IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 40

Suit No 613 of 2018

Between

D&R Asset Management Group Co Ltd

… *Plaintiff*

And

Taiyo Asset Management Pte Ltd

… *Defendant*

JUDGMENT

[Contract] — [Remedies]

TABLE OF CONTENTS

D&R Asset Management Group Co Ltd
v
Taiyo Asset Management Pte Ltd

[2021] SGHC 40

General Division of the High Court — Suit No 613 of 2018
Lee Seiu Kin J
9–11 September, 20 November 2020

17 February 2021 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 The plaintiff, D&R Asset Management Group Co Ltd ("D&R"), made a series of loans to the defendant, Taiyo Asset Management Pte Ltd ("Taiyo") in 2017. This was done amidst D&R's prospective acquisition of Taiyo. D&R commenced the present action when the sums remained unpaid after the dates on which they became due.

Facts

2 D&R is a company incorporated in Shenzhen, China and is in the business of asset and investment management.[1] Taiyo is a Singapore-

[1] Defendant's Closing Submissions ("DCS") para 2.

incorporated company that engages in similar business. At the material time, Taiyo was a registered fund management company regulated by the Monetary Authority of Singapore. Tey Eng Chee ("Thomas") and Wang Weidong ("Weidong") are shareholders of Taiyo and each hold 50% of Taiyo's issued and paid up share capital.[2]

3 On 11 January 2017, D&R entered into a sale and purchase agreement to purchase Thomas' and Weidong's shareholding in Taiyo (the "SPA"). The purchase was to have been carried out through D&R's subsidiary - SZDAREN Investment Ltd ("SZDAREN").

4 Following the SPA, Taiyo set up a new team, called "Team 2", which functioned alongside the existing employees (who were then called "Team 1"). Taiyo subsequently needed funds to set-up and operate Team 2. To this end, it is alleged that a total of four loans from D&R were executed by Taiyo's chief executive officer ("CEO"), James Kho ("James"), and/or Yang Jun ("Calvin") who was employed as the director of training development and research. The loans were each executed *via* a loan agreement (collectively, the "Loan Agreements") as follows:[3]

(a) US$20,000 on 11 April 2017;

(b) US$60,000 on 20 April 2017;

(c) US$100,000 on 8 June 2017;

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2 Plaintiff's Closing Submissions ("PCS") para 2; DCS para 3.

3 Plaintiff's Core Bundle p 5–8.

(d) US$200,000 on 30 August 2017.

5 These sums totalled US$380,000 and each of these loans became payable six months after they were executed.

6 In December 2017, Thomas was informed that SZDAREN was not intending to complete the acquisition under the SPA. He would therefore not receive the purchase price of his share. Thomas, being of the view that SZDAREN had no basis to refuse to complete the sale, commenced legal action in China to compel SZDAREN to fulfil its obligations under the SPA. According to the parties, the judgment in China is still pending at present.

7 By way of letter dated 22 February 2018, D&R sought the repayment of the sum of US$180,000, plus interest, which was the sum under the first three loans. This remained unpaid and on 2 May 2018, D&R made a further demand of US$380,000, plus interest, for all four loans. A similar demand was repeated by way of letter dated 22 May 2018. The loan sums have not been repaid and form the subject matter of the claim in this suit.

The claims and arguments

8 D&R mount their claim on two bases:

(a) That the US$380,000 should have been repaid pursuant to the Loan Agreements.

(b) In the alternative, that Taiyo had been unjustly enriched with the US$380,000.

9 On the other hand, Taiyo disputes the claim and raises the following arguments:

(a) In relation to the Loan Agreements:

(i) D&R had not adequately proven that it had transferred the US$380,000 to Taiyo.

(ii) There was no authority vested in Calvin and/or James for the loans.

(iii) Thomas had not approved the Loan Agreements.

(iv) Team 2 was in fact carrying on work for D&R and its related companies.

(v) The Loan Agreements were in fact sham and fabricated documents.

(b) Additionally, Taiyo argues that the claim in unjust enrichment must fail.

10 I address the arguments in turn.

11 For completeness, I note that D&R had initially made a claim for US$119,827.27 that it alleged remained in the reserve fund of Taiyo (the "Reserve Fund Claim"). The Reserve Fund Claim was withdrawn on the first day of trial. While nothing further turns on it substantively, in my view, this belated withdrawal resulted only because of D&R's failure to maintain proper records that would have allowed them to trace the funds and verify the signatories in the bank accounts of Team 2. It was D&R's own failure to do so

that resulted in it being unable to take a position on it earlier. This might be relevant towards the issue of costs.

My decision

D&R had adequately proven that it had transferred the US$380,000 to Taiyo

12 The starting point for the inquiry is the fact that D&R had adduced the four loan agreements evidencing that the loans had indeed been made, as noted above at [4]. Each of these loans were made on similar terms, for instance:

(a) The repayment date was six months after the date of the loan.

(b) An interest of 6% per annum was charged from draw down date until full repayment was made.

(c) The loans were unsecured and could only be used for "the purposes of Staff Salaries, Staff Reimbursements and other normal operating expenses of Business Unit Two of the Company".

13 It bears mentioning also that the first three loans (as above at [4(a)]–[4(c)]) contained the signatures of Calvin (listed as "Head of Finance, Business Unit Two" for Taiyo) and Zhou Xi (listed as "CFO" of D&R). This was also the same for the final loan (as above at [4(d)]), save that it also contained the signature of James (listed as "CEO, Business Unit Two" of Taiyo).

14 Taiyo's primary argument is that the moneys transferred to Taiyo pursuant to the Loan Agreements were either transferred from D&R Capital Management (Cayman) Limited ("D&R Cayman"), which was a company related to D&R, or from Calvin. It therefore alleges that D&R *itself* had suffered

no loss as there is no evidence that D&R had reimbursed D&R Cayman or Calvin with the funds.

15 I am unable to accept Taiyo's argument. Calvin's evidence was that he had applied for the loans through D&R's administrative platform, "DingTalk". Remittances were then made in various amounts to either Team 1's or Team 2's bank account, from 12 April 2017 to 10 January 2018.[4] While the remittances originated from D&R Cayman or Calvin's own bank account, what these clearly demonstrate is that Taiyo had received the funds pursuant to the Loan Agreements. Indeed, this is not a point that Taiyo is contesting.

16 I note that in cross-examination, Calvin had testified that he had, on occasion, forked out the sums himself before claiming from the D&R group of companies. On other occasions, D&R had "lent" him the sums, which he then sent on to Taiyo. While the nature of these transactions is unusual, Calvin's consistent evidence was that he had done so on behalf of D&R. I also accept his evidence that the reason why he had done so was to expedite matters as Taiyo was, at the time, in dire need of funds.

17 Regardless of their arrangement, the fact remains that Taiyo had received the sums in furtherance of the Loan Agreements. There is simply no evidence to support Taiyo's bare allegation that D&R itself had not suffered any losses. In any event, there is no necessity for any element of loss in the Loan Agreements.

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4 AEIC of Yan Jun dated 3 August 2020, para 37.

There was authority vested in Calvin and/or James for the loans

18 Calvin's evidence was that prior to making the applications for the loans through DingTalk and signing the Loan Agreements on behalf of Taiyo, he had discussed the matter with James and Zhou Xing. Zhou Xing was, at the relevant time, the managing director of Taiyo;[5] James, on the other hand, was the CEO of Taiyo, as noted above at [4]. According to Calvin, Zhou Xing and James both had authorised him to execute the loans in the manner he did.

19 Taiyo does not appear to contest this in their closing submissions. The main issues raised are instead that:

(a) Calvin and James did not have authority to enter into the Loan Agreements on behalf of Taiyo. This was because, no resolution was ever passed approving the Loan Agreements or vesting Calvin and James with the authority to enter into the Loan Agreements.

(b) James and Zhou Xing did not, by virtue of their positions, have the requisite authority to enter into the Loan Agreements. As a result, they could not have authorised Calvin as well.

(c) While Thomas did have the authority, he had no knowledge of the Loan Agreements and could not have authorised them in this instance.

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5 DCS p 8.

20 It is true that there was no resolution passed to that effect here. I find that notwithstanding this, Calvin did have the requisite authority to execute the loans.

21 The issue turns on the state of knowledge that Thomas had in relation to the Loan Agreements. Throughout the testimony, Thomas was consistent in the fact that he remained uninvolved in Taiyo after the SPA was signed. In particular, he testified as follows:[6]

> A: When I -- after the SPA is signed, I'm out of the picture. Ms **Zhou Xing, as an MD, was by default the manager of the company**. Now, as to whether she -- she runs the trading directly, she outsourced it to the -- the trading department in -- in the plaintiff's office in Shenzhen, **I have no idea and I really don't care.**
>
> Q: So you are saying that she was managing the company solely and making the decisions by herself?
>
> A: **Yes. It is by herself, I do not know**.
>
> Q: Without your input?
>
> A: Without my input.
>
> …
>
> Q: Okay. Since you say it was no concern of yours, Mr Tey, your position is that you were not involved in the running of Taiyo at all after the SPA, is that right?
>
> A: Yes.
>
> Q: And that you left all management decisions which needed to be made by the board to Zhou Xing and James?
>
> A: To D&R.
>
> Q: To Zhou Xing and James?
>
> A: To D&R.
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> Q: They are the directors?

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6 Transcript dated 11 September 2020, p 14 lines 4–10, p 86 line 16 to p 87 line 4.

A: **Yeah, the directors, yes. Internal directors, yes.**

[emphasis added]

22 Thomas' version of events was one of sustained indifference and a distancing of himself from the management affairs in Taiyo. Taiyo seeks to further drive home the point by arguing that: (a) Calvin's appointment as head of finance was not discussed with Thomas; (2) the Loan Agreements were not discussed with Thomas; and (3) Thomas was not asked to sign the Loan Agreements.[7]

23 In my view, it is incredible to suggest that Thomas was as completely uninvolved as he sought to make himself out to be. It is clear from the SPA that Thomas was still required to be responsible for the growth and profit of Taiyo for a period of three years. Further, as D&R point out, Thomas was the signatory of Team 1's bank account, he had sat as Chairman in Taiyo's Annual General Meeting in 2017, he was still in name a director of Taiyo, and he had signed the necessary forms for the opening of Team 2's bank accounts.

24 It is more likely that he kept an eye on the events within Taiyo. In fact, he conceded that he did have access to DingTalk,[8] where Calvin had made the applications and where the Loan Agreements were subsequently uploaded to. The DingTalk communication titled "Stamp Usage Approval Letter", which attached the Loan Agreements, had also been forwarded to him (the "Communication").[9] Moreover, Thomas had logged into DingTalk several days

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7 DCS paras 87–96.

8 Transcripts dated 11 September 2020, p 73 lines 2–7.

9 Transcripts

after the Communication had been sent to him. The Communication would have been the only other message that he had received, and the platform would also have brought this to his attention. It is again incredible that he did not see the Communication and had been unaware of the existence of the Loan Agreements. On a balance of probabilities, I find that Thomas was aware of the Loan Agreements. By choosing not to interfere and continuing to leave the management to Zhou Xing and James, he had impliedly authorised the execution of the Loan Agreements.

25 Even assuming that Thomas had not approved the Loan Agreements, on his own evidence, he had left the management decisions completely to Zhou Xing and James. This is relevant, for as stated by Belinda Ang J (as she then was) in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 at [30]:

> In *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 … Lord Denning MR (at 583) said:
>
> > [A]ctual authority may be express or implied. It is *express* where it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques. It is *implied* when it is ***inferred from the conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their numbers to be managing director***. They ***thereby impliedly authorise him to do all such things as fall within the usual scope of that office***.
>
> [emphasis in original in italics; emphasis added in bold italics]

26 Such implied authorisation would not necessarily have to occur *via* an express appointment. It can also take place by assent given informally: *SAL Industrial Leasing Ltd v Lin Hwee Guan* [1998] 3 SLR(R) 91 at [26]–[27], citing

Jimat bin Awang v Lai Wee Ngen [1995] 3 SLR(R) 496 and *Charterhouse Investment Ltd v Tempest Diesels Ltd* [1986] BCLC 1. In fact, the possibility of authorisation *via* implied assent was alluded to in Taiyo's Memorandum and Articles of Association, which allowed the directors to entrust to and confer, upon the managing director, any powers exercisable by them.[10]

27 Having taken the position that the decisions were left completely to Zhou Xing and James, it would therefore follow that Thomas had impliedly authorised them to carry out the operations of the company. It would therefore flow that Zhou Xing and James would have been able to, and did in fact, authorise Calvin to execute the loans on behalf of the company.

Team 2 was part of Taiyo

28 Taiyo next argued that Team 2 was in fact set up by D&R to continue the business of One Asia Investment Partners Pte Ltd ("One Asia"). One Asia was a company that was substantially owned by SZDAREN. Any funds that were therefore utilised by Team 2 should not be borne by Taiyo. A number of instances were relied upon to distinguish Team 2 from Taiyo, namely:

(a) Save for James, the four employees in Team 2 were former employees of One Asia.

(b) Team 2 had a different function, office and email domain from Team 1.

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10 PCS para 37.

(c) Team 2's revenue was channelled to D&R and ultimately reported to D&R.

29 The main thrust of Taiyo's argument here, however, is that the purpose of Team 2 was allegedly to launch a private equity fund, leveraging on Taiyo's status as a registered fund management company.[11] This was done on behalf of D&R, which could not operate a private equity fund in Singapore, being registered in China and not possessing the requisite Singapore licence. This was all based on Thomas' evidence in his affidavits.

30 It is unclear, however, how he was able to claim such an in-depth knowledge of Taiyo's operations, while maintaining that he was completely indifferent as to how Taiyo operated (as above at [21]–[22]). In fact, Thomas' evidence on cross-examination only revealed that his allegations as to the purpose of Team 2 were completely speculative.[12] When questioned on why the various specialisations of the team members made it seem like Team 2 was an asset management team, he could only respond that Zhou Xing had indicated to him that Team 2 was in the private equities business. When questioned on whether Team 2 could be engaged in a completely different business, notwithstanding an intention to run a business similar to One Asia, he conceded that "maybe" that could have been the case. Time and again, however, the only answer he could provide was the supposed indications Zhou Xing had given him. There was no other evidence to back up his claims. Instead, it is entirely possible that Team 2 had engaged in a business similar to One Asia but had

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11 DCS para 8.

12 Transcript dated 11 September 2020, p 95 line 18 to p 97 line 16.

branched out to other areas. Indeed, as Calvin testified: "we call it the private equity fund and also the corporate financial advisory, and so on and so forth."[13]

31 The lack of foundation for Thomas' allegations was a consistent theme in Taiyo's arguments. Again, Taiyo adduced no evidence to support its claim that Team 2 was, in reality, carrying out the work for D&R and/or was servicing D&R's own clients. It has not satisfied its burden in showing that this allegation was true or even accurate.

32 Additionally, I accept Calvin's evidence that a different office for Team 2 was required due to a number of reasons, including the need for confidentiality and proper premises to deal with high asset value clients. It would be a stretch to allege wrongdoing simply because separate premises, or even *emails* were utilised. Indeed, it would appear contrary to having two separate teams, if the two teams were to be completely fused at the hip and unable to operate independently.

The Loan Agreements were not sham or fabricated documents

33 The critical argument raised by Taiyo in relation to this issue was that there were a number of versions of the Loan Agreements that were disclosed during proceedings. In one of these earlier versions of the Loan Agreements, Calvin had signed off as the "Head of Finance, Business Unit Two, *One Asia Investment Partners Pte Ltd*" [emphasis added]. In Taiyo's view, this indicated that the sums were used for the benefit of One Asia and by implication, the funds were being utilised for the benefit of D&R.

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13 Transcript dated 9 September 2020, p 119 lines 16–19.

34 In my view, this is simply not borne out on the face of the documents themselves. In particular, the Loan Agreements had expressly stated that the sums were loaned from D&R to Taiyo, as an "intercompany loan". Taiyo was defined as the "Company" within the Loan Agreements. It was then expressly provided, as stated above at [12(c)], that the loans were to be used for specific purposes for benefit of the Company. These can only indicate that the sums were utilised for the benefit of Taiyo.

35 I further accept Calvin's explanation that he had made a clerical error in signing off as a representative of One Asia. He was previously employed by One Asia as Head of Finance. One Asia, however, was wound-up on 17 March 2017, which meant that it simply could not have been a party to the Loan Agreements. This mistake was subsequently discovered by one Ning Feng Jiao, an employee of D&R. Calvin then prepared a revised copy of the Loan Agreements, re-executed it and sent it again. In the circumstances, it cannot be said that the Loan Agreements were fabricated or sham documents.

Overall observations

36 It is consistently clear that Taiyo's various allegations are unfounded and unbelievable. It appears more likely to be a desperate grasping for straws, based on disparate instances of company operations that it disagreed with. Quite simply, Taiyo's failure to adduce a shred of evidence in relation to their arguments inevitably means that its defence must fail. Even in relation to Thomas' evidence, which could have been critical, all that can be said is that his position of indifference was not only incredible but damaging to Taiyo's own case.

37 In the circumstances, I find that the US$380,000 should have been

repaid pursuant to the Loan Agreements. There is no need for me to address the issue of unjust enrichment in this case.

Conclusion

38 For the reasons given, I find that D&R has established its case and is entitled to repayment of US$380,000, plus interests.

39 I will hear counsel on the issue of costs.

Lee Seiu Kin
Judge of the High Court

Nandakumar Renganathan, Sharon Chong Chin Yee, Nandhu and Lorraine Cheung (RHTLaw Asia LLP) for the plaintiff;
Lim Khoon and Sanjana Jayaraman (Eldan Law LLP) for the first defendant.