

## LIM CHIN HENG v ALLIANCE INTEL CONSULTING SDN BHD &amp; ORS

CaseAnalysis

| [2012] MLJU 1455

**Lim Chin Heng v Alliance Intel Consulting Sdn Bhd & Ors**  
**[2012] MLJU 1455**

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

DATUK LAU BEE LAN J

GUAMAN CIVIL NO S3-22-1084-2006

28 December 2012

*RS Sodhi (Ranjit Kaur with him) (Watson Peters & Mohd Fuad) for the plaintiff.**M Reza Hassan (Natisha Zainol Rashid & Ellia Zuraini Mat Zin with him) (Raja Riza & Associates) for the second to sixth defendants and tenth to 15th defendants.**Darryl Goon (Tham Li Vyien with him) (Raja Darryl & Loh) for the 16th defendant.***Datuk Lau Bee Lan J:**

## GROUNDS OF JUDGMENT

Background

**[1]** The Plaintiff is an individual resident in Malaysia.

**[2]** The action against the 1 Defendant has been discontinued prior to the trial. The 7th Defendant was not served with the Writ and the Writ against the 7th Defendant has expired. The Plaintiff has entered Judgment in default of appearance against the 8th Defendant. The 9th Defendant was not served with the Writ and the Writ has since expired.

**[3]** For ease of reference I shall adopt the description of the Defendants as per the table in the Written Submission of the 2nd-6th Defendants and 10th-15th Defendants with the necessary modifications as follows:

D e f e n d a n t	Name	Description
1 s t D e f e n d a n t	Alliance Intel Consulting Sdn Bhd	As described in paragraph 2 of the Re Amended Statement of Claim. A company in Malaysia providing private investigation services including surveillance. * See page 23 of Bundle A
2 n d D e f e n d a n t	Interasia Maritime (M) Sdn Bhd ('IAM')	A subsidiary of Interasia Lines Ltd. It was incorporated in Malaysia in 2003. Like Interasia Lines Ltd., IAM is engaged in the shipping business as Non-Vessel Operating Container Carrier ( <b>NVOCC</b> ).
3 r d D e f e n d a n t	Chua Teck Leong (Malaysian)	Acting General Manager and Director of IAM. He is also a General Manager and Director of the 7th Defendant.
4 t h D e f e n d a n t	Huang Cheng-Hsien (Taiwanese national)	The Vice President in Planning Division, Wan Hai Lines Ltd. Alternate Director in IAM and General Manager for Wan Hai Lines (S) Pte Ltd.

5 t h D e f e n d a n t	Lin Liang-Gyun	Currently the Manager of T.S.
	(Taiwanese national)	Lines, Singapore. T.S. Lines Singapore is not related to Wan Hai group of companies.
6 t h D e f e n d a n t	Kao Chung Yi (Taiwanese national)	The Internal Auditor of Wan Hai Lines Ltd.
7 t h D e f e n d a n t	Interasia Lines Ltd ( <b>IA Japan</b> )	A company incorporated in Japan sometime in 1967. The nature of IA Japan's business is that of a shipping company. It operates vessels and slots on vessels owned or operated by affiliated shipping lines for carriage of goods by sea. Shareholder of IAM. Wholly owned by Wan Hai Lines Ltd (Japan). Under the control of 8th and 9th Defendants.
8 t h D e f e n d a n t	Randy Chen American and/or a Taiwanese national	President of IA Japan and a Special Assistant to the President of Wan Hai Lines Ltd. Son of the 9th Defendant. Director of the 2nd and 15th Defendants and Wan Hai Lines Ltd. (Taipei) Company.
9 t h D e	Chen Ching Chih American founder (Taiwanese national)	The former group Chairman for Wan Hai Lines Group of Companies ('Wan Hai Lines Group of Companies').

f e n d a n t		
1 0 t h D e f e n d a n t	IAL Shipping Agency (S) Pte Ltd ( <b>'IA Singapore'</b> )	A subsidiary of IA Japan. It was incorporated in Singapore in 1993.
1 1 t h D e f e n d a n t	Michele Lee Mee Ching (Malaysian)	Assistant Finance Manager of IAM. Relative of the 3rd Defendant.
1 2 t h D e f e n d a n t	Lau Chu Guai (Singapore national)	The former General Manager of IA Singapore.
1 3 t h D e f e n d a	Yi Chun Shipping Agencies Sdn Bhd ('Yi Chun')	An agent for IA Japan in Malaysia. It was incorporated in Malaysia in 1992. Wholly owned by the 15th

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		Defendant. Under the control of the 8th and 9th Defendants' family.
1 4 t h D e f e n d a n t	Wan Hai Lines (M) Sdn Bhd (' <b>Wan Hai Lines Malaysia</b> ')	A company incorporated in Malaysia and registered on 28.2.1992. Local agent for Wan Hai Lines Ltd. (Japan). Under the control of the 8th and 9th Defendants' family. Operates, inter alia, as shipping agent, carrier by land, air and water, carry on forwarding, consolidating generally in dealings of every kind connected with such goods and chattels.
1 5 t h D e f e n d a n t	Wan Hai Lines (S) Pte Ltd (' <b>Wan Hai Lines Singapore</b> ')	Subsidiary of Wan Hai Lines Ltd. Under the control of the 8th and 9th Defendants' family. Provides full container shipping services and engages in leasing of vessels and container chartering.
1 6 t h D e f e n d a n t	Rashid Zulkifli (Sued as a firm)	A law firm established in Malaysia. Former solicitors of the 1st until 4th Defendants and the 10th until 15th Defendants.

**[4]**The Plaintiff's cause of action against the Defendants is premised on the tort of conspiracy in that the Defendants, and each of them, wrongfully and maliciously, conspired with one or more of them either directly and/or aided and abetted the others in doing acts with the predominant purpose of causing injury to the Plaintiff by removing the Plaintiff from his position as managing director of the 2nd Defendant Company thereby causing the Plaintiff to suffer financial damage and emotional hurt to the Plaintiff's feelings of dignity and pride, (see para 41 of the Re-Amended Statement of Claim).

[5] The Court has considered the Plaintiff's Submission (O), the 2nd-6th and 10th-15th Defendants' Submission (P), 16th Defendant's Submission (Q), 2nd-6th and 10th-15th Defendants' Submission in Reply (R) and 16th Defendant's Submission in Reply (S). The Court's findings are as follows.

#### Res Judicata

[6] The Defendants contended that the doctrine of res judicata and issue estoppel protects a defendant from being sued twice for the same cause of action and/or the same issues which have been decided upon. The cases of *Carl-Zeiss-Stiftung v Rayner & Keeler Ltd.* [1966] 2 All ER 536, *Asia Commercial Finance (M) Berhad v Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783, *Perspetive Management Services Sdn Bhd v Seganom Sdn Bhd* [2004] 4 CLJ 466, *Asia Commercial Finance (M) Berhad v Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783, *Superintendent of Pudu Prison & Ors. v Sim Kie Chon* [1986] 1 MLJ 494 were cited.

[7] The Defendants further submitted that the parties in this Suit are similar to the parties in the "Other Actions Brought By the Plaintiff" as identified by them below -

#### (a) Winding Up Petition

Parties - Plaintiff v (i) Interasia Maritime (M) Sdn Bhd; (ii) Interasia Lines Ltd (Japan); and (iii) Interasia Lines (Singapore) Pte. Ltd.

Status - the Court had dismissed the Plaintiff's petition.

#### (b) Section 181 Petition Parties

- Plaintiff v (i) Chen Ching Chih; (ii) Interasia Lines Ltd; (iii) Wan Hai Lines Ltd; and (iv) Interasia Maritime (M) Sdn Bhd.

Status - the Court had dismissed the Plaintiff's petition.

#### (c) Winding Up Appeal

Parties - Plaintiff v (i) Interasia Maritime (M) Sdn Bhd; (ii) Interasia Lines Ltd (Japan); and (iii) Interasia Lines (Singapore) Pte. Ltd.

Status - the Court had dismissed the Plaintiff's appeal and awarded RM 10,000 costs for each Respondent (there were three Respondents).

(d) Section 181 Petition Appeal

Parties - Plaintiff v (i) Chen Ching Chih; (ii) Interasia Lines Ltd; (iii) Wan Hai Lines Ltd; and (iv) Interasia Maritime (M) Sdn Bhd.

Status - Pending in the Court of Appeal.

(e) Industrial Court Claim

Parties - Plaintiff v Interasia Maritime (M) Sdn Bhd.

Status - Pending in the Industrial Court.

(f) First Defamation Suit

Parties - Plaintiff v (i) Interasia Maritime (M) Sdn Bhd; and (ii) Chen Ching Chih.

Status - Matter is inactive at the Shah Alam High Court.

(g) Second Defamation Suit

Parties - Plaintiff v Chen Ching Chih.

Status - Pending in the Shah Alam High Court.

Trial fixed on 2.3.2012.

**[8]** For the issue of res judicata and issue estoppel, I am inclined to accept the position that is submitted by the learned Counsel for the Plaintiff at para 107:

a The cause of actions in the Shah Alam Court was under section 218(i) of the Companies Act 1965 and section 181 of the Companies Act 1965 and the cause of action in the present suit is the tort of conspiracy. They are all different.

b The agreement to conspire was never an issue in the Shah Alam Court and the Shah Alam Court never decided on this issue. This conspiracy is the main issue in the present suit.



the Plaintiff was its employee; (iii) all business affairs in respect of IAM and its management were relayed to DW1. Therefore it is the Court's finding the evidence of DW1 is within his personal knowledge.

**[15]** In addition the Plaintiff questioned the credibility of DW1 as a witness contending he told lies and is a cheat. Evaluating the evidence, I did not find there is merit in the Plaintiff's contention for the reasons:

(i) With regard to the documents found with some markings in DW1's possession, namely, Additional Bundle of Pleadings, Ikatan Dokumen (Bahagian A dan B), Ikatan Dokumen (Bahagian C) and Ikatan Dokumen Tambahan 2 (Bahagian B dan C), the Court had forfeited the same from DW1. DW1 apologised to the Court in bringing his own set of documents whilst giving testimony on 23.9.2011 and explained it was not known to him that it is a practice for the Courts in Malaysia not to permit witnesses to bring their own bundles as based on his experience attending courts outside Malaysia, witnesses were permitted to bring their own documents.

(ii) As for the 10 employees who had resigned, I accepted DW1's explanation as why he considered them as key employees too (see para 19.2 below).

(iii) The Plaintiff contended DW1's allegation that the Plaintiff refused to investigate the matter is inconsistent with para 2 of the Minutes of EGM dated 19.10.2005 (Bundle E p.552) wherein DW1 (Chairman) had instructed the Plaintiff not to be involved in the investigations. To this contention, the 2nd to 6th Defendants and 10th to 15th Defendants have explained that DW1's statement is for events occurring sometime in September 2005 and the statement showed that the Plaintiff had failed to take any steps to investigate upon receiving Balachandar's resignation letter dated 15.8.2005.

(iv) There is no merit in the Plaintiff's contention that DW1 lied in re-examination when he said -

"Because the plaintiff allow our Indonesia and Bangkok agent to become agent of our competing carrier which is Top Asia and this is why we have strong suspicious."

This evidence was not led at the trial and documents at Bundle E pp.537-538 were not marked and is therefore not admissible as evidence.

### Conspiracy

**[16]** Now I shall turn to the issue of the alleged conspiracy. The elements to be established for

the tort of conspiracy are -

- (i) the existence of an agreement between two or more persons;
- (ii) for the purpose of injuring the Plaintiff; and
- (iii) acts done in the execution of that agreement which resulted in damage to the Plaintiff,

(see *SCK Group Bhd & Anor v Sunny Liew Siew Pang & Anor* [2010] 9 CLJ 389 (CA) at p.396 E-I, Clerk & Lindsell on Torts Nineteenth Edition, London; Sweet and Maxwell, 2006 p.1611 at para 25-117; *Crofter Hand Woven Harris Tweed Company, Limited, and Others v Veitch and Another* [1942] A.C. 435 (HL) at p.440) (all cited by the 2nd-6th and 10th-15th Defendants); *Industrial Concrete Products Bhd v Concrete Engineering Products Bhd & Other Suits* [2001] 8 CLJ 262; *SV Beverages Holdings Sdn Bhd v Kickapoo (Malaysia) Sdn Bhd* [2008] 4 CLJ 20, (CA) which approved the former case (both cited by Plaintiff).

**[17]** With respect to conspiracy, the crux of the Plaintiff's claim lies in para 41 of the Re-Amended Statement of Claim -

"The Defendants and each of them wrongfully and maliciously conspired with one or more of them either directly and or aided and abetted the others in doing acts with the predominant purpose of causing injury to the Plaintiff by removing the Plaintiff from his position as Managing Director of the 2nd Defendant JV Company, causing the Plaintiff to suffer financial damage and emotional hurt to the Plaintiff's feelings of dignity and pride."

**[18]** Para 41 of the Re-Amended Statement of Claim will be discussed under 3 limbs -

- (i) "The Defendants and each of them wrongfully and maliciously/conspired with one or more of them either directly and or aided and abetted" ("1st limb");
- (ii) "...in doing acts with the predominant purpose of causing injury to the Plaintiff by removing the Plaintiff from his position as Managing Director of the 2nd Defendant JV Company ..."("2nd limb"); and
- (iii) "... causing the Plaintiff to suffer financial damage and emotional hurt to the Plaintiff's feelings of dignity and pride." ("3rd limb").

**[19]** With respect to proof of the 1st limb, I find the essential element of the tort of conspiracy is absent and this alone warranted a dismissal of the Suit. The reasons being the Plaintiff has failed -

- (a) to illustrate precisely the alleged agreement between each of the Defendants in his Re-Amended Statement of Claim;
- (b) as evidence of the inability of the Defendants to act independently was confirmed by the Plaintiff in cross-examination. There is no agreement between the 2nd and the other Defendants; the same goes for the 3rd, 4th, 5th, 6th, 7th, 8th, 10th, 11th, 12th, 13th, 14th, 15th and the other Defendants as they are basically under the control of the 9th Defendant; the Defendants are unable to act independently, so there cannot be an agreement between them. To reiterate the Plaintiff did not proceed against the 9th Defendant as the Writ has expired.

[20] Based on the evidence (Q&A(s) at para 73 - 2nd-6th and 10th- 15th Defendants' Submission), I agreed with the Defendants that the Plaintiff has failed to prove there was an agreement between the two or more of the Defendants to injure the Plaintiff at the time of the alleged act of conspiracy. (**SCK Group Bhd** (supra); **Crofter Hand Woven Harris Tweed Company Limited** (supra) at p.445; *Renault SA v Inokom Corporation Sdn Bhd & Anor And Other Applications* [2010] 5 CLJ 32 at p.51G-I).

[21] Further in cross-examination (Q&A(s) at para 76, 2nd-6th and 10th-15th Defendants' Submission) the Plaintiff testified that the board of directors and/or the shareholders of a company cannot make decisions without the approval of the 9th Defendant (DW1), group Chairman of the Wan Hai Group of Companies at the material time

[22] In the event the Court erred in its finding on the 1st limb, I shall now turn to the 2nd limb. In para 19 of the Re-Amended Statement of Claim the Plaintiff pleaded that the 2nd Defendant was a JV company between him and the 7th Defendant. However in cross-examination on 28.7.2011 the Plaintiff's solicitor's had withdrawn his allegation of the existence of a JV Company and it follows that the 2nd limb must necessarily fail as there was no amendment to suggest a different connotation to the 2nd limb.

[23] Be that as it may, the submission of the Defendant is that the Plaintiff's removal as MD of the 2nd Defendant was lawful whereas the Plaintiff contended otherwise. The evidence showed the decision to remove the Plaintiff resulted from acts that was done by the Plaintiff, namely -

- (i) maliciously preventing the 3rd, 4th and the 9th Defendants from entering and having access to the 2nd Defendant's premises and documents ("1st event");
- (ii) the Plaintiff's involvement in the Top Asian Container Line Sdn Bhd ("TACL") ("2nd event"); and

(iii) the losses caused by the Plaintiff to the 2nd Defendant ("3rd event").

**[24]** As far as the 1st event is concerned, as correctly pointed out at the material time, the 9th Defendant is the Chairman of Wan Hai Lines Group of Companies, 4th and the 3rd Defendants are the Alternate Directors of the 2nd Defendant. From the cross-examination of the Plaintiff, (i) it is apparent that he employed security guards for the 2nd Defendant; (ii) although he admitted the 9th and 4th Defendants went to the 2nd Defendant's office on 13.2.2006, yet he denied that they were refused entry; however he admitted the 4th Defendant lodged a police report regarding the refusal of entry (IDD27 - Bundle E p.570); (iii) the Plaintiff vide his Statement of Case filed in the Industrial Court pleaded that the Chairman and the Taiwanese directors forced their way into the 2nd Defendant; (iv) however when asked -

"Why would the Taiwanese director force their way in if they are allowed entry? If you did not stop them from coming in, they wont have to force their way in?"

the Plaintiff sidetracked the issue by answering -

'At that time of incidents, I was at the police station making a police report. When I came back, my deputy GM informed me about it and he made police report on that incident."

**[25]** Further DW1 testified in examination in chief -

(i)

"At the point when the new competent individuals were nominated, the Plaintiff did not object to or query their involvement in any other companies.

However, the Plaintiff later turned hostile towards IA Japan and to the directors appointed to the board of directors of IA Malaysia alleging that IA Japan has no right to appoint the new directors.

From 13.2.2006 until 28.3.2006, the Plaintiff had forcibly prevented me as the Chairman of Wan Hai Lines Group of Companies and other newly appointed directors of IA Malaysia from having access to the

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company's premises and documents.

On 14.2.2006, the Plaintiff has employed a security guard to prevent IA Malaysia's board of directors from having access to IA Malaysia's premises.

The Plaintiff had also commenced a winding up petition in the High Court of Shah Alam via Petition No.MTI-28-90-2006 dated 26.4.2006 to wind up IA Malaysia.

On 7.2.2007, this winding up petition was then consolidated with petition No.MT3-26-2-2006 dated 11.6.2006 under Section 181 of the Companies Act 1965 .

The Plaintiff had also sought an interlocutory injunction to restrain the board of directors from removing him as a Director and the Managing Director of IA Malaysia.";

(ii) the existence of a letter dated 10.3.2006 from 2nd Defendant's previous solicitors, M/s Seah Balan Ravi & Co. to M/s David Gurupatham & Koay, Plaintiff's previous solicitors and c.c to the 2nd Defendant (Bundle D p.209). The said letter, inter alia, reads -

"You will no doubt recall that a compromise was reached between all of you that a representative of the Board of Directors of IAM will be granted access to IAM's office and documents without any conditions and hindrance from your client or any servant of his, including of any third party. He is also to have access to documents, files and to any information that he may need to refer or to inspect in the course of his duties as a director.";

(iii) the purpose of the said letter was to inform the Plaintiff on Mr. Chua Teck Leong's (3rd Defendant) appointment as one of the Board of Director of IAM (2nd Defendant) and that he is to be allowed access to IAM's office and to all IAM's document as prior to this he was denied access;

(iv) the reply from the Plaintiff's solicitors was a "without prejudice" letter whereby Mr. Sodhi informed the Court his client does not wish to waive his rights as to privilege attached to the said letter;

(v) vide letter dated 15.3.2006 (Bundle D p.210), M/s Seah Balan Ravi & Co wrote in reply to M/s David Gurupatham & Koay's letter dated 10.3.2006 -

"Our client is of the view that the conditions imposed by your client are restrictive and unfair to our client. The restrictive access means no access to our client. Our client as the Board of Directors is entitled to unlimited access to the office premises and documents. Our client's representative Mr L T Chua is the acting Managing Director is also entitled to unlimited access to the office premises and documents. Your client's action of limiting our client's access is clearly detrimental to the interest of the company's and the shareholder of the company.";

(vi) he was denied access and a police report was lodged that Plaintiff was hijacking the office documents.

**[26]** Based on the oral evidence and the relevant documentary evidence, save for the IDD documents, the Court's finding is that during the period (13.2.2006 to 28.3.2006), the Plaintiff had forcibly prevented the 3rd, 4th and the 9th Defendants from entering the premises of the 2nd Defendant.

**[27]** In relation to the 2 event, what transpired is sometime in September 2005, there were rumours that there were employees of the 2nd Defendant who were involved in the establishment of a competing company, TACL. Due to the rumours, the 2nd Defendant's Chairman and Board of Directors looked into the matter and discovered that employees of the 2nd Defendant were involved in TACL were the Plaintiff and Balachandar as per the evidence.

**[28]** In cross-examination of the Plaintiff (Q&A(s) at para 123, 2nd-6th and 10th-15th Defendants' Submission) it transpired on 15.8.2005, one Balachandar, the ex-finance manager of the 2nd Defendant tendered his letter of resignation (Exh.D32, Bundle E p.526) with one month notice but with no reason stated. Then on 16th August 2005 the Plaintiff accepted his resignation waiving that one month termination notice stating "Taking into consideration of the rumours in the market on your future endeavours, and to protect our company's interest, I have to release you today" (Exh.D33, Bundle E p.527).

**[29]** Based on the SSM report (exh.D28, Bundle H pp.2042-2044), TACL was established on 6.7.2005. Balachandar was listed as one of the Directors in TACL and was appointed on 12th July. Plaintiff agreed this was the same Balachandar who had resigned about one month after the incorporation of TACL. As the Managing Director of the 2nd Defendant, Plaintiff ought to investigate on the involvement of Balachandar with TACL before accepting his resignation. But what he did was he straight away said "... I have to release you today." What is material is the Plaintiff did not investigate despite there being a requirement of a one month termination. The Plaintiff agreed as MD he would know who are his competitors; yet said he would not know if any of his employees has set up a competing business.

**[30]** Further, DW1 in examination in chief testified the Plaintiff had allowed Balachandar and

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Vivian Tarn to accompany him to Singapore, Jakarta and Bangkok on 14.7.2005 just before he tendered his resignation (16.8.2005).

**[31]**After that on 2.9.2005, the Plaintiff through his General Manager, Ms Vivian Tarn ordered for the cancellation of the parking lots that was allocated for the employees of the 2nd Defendant (exh.D43, Bundle E p.545). The Plaintiff agreed it was because of the TACL issue, the 2nd-6th and 10th-15th Defendants proceeded to initiate investigation proceedings in August 2005 and agreed "Before TACL, everything was alright, after TACL, [Plaintiff] started to fight."

**[32]** Based on the evidence it is the Court's finding that the Plaintiff is not acting for the best interest of the company or the 2nd Defendant due to his involvement in TACL.

**[33]**The 3rd event submitted by the Defendants is the losses caused by the Plaintiff to the 2nd Defendant during his tenure as MD due to -

- (i) the resignation of the key employees of the 2nd Defendant;
- (ii) the establishment of TACL; and
- (iii) the Plaintiff's mismanagement.

**[34]**There is proof that during the Plaintiff's tenure as MD of 2nd Defendant, 10 key employees resigned supported by their letters of resignation -

No	Name	Former Designation in the 2nd Defendant	Date Tender Resignation
1.	Lee Keen Tuck	Sales Executive	1.8.2005
2.	Rajamaran a/l Rajee	Data Entry/IT Assistant	25.7.2005
3.	Anchala A Alagendiran a/l A Thimulam	Logistic Clerk	25.7.2005
4.	Normizan binti Samsuri	Customer Service Executive	15.8.2005
5.	Noor Zailan binti Awang	Documentation Officer	(file missing)
6.	Andy Tan Jee Wei	Transshipment Assistant	17.8.2005
7.	Sally Lee	Customer Service	1.8.2005
8.	Asley Ting Mee Foong	Account & Admin Assistant	25.7.2005
9.	Ivy Chong	Trade Assistant	12.10.2005 (tendered within 24 hours notice)
10.	Kong San Siong	Trade Executive	1.8.2005

**[35]** With regard to the Plaintiff's contention that the 10 said employees who resigned were key employees, I accepted the response of DW1 in cross-examination that key employees of the 2nd Defendant referred to "the MD, GM, Deputy GM, branch manager and heads of various department. There are other key employees. Every employee is key employee" as this has to be appreciated in the context of the shipping industry where DW1 testified -

"The Plaintiff also did not obtain any assurances or place any conditions on these employees that they will not engage or allow themselves to operate in competition with IA Malaysia knowing fully well how sensitive this industry is to competition and the impact of a mass resignation, especially of key personnel."

**[36]**As for the establishment of TACL as a competing company, I adopt what is alluded to in para 18-18.3 above; and (ii) the evidence that directors also found the Plaintiff allowed one Miss Pamela Vanaja, an administrative staff of IAM to cancel IAM's allocated car parks and had instead allocated them to the employees of TACL and to leak IAM's confidential information relating to employees' details and pay roll to TACL.

**[37]** As to the argument on Plaintiff's mismanagement of the 2nd Defendant which caused loss, I find the evidence showed -

- (i) when it was put to him, there was a loss of around RM4,000,000 from 2004 to 2005, although the Plaintiff said "There is no loss, only reduction of profit";
  - (ii) DW1 when cross-examined as to why the 2nd Defendant deteriorated after the appointment of new directors and alternate directors, responded "*No. 1, because as I said, the key employee left the company and also because additional competition from Top Asian Line which was formed by the former.*"
  - (iii) there was a decrease in the profits as DW1 stated -

<u>"Year</u>	<u>Net Profit After Tax</u>
2003	RM997.050 - See pg 502 Bundle E
2004	RM9,045,999.00 - See pg 306 Bundle E
2005	RM5,255,057.00 - See pg 306 Bundle E

Therefore based on the evidence between the year 2004 and 2005, there is a difference of about 4 million (RM9,045,999.00 -RM5,255,057.00).

**[38]** During cross-examination (by 16th Defendant's Counsel) the Plaintiff admitted the conspiracy to remove him as MD must be before 30.3.2006. The Court agreed with the Defendants that the Plaintiff was lawfully removed from his position as MD of 2nd Defendant on 30.3.2006 through the EGM and that it was for the best interest of the company. Further, the Court would not consider any evidence or documents beyond 30.3.2006 as there could not be any "predominant purpose to remove the Plaintiff" after this cut-off date.

**[39]** It is the Court's finding on a balance of probabilities, based on the evidence there is no merit in the Plaintiff's contention that each of the Defendants conspired among themselves in doing acts with the purpose of causing the Plaintiff to suffer financial damage and injury. Even if it could be argued that the removal of the Plaintiff caused damage to the Plaintiff (which I held otherwise) it is not a tortious conspiracy based on the ratio decidendi of Crofter's case wherein Viscount Simon L.C. at p.445 opined -

"It is enough to say that if there is more than one purpose actuating a combination, liability must depend on ascertaining the predominant purpose. If that predominant purpose is to damage another person and damage results, that is tortious conspiracy. **If the predominant purpose is the lawful protection or promotion of any lawful interest of the combiners (no illegal means being employed), it is not a tortious conspiracy, even though it causes damage to another person.**" (Emphasis added)

**[40]** In relation to the 3rd limb, the Plaintiff has alleged that the financial loss suffered by him due to his removal is the loss value of his share and the non payment of dividends. It is the Court's finding the Plaintiff has failed to prove that he suffered financial damage and emotional hurt to his feelings of dignity and pride. Here I rely on the case of *Milicent Rosalind Danker & Anor v Malaysia-Europe Forum Berhad & Ors* [2011] 1 LNS 497 (at p. 17 of the judgment) where Harmindar Singh Dhaliwal JC (as he then was) following *Lonrho Pic & Others v Fayed & Others (No.5)* [1994] 1 All ER 188 held "As a matter of law, damages for loss of reputation or injured feelings cannot be recovered in an action based upon conspiracy"

**[41]** The Plaintiff's claim for exemplary damages is also not claimable following Halsbury's Laws of England Vol. 12(1) 4th Edn. Reissue para 1115, p.518 which states such damages are damages which are awarded to punish and limited to 3 categories of cases - (i) oppressive, arbitrary or unconstitutional action by servants of the government; (ii) in which the defendant's

conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and (iii) where exemplary damages are expressly authorised by statute.

**[42]**With respect to the issue of loss and injury, in examination in chief, the Plaintiff, inter alia, stated -

- (i) "You see I am 15% shareholder in the 2nd defendant company. I also invested about RM450,000.00 in the 2nd defendant company. After removing me out of the way the defendants literally stripped the 2nd defendant of its assets and I suffered financial loss as a result in the drop in the value of my shareholding. I was not paid dividends since 2006.

Another good example is found at page 136 and 137 of IDT (sic) Part C [Bundle F IDP26]. This is an email from the 10th defendant's auditors to the 10th defendant where the 12th defendant is on copy. It can be seen from the email that there is a sum of Singapore Dollar 617,463.10 due from the 10th defendant to the 2nd defendant.

The 10th Defendant was trying to convince the auditors that these are not monies due to the 2nd defendant but arose out of exchange rate fluctuations. However the auditors did not agree and told the 10th defendant that they will give a qualified no opinion which will invite the tax authorities in Singapore to make inquiries."; and

- (ii) "The value is not even worth RM1.00/-. I have completely loss (sic) all my investment and my shares which were at one time worth about RM4.2 million is now worthless. See the valuation report at page 281 of ID Part C. I ask the court to give me at least RM4.2 million in damages."

**[43]**The remaining answer of the Plaintiff in bold is inadmissible on the ground of hearsay which I will address further later.

**[44]** In cross-examination by 16 Defendant's Counsel as what are his losses and damage due to the conspiracy he alleged, the Plaintiff stated -

"The value of my shares, my position as the MD, my yearly salary benefit, my image."

Q: You claim you are not getting dividends?

A: Yes.

Q: Were there any declarations of profits?

....

- A: During my time, yes.
- Q: After your time?
- A: No.
- Q: If there is no declaration of profit, as an MD, you know no one will get any dividends?
- A: Yes.
- Q: So do you agree you were not singled out to not get any dividends?
- A: Yes."

**[45]** The Plaintiff relied on (i) the Valuation Report dated 10.12.2005 prepared by Thiang & Co.(IDP7, Bundle E pp.264-282 at p.281and and e-mail from "Ah Long" (auditors for 10th Defendant) to Regine Yeo, Finance Manager for 10th Defendant) dated 10.10.2006 (IDP26, Bundle F pp. 136-137) which is of no relevance. In any event both these documents are only ID documents and not admitted as evidence.

**[46]** Based on the available evidence, the Court's finding is the Plaintiff has not managed to adduce any evidence to support his claim of financial damage.

#### Adverse inference

**[47]**The Plaintiff urged the Court to draw an adverse inference against the 2nd, 4th, 5th and 6th and 10th-15th Defendants for failure to testify contending the allegations made against them were of a personal nature and in respect of the 3rd Defendant who was present in Court but did not deny the "serious and personal allegations against him."

**[48]** The law as to when an adverse inference ought to be invoked against the other party is trite. However in the circumstances of this case, I agreed with the Defendants why it is sufficient for DW1 to testify apart from the fact that he is authorised to testify on their behalf -

7.1 There are 16 Defendants in this suit. It will be time consuming for each of the Defendants to give evidence during trial.

7.2 That DW-1 is the Chairman of IAM and Wan Hai Lines group of companies. Therefore, he would have knowledge of the events in respect of this suit.

7.3 The 2nd, 10th, 13th, 14th and 15th Defendants are companies and DW-1 is the most suitable individual to testify on their behalf.

7.4 The 3rd, 4th, 5th, 6th, 11th, 12th Defendants are mere employees of Wan Hai Lines group of companies. Therefore, their knowledge as to the events concerning this suit is limited.

7.4.1 Further, these individuals are residents of either Malaysia, Taiwan and/or Singapore. Therefore, in order to avoid any inconvenience, DW-1 is the best individual to testify for and on behalf of these Defendants."; and

- (i) "In any event, the final sentence of the answer given by the plaintiff in Question 57 of WS-PW2 which is as follows "... if I agreed, the 9th Defendant will stop harassing me" essentially means that the 3rd Defendant is unable to act independently. It follows therefrom that this completely negates any element of agreement as required in the test of the tort of conspiracy."

Defendants' objection on hearsay questions

**[49]** In respect of this issue I am persuaded by the 2nd- 6th and 10th-15th Defendants' Submission that the answers to the following questions in the examination in chief of the Plaintiff's witness statement (WSPW2) are rendered inadmissible on ground of hearsay -

- |        |               |
|--------|---------------|
| "(i)   | Question 54;  |
| (ii)   | Question 55;  |
| (iii)  | Question 57;  |
| (iv)   | Question 59;  |
| (v)    | Question 67;  |
| (vi)   | Question 68;  |
| (vii)  | Question 69;  |
| (viii) | Question 70;  |
| (ix)   | Question 71;  |
| (x)    | Question 72;  |
| (xi)   | Question 72A; |
| (xii)  | Question 77." |

**[50]** Further with regard to Q&A 74 in WSPW2, I agreed no probative value ought to be attached to this answer as it related to an event in May 2006 i.e. an occurrence after 30.3.2006 (date of

Plaintiff's removal).

Action against 16th Defendant

**[51]** Essentially the 16th Defendant's defence is -

"2.1 the Plaintiff's pleaded claim against the 16th Defendant does not disclose a reasonable cause of action; and

2.2 notwithstanding the foregoing and without derogating therefrom there is no evidence of the 16th Defendant being involved in any conspiracy or wrongdoing either as alleged or at all".

**[52]** The 16th Defendant was added as a party on 9.4.2010, about 3 years 5 months after the action was filed on 1.11.2006. Only 3 paras in the Re-Amended Statement of Claim relate to the 16th Defendant, namely, paras 16A, 41 and 42.14.

**[53]** The crux of the Plaintiff's claim against the 16th Defendant including against the 2nd-6th Defendants and 10th -15th Defendants as alluded to earlier lies in para 41 of the Re-Amended Statement of Claim (see para 11.1 above). The 16th Defendant basically denied para 41 vide para 5 to 5.3 of the Defence.

**[54]** Para 42.14 of the Re-Amended Statement of Claim alleges "In pursuance and in furtherance of the said conspiracy" (para 41) -

"42.14 On 18.4.2006 the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 13th, 14th, 15th Defendants, Chen Chih-Hsien and Wan Hai Lines Ltd (Japan) caused the 1st, 3rd and 4th Defendants and Abdul Rashid Ismail a partner in the 16th Defendant to hold a meeting to discuss ways and means to unlawfully procure copies of the bank account statements of the Plaintiff in contravention of the Banking and Financial Institution Act 1989. At this meeting the 1st Defendant agreed to use undisclosed sources to procure the bank statements of the Plaintiff. The 1st Defendant also agreed to procure from undisclosed sources the Plaintiff's private mobile or land line telephone records."

**[55]** The 16th Defendant has denied para 42.14 save it was admitted there was meeting held on 18.4.2006 and the 16th Defendant claimed professional privilege in respect of what occurred during the meeting. 25.4 Hence essentially the allegations against the 16th Defendant are 2 fold -

....

"(i) that the 16th Defendant was party to a conspiracy "with the predominant purpose of causing injury to the Plaintiff by removing the Plaintiff from his position as managing director of the 2nd Defendant JV Company"; and

(ii) the role played by the 16th Defendant in this alleged conspiracy was that "on 18.4.2006 the 1st, 2nd, 3rd, 4th, 5th, 6th, 7<sup>th</sup>, 8th, 9th, 10th, 13th, 14th, 15th Defendants, Chen Chih-Hsien and Wan Hai Lines Ltd (Japan) caused the 1st, 3rd and 4th Defendants and Abdul Rashid Ismail a partner in the 16th Defendant to hold a meeting to discuss ways and means to unlawfully procure copies of the bank account statements of the Plaintiff in contravention of the Banking and Financial Institution Act 1989." (Emphasis added)

**[56]**The 16th Defendant submitted the alleged conspiracy against the 16th Defendant is a legal impossibility and does not disclose any reasonable cause of action. I agreed with this submission as -

- (a) The Plaintiff was dismissed as the MD of the 2nd Defendant on 30.3.2006 (undisputed as it is pleaded by the Plaintiff in para 42.11 of the Re-Amended Statement of Claim) and the 16th Defendant's alleged involvement at the meeting took place later, i.e. 18.4.2006. Since the alleged conspiracy is in respect of the dismissal of the Plaintiff as MD of the 2nd Defendant which occurred on 30.3.2006, the meeting on 18.4.2006 cannot possibly have anything to do with the alleged conspiracy, that is, to dismiss the Plaintiff.
- (b) In para 42.11 of the Re-Amended Statement of Claim the Plaintiff alleged that his dismissal as MD of the 2nd Defendant was caused by the "2nd, 3rd, 4th, 7th, 8th, 9th, 10th Defendants and Wan Hai Lines Ltd (Japan)". Thus there is no allegation that the 16th Defendant was involved in the dismissal of the Plaintiff as MD and the 16th Defendant's pleaded involvement was only in regard to a meeting held on 18.4.2006 which is after the dismissal of the Defendant.
- (c) The 16th Defendant could not have been privy to the conspiracy to dismiss the Plaintiff as MD of the 2nd Defendant because the Plaintiff was already dismissed 19 days earlier on 30.3.2006. Seen in this context, it is legally impossible for the allegation for the 16th Defendant to conspire to dismiss the Plaintiff to be sustained.

**[57]**As for para 42.14 of the Re-Amended Statement of Claim (see paras 25.3 and 25.4 above), even if the allegation that several of the Defendants including Wan Hai Lines Ltd (Japan) caused Abdul Rashid Ismail, a partner of the 16th Defendant to hold a meeting to discuss ways and means to unlawfully procure copies of bank account statements of the Plaintiff in contravention of BAFIA, in my judgment, this is not the subject matter of the conspiracy complained of; the subject matter of the conspiracy complained of is the dismissal of the Plaintiff (para 41 of the Re-Amended Statement of Claim).

**[58]**In my judgment, the allegation of discussion of ways and means to unlawfully procure copies of bank account statements of the Plaintiff in contravention of BAFIA, even if true (which I held is not and will be addressed later), does not constitute a known cause of action in law upon which the Plaintiff can sustain.

**[59]** Even if, the allegation is proven, the allegation caused no legal damage to the Plaintiff as the dismissal had taken place before the dismissal of the Plaintiff. It is the Court's finding the Plaintiff has not proven that he suffered any damage caused by the meeting of 18.4.2006, which is an essential element to establish a cause of action in conspiracy.

**[60]** Be that as it may, I shall now turn to the evidence. At this juncture it is appropriate for me to refer to the Court's ruling on 15.12.2011 with respect to 3 documents objected to by the 2nd-6th and 10th-15th Defendants and the 16th Defendant on ground of privilege which I ruled in their favour. The reasons are set out below:

- 1 The issue is whether the following 3 documents are admissible as evidence as these documents are not privileged as the Plaintiff contends or they are not admissible on the ground of privilege as per the contention of the 2nd to the 6th Defendants and 10th to 15m Defendants and the 16th Defendant -
  - (a) Bundle E pp.389-392, a letter dated 19.4.2006 from the 1st Defendant (PW1) to Mr. Abdul Rashid Ismail (DW2), advocate and solicitor and a partner of the 16th Defendant law firm, Messrs Rashid Zulkifli (Exh.P1) ("1st document");
  - (b) Bundle E p.408 is an e-mail dated 27.11.2006 from Dr. Chen Ching Chih (DW1) to DW2 of the 16th Defendant (IDP15) ("2nd document").

On record Dr. Chen is the 9th Defendant the Court was informed by Mr. Sodhi, Plaintiff's solicitors, his instructions are the Plaintiff is not proceeding against the 7th and 9th Defendants as the Writ of Summons and Statement of Claim were not served on them; nevertheless the Plaintiff is not withdrawing any allegations against them and not making any election not to proceed against them. The Plaintiff cannot have it both ways. Therefore for all intents and purposes I regard Dr. Chen is still the 9th Defendant in this proceedings. Further Dr. Chen is also the Director of the 2nd, 7th and 10th Defendants; and

- (c) Bundle E pp.450-452, is a letter dated 21.8.2007 from the 16th Defendant to the 2nd Defendant with enclosures (IDP17) ("3rd document").

2

The Court has considered the following Written Submissions of:

- (a) the Plaintiff dated 18.11.2011;
- (b) the 2nd to the 6th Defendants and 10th to 15th Defendants dated 2.12.2011;
- (c) the 16th Defendant dated 2.12.2011; and
- (d) the Plaintiff's Reply Submission to the Submission of 2nd to the 6th Defendants and 10th to 15th Defendants and to the submission of the 16th Defendant both dated 7.12.2011.

2.1 The Court's findings are as follows.  
1st document

- 3 Based on the evidence given by Mr. Abdul Rashid (DW2) in Q&A 5 and 6 of WSDW2, it is evident that DW2 was already representing the 7th and 2nd Defendants at the time of these correspondence in respect of the 3 documents and were instructed by the 7th and 2nd Defendants. The said representations were in respect of -
- (a) the s.181 Petition vide Originating Petition No.MT3-26-2-2006 which was issued on 11.2.2006 (Bundle I Tab 1 (Part B));
  - (b) the s.218 Petition vide Petition (Winding-Up) No.28-90-2006 which was issued on 26.4.2006 (Bundle G pages 1-32);
  - (c) advising the 2nd Defendant on the removal of the Plaintiff as Managing Director of the 2nd Defendant which was even well before the 11.2.2006 181 Petition or the 218 Petition.

3.1 It is undisputed that in the 1st document, reference is made to a meeting of 18.4.2006 which was attended by DW2, Mr. Chua Teck Leong (3rd Defendant) and Mr. Vany Huang (4th Defendant). The 3rd Defendant is the acting Managing Director, director and alternate director in the 2nd Defendant and the director and general manager for the 15th Defendant, Wan Hai Lines (S) Pte Ltd and the 4th Defendant is the alternate director of the 2nd Defendant and the General Manager for the 16th Defendant.

3.2 Based on PW1's evidence in chief, they wanted him to do the bank search i.e investigate into the bank statements of the in and outgoing cash of one Mr. Lim of whom he had not met; not sure of his full name and in cross-examination by Mr. Reza he is not sure he is the Plaintiff. In cross-examination it transpired that PW1 stated there was an understanding between him and the Plaintiff that the action against the 1st Defendant be withdrawn for the consideration of him being a witness for the Plaintiff.

3.3 Although in examination in chief PW1 said that he was not aware that it was illegal to obtain the bank statement of an individual until he came across this case, in cross-examination, PW1 stated he did not in the 1st document at p.389 say that he would be carrying out illegal act; that he is not aware that in law it is not illegal to obtain bank statements per se and only after he was sued that he became aware.

4. Based on the 1st paragraph of the 1st document, it is clear that the document was a proposal for the clients of the 2nd Defendant, represented by the 3rd and 4th Defendants. Counsel for the 16th Defendant at the outset when Plaintiffs Counsel sought to introduce the document as evidence during the proceedings objected to its admissibility on the ground of litigation privilege and solicitor client privilege. There is evidence from Dr Chen that the 2nd to the 6th Defendants and 10th to 15th Defendants are not waiving privilege.

4.1 S.126 of the Evidence Act 1950 provides that the communication between PW1 and DW2 is privileged communication in that it covered by "*any communication made to him in the course and for the purpose of his employment as such advocate by or on behalf of his client.*"

5. S.126 of the Evidence Act 1950 reads -

"126 Professional communications

(1) No [advocate] shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such [advocate] by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure -

- (a) any such communication made in furtherance of any illegal purpose;
- (b) any fact observed by any [advocate] in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

5.1 I refer to the illustrations given in amplification of the application of proviso to s. 126(1)(a) of the Evidence Act -

"(b) A, a client, says to B, an advocate: "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication being made in furtherance of a criminal purpose is not protected from disclosure."

5.2 I find there is no evidence that the communication was made in the furtherance of any illegal purpose based on the evidence of PW1 and DW2 during the additional Q&A asked of him by Mr. Darryl Goon -

"Q16 Having regard to evidence in this trial, did you ask PW1 who is also representative of D1 (Alliance) Mr. Sundaresan to commit any illegal act whatsoever?

A I did not ask Mr. Sundaresan to do any illegal act. I have no reason to do so and I have always acted professionally.

....

**Q17** Have you any reason to believe that PW1, Mr. Sundaresan would commit or have committed any offence in relation to the investigations that he had undertaken in this case?

**A** I have no reason to believe that Mr. Sundaresan had acted illegally in the investigation that he had undertaken.

**Q** Have you any reason to believe that PW1 would have committed any offence at time when he was instructed to carry out the investigation?

**A** I have no reason to believe that PW1 would commit any offence at that time.

**Q** To the best of your knowledge was any offence actually committed by PW1 in carrying out the investigation?

**A** To the best of my knowledge, PW1 has not committed any wrongful act or any offence.

6. With respect I am of the considered opinion that the s. 97(1) and (3) of BAFIA creates offences against directors or officers or agents of the licensed institutions or agents of licensed institutions to produce information or documents relating to the affairs or accounts of its customers. S. 97(2) of BAFIA is the exception whereby when the disclosure of such information is not an offence.

**6.1** Some guidance can be obtained from *Maju Holdings Sdn Bhd v Kamala Devi Ramadass & Anor* [2003] 1 CLJ 434 (CA) at p.441 f-g

**6.2** There is no evidence that DW2 asked any director or agent of any licensed institution to provide information relating to any of its customer. In fact there is no evidence from PW1 as to the source of his information. PW1 never admitted to doing anything illegal or to fabricating evidence..

7. The case of *Re The Detention of Leonard Teoh Hooi Leong* [1998] 1 MLJ 757 relied by the Plaintiff can be distinguished as the protection of privilege does not extend to communications made in the furtherance of a fraud or a criminal act. Here the communications between the detainee (advocate) and his client, Nor'aishah were no longer privileged as it involved a criminal investigation for a specific criminal offence of kidnapping.

2nd document

8. The subject matter of the e-mail is titled" NEW LEGAL ACTION BY CH LIM AGAINST IAM AND 14 ORS (PART 1). At the material time of the e-mail, both the 181 Petition (dated 11.2.2006) and s.218 Petition (dated 26.4.2006) were pending. Thus the said e-mail is (i) a communication to DW2 from his client was privileged pursuant to s. 126 Evidence Act; (ii) the contents of the e-mail pertained to this legal action instituted by the Plaintiff on 1.11.2006; (iii) the allegation by the Plaintiff that the Defendants were attempting to put in a "false and fabricated defence" denying "knowledge of the appointment" of the 1st Defendant as "private investigator" is untrue. This can be seen from a perusal of -

....

- (i) para 42.14 of the Re-Amended Statement of Claim, where the allegation pleaded was not merely to a meeting on 18.4.2006 with the private investigator but there was a "meeting to discuss ways and means to unlawfully procure copies of bank account statements of the Plaintiff..."

(ii) para 50 of the Amended Defences of the 2nd, 3rd, 4th, 11th, 13th, and 14th Defendants and 10th, 12th and 15th Defendants wherein para 42.14 is denied i.e. there was a "meeting to discuss ways and means to unlawfully procure copies of bank account statements of the Plaintiff..." and that they at "all material times are at any one time maliciously conspire with one or more of them either directly or indirectly and /or aided and abetted the other in doing acts with the predominant purpose of causing injury to the Plaintiff..."

8.1 Clearly, the 2nd document is privileged as it is protected by litigation privilege (16th Edition of Phipson on Evidence para 23-82 at p.634; *Waugh v British Railways Board* [1980] AC 521 (HL) at p.544A-B; *Dea Ai Eng (P) v Dr. Wong Seak Shoon & Anor* [2007] 2 MLJ 357 (HC) at p.362 G-H which followed the former case); and is also communication between solicitors and client as in *Dato' Au Ba Chi & Ors v Koh Keng Kheng & Ors* [1989] 3 MLJ 445, (HC) Held 3).

3rd document

9. As correctly submitted by the 2nd-6th and 10th-15th Defendants and the 16th Defendant, the 3rd document is not a payment but the said document comprised a letter from the 16th Defendant to its client (2nd Defendant) enclosing (i) a copy of a letter from the legal firm, M/s Saibullah M.V. Nathan & Co dated 15.8.2007; and (ii) a copy of an invoice from that firm to its client, the 1st Defendant. The correspondence is undoubtedly one from a solicitor to his client in the course of litigation and is therefore privileged. In *Rex v Chhoa Mui Sai* (1937) MLJ 236, the Court held evidence of payment by client to solicitor was held not to be "communication" within the meaning of s. 126 of the Evidence Act and hence this case does not apply as the circumstances of the present case are different.

For the reasons given the Court rules that the 3 documents are inadmissible on the ground of privilege."

**[61]**Reverting to the mainstream, I shall evaluate the evidence adduced by the Plaintiff. PW1 is a private investigator with the 1st Defendant who stated that on 18.4.2006 he was working with the 1st Defendant and he testified as to what occurred at the meeting on 18.4.2006 at Sheraton Hotel lobby. PW1 did not testify that DW2 or anyone in the 16th Defendant was involved in any conspiracy to dismiss the Plaintiff or to injure the Plaintiff; neither did state that DW1 had asked him to commit any illegal act. At its highest, PW1 testified there was an attempt to investigate the financial affairs of the Plaintiff whereby PW1 was engaged to procure the Plaintiff's bank statements; PW1 did not disclose from whom he obtained the information of the Plaintiff's financial affairs. Even in the words of the Plaintiff, "Mr. Rashid looked at the bank statements and informed Mr. Sundaresan that the bank statements were of no use as Mr. Rashid needed documents to nail me, to fix me, to justify my dismissal as the managing director of the 2nd defendant and to assist the defendants to fabricate a case against me.". As I have ruled earlier there was no evidence of any illegal act committed by the 16th Defendant that would justify the piercing of the solicitor-client privilege in this case.

**[62]** The Plaintiff could not give any admissible evidence of what occurred at the meeting on

18.4.2006 as he was not present then. Despite the fact he was not present at the meeting, he still chose to state the following in examination in chief which I have in any event ruled as inadmissible on ground of hearsay (Q&A 68 WSPW2) -

"68. Q. What happened on 18.4.2006 in relation to the 1st Defendant?

A. On 18.4.2006 the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 12th, 13th, 14th, 15th Defendants and 16th Defendant acting in concert caused the 1st, 3rd and 4th Defendants and Abdul Rashid Ismail a partner in the 16th Defendant to hold a meeting to discuss ways and means to unlawfully procure copies of my bank account statements. At this meeting the 1st Defendant agreed to use undisclosed sources to procure my bank statements. The 1st Defendant also agreed to procure from undisclosed sources my private mobile or land line telephone records. (Please refer to page 389 to 393, 408 to 411, 405 to 407, 450 to 452 in Bundle E. See pages 67 and 72 in Bundle B)."

**[63]** Further, the Plaintiff's reliance on some documents particularly, the 3 documents in Bundle E pp.389-392, p.408 and pp.450-452 have been ruled inadmissible on ground of privilege.

**[64]** In the course of cross-examination it is observed that the Plaintiff pretended not to be able to hear or understand the questions posed and avoided answers to questions which were obvious. In contrast in re-examination, he was eloquent and elaborated in detail.

**[65]** DW2 testified in examination in chief -

"Q5: Was the 16th Defendant firm ever engaged by any of the parties in this suit to provide legal advice or legal representation?

A: The 16th Defendant was the firm of solicitors representing several of the Defendants in this suit. At the outset, they were the 1st, 2nd, 3rd, 4th, 7th, 10th, 11th, 12th, 13th, 14th and 15th Defendants.

The 16th Defendant firm had filed the Memorandum of Appearance for the 1st Defendant. On 15.2.2007, the conduct of the 1st Defendant's Defence was taken over by Messrs Saibullah M.V. Nathan. The 1st Defendant's Defence was in fact filed by Messrs Saibullah M.V. Nathan.

The 16th Defendant firm ceased representing the other said Defendants when their defence to this suit was taken over by the legal firm of Messrs Raja Riza & Associates on 16.9.2009 and then on 2.3.2010.

Q6: Was that the extent of the 16th Defendant's engagement in respect of legal proceedings by the Plaintiff?

A: No.

The 16th Defendant was also the firm of solicitors who represented Wan Hai Lines Ltd, the parent company of the 15th Defendant, the 7th Defendant and the 9th Defendant in respect of a petition filed by the Plaintiff under Section 181 of the Companies Act, 1965 (the "181 Petition") vide Originating Petition No.MT3-26-2-2006 [Bundle I Tab 1 PtB].

The 16th Defendant was also the firm of solicitors who represented the 7th Defendant in respect of another petition filed by the Plaintiff under Section 181 of the Companies Act, 1965 (the "218 Petition") vide Petition (Winding-Up) No.28-90-2006 [Bundle G pp. 1-32 Pt B]. The 16th Defendant was also engaged by the 2nd Defendant to advise the 2nd Defendant on the removal of the Plaintiff as Managing Director of the 2nd Defendant."

**[66]** In fact the Plaintiff himself is aware that the 16th Defendant was at all material times acting as solicitors for the 1st, 2nd, 3rd, 4th, 10th, 11th, 12th, 13th, 14th and 15th Defendants as the same was acknowledged by him in examination in chief (Q&A 18 WSPW2).

**[67]** DW2 further testified he and the 16th Defendant firm had not conspired to injure or had any intention to injure the Plaintiff with the other Defendants and merely a stratagem to disqualify the 16th Defendant from acting for its clients who have been sued by the Plaintiff. In fact the Plaintiff even lodged a complaint against DW2 with the Advocates and Solicitors Disciplinary Board; amongst the allegation concerned the meeting of 18.4.2006 which complaint was dismissed summarily on the ground there was no merit in the complaint (Bundle K p.1 - letter of dismissal from Advocates and Solicitors Disciplinary Board dated 20.9.2009).

#### Conclusion

**[68]** For all the foregoing reasons, based on the balance of probabilities the Court finds that the Plaintiff has not proven its case against the 2nd-6th Defendants and 10th-15th Defendants and the 16th Defendant. In the circumstances, the Plaintiff's claim is dismissed with costs to be taxed unless otherwise agreed.

**[69]** Learned Counsel for the Plaintiff urged the Court to assess damages in respect of the 8th Defendant against whom the Plaintiff had obtained Judgment in default of appearance. Both the learned Counsel for the 2nd-6th and 10th-15th Defendants and the 16th Defendant objected to the same and urged that the assessment of damages as against the 8th Defendant be dismissed. After hearing arguments, I dismissed the Plaintiff's application on the grounds submitted on behalf of the 16th Defendant and the 2nd-6th and 10th-15th Defendants -

- (a) the trial was not truncated as liability and damages were heard at the same time; it was not a case of the Court deciding on the liability subject to damages to be assessed.

....

Hence if the Court has found no damages proven by the Plaintiff, it would follow that it would apply vis-a-vis the 8th Defendant as well;

- (b) the suggestion of the learned Counsel for the 2nd-6th and 10th-15th Defendants that he may be instructed to apply to set aside JID of the 8th Defendant because there is anomaly is not unknown in the legal process because of the anomaly that is presented in that there cannot be a conspiracy of one person; and
- (c) damages in an action in conspiracy is not actionable per se and one must establish damages; so if there is no damages, the tort is not made out.

**[70]** In relation to costs, submissions were heard on 7.11.2012. The amount of costs awarded to the Defendants by the Court on 21.11.2012 and the reasons for the same are as follows:

"1. The Court has considered the submissions of the Plaintiff, the 2nd -6th and 10th - 15th Defendants and 16th Defendant.

2. Learned Counsel for the Plaintiff submits the amount of costs payable to all the Defendants except the 16th Defendant is RM20,000.00 and costs of RM3,000 for the 16th Defendant.

2.1 Learned Counsel for the 2nd - 6th and 10th - 15th Defendants seeks costs of RM 100,000.00 for each Defendant amounting to RM1,100,000.00.

2.2 Learned Counsel for the 16th Defendant seeks costs of RM200,000.00 for getting up.

3. In determining the issue of costs, the findings of the Court premised on O. 59 r.19 of the Rules of Court 2012 ("the RC") read with O.59 r.16 of the same are the following.

3.1 O.59 r. 16(1) of the RC provides in assessing the costs payable in relation to any item, the Court shall -

- (a) have regard to all relevant circumstances; and
- (b) particularly subparagraphs (a) to (g) listed therein (which will be addressed below).

3.2 The factors therein are the same as the factors encapsulated in O.59 Appendix 1 Part X para (2) of the Rules of the High Court 1980 referred to by His Lordship Syed Ahmad Helmy JC (now JCA) in *Union Insurance Malaysia Sdn Bhd v Chan You Young* [2003] 7 CLJ 50 at pp.59, 73-77 albeit in the context of a review of the taxed costs awarded by the deputy registrar.

The complexity of the item or the cause or matter in which it arises and the difficulty or novelty of the questions involved

4. An allegation of conspiracy to injure is a serious allegation and entailed careful examination of the copious Notes of Evidence and the perusal and applicability of several authorities totalling 45.

4.1 It also entailed a consideration of the issue of res judicata and issue estoppel.

4.2 Further at the completion of the trial counsel for the parties were required to submit on whether the Plaintiff's documents i.e. letters dated 19.4.2006, 21.8.2007 and e-mail dated 27.11.2006 are privileged documents and therefore inadmissible. This involved a perusal of a total 25 authorities.

5. The case involved 16 Defendants comprising companies and individuals. However in the course of trial, the Plaintiff withdrew the suit against the 1st Defendant and did not proceed with his claim against the 7th and 9th Defendants.
6. Notwithstanding 4 witnesses were called to testify at the trial (Sundaresan a/l K. Krishnasamy (PW1) and the Plaintiff himself (PW2) and Dr. Chen Ching Chih (DW1) and the 16th Defendant (DW2)), the trial spanned over a period of 11 days.

The skill, specialised knowledge and responsibility required of, and the time and labour expended by the solicitor or counsel

7. There are voluminous documents involved which entailed the expertise of Counsel to peruse, analyse and advise. Further, there is considerable amount of time and labour required in preparing the pleadings, witness statements and the submissions together with the bundle of authorities in support thereof.

The number and importance of the documents, however brief, prepared and perused

8. The trial involved the perusal of the following documents in preparation for the trial -

(i) A Bundle of Pleading;

(ii) B Additional Bundle of Pleading;

(iii) C Additional Bundle of Pleading 2;

(iv) D Ikatan Dokumen (Bahagian A dan B);

(v) E Ikatan Dokumen (Bahagian C);

(vi) F Ikatan Dokumen Tambahan (Bahagian C);

(vii) G Ikatan Dokumen Tambahan 2 (Bahagian B dan C);

(viii) H 2nd\_6th 10th\_15th Defendants' Bundle of Documents (Part C);

(ix) I Defendants' Bundle of Documents (Part B);

....

- (x) J Defendants' Bundle of Documents (Part B);
- (xi) K 16th Defendant's Bundle of Documents.

8.1 In addition there were 31 volumes of Notes of Evidence which required the consideration of the Counsel for the 2nd - 6th and 10th - 15th Defendants and the 16th Defendant before preparing the respective written submissions.

The place and circumstances in which the business involved is transacted

9. The allegation of conspiracy transpired in the course of several countries i.e. Malaysia, Singapore, Japan and Taiwan.

9.1 The 4th to 6th Defendants and the 12th Defendant are not Malaysian citizens whilst the 2nd, 7th, 10th, 13th, 14th and 15th Defendants are registered in various countries including Japan and Singapore and Malaysia.

The importance of the cause or matter to the client

10. Learned Counsel for 2nd - 6th and 10th - 15th Defendants contends basically the suit had affected the course of business of the Defendant companies i.e the reputation and goodwill of the 2nd, 7th, 10th, 13th, 14th and 15th Defendants. I find there is no proof of the same.

11. Learned Counsel for the 16 Defendant contends the suit is of crucial importance to the 16th Defendant as it involved a serious allegation of professional misconduct and his professional reputation as an advocate and solicitor was challenged at the trial. I accept this is a factor.

12. On 24.1.2011 the Court had allowed with costs the appeal of the Plaintiff against the learned SAR's decision wherein I had set aside the Order of the learned SAR dated 2.12.2010 (encl.81) allowing the setting aside of the Judgment in Default of Appearance dated 6.8.2008 entered against the 8th Defendant. Hence I agree with the learned Counsel for the Plaintiff the Court should take this into account.

12.1 Further, pertaining to the issue of res judicata, I had held this issue in favour of the Plaintiff and likewise the Court should take this into account.

13 Upon a consideration of all the relevant circumstances, the Court awards -

- (a) costs of RM200,000.00 to the 2nd - 6th and 10th - 15th Defendants;
- (b) costs of RM50,000.00 to the 16th Defendant; and
- (c) interest on costs at 5% per annum from the date of judgment till the date of realisation.

(See *Gooi Hock Seng v Chuah Guat Khim* [2001] 1 CLJ 583 at p.584)"

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