IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 99

Suit 2439/1996

Between

Mech-Power Generator Pte Ltd

… Plaintiff

And

Kang Beng Chiang
Fong Chee Eng Freddie
Vibropower Pte Ltd

… Defendant

GROUNDS OF DECISION

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Mech-Power Generator Pte Ltd v Kang Beng Chiang and Others

[1996] SGHC 99

Suit 2439/1996
Tay Yong Kwang JC
08 May 1996

Judgment:

GROUNDS OF DECISION

The Statement of Claim

1 The Plaintiff is a company that carries on the business of manufacturing generator sets including special generators that are mounted on Rubber Tyred Gantry Cranes ("RTGC generators"). The First Defendant was the general manager of the Plaintiff between 10 February 1992 and 31 July 1995. He was also appointed a director of the Plaintiff in that period. The Second Defendant was employed as the assistant general manager of the Plaintiff between 28 February 1995 and the end of June 1995.

2 The terms of the First Defendant's employment were contained in a letter dated 10 February 1992 and included the following two clauses:

> "12. Conflicting Activities. You shall not during the term of your employment directly or indirectly engage in any other employment occupation, consulting or other business activity

> competing with the business of the Company. 13. Confidentiality. You shall not during or after employment disclose to any person or company confidential information which you may learn during the course of employment, whether such information is produced by your efforts or other employee."

3 The Plaintiff also claimed that the First Defendant, as a director, owed the following fiduciary duties to the Plaintiff:

> "(1) a duty of good faith and fidelity; (2) a duty that during the subsistence of the directorship not to misuse any information confidential to the Plaintiff or to disclose such information to any third party; and (3) a duty that following the resignation of directorship not to use or disclose any trade secrets or other confidential information of the Plaintiff."

4 One of the Second Defendant's terms of employment as contained in a letter dated 28 February 1995 stated:

> "13. Confidentiality. You shall not during or after employment disclose to any person or company confidential information which you acquire during the course of employment, whether such information is produced by your efforts or other employees. You shall not disclose any transaction or information relating to the Company's business or take any technical information/data out of the Company's premises or transferred to any third party."

5 The Plaintiff alleged that in the course of their employment and the First Defendant's directorship, both the First and Second Defendants gained access to and acquired the Plaintiff's confidential information relating to the RTGC generator business including know-how, technical knowledge, suppliers' list, costings, customers' list and price list.

6 The First Defendant, by himself or in conjunction with the Second Defendant and/or other persons incorporated the Third Defendant on 21 July 1995. This fact was deliberately concealed from the Plaintiff. The Third Defendant's principal activities included manufacturing and repairing generators. Further,

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the First Defendant, besides being a shareholder of the Third Defendant, was appointed director of the Third Defendant on the date of its incorporation.

7 The Plaintiff claimed that the First Defendant had therefore breached Clause 12 of his terms of employment and/or his fiduciary duties to the Plaintiff.

8 It was also averred that the Third Defendant had made forays into the RTGC generator business and had manufactured RTGC generator sets which were identical or highly similar to the Plaintiff's and that the Third Defendant could not have developed, manufactured, launched or marketed its RTGC generator sets without the disclosure by the First and Second Defendants of the Plaintiff's confidential information. In having made such disclosures, the First and Second Defendants breached clause 13 of their respective terms of employment. In addition, the First Defendant was in breach of his fiduciary duties to the Plaintiff.

9 Insofar as the Third Defendant was concerned, it was alleged that owing to the complexity of the RTGC generator technology and the Plaintiff's near-exclusive possession of that technology, the Third Defendant was well aware or ought to have known that the information supplied by the First and the Second Defendants was confidential to the Plaintiff. The Third Defendant was therefore under a duty of confidence to the Plaintiff in respect of all the confidential information supplied and was not entitled to use or disclose it. The Third Defendant had made use of such information unlawfully and had made profits for itself to the Plaintiff's detriment.

10 Accordingly, the Plaintiff claimed the following relief:

> (1) an injunction to restrain the First and Second Defendants, whether by themselves or acting by their servants, agents or otherwise, from disclosing to any third party confidential

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> information of the Plaintiff relating to its RTGC generator business;
>
> (2) an injunction to restrain the Third Defendant, whether acting by its directors, officers, servants, agents or otherwise, from using or disclosing any confidential information of the Plaintiff relating to its RTGC business;
>
> (3) delivery up of all documents and materials which were in possession, power, custody or control of the Defendants the use or disclosure of which would offend against the above injunctions;
>
> (4) an inquiry as to damages for breach of confidence or an account of the profits made by the Defendants by reason of their breaches of confidence.
>
> (5) damages for the First Defendant's breach of his term of employment prohibiting involvement in conflicting activities.

The Defence

11 In their joint Defence, all three Defendants denied having breached any duty owing to the Plaintiff. The First Defendant averred that his last day of employment was 7 July 1995 and not 31 July 1995. He was therefore no longer employed by the Plaintiff when he became a director of the Third Defendant.

12 The Defendants claimed that the RTGC generator sets sold by the Third Defendant were manufactured in accordance with drawings and designs supplied to them by the purchasers and the subcontractors and that all technical and other information necessary for the manufacture of the sets was readily available in the open market and did not contain any information confidential to the Plaintiff. The Third Defendant also averred that the company entered the business using information gathered by the Defendants' own efforts.

The Reply

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13 The Plaintiff pleaded that it could not have been the usual practice of purchasers and of contractors to supply the Third Defendant with drawings and designs and that even if such were supplied, they were meant for reference only and were not intended for the Third Defendant to use *in toto* without due regard to the confidentiality of the information contained therein. The Plaintiff also disputed the claim that technical and other information on RTGC generator sets was readily available in the open market. Even if technical information was readily available, matters like price list, suppliers list and customers list were not.

The Plaintiff's Case

PW1 (Cliff Loke Choon Hoe)

14 Cliff Loke Choon Hoe, the Managing Director of the Plaintiff, stated in his affidavit of evidence-in-chief that the Plaintiff had been carrying on the business of manufacturing generator sets since its incorporation in 1983. The Plaintiff was generally recognized as one of the market-leaders, if not the market-leader, in Singapore and the region in respect of the generator business.

15 The RTGC generator, unlike ordinary generators, was one mounted on rubber tyred gantry cranes and could be operated as a mobile generator unit. The Plaintiff was an established leader in the RTGC generator business. For the last four years, it was the only company in Singapore which manufactured RTGC generator sets. According to a study by Andersen Consulting, commissioned by the Plaintiff in 1995/1996, the Plaintiff had at least a 50% share of the worldwide RTGC generator business.

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16 The Plaintiff started its RTGC generator business in 1992. Two very qualified persons were instrumental in building up this business. They were Steven Won, a mechanical designer, and Marc Soon, the electrical design manager. The Plaintiff also had the services of a mechanical consultant, one Bob Rawley. The first major RTGC job came in August 1992 when Keppel Engineering ordered 26 units of RTGC generator sets.

17 The First Defendant was involved in all aspects of the Plaintiff's operations and administration while he was the Plaintiff's general manager. He was involved in the day-to-day running of the business, including sourcing for key equipment, negotiating with suppliers, liaising with customers, supervising production and dealing with the bankers. In 1993, he was made a director.

18 On Friday 16 June 1995, the First Defendant suddenly informed Cliff Loke that he was resigning from the Plaintiff. They talked about the matter but Cliff Loke could not persuade the First Defendant to change his mind. On 19 June 1995, the First Defendant tendered two resignation letters - one for his directorship in Mech-Power Holding Ltd and all its subsidiary companies and the other for his position as general manager of the Plaintiff. Pursuant to the contract of employment, three months' notice was required. Accordingly, the First Defendant stated in his resignation letter that his last day of service would be 18 September 1995. He thanked Cliff Loke and his wife for the support given to him in the Plaintiff and had some kind words about Cliff Loke's abilities.

19 Cliff Loke asked the First Defendant about his future plans and was told that he intended to do consulting work. The First Defendant also assured Cliff Loke that he would not be involved in the generator business any more. The last day of service (18 September 1995) was later advanced by mutual agreement to 31 July 1995.

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20 On 7 July 1995, a farewell lunch was held for the First Defendant during which it was agreed with the First Defendant that he could proceed on unofficial leave till 31 July 1995. It was understood that should the Plaintiff require his presence in the office, the First Defendant would make himself available. The First Defendant assumed Cliff Loke that it would not be a problem.

21 Prior to his departure, the First Defendant liaised with the Plaintiff's financial controller, Roy Wong, and received his salary up to 31 July 1995. However, at the First Defendant's request, the salary for July 1995 was termed as salary "in lieu of notice" as he did not want that sum of money to be subject to Central Provident Fund deduction. A Form 49 was lodged with the Registrar of Companies on 30 August 1995 indicating that the First Defendant had resigned as a director on 31 July 1995.

22 As the parting of ways was an amicable one and in the light of the First Defendant's assurance, Cliff Loke did not demand to search the First Defendant or to otherwise ensure that he did not remove any of the Plaintiff's belongings.

23 Next, Cliff Loke went on to testify about the Second Defendant. The Second Defendant joined the Plaintiff as an assistant general manager on 28 February 1995. He was recruited by the First Defendant. His primary responsibility was to assist the First Defendant in his managerial role in the Plaintiff. Barely four months later, the Second Defendant tendered his resignation in end June 1995 and left the Plaintiff's employ one week thereafter. Similarly, Cliff Loke did not conduct any search on the Second Defendant for the Plaintiff's belongings.

24 Returning to the First Defendant, Cliff Loke said that when First Defendant joined the Plaintiff in 1992, he did not have any knowledge about the RTGC generator business. The First Defendant had been working in Petbow Far East

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Pte Ltd ("Petbow") for about 10 years. Although Petbow was also in the generator business, the First Defendant's knowledge was limited in two ways. Firstly, Petbow had not manufactured any RTGC generator set even though it might have had the expertise to do so. Secondly, purchases of supplies by Petbow were directly from the manufacturers and not through third party buying houses. The Defendants therefore had no experience or contacts in dealing with third party buying houses for parts for the generator sets.

25 During his years with the Plaintiff, the First Defendant learned and came to possess vast knowledge relating to the Plaintiff's RTGC generator business. He learnt the technical know-how of manufacturing a RTGC generator set, the names and contact persons of third party suppliers of engine alternators, radiators and other special parts, costing, the names and contact persons of the Plaintiff's customers and the Plaintiff's pricing structure.

26 Unlike an ordinary generator set, a RTGC one involved a specially designed enclosure, a control system, folding platforms, a refueling diesel system and a weatherproofing/soundproofing system. It was a specialized field of engineering and could not be manufactured by any generator manufacturer. If it were easy to manufacture RTGC generator sets, big foreign companies would not have bothered to turn to the Plaintiff here for their sets. Other more established local manufacturers did not even manufacture such generator sets.

27 Where the Plaintiff was concerned, the crane manufacturer (the purchaser of the RTGC generator sets) would send detailed technical specifications of the type of RTGC generator set required. The actual design, based on the specifications, was the sole responsibility of the Plaintiff. The Plaintiff would select the appropriate equipment and produce a set of technical drawings which would be submitted to the purchaser for approval. The purchaser would propose

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modifications if necessary. Sometimes, some purchasers would send to the Plaintiff sample drawings from previous projects purely for the Plaintiff's general reference together with the technical specifications. As different projects required different dimensions and other specifications, there could not be total duplication of the sample drawings.

28 After the detailed drawings were finalized by both the purchaser and the Plaintiff, the manufacturing process would begin.

29 While there was a limited number of third party suppliers for major equipment, RTGC generator sets comprised not only major equipment but other smaller, crucial components as well. The list of suppliers for such other components was confidential to the Plaintiff and was certainly not available easily. Suppliers of components required by RTGC generator sets were not the same suppliers of parts for ordinary generator sets.

30 Prior to the First Defendant joining the Plaintiff, he did not have any relationship with such suppliers as his former employer, Petbow, dealt only with manufacturers and not with third party buying houses.

31 Costing was not a straightforward matter for a RTGC set. The prices of various components had to be taken into account and these in turn depended on the relationship with the suppliers. It was not a simple mathematical formula. Costing was therefore confidential information

32 The Plaintiff's list of customers was also confidential information. The Plaintiff had information as to the specific persons in the large Korean and Japanese corporations who dealt with RTGC manufacturers. It was due to the Plaintiff's painstaking efforts over the years that such information was within

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its knowledge. A newcomer would find it impossible to penetrate such foreign corporations.

33 The pricing structure was of utmost importance as it determined the Plaintiff's bid for a particular job. If it was known to a competitor, the Plaintiff would be easily outbidded.

34 The First Defendant had unrestricted access to all the Plaintiff's documents on all aspects of the Plaintiff's RTGC business. He was also constantly involved in negotiations with the Plaintiff's customers whether face to face or via telephone or correspondence. The Second Defendant was accorded the same unlimited access to all of the Plaintiff's said confidential information.

35 Further, within eight months of the resignation of the First and Second Defendants from the Plaintiff, two other staff also left the Plaintiff's employment. Cliff Loke did not pay much attention to it then as he thought it was a normal turnover of staff. He did not suspect that anything was amiss until July 1996, about a year after the First and Second Defendants left the Plaintiff.

36 Around July 1996, Mitsubishi Heavy Industries Ltd, a Japanese corporation and long-time customer of the Plaintiff called for tenders for 16 units of RTGC generator sets. Having dealt with Mitsubishi for at least two years and based on previous successful tenders involving Mitsubishi at $95,000 per RTGC set, the Plaintiff made a similar bid at $95,000 for each set. However, the Plaintiff was not awarded the tender.

37 Surprised by the outcome, Cliff Loke spoke with his contact in Mitsubishi and was informed that the job had been awarded to the Third Defendant on the basis of the First Defendant's assurances that the Third Defendant was staffed

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with the Plaintiff's former personnel and that the Third Defendant therefore had the expertise to build the RTGC sets at a much lower price.

38 That was the first time Cliff Loke learned that the First Defendant was back in the RTGC generator business. From searches done on the Third Defendant, he learned that the Third Defendant was incorporated on 21 July 1995, its principal activities included the manufacture and repair of electrical generators, the First Defendant was a shareholder and was appointed a director on 21 July 1995 and the Second Defendant was also a shareholder and was appointed a director on 4 August 1995. The First Defendant had therefore breached his contract of employment by engaging in activities in conflict with the Plaintiff's business while he remained in the Plaintiff's employ.

39 Based on the abovesaid matters, Cliff Loke was of the belief that the Third Defendant, being such a young company, could not have the ability to manufacture RTGC sets unless it had obtained the Plaintiff's confidential information and trade secrets from the First and Second Defendants. He also discovered that the two employees who had left the Plaintiff had joined the Third Defendant.

40 Several other matters revealed that the Third Defendant was actively convassing for and manufacturing RTGC sets using the Plaintiff's know-how. Around June 1995, Detroit Diesel Asia Pte Ltd agreed to order 32 RTGC sets from the Plaintiff. The First Defendant had been fully involved in the project's negotiations while he was with the Plaintiff. In February or March 1996, the Plaintiff delivered the first batch of twelve sets and awaited the order for the remaining 20 sets. Detroit Diesel subsequently refused to confirm the orders for the other 20 sets. Cliff Loke was informed subsequently by a representative from Detroit Diesel that the rest of the sets would be supplied by the Third

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Defendant because the First Defendant had assured Detroit Diesel that the Third Defendant had the capability to build them at a more competitive price than the Plaintiff's.

41 In June 1995, Mitsubishi accepted the price of $104,000 for a RTGC set. In November 1996, the Plaintiff had to quote a reduced price of $87,000 for the same type of generator set because Cliff Loke was told that the job would otherwise go to the Third Defendant.

42 The Plaintiff and three other companies were on the approved list of the Hong Kong Housing Authority for supplying generator sets for housing in Hong Kong. In late 1996, Cliff Loke was informed by the Plaintiff's agent in Hong Kong that the First Defendant had applied for the Third Defendant to be on the approved list.

43 In late 1996, Hyundai called for a tender for nine RTGC generator sets. The job was awarded to the Plaintiff. However, Cliff Loke was informed that the Second Defendant and another representative from the Third Defendant had made a bid on the Third Defendant's behalf and had boasted to Hyundai that the Third Defendant had all the drawings of the Plaintiff and could build the sets at a lower price.

44 Similarly, when Samsung wanted to buy four RTGC sets from the Plaintiff, Cliff Loke was told that the First Defendant had sold the Third Defendant as having all the expertise, know-how and drawings of the Plaintiff.

45 On 17 December 1996, the Plaintiff obtained an Anton Piller order against the three Defendants. It was executed on 19 December 1996 at the Third Defendant's premises at 6 Third Lokyang Road. The Plaintiff seized

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correspondence between the Third Defendant and the Plaintiff's customers, the Plaintiff's original technical drawings of RTGC sets or related parts, a confidential Memorandum of Understanding between an Indonesian company and the Plaintiff and various copies of technical drawings originating from the Plaintiff but with the Plaintiff's name completely or partially blanked or torn out.

46 During the execution of the Anton Piller order, the First Defendant told the raiding party that all materials relating to the RTGC set business could be found in his room. This was untrue as various drawings of the Plaintiff were also found in the room of Chen Onn Meng, one of the directors of the Third Defendant. The raiding party also found the Plaintiff's drawings and sketches at the workstation of Koh Chin Leong, a former employee of the Plaintiff. At the Defendants' application to set aside the Anton Piller order, the First Defendant disclosed further correspondence which were letters of introduction written on behalf of the Third Defendant to various customers of the Plaintiff. Those letters were written to specific individuals in the organizations whose names could only have been obtained by the First Defendant during his employment with the Plaintiff. They were people the First Defendant had corresponded with or met while he was the general manager of the Plaintiff.

47 In response to the Defendants' claim that the Plaintiff's drawings found in the Third Defendant's premises had been given previously by the Plaintiff to Chen Onn Meng as a subcontractor, Cliff Loke said that the Plaintiff had never engaged Chen's company, Vibro Acoustics Pte Ltd, as its subcontractor for any RTGC generator project. Neither he nor the Plaintiff had given Chen or his companies (Vibro Acoustics Pte Ltd and Mason Industries Pte Ltd) any of the materials found in the Third Defendant's premises. The dates of the drawings found in Chen's room showed that they were made after the First Defendant had

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left the Plaintiff's employment. After the First and Second Defendants left the Plaintiff, the Plaintiff ceased all contacts with Chen's abovementioned companies. In 1992, however, the Plaintiff did engage Mason Industries Pte Ltd to do some simple work for the RTGC project for the then Port of Singapore Authority as the Plaintiff's manufacturing facilities were inadequate then.

48 Cliff Loke also testified concerning one Wee Choo Tat, a former employee of the Plaintiff now working for the Third Defendant. Wee was a Contracts Manager with the Plaintiff from 1 August 1992 to 30 June 1993 and was involved in the negotiation and execution of some contracts with the Plaintiff's customers. He was not responsible for the setting up of the Plaintiff's RTGC business. The Plaintiff was already actively involved in such business when Wee joined the Plaintiff.

49 Wee had left his former employer, McAlister, for the Plaintiff because the Plaintiff was able to offer him a better deal. McAlister was accordingly finding it very difficult to compete with the Plaintiff and was losing orders to the Plaintiff. Wee told Cliff Loke during the interview that since McAlister could not compete with the Plaintiff on RTGC matters, it was better for Wee to join the Plaintiff.

50 Subsequently, Wee left the Plaintiff to join Nedco as its general manager. Whatever his reasons were, they were not because he had completed setting up the RTGC generator business for the Plaintiff. If he had been so helpful to the Plaintiff's RTGC generator business, the Plaintiff would have made all efforts to retain his services.

51 As the RTGC generator business accounted for about 30% of the Plaintiff's business, the Plaintiff was at a severe and permanent disadvantage because the

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Third Defendant had made use of the Plaintiff's confidential information as a springboard into the business. The Plaintiff suffered loss of profits in various projects either because the contracts were awarded to the Third Defendant or because the Plaintiff had to quote below its normal price in order to secure the contract.

52 Cliff Loke acknowledged that he had breached the Plaintiff's undertakings contained in the Anton Piller order by informing five key members of the Plaintiff's staff of the action taken against the Defendants. He did this to clear the air as there was a fair amount of speculation going around the office due to the activities generated by the Anton Piller order.

53 Cliff Loke had also, despite the undertakings, confronted a supplier with a purchase order seized during the execution of the Anton Piller order. He did it out of impulse and anger and not with the intention of getting a lower price from the supplier. He wanted to seek out an explanation as to why the supplier had preferred the Third Defendant over the Plaintiff. He informed the supplier about the execution of the Anton Piller order as he thought it was public knowledge once it had been executed.

54 In addition to the above breaches, Cliff Loke had also informed four parties unconnected with the legal proceedings about the Anton Piller order and this action against the Defendants. He had not exacted any commercial advantage from those parties from the documents seized or the information obtained.

55 Under cross examination, Cliff Loke said that he was discharged from bankruptcy in 1994 after having paid about $900,000 to his creditors. The Plaintiff's investor, SEA Venture Investment ("SEAVI") had set as a condition for their investment that Cliff Loke be discharged from bankruptcy and then be

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made the Managing Director of the Plaintiff. Between 1994 to 1995, the First Defendant as general manager reported to Cliff Loke as Managing Director.

56 When Cliff Loke took the First Defendant into the company, he did not know him very well but he knew that the First Defendant had been working for Petbow for the past ten years. He thought it would be good for the Plaintiff to engage somebody who was familiar with the Plaintiff's business.

57 When asked whether, in 1996, Petbow had built two units of RTGC generators, Cliff Loke said he would not be surprised because Petbow was a big organization and was capable of doing that.

58 Cliff Loke acknowledged that of his "2 very qualified persons" who helped build up the Plaintiff's RTGC business, one (Steven Won) did not have a university degree or a polytechnic diploma or any professional qualification in mechanical design. The other (Marc Soon) had either 'O' level education or a NTC-3 (Electrical) Certificate. After attending a 5-year course at the polytechnic, he obtained a diploma in 1997. By "2 very qualified persons", Cliff Loke meant persons who could design according to the needs of the Plaintiff.

59 Cliff Loke agreed that the First Defendant knew a lot about the generator business. As the Plaintiff's general manager, the First Defendant was involved in all aspects of the Plaintiff's operations, the day-to-day matters, negotiations with customers, supervision of the production and the dealings with the bankers. He was given full authority to do whatever was necessary.

60 The First Defendant's resignation as the general manager and as a director of the Plaintiff was subject to Board approval from SEAVI. The Plaintiff did not accept his resignation on 19 June 1995. The First Defendant was a director

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by virtue of his position as general manager and the two positions were therefore linked. When he tendered his letters of resignation, the Plaintiff approached the Board of Directors of SEAVI. The First Defendant was the one who brought SEAVI into the Plaintiff. The First Defendant did not object that his last day as a director would be the same as his last day as general manager. The First Defendant was not present at the meeting of the Board of Directors of SEAVI. He was informed by Roy Wong, the Plaintiff's Financial Controller, that the Plaintiff would file Form 49 with the Registry of Companies indicating that his last day of service was 31 July 1995. He did not object to that. This was not mentioned in Cliff Loke's or in Roy Wong's affidavits of evidence-in-chief as they did not see the necessity to do so since Form 49 clearly stated the date as 31 July 1995.

61 Asked when the mutual agreement to advance the date of termination of service from 18 September 1995 to 31 July 1995 was reached, Cliff Loke replied that it was sometime at the end of June 1995 or in early July 1995. The agreement was made between the First Defendant and Peter Chan, a director of SEAVI. It could have been made over the telephone. Cliff Loke was not present when the agreement was reached but was informed by Peter Chan later. It was then left to Roy Wong to sort out the financial matters.

62 The discussion that took place on Friday 16 June 1995 between Cliff Loke and the First Defendant lasted two to three hours. Cliff Loke wanted the First Defendant to hold back his resignation until Cliff Loke returned as he was going abroad on Monday 19 June 1995. When Cliff Loke returned on Wednesday 21 June 1995, he was disappointed to learn that the First Defendant had tendered his resignation. He was also told that the First Defendant had gone on leave from Tuesday 20 June 1995 and would return on Friday. Cliff Loke then had a long discussion with his wife and they consulted SEAVI on what to do next. It

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was decided that as the First Defendant was not interested in the job anymore, they should allow him an early release and that was why Peter Chan was involved.

63 Although the First Defendant was supposed to have returned to the office on 23 June 1995, he did not because he was required at a job site in Tampines. On 7 July 1995, the Plaintiff's bankers called on Cliff Loke at his office. Cliff Loke was told that the First Defendant would be returning to the office. Cliff Loke, the bankers and a few members of the Plaintiff's staff then went out to lunch.

64 During lunch, either Cliff Loke, his wife or Roy Wong agreed with the First Defendant that he could proceed on unofficial leave till 31 July 1995. It was Roy Wong who informed Cliff Loke about the First Defendant's request that the salary for July 1995 be termed as salary "in lieu of notice". The First Defendant wanted it this way so that he would not need to contribute to the Central Provident Fund and would therefore have more cash in hand.

65 Cliff Loke also testified that the Plaintiff had subcontracted some aspects of generator building work to Chen Onn Meng's companies.

66 As the parting with the First Defendant was amicable, his room was not searched when he left the Plaintiff. The First Defendant had a computer installed by the Plaintiff for him in his home and all the diskettes used by him were also kept in his home. The Plaintiff did not search his home although the Anton Piller order permitted such a search.

67 As for the Second Defendant, he was recruited into the Plaintiff's employment by the First Defendant. There was objection from the Board of Directors concerning the Second Defendant's appointment but the First

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Defendant insisted that he had already agreed with the Second Defendant and he would lose face. The Second Defendant worked closely with the First Defendant while they were with the Plaintiff.

68 Asked to compare the Plaintiff's RTGC set with one built by McAlister, Cliff Loke said that the Plaintiff was the first company in Singapore to use the spring for operating the folding mechanism, which was the platform which was opened while doing maintenance work to the generator. The second difference was that the Plaintiff used the bolt-and-nut method of construction with no welding. The Plaintiff's RTGC set also had a lifting hook in the centre so that the set was easy to move about. The instrumentations were in one big panel so it was easy for the operator. While disagreeing that the difference was essentially aesthetic, Cliff Loke said that a person who could use McAlister's equipment could also use the Plaintiff's equipment.

69 Cliff Loke agreed that the Plaintiff had built RTGC generator sets for FELS using drawings supplied by FELS, although he had earlier denied this and had asserted that the sets were totally from the Plaintiff's own efforts. After this, the Plaintiff built its prototype. The Plaintiff spent about $200,000 developing this prototype.

70 Elaborating on the control panel of the RTGC set, Cliff Loke claimed that AB 365 (the Third Defendant's drawing) was copied from AB 359 (the Plaintiff's drawing) because an error was even repeated by the Third Defendant.

71 Although customers sometimes handed drawings to the Plaintiff, they were for reference only and the Plaintiff was not allowed to copy the drawings. The Plaintiff has written to its customers not to send the Plaintiff's drawings to competitors. The Plaintiff was not aware that their customers had done so until

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after discovering a document during the execution of the Anton Piller order. The Plaintiff's drawings also had a confidentiality clause at the bottom right hand corner thereof. It was recommended by the Defendant and was drafted with advice from M/s Allen & Gledhill, a firm of advocates and solicitors.

72 Cliff Loke agreed that a manufacturer which did not do electrical design work could send the work to a company which did. The same could apply to mechanical engineering. He disagreed, however, that the First Defendant or Wee Choo Tat could build RTGC generators by themselves.

73 There were only about 10 suppliers of engines and alternators in Singapore. Cliff Loke agreed that the First Defendant would know these suppliers even while he was still with Petbow. Similarly, Wee Choo Tat would know them. The Second Defendant would know only the suppliers of engines because he came from a company doing engine distribution.

74 By "third party suppliers", Cliff Loke was referring to people who did parallel importing and who might be able to offer better pricing to the Plaintiff. The Plaintiff always relied on such suppliers for its major equipment and special equipment as a business decision, although it was possible to deal with licensed distributors. Such suppliers did not advertise their services and therefore not everyone, including generator manufacturers, would know them. This was because third party suppliers would usually work with only one manufacturer in Singapore. The Plaintiff kept a list of all its suppliers.

75 Cliff Loke acknowledged that the First Defendant would know the names of these suppliers after having worked for the Plaintiff for four years, but said it would be hard to remember their telex numbers and addresses, as there were many suppliers all over the world. In the raid on the Third Defendant's premises,

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the Plaintiff did not find any list of such suppliers but only "2 or 3 correspondences with maybe 2 suppliers". Since the First Defendant had access to the entire list of the Plaintiff and since the Plaintiff found the correspondence with two or three suppliers, Cliff Loke concluded that the First Defendant was in possession of the entire list.

76 As for the components of the RTGC sets, Cliff Loke doubted that the First Defendant could remember all of them. He also doubted whether Wee Choo Tat could remember all the parts as he had left the Plaintiff's RTGC business since 1993.

77 In respect of costing of RTGC sets, what was confidential to the Plaintiff was information of all its costs and all its suppliers. If this was known by the Plaintiff's competitors, the Plaintiff would be at a distinct disadvantage because its competitors would know how much the Plaintiff's RTGC sets would cost. However the Plaintiff also did not find its costing list in the raid.

78 From 1992 to 1995, the Plaintiff got to know six crane manufacturers in Asia. These were the companies which would buy RTGC generators. As they were big corporations with many factories bearing the same name, it would be impossible for anyone to direct a letter of introduction to a specific person at a specific facsimile number unless that information was known to him. Wee Choo Tat, with four years of experience in the RTGC business, would know the addresses and telex numbers of at least one or two crane manufacturers. Namecards of customers obtained in the course of interaction, Cliff Loke claimed, belonged to the company and should have been returned on resignation.

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79 All the letters of introduction sent by the Third Defendant and seized in the raid had been signed by Wee Choo Tat. This, according to Cliff Loke, had been pre-arranged in that Wee would write to the respective customers based on information provided by the First Defendant. The Plaintiff had not sued Wee in these proceedings but was contemplating that course of action.

80 As for the Plaintiff's pricing structure, it was set up by the First Defendant and Cliff Loke. The Plaintiff would take into consideration the location where the RTGC generator would be used, who the end-user was, the level of its maintenance and the mark-up. The Third Defendant's pricing structure was similar to the Plaintiff's. As the First Defendant did all the pricing in the Plaintiff, it was something he knew and memorized.

81 Cliff Loke recalled that Wee Choo Tat had called him sometime in December 1995 to inform him that he was leaving Nedco and was joining the Third Defendant. He denied that Wee had asked him whether there was an opening for him in the Plaintiff. While Wee would have had experience with RTGC generator sets in McAlister and then in the Plaintiff, he would not have dealt with such sets while in Nedco because that was not part of Nedco's business.

82 The raiding party found eight different drawings of the Plaintiff's RTGC generators in Chen Onn Meng's room. Cliff Loke said he did not give them to Chen. It could be the First Defendant, the Second Defendant or anybody who put the drawings there.

83 As for an original drawing of the Plaintiff found at Koh Chin Leong's workstation, said to have been developed by the Plaintiff in 1993 for its RTGC sets, Counsel for the Defendants produced a 1990 drawing from United Engineers which was exactly the same. Cliff Loke explained that the Plaintiff

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had instructed its staff to design and develop its own components but he was not aware whether the staff had copied wholesale from others. He admitted that this particular drawing should not be considered to be the Plaintiff's and agreed that it should be deleted from the Plaintiff's stock.

84 In re-examination, Cliff Loke stated that while the Plaintiff gave layout drawings to its customers for their approval, it never gave its diskettes of the drawings away. As modifications would have been made by the customers, the drawings could not be copied and must have been produced from the Plaintiff's diskettes. After the customers sent the drawings back for modifications, the Plaintiff would do so and send the modified drawings back to the customers, always informing them that the drawings were confidential.

85 The Plaintiff had six computers which were accessible only to the Plaintiff's staff. It took the Plaintiff about six months to build its RTGC set prototype. It was then advised by its solicitors to register all the drawings and to enhance the confidentiality clause in its contracts of employment. The computer which was installed in the First Defendant's home for him to do his work was returned to the Plaintiff on 7 July 1995.

PW2 (Mdm Tham Sow Lin)

86 Mdm Tham Sow Lin, a director of the Plaintiff, is the wife of Cliff Loke. In her affidavit of evidence-in-chief, Mdm Tham stated that she was in charge of administrative matters in the company, including employment matters.

87 Confidentiality was important to the Plaintiff's RTGC business. For that reason, confidentiality clauses were built into the contracts of employment.

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88 She reiterated that the First Defendant was actively involved in the running of all aspects of the Plaintiff's business while he was the Plaintiff's general manager. He had unrestricted access to all the documents, drawings and diskettes. He was also constantly involved in communicating with the Plaintiff's overseas customers.

89 On 19 June 1995, the First Defendant suddenly informed her that he was resigning from the Plaintiff and handed over his resignation letters. The First Defendant did not reconsider his decision despite her persuasion. He said, *inter alia*, that he wished to have a slower pace of life and would go into consultancy work. He also assured her that he would not be competing with the Plaintiff in the generator business. Because of the First Defendant's assurance and his years of service, she trusted him and did not insist on any physical check for the Plaintiff's materials before he left.

90 Under cross-examination, Mdm Tham said that the Plaintiff had intended to go public and needed a manager so as to have a strong management team. The First Defendant was therefore taken on board by Cliff Loke.

91 She knew about the First Defendant's resignation on 19 June 1995 only. Her husband was busy preparing for his overseas trip and did not inform her of the conversation he had with the First Defendant on 16 June 1995. She told the First Defendant that she could not accept his resignation then because she had to seek the view of Peter Chan. The First Defendant left the office immediately afterwards and proceeded on leave until sometime at the end of June 1995.

92 On 7 July 1995, the First Defendant returned the computer and the diskettes to the Plaintiff. As the Plaintiff's bankers were there on a courtesy call and as it

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was close to lunchtime, they all went out to lunch together with some of the staff. It was not a planned farewell lunch.

PW3 (Roy Wong Yew Weng)

93 Roy Wong Yew Weng was the Plaintiff's Financial Controller since January 1994. He repeated in his evidence that the First Defendant was actively involved in running all aspects of the Plaintiff's business and had unrestricted access to all papers and materials.

94 In or about mid-June 1995, Roy Wong was informed that the First Defendant was resigning from the Plaintiff. It came as a surprise as there were no earlier indications of his intention. In one of the conversations Roy had with the First Defendant before he left, the First Defendant told him that he intended to do consulting work and assured him that he had no intention of getting involved in the generator business any more.

95 Although the First Defendant was required to give three months' notice of his resignation, Roy was informed subsequently by Cliff Loke that an agreement had been reached whereby the First Defendant's last day of service would be advanced to 31 July 1995.

96 They held a farewell lunch for the First Defendant on 7 July 1995. The First Defendant did not go to the Plaintiff's office from the next day as he was permitted to go on leave on the understanding that he would return to the office at anytime should the office require his presence. It was Roy's belief that this arrangement was reached because there was nothing much left for the First Defendant to do in the office and also out of goodwill to the First Defendant.

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97 Roy had to finalize the First Defendant's financial matters with the Plaintiff. The First Defendant requested Roy to term his salary for July as salary "in lieu of notice" as he did not want to have to make a deduction for the Central Provident Fund. Roy acceded to the request as he saw no harm in accommodating a colleague who appeared to be leaving the company on amicable terms.

98 The Plaintiff always safeguarded the confidentiality of its business information and that was emphasized to any new employee of the Plaintiff.

99 Under cross-examination, Roy said that it was sometime in July 1995 that Cliff Loke told him Peter Chan had agreed the First Defendant's last day of service would be 31 July 1995. Roy telephoned Peter Chan to confirm this. On 7 July 1995, Roy gave the First Defendant a salary statement. The First Defendant told him he needed money and asked him to alter it. As a result, a second statement was prepared (AB 71). Roy did not have the first statement anymore.

100 Roy then elaborated on why the First Defendant needed money. The First Defendant had told Roy that he had to pay back to the Plaintiff $70,000, which was the amount outstanding on the loan of $100,000 he had taken from the Plaintiff. If the salary was treated as payment in lieu of notice, there would be no CPF contribution from the employee and the employer. CPF contribution was made for the commuted leave. The $70,000 was paid back to the Plaintiff.

101 Although the First Defendant did not come back to work after 7 July 1995, Roy believed that he was working at home in many instances. Having returned the computer did not mean that the First Defendant could not work at home.

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There were many problems in the Telepark project and Roy was sure that the First Defendant attended to the problems.

The Defendants' Case

DW1 (Kang Beng Chiang, the First Defendant)

102 The First Defendant obtained a diploma in Electrical Engineering from the Singapore Polytechnic in 1977. He started work as an assistant plant supervisor with Resources Development Corporation. In 1979, he left to join ASEA as a design engineer where his duties included designing of electrical switch boards and control panels. In 1980, he joined Petbow as a sales engineer. As Petbow dealt with generators and switchboards, the First Defendant began to learn about the business of generator sets there. Petbow was established in 1932 in the United Kingdom and was one of the market leaders in the generator set business.

103 In 1985, Chen Onn Meng joined Petbow and the First Defendant became acquainted with him.

104 In 1986, the First Defendant was promoted to the position of general manager of Petbow.

105 In February 1992, he left Petbow and worked as a general manager of the Plaintiff where he took charge of the day-to-day running of the company's operations and the supervision of production, sales, customer service, the design department and the dealings with the bankers. In 1993, he was made a director of the Plaintiff. The person he reported to was Cliff Loke who was then a bankrupt holding no official position in the Plaintiff.

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106 The Plaintiff got involved in the RTGC set business sometime before the First Defendant joined the company. He was employed because of his experience in the business of generator sets.

107 In that same year, Cliff Loke asked the First Defendant to contact Wee Choo Tat who was working in McAlister on the possibility of him joining the Plaintiff. Wee was reputed in the market as a specialist in RTGC sets. Wee then joined the Plaintiff and helped in the negotiations to secure orders for RTGC sets. As a result, orders for about 140 RTGC sets were secured by the Plaintiff.

108 In June 1993, Wee left the Plaintiff to become the general manager of Nedco.

109 As the Plaintiff's general manager, the First Defendant did not get very involved in the initial negotiations with customers as he did not go to meet them. He was briefed and kept informed of ongoing negotiations.

110 Initially, the First Defendant was not familiar with the procedure of pricing the RTGC sets. After he became involved, he initiated the procedure whereby his staff would work out the requirements based on customers' specifications and pass them on to him to work out the pricing. Pricing depended greatly on the customers' requirements and specifications and would be based on the cost of the items to be obtained from suppliers. Having done the pricing, the First Defendant would inform the negotiating party for bids to be made.

111 Having done pricing for more than a decade in Petbow and in the Plaintiff, such work became second nature to him.

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112 Sometime before June 1995, the First Defendant became unhappy when he was suddenly questioned about the necessity of one of the trips he had made on behalf of the Plaintiff. After mulling over the incident, he decided to leave the Plaintiff. It affected him greatly as he had always acted in the best interests of the Plaintiff and was responsible to a large extent for the then status of the Plaintiff.

113 Before this incident, Chen Onn Meng had approached him on a few occasions on the possibility of leaving the Plaintiff and setting up a company with him in the generator business. The First Defendant did not feel he was ready on those occasions but once he had decided to resign from the Plaintiff, he concluded that he did not wish to work for somebody else any more.

114 The First Defendant then contacted Chen to inform him of his decision to leave the Plaintiff and to ask whether he was still keen in forming a company with him. Chen was very enthusiastic about the proposal. Chen had incorporated a group of companies related to the generator set business and would be in a position to assist the new company to be formed.

115 Before the First Defendant tendered his resignation, he talked to Cliff Loke about his intention to leave the Plaintiff. Cliff Loke said he would talk about it later and the conversation then went on about how the company should be run after the First Defendant's departure. Cliff Loke did not ask the First Defendant where or what he was moving on to after his resignation. The talk was inconclusive and Cliff Loke had to leave on a business trip.

116 The following Monday, the First Defendant handed his resignation letters to Cliff Loke's wife. A few days thereafter, he went on leave and told Chen to proceed with the incorporation of the Third Defendant.

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117 While he was on leave, Roy Wong telephoned him and asked him to return to the office on 7 July 1995. When they met, Roy told the First Defendant that the Plaintiff was calculating his salary and would pay him an amount in lieu of notice. He then handed the First Defendant the salary statement (AB 71) and a cheque for $10,322.00.

118 The First Defendant remembered this meeting very clearly as the Plaintiff's bankers had also gone to the Plaintiff's office by coincidence and were told that this was the First Defendant's last day in the company. The farewell lunch then followed. It was made clear to the First Defendant that he was no longer in the employment of the Plaintiff from 8 July 1995 onwards.

119 On 21 July 1995, the Third Defendant was incorporated. However, it officially commenced business only on 1 August 1995 when the things were moved into the premises which were not fully furnished yet.

120 The First Defendant had known the Second Defendant since the time the Second Defendant was working for Detroit Diesel. In February 1995, while the First Defendant was still the general manager in the Plaintiff, the Second Defendant called him to enquire about the possibility of him joining the Plaintiff. The First Defendant spoke to Cliff Loke about this and the latter agreed that the Second Defendant could be useful in helping the Plaintiff open up the overseas market. Accordingly, the Second Defendant joined the Plaintiff in February 1995 as assistant general manager (Overseas Market).

121 When the First Defendant decided to resign, he informed the Second Defendant of his intention. About two weeks after he resigned, the Second Defendant also resigned as he had decided by then to join the First Defendant in the new company.

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122 When the Third Defendant commenced business in 1 August 1995, the First Defendant was busy setting up the administration of the company while the Second Defendant started writing to the contacts and potential customers in the generator set business that he remembered from his employment with Detroit Diesel. The Third Defendant concentrated on industrial and marine generator sets, an area which the First and Second Defendants were very familiar with. The start-up was difficult. The Third Defendant secured the first order only sometime in October 1995.

123 The First and Second Defendants were conversant with the technical aspects of manufacturing a generator set. Chen Onn Meng, the other director of the Third Defendant, was even more conversant as he had a lot of hands-on experience.

124 In January 1996, Wee Choo Tat contacted the First Defendant and told him that he had left Nedco as there was a takeover in that company. The First Defendant got Wee to contact another company for a job but nothing came out of it. Wee then broached the subject of him joining the Third Defendant.

125 The First Defendant spoke to the Second Defendant about this. If Wee were to join them, it would naturally mean that he would explore the RTGC set business for the Third Defendant as that was Wee's specialty. They were hesitant as they were not sure they wanted to be involved in the RTGC set business. One of the reasons was that their factory was small. After some discussion, they decided not to limit their options and offered Wee the position of a marketing consultant for RTGC and other generator sets on a commission basis.

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126 In February 1996, Wee joined the Third Defendant and began to write letters of introduction to potential customers. Mitsubishi Heavy Industries invited Wee to make bids for RTGC sets. Wee handled the negotiations and obtained the specifications which he then passed on to the First Defendant for him to do the pricing. The First Defendant did what he had always done in his years of experience in pricing RTGC sets. Wee then submitted the tender.

127 They were surprised when informed by Mitsubishi that their price was about 30% higher than the lowest tender, which turned out to be that of the Plaintiff. On another occasion, the Third Defendant also failed to secure an order from Hyundai Heavy Industries because its price was higher than its competitor's.

128 The representative from Mitsubishi visited the Third Defendant and repeated that the Third Defendant's price was 30% higher than the lowest tender. He also handed a new set of enquiries for RTGC generators. The First Defendant and Wee Choo Tat visited Mitsubishi and were informed of their budget. The Third Defendant then made a successful bid on this occasion.

129 The Third Defendant was also approached by Detroit Diesel to make a bid for six units of RTGC sets. Wee met the representatives of Detroit Diesel and was told that the order was originally given to the Plaintiff but Detroit Diesel was very unhappy with the sets delivered. The Third Defendant submitted a tender but was not successful.

130 The Third Defendant was invited subsequently by P.T. Mabua, of which Detroit Diesel was a shareholder, to quote for 21 RTGC sets. This time, the tender was accepted.

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131 There was never a fixed price list for RTGC sets in the Plaintiff during the First Defendant's employment there. The First Defendant therefore could not have made use of any price list belonging to the Plaintiff. As for the list of customers, the approach was made by Wee to the well-known pool of customers.

132 The First Defendant was cross-examined as to why he had not informed Cliff Loke or anyone else in the Plaintiff that Chen Onn Meng had asked him whether he was interested in setting up a company with him. He replied that he had told Chen then that he was not ready and it did not occur to him that he had to inform anyone about it.

133 As for the trip about which the First Defendant was questioned, he said he went to Hong Kong with the Second Defendant because he wanted the Second Defendant to look after the export markets, one of which was Hong Kong. He thought it was best he went along and introduced the Second Defendant. He was told by Peter Chan that Cliff Loke's wife had asked why it was necessary for both the First and Second Defendant to go together. Since it was better for Peter Chan to ask the question, the First Defendant explained the situation to him and he said that it made sense. The fact that Cliff Loke's wife had raised the question agitated the First Defendant because he was running the company and did not need any approval to do what he had done.

134 The First Defendant agreed that he had told Chen he wanted to incorporate the Third Defendant before he (the First Defendant) formally tendered his resignation. He also agreed that he had told Chen to proceed with the incorporation a few days after tendering his resignation but before he was informed of the early release. He was advised by a solicitor that he could set up a new company the day after he tendered his resignation as a director of the

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Plaintiff. The incorporation was to be done only after he had left the Plaintiff's employ and that was the position on 21 July 1995.

135 The First Defendant denied that he had told Roy to alter the salary statement (AB 71). His last day of service ought to be 30 June 1995 if he was paid in lieu of notice, but he was told only on 7 July 1995. He also denied that he was on unofficial leave from 8 July 1995 till the end of the month. He spoke to Peter Chan before 7 July 1995 and was told that his last day was 7 July 1995.

136 The First Defendant said he did not copy the Plaintiff's information on computer diskettes or otherwise.

137 When he first joined the Plaintiff in 1992, he did not have experience in RTGC set business and RTGC did not feature in the Plaintiff's business. The Plaintiff made a successful bid for three related projects and then employed Wee Choo Tat to take care of the crane business. Wee was instrumental in designing the spring-loaded mechanism with Bob Rawley, a feature stated by the Plaintiff to be unique, Wee was working for McAlister, the largest supplier of RTGC sets, before he joined the Plaintiff. Bringing him on board would serve two purposes - the Plaintiff would have his expertise and kill the competition at the same time. After his departure from McAlister, that company practically dropped out of the RTGC generator business. Wee and his then boss from McAlister had actually gone to the Plaintiff to discuss the big project at the PSA. As the Plaintiff and McAlister were the only two companies which were bidding very seriously, it was thought that they could perhaps collaborate. However, nothing emerged from the discussions and it was then that Cliff Loke came up with the idea of taking in Wee and crippling the competition.

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138 The First Defendant agreed that he had free access to the design department where the diskettes containing the know-how about RTGC sets were stored. He would be given any technical materials that he requested. The department was also accessible to the sales, the project and the production personnel. Such technical information could be given to the Plaintiff's customers. While the Plaintiff did not give production drawings to its customers, it did give out detailed drawings like those concerning the panel of the RTGC set.

139 The Plaintiff's production area had a security guard and a 'No Entry' sign at the store. However, suppliers could go in and walk through the offices. Although the Plaintiff always wanted to protect the confidentiality of its technical knowledge, the measures taken were inadequate as drawings would be left around the premises.

140 The First Defendant agreed that he was involved in negotiations with customers while with the Plaintiff but not in the initial stages of the negotiations.

141 There were hundreds of components in a RTGC generator. The Plaintiff manufactured practically every part but the Third Defendant would subcontract out parts of the job. While he was the Plaintiff's general manager, initially they had no idea what the final cost of the set would be. With time and experience, they managed to come up with "guesstimates". A separate price list was prepared for each job unless it was a repeat. It was possible to memorize the costs of the components.

142 The Third Defendant built up its own pricing list from scratch. To work out the pricing, he would have to get the costing of the parts from the suppliers. Suppliers of components for the RTGC sets were the same ones who supplied

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parts for ordinary generators. Information on the pool of suppliers was available to any manufacturer of generators. One could look for them in the Yellow Pages.

143 The First Defendant dealt with about a dozen suppliers while he was in the Plaintiff's employ. He recorded the telephone numbers of major suppliers on his telephone's memory functions. Their facsimile numbers were stored in his computer. He did not take any name cards with him when he left the Plaintiff. The Third Defendant did not buy parts for RTGC sets from overseas suppliers.

144 Asked by Counsel for the Plaintiff whether he could remember the telephone number of one Bill Moir, who worked in a supplier's company and whom the First Defendant claimed he called frequently, the First Defendant was able to say he remembered the number as 001-31-786101877 without reference to any document.

145 While there should be no difficulty for a manufacturer of ordinary generators to build RTGC sets, most builders were somehow not interested in RTGC sets. The First Defendant agreed that one possible reason could be they were unable to work out a competitive package like the Plaintiff's. While price and quality were important to customers, a newcomer like the Third Defendant would even absorb losses in order to penetrate the market.

146 The First Defendant stated that he was shocked the Third Defendant did not get the contract from Mitsubishi due to a 30% price difference from its competitor because in the generator business, quotations seldom differed by more than 10%. He denied that he was shocked because he had expected to clinch the contract due to his knowledge about the Plaintiff's pricing.

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147 The contacts that Wee made while with the Third Defendant were through his own efforts and did not come from the First Defendant.

148 On the day of the execution of the Anton Piller order, the First Defendant told the raiding party that all RTGC generator materials were stored in his room. However, he testified in Court that he had also brought Roy Wong to Wee's workspace where Roy took several files and then brought them to the First Defendant's office. He agreed that this fact was not reflected in the supervising solicitor's report.

149 The First Defendant said that the Third Defendant's information about RTGC sets came from third parties like customers who sent the company the specifications and the typical layout drawings. In the case of Mitsubishi, the Third Defendant was given a full electrical drawing to quote on because the party involved wanted to terminate the existing contractor's services. There were also several contractors in the business who had built RTGC sets. They would have some standard drawings, too. The Third Defendant obtained some drawings from such contractors.

150 The Third Defendant shared its business premises with five other companies in which Chen Onn Meng was a director at the material time. The First and Second Defendants were employed by the Third Defendant with CPF benefits while Wee Choo Tat was employed on a commission basis. Koh Chin Leong was not an employee of the Third Defendant. He was formerly a draftsman with the Plaintiff and was now working for Dee Engineering Works. However, his workstation was also searched by the raiding party on 19 December 1996. This was due to the confusion during the raid. Someone from the raiding party had asked where the Autocad station was and the First Defendant replied, "There", indicating Koh Chin Leong's workstation. The First

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Defendant did not know why Chen Onn Meng, according to the supervising solicitor's affidavit, had directed the raiding party to search Koh's workstation.

151 Correspondence from third parties (AB 237 and 238) were addressed to "Mr Koh of VibroPower Pte Ltd" (ie the Third Defendant) or to "VibroPower Pte Ltd Attention: Mr Koh". However, the First Defendant maintained that he could produce CPF statements which would indicate that Koh Chin Leong was not working for the Third Defendant. He explained that third parties would not know who was actually working for whom.

152 On 19 December 1996, some of the Plaintiff's drawings were found at Koh's workstation. The First Defendant disagreed that the Third Defendant could have kept the Plaintiff's drawings at Koh's workstation out of convenience inspite of a letter dated 7 April 1997 from the Defendants' solicitors stating that "some documents were kept there as a matter of convenience". The First Defendant did not know how the drawings came to be at Koh's workstation. He also did not know how some of the Plaintiff's drawings came to be in Chen's room that day.

DW2 (Freddie Fong Chee Eng, the Second Defendant)

153 The Second Defendant is the Marketing Director of the Third Defendant. He has a qualified Craft Certificate from the Singapore Vocational Institute. Since 1963, he has worked in various companies involved in engineering and machinery distribution. In 1973, he joined General Diesel as a sales engineer and, in 1982, became the sales manager.

154 About this time, he became acquainted with the First Defendant who was then working in Petbow. In 1985, he got to know Chen Onn Meng.

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155 In 1988, General Diesel was sold to Detroit Diesel Corporation. In 1990, the Second Defendant became the general sales manager. In late 1994 or early 1995, the Second Defendant left Detroit Diesel as he had intended to buy into another company but the deal fell through. He then asked the First Defendant, who was the general manager of the Plaintiff, whether there was an opening for him in the Plaintiff. The First Defendant subsequently offered him the post of Assistant General Manager (Overseas Market). His job was to further open up an export market for the Plaintiff for all its products except RTGC generators because the Plaintiff already had staff attending to those. He accepted and started work in the Plaintiff in February 1995.

156 Within a few months, in June 1995, the First Defendant told the Second Defendant that he was resigning from the Plaintiff's employ. He did not tell the Second Defendant then what the reason for his resignation was.

157 After the First Defendant tendered his resignation, Cliff Loke spoke to the Second Defendant and said that he could only think of three companies that the First Defendant would move on to – Libra Equipment, Ensyst Pte Ltd or one of Chen Onn Meng's companies.

158 The Second Defendant considered his situation in the Plaintiff after the First Defendant's resignation as he had been recruited by the First Defendant. He decided to resign, too, and informed the First Defendant accordingly. The First Defendant then asked him whether he was keen to join him in a new company started by him and Chen Onn Meng. The Second Defendant agreed to join that company and tendered his resignation to Cliff Loke.

159 Cliff Loke asked the Second Defendant where he was moving on to and the Second Defendant told him. Cliff Loke then warned him that the First Defendant

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was not someone who could be trusted as he had left the Plaintiff after causing him to pay $900,000 in order to discharge himself from bankruptcy and getting him committed to a new factory that he was hesitant about.

160 In August 1995, the Second Defendant joined the Third Defendant when it commenced business. He began writing to previous business contacts and friends to inform them of his new position. The Third Defendant was only interested in industrial and marine generator sets then.

161 In January 1996, the First Defendant informed the Second Defendant that Wee Choo Tat was looking for employment. The Second Defendant was hesitant about bringing Wee on board as Wee was known to be a RTGC man and the Second Defendant was not sure they should go into the labour-intensive RTGC business. Eventually, they decided to bring Wee into the fold and the whole RTGC set business was left to Wee to manage.

162 While he was with the Plaintiff, the Second Defendant's duties did not encompass RTGC sets and he was not privy to any customer list or price list. He denied having used any confidential information belonging to the Plaintiff. In any event, the technical know-how on engines and generator sets was freely available and after more than 20 years of dealing with such products, there was very little that he did not know or could not find out.

163 Under cross-examination, the Second Defendant said that in his four months with the Plaintiff, he did not have access to the design departments. He agreed that the Plaintiff had emphasized the need to protect confidential information but maintained that common technical information and knowledge was available openly.

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164 The Second Defendant said that he was without a job for about two months in the beginning of 1995 and had a reduced salary when he joined the Plaintiff despite his 21 years of experience as he could not be demanding in the market's environment. He denied that he was using the Plaintiff as a stepping stone to learn whatever he could before leaving to set up a new company.

165 The Second Defendant claimed that he volunteered to undergo a physical check before he left the Plaintiff but Cliff Loke merely asked him to hand over to Kapardia. He managed to leave the Plaintiff earlier than required in his contract because Cliff Loke told him that if he had nothing else to do, he could leave.

166 The Second Defendant did not assist in the RTGC generator business in the Third Defendant except in very small ways. An ordinary generator manufacturer could also manufacture RTGC sets but the RTGC generator business was not in the Third Defendant's initial plans.

DW3 (Chen Onn Meng)

167 Chen Onn Meng, a director and shareholder of the Third Defendant, has a Diploma in Mechanical Engineering from the Singapore Polytechnic. In 1983, he started work in General Diesel and got to know the Second Defendant who was then a sales engineer there. In 1985, he joined Petbow and met the First Defendant and the friendship between them grew over the years. In 1992, Chen formed a company known as Mason Industries (S) Pte Ltd to do noise and vibration control work for generator sets. Subsequently, he incorporated another company called Vibro Acoustics (S. E. Asia) Pte Ltd.

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168 Because he respected the ability of the First Defendant, Chen often asked him to join him in starting a new business. However, the First Defendant was not interested then.

169 Chen's companies did noise and vibration control jobs for the Plaintiff's RTGC and ordinary generators. In the course of dealing with the Plaintiff and other manufacturers, drawings were given to Chen to peruse and to do quotations. One of the Plaintiff's drawings came into his possession for some reason which he could not recall. This drawing was seized from Chen's office by the raiding party in December 1996. Chen emphasized that his office, although in the same premises as the Third Defendant, was not part of the Third Defendant but of Mason Industries (S) Pte Ltd.

170 In June 1995, the First Defendant contacted Chen and asked him if he was still interested in starting a business with him because the First Defendant had resigned from the Plaintiff. Chen was and they made arrangements to incorporate what was eventually the Third Defendant. The new company was to have commenced business in September 1995 but in early July 1995, the First Defendant told Chen that the Plaintiff had paid him an amount in lieu of notice. The commencement date was therefore brought forward to August 1995.

171 Chen was not really involved in the Third Defendant as he had his other companies to take care of. He left the new company to the First Defendant. About a month later, the Second Defendant joined the company. Since Chen knew the Second Defendant and had dealt with him previously, he had no hesitation in agreeing to the Second Defendant joining the new company. In late January 1996, the First Defendant told Chen that Wee Choo Tat had approached him on the possibility of him joining the Third Defendant.

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172 Initially, the Third Defendant dealt only with the sale of commercial and industrial generator sets and the trading of switchboards. Chen's other companies would support the Third Defendant with sub-contract works to make the Third Defendant's price more competitive while generating more business for themselves.

173 Under cross-examination, Chen said he had done about 20 to 30 jobs for the Plaintiff while the First Defendant was the general manager there. One or two of these were related to RTGC sets. Drawings from the Plaintiff came via the sales or the project engineer and not through the First Defendant. The RTGC set related drawing (AB 348) which was seized from his room in December 1996 could have been given by the workshop personnel, perhaps the workshop manager. Sometimes, Chen's companies were needed at the very early stages of a project and it would therefore be no surprise that they received draft drawings (like AB 348) or sketches. After the First Defendant left the Plaintiff, Chen continued to quote for jobs but did not get any from the Plaintiff.

174 One of the Plaintiff's drawings (AB 354) found during the raid was dated 28 July 1995 and must therefore have been given to Chen after that date. The First Defendant had left the Plaintiff by then and Chen had said he did not get any jobs from the Plaintiff after the First Defendant left the company. Chen maintained that it could have come from the Plaintiff's workshop personnel with whom he maintained contact. Inspite of the confidentiality clause at the right hand bottom corner of the drawings, Chen was not told to return the drawings even when he was not awarded the job. It was put to Chen that the Plaintiff, being a certified ISO 9002 company, could only give out drawings with a covering letter under its written procedure and that Chen could not therefore have obtained these drawings without such a letter. Chen maintained his stand

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and commented that some companies certified under even ISO 9001 still bent the rules.

175 On the day of the raid, Chen allowed the raiding party to search only the rooms of the First and Second Defendants and the workstation of Koh Chin Leong but not his own room. Chen explained that was because the Anton Piller order was directed at the Third Defendant which he did not run. His room, he said, belonged to the four companies which he had a hand in running but not the Third Defendant. The RTGC set drawings were in a box of discarded drawings for jobs which he did not get. He finally relented and allowed the raiding party into his room after they had searched the premises the whole day since they practically had everything by then. It was his first encounter with an Anton Piller order. He denied that his room was a hiding place for the drawings.

176 Koh Chin Leong was employed by Dee Engineering and his salary was paid by that company. Dee Engineering did drawings for the Third Defendant. He directed the raiding party to Koh's workstation because they asked for Koh's workstation. He did not protest although a respite of two hours was given to him to consult his solicitors probably due to the surprise and confusion caused by the raid. Koh was responsible for the autocad for RTGC sets and they were designing such sets at that time. Chen could not recall if he and the Second Defendant had admitted that RTGC set materials were kept at Koh's workstation.

177 Even though some of the Third Defendant's drawings stated that they had been approved by Ben (ie Chen), the Third Defendant's practice was that Chen had to sign the drawings. There was no signature at all.

DW4 (Wee Choo Tat)

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178 Wee Choo Tat joined the Third Defendant as a Marketing Consultant on a commission basis in February 1996. He has a Diploma in Marine Engineering from the Singapore Polytechnic. From 1969 until 1975, he worked as an assistant engineer on board a ship and then as a yard manager. In 1975, he switched from the shipping industry to become a Marketing Manager for a company dealing with engines. In 1990, he was employed as a department manager in McAlister, heading the diesel engine and generator set department. It was here that he first became involved in RTGC generators. For three years, he dealt with RTGC generators.

179 As the business circle of builders of engines and generator sets was a small one, he got to know the First Defendant. Sometime in the middle of 1992, he thought of leaving McAlister. He spoke to Cliff Loke. Subsequently, the First Defendant, then general manager of the Plaintiff, called Wee and offered him a job in marketing and coordination of contracts for RTGC sets.

180 Wee worked with Albert Loo, the person in the Plaintiff dealing specifically with RTGC sets. The Plaintiff secured contracts to build some 140 sets during the one year that Wee worked for the Plaintiff. The First Defendant as general manager of the Plaintiff was hardly involved in the negotiations. His role was to price the sets after Wee gave him the specifications.

181 By the time Wee left the Plaintiff in June 1993, the Plaintiff was an established company dealing with RTGC sets. He became the general manager of Nedco. In 1995, there was a take-over of Nedco and Wee found himself redundant in the new organization.

182 He approached Cliff Loke for a job in the Plaintiff. Cliff Loke told him to wait for an offer from the Plaintiff but that never materialized. Knowing that the

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First Defendant had started his own company, Wee then approached the First Defendant and raised the subject of RTGC generator business to him. This was a difficult business and profit margins were comparatively less attractive. He was subsequently taken on as the Third Defendant's Marketing Consultant in RTGC sets on a commission basis.

183 Wee called Cliff Loke to inform him that he had joined the First Defendant in his company. Cliff Loke knew that the purpose was for him to develop the market for RTGC sets for the Third Defendant.

184 Wee then began to contact every possible RTGC customer that he remembered from the years he was in McAlister, the Plaintiff and Nedco, to renew the ties he once had. The list of customers comprised basically crane manufacturers who were involved with port facilities and Wee knew most of them personally. Wee had also kept in touch with the local suppliers through golf.

185 When the Third Defendant shifted to bigger premises, the initial reservations of the First and the Second Defendants about the RTGC set business taking up too much space dissipated. They also had reservations about the viability of this business.

186 The First Defendant got involved only when the Third Defendant received enquiries and invitations to bid for new orders. Their first invitation was from Mitsubishi Heavy Industries. After the First Defendant had priced the set, they tendered for the job. They were shocked that they lost the bid because their price was about 30% higher than the lowest tender.

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187 In July 1996, the representative of Mitsubishi visited them and handed them a new set of enquiries on which they made a quotation. Wee and the First Defendant then went to Japan to visit the Mitsubishi personnel and were told what their budget was. They agreed to a price acceptable to Mitsubishi and were awarded the job.

188 The Third Defendant's next three bids to Mitsubishi did not bear fruit as its prices were higher than the competition's.

189 Subsequently, Detroit Diesel invited the Third Defendant to quote for six RTGC sets. Wee went to meet the representatives of that company and found out that the Plaintiff had been awarded the contract to supply up to 32 RTGC sets. After the first six sets were delivered, Detroit Diesel was unhappy with the sets and was therefore looking for another contractor to take over the rest of the orders. The Third Defendant then made a bid and was given an order for eight sets with an option for another 13 sets to be ordered.

190 When customers invited manufacturers to bid for orders, they would supply the technical specifications with or without drawings which were given for reference only. Such drawings could be the customers' or those of other manufacturers who had supplied generator sets or had submitted drawings previously. In his years of work, Wee had come across drawings from McAlister, the Plaintiff, the Third Defendant and other engineering companies.

191 Wee disputed Cliff Loke's claim that the Plaintiff's information was confidential as such was readily available in the market. Wee was the one who approached all the customers of the Third Defendant because of the business and personal relationships built up over the years.

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192 In cross-examination, Wee explained that Bob Rawley was assisting him in the Plaintiff to build the prototype for the PSA project. Although Bob was a good designer, it was the first time he had come across a RTGC set. With Wee's input and knowledge gained from his three years with McAlister, Bob came up with the design for the PSA project.

193 Wee was asked why he remained unemployed for two months after having to leave Nedco if he had as much experience as he claimed. Wee replied that one serious offer was made but he rejected it. It was also a small market and the timing was not right for him. Further, looking for a job at mid-life was not easy.

194 Wee further explained that while it was not difficult to build a RTGC generator set, the business was not easy because the manufacturer had to deal with the end-users, the crane manufacturers. RTGC sets were not built on a production-line basis as each crane manufacturer had its own specifications. Agreeing that no other company appeared to be able to build RTGC sets as competitively as the Plaintiff, Wee commented that once a company was in the business, there were spin-offs in that other customers would gravitate to a company that had experience.

195 According to Wee, all the crane manufacturers were either subsidiaries of shipyards or departments within a shipyard. As a Marine Engineer, it was not difficult for him to trace them. The names of crane manufacturers were not secret. He could always check them up, make a telephone call and find out whom he should speak to in the company. It was therefore no big deal to him in knowing whom exactly to address the letters of introduction to. He knew a number of such contacts over the years in any event.

The Decision of the Court

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196 Clause 13 of both the First and Second Defendants' contracts of employment proscribes disclosure of "confidential information" "during or after employment", "whether such information is produced by (their) efforts or other employees". The additional sentence in Clause 13 of the Second Defendant's contract prohibits disclosure of any transaction or information relating to the Plaintiff's business and the taking of technical information/data out of the Plaintiff's premises. It is unclear what the last part of that sentence "or transferred to any third party" refers to.

197 In *Faccenda Chicken Ltd v Fowler and others* [1986] 1 AER 617, the English Court of Appeal held:

> "(1) The duty of fidelity owed by an employee to a former employer was not as great as the duty implied in the employee's contract of employment and owed during the subsistence of the employment, when use or disclosure of confidential information, even though it did not amount to a trade secret, would be a breach of the duty of good faith. Accordingly, confidential information concerning an employer's business acquired by an employee in the course of his service could be used by the employee after his employment had ceased unless the information was classed as a trade secret. Furthermore, an employer could not restrict the use or disclosure of confidential information by a restrictive convenant in the employee's contract of employment unless the information sought to be protected was a trade secret or equivalent to a trade secret …
>
> (2) In order to determine whether information was a trade secret or equivalent to a trade secret it was necessary to have regard to (a) the nature of the employment, for example whether the status of the employee was such that he regularly handled confidential information and recognised it as such or whether the information was only handled by a restricted number of employees, (b) the nature of the information itself, (c) whether the employer had stressed the confidentiality of the information to the employee and (d) whether the relevant information could easily be isolated from other non-confidential information which was part of the same package of information. …"

198 *Faccenda Chicken Ltd* was applied by the Singapore High Court *in Medivac International Management Pte Ltd v John Walter Moore* [1988] 1 MLJ 5.

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199 I shall deal firstly with the alleged breach by the First Defendant of clause 12 of his contract of employment and/or his fiduciary duties. It was not disputed that the First Defendant had tendered his resignation letters to the Plaintiff on 19 June 1995. The resignation as a director was stated to be with effect from 19 June 1995. His resignation as the general manager gave three months' notice as required. Cliff Loke claimed that the two positions were somehow inextricably linked. Yet it was the Plaintiff's case that the First Defendant had been appointed general manager first and as a director only at a later date. The separate resignation letters also bore testimony to the fact that the two positions were not so tied together that they became one. The Plaintiff produced no evidence to show that it was entitled not to accept the First Defendant's resignation as a director. When the Plaintiff filed Form 49 with the Registrar of Companies and what it stated in the form were matters within its control. The First Defendant had no say or knowledge about those matters. Despite the First Defendant's denial of any agreement to postpone the date of his resignation as director, the Plaintiff decided not to call Peter Chan of SEAVI to testify about the alleged mutual agreement. Cliff Loke's evidence about what Peter Chan said was hearsay and so was Roy Wong's on this. The Plaintiff also did not produce any evidence to show that the First Defendant signed anything as a director after 19 June 1995. I was therefore of the view that the First Defendant was no longer a director of the Plaintiff on and after 19 June 1995 and was therefore not in breach of any duty when he became a director of the Third Defendant on 21 July 1995. The First Defendant was even asked in cross-examination why he did not inform the Plaintiff when Chen Onn Meng suggested that they set up a business venture together. I do not think the fiduciary duty of a director of a company is so unreasonably onerous.

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200 The payment for July 1995 was stated on the face of the Plaintiff's own document to be "in lieu of notice 1/7/95 - 31/7/95". It was strange that the First Defendant would want to save on no more than $2,000 in his CPF contributions and lose the corresponding amount from his employer. He was able to pay back $70,000 or so to the Plaintiff and there was no evidence to show that he was in financial straits then. I repeat here my earlier observations about the alleged mutual agreement made between Peter Chan and the First Defendant. It was also strange that Roy would do whatever the First Defendant dictated knowing that the First Defendant had already tendered his resignation and knowing that misrepresenting the purpose of the July payment would lead to a breach of CPF regulations by the Plaintiff. It was common ground that the First Defendant did not return to the Plaintiff's office after the farewell lunch, impromptu or planned, on 7 July 1995. There was no other send-off lunch or valedictory occasion after 7 July 1995. The First Defendant also returned the company's computer that day. Even if he did go to render assistance at the Plaintiff's Telepark project on site, that surely was gratuitous service given out of goodwill. It was quite clear that the First Defendant was not to be involved in the Plaintiff anymore by 7 July 1995 at the latest. He was told about the earlier release date only on that day and he agreed to it. He was technically not an employee of the Plaintiff with effect from 1 July 1995 and therefore did not breach clause 12 of his contract by his involvement in the Third Defendant.

201 Even if I am wrong on the above and the First Defendant remained as a director and general manager of the Plaintiff until 31 July 1995, the evidence showed that the Third Defendant commenced business only on 1 August 1995 although it was incorporated on 21 July 1995. Between 21 July 1995 and 31 July 1995, the First Defendant would be no more than a director and general manager of the Plaintiff in name. He had ceased to run the operations of the

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Plaintiff. The Plaintiff has not even alleged that there was something for the First Defendant to do in the Plaintiff between 21 July 1995 to 31 July 1995. Any breach of clause 12 of his employment contract and/or of his fiduciary duties as a director would be, at the very worst, a most technical and trifling one and one that the law should not concern itself with because "*de minimis non curat lex*". I would have refused any claim for damages in such a situation.

202 In respect of the other complaints of the Plaintiff, no list of the Plaintiff's customers and suppliers nor of any pricing or costing structure was produced in evidence. The Plaintiff has also not shown that any of the Defendants possessed such lists. Indeed, from the discovery of two or three pieces of correspondence with two or three of the Plaintiff's suppliers, the Plaintiff performed a quantum leap in logic to come to the conclusion that the Defendants must have the entire list of the Plaintiff's 50 or more suppliers. The Plaintiff also appeared to be suggesting that the names of such so-called third party suppliers were shrouded in secrecy, known only to a select few in the inner sanctum of generator manufacturers. If such suppliers were not doing anything illegal or improper, and no such suggestion emerged, why should their names and the relevant persons involved be so hard to discover? Cliff Loke went to the extent of stating that calling cards exchanged in the course of interaction belonged to the company and should not be taken away upon resignation. If that were the case, one can only imagine how many former employees of companies have committed breach of trust or theft by bringing with them calling cards received during the course of their previous employment. As the First Defendant's evidence that he did not take any calling card with him when he left the Plaintiff was not challenged, I need not dwell further on this particular aspect.

203 The Plaintiff has also not demonstrated what was so unique about its pricing or costing structure that nobody was permitted to duplicate it or any part thereof.

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It could not be the prices of individual components that was so important. Ultimately, it was the margin of profits that mattered to any company. Those who have spent years in the business or one related to it would surely know what a particular generator set, RTGC or otherwise, was likely to cost. It also emerged from the evidence that customers did inform manufactures of their competitors' bids anyway. The First Defendant, when doing the pricing for the Third Defendant, could not help but know what price the Plaintiff was likely to bid at, in the same way as he probably would know what the Plaintiff was paying for any rented factory premises or what the salaries of the personnel involved in making RTGC sets were. If he could undercut the Plaintiff, produce RTGC sets acceptable to the Third Defendant's customers and yet keep the Third Defendant viable, that was his good fortune and the Plaintiff would just have to make do with lower profit margins by reducing its prices. The Plaintiff could also decide to wage a war of attrition by absorbing losses in its bids in an attempt to drive the Third Defendant out of business. It could even try to buy out the Third Defendant or its key staff as it did to McAlister. Whichever the course of action, I should have thought this was the stuff that competition in business was made of.

204 Where the customers and contacts were concerned, it was common ground that there were only a handful of them. The fact that the Plaintiff would not want others to know who they were did not render knowledge of them a trade secret. Wee Choo Tat was familiar with them at any rate. Further, in this age of modern communication and information explosion, it seemed archaic to make the plaintive cry that the Third Defendant could not have known which companies and which persons in the companies to target at.

205 The sum total of the Plaintiff's case was this - any former employee who knew the Plaintiff's suppliers could not contact those suppliers, any former

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employee who knew the costing and pricing of the Plaintiff was barred forever from costing or pricing another RTGC set, any former employee who knew the Plaintiff's customers could never deal with those customers. Bearing in mind that the pool of such customers (ie crane manufacturers) was a limited one, the above propositions would mean that a person could either work for the Plaintiff or get out of the RTGC business altogether for an indefinite period of time. Such a scenario could hardly be described as fair competition, something the Plaintiff emphasized it was not averse to.

206 Where the drawings were concerned, it was not proved on a balance of probabilities that the First and Second Defendants took them away from the Plaintiff in computer diskette or hard-copy form at any time. I accepted the evidence of the Defendants that such drawings, despite their confidentiality clause, were apparently in free circulation. The Plaintiff found no computer diskette containing their drawings in the Third Defendant's premises. It chose not to execute the Anton Piller order against the First and Second Defendants' homes although that was applied for and granted. It could not therefore come to Court and imply that the First and Second Defendants must be keeping such diskettes somewhere.

207 One of the Plaintiff's so-called confidential drawings was found to be an exact replica of another manufacturer's earlier drawings. That undermined the Plaintiff's assertion that its drawings were its own creation and therefore confidential. They did not amount to trade secrets. Where this particular drawing was concerned, if it was a trade secret, it was not the Plaintiff's trade secret.

208 Several of the Plaintiff's drawings found in the Third Defendant's premises had admittedly been produced after the departure of the First and Second

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Defendants from the Plaintiff's employ. That buttressed Chen Onn Meng's testimony that it was he who sometimes sought and obtained without stealth or surreptition drawings from the Plaintiff's workshop personnel. It was only in cross-examination of the Defendants' witness (Chen) that the Plaintiff said it was a certified ISO 9002 company. It has not been shown when the Plaintiff received such certification, what was the precise procedure put in place so that no drawing could leave the Plaintiff's premises without a covering letter, and what preventive measures there were to ensure that such a procedure would never be breached.

209 In one of the Plaintiff's letters sent in breach of its undertakings to the Court, Cliff Loke even acknowledged that Mitsubishi Heavy Industries had indeed sent enquiries to the Third Defendant which enclosed the Plaintiff's drawings. It was therefore not inconceivable that the Plaintiff's drawings had come into the possession of the Third Defendant through the process of enquiries and invitations to bid. Such being the apparent market practice, the Third Defendant could not be said to be under a duty of confidence to the Plaintiff, whatever the source of the drawings might be. At any rate, as I have indicated, I was not satisfied that they came from the First or the Second Defendants, which was what the Statement of Claim alleged.

210 The Plaintiff, in alleging that the Third Defendant could not have produced its RTGC sets without using the Plaintiff's drawings, overlooked several matters. The Third Defendant had Wee Choo Tat, a person recruited by the Plaintiff from McAlister to quench the said competitor in the RTGC set business. The suggestion that Wee could not be so good at the RTGC business because of his unemployment for about two months after he left Nedco failed to take into account the fact that there was, at that time, effectively only one major manufacturer of RTGC sets here and that by late 1995, the Plaintiff's

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RTGC set business was established and had no urgent need of Wee's services. Chen's companies were the supporting subcontractors and Chen had Koh Chin Leong, the former draftsman of the Plaintiff. It was quite irrelevant, in the light of my earlier findings, whether Koh was actually working for the Third Defendant or not. It was also immaterial where the drawings were found in the premises. Further, Chen and the First Defendant had a lot of experience and, even if not directly or intimately involved, could lend support to the Third Defendant's RTGC set business.

211 I shall deal now with the circumstances leading to the First Defendant's resignation. I was not entirely convinced that the First Defendant decided to leave the Plaintiff due to his unhappiness over the questions raised about the trip he had made with the Second Defendant. I was also not persuaded that he and Cliff Loke did not talk at all about his future plans. It was a most natural thing to discuss in the congenial setting like the one the First Defendant and Cliff Loke were apparently in. Even if the First Defendant was not entirely truthful in his conversation with Cliff Loke, it was understandable that, as an employee leaving to set up a rival business (in generator sets), the First Defendant would not be so forthcoming in talking about his plans. However, I rejected the Plaintiff's suggestion that that was a ploy to lull the Plaintiff into not conducting a physical search. If the First Defendant was so devious, he would have made sure that nothing incriminating would be found anyway. Unless the contract requires it, an employee leaving his employers is under no duty to disclose his future plans or to tell the complete story. Offshoots like the Third Defendant are part and parcel of business life and if other employees decide to leave and join the offshoot, like two other former employees of the Plaintiff did, one can only say, "*C'est la vie!*" because that is life.

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212 It was also submitted that the Defendants' case was not put to Cliff Loke for him to respond thereto. However, it was quite obvious from Cliff Loke's affidavit of evidence-in-chief that he knew what the Defendants' case was. He even responded to some of the allegations in his affidavit.

213 In conclusion, the Plaintiff's case was, in reality, a complaint about a competitor borrowing its strategies and business methodology and employing its former staff who gained their skills, experience and knowledge in the Plaintiff. If the Plaintiff was correct, then no business success formula could ever be replicated and no former employee of the Plaintiff could ever set up a rival company or work for one and the Plaintiff would have a stranglehold monopoly in the RTGC generator business. That may be what the Plaintiff wished to have but would not get. It has not been proved that the information in issue was of the nature of trade secrets. It has also not been proved that the First and Second Defendants removed anything from the Plaintiff's premises or used anything other than what they honestly acquired by way of skill, experience and knowledge. I therefore dismissed the Plaintiff's claim with costs to be taxed or agreed between the parties.

TAY YONG KWANG

JUDICIAL COMMISSIONER

SUPREME COURT

8 May 1998

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Tay Yong Kwang JC

Colin Caines (Khosa & Caines) for Defendants
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