

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)**

CIVIL SUIT NO. D-22NCC-1249-2010

BETWEEN

AIR COOL WINDOW TINTING FILM (M) SDN. BHD. ... PLAINTIFF

AND

LIM CHIEN WAH

AIR COOL AUTO MARKETING ...DEFENDANTS

GROUND OF JUDGMENT

1.0. Introduction

The Plaintiff in this action, Air Cool Window Tinting Film (M) Sdn Bhd, brings this action against Lim Chien Wah @ Peter Lim, the First Defendant ("Peter"), both in his personal capacity and as the sole proprietor of Air Cool Auto Marketing (M) Sdn Bhd, for breach of his fiduciary duty/his duties as a director of the Plaintiff. The action is brought under s.181 (a) and (b) of the Companies Act 1965, by the Plaintiff's director, Khor Phaik Chuan @ Karen ("Karen"), pursuant to leave of Court granted on 14.6.2010.

At all material times and until very recently, Karen and Peter were husband and wife. They were both shareholders in the Plaintiff until 11.5.2001, when Peter's 50% shareholding in the Plaintiff was transferred to Karen pursuant to an Order for ancillary relief granted by the Family Court further to a decree nisi granted around that same time. Prior to this date, they each held 50% of the shareholding in the Plaintiff. From the date of incorporation of the Plaintiff, Karen and Peter have been the only directors and remain the two directors to date.

Notwithstanding the transfer of the equity in the Plaintiff to Karen, Peter remains a director as of the date of this trial. The Plaintiff's grievance is primarily that Peter, as a director of the Plaintiff, has acted in breach of his fiduciary duties owed to the Plaintiff by, *inter alia* carrying on the business of the supply and sale of "Air Cool" products through his sole proprietorship and D2 without accounting to the Plaintiff for any and all profits made thereby. Additionally, Peter, it is alleged, competes with the Plaintiff's business and trade through the 2nd Defendant, thereby acting in conflict of interest and/or in breach of his fiduciary duty.

Several other breaches emanating from the business structure and dealings of the Plaintiff have been alleged. The primary cause of action is therefore breach of fiduciary duty and/or breach of duties as a director of the Plaintiff by Peter.

The Defendants contend, by way of defence, in summary, that as a consequence of the breakdown in the marriage of Karen and Peter, they have left the original business premises where both businesses operated

and have continued to operate their business including the sale and distribution of “Air Cool” products as was done previously, but now separately from the Plaintiff. Peter, through his counsel, denies any breach of fiduciary duty.

2.0. Issues

The issues for consideration in this case are, whether:-

1. The Plaintiff has established that the 1st Defendant has acted in breach of his fiduciary duty in respect of the several specific allegations set out in the Statement of Claim.
2. Whether Peter and/or the 2nd Defendant has refuted and/or defended the allegations above.
3. The remedies that are available to the Plaintiff in light of the above, if proven.

3.0. The Trial

The trial of this action took place over a period of two days. The Plaintiff called two witnesses in support of its case, namely Karen Khor Phaik Chuan (Karen) and Gary Mow Tung Khong @ Gary. The Defendants called one witness, namely Teo Chee Kian (DW-1), who is the Accounts Manager of D2, in support of its case. It is significant that Peter did not appear, nor give evidence at the trial of this action.

A voluminous number of documents were produced, of which only a small portion was actually referred to in support of the Plaintiff's case. Parties agreed that the documents would be treated as Part B documents, meaning that the makers were dispensed with but the contents remained in dispute. Accordingly, the documents were not individually marked as exhibits but in Bundles ranging from CBD-1 to CBD-8, save for a few documents which were produced during the course of the trial.

4.0 Salient Facts

The Plaintiff is a company set up in September 2001. The Plaintiff is the registered proprietor of the trade marks "Air Cool", "Super Cool", "I Cool" and "Durogard". The equity in the Plaintiff was held in equal shares by Karen and Peter, who were husband and wife, until 11 May 2011, when the Family Court in disposing Petition for Divorce No. F-33-169-2011 *inter alia* ordered the transfer of all shares in the Plaintiff held in the 1st Defendant's name to Karen.

The present action is brought by Karen for and on behalf of the Plaintiff, pursuant to sections 181A and 181B of the Companies Act 1965. The Plaintiff claims that Peter (in his personal capacity) acted in breach of his legal and fiduciary duties associated with being a director of the Plaintiff. The causes of action relied upon by the Plaintiff originate from Peter's acts and omissions dating back to October 2009, which the Plaintiff alleges, amount to breaches of the said duties.

Furthermore, the Plaintiff claims against Peter as the sole proprietor of one “Air Cool Auto Marketing”, which entirely was authorized to use and/or distribute products bearing the Plaintiff’s trade marks, until a purported termination on or about 10.3.2010.

Karen’s evidence in examination-in-chief showed that at all material times since mid-2000, Peter carried on business as a wholesale supplier and/or bulk trader of automotive window tint films. Peter undertook and continues to conduct that same trade as sole proprietor of his duly registered business, initially called “Ekspress Auto Marketing”. After the incorporation of the Plaintiff, Peter then continued that trade under the name and style of “Air Cool Auto Marketing”.

At all material times and despite being a Director of the Plaintiff, Peter continued operating his independent business, supplying and trading in tint films including these bearing the trade marks of the Plaintiff as an implied Licensee or Agent.

As against the 2nd Defendant, the Plaintiff in its pleadings contended that Peter was the principal and/or “shadow” director of D2, which he himself had incorporated and controlled, and by which he kept engaging in similar and/or competing trade as the Plaintiff’s. Additionally, the Plaintiff contends that D2’s trade included brands bearing the trade marks of the Plaintiff.

Karen went on to testify that that Peter had procured the formation of D2 without the prior knowledge or due approval of the Plaintiff, in order to

engage in activities for his own benefit but which resulted in detriment to the Plaintiff.

Karen added that the Peter is the principal and/or “shadow” director of D2, which in turn continues to operate in a trade similar to the Plaintiff’s. Not only that, the Plaintiff alleges that in furtherance of his own ends, Peter committed several misdemeanors on 30 October 2009 resulting in detriment to the Plaintiff.

5.0. The Law on Directors’ Duties

Section 132 of the Companies Act 1965 sets out the statutory position on director’s duties under common law and in equity. The governing principle is laid out in Section 132 (1) as follows:

A director of a company shall at all times exercise his powers for a proper purpose and in good faith in the best interests of the company.

Sections 132 (1A) to 132F of the Act go on to describe these duties in detail.

In the authoritative text by Walter Woon, *Company Law*¹ the learned author states:-

¹ Longman Singapore, 1988, 5th Reprint (1994), pp.187-188

'...A director has three broad categories of duties: fiduciary duties, duties of skill, care and diligence and statutory duties....'

He goes on to state that the word 'honestly' in s.132 of the Act:

' ... covers a multitude of rules evolved over the last century or so regarding what are classed as directors' fiduciary duties. These can be reduced to three basic propositions:-

Firstly, a director must act in what he honestly considers to be the company's interests and not in the interests of some other person or body. This is a director's main and overriding duty at common law;

Secondly, a director must employ the powers and assets that he is entrusted with for proper purposes and not for any collateral purpose;

Thirdly, a director must not place himself in a position whereby his duty to the company and his personal interests may conflict.'

The scope of a director's fiduciary duties was further elaborated in the case of ***Regal (Hastings) Ltd v Gulliver & Ors [1967] 2 AC 134***, where Viscount Sankey in the House of Lords said:

“The general rule of equity is that no one who has duties of a fiduciary nature to perform is allowed to enter into engagements in which he has or can have a personal interest conflicting with the interests of those whom he is bound to protect. If he holds any property so acquired as trustee, he is bound to account for it to his cestui que trust.”

And in the older case of ***Aberdeen Railway Co. v Blaikie Brothers***², it was decided that:

*“The director of a railway company is a trustee, and, as such, is precluded from dealing, on behalf of the company, with himself or with a firm of which he is partner.”*³

The foregoing enunciates in a nutshell the fiduciary duties of a director at law. Keeping in mind these duties imposed upon a director, each of the three issues set out above will be considered in the context of the Plaintiff’s allegations in this case.

The 1st Complaint: The Events of 30 October 2009

In or around September 2009, the relationship between Peter and Karen, which had been steadily deteriorating, broke down. Karen gave evidence that one of the first incidents carried out by Peter and his employees which caused damage to the Plaintiff was the unlawful entry into the premises by

² (1854) 1 Macq. 461

³ See the case of *CTI Leather v Hoe Joo Leong & 3 Ors*

the Plaintiff's ex-employees and Peter's employees. They then removed large amounts of documents such as warranty booklets, warranty form records, employee administrative files and even accounts. Karen testified that the entry and removal was done without her knowledge and consent, unlawfully and illegally, and as a consequence of which she lodged a police report. Karen testified that she knew that these acts by the ex-employees were carried out on Peter's instructions because she was advised of that by one Mr Teo Chee Kian, DW-1. Karen also contacted Peter at or around that time, which furthered her belief that he was involved.

DW-1 in the course of his testimony, stated that the move effected on 30.10.2009 had indeed been carried out on Peter's instructions, but for a perfectly bona fide reason, namely so that Peter could separate his business (Air Cool Auto Marketing – ACAM) from that of the Plaintiff and to physically remove himself and his business from the Plaintiff's premises.

Karen made further allegations that her notebook in her office had been removed but DW-1 clarified that the Notebook had been removed because it belonged to Peter and contained accounting records of one of Peter's other businesses relating to a restaurant business. In other words, there were two conflicting versions of events as to the purpose underlying the move on 30.10.2009.

I have heard and considered the evidence of both Karen and DW-1. It appears to this Court that given the background of the breakdown in the relationship between Karen and Peter, the sudden and somewhat disruptive move orchestrated by Peter was prompted primarily by a reason to separate himself and his business from that of the Plaintiff and Karen.

Although I accept Karen's testimony, which goes to show that the removal of documents and records etc. from the Plaintiff's premises caused considerable distress to her as it was done without warning, it would appear from a comparison and weighing of DW-1's and Karen's evidence that there was no substantive disruption or harm caused to the Plaintiff as a consequence of this move. The primary issue that appears to have irked Karen, and which could potentially cause problems for the Plaintiff, was the removal of warranty booklets with specified serial numbers from the Plaintiff's premises.

However, it also transpired in the course of the trial that the normal practice adopted by the Plaintiff and Peter was for warranty forms and booklets to be issued by the Plaintiff but passed on to Peter for distribution and supply to the various dealers, who dealt with Air Cool products. In other words, from 2000 or thereabouts, the practice of the Plaintiff and Peter was for Peter to deal directly with the majority of the dealers, whereupon warranty forms and other documentation was distributed by Peter.

At the time when Peter left the premises of the Plaintiff, Peter was a 50% shareholder and director of the Plaintiff. It cannot be said that he had no rights in relation to, for example, the distribution of warranty forms to dealers on behalf of the Plaintiff. Given the entirety of the circumstances, I find that Peter's movement out of the Plaintiff's premises on 30.10.2009 was primarily to separate himself and his business from that of the Plaintiff, and was not primarily actuated by malice.

Consultancy Fees – were payments remitted to the Plaintiff by Peter?

Moving on to the 2nd issue raised by the Plaintiff, namely the collection by Peter of consultancy fees due to the Plaintiff from dealers and his subsequent failure to remit the same to the Plaintiff to date. It is not in issue that the Plaintiff's various dealers pay specific consultancy fees to the Plaintiff on a periodic basis in respect of Air Cool products. It is also not in dispute and evident from correspondence exchanged between Peter and Karen on behalf of the Plaintiff, that Peter sought to collect considerable quantities of these consultancy fees from numerous dealers. Even after Peter left the Plaintiff's premises in October 2009, he continued to make these collections. Karen on behalf of the Plaintiff sought to collect these monies for and on behalf of the Plaintiff. There are letters which evidence the fact that despite having collected the consultancy fees, Peter failed to remit the same to the Plaintiff. The Defendants failed to produce any evidence to rebut the Plaintiff's contention, which I find to have been proved.

Peter has a clear fiduciary duty as director of the Plaintiff to remit any and all monies paid to him for and on behalf of the Plaintiff. Insofar as consultancy fees are concerned, I am satisfied that the Plaintiff has proved its contention and find that Peter has failed to make the requisite remittances. In fact, there has been a failure by the Defendants to explain precisely what they did with the cheques that they collected from various dealers on behalf of the Plaintiff. As Peter has thus acted in breach of his fiduciary duty, it appears to this Court that the Plaintiff is entitled to an Account and the remittance of all consultancy fees due to the Plaintiff.

Financial facilities procured by the Plaintiff primarily on behalf of the 1st Defendant

Karen testified on behalf of the Plaintiff that at Peter's request, the Plaintiff had applied for, and obtained, financial facilities primarily for the use of Peter. First, this was in the form of bankers' acceptance notes on three occasions totaling RM300,000.00 and later, an overdraft facility of RM100,000 ("The Financial Facilities"). The Bankers' Acceptance facilities were converted into a loan facility requiring a monthly repayment of RM12,000.00. The understanding between the Plaintiff and Peter was that notwithstanding that the Plaintiff had procured these facilities, the servicing of the same would be undertaken by Peter, since it was primarily for Peter's benefit. After the breakdown in the relationship between Karen and Peter, and the moving out of Peter on 30.10.2009, Karen contends that Peter deliberately failed, neglected and/or omitted to service these accounts. As a consequence, the Plaintiff was constrained to make all requisite repayments to prevent the facilities from being termed bad loans, or to avoid adverse action being taken by the Bank.

As of 10 March 2010, the Plaintiff has paid RM 222,042.23 towards these banking facilities, which sum the Plaintiff maintains is in actuality repayable by Peter to the Plaintiff. The Plaintiff contends that Peter's deliberate refusal to make these payments amounts to a breach of Peter's fiduciary duties owed to the Plaintiff.

There is no evidence before this Court from Peter to refute or rebut the Plaintiff's testimony through Karen. It would appear from the evidence before this Court that these facilities were in fact procured for the benefit of Peter. The practice throughout the history of Peter and the Plaintiff was for Peter to service these loans taken out by the Plaintiff to assist Peter. The failure by Peter to fulfill his duty and responsibility as a director of the Plaintiff to ensure that the loans taken out in the Plaintiff's name were serviced in a timely manner, amounts, I find, to a breach of Peter's fiduciary duty. He is obliged to ensure that Peter makes the requisite repayments to the Plaintiff in respect of these banking facilities.

The Public Bank account

At all material times prior to the breakdown in relationship between Peter and Karen, the Plaintiff conducted its financial affairs and operations via the use of a banking account with Public Bank Berhad. Karen and Peter were both authorized as sole signatories in respect of this account. Karen testified that insofar as the Plaintiff is concerned, she had control and charge of its financial affairs. Peter had full access to this account and, according to her, also enjoyed e-Banking facilities in respect of this account which allowed him to be apprised of the status of this account at all times. Karen further testified that soon after the breakdown and Peter having left the Plaintiff's premises, Peter negligently and/or intentionally issued some 22 cheques on behalf of the Plaintiff through this account, to the extent of approximately RM157,000.00. There were, however, insufficient funds to meet these cheques. As a consequence, after some of the cheques were dishonoured, the Plaintiff's Bank account was duly closed by the Bank,

leaving the Plaintiff without an account from which to operate its affairs. Karen's grievance, on behalf of the Plaintiff, is twofold:-

1. The fact that D1 deliberately issued the 22 cheques without checking the balance sum in the Plaintiff's account when he could easily have done so via his e-Banking account;
2. Taking to his own benefit the sum of RM40,000.00-odd comprising the total sum that cleared from 3 of the 22 cheques. This sum was paid into D1's own account.

The Plaintiff alleges, correctly in my view, that these acts of Peter amount to a breach of his fiduciary duties as a director of the Plaintiff. There can be no plainer case of a breach of fiduciary duty in respect of the 2nd complaint, namely the taking of moneys due to the Plaintiff into Peter's own account. With respect to the 1st complaint, it would also appear, in the absence of any tenable or credible explanation from Peter, that his act of virtually simultaneously issuing 22 cheques without checking the balance amounted to an attempt to cause the closure of the Plaintiff's bank account, thereby adversely affecting the normal business operations of the Plaintiff.

These two therefore amount to a breach of fiduciary duty. In this context, it is significant that nothing in the course of cross-examination provided a basis to refute or explain Peter's action in issuing the 22 cheques soon after the breakdown in the relationship between Peter and the Plaintiff.

Failure to account to Plaintiff for profits and/or benefit

Prior to the incorporation of the Plaintiff in July 2001, Peter had begun business trading in automotive tint films that were obtained in bulk at cost through one Ekspres Auto Marketing, a business he wholly owned. That was the precursor of Peter, namely the business known as Air Cool Auto Marketing. In July 2001, the Plaintiff, then owned jointly by Karen and Peter, was set up.

Karen testified that this business was set up primarily for her to manage and operate solely to enable her to have her own income with Peter's consent, as Peter was wholly committed to his business of supplying automotive window films wholesale. His involvement, according to her, was in procuring business for the Plaintiff through various dealers and retailers of automotive window films, who would be engaged to market the Plaintiff's brands using Peter's films. Peter offered no evidence to rebut or refute the Plaintiff's evidence on this front.

As a consequence, until the breakdown of the relationship and at all material times, Peter was permitted and/or authorized by the Plaintiff to operate his business of the wholesale supply of automotive window film materials which were unbranded as well as the supply and trade of window films bearing the Plaintiff's brand, where Peter was a licensee. The Plaintiff gained from this arrangement, in that it benefited from the growth of its brand while Peter profited from the increase in sales of his tint films.

The Plaintiff's primary brand was Air Cool, which gained considerable popularity. After the breakdown, and Peter's physical separation from the Plaintiff, Peter continued to market and sell Air Cool products. This is evident from the evidence of both Karen as well as Mr Teo Chee Kian (DW1), who confirmed that to date, Peter and D2 continue to sell, market and distribute Air Cool products to dealers throughout the country.

In fact, on 23.10.2009, D2 was incorporated for the purposes of selling and distributing car window tinting film as well as car accessories. Its registered office was at 17-B, Jalan Kenari 2, Bandar Puchong Jaya, from which address Peter routinely issued correspondence bearing the letterhead and logo of the Plaintiff. The evidence at trial disclosed that there were several conflicts and confusion that arose as a consequence of Peter and Karen issuing conflicting directions to dealers. For example, with respect to one Bassway, a dealer, Karen had procured Bassway as a dealer sometime in March 2011. Notwithstanding this, Peter wrote to Bassway, on the Plaintiff's letterhead, alleging that it was not an authorized dealer and should immediately cease to exhibit the Air Cool logo and brand. The dealer was naturally confused and it was after considerable pains that Karen on behalf of the Plaintiff was able to explain the situation to Bassway and persuade them to ignore Peter's letters.

In any event, Mr Teo Chee Kian (DW-1) was candid in his evidence in stating that to date, D2 deals with and supplies Air Cool products, without accounting to the Plaintiff for any profit or benefit. The position taken by DW-1 is that Peter is fully entitled to deal with Air Cool products, notwithstanding that the Plaintiff is the owner of the trademark, because

this has been the mode of business, custom and practice between the Plaintiff and Peter since 2001.

The flaw in this reasoning is that prior to the break-up, all benefit from the sale of Air Cool products by Peter was accounted for to the Plaintiff in terms of the sharing of advertisement costs and the promotion of the Plaintiff as the primary owner, distributor and supplier of Air Cool products. After the breakup, however, the beneficiary of the sale of Air Cool products by Peter and D2 is in fact these entities rather than the Plaintiff. There was no accounting back to the Plaintiff for any or all the profits, benefits or costs in selling and promoting the Air Cool brand. In short, the benefit of the sales of these products has not been channeled to the Plaintiff, but has instead been appropriated by the Defendants.

At this juncture, it must be made clear that the Plaintiff does not profit directly from the sale of window tint films bearing the Air Cool brand name to dealers. As stated earlier, the benefit to the Plaintiff is that with the increased sale of Air Cool products, the brand name "Air Cool" which is owned by it attains greater popularity and familiarity in the market. Peter, by selling and distributing Air Cool products through Peter and D2 (which was subsequently incorporated after the breakup), is slowly but effectively reducing the market's association of the brand name 'Air Cool' with the Plaintiff. As a consequence of the confusion that has arisen in relation to whether it is the Plaintiff or Peter and D2 that are selling and distributing Air Cool products, the market is slowly but effectively being transferred to the Defendants, particularly D2.

As Peter remains and was at all material times a director of the Plaintiff, he owed and continues to owe the Plaintiff a fiduciary duty to ensure that its business is not eroded or harmed in any manner whatsoever. The evidence of Karen and DW-1, clearly show that the Plaintiff's business is being effectively eroded by the acts of Peter.

I therefore find that this amounts to a breach of Peter's duties as a director of the Plaintiff. In this context, Peter and D2 (which I find to be a vehicle used by Peter to facilitate the sale of Air Cool products) are effectively siphoning off the Plaintiff's business and are bound to account to the Plaintiff for any and all benefit derived from the sale of the Plaintiff's products.

I have stated that I found D2 to be a vehicle used by Peter. My reasons for so finding are that D2 is managed and run by Peter's brother and himself. Although his brother is stated to be the 99% shareholder of this company, with Peter holding only 1 share, it is evident from the correspondence issuing from this entity, and the conduct of Peter since the breakdown in relations with Karen, that this company was created to facilitate the marketing of Air Cool products independently of, and distinct from, the business of the Plaintiff. This amounts to a conflict of interest and Peter is therefore in breach of its fiduciary duty in this context.

The Plaintiff is entitled to an account of profits and benefits as well as an order restraining the Defendants from committing any acts calculated to directly or indirectly erode the business and reputation of the Plaintiff vis-à-vis the brand name Air Cool, which it owns.

Conflict of Interest

At all material times to date, Peter is under an express legal duty to avoid a conflict of interest insofar as the business of the Plaintiff is concerned. However, another instance where Peter has appeared to act in conflict with his legal duty as a director of the Plaintiff is with regard to the sale and marketing of car window tinting film bearing the brand name 'Agard'. Once again, soon after the breakdown in the relationship between Karen and Peter, Peter started marketing a new product branded "Agard". Being a product similar to or identical with that marketed by the Plaintiff, namely Air Cool, Peter's acts, albeit directly or indirectly, in marketing 'Agard', places him in a position of conflict of interest.

The evidence showing that Peter initiated the sale and promotion of Agard is evident from the documentary evidence produced at trial as well as the evidence of Mr Teo Chee Kian (DW-1). He confirmed that Agard was the brainchild of Peter in consultation with his friends. This was also confirmed by Karen.

To further compound matters, the Plaintiff has produced photographic evidence showing that several dealers who are supported by Peter have been advertising the brands Air Cool and Agard together. This has resulted in confusion in the market. PW-2, a salesman for the Plaintiff, testified that he had visited many dealers in an effort to promote Air Cool products for the Plaintiff, only to find that the dealers had already been approached by Peter and/or representatives of D2, to promote Air Cool

products as well as by representatives of Agard Sdn Bhd to promote Agard products. This has resulted in what appears to be general confusion in relation to the brands Agard and Air Cool.

I must make it clear here that I do not make an express finding of confusion vis-à-vis Agard and Air Cool as that must be a matter for determination in an Intellectual Property-based action, if necessary. In this action, this Court is primarily concerned with breaches of fiduciary duty by Peter vis-à-vis the Plaintiff.

It is clear from the foregoing that Peter, by being instrumental in the creation and promotion of the brand name Agard has placed himself in a position of conflict of interest, which amounts (I find) to a breach of fiduciary duty.

The Plaintiff has proved on a balance of probabilities in this context that Peter has acted in breach of fiduciary duty.

Termination of D1's Licence

In the course of the Plaintiff's case, the Plaintiff relied upon a letter of 10 March 2010 purporting to terminate Peter's licence granted by the Plaintiff. A reading of the letter does not disclose who the solicitors are acting for. It can only be presumed that the solicitors were acting for the Plaintiff, as the Plaintiff is the owner of the trademark Air Cool and is therefore the only entity entitled to license the use of the Mark by other entities. However, at the time of issuance of this letter, Peter remained a 50% shareholder and

director of the Plaintiff. There is no company resolution authorizing the termination of the licence implicitly given to Peter in or around 2001.

In these circumstances, it appears to this Court that the purported termination was ineffective, as the Plaintiff could not authorize its solicitors to issue such a letter of termination in the absence of an appropriate Company resolution.

The net result is that while there may have been no effective termination of the licence Peter and D2 remain accountable to the Plaintiff for all sales and promotions of products bearing the Plaintiff's trademark, Air Cool. That will continue to date and until such time as there is an appropriate resolution on the part of the Plaintiff to terminate the licence validly. It is now able to do so in view of the order of the Court dated 11.5.2011 as Karen is now the effective owner of the Plaintiff.

Remedies available to the Plaintiff

Based on several findings of fact and law I have made above, it follows that the Plaintiff is entitled to the following relief:

1. A declaration that Peter has breached his obligations as the Plaintiff's Director and also as an agent and/or licensee of the Plaintiff;
2. A declaration that Peter is accountable for all profits made by him or the 2nd Defendant as a result of the breaches of duties by Peter,

including all profit derived from the brand “Air Cool” during the tenure of Peter as the Plaintiff’s director;

3. A declaration that Peter is responsible for, an Order that Peter do pay to the Plaintiff, all monies including the total value of all negotiable instruments in favour of the Plaintiff and those that Peter have yet to remit to the Plaintiff within 14 days from the date of this judgment;
4. A declaration that Peter is acting in breach of his fiduciary duty in selling and promoting “Air Cool” products directly or through the 2nd Defendant.
5. In this regard, Peter be and is hereby ordered to pay damages to the Plaintiff relating to Peter’s breach of fiduciary duty as aforesaid. The quantum of such damages is to be assessed by the Senior Assistant Registrar;
6. An injunction be and is hereby granted to restrain Peter, whether by himself or through the 2nd Defendant, from marketing and/or promoting and/or selling any business and/or products bearing the brand name “Air Cool”;
7. A declaration that Peter has breached his fiduciary duty as a director of the Plaintiff, by directly or indirectly selling and/or promoting “AGARD” products in competition with the Plaintiff’s business. In this regard, Peter be and is hereby ordered to pay damages to the

Plaintiff relating to Peter's breach of fiduciary duty as aforesaid. The quantum of such damages is to be assessed by the Senior Assistant Registrar;

8. Peter is liable to pay such damages assessed and held by this Court as being obtained as a result of breaches of duties as director and/or agent and/or licensee of the Plaintiff as aforesaid;
9. Costs of RM 80,000.00 be and are hereby awarded to the Plaintiff.
10. Interest on the sum of 4% on all sums due and outstanding under this judgment, from the date of this judgment herein to the date of full and final settlement.

Y.A. PUAN NALLINI PATHMANATHAN

Judge

High Court (Commercial Division)

KUALA LUMPUR

DATE: 4th AUGUST 2011

For the Plaintiff- Mr Jon Yoon; M/s Yoon Weng Foong

For the Plaintiff – Mr Brian Jit Singh; M/s Shook Lin & Bok

For the Defendants – V Saravanan; Vasudevan & Co.