

Ang Sin Hock v Khoo Eng Lim and Another (Ajit Singh Hazara Singh, Third Party)  
[2009] SGHC 179

**Case Number** : Suit 236/2006  
**Decision Date** : 07 August 2009  
**Tribunal/Court** : High Court  
**Coram** : Judith Prakash J  
**Counsel Name(s)** : A Rajandran (A Rajandran) for the plaintiff; Michael Loh (Clifford Law Corporation) for the first defendant  
**Parties** : Ang Sin Hock — Khoo Eng Lim; Ajit Singh Hazara Singh — Ajit Singh Hazara Singh  
*Tort – Conversion – Deceit – Fraudulent Misrepresentation – Limitation of Actions – Sections 6(1), 26(2) and 29 Limitation Act (Cap 163, 1996 Rev Ed)*

7 August 2009

Judgment reserved.

**Judith Prakash J:**

**Introduction**

1 This action arises out of a jewellery transaction in 1999 that went wrong. The plaintiff, Ang Sin Hock ("Mr Ang"), handed over a parcel of gemset jewellery ("the jewellery") to the second defendant, Ajit Singh Hazara Singh ("Mr Singh"), in the presence of the first defendant, Khoo Eng Lim ("Mr Khoo"). By this suit he claimed from the defendants the sum of \$270,725 in respect of the jewellery or, in the alternative, damages to be assessed for the loss of the jewellery. This judgment deals with the position of Mr Khoo only as judgment has already been entered against Mr Singh.

2 Mr Ang founds his claim on a number of causes of action:

- (a) he claims in conversion on the basis that the jewellery was entrusted to the defendants for the purpose of sale overseas but was subsequently misappropriated by them;
- (b) he claims on the basis of the tort of deceit on account of various fraudulent misrepresentations allegedly made by the defendants; and
- (c) he claims on the basis of an undertaking given by the defendants on 6 January 2000.

3 From the beginning, Mr Khoo contested the claim vigorously. He raised the following main defences to the claim:

- (a) that Mr Ang's dealings had been solely with Mr Singh as principal and Mr Khoo had acted only as a facilitator or broker and was not responsible for the actions of Mr Singh;
- (b) Mr Ang had entrusted the jewellery for sale to Mr Singh solely and Mr Khoo had never had physical possession of the jewellery or any responsibility therefor;
- (c) the misappropriation of the jewellery, if any, was caused solely and entirely by Mr Singh and Mr Khoo had simply tried to help the plaintiff to recover the proceeds of sale of the jewellery;
- (d) he had not made any fraudulent representations to Mr Ang and, in any event, any loss

suffered by Mr Ang arose from the misappropriation of the jewellery by Mr Singh and not from any misrepresentations made by Mr Khoo;

(e) he had not conspired with Mr Singh in any way and could not be responsible for Mr Singh's actions;

(f) the claim under the undertaking was time barred under the Limitation Act (Cap 163, 1996 Rev Ed) ("the Act") in that the alleged cause of action first accrued to the plaintiff on 1 March 2000, a date falling more than six years before the commencement of the action on 17 April 2006; and

(g) any cause of action based on fraud first accrued on 21 July 1999 or at the latest by 3 January 2000, more than six years before the commencement of the action and was therefore time barred.

4 Mr Singh took very little part in the litigation. In July 2001, he had been arrested and charged under s 403 of the Penal Code (Cap 224, 2008 Rev Ed) with an offence of dishonest misappropriation of the jewellery. Although he had initially claimed trial, on 25 September 2001, the first day of the trial, he pleaded guilty and in October 2001, he was sentenced to imprisonment for a term of 15 months. When the plaintiff served him with the writ in this action, Mr Singh did not enter an appearance. He turned up in court on the first day of the trial and informed the court that he was not contesting the claim. Subsequently, on 26 November 2008, after Mr Singh had been served with an amended statement of claim, the plaintiff applied for judgment to be entered against him. Mr Singh was asked whether he wished to defend and his reply was that he did not since he accepted the decision of court because he was guilty and he would rather save everyone's time. Judgment was therefore entered against Mr Singh in the sum of \$270,725 and interest at 12% p.a from 16 August 1999 until payment and costs as taxed or agreed. Mr Singh thereafter gave evidence in support of Mr Khoo.

### **The plaintiff's story**

5 To give a flavour of the case and the various positions taken by the plaintiff, it is necessary for me to summarise the evidence given by Mr Ang himself.

6 Mr Ang's affidavit started off with a summary of his claim against the defendants. He said in essence:

(a) that he had entrusted the jewellery to both the defendants for sale, relying on representations made by them that they would sell the jewellery to an overseas buyer and would remit his share of the sale proceeds to him; and

(b) Mr Ang's share of the sale proceeds would be the cost price of the jewellery which was agreed at \$270,725 and a one third share of the profits from the sale proceeds. The defendants were to share the remaining two-thirds of the sale proceeds equally between them.

Mr Ang asserted that what I have set out in [6(a) and (b)] above was the agreement that was envisaged between the parties at all material times.

7 Mr Ang stated also that the defendants had made various representations to him:

(a) before he entrusted the jewellery collection to them, they had represented to him that

they would procure an overseas buyer for the collection and that the proceeds would be shared with him and these representations were made to induce him to participate in the venture;

(b) after he entrusted them with the jewellery, the defendants made various representations regarding the sale to a "buyer", the price negotiated and agreed with the "buyer", the arrangements as regards payment by the "buyer" to the defendants, the receipt of the moneys by the defendants from the "buyer" and the remittance of the moneys or Mr Ang's share thereof to him; and

(c) even after he had lodged a police report against the defendants and also after Mr Singh was charged in court, representations had been made to him that the jewellery had been sold and that his share would still be remitted to him.

8 Going into the history behind the transaction, Mr Ang explained that in 1986, he was posted by his then employer to India and while living in India he became knowledgeable about the gemstone and gemset jewellery trade. Subsequently, he registered a business named REDS Gemstones and Fine Jewelry ("REDS") to deal in jewellery. His wife, Mdm Oh Poh Suan, was registered as the sole proprietor of REDS but she was acting as his nominee since he was still in paid employment. Mr Ang himself began to purchase and collect gemset jewellery with the intention of trading in it through REDS and, at all times, he was the *de facto* owner and controller of the business. By January 1999, Mr Ang had a significant collection of gemset jewellery comprising precious and semi-precious stones set in gold in rings, bracelets, necklaces, earrings and pendants.

9 Mr Ang and Mr Khoo first came to know each other in 1984 when they were working in the Trade Development Board. They became friendly and this friendship continued for several years thereafter. In August 1998, Mr Ang met Mr Khoo by chance in Chinatown. They renewed their friendship and decided to start a new entity dealing in jewellery. The business name chosen was "Delta Jewellery". At that time Mr Khoo had a business dealing in commodities under the name "Delta-T & Associates". By then, Mr Ang's business included not only procuring suppliers to manufacture and supply gemstones and gemset jewellery to REDS but also to find buyers for the same. He and Mr Khoo agreed that the "concept" of Delta Jewellery would be to procure jewellery from India and thereafter conduct "finishing" work on the jewellery so as to enhance its value and obtain accreditation from the Productivity and Standards Board so that the jewellery could be exported to overseas markets certified as having originated from Singapore.

10 On 15 January 1999, Mr Ang met Mr Singh for the first time. Mr Khoo introduced the two men. He told Mr Ang that he and Mr Singh had been in partnership for a year before January 1999 and that they were in business as traders of gemstones and precious metals among other activities. Mr Khoo mentioned that he had recently visited London and Phuket with Mr Singh and that Mr Singh had introduced him in London to people connected with the renowned jewellers Van Cleef & Arpels. Mr Ang was also told that Mr Singh and Mr Khoo were hoping to acquire a jewellery manufacturing factory in Phuket. Mr Ang learnt that Mr Khoo was the godfather of Mr Singh's child. It was apparent to him that Mr Khoo and Mr Singh knew each other well.

11 The 15 January meeting took place in a coffee shop. During the meeting, Mr Khoo proposed that he and Mr Singh would procure overseas buyers for Mr Ang's jewellery and that the proceeds of sale would be divided among the three men. They also had discussions about dealings in emeralds and other gemstones. In relation to the jewellery collection, the defendants asked to see the collection and a meeting was scheduled for the next day (16 January 1999) for that purpose. Mr Singh informed the others that the sale of the jewellery, including any processing (cleaning and polishing) work that needed to be done, would be finalised by end February 1999 and Mr Ang's share of the sale proceeds

would be remitted to him at about the same time.

12 The next day, Mr Khoo met Mr Ang at the latter's home and took him to the bank to retrieve the jewellery from the safe deposit box and from there both men went to Mr Singh's residence in Bukit Batok. Mr Ang handed over the jewellery to the defendants in Mr Singh's flat. The defendants intended to catalogue the items for the purpose of preparing the packing list required for the export of the jewellery. They impressed on Mr Ang again that they were experienced dealers in gemstones and the jewellery trade and had various contacts and potential buyers overseas. Mr Ang said that he trusted Mr Khoo totally because he considered Mr Khoo to be a friend and they had known each other for some time. Mr Ang relied on the defendants' representations and entrusted the jewellery to them on the basis that they would procure buyers for the same and thereafter remit his share of the sale proceeds to him.

13 On 26 January 1999, Mr Ang prepared a consignment note on the REDS letterhead confirming consignment of the items of jewellery described in the packing list to "Khoo Eng Lim (P/P No. 2504969A) and Ajit Singh (P/P No. 1386867J) of Delta-T & Associates for the purpose of export outside Singapore". Mr Singh prepared part of the packing list and the rest of it was typed out by Mr Khoo based on information given by Mr Singh. The packing list contained the description of the items, the quality of the items and the price of the same. Two prices were given: the "original price" and the "discount price". The discount price was the cost price of the jewellery whereas the original price was the intended sale price.

14 Mr Ang had originally been told that the sale of the jewellery could be finalised by the end of February 1999. This did not happen and some time after the end of February, Mr Khoo told him that there was a delay because the "cleaning work" in respect of the jewellery, which was being undertaken in Phuket, was massive. Subsequently, on 12 April 1999, Mr Khoo told Mr Ang that most of the cleaning had been completed and negotiations with a potential buyer were in their final stages. On 7 May 1999, Mr Khoo said that Mr Singh was in Europe with the jewellery and extensive negotiations were expected over the following week. On 7 June 1999, Mr Ang sent an e-mail to Mr Khoo enquiring about the sale. The next day, Mr Khoo told him that the jewellery had been sold at a price which was being finalised by Mr Singh and that payment would be transferred as soon as the goods changed hands. Shortly afterwards, Mr Khoo stated that Mr Ang's share should be in the region of \$300,000.

15 On 22 June 1999, the three men met in Singapore regarding the jewellery. This time, Mr Singh stated that the sale of the jewellery was under negotiation in London and that he had quoted a price of \$500,000 for the entire consignment and the prospective buyer had been given a month to complete the sale. Mr Singh assured Mr Ang that the sale of the jewellery would definitely be finalised within a month and that Mr Khoo would travel to London to do the paperwork in relation to the sale. Mr Ang subsequently wrote out minutes of this meeting and circulated them to the defendants. A further meeting was held among the three men on 25 June 1999 and again Mr Singh assured Mr Ang that the sale of the jewellery would be finalised by 20 July 1999. Mr Khoo told Mr Ang that he needed to furnish an acknowledgement of the receipt of the money to be paid to him by Delta-T & Associates and Mr Ang agreed to do this once the money was in hand.

16 The next meeting, which took place on 8 July 1999, was between Mr Ang and Mr Khoo only. According to Mr Ang, Mr Khoo told him that he would only be paid the cost price of the jewellery and that was 50% of the sale price of the same or \$300,000. The balance of the sale proceeds was to accrue entirely to Delta-T Associates. Mr Ang felt that he had no choice but to agree to this proposal because the jewellery was in the possession of the defendants and he wanted to maintain cordial relations with them and obtain some payment from them. A few days later all three men met again

and this time Mr Singh said that the sale of the jewellery had been concluded on his recent trip to Hong Kong. Mr Ang was told that the money due to him could only be remitted to him on 15 August 1999.

17 After that meeting, Mr Ang recounted the matters which had taken place during the meeting in an e-mail to Mr Khoo. He noted that a new payment date had been given and stated that after consulting his family and friends, he wished to state unequivocally that he would take action to recover the money or the jewellery if he did not receive the money in his bank account by 20 July 1999. Mr Khoo responded to this e-mail and wrote that the meeting had agreed to the 15 August deadline because "it was given by the buyer, who is not known to make further changes once he commits to the date".

18 The parties met again on 14 July 1999 to discuss the payment date. Mr Ang insisted on receiving payment by 20 July but Mr Singh said that the buyer would only pay on 15 August. Mr Singh then suggested that since they could not agree on a payment date, the jewellery would be returned to Mr Ang. When the latter agreed to this, Mr Singh said the return would only be made after Mr Ang had paid the expenses incurred in processing the jewellery and the trips taken to sell it. Mr Ang agreed to this too and there was then some discussion over the place at which the jewellery should be returned. The meeting ended inconclusively with Mr Ang reiterating that he wanted payment by 20 July 1999. The next day, Mr Ang sent out an e-mail about what had happened at the meeting and in this e-mail he said that since the jewellery had already been sold it could not be returned to him and he wanted payment by the promised date. Mr Khoo's e-mail in response confirmed that the jewellery was in London, that the buyer would take possession of it on 15 August 1999 and that Mr Ang would be paid after the jewellery changed hands.

19 Mr Khoo and Mr Ang met again on 17 August 1999. Mr Khoo said he wanted to clear up the matter to save his reputation and that he would give Mr Ang a written commitment regarding payment on Delta-T & Associates' letterhead. On 22 July 1999, Mr Khoo sent Mr Ang an e-mail asking him to confirm that the sum due to him, based on the packing list, was \$270,725. Mr Ang was not happy with this figure and sent out a long response. On 26 July, Mr Khoo in an e-mail repeated that, based on the packing list, the total cost worked out to \$270,725.

20 On 15 August 1999, Mr Ang met Mr Khoo in the latter's office. He told Mr Khoo that he had made enquiries and had been given advice that he could either lodge a complaint or wait until 18 August to settle the matter amicably and that he preferred the latter course. Mr Khoo said that he would be travelling to Europe on 18 August and would thereafter notify Mr Ang of the deposit of the money into his bank account. On 18 August however, Mr Khoo informed Mr Ang that the trip to Europe had been rescheduled to 23 August 1999 so that Mr Singh could go along as well.

21 In the event, the two men did not leave on 23 August. Two days later, Mr Khoo wrote to Mr Ang to assure him that he and Mr Singh were doing their best to get confirmed seats on a flight to London. He stated in his e-mail, *inter alia* :

I wish again to reiterate and reassure you here that we are doing our best to get on the flight. At the same time, alternative plan is being worked out so that u can receive the payment at the earliest possible. ...

We wish to state once again that we want to settle the matter with you immediately. We sincerely appreciate your patience and understanding thus far inspite of the difficulties that we encounter in managing a cordial relationship.

22 Over the course of the following days, there were further conversations and meetings between Mr Khoo and Mr Ang. Mr Ang also wrote frequently to Mr Khoo not only to document their discussions but also to emphasise his position. Mr Ang complained often about the delay and, on 4 September 1999, Mr Khoo replied by e-mail to state that he did not have any intention at all of avoiding or delaying payment to Mr Ang. This e-mail also stated that the defendants would be leaving for Europe on 7 or 8 September 1999 and that they would make payment to Mr Ang from Europe. On 6 September 1999, at Mr Khoo's request, Mr Ang sent an invoice from REDS to Delta-T & Associates. The material terms of this invoice were that:

(a) it referred to Delta-T & Associates as "Buyer";

(b) the payment terms were stated to be "T/T";

(c) the subject matter of the sale was described "Fine Jewelry" and the quantity of the sale was state to be "As shown in the Packing List dated January 26, 1999; and

(d) the price or amount was stated as being "\$270,725.00".

Mr Ang signed the invoice on the behalf of REDS and below his name he inserted his passport number and his bank account details so that payment could be made by telegraphic transfer.

23 No money was received by Mr Ang in September 1999. Many communications passed between him and Mr Khoo and Mr Khoo kept promising to make payment. On 25 September 1999, Mr Ang sent an e-mail to Mr Khoo in which he said that he would lodge an official report with the CID and that he was sure that the recent events that had happened were tricks and misrepresentations from Mr Khoo in an attempt to avoid making payment. On 6 October 1999, Mr Khoo informed Mr Ang that the defendants' friends in London had escorted the payer to the bank to ensure that a telegraphic transfer was sent out on that day. On 8 October 1999, he stated that he was checking for the fax copy of the remittance advice and that the remittance should be effected on that same day. No money came in October.

24 In November 1999, no money was received either. There were frequent discussions between Mr Khoo and Mr Ang and Mr Khoo continually reassured Mr Ang that payment would be made and that he and Mr Singh were making efforts to recover it from the buyer. On 26 November 1999, Mr Khoo wrote to state that a fresh bank draft was being prepared and that the amount would include late charges based on 1% per month interest. He said he expected to receive the draft at the beginning of the third week of December 1999. Nothing eventuated.

25 On 3 January 2000, Mr Ang lodged a police report referring to the consignment of the jewellery to the defendants. He stated that the goods had been sold on 8 June 1999 at the price of \$500,000 and that Mr Khoo had assured him that he would arrange payment of \$300,000 to Mr Ang by 4 September 1999. However, this had not happened and Mr Khoo and Mr Singh had used the excuse that the buyer had not paid them.

26 On 6 January 2000, Mr Ang met the defendants and received an undertaking ("the undertaking") signed by both of them. The undertaking is in the following terms:

#### SALE OF REDS JEWELRY

Please refer to your Report Ref No. C 177509 made with the Commercial Crime Division, CID on 3 January 2000 at 2.45 pm.

We, Ajit Singh (I/C No. 1386867J) and Khoo Eng Lim (I/C No. 2504969A) undertake on behalf of our buyer in Europe that we will arrange an amount of \$270,275 being payment for the abovementioned. We have also confirmed that due to delayed payment by the buyer, we will pay interest at 1% per month of this principal amount effective from 16 Aug 1999 up to the date that the money is transferred to your account. The full payment, including interest will be transferred direct from Europe to your bank account in Singapore not later than 29 February 2000 or as soon as the buyer has made the payment.

As advised, the payment will be made to your bank account at:

...

We regret for the inconvenience caused. You may wish to inform the CID of our undertaking.

27 After the undertaking was issued, there were various communications between Mr Khoo and Mr Ang pertaining to the defendants' promises to pay and extensions of the payment deadline. The undertaking provided for payment to be made no later than 29 February 2000, and on 10 February 2000, Mr Khoo reiterated that that commitment would be met. On the 29 February itself, he wrote to Mr Ang and stated that the defendants had been informed that the telegraphic transfer would be activated that day itself. Again, no money came in. He then informed Mr Ang that the transfer was being made from the United States and it would take about three or four banking days to be completed. Thus, the earliest that the money could be received would be 5 March 2000. The money failed to arrive and following the usual pattern there were numerous telephone conversations between Mr Khoo and Mr Ang, the latter pressing for payment and the former reassuring him that the money was on the way. In the meantime, Mr Ang was in active communication with Inspector Anthony Tan of the Commercial Crime Division of the CID regarding his complaint against the defendants.

28 The next written communication from Mr Khoo was on 12 April 2000. This was an unsigned fax that stated there was a problem with the transfer and the defendants were making alternative arrangements. They would pick up the draft on Monday 17 April 2000 and arrange to deliver it to Mr Ang on Tuesday 18 April 2000. On the same day there was a telephone conversation between Mr Ang and Mr Khoo in which Mr Khoo said that he had spoken to the CID about the matter and the CID had agreed to allow him up to 27 April 2000 to make the payment.

29 Mr Ang remained in communication with Inspector Tan who briefed him from time to time on the defendants' various promises regarding payment. These conversations took place in April and May 2000. In August 2000, Inspector Tan's subordinate, Sgt Goh, informed him that Mr Singh had been interviewed by the police and he had given them details of the buyer of the jewellery.

30 In July 2001, Mr Ang was informed by the police that Mr Singh had been arrested on 9 July 2001 and charged in court on 10 July 2001. Mr Singh claimed trial to the charge and Mr Ang was served with a subpoena to testify for the prosecution. In the event, Mr Singh pleaded guilty and no trial took place.

31 On 1 November 2001, Mr Ang's former solicitors sent Mr Khoo a letter of demand demanding the sum of \$300,000, with interest thereon at 1% per month, from 4 September 1999. Mr Khoo replied denying liability on the basis that he had not wrongfully converted the jewellery to his own use. All the arrangements to find buyers for the jewellery were done by Mr Singh and Mr Khoo's role was to only help in the communications between Mr Singh and Mr Ang.

32 Mr Ang took no further action until June 2002. On 25 June 2002, his solicitors wrote to Mr Khoo and refuted his assertions. The latter stated that they had instructions to commence legal proceedings against Mr Khoo. Mr Khoo's solicitors responded to this letter reiterating Mr Khoo's position. Thereafter, Mr Ang did not take further steps to enforce his rights due to the lack of financial resources. It was only on 17 April 2006 that this suit was commenced.

### **Consideration of the claim**

33 At the end of the trial, counsel for the plaintiff submitted that the following issues arose from the facts and positions taken by the parties:

- (a) whether Mr Khoo is jointly and severally liable with Mr Singh as a bailee for the conversion of the jewellery;
- (b) whether Mr Khoo is principally liable as a bailee for conversion of the jewellery;
- (c) whether the evidence of Mr Khoo is credible;
- (d) whether the defendants are liable for the tort of deceit;
- (e) whether Mr Ang has an independent cause of action on the undertaking;
- (f) whether the action is time barred and whether there was concealment of the right of action; and
- (g) whether any issue arises regarding the value of the jewellery and the interest agreed to be paid by the defendants.

The closing submissions presented on behalf of Mr Khoo raised issues as to the credibility of Mr Ang and his wife and also as to who was the true owner of the jewellery. Apart from those additional issues, the defence did not demur that the issues identified on behalf of the plaintiff were relevant to the case.

34 I shall consider the various issues raised by both parties in the order that I think is best and to the extent that I consider necessary in view of the findings that I will make in this judgment. Once certain basic matters have been determined, some of the issues may no longer be relevant.

### ***Who was the true owner of the jewellery?***

35 In para 1 of the statement of claim, the plaintiff stated that his claim was for damages for "the fraudulent misappropriation of properties belonging to the Plaintiff". That was the only statement on the ownership of the jewellery which was made in the statement of claim. In response, in para 1 of his defence, Mr Khoo denied the allegations in para 1 of the statement of claim and in particular denied that he had fraudulently misappropriated property belonging to the plaintiff and further denied that the plaintiff's property had been entrusted to him. It could be contended that those denials were



directed at the allegations of misappropriation and entrustment only and not at the allegation of ownership. However, in para 28 of the defence, it was averred that Mr Khoo did not admit that Mr Ang himself was the actual owner of the jewellery. Accordingly, on the issue of ownership Mr Khoo put Mr Ang to strict proof but did not put up a positive case of his own.

36 It was common ground that the consignment note evidencing the handing over of the jewellery by Mr Ang was on the letterhead of REDS and that Mr Ang signed that consignment note on behalf of REDS. Further, the invoice issued in September 2001 describing Delta-T & Associates as the buyers of the jewellery was also a commercial invoice from REDS. These documents support the inference that the jewellery belonged to REDS and that the consignor of the same was, accordingly, REDS. The evidence showed that the registered sole proprietor of REDS was Mr Ang's wife, Mdm Oh. Mr Ang maintained however that she was only the nominal owner of REDS and that he was its true owner and the manager of its business. Mdm Oh confirmed in court that this was indeed the position.

37 The defence submitted that Mdm Oh's evidence should not be believed. It asserted that she was less than cooperative in her answers during cross-examination and often gave vague answers to pointed questions instead of answering them directly. It was clear, counsel submitted, that she was attempting to explain away why Mr Ang should refer to her as the true owner of the jewellery. The defence pointed to a letter dated 19 February 2000 which Mr Ang had written to the police in which he had clearly referred to her as the owner of the jewellery. When confronted with the contents of this letter, Mdm Oh had initially refused to admit that either what was said in the letter was a lie or, alternatively, that Mr Ang's claim to be the owner was false. After continued questioning she then stated that the contents of the letter were true. Counsel submitted that on the basis of this answer the court should dismiss Mr Ang's claim as he had no *locus standi* to bring the action.

38 Although the answer that Mdm Oh gave in court was damaging to the plaintiff's position, this issue cannot be decided on the basis of that answer alone. Mr Ang gave evidence that the jewellery was accumulated by him during his stint in India. He exhibited documents that showed that he had been acquiring jewellery during this period. Further, Mdm Oh was a housewife throughout the period in India and it was only Mr Ang who had the financial ability to acquire the jewellery. He explained that Mdm Oh was named as the nominal sole proprietor of REDS because at the time of its registration he was employed by Intraco and had been advised that it might put him in a position of conflict if he became the registered owner of this business. That explanation rings true. Many working people who run their own side businesses fear that it would jeopardise their employment if their employers know that they are moonlighting. Mdm Oh had confirmed that at all material times REDS was set up, controlled and managed by Mr Ang. It is no wonder that, knowing that to be the case, she had difficulty with the question relating to the false statement in Mr Ang's letter regarding the ownership of the jewellery. Mr Ang's own explanation for stating in some communications that the jewellery belonged to his wife was that he did this in order to persuade the defendants to expeditiously settle the monies owing to him. This explanation, although rather lame, is consistent with what he wrote to the police in the letter of 19 February 2000 which was:

Everyone of us is suffering physically and mentally. My wife is suffering the most because she is the owner of the jewelry (*sic*) stock, and because she has been unable to do her jewelry (*sic*) business to date.

In that letter, Mr Ang was trying to persuade the police to take urgent action against the defendants (he asked them to bring the defendants to justice quickly) and was using all ways of persuading them that he could think of including an appeal to consider the suffering of his wife and family. He may have been somewhat manipulative in his approach, but that only makes the statement in his letter a lie. It does not mean that he was not the actual owner of REDS.

39 In the result, I am satisfied on a balance of probabilities that Mr Ang was at all times the true beneficial owner of REDS and that as such he was entitled to maintain this action.

***What was Mr Khoo's position in the transaction?***

40 The transaction out of which this action arose was a contractual arrangement. Mr Ang characterised it as an agreement between himself as the owner of the jewellery on the one part and Mr Singh and Mr Khoo on the other part as the persons who would market the jewellery internationally and achieve a sale thereof. Mr Khoo did not disagree that there was a contractual arrangement involving the owner of the jewellery consigning it for sale to another party. His stand was that this contract was between Mr Ang and Mr Singh only and that he himself acted only as a broker and facilitator. His role was to introduce Mr Ang to Mr Singh and to facilitate the transaction.

41 Defence counsel submitted that throughout his testimony, Mr Khoo gave evidence that was consistent with his position that he had, all along, been merely a facilitator. This evidence was confirmed by Mr Singh when he stated that Mr Khoo's only role was that of paying out the money once Mr Singh achieved the sale of the jewellery. Mr Khoo did not run away from the evidence no matter how negative the implications of his answers were. He did not run away from his failing to correct the minutes and letters sent out by Mr Ang. He admitted that he did not correct the record when he should have and explained that because Mr Ang was his friend, he did not consider it crucial to correct each and every matter. Given the tense situation during the period from July 1999 until the end of the year, it was not unbelievable that he considered that to antagonise Mr Ang by pointing out his flaws would not resolve the situation when all Mr Ang wanted was to get paid which was what Mr Khoo wanted as well.

42 Counsel criticised Mr Ang's evidence. He pointed out various instances where he considered that Mr Ang had lied or evaded questions. Mr Ang, it was submitted, was a shrewd and conniving man and also an experienced or savvy businessman. He had also ensured that each and every meeting between him, Mr Khoo and Mr Singh was reduced into writing, by putting his recollections into notes or e-mails to the other parties. Writings from Mr Ang also showed that at the material time, he considered Mr Singh, not Mr Khoo, to be the wrongdoer. In a letter to the CID, he made the following statements:

The details that Khoo will provide to the CAD, will show how Ajit had taken the REDS Jewellery items from me, sold them, and how he had used the proceeds from the sale.

...

Khoo did not know about Ajit's own plans on 15.1.99. I think it was around April 99 when Khoo asked me and Ajit to contact one another directly, that he began to feel that Ajit was up to something more fraudulent than (*sic*) he was prepared to venture with Ajit.

Counsel submitted that in this letter, Mr Ang had revealed the reality of the situation which was that he knew that it was Mr Singh and not Mr Khoo who had cheated him.

43 Despite the fact that counsel's criticisms of Mr Ang's evidence on various points were well taken, those criticisms do not detract from the strength of Mr Ang's position in relation to the role that Mr Khoo played in the transaction. Much as counsel tried to downplay Mr Khoo's failure to respond to various assertions made over a long period of time by Mr Ang in his letters and minutes of meeting when he was obviously treating Mr Khoo and Mr Singh as partners, the arguments counsel made lacked substance. The evidence not only from Mr Ang's contemporaneous correspondence but

also from Mr Khoo's own correspondence and activity weighed strongly against Mr Khoo's claim to having been only a facilitator.

44 The context in which the jewellery was handed over to Mr Singh must be remembered. Mr Ang had never met Mr Singh prior to 15 January 1999 yet on the very next day he physically handed over a parcel of valuable jewellery to Mr Singh. Why would he do such a thing? Mr Ang's explanation, which I accept as credible and convincing, was that he trusted Mr Khoo whom he had known for many years and it was Mr Khoo who told him that he and Mr Singh would be able to obtain an international buyer for the jewellery. Mr Ang was told that Mr Khoo and Mr Singh worked together on other projects and he was informed that Mr Singh was also involved in Delta T & Associates. Mr Ang's inclination to deal mainly with Mr Khoo was evidenced by his handwritten consignment note dated 26 January 1999 consigning the jewellery to Mr Khoo as the proprietor of Delta T & Associates. Later the same day, he typed out another version of the consignment note and this stated that the jewellery had been consigned to Mr Khoo and Mr Singh "of Delta T & Associates". Mr Khoo did not object to the contents of the printed consignment note nor did he correct it. There was no assertion that the consignment note was not a contemporaneous document.

45 Subsequently, in June 1999, when Mr Ang was already very anxious about the jewellery, he sent e-mails to Mr Khoo reiterating that the same had been consigned to both Mr Khoo and Mr Singh of Delta T & Associates. At other times too he wrote that the jewellery had been consigned to both men. There was never any occasion on which Mr Khoo either verbally or in writing objected to Mr Ang's assertion that the consignment had been to both of them.

46 Mr Khoo did not simply remain passive in the face of Mr Ang's assertions as to his involvement in the transaction. He went further and took an active part in reassuring Mr Ang that everything was in order, there was nothing to worry about and it was only a matter of time until payment was received and, even more, at times that he himself was going to collect the money. Whilst Mr Khoo may not have touched the jewellery in a purely physical sense because it passed physically from Mr Ang to Mr Singh, his actions and reassurances to Mr Ang indicated that he was as involved in the sale of the jewellery and the collection of the proceeds of sale as Mr Singh was.

47 During 1999, Mr Khoo often made promises on behalf of both himself and Mr Singh to pay Mr Ang. In an e-mail dated 30 August 1999, for example, he said:

I wish to again reiterate and assure you that we will resolve the matter. I shall update you within this weekend on *our* proposed action on payment made to you. (Emphasis added)

In cross-examination, Mr Khoo agreed that the words "we" and "our" referred to both himself and Mr Singh. Even earlier when there was some dispute about the non-inclusion of certain items in the packing list, Mr Khoo had sent out an e-mail in which he stated "We will pay whatever addition that is due to you if there has been any omission". Again, in court Mr Khoo confirmed that "we" referred to him and Mr Singh. As late as 10 February 2000, writing in respect of the defendants' commitment to pay Mr Ang, Mr Khoo said "We shall honour our commitment". Other correspondence in which Mr Khoo used the word "we" in reference to both himself and Mr Singh and in relation to promises of payment included e-mails sent on 30 August 1999, 4 September 1999 and 2 March 2000.

48 Apart from giving these assurances to Mr Ang himself, Mr Khoo also wrote to the CID in terms that indicated that he was a partner of Mr Singh rather than simply a broker. In a letter dated 13 April 2000, Mr Khoo said that the defendants had told Mr Ang that "there has been a problem with the remittance of the amount due to him for the sale of the REDS jewelry (*sic*) and that *we are making an alternative arrangement now*". This was a clear indication to a third party that he and Mr Singh

acted together.

49 In court, Mr Khoo admitted that he had promised Mr Ang that both he and Mr Singh would sign a written commitment on Delta T & Associates' letterhead by which they would promise to pay Mr Ang the amount due to him. In an e-mail dated 20 July 1999, Mr Khoo told Mr Ang that he had already drafted the letter on the firm's letterhead but had to wait for Mr Singh's return in order to issue it since he needed Mr Singh's signature as well. It was put to Mr Khoo that this correspondence showed that he and Mr Singh were partners in Delta T & Associates but he denied this saying that he was the sole proprietor of the firm. He also disagreed that by writing in this way he had been implying that Mr Singh was involved in Delta T & Associates. However, he did admit that he had told Mr Ang on 24 August 1999 that he and Mr Singh were trying to get funds from their other business to pay him. He agreed that at that time he had intended to use money belonging to another business between himself and Mr Singh to pay off Mr Ang and, when questioned further about this, he admitted that this business was Delta T & Associates though he continued to maintain that Mr Singh was not a partner in this business. It should be noted that according to what Mr Khoo told Mr Ang, the expenses that were incurred in trying to sell the jewellery were incurred by Delta T & Associates and that the intention was to channel the moneys from the sale transaction through Delta T & Associates to Mr Ang. It was Mr Khoo who prepared the draft of the invoice in respect of the jewellery issued by REDS and that invoice referred to Delta T & Associates as the buyer. Thus, even if Mr Singh was not a partner in Delta T & Associates, Mr Khoo's own involvement in the transaction through the involvement of his firm can be clearly discerned.

50 On many occasions in 1999, Mr Khoo told Mr Ang that he would be travelling abroad, either to Europe or Hong Kong, to finalise transactions with the purported purchaser and to arrange for the remittance of the funds to Mr Ang. In 2000, he informed the CID about similar journeys. On 13 April 2000, he told the CID that the defendants were scheduled to make an overseas trip to resolve the matter. In a subsequent letter to the CID dated 20 June 2000, he said that the remittance was not ready and that Mr Singh had suggested that Mr Khoo himself travel to Hong Kong to settle matter. He then sought permission from the CID to make this journey.

51 There was no documentary evidence that directly supported Mr Khoo's claim to be a broker or facilitator only. When he was asked why no document expressly described his role in these terms, Mr Khoo answered that his role was "implied" in the documents. He confirmed that he did not mention in his letters to the CID that he had acted only as a facilitator/broker. Nor had he ever told Mr Ang this fact. I asked him "Did you tell the plaintiff you were only a broker?" and his response was "Not directly, your honour". I take that answer to mean that he had never said such a thing to Mr Ang.

52 It is also material that Mr Khoo was, pursuant to the agreement, entitled to receive an equal share of the profits from the sale of the jewellery. If his role was only to be a broker, it is unlikely that both Mr Ang and Mr Singh would have agreed to give him such a large share of the profits. Mr Khoo also took a leading role in the transaction when he sought to change the terms thereof. At the beginning, the agreement was that Mr Ang would receive the cost price of the jewellery and the balance would be divided among the three men. Subsequently, Mr Khoo told Mr Ang that he would only receive the cost price of the goods and the profits would belong to the defendants entirely. This assertion was repeated by Mr Ang in an e-mail which he sent to Mr Khoo on 10 July 1999 and Mr Khoo did not deny that he had made the assertion. Subsequently, the three men met again and confirmed the change in the terms. Mr Khoo also took the lead on several occasions when he wrote to Mr Ang asking for an extension of the deadline for payment, giving one reason or another for the same.

53 On a consideration of all of the evidence before me, I am satisfied on a balance of probabilities that the agreement reached was between Mr Ang on the one part and Mr Khoo and Mr Singh acting

together on the other. Whilst Mr Khoo may not have physically handled the jewellery, Mr Singh's receipt of the same was a receipt of the jewellery on behalf of both of them. Mr Ang entrusted the jewellery to both defendants and they were both responsible for selling it and paying Mr Ang the agreed amounts from the proceeds of sale. Whilst it may have been the intention that the chief salesman would be Mr Singh, Mr Khoo was closely involved. All his actions after the jewellery had been handed over confirmed his involvement and his understanding of his joint responsibility in regard to the same. The extent to which Mr Khoo went to reassure Mr Ang regarding payment and finalisation of the sale would be inexplicable if he had only taken the role of a broker.

### ***Is Mr Khoo liable for conversion of the jewellery?***

54 Having found that Mr Khoo acted jointly with Mr Singh and was a principal rather than simply a broker, it follows that any bailment that was created when the jewellery was handed over to Mr Singh was a bailment in which both Mr Singh and Mr Khoo were bailees. This is the position reflected by the consignment note which described the jewellery as having been consigned to both men. The next issue is whether Mr Khoo as a bailee subsequently converted the jewellery and is liable to Mr Ang for that conversion. In this respect, it is clear that even if the jewellery was converted by Mr Singh alone (*ie* without the knowledge and consent of Mr Khoo), Mr Khoo as joint bailee would be equally responsible for such conversion.

55 The fact of the matter is that after the jewellery was handed over to Mr Singh, by his own admission, he took it out of the country and sold it. The jewellery was never seen again by Mr Ang. The issue is whether as a consequence of Mr Singh's actions, Mr Ang had a claim for conversion.

56 Counsel for Mr Khoo submitted that the bailment of the jewellery was made for only one reason: its sale. It therefore followed that the bailment could be terminated in two ways either by a failure to achieve a successful sale or by Mr Ang's withdrawal of his consent to the bailment at any time before the sale was finalised. In this case, at the latest the bailment would have ended on 31 July 1999 which was the first deadline for the sale of the jewellery. When that deadline passed, the bailment terminated. Further, Mr Ang repeatedly notified Mr Khoo in his correspondence that he had ended the bailment because there had not been any sale and he wanted the jewellery returned to him.

57 I do not completely agree with the above analysis. The bailment for sale was created in January 1999 with the initial intention that the jewellery would be sold by about the end of February 1999. If the jewellery had been sold, the bailment would have ended on sale. Mr Ang probably could not have terminated the bailment before the end of February 1999 since he had agreed to the jewellery being in the defendants' possession for a specific purpose until that date. After the date passed, since Mr Ang did not ask for the jewellery to be given back to him, the bailment continued. The bailment not only continued but it continued on the same terms *ie* that the defendants had it for the purposes of sale. After February 1999, Mr Ang had the power to request its return at any time but until he did so, the defendants had it in their possession with his authority and with the additional authority to sell it. Thus, I do not agree with the submission that the bailment automatically terminated when the jewellery could not be sold by any particular deadline, whether it was the end of February 1999 as I have postulated or the end of July 1999 as submitted for Mr Khoo.

58 At this point, it may be helpful to reiterate some salient facts. In June 1999, Mr Ang was told that the jewellery was in London and that the sale of the consignment was under negotiation in London. He was told that the sale would be completed in about a month *ie* around 20 July 1999. At this meeting, Mr Ang did not offer any objection to the continuation of the negotiations for the sale. He was content to leave the jewellery in the defendants' possession and for the bailment to continue. On 4 July 1999, Mr Ang wrote to Mr Khoo setting out a history of the transaction. In that letter, he

said that he would take action to recover the money or the jewellery if he did not receive the money in his bank account by 20 July 1999. The next development took place on 12 July 1999 when Mr Ang was informed that the sale of the consignment had been concluded on Mr Singh's recent trip to Hong Kong and that the sum of \$300,000 being the cost price of the jewellery could only be paid to him on 15 August 1999.

59 Two days later there was a dispute between the parties with Mr Ang refusing to accept 15 August 1999 as the payment date and insisting on the original date of 20 July 1999. At that stage, Mr Singh offered to return the jewellery. Whilst Mr Ang agreed initially, when he was subsequently asked by Mr Khoo whether he wanted to take the items back, he replied that he wanted his payment by 20 July 1999 as promised previously by the defendants. In a subsequent e-mail, Mr Ang reiterated that as he had been led to believe that the jewellery had been sold in early June 1999, the jewellery could not be returned to him and he wanted his payment by 20 July 1999. After further discussions between him and Mr Khoo and the promise of a written commitment on Delta T & Associates' letterhead from Mr Khoo regarding payment by 15 August 1999, Mr Ang agreed to extend the payment deadline to that date.

60 The correspondence between 22 July 1999 and 15 August 1999 dealt principally with the amount to be paid to Mr Ang. The figure of \$270,725 was put up instead of the figure of \$300,000. On 26 July 1999, Mr Khoo sent an e-mail stating that all parties had agreed to the 15 August 1999 deadline and that the total cost price amounted to \$270,725. On 15 August 1999, Mr Khoo told Mr Ang that he would be travelling to Europe on 18 August 1999 and he would notify him shortly thereafter regarding the transfer of the money into his bank account or into the bank account of Delta T & Associates. This trip was rescheduled to 23 August 1999 and on 24 August 1999, Mr Ang informed Mr Khoo that he would reimburse the latter's travel expenses to Europe. The travel plans were further delayed and subsequently Mr Khoo stated that he was making arrangements to pay Mr Ang by 4 September 1999. Mr Ang agreed to the change in the deadline and on 30 August 1999, Mr Khoo sent an e-mail stating the amount to be paid was \$270,725. On 3 September 1999, Mr Ang expressed his concerns to Mr Khoo about the delay in the remittance and Mr Khoo subsequently stated that the defendants would leave for Europe on 7 or 8 September 1999 and payment would be made in the week thereafter. Mr Ang agreed to the change in deadline and Mr Khoo then requested Mr Ang to issue an invoice to Delta T & Associates. This was duly done on 6 September 1999.

61 Counsel for Mr Khoo submitted that by issuing the invoice, Mr Ang had accepted that the title to the jewellery had been transferred and that the return of the same was by that time out of the question. He argued that this meant that the bailment had terminated and had been replaced by a claim for the agreed sum of \$270,725 as reflected in the invoice. Furthermore, time to sue on the invoice started immediately from 6 September 1999.

62 Mr Ang's response was that the contentions made by Mr Khoo could not be supported because he failed to have regard to the fact that it was the defendants themselves who had represented to Mr Ang and the CID that the jewellery had been sold. Since Mr Ang believed these representations it was not unreasonable for him to expect to recover his share of the proceeds and it would have been ludicrous for him to demand the return of goods that had been sold. Further, the submission that bailment had been terminated was not acceptable because Mr Ang had been lied to by the defendants as regards the sale of the jewellery. Since the defendants had made such false representations, their liability as bailees would still subsist. In addition, on account of the conversion of the jewellery, the defendants would remain liable to Mr Ang.

63 In my view, the legal position is not as put forward on behalf of Mr Ang. *Clerk & Lindsell on Torts* (Sweet & Maxwell 2006, 19<sup>th</sup> Ed) sets out the seven ways in which a conversion may take

place (at para 17-08 to 17-32). These are the following:

- (a) when property is wrongfully taken or received by someone not entitled to do so;
- (b) when it is wrongfully parted with;
- (c) when it is lost by a bailee in breach of his duty to the bailor;
- (d) when it is wrongfully sold, even without delivery, so as to pass good title to the buyer;
- (e) when it is wrongfully retained;
- (f) when it is wrongfully misused or destroyed; and
- (g) when the defendant, without physically interfering with it, wrongfully denies access to it to the claimant.

On the basis of the evidence in this case, the only types of conversion that may be applicable here are that set out in (b) and (d) above. The difference between (b) and (d) is that (b) occurs when a person without authority delivers another's goods to a third party by way of sale or gift or by some other method which is adverse to the right of the owner whilst in the case of (d), there is a wrongful sale on the part of a non-owner but not necessarily a delivery. The common thread is that the person delivering or selling the property concerned does so without the authority of the true owner.

64 Mr Singh's evidence was that he had sold the jewellery in dribs and drabs in the first few months after receiving it from Mr Ang. There was no evidence that the jewellery had been lost or given away and these possibilities were not even suggested to him or to Mr Khoo. Accordingly, I accept that it is most likely that the jewellery was sold though not necessarily in dribs and drabs and for the pittance that Mr Singh would have me believe he sold it for. I also do not know the exact time frame of the sale though, based on the various assurances that were given by the defendants to Mr Ang, it probably took place some time in 1999.

65 Looking at the evidence, it is plain that at all material times, Mr Singh and Mr Khoo were authorised by Mr Ang to sell the jewellery. Although there was a possibility of his demanding the return of the jewellery in July 1999, it quickly became apparent that Mr Ang wanted money rather than the physical objects. Despite threatening to take action to recover the jewellery if he was not paid by 20 July 1999, after that date Mr Ang did no such thing. On 25 July 1999, he threatened again to act decisively to recover the money or jewellery but did not issue a formal demand for the return of the jewellery and thereafter his letters concentrated on payment. In court Mr Ang was asked whether as at 22 July 1999 his real intention was to take action if he was not paid and his reply was that his real intention was simply to get payment. He also confirmed that he had never demanded the return of the jewellery at any time between 20 January 1999 and 3 January 2000.

66 It is clear from the evidence and the documentation, including the invoice, that by 6 September 1999 at the latest (and arguably by 22 July 1999), Mr Ang had waived his demand (if any had been made) in July 1999 for the return of the jewellery and had accepted a monetary claim against the defendants in place thereof. The authority given to the defendants to sell the jewellery had thus been reinstated. After September 1999 Mr Ang did not withdraw this authority. Instead he vigorously pursued payment. In the year 2000, he kept asking the defendants for payment and the main motive behind his reports to the police was to try and enforce payment. As late as April 2000 there was correspondence between him and Mr Khoo regarding the payment date and, in a letter sent to

Mr Khoo on 19 April 2000, Mr Ang stressed that he wanted the money to be paid to him by 27 April 2000. It was only on 1 November 2001 when his lawyers sent a letter of demand to Mr Khoo that Mr Ang demanded, in the alternative to payment of \$300,000 and interest on the same, the return of the jewellery.

67 In my judgment, that was too late for Mr Ang to withdraw the authority he had given to the defendants. By then he was fully aware that the jewellery had been sold. The jewellery was sold with his authority. The consequences of this were that the bailment terminated on sale and there could be no question of conversion because there was no issue of a wrongful sale or an unauthorised delivery of the jewellery to the purchaser. Thus, Mr Ang has no claim in conversion against the defendants. The wrong committed by the defendants did not relate to the sale: that was fully authorised. It related to the breach of their agreement to pay Mr Ang the proceeds of sale up to the sum of \$270,725 or to simply pay him the said sum at all.

***Is there an action in deceit against the defendants?***

68 The plaintiff's case in deceit was based on fraudulent misrepresentation. It was submitted that fraudulent misrepresentations were made to induce Mr Ang to part with the possession of the jewellery and thereafter further fraudulent representations were made to induce Mr Ang to forebear and not to commence legal proceedings against the defendants. It was further submitted that Mr Khoo made these representations knowing them to be false. The fraudulent misrepresentations relied on were the following:

- (a) the claim of Mr Khoo that the defendants had contacts in Europe who dealt in jewellery;
- (b) the representations that the defendants could find buyers for the jewellery and that they had buyers for the jewellery; and
- (c) the many representations that the jewellery had been sold and the proceeds would be remitted to Mr Ang.

69 Dealing first with the representations relating to the sale of the jewellery, I do not see how such representations can be considered actionable in themselves. First, a representation to be actionable must be a representation of fact and not a promise. These representations although they stated that the jewellery had been sold were in essence promises to make payment. They were statements of intention. As such the plaintiff cannot use them as a cause of action. Secondly, Mr Ang has not shown how he relied on those representations to his detriment. No doubt he did not take action against either Mr Khoo or Mr Singh in 1999 but as early as January 2000, he had already made a police report against the two men and was actively aiding the police investigations and pressing the police to take action. The last promise of payment was made in about April 2000 and thereafter there was nothing to impede any civil action by Mr Ang to enforce recovery. Mr Ang said that he did not do anything before Mr Singh was convicted because he did not know what the exact facts were. That reason for inaction had nothing to do with any representations of payment made by either defendant.

70 Turning to the representations made before the jewellery was consigned to the defendants, the evidence before me does not establish to the degree necessary to establish fraud that when Mr Khoo and Mr Singh told Mr Ang that they had buyers overseas and would be able to sell the jewellery, they were acting fraudulently without any intention of effecting a genuine sale of the jewellery. It should be recalled that the background to the consignment was first, the friendship between Mr Khoo and Mr Ang and secondly, the friendship between Mr Khoo and Mr Singh.



71 Mr Khoo had told Mr Ang that he and Mr Singh had been in business together and that Mr Singh much experience in the jewellery business. Mr Singh's testimony corroborated this assertion. He stated that he gained experience in the jewellery trade when he was stationed in Vietnam. This experience involved designing jewellery, polishing it and buying and selling it around the world. Originally he intended to sell the REDS jewellery in Thailand but he was not able to do so. He also went to Hong Kong, England, Paris and Australia and ended up selling the jewellery piece by piece.

72 The circumstances of the personal relationships between the parties and their activities in the first few months after the consignment was made indicate to me that the whole arrangement was a pure commercial transaction with Mr Singh and Mr Khoo entering into it with the intention of effecting a proper sale of the jewellery and sharing in the profits with Mr Ang. There is insufficient evidence to show that their intention from the beginning was to cheat Mr Ang and deceive him into parting with the jewellery so that they, solely, could benefit from it to his detriment. Further, in relation to Mr Khoo alone, the evidence of dishonest intention from the very beginning is even weaker. Mr Ang himself in certain of his correspondence did indicate that he thought that Mr Khoo was not aware initially of any nefarious intention that Mr Singh had. There is no evidence either that Mr Khoo profited from the sale of the jewellery. Mr Singh said that he used the proceeds of sale to cover his expenses and that Mr Khoo was not involved in this use. Thus, even if Mr Singh had intended to convert the jewellery from the beginning, the evidence suggests that Mr Khoo had no knowledge of such an intention and that he was sincere in the statements that he made to the plaintiff regarding the potential sale and sharing of profits. It must be noted that Mr Khoo and Mr Singh had known each other for many years, had previously travelled and done business together and there was no reason for Mr Khoo to doubt the honesty of Mr Singh's intentions.

73 I therefore hold that the plaintiff's cause of action for fraudulent misrepresentation fails.

### ***The monetary claim and time bar***

74 The plaintiff's monetary claim for the payment of \$270,725 arose I think, at the latest, on 6 September 1999 when the REDS' invoice was issued. The defendants, however, signed the undertaking on 6 January 2000 whereby they recognised their liability to pay this sum to the plaintiff and undertook to pay it by 29 February 2000 by the latest. Therefore, if the undertaking is relied on, in accordance with s 26(2) of the Act, the right of the action of the plaintiff against both would be deemed to have accrued on 6 January 2000. As far as Mr Khoo himself was concerned, on 2 March 2000, he wrote to Mr Ang stating that he had advised Mr Ang incorrectly on the expected date that the latter would receive the remittance and that the transfer could only be credited to Mr Ang's account on 5 March 2000 at the earliest. He further wrote:

We wish to assure you again that the matter will be settled. The delay if any can only be caused by the banking transfer and clearances. We do not intend to deviate from our undertaking to make the payment due to you.

This letter was signed by Mr Khoo and it is strongly arguable that it constituted an acknowledgement of the claim which fell within s 26(2) of the Act. In that case, the date of accrual of action, *vis-à-vis*, Mr Khoo would have been further postponed to 2 March 2000. There is a possibility of a similar argument being made on the basis of the note of 12 April 2000 which appeared to have emanated from Mr Khoo although it was not signed. In any event, whichever date is taken (6 September 1999/6 January 2000/2 March 2000/12 April 2000), all of them fell more than six years before the filing of this action on 17 April 2006. Accordingly, it was submitted by Mr Khoo that Mr Ang's monetary claim against him was time barred by virtue of s 6(1) of the Act.

75 Mr Ang's position was that his claim was not time barred because he was entitled to rely on s 29(1)(a) of the Act to extend time. This section provides:

**Postponement of limitation period in case of fraud or mistake.**

**29.** —(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —

(a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;

(b) the right of action is concealed by the fraud of any such person as aforesaid;

...

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

76 It was submitted that this section applied because Mr Ang's case was also founded on the tort of deceit. Counsel submitted that damage is an essential ingredient of that tort and in this case the damage did not materialise until the conviction of Mr Singh (25 September 2001) because it was only then that Mr Ang found out that the jewellery had been misappropriated. Prior thereto Mr Ang had been led to believe that the jewellery had been sold and that he would be paid his share of the proceeds upon the same being collected by the buyer. Numerous false representations were made that there were delays in remittance of the money or some problems with the documentation. Mr Ang relied on these false representations which continued to be made even during the course of the police investigations. He only realised that the defendants had been acting fraudulently when Mr Singh was convicted. Since the cause of action accrued on 25 September 2001, the suit was filed within time.

77 This submission has its difficulties. In the first place, I have found that the plaintiff has no cause of action in deceit. That means that he cannot rely on s 29(1)(a) which requires the claim to be based on fraud. Even if I were wrong in this finding, however, the evidence alluded to below shows that Mr Ang was alert to the possibility of fraud by January 2000, even if his visit to the CID in August 2000 is not taken as an indication that it was already on his mind by then. However, I must then consider whether s 29(1)(b) is applicable because that section postpones the accrual of the cause of action when the defendants have fraudulently concealed from the plaintiff the fact that he has a right to claim. In my view, in the light of the evidence, the plaintiff has difficulty bringing himself within this limb as well. It must be noted that even if there has been concealment the period of limitation begins to run when the plaintiff could, with reasonable diligence, have discovered that the cause of action existed.

78 Mr Ang's position is that he did not know that the jewellery had been misappropriated until Mr Singh pleaded guilty to the criminal charges. The corollary of this submission must be that he did not know until then that he would not receive payment from the defendants or that they had cheated him. The fact of the matter is that from July 1999 Mr Ang believed on the basis of what he had been told in June 1999 that the jewellery had been sold and that he could not get it back. Even the brief possibility of the return of the jewellery quickly fizzled out and he was happy to take the alternative of a monetary claim. In court he repeated many times that during this period he just wanted to be paid. His evidence supports my finding that by September 1999, he had given up any rights to physical possession of the jewellery and agreed to accept the sum of \$270,725 in place thereof. He said himself that this was not the original figure but that he had agreed to this figure after some

negotiation with the defendants. In this situation it makes no sense for him to subsequently argue that the defendants fraudulently concealed the misappropriation (which word must refer to the sale of the jewellery) from him.

79 The cause of action that Mr Ang had from September 1999 onwards (if not before) was a claim for payment of \$270,725. This was not a cause of action that was fraudulently concealed from him in any way. The defendants did make numerous representations to him regarding payment in order to buy time to make payment but he was aware at all times that he had the right to make the claim, no matter how often he denied in court having had this knowledge or understanding. The evidence shows that from about 4 July 1999, he had considered the various options open to him. In his letter of that date, he referred to having decided to take action to recover the money or the jewellery if he was not paid by 20 July 1999 and that he had made this difficult decision after "careful consideration and consultation with [his] family and friends". He repeated his intention to take action to recover the money or the jewellery again on 10 July 1999, 13 July 1999, and 20 July 1999. In the last of these letters, he also said that if he did not receive payment, he would hand the matter to the authorities as advised. He repeated this threat on 27 July 1999. The reference to "the authorities" only makes sense if construed as a reference to the police. On 18 August 1999, Mr Ang unofficially approached an officer in the CID to obtain some advice. On 6 September 1999, he told the defendants he had spoken with a friend and with a director of CID on the matter. On 9 September 1999, he said he was writing an official report and would file this if not paid by 16 September 1999. On 21 and 25 September 1999, he threatened again to lodge reports with the CID and on 3 October 1999, he was advising the defendants that he had briefed his friends on the developments and they were advising them that this was the last chance for him to settle the matter amicably with the defendants.

80 On 3 January 2000, Mr Ang made his police report. In it, he said that he was accusing the defendants of "criminal breach of trust and criminal fraud". In a letter to the police on 19 February 2000 (pursuant to which he forwarded the police a copy of the undertaking) he appealed for help from the CID in respect of what he called "this crime [committed] on me and my family". On 21 February 2000 he officially requested the CID to "initiate proceedings" if he was not paid by 29 February 2000 in accordance with the undertaking. On 14 March 2000, he wrote a long report to the CID telling Inspector Tan what had occurred between February 29 and the date of his letter. In the last paragraph of his letter, he said:

As my family and I have been put through a long period of hardship by the *criminal fraud* of the accused, I plead earnestly that the CID would bring the accused [*ie* the defendants] to justice quickly. [Emphasis added]

81 There can be no doubt that by 3 January 2000, at the latest, and probably very much earlier than that, Mr Ang was suspicious of the defendants, no longer trusted them and knew that he had to take action to protect this position. He may even have genuinely believed by that time that they were both guilty of criminal conduct. He knew that he had a right to payment and the action that he chose to take was to try and force them to pay up by taking the case to the police. He could also have taken civil action but he chose not to do so. He did not even choose to consult a lawyer to find out whether he had a civil remedy. Mr Ang was tossing the phrase "take action" around freely. It is not unreasonable to infer that he knew that meant both taking civil action and taking criminal action and, in fact, if he acted reasonably diligently, he would have taken legal advice on what his various options were. Even if the defendants had no intention at all of paying him the sum due, the fact that they kept breaking their promises to pay should have put him on the alert and should have indicated to him that legal advice was required.

82 Mr Ang's evidence on his understanding of his rights and remedies was not credible. In court, he denied that by the end of September 1999, he knew that he could have started a civil suit against the defendants. He also said that when he used the words "criminal breach of trust and criminal fraud" in his police report, he did not understand the meaning of the words. He had used them because in reporting to the police he used words that he had read in the media about police work. This was an unbelievable statement coming from an educated man who had held responsible positions in a well established international corporation. In his letter of 21 March 2000 to the CID, he had also written "Khoo and Ajit had colluded to commit the fraud in January 1999" but in court he tried to brush that aside by saying that that statement was speculation because he did not know then that there was a fraud.

83 As I read the evidence therefore, there is no basis to put forward any submission on behalf of the plaintiff that he is entitled to the postponement of the time bar afforded by s 29(1) of the Act. There was no concealment of his right of action and, even if there had been, the plaintiff could with reasonable diligence have discovered he had a cause of action by the end of 1999. At the very latest, he should have taken legal advice when the defendants failed to meet the deadline of 29 February 2000 in the undertaking. He did not do so. Any failure to ascertain that he had a legal remedy was due to the plaintiff's own inexplicable inactivity and not to any cover-up by the defendants.

### **Conclusion**

84 In the result, the plaintiff's claim against Mr Khoo is time barred and must be dismissed with costs. This conclusion cannot affect the validity of the judgment that was entered against Mr Singh in default of defence as the defence of time bar can, under s 4 of the Act, only be availed of by a defendant when it has been expressly pleaded as a defence to the claim. Since Mr Singh chose not to defend the action, this defence was not available to him.