

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 180

Suit No 1133 of 1988

Between

Han Seng Kong trading as H S
Kong

... Plaintiff

And

Sum Cheong Piling Pte Ltd

... Defendant

GROUND OF DECISION

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Han Seng Kong trading as H S Kong v Sum Cheong Piling Pte Ltd

[1992] SGHC 180

Suit No 1133 of 1988
Judith Prakash JC
30 June 1992

1 **Judgment:**

2 Coram: Judith Prakash JC

3 **Cur Adv Vult**

4 JUDGMENT

5 **Introduction**

6 The defendants are a well known piling company in Singapore. They are one of the businesses founded by a Mr Low Sum. By the mid 1980s when the events resulting in this action occurred, there were various companies in Singapore, Malaysia and Indonesia, including the defendants, which were being run by members of Mr Low Sum's family. These companies had similar shareholders and directors and can conveniently be called "the Group".

7 The defendants' board was chaired by Mr Low Sum himself and other directors included his sons, Low Kwai Wah ("KW Low"), Low Cheng Lum ("CL Low") and Low Tuck Kwong ("TK Low"). KL Low had day-to-day charge of the defendants and was their managing director until March 1987. CL Low was the managing director of Far Trading Pte Ltd ("Far Trading") another family company in Singapore but spent much of his time in Jakarta leaving that company to be run by his wife, one Mrs Rosalind Low. TK Low was in charge of the Low family's Indonesian operations in the form of P.T. Jaya Sumpiles, a joint venture with an Indonesian partner. An Indonesian permanent resident, he lived in Jakarta.

8 In July 1983, the plaintiff, a public accountant with his own practice in Singapore, was introduced to KW Low by another client. This introduction ultimately led to the plaintiff being appointed the auditor of both the defendant company and Far Trading and carrying out auditing and related investigation work in respect of the Malaysian companies in the Group. Over the next three years, the plaintiff had dealings with each of the Low brothers mentioned above and spent much of his time on matters arising out of this association. In April 1987, however, his appointment as the defendants' auditor was terminated and on 14 May 1987, he sent the defendants four bills totalling \$216,250, for work he had done during the period January 1985 to May 1987. The defendants refused to pay any of the bills. Accordingly the plaintiff sued.

9 The plaintiff's claim herein is for work done and services rendered to the defendants at their request. The material work and services were not straight forward auditing and accounting services. The plaintiff has, as he himself openly admitted, been fully paid for all auditing work undertaken on behalf of the defendants and Far Trading. The four bills cover instead additional work in the nature of corporate finance work which the plaintiff said he undertook for

the defendants. The work is alleged to have arisen out of an express contract whereby it was agreed that:

10 (a) the plaintiff would advise the defendants on restructuring and reorganising the defendants and the Sum Cheong Group for a public listing; (b) the plaintiff would prepare the defendants for a public listing; (c) the defendants would pay the plaintiff the sum of \$1 million or 1% of the listing capitalization whichever was the higher.

11 This contract was terminated before the listing was achieved by reason of the sale of the defendant company to Chuan Hup Australia Limited ("Chuan Hup Australia"). The plaintiff however claimed payment for the work done up to the time of termination on a quantum meruit basis.

12 In the alternative the plaintiff contended that there was a contract implied from the conduct of the parties for the plaintiff to do work and render services to the defendants and for the plaintiff to be paid a reasonable fee for the work and services. Finally, with regard to two of the bills the plaintiff contended, as a further alternative, that there was an express contract in writing for him to do the work detailed in the said bills on the basis of a reasonable fee being paid.

13 The defence was simple. First the defendants denied that the plaintiff had done the work or rendered services at the defendants' request as alleged. Secondly, they stated that any work which had been done or services which had been rendered were gratuitous and neither party intended them to be paid for.

14 Thus the plaintiff had to prove that the defendants had asked him to do certain work; that he had done such work and that it was intended that the work

should be paid for. In the pleadings, the plaintiff gave full particulars of the work he had done in respect of each of the four bills and his evidence, as presented at the trial, followed the same pattern. Thus it is convenient to consider the plaintiff's claim and the defendants' response to it on a bill by bill basis.

15 I. Bill for \$100,750 dated 30 April 1987

16 According to its wording, this bill was for work the plaintiff did for the defendants in years 1985, 1986 and 1987 in connection with corporate finance services and the Chuan Hup Australia acquisition. The particulars of work described in the bill differed however quite substantially from the plaintiff's testimony in support of this bill. Essentially the plaintiff's evidence was that this bill covered his efforts in the years 1985 to 1987 to list the defendants on the Stock Exchange of Singapore. The plaintiff's contention and the defence response will be considered separately.

17 (a) The plaintiff's story From the beginning, the plaintiff saw himself as more than an ordinary accountant. He believed that he could provide his clients with additional services in the form of corporate finance advice and that with his assistance, his clients would have an edge in any corporate venture they wished to pursue. At the time when the plaintiff first met KW Low, he was working with another client on their proposed listing.

18 Subsequently there were several conversations between the plaintiff and KW Low. Sometime in August 1983, KW Low took the plaintiff to Jakarta to meet his brothers there to obtain their support for the plaintiff's appointment as "consultant advisor" to the defendants. The plaintiff had discussions with KW Low, CL Low, TK Low and other personnel about the type of services he could

render the defendants. TK Low made a specific query about the plaintiff's fees and he explained that he charged 1% for corporate finance work as in that area it was a practice to charge on a lump sum basis. By corporate finance work, the plaintiff meant obtaining loans and negotiating their terms, public listing of a company and acquisition and sale of companies.

19 In November 1984, the plaintiff was appointed auditor and tax agent for the defendants. From that time the plaintiff was frequently in the defendants' office in Singapore. The various discussions between the plaintiff and KW Low on the question of a listing for the defendant company culminated in a meeting on 3 January 1984 at the defendants' office. At that meeting only KW Low and the plaintiff were present. KW Low told the plaintiff that he had been appointed to do all preparation and to organise the defendants to allow them to go public either directly or indirectly. The plaintiff accepted this appointment. He perceived his role in the listing as being akin to that of the head of corporate finance in a merchant bank. The issue of fees was discussed briefly. The fee set by the plaintiff was 1% of the total capitalization or S\$1 million whichever was the higher and the plaintiff made clear that other work done would have to be paid for separately. In relation to "other work" the plaintiff meant pure auditing work, taxation advice, secretarial and other consultancy services. The time frame of the proposed listing was discussed and it was decided the company should go public within a year assuming the defendants' accounts were in order.

20 The above meeting was the vital meeting at which the plaintiff alleges that the formal contract between the plaintiff and the defendant company for the plaintiff to do all necessary work to take the defendants public was concluded. The plaintiff did not subsequently confirm this conversation in writing nor did KW Low give him any written instructions. The plaintiff's position was that the defendants were an old Chinese family company and that as KW Low had

insisted that he must trust the defendants, the plaintiff did not send any correspondence confirming the instructions. The plaintiff did however make an entry in his personal diary confirming his appointment to take the defendants public. Subsequently, the plaintiff says he plunged enthusiastically into his new task. First he produced a paper, at KW Low's request, for the other directors of the defendants listing the advantages and disadvantages of going public. He stressed the advantages stating "the existing shareholders gain undreamed of riches" (sic) and "could the company and its shareholders afford not to afford to be rich?" (sic). He also briefed the directors after the Annual General Meeting in January 1984 as to the company's plans to go public and received their endorsement.

21 The plaintiff was ambitious. He wanted the defendants not simply to go public but to "go public with a bang" as a recognised blue chip company. For this purpose, the defendant company alone would not suffice. Although it had the advantage of being in a business where there were high profits and where payment was received in advance of the carrying out of the work, it also had the major handicap of being perceived as a largely one customer and one product company. The plaintiff therefore decided that for a successful listing the defendants must be shown to have product, customer and geographical diversification. Over the next few months, the plaintiff and KW Low had numerous discussions on the listing generally and specifically with reference to the other companies in the Group who could be injected into the defendant company for the purpose of listing. At this point, the plaintiff's target date for listing was March 1985.

22 In April, the plaintiff and KW Low had a meeting to discuss the restructuring of the Group companies for public listing, in particular the Malaysian members of the Group. These were Sum Cheong Piling (Malaysia)

Sdn Bhd ("Sum Cheong Malaysia"), Sum Cheong Construction Berhad, Hwa Hong Enterprises and Mastercharge Sdn Bhd. It was decided that the plaintiff should do a reporting audit on these companies for the purpose of inclusion in the prospectus for the defendants' listing. The plaintiff informed KW Low that he would have to charge separately for the reporting audit and quoted a lump sum of \$100,000. This figure was acceptable to KW Low and he gave the plaintiff the go ahead.

23 From about July 1984 to the end of 1984, the plaintiff and his staff carried out work on the accounts of the various Malaysian companies. From the start this proved a difficult job. The books and records had not been properly kept, the audited accounts were highly qualified and the personnel of the various companies were not very co-operative. One problem after another was encountered. The plaintiff spent much time in Malaysia on this job. He met KW Low often, both in Singapore and Malaysia. Additionally from about August 1984, TK Low took more interest in the listing procedure and had frequent telephone conversations and some meetings in Singapore with the plaintiff on the issue. When the plaintiff had difficulty in obtaining the co-operation of the management of the various Malaysian companies he enlisted the aid of TK Low. During the year, TK Low also had discussions with the plaintiff on which other companies in the Group could be used for the listing exercise. He suggested the injection of Far Trading, Sumpiles Investment Pte Ltd ("Sumpiles Investment") and two other companies. As a result the plaintiff also carried out reporting audits on Sumpiles Investment and Far Trading.

24 By the end of 1984, the defendants were not yet in a position to go for a listing. The companies were still being run as family companies and not as companies to be listed. At this point, seven companies were considered as part of the listing group. They were the defendants themselves, Sum Cheong

Holdings, Sumpiles Investment, Far Trading, Sum Cheong Malaysia, Sum Cheong Construction and Hwa Hong Enterprises. The plaintiff had completed the reporting audits for the defendants and Sum Cheong Holdings but he had encountered difficulties with all the other companies.

25 Up to the end of 1984, the plaintiff had rendered seven bills totalling \$82,000 for work in connection with the reporting audit on the various companies mentioned above. He had not however billed for any other work. His explanation was that the other work was corporate finance work and was different from reporting audit work because of the degree of skill brought to bear, the nature of the work and the complexity of problems encountered. The plaintiff wanted to bill for this work and had asked TK Low and KW Low about payment. He was told that he should trust them to pay when payment was due.

26 In 1985 the plaintiff continued with the reporting audit for the Malaysian companies. In February 1985, he travelled to Jakarta for discussions with TK Low on the listing. The main topic discussed at this meeting was the Malaysian situation as revealed by the plaintiff's investigations into the accounts. On 30 March 1985, there was a meeting between the plaintiff and KW Low in Malaysia at which the listing situation was discussed. At this time the defendants were still not in a position to go for listing. In the plaintiff's minutes of the meeting, there is a note that KW Low gave instructions to "forget about Malaysia" meaning leave the Malaysian companies out of the floatation. At that juncture however, the plaintiff was not disposed to accept this instruction and persuaded KW Low to reconsider. Thus the plaintiff's work on the reporting audit work on the Malaysian companies continued.

27 In 1985, apart from the reporting audit work the plaintiff had numerous discussions and telephone conversations on the listing of the defendants with

both TK Low and KW Low. In addition, the plaintiff met merchant bankers from Chase Capital Markets Limited and Singapore International Merchant Bankers Ltd ("SIMBL") to discuss the possible listing of the defendants. These discussions were of a preliminary nature although SIMBL had given the defendants two preliminary reports on its views. The plaintiff did not agree with the stances adopted by either of the merchant bankers as their plans for listing the defendants seemed to him to be too modest.

28 By the end of 1985, the listing position was not much further along than it had been at the end of 1984. The defendants and Sum Cheong Holdings were ready but that was all. As regards the other companies: (i) The plaintiff was at a stand still with Far Trading. The defendant company needed to acquire at least 50% of the shares in Far Trading from the individual shareholders but this had not yet happened. Also the work on the accounts had been stopped by Mrs Rosalind Low. (ii) The work on Sumpiles Investment had also stopped as a necessary change in shareholding of the company had yet to be effected. (iii) The plaintiff had realised that Sum Cheong Malaysia could not be a member of the listing group because too many questions on its accounts would be asked and problems were continuing to emerge. (iv) The Sum Cheong Construction audit could not be done as the controlling shareholder did not want to join the Singapore group. (v) In relation to Hwa Hong, the plaintiff's preliminary work had shown that the company was losing money and was not worth injecting into the Group.

29 Once again the bills rendered in 1985 covered only the reporting audit work. The plaintiff did not render any bills for his corporate finance advice for the same reasons as previously.

30 From January to August 1985, the plaintiff billed the defendants a total sum of \$64,000 for his various reporting audit work (mainly in respect of the Malaysian companies). He also billed them \$36,000 for accountancy and statutory audit work done for Sum Cheong Malaysia.

31 In 1986, little work was done on the direct listing of the defendants. The plaintiff carried out verification and inspection of stock and assets of the Malaysian company. He had discussions with KW Low and TK Low. In April 1986, the plaintiff asked KW Low about his fees and he was told to trust the defendants. In June 1986, the plaintiff prepared a final report on the problems and irregularities in Malaysia.

32 In July 1986, the plaintiff was informed by TK Low that he was thinking of selling the defendant company to a Japanese company. The plaintiff gave him advice on the proposed sale. In September 1986, on TK Low's instructions, the plaintiff prepared a five year financial record of the defendants for the purpose of evaluation during TK Low's discussion with the prospective buyers of the defendant company. In December 1986, the plaintiff assisted Touche Ross in relation to a management audit conducted on the defendants. It turned out, though the plaintiff was unaware of this at the time, that Touche Ross were the auditors of Chuan Hup Australia and were carrying out this audit for the purposes of the latter's purchase of the defendant company. Finally in January 1987, the plaintiff discovered that the defendant company had been sold that month to Chuan Hup Australia. The plaintiff had not been informed of the sale before hand. Thereafter the plaintiff did no further work on the pure listing aspect. The plaintiff did not send any bills in 1986 for reporting audit work or for other services rendered in respect of the Malaysian companies.

33 (b) The defendants' story On this bill, the main witness for the defendants was KW Low. He testified that sometime at the beginning of 1984, he had a discussion with the plaintiff on the question whether the defendant company was qualified to be publicly listed. The plaintiff advised KW Low that in order to ascertain this, he would have to go through the accounts of the defendant company for the previous three years and after that they could discuss the question. As a result of this discussion, Mr Low asked the plaintiff to quote a cost for doing the necessary auditing work. He was given a quotation of \$100,000 which he accepted and he then verbally instructed the plaintiff to go ahead with the work. KW Low confirmed that the quotation of \$100,000 covered reporting audits for the preceding three years in respect of the defendants themselves, Far Trading, Sumpiles Investment, Sum Cheong Malaysia and Sum Cheong Construction. According to KW Low, the plaintiff did the audit but when he was only about three-quarters of the way through, he became involved with TK Low in ventures in Hong Kong and did not complete the work.

34 KW Low was quite firm in his stand that the plaintiff had been authorised only to carry out the first step in a listing exercise. He did not give the plaintiff a wider brief as the agreement was that after the accounts had been verified, the plaintiff would advise him whether the defendants qualified to be listed. In his view, the first hurdle was to clear the accounts of the "subsidiaries". Then if all was in order to proceed, the defendants would have had to engage merchant bankers and auditors to take the listing further. This second step was never reached.

35 In cross-examination KW Low agreed that the plaintiff was supposed to advise on how the defendant company could be restructured to be listed. He also stated that he had, initially, a time period of one year in mind for the defendants

to be listed. As the work started in mid-1984, he expected listing to be achieved in mid 1985. He denied however that he had asked the plaintiff to prepare the defendants for public listing or that he had agreed that the defendants would pay the plaintiff \$1 million or 1% of the listing capitalization, whichever was the higher, for work done for public listing. He asserted that as an accountant the plaintiff would be able to do only a certain part of the work involved in a listing exercise and that the rest would have to be effected by a merchant banker. As far as the sum of \$1 million was concerned, KW Low's initial evidence was that the plaintiff had told him that this sum had been promised to him by TK Low. The plaintiff however did not explain why TK Low had promised him \$1 million and neither did KW Low ask him what this payment would be for. In the later part of his cross-examination however, KW Low stated that the plaintiff had told him that TK Low had promised to pay the plaintiff \$1 million if the defendant company was listed.

36 TK Low also gave evidence on the first bill. He stated that he was first informed of the public listing exercise by the plaintiff. The plaintiff told TK Low that KW Low had ordered him to do the public listing and that the conditions were that the work was to be done in one year and the fee was \$1 million or 1%. TK Low asked the plaintiff what would happen if he could not complete the work. The plaintiff said that he had only two or three staff and would not lose much money as he was also the defendant company's auditor. TK Low assured the plaintiff that if the plaintiff needed further time for the work, he would ask his brother, KW Low to grant it.

37 Thereafter TK Low did not pay much attention to the project as it was under the charge of his brother and he was more interested in the Indonesian business which he had built up. He only spoke to his brother or his father to find out about the listing if the plaintiff had problems and asked for his help. He also

testified that from time to time he made casual enquiries of the plaintiff as to how the work was going on. The plaintiff talked a lot but never showed any solid results. When TK Low asked KW Low what the chances of the listing were, he was told that they were not too good but his reaction was to say "it's okay, don't worry" as he was not really interested in the listing operation. This portion of TK Low's testimony was not very credible. He was a businessman. As he himself asserted in another context, where he saw an opportunity to make money, he took it. The plaintiff had formed the view that the defendants could raise \$100 million in a listing exercise. TK Low would have been aware of this and it is thus unlikely that his role in the operation was that of a disinterested bystander.

38 The third Low brother who gave evidence, Mr CL Low was also not very clear as to what the listing process was all about. Under cross examination however he did admit that he was aware at the material time that the defendant company was interested in being listed and that the plaintiff was working on this project for the defendants.

39 The defendants' final witness was Mr Paul Ma, a partner in the accounting firm of KPMG Peat Marwick Singapore. He has been a chartered accountant since 1971 and has practised in areas concerning the floatation of companies. He was put forward as an expert witness. Mr Ma had perused all the plaintiff's bundles of documents and transcripts of the notes of evidence given to him by the defendants' solicitors.

40 Mr Ma's evidence was that if a company wishes to go public, there would first be an initial review on the company's suitability for listing. If this was favourable then a decision would be made on which professionals ought to be employed to take the company public. These professionals would include the

merchant bank which normally acts as manager, lawyers and accountants. The manager of the issue would on appointment draw up a time table setting out target dates for the application and launch, and parties to be involved in the task. The function of the time table is to make sure that the professionals involved keep to the necessary dates to ensure the listing proceeds as scheduled. In the years 1983 to 1985, the manager of an issue was also normally the lead underwriter, a role he impliedly agreed to accept when taking on the task of manager. The exact terms of the underwriting would be agreed later. From Mr Ma's evidence, the role of head of corporate finance in a public listing is a role taken by the lead manager. It would not be normal for an accountant to act as lead manager though he could do so if he was qualified but he would not in any event be able to act as an underwriter.

41 Having gone through the papers which the plaintiff prepared and put in evidence, Mr Ma gave his opinion thereon as follows: (1) It was not apparent from the work papers provided whether a preliminary review had been carried out to determine the suitability of the proposed companies to be included in the proposed group to be listed, and whether there were any fundamental problems which might exclude any or all of them from being listed. (2) The auditors' qualifications of the accounts of Sum Cheong Piling Malaysia and its poor track record were sufficient to preclude this company from being included in the proposed listing and the reporting accountants' work done on its account was pointless. (3) The work papers showed that in the third quarter of 1984 the plaintiff was experiencing problems in preparing the accountants' report on the Malaysian companies and there was some decision to exclude them from the listing group. (4) It was not clear from the work papers whether by the third quarter of 1984 any decision had been taken on the companies to be included in

the proposed listing, the structure of the group, the company to be used as the vehicle for listing and the time table for the listing.

42 Mr Ma also testified that if he had been involved with the listing of the defendants in the capacity of merchant bank and accountant, he would have expected the following documents to be produced at a late stage of the listing exercise: (1) a time table for the listing exercise (2) a draft prospectus (3) draft Accountants' Report on the results of the group for the last five years, the balance sheets of the group for the last six years and the statement of net assets of the company and the group as at the latest audited balance sheet date, together with the supporting work papers showing what work had been done to satisfy the accountants that the audited accounts can be relied upon and what adjustments had been made to the audited statutory accounts to arrive at the amounts shown in the Accountants' Report (4) draft Accountants' Report on the profit forecast of the group for the current year (5) forecast of the profit, cash flow and balance sheet for three years for the group and supporting work papers to show what work had been done to satisfy the accountant that the forecasts had been properly prepared on the basis of the assumptions adopted by the directors and are consistent with the accounting policies used by the group (6) draft Original Listing Application (for submission to the Stock Exchange) together with work papers to support the numbers and statements included in the application.

43 According to Mr Ma, it was difficult to tell from the plaintiff's work papers at what particular stage the plaintiff had arrived on the listing of the defendants. He would have expected to see at least some of the documents mentioned above but he had not seen any of them. From the foregoing, it appears that the plaintiff's work on the listing exercise was at a very preliminary stage. Further, in answer to a question under cross examination as to what role the

plaintiff was playing in the listing exercise Mr Ma said: "The role of reporting accountant on the past five years accounts etc. I could also see him performing the role of advising on the companies to be included in the listing. I could not see him doing the work on profit forecast. I could see no work being done on collecting information for the prospectus. I could not see any work on the listing application."

44 He also testified: "I could see no evidence of substantial corporate advice in the documents I have seen. For example I saw no evidence of the proposed structure of the company in the group that was to be floated. I could see a lot of complaints in relation to the Malaysian companies."

45 (c) Conclusion on Bill I Having carefully weighed the evidence presented, both oral and documentary, I hold that the plaintiff has proved that on or about 3 January 1984 he was employed by the defendants to advise them on reorganisation and restructure for a listing and to prepare them for such listing for the consideration of a fee of \$1 million or 1% of the listing capitalization.

46 On the point of the contract's existence, the plaintiff's assertions were supported both by the documents in evidence and the notes he made as well as by the evidence given on the defendants' behalf. All the Low brothers were aware that a listing exercise was in progress and that the plaintiff was at the centre of that process. He may not have achieved very much but they were aware he was working on it. A necessary preliminary was the preparation of the accounts. The plaintiff in this connection did a great deal of work, especially in Malaysia, which was recognised and paid for. Along with that he gave advice on various problems that arose from time to time together with his views on how the company should be structured for listing. Unfortunately most of the

advice was given orally but such documents as exist buttress the plaintiff's case by showing that in 1984 and at least half of 1985, work in connection with a public listing was being undertaken. The fact that no merchant bankers, lawyers or underwriters were ever formally employed does not damage the plaintiff's case. These professionals would only have been needed once the defendants' listing group had been finalized and the accounts were in such a state that a listing application could have been made.

47 The absence of documentary evidence such as corporate resolutions on the listing is not, in this case, fatal to the plaintiff's position. From the evidence that emerged, it was clear that the defendant company was run relatively informally and that KW Low as its managing director had a great deal of leeway. In another context, TK Low as an ordinary director was able to contend that he could take various preparatory steps towards binding the defendants to a large project and not only not get formal board approval until just before signing but also be sure that such approval would be forthcoming.

48 KW Low's evidence in relation to the \$100,000 quotation for the reporting audit work was also significant. He considered this quotation, found it acceptable and told the plaintiff to go ahead. He said that that was his usual style of business, that once he had approved a certain action, he would give the green light to proceed. He was not one for documents. It is telling that most of the documents in the case overall were generated by the plaintiff. The defendants on their own appear to have had little use for paper work. All this is consistent with the plaintiff's contention that his appointment was made orally.

49 On the question of the fee for the work, both KW Low and TK Low remembered the figure of \$1 million. Whilst KW Low alleged this was an amount offered to the plaintiff by TK Low, TK Low's own evidence on the

question of the \$1 million or 1% of capitalization completely supported the plaintiff's stand. Although TK Low says this was what the plaintiff had told him and he had not got it directly from his brother, KW Low, it is significant that he did not challenge it at the time or even speak to his brother to find out whether it was true. He accepted it, probably because it was in line with the plaintiff's previous indications as to what the fee for corporate finance work should be. A man like TK Low who considered \$20,000 "pocket money", and was willing to pay the plaintiff such a sum from time to time from his own resources, would not have jibbed at a fee of \$1 million if the listing actually raised around \$100 million as the plaintiff had estimated it would.

50 The defence pointed out that it was unethical for the plaintiff to charge on a lump sum or percentage basis. The plaintiff did not agree. Probably his interpretation of the relevant accountants' rules was different from that of Mr Ma and the defendants' counsel. In my opinion, even if the plaintiff was wrong, the fact that he should not have charged on that basis does not of itself invalidate the contract. The defendants did not produce any authorities to support their contention that the contract was by reason of the manner of its pricing rendered either invalid or unenforceable.

51 The next issue is what happened to the contract between the plaintiff and the defendants. The plaintiff's stand is that the sale of the defendant company's shares to Chuan Hup Australia amounted to repudiation of the contract which repudiation he accepted. Thereafter he became entitled to payment for the work done pursuant to the contract on a quantum meruit basis.

52 The legal position in relation to what is popularly called "anticipatory breach of contract" is cogently set out in paragraph 1713 of Chitty on Contracts (26 Ed). This states: "if, before the time arrives at which a party is bound to

perform a contract, he expresses an intention to break it, or acts in such a way as to lead a reasonable person to the conclusion that he does not intend to fulfil his part, this constitutes an anticipatory breach of the contract and entitles the other party to take one of two courses. He may "accept" the repudiation, treat it as discharging him from further performance, and sue for damages forthwith, or he may wait till the time for performance arrives and then sue."

53 In the present case, the performance required of the defendant company was to take such steps as, on the advice of the plaintiff, were deemed necessary to achieve a listing and thereafter to pay the plaintiff his agreed fee. When the defendant company's shares were sold to Chuan Hup Australia, it was clear that all intentions of achieving a public listing in Singapore had been finally abandoned. In fact the work on the listing had been in abeyance for sometime, all parties having turned their attention to other activities. Once the defendants made it clear that listing was no longer on the cards, the plaintiff was entitled to treat the contract as being at an end.

54 The next question is whether he was entitled thereafter to any payment for the work he had done pursuant to the contract.

55 The general rule as expressed in "The Law of Contract" by G.H. Treitel (8th Edition) is that where a contract expressly provides for a fixed remuneration on the occurrence of a specified event, the court cannot award any other remuneration on those events nor can it award any remuneration if they do not occur. If the general rule applied, the plaintiff would not be entitled to a cent as the specified event which was the listing of the defendant company never took place.

56 The courts have recognised however that this general rule is capable of leading to unjust results. As a consequence, remuneration may be awarded on a quantum meruit basis in exceptional circumstances. In order to ascertain whether such circumstances exist, it is first necessary to analyse the contract concerned to see whether the obligations of the parties thereunder are "entire" or "severable". If a contractual obligation is construed as being "entire", it means that the contract requires that obligation to be completely performed by one party before the other party's obligation to pay arises. On the other hand, where obligations are construed as "severable", payment under the contract is due from time to time as performance of specified parts of the contract is rendered.

57 Generally, whether an obligation is "entire" or "severable" can be settled either by reference to the express terms of the contract or to commercial practice recognised by law. Where the contract is silent and no recognised practice exists, the whole of the contract has to be construed to determine the nature of the obligations thereunder. In this case however it is important to note that as pointed out by Treitel (at page 687): "where a party agrees to do work under a contract the courts are reluctant to construe the contract so as to require complete performance before any payment becomes due." Treitel attributes this reluctance as arising from the fact that such construction would often lead to the unjust enrichment of the party who receives the benefit of the partial performance.

58 The contract here contained two important obligations to be performed by the plaintiff. The first was for him to advise the defendants on reorganisation and restructuring so that they could be listed. The second was for him to prepare them for such listing. These obligations obviously involved work which had to be done in stages over a relatively long period of time. Both the plaintiff and the defendants are agreed that at the outset it was envisaged that a year would be

required to bring the defendants to a state in which they could apply for listing. In these circumstances, while the plaintiff had quoted an overall fee, this does not preclude payment on a progressive basis. The plaintiff's conduct in fact was consistent with such a position as he did mention the question of payment for his work several times over the course of the next two years. Although the plaintiff was prepared not to insist on interim payments so as not to embarrass the directors with whom he dealt, this does not mean that the obligation that he undertook was an entire obligation. Accordingly, I am of the opinion that the contract between the plaintiff and the defendants is one in which a reasonable remuneration is allowable for partial performance.

59 I would like to deal here with the defendants' contention raised first when opening their case and again during submissions, that the plaintiff had waived his right to claim remuneration in respect of the contract. First I should state that strictly speaking this point was not open to the defendants as waiver did not form part of their pleaded defence. I need not therefore deal with it in detail. The evidence before me did however satisfy me that the elements needed to constitute a waiver were not present. Even if the plaintiff's failure to render bills for his corporate finance work until May 1987 could have amounted to a representation that he was not going to charge for his work, the defendants did not rely on such representation. They did not show that they were induced to change their position by reason of the representation. Accordingly waiver could not be established.

60 The question then arises as to what a reasonable remuneration would be. The plaintiff has claimed \$100,750. In my opinion, that amount was excessive.

61 In the first place, in the Statement of Claim the plaintiff stated his claim as being for work done for the period January 1985 to May 1987. In his further

and better particulars and in his evidence, the plaintiff gave details of work carried out from January 1984 onwards. When the plaintiff commenced his evidence on the second bill, the defendants' counsel objected to evidence being adduced in respect of that bill for the period before May 1985 on the basis that the claim as presented in the bill encompassed only work from that date. This objection was allowed by me. The work to be assessed under the first bill also must only be that carried out from January 1985 onwards as that was the earliest date covered by the bill and the Statement of Claim.

62 Secondly, it was clear from the evidence and from the documents that the plaintiff had exaggerated the amount of work done and the time spent. Perhaps this exaggeration was not intentional and the plaintiff did spend all the hours that he said he did on the defendant company's behalf. In several cases, however, an examination of the work indicated that it could not have taken the amount of time the plaintiff said it did. For example, the plaintiff claimed 11 1/2 hours for the preparation of a document listing the advantages and disadvantages of going public. This is a document which Mr Ma's evidence shows to be generally available from merchant banks as a basic document giving advice to clients who are looking into a listing. According to Mr Ma, it is something anyone with experience would not take more than an hour to prepare. The plaintiff had at all times presented himself as a man of experience and wisdom with the qualities needed to guide his clients through the intricacies of corporate finance. In fact he said that he was employed for "special insight leading to wisdom" and not simply for "paper pushing". A man with such expertise would have been able to do the work much more quickly. There were several other documents in respect of which the time claimed did not seem commensurate with the contents thereof like some simple telexes of a few lines each for which the plaintiff claimed an hour's time.

63 The plaintiff also purported to claim time on items for which he had already billed in his reporting audit bills such as time spent doing company searches in Malaysia and "debating and meeting with the management, local lawyers and auditors of the Malaysian companies on many occasions". When asked by his counsel to explain the components of various items of his working so as to show how the length of time claimed could have been taken up, the plaintiff had difficulty on many occasions. Finally, as was clear from his evidence, the plaintiff is a verbose man much given to long expostulations. The three Low brothers were on the contrary men of few words. The lengthy meetings which the plaintiff testified he had with each of them would have been prolonged by the plaintiff's verbiage rather than by the substance of the matters which had to be discussed. I have to conclude that the work which the plaintiff did could have been done much more expeditiously.

64 In assessing a reasonable figure to be awarded to the plaintiff I am also influenced by the fact that he did not come at all close to preparing the defendant company for a listing as the evidence of Mr Ma quoted above makes clear.

65 The plaintiff's counsel urged that when assessing the remuneration due to the plaintiff, I should be guided by the rate charged in the first bill i.e. \$200 per hour. I am not disposed to do that. First, the only documentary evidence available as to the plaintiff's usual rates was in his letter of 3 November 1983 to the defendants in which the highest rate he quoted was \$55 per hour. Even giving credit for the fact that corporate finance advice involves more skill than auditing, the gap between \$55 and \$200 is extremely wide. There was no other evidence as to what a reasonable rate for this type of work was at the time it was done. The other problem with going on an hourly rate basis is that for the reasons stated earlier, I do not believe that it would be fair to charge the defendants strictly on the time, some 286 hours, which the plaintiff claims to have spent on

work pursuant to the contract between 1985 and 1987. Thus the amount payable is left at large and I have, to paraphrase the words of Lord Wright in *Way v Latilla* < 1937 > 3 All ER 759 at 766, to do the best I can to arrive at a figure which seems to me fair and reasonable to both parties, on all the facts of the case.

66 In the result, having weighed all the factors, it is my judgment that \$30,000 is a reasonable amount to be awarded to the plaintiff for the work that he did in connection with the listing over and above the reporting audit for which he has already been generously remunerated.

67 II. Bill for \$100,500 dated 1 May 1987

68 The plaintiff described this bill as covering his corporate finance services rendered on TK Low's instructions from May 1985, through 1986 and into 1987 in respect of: (a) shell company operations; (b) the proposed construction and management of a port at Mawan, China; (c) the joint venture between the defendants and Nanhai Oil Shenzhen Development and Services Corporation; (d) proposed borrowing of US\$100 million; (e) Xiamen Harbour project; (f) Wuhan Hotel project and joint venture; and (g) various miscellaneous services and advice in connection with the foregoing.

69 The plaintiff's stand was that all of the above work arose out of and was part of the services which he was to perform under the contract for the public listing of the defendants. Alternatively, that there had been an implied contract for him to do the various work and services on the basis of a reasonable remuneration. The implied contract arose out of the fact that the defendants had asked him to do work in a professional capacity well knowing that such work would have to be paid for.

70 When the plaintiff commenced his evidence on this bill, a preliminary objection was taken that the statement of claim was for work during the period January 1985 onwards and the bill itself was for work from May onwards. Accordingly remuneration was not being claimed for work done prior to May 1985 and evidence in respect thereof should not be allowed. I agreed with the objection. The plaintiff's counsel accepted this ruling. He did not offer any evidence in respect of item (d) of the bill which related to the proposed borrowing of US\$100 million as that transaction occurred in 1984. Secondly in respect of the shell company operations, the evidence he offered commenced from May 1985. I shall deal with the items in the manner in which the plaintiff presented them.

71 (a) The shell company operations This sub-heading refers to the plaintiff's attempts to find a listed company in Hong Kong which would be open for purchase by the defendants so as to achieve a back-door listing in Hong Kong.

72 The plaintiff testified that it was clear by the end of 1984 that the work on directly listing the defendant company on the Singapore Stock Exchange was running into difficulty. He therefore proposed to the defendants that they seek an indirect listing in Hong Kong by acquiring a shell company. Prior to May 1985, he had had dealings with personnel from Chase Manhattan Asia and Wardley Limited in relation to such an acquisition. Various companies had been offered for the defendants' consideration. In May 1985, the plaintiff and TK Low travelled to Hong Kong to further their investigations. It is important to note here that in all the shell company dealings, the principal involved on behalf of the defendants was TK Low. KW Low was only occasionally involved.

73 The plaintiff spent eight days in Hong Kong on that occasion. The time was used in meetings with TK Low, the bankers, the principals in the companies concerned and various other professionals in connection with the shell company acquisition. As a result, there was a decision on the part of TK Low to acquire a company known as Well Fung Properties & Investment Ltd. On 9 May 1985, the plaintiff drafted instructions to Wardley Limited to make an offer for Well Fung. This letter was signed by TK Low and was written on the letterhead of a company called Sum (H.K.) Investment Ltd whose address was given as care of Sum Cheong Piling Pte Ltd. Thereafter the plaintiff spent five more days attending and assisting TK Low in meeting various parties in Hong Kong with regard to the proposed acquisition. The plaintiff returned to Singapore on 14 May 1985.

74 On 20 May 1985, Wardley informed the plaintiff that the offer for Well Fung had been rejected. The plaintiff discussed this rejection with TK Low and also the various requirements of the Hong Kong Securities Commission which would need to be met for a company purchased by TK Low to continue to be listed after the purchase. The problems involved in such an acquisition were discussed several times over the next few days. Among the options discussed was that of abandoning completely the search for a suitable company.

75 On 29 May 1985 the plaintiff received a telex from Wardley advising him that there was a good possibility that another shell company would be available soon. The plaintiff then sent a telex on 3 June 1985 to Wardley stating that "we thought it best to defer for a period to end of June our intention to acquire a listed shell because we cannot meet the guarantees stipulated by the authorities just now." In his testimony, the plaintiff said that he took this course because the defendants were unable to meet the requirements of the securities commission and the negotiating tactics adopted by the defendants were wrong.

Thereafter nothing further was done in relation to shell companies. It is significant that the plaintiff did not testify that instructions were given to him by the defendants to abandon the search. He seems to have abandoned it of his own accord. According to the plaintiff's further and better particulars, he spent 116 hours in May and June 1985 on the shell company project.

76 The defendants' stand was that the search for a shell company had nothing to do with the proposed public listing of the defendant company. They alleged that the plaintiff had offered to find a shell company for any interested party on a commission basis. The plaintiff was acting basically as a broker though he did, in addition, give the defendants/TK Low the benefit of his expertise in relation to the accounts of the various companies which were presented as possible candidates for purchase.

77 TK Low's testimony formed the core of the defence on this aspect. He stated that the plaintiff had told him that money could be made through the purchase of a Hong Kong shell company. The possibility interested him not only for himself but also for the defendants. His understanding with the plaintiff was that if a shell company was acquired, the plaintiff would be paid 1% of the acquisition amount as a finder's fee. Otherwise, no payment would be due to the plaintiff. The plaintiff's disbursements would however be paid for. TK Low stated (and the plaintiff agreed) that in fact all the plaintiff's airfares, hotel charges and other disbursements incurred by the plaintiff while looking for a shell company were paid for by either the defendant company or TK Low personally. In TK Low's opinion, this was a fair deal as the plaintiff had contributed his time to the search for the shell company. He testified that pursuant to this arrangement, various meetings were arranged by the plaintiff in Hong Kong with bankers and other business people which he had attended. In

the end the shell company search was fruitless and thus the plaintiff was not entitled to any remuneration.

78 KW Low testified that he did not instruct the plaintiff to go to Hong Kong to buy a shell company in 1985. He was aware that the plaintiff looked for a shell company in Hong Kong in 1985 with TK Low. The plaintiff was often in Hong Kong with TK Low during that year and little feedback was given to KW Low. KW Low was also involved in some meetings in Hong Kong in connection proposed acquisitions. In his evidence, except in regard to a company known as Shine Construction, his presence at the various discussions was because he happened to be in Hong Kong at the time and not because he had initiated the meetings. He gave no evidence on the terms on which the plaintiff was working in connection with the shell company search.

79 Was the shell company operation part of the listing contract? The contract between the plaintiff and the defendants as established by the plaintiff was "to prepare the defendants for public listing". Did this contract encompass the acquisition of a shell company in Hong Kong? In my judgment, it did not. The defendants' main interest and concern in 1984/85 as expressed by KW Low according to the plaintiff's own testimony were to go for a public listing in Singapore of the defendant company. This is also supported by the evidence that the defendants had asked two merchant banks to look into the issue. The discussions with SIMBL were serious enough for SIMBL to prepare two preliminary reports for the defendants' consideration. At the time that the plaintiff was entrusted with the job of preparing the defendants for a listing, the emphasis was on Singapore. An indirect listing on a foreign stock exchange through the acquisition of a foreign company was not contemplated.

80 The plaintiff himself admitted that it was his suggestion to acquire a Hong Kong company, a suggestion made one year after his initial appointment. In his testimony, he endeavoured to convince the court that this suggestion was made as a solution to problems encountered in Singapore. That assertion was however contradicted by a letter which the plaintiff wrote to TK Low personally on 27 December 1984. In this letter the plaintiff said that he had been advised of the availability of a publicly listed company in Hong Kong which had been offered as a shell with a public listing on the Hong Kong Stock Exchange. He further stated: "We shall be grateful if you would let us know whether you or perhaps your friends would be interested to purchase it." It would be noted that the offer was made not only to TK Low but also to his friends. The plaintiff did not offer a shell company as an alternative form of listing for the defendants. He offered it as an investment pure and simple.

81 It is also significant that in the search for a suitable Hong Kong company, the plaintiff worked with and reported to TK Low rather than KW Low, the defendants' managing director and the person who had originally appointed him to oversee the listing operation. If the shell company operation had been intended as part of the listing, KW Low would have played a much bigger part therein.

82 Accordingly, I am unable to find that the work done in connection with the acquisition of a shell company was part of the contract for listing. I am also unable to find that work which the plaintiff undoubtedly did in relation to the shell company transaction was work that was to be paid for on the basis of a reasonable remuneration. At an early meeting with TK Low, the plaintiff had told him that he charged 1% for sale and acquisition of companies. TK Low accepted this as the market price for such deals. A situation where one person is acting as a procurer of an asset for purchase by another is a common situation

in which it is accepted that payment depends upon success. It is an entire rather than a severable contractual obligation. As the plaintiff's efforts were, for one reason or another, fruitless, he is not entitled to payment.

83 Shine Construction There is however one acquisition transaction where the plaintiff is entitled to payment. That is in relation to the Hong Kong company called Shine Construction. The negotiations relating to this company were not part of the shell company operation. According to KW Low's testimony which I accept, a Singapore architect introduced him to Shine Construction as a possible investment in Hong Kong. KW Low asked the plaintiff who was then in Hong Kong to examine whether the company was a worthwhile investment. The plaintiff accordingly attended a meeting with KW Low at which Shine Construction's directors and accountants were present. According to KW Low, Shine Construction's accountants were unable to answer the plaintiff's questions on their accounts or to supply him information which he needed. Accordingly he later advised KW Low not to pursue the investment. This advice was taken. The defendant company subsequently paid bills rendered by the plaintiff for disbursements incurred in travelling to and staying in Hong Kong for meetings relating to Shine Construction.

84 According to the plaintiff's own evidence, some portion of the time he spent in Hong Kong in May and July 1985 was spent on meetings concerning Shine Construction. It is impossible however to quantify how much time was taken for this purpose.

85 On the basis of what KW Low said however, the plaintiff is entitled to remuneration for that time. He was a professional asked to give professional advice. He was not playing a broker's role in relation to Shine Construction. The circumstances were such that he could not have been expected to work for free.

KW Low was fully aware of that. During his testimony in relation to this matter, he said that if the plaintiff had billed him for work done in respect of Shine Construction, he would have paid the plaintiff. Doing the best I can in the absence of any evidence on the amount of work the plaintiff actually did for the Shine Construction venture, I award him \$1,500.

86 (b) Mawan Harbour and joint venture with Nanhai Oil Shenzhen Development and Services Corporation Mawan Harbour is located in the Shenzhen Economic Zone in Southern China. In 1984, the Chinese authorities were interested in developing a container port at Mawan Harbour. This project was brought to TK Low by a friend who knew that TK Low had done a lot of harbour construction work in Indonesia. TK Low made several trips to China in connection with the project together with his friend, Professor Hou Ke Hwa, an engineer with whom he had worked on previous construction projects. Eventually the Chinese informed TK Low that they wanted to create a joint venture company with the defendants to finance, construct and operate the project. At that stage TK Low asked Professor Hou to prepare a preliminary feasibility study. By that time too, the defendants had agreed to undertake the project and had given TK Low full responsibility for it.

87 According to his evidence, the plaintiff first became involved with Mawan in July 1985 when he received instructions on the telephone from TK Low to prepare to travel to Hong Kong in connection with the defendants' bid for a construction project in China. Thereafter, the plaintiff went to Hong Kong on several occasions in connection with the Mawan project. The plaintiff was, on his testimony, trying to arrange finance for the defendants to assist them in the project. The defendants' calculation was that the project would cost in the region of US\$200 million and they needed to raise at least US\$100 million in loan funds. The plaintiff had long meetings and discussions with various banks

but primarily with the Hong Kong and Shanghai Banking Corporation in his efforts to raise funds for the defendants. He also made approaches to Hutchison Whampoa who ran, through a related company, the Hong Kong Container Port. His aim in so doing was to promote a joint venture between the defendants and the Hutchison group for the development of Mawan Port. Eventually the defendants were awarded a contract to develop Mawan Port but the plaintiff was unable to secure any financing for them or to involve Hutchison Whampoa in the project.

88 The plaintiff says he spent 555 hours between 4 July 1985 and 21 November 1985 on meetings, preparation and review of documents and other work related to the Mawan project. Among the things which the plaintiff did was to prepare at short notice a "feasibility study" on the project for TK Low to take into China with him for the purpose of his negotiations with the Chinese parties. He also reviewed two feasibility studies prepared by Professor Hou, attempted to translate into English a joint venture agreement prepared by the defendants' Chinese partners and worked with one Dr Ong, an engineer, on another feasibility study for the project. He claimed payment for all time spent.

89 The defendants' position as enunciated by TK Low was that the plaintiff's involvement in the Mawan project was entirely his own doing. The plaintiff became aware of the existence of the project in the course of his dealings with the defendants. He volunteered to raise funds for the project on the basis that he would be paid a fee of 1% of the loan procured. TK Low was amenable to this offer. He had already made arrangements with Marubeni Corporation for them to provide financing but he was open to alternative arrangements which would be more beneficial to the defendants than the conditions laid down by Marubeni Corporation. He therefore accepted the plaintiff's participation and attended meetings with such bankers as the plaintiff

required him to. However, as the plaintiff did not procure any loans, the plaintiff did not earn any fees. My conclusion after analysing the evidence before the court, is that the defendants' position on the plaintiff's role in the Mawan project is more credible than that of the plaintiff. The defendant company was experienced in the construction business. TK Low himself through his business in Indonesia had been involved in many harbour construction projects. He had the expertise and the back-up needed for such projects. Not only could he call upon the knowledge and assistance of Professor Hou, a consulting engineer but he also had access to the services of M/s Posford Pavry & Partners, an English firm of consultant engineers. In relation to the Mawan project, Professor Hou produced both a preliminary and a final feasibility study and Posford Pavry & Partners in association with Technecon Transport Economists produced a 74 page (excluding the appendices, exhibits and photographs) Financial and Engineering Feasibility Report.

90 On the other hand, the plaintiff had no natural role to play in this project. He was not an engineer. He knew nothing about constructing or operating a harbour. He could not speak Mandarin. Finally, as a Malaysian citizen, he was unable to enter China to help TK Low with the negotiations. There was no need at all for the defendants to use the plaintiff's services in connection with Mawan.

91 The plaintiff was unable to support his position by reference to documents. He relied on several telexes which he sent to Hong Kong Bank, to the Bank of China, to various other banks for bankers' references and to Hutchison Whampoa and its related company running the Hong Kong Container Port, as support for his contentions. These documents are however neutral. They do not establish the plaintiff's capacity even though in many of them, he described himself as a special assistant to TK Low. TK Low's response to that was he was quite content for the plaintiff to describe himself as he pleased as

the description did not harm the defendants. The amount of weight that should be given to this description can also be gauged by the fact that the plaintiff erroneously described TK Low in such telexes as the managing director of the defendant company though he was well aware of TK Low's actual status.

92 The defence contention was strengthened by a document entitled "Discussion draft proposal on the construction of the Mawan Harbour and Terminal, Shenzhen, S.E.Z. People's Republic of China", prepared by the plaintiff himself in Hong Kong in August 1985. At that stage Professor Hou had already prepared a preliminary feasibility study which the plaintiff considered to be flawed because it assumed a pay-back period in excess of 16 years whereas the banks the plaintiff had been dealing with expected to be repaid in 10 years. Secondly, the study assumed that there would be a spill over of business from the Hong Kong port to Mawan an assumption the plaintiff challenged. According to the plaintiff, his criticisms of Professor Hou's report were accepted by TK Low and he was asked to prepare a substitute feasibility study for discussion with the Chinese.

93 When the plaintiff's document is analysed, however, it appears to be a paper addressed to a potential financier rather than to a proposed joint venture partner. For example, the very first line of the document says: "The name of the proposed Borrower shall be". Then after the third paragraph there is sub-heading reading: "Type and currency of arranging" (sic) and the first line after this sub-heading reads: "The proposed type of financing shall be US\$ fixed rate borrowing....". The paragraph goes on to state that arrangements for the syndication of the borrowing shall be mandated to the Sum Cheong Group of Singapore and that the maturity period of the loan shall be 10 years plus an additional period of grace. Other sub-headings in the document include the following: "Purpose of the Loan", "Amount of the Borrowing and Estimated

Allocations", "Expected Income", "Loan Repayment and Foreign Exchange" and "Taxation". There is no engineering input in the document at all and the business input is minimal. A lot of the information required was indicated only in outline. It is impossible to believe that this document could have been intended for presentation to the Chinese partners as a basis for agreement.

94 When TK Low went into China to negotiate in August 1985, the plaintiff could not accompany him. He spent his time in Hong Kong liaising between TK Low and the latter's offices in Singapore and Indonesia. He further testified that he travelled to see Castle Peak Power Station in Hong Kong to assess shipping traffic between the power station and the Hong Kong International Container Terminal. He also spent time visiting and studying the Kowloon Railway System because the Mawan project involved the establishment of a railway system. To quote the plaintiff, he "wanted to understand the economics of transport systems involving sea, road and railway in a rocky terrain." That the plaintiff thought such activities could serve a useful purpose or give him reliable information shows his true position at the margins of the project.

95 The plaintiff's testimony that in October 1985 he was asked again to produce a feasibility study is again unbelievable. By that time, Professor Hou's second report had been produced and a draft contract had been signed between the defendant company and Nanhai Oil Shenzhen Development and Services Corporation. What was needed was the full scale professional feasibility study which the defendants commissioned Posford Pavy & Partners to prepare. As the plaintiff himself admitted, his attempts at a second feasibility study, even though undertaken in conjunction with an engineer, were even less successful than the first effort as not even a draft resulted. Finally, the plaintiff's contention that the defendants commissioned him, a non-Mandarin speaker, to translate the draft joint venture agreement between themselves and the Chinese into English

is incredible. It is much more likely that it was the plaintiff's own idea to translate this document cheaply with the assistance of his wife so that he would have something to show to the banks from whom he was attempting to obtain financing for the defendants.

96 The plaintiff also sought to contend that his work on the Mawan project formed part of his contract for listing the defendants. His explanation was that if the project came to fruition it would be injected into the defendant company in order to meet the Stock Exchange of Singapore's criteria of product, geographical and income diversification. The defendants would have a steady source of income for many years to come and would have assets of undoubted quality to be included in their financial statements. He testified that income from utilities is prized for its stability and assured growth and such income would help the defendants to be regarded as a blue chip company.

97 Mr Ma was asked his opinion on the above. He stated that if the Mawan project was the largest project to be undertaken by the defendant company and the success of the company was dependant on the success of the project, then the Mawan project would not assist the company in overcoming the objection of being over-dependant on a single customer or business. Secondly, a feasibility study on such a project would, he said, be based on a lot of assumptions. The most important ones would relate to the ability of the Chinese partners to perform and to receive the necessary approvals. This would be more important than the academic conclusions in the report. Mr Ma was not convinced that the Mawan project added to the chances of the defendants being successful in a listing application.

98 It is my finding that the Mawan project was completely separate from the listing exercise. It was not contemplated when the exercise was embarked

upon. It was a business opportunity that arose later. There was no intention at the time that the plaintiff was appointed to oversee the listing that he should be involved in the defendants' bids for work. He was supposed to re-organise and restructure the defendants and their group. The plaintiff was employed for his accounting skills and corporate advice and the Mawan project fell outside the scope of his duties.

99 In the event, this portion of the plaintiff's claim must fail.

100 (c) Xiamen Harbour The next portion of the second bill relates to four and a half hours that the plaintiff spent on studying documents and advising KW Low on the feasibility of the defendants participating in the development of the port of Xiamen, China.

101 According to the plaintiff, on 23 October 1985, KW Low gave the plaintiff various documents to study on the Xiamen port and asked for his advice. After the plaintiff had perused the documents, he met KW Low again and recommended that the project be abandoned. KW Low agreed and no further work was done. The documents which KW Low handed the plaintiff were exhibited as PB1369 - 1413 of the plaintiff's bundle.

102 KW Low on the other hand had no memory of the plaintiff's involvement in this project at all. He did not remember the documents PB1369 - 1413 either. He recalled the project as having been a joint venture between the Port of Singapore Authority and the defendants. Thus he denied the plaintiff had done any work on this matter.

103 I accept the plaintiff's evidence. How else would the plaintiff have obtained the documents? KW Low must have suffered a lapse of memory as the

events occurred more than six years ago and the plaintiff's involvement was very brief. I award the plaintiff \$400 for this work.

104 (d) Wuhan Project The fourth item in the second bill which I must deal with relates to the 11 hours claimed by the plaintiff in respect of work done in relation to the proposed construction and operation of a hotel in Wuhan, China.

105 The plaintiff testified that on 25 September 1985, he received instructions from KW Low to attend a meeting with two gentlemen who represented a company which was promoting the Wuhan Hotel. They brought with them a feasibility study which was given to the plaintiff to analyse and to report on to KW Low. The plaintiff's role was to assess the suitability of the investment. This meeting was held in the defendants' board room in Singapore and KW Low was present.

106 After the meeting, the plaintiff studied the feasibility study. He concluded that the study was too optimistic. On the 27 September 1985 he had another meeting on the Wuhan project with KW Low and other director of the defendants. At this second meeting, the plaintiff advised that the hotel was not suitable as an investment for the defendants at that stage because of its impact on the defendants' cash flow. KW Low was still interested in the project but the plaintiff's involvement ended there.

107 KW Low also testified on the Wuhan project. His stand was that the Wuhan project was his personal project rather than the defendant company's. He gave evidence that he was approached as a potential investor in the project. He also stated that he did in fact become an investor and the investment is continuing. He confirmed that the plaintiff came to his office to have a discussion with the two gentlemen who were promoting the project in order to

help him determine whether it was a feasible investment. After the discussion, the plaintiff's advice had been not to proceed with the investment as the returns would take a long time. Thereafter the plaintiff was no longer involved. KW Low did not take the plaintiff's advice. Neither did he expect the plaintiff to send a bill for the advice. He thought it was friendly advice as the discussion took only three hours and at the end of it the plaintiff rejected the project. KW Low's attitude seems to be that the plaintiff should only bill if something had resulted from the discussions. He also stated however that if a bill had been presented he would have paid it personally. Under cross-examination, KW Low confirmed that he had not informed the plaintiff that the Wuhan project was his personal project. He asserted however that the plaintiff was aware of this fact.

108 On the foregoing evidence, I hold that the plaintiff is entitled to remuneration in respect of his work for the Wuhan project. At all material times, the plaintiff dealt with KW Low in his capacity as managing director of the defendant company. No evidence was given of any work done by the plaintiff as personal work for KW Low. Further all meetings relating to the investment took place in the defendants' office. As KW Low did not inform the plaintiff that the Wuhan project was his personal investment, he was, in the circumstances of the plaintiff's relationship with the defendants, making a representation that the work to be done was work for the defendants. The defendants are bound by this representation on the part of their managing director.

109 There was some conflict of evidence as to the extent of the plaintiff's involvement in Wuhan as KW Low asserted this was limited to one meeting. KW Low's memory was not, however, very good in relation to matters of detail and he did not keep notes of time spent unlike the plaintiff. Accordingly, the

plaintiff's recollection of the time involved and the number of meetings attended is likely to be more accurate than that of KW Low.

110 I award the plaintiff \$800 for his work on the Wuhan project.

111 (e) Other work Apart from the specific items (a) to (f) in the bill as described earlier, the second bill also contained a description of various activities which the plaintiff allegedly undertook on behalf of the defendants. In his evidence, the plaintiff did not attempt to justify these items as separate work for which payment should be made. Instead where evidence was led on work which would fall within the descriptions in the bill, the plaintiff's stand was that such work related to items (a) to (f). Accordingly, there is no need for me to deal separately with the other work described.

112 Before I turn to the last two bills, it should be noted that the first two bills included disbursement claims of \$750 and \$500 respectively. No evidence was led on the disbursements incurred by the plaintiff which made up the said sums of \$750 and \$500. I am, accordingly, unable to make any award in respect thereof.

113 III. Bill for \$10,000 dated 1 May 1987

114 On 28 May 1985 the plaintiff received a memorandum dated 27 May 1985. It was stated as being from TK Low and under his name there appeared in printed form the name and address of the defendant company. The memorandum was short. It stated "Kindly study the enclosed balance sheet of Exklusiv Auto Pte Ltd and advise me according" (sic) and was signed by TK Low.

115 The plaintiff testified that he spent some 62 hours thereafter working on this assignment which related to the proposed acquisition of shares in a Singapore company, Exklusiv Auto Pte Ltd ("Exklusiv Auto"), which had the agency for Renault cars. He not only perused the balance sheet but also met several times with the owner of Exklusiv Auto, one Mr Peter Kwee, and his accountant to clarify items in the documents. A written report was given directly to TK Low advising against the investment. The plaintiff asserted that the purpose of this work was to assess the suitability of Exklusiv Auto for inclusion in the listing group to meet the criteria of geographical and customer diversification.

116 TK Low's position was straight forward: Exklusiv Auto was not connected with the defendant company but was his personal matter. He stated that Mr Peter Kwee, was his school mate. When Peter Kwee had some financing problems with his business, he had gone to TK Low for help. He wanted TK Low to go into Exklusiv Auto as a shareholder. In the end TK Low did not invest but he helped Mr Kwee by lending him the money. On receipt of Exklusiv Auto's papers, TK Low had sent them to the plaintiff as he wanted his advice on whether it was a good company. The plaintiff had told him that the company was not a good one and as TK Low was not in that line of business, he should not get involved. KW Low's testimony was that the work in respect of Exklusiv Auto was not done for the defendants.

117 Under cross-examination, the plaintiff stated that he was aware that Peter Kwee was a former classmate and a personal friend of TK Low. He also knew that Peter Kwee had offered the opportunity of buying over Exklusiv Auto to TK Low personally. He however asserted that in answer to a question he had put to TK Low, TK Low had informed the plaintiff that he intended to pass on this opportunity to the defendants.

118 In assessing the evidence I had to bear in mind that it was the plaintiff who had to show that the instructions on Exklusiv Auto originated from the defendants.

119 I hold the plaintiff has not proved that the work he did in respect of Exklusiv Auto was done for the defendants. That the instructions were written on a memorandum of the defendants was incidental and did not prove they emanated from the defendant company. It is interesting to note here that in relation to the final bill where the initial instructions came on a memorandum from P.T. Jaya Sumpiles Indonesia, the plaintiff was easily able to overlook that small detail and assert his instructions came from the defendants rather than P.T. Jaya Sumpiles Indonesia. In fact the instructions here came from TK Low. The investment was one offered to TK Low personally. Even if TK Low intended to pass on the investment to the defendants at a subsequent date, there was no evidence that he had done so at the time the plaintiff was instructed to carry out the work. The plaintiff's task was a necessary preliminary to deciding on the investment and it was a task which TK Low personally wanted to plaintiff to carry out.

120 The fact that TK Low was also a director of the defendants does not mean that every instruction he gave to the plaintiff was an instruction on behalf of the defendant company especially when such instruction did not relate to the type of work in which the defendants were involved. Also KW Low, the managing director of the defendants, knew nothing about this investment. Finally, as pointed out earlier, the plaintiff sent his advice to TK Low personally. No copy thereof was forwarded to KW Low.

121 TK Low did give some questionable testimony in relation to this bill. In court he stated that the plaintiff did not tell him that the plaintiff would not bill

for Exklusiv Auto. TK Low had assumed from the circumstances that the plaintiff would not bill. He thought the plaintiff would do it as a favour as he had given the plaintiff pocket money from time to time. In an affidavit filed in these proceedings however, TK Low had stated that the plaintiff had specifically told him that the plaintiff would not bill for Exklusiv Auto. The plaintiff's reason was that the amount involved was small. TK Low was unable to explain the discrepancy in the evidence. In my judgment however, this inconsistency does not help the plaintiff prove that in fact the work was done for the defendant company. For the reasons stated earlier, I hold the plaintiff has not discharged his burden of proof in this regard.

122 IV. Bill for \$5,000 dated 1 May 1987

123 This last bill relates to work on yet another project in China. This time it was the Tianjin Sheraton Hotel and Convention Centre ("the Tianjin Hotel"). The plaintiff allegedly spent 43 1/2 hours of his time on this project.

124 According to the plaintiff, in May 1986, he received a memorandum dated 1 May 1986 on the letterhead of P.T. Jaya Sumpiles Indonesia. The memorandum referred to an "enclosed" feasibility study and telexes relating to the Tianjin Hotel and asked the plaintiff to "kindly study and advise your comments on the feasibility of this project". It further stated "I need to have your comments very soon". It was signed by TK Low.

125 The documents forwarded to the plaintiff comprised two feasibility studies, telexes and letters addressed to TK Low at P.T. Jaya Sumpiles Indonesia and some other correspondence. All in all, they came to some 122 pages.

126 The plaintiff testified that he studied the documents, sent a written report thereon to TK Low and, at TK Low's request, had a meeting with the representative of the promoters of the project. In support of his contention that all this work was done for the defendants, the plaintiff testified that TK Low had told him that the project was the defendants' project. He was also told that the project was directly connected to the defendants' listing. In the report which the plaintiff gave TK Low there is mention of a loan to be provided by TK Low personally and a sum of US\$6 million to be provided by the defendants in cash or by way of a guarantee. The plaintiff's comment was that if such a guarantee were given, it would seriously restrict the defendants' credit rating for the next 13 to 15 years and he therefore advised against the investment.

127 The defendants' case was that the Tianjin Hotel project was not their project and they had not commissioned the plaintiff's work. TK Low's testimony was that the project was brought to him by an American friend who sent him the relevant documents to ascertain whether he was interested in participating in it. The suggestion was that his participation should be by way of a loan of US\$6 million to Gateway Development Corporation, the United States joint venture corporation developing the project. TK Low confirmed that he had written the memorandum to the plaintiff in order to assist the plaintiff in obtaining the documents on the project. According to TK Low, the plaintiff knew about the project from seeing the documents in TK Low's office in Singapore and he had volunteered his assistance. At that time TK Low had not decided who should participate in this project. It could have been the defendant company, P.T. Jaya Sumpiles Indonesia or TK Low himself. KW Low who was still the managing director of the defendants in May 1986 testified that he knew nothing about the Tianjin Hotel project. This testimony was not challenged in cross examination.

128 The burden is on the plaintiff to prove that the work he did was work requested by the defendants. In my judgment he has not discharged this burden in relation to the Tianjin Hotel project. Although I did not believe TK Low's statement that the plaintiff was a volunteer in relation to this work as his court testimony on how the work came to be done by the plaintiff was inconsistent with the contents of an affidavit previously made by him, this does not mean that I have to discard all TK Low's evidence on the transaction. It is the plaintiff's obligation to persuade me that on the balance of probabilities the work was done for the defendants and no one else. Apart from the plaintiff's assertion to that effect, there is no support for his contention.

129 From the correspondence which was included in the bundle of documents relating to this project, it is clear that the offer to participate in the project was made directly to TK Low. The defendant company was only mentioned once in all the letters. The type of investment asked for would not naturally involve the plaintiff as it was an infusion of loan capital rather than active participation in the construction of the project. It was an investment that could well have been made by any of the parties mentioned by TK Low. Further, the plaintiff was aware that TK Low had other business interests besides the defendant company and that in fact he was actively running P.T. Jaya Sumpiles Indonesia. In the circumstances, it behoved the plaintiff to take steps to ascertain for whom he was working. Secondly, the work could not have been part of the listing contract as by May 1986 the direct listing of the defendants in Singapore was no longer being actively pursued. As the plaintiff himself testified, by March 1986 another important deadline in regard to the listing had passed. His evidence shows that thereafter no work was done on the listing apart from the preparation of a report on the problems and irregularities in Malaysia.

130 In the circumstances, the plaintiff's claim in respect of this bill fails completely.

131 Conclusion

132 In the result, there will be judgment for the plaintiff for a total sum of \$32,700 with interest thereon at the rate of 6% per annum from 15 May 1987 (the plaintiff sent the bills to the defendants on 14 May 1987).

133 I will hear the parties on costs.

Judith Prakash JC

J Balachandran with Ramesh (Ramdas & Wong) for the plaintiff
Choo Han Teck with Eu Hai Meng (Allen & Gledhill) for the
defendants
