

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 265

Suit 612/1989

Between

Francis s/o Anthony Albert
Stephen Albert

... Plaintiff

And

Albert Construction (Pte) Ltd
Anthony Albert

... Defendant

GROUND OF DECISION

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**Francis s/o Anthony Albert and Another v Albert Construction
(Pte) Ltd and Another**

[1993] SGHC 265

Suit 612/1989
Lim Teong Qwee JC
06 November 1993

1 **Judgment:**

2 Coram: Lim Teong Qwee JC

3 **Cur Adv Vult**

4 J U D G M E N T

5 The second defendant Anthony Albert was born in July 1919 and is now 74 years old. He married in 1944 but his wife died in 1988 and he has remarried a much younger person. He has 3 sons and 6 daughters by his late wife and a son by his present wife. She is an Indian national and now lives in India with their son. The plaintiffs are the younger 2 of the 3 sons of the second defendant from his first wife.

6 The second defendant was a teacher and later worked in a construction company in India before coming to Singapore in 1946. He then worked for a construction company as an accountant and in 1950 formed a construction

company with a friend. In 1960 he formed another construction company. This was Albert Construction Company ("ACC") of which he was sole proprietor. ACC's last project was the British High Commission ("BHC") building contract. This was completed shortly before 6 April 1973 which is the date of a letter of appreciation from the High Commissioner himself at DB-94.

7 In May 1973 the first defendant was incorporated under the Companies Act to carry on the business of builders and contractors for construction work. The Memorandum and Articles of Association provide for 3 classes of shares. Of the original authorised capital of \$1m divided into one million shares of \$1 each, 200,000 shares are "Founder shares" which can only be issued to the second defendant "and his assigns or nominees whomsoever". 400,000 shares are "A" shares and 400,000 shares "B" shares. On a poll the Founder shares confer on the holder 10 votes for each share held and the "A" shares confer one vote for each share held. The "B" shares are non-voting shares. The second defendant is the chairman of the board of directors for life and is entitled to appoint and remove directors from time to time. At the time of incorporation the second defendant subscribed for one Founder share and his 3 eldest children daughters Remoulda and Celin subscribed for one "B" share each and son Baldwin subscribed for one "A" share. The subscribers were also the first directors of the company. Now only the second defendant and a Mr Fernandez are directors. The second defendant has a casting vote as chairman but a quorum for directors' meetings can be constituted by him alone and he can act alone without even any notice of meeting to other directors.

8 In August 1974 the second defendant was issued 199,999 Founder shares, 349,999 "A" shares and 349,998 "B" shares in consideration of the sale of his properties at Jalan Chengkek, Ponggol and Kerbau Road to the first

defendant. In February 1986 the authorised capital was raised to \$3m divided into 600,000 Founder shares, 1.2m "A" shares and 1.2m "B" shares and there was a bonus issue of one for one to capitalise \$900,000 part of profit arising out of a revaluation of assets. The second defendant would have been entitled to virtually the whole of the bonus issue but he caused 200,000 Founder shares, 250,003 "A" shares and 350,000 "B" shares to be issued to himself, 29,999 "A" shares to Baldwin, 29,999 "A" shares to the first plaintiff Francis and 39,999 "A" shares to the second plaintiff Stephen. At the same time the 2 daughters transferred their one "B" share each to Francis and Stephen. In December 1988 the second defendant transferred one "A" share to Fernandez. Out of an issued capital of \$1.8m the second defendant now holds 400,000 Founder shares, 600,001 "A" shares and 699,998 "B" shares, Francis holds 29,999 "A" shares and one "B" share and Stephen holds 39,999 "A" shares and one "B" share. Of the remaining 30,001 "A" shares 30,000 are held by Baldwin and one by Fernandez.

9 The second defendant controls the first defendant at board and at general meeting levels and owns more than 94% of the issued capital of the first defendant. The plaintiffs were directors for about 10 months between February and December 1988. Together they own less than 4% of the issued capital. In this action they each claim against their father shares in the first defendant "to the value of \$250,000 or to a value as the court thinks just". The claims are "based on the doctrine of proprietary estoppel". I am not sure if shares in a company can be the subject of proprietary estoppel. This can only come about if it can be shown that the second defendant has knowingly encouraged the plaintiffs to act or has acquiesced in their actions to their detriment and in infringement of the second defendant's rights in the shares. See the leading case of *Dillwyn v Llewelyn* (1) to which I was referred. Modern examples of the

application of the principle are to be found in *Crabb v Arun District Council* (2), *Greasley & Ors v Cooke* (3) and *In re Basham, Deceased* (4) to which I was also referred. All concerned proprietary rights over land. I asked Mr Wilson how the doctrine of proprietary estoppel would apply on the case as pleaded and I understood that he was relying on the general principle. He did not seek to amend the statement of claim nor did Mr Tan raise any objection. In *Amalgamated Investment & Property Co Ltd v Texas Commerce International Bank Ltd* (5) Lord Denning MR said at p 122:

10 "When the parties to a transaction proceed on the basis of an underlying assumption - either of fact or of law - whether due to misrepresentation or mistake makes no difference - on which they have conducted the dealings between them - neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so."

11 This general principle may well apply to the pleaded case and in the event the reference to "proprietary estoppel" in the statement of claim has little or no significance and I ignore it.

12 There are alternative claims for money payable for services rendered and other claims and there is a counterclaim.

13 In the statement of claim it is alleged that the plaintiffs "commenced rendering full-time services to the < first defendant > and/or the < second defendant > in February 1975 and May 1973 respectively and rendered their full-time services for the management and execution of the construction and other businesses carried on by the < first defendant > " and that they "agreed to do so and did so at the request of the < second defendant > " and that the request

was made "on his own behalf and/or on behalf of the < first defendant > ". It is further alleged that Francis rendered his services between February 1975 and August 1982 and between November 1983 and May 1984, and Stephen between 10 May 1973 and 9 January 1983 and between 10 June 1985 and 9 August 1987. It is then alleged that in return for the services rendered the second defendant "represented and led the plaintiffs to believe that upon his retirement from active business of the < first defendant > he will transfer to the plaintiffs a reasonable part of his shareholding in the < first defendant > and also he will let the plaintiffs have control of the management of the < first defendant > ". The defendants admit that the plaintiffs "became employees" of the first defendant from October 1977 and May 1973 respectively at the request of the second defendant and that Francis was so employed between October 1977 and June 1982, and Stephen between May 1973 and May 1974 and between January 1975 and June 1982 but deny all the other allegations. Mr Wilson said the plaintiffs' case is that they were employees and rendered services as such employees. The defendants say the plaintiffs were paid salaries and the second defendant also says that he caused the 30,000 and 40,000 shares to be issued and (as regards one share each) to be transferred to them without any payment. The plaintiffs allege that the second defendant has ceased taking any active part in the business affairs of the first defendant. As noted above the second defendant is still the chairman of the board of directors for life with power to appoint and to remove directors and the only other director is Fernandez who holds one "A" share.

14 Francis as employee of the first defendant and/or of the second defendant

15 Francis said that immediately after he completed full time national service in January 1975 he joined the first defendant in its construction business.

His work was mainly in placing concrete at the work site for the St Andrew's Junior College ("SAJC") contract. He was not paid any salary but received only pocket money of \$90 per month. The second defendant told him "It's your own company. What salary do you want?" After June 1982 he said he worked for the second defendant at his emporium and also at the first defendant's store at Ponggol looking after and maintaining the machinery stored there. He stayed at the Ponggol store until the machinery was sold and the land was acquired. He said the second defendant told him "We must work for < the first defendant > . It's our company and it's yours." From January to June 1984 he was helping at the emporium. He drove a van and made deliveries and also drove his sisters home from the emporium where they worked. The emporium was as he himself said that of Albert's Emporium Pte Ltd ("AEPL") and not that of the first defendant or the second defendant. It is not disputed that he was employed by Regional Development Consortium ("RDC") from October 1982 to November 1983 and by Mass Rapid Transit Corporation ("MRTC") from July 1984 to February 1986. Under cross-examination he agreed that the SAJC project started in 1977 and that he was employed by the first defendant from October 1977 to June 1982. He denied he was asked by the second defendant to work for the first defendant at the SAJC site in October 1977 and said he also worked when he was still in secondary school, during national service from 1975 to 1977 and after 1982. He said from January to October 1977 there was preparation work to be done for the SAJC contract and in 1975 and 1976 he worked on the Jalan Chengkek houses clearing the yard.

16 The Central Provident Fund ("CPF") statement of account at AB-9/15 shows that contributions were received from the first defendant for October 1977 to June 1982. Prior to that the only other contributions were from the armed forces. No contributions were received for any period from July 1982

except for October 1982 to November 1983 from RDC and for July 1984 to February 1986 from MRTC. From October 1977 to June 1978 the contribution was \$18.60 each month. It was \$20 from July 1978 to June 1979, \$25 from July 1979 to June 1981. This is consistent with a monthly wage of \$120. From July 1981 to June 1982 the CPF contribution was \$116 per month consistent with a monthly wage of \$300. At AB-142 are 2 documents from the first defendant advising payment by cheque. Both are addressed to Francis. One says "To salary for the month of October 1977" and the other says the same except that it is for November 1977. Francis admitted signing both as well as other documents similar to them and that he signed one each month when he received payment and sometimes later.

17 I find that Francis was first employed by the first defendant in October 1977 and that he was employed from October 1977 to June 1982. I also find that for October and November 1977 his monthly wage was \$120 and that this continued until June 1981. For July 1981 to June 1982 his monthly wage was \$300. I further find that he was not employed by the second defendant at any time between February 1975 and May 1984.

18 Stephen as employee of the first defendant and/or of the second defendant

19 Stephen said he worked for the second defendant before the first defendant was incorporated. The second defendant was then engaged in the BHC contract. The contract was completed shortly before 6 April 1973. He said that he worked 7 days a week from 8.00 in the morning to 7.00 or 8.00 in the evening. Also he was attending school until November 1972 and so he could have worked such long hours 7 days a week only after he left school and before

the contract was completed. While he was still attending school he went to the work site every day after school unless he had to stay back. He was doing construction work. Born in January 1956 he would have just turned 17 in January 1973. He was not in good health in his younger days. He took his primary 6 examinations in hospital. When he was in secondary one he had an operation to remove his spleen. He was exempted from national service. After the first defendant was incorporated he said he continued to do the same work. He said he now worked longer hours. He started at 7.30 in the morning and worked till 7.00 or 8.00 in the evening. That was when the first defendant was engaged in the construction of 5 terrace houses on the land at Jalan Chengkek. That was between 1973 and 1975 or early 1976. From 1977 to 1979 the first defendant was engaged in the SAJC contract. Stephen said that on the SAJC contract he worked from 7.00 in the morning till sometimes 10.00 or 11.00 in the night every day 7 days a week.

20 The second defendant said he was the main contractor for the BHC contract. He said work started early 1971 and then after seeing 2 photographs one of which (P-13) had "September 1971" printed on the edge he corrected himself and said that he was given possession of the site in October 1971. The photographs show one of his sons driving a peg into the ground. He said the contract was completed and handed over "just inside 24 months". DB-94 is a congratulatory letter from the then British High Commissioner referring to the opening of the new building. The letter is dated 6 April 1973 and the contract must have been completed about March or early April 1973 and as it took 24 months work must have commenced about March 1971. After a lapse of some 20 years it is not surprising that the second defendant at 74 must have been mistaken as to dates. But the issue is not whether Stephen did any work for the second defendant in 1971. The issue is whether he was employed by the first

defendant or the second defendant from 10 May 1973 which is the date of incorporation of the first defendant as alleged in the statement of claim.

21 The second defendant said Stephen was not employed by him on the BHC contract. On that contract he employed a sub- contractor for labour. All the workers on site were supplied by the sub-contractor. As to the photographs he said it was a Sunday and prior to commencement of work. The representative for the British High Commission asked his son in jest to learn how to drive a peg into the ground and his assistant took the photographs. After the first defendant was incorporated Stephen was employed by the first defendant. That was May 1973. In June 1974 Stephen entered Singapore Polytechnic as a day release student and he left in December 1974 without completing the course. He was then employed by the first defendant. The second defendant said both plaintiffs left the first defendant in June 1982. The first defendant was then building a terrace house at 23A Jalan Chengkek. The plaintiffs asked for a monthly salary of \$300 and the second defendant agreed and from July 1981 the first defendant paid them a monthly salary of \$300. He said that later they wanted to do the roofing as sub-contractors. He refused as he had given the contract to "an expert in roofing". The next day they left the job site and he did not see them again. They also left the family house where they were staying and later he found out that they had gone to stay at the Ponggol land. Under cross-examination he said Stephen (and Francis also) left the first defendant in 1982 and started their own companies, Albert Building Development Co ("ABD Co") and Alert Auto Repair Centre ("AARC"). ABD Co was formed and commenced business on 24 February 1983. The partners were the plaintiffs. AARC was formed and commenced business on 1 March 1987. The partners were also the plaintiffs.

22 AB-31 is Stephen's CPF statement of account. It shows that contributions were received from the first defendant for May 1973 to May 1974 and again for January 1975 to June 1982. The contributions for the months to June 1981 varied but were consistent with a monthly wage of \$120. The contributions for July 1981 to June 1982 were as in the case of Francis also consistent with a monthly wage of \$300. AB-137/141 and AB-143 are 11 documents advising payment by cheque. They are all addressed to Stephen and are in respect of monthly salary of \$120 during 1977. Stephen admitted that he signed them all but he denied that they were for salary. He admitted he received a pocket allowance and said that he signed these documents because the second defendant wanted to contribute to CPF and needed some vouchers to show in case there was a check.

23 I find that Stephen was employed by the first defendant from May 1973 to May 1974 and again from January 1975 to June 1982. I also find that he was paid a monthly salary of \$120 until June 1981 and from July 1981 to June 1982 his monthly salary was \$300. I further find that Stephen was not employed by the second defendant at any time between May 1973 and August 1987.

24 The Representation

25 In para 9 of the statement of claim the plaintiffs say that in return for the services rendered, i.e. as employees of the first and second defendants, "the < second defendant > represented and led the plaintiffs to believe that upon his retirement from active business of the < first defendant > he will transfer to the plaintiffs a reasonable part of his shareholding in the < first defendant > and also he will let the plaintiffs have control of the management of the < first defendant > ". There are substantially the same allegations in paras 15 and 19.

In para 19 there is the further allegation that the plaintiffs did not seek alternative gainful employment in the belief that the second defendant would make good his representations. In para 15 there is the allegation that the second defendant encouraged the plaintiffs in addition to leading them to their belief. No particulars were asked for and none were given as to how the plaintiffs were led to their belief.

26 I shall consider first the representation. In the further and better particulars the plaintiffs say that the representation was made orally by the second defendant to both Francis and Stephen a few months after they commenced their respective employment with the second defendant and confirmed several times during their employment. In view of my finding that the plaintiffs were not employed by the second defendant at any time during the period the plaintiffs allege they "rendered full-time services" as employees, it follows that the plaintiffs have failed to prove their case under paras 9, 15 and 19 of the statement of claim. I will nevertheless go on to consider whether any such representation as pleaded was made by the second defendant at all.

27 The second defendant's eldest daughter Remoulda said that on numerous occasions over a period of time her father wrote to her and also said that he needed the plaintiffs to join him in the first defendant. She also said the second defendant "expressed he would give them and delegate more responsible positions in company at management level, would increase their shares and eventually when he retired < they > would run company, that assets and profits would also go to them". No letters from the second defendant were produced. She left Singapore after secondary 2 and went to a boarding school in India. She did her "A" levels in India and went to medical school also in India where she graduated in 1971. She worked in Singapore until 1973 when she went to

England. She has lived there since. She said the second defendant told her about his promises whenever she was in Singapore on holiday. That would have been after 1973. She also said this was first said when the plaintiffs were taken into the company during school days. Both the plaintiffs left school in November 1972. She also said when the plaintiffs joined the company, it was the first defendant. The first defendant was incorporated in 1973. She said her father said the first defendant belonged to the plaintiffs, meaning the "company as whole, reputation and goodwill, assets and profits, everything pertaining to company". P-8 is her letter to Stephen dated 9 October 1988. In it she wrote "You and Francis need to know your positions in the company and your share of the profits". This would be inconsistent with the whole company having been promised to them. Although she was a director of the first defendant until February 1988 she had no personal knowledge of the affairs of the first defendant.

28 The second defendant denied ever saying to either of the plaintiffs the words relied on as constituting the representation or words to that effect. Passages of the evidence of the plaintiffs touching on the alleged representation were read to him and he denied saying those words. Surprisingly there was no significant cross-examination on this.

29 There is no evidence that the second defendant said he would transfer any shares to either Francis or Stephen whether upon his retirement from active business or at any time at all. There is no evidence that the second defendant said he would let the plaintiffs have control of the management of the company. They were directors between February and December 1988 but there is no evidence that either of them showed any interest in his appointment or in management at board level. What Mr Wilson urges upon me is that by saying

"It's our company. It's your company. When I die I can't carry all these and go. So you all should work extremely hard whether it's raining or shining. And all that money in company eventually will be yours" or words to that effect he meant and was understood to mean what is pleaded in paras 9, 15 and 19 as the representation. This is Stephen's evidence in examination-in-chief:

30 "Q: What you understood? 'Eventually the company will be yours'? A: I believed by working with him, my dad, even though he gave pocket allowance, I was building my future in his company.

31 Q: 'Eventually'? A: As time goes by. He would slowly teach us and change us from being labourer to office staff or something like that. And give us some more commitment to company.

32 Q: (Question repeated). What time span? A: At least when he retires.

33 Q: 'Company will be yours.' What you understood? A: When he retires or before he retires we will have position of stake in company. I mean I.

34 Q: What kind of stake? A: Believed assets or company will be turned over to us eventually."

35 Under cross-examination he said the second defendant spoke in Malayalam and that was his translation. As to his understanding that "eventually" meant "at least when < the second defendant > retires" his evidence is:

36 "Q: You said, 'When he retires or before he retires we will have position of stake in company. I mean I.' Your father still director of D1? A: Don't know.

37 Q: If not retired as director of D1 you would not expect him to let you have 'position of stake' in company? A: Maybe."

38 As to his understanding of "company will be yours" this is his evidence:

39 "Q: Ever asked your father what stake he would give you in company?
A: No. He always said, 'It's our company.'

40 Q: Why not ask him? A: Because he said it's our company and I presume whatever in company belonged to me and my brother Francis.

41 Q: Everything in company would belong to you and Francis? A: Yes."

42 The plaintiffs have an elder brother Baldwin and 6 sisters. Baldwin and the 2 eldest sisters were subscribers to the Memorandum of Association of the first defendant and also its first directors together with the second defendant. They remained directors until 1988. Stephen admitted that apart from the eldest daughter who was a medical doctor all the brothers and sisters worked in the first defendant at some time or another. He said "I believed by working with my father he would slowly transfer company and its assets to me and Francis" but he was not sure whether the second defendant would give the shares to the plaintiffs equally or not. He did not know if it was fair to other family members who also worked for the first defendant if they received nothing. The whole company (first defendant) was to be turned over to the plaintiffs.

43 I find that the representation alleged in paras 9, 15 and 19 of the statement of claim has not been proved. The second defendant asked the plaintiffs to work for the first defendant. That is admitted. They received wages. The wages may have been inadequate but the plaintiffs have not satisfied me on

the evidence that something more was promised as pleaded in the statement of claim or that anything else was agreed upon to be paid. In February 1986 Celin transferred her one "B" share to Francis and Remoulda transferred her one "B" share to Stephen, and Francis was allotted 29,999 "A" shares and Stephen 39,999 "A" shares. 29,999 "A" shares were also allotted to Baldwin. All these shares were allotted as fully paid bonus shares out of capital reserves. The plaintiffs and Baldwin did not pay anything for the shares allotted to them. The second defendant said he gave these shares to his 3 sons to avoid criticism of his friends that the first defendant looked like a one man business. The shares were given 3 years before this action was commenced and before any demands were made to him. As to the alleged encouragement I find the evidence wholly unsatisfactory. The second defendant did nothing to encourage the plaintiffs to believe that he would transfer any shares to them if they rendered any services to either of the defendants.

44 On the whole of the evidence before me and on the facts I have found I dismiss the plaintiffs' claim. The alternative claim is for a quantum meruit for the services rendered as employees. I dismiss it also.

45 Counterclaim

46 The first defendant counterclaims damages in respect of the alleged trespass on the land at Ponggol. This was withdrawn at the close of the defendants' case. There was also a counterclaim against Francis for \$6,000 and against Stephen for \$33,500 in both cases for drawings made by them from the first defendant. Particulars of the drawings were:

47 Francis

20 May 1983	Indian Bank cheque	\$ 3,000
23 May 1983	Indian Bank cheque	\$ 4,000
25 July 1983	UOB cheque	\$ 5,000
7 March 1988	Indian Bank cheque	\$ 1,500
		\$13,500

48 Stephen

10 December 1986	Indian Bank cheque	\$ 1,000
6 April 1988	Indian Bank cheque	\$40,000
		\$41,000

49 In each credit was given for bonus of \$4,500 for the year ended 31 August 1979 and \$3,000 for the year ended 31 August 1980 totalling \$7,500.

50 The plaintiffs deny each drawing and Francis also pleads the defence of the Limitation Act. Under s 31 the claim by way of counterclaim is deemed to be a separate action and to have been commenced on the same date as the action in which the counterclaim is pleaded. The action was commenced on 28 March 1989 and accordingly the claim in respect of each of the alleged drawings has been brought within 6 years and the defence of the Limitation Act fails.

51 Drawings by Francis

52 \$3,000 and \$4,000

53 The cheque for \$3,000 is at AB-208(B) (front) and AB-209(B) (back). It is not disputed that this was the first defendant's cheque and that Francis received it. He said that he cashed it and gave the money as deposit for a van which was bought from Crystal Art Co by AEPL. He said AEPL bought the van and he drove it. The cheque for \$4,000 is at AB-210 (front and back). It was the first defendant's cheque drawn in favour of Crystal Art Co. Francis said he

received it and gave it to the payee in payment of the balance of the price of the van. The second defendant said that the \$3,000 cheque was given at Francis's request to buy a van. The cheque for \$4,000 was given at Francis's request also to buy a van. He did not deny that AEPL bought a van or that Francis drove a van for AEPL to make deliveries or to take his daughters home in the evening from AEPL's shop where they were working. There is no evidence of any other van.

54 I find that both cheques were not given to Francis as drawings by him.

55 \$5,000

56 The cheque is at AB-211 and is dated 25 July 1983. Francis admitted receiving this but said it was a wedding gift. He was married on 22 February 1982 at the Registry of Marriages but he said it was one or two days after the church wedding that he received the cheque. He said it was because the second defendant had not done anything for him when he was married. The second defendant said the cheque was given to Francis who said it was to improve his company. When asked what improvements he said Francis told him he was short of funds and needed \$5,000 to pay wages to his workers. Under cross-examination he said that the church wedding was in 1983 and when shown the marriage certificate he remembered it was on 23 July 1983 but he denied that this was a wedding gift. He went on to say "Marriage gift by parents to son is not customary according to Malayalee Christian. I mean according to Malayalee Roman Catholics."

57 I find that the \$5,000 was a wedding gift from the second defendant and ought not be charged to Francis as drawings.

58 \$1,500

59 Francis said he was given the cheque dated 7 March 1988 (AB-208C) by his father to draw cash. He did it and he gave the money to his father immediately. The second defendant said Francis asked him to issue a cheque for \$1,500. He said Francis told him it was to pay wages for his workers. He did not say why he should be asked for a cheque in particular and not just a sum of money and why it should be from the first defendant and not the second defendant himself.

60 I am not satisfied that this was a loan from the first defendant to Francis and I find that it should not be charged to him as drawings.

61 In the premises I dismiss the first defendant's counterclaim against Francis.

62 Drawings by Stephen

63 \$1,000

64 It was suggested to Stephen in cross-examination that he received \$1,000 by cheque from the first defendant in December 1986 and he denied it. He admitted having cashed the cheque but said the second defendant sometimes asked him or one of the other 2 brothers to go to the bank to draw cash and to give the cash to him. It was put to him by counsel for the defendants that the \$1,000 was given to him by the first defendant to help him start his business but he denied it. He and Francis started the business of motor repairing as AARC on 1 March 1987. The second defendant in his examination-in-chief said the cheque was given to Stephen and that Stephen told him it was to buy tools for

his business of motor repairing. He did not say who asked for the money or by whom it was given other than that it was by cheque issued by the first defendant.

65 I am not satisfied that the first defendant lent Stephen \$1,000 as alleged and I find that this should not be charged to him as drawings.

66 \$40,000

67 The allegation is that the first defendant lent Stephen \$40,000. Stephen denied the alleged loan. The plaintiffs commenced the business of motor repairing as AARC on 1 March 1987 at Ponggol. On 1 September 1987 Stephen formed SA Motor Repair ("SAMR") to do the same business also at Ponggol. He was the sole proprietor and later on 6 April 1988 the second defendant became a partner with him. These particulars appear on AB-20 which is a copy of a Registry of Companies and Businesses statement of changes signed by the second defendant. Stephen said the second defendant paid \$40,000 as his capital contribution. The cheque is dated 6 April 1988 and drawn in favour of SAMR. The second defendant said Stephen asked for \$40,000 for SAMR and he gave it but he denied it was his capital contribution. He knew it was paid into SAMR's account because he went to the bank with Stephen to pay it in. He admitted he became a partner on 6 April 1988 and that at the time the cheque was given he was already a partner.

68 I find that the \$40,000 was received by SAMR and was not a loan by the first defendant to Stephen and ought not to have been charged to Stephen's account as drawings.

69 Accordingly I dismiss the first defendant's counterclaim against Stephen.

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70 Costs

71 The plaintiffs will pay the defendants costs of the claim and the first defendant will pay the plaintiffs the costs of the counterclaim.

Lim Teong Qwee JC

Herbert Wilson for the plaintiffs
Tan Teng Nuan for the defendants
