Excel Golf Pte Ltd v Allied Domecq Spirits and Wine (Singapore) Ltd (No 2) [2004] SGHC 162

Case Number : Suit 286/2003

Decision Date : 03 August 2004

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : S H Almenoar, Raji Ramason and Cheryl Lim (Tan Rajah and Cheah) for plaintiff; Ang Cheng Hock, William Ong and Tham Wei Chern (Allen and Gledhill) for defendant

Parties : Excel Golf Pte Ltd — Allied Domecq Spirits and Wine (Singapore) Ltd

Contract – Breach – Breach of oral agreement – Whether plaintiff failed to discharge its obligations under oral agreement – Whether terms breached were conditions – Whether defendant entitled to terminate oral agreement.

Contract – Formation – Whether four unsigned draft agreements were sufficient evidence of written contract between parties.

Evidence – Witnesses – Examination – Plaintiff failed to cross-examine defendant's witnesses on material parts of their evidence – Whether this could be treated as an acceptance of the truth of that part of the evidence – Whether rule in Browne v Dunne (1893) 6 R 67 applied.

Partnership – Evidence of formation – Parties agreed to share profits and losses – Whether parties in a partnership – Test to be applied – Partnership Act (Cap 391, 1994 Rev Ed) s 1(1).

3 August 2004 Judgment reserved.

Lai Siu Chiu J:

Introduction

1 Excel Golf Pte Ltd ("the plaintiff") is a company incorporated in Singapore and, according to its objects upon its incorporation in 1985, it deals in computer hardware, software, accessories and office equipment. The objects do not include the staging of major professional golf tournaments, organising of golf-related travel and the sales and distribution of golfing equipment (as the plaintiff subsequently described itself to the public in promotional material.[1] The plaintiff's managing director is Chuan Ian Campbell ("Chuan") who is also a shareholder. Chuan has another company called Graham Brash Pte Ltd ("Graham Brash"), which retails books, magazines and stationery. The plaintiff's biggest shareholder is one Paul Drayson ("Drayson") who is also a director. Drayson was an accountant before he retired; he prepared budgets for the plaintiff for the subject matter of this trial. Allied Domecq Spirits and Wine (Singapore) Ltd ("the defendant") is a Singapore-incorporated company. It is a subsidiary of Allied Domecq PLC ("the parent company"), a public company listed in the United Kingdom. The parent company's world-wide businesses include the manufacture and distribution of spirits and wines and the operation of quick-service restaurants. The parent company owns, amongst others, a brand of Scotch whisky known as "Ballantine's", which the defendant markets and distributes in Singapore and in the Asia-Pacific region. The defendant's regional president is Kenneth Mackay Burnett ("Burnett").

The facts

2 Under an undisclosed agreement it had made with the organisers of the Professional Golfers' Association ("the PGA") European Tour, the plaintiff was the owner of the annual European Seniors PGA Tour ("EST") tournament for the years 2002, 2003 and 2004.

3 In or about June 2001, the defendant's management conceived the idea of sponsoring a seniors' golf tournament as a form of promoting Ballantine's whisky in Asia-Pacific including South Korea, then its biggest market. The defendant decided that its commercial director Nigel Parmley ("Parmley") would take charge of the project. He was tasked with contacting the European PGA with a view to securing a golf tournament for the defendant to sponsor. Parmley eventually contacted one Andrew Stubbs of EST who put him in touch with one John Hadley ("Hadley"), the partner of EST in Australia and Asia.

4 In October 2001, Burnett and Parmley met with Hadley as well as Hadley's associate Bob Tuohy of Tuohy Associates, an Australian events organiser. Hadley and Bob Tuohy presented a proposal ("the Tuohy proposal") for the defendant to sponsor a golf tournament. In view of the cost involved (US$2m), Burnett and Parmley decided to, and did, submit the Tuohy proposal to the International Marketing Executive ("IME") division of the parent company for consideration. The IME decides on marketing strategy for the products sold worldwide by the Allied Domecq group. Burnett[2] described IME as global custodians of Allied Domecq's brands.[3] I should add that Hadley's company Nutrius Pty Ltd ("Nutrius") was subsequently appointed by a letter dated 20 January 2002 as a tournament consultant by the plaintiff for three years at a flat fee of US$25,000. In the appointment letter, the plaintiff agreed to pay Hadley[4] 10% of the profits from the event if the profits after tax exceeded US$25,000.

5 Shortly after October 2001, Burnett received a telephone call from Chuan inquiring if it was true that the defendant intended to sponsor a golf tournament. Burnett answered in the affirmative, whereupon Chuan suggested that the plaintiff and the defendant form a partnership to stage the golf tournament. A round of golf followed between them for Burnett and Chuan to discuss the latter's proposal. At about the same time, IME reverted to Parmley to say the Tuohy proposal was too expensive, although it was a good idea.

6 According to Chuan, an in-principle agreement was reached after discussions between himself and Burnett on or about 9 October 2001 during their game of golf. The plaintiff would be appointed to organise and manage a golf tournament to be sponsored by the defendant, called Ballantine's Legends of Golf ("BLOG"), once the parent company gave its approval.

7 Between November 2001 and February 2002, several meetings took place between representatives of the plaintiff and the defendant. Arising from those discussions, it is common ground that the following terms were agreed:

(a) The defendant would be the title sponsor whilst the plaintiff would organise the BLOG ("the Event") for three years.

(b) The defendant would pay the plaintiff US$250,000 ("the management fee") as the management fee for the Event in 2002.

(c) The defendant would underwrite the prize money of US$500,000.

(d) The plaintiff would properly promote and market the Event, including arranging for the appropriate television and media coverage.

8 The plaintiff disputed the defendant's pleaded case that the following terms also formed part of the oral agreement:

(a) The parties would work as partners.

(b) The terms for staging the Event in 2003 and 2004 would be agreed only after the Event for 2002 had been held.

(c) The plaintiff would use the management fee to defray the costs involved, including securing a golf course, the fee payable to EST, television coverage and other publicity for the Event, so as to put the Event on EST's calendar.

(d) The plaintiff would prepare, and regularly update, a detailed budget.

(e) The plaintiff and defendant would contribute financially towards the staging of the Event and share in the profits or losses which might arise.

(f) The plaintiff would procure additional or co-sponsors for the Event so as to minimise the costs charged for staging the Event.

9 In relation to item (e), the defendant contended that expenses to be borne by the plaintiff (such as the fee payable to EST) would be charged to the plaintiff's account ("the EG account"), those to be borne by the defendant (such as the management fee) would be charged to the defendant's account ("the AD account"), while expenses to be borne or shared by both parties would be charged to a common staging account ("the staging account"). Shortfalls in the staging account would first be covered by the plaintiff, but would ultimately be shared between the parties in the ratio 40:60 in favour of the plaintiff and the defendant respectively. Profits would likewise be shared. (Hereinafter, the EG, AD and staging accounts will be referred to collectively as "the three accounts".)

10 It was not in dispute that Chuan had represented to Burnett and Parmley that he could stage the Event at a much lower cost (US$750,000) as compared with the Tuohy proposal.

11 In January 2002, Chuan introduced Burnett and Parmley to Matthew Murray ("Murray"). Murray is the son of a golf professional and, according to Chuan, was experienced in running golf tournaments; he is a shareholder and director of the plaintiff. Murray was the tournament director for the Event.

12 Another person who became involved in the Event was Charles O'Connor ("O'Connor"), the self-styled Chief Executive Officer of EventsAsia, which is actually a sole-proprietorship registered at his home address. According to O'Connor, EventsAsia was engaged by the plaintiff to assist with the Event's management, promotion, media buying and sponsorship sales. I shall return to O'Connor's role later.

13 On 4 February 2002, and at subsequent meetings, Parmley and other representatives of the defendant attempted to resolve the terms of the parties' agreement with Chuan and Matthew. Chuan requested for moneys to start off the Event, specifically the sums of US$50,000 and US$6,000 for the deposits to be paid to the EST and for golf course rental respectively. The defendant paid US$50,000 direct to EST on 8 February 2002. On 18 February 2002, the plaintiff raised an invoice ("the first invoice") which it described as a deposit towards the management fee. The defendant paid the invoice promptly. A second invoice from the plaintiff followed on 8 April 2002, a third on 11 April 2002,

a fourth on 24 April 2002 and the fifth invoice was presented on 21 May 2002. All invoices were for S$50,000 each. The invoices were all paid by the defendant save for the fifth. Eventually, the defendant's payments totalled US$140,500.97.

14 Between February and March 2002, Chuan presented the defendant with four draft agreements. However, due to various circumstances, the terms thereof were never finalised. The defendant itself presented the plaintiff with a fifth draft agreement ("the fifth draft") on or about 15 August 2002, which the plaintiff did not accept. In the event, a formal agreement was never signed between the parties.

15 Besides meeting to finalise the terms of the formal agreement to be signed between the parties, the plaintiff's and the defendant's teams also met frequently for the plaintiff to update the defendant on the status of the preparations for the Event. The Event was to be held between 8 and 10 November 2002 at the Laguna Golf and Country Club ("the venue"). It was to be preceded by two days of Pro-Am (professional and amateur) tournaments on 6 and 7 November 2002.

16 In the initial months, the parties also met to discuss the press conference scheduled for 23 April 2002 ("the press conference") to announce the Event. From late March 2002 onwards, minutes of meetings between the parties were prepared by Andrew Benbow ("Andy"), who worked until November 2002 as a consultant for the plaintiff. Benbow[5] also helped on the technical aspects of posting the budgets prepared by Drayson on the plaintiff's website or e-mailing the same to make them available to all the principal parties, but he did not make decisions on the contents of budgets.[6]

17 The defendant initially assigned Tham Wai Ming ("Tham"), its financial and commercial controller (who reported to Parmley), to head the working group preparing for the Event. Olivia Sim ("Sim"), the defendant's communications manager, was another member of the working group. On or about 10 June 2002, Michelle Chan ("Michelle") was employed by the defendant as marketing manager and was appointed the project manager for the Event.

18 According to Tham,[7] the defendant did not approve any of the plaintiff's draft agreements for the following reasons:

(a) The first draft (dated 5 February 2002), *inter alia*, did not spell out the costs which the plaintiff would bear and it was unclear who would bear the publicity costs, golf course fees and the attendance fees of professional golfers.

(b) The second draft (given to the defendant on or about 18 February 2002), which incorporated amendments made by the plaintiff's solicitors, did not address the defendant's concerns, save that it acknowledged the defendant had paid US$50,000 to the EST.

(c) The third draft (given to the defendant on or about 12 March 2002) suffered from the same deficiency as the second. In particular, it did not set out which expenses would be borne by the plaintiff and which by the defendant.

(d) The fourth draft (given to the defendant on or about 27 March 2002) did not incorporate the defendant's requirement of a detailed budget and did not set out which items of expenditure would come under which of the three accounts.

19 Sim,[8] Tham and Michelle[9] testified to their unhappiness with the plaintiff's performance, and its poor and/or inadequate organisation skills, starting with the press conference. This was

reflected in the many e-mails they exchanged (particularly from Michelle) with Chuan and others in the plaintiff's organisation. The following paragraphs highlight some of the incidents that gave rise to the defendant's dissatisfaction.

20 For the press conference, Chuan had recommended that the defendant order T-shirts and other items such as umbrellas from a Malaysian company, Swingmart Sdn Bhd ("Swingmart"). The T-shirts, bearing the Event's logo, were to be worn at the press conference by both parties' representatives. Swingmart, according to Chuan, was one of the plaintiff's sponsors.

21 Swingmart quoted RM25 per piece for supplying and printing 250 pieces of T-shirts and invoiced the defendant RM25,750 (equivalent to S$12,572.19). Tham was surprised that the cost was not reflected in the plaintiff's budget of 28 March 2002 as an item under the AD account but was under the staging account. When she queried Swingmart, Tham was informed that the company had withdrawn its invoice to the plaintiff after it was told that the defendant should be billed instead. Questioned by Sim, Chuan explained that as the T-shirts were to be given away at the press conference, they were chargeable to the AD account. He then suggested that as the cost involved was low, the same be shared equally between the parties. Ultimately however, only the defendant paid Swingmart. In addition, the defendant paid the plaintiff S$4,854.60 for the cost of the press conference.

22 A sample of the T-shirt with the printed logo was not given to the defendant for prior approval, despite its repeated requests to O'Connor. Sim finally saw the T-shirt on the day of, and just before, the press conference itself. Although the quality was acceptable, Sim opined that the T-shirt could have been better had it been cotton-woven instead of being yarn-dyed.

23 Sim's view on the inferior quality of Swingmart's T-shirt was vindicated as, after the press conference, Chuan himself questioned Swingmart (in an e-mail dated 10 May 2002) on the quality. He commented that the T-shirts, "after a few washes look quite sad".

24 For the Event itself, Michelle testified[10] that O'Connor had obtained a quotation from a company R Meyson Marketing Pte Ltd ("Meyson") of S$14 per T-shirt for 2,000 pieces. For the exact same T-shirt and logo (also to be manufactured by Meyson) but with superior quality (cotton-woven instead of being yarn-dyed), the defendant's regular supplier quoted a price of S$11. Michelle had e-mailed Chuan in September 2002 to complain about the S$3 price discrepancy. Despite this, Chuan, using the excuse that she was not comparing like with like and it was too late, persisted in placing the T-shirt order with Meyson. Based on 2,000 pieces, the cost increase to the defendant was S$6,000.

25 Chuan had represented in his letter dated 12 March 2002 to Parmley that Swingmart should be appointed the official apparel company for the Event because it had given an undertaking to make a contribution of 10% on any and all its billings to charity. He repeated the assurance in his e-mail to Tham of 22 April 2002 to prevent her from withholding 10% of the payment due to Swingmart, which she wanted to pass on to the adopted official charity for the Event, namely the Singapore International Foundation ("SIF"). The representation was untrue; there was no such undertaking from Swingmart nor was it ever given to the defendant.

26 The defendant subsequently ascertained in the process of discovery for this trial that Chuan had made a secret commission out of Swingmart's appointment. Chuan disclosed reluctantly, pursuant to a court order, an agreement dated 11 April 2002 between the plaintiff and Swingmart, wherein the company agreed to pay the plaintiff 10% commission for business concluded by Swingmart (for the Event) with prospective clients introduced by the plaintiff. In addition, Swingmart agreed to provide

complimentary outfits for 12 members of the plaintiff's staff and would give a 60% discount on purchases of outfits by the plaintiff for its remaining staff. Even worse, the plaintiff agreed to try to secure a higher price of RM32 per T-shirt (up from RM25 per T-shirt), from the defendant.

27 Swingmart was not an isolated incident. The defendant subsequently discovered that the plaintiff had secured secret commission deals from Hotel Grand Plaza and other organisations. I shall revert to this topic later.

28 Another criticism levelled against the plaintiff related to the press release it prepared for the press conference. The press release announced that part of the Event's proceeds would go to local charities, including the Association of Women for Action and Research, instead of the SIF. Sim pointed the mistake out to Murray and Chuan who dismissed it cursorily. It transpired that the plaintiff and Murray had furnished the Asian PGA with the wrong draft for the press release, which was then placed on the PGA's website.

29 Yet another aspect on which the plaintiff fell short of the defendant's expectations related to its design of the stage backdrop for the press conference. Sim said Murray's logos for the plaintiff, EST and Asian PGA appeared to be a "cut and paste" job extracted from the internet websites of the three organisations. The defendant engaged its own creative agency, DPC Design Pte Ltd, to do the design. The designers rejected Murray's logos outright, even after his improvements, and proceeded to design the artwork themselves so as to achieve a more professional finish.

30 Publicity under O'Connor's charge was another source of dissatisfaction to the defendant. Matters did not improve when Chuan brought in Gartshore & Associates Advertising Pte Ltd in August 2002, as the promotion and media consultant. The company's managing director and chairman William Gartshore ("Gartshore") met the defendant's representatives on 14 August 2002 and proposed advertising slots in various printed media as well as a lucky draw contest. When Gartshore[11] was told that the plaintiff had allocated a budget of US$35,000 for advertising for the Event, he was visibly surprised. He opined, and confirmed under cross-examination,[12] that such a sum would only be sufficient to buy two full pages of advertisements in *The Straits Times* newspaper. According to the defendant, neither O'Connor nor the plaintiff finalised a feasible publicity plan, even after the defendant agreed to "top up" the much-reduced advertising budget by US$15,000 to US$50,000.

31 As for the lucky draw contest mooted by Gartshore, the defendant received a mock-up of a lucky draw contest advertisement from the plaintiff in mid-September 2002. Michelle ascertained from inquiries she made of the Criminal Investigation Department ("CID") that government approval was needed to conduct the contest. She requested a copy of CID's permit from the plaintiff but never received its response.

32 In May 2002, O'Connor proposed that a Great Golf Sale ("GSS") be held at the venue simultaneously with the Event. Chuan informed the defendant that the GSS would be staged by a business associate of his, one Zainal Shah of Super Shows Asia Pte Ltd ("Super Shows"). Further, 20% of the gross sales generated at the GSS would go to the staging account. Michelle repeatedly requested, but never received, a copy of the agreement between the plaintiff and Zainal Shah or Super Shows from the plaintiff. It was only in the discovery process for this trial that the defendant obtained a copy of the plaintiff's agreement, evidenced in a letter dated 1 September 2002 with Zainal Shah/Super Shows. It was stated therein that the plaintiff would be offered a 25% share in Super Shows in exchange for the latter being given the first right of refusal to hold similar sales at other golf tournaments organised by the plaintiff. Super Shows also agreed to pay the plaintiff a 10% commission on the net sales or billings of exhibitors participating in the GSS, and 20% of all income generated by novelty items such as "hole-in-one" charity golf and putting competitions held in

conjunction with the Event.

33 The above instances of the defendant's dissatisfaction with the plaintiff's organisational abilities pale in comparison with its unhappiness over the lack of and/or inadequate budgets from the plaintiff. The continuing dispute surrounding the budgets was ultimately the proverbial last straw that led the defendant to terminate the agreement with the plaintiff and to cancel the Event.

The budgets

34 The defendant contended that it was part of the terms of the oral agreement that the plaintiff would provide detailed and updated budgets periodically. The plaintiff denied this. The defendant alleged that it (particularly Tham) chased the plaintiff repeatedly for budgets since 7 May 2002, including details of actual expenses incurred and profit and loss accounts.

35 In her testimony, Tham referred to the minutes of meetings such as those held on 30 May 2002 (which she drafted) and 26 July 2002 (recorded by Andy) as proof of the plaintiff's obligation. She deposed that Chuan had explained at the first meeting on 15 March 2002 that expenses would be categorised under one of the three accounts, depending on their nature. However, he did not elaborate on which specific items would come under which account. Consequently, Tham requested that the plaintiff prepare a detailed budget with full particulars, and that it amend the third draft agreement accordingly to reflect the defendant's requirement. The defendant's request was met by the plaintiff's inclusion of the following clause in the fourth draft:

> 1.3 Surplus monies and services obtained from various co-sponsors will be held in a separate EG staging bank account and only be made available to the [defendant] once all the requisite services and facilities necessary for the success of the [BLOG] event have been obtained and paid for. Both parties agree that the primary objective of this agreement is to ensure that the BLOG event is conducted in the most successful manner possible, with the reduction of the [defendant's] prize money outlay being secondary to the primary objective. BLOG will be at liberty to request EG to provide copies of monthly statements, and to account for all expenditure from this EG staging account.

36 In the plaintiff's budget of 28 March 2002 ("the first budget"), the cost of staging the Event, including the prize money, was estimated to be in excess of US$1.5m. The figure did not include the expected outlay for items such as the costs of printing, scoreboards and various other expenses, most of which did not have an estimate. The first budget did not contain a profit and loss statement showing expenses already incurred and sponsorship income that had already been received.

37 The defendant therefore asked the plaintiff for an updated budget. At the meeting between the parties on 12 April 2002, the defendant raised its concerns that there was a shortfall of US$1m that would have to be covered if other sponsorship was not secured. This was to be contrasted with Chuan's initial estimate that the defendant's cost for the event would be US$750,000, excluding the prize money. As reflected in the minutes of that meeting, Chuan expressed confidence that the shortfall would be covered by various sponsorships in the near future. This confidence turned out to be misplaced.

38 On 6 May 2002, the plaintiff put up another budget for the Event; the cost of S$1,505,000 for staging the Event had been reduced to S$1,027,320. However, the cost of promotion (television production and airtime) had been shifted without the defendant's consent from the EG account to the staging account. Further, the fees of EventsAsia were missing from the budget. In addition, the column for sponsors (four items) showed a total of S$57,320 without details of who the purported

sponsors were. Neither was there indication that any sponsorship moneys had been received.

39 In a meeting on 30 May 2002 and in subsequent meetings and correspondence, Tham and her colleagues expressed the defendant's concern that the budget of 6 May 2002 was not detailed enough. Chuan promised that the plaintiff would clarify the budget, set out the actual expenditure incurred and prepare an updated profit and loss statement. The defendant requested that the budget be split into the three accounts showing expenses already incurred and projected expenditure. All income received from sponsorship and other sources should be placed in the staging account.

40 However, as at 4 July 2002, when the defendant received the plaintiff's fourth invoice dated 21 May 2002, the plaintiff had still not provided the defendant with a detailed budget to enable it to assess the financial health of the Event. Neither did the plaintiff appear to have secured any reasonable amount of sponsorship income. Consequently, the defendant decided not to pay the plaintiff's fourth invoice. Despite Tham's e-mail reminder to Chuan's secretary Evelyn on 10 July 2002, Chuan did not provide an updated budget. Instead, he replied that the parties were at an impasse, and that if the defendant continued to withhold payment, the plaintiff was less compelled to provide updates or further information.

41 Tham felt the plaintiff was not taking her request for updated budgets seriously. Hence, when Lim Yew Kiat ("Lim"), the defendant's tax and treasury manager inquired of her whether there were any outstanding issues relating to the Event, Tham told him of the plaintiff's omission. In the result, Lim and Michelle sent to the plaintiff (with Burnett's approval) a comprehensive letter dated 19 July 2002 ("the letter"), setting out the defendant's concerns. Noting that the defendant had already paid US$140,500.97 to the plaintiff, the letter added that the defendant would only make further payments if the plaintiff fulfilled its earlier promise within seven days by preparing a budget showing a breakdown and full particulars for the three accounts. The defendant also required the staging account to contain details of bank accounts, itemised expenses and receipts, with supporting documentation. The letter concluded with a demand that the plaintiff furnish to the defendant two bank guarantees, one for US$400,000 (valid until 30 June 2003) to cover the plaintiff's agreed 40% share of the staging cost for the Event, and the other for US$250,000 (valid until 31 December 2002) to cover a refund of the management fee should the Event be cancelled.

42 There was no response from the plaintiff to the letter. Consequently, Michelle and Lim sent a reminder dated 25 July 2002 on the defendant's behalf. Chuan replied on 26 July 2002, addressing not the budget concerns but other irrelevant issues. He then claimed that the information sought by the defendant had been disclosed to them on the BLOG management document website and at numerous meetings which he enumerated. The defendant was puzzled; if indeed it had the information, it would not have asked for the information in the first place. Chuan added that the Event had been publicised, and promotions and media coverage had been organised and would be carried out within the next three and a half months. This surprised the defendant as it had not seen any promotional or media publicity plan, nor was it given any such information. Lastly, Chuan claimed that there was a contract dated 19 July 2002 (not explained) which was binding on the defendant.

43 A meeting followed that same day between representatives of the parties. The plaintiff tendered a new cash flow budget ("the 26 July budget") that reduced the figure of US$1,027,320 in the 6 May 2002 budget to US$708,621.30. The defendant found the revisions unacceptable. The budget listed the expenses to be borne by the staging account but omitted the expenses under both the EG and AD accounts. The cost of television production and air-time, which the plaintiff had unilaterally shifted to the staging account, had also not been transferred to the EG account. In addition, the expenses for golf course rental and temporary staff which were previously placed under the EG account had been shifted unilaterally to the staging account. The 26 July budget was also

deficient as it did not include a complete profit and loss statement.

44 Given the significant reduction in the figures from those in the 6 May 2002 budget, Lim and Tham raised their concerns to Chuan as to how the quality of the Event could be assured. Tham expressed doubt on whether the plaintiff could meet its financial obligations, given its recent inability to pay a deposit of US$7,500 required to secure the services of a professional golfer, Isao Aoki. Further, the plaintiff's paid-up capital was only S$2.

45 At the meeting, Lim also sought clarification of the role of O'Connor or EventsAsia, previously described by Chuan as an "outside contractor". It was then that Chuan admitted O'Connor was part of the plaintiff's staff. He agreed the fees of EventsAsia would be transferred from the staging account to the EG account. The plaintiff then agreed to supply, by 12 noon of 31 July 2002, another budget which showed expenses incurred, income received and an analysis of the projected expenditure and income, for the three accounts. It also agreed to provide an explanation on why the budget had increasingly shrunk and how the quality of the Event could nonetheless still be maintained.

46 Lim also brought up the subject of Gary Player, a South African professional golfer, whose appearance at the Event had been secured by the plaintiff at a cost of US$125,000 ("the appearance fee"). He pointed out that the defendant had not at any time agreed to pay the entire appearance fee. Chuan, however, insisted that the defendant had agreed in March 2002 to underwrite the cost in exchange for the plaintiff providing them with additional Pro-Am slots, three sponsors' exemptions and the hospitality marquee seating at the 18th hole for VIP guests. I should point out that when he was cross-examined on this dispute, Chuan could not give a satisfactory explanation but only a lame denial why, in his e-mail to Tham dated 6 May 2002,[13] he had stated unequivocally: "It is our intention and understanding that the STB and SSC will cover a large portion of [Gary] Player's cost and EG will still be able to sell his services, and or have a sponsor adopt him as their man for the event's duration."

47 The plaintiff and the defendant gave different versions of the minutes of the meeting of 26 July 2002. When he testified, Lim[14] explained[15] that he had found several inaccuracies in Andy's draft minutes received on 29 July 2002. Hence, he e-mailed Andy immediately to say that he had several amendments and additions to make to the minutes. Lim discussed his proposed amendments with his colleagues between late July and early August 2002. Unfortunately, the issue then slipped his mind as he was preoccupied with his own work and with the fifth draft. He only remembered on or about 27 September 2002 when he was clearing his e-mail. He then forwarded his version of the minutes to Andy. I should emphasise that the dispute on the minutes centred mainly on the appearance fee. Lim's version of the minutes recorded:

> Yew Kiat clarified that AD [the defendant] at no time indicated that it will pay for the entire Gary Player appearance fee

and had the following additional paragraph:

> *Yew Kiat queried the logic if ExG* [the plaintiff] *is of the view that Gary Player's fees will be on AD's account in March 2002, why is it that even till June 2002, ExG continues to report in minutes of meeting the status of getting a sponsor to pay for Gary Player's fees.*

On the other hand, Andy's version stated:

> Yew Kiat also clarified that AD was not now interested in supporting the entire Gary Player

appearance fee in the AD budget

and omitted entirely the italicised paragraph set out above. I should add that Chuan objected to the defendant's version of the minutes on 17 October 2002 *after* the defendant had terminated the plaintiff's services, while Drayson's recollection[16] of what transpired at the meeting seemed to suggest Lim's version was correct.

48 When he was cross-examined,[17] Andy[18] had no recollection of Lim's e-mail to him giving notice of proposed changes to the minutes. Questioned by the court,[19] Andy testified that he generally prepared minutes of meetings without consulting or relying on anyone. This was the case for the minutes of the meeting of 26 July 2002.

49 On 31 July 2002, Andy e-mailed a budget ("the 31 July budget") to Tham with a budget change explanation. In fact, the 31 July 2002 budget contained, on separate sheets, two budgets ending with different figures: one figure was US$696,033.90 and the other was US$852,634.14. Tham noted, however, that in neither budget did the plaintiff rectify the problems that the defendant had highlighted earlier – there were no details of sponsors, no analysis of projected sponsorship income and no supporting documentation for the amount of sponsorship purportedly raised for the Event. Further, PGA's fees had been moved from the EG account to the staging account, while the cost of temporary staff remained in, the EG account. Promotion, publicity and EventsAsia's costs remained in the staging account. The plaintiff's budget change explanation did not help either, as it purportedly explained the 26 July 2002 budget figure of US$708,621.30 and not the two new sponsorship income figures of US$696,033.90 and US$1,028,132.00.

50 Consequently, after Tham had discussed the 31 July budget with him, Lim e-mailed Andy on the very same day pointing out that the 31 July budget contained figures that differed from earlier budgets. He also pointed out that the budget change explanation served no purpose as the numbers did not reconcile with the figures in the 31 July budget. It also did not break down the expenses between the three accounts, and sponsorship details were still lacking.

51 Lim's e-mail drew a curt response on 1 August 2002 from Chuan; he stated he would *not* provide the budget, the plaintiff had never agreed to provide the information requested, and Andy would meet the defendant the following day. The plaintiff's *volte face* surprised the defendant.

52 On 2 August 2002, Parmley, Lim, Tham, Sim and Michelle met Andy and Drayson; Chuan was absent. The defendant's team queried the 31 July budget, and asked why the fees of Nutrius/Hadley and EventsAsia had been placed in the staging account. As they had been hired to perform the plaintiff's tasks, their fees should rightly be paid from the EG account, as was agreed previously. Drayson and Andy said that they could not recall such an agreement and refused to transfer the items to the EG account. Parmley questioned the sponsorship income. He stressed the need for an accurate record in the budget of such sponsorship so that there was an accurate reflection of the financial impact on the budget. It was agreed that the parties would meet again to discuss the question of sponsorship and for each side to evaluate its financial risks.

53 On 13 August 2002, Chuan e-mailed the defendant a sponsorship update. The defendant did not find it useful because it again did not include details of sponsorship and there was no supporting documentation by way of contracts or letters of intent.

54 On or about 14 August 2002, the plaintiff tendered yet another budget ("the August budget") to the defendant. The cost figure in the 26 July budget had been now revised to US$665,790.50. The items the defendant had objected to previously (advertising expense and consultants' fees) had been

shifted back to the EG account. The August budget finally had a sponsorship income section. However, the income section still failed to show what income would be received from co-sponsors and included unconfirmed sponsors. Supporting documents were again absent.

55 By this time, according to Tham, the defendant was becoming increasingly frustrated with the plaintiff. None of the plaintiff's budgets indicated when sponsors' money would be coming in and how the sums would be utilised. Further, items were being constantly shifted from the EG account to the staging account. From the dearth of sponsorship details, it appeared that the plaintiff had been unable to secure any or adequate sponsorship to fund the Event. That would mean that the defendant would ultimately have to bear the entire loss arising therefrom, given the plaintiff's inability at the time to pay for many of the items in the staging account and its S$2 paid up capital.

56 It was these concerns that prompted Lim to forward to the parent company the plaintiff's fourth draft of the agreement. The parent company amended the document by way of the fifth draft, which Lim e-mailed to the plaintiff on or about 15 August 2002. Given the state of the parties' relationship, it was not surprising that the fifth draft included the following new clause:

> F The SPONSOR [the defendant] reserves the right to terminate the agreement immediately at any time and EG [the plaintiff] shall indemnify the SPONSOR for all expenses incurred, and all fees paid and expenses incurred by the SPONSOR shall be refunded by EG in the event that EG is unable to fulfil any of its obligations under clause 5.1 or to raise additional cash sponsorship from other sponsor(s) to cover the cost of staging the [BLOG] Event at least 60 days before the scheduled date for the [BLOG] Event.

The above and other amendments proposed by the defendant were meant to address the recurring problems it had encountered with the plaintiff.

57 Michelle indicated to Chuan on 16 August 2002 that the defendant wanted a signed contract by the time of the next meeting (20 August 2002). Chuan responded on 20 August 2002 to say an agreement was already in place which the plaintiff would sign but, not the fifth draft. He again asked for payment of US$100,000.

58 The meeting on 20 August 2002 did not resolve any of the outstanding issues as, according to the defendant, Chuan stormed out of the meeting after refusing to discuss the fifth draft. Despite his outburst, the defendant subsequently attempted to discuss the amendments incorporated in the fifth draft with Chuan. However, Chuan was adamant that an agreement was already in place and refused to negotiate further.

The termination

59 By end-September 2002, the plaintiff had still not addressed the defendant's long-standing concerns *vis-à-vis* the budget and sponsorship. Neither had the plaintiff come up with a comprehensive publicity plan despite the lapse of time. Consequently, the defendant decided to, and did, seek legal advice on what it considered were material breaches by the plaintiff of the oral agreement.

60 By their letter dated 30 September 2002 ("the notice") the defendant's solicitors informed the plaintiff that it was in repudiatory breach of the oral agreement between the parties for the following reasons:

(a) A complete lack of transparency on the plaintiff's part in accounting for the income

earned and the expenses incurred in staging the Event, in relation to the staging account.

(b) A total failure on the plaintiff's part to account for receipts from any co-sponsors.

(c) Despite the Event being less than six weeks away, a finalised budget had not been agreed between the parties due to the plaintiff's constant reductions of the size of the budget and failure to find co-sponsors.

(d) A significant lack of promotional publicity for the Event since the press conference on 23 April 2002.

61 The notice concluded with an offer to the plaintiff to remedy its breaches by putting forward constructive proposals acceptable to the defendant at a meeting to be held between the parties no later than 2 October 2002. Further, the parties were to sign a written contract by the same deadline. Failing compliance with both requirements, the defendant's solicitors gave notice that the defendant would terminate the oral agreement in accordance with its full legal rights.

62 The parties met on 1 October 2002. Chuan, Drayson and Andy represented the plaintiff while the defendant's team comprised of David Cowie ("Cowie"), who was the defendant's finance director, Parmley, Michelle and Tham. The meeting was to discuss how to salvage the situation. Parmley made various proposals on structuring the agreement. He pointed out that there was no reasonable prospect that the Event could break even in terms of costs and there had not been any reasonable public relations activities. Lim repeated the defendant's request to see contracts and sponsorship documents the plaintiff claimed to have concluded. Chuan and Andy promised to revert on the issues raised. That same evening, Parmley received Andy's e-mail enclosing another budget ("1 October budget") where the expenses had been reduced to US$639,951. The fees of Nutrius had been transferred back to the staging account from the EG account.

63 On the morning of 2 October 2002, Parmley replied to Andy setting out the issues pertaining to performance criteria required by the defendant. He proposed that if the performance criteria was not met, either party could withdraw without penalty. However, if the criteria was met, a penalty of US$100,000 would be imposed on the party withdrawing.

64 Another meeting followed that day between the parties. However before the meeting began, Chuan demanded that Michelle and Lim leave, which they did. Parmley felt that the 1 October budget was useless as only the expenses portion was shown. The defendant assumed therefrom that the Event would face a potential loss of about US$600,000. Chuan was confident the loss would only approximate US$100,000, which estimate the defendant felt was unrealistic. Parmley and Cowie told Chuan that if the Event proceeded, the defendant would only agree to hold it in 2002 and decide later whether to hold it in 2003 and 2004. Chuan however was adamant that there was a contract for three years in place, and that the defendant could not walk away after one year.

65 After the meeting, Chuan reiterated his stand; he informed the defendant that it had to compensate the plaintiff if the contract was only for 2002. At this stage, according to Parmley, the defendant realised that the plaintiff was more interested in money than in salvaging the situation. It decided to terminate the defendant's relationship with the plaintiff.

66 Consequently, the defendant's solicitors wrote to the plaintiff's solicitors on 3 October 2002 ("the termination letter") stating that the defendant had not received any acceptable constructive proposals on how the repudiatory breaches of the plaintiff would be remedied. As such, the defendant accepted the plaintiff's breaches and was terminating the agreement forthwith. The defendant

reserved its rights to claim damages arising from the repudiatory breaches and to recover all sums paid in good faith to the plaintiff. I should add that on or about 7 November 2002, the defendant stopped payment on its cheque dated 23 September 2002 for S$49,950 issued in favour of the venue. The payment had been advanced on the plaintiff's behalf and was to be set off against the management fee.

67 Notwithstanding the cancellation of the Event, the defendant agreed to and did reimburse several golf professionals at the request of Andy Stubbs of the EST a total sum of S$32,051.56 for non-refundable deposits the players had paid to book air-tickets to Singapore. The defendant paid these and other expenses of the EST as it wanted to maintain friendly relations with PGA and EST, with whom it hoped to work in the future.

68 The defendant also participated in the Ballantine's Charity Golf Challenge ("the Charity Event") organised by the SIF that was scheduled for, and was held, on 11 October 2002 in aid of the SIF at the Jurong Country Club. According to Cowie,[20] the Charity Event was separate and distinct from the Event; it was for a good cause, the guest-of-honour was a government minister, guests had been invited and the defendant was the sponsor.[21]

69 Despite the termination letter, the plaintiff still attempted between 3 and 12 October 2002 to finalise the terms of the formal agreement. Chuan e-mailed yet another draft (marked "private and confidential - without prejudice") to the defendant on 12 October 2002 and even apologised to the defendant (particularly to Michelle and Lim) for his past conduct if he had caused them offence. The plaintiff's solicitors replied to the termination letter on 10 October 2002[22] vehemently denying their client was in repudiatory breach of the agreement.

70 On 16 October 2002, the plaintiff issued a press release drafted by Murray announcing not the *cancellation* but the *postponement* of the Event to mid-2003 "due to certain timing issues and recent events and developments beyond the control of the organisers". I consider the press release highly misleading. Questioned by the court, Chuan[23] admitted the defendant had not agreed with him to postpone the Event to April 2003. Even so, he would not admit that the press release was untrue; he claimed it was "inaccurate".

The pleadings

71 On 23 March 2003 this suit was filed. In the statement of claim, the plaintiff alleged that it had exclusive naming rights to the Event for three years by reason of an oral agreement made with the defendant on or about 4 February 2002. It alleged that it also had a written agreement with the defendant evidenced in:

(a) an e-mail from the plaintiff to the defendant dated 6 February 2002 together with the unsigned first draft agreement;

(b) the second unsigned agreement dated 5 February 2002;

(c) the first, second and third invoices which the defendant paid and the fourth invoice dated 21 May 2002 which the defendant did not pay

(d) an e-mail from the plaintiff to the defendant dated 12 March 2002 together with the unsigned third agreement;

(e) letters dated 12 March, 9 July and 12 July 2002 from the plaintiff to the defendant, and

from the defendant to the plaintiff dated 19 July 2002;

(f) an e-mail to the defendant dated 27 March 2002 together with the fourth unsigned agreement;

(g) the defendant's payment of the press conference expenses of S$4,854.60;

(h) an invoice dated 20 September 2002 for S$49,950, payment for which was by way of a cheque that the defendant wrongfully stopped;

(i) an official press release by the defendant at the press conference;

(j) an article in *The Straits Times* dated 24 April 2002; and

(k) an article in the June 2002 issue of *Par Golf* magazine.

72 Over and above the terms set out in [7] above, the plaintiff alleged that the following terms, *inter alia*, were also agreed:

(a) For staging the Event in 2003 and 2004, the plaintiff would be at liberty to raise the management fee by 25% per annum.

(b) The plaintiff would use its best endeavours to promote the defendant's involvement in the marketing of, and advertisements and materials published for, the Event by the plaintiff.

73 The plaintiff alleged that the defendant's conduct and correspondence (which were particularised) amounted to part-performance of the four unsigned agreements, upon which the plaintiff had acted to its detriment. However, by the defendant's letters (*inter alia* those dated 25 and 30 September 2002) and by the defendant's conduct, the plaintiff alleged the defendant either denied and/or evinced an intention to be no longer bound by the unsigned agreements. The plaintiff stated it accepted the defendant's repudiation of the unsigned agreements by the issue and service of the writ in these proceedings.

74 The plaintiff pleaded that the defendant's breach had caused its principal officers (including Chuan) and consultants (including Hadley) to lose credibility with the PGA, and with top executives and government leaders in Singapore and worldwide. It claimed damages which included management fees of US$312,500 and US$390,625 for the years 2003 and 2004 respectively, the annual prize money totalling US$1.5m for three years, expenses of S$288,787.51 which it had allegedly incurred in preparation of the Event, loss of profits for three years, loss of reputation and aggravated damages.

75 In its defence, the defendant referred to and relied on the oral agreement set out in [7] and [8] above. It:

(a) denied that the four unsigned agreements were binding upon the parties;

(b) denied that it had agreed to the Event being held for three years and disputed the fees claimed by the plaintiff for 2003 and 2004;

(c) averred that it had paid a total of US$140,500.97 to the plaintiff in good faith towards payment of the management fee;

(d) averred that it had become increasingly apparent, in the course of the defendant's

dealings with the plaintiff between February and September 2002, that the plaintiff had failed and/or was not able and/or was not willing to perform its obligations under the oral agreement; and

(e) alleged that the defendant had consistently failed to discharge its obligation to prepare and update budgets covering the three accounts. Budgets that were presented contained figures that were constantly reduced and/or changed. The plaintiff failed to provide a proper system of accounting causing the defendant to doubt the standard and quality of the Event. This directly affected the goodwill and brand name of Ballantine's, given that the defendant was the title sponsor.

76 Although the plaintiff was obliged under the oral agreement to properly promote, market and arrange for appropriate television and printed media coverage for the Event, the defendant alleged that the plaintiff failed to discharge its duties. Instead, the plaintiff unilaterally moved the cost of advertising and television airtime from the EG account to the staging account without any explanation.

77 The defendant alleged that the promotional plan that O'Connor presented to it on 29 July 2002 was vague, while timelines and milestones were absent. Despite requests from Sim for explanations of the promotional plan, none were forthcoming as of September 2002, notwithstanding Chuan's assurances.

78 The lack of co-sponsorships was another grievance of the defendant. It alleged that, at various times, the plaintiff had represented that there were confirmed sponsors which included Hardy's Wines, Asprey & Garrard, Srixon, Evian/Danone, Swingmart, Plaza (Pacific) Hotels, Singapore Petroleum, Keppel Corporation, Singapore Airlines, Pauliner-Melchers, Tait Radio Comunications, Steelcase, *The Economist* and the Singapore Sports Council ("SSC"). The plaintiff did not and/or could not produce agreements and/or written undertakings to the defendant from any of these alleged sponsors.

79 The defendant alleged that it was the plaintiff who was in repudiatory breach of the oral agreement for failing to comply with the terms by mid-September 2002. It relied on the notice and the termination letter. The defendant counterclaimed damages from the plaintiff as well as S$449,510.37. This sum included periodic payments made towards the management fee as well as expenses incurred for the press conference, payments to Swingmart and the reimbursement to EST of various expenses incurred by or on behalf of professional golfers.

80 The plaintiff filed a lengthy (48-page) reply and defence to the counterclaim essentially denying the defendant's allegations. It asserted[24] that the parties had arrived at a detailed and focused agreement expressed in the first unsigned draft and that no further negotiations were required. The plaintiff further contended that it was not obliged to furnish the defendant with budgets but did so as a matter of courtesy. It averred it did not have to account to the defendant for how it expended the management fee. Incidentally, nine sets of further and better particulars of their respective pleadings were filed by the parties, sometimes voluntarily, at other times pursuant to orders of court. In one instance, the plaintiff filed a registrar's appeal on particulars ordered from them.

The evidence

81 The trial was spread over 16 days and the parties had eight witnesses each. Surprisingly, although he was the plaintiff's principal witness, Chuan's written testimony was contained in brief

paragraphs that basically rehashed the plaintiff's statement of claim. He chose to rely instead on the voluminous documents (13 bundles) exhibited to his affidavit. The result was that he subjected himself to rigorous cross-examination for over a week. Chuan's brief written testimony, as well as that of plaintiff's other witnesses, is to be contrasted with the affidavit evidence of the defendant's witnesses, which dealt *in extenso* with the facts leading up to the termination of the agreement and the cancellation of the Event. I shall now address the issues that arise from the pleadings.

Was any contract concluded by the unsigned draft agreements? If not, was there an oral agreement between the parties?

82 Chuan repeatedly maintained that a firm agreement was in place by 6 February 2002, based on the first draft and that the plaintiff's subsequent three drafts were "clarifications and/or cosmetic changes against which the defendants made payment and performed indicating their agreement".[25]

83 However, Chuan's answers during cross-examination showed that the plaintiff's stand was unsustainable. First, the minutes of the meeting drafted by the plaintiff held on 4 February 2002 did not record that the defendant had agreed to the first draft agreement. In fact, under item 9.1 headed "Steps to be taken", it was stated "Letter of intent with Ballantines". According to Parmley,[26] the defendant initially wanted a memorandum of understanding or a letter of intent but it was never done.

84 From the correspondence and e-mails before the court, it was clear that the defendant continuously raised queries or proposed amendments to the plaintiff's various drafts. Cross-examined, Chuan did not dispute that such queries came from the defendant.[27] Indeed, in his e-mail of 27 March 2002 forwarding the fourth draft to the defendant, Chuan said "it incorporates the few changes we discussed at March 15th Meeting". Whether the changes were few or many does not detract from the fact that revisions were made to the many drafts. By no stretch of the imagination can the revisions be described as "clarifications".

85 I have already observed at [69] that after the defendant terminated their relationship, the plaintiff sent further drafts to the defendant for approval, the terms of which contradicted the plaintiff's claim that there was a three-year agreement in effect. Why agree to a one-year term (albeit on terms) if there was already a three-year agreement in effect? Even more telling was the plaintiff's reaction to the fifth draft. The minutes of the meeting held on 20 August 2002[28] recorded Chuan as having opined (when Lim asked the plaintiff to sign a new agreement which included amendments made by the defendant) that the new agreement should not be a topic for discussion at the status meeting and was best dealt with in a face-to-face meeting with Parmley and himself at a later date. Such actions are inconsistent with the plaintiff's position that a concluded agreement was already in existence by 6 February or even by 27 March 2002 when the fourth draft was forwarded to the defendant. Further, there was an e-mail from O'Connor to Chuan dated 3 July 2002[29] where he asked Chuan to check, when the defendant had signed the contract, whether the defendant was committed to three years. In the e-mail, O'Connor expressed his fears that the defendant wanted information on sponsors' contracts "so they can replicate the event in 2003". It clearly showed that, internally, the plaintiff did not regard itself as having secured a signed contract, let alone for three years.

86 The testimony of Murray[30] reinforced the defendant's stand that there were on-going discussions between the parties on the various draft agreements even up to 3 October 2002, although he described the situation as "bizarre".[31]

87 The defendant's witnesses, Tham and Parmley, testified that in the period before 23 April

2002 they were pre-occupied with the press conference. Hence, finalising the terms of and signing an agreement was not a priority. In any case, the defendant considered there was already an oral agreement in existence.

88 The defendant submitted that its periodic payments towards the management fee should not lead to the conclusion that the four drafts were binding on the parties as there was no dispute between the parties that the management fee was payable. Parmley[32] and Burnett[33] testified that the payments were made in good faith.

89 In its submissions,[34] the defendant relied on extracts from *Chitty on Contracts* (28th Ed, 1999) vol 1, in particular on the following passages at paras 2-103 and 2-104 to support its contention that there was only an oral agreement between the parties:

> **Agreement in principle only.** Parties may reach agreement on essential matters of principle, but leave important points unsettled so that their agreement is incomplete. It has, for example, been held that there was no contract where an agreement for a lease failed to specify the date on which the term was to commence …
>
> **Agreement complete despite lack of detail.** On the other hand, an agreement may be complete although it is not worked out in meticulous detail. Thus an agreement for the sale of goods may be complete as soon as the parties have agreed to buy and sell, where the remaining details can be determined by the standard of reasonableness or by law.

90 For its defence that the oral agreement between the parties was for one, not three, years, the defendant also referred to two another extracts from *Chitty* at paras 2-116, 2-118 and 2-119 which state:

> **Terms "to be agreed".** The parties to an agreement may be reluctant to commit themselves to a rigid long-term arrangement, particularly when prices and other economic conditions are likely to fluctuate. They sometimes attempt to introduce an element of flexibility by providing that certain terms are to be agreed later, or from time to time.
>
> **Agreement not incomplete merely because further agreement is required.** Because the courts are "reluctant to hold void for uncertainty any provision that was intended to have legal effect," they may sometimes give effect even to an agreement which provides for further terms "to be agreed." …
>
> Thus an agreement is not incomplete *merely* because it calls for some further agreement between the parties. Even the parties' later failure to agree on the matters left outstanding will vitiate the contract only if it makes it "unworkable or void for uncertainty."

Cowie's re-examination in this context is highly relevant. He explained[35] that although the defendant's intention was to have a three-year contract, unless the Event for 2002 was successful the defendant did not want to be obligated to proceed with two more unsuccessful Events as it would not make commercial sense. The defendant also relied on two essential terms which the parties had not agreed on for years 2003 and 2004 – the venue for the Event and the plaintiff's management fees. Hence, it only had an agreement in principle for years 2003 and 2004 which, based on the above extract from *Chitty* at para 2-103, meant that it was unenforceable.

91 On the evidence before the court and on basic contract law, there is little doubt that the contract between the parties was only oral, it was not contained in the four draft agreements of the

plaintiff and it was for only one year as terms for the contracts for the second and third years were still under negotiation.

Were there other terms of the oral agreement between the parties apart from the four undisputed items?

Proper accounting and the budget

92 Turning now to the disputed terms of the oral agreement, I deal first with whether the plaintiff had agreed to provide a proper system of accounting and budgets. Chuan consistently denied that the plaintiff had any such obligation, claiming budgets were provided to the defendant as a matter of courtesy, not as of right.

93 Earlier at [35]–[50], I referred to the e-mails and the minutes of meetings where the defendant (in particular Tham and Lim) repeatedly chased the plaintiff for comprehensive and updated budgets, pertaining especially to the staging and EG accounts. It is noteworthy that the disputed minutes of the meeting on 26 July 2002 had "budget" as an undisputed item of discussion, and it recorded that the plaintiff had presented an updated budget and that it had agreed to supply:

(a) cash flows for the three accounts;

(b) an analysis of cash flows (sponsors and the likelihood of payment) spread over the August through December period; and

(c) a description of how changes in expense levels were derived and how the quality of the resulting tournament would be maintained.

94 If indeed the plaintiff's contention is to be believed, one wonders why it did not inform the defendant at that meeting, or earlier or even later, that the plaintiff was under no obligation to provide any budgets at all. On the contrary, the plaintiff continuously came up with new or revised budgets in an attempt to comply with the defendant's insistence on details of income and expenditure. At no time before Chuan's *volte face* on 1 August 2002 did the plaintiff deny or refuse the defendant's requests for budgets and supporting documentation, although it consistently procrastinated in its compliance. Consequently, I am satisfied that the plaintiff was obliged to provide detailed budgets and update the figures periodically for the three accounts so that the defendant could be apprised of its financial risks involved for the Event.

Was there a partnership between the parties?

95 Whether the plaintiff had to account to the defendant on expenditure of the management fee is tied up with the question of whether the parties were partners. Despite the plaintiff's denials that there was a partnership, Chuan himself referred to the parties as partners or as having a partnership in his letter dated 12 June 2002 to Parmley and in his e-mail to Michelle dated 27 June 2002. I reject his denial based on clause F of the recital in the draft agreements and on cll 1.2 and 1.3 of the fourth draft agreement as it went against the entire tenor of the parties' relationship and contradicted the plaintiff's reply and defence to counterclaim where it was pleaded[36] that there was to be a profit-sharing arrangement.

96 Clause F in the four drafts states:

EG [the plaintiff] and the Sponsor [the defendant] intend to enter into some form of joint

> venture, relating to the management of the BLOG Event. It is understood that it will only be the naming rights and the Event's financial mechanics which will be open to negotiations and that ownership of the Event will remain with EG.

The relevant extract from cl 1.3 from the fourth draft reads:

> Surplus monies and services obtained from various co-sponsors will be held in a separate EG Staging bank account and only be made available to the SPONSOR, once all prerequisite services and facilities necessary for the success of the BLOG Event have been obtained and paid for …

97 In its final submissions[37] the defendant offered an explanation for Chuan's change in stance. He must have realised albeit late in the day, that the drafts provided for the sharing of profits not losses, between the parties. The sudden shift in the plaintiff's position, however, did not advance its case that it was not the defendant's partner. The parties had a profit-sharing arrangement and a staging bank account was opened, according to Chuan after considerable probing, on 4 October 2002 (not September 2002 as he had initially claimed). In cross-examination, Chuan[38] withdrew para 9.25 of the plaintiff's reply where it was asserted that it was not obliged to open a staging bank account. Why would the plaintiff open a staging bank account especially *after* the notice of termination, if indeed there was to be no sharing of profits and losses?

98 Sharing of profits is the hallmark of a partnership. Section 1(1) of the Partnership Act (Cap 391, 1994 Rev Ed) ("the Act") states:

> Partnership is the relation which subsists between persons carrying on a business in common with a view to a profit.

Granted the parties were not in business together, but that did not mean they did not or could not agree to participate as partners in a one-off venture, namely the Event.

99 In this regard, I turn to the authoritative textbook *Lindley & Banks on Partnership* (18th Ed, 2002) where at para 7-16 the author quoted Lord Lindley as saying:

> The question whether a partnership does or does not subsist between any particular persons is a mixed question of law and fact, and not a mere question of fact.

As to the evidence on what has to be proved, the author added at para 7-19:

> [T]he crucial question is the *purpose* for which the existence of a supposed partnership must be proved: if a third party seeks to make persons liable as partners, then all that must be established is such liability, the existence or otherwise of a true partnership being largely irrelevant. If, on the other hand, it is a question of liability as between the alleged partners, it will be necessary to prove the existence of a partnership in point of fact. [emphasis in original]

I am therefore satisfied that the defendant had a partnership arrangement with the plaintiff for the staging of the Event.

Was the management fee to be used to defray expenses for the Event?

100 The management fee, which is equivalent to S$425,000 at an exchange rate of S$1.70 to US$1.00, is not a small sum; neither is the prize money. Averaged over 12 months, the monthly fee equated to US$20,833.33. I cannot imagine that the defendant, as a commercial enterprise, would

give a *carte blanche* to the plaintiff on payments it made towards the management fee.

101 In any case, in the light of my finding that there was a partnership between the parties, until the plaintiff actually "earned" the management fee by staging the Event, it was obliged to account to the defendant for moneys paid by the latter. In this connection, I refer again to *Lindley & Banks on Partnership* where at para 16-01 the learned author states:

> Perhaps the most fundamental obligation which the law imposes on a partner is the duty to display complete good faith towards his co-partners in all partnership dealings and transactions. Lord Lindley summarised that duty in the following terms:
>
> > "The utmost good faith is due from every member of a partnership towards every other member; and if any dispute arise between partners touching any transaction by which one seeks to benefit himself at the expense of the firm, he will be required to show, not only that he has the law on his side, but that his conduct will bear to be tried by the highest standard of honour."

In addition, s 28 of the Act puts a duty on the plaintiff "to render true accounts and full information of all things affecting the partnership to any partner or his legal representative". It was precisely because of the need for accountability that the staging account was established. This fact was not and could not be denied by the plaintiff. Consequently, the plaintiff was obliged to account to the defendant on how it expended the sums paid towards the management fee. I accept the testimony of the defendant's witnesses Parmley and Cowie in this regard. The defendant's periodic payments were to assist the plaintiff to pay for television coverage, media publicity and other promotional expenses relating to and leading up to the Event, hence the defendant's insistence on proper budgets to establish how its moneys were spent.

Was the plaintiff obliged to procure additional sponsors for the Event?

102 The plaintiff's case was based on the four draft agreements. It cannot therefore blow hot and cold, as the fourth draft contained the following clause:

> 1.2 It is understood that both EG and the SPONSOR intend to try and reduce the SPONSOR'S financial outlay and exposure from the present total of US$750,000 and this will be achieved by off-setting surplus monies and services that may be raised from additional co-sponsors and participants in the BLOG Event.

103 Throughout, the minutes of meetings and e-mail correspondence showed that the plaintiff repeatedly promised the defendant sponsorship particulars, but failed to come up with them. The reason for the plaintiff's reluctance is now obvious. It would also explain why (according to Cowie's written testimony which the plaintiff did not challenge), at the meeting on 1 October 2002 Chuan said that the plaintiff would allow the defendant to see the sponsorship contracts only *after* the parties had executed a written contract. This was either because Chuan had signed contracts with sponsors who agreed to pay the plaintiff commission, or because the plaintiff never had the sponsors it claimed to have secured. Chuan wanted to tie the defendant down so that even if it found out about his misfeasance or omission later, it would be too late for the defendant to withdraw from the Event (or so he believed).

104 During cross-examination, Chuan took the court on a semantic merry-go-round with his convoluted verbiage regarding "confirmed sponsorship". This can be seen from the following extracts from the notes of evidence:[39]

Q: What do you mean when you used words "confirmed sponsors" in your e-mails/updates?

A: They confirmed their willingness to participate as sponsors and will try to do so.

…

Q: You mean they had expressions of interest only, no contracts signed?

A: Yes.

Q: When you refer to "confirmed sponsors", these had not entered into contracts with plaintiffs to sponsor the Event?

A: Not in this context.

Court: Then tell us what do you mean?

A: Through conversations or e-mails, these parties had expressed a desire/interest to become sponsors in cash or kind for the Event.

Court: Then what do you mean by the term "confirmed sponsor"?

A: It would have to be strong interest from the party to participate not only based on an interest.

Q: If in your view you felt a particular person had a strong enough interest you would report him to the defendants as a confirmed sponsor?

A: And when contracted yes.

Q; It therefore follows that it does not matter to you if there is no contractually binding sponsorship agreement signed with sponsor before you would report to defendants he is a confirmed sponsor.

A: He would have to be secured.

Court: By?

A: By some form of correspondence not necessarily a contract.

105 Chuan's confusing answers should be contrasted with:

(a) his solicitors' letter dated 10 October 2002[40] to the defendant's solicitors which, *inter alia*, stated that the plaintiff received the first sponsorship income of S$40,000 from Grand Plaza Hotel on 26 September 2202 and at that point in time, no other sponsor had been contracted with nor consideration received and all arrangements were still in the final stages of negotiations; and

(b) para 31.14 of the reply and defence to counterclaim where the plaintiff pleaded that, although not contractually obliged to, the plaintiff as a matter of courtesy furnished information on sponsorship. The paragraph added, "All corporations named by the defendant had indicated sponsorship participation, and signed agreement do exist between the plaintiff and the name

companies with the exception of Pauliner-Melchers who were to provide and wished appointment as the Event's Official Beer, and the SSC who provided verbal and emailed indication of their intend [*sic*] co-sponsorship."

In regard to (a), Chuan could only proffer a lame explanation that his solicitors were wrong. I should add that the defendant's solicitors wrote to the SSC on 16 January 2004. The latter's solicitors confirmed on 20 January 2004[41] that SSC did not enter into any contract with the plaintiff whether orally or in writing. Although there were discussions, nothing was ever concluded. SSC's position would have been known to Chuan as it sent him an e-mail on 11 September 2002[42] setting out a tentative proposal for sponsorship qualified with the remark "this is not a formal offer". The lack of supporting evidence also disproved his claim that there was a firm commitment from CNN as at 20 September 2002 and with other alleged sponsors including, *inter alia*, BMW and Tradewinds Tours & Travel Pte Ltd (a subsidiary of Singapore Airlines).

106 Contrary to its denials, the plaintiff did agree to secure other sponsors to help defray the costs of staging the Event but failed to do so. The defendant produced a list[43] which set out the 51 sponsors that the plaintiff's representatives (Chuan, O'Connor and Murray) had, at some time or another purportedly secured but which either did not materialise or were suspect for reasons which will be set out later. Donation of Evian water by Danone Imported Waters Asia Pte Ltd, described by the plaintiff as a "confirmed sponsor", would not in any event have been a meaningful sponsorship in terms of income for the staging account, whilst Hotel Grand Plaza's sponsorship was tainted by the plaintiff's secret commission deal.

107 Earlier at [26]–[27], I referred to such secret commission arrangements made by Chuan at the defendant's expense. This also extended to O'Connor's appointment. In discovery, the defendant was given an agreement dated 15 March 2002[44] signed by the plaintiff with EventsAsia where, in return for a payment of S$250,000 by 1 January 2004, O'Connor agreed to allow the plaintiff to purchase 30% equity in his sole-proprietorship. Amongst the documents produced in court were invoices issued by O'Connor to the plaintiff,[45] of S$3,000 per week or S$12,000 per month. Hadley, on his part, charged the plaintiff US$2,083 per month.[46] It is no wonder Chuan tried to make the defendant pay for O'Connor's and Hadley's consultancy fees by moving the items from the EG account to the staging account. Had he succeeded, it would have meant the plaintiff reaping the benefit of its agreements with Nutrius and EventsAsia. I found Chuan's explanation that he "was remiss in addressing the document"[47] when confronted with the Nutrius agreement totally unconvincing. Like the contracts with Swing, Hotel Grand Plaza and Super Shows, Chuan would not have disclosed this agreement to the defendant without a court order. O'Connor's cosy deal with the plaintiff would also explain why Chuan rejected the defendant's request to engage the services of Fulford Public Relations Consultancy Pte Ltd ("Fulford") to prepare a public relations proposal to generate publicity for the Event.

108 As for Hotel Grand Plaza, apart from the cash component of $40,000, the plaintiff's solicitors' letter dated 10 October 2002 to the defendant's solicitors did not disclose that the plaintiff had secured a "barter" arrangement. Obtained in discovery, the plaintiff's letter dated 20 August 2002[48] to Plaza Pacific Hotels & Resorts (owners and/or operators of Hotel Grand Plaza) revealed a "sponsorship investment value" of S$125,000 on the package of rooms, food and beverages to be provided by the hotel. The shortfall of S$16,829 between the sponsored value (S$125,000) and the actual value (S$108,171) of the package was given to the plaintiff by way of complimentary rooms, a Christmas party and other benefits. In its letter, the plaintiff promptly gave notice that it intended to utilise its benefits by accommodating Hadley at Grand Plaza Hotel between 25 August and 4 September 2002. In addition, the plaintiff stated that it expected to earn 10% commission on room nights that it generated for stays at any of the Plaza Pacific Hotels and at the Mandarin Hotel and

from associated tours. It is little wonder that the plaintiff objected to the defendant's attempts to book accommodation at the Grand Copthorne Hotel for participants of the Event.

Did the plaintiff fail to provide sufficient and appropriate publicity and media coverage for the Event?

109 The plaintiff did not deny it had an obligation to promote and publicise the Event, but maintained it had discharged its responsibility. There are two aspects to this issue: first, what was the defendant's target audience in promoting Ballantine's for the Event and was it made known to the plaintiff? Secondly, was there sufficient publicity generated by the plaintiff for the Event before the termination letter?

The defendant's target audience

110 In his affidavit of evidence-in-chief, O'Connor[49] deposed:

> 15. In order to promote the Event successfully, I required Allied Domecq's representatives to provide me with information regarding their target and market audience. Unfortunately, after repeated requests, no such information was forthcoming. On or about 9 July 2002, Olivia Sim sent an email to Chuan Campbell enclosing a proposal put forward by Fulford PR. Olivia Sim expressed her satisfaction with the said proposal. Chuan Campbell forwarded the same to me on or about 10 July 2002. I expressed my frustrations in an e-mail to Chuan Campbell of Excel Golf dated on or about 11 July 2002 as I had already made extensive arrangements with regard to my promotional and media plans for the Event.
>
> 16 Further, the representatives of Allied Domecq would offer no real direction as to what budget they were looking to spend on pre-Event promotional material. They were also not forthcoming in providing information as to what events they wanted to be involved in, where the events were to be held, when they wanted the events to be held,

The above statements were proved to be untrue when Chuan, O'Connor and the defendant's witnesses testified.

111 In paras 100–101 of her written testimony, Sim deposed that:

> ... having an event like the "Ballantine's Legends of Golf" to promote the Scotch whisky "Ballantine's" was conceptually distinct from the usual promotional TV or printed advertisements where we marketed or promoted the "Ballantine's" whisky to the consumer audience. The latter is conveniently described in the industry as "bottle publicity" or "brand publicity", where advertisements for our Ballantine's whisky are traditionally placed, often on a stand-alone basis, in various forms of media. In contrast, "event publicity" meant that the focus was on promoting the Event and increasing its publicity. The greater the awareness of Ballantine's Legends of Golf, the more the golfing public will know of Ballantine's, the Scotch whisky.
>
> Furthermore, there was synergy between the target audience of the Event – men in their forties who are most likely to play golf and drink whisky.

112 Sim testified[50] that she had informed the plaintiff of the defendant's target audience in a meeting in February 2002. It was not documented as Andy had yet to join the plaintiff and there was no established minute-taking procedure in those days. Sim recalled she had briefed the plaintiff (as well as Michelle after Michelle joined the company), that the defendant wanted to leverage on the

Event to promote the 17 Years Old and limited edition (30 Years Old) aged Ballantine's, that the target consumers were predominantly men who were in their late 40s and upwards, who were in established positions and whose lifestyles included playing golf. In this regard, Sim had passed a book titled *The Scotch – The Story of Ballantine's 17 Years Old* to Murray.[51]

113 Cross-examined, she disagreed with counsel's suggestion that the defendant itself did not know and did not inform the plaintiff what publicity it wanted, commensurate with the prize money of US$500,000. Extracts[52] from *The Scotch* book appeared in O'Connor's write-up[53] for the lead-up tournaments to the Event. He had incorporated the following excerpts from the book into his introductory paragraphs:

> Only a mind with the mischievous ingenuity of the Scots could have devised a game as challenging and frustrating as golf. Never in the history of sport has such a relatively uncomplicated game become such a glorious obsession.
>
> Golf is about winning and losing. And later celebrating – or trying to forget, whichever the case may be – with the help of a welcome whisky in the clubhouse …
>
> In addition to bestowing their greatest game on the world, the Scots also contributed that other fine tradition of the 19th Hole, enabling the worst of enemies on the course to retire to the bar the best of friends and raise a toast of Ballantine's to each other.

This contradicted the plaintiff's claim that it was not briefed on what the defendant's target and market audiences were.

Was there adequate publicity and promotion before 3 October 2002?

114 It should be noted that in a letter dated 19 July 2002 to the plaintiff, the defendant had placed on record that since the press conference there had been an absence of publicity. It expressed its concerns and added:[54]

> Please provide us with Excel Golf's plan to publicize the tournament, including the work that has been done to-date, and comprehensive details of the plan moving forward.

The request was repeated in the defendant's reminder of 25 July 2002 and in subsequent correspondence and meetings with the plaintiff. Although Chuan's reply dated 26 July 2002 claimed "all promotions and media coverage of the said event have been organised and will be carried out within the next 3½ months", he admitted under cross-examination[55] that, even as at 7 August 2002, the public relations plan had neither been finalised nor carried out. O'Connor himself clarified[56] that as at 26 July 2002 promotions and media coverage "were being organised", not that they had been organised. He admitted that up to 22 July 2002 there had been no paid-for advertisement on radio or television or in print. Indeed, it was his intention not to advertise until closer to the Event, even though the defendant was becoming increasingly anxious about the lack of publicity and even though, according to O'Connor, he had started negotiations with the cable television sports channel ESPN and *Asian Golf Monthly* magazine back in April 2002.

115 As publicising the Event was not the defendant's responsibility, Sim said they left it to the plaintiff to come up with a plan and advise the defendant on how it intended to achieve the publicity and goal the defendant wanted. The defendant pleaded in the defence ([77] *supra*) that O'Connor's working plan dated 29 July 2002[57] was vague. Michelle explained[58] that it was basically only a concept which needed to be fleshed out with more details and that there were no timelines. However,

according to Michelle and Sim, the defendant had trouble contacting O'Connor to update and present the working plan. By his own admission, O'Connor was still finalising the public relations plan up to 14 August 2002. It speaks volumes of his ability that O'Connor failed to show up at the meeting on 14 August 2002 after the defendant had finally managed to contact him. Instead, Gartshore appeared with Chuan and presented the defendant with new proposals that turned out to be an advertising schedule described as a "consolidated media flow plan" ("the Plan"), which the defendant received for the first time on 17 September 2002.[59]

116 In order to meet the 20 September 2002 deadline for advertisement of the Event in the October 2002 issue of *Asian Golf Monthly*, the Plan stated the defendant was required to book space in the magazine that very same day. Understandably, Michelle voiced the defendant's frustrations at the rush. The Plan provided for two 30-second slots of radio advertising and one 15-second slot of television advertising (with no details or signed contracts) for the prices of S$30,000 and S$20,000 respectively. Press advertisement would be in the *Today* newspaper. The budget totalled S$89,869.18. In its submissions, the defendant complained, quite rightly, that the lateness of the Plan meant that the defendant had less than two months' publicity and promotion before the Event was held. Cross-examined,[60] O'Connor conceded this to be the case, claiming it was because the defendant never told him[61] what its target audience and objectives were, although he was aware that US$50,000 was the budget for advertising as at June 2002. In the light of O'Connor's write-up for the lead-up tournaments to the Event and what was set out in [113] above, this excuse is unsustainable.

117 Why the lateness? It was undoubtedly due to the plaintiff's failure to find other sponsors. It was unwilling to be out-of-pocket on publicity. It therefore hoped and looked for free publicity to avoid having to meet the expense itself. Gartshore, who has 38 years in advertising, opined[62] that if the defendant had advertised Ballantine's whisky in such "lifestyle" magazines as *The Peak*, *Prestige* and the *Singapore Tatler*, it was "quite likely" that, in exchange, these magazines would have done write-ups on BLOG. It is not disputed that O'Connor and the plaintiff constantly pushed the defendant to do brand advertising. O'Connor admitted[63] that he was hoping to promote the Event with the *Singapore Tatler* and with in-house magazines of the venue and of the Singapore Island Country Club (called *The Islander*). Had he succeeded in getting write-ups in these magazines, riding on the defendant's brand publicity the plaintiff would not have had to pay. The plaintiff's budget for advertising and promotion shrank from US$50,000 to US$20,000, increased to US$35,000 and was to have been topped-up again to US$50,000 by the defendant. Marketing and promotion disappeared altogether from the budget of 26 July 2002. The plaintiff then tried, albeit unsuccessfully because of the defendant's objections, to shift the advertising and promotion expense from the EG to the staging account. As an aside, when asked why the cost of promotion in the 6 May 2002 budget ([38] *supra*) was shifted to the staging account, Chuan claimed[64] it was a "retaliatory action" because the defendant would not pay the appearance fee of Gary Player. His explanation contradicted Drayson's, who testified[65] that when he prepared the first budget, he had placed television in the staging account only to be told by Chuan that the item should go into the EG account as the plaintiff was responsible for the expense. Drayson,[66] who was a more credible witness, confirmed that in preparing the accounts it was agreed between him and Chuan that he would take instructions from Chuan as to which items went into which accounts.

118 Chuan had represented in an update to the defendant on 11 June 2002 that O'Connor was awaiting a contract with ESPN Star Sports at a price below S$60,000. O'Connor gave the defendant a similar false impression in July 2002. In truth, a proposal only came from ESPN in July 2002.[67] Questioned, Chuan's lame excuse was that he had relied on O'Connor. O'Connor himself admitted the first draft contract was forwarded by ESPN on 13 September 2002. He sought to defend himself by claiming[68] that he had a very good working relationship with ESPN, that they were standing on a

solid offer that was moving forward, and that he had had on-going discussions with the sales, production, distribution and legal departments of ESPN. He then blamed the defendant for the lack of a contract with ESPN, alleging that it was due to its pulling out of the tournament. Frankly, his excuses lacked credibility.

119 The defendant raised another complaint concerning ESPN. Its South Korean associate was interested in having exclusive television coverage of the Event in South Korea and preferred to work with the South Korean broadcaster for the golf channel (Channel 44) in that regard. Jinro Ballantine's therefore sought the defendant's assurance, which the defendant in turn sought from O'Connor, that ESPN would not broadcast the Event in South Korea. Michelle sent e-mails to Chuan on 8 and 9 July 2002 seeking ESPN's written confirmation that South Korea would be taken out of the broadcast distribution (which would be a two-hour telecast by CNBC), otherwise Jinro Ballantine's could not finalise its negotiations with Channel 44. O'Connor gave the requisite assurance by e-mail on 9 July 2002 attaching a reply[69] from Mike Rehu, executive producer and director of ESPN Star Sports which stated:

> ESPN Asia cannot be received in Korea except through our joint venture and we will not supply them with our product.

The defendant duly conveyed the assurances of O'Connor and ESPN to Jinro Ballantine's, who proceeded to negotiate with Channel 44 on that basis.

120 However, on 30 August 2002, when O'Connor emailed Michelle to say he had closed the package with ESPN at US$59,000 with a significant reduction, he cautioned that although Star Sports was not a paid cable operator in South Korea some pockets of the population who owned satellite dishes could pick up the feed for free from "leakage" from China. Questioned by the defendant, O'Connor clarified for the first time on 3 September 2002 that "ESPN channel is not the channel that the tournament is being distributed on ... [T]he Starsports network is completely separate to the ESPN channel. … Yes, you do have a letter pertaining to ESPN … NOT Starsports and the tournament will be televised on Starsports."

121 In her written testimony, Michelle deposed she was confused by O'Connor's explanation. If there was indeed a distinction between ESPN and Star Sports, O'Connor should have told the defendant at the outset which he did not. I would add that O'Connor's reliance on Mike Rehu's confirmation of 9 July 2002 to support his explanation was misconceived as Mike Rehu wrote on behalf of ESPN Star Sports. When Michelle repeated her request for ESPN's written assurance that it would not distribute the Event in South Korea, O'Connor replied to say "I doubt ESPN Star Sports (the company) will offer AD [the defendant] the letter you have requested regarding their Star Sports channel distribution" and added "The ESPN channel and Star Sports channel are 2 very separate distributions".

122 In cross-examination,[70] Michelle testified that even if ESPN and Star Sports were two separate channels as would appear to be the case, ESPN Star Sports was represented to her as part of one network by O'Connor, and she understood the Event would be telecast on the ESPN Star Sports channel. In her written testimony,[71] Michelle deposed that the "whole fiasco" caused Jinro Ballantine's much wasted effort and potential legal liability towards Channel 44, which could easily have been avoided had O'Connor been more transparent and informative in providing the defendant with details of the television package.

123 A further criticism levelled against O'Connor was his choice of newspaper promotion. It reflects poorly on him that he considered advertising the Event in *Today* and *The New Paper*, two

tabloid dailies (the former is distributed free) the reader profile of which – soccer-loving and/or blue collar and non-golfing – was totally incongruent with the defendant's target audience of 40-something men who drank whisky and played golf. O'Connor did not deny this. One would have thought *The Straits Times*, if not *The Business Times*, would have been the more appropriate newspapers to carry advertisements of the Event, but this would have cost the plaintiff more. Although O'Connor disagreed[72] with counsel's suggestion that the appointment of Fulford by the defendant would have jeopardised his consultancy and agreement with the plaintiff, it cannot be denied that O'Connor would have lost a monthly income of S$12,000 if his services had been terminated by the plaintiff.

124 The defendant called Adrian New ("New"), the president of Redmandarin Pte Ltd, a sponsorship specialist, as an expert witness. New[73] used to work as a senior vice-president for credit card company Visa International ("Visa") from 1992 to 2001. He was familiar with golf tournaments as he had previously been involved in the Asian PGA Tour, including the Caltex Masters in Singapore (presented by Carlsberg), the Omega Hong Kong Open and the Carlsberg Malaysian Open. He clarified that when he was with Visa, now one of Redmandarin's clients, the company would use sponsorship to drive its business. Hence, his involvement in seven to eight golf events, including the Johnnie Walker Classic.

125 The defendant sought New's views on the sponsorship aspect in this dispute. He opined that for an event like BLOG, he would have expected that there would be a title sponsor, several supporting sponsors and official suppliers who would contribute either money or value in kind to the Event. He would have expected most of the sponsorship agreements (*viz*, signed contracts with agreed deliverables and commitments) to be in place six months before the Event was staged. For the defendant to be able to properly leverage on its investment in the Event, it would need to run advertisements and promotions around the Event as well as invite key customers. To do that, the defendant would require planning well in advance (probably a year ahead) and implementation six months beforehand. Basically, the scale of an event would dictate the time-frame involved. He cited the Olympics as an example where long-term planning was needed and contracts might be signed ten years before the event.

126 In answer to a question from the court,[74] New opined that to a reasonable average person, the target audience of a golf tournament with a title sponsor would usually be golfers as it gave them an opportunity to see the best golfers in the world and in their country at close range. I should point out that the plaintiff not only did not call a corresponding expert or indeed any expert to refute New's testimony, it even relied on his testimony in its submissions.[75]

127 Even if the budget was at or below US$50,000, it was not unreasonable of the defendant to expect paid-for advertisements announcing the November tournament shortly after the press conference, while the Event was still fresh in the public's mind. This would include newspaper advertising as well as advertisements in golf magazines such as *Asian Golf Monthly*. Write-ups, articles (as in *Par Golf* magazine) and news items in the press and magazines were not good enough. Instead of shifting the publicity engine fired off by the press conference into higher gear, O'Connor literally let the engine die out; he failed to deliver what he had promised the defendant. As the plaintiff itself accepted New's expert testimony of what was expected of an event organiser for a golf tournament, I hold that the plaintiff failed to discharge its duty to provide adequate promotion and appropriate publicity for the Event between May and 3 October 2002.

128 Although the plaintiff failed to promote and publicise the Event in advance and adequately, the plaintiff's submissions[76] relied on the defendant's duty-free promotion for BLOG at Kuala Lumpur International Airport between 1 August and 30 September 2002 as an admission of the plaintiff's complaint that it was done without consulting the plaintiff. The submission is misconceived as a letter

dated 15 October 2002[77] to the contest winner in Japan was written by Enrichment Music and Arts, who described themselves as the appointed event manager for the mentioned promotion, and para 2 therein clearly stated:

> [W]e would like to advise that Ballantine is no longer a sponsor to the golfing event Legends of Golf. As such, golfing activities that are organised in conjunction by [*sic*] this promotion will not be activated.
>
> Nevertheless, we congratulate you on having won two (2) economy class return tickets to Singapore inclusive of 4 nights' accommodation … and option to play one night golf game on November 9th…

The findings

129 At the outset in [81], I observed the different approach the parties adopted to present their respective cases. Chuan's written testimony did not address the detailed allegations raised by the defendant's witnesses, whilst the affidavit evidence-in-chief of the plaintiff's other witnesses barely addressed them. More importantly, the defendant's allegations were often not challenged during the cross-examination of its witnesses. Consequently, the defendant submitted,[78] which submission I accept, that the rule in *Browne v Dunne* (1893) 6 R 67, HL, applies. The principle in that case is to the effect that where the court is asked to disbelieve a witness, the witness should be cross-examined. Failure to cross-examine the witness on some material part of his evidence, or at all, may be treated as an acceptance of the truth of that part or the whole of his evidence. This would apply to the budget issue as well as to the defendant's complaint on the lack of other sponsors. The plaintiff decided to skirt both issues by denying it was contractually obliged to provide budgets and to find other sponsors. I have rejected both denials in the light of the overwhelming evidence to the contrary produced in court, not to mention the contradictory answers adduced from Chuan under cross-examination.

130 My observation on the different approaches adopted by the parties in the conduct of their cases also applies to their final submissions. The defendant's submissions painstakingly addressed all the relevant issues raised by the pleadings and made detailed reference to the relevant notes of evidence. On the other hand, the plaintiff's closing submissions:

(a) were sometimes made with complete disregard to the actual evidence adduced in court;

(b) contained incorrect conclusions; or

(c) overlooked testimony which discredited its case or its witnesses.

131 An example of (a) is para 10 where the plaintiff submitted that it had arranged for several media promotions, had secured *The Economist* to promote and advertise the Event and had arranged to do the same with *Asia Golf Monthly*, *Today* newspaper, Mediacorp Radio, CNN, Singapore Tourism Board and Channel News Asia. No independent evidence was produced to corroborate the plaintiff's claims save for Gartshore's media plan. In the case of *The Economist*, the affidavit of Timothy John Pinnegar, its regional advertising manager, was disregarded [79] because he did not testify. Equally, there is no evidence to support para 4 on p 107 of the plaintiff's submissions that SSC's close association with rugby and O'Connor's ongoing management of Wanderers Rugby Club meant he would have considerable success in securing co-sponsorships for the Event.

132 An example of (b) was the plaintiff's conclusion that Parmley's internal e-mail dated

6 February 2002[80] to the defendant's staff (including Neil Macgeorge, its brand marketing manager) where he said the defendant had "contracted for the rights to the EPGA Seniors' golf tour for Asia for 3 years" proved the parties had a three-year contract. The e-mail was not addressed to the plaintiff and Parmley explained[81] that it was to let Ian Macgeorge know what the defendant was doing. I do not accept that it amounted to an admission of a three-year commitment.

133 An example of item (c) was the plaintiff's submission that the defendant had agreed to a 25% increase in the management fees when Chuan himself had admitted[82] it was only a proposal he had made to Parmley.

134 Chuan, as the plaintiff's managing director, did not impress me with his lack of candour and constant shift in positions. It is neither possible nor necessary to cite the many instances where he was shown to have been untruthful under oath. They are set out at length in the defendant's submissions.[83] On more than one occasion, I chided him on his prevarications and for sidestepping, instead of answering, counsel's questions. He was accused by the defendant during cross-examination, and in its final submissions, of being dishonest. This allegation is not without basis when his conduct is viewed in the light of the deals for secret commissions he concluded at the expense of the defendant or, as in the case of the agreements with EventsAsia and Nutrius, his attempts to reduce profits meant for the staging account for the plaintiff's benefit. Even on signage, Chuan attempted to renege on his agreement that the cost would be shared between the parties, although Murray (who was in charge of the signage) testified there was indeed such an agreement. The plaintiff's submissions described[84] the defendant's allegation of secret commissions as false and valiantly attempted to show that the defendant knew that the 10% commission deals Chuan secured for the plaintiff were all meant for charity. If indeed his motive was that noble, then why did Chuan not disclose all the commission agreements voluntarily until the plaintiff was forced to do so by order of court?

135 The above references are by no means exhaustive: further examples of Chuan's misdeeds are set out in the defendant's closing submissions. The examples also exclude Chuan's conduct after 3 October 2002. Whatever doubts I may have had that the defendant's harsh criticisms of him were unjustified were dispelled by Chuan's acts subsequent to the notice of termination.

136 The defendant accused Chuan of manufacturing evidence. He had written or e-mailed on the plaintiff's behalf from January 2003 onwards to many of the alleged sponsors, in effect thanking them for agreeing to sponsor the November 2002 event. Such self-serving evidence did not help to advance the plaintiff's case. Indeed, the letters are highly suspect and, consequently, have no probative value whatsoever. Counsel for the defendant pointed out discrepancies in some of those letters; I shall highlight three:

(a) Chuan purportedly wrote to CNN on 20 September 2002[85] stating, in para 1:

> … CNN will kindly agree to provide a similar media barter sponsorship as per your e-mail of Friday October 11 2002 an the Campaign period as per your CNN Media package dated 4 Oct 2002. I write this long overdue BLOG 2002 Sponsorship letter.

Cross-examined, Chuan realised he had made a mistake in pre-dating his letter *before* CNN's email, conceded his letter was written on or after 20 October 2002, and explained lamely that it was "a template letter".[86] I then pointed out to him that even template letters can have their dates updated, to which he agreed.

(b) Sebana Golf & Marina Resort ("Sebana") was not listed among the 51 sponsors[87] the

plaintiff claimed to have procured. Yet Chuan purportedly e-mailed Sebana on 29 January 2003[88] to say:

> I write to thank you for your ongoing support of the BLOG and document the various point [*sic*] that were agreed to.

He attached therewith his signed letter bearing the same date, his signed letter dated 1 September 2002[89] and another document. If indeed Chuan had e-mailed Sebana on 29 January 2003, there could not have been the two signed attachments, as Chuan confirmed when questioned by the court.[90]

(c) The plaintiff produced a letter dated 20 May 2003[91] from Graham Brash signed by Chuan's secretary Evelyn as its general manager and addressed to Chuan as the plaintiff's managing director. It read:

> This is to confirm that Graham Brash Pte Ltd agreed to be a Sponsor on the Ballantine's Legends of Golf for S$25,000, S$20,000 in barter and S$5,000 in cash.

Graham Brash, Chuan's company, was also not on the plaintiff's sponsors' list. Neither had the defendant seen this letter before discovery. Questioned, Chuan said[92] "Evelyn got the date wrong" and the letter should have been dated 20 May 2002. As he had been proven by the defendant to have a propensity to lie, I disbelieved Chuan; the letter was indeed created in May 2003.

137 In its submissions,[93] the plaintiff sought to explain the discrepancy in the letter to Sebana. It said Chuan's second attachment to his e-mail dated 29 January 2003 had been created on 1 September 2002 and printed and faxed out on that date; so, too, had been the first attachment dated 29 January 2003. I need only say there was no evidence to support this submission.

138 Chuan was further accused by the defendant of perverting the course of justice; it cited the following instances:

(a) At the annual general meeting of the parent company in London on 30 January 2004, he admitted responsibility[94] for distributing a letter from York Holdings dated 18 January 2004[95] which talked about this case coming on for trial on 3 February 2004; reference was made to the BLOG website.

(b) At the opening of this trial, counsel for the defendant complained about the plaintiff's website on which the plaintiff had even included New's *curriculum vitae*. Counsel for the plaintiff assured the court that the defendant's complaint was completely unfounded and the website made no reference to this case. I directed the plaintiff to remove forthwith any references to this case on pain of being cited for contempt of court. On the following afternoon, counsel for the defendant complained[96] that the plaintiff's website still contained references to the case and that it had even posted the defendant's cheque, on which payment was stopped, thereon.

(c) Despite a reminder from the defendant's solicitors dated 8 October 2002[97] demanding that the plaintiff cease using the Ballantine's brand name and all accompanying logos, the plaintiff persisted in using the words Ballantine's Legends of Golf on the website it had created on Chuan's justification that "this was the event's website".[98] He only removed the Ballantine's Legends of Golf trade mark (which the defendant registered on 8 October 2002) on 29 May 2003 after the defendant had filed its defence and counterclaim on 29 April 2003 praying for an injunction to

restrain the plaintiff from using the same.

139 As late as 29 May 2003, Chuan still discussed this pending case on the plaintiff's website and had offered (via the website of Graham Brash) copies of the parties' pleadings. Questioned, he claimed[99] "it was done tongue in cheek". I disbelieved him. Having seen him in the witness box for over a week, Chuan's actions showed that he will go to any lengths to make money; he also came across as arrogant. Instead of focusing his energies on legitimately earning his keep by organising the Event properly, Chuan preferred to indulge in schemes to make illegitimate profits off the defendant. He acted disgracefully, behaving in a manner unbecoming of a managing director of any respectable company.

140 O'Connor fared little better than Chuan as a witness. He was shown to be untruthful under cross-examination: see [109]–[113] *supra*. I would have expected any professional and competent event organiser to have done a better job than what he did for the Event. He and Chuan looked upon the defendant as a cash cow to be milked for all it was worth. That was a grave mistake which also revealed their lack of vision. Had the plaintiff and its consultants discharged the duties promised to, and expected of them by, the defendant and made the 2002 Event a success, it would have guaranteed its continued engagement by the defendant to organise the tournaments for 2003 and 2004, if not beyond. The BLOG would then have become a permanent and well-known fixture on the EST/PGA calendar.

141 Although he was called as a witness of fact, Hadley[100] liberally gave his opinion that the plaintiff had done a wonderful job. I do not consider him to be an objective or independent witness in the light of the agreement between his company and the plaintiff. Equally, Murray is not an independent witness although he, Drayson and Andy were more truthful in their testimony. In his first affidavit, Hadley over-emphasised the fact that the defendant's various witnesses (including Tham and Lim who are qualified accountants) were inexperienced in golf tournament budgets. He opined that the defendant's team involved with the Event were unfamiliar with golf tournaments since none of them (save for Baven Chin, Victor Lee and Francis Lee) played the game. I wonder why being a golfer is a prerequisite for a professional and competent event organiser to properly organise a golf tournament. In the case of Chuan and Murray, whatever abilities they may have had on the golf course (including being single-handicappers if they are) apparently did not translate into competence in organising the Event.

142 There is no magic in a golf tournament budget either. Budgets are budgets regardless of the purpose for which they are prepared. It does not make one iota of difference to a qualified accountant whether the figures he sees in a budget (if properly prepared) relate to a company's normal trading operations, a fund-raising exercise for charity, or any other project.

143 As the South Korean market accounted for 45% of the defendant's turnover in the Asia-Pacific region, the defendant naturally wanted to reward its South Korean customers by flying them to Singapore to participate in the Pro-Am tournaments before the event. It also tried to fulfil the South Koreans' ambitious "wish list" of having top professional golfers (save for Tiger Woods) participate in the Pro-Am tournaments. As such, Jinro Ballantine's was involved in the preparations for the Event. Its staff came to Singapore for the press conference and attended the meeting between the parties on 24 April 2002. The plaintiff's counsel latched on to this at trial[101] to suggest that Jinro Ballantine's may have been unhappy with the defendant's arrangements for the Event (which it funded), and this could have pressurised the defendant to terminate the agreement with the plaintiff. This was pure speculation; it was never pleaded as part of the plaintiff's case and I therefore disallowed counsel's cross-examination along those lines.

144 Counsel for the plaintiff also sought (unsuccessfully) to extract from the defendant's witnesses evidence to the effect that the defendant attempted to renege on the oral agreement for cost considerations. As was pointed out by Burnett,[102] the sums and potential loss involved had the Event for 2002 been held would have been a drop in the ocean when compared to the parent company's annual budget of £500m for worldwide brand advertising for the Allied Domecq group. This "theory", as the defendant described it, was not pleaded as part of the plaintiff's case and I agree it should be disregarded. In court and in its submissions, it further suggested that it was bickering and personality differences between the parties, for which the defendant was blamed, that was the problem rather than any breach of the terms of the agreement. This was yet another theory concocted by the plaintiff which I again disregarded.

Repudiatory breach

145 The protagonists accused each other of being in repudiatory breach of the agreement, written or oral. It would therefore be appropriate at this juncture to look at the relevant law. Both parties relied on the same authorities in their submissions. The case *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26 was cited for Diplock LJ's definition, at 69, of conditions and warranties: a "condition" is a term "the breach of which gives rise to an event which relieves the party not in default of further performance of his obligations", and a "warranty" is a term "the breach of which does not give rise to such an event". The plaintiff referred to two local cases to show Singapore courts have adopted the common law definition of a "condition", *viz*, *San International Pte Ltd v Keppel Engineering Pte Ltd* [1998] 3 SLR 871 and *Kool Team Marketing v Pacific Sunwear Pte Ltd* [2000] 2 SLR 243.

146 Both sides also relied on the following extract from *Chitty on Contracts* (28th Ed, 1999) vol 1, which states at para 12-026:

> [T]he reason why a breach of a condition entitles the innocent party to treat himself as discharged has been said to be that conditions "go so directly to the substance of the contract or, in other words, are so essential to its very nature that their non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all."

147 The learned authors of *Chitty* then referred to a third category of term which Diplock LJ said in the *Hongkong Fir* case at 70 cannot be classified as either a "condition" or a "warranty". The defendant cited the following passage from *Chitty* at para 12-034:

> The description that has been applied to such terms is that of "intermediate" or "innominate" terms. Breach of such a term entitles the party not in default to treat the contract as repudiated only if the other party has thereby renounced his obligations under the contract, or rendered them impossible of performance, in some essential respect or if the consequences of the breach are so serious as to deprive the innocent party of substantially the whole benefit which it was intended that he should obtain from the contract.

148 The defendant submitted that the three terms which are conditions that went directly to the substance of the contract involved:

(a) a proper system of accounting and the budget for the Event;

(b) co-sponsorships; and

(c) publicity for and promotion of the Event.

The non-performance of each of these terms by the plaintiff deprived the defendant of substantially the whole benefit of the contract which it was intended that it should obtain from the contract. As such, each of these breaches was a material breach of the oral agreement which entitled the defendant to terminate the oral agreement.

149 The plaintiff on the other hand submitted that even if it breached those terms, they were not conditions but warranties which only entitled the defendant to claim damages and not treat itself as discharged from the obligations under the agreement. Alternatively, the terms were innominate terms, the breach of each of which was not so serious as to deprive the defendant of substantially the whole of the benefit it had contracted for. The benefit the defendant wanted was to hold a successful golf tournament. Breach of any of the above three terms would not have detracted from the fact that:

(a) the venue for the Event had been secured;

(b) the prize money of US$500,000 was still available; and

(c) enough quality players, including Gary Player, had committed themselves to the Event.

With respect, the plaintiff's submission was overly simplistic. The question that should be asked is, did the defendant get what it bargained for, and what the plaintiff agreed to deliver, in exchange for a management fee of US$250,000? The answer must be a resounding "no". I cannot see how the plaintiff is entitled to be paid US$250,000 merely for securing the venue and arranging for Gary Player and other professional golfers to play in the tournament. The prize money involved no effort on its part as it came from the defendant.

150 What the defendant expected and was entitled to expect from the plaintiff was a highly-publicised and professionally-organised golf tournament sponsored by a good variety of local and international sponsors, targeted at and attended by male golfers in their 40s, as befitting the image of Ballantine's 17 Years Old and 30 Years Old whisky. The Event should have been attended by reasonably well-known, if not, top golfers of the PGA, should have been promoted in news media and telecast "live" on cable television in the Asia-Pacific region, and should have attracted overseas visitors to play in the Pro-Ams. Even if the Event did not make a profit for the defendant in 2002, it should have broken even in costs or, at the least, the loss should have been minimal and more than compensated for by the wide publicity generated, which the defendant could leverage on for future tournaments. The plaintiff did not fulfil any of the defendant's expectations. It is my view that the terms the plaintiff breached were conditions, not warranties or innominate terms. The breaches were so serious that they deprived the defendant of substantially the whole benefit it was intended to obtain from the oral agreement. It was the plaintiff, not the defendant, who repudiated the oral agreement.

Conclusion

151 Consequently, I dismiss the plaintiff's claim with costs to the defendant. The plaintiff's claim included the prize money of US$1.5m for the years 2002 to 2004. As the defendant described it in its submission, this claim is outlandish or absurd. Even if the tournament was held for the three years, the prize money would not be paid to the plaintiff but to the winning golfers. Equally absurd was the plaintiff's claim for "loss of reputation" which included Hadley's loss of credibility. He was not a party to this suit and, when cross-examined, was not even aware he was included in the statement of claim. This is a claim in contract, not a claim in tort for defamation.

152 I award judgment to the defendant on its counterclaim with costs. The defendant is entitled to final judgment for all sums which it paid to the plaintiff for the management fee, including the US$50,000 (S$92,500) deposit paid to EST. For the press conference, it is also entitled to be reimbursed for its payments to Swingmart (S$12,572.19) and the plaintiff (S$4,854.60). In relation to its other claims such as for the cost of liquor, the Event trophy, payment for tax advice, *etc*, I award it interlocutory judgment with damages to be assessed. The defendant in its submissions[103] challenged the plaintiff's claim for the sum (S$32,051.56) paid to EST. This item of claim should also go for assessment if the defendant is intent on pursuing it. Costs of assessment are reserved to the registrar. The defendant is awarded interest at 6% per annum on the judgment sums from the date of the writ until payment.

153 Finally, in relation to the defendant's registered trade mark "Ballantine's Legends of Golf", an order in the terms of prayers (3)(a) to (f) and (4) of the counterclaim is granted. Having lost their action, the plaintiff no longer has any *locus standi* to make use of the trade mark or refer to BLOG in any context, including their website.

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[1]See DB571.

[2]PW8.

[3]Notes of evidence p 686.

[4]PW1.

[5]PW7.

[6]Notes of evidence p 323.

[7]DW2.

[8]DW6.

[9]DW4.

[10]Notes of evidence p 551.

[11]PW5.

[12]Notes of evidence p 304.

[13]DB916.

[14]DW7.

[15]Notes of evidence p 669.

[16]Notes of evidence pp 308–309.

[17]Notes of evidence p 330.

[18]PW7

[18]PW7.

[19]Notes of evidence p 329.

[20]DW1.

[21]Notes of evidence p 362.

[22]DB4194.

[23]Notes of evidence p 196.

[24]At paras 7.2 and 7.3.

[25]Notes of evidence p 42.

[26]Notes of evidence p 462.

[27]Notes of evidence pp 42–43.

[28]DB2283.

[29]DB4279.

[30]PW3.

[31]Notes of evidence p 242.

[32]Notes of evidence pp 460–461.

[33]Notes of evidence p 691.

[34]Paras 63–69.

[35]Notes of evidence p 372.

[36]At para 9.

[37]Para 317.

[38]Notes of evidence p 49.

[39]Pages 109–111.

[40]See DB4195.

[41]DB4353.

[42]DB2660.

[43]Exhibit D1.

[44]See DB341.

[45]See DB4134/4148.

[46]See DB4116.

[47]Notes of evidence p 79.

[48]DB2201.

[49]PW4.

[50]Notes of evidence p 614–615.

[51]Notes of evidence p 644.

[52]Exhibit D2.

[53]DB401.

[54]DB1599.

[55]Notes of evidence p 185.

[56]Notes of evidence pp 272–273.

[57]At DB1692-97.

[58]Notes of evidence p 555.

[59]See DB2818–2821.

[60]Notes of evidence p 280.

[61]Notes of evidence p 263.

[62]Notes of evidence p 305.

[63]Notes of evidence pp 279–280.

[64]Notes of evidence p 75.

[65]Notes of evidence p 314.

[66]PW6.

[67]DB1369–1372.

[68]Notes of evidence p 270.

[69]DB1496.

[70]Notes of evidence pp 538–539.

[71]Para 173.

[72]Notes of evidence p 268.

[73]DW5.

[74]Notes of evidence p 581.

[75]Paras 59–60.

[76]Page 10.

[77]DB3341.

[78]Para 158.

[79]Notes of evidence p 336.

[80]DB 89.

[81]Notes of evidence p 441.

[82]Notes of evidence p 27.

[83]Paras 282 to 311.

[84]At p 100.

[85]DB2938.

[86]Notes of evidence p 139.

[87]Exhibit D1.

[88]DB3611.

[89]DB3615.

[90]Notes of evidence p 145.

[91]DB990.

[92]Notes of evidence p 142.

[93]Page 68 para 5.

[94]Notes of evidence p 198.

[95]DB4406.

[96]Notes of evidence p 61.

[97]DB9412.

[98]Notes of evidence p 196.

[99]Notes of evidence p 197.

[100]PW1.

[101]Notes of evidence p 642.

[102]Notes of evidence p 694.

[103]Pages 138–139.

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