IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 79

Suit 403/1994

Between

Haco Far East Pte Ltd

… Plaintiff

And

Ong Heh Lai Francis

… Defendant

GROUNDS OF DECISION

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

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Haco Far East Pte Ltd v Ong Heh Lai Francis

[1998] SGHC 79

Suit 403/1994
Judith Prakash J
23 March 1998

Judgment:

GROUNDS OF DECISION

1. This was an action by a company against a former director for breach of fiduciary duty in that, while holding that office, he allegedly carried on business in competition with it and also made use of the company's facilities for the purposes of his competing business. At the end of the trial, I found that the plaintiff had proved many of its contentions and I accordingly entered judgment against the defendant director for damages to be assessed. The defendant has now appealed.

Background

2. The plaintiff was incorporated in 1984 with two shareholders, Haco N.V., a Belgian company which held 69% of the share capital, and the defendant, a Singaporean individual who held the remaining 31% of the capital. Haco N.V. was a company which produced heavy machinery and the intended business of the plaintiff was to sell Haco products and other machinery in Singapore and

the region. The defendant was experienced in the business having previously been the general manager of Gadelius Pte Ltd.

3. The plaintiff had two directors: one Mr Roger Havegeer, the chief executive of Haco N.V., and the defendant. The defendant was appointed the managing director and he held that position until his resignation on 22 April 1993. From the beginning Haco N.V. left the running of the plaintiff almost entirely to the defendant. Officers from Haco N.V., including Mr Havegeer, visited Singapore from time to time but they did not stay long and neither did they send anyone to sit in the Singapore office for long periods of time.

4. Under the defendant's management, the plaintiff did fairly well. Turnover increased from $1 million to more than $11 million in 1990. However, in 1991, sales fell to $8.9 million and the following year, they fell again, this time dramatically to only $6 million. The defendant blamed competition from local dealers and China made machines for the fall in the profits.

5. In the 1980s, there was some unhappiness between Haco N.V. and the defendant. This resulted from an anonymous message which Haco N.V. received stating that the defendant, although managing director of the plaintiff, had taken an interest in a competing company called Hua Leng Agencies Pte Ltd ('Hua Leng'). Haco N.V. did a company search on Hua Leng and found that the defendant's name appeared there. Mr Havegeer and his finance manager, Mr Mullier, came to Singapore to discuss the situation with the defendant. According to Mr Mullier, the defendant admitted he had an interest in Hua Leng but claimed that there was nothing wrong in this as the company did business in a different area and his position in Hua Leng had not caused the plaintiff any damage. Haco N.V. accepted the explanation and decided not to pursue the matter on condition that the defendant withdrew from Hua Leng. The defendant

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accepted this condition. What happened, however (as the plaintiff subsequently discovered), was that Hua Leng changed its name to Roundo Far East Pte Ltd ('Roundo') in late 1987 and the defendant continued to hold shares in it.

6. In November 1992, one Mr Patrick Maene, an employee of Haco N.V. then stationed in Bangkok, chanced upon an advertisement in the Yellow Pages in Thailand for 'Atlantic' machinery which was machinery of the same nature as that marked and branded under the plaintiff's brand name 'Haco'. The Atlantic machinery was being marketed and promoted in Thailand by a company called AmerFab. At that time, the plaintiff's agent in Thailand was a company called Procurement Center (Thailand) Co., Ltd. ('PCT') which was run by a Mr Venakul. When Mr Maene asked Mr Venakul about AmerFab, he was told that it was run or owned by the defendant. Mr Venakul showed Mr Maene a fax dated December 1990 which he had sent to the plaintiff to the attention of the defendant and which also dealt with a quotation which a business called AmerFab System had sent PCT for transmission to customers in Thailand. Mr Maene reported this information to Haco N.V.

7. Mr Mullier and Mr Havegeer then came to Singapore to discuss the matter with the defendant. They met him on 21 April 1993 and asked him what his involvement in AmerFab was. According to Mr Mullier, the defendant admitted his involvement in AmerFab, adding that this had no impact on the interest of the plaintiff's business and had never influenced the plaintiff's sales nor its profits. Mr Mullier thought that that was wrong in view of the high growth pattern in the plaintiff's sales until 1990 when it suddenly decreased from $11 million to $6 million in the space of two years and even though the general economy was booming. During the meeting, Mr Havegeer asked the defendant to resign from the plaintiff. The defendant refused.

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8. The next day, the parties met again. This time the defendant was accompanied by his lawyer. He then denied all allegations and refused to resign. Mr Havegeer made it clear to the defendant that he could no longer be managing director of the plaintiff and finally the defendant agreed to resign. Mr Havegeer appointed Mr Maene as the new managing director of the plaintiff and asked him to investigate whether the defendant had caused any loss to the plaintiff by reason of his involvement in AmerFab. Mr Maene undertook this task vigorously and it was his investigations that eventually led to the institution of this action.

9. Before I go on to deal with the pleadings and the evidence in detail, some background information on the competing businesses may be helpful. On 23 September 1989 a sole-proprietorship called AmerFab System was registered in Singapore. From then up to 10 March 1993, the owner of the business was one Ong Her Teck, a brother of the defendant. The defendant himself became the manager and sole proprietor of AmerFab System on 10 March 1993 (ie shortly before his enforced resignation from the plaintiff). He held this position until the business was terminated on 24 September 1993.

10. A private limited company called AmerFab Pte Ltd ('AmerFab PL') was incorporated in Singapore on 23 November 1990. One of the first two directors of the company was Judith Ong nee Toh Hwee Kian, a lady who had previously been employed by the plaintiff. The other director was one Tay Bon Keng. The company's initial paid up capital was $2 but in February 1991, the authorised capital was increased to $500,000 and the paid up capital was increased to approximately $300,000 by the allotment of shares to Ong Her Buck and Ong Her Teck, both of whom are brothers of the defendant.

11. In March 1992, Tay Bon Keng resigned as a director and was replaced by one Madam Helen Pow. In July 1993, Mr Ong Her Buck and Mr Ong Her Teck

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joined the board of AmerFab PL. When it was incorporated, AmerFab PL's registered office was at Tat Lee Bank Building and the company maintained this registered office which was the address of its auditor and secretary until at least 31 December 1993. The company's business was, however, carried on at different offices during the period 1990 to 1993.

12. During the period in question, the plaintiff had offices at No 3 Defu Lane 9, 149 Ubi Avenue 4, No 3 Jalan Papan and No 2 Kallang Pudding Road #04-03 Mactech Industrial Building. These offices were also occupied by staff/equipment belonging to AmerFab System and AmerFab PL. AmerFab System issued invoices showing its address as No 3 Defu Lane 9 and AmerFab PL placed advertisements in which its address was shown as No 3 Jalan Papan. The defendant himself stated in evidence that most of AmerFab PL staff were located in Jalan Papan and that the company also had offices in Ubi Avenue 4 at the time the plaintiff was there and in Kallang Pudding Road as well.

The pleadings

13. The main allegations made by the plaintiff in its statement of claim were as follows:

(1) as managing director of the plaintiff, the defendant owed it duties to act honestly in the interest of the plaintiff; not to place himself in a position where his duty to the plaintiff and his personal interest might conflict; and to employ the powers and assets that he was entrusted with for the purpose for which they were given and not for any collateral purpose;

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(2) that the defendant had a controlling interest in AmerFab System and AmerFab PL and that these companies while under his control competed with the plaintiff and for the plaintiff's business;

(3) that the defendant used the staff of the plaintiff for the purposes of the business of AmerFab PL and AmerFab System;

(4) the defendant also transacted business through AmerFab System and AmerFab PL with third parties and took away business which would otherwise have been directed to the plaintiff and in this connection the plaintiff specifically mentioned dealings in machines produced by Strippit, Inc of the United States of America; and

(5) the defendant misapplied the plaintiff's office premises, equipment and personnel to the use of AmerFab System and AmerFab PL.

14. The plaintiff then claimed the following reliefs:

(1) for damages to be assessed as a result of the defendant's breaches of duty;

(2) an account of the profit made by the defendant through AmerFab System and AmerFab PL in the sale of drum plants, Blue Valley flanges, Strippit machines and plate rolls; and

(3) payment of all sums found due to the plaintiff on the taking of the above account.

15. The defendant's response was basically a denial of all accusations. He contended that he had never breached any of the duties of a managing director as imposed on or required of him. He also pleaded that at no time had he acted

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against the interest of the plaintiff or placed himself in a conflict situation or used the assets of the plaintiff other than for the purposes of the plaintiff. He averred that the plaintiff was well aware of all his activities during the time he was managing director. He denied that he had a controlling interest or any interest in AmerFab System or AmerFab PL or that these entities competed in the same business as the plaintiff or for the plaintiff's business.

The evidence

(i) Kelvin Lek Yak Chai

16. In his affidavit of evidence-in-chief made in April 1997, Mr Lek stated that he was then a director of a company called AKT Machinery Pte Ltd which dealt in the sale of machines. Mr Lek had formerly worked for both the plaintiff and AmerFab PL.

17. According to Mr Lek, he was employed by the plaintiff from 1988 to 1990. During that time, the plaintiff was actively promoting the sale of Strippit machines. To enhance customer service, Mr Lek was sent by the plaintiff to the Strippit factory in the USA to receive training on the commissioning and maintenance of Strippit machines. After Mr Lek's return to Singapore, he promoted and serviced Strippit machines for the plaintiff.

18. Some time in 1990, AmerFab PL also started selling Strippit machines and the defendant then asked Mr Lek to join AmerFab as a sales engineer. This was to ensure that there would be a follow up customer service for the Strippit machines now that, according to the defendant, the plaintiff was no longer to sell Strippit machines. Mr Lek accepted the offer. He further stated that during his employment with AmerFab PL, he received all his working instructions

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from the defendant and he considered the defendant to be his boss. He was under the impression that the defendant was the managing director of AmerFab PL. Later he was surprised to learn that the defendant identified himself as an employee of AmerFab PL under the name of Francis Wang. In court, he stated that he had seen a name card of Francis Wang which had been given to him by Judith Ong.

19. In answer to a question from me, Mr Lek said that the defendant himself had told him that Francis Wang was the same person as Francis Ong Heh Lai, the defendant. He also volunteered that when he was promoted to sales manager of AmerFab he was told to tell some customers that the defendant's name was Francis Wang. Mr Lek referred to the defendant as the managing director of both the plaintiff and AmerFab. When I asked him how he came to know the defendant's position in AmerFab, his reply was that it was because the defendant gave the instructions and signed the cheques.

20. In Mr Lek's affidavit, he referred to his employer as either AmerFab or AmerFab PL. He did not seem to distinguish between AmerFab System and AmerFab PL. In court, he produced a copy of his employment contract dated 1 September 1990 which turned out to be written on the letterhead of AmerFab System. The document made it clear that Mr Lek would be dealing with Strippit machines because there was a specific provision that a commission of 0.5 per cent of the invoice value of all Strippit sales would be paid to Mr Lek after receipt of full payment from the customers. The letter showed that at that stage AmerFab System was giving its address as No 3 Defu Lane 9, Singapore. The letter was signed on behalf of AmerFab System by Ms LK Goh ('Ms Goh') whom Mr Lek described as the administration manager of AmerFab. In fact she was an employee of the plaintiff until she was asked to leave it in April 1993 at the time the defendant resigned.

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21. Another document produced by Mr Lek was a letter dated 10 July 1990 written on the plaintiff's letterhead and signed by the defendant. In it, the defendant stated that he was raising Mr Lek's salary by $150 a month and explained that this was 'only a small reflection of my appreciation of your work attitude and hard work'. Mr Lek testified that soon after receiving that encomium, he had been asked by the defendant to join AmerFab. He also stated that while he was working for the plaintiff, AmerFab was started and after that he did work for both companies and took instructions from the defendant. At that time the office premises of both companies (ie the plaintiff and AmerFab) were in Ubi Avenue. AmerFab occupied the third floor of the building and the plaintiff was on the second floor and although usually the employees of both companies 'were like a family', when there were Belgian visitors to the plaintiff's office, Mr Lek would be told not to go to the plaintiff's office or to leave the building entirely. These instructions were given to him by both the defendant and Ms Goh.

22. Mr Lek made a further affidavit of evidence-in-chief on 22 October 1997, in the midst of the trial. In this affidavit, he stated that on Sunday, 25 April 1993, immediately after the resignation of the defendant from the plaintiff company, the defendant called him at home and told Mr Lek that he could not work one of the computers in the plaintiff's office and asked Mr Lek to have a look at the computer. When Mr Lek had worked with the plaintiff, he had used this computer, an Apple model, extensively because the Strippit software used for demonstrations was Apple compatible. He also knew from his work on the computer that it contained a lot of information relating to AmerFab quotations.

23. Mr Lek arrived at the plaintiff's premises before noon that morning. The defendant, Ms Goh and other staff were already there. As Mr Lek walked

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towards the defendant's office in which the computer was sited, he saw that the defendant and the other persons present were going through all the files in the plaintiff's office and removing and destroying documents relating to AmerFab. After some time Mr Lek managed to get the computer working and Ms Goh then took over from him. The only persons who had used the computer beside himself were Ms Goh, one Mr Chua, one Mr Wong and Judith Ong.

24. Under cross-examination, Mr Lek said that he was sure that there was no such person as Francis Wang. He explained that when he was in Bangkok with the defendant, the defendant had handed a card with Francis Wang's name on it to a customer. He was asked by counsel whether he knew that the defendant had a brother called Francis Wang who worked in Bangkok for AmerFab Co Ltd. His reply was that he did not know this. It was not put to him that he should have known this since he had visited Bangkok with the defendant and knew that there was an AmerFab company in Bangkok. Apart from this question and the defendant's own assertion later that there was a Francis Wang in Bangkok who was his brother, no evidence was produced of the independent existence of this man. Mr Wang himself did not turn up to nail down Mr Lek's alleged lie. It should also be noted that Mr Lek said that the name card which had the name of Francis Wang was a name card of AmerFab System. It was not the name card of AmerFab Co Ltd.

25. Under cross-examination, Mr Lek also said that he had joined the plaintiff as a service technician. Subsequently he went to the Strippit factory for training. Later he was told by the defendant that the latter had obtained the agency for Strippit machines. The defendant explained to him that he needed to be transferred to AmerFab because Strippit was no longer 'under the plaintiff's agency' and it had been transferred to AmerFab. He also explained that he used the word 'transfer' in relation to his change of employer from the plaintiff to

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AmerFab because the defendant had told him he would be transferred and all the while there was no difference between AmerFab and the plaintiff. Both were doing the same thing. It was like a family. Sometimes both companies used the same fax number and office facilities.

26. Counsel for the defendant sought to undermine the impact of Mr Lek's testimony by suggesting to him that in his new business, AKT Machinery, he was in competition with AmerFab. Mr Lek replied that there was not much competition between his company and AmerFab. In any case, Mr Lek impressed me as an honest and forthright witness and I believed his account of what had occurred after he first went to work for the plaintiff.

(ii) Goh Tow Teck aka William Goh

27. Mr Goh was another ex-employee of the plaintiff company. At the date of the trial, he was Mr Lek's partner in AKT Machinery. Mr Goh stated in his affidavit that he had been employed by the plaintiff from June 1991 until March 1993. He started off as a sales engineer and after three months he was promoted to sales manager.

28. Mr Goh recalled one particular transaction in which he was directly involved which seemed irregular to him. At that time, he had given a quotation for the plaintiff's sale of a used Grenen Roll Bending machine to a company called Meisei Industrial. Meisei Industrial informed him that they were very interested and would contact him when they were ready for further negotiations. Thereafter he went to Indonesia for an exhibition. While there he learnt that Meisei Industrial had called the plaintiff's office in Singapore to say that they were interested in buying the machine and wanted Mr Goh to negotiate the transaction at their factory in Kuala Lumpur.

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29. Mr Goh informed the defendant about the matter and was told that the defendant would handle the case personally. Subsequently, Meisei Industrial came to Singapore to test the machine and, being satisfied with it thereafter, wanted to conclude the transaction immediately. Meisei Industrial negotiated the purchase price with the defendant directly. Mr Goh was then in the defendant's office. When the deal was made, the defendant prepared a sales contract on AmerFab's letterhead and Meisei Industrial's representative signed that contract.

30. Mr Goh also stated that, during his period of employment with the plaintiff, on a number of occasions he was asked by the defendant to promote the products of AmerFab. Also, he was told by the defendant to work on the third floor which housed the office of AmerFab because there was insufficient space on the first and second floors which were the plaintiff's office. He stated that Judith Ong and Susan, the accounting clerks, and Kelvin Lek, the sales manager, who were all employees of AmerFab also worked at the AmerFab office on the third floor. In cross-examination he was asked whether there was anything wrong with these AmerFab employees working at the AmerFab office. Mr Goh's reply was that he did not know that there was anything wrong with this arrangement but that when he had mentioned it later to Mr Maene, the latter said that the whole building (ie the warehouse in Ubi Avenue 4) belonged to the plaintiff and what was he talking about the AmerFab office on the third floor.

31. Mr Goh also impressed me as a forthright man without any axe to grind. He was fair and did not leap to ascribe blame to the defendant even when he was given an opportunity to do so. I believed his account of the defendant's involvement in AmerFab.

(iii) Patrick Karolus Maene

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32. Mr Maene took over the defendant's position in the plaintiff company upon the latter's resignation and spent much of his time thereafter investigating what the defendant had been up to. Most of his evidence was an account of the result of his investigations. He informed me that he was the person who had collated all the documents which the plaintiff had produced at the trial. He had obtained these documents from four sources:

paper records and computer diskettes which he found in the plaintiff's premises;

the plaintiff's agent in Thailand, PCT;

a company called More Corporation Ltd in Korea; and

a company called Fine Metal Works Pte Ltd.

33. Mr Maene explained that the material from the computer diskettes had been obtained with the assistance of one Mr Guido Vandenhende who joined the plaintiff company as service manager. Mr Vandenhende went through all the diskettes and printed as many as possible of the documents which Mr Maene thought were significant. Mr Vandenhende subsequently gave evidence and confirmed this and also identified the documents which he had printed from the computer diskettes in the plaintiff's office.

34. As an investigator, Mr Maene did not have personal knowledge of many of the items on which he gave evidence. Some of his evidence was inference from documents he had found and other parts of it were hearsay. The account that follows is an indication of the main matters that I gathered from the parts of Mr Maene's testimony that had probative value.

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35. Mr Maene produced the April/May 1993 issue of the magazine called *Asia Pacific Metalworking Equipment News*. In this magazine were various advertisements and product write-ups. Among these was an advertisement for a Strippit punch press and an Euromac hydraulic punching machine. This advertisement bore the logo 'AmerFab' and below that the names and addresses of the Singapore, Malaysian and Thai offices viz AmerFab PL, AmerFab Sdn Bhd and AmerFab Co Ltd. The address of AmerFab PL was given as No 3 Jalan Papan.

36. There were three other relevant advertisements in the same magazine. First, an advertisement placed by Blue Valley Machine and Manufacturing Co Inc of the USA advertising its machines. That advertisement stated that the distributor in Singapore was AmerFab PL and gave its Jalan Papan address, telephone numbers and fax numbers. Then, there was an advertisement for a Strippit MultiPunch II machine. At the bottom of this appeared the name of AmerFab PL, its Jalan Papan address and telephone numbers. Finally, there was an advertisement for a Strippit CNC turret press placed by AmerFab Sdn Bhd. At the bottom of this advertisement was written: 'Contact person: Mr Francis Wang, Mr Kelvin Lek'.

37. Mr Maene also referred to the entry for AmerFab PL in the magazine 'Singapore Industrial Machinery 1993-1994' showing its products as Strippit, Euromac, Blue Valley and drum manufacturing plants. The address of AmerFab PL was No 2 Kallang Pudding Road which was the plaintiff's address. He also produced the Indonesian Yellow Pages in which were found side by side advertisements for AmerFab PL and the plaintiff company. AmerFab was shown as dealing in Strippit and Blue Valley machines among others whereas the plaintiff's advertisement showed that they dealt in, among others, the Euromac hydraulic punching machine. The advertisements showed AmerFab

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and the plaintiff sharing the same Indonesian office at 95 Jalan Lautze Jakarta. AmerFab's address in Singapore was shown as the Jalan Papan address whereas the plaintiff's Singapore address was the Ubi Avenue 4 office. The plaintiff was paying for both offices at that time.

38. The plaintiff produced a page from an exhibition brochure for the Exhibition Intermach 93 which showed that the agent in Singapore for Euromac machines was AmerFab PL having an address at Kallang Pudding Road. The Singapore telephone book listing for 1992 showed AmerFab PL as having three addresses among which were 3 Jalan Papan and 149 Ubi Avenue 4. AmerFab letterheads and invoices showed its addresses as either 3 Jalan Papan or 149 Ubi Avenue 4. An advertisement in the magazine for the Thai Metalex 91 exhibition showed AmerFab PL having its address as 149 Ubi Avenue 4 and being the sole distributor of, inter alia, Strippit punch presses and Blue Valley flanging machines.

39. Under cross-examination, Mr Maene asserted that the plaintiff had been the sole agent for Strippit, Blue Valley and Euromac Machines. He was not, however, able to produce any documentary evidence of such sole agency agreements for Strippit and Blue Valley. In respect of Euromac, there was a letter dated 8 October 1992 stating that as from 30 October 1992 they would no longer use the plaintiff as their agent due to poor sales and the possibility of competing machines being built by Haco N.V. Mr Maene was able to produce various invoices for Strippit machines which Strippit Inc had sent the plaintiff and a letter written by the defendant on the plaintiff's letterhead dated 29 March 1990 to a former Strippit employee one Mr Robert O'Connor. In this letter, the defendant said that he would be visiting Strippit in April 1990 and would also contact Mr O'Connor. He also stated:

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'The Strippit correspondence is done through AmerFab System. I hope that it develops well and that during the trip to Strippit I would be able to wrap up an agreement of some sort. Thank you very much for your offer to help - I may have to take up on your offer. I will definitely keep it in mind.'

40. In relation to Blue Valley, Mr Maene was not able to supply very much in the way of documentation. All he could say was that the plaintiff used to be the only company supplying Blue Valley machines in the Asian market and that he inferred that the defendant had procured an exclusive distribution contract for AmerFab from Blue Valley because when he had contacted Blue Valley in order to buy machines directly from them for his own Indonesian customers (after he left the plaintiff's employ) he had been referred to AmerFab PL.

41. There was a complaint in paragraph 9.1 of the statement of claim that AmerFab System had entered into a contract to install a drum plant at the premises of an Indonesian business called C V Pinang Jaya at a price of $1.4 million when it was also the plaintiff's business to provide drum plants for its customers. Mr Maene said during cross-examination that the plaintiff had sold two drum plants between 1986 and 1988. He referred to the invoices for these plants which were in the bundle. His evidence for saying that AmerFab System had entered into a contract with CV Pinang Jaya was as follows. First, there was a draft letter addressed to Svenska Handelsbanken purportedly written by the defendant (of which more later) in which it was stated that currently AmerFab System had a project on hand for turnkey delivery of a drum plant worth $1.4 million. Secondly, he referred to a draft sales agreement which had been retrieved from a diskette in the plaintiff's office. This was worded as an agreement made on 21 February 1990 between the plaintiff (represented by the defendant) as seller and C V Pinang Jaya of Medan as the buyer. The content of the agreement was that the buyer would purchase a drum manufacturing plant

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from the seller at a price of S$1.4 million FOB with the seller being responsible to supervise the installation and commissioning of the machinery at the buyer's premises. At the end of the agreement appeared the names of both parties and the persons who were intended to act as witnesses. The third document was also retrieved from a computer diskette. This was in all aspects identical to the first page of the agreement between the plaintiff and C V Pinang Jaya except that instead of the plaintiff's name appearing as the seller the name that appeared was that of AmerFab System.

42. Mr Maene had to admit during cross-examination that there was no signed sales agreement between AmerFab System and C V Pinang Jaya. He also had to agree that he had not contacted the intended buyer to find out whether the sale had actually gone through. He did assert, however, that the plaintiff had delivered machines which were to be incorporated as part of the drum plant to the same buyer, C V Pinang Jaya, under a separate contract. He also had not seen either a signed contract for the drum plant between the plaintiff and the buyer or any sale invoice from the plaintiff for the plant.

43. Mr Maene also produced office circulars to show the linkage between the plaintiff and AmerFab. One of these was dated 23 January 1993 and addressed to 'staff of Haco Far East and AmerFab PL' and was from Francis Ong. It stated that the persons named at the bottom of the circular were invited to lunch on 26 February at a restaurant to celebrate the Lunar New Year. The other circular was dated 19 January 1993 and was on the plaintiff's letterhead and addressed to 'all staff from the managing director'. It related to the removal of the plaintiff's office to Kallang Pudding Road and assigned various responsibilities relating to the removal to various named staff members. Some of these persons were on the plaintiff's staff while others were on AmerFab's payroll. To Mr Maene this

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showed that if the plaintiff moved to a new office, so did AmerFab and all the employees of both companies were used for the move.

44. Mr Maene also testified as to how he came into possession of the draft letter to Svenska Handelsbanken which was marked PB333. He stated that he had started work on the Monday following the defendant's resignation. The defendant was still in the plaintiff's office. Mr Maene told him that he was not supposed to be there and asked him to move out. Subsequently the defendant wanted to pick up his personal files. Mr Maene reviewed the documents in them before allowing him to take them as he saw the bundle included documents relating to the plaintiff. He found PB333 in the files and realised that it was important. Finally, on the defendant's insistence he returned it to him after the defendant agreed that Mr Maene could make a copy of this document.

45. Another document which Mr Maene produced was a letter dated 21 April 1991 on the letterhead of AmerFab System addressed to PCT and purportedly signed by the defendant. Under cover of this letter a cheque for baht 750,000 was forwarded to PCT. The letter requested them to transfer the funds in Singapore dollars 'in your usual arrangement to Ong Heh Lai'. Although initially this letter was not a disputed document, subsequently in cross-examination the defendant denied writing it. Mr Maene used this letter as evidence that the defendant had received money from AmerFab System.

46. In further support of this contention, he referred to a handwritten letter dated 11 November 1990 from the defendant to Mr Venakul of PCT. In that letter, he asked Mr Venakul to cash one cheque and transfer the money to him and to hold two other cheques until their due dates and then deposit the funds into the

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defendant's account with the Thai Farmers' Bank. He also gave some instructions in the letter in relation to certain payments to be made for Roundo.

47. According to Mr Maene's affidavit, from October 1989 to April 1993, business addresses of AmerFab were the same as the plaintiff's addresses in Singapore, Malaysia and Indonesia. In Singapore, the plaintiff was at 149 Ubi Avenue 4 from February 1988 to January 1993; at 2 Kallang Pudding Road from 1 February 1993 onwards and at No 3 Jalan Papan from 1 April 1991 to 1 April 1993. He produced a floor plan of No 3 Jalan Papan which showed that AmerFab occupied the same floor in those premises as the plaintiff did since it indicated not only the AmerFab office but also storage areas for Strippit machines as well as machines produced by Simat and Atlantic which were lines carried by the plaintiff company. The plaintiff paid the rent for all these premises.

48. According to the accounting records of the plaintiff, the defendant incurred a sum of $7,016 in the purchase of Ikea furniture which was delivered to an apartment at Block 10 Holland Hill Singapore. The said items were, however, posted in the plaintiff's account as entertainment expenses. These expenses were approved by the defendant himself. The invoices showed that the items purchased were household furniture and not office equipment. The plaintiff's books also showed that renovation works in the sum of $7,450 were carried out at the third floor of the plaintiff's offices at Ubi Avenue 4. The third floor was the floor which was primarily occupied by AmerFab staff and Mr Maene considered that making the plaintiff pay such renovation costs was wrongful.

(iv) Ms Patricia Pua

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49. Ms Pua was the business development manager of the magazine *Asia Pacific Metalworking Equipment News*. She produced an advertising contract between her employer and AmerFab PL. This contract was dated 4 April 1993 ie whilst the defendant and Ms LK Goh were still working for the plaintiff. Ms Pua confirmed that Ms LK Goh entered the contract on behalf of AmerFab PL. She also confirmed that she knew the defendant and that he had, most probably, never placed an advertisement or asked for free editorial space in her magazine on behalf of the plaintiff company.

(v) Ong Heh Lai, Francis

50. The defendant was the only witness on his own behalf. In his affidavit of evidence-in-chief, he started out by giving the history of his involvement with Haco N.V. He stated that after the plaintiff's incorporation and while it was waiting for its own premises to be ready, it operated its business within the premises of Hua Leng and did not pay any rent or service charges. He asserted that Mr Havegeer had been fully aware of this. He also stated that Hua Leng was run by his relatives.

51. The defendant said that the main business of the plaintiff was to distribute machines built by Haco N.V. Initially, business was slow for Haco machines and in order to keep the plaintiff's business profitable, the defendant concentrated his efforts on other business instead of selling only Haco machines. In 1986, the plaintiff successfully competed for the sale of an asphalt drum manufacturing plant to Pertamina. The defendant also developed a second-hand machine business for the plaintiff. The defendant also gave an account of his difficulties with Haco N.V. because of its reluctance to increase the paid up capital of the plaintiff company.

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52. At some stage, the sale of Haco machines to South Korea, Taiwan and Thailand expanded. Among the machines sold to Thailand were the Haco CNC pressbrakes. These machines apparently gave a lot of problems and Haco technicians from Singapore and Belgium had to make frequent trips to Bangkok to service them. In order to save costs on board and lodging in Bangkok, the defendant made arrangements with his brother in AmerFab Co Ltd (Thailand) to allow Haco technicians to stay in its Bangkok boarding house free of charge. AmerFab staff in Bangkok also provided assistance to Haco technicians by providing them with transport and directions.

53. It should be noted here that there was no documentary evidence produced of any such facilities being given to the plaintiff company. Neither was there any written agreement between the plaintiff and AmerFab Co Ltd for the provision of such assistance. Neither did anyone come to court from AmerFab Co Ltd to testify as to the assistance given to the Haco technicians or to produce any documents evidencing the expense incurred on behalf of the plaintiff. Mr Maene stated that when he checked the plaintiff's records he could find no reflection of any such assistance.

54. The defendant went on to state in his affidavit that in return for what had been done in Bangkok, he allowed AmerFab PL to occupy a small portion of the plaintiff's premises on the third floor of the workshop at Ubi Avenue 4. This third floor had a separate stair case and was mostly unoccupied. Sometimes small machines and big parts were stored by the plaintiff there.

55. The defendant denied that he had set up AmerFab System or AmerFab PL. He denied that he had a controlling interest or any interest in either operation or that they competed in the same business as the plaintiff or for the plaintiff's business. He explained his connection with AmerFab System by saying that he

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'registered [his] name in AmerFab as from 10.3.93 and it never indulged in any trading and it was struck off the Register on or about 24.9.93'. The sole proprietor of AmerFab System was his brother, Ong Her Teck, and all the business connected with AmerFab System were conducted by Ong Her Teck.

56. As regards AmerFab PL, the defendant explained that towards the end of 1990 his brother, Ong Her Teck, decided to incorporate a private limited company known as AmerFab PL to take over AmerFab System. His brother was keen to keep the name 'AmerFab System' but since he was already a shareholder in AmerFab PL, he asked the defendant to 'lend' his name in order to retain 'AmerFab System' for use by Ong Her Teck in the future if need be. The defendant said he obliged his brother. AmerFab System became dormant soon after the incorporation of AmerFab PL. The defendant asserted that he never transacted any business in the name of AmerFab System during the period when his name was registered as the sole proprietor of that business.

57. The defendant was cross-examined on the above explanation for his becoming registered as the proprietor of AmerFab System. He reiterated that his brother had asked him to become the manager of AmerFab System in order that his brother could keep the name. I asked why Ong Her Teck had not himself acted as manager of AmerFab System. The defendant's reply was 'He was already in AmerFab Pte Ltd. He thought that it would just be a duplicate'. I then enquired had Ong Her Teck asked the defendant to do this and the reply was 'He thought that it was a nice name to keep. I thought why not. There was no transaction whatsoever from registration to termination'. And again in explaining why Ong Her Teck left as sole proprietor and made the defendant sole proprietor instead, the defendant said 'He wanted someone to take over the firm's name. He thought that he might use the name some time in the future'. When I pressed him by asking why Ong Her Teck had not then kept AmerFab

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System in his name throughout, the defendant could only say 'I don't understand his thinking'. The defendant was unable to give a rational or coherent reason as to why he should have become the sole proprietor of AmerFab System in March 1993.

58. In his affidavit of evidence-in-chief, the defendant also asserted that the business activities carried out by AmerFab System and AmerFab PL were materially different from those carried out by the plaintiff. There was never any diversion of business activities from the plaintiff to either of the AmerFab operations. Further, AmerFab PL had shareholders and directors and he had no interest in the company not being either a shareholder or a director of it. Under cross-examination he asserted that neither he nor Ms LK Goh had any position in AmerFab PL.

59. The defendant and Ms LK Goh had known each other for a long time as the latter had, prior to joining the plaintiff company, worked in Gadelius Pte Ltd as a secretary to the managing director. After joining the plaintiff, she quickly became the second in command. In 1986, she was appointed the company secretary of the plaintiff. At some stage she became the plaintiff's administration manager and she held that position for many years right up to her departure in May 1993. Subsequently, Ms Goh joined AmerFab PL and became the latter's administration manager. It should be noted that sometime after leaving the plaintiff the defendant joined Amerfab PL as its general manager. He held that position until shortly before the trial started.

60. Under cross-examination, the defendant admitted that both he and Ms LK Goh had been cheque signatories for AmerFab PL at the material time. He explained that this was for convenience and the mandate was given to them by the directors of AmerFab PL. The defendant was asked who had been managing

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AmerFab PL's affairs and his reply was that the company had many staff including Judith Ong. As far as he knew, it did not have a managing director and he was not sure whether there was a general manager. He explained the company had had a number of officers. Most of the staff were located in Jalan Papan. He agreed that the plaintiff had had an office in Jalan Papan as well but did not admit that the Jalan Papan office occupied by AmerFab PL belonged to the plaintiff. He asserted, without any documentary substantiation, that AmerFab PL was itself a tenant of Jalan Papan. When he was asked why he did not know who the general manager of AmerFab PL was, the defendant replied that it was because one of the staff, Ong Sin Guan (another of his brothers), was working as though he was the general manager but called himself the regional manager so the defendant was not sure of his actual position. Ong Sin Guan also worked in Roundo (ie the former Hua Leng) and was mainly in that office.

61. The defendant was asked a number of questions on PB333, the draft letter to Svenska Handelsbanken which Mr Maene had found in the defendant's personal file. This was a typed letter with a number of handwritten corrections and additions in the defendant's own handwriting. It was a very damaging letter from the defendant's perspective as would be seen from the following extracts (with the handwritten portions indicated in italics):

'Svenska Handelsbanken

Attention: Mr Johan Lindzen

Dear Mr Lindzen

Further to our meeting, I wish to give below some information regarding this company in support of my application for *banking* facilities from you.

AmerFab System was incorporated in September 1989. The main line of business is sales and service of the following equipment:

packaging together complete systems of computerised sign/design cutting equipment

computerised and CNC control punching and cutting machines

turnkey project services

Avonite designer material for kitchen and counter tops

…

For the sheetmetal industry, we have secured agencies for:

Strippit CNC turret punch press *which is the biggest US-made and among the biggest in the world*

C&G computerised plasma cutting machine *which is competitively priced*

I have considerable experience handling turnkey project deliveries. Currently we have a project on hand for turnkey delivery of a drum manufacturing plant worth S$1.4 million.

…

AmerFab System is currently operated as a sole proprietorship under a nominee proprietor, Ong Her Teck. In reality the business is handled by myself and I have a team of personnel as given below.

Sales manager - James Chew

Secretary - Judith Toh

Project supervisor - Leong Yew Fai

Project assistant - Chee?

Sales/service engineer - Sam Yeap

Sales/Service engineer - Ong Lai Pu

Avonite Sales Supervisor - Daniel Cheng

Accounts - L K Goh

I plan to convert this firm into a private limited company with authorised capital of S$1 million and paid-up capital of $400,000 by the beginning of 1991.

So far the business is developing as planned and there is no reason why the budget of $5 million orders anticipated by year-end should not be realised. Profitability is better than forecast. Therefore I foresee the year-end result to match the forecast for 1990.

The facilities I wish to apply for is S$1 million revolving credit for drawdowns, documentary credits and trust receipts *and I hope to have your support and approval.*

Pls find attached following documents for your reference:

Sales forecast 1990

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personal particulars (income and assets)

orders on hand

With best regards

FRANCIS ONG'

62. In his affidavit, the defendant stated that the draft of PB333 was typed by Ms Goh and given to him for approval. He went through the document and made various corrections without giving the final approval because the text did not reflect the true picture of the affairs of the sole proprietorship. So, the letter was not signed nor sent to the bank. He contended that it was not a document of any substance. It was notable that in his amendments, the defendant did not delete the reference to a meeting between himself and the bank officer Mr Lindzen, nor did he delete the damning statement about AmerFab System being operated by a nominee proprietor whereas in reality the business was handled by himself, nor did he change the name of the signing party which had been typed as 'Francis Ong'.

63. In court the defendant stated that he did not write PB333. He said it was a draft made by Ms Goh at the request of his brother, Ong Her Teck. When it was put to him that the letter was going to go under his hand, his reply was 'After I studied the draft, I found that there was many inaccuracies. Therefore it was to be discarded'. It was put to him again that he was going to sign the letter. This time the defendant's reply was that his name had been given but he had never agreed to sign it. He was also shown PB335, the list of orders on hand that had been prepared to be forwarded with PB333. The defendant stated that PB335

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was a budgetary document which had been prepared for the purpose of securing banking facilities for AmerFab System and that there was no truth in the figures at all that was why he had not signed it.

64. I asked the defendant why AmerFab System had wanted him to sign the letter. His response was that his brother was not known in the industry and was using the defendant's name to apply because the defendant had previously worked for Gadelius Pte Ltd. He admitted that he had been happy to let his brother use his name because he was trying to help his brother. It was clear that the defendant had had every intention of sending out a letter signed by him for the purpose of applying for bank facilities for AmerFab System. The defendant also admitted that the document PB336 which was also to be forwarded to the bank under cover of PB333, contained personal particulars of himself and his properties. He agreed that he had furnished the information on his personal assets to his brother to assist his brother in obtaining the banking facilities.

65. The defendant was also asked about the drum plant which was mentioned in PB333. It was suggested to him that this drum plant which AmerFab System was touting as its own project was in fact the one for which the plaintiff had given a quotation to CV Pinang Jaya. The defendant refused to admit this despite strenuous cross-examination on the point. However, at a later stage of his cross-examination, he admitted knowing that AmerFab was competing with the plaintiff in relation to the supply of a drum plant.

66. This admission came in relation to another document which the defendant admitted preparing in connection with PB333. This was PB337 which was supposedly a list of AmerFab's 'orders on hand'. This list was addressed to Mr Lindzen of Svenska Handelsbanken. The first item on the list was a drum plant having a sales value of $1.4 million, a landed cost of $1 million and purportedly

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intended for a company called 'Pinang Jaya'. He was asked whether his brother had sent a quotation to CV Pinang Jaya for this drum. The defendant's answer was he believed so but he would say that it was AmerFab System rather than his brother who had sent the quotation out. He agreed that at that time he (on behalf of the plaintiff) was trying to sell a similar system to the Pinang Jaya group and explained that it was normal for a customer to make enquiries from five or six potential suppliers. He did not ask his brother why the latter was competing with the plaintiff because where such business was concerned they kept apart. He said that helping his brother to get bank facilities and competing in the same business were two different things and whilst he knew that his brother was a competitor, he was helping his brother simply to start up his business. He did not think it was wrong to help a competitor get off the ground.

67. The defendant portrayed himself as a person who was willing to go to great efforts to assist his family members in business to the extent of using himself as a front man. Yet, none of these relatives saw fit to support the defendant in his time of trial by giving evidence which would have established that AmerFab System and AmerFab PL had been completely separate entities with which he had had little to do. The defendant's explanation for their absence was that they did not want to be involved. He did not express any rancour at their failure to turn up and support him, saying merely that 'many lay people are frightened about the courts'. I, however, drew an adverse inference from the defendant's inability to procure any corroborative evidence from the relatives he had gone out on a limb for to the extent that he had lost his job and become involved in expensive litigation.

68. The defendant explained that he had gone to the plaintiff's office on Sunday, 25 April 1993 because he had wanted AmerFab PL to move out everything. So he had to be there to open the office. Secondly, he wanted some of the staff to

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go through the outstanding matters for the plaintiff which had to be cleared by him. About four of the plaintiff's employees were there including himself and Ms Goh. As far as he was concerned, all AmerFab did was to move away its equipment and documents. He denied that the staff had destroyed any documents as alleged by Mr Lek. He also explained that he had asked Mr Lek to come in to put the Apple computer in working condition because he did not want to leave the office with an inoperable computer. He agreed that this Apple computer had been kept in his own room in the office. It was then put to him that all the Strippit information was on that computer. His response was that he was not sure if it had all the Strippit information but that the computer had been purchased at the time when Mr Lek was working for the plaintiff and that he had had to use it to support the Strippit machines. When he was asked the question again, the defendant agreed that all the Strippit information had been in the Apple computer. This was more confirmation of the diversion of the Strippit business ie that the person most familiar with the computer was an AmerFab employee.

69. In the course of cross-examination, the defendant was shown PB317 which was a letter addressed to PCT and dated 1 April 1991 on the letterhead of AmerFab System. The name below the signature read 'Francis Ong' and the body of the letter read 'Please find enclosed the Thai Farmers Bank cheque no. 7482891 of Baht 750,000 dated 5/4/91 issued under your name. Please transfer the funds in Singapore Dollars in your usual arrangement to ONG HEH LAI'. The defendant stated that he had not written this letter. He said he did not recognise the signature on it and that obviously AmerFab had been using his name to get some services from Mr Venakul. He then explained that the money was sent to AmerFab System but care of him because of his relationship with Mr Venakul.

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70. The defendant went on to explain that in Thailand customers generally issue post-dated cheques for the purchases they made. The plaintiff company itself would receive such cheques and when the due dates arrived, the plaintiff would send the cheques to Mr Venakul to cash them and transfer the monies to the plaintiff. But, he said, usually Mr Venakul would address the correspondence to the defendant personally even though the cheques had been made out in favour of the plaintiff. He explained that likewise by PB317 AmerFab was asking Mr Venakul to cash the cheque and then make the payment in the name of AmerFab but to send the envelope to the defendant.

71. I asked the defendant whether he was saying that 'Please transfer funds in Singapore dollars in your usual arrangement to Ong Heh Lai' actually meant please make out a cheque in Singapore dollars in favour of AmerFab System but put it in an envelope addressed to Ong Heh Lai and he answered that yes it did. He also stated that the handwritten words 'account payee only AmerFab System c/o Ong Heh Lai Singapore tel 7430433' which appeared at the bottom of the letter had been written by Mr Venakul and his staff. He explained that such cheques were being sent to him because of his relationship with Mr Venakul and that if AmerFab System had not used the defendant's name then Mr Venakul would probably not have bothered to undertake the service. His account of his previous knowledge of this transaction was muddled. First, the defendant stated that AmerFab System had told him that they were writing PB317 and he had agreed to it being done. I asked him whether he had scolded them for forging his signature and he replied he had not because they had not shown him the letter and he had not known that they were forging his signature. Secondly, he said that when the cheques made out to AmerFab were sent to him he either handed them to Judith Ong or his brother and they then told him that they had used his name to ask Mr Venakul to send money to AmerFab through

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him. His third twist was to say that he was not upset about AmerFab System having done this (ie forged his signature) because he came to know about it only after all the documents were filed in court and he saw the letter in the bundle.

72. The defendant was then shown PB320 which was a fax on the plaintiff's letterhead addressed to Mr Venakul and dated 11 April 1991. This was sent ten days after PB317 and referred to the same amount of Baht 750,000. The text was 'Please send the above funds to AmerFab System and not to me as advised previously'. The defendant then responded that he did not remember having sent that fax. I did not believe him. I thought that he had sent PB317 and had subsequently sent PB320 and that he knew all about the transfers of money which were being made to AmerFab System at his request.

73. The defendant was shown PB237, the handwritten letter dated 11 November 1990 which he had sent to Mr Venakul. He was asked to explain the references to transferring money to Roundo and to himself. The defendant explained that Ong Sin Guan was then based in Bangkok and Roundo had post-dated Thai cheques in its Singapore office. Roundo had asked him to make use of Mr Venakul's services to transfer the funds to Roundo. As regards the reference to a transfer to himself, he stated that this was in reference to funds which a Thai customer wanted him to use to purchase electronic items on that customer's behalf.

74. As regards item 2(b) of the letter, the defendant at first stated that the two cheques mentioned in the letter were the plaintiff's cheques which Mr Venakul was to transfer to the plaintiff on the respective due dates. It was then pointed out that the actual wording of item 2(b) was 'Please hold the following cheques and deposit into my account at the Thai Farmers Bank on due date'. In response, the defendant said looking at the letter he had remembered that he did have a

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bank account in Thailand and that because the cheques were not yet due, Mr Venakul was to first deposit them into the defendant's own account. Then on the due date, he would issue cheques drawn on that account in Mr Venakul's favour so that he could transfer the funds to the plaintiff. The defendant went on to say that most probably those post-dated cheques had been cash cheques. He was then asked if they were cash cheques why had they been deposited into his account first and not directly into Mr Venakul's account. His response was that whilst it could be done that way there were so many cheques that if he followed that method he would have been entrusting a lot of funds to Mr Venakul. The plaintiff's accounts clerk, Jasmine, kept a record of all the cheques which the defendant received. Under further questioning, the defendant justified the completely redundant step of depositing the cash cheques into his own account before drawing a further cheque in favour of Mr Venakul by stating that this method gave him a record that Mr Venakul had received the money. If the defendant had truly wanted to keep a record of the cheques which were sent to Mr Venakul, there were surely easier ways of doing so than the method that he described. It appeared to me that the defendant had asked Mr Venakul to handle a number of money transactions which had nothing to do with the plaintiff company. They could have been transactions relating to AmerFab or Roundo or simply to the defendant personally.

75. The defendant did assert that the way that he had done business in Thailand could be fully substantiated by Jasmine. He was asked whether he would be calling her to testify. His first answer was that he was not sure whether she would appear. At the next hearing, he informed the court that he had spoken to Jasmine on the telephone and she had said that she did not want to get involved. She had told him that even if he issued her with a subpoena, she would not attend. So no evidence was given to corroborate the defendant's description of

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the extraordinarily complex system of handling money that was employed by the plaintiff and PCT and which supposedly had nothing at all to do with AmerFab.

76. Another document which the defendant had to explain was PB418 which was an instruction from United Overseas Bank Ltd to United Overseas Insurance Ltd dated 22 June 1992 for the latter to effect fire insurance on a property known as Holland Hill #04-01 Olina Lodge, Singapore. This was an apartment which belonged to the defendant and his wife, Madam Chen Ah Mui. According to the note, these two persons were the insured and the account holder with United Overseas Bank Ltd was AmerFab PL. The instruction was marked 'c.c. AmerFab Pte Ltd'. The defendant was asked whether it was correct that AmerFab was paying for that insurance policy for him and his wife. His answer was that actually he was simply using AmerFab's name in order to get a special rate because AmerFab had an account with the United Overseas Bank and the insurance company had offered a special rate to AmerFab. It was clear from this evidence that even if the defendant was to be believed and he was paying for the insurance himself, he had the ability to use AmerFab PL's connections in order to obtain a better rate than he would have otherwise.

77. The defendant spun a long story to explain away his signature of an AmerFab Pte Ltd document on 10 September 1991. This was a contract offer addressed to Li Shan Iron & Steel Co Ltd ('Li Shan') of Taiwan whereby AmerFab PL offered to sell the latter three machines for US$250,000 and to buy from it a Komatsu Shear machine for US$52,500. He explained that Li Shan had contracted to buy two AmerFab machines. When they came to the office at Ubi Avenue, Li Shan saw a machine belonging to Haco in the driveway and wanted to buy that as well. They wanted all the machines to be put into the same contract for finance purposes. That was why the plaintiff's machine was

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included in the same document as the two AmerFab machines. The defendant recalled that while he was discussing the purchase with Li Shan, Judith Ong brought the contract to Li Shan's representative for signature. As they were engaged in the conversation, Mrs Ong left the contract there and went back to her own office. So the defendant then asked Li Shan whether they wanted him to sign the contract as well on AmerFab's behalf since Mrs Ong was not around. He explained that it was a matter of convenience for him to sign the AmerFab contract offer since 'At that time AmerFab was located on the third floor, completely cut off from the plaintiff's office'. This explanation did not ring true to me. If Mrs Ong was the person who was authorised to sign the contract on behalf of AmerFab, she could well have waited to sign it or she could have been called back downstairs by a simple phone call. The plaintiff's office was on the second floor. It would have been no great inconvenience to call her down from the third floor to sign the contract. I found that the defendant had signed the contract on AmerFab's behalf because he was doing business on AmerFab's behalf.

78. There was an interesting sequel regarding the Komatsu Shear machine which AmerFab purchased from Li Shan. Another document produced was PB450 which was a note written on AmerFab PL's letterhead in the defendant's handwriting. This note mentioned two machines and gave prices for them and in relation to the shear machine it stated 'used Komatsu Shear 6006 CIF Bangkok DM100,000'. The defendant gave an incredible account of the circumstances under which he came to write this note.

79. The defendant said that some time at the end of 1992 or at the beginning of 1993, he was working late in the plaintiff's office. Mr Venakul telephoned him at about 8pm that evening. Mr Venakul said that he wanted to purchase the Komatsu machine from AmerFab PL and that he had not been able to get

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AmerFab PL to quote him for the used machine. Mr Venakul insisted that the defendant write down the information and send it to him by fax immediately. The defendant declared in court 'I realise now that he had set a trap for me to involve me in AmerFab'. I asked the defendant why he did not tell Mr Venakul that he had nothing to do with AmerFab and could not put up a quotation for it. His reply was that Mr Venakul had been insistent. He further said that he did not remember writing the note on AmerFab's letterhead and that his note could have been superimposed onto the letterhead. When asked why he had been willing to commit AmerFab PL to a price, he said that he had checked the price with Mrs Ong before he sent out the quotation, having called her at her home in order to get the information. As for all the technical details on the two machines which were inserted on PB450, he said that probably these particulars had been given to him by Mrs Ong during the same conversation. I did not believe all this. This document was further evidence that the defendant was handling business on AmerFab PL's behalf on a regular basis.

80. It was put to the defendant that his name was found all over the place in AmerFab documents. His response was that his name was only there under special circumstances. He agreed, however, that Ms Goh was involved in AmerFab documents. It was also put to him that although in his affidavit he said that AmerFab's business was conducted by his brothers there was not a single AmerFab document in which his brothers' names appeared. His explanation was that the plaintiff must have been very selective in what it had produced and had not produced documents that were favourable to him. It was put to him that he could have obtained copies of those documents from the AmerFab records and from his brothers. His explanation was that he had not realised the importance of doing so at that time and had only realised it in the last one or two weeks. It was notable that when the defendant said this in October 1997 the case had

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already been part-heard on two occasions and he had first seen the plaintiff's documents in April 1997.

Conclusion

81. I found the defendant to be an unreliable and dishonest witness. He was often evasive and said many things that were not credible. At one stage in his testimony, he said that the sad thing about business was that one could never be completely straight because otherwise it would be difficult for a businessman to succeed. Obviously, his credo was success and if in order to be successful he could not be straight he was more than willing to go down the more crooked path.

82. The evidence before me was that the defendant had operated AmerFab System and AmerFab PL in competition with the plaintiff company and had used the plaintiff's facilities and staff for the competing businesses. I also considered that it was probable that the defendant had diverted not only Strippit's business but other businesses away from the plaintiff and towards the AmerFab companies. I found it significant that the defendant's two brothers did not become directors of AmerFab PL until after he had resigned from the plaintiff company. Before that the only directors were Mrs Ong, who was basically a secretary and who was used to working for the defendant, and one Madam Helen Pow who was probably a nominee and had nothing to do with AmerFab PL's office as she was not mentioned in any of the staff circulars. The most commercially experienced man in the offices which AmerFab occupied (and even though notionally he was sitting in the plaintiff's office) was the defendant. He was the one with the contacts and the knowledge of the trade and he must have been the one with whom not only the staff of the AmerFab companies but also their customers and suppliers dealt. I inferred further that

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the defendant was not only running the AmerFab businesses but also that he had procured the establishment of both of them but had been careful, in view of his prior experience with Hua Leng, to ensure that his name appeared nowhere in the official documentation. AmerFab was the defendant's alter ego and not simply a poor relative he helped out from time to time.

83. The defendant had clearly acted in breach of his fiduciary duty and dishonestly. He had no right to be involved in AmerFab in any way and not even to the limited extent which he was forced to admit. Even that limited involvement would have been wrongful. If the plaintiff had been more vigilant at the time of dismissing him it would probably have been able to recover far more in the way of documents in support of its case. However, the evidence that was produced together with the defendant's own lies and incredible explanations was sufficient to establish the plaintiff's case.

84. At the end of the hearing, I had no hesitation in passing judgment in favour of the plaintiff and ordering the defendant to pay it damages to be assessed.

JUDITH PRAKASH

JUDGE

Judith Prakash J

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P Selvadurai with Godwin Campos (Rodyk & Davidson) for the plaintiff
P Suppiah with Elengovan Krishnan (P Suppiah & Co) for the defendant

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