Sum Yue Holdings Pte Ltd *v* Foo Sek Soon (alias Justin Foo) and others [2010] SGHC 181

Case Number : Suit No 13 of 2008

Decision Date : 29 June 2010

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Sam Han Tatt (H T Sam & Co), Oei Ai Hoea Anna (Counsel instructed) with Chen Wei Ling and Sng Kheng Huat (Sng & Co) for the plaintiff Palmer Michael Anthony, Lem Jit Min Andy and Deryne Sim Lifen (Harry Elias Partnership) for the 1st to 6th defendants 7th defendant in person.

Parties : Sum Yue Holdings Pte Ltd — Foo Sek Soon (alias Justin Foo) and others

Companies – Directors – Duties

29 June 2010 Judgment reserved

Lai Siu Chiu J:

1 This was a claim by Sum Yue Holdings Pte Ltd ("the plaintiff") for conspiracy and breach of their duties as directors and/or employees, against its two former directors Justin Foo ("Justin" who is the first defendant) and Bob Lim ("Bob" who is the sixth defendant) and its three former employees Theresa Ang ("Theresa" who is the second defendant), Richard Lim ("Richard" who is the fourth defendant and the son of Bob) and Peter Lim ("Peter" who is the fifth defendant).

2 The plaintiff also sued Latrade Automation Pte Ltd (the "third defendant") for participating in the conspiracy and for concealing its receipt of payments amounting to $225,720 from Sam Hui Engineering Works and Service for a project. It was the plaintiff's case that the third defendant was incorporated by Justin and Theresa with the expectation that existing jobs which were being carried out by the plaintiff as well as new jobs to be awarded, would be transferred to the third defendant. The first to sixth defendants will be referred to collectively as "the defendants" or "the six defendants" henceforth where appropriate. Sam Hui Engineering Works and Service is the seventh defendant and is a sole-proprietorship of one Chow Chee Meng ("Chow"). Specifically, the plaintiff claimed that the defendants had conspired to cause loss to the plaintiff by terminating an agreement that the plaintiff had with Chow for the supply and installation of hot air ducting for a company in Jurong called Techno Glass Singapore Pte Ltd ("the NH Glass project") and transferring that project to the third defendant. The plaintiff claimed against Chow for damages for breach of contract and for dishonest assistance in the breaches by Justin and Bob of their fiduciary duties and in conspiracy. The plaintiff further sued the defendants for causing it to purchase $124,564.83 worth of materials when the materials were not meant for the plaintiff's use but which were used by the third defendant in the NH Glass project.

3 At the material time, the three shareholders of the plaintiff were Justin, Lim Men See ("Lim") and Sum Yue Electrical Industries Pte Ltd ("SYEI"). Lim was at the material time and is still, the managing-director of the plaintiff. The shareholders of SYEI were Lim and Bob.

4 The plaintiff's claim essentially arose from a purchase order no. 05-0001 ("the PO") dated 4 January 2005 in the sum of $300,000 issued by Chow to the plaintiff for the NH Glass project. The NH

Glass project was essentially Justin's responsibility.

5 According to Lim's affidavit of evidence-in-chief ("AEIC"), on 7 January 2005, the plaintiff rendered invoice SYH 2100 for $75,000 to Chow for 25% down payment on the NH Glass project. Chow paid the invoice on 10 January 2005. Thereafter, the plaintiff made preparations for carrying out the NH Glass project. On 13 January 2005, it placed an order with Sim Lee Seng for installation of metal ducting and dismantling of an existing cooling tower for which it made a down payment of $15,000. Between 24 January 2005 and 5 May 2005, the plaintiff ordered materials from ESAB Asia Pacific Pte Ltd totalling $124,564.83.

6 On 31 March 2005, Chow wrote to the plaintiff to say he had cancelled the PO (see [4] above) ("the cancellation letter") due to "unsatisfactory work progress" and that he had appointed other contractors to take over the NH Glass project. It was the plaintiff's case that the cancellation letter was not prepared by Chow but by Justin who then brought it to Chow and procured Chow's signature on the document. On the same day, Justin wrote to Chow to confirm the third defendant would take over the NH Glass project for $225,000. On the same day too, Justin resigned from the plaintiff's employment. Justin's last day of work with the plaintiff was 30 April 2005 but he remained a director and shareholder of the plaintiff until July 2005 (according to Justin) while the plaintiff contended that he was a director until 27 September 2007.

7 It was also the plaintiff's case that notwithstanding the cancellation letter, the plaintiff continued to purchase materials (with the approval of Justin and Bob) for and its employees continued to work on, the NH Glass project even after 31 March 2005.

8 The plaintiff alleged that the third defendant issued invoices to and received payments from Chow even before 31 March 2005. In particular, the third defendant issued an invoice no. 238801/05 for $20,000 on 11 March 2005 to Chow who made payment to the plaintiff which payment was received by Justin. The plaintiff claimed that it then paid Justin $20,000 on 28 March 2005 supposedly to reimburse Justin for paying the said sum on its behalf. Thus, the plaintiff alleged, Justin received double payment. On 17 March 2005, the third defendant issued invoice no. 238802/05 to Chow for 30% progress payment amounting to $90,000. Chow paid Justin who received it not for the plaintiff but on the third defendant's behalf for the third defendant's invoice no. 238802/05.

9 On 13 April 2005, Justin and Chow attended a meeting with representatives of NH Glass. At the meeting, Justin signed minutes on behalf of the plaintiff, which minutes included an agreement that the plaintiff and Chow would follow a schedule of works agreed that day, failing which NH Glass could impose penalty charges.

10 The plaintiff further alleged that the third defendant was incorporated (on 23 February 2005) while its two shareholders cum directors Justin and Theresa were still working for the plaintiff and while Justin was still a director and shareholder of the plaintiff. Together with Richard and Bob, Justin had joined the plaintiff in January 2004 while Theresa and Peter joined in November 2004. (Bob ceased to be a director of the plaintiff in December 2006).

11 The plaintiff alleged that although the third defendant's registered address was at No. 10, Admiralty Street #03-74, North Link Building, Singapore 757695, it conducted its business at the plaintiff's premises at No. 4 Soon Lee Road, Singapore 628071 ("the plaintiff's premises"). The third defendant only shifted out from the plaintiff's premises on 28 November 2005.

12 The plaintiff further alleged that Justin, Theresa, Richard, Peter and Bob conducted their business since 28 July 2004using the computer systems and/or work stations of the plaintiff and had

communicated with the third defendant and the seventh defendant in relation to the NH Glass project and/or with third parties and potential customers and suppliers in order to cause harm, loss and damage to the plaintiff. Further, the plaintiff claimed, the same five defendants used the plaintiff's computer facilities to promote and siphon off the plaintiff's business to the third defendant.

13 The plaintiff claimed that after the departure of Justin, Theresa, Richard, Peter and Bob from the plaintiff's employment, it discovered that the five defendants had removed the hard disks from the computer systems and rendered the computers inoperable. Lim lodged a police report over the incident on 9 December 2005.

14 The plaintiff/Lim suspected the five defendants were involved in a conspiracy with Chow or had acted in breach of their fiduciary duties and obligations in order to promote the business of the third defendant.

15 To gather evidence of the misdeeds of the defendants, the plaintiff engaged the services of a company called I-Analysis Pte Ltd ("I-Analysis") to conduct a digital forensic investigation of the plaintiff's computer hard disks in November 2006. I-Analysis rendered a report after its investigations and its director Darren Cerasi ("Cerasi") testified for the plaintiff. I-Analysis was also tasked by the plaintiff to verify the authenticity of two letters dated 26 April 2005 ("the April letter") and 16 May 2005 ("the May letter") which Bob as its director, had written on behalf of the plaintiff to Justin. In the April letter [note: 1], Bob had purportedly requested Justin to stay on with the plaintiff until he completed its existing projects. In the May letter [note: 2], Bob had said:

> Further to our request for your extension of stay, we would like to clearly specify that we have no objection to allow you to carry out your businesses at our premises during the periods of extension of stay with us

Cerasi considered the two letters "questionable in the content" and pointed to unusual features in the same. I shall return to his comment when I consider Cerasi's testimony later.

16 Not surprisingly, the former employees and/or directors and/or shareholders of the plaintiff had a different version from Lim of the events that transpired before they left the plaintiff's employment.

17 Justin, the first defendant was the only witness for his and the case of the third defendant. His testimony was also adopted by the second to sixth defendants. Consequently, I turn now to look at his testimony. In his AEIC, Justin pointed out that he was a minority shareholder holding only 10 shares in the plaintiff. Prior to joining the plaintiff, Justin (with Bob and Peter) was a shareholder/director of Sum Yue Instrumentation Engineering Pte Ltd ("SY Instrumentation") between 1999 and 2004. SY Instrumentation undertook projects that were similar to those of the plaintiff. SY Instrumentation was wound up in 2006. SY Instrumentation's projects were transferred to the plaintiff in January 2004. Projects from Sum Yue Engineering Pte Ltd ("SY Engineering") a company owned by Bob and Peter, were transferred to SYEI some time in February 2004.

18 Bob and Lim invited Justin to join the plaintiff in 2003. Justin was in charge of the plaintiff's mechanical projects which included customers such as SIS 88 Pte Ltd ("SIS") and Chow. Justin was assisted by Richard in these projects. These customers were his customers even before Justin joined the plaintiff.

19 In March 2004, Justin was tasked to take over the administration of the plaintiff and SYEI. The request was minuted at a meeting held on 27 March 2004 and announced by Bob. In June 2004, Justin was asked to merge the administration of the two entities. Towards that end, Justin called a general

meeting on 13 August 2004 that was attended *inter alia* by Lim, Ronald Lee Lim Sim ('Ronald"), Bob, Peter and Theresa; Justin presented a flowchart with his proposal to merge the administrative operations of the two companies. Theresa was tasked with recording the minutes of meetings and did so for these and other meetings. However, Lim refused to accept the accuracy of the minutes as recorded by her which he did not sign.

20 Although customers were invoiced and paid for the projects taken over from SY Instrumentation and SY Engineering, Justin and the other defendants working for the plaintiff were told by Angie Ang ("Angie"), an employee of SYEI, that SYEI and the plaintiff were purportedly making losses on those projects. At the meeting on 13 August 2004, Justin had asked Angie for the accounts and financial statement of SYEI and the plaintiff to enable him do the merger and to verify if indeed they were making losses on the projects inherited from SY Instrumentation and SY Engineering but she refused. He also wanted to verify what he discovered in the course of running the plaintiff – the plaintiff handled projects and paid for materials and labour on behalf of SYEI but it was SYEI that invoiced customers and collected payments from them. When Justin raised his objections to Lim on this practice, his objections were overruled as Lim was the majority shareholder of both the plaintiff and SYEI. Lim felt it was unnecessary for the plaintiff to invoice SYEI as it would incur more goods and services tax.

21 Ultimately, Justin's proposal to merge the administrative operations of the plaintiff and SYEI was rejected by Lim and Ronald at a meeting held on 21 September 2004. Ronald said the proposal was not workable as the staff of the two companies could not work together due to disagreements. From then on until December 2004, Justin's relationship with Lim steadily deteriorated, exacerbated by Justin's request for and Lim's refusal to provide, the accounts of SYEI and the plaintiff. Lim began withholding payments to the plaintiff's suppliers and contractors for on-going projects under Justin's charge by refusing to sign cheques for payments approved by Justin.

22 It would be appropriate at this juncture to describe the role of Ronald in this dispute. It was the defendants' case (but denied by Lim and Ronald) that Ronald was a majority shareholder in the plaintiff despite the fact that his name did not appear as such in the shareholders' register of the company.

23 In his AEIC, Justin deposed that Ronald took part in management decisions of the plaintiff and would attend most if not all, meetings of the board of directors, shareholders and management. Important correspondence would also be copied to him. Justin deposed that Ronald was (and still is) the general manager of Singapore Epson Industrial Pte Ltd ("Epson") for about 20 years up to 2004, during which period he awarded projects to SYEI. He pointed out that Ronald was at the plaintiff's premises everyday and even kept two dogs there. Indeed, Ronald even had a 'karaoke' room at the plaintiff's premises besides a kennel for his dogs. I note that Lim himself testified that the plaintiff purchased its premises from Epson (in June 2002 for $700,000) after being approached by Ronald. Ronald who was a witness (PW3) for the plaintiff *inter alia* denied he was involved in the plaintiff and that he attended any meetings of the plaintiff as recorded in minutes taken by Theresa. I will refer to Ronald's testimony later.

24 At a meeting held on 7 January 2005 attended by Justin, Richard, Bob, Peter and Theresa, Bob informed the attendees that Lim wanted Justin to cease getting business for the plaintiff and that Justin should set up his own company if he wanted to continue doing business.

25 This cessation of business was subsequently confirmed by Lim to Justin who was told that he should stop work on projects under Justin's charge including the NH Glass project. Justin conveyed Lim's message to Bob, Peter and Richard at a meeting held on 28 January 2005. According to Justin,

this prompted his resignation on 31 March 2005. Although his last day with the plaintiff was on 30 April 2005, Bob and Peter requested Justin to remain with the plaintiff until Justin had completed all the on-going projects under his charge. Justin agreed on condition that he could rent a space at the plaintiff's premises to carry on his own business to which Bob and Peter agreed. This resulted in the April and May letters (see above at [15]) from Bob which authenticity as stated earlier, was questioned by the plaintiff's expert I-Analysis.

26 There then followed another round of meetings (again denied by Lim) between 3 and 27 June 2005 at which (according to the defendants) the following matters were raised (and recorded in minutes prepared by Theresa save for the minutes of a meeting on 3 June 2005 which the defendants claimed were recorded by Angie):

(a) Lim furnished information on the plaintiff's outstanding loans, overdrafts with banks and its overheads;

(b) Lim and Ronald said that since the plaintiff had incurred too many liabilities, it would cease business with effect from 30 June 2005;

(c) the plaintiff's building would be sold;

(d) the termination dates (with payment of salaries) for the plaintiff's employees Richard, Ah San and Zaw Tun would be 30 June, 31 August and 31 August 2005 respectively;

(e) Lim said that if Justin or Peter decided to continue doing the same business as the plaintiff, they should incorporate new companies to do so on condition that the new companies' registered address was not at the plaintiff's premises;

(f) meanwhile, Justin and Peter could rent space from the plaintiff within its building for their new companies;

(g) Justin proposed a buy-over of the plaintiff's existing welding sets at prices to be agreed with Lim; and

(h) Justin indicated he would move out from the plaintiff's premises by mid-July 2005.

27 Justin then received a note dated 4 July 2005 from Lim requesting him to make arrangements to redirect all correspondence of the third defendant away from the plaintiff's premises. On the same day, Theresa received a separate letter from Lim requesting that the suppliers bill the third defendant with effect from 1 July 2005. Angie also requested for Theresa to transfer telephone and facsimile lines and servers from the plaintiff's to the third defendant's name. Lim asked for Peter's proposal on renting space for the third defendant at the plaintiff's premises and he inquired whether the third defendant would want to acquire the plaintiff's two lorries. Finally, Lim requested that termination letters be issued to the plaintiff's staff to take effect on 30 June 2005.

28 Peter responded to Lim's inquiries by a memorandum dated 5 July 2005 to say that the third defendant would purchase one of the plaintiff's lorries and that the company was agreeable to rent space from the plaintiff at $4,000 per month. Peter requested an invoice for $3,750 from the plaintiff for rent for the previous month. The third defendant eventually did not pay any rent to the plaintiff as the plaintiff did not render any invoice. Another reason for the third defendant's non-payment of rent to the plaintiff was the fact that the third defendant had rendered invoices approximating $42,277.20 to the plaintiff for work done for projects of SYEI between October 2005 and January 2006 which Lim

refused to acknowledge.

29 There were on-going discussions between Lim and the defendants on how to deal with the sending of invoices to and the collection of payments from, customers. One issue revolved around the payment by Chow to the plaintiff of the deposit of $75,000 for the NH Glass project. Justin, Peter and Bob decided that the plaintiff would continue with and complete the fabrication work for the NH Glass project up to the down payment stage. Justin pointed out that a portion of the $124,564.83 allegedly spent by the plaintiff on materials and subcontractors for the NH Glass project was used for another project *viz* the SIS project. He deposed that Richard and he had no choice but to use for the SIS project, materials initially acquired for the NH Glass project as Lim refused to pay the plaintiff's suppliers and contractors causing difficulties for the third defendant and resulting in complaints from both NH Glass and SIS.

30 Without any prior warning, the defendants then received Lim's letter dated 18 July 2005 [note: 3] requiring them to leave the plaintiff's premises immediately or else face action for trespass. The defendants were required to hand all the plaintiff's documents to Angie and were reminded not to remove any documents from the plaintiff's premises.

31 On the following day, the plaintiff's workshop was secured by additional locks and chains. Save for Bob, the other defendants were denied entry. Justin and Bob wrote to Lim immediately to explain that such action would cause harm to the plaintiff and seriously disrupt its on-going projects. They requested that the plaintiff's operations be allowed to continue until end July 2005 if its projects could not be completed by 30 June 2005. Their request was ignored by Lim who did not reply to their letter.

32 However, shortly thereafter, Lim allowed Peter, Bob and Theresa to return to the plaintiff's premises to assist in the on-going projects until some time in November 2005. As part of the winding-down of the plaintiff's operations, two projects *viz* Temptech Pte Ltd and Powder Coating Engineering Pte Ltd were transferred to Peter on or about 28 July 2005.

33 Although the third defendant was incorporated on 23 February 2005, Justin said it only commenced operations on 1 April 2005. Initially, the third defendant's registered address was at No. 6 Bloxhome Drive Singapore 559702, before being changed to No. 10, Admiralty Street #03-74, North Link Building, Singapore 757695. Contrary to the plaintiff's case and to Lim's accusations, Justin contended that the third defendant conducted its business openly and with the full knowledge of the plaintiff/Lim. This was pursuant to the understanding that Justin, Bob and Peter had reached with Lim and Ronald.

34 In support of his assertion. Justin pointed out that between 1 April and 18 July 2005, the third defendant sent out correspondence, invoices, quotations and delivery orders as well as received such documents from third parties at the plaintiff's premises. It also met its customers at the plaintiff's premises. Justin pointed out that save for a few, the third defendant's customers were different from the plaintiff's. The common customers were Justin's even before he joined the plaintiff. In fact, the plaintiff had only one customer (Epson) when Justin joined the plaintiff. Its customers in 2004 and 2005 were either Justin's or Bob's and Peter's customers from SY Engineering.

35 As for the NH Glass project, Justin explained that because of Lim's obstructive behaviour in withholding payments for projects under his charge, Justin experienced great difficulties with his customers including Chow, from whom the plaintiff received a warning letter on 1 April 2005 [note: 4]. Chow had also threatened to sue the plaintiff for delay in the NH Glass project and to impose a penalty of 10% of the contract value or $30,000 for each day of delay. Justin managed to persuade

Chow to withhold legal action by his offer to have the third defendant take over the project. This resulted in the issuance of the cancellation letter (see above at [6]) and the third defendant's agreement to take over the project on the same day (31 March 2005). Otherwise the plaintiff would have faced a huge claim for damages.

36 Justin accused the plaintiff of bad faith. He referred to the plaintiff's financial report for 2007 which stated that the plaintiff's premises were sold for $1.8m. However, he and the other defendants did not know what Lim had done with the sale proceeds. Justin pointed out that the plaintiff's premises were its main asset against which the defendants would have recourse to for their costs. He revealed that the plaintiff failed to pay the salaries of its employees for June 2005 when their services were terminated. Although Lim had requested Peter to advance the sum on the plaintiff's behalf, promising to reimburse Peter from collections made by the plaintiff, Lim did not honour his word. Peter in turn borrowed money from the third defendant to make payment. The third defendant paid approximately $46,000 to the plaintiff's employees.

37 Justin further noted from the plaintiff's financial statements for 2007 that the company consistently made losses for the years 2004, 2005 and 2006. It was only in 2007 that the company turned in a profit. It was clear from the said accounts that the plaintiff disposed of all its property, plant and equipment before commencing this action in January 2008. Justin believed this was done by Lim intentionally in order to deprive the defendants of their costs should the plaintiff fail in its action. (This fear has been allayed by an order for security for costs in favour of the six defendants [see [47 below]).

38 At the end of 2006, Lim removed Bob as a director of both the plaintiff and SYEI, despite Bob's objections. Lim then appointed his wife Wong Jit Yan ("Lim's wife") and his son Lim Daw Seng ("Lim's son") as directors of both companies. Lim further changed the cheque signatories of the plaintiff so that he alone could sign cheques for amounts in excess of $20,000 while Lim's wife and Lim's son could sign cheques for lesser sums.

39 Justin denied the plaintiff's allegation that the six defendants had removed the hard disks from the plaintiff's computer systems. He deposed that neither he nor Richard had access to the plaintiff's premises after 18 July 2005 so as to be able to tamper with the computers. As the plaintiff's premises were fitted with close circuit surveillance cameras, any attempts to remove the hard disks by any of the defendants would have been detected in any case. There was also no reason for any of the defendants to remove the hard disks as they had used the computers to create the invoices and other documents of the third defendant, which was done with the plaintiff's consent. In any case, not all the computers belonged to the plaintiff - some belonged to and had been transferred to the plaintiff from SY Instrumentation and SY Engineering.

40 The last piece of evidence for the six defendants' case came from Bob. In his AEIC, Bob deposed that in September 2006, Ronald approached him and inquired if Bob wanted to sell his shares in SYEI to Lim. In view of the differences between Lim, Justin and Bob, Ronald advised that it would be better for the parties to part ways. Bob was agreeable to Ronald's suggestion.

41 On 3 October 2006, Lim's solicitors wrote to Bob's solicitors enclosing a draft sale and purchase agreement ("the draft agreement"). However, the draft agreement contained in cl 7 a provision that upon completion of the sale of Bob's shares in SYEI, Bob would not have any claims against Lim and/or SYEI and /or the plaintiff. Bob did not agree to cl 7. Thereafter, negotiations between Bob and Lim through their respective solicitors broke down. To-date, Bob remains a shareholder of SYEI. The plaintiff subsequently commenced this suit on 7 January 2008.

The pleadings

The pleadings

42 I turn now to the pleadings. The statement of claim was prolix to the extreme numbering 84 pages as the plaintiff set out (unnecessarily) almost verbatim, the report of I-Analysis. I will not repeat the plaintiff's various heads of claim as they have been set out in [1] and [2] above.

43 As for the defence, the first to sixth defendants filed a joint defence while Chow filed his own separate defence as the seventh defendant. In their joint defence, the six defendants essentially denied they had breached their fiduciary duties as directors and/or their employment contracts and that they had engaged in a conspiracy to harm the plaintiff and/or to siphon off its business. The defendants contended that the third defendant only commenced operations on 1 April 2005 notwithstanding its incorporation two months earlier. They denied that the third defendant operated at the plaintiff's premises without the latter's knowledge and consent. They asserted that the third defendant conducted its business openly and with the plaintiff's knowledge at the plaintiff's premises between 1 April 2005 and 18 July 2005.

44 The defendants alleged that the plaintiff failed to pay their salaries for the month of June 2005 and that Peter had paid the employees their salaries on the plaintiff's behalf. (This complaint was not pursued at the trial). The defendants admitted that Chow only dealt with Justin and Richard for the NH Glass project but denied that they had conspired with Chow to cause harm and/or loss to the plaintiff. The defendants pleaded that the third defendant was incorporated to take over the plaintiff's projects because Lim wanted to close down the plaintiff's operations and for that reason, the third defendant took over the NH Glass project.

45 In his defence, Chow disclaimed knowledge of the plaintiff's capital structure and shareholdings and averred that he only dealt with Justin as a director of the plaintiff, as Justin was in charge of the plaintiff's electrical engineering works. Chow asserted that he dealt with Richard, Peter and Bob as employees of the plaintiff. Chow stated he was unaware that Justin ceased employment with the plaintiff on 30 June 2005 or that Justin was a shareholder of the third defendant.

46 Chow denied he had acted in concert with the six defendants to defraud and harm the plaintiff as alleged in the statement of claim. Chow averred that although he paid the plaintiff`$75,000 on 4 January 2005, progress was slow on the NH Glass project. Justin informed him in February 2005 that the plaintiff was unable to complete the NH Glass project on time whereas the third defendant could do so under Justin's supervision. Justin requested that Chow terminate the plaintiff's contract and award the same to the third defendant. Out of anxiety that the NH Glass project would be delayed, Chow averred that he agreed to Justin's request and issued the cancellation letter (which Justin prepared) to the plaintiff. He trusted Justin totally. Chow stated he paid all invoices issued to him by the third defendant.

47 I should point out that by an order of court dated 9 March 2009, the plaintiff was ordered to provide security for costs of $60,000 to the six defendants. By another order of this court on 22 September 2009 (after the first part hearing in July 2009), the plaintiff was ordered to provide further security of $40,000 for the costs of the defendants, making a total of $100,000.

The evidence

The plaintiff's case

48 Besides Lim (PW1), Cerasi (PW2) and Ronald (PW3), the plaintiff's other four witnesses were Lim's wife (PW4), Lim's son (PW7) as well as the plaintiff's auditor Sashi Kala Devi ("Devi") (PW5) and one of its labour supply subcontractors Joseph Lim Swee King (PW6). Each defendant testified for

his/her own case and in Justin's case, he testified for the third defendant as well. As for Chow, he appeared in person as his previous solicitors had discharged themselves from acting for him before the trial. Chow revealed to the court that he lacked the funds to pay for legal representation.

49 Lim was the key witness for the plaintiff. His AEIC was lengthy, his exhibits voluminous and his cross-examination extended to almost three days. His testimony was heavily criticised in the defendants' closing submissions as being neither credible nor truthful nor consistent with documents that were before the court.

50 The other witness of the plaintiff who came in for equally strong criticism by the defendants was Cerasi who was accused of disregarding his duties as an independent expert under Order 40A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed ("the Rules"). I shall consider the criticism against Cerasi when I look at his testimony later. Meanwhile, I turn my attention to Lim's evidence.

51 Having reviewed his testimony, I am of the view that the defendants' criticism of Lim (PW1) was not unwarranted. He repeatedly claimed he could not recall events (until he was admonished by the court), he prevaricated and often contradicted himself in the course of cross-examination. Despite his assertion that Ronald was neither a shareholder nor involved in the plaintiff in any way, Lim could not satisfactorily explain why Ronald went to the extent of filing an affidavit on the plaintiff's behalf (on 4 February 2009 in exhibit D2) to oppose the defendants' application for security for costs. In fact, Lim claimed that he did not even ask Ronald to file the affidavit nor did he instruct the plaintiff's solicitors to do so. It was only after considerable pressing by the court that Lim admitted he had informed Ronald of the contents of Justin's affidavit filed in support of the application. His explanation as to how Ronald was so well informed on the affairs of the plaintiff as to be able to oppose the application was absurd – Lim claimed that Ronald frequently visited the plaintiff's premises to play with the dogs and have meals there with the defendants who asked Ronald for his ideas. Ronald thereby became familiar with the company's financial affairs (see p 22 of the defendants' submissions). Ronald's explanation for his involvement in the application was that he was pulled in by Lim because he was a good friend of Lim. I should point out that this "good friend" of Lim's went so far (according to the defendants' case) as to propose at the management meeting held on 27 June 2005, that the plaintiff should cease operations with effect from 30 June 2005 because it was heavily in debt.

52 Lim maintained his denial that Ronald attended any management meetings of the plaintiff. He took the position that the minutes of such meetings prepared by the second defendant reflecting Ronald and himself (named as John Lim) as attendees were fabricated. These were for meetings that took place between 27 March 2004 and 27 June 2005. Ronald was recorded as having attended five out of eight meetings in question. The defendants pointed out that Lim could not offer any reason why the defendants would include Ronald in the meetings if indeed he (as well as Lim) was not present. Ronald's surmise that the defendants bore a grudge against him because he did not want to give them his project [note: 5] was only a guess as Ronald himself admitted.

53 The defendants pointed out that Lim's claim that he was unaware of and did not attend the management meeting on 27 June 2005 [note: 6] was even less credible because he referred to the same in his letter dated 29 June 2005 [note: 7] terminating the employment of a staff member Zulkarnain Bin Said where he said:

> It is most unfortunate that we have to inform you that decisions have been made to close the Engineering department during the management meeting with effect from 30th JUNE 2005. The reasons due to slow down in business and the company have to trim down its overhead.

> We hereby, wish you best of luck for all your future ventures and hope that you could acquire a suitable job within the shortest period of time.

Lim's subsequent letters of termination addressed to the first to fifth defendants (but not the third defendant) all dated 18 July 2005 [note: 8] also referred to 30 June 2005 as the termination date. The defendants submitted that the words "during the management meeting" in para 1 of the above letter could only have referred to the meeting held on 27 June 2005, as both the minutes and the aforesaid letters referred to the same date *viz* 30 June 2005 as being the last date of operations for the plaintiff's engineering department.

54 In their reply dated 18 July 2005 [note: 9] to Lim's termination notice, Justin and Bob had pointed out the disruption to the plaintiff's ongoing projects and its exposure to liability if the plaintiff ceased operations on 30 June 2005. They reminded Lim that "at the Board Meeting on 27 June 2005, the Board of Directors had decided that the Company's operations were to continue until the end of July 2005 in order for the on-going projects to be completed". Despite the reference to the management meeting on 27 June 2005 in his own letters as well as in Justin's and Bob's letters, Lim maintained his ignorance of the meeting. Neither did he question Justin or Bob on their reference to the board meeting of 27 June 2005 in their reply to him.

55 Lim also claimed he did not know of the existence of the third defendant until he engaged the services of I-Analysis. This denial was also challenged by the defendants who pointed to Lim's note dated 4 July 2005 (see above at [27]) [note: 10] to Justin (copied to Bob and Peter) where he said:

> Please make the necessary arrangements for any future letters concerning your company NOT to be sent to No. 4 Soon Lee Road (S) 628071.
>
> Please redirect all your letters with immediate effect.

Confronted with the above document in cross-examination, Lim claimed [note: 11] that the word "company" referred to SY Instrumentation and not to the third defendant. When he was reminded by counsel for the defendants that in his own AEIC (at para 10), Lim had deposed that SY Instrumentation was a failed business of Justin's, Lim's (unconvincing) explanation was that he had received letters and correspondence addressed to SY Instrumentation which, when requested by counsel, he was unable to produce claiming he had handed them to Justin. Pressed further by the court, Lim changed tack and said Justin could well have registered the third company without operating it, despite the clear words that Lim used in the note.

56 Lim however did agree that he refused to allow Justin to have sight of the management accounts of either the plaintiff or SYEI because "they were not yet prepared". [note: 12] It is noteworthy that according to the defendants, Justin had asked for the accounts at the management meeting on 13 August 2004 (which Lim and Ronald denied attending). During cross-examination [note: 13], Lim had three versions of when he was told of Justin's request for accounts. First, he said he knew it was at the meeting held on 13 August 2004 because Justin told him about the meeting although he did not attend. Later, he said that he learnt of the meeting subsequently from his staff Angie. His third version was that Angie told him of Justin's request for the accounts but without mentioning any meeting.

57 The defendant submitted that the court should draw an adverse inference against the plaintiff for not calling Angie to testify not only on this aspect of the testimony, but also on the minutes of

the meeting dated 3 June 2005 which set [note: 14] Theresa testified was not recorded by her [note: 15] but was given to her by Angie. Theresa's version of the minutes of the meeting was also exhibited by the defendants. The significance of the minutes dated 3 June 2005 (be it Angie's or Theresa's version) was that it recorded Justin's request to rent space from the plaintiff. Lim had admitted there was such a discussion but he claimed it took place at a coffee-shop and not at the plaintiff's premises. Leaving aside the venue of the discussion which is inconsequential, Lim's own evidence meant that the plaintiff was aware that Justin was setting up a company to carry out mechanical engineering projects. I should point out that Lim initially claimed that Angie had left the plaintiff's employment but retracted his testimony when counsel for the defendants confronted him with the plaintiff's letter dated 14 July 2005 wherein Justin, Theresa, Peter and Bob were directed to hand over all the plaintiff's documents to Angie. [note: 16]

58 Lim explained that he did not accept the April and May letters (see above at [15]) (which he described as "suspicious" and "unauthentic' in para 47 of his AEIC) because Bob did not have his authorisation to issue those letters although he agreed that Justin's last day of employment was 30 June 2005. In this regard, the defendants pointed out that Lim contradicted his own AEIC as Lim had there (in para 46) deposed that Justin's last day with the plaintiff was 30 April 2005 and he had not agreed to an extension until 30 June 2005.

59 It would not be necessary to refer to other aspects of Lim's testimony as the extracts that were referred to above already cast grave doubts on his credibility as a whole. I turn instead to the defendants' case as well as the case of Chow who, as will become evident later, was unwittingly sued merely for awarding the NH Glass project to the plaintiff prior to issuing the cancellation letter.

The defendants' case

60 Richard corroborated Justin's evidence that Bob had announced at a meeting on 7 January 2004 that Lim wanted Justin to stop all jobs of the plaintiff concerning the NH Glass project and that Justin should set up his own company. Their testimony that Lim stopped paying the plaintiff's suppliers and contractors and this caused delay in the progress of the NH Glass project was supported by Chow, who said the delay prompted him to issue the warning letter on 1 April 2005 (see above at [35]). Because of Lim's obstructive conduct, Justin requested for the issuance of the cancellation letter with Chow's concurrence and arranged for the third defendant to continue work on the NH Glass project which was eventually completed in October 2005.

61 In claiming the balance $225,000 for the NH Glass project, the defendants submitted that the plaintiff was in effect claiming for 75% of the work which it could not and did not do, due to its financial constraints and Lim's conduct.

62 The defendants pointed out that the third defendant not only assumed liability for the job when it took over the NH Glass project but it also assumed the obligation to pay liquidated damages for delays at 10% per diem of the contract price, under its agreement dated 2 April 2005 with the seventh defendant.

63 As for the plaintiff's claim for purchase of materials totalling $124,564.83 (referred to at [5] above), Justin explained that not all the materials were used in the NH Glass project. Some were used in the SIS project. However, as Richard who was in charge of the SIS project had handed over all the plaintiff's documents for the project, the defendants could not say which proportion of the materials went into the two projects. Pointedly, neither did the plaintiff produce any documents to support this claim.

64 In relation to the plaintiff's claim for $20,000 which it alleged was wrongly paid to the third defendant by the seventh defendant, the defendants contended that this claim was baseless. The sum had nothing to do with the NH Glass project as it was reimbursement by the plaintiff to Justin for payment made to SLS, a subcontractor of the plaintiff, for the SIS project. SLS had supplied $40,000 worth of labour to the plaintiff for the SIS project. The evidence showed that the plaintiff made partial payment of $20,000 for the labour supplied by a cheque in favour of SLS numbered 138896 [note: 17] drawn on United Overseas Bank.

65 It was Justin's testimony [note: 18] that he borrowed the balance $20,000 due to SLS from Chow which sum the plaintiff reimbursed him on 28 March 2005. It was also Justin's evidence [note: 19] that the third defendant issued an invoice dated 11 March 2005 for $20,000 to the seventh defendant at Chow's request and it was backdated. Justin's evidence was corroborated by Chow. [note: 20] Extrinsic evidence supporting Justin's testimony was to be found in a payment voucher of the plaintiff dated 28 March 2005 and the plaintiff's note to SLS dated 9 March 2005 [note: 21] which SLS countersigned as acknowledgment of payment of $20,000. In the plaintiff's note, the word "GLASS" denoting NH Glass had been cancelled and replaced with the word "SUGAR" denoting SIS, while the handwritten number 10481 thereon was that of the SIS project. Lim agreed with the defendants' counsel that the corrections were made by Richard. I should point out that the payment voucher contained the reference number 10521 which was the job number for the NH Glass project. Further, when cross-examined, Lim admitted that when SLS sued the plaintiff, the latter proved it had paid $20,000 to SLS by tendering the payment voucher as evidence. Consequently, the plaintiff implicitly accepted the defendants' position on the payment voucher.

66 The defendants accused Lim of bad faith – Lim was well aware of the true position and yet he chose to fabricate this frivolous claim. The defendants pointed out that Lim relied on the third defendant's invoice to the seventh defendant dated 11 March 2005 [note: 22] as well as the plaintiff's payment voucher dated 28 March 2005 but deliberately failed to disclose the plaintiff's note to SLS dated 9 March 2005 until the trial.

67 I shall deal with the last item of the plaintiff's claim ($90,000) that was allegedly received by the third defendant from Chow on 2 April 2005 vide OCBC cheque no. 655735 when I consider the testimony of Chow (see below at [75]).

68 The final issue in the defendants' case related to the controversial minutes that Theresa prepared but which Lim and Ronald both disavowed. Theresa performed administrative functions in the plaintiff's organisation and her duty *inter alia* was to assist Justin, Bob and Peter with recording of minutes of meetings, preparation of quotations and delivery orders. Like the other individual defendants, Theresa's employment was terminated by the plaintiff on 30 June 2006. Although she had deposed in her AEIC that the plaintiff failed to pay her salary for June 2006 as well as one month's salary in lieu of notice, Theresa informed the court that she was no longer pursuing those claims.

69 Theresa testified that she had prepared all the minutes (save one) which recorded the attendance of Lim and Ronald. These were for the meetings in (a), (b),(c),(f), (g) and (h) below. Theresa also prepared the minutes of other meetings. However, she did not attend the meeting in (e) but prepared the minutes based on what Justin, who attended, reported to her. Theresa also received from Angie a copy of the minutes the latter had prepared of the same meeting:

(a) On 24 March 2004, Bob announced that Justin would run the plaintiff's administration department with immediate effect.

(b) On 13 August 2004 [note: 23] Justin requested for the plaintiff's accounts and for the balance sheet to be produced at the end of each month; Angie said the accounts department faced a heavy workload then. (This appeared to be the excuse why Justin did not receive the accounts and balance sheet subsequently).

(c) On 21 September 2004 [note: 24] Ronald suggested that due to differences between the staff, it was decided (presumably by him and Lim) that the plaintiff and SYEI should be managed separately.

(d) On 7 January 2005 [note: 25], Bob reported that Lim wanted him to inform Justin that the latter should stop getting new orders from the plaintiff and that Justin should set up his own company. Justin reported that no funds were coming from the finance department to pay the plaintiff's workers, contractors and suppliers.

(e) On 28 January 2005 [note: 26], Justin reported that Lim had expressed his intention to stop all jobs relating to the NH Glass project. As the plaintiff had collected a deposit, Justin felt the plaintiff had no choice but to complete the fabrication works to cover the deposit. He suggested that the seventh defendant take over the balance job.

(f) On 3 June 2005 [note: 27], it was reported that Justin had tendered his resignation on 31 March 2005 and his last day would be 30 April 2005. Bob reported he would retain Justin and extend his stay until 30 June 2005 to complete projects. Staff of Justin and Richard would have their services terminated once the projects they worked on were completed. Justin would pay rent for the plaintiff's premises and would let the plaintiff know what rental he would pay and the period of lease. Justin was not allowed to register his company's address at the plaintiff's premises. His company's business dealings, his workers and subcontractors were not related in any way with the plaintiff.

(g) On 22 June 2005 [note: 28], Lim reported on the loans and overdraft owed by the plaintiff to its bankers and said that the company had other creditors. He and Ronald suggested selling the plaintiff's premises. Lim suggested that Justin rent a place elsewhere as the plaintiff's premises may be sold off.

(h) On 27 June 2005 [note: 29] Ronald reported that the plaintiff's debts were too heavy and it would cease operations on 30 June 2005. He proposed that the plaintiff's premises be sold to settle the bank's loan. Lim and Ronald agreed that Peter could continue doing the same business provided that a new company was set up and it had no connection with the plaintiff. Lim and Ronald further agreed that Peter could rent the plaintiff's premises until the building was sold.

70 In cross-examination, Theresa clarified that she attended shareholders' meetings but never prepared the minutes. She further clarified that the minutes of shareholders' meetings were not recorded by her but by the company secretary of the plaintiff; she prepared minutes of informal meetings or directors' meetings. Theresa maintained that the minutes she had recorded were a true and accurate reflection of what took place at meetings that she attended. Counsel for the plaintiff did not dispute that Therasa prepared the minutes. Indeed, in the plaintiff's closing submissions (at para 86), Theresa's minutes were relied on for the submission that they did not support the defendants' case. I believe Theresa's minutes fairly represented what transpired at meetings, notwithstanding the shortcomings in her grammar and language. As for the minutes of the meeting held on 3 June 2005, the only person who could disprove Theresa's evidence that Angie prepared and

handed her a copy of the minutes would be the latter. However, the plaintiff chose not to call Angie to testify, and did not offer any explanation that would preclude the court from drawing an adverse inference by her absence.

71 It would not be necessary to refer to the testimony of the other defendants as Richard, Peter and Bob essentially repeated and corroborated in parts, what Justin alleged in his AEIC; they were not material witnesses. The additional piece of evidence from Bob's AEIC has already been set out earlier at [40].

The seventh defendant's case

72 As stated earlier [48], Chow decided to act in person on 5 July 2008 which was just eight days before this trial commenced. His previous solicitors had not filed his AEIC before their discharge from acting for him. For the same reason, Chow did not file any closing submissions. In the interests of justice, Chow was allowed to give oral testimony and his examination-in-chief was led by the court.

73 Chow (DW6) testified that he had never communicated with Lim for the NH Glass project; he only dealt with Justin exclusively from the outset. Chow added that his only interest was to finish the NH Glass project within the three months' deadline. Eventually, the project was completed in four months, after an extension of one month was given by his employer. Chow said he transferred the project to the third defendant at Justin's request because he was told by Justin (whom he trusted) that technical problems had occurred in the plaintiff which would delay the project. Chow signed the cancellation letter dated 31 March 2005 to cancel the purchase order (see above at [4]) which Justin accepted on the plaintiff's behalf on 1 April 2005. Chow then immediately accepted the third defendant's offer letter dated 31 March 2005 (signed by Justin) to take over the NH Glass project as he had no other alternative contractor; he was also under pressure from his employer coupled with the threat of being liable for a penalty amounting to 10% of his contract's value of $400,000 if he did not complete the work in time.

74 According to Chow, it made little difference to him that the third defendant took over the NH Glass project as Justin continued to supervise the project. Even the third defendant's address (at No. 4 Soon Lee Road) was the same as the plaintiff's. Chow thought the third defendant was a subsidiary of the plaintiff. He pointed out that had he conspired with Justin as the plaintiff alleged, he would have deducted his share of the alleged secret profit before he paid the third defendant the balance 75% of the contract value. Chow added that he would never betray the plaintiff or Lim. He agreed with counsel for the defendants that as at 31 March 2005, the plaintiff had completed around 25% of the NH Glass project equivalent to $75,000 in value.

75 As for the $90,000 claim of the plaintiff, Chow agreed that the third defendant had rendered invoice numbered 238802/05 in that sum to the seventh defendant on 17 March 2005 [note: 30] as 30% of the progress payment for the NH Glass project. Chow confirmed Justin's earlier testimony [note: 31] that the sum was actually a loan Chow had extended to the third defendant at Justin's request on or about 2 April 2005. This was corroborated by the seventh defendant's payment voucher. [note: 32] Chow agreed that the third defendant's said invoice had been backdated to 31 March 2005. The $90,000 payment was also reflected in the third defendant's invoice numbered 238808/05 dated 23 April 2005 [note: 33] to the seventh defendant which contained the following particulars:

Description	Qty.	Unit Price	Amount

To supply and install Air Ducting For NH Techno Glass Factory Project	1	S$225,000.00	S$225,000.00
Less 1st progressive payment	1	S$20,000.00	S$20,000.00
Less 2nd progressive payment	1	S$90,000.00	S$90,000.00
		Sub Total	S$115,000.00
		Add 5% GST	
			S$115,000.00

Chow concluded his testimony with his request to the court that the plaintiff's claim against him should be dismissed as he had nothing to do with the dispute between the plaintiff and the defendants.

The expert testimony

76 As observed earlier (at [50]) the plaintiff's expert's testimony came in for heavy criticism from the defendants in their closing submissions. I turn my attention now to Cerasi's evidence.

77 Cerasi (PW2), a digital computer forensic practitioner deposed in his AEIC that he was tasked with investigating the activities of the defendants to ascertain if they had committed any wrongdoings detrimental to the interests of the plaintiff, even though he agreed with counsel for the defendants [note: 34] that such issues were not within his area of expertise. Notwithstanding his admission in court, Cerasi's report was replete with findings of wrongdoings on the part of the six defendants, essentially adopting Lim's/the plaintiff's allegations, thereby overstepping the boundaries of his mandate/duties as set out under O 40A r 2 of the Rules; it states:

> (1) It is the duty of an expert to assist the Court on the matters within his expertise.
>
> (2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

78 An example of Cerasi's shortcoming was highlighted by the defendants. Cerasi claimed (at paras 9, 10, 11 and 12 of his AEIC) that he was told that the defendants had contacted the plaintiff's customers (such as Hitachi Zosen) to say that the third defendant was a subsidiary of the plaintiff and to incorrectly inform customers like Temptech Pte Ltd) that the plaintiff's engineering department had closed and was operating as the third defendant. Cerasi stated he was told that the defendants then transferred ownership of the plaintiff's account with its internet service provider as well as its telephone and fax lines to the third defendant. Further, Cerasi said he was also told that the defendants accepted the termination of the NH Glass project and sent the third defendant's quotations for the same project but used materials purchased by the plaintiff for the same project. Such information could only have been furnished by Lim. Cerasi accepted the allegations at face value and failed to verify whether they were true.

79 Based on what Lim told him, Cerasi in his findings then set out all the allegedly wrongful activities/wrongdoings of each and every individual defendant as well as of other former employees of the plaintiff. For added measure, he went on (in para 17 of his AEIC) to depose that these individuals

diverted business away from their employer to a new entity *viz* the third defendant to the detriment of the plaintiff. He then concluded that the defendants had conspired to divert the NH Glass project to the third defendant to the plaintiff's detriment. He further echoed Lim's suspicions that the April and May letters signed by Bob were questionable.

80 Cerasi's AEIC showed he obviously lacked impartiality and that his findings went against the grain of O 40A r 2(2) of the Rules. Consequently, I reject his testimony in toto.

The findings

81 The only issue for determination by this court is, did the defendants (other than the third defendant) breach their fiduciary duties as directors and/or their duties as employees of the plaintiff when Justin agreed with Chow to terminate the PO and offered to take over the NH Glass project on the third defendant's behalf?

82 I had previously (at [51]) reviewed Lim's testimony and concluded therefrom that the defendants' criticisms that he was an unreliable as well as an untruthful witness were justified, in the light of Lim's shifts in position, the numerous inconsistencies in his oral testimony and his repeated prevarications. Indeed, I disbelieve Lim's testimony in its entirety.

83 Ronald fared no better than Lim as a witness. I am not persuaded he spoke the truth when he claimed he had no interest in the plaintiff or in its business. Ronald could not offer any plausible explanation why his being a good friend of Lim but an outsider of the company warranted his regular attendance at management and other meetings of the plaintiff and almost daily visits to the plaintiff's premises. I am satisfied from Theresa's testimony that she had accurately recorded the minutes of those meetings that showed Lim's and Ronald's attendance, despite their denials (which I reject). I need only to highlight three meetings, those held on 21 September 2004, 22 June 2005 and 27 June 2005. Why would an outsider like Ronald actively participate at these meetings to say (on 21 September 2004) that the plaintiff and SYEI should be managed separately and announce (at the June 2005 meetings) that the plaintiff's premises should be sold because the company's debts were too heavy?

84 I find that the defendants' suspicions that Ronald was/is a major shareholder of the plaintiff were not unfounded. In all likelihood, Ronald's shares in the plaintiff were/are held on trust for him by Lim who by all accounts was beholden to Ronald. It was Ronald who was instrumental in introducing Epson's property to the plaintiff to purchase. That would explain why Ronald would not want to register himself as a shareholder and appear in the records of the Accounting and Regulatory Authority ("ACRA"). As an employee of Epson, even if he did not have an employment or a service contract (which is unlikely), he would still be in breach of his implied fidelity duties by having other business interests, particularly if such interests conflicted with his duties and responsibilities to Epson. First, Ronald had introduced Epson's property to the plaintiff to purchase at $700,000. Then, the plaintiff sold the property for $1.8m. If he was/is a major shareholder of the plaintiff as Justin and the other defendants alleged and which I suspect is very likely, Ronald would obtain a substantial share of the profits.

85 I entertain no doubts on the veracity of the defendants' testimony and that of Justin in particular; their version of events was corroborated by Chow, whom I found to be honest, forthright and a refreshing change from Lim and Ronald.

86 Chow's testimony (see above at [65] and [74]) in effect demolished the plaintiff's claims for $20,000 and $90,000 as they were loans that Chow extended to Justin to help Justin pay

subcontractors.

87 Before I address the plaintiff's claims for $225,000 and $225,720 that were paid to the third defendant for the NH Glass project, I need first to deal with Lim's professed claim that he was unaware of the existence of the third defendant until he engaged the services of I-Analysis. Earlier (at [55]), I had alluded to Lim's note dated 4 June 2005 that strongly suggested that since he was not only aware of the third defendant existence but also that it operated at the plaintiff's premises until the latter moved out, Lim's explanation that he meant SY Instrumentation when he referred to the "company" is an untruth. My view is reinforced by his note [note: 35] dated 4 July 2005 to Theresa, copied to Bob and Peter that stated:

> Further to our discussion, please take note of the following:-
>
> 1) Kindly make the necessary arrangement to inform your suppliers to bill under your company with immediate effect from **01 July 2005**.
>
> 2) Regarding the two lorries **YJ6711T** and **YJ6127E** please inform us if your company is interested in buying.
>
> 3) Kindly arrange to give termination letter to the staff as at **30/6/2005** with immediate effect. Please let us a duplicate copy of the termination letter.
>
> 4) Regarding rental of premises by Mr Peter Lim, please let us know your rental charges.
>
> 5) Regarding Mr Justin Foo's rental, what is the outcome of the payment? Please let us know immediately.

88 In response to Lim's note, Peter had sent Lim a memorandum on 5 July 2005 [note: 36] where he wrote:

> 1 Decision has been made to purchase only YJ6711T
>
> 2 Confirmed renting of existing office, Spray Booth/machine workshop and ground floor workshop at S$4000.00
>
> 3 Mr Justin Foo confirmed rental of workshop for the last one and a half month with electricity until 15th of July at a total sum of S$3750. Please bill him accordingly.

89 I make two observations on the above documents. First, Lim's note and Peter's memorandum corroborated the minutes taken by Theresa of the two meetings in June 2005 (see [69(g) and (h)]) which recorded that Lim and Ronald intended to cease the plaintiff's operations as of 30 June 2005. Otherwise, why would the plaintiff terminate the services of all its staff and dispose of its vehicles one of which (YJ6711T) was purchased by Peter? Evidence of Peter's purchase of the said vehicle for $20,000 is to be found in the plaintiff's tax invoice SYH1244 dated 28 September 2005. [note: 37] It is damning evidence of Lim's character that he did not disclose his note, Peter's memorandum or the tax invoice. Those documents either emanated from the plaintiff or were in its possession. But it was the defendants who produced them.

90 It is crystal clear from para 1 of Lim's note that he must have known that the defendants had a company that would take over the plaintiff's projects. Lim's note also talked about Peter's and Justin's

intention to rent space from the plaintiff. Such conduct on the part of the duo is not consistent with the plaintiff's allegation that Justin and Theresa (the other director of the third defendant) incorporated the third defendant and carried out its operations surreptitiously at the plaintiff's premises.

91 I should add that the plaintiff had novated its contract with SIS to Automation Control Engineering Pte Ltd on 14 September 2005 and transferred two projects to Peter on 28 July 2005 (see above at [32]). Such acts were consistent with the defendants' contention that Lim and Ronald wanted to close down the plaintiff's operation.

92 Contrary to the plaintiff's closing submissions, I do not find that any of the six defendants had breached their fiduciary duties (in the case of Justin and Bob) and/or fidelity duties as employees (in the case of Theresa, Richard and Peter) to the plaintiff. Neither do I accept that Peter, despite not being a director of the plaintiff, behaved as and was accepted as one and should similarly be held to owe fiduciary duties to the plaintiff, which he breached. Further, I do not accept that the third or seventh defendants had participated in any conspiracy with the other five defendants to cause harm to the plaintiff or that the third or seventh defendants had dishonestly assisted in any breach of fiduciary duties owed by the other defendants to the plaintiff.

93 The plaintiff's submissions completely ignored the damning evidence extracted from Lim in cross-examination and which was corroborated either by his own correspondence or correspondence to him, and/or minutes of meetings that clearly showed that:

(a) Lim (and Ronald) intended to close down the plaintiff's operations;

(b) Lim indicated to them that Justin and/or Peter could/should start their own company/companies to carry on the business of the plaintiff;

(c) Justin and/or Peter could rent space at the plaintiff's premises for their new company/companies at rents to be agreed, provided the new company/companies had a different registered address from the plaintiff's;

(d) Peter indicated to Lim that the third defendant would move out from the plaintiff's premises after one and a half months' occupation;

(e) letters, correspondence and invoices of or to the third defendant were received at/sent out from the plaintiff's premises.

94 In its closing submissions, the plaintiff (at para 89) pointed out that the minutes of the meeting held on 7 January 2005 stated that Lim wanted Justin to stop getting new orders and to set up a new company, not that Justin was permitted to set up a new company to take over the NH Glass project. Further, the minutes of the meeting on 28 January 2005 showed that Justin himself reported that the seventh defendant, not the third defendant, was to take over the balance of the NH Glass project. Finally at the meeting on 3 June 2005, nothing was said specifically about the NH Glass project. On the contrary, it was reported that Justin was to continue all of his uncompleted projects (see above at [69(e)]. The plaintiff therefore argued that there was no evidence to suggest that the plaintiff consented to the third defendant's taking over of the NH Glass project.

95 The above submissions completely disregarded the factual matrix of the case – as early as January 2005 (presumably after the PO dated 4 January 2005 was issued). Lim (according to Bob) wanted Justin to stop getting new orders. The NH Glass project was already in delay by March 2005

and by Lim's own evidence, he expected Justin to leave the plaintiff's services by 30 April 2005 since he had not authorised Bob to extend Justin's employment until 30 June 2005. Who then was to take over the NH Glass project after 30 April 2005 if not Justin's new company, the third defendant? The NH Glass project had always been under the charge of Justin with Richard's assistance.

96 I would add that the plaintiff's contention that the defendants' pleadings had admitted to having breached their duties as employees of the plaintiff is incorrect (see paras 32 and 172 of its submissions). By para 18 of their common defence, the defendants admitted to paras 2 and 4 of the statement of claim in relation to their fiduciary duties as directors and their duties as employees respectively of the plaintiff, not that they had breached those duties. It was the plaintiff's fault in pleading in one and the same sentence (in para 4 of the statement of claim) that the defendants owed duties as employees of the plaintiff which they had breached, that caused the defendants to make the inadvertent error of admitting to their duties as employees and to the breach thereof.

97 I turn next to the plaintiff's claim for $225,720. This comprised of $20,000 and $90,000 allegedly received by Justin on the plaintiff's behalf, $115,000 allegedly received by the third defendant on the plaintiff's behalf and $720 invoiced by the third defendant to Chow on 15 April 2005 for glass supplied to the NH Glass project which invoice was signed by Justin. Justin's evidence (corroborated by Chow) was that he had to borrow money from Chow ($110,000) to pay the plaintiff's suppliers and subcontractors because of Lim's refusal to sign cheques to make payment. It is noteworthy that Lim himself testified [note: 38] that he stopped payments to the plaintiff's workers, subcontractors and suppliers. At the meeting on 27 June 2005 (see above at [69(h)]), Ronald had announced that the plaintiff was heavily in debt. It was also in evidence that the plaintiff had been operating at a loss for the years 2003 to 2005. Lim's conduct had caused delay to the NH Glass project. The plaintiff was at risk not only of having its services terminated but also of having to pay damages for its delay in completing the project. Justin who was in charge of the project took the pragmatic approach – he persuaded Chow to terminate the plaintiff's contract because Lim did not want to continue with it and it was in delay; Justin took over the project immediately in the name of the third defendant, assuming the plaintiff's liability, in order to complete the same, which was done in October 2005, well after the plaintiff had ceased operations.

98 On the evidence, the transfer of the NH Glass to the third defendant was known to and/or authorised by or acquiesced to by Lim. Yet he had the gall to turn around and sue Justin, the third defendant and the other defendants for conspiracy and to claim the balance 75% value of the NH Glass project totalling $225,000 ($300,000 x 75%). To allow the plaintiff to recover $225,000 and/or $225,720 for work it did not and could not carry out on the NH Glass project would be to unjustly enrich the plaintiff at the third defendant's expense.

99 I disbelieve Lim's claim that the plaintiff had expended $124,564.83 in purchasing materials for the NH Glass project. Rather, I accept Richard's evidence that not all the materials were used in the NH Glass project as part thereof went into the SIS project. Richard also testified that he was unable to ascertain the proportion of materials used in the two projects because he had handed all the documents over to the plaintiff. As the plaintiff failed to produce documents to substantiate its claim that all the materials went into the NH Glass project, I am dismissing it without more.

100 I would add that Lim's allegation that the five individual defendants removed the hard disks from the computer systems in the plaintiff's office is a complete fabrication.

Conclusion

101 In the light of the evidence adduced in court, I have no hesitation in finding that the plaintiff's

various heads of claim are completely unmeritorious. I agree with the defendants that the plaintiff's action was instituted in bad faith undoubtedly by Lim and/or Ronald with the motive of denying the plaintiff's other shareholders *viz* Justin and Bob (through his shareholding in SYEI which is the third shareholder of the plaintiff) of any share in the sale proceeds of the plaintiff's premises. To-date, in breach of his director's duties, Lim has failed to account for the sale proceeds. There was no conspiracy between the defendants to cause harm to the plaintiff as alleged or at all.

102 For added measure, Lim and/or Ronald added Chow as the seventh defendant to this suit when Chow was an innocent party whose only fault was to award the NH Glass project to the plaintiff and subsequently to the third defendant, because he knew that Justin was capable of doing the work required.

103 Consequently, the plaintiff's action is dismissed with costs to all seven defendants to be taxed on a standard basis unless otherwise agreed.

[note: 1] AB276

[note: 2] AB293

[note: 3] AB361

[note: 4] AB 232

[note: 5] N/E 276-277

[note: 6] See minutes at DB26

[note: 7] at AB320

[note: 8] See AB361-364

[note: 9] AB1160

[note: 10] AB347

[note: 11] N/E 96

[note: 12] N/E 44

[note: 13] N/E 39-40

[note: 14] DB24A

[note: 15] her version is at DB23

[note: 16] N/E 55

[note: 17] exhibit P3

[note: 18] N/E 358

[note: 19] N/E 401

[note: 20] N/E782

[note: 21] see exhibit P5

[note: 22] AB138

[note: 23] DB18

[note: 24] DB20

[note: 25] DB21

[note: 26] DB22

[note: 27] DB24A

[note: 28] DB25

[note: 29] DB26

[note: 30] AB164

[note: 31] N/E 402

[note: 32] AB237

[note: 33] AB274

[note: 34] N/E 210

[note: 35] DB4

[note: 36] DB3

[note: 37] see exhibit LDL-8 p 45 in Peter's AEIC

[note: 38] N/E45

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