Mona Computer Systems (S) Pte Ltd *v* Singaravelu Murugan
[2013] SGCA 63

Case Number	: Civil Appeal No 142 of 2012
Decision Date	: 27 November 2013
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; Quentin Loh J
Counsel Name(s)	: R Kalamohan and Shanthi Elavarasi d/o R Kalamohan (Kalamohan & Co) for the Appellant; Cheong Yuen Hee and Cheong Aik Chye (A C Cheong & Co) for the Respondent.
Parties	: Mona Computer Systems (S) Pte Ltd — Singaravelu Murugan

Companies – breach of fiduciary duties

Damages – Assessment – Account of profits

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2012] SGHC 230.]

27 November 2013

Chao Hick Tin JA (delivering the grounds of decision of the court):

1 This appeal concerned an assessment of account of profits for breach of fiduciary duty on the part of the Respondent. The Respondent was an officer of Mona Computer Systems (S) Pte Ltd, the Appellant in this appeal The Appellant appealed against the order of the High Court which had excluded from the account of profits the commissions which the Respondent had obtained from his newly-incorporated company, MN Computer Systems (S) Pte Ltd ("MN"), a company whose line of business was in direct competition with that of the Appellant. The High Court order also permitted the Respondent to retain the director's fees which he obtained from MN. After hearing oral submissions we allowed the appeal, and ordered the Respondent to account to the Appellant the full amount of the commissions which he obtained from MN but permitted him to retain the director's fees from MN. Costs, here and below, which we fixed at $20,000 were awarded in favour of the Appellant. We now give our reasons for the substantive decision.

Facts

Parties to the dispute

2 The Appellant was a company incorporated in Singapore by the Respondent's late brother-in-law, one Chandran Dharani ("Dharani"). Its business was the provision of software engineers on contract to third party clients. Its clients included the Housing Development Board ("HDB") and the Central Provident Fund Board ("CPF"). After Dharani's death, his wife, one Issac Rathi ("Rathi"), took over as the majority shareholder and managing director of the Appellant.

3 The Respondent was the husband of Dharani's sister, one Chandran Meena Kumari ("CM"). CM was also a director of the Appellant and was a co-defendant in the originating suit. The Appellant's claim against CM was dismissed with costs.

Background to the dispute

4 The Respondent was employed by the Appellant as its Computer Systems Manager on 2 September 2000. He was its sole full-time employee and Dharani's right-hand man. After Dharani's death in November 2006, the Respondent continued to work for the Appellant until his resignation on 20 February 2009. On 22 November 2007, the Respondent incorporated MN which conducted the same business as the Appellant. The Respondent admitted that he secured certain contracts ("the diverted contracts") for MN while still under the Appellant's employment [note: 1].

5 On 26 March 2009, the Appellant commenced Suit No 265 of 2009 ("the Suit) against the Respondent and CM alleging breach of fiduciary duties on their part in incorporating MN and diverting contracts for the supply of software engineers to MN [note: 2]. The Suit also involved a claim and counterclaim concerning the Respondent's alleged entitlement to commissions from the Appellant from June 2006 onwards until his resignation [note: 3]. Right from the pleadings stage, the Respondent admitted to incorporating MN while he was still employed by the Appellants and diverting contracts to MN. His defence was that Rathi had consented to what he was doing [note: 4].

6 The trial judge, Belinda Ang J ("Ang J"), found the Respondent liable for breach of fiduciary duties in diverting business opportunities from the Appellant to MN. For this, she found the Respondent "liable to account for any profits he personally made from [the diverted contracts]" [note: 5]. CM was absolved of liability. Ang J dealt with the claim and counterclaim relating to the commissions paid to or due to the Respondent from the Appellant. However, she did not expressly deal with the issue of commissions paid by MN to the Respondent. These commissions were the subject of this appeal.

Assessment of damages before the Assistant Registrar

7 Pursuant to the judgment of Ang J, damages were assessed by the Assistant Registrar ("AR") on 8 May 2012. The AR decided that the Respondent's "profits personally made from [the diverted contracts]" included the Respondent's share of the net profit which MN made from these contracts, and the commissions due from MN to the Respondent in respect of those contracts. The sums accountable under these two heads were determined by the AR to be $166,309.15 and $316,065.37 respectively. The AR stipulated a cut-off date of 31 July 2011 in respect of the profits earned by MN flowing from on-going contracts with the CPF and HDB [note: 6] to be accounted to the Appellant. The diverted contracts with the remaining clients all ended within the year 2009. The Respondent argued that the commissions which he received from MN should be excluded from the account because the Judge had not specifically ordered an account of such commissions. The AR rejected this argument because she found that commissions paid by MN to the Respondent pursuant to the diverted contracts fell squarely within Ang J's order that the Respondent be "liable to account for any profits he personally made from the diverted contracts" [note: 7]. However, she rejected the Appellant's claim for an account of the salary and directors' fees which the Respondent received from MN, and jobs credits earned by the Respondent. She opined that these were sums paid to the Respondent as an employee and director of MN and did not flow from the Respondent's breach of duty to the Appellant [note: 8]. The Respondent claimed that $48,125 was paid to him as director's fees, and the Appellant did not dispute this figure [note: 9]. This sum was accordingly deducted from the gross profits assessed by the AR in arriving at the figure of $166,309.15.

Assessment of damages before the High Court Judge

8 The Respondent then filed Registrar's Appeal No 188 of 2012 ("RA 188) seeking a reduction of the sum representing his share of MN's net profits from the diverted contracts, and a reversal of the AR's decision that he account for commissions received from MN ("the commissions issue"). The Appellant also filed Registrar's Appeal No 189 of 2012 ("RA 189") seeking further account of profits in respect of the HDB and CPF contracts to the extent that this had been denied by the AR. The High Court judge ("the Judge") heard these two Registrar's appeals on 3 August 2012. Before the Judge, counsel for the Respondent argued that the commissions his client received from MN should not be counted as "profits" flowing from the Respondent's breach of his duties to the Appellant, but were part of his remuneration package from MN. The Respondent also highlighted the fact that MN paid commissions to the Respondent at the same rate and on the same basis as the Appellant previously had done. In other words, the point made was that had the Respondent not breached his duty to the Appellant, the Appellant would have had to pay those commissions to him anyway. The Judge initially dismissed the Respondent's appeal as regards the commissions issue. The Respondent then sought to make further arguments, essentially reiterating that the Respondent's commissions from MN were part of his remuneration, and also contending that in fashioning an account of profits, a liberal allowance should be made for the Respondent's skill and work in generating the profits. Upon hearing further arguments, which he thought were different from the arguments advanced at the 3 August 2012 hearing [note: 10], the Judge varied his earlier decision such that the Respondent would not be required to account for the commissions which he received from MN, but only the director's fees he received from MN. He acknowledged that neither party had appealed against the AR's order that the Respondent retain the director's fees. However, he observed that the Appellant may have been willing to live with that order because he was required to account for the commissions, which amounted to a far larger sum. He also "inferred that [the Respondent] was receiving director's fees because MN was doing well as a consequence of the wrongful diversion of contracts to it" [note: 11].

9 The Judge reasoned that had the Respondent not set up MN and diverted the Appellant's clients' contracts to it, he would have continued employment with the Appellant, securing and servicing contracts for the Appellant, and receiving commissions from the Appellant for his services. Therefore, the account of profits should take into account these commissions which the Appellant would have had to pay the Respondent had he not breached his fiduciary duties and diverted the contracts to MN. Otherwise, the Appellant would enjoy a windfall [note: 12]. The Judge made the finding that both the Appellant and MN paid the Respondent the same rates of commission. Accordingly, he allowed the Respondent's appeal in respect of the commissions obtained from MN.

10 Being dissatisfied with the Judge's order permitting the Respondent to keep the commissions which he obtained from MN, the Appellant then filed the present appeal. [note: 13] The Respondent did not appeal against the order that he account for $48,125 in director's fees, and neither did the Appellant dispute the amount ordered. Before us however, counsel for the Appellant contended that there was an arithmetical error in the calculation of the director's fees and that the amount ought to have been $212,500.

Issues in this appeal

11 The key issue in this appeal was whether the Judge, in fashioning the account of profits for breach of fiduciary duty, had erred in excluding sums which he found that the Appellant would have had to pay to the Respondent, had the Respondent secured the contracts for the Appellant instead of diverting them to MN.

12 A further issue raised by the Respondent was whether he was entitled to an equitable allowance for work done in generating MN's profits.

Whether the account of profits should exclude sums which the principal would have had to pay the fiduciary, had the fiduciary not breached his duties

13 Where an individual has illegitimately profited by exploiting his fiduciary position, the claimant may elect between an account of profits and compensation for loss. In this case, Ang J ordered the remedy of account. This is a gains-based remedy and is not related to the restitution or compensation of the principal. Its award is unrelated to whether the fiduciary's conduct has caused any loss to the principal. The remedy gives effect to that "inflexible rule of a Court of Equity" that:

> … a person in a fiduciary position… is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict.
>
> [*per* Lord Herschell in *Bray v Ford* [1896] AC 44 at 51]

14 In this connection we would cite that celebrated passage in *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134 ("*Regal*") at 144-145 :

> The rule of equity which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff, or whether the profiteer was under a duty to obtain the source of the profit for the plaintiff, or whether he took a risk or acted as he did for the benefit of the plaintiff, or whether the plaintiff has in fact been damaged or benefited by his action. The liability arises from the mere fact of a profit having, in the stated circumstances, been made.

15 The same is stated in John Glover, *Commercial Equity: Fiduciary Relationships* (Butterworths, 1995) ("*Glover*") (at para 6.78):

> A beneficiary's claim that a fiduciary disgorge a gain to him is specifically based in the fiduciary's wrongdoing. The obligation to disgorge is a personal one… the gain is not related to any property which the beneficiary possesses or once possessed. Profits, bribes and prohibited advantages come from third parties. Breach of duty in making the gain is the thing which obliges a fiduciary to disgorge it.

16 Because this is a gains-based and not a restitutionary remedy, it is possible that the beneficiary will gain a "windfall"—*ie*, benefits it might not otherwise have earned itself. The cases are well known. In *Regal*, the plaintiff company's directors were held liable to account for profits earned from the sale of shares in a subsidiary company, which they had purchased when the plaintiff company did not have the funds to subscribe for it. Lord Porter stated (at 157) that this "may be an unexpected windfall [for the plaintiff company], but whether it be so or not, the principle that a person occupying a fiduciary relationship shall not make a profit by reason thereof is of such vital importance that the possible consequence in the present case is in fact as it is in law an immaterial consideration." Similarly in *Industrial Development Consultants Ltd v Cooley* [1972] 1 WLR 443 ("*Cooley*"), the director was liable to account for all the profits derived from a contract which he obtained for himself, and which he had previously unsuccessfully tried to obtain for his company. Roskill J explained that as long as the director was still a director of the company, he "had one capacity and one capacity only in which he was carrying on business at that time", and he ought not retain profits obtained solely by reason of placing himself in a position of conflict, even if this meant that the company would receive a benefit which it was unlikely to have gotten for itself (at 451 and 453).

17 The thrust of these decisions is that the fiduciary should not be allowed to retain any of the

profit derived from his breach of duty. A deduction for what the company would have had to pay the defendant had he dutifully secured the benefits for the company instead is out of place given the gains-based basis for disgorgement.

18 Similarly in the present case, whether the Respondent would likely have continued in the Appellant's employment and continued to receive commissions from it had he not breached his fiduciary duty is not a relevant consideration in the fashioning of the account. The only question is what profit the Respondent gained which could be attributed to his breach of duty. In our view, the Judge erred in principle when he reasoned that the accounting of profits should not result in the Appellant enjoying a windfall. The commissions which the Respondent received from MN were derived from the profits which MN earned from the diverted contracts, and therefore fell squarely within the profits to be accounted to the Appellant. In our view, the AR was correct to order the Respondent to account for these commissions. As a matter of principle the Respondent should also have to account to the Appellant for the director's fees which he received from MN. If not for the profits obtained by MN from the diverted contracts, MN would not have had the funds to pay out the director's fees. More will be said of the director's fees at [30] below.

Whether the respondent is entitled to an equitable allowance

19 In the alternative, the Respondent relied on *Boardman v Phipps* [1964] 1 WLR 993 ("*Boardman*") and *Paul A Davies (Aust) Pty Ltd (in liq) v Davies & Anor (No 2)* [1983] 8 ACLR 1 ("*Davies*") to argue that a liberal allowance should be granted to him for his expenditure as well as work and skill invested by him in generating MN's profits.

20 *Boardman* and *Davies* are in our view distinguishable from the present case. *Boardman* concerned the very different situation of fiduciaries who in good faith purchased shares in their personal capacity, where the trust of which they were trustees had neither the funds nor will to purchase. Subsequent events showed that the purchase would have benefitted the trust, had it been made. Wilberforce J found it appropriate to grant the fiduciaries, who were accountable for the entire profits reaped in breach of their fiduciary duties, "an allowance for their work and skill" (at 1018). He found that it would be "inequitable" for the trust to reap the benefits of the profits obtained through the fiduciaries' risk, resource and investment, without paying for the skill and labour which produced the profits. The Court of Appeal ([1965] Ch 992) and the House of Lords ([1967] 2 AC 46 ("*Boardman (HL)*")) affirmed the decision. This was a case in which the fiduciaries "acted with complete honesty throughout" and as noted by Lord Cohen in the House of Lords (at 104):

> … the respondent is a fortunate man in that the rigour of equity enables him to participate in the profits which have accrued as a result of the action taken by the appellants [the fiduciaries] in March, 1959, in purchasing the shares at their own risk. …the trial judge evidently shared this view. He directed an inquiry as to what sum is proper to be allowed to the appellants or either of them in respect of his work and skill in obtaining the said shares and the profits in respect thereof. The trial judge concluded by expressing the opinion that payment should be on a liberal scale. With that observation I respectfully agree.

21 The case of *Davies* appears somewhat more generous to the directors, but we note that it involved slightly different considerations. The case concerned the directors' purchase of personal property using a mixture of the company's money and money borrowed from a bank on personal guarantees. The question was whether a constructive trust arose over the appreciated value of the property in its entirety, or whether an account ought to be ordered which was restricted to the proportion of the profit attributable to the company funds utilized. The Court of Appeal of New South Wales ordered the former. It was in this context that the court then saw fit to make an allowance for

the directors' contribution to the property "by way of effort and expertise in procuring the original purchase, in running and improving the property… and in securing the completion of it by the provision of mortgage finance on their personal covenant...". *Boardman* was cited as authority for the assessment of such allowance on a "liberal scale" (*per* Moffitt P at 8). It was also noted that the directors "were not guilty of conscious wrongdoing". However, this should not be seen as an indication that in all cases where the defaulting fiduciary has invested his own efforts and resources in reaping illegitimate profits, the court is obliged to grant him a liberal allowance. In a more recent case concerning diversion of business the Federal Court of Australia stated that:

> Allowances are not granted as of right and it is here that a court will exercise its powers to do what is "practically just". Considerations such as whether the fiduciary has acted honestly or dishonestly; how and for what has the fiduciary been remunerated; would the denial of an allowance leave the principal unjustly enriched; what risk has been borne by the principal; etc, come into play: see generally *Harris v Digital Pulse* at [311]-[336] and see Ford and Lee, *Principles of the Law of Trusts*, vol 2 [17.2650].
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> [*Grimaldi v Chameleon Mining NL and Another (No 2)* [2012] FCAFC 6 at [531]]

22 It is important to note that for the purposes of the present case, the dispute is not whether the account of profits inequitably extended to aspects of MN's business not attributable to the Respondent's breach of fiduciary duties, which was the key contention in *Davies*. In the context of diverted corporate opportunities the case of *Warman International Ltd v Dwyer* (1995) 182 CLR 544 ("*Warman*") noted that the concern was to "ascertain precisely what it was that was acquired in consequence of the fiduciary's breach of duty" (at [40], see also Lady Justice Arden's interpretation of *Warman* in *Murad v Al-Saraj* [2005] EWCA Civ 959 at [115]). This was not the issue in the present case. The AR's assessment was clearly limited to profits derived from contracts entered into while the Respondent was still in the employ of the Appellant, and the account was not of unlimited duration because cut-off dates were set for the on-going HDB and CPF contracts. Profits derived from extensions of the diverted contracts occurring after the Respondent had resigned from the employment of the Appellant, or profits derived from MN's other contracts which were not diverted from the Appellant, were not part of the calculation of the account. The issue raised by the Respondent was limited to whether a discretionary allowance ought to be granted to him out of the profits which were undoubtedly attributable to the diverted contracts.

23 In our view, the power to grant an allowance to a fiduciary in breach should be exercised sparingly in order not to encourage fiduciaries to act in breach of their duties. The starting point is as stated by Millett LJ in *Bristol & West Building Society v Mothew* [1998] Ch 1 (at 18):

> A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.

24 A fiduciary ought never to place himself in a position where he is unable to fulfil his duty of loyalty and he should not enjoy the benefit of having so placed himself (see *Cooley* at 451, *Boardman (HL)* at 123, and *Guinness v Saunders* [1990] 2 AC 663 ("*Guinness*") at 700). The allowance for skill and work is granted in limited circumstances because such an award is an exception to the overriding no-conflict and no-profit rules. The House of Lords explained this in *Guinness.* There the defendant director secured from his company a £5.2 million service fee proportionate to the value of a takeover bid which he worked on for the company. Upon a finding of liability to account for the fee, the defendant cited *Boardman* in an attempt to retain a just allowance. In rejecting the argument, the House of Lords reviewed the circumstances of *Boardman*, including the fact that the fiduciaries there

had run a personal risk and eventually greatly improved the position of the trust. It was opined that only "in exceptional circumstances [that] a court of equity may award remuneration to the trustee" (at 694).

25 This court has adopted *Guinness* and has, in the case of *Jumabhoy Rafiq v Scotts Investments (Singapore) Pte Ltd* [2005] 1 SLR(R) 45 ("*Jumabhoy*"), taken a restrictive approach to granting an equitable allowance to fiduciaries as recognition for work done. In that case, the defendant director claimed that he was entitled to remuneration from the company on a time-costs basis, or alternatively, remuneration on a *quantum meruit* basis. In rejecting the claim on the *quantum meruit* basis, this court stated that the concept of an equitable allowance for work done is inherently inconsistent with the prohibition against a fiduciary profiting from placing himself in a position of conflict. At [26] of *Jumabhoy*, this court quoted Lord Goff's observations in *Guinness* at pp 700-701 which addressed the circumstances where an equitable allowance could be permitted to a fiduciary in breach despite the "no profit" and "no conflict" rules:

> *Plainly, it would be inconsistent with this long-established principle* [viz, that a fiduciary should not put himself in a position of conflict] *to award remuneration in such circumstances as of right on the basis of a quantum meruit claim. But the principle does not altogether exclude the possibility that an equitable allowance might be made in respect of services rendered*. That such an allowance may be made to a trustee for work performed by him for the benefit of the trust, even though he was not in the circumstances entitled to remuneration under the terms of the trust deed, is now well established.
>
> …
>
> The decision [in *Boardman v Phipps*] has to be reconciled with the fundamental principle that a trustee is not entitled to remuneration for services rendered by him to the trust except as expressly provided in the trust deed. Strictly speaking, it is irreconcilable with the rule as so stated. It seems to me therefore that it can only be reconciled with it to the extent that the exercise of the equitable jurisdiction does not conflict with the policy underlying the rule. And, as I see it, such a conflict will only be avoided if the exercise of the jurisdiction is *restricted to those cases where it cannot have the effect of encouraging trustees in any way to put themselves in a position where their interests conflict with their duties as trustees.*
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> Not only was the equity underlying Mr Boardman's claim in Phipps v Boardman clear and, indeed, overwhelming; but the exercise of the jurisdiction to award an allowance in the unusual circumstances of that case could not provide any encouragement to trustees to put themselves in a position where their duties as trustees conflicted with their interests.
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> [emphasis added by the court in *Jumabhoy*]

26 At this point, we recognise that there have been varying approaches in the degree of stringency with which the discretion to grant an allowance has been exercised. There are undeniably decisions which have taken a more liberal view than *Guinness*, granting an allowance in less-than-exceptional circumstances and even where the fiduciary has acted dishonestly (see *Murad v Al-Saraj* at [88], *O'Sullivan v Management Agency & Music Co Ltd* [1985] 1 QB 428 at 468, and *Estate Realties Ltd v Wignall* [1992] 2 NZLR 615 (HC) ("*Estate Realties*") at 630-1, see also *Snell's Equity* at p 228). In *Estate Realties*, Tipping J awarded an allowance to dishonest fiduciaries and opined that no "exceptional circumstance" need be shown before an allowance is made. He described the requirement of exceptional circumstances in *Guinness* as being "overstated". However, what is well-accepted is that the fiduciary's good faith is a hugely relevant consideration in the exercise of the

court's discretion to grant an allowance. As noted in Meagher, Gummow and Lehane's *Equity* (LexisNexis Butterworths, 2003, 4th Ed) (at para 5-255):

> What is clear is that a fiduciary who is ordered to account for his profit… will, at least if he has acted honestly, be held entitled to an allowance for his work and skill and, if he has been unassailably honest and unusually skilful, that allowance should be "liberal"… An element of dishonesty will not necessarily disentitle the defaulting fiduciary altogether, though the *degree of liberality* will undoubtedly be reduced in such a case… Where a fiduciary has been particularly fraudulent, it seems that compensation may be denied altogether…
>
> [emphasis added]

27 The circumstances of the present case seem to us to resemble the classic case of a fiduciary reaping profits from deliberately placing himself in a position of conflict. The Respondent, while still being the sole key employee of the Appellant, set up a rival company operating in the exact same business, and then submitted tenders for contracts with the Appellant's clients which the Appellant was still actively pursuing and without obtaining the informed consent of the Appellant. In our view, this is the kind of case to which the remedy of account should apply with all rigour.

28 The Respondent has done little to show why, and to what extent, he should be granted the indulgence of an allowance. As stated in *Warman* at 561-562:

> It is for the defendant to establish that it is inequitable to order an account of the entire profits. If the defendant does not establish that that would be so, then the defendant must bear the consequences of mingling the profits attributable to the defendant's breach of fiduciary duty and the profits attributable to those earned by the defendant's efforts and investment, in the same way that a trustee of a mixed fund bears the onus of distinguishing what is his own.

29 Before us, the Respondent ran the argument that his case was unique because he did inform Rathi of his plans to obtain business for MN whilst still being employed by the Appellant. He also claimed that he had intended to resign from the Appellant before pursuing the diverted contracts, but Rathi had begged him not to leave. These arguments added little to the Respondent's appeal given that Ang J already found, as a matter of fact, that Rathi did not give her informed consent to the Respondent submitting tenders for the diverted contracts under the name of MN, and that the Respondent went ahead to place himself in a position of conflict (see *Mona Computer Systems (S) Pte Ltd v Chandran Meenakumari and another* [2010] SGHC 275 at [20]). The only way the Respondent could have discharged himself of his duty was to resign from the Appellant and refrain from utilizing opportunities which had come to him as a fiduciary of the Appellant. This the Respondent did not do and his liability to account was ordered on that basis. The defences raised before us related to the question of liability but that line of argument was no longer open to the Respondent. What would have been more relevant to the Respondent's case at this stage was for him to describe and evidence the nature and value of his work in servicing the diverted contracts and explain why some allowance ought to be accorded to him notwithstanding his breach as a fiduciary. However, this was not done either before us or in the assessment proceedings below.

Retention of director's fees

30 While we have noted at [18] that the director's fees paid to the Respondent were also tainted by the Respondent's breach of his duties as a fiduciary and the Respondent should have been made to account for the same, the Appellant did not appeal to the High Court against that part of the AR's order allowing the Respondent to retain the director's fees. In the circumstances, the Judge's

variation of the part of the AR's order relating to the director's fees is irregular. In the result, by allowing the Respondent to retain the director's fees, we were merely restoring the order of the AR against which there was no appeal by the Appellant.

Conclusion

31 We have explained that the basis upon which the Judge reversed the AR's decision on the commissions issue, was erroneous. The Respondent also failed to convince us that it would be inequitable not to grant him an allowance for his efforts in obtaining the commissions. We had, however, allowed the Respondent to retain the director's fees because the Appellant accepted and did not appeal against this part of the order of the AR.

32 In the result, we allowed the appeal to the extent that we restored the decision of the AR that the $316,065.37 received by the Respondent from MN as commissions be accounted to the Appellant, and that the Respondent be allowed to retain his director's fees (as this part of the decision of the AR was not being challenged by the Appellant). We should also mention that the Appellant raised before us for the first time the point that the amount of director's fees which the Respondent in fact received was $212,500 and not $48,125, the latter being the figure reckoned by the AR and accepted by the Judge. Whichever was the correct figure, we did not think it mattered anymore as the AR's treatment of the director's fees was accepted by the Appellant. As an aside, we also wish to add this. Even if the Respondent could show that a fair allowance should have been accorded to him for his skills and efforts in earning the commissions from MN, the retention of the director's fees assessed at $48,125 permitted by the AR (which we did not disturb) would have been an adequate allowance and we would not have minded to add anything more.

[note: 1] See Defence and Counterclaim filed 16 April 2009, at paras 9-10

[note: 2] See Statement of Claim filed 26 March 2009

[note: 3] See Ang J's Grounds of Decision ("GD") at [23]-[24], in ACB Vol 2 at p 19

[note: 4] See Defence and Counterclaim filed 16 April 2009 at paras 6-9

[note: 5] See Ang J's GD at [22]

[note: 6] See AR's GD at [23] and [29] in ACB Vol 2 at pp 43 and 46

[note: 7] *Ibid* at [52], ACB at pp 54-55

[note: 8] *Ibid* at [50] in ACB Vol 2 at p 55.

[note: 9] *Ibid* at [42] in ACB Vol 2 at p 51.

[note: 10] See the Judge's GD at [20]-[21]

[note: 11] See the Judge's GD at [24]

[note: 12] See the Judge's GD at [23]

[note: 13] See Notice of Appeal for CA 142/2012 in RA Vol 2, at pp 1-4 [Tab 2 of Annex B]