IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 191

Suit 1783/1998

Between

Robert S Grossman

… Plaintiff

And

Batey Holdings Pte Ltd
Batey Ads (Pte) Ltd
Batey Ian Carlile
Chan Thye Guan George
Rodney Edward Pullen

… Defendant

GROUNDS OF DECISION

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Robert S Grossman v Batey Holdings Pte Ltd and Others

[1999] SGHC 191

Suit 1783/1998
Chao Hick Tin J
20 July 1999

Judgment:

1. This was an action to claim for broking commission. At the commencement of the trial the plaintiff had discontinued his claim against the fourth and fifth defendants. At the conclusion of the trial I granted judgment in favour of the plaintiff as against the second defendant. His claim against the first and third defendants was dismissed. The second defendant has appealed against my decision. I now give my reasons.

Facts

2. The plaintiff (Grossman) is an American citizen and was and is residing in California, USA. He was at all material times in the business of providing financial and marketing consultancy services under the style of "The Horizon Group".

3. Both the first and second plaintiffs are Singapore incorporated companies. The second defendant, Batey Ads (Pte) Ltd, was at all relevant times a leading advertising agency in Singapore. Among its clients were some of the most

reputable companies here and in the region. The first defendant was, up to the time of the alleged matter giving rise to this action, a dormant company. The third defendant, Mr Ian Batey (hereinafter referred to as IB) was at all material times the major shareholder in, and director of, the two companies. There are other companies within the Group and they deal in public relations, design media and integrated marketing communication services. These other companies are located in Singapore, East and South East Asia, Australia and the United States.

4 In 1989, a 20% stake in Batey Ads was purchased by BDDP, a French multinational advertising group. By 1996 Batey Ads was not satisfied with the tie-up and began active search for a new strategic business partner. Batey Ads felt that BDDP was not fulfilling its role. The aim of Batey Ads was to buy back the 20% stake from BDDP. This fact that the Batey Group was searching for a new partner for Batey Ads soon became known in the market. Grossman was aware of that and offered his services to IB in their search.

5 Thus, in November 1996, Grossman contacted IB and spoke to him. IB asked Grossman to drop him a note. Grossman followed this up a week later with a fax dated 25 November 1996 where he sought to convince IB of the desirability of forming a new network of high quality communication companies, independent of the three major global multinational agencies, WPP, OMNICOM and IPG.

6 On 11 December 1996 Grossman spoke to IB wherein he, inter alia, asked IB to fax over to him a list of the major clients of the Batey Group. This was done the same day by IB’s secretary.

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7 On 15 December 1996, Grossman faxed a letter to IB wherein he stated that, having reviewed the Batey Group's client list, he was aware of one and possibly two agencies that would be an excellent fit for the Batey Group, having regard to the criteria given by IB. He further elaborated:-

> "These agencies have global agency of record client relationships, where they are the lead agency, but currently service the business in Asia through affiliations. I have knowledge that they would be interested in moving their Asian business to a partner in which they would have an equity stake.
>
> I also know that in at least one of these situations, the client would be eager to support such a move.
>
> I would like to propose as a next step that we ink an agreement in which I represented the interests of the Batey Group ....."

8 On 19 December 1996, Grossman informed IB that BDDP had sold its stake in a promotional marketing agency in the US and that BDDP's new parent was interested in "reducing some of its debit". Grossman asked for a convenient time when he could speak to IB. On 30 December, IB's secretary informed Grossman that he could call IB on 6 January 1997 at 11.00am, Singapore time.

9 At the appointed time (which was 5 January 1997 in California, USA) Grossman called and spoke to IB. IB told Grossman what his Group was doing at that time in terms of seeking a new partner and what their thinking was. According to Grossman, IB agreed to appoint him as the representative and that they also agreed on the payment terms of the appointment; IB was willing to sign a written agreement to that effect. And because of that oral agreement, Grossman then indicated to IB that a possible partner for the Batey Group was Publicis. Grossman was told to make further inquiries with regard to that possibility. It was a long conversation of about 40 minutes.

10 On 8 January 1997 Grossman faxed to IB a letter, enclosing an agreement for IB's signature. It is necessary that I quote the first paragraph of that letter:-

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> "We agreed in our last conversation to two next steps,
>
> 1. I would proceed with making an inquiry with Publicis to see if they are interested in talking and if their client service needs are as we discussed for Asia.
>
> 2. I would send you an agreement document that outlines our arrangement for your signature." Emphasis added.

11 In this letter Grossman informed IB that he had made contact with Publicis and as it happened, its Chairman was planning a visit to Singapore on 21-22 January 1997 and enquired if that date was suitable to IB to having a meeting. He also explained that the agreement enclosed may appear complicated because it was drawn up by a lawyer. He further explained a new clause (clause 2) which was added. This clause was for IB to list out those parties with whom the Batey Group was already talking to. The object of this clause was to ensure that "there (was) no confusion about what was underway before we began talking."

12 The written agreement which Grossman forwarded commenced with the following introduction:-

> "This letter confirms the contingency agreement between the Batey Group and Robert Grossman …"

13 On 13 January 1997, IB responded saying that having thought through the Publicis connection, he did not think the potential was large enough. Thus, he did not want to waste time meeting the Chairman of Publicis as suggested by Grossman. IB then went on to deal with the agreement forwarded by Grossman, and it is important that I set it out in full:-

> "I also have a problem with the agreement you want me to sign. I don't wish to disclose all our present negotiations in detail, nor do I want to get pinned down on legal commitments to you. All this sounds negative, and it's not meant to be. I have the BDDP hurdle to jump, and it's a big one, and I want the freedom and flexibility to think and do things quickly once the BDDP battle has been won.

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> Bob, if you patch us together with a suitable strategic partner, I'm very happy to pay you the fee levels stated in your document. But such an agreement has to be loose, and you have to rely on our integrity to compensate you."

14 Some months passed. On 21 April 1997 Grossman wrote to IB and told him three things –

> (i) That he had been approached by CKS, a US-based agency who was aggressively looking forward to expanding internationally and who asked if he had any contacts in Asia. So Grossman thought this could be a match for the Batey Group.
>
> (ii) That WPP was interested in further growth in Asia and Grossman enquired if the Batey Group was interested. If so, he would find out more about WPP's specific objectives in Asia.
>
> (iii) That Bozell Worldwide was interested in either selling all or part of their network or finding a merger partner to strengthen their international network in Asia and Latin America. Grossman set out some of the major Asian clients of Bozell Worldwide. Grossman felt this could also be a possibility that fit into the Batey Group's plan. Grossman told IB that if the latter was interested, he would explore further with Bozell Worldwide.

15 On 26 April 1997 IB responded to the three opportunities mentioned by Grossman as follows:-

> (i) CKS: the Batey Group was not interested in CKS. However IB thought someone else might be interested and gave Grossman the name.
>
> (ii) WPP: the Batey Group was amenable to a private chat with WPP.
>
> (iii) Bozell: the Batey Group was clearly not interested in Bozell and in IB's words "terminate this particular concept."

16 Taking the cue from this response of IB, Grossman pursued the WPP line. He got his contact, Mr John Anderson, an attorney who specializes in the area of the law relating to advertising, to get in touch with someone in WPP, hoping to interest WPP in the Batey Group. Anderson gave a brief introduction of the

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Batey Group to WPP. Eventually, an arrangement was made for Mr Martin Sorrell, the Group Chief Executive Officer of WPP, to call IB. Grossman followed it up by informing IB on 13 May 1997 as follows:-

> "… WPP are indeed interested in having a private chat with you about a third Asia-Pacific Network and in fact had some client opportunities in Asia that may fit nicely in a network separate from Ogilvy and Walter Thompson. Martin Sorrell ….. will be calling you soon to talk or set up a meeting."

17 On 19 May 1997, Sorrell wrote to IB, having earlier spoken to him. It is clear that Sorrell was interested in having a tie-up with the Batey Group, though at that point in time IB indicated that he would like to have a bit more time (as at that point IB was still exploring with IPG, which according to IB was his first choice) until the end of May 1997 before he would hold further discussions with Sorrell. Sorrell told IB what he had in mind as follows:-

> "…. Our thinking could be to develop Batey Advertising as a separate brand. It would not be our view that it should be merged or developed closely with one of our existing agency networks. As I explained, we believe there is a significant opportunity to develop an Asia Pacific based multinational agency network for Asia Pacific based multinationals."

18 In the letter of 19 May 1997, Sorrell added a postscript with these words:-

> "For the avoidance of doubt, we would be prepared to cover John Anderson's costs in the event of something happening …"

19 On 20 May 1997 Grossman spoke to IB wherein the latter told Grossman that Sorrell had said that he would be looking after Grossman. At the time Grossman thought that maybe IB might have told Sorrell of the efforts Grossman had put in in the matter.

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20. A couple of months passed. On 14 August 1997 Grossman wrote to IB to ascertain the state of the discussion between the latter and Sorrell. Grossman said he heard that a lot of progress had been made and asked for confirmation.

21 On 10 September 1997 Grossman spoke to IB over the telephone, who informed Grossman that WPP was conducting "due diligence" on the Batey Group. This was great news for Grossman as it indicated that a deal could be on the way. IB also told Grossman that Sorrell would take care of the latter. However, Grossman reminded IB that his contingency agreement was with the Batey Group. Grossman said from that conversation he sensed that the Batey Group might be trying to wriggle out of the contractual arrangement with him. Therefore, the next day, 11th September 1997, Grossman reiterated in writing to IB that "the existing contractual arrangement is between the Batey Group and the Horizon Group." He also forwarded to IB the relevant correspondence and, in turn, asked IB to send to him the specific terms of any transaction between the Batey Group and WPP "in order to establish the exact amount of our compensation" based on the agreed fee structure.

22 After two weeks, and hearing no further from IB, Grossman tried unsuccessfully on several occasions to reach IB. Then on 15 October 1997, Grossman wrote to IB complaining, inter alia,

> "Your actions and failure to respond to my request and telephone messages could give the impression that you are avoiding your contractual responsibility to pay my fees at a time when I have completely fulfilled all of my obligations to the Batey Group, and am in fact the procuring cause of the pending transaction between the Batey Group and WPP."

23 At the time when this fax arrived, IB was away and his staff informed Grossman. On 6 November 1997, IB responded, inter alia,

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> "…. I did not intend to undertake the contractual obligations as set out in your draft agreement on the fee levels to be paid to you … What we may have had, however, was an informal arrangement that should you set us up with such a partner on terms favourable to us, we will be willing to pay a fee to you. But this fee was to be dependent on your involvement in negotiating and achieving for us a deal which meets our interests and requirements. We were never to pay you a fee for merely giving us the names of suitable parties that may be interested in dealing with us.
>
> If we intended otherwise as suggested by you, we would have readily executed the written agreement you prepared. It is obvious that both of us proceeded on the basis that there was no binding agreement between us.".

24 Eventually, in the second half of November 1997, a deal was concluded between the Batey Group and WPP with the execution of a share sale agreement on 19 November 1997. Grossman was not notified of the same. It was on 21 November 1997, when he learned from Anderson that WPP had made an announcement to the Stock Exchange, that he realized a deal between the Batey Group and WPP was finally sealed.

Findings

25 On the substantive merits of the case the defence raised essentially two points. First, there was no contractual arrangement between the Batey Group and Grossman. Second, if there was anything at all it was an informal non contractual arrangement whereby the Batey Group would pay Grossman a reasonable compensation for his efforts.

26 I would, at the outset, state that it was Grossman who sought out IB to offer his services. I accepted IB's evidence that at the initial stage he was constrained in not rejecting Grossman's offer outright because Grossman did a good turn for the Batey Group in relation to the China Coca-Cola account. At that stage IB's main preoccupation was to terminate the partnership with BDDP.

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However, I find that at some point in December 1996, IB was open to any useful suggestions or ideas which Grossman might have in relation to the strategic partner which the Batey Group was then looking for.

27 Grossman's contention was that in the conversation on the 5/6 January 1997, IB had agreed to appoint him on a contingency basis to seek out a strategic partner for the Batey Group. Grossman's evidence was that in that conversation he also told IB of the fee levels which he would charge if a deal was struck and that was agreed to by IB. Thus, in his mind, there was an agreement. He also told IB that he would send IB a written agreement for IB's signature to which the latter agreed. The written agreement was to confirm the oral agreement. IB denied there was any oral agreement.

28 At this juncture, I would like to observe that I find Grossman to be a diligent broker who would note down the things said by his clients, as he did in this case. I had no hesitation in coming to the conclusion that on questions of fact, where there was a dispute, the evidence of Grossman was to be preferred. Of course, what was just as helpful in this case was that many of the things that transpired between the parties were documented in the communications between IB and Grossman, quite apart from the many contemporaneous personal notes which Grossman had made of their conversations.

29 I accepted the evidence of Grossman that in the telephone conversation on 5/6 January 1997 he did tell IB of his fee levels and IB was agreeable to that and that IB agreed to having that agreement reduced into writing. Thus, the opening words of the agreement which Grossman forwarded to IB on 8 January 1997 commenced with the words "This letter confirms the contingency agreement." It is also significant that IB made no comment on the fee levels set out in the agreement. He accepted the fee levels without seeking any

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clarification. This again was wholly consistent with Grossman's assertion that they had discussed about his fees and IB had agreed.

30 IB argued that his letter of 13 January 1997 showed that he had no intention to enter into any contractual arrangement with Grossman as he refused to sign the written agreement forwarded by Grossman. It is important to bear in mind the reason given by IB for not wanting to sign the agreement. It had all to do with the new clause which Grossman sought to insert in the agreement and which would require the Batey Group to list out the entities with whom they were then talking to. This was IB's specific reason (I would quote again):-

> "I also have a problem with the agreement you want me to sign. I don't wish to disclose all our present negotiations in detail, nor do I want to get pinned down on legal commitment to you."

31 So IB did not want to sign the agreement because he had a problem with one of the clauses. But he was not rejecting altogether the services offered by Grossman. He did not want to be tied down in a straight jacket. All IB wanted was flexibility; the choice to deal with anybody he wished at any time. He did not want to be placed in a situation where other than those entities listed, he would have no liberty to talk to others directly. He expressly qualified himself stating his refusal to sign was not meant to be negative, and went on to say to Grossman that if Grossman were to "patch" the Batey Group with a suitable strategic partner "I'm very happy to pay you the fee levels stated in your document." His further comment that "such an agreement has to be loose" did not and could not mean no agreement or no intention to create legal relationship. In my view, in the context, the word "loose" was really meant to be in contrast with the situation where there was a specific agreement in writing. That was why IB went further to say "you have to rely on our integrity to compensate you", as there would be no specific written agreement.

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32 If it was contemplated that no legal relationship was intended even if Grossman were to bring someone with whom the Batey Group would eventually enter into a stratetgic alliance, then IB could have simply said so. Why the need to refer to the fee levels at all when IB said in court that he intended to pay Grossman only a reasonable fee for his efforts. He could have simply stated "I will pay you such sums as I think fit for your time and effort". Looking at the letter as a whole, in my view, the use of the word "integrity" was really to assure Grossman that the Batey Group would honour their commitment even though IB had not signed the written agreement. I would stress that informality does not mean no legal relationship is intended. Many things are done informally but they do create legal commitments: e.g., *Kingswood Estate Co Ltd v Anderson* [1963] 2QB 169. The crucial thing is not form but substance.

33 The task which IB had asked Grossman to undertake was clearly of a business nature. There is a presumption in law, that for such business transactions the parties intend to create legal relations. Of course, that presumption can be expressly negatived. The burden is on the party who asserts that, to prove it. In my view, in this case, it had not been negatived. The entire tenor of IB's letter of 13 January did not support his contention. If IB had intended to say there would be no legal relationship, much clearer words than those he used would be required.

34 Counsel for the defendants relied upon *Rose & Frank Co v Crompton* [1925] AC 445 in support of his contention that IB's letter of 13 January 1997 negatived any legal presumption. One has only to compare the wording used in *Rose & Frank*, to see the difference. There, it was stated:-

> "This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, and shall not be subject to legal jurisdiction in the law courts either in the United States or England, but it is only a definite expression and record of the

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> purpose and intention of the three parties concerned to which they each honourably pledge themselves with the fullest confidence, based on past business with each other, that it will be carried through by each of the three parties with mutual loyalty and friendly cooperation."

35 I find that by 13 January 1997, notwithstanding the absence of a written agreement, there was, by the correspondence, a clear agreement that if Grossman could bring someone with whom the Batey Group would enter into a strategic alliance, Grossman would be paid according to the fee levels he set out. There was nothing to suggest that to earn that fee Grossman had to participate in the negotiations which undoubtedly would have to be undertaken between the Batey Group and any potential partner which Grossman might bring. Of course, it would be implied that Grossman should assist wherever necessary. But it had not been suggested that there had been any instance where Grossman had refused to assist when requested.

36 In pursuance of that agreement, we see that in April 1997 Grossman brought up some ideas to IB. Of the three that was raised, IB indicated some positive interest with regard to WPP. Grossman followed it up by getting his contact, Anderson, to act on it which led to Sorrell calling and speaking to IB over the phone. That led eventually to the deal between the Batey Group and WPP.

37 Even Sorrell, who did not specifically engage anyone to be his broker/representative, realized that brokerage had to be paid. He had in mind Anderson because Anderson was the one who contacted WPP. But Anderson did not make any claim for commission/fee because he was acting in that role as agent for Grossman and Grossman would be making the claim.

38 IB contended that he knew Sorrell personally and could have called the latter directly at any time. I have no reason to doubt that IB knew Sorrell. But the fact

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is that he did not call Sorrell directly. In his reply of 26 April 1997, IB did not tell Grossman that he knew Sorrell well and could arrange with WPP directly. He probably did not know the objectives of WPP in Asia at the time. He used Grossman to set up the contact. It seemed to me that it could well be that there were tactical advantages in the overtures to WPP being made by a third party rather than by IB himself.

Party liable to pay the plaintiff

39 Some two months before the commencement of the trial before me, leave was granted by the Assistant Registrar to the defendants to amend the Defence. By the amendments, the first and second defendants averred that there was no basis for Grossman to claim that he had entered into an agreement with either of the first two defendants as (i) IB never informed any other director/shareholder of the first and second defendants of his conversation/correspondence with Grossman and (ii) no resolution was passed by the first and second defendants authorizing IB to enter into the contract with Grossman.

40 Grossman was, in this instance, dealing directly with IB, the Chairman and Chief Executive of the first and second defendants. IB founded the companies and they bear his name. It was known in the market that the Batey Group was looking for a new strategic partner to replace BDDP. IB's letter of 13 January 1997 was copied to Mr George Chan, the Deputy Chairman and Business Director of the Batey Group. There was nothing to indicate to Grossman that IB had no authority from Batey Ads to enter into the arrangement with Grossman (which was really something directly related to the Batey Group's search for a strategic partner) or that IB's authority by virtue of his office was in any way circumscribed. IB said he had to seek the board's approval if it involved a large

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sum; he only had the authority to commit to pay a reasonable sum. His general authority to commit was up to $50,000. But this was a restriction not known to Grossman. In the circumstances it seemed to me reasonable for Grossman to assume that IB had implied actual authority, or at the very least, ostensible authority, to enter into the contractual arrangement on behalf of his company.

41 Applying the principle in *Royal British Bank v Turquand* [1856] 6E&B 327 an outsider like Grossman had no need to satisfy himself that the internal regulations of the company had been complied with. I think it absurd in such circumstances to expect a third party who is about to enter into a contractual arrangement with the Chairman and Chief Executive of a company to ask the latter if he had been duly authorized by his company to do so. If you can't deal with the Chairman and Chief Executive, who else could you deal with? Any other view would bring the commercial world to a grinding halt.

42 In this regard, I would quote the following passage from *Walter Woon on Company Law (2nd Edition)* at p.91:-

> "A party dealing with a company does not know what the actual authority of its agent is. The actual authority of a company's agent is an internal matter. An outsider cannot easily find out what an agent's actual authority is. It is sufficient if the agent has apparent authority to do the acts in question. Persons dealing with a company in good faith are entitled to assume that acts within the apparent authority of its agent have been properly performed and need not inquire as to whether the agent's powers have been exercised or conferred regularly in compliance with all the prescribed formalities. As long as the agent has apparent authority, the fact that there is some internal irregularity that vitiates his actual authority does not matter."

43 In the course of the trial the issue was raised that it was not clear as to which company within the Batey Group did Grossman enter into a contract with, as there was no legal entity known as the Batey Group. All Grossman's

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communications were addressed to the Batey Group. I must point out that this was not an issue that was raised in the amended defence and thus strictly did not arise. Nevertheless, I went on to consider it in the light of the evidence.

44 The "Batey Group" was a label used to identify a group of related companies. But in IB's mind there was no doubt as to the real entity for whom he was acting in relation to this matter and this came out in cross-examination.

> "Q: Reverting to your letter of 13.1.97, last para, the word "us"?
>
> A: That referred to the company. I represented the company, Batey Ads.
>
> Q: Who would be paying the plaintiff if you decide to pay the plaintiff a reasonable sum?
>
> A: Batey Ads. I would not consumate a deal without the support of shareholders."

This was also clear from IB's affidavit of evidence-in-chief. It was the second defendant. The strategic partner was sought in relation to the business of the second defendant: see press statement at AB172.

45 It seems to me that an outsider like Grossman could not be expected to know fully the entire structure or inter-relationship of the companies within the Group. By raising this issue of an uncertain party, it seemed to me that IB and/or the second defendant were really trying to take advantage of a matter that fell exclusively within their knowledge. While Grossman could not identify precisely which company/entity he was rendering services to thinking that the "Batey Group" was the entity, obviously this was a point that could easily be ascertained.

46 Having had the benefit of the services of Grossman, the second defendant, for whom the services were rendered, was therefore liable to pay for the same. It would be absolutely unjust to allow the second defendant to rely upon a fact

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situation wholly within its own knowledge to deny Grossman his rightful due. I may add that the fact that in consequence of the negotiations with WPP, some structural changes were made to the first and second defendants should not alter the position of the party liable to pay Grossman his fees. Neither should the manner in which the deal with WPP was put into effect affect Grossman's entitlement to his fees.

47 From the evidence it was clear to me that IB was not entering into the contractual arrangement with Grossman in his personal capacity.

Judgment

48 For the above reasons, I granted an order in terms of the three prayers set out in the amended Statement of Claim, as against the second defendant, namely,

> "(i) An account of all amounts paid or payable by WPP pursuant to the Share Sales Agreement and an account of the amount of all fees due to the plaintiff in respect thereof and payment of all sums found due and payable;
>
> (ii) A declaration that the plaintiff is entitled to be paid fees, in the event that all or any of the options under the Share Sales Agreement are exercised;
>
> (iii) An account of all amounts payable by WPP in the event that any of the put or call options referred to in the Share Sale Agreement are exercised and an account and payment of all fees due to the plaintiff pursuant to the exercise of the said put or call options."

49 The plaintiff's claim against the first and third defendants was dismissed. I awarded costs to the third defendant but granted no costs to the first defendant because (i) the positions/defences of the first and second defendants were identical, (ii) they were represented by the same counsel, and (iii) in all the circumstances, it was not unreasonable for the plaintiff to have brought in the first defendant.

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50 The plaintiff also claimed for interest in respect of the amount of fees which would be due to him. As I then thought this could be premature, I gave the plaintiff liberty to apply in relation to that.

Chao Hick Tin

Judge

Chao Hick Tin J

Leonard Hazra (Wong Partnership) for the plaintiff
Sushil Nair with S Manoj (Drew & Napier) for the first and second defendants

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