Vita Health Laboratories Pte Ltd and Others v Pang Seng Meng
[2004] SGHC 158

Case Number : Suit 640/2002

Decision Date : 29 July 2004

Tribunal/Court : High Court

Coram : V K Rajah JC

Counsel Name(s) : Cavinder Bull, Kelvin Tan and Johanna Tan (Drew and Napier LLC) for plaintiffs; Alvin Tan Kheng Ann (Wong, Thomas and Leong) for defendant

Parties : Vita Health Laboratories Pte Ltd; Vita Health Laboratories (Hong Kong) Ltd; Vita Corporation Pte Ltd; Vita Life Sciences Ltd — Pang Seng Meng

Companies – Directors – Duties – Defendant allegedly orchestrating fictitious sales with overseas entities and making payments without proper authorisation and making excessive stock purchases – Whether amounting to breach of fiduciary duties

Contract – Breach – Share sale agreement – Defendant warranting that non-existent trade debts in financial statements were good debts – Defendant receiving bonus shares pursuant to share sale agreement – Whether defendant liable for debts warranted – Whether defendant entitled to retain bonus shares

Contract – Misrepresentation – Damages – Plaintiff induced to enter into agreement by defendant's misrepresentation of receivables purportedly due from third parties – Whether plaintiff could claim damages in lieu of rescission – Section 2(2) Misrepresentation Act (Cap 390, 1994 Rev Ed)

Damages – Measure of damages – Quantification of losses where defendant involved in fraudulent misrepresentation

29 July 2004 Judgment reserved.

V K Rajah JC:

Introduction

1 The Vita Health brand has made a name for itself in Singapore, Malaysia and the region. In 2002, it was accorded the status of SuperBrand by the Singapore chapter of the SuperBrands Council, an independent authority on branding.

2 The brand began with modest origins in Singapore. It was conceived by the defendant's late father in the '70s. He figured among the pioneers of the pharmaceutical retail business in Singapore. Through the years, the Vita Health group of companies ("VHGC") has built a network of regional distributors for its pharmaceutical products, largely manufactured in Australia. The products include traditional nutritional products, vitamin preparations and health supplements.

3 Under the stewardship of the defendant's late father, VHGC enjoyed a steady growth in business. In the '80s the seeds of a regional business were first planted. The business began to flourish in the '90s when the defendant took over the reins, successfully guiding VHGC through a spurt of remarkable growth. Popularity of Vita products soared in Singapore and Malaysia, and substantial sales were also apparently being made to consumers both in Indonesia and the Philippines. The defendant was ambitious. These were heady times. A shoestring and somewhat pedestrian family

operation had evolved into a regional business all because of his vision, efforts and drive to expand VHGC's business horizons. He harboured visions of building a pan-Asian business anchored in Singapore. To do this, he would first have to attract investors to inject substantial capital into the family business. Investors had to be persuaded not only that VHGC was a viable and attractive business prospect offering attractive returns but that it had, in addition, the potential to secure a future stock exchange listing. This, the defendant successfully accomplished. Not only did he attract substantial and reputable investors, he also managed to have the VHGC business listed on the Australian Stock Exchange by means of a reverse takeover in 2000.

4 Financial success however, came with a price. Accountability became the order of the day and cosy family arrangements could no longer be sustained. Business plans had to be tested. Accounts had to be verified. Receivables had to be collected. Management was closely scrutinised. The relationship between the defendant and outside investors went from strained to tense and finally, to acrimonious. In March 2002, the defendant was "persuaded" to step down from all management positions in VHGC. Allegations of impropriety were levelled against him in quick succession. Shortly thereafter, proceedings were commenced against him by VHGC in Singapore and Malaysia. His substantial shareholdings in the fourth plaintiff, worth millions of dollars, have now been "locked out"; effectively frozen. An accountant appointed by the plaintiffs concluded there had been serious accounting manipulation, asserting that the defendant had misled outside investors. These charges are at the heart of these proceedings, which have stretched over eight weeks of hearings.

The parties

5 The first plaintiff, Vita Health Laboratories Pte Ltd ("VHLS"), is incorporated in Singapore and carries on the business of import, export, and distribution of medicinal and pharmaceutical products; primarily those bearing the Vita brand. The second plaintiff, Vita Health Laboratories (Hong Kong) Ltd ("VHLHK"), is a company incorporated in Hong Kong. From time to time, for tax reasons, it is used as a vehicle by VHGC to transact business. The third plaintiff, Vita Corporation Pte Ltd ("VCL"), is incorporated in Singapore and wholly owns the first and second plaintiffs. VCL is in turn, currently wholly owned by the fourth plaintiffs, Vita Life Sciences Limited ("VLS"), a public company incorporated in Australia which had been listed on the Australian Stock Exchange ("ASX") until 30 June 2003. Certain issues arising from the imposition of a "holding lock" on the defendant's shares in VLS resulted in a decision by the ASX to delist VLS thereafter.

6 The defendant graduated from the University of Singapore with a degree in social sciences in 1980. He joined his father in the family pharmaceutical business thereupon and was actively involved in the growth, management and development of the "Vita" pharmaceutical business.

Factual matrix

7 It is undisputed that the defendant was at all material times, and certainly from 1997 to 2000, the operating and controlling mind of VHGC. There is, however, some discord between the parties as to the extent of his knowledge and control from 2001 until his retirement from all management posts in VHGC in March 2002.

8 In late 1997, the defendant successfully persuaded Deutsche Morgan Grenfell Private Equity Fund Asia Limited ("DMG") to make an investment in VCL. In mid-1998, Nomura Regionalization Venture Fund Ltd ("Nomura") also made a substantial investment in VCL. The investment agreements entered into with these investors made it mandatory for the defendant to procure a listing of VHGC on a stock exchange by the end of 1999, failing which the defendant and his siblings, Pang Seng Hock ("Seng Hock") and Pang Mui Hwa would be obliged to redeem DMG's and Nomura's shares in VCL for

approximately $8.3m or alternatively, dispose of VHGC.

9 In early 1999, serious discussions commenced between VLS and the defendant, in connection with VLS's proposed takeover of VHGC. VLS was then known as Macarthur National Limited. The successful outcome of these discussions was of crucial importance to the defendant. At that juncture, prospects for VHGC's listing on the Singapore bourse were rather remote. The timelines imposed by DMG and Nomura were about to expire. The discussions contemplated a back door listing of VHGC on the Australian Stock Exchange. VLS's financial advisors noted in the course of their due diligence review, that VHGC had substantial stale receivables from sales to Indonesian and Philippines based entities. After lengthy discussions, VLS entered into a share sale agreement with the defendant and his family-owned entity on 29 October 1999. All their shares in VCL were sold to VLS in consideration for the allotment of a commensurately valued amount of shares in VLS. This share sale was completed on 3 February 2000. The defendant became the largest single shareholder of VLS, which shareholding continues to this day to have a substantial value. The defendant was also appointed managing director of VLS on 28 February 2000.

10 The defendant now had to fulfil substantial duties and discharge several responsibilities in various roles, managing different aspects of VHGC's several businesses. He travelled frequently and was unable to attend to VHGC's traditional pharmaceutical business with the same earlier devotion and attention. With his acquiescence, a new managing director, Lam Pin Kee ("Lam") was appointed to oversee VHLS's operations. The defendant, however, continued to play an important role in the operations of these companies and it would not be overstating the position to say that he continued to have effective overall operational control of VHGC's pharmaceutical business though he was now heavily dependent on others. In particular, he had a close relationship with Tang Oyi Chuen ("Tang"), the finance director of VHGC prior to the takeover. Until his departure in 2001, Tang continued to work closely with the defendant. This was an important relationship, which allowed the defendant to enjoy both front office and back office control of VHGC.

11 Towards the end of 2001, Vanda Gould ("Vanda") who was concurrently the chairman of VLS as well as one of its substantial shareholders, began to take issue with the defendant about the operation and performance of VHGC which he was unhappy with. Financial expectations were not being met. Irregular accounting issues surfaced. The Pang family and staff loyal to them continued to maintain a tight grip over VHGC's operations. Differences between Vanda and the defendant emerged. The dissent initially pertained to the involvement of the defendant's brother, Seng Hock's role in VHGC. It later conflagrated into a confrontation at a VLS board meeting on 26 February 2002 leading to the defendant's complete retirement from VHGC's management. These differences then crystallised into a very personal and acrimonious joust for the hearts and minds of the VLS board and its shareholders. Vanda prevailed and the present proceedings were initiated.

12 Upon commencement of the present proceedings, the plaintiffs appointed a special accountant, Don Ho ("Ho"), to inquire into VHGC's operations and the defendant's complicity in certain apparent irregularities. On completing an inquiry stretching over several months, Ho opined that the defendant had committed serious improprieties, particularly in relation to VHGC's regional businesses in Indonesia, Philippines and Taiwan. In addition, Ho asserted in his report that the plaintiffs could maintain a montage of variegated claims against the defendant for various alleged fiduciary and contractual breaches. The plaintiffs have since made a stream of substantial amendments reflecting Ho's somewhat fluid findings. It would be fair to say that the plaintiffs initially took a blunderbuss approach in attempting to lay at the defendant's door every conceivable irregularity both real and imaginary. However, after a change of solicitors on 26 June 2003, the plaintiffs' various claims assumed a more coherent, measured and rational structure and tone. The present solicitors explain that the numerous amendments were necessitated by the painstaking ongoing task of reconstructing

the financial records of VHGC.

13 It will be convenient to deal with each of the existing claims separately. Prior to this it might be helpful to first briefly set out the applicable principles of law in dealing with the plaintiffs' allegations.

Directors' duties – a vignette

14 Every director of a company, regardless of whether he has an executive or non-executive designation, has fiduciary duties and legal responsibilities to his company. In scrutinising and analysing a director's conduct, particular attention will be directed to the director's belief in adopting a particular course of conduct and the purposes for which he exercises a particular power. Corporate powers ought to be exercised *bona fide* solely for the purpose for which they were granted and for the general benefit of the company. The common law duties are neatly encapsulated in s 157(1) of the Companies Act (Cap 50, 1994 Rev Ed) ("CA") which requires the application of honesty and discharge of reasonable diligence by directors. In explicating the purport of s 157 of the CA, Yong Pung How CJ observed in *Lim Weng Kee v PP* [2002] 4 SLR 327 at [28] that:

> [T]he civil standard of care and diligence expected of a director is objective, namely, whether he had exercised the same degree of care and diligence as a reasonable director found in his position. The standard is not fixed but a continuum depending on various factors such as the individual's role in the company, the type of decision made, the size and business of the company.

In passing, it should be stated that incompetence is not *ipso facto* considered a breach of fiduciary duty even though it may attract other heads of liability.

15 A director who by action or inaction causes losses to a company may find his conduct being questioned. Without evidence of a lack of *bona fides* however, it cannot properly be contended that directors are invariably liable for all losses sustained by a company.

16 In *ECRC Land Pte Ltd v Wing On Ho Christopher* [2004] 1 SLR 105, Tay Yong Kwang J rightly opined at [49]:

> The court should be slow to interfere with commercial decisions taken by directors (see *Intraco v Multi-Pak Singapore* [1995] 1 SLR 313). It should not, with the advantage of hindsight, substitute its own decisions in place of those made by directors in the honest and reasonable belief that they were for the best interest of the company, even if those decisions turned out subsequently to be money-losing ones.

17 This judicial endorsement of the sanctity of business judgment is underpinned by strong policy considerations. It is the role of the marketplace and not the function of the court to punish and censure directors who have in good faith, made incorrect commercial decisions. Directors should not be coerced into exercising defensive commercial judgment, motivated largely by anxiety over legal accountability and consequences. *Bona fide* entrepreneurs and honest commercial men should not fear that business failure entails legal liability. A company provides a vehicle for limited liability and facilitates the assumption and distribution of commercial risk. Undue legal interference will dampen, if not stifle, the appetite for commercial risk and entrepreneurship.

18 Limited liability immunity cannot be divorced from legal responsibility imposed on directors in their dealings with third parties and their conduct while exercising corporate powers. Rights go hand in

hand with responsibilities. Ordinary norms of commercial morality must be observed. The lack of commercial probity will attract a variety of consequences, both civil and criminal.

19 A director who causes accounts to be misstated, flagrantly abuses his position and breaches his corporate duties. Being in breach of his duties to the very company itself, he cannot evade his responsibility by attempting to hide behind the cloak of corporate immunity. Apart from this, he may also face issues of liability and or indemnities apropos his fellow directors, shareholders, auditors and third parties. In appropriate cases, the cloak of corporate immunity will be readily lifted by the court. Creative accounting of a deceitful nature ought to be severely denounced as it strikes at the very heart of commercial intercourse which depends upon the integrity of company accounts and financial statements.

Delegation

20 The issue of delegation has vexed courts in several jurisdictions. It would be wholly impractical to expect directors to be omniscient or to personally discharge all corporate powers and functions. The larger the business, the greater the commercial need for delegation. The more specialised functions are, the greater the need for independent operations and powers. Legal pragmatism imbued with latitude towards business efficacy is crucial in assessing a director's delegation of duties. Admittedly, he must reasonably believe that his subordinates will competently discharge their duties in the company's interests. Other than that it is fair to say that there is no acid test that will provide a definitive answer. It can however be safely assumed that the court will be reluctant to take to task a director who has *bona fide* delegated his functions and/or powers to competent subordinates.

21 It has been said that delegation may be improper only if the situation is "of such a character, so plain, so manifest and so simple of appreciation" that no one would rely on the subordinates (*cf* Romer J in *In re City Equitable Fire Insurance Company, Limited* [1925] Ch 407 at 428, quoting from *Overend & Gurney Company v Gibb* (1872) LR 5 HL 480 at 486–487). This historical view, set in the context of a wholly different era of commerce, is no longer apposite. A director cannot now be viewed as a mere *sentinel* who may occasionally doze off at his post. Directors are *officers* who must remain alert and watchful at the helm. Directors ought to have an inquiring, though not necessarily suspicious, mind in discharging their supervisory functions. The English Court of Appeal in *Re Barings plc (No 5)* [2001] 1 BCLC 523 at [36], approved (*per* Moritt LJ) the instructive summary of principles by Parker J at first instance (see *Re Barings plc* [1999] 1 BCLC 433 at 489):

> (i) Directors have, both collectively and individually, a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company's business to enable them properly to discharge their duties as directors.
>
> (ii) Whilst directors are entitled (subject to the articles of association of the company) to delegate particular functions to those below them in management chain, and to trust their competence and integrity to a reasonable extent, the exercise of the power of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.
>
> (iii) No rule of universal application can be formulated as to the duty referred to in (ii) above. The extent of the duty, and the question whether it has been discharged, must depend on the facts of each particular case, including the director's role in the management of the company.

I accept this summary as correctly reflecting the position in Singapore as well. With this overview, I now turn to the facts.

Indonesia

22 The plaintiffs claim that the defendant was responsible for creating and maintaining in VHLS's books, false and unrecoverable receivables purportedly due from an Indonesian entity, namely PT Vitaton Humanoria Lestari Indojaya ("Vitaton"). This accounting travesty, it is alleged, was created by the façade of representing Vitaton as an independent third party purchasing goods from VHLS. In reality, it is said, Vitaton was funded, managed and controlled through VHLS with the connivance and at the behest of the defendant. The defendant, on the other hand, has stoutly maintained that Vitaton was an independent entity.

23 In 1996, the principal sales income of VHGC was from Singapore and Malaysia. However, in the 1997 accounts, the receivables dramatically swelled from just $2.5m in 1996 to $10.2m. A substantial amount of these new receivables was attributed to burgeoning sales to customers in Indonesia and the Philippines. Interestingly, it should be noted that the defendant's parents signed the 1996 audited accounts but not the 1997 audited accounts. The defendant and his brother, Seng Hock, signed the latter.

24 A number of other critical events also transpired in 1997. Vitaton was incorporated. A distribution agreement was signed between Vitaton and VHLS. Similar arrangements were reached with a Philippines entity (see [36]). Both distribution agreements were dated 1 January 1997. It will be remembered that DMG became an investor in VHGC towards the end of 1997. The defendant around this time also actively solicited other outside investors.

25 Though Vitaton was only "incorporated" around 17 August 1997, substantial receivables inexplicably accrued in VHLS's books as owing from Vitaton well before this date. Vitaton's business was conducted and managed by Dr Patricia Purnawati ("Dr Pat"). The defendant maintained that he approached her to assist in the expansion of VHGC's business in Indonesia and that she had then "set up her own company to take over the business". Dr Pat's testimony was, however, utterly inconsistent with the defendant's assertion. She was corroborated in all essential aspects of her testimony by Kenny Chiew, a former country manager for VHLS's Indonesian operations. They both asserted unequivocally that Vitaton only held product licences for VHLS and did not independently transact any business. Indeed, they added, Vitaton was only incorporated for the purpose of holding production licences on behalf of VHGC for its operations in Indonesia. They further asserted that the defendant mooted the idea for this arrangement. Vitaton, they confirmed, did not exist as an independent entity and was in actuality always a "branch of VHLS" answerable to the defendant on behalf of VHLS.

26 There is clear documentary evidence showing that the sum of $1,583,110.98 in due receivables from Vitaton was reflected in VHLS's accounts even prior to 17 August 1997, the date of Vitaton's apparent incorporation. The distribution agreement with Vitaton was apparently backdated to 1 January 1997 to lend documentary support to the semblance of a legitimate business arrangement. Interestingly, this façade could not bury the troubling fact that at the end of 1996, due receivables from Vitaton were recorded as $1,259,969. In short, the VHLS accounts demonstrably showed that substantial business was being conducted with Vitaton as a third party *even before it existed*. The defendant could not satisfactorily explain this by relying on the wholly improbable response that he assumed that Vitaton had all along been properly constituted, as a crutch. For good measure, he tentatively suggested that these questions be directed at Tang. I find this most unsatisfactory. The terms of the distribution agreement are striking for their inconsistencies and patent departure from reality, clearly inviting a finding that they were a "fig leaf" – what were they meant to conceal?

27 In the course of cross-examination, the defendant, momentarily appearing to forget his script, stated that "we had told her (Dr Pat) to form the company". He subsequently tried to repair this concession. I formed the view, in assessing his evidence, that the inadvertent slip in fact reflected the truth and was indeed consistent with the evidence given by Dr Pat and Kenny Chiew on the issue of "ownership" of the Indonesian operations. They had both insisted that Vitaton had never done any business in Indonesia. Their evidence on this point was unshaken. While there were some blemishes, their evidence taken in its totality has not only a ring of truth but is also firmly substantiated by several contemporaneous documents and events.

28 Dr Pat first became involved with VHLS in 1995. An employment contract was signed in 1998 and continued to have effect until the defendant's retirement. As a consequence of this arrangement, she continued to indirectly receive emoluments from VHLS even after Vitaton's incorporation. The employment contract was signed by the defendant. It required Dr Pat to devote all her time to VHLS's operations in Indonesia. The defendant's attempted explanation of Dr Pat's continuing relationship with VHLS, purportedly *qua* consultant, was totally at variance with the established facts. In addition, it is pertinent to point out that in August 1999, the defendant confirmed *vide* a letter of appointment, addressed to the Indonesian Department of Industry and Trade, that Dr Pat was VHLS's representative in Indonesia to "introduce and promote the company's range of products", "liaise with its customers and follow up on all matters" and "assist to conduct market research, quality control inspections *etc*".

29 Kenny Chiew's evidence is consistent with his monthly reports to VHLS and the defendant. He was no ordinary sales representative. He was VHLS's plenipotentiary in Indonesia. He was running the Indonesian operations for VHLS with Dr Pat. VHLS, at the behest of the defendant and Tang, was funding and controlling all aspects of sales to actual Indonesian clients. Invoices to Indonesian customers were issued in VHLS's name instead of Vitaton's. The defendant was also unable to account for the astonishing "credit" arrangements VHLS had with Vitaton. His disquieting explanations, limply tied to prevailing economic conditions in Indonesia, defied commercial logic and invited incredulity and scepticism. The purported credit arrangements were not merely elastic, as the defendant would have the court believe, but entirely illusory.

30 It is germane to point out at this juncture that there is a high standard of proof imposed on the plaintiffs in respect of any allegations involving fraudulent conduct levelled against the defendant. If a serious allegation such as fraud is made in civil proceedings, the standard of proof goes beyond the usual civil standard of proof. Generally speaking, the graver the allegation the higher the standard of proof incumbent on the claimant: *Yogambikai Nagarajah v Indian Overseas Bank* [1997] 1 SLR 258 at [39] to [43]. With this in mind, I nevertheless find that Vitaton was not an independently conceived and operated business entity. I accept the plaintiffs' contention that it was a charade. It was run and managed as a *de facto* subsidiary of the plaintiffs. The purported "sales" never existed as true sales. I do however find that VHLS had genuine business operations in Indonesia. The products "sold" to Vitaton were actually sold subsequently to third parties, albeit with different terms and credit arrangements. These were the true sales that ought to have been recorded in the books. Substantial receipts were generated and remitted to VHLS from these sales. The Indonesian transactions generated actual sales of $4.56m with receipts of $3.34m ultimately being recovered by VHLS. Though it appears dicey whether this business broke even by 2002, in the ultimate analysis, this may not matter. It was patently not profitable in 1999 and was clearly misrepresented in the accounts at all material times.

31 VHLS's relationship with Vitaton should not have been portrayed as one conducted at arm's length. Vitaton was not conducting any business in Indonesia. VHLS, by booking all the deliveries to its Indonesian "branch" created a chimera of a highly successful and profitable business. VHLS had

employed Dr Pat to manage its operations in Indonesia. VHGC's accounts misstated at all material times the true nature of its relationship with Vitaton. The defendant and Tang were both conscious that the sales had been misrepresented.

32 The defendant invented this charade of trading with Vitaton in order to portray VGHC's accounts in better light to bait, reel in and then reassure outside investors of VHGC's overall financial health and prospects. Crucially, he did not disclose the actual relationship to the outside investors including VLS.

33 I will deal with the plaintiffs' consequential claims in respect of this issue separately.

Philippines

34 The plaintiffs make two alternative allegations against the defendant in relation to VHGC's Philippine business transactions. They assert that Vita Health Laboratories (Phils) Inc ("VHLP") was owned by the defendant. Alternatively, VHLP was in fact a *de facto* subsidiary of VHLS. The defendant maintained that VHLP was an independent entity.

35 VHLP was formed in November 1996. Dr Roberto Gabiola, VHLP's former President and CEO as well as minority shareholder, testified that the defendant initiated its incorporation. This damning assertion was not challenged in cross-examination. Dr Gabiola further asserted that he ran VHLP as a subsidiary of VHGC. He referred to a trust deed and "statement of amounts" which indicated that the defendant indirectly held a substantial portion of VHLP's equity. While VHLP had staff strength of about 20 comprising mainly sales staff, they took directions primarily from the defendant initially and subsequently from George Chong, VHLS's Philippines country manager. To corroborate his evidence, Dr Gabiola relied on a number of contemporaneous documents. Nilda Fisabon, the administrative manager of VHLP, also gave unchallenged evidence that "VHLS never requested that we make payments of monies to them".

36 Brief references to some of the documents are warranted at this juncture. A distribution agreement identical to that which the defendant signed with Vitaton was entered into between VHLS and VHLP. It was also dated 1 January 1997. In November 1997, the defendant signed a letter addressed to Dr Gabiola deleting a provision that required VHLS to accept all "returns from the trade". This gave the relationship the veneer of an outright sale arrangement. The records also show that VHLP never actually paid for the products shipped to it, though a paltry amount was remitted back to Singapore. From time to time, credits were made to the accounts. At first blush, this created the appearance of a third party arrangement with active payment movements. VHGC's accounts showed outstanding receivables of $719,000 due to it, as of 31 August 1997 against "payment" of just $40,000. This payment record cannot, by any means, be described as a commercial arrangement. The purported credit terms between VHLP and VHLS were as "generous" as the arrangement with Vitaton. There is no evidence of VHGC extending similar credit terms to any other entity.

37 VHLP's bank accounts were indisputably controlled from Singapore. Its chequebooks were held in Singapore and payment requests were processed by VHLS in Singapore before being sent to Dr Gabiola, for his signature. Dr Gabiola also signed documents on behalf of VCL. Other documentary evidence, including internal presentations to management, clearly showed the defendant's involvement in several operational aspects of VHLP's day-to-day business activities.

38 There is a rather remarkable episode that merits close attention and underscoring. On 2 December 1998, the defendant transferred $600,000 from his personal bank account to reduce the outstanding receivables reflected in VHLS's books as due from Vitaton and VHLP. In response to

concerns over the static nature of certain VHLS's receivables, Tang had earlier informed DMG and Nomura that arrangements would be made for the "owners" of Vitaton and VHLP to address the unsatisfactory state of their receivables. The defendant's explanation that he had unilaterally taken this step because of his personal indemnity obligation to these investors is utterly implausible. He never informed them that he was discharging such an obligation. No demand had been made. Indeed, Linus Koh ("Koh"), DMG's nominee director on VHLS at the material time, expressed undisguised surprise in court when informed of the defendant's inexplicable conduct. It bears mention that Koh was a witness for the defence. This baffling payment provides compelling evidence of the defendant's scheme to maintain the appearance of VHLS running a profitable business with Vitaton and VHLP.

39 I also draw an adverse inference against the defendant for not making serious attempts to arrange for Tang to give evidence *via* a video link. Several of the plaintiffs' witnesses gave evidence through this medium. I do not understand why the defendant did not take strenuous steps to enable Tang to give evidence, if it could help his case. Tang is in Canada and it would not have been difficult to make arrangements for him to give evidence (see *Cheong Ghim Fah v Murugian s/o Rangasamy* [2004] 1 SLR 628 at [37] to [45]). It is incontrovertible that Tang was purporting to liaise with the owners of Vitaton and VHLP. It appears to me that the defendant and Tang worked hand in glove in the gestation of the Vitaton/VHLP charade. Both of them knew that there were no "owners" behind Vitaton or VHLP.

40 The farcical nature of the trading relationship is further exposed when two credit notes that the defendant caused VHLS to issue are scrutinised. These credit notes amounting to $800,000 and $500,000 were ascribed to Vitaton and VHLP respectively. The purported consideration for these credit notes, which first surfaced in 1999, included the purchase of:

a) the existing product licences;

b) the sales and distribution networks; and

c) all unsold stock which these two "entities" *owned*.

The $500,000 credit note in favour of VHLP subsequently ballooned into $783,000 in December 2001. There is clear evidence that this amount was arbitrarily tied to the latest current outstandings of VHLP. In an e-mail dated 13 December 2001, Paul Teo, the then finance manager who had replaced Tang, directed George Chong "to rework the valuations to about $700,000 which allow us to also capitalize all VHLP's owing as at to date". Both credit notes were plainly a sham. There was no need to purchase any assets; VHLS already owned and managed these "entities". The true purpose of these credit notes was to reduce the "outstandings" due from Vitaton and VHLP without exposing the charade. It should be noted that there is congruence between part of the $600,000 paid by the defendant on behalf of the "owners" and the $500,000 he initially sought to write off in respect of VHLP's accounts. The defendant cannot now rely on the ostensible approval for these arrangements he had procured from the boards of VHLS and/or VLS. Any such approval was procured entirely through deceit and is to that extent, wholly ineffective in shielding the defendant from the consequences of his conduct.

41 There is yet another matter that merits mention. The Indonesian and Philippines entities have two essential and telltale attributes. They use the "Vita" trade name and deal only with VHGC supplied products. It is impossible to permit the defendant momentary lapses in allowing the utilisation of the "Vita" trade name in circumstances that would subsequently entail a ransom be paid. This was not an instance of Homer nodding. The defendant struck me as nothing less than an astute businessman.

42 In the circumstances, I unreservedly accept the plaintiffs' contention that VHLP like Vitaton, was a *de facto* subsidiary of VHLS. I do not accept the alternative contention that the defendant owned VHLP and surreptitiously conducted its business entirely for his direct benefit. The benefit was indirect. He had installed in the Philippines, an arrangement similar to the Indonesian arrangement. The intention was again, to create the illusion to outside investors that a viable business arrangement had taken root in the Philippines. Inter company "debts" were reflected in VHLS's accounts at all material times as sales and booked as third party receivables. This was nothing short of a deception. While I am prepared to accept that the defendant may have believed at some stage that the activities in Philippines were a prudent long-term investment decision, they were never disclosed as such. DMG, Nomura and VLS were in turn actively and fraudulently misled into thinking that VHLS had an important and successful business relationship with a Philippine entity.

43 VHLS has a further claim based on outstandings due from Zuellig Pharma Corporation Philippines ("Zuellig Philippines"). As pleaded, the claim is principally anchored to an alleged breach of duty by the defendant in failing to ensure collection of payments for products sold to them. There is a further subsidiary allegation that he caused Zuellig Philippines to advance funds to VHLP. Ho's testimony on this issue is unsatisfactory as he failed to adequately understand the relationship between the various entities. The claim is further undermined by reason of settlement arrangements VHLS entered into with the Zuellig group which allowed them to have a "fresh, clean start for 2003". Gerald Adams, the current managing director of VLS, confirmed that the plaintiffs were averse to taking steps to collect debts from *inter alia* Zuellig Philippines because of the "greater relationship" the parties had. Given this stance, it would not be appropriate for the plaintiffs to maintain this claim against the defendant. It also appears that the plaintiffs have strayed beyond their pleadings in pressing this claim, which has some degree of overlap with the claim apropos VHLP.

Taiwan

44 The plaintiffs have four different claims arising from business transactions in Taiwan. There are four separate entities involved: Weider Pharma (Taiwan) Co Ltd ("Weider"), Baillian Enterprises ("Baillian"), Dragon Pharmaceutical Company Ltd ("Dragon") and Zuellig Pharma Inc Taiwan ("Zuellig Taiwan"). For convenience, I will deal only with the Weider issues under this head. The main plank in respect of the plaintiffs' claims for the other entities is the defendant's failure to act diligently or reasonably in collecting longstanding receivables. The other claims are also subsumed under VLS's claim based on the defendant's alleged breach(es) of his contractual warranties and undertakings.

45 The plaintiffs' claims in respect of Weider largely mirror the charges levelled in respect of the business arrangements VHGC had with Vitaton and VHLP. It is alleged that Weider too was a *de facto* subsidiary and that this was concealed from the plaintiffs, and in particular, VLS. However, it bears mention that the defendant's stance on this issue is quite the opposite of his position on Vitaton and VHLP. In his defence, he admits that Weider was indeed a *de facto* subsidiary of VHLS, established "to assist … in the facilitation" of its sales to Zuellig Taiwan. In support of his position, several witnesses were called by the defence to give evidence on the arrangements in Taiwan and the genesis of some rather controversial business practices. This too was an entirely different stance from the defendant's approach in addressing the claims apropos Vitaton and VHLP, where he was effectively the sole factual witness called in rebuttal.

46 Weider was created because Zuellig Taiwan had concerns about dealing directly with VHLS. There are no real issues pertaining to the legitimacy of VHLS's transactions with Zuellig Taiwan. The Zuellig group continues to maintain a sound business relationship with the plaintiffs. VHLS had in the course of time under-declared the price of goods it shipped to Zuellig Taiwan. Zuellig Taiwan discovered that Sophia Cheng ("Sophia"), VHLS's Taiwan representative, had forged its company

stamp to facilitate this. Not wanting to be implicated by dealing directly with VHLS, Zuellig Taiwan thereafter required that it interpose an intermediary. Sophia then established Weider using family members as directors. Indeed, one of the directors was Sophia's four-year-old son! Clearly, Weider was another charade. That much is undisputed at least for this aspect of VHLS's operations. The question remains, however, whether this was another charade that the defendant both created and concealed from the plaintiffs. The plaintiffs plead that the true nature of Weider was concealed from and/or misrepresented to "VLS, their directors, the plaintiffs' officers, employees". It is axiomatic that the burden to establish these facts lies on the plaintiffs.

47 It must be observed at the outset, that apart from the defendant's pleaded position, there are other significant differences between Weider on the one hand, and Vitaton and VHLP on the other. First, Weider was only incorporated after VLS bought into VHGC. It was established in March 2001. Secondly, the defendant quite clearly made no attempt to mask this arrangement from VHGC's employees and officers. Perhaps because all the investors were already in, unlike the establishment of Vitaton and VHLP, where clandestine arrangements were initiated, concluded and concealed by the defendant, Weider enjoyed an altogether different gestation. The problems pertaining to the business operations and sales in Taiwan were well documented and freely discussed among the management of VHGC. Thirdly, and most importantly, I find that no attempt was made to conceal the peculiar structure and arrangements from VLS. David Allison, the plaintiffs' then group financial manager, and VLS's company secretary was privy to the Weider arrangements. Indeed, he was present at a crucial meeting on 3 July 2001 where it was minuted that "to resolve Zuellig's issues, management agrees to set up a company for import purposes. Sophia set up Weider in 2001 for the purposes of importing goods to be sold to Zuellig. This company is owned by Sophia and family." It should also be noted that in May 2001, the defendant had personally asked Allison to look into the Taiwan situation and asked him to "follow up with all concerned on this matter as well". There was no suggestion from plaintiffs' counsel that the defendant had asked any of VHGC's staff involved in its Taiwan business to conceal the true nature of the Weider operations from Allison or VLS. This was not a clandestinely evolved arrangement like Vitaton and VHLP.

48 There are obviously a number of improprieties pertaining to VHGC's Taiwan operations. Notwithstanding, the responsibility for this cannot be brought to bear upon the defendant. The plaintiffs are limited by their narrowly pleaded case on this issue. Unlike the instances of Vitaton and VHLP, Weider's origins and structure were an open secret within the plaintiffs. I also take into account that in 2001, the defendant was no longer engaged in the day-to-day operations of VHLS, particularly after Lam's arrival, as a result of his heavy engagements outside Singapore. Granting that he clearly had the final say with regard to all decisions, he nevertheless assumed a more broad brush approach, upon Lam's appointment, allowing the minutiae to be addressed by others in VHLS's management. He quite reasonably left it to them to resolve this issue in the interests of VHLS. As for the plaintiffs' claim that Weider was another improper operation that was wilfully concealed from them, such a claim is untenable and fails. Indeed, Allison and Lam knew about this arrangement and were attempting to resolve the unsatisfactory position. Unlike the earlier episodes, it cannot be fairly said that the defendant initiated and concealed this arrangement.

Malaysia

49 The defendant admits that he inflated the receivables due from Zuellig Pharma, Malaysia ("Zuellig Malaysia"). He signed a letter dated 31 March 2001 unilaterally increasing the price of certain products *already sold* to Zuellig Malaysia. The letter was backdated.

50 The defendant conceded that the price increase of 20% was effected to ensure that the planned half-year results of VLS could be achieved. He also asserted that Henry Townsing

("Townsing"), another director of VLS had acquiesced in this exercise. Leaving aside the truth of this assertion, it must be observed that this position was neither pleaded nor put to Townsing when he gave evidence. I therefore leave this issue open. In the final analysis, the fact remains that the defendant initiated and effected this exercise in creative accounting to dress up VHGC's accounts. This is wholly unacceptable conduct for which the defendant, as managing director, is personally answerable. Even if Townsing played a role in this abject pantomime of creative accounting, the defendant cannot shirk his responsibility.

51 Ho gave evidence that the plaintiffs' loss arising from this exercise was the precise amount of the improper increase. Despite being queried by me, he adamantly insisted that this "loss" was both theoretically and practically recoverable. Ho's evidence on this point does not stand up to scrutiny. If the increase was not justified in the first instance, how could he claim the plaintiffs had been damaged to the extent of the purported increase? He did not strike me as an objective witness on this and, indeed, some other issues (see [87] to [90]). Counsel for the plaintiffs, to his credit, neither pursued this line of quantification nor attempted to shore up his expert's untenable stance. He submitted that the damage recoverable by the plaintiffs as a consequence of this exercise was limited to excessive taxes paid and the costs of restating the accounts. However, as no evidence was led by the plaintiffs to quantify these claims, no award is called for.

Ordering excessive stock

52 On 26 November 1998, the defendant signed a trademark licence agreement with Sunkist Growers pursuant to which VHLS was allowed to manufacture, market and sell certain Sunkist products. In June 2000, the defendant arranged for VCL to enter into a distribution agreement with Nestlé Australia for the distribution of Nestlé products. The plaintiffs have pleaded that in breach of his fiduciary duties, the defendant caused VHLS to purchase excessive amounts of Sunkist and Nestlé products which it "had no reasonable prospect of selling". The defendant's case is that in so far as the Sunkist agreement is concerned, there was a prior commitment to purchase minimum quantities on an annual basis. This estimation had been reasonably arrived at. As for the Nestlé arrangement, the products were ordered on the basis of sales forecasts made by the various country managers in VHGC.

53 In their submissions, the plaintiffs contend that the Sunkist and Nestlé "disaster" should be seen in the context of the defendant's attempts to inflate the financial performance of VHLS. As a consequence the plaintiffs suffered losses by being forced to write off $1,734,434 worth of Sunkist and Nestlé products. It is also asserted that the defendant signed the Sunkist agreement "without due diligence" and committed VHLS to overly aggressive sales targets. For good measure, it is further maintained that he failed to supervise the various country managers in relation to these matters. None of these assertions was pleaded. Despite a request for further and better particulars of the statement of claim on this issue, the plaintiffs' case remained unsatisfactorily threadbare. The defendant has rightly taken serious objection to this. There appears to be a chasm between the plaintiffs' pleaded case on an alleged breach of fiduciary duties in effecting the orders and the re-crafted case in submissions hinging on the absence of due diligence in entering into the relevant agreements. The particularity of a pleaded claim should invariably be commensurate with the seriousness and complexity of the claims being made. By omitting to detail the basis on which they allege there were no reasonable sales prospects, the plaintiffs failed to adequately plead these claims. There is merit in the defence counsel's contention that the plaintiffs changed horses in mid-stream on this issue.

54 There is another reason why the plaintiffs' claim under this head must fail. Alex Chen ("Alex"), VHLS's former business manager in charge of Sunkist and Nestlé products gave evidence that he

liaised with the various country managers on the orders before they were placed. I found him to be a credible and forthright witness. His evidence, though not a model of perfection, was largely corroborated by contemporaneous documents and correspondence. No evidence was led to show that either he or the other country managers had been asked to manipulate the sales and conjure up orders. Leaving aside the issue of pleadings which does not appear capable of being satisfactorily resolved, the concatenation of circumstances precludes any finding of fraudulent conduct on the part of the defendant on this issue.

55 With the benefit of hindsight, there are facets of the defendant's oversight or lack of foresight, which can be criticised. Arguably, he could have paid closer attention to the sales figures and the concurrent issues. This does not by itself merit a finding of liability, based on lack of due diligence, against the defendant. I do not think it was unreasonable for him to rely on Alex and the country managers. The temptation to judge the defendant with the benefit of hindsight for a commercial decision gone awry should be resisted.

56 In any event, the plaintiffs have not clearly spelt out a case for visiting these losses on the defendant. The damages claimed by the plaintiffs for these losses rely primarily on Ho's rather unsatisfactory evidence (See [87] to [90]). He concluded that the write-offs which amounted to 59.4% of the total sales inevitably meant that the orders were "excessive". I do not find this contention particularly helpful. I am not prepared to conclude that the defendant entered into these agreements because he was motivated by improper considerations. There appears to be adequate business consideration grounded on management input, experience, and market cum development potential, leading to these forays and the agreements. Clearly, all of this now appears to have been over optimistic and somewhat excessive. However, minimum portions had already been committed to, and VHLS had no choice but to make the best out of an unhappy situation.

"Excessive" salaries paid to defendant's brother and wife

57 The plaintiffs' claim that the defendant's brother, Seng Hock, had been improperly and excessively remunerated for the period from August 2001 to February 2002. It is undisputed that Seng Hock ceased attending VHLS's offices from August 2001. He was also not included or named by the defendant as an employee in an organisation chart sent by him to Lam on 6 May 2001. If indeed he continued to be an employee of VHLS or VHGC, I find it wholly inexplicable that the defendant did not deal with this issue in a direct manner. I accept the plaintiffs' further contention that no proper disclosure of his alleged role *qua* employee of VHLS was made to them. The private arrangement the defendant had directly arrived at with his brother appears to be shrouded in mystery and clouded by uncertainty. The defendant did not take steps to adequately bring this matter to the attention of the other directors before sanctioning the payment of his brother's remuneration. VLS had reporting obligations to the ASX in so far as there was any remuneration paid to the family members. I accept Vanda's and Lam's evidence that the employment of relatives was an issue of "niggling" concern for them, which the defendant held out as having been resolved by his brother's departure from VHLS *qua* employee. The amount to be reimbursed by the defendant under this claim is $60,389.

58 There is a further claim by the plaintiffs in respect of the defendant's wife, Michelle Nicholas ("Michelle"). It is alleged that Michelle's salary which had been adjusted downwards to address certain listing requirements on disclosure had subsequently been restored without proper authorisation. I do not think it is legitimate for the plaintiffs to maintain this petty claim. Soon after a remuneration committee meeting on 20 March 2001, Tang sent an e-mail to David Allison asserting his belief that the committee had approved the restoration of Michelle's pay. Neither Allison nor Townsing responded to this. Townsing now purports that there were some further discussions, which led to a contrary position. These alleged discussions were not documented. Allison has not given any

satisfactory response why he did not expressly contradict Tang's belief and assertion as recorded in this e-mail. It must also be noted that the relationship between the plaintiffs and the defendant at that juncture was cordial. I therefore find the plaintiffs' complaint here unsubstantiated. The sum involved is $42,790. There was no attempt by either Tang or the defendant to conceal the restoration of this rather minor pay adjustment. The plaintiffs' temptation to tar them for all manner of irregularities should not be exercised extravagantly.

The car purchase

59 On 5 March 2000, the directors of VLS resolved that any capital expenditure within VHGC in excess of $200,000 required board approval. It is accepted that the defendant was aware of this, given that he was present when the resolution was passed.

60 In April 2001, the defendant caused VHLS to purchase a Mercedes S320, which cost $357,000. The plaintiffs assert that it was only noticed around 25 February 2002 that the capital expenditure threshold had been exceeded through this purchase.

61 The defendant asserts that Vanda and Townsing had seen the car in Singapore on more than a few occasions when they visited Singapore. He says they knew of the purchase and "had by their conduct," assented to the purchase. Vanda and Townsing deny knowledge both of the purchase using company's funds and of the car's value. It is axiomatic that even if the other directors knew of the purchase, the real issue is whether the defendant openly disclosed to them the purchase price. It is clear that he did not seek the board's prior consent before the purchase. Was VLS's board subsequently informed of the purchase and did it ratify the purchase by its conduct?

62 The defendant finally asserts that, in any event, he had disclosed the purchase of the car in the "management reporting package" dated 31 May 2001, which Tang had sent to VLS's board. The schedule dealing with "Property, plant & equipment as at 31 May 2001", included a section captioned:

> Major addition > $5,200
>
> | Description | Category | Amount |
> |---|---|---|
> | SM BGT Car Mercedes 5320L | Motor Vehicle | $357,000 |

The plaintiffs complain that this information is "hidden" among a mass of corporate information. I disagree. Any reasonable director looking at the information would have immediately realised that disclosure had been made of a recent purchase of the car for the defendant. It does not appear to me that Tang and the defendant were trying to camouflage this information. The plaintiffs' complaint here is again redolent of "overkill".

63 In the extant circumstances, a resolution to approve this purchase was not needed. The records of the company, coupled with the testimonies adduced, ineluctably lead to the conclusion that the board of VLS had been run rather informally. Not every decision of substance warranted a resolution. Business was often transacted over the phone or through e-mails. Board resolutions and papers were not required for all transactions and or purchases. The relationship between board members was such that the board operated on the basis of disclosure rather than a rigid adherence to documentation. Considering the evidence, I also accept the defendant's assertion that he disclosed this fact orally to Vanda and Townsing. It must be borne in mind that their relationship at that juncture was good. There was no need for the purchase to be concealed. I find that the VLS board not only knew of the purchase of the car but approved it informally by their conduct.

Breach of share sale agreement

64 VLS has pleaded a further independent cause of action against the defendant based on the share sale agreement ("SSA") made *inter alia* between them on 29 October 1999. This springs from several alleged breaches by the defendant of warranties and obligations he undertook in the SSA.

65 The SSA contains specific warranties made by the defendant that the VCL's financial statements at the material dates presented "a true and fair view of the profit or loss of the company and the trade debts … are *good* debts and will produce the *full* amount of the debts without deduction". It is not in dispute that a finding of a breach will entail personal liability on the part of the defendant to repair the consequences.

66 The trade debts and receivables owing to VHLS as at the completion date, *ie* on 3 February 2000, was $12,762,722. From that sum, the plaintiffs assert the amount of $2,206,189.87 still remains unpaid. Given that Ho's findings on this issue were neither contradicted by Tim Reid ("Reid"), the defence expert, nor tested in cross-examination. I accept them (see [90]). The outstanding sums as identified by Ho are:

S/N	Name	Amount (S$)
1	Baillian Enterprise Ltd	197,564.45
2	Zuellig Pharma Inc, Taiwan	298,959.12
3	PT Doves Soper Indonesia	36,551.40
4	PT Dayasembada Swadarma	8,928.54
5	PT Rajawali Int'l Retail	10,460.87
6	PT Muara Sehat Permai	12,717.92
7	PT Caturabadi Jayasakti	746.98
8	Barclay Marketing Pte Ltd	7,615.00
9	CV Prima International Melawai	2,481.50
10	Dragon Pharmaceutical Co. Ltd	148,403.77
11	Kenda (S) Pte Ltd	258.75
12	Takehaya Co. Ltd	360.00
13	PT Vitaton	1,025,546.06

14	VHLP	618,227.63
		2,368,821.99

67 It is axiomatic that the defendant is liable in full for all amounts warranted as good debts from Vitaton and from VHLP. Given that these debts do not exist, it is immaterial whether they can be properly characterised as "good" debts; in short, they are neither real nor genuine let alone "good". The warranty was patently false.

68 In relation to the Zuellig Taiwan debts, it cannot really be argued that there had been an actual, vivid portrayal by the defendant *qua* vendor in the SSA that this was a genuine debt, which would be paid "without deduction". It is not open to him now to rely on the complex set-off arrangements between Weider and Zuellig to wipe out this obligation. It is also clear that the Barclay, Baillian and other debts referred to in the list of receivables remain outstanding and cannot now be satisfied by any means reasonable or otherwise. More than four years have passed since these warranties were given and the defendant has been unable to adduce a scintilla of credible evidence as to what other steps the plaintiffs could plausibly have taken, or can now take, to recover these amounts. VLS is entitled to recover the losses pleaded under this head.

The disclosure letter

69 The defendant claims that pursuant to a disclosure letter dated 26 October 1999, his obligation to make good some $1.3m of debts purportedly due from Vitaton and VHLP has been effectively avoided. The disclosure letter, it is said, discloses the intention to set-off $1.3m worth of debts from Vitaton and VHLP. Pursuant to the terms of the SSA and/or subsequent ratification by the plaintiffs, it is asserted that these obligations have now been "extinguished".

70 Generally speaking, the rationale of disclosure letters is well captured by the expression "confess and avoid". The essence of any disclosure letter, subject to the terms of its contractual setting, is candour. Indeed the SSA itself refers only to the avoidance of exceptions "*fairly*" disclosed in a disclosure letter. The facts disclosed in the purported disclosure letter sent on behalf of the defendant, wilfully misstated the relationship between VHLS on the one hand and Vitaton and VHLP on the other. What did the defendant disclose? That there would be an arrangement where "valuable" consideration would be given for the setting of these debts. The so called consideration, it should be reiterated, was *inter alia* the purchase of the relevant product licences and networks which VHLS already had control of.

71 Quite apart from this fundamental issue that undermines the thrust of the defendant's contention, I accept the plaintiffs' submissions that the facts pertaining to the sending and receipt of the disclosure letter have neither been properly pleaded nor proved by the defendant. For these reasons, the disclosure letter does not assist the defendant in diminishing his liability to VLS.

72 The defendant also contends that the plaintiffs are estopped from denying the applicability and/or validity of the disclosure letter by reason of their subsequent acceptance of the write-offs for Vitaton and VHLP. For good measure it is also pleaded that the plaintiffs failed to object to the write-off. Considerable ingenuity was exercised by defendant's counsel in extrapolating the various facets of this contention and in dissecting the available evidence. In my view the defendant's contentions are wholly misplaced. Having concluded that the set-off arrangements were a sham, I do not see how the defendant can sustain an argument that the plaintiffs had consented to this sham. It is a remarkable argument and ought to be dismissed *in limine*. In any event, it seems clear to me that

there was no such agreement prior to the signing of the SSA. Indeed, if there was such an understanding, why was the disclosure letter necessary? Furthermore, the defendant's reliance on a cryptic defence of "capitalisation" is bereft of credible particulars and should be dismissed altogether. For good measure, I should also add that I accept Townsing's and one Alexander Beard's evidence on this issue. Any inconsistencies in their evidence should also be interpreted and viewed in light of their mistaken state of knowledge at the material time(s). Finally, even if VLS were not contractually entitled to maintain this claim, the defendant would be unable to fend off claims for the identical amounts apropos the vehicle of VHLS. It is also noteworthy that in an e-mail dated 14 March 2002, the defendant confirmed to Vanda:

> Indonesian and Philippines debt: Henry has reminded me of the conditions for the sale of Vita Health to VLS. I will stand by all *legal obligations* pertaining to these debts. [emphasis added]

This is an acknowledgment made by the defendant after the claim was made known to him. His spirited attempts to now resile from his earlier solemn undertakings are, simply put, a misconceived afterthought.

Miscellaneous claims

73 The plaintiffs have also included a catalogue of claims pertaining to breach(es) of warranties. These claims relate to the lack of disclosure of *de facto* control of Vitaton and VHLP, related party transactions with Vitaton and VHLP and the defendant's alleged failure to staunch infringing activities by the Malaysian country manager, Khoo Seng Kang. They invite the court to direct that damages be assessed for these losses. In so far as the additional claims pertaining to Vitaton and VHLP are concerned, these appear to overlap with the preceding claim for receivables. It is clear that the plaintiffs did not wholly rely on the purported collectability of these "good debts", hence the personal indemnities required from the defendant. The warranty in the SSA, however, does not purport to embrace Khoo's infringing activities. In this connection, I also note that separate claims have already been made in Malaysia in respect of these alleged breaches. There does not appear, in these proceedings, to be any cogent evidence directly and personally implicating the defendant in this connection. While his management may be open to criticism, this alone does not appear to be capable of crystallising into a basis for a contractual, tortious or fiduciary claim.

74 There is also a claim by VCL for an outstanding loan of $2,564.66 purportedly extended to the defendant. This is not satisfactorily evidenced in Ho's testimony or documented, and is disallowed.

Misrepresentation

75 Under this head, VSL assert that they were fraudulently induced to enter into the SSA by the falsely portrayed status of Vitaton and VHLP. They plead that there was an overstatement of receivables and concealment of bad or doubtful debts. Having relied on these misrepresentations, VSL says it has suffered loss(es) and is entitled to damages. It is asserted that the value of VCL has been diminished, given that the independent network in Indonesia and Philippines does not exist.

76 VSL does not ask for the SSA to be rescinded. It asks that damages be awarded in lieu of rescission pursuant to s 2(2) of the Misrepresentation Act (Cap 390, 1994 Rev Ed). Their expert has not specifically quantified the loss under this head, despite an invitation by the court to produce evidence that might assist. In the course of the proceedings, I had asked the plaintiffs whether their expert could present a financial statement reflecting the true financial position of VHGC, if the purported sales figures of Vitaton and VHLP had not been included in VHGC's financial statements at the material time. Counsel for the plaintiffs informed the court that it could not be done at that

juncture, as the plaintiffs no longer had access to the accounts of Vitaton and VHLP. Granting that this could not have been done at the hearing stage, I am not satisfied why it could not be prepared earlier. The plaintiffs appear to have had Dr Pat's and Dr Gabiola's colloperation in prosecuting their present claim against the defendant. With diligence, Ho could have utilised this method or some other approach to give evidence as to how this head of damages ought to be assessed. A line has to be drawn. Given that the plaintiffs have had the opportunity both before these proceedings and in the course of these lengthy proceedings to adduce additional evidence, it is not appropriate that they be accorded a further opportunity to repair their claim by having damages assessed separately. Interestingly, the plaintiffs concede in their submissions that general damages for such misrepresentation are "difficult to quantify in full".

77 In any event, I am not satisfied that having recovered their losses under the indemnity, VLS can really mount a further claim for misrepresentation independent of VHLS's claims for losses caused by operations in Indonesia and the Philippines. To the extent that there is an overlap, it is preferable to deal with such a claim as a VHLS claim (see [99] to [104]). It must also be emphasised that Singapore and Malaysia have proved to be viable and valuable markets for the plaintiffs and no valid complaints have been made out in respect of business operations in these markets.

Return of bonus shares

78 Clause 8 of the SSA obliged VLS to issue additional shares to, *inter alia*, the defendant if certain net profit targets were reached by VCL in 2000 and 2001. These profit targets were reached – assisted in no small measure by misstatements of the actual sales to Zuellig Malaysia for financial year 2000 and other irregularities. The defendant contends that there was no reason to inflate profits for the financial year 2000 because he could and would have earned the additional shares in 2001. This is a strange argument. It cannot really be denied that the issue of the bonus shares was premised on the achievement of a particular profit target for that financial year. Quite apart from the misstatement of the Zuellig Malaysia share profits in 2000, I am constrained to take notice of the various misstatements and chicanery that the defendant was party to in the preparation of the accounts of VCL. I am prepared to conclude, on the basis of the evidence, that the profits of VCL were misstated not only in 2001 but the preceding year as well when the defendant had carriage of VHGC. The breach of several warranties in the SSA clearly precludes the defendant from claiming any bonus shares. The issuance of the bonus shares was procured by deception and mired in creative accounting. It would be most unjust in these circumstances, to engage in a mathematical exercise to ascertain whether the defendant could retain a portion of these bonus shares. The structure, scheme and terms of the SSA make it patently clear that the bonus shares were meant to reward the defendant for a successful and profitable performance of VCL premised upon the defendant's compliance of the terms of the SSA in substance and in spirit. This was clearly not the case and the defendant cannot accordingly seek to retain these shares. I also find that if VLS had learnt about these dubious accounting devices deployed by the defendant and Tang, it would not have – and rightly so – issued the bonus shares pursuant to the terms of the SSA. The relevant accounts in 2000 and 2001 would have to be restated. It is axiomatic that with the very substantial write-offs needed, the profits in 2000 and 2001 would have evaporated.

Evaluation of expert evidence

79 Expert witnesses occupy a unique position in our adversarial system. They may draw on inferences and give opinions unlike lay witnesses. The nature of the inference to be drawn is important. Matters that can be readily observed or inferred as for example, plain arithmetic, do not require proof by expert evidence.

80 The significance of the expert's evidence is underlined by the obligations imposed on him. While the party calling him remunerates him, he is expected to remain detached from the fray and should not have any interest in the outcome of the proceedings nor partiality to the facts in issue. An expert is now required under the rules of court, to acknowledge and accept that he owes a *higher duty* to the court in ensuring the veracity and probative value of his evidence: O 40 r 2(2) of the Rules of Court (Cap 322, R 5, 1997 Rev Ed) ("ROC"). This duty implicitly obliges him to give testimony that may harm or damage the contentions of his instructing party, if the facts warrant this.

81 The high standards expected of and imposed on the expert witness do not, however, in reality detract from the need to carefully evaluate and scrutinise his evidence for coherence, rationality, diligence and last but not least, bias:

> It has long been recognised by the courts that bias is not the preserve of lay witnesses, and that experts may display it in their evidence. Indeed in many respects the incentives for expert to favour one party contrary to their actual belief are substantial. First, expert witnesses are paid for their evidence. Secondly, they may be retained on a regular basis by a particular client or group of clients in different cases. Thirdly the expert may hope to gain favour with a client generally, perhaps because he hopes that non-legal professional engagements may be forthcoming or continue.
>
> [Tristram Hodgkinson, *Expert Evidence: Law & Practice* (Sweet & Maxwell, 1990) at p 213.]

Bias could also include any perceived partiality or inclination to make suppositions or assumptions in favour of an instructing party.

82 It may be said – albeit with some exaggeration – that while an advocate may be as biased as he chooses to be in pressing his client's cause, an expert cannot adopt such a stance. An advocate is expected to articulate his client's views and cause without necessarily interposing his own views. An expert, on the other hand, should not evolve into a spokesperson for his client. Any opinions expressed *must* have a genuine foundation. It really cannot be disputed that:

> [I]t [is] necessary that expert evidence presented to the court should be, and should be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation.
>
> [*per* Lord Wilberforce in *Whitehouse v Jordan* [1981] 1 WLR 246 at 256–257.]

83 While this *dicta* may sometimes be criticised by practitioners as being too idealistic, it now neatly dovetails with O 40 r 2(2) of the ROC. The expert should neither attempt nor be seen to be an advocate of or for a party's cause. If he appears to do this, he will inexorably lose his credibility. That said, it is entirely permissible for him to propound and press home the opinion he seeks to persuade the court to accept. In essence, his advocacy is limited to supporting his independent views and not his client's cause. This is an important distinction that some experts fail to grasp.

84 An accountant expert discharges a unique role. He may be called upon to execute a variety of roles in legal proceedings. I drew counsel's attention to the following passage in a leading treatise:

> An accountant might be engaged to fulfil one of at least three roles in connection to litigation:
>
> (1) to act as an independent expert and provide an opinion on liability, quantum, or both;

(2) to act as a consultant assisting in the preparation of the case of one of the litigants; and

(3) to act in a supporting administrative role in managing the documentary information required for the litigation.

It is only in the first role that the forensic accountant is acting as a forensic expert. When the accountant acts as a consultant, he or she is assisting in the advocacy of the client's case, *which is a role that is inconsistent* with the forensic expert's need for independence. *Accordingly, the accountant should generally avoid accepting instructions that would require the accountant to act both as an independent expert and a partisan consultant.* [emphasis added]

[Ian Freckelton and Hugh Selby, *Expert Evidence* (The Law Book Company, 1993) at 123.420.]

85 In my view, careful consideration has to be accorded to the evidence of an expert accountant who has been engaged as an investigator and collator of facts, and later reprises in court the role of an advocate in support of evidence that he himself has gathered. Such evidence may at times, be coloured by the difficult and sometimes conflicting roles being discharged by him.

86 Engaging two experts to give evidence in instances that require both investigations and opinion evidence does not present a feasible or practical alternative since this would not only be more costly, but also add to the length of proceedings. In the circumstances, it is always imperative that accountancy experts be apprised immediately upon their appointment, of their overriding obligation to the court. Experts ought to state in their report that they were aware of this obligation from the outset and make it amply clear if they have had any issues or problems in relation to the access to, collation and or the reliability of relevant evidence. Any reservations or qualifications they may have about the reliability of the facts being presented or assumptions made, ought to be expressly and specifically particularised in their report prior to cross-examination. All said and done, it must be acknowledged that no amount of legislation or protocols can secure the integrity of an expert. In the final analysis, it must be the expert's professionalism that illuminates and buttresses his opinion.

87 The plaintiffs' expert accountant, Ho, was appointed in July 2002 to "investigate" financial transactions entered into by VHGC and the loss and damage suffered by it in relation to the SSA. In his report, he characterised his appointment as "special accountant". Ho is a seasoned witness and well qualified to give evidence in proceedings of this nature. Notwithstanding and rather unfortunately, several severe shortcomings appeared in his report and testimony. It was only in cross-examination that some of his concerns and problems in preparing his report surfaced. It also appeared to me that his report was prepared in close consultation with the plaintiffs who "[have] gone through it many times". He further claimed that as his terms of reference were not "ongoing", he could not really revisit issues that the defence expert had raised. That Ho was not even informed by the plaintiffs that these proceedings had commenced when he was first instructed by the plaintiffs' previous solicitors, also came as a surprise.

88 Most of Ho's primary information was filtered through the plaintiffs' current management and previous solicitors. He was not given access to the accounts of Vitaton and VHLP, was not conversant with Weider's structure, unaware of the transfer of Vitaton's business subsequently to PT Progress and was completely oblivious to the fact that Tang was a director of VHLS. Also, he failed to personally interview a number of the *dramatis personae* or former staff in attempting to reconstruct the accounts and ascertaining the nature and substance of unexplained transactions. These telling shortcomings, *inter alia*, were made very apparent in the course of cross-examination. Several portions of his report were also speculative and savoured of a certain alacrity in advancing the plaintiffs' cause. One example is the alleged *loss* to VHLS caused by the defendant's retrospective

sanctioning of the price increases to goods earlier supplied to Zuellig Malaysia (see [51]). The enquiries into the Sunkist and Nestlé sales appeared superficial. Without being overly critical, it can perhaps be fairly said that portions of his evidence are notable for their lack of moderation. The constant changes to the calculations made from time to time, in response to mistakes pointed out by the defence expert, did little to inspire confidence in his findings, save for those that remained unchallenged or were simply matters of pure arithmetic. One would have expected that once the flaws in his initial report were pointed out by Reid, Ho would have gone back to the drawing board to re-examine his report rather than make several subsequent piecemeal changes.

89 Granting that Reid does not have the same breadth of experience as Ho, his views were nonetheless measured and appeared to have been given only after proper deliberation. As a consequence of the various affidavits Reid filed, Ho made several changes to his reports on calculations and altered some of his findings. Ultimately, Ho accepted a number of calculations made by Reid. On issues where they differed, I almost invariably prefer Reid's evidence. Of particular relevance are the different views pertaining to credit notes that have not been accounted for and the outstandings from indirect customers in Indonesia. I accept Reid's evidence as having a closer bearing on the facts. His accounting explanations were also largely more coherent.

90 This is not to say that all of Ho's evidence is unreliable and should be wholly disregarded. I have given anxious consideration to this issue. On matters involving summaries of accounting information that have not been challenged by Reid, Ho's evidence ought to be accepted. Having had several opportunities to test and contradict Ho's evidence on calculations and summaries, the defendant cannot make a sweeping generalisation and assert that Ho's entire evidence is tarnished. He has done some useful and apparently reliable spadework in unearthing some deeply burrowed creative accounting.

Quantification of losses

Principles applicable in assessing loss

91 Where fraud or deceit is exposed, the law pragmatically attempts to cut through the thicket of facts and remedy the wrong by restoration of the status quo. Fraud results in the tortfeasor being responsible for all the consequences that directly ensue in its wake: *Doyle v Olby (Ironmongers) Ltd* [1969] 2 QB 158 ("*Doyle*"). In claims involving fraud, damages are not restrained by foreseeability *per se*. The intention to injure negatives this limiting factor. The tortfeasor is inexorably responsible for all losses that directly flow from the tort. Lord Denning MR tersely observed in *Doyle* (at 167), "it does not lie in the mouth of the fraudulent person to say that they could not have been foreseen." The legitimacy of this approach is clearly beyond reproach after the illuminating analysis undertaken by the House of Lords in *Smith New Court Securities v Citibank NA* [1997] AC 254 ("*Smith*'s case"). The rationale for considering fraud differently was also helpfully summarised by Lord Steyn in *Smith's* case at 279–280:

> That brings me to the question of policy whether there is a justification for differentiating between the extent of liability for civil wrongs depending on where in the sliding scale from strict liability to *intentional wrongdoing*, the particular civil wrong fits in. … *[I]t is a rational and defensible strategy to impose wider liability on an intentional wrongdoer.* … Such a policy of imposing more stringent remedies on an intentional wrongdoer serves two purposes. First it serves a deterrent purpose in discouraging fraud. … And in the battle against fraud civil remedies can play a useful and beneficial role. Secondly, as between a fraudster and the innocent party, moral considerations militate in favour of requiring the fraudster to bear the risks of misfortunes directly caused by his fraud. … *The law and morality are inextricably interwoven. To a large extent the*

law is simply formulated and declared morality. And, as *Oliver Wendell Holmes, The Common Law* (ed. M. De W. Howe), p. 106, observed, the very notion of deceit with its overtones or wickedness is drawn from the moral world. [emphasis added]

92 I respectfully agree with Lord Steyn's views, which also had the general endorsement of Lords Browne-Wilkinson, Mustill, Keith of Kinkel and Slynn of Hadley. He rejected as "far too narrow a view" the contention that the only purpose of the law of tort should be to compensate, by recognising and emphasising the intentional element in fraud. He took pains to stress the importance of deterrence as a policy consideration in assessing damages for fraud. Intentional torts are rightly singled out for special consideration.

93 It is therefore trite law that a claimant can recover all the direct losses from a fraudulently induced transaction. This encompasses consequential losses. The orthodox view that damages ought to be assessed by particular reference to *a* transaction date was also demolished in *Smith* in favour of a flexible approach that recognises (at 284) that:

> … the court is entitled simply to assess the loss flowing directly from the transaction without any reference to … any particular date … wherever the overriding compensatory rule requires it.

The true principle is to justly compensate the claimant for all financial losses and/or damages flowing directly from the fraud. Valuation is one method. Adding up the immediate and consequential losses is another. In *Smith*, Lord Browne-Wilkinson (at 266 and 267) postulated several considerations that could be taken into account in assessing losses or damages for fraudulent misrepresentation in the purchase of property. While these considerations are helpful, they should not be applied dogmatically. In assessing damages for fraud, a mechanical approach is to be eschewed in favour of flexibility. The multi-faceted dimensions of fraud require pragmatism and malleability from the court in fashioning the appropriate remedy. Creative accounting may require creative remedies. While the deterrent factor may sometimes be cloaked in an award of damages, it should not be forgotten.

94 When accounts are falsified there will necessarily be different approaches in measuring the loss. This could, *inter alia*, be predicated upon the attributes of the victim and tortfeasor, the nature of the falsification and the consequences that directly flow. There is no universal test in view of the many imponderables competing for primacy; an inflexible approach cannot achieve justice. It should also be noted that s 157(3)(a) of the CA appears to accept a broad test of liability against a director who, *inter alia*, fails to act honestly. The director is responsible for "*any* damage suffered by the company as a result of the breach".

95 In the present circumstances, where the defendant caused VHLS's accounts to inaccurately portray transactions between VHLS and Vitaton/VHLP, it appears appropriate to conclude that VHLS and the other interested plaintiffs had a legitimate expectation and belief that its accounts were correct and that they would receive the amounts represented therein as genuine receivables due from Vitaton/VHLP.

96 The defendant asserts that the true loss, if any, suffered by VHLS is limited to the actual cost of the products VHLS purchased from its suppliers less all the actual moneys received from the Indonesian operations. This, in turn, would be a positive rather than a negative figure. This approach blatantly attempts to attenuate the causative effect of his tortious conduct. It ignores the corrosive consequences of his deceit. It is noteworthy that in *Doyle*, the claimant had incurred losses in trying to run a disastrous business. He was held to be entitled to recover all the money he had put into *running* the business as well as the money he lost in buying the business.

97 The defendant has obdurately maintained to date that Vitaton and VHLP were independent third parties. The approach he postulates does not take into account the substantial costs and losses he had caused VHLS to incur by running and operating the Indonesia and Philippines operations. These costs include rents, salaries, promotional expenses and other operational costs. He had masked the true nature of these costs from the plaintiffs. The plaintiffs never consented to the running and operation of these *de facto* subsidiaries. Another dimension pertaining to this issue may help place matters in perspective. There is no gainsaying that the defendant was a fiduciary. Directors who cause company funds to be misplaced are liable to make good the misapplication with interest: *In re Duckwari Plc* [1998] Ch 253 at 262. This rule applies even if the director does not personally benefit from the misapplication.

98 It is only appropriate in the present factual matrix, that the defendant bears the difference between what he led VHLS to believe it would recover and what it actually recovered. The wrong here is deceiving VHLS and the plaintiffs that the accounts represented the true financial relationship VHLS had with, what in truth was, its *de facto* subsidiaries in Indonesia and Philippines. The plaintiffs believed this. As VHLS had never consented to these operations it ineluctably follows that the running costs incurred should be borne by the defendant. It is as plain as a pikestaff that the defendant misused his powers as a director and abused his position as a fiduciary in effecting this charade. The true loss he caused is captured in this case by pinning the defendant personally to the false picture he painted. The duty of the court is to approach this assessment of loss on a "broad basis": see *per* Sachs LJ in *Doyle* at 171. In the circumstances, there is no merit in adopting the defendant's arid compartmentalisation approach through which he seeks to cynically limit the damage he caused.

Indonesia

99 There has been a finding that the accounts of VHLS had been misstated because the true relationship with Vitaton had been concealed (see [31]). The plaintiffs have submitted two alternative methods of calculating this loss. One method is to reconstruct the losses by attributing notional losses to every year of operations. I reject this as it has not been tested in cross-examination and has only surfaced in the course of the final submissions. Furthermore, given the inherent unreliability of the forensic work completed by their expert, this approach is fraught with uncertainty. The alternative approach, which I accept, is to add up the outstandings due to VHLS and VHLHK from Vitaton from the final accounts drawn up. The amount owing to VHLS is $313,216 and the amount due to VHLHK is $278,095.47. While the defendant quibbles over the reliability of Ho's work on many points, there is really no practical difference between the two experts on this particular issue.

100 There are also further claims for unsubstantiated unauthorised loans, credit notes and outstandings from indirect customers. These three issues form the subject of spirited disagreement between Ho and Reid. In respect of the latter two issues, I prefer Reid's more considered views. As far as the purported loan of $149,738.96 is concerned, it is clear that this was not a loan to an independent entity and should not be recorded as such. The defendant knew this.

101 There remains the issue of the purported credit note for $800,000 (see [40]). This credit note was caused to be issued by the defendant and Tang for what was clearly an improper purpose. The defendant should assume responsibility for this. The amount due to the VHLS should therefore be $1,262,954.96. The sum of $1,025,546.06, which is the amount received under the contractual warranty ought to be deducted from this figure, leaving a sum of $237,408.90 due.

102 Finally further consideration must be given as to whether the disposal of the "Vitaton" network by VHLS should be taken into account. VHLS maintained the Vitaton network until about February 2002, about a year after the defendant's retirement. They then reached an agreement with

an Indonesian entity, PT Progress, whereby all of Vitaton's "assets" were transferred to it. In consideration, PT Progress assumed Vitaton's liabilities. PT Progress would, in turn, buy Vita products directly from VHLS as well as effect direct payment on commercial credit terms. VHLS would no longer assume responsibility for Dr Pat and the Vitaton network. The defendant takes issue with this at two levels. First, he claims the "assets" of Vitaton ought to be taken into account in any quantification exercise. Secondly, he asserts credit ought to be given for the value of the benefit VHLS continues to receive from the Vitaton "network" he installed.

103 It must be appreciated that VHLS found itself in a commercial dilemma because of the defendant. He insisted that Vitaton was an independent entity and caused the accounts to reflect this. Dr Pat and the other independent evidence indicated otherwise – correctly so, as it has now appears. It is wholly inappropriate for the defendant in the circumstances to fault VHLS for placing its Indonesian market on a firmer and more transparent commercial footing. As stated in *Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd* [2004] SGHC 107 at [74]:

> Mitigation is neither an exact science nor a mathematical exercise. It must be viewed through a commercial lens and measured by commercial common sense. The court will not audit every decision made in the turmoil of a difficult and fluid commercial situation.

104 With the fog of uncertainty enveloping the status of operations of Vitaton, the plaintiffs cannot be faulted for their inclination to start their Indonesian operations on a clean slate. The defendant has not adduced any evidence or made any sensible contention casting doubt on the reasonableness of the steps taken by VHLS in relation to this disposal. Nor can it be said that VHLS has failed to alleviate its losses. It ought to be recognised that in fraud involving fiduciaries, in particular, the court may assess more generously the conduct of the victim in attempting to mitigate the loss. In the circumstances, it would not be appropriate to make any adjustment on account of the sale. VHLS appeared to have taken a commercially sensible decision to end a factual and legal impasse wholly conceived by the defendant.

Philippines

105 The plaintiffs once again submit that either a reconstruction method or a calculation of all outstanding sums be adopted. The reconstruction method is unhelpful for the reasons given earlier. The outstanding sums are:

	$
Amount due to 1st plaintiff from VHLP	218,192.96
False credit notes used to reduce amount due to 1st plaintiff from VHLP including $783,000 credit note	967,075.04
Unauthorised loans to VHLP	64,848.42
Total due to VHLS from defendant	1,250,116.42

Amount due to VHLHK from VHLP/defendant	22,759.28

On the basis of the evidence tendered, the only credit note that can clearly be held to have been improperly given was the note for $783,000. Ho has again not persuasively asserted that the other unaccounted for credit notes were not issued in the ordinary course of business. Taking this into account, the total amount due to VHLS is therefore $1,066,041.38. From this amount the sum of $618,227.63 being the amount recovered under the contractual warranty, ought to be deducted, leaving a sum of $447,813.75 due to VHLS. The amount due to VHLHK is $22,759.28 as reflected above.

Overview

106 Crucial aspects of the defendant's corporate culture and conduct have revealed themselves in these proceedings to be flawed and alarming. The defendant has disconcertingly flouted conventional and essential norms of proper disclosure in order to attract outside investors. While this pattern of behaviour was largely arrested after VLS assumed control of VHGC, the earlier chicanery had already burrowed deeply into the accounts of VHGC. The defendant has now been hoisted by his own petard. The defendant was clearly the principal author of these shabby deceptions. Between 1996 and 1998, he orchestrated a dizzying ascending spiral of impressive "sales" culminating in the entry of corresponding receivables from entities in the Philippines and Indonesia. The initial concealments led in turn to a smokescreen of creative accounting with corrosive results.

107 The defendant has in the course of these proceedings, complained of the plaintiffs' aggressive and oppressive conduct in pursuing their claims against him. While there are aspects of the plaintiffs' claims and conduct that are indeed redolent of over-zealousness – and I am being mild here – I do not think it is necessary to deal with what essentially amount to tangential issues. The defendant's conduct in concealing material facts is, by any yardstick, inexcusable and he has invited severe and adverse consequences as a result. In attempting to attract outside investors, he conducted himself like a corporate tightrope walker without a balancing pole of integrity.

108 Singapore companies wear the badge of integrity and good governance when they transact with foreign entities. This is a hard won and important asset that should not be mortgaged for expediency and squandered through avarice. Good governance is synonymous with accountability. When matters such as those disclosed in these proceedings are drawn to the court's attention, severe excoriation can be expected. The defendant's conduct in causing the VHGC accounts to be misstated is deplorable. Having said that, the current management of VLS has in these proceedings, attempted to portray the defendant as a knave. He is not. All said and done, he has achieved considerable success for the Vita brand in Singapore and Malaysia. The defendant, clearly an entrepreneur of vision and ability, could probably have achieved considerable business and financial success even if he had not succumbed to these serious lapses. His impetuosity led to an abandonment of the virtues of integrity, patience and foresight which his late father had so amply exemplified in his preceding painstaking build up of the Vita brand. The defendant must now pull himself up by his bootstraps and start anew. He has both the ability and resources to do so.

Conclusion

109 In the result there will be judgment for the plaintiffs against the defendant for the following amounts:

VHLS - $685,222.65 (see [101] and [105] and $60,389.00 (see [57])

VHLHK - $300,854.75 (see [99] and [105])

VLS -$2,368,821.99 (see [66])

110 The bonus shares issued to the defendant pursuant to the terms of the SSA are to be cancelled (see [78]). Interest is to run on the sums awarded at 3% per annum from the date of filing the statement of claim.

111 I reserve the issue of costs for further argument. The parties have liberty to apply for consequential orders and directions.

112 Finally, I would like to thank counsel for their assistance in this protracted hearing. Mr Bull, who was appointed as plaintiffs' counsel fairly late in the day succeeded in restoring coherence to the plaintiffs' case and managed to tone down and temper most of the plaintiffs' earlier misplaced rhetoric and overzealousness. He is a persuasive advocate and has ably prosecuted a factually complex and somewhat emotively charged case with conspicuous fairness. Mr Tan displayed admirable diligence in single-handedly dealing with the factual complexities and multitudinous documents that emerged in these proceedings. He presented the defence with commendable clarity.

Judgment for the plaintiffs with costs reserved.