

Ang Hong Hin v Ang Chye Hin
[2010] SGHC 58

Case Number : Suit No 103 of 2006
Decision Date : 18 February 2010
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Liew Chen Mine (Aptus Law Corporation) for the plaintiff; Defendant in person.
Parties : Ang Hong Hin — Ang Chye Hin

Partnership

18 February 2010

Judgment Reserved.

Judith Prakash J:

1 The plaintiff and the defendant are brothers who were, for many years, equal partners in an undertaking business. The partnership was dissolved in June 2004 pursuant to a dissolution agreement whereunder the plaintiff agreed to buy out the defendant's share in the business for an agreed remuneration to be paid in instalments. The plaintiff failed to pay the third and final instalment of \$200,000 and subsequently started this action for damages for fraudulent misrepresentation or wilful non-disclosure or fraudulent acts or, alternatively, for rescission of the dissolution agreement. The defendant denies the plaintiff's allegations and has put in a counterclaim for payment of \$200,000, an account of certain moneys in one of the plaintiff's personal bank accounts, and the appointment of an accountant to enquire into the accounts of the business (including the business of a firm called Western Casket).

Background

2 The story behind this action spans many years, many family members and various businesses. The first business, Ang Chin Moh Undertaker ("ACM"), was started in 1947. According to records at the Registry of Companies and Businesses ("ROC"), the parties' mother, Mdm Ng Ah Yeow ("Mdm Ng"), was a partner in the business from the beginning. Notwithstanding that, however, ACM was apparently run by their father and it was only after his death, some time in 1971, that Mdm Ng took over the business. According to the ROC records, the plaintiff, Ang Hong Hin, became a partner in ACM for a short period between April 1976 and May 1976. Thereafter, ACM was registered as a sole proprietorship with Mdm Ng being the sole proprietor although the plaintiff maintained that he continued in fact to be a partner and was running the business himself.

3 The plaintiff was born in about 1951 and since finishing national service, apart from a short spell in a textile business, he has spent his whole career working in ACM and other undertaking businesses. All parties agreed that he was in charge of "field work" which meant that he was the person who obtained business, dealt with customers and arranged funeral services for customers. Generally speaking, the plaintiff spent very little time in ACM's office as the nature of his job required him to be supervising the provision of services in the field.

4 In mid 1979, the plaintiff set up another undertaking business, Ang Chin Moh Kheng Khee ("ACMKK"), and registered himself as the sole proprietor of this business. ACMKK's business was,

however, conducted from the premises of ACM and, from all accounts, it was treated as part of the family undertaking business. The firms shared an office in Geylang Bahru as well as their resources and had a common pool of customers. In this judgment, when I refer to "the business" without any other description I should be taken as referring to the businesses of both ACM and ACMKK.

5 In April 2000, the plaintiff's wife, Mdm Foo Kok Keng, registered a business called "Western Casket". The principal activity of Western Casket was recorded as being the manufacture of coffins. It was, however, not disputed that at all material times, this was also an undertaking business. The plaintiff was registered as the owner of Western Casket in May 2001 when his wife withdrew from the same. He operated it from premises in Toa Payoh. In February 2002, the plaintiff's son, Ang Ziqian, became a partner in Western Casket. The defendant had no share in Western Casket nor did he play any part in its business.

6 The defendant, Ang Chye Hin, is the elder of the two brothers. For most of his working life, he was a full-time civil servant working in the Supreme Court. He left the civil service about two years ago. One of the disputes between the parties is the extent to which the defendant was involved in ACM and ACMKK. The plaintiff's position is that even before 1993 when the defendant became a partner of ACM, he was already in charge of the finances, accounts and bookkeeping and other administrative matters of both ACM and ACMKK. The defendant, on the other hand, maintains that he simply helped out in the office during weekends and gave casual assistance. He did not control the accounts in any way.

7 The other family member who worked in the business on a full-time basis was the parties' elder sister, Ms Ang Choon Boy ("Ms Ang"). She was not, however, recorded as an employee of either firm and was not paid a salary or CPF. Instead, she received an allowance of about \$800 a month. Ms Ang assisted the plaintiff by running the office for him.

8 In 1993, Mdm Ng decided to retire. At this stage, both the plaintiff and the defendant officially became owners of the business: they were registered as equal partners of ACM on 30 August 1993. According to the plaintiff, the defendant became a partner in ACM at the suggestion of Mdm Ng who reminded him that the defendant was his only brother. The defendant said that he became an authorised signatory of ACM's bank account in 1996 on the insistence of his mother.

9 Difficulties in the partnership surfaced in 2004. The defendant's story was that some time in January 2004, the plaintiff began to have a different attitude towards the workers of the business and when the defendant remonstrated with him over the way he was treating the workers, the defendant was told by the plaintiff not to interfere or the defendant could part ways with the plaintiff. When the defendant sought clarification of this remark, the plaintiff confirmed that he wanted to end the partnership. In February 2004, the plaintiff instructed the defendant to ask the accountant of the business, one Mr Chew Whye Lee, to prepare a statement of assets and liabilities of ACM and ACMKK so that the basis of dissolution could be decided. I shall refer to these documents hereafter as the "asset statements". Copies of the asset statements are annexed hereto as Appendices A and B.

10 The plaintiff's story was that in early 2004, he discovered that the defendant had made CPF contributions for his wife, Mdm Teo Bee Kieu ("Mdm Teo"), using the funds of ACM as if Mdm Teo was an employee of ACM. The true position was that Mdm Teo did not work in or have anything to do with the business. The plaintiff complained about this discovery to Ms Ang. Some weeks later, the defendant called him and angrily told the plaintiff that he no longer wanted to continue with the partnership. The defendant called again a few minutes later and told the plaintiff that he would have a valuation of the business done and would employ a lawyer to draw up a dissolution agreement.

11 Mr Chew duly prepared the asset statements which were given to the parties some time in April or May 2004. The ACM asset statement showed that as of 31 March 2004, that firm's asset balances were \$2,877,426.11 being the total value of its fixed and current assets. Included among the assets and valued at \$2,390,251 was the property described in [19(f)] below. The document also valued ACM's current liabilities at \$1,167,022.27. Therefore, ACM's net assets would have amounted to \$1,710,403.84. The ACMKK asset statement showed that ACMKK's assets as at 31 March 2004 were worth \$1,224,920.74. These assets included the property described in [31(c)] below which was valued at \$600,000. ACMKK had no liabilities. On this basis, the total asset value of the two businesses was \$2,935,324.58. However, the asset statements did not reflect a sum of \$730,000 which had been kept in cash by Ms Ang on behalf of the business.

12 By a letter dated 21 May 2004, drafted for the plaintiff by his niece, a lawyer, the plaintiff proposed to the defendant that either party would have the right to buy the other's share in the business for \$1,767,662.95. The letter showed that this sum was calculated on the basis that the business was worth \$1,710,403.84 (valuation of ACM) plus \$1,224,920.74 (valuation of ACMKK) plus \$600,000 (the cash of \$730,000 less \$130,000 which the parties were proposing to give to Ms Ang). The proposed price thus was 50% of the value of the business.

13 On 25 May 2004, the defendant agreed to sell his share in the business to the plaintiff for the sum of \$1,767,662.95 on the basis that he would take \$600,000 in cash from the amount held by Ms Ang and the plaintiff would pay him the balance of \$1,167,662.95 in one lump sum by way of a cashier's order. The plaintiff did not accept this offer as he was not in a position to make such a lump sum payment.

14 Subsequently, there were discussions between the parties and documents for the dissolution of the partnership were prepared. Three drafts of the documents were produced. Eventually, two documents were signed by the parties and dated 7 June 2004. The first document entitled "Dissolution of Partnership Agreement (M/s Ang Chin Moh Undertaker)" ("the dissolution agreement") was made between the defendant, referred to therein as the "Retiring Partner", and the plaintiff, referred to therein as the "Continuing Partner", and was in respect of the business of ACM. The dissolution agreement contains two clauses numbered 1 and 2 and five separate clauses numbered from a. to e. under the heading "The Consideration and Terms". The agreement provides:

NOW IT IS AGREED AS FOLLOWS:-

1. The parties have agreed that the Retiring Partner will withdraw from the said Partnership Business and will renounce all and or any claims the Retiring Partner may have in the said Partnership Business for the **consideration** of and upon the **terms** as set out hereunder.
2. The parties agreed and confirmed that at all material times (*sic*) the continuing partner was and is the active partner having the full control of the operation and administration of the said Partnership Business on behalf of the partners.

THE CONSIDERATION AND TERMS

- a. The **consideration** for the Retiring Partner retiring from the **said Partnership Business** and relinquishing all claims to the assets of and goodwill in the **said Partnership Business** for the **consideration** of S\$667,662.00 payable by the Continuing Partner to the Retiring Partner.
- b. The mode of payment of the **consideration of \$667,662.00** shall be payable by the

Continuing Partner to the Retiring Partner by post dated cheques to be paid in the following manner:-

- i. 1st payment of a sum of **S\$267,662.00** payable on upon (*sic*) the signing of this agreement;
- ii. 2nd payment of a sum of **S\$200,000** payable on or before 15th June 2004; and
- iii. 3rd payment of a sum of **S\$200,000.00** payable on or before 30th June 2004

c. (This clause provided for the defendant to withdraw his name from the records of the ROC upon receipt of the first payment.)

d. (This clause provided for the plaintiff to take steps to ensure that creditors of the business henceforth looked only to him and not to the defendant for payment of their debts.)

e. (This clause provided that the payment by the plaintiff would be in full settlement of all claims and the plaintiff would release the defendant from all liabilities accrued before the retirement date and indemnify him against the same.)

15 The second document entitled "Acknowledgement and Confirmation (Sum of \$600,000.00)" ("the acknowledgement") was stated to be supplementary to the dissolution agreement. By the acknowledgement, the plaintiff and the defendant acknowledged that the plaintiff had handed over \$600,000 to Ms Ang to be held on behalf of the partners, that this sum belonged to the partnership of ACM and each of the partners was entitled to \$300,000 and that the plaintiff's half share of the \$600,000 was to be given to the defendant "as a gift in consideration of the love and affection between two brothers".

16 It would be noted that neither of the documents mentioned anything about ACMKK and that the total amount payable by the plaintiff to the defendant, when the sums payable under the dissolution agreement and the acknowledgement were aggregated, was \$1,267,662 which was approximately \$500,000 less than the alleged total value of the two firms.

17 On 7 June 2004, the plaintiff paid the defendant the first instalment of \$267,662. On 16 June 2004, he paid the second instalment of \$200,000. The final instalment was due on 30 June 2004 but it was not paid. The defendant and Ms Ang had left ACM's office by 11 June 2004.

18 The plaintiff complained that after payment of the first instalment was made, the defendant had refused to hand over the account books of the business. Nor did he hand them over after clearance of the second instalment. The plaintiff therefore had difficulty in running the business as various documents including CPF and wage records, invoice books and general ledgers were not available to him. Furthermore, when he opened the drawer in the office where the cash was kept, instead of the sum of about \$100,000 that he expected to find there, only \$93 was in the drawer. The plaintiff decided that the defendant was dishonest and decided not to pay him the third instalment.

19 On 27 October 2004, the plaintiff's then solicitors, M/s Julie Tok & Co, wrote a letter to the defendant making various allegations on behalf of the plaintiff and demanding that he do certain things. The letter stated *inter alia* that:

- (a) the defendant had been in charge of the administrative work of ACM and that since taking

over ACM, the plaintiff had discovered discrepancies in the business's bank account transactions and in the contributions made to the CPF Board;

(b) the defendant should furnish the plaintiff with various accounting documents in respect of the business for the period of three years preceding 7 June 2004. It also asked the defendant to confirm the total amount withdrawn from the bank account of ACM during that period and the basis for such withdrawal;

(c) the defendant should confirm why CPF contributions had been made from ACM's funds in respect of Mdm Teo, her father, Mr Teo Ah Sai and the defendant's daughter Ms Florence Ang Loo Yen, when none of these persons were employees of ACM;

(d) the defendant had been in charge of the administration of ACMKK and therefore should furnish the plaintiff with similar documents for the same three year period in respect of ACMKK;

(e) the defendant was to inform the plaintiff of the total amount withdrawn by him from the bank accounts of ACMKK for the same three year period and explain the basis of such withdrawals; and

(f) in relation to the property known as 53 Ubi Avenue 1, #01-56 Paya Ubi Industrial Park Singapore ("the Ubi property"), the defendant was to have transferred his interest in the same to the plaintiff in the course of the dissolution of the partnership and that he had failed to do so despite having received payment from the plaintiff. It also asked him to specify within the next seven days when he would be taking the necessary action to effect the transfer.

20 In their response, dated 3 December 2004, the defendant's solicitors expressed surprise at the plaintiff's allegations and noted that in the dissolution agreement, the plaintiff had confirmed that he had had active management and control of the business. Secondly, the plaintiff as managing partner had signed all the previous accounts submitted to the authorities. Thirdly, the plaintiff had conducted his own valuation of the business and had had it valued at \$1.7m, but he had asked for a reduction in price and the defendant had as a gesture of brotherly love and affection agreed to accept \$667,662 and to take into account as part of the consideration the sum of \$300,000 held by Ms Ang in full and final settlement of the sale of his share of business. As for the Ubi property, the letter stated that it was never partnership property as it was acquired in joint personal names.

21 The correspondence then lapsed for a while. It was revived by the plaintiff's solicitors' letter of 2 September 2005 making further allegations. Further correspondence ensued. On 22 February 2006, the defendant wrote directly to the plaintiff and asked him to make some arrangement for the defendant to sign the transfer documents to transfer his share in the Ubi property to the plaintiff. The defendant said that he was more than happy to make the transfer. The plaintiff's solicitors responded to the letter by stating that notwithstanding the defendant's present offer to transfer the Ubi property, the plaintiff continued to hold him accountable for moneys taken by him from the partnership.

22 On 27 February 2006, the plaintiff filed the writ in this action.

The pleadings

23 I think it is helpful at this stage to set out the pleadings in some detail. This will indicate the scope of the parties' respective cases.

24 The material averments made by the plaintiff in his amended statement of claim are as follows:

(a) the plaintiff became a full-time partner of ACM on his father's death in October 1975 and continued as such until Mdm Ng's retirement and the defendant's admission as a partner in August 1993. During the period between October 1975 and August 1993, the defendant was entrusted with keeping and maintaining the accounting records of the business and with handling its financial and administrative affairs;

(b) when the defendant was admitted as a partner, the agreement was that the plaintiff would be in charge of marketing and customer services whilst the defendant would be in charge of the administrative, accounting and financial aspects of the business;

(c) during the subsistence of the partnership, the plaintiff drew a monthly salary of \$3,800 and an annual bonus of \$11,400 whilst the defendant as a part-time partner was given allowances to service his housing loan, purchase his groceries and pay his utilities as well as a sum of \$6,000 per year. Although the plaintiff had requested him to make CPF contributions in respect of the plaintiff's monthly salary, the defendant had refused or failed to do so;

(d) apart from the aforesaid, there was no agreement for the withdrawal of any other moneys from the business by either of the partners and any profits made were to be retained in the business;

(e) at all material times, the plaintiff was also the sole proprietor of ACMKK. ACMKK operated from its office at Tannery Lane, Singapore, and this firm was registered with the full knowledge and consent of the defendant;

(f) the defendant was fully in charge of keeping the accounts of the business and depositing payments made to ACM and ACMKK and was also entrusted with and in charge of the cheque books of the two firms as well as of the drawing and issuing of cheques;

(g) although both partners had the mandate to draw cheques on ACM's account, the plaintiff had pre-signed cheques and other documents in blank for the defendant to issue in the course of business of ACM and ACMKK;

(h) in March 2004, the defendant wanted to withdraw as a partner and both parties had agreed that the defendant would cause valuations of the assets of the business to be carried out;

(i) in May 2004, the defendant submitted such valuations [i.e the asset statements] to the plaintiff and the asset statements contained the purported values of ACM and ACMKK as at 31 March 2004;

(j) in order to induce the plaintiff to agree to the withdrawal of the defendant from the partnership and to pay the defendant for the same, the defendant represented to the plaintiff *inter alia* that:

(i) the Ubi property would be treated as partnership property and would be transferred to the plaintiff upon the sale of the defendant's share in the business to the plaintiff;

(ii) the value of the assets in ACM and ACMKK as stated in the valuation documents were accurate and true; and

(k) acting on the faith and truth of these representations, the plaintiff entered into the dissolution agreement and the acknowledgement and agreed to make payment to the defendant of the amounts and in the manner stated therein and did in fact make payment of \$467,662 to the defendant and also allowed Ms Ang to transfer funds to the defendant pursuant to the acknowledgement.

25 From para 17 of the statement of claim onwards, the plaintiff set out the allegations of misrepresentation and breach of duty which formed the basis of his claim. First, he claimed that the representations made were untrue in that:

(a) the defendant did not have any intention to transfer his interest in the Ubi property to the plaintiff;

(b) the current assets of ACM and ACMKK were inflated and/or untrue as these values were arrived at without taking into account numerous unauthorised withdrawals of funds that the defendant had made from the bank accounts of ACM and ACMKK;

(c) the current assets of ACM and ACMKK were inflated and/or otherwise untrue as these values did not take into account numerous unauthorised CPF contributions to the accounts of various persons made by the defendant; and

(d) the defendant had in the asset statements represented that ACM had cash in hand of \$59,098.39 and ACMKK had cash in hand of \$107,165.82, but after dissolution of the partnership, no part of these sums had been found.

26 The second allegation was that the defendant, who knew more about the partnership accounts than the plaintiff, was under a duty to put the plaintiff in possession of all material facts with reference to the partnership assets but, in breach of this duty, the defendant had failed to inform the plaintiff of the following material facts and had concealed what he knew *viz* that for some years prior to the dissolution of the partnership, the defendant, without the consent of the plaintiff, had:

(a) used partnership moneys to make CPF contributions for the accounts of Teo Ah Sai, Florence Ang and Mdm Teo who were not employees of the business; and

(b) used cheques pre-signed by the plaintiff and drawn on the bank accounts of ACM and ACMKK to withdraw cash either by or for himself or by or for third parties who had no commercial dealings with the business.

Related to the second allegation was the third allegation which was that the defendant had in breach of his duty as a partner fraudulently used moneys belonging to the business for his own benefit or the benefit of third parties or caused such moneys to be used for the benefit of third parties.

27 The main reliefs claimed by the plaintiff were:

(a) damages for fraudulent misrepresentation and/or fraudulent acts and/or wilful non-disclosure;

(b) an order that the defendant do transfer his right and interest in the Ubi property to the plaintiff; and

(c) alternatively, at the option of the plaintiff, a rescission of the dissolution agreement and

the acknowledgement.

It should be noted that in closing submissions the plaintiff did not pursue [27(b)] above as he accepted during the course of proceedings that the defendant was willing to effect the said transfer and had been so willing prior to the commencement of the proceedings.

28 The defendant filed both a defence and a counterclaim. He resisted the plaintiff's claim and set out a version of the facts that was rather different from that pleaded by the plaintiff. The areas of difference are as follows:

- (a) the defendant pleaded that the plaintiff was the precedent partner of ACM until 11 June 2004 and had full management and administrative control of the operations of ACM. Further, although ACMKK was registered in the sole name of the plaintiff, it was at all material times treated as part of the family business;
- (b) that the plaintiff had been a partner in ACM from October 1975 for a period of about a year and thereafter Mdm Ng had been the sole proprietor of the business;
- (c) that during the period between October 1975 and 30 August 1993, neither Mdm Ng nor the plaintiff had entrusted the defendant with any responsibility to keep and maintain the accounting records of ACM or to handle its administrative and financial matters and that at all material times, it was the plaintiff who was responsible for keeping and maintaining the accounting records and for the administrative and financial matters;
- (d) after the admission of the defendant as a partner on 30 August 1993, the plaintiff as the precedent partner had full and effective control over the management, administration and operation of ACM and ACMKK, including control over all financial matters, the employment of workers, the conduct of sales and over at least 95% of all cash collections from customers; and
- (e) whilst the plaintiff was a full-time active partner of the business, the defendant only assisted as and when necessary during weekends by relieving Ms Ang.

29 In relation to drawings from the business, the defendant admitted that the plaintiff had paid the defendant's mortgage instalments, his income tax and utilities bills and had also given him an annual *ang pow* of between \$3,000 and \$6,000. He averred that the plaintiff had controlled the finances of the business and had made all decisions as to payment of salary and bonus to the plaintiff himself and in respect of expenses borne on behalf of the defendant. The payments made for the defendant's expenses had come from a bank account identified as the "UOB A/C No. 114xxxxxx-x" (the "third account"). The moneys in the third account belonged to ACM and ACMKK. The plaintiff himself had drawn an average of \$105,000 per year, or an average of \$8,750 per month. Further, CPF contributions were made for the plaintiff from 1983 to 1985 and from 1988 to 1993. It was the plaintiff's own decision to stop making CPF contributions to his CPF account.

30 The defendant denied that there had been an agreement between him and the plaintiff relating to withdrawals from the partnership and averred that the understanding or practice was that both of them, being equal partners, were entitled to equal shares of the profits of the business and to make withdrawals from the business and to record such withdrawals to the respective partner's account, subject to adjustment at the end of each financial year if the drawings had been unequal. Further, it had never been the practice of the partnership that either partner had to seek the prior consent of the other partner before making a partner's withdrawal. The plaintiff had never accounted to the defendant for his withdrawals from the third account and another account in DBS Bank (which were

both held in the sole name of the plaintiff) despite the fact that about \$2,401,525.63 belonging to the business had been banked into these two accounts between 1993 and January 2002.

31 Whilst agreeing that the plaintiff was the sole proprietor of ACMKK the defendant averred that:

(a) notwithstanding the plaintiff's registration as sole proprietor, ACMKK was a family business and part of the assets of ACM;

(b) the defendant had suggested the registration of ACMKK in order to have an undertaking business which had a name that would identify it with the Heng Chew Hee Quan community so that it could obtain business from that community; and

(c) ACMKK was operated from ACM's office in Geylang Bahru and not from Tannery Lane and that the reference to "Tannery Lane" by the plaintiff was a reference to ACM's property known as #01-02 Elite Building II Tannery Lane, Singapore (the "Tannery property") which had been purchased in 1992 and used as an warehouse for ACM's goods.

32 The defendant further stated that ACM and ACMKK had separate bank accounts and that the plaintiff was the "sole proprietor" of ACMKK's only bank account and that the plaintiff had also been the sole signatory of ACM's account with the United Overseas Bank Ltd from 1975 until 1996 when he allowed the defendant to become a joint signatory of the same. The plaintiff had been in charge and in control of all cheque books and of the recording of accounts and depositing of payments in the bank accounts. All financial transactions undertaken by and involving the business were undertaken with the full knowledge of the plaintiff. The plaintiff signed the annual accounts of ACM and ACMKK and all relevant transactions such as tax returns.

33 In para 9 of the defence, the defendant set out his account of how the partnership had come to an end. He stated *inter alia* that although the original sale price was set by the plaintiff at \$1,767,662.29, the plaintiff subsequently insisted on revising the price first to \$1,267,662 and then to \$667,662. Regarding the computation of the assets and liabilities of ACM and ACMKK, the defendant averred in para 10 that he had not prepared the asset statements and that they had been prepared by the accountant, Mr Chew. He had not given Mr Chew any instructions as to how to carry out the computation.

34 In relation to the misrepresentation claim, the defendant pleaded that:

(a) he had not provided the plaintiff with any inducement;

(b) he had made no representation regarding the status of the Ubi property and he did not deny that the Ubi property belonged to ACM;

(c) he had made no representation as to the accuracy of the asset statements and the preparation of the same had been initiated by the plaintiff; and

(d) it was the plaintiff who relied on the asset statements and made the offer that either party should buy or sell the business to the other at \$1,767,662.29 and if the plaintiff had sold his share he would have insisted on the price of \$1,767,662.29 but since it was the defendant who was selling out, the plaintiff had revised and reduced the valuation from \$1,767,662.29 to \$1,267,662 and then to \$667,662.

35 In para 12 of the defence, the defendant averred that:

(a) the dissolution agreement was the final product of several draft agreements which the plaintiff had insisted should be changed;

(b) it was the plaintiff who had insisted on the execution of the acknowledgement to formalise the status of ACMKK and the sum of \$730,000 which he had handed to Ms Ang;

(c) the plaintiff had insisted that the original reference to ACMKK in the draft dissolution agreement be removed for fear that other family members might contend that ACMKK's assets belonged to the family; and

(d) the sum of \$730,000 comprised part of the assets of the business and the plaintiff and the defendant were entitled to the same in equal shares.

36 In further answer to the allegations of misrepresentation, the defendant stated that:

(a) any transfer of the Ubi property would have to be initiated by the plaintiff and the assertion made by the defendant's previous solicitors that the Ubi property did not belong to the business had arisen out of miscommunications due to the removal of the assets and liabilities of ACMKK from the dissolution agreement;

(b) all withdrawals made by the defendant had been entered into the current accounts of the partners and reflected in ACM's balance sheet which the plaintiff had approved and signed every year and therefore had actual or constructive notice of;

(c) there were no unauthorised withdrawals made by the defendant;

(d) the plaintiff was aware of the appointment of Mdm Teo, Florence Ang and Mr Teo Ah Sai on the payroll of ACM and he had signed most of the IR8A forms for these persons;

(e) no representation was made to the plaintiff that the cash in hand for ACM and ACMKK was, respectively, \$59,098.39 and \$107,165.82. These figures were taken from the asset statements and the cash was then kept in the firm's drawer which could be accessed by both the plaintiff and Ms Ang; and

(f) the defendant did not represent that the asset statements were accurate and true; it was the plaintiff who relied on the asset statements to make the first proposal to dissolve the partnership and the plaintiff was not induced by the asset statements to enter into the dissolution agreement.

37 The defendant repeated in later paragraphs of the defence that the plaintiff was aware of all appointments to the payroll of ACM and of the CPF contributions made to the various persons. In particular, he knew that Mdm Teo had been on the payroll of ACM since 1981. He also had actual or constructive knowledge of such appointments and of the withdrawals by partners (including the defendant) for payment to third parties or for the partners' own expenses. All withdrawals by the defendant were properly accounted for under the partners' current accounts and shown on the balance sheets of both ACM and ACMKK.

38 In relation to Western Casket, the defendant pleaded in para 22 that the plaintiff had registered this business without consulting or seeking the defendant's approval. The plaintiff had, for his own benefit, operated Western Casket using the assets of ACM and ACMKK and had not treated Western Casket as part of ACM and had not accounted for the profits of Western Casket.

39 The defendant put in a counterclaim for the \$200,000 which had not been paid to him under the dissolution agreement. He further alleged that the plaintiff, as a partner of the business, had owed a duty of good faith and probity to the defendant. In breach of that duty, the plaintiff had diverted business and orders belonging to the business to Western Casket.

40 The defendant counterclaimed for the following reliefs:

- (a) the sum of \$200,000;
- (b) a declaration that Western Casket be deemed to be part of the assets of the business and accordingly, that the plaintiff account to the defendant for the defendant's share of the profits made by Western Casket;
- (c) an independent certified public accountant be appointed to review the books and accounts of Western Casket from the date of its registration until 11 June 2004 to determine the defendant's share of profits in Western Casket (and also for certain consequential orders in relation to the appointment); and
- (d) that the plaintiff render an account of the moneys in the plaintiff's account (and in his DBS account as well) which moneys lawfully belonged to ACM and ACMKK.

41 The plaintiff filed a fairly lengthy reply and defence to counterclaim. I do not think it is necessary to deal with this except that in relation to Western Casket, the plaintiff explained that the same was created when the plaintiff took over the loss making casket/undertaker's business of the parties' uncle, one Mr Ang Chin Huat. The defendant had refused to take over the business because it was loss making. The plaintiff with the full knowledge of the defendant, then decided that he would take over the business on his own. After the creation of Western Casket, its clientele and that of ACM and ACMKK were kept separate.

The evidence

42 As can be seen from the summary of the pleadings given above, the issues that arise in this case are mainly factual ones: questions of who did what and who knew what was being done. Whilst there is copious documentary evidence, the credibility of the various witnesses needs to be assessed carefully because of the claim by the plaintiff that many of the documents cannot be accepted at face value since he allegedly signed them in blank leaving the details to be completed later by the defendant. Also, it is clear that the financial records of the business were not kept painstakingly and that the accountants did the best they could with the material that they were given without being able to verify whether they had full records of all income received and expenses incurred in the business. This was a family run small business and it did not have professional systems for recording and tracking transactions and payments.

43 It may be convenient here to mention the bank accounts operated for the business:

- (a) ACM had two separate accounts: UOB account no. 114-xxx-xxx-x (the "ACM UOB account") and DBS account no. 025-xxx-xxx-0 (the "ACM DBS account"). Both the plaintiff and the defendant were authorised signatories and cheques could be drawn by either of them. The correspondence (including bank statements) for both accounts was sent to the defendant's residential address.
- (b) ACMKK had one bank account: UOB account no. 103-xxx-xxx (the "ACMKK account"). The

plaintiff was the sole signatory for this account and all correspondence (including bank statements) was sent to the defendant's residential address.

(c) The third account (see [29] above) was an account held in the plaintiff's personal name in the United Overseas Bank but into which cash cheques presented to the business and cash collected for the business were deposited. The correspondence for this account was sent to the plaintiff's residential address and the plaintiff was the sole signatory for the account.

(d) There was also an account (DBS account no. 025-xx-xxx-7) held by the plaintiff in his personal name for which the plaintiff was the sole signatory. This account, however, was only used for one specific transaction and therefore does not play a part in the proceedings.

44 I should also state that hereafter I shall sometimes refer to Mdm Teo, Florence Ang and Mr Teo Ah Sai collectively as "the defendant's relatives".

The witnesses for the plaintiff

45 The persons who gave evidence for the plaintiff were the plaintiff himself, Mr Soo Choon Kiat, a certified public accountant, two persons from the auditing firm that prepared the business's accounts viz Mr Bong Liat Hian, an accounts clerk and Mr Chew Whye Lee, the owner of the firm, and four friends and business associates of the plaintiff namely, Mr Ng Soon Hwa, Mr Lim Yeow Hui, Mr Lim Tiong Huat and Mr Ong Chin Kee.

The plaintiff

46 The plaintiff in his affidavit of evidence-in-chief reiterated his history of the business. Various statements in the affidavit made it clear that the plaintiff did not accept that ACMKK was part of the business of ACM but considered it to belong to himself alone. The plaintiff also emphasised the defendant's role as the person in charge of finance, accounts and administration as he was better educated than his siblings and had a full-time job as a civil servant doing paperwork. He stated that he relied completely on the defendant to manage the office. The plaintiff worked full-time for the business whilst the defendant would only go to the office of the business as and when it suited him and his schedule as a civil servant. The defendant had arranged for most official documents, in particular statements of account and CPF statements, to be sent directly to his residence. The plaintiff pre-signed cheques and other documents in blank in respect of the business so that it would be convenient for the defendant and Ms Ang in the administration of the office.

47 The plaintiff explained that customers made payment to the business in one of three ways: in cash, by cash cheque or by cheques addressed specifically to ACM or ACMKK. The cheques addressed to the companies were deposited into their respective bank accounts. At the suggestion of the defendant, the third account was used for the deposit of cash cheque drawn by customers of ACM and ACMKK. The third account had originally been opened so that the plaintiff could service the loan he had taken for the purchase of the Tannery property. Subsequently, the defendant told the plaintiff that drawings of the partners from ACM and the plaintiff's own drawings from ACMKK should only come from the third account.

48 As for cash payments by customers, the arrangement was for the cash to be put in the drawer at the office and for such payments to be recorded in the books by the defendant. Either the defendant, the plaintiff or Ms Ang would collect cash payments and put it in the drawer with the order forms stating the customer's particulars and order. Cash in the drawer was sometimes used to pay suppliers and other expenses. The defendant was in charge of recording the cash receipts and

cash payments in the books of ACM and ACMKK.

49 The plaintiff asserted that he and the defendant had agreed on the payments to each of them *ie* the plaintiff's monthly salary of \$3800 and annual bonus of \$11,400 and the defendant's annual lump sum of \$6,000 and living expenses. The plaintiff asked the defendant why he did not effect CPF contributions on the plaintiff's behalf on the plaintiff's salary but received no reply. When the defendant bought a unit in a development called St Francis Court ("the SFC unit"), they agreed that the housing loan, maintenance, property tax and insurance premiums for the SFC unit would be paid from the third account. The defendant's down payment was paid from the cash collections of ACM.

50 The plaintiff asserted that there was no agreement on withdrawal of profits apart from what was mentioned above. Profits were agreed to be retained in the business for future expansion. There was no agreement that either party could withdraw any money from the business unilaterally.

51 Whilst he had pleaded that he found out about the CPF contributions made to Mdm Teo in March 2004, in his affidavit, the plaintiff said that he discovered this in early 2004 when he saw a CPF contribution slip on the office table. He complained to Ms Ang about the contributions but did not pursue the matter immediately with the defendant. A few weeks after that complaint, he received a telephone call from the defendant who was angry and said he was not going to continue with the partnership in ACM. The defendant said that he would get a valuation of ACM done and a lawyer to draw up the dissolution agreement. The next day, the defendant called the plaintiff again and said that he already had a lawyer and that Ms Ang was holding \$730,000 in cash from profits made from 1990 to 2000 which he wanted to have taken into account in the dissolution. The plaintiff proposed that Ms Ang should be given \$130,000 for her many years of work and that only \$600,000 be taken into account. At that point, he asked the defendant whether the defendant had taken any money from ACM or ACMKK and the defendant said he had not. The plaintiff then spent several paragraphs of the affidavit detailing the events leading up to the signing of the dissolution agreement and the discovery that the cash in hand reflected in the asset statements was not in the office.

52 The plaintiff also made a point of saying that he could not really read the dissolution agreement and the acknowledgement. The defendant knew that he was not very good in English and when he gave the plaintiff the documents, the plaintiff looked at the figures stated therein and they appeared to match the selling price and the instalments that the plaintiff had agreed to. The plaintiff then signed the two agreements. Subsequently, after discovering the misappropriation by the defendant, the plaintiff consulted lawyers who told him that the dissolution agreement stated that he was in full control of the operation and administration of ACM. The plaintiff protested that he had no inkling that such a clause would be put into the dissolution agreement. He was a straightforward person and prided himself on being an honest businessman and thought that his brother, the defendant, would treat him the same way.

53 The plaintiff then went on to deal with the discoveries that he had allegedly made after he received the records of the business from the defendant. He reiterated his shock at discovering unauthorised CPF contributions and salaries paid for the defendant's relatives. Teo Ah Sai had occasionally participated in funeral services and had been paid an *ang pow* for this but neither Florence Ang nor Mdm Teo had worked for the business at all. Since January 2002, Mdm Teo's salary was stated to be \$8,000 per month. The plaintiff denied that his mother had ever authorised the defendant to use partnership money or the plaintiff's funds in ACMKK to pay such salaries and CPF contributions.

54 The plaintiff then asserted that after recovering and studying copies of the monthly bank statements of the ACM UOB account, the ACM DBS account, the ACMKK account and the third

account, he had discovered that the defendant had surreptitiously been taking money over the years from all of these accounts for his own benefit as well as for the benefit of the defendant's "neighbours". He had done this by using cheques which had been pre-signed by the plaintiff. Most of the relevant cheques were issued to cash but were deposited into a bank account bearing the number 302-xxx-xxx-7 which was the defendant's personal bank account. Some were cashed by the defendant. Although the cheques in question were signed by the plaintiff, the details of the payee and the amounts in words and figures were written by somebody else and the plaintiff asserted that that person was the defendant. The defendant had also used cheques for payment of his personal expenses such as credit card bills. The cheque images showed that between 2001 and 2003 alone, the defendant had withdrawn \$158,915.72 from the ACM UOB account. Images of cheques from the ACMKK account showed that for the period from 2001 to 2004, the defendant had withdrawn at least \$339,392.63 from that account. As for the third account, the cheque images showed withdrawals totalling \$201,576.52 made by the defendant between 2001 and 2004.

55 The plaintiff also produced cheques to substantiate his allegation that the defendant had withdrawn money from these various accounts for the benefit of the defendant's neighbours, one Mr Chia Ann (also known as Chia Kok Ann) and the latter's wife, Mdm Tay Sai Hui (together "the Chias"). He adduced 15 cash cheques drawn on the ACM UOB account between 9 March 2001 and 14 February 2004 which had either been en-cashed by Mr Chia or deposited into his bank account. These cheques totalled \$135,025. Another 18 cash cheques amounting in total to some \$150,000 had been en-cashed by Mdm Tay between April 2001 and October 2003. The plaintiff had also discovered certain cheques which indicated that the defendant had used cheques drawn on the ACMKK account and the third account for payment of the expenses of the Chias. The Chias were the defendant's neighbours and although they were in business, they had no commercial dealings at all with either ACM or ACMKK.

56 As for Western Casket, the plaintiff reiterated that he had bought over a failing business from his uncle and renamed it Western Casket. Although he had asked the defendant to participate in the venture, the defendant was not interested but indicated that he did not mind the plaintiff buying over the business on his own. Right from the start, the clientele, accounts, assets and liabilities of Western Casket were kept separate from those of ACM and ACMKK.

57 In relation to his own drawings, the plaintiff asserted that for many years, he did not take his full monthly salary of \$3,800, of which \$1,000 was paid from cash on hand and \$2,800 supposedly came from the cash cheques deposited into the third account. He left this monthly sum as well as his bonuses in the third account. The third account had been opened for the purchase of the Tannery property and from 1991 until 1996 or so, only moneys earned by ACMKK were deposited into the third account. The plaintiff had also deposited some \$90,000 which he received in 1992 from the dissolution of a textile company in which he had had an interest. After the Ubi property was purchased in 1994 or 1995, moneys belonging to ACM were also deposited into the third account. At that time, the defendant told the plaintiff that the third account should be used for the collection of cash and cash cheque payments made by customers of both ACM and ACMKK. He said that in order to keep the accounting clear, the moneys in ACM's and ACMKK's bank accounts should be used to pay the expenses of those firms and the moneys in the third account would be used to pay his salary as well as to service the loan for the Tannery property and agreed personal uses such as medical expenses of Mdm Ng. The plaintiff agreed. He confirmed that the housing loan for the SFC unit was serviced from the third account until 1998. Thereafter, from time to time, the plaintiff drew cheques of \$20,000 each in favour of the defendant to enable him to pay the housing instalments.

58 The plaintiff admitted that there were some instances when he had used the third account to make payment to suppliers of ACM and ACMKK. This happened when he was unable to find the ACM

and ACMKK cheque books. However, such occasions were few and far between. Deposits into the third account were made by the plaintiff and he would then place the deposit slips in the office drawer so that the defendant could record them in the books. The plaintiff admitted that he had used moneys from the third account to make the initial payments totalling about \$200,000 for a residential property that he purchased in a development called "Trellis Tower". He also spent about \$150,000 from the third account on a purchase of unit trusts. However, the defendant was aware of these purchases and, to quote the plaintiff directly, "he knew that these monies came from the dividends I received from Hup Seng Textile, the savings from my undrawn salaries and bonuses which I kept over the years since 1991/2 and from the cash/cash receipts from my sole proprietorship of ACMKK. I did not use any monies that belonged to ACM". Subsequently, the value of the unit trusts was included in the asset statement for ACM.

59 The plaintiff explained the rationale for the action against the defendant and also justified his own conduct in the following words:

119. I had followed instructions and advice of the Defendant throughout all these years as I was not highly educated and that all accounts has been done by the Defendant which I had relied on all these years. I could not imagine that the Defendant ... who is my own blood and flesh brother could have twisted the facts to allege that I had misappropriated partnership monies.

120. I have nothing to hide and the Defendant is only making allegations about my integrity because I have caught him stealing partnership monies for himself, his relatives and quite possibly, his friends.

121. I know that I had signed acknowledgements to the journal adjustments and income statements but as I have explained, these documents were given to me to be signed either in blank or without explanation to me. It did not occur to me to ask for explanation or question these documents as it did not occur to me that the Defendant would be stealing money from ACM and ACMKK for the benefit of himself and/or family/ friends.

60 The plaintiff was subjected to vigorous and sustained cross-examination over some five trial days. He was a long-winded witness prone to wandering off into irrelevant matters and prevaricated on several occasions. There were a number of areas in which the credibility of his evidence came under attack and the plaintiff was not always successful in warding off such attacks.

61 First, there was the question of the plaintiff's knowledge of the English language. He gave evidence in Hokkien and his stance was that he knew little English and therefore the paperwork in the business had been left to the defendant who was better educated. In cross-examination, he admitted that both his primary and secondary school education had been undertaken in the English stream. When asked whether he was comfortable in English, however, he replied "my result wasn't good". That was an early example of his prevarication. Subsequently, he stated that his command of English was very poor. It should also be noted that at times during cross-examination, he answered questions in English without waiting for the interpreter. Further, there was evidence that when he wrote out cheques he wrote them in English whereas when his sister, Ms Ang, wrote them, she used Chinese. The plaintiff also testified that on 25 May 2004, the defendant's then lawyer (Mr Choo Si Sen) had sent him the defendant's letter agreeing to dissolve the partnership for \$1.76m. When he received this letter, the plaintiff said he did not consult anyone on its contents but immediately called Mr Choo to give his response. When asked whether he understood the contents of the letter written in English, he replied "I understood". Subsequently when asked whether he could read the letter, he modified his response by saying "I could read but I do not understand - I did not understand fully". The plaintiff persisted in using the excuse of a poor command of English to explain why he had not, allegedly,

understood documents that he had signed. At one point he asserted that he had not been writing and speaking English for between 30 and 40 years.

62 Secondly, he had a tendency to try to explain away inconvenient documents by blaming the defendant. On the first day of the trial, the plaintiff stated in cross-examination that he and his mother were partners in ACM from 1975 and that he had signed a document evidencing this fact. A document (marked P1) was shown to him on the fifth day of the trial. It was a copy of an "Application to Register Changes in Business Particulars" that was filed at the ROC in respect of ACM in 1976. The plaintiff recognised the document and confirmed that Mdm Ng had affixed her finger print to it and that he had signed it in the box marked "Declaration by Proprietor/Partners". He confirmed that the document showed that he became a partner on 1 April 1976 and that he withdrew from the partnership on 31 May 1976. He was asked to explain the withdrawal in the light of his evidence that he had been a partner continuously from 1975. His answer was "I was not aware of this withdrawal. When I signed the form it was blank ... I was given a blank form and I did not know what I was signing". He said the defendant gave him the form and he simply signed it in blank. He was told it was for registration purposes, by which he understood ACM had to be registered. He could not explain, however, why there had to be another registration in 1976 when ACM had been registered since 1947. The plaintiff maintained that he only found out about the 1976 withdrawal from partnership in 2006 or 2007.

63 The plaintiff was shown a series of statements issued by the Central Provident Fund Board ("CPF Board") for dates between 1980 and 1993 which showed that during that period, ACM had made CPF contributions on behalf of both the plaintiff and Mdm Teo. The plaintiff maintained he was not aware of these CPF contributions because the statements had been sent to the defendant's home. Although he had signed cheques in respect of the CPF contributions, the cheques only showed the lump sum paid and did not indicate on whose account the payments were being made. The plaintiff then changed his evidence slightly to say that all along he had signed blank cheques and when the defendant used them, he was not aware of it. It was pointed out to him that at various times there had only been two employees of ACM, himself and Mdm Teo, on the CPF records and his response to that was "He made the decision, he did the account. I did not know who was working for Ang Chin Moh Undertakers".

64 The plaintiff admitted signing the balance sheets prepared in respect of ACM. He said that the documents were prepared by the defendant and the accountant and he did not know whether the figures were correct but simply signed the documents at the defendant's request. The documents contained the statement "Certified True and Full" which appeared above the plaintiff's signature. When asked whether he had understood those words at the time of signing the accounts, the plaintiff evaded giving a direct answer and kept repeating that he depended on the defendant to deal with matters.

65 The plaintiff was asked various questions about the figures in the accounts. ACM's balance sheet for 1994 showed its gross sales as being \$468,927 and the plaintiff was asked whether that figure was correct. He replied that that was the defendant's calculation. When asked whether he had any reason to dispute the calculation, his response was that he had never touched the accounts all along and that the defendant had never shown him the account books and therefore he could not say whether the figure was correct or not. As for ACMKK (which the plaintiff steadfastly maintained belonged to him alone), the 1995 balance sheet showed its gross sales as being \$601,880.80. Here too the plaintiff maintained that this was the defendant's figure and he had signed the statement when the defendant said the same was correct. He agreed that the companies were together doing gross sales of over \$1m a year and that the business was good.

66 The plaintiff was shown an IR8A form for the year 1992 submitted by ACM showing Mdm Teo as an employee of the firm. The form bore Mdm Ng's thumbprint against the space for the employer's signature. The plaintiff maintained that Mdm Teo was not an employee of ACM and that his mother had been illiterate and had not known that this form was intended to show that Mdm Teo was an employee of ACM. He was then shown another IR8A form in respect of Mdm Teo, this one for 1994, that he himself had signed. He admitted signing it, but maintained that he had signed a blank form. He then asserted that all the IR8A forms that he had signed for Mdm Teo were blank and he had signed them in blank for the defendant's convenience. He made the same assertion in respect of a document entitled "Form E" which was a declaration of employee remuneration made to the tax authorities by ACM and which showed that in 1993, Mdm Teo and the plaintiff had been employees of that firm. The plaintiff was shown a document entitled "Form P" which he had signed as precedent partner for ACM. Again he said that this document and all similar ones had been prepared by the defendant and he had signed without checking whether the details were correct.

67 When it came to his own personal income tax return, however, the plaintiff's testimony was rather confused. At first he said that the defendant did everything for him in relation to preparing the form and he (*ie* the plaintiff) then asked the account personnel to fill in the details accordingly. When I asked who prepared the income tax return for him, his reply was that it was prepared by his accounts personnel but the data had come from the defendant. He explained that by "accounts personnel" he had referred to his "personal accountant for the textile shop" not the accountant who prepared ACM and ACMKK's accounts. He confirmed that the defendant had given the accounts of the two businesses to his personal accountant so that the latter could file the income tax return.

68 The plaintiff's testimony on how he discovered that ACM was paying CPF contributions for Mdm Teo was not consistent. At first, he said he remembered that it was some time in February 2004 that he discovered the CPF deposit slip showing the contributions made for Mdm Teo. He explained that one morning he went into the office and found the slip lying on the floor. He picked it up, saw Mdm Teo's name written there and noticed that her salary was stated as \$8,000. When Ms Ang came in later, the plaintiff told her about the slip and asked why it showed a sum of \$8,000. Ms Ang did not reply. The amount made him angry because he thought the company's money should not be spent indiscriminately. The plaintiff was asked whether he had contacted the defendant about this. His reply was that the following Sunday, which was about three or four days later, he had told the defendant about it in the office and the defendant had kept quiet. The plaintiff did not take the matter further because he then received an order and had to leave the office to deal with the order. Thereafter, the matter was not brought up again.

69 The plaintiff was then shown his affidavit of evidence-in-chief and the paragraph where he had stated that he had seen the CPF contribution slip on the office table. He was asked whether there had been a lapse of memory in court because in court he had stated that he found the slip on the floor. The plaintiff replied that there was no lapse of memory: he had found two slips, one on the floor and the other on the table and could not remember whether the one on the floor or the one on the table was the slip showing the \$8,000 figure.

70 The plaintiff's attention was drawn to para 32 of his affidavit where he had stated he had mentioned the matter to Ms Ang but did not pursue the CPF contribution with the defendant immediately because he was too busy and did not have the opportunity to see the defendant in the office. On being questioned about this variation, the plaintiff did not agree that the account he gave in the affidavit was different from the account he gave in court. In answer to the question whether his evidence in court of confronting the defendant on the Sunday after discovering the slip was incorrect, he responded that he did meet the defendant on Sunday and that it was probably because he was nervous that he had omitted something in his affidavit.

71 The plaintiff was asked whether after discovering the CPF deposit slip he had taken any action to investigate the matter further. He replied at first, "Do I have the time and opportunity to investigate?" but on further questioning, he said that he asked Ms Ang about it twice. He was asked whether he had contacted the accountant to investigate the matter. His response was he did not know who the accountant was and did not know his address. He was depending on the defendant to give him an answer. When asked whether he had stopped the payment of CPF for Mdm Teo after February 2004, his response was that CPF matters were handled by the defendant and what could he say when the defendant kept quiet. When it was suggested that he could have told the defendant not to make any more payments, he said he had no opportunity to talk to the defendant. The plaintiff was not able to produce the copy of the deposit slip he had found in the office. He said that he had given it to Ms Ang. The plaintiff also confirmed that he had not brought up the issue of the CPF deposit slip during the negotiations with the defendant for the dissolution of the partnership.

72 The plaintiff showed a tendency to be confused about dates. He had to concede that, when in an earlier affidavit he had said that matters had come to a head when he discovered Mdm Teo's CPF deposit slip in May/June, he had been confused about the date. He also said that he had received the two asset statements in March 2004. It was pointed out to him that the first line of each document said "Assets (*sic*) Balances as at 31.03.04" and therefore the documents could not have been sent to him until after that date. He was asked several times whether he agreed that therefore the defendant's version that the asset statements were completed after March and given to him in April was correct. The plaintiff prevaricated many times and finally reasserted that the documents had been sent to him in March 2004.

73 The plaintiff was questioned about his complaint that after the dissolution agreement was signed and he took over the business, he could not find the cash in hand of \$59,098.39 belonging to ACM and \$107,165.82 belonging to ACMKK. He gave various accounts of how he found out this was missing. First he said that when the first instalment was paid on 7 June 2004, he looked in the office drawer but could only find \$93. Then he said, one day after signing the dissolution agreement he went to the shop and found the money was not there. When asked whether he was changing his evidence, his reply was that he discovered the loss on both days. He agreed that the drawer had been locked and that all three siblings had the key to the drawer. He was very angry about the loss but did not write to the defendant to say so. He told the defendant about it many times but in a polite way and his (rather feeble, in my view) explanation was that he did not dare say the money was missing because that would mean he did not trust the defendant. The plaintiff was shown the letter of complaint to the defendant dated 27 October 2004 in which Ms Tok had asked for various documents and complained, among other things, about the CPF contributions made for the defendant's relatives and had also asked for the total amount withdrawn by the defendant from the bank accounts of ACM and ACMKK. Yet this letter had not mentioned that cash of approximately \$166,000 was missing. At first, the plaintiff maintained that it was mentioned because the word "cash" was mentioned although no figure was given, but he finally had to concede that there was no accusation of missing cash. He agreed subsequently that this accusation was first made a year later in a letter dated 2 September 2005.

74 The plaintiff testified that when customers of ACM and ACMKK paid cash, it was put into the same drawer in the office but "there will be one paper which states that this is for 'Ang Chin Moh Undertaker' and another paper which states 'Ang Chin Moh Kheng Kee'" so that the defendant could make a record of what had come in. The cash in the drawer would be used for some of the business expenses including payment of workers' wages. Only when the cash was insufficient would the workers be paid by cheque. The plaintiff was asked whether in these circumstances he really expected that in June 2004, three months after 31 March 2004, the exact amounts of \$59,098.39 and \$107,165.82 would still be in the drawer. His reply was that he did not touch the sums and the

expenses were paid from the daily takings. He asserted the daily takings were kept in a different drawer which he called "the cashier drawer". He then said that he did not know where the sums of \$59,098.39 and \$107,165.82 were kept – whether they had been kept in the safe deposit box or elsewhere. Then again he contradicted himself by saying that the cash in hand for ACM and ACMKK were kept in the same drawer together with the daily takings. Subsequently, he testified that on 31 March 2004, the cashier's drawer would have had cash of \$4,000 or \$5,000 at the most and would not have contained the sum of \$59,098.39. Nor was the sum of \$107,165.82 in the cashier's drawer on 31 March 2004, but in June 2004 he had not expected either sum to be missing.

75 The plaintiff confirmed that his assertion that his monthly salary was \$3,800 and that he was given an annual bonus of \$11,400 had also applied to his income in 1997. It was then pointed out to him that in the profit and loss account of ACM for 1997 his salary was stated as being \$130,000. The plaintiff's response was that this was prepared by the defendant and he himself had not been aware of it. He maintained the same position in respect of a salary of \$130,000 shown in both the 1998 and 1999 profit and loss accounts. It should be noted that in the copies produced to the court, the 1999 accounts were signed by the plaintiff but the signature portions of the other two sets of accounts were not completed.

76 In relation to the cash of \$730,000, the plaintiff's evidence was that it took at least ten years to accumulate that sum and that the money had come from the customers of ACM and had been collected by the defendant, himself and Ms Ang. He remembered that the collection had started in about 1990 and he had passed the cash to Ms Ang from time to time so that both the defendant and he would not feel that either of them could use the money. This money was regarded as the profits of the business. The plaintiff confirmed that at the time of dissolution, he was aware that Ms Ang had \$730,000 in hand. He was asked to explain the contradiction between this statement and his earlier evidence that he only found out about the money when the defendant called him up in 2004 and told him about it. It took him some time to explain but finally he said that what he meant was that he had known from the beginning that Ms Ang was holding money for the business, but it was not until the defendant spoke to him that he knew the total amount that was in her hands. He confirmed that he gave different amounts to Ms Ang over the ten years but he did not keep any note of the dates or amounts passed to her from time to time.

77 In relation to the third account, the plaintiff said that he did not keep records of the cash and cash cheques deposited into the account because this was the defendant's job. What he did was to leave the deposit slips in the office drawer so that the defendant could make the record. He confirmed that all deposits had been made by him and the deposit slips were in his handwriting though he maintained he did not know exactly how much was deposited because he did not count up the deposits. Not all the cash cheques were put into the third account. When the third account needed a lot of money, he and the defendant would try and deposit as many cash cheques as possible so that there would be sufficient money to pay their personal loans, the workers' pay, the plaintiff's pay and the defendant's maintenance charges. He said that he wanted to put all the cash cheques into the third account but sometimes the defendant stopped him and asked him to put the money into the other accounts of the business. His explanation for depositing these moneys into the third account instead of into ACM or ACMKK's accounts was that it was due to the purchase of the Ubi property which was registered in the joint names of the brothers.

78 The evidence showed that some of the payments for the Ubi property came from ACM's UOB account, but the plaintiff maintained that the deposit for this property came from the third account though he did not remember the quantum. There was also a bank loan which helped finance the purchase and this was repaid by money belonging to ACM from the third account and ACM's own accounts. The plaintiff was asked whether the amounts from ACM and ACMKK's customers that were

deposited into the third account had been reflected in the financial records of the two firms. His reply was that the defendant had to do that and it was the defendant who had to be asked whether the deposits were recorded in the accounts. He confirmed that the bank statements of the third account were sent to his home.

79 The plaintiff had made an allegation that the moneys in the third account had been misused by the defendant. He was asked whether he had taken any money out of that account for himself and, while admitting that he did make withdrawals for some purchases, he was quick to say that it was only "a bit of money". He did not keep an account of how much he had withdrawn. In response to further questioning, the plaintiff stated that between 1991 and 2004, he did not have any other personal bank account apart from the third account. He agreed that the money in the third account had been used for his personal expenditure and also his mother's expenses.

80 The plaintiff admitted that the defendant was entitled to a share in the third account because the moneys deposited into the account had come from the business. He was asked whether he agreed that on 31 March 2004 when the parties wanted to dissolve the partnership, the third account had to be included as part of the valuation. The plaintiff accepted this and it was then put to him that it was not fair to the defendant that the third account had not been factored into the valuation for the purpose of dissolution. The plaintiff's response was that the valuation was done by the defendant and it was the defendant who had not factored it in. He speculated that maybe that was because the defendant had already taken more than his share from the third account.

81 In relation to collection of payments, the plaintiff asserted that half of the customers would go to the office to pay their bills. Such customers paid whoever was manning the office who could have been himself, Ms Ang or the defendant. He disagreed that because of his direct contact with the customers he was in control of payment collections. He also disagreed that he was the person who determined which case would be handled by ACM and which by ACMKK.

82 The plaintiff said that it had not occurred to him in 2004 that he could have asked for an independent valuation of the business.

83 The plaintiff agreed that there had been negotiations in relation to the dissolution agreement. He also agreed that the draft dissolution agreement had been revised many times but asserted that he was not familiar with its contents because the defendant did not explain them. He was not able to say how many times he met to discuss the dissolution agreement. He said he did not have a copy of any draft because, at the meeting, the defendant had shown him the draft but had collected it at the end of the discussion saying that he would do a better one and show it to the plaintiff and his friends at the next meeting. When the plaintiff was questioned further about the meetings, however, his evidence became somewhat jumbled. At one stage, he said that they had just had conversations and there had been no papers shown to him. Also, he could not remember how many meetings there had been between the time of the first meeting which took place in a restaurant after 24 May 2004 (and at which a draft agreement had been passed around) and the signing of the dissolution agreement on 7 June. His memory of the time that had elapsed between meetings was not reliable: at one stage he said it was one month and at another, he said it was ten days but neither of these suggestions was consistent with the period of two weeks between 24 May 2004 and 7 June 2004.

84 The plaintiff was asked several questions about cash cheques that he had issued. He maintained that all these cash cheques had been issued to persons who had supplied services to the business. It was pointed out to him that many of them had been banked into personal accounts instead of into company accounts. His response was that he could not control where the cheques were deposited. Some cash cheques had been en-cashed by his friend/supplier, Ng Soon Hwa and

others by Lim Tian Lye and See Lay Choo. There was also a cheque for \$15,000 which had been credited to the account of his friend, Lim Tiong Huat. He explained that this was meant to repay a payment made by Mr Lim on his behalf to the Golden Pagoda Temple. He was asked why he could not have paid the Golden Pagoda Temple directly by an account payee cheque and his answer was "Because there was many occasion (*sic*) during the auspicious day, and Lim Tiong Huat has been contributing and paying on my behalf. And the sum has been accumulating and so I have to pay him back". Even if that is accepted as the true reason for the payment to Mr Lim, it shows that the plaintiff had withdrawn money from the business for his personal use and such drawing would have needed to be debited to his current account with the partnership.

85 The plaintiff admitted that he had used resources of ACMKK for the purpose of his Western Casket business. He had, however, paid ACMKK a sum in excess of \$10,000 every month for the use of such resources. He asserted that the defendant had the records of such payments. No documentary evidence of payment was produced but there was a cheque for \$4,243.66 dated 5 August 2001 drawn on ACMKK's bank account and made in favour of Western Casket. The plaintiff explained that this was a payment for "the service which is known to the defendant" and then he explained further that it was for "the workers and the hearse - lorry - no, lorry and the workers. Sometimes, because of lack of items, so it was taken from the company". I find this explanation incomprehensible except insofar as it indicates that the plaintiff used ACM/ACMKK's moneys to pay Western Casket's bills. There was another cheque for \$5,000 dated the same day and drawn on the third account which was paid to Western Casket. The plaintiff explained that he had needed money to settle some miscellaneous expenses for that business and had used the third account for this purpose. Here again, the evidence indicates a misuse of funds in the third account.

The plaintiff's business acquaintances/friends

86 Four of the plaintiff's business acquaintances testified on his behalf. The first of these was Mr Ng Soon Hwa, the proprietor of a business called "Soon Lee Hwa Chair Tables Company". Mr Ng has known both the plaintiff and the defendant for more than 15 years through his business of supplying tentage to ACM/ACMKK.

87 In May 2004, Mr Ng had been involved in trying to settle the dispute between the brothers. He was roped in by Mr Lim Tiong Huat ("TH Lim") who asked him to help persuade the defendant to agree to a reasonable instalment payment arrangement with the plaintiff. As a result, Mr Ng attended a meeting at a restaurant during which he and TH Lim had convinced the defendant to agree to instalment payment terms and also to give a discount on the price of his share in the partnership. Subsequently, Mr Ng attended the meeting at TH Lim's office some time in June 2004 at which the plaintiff and the defendant signed some documents for the dissolution of the partnership.

88 Mr Ng testified that he had known all along that the defendant was in charge of keeping the account books of ACM and ACMKK. He had often collected payments for both firms which he had passed to the defendant, the plaintiff and Ms Ang. He had often received payment from these three persons for his services supplied to the business. Most of the time, however, Ms Ang dealt with him as the plaintiff was seldom in the office and the defendant was a full-time civil servant.

89 Mr Ng did not agree that the plaintiff was in full control of the operation and administration of the business. It was impossible for this to be so because the plaintiff handled customers and that was a time consuming job. The plaintiff was a people person and was not very good in English nor in doing paperwork, whereas the defendant was more educated and meticulous and was good in office work and English. Mr Ng had always thought that the defendant was the person who controlled the administration of the partnership. Also, for some years prior to the dissolution, the defendant had

arranged for all telephone calls made to the office of the business after 5pm to be diverted to his mobile phone.

90 Under cross-examination, Mr Ng confirmed that he and the plaintiff had passed business to each other and that in a good month the plaintiff would pass him about seven or eight cases. His average charge for tentage and furniture supplied was around \$1,200 and in the case of the services he provided for ACM and ACMKK's clients, payment would often be collected on his behalf by those businesses. They would usually pay him in cash and sometimes by cash cheque. He was not sure who signed the cheques for ACM and ACMKK because they were already signed when they were given to him. He did not notice whether the signature was that of the plaintiff or of the defendant.

91 He confirmed that he was aware that the defendant was not in ACM's office on weekdays. When asked to explain on what basis, therefore, he had asserted that the defendant was the person in charge of the administration of the partnership, his answer was that usually when he went to the office on Sunday, it was the defendant who was handling the books. Also, when he called ACM's office after 5pm, the defendant would answer the call. Mr Ng also justified his description of the defendant's role in the business by asserting that he and the defendant had talked to each other over a period of more than ten years and he had often seen the defendant helping the plaintiff by doing the accounts.

92 Mr Lim Yeow Hui, the sole proprietor of Lim Siang Huat Textiles and Department Store, testified that his company had supplied funereal clothing to ACM for more than 20 years. Orders for his goods were usually placed over the telephone by Ms Ang and he would then personally deliver the goods to ACM's office. He collected payment on delivery and while he dealt mainly with Ms Ang, he had also dealt with both the plaintiff and the defendant. When the plaintiff was not in the office, Ms Ang or, occasionally, the defendant, would take a cheque book out of a drawer and fill up his company's name as payee, fill in the amount of the payment and the date of the cheque and then hand over the cheque to him. Such cheques had been pre-signed by the plaintiff. Mr Lim recognised the plaintiff's signature as he had on many occasions also received cheques from the plaintiff which had been signed on the spot.

93 Attached to the witness's affidavit were two sets of cheques. In respect of the first set, the witness identified them as cheques issued between 2001 and 2003 which had been pre-signed by the plaintiff and later completed by Ms Ang or the defendant. In respect of the second set, the witness identified them as cheques issued during the same period which had been signed by the plaintiff on the spot and handed to him by the plaintiff.

94 Under cross-examination, Lim Yeow Hui confirmed that between Monday and Friday, Ms Ang was usually the person manning the office and the defendant was not there during normal working hours. The defendant had given him cheques on a public holiday or a Sunday and this had happened occasionally, sometimes once or twice a month. The witness's attention was drawn to some of the cheques exhibited in his affidavit and he was asked questions about them. For example, in respect of a cheque dated 30 January 2001 for \$1,198, he was asked how he remembered that that cheque had been pre-signed by the plaintiff. His answer was "Because normally it was his sister who filled in the particulars." When asked how he knew that that was a cheque in which the particulars had been written by Ms Ang, he gave the same reply and then he said that because Ms Ang filled in most of the cheques, he thought she must have filled in this one.

95 Lim Yeow Hui then said that the difference between the cheques that were filled in by Ms Ang/the defendant and those written on the spot by the plaintiff was that the handwriting on the two sets differed. However, when he was asked to identify whose handwriting appeared on the

cheque of 30 January 2001, his reply was that after so many years, he could not remember. He was then shown a cheque dated 21 March 2001 for \$1,785 and asked to identify the handwriting. Again he was not able to. Subsequently, the witness was able to identify the plaintiff's handwriting on a particular cheque on the basis that the cheque contained an amendment and the plaintiff had initialled against the amendment. He had to concede, however, that when he was just shown any cheque without more, he was not able to identify who had written the particulars on it. In court, Mr Lim was also shown cheques written in Chinese and asked to identify the handwriting. He was not able to do so. He explained that before making his affidavit, the cheques had been faxed to him and he had compared them with some other cheques which he had received more recently and, from the comparison, he was able to tell which cheques had the plaintiff's handwriting and which had the handwriting of Ms Ang or the defendant. But when asked to explain how he had carried out the comparison, he replied that he had forgotten how he did so. These lapses in memory and inability to explain the manner of differentiation, in my view, made Mr Lim's evidence on the cheques suspect and unreliable.

96 Mr Ong Chin Kee, the sole proprietor of a firm called "No. 1 Casket", gave similar evidence relating to payments made by ACM/ACMKK. He had done business with them for about 15 years and had dealt mainly with the plaintiff and Ms Ang but had occasionally encountered the defendant. ACM/ACMKK ordered goods from him which he would deliver personally to the office. At the end of each month, he would visit ACM's office to collect payment. Mostly Ms Ang made payment but sometimes when the plaintiff was in the office, he would handle the matter. Mr Ong observed that Ms Ang was entrusted with blank cheques pre-signed by the plaintiff as well as with cash. Whenever a cheque was issued to pay him, Ms Ang would fill up the particulars of the payment on a blank cheque which had been pre-signed by the plaintiff. The witness produced copies of some of the cheques which had been given to him during the period between 2001 and 2003 and asserted that these had been pre-signed by the plaintiff and completed by Ms Ang.

97 Under cross-examination, Mr Ong stated that on occasion he had heard Ms Ang tell the plaintiff that the pre-signed cheques had been used up and that he needed to sign more cheques. Mr Ong said that he had received cheques from the plaintiff which the plaintiff had signed in his presence and, on those occasions, it was the plaintiff who filled up the particulars in the cheque. He was able to distinguish the cheques that the plaintiff himself had prepared from those that were signed in blank and completed by Ms Ang by the fact that Ms Ang wrote the particulars on the cheque in Chinese while the plaintiff always wrote his particulars in English.

98 The next witness was Mr Lim Tiong Huat ("TH Lim"). He testified that he had known the parties for more than 30 years having met them in the course of his business which was related to the supply and rental of chairs, tents and other accessories. Some time in April 2004, he had received a telephone call from the defendant who said that he and the plaintiff wanted to dissolve their partnership. The defendant stated that he had done a valuation of the partnership and had submitted the same to the plaintiff. He also said that he did not have the ability to run the business on his own and that he was considering selling his share to the plaintiff.

99 TH Lim testified to the various meetings held to discuss dissolution. First, there was a meeting in May 2004 at his own office at which the defendant produced some documents showing the valuations of ACM and ACMKK. No agreement was reached at that meeting as to who was buying over the business. There was a second meeting some time in middle/late May 2004, again in TH Lim's office. This was attended by the brothers, Ms Ang and Ms Julie Tok. At this meeting, the defendant confirmed that the plaintiff would take over the defendant's share at the valuation price of \$1.7m. About ten days later, the plaintiff gave TH Lim a cashier's order in the sum of \$100,000 to be passed to the defendant as a preliminary payment. The defendant rejected the payment and said he wanted

full payment in one lump sum. When the plaintiff heard this he was agitated as he could not afford to make payment this way. TH Lim therefore arranged another meeting to try and resolve the dispute.

100 The third meeting took place at a vegetarian restaurant in Jalan Besar. Mr Ng and TH Lim tried to persuade the defendant to accept instalment payments from the plaintiff and to reduce his selling price. They thought that the Ubi property had been overvalued. The defendant finally agreed to instalment payments and to a reduction in the price. At the next meeting which took place in TH Lim's office in June 2004, the brothers, Ms Ang, TH Lim, Mr Ng and the plaintiff's two sons were present. The defendant brought along some papers and TH Lim witnessed the signing of the same. He knew that the plaintiff did not read the agreement.

101 TH Lim did not know the contents of the documents at that time, but he learnt later that the defendant had alleged that the plaintiff was the active partner in full control of the operations and administration of the partnership. TH Lim accepted that the plaintiff was an active marketing person but said he was seldom in the office and was not in full control of the administration. Over the previous years, TH Lim had visited ACM's office at least six or seven times a month. He noted that the defendant was invariably in the office on Saturdays and Sundays, taking calls and recording orders as well as collecting and making payments.

102 Under cross-examination, TH Lim stated that his firm was called Lian Yick Metal Tents, Table & Chairs Rental ("LHMT") and that it was a partnership between him and three of his siblings. For 30 years, LHMT had done a lot of business with ACM/ACMCK and payment by the latter had been made sometimes in cash and sometimes by cheque. Some cheques were issued in favour of the firm but at other times, because TH Lim had to make purchases on behalf of ACM/ACMCK, they would give him cash cheques. Such cash cheques were deposited into TH Lim's personal account or, sometimes, into the account of his siblings. He was shown, and identified, a number of cash cheques that had been deposited into his siblings' accounts. When asked why these cheques were not issued in favour of LHMT, TH Lim's reply was difficult to understand. He said it was because the payment was collected on his behalf and handed over to his secretary for her to deposit but he was not sure into which bank account she had deposited the cheques. He said he did not specify the account into which the deposit should be made. Subsequently, TH Lim said that the cash cheques that were put into his siblings' accounts had been intended for services rendered by another firm, Lian Yick General Service, which belonged to his sister-in-law, Mdm See Lay Choo, and he further confirmed that where services had been rendered by LHMT, the cash cheque would be deposited into LHMT's own account. When shown a cash cheque dated 29 December 2002 for \$15,940 from ACM, TH Lim confirmed that it had been deposited into his personal account. At first, he could not remember the purpose of that payment but subsequently he stated that a monk had been engaged to chant sutras on behalf of the plaintiff and the defendant's deceased parents and TH Lim, having paid the monk on their behalf, had subsequently been reimbursed by this cash cheque.

The plaintiff's evidence relating to the accounts

103 Three witnesses gave evidence for the plaintiff in relation to the accounts of the business. They were Chew Whye Lee, the accountant of ACM/ACMCK, his assistant, Bong Liat Hian, and Soo Choon Kiat, a certified public accountant, whom the plaintiff had employed in November 2007 to assist him in going through the books and records of the two firms in relation to his claims against the defendant.

104 Mr Chew is related to both parties by marriage. His evidence-in-chief was given in court because he had not wanted to file an affidavit on behalf of either party. As the accountant, he considered he had to be neutral.

105 Mr Chew runs two businesses, an auditing firm called Chew Whye Lee & Co ("CWL Co") and a company called Commercial Group Pte Ltd ("CGPL") which provides tax services. CGPL had provided tax services for both ACM and ACMKK. It had prepared the tax returns and the same had been signed by the plaintiff as precedent partner. CWL Co had acted as accountant for ACM and ACMKK from 1994 and at the date of the hearing, it was still carrying on this task. Mr Chew said that CWL Co was appointed by the defendant. From 1994 until 2004, in relation to the accounts, Mr Chew liaised only with the defendant.

106 He was shown a table setting out payments made in January 2001 from the ACM UOB account. He confirmed that this document had been prepared by his staff and listed all cheques issued by ACM for payment to third parties. It gave particulars such as the date, number and amount of the cheque and the purpose for which the payment was made. Mr Chew stated that the information in the table was taken from a source document which was brought to him by the defendant. In drawing up this table and other similar ones like it, and in trying to decide what the purpose of each payment was, his staff referred to the handwritten records supplied by the defendant. There were record books and loose sheets of foolscap paper. Mr Chew was not able to say who had actually prepared such records. Mr Chew was asked questions about certain cheques reflected in the table against which were written the remark "Exchange cash". He explained that this meant that the cheques concerned had been issued and handed over in exchange for cash. Mr Chew confirmed that all information contained in the regular payment statements prepared by his firm over the years had come from documents supplied by the defendant.

107 Mr Chew was shown a document prepared for ACM which bore the remark "Year end: 31 12 2003". He stated that this was a document containing the summary of the value of the assets of ACM showing the opening balance at the beginning of the year and the journal entries made during the year and then coming to the closing balance on 31 December 2003. He described it as a "trial balance". This document had been derived from the monthly bank summaries prepared by his firm on the basis of the source documents provided by the client. The trial balance contained the valuation of the partners' capital accounts and their current accounts. In respect of the plaintiff at the beginning of the year, his current account showed a balance of \$349,352.81. During the year, a sum of \$125,434.66 was, apparently, debited against that current account and a sum of \$38,526.85 was, apparently, credited to his current account. In respect of the defendant, he had started 2003 with a current account of \$349,352.82 (*ie* the same amount as his brother) but during the year, apparently, \$205,210.14 was debited from his current account and, apparently, \$56,425.28 was credited to it.

108 Mr Chew was shown a letter from ACM referring to "Journal Entries as at 31st December 2003". This letter asked the accountants to make journal adjustments to ACM's accounts and set out a whole series of figures relating to various items of expenditure incurred by ACM for example, advertising expenses, motor vehicle and term loan payments. The letter was prepared by the accountants for signature by the plaintiff. One of the items to be adjusted was the sum of \$125,434.66 which had to be debited against the partners' current accounts. Mr Chew explained how this figure was derived. He noted that the total sales figure for that year had been \$802,974.24. However, the receipts banked in by the firm had amounted to only \$677,539.58. The difference between the total sales and the amount credited to the bank was \$125,434.66 and as the accountants did not know how that sum had been expended, it had to be debited against the partners' current account. The assumption was that the partners had taken this sum as their drawings.

109 Mr Chew was then asked about the sum of \$205,210.14 that had apparently been deducted from the defendant's current account. He explained that this figure had been derived by taking the total sum paid out of ACM's bank accounts during the year and deducting from it the expenses that

the firm had incurred that year. The balance remaining was taken as being an amount to be allotted to the partners' current accounts. He was asked why he had deducted the first figure of \$125,434.66 from the plaintiff's account and deducted the second figure of \$205,210.14 from the defendant's account. His explanation was that his staff member must have done this adjustment after discussing the matter with the defendant. It was suggested to Mr Chew that the way the accounts had been done, it appeared that all the cash that was not banked in had been taken by the plaintiff and all the cheques that had not been used to pay expenses had been paid to the defendant. His response was that while that appeared to be correct on the face of the documents, these were only entries that were made and he did not know whether the partners had in fact totalled up the two amounts and divided the total equally between themselves. In his practice, if the accountants were not sure which current account had to be credited or debited, they would lump all the amounts into a common account called the "Partners' Current Account" and at the end of the year, they would divide the amounts by two and credit or debit the respective partner's account accordingly. He explained that, therefore, the figures in the trial balance should not be taken as showing that in fact the plaintiff took \$125,434.66 and that the defendant took \$205,210.14.

110 As I look at the ACM document showing the journal adjustments made against the accounts for the year ended 31 December 2003, it appears to me that it was purely fortuitous that the figure of \$125,434.66 was written under the debit column but in the same line as the plaintiff's name whereas the figure of \$205,210.14 was written in the debit column along the same line as the defendant's name. In the descriptive column, the plaintiff's name appeared above the defendant's, so the plaintiff's current account was apparently debited with the first (\$125,434.66) of four entries in the debit column under the general rubric "Partners' Current Account" whilst the defendant's was debited with the second of these figures (\$205,210.14). But all four figures were actually adjusted against the total of the partners' current accounts. This is apparent from Mr Chew's explanation of the other two figures in the debit column and the six figures that appeared in the credit column. At the beginning of 2003, the partners each had the same amount in their current accounts (less one cent only in the case of the plaintiff) and it is clear to me from Mr Chew's evidence that he never ascribed particular drawings to a particular partner's account but always ascribed such amounts to the general partners' current account.

111 The third figure debited to the partners' current account was \$33,585.61. Mr Chew explained that this sum was derived from an amount of \$47,000 or so taken out of ACM's account with DBS Bank of which about \$13,000 was used to repay a term loan. As the accountants had not been able to ascertain what the balance of \$33,585.61 had been used for, they had put it under the partners' account. He also explained that the fourth figure of \$854.14 debited to the partners' current account was a hire purchase liability owing by ACM. A journal entry had to be passed to recognise the liability and it was recognised under the current account because his practice was that the current account was considered the common account for the obligations of the partners.

112 Mr Chew also explained how two of the six items that had been credited to the partners' current account during the year had been derived. The first, the sum of \$38,525.85, was an amount that had been banked into ACM's DBS account but in respect of which the source records had not contained any explanation. The second sum, \$56,425, represented the cost of purchase of coffins and other funeral requisites by ACM which had been paid for but which could not be traced in ACM's bank statements. Therefore, the conclusion was that one of the partners must have paid it on behalf of ACM and the amount had to be credited to the current account. Basically it appeared that payments made on behalf of the firm which could not be traced to the firm's accounts were credited to the partners' current account on the basis that they were moneys advanced by the partners to the firm.

113 On specific transactions, looking at the records, Mr Chew confirmed that in 2001, various cheques amounting to some \$52,000 had been paid to Mr Chia Ann. In the monthly summaries, the amounts of these cheques were entered against the rubric "Other Debtors" ie they were reflected as loans to a third party. He was asked why in the final profit and loss accounts for 2001, the item "Other Debtors" was missing. He explained that there may have been an adjustment passed to reverse the entries made in the summaries. He was then shown the journal adjustment as at 31 December 2001 which showed that a figure of \$52,000 was debited and credited against the rubric "Partners' current account Other debtor (being adjustment of a/c)". He explained that, as he had said earlier, the partners' current account was the common account and therefore whatever sums came in or went out which could not be clearly traced were put into the "Partners' account". He agreed that the effect of the adjustment in the case of the \$52,000 was that the accounts indicated that the partners had withdrawn that sum and not that the same had actually been lent to a third party. He also confirmed that the adjustment was made after information and discussions between his staff and the defendant and that such adjustments were only made with the client's instructions. He identified the client as being the defendant.

114 The witness was shown schedules of salaries and CPF payment for the employees of ACM in 2002. He confirmed that on the basis of these documents, ACM had had six employees that year. These documents were prepared by Mr Chew's staff using the CPF receipts and statements provided by the firm in the person of the defendant. The information there was used to work out the salaries of the staff. The documents showed that in 2002, Ms Ang was paid \$12,000 in salary and CPF contributions of \$4,320 were made for her. For ACMKK, looking at similar documents, Mr Chew confirmed it had had 17 employees in 2002. He also stated that the figure of \$146,030 which appeared in the 2002 profit and loss account as the total salary and bonus paid that year was obtained from data contained in the CPF records. He also stated that if someone had a CPF record then he and his staff would assume that that person had been paid the salary that was shown in the CPF records and would enter that salary figure into the profit and loss account. He agreed that if amount shown as salary had not actually been paid then that amount would become cash in hand in the business.

115 Mr Chew also testified that although the accounting documents had been signed by the plaintiff, he had always passed them to the defendant and it was the defendant who returned the documents after the signature was affixed. He had never seen the plaintiff signing the documents nor had he ever discussed the documents with the plaintiff. The defendant had never signed the documents and the witness vaguely remembered having been told by the defendant something to the effect that because he was working in the Supreme Court he should not sign the accounts.

116 During cross-examination, Mr Chew was asked to explain the asset statements. Mr Chew testified that these statements were prepared to reflect the net worth of the businesses. The figures in the statements had been extracted from the books of account which showed the value of the assets and the liabilities. The information used to prepare the statements had come from the profit and loss statements and balance sheets prepared by CWL Co when it closed the March 2004 accounts. He explained that the figure of \$59,098.39 described as "Cash in Hand" under the rubric "Current Assets" was the cash in ACM on 31 March 2004. It was derived by taking the total collection for sales between January and March 2004 and subtracting from this (i) the amount that had been banked in and (ii) those expenses paid which were documented but not reflected in the bank statements. He agreed that on paper this was a record to state that on that date, there should be this amount of cash with ACM. He also stated that ACM did not keep records of the cash received and that was why the accounting had been based on total sales. No information was provided to CWL Co showing how much cash the firm received each day. The accuracy of Mr Chew's system, he said, depended on whether ACM was accurate in recording the sales and the expenses paid. If they gave

him the complete sales record and the complete bank records, then the calculation of cash would be accurate.

117 Mr Chew stated that the asset statements were not valuations of ACM and ACMKK. They were only the book value of the two firms extracted from the 31 March 2004 accounts. As for the value of the two pieces of property, these had been based on the records in the company books and no valuation was done. He said that it was the defendant who requested him to prepare the statements based on the books of the company. He did not remember when it had been asked for but thought it might have been around May 2004.

118 Mr Chew did not remember the plaintiff calling him in 2004 to complain about unauthorised payment of CPF contributions. No issue was made of Mdm Teo's salary and CPF contributions in 2004. The first time the point was mentioned was in 2005 when the plaintiff took in the 2004 account books for CWL Co to do the accounts.

119 In re-examination, Mr Chew stated that the asset statements were prepared for the partners to use for reference purposes. They were not to be used as a basis for splitting up the partnership because they did not present a true and fair picture of the asset values of ACM/ACMKK. To get such a picture, a proper audit of each firm would have to be done. When he did his statements, no physical stocktaking had been done; there was no physical counting of the cash in hand and all the figures had been based on the information given to the accountants without any independent check. The witness said that he had informed the defendant that the figures were extracted from the books. In respect of an item in the ACM asset statement described as "HDB property-take over fee \$100,000", Mr Chew confirmed that this figure had been given to him by the defendant. As for the value of the Tannery property that appeared in the ACMKK asset statement, Mr Chew said that the figure of \$600,000 had been provided by the defendant. He had not been able to verify it because this item had never been included in the company's accounts as it was not known to be ACMKK's asset. It was only when the asset statement was being prepared that the defendant had told him that the Tannery property had been purchased with ACMKK's funds and therefore its value had to be included in the statement.

120 Bong Liat Hian was employed by CWL Co for more than five years until 2005. During that period, he had worked as an "audit senior" and his duties included being the bookkeeper for ACM and ACMKK. Before 2004, he had been given instructions by the defendant and, in 2005, he had dealt both with the plaintiff and the latter's son, Ang Ziqian. He had first met the defendant between 1998 and 2000 whilst he only met the plaintiff and his son in 2005.

121 Mr Bong stated that he met the defendant from time to time when the defendant took documents and records, including records kept on foolscap paper, to Mr Bong so that he could write up the books. The foolscap sheets had entries relating to the cash inflow and cash outflow of ACM/ACMKK. Mr Bong had made lists of the cheques drawn by ACM on the ACM UOB account and, in classifying the purposes for which the cheques had been made, he had relied on the entries in the foolscap sheets. He had also used such entries to do postings in relation to the businesses' trial balances and to make clients' adjustments. Other documents like CPF statements had been given to him and he had also used the records to prepare IR8A forms for ACM. These forms were then passed on to the defendant. If there was any uncertainty as to the classification and treatment of any transaction, Mr Bong would check with the defendant. After the accounts had been prepared, the source documents were handed back to the defendant. He also stated that when accounting adjustments had to be made, they were either made on the basis of entries in the source documents or on the basis of instructions given by the defendant after he had asked the latter for clarification.

122 During cross-examination, Mr Bong remembered that the foolscap sheets given to him had contained entries written in both English and Chinese. He could not identify the handwriting. He was shown a journal adjustment entry in respect of the year ending 31 December 2001 and was asked to identify the signature which appeared below the plaintiff's name. The witness was not able to state whether that signature was actually the plaintiff's signature. He said that after the document was prepared, he would have handed it to the defendant and thereafter, it would have been signed but he would not have known who actually signed it.

123 Mr Soo Choon Kiat was employed by the plaintiff in November 2007 to assist him in going through the books, records and documents of ACM and ACMKK in relation to his claims against the defendant. Having reviewed such accounting records, Mr Soo came to the following conclusion:

- (a) that the records showed that the defendant's relatives were being paid both monthly salaries and CPF contributions from the moneys in the ACM UOB account and/or ACM's cash in hand;
- (b) that the cheque images showed that moneys had been withdrawn from the ACM UOB account and the ACMKK account by the Chias; and
- (c) that the cheque images showed that moneys had been transferred via such cheques from the bank accounts of ACM and ACMKK to a bank account known as Account Number 302-xxx-xxx-7 which Mr Soo understood to be the defendant's own bank account.

Mr Soo was not able to verify whether the defendant had withdrawn or caused the withdrawal of moneys from these accounts without the plaintiff's consent or knowledge. Now was he able to state what the actual purposes of the withdrawals had been.

124 On the assumptions that the defendant had drawn up the identified cheques and used them for his own benefit without the plaintiff's consent, and that the plaintiff was not aware of and did not understand the accounting records despite his having signed the same, and on the basis of his review of the asset statements, Mr Soo came to the opinion that these documents did not accurately and fairly reflect the true and fair value of the net assets of ACM as at the date of the valuation. He reasoned that the unauthorised withdrawals of money by the defendant had not been properly accounted for. They should have been treated as drawings by the defendant against his account under the partnership's current account or as debts owed to ACM by the person who had the benefit of the moneys. The fact that the withdrawals were treated as expenses rendered the summary inaccurate.

125 From Mr Soo's analysis of the records, the defendant's unauthorised withdrawals for the period between January 2001 and March 2004 were initially recorded as drawings by partners but subsequently adjusted, mainly as expenses. One result of these adjustments was that the withdrawals were reflected in the final accounts of ACM as expenses in Profit and Loss accounts rather than in the Capital or Current Account of the defendant with ACM which would have been the appropriate accounts to record such withdrawals. Consequently, the ACM asset statements would not have shown the true and fair net asset of ACM. Another possible result of the adjustments would be the distortion of the respective partner's Capital/Current Account of the partnership. The expensing of the unauthorised withdrawals resulted in the Current Account not correctly reflecting the true drawings of the partners.

126 As for ACMKK, the withdrawals of money by the defendant as shown to Mr Soo by the plaintiff also rendered the asset statement of ACMKK inaccurate. He treated all unauthorised withdrawals by

the defendant as debts owed to ACMKK and the extent of these debts which were not reflected (which he calculated as being \$339,393) would also be the extent of the inaccuracy in the asset statement.

127 Mr Soo also opined that if the defendant had been effecting unauthorised withdrawals from ACMKK or had made payments for his own personal benefit then those unauthorised withdrawals/personal payments should be reflected in the defendant's drawings and accordingly, those drawings should reduce the defendant's equity interest in ACMKK. Mr Soo thought it was obvious that the defendant's valuation in the asset statement for ACMKK perversely undervalued ACMKK as the defendant's unauthorised withdrawals of moneys were recorded and treated inappropriately as expenses of ACMKK.

128 During cross-examination, Mr Soo confirmed that various matters that he had stated in his affidavit on the course of events had come from the affidavits and letters and other documents that he had been given during discussions and briefings with the plaintiff and his son. In general, he had repeated the plaintiff's statements of his case. He agreed that he had accepted the plaintiff's version that the CPF contributions (as shown in the documents) paid for the defendant's relatives were unauthorised. When asked to show evidence in support of his assertion that these three persons had also been paid salary, Mr Soo referred to the salary schedules prepared by CWL Co and the IR8A forms. He was not able to point to actual payment documents like cheques and stated that the plaintiff had informed him that most of the salaries had been paid in cash. He therefore confirmed that there was no direct record that salary had actually been taken by these persons. He also agreed that there was no way he could substantiate any cash payment without supporting documents.

129 Mr Soo agreed that the adjustments he had made to the defendant's Current Account to reflect the salaries paid to the defendant's relatives as the defendant's drawings were based on the assumption that these were unauthorised payments. He pointed out that it was clearly stated as his assumption in his opinion that the defendant had used moneys for his own benefit without the consent or knowledge of the plaintiff. If that assumption was wrong, then, Mr Soo agreed, the whole basis of his calculation would have to change. Mr Soo also agreed that if the plaintiff had admitted that he himself had diverted cash and cash cheques from ACM and ACMKK into his personal account and these moneys had not been factored into the accounts of those firms, then the asset statements would have to be revised once again.

The witnesses for the defendant

130 The persons who testified on behalf of the defence were the defendant himself, Ms Ang, Mdm Teo, one Chua Chin Karr, a former employee of ACMKK and Mr Choo Si Sen, a solicitor.

The defendant

131 The defendant's evidence-in-chief generally confirmed the contents of his defence. He emphasised that the plaintiff was in complete control of the business: all financial decisions were made by him, all negotiations and financing were done by him, all IR8A forms and all CPF contribution forms were signed by him for two decades, all income tax returns were signed by him and all the Trading and Profit and Loss Accounts and Journal Entries of ACM and ACMKK were signed and verified by the plaintiff for two decades.

132 In relation to the dissolution of the partnership, the defendant repeated his account of how when he appealed to the plaintiff to treat the workers decently, he was told not to interfere or he could go away. Later, the plaintiff confirmed that he wanted to split the business. In February 2004,

the plaintiff instructed the defendant to get Mr Choo to prepare the asset statements for the firms. These were given to the plaintiff in mid April 2004 but in the meantime, the plaintiff refused to communicate with the defendant and, most of the time, would only do so through TH Lim.

133 On 21 May 2004, the plaintiff proposed that either party buy the other out at \$1,767,662.95 and gave the defendant three days to decide. On 25 May 2004, the defendant agreed to sell his share to the plaintiff. The defendant wanted a formal sale and purchase agreement but the plaintiff kept insisting that that was not necessary. He then drove a hard bargain and the final sale price for the defendant's assets was agreed at \$1,267,662. The defendant said he had no choice but to accept the new proposal as he wanted to opt out of the partnership to get out of the way in order to facilitate the plaintiff's pursuit of his happiness and to preserve his late mother's wish that the Ang family business should continue to prosper.

134 Regarding the dissolution agreement, the defendant said that the first draft was given to the plaintiff on 26 May 2004 and it included the assets of both ACM and ACMKK. Subsequently, the plaintiff insisted that the references to ACMKK be deleted. The drafts were discussed and amended several times. The final forms of the dissolution agreement and the acknowledgement were the product of several provisions and amendments insisted upon by the plaintiff. The defendant complained that the most astounding thing about the whole episode was the uneven level of negotiation: the plaintiff bought out the defendant and kept both ACM and ACMKK, he reduced the price by \$500,000, he utilised the funds of \$600,000 saved from the business which belonged to both of them to pay for his purchase and he was permitted to pay the balance by three instalments.

135 The defendant dealt at some length with the allegations of misrepresentation made against him. I need not advert to his reply on the allegation of misrepresentation relating to Ubi property as that issue is no longer alive. The second misrepresentation was as to the accuracy of the asset statements. The defendant's response was that he made no representation that the values stated in the asset statements were accurate and true. He did not prepare the accounts. Mr Chew prepared the computation of assets and liabilities upon the plaintiff's instructions. The plaintiff was the precedent partner as he signed the accounts all those years and had to hold himself responsible for their accuracy and truthfulness. The accounts for the year 2003 which were signed by the plaintiff were used to compute the values of the assets as at 31 March 2004.

136 The plaintiff had had one and half months after the asset statements were given to him to go through them. He had time to consult and deliberate and it was he who computed the half share of the assets of the business as being worth \$1,767,662.29. Even then, he was not prepared to pay the defendant that amount and negotiated it down by \$500,000. If the plaintiff had been induced by the accounts, he would have paid the defendant \$1,767,662.29.

137 The plaintiff had signed the IR8A forms for Mdm Teo except for rare occasions when the defendant might have signed them as a matter of convenience. The same could be said for the CPF contributions made for Ms Ang and Teo Ah Sai. All these contributions were made with the plaintiff's full knowledge.

138 In September 1993, at Mdm Ng's insistence, the plaintiff had increased Mdm Teo's salary so that her CPF contributions could be used to help with payment of the mortgage instalments for the SFC unit. This property had been purchased for \$625,000 and the plaintiff had arranged for a bank loan of \$350,000 which he had guaranteed.

139 In relation to the missing cash, the defendant said that cash collected from customers was kept in the office and used to pay workers' salaries and for the day-to-day operations of the

business. The plaintiff used the cash whenever he needed it for daily operations and for his own use. The use of cash was not accounted for. No cash record book was kept.

140 Dealing with the plaintiff's allegation that there were withdrawals made without his consent or knowledge, the defendant denied the same and asserted that all the withdrawals were reflected in the partners' current account of ACM and ACMKK. There was a mutual understanding or common practice that both parties were entitled to make withdrawals from the bank accounts. All such withdrawals were properly accounted for. There were occasions when loans were made to Mr Chia Ann. This was reflected in the partnership account which the plaintiff was fully aware of and sanctioned.

141 The defendant also raised several accounting irregularities which he thought the plaintiff should clarify but which the plaintiff had refused to clarify. These related to amounts banked into the third account and into an account with DBS Bank, the source of which he said had not been disclosed. He wanted an account of the same. He asserted that the moneys withdrawn by the plaintiff from the third account had not been reported to Mr Chew and were not reflected in the partnership accounts or the profit and loss accounts. The plaintiff had never accounted to the defendant for all the money he had collected from the customers. All the sales, delivery orders and quotations were prepared by the plaintiff. He was the one who issued receipts and he collected 95% of the cash paid. He also handled payments made by cheques and he was the one who would do the banking in of the cheques. The defendant also drew attention to some documents like delivery orders and sales receipts which did not tally.

142 When it came to cross-examination, the defendant, like the plaintiff, was a difficult witness. He told long stories and often did not answer to the point. One small example right at the start of the cross-examination was that he was asked whether he knew that Mr Chew was the accountant of ACM when he was a partner of the firm. He might have thought that that was a stupid question and that the answer was obvious but instead of replying to the question with a simple yes, he said "Chew Whye Lee is ... my cousin's husband. And both me and my brother, we know him." That answer proved to be quite typical as he often tried to involve the plaintiff in some way when responding to questions. He also prevaricated and at times I got the impression that he was making up some of his answers on the spot.

143 On the issue of Mr Chew, the defendant found it hard to give a straight forward answer. He was asked to confirm whether he was the person who approached Mr Chew to do the accounts for the business. His immediate response was that it was not him, but the family. All of them had agreed. When told that Mr Chew's testimony was that the defendant had approached him, the defendant changed his answer to say that when the family had agreed on Mr Chew's appointment, he had gone to see Mr Chew and told him to do the accounts for the business. He then said that it was his brother who asked him to see Mr Chew.

144 The defendant was asked whether he could confirm that he was the only person who had liaised with Mr Chew and the latter's staff. His response was that he disagreed because Mr Bong had liaised with the plaintiff and occasionally when the defendant was in the office he heard Mr Bong telephoning the plaintiff and dealing with him. When asked to recall the last occasion when this had happened, the defendant could not remember. He asserted he knew it was Mr Bong who called because he had answered the telephone and Mr Bong had told him that he wanted to talk to the plaintiff. As for taking the books over to CWL Co, the defendant said that he had done that on the instructions of the plaintiff. He emphasised what he had taken over were not books of accounts but simply sheets of foolscap paper. He agreed that he was the person who collected the foolscap sheets from the accountants when the accounts had been prepared but was quick to say that that was

because the plaintiff had asked him to help out. He confirmed that he had signed an acknowledgement in favour of the accountants acknowledging the return of the following records which had been given to the accountants for the audit period January to December 2002:

- (a) daily cash and cheque payment listings;
- (b) sales and receipts day books/listings;
- (c) CPF statements;
- (d) bank statements;
- (e) profit and loss accounts; and
- (f) balance sheets.

145 The defendant maintained that he was not involved in the management of the business; he had simply helped out when he went into the office on Saturdays and Sundays. He was shown documents which appeared to indicate that he had been involved in administrative matters, but his stand was that he had issued these documents only occasionally and only because the plaintiff asked him for help. Among the documents shown to him were employees' leave applications, a letter asking for a season parking ticket for an employee and a letter arranging for an advertisement to be placed for ACM. Despite this, the defendant disagreed that, throughout the years, he had assisted in administration and employee issues.

146 He agreed that all the monthly bank statements of ACM/ACMCK had been sent to his residence since the 1980s. He had also received the CPF statements. He agreed too that he was the person who had signed, on behalf of ACM, the new employee contribution form for his father-in-law, Teo Ah Sai, by which the CPF had been informed that Teo Ah Sai was ACM's employee. He asserted, however, that he had spoken to the plaintiff about this and the plaintiff had agreed to it. He took the same stand with the new employee contribution form furnished to the CPF Board in respect of Ms Ang: he had signed it but had done so on the instruction of the plaintiff.

147 The defendant readily admitted that Ms Ang had never been employed by ACM. He was less direct when asked a similar question about Teo Ah Sai. His response was that Teo Ah Sai had acted as "*ho mia lang*" for some of the funerals. He then had to agree that the *ho mia lang* was rewarded with an *ang pow* after each service. He would not agree, however, that the *ho mia lang* was not required for every funeral. He asserted that the plaintiff had asked him to record Teo Ah Sai and Ms Ang as employees because the plaintiff wanted to employ some foreign workers. At that time, ACM had only a few workers and it needed to have a certain number of local workers before it could qualify to employ foreign workers.

148 He was asked whether it was the plaintiff's idea or his idea to record Teo Ah Sai and Ms Ang as

employees for quota purposes. His answer was that it was the idea of both of them. He agreed that the idea was to represent to the Ministry of Manpower that ACM had a certain number of employees so that the Ministry would regard it as being qualified to employ foreign workers. From the records, he confirmed that Teo Ah Sai was employed in 2002. He was then asked how many foreign workers were employed thereafter. He responded that no such workers were taken on because the plaintiff wanted to get East Malaysian workers and the agents had recommended other races which the plaintiff did not find suitable and had rejected.

149 The defendant was then asked why the plaintiff had wanted to put the defendant's relatives on the payroll instead of members of the plaintiff's own family. His reply was that he did not know why Ms Ang alone had been put on the payroll, notwithstanding that the plaintiff's sons had from time to time helped out in the business during their holidays.

150 I find great difficulty in believing the reason that the defendant gave for the apparent employment of Ms Ang and Teo Ah Sai. I think that this evidence was fabricated and do not believe that, even if the plaintiff had ever had an intention of employing foreign workers (which seems doubtful since no one was employed in 2002 or thereafter), he had authorised the defendant to put his relatives on the payroll in order to fulfil the necessary quota. It should also be recalled that ACMKK had 17 workers and there was no explanation given why the foreign workers could not have been employed by ACMKK instead of ACM since the two businesses were run as one. It is also notable that for the other employees of ACM, the plaintiff had signed the CPF notification form whilst it was only for Teo Ah Sai and Ms Ang that the defendant signed such forms. When he was asked why the plaintiff could not have signed these forms as well, the defendant's reply was a weak "he told me that, er, 'This --- this two you just, er, sign it'".

151 The defendant maintained that his relatives were not paid any salary. He was told that in the accounts, salary was reflected as having been paid. His response was that he did not know anything about accounting, but that that was simply a bookkeeping statement. He agreed that when an employer paid CPF contributions for an employee, he would also pay the CPF Board the employee's own contribution which could then be recovered from the employee's salary. I asked him how ACM had recovered the employee's contribution from Teo Ah Sai and Ms Ang and his response was that it had not.

152 The defendant was asked to explain why various documents from the bank relating to the redemption of the mortgage over the Ubi property had been sent to his residential address. His response was all such documents had been sent to his home since the time of his mother, and after receiving the documents, he would take them to the office for the plaintiff to look at. I asked why he did not have the documents readdressed to the office. His response was that the plaintiff had told him to have them sent to the defendant's home because on occasions before 1980, the postman had put letters intended for the firm in the wrong post box and correspondence had gone missing. When he then agreed that the Ubi property had been bought in 1998, some 18 years later, the question was why the bank had not been asked to send the documents to the office address. He replied this was not arranged by him but by the plaintiff. The defendant could not, however, give any reason why the plaintiff should have given instructions for the correspondence to be sent to his home. It was then put to him that the documents were sent to his home because he kept the books for the business. The defendant disagreed.

153 The defendant was asked many questions relating to the fact that not only the Ubi property documents but all other bank correspondence and CPF correspondence had been sent to his home. It was put to him that since his position was that the plaintiff was in control of the business, the plaintiff would have needed all these documents. He agreed with that suggestion. He was then asked

whether he agreed that if the plaintiff had needed all these documents, it would have been more convenient for him to have directed all the correspondence to the plaintiff's home instead of to the defendant's. The defendant replied that that question should be asked of the plaintiff, he did not know. He disagreed that it was because he himself was in charge of the accounts that he had had all the correspondence sent to his home.

154 As regards the position of his wife, Mdm Teo, the defendant maintained that she had been put on the payroll of ACM on the instructions of Mdm Ng. She had been first recorded as an employee of the firm in 1980 some time after she had had an operation for a heart problem. The defendant was asked to explain why in 2002 the declared salary for Mdm Teo had been increased to \$8,000. His answer was incomprehensible. He said:

... during the, er, period of, er, I think is 19 - 1997 or so, because of buying house, my brother ask that the salaries to be put there for him. But after he get all the loan, he get all the loan, and then he say no, his tax is too high, so stop his salary and increase my wife's salary because she pay less tax.

I asked him to explain how giving Mdm Teo an increased salary would help the plaintiff pay less tax. His response was:

Because, er, the - the tax - I mean, sorry, that his salary is no more already. All the - all the few - previous year we have the salary record there. So the - the - the tax is, er, is there, you see. So if my - my - if he increase my wife's salary to 8,000 because her tax is lesser, because he has the - the company profit, and together the two company will be very high together with his salary, so his tax will be very high.

It should be noted that this reasoning was never put to the plaintiff when the latter was being cross-examined. It appears to me that it was a made up explanation. I cannot see why the plaintiff would agree to making additional CPF contributions for Mdm Teo in order to give the appearance of greater expenditure when he could also have got a tax benefit from paying CPF contributions for himself.

155 It should be noted that the defendant conceded that since his story was that Mdm Teo had never received a single cent in salary, the record of salary being paid to her was simply an expense fraud on the tax authorities. He was asked whether he had agreed to have his wife's name be recorded as an employee so that the tax authorities could be defrauded. His answer was he did not. When I asked him whether he agreed to the increase in Mdm Teo's salary from \$4,000 or \$5,000 to \$8,000, he said the plaintiff had directed him to do so and had told him that the plaintiff was managing the company and the plaintiff would answer for what he himself was doing. He was asked whether he knew this was a criminal offence and his reply was "But what can I do? My brother insist on that way."

156 Regarding the dissolution agreement, the defendant agreed that the first draft of it had been prepared by a lawyer friend of his, one Mr Wong. He had discussed the situation with Mr Wong before the draft was prepared. He had consulted Mr Wong on behalf of both the plaintiff and himself but the plaintiff had never met Mr Wong. Subsequently two further drafts had been prepared because the plaintiff had pressed a hard bargain. The defendant was asked what the difference was between the first draft and the second draft and he responded that the first draft had referred to ACMKK but all references to ACMKK had been deleted from the second draft. Also, the price in the first draft had been stated as \$1,267,662 but in the second draft it was \$667,662. As between the second draft and the third draft, the only different was the removal of the word "post-dated" in relation to the payment cheques which appeared in the second draft.

157 The defendant was asked to explain what he meant by saying that the plaintiff had "pressed a hard bargain". His reply was that the plaintiff had insisted on reducing the price. He had done this from the time of the letter of 21 May 2004 when he had proposed \$1.7m and subsequently reduced his offer to \$1.2m. The defendant explained that he had accepted the change because he had no choice. He had no choice because everything the plaintiff wanted he gave him, what could he do since the relationship was "already fixed in that manner". The plaintiff had also insisted on there being two agreements instead of one.

158 The defendant was shown the first draft of the dissolution agreement and pointed to cl 2 of the same which reads:

The parties agreed and confirmed that at all material time the continuing partner [i.e the plaintiff] was and is the active partner having the control of the operation and administration of the said Business on behalf of the partnership and the Family Business of "Ang Chin Moh Kheng Kee".

He was asked whether it was he who gave the instructions for Mr Wong to put in this clause. His response was that it was not his instruction but was based on what his brother had told him. The plaintiff had told him that he was running the show. He had said this directly to the defendant before the defendant saw Mr Wong. When asked when exactly the plaintiff had said this, the defendant replied that it was after 21 May 2004. It was suggested to him that this evidence was contrary to his affidavit testimony that after confirming the breakup, the plaintiff had refused to communicate directly with him and had communicated only through TH Lim. The defendant's response was, yes, the plaintiff did not want to communicate with him but that did not mean that the plaintiff did not communicate with him. The plaintiff had asked TH Lim to ask the defendant to call the plaintiff and the plaintiff had then spoken to the defendant on the phone. He explained further that when he had said "refused to communicate" what he had meant was that the plaintiff had refused to see him personally not that he had refused to talk to him on the phone. When asked why the plaintiff had wanted the defendant to call him, the defendant said that the plaintiff wanted to tell the defendant how to do the dissolution agreement so that the defendant would be able to instruct the lawyer on the terms the parties wanted. He was asked whether the plaintiff had insisted that the lawyer be told to put in a clause to say that the plaintiff was in charge of the operation and administration of ACM/ACMCK. The response was that it was not that the plaintiff had insisted but the plaintiff had said to the defendant that he was running the show. It was understood when the plaintiff said that, that such a clause should be included in the dissolution agreement. It can be seen from the foregoing that the defendant's evidence became quite confusing when he tried to implicate the plaintiff in the drafting process which he had been the only person to discuss with Mr Wong.

159 The defendant was questioned on the cheques drawn on the ACM UOB account which had been deposited into his own bank accounts over many years. He admitted to these deposits. He was asked why cash cheques were deposited into his accounts. His explanation was that the company needed cash to run its business, especially after the third company had been set up (though he did not say so expressly, I understood the reference to "the third company" to be a reference to Western Casket) and each time the cash had run low he had been asked to put in money and so he had put in his own funds first and had reimbursed himself using the cash cheques. He was asked why he had not used the cash held by Ms Ang to run the business and his response was that this cash had been kept in a safe deposit box in a bank. He explained that she could not take out an amount of cash to keep in the office as a float because the plaintiff had said "don't touch the money".

160 The defendant was referred to a cash cheque dated 16 July 2002 for a sum of \$8,950. He confirmed that this cheque had been written by him and signed by the plaintiff. He maintained that if the particulars on the cheque had not been filled in first, the plaintiff would not have signed the

cheque. The defendant could not remember what the proceeds of the cheque had been used for. This was a cheque on the ACMKK account to which the defendant was not a signatory.

161 The defendant was shown another cheque, this one dated 2 October 2001 drawn on the ACM UOB account. He asserted that the cheque had not been pre-signed by the plaintiff. He knew this because he must have completed the particulars and then given the cheque to the plaintiff to sign. Then the cheque had been deposited in the defendant's account. The defendant was asked why he could not have signed this cheque himself since he was also a signatory for the ACM UOB account. His response was "Because when he gave me the cheques --- when he gave me the cheque, I will give him - I will let him to sign if I meet up with him." That answer seemed to indicate that the defendant would ask the plaintiff to sign cheques if the defendant met the plaintiff. However, when pressed as to why he had not signed the cheque himself, his response was that the plaintiff brought cheques to him so he would fill them up on the spot and let the plaintiff sign them. He explained that the plaintiff would bring cheques to him because the plaintiff needed money so he had asked the defendant to go and draw out the money.

162 The defendant was asked to explain the sequence of events in such cases. He responded that, first, the plaintiff would tell him that he needed cash. Then, in the evening, the plaintiff would bring a cheque to the defendant, the defendant would fill up the particulars and the plaintiff would sign the cheque. When asked how he had given the plaintiff the cash, the defendant's response was that the plaintiff would have gone over to his home to collect the cash. He said that regularly the plaintiff came to his house to collect cash and when he arrived he would have brought along, not the cheque book, but one cheque leaf from the cheque book kept in the office. The defendant was asked whether he was given the cheque in exchange for cash. His first reply was "I come out the upfront first". But, subsequently, he agreed that the cheque was given to him at the same time as he gave the cash to the plaintiff. He was asked why the plaintiff did not keep cash in his own home to use for such situations and the answer was that the defendant did not know. He was asked why he had not filled in his own name as the payee in such cheques. His reply was "What's the difference? Cash also can put into my account". He was also asked why he had to fill up the particulars for the plaintiff instead of the plaintiff doing it himself. The answer, given after some prevarication, was that that was the plaintiff's way as the plaintiff was a very domineering man. The defendant also said that this procedure took place quite often.

163 I find this story difficult to accept. The plaintiff was a signatory for the ACM UOB account and could have completed and signed his own cheques and cashed them at the bank without reference to the defendant. The defendant's own evidence was that the plaintiff deposited all the cheques paid to the business. If he went to the bank so often for that purpose, he could equally have gone to the bank to encash his own cheques. Further, the evidence was that the plaintiff was quite capable of filling in the particulars in a cheque leaf. He did not need to rely on the defendant for that. Even if he wanted the defendant to give him cash in exchange for a cheque, he could have written out the cheque in advance and simply handed it over to the defendant for the cash instead of insisting that the defendant fill up the particulars. Finally, if the defendant was intended to have the cheque and was going to deposit it into his own account anyway, why did it have to be a cash cheque? A cheque in the name of the defendant as payee would have been as easy to write and safer for the defendant to carry around.

164 The defendant was asked whether he had issued cheques drawn on the ACM UOB account in order to pay his personal expenses. His answer was yes, he had used such cheques to pay his credit card expenses and he had told the plaintiff what he was doing. He was then asked whether he agreed there was an agreement between the partners that no personal expenses should be paid from any money in the ACM UOB account. His response was that there was no such agreement.

165 Turning to the issue of the cheques paid to Mr Chia, the defendant testified that the Chias had been very close to Mdm Ng whom they had helped when she was sick. He agreed that he had drawn many cheques on the ACM UOB account which had been encashed over the counter by the Chias. He had done this because the Chias said they needed money and before Mdm Ng died she had told both the defendant and the plaintiff that if ever these persons needed help, they should help them. He asserted that before making loans to the Chias, he had spoken to the plaintiff and the plaintiff had agreed to so doing.

166 It was pointed out to him that on 10 October 2003, a cheque for \$6,450 had been encashed over the counter by Mdm Tay and on the same day she had encashed another cheque for \$5,250. Both these cheques had been signed by the defendant. He was asked why he had given Mdm Tay two cash cheques rather than one. His rather unconvincing reply was "They told me to issue in this manner". That was not all. Examination of the documents showed two more cheques, one for \$7,750 and the other for \$5,750, which were also encashed that day by Mdm Tay. The defendant said he did not know what Mdm Tay wanted the money for. She had just asked him to help and he had done so. He had not charged Mdm Tay interest.

167 The defendant was asked whether the Chias had repaid the total amount of \$25,200 borrowed on 10 October 2003. He replied that they had repaid the same in cash and he was the one who had collected the cash repayments. He was asked what had happened to the cash and his reply was "Put back in the company". He then elaborated that he had put the money in the drawer in the office because the business practice was only to bank in cheques. Cash had to be put into the drawer for subsequent use. The defendant agreed that there were no documents showing either the loan or the repayments and that he had not arranged for any such documents to be made. He admitted that he did not remember how much had been repaid. The defendant also said that the Chias had made regular repayments but he did not remember at what intervals or of what amounts. Additionally, after returning the loans, if they needed further money, they would borrow some more. So, they kept on borrowing and repaying and he did not make a record of the transactions because he trusted them. All this evidence I find to be extremely far-fetched.

168 The defendant disagreed vigorously with the suggestion that he had been stealing money from the business. He asked, rather aggressively, how the plaintiff was going to account for the amount of money that had been channelled to the third account. He said that this case had been brought because the plaintiff was afraid of the tax department investigating the amount of income that had not been declared. This accusation which was one that the defendant repeated several times is one the logic of which I cannot understand. If the plaintiff were afraid of being prosecuted, surely he would want to keep the facts secret instead of disclosing them in court.

169 Asked about the third account the defendant disagreed that he had been the one to suggest to the plaintiff that this account be used for the collection of cash payments from customers of ACM/ACMCK. He confirmed that he had been aware that cash banked into the third account was money belonging to ACM and ACMCK. The defendant maintained that he had told the plaintiff many times that there had to be a proper accounting of the money put into the third account and the plaintiff's reply was that if you did not lift up the wood, no one would know about the presence of termites and this was a family business. The defendant asserted that the plaintiff had used the moneys in the third account for his own benefit. He did agree, of course, that some of that money had been used to pay for his SFC unit.

170 The defendant made an issue about the fact that after proceedings started, he had asked the plaintiff for an account of how the money in the third account had been used and the plaintiff had not furnished the same. Counsel suggested to him that the plaintiff had not been in a position to do so

because all the records for payment were supposed to be kept by the defendant and the plaintiff did not have them. The defendant disagreed and maintained that all the records were with the plaintiff. He was then asked how he had known, as claimed in his affidavit, that as at December 2002, a total sum of \$2,286,301.71 had been banked into the third account. The defendant explained that before the split, he had taken all the plaintiff's bank deposit slips and photocopied them and had used these documents to obtain the figure. He agreed he had taken these documents from the office of ACM and that they had been kept in a file in the office. He had photocopied these slips in order to protect his own interests because his lawyer, Mr Choo, had warned him that the plaintiff was difficult to deal with. The defendant was asked if he knew why the plaintiff had kept all the deposit slips in the office. He replied that he did not. He agreed, after some shilly-shallying, that the bank-in-slips showed how much money was deposited into the third account from time to time. It was suggested to him that if the plaintiff had wanted to misappropriate partnership moneys by putting them into the third account, he would not have kept the bank-in-slips in the office. The defendant's response was that the plaintiff probably kept them there for convenience. The defendant finally admitted that he had known all along that the deposit slips were in the office.

171 The plaintiff's position was that maintenance charges for the defendant's SFC unit were paid from the third account. The defendant agreed that this was the position. He was then questioned about the cheques issued to pay such maintenance charges and he admitted that these cheques had covered both his own maintenance charges and those of Mr Chia who occupied another unit in the same development. He said that he had done this more than once over a period of two to three years because Mr Chia had asked him for help. Mr Chia had subsequently repaid the amount advanced on his behalf. The defendant acknowledged that he had not kept a record of the payments made on Mr Chia's behalf and asserted that repayments made by Mr Chia had been "put back in the company". Nothing was written down but he had told the plaintiff of such payments.

172 In relation to the asset statements, the defendant, while agreeing that he had instructed Mr Chew to prepare the same, maintained that he did so on the plaintiff's instructions. He had gone to Mr Chew's office to tell him what to do and had not had a long discussion but he had simply given the instructions. It had taken Mr Chew between two and four weeks to prepare the asset statements and when they were ready, the defendant collected them and handed them over to TH Lim to pass to the plaintiff. The defendant said he played no part in the preparation of the asset statements. He did not accept as true Mr Chew's evidence that it was the defendant who had supplied Mr Chew with the current information required for him to prepare the asset statements. When he was asked whether he was saying that Mr Chew had told a lie, he replied "It's not telling a lie but, er, I think the facts he get it all wrong". When it was put to him again that Mr Chew said the defendant had given him certain information, he said that he had told Mr Chew certain things *ie* about the Tannery and Ubi properties and the bank statements. The information was given at the first meeting. It took some time for the defendant to admit that he had given Mr Chew the values of the properties but he finally conceded that he had told the latter that the plaintiff had bought the Tannery property for around \$590,000. As the record shows, it was very difficult to get a straight answer out of the defendant on what he had told Mr Chew about the value of the Tannery property. He was equally difficult in relation to how Mr Chew had obtained the bank balances of the firms. He speculated that "maybe" Mr Chew had obtained these figures from the bank statements but then admitted that he had handed the bank statements to Mr Chew.

173 The defendant was asked questions about a commercial vehicle bearing the registration number GV2169. He confirmed that this vehicle belonged to his son-in-law. He said that his son-in-law did not have any commercial dealings with ACM/ACMKK but whenever there was something urgent to be done at night, Ms Florence Ang and her husband would help out. He agreed that vehicle GV2169 was under hire purchase from OCBC Finance and confirmed that he had issued cheques on the ACM UOB account

to pay the hire purchase instalments to OCBC Finance. When asked why he had paid such instalments from ACM's account, he responded that some of the money was his drawing. He was then asked if the plaintiff was aware that he was drawing this sum of \$2,480. His response was that he had informed the plaintiff of this. The defendant was asked how he kept tab of his drawings from the ACM UOB account. His answer was that as a partner, he could draw any reasonable amount. When it was put to him that he had used partnership moneys for many things without the plaintiff's knowledge, he disagreed and said that the plaintiff had asked Ms Florence Ang and her husband to help out in the night. He was asked whether the payment voucher for the OCBC Finance instalment stated "for account of Ang Chye Hin". He replied that it did not and he had to agree that a party looking at the voucher would not know that that amount was meant to be debited to his current account. He explained he had not declared this amount as part of his drawings for income tax purposes as he really did not know about accounting and about income tax liabilities. It is also notable that counsel for the plaintiff was able to produce a document showing that one of the cheques used to pay the OCBC Finance instalment was described as a cheque paid to "petty cash".

Ms Ang Choon Boy

174 Ms Ang testified in chief that she started helping out in the family business in 1975. From then until 1978, the records of the sales and purchases of ACM were kept by her sister, Ang Choon Siew. After her sister's death in 1978, Ms Ang took over the duty of keeping the records. She kept these records based on the instructions of the plaintiff. She also helped out with the washing, cleaning, minding of the office and attending to telephone calls and visiting customers. In June 2004, she left ACM after the plaintiff bought over the defendant's share in the business.

175 For all intents and purposes, the plaintiff was running the business from 1975. Between 1975 and 1993, the plaintiff had Mdm Ng's full mandate to run ACM and was a de facto partner of the business. As for ACMKK, for all intents and purposes, it was an asset of ACM although registered as a separate firm owned by the plaintiff. Ms Ang asserted that the plaintiff made all the decisions on employment, marketing, financing and everything else. He did not allow the defendant to interfere in the running of the business. She also corroborated the defendant's stand that he was not involved in the business except on Saturdays and Sundays in order to give her some time off.

176 As regards the CPF contributions for Mdm Teo, Ms Ang confirmed that her mother had asked the plaintiff to pay such contributions from 1980 or 1981. The contributions had been made with the plaintiff's full knowledge and consent. It was a lie for the plaintiff to say that he was not aware of it. She also asserted that the plaintiff was fully aware of the CPF contributions made for Florence Ang and Teo Ah Sai.

177 As the business was a family business, Mdm Ng had always insisted that the plaintiff should take care of the defendant. So when the plaintiff bought the Tannery property in his own name, Mdm Ng told him to give the defendant a share in it. In 1993, on the instructions of Mdm Ng, the plaintiff helped the defendant to purchase the SFC unit. He also assisted in the purchase by adjusting the CPF contribution of Mdm Teo. Originally her salary was only a few hundred dollars but in 1993 or 1994, it was increased so that her CPF contribution could be used to pay part of the mortgage instalments for the SFC unit.

178 On income tax, Ms Ang asserted that the plaintiff paid the income tax of the defendant and his wife. This was because the defendant had to pay higher income tax due to income from the business and his salary as a civil servant. The defendant was not given his share of the profit by the plaintiff.

179 Ms Ang said it was not true that the defendant was entrusted with the accounts,

administrative and financial decisions from 1975 by Mdm Ng and the plaintiff. From 1993 to 2004, the plaintiff was the one who controlled these matters. The plaintiff would give her receipts or slips of paper and she would then record, on foolscap sheets, details of sales and services rendered. Before the records were handed over to the accountants to be written up, she would tell the plaintiff to go through the records.

180 In cross-examination, Ms Ang was asked about the \$730,000 that she had kept in cash for the business. She stated that the money had been entrusted to her over a period of time between 1980 and 1992. Each year several sums had been given to her and she had put the money into the safe deposit box in accordance with the plaintiff's instructions. She did not keep any record of the sums given to her but the plaintiff had kept a record in a book which he retained in his custody. Ms Ang then asserted that the defendant had never known that the plaintiff had entrusted money to her. She said she had not told the defendant about this because there was no reason for her to tell him even though he was a partner in the business. She said that she would not have told the defendant because the defendant did not participate in matters of the business. The money was entrusted to her from 1980 onwards and the defendant only became a partner in 1993. After the defendant joined the business, the plaintiff stopped giving her cash to safe keep.

181 The witness maintained that the plaintiff had become a partner in the business in 1978. She was told that the records showed that he was registered as a partner in 1975 and withdrew in 1976 but she said that she could not remember these dates from long ago. What had happened was that after her father died, it was Mdm Ng and the plaintiff who were running the business but Mdm Ng was actually carrying on business in name only and everything was run by the plaintiff.

182 In relation to the accounts, what happened was that the plaintiff would jot down the sales or other transactions that he had handled and she would then copy out the details on foolscap sheets. She would show these entries to the plaintiff to make sure that everything was all right. The plaintiff would then ask her to hand the sheets to the defendant to be submitted to the accountant. She kept the records in Chinese and when there were forms to be filled up in English, those were handled by the plaintiff. When asked again, she confirmed that forms like the CPF returns were all completed by the plaintiff. She was asked whether she knew that the bank and CPF statements and other correspondence were sent to the defendant's address. Her reply was yes, that was on the instructions of the plaintiff. The reason for such instructions was that previously the correspondence was sent to ACM's address, but the letter box was very small and the letters overflowed and sometimes went into the neighbouring box and the neighbours had to hand the correspondence to ACM. So then the plaintiff decided that the mail would be diverted to the defendant's address. It would be noted that this account was not quite consistent with the defendant's account in that he had asserted that the documents had been wrongly delivered by the postman.

183 Ms Ang said she saw the defendant handing over documents to the plaintiff from time to time but she could not describe what documents those were. It was the defendant who told her that these documents were the diverted correspondence. She was asked why the plaintiff had not had the correspondence sent to his own address. Her response was that the plaintiff said that it was more convenient to send it to the defendant's address because the defendant was living near to the office. Also, the plaintiff was very busy running the business and had no time to take care of that. Ms Ang's position was that, in the end, the documents were taken care of by the plaintiff because he would sign them. When she was asked what extra work it would have been for the plaintiff to have had the documents delivered to his house by post and then taken them to the office when he went there, the witness replied that that had been the plaintiff's decision because it was something that he decided to do that way. She said that it was not for her to question the plaintiff.

184 This explanation really does not convince me. If it was only a question of an overflowing letter box, then since the plaintiff was in the office everyday (as Ms Ang herself confirmed), it would not have been any extra trouble for him to bring the correspondence over with him from his home rather than asking the defendant who had a full-time job elsewhere to go to the office everyday simply to deliver the mail.

185 Ms Ang was questioned on the frequency of the defendant's visits to the office during the week. At first she replied by saying "He's working, how does he come?" Then, when her attention was drawn to her averment in her affidavit that the defendant would sometimes go to ACM's office on weekday mornings, she responded that he hardly went there. He only went there once in a long while and that was when he had to accompany her to the office because there were dogs in the area and she was scared of going alone. On further questioning, Ms Ang confirmed that there were dogs in the area everyday but when asked why in that case the defendant did not need to accompany her everyday, her reply was that it was when it was very early in the morning and she did not dare to go to the office alone that the defendant went with her. She refined this answer by saying that the defendant only went to the office early in the morning on the occasions when she asked him to go because she was scared of the dogs. On such occasions, she would leave for the office between 5am and 6am after telephoning the defendant who would come to her house. They would then either walk or take a bus to the office. Once in the office, the defendant would unlock the door, do a bit of cleaning and then leave for his own employment.

186 That was another story that Ms Ang told that leaves me incredulous. I do not accept that if the defendant only went to the office in the morning in order to protect Ms Ang from the dogs and those dogs were always in the vicinity, he did not accompany her every morning but only once in a long while. On the other hand, it was interesting that she should say that he hardly went to the office because it was her position that he was the mail man. It would have made more sense had she said that he accompanied her to the office everyday so that he could deliver the business mail received at his home.

187 The length to which Ms Ang would go to bolster the defendant's position that he did not play a significant role in the business but only helped out occasionally was shown when she was asked questions about the defendant's attendance at the office at weekends. She had stated in her affidavit that he helped out when she was off on Saturdays and Sundays. It was suggested to her that therefore the defendant would go to the office at least one day a week. She responded "Well, depends because at times when he was busy, he would not be there". She was clearly not willing to accept a regular weekly attendance at the office by the defendant. She also testified that occasionally when she was there on a Saturday or a Sunday, the defendant had also been there and she was asked what he had done in the office from her observation. Her response was that he did "a bit of work" and she elaborated by saying that he would open the door for her and if there were customers, he would entertain the customers and ask them to take a seat. She was asked whether he did any paperwork. Ms Ang gave an emphatic "no" in response. She was told that an employee, Mr Chua Chin Karr, had seen the defendant doing paperwork in the office on the weekend. Ms Ang then modified her answer to say that there had been times when the defendant had to do some writing. For example when there were telephone calls he had to take down addresses. She explained that the plaintiff had actually given instructions to the defendant not to meddle with the affairs of the business and therefore the defendant was only taking care of certain things like answering the telephone. When questioned she said that the plaintiff had told the defendant this long before the defendant became a partner so even when he became a partner, the defendant had no right to be involved in the affairs of the business.

188 Ms Ang was asked about the situation before 1993. She said that at that stage, the defendant

had a full-time job and did not do very much because the plaintiff would not let him. The plaintiff wanted all the rights of the company. She was then asked if the defendant had done nothing before 1993, why Mdm Ng had made him an equal partner in the business instead of rewarding Ms Ang herself for the hard work over the years. She replied that her mother's idea was that there were only two males in the family and she herself was only a sister and only needed to help out. The two brothers had an equal share in the partnership because Mdm Ng gave them those shares. Although they were equal partners, the plaintiff had the right to tell the defendant what to do because all along it was the plaintiff who had been taking care of everything.

189 At times it was difficult to get a straight answer from this witness. She was asked whether it was not true that while Mdm Ng was sole proprietor, all documents that needed Mdm Ng's thumbprint were passed to her by the defendant or Ms Ang herself. Her response was "then why did not mention Hong Hin?" The question was repeated and this time the answer was "Not me". Then the question was repeated in relation to the defendant and her answer was that she would have to think about it because it was such a long time ago. Finally, she said that she could not recall.

190 Ms Ang was asked in relation to the CPF contributions made for Mdm Teo, the basis of her assertion that the plaintiff had been fully aware of such contributions all along. Her reply was that those were Mdm Ng's instructions and that Mdm Ng had told the plaintiff that Mdm Teo's health was not good and it was good for her to have something for her old age. As for the contributions for Teo Ah Sai, Ms Ang said that those were the plaintiff's own idea because Teo Ah Sai had helped out in some funerals. The same went for Florence Ang – the plaintiff had given the defendant the instructions to pay CPF contributions for her because he wanted to maintain a certain number of employees on record.

191 No CPF contribution was made for Ms Ang herself. She said that was her mother's decision. I asked why it was when the plaintiff wanted to have a certain number of employees on record he had not made Ms Ang herself an employee since she in fact was working in the business. Her response was that it was her mother's idea that she should not be given CPF. She explained that her mother was worried about Mdm Teo because of the latter's heart condition and that was why CPF was provided for her. When it was suggested to her that it was odd that she who was working in the business did not receive CPF, when a person who did not work there obtain this benefit, Ms Ang then asserted "I did not want to have it because I felt it was sufficient for me to be paid and I was ... yes, I had my meals, I had enough and they were my brothers. I would not want to be so calculating". Ms Ang added that she knew that the plaintiff knew about Mdm Teo's CPF contributions from the very beginning because she had heard the plaintiff telling Mdm Teo not to worry and that he was contributing CPF for her. The plaintiff also told Mdm Teo not to bother with the company's matters and that she need not worry about the business.

192 Whilst I can accept that Ms Ang felt it was sufficient for her to be given a monthly allowance and provided with a home and meals and did not also require CPF contributions for herself, I think that the evidence she gave about the plaintiff's conversations with Mdm Teo was made up. It was surprising that these assertions, if true, only came up during cross-examination and were not put in her affidavit as the basis of her knowledge that the plaintiff had consented to such contributions from the very beginning.

193 Ms Ang clarified that all her expenses were taken care of by the business. It paid for her meals and also paid the expenses associated with her flat in St George's Road. The instalments for the flat were paid for by ACM. She did not need any CPF contribution since the business was paying for the flat.

194 Ms Ang was referred to para 19 of her affidavit where she had stated that the plaintiff had paid the defendant and Mdm Teo's income tax and was not given his share of the profit by the plaintiff. She was asked how she knew that the defendant had not been given his share of the profit. Her answer was that the plaintiff had said that the defendant already had a job and since that was the case he was paying the income tax. When the question was repeated her answer was "because all the powers were with Hong Hin". She confirmed that it was her understanding that the defendant did not take any drawings as a partner. She had asked the defendant about this and he said that he did not want to withdraw any money because everything was handled by the plaintiff and the defendant did not want to sour the relationship. Ms Ang was then told that the defendant had testified that he had withdrawn moneys from the business account to pay for various personal expenses. She asserted that she was aware of that. It was then put to her that her statement that the defendant did not withdraw money as a partner was not true. Ms Ang's response was that what counsel was saying had made her confused. Then she said that she had not heard the question correctly and reaffirmed that if the defendant had withdrawn money it was to pay towards the purchases of the business.

195 The witness proved to be rather confused over what were expenses of the company. She was asked whether the management fees and service charges paid for the SFC unit were the defendant's expenses or ACM's expenses. She asserted that since these expenses had been paid by ACM for the defendant, they were to be considered ACM's expenses. On pressing, she clarified that in her mind, whatever bill ACM paid, that bill must have been ACM's expense.

196 When Ms Ang was pressed on the issue of whether payments made on behalf of Mr Chia were expenses of the business, her response was that Mr Chia had paid back the company. Ms Ang did not know how much Mr Chia had borrowed. She repeated the story that moneys given to Mr Chia were loans made because Mdm Ng had said the family should take care of him. She had heard her mother give such instructions to the plaintiff and the defendant. It was after Mdm Ng died in 2000 that Mr Chia had started borrowing money. He had approached both brothers for money. She was asked how the money was lent and her reply was that at times it was in cash and at times it was by cheque. When asked who handed the cash to Mr Chia, Ms Ang replied that she was confused and now she thought it was not cash. Then she repeated that it was by cheque "at times". When asked if it was by cheque at times, how was it lent at other times, Ms Ang said that she must think about it and then she said she could not recall it. When asked who had drawn up the cheques, she said "let me think about it also". When asked whether the defendant wrote the cheques, her reply was "One or two cheques I should think so. More than that, I am not sure". When asked whether the plaintiff wrote the cheques, she responded, "Well, this is such a long time ago. I cannot remember".

197 Ms Ang also gave evidence on repayments made by Mr Chia. She asserted that the loans were repaid in cash and that Mr Chia went personally to the office to hand the cash over. She was asked who Mr Chia had handed the cash to and gave a rather oblique reply. She said that at times when the plaintiff was not around, Mr Chia would pass her the cash and after that when the plaintiff came to the office, she would hand the money to him. I asked whether she had given Mr Chia a receipt as a record of how much had been repaid. Her reply was that she had written the amount that was repaid on the piece of paper that was used to bundle up the cash. She had not written it in a book so that there was a record or issued a receipt "because he [*ie* Mr Chia] is our own people". When asked how she knew that Mr Chia had actually repaid all that he had borrowed from ACM, her reply was that it was because he had made many repayments. When it was suggested that since she did not know the amount lent and the total amount repaid, she could not be sure that everything that had been lent had been repaid, she agreed that she did not know but repeated that Mr Chia had made many payments.

198 Ms Ang testified that once or twice the defendant had collected repayments from Mr Chia. The

defendant would then telephone the plaintiff and tell him about the repayment. Ms Ang said she knew this because the defendant informed her of it. When asked when she had been informed, she said that the defendant would give her the cash, tell her that he had already telephoned the plaintiff about it and remind her to hand the cash to the plaintiff.

199 I do not believe any of Ms Ang's evidence about the loans and the repayments. She was confused about how the loans were made and although she was taking the position that the plaintiff knew all about it, she could not bring herself to go so far as to say that he wrote the cheques. Whilst asserting that she had collected repayments, she had not recorded any of these repayments and had to concede that she could not say whether all the loans were repaid since she did not know how much was lent and how much was repaid. Her story of the defendant receiving the money from Mr Chia, telephoning the plaintiff about it, then coming to the office and handing it to her to be given to the plaintiff, was incredible. Her story that she heard her mother instruct the brothers to help Mr Chia was, in my view, another afterthought.

200 Ms Ang was asked about what happened when there was no cash in the office to pay suppliers. She said that in that situation, the plaintiff would instruct her to obtain the money from the defendant. After the defendant paid it, then that same evening, the plaintiff would go to the defendant's house and the defendant would write a cheque and the plaintiff would check the amount and sign the cheque. Usually, the defendant would have some cash at home. The sequence of events that was extracted from Ms Ang after protracted questioning was that first a supplier would come to the office asking for payment and there would be insufficient cash to meet the bill. She would then call the plaintiff and inform him and the plaintiff would tell her to call the defendant. She would do so and the defendant would say he had money at home but that he could only hand it over at night because he was in the office. The supplier would then be told that he should come back at night for his payment. So that night Ms Ang and the plaintiff would go to the defendant's house to collect the money.

201 Ms Ang was asked why the plaintiff could not have just gone to the bank to cash the cheque when he was informed that more money was needed. Her response was that the plaintiff was not free because he was attending to business. When asked why she could not direct the supplier to the plaintiff's location to collect the cheque from him, she said the cheque book was in the office. Then when asked why the plaintiff could not come back to the shop at night and write out the cheque for her to hand over to the supplier the next day, the response was "Well, he did not think of it immediately and then he just asked me to approach Chye Hin". I asked if this happened whenever there was not enough money in the office and her answer was yes.

202 The witness said that she was not able to issue cheques herself to the suppliers because she had no account. It was put to her that there were pre-signed cheques in the office but she disagreed and said there were never any pre-signed cheques there. When asked if she had ever drawn any cheques for suppliers, her answer was no. She was shown a cheque dated 6 June 2001 drawn on the ACM UOB account and she identified the Chinese handwriting on the cheque as being her handwriting. She then explained that she did write this cheque in favour of a supplier but it was not signed by her. She said that at the time she filled in the particulars the cheque had not yet been signed. She explained that she would have been asked to write the cheque when the supplier was in the office and she would have then shown it to the plaintiff who would have signed it after checking that it had been correctly written. When asked why the plaintiff could not write the cheques himself, she responded that he was not free as he was attending to the business.

203 Counsel informed Ms Ang that Mr Ong Chin Kee had testified that Ms Ang had actually filled up cheques that had been pre-signed by the plaintiff in order to pay Mr Ong's bills. Ms Ang protested

that that was not true. She asserted that Mr Ong had business dealings with the plaintiff and would definitely say something in the plaintiff's favour.

204 At one stage, Ms Ang stated that the plaintiff had not signed income tax returns and accounting documents in blank. He had, however, signed other documents in blank and these included the utilities bills, the telephone bills and miscellaneous bills. When this cryptic answer was explored, it turned out that she was saying that the plaintiff would sign blank cheques and, subsequently, on the defendant's instruction, she would fill in the amount of such cheques to pay expenses like the utilities bill and then before she posted the cheque or handed it over in payment, she would show the cheque again to the plaintiff for his approval. She confirmed that it was the defendant who instructed her to do all these things to obtain the plaintiff's signature. The plaintiff had asked the defendant to take care of unimportant things like the utilities bill and the telephone bill. Apart from anything else, this evidence contradicted her earlier denials about pre-signed cheques.

205 As can be seen from my comments in relation to specific portions of Ms Ang's evidence, on the whole I did not find her to be a credible witness. Like her brothers, she was long winded and had to be stopped several times in the course of her evidence and advised to get to the point and not to stray off into irrelevancies. She prevaricated and often gave evasive answers.

The other witnesses

206 Mdm Teo Bee Kiau stated in her affidavit of evidence-in-chief that she had married the defendant in 1975. After her marriage, she had lived with her mother-in-law and some of the defendant's siblings in a flat in St George's Road. As a member of the Ang family, she helped Mdm Ng in the household chores and the daily cooking for the family. The food was sent to the ACM office to feed the plaintiff and his sisters. She also helped sew garments for funerals and answered phone calls at night.

207 Mdm Ng appreciated Mdm Teo's contribution and instructed the plaintiff to arrange the CPF contributions from ACM for her. The plaintiff signed the IR8A forms showing her salary and the CPF contributions for more than ten years. However, she had not received any salary. She produced forms signed by the plaintiff for the years 1994, 1998 and 2001. For the first ten years, her salary was a few hundred dollars a month but in 1993, it was adjusted by the plaintiff so that she would be able to utilise \$640 a month from her CPF contribution to pay towards the mortgage. Her income tax was paid by the plaintiff.

208 Under cross-examination, Mdm Teo said that Mdm Ng had authorised her CPF contributions in 1981. When asked how this authorisation had been given, the response was "Well, my brother-in-law, Ang Hong Hin, had approved it. He had signed it". When the question was repeated, the response was that Mdm Ng had gone to check with the plaintiff and the plaintiff approved. Mdm Ng had also informed Ms Ang and the defendant about the CPF contributions for Mdm Teo. At the time she told the defendant, the plaintiff and Ms Ang were also present. Mdm Teo was asked what Mdm Ng's reason for this decision was. At first she replied that Mdm Ng did not give her the reason. Then she said that Mdm Ng had stated that Mdm Teo was in poor health and the money was for her so that in her later years, she could use it to seek treatment.

209 Mdm Teo was asked whether she was aware that in 2002, her CPF contribution was \$2,160 per month. She responded that she was not sure about this. Counsel asked whether it was right to say that all these matters were handled by the defendant and her response was no, it was the plaintiff because he was in the shop and everything was handled by him. She agreed that she assumed that the plaintiff was handling her CPF matters just because he was in the shop. As regards the regular

statements sent by the CPF Board, Mdm Teo stated that Ms Ang would take them to the office to hand to the plaintiff. She admitted that she had never seen them handed over to the plaintiff but assumed that Ms Ang was giving the documents to him.

210 Mdm Teo's attention was drawn to page six of her affidavit which was a copy of her IR8A form for 1982. She was asked what that document was and she said she was not sure of it. A similar question was posed in respect of page 7 of her affidavit which was the IR8A form for 1984 and again she did not know what it was. When asked why she had referred to these documents if she did not know what they are, her answer was that she had not seen those papers but she had contributed to CPF. She similarly denied having seen other documents that had been annexed to her affidavit but, subsequently, averred that these documents had been exhibited to prove the CPF contributions.

211 When asked how she knew that the plaintiff had signed the IR8A form, Mdm Teo's response was that Mdm Ng had said that the plaintiff had told her this. She asserted that for ten years the plaintiff had said in her presence that he had signed her IR8A form.

212 The witness was not able to identify many of the documents attached to her affidavit. She explained that she did not understand English. The documents had not been kept or provided by her and they had come from the shop. When she went to see the lawyers to sign her affidavit, the documents were already attached to it.

213 In relation to her assertion that in 1993, the plaintiff had adjusted her salary so that she would have \$640 towards the mortgage, she was asked what her new salary was. Her reply was that it had been \$8,000 a month in 1993 and that she knew this because the plaintiff had mentioned it. She was told that according to the CPF statement, she did not receive \$8,000 in 1993 but only in 2002 and asked to explain how the plaintiff could have told her this in 1993. The witness said she was not sure. She agreed that she did not bother about her CPF contribution and did not interfere in such things and left them to her husband and/or the plaintiff to handle.

214 Overall, it appeared to me that Mdm Teo was not of much assistance to the defendant in his case because she was ignorant and vague about too many details.

215 Mr Choo Si Sen gave evidence that on 21 or 22 May 2004 the defendant came to see him about his partnership dispute with the plaintiff and showed him a copy of the plaintiff's letter of 21 May 2004. Mr Choo helped the defendant draft his reply of 24 May 2004 and sent this letter by fax from his office to the plaintiff on 25 May 2004. He then telephoned the plaintiff and suggested that a formal agreement be drafted and signed and a down-payment be made to the defendant before the defendant withdrew his name from the ROC records. The plaintiff did not agree and insisted that the name be removed before payment.

216 In court, Mr Choo confirmed that he had gone through the letter of 21 May with the defendant. He could not remember very much else as the defendant had gone to see him as his friend and not a client. Thereafter, he had spoken to the plaintiff and he vaguely remembered that the plaintiff had mentioned that he wanted to pay the defendant by instalments. Mr Choo had spoken to the defendant about this but could not quite remember the defendant's response. He was then told that the plaintiff's instructions were that Mr Choo had called again and said that the defendant insisted on full payment in one lump sum. Mr Chew responded that that could well have been the case. He remembered advising the defendant to make sure his interest was well protected but when asked whether he specifically told the defendant that he should photocopy documents in order to protect himself, Mr Choo said he could not remember saying that. He added that when he told the defendant to protect his own interests, what he had in mind was the payment terms and the indemnity.

217 Mr Chua Chin Karr was employed by ACMKK from 1995 to 2002. He worked at the firm's office in Geylang Bahru but did not know that that office housed both ACM and ACMKK. As far as he was concerned, there was only one business because there was no division of labour, logistic support, marketing and operational management. As an employee of the business for ten years, he knew both the plaintiff and the defendant and, he said "I look into their eyes, as both being my bosses".

218 Mr Chua was recruited by the plaintiff as a driver. He learnt the business from following the plaintiff around and after a while was promoted to be a supervisor. At the peak, he supervised 15 workers. As part of his duties, he assisted the plaintiff in collecting payment. All cash and cheques collected were handed to the plaintiff. The plaintiff worked full-time managing the operation of the business, attending to customers, training the workers, paying the salaries and running the daily routines of the business. In 2001, the plaintiff set up Western Casket which had its operations in Toa Payoh. Mr Chua was asked to supervise the workers who had been assigned to work at Western Casket.

219 The plaintiff was assisted by Ms Ang and the defendant. Ms Ang worked full-time whilst the defendant went to the office on Saturdays and Sundays. Sometimes the defendant also went to the office in the morning but he would leave by 7.45am.

220 In court, he said that three members of the Ang family had run the business *viz* the defendant, the plaintiff who was the boss and one sister. When referred to his statement "I look into their eyes, as both being my bosses", Mr Chua confirmed that he was referring to both the plaintiff and the defendant as his bosses. He was not sure whether Ms Ang was his boss as well because normally he did not take instructions from her. He thought the defendant was his boss because sometimes the defendant gave his instructions and also because the plaintiff had told him that the defendant was his elder brother. So he supposed that since both men were in the family business, the defendant must be a boss.

221 Mr Chua confirmed that the defendant's morning visits to the office took place occasionally on weekday mornings. However, he regularly went in on the weekend. On Sunday, he would sometimes stay the whole day but on Saturday, he would stay for just a while. When he was in on Sunday, the defendant answered the telephone and Mr Chua would also see him doing some writing. The witness was not sure, however, what the defendant was writing.

222 As regards the plaintiff, he confirmed that when he stated that the plaintiff undertook "all the daily routines of the business", he had been referring to matters like the schedule of jobs for the day and the schedule for monitoring workers. He did not know whether the plaintiff attended to the accounts or not. The witness was also unfamiliar with Mr Chew, the accountant.

Findings

223 I have set out the evidence in the sections above and my views on the quality of the same in considerable detail in order to provide an understanding of the context in which I have come to make the findings and the decisions that are contained below. Whilst there were numerous documents produced in court, I am satisfied that the documents alone do not tell the whole story and, in certain respects, the documents have been misleading. This is because the business was not professionally run so not only were the records kept in a rather disorderly and unsystematic manner, but also the true position was often either deliberately omitted or misstated. I have thus had to try and piece together the true position from both the oral evidence and the documents and the difficulty in so doing has been compounded since, as I have indicated above, none of the main witnesses from the family has been wholly truthful in his or her testimony. I should also say that generally I found the

evidence of the neutral witnesses, *ie*, those who were not family members, to be truthful and reliable.

224 My first finding is that at all material times, ACM and ACMKK were run as, and were considered to be, one business. I do not accept that the plaintiff was the sole proprietor of ACMKK and was the only person with the right to the income and assets of this business. At the beginning when ACMKK was registered, the plaintiff was working for the family business ACM and ACMKK became an extension of this family business and an integral part of the same. At that time, ACM was run by Mdm Ng. Although the plaintiff may have been actively managing the business from 1975 and making the everyday business decisions, I am satisfied that he deferred to his mother as the ultimate boss of ACM/ACMKK.

225 My second finding is that from the mid 1970s, both the defendant and the plaintiff were actively involved in the business. The defendant asserted that he was the one who suggested that ACMKK be registered in order to obtain business from the Heng Chew Hee Quan community and that evidence shows his involvement from an early stage. I accept that the plaintiff was the field manager and did the running around, the marketing and the interaction with customers. I also accept the plaintiff's account that the defendant was heavily involved in the administration and bookkeeping from that time. It was clear from the evidence that Mdm Ng was a traditional woman and depended on her sons to run the business and was also more inclined to give them responsibility and recognition than her daughters. It was natural for the defendant who had a full-time job outside the business to have the task of keeping the accounts and the administration of the business as this task could be carried on outside normal office hours. Although the plaintiff was recorded as a partner of the business, he held this position for a very brief time and I do not think that, simply because of such registration, he was a *de facto* partner of Mdm Ng in the business. As her later actions show, Mdm Ng treated both her sons equally and regarded them as equally entitled to benefit from the business. There was no strict demarcation of ownership between the brothers and Mdm Ng's view was, apparently, that all her children were entitled to work in and to benefit from the business albeit in different ways and to a different extent depending on their gender as shown by the different treatment accorded to the sons and Ms Ang notwithstanding the latter's whole-hearted and full-time devotion to the business from 1978 onwards.

226 In 1993, Mdm Ng formally gave the business to her sons by making them partners. Her intention was for them to benefit equally and for them to continue in their respective roles as field manager and business development operator (the plaintiff) and backroom accountant and administrator (the defendant). As far as the defendant is concerned, I think that he played his role to the hilt. I do not accept that he only helped out on a casual basis. He was in the office regularly and the evidence showed that he dealt with the accountants and kept financial records and also did other administrative tasks. The fact that all the banking correspondence and other documents (apart from the correspondence for the third account) were sent to him for many years was extremely telling. There was no good reason for the correspondence to be directed to his home address if he was not the person in charge of the records and administration. It would have been much more convenient for such correspondence to be addressed to the plaintiff if the defendant's only involvement was to clean the office every now and again.

227 It is not clear exactly what agreement was made on partners' drawings during the subsistence of the partnership. The defendant asserted that either partner could withdraw any money he wanted without the prior consent of the other but in my judgment, there was no specific agreement to this effect. I accept the plaintiff's evidence that the defendant's housing loan and maintenance charges were paid for by the business, as were his grocery and utility bills. He also got an *ang pow* annually. The plaintiff declared himself to be entitled to a monthly salary of \$3,800 and a bonus of \$11,400 but there was no evidence to substantiate his assertion that he actually limited himself to this

entitlement. He asserted that he only drew \$1,000 a month and left the rest in the third account but there was no way of verifying this arrangement since the plaintiff often collected cash from the customers and the evidence from the accountants was that they could not reconcile the cash collections and the amounts banked in. Also, since the third account was used to hold money belonging to the business, there was no good reason for the plaintiff to leave his personal funds there. It appeared to me that the plaintiff was able, had he wanted to, to have free and unrecorded access to the business's funds. It is also probable that the plaintiff had no hesitation in using money from the business for his personal use. It is clear that he did use the business funds for personal matters like the outgoings of Western Casket and prayers undertaken on his behalf by TH Lim. The defendant, however, also used the funds of ACM/ACMKK for his own benefit without the authority of the plaintiff. I will comment further on this subsequently.

228 I accept that the defendant was overall in charge of keeping the accounts of the business although Ms Ang also kept records while she was in the office during the week. The work of reconciliation was, however, that of the defendant and it was he whom the accountants consulted whenever they had any questions regarding the accounts and the entries written up by Ms Ang and the defendant. Further, after it was agreed that the third account should be used for cash and cash cheques received by the business, the plaintiff ensured that all bank statements were taken to the office for recording purposes and the defendant was fully aware of this and had access to the same at all times for the purpose of his records. The defendant was able to copy these statements in order to compute the amount of deposits and withdrawals from the third account that took place over the years. His explanation that he made such copies and did the computation only to protect himself in relation to the split is a feeble story which I do not accept.

229 I also find that the plaintiff pre-signed cheques for the convenience of the administration of the business. These cheques were used by both Ms Ang and the defendant to pay various bills on behalf of the business. The defendant also misused some of these cheques. I do not believe his story that he exchanged cheques for cash and that all cash cheques paid into his account were in reimbursement of moneys which he had advanced to the business at the plaintiff's request. I also find that the cash cheques given to the Chias were given in breach of the defendant's duty as a partner of the business. I do not believe that these were loans to the Chias or, if they were loans, that they were loans authorised by the plaintiff. There is no evidence of any repayment by the Chias either of the loans or of any sums paid on their behalf like their maintenance charges. Both the defendant and Ms Ang told incredible stories regarding repayment to cover up the wrong-doing of the defendant.

230 In respect of the other documents, I find it difficult to believe that the plaintiff signed all of them in blank or that he was completely unaware of their contents. In respect of the accounts, however, I accept that he signed them on trust and did not pay too much attention to the details. He would not have been aware of how the expenses like salary and CPF for the workers were broken down. However, he must have known the amounts shown as his salary and must be responsible for the same. It is also significant that the plaintiff's income tax returns were prepared by his own accountant and he cannot be assumed to have signed those returns in blank without regard to the figures declared as his salary. The plaintiff definitely drew more than \$3,800 a month and \$11,400 in bonus from the firm and that is why he did not object to the way in which the tax returns were drawn. Whether the full amount drawn by him each year was reflected in the tax returns is another matter. It is quite probable that his income was undeclared and that even he himself did not have a clear idea of exactly how he took as he was not fastidious about the distinction for moneys for private purposes and moneys for business purposes.

231 I must, however, also state that I do not accept that the plaintiff had as basic a command of English as he wished me to believe. The plaintiff is a dynamic businessman whose knowledge of

English is more than sufficient for business purposes and for understanding general correspondence. His conversation with Mr Choo showed that. He also had access to advice from friends and legally trained relatives and I do not believe that he was completely unaware of the contents of the draft dissolution agreement. I accept that he signed it knowing its contents though he perhaps did not realise the significance of the statement that he was in charge of all administrative matters of the business. On the other hand, I must also say that I accept the plaintiff's story that the dissolution agreement and the acknowledgement were largely drafted by the defendant. Although the defendant accused the plaintiff of driving a hard bargain, in this respect what the plaintiff did was to concentrate on the price and payment terms and to insist on the removal of references to ACMKK. Otherwise, the language of the documents was that provided by the defendant and his advisers. The defendant admitted that the first draft of the dissolution agreement was prepared by Mr Wong, his lawyer and that he was the only person who spoke with Mr Wong on the matter. I accept that it was the defendant's idea to insert a clause providing that it was the plaintiff who was the active partner having control of the operation and administration of the business. His assertion that he put this in because the plaintiff told him that the plaintiff was the one running the business was unbelievable.

232 I had some difficulty in deciding who it was who initiated the breakup of the business. I do not accept the plaintiff's story that he first found out about the CPF contributions for Mdm Teo in February 2004. Mdm Teo had been receiving such contributions since the 1980s and in the 1980s, only she and the plaintiff had received such contributions from ACM. Whilst at that time the contribution forms were executed by Mdm Ng, I think he must have known about Mdm Teo's contributions and also the fact that these contributions were increased in 1993 when the SCF unit was purchased. In a family business like ACM/ ACMKK run by all three siblings and their mother, and given the constant interaction between the family members both at work and at home, these contributions could not have been concealed from the plaintiff for a period of more 20 years. What I think the plaintiff did not know and what shocked him was the indication that Mdm Teo's apparent salary had been increased to \$8,000 in 2002 so that the CPF contribution was also increased substantially to more than \$2,000 each month. It was when the plaintiff saw Mdm Teo's CPF contribution slip in 2004 that he found out about the increased salary and was upset by it. The fact that it was only the increase rather than the contribution *per se* that concerned him would also explain why he did not bring it up, even on his own story, in a more confrontational way with the defendant and only mentioned it once to his brother. The plaintiff's story of how he brought up the matter to his brother was a weak one and it appears highly unlikely to me that if he badly wanted to obtain an explanation of what was going on, he would have allowed himself to be diverted from the topic by a customer's request. Even if he had left midway during the discussion, he would surely have brought it up again later.

233 As regards the defendant's story that he remonstrated with the plaintiff over the treatment of the workers, it seemed unlikely that that alone could have initiated the split. It should be noted that on this issue Ms Ang agreed that the way that the plaintiff treated the workers at Chinese New Year was the reason for the split though she subsequently added that another reason for the breakup was that the defendant was too honest. However, having considered it further, I have come to the conclusion that the plaintiff was indeed the person who wanted to end the partnership. He was probably not very happy about sharing the business with the defendant after the death of Mdm Ng. Both the defendant and Ms Ang said that the plaintiff's attitude changed after this and that he became more greedy. It was also clear that the plaintiff considered the defendant to be a "part-time" partner and that he had shared the business with the defendant only because of Mdm Ng's insistence. Thus, perhaps the combination of the discovery of Mdm Teo's increased CPF and the defendant's protest about the workers' pay contributed to a decision on the part of the plaintiff to take over the business completely. I therefore accept that it was the plaintiff who told the defendant to have the assets valued. The actual asset valuation was, however, commissioned by the defendant who also

thereafter took legal advice on what sort of documents had to be drawn up.

234 The asset statements were not valuations of ACM and ACMKK. Mr Chew was quite forthright on this. He said that in order to do valuations of the businesses, there would have had to be a full audit of the business. All he did was to indicate what the book values of the assets were as at the date 31 March 2004. In my opinion, it is clear from these assets statements that they do not purport to set out the full value of the business. Whilst the plaintiff was not an accountant, he had access to legal advice (from his niece, if not anyone else) and was also capable of seeking the advice of an auditor on what the documents meant. There was nothing to stop him from asking Mr Chew what the asset statements were really about.

235 I am sure that the plaintiff was aware that the asset statements were not full valuations. He was a canny businessman who was experienced in investing in property and he would have had access to market information about the value of the Ubi property and the Tannery property. His friends considered that the Ubi property was overvalued in the asset statements and used this knowledge to persuade the defendant to reduce the price he was asking for his share. Further, the plaintiff knew that the asset statements did not reflect the balance in the third account which contained funds belonging to the business but which had never been declared to the accountants. Also, there was nothing in the asset statements about the parties' respective current account balances and how much, if anything, each of them owed the business. The plaintiff was also aware that the cash held by Ms Ang was not included in the asset statements. The plaintiff must have been aware that the accounts were incomplete since there was always an amount of cash that was not recorded in the books. Also, he would have known that the books did not show his use of the business's funds to pay the expenses of Western Casket from time to time. So, he must be taken to have known that the asset statements could not be full and proper valuations. In any event, the plaintiff used the figures in the asset statements only as a rough guideline to help him determine a price. He did not pay exactly what was asked but negotiated a discount of \$500,000 from the paper value of the defendant's share. In my judgment, the plaintiff was not induced by the asset statements into buying the business. As the person who had run the business for 30 years or so, he would have been fully cognisant of how good the business was and what it was worth to him to buy out the defendant.

236 I should also state that I find the plaintiff's accusations about the disappearance of the cash in hand to be disingenuous. The plaintiff was aware that cash in hand was kept in the office drawer and used for the expenses of the business and therefore that the amount was always changing. He could not have expected the cash in hand on 31 March 2004 to still be in the office drawer on 7 June 2004. The fact that the plaintiff did not complain about the missing cash until September 2005 was significant. This complaint was clearly an afterthought. The plaintiff's own witness, Mr Chew, stated that he himself did not know whether there was cash in hand of the amounts stated in the asset statements since he had derived these amounts from subtracting the expenses from the cash takings and not from actually counting cash.

237 Thus, my finding is that the plaintiff was not induced to enter into the dissolution agreement and acknowledgement on the faith of the so-called representations in the asset statements. The plaintiff wanted to buy the defendant out. Further, the price that he paid was determined by what he could afford and not by the figures in the asset statements which were not misrepresentations by the defendant.

238 In any case, even if I had found that the plaintiff relied on misrepresentations from the defendant, I would not have ordered a rescission of the dissolution agreement and the acknowledgement since what the plaintiff really wanted was to take over the business. Even if it was

not too late to reinstate the defendant as a partner, that would not have been what the plaintiff really wanted. Instead, I would have ordered damages to be set off against the amount which the plaintiff still owes the defendant in respect of the purchase.

239 Although the cause of action for misrepresentation must, in my view, fail, the plaintiff's alternative cause of action in respect of the breach of duty by the defendant, has been proved. It has been shown that the defendant had taken funds from the business without the consent of the plaintiff and without recording such withdrawals as his partnership drawings. He had deposited many cash cheques into his account and could not justify such deposits to my satisfaction. He had also lent money to or allowed cheques to be encashed by the Chias for no valid commercial reason. Further, he had paid his own expenses and his son-in-law's hire purchase instalments without authorisation. I also find that he had put his father-in-law, Teo Ah Sai and his daughter, Florence Ang, on the payroll of ACM without the plaintiff's consent and knowledge. In addition, he had unilaterally increased the CPF contributions of his wife in 2002. All these actions were a breach of duty and must be accounted for.

240 Turning to the defendant's counterclaim, I do not accept the defendant's contention that Western Casket was part of the business. The plaintiff said that he had asked the defendant to agree to the purchase of Western Casket by the business but the defendant had rejected this proposal because he thought that Western Casket was a losing business. This evidence of the plaintiff was supported by Ms Ang who agreed that the defendant had not wanted to take an interest in Western Casket. Ms Ang was so obviously a witness who was biased in favour of the defendant, that a statement of hers that was inconsistent with the defendant's stand was significant. I therefore find that Western Casket had with the defendant's consent been acquired by the plaintiff alone and was operated as an independent business. That being the case, the plaintiff was not entitled to use the funds or other assets of ACM/ ACMKK for the purposes of Western Casket's business. Any such use would either have to be repaid (in the case of funds) or paid for (in the case of use of workers or other facilities).

Conclusion

241 In relation to the plaintiff's claim against the defendant, I find that the defendant was in breach of duty to the plaintiff as a partner of the business and that he must account to the plaintiff for the plaintiff's half share of all unauthorised withdrawals, deposits into his own account and unauthorised payments to the Chias, on behalf of his son-in-law and in respect of his own expenses. He must also account to the plaintiff for the unauthorised CPF contributions made from 2002 for Mdm Teo and for all CPF contributions made for Teo Ah Sai and Florence Ang. He must also account for the cash representing the salaries of the defendant's relatives from 2000 onwards as, even if these were not actually paid to the respective family members, they were reflected as having been paid in the books and there is no explanation from the defendant as to what happened to this cash which would otherwise have been deposited in ACM's bank accounts. The plaintiff shall be entitled to set off, against the amounts that the defendant has to account for, the sum of \$200,000 which he still owes the defendant in respect of the purchase of the business. There will be judgment for the plaintiff accordingly.

242 In respect of the counterclaim, the plaintiff shall account to the defendant in respect of all payments that he made from moneys belonging to ACM/ACMKK that were not for the purpose of the business but for were for his personal use and/or for the use of Western Casket and there shall be judgment for the defendant on his counterclaim to that extent.

243 I shall see the parties on the exact orders to be made pursuant to this judgment to effect the

necessary accounting. I shall also hear them on costs.

Appendix 'A'

03

ANG CHIN MOH UNDERTAKER

Assets balances as at 31.03.04:-

	Cost S\$	Accum. Dep S\$	Net book value S\$	Net Realisable value S\$
1. FIXED ASSETS:-				
Furniture and fittings	7,869.00	7,869.00		
Office renovation	16,813.97	15,993.97	920.00	920.00
Motor vehicles	307,377.00	192,066.00	115,311.00	115,311.00
Air-conditioner	5,650.00	4,020.00	1,640.00	1,640.00
Fax Machine	990.00	990.00		
Office equipment	13,411.68	10,062.81	3,348.87	3,348.87
Leasehold factory	<u>2,414,395.00</u>	<u>24,144.00</u>	<u>2,390,251.00</u>	<u>2,390,251.00</u>
	2,766,616.65	255,145.78	2,511,470.87	100,000.00
HDB property-take over fee				
2. CURRENT ASSETS:-				
Bank balances:			179,505.22	
- UOB Bank			18,514.13	
- DBS Bank			59,098.39	
Cash in hand			737.50	
Trade debtor			8,000.00	265,955.24
Stocks				
				<u>2,877,426.11</u>
TOTAL				
1. CURRENT LIABILITIES:-				
Term loan creditor - Standard & Chartered Bank				<u>1,167,022.27</u>

Appendix 'B'

04

ANG CHIN MOH KHENG'KEE UNDERTAKERS

ASSETS BALANCES AS AT 31.03.2004

	Cost S\$	Accum. Dep S\$	Net book value S\$	Net Realisable Value S\$
1. FIXED ASSETS:-				
Furniture and fittings	1,233.00	1,233.00		
Motor Vehicles	163,029.00	163,029.00		80,000.00
Electrical Installation	1,896.00	1,896.00		
Machines	405.82	405.82		
Office equipment	5,187.64	4,883.74	303.90	303.90
Renovation	<u>9,070.00</u>	<u>9,070.00</u>		
	180,821.46	180,517.56	303.90	80,303.90
Property - Mapherson Tanny Lane				600,000.00
2. CURRENT ASSETS :-				
Bank balance			327,211.02	
- UOB Bank			107,165.82	
Cash in hand			50,000.00	
Investment			50,000.00	
Fixed Deposit			2,240.00	
Trade debtors			8,000.00	544,616.84
Stocks				
				<u>1,224,920.74</u>
TOTAL				