Premiere Visione Resources Inc Pte Ltd *v* Lim Choo Sun
[2010] SGHC 323

Case Number : Suit No 352 of 2009

Decision Date : 29 October 2010

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Andre Arul (Arul Chew & Partners) for the plaintiff; Helen Chia (Helen Chia LLC) for the defendant

Parties : Premiere Visione Resources Inc Pte Ltd — Lim Choo Sun

Companies – Fiduciary duties

29 October 2010 Judgment reserved

Lai Siu Chiu J :

1 In this suit, Premiere Visione Resources Inc Pte Ltd ("the plaintiff") sued Lim Choo Sun ("the defendant") for breach of his fiduciary duties as a director and for breach of his duties as an employee of the plaintiff.

2 The plaintiff is a Singapore company that was incorporated on or about 12 November 2003. Its principal activity is the provision of consultancy and resource management services. In plain language, what the plaintiff did was to recruit and deploy locals as trainees for the hotel industry in Singapore.

3 The defendant is a Singaporean who became a director of the plaintiff from its inception and was also its employee (as the director of operations Asia Pacific) and shareholder (holding 35% of the issued shares). The defendant ceased to be a director of the plaintiff on or about 26 March 2008 and ceased to be its employee on or about 29 October 2007 when his services were terminated after he had been earlier suspended on or about 12 September 2007. However, the defendant remains a shareholder of the plaintiff to date. The defendant is known as and is referred to as Robin Lim in the service industry and in all the correspondence that was produced in these proceedings, while the plaintiff was referred to "PVR".

4 Besides the defendant, the plaintiff had/has two other directors and shareholders *viz* Andrew Chai Wei Kuo ("Andrew") and Stelle Lim Soak Ngee ("Stelle") (PW8) who are husband and wife respectively. Andrew holds 55% while Stelle holds 10% of the issued shares in the plaintiff. The couple presently runs the plaintiff's operations and were the plaintiff's witnesses at this trial.

5 The defendant had previously worked under Andrew as an assistant sales manager when both were with the Singapore office of Honeywell Inc, an American multinational corporation. When Andrew left Honeywell Inc sometime in July 2002 to strike out on his own, the defendant decided to follow Andrew as he regarded Andrew as his mentor.

The background

6 Prior to the incorporation of the plaintiff, Andrew and Stelle had on or about 13 March 2002,

incorporated another company called Sass Atlantic Inc Pte Ltd, of which they were the only shareholders. The company subsequently changed its name to Mil-Com Sass Atlantic Pte Ltd in October 2002 and finally to Sass Atlantic Pte Ltd ("Sass Atlantic") in mid-2004. Sass Atlantic's business was to recruit and outsource manpower, both local and foreign, for the airline industry. Before being employed by the plaintiff, the defendant was employed by Sass Atlantic (in December 2002) as its business development manager.

7 Besides Sass Atlantic, Andrew had an interest in a Singapore company called Mil-Com Aerospace Pte Ltd ("Mil-Com") whose managing-director was one Dr Diana Young ("Diana"). Mil-Com was in the business of supplying foreigners (mainly Filipinos) such as technicians and engineers to the airline industry. Andrew negotiated with Diana in August 2002 and the two agreed to have a joint venture which resulted in Sass Atlantic being renamed Mil-Com-Sass Atlantic Pte Ltd in or about October 2002. According to the defendant, Andrew is also the sole proprietor of Sass Atlantic Aviation Services and has two other businesses known as "The Mannequin Collection" and "Platinum Models".

8 In October 2003, Diana offered to and did sell her shares in Sass Atlantic to Andrew. Andrew said he used Sass Atlantic as the vehicle to supply manpower such as cabin crew to airlines. In his affidavit of evidence-in-chief ("AEIC") Andrew deposed that he decided that Sass Atlantic would service airline clients while the plaintiff would focus on servicing non-airline clients.

9 Andrew's involvement in Sass Atlantic and his deploying of the plaintiff's staff and resources to work for the latter was a source of unhappiness to the defendant who voiced his displeasure to Andrew in 2005. Andrew's reaction was to call for an extraordinary general meeting ("the EGM") on 27 November 2005 to remove the defendant as a director of the plaintiff. According to the defendant, at the EGM, Andrew produced a table he had prepared setting out his contributions to the plaintiff including loss of income, royalties, brand equity and demanded that the defendant pay him the difference less the cost of Sass Atlantic's use of the plaintiff's resources. Faced with termination, the defendant in his AEIC deposed that he was forced to agree to Andrew's justification of the use of the plaintiff's resources for Sass Atlantic.

10 According to the defendant, from then on, it was understood that Andrew and he could proceed as they wished. While Andrew was free to develop his businesses, the defendant decided he would have to look beyond the boundaries of the plaintiff as his position was precarious, since he could be removed by Andrew at any time.

11 At about this time, the defendant became acquainted with Lee Hor Loong ("Desmond") (DW7). The defendant was first introduced to Desmond in or about 2003 when the latter was working as the human resources manager in Shangri-La Hotel Singapore, which was then a client of the plaintiff. The defendant deposed that he shared his problems with Desmond in response to which Desmond invited the defendant to be his partner. In 2004, Desmond had left Shangri-La and had started his own business called Gates Human Resources Pte Ltd ("Gates") initially as a sole proprietorship before converting it to a limited company on or about 17 March 2006. After Gates' incorporation, Desmond and the defendant became the directors as well as (equal) shareholders of the company. Gates started off in the business of providing executive search services to hotels in Singapore before moving into recruitment of foreign trainees and foreign workers for hotels, by bringing in Filipinos, Indonesians and South Koreans.

12 In his AEIC, Andrew deposed that over time Sass Atlantic built up a good reputation for providing manpower to the airline industry. Leveraging on its good reputation, he said Sass Atlantic secured Shangri-La Hotel as its first corporate non-airline customer on or about 26 August 2003. Sass

Atlantic placed 25 Singaporean trainees to work in the front office and food and beverage departments of Shangri-La Hotel.

13 Andrew deposed he would make the initial approach to potential customers and after he had established and developed a business relationship with their senior managers and/or directors and the potential customer became a client, he would hand over the client to the defendant who would thereafter liaise with the client and take care of the operations and/or logistics aspects of the business. The defendant would carry out the placement of the trainees with the client.

14 After Andrew had bought over Diana's shares in Sass Atlantic, he decided to channel the Shangri-La contract and future non-airline clients to a new entity which, ultimately, was the plaintiff. The defendant requested for and was eventually given 35% equity in the plaintiff, after Andrew had discussed his request with Stelle. Initially, Andrew was not a director of the plaintiff (the founder directors were Stelle, the defendant and one Toh Li Ping) as he did not want a conflict of interest situation arising from the transfer of the Shangri-La contract to the plaintiff from Sass Atlantic.

15 Andrew claimed that at that point in time (when he was negotiating with Diana to buy over her shares in Sass Atlantic) he had held discussions with the defendant and Stelle on the potential conflict of interest situation were he to become a director of the plaintiff while retaining his then directorship in Mil-Com. Flowing from those discussions, Andrew claimed that the defendant was made aware of the duties he owed the plaintiff as a director and as an employee, when his employment was transferred from Sass Atlantic to the plaintiff. Andrew became a director of the plaintiff on or about 31 May 2004 after he had bought out Diana's shares in Sass Atlantic. The plaintiff then moved out of the office of Mil-Com to new premises at Changi Business Park ("the plaintiff's premises").

16 After Shangri-La Hotel, the plaintiff secured the Grand Hyatt, the Ritz Carlton, the Intercontinental Hotel, the Conrad Centennial and other hotels as its clients. Through the defendant, the plaintiff placed local trainees for all these hotels.

17 Contrary to the contention of the defendant and Desmond, Andrew asserted that it was always his intention that the plaintiff's recruitment of trainees for hotels would be expanded to include foreign trainees. In his AEIC, Andrew referred to emails he had exchanged in 2005 with parties in Vietnam, the Philippines, Thailand and Myanmar. He deposed that he and the defendant had even visited Dubai in September 2004 to meet representatives of the Shangri-La and Traders Hotel there with a view to supplying the two hotels with trainees from Indonesia, the People's Republic of China ("PRC") and the Philippines. However, no contracts for the plaintiff resulted from that trip or from his other contacts.

18 It was Andrew's case that after the Dubai trip, he had requested the defendant to explore the possibility of recruiting foreign trainees and workers from neighbouring Asean countries because the then labour market in Singapore was very tight and the plaintiff was having difficulties sourcing for Mandarin speaking staff for its Singapore clientele. Andrew deposed that in October 2004, he requested the defendant to study Singapore's regulatory and legislative framework as well as the requirements for obtaining a licence to import foreign trainees from PRC under internship/training work permits. He then requested the defendant to obtain a licence to operate an employment agency in his own name ("the EA licence"), which would be linked to the plaintiff. The defendant did apply for and obtained an EA licence in November 2004 as Andrew requested.

19 However, when Andrew requested the defendant to explore the possibility of recruiting candidates from PRC as trainees, the defendant misrepresented to Andrew that the holder of the EA licence, *viz* the defendant, had to obtain a certificate in employment agency ("the CEA") and the plaintiff had to have two years' experience (which it did not) in importing foreign workers/trainees

from countries other than PRC before it would be allowed to bring in trainees from PRC to Singapore.

20 Andrew instructed the defendant to take the examination for the CEA which the defendant obtained in or about 2005 (this date is incorrect). Believing what the defendant told him, Andrew said he put in abeyance temporarily the plans for the plaintiff to recruit PRC nationals until after the plaintiff had obtained two years' experience in recruiting foreign workers. To that intent, Andrew and the defendant visited a training institute in Singapore called CSM Academy International Pte Ltd ("CSM") that specialised in training students from the Philippines, Indonesia, Myanmar, PRC and India for the hospitality industry. Andrew deposed that he had also negotiated an agreement with Shandong Hansen International Economic & Trade Cooperation Co Ltd ("Shandong") to source for candidates from PRC. However, when he discussed with the defendant, the latter cautioned Andrew that such foreign trainees should only be placed with the plaintiff's clients if there were no local trainees. Andrew alleged he was persuaded to abandon the project. He further alleged that the defendant failed to follow-up on Andrew's contacts with E-Training Conxepts ("Conxepts"), a hospitality training institute in Singapore that recruited Filipinos as foreign trainees for the plaintiff or the Haach group ("Haach"), spa operators who wanted Mandarin proficient workers.

21 According to Andrew, another project where the defendant disagreed with him was the recruitment and training of customer service staff for the Changi International Airport Services ("CIAS") in October 2005. When he discussed the proposal with the defendant, the latter felt that the rates offered by CIAS were too low and would not be profitable for the plaintiff. Yet, when Andrew offered to take on the project using Sass Atlantic, the defendant allegedly became upset and suggested that Sass Atlantic and the plaintiff merge their operations so that there would be no conflict of interest.

22 Andrew felt that the defendant's comments were uncalled for as, according to Andrew, the defendant had been aware of and had approved the arrangement of the plaintiff working in tandem with Sass Atlantic. Sass Atlantic had voluntarily paid about $11,523.34 to the plaintiff's staff, between March 2006 and July 2007 for work done for Sass Atlantic. Andrew further claimed that Sass Atlantic paid the medical expenses of three of the plaintiff's staff, and also paid the defendant $154,771 for the period July 2005 to July 2007 for his equity share, which equated to 39.68% of the profits made by the plaintiff during that period.

23 On 27 November 2005, Andrew called for the EGM alluded to earlier in [9] above as he viewed the defendant's allegations regarding Sass Atlantic's usage of the plaintiff's staff and resources to be untrue and/or unwarranted. At the EGM, Andrew deposed that he told the defendant that the latter's obstructive conduct, demeanour and recalcitrance was making it difficult to conduct and manage the plaintiff's day to day business. He suggested that the defendant's directorship be terminated and that the defendant be an employee only of the plaintiff. Andrew alleged that the defendant pleaded with him not to terminate the defendant's directorship and Andrew did not. At the EGM however, it was decided (presumably by Andrew and Stelle) that the business of supplying manpower for aviation accounts like CIAS and Singapore Airport Terminal Services would be given to Sass Atlantic whilst airport retail clients like Nuance Watson would be placed with the plaintiff. I note that the minutes of the EGM were signed by Andrew and Stelle but not by the defendant who testified that he did not see the minutes until this trial and that the first item minuted was not even discussed.

24 In February 2006, when the plaintiff had gained two years' experience in recruiting foreign workers, Andrew requested the defendant to relook the requirements of recruiting PRC nationals. After some time, the defendant reported to Andrew that in addition to two years' experience, the plaintiff was required to place a security deposit of $200,000 with the Ministry of Manpower ("MOM") in Singapore before the plaintiff would be allowed to bring in recruits from PRC. Much later, Andrew

discovered that there was no such requirement by MOM. He alleged that the defendant lied to him in order to prevent the plaintiff from importing recruits from PRC.

25 Andrew said he was aware that Desmond had set up Gates after leaving Shangri-La Hotel. He described Desmond as the defendant's "very good friend". Andrew asserted that Gates was in the business of executive search and not manpower placement as far as he and Stelle were aware. Andrew revealed that at the defendant's suggestion, he had even allowed Desmond to set up a temporary office without charge at the plaintiff's premises, when Desmond first set up Gates. Desmond moved out of the plaintiff's premises in September 2005. Andrew claimed that he was unaware that the defendant was a 50% shareholder in Gates until much later as the defendant did not disclose his interest to Andrew/the plaintiff at the material time. Neither did the defendant disclose his 50% interest in Nanyang Training & Education Consultants Pte Ltd ("Nanyang").

26 Andrew deposed that in furtherance of the plaintiff's intention to recruit foreign workers for Singapore hotels, he developed contacts in Thailand in April 2006 and in Zhuhai (in PRC) and Macau in June 2006. Andrew deposed that he travelled regularly to both places for placement business. Further, in November 2006, Andrew tasked the defendant and three other staff members of the plaintiff to visit Kuala Lumpur to conduct a recruitment exercise which yielded a few applicants. Andrew blamed the defendant for misinforming him that the results of the recruitment exercise did not justify the costs involved and that the profit margins were too thin, causing Andrew not to pursue further recruitment of Malaysians thereafter.

27 In February 2007, Andrew took some staff from the plaintiff (which included the defendant) to Macau as part of an incentive trip. During that trip, the defendant met Andrew's contacts, in particular the senior management of The Venetian Hotel & Resort ("The Venetian") who included the senior vice-president of The Sands Hotel one Steven Hicks ("Hicks"), and Scott Sullivan ("Sullivan"), the general manager of The Venetian and of the Grand Canal Shoppes ("the Shoppes") which are located within the hotel complex. The Venetian, The Sands and The Four Seasons hotels in Macau belong to The Sands Group of hotels/casinos. Andrew and the defendant discussed the possibility of supplying manpower from the Philippines to the 300 or so retailers of the Shoppes. In the same trip Andrew and the defendant also met Jeff Low Wee Fong ("Jeff") (PW2) at Zhuhai where Jeff operated The ACN Institute ("ACN"), which institute provided cabin crew training to PRC nationals who sought employment in the airline industry.

28 In February/March 2007, Jeff introduced Andrew and the defendant to U Pui Io ("Melvin") (DW2) who was/is the general manager of Lei Yun Human Resources Co Ltd ("Lei Yun"), a registered foreign labour recruitment agency in Macau. The plaintiff intended to provide foreign labour to The Venetian/the Shoppes and the introduction to Jeff and then Melvin was with a view to exploring how the three parties could work together to recruit workers for The Venetian/the Shoppes.

29 The defendantfollowed up the introduction to the management of The Venetian by submitting the plaintiff's proposal in February 2007 to Hicks for the Shoppes. In or about April 2007, Sullivan agreed to support the plaintiff's proposal and provided the plaintiff with a list of the Shoppes' retailers. (Henceforth, the plaintiff's project in Macau will be referred to as "the Macau project").

30 The Macau project was one of Andrew's main grievances against the defendant in this trial. In this regard, Jeff testified against while Melvin testified for, the defendant. Consequently, the evidence that was adduced in connection with the Macau project has to be reviewed in some detail later in this judgment.

31 In May 2007, Andrew, Melvin and the defendant visited some Hongkong retailers as the majority

of the Shoppes' operators were from Hongkong. Thereafter, the defendant worked with Melvin (and Desmond) to bring in Filipinos as sales assistants for the Macau project. The defendant continued to work on the Macau project until his services with the plaintiff were terminated by Andrew on 28 September 2007.

32 It was Andrew's case that through the defendant, Gates had benefited from the Macau project at the expense of the plaintiff. The Macau project formed part of the plaintiff's claim against the defendant.

33 According to Andrew, the profit-sharing arrangement for the Macau project was resolved in June 2007 after the defendant initially made an oral demand of him for 50%, even though the defendant's shareholding in the plaintiff was only 35%. Andrew claimed that he counter-proposed 40% profit for the defendant which was accepted. Andrew alleged that at the defendant's recommendation, he agreed to Gates being engaged and paid a commission to place Filipinos for 154 positions in the Shoppes, not knowing then of the defendant's interest in Gates.

34 Andrew opined that it was unnecessary for either Desmond or Gates to be involved in the Macau project at all as the defendant already had (but failed to disclose to Andrew) contacts with labour agencies in the Philippines. Andrew surmised that the defendant recommended Gates for the Macau project so that the defendant could skim off profits for himself using the name of Gates, or by way of kickbacks from Gates, or via some other means. He further accused the defendant of cutting Jeff out of the Macau project, relying on his exchange with the defendant in July 2007 in this regard. I note however that the email exchange (at exhibit AC-34 in Andrew's AEIC) did not support Andrew's allegation.

35 In May 2007, the defendant had proposed the following profit-sharing arrangement for the Macau project by his email to Andrew dated 28 May 2007:

> Documentation: Melvin (50%) plaintiff (40%) Jeff (10%)
>
> Placement fees (non PRC): plaintiff (60%) Melvin (30%) Jeff (10%)
>
> Placement fees (Macanese): Melvin (70%) plaintiff (30%)
>
> Placement fees (PRC): Melvin (30%) Jeff (30%) plaintiff (40%)
>
> Training (non recruitment): Jeff (70%) plaintiff (30%)

36 Andrew asserted that his email reply to the defendant dated 18 June 2007 contained the actual agreed division. His breakdown stated:

	Lei Yun	The plaintiff	Jeff
Documentation	60%	30%	10%
Placement (non PRC)	20%	70%	10%
Placement (Macanese)	60%	20%	20%
Training	0%	20%	80%
	140%	140%	120%

37 Melvin however categorically denied he had agreed to Andrew's figures and contrary to Andrew's assertion, testified he had not received commission from all the retailers in the Macau project, let alone substantial sums. Neither had he paid any part of the commission he received to Gates or to the defendant.

38 I shall return to the Macau project later in my review of the parties' evidence.

39 Andrew deposed that he had requested the defendant to file a report of the latter's Macau expenses and to provide copies of the agreements signed between the plaintiff and various retailers, but the defendant repeatedly ignored Andrew's request. Sensing that something was wrong, Andrew decided to gain access to the defendant's emails which he did on or about 6 September 2007. It was then that Andrew discovered that the defendant was involved with both Gates and Nanyang and that the defendant had been earning profits on the sly from various transactions, to the plaintiff's detriment.

40 Andrew then discovered from two staff members of the plaintiff that they had received telephone calls from various Singapore hotels including the Grand Hyatt, The Intercontinental, The Sentosa Resort & Spa claiming the plaintiff had supplied foreign trainees to the hotels which was not the case. Andrew then realised that the defendant had supplied the foreign trainees through Gates, but using the plaintiff's name.

41 Andrew issued a notice of suspension dated 12 September 2007 to the defendant and requested that the defendant hand over his duties to assigned staff and return the plaintiff's properties including a laptop. On checking the defendant's desk after suspending him, Andrew found a list of Gates' clients. The defendant failed to comply with Andrew's request so Andrew made a police report on the same day. The defendant replied by email to Andrew on 14 September 2007 asking that a directors' meeting be convened to resolve the parties' differences, pointing that under the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"), the suspension of his directorship was invalid and the defendant was entitled to have access to the plaintiff's office and property. On the same day, Andrew informed the plaintiff's clients including Lei Yun by email of the defendant's suspension and that Jeff had taken over the defendant's duties in the Macau project.

42 On 18 September 2007 the plaintiff's (former) solicitors sent a letter of demand to the defendant alleging he had breached his fiduciary duties as a director of the plaintiff. The letter required the defendant to provide the plaintiff within seven days with a proposal of how the defendant intended to account to the plaintiff for profits arising from the defendant's alleged breach and further required the defendant to furnish the plaintiff with a complete list of the plaintiff's customers which the defendant, Gates, and/or Nanyang (both Gates and Nanyang were described in the letter as the plaintiff's "competitors") had approached. By his solicitors' letter dated 19 September 2007, the defendant denied the plaintiff's allegations and countered that Andrew had made false and misleading defamatory statements against the defendant for which the defendant made a "cease and desist" demand.

43 Andrew sent another letter dated 28 September 2007 on the plaintiff's behalf to the defendant giving the defendant three months' notice of termination. Andrew wrote a third time on 29 October 2007 on the plaintiff's behalf to the defendant terminating the defendant's employment immediately on the basis that the defendant had failed to report for work after 28 September 2007 and had also failed to account for his whereabouts.

44 Andrew alleged that after the defendant's dismissal, he uncovered more evidence of the defendant's misdeeds, in particular, how the defendant had used the plaintiff's email account to

communicate with local hotels with which Gates had contracted to place Indonesian trainees and Filipino "S" pass (semi-skilled) holders. He accused the defendant of misrepresenting to the plaintiff's clientele that the foreign trainees supplied by Gates/Nanyang were ostensibly supplied by the plaintiff, thereby misusing the plaintiff's name and goodwill. None of the revenue generated from such placement was received by the plaintiff. Andrew further alleged that the defendant had copied the plaintiff's business model in setting up Gates and Nanyang.

45 It was only on 26 March 2008 that the plaintiff finally convened a directors' meeting ("the directors' meeting") as the defendant had requested. In his written testimony, Andrew deposed that he confronted the defendant over the defendant's involvement with Gates. The defendant replied he was concerned about his livelihood when Andrew attempted to remove him as a director at the EGM. Andrew said that he reassured the defendant that his livelihood was not threatened but that the then intended removal of the defendant from his directorship was due to the defendant's obstructive behaviour that was hurting the plaintiff's business. Andrew and Stelle demanded that the defendant pay compensation (amounting to $348,326) to the plaintiff for the loss caused by his channelling business to Gates and Nanyang and for the loss of profits from the Macau project. Stelle followed up by her email to the defendant on the same afternoon attaching the resolution passed earlier at the directors' meeting, requiring the defendant to give his counter-proposal on the compensation figure by Friday 28 March 2008.

46 The defendant rejected the demands of the couple in his email reply to Stelle and Andrew on 27 March 2008, pointing out he neither agreed to the resolution as minuted nor to his removal as a director and maintaining that he had not breached his duties as a director. Neither would he accede to the couple's demands. There was further exchange of correspondence between the parties' solicitors in October 2008 where accusations of breach of director's duties were traded against one another by the defendant and Andrew. Eventually, the writ of summons herein was issued and served on the defendant on the defendant's birthday, *viz* 25 April 2009.

The pleadings

47 In the (lengthy) statement of claim, the plaintiff listed out the duties that the defendant owed to the company as employee and as director (express or implied) and which he had allegedly breached. It was alleged that by an oral agreement made in October 2003 between the defendant and Andrew, the defendant was appointed a director, shareholder and employee of the plaintiff on terms and conditions negotiated by the parties.

48 The facts (including the Macau project) pertaining to the defendant's breaches were pleaded *in extenso* by the plaintiff. The plaintiff prayed *inter alia* for a declaration that the defendant had breached his duties to the plaintiff and an injunction to restrain him from carrying on business under the name of Gates and Nanyang and claimed $176,080 and $129,540 for loss of profits the plaintiff had suffered. The plaintiff required the defendant to account for further secret profits he had made in breach of his duties and/or in breach of trust.

49 In his defence (Amendment No 2) and contrary to the plaintiff's pleaded case, the defendant denied that his duties as the plaintiff's director of operations (Asia Pacific) included an obligation to expand the plaintiff's business or seek new business opportunities for the plaintiff. Neither was the defendant tasked to study regulatory and/or legislative framework and requirements in Singapore for obtaining a licence to import foreign manpower/trainees from PRC for internship/training work permit in Singapore. The defendant averred he had no knowledge of any alleged agreement between the plaintiff and Shandong (see [20]). The defendant further denied he had reached an oral agreement with Andrew in October 2003 as alleged or at all.

50 The defendant averred that the plaintiff was not in the business of supplying foreign manpower to customers in Singapore and did not have the means or the contacts to start this business. At all material times, the plaintiff's principal business was the recruitment of Singapore citizens for its customers. At no time did the plaintiff decide to explore the possibility of recruiting foreign manpower/trainees from neighbouring countries in Asia to supply to its Singapore customers nor did the plaintiff explore the possibility of partnering Singapore training institutions to place their students as interns with various local hotels. Neither was the defendant tasked to follow up potential business dealings with CSM or Haach as alleged by the plaintiff.

51 The defendant denied making any representations to Andrew as alleged by the plaintiff in the statement of claim. Although he admitted being a director and shareholder of Gates and Nanyang, the defendant contended there was no obligation for him to inform the plaintiff of his involvement in the two companies which he denied were in the same business as the plaintiff. The defendant pointed out that unlike Gates, the plaintiff at all times was in the business of recruiting local manpower/trainees and was not in the business of supplying foreign manpower nor did it have the means or contacts to do so. Further, the plaintiff did not have the necessary contacts to recruit Filipino workers for the Macau project. The defendant accused Andrew of being jealous of his doing his own business which was separate and distinct from the plaintiff's business.

52 The defendant denied he had breached his duties or trust as alleged by the plaintiff. Even if he had breached his duties (which he denied), the defendant contended the plaintiff had not suffered any loss arising therefrom. He put the plaintiff to strict proof that the customers of Gates/Nanyang were under the impression that the foreign manpower supplied by the two companies was ostensibly from the plaintiff.

53 It serves no purpose to refer to the plaintiff's reply to the defence as it was essentially a repeat of the plaintiff's allegations in the statement of claim.

The evidence

(i) The plaintiff's case

54 Having dealt with the pleadings, I turn now to the evidence that was adduced at trial. I should first state that the plaintiff called no less than eight other witnesses for its case besides Andrew and Stelle while the defendant had seven witnesses including Desmond. Andrew was the plaintiff's first and main witness.

55 As the main points of the plaintiff's version of events as given by Andrew in his AEIC have already been set out earlier, I will turn my attention to the additional evidence that was adduced from Andrew and the plaintiff's other witnesses in the course of oral examination and/or cross-examination.

56 Throughout his testimony (written and oral), Andrew repeatedly maintained that it was always his/the plaintiff's intention to move into the recruitment of foreign workers/trainees. He referred to emails exchanged between the defendant and Shangri-La, Dubai, where the plaintiff proposed recruiting for the latter Indonesian and mainland PRC nationals. In cross-examination, Andrew admitted the Dubai venture never materialised.

57 Andrew also referred the court to a draft Strategic Partnership Agreement that was intended to be signed between the plaintiff and Shandong (see [20]) for the placement of trainees/workers from the PRC in international hotels. The document however was not signed and the partnership with Shandong also did not materialise.

58 Andrew took pains to emphasise that the defendant had no grounds to be unhappy with the operations of Sass Atlantic as the defendant was aware and approved of the same, when Sass Atlantic went its separate way from Mil-Com after he had bought over Diana's shares in Sass Atlantic. He further asserted that when he had a meeting (in the defendant's presence) with Diana and her legal counsel over the split of Sass Atlantic from Mil-Com, Diana had reminded him of the breach of his duties as a director had he not disclosed his interest in the plaintiff to her which he did.

59 As for the Macau project, Andrew referred to a number of the service agreements (of one year's duration) that had been signed between the plaintiff and certain retailers (collectively "the service agreements") wherein the retailers agreed to allow the plaintiff to recruit and place Macanese and foreign workers (from the PRC, the Philippines, Thailand, Indonesia and Vietnam) as staff for the Shoppes. Payment for such services would be collected by the plaintiff from the recruits, save for the Macanese, for whose placement the plaintiff would charge the Shoppes.

60 Andrew referred the court to emails exchanged between the defendant and a Philippines recruitment agency called Service Online Corporation ("SOL") (through whom Filipino workers were recruited for the Shoppes) wherein the defendant requested information on the recruits' salaries to enable the defendant to deduct placement fees due to the plaintiff. He asserted that the defendant must have received payment for the work done. Andrew pointed to the fact that he was not copied on such emails and he discovered their existence by retrieving them from the office server as he was denied access to the defendant's laptop, the password having been changed by the defendant without his knowledge.

61 Andrew revealed that it was illegal for non-PRC companies to collect placement fees. As Macau was not considered part of mainland PRC, Lei Yun could not collect placement fees from PRC recruits. He denied the suggestion of counsel for the defendant that his fee sharing arrangement was never agreed by the other parties.

62 Andrew disagreed with the defendant's claim that the latter was a silent partner in Gates before the defendant left the plaintiff's services. Andrew drew the court's attention to Gates' contract with the Grand Hyatt dated 28 March 2006 which was signed by the defendant as Gates' director, rather than by Desmond. He found it odd that a silent partner would sign the contract instead of the main director. Further, a clause in the Grand Hyatt agreement provided that the hotel would pay the plaintiff (not Gates) fees for the trainees placed by Gates. Andrew wondered why there was such a provision if Gates and the plaintiff were not related entities. The same provision appeared in Gates' contract with the Intercontinental Hotel dated 9 July 2006.

63 In the list of Gates' clients that he found on the defendant's desk after suspending the defendant, Andrew said a number were the plaintiff's customers including The Sentosa Resort & Spa, The Shangri-La Hotel and The Conrad Centennial. Andrew alleged that the defendant used a sole proprietorship called Trendz Consultants to receive commissions paid to the defendant. He accused the defendant of providing resumes of Filipinos to the Meritus Mandarin in October 2006 without his knowledge. As the defendant had already established contact with a Philippines recruitment agency in 2006 while working for the plaintiff, Andrew could see no reason why the defendant would need to introduce Desmond to the Macau project save to cover up the defendant's own Philippines contacts and to get Gates involved in the Macau project in conflict of his duties to the plaintiff. Moreover, in his email correspondence on behalf of Gates, the defendant used the plaintiff's email address.

64 During cross-examination, Andrew revealed that the tenant of the plaintiff's premises was Sass Atlantic who was reimbursed by the plaintiff two-thirds of the rental paid to the landlord. Questioned why the plaintiff was required to pay for everything, Andrew explained it was because Sass Atlantic

had transferred to the plaintiff all revenue it received other than the business of cabin crew training, but he admitted there were no resolutions evidencing such transfer. However Andrew denied that the defendant had raised with him as a grievance the costs of Sass Atlantic being borne by the plaintiff.

65 Although he complained that the defendant failed to keep him apprised of developments by extending to him copies of emails with third parties, it emerged in the course of his cross-examination that Andrew was equally guilty of the same omission – he failed to keep the defendant informed of his email correspondence (either using the email address of the plaintiff or Sass Atlantic) with Malaysian and other parties (in Vietnam and PRC) on recruitment possibilities.

66 Andrew acknowledged that the plaintiff's effort in recruiting foreign workers/trainees never came to fruition while the defendant was in the plaintiff's employment; he gave various reasons/excuses for the failure (including lack of funds on the part of Shangri-La Dubai, disagreement on pricing with ICH group of hotels in Bangkok and lack of interest in training in English by Thai hotels). He put the blame on the defendant for making him believe the plaintiff should not go into the venture because the margins would be lower than the plaintiff's existing margins. Andrew's other excuse was that the defendant held the CEA licence. It was adduced from Andrew that the plaintiff's first placement of foreign trainees with Singapore hotels took place at end-2007 (with less than resounding success) after the defendant had left the plaintiff's services.

67 As for the Macau project, Andrew revealed he had asked Melvin himself in September/October 2007 whether Lei Yun had received payment of the placement fees and the answer was "no". Andrew said he found the answer hard to believe. When Andrew pressed Melvin on whether Lei Yun would cooperate with the plaintiff in future after the defendant's dismissal, Melvin reportedly said that he would work with whoever had the closest customer contact.

68 Andrew drew the court's attention to a letter on Lei Yun's letterhead dated 20 August 2007 signed by Melvin as Lei Yun's general manager which contents *inter alia* stated:

> To whom it may concern
>
> Please be informed that following are duly authorized representatives to conduct recruitment activities in the Philippines:
>
> Mr Stanley Wong
>
> General Manager
>
> Sun & Moon Management Limited
>
> Mr Robin Lim
>
> Director
>
> Lei Yun Human Resources Co Ltd

Andrew suspected from the letter that the defendant was a director of Lei Yun and if he was not, then the defendant was misrepresenting himself to the Philippines or Macau governments and which

could have resulted in legal liability.

69 Jeff founded ACN in 2005. In his AEIC, Jeff deposed that he became acquainted with Andrew in June 2006; in turn, Andrew introduced him to the defendant. Jeff was subsequently introduced to Melvin in late 2006 through another party. Melvin enlisted Jeff's collaboration to procure clients as Lei Yun had limited resources. Jeff's introduction to the Macau project came about when he invited James Wong, the mall manager of the Shoppes, to visit ACN's premises in Zhuhai in May 2007. James Wong was impressed with the cabin crew trainees he saw at ACN and he wanted to recruit the students to work at The Venetian and at the Shoppes. As a gesture of goodwill, Jeff deposed that he supplied gratis 38 cabin crew trainees to work as customer service agents at The Venetian and at the Shoppes in June-July 2007. From time to time, the defendant would bring retailers to ACN to showcase what the institute could offer. However, Jeff gradually lost contact with the defendant who copied him in emails on those visits. When the visits ended, the defendant ceased communicating with Jeff.

70 Jeff supported Andrew's contention that an agreement was reached in June 2007 in relation to the profit-sharing arrangement for the Macau project. He reasoned that as no one reverted to object to Andrew's email dated 18 June 2007, it must mean that Andrew's proposal was accepted by all parties concerned.

71 Based on rumours he had heard and from third party reports, Jeff believed that the defendant had placed Filipino workers for the Macau project and he opined that it was highly likely that the defendant had been paid processing/placement fees by such workers before they were brought to Macau.

72 Jeff testified that the plaintiff and Venetian Cotai Limited (on behalf of The Venetian) signed a non-disclosure agreement on or about 13 April 2007 ("the NDA") as required by Sullivan. The NDA provided that the plaintiff should not make unauthorised disclosure of confidential information that The Venetian furnished to the plaintiff. In exchange for the executed NDA, The Venetian released to the plaintiff the list of 300 retailers involved in the Macau project. Jeff testified that with the signing of the NDA, the plaintiff was able to commence the recruitment of foreign and Macanese workers for the Macau project. Andrew, the defendant and other staff of the plaintiff flew out from Singapore to visit the retailers listed in the Macau project. He revealed that Sullivan and other senior management from the Shoppes visited ACN in April 2007 after the NDA was signed while the defendant brought retailers (including Tiffany's) who were involved in the Macau project to ACN to view its training facilities.

73 Jeff testified that he and the plaintiff did a recruitment campaign in Macau for Duty Free America ("DFA") another retailer in the Macau project. He was surprised to find about three months later, Filipinos working in DFA, and surmised that the placements must have been done by the defendant. Jeff also found Filipinos working in other shops. Jeff then heard from his housing agent contact that the defendant and Melvin had visited the housing agent to negotiate for accommodation for the Filipinos workers.

74 When Jeff confronted Melvin and demanded his share of the commission, Melvin claimed that his role was only to take care of documentation and referred Jeff to the defendant for his commission. Jeff said he went back to Andrew as he felt the defendant and Melvin were doing things behind his back. He would wait for the outcome of this suit before deciding what steps to take on his share of the commission for the Macau project.

75 Jeff claimed that without his contacts, the plaintiff would not have secured the Macau project.

He contended that the plaintiff was the only manpower agency who could import Filipino workers for the Macau project. Jeff claimed he spoke to the Filipinos who had been placed in DFA and ascertained that they had been brought to Macau by SOL.

76 During cross-examination, Jeff revealed that ACN did not collect placement fees from airlines that employed his trainees. Instead, the trainees had to pay ACN for the training he provided to them. He explained that ACN was an established cabin crew training school not only in Zhuhai but in the whole of PRC. He pointed out it was not he, but the plaintiff, who benefited from being involved in the Macau project. At the time the plaintiff was the only manpower company that provided Filipino workers in Macau. Unlike Lei Yun, the plaintiff could provide a "one-stop" service for the hiring of Filipinos and PRC workers from documentation to housing requirements. Had things proceeded as planned, the plaintiff would have provided 3,000 workers (or 10 per outlet to the 300 Shoppes) in the first phase of the Macau project.

77 Jeff acknowledged that he was supposed to take over the Macau project from the defendant after the latter's services were terminated, according to Andrew's email notification to the management of The Venetian dated 17 September 2007. However, there was nothing much he could do. By then, the first phase of the Macau project was completed and workers for the retailers had been procured by the defendant. When Jeff visited the plaintiff's clients with Andrew, they told him they did not need the plaintiff's services any more.

78 Jeff testified he had neither heard of Gates in his discussions with the defendant or Melvin, nor was he involved with the NDA.

79 The plaintiff's other witnesses included Tan Hung Liang known as Eugene Tan ("Eugene") (PW10) to the defendant. I would describe Eugene as a reluctant witness as he clearly would not have testified for the plaintiff had he not been subpoenaed and warned of the consequences of non-compliance with a subpoena. However, I found him to be a forthright and impartial witness when he took the stand.

80 Eugene is the (regional) director of human resources or personnel director at Shangri-La Hotel Singapore. He testified that he first met the defendant and Andrew in or about 2003 when they came to see him to offer Mil-Com's services for recruitment of trainees in Singapore. Because Shangri-La was desperate for local staff at that point of time, Eugene testified that Shangri-La agreed to engage Mil-Com's services to recruit local trainees, as reflected in copies of contracts signed between Shangri-La Hotel and Mil-Com dated 26 August 2003 and 9 February 2004. Eugene explained that under both contracts (of two years' duration), Mil-Com was to provide "service ambassadors" for the food and beverage, front office, guest services, guest relations, concierge and baggage services departments.

81 For both contracts, Eugene said he dealt with Andrew and the defendant. Subsequently, the duo informed Eugene that they were no longer with Mil-Com but had started a new company *viz* the plaintiff. Shangri-La Hotel subsequently signed a contract dated 15 August 2005 with the plaintiff in terms similar to the previous contracts signed with Mil-Com. Eugene revealed that because Shangri-La Hotel was caught in a bind between the plaintiff and Gates, his superiors had instructed Eugene to deal less with, and to gradually stop using the services of, the two companies.

82 It was noteworthy that Eugene testified that the plaintiff and Gates were only two of the companies that provided workers/trainees to the Shangri-La Hotel. There were other agencies that provided the same service. For the housekeeping department, another agency was responsible for recruiting room attendants and chamber maids from the PRC. Eugene added that over the years, the

number of trainees provided by the plaintiff dwindled because the plaintiff had difficulty getting locals interested in the work-cum-study programme.

83 Eugene's attention was drawn to Gates' contract with Shangri-La Hotel dated 16 June 2006, signed by the defendant as director of the former. It was for the provision of foreign trainees on trainee work permits by Gates to the hotel for two years with effect from 1 July 2006. He said Desmond, Shangri-La Hotel's former human resources manager, was instrumental in securing the contract for Gates. It was Desmond who approached Eugene to give Gates an opportunity to provide foreign trainees who could either be graduates or degree holders. Eugene testified that Gates continued to supply foreign workers to Shangri-La Hotel and he was not aware of any negative feedback regarding their workers. However, Eugene revealed that in the last two years, he had received negative feedback on the quality of the candidates provided by the plaintiff.

84 Due to a quota imposed by MOM, Eugene explained that Shangri-La Hotel was only allowed to employ one foreign trainee for every five local trainees irrespective of its size and the number of its employees. After the foreign trainees had completed their six months' training, they had to return to their home countries as MOM would not allow them to be retained as employees. Apart from employment pass holders, it was only semi-skilled foreigners *viz* those holding special passes ("S Passes") or those holding work permits from traditional source countries (like Malaysia), who could be employed in hotels. S Pass holders needed to earn a minimum monthly salary of $1,800 before they could be employed by Singapore hotels and they were subject to foreign workers' levy. Even then, there was a quota imposed by MOM for such workers.

85 In March 2007, Eugene had recommended the defendant to the human resources manager, Francis Law ("Francis") of Malaysia's YTL Group, describing the defendant as "reliable". Francis enlisted the defendant's help, having faced difficulties in recruiting Malaysians for the group's hotels in West Malaysia.

86 Counsel for the plaintiff repeatedly questioned Eugene that if he had requested of the plaintiff instead of the defendant and/or Gates, the plaintiff could similarly have supplied Shangri-La with foreign workers. Eugene's answer was "no", citing the following example. To drum up business for its food and beverage outlets during the 2008 financial crisis, Eugene said Shangri-La Hotel ran a "Flash Your Age" campaign where diners celebrating their birthdays at Shangri-La Hotel were given a discount based on their ages. There was an overwhelming response to the campaign. The hotel was swarmed with telephone calls. Eugene requested of the plaintiff but it was unable to provide Mandarin-speaking trainees for the hotel's call centre. The hotel resorted to other agencies to obtain the trainees and they were not necessarily from Gates.

87 Apart from Eugene, the plaintiff called two other hotel representatives to testify. They were Margariete Virginia Johnson ("Margariete") (PW5) who is currently the front office manager of the Hilton Hotel but who was previously with the Grand Hyatt (2002-2009) occupying the same post. Besides Margariete, the plaintiff also called the former human resources manager of the Grand Hyatt, Hong Bee Chen ("Hong" who is known as Vicki) (PW9) to testify. Hong was with the Grand Hyatt from April 2006 to May 2008.

88 Margariete recalled making a trip to Manila to recruit staff. She met Desmond for the first time at the airport and he accompanied her to Manila in place of the defendant who she was told, was in Macau. Margariete testified that she was told by Desmond during the flight that the Filipinos to be recruited (and subsequently Indonesians) were not supplied by the plaintiff. The defendant did not tell her the plaintiff only supplied local trainees. Margariete said she always thought she dealt with the plaintiff on Grand Hyatt's staffing requirements and she continued to-date to deal with the plaintiff on

the Hilton Hotel's staff recruitment.

89 Nothing turns on Hong's testimony as like Margariete, she said she dealt with the plaintiff and the defendant in particular, on staffing recruitments for the Grand Hyatt. Unlike Margariete however, Hong recalled having dealt with Desmond on foreign trainees. Hong also recalled liaising with another agency to recruit staff from the PRC and testified that the plaintiff only provided local trainees.

90 Besides Margariete and Hong, the plaintiff's other witnesses included its former operations manager Amran Bin Samsudin ("Samsudin") (PW3), its current operations manager Linda Teo ("Linda") (PW7) as well as its assistant operations manager Evelyn Lee ("Evelyn") (PW6).

91 At the material time, Samsudin handled the accounts of the Grand Hyatt, The Intercontinental, The Ritz-Carlton Millenia, The Conrad Centennial and Sentosa Resort & Spa. He recalled receiving a telephone call from Hong (this corresponds with [89] above) of the Grand Hyatt in mid-2006 inquiring about shortlisted Indonesian trainees. Samsudin was surprised as the plaintiff to his knowledge did not supply Indonesian trainees to any of its clients. He questioned the defendant and the latter confirmed that he was recruiting foreign trainees for the plaintiff and that Andrew was aware of the fact. Samsudin subsequently received similar inquiries from the Grand Hyatt, The Intercontinental and Sentosa Resort & Spa when the callers could not contact the defendant, Andrew and another staff member called Lawrence Teo.

92 Samsudin deposed that he participated in the Malaysian recruitment exercise in Kuala Lumpur in October 2006. Like Andrew (see [26]), Samsudin said he was keen to recruit Malaysians as trainees but was discouraged by the defendant's negative comments that Malaysian trainees were not financially viable for the plaintiff.

93 Samsudin visited Jakarta in October 2007 on the plaintiff's behalf with a view to recruiting Indonesian trainees by partnering with two Indonesian educational institutions that provided hospitality services. As none of the Indonesian parties who told him of the defendant's placing of Indonesian trainees with Singapore hotels through Gates testified, Samsudin's written testimony has no probative value. As an aside, I should point out that the Indonesian educational institutions that the plaintiff contacted were Gates' contacts. In the defendant's closing submissions (para 43), he accused Andrew/the plaintiff's staff of stealing and retrieving information from his desk on Gates' contact with its Indonesian counterparts and using the same to place two batches of foreign recruits in The Sentosa Resort & Spa.

94 Samsudin deposed that the number of trainees which the plaintiff placed with the Shangri-La Hotel decreased from 40 in 2004 to 18 in 2009. Further, he discovered from his visits that the plaintiff's trainees at The Intercontinental, The Shangri-La Hotel and the Grand Hyatt were replaced by Filipinos and Indonesians provided by Gates.

95 Linda testified that she handled the Pan Pacific Hotel and Grand Hyatt Hotel accounts for the plaintiff. She corroborated Samsudin's testimony on Hong's inquiry in [91] on Indonesian trainees. In fact, Hong had complained to her about the Indonesian trainees thinking the plaintiff had recruited them. Linda also complained of the plaintiff's loss of business from The Pan Pacific's Atrium Lounge where its local trainees were replaced by Filipinos. The Pan Pacific had in fact suggested to her that the plaintiff should recruit foreign trainees but when she raised the subject with the defendant, he opined that the profit margins were not enough.

96 Nothing turns on the testimony of Evelyn who essentially repeated what Samsudin and Linda deposed to in their AEICs. Like Andrew, Samsudin and Linda, Evelyn blamed the defendant for

"stifling" (using her word) the plaintiff's efforts to recruit Malaysian and mainland Chinese as trainees and for the plaintiff's loss of business, this time at the Intercontinental Hotel, which was under her charge. She sensed that the defendant's involvement with the plaintiff decreased over time and by end 2006, his involvement decreased to the extent that he did not even check the number of trainees hired by the plaintiff's clients.

97 I should point out that it was the defendant's case that Evelyn's salary was paid by the plaintiff although half the time she worked for Sass Atlantic whilst Linda's salary was paid by the plaintiff even though she worked for half a year at Sass Atlantic. This was not denied by Andrew but justified by him in [108] below.

98 Stelle was the plaintiff's final witness. Her role in the plaintiff (after the defendant's termination in September 2007) was to manage the payroll and she also took over the defendant's duties as business development manager sometime in April 2009. Stelle's testimony echoed that of Andrew. As such, it serves no purpose to repeat it here. Moreover, it was established under cross-examination that a substantial part of Stelle's written testimony was hearsay – it was what was told to her (usually by Andrew) and not what she saw or heard herself. Above all, Stelle did not visit Macau and had no personal knowledge of the Macau project. Stelle produced calculations of the plaintiff's gross profit margins for the years 2004-2008. I did not find Stelle's testimony helpful at all for this reason and for other reasons set out later in my findings.

(ii) The defendant's case

99 The defendant (DW1) called Melvin and Desmond as his witnesses, together with a former trainee of the plaintiff Boon Ching Ching ("Daisy") (DW6) as well as the three personnel/human resources managers of Singapore hotels that were/are the plaintiff's and/or Gates' clients.

100 I turn first to the defendant's testimony. In his AEIC and in the witness box, the defendant refuted the accusations levelled against him by Andrew and the plaintiff's other witnesses that he had channelled to Gates, contracts from Singapore hotels that were meant for the plaintiff.

101 Contrary to Andrew's claim, the defendant pointed out that Andrew was always more focussed on establishing his business in Sass Atlantic than developing the plaintiff's business, sometimes at the expense of the plaintiff, the reason being that Andrew and his wife Stelle owned 100% of Sass Atlantic as against 65% of the plaintiff. When he worked for Mil-Com, the defendant said the primary objective was to outsource manpower for Singapore Airlines. Unfortunately, despite a presentation to the senior management of Singapore Airlines, Mil-Com did not succeed in its objective. Mil-Com's subsequent efforts to initiate contacts/contracts with Emirates, Air China and Japan Airlines were also unsuccessful.

102 The defendant explained that the plaintiff's trainee scheme for locals was a two year work-cum-study programme whereby school-leavers from poor backgrounds with "N" level or Institute of Education ("ITE") certificates could study and work at the same time to gain experience in the hospitality field. The plaintiff's first batch of about 20 trainees was recruited in 2003. Hotels like The Shangri-La and The Grand Hyatt were receptive and were the first hotels with which the plaintiff placed trainees who were mainly recruited from ITE.

103 While Andrew made light of his parting with Diana, the defendant said there were disagreements between Andrew and Diana that caused Andrew to leave Mil-Com. The defendant sensed it because Andrew instructed him on one occasion to go to Shangri-La Hotel quickly and change the contracting party from Mil-Com to the plaintiff, which the defendant did. The defendant

recalled receiving a telephone call from Diana (in March-April 2003) where she apologised to him but informed him that he and the other staff of the plaintiff could no longer go to Mil-Com's office because she had changed the locks. Diana added she was upset with Andrew and apparently broke down when she met him with Andrew subsequently.

104 The defendant refuted Andrew's testimony that Diana had (out of the blue) reminded them at the meeting of conflict of interests and their directors' duties. What the defendant recalled was that Diana wanted Andrew to be responsible for the full loss of $300,000 incurred by Mil-Com which Andrew rejected arguing that that as a 20% shareholder he should not bear the full loss.

105 The defendanttestified that Andrew requested that staff Andrew had hired for Sass Atlantic (Rachelle Ang and Evelyn) were to be paid by the plaintiff because to Andrew, it made no difference whether they were paid from the left pocket or the right pocket. However, it made a difference to the defendant as he had no shares in Sass Atlantic whereas Andrew and Stelle held 65% shares in the plaintiff and that meant he was paying 35% of such staff's salaries. However, when the defendant broached the subject to Andrew, it drew an angry response from Andrew (even though the defendant apologised). This can be seen from the following text message which the defendant received from Andrew on 21 November 2005 at 11.45pm:

> Agreed. But if you remind me again about resource sharing issues, I will bill PVR for licensing of training, brand equity and increase rent, and as majority shareholder I will terminate your directorship.

106 Still not mollified by or satisfied with the defendant's apology, Andrew sent another message to the defendant at 1.31am on 22 November 2005 which read:

> As a friend no issue, but as an equity partner you need to know where you stand. I am very uncomfortable about you talking about Sass using PVR resources, as if PVR does not use Sass resources (Emirates database, training heads filler) or brand equity, business references from beginning and even up to now. If we don't see eye to eye as business partners, I am prepared to part but keep the friendship. Please respect me as the majority shareholder, is all I ask. I hope I don't have to remind you about this again.

107 There was also a conflict in the work done by Sass Atlantic and the plaintiff. The defendant recounted that Andrew had met the management of CIAS (see para [21]) to propose a work-cum-study programme for its staff. The defendant was excluded from the meeting. Subsequently, Andrew informed the defendant that CIAS wanted a charge rate of $7.00 per hour for the programme. The defendant expressed his view that such a low rate was not feasible pointing out that Shangri-La was then paying the plaintiff an hourly rate of $8.00 for a similar programme. Less an allowance of $4.50-$5.00 to be paid to the trainees, the plaintiff would be left with $2.00-$2.50 to cover overheads and for profits. Andrew's response was, if the defendant did not want to do it for the plaintiff, why not let Sass Atlantic take on the CIAS assignment? This was encapsulated in Andrew's text message to the defendant sent on 21 November 2005 at 9.36pm where he said:

> Robin, if the CIAS deal is indeed around 7 dollars just as they claim and you don't want to do it… then I like to propose that Sass take on the project, firstly it is in the aviation industry, 2nd Sass desperately need to build its own growth and its own resources with sustainable business model, which Sass doesn't have now. I have help grown Shang, Hyatt, Intercon, Regent, Conrad with sustainable growth model for PVR. These are the ones I pitch and help close the deal. 4 of these clients are our largest most stable clients. I need to do likewise for Sass so that it can stand on its own feet with its own resources. It is frustrating sharing resources and my experience in

Honeywell tells me so, as you know. Please concur and not keep even aviation projects away from Sass…

The defendant testified he suspected Andrew may not have been truthful with him and that CIAS may well have offered a rate higher than $7.00 per hour. That was why the defendant was not invited by Andrew to attend the meeting with CIAS.

108 The defendant disputed para 62 of Andrew's AEIC. Andrew had claimed therein that it was part of the agreement between the plaintiff and Sass Atlantic that the former would meet the office, manpower and other expenses of the latter when Sass Atlantic transferred the Shangri-La contract to the plaintiff. Andrew further deposed that Sass Atlantic voluntarily paid the defendant $11,525.34 for the period March 2006 to July 2007 for work done by the plaintiff's staff for Sass Atlantic. The defendant was further paid $154,771 for the period July 2005 to July 2007 as profits for his 35% equity share in the plaintiff. Further, Sass Atlantic paid the medical expenses/bills of three staff (Evelyn, Samsudin and Roland) of the plaintiff for the period September 2004 to September 2007. The defendant did not dispute those payments but pointed out that the plaintiff reimbursed Sass Atlantic two-thirds of the latter's rent not to mention that its staff like Linda worked almost full-time for Sass Atlantic.

109 The defendant drew the court's attention to Andrew's affidavit where Andrew had worked out the costs sharing between the plaintiff and Sass Atlantic. Andrew claimed there that the plaintiff owed Sass Atlantic an estimated $112,000 for supporting the plaintiff with Emirates' "brand name" of which the defendant's 35% share amounted to $39,200. Andrew added that Sass Atlantic "gave" $45,000 to the plaintiff by the value of the Shangri-La contract. Further, Andrew claimed he had to pay $43,000 to Mil-Com to "redeem the bank account from Mil-Com". This (according to Andrew) meant that Sass Atlantic subsidised the defendant to the extent of $15,750 (35% x $45,000). As the plaintiff subsequently repaid Andrew $38,000, that left a balance outstanding of $5,000 on the payment made to Mil-Com of which the defendant's share was $1,750.

110 The defendant testified that he could not accept Andrew's calculations as the computation was not based on correct figures, one example being that Andrew's monthly salary was $4,000 but he had used $5,000 as the figure in his calculations. In the defendant's opinion, the proportion of costs charged to the plaintiff far exceeded the actual costs incurred by Sass Atlantic.

111 It is noteworthy that one item included in Andrew's computation as chargeable to the plaintiff was the following:

Andrew Cost Per Month

Opportunity cost per month (Honeywell salary as of 2002 Sep) $14100

Less cost supported by the plaintiff 5,273.33

Net cost per month to support the plaintiff 8,826.67

112 I can say without more that the above item is not only unjustified but absurd and was quite rightly rejected by the defendant along with many other items of a personal nature incurred by Andrew but charged to the plaintiff. I see no reason why the plaintiff was/is expected to bear the cost of Andrew's computer, his mobile telephone and his parking charges if he spent most if not all of his time working at and for Sass Atlantic as well as travelling for the latter.

113 The defendant testified that the text messages from Andrew in [105] and [106] not only hurt and saddened him but caused him to feel insecure; I am not surprised. Anyone reading Andrew's messages with its unpleasant and menacing tone, never mind a fellow (minority) shareholder and director like the defendant, would be fearful. Andrew had not minced his words. He did not want the defendant to forget that he (with his wife Stelle) was the majority shareholder who controlled the plaintiff and he could get rid of the defendant at any time. Indeed, Andrew followed through his threats by calling an EGM to remove the defendant as a director later that month (see [9]).

114 Although he was not removed as a director on 27 November 2005, the defendant felt insecure – his position in the plaintiff was precarious as Andrew could still remove him subsequently for any or no reason. The defendant decided he would have to make alternative plans for his future. After he became acquainted with Desmond, the defendant realised there was one area where he could put his expertise and experience in recruiting manpower to good use *viz* foreign recruitment. The idea had been briefly discussed by the plaintiff previously but not pursued because the plaintiff did not have the resources for the project.

115 To turn his idea into reality, the defendant testified that he checked the website of MOM to ascertain the regulatory requirements of foreign labour recruitment. He then signed up to do a course leading to the award of a CEA at the Singapore Polytechnic and subsequently passed the examination after completing the course. The defendant said he also acquired knowledge of foreign manpower recruitment from Desmond as the latter was an experienced recruitment manager. The defendant also had to update himself periodically on MOM regulations which constantly changed due to market conditions. These measures were done by the defendant in his own time.

116 Contrary to Andrew's complaint that he did not pursue the possibility of recruiting PRC workers for the plaintiff and that he had misled Andrew into thinking the import of Chinese workers was not allowed, the defendant explained that MOM only changed the rules and allowed the import of PRC workers from 1 June 2007, at 5% of an employer's workforce which percentage was subsequently increased to 10%.

117 The defendant similarly rebutted Andrew's claim that the plaintiff intended to recruit foreign students from CSM (see [20]) and place them as trainees in Singapore hotels. This would not have been allowed under MOM's regulations. As for Andrew's complaint that he discouraged the plaintiff from recruiting Malaysians, the defendant explained that it was not viable because the hotels would have to pay a foreign worker's levy on Malaysians (and they would therefore cost more) as against the plaintiff's local trainees. In any case, the plaintiff's recruitment exercise in Kuala Lumpur for Malaysians was a failure.

118 The defendant drew the court's attention to the audited accounts of the plaintiff for the years 2005 and 2006. The plaintiff's revenue for 2005 was $1,707,352 and it increased substantially to $2,047,049 in 2006 mainly due to his efforts.

119 The defendanttestified he was reacquainted with Desmond in 2005 after their last encounter at the Shangri-La in 2004 when Desmond was still the hotel's recruitment manager. After meeting Desmond a few more times subsequent to the November EGM, the defendant and Desmond decided to go into the recruitment of foreign trainees. The defendant first applied for the CEA. Desmond then used his previous contacts from Shangri-La Hotel to sources for trainees from two Indonesian colleges and one Filipino school. Desmond also had contacts with Filipino recruitment agencies and subsequently from South Korea.

120 The defendantrevealed that when Desmond moved into the plaintiff's office temporarily for two

to three months after starting Gates, Andrew asked him to approach Desmond with a view to the plaintiff going into the field of executive search; Andrew wanted a 20% stake in Desmond's business. Desmond declined and moved out of the plaintiff's premises to Peninsular Plaza shortly thereafter.

121 In cross-examination the defendant revealed that it was in fact Andrew who encouraged him to register his sole proprietorship Trendz Consultants to receive the defendant's share of the profits from the plaintiff. Andrew's share of the profits was similarly transferred to Andrew's sole proprietorship Sass Atlantic Aviation.

122 As for Nanyang (see [25]), the defendant explained that Desmond travelled to Indonesia very often in 2006 and worked with Indonesian students from two to three schools to source for trainees but the margins were very low. Nanyang was incorporated in October 2006 by him and Desmond with a view to attracting Indonesian and later Filipino students to attend private schools in Singapore. There was then a local private school for foreign students called Nanyang Institute of Management Pte Ltd ("NIM") whose chief executives the defendant had met. He had hoped to use Nanyang to bring in foreign students for NIM which taught a diploma course in hospitality, and earn a commission on the school fees paid by the students. Private schools in Singapore saw high growth in 2006 and it was a lucrative business. Unfortunately, NIM did not have the requisite licence to accept such students and Nanyang became a dormant company in 2007-2008 after going into the business of leasing dormitories temporarily.

123 The defendant testified he was told of his suspension when he was met at the airport on 12 September 2007 by Roland of the plaintiff's staff and Daisy from Sass Atlantic. They told the defendant that Andrew had instructed them to escort him to the plaintiff's office and that they needed to retrieve the plaintiff's Dell computer that the defendant was using. The defendant refused to go to the plaintiff's office and further refused to acknowledge Andrew's letter of suspension. The defendant informed Roland and Daisy that the Dell computer had crashed a long time ago and had since been discarded; he was using his own laptop.

124 The defendant referred to the meeting on 26 March 2008 at [45] where Andrew and Stelle demanded that he compensate the plaintiff $348,326 for allegedly diverting business to Gates and Nanyang. The defendant said the demand was unjustified as it was premised on Gates making the amount of profits the couple had projected which Gates never achieved as reflected in its 2007 audited accounts.

125 I turn next to Desmond's evidence. Desmond testified that he became acquainted with Andrew and the defendant when he was the human resource manager at the Shangri-La Hotel. He dealt mainly with the defendant.

126 Although both were directors and shareholders of Gates, Desmond asserted that before the defendant left the plaintiff's services, the defendant was only his silent partner and was not involved in Gates' operations. Further, before the defendant left the plaintiff, the defendant did not draw either director's fees or a salary from Gates. Desmond testified he was solely responsible for and ran Gates in the initial years, funding the company's operations with his own money. The defendant was active in Gates only after he left the plaintiff. Further, the business of Gates in 2006-2007 was not profitable at all, its losses being reflected in the audited accounts of the company for the two years.

127 After leaving the Shangri-La Hotel in 2004, Desmond worked elsewhere before he set up Gates with his wife's help, first as a sole proprietorship doing executive search for hotel management personnel before converting it to a limited company, doing both executive search and foreign workers recruitment. He testified that he and the defendant operated on mutual trust and on a gentleman's

agreement that Desmond would keep all the fees earned from executive search and he would only share (equally) with the defendant Gates' income from manpower recruitment. Desmond stated unequivocally that Gates never competed with the plaintiff because the former only recruited foreign workers (but not Malaysians or mainland Chinese) for hotels whereas the plaintiff only provided local trainees. That was why it was not uncommon for some hotels (*inter alia* Grand Hyatt, Shangri-La, Conrad Centennial, The Intercontinental, and Marina Mandarin) to have contracts with the plaintiff and Gates concurrently.

128 Desmond denied the plaintiff's pleaded allegation that Gates had taken over the plaintiff's customers or clientele. He was equally emphatic in his contention that the defendant had no overseas contacts before joining Gates. Otherwise the defendant would not have come to him for help.

129 Desmond exhibited to his AEIC copies of, memoranda of understanding that he had signed on behalf of Gates, one with an Indonesian school, another with an Indonesian tourism institute and Gates' accreditation with SOL in the Philippines.

130 As for Nanyang, Desmond also corroborated the defendant's evidence on the rationale for its setting-up. He said he tried to bring in Filipino and Indonesian students through Nanyang but failed.

131 I should point out that Desmond passed the requisite examination and holds a CEA licence for manpower recruitment in Singapore. Andrew's portrayal of the defendant as the person holding a CEA licence on the plaintiff's behalf and which the defendant subsequently took with him to Gates was inaccurate. The CEA licence was personal to the defendant. It had nothing to do with the plaintiff. If Andrew had taken the trouble (like the defendant and Desmond) to attend the course run by the Singapore Polytechnic, sat for and passed the requisite examination subsequently, he too could have been obtained a CEA licence and ventured into foreign labour recruitment for the plaintiff.

132 Desmond revealed that he moved out of the plaintiff's premises because it did not seem to him a fair trade-off that he should give 20% of his executive search revenue to the plaintiff without consideration, in exchange for a free workstation. Desmond did his sums and realised that it was commercially better for him to pay $1,000 per month for 420 sq ft of rented space at the Peninsular Plaza than to give $2,000 of his (then) monthly revenue of $10,000 to the plaintiff and be tied to the plaintiff for life.

133 Desmond's testimony on the Macau project corroborated the defendant's version particularly on his role in bringing Filipino recruits to Macau through SOL. Desmond testified that the defendant had approached him in June 2007 to introduce a Philippines recruitment agency to Lei Yun as the latter had no contact for recruiting Filipinos. Desmond said he made the introduction of SOL to Lei Yun in his personal capacity, not on behalf of Gates. As such, any revenue that he obtained from the Macau project would not be paid to or shared with Gates. After he had made the introduction, Desmond said he had no dealings with Andrew.

134 An important factor raised by Desmond and which the plaintiff appeared to have overlooked was that Desmond came from the hotel industry. As he pointedly informed the plaintiff's counsel, he knew many of the human resource/personnel managers of major hotels from his stint with the Shangri-La Hotel. Consequently, he had good contacts in the industry when he started Gates. He not the defendant, negotiated contracts on Gates' behalf with the people he already knew in the hotel industry. The plaintiff could not challenge this aspect of his evidence.

135 I would add that cross-examination of Desmond did not show up any inconsistencies in his testimony so as to cast doubt on his credibility.

The Macau project

136 As for the Macau project, the defendant's version of events was vastly different from that put forward by Andrew and Jeff.According to the defendant, Andrew's contact with Hicks (see [27]) at the beginning of 2007 was very preliminary. The defendant said he followed up by sending a proposal to Hicks on a work-cum-study scheme that the plaintiff had tried out in Singapore. He received no response to his proposal. When Hicks visited Singapore subsequently, the defendant raised the subject of sourcing manpower for the Shoppes. Hicks asked that the plaintiff's representatives visit him in Macau with their proposal which the defendant and Andrew did one or two weeks later.

137 Contrary to Jeff's comment that Lei Yun was a small-time company, the defendant pointed out that the Lei Yun group was a prominent construction company in Macau. Due to the limited labour pool in Macau because of its small population (half million), the defendant testified he and Melvin brainstormed on the sort of workers that would be suitable for the Shoppes bearing in mind government regulations. They concluded that Filipinos would be ideal. Filipinos were willing to do shift duty unlike the Macanese. Further, the Macanese government only allowed locals to be croupiers in the casinos, thereby retaining the best jobs in the gambling industry for its own citizens. As the plaintiff was new in Macau, the defendant explained he had to rely on and learn from Melvin on what was required of foreign labour recruitment under Macanese law, including the restrictions and quotas.

138 The defendant and Melvin met Sullivan (see [27]) who verified Lei Yun's licences and visited ACN in Zhuhai. The plaintiff sent out questionnaires to the retailers to ascertain the manpower needs of the Shoppes. The plaintiff then signed the non-disclosure agreement in [73] with Venetian Cotai Limited. The defendant, Andrew and Melvin visited Hong Kong in May 2007 where they made their sales pitch to 20-30 retailers who would have outlets in the Macau project.

139 The defendant testified that because the plaintiff was not then (and even now) involved in recruiting labour either from the PRC or from the Philippines, he had to rely on Melvin for the former while for the latter, he recommended Desmond to Andrew. He explained that the paperwork involved for both types of recruitment was laborious and extensive and needed the requisite expertise. During that period, the defendant visited Macau as often as two weeks in a month.

140 The defendant (like Melvin), disputed the testimony of Andrew and Jeff that the profit-sharing arrangement proposed by Andrew (see [36] above) had been agreed to by all parties. The defendant said he had pointed out to Andrew that Jeff made nominal contributions towards the recruitment exercise and yet Jeff was given a share of the profits in addition to which Jeff charged students at ACN fees of RMB28,800 each for four months' training as cabin crew. Further, Jeff was not a licensed employment agent and therefore could not charge placement fees. The defendant testified that his comments on Jeff drew a strong reaction from Andrew (see [34]) who rejected any attempt to exclude Jeff from the profit-sharing arrangement. Although Jeff placed 38 of his students to work in The Venetian, neither the plaintiff nor Lei Yun received any placement fees therefrom. Further, (according to the defendant), Jeff wanted to charge RMB500 per hour to conduct training for some of the plaintiff's clients. The rate was too high and by the time Andrew informed the defendant that the rate was a mistake and should be RMB500 per day, the plaintiff had lost the training deal.

141 The defendantfurther refuted Andrew's claim that the Macau project was very lucrative but the plaintiff had not received its share of the revenue collected by Lei Yun. He cited DFA as an example. DFA had projected its two outlets would be very successful as which result it recruited (through Desmond and SOL), many Filipinos. Unfortunately, after its opening, DFA's outlets did not get the patronage it projected with the result that within two to three months, DFA had retrenched 16 Filipinos. Besides DFA, the defendant testified, newly-opened restaurants also retrenched their foreign

workers due to poor business. There were also instances (like Buddha Bar) where the outlet did not even commence business due to disagreement with The Venetian's management or other issues, notwithstanding that a letter of intent may have been signed with Lei Yun and expenses may have been incurred by SOL in the Philippines. In the case of The Four Seasons Hotel, the management of The Venetian told the plaintiff and/or Lei Yun that the workers selected would not be employed as The Venetian was conducting a retrenchment exercise of its existing employees.

142 I should add that when he testified, Desmond confirmed that on the Macau project, he lost money on The Four Seasons Hotel, the Buddha Bar and DFA. Desmond described his profit from the Macau project as "pathetic".

143 The defendant added that some of the Filipinos placed with DFA did not pay the contractual placement fee to Lei Yun. The Filipinos failed or refused to pay either because they were retrenched soon after they arrived in Macau, or they claimed they had paid before they left the Philippines or, they were not made to sign promissory notes by SOL before they left Manila. DFA refused to help Lei Yun collect the placement fees by deductions from the employees' salaries for the reason there was no such contractual term in the employees' contract.

144 Contrary to Andrew's accusation that he continued to work on the Macau project and against the plaintiff's interests after his dismissal, the defendant explained that The Venetian had its opening on 28 August 2007 whilst many of the Shoppes in the Macau project were scheduled to open between September and November 2007. He felt he needed to return to Macau (which he did) to explain to Melvin what had happened and to leave it to Melvin to decide who Lei Yun would work with in future. As Melvin opined he was more comfortable working with him, the defendant continued to help Melvin with the Macau project at his own expense (travel and accommodation). Melvin further informed the defendant (which Melvin confirmed when he testified) that Lei Yun would continue to bill clients for work done and retain the monies until differences between the plaintiff, Andrew, the defendant and Jeff were resolved.

145 At this juncture, I turn to look at the evidence of Melvin (DW2). In his AEIC, Melvin deposed that the roles of the partners in the Macau project were well defined. Lei Yun/the plaintiff were in charge of sales and customers, Jeff would recruit and train PRC workers while Lei Yun was to be the Macau human resource agent as Lei Yun had all the requisite licences for the import of foreign workers. Melvin confirmed the defendant's testimony as set out in [141] to [145] above. As alluded to earlier (at [37]), Melvin disputed Andrew's claim that the fee-sharing proposal set out in Andrew's email dated 18 June 2007 had been agreed. He was adamant that he never knew let alone agreed to Andrew's proposal. In fact he added, Jeff had also not agreed. In the light of Jeff's testimony (at [71] above), either Jeff had done a *volte face* since 18 June 2007 and had decided to accept Andrew's proposal, or Jeff was untruthful in his testimony.

146 It was noteworthy that during cross-examination, Melvin said that Jeff and Andrew did not participate in the Macau project. He added that it was the defendant who had the closest relationship with the retailers and who understood the project. Hence, after the defendant's termination by the plaintiff, Melvin asked for the defendant's assistance to complete the project; Melvin was of the view that only the defendant had the ability to carry on and complete the work, particularly on the recruitment from the Philippines. Melvin had initially requested the defendant for a contact in the Philippines and this resulted in the introduction of SOL to Melvin.

147 Melvin testified that the defendant was neither a shareholder nor a director of Lei Yun, producing a search conducted in Macau's register of companies on Lei Yun as confirmation. When shown Lei Yun's letter dated 20 August 2007 (at [69]), Melvin admitted he had signed it as the

general manager. He rationalised it as a requirement of the Philippines authorities with whose procedures for export of labour he was unfamiliar. He understood the purpose was convenience, in order to do business and he did not think it amounted to misrepresentation. During cross-examination, Melvin revealed that in introducing him to Hong Kong retailers for the Macau project, Andrew had similarly passed him off as a director of the plaintiff (and prepared a name card for him accordingly) when he was not.

148 Melvin testified that he was made aware of the defendant's termination from the plaintiff's services by Andrew's email announcement. He felt embarrassed (and complained it damaged his reputation as well) that Andrew circulated the announcement to retailers in the Macau project some of whom asked him about it. After the defendant's termination, Andrew and Jeff had a meeting with Melvin where they informed him that Jeff would take over the defendant's responsibilities. Andrew had also asked Melvin who he sided with. Although he suggested that Andrew should to settle the dispute with the defendant, Melvin said he did not want to interfere. Thereafter, Melvin neither heard from either Andrew or Jeff (which the plaintiff's counsel disputed) nor whether the fee dispute had been resolved. Melvin continued working on the Macau project with the defendant's assistance.

149 Melvin made it clear that Lei Yun was the only legal entity responsible for conducting recruitment for the Macau project and that could collect payment for its services. He confirmed that the fees Lei Yun collected for the Macau project had not been dispersed to anyone. He added that nothing was legally owed to the plaintiff, Jeff or the defendant since no formal agreement was entered into. Melvin went further in his AEIC to say that the plaintiff's claim against the defendant for any loss of profit and/or business from the Macau project could not stand.

150 In the course of cross-examination, Melvin revealed that fees were payable by the retailers in the Macau project based on success rates and the number of people placed. Consequently, by his estimate, only about 20 retailers owed placement fees to Lei Yun.

151 Melvin said he first heard of Gates in 2008 when he came to Singapore to attend the defendant's wedding. The defendant then informed Melvin that he had joined Gates. Melvin was then introduced to Desmond. He was not aware of Desmond's involvement in the Macau project.

152 Although Melvin was called as the defendant's witness, I have no doubt that his testimony was unbiased and truthful.

The defendant's other witnesses

153 Besides Desmond and Melvin, the defendant called three hotel personnel as his witnesses. They were Florence Yeo ("Florence") (DW5) who was formerly the assistant human resource manager of The Sentosa Resort & Spa (between 2006 to 2007), Ng Lip Gee ("Miss Ng") (DW 3) who was the personnel manager of the Grand Hyatt Hotel (2005 to mid-2007) and Wah Yuh Fang ("Miss Wah") (DW4) who was the human resource manager for Conrad Centennial (2006 to November 2007). All three witnesses testified that they were aware that Gates and the plaintiff were separate entities, with the former supplying foreign trainees for six months while the latter provided local students as trainees for two years.

154 It bears mentioning that the evidence of Miss Ng who no longer works in the hotel industry, contradicted that of her former colleague Margariete. Miss Ng testified that she was fully aware that Gates and the plaintiff were separate legal entities and performed different functions – the plaintiff supplied local manpower while Gates recruited foreign manpower for the Grand Hyatt. She was introduced by the defendant to Gates as a company that sourced for foreign manpower. Miss Ng

added that at the material time, the Grand Hyatt recruited foreign housekeeping staff from Strategic Mindmapping Management concurrently with obtaining foreign and local manpower from Gates and the plaintiff respectively.

155 Nothing turns on the testimony of Miss Wah or Florence. Both in essence corroborated Miss Ng's testimony and in turn that of the defendant.

156 Another witness was Daisy who was a trainee in the plaintiff's internship programme in 2003, attached to Shangri-La Hotel. Daisy subsequently worked at Sass-Atlantic for about four months in 2007 as a business development manager, tasked with marketing properties in the Thai islands of Phuket and Koh Samui. Daisy testified she also helped to train cabin crew for Tiger Airways along with Linda (whose salary was paid by the plaintiff). Daisy revealed that for her traineeship, the allowances were $4.00 per hour which worked out to $600-$800 per month, with no Central Provident Fund contributions or medical or annual leave benefits like regular employees. Hence, while the internship was well received in an economic downturn, it was less attractive when there were more job opportunities in better economic times. In her AEIC, Daisy deposed to standing in for a colleague at a recruitment drive of the plaintiff held at the Suntec Convention Centre; she noticed there were less than 20 walk-in applicants for the internship programme.

157 Daisy was the person from Sass Atlantic who met the defendant at the airport (see [138]) to inform him of his suspension on 12 September 2007. She revealed that she felt uncomfortable treating the defendant as a criminal. However, as an employee, she had no choice but to follow Andrew's instructions. She explained she left Sass Atlantic because too many things were going on there that made her feel uncomfortable.

The issue

158 The only issue this court has to determine is whether the defendant breached his fiduciary duties to the plaintiff in being a director and shareholder of Gates and Nanyang, without declaring his interests to his fellow directors Andrew and Stelle. If the defendant did breach his duties, did his breach cause damage to the plaintiff? As the law on a director's fiduciary duties both at common law and under s 157 of the Companies Act (Cap 50, 2006 Rev Ed) is so well known, it does not require repeating in this judgment.

The findings

159 The picture painted of the defendant by Andrew (and to a lesser extent by Stelle) in the witness box was that of a dishonest and ungrateful colleague/co-director/shareholder, who had secretly worked against the interests of the plaintiff while still in its employment. The defendant that this court saw and heard in the witness box was far removed from the negative image that had been (unfairly) portrayed of him. He came across as honest and sincere. I did not doubt his credibility. What emerged from the evidence was that he had been shabbily treated by the plaintiff and by Andrew in particular.

160 It is noteworthy that the defendant did not deny that he had failed to disclose his interest in Gates or Nanyang. His defence was that he had no obligation to disclose because the plaintiff and Gates were not in the same business, more so Nanyang. Apart from the non-disclosure, the defendant denied he had acted against the interests of the plaintiff or benefited from his interest in Gates at the expense of the plaintiff.

161 The evidence also showed that there were instances (the Grand Hyatt being one example)

where the name of the plaintiff had been mistakenly inserted in the contract provisions as the receiving party of placement fees invoiced by the plaintiff to the hotel. Counsel for the plaintiff (and Andrew) made much of this mistake to accuse the defendant of deliberately misleading the hotels into thinking the plaintiff and Gates were one and the same company. The defendant on the other hand candidly admitted that it had been a typographical error arising from his "cut and paste" job. He used the same template for Gates' contracts as that he had used for the plaintiff's contracts of which he was the author in any case (based on Mil-Com's service contract for the first Shangri-La contract).

162 Counsel for the plaintiff also made much of the fact that the defendant had used the plaintiff's email address in his correspondence on behalf of Gates. I view thus fact as inconsequential since Andrew himself also used the email of Sass Atlantic interchangeably with that of the plaintiff's for his own correspondence. It bears repeating that the defendant had no shares in Sass Atlantic. Furthermore, for incoming email messages, the defendant was not in a position to dictate to the sender that his email address should be that of the plaintiff and not Gates.

163 Counsel for the plaintiff and Andrew made much too of the fact that the defendant was designated a director of Lei Yun in Lei Yun's letter dated 20 August 2007 set out at [68] above. The defendant explained that it was a requirement by the Philippines authorities that the importing agent of Philippines labour (for Macau) *viz* Lei Yun provided an official letter for the interview of applicants in Cebu. Melvin was then not available and as a matter of urgency, SOL requested the defendant to sign the letter on Lei Yun's behalf. Melvin himself had categorically stated that the defendant was never a director of Lei Yun and that the defendant had signed the letter for business convenience. The plaintiff was in no position to challenge the testimony of Melvin in this regard.

164 The last fact the plaintiff capitalised on was that the defendant had signed contracts on behalf of Gates with local hotels while he was still in the plaintiff's employment. The defendant's explanation was that whoever was available would sign the contract for Gates. The defendant pointed out that in its early days, Gates was literally a one-man operation of Desmond. If Desmond was busy, the defendant would help out by signing Gates' contracts on Desmond's behalf. His testimony was corroborated by Desmond and I accepted it as sensible and logical.

165 I note that for a starting salary from the plaintiff of $3,200 that was eventually increased to $3,800, the defendant effectively headed and ran the plaintiff's operations bringing in revenues for the plaintiff that were $1,707,352 in 2005 and which increased substantially to $2,047,049 in 2006 (see [118]). Apart from meetings with potential clients (many of which like the Dubai trip came to nought), Andrew played no active role in the running of the plaintiff's operations before the defendant left the plaintiff. According to the defendant, Andrew was only concerned with when the plaintiff would bill the customer and when the defendant/the staff would be collecting the money, not with operations. As reflected in the fact that the plaintiff only managed to place two batches of foreign (Indonesian) trainees with The Sentosa Resort & Spa after the defendant's departure, Andrew and Stelle were apparently not familiar with the business of manpower placement despite Andrew's pursuit of many contacts set out earlier in [17].

166 Although he was cross-examined *in extenso* over 3½ days, the defendant's testimony, that Gates never provided local but only foreign trainees whereas the plaintiff only provided local but not foreign workers to Singapore hotels was unshaken and not rebutted by the plaintiff. The voluminous documents before the court provided by the defendant as a result of the plaintiff's numerous and excessive discovery applications, substantiated the defendant's testimony which in turn was corroborated by Desmond and the defendant's witnesses from three hotels. On hindsight, this court and the courts below should not have granted the plaintiff's repeated applications for discovery (purportedly on the basis that the defendant was wilfully withholding relevant documents) as they

were nothing more than fishing expeditions, attempting to find evidence to support the plaintiff's case.

167 Indeed, the plaintiff did not and/or could not produce one iota of evidence that supported Andrew's bald and repeated assertion (in para 42 of his AEIC and in court) that "as early as September 2004, the plaintiff was already in the business of providing foreign manpower to hotels which Robin was well aware of since he was participating actively in the process". During cross-examination Andrew prevaricated when questioned on his para 43 but finally, after he was pressed for an answer by the court, he admitted that he had no evidence to support his bold (and I would add untrue) statement. He then disclosed that the first time the plaintiff placed foreign trainees in local hotels (at The Sentosa Resort & Spa) was at end 2007 after the defendant's departure from the plaintiff.

168 Yet, in its closing submissions, the plaintiff asserted (at para 47) in complete disregard of the evidence presented that, "using his close personal relationship, the defendant gradually and systematically funnelled business away from the plaintiff to Gates" and proceeded to expand on the argument by referring to a chart that its counsel had prepared. The submission was completely misconceived. Despite the extensive (and sometimes oppressive) discovery that it obtained from the defendant, the plaintiff did not produce a single service agreement signed with any hotel in Singapore that showed *either* that (i) Gates provided local trainees or staff *or* (ii) that the plaintiff provided foreign trainees or staff, *before* the defendant's suspension on 12 September 2007. Quite simply none existed.

169 It is also pertinent to note from the defendant's (unchallenged) evidence that before Gates ventured into the field, foreign hospitality trainees had already been provided to hotels like Shangri-La by other manpower agencies such as FSC and Recruit 2000. His testimony was corroborated by none other than the plaintiff's own witness Eugene from Shangri-La Hotel (at [82]) whose testimony the plaintiff sought to discredit in its closing submissions (see [181]). Further, according to the defendant, effective from 1 June 2009, MOM no longer permitted Indonesians and only Filipinos could be deployed in hotels as trainees, under a new scheme called training employment pass. For MOM approval's under this scheme, students had to come from state universities. Gates' Indonesian partners could not but its Filipino partners could, satisfy the criterion. Andrew had no contacts in the Philippines that would have enabled the plaintiff to recruit Filipinos for the hotel industry. The change of schemes by MOM may explain why the plaintiff only managed to place two batches of Indonesians at The Sentosa Resort & Spa and no more at the same or other hotels.

170 As Desmond had testified, many local recruitment companies did not carry out foreign recruitment because they did not have the contact or network. This certainly applied to the plaintiff. SOL was Gates/Desmond's contact, not the plaintiff's or the defendant's. Hence, to date, the plaintiff has not recruited Filipinos for its clients.

171 As for Andrew's repeated assertion that the plaintiff's intention was always to go into foreign labour recruitment but that the defendant discouraged him (which the defendant denied), the defendant's answer was that those intentions were momentary, short-lived and never pursued, citing Shangri-La Dubai as an example. I saw no evidence that contradicted the defendant's stand.

172 At this juncture I need to digress. The defendant had accused Andrew/the plaintiff (see [93]) of stealing and retrieving information from the defendant's desk on Gates' contacts with its Indonesian counterparts and using the same to place Indonesian trainees in The Sentosa Resort & Spa. In the plaintiff's closing submissions (at para 208) in answer to this accusation, it was contended that "the contact was obtained while the defendant was on the plaintiff's payroll and hence was the plaintiff's

contact and further, was in the plaintiff's office". That lame submission however went against the weight of the evidence adduced from Andrew himself – that he found a list of Gates' clients on the defendant's desk. Obviously, Andrew had no scruples about using Gates' contacts for the plaintiff's business while in the same breath complaining that the defendant made use of the plaintiff's clients for Gates' business (which allegation on the evidence was not substantiated).

173 It would also be appropriate at this juncture to comment on Andrew's testimony. I concluded from the evidence adduced in court that he was an unreliable witness who was quite prepared to and did take liberties with the truth. He was not above practising double standards either when it suited his purpose (see [65], [147], [169] above and [177] below). Andrew used Stelle to hold his shares in the plaintiff before he broke away from Mil-Com and he certainly did not declare his interest to Diana.

174 I dismiss as highly improbable Andrew's claim that there was an oral agreement made in or about October 2003 between himself and the defendant on the terms and conditions of the defendant's employment. Andrew was not the sort of person to rely on oral agreements. If indeed there had been such an agreement, it would have been evidenced in writing. The alleged oral agreement was fabricated just as Andrew concocted the evidence that Diana would suddenly raise the subject of directors' duties and conflict at a meeting, when that had no relevance to her discussion with him on who would bear the loss of $300,000 incurred by Mil-Com. Andrew was described (not without justification) as manipulative and unreasonable in the defendant's closing submissions. Without the alleged oral agreement, there was no basis for Andrew's allegation that the defendant's duty included developing new businesses for the plaintiff.

175 Earlier (at [113]), I had commented on Andrew's reaction when the defendant made known his unhappiness over the plaintiff's having to bear costs which should rightfully be borne by Sass Atlantic. It showed up Andrew's character for what it was. Andrew would not tolerate dissent from his fellow director which he felt was against his interests. Ultimately, Andrew's only interest in the plaintiff was purely financial – how much he could get for his 65% investment in the company. There was nothing altruistic about Andrew's motives in commencing this suit. He thought (wrongly) that the defendant had profited and substantially at that, from the Macau project, and Andrew was bent on getting his 65% share.

176 In this regard, the defendant had pointed out that after his removal as a director by Andrew and Stelle, the accounts of the plaintiff showed that Sass Atlantic charged the plaintiff a royalty of $90,113 in 2007 which was never paid by the plaintiff previously. He further noted that staff costs increased tremendously from $128,520 in 2007 to $209,406 in 2008. He also noted that legal and professional fees were $117,099 in 2007. He pointed out that the couple was using the plaintiff's funds to sue him and as a 35% shareholder, he was in fact partly funding this litigation against himself.

177 More pertinently, the defendant had pointed to the inequities of the situation. Andrew sued him via the plaintiff for allegedly taking business away from Gates purportedly in breach of his fiduciary duties to the plaintiff. Yet, Andrew himself targeted the same pool of trainees as the plaintiff for the business of training cabin crew by Sass Atlantic for his clients Jetstar and Tiger Airways. The defendant questioned, why then was it wrong for him to hold a directorship in Gates which business of placing foreign *not* local trainees with hotels did not conflict with the plaintiff's business?

178 The defendant's criticism of Andrew was not unfounded. Andrew repeatedly stressed to the defendant that Sass Atlantic had a "brand name" for which he was entitled to charge the plaintiff a premium. The question that arises is what was this "brand name" that justified the plaintiff being saddled with a premium payment let alone a "royalty" amounting to $90,113 in 2007 (see [174]) Apart

from cabin crew trainees and the prospective employer of such trainees, who would have heard of Sass Atlantic? I certainly did not before this trial. Why would training cabin crew for Emirates Airlines (bearing in mind that it is not/may not be, as well known as Singapore Airlines which is not a client of Sass Atlantic) give Sass Atlantic a brand name? This self-styled branding was nothing more than Andrew's attempt to milk the plaintiff for more money than his 65% investment warranted.

179 I do not see why the plaintiff would have to be perpetually beholden to Sass Atlantic merely because Andrew passed the Shangri-La contract onto the plaintiff at the time he parted ways with Mil-Com, particularly when by his own estimate the value of the contract was $45,000, hardly a large sum. I had earlier commented as absurd (at [112]) Andrew's computation of his cost chargeable to the plaintiff; I need say no more. Andrew had deposed in his AEIC that he paid the defendant dividends in the past (see [108]) based on the defendant's 35% shareholding. This was not generosity on the part of Andrew as he sought to suggest. It was the defendant's entitlement to be paid dividends based on the defendant's shareholding if Andrew declared dividends and paid himself dividends based on his own 65% shareholding.

180 Before I leave the topic of the credibility of witnesses, I should also make some observations on the testimony of the plaintiff's other two key witnesses Stelle and Jeff.

181 In his closing submissions (para 98), the defendant described Stelle as a puppet of Andrew. The defendant contended that throughout her evidence, Stelle had been coached and was under the strict direction of Andrew. Even if she was not coached by Andrew, I had earlier commented (at [98]) that Stelle's testimony was not helpful as she lacked personal knowledge of key events. When she was recalled (on 14 May 2010) to testify on her calculations in exhibit P5, it was clear from Stelle's answers to questions posed by the court, that her figures (like Andrew's computations in exhibits P1 and P2) were based entirely on projections of what she/Andrew *thought* the plaintiff/Lei Yun could have earned from the retailers in the Macau project, disregarding the realities of the situation that (according to Melvin) Lei Yun only claimed fees from 20 or so retailers because Lei Yun operated on a success basis to earn its fees.

182 As for Jeff, he appeared to be the only person who had benefited from the Macau project without encountering any problems. Unlike Lei Yun, Desmond and the plaintiff (who have yet to resolve their differences on the fee-sharing arrangement), Jeff had already collected his training fees upfront from the 38 cabin crew trainees that he placed in The Venetian. His involvement in the Macau project was nominal if not non-existent and he gave himself (and the plaintiff) too much credit in his contention (at [75]) that without his contacts, the plaintiff would not have secured the Macau project. It was Desmond who was instrumental in importing Filipinos into Macau through SOL for Lei Yun. Neither Jeff nor the plaintiff held the necessary licences in Macau that would enable them to carry out recruitment of foreign workers and place them in the Shoppes. The defendant's complaint that Jeff did nothing to earn the commission that Andrew was willing to share with him was not unjustified. I viewed Jeff's testimony with considerable scepticism because of his obvious closeness to Andrew. In any event a large portion of his evidence offended the hearsay rule and should be/is disregarded.

183 In its closing submissions (at para 221), the plaintiff criticised the evidence of its own witness Eugene as naturally suspect and should be discounted because he was the defendant's close friend. I reject this submission. Eugene's testimony was balanced and did not lean in either party's favour. Just because he spoke the truth and it happened to be unfavourable to the plaintiff (see [83] above) testifying he had received negative feedback on the quality of the plaintiff's trainees in the last two years, does not mean the court should reject Eugene's testimony. It bears mentioning that the plaintiff's witness Hong, also corroborated the testimony of defendant's witnesses from the hotel

industry.

The decision

184 On the evidence, I find that:

(a) there was no conflict of interest and no breach of fiduciary duties on the part of the defendant in his having shares and directorships in Gates and Nanyang at the time he was employed by the plaintiff. Although he failed to disclose his interest in either company to the plaintiff, that failure caused no loss to the plaintiff. The defendant's failure to disclose was due to his fear of losing his job with the plaintiff a fear which was very real at the material time (see [113]). In any case no loss to the plaintiff resulted from the defendant's non- disclosure as Gates suffered losses in its operations for the years 2006-2007;

(b) the plaintiff and Gates were not in competition for the same business as they carried out different recruitments for the hotels in Singapore; there is no evidence that the defendant copied the plaintiff's business model for Gates or Nanyang;

(c) there was no agreement reached on profit-sharing of the revenue from the Macau project as the testimony of Melvin, the defendant and Desmond is to be preferred to that of Andrew and Jeff in this regard;

(d) whatever revenue collected by Melvin from the Macau project has not been distributed and none has been paid to the defendant; and

(e) there was no basis for the plaintiff's computation of the profits the defendant/Gates purportedly made from the Macau project as shown in exhibits P1, P2 and P5. The calculations were based on assumptions which were completely off the mark; the demands for compensation made by Andrew and Stelle in [45] were completely unjustified.

Conclusion

185 Accordingly, I dismiss the plaintiff's entire claim against the defendant with costs to be taxed on a standard basis unless otherwise agreed.

186 I shall hear arguments on another day as to whether the costs should be borne by the plaintiff or personally by Andrew. There is considerable merit in the defendant's argument that making an order for costs against the plaintiff would be unfair to him as it would mean he was effectively paying 35% of those costs.

187 The issue of the defendant's 35% shareholdings in the plaintiff would also need to be resolved by another forum in the future as the defendant cannot conceivably continue as a shareholder of the plaintiff indefinitely in the light of the breakdown of his relationship with Andrew which has been exacerbated by this suit.