IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 152

Suit No 304 of 1991

Between

Fujitsu Microelectronics Asia Pte Ltd

… Plaintiff

And

K T Technology (S) Pte Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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

[1997] SGHC 152

Suit No 304 of 1991
S Rajendran J
04 June 1997

Judgment:

GROUNDS OF JUDGMENT

1. The plaintiffs were the payees of three Standard Chartered Bank cheques dated 4, 10 and 19 December 1990 drawn by the defendants totalling US$905,580. The plaintiffs presented the said cheques for payment but they were dishonoured and returned to the plaintiffs on 7 February 1991. On 8 February 1991 the plaintiffs gave the defendants notice of such dishonour and on 11 February 1991 instituted these proceedings claiming the said sum and interest under s 57 of the Bills of Exchange Act.

2. The cheques were given to the plaintiffs in settlement of a claim made by the plaintiffs in Suit No 2193/90 in which the plaintiffs claimed a sum of US$910,380 being the price of goods sold and delivered. The goods in question were computer RAM chips. Details of the defendants' purchase order issued in respect of the chips are stated in the schedule below. The last column indicates

the defendants' claim in the present proceedings that part of the orders were for a company called "Trivest" and not for the defendants.

Date PO No. Quantity Price (US$) Remarks

4.9.90 KTT 09013/90 136,000 550,250 Trivest

5.9.90 KTT 09038/90 60,000 241,500 Defendants

27.9.90 KTT 09330/90 100 430 Defendants

28.9.90 KTT 09348/90 28,000 113,400 Defendants

(3,000)

Trivest

(25,000)

224,100 905,580

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3. The defendants' case was that they were entitled to stop payment on their cheques as the transactions were tainted by the fraudulent acts of two of the plaintiffs' former employees, namely, Eddy Ong Chwee Kim ("Eddy") and Philip Goh Peng Hock ("Philip"). It was the defendants submission that the plaintiffs are responsible for the fraudulent acts of its employees and so long as the plaintiffs can be shown to have cloaked the employees with the ostensible authority to enter into the transactions, then the fraudulent acts of Eddy and Philip would be the fraudulent acts of the plaintiffs. It was also the defendants'

case that when the plaintiffs received the three cheques from the defendants on 4 December 1990 they did not do so as *bona fide* payees because at that time the plaintiffs knew that Eddy had made use of Trivest to deceive the plaintiffs and also deceive the defendants.

4. The defendants claimed that on 17 August 1990 Philip represented to Toh Teck Swee ("Toh"), the Managing Director of the defendants, that if the customers of the plaintiffs combined their purchase of RAM chips they could obtain volume discounts from the plaintiffs (with a 30-day credit term). Philip also told Toh that the combined purchase would be made under the defendants' name and that he would co-ordinate with the other customers to pay for their share of the purchase price to the defendants. Upon receipt of the payments from the other customers, the defendants would pay the total purchase price to the plaintiffs.

5. Toh believed that this was a genuine discount scheme offered by the plaintiffs and therefore agreed, on behalf of the defendants, to participate. Accordingly, on 24 August 1990 he issued the defendants' purchase order for 120,000 RAM chips for the price of US$486,000 ("the first transaction"). Of these only half were for the defendants; the balance was for another customer of the plaintiffs (whose identity was at that time not revealed to Toh) with whom Philip was liaising. The defendants collected their portion of the chips from the plaintiffs while Philip arranged for the delivery of the remaining portion to the other customer. A few days later Philip called at Toh's office and showed him a bank draft which he said was the payment for the other customers' share. Philip said he would deliver the bank draft direct to the plaintiffs. The defendants paid for their share a few days later. The first transaction was therefore completed without any problems.

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6. On 4 September 1990, Philip introduced Eddy to Toh as "his boss". Philip and Eddy asked Toh if the defendants wished to again participate in such a bulk order purchase (with 90-day credit terms this time) with the same customer as on the previous occasion. This time he was given the identity of the other party as Trivest. Toh testified Philip told him that Eddy had "some sort of connection" with Trivest and so it would be easy for Philip to co-ordinate the delivery and payment.

7. In an affidavit filed in connection with Order 14 proceedings ("the earlier affidavit"), Toh had gone further and said that Philip had told him "sometime on or before 4 September 1990" that Trivest was owned by Eddy. (Trivest was owned by Eddy’s wife who is Philip’s sister.) Cross-examined on this, Toh claimed that he learnt that Eddy owned Trivest on a date subsequent to 4 September 1990. Contrary to what he said in his earlier affidavit, Toh maintained that on 4 September 1990 he thought that Trivest was just another customer of the plaintiffs. He told the court that if, on 4 September 1990, he had known that Eddy owned Trivest, he would have acted differently. Asked to explain, he said that he would have done a Registry of Companies search of Trivest and if that showed Eddy to be the owner, he would have put the transaction on hold because Eddy would have been in a position of conflict of interest and the transaction, unless authorised by the plaintiffs, would be improper.

8. Toh told the court that a few days after learning from Philip that Eddy owned Trivest, he had, on 20 September 1990, done an ROC search on Trivest. I would note here that this is the first time that the defendants made any reference to having done a search on Trivest. Toh told the court that as the search did not show Eddy to be the owner he disbelieved what Philip had told him. The ROC search referred to was not produced in evidence.

9. Toh told the court that on the strength of the representations made by Eddy and Philip on 4 September 1990, he, on behalf of the defendants, issued the purchase orders listed above. He claimed that the entire amount of RAM chips in purchase order KTT 09013/90 and 25,000 out of the 28,000 RAM chips in the last purchase order (KTT 09348/90) were for Trivest. Consequently, the defendants' share of the total number of chips ordered was only 63,100 chips to the value of US$254,080. Toh said that these 63,100 chips were collected by the defendants after signing the respective invoices of the plaintiffs acknowledging delivery of the said chips.

10. Toh alleged that the remainder of the chips (totalling 161,000) were collected and delivered by Philip to Trivest. Consequent to the arrangements made between him, Eddy and Philip, the defendants on 16 September 1990 and 2 October 1990 issued to Trivest two invoices for the RAM chips meant for Trivest. Trivest acknowledged receipt of the goods on these invoices. These RAM chips were entered in the books of the defendants as having been sold to Trivest.

11. On 10 October 1990 Philip went to Toh's office with a bundle of invoices covering the 161,000 chips and required the defendants to acknowledge delivery of these chips by signing the invoices. Toh placed the defendants' stamp and signed each of the invoices to acknowledge delivery of the chips meant for Trivest. Toh said he did so because he trusted Philip when Philip told him that, in order to complete the paper work, the plaintiffs required the defendants to sign these invoices acknowledging delivery. Before stamping the invoices with the defendants' stamp Toh, on Philip instructions, adjusted the date on the stamp to reflect a date of delivery close to the date of each invoice that was to be stamped.

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12. Around the end of October 1990, Toh telephoned the plaintiffs and learnt that Eddy was no longer with the plaintiffs. (Eddy was dismissed from the plaintiffs' employ on 23 October 1990.) He then spoke to Philip and learnt from Philip that Eddy had left the plaintiffs in order to concentrate on Trivest. At about this time the plaintiffs' accounts department was pressing the defendants for payment. Toh said that he became concerned and called Philip to query him on when Trivest would pay their share to the defendants. He said that he also queried Philip on why the plaintiffs were pressing for payment when Eddy had said that the plaintiffs would extend a 90-day credit term.

13. Toh told the court that, despite his calls to Philip, the plaintiffs continued to press the defendants for payment. He therefore drew up a schedule of proposed payments and sent the schedule to the plaintiffs sometime in mid-November 1990. There were errors in this schedule and the plaintiffs, by their fax of 16 November 1990, asked the defendants to re-submit the schedule with the errors corrected. Towards the end of November 1990, the plaintiffs received the schedule back from the defendants with the errors corrected. By this schedule the defendants proposed to settle the claim for US$905,580 in three payments to be made on 30 November, 10 and 31 December 1990.

14. It would appear from Toh's earlier affidavit, that when the plaintiffs pressed the defendants for payment, the defendants in turn demanded payment from Eddy and/or Philip and/or Trivest for payment for their share of the goods. Sometime around the end of November 1990, Philip handed to Toh three undated cheques payable to the defendants in purported full payment for Trivest's share in the purchases and told Toh that he would let him know the dates to be inserted on the cheques when Eddy confirmed the dates.

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15. On 3 December 1990 the defendants were served with the writ (in Suit No 2193/90). Toh told the court that as the defendants had received the three cheques from Trivest, the defendants wanted to resolve Suit No 2193/90. Accordingly, he arranged a meeting between the plaintiffs and the defendants. The meeting was held on 4 December 1990. The plaintiffs were represented by their then Financial Controller, Tsui Sai Cheong ("Tsui").

16. Toh said that at the meeting he asked Tsui why the plaintiffs were asking for payment when Eddy, their Regional Sales Manager, had given 90-days credit. He said that Tsui denied that the defendants had been granted 90-days credit and also told him that Eddy had been dismissed by the plaintiffs for misconduct. Toh told the court that at the meeting Tsui had asked the defendants if they had sold any of the plaintiffs' goods to Eddy. The defendants replied that they would check. Toh agreed that at that time the defendants knew that Eddy was the owner of Trivest.

17. At the meeting the defendants, in settlement of the plaintiffs' claim, issued three Standard Chartered Bank cheques to the plaintiffs dated 4, 10 and 19 December 1990 for a total of US$905,580. As these cheques for US$905,580 still left a shortfall of US$4,800, the defendants, soon after the meeting, sent a cheque for that amount to the plaintiffs. That cheque was cleared and the plaintiffs received the proceeds.

18. The plaintiffs on 10 January 1991 discontinued the Suit No 2193/90. At that time the three Standard Chartered Bank cheques from the defendants had been presented for payment but no information had been received from Standard Chartered Bank of any dishonour.

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19. After the meeting Toh contacted Philip and told him that the defendants had made payments to the plaintiffs and demanded to know the dates to be inserted in Trivest's undated cheques. Philip told him that Eddy had given the dates as 13, 24 and 16 December 1990. Toh inserted those dates on the cheques and presented the cheques for payment. They were all dishonoured.

20. Toh told the court that when the cheques were dishonoured the plaintiffs tried to but could not contact Eddy or Philip. Toh said that the defendants had all along believed that the combined purchases were legitimate. Toh said that he had no reason to suspect that what Eddy and Philip were doing were otherwise than authorised transactions. It was when the cheques were dishonoured that the defendants realised that they had been cheated. The defendants then stopped payment on the three cheques that they had given to the plaintiffs.

21. Toh lodged a police report against Eddy and Philip at the Criminal Investigation Department on 7 January 1991. The plaintiffs too had lodged a police report. Toh testified that the duo were arrested, charged in court and convicted of cheating and criminal breach of trust. The plaintiffs received notification from the defendants that the defendants had stopped payments on the cheque on 20 February 1991.

22. The defendants, on 14 May 1991, after the commencement of these proceedings, paid to the plaintiffs the said sum of US$254,080 for the 63,100 chips which the defendants admitted were orders for their own account. Interest of US$5,126 was also paid to the plaintiffs. The balance of US$651,500 remained in dispute.

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23. Eddy and Philip were not called as witnesses either by the defendants or by the plaintiffs. Tsui, who was to have been the main witness for the plaintiffs, also did not testify. Tsui had left the plaintiffs' service in May 1996 and had thereafter refused to co-operate with the plaintiffs. The only witness called by the plaintiffs was Leung Chung Keung ("Leung") who was working under Tsui.

24. Leung testified that the plaintiffs did not have any discount scheme for customers who banded together to make a single bulk purchase. The plaintiffs had no knowledge of the arrangements entered into between the defendants and Trivest in respect of the first transaction, the second lot of transactions or as to the undated cheques handed to the defendants by Trivest. It was also the plaintiffs' corporate policy that its employees (and their relatives) should have no business dealings either directly or indirectly with the plaintiffs.

25. Toh, in spite of knowing that Eddy was the owner of Trivest, was prepared to place orders with the plaintiffs in the defendants' name for goods intended for Trivest. In addition, and this is very damaging evidence against the defendants, Toh was prepared to acknowledge on the plaintiffs' invoices, that the defendants had received the goods described therein when in fact the goods had not been received by the defendants. In so doing, Toh, and hence the defendants, were being party to a deception practiced on the plaintiffs that the defendants were the actual purchasers of all the goods ordered.

26. Again when the defendants were asked by the plaintiffs at the meeting on 4 October 1990 whether the defendants had supplied any of the plaintiffs' goods to Eddy, the defendants gave an evasive answer and chose not to disclose to the plaintiffs - even at that stage - the extent of their dealings with Eddy. It is also clear from their conduct that the defendants treated Eddy and Philip not as the representatives of the plaintiffs but as the representatives of Trivest. This is

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evident from Toh's statement referred to above that when the plaintiffs pressed for payment the defendants demanded that Eddy and/or Philip and/or Trivest make payment for their share of the goods collected from the plaintiffs.

27. In the circumstances, I accept the submission of counsel for the plaintiffs that at the time they placed the purchaser orders with the plaintiffs, the defendants knew that Eddy and Philip were acting improperly and outside their authority as representatives of the plaintiffs. I accept the submission of counsel that the defendants worked hand in glove with Eddy and Philip to procure the delivery of the plaintiffs' goods to Trivest without disclosing to the plaintiffs that fact.

28. Counsel for the plaintiffs submitted that during cross-examination Toh showed himself to be an evasive and defensive witness. The attempts by Toh to resile from what he had sworn to in his earlier affidavit that Philip had told him on or before 4 September 1990 that Eddy owned Trivest is a sufficient example of Toh's evasiveness. I am satisfied that Toh's statement in that earlier affidavit reflected the true state of affairs. But even if that is not so and Toh was in fact told of Eddy's connection to Trivest sometime between 4 and 20 September 1990, the fact still remains that after learning of this connection the defendants still went ahead to issue the purchase orders dated 27 and 28 September 1990.

29. I found Toh's claim that because the ROC search did not reveal Eddy to be the owner of Trivest, he disbelieved what Philip said, to be quite incredible. If that were so, he would, as Counsel for the plaintiffs submitted, have at least confronted Philip with the ROC search before entering into the two further contracts. Toh's failure to do that suggests that he was quite indifferent to the question whether the shares of Trivest were being beneficially held for Eddy or whether the shareholder/s were relatives of Eddy and/or Philip. In fact, it is well

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within the realms of possibility that the purpose of the search was to ensure that Eddy's connection to Trivest could not be traced through a casual ROC search.

30. Counsel for the defendants submitted that the plaintiffs were liable as masters for the fraud committed by Eddy and Philip on the basis that both had conducted themselves within the scope of their authority, actual or ostensible, as servants of the plaintiffs. In support of this proposition, Counsel relied on the case of *Lloyd v Grace Smith & Co* [1912] AC 716 where the House of Lords endorsed the view that an innocent principal was civilly responsible for the fraud of his authorised agent, acting within his authority, to the same extent as if it was his own fraud. Expanding on that principle Lord MacNaghten at page 736 of his report said:

"That, my Lords, I think is the true principle. It is, I think, a mistake to qualify it by saying that it only applies when the principal has profited by the fraud."

There was no dispute with that statement of the law. The only question was whether those principles were applicable to the facts of the present case.

31. The facts here, as I found them to be, were that the defendants participated in a scheme proposed by Eddy and Philip whereby the defendants, for their personal profit as well as the profit of Eddy and Philip, issued the purchase orders in their name to camouflage from the plaintiffs the purchases of Trivest. In making these proposals, Eddy and Philip were, to the knowledge of the defendants, acting outside their authority as agents of the plaintiffs. The principle of law enunciated in *Lloyd v Grace Smith & Co* and other similar cases quoted was therefore not applicable in this case. The law will not lend its protection to a party who knowingly participates in the acts of the agent to defraud his principal.

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32. This is a case where the plaintiffs are suing on the cheques handed to them by the defendants in settlement of the plaintiffs' claim against the defendants in Suit No 2193/90. The judicial approach to claims on bills of exchange is well settled. To quote from R.M. Goode, *Commercial Law*, (1995 Edition) at 572:

"A bill of exchange generates a contract quite distinct from the transaction in respect of which it is given. Great importance is attached by the court to the unconditional character of a bill of exchange, for its utility as an instrument of commerce vitally depends on the assurance of payment to the holder. It is thus regarded as akin to cash, and the courts are very reluctant to allow a breach of the underlying transaction to be set up as a defence to a claim on a bill."

Where the dispute is between immediate parties to a bill, certain limited defences are available to the drawer of the bill, eg where the issue of the bill was induced by fraud or where there is an absence of consideration. Chalmers and Guest, *Bills of Exchange* (1991 Edition) at page 38, summarise the position as follows:

"It is clear, however, that if he [the payee] himself procures the issue of the instrument or its acceptance by fraud, duress or other unlawful means, or if as between himself and the person sought to be held liable on the instrument the consideration is illegal, then his title to the bill will be defective and such defect in title may be raised as a defence against him. Moreover, as between immediate parties, subject to the rule that negotiable instruments are to be treated as cash in the hands of the recipient, mere personal defences arising out of the underlying transaction, eg absence or failure of consideration, may also be raised."

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The plaintiffs and the defendants were immediate parties to the cheques and the defendants raised both the absence of consideration and the fraudulent conduct of the plaintiffs' employees Eddy and Philip in defence of the plaintiffs' claim.

Absence of consideration.

33. Counsel for the defendants submitted that the three cheques given by the defendants to the plaintiffs were in reality not in consideration of the discontinuance of Suit No 2193/90 but in payment of the RAM chips ordered from the plaintiffs. He submitted that in the circumstances of this case, the plaintiffs' contention that the discontinuance of the suit was the consideration for the three cheques cannot be supported.

34. There was, in my view, no merit in this submission. It was not disputed that the settlement or compromise of a claim constitutes adequate consideration. Whilst it may be true that the defendants in handing the three cheques to the plaintiffs were in effect paying for the RAM chips they had ordered, it was equally true that by so doing they were procuring the withdrawal of Suit No 2193/90 by the plaintiffs. As the cheques were handed to the plaintiffs in settlement of the claim in Suit No 2193/90, there clearly was consideration for the three cheques. Even if the cheques were handed to the plaintiffs in payment of the RAM chips, as suggested by Counsel for the defendants, that would also be a sufficient consideration for the cheques.

35. Counsel also submitted that as the 161,000 RAM chips to the knowledge of Eddy and Philip - the employees of the plaintiffs - were never delivered to or received by the defendants, the three cheques were given for a consideration that had failed. Again, there was no merit in this submission. The RAM chips were delivered to Trivest because it suited the defendants to have the chips

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delivered direct to Trivest. In the circumstances, it cannot be said, by reason of the delivery not having been made to the defendants, that there had been a failure of consideration.

Fraudulent conduct of Eddy/Philip.

36. Counsel for the plaintiffs submitted that even though Eddy and Philip were the employees of the plaintiffs, the two had perpetrated a fraud against the plaintiffs in connivance with the defendants. They were therefore acting outside their authority. Counsel submitted that Eddy and Philip should not, for these transaction, and in particular, in respect of the issue of the three cheques, be treated as the agents of the plaintiffs but as third parties.

37. Counsel for the plaintiffs submitted that fraud by a third party that induced the giving of the cheques to the plaintiffs would not affect the plaintiffs' rights as payees of the said cheques unless it was shown that the plaintiffs received the cheques with notice of the fraud. In support of this proposition, Counsel cited the following passage in the judgment of Crompton J in *Watson v Russell* (1862) 3 B&S 34 at 38:

"If A, by means of a false pretence or a promise or condition which he does not fulfil, procures B to give him a note or cheque or acceptance in favour of C, to whom he pays it, and who receives it *bona fide* for value, B remains liable on his acceptance. His acceptance imports value and liability prima facie, and he can only relieve himself from his promise to pay C by shewing that C is not holder for value, or that he received the instrument with notice or not *bona fide*."

On the authority of *Watson v Russell* and a number of cases following *Watson v Russell* (namely, *Talbot v Von Boris* [1911] 1 KB 854; *Hindle v Brown* (1908)

98 LT 791; *Hasan v Willson* [1977] 1 LLR 431 and *Nelson v Larholt* [1948] 1 KB 339), Counsel submitted that the defendants would, in order to succeed in this line of defence, have to prove that Eddy and Philip acted fraudulently in procuring the issue of the three cheques and, second, that the plaintiffs had notice of their fraud.

38. Counsel for the defendants in response submitted that in making the above submissions the plaintiffs had ignored the master and servant liability issue. Counsel also submitted that the principle in *Watson v Russell* was not merely confined to requiring the defendants to show that the plaintiffs received the cheques with notice; it went further in that the defendants would be "relieved" from their promise to pay the plaintiffs by showing that the receipt of the instruments by the plaintiffs was not *bona fide*. He submitted that in this case the defendants, in receiving the cheques, had not acted *bona fide*.

39. In view of my findings relating to the complicity of the defendants with Eddy and Philip, I do not need to say anything more about the master/servant issue. The plaintiffs clearly cannot seek to evade liability when they themselves were willing parties to the fraud perpetrated by Eddy and Philip. In addition, at the time the defendants handed the cheques to the plaintiffs the defendants knew that Eddy was no longer in the employ of the plaintiffs but was working solely for Trivest. If indeed the defendants had been induced to hand over the cheque consequent to what Eddy (or Philip on Eddy’s directions) represented, those representations would be the representations of Eddy/Trivest and not the representations of the plaintiffs.

40. I turn then to consider the submission on the plaintiffs’ *bona fides*. Counsel for the defendants submitted that the plaintiffs did not act *bona fide* because the plaintiffs, when they received the cheque on 4 December 1990, knew that Eddy

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had used the defendants to obtain credit terms for Trivest and were attempting to push their (ie plaintiffs) liability for Eddy's acts on to the defendants. These issues had not been raised in the pleaded Defence. Counsel for the plaintiffs, relying on the case of *Tramp Leasing Ltd v Sanders* [1995] TLR 220 objected to their being raised in submissions.

41. I agree with the view expressed by Court of Appeal in *Tramp Leasing Ltd v Sanders* that a defence which raises mixed issues of fact and law ought to have been pleaded in accordance with the spirit of the times of openness and frankness so that the issue to be tried is clearly set out before the parties and the court. The plaintiffs in this case were raising such a defence without having specifically pleaded that defence. I accept the submission of Counsel for the plaintiffs that to allow such a point to be raised for the first time in closing submission is prejudicial to the plaintiffs as the plaintiffs did not have the opportunity to lead evidence on it.

42. I would, however, add that even on the merits the submission failed. I was not prepared, on the evidence before me, to infer that the plaintiffs knew that part of the purchases made by the defendants were purchases on behalf of Trivest. It is possible, by the fact that the plaintiffs asked the defendants if the defendants had been supplying any of the plaintiffs goods to Eddy, that the defendants did consider that to be a possibility but the defendant did not respond to that query in any positive way - all that the defendants said was "we will check".

43. Even if I make the inference that at the time of the writ and at the time of the settlement the plaintiffs knew that a part of the RAM chips were intended for Trivest it would, in my view, make no difference to the defendants' case as it was not in dispute, that at the time the contracts were entered into, the

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plaintiffs (apart from Eddy and Philip) knew nothing about the involvement of Trivest. The defendants chose to enter into the contracts for the RAM chips (whether for themselves or for a third party) in their own name and, when sued, they elected to settle the claim. If the defendants disputed the claim they should have made their position clear to the plaintiffs and defended the action. Instead, the defendants by making proposals for payment by instalments admitted liability. In the circumstances, I cannot see how the plaintiffs can be said to be lacking in *bona fides* when they accepted the cheques in settlement.

44. For the above reasons, I give judgment to the plaintiffs for the balance sum of US$651,500 claimed. I further order that the defendants pay interest on the judgment sum at the rate of 8% per annum from the dates of presentment for payment of the cheques and bear the plaintiffs' costs in these proceedings.

S Rajendran

Judge

4 June 1997

SINGAPORE

S Rajendran J

Tan Cheng Han with G Vijayendran (Drew & Napier) for the plaintiffs

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Tan Chee Meng with Melvin Khoo (Harry Elias & Pnrs) and Tay Cheow Seng (Yoong Momo Tay & Pnrs) for the defendants

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