IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 278

Suit No 1039 of 2016

Between

(1) RJC Resource Pte Ltd
(2) Ng Swee How

… Plaintiffs

And

Koh Lee Hoo

… Defendant

GROUNDS OF DECISION

[Contract] — [Fraudulent Misrepresentation] — [Contractual Construction] — [Total Failure of Consideration]

TABLE OF CONTENTS

RJC Resource Pte Ltd and another
v
Koh Lee Hoo

[2018] SGHC 278

High Court — Suit No 1039 of 2016
Mavis Chionh Sze Chyi JC
22–24 May, 11, 25, 28 June 2018; 14 August 2018

28 December 2018

Mavis Chionh Sze Chyi JC:

Introduction

1 This dispute arose from the breakdown of a business venture. The plaintiffs characterised the business venture as an investment by them in a project to supply sand to a Japanese entity. The defendant, on the other hand, characterised it as purely a purchase by the plaintiffs of some shares in the company set up to carry out the project. The central issues before me concerned the construction of an agreement dated 31 May 2013 entered into by the parties (hereinafter referred to as the "31 May 2013 Agreement"), as well as the plaintiffs' complaints of fraudulent misrepresentations on the part of the defendant.

2 The 1st plaintiff, RJC Resource Pte. Ltd. (hereinafter referred to as "1st plaintiff" and "RJC Resource" interchangeably), is a company incorporated in

Singapore whose business interests include the wholesale of construction materials and the provision of general building engineering services. The 2nd plaintiff, Ng Swee How, is the sole director and shareholder of the 1st plaintiff.[1]

3 The defendant, Koh Lee Hoo, is the sole director and shareholder of a company incorporated in Singapore, called Singapore Hua Kai Engineering Co Pte Ltd ("Singapore Hua Kai"), whose business interests are stated to include general wholesale trade and chartering of ships, barges and boats with crews.[2]

4 Both the 2nd plaintiff and the defendant are directors and shareholders of another Singapore incorporated company called SNC Training Consultants Pte Ltd ("SNC").[3] They are also both directors and shareholders of a company known as Hua Kai Engineering & Resources Ltd ("Hua Kai BVI"), which was incorporated in the British Virgin Islands ("BVI").[4] Hua Kai BVI was the corporate entity at the centre of the dispute between the parties.

5 At the conclusion of a 5-day trial, I gave partial judgment for the plaintiffs, ordering that the defendant reimburse a sum of US$300,000 to the 1st plaintiff (with interest and costs). The plaintiffs and the defendant having both appealed my decision, I am setting out my reasons in these written grounds. As the parties' pleadings are lengthy and often repetitive and confusing, I propose to first set out a summary of the plaintiffs' claims and the defendant's defence.

---

1 Agreed Bundle of Documents Vol 1 ("1ABD"), pp 186-187.

2 1ABD, pp 181-182.

3 1ABD, pp 148-151.

4 1ABD, pp 125-126.

Summary of plaintiffs' claims

6 The plaintiffs alleged that the parties had contracted in the 31 May 2013 Agreement for the 1st plaintiff to invest a total sum of US$1.2 million into a "project" for the supply of sand to a Japanese company known as Japan Resources Development Co Ltd ("JRDC"). This "project" was referred to as the "Japan Project" by the parties. The monies invested by the 1st plaintiff were clearly designated for specific uses such as the hiring and chartering of sand dredging equipment. It was further agreed that various sums which the 2nd plaintiff had previously lent the defendant in the period between 23 July 2012 and 14 May 2013 would be treated as part of the investment sum of US$1.2 million. The plaintiffs claimed that the amounts paid to the defendant in relation to the investment in the Japan Project totalled $1,242,500 and US$200,000; which the plaintiffs said was the equivalent of the US$1.2 million referred to in the 31 May 2013 agreement.[5]

7 According to the plaintiffs, they had entered into the 31 May 2013 Agreement on the basis of certain oral representations made by the defendant; specifically and in particular, the following:[6]

> (a) that a company known as Hua Kai Engineering and Resources Co Ltd had secured a sand concession in Vietnam from a Vietnamese entity known as Hoang Viet Trading Service Pte Ltd ("Hoang Viet"), for the supply of sand to JRDC. It will be noted that the name Hua Kai Engineering and Resources Co Ltd is very similar – but not identical to – the name of the BVI company referred to as Hua Kai BVI in these

5 Statement of Claim (Amendment No 1), para 26; Plaintiffs' Closing Submissions, paras 3, 18-24; 2nd Plaintiff's AEIC, para 35.

6 Statement of Claim (Amendment No 1), para 8.

proceedings; the main difference being that the word "Co" does not appear in Hua Kai BVI's name. It will also be noted that Hua Kai Engineering and Resources Co Ltd was named as one of the parties to the 31 May 2013 Agreement, although no particulars were given of this entity in the agreement;

(b) that as Hua Kai Engineering and Resources Co Ltd and/or the defendant did not have the funds to carry out its obligations under the said sand concession, the defendant wanted the 1st plaintiff and/or the 2nd plaintiff to invest and/or inject sums (in the sum of USD 1,200,000) for the purpose of hiring and/or chartering dredges and also towards the deposit required by Hoang Viet under the terms of the sand concession;

(c) that there was "very little risk" in the said investment and/or injection as there was a "secured" sale and purchase agreement with the supplier of the sand, and the end-buyer (*ie*, JRDC) was also secured.

8 The plaintiffs claimed that they subsequently discovered the falsity of the defendant's representations after entering into the 31 May 2013 Agreement. The representation set out above at [7(a)] was false because there was in fact no company called Hua Kai Engineering and Resources Co Ltd in existence at the time of the 31 May 2013 Agreement; and the sand concession from Hoang Viet was not granted to Hua Kai Engineering and Resources Co Ltd. It was only after the signing of the agreement that Hua Kai BVI was incorporated on 18 July 2013 as the vehicle for the Japan Project. The representation about the uses to which the plaintiffs' investment funds would be applied was also false because the funds were not used for the stated purposes of paying the sand deposit and hiring or chartering dredgers and equipment. As for the representation that the investment carried "very little risk", this too was false:

the plaintiffs ended up "suffering great risks" due to the fact that the new entity Hua Kai BVI did not have a sand concession in Vietnam and the eventual lack of any agreement concluded for the supply of sand to JRDC.

9 The plaintiffs also claimed that following the 31 May 2013 Agreement, the defendant made further false representations to the 2nd plaintiff to induce him to sign a document referred to in these proceedings as the "SNC Deed".[7] The SNC Deed concerned the payment by SNC and/or the defendant to the plaintiff of certain sums apparently computed by reference to sand to be supplied by SNC to an entity named Starhigh Asia Pacific (Pte. Ltd.) ("Starhigh"). The SNC Deed did not concern the Japan Project. However, it was the plaintiffs' case that the defendant had procured the 2nd plaintiff's execution of this deed in order to convince the 2nd plaintiff that the defendant was still able to secure the sand concession in Vietnam for the supply of sand to JRDC, and to persuade him that the intention of the parties *vis-à-vis* the investment and injection of funds (amounting to US$1,200,000) under the terms of the 31 May 2013 Agreement, could still be carried out despite the defendant's falsehoods.[8]

10 It was common ground between the parties that the Japan Project never took off: no binding agreement for the supply of sand was eventually concluded between Hua Kai BVI and JRDC; nor did any supply of sand to JRDC by Hua Kai BVI (or by any entity related to the parties) ever take place.

11 The plaintiffs claimed the following reliefs against the defendant:[9]

---

7 1 ABD, pp 56-57.

8 Statement of Claim (Amendment No 1), para 22.

9 Statement of Claim (Amendment No 1), pp 31-40.

(a) damages for fraudulent misrepresentation, or in the alternative;

(b) damages for misrepresentation pursuant to s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed), or in the alternative;

(c) rescission of the 31 May 2013 Agreement, and consequently the return of the sums of $1,242,500 and US$200,000 paid to the defendant;

(d) in the alternative, the return of the total sums of $1,242,500 and US$200,000 on the basis that these were monies had and received by the defendant;

(e) further or in the alternative, the refund of a sum of US$500,000 pursuant to, *inter alia*, clause 8 of the 31 May 2013 Agreement. The plaintiff also pleaded reliance on clauses 16 and 18 of the 31 May 2013 Agreement, and referred as well to the preamble to the SNC Deed;

(f) interest and costs.

Summary of defendant's defence

12 The defendant denied that the payments made to him were in pursuance of an investment by the plaintiffs in the Japan Project. Instead, according to the defendant, the agreement between the parties was for the plaintiffs to pay a sum of US$1.2 million to purchase 18% of the total issued shares in Hua Kai BVI from the defendant.[10]

13 The defendant also denied making the misrepresentations complained of by the plaintiffs. He claimed that the 2nd plaintiff had been aware from the

[10] [8] of the Defence (Amendment No. 3) at Tab CC of the 2nd Supplemental Set Down Bundle.

outset that there was no company called Hua Kai Engineering and Resources Co Ltd incorporated as at the date the 31 May 2013 Agreement was signed. Instead, as the 2nd plaintiff well knew, they were to visit Hong Kong in June 2013 – after a site visit to Japan – to incorporate a BVI company as the vehicle for carrying out the Japan Project; and this was what had transpired.[11] The 2nd plaintiff was also aware that it was actually Singapore Hua Kai that held a Vietnam sand concession.

14 The defendant further asserted that, in any event, the plaintiff had not relied on any oral representations or assurances from him in entering into the 31 May 2013 Agreement. The 2nd plaintiff was a "sophisticated and shrewd businessman"; and it was the 2nd plaintiff who had actively pursued a stake in the defendant's sand business after personally assessing the business risks and satisfying himself of its potential. According to the defendant, the 2nd plaintiff had carried out his own checks prior to entering into the 31 May 2013 Agreement by visiting and inspecting the sand operations in Vietnam; and he had also had sight of the sand concession agreement signed between Hoang Viet and Singapore Hua Kai, among other things.[12]

15 In his amended defence, the defendant appeared to deny receiving at least some of the payments which the 2nd plaintiff claimed to have made to him pursuant to the 31 May 2013 Agreement.[13] The defendant also pleaded that the plaintiffs had not paid the full US$1.2 million by 31 August 2008 as the plaintiffs were contractually obliged to do – even going so far as to state that he reserved his "right to claim for his loss and damage arising from the plaintiffs'

---

11 Defendant's AEIC, paras 17 and 27.

12 Defence (Amendment No. 3), paras 14, 64-66.

13 Defence (Amendment No. 3), para 50.

breaches".[14] No such counter-claim was eventually made by the defendant. Moreover, despite the defendant's apparent denial of some of the payments the 2nd plaintiff claimed to have made to him (and despite portions of his AEIC appearing to cast doubt on whether the full US$1.2 million had been paid), the closing submissions filed by the defendant's counsel took the position that "[b]y 26 August 2013, US$1.2 million was paid in entirety by the 2nd plaintiff to the defendant".[15]

16 In any event, the defendant denied that he had guaranteed the repayment to the plaintiffs of any sums under the 31 May 2013 Agreement.[16]

17 As to the SNC Deed, the defendant contended that the 2nd plaintiff had already litigated his claims in relating to this deed in a separate suit – DC 923 of 2016 – and should accordingly be barred from attempting to re-litigate any claims relating to this Deed in the present proceedings.

31 May 2013 Agreement

18 As the 31 May 2013 Agreement was central to the present dispute, I reproduce below some of its key terms. The terms "Koh" and "Ng" in the agreement refer respectively to the defendant and the 2nd plaintiff. The terms "HK" and to "RJCR" refer respectively to Hua Kai Engineering and Resources Co Ltd – which the parties are agreed does not actually exist – and "RJC Resource Pte Ltd". It is not disputed that agreement was drafted by the 2nd plaintiff's lawyer. The material portions of the 31 May 2013 Agreement are as follows:[17]

---

14 Defence (Amendment No. 3), para 67.

15 Defendant's Closing Submissions, para 21.

16 Defence (Amendment No. 3), para 72.

> 1. HK has a confirmed sand concession ("concession") in Vietnam with Hoang Viet Trading Service Pte Ltd ("HV") to be supplied to Japan ("JAPAN RESOURCES DEVELOPMENT C.O., LTD.). HK warrants that HV will [*sic*] an export license from the relevant authority and this is a condition precedent for the injection of any funds into this agreement.
>
> 2. RJCR has been invited to and agrees to inject a total sum of US$1.2 million for the purpose of hiring/chartering dredgers and also towards the deposit required by HV.
>
> 3. By virtue of the aforesaid financial injection to be undertaken by RJCR, HK agrees that it will [*sic*] from the HV sand concession guarantee and secure for RJCR returns as set out below.
>
> 4. The payment of the US$1.2 million to be paid by RJCR to HK will be as follows:-
>
> i) US$100,000 agreed by parties herein as already paid by RJCR for the deposit for hiring / chartering of dredgers and equipment;
>
> ii) US$400,000 by the 31st May 2013 (made up of US$ 200,000 as TT for the sand deposit and US$200,000for [*sic*] hiring/chartering of dredger [*sic*] and equipment);
>
> iii) US$700,000 as follows: US$200,000 on or before 15th July 2013 and US $500,000 on or before 31st August 2013.
>
> …
>
> 8. If the Vietnam concession and the Japan Project does not materialize KOH will reimburse a maximum of US$500,000 to RJCR depending on which projects do not materialize. US $500,000 if both do not materialize, US$200,000 if the Vietnam concession does not materialize and US$300,000 if the Japan Project does not materialize.
>
> …
>
> 16. In consideration of the sums set out in Clause 4 herein paid and to be paid by RJCR, KOH agrees to guarantee the payments or minimum profits payable to be made by HK to RJCR mentioned herein should any of the said payments or minimum profits not be forthcoming within 1 month after the time limited for HK to make payment. Notice in writing by RJCR to KOH will be sufficient demand for payment and KOH cannot deny or dispute the amounts payable hereunder as stated in any letters

---

[17] 1ABD, pp 32–34.

> of demand for [*sic*] RJCR to KOH. Koh also agrees that if the sand is found to be in non compliance with ITC specifications that he will also guarantee to repay to RJCR the US$200,000 paid by RJCR as set out in Clause 4 herein. The personal Guarantee by Mr. Koh for this contract to be relinquish after 2 years from the date of this contract signed.
>
> 17. Further, in consideration of RJCR making payments as set out in clause 4 herein HK agrees that NG will be given an 18% share of all ordinary shares issued and that NG's shareholding will remain at 18% at all times whether or not shares are increased or decreased. If Ng decides to dispose of the said shares (with a minimum period of holding for 2 years) KOH will have first right of refusal and Ng will make the offer to sell in writing to KOH who will respond in 7days. In the event RJCR is unable to pay the balance of US$700,000 NG's shareholding will be reduced proportionately on the basis that US$1.2 million is equivalent to the 18% shareholding.
>
> 18. KOH and HK further jointly warrant and guarantees that RJCR will be entitled to a minimum sum equivalent to 10% of the net profit per month being profit from the Japan Project and this sum is payable by HK commencing October 2013.

Summary of evidence led at trial

2nd plaintiff's evidence

19 I will next summarise the evidence given in the course of the trial before dealing with the analysis of the issues in contention. By way of background, the 2nd plaintiff testified that he had first met the defendant in 2006 in the Middle East. They then lost touch with each other until 2012, when the defendant asked him out for coffee. Sometime in 2012, the 2nd plaintiff and the defendant visited Cambodia together, to check out the latter's sand barge. While they were in Cambodia, the defendant helped the 2nd plaintiff to obtain a "sand licence" for his company from a Cambodian sand owner. The defendant also saved the 2nd plaintiff from drowning when a boat they were traveling in took in water. As a result, the 2nd plaintiff felt that the defendant was someone he could trust.[18]

[18] Transcript of 22 May 2018, pp 11-12.

This explained his willingness to accede to the defendant's requests for loans in 2012 and 2013.

20 The discussions about the Vietnam sand concession and the sale of sand to JRDC came on the back of loans made by the 2nd plaintiff to the defendant. Between 23 July 2012 and 14 May 2013, the 2nd plaintiff made the following loans to the defendant via cash cheques:[19]

23 July 2012	$30,000 (CIMB cheque no. 739072)
6 December 2012	$20,000 (CIMB cheque no. 739088)
9 January 2013	$40,000 (UOB cheque no. 124058)
6 April 2013	$30,000 (CIMB cheque no. 010221)
10 May 2013	$100,000 (UOB cheque no. 311935)
14 May 2013	$100,000 (UOB cheque no. 311941)

21 By 14 May 2013, the 2nd plaintiff had lent the defendant a total of $320,000. Of the above loans, the 2nd plaintiff had obtained from the defendant a written acknowledgement of the three loans made on 23 July 2012, 6 December 2012 and 9 January 2013.[20] The 2nd plaintiff did not ask the defendant to sign written acknowledgements of the loans made subsequent to 9 January 2013 because by April 2013, they were already having discussions about him (the 2nd plaintiff) investing in the sand business. At this time (April 2013), the defendant had told the 2nd plaintiff about a company called Raffles-Sand entering into a Memorandum of Understanding ("MOU") with a Japanese company – JRDC – for the supply of sand. The 2nd plaintiff did not know the

19 2nd Plaintiff's AEIC, para 7.

20 2nd Plaintiff's AEIC, para 12 and p 101.

owner of Raffles-Sand, one Khoo See Pheng Alex ("Khoo"), but the defendant had time and again "colourfully" described to him "the benefits of this sand business in Japan",[21] and the 2nd plaintiff and defendant spoke about the former investing in the project to supply sand to JRDC. At this point, the 2nd plaintiff was aware that the defendant had a sand concession in Vietnam: he was under the impression that sand from this Vietnam sand concession would be supplied to Raffles-Sand, for the latter to sell the sand to JRDC.[22].

22 On 19 May 2013, the defendant asked the 2nd plaintiff for another loan – this time for a sum of US$200,000 which the defendant claimed he needed as "a deposit" for the agreement he had entered into with a Vietnamese company (Hoang Viet) for the purchase of sea sand.[23] The defendant assured the 2nd plaintiff that he would be able to repay this US$200,000 as well as the previous loans of $320,000, "within the next few months". Believing him, the 2nd plaintiff proceeded to lend him US$200,000 for the said "deposit". The sum was sent via telegraphic transfer to Hoang Viet:[24]

27 May 2013	US$200,000

23 On 31 May 2013, the defendant met with the 2nd plaintiff and made to him the following oral representations:[25]

---

21 Transcript of 22 May 2018, p 29.

22 Transcript of 22 May 2018, pp 31-32.

23 2nd Plaintiff's AEIC, paras 13-14.

24 2nd Plaintiff's AEIC, pp 102-103.

25 2nd Plaintiff's AEIC, paras 16(a)-(b); Plaintiffs' Closing Submissions, paras 3, 18.

(a) That a company known as Hua Kai Engineering and Resources Co Ltd had secured a sand concession in Vietnam with Hoang Viet, for the supply of sand to a Japanese company, JRDC;

(b) That since Hua Kai Engineering and Resources Co Ltd and/or the defendant did not have the requisite funds to carry out this project, the defendant wanted the 1st and/or the 2nd plaintiff to invest a total of US$1.2 million for the following purposes:

(i) deposit for hiring and/or chartering dredgers and equipment;

(ii) sand deposit; and

(iii) hiring and/or chartering dredgers and equipment.

24 According to the 2nd plaintiff, the defendant assured him that the investment would carry "very little risk" because the agreement with Hoang Viet for the sale and purchase of sand was "a secured agreement", and the end-buyer for the sand (*ie*, JRDC) was "also secured".[26] The defendant assured the 2nd plaintiff that the previous six loans totalling $320,000 would "form part of the investment sum" of US$1.2 million, and that he and/or the 1st plaintiff would have the assurance of a personal guarantee for this investment sum from the defendant himself.

25 The 2nd plaintiff relied on the defendant's oral assurances to enter into the 31 May 2013 Agreement.[27] This agreement was drafted by the 2nd plaintiff's lawyer, one Patrick Chin, but it was the defendant who supplied

---

26 2nd Plaintiff's AEIC, para 16(c); Plaintiffs' Closing Submissions, paras 3, 18.

27 2nd Plaintiff's AEIC, para 17; 1ABD, pp 32-35.

details such as the names of the various companies involved in the Japan Project (*ie*, JRDC and Hua Kai Engineering and Resources Co Ltd). On signing the agreement on 31 May 2013, the 2nd plaintiff made two further payments to the defendant as follows:[28]

31 May 2013	$200,000 (via cash cheque – CIMB cheque no. 010228)
31 May 2013	$10,000 (in cash)

26 The 2nd plaintiff contended that the 31 May 2013 Agreement was an agreement for him to invest in the project for the supply of sand to JRDC.[29] It was not an agreement for the purchase of shares in the BVI company set up to carry out this project. Before signing the agreement, the 2nd plaintiff was not aware of the plan to set up a new BVI company. The defendant had given him the impression that there was already a BVI company set up to do the Japan Project, and that was the basis upon which he signed the 31 May 2013 Agreement.[30] He only realised that the company had yet to be set up in June 2013 when he heard the defendant and Khoo discussing the plan to register a BVI company during their trip to Japan.[31] He was shocked and angry to discover that the BVI company had not actually been incorporated at the time he signed the 31 May 2013 Agreement.[32]

27 According to the 2nd plaintiff, his state of anger and agitation during the registration process in Hong Kong was the reason why he failed to notice that

28 2nd Plaintiff's AEIC, paras 19-21.

29 Transcript of 22 May 2018, p 29.

30 Transcript of 22 May 2018, pp 37-38.

31 Transcript of 22 May 2018, pp 31-32.

32 Transcript of 22 May 2018, p 42.

his shareholding in the new BVI company had been wrongly stated in the Register of Directors and Members. As an 18% shareholder, he was to have been allotted 9,000 of the 50,000 issued shares in Hua Kai BVI, but his shareholding was wrongly stated as 5,000 shares in the register.[33] Conversely, one of the defendant's staff, Ng Liang Wee (also known as Simon Ng), who should have been allotted only 5,000 shares, was wrongly stated in the register to have received 9,000 shares.

28 On 31 July 2013, the 2nd plaintiff wrote to the corporate secretary in Hong Kong, who had arranged for the registration of Hua Kai BVI, to ask them to rectify the error by transferring 4,000 shares from Ng Liang Wee to him. It took the defendant's then lawyers more than a year to send the 2nd plaintiff the share transfer forms – but by then the 2nd plaintiff himself had decided not to execute the share transfer forms anyway.[34] This was in light of the various disputes which had arisen between him and the defendant over the 31 May 2013 Agreement: in particular, he had come to realise that the representations previously made to him by the defendant were false,[35] and that the defendant did not intend to adhere to the terms of the 31 May 2013 Agreement.[36]

29 The 2nd plaintiff claimed that sometime around 18 July 2013, he confronted the defendant about his misrepresentations in relation to the existence and status of the entity referred to as Hua Kai Engineering and Resources Co Ltd in the 31 May 2013 Agreement. Following this confrontation, the defendant got the 2nd plaintiff to sign the SNC Deed (dated 3 August 2013),

---

33 1ABD, p 126.

34 1ABD pp 119-123.

35 Statement of Claim (Amendment No 1), para 8.

36 2nd Plaintiff's AEIC, paras 39-42.

in which the 2nd plaintiff was promised certain payments by SNC and/or the defendant. This deed purported to promise the 2nd plaintiff payments based on the quantity of sand supplied by SNC to Starhigh. Whilst the subject-matter of the SNC Deed had nothing to do with Hua Kai BVI or the Japan Project, the 2nd plaintiff claimed that the Deed came about because the defendant wanted to use it to convince the plaintiffs that the defendant was still able to secure the sand concession in Vietnam for the supply of sand to JRDC and to persuade them that the investment under the terms of the 31 May 2013 Agreement could still be carried out. To further convince the 2nd plaintiff to sign the Deed, the defendant represented, *inter alia*, that he was the majority shareholder of SNC and that he controlled SNC. These representations too turned out to be false because the defendant was not SNC's majority shareholder: he held 46.82% of its shares.[37]

30 In any event, the 2nd plaintiff alleged that he did not receive any of the payments promised under the SNC Deed. On the other hand, by the time the SNC Deed was executed, the 2nd plaintiff had paid the defendant the following further sums:

29 July 2013	$100,000 (via cash cheque – CIMB cheque no. 010241)
29 July 2013	$112,500 (via cash cheque – CIMB cheque no. 127759)
29 July 2013	$100,000 (via cash cheque – UOB cheque no. 127758)
26 August 2013	$400,000 (in cash)

[37] 2nd Plaintiff's AEIC, para 36.

31 As at end-August 2013, therefore, the 2nd plaintiff asserted that the plaintiffs had paid the defendant a total of $1,242,500 and US$200,000 – which constituted the equivalent of the US$1.2 million referred to in the 31 May 2013 Agreement, or about $1.5 million.[38] He reiterated that the monies were paid for the purpose of an investment in the Japan Project. He pointed out that in a letter dated 30 December 2013, the defendant had clearly admitted receipt of this total sum of $1.5 million, although he had tried to mischaracterise it as "the purchase price" of part of the defendant's shareholding in Hua Kai BVI (erroneously referred to as "Hua Kai (Hong Kong) in the letter).[39]

32 In cross-examination, the 2nd plaintiff was referred to a document titled "Statement of Account" dated 3 August 2013 which both he and the defendant had signed, and which purported to record the payments he had made as at that date towards the purchase price of US$1.2 million for 18% of the defendant's shares in Hua Kai BVI.[40] He stated that when he signed this "Statement of Account", he had been tired and under heavy work pressure, and had not noticed the reference to payment for shares or even read through the document.[41] He had also been distracted by the defendant's proclamation of "good news" in relation to the payments promised to him under the SNC Deed, which was also signed on 3 August 2013 – and in consequence he had overlooked the contents of the "Statement of Account".[42] The 2nd plaintiff also sought to rely on a number of audio-recordings he had secretly made of meetings with the defendant in which (according to the 2nd plaintiff) he had consistently denied

38 Statement of Claim (Amendment No. 1), paras 32-33.

39 1ABD, p 117.

40 Defendant's AEIC, p 115.

41 Transcript of 22 May 2018, p 104.

42 Transcript of 22 May 2018, pp 106-107.

that the monies were for the purchase of shares in Hua Kai BVI, and in which the defendant had at certain points declared that he would return the monies[43].

Defendant's 1st witness' evidence

33 The defendant called Khoo as his first witness. Khoo is the director and shareholder of a company in the sand trade, known as Raffles-Sand. As stated, sometime in late March 2013, Raffles-Sand entered into a MOU with JRDC for the supply of sand and stone to a construction project in Fukushima, Japan.[44] As Khoo had known the defendant for some years and was aware that the defendant had "a lot of contacts in Cambodia and Vietnam", he asked the defendant to supply sand to Raffles-Sand for onward sale to JRDC.[45]

34 Pursuant to the above proposal, Khoo and the defendant discussed setting up a new entity for the purpose of buying sand and stone from Singapore Hua Kai. The purchased sand and stone would then be supplied to Raffles-Sand, which would in turn supply the materials to JRDC.[46] The 2nd plaintiff came to know of this intended business venture through the defendant, and expressed interest in joining in. To facilitate the 2nd plaintiff's participation, Khoo was told by the defendant that the 2nd plaintiff would purchase 18% of the defendant's shares in the new entity.[47] This new entity was to be incorporated in the BVI.

---

43 2nd Plaintiff's AEIC, para 49, pp 128-489.

44 1ABD, pp 16-18.

45 Transcript of 23 May 2018, p 107.

46 Alex Khoo's AEIC, para 6.

47 Alex Khoo's AEIC, para 7.

35 Khoo testified that in or around June 2013, he had discussed the incorporation of the BVI entity with both the defendant and the 2nd plaintiff during their first trip to Japan together.[48] This was also the first time he met the 2nd plaintiff. He recalled highlighting to the latter that "incorporating a BVI company was not so simple because the name of the BVI entity would have to be approved first".[49] This was why in early June 2013, Khoo had corresponded with a corporate secretarial firm in Hong Kong – SBC International – to get their assistance in verifying the availability of the name "Hua Kai Engineering & Resources Ltd" for registration in the BVI.[50] Khoo testified that he was the one who had suggested the name "Hua Kai Engineering & Resources Ltd" to the defendant. He did not know where the name "Hua Kai Engineering and Resources Co Ltd" – which appeared in the 31 May 2013 Agreement – had come from: the defendant had shown him a copy of this Agreement but he was not party to it and had expressed no comments on it.[51]

36 The paperwork for the incorporation of Hua Kai Engineering & Resources Ltd – *ie*, Hua Kai BVI – was done in Hong Kong on 13 June 2013 at the office of SBC International.[52] Both the 2nd plaintiff and the defendant were present, together with Khoo, Ng Liang Wee and some of their Japanese associates. In fact, they had stopped over in Hong Kong on the way back from their visit to Japan. Khoo recalled that at the SBC International office, there was some discussion about the 2nd plaintiff purchasing part of the defendant's

---

48 Transcript of 24 May 2018, pp 16-17.

49 Alex Khoo's AEIC, para 8.

50 Alex Khoo's AEIC, p 13.

51 Transcript of 23 May 2018, pp 102-103.

52 Alex Khoo's AEIC, para 11.

shares in Hua Kai BVI.[53] Khoo recalled the defendant proposing to sell 18% of his shares to the 2nd plaintiff and the latter nodding in response.[54]

37 Khoo's company Raffles-Sand took up 25,000 shares in Hua Kai BVI, which represented 50% of its issued shares. The defendant was allotted 11,000 shares.[55] Khoo confirmed that the 2nd plaintiff was to have received 9,000 shares (*ie*, 18%) and Ng Liang Wee, 5,000 shares (*ie*, 10%), but that a mistake by SBC International had led to the 2nd plaintiff being allotted 5,000 shares and Ng Liang Wee, 9,000.[56] He recalled the 2nd plaintiff making active efforts to correct the mistake in the months that followed. He also recalled that along with taking up shares in Hua Kai BVI, the 2nd plaintiff had become a director of Hua Kai BVI and had actively participated in the company's business activities – for example, by executing MOUs on behalf of the company.[57]

38 Khoo testified that although he had been informed by the defendant that the 2nd plaintiff would be paying US$1.2 million for 18% of the shares in Hua Kai BVI,[58] he had not been privy to the negotiations between them.[59] He did not know how the defendant had arrived at the valuation of US$1.2 million for 18% of the issued shares in the company when its paid-up capital was $50,000.[60]

---

53 Transcript of 24 May 2018, pp 18-19.

54 Transcript of 24 May 2018, p 56.

55 1ABD, p 126.

56 Alex Khoo's AEIC, para 15.

57 Alex Khoo's AEIC, paras 18-30.

58 Transcript of 24 May 2018, pp 21-22.

59 Transcript of 24 May 2018, pp 45-46.

60 Transcript of 24 May 2018, p 24.

39 Khoo also testified that insofar as the supply of sand was concerned, his understanding with the defendant was that "Hua Kai Singapore will supply to Hua Kai BVI or Hua Kai Singapore supply to Raffles-Sand and then to Japan". In cross-examination, he disagreed with the suggestion by the plaintiffs' counsel that the intention had been for Singapore Hua Kai to assign the Hoang Viet sand concession to Hua Kai BVI and then for Hua Kai BVI to supply the sand directly to JRDC.[61]

40 In any event, according to Khoo, the MOU with JRDC was a non-binding letter of intent: to date, no firm agreement had been signed with JRDC. Khoo agreed that there had been no capital outlay insofar as procuring the supply of sand was concerned, although there had been "a few thousand" dollars of expenses related to the incorporation of Hua Kai BVI which the defendant had paid.[62] The reason why no deal had been concluded with JRDC to date was because after entering into the MOU with Raffles-Sand, JRDC had been reluctant to sign any agreement. JRDC had instead referred Raffles-Sand to "the big company in Japan", which had in turn also declined to sign any agreement "directly" or to provide a deposit payment. In the end, according to Khoo, in light of the "big risk" created by the lack of either a firm agreement or a deposit, they were unable to proceed.[63]

Defendant's evidence

41 The defendant agreed that he and the 2nd plaintiff had met in 2006 when he was doing business in the Middle East. He also agreed that he had

---

61 Transcript of 24 May 2018, pp 31-33.

62 Transcript of 24 May 2018, pp 12-14.

63 Transcript of 23 May 2018, p 110.

started borrowing money from the 2nd plaintiff sometime in 2012.[64] According to the defendant, it was also in 2012 that he had started discussing the sand business with the 2nd plaintiff. He admitted that at that point, he had told the 2nd plaintiff that the sand business was very lucrative so that the latter would lend him money.[65]

42 According to the defendant, the 2nd plaintiff knew that he (the defendant) had his own sand ship as well as sand concessions in Vietnam and Cambodia. The 2nd plaintiff had travelled to Cambodia with the defendant and seen the site of the sand concession for himself; and he became interested in becoming a shareholder and director of the defendant's company.[66] The defendant even arranged for a Cambodian sand concession to be granted to the 1st plaintiff (*ie*, RJC Resource).[67]

43 Sometime in early 2013, the defendant was approached by Khoo after Khoo's company Raffles-Sand entered into an MOU with a Japanese company (JRDC) for the supply of river sand and stone. Khoo wanted the defendant's company Singapore Hua Kai to supply the sand and stone. At that stage of their discussions, the two of them envisaged an arrangement whereby Singapore Hua Kai would obtain sand from Vietnam via the sand concession it had from Hoang Viet, before selling it to Raffles-Sand for on-selling to JRDC.[68]

---

64 Transcript of 11 June 2018, pp 11-12.

65 Transcript of 11 June 2018, pp 14-15.

66 Transcript of 11 June 2018, pp 10-13.

67 Transcript of 11 June 2018, pp 16-19.

68 Defendant's AEIC, paras 11-12.

44 The 2nd plaintiff came to know of these plans, as the defendant gave him a copy of the Raffles-Sand-JRDC MOU and told him about its potential.[69] Consequently, the 2nd plaintiff "wanted to be a part of the project to sell sand and stone to Japan because the project was in high volume and the Japanese offered price was good".[70] As such, he and the defendant came to an agreement that he "would provide … consideration [of] US$1.2 million dollars for 18% of the [defendant's] shareholding in the business venture, which was subsequently incorporated as Hua Kai Engineering & Resources Ltd [*ie*, Hua Kai BVI]".[71]

45 The defendant asserted that the 31 May 2013 Agreement "[did] not evidence the true agreement" between him and the 2nd plaintiff because what the two of them had contracted for was actually a "Share Purchase Agreement" wherein the 2nd plaintiff "would buy 18% of [the defendant's] shareholding in Hua Kai BVI and once the business venture started generating returns, he would also be entitled to 18% of the profits".[72] In fact, the agreement had been prepared by the 2nd plaintiff's lawyer. The defendant had not been given any forewarning as to the signing of the 31 May 2013 Agreement as the 2nd plaintiff had merely told him they were going to the lawyer's office for coffee.[73] As he had only a limited grasp of the English language, he signed the agreement without understanding its contents.[74] Neither the 2nd plaintiff nor the lawyer explained the document to him, and he "thought that it was an illegal contract".[75] He left the lawyer's office in a huff without taking a copy of the agreement.

---

69 Transcript of 11 June 2018, pp 36-38.

70 Defendant's AEIC, para 14.

71 Defendant's AEIC, para 16.

72 Defendant's AEIC, para 20.

73 Transcript of 11 June 2018, p 84.

74 Transcript of 11 June 2018, p 7.

46 The defendant was certain that the 2nd plaintiff knew Hua Kai BVI did not yet exist as at 31 May 2013, because when he gave the 2nd plaintiff a copy of the Raffles-Sand-JRDC MOU, he had stated that they were "in the process of incorporating the company".[76] Indeed, the incorporation of Hua Kai BVI was a subject Khoo, the 2nd plaintiff and himself had "actively discussed … since April 2013".[77] The defendant had also shown the 2nd plaintiff a copy of the sand concession agreement which his company Singapore Hua Kai had signed with Hoang Viet on 19 May 2013,[78] so the 2nd plaintiff was aware that it was Singapore Hua Kai – and not Hua Kai BVI – which held the Vietnam sand concession. The defendant denied having told the 2nd plaintiff that Singapore Hua Kai would assign this sand concession to Hua Kai BVI. Instead, what he had told the 2nd plaintiff at that juncture was that Hua Kai BVI would "have priority in obtaining the sand" from Singapore Hua Kai's sand concession in Vietnam;[79] and Hua Kai BVI would supply the sand to JRDC. Raffles-Sand would not be in this supply chain and would instead take up 50% of the issued shares in Hua Kai BVI.[80]

47 On 3 June 2013, the defendant visited Japan together with the 2nd plaintiff, Khoo and Ng Liang Wee for the purpose of inspecting the intended project site in Fukushima.[81] They then stopped over in Hong Kong on the way back from Japan in order to arrange for the incorporation of Hua Kai BVI. It

---

75 Transcript of 11 June 2018, p 83-85.

76 Transcript of 11 June 2018, p 81.

77 Defendant's AEIC, para 28.

78 Defendant's AEIC, para 19; 1ABD, pp 19-31.

79 Transcript of 11 June 2018, pp 76-77.

80 Transcript of 11 June 2018, p 70.

81 Transcript of 11 June 2018, p 32.

was in Hong Kong that the defendant announced to the others that the 2nd plaintiff would be taking up 18% of the shares in Hua Kai BVI. Prior to making this announcement, the defendant did not notify Khoo of the 2nd plaintiff's intended shareholding because as far as he was concerned, he was simply selling his own shares in Hua Kai BVI.[82]

48 It was also during this Hong Kong trip that the defendant decided to "give" Ng Liang Wee 10% of his shares in Hua Kai BVI, as Ng Liang Wee had served him for many years as an employee and was a "capable assistant".[83] Unfortunately, the corporate secretarial firm (SBC International) had made a mistake by confusing Ng Liang Wee with the 2nd plaintiff – such that Ng Liang Wee was allotted the number of shares that should have been allotted to the 2nd plaintiff, and vice versa.[84] The 2nd plaintiff himself had written to SBC International about the mistake; and on 25 August 2013, Khoo had also notified SBC International that all the shareholders of Hua Kai BVI agreed the mistake should be rectified.

49 In respect of the amounts paid to the defendant pursuant to the 31 May 2013 Agreement, as noted earlier, the amended defence had appeared to take the position that at least some of the payments pleaded by the plaintiffs were denied. Thus for example, in respect of the four payments totalling $712,500 which the 2nd plaintiff claimed had been made on 29 July 2013 and 26 August 2013 (see [30] above), the defendant had pleaded a general denial of the relevant paragraphs in the amended statement of claim and put the 2nd plaintiff to strict proof of these paragraphs.[85] In his affidavit of evidence-in-chief, the defendant

---

82 Transcript of 11 June 2018, pp 62-63.

83 Transcript of 25 June 2018, p 6.

84 Defendant's AEIC, paras 44-46, pp 112-113.

also alleged that the US$1.2 million mentioned in the 31 May 2013 Agreement was to have been paid in three tranches: US$500,000 by 31 May 2013; US$200,000 by 15 July 2013; and US$500,000 by 31 August 2013.[86] Taking into account the payments he had actually received from the 2nd plaintiff, there remained – as at 3 August 2013 – an amount of US$400,000 outstanding from the 2nd plaintiff out of the total of US$1.2 million.[87] He relied on the "Statement of Account" dated 3 August 2013 in putting forward this narrative.[88] At the conclusion of the trial, however, the closing submissions filed on the defendant's behalf took the position that "[b]y 26 August 2013, US$1.2 million was paid in entirety by the 2nd plaintiff to the defendant".[89]

Issues for determination

50 To recap, the plaintiffs' claims against the defendant were broadly as follows:

(a) The defendant had made fraudulent misrepresentations to the plaintiffs. The plaintiffs were therefore entitled to claim damages at law (or at least damages pursuant to s 2 of the Misrepresentation Act) or seek rescission of the 31 May 2013 Agreement;

(b) Alternatively, the return of the total sums of $1,242,500 and US$200,000 paid by the plaintiffs to the defendant for a total failure of consideration of these payments;

---

85 Defence (Amendment No. 3), para 50.

86 Defendant's AEIC, para 50.

87 Defendant's AEIC, para 65.

88 Defendant's AEIC, paras 48-65, pp 115-116.

89 Defendant's Closing Submissions, para 21.

(c) Alternatively, the defendant was contractually obligated to refund a sum of US$500,000. In this respect, as noted earlier, the plaintiffs pleaded reliance on clause 8 of the 31 May 2013 Agreement, as well as clauses 16 and 18 of the agreement, and made reference to the preamble of the SNC Deed.

51 The substantive differences between the parties in this case were largely factual: the parties were in broad agreement on the applicable legal principles. Having heard the evidence and having considered the parties' pleadings as well as their written submissions, I assessed that the following were the key issues which had to be determined in order for the plaintiffs' claims to be disposed of:

(a) Did the defendant make the fraudulent misrepresentations complained of by the plaintiff?

(b) If no such fraudulent misrepresentations were made, and on the basis that the 31 May 2013 Agreement constituted a valid and binding agreement, what did the parties agree to in the 31 May 2013 Agreement? Was it a share purchase agreement, as the defendant claimed, with the plaintiffs purchasing from the defendant 18% of the shares in Hua Kai BVI for US$1.2 million? Or was it an agreement for the plaintiffs to invest US$1.2 million in the Japan Project in return for profits to be made from the supply of sand to Japan, as the plaintiffs claimed?

52 The determination of [51(a)] was relevant to disposing of the plaintiffs' claim for fraudulent misrepresentation; whereas the determination of [51(b)] was relevant to disposing of the claims for total failure of consideration and for the refund of US$500,000 based on clause 8 and other provisions in the 31 May 2013 Agreement.

The analysis

Did the defendant make the fraudulent misrepresentations complained of by the plaintiffs

53 In respect of the plaintiffs' claim for fraudulent misrepresentation, parties were agreed that in law, the elements of such a claim were as follows (see *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [13]–[14]). First, there must be a representation of fact made by words or by conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

54 Whilst the plaintiffs' pleadings were replete with various references to "representations" and "assurances", they eventually identified the following as the alleged false representations relied on by the plaintiffs in entering into the 31 May 2013 Agreement:[90]

(a) that a company known as Hua Kai Engineering and Resources Co Ltd had secured a sand concession in Vietnam with Hoang Viet, for the supply of sand to a Japanese company, JRDC;

(b) that since Hua Kai Engineering and Resources Co Ltd and/or the defendant did not have the requisite funds to carry out this project, the

---

90 Plaintiffs' Closing Submissions, paras 3, 8.

defendant wanted the 1st and/or the 2nd plaintiff to invest a total of US$1.2 million for the following purposes:

(i) deposit for hiring and/or chartering dredgers and equipment;

(ii) sand deposit; and

(iii) hiring and/or chartering dredgers and equipment; and

(c) that the investment would carry "very little risk" because the agreement with Hoang Viet for the sale and purchase of sand was "a secured agreement", and that the end-buyer for the sand (*ie*, JRDC) was "also secured".

55 In respect of the representation set out at [54(a)], having considered the evidence, I found that while the 31 May 2013 Agreement did on its face refer to "Hua Kai Engineering and Resources Co Ltd" having "a confirmed sand concession" with Hoang Viet, the 2nd plaintiff was in fact aware from the outset that no such company had been incorporated as at 31 May 2013 and that the plan was to incorporate a BVI company as the vehicle for the Japan Project. My reasons for this finding were as follows.

56 Firstly, on the face of the 31 May 2013 Agreement, it was clear that apart from the name "Hua Kai Engineering and Resources Co Ltd", no other particulars were given of the corporate entity which purportedly had a "confirmed sand concession" for the supply of sand to JRDC: not even the registered address of this purported entity was stated in the agreement.[91] The 2nd plaintiff testified that he had left it to the defendant to fill in the registered

[91] 1ABD, p 32.

address – but then admitted that he had retained the original of the agreement with the registered address of Hua Kai Engineering and Resources Co Ltd left blank.[92] While the 2nd plaintiff stated that he would not have signed the 31 May 2013 Agreement had Hua Kai Engineering and Resources Co Ltd not been in existence, he conceded that he had not done any checks on the existence and status of the purported entity prior to executing the agreement and had simply assumed its existence.[93] These omissions appeared rather cavalier and were anomalous in light of the 2nd plaintiff's own assertion that he was making a "very big investment" and needed to be "quite careful".[94] Indeed, it was not disputed that it was the 2nd plaintiff who had insisted on having a written contract,[95] who had instructed his lawyer to draft the 31 May 2013 Agreement, and who had brought the defendant to see his lawyer.[96] The 2nd plaintiff also testified that he had wanted to make sure the money he was investing went to a company instead of to an individual because "it would be more secure in the sense that individual, he can just run away".[97] In my view, the 2nd plaintiff's apparently cavalier attitude could only be explained if he already knew – at the time he signed the 31 May 2013 Agreement – that Hua Kai Engineering and Resources Co Ltd had yet to be incorporated.

57 Secondly, it was clear from the 2nd plaintiff's own evidence that from the outset, he had known it was Singapore Hua Kai which held the sand concession from Hoang Viet. In addition to the defendant having told him

92 Transcript of 22 May 2018, p 41.

93 Transcript of 22 May 2018, pp 38-41.

94 Transcript of 22 May 2018, p 57.

95 Transcript of 22 May 2018, p 69.

96 Transcript of 22 May 2018, p 57.

97 Transcript of 22 May 2018, p 117.

so,[98] he himself had seen a copy of the Hoang Viet sand concession agreement on 27 May 2013.[99] It would have been obvious from the Hoang Viet sand concession agreement that "Singapore Hua Kai Engineering Pte Ltd" was the party contracting with Hoang Viet.[100]

58 In re-examination, the 2nd plaintiff attempted to explain his position by claiming that the defendant had told him the sand concession could be assigned from Singapore Hua Kai to Hua Kai BVI.[101] In this connection, whilst I noted that the defendant had at one point in his AEIC stated that Singapore Hua Kai was "allowed" to "assign the benefits or the rights of the Hoang Viet – Hua Kai Singapore Agreement to anyone it wished", the defendant stated in cross-examination that he had never told the 2nd plaintiff the Hoang Viet sand concession would be assigned to *Hua Kai BVI*. Instead, the defendant claimed that what he had told the 2nd plaintiff was that Hua Kai BVI would "have priority in obtaining the sand" from Singapore Hua Kai's sand concession.[102]

59 In any event, the 2nd plaintiff's evidence in re-examination – that the defendant had told him Singapore Hua Kai would assign its sand concession to Hua Kai BVI – was at odds with his assertion in his AEIC that the defendant had assured him that "Hua Kai Engineering and Resources Co Ltd … had secured a sand concession in Vietnam with Hoang Viet".[103] I found it

98 Transcript of 22 May 2018, p 32.

99 Transcript of 22 May 2018, pp 26; 68.

100 1ABD p 19.

101 Transcript of 23 May 2018, p 50.

102 Transcript of 11 June 2018, p 76.

103 2nd Plaintiff's AEIC, para 16(a).

unbelievable that the 2nd plaintiff would have failed to include in the 31 May 2013 Agreement specific mention of the intended assignment of the sand concession to Hua Kai BVI if such an assignment had indeed been promised – especially given the care he had taken to procure a written contract, and given that he had instructed his lawyer on the drafting of the contract.

60 In cross-examination, the 2nd plaintiff also conceded the defendant had told him in April 2013 that it was a company called Raffles-Sand which had "got" the Japan Project and which would be supplying the sand to JRDC.[104] This admission too was plainly at odds with his assertion in his AEIC that the defendant had represented that an entity known as Hua Kai Engineering and Resources Co Ltd would be supplying the sand to JRDC.

61 In view of the reasons set out above, I did not accept that the defendant had represented to the 2nd plaintiff that "a company known as Hua Kai Engineering and Resources Co Ltd … had secured a sand concession in Vietnam with Hoang Viet … for the supply of sand to a Japanese company [*ie*, JRDC]".

62 In respect of the representation set out at [54(b)], the 31 May 2013 Agreement did state that the monies injected by the plaintiffs were intended "for the purpose of hiring/chartering dredgers and also towards the deposit required by [Hoang Viet]" (see clauses 2 and 4 of the 31 May 2013 Agreement reproduced at [18] above). Nonetheless, I found that the plaintiffs were unable to prove that this particular representation was false at the time it was acted upon. Let me elaborate.

---

104 Transcript of 22 May 2018, p 18.

63 It was agreed between the parties that an assertion as to the existence of a particular intention would amount to a statement of fact. Thus, the misstatement of the existence of such an intention would amount to a misrepresentation of fact: see *ACTAtek, Inc and another v Tembusu Growth Fund Ltd* [2016] 5 SLR 335 at [48]. That said, even if the defendant had in fact represented to the 2nd plaintiff that the monies injected were intended "for the purpose of hiring/chartering dredgers and also towards the deposit required by [Hoang Viet]", the plaintiffs still had to prove that such a representation was false at the time it was acted upon – that is, at the time the 31 May 2013 Agreement was concluded: see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 11.059; see also *Foodco UK LLP v Henry Boot Developments Ltd* [2010] EWHC 358 at [212], where Lewison J noted that "[w]hat matters is the state of affairs at the date when the contract is concluded and the representation acted upon".

64 The plaintiffs were unable to prove that the representation was false for the following reasons.

65 It was not disputed that the Hoang Viet sand concession agreement required the payment of a deposit of US$200,000.[105] This deposit was required to be paid within 5 working days from 19 May 2013 (the date of the Hoang Viet agreement). Nor was it disputed that part of the monies injected by the plaintiffs – a sum of US$200,000 – was in fact paid to Hoang Viet within the stated 5 working days (that is, by 27 May 2013).[106] Assuming therefore that the defendant had represented to the 2nd plaintiff on 31 May 2013 that the monies

---

105 1ABD, p 21.

106 2nd Plaintiff's AEIC, para 15; Defendant's AEIC, para 53; 1ABD, p 104.

injected would be used at least in part to pay the sand deposit, the evidence available indicated that this representation was true.

66 As to the stated intention to use the monies injected "for the purpose of hiring/chartering dredgers", whilst the defendant was unable to produce documentary evidence of payments made towards such purpose, this did not in itself prove that he must have been lying at the point he made the representation. The plaintiffs themselves had suggested to Khoo that in any deal for the supply of sand, he – as a seasoned sand trader – would require the intended buyer of the sand to furnish some form of security before committing to any capital outlay of his own.[107] Not only did Khoo agree with this suggestion, he also testified that in the case of the Japan Project, no firm deal was eventually concluded with JRDC because JRDC was reluctant to sign a firm agreement and had instead referred Raffles-Sand to the "big company" in Japan. The "big company" had suggested getting a proxy to sign the agreement instead, and had also refused to provide any deposit payment. In the circumstances, and having regard to the "big risk" involved, the Japan Project could not proceed any further.[108]

67 The plaintiffs did not challenge the above evidence from Khoo. Tellingly, however, what Khoo's evidence suggested was that if no dredgers or other equipment were eventually hired to operationalise the supply of sand to JRDC, it would have been because of JRDC's subsequent conduct in refusing to sign a firm agreement or to provide a deposit payment – and not because the defendant had all along intended to renege on the stated intention to use the funds for hiring such equipment.

---

107 Transcript of 23 May 2018, pp 108-109; 24 May 2018, pp 9-10.

108 Transcript of 23 May 2018, pp 109-110.

68 For the above reasons, even assuming the defendant had represented that the monies injected by the plaintiffs were intended "for the purpose of hiring/chartering dredgers and also towards the deposit required by [Hoang Viet]", the plaintiffs failed to prove that this representation was false at the time the 31 May 2013 Agreement was concluded.

69 In respect of the representation set out at [54(c)], the defendant was prepared to agree that he had characterised the Japan Project as being potentially profitable, although he asserted that the 2nd plaintiff had in any event come to the same conclusion for himself, after making his own calculations.[109] More importantly, the defendant asserted that he had not made the specific representation that the investment bore "little risk because the end-buyer and the supplier of the sand were identified".[110]

70 In this connection, as noted earlier, I have found as a fact that prior to 31 May 2013, the 2nd plaintiff already knew that it was Singapore Hua Kai – and not Hua Kai Engineering and Resources Co Ltd – that had the sand concession agreement with Hoang Viet. He also knew, as at 31 May 2013, that Hua Kai Engineering and Resources Co Ltd had yet to be incorporated at the point in time when the 31 May 2013 Agreement was signed. Whether there was some plan for Singapore Hua Kai to assign the sand concession to the BVI company to be set up (as the 2nd plaintiff claimed), or whether the plan was for this new BVI company to "have priority" in procuring sand from Singapore Hua Kai (as the defendant claimed), the point is that the plaintiffs would have known prior to 31 May 2013 that there was no Hua Kai Engineering and

---

109 Defendant's Closing Submissions, para 138.

110 Defendant's Closing Submissions, para 139.

Resources Co Ltd – indeed, no BVI company – which had an "agreement with Hoang Viet for the sale and purchase of sand".

71 In cross-examination, the 2nd plaintiff further conceded that as at *April 2013*, he knew that the arrangement for the supply of sand to JRDC consisted of an *MOU* between JRDC and Raffles-Sand.[111] The fact that the 2nd plaintiff knew prior to 31 May 2013 that there existed only an MOU with JRDC – as opposed to a binding contract – was at odds with the allegation that the defendant had assured him JRDC was a *secured end-buyer* for the sand.

72 Indeed, the fact that the 2nd plaintiff took care to provide in the 31 May 2013 Agreement for the reimbursement of certain sums in the event that "the Vietnam concession and the Japan Project does not [*sic*] materialize" (see clause 8 of the 31 May 2013 Agreement reproduced above at [18]) is consistent with his knowledge that as at 31 May 2013, there was no Hua Kai Engineering and Resources Co Ltd which had an "agreement with Hoang Viet for the sale and purchase of sand", and also no binding agreement with JRDC for the supply of sand.

73 For the above reasons, I did not accept that the defendant had represented to the 2nd plaintiff that his investment would carry little risk because there existed "a secured agreement" with Hoang Viet for the sale and purchase of sand and/or because the end-buyer for the sand was "also secured".

74 Given the above findings of fact, I did not find it necessary to deal with questions relating to the plaintiffs' allegations of reliance on the purported fraudulent misrepresentations and/or the damage allegedly suffered in

---

111 Transcript of 22 May 2018, p at 32.

consequence. Based on these findings of fact, I was satisfied that the plaintiffs could not make out their claim for fraudulent misrepresentation. In the circumstances, I rejected their claim for damages for fraudulent misrepresentation and the alternative claim for rescission of the 31 May 2013 Agreement and return of the total sums of $1,242,500 and US$200,000.

75 The plaintiffs' Statement of Claim (Amendment No 1) also included a prayer in the alternative for damages under s2 of the Misrepresentation Act. This appeared to be a reference to s 2(1) of the Misrepresentation Act, although unfortunately the elements of this alternative claim were not dealt with in the parties' closing submissions.

76 Section 2(1) of the Misrepresentation Act provides:

> Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

77 The elements for relief under s 2(1) have been summarised by the English Court of Appeal in *Spice Girls Ltd v Aprilia World Service BV* [2002] EMLR 27 at [12] as follows:

> …(L)iability depends on four elements: (a) a misrepresentation made by one person to another, (b) a subsequent contract between them, (c) consequential loss and (d) an absence, at the time the contract was made, of a belief or reasonable grounds therefor in the truth of the facts represented. If all those conditions are satisfied then the representor is liable to the representee for such damages as would be payable if the misrepresentation had been made fraudulently.

78 It has also been held that the Misrepresentation Act does not change the law as to what amounts to a representation; it only alters the relief for non-fraudulent misrepresentation: *Tan Ching Seng v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [23].

79 From the above, it is plain that damages under s 2(1) of the Misrepresentation Act is still premised first and foremost on a false statement of fact having been made at the pre-contractual stage. As seen in [54] to [73] above, I have found against the plaintiffs on the alleged misrepresentations. In the circumstances, it was clear that the plaintiffs could not establish even the first of the four elements of liability under s 2(1) of the Misrepresentation Act; and I rejected their alternative claim for damages under this provision.

If no fraudulent misrepresentations were made, and on the basis that the 31 May 2013 Agreement was valid and binding, what did the parties agree to in the 31 May 2013 Agreement

80 Having rejected the plaintiffs' claim that the 31 May 2013 Agreement should be rescinded for fraudulent misrepresentation, I next considered the issue of what the plaintiffs and the defendant had contracted for in this agreement. As I observed earlier, the determination of this issue was relevant to the plaintiffs' claims for total failure of consideration and for the refund of US$500,000 based on clause 8 and other provisions in the 31 May 2013 Agreement.

81 I first considered the defendant's understanding of the 31 May 2013 Agreement. It must be stated at the outset that the defendant did not seek to challenge the validity of the 31 May 2013 Agreement. In his affidavit of evidence-in-chief, the defendant had stated that the agreement "does not

evidence the true agreement or the Share Purchase Agreement" between him and the 2nd plaintiff.[112] However, the defendant did not plead the defence of *non est factum* or any other similar defence. I therefore proceeded on the basis that he did not intend to disavow the 31 May 2013 Agreement in its entirety and that he was simply saying it should be understood as being purely an agreement for the sale and purchase of his shares in Hua Kai BVI. Indeed, in the same paragraph of his affidavit of evidence-in-chief, he went on to state that "the main essence of the agreement … lies in *Clause 17* of the 31 May 2013 Agreement, wherein [the 2nd plaintiff] would buy 18% of [his] shareholding in Hua Kai BVI and once the business venture started generating returns, he would also be entitled to 18% of the profits" [emphasis added].

82 I found the defendant's "understanding" of the 31 May 2013 Agreement as a share purchase agreement to be wholly baseless. In *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 ("*Yap Son On*"), the Court of Appeal ("CA") has pointed out that in any exercise of contractual interpretation, the "text of the agreement is of first importance" (at [30]). The defendant's proposed "understanding" of the 31 May 2013 Agreement essentially required that all clauses apart from clause 17 be disregarded – a proposition for which the defence provided no legal or evidential basis. If the only thing agreed between the plaintiffs and the defendant was that the former should purchase from the latter 18% of the shares in Hua Kai BVI for US$1.2 million, then it was anomalous that the 31 May 2013 Agreement should have incorporated multiple clauses providing for the purposes for which the plaintiffs' "financial injection" of US$1.2 million was to be used. It also could not be disputed that these stated purposes related to the supply of sand to JRDC (*ie*, the Japan Project); and that

112 Defendant's AEIC, para 20.

clause 8 specifically provided for the reimbursement of part of the US$1.2 million in the event that the Vietnam sand concession and/or the Japan Project failed to materialise. The incorporation of these terms in the 31 May 2013 Agreement made sense only if it was understood to be – at least in part – an agreement for the plaintiffs *to invest in the Japan Project*.

83 I would add that whilst the defendant claimed at some points in his testimony that he had been unaware of what the 31 May 2013 Agreement said, I found this testimony unbelievable.[113] Not only did he sign the 31 May 2013 Agreement, there was no evidence at all – up until the time these proceedings commenced – of his having subsequently sought to disavow the agreement or to protest his alleged ignorance of its terms. Having heard the exchanges between the defendant and the 2nd plaintiff in the audio recordings of their meetings, and having observed the defendant's behaviour in the witness stand, I had no doubt that the defendant would have had no difficulty in making known his objections had he really been kept ignorant of the terms of the 31 May 2013 Agreement.

84 I would also add that I did not find the Statement of Account dated 3 August 2013 to be of any help to the defendant. Whilst this document purported to refer to the "sale" to the 2nd plaintiff of 18% of the Hua Kai BVI shares "@ USD 1.2 mil", there was no basis on which to suppose that it had in some way revoked or varied those express terms of the agreement which – as observed earlier – clearly provided for the plaintiffs to invest in the Japan Project.

85 Furthermore, insofar as the exercise in contractual construction is informed "by the surrounding circumstances or external context" and insofar as

---

113 Transcript of 11 June 2018, p 84.

the court may have regard *inter alia* to the factual matrix constituting the background in which the contract was drafted (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131]), it did not make sense for the 2nd plaintiff to agree to shell out US$1.2 million *solely* for the purpose of purchasing an 18% shareholding in a BVI company which had not even been set up at the point in time when the 31 May Agreement was signed. Indeed, even when the company (*ie*, Hua Kai BVI) was eventually set up, it had only 50,000 issued shares each with a par value of US$1.[114] Tellingly, the defendant was completely unable to explain how he had arrived at a valuation of US$1.2 million for 18% of his shares in Hua Kai BVI.[115] At one point, he attempted to rely on the assets allegedly owned by Singapore Hua Kai as a reference point for the valuation, but he was quickly obliged to concede that these assets did not belong to Hua Kai BVI, nor was the 2nd plaintiff a shareholder of Singapore Hua Kai. In short, despite alleging that the entire sum of US$1.2 million was paid by the plaintiffs as consideration for an 18% shareholding in Hua Kai BVI, the defendant had no coherent explanation for how the 9,000 shares in this new BVI company came to be valued at US$1.2 million.

86 Indeed, the defendant himself appeared at times to forget his own insistence that the agreement he had with the plaintiffs was no more than a sale and purchase agreement for 18% of the Hua Kai BVI shares. At one point in his AEIC, for example, having set out his version of the payments made to him by the 2nd plaintiff, he referred to the transaction they were engaged in as "the investment project with the Japanese".[116] In cross-examination, he also admitted

---

114 1ABD, p 133.

115 Transcript of 25 June 2018, pp 75-77.

to the suggestion that he had told the 2nd plaintiff that "even if the Hua Kai BVI company is not incorporated," he (the defendant) was "likely to have 50% of the shares *in the Japan project* anyway… *and would sell* [the 2nd plaintiff] *18% of that*" [emphasis added]. [117]

87 For the reasons set out above, I rejected the defendant's portrayal of the 31 May 2013 Agreement as an agreement solely for the sale and purchase of his 18% shares in Hua Kai BVI.

88 On the other hand, I also did not accept the 2nd plaintiff's contention that the 18% shareholding in Hua Kai BVI was purely a "free gift" from the defendant and that his intention in entering into the 31 May 2013 Agreement was not to buy shares.[118] It is true that the 31 May 2013 Agreement referred to the 1st plaintiff "injecting" a total sum of US$1.2 million for the purpose of hiring/chartering dredgers and also towards the deposit required by Hoang Viet (see clauses 2 and 4); that the agreement included provision for partial reimbursement of this sum in the event the sand concession with Hoang Viet and/or the Japan Project did not materialise (see clause 8);[119] and that it also provided for the 1st plaintiff to be "guaranteed" a monthly minimum sum equivalent to 10% of the profit from the Japan Project (see clause 18).[120] However, clause 17 of the Agreement also provided as follows:

> *Further, in consideration of RJCR making payments as set out in clause 4 herein HK agrees that NG will be given an 18% share of all ordinary shares issued* and that NG's shareholding will

---

116 Defendant's AEIC, para 66.

117 Transcript of 11 June 2018, p 66.

118 Transcript of 22 May 2018, p 47, 107.

119 Clause 8 of the Agreement at 1ABD p 33.

120 Clause 18 of the Agreement at 1ABD p 34.

> remain at 18% at all times whether or not shares are increased or decreased. If Ng decides to dispose of the said shares (with a minimum period of holding for 2 years) KOH will have first right of refusal and Ng will make the offer to sell in writing to KOH who will respond in 7days. In the event RJCR is unable to pay the balance of US$700,000 NG's shareholding will be reduced proportionately on the basis that US$1.2 million is equivalent to the 18% shareholding.
>
> [emphasis added]

89 As noted earlier, the CA has in *Yap Son On* held that in construing any agreement between parties, "the words used by the parties occupy primacy of place" (at [38]). The terms of clause 17 are unambiguous: the plaintiffs have not shown otherwise. In light of clause 17, and particularly the words in italics, I did not find it credible for the plaintiffs to deny that the 18% shareholding in Hua Kai BVI formed part of the constitution for their US$1.2 million payment.

Plaintiffs' claim for the return of the total sums of $1,242,500 and US$500,000 on the basis of a total failure of consideration for these payments

90 For the reasons set out above, I found that the shares in Hua Kai BVI formed part of the consideration which the plaintiffs had agreed to in the 31 May 2013 Agreement.

91 As noted earlier, the 2nd plaintiff received 5,000 shares in Hua Kai BVI upon its incorporation on 18 July 2013. I would add that despite the plaintiffs' insistence to the contrary, there was nothing sinister about the allocation of 5,000 shares to the 2nd plaintiff – instead of the 9,000 he was meant to receive. On the evidence, it was clear that this was a genuine mistake made by SBC International. [121] It was also clear that it was the 2nd plaintiff himself who

[121] Defendant's AEIC, pp 112-113.

decided not to execute the share transfer forms to effect the re-allocation of the addition 4,000 shares from Ng Liang Wee – allegedly because of the various disputes which had arisen by then between him and the defendant.

92 As I found that the Hua Kai BVI shares formed part of the consideration bargained for by the plaintiffs in entering into the 31 May 2013 Agreement and as the 2nd plaintiff did receive some of these shares, the plaintiffs' claim for return of all monies paid on the basis of total failure of consideration clearly could not succeed.

Plaintiff's claim for refund of US$500,000 on the basis of various clauses in the 31 May 2013 Agreement

93 In respect of the plaintiffs' claim for the refund of a sum of US$500,000,[122] the key provision may be found in clause 8 of the 31 May 2013 Agreement which provided as follows (reproduced here for convenience):

> If the Vietnam concession and the Japan Project does not materialize KOH will reimburse a maximum of US$500,000 to RJCR depending on which projects do not materialize. US $500,000 if both do not materialize, US$200,000 if the Vietnam concession does not materialize and US$300,000 if the Japan Project does not materialize.

94 The defendant argued that the plaintiffs could no longer rely on clause 8 because it was subject to an "expiry" period of 2 years from the date of the Agreement. In making this argument, the defendant sought to rely on clause 16; specifically, the last sentence in that clause which read:

> The personal Guarantee by [the defendant] for this contract to be relinquish after 2 years from the date of this contract signed.

[122] [54]-[59] and prayer (3) at p 39 of the Statement of Claim (Amendment No. 2).

95 I should state that it was not clear exactly what the term "relinquish" was intended to convey. Neither the plaintiffs nor the defendant made any submissions on this: instead, both sides appeared to assume that it meant the same thing as "expire". Assuming this was what the term was intended to convey, the above sentence still had to be read in its entirety:

> In consideration of the sums set out in Clause 4 herein paid and to be paid by RJCR, KOH agrees to guarantee the payments or minimum profits payable to be made by HK to RJCR mentioned herein should any of the said payments or minimum profits not be forthcoming within 1 month after the time limited for HK to make payment. Notice in writing by RJCR to KOH will be sufficient demand for payment and KOH cannot deny or dispute the amounts payable hereunder as stated in any letters of demand for [*sic*] RJCR to KOH. Koh also agrees that if the sand is found to be in non compliance with ITC specifications that he will also guarantee to repay to RJCR the US$200,000 paid by RJCR as set out in Clause 4 herein. The personal Guarantee by Mr. Koh for this contract to be relinquish after 2 years from the date of this contract signed.

96 Having regard to clause 16 in its entirety, it was apparent that even if the last sentence were intended to set an "expiry date" of 2 years to the personal guarantee given by the defendant, this was targeted at and limited to the guarantees provided for in clause 16 itself; namely, the guarantee of payment of the profits and other payments payable by Hua Kai BVI to the 1st plaintiff, and the guarantee of repayment of the US$200,000 paid to Hoang Viet in the event that the sand supplied failed to satisfy JTC specifications. Having regard to the express wording of clause 16, it was simply not possible to construe it as a provision which stipulated a 2-year "expiry date" for other clauses in the 31 May 2018 Agreement – such as clause 8.

97 In order to invoke clause 8 successfully to obtain reimbursement of the "maximum" sum of US$500,000, the plaintiffs had to prove that both "the Vietnam concession" and "the Japan Project" had failed to materialise.

Regrettably, the plaintiffs' case in respect of "the Vietnam concession" was rather incoherent. It was never clear what precisely they claimed would amount to non-materialisation of the Vietnam sand concession. In the first place, it was not disputed that there *was* a valid Vietnam sand concession – albeit one held by Singapore Hua Kai. The plaintiffs started with the proposition that the defendant had falsely represented that a company known as Hua Kai Engineering and Resources Co Ltd already held a sand concession from Hoang Viet at the time the 31 May 2013 Agreement was executed. However, in [55] to [61] above, I have found that no such representation was made, nor could the 2nd plaintiff have believed when signing the Agreement that a BVI company held such a sand concession – not least because he himself conceded that he had seen the Hoang Viet sand concession agreement on or around 27 May 2013, and would therefore have seen that it was Singapore Hua Kai that held the concession.

98 Somewhat belatedly, there was an attempt in re-examination by the 2nd plaintiff to suggest that the defendant had agreed that the sand concession in Vietnam would be assigned from Singapore Hua Kai to Hua Kai BVI. Apart from the reasons stated at [58] above, this allegation was never pleaded by the plaintiffs in their amended statement of claim (which notably underwent two amendments). The court cannot make a finding based on facts which have not been pleaded: see *Ong Seow Pheng and others v Lotus Development Corp and another* [1997] 2 SLR(R) 113 at [41]. In the circumstances, I did not give weight to this allegation.

99 For the reasons set out above, I found that the plaintiffs were unable to satisfy me that "the Vietnam concession" had "not materialised".

100 On the other hand, insofar as "the Japan Project" was concerned, it could not be disputed that this never materialised. There was an attempt by the defendant to suggest that this was the 2nd plaintiff's fault. In his affidavit of evidence-in-chief, the defendant suggested that "the investment project with the Japanese failed to proceed" because the 2nd plaintiff had reneged on his promise to provide a credit line to a company named Opera House Co Ltd in relation to another project.

101 I did not find the defendant's suggestion credible. Not only was the defendant unable to offer any sensible explanation as to the connection between the MOU to supply sand to JRDC and the separate dealings with Opera House Co Ltd ("Opera House"), his own witness Khoo gave a wholly different explanation as to why the MOU with JRDC did not lead to a binding contract. As noted in [66] above, Khoo's evidence was that JRDC itself had backed away from signing a binding contract; and the "big company" in Japan which JRDC had referred Raffles-Sand to had also declined to sign any contract or to pay any deposit. In short, the eventual failure of the Japan Project could not in any way be said to have been caused by the 2nd plaintiff.

102 As the Japan Project had clearly failed to materialise, I held that the 1st plaintiff was entitled to be reimbursed a sum of US$300,000 pursuant to clause 8 of the 31 May 2013 Agreement.

Peripheral issues

Whether the 1st plaintiff was a non-signatory to the 31 May Agreement

103 I conclude by addressing a number of peripheral issues raised by the parties in the course of the trial. The first concerns the defendant's contention

that the 1st plaintiff was not a signatory to the 31 May 2013 Agreement and should, accordingly, be precluded under clause 15 from seeking to enforce any of its terms. Clause 15 reads:

> No party not a signatory to this agreement shall be in any manner entitled to claim any right or benefit or enforce any rights herein.

104 Rather curiously, whilst this point was pleaded in the Defence (Amendment No. 3),[123] it was not taken up by defence counsel either in cross-examination or in closing submissions. In any event, I did not find any merit to this contention. It was not disputed that the 2nd plaintiff had signed the 31 May 2013 Agreement. It was also not disputed that the 2nd plaintiff was at the material time the sole director (as well as the sole shareholder) of the 1st plaintiff.[124] It would be reasonable, in the circumstances, to infer that the 2nd plaintiff had signed the 31 May 2013 Agreement both in his personal capacity and on behalf of the 1st plaintiff, as its sole director.

Failure of the business venture involving Opera House

105 In the course of the trial, both sides also made various allegations concerning the failure of a business venture between Hua Kai BVI and a Japanese corporate entity named Opera House. In brief, during a second visit by the parties to Japan in July 2013, Hua Kai BVI had signed an agreement under which it was supposed to sell, *inter alia*, river sand and rock to Opera House for a reclamation project in Okinawa.[125] According to both the defendant and Khoo, during a meeting with representatives from Opera House, the 2nd

---

123 Defence (Amendment No. 3) at para 7.

124 1ABD, pp 186-187.

125 Defendant's AEIC, pp 77–81.

plaintiff – who signed this agreement on behalf of Hua Kai BVI – had taken it upon himself to offer to provide Opera House with a credit line of US$5 million, but had subsequently reneged upon this offer.[126] The 2nd plaintiff, for his part, denied these allegations.

106 I did not find it necessary to make any findings in relation to the allegations concerning the failure of the Opera House venture because there was no evidence before me to demonstrate any connection between the Opera House Venture and the Japan Project; nor did the defence provide any coherent explanation as to how the failure of the Opera House venture affected the viability of the plaintiffs' claims in the present suit.

SNC Deed

107 Finally, a fair amount of time was taken up by the plaintiffs in expanding upon the terms of the SNC Deed and the false representations allegedly made by the defendant in connection with the SNC Deed.[127] The plaintiffs even pleaded in their amended statement of claim that they would "refer to the terms of the SNC Deed for its full purport, effect and consequence at the further proceedings and/or the trial of this matter".[128]

108 As the defendant pointed out, however, the terms of this deed, their purport and effect, had in fact been the subject-matter of a separate suit brought by the 2nd plaintiff in DC 923 of 2016 against the defendant and SNC Training Consultants Pte Ltd. In that suit, the District Judge had found that the SNC Deed was not meant to be a deed, despite being labelled as such, but also that it was

126 Defendant's AEIC, paras 40, 66-67; Alex Khoo's AEIC, paras 18-22.

127 Statement of Claim (Amendment No. 2), paras 22-27.

128 Statement of Claim (Amendment No. 2), para 22(d).

a document which "clearly provided for a commercial arrangement under which [the 2nd plaintiff] provided consideration in the form of assistance and financial and business contribution, in return for which payments for sand supplied under the Starhigh Agreement would be made to [the 2nd plaintiff]".[129] It should be pointed out that in making these findings, the District Judge essentially agreed with the claim put forward by the 2nd plaintiff in DC 923 of 2016 regarding the nature and effect of the document known as the SNC Deed.[130] On that basis, the 2nd plaintiff was awarded judgement in DC 923 of 2016 against both the defendant and SNC Training Consultants Pte Ltd for the sum of $180,658.68.

109 Rather belatedly, having proceeded to plead the terms of the SNC Deed in the amended statement of claim in these proceedings, the 2nd plaintiff conceded in his affidavit of evidence-in-chief that the plaintiffs were "not making any claims under the SNC Deed" and that the defendant had since paid him the judgement sums ordered in DC 923 of 2016.[131] However, even this concession failed to go far enough – especially since it came only after the 2nd plaintiff had put forward a substantial amount of material in his affidavit of evidence-in-chief regarding the circumstances in which the SNC Deed was entered into and its terms.[132] In my view, the terms of the SNC Deed and the circumstances in which it was entered into should not have been pleaded by the plaintiffs in the first place in their present suit. Having put forward a certain version of events relating to the SNC Deed, its origins, and the nature of its terms in DC 923 of 2016, it was highly inappropriate – indeed, impermissible –

---

129 Defendant's AEIC, p 135.

130 Defendant's AEIC, p 129.

131 2nd Plaintiff's AEIC, paras 37-38.

132 2nd Plaintiff's AEIC, paras 30-36.

for the plaintiffs to attempt to put forward a *different version of events* in the present suit by claiming that the SNC Deed had been offered to them by the defendant as a means of reassuring them that "the terms of the 31st May 2013 Agreement could still be carried out".[133]

110 For the reasons set out above, I did not find it appropriate to make any findings on the plaintiffs' allegations regarding the SNC Deed.

Conclusion

111 In light of the findings of fact and the reasoning set out at [94] to [102] above, I gave judgment for the sum of US$300,000, to be reimbursed by the defendant to the 1st plaintiff pursuant to clause 8 of the 31 May 2013 Agreement, with interest to run on this judgement sum at 5.33 % from the date of the writ. I also ordered the defendant to pay the plaintiff the costs of the action; such costs to be agreed (and if not agreed, then to be fixed by me).

Mavis Chionh Sze Chyi
Judicial Commissioner

Lam Kuet Keng Steven John and Choong Madeline (Templars Law LLC) for the plaintiffs;
Choh Thian Chee Irving, Lim Bee Li and Chuah Hui Fen, Christine (Optimus Chambers LLC) for the defendant.

---

133 Statement of Claim (Amendment No. 2), para 22.