Van Der Laan Elisabeth Maria Everarda *v* Billionaires Management Worldwide (BMW) Pte Ltd and others
[2010] SGHC 180

Case Number : Suit No 416 of 2008

Decision Date : 30 June 2010

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Elisabeth Maria Everarda Van Der Laan the Plaintiff in person; Billionaires Management Worldwide (BMW) Pte Ltd, unrepresented; Thomas Thirugnanam Subramaniam @ Muhd Iskandar Shah T.A. the second defendant in person; AJ Hameedah the third defendant in person.

Parties : Van Der Laan Elisabeth Maria Everarda — Billionaires Management Worldwide (BMW) Pte Ltd and others

Contract

30 June 2010

Quentin Loh J:

Introduction – The parties

1 The Plaintiff, Mdm Elisabeth Maria Everarda Van Der Laan, is a Dutch national with permanent residence in Hong Kong. She is a writer by profession and with her knowledge and practice in the spiritual aspects of yoga, she authored a book: "Yoga, A Many Splendorous Path", (the "book"). This was published and launched in Kuala Lumpur in November 2007.

2 The 1st Defendant, Billionaires Management Worldwide (BMW) Pte Ltd, ("BMW") is a company incorporated in Singapore and despite its rather extravagant nomenclature, had at the material time, a rather modest address at #02-02 in the Singapore Post Centre along Eunos Road, Singapore. The 3rd Defendant, Mdm AJ Hameedah, was, at all material time, its sole shareholder only director. The 2nd Defendant, Mr Thomas Thirugnanam Subramanian @ Muhd Iskandar Shah TA, is the 3rd Defendant's husband and only became a director of the 1st Defendant around March 2009. Prior to that, he was an independent business consultant to the "BMW Group of Companies". When I asked for the other companies in the group, the 2nd Defendant told me there was, in the legal sense of holding or subsidiary or related companies, no "group" as such. There was another 'associated' company, Business & Personal Management Consultancy & Services Pte Ltd, ("B&P"), abbreviated to "BNP" in the emails and "B&P" in the logo, which was 99% owned by the 3rd Defendant and 1% owned by a third party. B&P have or had an equally modest office at #05-1135 Joo Chiat Complex, at 2, Joo Chiat Road, Singapore. The 2nd Defendant is an accountant by training and worked for some 4 years at Haymarket Publishing Services Ltd, London, becoming head of its finance department of some 14 people after about 3 years.

3 A relevant background fact is that the Plaintiff, the 2nd and 3rd Defendants are all members of an organisation known as "XL Group" ("XL Results Foundation"). This was a group founded by two

persons, Roger Hamilton and Dave Rogers, in Singapore in 2002. One of its main goals was to bring together a network of interested individuals from across the globe to accelerate the growth of entrepreneurship globally. The 2nd Defendant claimed that in the last 8 years, it has grown into a network across 27 countries but did not state how many members it has. There were claims that XL Group conducts seminars and talks "in many parts of the world and [t]hese programmes attract attendances from XL Group members from XL Group's network countries." The 2nd Defendant told me that after attending a 4 or 5 day seminar or workshop in Bali, the 2nd Defendant became a duly certified Wealth Dynamics Master Practitioner, (whatever that might mean). This Certificate appears at Exhibit "TS-1" in his AEIC:

WEALTH DYNAMICS

• Powerful Beyond Measure

Presented to

Thomas Iskandar Shah

Who is here certified to practice as a

Wealth Dynamics

Master Practitioner

For

Entrepreneurs, Singapore

From: 1 November 2007

To: 31 October 2008

Certified

XL

Social Entrepreneur

(Logo)

……..(Sd)……..

Roger Hamilton

Chairman, XL Group

The 2nd and 3rd Defendants were the XL Country Managers for Singapore.

Some Procedural History

4 An unusual feature of this case was that all the litigants were in person during the trial. The parties ran out of funds to retain lawyers during the run up to the trial.

5 The case was fixed for hearing from 12 to 14 April 2010. On the first day of trial:

(a) the Defendants' lawyer, Mr Ramesh Kumar of Allen & Gledhill LLP, applied in chambers to discharge himself. He had not been paid. He had given the Defendants prior warning that he would have to apply for a discharge if payment was not made by a certain date. The 2nd Defendant on behalf of all the Defendants consented as he accepted they had been given ample and fair warning to make payment and it was not fair for their lawyers to continue with the trial without being paid. The 2nd Defendant told me that they had raised some funds for their defence,

made out a cheque to Allen & Gledhill LLP, but the 3rd Defendant countermanded the cheque without his knowledge. I granted the application.

(b) In open court, the 2nd Defendant then applied to vacate the trial dates to the 6 July 2010 on the ground that the 3rd Defendant was ill and the 3rd Defendant claimed she was on medical leave till then. I was handed a letter from the 3rd Defendant explaining that she was suffering from major depressive disorder since her 4 year old son passed away from cancer on 30 November 2008. He was diagnosed with cancer in 2006 when he was 2 years old. The 3rd Defendant made a plea to be able to come to court to clear her name as she was accused of fraud. The letter enclosed a medical certificate dated 6 April 2010 from Changi General Hospital, ("CGH"), which excused her from meetings as she had difficulty sleeping and "may be late at work on occasions" from 6 April to 6 July 2010. The medical certificate contained a printed line: "This certificate is *valid / not valid for absence from court attendance." The doctor had not cancelled out the relevant word or phrase.

(c) The Plaintiff objected strongly. She had tried to mediate their dispute twice and the Defendants cancelled the mediation, once on 1 November 2008 because of the deterioration of their son's health and the second time on 9 December 2008, the day before the mediation, as a result of his passing. The Plaintiff then showed me a photograph of the 2nd and 3rd Defendants attending a function in Kuala Lumpur on 9 December 2008. The 2nd Defendant confirmed he and his wife attended the function in Kuala Lumpur but they were trying to get a break, out of the country and away from reminders of their son. The Plaintiff said she had spent a lot of money to bring in her witness, Mr K.K. Sarachandra Bose, ("Mr Bose"), who was waiting outside the court. He is a lawyer from Dubai and was charging her for his time.

(d) The 2nd Defendant, speaking on behalf of all the Defendants said they were prepared to accept the evidence of Mr Bose in his AEIC dated 17 March 2010, they would not challenge his evidence and did not need to cross-examine him.

(e) The Defendants' lawyer, Mr Ramesh Kumar, who very kindly stayed behind in case he could assist the court, also confirmed in open court that the Defendants had abandoned their counterclaim earlier on when they applied for security for costs. The 2nd Defendant confirmed this.

(f) After hearing both parties, I asked the 2nd Defendant to request the doctor to attend court any time in the afternoon as there was an ambiguity in the medical certificate and the doctor should clarify whether she had certified fitness or not to attend court. I stood the matter down.

In the event, the doctor was not able to attend court at such short notice, either on 12 April 2010, nor the next day. However, CGH issued a letter dated 12 April 2010, which was handed to me at 6.20 pm on that same day. This letter explained that the 3rd Defendant was suffering from major depressive disorder and complicated grief. She was seen on 1 April 2010 and was started on medication and therapy for her grief. It stated that: "It will take about two to four weeks for the medication to begin working and another month for the medication to achieve its maximum effect. However she will need grief focussed therapy to resolve her complicated grief."

6 On the 13 April 2010, I reluctantly vacated the trial dates. Although the letter did not state

that the 3rd Defendant should be excused from court, I went on the assumption that if she was to be excused from meetings, then that must mean court attendance as well. As the Defendants' application could have been made earlier, I made the following orders:

(a) Taking into account the maximum effect of the medication, I postponed the trial to 12-14 July 2010.

(b) As the litigants were now in person, and given the current circumstances, I ordered that the security for costs be returned to the Plaintiff forthwith.

(c) I gave leave to the Plaintiff to file a further affidavit for an Expert Report by 12 June 2010 after explaining to her that she could not rely on her AEIC which sets out what the forensic expert told her without the forensic expert giving his report and coming to court. Leave was also granted to the Defendants to file an affidavit/Expert Report on the same issue, also by 12 June 2010.

(d) I warned the 2nd Defendant that there would be no further postponement of the trial. I also told the 2nd Defendant that he would be in a position to know whether his wife would be fit to participate in the July 2010 trial some time before then, and if she was not fit, he should make arrangements to either represent her or to get her a lawyer.

(e) All costs thrown away for the postponement, on application of the Defendants at the last minute, was to be to the Plaintiff in any event, but on the basis of a litigant in person. I told the Plaintiff that the costs of Mr Bose's attendance should be hers, but I would refrain from making an order till the end of the trial when I have heard all the evidence.

7 The Plaintiff was very upset at the vacation of the trial and burst into tears, saying that the Defendants had once again managed to postpone the hearing of their dispute. However she managed to control herself after a while and to take down the orders set out above.

8 The Plaintiff then wrote three letters dated 14, 16 and 19 April 2010 to the Registrar. She explained she would be deprived of her day in court because she had run out of funds to stay in Singapore beyond the end of June 2010. The Defendants' application to postpone the trial with the 3rd Defendant's condition effectively meant they had successfully deprived her of her right to bring this claim against them. She pleaded for the case to be brought forward to May or June 2010. She explained she was too shocked on 13 April 2010 to set out these reasons fully.

9 I called the parties back for a PTC and asked the 2nd Defendant to request the doctor to attend court. At the PTC on 30 April 2010, Dr Yap Hwa Ling ("Dr Yap") turned up with the CGH file on the 3rd Defendant. Dr Kok Lee Peng ("Dr Kok") was the therapist, and Dr Yap was the psychiatrist. Dr Yap had regular discussions on the case with Dr Kok. I asked about the medical certificate dated 6 April 2010. Dr Yap confirmed that they did not certify unfitness to attend court, they only meant to certify light duty for the 3rd Defendant and she was not meant to be excused form court attendance by that certificate. Dr Yap said she saw the 3rd Defendant only the day before and the 3rd Defendant was better now that her medication had started to take effect. After hearing the parties, I acceded to the Plaintiff's request and re-fixed the case for hearing from 7 to 11 June 2010. I then dealt with some housekeeping matters, *eg*, the Defendants had not filed any documents, I gave the Plaintiff and 2nd Defendant a List of Issues to assist them in their cross-examination and reminded the 2nd Defendant to get legal representation for the 1st Defendant. I fixed another PTC on 14 May 2010. The

2nd Defendant failed to turn up. He telephoned the Registry to say that his spiritual leader had passed away in Batu Pahat and he had rushed there to attend the funeral. I held two more PTCs to ensure the readiness of parties and their respective cases for trial. During the last PTC on 31 May 2010, the 2nd Defendant applied to produce his project accounts. This was in response to my earlier observations that his pleaded defence was that he had spent the Plaintiff's money on the project but I did not see any accounts or supporting documents for that issue. I told the 2nd Defendant that it was very late in the day. I ordered the 2nd Defendant to produce his project account documents to me in the first instance, making clear that it must also include his accounts, ledgers, supporting documents, bank accounts, vouchers, invoices, receipts, emails, letters, correspondence, etc to show how the Plaintiff's money had been spent on the project. He was to produce the originals in a paginated bundle, with a second copied paginated bundle, for me to review to see if they were relevant. He was to do so by 2 June 2010, the Wednesday in the week before the trial's commencement. If they were relevant, I would send the Plaintiff the second bundle. I reminded the 2nd Defendant yet once more to get representation for the 1st Defendant. The 2nd Defendant did not send his project account documents until Thursday.

10 The trial commenced as re-scheduled on 7 June 2010. The 1st Defendant was unrepresented. Only the 2nd Defendant was present and explained that the 3rd Defendant was not in Court as she was "not feeling well." I told the 2nd Defendant that his wife was not attending trial at her own risk unless she produced a medical certificate. The 3rd Defendant turned up in the afternoon. The 3rd Defendant took no part in the trial and chose not to give evidence. I warned the 2nd and 3rd Defendants that her AEIC would be disregarded and whatever the Plaintiff said about the 3rd Defendant, *eg*, the 3rd Defendant's participation in the meetings, would not be rebutted by the 3rd Defendant, but the 2nd Defendant said he and his wife knew and accepted that. I now turn to the facts of the case.

Events Leading Up to the Contract

11 The Plaintiff first met the 2nd and 3rd Defendants in October 2007 at an XL Coaching Programme ("XL Weekend") at the Sheraton Towers Hotel. (There was some discrepancy as to whether this occurred in August or October 2007, but it was not material. If it were necessary, I would find that it was sometime in September 2007 because of the email evidence put before me). She alleged that during the XL Weekend, the 2nd Defendant introduced himself to the other participants, and claimed to have had experience in marketing books as he used to work as a marketing agent in a publishing house in London. However, the 2nd Defendant claimed that he had only introduced himself as a certified accountant who used to be employed by Haymarket Publishing Services Ltd and that he used to be a Group Sales Manager with Great Eastern Life. Having heard the parties, I accepted the version given by the Plaintiff. I found that the 2nd Defendant was given to making exaggerated claims and could be very persuasive, smooth and appear very sincere. On the witness stand, he was evasive and would avoid answering questions that were inconvenient, feigning a misunderstanding. There were also inconsistencies in his and the other Defendants' evidence. In the course of this judgement I will be making reference to such instances. The Plaintiff on the other hand was very direct, never wavered in her evidence and where she was wrong in some details, she readily admitted it without trying to justify herself. Furthermore, her evidence was consistent throughout the trial, unlike that of the 2nd Defendant. I found her truthful if somewhat naïve and too trusting.

12 The Plaintiff obviously found the XL coaching in October 2007 beneficial and sought the assistance of the 2nd Defendant to market her book and promote her as a writer. Her emails to the 2nd Defendant on or around 20 September 2007, 29 October 2007 and 30 October 2007 made this clear:

> I guess life never be the same again after the coaching weekend. … Is it possible for me to meet you Monday morning Sept 24. at your office in Joo Chiat Complex. To talk through how to go about selling the book, thus a strategic business plan, marketing/E-marketing. Please let me know.
>
> After the launch [planned for 8-10 November 2007 in Kuala Lumpur] time to sit down and make a sales plan how to take it from there.
>
> To meet for a business plan at the conference cum workshop (Sunway Pyramide Convention Centre) is not preferable. 15th November in Singapore sounds better, pl let me know time/place.

I found that from the evidence, and especially the contemporaneous e-mail correspondence between the Plaintiff and the 2nd Defendant, two meetings were scheduled to discuss a business plan to market the Plaintiff's book and promote her as a writer.

13 On 15 November 2007, the Plaintiff met with the 2nd and 3rd Defendants at the Sheraton Towers Hotel lobby to discuss a business plan to market her book and promote herself as a writer, facilitate book and/or yoga related seminars and talk shows. She did not meet the 2nd and 3rd Defendants to discuss investment of her savings. The Plaintiff claimed, and I accepted her evidence, that at this meeting, the 2nd Defendant started enquiring about her financial affairs, her monthly expenditure, the amount of her savings, her aspirations upon retirement, her plans for retirement, whether she had enough funds for retirement and questions of the same ilk. The 2nd Defendant in his AEIC agreed that the Plaintiff wanted to expand the distribution of her book significantly and said that they discussed a business plan to be devised and implemented. The 2nd Defendant then said that in the course of the discussion, he inquired into the Plaintiff's financial situation "to ascertain how much she would be able to and willing to spend on a Business Plan to promote herself and her Book worldwide." I did not accept the 2nd Defendant's evidence. The agreement that the 2nd Defendant drafted showed two clear components, the coaching and promotion of the Plaintiff's book and the investment component. The Plaintiff's emails tended to support her version of what happened. I found that the 2nd Defendant was trying to merge the two components into one to mask the Defendants' intention, to use the Plaintiff's retirement funds to promote their own project. All that happened thereafter, clearly bore this out. The Plaintiff revealed to the 2nd Defendant that her savings amounted to around S$750,000. In the event, the Defendants persuaded the Plaintiff to invest only S$500,000 and not the whole sum.

14 Another meeting, at which the business plan was further discussed, took place on 21 November 2007 at the Sheraton Towers Hotel lobby. At both these meetings, the 2nd Defendant said the 3rd Defendant did not actively participate in the discussions. The Plaintiff said otherwise. Insofar as the 3rd Defendant was in court but chose not to give evidence, I took that against her credibility. When she first sought an adjournment of the trial, she made an impassioned plea in writing that she was not well, but wanted the opportunity to clear her name in court as she had been brought in on the basis of fraud. The 3rd Defendant further alleged in her letter that the Plaintiff's AEIC contained lies and

distortion of the truth which she wished to address at the trial. The doctors say the medication was working and taking effect, but she claimed otherwise, through the 2nd Defendant, at trial. I watched her carefully in court. The first afternoon she attended, she had a solemn look on her face, but every now and then I saw that flicker of interest or recognition when the Plaintiff was being cross-examined by the 2nd Defendant. She also flipped through some documents and bundles now and then and appeared to assist the 2nd Defendant. As the afternoon progressed, she became more lively and the solemn look was absent. On the second day, there was quite a turn-around as she was alert and even combative, pulling out documents for the 2nd Defendant when she disagreed with the Plaintiff's answer, and putting some bundle or document in front of the 2nd Defendant to remind him about some point or other or talk to him so that he could then ask a question. She was asking or reminding him about some point about 3 to 4 times that day. Their 'assistant', who I believe to be their daughter, and who was there assisting the 2nd Defendant from the beginning, began noticing me looking at the 3rd Defendant during the second day of the trial, especially during the afternoon. The 3rd Defendant's behaviour abruptly changed the next day to dozing off, then apparently waking up and crying and it included going out of the court. Lest I come across as unsympathetic, I accept without hesitation that one of the most painful things in this world is for parents to bury their child. It must be even more painful to watch their child waste away to so cruel a disease as cancer and not be able to do much about it. I am sure the 2nd and 3rd Defendants suffered immensely over the illness and subsequent death of their son at the end of November 2008. However, they were engaged in business activities and unless they disengaged themselves from those activities, they had to keep them separate. I am afraid that I formed the view that the 2nd and 3rd Defendants were beginning to use their son's tragic end as an excuse for their own ends by the time of the action and trial. I also formed the view that the 3rd Defendant was evading taking the witness stand after stating in writing that she wanted a vacation of trial dates to enable her to come to court to clear her name and expose the Plaintiff's lies and distortion of the truth. I therefore did not accept the Defendants' version that they discussed the Plaintiff investing in the 1st Defendant's business plan to promote her book and herself with her retirement nest egg. I found that the 3rd Defendant also actively participated at these and the other meetings.

15 On 13 December 2007, the Plaintiff met the 2nd and 3rd Defendant at the 1st Defendant's office to discuss an agreement for the plan that they had discussed in the two meetings. After the meeting the 2nd Defendant drafted the contract. What must be noted is that the Plaintiff was persuaded to part with $500,000 of her savings. Why the promotion of the Plaintiff's book and her reputation as an author required her to part with such a large amount of money on the Defendants' version could not be readily understood. I accepted the Plaintiff's view, albeit with hindsight, which was set out in her AEIC at paras 11 and 12:

> 11 I aver that they convinced me that the 2nd Defendant could coach me to market and promote the book myself. His coaching fee was US$10,000 per year. With worldwide circulation of my recently published and a next book in mind, the 2nd Defendant proposed the coaching would be best for 3 years, and the coaching would be based on a sort of 'wealth building" formula, meaning a formula that was to combine the marketing of the book with marketing me/the author cum yoga teacher cum workshop facilitator.
>
> 12 I aver that somewhere along, they shifted from coaching talk to private talk and began to inquire into my private life and private financial situation; in hindsight they were simply violating

my privacy. They began suggesting I invest through [the 1st Defendant] too, in order to rebuild my total assets …

16 The 2nd Defendant had the agreement he drafted typed out. On 14 December 2007, the Plaintiff went to the 1st Defendant's office and signed the contract (the "Contract"). The 2nd Defendant, although claiming to be an associate or group business consultant of the 1st Defendant, and not a shareholder or director at that time, signed the Contract. The 3rd Defendant was around then, but the 2nd Defendant could give no convincing explanation why she did not sign as she was the director and shareholder of the 1st Defendant. He said that he did not make any business management decision for BMW at the material time, they were all made by the 3rd Defendant. The 2nd Defendant said he signed the Contract because his son was not well that day and the 3rd Defendant had to take him to hospital to be admitted. He said he brought the typed Contract home for the 3rd Defendant to approve and once she approved it, he signed it the next day. That of course does not explain why the 3rd Defendant could not sign the agreement on the evening of 13 December 2007 once she approved its terms. When I asked why this was not possible, given his position that the 3rd Defendant was the director made all the business decisions for BMW, the 2nd Defendant claimed that in case there were amendments made on 14 December 2007, it was left for him to sign. This must have meant that the 2nd Defendant had the necessary authority to agree to changes.

The Business Personal Coaching Agreement

17 The Contract that the 2nd Defendant drafted was, in effect, in simple point form and it reads as follows:

> **BUSINESS PERSONAL COACHING AGREEMENT**
>
> 1ST Party: Billionaires Management Worldwide (BMW) Pte Ltd
>
> 2nd Party: Elise Everarda… Author of "Yoga, A Many Splendorous Path"
>
> 1st Party: A) Will plan and execute a business strategy for the 2nd Party to achieve the following:
>
> (i) To achieve worldwide circulation of the book, "Yoga, A Many Splendorous Path" within 12 months to 24 months subject to availability of translation into languages other than English where applicable.
>
> (ii) Set up a marketing strategy for multiple sources of income i.e Royalties, Seminar, talk-shows etc…
>
> B) Arrange project investment plan for the amount of S$500,000 in two lots of S$250,000 for a 3 years period. The fixed monthly income to be S$15,000 or 3% of amount invested.
>
> C) To devise a plan and strategy for the 2nd Party to rebuild her Total Assets to S$1,600,000 within 3 years from current value of S$720,000 i.e plus S$880,000 within 3 years.

D) The 1st Party Guarantees that at all times the 2nd Party will recover at least twice the cost incurred.

2nd Party: A) The 2nd Party hereby agrees to abide by all guidelines stipulated by the 1st Party so as to ensure that the objectives can be achieved.

B) The 2nd Party agrees to pay the following cost: -

(i) A Business Consultancy Fee of US$10,000 per annum.

(ii) A Wealth Dynamics Boardroom Fee of US$4800 per annum.

(iii) A Wealth Dynamics Masterclass Fee of US$2400 per annum.

Both Parties agree that they will work in a WIN WIN WIN manner to ensure the success of all parties.

1st Party	2nd party
(Sd.) [14/12/07]	(Sd) [14/12/07]
Thomas Iskandar Shah	Elise Everarda
Snr Group Business Consultant	Passport No: BAO 367168
	Author of "Yoga, A Many Splendorous Path"

It should be noted that the 2nd Defendant did not sign the agreement for and on behalf of the 1st Defendant. There were no words of qualification to his signature. Nor was there any suggestion that when he signed the Contract he told the Plaintiff that he was signing the Contract on behalf of the 1st Defendant only. In reality, there was no one else running the 1st Defendant. The 2nd Defendant conceded that he and the 3rd Defendant were the "senior management" of the 1st Defendant at the material time. If it was necessary, I would be prepared to find and hold that in the circumstances of this case, the 2nd Defendant signed the Contract in his own personal capacity as well and became liable thereon.

18 There was some controversy over the actual terms of the Contract. In her AEIC dated 3 October 2010, the Plaintiff produced a document which was identical in content to the above contract, but with handwriting along the sides and at the bottom of the page. The relevant notation in manuscript for example stated against clause A (ii) and (C) was: "2 January 2008", against the Wealth Dynamics Boardroom sessions: "4 x Annual" and against the Wealth Dynamics Masterclasses: "12 x Annual". The question was what these notations meant and whether these handwritten notations were to be included as terms of the Contract.

19 The Plaintiff asserted that on 14 December 2007, both parties had a copy of the Contract prepared by the 2nd Defendant, but upon reading it, she found two points, which had not been previously discussed, added, *viz*, the Wealth Dynamics Boardroom fee and the Wealth Dynamics Masterclass fees. She also found the terms unclear in that there were insufficient details. These further points were therefore discussed between the Plaintiff and the 2nd Defendant and she made those handwritten notations on her copy of the Contract. The Plaintiff stated that the 2nd Defendant agreed that her copy would be the Contract, and even made a photocopy of her copy with the

handwritten notations for his reference. It is worth noting that in an earlier affidavit dated 12 September 2008, the handwritten notations in the contract which the Plaintiff produced appeared to be very faint, but they were there. The Plaintiff explained that perhaps this was due to the numerous times which the document was photocopied by her then lawyers. The Plaintiff's copy therefore always had the handwriting on it.

20 The 2nd Defendant denied that he had agreed to any additional terms, and asserted that the handwritten notes were not written during the meeting. He claimed and alleged that the final contract was the clean copy produced in his affidavit dated 17 March 2010. Earlier, he had initially exhibited a copy of the Contract that contained the Plaintiff's faint handwritten notes in his affidavit of 13 February 2009. He claimed that this was a photocopy of the contract which the Plaintiff produced in her affidavit dated 12 September 2008, and that the reason why the notes appeared faint was that Plaintiff had erased the handwritten notes as she knew they were not part of the Contract.

21 Having heard the evidence, I accepted the Plaintiff's version of events and reject the Defendants' version. Her evidence was unwavering and more believable. The Contract, as drafted, was only in point form without any details. They were more correctly termed the main principles of the agreement reached between the parties. The printed terms of the Contract were not only vague, there were no concrete terms or necessary details. It was entirely conceivable, and I found, that the Plaintiff had asked for additional details during that meeting. This included her queries on the two new items – the Wealth Dynamics Boardrooms and Wealth Dynamics Masterclasses added in by the Defendants after the meeting on 13 December 2007. I found that the handwritten notes fleshed out the terms of the contract with some of the necessary details that any party would want to know and expect would form part of their contract. I also accept that the 2nd Defendant promised the Plaintiff that her copy of the contract would constitute the Contract, and that he also made a photocopy of her copy with the handwriting on it. It was clear to me that the Plaintiff trusted the 2nd and 3rd Defendants and therefore did not ask him to re-draft the Contract to include the handwritten terms as she was clearly not someone experienced in matters of business. A lot of her trust in the 2nd and 3rd Defendants stemmed from the fact that they were fellow XL Life Members and all XL members promised to abide by the XL 'Life Membership Code of Conduct'. Moreover the 2nd and 3rd Defendants were not just XL Life Members, they were the XL Country Managers for Singapore and therefore held positions of great trust and confidence. It was also very clear to me that the Plaintiff held the XL goals for the good of its members, eradication of poverty and ethics very dear to her heart. Her big mistake was to assume that the 2nd and 3rd Defendants were of the same mind and held the same values when they clearly did not. And so she dealt with them on that mistaken basis. I found that the Plaintiff's copy of the Contract with her handwritten notes superseded the clean copy produced by the 2nd Defendant in his AEIC dated 17 March 2010.

22 It is clear from the authorities, including *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029, that contracts are not made in a vacuum. Contracts like the one under consideration, not drafted by lawyers nor falling within the class of recognised commercial documents, are those where the court has often to ascertain the intention of the parties in arriving at the terms of the agreement by construing it against the relevant and clear contextual background. It is clear that this very briefly expressed Contract of 'general principles' did not contain the entire terms of the agreement reached between the parties. The context in which the Contract came into existence assumes some importance when it comes to construing what the parties intended by the words used. It was not a contract to which the parol evidence rule applies. Moreover no such difficulty over the parol evidence rule could arise here because the terms were extremely brief and, as noted above, this Contract did not contain the entire agreement reached

between the parties. Applying these principles, it was clear that the Contract provided for the following:

(a) First, (under "A" on page 1), the 1st Defendant would plan and execute a business strategy for the Plaintiff to (i) achieve a worldwide circulation of her book within 12 to 24 months, (ii) set up a marketing strategy for multiple sources of income like royalties, seminars, talks-shows, etc; this would also entail, (on page 2 under "B"), the Plaintiff paying the 1st Defendant for the following:

(1) US$10,000 per annum as a business consultancy fee;

(2) US$4,800 per annum for Wealth Dynamics Boardroom fees; and

(3) US$2,400 per annum for Wealth Dynamics Masterclass fees;

(b) Secondly, (under "B" on page 1), the 1st Defendant would arrange an investment plan for the amount of S$500,000.00, (given in two tranches of S$250,000 each), over a period of 3 years and that there would be a fixed monthly income of S$15,000 to the Plaintiff or 3% of the amount she invested and, (under "C" on page 1), the 1st Defendant would devise a plan and strategy for the Plaintiff to rebuild her Total Assets, (not defined), to S$1,600,000 within 3 years from the current value of S$720,000, *ie* plus S$880,000 within 3 years; and, (under "D" on page 1), the 1st Defendant guaranteed that the Plaintiff would recover at least twice the cost incurred, (and it should be noted that there was no definition or explanation as to what 'cost' referred to).

The Plaintiff agreed to abide by all guidelines stipulated by the 1st Defendant so as to ensure that the objectives could be achieved. The Plaintiff termed the first as the coaching element and the second as the investment element.

23 I also found that the handwriting on the Plaintiff's copy of the Contract was evidence of the following terms that were agreed upon by the parties at the time of signing of the Contract:

(a) the setting up of a marketing strategy for multiple sources of income ie royalties, seminars, talk-shows, etc and the devising of a plan and strategy for the Plaintiff to rebuild her total assets to S$1,600,000 within 3 years was to be done by 2 January 2008;

(b) the parties agreed the 1st tranche of the S$500,000 would be paid on 2 January 2008, with the Plaintiff handing the 2nd Defendant a post-dated cheque for that sum and the 2nd tranche of S$250,000 would be paid sometime around 11 to 15 January 2008;

(c) the S$500,000 would be at least S$1,000,000 by 2011;

(d) there would be 4 Wealth Dynamics Boardroom classes per annum, starting 2008; and

(e) there would be 12 Wealth Dynamics Masterclasses per annum, starting 2008.

There were no details agreed upon as to the 'guidelines' to be stipulated by the 1st Defendant. None were ever drawn up. The Defendants' version of their guidelines was simply that the Plaintiff should comply with all their instructions. That translated in effect, to: do what I tell you to do without

deviation or questions.

Did the Defendants Breach the Contract?

24 The Plaintiff's case was that she terminated the contract because of the 1st Defendant's repudiatory breach in not carrying out any proper coaching lessons for her, there were no plans made or effected in promoting her or her book, there were no Wealth Dynamic Masterclasses being held nor any plans for Wealth Dynamics Boardrooms, and the 2nd and 3rd Defendants were totally absorbed in and affected by their son's terminal illness. The Plaintiff also alleged that the Defendants did not create any business strategy for her to ensure worldwide circulation of her book or any marketing strategy for multiple sources of income, or to set up multiple sources of income, pursuant to Clause A ("Business Strategy"). Furthermore, the 1st Defendant failed to deliver any project investment plan for her $500,000, pursuant to Clause B, or any plan for her to rebuild her total assets to S$1,600,000 within 3 years, pursuant to Clause C ("Investment Plans"). It was not in dispute that the Plaintiff was paid S$15,000 for February, March and April 2008 and S$7,500 for May 2008 by the Defendants. Equally, it was the Plaintiff's case that the 2nd and 3rd Defendants should be personally liable for this breach of contract as directors of the 1st Defendant. Finally, the Plaintiff claimed that the 2nd and 3rd Defendants conspired with the 1st Defendant to defraud her of her savings.

25 The 2nd Defendant denied that the 1st Defendant breached the Contract and claimed that the Plaintiff had terminated the contract prematurely without any justification and therefore caused the entire project for her to fail. The Defendants also said the Plaintiff failed to abide by their 'guidelines'. The Defendants stopped paying the Plaintiff any more because of the Plaintiff's alleged repudiatory breach in evincing an intention not to continue with the Contract in or around April 2008.

The Coaching Element & Promotion of the Plaintiff and Her Book

26 Under the Contract, the Plaintiff agreed to pay the 1st Defendant a business consultancy fee of US$10,000, a Wealth Dynamics Boardroom Fee of US$4,800 per annum, and a Wealth Dynamics Masterclass Fee of US$2,400 per annum. The 2nd Defendant was to coach the Plaintiff on ways to market herself, set up multiple sources of income and learn to give good seminars, talk-shows and workshops to promote herself as a yoga authority and teacher as well as an author. It is not disputed that these sums were paid by the Plaintiff up front.

27 The Plaintiff said that she found the 2nd Defendant forgetful and not focussed during their coaching sessions. Each coaching session would start with the 2nd and 3rd Defendants talking about their terminally ill son and she empathised with their terrible plight. She even gave them the contact of an Ayurvedic Professor to see if alternative medicine could help. Because of the 2nd Defendant's lack of focus and forgetfulness as to what had been covered in the session before, she started making minutes of what was covered by each coaching session to help the 2nd Defendant recapitulate what had been covered and to move forward.

28 The Plaintiff contended that the amount paid was not earned by the 1st Defendant as it and the 2nd Defendant provided no proper business consultancy services and conducted no Wealth Dynamics Boardroom sessions or Wealth Dynamics Masterclasses. The Plaintiff did not dispute that the 1st Defendant provided 6 coaching sessions to the Plaintiff from 14 December 2007 to 6 February 2008. However, contrary to the 2nd Defendant's representation that the coaching sessions were

based on a marketing strategy to promote the Plaintiff's book, as noted above, the Plaintiff asserted that every coaching session began with the 2nd and 3rd Defendants relating their son's tragedy and the current stage of his plight to her. In addition, the Plaintiff stated that any coaching which was done after that was random, not focussed and not based on any marketing strategy. She had to come forward with a lot of the suggestions. The 'minutes' showed that it was the Plaintiff who was putting forward the ideas for marketing herself and her book. It was telling that the Defendants did not dispute any of these 'minutes' although copies were sent to them each time they were made.

29 The 2nd Defendant contended that he did provide coaching sessions for the Plaintiff based on a marketing strategy to increase her profile as a writer and promote her book. It would take time to do that as she was unknown. She was too impatient and prematurely repudiated the Contract. As for the Wealth Dynamics Boardroom sessions and Masterclasses, he asserted that none were provided because classes were only to begin in June/July 2008, and that he had explained this to the Plaintiff at the meeting of 13 December 2007. He argued that the fact that the Plaintiff had not asked about the Wealth Dynamics sessions or Masterclasses in her many e-mails reinforced his assertion that she knew about the change of dates. I did not accept the 2nd Defendant's version. He could not give any satisfactory explanation how or why the 12 Masterclasses to be held over the year were to be squeezed into 6 months along with the 4 Boardrooms, also squeezed into the same period. Further, the Plaintiff pointed out that she paid him in advance in December 2007 for those classes in 2008 and she asked the 2nd Defendant why he was charging her in advance, and why would she agree to it, if these classes and Boardrooms were only going to be held after June or July 2008. Again the 2nd Defendant had no convincing answer except to say lamely he had given her a discount for the early payment. I could not accept that as true. I accepted the Plaintiff's version that the 2nd Defendant only told her about postponement of the Masterclasses and Boardrooms in March 2008.

30 The Plaintiff strongly disputed that she had been told that the Wealth Dynamics Boardroom sessions and Masterclasses were only to start in June/July 2008, and argued that the 1st Defendant had no intention of conducting either the Wealth Dynamics Boardroom session or Masterclasses. As noted above, the 2nd Defendant made much of the fact that the Plaintiff had never complained about this in the many emails passing between them. Neither was it stated in her "minutes". The Plaintiff stated that she did not ask about the sessions nor press them for any other matters due to the plight of the 2nd and 3rd Defendant's son and how badly they were affected. She felt for them. She was badly affected by the 3rd Defendant crying in her arms. The Plaintiff said she was not the type of person who would dwell or press on matters of business, knowing that the 2nd and 3rd Defendants' son was dying and they were having difficulty coping with that. I accepted her evidence. What she said was consistent with the kind of person she was:

> Every session, every coaching session started with you and your wife sharing your plight about your son. It started with your son was degenerating, the voice was unbearable. You showed me weaknesses. Your wife cried in my arms. You were, before a coaching session started, fully emotionally trying to get me in your plight. I come from a state that after that, I did not dare to ask you about this because I was fully aware that you as parents have more than my business strategy at that time. That is the only reason why I kept patient…

31 With regard to the 1st Defendant's coaching sessions, I therefore accepted the Plaintiff's evidence that the 2nd and 3rd Defendants were not focussed during the sessions. During the trial, the 2nd and 3rd Defendants continually mentioned their grief about their son's tragedy. They even did so

during the interlocutory matters heard by me. They claimed they were unable to concentrate on the matters relating to the trial because to gather these documents and recall the facts only brought back all the pain and memories of their deceased son. The trial dates had to be postponed for nearly two months from 12 April 2010 to 7 June 2010 as the 3rd Defendant was allegedly still too depressed over her son's death. It was completely conceivable that during the period of the coaching sessions, January to March 2008 and then going on to November 2008, when the 2nd and 3rd Defendant's were grappling with their son's plight and fighting to keep him alive, they were unable to concentrate on their coaching obligations and could only think of their son's tragedy. The 2nd Defendant said his wife did not sign the Contract because on the day before, his son had become very sick and then had to be hospitalised on 14 December 2007 due to the bleeding of his tumour into his brain. One can well imagine the gradual sinking of their son's condition in the early months of 2008 until his tragic demise at the end of November 2008. I therefore accepted the Plaintiff's evidence, including her allegation that the 2nd Defendant failed to respond on her idea to insert advertisements in a magazine called Expat Living or to organise interviews. I also accepted her evidence that the Defendants inserted the wrong write-up about the Plaintiff in their advertisement of a workshop to all XL members, (see Exhibit "EME-8" in the Plaintiff's AEIC). In addition, it was unlikely that the coaching sessions were based on any marketing strategy, as the 2nd Defendant himself claimed that specifics of the strategy had to be kept secret to prevent others from stealing the idea.

32 With regard to the Wealth Dynamics Boardroom sessions or Wealth Dynamics Masterclasses, I accepted the Plaintiff's evidence first of all that these were unilaterally added by the Defendants after their discussion of the terms on 13 December 2007 and secondly that she was not told about the change of dates of the Wealth Dynamics Boardroom sessions and Masterclasses until March 2008. As noted above, given her nature, I accepted and found that she empathised with the 2nd and 3rd Defendants plight and sorrow and therefore did not have the heart to ask or press about the Wealth Dynamics Boardroom sessions or Masterclasses. I found that the 2nd and 3rd Defendant's had never arranged any Wealth Dynamics Boardroom sessions or Masterclasses for the Plaintiff as called for under the Contract. This was also consistent with their behaviour in failing to create a Business Strategy or Investment Plans as I shall come to below. The Plaintiff's letter dated 25 March 2008 suggesting that they mutually terminate their Contract, was entirely consistent with her version of the events:

> Since the postponement of our meeting March Tuesday 18th to Wednesday 19th, to Thursday 20th and then to Wednesday 26th, I have given our contract very serious consideration.
>
> First and foremost, let me say that my heart goes out to you and your wife and Danish. I am deeply aware what a stressful time it is for you and your family. When I signed the contract I was not aware that you are out of Singapore on such a regular base. Adding the two together, it does not seem to be the right time for you to take on a one-to-one coaching commitment.
>
> I am most concerned, for as yet 3 months down the road, there has been made no progress with regards to the terms of the contract, re page 1/1 A-C- … and page 2/2 B.
>
> I am feeling disturbed about it and anxious as you have not been able to meet these contractual commitments and, given the circumstances, do not seem to do so in the foreseeable future. Awaiting your strategic business plan I have taken all sorts of action … to this end I propose that we terminate the contract before it seriously affects our relationship as colleagues in XL, as friends and as contract partners.

… The months up to now have clearly demonstrated, understandably so regarding your personal family cares and international business traveling, that the contract and meeting commitments have become impossible for you to make happen. …

A new contract needs to replace the old wherein only my investment plan through BMW is to be mentioned, and which need to be done latest by Friday, 28th.

33 I therefore found that the amount paid by the Plaintiff under the 'coaching element' and promotion of her and her book was not earned by the 1st Defendant as it provided no proper business consultancy services or coaching and failed to conduct any Wealth Dynamics Boardroom sessions or Wealth Dynamics Masterclasses. There was a clear breach of the contract by the Defendants from the beginning. As such, the Plaintiff was entitled to terminate the first part of the Contract and seek a refund of the sums paid for these services, sessions and classes.

The Investment & Promise to Increase the Plaintiff's Assets to S$1,600,000 Within 3 Years

34 As I have found above, it was the Defendants who took the initiative to seek out information on the Plaintiff's financial position, her retirement plans and then persuaded her to invest with them and made assertions of growing her wealth to S$1,600,000 within 3 years and to achieving at least S$1,000,000 by 2011. I now deal with the far more serious and cruel blow to the Plaintiff. She handed over two thirds of her savings to the Defendants to invest and grow it for her and it is now all gone. The 2nd Defendant confirmed that it has been exhausted and they are not in a position to even pay back a portion of that sum. The evidence shows that the whole $500,000 practically disappeared within 5 months of her handing over the money to the Defendants in January 2008.

35 It was not in dispute, because the 2nd Defendant finally conceded it, that the 1st Defendant did not even have any internal written Business Strategy or Investment Plans for this S$500,000. However, the 2nd Defendant argued that the Contract did not specifically require the Business Strategy or Investment Plans to be in writing, and then argued that there was no express deadline by which they had to be produced. In my view, this was not acceptable and untrue. Even if all else is put to one side, the 2nd Defendant admitted that the 1st Defendant would have produced a written Business Strategy and Investment Plans except for the plight of their son. The 2nd Defendant said that they just had to prioritise their commitments to family, to business and, no doubt, XL. I have also found it was a term of the Contract that they had to do so by 2nd January 2008.

36 The 2nd Defendant then disingenuously claimed that *he had in fact* devised a Business Strategy and Investment Plan. The 2nd Defendant explained that this strategy and plan was based on an online portal called BMW-Admall, which was managed by the 1st Defendant. In his AEIC dated 17 March 2010, at paragraphs 127 and 128, the 2nd Defendant claimed as follows:

127 This online portal is the "BMW-Admall" (the "Admall"). The Admall is an online advertising forum where patrons could purchase advertisement spaces) ("Ad-spaces") at a cost of US$400….

128 As regards the Business Plan, BMW's intention in regard to the said launches of Admall in Bangalore and Dubai was to bundle a copy of [the Plaintiff's] Book together with each purchase of an Ad-Space. This way, purchasers of Ad-spaces would receive a copy of [the Plaintiff's] Book along with the AD-spaces purchases and they would come to know about [the Plaintiff] and her Book.

37 The 2nd Defendant asserted that the plan was to sell 2 million Ad-spaces, and reward the Plaintiff with US$30 for every Ad-space sold ("BMW-Admall Project"). He asserted that the BMW-Admall Project was the Business Strategy as it would achieve worldwide circulation of the book and increase the Plaintiff's profile as a writer. In addition, the BMW-Admall Project was also the Investment Plan as the Plaintiff's assets would be increased proportionately with the sale of Ad-spaces. The 2nd Defendant claimed that he had explained the above strategy to the Plaintiff when they met on 13 December 2007. He argued that the fact that the Plaintiff did not ask about either the Business Strategy or Investment Plans throughout their e-mail correspondence from 14 December 2007 to 25 March 2008, and during any of the coaching sessions, reinforced his assertion that he had explained the plan to her.

38 The 2nd Defendant also claimed that the 1st Defendant took steps to organize events in Bangalore and Dubai in furtherance of the Business Plan, by launching the BMW-Admall there. The first event was held on 4 May 2008 in Bangalore and the second event was held on 11 May 2008 in Dubai. He added that the 1st Defendant had engaged the services of Mr Bose, to assist in the planning of the launch. In the 2nd Defendant's affidavit dated 13 February 2008, he asserted that the 1st Defendant had also engaged Mr Suresh Oberoi, a veteran Bollywood actor, to act as their 'Brand Ambassador' at a significant cost of over $250,000.

39 The 2nd Defendant, in an affidavit filed on 13 February 2009 to resist summary judgement proceedings taken out by the Plaintiff, also exhibited a number of photographs to show that the Plaintiff's book was being promoted in Dubai. The photographs contained the heading "Creating Awareness of Billionaires Management Worldwide with Brand Ambassador Suresh Oberoi to promote Yoga – A Many Splendorous Path in Dubai and India".

40 The evidence does not support the 2nd Defendant's story about the BMW-Admall Project at all. In fact the evidence shows the untrue statements made on oath in the 2nd Defendant's 13 February 2009 affidavit. Their version is full of inconsistencies. Apart from there being no written evidence of the Business Strategy or Investment Plans, and not even an oblique reference to it in the Contract, I accepted the Plaintiff's assertion that the BMW-Admall project was never mentioned to her. Her assertion was given very firmly, very clearly and she was not shaken at all on this. The Plaintiff told the Defendants she wanted to promote her book and herself in the surrounding region like Indonesia, Singapore, Malaysia and China. There was evidence of her own efforts in Indonesia and China. She never asked the Defendants to promote her or her book in Dubai or India. In the 2nd Defendant's AEIC dated 17 March 2010, he stated that the BMW-Admall Project had to be kept a secret to ensure that the idea was not stolen. Having heard the 'idea', I cannot see why it is so secret or why it has to be kept a secret. Furthermore, when submitting his project accounts, the 2nd Defendant included a write-up to say this business plan came from some well known person, so he claims, called Jay Abraham, and the 2nd Defendant exhibited a portion of the following book: Money-Making Secrets of Marketing Genius Jay Abraham and Other Marketing Wizards, A No-Nonsense Guide to Great Wealth and a Personal Fortune (© 1993 and 1994, Abraham Publishing Group, Inc., California). It was certainly not novel or revolutionary an idea, not by a long chalk. In addition, when he was cross-examined on why he did not produce a written Business Strategy, he said that the strategy was a matter for internal management, and it was not necessary for the Plaintiff to know the details of the plan. This was consistent with the Plaintiff's assertion that he had never mentioned the BMW-Admall Project to her and totally inconsistent with the 2nd Defendant's evidence at [37] above.

41 Mr Bose, the lawyer supposedly hired by the 1st Defendant to help in the launching of BMW-Admall and the Plaintiff and her book in Dubai, flatly denied the Defendants' claim of the link between the BMW-Admall and the Plaintiff. As noted above, the Defendants accepted Mr Bose's AEIC and did not wish to cross-examine him. Mr Bose unequivocally stated in his AEIC that the Plaintiff's book was never mentioned at the Dubai and India launches of the BMW-Admall:

> ..before 25 March 2008 … [there was] no aggressive promotional and marketing drive to sell the book Yoga, A Many Splendorous Path, by Elise Everarda, which engaged the Bollywood actor Mr Suresh Oberoi,
>
> I aver that the author of the book and the book were never mentioned to me and thus no cornerstone in the M+BMW-Admall Investment and (or) in the BMW-Admall promotion drive in Dubai and India.
>
> I aver that Mr Suresh Oberoi was not engaged to promote the mentioned book at a cost of over S$250,000/-. These statements are false.

More devastating to the 2nd Defendant's version of events, Mr Bose added that he knew nothing about the Plaintiff or her book and that the photograph exhibited by the 2nd Defendant in his 13 February 2009 affidavit as "TS-13" was indeed taken in Dubai but the headline was "fabricated". This exhibit had the photograph of the launch of the BMW-Admall Project in Dubai, but the original headline above the photograph was removed and another was substituted; the false headline read: "Creating Awareness of Billionaires Management Worldwide with Brand Ambassador Suresh Oberoi *to promote* "*Yoga – A Many Splendorous Path in Dubai and India*", (emphasis added). When I asked the 2nd Defendant to explain this and how the same photograph had a false headline substituted in his affidavit, he could only weakly say, totally without conviction, that it was an "internal" photograph had been wrongly inserted into his affidavit. Why the Defendants ever had the same photograph, whether internal or external, with a false heading or headline speaks for itself, let alone its appearance in his affidavit as an exhibit in support of an allegation that was untrue and misleading. Paragraph 28 of the 2nd Defendant's 13 February 2009 affidavit reads as follows:

> To perform their obligations, the Defendants had utilised the S$500,000 to invest and advance their plans as set out above. In this regard, the Plaintiff's book as well as the Defendants' business was already being promoted in Dubai even as far back as in February 2008, a copy of the relevant photographs showing the aforesaid is exhibited hereto and marked " **TIS-3** ".

The truth of the matter is, as Mr Bose's affidavit showed, that the promotion and the securing of Mr Suresh Oberoi was to promote BMW-Admall and not the Plaintiff or her book, but her funds were used for the BMW-Admall project. The print-outs of the BMW-Admall site show that there were many other matters being promoted on that site, the Plaintiff's book was only one and seemed almost incidental when considering that site as a whole. More telling was an email dated 20 March 2008 from the 2nd and 3rd Defendants to Mr Bose which refers to a coming meeting in Dubai from the 22 to 25 March 2008 where the following would be discussed: marketing Dubai properties in Singapore, Indonesia and Malaysia, launching the Defendants' on line advertising mall in Dubai – www.bmw-admall.com, marketing ladies and children fashion clothings, banana plantation in Indonesia, coconut plantation in Indonesia, labour supply, supply of construction materials, eg cement, mortar, etc, and alternative Eco fuel productions. The Defendants were also thinking of setting up an import and export company or marketing agency or 'rep' office in Dubai where they needed Mr Bose's assistance and advice. All this had nothing to do with the Plaintiff or her book.

42 Faced with this evidence from Mr Bose, the 2nd Defendant desperately tried to salvage the position by stating that it was not necessary to tell Mr Bose about the book as it was a matter of internal management. In my view, this was again most unconvincing and was a feeble lie to cover up his fabrication of the photographs in question and the lies set out in the 2nd Defendant's affidavit of 13 February 2009. These are some of the incredulous answers given by the 2nd Defendant in his cross-examination:

Plaintiff:	My name was not mentioned once at these launches, is this so?
2 Defendant:	It has been made clear to you that there was no necessity to mention your name or your book at that moment because it was under the strategy of bundling or under the host device strategy where the parasite doesn't need to be mentioned.
Plaintiff:	Was my name mentioned at these launches?
2 Defendant:	No it was not mentioned because there was no necessity to do so.
Plaintiff:	My book was not mentioned once at these launches, is this so?
2 Defendant:	Yes, as what you say and what I've told earlier, the book was not mentioned because there was no necessity to do so.

It appeared to me that using the BMW-Admall Project as their business plan and strategy for the promotion of the Plaintiff and her book was a clear and disingenuous afterthought to try and justify using the Plaintiff's funds for their own project. In the 2nd Defendant's affidavit of 13 December 2007, he claimed that the Defendants had created an "internet portal to sell the Plaintiff's book as well as various other products of the Defendants". However, the BMW-Admall portal was created in August 2007, two months before the 2nd Defendant met the Plaintiff. I accepted the Plaintiff's evidence that the Defendants never told her of the BMW-Admall project and she only came to know of the BMW-Admall project from the 2nd Defendant's affidavit of 13 February 2009.

43 In addition, the 2nd Defendant stated that he had sold over 100 Ad-spaces in Dubai. If this was so, he should have distributed 100 of the Plaintiff's books. However, at the material time, he had not obtained any copies of the Plaintiff's book from her or her distributor. As such, he could not have bundled her book with the Ad-spaces, let alone set aside US$30 for the Plaintiff for each sale of an Ad-space.

44 The 2nd Defendant claimed that the Plaintiff's funds, and more, had been spent to create a Business Strategy and Investment Plan for the Plaintiff. But up to a week before trial, there was no documentary evidence produced to back this claim. At the last minute, the 2nd Defendant produced a bundle of documents entitled "Project Investment Accounts/Costings". This bundle was most unhelpful as it was not well arranged, did not explain much, had portions missing and was incomplete to back up the Defendants' claim. What it did show however was this:

(a) There were bank statements of the 1st Defendant's account with Overseas Chinese Banking Corporation (OCBC). The 2nd Defendant confirmed that the 1st Defendant only had that one OCBC Singapore Dollar Account. However, they did not come with any supporting documents explaining what the payments in and out of the account were for. The Plaintiff's two tranches of

S$250,000 that were paid to the Defendants were clearly reflected as payments into that OCBC account. But I could not tell what the sums of money withdrawn were used for. There were many repetitive sums paid out, some on the same day, and they were inexplicable. In addition, despite my clear instructions for the 2nd Defendant to produce the 1st Defendant's ledgers, he did not do so. As a qualified accountant, and former head of an accounting department of some14 people, he of all people should know what was required. Yet he feigned ignorance and then produced that incomplete and largely unexplained and incomprehensible bundle of documents. Accordingly, I found and held that not only were the Defendants unable to show how they spent the Plaintiff's money on her project or investment, there was no proof that they spent the Plaintiff's S$500,000 on promoting her or her book at all.

(b) On the contrary, the "Project Investment Accounts/Costings" bundle produced by the 2nd Defendant shows that he and his wife spent company's, (*ie*, the Plaintiff's), funds rather extravagantly. The 1st Defendant's OCBC Account had an opening balance of S$61,141.06 on 2 January 2008. The Plaintiff's S$500,000 went into this account on 2 and 18, (paid on the 11 but banked in by the Defendants on 18), January 2008. By 30 May 2008, this account was down to S$21,201.30. The 2nd and 3rd Defendant paid themselves an extravagant amount of S$15,000 each per day when they travelled abroad for the projects. The Defendants clearly allocated the overhead costs of the 1st Defendant from January to May 2008 to the Plaintiff. This included contract fees, allowances and casual labour of S$32,728.21, office rent of S$34,030.22, transport costs of S$12,355, telephone and utilities of S$1,735.91, donations of S$16,746 and a general management fee of S$20,000 per month which added up to S$100,000 for those 5 months. The total came to S$198,753.35. For the 'Dubai Project' from 8 to 11 March 2008, the 2nd and 3rd Defendant paid themselves S$60,000 each for that trip. In the subsequent trips for the 'Dubai Project' they paid themselves the same amount – this came to S$180,000 each for the three trips, (22 to 25 March 2008, 6 to 9 April 2008 and 19 to 22 April 2008). Between them they had paid themselves S$240,000 each for these 4 trips. Their airfare ranged from S$11,000 to S$13,000 per trip. They lived in the lap of luxury, spending S$24,390 for 5 nights in the world's only 7-star, and notoriously expensive, Burj Al Arab hotel in Dubai.

45 As for the 2nd Defendant's claim that he had hired Bollywood actor Suresh Oberoi at a significant cost of S$250,000 to promote the Plaintiff's book, the Project Accounts showed that Mr Oberoi had only been paid S$18,750. This was confirmed by the 2nd Defendant during cross-examination. Even if the cost of accommodation for both Mr and Mrs Oberoi was included, the figure was merely S$35,093.82. The 2nd Defendant could not give a proper explanation for this false claim by him. I was convinced and found that this was another of the 2nd Defendants lies, and further evidence that the Defendants had used the Plaintiff's money for their own private purposes. They certainly had not paid Mr Oberoi nor Mr Bose any significant sum of money. The Defendants claim that the entire project collapsed because of the Plaintiff's premature pulling out after some 3 months into a 36 month project was another gross exaggeration and quite false. When pressed, the 2nd Defendant then had to admit there were other reasons, *viz*, the financial crisis in September 2008 and problems that arose between Mr Bose and the Defendants. I was sure, and I so found, that their running out of money with their profligate behaviour was also a major factor. The many writs filed against them in the Subordinate Courts, which I refer to below, is ample proof of this.

46 I found that all the evidence pointed to the fact that the 2nd and 3rd Defendants had never intended to create a Business Strategy or Investment Plan for the Plaintiff. I had no doubts on this score. They needed funds for their own business and their plans for the BMW-Admall Project. The sad

truth for the Plaintiff is that she had been well and truly misled into handing over $500,000 of her savings to the 1st Defendant, 2nd and 3rd Defendants who then started to fund their own business plans and squander her money on an extravagant lifestyle. They needed money and the Plaintiff was, unfortunately for her, there at the wrong time and fell into their clutches. Having parted with $500,000 to the 1st Defendant and faced with no strategies or plans, it was understandable that the Plaintiff wanted to terminate the contract. I found and held that on the facts, she had the right to do so when she terminated the contract in light of the 1st Defendant's serious breaches of the contract.

47 It was unconscionable for the 2nd and 3rd Defendants to take the Plaintiff's savings for her retirement for their own purposes and lifestyle. I may have formed a more charitable view, *eg* that they intended to give the Plaintiff her share if they succeeded, but their extravagance in spending and the way in which they spent her money militates against their having any such noble intentions. I found that they never told her what they were doing with her money and the reason is very clear – they were surreptitiously using her money for their own ends. The Plaintiff has made a search and pointed to the many actions filed against them over the years in her AEIC. There were some 13 of them stretching from 1999 to 2009 in the Subordinate Courts. The 2nd Defendant said in response it was unfortunate that they got into so many legal actions but that cannot be taken against them because in life that sometimes happens and even Microsoft has many legal actions taken out against them. That too is a completely wrong comparison or justification. Many of these actions were credit related actions in the Subordinate Courts and being taken out by United Overseas Bank, ABN Amro Bank N.V., Standard Chartered Bank, American Express Bank Ltd and Bank of China. There were also writs filed by the HDB, Singapore Press Holdings Limited and some individuals. It was also clear to me why the Defendants never wanted to take part in any mediation. They had already spent all the Plaintiff's funds by May 2008 and they would have been unable to offer to return anything. Hence, they dragged out these proceedings as long as they could.

Whether the 2nd and 3rd Defendants were personally liable for the 1st Defendant's breach of contract

48 It is well established that the corporate veil can be lifted to make company's directors, the 2nd and 3rd Directors, liable if they had engaged in a "sham transaction" with the Plaintiff. (see *Singapore Tourism Board v Children's Media Ltd and others* [2008] 3 SLR(R) 981 at [98]).

49 In *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786, Lord Justice Diplock considered the legal concept involved in describing a transaction as a 'sham' at p 802:

> As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a "sham", it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co v Maclure* (1882) 21 Ch D 309 and *Stoneleigh Finance Limited v Phillips* [1965] 2 QB 537), that for acts or documents to be a "sham", with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating.

50 This case and *The Rialto, Yukong Line Ltd of Korea v Rendsburg Investments Corporation* (No. 2) [1998] 1 Lloyd's Rep 322 were accepted and endorsed by Justice Judith Prakash in *Win Line (UK) v Masterpart (Singapore) Pte Ltd and another* [1999] 2 SLR(R) 24 at [38]. In the present case, the 2nd Defendant is an accountant by training and certainly knows the legal effect of a company and the 'shelter' it provides its shareholders. Given how closely the 2nd and 3rd Defendant worked, I found that this knowledge was also known to the 3rd Defendant who was his wife. I found that he deliberately did not hold any shares in the 1st Defendant and in B&P and was not, at the material time, a director of the 1st Defendant or B&P. Yet it was clear that he was the one driving the business operations under the guise of a 'business consultant'. He admitted he and his wife were the 'senior management' of the 1st Defendant. On his and his wife's own AEIC evidence, he did all the negotiations and talking with the Plaintiff and his wife, the 3rd Defendant, was the passive bystander, (although I have found that the 3rd did take part in the discussions). It was the 2nd Defendant who chose to go into the witness stand, but not the 3rd Defendant. From the evidence, it is the 2nd Defendant who was taking the lead role in the 1st Defendant's business affairs. It was clear to me, and I so found, that the 2nd and 3rd Defendants were the first to initiate and enquire into the Plaintiff's means and then cold-bloodedly persuaded her to part with her money. I have found it was the 2nd and 3rd Defendants' intention to put that money into their own project and not for the purposes of the Plaintiff or for her benefit. They used the 1st Defendant as their front. The 2nd Defendant entered into his commitments to the Plaintiff through the 1st Defendant when he was not able to fulfil those obligations. The 2nd Defendant charged his services through B&P which the 2nd Defendant said was managing the business of BMW and BMW-Admall.com Pte Ltd. More than that, the Defendants never intended to create any Business strategy or Investment Plans for the Plaintiff. They just needed her money for their own project, their own business and to line their own pockets by drawing large sums of money out of the 1st Defendant to pay themselves unjustified and unjustifiable sums. The 2nd and 3rd Defendants were the will and directing minds behind the 1st Defendant. There was more than enough evidence to satisfy the requirements of entering into the Contract as a 'sham' or front. Further, as noted above, the 1st Defendant signed the Contract in his own name and his own designation as a Senior Group Business Consultant without any qualification.

51 In the present case, I found and held that the transaction between the Plaintiff and company was a sham, and that this was an appropriate situation to lift the corporate veil, and to make all three Defendants jointly and severally liable for the breaches of contract in question.

52 I think it is important to note that the 2nd and 3rd Defendants appeared to be continuing their activities under this façade of a successful group of companies and continuing to make extravagant claims. In a write-up dated 2 February 2009 to XL members, the 2nd Defendant claims:

> THOMAS ISKANDAR SHAH – XL SINGAPORE COUNTRY LEADER
>
> BNP-BMW Group CEO – Creative Development
>
> Wealth Dynamics Profile – Creator
>
> Thomas Iskandar Shah is a UK Chartered Accountant by qualification and joined the BNP-BMW Group as an External Consultant in 1987. He is the main advisor for its future growth and development.

In UK he has worked for Michael Heseltine, a former UK Defence Minister's Company, Haymarket Publishing from 1978-1982. …

…He became a self-made millionaire in 1995.

…In 2001, during the Asian Recession, ***his ideas*** *on how to revive the economy were* ***accepted by the Government*** . He has always been *inspired by his mentors*, *like his late uncle, the First Foreign Minister of Singapore, Mr S. Rajaratnam, and also by the "Founder of Modern Singapore" Minister Mentor Mr Lee Kuan Yew*.

…Since 2006, Thomas has also trained more than a thousand Entrepreneurs in Singapore, Indonesia and Malaysia. He has also set up more than 20 projects on a joint venture basis with the Business Mentoring Workshops (BMW) Entreprenuers. …

(emphases added)

The 3rd Defendant has a shorter but similar write-up claiming she "joined the BNP-BMW Group in 1987, [the year the 1st Defendant was incorporated] as Administrative Executive and was promoted to Administration Manager in 1989. In 1992 she was promoted to Administration Director. [The 3rd Defendant] was promoted to Group Regional Director in 2000 and has been the Group CEO since 2006. She is currently the Group CEO – Support Services." This is misleading in that the 3rd Defendant was the only shareholder and only director at the material time and, on the 2nd Defendant's own admission, there was no "Group" as such. Only some associated companies with common shareholders. Like her husband, the 3rd Defendant's write-up also claims "she also has a passion for marketing. To further this passion she is involved in Marketing with specialized training in Real Estate, Insurance, Food Catering and the Fashion Industry. .. She became a self-made millionaire at the age of 27."

Conspiracy to defraud

53 The Plaintiff asserted that the three Defendants conspired with the predominant purpose of injuring her by fraudulently inducing her to enter into the contract with the 1st Defendant, and make payments for investment plans and coaching obligations, which the 2nd and 3rd Defendant knew were non-existent, and instead used her S$500,000 for their own business, marketing and promotional activities. In this sense, the 2nd and 3rd defendants conspired with the 1st Defendant to fraudulently enter into a contract with the Plaintiff and then to cynically breach the Contract.

54 In *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637, the Court of Appeal stated at [45]:

The tort of conspiracy comprises two types: conspiracy by unlawful means and conspiracy by lawful means. A conspiracy by unlawful means is constituted when two or more persons combine to commit an unlawful act with the intention of injuring or damaging the plaintiff, and the act is carried out and the intention achieved. In a conspiracy by lawful means, there need not be an unlawful act committed by the conspirators. But there is the additional requirement of proving a "predominant purpose" by all the conspirators to cause injury or damage to the plaintiff, and the act is carried out and the purpose achieved.

In *Nagase Singapore Pte Ltd v Ching Hai Huat* [2008] 1 SLR(R) 80, Prakash J held that as a matter of law that there can be a conspiracy between a company and its controlling director to damage a third party by unlawful means even where the director is the company's moving spirit. I respectfully agree with this statement of the law.

55 Here, it was clear that the 1st, 2nd and 3rd defendants were involved in a conspiracy to fraudulently persuade the Plaintiff to invest her S$500,000 with the 1st Defendant, with beguiling promises to increase this to S$1,600,000 within 3 years, and then to deliberately cause the 1st Defendant to breach its contractual obligations with the Plaintiff. As mentioned above, I was of the view and have found that the 2nd and 3rd Defendants had no intention whatsoever of creating any business strategy or investment plan for the Plaintiff, or organizing any Wealth Dynamic Boardroom sessions or Masterclasses. From the outset, they had conspired to injure the Plaintiff by using her $500,000 for their own fraudulent purposes. Insofar as such a breach is concerned, *Clerk & Lindsell on Torts*, (Sweet & Maxwell, 19th Ed, 2006), at p 1623 para 25-128, states as follows:

> Despite the problems of policy surrounding it, the principle appears to have been accepted that a deliberate breach of contract is unlawful means for the purpose of conspiracy [note: 1]

56 Hence, I found that all three Defendants were liable for conspiracy to defraud the Plaintiff by unlawful means. Whilst it is impossible to lay down a definition completely and comprehensively encompassing fraud, as it is infinite, *crescit in orbe dolus*, for the present purposes it is sufficient to say that there were false representations and promises made knowingly by the Defendants to the Plaintiff, thereby causing the Plaintiff to pay over her money to the Defendants and it has resulted in pecuniary loss and injury to her. There was intentional misrepresentation and concealment by the Defendants. The Plaintiff would have never parted with her money if she knew the true purpose of the Defendants. If A induces B to enter into a contract with him with the object of committing an unlawful act to the injury of B, that is a fraud on B: see "Fraud", *Jowitt's Dictionary of English Law* (Sweet & Maxwell, 2nd Ed). The unlawful act can include a planned, future deliberate and cynical breach of contract made at the time B was induced to enter into the contract. This is fraud in the first sense set out in *Derry v Peek* (1888) L.R. 37 Ch. D. 541 and not that of making a representation recklessly, not caring whether it is true or false. The Defendants combined to injure the Plaintiff and the Plaintiff has suffered undoubted damage. The Plaintiff has also satisfied the high burden of proof required to sustain an allegation of fraud as set out in the *Derry v Peek*.

Points of Practice and Procedure

57 Our Rules of Court (Cap 322, R5, 2006 Rev Ed)("RSC") currently stipulate that a company must be represented by a solicitor in court: see O 5 r 6(2) – Except as expressly provided by or under any written law, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor, and Ord 12 r.1(2) – Except as is expressly provided in any written law, a defendant to such an action who is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor. However English cases like *Arbuthnot Leasing International v Havelet Leasing* [1992] 1 WLR 455, at 461-463 and *Lea Tool & Moulding Industries (In Liquidation) v CGU International Insurance* [2000] 3 SLR(R) 745 suggest that this is not an immutable rule of procedure. The former case states that there can be exceptional cases and the basis of making an exception is the court's inherent power to regulate its own procedure. In that case, Scott J gave an example for an exception – where a Mareva injunction has been taken out against a company freezing its assets and because the company is not then in a financial position to appoint solicitors, a director may be allowed to join the proceedings to discharge or vary the Mareva injunction. In the latter case, Lai J ruled that a

company could comply with an 'unless order' to file its bundle of documents by its own officer and not its solicitor (who had discharged himself). However *Redford v Freeway Classics* [1994] BCLC 445, shows that these are indeed exceptions because the English Court of Appeal did not consider the fact that a company might have a good defence or that a director's reputation might be adversely affected by an adverse default judgement or that the company may not have sufficient funds and the plaintiff's conduct as exceptional circumstances. In England, this requirement has been set aside by an amendment to their Civil Procedure Rules which now permits corporate self-representation unless there is a particular and sufficient countervailing reason: see para.5/6/1, Singapore Civil Procedure (Sweet & Maxwell, 2007). With effect from 1 July 2007, the Registrar is empowered to issue Practice Directions permitting the circumstances under which a person who is not an advocate and solicitor may begin or carry on proceedings on behalf of a corporation, but no such Practice Direction has been issued to date. Unless this is done, the position must be that a corporation can only carry on proceedings at trial by an advocate and solicitor and any suggestion to the contrary in the aforementioned text cannot, with respect, be right.

58 In any case, this is certainly not such an exceptional case. I would have entered judgement against the 1st Defendant on the first day except that it would have made little difference since the 2nd Defendant, and theoretically the 3rd Defendant were both present to give evidence as parties before the court and I wanted to hear all the evidence before making my decision on the case as a whole. In my view, it is only in the very exceptional case, as in the example given by Scott J and Lai J that this rule can be put to one side, given the clear language of our RSC.

59 There seems to be little guidance as to what Courts can or cannot do when both litigants are in person. That such cases can be very difficult to try is axiomatic. The Court does not have the assistance of counsel. The very foundation of our procedure for trials is based on the adversarial system. Hence, it has been authoritatively said that a judge cannot descend into the fray and take over with his own line or lines of cross-examination. When there is only one counsel present, then at least one side of the case is properly presented and counsel will not take unfair and undue advantage of the unrepresented side. In a paper by the English Department for Constitutional Affairs entitled: Litigants in Person, Unrepresented litigants in first instance proceedings, (prepared by Professor Richard Moorhead and Mark Sefton of Cardiff University, for the Department of Constitutional Affairs, DCA Research Series 2/05, March 2005, ISBN 1 84099 058 9, "the DCA Paper"), it is suggested that a judge may ask the represented side to take the lead, *eg*, by asking the lawyer to summarise the situation. Experience in England has shown that counsel normally outlines the case fairly, and that has also been my experience in the limited time I have been on the bench.

60 The problem arises when both sides are not represented. The judge within an adversarial system is at a peculiar disadvantage because the paperwork will almost inevitably be poor, the presentation of the case will also probably be poor and the judge then has to try and summarise the litigants' cases so that it is articulated properly [note: 2]. One is almost tempted to say that in such a situation the Civil Law inquisitorial system, without the restrictions imposed by the advsersarial system, (*eg*, not descending into the fray), might better serve the ends of justice. The DCA Paper accepts that the judge must be more proactive when both litigants are in person. The judge acts like a neutral advocate but must always be careful not to go too far as he does not have the advantage, as an advocate and solicitor would, of being able to take full instructions. And as advocates, solicitors and judges well know, things are not always what they seem on the surface.

61 I should set out my thoughts on my approach as well as mention some of the measures I took with the parties in case this matter goes further.

(a) It goes without saying that it is essential for the judge to have read all the papers thoroughly and in some detail well before the start of the trial.

(b) It would be preferable if the judge hearing the matter is given the papers well before hand so that he or she may convene PTCs to enable the case to go on for trial as scheduled. This means preferably an assignment of a judge to the case at least one if not two months before trial.

(c) The pleadings may be inadequate or incorrect and the judge may want to suggest to the parties amendments to their pleadings – this is, in my view permissible because the court is empowered under Ord 28 r 8 to act on its own motion for ordering an amendment to the pleadings, (see also *Lee Siew Chun v Sourgrapes Packaging Products Trading Pte Ltd* [1992] 3 SLR (R) 855) and further, at the end of the day, all issues should be aired and argued before the court. This is probably subject to the limitations in [62] and [63] below.

(d) The discovery may be inadequate. The AEICs will probably be inadequate and not address the issues fully. If it can, that is best remedied before the trial.

(e) The judge should give the parties a List of Issues as it appears on the papers so that it will aid their focus during cross-examination and presentation of their respective cases.

(f) The judge will also be able to explain to the parties some legal concepts like hearsay evidence, so that they can correct any infringements of that rule prior to, and help ensure that all relevant evidence is able to be adduced at, the trial.

(g) These PTCs will be able cover a whole host of matters. The list is not exhaustive, but includes issues like witnesses, documents, bundles for use at trial, etc.

(h) The judge is able to ascertain from the parties what they say or what their case is and to put that in legal language for them.

(i) The judge should see if there is some pro-bono *amicus* scheme where some willing lawyer can be found to assist the court or the parties. Also the judge could tell the litigant in person to go and discuss a legal or other point with some friendly lawyer rather than say what exactly the judge thought was wrong with his case, or else there may be a perception that the judge has prematurely made up his mind.

62 Whilst during trial there will inevitably be some blurring of roles as judge and someone providing assistance to litigants in person in carrying out cross-examination and submissions, and in effect acting as some kind of intermediary in re-formulating questions during cross-examination and submissions, there is nonetheless a line that cannot be crossed. That line exists between assisting a party with his questions or line of questions during cross-examination and conducting a cross-examination for them. That line also exists on the one hand in reminding them about areas of cross-examination that appear on their pleadings or AEICs but have not been covered or of new areas arising during cross-examination of the foregoing that are relevant or asking questions to clarify details or facts which have surfaced and on the other, exploring new areas not covered by their pleadings or AEICs or contemplated by the parties. It is perfectly legitimate for a judge to say, for example: "Can you just help me, the plaintiff says that there was a defect in the machine, what do you say to that?" In my view, I am proscribed by our system of trial to create causes of action not thought of by a party or create defences, like raising limitation, when a defendant has not done so expressly or by implication on his case. An issue like illegality is on a different footing as it is settled

law that, for public policy reasons, a Court can raise illegality on its own motion. Neither should a judge start cross-examining on behalf of a litigant just to see if there is perhaps some cause of action or issue in the wings, *eg*, to ask whether a party had said something and then to test whether there has been a misrepresentation when neither party has brought it up. But I am not, for example in a building contract case, precluded from pointing out to a party an express term of the contract or from asking if they are saying it is an unexpressed term of their agreement that the work be carried out in a good and workmanlike manner when that party is putting forward a case of bad work. Nor is it wrong when a witness has made a particular assertion and the other litigant has not challenged it or asked any questions about it to point that out. If the witness says "x" and the judge knows that his AEIC says "y" and the cross-examining litigant in person has not realised it, the judge is entitled to intervene and ask the witness: "Look, turn to page 5, paragraph 10 of your AEIC, have a look at what you said then; now what you have just told me today seems to be different, would you like to explain that or add anything to your evidence about that?" The judge is clearing up an ambiguity which needs to be cleared up, (see DCA Report, page 184).

Similarly a judge should be free to re-cast questions for the litigants as their formulation of their questions may be poor whether due to limitations of language or ability or legal knowledge.

63 There will always be difficult borderline cases or issues where crossing the line is not that clear, *eg*, raising a point of law that arises on the facts and the litigant is not aware of the same. The DCA Paper shows that some judges think it is incumbent upon them to raise it, provided it is to both parties and to make sure both parties understand the same. The DCA Paper shows a whole diversity in dealing with cases where both litigants are in person. In the final analysis, it is incumbent upon the judge not to appear to be discriminatory and to be fair. I agree that that takes some effort because as a case moves along, the judge begins to form some views. So long as a judge keeps an open mind and conducts the proceedings even-handedly until the close of the case, he cannot be faulted, but he certainly must be allowed to take a more pro-active part.

Conclusion

64 In conclusion, I found that the Plaintiff had made out her case against all three Defendants. Accordingly, I entered judgment in her favour against all 3 Defendants, jointly and severally for the following sums:

(a) the sum of S$447,500 (which is $500,000 less the S$52,500 paid to the Plaintiff between February to May 2008)

(b) interest on the sum of S$447,500 at the rate of 5.33% per annum from the 3 May 2008 to the date of payment

(c) the sum of S$24,768 (being payment for the Business Consultancy Fee of US$10,000, the Wealth Dynamics Boardroom Fee of US$4,800 and the Wealth Dynamics Masterclass Fee of US$2,400)

(d) interest on the sum of S$24,768.00 at the rate of 5.33% per annum from 2 January 2008 to the date of payment.

65 I also awarded the Plaintiff costs of the action. In the exercise of my discretion I bore in mind that the Plaintiff was represented by lawyers in the earlier stages of proceedings, wasted costs for the vacation of the original hearing dates fixed on 12 to 14 April 2010. Thus, I awarded the Plaintiff $15,000 plus all reasonable disbursements, which for the avoidance of doubt includes but is not limited to

(a) all the court hearing fees; and

(b) reasonable costs and disbursements of securing Mr Bose's attendance in Singapore for the abortive hearing on 12 to 14 April 2010.

[note: 1] (Rookes v Barnard [1964] AC 1129; this is also consonant to the reasoning in *Associated British Ports v T.G.W.U.* [1989] 1 WLR 939, CA (Reversed on other grounds *ibid*, HL)

[note: 2] This statement and the following paragraphs are drawn heavily from the DCA Paper, pp.181-195.