

Automatic Controls and Instrumentation Pte Ltd v Tan Thiam Soon and another
[2017] SGHC 77

Case Number : Suit No 134 of 2015
Decision Date : 11 April 2017
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Eric Chew (ECYT Law LLC) for the plaintiff; Lim Chee San (TanLim Partnership) for the first defendant.
Parties : Automatic Controls and Instrumentation Pte Ltd — Tan Thiam Soon — Tay Chin Huat

Tort – Conspiracy

Tort – Conversion

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 21 of 2017 was dismissed with costs by the Court of Appeal on 29 September 2017 with no written grounds of decision rendered.]

11 April 2017

Woo Bih Li J:

Introduction

1 The plaintiff, Automatic Controls and Instrumentation Pte Ltd (“the Plaintiff”) initiated the present action against two of its former employees, Tan Thiam Soon (“D1”), a Field Service Manager and Tay Chin Huat (“D2”), a Senior Supervisor.

2 The Plaintiff alleged that D1 and D2 had wrongfully and with intent to injure the Plaintiff conspired to commit fraud against the Plaintiff. The particulars of this claim are set out in paragraphs 11(a) to 11(c) of the statement of claim (“SOC”) as follows:

(a) [D1 and D2] fraudulently, knowingly, without belief in its truth and/or recklessly, misrepresented the hours worked by workers by:

(i) Inflating the working hours recorded;

(ii) Purportedly verifying labour suppliers’ claims, but did so against workers’ time cards with inflated working hours; and

(iii) Making recommendations to the [Plaintiff] to pay labour suppliers, based on time cards with inflated working hours.

(b) [D2] sent workers to job sites at the National University of Singapore, National University Hospital and Jurong East (the “**Alibaba Projects**”), where the [Plaintiff] did not have projects;

(c) [D1 and D2] created time cards for workers who did not exist and recommended payments

to be made based on these time cards.

3 I pause to mention that although the SOC did not elaborate what job site at Jurong East was being referred to, this was clarified in the course of the trial (see [15] below).

4 The Plaintiff also claimed that D1 and D2 had breached implied duties of their employment with the Plaintiff for the same reasons as set out in its claim for conspiracy.

5 The Plaintiff further claimed that D1 and D2 had wrongfully interfered with the Plaintiff's goods by committing acts of conversion. The particulars of conversion were set out in paragraphs 13(a) and 13(b) of the SOC as follows:

(a) Took the [Plaintiff's] materials and tools and used them for the Alibaba Projects; and

(b) Ordered materials and tools on the [Plaintiff's] account from the [Plaintiff's] suppliers and used the said materials and tools for the Alibaba Projects.

6 On 10 March 2015, the Plaintiff obtained judgment against D2 for default of appearance. The judgment was for damages to be assessed with interest and costs reserved to the Registrar hearing the assessment of damages.

7 Accordingly, the Plaintiff continued with the action against D1 only. The trial was held from 4 to 7 October and 14 October 2016. After hearing the evidence and considering the parties' submissions, I granted the Plaintiff interlocutory judgment on 12 January 2017 against D1 for D1's conspiracy with D2 to injure the Plaintiff with damages to be assessed by me under paragraphs 11(a), 11(b) and 11(c) of the SOC as well as in respect of workers who did not carry out the Plaintiff's work. I also granted judgment for the tort of conversion under paragraph 13(b) of the SOC. The Plaintiff had decided it was not pursuing paragraph 13(a) of the SOC. Costs of the trial and assessment and interest were to be determined by me.

8 In the circumstances, it was unnecessary for me to grant judgment against D1 for breach of a contractual duty arising from his employment.

9 D1 has filed an appeal to the Court of Appeal against my decision.

The trial

10 The trial was on liability only.

Evidence of four men who were not cross-examined

11 The Plaintiff adduced evidence from various persons. The affidavits of evidence-in-chief ("AEICs") of four men were admitted in evidence without cross-examination. They were:

(a) Ponnusamy Vijaykumar ("Ponnusamy");

(b) Kumarasamy Sasikumar ("Kumar");

(c) Chua Sze Beng ("Chua"); and

(d) Paramasivam Prithivirajan ("Param").

12 According to Ponnusamy's evidence, he was employed by Chan Li Comm Svs Pte Ltd ("Chan Li") as an assistant electrical engineer from October 2009 to August 2011. Chan Li was in the business of providing manpower and unskilled labour mainly from India. Ponnusamy was sent by Chan Li to work at the Plaintiff where he worked under D2.

13 Ponnusamy said that he found out that D2 was sending the Plaintiff's workers to job sites which the Plaintiff did not have work for. These were the same job sites referred to as the Alibaba Projects in the SOC. D2 would also use the Plaintiff's materials and tools for these projects. D2 would often give instructions to one Kooy Ten Yen ("Kooy") to manage the Alibaba Projects on his behalf.

14 Kumar was assigned to work for the Plaintiff from February 2007, first as a general worker and then as a supervisor. As a supervisor, he reported to D2. He was sacked by D2 around August 2011 (*ie*, about two months before he signed a statutory declaration which was exhibited with his AEIC).

15 Kumar mentioned that work was done by the Plaintiff's workers at an old Housing and Development Board ("HDB") flat at Jurong East ("the Jurong East HDB"), a project which the Plaintiff had not undertaken. This job was identified as one of the Alibaba Projects. He had learned from a worker, P Vijaykumar, who did not turn up at a job site of the Plaintiff that P Vijaykumar had been sent to work at that HDB flat along with five to six other workers. He also learned that the time cards for work done at the HDB flat were signed with no job stated on them.

16 Kumar also learned that workers for the Plaintiff were sent to job sites at the National University of Singapore ("NUS") and the National University Hospital ("NUH"). He had initially thought that these were jobs of the Plaintiff but eventually realised that they were not because:

- (a) D2 had told the workers sent there not to use the uniforms of the Plaintiff;
- (b) During the daily Tool-Box Meeting and Safety Briefing, the name of "Modernize Engineering" was written on the attendance sheet; and
- (c) D2 had instructed the workers sent there to say they were from Modernize Engineering if they were asked which company they were from.

17 According to Kumar, Chan Li was the manpower supplier who supplied Indian and Bangladeshi workers to the Plaintiff. Kooy and Yap Yen Lim were two other manpower suppliers who supplied Malaysian workers to the Plaintiff.

18 D2 filled in the time cards of the workers at the Jurong East HDB, NUS and NUH job sites without the jobs stated in the time cards although such information should have been stated.

19 In about the last week of September 2011, Kumar informed the Plaintiff's managing director Chan Seng Kit, also known as Derek Chan ("the MD"), about what he knew. The MD showed him time cards of some workers who were supposed to have worked at the job sites of the Plaintiff. Kumar said that some of these time cards for a particular job of the Plaintiff with ST Microelectronics bore the names of certain workers who were not in fact at that job site.

20 Kumar also said that D2 would order materials in the name of the Plaintiff or take the materials from the Plaintiff's store for the Alibaba Projects. Large tools had the name of the Plaintiff on them but D2 had instructed workers to spray paint over the Plaintiff's name.

21 Chua was a workshop manager of the Plaintiff. His evidence was that on one occasion, the MD

gave him a table of names of the Plaintiff's workers and the dates on which they were supposed to have worked at the Plaintiff's workshop. The MD said that the information had been extracted from the workers' time cards. The information showed that Kooy had worked in the workshop in end November 2010 and most of December 2010 but Chua did not see Kooy in the workshop during that period.

22 The evidence of Param was that initially he was working at some of the Plaintiff's projects at Novartis and Gardens by the Bay. From about October 2010 to February 2011, D2 sent him to work at job sites at NUS and at NUH. At these job sites, he and other workers wore T-shirts bearing the name of Modernize Engineering.

23 I now come to those persons who did give oral evidence at the trial as witnesses for the Plaintiff. They were:

- (a) PW1 - Tan Ching Kiat, also known as Vincent Tan ("Vincent Tan");
- (b) PW2 - Tay Chin Huat (*ie*, D2 himself);
- (c) PW3 - Chan Seng Kit, also known as Derek Chan (*ie*, the MD); and
- (d) PW4 - Lee Tai Wai, also known as Bernard Lee ("the Auditor").

Vincent Tan's evidence

24 Vincent Tan did not provide an AEIC. Hence, his evidence-in-chief was by oral testimony.

25 Vincent Tan was the sole director and sole shareholder of Modernize Engineering and Services Pte Ltd ("Modernize ESPL"). Modernize ESPL was incorporated on 20 November 2010. Prior to that incorporation, Vincent Tan was working for Modernize Engineering as a senior manager. According to a search made at the Accounting and Corporate Regulatory Authority, Modernize Engineering was a sole proprietorship and the owner was one Tan Thiam Seng. The business was terminated on 5 April 2013.

26 Vincent Tan referred to Tan Thiam Seng as his boss in Modernize Engineering. He said that Modernize ESPL was incorporated to acquire the business of Modernize Engineering. So from the date of incorporation of Modernize ESPL on 20 November 2010 to the date of termination of the business of Modernize Engineering, he was working for both these entities. [\[note: 1\]](#)

27 In late 2010, Modernize Engineering was given a job for the supply and installation of wires and cables at NUS by Schneider Electric Buildings Singapore Pte Ltd. The final claim for payment by Modernize Engineering for that job was made in July 2011. This meant the job would have lasted from October or November 2010 to May or June 2011.

28 Modernize Engineering also did work for the Plaintiff (at other locations) but Vincent Tan knew the Plaintiff by the name of "A-Controls" and not by its full name Automatic Controls and Instrumentation Pte Ltd.

29 Coming back to the NUS work site, Vincent Tan said that as he was halfway through the project at NUS, he was short of manpower. So he approached D1 from A-Controls for help. D1 was a friend of his whom he knew some time ago even before 2010. D1 recommended D2 who in turn recommended Kooy. Vincent Tan said that Kooy was the one who supplied manpower to Modernize Engineering although at one point, he also said he was not sure whether some workers also came from

A-Controls. [\[note: 2\]](#) He did not pay D2 for the workers. He paid Kooy only.

30 As for work to be done at NUH, there was evidence of a purchase order dated 28 December 2010 issued by Johnson Controls (S) Pte Ltd to Modernize ESPL [\[note: 3\]](#) for some work to be done at NUH. According to Vincent Tan, the purchase order should have been issued to Modernize Engineering instead. [\[note: 4\]](#) Vincent Tan said that, as before in the case for NUS, he again had to obtain more manpower for the NUH project. Again, he contacted D1 who asked him to look for D2 for the supply of manpower. D2 sought the help of Kooy but eventually it was Chan Li who supplied manpower for the NUH project. [\[note: 5\]](#)

31 It was Modernize ESPL who helped Modernize Engineering to complete the work at NUH and perhaps for NUS as well [\[note: 6\]](#). In any event, his boss at Modernize Engineering, Tan Thiam Seng, was not involved in the procuring of additional manpower for either of the projects at NUS and NUH. [\[note: 7\]](#)

32 According to Vincent Tan, D1, whose full name is Tan Thiam Soon, was not related in any way to Tan Thiam Seng.

33 Vincent Tan also eventually produced copies of payment vouchers which he said were kept in Malaysia. He said they were payment vouchers of Modernize Engineering. They were issued in respect of work done at NUS and NUH and were supposed to be for payments made to various workers. There is some history behind the late production of these documents which I will elaborate on later.

D2's evidence

34 As mentioned above, default judgment had been obtained against D2 on 10 March 2015 (see [6] above). Although D2 was one of the defendants, the Plaintiff still called D2 as one of the Plaintiff's witnesses for the trial in respect of D1. Like Vincent Tan, D2 did not provide an AEIC and his evidence-in-chief was by oral testimony.

35 I would add that in separate criminal proceedings, D2 had pleaded guilty to five criminal charges with another 15 charges being taken into consideration in sentencing. Each charge was for cheating the Plaintiff. This was done by deceiving the Plaintiff into believing that a named worker was working at a worksite managed by the Plaintiff, which D2 knew was untrue. By the deception, he had dishonestly induced the Plaintiff to deliver a certain sum of payment as that worker's salary to Chan Li. He was convicted and sentenced accordingly.

36 D2 denied that he was guilty of the charges notwithstanding the conviction and sentences.

37 He said that he took instructions from his superior and main supervisor whom he identified as "Ah Tan" and whose full name was Tan Thiam Soon, *ie*, D1. [\[note: 8\]](#)

38 He said he would sign on workers' time cards (for work done in Singapore) even though there were times when he was in Malaysia and was not personally present while the work was being done in Singapore. D1 was the one who told him to sign the time cards and that he was one of the few persons who could sign on the time cards to verify the hours worked. [\[note: 9\]](#) In cross-examination, he said that he would not have signed the time cards in the manner he described if no one had asked him to do it. [\[note: 10\]](#)

39 As regards work being done at NUS, it was his superior (meaning D1) who told him to send someone there to do work. [\[note: 11\]](#)

The MD's evidence

40 The MD's evidence was that the job code written in various time cards would not have been known to D2. It was known only to senior managers including D1. It was D1 who would know which job site of the Plaintiff to use on the time cards to claim the salary of workers for payment by the Plaintiff.

41 It was also D1's responsibility to verify the claim of the party who had allegedly supplied labour to the Plaintiff. [\[note: 12\]](#)

42 The MD had also made a written complaint to the police. The written complaint was undated but was sent around 2011. It was admitted in evidence as Exhibit P1. In that complaint, the MD had alleged that D1 was the mastermind in defrauding the Plaintiff through the use of various fake invoices including invoices for workers sent to the Alibaba Projects. In the first page of that complaint, the MD alleged that when D1 was confronted, he admitted his activities in front of a witness who was Bernard Lee, the Auditor.

43 When the MD was challenged in cross-examination about the alleged admission by D1, the MD said that there was in fact an interview statement signed by the Auditor although this was not disclosed in his AEIC.

44 Subsequently, the Plaintiff made a formal application to call the Auditor to give evidence on that statement which I allowed.

The Auditor

45 The interview statement was actually a record of an interview conducted by the MD with D1 and D2 in the presence of the Auditor on 12 October 2011 at the Plaintiff's premises ("the Interview Record"). It states:

Question:

Did you re-direct company resources to fund your own private project?

HDB, NUS & NUH Project?

Answer:

Yes

Question:

Do you want to settle? And reimburse whatever you have benefited, and get back from companies and contractors that you wash the money with?

Answer:

You tell how much to reimburse you? I need the figure to take to the suppliers who benefited

from this fraudulent transaction.

Question:

Derek, I offer Tan up to 10am Thur, 12-Oct 2011 to come back with an acceptable figure of what they have taken.

Answer:

Yes, Tan and Tay answer agree to tall [sic] to their accompany [sic] and revert to us to Dere [sic] by 10 am tomorrow.

46 I add that although the Interview Record was not disclosed by the Plaintiff earlier in discovery, there was no suggestion by D1 that the Interview Record had been fabricated in the sense that there was no such interview. According to the Auditor, there was an audio recording of the interview from which the MD produced the transcript the same day [\[note: 13\]](#). The Auditor did not check the transcript against the recording but he countersigned it together with the MD as the transcript accorded with his recollection of what had been said.

47 The Auditor said at trial that he could not remember the faces of either D1 or D2. This was not surprising given the lapse of time. Indeed, it might have been more surprising if he had said he could identify both of them.

48 He said that one of the two men interviewed was giving the responses. He was not certain which of the two had done so. He had assumed it was the more senior of the two as, usually, the more senior person would do the talking.

49 There was an error in the date of the third question which referred to 12 October 2011 as the date when D1 and D2 would respond with a figure to settle the issue of their wrongful conduct, after they had consulted with their accomplices. As the interview was conducted on 12 October 2011, the correct date for the next day should have been 13 October 2011 since D1 and D2 were supposed to have responded the next day.

50 There were also other errors. For example, the response to the third question should have been recorded as "Yes, Tan and Tay answer agree to [talk] to their [accomplice] and revert to us to [Derek] by 10am tomorrow".

51 In my view, all the above errors did not necessarily mean that the substance of the various responses was incorrect or inaccurate.

52 Although the Auditor did not identify D1 and D2 as the persons being interviewed, it was not put or suggested to the Auditor that D1 was in fact absent from the interview. Furthermore, D1 did not dispute the questions or that it was he who gave the responses at the cross-examination of the Auditor. Instead, the dispute was in respect of the substance of the responses. Hence it was put to the Auditor that there was no admission about re-directing the Plaintiff's resources to other projects and there was no offer to speak to third party suppliers with a proposal to settle the misconduct of D1 and D2 or to respond with a proposal the next day.

53 The Auditor maintained the accuracy of the substance of the responses. As for the last response, he said that he had checked his diary and recollected that he himself turned up at the Plaintiff's premises the next day to see what offer D1 and D2 would come up with, as discussed.

However, D1 and D2 did not turn up the next day at the Plaintiff's premises. [\[note: 14\]](#)

D1's evidence

54 D1 was the only witness for himself. He denied that the job codes were confidential and known only to senior management.

55 Initially D1 denied that D2 reported directly to him. He suggested that D2 reported to the project manager (of the Plaintiff) instead. When D1 was pressed whether D2 reported directly to him, he eventually said that D2 was under his charge. When D1 was asked whether he was D2's supervisor, he eventually agreed that he was. [\[note: 15\]](#)

56 D1 also admitted that Vincent Tan, whom he knew as "Ah Kiat", was the person he spoke to at Modernize Engineering and that Vincent Tan was much closer to him than to D2. Both Vincent Tan and D1 were sitting outside and talking together on one day of the trial, *ie*, 7 October 2016. They also walked into the courtroom together. [\[note: 16\]](#)

57 D1 admitted that he had had contact with labour suppliers although he said that D2 had more contact with them. He also said that Vincent Tan had contacted him to help with a shortage of manpower and he had referred Vincent Tan to D2. D1 said he did not follow up after that.

58 D1 denied any conspiracy with D2. He also denied telling D2 that he was to sign on the time cards of workers even on days when D2 was not in Singapore. However, he admitted that he had signed the Plaintiff's payment vouchers to recommend payment for the supply of labour. It was not disputed that the Plaintiff had paid for labourers who were not working at the Plaintiff's projects. D1 said he had not checked the accuracy of the claims for labour supplied to the Plaintiff. He said he had trusted the accounts staff who had prepared the documents.

59 As for the Interview Record, D1 did not say that he was not the one giving the responses to the questions.

60 For the first question, he said he did not say "Yes". Perhaps he did say "No". Perhaps D2 said "Yes" but he could not remember.

61 D1 said he was surprised by the second question. He had done nothing wrong and there was no reason to discuss about any compensation.

62 As for the third question, he said that D2 and he had left the meeting together without answering that question. [\[note: 17\]](#)

The court's reasons

63 It was not in dispute that D2 had directed manpower paid by the Plaintiff to the Alibaba Projects and that he had used materials and tools of the Plaintiff for such projects. There was also no question that the Plaintiff had been injured by these acts. The question was whether D1 was a party to such wrongful conduct so as to constitute the tort of conspiracy by unlawful means and the tort of conversion.

64 D1 relied on *Chua Kwee Chen and others (as Westlake Eating House) and another v Koh Choon Chin* [2006] 3 SLR (R) 469 for the standard of proof which the plaintiff had to meet. In that case, Andrew Phang Boon Leong J (as he then was) said at [39] that the standard of proof in civil

proceedings where fraud and/or dishonesty is alleged is the civil standard of proof on a balance of probabilities. However, more evidence is required than in an ordinary civil case.

65 I found the evidence of Vincent Tan telling.

66 As mentioned above, Vincent Tan said he had approached D1 to help him with his manpower shortage at NUS. Vincent Tan said that D1 then referred him to D2 who in turn put him in touch with Kooy who supplied the required manpower for the job at NUS.

67 However, given that D1 already knew who the labour suppliers were, there was no need for D1 to refer Vincent Tan to D2 to get the contacts. D1 would have provided the information directly to Vincent Tan if everything was above board.

68 Furthermore, there was even less reason for Vincent Tan to seek D1's help on a second occasion for the work at NUH as he had already been in touch with D2 and Kooy. Vincent Tan did not say that he did so because Kooy was unable to assist for the NUH project. Even if Kooy was unable to assist directly, Kooy would have been able to refer him to another labour supplier. So could D2.

69 It seemed to me that D1's involvement was not simply confined to referring Vincent Tan to D2 as both Vincent Tan and D1 were suggesting. D1 was in fact more involved and had in fact conspired with D2 to use workers employed or engaged for the Plaintiff's account for the work of others.

70 From Vincent Tan's evidence, it seemed as though he sought D1's help each time as a matter of course. I was of the view that he did so because he knew that there was some arrangement between his friend, D1, with D2 whereby workers would be charged to the Plaintiff's account even though they were to be used for the work of others. His allegation that Modernize Engineering also made some payment for such workers did not mean that there was no misconduct or that he was innocent of the arrangement.

71 Vincent Tan was also less than candid when the Plaintiff previously sought documents from Modernize ESPL, a non-party, in respect of the Alibaba projects. Vincent Tan executed an affidavit to say that Modernize ESPL had nothing to do with the Alibaba projects. Yet at trial, he said that Modernize ESPL had completed the contracts for Modernize Engineering.

72 Furthermore, when the Plaintiff then sought discovery of similar documents from Modernize Engineering, Tan Thiam Seng signed an affidavit to disclose limited documents. According to the Plaintiff, those documents were documents which had already been made available by other non-parties. More importantly, that affidavit should have been signed by Vincent Tan, instead of Tan Thiam Seng, since the former was the one involved in the projects at NUS and NUH.

73 From Vincent Tan's evidence at trial, he was the one who was involved in these two projects for the two entities whether it be Modernize ESPL or Modernize Engineering. It seemed to me that he had sought to give the wrong impression that Modernize Engineering and Modernize ESPL were completely different outfits run by different people when the Plaintiff's applications for discovery of documents against first Modernize ESPL and then Modernize Engineering were dealt with. He was trying to give the wrong impression because he knew something was amiss.

74 Furthermore, at trial, Vincent Tan said he would be able to provide some documents (which had not been adduced before) but he would have to go to Malaysia to get them. It was surprising that he had to allegedly go to Malaysia to get them when the Alibaba projects were in Singapore and Modernize ESPL and Modernize Engineering were Singapore entities. The fact that these entities might

also have other jobs in Malaysia did not explain why the documents for the Alibaba projects should be in Malaysia. Eventually, he produced copies of some payment vouchers, as mentioned above, which were of limited assistance to the Plaintiff.

75 Secondly, while D2 was a reluctant witness for the Plaintiff, he did say that D1 was his supervisor and he would take D1's instructions to send workers to their worksites, although he claimed that he did not know who in the Plaintiff controlled the movement of workers. [\[note: 18\]](#) The point is that D1 was the one whom D2 kept on referring to as his supervisor during D2's oral testimony.

76 I also found D1 to be evasive when he was describing his relationship with D2. When D1 was asked whether he was D2's supervisor, D1 said that D2 was one of his team members. When he was asked whether D2 reported to him, he said D2 reported directly to the project manager. When it was pointed out to him that D2 had said that he (D1) was D2's main supervisor, D1 said that he (D1) was in charge of the installation team of which D2 was a member. When he was asked whether D2 reported directly to him, he said he (D2) was under his charge. Eventually D1 agreed that he was D2's supervisor. [\[note: 19\]](#)

77 I was of the view that D2 was often taking instructions from D1 directly but D1 attempted to show an inaccurate picture, *ie*, that D2 was taking instructions mainly from the project manager. In my view, D1 was not truthful because he had something to hide.

78 D2 also did give evidence that it was D1 who asked him to sign the workers' time cards even for those days when D2 was not in Singapore. Although D1 denied having told D2 to do this, it was not disputed that D2 was doing so. It was likely that as D2's supervisor, D1 was aware that D2 was signing time cards of workers even for those dates when D2 was not in Singapore.

79 Thirdly, D1 had said that he did not check the claims of the labour suppliers even though he was supposed to do so when he signed the Plaintiff's payment vouchers to recommend payment for the supply of labour. D1 said that he had trusted the Plaintiff's accounts staff who had prepared the documents for his signature. I did not accept this explanation because D1 did not suggest this was an occasional lapse on his part. Even if D1 had simply trusted an accounts staff, he would have been in breach of an implied duty of care in contract to act with due diligence. I was of the view that D1 had signed the payment vouchers knowing the amounts claimed for the supply of labour.

80 Fourthly, I accepted that the Interview Record correctly recorded the responses to the questions; otherwise, it would mean that the MD had fabricated the responses and the Auditor had blindly countersigned the Interview Record. Although the Defence complained in closing submissions that it did not have the chance to cross-examine the MD on the Interview Record as it was introduced through the Auditor at trial, the reality was that the Defendant could have, but did not, ask for the MD to be recalled for cross-examination on this document. Indeed, both sides proceeded on the premise that there was no need to recall the MD as a witness. Perhaps this was because he had signed the supporting affidavit for the application to adduce further evidence through the Auditor and his affidavit was self-explanatory.

81 Although there were not many specifics in the questions and responses in the Interview Record, it was quite clear to me that the responses, if correctly recorded, were in substance admissions that the Plaintiff's resources had been used for the project(s) of others and that D1 and D2 had participated in such a wrongful arrangement.

82 When the Auditor gave evidence that he believed that it was the more senior of the two who was giving the responses to the questions (as mentioned above), it was not put to him in cross-

examination that it was D2, instead of D1, who was giving the responses.

83 In any event, I found it unbelievable that, if D1 were innocent, he could not remember whether D2 had admitted to using the Plaintiff's resources for other projects. If D2 had admitted to his, it would have come as a shock to D1 who would then have remembered it.

84 As for D1's evidence that he and D2 left the meeting without responding to the third question, this was contrary to the Auditor's evidence. If they had not agreed to go back the next day with a possible proposal of settlement from their accomplices, the Auditor would not have gone back the next day to see what proposal they might come up with. I accepted that the Auditor did go back the next day as he was certain about that after checking his diary. I concluded that, contrary to D1's evidence, he and D2 did agree to talk to their accomplices about making a proposal of settlement.

85 In the circumstances, I found that the Plaintiff had established its case against D1 and I granted interlocutory judgment against D1 as stated above at [7].

[\[note: 1\]](#) Notes of Evidence ("NE") 4/10/16 p 14

[\[note: 2\]](#) NE 4/10/16 pp 30-31, 35-38, 47

[\[note: 3\]](#) Plaintiff's Bundle of Documents ("PBD") p 75

[\[note: 4\]](#) NE 4/10/16 p 49

[\[note: 5\]](#) NE 4/10/16 pp 51,57

[\[note: 6\]](#) NE 4/10/16 p 56

[\[note: 7\]](#) NE 4/10/16 pp 57-58

[\[note: 8\]](#) NE 5/10/16 p 3 and p 11

[\[note: 9\]](#) NE 5/10/16 pp 10-11 and p 17

[\[note: 10\]](#) NE 5/10/16 p 21

[\[note: 11\]](#) NE 5/10/16 p 20

[\[note: 12\]](#) NE 5/10/16 p 36

[\[note: 13\]](#) NE 6/10/16 p 8

[\[note: 14\]](#) NE 6/10/16 p 14

[\[note: 15\]](#) NE 6/10/16 pp 38-40

[\[note: 16\]](#) NE 7/10/2016 p 41

[\[note: 17\]](#) NE 7/10/16 pp 71-73

[\[note: 18\]](#) NE 5/10/16 pp 6-7

[\[note: 19\]](#) NE 6/10/16 pp 38-39

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