IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 208

Suit 2101/1996

Between

Ramzi Toufic Fares

… *Plaintiff*

And

Aidec Management Company Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Ramzi Toufic Fares v Aidec Management Company Pte Ltd

[1998] SGHC 208

Suit 2101/1996
Tan Lee Meng J
23 June 1998

1 **Judgment:**

2 **Cur Adv Vult**

3 1. The plaintiff claimed damages from the defendants, his former employers, for breach of his contract of employment. The plaintiff alleged that he was constructively and wrongfully dismissed when the defendants seriously breached his contract of employment in September 1996. The defendants, who denied that they breached the contract of employment, contended that the plaintiff breached his contract of employment by failing to report for work after 24 October 1996, and claimed that they were entitled to a *pro rata* refund of the sign-on fee paid to the plaintiff.

4 Background to the dispute

5 2. The defendant company (hereinafter referred to as "AIMAC") is a subsidiary of Asian Infrastructure Development Company Ltd. (hereinafter referred to as "AIDEC"). AIDEC, the parent company, has a very large fund to invest in private sector infrastructure projects in Asia. AIDEC's subsidiary,

AIMAC, was incorporated in Singapore in August 1995 to make investment decisions and commit funds on behalf of AIDEC. AIMAC's task is to study the risks involved in a proposed infrastructure project and to determine whether and how best to bear those risks. Proposals for investments are submitted to an Investment Committee, which decides whether or not to inject AIDEC's funds into a proposed infrastructure project.

6 3. After AIMAC was formed in August 1995, its chief executive officer (hereinafter referred to as "CEO"), Mr. Koji Kashiwaya, entrusted his general manager, Mr. Yuichi Saito, with the task of recruiting staff for what became known as the Treasury and Administration Department. Mr. Kashiwaya's next task was to recruit staff with the relevant technical know-how and expertise to enable AIMAC to fulfill its investment management obligations to AIDEC. The plaintiff, who was Mr. Kashiwaya's colleague at the World Bank, was hired as the general manager of AIMAC's Investment Management Group but he asked for and was given an additional title, that of "executive vice-president". From the time the plaintiff started work in January 1996, AIMAC had two general managers, Mr. Saito and the plaintiff, and two departments, Mr. Saito's Treasury and Administration Group and the plaintiff's Investment Management Group.

7 4. In May 1996, Mr. Kashiwaya informed his staff that he had re-organised AIMAC. As a result of this re-organisation (hereinafter referred to as the "May 1996 re-organisation"), AIMAC had three departments instead of two. The new department was named the Planning and Debt Financing Group, and it was headed by a newcomer, Mr. Kazuo Yoshimura, a banker, who was assigned a number of functions which hitherto were within the plaintiff's portfolio.

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8 5. In September 1996, Mr. Kashiwaya carried out another re-organisation exercise. The plaintiff took the view that his employment contract was breached as a result of this re-organisation (hereinafter referred to as the "September 1996 re-organisation") because he was given a lower level of responsibility. On 16 September 1996, he demanded that all his "duties, powers, authority, responsibilities and titles", be restored to him by 31 December 1996. On 24 October 1996, not having had the desired assurance that the position would be altered to his satisfaction, the plaintiff claimed that he had been constructively dismissed and did not report for work after that date.

9 6. In the meantime, the defendants denied having repudiated the contract of employment. On 1 November 1996, their lawyer wrote to the plaintiff's lawyer to put on record that the plaintiff's refusal to report for work was treated as a case of serious misconduct and to demand that the plaintiff return to work by 4 November 1996. As the plaintiff did not do so, the defendants terminated the employment contract with the plaintiff on 5 November 1996 on the ground that the plaintiff's failure to report to work was a repudiation of the contract. The plaintiff then commenced an action against the defendants for wrongful repudiation of his employment contract. The defendants responded with a counterclaim for a *pro rata* refund of the sign-on fee paid to the plaintiff.

10 7. The plaintiff justified his claim that he had been constructively dismissed on the following grounds:

> (a) Certain key functions had been taken from him in breach of the terms of reference in the contract of employment.
>
> (b) He was demoted as a result of the September 1996 re-organisation.
>
> (c) He was sidelined and "marginalised" after the September 1996 re-organisation.

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11 For an understanding of what an allegation of "constructive dismissal" entails, the following words of Lord Denning M.R. in *Western Excavating (E.E.C.) Ltd.* v. *Sharp* [1978] I.C.R. 221, 226 are helpful:

> If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once.

12 In similar vein, in a Canadian case, *Poulos* v. *Murphy Oil Company Ltd.* [1990] 5 W.W.R. 696, 711, McBain J. said:

> Some unilateral variations of the employment contract are so severe and of such effect that they give rise to the principle of constructive dismissal.... The question to be answered is whether this employer has breached an express or implied term of the employment contract that goes to its very root. *The burden to establish such a change or variation is on the plaintiff.* (emphasis added)

13 8. It follows that it is for the plaintiff to prove that AIMAC's breach of his employment contract went to the root of his contract of employment or, to put it another way, was sufficiently serious to entitle him to leave at once. The test for constructive dismissal "is not how the employee views the change or changes, rather the view and assessment of these changes must be objective in nature". (*per* McBain J. in *Poulos* v. *Murphy Oil Company Ltd., op. cit.*, 717.)

14 Were key functions taken away from the plaintiff?

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15 9. For the purpose of determining whether the defendants took away key functions from the plaintiff without his consent after the September 1996 re-organisation, the following ought to be considered:

> (a) the plaintiff's position under his employment contract.
>
> (b) the plaintiff's position after the May 1996 re-organisation.
>
> (c) the plaintiff's position after the September 1996 re-organisation.

16 10. The plaintiff's position under his employment contract will first be considered. As has been mentioned, the plaintiff was hired as the general manager of a department in AIMAC and in the organisation chart annexed to the employment contract, the plaintiff was placed at the same level as Mr. Saito, the general manager of the Treasury and Administration Department, with both of them reporting directly to the CEO. However, the plaintiff was given the additional title of "executive vice-president" and his employment contract provided as follows:

17 WHEREAS:

> AIMAC wishes to avail itself of the services of the Employee to serve as Executive Vice-President, a position the duties, responsibilities and authority of which are described in more detail in the Annex to this Agreement entitled "AIMAC, Executive Vice President - Terms of Reference" (hereinafter the "TOR") and the Employee is willing to provide such services, in each case on the terms and subject to the conditions hereinafter provided. 2.1 …. The TOR may be amended from time to time by the CEO, in agreement with the Employee. 2.2 …. The Employee shall …be subject to the ultimate authority and direction of the Management of AIMAC, as vested in the CEO.

18 11. The terms of reference referred to in clause 2.1 of the employment contract provided as follows:

> Under the authority, guidance and supervision of the CEO, the EVP will have prime responsibility for the Investment Unit. He

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> will also assist the President/CEO in the day to day management of the Company. Specifically, the EVP will:
>
> 1. Assist the President/CEO with the overall management of the company, including the preparation of business plans and budgets, and acting for him in his absence from office;
>
> 2. Manage AIMAC's Investment Management Unit responsible for the Company's medium and long term investments;
>
> 3. Act as Secretary of the Investment Committee, and prepare reports and related documentation required by the Investment Committee and the Board on Projects and Project financing issues;
>
> 4. Assist the President/CEO in the design, formulation and implementation of the business strategy and the operational plan of the Company's medium and long term investments;
>
> 5. Assist the President/CEO in managing the relations with the shareholders, the Board and the Investment Committee;
>
> 6. Assist the President/CEO in formulating a strategy for raising additional equity for AIDEC and tapping its debt raising capacity;
>
> 7. Assist the President/CEO in managing the Company's relationships with clients, financial markets and NPFI.
>
> 8. Identify and process investment opportunities for consideration by the Investment Committee;
>
> 9. Design and implement exit and disinvestment strategies with the objective of achieving the highest return on investments;
>
> 10. Monitor implementation and performance of projects financed by AIDEC;
>
> 11. Conduct a periodic assessment of the performance of NPFI and other investment advisors, and prepare a report on this assessment for review by the Board;

19 12. The plaintiff, who contended that the said terms of reference were material to his decision to join AIMAC, laid great emphasis on the fact that the terms of reference provided that he had *prime* responsibility for the Investment Unit. He also stressed that it was clear from clause 2.1 of the employment contract that his consent was required before the terms of reference could be amended by the CEO. On the other hand, the defendants contended that the

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word "prime" must be read in the context of the preceding words, namely "under the authority, guidance and supervision of the CEO". They further contended that the terms of reference must be read subject to clause 2.2 of the employment contract, which provided that the plaintiff was "subject to the ultimate authority and direction of the management of AIMAC, as vested in the CEO". The defendants, who pointed out that the plaintiff had not been given sole or exclusive authority over every aspect of investment management, also asserted that in relation to investment management matters, the CEO was entitled to make decisions and give directions which were binding on the plaintiff.

20 The May 1996 re-organisation

21 13. Although the plaintiff's complaints relate to the September 1996 re-organisation, reference must be made to the earlier re-organisation in May 1996, which saw the transfer of a number of the plaintiff's functions to Mr. Yoshimura, a move which undoubtedly affected the plaintiff's "prime" responsibility with respect to investment management. The plaintiff conceded that he accepted the May 1996 re-organisation. When cross-examined, his reply was as follows (N/E p. 13):

22 Q. Was re-organisation in May a breach of the contract?

23 A. I believe that I accepted the re-organisation plans of May 1996 reluctantly.

24 In view of the plaintiff's admission that he accepted the May 1996 re-organisation, it follows that his rights under his employment contract were varied with his consent by the said re-organisation and any discussion of the

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effect of the September 1996 re-organisation on the plaintiff's contractual rights must be on the basis that his employment contract had been varied in May 1996.

25 14. How did the May 1996 re-organisation affect the plaintiff's contractual position? On 27 May 1996, Mr. Kashiwaya announced that a banker, Mr. Kazuo Yoshimura, had been appointed as the managing director and head of a new department, the Planning and Debt Financing Group, with effect from 3 June 1996. He added that the general managers of the two existing departments, namely Mr. Saito and the plaintiff, would be called "managing directors" instead and that the plaintiff would continue to hold the title of "executive vice-president". In the organisation chart issued by Mr. Kashiwaya to explain the restructuring of AIMAC, all three managing directors were placed on the same level, with all three reporting directly to the CEO.

26 15. Before considering the Planning and Debt Financing Group's scope of work, it is important to note the raison d'tre for the hiring of Mr. Yoshimura, a banker in the Industrial Bank of Japan for seventeen years and a former Director of IBJ Asia Ltd. in Hong Kong, with responsibility for the structuring and syndication of project finance and loan facilities in Asia. On 26 March 1996, Mr. Kashiwaya explained in a memorandum (1AB 82) to senior staff, including the plaintiff, why he wanted to have three departments in AIMAC instead of two in the following terms:

> By dividing [AIMAC into three departments], first I am pursuing "the check and balance". Each project to be financed by AIDEC must have … various risks. To analyze and prepare for these risks need a little independent and experienced analysis. We may need some market skills to make the deal bankable.

27 Second, AIDEC/AIMAC is always changing and responsive to the market change, and also have huge potentialities. In this context, we need a

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special function to map out the business strategy and long term business planning.

28 We will soon hire a well-experienced and well-balanced commercial banker in charge of project finance. I am thinking of assigning him as MD, DF.

29 16. Two points in Mr. Kashiwaya's memorandum ought to be noted. First, the banker he had in mind for AIMAC, namely Mr. Yoshimura, would be put in charge of project finance and would be asked to analyse the risks of a proposed infrastructure project independently of the plaintiff. Mr. Kashiwaya wanted a system of "check and balance" when he studied the proposals of the banker and the plaintiff in relation to investment management. Secondly, Mr. Kashiwaya wanted a banker's skills to make a deal "bankable". In para. 26 of his affidavit of evidence-in-chief, Mr. Kashiwaya explained the meaning of "bankable" and why he decided to hire Mr. Yoshimura in the following terms:

> My experience in the World Bank also led me to believe that former World Bank staff lacked contact with the financial market and thus may not be in the best position to help AIMAC make a proposed investment "bankable", that is, make the proposal such that it can attract participation by commercial banks. For a proposed investment to be "bankable", *inter alia,* the proposal must be supported by *information describing the project risks, the terms of the financing, and cash-flow forecasts showing the financial feasibility of the project on the basis of certain assumptions* as to completion date, construction costs, productivity, market price, interest rates and exchange rates, among other things. These assumptions are adjusted to show the impact of the worst case, e.g. high interest rates plus low market prices - usually known as a sensitivity analysis.
>
> As a matter of prudence, therefore, I decided that the *financial risk analysis role* of AIMAC should be performed by a member who has the relevant skills and experience, and who is in constant contact with the financial market. With this in mind, I decided that AIMAC should employ such a person. (emphasis added)

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30 17. If the raison d'tre for the hiring of Mr. Yoshimura is understood, it is obvious that no matter how much the plaintiff tried to downplay Mr. Yoshimura's role, the latter was given a great measure of responsibility for certain aspects of AIMAC's functions in relation to investment management as a result of the May 1996 re-organisation. It followed that the position of the plaintiff, who hitherto had, subject to the authority of the CEO, prime responsibility for investment management matters, was affected by the hiring of Mr. Yoshimura. Indeed, Mr. Yoshimura would have prime charge of the aspects of investment management within his portfolio and a measure of shared responsibility with the plaintiff for areas where inputs of both their departments were required for a coherent report or position paper to be submitted. The plaintiff was not unaware of the fact that there would be some changes with the hiring of Mr. Yoshimura. That was why he wanted Mr. Kashiwaya to assign Mr. Yoshimura to his department, the Investment Management Group, so that it would be clear that Mr. Yoshimura was his subordinate. In a letter dated 26 March 1996 (1AB 85-86) in response to Mr. Kashiwaya's proposals to hire a banker to handle independent financial risk analysis, the plaintiff wrote:

> Basically what you are proposing could be seen as a step to take away some of my key functions and reassign them to the new MD-DF. I am of the opinion that they should remain closely associated with that of investment management. They are all very intimately related, and it would be wise to keep them under the *same conceptual guidance and supervision as the investment management function.* (emphasis added)

31 18. The plaintiff's suggestion that the banker in question be placed in his department and be required to report to him was rejected by Mr. Kashiwaya, who reiterated that he intended to hire a banker to work independently of the plaintiff. In a letter to the plaintiff on 27 March 1996 (1AB 87-88), Mr. Kashiwaya said:

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> Generally speaking, project has so many dimensions where … many risks are hidden. This is my persistent desire that we need the well experienced, well balanced and professional approaches of commercial bankers in the project finance. I intend to improve and qualify AIMAC's risk analysis and other investment management through injecting the new blood from the bankers. Of course all risk analysis will be co-related and should be handled in integrated way. Nevertheless, my strong desire is that we should institutionalize the evaluation of risk analysis bankable, skill, financial structuring and marketing, of debt financing *from an independent angle.* I stick to developing the banker's skill to evaluate and address risk management in an *independent way, in order to keep [at] arms … length … evaluation from the execution. (*emphasis added)

32 It is thus surprising that the plaintiff continued to insist after the May 1996 re-organisation that he had prime responsibility for some of the aspects of investment management within the scope of Mr. Yoshimura's portfolio.

33 19. The functions of Mr. Yoshimura and his Planning and Debt Financing Group will next be considered. In the organisation chart attached to his memorandum dated 26 March 1996 (1AB 82), Mr. Kashiwaya outlined the role of this new department as follows:

> (a) Business planning and strategy
>
> (b) Risk analysis of AIDEC financing
>
> (c) Debt financing and its structuring
>
> (d) Market and arrangement of debt financing

34 In short, Mr. Yoshimura's new department was intended to have responsibility for AIMAC's business strategy, AIMAC's long term business plans, the implications of these business plans on AIMAC's budget and the raising of additional funds for AIDEC. Raising additional funds for AIDEC involves getting more people to put their money in AIDEC as well as persuading existing shareholders to commit more funds to AIDEC so that AIMAC would have a larger fund to manage and invest on AIDEC's behalf. It followed that

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Mr. Yoshimura had, from the day he joined AIMAC, a very important role to play in managing AIMAC's relations with potential investors, existing shareholders and relevant persons in the financial markets.

35 20. As for debt financing, which involves the raising of money from outside sources to help finance an infrastructure project which has been identified by AIMAC as one in which AIDEC's money should be invested, the plaintiff downplayed the significance of this function to show that Mr. Yoshimura played a minimal role in investment management matters before the September 1996 re-organisation. However, debt financing was not unimportant to AIMAC. The plaintiff's witness, Miss Angela Tan, noted that debt financing gave AIMAC an edge over its competitors. When cross-examined, her answers were as follows (N/E p. 66):

36 Q. Why was it necessary to raise capital from outside sources?

37 A. Normally, in infrastructure projects, the debt component is huge as compared with equity. 70% debt - 30% equity. AIDEC's main thrust is to provide equity financing but AIDEC can also provide debt financing from own capital. We tell project proponents that we can raise debt financing from other sources plus other services which other companies cannot provide.

38 Q. Why was it necessary to tell the proponent that it could also secure funds from outside AIDEC?

39 A. To secure position of AIDEC in the deal. It enhances AIDEC's position. AIMAC interested in the arrangement fee earned.

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40 21. Apart from the transfer of the above-mentioned functions to Mr. Yoshimura's Planning and Debt Financing Group, another important change which occurred with the May 1996 re-organisation and the hiring of Mr. Yoshimura was that investment management matters, which hitherto had been the prime responsibility of the plaintiff, subject to the supervision of Mr. Kashiwaya, were discussed by the plaintiff, Mr. Yoshimura, Mr. Saito and Mr. Kashiwaya at regular Monday morning management and investment meetings. The plaintiff confirmed this. When cross-examined, he said as follows (N/E p. 23):

41 Q. You said proposals for investments are discussed at management meetings before submission to [Investment Committee]?

42 A. Yes.

43 Q. Who attended investment management meetings before September re-organisation?

44 A. President of company, Head of IM Unit, staff of IM Unit and [Managing Directors].

45 22. Mr. Yoshimura took an active part in these meetings, often to the chagrin of the plaintiff, who thought that he was interfering unnecessarily in what he perceived to be matters within the responsibility of his department. The plaintiff's witness, Miss Angela Tan, gave an account of what transpired at the management meetings. When cross-examined, her answers were as follows (N/E pp. 74-75):

46 Q. Was Saito at weekly Monday meetings?

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47 A. Yes, everybody involved.

48 Q. Inputs of Yoshimura at these meetings considered?

49 A. Yes, everybody welcome to give inputs….

50 Q. What kind of input did Yoshimura usually give at these meetings?

51 A. Varies. He asks questions, he gives inputs.

52 Q. Did he ask questions about technical aspects?

53 A. Sometimes.

54 Q. Most of his inputs related to financial aspects of proposed projects?

55 A. Yes.

56 Q. By that, I mean all the financial aspects and not just debt financing?

57 A. Yes. Whether we are doing equity-debt financing, questions are financial.

58 Q. Were decisions made at Monday meetings?

59 A. Decisions are made but mostly decisions made by CEO. Monday meetings mainly to update CEO on project status.

60 23. In short, there was a measure of "shared responsibility" for decisions with respect to overall management and investment opportunities. Mr. Kashiwaya likened the position of his three managing directors to that of cabinet

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ministers, who were expected not only to handle their own portfolios but also to comment on and help make decisions on issues referred to the cabinet. The defendants' counsel summed up the position when he said that after the May 1996 re-organisation, the plaintiff, Mr. Yoshimura and Mr. Saito "worked alongside each other to assist the CEO in the overall management of the company as well as in the investment function of the defendants". This was not a style the plaintiff was used to, and especially so since he was under the mistaken impression that he was the second in command in the company in all aspects of management and that his position was not the same as that of his fellow managing directors.

61 The September 1996 re-organisation

62 24. As has been mentioned, in September 1996, Mr. Koji Kashiwaya decided to re-organise the company again. After this re-organisation, the terms "Investment Management Group" and "Planning and Debt Financing Group" were no longer used. Instead, the plaintiff was put in charge of the Project Management Department (hereinafter referred to as "PMD"). As for Mr. Yoshimura, he was put in charge of two departments, the Financial Management Department (hereinafter referred to as "FMD") and the Planning and Investor Relationship Department (hereinafter referred to as "PIRD").

63 25. Mr. Kashiwaya outlined the functions of the plaintiff and the PMD, which he headed, in the following terms (2AB 237):

> 1. Project identification.
>
> 2. Project political (policy) and technical risk analysis (including environmental aspect), financial viability analysis, and their implications on the financial risk analysis.
>
> 3. Regulatory framework and sector policy.
>
> 4. Structuring of project framework.

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- [Joint Venture] Agreement

- Implementation Agreement

- Offtake Agreement

- Other project agreement.

5. Management and coordination with Project or Technical Consultant (especially World Bank staff).

6. Supervising the implementation and technical (physical) monitoring of the projects.

7. Strategic alliance with potential developers.

64 26. A perusal of the functions assigned to the plaintiff and his department, the PMD, will reveal that the plaintiff had been assigned very important functions. Indeed the proper identification of infrastructure projects and a careful analysis of the project's political and technical risks and its financial viability and impact on the financial risk analysis are the key steps which must be taken before AIMAC can even think of committing funds to it. The plaintiff himself conceded that project identification was the most important role of AIMAC when in reply to a question as to what he meant when he said that he was second in command, he said (N/E p. 7):

> Most important function of company was to find projects to invest funds of parent company. That was key function of AIMAC. All other functions were supporting functions. No question that whoever had this function was the most important person after the CEO.

65 27. Although the plaintiff had been left with, in his own words, the "key" function of AIMAC, he nonetheless asserted that the September 1996 re-organisation rendered it impossible for him to effectively and meaningfully carry out his duties, responsibilities and functions under his employment contract. In his statement of claim, the position was put as follows:

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66 The following key duties, responsibilities and authorities provided for in the plaintiff's TOR were, inter alia, removed and given to [Mr. Yoshimura] as MD of FMD and PIRD:

67 (1) Management of the financial functions of the investment management unit responsible for [AIMAC's] medium and long term investments including, inter alia, financial risk analysis, financial structuring, project financial coordination, term sheet negotiations and documentation.

68 (2) Acting as Secretary to the Investment Committee.

69 (3) Processing of investment opportunities for consideration by the Investment Committee.

70 (4) Designing and implementing exit and disinvestment strategies.

71 (5) Financial monitoring of projects.

72 In summary, all the financial aspects of the investment management unit were effectively removed from the plaintiff. Consequently, the plaintiff no longer had prime responsibility for investment management and was relegated to a subservient role. Further, the alleged re-organisation/restructuring rendered it impossible for the plaintiff to effectively and meaningfully carry out his duties, responsibilities and functions under the Agreement and the TOR.

73 28. I leave out, for the moment, the plaintiff's complaints in relation to the post of secretary of the Investment Committee and the exit and disinvestment strategy . If this is done, the plaintiff's main complaint is that the financial aspects of the investment management unit were effectively removed from him after the September 1996 re-organisation. The question to be

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determined is whether these financial aspects relate to tasks already handled by Mr. Yoshimura after the May 1996 re-organisation or to tasks necessarily within the scope of his portfolio as a result of the May 1996 re-organisation. It is obvious from the previous discussion on the raison d'tre for the hiring of Mr. Yoshimura and the fact that he was given the role of planning and debt financing after the May 1996 re-organisation that he must have some measure of responsibility for financial risk analysis, financial structuring, project financial co-ordination, financial monitoring and investor relationship, including co-ordination with investment advisors. Before Mr. Yoshimura arrived, the plaintiff was already aware of the ramifications of Mr. Kashiwaya's intention to hire a banker to carry out the said functions independently of any control by the plaintiff or anyone else other than the CEO. In his letter dated 26 March 1996 to Mr. Kashiwaya (1AB 85-86), which has already been referred to, he vociferously objected to the proposal to hire a banker for independent analysis but what is crucial is that he ended his letter of complaint by assuring Mr. Kashiwaya that he was with him "all the way". His exact words were as follows:

> *…. Lastly, Koji, I want you to know that, notwithstanding any of the above, for me you are the founder and President/CEO of this company, and that I am with you all the way. (emphasis added)*

74 29. The plaintiff must be taken to mean it when he said that he was with the CEO "all the way". In any case, since he accepted the May 1996 re-organisation, he must be taken to have accepted Mr. Kashiwaya's approach with respect to the hiring of a banker to undertake independent analysis of various financial aspects of AIMAC's investment management function and to assume a large measure of responsibility for the financial matters in question. Hence, the division to some extent in the September 1996 re-organisation between technical aspects of investment management, which were kept within the

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plaintiff's portfolio, and certain financial aspects of investment management, which were placed within Mr. Yoshimura's portfolio.

75 30. As for the processing of investment opportunities for consideration by the Investment Committee, this involves the preparation of reports and related documentation required by the Investment Committee on projects and project financing issues. The plaintiff was in charge of, *inter alia,* the identification of projects for AIMAC to invest AIDEC's funds, the assessment of political and technical risks, and their implication on the financial risk analysis, the regulatory framework and sector policy, and the structuring of the project framework. As such, he was responsible, to a great extent, for the preparation of the reports which helped the Investment Committee make up its mind on whether or not to invest in a particular project. It is true that while the plaintiff's PMD had a major role to play in the preparation of the said reports, he had to work with Mr. Yoshimura, who was entitled to give inputs in relation to matters such as financial risks. He was obviously frustrated with the fact that while he once had prime responsibility for the preparation of such reports, he now had to share responsibility for these with Mr. Yoshimura. However, the natural consequence of the May 1996 re-organisation was the introduction of independent inputs from Mr. Yoshimura and the question of having exclusive or prime control over the preparation of reports for the Investment Committee no longer arose with Mr. Kashiwaya's system of independent analysis by the plaintiff and by Mr. Yoshimura.

76 31. I now return to the two remaining matters, namely the role of secretary of the Investment Committee and the planning of the exit and disinvestment strategy. The secretariat of the Investment Committee was transferred to Mr. Yoshimura's FMD after the September 1996 re-organisation. Was this a breach of contract? Mr. Kashiwaya pointed out that the role of the

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secretariat was a very nominal one. The secretary was, in his words, only a "liaison window" between the company and the Investment Committee and he stressed that the plaintiff was not disadvantaged by the loss of the post of secretary because he gave written instructions to the effect that the FMD was to carry out its role as the secretariat or "liaison window" for the Investment Committee in close co-ordination with him, the plaintiff's PMD and Mr. Saito's department. Mr. Kashiwaya explained that the secretariat was transferred to Mr. Yoshimura's FMD because investment committee members were more interested in financial issues, which were, in the main, handled by Mr. Yoshimura, rather than project management issues. Besides, the transfer of the nominal role of the secretariat to Mr. Yoshimura's FMD made sense as some of the Investment Committee meetings were conducted in Japanese. Furthermore, some of the Japanese shareholders had indicated that they preferred to deal with a Japanese secretary. When cross-examined, Mr. Kashiwaya said as follows:

> Q. Some of the investment committee meetings were conducted in Japanese?
>
> A. Yes. All attendees are Japanese. I allowed this because they can understand, convey their instructions more precisely than in English.
>
> Q. Did any of the shareholders or investment committee members express a preference in dealing with a Japanese rather than the plaintiff?
>
> A. I did not ask that question but we decided that the official language is English but informally, we can use Japanese if both sides understand the language.
>
> Q. Did anyone tell you that they would rather deal with a Japanese?
>
> A. Not formally but during luncheons, they said that they preferred to deal with Japanese. I don't remember who expressed such a wish.

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77 In the circumstances, I hold that even if the removal of the plaintiff as secretary of the Investment Committee was a breach of the plaintiff's employment contract, it was not a serious breach and did not, on its own, or in combination with other acts of the defendants, entitle the plaintiff to contend that he had been constructively dismissed.

78 32. As for the designing and implementation of the exit and disinvestment strategy, this role was transferred to Mr. Yoshimura's FMD after the September 1996 re-organisation. There is no question that Mr. Yoshimura had an important role to play in the planning of the exit and disinvestment strategy because of the nature of his job in AIMAC and Mr. Kashiwaya thought it more appropriate that he should be in charge of this portfolio. Although this did not result in the plaintiff having no role to play in the planning and implementation of the exit and disinvestment strategy, he took the view that this transfer of functions was a breach of the terms of reference annexed to his contract of employment. Taking all circumstances into account, I hold that even if the transfer of responsibility for the planning of the exit and disinvestment strategy to Mr. Yoshimura was a breach of contract, I do not see how the plaintiff, who retained the key portfolio of identification of projects and many other important portfolios can say that he was constructively dismissed merely because he no longer had prime responsibility for the task of designing and implementing the exit and disinvestment strategy and he was no longer the secretary of the Investment Committee.

79 33. Mr. Kashiwaya made it plain that the September 1996 re-organisation was not intended to reduce the plaintiff's importance. The plaintiff retained the title of executive vice-president and continued to report to the CEO only. His salary and other benefits were in no way reduced. In fact, Mr. Kashiwaya believed that the re-organised structure enhanced the plaintiff's

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performance as it allowed him more time and space to focus on the role entrusted to him. It also made available to him a team of colleagues who were better trained and better coordinated. Mr. Kashiwaya reiterated how important the plaintiff's department, PMD, was after the re-organisation when he said:

> [The] staff in PMD are entrusted with the important role of identifying suitable projects for investment, analysing the political and technical risks of such projects, analysing their financial viability and considering its implications on the financial risk analysis. PMD staff are also responsible for supervising, implementing and monitoring the projects. All of these are the core functions of AIMAC.

80 34. The plaintiff regarded the above statement as inconsistent with what Mr. Kashiwaya said in his letter to the plaintiff dated 27 March 1996 (1AB 87). In that letter, Mr. Kashiwaya said:

> I have no intention to jeopardize your function, namely especially to originate the deal, propose to [Investment Committee] the project, and proceed it for the approval of [Investment Committee] and to negotiate the terms and conditions based upon [Investment Committee] approval. This is the core function of AIMAC.

81 Mr. Kashiwaya's letter must be viewed in its proper context. It cannot be said that the plaintiff's position had been jeopardised merely because Mr. Yoshimura shared responsibility with him for some of the financial aspects of the functions referred to in the said letter. Besides, having undertaken a detailed analysis of the functions of the plaintiff and Mr. Yoshimura, I do not think it fruitful to analyse the differences between Mr. Kashiwaya's two statements on the "core" function of AIMAC. This is especially so since the plaintiff conceded that the "key" function or "most important" function of AIMAC was to find projects to invest the funds of the parent company, a function which he retained after both the May 1996 and September 1996 re-organisations. In similar vein, I find it unnecessary to discuss the details of the plaintiff's list (P1) and the

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defendants' list (D1), which outlined more than 30 of the plaintiff's functions before and after the September 1996 re-organisation. Apart from the fact that the plaintiff and defendants took rather different views in the two lists with respect to the plaintiff's position after the September 1996 re-organisation, the functions referred to in the said lists fall within the broad ambit of what has already been discussed.

82 35. In the final analysis, the May 1996 and September 1996 re-organisations cannot be regarded as totally independent or totally different exercises. Only about 3 months separated the two re-organisations. During this period, the plaintiff was on leave and away from Singapore for a number of weeks. I prefer to view the September 1996 re-organisation as an extension of the May 1996 re-organisation and as an attempt by Mr. Kashiwaya to implement his broad strategy for the May 1996 re-organisation in a more concrete way. Admittedly, he might have added a few different touches. The issue is whether each of the different touches is by itself, or in combination with others, such a serious breach of contract as to raise the question of constructive dismissal of the plaintiff. Having carefully considered all the available evidence, I have no doubt that the transfer of some of the

83 plaintiff's functions to Mr. Yoshimura as a result of the September 1966 re-organisation did not, in view of the plaintiff's acceptance of the May 1996 re-organisation, reach the threshold required for a case of constructive dismissal.

84 Was the plaintiff demoted

85 ?

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86 36. The plaintiff claimed that he was demoted as a result of the September 1996 re-organisation. In his statement of claim, the position was put as follows:

> [T]he defendants negated the plaintiff's overall management functions, duties and responsibilities and effectively removed the plaintiff as the [executive vice-president] of the defendants. In particular, the following duties and responsibilities of the plaintiff as [executive vice-president] were removed and given/assigned to [Mr. Yoshimura]:
>
> - strategic alliances;
>
> - business co-operation with potential investors;
>
> - business planning;
>
> - AIDEC investor relationship; and
>
> - formulating strategy for raising additional equity for AIDEC.

87 37. The above functions were admittedly transferred to Mr. Yoshimura's Planning and Investor Relationship Department after the September 1996 review. According to Mr. Kashiwaya, the duties of Mr. Yoshimura's PIRD were as follows (2AB 238):

> 1. Strategic Planning of AIDEC/AIMAC.
>
> - Fund raising. - Strategic alliance, business co-operation with potential investors such as financial institutions. Business planning.
>
> 2. Portfolio Management control of AIDEC in the long term.
>
> 3. AIDEC's investor relationship.

88 The functions exercised by the PIRD fell within the purview of Mr. Yoshimura's Planning and Debt Financing Group, which was created in May 1996. The Planning and Debt Financing Group had responsibility for planning, which involved business planning and strategic planning, as well as fund-raising, which involved strategic alliances and business co-operation with

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potential investors such as financial institutions. In view of the nature of his duties, Mr. Yoshimura had to oversee AIDEC's relationship with investors. In short, the functions within the scope of Mr. Yoshimura's Planning and Debt Financing Group after the May 1996 re-organisation were the functions allocated to the newly created PIRD in September 1996. As such, it cannot be said that PIRD usurped the plaintiff's functions after the September 1996 re-organisation.

89 38. For the sake of completeness, I will also deal with the plaintiff's further assertion that he was in effect the second in command in AIMAC and that the defendants had breached his employment contract by failing to accept this after the September 1996 re-organisation. To his credit, the plaintiff's counsel preferred not to push this point too far. However, during the course of the trial, the plaintiff insisted that his position in AIMAC was that stated in his letter dated 26 September 1996 to Mr. Kashiwaya (2AB 260), namely that he was the "No. 2 in the overall management of *all* aspects of the company". In this letter, the plaintiff also said:

> My understanding is that what you wrote implies that my title of [executive vice-president] has no functional content, and is for the sole purpose of contacts outside the company. This in turn implies that all [Managing Directors] are otherwise equal. This would be very different from what is in my terms of reference... and indeed from what you yourself have been telling everybody, namely that I am your No. 2 at AIMAC.

90 39. If the plaintiff had really been the second in command in the company, his fellow managing directors, namely Mr. Saito and Mr. Yoshimura, were his subordinates. An examination of the terms of the contract of employment and the facts will reveal that the plaintiff's contention cannot be supported. When the plaintiff was hired, the organisation chart annexed to his employment contract showed that he and Mr. Saito were on the same level, with

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both reporting directly to Mr. Kashiwaya. The organisation chart issued to the staff in connection with the September 1996 re-organisation also placed Mr. Saito and Mr. Yoshimura on the same level as the plaintiff. Most important of all, the plaintiff agreed in writing when he first joined AIMAC that his position was parallel to that of Mr. Saito. In a letter to Mr. Kashiwaya on 9 January 1996 (1AB 33), he stated his position in the following unambiguous terms:

> [My] position as [executive vice-president] does not create an additional layer, but is in parallel with that of Saito. So that you do not need to worry about the hierarchy issue. Certainly not with me. Contrary to those people who do not wish to see you succeed in AIDEC, my only concern is to be able to help you make AIDEC a success.

91 40. The plaintiff relied on the fact that unlike Mr. Saito and Mr. Yoshimura, who, like him, were initially called "general managers", and subsequently "managing directors", he alone had the title of "executive vice-president". However, he conceded that this additional title did not, without more, confer on him the status of second in command in the company. After all, in his previous place of employment, there were three vice-presidents. When cross-examined, Mr. Kashiwaya shed some light on why the plaintiff was also called the executive vice-president. His answers were as follows (N/E p. 103):

92 Q. When contract was entered, did you negotiate with Fares over terms of reference?

93 A. One issue is general manager.

94 Q. General Manager as position. Why change to Executive Vice-President?

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95 A. I don’t remember nitty gritty. My idea was General Manager in parallel with Saito. Fares preferred Executive Vice-President. So I allowed him to say in front of clients but actually his function was as General Manager.

96 Q. Title "Executive Vice-President" purely for external use but not internal?

97 A. Yes ....

98 (N/E p. 108)

99 Q. I put it to you that the reason why Mr. Fares was given the title of Executive Vice-President was because in addition to his function in the Investment Management Unit, he also had overall management functions in assisting you as CEO?

100 A. No.

101 Q. I put it to you that Fares did have overall management functions in addition to being in charge of the Investment Management Unit.

102 A. Same functions as Mr. Saito in management of the company.

103 41. Admittedly, Mr. Kashiwaya loosely referred to the plaintiff as "No. 2" occasionally. In fact, when he declined to attend the annual meeting of the Nomura Project Finance International Ltd. in February 1996, he wrote to say that he would send the "No. 2" of AIMAC, the plaintiff, to attend the annual meeting. However, the use of this term must be viewed in its proper context as Mr. Kashiwaya and the plaintiff had different views as to what being the "No. 2" meant. Mr. Kashiwaya explained that he sometimes called the plaintiff "No.

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2" only in the sense that as compared to his fellow heads of department, he had a more important job and not because he had any power or authority over his fellow heads of department. He never regarded the plaintiff as his deputy or as having authority over the other managing directors. In his letter of 27 March 1996 to the plaintiff (1AB 87), Mr. Kashiwaya reiterated:

> It does not mean that the other [Managing Directors] have to report to you or if the other [Managing Directors] have a different view from you your decision automatically overrule him. This is the same as before.

104 That "this is the same as before" cannot be denied. Mr. Kashiwaya rightly pointed out that if he had intended from the very beginning to have the plaintiff as the "No. 2" in overall charge of all aspects of the company, he would have placed him higher than Mr. Saito in the company's organisation chart when he was hired and higher than Mr. Saito and Mr. Yoshimura when the latter joined AIMAC in June 1996.

105 42. What other evidence is there in the contract of employment to suggest that the plaintiff was Mr. Kashiwaya's "No. 2", as understood by the plaintiff? The plaintiff's contract stated that he was to act for the CEO in his absence from office. However, it must be noted that at the time the contract was drafted, the plaintiff was the only person in the Investment Management Unit and it may have been convenient to have him act for Mr. Kashiwaya whenever the latter was away and Mr. Kashiwaya did, on a very limited number of occasions, put on paper the fact that the plaintiff would be acting for him while he was away. However, Mr. Kashiwaya did not intend that by the inclusion of this role of acting for him whenever he was away, the plaintiff had become his deputy when it was plain from all other facts that he was equal in status to Mr. Saito and Mr. Yoshimura. In fact, Mr. Kashiwaya soon found it unnecessary to have anyone act for him in his absence because he was able to retain full control

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of the company and to make important decisions while he was abroad. In view of the circumstances, the plaintiff has not established that the defendants had negated his overall management functions, duties and responsibilities and had effectively removed him as the executive vice-president of the company.

106 Was the plaintiff side-lined after September 1996?

107 43. The plaintiff also alleged that he was side-lined or "marginalised" after the September 1996 re-organisation. Before considering the plaintiff's specific complaints, it ought to be noted that relations between the plaintiff and his fellow managing directors, Mr. Saito and Mr. Yoshimura, were, to say the least, not warm and were certainly not what Mr. Kashiwaya would have preferred. As such, the plaintiff's complaints must be viewed in this light. It is not for me to determine who was right or wrong and whether Mr. Kashiwaya was right in saying that the plaintiff had a "persecution mania". All that needs to be said is that no matter how much the plaintiff had been provoked, he certainly ruffled his fellow managing directors' feathers when he dealt with them. For instance, within two and a half months after joining AIMAC, he wrote a rather strongly worded and unfriendly letter (1AB 60) to Mr. Saito in the following terms:

> Ever since I joined AIMAC nearly 2 months ago, I and my staff have been facing daily blockages and undermining of our function….

108 We have been exercising patience and tried each time to react amicably and peacefully, in the hope that you and your staff will soon come to realize that we are not "the enemy"….

109 I can draw the only obvious conclusion available to me, namely that the only consideration the administration unit has is their own ego, for which the

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rest of the staff of this company, and the company's interest are being sacrificed. And please let us not hide behind the very convenient slogans of "different management styles" or "different corporate cultures". This is purely a matter related to character, goodwill, team spirit, and ultimately professionalism and competence of all concerned….

110 You and your staff may have a lot of time on your hands to indulge in these infantile. My staff and I don't….

111 [I] will not stand by and watch [the company] choked to death by oppressive controls and egocentric attitudes.

112 44. As for Mr. Yoshimura, relations between them took a turn for the worse as time went by. Referring to Mr. Yoshimura, the plaintiff wrote to Mr. Kashiwaya (2AB 216):

113 The only ability [Mr. Yoshimura] has amply demonstrated in AIMAC so far is his towering ego, his arrogance to staff, his low scheming and bad mouthing others, and his utter lack of moral principles in professional life. As a result, I believe that it is going to be rather difficult for any self-respecting professional staff in the company to function properly with him, or under his authority.

114 45. As for the CEO himself, the plaintiff used equally strong language, which must have taxed the former's patience. For instance, in the same letter referred to above with respect to the plaintiff's view of Mr. Yoshimura, the plaintiff wrote to Mr. Kashiwaya:

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> Instead of rewarding me, you are trying to destroy me professionally, by making me an instrument and victim of expediency. Instead of reciprocating with your full trust and support, you cut me down and bring in my place, and to the forefront, those who are sharpening knives for you. I would be insulting your intelligence and our friendship, if I could bring myself to believe that you are not aware of what you are actually doing to me.

115 46. As has been mentioned, the plaintiff's complaint that he was side-lined and isolated must be viewed in the light of his relationship with his fellow managing directors and Mr. Kashiwaya. The plaintiff alleged that he was side-lined on at least two occasions. First, he said that he was not invited to attend a meeting with staff of the Mitsubishi Corporation on 24 September 1996. He noted that the meeting touched on identification of projects for investment, a portfolio which was assigned to him after the September re-organisation and said that he should have been present at the meeting. Mr. Kashiwaya pointed out that the plaintiff's presence was not required at this meeting because the parties representing Mitsubishi Corporation were not senior staff and they had indicated that they preferred to speak to someone who understood Japanese.

116 47. Secondly, the plaintiff pointed out that he was not asked to attend a meeting with another client, Ebara Corporation, on 2 October 1996. From the report of the meeting, which he received five days later, he concluded the purpose of the meeting was to discuss a new project, to follow up on another project in Malaysia and to explore co-investment opportunities with Ebara Corporation in their other projects in the region. The plaintiff, who had been discussing a proposed water export project in Malaysia with officials of Ebara Corporation, thought that he should have been informed of the meeting beforehand and that he should have been asked to attend it. However, Mr. Kashiwaya said that the purpose of this meeting was to introduce Mr. Yoshimura to the staff of Ebara Corporation. He pointed out that Ebara

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Corporation was a shareholder of AIDEC and notwithstanding what was stated in the report, the meeting was not concerned about substantive issues involving the plaintiff's duties and functions. In any case, Mr. Yoshimura, being a senior person in AIMAC, could not decline to discuss projects with Ebara Corporation's staff if the issue was raised. If and when a proposal became more concrete and a question arose as to whether AIMAC was interested in pursuing a project, proper steps will be taken to have the plaintiff's department identify and evaluate the project in the manner prescribed by the September 1996 re-organisation. Mr. Kashiwaya added that the plaintiff was paranoid about his field of responsibility and unnecessarily construed moves by his colleagues as attempts to isolate him. When cross-examined, Mr. Kashiwaya rightly pointed out that although project identification was not within the scope of Mr. Yoshimura's FMD, if the managing director of that department was introduced to important shareholders of AIMAC, such as the Ebara Corporation, he represented AIMAC and if he discussed projects with the shareholder, the plaintiff should not have been worried.

117 48. After evaluating the evidence, I find that the plaintiff has failed to prove his allegation that he was side-lined or "marginalised" after the September 1996 re-organisation.

118 Conclusion

119 49. The plaintiff may have had his frustrations with the way things worked out for him in AIMAC. However, he expected far too much from his contract of employment. He started on the wrong footing when he assumed that he was the second in command in AIMAC. He wanted Mr. Yoshimura to be assigned to his department as his subordinate but this request was rejected. Instead, Mr. Yoshimura was given responsibility for many financial aspects of

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investment management. Having to work with Mr. Yoshimura and Mr. Saito as equals was not the plaintiff's cup of tea. He viewed the September 1996 re-organisation as the straw which broke the camel's back. However, he had consented to the loss of so much ground in the May 1996 re-organisation that the September 1996 re-organisation cannot be regarded as a breach which went to the root of his employment contract. In his eagerness to establish a case of constructive dismissal, the plaintiff made many assertions which could not be proven. I might add that the fact that the plaintiff asserted in his statement of claim that the September 1996 re-organisation exposed him to personal liability for breach of confidentiality agreements with AIMAC's clients has not been overlooked. This is a very serious allegation. Regrettably, not a shred of evidence was tendered to substantiate this allegation. Taking all circumstances into account, I find that it has not been established that the defendant company breached the plaintiff's employment contract to such an extent as to entitle the plaintiff to leave immediately on the basis of constructive dismissal. It follows that the plaintiff's action for damages for breach of his employment contract is dismissed with costs.

120 50. I now turn to the defendants' counterclaim. Clause 7.1 of the plaintiff's employment contract provided that if AIMAC terminated the contract under the provisions of clause 9.2 of the contract within 12 months of 1 January 1996, the sign-on fee will be refunded to AIMAC on a *pro rata* basis for the remainder of the 12 months. It follows that as the plaintiff breached his employment contract by leaving the company in the manner he did and the defendants dismissed him for breaching his employment contract, the defendants' counterclaim for a *pro rata* refund of the sign-on fee of US$100,000.00 succeeds with costs.

121 - Sgd -

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122 TAN LEE MENG

123 JUDGE

Tan Lee Meng J

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