45]

> So one thing – it is my concern that I enter into this deal. … If I am into Tanglin and go further, I do not want you or Chin to come to me and say, "Hey, I did not get paid or where is my money or something, you know."

Again, further down in the transcript:[note: 46]

> [Plaintiff]: No, no, but my question is this to you.
>
> Mr. Lim: Yes.
>
> [Plaintiff]: That is why I asked you before. You spend some money, ang pow, whatever, pay or the Brunei guys, even I am putting them up in hotel or anything, But I hope you do not have any claim against them later, "Oh I have spend 50,000. Please give me 50,000 back." It is not the money. It is just I wanted it – you know.

77 Finally under cross-examination, two matters arose in connection with this issue. First, the Plaintiff tried to claim, belatedly, that he did not even know why Chin had to be paid S$300,000 but he did not ask Surian why.[note: 47] This I find quite unconvincing and inconsistent with the evidence – right from the start he was told Chin had to be paid S$300,000 to get him out of the Project and for the Plaintiff to take it over. The Plaintiff was forced to admit a number of times that he knew right from the start that Chin had to be bought out and he accepted that. In his earlier meeting with FK, the Plaintiff says he found it odd that he had to pay Chin when it was so much simpler to just return Chin his money. I find that the Plaintiff must have raised this with FK or Ang. I therefore find the Plaintiff knew the S$300,000 had already been paid over to Atamaya, so Chin was out-of-pocket and had to be reimbursed. Secondly, and more importantly, both Mr Sreenivasan and Mr Maniam were quizzed by me during oral submissions over the evidence which showed the Plaintiff did not make any fuss about paying off Lim Peng Lee/Langston. The answer that emerged was that they were part of the original deal and no one wanted "fish bones". I understood this to mean that no one wanted the Project to be underway only to suddenly find Lim Peng Lee kicking up a fuss about having put in money and not being reimbursed. This would embarrass the principals as they would not want to be involved in an apparent scandal. Getting fish bones lodged in one's throat can be a very uncomfortable and inconvenient experience, as both Mr Sreenivasan[note: 48] and Mr Maniam[note: 49] acknowledged.

78 I therefore find that the Plaintiff also knew he had and was prepared to pay off Lim Peng Lee/Langston as well. Chin/LKIPL and Lim Peng Lee/Langston were the first two parties identified to go ahead with the joint development. Exactly what that sum was in Lim Peng Lee/Langston's case, S$200,000 or S$250,000, the Plaintiff did not exactly know but he knew he had to buy out Lim Peng Lee/Langston's interest. He wanted the Project "clean" from any earlier claims to an interest therein. Any attempt by him to claim otherwise now is an afterthought.

S$100,000 taken in payment of Surian's bill

79 It is not disputed that Surian rendered a bill which on its face recites work done from September 2005 to 23 May 2006. It also states that the work was done for Langston/Lim Peng Lee, Ang, PSN and Atamaya. The Plaintiff is not named as a client on the bill. Surian claims he raised the payment of his fees with Ang and Atamaya several times in the past. He was told to wait until the investor came into the Project. Before the Plaintiff came onto the Project, Surian had already done

considerable work on the Project. Surian also claimed that on 23 May 2006 when the Plaintiff came to deposit the S$1 million, he asked whether he could render his bill. Surian says the Plaintiff agreed. It is also not denied that upon Ang's authorisation on 25 May 2006, in the presence of Atamaya, Surian drew up his bill, sent it off to the Plaintiff and in breach of rules 7 and 8 of the Legal Profession (Solicitors' Accounts) Rules and the Law Society Council's Circular dated 1 March 1991 (which required a solicitor to allow a lapse of 2 working days after giving notice of his bill before transferring any money from the client's account in payment of the bill), immediately issued a cheque from his client's account and banked it into his firm's account on the same day in settlement of this bill.

80 I do not accept Surian's evidence that the Plaintiff agreed on 23 May 2006 that he could render the bill nor do I accept his evidence that the Plaintiff agreed he could make payment from the S$1 million deposit. Surian has therefore rendered a bill which recited work done before the Plaintiff entered into the Project, the bill did not name the Plaintiff as a client for whom the work was done (in fact it named others) and if the Plaintiff were to challenge the bill, I find that Surian will be very hard put to justify the same. In the circumstances, I was not surprised to find that Surian returned the S$100,000 to the Plaintiff. That speaks for itself.

Application of the Law

Conspiracy to Defraud

81 On his pleaded case, having dropped FK from the action and withdrawing any allegation of conspiracy against him, the Plaintiff was left with Ang and Surian as the parties to the conspiracy. The Plaintiff has not pleaded a conspiracy to injure. The Plaintiff has pleaded a conspiracy to defraud him and consequently he must meet the standard of proof required in *Derry v Peek* (1889) LR 14 AC 337 at 374 *per* Lord Herschell (with whom Lord Halsbury LC agreed), which was adopted in *Panatron Pte Ltd v Lee Chew Lee* [2001] 3 SLR 405:

> ...there must be *proof of fraud, and nothing short of that will suffice*. … fraud is proved when it is shewn that a false representation has been made, (1) knowingly, or (2) without belief in its truth or (3) recklessly, careless whether it be true or false.
>
> [emphasis added]

It is also clear that the standard of proof for an allegation of fraud is higher than the ordinary standard in civil cases: see *Samwoh Resources Pte Ltd v Lee Ah Poh* [2003] SGHC 69 at [14] *per* Tan Lee Meng J. There is much to be said for the common law formulation in civil proceedings: in proportion as the allegation or offence is grave, so ought the proof be clear.

82 Having considered the evidence and making the findings of fact that I do, there is just no evidence at all to support an action for conspiracy to defraud. The Plaintiff has not even come near satisfying this high burden of proof required. My findings above negative Surian making many of the alleged representations[note: 50] to the Plaintiff in furtherance of a conspiracy to defraud him. What evidence there is suggests that many of those representations were made by others, like FK and Ang. Ang is not a party to this action and the claim against FK has been withdrawn. Not having heard their evidence it will not be right to make any findings against them. The Plaintiff has failed to make out his case of conspiracy to defraud Surian.

Professional Negligence

83 Not all breaches of professional duties or ethical standards set out under the Legal Profession

Act give rise to civil liability. An advocate is in breach of his duty to the Court if he fails to bring an appellate court's notice to an updated medical report issued after trial (albeit from other proceedings) which will reduce his client's damages, but such a breach will hardly ever result in a professional negligence claim (see *eg Vernon v Bosley (No 2)* [1997] 1 All ER 614). However this is a clear case where Surian's breaches of professional duties and ethical standards also resulted in his breaching the duty of care he owed to his client. Surian, through Mr Sreenivasan, admitted that he failed to advise the Plaintiff that he was in a position of conflict as he also acted for PSN, Atamaya, Langston/Lim Peng Lee and Ang in the Project, he also failed to inform the Plaintiff that Ang was an undischarged bankrupt (his only excuse that the Plaintiff knew this fact has been rejected), and he failed to advise the Plaintiff on the risks of issuing the 24 May 2006 letter of authority allowing Ang to disburse the funds as he deemed fit. Surian also admits he did not personally inform the Plaintiff of the disbursements each time he made a payment. His excuse was that he was authorised to take Ang's instructions. This excuse is of no avail because upon receiving the 24 May 2006 letter of authority, it was Surian's duty to advise the Plaintiff of the risks and consequences of such an authority, and *a fortiori* since it was given to an undischarged bankrupt.

84 When a lawyer lands himself into a position of conflict by acting for multiple clients, his breaches of the professional and ethical rules in relation thereto will inevitably result in breaches of the duty of care he owes to his client. There is little to be gainsaid by repeating [34]–[38] and [43] of the judgment of the Court of 3 Judges in *Law Society of Singapore v Uthayasurian Sidambaram* (*supra* [2]). The breaches set out there would also be instances of breach of professional duty to a client.

85 More than that, whilst a solicitor's duty to make checks on his client, A, may not be unduly onerous and centres mainly on identity, authority to act and to comply with regulatory requirements like anti-money laundering practice directions, it takes on a new complexion when he also acts for B, a counterparty. The solicitor's duty to make checks on A when acting for B and *vice versa* becomes far more onerous and exacting. It may even get to a point where he has to discharge himself from acting for both because A has told him something in the course of his taking instructions which B would need to know as it would be disadvantageous to B. But the solicitor cannot do so without breaching the confidence of A, and if he does not do so he would not be acting in the best interests of B.

86 This is where Surian fell between not 2 but 5 stools. Surian claims he checked up on PSN on the internet. He ascertained he was indeed a former Prime or Chief Minister of Brunei. He had a photocopy of his passport. He said Ang showed him a power of attorney from PSN, but he never checked or read through it carefully or kept a copy. Whilst there might have been no need for Surian to check on whether PSN had the authority from RGB to deal with the Property whilst acting for PSN or Atamaya, once he acted for the Plaintiff, it was incumbent on Surian in acting for the Plaintiff to ascertain if PSN did in fact have that authority. Surian prepared a draft letter to the RGB to check on this fact,[note: 51] but it was never sent. Surian owed a duty to advise the Plaintiff that he should check on the authority of PSN and Atamaya as the representatives of RGB.

87 Further breaches of his professional duty to the Plaintiff can also be found at paragraphs 46 to 51 in the judgment of the Court of 3 Judges in *Law Society of Singapore v Uthayasurian Sidambaram* (*supra* [2]). These very same breaches of professional conduct and ethical standards also give rise to civil liability in professional negligence.

88 The breaches of professional duty were so clearly established that Mr Sreenivasan candidly accepted them and concentrated his efforts on issues of causation and contributory negligence. I therefore find and hold there is overwhelming evidence of multiple breaches of the professional duty

owed by Surian to the Plaintiff.

Scope of a lawyer's retainer – Commercial Advice

89 Mr Sreenivasan contended that a lawyer's retainer, in a case like this, does not extend to giving advice on the commercial aspects of the deal and much of the complaints of the Plaintiff relate to commercial aspects of the deal. This must start with the question: What was the solicitor retained to do? The answer to this question is necessarily fact sensitive. It must either be something that is expressed in the retainer or because of the circumstances of the case is implied as a matter of law.

90 There is a well known passage of Oliver J (as he then was) in *Midland Bank Trust Co Ltd v Hett, Stubbs & Kemp* [1979] Ch 384 at 402:

> Now no doubt the duties owed by a solicitor to his client are high, in the sense that he holds himself out as practising a highly skilled and exacting profession, but I think that the court must beware of imposing upon solicitors – or upon professional men in other spheres – duties which go beyond the scope of what they are requested and undertake to do. It may be that a particularly meticulous and conscientious practitioner would, in his client's general interests, take it upon himself to pursue a line of inquiry beyond the strict limits comprehended by his instructions. But that is not the test. The test is what the reasonably competent practitioner would do having regard to the standards normally adopted in his profession, and cases such as *Duchess of Argyll v. Beuselinck* [1972] 2 Lloyd's Rep. 172; *Griffiths v. Evans* [1953] 1 WLR 1424 and *Hall v. Meyrick* [1957] 2 QB 455 demonstrate that the duty is directly related to the confines of the retainer.

91 In *Pickersgill v Riley* [2004] PNLR 31, R owned M Ltd and guaranteed it's liabilities under a 28-year lease. When R wanted to sell M Ltd, he was unsuccessful in persuading the landlord to release him from the guarantee. R then sold his shares in M Ltd to W Ltd for £125,000 and obtained a counter indemnity from W Ltd indemnifying him if he became liable under his guarantee to the landlord. P acted for R in the sale of his shares to W. At the time of the sale both P and R thought W was a company of substance but neither carried out any checks on W's financial status. A few years later, M Ltd became insolvent and R had to pay the landlord £56,152 under his guarantee. R looked to W but found that W had always been a shell company with no assets. R then sued P for negligence. At the time of the sale, R admitted that P had told him that getting an indemnity from a corporation meant that if the corporation ever became insolvent, then R would become a creditor and suffer like anyone else. P had also said that if the corporation divested itself of its assets, given the long lease, then it could avoid paying on the guarantee. R succeeded at first instance and before the court of appeal in Jersey. They held that P had a duty either to investigate W Ltd or to advise R the risk he would be running if that were not done. The Privy Council reversed their decision and held that P had discharged his duty in advising R about the risk of taking a guarantee from a corporation and P's duty did not extend to advising on the commercial wisdom of obtaining the indemnity from W Ltd or advising R to investigate the financial substance of W Ltd. R could not extend P's role from that of his solicitor acting on his instructions to that of his commercial adviser or to that of his insurer against his commercial misjudgment.

92 Lord Scott, in delivering the judgment of the Privy Council stated that the scope of a lawyer's duty to his client will depend upon the content of the instructions given and also on the particular circumstances of the case. It is a duty that is not helpful to describe in the abstract and it may vary depending on the characteristics of the client. A youthful client, unversed in business affairs, might need explanation and advice from his solicitor before entering into a commercial transaction that would be pointless or even impertinent if given to an experienced businessman. The Privy Council

quoted with approval from *Jackson and Powell on Professional Negligence*, 5th ed (2002) as correctly stating the position:

> In the ordinary way a solicitor is not obliged to travel outside his instructions and make investigations which are not expressly or impliedly requested by the client.

The Privy Council also quoted, with approval, from *Clark Boyce v Mouat* [1994] AC 428 at 437 per Lord Jauncey of Tullichettle:

> When a client in full command of his faculties and apparently aware of what he is doing seeks the assistance of a solicitor in the carrying out of a particular transaction, that solicitor is under no duty to go beyond those instructions by proffering unsought advice on the wisdom of the transaction.

In this case, Mrs Mouat mortgaged her house to secure a loan to her son. He joined in the mortgage as guarantor. When the son's business ran into financial difficulties and he became bankrupt, Mrs Mouat faced a liability of over £110,000 secured on her house. She sued the solicitor who acted in the transaction both for her and her son. The judge found she fully understood the transaction and the solicitors had advised her to get independent advice, which she refused to do, and that she risked losing her house. Mrs Mouat argued, unsuccessfully, that the solicitors should have ensured she got independent advice and should have disclosed to her that they knew nothing of the son's ability to service the mortgage. The court found that all the solicitor was retained to do was to carry out the necessary conveyancing on her behalf and to explain to her the legal consequences of the transaction. The Privy Council also quoted from *Reeves v Thrings & Long* [1996] PNLR 265 at 275 per Sir Thomas Bingham MR:

> It will always be relevant to consider what the solicitor is asked to do, the nature of the transaction and the standing and experience of the client. Thus on the facts, [Sheppard] was not retained to advise on the wisdom of offering the price [Reeves] had informally agreed to pay … But it was in my view [Sheppard's] duty to draw [Reeves'] attention to any pitfall, particularly any hidden pitfall, the contract might contain.

93 It is also clear that a solicitor will or may owe a duty to make particular inquiries of clients who are ignorant or inexperienced that he will not owe to an experienced client: see *Carradine Properties v D.J. Freeman & Co*. [1999] Lloyd's Law Reports 487. When advising a layman, not *au fait* with the ways of commerce or worldly matters (or "dear Mrs Bloggs" down the street, as the English would say), it is the duty of the lawyer to protect his client's interest and render advice on the pros and cons in a way that the client will understand, with a far more stringent criterion than advising a sophisticated, shrewd and experienced businessman. It will also be incumbent on the lawyer to explain clearly the effect and consequences of the various options facing the client, advise and recommend that option which will best suit and protect his client's interest and consider whether there are any other measures or options that will safeguard his client's interests. See also *Lie Hendri Rusli v Wong Tan & Molly Lim* [2004] 4 SLR 594 at [55]. In the *Lie Hendri Rusli* case the court asked and answered these questions at [70]:

> In the ultimate analysis, the principal issue in this case is straightforward. Did TYP [the lawyer] inform the plaintiff [the client] that he was undertaking personal liability as a surety for Alps? The answer to this is yes. Ought TYP to have questioned the wisdom of this and advised the plaintiff to ascertain the extent of the liability? In the circumstances of this case, the answer is no.

94 At the other end of the scale, when dealing with an experienced, sophisticated and sharp businessman, what exactly are the duties of a solicitor in advising on the commercial aspects? In *Carradine Properties v D.J. Freeman & Co* (*supra* [92]) a property company with experienced directors in property and insurance matters, hired contractors to demolish a flying freehold, *ie*, property on the second floor. The contractors did their work negligently and damaged the property below. The company instructed their lawyers to sue the contractor who in the event turned out to be uninsured and worthless. The company had overlooked their own public liability policy and when they tried to make a claim, some two years later, it was denied for late notification. The company sued its solicitors for failure to inquire whether the company carried its own public liability insurance. The Court of Appeal held that when an experienced client instructed solicitors to sue a third party, and the loss would be within the usual insurance cover carried by the third party, the client impliedly instructed the solicitors or the solicitors were entitled to assume that such cover existed. The solicitors were under no duty to inquire whether the clients themselves had a policy which covered the loss. It may be different if the client were not the experienced businessmen that they were.

95 I respectfully adopt what was stated in *Law Society of Singapore v Uthayasurian Sidambaram* (*supra* [2]) at para 57: "This is not to say, however, that a solicitor advising a savvy, commercially-minded client should *immediately* wash his hands clean from advising him of the potential ramifications of any decision, when it is potentially detrimental to his interests. Rather the solicitor ought to tailor his advice to suit the needs of his client and not be afraid to ask probing questions."

96 The extent of a lawyer's duty in advising a corporation with experienced businessmen at the helm and the need to probe or give advice on points that arose during negotiations, but not in the retainer, are well illustrated in *The Football League Ltd v Edge Ellison* [2006] EWHC 1462. The plaintiff in that case administered the business and the interests of its 72 member clubs which make up the Football League Ltd ("FLL"), and constitute its shareholders. The case involved the broadcasting rights of the league matches. When the licensee Sky's term was coming to an end, it was felt that better terms could be sought and the Plaintiff formed a commercial committee who instructed the Defendant solicitors. A Television Strategy document was drafted by the Plaintiff which set out the various roles of its advisers, the commercial committee, the clubs, the Premier League and others. The task of assessing the bidder's logistical and financial capacity to support the bid, which must have included the bidder's financial ability to meet its payment obligations as licensee, was not one of those assigned to the solicitors. After an extended marketing exercise, a 3 year licence was eventually granted on 15 June 2000 to ONdigital, ITV's digital broadcasting arm and a subsidiary of Carlton Communications Plc and Granada Media Plc, both FTSE 100 companies. The terms included an attractive advance payment of £12 million on 15 June 2000 and another £35.25 million 80 days later, as some clubs were in need of funds urgently and some were facing risks of insolvency. In March 2002 with over 2 years of the licence to run, ONdigital went into administration and by October 2002 it went into liquidation. FLL sued their solicitors professional negligence in omitting to obtain FLL's instructions as to whether it wished to ask for guarantees from Carlton and Granada for the due performance of ONdigital's payment obligations. As no request for guarantees was made, the basis of the claim was for the loss of chance of obtaining the guarantees.

97 The court found that the scope of the solicitor's retainer did not include bidder solvency or the

need for the bidder's covenant to be secured. It was not express nor was it to be implied. Their retainer was to advise on legal matters, like drawing up the tender documents, ensure it complied with UK laws, UK and European competition laws, advise on the best type of tender, the legal framework, the legal ramifications of the recommended bid and strategic alliances and the like. However in the course of the extended negotiations, ONdigital's bid document had a paragraph which read:

> Financial Arrangements:
>
> ONdigital and its shareholders will guarantee all funding to the FL [Football League] outlined in this documents

Although this was ambiguous and could be read in two ways, the court held that once the solicitors saw this document and this paragraph, it was their duty to raise it to the commercial committee and suggest that they should try getting the shareholder's, *ie*, Carlton and Granada's guarantee. This same document also came up when the solicitor was negotiating the long form agreement (the short form agreement having been signed first). That was the second time the solicitor should have been alerted to that document and raised to the commercial committee whether it wished him to try asking for a shareholder guarantee. They were therefore in breach of their duty to their client. However, as the evidence clearly showed Carlton and Granada would have refused to provide any guarantees, the plaintiff did not suffer any substantial loss and was awarded nominal damages of £2 for each of the two breaches. The court also said that the nature and extent of a solicitor's duty to advise his client cannot be definitively and rigidly demarcated by reference to the initial instructions given to him. Apart from the case of the inexperienced or ignorant client, special considerations may arise and there will be circumstances where in the carrying out of his instructions the solicitor will or may have an obligation to proffer unsolicited advice or seek further instructions. Hence, although bidder solvency was outside the retainer, a document where the issue of a possible guarantee arose twice in the course of negotiations and advising their client and that gave rise to a duty upon the solicitors to bring this to the attention of their clients and to ascertain whether they should try to ask for a guarantee.

98 The starting point is the scope of Surian's retainer. I have found as a fact that when Surian first met the Plaintiff, on 19 May 2006, he gave a candid and balanced view of the Project and that Surian did not do any sales pitch. At that point Surian had not been retained by the Plaintiff although he was referred to as the solicitor for the Project. The next time he met the Surian, it was in Surian's office on 23 May 2006 to deposit his S$1 million. In between, those dates, it was FK and Ang that were persuading him to enter into the Project. This is very clear in the Plaintiff's police report to the CAD dated 28 June 2006, where he names FK and Ang, not Surian, as the parties who persuaded him to enter into the deal.[note: 52] The Plaintiff on the other hand was a very sharp, experienced and intelligent businessman. Assessing the business and profit potential, the ability of Atamaya and PSN to deliver the mandate, the business potential of the RGB, the wisdom of risking S$1 million whilst there was no contract with RGB, the wisdom of entering into such a deal, were all commercial matters. The Plaintiff believed PSN would deliver and he would have the chance to get close to him. The buying out of parties who had no enforceable interest were to remove "fish bones". These were all commercial aspects which were not part of Surian's retainer.

99 When the Plaintiff met Surian on 23 May 2006 to deposit his S$1 million, he signed a warrant to act. It was a simple half page document with the heading: "JOINT DEVELOPMENT OF NO.7 TANGLIN HILL, SINGAPORE" and the operative words are: "...to act for me/us in the above matter and to do everything in connection therewith..." He was retained to advise on the legal aspects of the deal, to

draft the JDA when the mandate was given, to incorporate the company that would sign the JDA. He did deal with some of the legal questions when they arose. He also advised that a 'sovereignty' clause would address the Plaintiff's concerns over sovereign immunity. He was asked about obtaining a power of attorney or getting a charge on the land or lodging a caveat. He did advise that this was not possible and did not explore other avenues for the Plaintiff but that was because he preferred one client's interest over another.

100 However, as noted above, Surian's breaches of duty were not on the commercial aspects of the deal, it rested squarely on his professional duty to his client on the legal aspects, including failing to advise the Plaintiff that he was in a position of conflict and that the Plaintiff should get his own independent advice, or failing to put the Plaintiff's interests before his own or that his other clients, or failing to advise the Plaintiff on the consequences of giving Ang, a bankrupt, absolute discretion to disburse the S$1 million, or failing to check if PSN indeed represented RGB and had the authority to deal with the Property, or failing to try and secure a similar guarantee or acknowledgement from Atamaya as that held by Chin, or failing to check with the Plaintiff before making payments with uncrossed cheques to Chin's driver. The Plaintiff's other allegations of negligence are not sustainable here. They are:

(a) failing to advise the Plaintiff on the risks of entering into the Project – this is a commercial aspect which is outside Surian's retainer;

(b) failing to advise the Plaintiff that the whole Project depended on PSN delivering on the mandate from the RGB – this again is the commercial aspect and something the Plaintiff was best placed to assess; and

(c) failing to keep proper accounts of monies in the client's account – Surian did keep an account – what the Plaintiff is complaining about is its disbursement, not the keeping of proper accounts.

Causation

101 Mr Sreenivasan concentrated his efforts on the issue of causation – what caused the loss. The principles of law in this area are settled. Surian's breaches must be the dominant or effective causes of the loss: see *The Cherry* [2003] 1 SLR 471. In the well-known words of Lord Reid in *McGhee v National Coal Board* [1973] 1 WLR 1 at 5: "[I]t has often been said that the legal concept of causation is not based on logic or philosophy. It is based on the practical way in which the ordinary man's mind works in the everyday affairs of life." This was cited with approval in *Sunny Metal & Engineering Ptd Ltd v Ng Khim Ming Eric* [2007] 3 SLR 782 at 802. In *The Cherry*, the Court of Appeal endorsed Kan J's dictum in *The Feng Hang* [2002] 2 SLR 205: "The courts adopt a common sense approach in interpreting the facts of each case to determine whether the breach was the cause of the loss or merely gave the opportunity for the loss to be sustained." This emphasis on a common sense and practical approach, without being blinded by logic or philosophy, shows that the principles can be stated but the devil is in the application. Fortunately, this case does not present such difficulties nor does it require the analysis carefully laid out in the *Sunny Metal & Engineering* case.

102 What was the dominant or effective cause of the loss here? The dominant and effective causes can be divided into two groups. On one side are my findings above, especially at paragraph 70 above, on the Plaintiff's actions in wanting this deal. On the other side are the very obvious breaches of Surian of his professional duty to the Plaintiff. I could not hold, looking at the facts and circumstances of this case and the three claims, that even if Surian had fulfilled his duty, the Plaintiff would not have entered the deal. He wanted it badly, he knew the risks and went into it with his eyes

open. Ang sent an SMS to the Plaintiff before the Plaintiff's first meeting with Surian on 19 May 2006 and gave the Plaintiff the opportunity to pass on this Project, yet the Plaintiff went ahead: see [66(a)] above. On a broad brush, applying a practical and pragmatic approach, I would find and hold that both groups of causes were effective causes causing the 'loss' to the Plaintiff in respect of the first two claims of S$300,000 and S$250,000 but on the second S$300,000, for the reasons given below, the cause of that loss lay only at Surian's doorstep. This therefore brings me to contributory negligence.

Contributory negligence

103 There is no doubt that a plea of contributory negligence can be made in defence to a professional negligence claim, whether it is framed in tort or contract: see *Fong Maun Yee & Anor v Yoong Weng Ho Robert* [1997] 2 SLR 297 at [51]. There the Court of Appeal also held that the defence of contributory negligence applies where the relevant evidence establishes the cause of the damage suffered by the Plaintiff is the combination of the fault on his part and the wrongdoing of the Defendant.

104 In *The Football League* case (*supra* [95]), Rimer J said (at [330]: "It is only in rare cases that a solicitor is able to advance a plea of contributory negligence with any real prospect of success, and for obvious reasons. That is because his breach of duty will usually be in relation to a matter within his special expertise as a solicitor, being a duty which is not usually one relating to a purely commercial matter of judgment falling squarely within the client's own competence." A similar view was expressed in *Fong Maun Yee & Anor v Yoong Weng Ho Robert* (*supra* [102]) at [59]: "In apportioning liability the particular relationship between the Plaintiff and the defendant must not be overlooked. Where the relationship is one of a client and a professional where the client relies on the professional care and skill in handling the affairs of the client, the courts take account of the primary responsibility of the professional." On the facts of that case, the Court of Appeal apportioned 75% liability to the solicitor and 25% to the client for his contributory negligence. In *The Football League* case, Rimer J said that if he had to rule on contributory negligence, he would have apportioned the loss at 75% on the part of the Football League and 25% on the solicitor.

105 If I had to decide this case only on contributory negligence, from my findings above, especially at [70], I would have found a significant percentage of contributory negligence on the part of the Plaintiff. Here, the Plaintiff asked and Surian told the Plaintiff that getting a power of attorney from RGB was not possible. Surian also told the Plaintiff that he could not lodge a caveat or obtain a charge of the Property. Although Surian never explored any other measures that the Plaintiff might take to protect his position, I find that even if the Plaintiff or Surian had asked for some form of security, it would not have been forthcoming. RGB owned the land and so long as they signed a binding agreement for joint development and sharing of the profits, they would have given nothing else. The Plaintiff knew the entire venture rested on the mandate from RGB and when the Plaintiff deposited his money with Surian, he knew that that mandate had not yet been obtained. The Plaintiff had formed his own commercial judgment and fully expected PSN to deliver on his promise. The Plaintiff knew the whole deal depended on PSN delivering on his promise and that in the meanwhile, certain disbursements had to be made to buy out the previous parties to and 'facilitate' the deal, even though in law they may have had no contract with RGB yet. Surian maintains, correctly, that the Plaintiff was a sharp, sophisticated and very experienced businessman. He had made his assessments and had the measure of the various players. He had met Atamaya and later PSN and was able to form his own opinion on their credibility and their ability to swing the deal from RGB. I have also found that the Plaintiff was very keen to enter into this Project because he saw the opportunity to get to know the RGB and the Royal Family of Brunei and to do his first commercial deal with them. I also find that the Plaintiff would not have asked Atamaya for a similar guarantee as he would not

have risked offending him bearing in mind his intention for the longer term relationship he was hoping to build with Atamaya and PSN. Further, the Plaintiff knew Chin's S$300,000 had been paid to Atamaya and the Plaintiff was paying off Chin. Similarly Lim Peng Lee/Langston also had to be paid off. I have found the Plaintiff knew the kind of deal he was getting into (see [70] above), and what kind of transaction this was. As I have found above, he was so keen on establishing a relationship with PSN and develop links with the RGB and the Brunei Royal Family that he threw caution to the winds and was willing to risk his S$1 million.

106 Although Surian was in breach of his professional duty to the Plaintiff, not unlike the plaintiff in *Fong Maun Yee & Anor v Yoong Weng Ho Robert* (who was suspicious of the option, the low price he was getting for the land and the mandate of the seller to sell), the Plaintiff knew the ramifications of the deal he was entering into, independently of what Surian told him. Like *The Football League* case, it is equitable and just in the circumstance before me that the Plaintiff bears two thirds of the total loss of S$850,000 and Surian should bear one third. In coming to this proportion I have taken into account my analysis of causation in the paying out of the second S$300,000 and where I find contributory negligence does not arise (see below).

107 However I think the proper analysis in this case is to apply the basic elements of the tort of negligence, *viz*, a duty owed by the defendant to a Plaintiff, a breach of that duty by the defendant and the breach must have caused the plaintiff loss or damage. It is for such damage that Surian is liable. I now turn to the heads of loss claimed.

The S$300,000 paid to Chin

108 I have found that paying Chin S$300,000 by the Plaintiff was something that was raised from the first time the Plaintiff was asked to look at the Project. The Plaintiff knew Chin and Langston were in the joint development project but that subsequently Chin was found unsuitable by RGB. The Plaintiff was therefore stepping in to replace Chin and Langston and he wanted the Project "clean".

109 Mr Maniam submits that for his S$300,000 paid into the Project, Chin had been protected by a Guarantee in the event the condition precedent in the pre-contract agreement was not fulfilled. Here the Plaintiff was taking over this payment but he had no such protection. Mr Sreenivasan submits this is without foundation as a man cannot guarantee his own debts. However it cannot be denied that at least Chin had an acknowledgement in writing from Atamaya that the S$300,000 had been paid to him and that if the condition precedent was not fulfilled Atamaya undertook, in writing, to return the same.

110 I have found that the Plaintiff knew the S$300,000 put in by Chin had been paid to Atamaya. Surian was in breach of his obligations in not suggesting to the Plaintiff that Atamaya give a similar assurance as he did to Chin or to obtain some assignment or subrogation rights from Chin against Atamaya. But I find, on balance, that if Surian had done so, the Plaintiff would not have wanted to irritate or annoy Atamaya or PSN over S$300,000, especially bearing in mind the kind of deal he had entered into, the possibility of future deals and his aim of building a long term relationship with PSN and his son Atamaya. Furthermore, being the experienced and sharp businessman that he was, the Plaintiff would have thought of this possibility himself. I find that the Plaintiff had, on his own bat, formed the view that PSN and Atamaya were who they said they were and was convinced that PSN would deliver the mandate to jointly develop the Property.

111 An undeniable fact is that Ang sent an SMS to the Plaintiff before the S$300,000 was disbursed to Chin's solicitors, Messrs Derrick Wong & Partners and the Plaintiff did not raise any objections. The Plaintiff intended to pay off Chin and whether the Plaintiff gave those instructions himself or through

Ang, the net result is the same – the cheque was made out to Messrs Derrick Wong & Partners and the voucher correctly reflected the nature of the payment: "Refund of monies paid by Chin Bay Ching in relation to No.7 Tanglin Hill, S'pore."[note: 53] However, I think the correct analysis is that there was no loss caused by Surian's breaches. It is a classic case of *damnum absque injuria*. The Plaintiff intended to pay off Chin. It was not a conditional payment. The Plaintiff fully believed PSN would deliver on the Project and the Plaintiff wanted Chin out of the deal, expecting the mandate to come soon, so there could be no issues as to who had a share in the potentially large profits from the Project. Even if I accept the Plaintiff's claim, which I do not, that he would not have given Ang the authority to disburse the funds if he had known he was an undischarged bankrupt, the structure of the deal would have been no different – the Plaintiff would have wanted to pay off Chin and would have instructed Surian accordingly, and since Chin was represented by lawyers, the money would have, as it did, moved from Surian to Chin's solicitors with the correct paperwork.

The S$250,000 payment to Lim Beng Huat/Lim Peng Lee and Langston

112 There is no doubt, as I raised with counsel, that Surian should have checked with the Plaintiff that Ang was asking him to disburse S$250,000, with an uncrossed cheque, to Ang's driver, Lim Beng Huat. That this should have set off alarm bells to any solicitor is beyond argument. Surian's reliance on the letter of authority was quite misplaced, as was the written instruction from Ang, because even if all those factors are in his favour, he should at least have checked with the Plaintiff. The Plaintiff was only a telephone call or SMS away. But the Plaintiff did not. He paid out as instructed.

113 But these facts have to be taken in context. Surian says Ang told him that the payment was meant for Lim Peng Lee/Langston and Lim Peng Lee was not in Singapore and had asked that payment be made to Ang in the meanwhile. It is a fact that Lim Peng Lee resided in New Zealand and often travelled to China. Surian telephoned Lim Peng Lee who confirmed he was out of town and that the payment could be made as instructed by Ang. Ang also told Surian he had checked with the Plaintiff. As noted above, this was true as Ang had sent the Plaintiff an SMS stating that he was discharging Langston at S$250,000 and the Plaintiff had replied "Noted". The Plaintiff claims he was unhappy because he thought there was only S$100,000 to be paid out for disbursements. I find that totally unconvincing and I have no hesitation, as I have said before, in rejecting this piece of evidence from the Plaintiff. His clear reaction was an SMS reply: "noted" and nothing more. I have found that he did not object, he did not telephone Ang and he did not protest. The Plaintiff attempted to say he telephoned Ang who gave him a vague answer. The Plaintiff is not the kind of person who will accept a vague answer when he wants to know something. I do not accept that and find that the Plaintiff did not telephone Ang.

114 If Surian had called the Plaintiff, I have no doubt, and I would find and hold that the Plaintiff would have told him to go ahead. I also find, on a balance, that if Surian had called and said Ang wanted an uncrossed cheque for that sum made out to his driver, that would have resulted in the Plaintiff contacting Ang, being given the convincing answer that Lim Peng Lee agreed to it, that Surian had called Lim Peng Lee himself and the Plaintiff would have approved the payment. Surian therefore caused the payment voucher to read: "Payment to Langston Key Investment Pte Ltd to discharge obligations for Joint Development of No.7 Tanglin Hill, S'pore",[note: 54] although the payee of the uncrossed cheque was Lim Beng Huat.

115 I have also found that the Plaintiff intended to pay off Lim Peng Lee and Langston to remove the "fish bones". Even if I accepted the Plaintiff's contention, which I do not, that if he knew Ang was a bankrupt he would not have authorised the payment, I find that the structure would have been no different. Surian also acted for Lim Peng Lee and Langston and Lim Peng Lee would have said, as he did when Surian called him, pay it out as instructed by Ang. From the evidence, Ang and Lim Peng

Lee were the ones close to PSN. At the end of the day, Lim Peng Lee did receive the S$250,000 and as noted above, sent an email dated 13 June 2006 stating that he/Langston had received the S$250,000.[note: 55] The Plaintiff had met Lim Peng Lee at the Hilton hotel before their meeting on 1 June 2006 and when the Plaintiff surreptitiously taped their conversation, the Plaintiff never complained that he did not know of Ang's status as a bankrupt; nor did he ask Lim Peng Lee whether Lim Peng Lee knew Ang was a bankrupt. I therefore find and hold that this head of claim is also a case of *damnum absque injuria*. The S$250,000 ended up where it was supposed to go – to Lim Peng Lee and Langston – and as intended by the Plaintiff, *viz*, to buy them out of the Project.

The 2nd S$300,000 paid to Lim Beng Huat

116 This sum was also paid on Ang's instruction, by uncrossed cheque in favour of Lim Beng Huat, his driver or 'runner' or companion. No one knows what happened to this sum or where this sum went. Ang gave instructions on 26 May 2006 to Surian, Ang signed the authorisation form and Lim Beng Huat signed the Voucher. In his AEIC,[note: 56] Surian said he did not know the purpose of his S$300,000 payment, and that he told the Plaintiff on 1 June 2006 that he did not know the purpose. In court, he came up, for the first time, with the excuse that Ang told him it was for expenses. Ang told him not to probe further. So Surian enquired no further. I agree with Mr Maniam that that was a red flag, crying out for Surian to check with the Plaintiff. But he inexplicably did not do so.

117 It should be remembered that in the SMS sent by Ang on 24 May 2006 to the Plaintiff over the first two payments, Ang also said: "*Rest can wait till tmrw*." There were therefore yet more payments to be made. To this, the Plaintiff replied by SMS: "Noted." Unlike the other two payments, if Surian had called the Plaintiff and said Ang wanted another S$300,000 again payable to Ang's driver, the Plaintiff would have asked what it was for and upon Surian saying he did not know what it was for and Ang told him not to ask any more, I find that the Plaintiff would have contacted Ang and asked what this sum was for. If it was only for expenses, which the Plaintiff thought would not exceed S$100,000 as it was for travelling, accommodation and the like, the Plaintiff would have asked Ang for details. As there is no evidence as to what this sum was for, I find that the Plaintiff would have told Surian not to make the payment. Atamaya had received S$300,000 from Chin. Chin had been paid back his S$300,000. Langston had been similarly bought out at S$250,000. It was incumbent on Surian to check with the Plaintiff what this further payment was for but he did not. He met the Plaintiff a number of times during this period of PSN and Atamaya's visit (24 to 29 May 2006), but he never raised this payment with the Plaintiff.

118 This whole S$300,000 was therefore a loss to the Plaintiff because no one knows what happened to this sum. Surian is fully liable for this sum. He was negligent in making payment by an uncrossed cheque to a third party. He never checked with the Plaintiff, and the payee was a driver and not a counterparty to the transaction. But for the negligence of Surian in paying out this sum in the manner he did and without checking with the Plaintiff, the Plaintiff would not have suffered this loss. Even if I take into account the 'blameworthiness' of the Plaintiff set out in my findings above on contributory negligence, I do not think there is any contributory negligence on the part of the Plaintiff in this payment. This is one instance where the 'but for' test is adequate: but for Surian's negligence in not checking with the Plaintiff before making payment, this sum would not have been paid out.

The S$100,000 in payment of Surian's bill

119 This was repaid by Surian. Consequently no findings or orders need be made in respect of this sum save for the issue as to whether interest should be paid for the period it was out of Surian's client's account.

Conclusion

120 What caused the Project to unravel or abort? There is a suggestion that when the Plaintiff started asking questions and wanted to withdraw from the Project, PSN, who had just returned to Brunei was told not to proceed to get the mandate. This evidence is untested and too unreliable to draw any conclusions. Many of the key players never gave evidence. Was there ever a deal in the first place? We shall never know.

121 For the reasons set out above, I therefore find and hold that:-

(i) The Plaintiff's claim against Surian for conspiracy to defraud him is dismissed.

(ii) Surian is not liable to the Plaintiff for the S$300,000 that was paid to Messrs Derrick Wong & Partners, solicitors for Chin, and the Plaintiff's claim against Surian for this sum is dismissed;

(iii) Surian is not liable to the Plaintiff for the S$250,000 that was initially paid to Lim Beng Huat but eventually paid to Lim Peng Lee and Langston, the intended recipients, the Plaintiff's claim against Surian for this sum is dismissed;

(iv) Surian is liable to the Plaintiff for the S$300,000 that was paid to Lim Beng Huat, Ang's driver, which sum remains unaccounted for and missing to date; there will be judgment for the Plaintiff against Surian for this sum;

(vi) Interest has been claimed but neither party has made any submissions thereon.; as with the order on costs below, the parties are to make written submissions within 7 days from the date hereof on this claim with regard to whether interest should be awarded for the S$300,000 and the S$100,000 that was paid out for Surian's bill and later returned, and if so, at what rate and for what period.

(vii) Surian has returned the S$100,000 taken in payment of his bill to the Plaintiff and it is therefore not necessary for me to make any order in respect of this sum save for the issue of interest addressed above;

(viii) No alternative claim in general damages was advanced by the Plaintiff nor addressed by counsel and I therefore make no order thereon;

(vii) The parties are file written submissions on costs and the issue of interest within one week from the date hereof.

122 I must record my appreciation to counsel for their concise presentation of the evidence and not taking points that were peripheral or that were untenable. I also commend them for accommodating my request to sum up and make their closing speeches immediately after the evidence was completed, something which neither was used to. Because I raised an authority not in the bundles and because the Transcript was not available then, counsel asked for the time to hand in skeletal submissions with references to the Transcripts and on further points of law that arose in the debate during submissions. They accepted tight timelines for filing these submissions no later than 3 days after the Transcripts were made available. There are doubtless cases which will benefit much from written submissions, but there are cases before the courts today that can be better dealt with through oral submissions and closing speeches immediately or as soon as possible after the close of evidence. Making closing submissions immediately after the evidence is completed, at a time when the

evidence is fresh in the minds of everyone, is a boon not to be lightly thrown away.

[note: 1]Plaintiff's Opening Statement, [2].

[note: 2]Transcript, 14 September 2009, at p 1.

[note: 3]See the transcript of the DC proceedings set out in 1.DBD.126.

[note: 4]Plaintiff's AEIC at p 104.

[note: 5]Transcript, 14 September 2009, at pp 35–36.

[note: 6]Transcript, 15 September 2009, at p 90.

[note: 7]Transcript, 15 September 2009, at p 91.

[note: 8]Transcript, 15 September 2009, at p 91.

[note: 9]Transcript, 15 September 2009, at pp 92–93.

[note: 10]2 AB 372–373.

[note: 11]1 DBD 118.

[note: 12]1 AB 167.

[note: 13]Transcript, 15 September 2009, at pp 92–93 and 94–95.

[note: 14]1 DBD at pp 127–128.

[note: 15]1 DBD 111.

[note: 16]1 AB 74.

[note: 17]1 AB 70.

[note: 18]1 AB 69.

[note: 19]1 AB 71.

[note: 20]See 1 AB 100 – 106 and the emails which follow, up to 1 AB 125.

[note: 21]1 AB 123.

[note: 22]Transcript, 14 September 2009, at p 41.

[note: 23]Transcript, 14 September 2009, at pp 40–42.

[note: 24]1 AB 154 and 155–158

[note: 25]1 AB 157.

[note: 26]1 AB 158.

[note: 27]1 AB 156.

[note: 28]2 AB 424.

[note: 29]2 AB 425.

[note: 30]2 AB 425.

[note: 31]2 AB 426.

[note: 32]2 AB 427.

[note: 33]2 AB 234–371.

[note: 34]2 AB 283.

[note: 35]2 AB 277–278.

[note: 36]2 AB 279–281.

[note: 37]2 AB 372–373.

[note: 38]1 DBD 118.

[note: 39]See the transcript of the DC proceedings set out in 1 DBD 126.

[note: 40]Transcript, 14 September 2009, at p 81.

[note: 41]Transcript, 14 September 2009, at p 85.

[note: 42]Transcript, 14 September 2009, at p 84.

[note: 43]Transcript, 14 September 2009, at p 10.

[note: 44]Transcript, 14 September 2009 at pp 58–62.

[note: 45]2 AB 242.

[note: 46]2 AB 344.

[note: 47]Transcript, 14 September 2009 at pp 52–53.

[note: 48]Transcript, 17 September 2009, at p 39.

[note: 49]Transcript, 17 September 2009, at p 99.

[note: 50]The representations are set out at [11] of the Statement of Claim.

[note: 51]1 AB 128.

[note: 52]1 DBD 48.

[note: 53]1 AB 163, 165 and 166.

[note: 54]1 AB 164.

[note: 55]2 AB 385.

[note: 56]At [47]–[48] and [57].