IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 268

Suit 304/1991

Between

Fujitsu Microelectronics Asia Pte Ltd

… Plaintiff

And

K T Technology (S) Pte Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Fujitsu Microelectronics Asia Pte Ltd v K T Technology (S) Pte Ltd

[1994] SGHC 268

Suit 304/1991
Amarjeet Singh JC
21 October 1994

1 **Judgment:**

2 Coram: Amarjeet JC

3 **GROUNDS OF DECISION**

4 This is an appeal by the Defendants, the Appellants herein, from my decision affirming the Assistant Registrar's decision that the judgment in default entered against them by the Plaintiffs i.e. the Respondents, do stand.

5 History of Appeal

6 The Plaintiffs commenced action in Suit No. 304 of 1991 against the Defendants on 11 February 1991 as payees of three cheques dated:

7 i) 4 December 1990 for US$331,432.90cts;

8 ii) 10 December 1990 for US$280,485.65cts; and

9 iii) 19 December 1990 for US$293,661.45cts.

10 drawn by the Defendants on the Standard Chartered Bank, Battery Road, Singapore. The three cheques totalled US$905,580.00cts.

11 On presentation of the above cheques for payment, they were dishonoured and the Plaintiffs gave the Defendants notice of such dishonour on 8 February 1991.

12 Service of the Writ of Summons was effected on the Defendants by the Plaintiffs' Process Server leaving it at Blk 1160 Depot Road, #05-08 to 17 Telok Blangah Industrial Estate, Singapore which is the registered office of the Defendants according to information obtained from a search at the Registry of Companies. The Summons was pushed under the door of unit #05-08 according to the Process Server as the door was locked.

13 The Defendants failed to enter an Appearance within time and on 27 February 1991, the Plaintiffs obtained judgment in the sum of US$905,580/- together with US$15,735.23cts. interest plus costs. The Defendants thereafter took out a Summons to set aside the default judgment obtained by the Plaintiffs alleging that the Defendants occupied 10 units of office space from #05-08 to #05-17 of Block 1160 and whilst the Defendants' main entrance is at #05-15 where the reception counter is and which entrance also faces the stairs of the building, the Plaintiffs' Process Server ignored the reception counter and had proceeded to effect service by leaving the Writ as alleged by the Plaintiffs under the door at #05-08 which was at the end of the corner of the 5th floor where no one went at all and that the Writ had been brought to them the day after the judgment was entered by a tenant occupying the same floor as the Defendants

who knew the Defendants. The Defendants alleged such service to be irregular and hence bad.

14 On 18 March 1991, the Assistant Registrar set aside the default judgment and gave liberty to the Defendants to enter Appearance. The Plaintiffs appealed against the Assistant Registrar's decision to set aside the default judgment.

15 On 5 July 1991, on appeal, Mr Justice Punch Coomaraswamy allowed the Plaintiffs' appeal and declared that the Writ of Summons was validly served by the Plaintiffs and that the default judgment was regularly obtained. The learned Judge then ordered that the Defendants' Summons-in-Chambers Entered No. 1304 of 1991 be restored for further hearing before the Registrar on its merits. On the same day in a separate order, Justice Punch granted the Defendants a stay of execution of the default judgment pending their furnishing a Banker's Guarantee in the sum of US$500,000/- on terms to be settled by the Registrar in default of agreement between the parties, alternatively, the amount was to be paid to the Defendants' solicitors and the Defendants were required to file a letter in Court of the payment to them. The Defendants accordingly paid the equivalent of a sum of $880,000/- to their solicitors who filed in Court a Notice of Payment to them.

16 On 2 August 1991, the Assistant Registrar, on re-hearing the Summons-in-Chambers Entered No.1304 of 1991, on its merits:

17 i) dismissed the Defendants' application;

18 ii) ordered that the final judgment in default of appearance do stand and

19 iii) finally ordered that the sum of $880,000/- held by the Defendants' solicitors be paid out to the Plaintiffs' solicitors in satisfaction of the judgment.

20 The Defendants appealed against the above orders.

21 On hearing the appeal, as I stated earlier, I affirmed the Assistant Registrar's decision and dismissed the Defendants' appeal with costs. I now give my reasons for the same.

22 During the hearing of the appeal before me, Counsel for the Defendants dropped the issue of the service being bad, and rightly so, and submitted only on the issue of the merits as to whether the Defendants should be allowed to defend the action.

23 As to the merits, the undisputed facts as I can ascertain them are these.

24 Undisputed Facts

25 The Plaintiffs are manufacturers and reproducers of industrial and commercial electronic products and engaged in mechanical engineering works. All its shares are owned by its parent Fujitsu Ltd of Japan.

26 The Defendants are manufacturers of computer related hardware and software.

27 The Defendants ordered a large number of computer components from the Plaintiffs under their company's Purchase Orders totalling US$910,380/- from late August 1990 to late September 1990. The Plaintiffs' claim was based essentially on 5 Purchase Orders:

Version No 1: 29 Oct 2026 (23:45 hrs)

Purchase Orders		Amount		Pieces
(a) KTT 09013/90		US$550,250.00		136000
(b) KTT 09038/90		US$241,500.00		60000
(c) KTT 09348/90		US$113,400.00		28000
(d) KTT 08395/90		US$ 4,800.00		1000
(e) KTT 09330/90		US$ 430.00		100000
		US$910,380.00		225100

28 The aforesaid orders (referred to hereinafter as orders "a", "b", "c", "d" or "e") were placed with a Sales Executive Phillip Goh Peng Hock ("Phillip Goh") and Eddy Ong Chwee Kim ("Eddy Ong") the Plaintiffs' Regional Sales Manager. Correspondingly, deliveries were made between late August to late October 1990.

29 Between October and November, the Plaintiffs were in touch with the Defendants over the above outstanding amount. The Defendants gave to the Plaintiffs in November payment schedules concerning the full outstanding amount and this was never denied in the Defendants' Affidavits.

30 When the Plaintiffs were not paid, they filed Suit No. 2193 of 1990 against the Defendants on 30 November 1990 claiming the aforesaid amount. The Defendants were served a Writ on 3 December 1990. On 4 December 1990 pursuant to discussion with officers of the Defendants including the Defendants' Chairman, the Defendants issued 3 cheques as stated earlier for US$905,580/- to the Plaintiffs leaving a balance of $4,800/- for which they issued a separate cheque which was later cashed. On 10 January 1991 the solicitors for the Plaintiffs discontinued the Suit. On 7 February 1990, the Plaintiffs were

Version No 1: 29 Oct 2026 (23:45 hrs)

informed of the dishonour of all the three cheques. The Plaintiffs then commenced the present action in Suit No. 304 of 1991.

31 The Defendants' Case

32 The Defendants' contention before me as reflected by their Affidavit evidence was to the following effect.

33 The Defendants were approached in the middle of August 1990 by Phillip Goh through their Purchasing Manager Toh Teck Swee ("Toh") to participate with other companies by combining their purchases with them from the Plaintiffs in order to obtain volume discounts. Accordingly, the Defendants placed a Purchase Order No. KTT 081213190 for 120,000 computer components of which they only required half. The Plaintiffs by their Invoice granted a 30 day credit to the Defendants. The Defendants collected their share whilst Phillip Goh collected his share of the computer components. Before the expiry of the credit term, Phillip Goh gave the Defendants a Banker's Draft in respect of the share he collected and thereafter the Defendants paid in full to the Plaintiffs for the said purchases and the transaction was smoothly completed.

34 On or about 4 September 1990, Phillip Goh met Toh and told him that the buyer involved in the previous transaction was a company called Trivest Investment Company ("Trivest") which was owned by Eddy Ong, the Plaintiffs' Regional Sales Manager. (According to later discovery it was a company owned by Phillip Goh's sister Kelly Goh Cheow Lian who had liaisons with Eddy Ong). At this meeting, Eddy Ong was also present and informed Toh that Trivest would take over any additional orders that the Defendants made with the Plaintiffs and to avoid confusion in the event of a mix-up, to make more than one order in the same Purchase Orders and as an inducement were told they

Version No 1: 29 Oct 2026 (23:45 hrs)

would be given 90 days credit for the purchase. As such, the five Purchase Orders were placed as stated earlier amounting to US$910,380/-.

35 The Defendants admitted that the goods under Purchase Order (b) and (e) belonged to the Defendants. The Defendants however denied that the goods in respect of order (a) were for them. They were in fact for Trivest and were duly collected by Eddy Ong and/or Phillip Goh. In respect of order (c), the Defendants' admission was that only 3,000 pieces were for the Defendants whilst the rest of the 25,000 pieces were for Trivest. Purchase Order (a) being the bulk of the goods were for and belonged to Trivest. Purchase Order (d) (Purchase Order no. KTT 08395/90 for US$4,800/-) was not the subject of dispute. In the circumstances, the Defendants stated that because item (c) was not disputed, the balance outstanding was US$905,580/- on the remaining orders by themselves and Trivest.

36 The Defendants further stated that of this sum, their share of the goods purchased was US$254,080/- and admitted that they only owed this sum and no more to the Plaintiffs.

37 The Defendants' contention thereby in respect of the remaining goods was that the said goods were purportedly sold to the Defendants by the Plaintiffs but were collected by Eddy Ong and or Philip Goh and that the Defendants were duped and defrauded into signing the delivery orders and had not suspected that anything was amiss until much later.

38 Accordingly, it was the submission of the Defendants that the Defendants had a good defence as:

Version No 1: 29 Oct 2026 (23:45 hrs)

39 i) a fraud had been practiced on them by the Plaintiffs involving their aforesaid Eddy Ong/Phillip Goh and ii) there was in any case a failure of consideration in respect of the dishonoured cheques.

40 In respect of the question of fraud, Counsel submitted that in law a master is held liable for the fraud of its servant and the Plaintiffs were liable as such as Eddy Ong and Phillip Goh were acting in the course of their employment when the Defendants were defrauded as both Eddy Ong and Phillip Goh had apparent and ostensible authority to transact business on behalf of the Plaintiffs i.e. that a principal is liable for the fraud of his agent acting within the scope of his authority. The Defendants further alleged that it was a part of the scheme by the Plaintiffs to promote their sales by giving discounts for bulk purchases. According to the Defendants, as Eddy Ong was the Plaintiffs' Regional Sales Manager, he must have had the authority to approve the purchase and knowledge must be imputed to the Plaintiffs.

41 In their Affidavits and that of their solicitors, the Defendants further alleged that the Plaintiffs breached certain rules and regulations set out by the Ministry of Industry and Trade (MITI) and the Plaintiffs were bound by these rules and regulations though this was later said to be rules and regulations made by the Co-ordinating Committee for Multi-lateral Export Controls (COCOM) of which Japan was a signatory. The Defendants stated that the Plaintiffs organised the purchases through Trivest for the sale of its own goods through bulk buying, discounts and credit facilities to increase their sales and the Plaintiffs did all these knowingly. The Defendants explained the issuing of the three cheques in question to the Plaintiffs. They stated that when the Plaintiffs pressed for payment, the Defendants had in turn demanded that Eddy Ong and/or Phillip Goh and/or Trivest make payment for their share of goods that they collected from the Plaintiffs. At the end of November the Defendants

Version No 1: 29 Oct 2026 (23:45 hrs)

received from Phillip Goh three undated cheques being in full payment of the computer components that they collected from the Plaintiffs. Phillip would inform the Defendants which dates should be inserted by the Defendants on the cheques later. The Defendants were confident of payment in respect of the cheques Phillip Goh gave them. As a result they called for a meeting on 4 December 1990 at the Plaintiffs' office and held a discussion with the Plaintiffs settling the matter of the outstanding sums to them by issuing them their own cheques for the full sum as set out earlier as due and owing to the Plaintiffs. The Defendants alleged that the Plaintiffs were fully aware of the fraudulent scheme hatched by Eddy and/or Phillip to defraud the Defendants "because at the meeting, they asked us whether Eddy had taken from the Defendants any of the computer components purchased from the Plaintiffs and also made numerous inquiries on our dealing with Eddy". By that time they had understood that Eddy Ong had been sacked by the Plaintiffs because of misconduct. After the meeting with the Plaintiffs the Defendants informed Eddy Ong that the Defendants had given their cheques to the Plaintiffs and Eddy Ong instructed the Defendants to insert three different dates namely 13, 24 and 26 December in the undated cheques given earlier to the Defendants by Phillip Goh. These cheques however were subsequently dishonoured and Eddy Ong and Phillip Goh became uncontactable. The Defendants accordingly stopped payments on their cheques to the Plaintiffs when they realised they were the victims of a fraud and as there was no consideration for the purchase of the balance of the goods which were not received by them and which was therefore just a "paper transaction".

42 The Defendants' submission was that the Defendants were not the purchasers for the full invoices and in all the circumstances, the Defendants should be allowed to prove the existence of the scheme of the Plaintiffs at the trial of this action.

Version No 1: 29 Oct 2026 (23:45 hrs)

43 The Plaintiffs' Case

44 The Plaintiffs on the other hand, submitted that the goods the subject matter of their claim were:

45 (i) ordered by, sold and delivery of the same was taken by the Defendants without any knowledge of the fraudulent activity of their servants in the underlying transaction and that non-payment of the goods ordered and delivered resulted in Suit 2193 of 1990 being commenced against the Defendants by the Plaintiffs. (ii) the Defendants were undisclosed agents for Trivest and they had no defence on the merits under the law of undisclosed agency. (iii)the issue of illegality grounded in the allegation that the Plaintiffs violated some rules and regulations was a spurious and unsubstantiated and (iv) there was no failure of consideration. Forbearance to sue on their part was a valid consideration in itself in respect of the three cheques issued to them. When given to them the cheques were received free from any cause stipulated in s 29(2) of the Bills of Exchange Act (Cap.23) which would render the cheques defective through fraud and that therefore the Defendants failed on the merits on this single issue alone.

46 Law

47 In respect of the setting aside of a regularly obtained default judgment the settled law is that there must be a defence on the merits shown and the merits are to be considered in accordance with propositions laid down in Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc; The Saudi Eagle < 1986 > 2 Lloyd's Rep 221, C.A. at pg. 223. The relevant proposition derived from the case is summed up in the White Book, Vol 1 (1995 Edn.) 13/9/14 pg 142 as follows:

Version No 1: 29 Oct 2026 (23:45 hrs)

48 "It is not sufficient to show a merely "arguable" defence that would justify leave to defend under Order 14; it must both have "a real prospect of success" and "carry some degree of conviction". Thus the court must form a provisional view of the probable outcome of the action".

49 Evaluation and Conclusion

50 I shall first, briefly, deal with the question of the underlying fraud in the transaction as alleged by the Defendants and the question of undisclosed agency. It is evident from the Affidavits of the Defendants that when they signed the relevant Purchase Orders, they stood to gain from combining their orders with Trivest as such orders would entitle them to a bulk discount. It is further not disputed by the Defendants that all the deliveries were in fact effected by Fujitsu. The Consignment Despatch Notes of the Plaintiffs (such as were exhibited) show that the goods were either delivered by Phillip Goh or there was "self collection" against the proforma entry "Carrier Agency: - ____". "Self collection" necessarily must mean that delivery was to be taken from the Plaintiffs' factory by the Defendants themselves or through their agent as was submitted by the Plaintiffs' Counsel. The Defendants' dispute is not that there was non-delivery of some of the goods to them. The real dispute was that having taken delivery of the goods some of which were taken by Trivest as arranged earlier between them and Trivest the Defendants had not been paid (notwithstanding that the Defendants had also invoiced Trivest for the portion of goods that went to them) and that Trivest acted fraudulently (after the first transaction) and that the Plaintiffs had in all probability knowledge of Eddy Ong and Phillip Goh's fraudulent conduct and as their employees the Plaintiffs must assume responsibility for the goods taken by them.

Version No 1: 29 Oct 2026 (23:45 hrs)

51 I considered the Affidavit evidence of the Defendants carefully and I was satisfied that there was a complete absence of any real material that indicated that the Plaintiffs had any knowledge of the fraudulent acitivity indulged by Eddy Ong and Phillip Goh. According to the Plaintiffs the granting of a 30 day credit period and subsequently for a few Purchase Orders of a 90 day credit paid even with the approval of their Accounts Department was perfectly in order as in the sale of electronic parts, generally purchases were often made on credit for purchase orders placed and the payments to vendors quite often delayed. In any case, the period of credit for the Purchase Order (a) for US$550,000/- was only for a credit period of 30 days as is evidenced by the Plaintiffs' invoices (Bundle of Affidavits Exh. C pgs. 61-67; 71-72; 75, 77, 78-79 and 81). Eddy Ong and Phillip Goh were also not the senior most persons in Fujitsu. Apart from the Managing Director and other Directors there was the Finance Manager above them. The Defendants' submission that the Defendants must have knowledge of their said employees' fraudulent conduct as at least Eddy Ong was a Regional Sales Manager did not carry any degree of conviction with me. In fact as the Defendants stated in their Affidavit through their Finance Manager (Bundle of Affidavits Exh. C pg 131 at 136):

52 " 8. Both Phillip Goh and Eddy Ong had no buinsess arranging the scheme alleged by K.T. Fujitsu neither knew nor approved of it. In fact such involvment would have been against Fujitsu's policy. 9. Phillip Goh was dismissed by Fujitsu shortly after receipt of the letter of 18 February 1991 from K.T.'s solicitrs. Eddy Ong had been dismissed on 23 October 1990. The dismissal was unconnected with the sales to K.T. If Eddy Ong was still in Fujitsu's employ at the receipt of K.T.'s solicitors' letter of 18 February, Fujitsu would have dismissed him in the same manner as it did Phillip Goh. "

Version No 1: 29 Oct 2026 (23:45 hrs)

53 The Plaintiffs had also filed a criminal complaint against both Eddy Ong and Phillip Goh with the police on learning of this matter by letter dated 18 February 1991 from the Defendants' solicitors (the Defendants had also earlier lodged their own police report against both). Amongst other things, the Plaintiffs had complained in their report that Eddy Ong and Phillip Goh had wilfully violated the Plaintiffs' conflict of interest policy against employees or their relatives having business dealings with third parties including the Defendants without the prior knowledge and approval of the Plaintiffs and that Trivest was a shell company with whom the Plaintiffs themselves would not have done business without advance payment or at least upon delivery. The Plaintiffs had also lodged an earlier police report against Eddy Ong on a separate matter which had come to their attention.

54 The Defendants had as has been stated earlier combined their purchases with Trivest to obtain a volume discount. It was plain to see that the Defendants had thus concealed from the Plaintiffs', Trivest's portion of the purchases. From the facts admitted by the Defendants in respect of the portion of the goods bought for Trivest the inescapable conclusion is that the Defendants were acting as an agent for an undisclosed principal. The liability of an agent acting for an undisclosed principal is succintly set out in Bowstead on Agency (15th Edn.) pg 432 thus:

55 "Where the principal is undisclosed at the time of contracting, the contract is made with the agent, and he is personally liable and entitled on it. The principal also may intervene to sue, and may be sued, but the latter only subject to the general rule that nothing must prejudice the right of the third party to sue the agent if he so wishes."

Version No 1: 29 Oct 2026 (23:45 hrs)

56 This was therefore a case where both agent and principal was liable and entitled on it. Thus, in Pernas Trading Sdn Bhd v Persatuan Pelandang Bakti Melaka < 1979 > 2MLJ 124 oral evidence that goods were bought by the Respondents for a third party when the contract showed that the Respondents were purchasers was disallowed and the Respondents were held liable in summary judgment proceedings for the price of goods sold and delivered. The Court held that even if the Respondents were agents for a third party, they were contracting in such form as to be personally liable: see further Team 108 Technical Services v Hujong Enterprises (Pte) Ltd < 1987 > 1MLJ 272. In the circumstances I was in agreement with Plaintiffs' Counsel that the Defendants had no defence on the merits under the law of undisclosed agency.

57 Having regard to what I have stated above, I was also satisfied that the Plaintiffs were not liable for the fraud of Eddy Ong and Phillip Goh as the Plaintiffs' agents as in the context of the facts of the case there was clear evidence that they were not acting within the scope of their duties and nor were the Defendants acting in good faith when the duo surreptiously enjoined the Defendants and the Defendants agreed to combine their orders for the electronic components with a third party i.e. Trivest to obtain bulk discounts. It was unfair for the Defendants to say that what Eddy Ong and Phillip Goh did was part of a scheme by the Plaintiffs to promote their sales. The Plaintiffs no doubt had a scheme for bulk purchase discounting for genuine bulk buyers - not buyers who wrongfully combined their orders to take advantage of the unsuspecting Plaintiffs. Eddy Ong and Phillip Goh had no authority to do what they did i.e. in combining the orders. The Plaintiffs had also by the time the Purchase Orders were made, been made aware of the existence of Trivest by both Eddy Ong and Phillip Goh and that they had an interest or close connection with Trivest as disclosed in the Affidavit evidence. The irresistible inference to be drawn at any

Version No 1: 29 Oct 2026 (23:45 hrs)

trial if one was held would be that the Defendants kept an eye shut as to the dishonest acts of Eddy Ong and Phillip Goh as employees in arranging the bulk purchases and discounts in conjunction with the Defendants in which Eddy Ong/Phillip Goh would gain through Trivest (as the Defendants would as well). A third party like the Defendants here when it deals with an agent acting on behalf of his principal, must itself act in good faith. The facts and principles ennunciated in Ayres v Moore < 1940 > KB 278 and Lloyds v Grace Smith & Co. < 1912 > H L 716 were therefore inapplicable on the facts of the present case and in my opinion the issues raised above had no real prospect of success.

58 The issue as to illegality as advanced by the Defendants lacked clarity. The Defendants referred to the existence of the Co-ordinating Committee for Multi-Lateral Export Controls (COCOM) of which Japan was a signatory. COCOM, the Defendants said placed restrictions on exports and re-exports of certain computer and electrical components and electrical data. The Defendants' solicitors stated in their Affidavit on information of a United States Embassy officer that "RAM Chip were likely" to come within Category 3 of the Commercial Control List (CCL) of COCOM as a controlled item and could not be sold to the Defendants without their compliance with certain undertakings none of which had been sought and given. The Plaintiffs had denied that its Singapore trading activities were affected in the manner alleged by the Defendants.

59 I was satisfied that there was no convincing evidence set out in the Defendants' solicitors' Affidavit of any illegality tainting the purchases the Defendants made from the Plaintiffs. By stating the RAM chips were "likely" to fall within the controlled category the Defendants were not even sure themselves. It was also not clearly stated how the restrictions exactly effected the Defendants' purchases. COCOM was initated by the United States of

Version No 1: 29 Oct 2026 (23:45 hrs)

America to prevent the sale of strategic equipment and technology to Communist countries and there was no evidence in this case to suggest the involvement of any Communist country. Apart from this, the Plaintiffs submitted and I accept their submission which was not contradicted that the COCOM rule in any case applied to all software and technology effective from 1 September 1991 (Joseph Yoong's Second Affidavit Exh. B pg.7) and that as the restriction came into existence after the computer components were delivered by the Plaintiffs to the Defendants i.e. between August to October 1990 the rules were inapplicable in the case. It was sufficiently certain to me that the submission on illegality would fail on trial if one was held.

60 It was the Plaintiffs' case that the single point alone entitling the Plaintiffs to succeed was that the Plaintiffs' current action arose from the dishonour of the three cheques. The claim was not for goods sold and delivered. The issue of the three cheques to them by the Defendants constituted an obligation to make payment to them distinct from any contract and as Good, Commercial Law pg 432 put it:

61 " < A bill of exchange > fulfills much the same functions as a bond and a letter of credit, both of which embody a duty to pay distinct from, and independent of performance of the contract pursuant to which they are issued".

62 This position of the law was however in my opinion subject to the provision of s 29(2) of the Bills of Exchange Act (Cap.23) which states:

63 " S 29(2) - In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress or for an illegal consideration, or when he

negotiates it in breach of faith, or under such circumstances amounts to a fraud. "

64 The Plaintiffs' Counsel submitted that in order to vitiate the Plaintiffs' title to the three cheques the operative time of the fraud must be either the time when the Defendants obtained the cheques or when the Defendants negotiated the cheques. Neither the first issue of a cheque nor its presentation for payment constituted negotiation and the Defendants therefore had to show by adquate evidence at this stage that the Plaintiffs obtained the cheques at the meeting on 4 December 1990 by fraud. Counsel for the Plaintiffs submitted that fraud as propounded by Lord Herschell in the locus classicus of Derry v Peek < 1889 > 14 App Case 337 at 374 had the following elements:

65 (i) a false representation by a representative; (ii) a representation made knowingly or without belief in its truth, or recklessly, without caring it to be true or false; (iii)a representation which induces the representative to enter into the transaction in question; (iv) the representative also be induced to enter into the transaction in question.

66 On the Affidavit evidence, there was, in my opinion, no evidence of any false representation made by the Plaintiffs on 4 December 1990. On the Defendants' own Affidavit evidence they had before 4 December 1990 met Eddy Ong and Phillip Goh and obtained their three cheques for what was owed to the Defendants and the Defendents hoping that the cheques would be cashed, issued their own cheques for the full amount of their liability to the Plaintiffs. There is nothing on the Defendants' Affidavits to show that the Plaintiffs were even aware of the three cheques the Defendants had obtained from Eddy Ong and Phillip Goh or that it was a condition precedent that the cheques being issued to the Plaintiffs would only be honoured if the earlier three cheques

Version No 1: 29 Oct 2026 (23:45 hrs)

received by the Defendants from Eddy Ong and Phillip Goh were themselves honoured. The Defendants general allegations that the Plaintiffs had asked some questions about Phillip Goh and Eddy Ong and whether they had received any of the goods purchased without more ado added nothing to the Defendants' case even if true. By that time, Eddy Ong had been removed for some other impropriety. Therefore the Plaintiffs may well have been making further inquiries on him without the Defendants being very helpful at that stage. Again the inserting of the dates in the cheques issued by Eddy Ong and Phillip Goh and their representation that the cheques would be honoured was after the meeting of the 4 December 1990 and such an arrangement was not shown to be known to the Plaintiffs.

67 Accordingly, I accepted the submission of the Plaintiffs' Counsel that even if the alleged false representation of Eddy Ong that the cheques would be honoured is taken into consideration the same had nothing to do with the Defendants and the same was at a time after the three cheques were given to the Plaintiffs by the Defendants. I was also satisfied that the Defendants were anxious to settle Suit No 2193 of 1990 brought by the Plaintiffs and that the Defendants issued the three cheques to the Plaintiffs in settlement of the claim in Suit No 2193 of 1990 and as a result of the forbearance by the Defendants to continue with the Suit in question as stated by them in their affidavit evidence and uncontradicted by the Defendants. Thus the Defendants subsequent discontinuance of the above Suit was a valid consideration for the three cheques. I was satisfied that the Plaintiffs' action on the three dishonoured cheques on the ground that there was a valid consideraiton and there were no vitiating circumstances under s 29(2) of the Bills of Exchange Act (Cap.23) completely negated any real prospect of success on the part of the Defendants in mounting a defence to the Plaintiffs' claim.

Version No 1: 29 Oct 2026 (23:45 hrs)

68 For all the reasons I was satisfied that the probable outcome of the action would be against the Defendants at a trial and as such I dismissed the Defendants' appeal with costs to be paid by them on an indemnity basis to the Plaintiffs.

Amarjeet Singh JC

Tan Cheng Han with Gregory Vijayendran (Drew & Napier) for the plaintiffs
Joseph Yoong (Yoong & Partners) with Tan Chee Meng (Harry Elias & Partners) for the defendants

Version No 1: 29 Oct 2026 (23:45 hrs)